UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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ADMINISTRATIVE PROCEEDING
File No. 3-15003

In the Matter of

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

Respondent.

DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

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I. INTRODUCTION

The evidence in this case has helped explain why thousands of investors from the United States and elsewhere invested their hard-earned money, totaling in the billions of dollars, in so-called "certificates of deposit" nominally issued by Stanford International Bank, Ltd. ("SIB" or "the Bank" and "the SIB CD"), an offshore bank in the Caribbean owned by a single person, Allen Stanford. The Respondents – executives of a United States-registered broker-dealer and investment adviser – wholly disregarded their responsibilities under the federal securities laws. And by doing so, each contributed to a façade of legitimacy around Stanford's enterprise and lured investors into a false sense of security about Stanford's offered investment.

Danny Bogar was the President of Stanford Group Company ("SGC"), which was dually registered with the Securities and Exchange Commission ("SEC") as a U.S. broker dealer/investment adviser. Like SIB, SGC was wholly-owned by Allen Stanford. SGC was the sole broker-dealer in the United States that Allen Stanford authorized to market his bank's "CD" within the United States. Bernerd Young served as SGC's chief compliance officer, and SGC's Due Diligence Officer on SIB and the SIB CD. Jason Green served as the President of SGC's Private Client Group, the product manager for the SIB CD, and played a key role in SGC's efforts to market the SIB CD.

SGC and the Respondents told investors that they could invest in a "certificate of deposit" that paid higher returns than a normal certificate of deposit because the offshore bank used a global network of successful money managers. But at the same time, SGC and the Respondents assured investors, who often approached this unique product with skepticism, that their investments were safe because the global network of money managers pooled their investments into a single portfolio (the "CD portfolio") that, in turn, was invested in a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks" and because depositors were protected by a "comprehensive insurance program." Not surprisingly, investors took comfort in these assurances from SGC. Ultimately, as Respondents have no choice but to admit, their assurances were false.

But the Respondents intentionally failed to tell these investors that neither they nor anyone at SGC had any independent basis on which to vouch for how the Bank invested the CD portfolio, whether SIB's historical investment returns were accurate, whether SIB possessed the assets it claimed, and, ultimately, whether the investment was safe at all. Contrary to specific and bold promises about how SIB invested its assets, the Respondents alleged that Allen Stanford and his Bank claimed that his U.S. broker-dealer was prohibited from obtaining such verification. And each Respondent knew that, contrary to the alleged "comprehensive insurance program," depositors in the SIB CD and investments underlying the CD portfolio had no insurance protection whatsoever. Nor did Respondents disclose either the fact of scope of SGC's total financial dependence on SIB and its otherwise interconnectedness to SIB. Finally, each Respondent played a role in training SGC's financial advisers to emphasize the liquidity of the underlying CD investment portfolio and the comprehensive insurance program as key security features of the CD program and in driving the sale of SIB CDs by using an out-sized compensation program.

Respondents took these steps even in the face of significant, mounting issues that called into question the legitimacy of Stanford and his bank. Indeed, the Respondents' response to learning such facts was to go on the "offensive" to defend Stanford's enterprise, engage in "damage control", and otherwise attack Stanford's critics without doing anything to determine if the facts were true. In short, each Respondent focused on protecting Stanford's enterprise, not on protecting SGC's investor-clients.

As a result of their actions, each Respondent violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), violated and/or aided and abetted and caused SIB's and SGC's violations of Section 10(b) of the Securities and Exchange Act of 1934 ("Exchange Act"), aided and abetted and caused SGC's violations of Section 15(c)(1) of the Exchange Act, and willfully aided and abetted and caused SGC's violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act").

II. STATEMENT OF FACTS[1]

A. Stanford Group Company 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]. The centerpiece of this fraud was a product Stanford and his entities called "Certificates of Deposit" that were reported as being issued by an offshore company that Allen Stanford owned, Stanford International Bank ("SIB"). [Tr. 78:17 – 79:7; 83:12-17; 84:2-11]. As discussed below, potential investors in the SIB CD were told that SIB pooled the money invested by CD investors and invested those funds in a single portfolio. [Tr. 90:25 – 91:11; Division Exhibit 644 at p. 12 of 14; Division Exhibit 742 at p. 6 of 21]. 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

1 The Division offers this statement of facts, along with other facts supported by the record set out elsewhere in this Brief, as proposed factual findings supported by the evidence in this case.

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]. In other words, even though it was called a "bank" and issued what were called "certificates of deposit," SIB was nothing like a traditional commercial bank. [Tr. 83:18 – 84:1].[2] And, while the SIB CDs claimed a fixed-rate of return like certificates of deposit issued by banks in the United States, it was, in truth, much different. [Tr. 84:2-11]. As the Respondents knew, 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].[3] In fact, though it was called a "certificate of deposit," those within SGC, including the Respondents, 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); Tr. 2876:3-9 (Bogar's admission that the SIB CD was operated like a hedge fund); Tr. 3759:17-25 (Green's admission that he understood SIB claimed its trading strategy was much like a hedge fund); Tr. 2746:11-16 (Fontenot's admission that Green internally described the SIB CD as being "similar to a hedge fund. It was managed along the same style as a hedge fund."); Tr. 411:4-17

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[2] Respondents understood that SIB was not like a commercial bank. [*See, e.g.*, Tr. 3343:10-3344:3].

[3] Or, as one SGC financial adviser explained "SIB pooled investor deposits and each depositor's dollar was invested in the same fashion." [Tr. 410:3-9].

(Shaw: "So, in your mind, this was like a hedge fund, is that right?" "Yes." "Okay. And there's another characterization that you thought it was like an nonrated bond? Was it also like that?" "Well, it was an unrated bond from the standpoint that it was an IOU"); Tr. 323:8-324:1 (Finkelstein: "I personally looked at the CD as a nonrated bond")].

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, Mike Bishop testified that "[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].

Although it was held out as an Antiguan offshore bank, SIB's records were kept predominantly in the U.S. [Tr. 83:12-17]. Further, SIB's core functions were conducted in the U.S. [Tr. 83:14-17; 157:5-9]. For example, SIB's investment portfolio was managed by Jim Davis and Laura Pendergest-Holt from the U.S. (primarily Tupelo, MS; Memphis, TN; Miami, FL; and Houston, TX). [Tr. 89:15 – 90:4; 91:14 – 92:19; 157:5 – 158:14; 159:14 – 160:8; 161:24 – 162:5; 165:7-16; 306:20 – 307:4]. SIB expressly acknowledged in its disclosure statement that SIB and its officers were subject to the antifraud provisions of the federal securities laws. [Tr. 294:13 – 295:13; Exhibit 644 at p. 5 of 14].[4]

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[4] Although SIB was purportedly subject to some level of oversight by the Antiguan Financial Services Regulatory Commission ("FSRC"), it is clear that no real oversight of SIB was provided. [*See, e.g.,* Tr. 245:5-246:9]. Indeed, it appears that at different times, the FSRC had only three or four examiners available for all of the banks in Antigua. [Tr. 244:16-21]. As even Stanford's materials indicate, Antiguan law did not provide any level of insurance coverage for the SIB CD. [*See, e.g.,* Division Exhibit 644 at p. 2 of 14]. Likewise, even Leroy King (whatever else his misconduct may have been) admitted that, even assuming it was operating as intended, the FSRC did not independently verify the assets of SIB, but instead relied on SIB's external and internal auditors. [Tr. 830: 22 – 832: 21].

SIB represented that a tiny Antiguan company named C.A.S. Hewlett, with only two or three employees, served as its external auditor. And it had done so since at least 1997. [Tr. 87:8-88:6]. It is undisputed that various persons, including SGC's financial advisers, expressed concerns about the fact such a small company served as SIB's auditor. [*See* Tr. 3382:14-20; 3382:21-3383:2]. Particularly in 2008 and 2009, the external auditor became a commonly discussed grievance by the financial advisers to SGC management. [Tr. 425:17-426:2]. Others expressed concern at the length of time Hewlett served as the auditor. [Tr. 424:17-425:6; 468:19-469:3]. The explanation the financial advisers received was striking: "The explanation was that this was a long-term friendship of Allen Stanford's and he was respecting that friendship and there are very few audit firms that domiciled in Antigua." The financial advisers immediately recognized the flaw in that logic: "our thinking was loyalty and friendship is one thing, but this is – this is a fiduciary obligation." [Tr. 426:4-11].

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.]

From January 2007 through February 2009, SIB obtained more than $4.2 billion in new CD deposits. [Division Demonstrative Exhibit 2]. In fact, according to the forensic accountant working for the equity Receiver appointed over SIB and SGC, from October 2008 through February 2009 alone, SIB received approximately $450 million. [Tr. 135:22 – 136:19; Division Demonstrative Exhibit 2]. The Receiver's forensic accountant also confirmed that investors from the United States, more than any other country, accounted for the largest portion of CD-related revenue for SIB, going back to at least 2007. [Tr. 302:19 – 303:7; 213:5 – 214:8].[5] Investors frequently liquidated some or all of the existing holdings in traditional securities such as mutual funds, stocks and bonds and used the proceeds to invest in the SIB CD. [E.g., Tr. 1551:3-Tr. 1552:5; 1560: 6-23 (Smith); Tr. 2705: 5-12 (Thevenot)].

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].

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5 In evaluating the testimony offered by the Receiver's forensic account, Karyl Van Tassel, the Division asks that the Court take official notice that the Fifth Circuit Court of Appeals has noted that Van Tassel's work is clear, credible, and reliable. *See, e.g., Janvey v. Alguire,* 647 F.3d 585, 597 (5th Cir. 2011) ("The district court relied upon ... the declarations of the Receiver's forensic accountant, Karyl Van Tassel, to find that a Ponzi scheme existed. We find that the district court did not err in finding that the Stanford enterprise operated as a Ponzi scheme. . . . The Van Tassel Declarations . . . provide clear, numerical support for the creative reverse engineering undertaken by Stanford executives to accomplish the Ponzi scheme;"); *See also Am. Cancer Soc'y v. Cook*, 675 F.3d 524, 528 (5th Cir. 2012) (crediting Ms. Van Tassel's declaration and stating that "this court found credible [in *Alguire*] a declaration that provided 'clear, numerical support for the creative reverse engineering undertaken' by the Ponzi scheme and specifically itemized the assets and returns of the company.").

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:

(i) SIB pooled CD deposits and invested the funds in a diversified portfolio of highly marketable and liquid securities that was managed by a network of international money managers;

(ii) this investment portfolio was allocated primarily to equities and investment-grade bonds, and had achieved double-digit returns without a loss for more than 15 years; and

(iii) the investment portfolio returns allowed SIB to offer generous yields, which were always higher than yields offered by United States banks.

[Tr. 299:9 – 300:6; 300:10 – 301:3; Division Exhibit 607 (Brochure) pp. 5, 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].

More specifically, under the heading of **"Depositor Security,"** the brochure assured investors that:

> Key components of Stanford International Bank's investment criteria include:
>
> **Liquidity.** We focus on maintaining the highest degree of liquidity as a protective factor for our depositors. The Bank's assets are invested well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international [banks]
>
> [....]
>
> **Insurance.** Stanford International Bank maintains a comprehensive insurance program with the following coverages:
>
> - a depository insolvency policy insuring funds held in correspondent financial institutions
> - A banker's blanket bond
> - A directors' and officers' liability policy

[Division Exhibit 607 at pp. 5 and 7 of 17; Division Exhibit 611].

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]. As discussed below, the Respondents knew or were reckless in not knowing that they had no independent basis on which to make these representations.

In addition, SIB had no insurance that protected CD investors. [Tr. 99:3-11]. In fact, each of the Respondents knew that there was no insurance that protected CD investors. [Tr. 2794:20-23 (Bogar admits that he knew that the CD did not have any deposit insurance); Tr. 3815:1-8 (Green acknowledging that the product was not insured in any way); and Tr. 3407:4-11 (Young acknowledging no insurance)].

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

1. Summary of Respondents' Positions at SGC and Background

Each Respondent played a crucial role at SGC.[6]

a. Bogar

Respondent Bogar was SGC's President from March 2005 through February 2009. [*See* generally Tr. 2594:19-22; 2611:14-19; 2620:4-8]. Before that, from August 2000 through February 2009, Bogar, acting on behalf of Stanford Financial Group ("SFG")(from 2000-2005) and SGC (2005-2009), managed private equity for SIB pursuant to a contract between SGC and

6 For example, the Respondents' expert witness admitted that each Respondent would be considered a "principal" of SGC or, stated differently, a member of SGC's management team. [Tr. 4230:25-4231:3; 4216:24-4217:1; 4217:15-22].

SIB.[7] [Tr. 2565:17-24; Tr. 2566:12-15; Division Exhibit 570]. As President, Bogar approved SGC's offer and sale of the SIB CDs and the use of the SIB CD offering documents, namely the marketing brochure and the disclosure statement. [Tr. 2874:11-14][8]

Prior to joining SGC, Bogar worked as an executive with a wireless communications distributor [Tr. 2557:12-21] and did not have experience in the securities industry. [Tr. 2873:18-22]. After joining SGC, Bogar obtained Series 7 and 24 securities licenses. [Tr. 2594:25-2595:11].

From June 2004 through February 2009, Bogar received more than $3 million in compensation. [Tr. at 139:10 – 140:18; Division Demonstrative Exhibit 1].

b. Young

Young was hired to become SGC's chief compliance officer in July 2006. At that time, his title was managing director of compliance for Stanford Group Holdings ("SGH"), SGC's immediate parent company.[9] Initially, he did not have any active securities licenses; those licenses became effective in the fall of 2006. [*See generally* Tr. 3117:23-3118-20]. By no later than June 2007,

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7 As discussed below, in December 2004, SIB entered into an agreement with SGC that authorized SGC to identify private equity opportunities for SIB, negotiate terms on behalf of the bank, and manage the portfolio. [Division Exhibit 570; KVT Testimony, Tr. 91:14-92:19 and 110:4-23]. The private equity investments were part of the SIB CD investment portfolio. [Tr. 91:14-92:19].

8 Bogar admits he was aware of the contents of the offering documents but that he reviewed them in a "cursory manner." [Tr.2881:22 – 2882:2].

9 It should be noted that Stanford Group Holdings is not the same entity as Stanford Financial Group Company, a separate entity that provided administrative services to all of Allen Stanford's entities. [Compare, for example, Tr. 80:20-81:10 (explaining nature of Stanford Financial Group Company) with Tr. 3146:24 – 3147:3 (Stanford Group Holdings is the 100% owner of Stanford Group Company)].

Young became SGC's Due Diligence Officer.[10] He remained as SGC's chief compliance officer through February 2009. 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].

Prior to joining SGC, Young was the District Director of the Dallas office of FINRA from 1999 through 2003. Before that, he served as the Assistant Director from 1995-December 1997. In approximately early 1998 he was placed in charge of the Dallas office. He was terminated by FINRA in May 2003. [Tr. 3103:1-5].

c. Green

Green served as President of SGC's Private Client Group from January 2007 through February 2009. [Tr. at 3677:19-3678:5] Previously, Green had also served as Managing Director of SGC's Baton Rouge, Louisiana branch office (April 2001 to January 2007) and Senior Vice President for Financial Planning (February 1996 to April 2001).

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[10] At trial, Young claimed that he became SGC's due diligence officer in June 2007, after his predecessor formally left the Stanford family of companies. [Tr. 3435:2-9]. But it is also undisputed that Young engaged in various SIB related compliance activities on behalf of SGC before May 2007, including taking what Young has described as a "due diligence" trip to the bank in Antigua in October 2006. [Tr. 3215:8-15].

Beginning in approximately 2004, Green assumed responsibility for training SGC's financial advisers in connection with marketing the SIB CD, and he was widely viewed within SGC as the being in charge of SGC's efforts to market the SIB CD. [*See, e.g.,* Tr. 1370:20-22 (Managing Director Marty Karvelis noting that Green's "sole focus" was "selling of the CD"); Tr. 331:17-20 (noting that Green was the "prime manager" of the SIB CD); Tr. at 413:7 - 414:17 (Green ran SIB CD training for SGC financial advisers)].

In addition, Green admits that he gave the marketing brochure to his clients (or had his sales assistant give it to them) and he knew other SGC financial advisers did the same. [Tr. 3953:24-3954:12]. As discussed in more detail below, Green also led and was responsible for SGC's participation in a single-product sales contest designed to encourage the sale of the SIB CD by all of Stanford's various entities. [*See generally* Tr. 1170-1178; Tr. 4002:23-4003:7; Division Exhibits 606 at 44, 74-77; 789].

Green had an advisory relationship with many of his clients—including James Stegall, who executed an advisory agreement with SGC that was signed on its behalf by Green. [Green Exhibit 247 at 31-34; Tr. at 1502:10-1505:16]. The SIB balances were included in Mr. Stegall's assets-under-management figure for the purpose of calculating his advisory fee. [*Id.*]

From January 2005 through February 2009, Green received more than $2.6 million in compensation solely attributable to sales of SIB CDs. [Tr. 143:7 – 145:5; Division Demonstrative Exhibit 1].[11]

[11] The Receiver's forensic accountant, Karyl Van Tassel, testified that Division Demonstrative Exhibit 1 only displays compensation received by each Respondent during the date ranges referenced in the far right-hand column of the document. [Tr. 140:19-24]. Therefore, compensation received by Bogar and Green from SGC prior to those dates in that right-hand column is not reflected on Division Demonstrative Exhibit 1. [Tr. 140:25 – 141:4]. For example, the compensation figures for Bogar, who became SGC's President in March 2005, do not include: (i) salary he received in his role as President from March 2005 through

2. **Each Respondent 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.**

As discussed in more detail below, during the course of their employment at SGC, each Respondent learned certain material facts about SIB and the SIB CD; more importantly, each learned that information necessary to verify the most basic, core facts would never be revealed to them.

a. **The Respondents conducted half-hearted attempts to understand the product at the core of SGC's existence.**

Young and Green each made multiple trips to Antigua, where they were to learn about the Bank and the SIB CD. [*See, e.g.,* Tr. 3214:23 (Young's trips); Tr. 3711:8-15 (Green)]. In truth, 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.

September 2006; or (ii) any compensation he received from SGC between August 2000 and March 2005. [Division Demonstrative Exhibit 1]. Likewise, the compensation figures for Green, who joined SGC in 1996, do not include: (i) salary he received from SGC from approximately 1996 to at least January 2006; (ii) commissions/referral fees derived from sales of SIB CDs from approximately 1998 (when SGC began offering and selling SIB CDs to U.S. investors) to January 2005; and (iii) quarterly bonuses received from 1998 to January 2006. [Division Demonstrative Exhibit 1]. Moreover, even during the relevant time period, Green "actually received more compensation than this, but this is just the amount that we allocated to sale of SIB CDs." [Tr. 144:25 – 145:5]. In sum, these compensation numbers reflect very conservative amounts for Bogar and Green. [Tr. 143:24 – 144:2].

Bogar's efforts to understand the Bank and the SIB CD were even less stringent. He admits that when he became President of SGC his efforts consisted only of having a conversation with Young's predecessor in the compliance department and going through her due diligence binder. [*See* Tr. 2878:8 – 2879:5].

b. Each Respondent knew that nobody at SGC was permitted to have transparency into or otherwise verify the nature, historical performance, or even existence of the SIB CD portfolio.

It is undisputed that each Respondent 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 (Young); Tr. 2883:10-15 (Bogar); and Tr. 3759:8-16; Tr. 3881:20-25, 3980:7-10 (Green).] As Bogar explained: nobody at SGC was able to independently verify statements about how the funds were invested, other than by asking people who "are with the bank." [Tr. 2882:3-2883:15].

3. The Respondents cannot adequately explain the need for SIB's secrecy.

While each Respondent clearly admitted they had no transparency that allowed them to confirm the nature of SIB's CD portfolio or verify the veracity of SIB's claims about the CD portfolio, their explanations about why such secrecy existed are vague and, ultimately, unpersuasive.

For example, Young 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]. Green also referenced supposed privacy laws. [*See* Tr. 3760:1-

2]. Bogar, though vaguely referencing the existence of privacy laws, offered very little explanation at all and, in fact, admitted that he did not have "any curiosity" about what was in the bank's portfolio. [Tr. 2960:21-2961:22].

Green also testified that when he sought confirmation from Laura Pendergest-Holt, the person in Memphis held out as the person most responsible for overseeing the external money managers supposedly managing all of the SIB CD portfolio, she explained the secrecy differently: she refused to provide any transparency into the portfolio because "while it was a systematic, disciplined approach to investing, it was proprietary and it could be copied and that would cause them harm. They would basically lose their advantage in the marketplace, so to speak." [Tr. 3965:23-3966:9; *see also* Tr. 3967:4-13; Tr. 3745:11-20]. Bogar claimed he also believed confidentiality concerns prohibited disclosure of information about the CD portfolio. [*See* Tr. 3016:10-25].[12]

A closer examination of their testimony and evidence, however, demonstrates that the Respondents had no reason to blindly accept that the CD portfolio had to be protected behind a shroud of secrecy. For example, the Respondents have offered no explanation (much less

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12 Green (but not Bogar and Young) also claimed that another reason given for the secrecy was that "the CD had to be marketed as a CD and not as an investment. And to begin disclosing all of the individual holdings would put us in a bad regulatory and compliance situation." [Tr. 3760:3-11]. Again, however, neither Green, Bogar, nor Young offered any explanation as to what this justification even meant, much less why it would preclude SGC from being able to confirm SIB was investing the CD portfolio as it promised. This is probably because this "explanation" makes no sense. On its face it suggests that, even though everybody understood it was not a CD, it should be referred to as one in marketing materials in part to avoid regulatory scrutiny. Leaving that aside, how would allowing SGC to have transparency into SGC's "premier" product constitute "marketing"? Respondents have not even tried to answer that question; more importantly, there is no evidence they ever even asked that question. Notably, though Green claims (without recalling any specifics) to have spoken with individuals within the compliance department many times over the years about the CD portfolio, there is no evidence that anyone ever heard this type of explanation from the compliance department. [*See, e.g.,* Tr. 3957:15-20 and 3958:13-3959:2]. Green offers no explanation for this discrepancy.

evidence) suggesting why disclosing information that would confirm past holdings or historical portfolio performance to SGC – an affiliate owned by the same person – would harm SIB's competitive position. In fact, it is undisputed that no Respondent even proposed entering a confidentiality agreement to allow sharing of such information. [*See, e.g.,* Tr. 3967:22-3968:6].

Likewise, to the extent Respondents had heard or been told that Antiguan privacy law prohibited them from knowing information about the SIB CD portfolio, this amounted to, at most, an unverified – and in fact, unchallenged – assumption. It is striking that, during a three-week proceeding, none of the Respondents pointed to any 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, Mr. 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.[13]

13 In addition, John Ward, the relationship manager at Pershing, noted that the President of SIB and the head of the FSRC claimed to Pershing representatives that Antiguan privacy did prohibit disclosure of SIB's portfolio information. [*See* Tr. 828:6-829:15]. While Bogar may have known about these statements to Pershing's representatives, there is no evidence that he ever asked any questions about them. And there is no evidence Young or Green even knew about these statements to Pershing's representatives.

Moreover, as Bogar knew, Pershing's in-house counsel rejected these representations. Instead, the in-house counsel stated that he did not believe that privacy statutes prohibited an institution such as SIB from sharing information about the institution's own assets. [*See* Tr. 828:6-829:15]. In fact, even when Leroy King, the head of the FSRC, told Pershing's representatives that the law prohibited such disclosure, Pershing questioned the accuracy of that claim and persisted in requiring transparency in order to continue wiring funds in connection with the investment into SIB CDs. [Tr. 832:22-833:9]. Ultimately, Pershing ended that business when SGC and SIB failed to provide such transparency. [Tr. 854: 8-17]. This stands in stark contrast to the Respondents' unblinking, unwavering and uneducated acceptance. In short, this episode merely highlights that, to the extent the Respondents believed Antiguan law prohibited

In any event, a variety of facts contradicted the notion that either proprietary or privacy concerns made it impossible for SGC to verify SIB's CD portfolio. 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 each of the Respondents claimed oversaw or managed the entire CD portfolio and the very person that Green claims told him that he could not learn the information because of confidentiality concerns.

Contrary to the supposed secrecy requirements the Respondents accepted without investigation or hesitation, Fred Palmliden – the person in Memphis who actually compiled the spreadsheet that tracked all the assets being managed by the external money managers – confirmed that he would have provided such information to any of the Respondents if they had ever asked for it. [Tr. 720:17 – 723:25; 745:18 – 746:22; 750:5-16; 751:9-22; 752:22 – 753:21; 796:18 – 797:14]. He specifically confirmed that nobody, including Ms. Pendergest-Holt, ever told him to keep the CD Portfolio information confidential. [Tr. 745:18-746:6]. If the Respondents had asked for -- and thus received and seen – those spreadsheets, the Respondents would have immediately realized that – contrary to every representation both they and SIB had made for years to investors – 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;

SGC from confirming the contents and performance of SIB's CD portfolio, that belief was, in truth, only an unverified assumption that was not based on anything specific and that the Respondents did not even try to verify it.

722:14 – 723:3; 723:20-25; 744:1-3; Division Exhibit 571; Division Exhibits. 579 – 582; Division Exhibits. 585 – 592].

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].[14] The Respondents have offered no explanation as to why those employees were able to circumvent the allegedly applicable Antiguan privacy laws, but SGC was not. Nor have Respondents even tried to explain why – as Green claims he was told – it was crucial that the portfolio information be kept confidential, yet no steps were taken to make sure these employees in Memphis did not share it. In any event, even though they were subject to oversight by SGC, none of the Respondents 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].

Moreover, it is undisputed that SGC began to implement an investment product called the Stanford Investment Model ("SIM") that was intended to track the investment strategies used by SIB. This product resulted from a recognition that some investors would prefer to reap directly the benefits of the high investment returns SIB claimed to achieve in the market, i.e., investing *with* SIB as opposed to investing *in* SIB. As SGC financial adviser Doug Shaw explained, SIM was intended to be a "proxy of the bank portfolio." [Tr. 495:1-14]. The Respondents did not even attempt to explain how SGC would be able to mirror SIB's investment strategies given that, supposedly, SGC was prohibited from knowing about those strategies.

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14 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].

Third, as discussed in more detail below, Bogar and others within SGC claim to have believed that it would be permissible to retain a third party such as Grant Thornton or another accounting firm and provide that firm with information sufficient to confirm the details and authenticity of the assets SIB claimed as part of the SIB CD portfolio. [*See, e.g.,* Tr. 2728:6-2729:9]. Yet Respondents do not explain, nor could they, why such a third party could obtain this information but SGC itself could not.

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 both Bogar and Young were well-aware of SGC's management of these private equity investments and that they 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].[15] Yet, neither Bogar nor Young ever even asked why their knowledge of this SIB asset was permitted but they were prohibited from knowing about other SIB assets.

15 Bogar and Young claim that they did not believe these assets were part of the CD Portfolio. [Tr. 2585:22 – 2586:1]. As noted below, this testimony, even if it is credited, only proves the recklessness and indifference with which the Respondents approached their responsibilities. But even if they believed that the private equity investments were not part of the CD portfolio but instead reflected other SIB assets, it is undisputed that both Young and Bogar understood that the private equity investments reflected SIB assets. [Tr. 2901:15-19; 2901:20-2904:22; Tr. 3471:19-3472:13; Tr. 3475:4-10).

4. Nevertheless, the Respondents blindly followed Allen Stanford's lead because SGC could not survive without the SIB CD.

The evidence also explains why the Respondents were willing to market a product they knew nothing about. Bogar put it plainly:

> Q: If you were aware ... that the NASD had said that it would be, that a brokerage firm should be skeptical of issuer statements, would that have caused you do to do more due diligence on this particular product?
>
> A: I don't think so. I think – I think we did the due diligence that we could do on the product. **You know, this was – the firm was built around Stanford International Bank and its product. And we believed in the firm. We believed in the people that were representing the product to us.** And I believe that, you know, transparency was an issue and I believe other than transparency, we did a lot of due diligence on the product.

[Tr. 2879:15-2880:2 (*emphasis added*)].[16] In short, at best, simply because they "believed in the people," the Respondents assumed everything about the SIB CD was "as promised" and made those same promises to investors.

The evidence confirms that the Respondents had a strong motivation to believe in Stanford's promises: their broker-dealer was financially dependent on selling the SIB CD. [Tr. 3345:18-3346:18 (Young admits that he was aware of SGC's financial dependence for years while he was working at the NASD, even before he joined SGC); Tr. 2909:24-2910:2 (Bogar acknowledges that SGC "can't live without" the money from selling the SIB CD); *see generally* Tr. 1170-1178; Division Exhibit 69 at p.2, Division Exhibit 606 at pp. 74-77 (addressing Green's

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16 Bogar's testimony, at best, only confirms his reckless approach, even at this late date, to his obligations. Bogar would have this Court conclude that he actually believed that "other than transparency, we did a lot of due diligence on the product." Yet, minutes later, he admitted that it is not possible to understand the Bank's CD without actually getting transparency into what the assets actually were at the bank. [Tr. 2881:16-21]. To put it bluntly, saying that "other than transparency" SGC did a lot, or even sufficient, due diligence is like a car salesman assuring you "other than the fact that there's no engine, this car runs like a beauty." Bogar's admission that he knew "transparency was an issue," but continued insisting that he and others at SGC conducted proper due diligence only confirms that, even looking back, he apparently would not change a thing.

knowledge that he and all of SGC's domestic financial advisers received lucrative compensation in connection with selling the CD).

This strong financial incentive provides a compelling explanation for why the Respondents pushed the product without disclosing their lack of transparency into the CD portfolio. As a result, Bogar, Green and Young allowed (and in fact encouraged) the sale of the SIB CD through the use of offering materials that touted the liquidity of SIB's investment portfolio as a protective factor for CD purchasers and represented that SIB maintained a comprehensive insurance program that provided depositor security. [17]

In addition, Green and Young, with Bogar's knowledge, trained SGC's financial advisers on selling the SIB CD, assuring them about the safety of SIB's investment portfolio. The testimony of Green's witness, James Fontenot, is telling on this issue:

> Q: Did Mr. Green ever disclose to you or anyone else during training as far as you know, that neither he nor anybody at the Stanford Group Company could confirm how SIB's portfolio was actually being managed?
>
> A: Well, according to the training meetings that I attended that Mr. Green oversaw and the ones that he didn't, we were regularly given literature that showed how the portfolio was being managed and the allocations and the percentages in the different categories.
>
> Q: ... [d]id he ever disclose to you or the other FAs at those meetings that the information could not be independently confirmed by anyone at Stanford Group Company?

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[17] Green admits that he understood more transparency was necessary. [*See* Tr. 3960:16-17]. He also admits that, despite pressing for information about the external money managers reportedly managing the SIB CD portfolio, he was only able to obtain some names of individuals and was not able to get information that would allow him to speak with the external money managers. [Tr. 3961:17-20]. Moreover, even when he did get a few names, he did not try to contact them. [Tr. 3961:20-22]. Curiously, even though everybody at SGC understood that a group of non-SIB employees located in Memphis, Tennessee purported to oversee the external money managers, there is no evidence that any of the Respondents ever asked any of those individuals for any account statements provided by the external money managers. [*See, e.g.,* Tr. 3966:17-21 (Green admits that he can't recall asking for such information and that though he recalls pressing Laura Pendergest-Holt for more information, his request was denied.)].

A: No.

[Tr. 2475:21-2746:10]. This is hardly surprising, given that no materials SGC provided to investors about the SIB CD – including the document referred to as the "Disclosure Statement" -- discloses SGC's total lack of transparency. In short, the evidence clearly demonstrates that the Respondents failed to disclose, even to SGC's own financial advisers, that not even SGC's executives could verify the contents of SIB's vaunted CD portfolio.

And there can be no doubt this was important information. As SGC financial adviser Doug Shaw explained as to why that mattered to him:

> "…if you're vetting a product and you're not able to see the working pieces within the product, that whole vetting process is an illusion … If I were the compliance department and if I wasn't seeing what was in the portfolio knowing that it was a product of the organization, that would have concerned me a lot."

[Tr. 423:22-424:7]. Not surprisingly, investors who interacted with Green testified unequivocally that it would have been important to know that he could not confirm the contents of the SIB CD portfolio. [Tr. 1419:6-1420:7; 1500:9-16]. As Cynthia Dore explained, it was Green's assurances about the contents of the SIB portfolio and other safety features of the SIB CD that overcame her initial skepticism about investing in this offshore product. [Tr. 1462:4-1463:16].

5. Unlike Respondents, outside parties, investors, and SGC financial advisers attempted to verify the details of the SIB CD portfolio.

Unlike the unchallenged assumptions Respondents made, during the relevant time period outside parties, investors, and SGC financial advisers increasingly demanded transparency into the CD portfolio. For example, as Young admits, 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); *See also*

Division Exhibit 277 (Green's response to a question in March 2008 about how SIB's portfolio was performing: "I don't think Lou has much money at SIB ...so I'm never too excited about jumping through a lot of hoops for him.")].

a. Pershing, SGC's clearing broker, quickly recognized that in order to understand SIB and its only product, it was necessary to have transparency into the CD portfolio.

For example, after only about six months after executing a clearing agreement with SGC at the end of 2005, Pershing, LLC began asking SGC for information on SIB's portfolio in mid-2006. [Tr. 809: 2-19]. Pershing continued asking for information throughout 2007. [*E.g.*, Division Exhibits. 230, 240, 255, 256, 269]. In an effort to get its questions answered about the contents of the SIB portfolio, in January 2008, Bogar accompanied Pershing executives to Antigua to meet with bank officials. [Tr. 826: 13 – Tr. 835:1].

But the Antiguan trip did not answer Pershing's questions. [Tr. 834:7-10; Tr.835: 2-9]. To the contrary, an initial meeting with SIB's president was ""extremely disappointing", because "that was the first time we learned that, you know, we were not going to get access to the information that we thought we were going to get access to and the reason we made the trip." [Tr. 830:12-18].

Moreover, even a meeting (which Bogar attended) with Leroy King, the head of the Antiguan Financial Services Regulatory Commission ("FSRC"), did not yield any information that satisfied Pershing. As John Ward made clear in his testimony, King admitted to Pershing's representatives that the FSRC did not verify SIB's assets, telling Pershing's representatives that was the job of SIB's auditor. [Tr. 831:1 - 832:11]. Instead, as King acknowledged, the FSRC and merely obtained statements from SIB and the FSRC compared those statements with other information submitted by SIB. [Tr. 832:3 - 834:6].[18] As a result, this meeting was not good enough for Pershing because, as John Ward put it, "we didn't get the transparency that we were looking for." [Tr: 834: 7-13].

Pershing continued to ask for the information throughout 2008, but was never provided it. [*E.g.,* Division Exhibits. 289, 290, 298, 318, 323, 327, 328; *see also* Division Exhibit 288 (Jim Davis tells Bogar that they will not give Pershing what it was asking for)]. By November 24, 2008, Pershing decided to issue an ultimatum. [Division Exhibit 344]. But even the ultimatum did not yield the information. SGC, through Bogar, again refused to provide what Pershing wanted. [Division Exhibit 344]. Pershing then informed SGC that it was going to refuse to wire any funds to SIB. [Tr. 854:7-17]. Although Pershing continued to serve as a clearing broker for the broker-dealer, it no longer wanted anything to do with the Bank. [Tr. 897:20-898:19]. And as Bogar admits he knew, the reason was simple: Pershing was unable to obtain any level of transparency into the CD portfolio. [Tr. 2984:11-12].[19]

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18 At trial, Bogar did his best to avoid acknowledging this fact. Though he initially admitted that neither he nor SGC had obtained independent verification of the CD portfolio [Tr. 2883:7-9], he later tried to suggest that perhaps the FSRC had provided independent verification. This inconsistent testimony, particularly when compared to John Ward's clear testimony about what Leroy King told them in the meeting Bogar attended merely confirms that Bogar continues to not accept responsibility for his failures.

As Pershing no doubt recognized, it is axiomatic that obtaining alleged "account statements" from the Bank, as opposed to getting them directly from the third party, provides independent verification at all of the assets because there is no basis to assume that the statements are real. In this regard, it is worth noting that Ward's testimony was essentially an admission against interest and, as such, should be accorded more weight. Ward's admission that he knew as early as January 2008 that the FSRC did not verify the SIB CD portfolio can only hurt Pershing's defense against claims that Pershing should have ceased processing wire transfers to SIB sooner. In contrast, Bogar's inconsistent testimony is clearly designed to be self-serving, furthering only his own interests.

19 Surprisingly, Bogar and Green appeared to claim at trial that the fact that Pershing agreed to become SGC's clearing broker at the end of 2005 after visiting the Bank excuses all of their

b. 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.[20] [Tr. 1248:22 – 1249:1; 1250:7 – 1251:3; 3569:19 – 3570:2]. In the context of this case, the reason SGC retained Synder 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...."

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conduct and failures. Nothing could be further from the truth. As John Kearney explained: "If we had been aware that [Pershing] had done due diligence and not received responses or had concerns, then it might have heightened our concern. But the fact that somebody else purported to have done due diligence wouldn't limit the scope of our due diligence." [Tr. 1269:15 – 1270:4; *see generally* discussion below at Section B.5.b.].

In short, the Respondents have it exactly backwards. It is irrelevant that Pershing agreed to become the clearing broker, but Pershing's later concerns should have warned the Respondents that they too should have been concerned or at least made real inquiries. Instead, they did little or nothing. In fact, Bogar's attempt to rely on Pershing's initial due diligence is even more perplexing given that he admits that as early as 2005 when considering changing clearing brokers he was told that "at some point in time [Pershing is] going to get indigestion with our offshore business ... you know, the bank had no transparency and I was being warned at that time that that would be an issue." [Tr. 2626:13-2627:11]. Bogar was put on notice about this very issue years earlier.

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

[Division Exhibit 444 (emphasis added)]. Here was a compliance officer spelling out directly to Green (and Young) 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].[21]

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

[21] 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].

investments." [Division Exhibit 506; Tr. 1264:19 – 1266:15].[22] Notably, Young testified that he was aware that Snyder Kearney had requested this information. [Tr. 3573:18-22].

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22 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].

c. **Outside advisers to investors raised serious questions and criticisms of Stanford, SIB and the SIB.**

At least as early as February 2007, each Respondent learned that CPAs or other advisors counseling existing or potential SIB CD investors raised serious questions 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]. These episodes are noteworthy because of the issues flagged for the Respondents by these individuals who were not connected to the Bank and because of the Respondents' reactions to these warnings.

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, Green's reaction 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]. Likewise, Young admits that in drafting this type of response, he did nothing to verify that the allegations in the e-mails were false or meritless. [Tr. 3451:5-9; 3460: 9-24]. Instead, Young, Green, and others proceeded to prepare and approve 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].[23]

Green's refusal to heed these warnings continued even during the trial. First, he claimed that he should be excused for his role in ignoring and attempting to refute these warnings because he was on vacation when the original e-mails came in. [*See* Tr. 3850:7-3852:19]. He also

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23 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].

suggested that he was absolved of further action because he forwarded one of the e-mails to compliance. And, as his counsel asked Jay Comeaux: "And if, in fact, one of the groups that is been passed on to is compliance, when he gets back, the reasonable thing for him to do is to assume that that particular matter has been addressed in his absence, correct, sir?" Even Comeaux, who himself typically assumed what he was told by the Bank was true, found this one "assumption" too many. Instead, Comeaux rightly recognized that, instead of "assuming" it had been handled, Green should have verified it. [Tr. 1111:16-21].

Plus, Green's own words even cut against this excuse. As Comeaux agreed, Green's instructions make it clear that even if he was on vacation, Green understood the message of the e-mail. [*See* Tr. 1127:21-1128:7]. Moreover, one of the e-mails did not even require Green to access an attachment, further undercutting his explanation that he could not open the attachment on his blackberry. [*See, e.g.,* Division Exhibit 77 at 5]. Finally, even if his testimony is credited, it only confirms his recklessness: given the prominent role Green played within SGC in connection with the SIB CD and in training SGC FAs about it, it was a wholly improper for him to simply "assume" it was properly handled.

Green further suggested that he should be excused for ignoring these CPA reports because, he claimed, he had some experiences with "local CPAs" in Baton Rouge entering into competition with SGC in the brokerage business. [*See* Tr. 3852:3-19]. There is no evidence in the record to support this claim and certainly no evidence that these particular CPAs were in the brokerage business and, therefore, acting only as competitors, not impartial advisors, to their clients. Green could not know because he never asked.

6. Respondents' Role in Training and in SGC's Participation in Significant Sales Contests

Beginning in approximately 2004, Green conducted mandatory regular training sessions for SGC FAs related to marketing the SIB CD. [*See, e.g.,* Division Exhibit 103; Tr. 3764:14-19]. Bogar knew about these required training sessions and, in fact, as president ensured that the training occurred. [Tr. 2792:20 - 2793:24]. Similarly, Young was also 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]. Bogar knew of this training material and had seen the training materials and PowerPoint presentation. [Tr. 2794:3-5; 3087:16-3088:5].[24] Bogar also attended at least portions of certain training sessions. [Tr. 2794:9-19].

a. SIB CD Training Presentations

As Bogar and Young knew, Green emphasized in written training presentations that he prepared that:

- Antigua was stable and had a strong regulatory authority [Division Exhibit 104 at 10];
- The SIB CD was appropriate for investors seeking "safety" [Id. at 13];
- SIB's investment strategy was set and reviewed by its Board [Id. at 15];
- SIB's portfolio was managed by "seasoned" advisors across the globe [Id.];

[24] Curiously, despite this clear admission that he had seen the training "deck," Bogar also tries to minimize this by testifying elsewhere that he had only reviewed it in, as he puts it, a "cursory manner." [Tr. 2794:3-5]. This attempt to dodge the misleading content and guidance of the training presentations flies in the face of Bogar's responsibilities and is, at best, surprising given the importance the SIB CD played to SGC. But even if this testimony is credited, it is undisputed that he was aware of the training and to the extent he ignored his admitted obligation to correct misinformation, this failure only confirms his liability.

- Investors could transfer substantially all of their investment risks to SIB [Id. at 24];
- SIB had been successfully managing these investment risks for over 20 years [Id. at 26];
- SIB's portfolio had consistently returned between 11.7%-16.5% [Id. at 27, 32];
- SIB's Antiguan auditor provided oversight [Id. at 29]
- SIB maintained various insurance policies, including policies issued by Lloyd's of London that covered "fraud" [Id.];
- All earnings had been retained within SIB [Id. at 30];
- 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. at 34].[25]

b. Training and Marketing Manual

Separately from the PowerPoint training presentations Green and Young presented to SGC's financial advisers, Young and Green each knew 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) and 3949:25 - 3950:6 (Green)].[26] This Training

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25 Green acknowledged that this portion of Division Exhibit 104 was his PowerPoint presentation. [Tr. 3787:10-3789:23, noting that it is the same presentation included as Green Exhibit 261]. Also, although Mr. Green used a number of different training presentations over time, the content of these presentations was virtually identical. Each presentation included variations of these key safety and security features of the SIB CD. [*See generally* Green Exhibit 250, Division Exhibits 21 and 65; Tr. 1347:4-1360:21.] In addition, some of Green's earlier presentations show a highly misleading chart that purports to show the SIB CDs as being as safe as, or safer, than true conservative investments such as high-quality bond funds. [Green Exhibit 250 at DS00127-129]; Division Exhibit 21 at 39-41; Tr. 1354:14-1356:20].

26 Green's testimony on this point at trial is, on balance, not believable. On direct examination, he claimed "I had nothing do with [Division] Exhibit 742 [the Training and Marketing Manual] … I may have seen it, Mr. Freeman. I never recall it. I didn't recall it until it was shown to me by the Division in my interview in Baton Rouge [well after SGC was placed in receivership]." [Tr. 3763:2-9].

Initially on cross-examination Green continued his denials. For example, when shown documentary evidence [Division Exhibit 90] confirming that Green himself received a copy of the Manual by e-mail, Green tried to suggest he received it by mistake and didn't review that

Manual was also presented during the training sessions Green and Young conducted. [*See* Tr. 1163:18-1164:13, describing the Training and Marketing Manual as "a sales manual for clients."].

The Training and Marketing Manual parroted many of the assurances contained in the offering documents used to market the SIB CD. For example, the Training and Marketing Manual states that:

- "The Bank's assets are invested in a well-balanced global portfolio of marketable financial instruments, namely U.S. and international securities and fiduciary placements. The investment strategy is set by the Bank's Board of Directors annually and reviewed quarterly. Implementation of the investment process is carried out through a network of seasoned financial consultants and investment managers located in major financial centers across the globe." [Division Exhibit 742, p. 6 of 21].

- "What is the investment philosophy of Stanford International Bank? Capital preservation and a steady annual flow of revenues" It elaborates on this point by explaining "The Bank's strategy is based on an investment methodology that pursues: (a) Minimization of risk (both systematic and unsystematic) and (b) Liquidity (marketability)..." [*Id*].

- "How is the investment portfolio of Stanford International Bank composed? The result of Stanford International Bank's investment strategy is a portfolio of established, quality companies, governments and government agencies from around the world." [Division Exhibit 742, p. 7 of 21].

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attachment, leaving the impression that he would have had no reason to ever review the Training Manual. [Tr. 3948:11-3949:10].

Yet, other documentary evidence – in contrast to Green's self-serving claims – demonstrates that the Manual was actually distributed in conjunction with the training that Green conducted with Young and financial advisers were required to sign a sheet affirming its receipt. [*See, e.g,* Division Exhibits. 17 and 93].

And it is undisputed that Green knew that SGC financial advisers reviewed the Manual and that it was available for financial advisers, "for those who needed to perhaps refresh their memory on things..." [Tr. 3952:22-2]. Under these circumstances, it is difficult to credit Green's attempt to disclaim knowledge of the Manual's contents. But given his prominence in marketing the CD and training others to do so, if he truly never bothered to look at it to make sure it was not contradicting what he claims he believed was accurate training, that only confirms his willful and reckless approach to selling the SIB CD.

The Training and Marketing Manual also, like the marketing brochure, addressed the Bank's insurance policies. Specifically, the Training and Marketing Manual contains a section titled "SECURITY." That section leads with two questions: "How secure is Stanford International Bank?" and "what protection does Stanford International Bank provide to its depositors?" [Division Exhibit 742, p. 11 of 21]. It then answers those questions:

> 2) Stanford International Bank invests most of its assets in securities such as bonds and equities that are marketable instruments, negotiable in financial markets and easy to liquidate. Consequently, in the case of unusually strong demand for withdrawals, Stanford International Bank could liquidate all the securities sufficient to cover all withdrawals. In contrast, commercial banks or Savings & Loans institutions normally invest a great part of their funds in loans and other non-liquid assets, and maintain a minimal part of liquid funds. Stanford International Bank's liquidity equals security, since it assures that the Bank has the resources to honor withdrawals requests as they appear."
>
> . . .
>
> 8) Since Stanford International Bank is not a U.S. bank, it is not covered by FDIC insurance. However, the FDIC provides relatively weak protection: first it covers only up to $100,000 per client/account; second, the FDIC reserve fund covers only a minor portion of the deposits of all the banks that are insured; and third, it does not make any bank safer, nor does it prevent the failure of any bank.
>
> Stanford International Bank's funds are protected by a comprehensive insurance program which provides various coverages, including: ..."

[Division Exhibit 742, p. 12 of 21].

Finally, like the marketing brochure, the Training and Marketing Manual highlighted the striking comparison of SIB's much higher interest rates to the interest rates paid by United States banks. [Division Exhibit 742 at p. 9 of 21].[27]

[27] During trial, no doubt recognizing that the Training Manual's description of FDIC insurance as "relatively weak" compared to SIB's "comprehensive insurance program," was grossly misleading, Young testified that he trained SGC's financial advisors with two "later" versions of the Training and Marketing Manual, one that was available in December 2007 and one that became available in September 2008 [Tr. 3419:18-24; 3182:24-3183:13]. These

As Young noted, 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-

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documents do not contain the phrase "relatively weak." [*See* Young Exhibit 75 (December 2007) and Young Exhibit 76 (September 2008)].

This testimony changes nothing. In fact, it only erodes any credibility Young might have because this offered excuse cannot be reconciled with the evidence. And, even if the testimony is credited, it merely reinforces his liability.

At the outset, it is notable that Young never referenced these allegedly new "versions" in his Wells Submission despite being well-aware of the Division's concerns about the "relatively weak" description contained in Division Exhibit 742. To the contrary, he cites only the version dated "December 2006" admitted here as Division Exhibit 742 [*See* Young Exhibit 110, at BEY 000022-23].

Moreover, Young offered no evidence (other than his self-serving claim) that even suggests, much less establishes, that he actually used these new alleged "versions." [Tr. 3181:20-3182:3]. In fact, there is no evidence that these new "versions" were ever even placed on the intranet or otherwise made available to SGC financial advisers.

To the contrary, the evidence establishes that Young, in truth and contrary to his testimony, used the December 2006 version of the Manual throughout his tenure at SGC. For example, in February 2008, Young used and distributed the December 2006 version of the Manual to SGC financial advisers participating in SIB CD-related training. [Division Exhibit 93; Tr. 3419:15-3421:20]. He did so again in June 2008. [Division Exhibit 17; Tr. 3421:21-3422:25). Finally, as noted below, SGC financial adviser Doug Shaw used a version of the Manual including the "relatively-weak" language as late as the fall of 2008. [Division Exhibit 777].

In sum, the evidence is overwhelming that Young did not in fact train SGC financial advisers using the alleged later versions of the Manual, but instead used the December 2006 version, perhaps with only minor modifications not relevant to the issues of this case. [*See* Tr. 417:10-20, explaining that the difference between Division Exhibit 777, used in late 2008, and Division Exhibit 742 was merely the identity of a particular insurance company].

Moreover, even if this overwhelming evidence is set aside and Young's testimony is credited, it only raises the question of why he failed to take any step whatsoever to ensure that older "versions" of the Manual were not used. [*See* Tr. 415:13-20].

Finally, it is worth noting that Young admits he had "nothing to do with any changes that may have been made." [Tr. 3181:20-3182:3]. And, in any event, even the later versions Young claimed he used are misleading: they continue to minimize the absence of FDIC insurance by highlighting SIB's alleged "comprehensive insurance program." [*See* Young Exhibit 75 at BEY 003832 and Young Exhibit 76 at StanP-0055255). In fact, these new versions add additional misleading language by suggesting that the insurance program covers "fraud." [*Id.*] In addition, these versions continue to assure SGC financial advisers that, for example, SIB's investment strategy results in a portfolio of "established, quality companies, governments and government agencies…" [*See* Young Exhibit 75 at BEY 003829 and Young Exhibit 76 at Stan P_0055252].

3261:10; *see also* Division Exhibit 370]. Or, as Doug Shaw, an SGC financial adviser, explained when asked about the Training Manual: "This kind of information I absorbed, and it became a part of my discussion with clients as I was presenting." [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)].[28]

And there is no doubt that the Training Manual addressed questions investors were concerned about. For example, Doug Shaw testified that:

> "if I were to guess I'd say it was 20 percent of the time – the clients would ask about the backing of the bank because they read in the marketing material that I had also provided them that there was third-party banking or insurance that was linked to the CD. I would read these few paragraphs to them pretty much verbatim. I did so because I knew this was a compliance-approved version of the message, and I did not want to color outside the lines."

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[28] Surprisingly, Bogar, SGC's president, claimed that, while he was "sure [he] saw it in passing," he could not recall seeing the Training and Marketing Manual. [Tr. 3087:16-3088:5].

On one hand, this attempt to avoid the fraudulent statements and guidance included within the Training and Marketing Manual strains credulity. The SIB CD, as even Bogar admits, was SGC's most important product, even a "premier" product, and that SGC could not survive without the fees it received for marketing SIB CD. [Tr. 2874:19-25; 2909:20-2911:13; and 2911:24-29.] And it is undisputed that the Manual was available to virtually anybody at SGC. [Tr. 3149:8-3151:7]. Moreover, as early as November 2007, Young directed Bogar's attention to the fact that the Training Manual was given out and available to SGC financial advisers. [*See* Young Exhibit 11, BEY 007245-7251]. Bogar admits that he could not allow financial advisers to use misleading information. [Tr. 3087:16-3088:5]. Yet, Bogar claims he never bothered to read it?

On the other hand, if his denial is credited, it merely confirms his liability. At a bare minimum, it was severely reckless for Bogar, under the circumstances of this case, to never even read the document that was, as even Young acknowledged, intended to be a resource for SGC's financial advisers in answering questions from clients, particularly questions about SGC's premier product. [Tr. 3414:21-3415:5; 3260:21-3261:10).

[Tr. 416:19-417:4].[29] Indeed, in the fall of 2008, one of Doug Shaw's clients, Mike Bishop, became "anxious" about his investments in the SIB CD. [Tr. 1134:10-1135:3]. As Mr. Bishop explained:

> "Well, I think, you know, Doug read our anxiety. He read that we were concerned. And he immediately called upstairs to Natali Andrade and asked her to bring a document down. And she came down and presented us with a piece of paper that had some information on it that was relative to the security and the safety through insurance that actually kind of indicated that the insurance on this was better than the FDIC insurance."

[Tr. 1135:6-14]. That piece of paper was copied directly from the Training and Marketing Manual, and Mr. Shaw read it to Mr. Bishop "line by line." [Tr. 1135:15-1136:1, discussing Division Exhibit 777; see also Tr. 417:5-25 (Shaw authenticates Division Exhibit 777 as having come from him and his copy of the Manual)]. Based on this reassurance, Mr. Bishop left his money invested in the SIB CD. [Tr. 1137:4-15].[30]

c. SGC and Respondents approved or participated in various sales incentives related to the SIB CD, and failed to disclose the scope of those incentives.

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

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[29] As Shaw noted, there were different versions of the Training Manual. For example, Division Exhibit 742 is a complete copy of a version last updated in March 2007. Division Exhibit 777 is an excerpt from the version of the Training and Marketing Manual Doug Shaw recalled using. [Tr. 417:10-25]. Indeed, as Mike Bishop unequivocally testified, he received Division Exhibit 777 in the fall of 2008 in response to questions he raised with Shaw. [Tr. 1134:7-1136:1].

[30] Mr. Bishop invested in the SIB CD in 2007 because, as a conservative investor, he was interested in a safe investment. [Tr. 1132:4-13]. Before investing, he asked questions about the fact that the Bank was "offshore" because he had "heard about the Cayman Islands and the Isle of Man and all that stuff" and was assured it was safe. [Tr. 1133:16-20]

- 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 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.[31]

- 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].

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[31] 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).

Each of these programs resulted from Allen Stanford's persistent goal of growing SIB's assets. [Tr. at 1033:19 – 1034:8].

Additionally, Bogar and 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]. Green's involvement with these sales incentive programs was extensive.

Green knew that he and all of SGC's domestic FAs who sold the CD—all of whom he oversaw as part of the "Superstars" team in the sales contests—stood to receive extensive compensation over and above a one-time fee for selling the SIB CD. [*See generally*, Tr. at 1170-1178]. This compensation included trailing commissions, FA bonuses, Managing Director bonuses (based on SIB growth for the entire branch), staff bonuses, special "TPC" trips, and special recognition as part of those trips. [Id.; Division Exhibit 69 at 2]. In at least one instance, this compensation included a "mega-bonus" or "super bonus." [Division Exhibit 606 at 74-77]. Green personally ensured that Allen Stanford paid the promised mega-bonus, and coordinated the TPC check presentation ceremony. [Id.] In addition, Green himself was awarded a one-time $3 million dollar bonus as a result of his efforts leading the sales contests.[32] [Tr. at 3878:2-5]. This was on top of his regular quarterly bonuses, which were quite significant. For example, Green's Q-4 2007 SIB CD bonus was $100,308. [Division Exhibit 69 at 3].

In fact, Green spent more time encouraging the SIB sales contests—approximately 40%—than he did on any other work responsibilities. [Division Exhibit 606 at 44; Tr. at 4002:23-4003:7]. As part of this effort, Green sent out regular group emails to SGC's FAs encouraging them to keep selling SIB CDs. The message conveyed in these e-mails is hard to avoid:

[32] It is irrelevant that Green chose to have this money directed to his church. However commendable that may be, it was his choice to do so—presumably, at least in part, because it made Green personally happy to make this donation. His decision does not change the fact that this bonus presented a huge conflict of interest that had to be disclosed to investors, and that he was not entitled to obtain this donated money by fraud.

- For example, one of these emails stated, "Congratulations to everyone for setting a new team quarterly record of $104, 091, 176!!!" [Division Exhibit 59 at 1]. The email continued, "Now, get some rest, so we can finish the year strong." [Id]

- He also sent emails to individual teams, such as one that read "Hello Money Machine: I was thrilled to see you guys move into second place in the team standings!!! You are finishing STRONG." [Division Exhibit 788 at p 1]. This email was sent in the context of merging the Money Machine team into Green's Superstars team—something that would have helped Green's results at the time. [Id].

- Green also sent similar emails to individual FAs. [Id.; *see also* Division Exhibit 790]. One reads, "Roberto, Wow! You're an animal! Let me know if there's anything I can do to help you keep growing your [SIB CD] business at this phenomenal pace." [Division Exhibit 789 at p. 1]. This email was sent to an FA who had over $6 million in quarterly SIB CD sales. [Id]. at 2.
- Finally, Green regularly sent out "scorecards" or "hustle sheets" which tracked individual and/or team sales of the SIB CD and encouraged the SGC FAs to keep selling more SIB CDs. [Division Exhibit 497 at p. 1-2; Division Exhibit 788 at 1-2].[33]

Neither Green, Bogar, nor Young disclosed this extensive SIB-specific compensation to investors. They also (as discussed in more detail below) did not fully disclose 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 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]. Notably Green also admitted he knew that single-product sales contests and bonuses, which create a bias toward a particular product, were frowned upon in the industry. [See Tr. at 4004:24-4005:8].

33 Based on a single email from 2004, Green contends that he constantly stressed the "golden rule"—that SGC's FAs never push the SIB CD as the expense of the investor's best interest [Tr. at 3833:15-3834:18]. It is notable that based on searches by both the Division and Green's counsel, this is the only such email in existence. None of the other documents used or sent by Green—including his training presentations, the scorecards, the hustle sheets, other emails regarding the sales contests, the "talking points," etc.—mention the "golden rule" or other suitability concerns. In addition, those who went through Green's training don't recall him mentioning the "golden rule." [See Tr. at 1179:20-22]. To the contrary, Green's focus was on SIB CD sales—not what was in the best interest of investors. [Tr. at 1179:23-1180:12].

7. 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 Bogar and 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.[34] [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).[35] [Tr. at 2901:11-14; 91:8 – 92:19]. These holdings were inconsistent with SIB's

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34 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].

35 As discussed elsewhere in this brief, Bogar and Young claim that they believed that the private equity portfolio was not part of SIB's overall investment portfolio underlying the SIB CDs. This claim cannot be reconciled with other evidence, such as SIB's annual reports (Division Exhibit 624) (which show a single investment portfolio), Bogar and Young's admitted knowledge that the private equity investments were SIB assets, and the clear statement in the SIB Brochure that references that 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." [Division Exhibit 607 at Pg. 5 of 17]. Likewise, Young knew that SGC

representations that 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." [Division Exhibit 607 at Pg. 5 of 17].

Bogar and 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]. In addition, certain SGC personnel received warrants in several private equity deals. [Tr. at 681:10 – 682:10]. For example, Bogar received approximately 400,000 warrants as part of a November 2007 private-equity deal between SIB and Elandia. [Division Exhibit 650 at Pg. 209 of 613; Tr. at 683:1-19. Bogar cashed in these warrants after SGC was closed. [Tr. 2905:9-2906:5].

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").[36] [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)].

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represented to the SEC in May 2005 that SIB had only one investment portfolio. [Tr. at Pg. 3486:14 – 3487:16; Young Exhibit 113 at BEY 005854]. The most reasonable inference under these circumstances is either that Bogar and Young did understand that it was part of SIB's CD portfolio, or Bogar and Young intentionally put their heads in the sand to avoid such an understanding. Regardless, as discussed below, even if Respondents did believe it was separate from the CD portfolio, the Respondents certainly knew that it was inconsistent with the statements referenced above. And there is no evidence that Bogar or Young took any meaningful steps to try to reconcile this readily apparent inconsistency.

[36] 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].

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].

8. SGC Relied on CD Revenue to Survive

The Receiver's forensic accountant, Karyl Van Tassel, has reported that SGC was completely dependent on revenue derived from the sale of SIB CDs and was insolvent since at least 2004 without SIB's financial contributions, including fees related to the other services SGC provided to SIB. [Tr. at 113:3-12]. Specifically, SGC received approximately $360 million from SIB in connection with the sale of SIB CDs from 2004 to 2008. [Division Exhibit 707]. In addition, SGC received more than $93 million for managing SIB's undisclosed private equity investments and preparing its quarterly research reports. [Id.] In total, almost 58% of SGC total revenues during that time period derived from its relationship with SIB. [Id.] But even this revenue was not sufficient to sustain SGC—it received additional contributions of $175 million from Allen Stanford to maintain its operations.[37] [Id.] Other than the 3% fee that SGC referenced in certain communications as a fee it received for selling the SIB CDs, neither SGC nor SIB disclosed SGC's financial dependence on SIB and Allen Stanford.[38]

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37 The Receiver's forensic accountant has testified that capital contributions to SGC consisted primarily of SIB CD sale proceeds. [Tr. at 113:13-23].

38 The SIB disclosure statement [See, e.g., Div. Exhibit 644], SGC's post-sale letter [Division Exhibits 629 and 632], and SGC's Form ADV [Division Exhibit 486] at least reference the referral fee arrangement, but failed to disclose the private-equity and research fees that SGC received from SIB. Although initially he said he did not know what a Form ADV was used for, Bogar ultimately admitted that it was a document provided to advisory clients by SGC financial advisers and that it did not disclose the fees SGC earned as a result of managing SIB's private equity investments, even though SGC received millions of dollars from that related party transaction. [Tr. 2896:15-19].

III.
LEGAL ANALYSIS

A. Respondents Violated and Aided and Abetted Violations of the Antifraud Provisions of the Securities Act and the Exchange Act.

1. General Elements of the Violations.

Section 17(a) of the Securities Act prohibits, in the offer or sale of securities, employing any device, scheme, or artifice to defraud, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made not misleading, in the offer or sale of securities, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, prohibit, in connection with the purchase or sale of securities, employing any device, scheme, or artifice to defraud, the making of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made not misleading, or engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.[39] Rule 10b-5(a) makes it

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[39] Section 10(b) and Rule 10b-5 of the Exchange Act prohibits fraud committed "in connection with the purchase or sale of any security." Section 17(a) of the Securities Act prohibits fraud "in the offer or sale of any securities."

There can be no serious doubt that the SIB CDs are "securities" as defined by these antifraud provisions. As the Northern District of Texas recognized in addressing this very issue, "Congress' purpose in enacting the securities laws was to regulate investments, in whatever form they are made and by whatever name they are called." [*SEC v. Stanford*, Case. No. 3:09-cv-298-N, Slip. op. [DKT. 1483] (November 30, 2011). In any event, investors bought the SIB CD to earn a profit in the form of interest, which was based entirely upon the returns generated by SIB's underlying investment portfolio. See, e.g., *Reves v. Ernst & Young*, 494 U.S. 56 at 68 (1990). (In concluding that demand notes were securities, noting "Indeed, one of the primary inducements offered purchasers was an interest rate constantly revised to keep it slightly above the rate paid by local banks and savings and loans.") Second, the SIB CD was marketed by a registered broker-dealer/investment adviser and sold pursuant to a Regulation D exemption. Third, the SIB CD was viewed by investors as a fixed-income investment. The offering unlawful "to employ any device, scheme, or artifice to defraud." Rule 10b-5(b) makes it unlawful to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

And Rule 10b-5(c) makes it unlawful to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. 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

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materials—which discussed the underlying investment portfolio, the structure of the returns, and some of the investment risks—reinforced this expectation. Finally, there are no actors that reduced the risk of the SIB CD. The SIB CD was not covered by FDIC insurance or any insurance in Antigua or at all. Nor was SIB regulated by the SEC, the FDIC, or any equivalent regulatory agency. It is clear that the SIB CDs were securities for purposes of the antifraud provisions.

The SIB CD was also a security because it was an "investment contract" under Section 2(a)(1) of the Securities Act and Section 3(a)(1) of the Exchange Act. An investment contract includes any contract, transaction or scheme whereby a person (1) invests money, (2) in a common enterprise, (3) with the expectation of profits derived solely from the efforts of the promoter or a third party. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946); *see also United Housing Foundation, Inc. v. Forman,* 421 U.S. 837, 851-852 (1975). The first and third elements are easily satisfied here. And the "common enterprise" element is met because the investors' funds were pooled together, linking investors fortunes.

And of course, even if the Court concluded they were not securities, there is no doubt that Respondents' fraud was both "in connection with the purchase or sale of any security" and "in the offer or sale of any securities." For example, as discussed above, it is undisputed that as a result of Respondents' fraudulent conduct, investors frequently sold traditional securities such as mutual funds, stocks, and bonds in order to invest in the SIB CD. By inducing investors to liquidate their existing holdings in order to invest in the SIB CD, Respondents fraud falls within the prohibitions of Section 17(a) and Section 10(b). *See, e.g., SEC v. Zandford*, 535 U.S. 813, (2002).

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).

Violations of Section 10(b) and Rule 10b-5 require a showing of *scienter*, a mental state embracing intent to deceive, manipulate or defraud, but no such showing is required for violations of Sections 17(a)(2) and (a)(3). *Aaron v. SEC*, 446 U.S. 680, 691 (1980). *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.

To violate these provisions, the alleged misrepresentations or omitted facts must be material.[40] Information is material if it would have assumed significance in the investment deliberations of a reasonable investor. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988); *Steadman* at 1130. Representations and omissions relating to financial condition, solvency, and profitability are material. *See SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980). Likewise, misrepresentations that an investment product is low-risk, backed by a high-quality investment portfolio, and insured or otherwise protected against loss are material, since they "go[] to the essence of the investment decision." *See SEC v. Phoenix Telecom,* 239 F. Supp. 2d 1292, 1298-99 (N.D. Ga. 2000); *SEC v. Randy*, 38 F. Supp. 2d 657, 669 (N.D. Ill. 1999) (claims that CDs issued

40 Section 17(a) and Section 10(b) also require the use of interstate commerce or the mails. It is undisputed that a variety of Respondents' fraudulent acts, misstatements and omissions meet this standard.

by supposed Canadian bank were "backed by 'Triple A' bonds … [and] guaranteed" were material representations).

Under Section 20(e) of the Exchange Act, a person may be held liable for aiding and abetting another's fraud. Aiding and abetting liability requires proof of: (i) a primary violation; (ii) substantial assistance by the aider and abettor; and (iii) knowing or reckless assistance. *See Voss v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000). To prove substantial assistance, the Commission must show that the conduct was a "substantial causal factor" in the primary fraud. *SEC v. Hopper*, 2006 WL 778640, at *15 (S.D. Tex. Mar. 24, 2006). Substantial assistance can take the form of either action or inaction: "substantial assistance occurs where [the respondent] affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed." *SEC v. Espuelas*, 767 F. Supp. 2d 467, 478 (S.D.N.Y. 2011).

2. Respondents are Primarily Liable Under Section 10(b) of the Exchange Act.

Bogar, Young, and Green each violated Section 10(b) of the Exchange Act. First, each is liable under Section 10(b) and Rule 10b-5(b) based on their failure to inform potential investors that SGC was not able to confirm representations made about SIB's CD portfolio, including performance and liquidity, and the risks that arose therefrom; and their failure to disclose facts inconsistent with those representations that the Respondents did know.

Each Respondent knew that the CD offering documents – which Bogar and Young approved for use by SGC financial advisers and for dissemination to investors and which Green used and trained FAs to use – represented that the CDs were backed by a portfolio of liquid and high-quality investments. They also knew that these materials represented that SIB could pay above-market rates on the CDs due to its portfolio's supposedly long and unbroken track record of double-digit returns. Bogar and Young also approved and Young and Green directed and conducted, training sessions that emphasized these points to SGC financial advisers. It is also clear that the Respondents knew (and in fact intended) that the financial advisers would convey these claims to investors when selling the CDs.[41]

When Bogar and Young approved the dissemination of the offering materials and the training program (and when Green used the offering materials and led the training sessions) each knew that SIB's portfolio was a "black box" into which SIB had refused to let them see. They thus had no basis to approve (or, in Green's case, train financial advisers to repeat) SGC's use of the claims about SIB's portfolio. Yet, at no point did any of the Respondents 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)].

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

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41 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").

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)[42]; *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 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).[43]

Further, Young and Bogar failed to inform investors that information they did have about SIB's investments – through their insight 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. As securities industry professionals, the Respondents could not have missed the incompatibility of this information with the representations in the offering documents and training materials about the

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42 These standards are well-established in the industry. Even the Respondents' expert admitted as much and acknowledged that this standard applied to the Respondents. [Tr. 4234:5-15].

43 The Respondents' 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").

purported quality of SIB's portfolio.[44] Likewise, as discussed in this brief, each Respondent 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).

These omissions were material. With Young and Bogar's approval – and as directed by Green during training – SGC marketed the SIB CD as appropriate for investors seeking safe and secure income. The strength and liquidity of SIB's underlying investment portfolio was thus emphasized to CD investors; likewise it was marketed as having a "comprehensive insurance program" that provided "depositor security." See *Randy*, 38 F. Supp. 2d at 663, 669 (representation that CD was insured by Lloyd's was material as a matter of law); *SEC v. Phoenix Telecom,* 239 F. Supp. 2d 1292, 1298-99 (N.D. Ga. 2000) (misrepresentations about the safety of an investment are material). A reasonable CD investor would want to know, however, that his own broker could not verify whether SIB's portfolio was in fact liquid, of high quality and exceptionally successful. [See Tr. 1419:6-1420:7 (Dore); 1500:4-16 (Stegall)]. That investor would also want to be alerted

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[44] It is irrelevant that the Respondents claim that they believed the assets were not part of the CD portfolio. It is undisputed that investors were told that "the Bank's assets" were invested in a liquid portfolio. [See, for example, Div. Exhibit 607 at p. 5 of 17]. It is also undisputed that Bogar and Young knew that, while they were supposedly precluded from knowing information about the Bank's assets, they did know SIB had hundreds of millions of dollars invested in illiquid private equity. They were obligated to disclose this inconsistent information, particularly given their repeated assurances to investors that SIB's assets were invested in a "liquid portfolio."

to facts in his broker's possession – including SIB's investment of more than half a billion dollars in speculative, illiquid private equity – that belied SIB's claims about its portfolio.

Bogar and Young controlled SGC's offer and sale of SIB CDs, including whether SGC marketed the CDs at all, the materials that SGC financial advisers provided to investors about the CDs, and the content of training about the CDs. [See Tr. 2874:11-17 (Bogar had authority); Tr. 3354:22-3355:12 (Young said he had input)]. They specifically approved – via the training materials – the information that SGC FAs provided to investors about the CDs. They also had the ultimate authority to end SGC's offer and sale of SIB CDs and to increase SGC's disclosures about the CDs – authority that Bogar actually exercised very late in the game, after the risks associated with the CDs could no longer be contained.

Likewise, Green and Young directed SGC FAs to use the offering documents in offering and selling the SIB CD to U.S. investors. In short, the Respondents controlled the message conveyed to investors about the SIB CD program and, thus, are primarily liable under Section 10(b) and Rule 10b-5(b) for the omissions. *See Kenton Capital*, 69 F. Supp.2d at 9; *see also SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999) (defendant is liable under Section 10(b) and Rule 10b-5 for material omissions "as to which he had a duty to speak").

In addition, the Respondents are also liable under Rules 10b-5(a) and (c) of the Exchange Act for the materially misleading statements and omissions made in the offering materials, including the brochure. In using and approving SGC's use of the brochure – a document containing untrue statements and omissions of material fact, the Respondents knowingly or recklessly "employ[ed] a[] device, scheme, or artifice" to deceive investors and prospective investors.

3. There is no doubt each Respondent acted with *scienter*.

The evidence in this proceeding leaves no doubt that each Respondent acted with the requisite *scienter*. The Division's expert witness, Doug Henderson, submitted a detailed expert report and provided consistent and unequivocal testimony – even under sharp cross-examination - establishing the relevant standards of care applicable to each Respondent and how, under the evidence of this case, Respondents' conduct compared to those obligations. Notably, the Respondents' expert witness admitted that Mr. Henderson had properly identified the applicable core standards of care. And based on the information available to him before trial, Mr. Henderson offered a critical, but specific and supported, conclusion: "Overall, I found that Respondents had clear and important responsibilities and the requisite authority to fulfill those responsibilities but failed, abysmally, to do so." [Division Exhibit 746 at p. 15 of 384].[45] And after hearing

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45 In contrast to Mr. Henderson's detailed opinions supported by an analysis of specific facts, the Respondents' expert resorted instead to vague statements that give no guidance at all. For example, when asked about her opinions of Mr. Bogar's conduct of the business of SGC, she merely offers that "I think he acted as a CEO would act." [Tr. 4110:8-11]. It is also ironic that she praises Bogar for hiring Young, a "highly-credentialed" person with nearly 20 years of experience as a regulator, but never even addresses the significance, if any, of the fact that Young was terminated from his position as a regulator. That is not to say that having a negative employment experience necessarily made Young a bad choice; but the fact that Respondents' own expert fails to even acknowledge that fact while extolling his regulatory background is telling.

voluminous testimony, Mr. Henderson noted that his opinion remained that the Respondents' behavior fell "way short, far off the mark, and I've used different terms in my report and I hold by those and maybe feel even more strongly about it through this hearing that their failures were egregious." [Tr. 2125:19-2126:5].

Mr. Henderson's opinion is well-supported by the record. As detailed above, each Respondent knew that SIB's CD portfolio was not transparent and that there was no insurance protecting depositors. Yet, each allowed and encouraged (and in Green's case conducted) marketing efforts centered on assuring investors that SIB's CD portfolio was highly liquid and that depositor security was provided in part through a comprehensive insurance program. Moreover, despite knowing that they had no transparency, each Respondent failed to disclose or require SGC or its financial advisers to disclose this lack of transparency. Bogar and 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.[46]

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[46] 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 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)).

Those representations and omissions cannot be squared with the Respondents' knowledge and is sufficient on its own to establish that each Respondent acted with *scienter*.[47] And, as detailed above, the evidence demonstrates that each Respondent actually knew myriad additional information contradicting what they told investors about SIB and the SIB CD. Many of these additional facts would be sufficient on their own to establish the respective Respondent's scienter. When the facts each Respondent knew are viewed collectively and compared to their actions, the conclusion that each acted with intent, or at least severe recklessness is inescapable.[48] And even if the Court believes that the Respondents believed what they were told by SIB (a conclusion made very difficult given the bulk of evidence calling it into question), that does not preclude a finding of liability. Licensed securities professionals such as Respondents cannot simply parrot the

[47] At various times in the proceeding, the Respondents referenced certain activities that attorneys reporting to Allen Stanford may have conducted. But it is unclear if the Respondents actually contend that such actions nullify their scienter. In fact, although they could have, Respondents did not subpoena attorneys to testify and instead sought to rely only on the allegations in a complaint filed in an unrelated matter. In the event Respondents assert an argument based on activities of attorneys, the Division will respond at that time.

The Division notes that Green claimed to have had two conversations with Tom Sjoblom. But these conversations cannot defeat Green's scienter. He offered no indication at all as to what disclosures he (or anybody else) had made to Sjoblom, whether he (or any person) actually asked Sjoblom to provide advice as to the legality of any particular conduct, or, if such a question was asked, which conduct was the subject to the inquiry. In any event, as Green himself admits, Sjoblom was not retained in 2005 to provide independent legal counsel but instead to represent Stanford in connection with regulatory inquiries. It goes without saying that a lawyer acting as an advocate is wholly distinct from a lawyer providing confidential and privileged independent legal advice. It's also worth noting that Green had been actively selling the SIB CD for years before this alleged conversation even allegedly took place.

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

marketing information furnished by the issuer, SIB, even if they actually believe the representations.[49]

In any event, what little doubt might have remained possible about the Respondents' *scienter* is quickly erased when the Respondents' efforts even during the trial to obscure the facts about what they knew and did are considered. *See In the Matter of Monetta Financial Services, Inc.*, 2000 SEC LEXIS 574, *63 (2000) (noting lack of candor and attempt to hide misconduct supports finding of intent to deceive); *In the Matter of G. Bradley Taylor*, 2002 SEC LEXIS 2429, *35 (2002) (noting efforts to conceal conduct demonstrate consciousness of guilt and support finding of intent to deceive).[50]

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49 *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.

50 Because they could not explain away or avoid the evidence presented at the hearing that established their liability for intentional misconduct, the Respondents improperly attempted to substitute the credibility normally associated with the Federal Bureau of Investigation ("FBI") for their own lack of credibility. In fact, the Respondents made this "unusual" testimony from an FBI agent a centerpiece of their defense, calling her to lead off their defense. [Tr. at 54:25 – 55:4; 2167:1]. The Division recognizes that it is somewhat unusual for an agent of the FBI to be called as a defense witness in a securities enforcement action. And, as Special Agent Walther confirmed, she "liked" Bogar and Green and had spent considerable time with them during the criminal prosecutions arising from Allen Stanford's Ponzi scheme. [Tr. 2196:16-17; 2194:17-2195:19] Unfortunately, a further explanation for this unusual testimony came to light on cross-examination, when it became clear that there was considerable bias against the Division and against the SEC. For example, Special Agent Walther testified that "there was anger and frustration [on the part of herself and her partner] and there [had] been throughout this case . . . I felt that the relationship over the years could have been handled better and more professionally" [Tr. at 2197:15 – 2198:1; 2212:22 – 2213:5].

Even if this bias could be set aside, the evidence is clear that Agent Walther's testimony did nothing to exculpate the Respondents. While Respondents succeeded in soliciting an improper legal opinion from an agent of the FBI (that "there was no evidence of fraud"), it quickly became clear that Special Agent Walther had no basis at all to offer such an opinion. To the contrary, Special Agent Walther admitted she did not know the appropriate standards of care or the

a. Green

Mr. Green knew or was reckless in not knowing that his references during training and his use of materials that touted the liquidity and nature of SIB's CD portfolio and SIB's alleged "comprehensive insurance program" were either false, misleading, or—at the very least—materially incomplete.

With regard to his references to insurance, it is undisputed that Green knew that the SIB CD was not insured. He therefore knew or was severely reckless in not knowing that the Lloyd's "fraud" insurance, as well as the other insurance, discussed in his training presentations offered no protection whatsoever to depositors.[51] This is especially so since the compliance presentation given in conjunction with Green's training flatly stated that the SIB CD was "not insured." [Division Exhibit 104 at p. 63]. At trial, Green (along with Young) pointed to this compliance slide to suggest it should have been clear that there was no insurance. But this misses the point: in the same training, SGC financial advisers are presented with two conflicting concepts. Green's presentation informs them that the Bank carries a "Blanket Bond" policy that insures against "fraud" and the compliance portion states that "there is no insurance." Yet Green never

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disclosure requirements for civil securities fraud cases like this one and, in fact, she testified that she would rely upon, and defer to, the SEC for such determinations. [Tr. at 2216:14 – 2217:10; 2218:7 – 2219:7]

[51] While it is true that SIB maintained private insurance protecting the bank and its officers, this insurance offered no protection to investors. Therefore, the statements regarding insurance—presented in the context of providing "depositor security"—were misleading. *See SEC v. Gabelli,* 653 F.3d 49, 57 (2d Cir. 2011) ("The law is well settled . . . that so-called 'half-truths' -- literally true statements that create a materially misleading impression -- will support claims for securities fraud."); *Operating Local 649 Annuity Trust Fund v. Smith Barney Fund Management LLC*, 595 F.3d 86, 92 (2d Cir. 2010) ("The veracity of a statement or omission is measured not by its literal truth, but by its ability to accurately inform rather than mislead prospective buyers."). It was also untrue that FDIC insurance was "relatively weak" compared to SIB's insurance.

resolved the inconsistency in these statements, and continued to discuss SIB's insurance in his training.

That this constitutes, at best, severe recklessness is reinforced by the fact that Green knew that, given this conflicting and confusing guidance and the clear references to a "comprehensive insurance program" in other documents, SGC's financial advisers came away from Green's training believing (incorrectly) that SIB had "fraud" coverage that would have protected investors if SIB was a fraud—as it was. [Tr. at 1359:25-1360:21.] Green admits that Michael Koch, who was in SGC's compliance department, told him that advisors were telling investors that the SIB CD was insured. [Tr. at 3797:10-25] as a result, Mr. Koch wanted the insurance language removed from Green's training. [Id.] Tellingly, Green simply refused to do so. In addition, Green also received a number of inquiries from FAs asking for clarification on the insurance—including one which stated that "some of our clients will be confused" by the insurance statements. [See Division Exhibits 131, 201, 223, 316].

Given this clear evidence, Green's testimony seeking to convince the Court that that "it was very clear to everyone that the product was not insured in any way" is at best misplaced and, in fact, misleading. Particularly since Green had already heard unequivocal testimony from investors that they believed some type of insurance protected their investment.[52] Green, in essence, is asking this Court to find that each of these investors testified falsely. But in fact, there is substantial evidence confirming the investors' testimony, not Green's self-serving

52 The belief that SIB had insurance that would protect depositors was conveyed to investors, including Mr. Green's investors. [Tr. at 1407:12-1408:4; 1411:7-13; 1414:17-1415:9; 1487:18-22; 1494:22-1495:14; 1511:7-23; 1557:22-1558:3; 1558:24-1560:5]. This was a predictable – indeed inevitable – result of Green's conduct and, in particular his failure to make a simple, straightforward disclosure needed when marketing a "CD" to U.S. investors—frequently, retirees: that there is no insurance whatsoever protecting your investment. [Tr. at 1499:23-1500:3.].

denials. For example, as discussed in more detail below, Green edited and distributed the December 2008 report, which stated: "The Bank also maintains the following insurance coverage through Lloyd's and other Underwriters: Bankers Blanket Bond; Directors and Officers Liability; Professional Liability (errors and omissions); and Excess FDIC. This extensive insurance program has been in place for years[.]" [See Division Exhibits 121, 125]. Likewise, as discussed elsewhere, there is ample evidence that SGC's financial advisers understood from Green's training that there was insurance protection or, at a minimum, were confused about that issue themselves.

Similarly, Green can offer no persuasive excuse for why he, as he claims, could reasonably believe the never-changing statements about SIB's CD portfolio.[53] For example, he cannot, with any justification, claim to rely on the presence of regulators in Antigua because he knew or was severely reckless in not knowing that the International Monetary Fund – in a report his own compliance department possessed -- had judged Antigua as materially noncompliant in a number of key risk areas. [See Division Exhibit 636 at pp. 163-170]. Green's own witness, Jonathan Batarseh, noted concerns about these areas, and stated that he would have recommended to Green that he "follow up" and "verif[y] that Antigua ha[s] made the improvements that they should have made." [Tr. at 2331:12-2336:18]. Likewise, Green knew or

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53 By making a recommendation, a securities dealer implicitly represents to a buyer of securities that it has an adequate basis for the recommendation. *Hanly*, 415 F.2d at 597; *In the Matter of the Application of Richard G. Cody*, 2011 SEC LEXIS 1862, at *27-28 (May 27, 2011) (Comm'n Opinion) ("[a] representative's recommendation carries the implicit representation that it was responsibly made on the basis of actual knowledge and careful consideration"); *see also Kaufman*, 50 S.E.C. at 168 n.18 (citing Alexander Reid & Co., Inc., 40 S.E.C. 986, 990-91 (1962) ("a broker-dealer in his dealings with customers impliedly represents that his opinions and predictions respecting a [security] which he has undertaken to recommend are responsibly made on the basis of actual knowledge and careful consideration . . . [I]t is not a sufficient excuse that a dealer personally believes the representation for which he has no adequate basis").

recklessly ignored the fact that when an independent CPA researched the FSRC, he discovered that the FSRC's staff consisted of only 3 bank examiners—which "may [make it] difficult to conduct a thorough examination of a bank with over $4 billion in assets." [Division Exhibit 71 at p. 4]. The same CPA report noted a number of concerns regarding Antigua and Allen Stanford's influence over the FSRC and other Antiguan officials. [*Id.* at 3.] Whether or not this CPA report was accurate (though of course it turned out it was) is not necessarily the point: instead, the fact that there is no evidence that Green took any steps to investigate those claims completely undercuts any claimed diligence or reliance on his part. Indeed, Mr. Green knew that when one SGC financial adviser tried to get more information on SIB from the FSRC, he was informed that the only information the FSRC would provide was a letter of good standing. [See Division Exhibit 50 at p. 1]. Finally, he knew or at least was on notice of the risk that Allen Stanford, "who always [got] his way," had a great deal of influence in Antigua, and that in or around 2008 the Antiguan government expropriated the Half Moon Bay resort on his behalf. [See Division Exhibit 753]. In spite of all this, Mr. Green admittedly never spoke with anyone from the FSRC. [Tr. at 3959:14-17].

Nor should Green be able to excuse his failures by claiming he relied on the apparent activities of SIB's auditor, CAS Hewlett. Green knew or was severely reckless in not knowing that there were significant concerns about the auditor. At a minimum, he admittedly did nothing to attempt to verify the statements about the auditor. [Tr. at 3957:6-14]. This is the case in spite of the fact that he knew that SGC's FAs, as well as independent third-parties that had looked at the SIB CD, had concerns about Hewlett. [See Division Exhibit 95 at pp 1-2; 120 at pp. 1-2; and 147 at p. 1].

Two additional episodes give a clear picture of Green's *scienter*. First, Green admittedly knew that Pershing had concerns about SIB's lack of transparency. [Tr. at 4032:19-23]. He also knew how important Pershing's concerns about SIB were, and that the FAs would therefore ask questions about Pershing's decision to cut off wire transfers.[54] [See Division Exhibit 354]. As a result, Green drafted talking points attributing Pershing's decision to halt wire transfers to "several points [. . .] including tax reporting." [Division Exhibits 355, 356].

Simply put, this explanation was false. Even Bogar admits that, with Pershing, "for sure, transparency was the main issue." [Tr. at 2984:11-12.] At best, the explanation Green crafted greatly obfuscated the reasons for Pershing's decision—and Green knew it. [Division Exhibit 798 (referring to potential audit procedures for SIB in connection with Pershing's inquiries]. Moreover, both John Ward and Ed Zelezen confirmed that Pershing's decision had nothing to do with tax reporting. [Tr. at 854:21-24; 927:24-928:2].[55] Yet, ever faithful to protecting his company instead of his clients, Green discussed with Bogar how important it was to "stay on message" regarding Pershing. [Division Exhibit 355.] This is a far cry from the legal requirement of full and complete disclosure of all material information.

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[54] Even upon setting up the initial wire transfer work around, which was rejected by Pershing, Green and Bogar put together a process that would provide "good cover for Pershing" and hatched a "story to the advisors." [Division Exhibit 359].

[55] At trial, Green assured the Court that he had a conversation with Ed Zelezen in which he claims Mr. Zelezen approved Green's talking points explanation of Pershing's decision. It is telling that, given the chance to examine both Mr. Ward and Mr. Zelezen under oath, Green's counsel did not ask Mr. Zelezen – who testified that tax reporting had nothing to do with Pershing's decision – about his purported conversation with Green approving these talking points. [Tr. at 4062:8-14]. So, in contrast to the litany of documents introduced during trial demonstrating Pershing's transparency concerns, Green chose instead to ask this Court to simply take his word for it. Given the overwhelming evidence to the contrary, however, there is no reason to accept Green's testimony.

Second, beginning in December 2008, Green, despite learning an increasing amount of information calling into question everything that he says he had believed for over 10 years, approved and circulated a variety of information vouching for SIB and the SIB CD. For example, Green reviewed, revised, approved, and distributed the December 2008 SIB Monthly Report to his own clients and to SGC's financial advisers—for the express purpose of distribution to all SIB CD investors.[56] [Division Exhibits 121 and 125]. Green did this despite the fact that he had good reason to doubt the veracity of the report. In the first draft of the report, Allen Stanford attached a third page that included a SIB financial statement. [Tr. at 4045:22-4048:12]. When Green noticed that the financial statement did not contain enough cash based on Allen Stanford's purported $541 capital contribution referenced in the report, he questioned Stanford on it. [*Id*]. Stanford's initial response was "oh shit." [*Id*].

[56] In addition, in October 2008 Green distributed SIB's Q3 Report to SGC's FAs, highlighting SIB's "stability" and the fact that SIB purported to have "capital and lots of liquidity." Division Exhibit 108 at 1. However, the report was questionable on its face, and there is no evidence that Mr. Green did anything to validate it. SIB purported to have a portfolio that was diversified geographically and across industry sectors. However, as the report noted in its geographical summaries, markets were down across the globe: (1) U.S.—"time of consolidation and turmoil"; (2) Western Europe—"deepening economic slowdown"; (3) Eastern Europe—"one of the worst performers in the global financial markets"; (4) Asia Pacific—"down 32.2% in the first three quarters of 2008, compared to the 20.6% loss of the S&P 500"; (5) Latin America—"failed to recover following steep sell-off in the third quarter." *Id.* at 2-3. In short, there was nowhere to hide in this market. Yet SIB's claimed to have had essentially flat performance with its purportedly globally-diversified portfolio. Furthermore, as Mr. Green's own witness James Fontenot acknowledged, the SIM product—which was supposed to replicate the performance of the SIB portfolio—experiencing significant losses at this time. Tr. at 2747:20-2749:2. Yet Mr. Green distributed this report and the December report without doing anything to verify SIB's claimed performance. Even after receiving questions from a number of FAs regarding the source of the capital infusions discussed in Mr. Green's cover email, Mr. Green did nothing to follow-up other than—possibly—talking to Allen Stanford. Division Exhibits 108, 751, 752.

Despite this, Green simply took Stanford's word that he had made the capital contribution; he never attempted to independently verify it.[57] [*Id.*] And he sent the report out anyway—tellingly, without the third page. This report was important to investors, including Mr. Stegall, who left his money at SIB based on its assurances. [Green Exhibit 247 at 3-4; Tr. at 1510:12-1513:6].

Incredibly, on February 13, 2009, Green also instructed Dirk Harris to distribute to his clients (many if not most of whom were legacy clients of Green, including Robert Smith), a misleading letter from Allen Stanford stating that SIB "remains a strong institution." [Division Exhibit 213; Green Exhibit 293 at SECGREEN0135-36; Tr. at 1598:18-1599:16]. Green stressed: "I really think it's important to send this to your SIB clients." [Division Exhibit 213].

Harris, on the other hand, was troubled that the letter "basically say[s] 'trust me, because I'm Allen Stanford'" and did not address the specific allegations about SIB. In fact, this followed a telephone conference Allen Stanford had with SGC's financial advisers that reassured no one other than Green—who, unlike the other FAs, was not asking tough questions about SIB. [Tr. at 4052:21-4056:5]. Even if there were no other relevant facts, this episode is instructive, because at the end of the day—as demonstrated by these events as well as his own

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57 This was particularly inappropriate in light of the fact that Green had received another CPA analysis only four days earlier noting: "I know that seems like a rude question. After all, scads of European and even Swiss banks invest in [SIB]. But as we have seen with Bernard Madoff, having audited financials, surviving scrutiny by regulatory agencies, having impressive clientele, a golden reputation, and a record of outstanding performance doesn't mean all that much. Madoff's firm was audited by a tiny firm of questionable quality, to be kind." [Division Exhibit 120]. It was exactly these factors—audited financials, Stanford's reputation, etc.—that Green argues made it impossible to detect the fraud. Yet when he is put on specific notice at this point in time (just as he was 2007 – see Division Exhibit 77) that a fraud can exist behind the veneer of legitimacy, Green continues to turn a blind eye, despite the fact that, as his own witness, Mr. Batarseh testified, "after Madoff, it was fair to re-evaluate a lot of different things." [Tr. at 2308:18-2309:2]. This attitude and approach at this late date is not only wrong on its own account, but sheds light on his mental state throughout his time at SGC.

testimony— Green's due diligence consisted of trusting Allen Stanford. He made little to no effort to independently verify the information he was giving to investors and SGC's FAs.

But, in truth, it is worse than that. Green gave these instructions to Mr. Harris the day after Laura Pendergest told him, on February 12, 2009, that she was not managing anywhere near the entire portfolio. [Tr. at 3906:6-3907:7]. At that point, it is indisputable that Mr. Green had actual knowledge of the fraud. Yet he continues to rely blindly on, and support, Allen Stanford. It is difficult to imagine a better illustration of how he approached his responsibilities to his clients during his time at SGC.

b. Bogar

As with Green, the evidence establishes that Bogar acted with, at a minimum, severe recklessness. For example, Bogar knew, probably better than anybody, that SIB invested significant sums into illiquid private equity investments; yet, he did nothing to try to reconcile this fact with the well-known claims by SIB that it invested its assets in a liquid portfolio.

In addition, during the trial, Bogar placed great weight on the fact that Pershing had visited SIB and had agreed to become SGC's clearing broker. But this only confirms that Bogar's continued inaction in the face of later pressing demands from Pershing for transparency into the Bank was, at a minimum, severely reckless. As the Division's expert explained, if Pershing, which is only serving as SGC's clearing broker and has only a limited direct involvement with the SIB CD had concerns about the lack of transparency into the SIB portfolio, Bogar (and others at SGC, which was actually marketing and selling the product) should have been "more concerned by a multiple, some multiple." [Tr. 2097:12-13].[58]

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58 Notably, the Respondents' expert could not contradict that opinion because she did not know the facts about Pershing's demands beginning in mid-2006.

And his failure to take action in the face of these demands from Pershing is made even worse given what he learned from Jim Davis during the process. In June 2008, Bogar asked Davis directly: "I have got to know today if we are going to try to comply with Pershing's request. YES or NO will do." Jim Davis responded later that day with a one word answer: "no." [Division Exhibit 288]. Bogar did not disclose this to Pershing and continued to allow his broker-dealer to market the SIB CD with promises concerning the make-up of the CD portfolio.

And, although Bogar knew that Pershing's decision to end its connection to the Bank was based on the lack of transparency, he stood (at best) silent when Green drafted a false explanation that emphasized that the issue was "tax reporting." [See Division Exhibit 355].

Finally, Bogar's own testimony confirms that he blindly relied on his faith in Allen Stanford. Even taken just on its own, such an attitude on the part of the President of a broker-dealer acting in the context of this case constitutes severe recklessness. But to make matters worse, Bogar confirmed his disinterest in making full disclosures to investors when he tried to persuade this Court during his testimony that he did not believe it was necessary to disclose SGC's lack of transparency simply because they did not lie and affirmatively state that they had such transparency. [Tr. 2885:9-Tr. 2886:7]. Such a cavalier attitude speaks volumes about Bogar's mental state during his time at SGC.

c. Young

Young also acted with the requisite *scienter*. As a threshold matter, it is undisputed that Young (just as Green and Bogar did) knew there were allegations of corruption in Antigua and Allen Stanford's political influence there. [*See, e.g.*, 3337:6-18; Division Exhibit 696; *see also* Division Exhibit 705; Tr. 3609:13-17]. Young was also well-aware of concerns by SGC financial advisers related to SIB's auditor. [Tr. 3382:14-20; 3382:2].

A perfect example of what can only be generously described as a reckless disregard for investors' interest is found in Young's decision, during late 2008 and early 2009, along with Green and Jonathan Batarseh, to go office to office on a "road show." The purpose of the road show was to give SGC's FAs positive information about SIB that could be used in answering questions from clients.[59] [Tr. at 2370:16-2371:14.] During the meeting and in the accompanying presentation, Green and Young reinforced the earlier representations regarding the safety and security of SIB. [Division of Enforcement Exhibits 745 and 796]. Particularly at this late date, there was no basis for these representations, which they did not independently verify. At the time of the road show, Green and Young knew about the regulatory investigations, SIB's liquidity problems, the worldwide financial meltdown, the losses in the SIM portfolio, the Pershing issues, the CPA reports, and the FA's concerns about the auditor. In a post-Madoff environment, when a "trust but verify" approach was even more crucial (Tr. at 2308:18-2309:2), Young and Green continued to

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[59] As Chuck Vollmer put it, "You and Bernie Young were recently in our office discussing the soundness of the bank." [Division Exhibit 150 at p. 1]. In fact, the first substantive slide of the presentation states that its purpose is to "review [. . .] "[the] operational safeguards of Stanford International Bank, which **ensure** the integrity and transparency of the Bank's operations." [Division Exhibit 796 at p. 3 (emphasis added)]. This was an amazingly audacious - and severely reckless - statement when both Green and Young knew that SIB was steadfastly refusing to provide Pershing the transparency it was requesting. It's not surprising that at trial Young tried to deny that this was the purpose of the roadshow, claiming that -- contrary to the statement in the slide show and to the email from Vollmer, the point of the roadshow was to discuss what a fine job he had done with his due diligence. [Tr. 3318:19 – 3319:9]. But the documentary evidence speaks for itself. Young may wish he had not assured the SGC financial advisers of the "integrity and transparency of the Bank's operations." But he did. And his refusal to accept this plain evidence is simply another example of unbelievable and self-serving testimony from Young that should be rejected as plainly inconsistent with the documentary evidence contained, for example, in Division Exhibit 745.

place their trust in Allen Stanford—even in the face of what became unbelievable explanations from him. This is, at best, severely reckless.[60]

In addition, as discussed above Young knew or was severely reckless in not knowing a variety of facts that make his action in this case intentional or reckless. For example, like Bogar, 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. In evaluating Young's *scienter* and conduct in general, it is worth noting the multiple instances of apparently unbelievable testimony. For example, when asked during his direct examination about a letter from SIB's external auditor addressed to him, he suggested that he was the person who sought out that letter, leaving the impression that perhaps it was part of his due diligence process. [See, e.g., 3386:14-3388:4; 3266:9-14]. But on cross-examination, Young admitted that such a letter was actually requested by the Louisiana Office of Financial Institutions as part of an investigation. [Tr. 3386:20-3387:11]. Moreover, contrary to his suggestion during his direct testimony, there is no evidence that Young was the one who actually even procured the letter. This attempt by Young to claim a level of diligence not supported by the record colors all of his testimony, casting doubt on many of his self-serving claims.

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60 Young cannot escape this conclusion by relying on a conversation he finally had with Leroy King in December 2008. For example, there is no documentary evidence confirming the contents of that conversation and, as discussed below, Young's actions in this case have made his self-serving testimony unreliable. In any event, even Young admits he should have taken what the FSRC said with a degree of skepticism. Indeed, Young claims he did apply skepticism but this self-serving claim cannot be squared with his enthusiastic acceptance after a single conversation, given the myriad other facts Young knew or could easily have discovered. [See generally Tr. 3394:24-3395:8].

That was not the only instance of perplexing testimony. For example, as noted above, Young attempted to shift the Court's attention from clear evidence about his conduct during the roadshow with self-serving testimony. In yet another instance, Young assured the Court that he had made handwritten notes on what has since been labeled as Young Exhibit 98 early in his career at SGC [Tr. 3202:24].

But he started working at SGC in September 2006 and the notes reference November 2007. Clearly those notes were made, at the earliest, over a year after Young started at SGC. And in fact they weren't notes on the document at all, but instead were made on a sticky-note. Moreover, after providing several inconsistent explanations about the document following the hearing, it appears Young now says that the notes may not have been created until Young was preparing his Wells Submission during the Division's investigation in this matter.[61]. Such a reckless approach to testifying under oath provides probative evidence of how Young approached his responsibilities at SGC. It also renders much of his testimony, which consisted of frequent self-serving unsubstantiated claims unreliable.

Perhaps a PowerPoint presentation that Young claimed he was "very instrumental in creating" and that was used during the 2008 annual compliance meeting sums up Young's scienter the best. [Tr. 3599:19 – 3600:2]. On a slide titled "best practices, " SGC's compliance department advises SGC's FAs to "make statements of fact only when you are certain the statements are actually facts." [Division Exhibit 796]. Young even acknowledged that this admonition applied equally to information about SIB's investment portfolio. [Tr. 3601:2-4]. In short, there is overwhelming evidence in this case that Young acted with, at best, severe recklessness.

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61 Attached as Exhibit A are copies of e-mails from Young's counsel related to this issue, including an e-mail from Young on March 25, 2013 noting that the original document did not have handwriting on it.

4. Respondents are Primarily Liable Under Section 17(a) of the Securities Act.

The Respondents are also liable under Section 17(a)(2) for approving and directing SGC's use and dissemination of offering documents that represented that SIB maintained a comprehensive program of private insurance for the benefit of CD investors, and that grossly understated (or omitted) the financial incentives and other support SIB provided to SGC. This conduct by the Proposed Respondents to entice investment in the SIB CDs is sufficient to establish liability under Section 17(a)(2). *See SEC v. Tambone*, 597 F.3d 436, 444 (1st Cir. 2010); *SEC v. Radius Capital Corp.*, 2012 WL 695668, at *4 (M.D. Fla. March 1, 2012) (salesman who gave investors prospectus containing representations that he knew to be false constituted "use" of a false statement sufficient for Section 17(a)(2) liability); *see also SEC v. Stoker*, 2012 WL 2017736, at *8 (S.D.N.Y. June 6, 2012) (Section 17(a)(2)'s "by means of" language "plainly covers a broader range of activity" than Rule 10b-5(b)).[62]

[62] *But see SEC v. Kelly*, 817 F. Supp. 2d 340, 345 (S.D.N.Y. 2011) (concluding that *Janus* applies equally to Section 17(a)(2) liability, such that the defendant must be the "maker" of the misrepresentation).

The Respondents are also primarily liable under Sections 17(a)(1) and (3) of the Securities Act for the materially misleading statements and omissions made in the offering materials, including the brochure. *See Cady,* 40 S.E.C. at 913 (noting that "a breach of duty of disclosure may be viewed as a device or scheme, an implied misrepresentation, and an act or practice, violative of all three subdivisions"). In approving and using the content of the brochure – a document containing untrue statements and omissions of material fact – and its use to solicit CD purchasers, the Respondents knowingly or recklessly "employ[ed] a[] device, scheme, or artifice" to deceive investors and prospective investors.

5. In direct conversations, Green made material misrepresentations and omissions.

In addition to the misrepresentations in the offering documents, Green, as demonstrated by the testimony of Mr. Stegall, Ms. Dore, and Mr. Smith, affirmatively represented to prospective investors using his own oral and/or written statements that the SIB CDs were: (i) safe and secure; (ii) protected by private insurance; and (iii) invested in a liquid and globally-diverse portfolio. Likewise, as discussed in this brief, he did not disclose to investors in these discussions material facts necessary to make the statements he made not misleading.

Because Green knew that neither he nor SGC could confirm SIB's portfolio and that the SIB CD was a risky, uninsured investment, he acted knowingly or recklessly in making these affirmative statements. Accordingly, Green violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

6. The Respondents Also Aided and Abetted SIB's and SGC's Fraud.

The Respondents also aided and abetted SIB's and SGC's fraud on CD investors. The first element of aiding and abetting – a primary violation – is supplied by the false statements and material omissions in the SIB and SGC offering documents.[63] SIB and SGC are liable under Section 10(b) and Rules 10b-5(b) because the offering documents made materially misleading statements and omitted material facts. Specifically, the offering documents: (i) misled investors into believing that a "comprehensive" program of private insurance protected the CDs; (ii) failed to disclose that SIB's portfolio was not transparent; (iii) omitted significant related-party transactions; and (iv) misrepresented the fees that SIB paid to SGC in connection with SGC's sale of CDs.[64]

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[63] The evidence demonstrates that both SGC and SIB violated Section 10(b) of the Exchange Act based on the material misrepresentations and omissions in the offering documents. It is undisputed – indeed the Respondents themselves have indicated – that the offering documents are "bank documents" and the statements in them attributable to the Bank. It is also clear, however, that at least one version of the marketing brochure attributes its statements to SGC. [See, e.g., Division Exhibit 607]. As a result, SGC also may be held to have violated Section 10(b).

[64] SIB's and SGC's *scienter* is supplied by the conduct of their senior-most executives. Allen Stanford and Jim Davis dominated and controlled these companies' operations. As the testimony of Karyl Van Tassel, it is clear that SIB and SGC intentionally made material misrepresentations and otherwise engaged in fraudulent conduct in connection with the offer and sale of SIB CDs. The Division further asks the Court to take official notice of Allen Stanford's criminal conviction, which further supports this conclusion.

The remaining elements of this charge – knowing or reckless substantial assistance – are also present. Each respondent approved the use of the offering documents (and in the case of Green, used the documents themselves), knowing that they emphasized the supposed private insurance and the liquidity and strength of the portfolio backing the CDs. The Respondents also led or approved financial adviser training that highlighted these attributes. As discussed above, the Respondents, however, knew key facts that undermined these representations. They knew, for instance, that there was no comprehensive private insurance backing the SIB CDs. They also knew that SIB's portfolio was hidden from view and that they had no way to verify the truth of the claims about it. They (or at least Bogar and Young) also had strong reason to doubt those claims, since they knew that SIB's private equity portfolio was highly illiquid and of low quality, and thus unlikely to have generated an unbroken 15 year string of double-digit returns. And, as discussed in this brief, each knew myriad facts that undercut their blind reliance on Stanford and the bank. Their persistence in repeating these claims to investors without qualification – and authorizing and training others to do the same – was at least severely reckless. *See, e.g., Randy*, 38 F.Supp.2d at 671-72 (salesman acted recklessly by using offering materials containing facts that he knew to be questionable or contrary to other facts he knew). They therefore aided and abetted SIB's and SGC's fraud.

B. Respondents Aided and Abetted SGC's Violation of Section 15(c)(1) of the Exchange Act.

Section 15(c)(1) prohibits a broker-dealer from effecting or inducing the purchase or sale of securities by means of any manipulative, deceptive, or other fraudulent device. Untrue statements and omissions of material facts are considered to be manipulative, deceptive and fraudulent as defined in Rule 15c1-2. The standard of misconduct applied to Exchange Act Section 15c(1) violations is the same as for violations of Section 10(b) under the Exchange Act. *SEC v. Morgan*

Keegan & Co., 678 F.3d 1233, 1244 (11th Cir. 2012); *SEC v. George*, 426 F.3d 786, 792 (6th Cir. 2005).

As discussed above, SGC, through its network of domestic brokers, induced thousands of U.S. investors to purchase the SIB CD by means of deceptive and fraudulent conduct. SGC misrepresented key features of the CD program (i.e., liquidity and insurance), failed to disclose material, related-party transactions, and misrepresented the amount of referral fees that SGC received from SIB for selling the CDs. For all the reasons discussed herein, the Respondents aided and abetted SGC's violations by approving the use of offering documents that they knew misrepresented and omitted material facts about the CD program, and by encouraging the sale of SIB CDs to U.S. investors.

C. Respondents Aided and Abetted SGC's Violations of Section 206 of the Advisers Act.

1. SGC Violated the Advisers Act.

Section 206(1) of the Advisers Act prohibits any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, from employing any device, scheme, or artifice to defraud any client or prospective client. *See* Investment Advisers Act of 1940 § 206(1), 15 U.S.C. § 80b-6(1) (2011). 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. 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). Scienter is defined as a mental state consisting of an intent to deceive, manipulate or defraud. *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 194 n.12 (1976). Both intentional and reckless conduct satisfy the scienter requirement. *Vernazza v. SEC,* 327 F. 3d 851, 860 (9th Cir. 2003); *SEC v. Blavin,* 760 F. 2d 706, 711-12 (6th Cir. 1985).

Section 206 imposes a fiduciary duty on investment advisers, requiring an affirmative obligation of utmost good faith and full and fair disclosure of all material facts to their clients. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, 194-195 (1963). The fraud towards clients that Section 206 prohibits may involve affirmative misrepresentations or nondisclosure of facts, and the nature and extent of disclosure depends on the circumstances and reasonable expectations of the parties. *See In the Matter of Montford and Company, Inc. D/B/A Montford Associates, and Ernest V. Montford, Sr.*, Initial Decision Release No. 457, 2012 SEC LEXIS 1264, at *38 (April 20, 2012). Materiality is established if a reasonable investor would have considered the misrepresented or omitted fact important when deciding whether to buy, sell or hold the security in question (*See Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988), or in deciding the matter before him or her. *TSC Industries v. Northway, Inc.,* 426 U.S. 438, 449 (1976).

When dealing with a fiduciary relationship a duty to disclose "arises when one party has information that the other party is entitled to know." *Chiarella v. U.S.*, 445 U.S. 222, 228 (1980); *see also SEC v. Falstaff Brewing Corp.*, 629 F.2d 62, 77 (D.C. Cir. 1980). Advisers are responsible for providing all necessary information for clients to make informed investment decisions. *See In the Matter of Robert Radano*, Advisers Act Rel. No. 2750, 2008 SEC LEXIS 1504, at *16-17 (June 30, 2008); *In the Matter of the City of Miami, Florida, Cesar Odio and Manohar Surana*, Initial Decision Rel. No. 185, 2001 SEC LEXIS 1250, at *61 (June 22, 2001); *In the Matter of Conrad P. Seghers*, Advisers Act Rel. No. 2656, 2007 SEC LEXIS 2238, at *29-30 (September 26, 2007). With a duty to disclose, disclosure must be effective in order to discharge that duty. *In the Matter of Boettcher & Co., David F. Lawrence, Alfred A. Wiesner, Bruce C. Newman*, Admin. Proc. File No. 3-544, 1967 SEC LEXIS 2613, at *56 (January 5, 1967).

An investment adviser's duty to disclose requires that the adviser convey an accurate picture of the state of the client's affairs and act with reasonable care to ensure this accurate picture. *See In the Matter of Robert Radano*, Advisers Act Rel. No. 2750, 2008 SEC LEXIS 1504, at *16 (June 30, 2008); *SEC v. DiBella*, 587 F.3d 553, 562 (2009); *In the Matter of Michael R. Pelosi*, Initial Decision Rel. No. 448, 2012 SEC LEXIS 48, at *55-57 (January 5, 2012). The nature and extent of disclosure required "depends on the circumstances and the reasonable expectation of the parties," (*See In the Matter of Montford and Company, Inc. D/B/A Montford Associates, and Ernest V. Montford, Sr.*, Initial Decision Release No. 457, 2012 SEC LEXIS 1264, at *38 (April 20, 2012)), and disclosure is not sufficient if it does not convey the intended message and/or the import of the disclosure is not fully understood by the client. *See In the Matter of Charles K. Seavey*, Initial Decisions Rel. No. 200, 2002 SEC LEXIS 398, at *41-42 (February 20, 2002); *In the Matter of O'Brien Partners, Inc.*, Advisers Act Rel. No. 1772, 1998 SEC LEXIS 2318, at *13-14, 28-29 (October 27, 1998). A purported disclosure is not sufficient if its intended recipient does not understand the underlying subject of the disclosure. *See In the Matter of Kingsley, Jennison, McNulty & Morse, Inc.*, Initial Decision Rel. No. 24, 1991 SEC LEXIS 2587, at *45.

It is undisputed that SGC was a registered Investment Adviser.[65] SGC commonly recommended the SIB CD to advisory clients. If a client was interested in purchasing the SIB CD, SGC would provide the client with the disclosure statement and the brochure. In recommending the SIB CD to advisory clients, for the same reasons discussed above, SGC violated Sections 206(1) and (2) of the Advisers Act by misrepresenting key features of the SIB

[65] According to its Forms ADV, SGC offered and sold the SIB CD "if consistent with the client's investment objectives." [Division Exhibit 486, p. 15 of 40]. In its 2007 Form ADV, SGC identified Bogar, Green and others, as persons who determine "general investment advice given to clients." [Division Exhibit 486, p. 7, 15 of 40].

CD program (liquidity and insurance). It also violated those provisions by failing to disclose the significant conflicts created by the financial incentives that SIB paid to SGC to market the SIB CD.[66]

2. Respondents Aided and Abetted these Violations.

In order to establish Respondents aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act, three elements must be proven: (1) an independent securities law violation committed by another party; (2) knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. *See In re Woessner*, Initial Decision Rel. No. 225, 2003 SEC LEXIS 646, at *28-30 (March 19, 2003); *Investors Research Corp. v. SEC*, 628 F.2d 168, 178 (D.C. Cir. 1980). A respondent or defendant can aid and abet a failure to disclose. *See In the Matter of John J. Kenny and Nicholson/Kenny Capital Management, Inc.,* Advisors Act Rel. No. 2128, 2003 SEC LEXIS 1170, at *50-51 (May 14, 2003).

The second element, the knowledge requirement, can be established by proving that the respondent acted with knowledge or that she "encountered red flags or suspicious events creating reason for doubt that should have alerted h[er] to the improper conduct of the primary violator, or if there was a danger so obvious that he must have been aware of it." *See In the Matter of Warren Lammert, Lars Soderberg, and Lance Newcomb*, Initial Decision Rel. No. 348, 2008 SEC LEXIS 937, at *52 (April 28, 2008) (internal citations omitted); *Howard v. SEC*, 376 F.3d 1136, 1143 (D.C. Cir. 2004). When the alleged aider and abettor is a fiduciary, a showing of recklessness is sufficient to establish liability. *See Valicenti Advisory Services, Inc.*, Initial Decision No. 111, 1997

66 SGC's Form ADV did not disclose that it received fees from SIB pursuant to the Private Equity Agreement or the Research Agreement. *See* Form ADV Part I, Item 8 and Part II, Item 9 (note that the Commission adopted amendments to Part II of Form ADV in July 2010).

SEC LEXIS 1395, at *54 (July 2, 1997), Advisers Act Rel. No. 1774, 1998 SEC LEXIS 2497 (November 18, 1998), *aff'd*, *Valicenti Advisory Services, Inc. v. SEC*, 198 F.3d 62 (2d Cir. 1999), *cert. denied*, 530 U.S. 1276 (2000); *In the Matter of Carole L. Haynes*, Initial Decision Rel. No. 78, 1995 SEC LEXIS 3134, at *74 (November 24, 1995) (citing *Lanza v. Drexel & Co.*, 479 F.2d 1277, 1306 n.98 (2d Cir. 1973).

Third, the substantial assistance element of liability is satisfied where the aider-abettor's actions are a "proximate cause" of the harm upon which the claim for relief is based, that is, the harm is a direct and foreseeable result of the alleged assistance. *See In the Matter of Russo Securities Inc. and Ferdinand Russo*, Exchange Act Rel. No. 39181, 1997 SEC LEXIS 2075, at *17-18 (October 1, 1997). An action that is a substantial factor in causing the primary violation satisfies the proximate cause requirement. *See In the Matter of Gregory O. Trautman*, Securities Act Rel. No 9088, 2009 SEC LEXIS 4173, at *74 n.73 (December 15, 2009). As discussed above, Respondents' actions were a proximate cause of SGC's violations.

As with aiding and abetting, three elements also need to be proven for causing liability: (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 her conduct would contribute to the violation. *See In the Matter of Scott G. Monson*, Investment Company Act Rel. No. 28323, 2008 SEC LEXIS 1503, at *10 (June 30, 2008); *see also In the Matter of Robert M. Fuller*, Securities Act Rel. No 8273, 2003 SEC LEXIS 2041, at *13-14 (August 25, 2003). A person does not have to be the proximate or sole cause of a violation to be liable for causing the violation. *See In the Matter of Erik W. Chan*, 55 SEC 715, 2002 SEC LEXIS 1059, at *17-18 (April 4, 2002); *In the Matter of Rita J. McConville*, Exchange Act Rel. No. 51950, 2005 SEC LEXIS 1538, at *43 n.45 (June 30, 2005). Negligence is sufficient to establish causing liability for a violation that does not require scienter. *See In the Matter of KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 2001 SEC LEXIS 98, at *78 (January 19, 2001). Negligence is the failure to exercise reasonable care or competence. *In the Matter of Byron G. Borgardt and Eric M. Banhazl*, Securities Act Rel. No. 8274, 2003 SEC LEXIS 2048, at *38 (August 25, 2003). *See also In the Matter of Sharon M. Graham and Stephen C. Voss.*, Exchange Act Rel. No. 40727, 53 S.E.C. 1072 (November 30, 1998) (a willful aiding and abetting finding necessarily means that the defendant caused the violations as well).

Bogar, Young and Green substantially assisted SGC's actions by approving and promoting the sale of the SIB CDs in the U.S. and using misleading sales materials and single-product sales contests. Bogar and Young also substantially assisted SGC by concealing the fact that SIB had a significant amount of assets consisting of illiquid private equity investments. Finally, Green, with Bogar and Young's approval, substantially assisted SGC by training SGC's financial advisers to misrepresent the safety and security of the SIB CD to their advisory clients.

The Respondents also substantially assisted SGC's violations by failing to disclose the rampant conflicts of interest between SIB and SGC. None of the Respondents disclosed the extent of SGC's dependence on SIB or the financial incentives that SGC and its financial advisers received from the sale of SIB CDs.[67] Bogar and Young also assisted the fraud by failing to disclose related-party transactions that existed between SIB and SGC, including fees SGC earned from managing the private equity investments. Green substantially assisted these violations by spearheading the undisclosed SIB CD sales contests. As a result, each Respondent aided and abetted SGC's violations of Sections 206(1) and (2).

67 *See In the Matter of Michael A. Callaway*, IA-2833 (Jan. 30, 2009) (associated person of an IA violated Section 206(2) by, among other things, failing to ensure that the conflict inherent in receiving additional fees for recommending another Merrill Lynch service was disclosed to advisory clients).

D. Green Misrepresented Facts to Investors.

In addition to the misrepresentations in the offering documents, Green affirmatively represented to prospective investors using his own oral and/or written statements that the SIB CDs were: (i) safe and secure; (ii) protected by private insurance; and (iii) invested in a liquid and globally-diverse portfolio. Because Green knew that neither he nor SGC could confirm SIB's portfolio and that the SIB CD was a risky, uninsured investment, he acted knowingly or recklessly in making these affirmative statements. Accordingly, Green violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

E. Relief Requested

1. Disgorgement

Sections 8A of the Securities Act, 21B of the Exchange Act and 203 of the Advisers Act permit the Commission to order disgorgement. Disgorgement is designed to deprive a wrongdoer of unjust enrichment and to deter others from violating securities laws by making violations unprofitable. *SEC v. First Pac. Bancorp.*, 142 F.3d 1186, 1191 (9th Cir. 1998), *cert. denied*, 525 U.S. 1121 (1999). To obtain disgorgement, the Commission need only show a reasonable approximation of profits causally connected to the violations. *Thomas C. Bridge*, 2009 SEC LEXIS 3367 at *93; *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) ("where a 'harm' amount is difficult to calculate, a court is wholly justified in requiring the party in contempt to disgorge any profits it may have received that resulted in whole or in part from the contemptuous conduct"). All doubts concerning the approximation are to be resolved against the defendant. *SEC v. Hughes Capital*, 917 F. Supp. 1080, 1085 (D.N.J. 1996), *aff'd w/o opinion*, 1997 U.S. App. LEXIS 24480 (3d Cir. July 9, 1997); *see also First City Financial Corp.*, 890 F.2d at 1232; *SEC v. MacDonald*, 699 F.2d 47, 55 (1st Cir. 1983). Once the Commission has shown that the disgorgement amount is a reasonable approximation of ill-gotten gains, the burden of proof shifts to the defendant. *First City Financial Corp.,* 890 F.2d at 1232.

A forensic accountant working for the Receiver appointed over SGC conducted an extensive analysis of compensation and other relevant records to establish the payments each Respondent received that are causally related to their misconduct connected to selling the SIB CD. [See, for example, Tr. 143:16-20 (explaining that compensation numbers for time periods prior to 2005 not included because insufficient information to separate commissions related to the SIB CD and commissions not related to it)]. As a result of the key role each Respondent played in SGC's offer and sale of SIB CDs to U.S. investors, all of the following compensation is related to their misconduct:

- From June 2004 through February 2009, Bogar received more than $3,085,596.74 in compensation. [Tr. at 139:10 – 140:18; Division Demonstrative Exhibit 1].

- From July 2006 through February 2009, Young received $1,271,183.60 in compensation. [Tr. at 142:24 – 143:6; Tr. at 145:3-5;Division Demonstrative Exhibit 1].

- From January 2005 through February 2009, Mr. Green received $2,613,506.47 million in compensation solely attributable to sales of SIB CDs. [Tr. at 143:7 – 145:5; Division Demonstrative Exhibit 1]. In addition, the evidence established that Green also obtained the benefit of a $3 million bonus because the Superstars team he lead met a goal established by Allen Stanford. [Tr. at 3878:2-5.]. Green should be required to disgorge this amount, regardless of the fact that he directed that the bonus be paid to a religious organization. Regardless of his motivation for arranging for that money to be donated, it is beyond dispute that this money was his to direct and it was directly related to his fraudulent conduct.

There is no doubt that Green's payments, which are explicitly and directly linked to his fraudulent conduct, should be disgorged. Likewise, Bogar and Young should be required to disgorge all the payments they received as identified by the Receiver's forensic accountant. Even if this is compensation is not as explicitly tied to the fraudulent marketing of the SIB CD in the same way as a commission or bonus, it is clear that these payments are causally related to their fraudulent misconduct. First, without the benefit of proceeds from the sale of SIB CDs, SGC was insolvent from 2004 forward. And Bogar and Young played central roles in propping SGC up through the improper marketing of the SIB CD.

In other words, without the misconduct of individuals such as Bogar, SGC's President, and Young, it's Chief Compliance Officer and the due diligence officer for the SIB CD, SGC would have been insolvent and Bogar and Young would have received no payments from SGC. Given the causal connection between their misconduct and all payments each received from SGC, Bogar and Young should be required to disgorge all of those payments as ill-gotten gains. *See, e.g., CFTC v. British American Commodity Options Corp.*, 788 F.2d 92 (2nd Cir), 479 US 853 (1986) (upholding order requiring CEO of a broker-dealer to disgorge entire salary because broker dealer engaged in pervasive fraud); *In the Matter of Rita J. McConville and Kevin M. Harris, C.P.A.,* 2004 SEC LEXIS 2228 (September 27, 2004), Administrative Proc. File No. 3-11330, Initial Decision Release Number 259 (ordering disgorgement of salary, finding that "the root cause of the violations was her failure to perform her responsibilities); *SEC v. Gruttadauria*, Case No. 1:02-cv-00324-PAG, slip op. at 9 (N.D. Ohio March 10, 2004) (granting summary judgment and ordering defendant to pay $20.8 million in salary, wages, and bonuses).

Finally, all of these compensation calculations for Green and Bogar are conservative estimates because of the time periods captured by the Receiver.[68] [Tr. at 143:24 – 144:2]. This provides an additional reason to require them to disgorge the entire amounts identified.

2. Prejudgment Interest

Rule 600 of the Commission's Rules of Practice provides that prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement. This is particularly true here, where Green and Bogar were able to enjoy the fruits of his fraudulent conduct for over a decade. *See Hughes Capital*, 917 F. Supp. at 1090 ("It comports with the fundamental notions of fairness to award prejudgment interest. The defendants had the benefit of nearly $2 million dollars [sic] for the nine and one-half years between the fraud and today's disgorgement order. In order to deprive the defendants of their unjust enrichment, the court orders the defendants to disgorge . . . prejudgment interest.").

The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in SEC enforcement actions such as this one. See Rule 600 of the Commission's Rules of Practice. In the event the Court awards a specific disgorgement amount and concludes that prejudgment interest is appropriate, the Division will provide a calculation of the appropriate amount.

The Division urges the Court to require Respondents to disgorge all of their ill-gotten gains, plus prejudgment interest.

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68 See Footnote 11, supra, for detailed information about what the disgorgement calculations do not include for each Respondent.

3. Civil Penalties

The Commission may impose civil penalties under Section 21B of the Exchange Act, Section 20(d) of the Securities Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act against a respondent who willfully violated the securities laws, if the civil money penalty is in the public interest. When determining whether a penalty is in the public interest, the Commission may consider, among several factors, whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; the harm to others resulting either directly or indirectly from such act or omission; the extent to which any person was unjustly enriched, taking into account any restitution. *See* Section 203(i)(3)(C) of the Advisers Act.

Penalties are statutorily authorized in three tiers. First tier penalties may be imposed in the amount of $6,500 per violation. Where the violative act or omission at issue involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, second tier penalties of $65,000 per violation may be imposed. If the violative act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, and directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission, the Commission may impose a third tier penalty of $130,000. 17 C.F.R. §201.1001-.1003. These penalty amounts apply to each act or omission occurring after February 15, 2005 and on or before March 3, 2009. *Id.*

The Division has established that: (1) each Respondent committed fraud; (2) that conduct caused widespread harm to investors; (3) there is a clear need for deterrence here because the Respondents were in the best position to understand the problems with their conduct and none have acknowledged wrongdoing here; to the contrary, each has offered self-serving testimony that at times could be characterized as evasive and, at best, disingenuous; and (4) penalties are appropriate to send a message that conduct such as Respondents' will not be tolerated, particularly by senior investment professionals. Moreover, each Respondent profited handsomely from their misconduct and their fraudulent conduct enabled each to maintain high level positions as a securities professional. 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)).

Because each Respondent's violations involved fraud and a significant risk of substantial losses to investors maximum third tier penalties may, and should, be imposed.

4. Cease-and-Desist Order

Section 203(k) of the Advisers Act, 15 U.S.C. § 80b-3(k) (2011), and Section 9(f) of the Investment Company Act, 15 U.S.C. § 80a-9(f) (2011) authorize the Commission to impose a cease-and-desist order upon any person who "is violating, has violated, or is about to violate" any provision of the Advisers Act or the Investment Company Act or the rules and regulations thereunder, as well as any other person that is, was, or would be a cause of the violation. In determining whether a cease and desist order is appropriate, the Commission considers numerous factors, including the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, the respondent's opportunity to commit future violations, the degree of harm to investors, the extent to which the respondent was unjustly enriched, and the remedial function to be served by the cease-and-desist order in the context of other sanctions being sought. *WHX Corp. v. SEC*, 362 F.3d 854, 860 (D.C.

Cir. 2004) (appeal of administrative cease and desist order); *KPMG v. SEC*, 289 F.3d 109, 124-25 (D.C. Cir. 2002) (same). "The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction, and, absent evidence to the contrary, a single past violation ordinarily suffices to raise a sufficient risk of future violations." *Rodney R. Schoemann*, S.E.C. Rel. No. 9076, 2009 WL 3413043, *12-13 (Oct. 23, 2009), *aff'd*, 2010 WL 4366036 (D.C.Cir. Oct. 13, 2010). The Commission should also "consider the function that a cease-and-desist order will serve in alerting the public that a respondent has violated the securities laws." *Fundamental Port.*, 2003 WL 21658248, *18 ("*FPA*").

The Division has demonstrated that Respondents committed recurring securities violations when each 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. Moreover, as discussed above, the Respondents not only have failed to provide any assurances against future violations, none have even acknowledged that a violation has occurred. A cease-and-desist order would also serve an important public function in alerting the public that the Respondents violated the securities laws. Providing a meaningful remedy in this case will send a message that securities professionals must meet their obligations.

5. Full Collateral Bars are Appropriate Against Each Respondent

In order to protect investors, Section 203(f) of the Advisers Act (15 U.S.C. § 80b-3(f) (2011)) and Section 9(b) (15 U.S.C. § 80a-9(b) (2011)) of the Investment Company Act authorize the Commission to bar or suspend a person from association with an investment adviser, or from serving in a variety of positions with a registered investment company, for willful violations of the respective acts.

Similarly, Section 15(b)(6)(A) of the Exchange Act has long provided that the Commission could bar a broker-dealer found liable for certain misconduct from association with a broker-dealer if such a bar was "in the public interest" and specified criteria were satisfied. Section 925 of the Dodd-Frank Act amended Section 15(b)(6)(A) of the Exchange Act to permit the Commission to bar a broker-dealer found liable for certain misconduct not only from association with a broker or dealer, but also from association with an investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO.[69]

The Commission's authority to bar a broker-dealer or other investment professional is a prospective remedy imposed based on conduct that was unlawful even prior to enactment of the Dodd-Frank Act and limiting the scope of Respondent's conduct only "*in futuro*." *Landgraf*, 511 U.S. at 274. In this respect, the bar is indistinguishable from the prospective injunctive relief that the Supreme Court has held does not raise retroactivity concerns. *See id.* What is more, the imposition of a bar is a remedial measure designed to protect the investing public from harm. Section 15(b)(6)(A) expressly provides that a bar is appropriate only if "in the public interest," a phrase the Commission and the courts have interpreted to mean that the remedy is not "punitive" but rather is "meant to protect the investing public." *Rizek v. SEC*, 215 F.3d 157, 163 (1st Cir. 2000); *see also Kornman v. SEC*, 592 F.3d 173, 188 (D.C. Cir. 2010) (holding that a bar was "remedial in nature because it is designed to protect the public, and the sanction is not historically viewed as punishment" (internal quotation marks omitted)); *Brownson v. SEC*, 66 Fed. Appx. 687, 688 (9th Cir. 2003) (noting that "the SEC's goal of protecting the public is remedial, not punitive"); *Vansco v. SEC*, 395 F.2d 349, 353 (2d Cir. 1968) (concluding that a bar was "in the public interest" because it was based on the belief "that the public should [not] be exposed to

69 Section 925 of the Dodd-Frank Act made similar amendments to Sections 15B and 17A of the Exchange Act, and Section 203(f) of the Investment Advisers Act.

further risk of fraudulent conduct"). Such prospective remedial relief designed to protect the public is appropriate even if based on conduct prior to enactment of the statute in question. *See Landgraf*, 511 U.S. at 274; *cf. Hawker v. New York*, 170 U.S. 189 (1898) (upholding legislation that barred a physician from practicing medicine if convicted of a felony, even though conviction pre-dated passage of the statutory bar). Accordingly, the Dodd-Frank bars are appropriately imposed here.

Imposition of the Dodd-Frank Act bars here is especially appropriate here given the need to protect the investing public prospectively from Respondents. As the record in this case demonstrates, Respondents pose a continuing threat to the investing public because their fraudulent activities were egregious and recurrent. In addition, acting with a high degree of scienter, Respondents caused investors to be seriously misled. Furthermore, Respondents have offered no assurances against future violations, and continue to deny wrongdoing. Continued participation by Respondents in the securities industry will present opportunities for future violations. Accordingly, the full range of Dodd-Frank bars should be imposed to protect the investing public from the continuing threat Respondent poses.

a. The Full Range of Bars Should Be Imposed Against Respondent

The Division requests that Respondents, who were senior securities professionals and licensed executives of a broker-dealer, be barred under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act")[70] from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. Respondents may argue that the new bar provisions of the Dodd-Frank Act cannot be applied to them since they were enacted after the date of the conduct in question. Any such argument is without merit.

70 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

Generally, in the absence of Congressional intent that a statue apply retroactively[71], there is a well-settled "presumption against applying statutes affecting substantive rights, liabilities, or duties to conduct arising before their enactment." See *Landgraf v. USI Film Products*, 511 U.S. 244, 279 (1994). And if a statute would have retroactive effect, it will not apply.

A statue does not operate retroactively solely because "it is applied in a case arising from conduct antedating the statute's enactment." *Id.* at 269. Rather, a statute has retroactive effect if it would, among other things, increase liability for past conduct, or impose new duties with respect to conduct already completed. *Id.* at 280. Generally, the presumption against statutory retroactivity is explained by "the unfairness of imposing new burdens on persons after the fact." *Id.* at 270. *See also Associated Fisheries of Maine, Inc. v. Daley*, 127 F.3d 104, 113 (1st Cir. 1997) (statutory amendment requiring additional information to be included in a final regulatory flexibility analysis (FRFA) had impermissible retroactive effect where the agency had completed a FRFA prior to the effective date of the amendment)

As noted by the Supreme Court, "application of new statutes passed after the events in suit is unquestionably proper in many situations," *Landgraf* at 273. For instance, the Supreme Court stated in *Landgraf* that, "[w]hen the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive" and is thus permitted. *Id.* One example of such prospective relief is "relief by injunction" which necessarily "operates *in futuro*." *Id.* at 274. Application of a newly-enacted statute is also permissible so long as it does not "attac[h] new legal consequences to events completed before its enactment." *Id.* at 270.

For both of these reasons, application of the Dodd-Frank Act bars to Respondents' conduct here is appropriate and permissible. The bars are prospective relief designed to protect the public

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71 Although Congress may apply statutes retroactively, it can only do so if the retroactive application is not otherwise prohibited by the Constitution.

"*in futuro*," and thus do not raise retroactivity concerns. And, in any event, the bar provisions (other than the NRSRO and municipal advisor bars) of the Dodd-Frank Act do not impose new legal consequences on Respondents' conduct. Accordingly, the application of the new bar provisions of the Dodd-Frank Act is not precluded here.

b. Most of the Bar Provisions of the Dodd-Frank Act Do Not Impose New Legal Consequences On Respondent's Conduct

As noted above, the Supreme Court has also held that a newly enacted statute may be applied to conduct committed prior to enactment so long as the statute does not "attac[h] new legal consequences to events completed before its enactment." *Landgraf*, 511 U.S. at 270. The Dodd-Frank Act's bars from association with brokers, dealers, municipal securities dealers and transfer agents bar provisions add no new legal consequences to the respondent's pre-Act conduct, and therefore do not have impermissible retroactive effect.

Before the enactment of the Dodd-Frank Act, the Commission had the authority to bar persons from associating with entities the Commission regulates, when those persons committed willful violations of the securities laws, were convicted of certain enumerated violations, or were enjoined from violations of the federal securities laws. *See generally*, Exchange Act Sections 15(b)(6) (relating to persons associated with brokers and dealers), 15B(c)(4) (relating to persons associated with municipal securities dealers), 17A(c)(4)(C) (relating to persons associated with transfer agents), and Advisers Act Section 203(f) (relating to persons associated with investment advisers). Because the Commission's jurisdiction could be triggered by the person's "seeking to become associated" with the particular entity, the fact that the person was not associated with an entity in a particular industry at the time of the conduct did not prevent the person from later exclusion from the industry based on that conduct. Therefore, even prior to Dodd-Frank's enactment, the respondent could reasonably expect that his conduct could lead to a bar from association with a broker, dealer, municipal securities dealer, transfer agent or investment adviser.

Accordingly, the Dodd-Frank Act added no new legal consequences to a Commission bar, at least insofar as the new bar provisions extend to employment as a broker, dealer, investment adviser, municipal dealer, or transfer agent. Respondents may therefore be barred from such employment.[72] *See, e.g.*, *In the Matter of John W. Lawton*, Initial Decision Rel. No. 419, 2011 WL 1621014, at *4 (Apr. 29, 2011) (imposing bars from association with a broker, dealer, investment adviser, municipal dealer, or transfer agent where those bars did not impose new legal consequences for the respondent).

VI.
CONCLUSION

The evidence in this case confirmed that the Respondents violated the federal securities laws. The Division therefore asks the Court to enter an Order accepting the factual statements and legal conclusions set out above and that imposes an appropriate remedy against the Respondents.

Respectfully submitted,

David Reece, Esq.
Texas Bar No. 24002810
B. David Fraser, Esq.
Texas Bar No. 24012654
Chris Davis, Esq.
Texas Bar No. 24050483
Janie Frank, Esq.

72 The Dodd-Frank Act did create a new legal consequence with regard to Respondent's employment as a municipal advisor or an NRSRO. But as discussed above, because those bars are prospective remedial relief, rather than retroactive punishment, Respondent may be barred from working in those capacities as well.

EXHIBIT A

Reece, David B.

From: Reece, David B.
Sent: Thursday, March 21, 2013 10:34 AM
To: jrh@hendersonrandy.com
Cc: Fraser, B. David; Frank, Janie L.
Subject: Young Exhibits

Randy:

Thank you for your voice-mail yesterday in which you indicated that the document currently labeled as Young Ex. 78 was produced to the Division on a thumb drive after Mr. Young's investigative testimony in October 2011.

Would you please let us know within which folder (or other identifying information) included on that drive this document can be found?

David

Reece, David B.

From: J. Randle Henderson <jrh@hendersonrandy.com>
Sent: Monday, March 25, 2013 12:19 PM
To: Reece, David B.; Frank, Janie L.
Subject: [Fwd: FW: 2005 disclosure statement]
Attachments: Full page photo.pdf

See explanations as to Exhibit source.

---------------------------- Original Message ----------------------------
Subject: FW: 2005 disclosure statement
From: "Melinda G. LeGaye" <MLeGaye@mglconsulting.com>
Date: Mon, March 25, 2013 10:02 am
To: "jrh@hendersonrandy.com" <jrh@hendersonrandy.com>
Cc: "Bernerd Young" <BYoung@mglconsulting.com>
"Danny E. LeGaye" <DLeGaye2@mglconsulting.com>

Randy -

See note below from Bernie. Additionally, this same document was included by the SEC in their revised Exhibit List dated February 6, 2013 - Document
#643 (Bates #StanP-0078903-0078925) - how ever they did not introduce their exhibit #643 during trial.

From: Bernerd Young
Sent: Monday, March 25, 2013 11:58 AM
Cc: Melinda G. LeGaye; Bernerd Young
Subject: 2005 disclosure statement

Attached is the original document used for the Wells submission in July 2010. The document was obtained from BEY's flash drive a copy of which was provided to the SEC in Late 2011. The original document (minus the had-written sticky note) is found in the SEC\temp folder, in the file labeled "SIBL Due Dil" The document starts on page 205 of 422 of the document) When this document was copied for the original Wells submission, the sticky note was left on, in error.

J. Randle Henderson
16506 F. M. 529
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Houston Texas 77095
713.870.8358 Ph. 281.758.0545 Fax

[redacted]

Disclosure Statement

U.S. Accredited Investor Certificate of Deposit Program

[redacted]

STANFORD INTERNATIONAL BANK LTD

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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FORT WORTH, TEXAS 76102-6882
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IN REPLYING
PLEASE QUOTE
FW-2973

April 5, 2013

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OFFICE OF THE SECRETARY

Via Facsimile and UPS

Office of the Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: In the Matter of Bogar, Young and Green
Administrative No. 3-15003

Dear Ladies and/or Gentlemen:

Pursuant to Rules 151 and 152 of the Commission Rules of Practice, the Division is filing the enclosed *Division of Enforcement's Posthearing Brief* in the above-referenced matter transmitting to the Commission (Office of the Secretary) an original and three copies.

Sincerely,

David B. Reece by permission
David B. Reece
Trial Counsel

w/electronic attachment via email and UPS
cc: Honorable Administrative Law Judge Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549

[redacted]