UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15003

In the Matter of

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

Respondents.

RESPONDENT JASON T. GREEN'S PROPOSED CONCLUSIONS OF LAW AND FACT AND INITIAL POST-HEARING BRIEF

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[1] Pursuant to Rule 340 and the Court's March 1, 2013 Order, Respondent Jason T. Green ("Green") files this Post-Hearing Brief and Proposed Findings and Conclusions. Neither the law nor the facts in the record support the allegations set forth against Green in the Order Instituting Proceedings dated August 31, 2012 ("OIP"). Accordingly, the Court should conclude that no action against Green is warranted.

I. INTRODUCTION

[2] This case arises out of a massive fraud perpetrated against a highly-regarded boutique brokerage firm, its financial advisors, and its customers. For over a decade, Allen Stanford and his close confidants, all now convicted felons, bribed public officials, lied to regulators and the public, and manipulated the assets of Stanford International Bank ("SIB") as part of a multi-billion dollar Ponzi scheme. Like many others, Green was a victim of their fraud.

[3] The fraud at the heart of the Ponzi scheme involved SIB certificates of deposit ("SIB CDs"). To help it issue and sell the certificates, and to create an aura of legitimacy and

respectability, SIB retained renowned law firms, renowned analysts, and expert compliance specialists. It established working relationships with prominent individuals who had previously held top positions in government and finance, and it aggressively publicized those relationships. It touted its relationships with Bear Stearns & Company, Pershing, LLC, Credit Suisse, Societe Generale S.A., the Washington Research Group, and others. It touted its commitment to the Basel Accords. It purportedly subjected itself to rigorous, ongoing review by auditors and by regulators. It purportedly devised and implemented investment strategies that resembled those others had used successfully. And its track record, for years, was very impressive. Many bright, diligent people were fooled.

[4] Green trusted and relied on SIB's lawyers, analysts, and compliance specialists to tell the truth and to follow the law. He believed what they told him. He believed the documents they prepared for investors and for regulators were accurate and legally sound. Rarely, though, did he simply accept what he read or was told at face value. Over the years, time and again, he inquired, he probed, and he pressed for truthful answers, with management, with lawyers, and with compliance specialists. All of the due diligence he did reinforced his confidence in SIB and in the SIB CDs.

[5] The Division's Order Instituting Proceedings seeks to portray Green as a fraud himself for failing to detect and halt the Ponzi scheme. At trial, however, the Division failed to prove its case. The evidence revealed a very different Green. It showed a man who cares deeply for the truth and who cared deeply for his customers. It showed someone who was thoughtful and deliberate in how he conducted his business, someone who was committed to ensuring that customers received accurate information and investment recommendations consistent with their needs and objectives, someone who sought to help financial advisors provide honest and

profitable services to their customers. Because the evidence showed Green acted honestly and reasonably, no action against him is justified and the Division's charges against him should be dismissed.

II. FACTUAL BACKGROUND

A. Background of Respondent Green

[6] Green began his career in the financial services industry in 1989 in Baton Rouge, Louisiana, after graduating from Louisiana State University with a bachelor's degree in business administration.[1] Green spent his first five years in the industry with Shobe & Associates and then spent his next two with City National Bank.[2] In 1996, Jay Comeaux and Alvaro Trullenque, former financial advisors at Merrill Lynch, recruited him to join Stanford Group Company ("SGC"). SGC was a new broker-dealer Comeaux and Trullenque had formed and were seeking to grow.[3] SGC was owned and controlled by its sole shareholder, R. Allen Stanford.

[7] Comeaux and Trullenque's goal was to build SGC into a sophisticated boutique brokerage firm with a reputation for putting customers first and for hiring the industry's best and brightest.[4] Green fit the bill. He was bright and honest, conscientious and gregarious, and he always put his customers first.[5] His strong commitment to protecting his customers is perhaps

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1 Green testimony at 3670:7-3671-1.

2 Green testimony at 3671:10-3672:1.

3 Green testimony at 3672:2-16.

4 Testimony by Jay Comeaux at 147:4-8.

5 Comeaux testimony at 1057:9-11; at 145:4-25; at 1055:19-1056:4; and at 1055:15-1056:10. Those witnesses who were asked the question at trial testified that they never observed, or heard from others, that Green ever misled any financial advisors or customers about the SIB CDs or otherwise was untruthful. Fontenot testimony at 2744:7-9 (testifying he never saw Green "say or do anything . . . dishonest"); Batarseh testimony at 2272:13-16 (testifying he never saw Green "say or do anything . . . dishonest"). The lone exception – admitted perjurer, Bobby Allison (*see* G 22 at 7-8 (disclosing false sworn statement to the Arkansas securities commissioner)) – is one of only two people Green fired during his tenure at SGC – for consistent underperformance, in part for listing a dead broker on his spreadsheet of potential recruiting leads. Batarseh testimony at 2256:18-2259:25 (describing Allison's poor performance and firing). Allison's accounts of his interactions with Green are as unbelievable as his contention that he cannot recall his 18-month suspension from the industry or the fact that

best exemplified by his uncompromising insistence on what he referred to as the "Golden Rule" of suitability.[6] His compelling testimony on the subject at trial leaves no doubt that he himself not only lived by the rule in dealing with his own customers but also impressed the importance of it on all SGC financial advisors.[7]

[8] Green held several positions at SGC during his tenure there, which lasted from early 1996 until early 2009. Initially, he served as the director of financial planning and as a financial advisor.[8] In 2001, he became the branch manager of the Baton Rouge branch.[9] As branch manager, he was primarily responsible for expanding the branch's business and for recruiting additional financial advisors.

[9] In early 2004, Allen Stanford appointed Green Captain of the "Superstars."[10] In that role, Green managed a team, consisting of SGC financial advisors based in the United States, who participated in the "Top Producers Club" or "TPC."[11] In early 2007, Allen Stanford promoted Green again, this time to the role of President of the Private Client Group ("PCG") of SGC. As

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he was never again registered with the NASD or FINRA after that point (*see* Allison testimony at 563:24-564:7; *see also id.* 552:1-562:10), and his assertion that he does not recall the emails informing him of his firing from SGC (*see id.* 567:1-580:20).

6 G-249 ("I just want to make sure that everyone understands where I'm coming from on all of this and does not misinterpret my emphasis on growth for something it's not, which is growth at any cost. As I see it, when you boil it down, there's only one rule we don't want to break, the Golden Rule. * * * [L]et's not try to force CDs into circumstances where they might not be the best fit. We're in this for the long haul, not just quarterly sprints. A simple gut check is to ask yourself: If I was in their position, is this how I would invest my money? If the answer is yes, then move forward post-haste. If not, make the proper adjustments. In the long run, a good name is worth more than money."); Green testimony at 3832:6-3834:18.

7 Green testimony at 3832:6-3834:18. The Division apparently faults Green for having only one email in evidence that discusses the "golden rule." This, of course, ignores the dozens of times he discussed the suitability concept as part of his SIB CD presentations, where he counseled financial advisors to "allocate[e] only a suitable portion of an investment portfolio to SIB CDs." (G-254 at 21; G-261 at 32; G-264 at 30; G-268 at 30.) Likewise, it ignores testimony from other witnesses, including Division witnesses, who stated Green impressed on SGC financial advisors the importance of suitability. *E.g.*, Comeaux testimony at 1058:12-1059:2 (Comeaux told financial advisors not to over-allocate to the SIB CDs and was confident Green did the same).

8 Green testimony at 3673:10-19.

9 Green testimony at 3676:19-24.

10 Green testimony at 3679:24-3680:10.

11 Green testimony at 36 80:11-21.

President of the PCG, Green managed all of SGC's retail brokerage operations.[12] To assist him, Green hired Jonathan Batarseh as a PCG Managing Director.[13] Batarseh was at that time a CPA with KPMG, which attempted unsuccessfully to retain him by extending him a partnership offer.[14]

[10] When Green became President of the PCG, he relinquished his responsibilities with his customers and as branch manager, and turned over his entire book to his business partners.[15] One of his partners, Grady Layfield, himself a CPA who had previously worked at KPMG, [16] became the new Baton Rouge branch manager.

[11] Throughout his career at SGC, from February 1996 until its collapse in February 2009, as well as during his time with Shobe & Associates and City National Bank, Green had an unblemished disciplinary record and never received a single customer complaint.[17]

B. The Stanford Group of Companies and the SIB CD Product.

1. Corporate Overview of the Stanford Companies.

[12] SGC was part of a conglomerate of companies under the umbrella of Stanford Financial Group ("SFG").[18] SFG was owned and controlled by Allen Stanford. [19] SFG, in fact, functioned as the umbrella entity for all of the other 75-100 Stanford affiliates. One of SFG's primary functions was to provide "back office" services – for example, in-house legal, information

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12 Green testimony at 3677:19-3678:19.

13 Green testimony at 3878:20-3679:2.

14 Batarseh testimony at 2252:23-2253:9.

15 Batarseh testimony at 2268:25-2269:10 (testifying that Green turned over his book of business to Layfield and Harris); Green testimony at 3679:14-23 (testifying he turned over his entire book of business to Layfield and Harris and noting that he "was not allowed, frankly, to advise clients anymore").

16 Green testimony at 3679:3-23.

17 Green testimony at 3672:25-3673:7.

18 Green testimony at 3675:11-16.

19 Green testimony at 3682:6-11.

technology ("IT"), and human resources ("HR") services – to the other entities.[20] One of the other Stanford entities was Antigua-based Stanford International Bank, Ltd. ("SIB").[21]

2. Green's Education About and Knowledge of SIB and the SIB CDs.

[13] Green first learned about SIB and SIB's certificate of deposit ("CD") program from Comeaux and Trullenque when he joined SGC. At that time, the SIB CDs were not available to U.S. investors.[22] SIB only began offering the CDs to U.S. investors in 1998. Even then, the CD's were offered only to accredited U.S. investors through a Reg. D offering.

[14] Once the accredited investor program was in place, Green began educating himself about the product. He studied SIB's Offering Documents.[23] He reviewed SIB's past annual reports.[24] He visited SIB's offices in Antigua and spoke with key SIB personnel, including the bank's president, Juan Rodriguez-Tolentino. He discussed the SIB CDs with Comeaux and Trullenque, with SIB board member Jim Davis, with SIB's chief investment officer, Laura Pendergest-Holt, and with SGC fixed income specialist Ben Finkelstein. [25] He spoke, too, with a number of lawyers and compliance specialists at both SFG and SGC. [26] Over time, he continued to talk to even more people and to read even more material on the subject.[27]

[15] The Offering Documents for the SIB CD's consisted of a Subscription Agreement, an Investor Questionnaire, and a Disclosure Statement.[28] Green understood that numerous people

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[20] Green testimony at 3681:6-3682:5.

[21] Green testimony at 3682:12-16.

[22] Green testimony 3763:24-3764:4.

[23] Green testimony at 3765:17-24.

[24] Green testimony 3765:23-24.

[25] Green testimony at 3764:1-13.

[26] Green testimony at 3764:1-13.

[27] Green testimony at 3764:1-13.

[28] *E.g.*, G-15 ("Subscription Agreement Investor Questionnaire") at 4 (STANP_0079055) (defining "Offering Documents" as the "Subscription Agreement, the Investor Questionnaire, and the Disclosure Statement").

had participated in researching and drafting the Offering Documents and in handling the requisite regulatory filings. The list included SIB's in-house counsel and compliance personnel, as well as prominent outside law firms -- in particular, Greenberg Traurig and Carlos Loumiet, the firm's Miami-based corporate partner and international banking specialist.[29] The SIB Offering Documents confirmed critical information about the SIB CD program Green had learned from Comeaux, Trullenque, and others. In particular, it confirmed that an investment in a SIB CD carried "substantial risks" and that "the ability of SIB to repay principal and interest on the CD Deposits [was] dependent on [SIB's] ability to successfully operate by continuing to make consistently profitable investment decisions."[30]

[16] Based on what he heard and read, Green believed SIB had put together a stellar team to pursue its investment goals and strategies. The team consisted of both internal and external analysts and money managers. The internal group, which was headquartered in Memphis, consisted of twenty to twenty-five skilled managers and analysts, most of whom held MBA degrees or were CFAs and many of whom had been recognized by the *Wall Street Journal* as All-American analysts in their respective fields of expertise. [31] The team of outside money managers included more than twenty internationally prominent managers, headed up by Credit Suisse, Societe Generale, HSBC, and Coutts.[32]

Contrary to what the Division has suggested, the SIB brochure (D-607) was not an offering document. *See* Young testimony at 3259:21-25 (defining the brochure as a "stand-alone marketing piece" that is not an offering document).

29 Green testimony at 3701:22-25; 3969:4-6, Bogar testimony at 2571:22-2572:19; 2607:9-2609:7.

30 *E.g.*, G-15.

31 Green testimony at 3686:9-3687:6; 3743:13-3744:3.

32 Green testimony at 3697:23-3698:24.

[17] Green understood that SIB's primary investment goal "was to produce a consistent, absolute return for the portfolio."[33] Its main strategy for accomplishing this goal was to invest customer deposits in a "globally diversified" portfolio of "highly-marketable securities."[34] Historically, this strategy had generated an average annual return of roughly 11-13%.[35] While the strategy entailed substantial risks, as the Disclosure Statement noted, the bank's team of internal and external money managers used a variety of techniques to reduce those risks. The techniques included a "sell side strategy" that normally required liquidation of a holding that dropped more than 7-9% in a quarter, as well as multiple hedging strategies, including the purchase of precious metals, the use of options, and short selling.[36]

[18] Equally important, Green understood that SIB had implemented a system of "checks and balances" to ensure these strategies and techniques were properly employed. The management team in Memphis handled part of the portfolio and oversaw and managed the international money managers on a daily basis. SIB's board of directors reviewed the bank's portfolio quarterly and the strategy annually.[37] SIB's auditor, C.A.S. Hewlett, which had been approved by the Antiguan financial regulatory authority, performed periodic audits and provided quarterly audited financial statements.[38] SIB's regulator, the Financial Services Regulatory Commission ("FSRC"), received quarterly reports from SIB on the bank's holdings and conducted annual

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33 Green testimony at 3742:2-3.

34 Green testimony at 3742:6-10.

35 Green testimony at 3746:18-3747:10.

36 Green testimony at 3742:6-3743:12; *see also* Shaw testimony at 410:10-411:3, 453:4-454:25 (describing hedging and other mitigating strategies); Batarseh testimony at 2265:6-2266:24 (discussing the "significant risk" and the strategies SIB employed to manage and mitigate those risks).

37 Green testimony 3743:13-3744:3. The board was comprised of a number of impressive individuals. Besides Mr. Stanford and Mr. Davis, there was Sir Courtney Blackman. He, like Warren Buffet, had a doctorate degree in finance from Columbia University and was former Caribbean central banker. Kenneth Allen was a barrister and Queen's Counsel. (*Id.* at 3684:8-3686:7.)

38 Green testimony at 3702:18-3704:19.

on-site examinations of the bank.[39] SIB's insurers, in particular Lloyd's of London, which underwrote a $50 to $100 million policy for the bank itself, provided yet "another set of eyes" or yet another layer of protection by conducting a rigorous review of the bank's procedures, using one of the world's largest insurance brokers and a firm specializing in risk reviews.[40] So, too, in Green's view, did BDO Seidman, an internationally renowned accounting firm and the auditor for SGC, Stanford Financial Group, and Stanford Group Holdings. Because BDO Seidman had to be confident about the reliability SIB's numbers, given the substantial revenue the other Stanford entities generated from SIB, BDO Seidman's involvement buttressed SIB's use of C.A.S. Hewlett and reinforced Green's confidence that SIB's portfolio was being invested and managed as represented.

[19] Finally, Green understood that both the regulatory regime and the regulatory system that oversaw SIB's operations were "strong." The FSRC was led by Ambassador Leroy King, a 38-year Wall Street veteran with Bank of America. King relied on a highly trained staff to oversee the approximately 16 banks operating in Antigua. The perceived strength of Antigua's regulatory regime and system was reinforced, in Green's mind, by the fact that Antigua was a signatory to the Basel I Accords, which mandated strict capital requirements. When Antigua signed on to Basel II in 2008, leading to even stricter, risk-adjusted capital requirements, Green's confidence grew.[41]

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[39] Green testimony at 3704:23-3706; 3744:7-12.

[40] Green testimony at 3744:16-3745:7; *see also* Batarseh testimony at 2264:3-2265:1 (describing the insurance underwriting process as "another set of eyes").

[41] Green testimony 3706:3-20; *see also, e.g.*, Comeaux testimony at 1068:14-17 (testifying to SIB's commitment to the capital reserve requirements of Basel I and Basel II Accords); Shaw testimony at 459:12-460:1(describing the importance of the Basel Accord capital requirements and noting SIB was a Basel III champion).

3. SIB's Money Management Strategies and SIB's Returns Reminded Green of Other Successful Money Managers He Was Following.

[20] Far from being "too good to be true," SIB's money management strategies and its returns reminded Green of other successful money managers he had been following. The most notable was Jean Marie Eveillard. Eveillard started out with SocGen – one of SIB's money managers – emigrated to the U.S. from France, and then managed what would become the $38 billion First Eagle Global Fund ("First Eagle"). Eveillard managed First Eagle for nearly thirty years, starting in 1979. Eveillard was recognized as one of the world's premier value investors. He received Morningstar's International Manager of the Year award in 2001 and then received Morningstar's Lifetime Achievement Award in 2003. In 2004, *Fortune* named him one of the greatest value investors ever.[42]

[21] First Eagle's investment strategy was similar to SIB's. First Eagle's portfolio, for example, was globally diversified, with substantial equity positions, and a substantial allocation to precious metals.[43] The allocation to precious metals was designed to protect against "tail risk" or "unexpected events," because precious metals were a noncorrelated asset class and generally performed well when the markets otherwise were weak. Thus, like SIB, First Eagle often under-performed in bull markets, "but when the wheels came off, [Eveillard] looked like a genius."[44] For nearly thirty years, from its inception in 1979 until the recent financial crisis, First Eagle had had only two years of negative returns, both close to only -1%, with an average annual positive return of around 15-16%. Even during the Tech Wreck, from early 2000 to 2003, the fund returned about 10% per year.[45] First Eagle's risk level was likewise comparable to SIB's.

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[42] Green testimony at 3718-20; 3748:9-3749:8.

[43] Green testimony at 3749:17-24.

[44] Green testimony at 3749:9-3750:10; *see also id.* at 3757:6-3759:7; G-297.

[45] Green testimony at 3750:19-3752:9; see G-297.

Dr. Ross testified that, even with consistent, high returns, both were slightly below or at the low end of the moderate range.[46]

[22] Green followed other money managers, too, who consistently outperformed the market using some of the same strategies as SIB. One was Dr. David Swensen, the manager of the Yale Endowment Fund. Dr. Swensen focused on "absolute return," using "alternative investments" and other "noncorrelated assets."[47] Like SIB and First Eagle, the Yale Endowment Fund consistently outperformed the market over time and generated positive returns even during the Tech Wreck.[48] Warren Buffet was another manager Green followed and admired. Mr. Buffet's Berkshire Hathaway had only profitable annual returns from 1965 to 2000, and only two losing years – 2001 and 2008 – throughout its existence.[49] Dr. Ross agreed that the Yale Endowment Fund and Berkshire Hathaway provided additional, reasonable comparisons in assessing SIB's track record, as well as its investment strategies.[50]

4. Green Diligently Kept Abreast of News About the U.S. Accredited Investor CD Program Throughout His Tenure at SGC.

[23] Throughout the life of the SIB CD accredited investor program, Green diligently sought to keep abreast of news and developments regarding SIB and the SIB CDs. In 2004, to cite just one example, the IMF issued a report on Antigua's financial system, including its regulatory and banking environment. Green obtained a copy, analyzed it, and contacted SIB management to discuss questions he had about the report.[51] Green had specific questions about the report's conclusions that one (unnamed) Antiguan bank had connected-party loans and that others had

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46 Ross testimony at 4201:14-4202:4.

47 Green testimony at 3753:20-3454:10; *see also id.* at 3747:21-3748:2.

48 Green testimony at 3753:16-1355:12; G-235.

49 Green testimony at 3755:13-3757:2; G-296.

50 Ross testimony at 4204:2-16.

51 Green testimony at 3708:33709:13; G-89.

large investments in local real estate projects. Green called SIB's president, Rodriguez-Tolentino, to make sure SIB was not one of the banks in question. Rodriguez-Tolentino assured him SIB was not the culprit. He explained that SIB was operating under the Basel I Accords and, therefore, had to fully disclose real estate holdings. He said the only real estate SIB held was the former SIB bank building. He further explained that the Basel I Accords required full and timely disclosure of affiliated-party transactions and mandated that those transactions be 100% collateralized, making such loans commercially unreasonable.[52] Green, however, did not accept Rodriguez-Tolentino's explanations at face value. He raised the same questions with Allen Stanford and Davis; both independently confirmed Rodriguez-Tolentino's account.[53]

[24] Green, like Bernerd Young, SGC's Chief Compliance Officer from 2007 to 2009, and others at SGC, viewed the IMF report as being favorable to Antigua and to its financial and regulatory environment.[54] Pershing, LLC did, too. Before Pershing, one of the world's largest clearing brokers, became SGC's new clearing firm in 2005, it conducted extensive due diligence, not just on SGC, but on SIB and the other Stanford affiliates.[55] The Pershing due diligence process was memorialized in a series of due diligence memoranda.[56] One, authored by Tres Arnett, a senior attorney in Pershing's Office of the General Counsel, discussed the IMF report and emphasized the "favorabl[e] review[]" the IMF had given to Antigua.[57]

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52 Green testimony at 3707:15-3714:4; G-89.

53 Green testimony at 3714:5-7.

54 Young testimony at 3307:5-3308:17; Ward testimony at 0865:25-0867:05.

55 See discussion below.

56 *See* B-394; B-395; B-396.

57 B-395 at 2.

5. *Green's Favorable View of SIB and the SIB CDs Was Validated by Numerous Internal and External Sources.*

[25] Over the years, Green found his favorable view of SIB and the SIB CDs validated by a variety of sources. As SGC and the other Stanford companies expanded and grew, for example, many reputable industry professionals, as well as present and former national and international statesmen and luminaries, retired generals, and other respected professionals, joined SGC or one of its Stanford affiliates. Highly regarded organizations likewise lauded the Stanford companies, Stanford personnel, and their business practices. Here are just a few of the most notable examples:

- In 2009, *World Finance Magazine* named Allen Stanford Man of the Year. Mr. Stanford beat out Jeffrey Immelt, the CEO of General Electric, Richard Branson, the billionaire and chairman of Virgin Group of Companies, as well as Lakshmi Mittal, one of the richest men of India, among others.[58] The article announcing the award noted that Mr. Stanford had predicted the subprime meltdown before it happened. This prediction further enhanced the reputation of the Memphis and Washington-based research analysts who worked at SGC and advised SIB on its investment strategies.[59]

- In 2008, *Forbes* published a lengthy and favorable article about Mr. Stanford's background and accomplishments and named him to the Forbes 400 list of wealthiest Americans.[60]

- In 2008, Congressman Michael Oxley, of Sarbanes-Oxley fame, became a member of the Stanford International Advisory Board, joined by the former president of Switzerland, Dr. Adolf Ogi. And, at the event announcing Mr. Oxley's joining the board, Madeline Albright, the former Secretary of State, and Paul Wolfowitz, the former head of the World Bank, were speakers.[61]

- In 2008, President Bush sent a congratulatory letter to Mr. Stanford commending him on the Stanford Financial Group's expansion and continued success.[62]

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[58] Green testimony at 3715:2-3716:18; G-208.

[59] Green testimony at 3716:6-13; G-206.

[60] Green testimony at 3716:21-3717:13.

[61] Green testimony at 3717:14-3718:21.

[62] Green testimony at 3718:22-3719:20; G-196.

- In 2007, SGC's research analyst teams received All-American honors in various categories, beating out big-name competitors such as Goldman Sachs, UBS, Morgan Stanley, and JPMorgan Chase.[63]

- In 2006, the Organization of American States honored Allen Stanford by giving him its "Excellence in Leadership Award."[64]

- In 2005, the Washington Research Group joined SGC after conducting substantial research on SGC, SIB and other Stanford entities, as Ed Garlich, the head of the group told both Mr. Shaw and Mr. Green.[65] The Washington Research Group included such luminaries as Dr. Lyle Gramley, a former member of the Federal Reserve and the President's Economic Advisory Counsel, in charge of policy and macroeconomic developments; General David Baker, a former member of the Joint Chiefs of Staff, and in charge of defense industry analysis and geopolitical developments; Dr. Gregory Frykman, a world famous Johns Hopkins oncologist, covering biotechnology and pharmacology; and economist and policy analyst Greg Valliere, who appeared on CNBC on a weekly basis.[66]

- In 2005, John Mendelsohn, the former head of market analysis for both Morgan Stanley and Dean Witter, joined SGC. Mr. Mendelsohn had been an All-American analyst for thirteen straight years.[67]

- In 2005, Pershing, LLC, one of the world's largest and most respected clearing firms, agreed to become the clearing firm for SGC.[68]

[26] SIB's retention of some of the country's most prominent financial services lawyers provided further validation for Green that SIB and SGC were committed to hiring and retaining superior talent and to ensuring that the companies' business model was lawful in all respects.[69] The same commitment, in his view, was reflected in the companies' in-house lawyers. The general counsel for SFG and SGC, for example, was Yolanda Suarez, a former partner at

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63 Green testimony at 3693:20-3697:17; G-82.

64 Green testimony at 3720:9-12.

65 Shaw testimony 444:11-445:14; Green testimony at 3687:7-3691:25; G-174.

66 Green testimony at 3687:20-3689:2.

67 Green testimony at 3689:19-3691:25; G-174.

68 *See* Ward testimony at 0857:25-0864:2; B-395; *see also* Ward testimony at 0872:21-0874:13; B-394; Bogar testimony at 2628:17-2632:18 (testifying the due diligence process included on-site visits by Pershing personnel to all offices of SGC, visits with SIB in Antigua, visits with all Stanford affiliates, including those in Latin America, involving the highest levels in Pershing's legal and compliance departments were involved).

69 The list of prominent law firms that advised SGC and SIB included K&L Gates, Proskauer Rose, Hunton & Williams, and Chadbourne Parke. (Green testimony at 3701:22-3702:11.)

Greenberg Traurig and Mr. Loumiet's protégé. When Ms. Suarez was elevated to chief of staff to Mr. Stanford, Mauricio Alvarado became the new general counsel. Mr. Alvarado previously had been a partner at the prominent national law firm Vinson & Elkins.[70]

[27] Pershing also provided Green further validation. The lengthy negotiations between SGC and Pershing in 2005 about Pershing becoming SGC's new clearing broker were especially influential. Daniel Bogar, the President of SGC, spearheaded the negotiations for SGC. At the outset of the negotiations, SFG senior management, including Pendergest-Holt and Davis, cautioned Bogar that SGC's affiliation with SIB could prove difficult. The likely stumbling blocks were that SIB was headquartered in Antigua and that SIB did not provide transparency regarding the individual holdings in its portfolio. Given these concerns, Bogar insisted that Pershing conduct as much due diligence as it needed to, because he wanted to be sure Pershing "wouldn't start and then get indigestion with our bank."[71] Green learned from Bogar and others about the negotiations and the extensive due diligence Pershing conducted on SIB before

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[70] Green testimony at 3681:6-3682:5. Suarez and Alvarado worked for Stanford Financial Group Company ("SGG"), an "umbrella company" that provided a variety of "back-office" management and legal services to the other Stanford affiliates, including SGC. (Green testimony at 3680:22-3682:11.)

[71] Bogar testimony at 2626:13-2627:11 (testifying he was warned that, although "they want[ed] our business," "at some point in time, they are going to get indigestion with our offshore business" and that he told Pershing: "Guys, you've got to look under our skirt. Do whatever you've got to do because everyone in our company is telling me that we'll start, and then you guys will get indigestion with our bank"); see also id. at 2628:19-25 ("Then I also met with the CEO of the Bank of New York. I mean, every time the message was the same. 'Gentlemen, I'm a new kid on the block in this firm. You know, we clear through Bear Stearns. It's a major deal for this company, and we have a major proprietary product. It's offshore; and there's, you know, there's no transparency. These are the issues."). Weiser, SGC's CFO, also testified that Pershing did a "tremendous amount of due diligence on" SGC and SIB. (Weiser testimony at 2451:24-2452:4.)

becoming SGC's new clearing broker,[72] and he understood that a key focus of Pershing's due diligence was "the lack of transparency with regards to [SIB's] portfolio."[73]

[28] Pershing's due diligence memoranda and the testimony at trial of the two Pershing witnesses, Ed Zelezen and John Ward, reflect the extensive due diligence the firm conducted before Pershing agreed to become SGC's new clearing broker.[74] The due diligence included an analysis of all known Stanford entities, of SIB's money management and performance, of Antigua's regulatory environment, and of the SIB CD disclosure documents, plus the vetting of key personnel with the various Stanford entities, including outside counsel retained for legal matters.[75]

[29] The due diligence memoranda likewise reflect the favorable view Pershing reached of SGC, SFG, and SIB after completing its due diligence. Claire Santaniello, Pershing's chief compliance officer, drafted a memorandum in which she complimented the research related to SIB's proprietary product and bank assets."[76] Mr. Arnett, as a senior member of the Pershing's Office of the General Counsel, drafted a memorandum summarizing his view of the due diligence of the compliance environment at SGC and SIB, noting: "I definitely took away a sense of an experienced group with a compliance-minded culture. I was even more impressed with the

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72 Green testimony at 3881:6-25 (noting SGC's insistence on Pershing conducting as much due diligence as they saw fit prior to becoming the new clearing broker pertained to SIB and "particularly the lack of transparency with regards to the portfolio"). Shaw also testified that he had interactions with Pershing and was told "how uncasual Pershing is in signing on new relationships the size of Stanford and how they had done extensive due diligence prior to inking a contract for clearing function." (Shaw testimony at 445:17-446:19.)

73 Green testimony at 3881:25.

74 *See* B-394; B-395; B-396.

75 *See* Ward testimony at 0857:25-0864:2; B-395; *see also* Ward testimony at 0872:21-0874:13; B-394; Bogar testimony at 2628:17-2632:18 (testifying the due diligence process included on-site visits by Pershing personnel to all offices of SGC, visits with SIB in Antigua, visits with all Stanford affiliates, including those in Latin America, involving the highest levels in Pershing's legal and compliance departments were involved).

76 B-394 at 3; Ross testimony at 4140:13-4141:7.

staff at SIBL and the affiliated Stanford Trust Company in Antigua."[77] In the same memorandum, Mr. Arnett analyses the stated SIB 2004 return of 11% and explains how it was attained.[78]

[30] Dr. Ross, who had personal experience with Pershing's due diligence process as chief compliance officer with Wells Fargo, testified that a prospective clearing broker's due diligence is usually very extensive, given the substantial risks to which a clearing broker (such as Pershing) is exposed vis-à-vis the initiating broker (such as SGC).[79] Dr. Ross testified, too, that Pershing's extensive due diligence and the firm's subsequent clearing agreement with SGC "would be a subject of comfort for the senior officers of SGC."[80] Ward agreed.[81] Not surprisingly, Green's colleagues, including Bogar, Shaw, and Chuck Weiser, SGC's chief financial officer, took great comfort, just as he did, from Pershing's extensive due diligence and subsequent agreement to become SGC's new clearing broker.[82]

[31] In addition to these matters, Green's view about SIB and about the appropriateness of the SIB CD accredited investor program were heavily influenced by the discussions he had with and

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77 B-395 at 2; Ross testimony at 4142:8-4143:13.

78 B-295 at 2; Ross testimony at 4143:20-4144:20.

79 Ross testimony at 4137:23-4140:13.

80 Ross testimony at 4143:15-19.

81 Ward testimony at 0870:24-0872:18 (noting Pershing's favorable review would provide "comfort" to SGC leaders).

82 Shaw testimony at 445:17-447:8 (noting that Pershing's extensive due diligence and subsequent agreement to clear for SGC "signaled to me that [SGC] had passed with flying colors whatever the requirements were of Pershing"); *see also* Bogar testimony at 2627:2-2628:23; Weiser testimony at 2451:9-2452:16. Green understood, as well, that Bear Stearns, SGC's clearing broker before Pershing, likewise had done extensive due diligence on the Stanford entities and the SIB CD product. After completing its due diligence, moreover, Bear Stearns served for years as SGC's clearing broker. (Green testimony 3722:9-18 (testifying that "Bear Stearns had done extensive due diligence on all of the businesses of Stanford, including the International Bank, had been down there, visited it and looked at it and, so, similarly favorable to Pershing, accepting us as an introducing broke").) NFS, an affiliate of Fidelity added further validation to Pershing's due diligence findings when it both conducted extensive due diligence on the Stanford entities in 2008, after Pershing had done its due diligence to become SGC's clearing broker, and subsequently agreed to clear portions of SGC's business. (Green testimony at 3885:20-3886:10; Weiser testimony at 2466:9-23; *id.* at 2468:42469:14; *id.* at 2533:17-2534:8; Bogar testimony at 2716:6-2719:17.)

the advice he received from Stanford regulatory counsel, starting in 2005. Those discussions and that advice helped define his view about most of the major issues in this case – his views, for example, about SIB, SGC, the SIB CD Offering Documents, SIB's referral fees, the confidentiality of SIB's portfolio, SGC's compensation model vis-à-vis the SIB CD, and SGC's bonuses for selling SIB CDs, as well as his personal involvement in selling the SIB CDs and his role as the captain of the Super Stars.

[32] In the summer of 2005, Green learned that the SEC was investigating the SIB CDs when SGC customers started receiving correspondence from the SEC asking them about the product.[83] During this time, Green met SGC's SEC lawyer, Tom Sjoblom, in SGC's Houston office. There, Sjoblom interviewed Green for one to two hours.[84] Sjoblom introduced himself as a partner with the law firm of Chadbourne Parke (later Proskauer Rose), which SGC had retained as regulatory enforcement counsel.[85] Sjoblom told Green about his decades of service in senior positions at the SEC Division of Enforcement in Washington, D.C. Green considered Sjoblom to be one of the nation's leading experts on the SEC's rules and regulations and on the securities laws. Based on their conversation, Green understood Sjoblom had conducted and planned to continue conducting his own due diligence on SGC and the other Stanford entities, including SIB, to determine whether they operated lawfully and whether he would continue his engagement.[86]

[33] Upon learning that the SEC was examining the lawfulness of the SIB CD products, Green became "very concerned." He "wanted to make sure [he] was not doing anything inappropriate, that the company wasn't doing anything inappropriate. So, [he] just bared [his] soul" and "told

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[83] Green testimony at 3837:1-14.

[84] Green testimony at 3838:9-14; *id.* at 3839:7-9.

[85] Green testimony at 3837:15-21.

[86] Green testimony at 3823-38:8; 3839:10-15.

[Sjoblom] everything [Green] knew" and provided "full and complete disclosure."[87] To that end, Green discussed with Sjoblom:

> [E]verything about my [my] involvement with the International Bank CD and particularly the sales practices. At that time, I was already captain of the Superstars team; so, I told him all about the Superstars team, about being the captain, about the TPC, how that was being run, about the compensation to the advisors.
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> * * *
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> Sales contests, compensation, bonus, the referral fee, the disclosure documents, everything. We covered soup to nuts.[88]

[34] After "full and complete disclosure," Green asked Sjoblom his views on the appropriateness and lawfulness of what he, SGC, and SIB were doing. Sjoblom responded that "[he] saw no problems here whatsoever" and opined that Green's conduct, as well as the business of SIB and SGC, were lawful.[89]

[35] During the interview, Sjoblom also said he had interviewed or was going to interview a number of other SGC, SIB, and SFG employees, and that he planned to conduct additional due diligence on SIB, including a visit to Antigua. Several months later, in September 2005, Green and Sjoblom talked again. Sjoblom told Green that he had completed his due diligence, including visits to SIB in Antigua and in Memphis. He said that he had been given "carte blanche" and that, after looking at everything, he was "very impressed" with SIB and SGC.[90] Sjoblom also reaffirmed his earlier opinion on the appropriateness of the sales contests, bonuses, compensation program, offering documents, and referral fees, as well as Green's involvement.[91]

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87 Green testimony at 3839:25-3840:7.

88 Green testimony at 3839:16-22; 3840-8-12.

89 Green testimony at 38415-16.

90 Green testimony at 3841:17-3842:13.

91 Green testimony at 3842:23-3844:3.

[36] The following month, Sjoblom shared those same opinions with the SEC itself.[92] Green confirmed that Sjoblom's letter to the SEC conveyed to the SEC the same views and conclusions Sjoblom had expressed to him in their two earlier conversations.[93] After his conversations with Sjoblom, Green understood the SEC took no further action against SIB. Green took this as additional validation of Sjoblom's views on the lawfulness of the SIB CD program and on the other matters they had discussed.[94] Against this impressive background, Green, like many of his colleagues, reasonably believed that SGC and its Stanford affiliates were committed to the highest professional and ethical standards.[95]

C. Green Reasonably Relied on the Disclosures in SIB's Offering Documents, Which Had Been Drafted, Vetted, and Approved by Both the Legal and Compliance Departments of SIB and SGC.

1. The Offering Documents Disclosed the Material Risks of Investing in the SIB CDs and Green, in Turn, Disclosed Those Risks to Customers.

[37] The Offering Documents for the SIB CD's consisted of the SIB Disclosure Statement, the Subscription Agreement, and the Investor Questionnaire.[96] SIB required financial advisors to

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92 Green testimony 3845:24-3848:11; Young-32 (October 3, 2005 letter by Sjoblom to the SEC's Forth Worth office).

93 Green testimony at 3844:13-3848:11.

94 Green did not believe he should hire his own set of lawyers to second guess and redo the work of Sjoblom and his legal team. (Green testimony at 3843:16-24.) Dr. Ross testified that Mr. Green had no such duty. (Ross testimony at 4190:10-12; 4179:20-4180:12.)

95 *E.g.*, Shaw testimony at 439:4-445:14 (describing his own due diligence on SGC and the Stanford entities and noting the array of talent at and the due diligence by the Washington Research Group before joining SGC, as well as the involvement of Congressman Oxley, Mr. Wolfowitz, and Ms. Albright); Bogar testimony at 2764:10-2768:22 (describing the impressive array of people joining and working for SGC of Stanford affiliate; such as Dr. Ogi, the former president of Switzerland and head of the Olympic Committee, the Washington Research Group, General Baker, Ambassador Peter Romero, Madeline Albright, Mayor Lee Brown, Congressman Oxley, as well as Mr. Bogar's attendance at the International Advisory Board meetings and his interactions with its members); Comeaux testimony 1029:11-18; 1055:16-1057:24 (describing his efforts to build "a high-end boutique kind of wealth management firm that differentiated itself from the [Wire]houses" and SGC's commitment to the highest standards); Finkelstein testimony 397:13-398:20 (describing due diligence of SGC before joining and the culture of excellence at SGC and the impressive professionals working at SGC).

96 The Subscription Agreement Investor Questionnaire unequivocally defines the "Offering Documents" as the "Subscription Agreement, the Investor Questionnaire, and the Disclosure Statement." *E.g.*, G-15 ("Subscription

provide every potential purchaser of a SIB CD with a copy of the Offering Documents, to encourage every potential purchaser to study the documents, and to have every purchaser sign the Subscription Agreement, attesting to the fact that he had received, read, and understood the Offering Documents and had all of his questions about the SIB CDs, if any, answered to his satisfaction.[97] Financial advisors could not sell SIB CDs to U.S. accredited investors without following this procedure.[98]

[38] The practice of SGC's financial advisors was to send the Offering Documents to potential investors before having any substantive discussions with them about the SIB CDs.[99] Green followed this practice in discussing the SIB CDs with potential investors.[100] The investors the Division called to testify, discussed below in more detail, were no exception.[101]

Agreement Investor Questionnaire") at 4 (STANP_0079055).) The SIB brochure (*e.g.*, D-607) was not an offering document. (*See* Young testimony at 3259:21-25 (defining the brochure as a "stand-alone marketing piece," not an offering document).)

97 Green testimony at 3924:7-3925:25, 3926:1-10, 3927:25-3929:17, 3932:13-3933:5 (describing how his customers received the offering documents and how the firm's policy requiring offering document delivered to potential investors was strictly enforced); Comeaux testimony at 1063:15-1064:12 (testifying submission of offering documents to potential investors was strictly adhered to and enforced by compliance department); Fontenot testimony at 2741:19-2743:13 (describing how Cynthia Dore received the offering documents and how the firm had a strict policy requiring the offering documents be delivered to potential investors); Shaw testimony at 449:3-17, 460:18-463:21 (testifying disclosure statement and subscription agreement were required to be provided to every potential investor pursuant to firm policy and that firm policy also said to encourage customers to review the offering document and to make sure they understand them); Young testimony at 3260:13-20 (describing how he trained financial advisors that offering documents were required to be delivered to potential investors); *see also* G-15 (enumerating attestations).

98 Green testimony at 3924:7-3925:25, 3926:1-10, 3927:25-3929:17, 3932:13-3933:5; Comeaux testimony at 1063:15-1064:12; Fontenot testimony at 2741:19-2743:13; Shaw testimony at 449:3-17, 460:18-463:21; Young testimony at 3260:13-20.

99 Fontenot testimony at 2741:19-2743:13 (describing how Ms. Dore received the offering documents and how the firm had a strict policy requiring the offering documents be delivered to potential investors).

100 Green testimony at 3924:7-3925:25, 3926:1-10, 3927:25-3929:17, 3932:13-3933:5 (describing how his customers received the offering documents and how the firm's policy requiring offering document delivered to potential investors was strictly enforced).

101 Green testimony 3924:7-3925:25 (discussing how he reviewed the offering documents with Moran); *id.* at 3932:13-3933:5 (discussing how he was certain Dore received the offering documents); id. at 3933:6-10 (discussing how Smith and Stegall received the offering documents and were told to carefully review them); Fontenot testimony at 2741:19-2743:13 (describing how Dore received the offering documents and how the firm had a strict policy requiring that the offering documents be delivered to potential investors).

[39] Green understood the Offering Documents had been prepared by a team of knowledgeable, sophisticated professionals – prominent outside counsel, together with able in-house counsel and compliance personnel.[102] He understood, moreover, that in-house counsel and compliance continuously vetted the factual accuracy and legal adequacy of the offering materials.[103] Like his colleagues, Green relied on the firm's legal and compliance team to ensure the Offering Documents contained adequate disclosures and complied with all applicable rules and regulations.[104] Dr. Ross confirmed that this was standard industry practice and that it was reasonable for Green to rely on SGC's in-house legal and compliance team, as well as outside counsel, and to trust in their competence and integrity. She confirmed, as well, that Green had no duty to second guess their work or their legal opinions, let alone a duty to hire his own, independent attorney to review and evaluate the appropriateness of their work.[105]

[40] The Disclosure Statement explains in the very first sentence that a SIB CD investment entailed "substantial risk" and later explains that investors could lose their entire investment:

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[102] Green testimony at 3701:22-25; 3969:4-6.

[103] Green testimony at 3970:22-25.

[104] Ross testimony at 4178:23-4180, 4180:13-4181:5 (opining Green was reasonable in relying on management, legal, and compliance ascertaining the accuracy and adequacy of the offering documents); Shaw testimony at 421:22-422:12 (describing ongoing vetting by the compliance department); Finkelstein testimony at 62:13-25; 349:16-350:11; 362:13-25; 396:15-20 (testifying about legal and compliance's vetting of statements pertaining to the SIB CDs).

[105] Ross testimony at 4179:20-4180:12; Green testimony at 3843:20-24 ("I never saw my job as one of needing to regulate the regulators, audit the auditors, make sure the legal people weren't doing anything illegal, and compliance was complying. No, I did not see that as my responsibility ever."). In fact, Dr. Ross's forceful testimony established both that Green had no such duty and that second guessing legal and compliance by engaging his own, independent counsel would have been "counterproductive and, again, characteristic of circumventing the legal department." (Ross testimony at 4190:10-12.). Additionally, Green was not responsible for performing, and never did perform, institutional due diligence for SGC on either SIB or the SIB CD's. Jane Bates, Young's predecessor as SGC's chief compliance officer, and then Young, once he became the SGC chief compliance officer, were SGC's due diligence officers. (Young testimony at 3265:14-16 (identifying himself as the "due diligence officer for the bank"); *id.* at 3435:2-9 (identifying Jane Bates as the due diligence officer for the SIB CD product prior to his arrival); Ross testimony at 4153:12-15.) Dr. Ross, who has decades of due diligence experience involving broker-dealers, testified that Green did not have a duty to perform institutional due diligence for SGC. She explained that "[b]rokerage firms have very well-defined specialized roles, and you would not want someone who was responsible for revenue to be doing due diligence or documents. (Ross testimony at 4208:10-15.) Dr. Ross was clear that Green could reasonably rely on the SIB CD due diligence conducted by the firm and its outside advisors. (Ross testimony at 4208:16-19.)

- The first sentence in the Disclosure Statement informs investors that: "PARTICIPATION IN THE U.S. ACCREDITED INVESTOR CERTIFICATE OF DEPOSIT PROGRAM . . . OFFERED BY STANFORD INTERNATIONAL BANK LTD. . . . INVOLVES SUBSTANTIAL RISK TO POTENTIAL DEPOSITORS[.]"[106]

- Under the heading "Global Investment Portfolio," the Disclosure Statement says: "The viability of the U.S. Accredited Investor CD and the ability of SIBL to pay principal and interest on the CD Deposits are dependent on our ability and the ability of our portfolio managers to consistently make profitable global investment decisions. There can be no assurance that these decisions will continue to yield profitable results for SIBL or cause the investments made in the U.S. Accredited Investor CD or any other products we offer to produce returns sufficient to fund the payment obligations of the CD Deposits."[107]

- Under the heading "Investment Risk and Strategy," the Disclosure Statement warns: "YOU MAY LOSE YOUR ENTIRE INVESTMENT UNDER CIRCUMSTANCES WHERE WE MAY BE FINANCIALLY UNABLE TO REPAY THOSE AMOUNTS. PAYMENTS OF PRINCIPAL AND INTEREST ARE SUBJECT TO RISK." [108]

[41] The Disclosure Statement likewise informs potential investors in SIB CD's that their SIB deposits were uninsured. Although the risk disclosures themselves – particularly the warning that investors could lose their entire investment – made the same point, the Disclosure Statement highlighted the lack of insurance for investors:

- On the introductory page, the Disclosure Statement warns: "SIBL'S PRODUCTS ARE NOT . . . COVERED BY THE INVESTOR PROTECTION OR SECURITIES INSURANCE LAWS OF ANY JURISDICTION SUCH AS THE U.S. SECURITIES INVESTOR PROTECTION INSURANCE CORPORATION * * * THE CD DEPOSITS AND THE CD CERTIFICATES ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION ('FDIC') OR ANY OTHER AGENCY OF THE UNITED STATES GOVERNMENT[.]"[109]

- Under the heading "No U.S. Federal or Other Governmental Guarantee of Principal or Interest," the Disclosure Statement reiterates that: "THE CD

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[106] *Id.* at 2 (STAN P_0078927) (capitalization in original).

[107] *Id.* at 5 (STAN P_0078931).

[108] *Id.* at 6 (STAN P_0078932) (capitalization in original).

[109] D-644 ("2007 U.S. Accredited Investor Certificate of Deposit Program Disclosure Statement") at 1 (STAN P_0078927) (capitalization in original).

DEPOSITS AND THE CD CERTIFICATES ARE NOT INSURED BY THE FDIC OR ANY OTHER AGENCY OF THE OF THE UNITED STATES GOVERNMENT[.]"[110]

- The Disclosure Statement also describes what types of insurance SIB held – leaving no doubt there was no depository insurance of any kind: "The insurance coverage held by SIBL includes Property and Casualty, Exporter's Package, Vehicle, Worker's Compensation and Travel. Fidelity coverages include Bankers' Blanket Bond, Directors' and Officers' Liability, Errors and Omissions Liability coverages. We also maintain Depository Insolvency Insurance. We maintain excess US$20 million, for each of our major U.S. and foreign correspondent banks. The latter insurance protects us against the possible insolvency of specific financial institutions where we may place our funds. This insurance does not insure customer deposits and is not the equivalent of the FDIC insurance offered on deposits at many institutions in the United States."[111]

- Last, but not least, the Disclosure Statement warns investors they potentially could lose their "entire investment" – leaving no room for them to conclude there was depository insurance: "YOU MAY LOSE YOUR ENTIRE INVESTMENT UNDER CIRCUMSTANCES WHERE WE MAY BE FINANCIALLY UNABLE TO REPAY THOSE AMOUNTS. PAYMENTS OF PRINCIPAL AND INTEREST ARE SUBJECT TO RISK."[112]

[42] The Disclosure Statement also discusses the referral fees and other incentive compensation paid to SGC and others and invites investors to ask additional questions about the fees, if they have any:

- Under the heading "Referral Fees," it states: "Referral Fees are paid to persons who introduce Depositors to us. See 'Description of U.S. Accredited Investor CD Program, Referral Fees' on page 9 for a more detailed discussion of these fees. We currently pay a referral fee of 3% to our affiliate Stanford Group Company. Such fees are subject To change on an annual basis. Referral fees paid to others will not reduce the principal amount of your CD Deposit or the interest earned thereon."[113]

- Later, the Disclosure Statement says: "We may engage certain persons to introduce potential Depositors to the U.S. Accredited Investor CD and pay them a referral fee. We may also pay additional incentive bonuses to our representatives. You may obtain information regarding any of these fees from us upon written

[110] *Id.* at 6 (STAN P_0078932) (capitalization in original).

[111] *Id.* at 10 (STAN P_0078940).

[112] *Id.* at 6 (STAN P_0078932) (capitalization in original).

[113] *Id.* at 6 (STAN P_0078933).

request. Among the firms with which SIBL has entered into referral agreements is Stanford Group Company."[114]

- Lastly, under a section titled "Affiliate Transactions," the Disclosure Statement explains: "SIBL and an affiliated company, Stanford Financial Group Company ('SFG') have had a marketing and service contract in force since 1995, which provides us with marketing and management services for a negotiated fee. * * * We are also party to a referral fee agreement with SGC. The fees paid pursuant to the referral fee agreement with SGC are calculated as a percentage of SGC's referred client portfolio, and are currently 3%, negotiated annually. Referral fees paid do not reduce the principal amount of any CD Deposits or any interest earned theron."

[43] In addition to providing potential investors with a copy of the Offering Documents, Green verbally reinforced the disclosures about the SIB CDs' risks, emphasized that investor deposits were not insured, and noted the referral fees. The unbiased testimony of Peter Thevenot, the master espalier, provides a good example of what Green told potential investors. Thevenot started working in a factory full-time at age 17.[115] Yet, despite his limited formal education, Thevenot fully understood, based on what Green told him and on the Disclosure Statement he reviewed at Green's request, that the SIB CD had substantial risks, that it was uninsured, and that there was an annual 3% referral fee in connection with purchasing the CD.[116] Thevenot emphasized, too, that Green did not urge, much less pressure, him to buy a SIB CD. Indeed, Thevenot is the one who approached Green about investing in a CD. What's more, even though Green recommended an investment of $500,000, Thevenot decided to invest $1 million.[117] Walter Alvarez's materially identical account of what Green told him about the risks

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[114] *Id.* at 8 (STAN P_0078937).

[115] Thevenot testimony at 2688:9-11.

[116] Thevenot testimony at 2694:24-2697:16; 2698:16-2700:10.

[117] Thevenot testimony at 2697:14-25.

of investing in a SIB CD and the lack of any depository insurance corroborates Thevenot's testimony, as well as Green's own account of what Green told potential investors.[118]

2. The Self-Serving Testimony of the Division's Investor Witnesses Does Not Support the OIP's Allegations that Green Misled Them.

[44] The OIP alleges "Green made oral misrepresentations about the safety of the SIB CD, the diversity and liquidity of SIB's underlying investment portfolio, and insurance." (OIP at ¶ 29.) The OIP provides three examples of the sort of oral misrepresentations Green allegedly made: (1) "[He] told a Louisiana investor who was looking for a risk-free investment that the SIB CDs were 'safe as U.S. treasuries" (*Id.* at 29(a)); (2) "[he] told a Louisiana retiree that the SIB CDs were 'insured by Lloyd's of London" (OIP at ¶ 29(b)); and (3) "[he] told a Louisiana investor who was concerned solely with capital preservation that SIB was safer than U.S. banks and that the purported program protecting the SIB CDs was stronger than FDIC coverage" (OIP at ¶ 29(c)). The Division disclosed that the first allegation references misrepresentations purportedly made to Thomas Moran, the second references misrepresentations purportedly made to Robert Smith, and the third references misrepresentations purportedly made to Cynthia Dore.[119] Although it neither cited nor quoted him in the OIP, the Division also called James Stegall to testify about similar alleged misrepresentations.

(a) Dore's Testimony Does Not Support the Division's Allegations.

[45] The OIP alleges that Dore "was concerned solely with capital preservation" and that Green told her "that SIB was safer than U.S. banks and that the purported insurance program protecting SIB CDs was stronger than FDIC coverage." (OIP at ¶ 29(c).) Neither Dore's testimony nor anyone else's supports these assertions.

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[118] Alvarez testimony at 2546:3-2548:18.

[119] Division's letter to John Kincade, Winstead, P.C., dated October 30, 2012.

[46] Dore is an accountant with over thirty years of experience.[120] She is wealthy by any standard,[121] is a "very astute, very educated investor,"[122] and has a history of participating in private equity deals.[123] Tom Newland, an SGC financial advisor and acquaintance of hers, introduced Dore and her husband to SGC in 2000.[124] Green never served as Dore's financial advisor. He met with Dore and her husband only once, in SGC's Houston office, along with Newland, in connection with her opening an account with SGC.[125] Dore did not decide to invest in SIB CDs until October 2002,[126] when James Fontenot was her SGC financial advisor.[127]

[47] Dore testified that, at the meeting she attended with Newland and Green in 2000, roughly two years before she purchased her first SIB CD in late 2002, both Green and Newland told her her SIB deposit would be insured by Lloyds of London.[128] She testified, as well, on direct examination, that she "felt very comfortable and safe" with the SIB investment.[129] Dore's testimony is not credible for several reasons.

[48] *First*, Dore's allegations regarding the purported safety and insurance of the SIB CD product are contradicted by the Disclosure Statement, which warned her in the very first sentence that the investment entailed "substantial risks" and which warned her elsewhere that she could

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120 Dore testimony at 1425:15-22.

121 Dore testimony 1456:25-1457:8; *see also* Fontenot testimony at 2741:1-18 (discussing Ms. Dore's participation in private equity deals).

122 Fontenot testimony 2741:4-5.

123 Fontenot testimony 2741:17-18.

124 Dore testimony at 1398:25-1399:21.

125 Dore testimony at 1404:1-10.

126 Dore testimony at 1408:13-18.

127 Fontenot testimony at 2739:4-8.

128 Dore testimony at 1407:12-1408:1.

129 Dore testimony at 1412:1.

lose her entire investment.[130] Pursuant to SGC's standard practice, Dore received the Offering Documents from Fontenot *before* she invested.[131] In signing the Subscription Agreement, she represented that she had carefully reviewed and understood the Disclosure Statement.[132] Fontenot was "totally confident" Dore had in fact reviewed both sets of materials, "because she discussed some of the items in them."[133]

[49] Confronted with her signature on the Subscription Agreement, Dore acknowledged she had signed the document but claimed never to have read either the Subscription Agreement or the Disclosure Statement.[134] This is hardly the behavior of a seasoned, savvy investor and accountant. What makes her testimony even less credible, moreover, is Dore's admission, on cross examination, that she truthfully told the SEC before trial that she was initially "skeptical" about investing substantial sums in an offshore bank.[135] There is little Green could plausibly have said to her to convert her skepticism about the risks of investing in a SIB CD into optimism about having discovered a risk-free investment. And, to make matters worse for Dore, in order

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[130] *See* G-14 (May 15, 2001 SIB disclosure statement in force at the time of Ms. Dore's first purchase).

[131] Fontenot testimony at 2741:21-1742:4; 2742:22-2743:13 ("My practice – it was my practice, which, as I understood, was pretty much policy in our branch, that if we knew of someone who was interested either by referral or their inquiry to us, before we could discuss anything with them about the bank, that typically a subscription agreement and a disclosure notice was FedExed to them or personally delivered – and in most cases FedExed so that we would have a record of it. And as I recall, that was the way it was handled with Ms. Dore.").

[132] Dore testimony 1442:25-1444:23; *see* G-244 at JG-073-77; G-15 (stipulated to by Division counsel as the full Subscription Agreement and Investor Questionnaire in force at the time of Ms. Dore's initial purchase) at 1 ("You have received a Disclosure Statement and other relevant Offering Documents related to the U.S. Accredited Investor CD prior to remitting the Minimum Balance or such other amount in excess of the Minimum Balance. You have read and you understand the Offering Documents, particularly the discussion of the risks associated with the U.S. Accredited Investor CD. In addition, you have had an opportunity to ask SIB questions about, among other things, the U.S. Accredited Investor CD and have had your questions answered to your satisfaction.").

[133] Fontenot testimony at 2742:5-11.

[134] Dore testimony 1442:21 ("It [the subscription agreement] has my signature on it."); *id.* at 1444:17 ("Oh, I can assure you we didn't read this."); *id.* at 1445:11-15 ("You know, as in a lot of things, we trust other people and don't read what we need to read. It is a good lesson I have learned. I have no idea whether this was ever represented to me or if I ever read it; but, yes, I see my signature on there.").

[135] Dore testimony at 1432:21-1433:6.

for her to be believed, the Court would have to conclude that Green and Fontenot made misrepresentations to a sophisticated investor knowing she could easily detect a fraud simply by reading the first sentence in the Disclosure Statement, which she was required to attest in writing she had read.

[50] *Second*, even leaving aside the Disclosure Statement Dore represented (in writing) she had received and carefully reviewed, the OIP's allegations against Green cannot be reconciled with the admission Dore made, during her cross-examination, about her knowledge of the risks associated with the SIB CDs. On cross, she admitted that what led her to buy a SIB CD was that she "became convinced that it was **safer than the stock market**."[136] No investor "concerned solely with capital preservation," seeking to buy a security that was "safer than U.S. banks,"[137] could reasonably conclude she was getting what she wanted by buying a security that was described simply as being "safer than the stock market." Equally problematic for her, Dore conceded she understood that SIB invested in highly volatile industries such as oil and gas, as well as real estate, and vividly remembered stock market crashes such as the tech wreck in 2000-2002.[138] Sophisticated accountants with a history of investing in private equity do not think the road to capital preservation runs through oil and gas investments, real estate investments or equity investments.

[51] *Third*, Dore's understanding that the SIB CD was really only safer than the stock market was consistent with Green's testimony about what he told investors, as well as with the testimony of the financial advisors he trained, like Shaw and Fontenot, and with the testimony of the only unbiased investor witness, Thevenot. Green explained to them, as he doubtless did to

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[136] Dore testimony at 1408:23-1409:2; 1432:19-20 (emphasis added).

[137] OIP at ¶ 29(c).

[138] Dore testimony 1426:9-1430:15.

Dore, that the SIB CD had "substantial risks" but that the bank had a history of managing those risks well and, in the past, had consistently generated above-average returns over time.[139]

[52] *Fourth*, Dore's testimony about depository insurance is implausible in light of her experience and understanding. Having conceded she knew that SIB made highly volatile investments in oil and gas and real estate and otherwise was exposed to the many risks of the stock market,[140] and having lived through the "tech wreck," Dore understood that market losses could quickly top 50% of an investment's initial value.[141] Yet, when questioned about the enormous cost of ensuring SIB's entire portfolio against market losses, Dore stated she "never considered" it.[142] For a seasoned, sophisticated investor and experienced accountant who was considering investing millions in the SIB CD, such a statement is not believable. Dore's acknowledgment that she was initially "skeptical" of investing in SIB CDs makes her testimony about depository insurance and capital preservation even less credible.[143]

[53] *Finally*, both Fontenot and Green vehemently denied ever implying, let alone telling, Dore that her SIB deposit was insured or that her investment would be "safe" or "safer than U.S.

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[139] Green testimony at 3741:22-3743:12; *id.* at. 3817:5-3819:1; Shaw testimony at 465:17-466:4 (testifying Green's presentations to him and other financial advisors were consistent with the information contained in the disclosure statement and the subscription agreement advising potential investors of the substantial risks); Fontenot testimony at 2736:20-2737:24; *id.* at. 2744:4-6 (testifying that Green's presentations said there was substantial risks that historically was well-managed by SIB; the main risk was the bank's ability to manage the portfolio as successfully as in the past; never heard Green downplay the risks); Batarseh testimony at 2265:2-2266:24 (testifying that Green explained in his presentations that the SIB CDs had substantial or significant risk and discussed strategies SIB employed to manage those risks); Thevenot testimony at 2699:11-13 ("As a matter of fact, I think the first page [of the disclosure statement] talked about substantial risks; and Jason wanted to make sure that I understood that.").

[140] Dore testimony at 1426:9-1430:15.

[141] Dore testimony at 1430:5-1432:14.

[142] Dore testimony at 1430:21-24.

[143] Dore testimony at 1432:21-1433:6.

banks."[144] Against this background, when put into the appropriate context, Dore's testimony does not support the OIP's allegations.

(b) Stegall's Testimony Does Not Support the Division's Allegations.

[54] The OIP does not quote or even mention Stegall. Even so, the Division called him to testify that Green told him the SIB deposits were "insured by FDIC, Lloyd's of London, [and] other various insurances on the advisors."[145] Stegall's purported belief, however, like Dore's, is contradicted by the Offering Documents, which, as mandated by SGC policy and as a condition for every SIB CD purchase, Stegall received.[146]

[55] Like Dore, moreover, Stegall conceded that Green explained to him the SIB CD was simply "safer than the stock market."[147] Stegall understood that being safer than the stock market was far from risk-free. In fact, Stegall testified that the risk he was taking in his Stanford Asset Allocation managed account, which he instructed should be invested in "alternatives" and equities and had a targeted return of 8-10% *above* an assumed inflation rate of 3%, was "comparable" to the risk SIB would have to take just to pay him his SIB CD interest of 8.4% and to pay SGC its 3% referral fee.[148] Stegall readily acknowledged he wanted to take "stock

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144 Fontenot testimony 2740:12-25; Green testimony at 3922:1-6.

145 Stegall testimony at 1487:18-22; *see also id.* at 141495:6-14 (testifying that he thought the deposits were FDIC insured and that he would not have invested had he known they were not).

146 Green testimony at 3933:6 (testifying Stegall received the SIB CD offering documents and was encouraged to review them before investing); *see also* Green testimony at 3924:7-3925:25, 3926:1-10, 3927:25-3929:17, 3932:13-3933:5 (testifying customers received offering documents pursuant to firm mandatory firm policy that was strictly enforced); Fontenot testimony at 2741:19-2742:21 (same); Shaw testimony at 449:3-17, 460:18-463:21 (same); Comeaux testimony at 1063:15-1064:12 (same); Young testimony at 326013-20 (testifying that it was a firm requirement – without which a CD sale could not be made – to provide customers with a disclosure statement and subscription agreement and investor questionnaire prior to a CD purchase).

Stegall did not deny receiving the Offering Documents. (Stegall testimony at 1534:2-6 ("Q: You don't deny that you signed other documents [other than account transfer forms]. A: I don't recall. Q: You just don't recall; is that right, sir? A: I don't recall.").

147 Stegall testimony at 1487:6-9; *id.* at 1522:10-14.

148 Stegall testimony at 1531:13-1532:7; *see also id.* at 1526:9-21.

market" risk with the investment in his managed account and knew he could suffer double-digit losses in the stock market in a short period of time.[149]

[56] Stegall also undercut the Division's suggestion that Green misled investors about the SIB CD referral fee. Stegall acknowledged receiving a letter discussing referral fees after his purchase. When questioned about the letter, which disclosed that SGC was receiving a 3% referral fee "on an annual basis," Stegall acknowledged "that as long as I got my payment, I was not concerned about what fees they were paying anybody; so, this was not important to me[.]"[150] Similarly, when questioned about the referral fee letter's disclosure that "SGC may receive additional incentive bonus for financial advisors who aid in the sale of SIBL's CD," he testified: "It wouldn't have mattered to me as long as they made my payments that we agreed, my percentage of what I was going to get."[151]

[57] When put into the appropriate context, Stegall's testimony likewise does not support the OIP's allegations against Green.[152]

(c) <u>Smith's Testimony Does Not Support the Division's Allegations.</u>

[58] Stegall's long-time friend, Robert Smith, testified that he independently approached Green about investing in SIB CDs after he heard about the opportunity from friends who had already invested.[153] Smith's testimony otherwise is defined by his fuzzy memory and his inability to recall specifics. Although Smith testified he thought "this bank was a real good, solid investment," he could not "recall" "any specific features that made the bank safe" that Green had

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[149] Stegall testimony at 1527:2-7.

[150] Stegall testimony at 1418:3-14. G-247 at JG-013.

[151] Stegall testimony at 1418:18-1419:2. G-247 at JG-013.

[152] *See* Green testimony at 3933:11-3934:14 (testifying he never told Mr. Stegall his deposit was insured or downplayed the risks of investing and fully disclosed all material risks of investing).

[153] Smith testimony at 1551:24-1552:22.

told him about.[154] When asked about whether he "receive[d] information about insurance that the bank had," Smith testified that "one piece of paper listed Lloyd's of London, SIPC, and these types of things."[155] Moreover, while Smith never referred to insurance covering investor deposits, even if he had, the Disclosure Statement he received pursuant to mandatory SGC firm policy disclosed that his SIB deposit was insured neither by Lloyds' of London nor by SIPC nor by anyone else.[156] Additionally, Smith conceded that, in purchasing a SIB CD, he was willing to take market-like risk "comparable" to the risks he accepted in owning the equity-based mutual funds he held in his Crompton employee savings plan.[157] What's more, Green adamantly denied making any misrepresentations to Smith in connection with the SIB CDs.[158]

[59] Against this background, Smith's testimony, like Dore's and Stegall's, does not support the OIP's allegations against Green.[159]

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[154] Smith testimony at 1554:21-1555:14.

[155] Smith testimony at 1557:22-1558:3.

[156] Green testimony at 3933:6 (testifying Smith received the SIB CD offering documents and was encouraged to review them before investing); *see also* Green testimony at 3924:7-3925:25, 3926:1-10, 3927:25-3929:17, 3932:13-3933:5 (testifying customers received offering documents pursuant to firm mandatory firm policy that was strictly enforced); Fontenot testimony at 2741:19-2742:21 (same); Shaw testimony at 449:3-17, 460:18-463:21 (same); Comeaux testimony at 1063:15-1064:12 (same); Young testimony at 326013-20 (testifying that it was a firm requirement – without which a CD sale could not be made – to provide customers with a disclosure statement and subscription agreement and investor questionnaire prior to a CD purchase).

[157] Smith testimony at 1581:2-1583:8.

[158] Green testimony at 3933:11-3934:14 (testifying he never told Smith his deposit was insured or downplayed the risks of investing and fully disclosed all material risks of investing).

[159] The Division's fourth investor witness, Michael Bishop, had nothing critical to say about Green. Bishop was Shaw's customer. He never communicated with Green or even knew who Green was. (Bishop testimony at 1137:23-1138:3; 1146:15-19.) Like the others, Bishop signed a subscription agreement when he first invested in SIB CD, wherein he attested he had carefully reviewed and understood the SIB disclosure statement. Conveniently, though, Bishop, like Dore, testified he never reviewed "the fine print," ignoring the fact that risk disclosures and admonitions appeared in the Disclosure Statement in regular print, on the first page, starting with the first sentence. (Bishop testimony at 1140:23-11-1423:4; *see* G-243 at JG60-62.)

Likewise, although Bishop did not deny receiving the letter sent to him and his wife that fully disclosed the 3% annual referral fee and other affiliate payments, he testified he had "no memory of ever seeing this." (Bishop testimony at 1139:18-1140:22.) Moreover, Shaw was adamant that he never misrepresented to Bishop or any other customers the safety, insurance or any other aspect of the SIB CD product. (Shaw testimony at 451:3-453:12 (explaining how he described the lack of depository insurance on the SIB CD product and the substantial risks involved in investing in the SIB CD product).

(d) The Division Failed to Call Moran to Testify and Failed to Support the Allegations He Supposedly Made Against Green That Are Quoted in the OIP.

[60] The Division never called Thomas J. Moran to testify. Moran was included on the Division's witness list and quoted in the OIP. The Division had identified Moran as the "Louisiana investor who was looking for a risk-free investment" and who was allegedly told by Green "that the SIB CDs were 'safe as U.S. treasuries.'"[160] The record is bereft of any testimony even remotely supporting these allegations.

[61] Green vigorously disputed the OIP's allegation regarding Moran.[161] Green also testified that Moran held tens of millions of dollars in Treasuries at the time Moran was invested in SIB CDs.[162] The SIB CDs generated substantially higher returns than the Treasuries. Moran could have liquidated his Treasuries position and converted it to SIB CDs – had he really thought the SIB CDs were as safe. But he did not.[163]

[62] Moreover, Green testified Moran was a "very thoughtful," "very careful," "very successful" businessman of 40-plus years.[164] When Moran invested in the SIB CDs in June 2003, he signed the SIB subscription agreement.[165] With his signature, Moran represented that he had received the Disclosure Statement, that he read and understood the Offering Documents, that he had had an opportunity to ask questions, and that the questions he had, if any, had been answered to his satisfaction.[166] Green testified that he was "100 percent" confident Moran

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[160] OIP at ¶ 29(a); *see* Division's letter to John Kincade, Winstead, P.C., dated October 30, 2012.

[161] Green testimony at 3920:2-8.

[162] Green testimony at 3921:1-5.

[163] Green testimony at 3921:6-15.

[164] Green testimony at 3922:7-16.

[165] Green testimony at 3924:7-3929:21; G-246 at JG-119.

[166] Green testimony at 3929:25-3931:17; *see* G-15.

received a copy of the Disclosure Statement.[167] Against this background, Moran's allegations are not believable.

D. Green's SIB CD Sales Training Presentations Were Approved by Legal and Compliance, Were Substantively Consistent Over Time, And Were Not Misleading.

[63] The OIP alleges that Green's training presentations were misleading.[168] The Division, however, confused the presentations Green made with those made by others and provided no proof that Green's own presentations misled anyone.

1. In 2004, Green Offered to Help Educate SGC Financial Advisors About the SIB CDs.

[64] Prior to 2004, SGC financial advisors were trained by Oreste Tonarelli. Tonarelli was the head of SIB's training department. Green had earlier observed portions of Tonarelli's presentation as the Baton Rouge branch manager. Green's view of Tonarelli and his presentation was the same as that of Shaw and Comeaux. Although Tonarelli was bright and multi-lingual, English was not his native language. He spoke it with a heavy accent, making it difficult to understand him.[169] Tonarelli was a less than scintillating presenter in other ways, too. His training presentation was infamous for being dry, repetitive, and lengthy, sometimes lasting an entire day.[170]

[65] Green's role in assisting with training began when Allen Stanford appointed him "Captain" of the newly-formed Super Stars team in 2004. In that capacity, Green identified areas of potential improvement for the sale of SIB CDs. One was the education of new financial

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[167] Green testimony at 3931:18-3932:12.

[168] *E.g.*, OIP at ¶¶ 14-19, 21.

[169] Green testimony at 3763:11-21.

[170] Green testimony at 3763:11-21; Shaw testimony (testing having attended several of Tonarelli's full-day training sessions and describing Tonarelli as an "irritating man to listen to . . . it's the sort of thing that if you had a sharp object, you would euthanize yourself"); Comeaux testimony at 1060:9-1061:14 (describing Tonarelli as a "man of small stature with a very large knot in his tie" who was "very monotone" and "boring").

advisors on the product.[171] Since the Super Stars was comprised of U.S.-based SGC financial advisors, Green offered to Yolanda Suarez to play a part in educating SGC's U.S. financial advisors about the SIB CDs.[172]

2. Green Prepared a Consistent Set of Training Materials That Legal and Compliance Approved.

[66] In response to his offer, Suarez asked Green to "put something together" she could review and approve.[173] Green obliged. He reviewed SIB's annual reports, SIB's Offering Documents, the SIB presentations given by the bank president, Rodriguez-Tolentino, and the presentation given by Finkelstein. Green used those materials to create his own slide presentation.[174] His first presentation was Green Exhibit 250. Green gave this presentation in the summer of 2004 to Eddie Rollins, the executive director of the Private Client Group, Marty Karvelis, the Miami branch manager, and Dan Patterson, a financial advisor in Miami.[175] Like all the others, Green's first presentation went through a vetting and approval process with the legal and compliance departments; it also had to be approved by SIB's bank president, Rodriguez-Tolentino.[176]

[67] Over the years, Green's presentations evolved but never changed substantively. The Reconciliation Green prepared and presented at trial – G-D-1 – shows the chronology and the substantive similarities. The first presentation listed on the Reconciliation – G-254 – Green gave

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[171] Green testimony at 3764:25-3765:10. Green did not provide, and had no duty to provide, compliance training with regard to the SIB CD program. That training was conducted by the compliance department. Most training was done by Jane Bates and later Bernie Young when he became the new SGC chief compliance officer.

[172] Green testimony at 3764:14-3765:10.

[173] Green testimony at 3765:11-16.

[174] Green testimony at 3765:17-3766:8.

[175] Green testimony at 3766:13-3767:18.

[176] Green testimony 3798:21-3799:25 (describing the "approval process" that applied to all of Green's training presentations).

to a potential investor, Robert Hollier, in December 2004 or January 2005.[177] Green used the format of the Hollier presentation until at least July 2006.[178] In September 2006, only the presentation's background changed, as evidenced by the slides Green used in his September 2006 presentation to the Boca Raton office – G-264.[179]

[68] One year after the Boca Raton presentation, Green presented to SGC's Nashville office.[180] As the Reconciliation shows, the slides for the Boca Raton presentation and the slides for the Nashville presentation are identical.[181] Those slides, moreover, are materially the same as the slides Green used in the Hollier presentation.[182] Finally, in October 2008, Green used a generic WebEx presentation (or "PCG current") that combined his slides (the first 33) with the slides used by the SGC compliance department in the presentation that followed his.[183] This presentation was in substance materially identical to the earlier presentations.[184] And it is undisputed that all of Green's presentations were approved, in advance, by legal and compliance.[185]

3. *The Division Repeatedly Cited and Relied on Slide Presentations Green Never Prepared or Used.*

[69] Throughout the trial, in questioning witnesses and in presenting evidence, the Division cited Exhibit D-104 as containing a representative sample of the PowerPoint slides Green

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[177] Green testimony at 3767:23-3770:9; *see* G-253.

[178] Green testimony at 3771:12-18; *see* G-253.

[179] Green testimony at 3772:15-3774:10; *see* G-262 (email sending presentation); G-264 (presentation).

[180] Green testimony at 3772: 3777:1.

[181] Green testimony at 3777:2-5; G-D-1.

[182] Green testimony at 3777:18-3778:1; G-D-1.

[183] Green testimony at 3778:7-3780:12; *see* G-260 (email attaching presentation); G-261; G-D-1.

[184] Green testimony at 3781:22-3787:9; *see* G-D-1 (Reconciliation 1: comparing the Hollier presentation to the Boca Raton presentation), (Reconciliation 2: comparing the Boca Raton presentation to the Nashville presentation), (Reconciliation 3: comparing the Nashville presentation to the PCG current presentation).

[185] Green testimony 3798:21-3799:25 (describing the "approval process" that applied to all of Green's training presentations).

allegedly used in his presentations to SGC financial advisors. D-104 is an email Jeff Dunbar sent to Young on October 1, 2008, purporting to attach three of Green's PowerPoint presentations. Dunbar was an associate in the PCG who assisted Batarseh and Green. The email thread shows Dunbar, on his own, responding to an earlier request from Young to send him Green's training presentations for the period January 1, 2007 to September 26, 2008.[186]

[70] As the Reconciliation (G-D-1) shows, Dunbar made several mistakes in compiling the information for Young. Although the first and third attachments are identical, Dunbar states that the first is the current PCG presentation and that the third is the 2007 version. Dunbar is correct in observing that the first attachment is the "current presentation." It is identical to the WebEx presentation (identified as G-261) Green used in October 2008. Attachment 3, however, is the very same WebEx presentation. Dunbar's mistake is obvious because the presentation in the third attachment, referred to as the 2007 version, contains 2008 data.[187]

[71] The second attachment to Dunbar's email was clearly sent in error. Green never drafted or gave this presentation to anyone; in fact, he expressly rejected it.[188] Attachment 2 is a draft presentation compiled by Michael Koch, Young's deputy in the compliance department. Koch's assistant, Susanna Oliva, sent the draft (identified as G-258) to Green on November 12, 2007 (email identified as G-287), ahead of a WebEx presentation Koch and Green were scheduled to give that day.[189] As Green's email (identified as G-72) in response to Oliva reflects, Green declined to use Koch's presentation:

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[186] D-104; Green testimony at 3788:1-3789:6.

[187] Green testimony at 3789:7-3790:20; G-D-1 (reconciliation 4).

[188] Green testimony at 3790:23-3791:7.

[189] Green testimony at 3791:1-3792:14.

> Michael, I finally had a chance to review the presentation. It is a completely different presentation. I do not want to give this one. I put a lot of thought into the content and order of those slides, and that is what I plan to present.[190]

As Reconciliation 5 shows, Attachment 2 and Koch's presentations are identical.[191] Notably, moreover, as Reconciliation 6 shows, Koch's draft added 25 new slides and removed 19 from the standard presentation Green had been giving since 2004.[192] Attachment 2 – the Koch presentation – is, in short, entirely different from anything Green ever presented.

[72] The record thus shows that the presentation the Division has tried to use to support the OIP's allegations that Green misled SGC financial advisors is one Green neither prepared nor used.

4. *The OIP's Allegations Against Green Regarding Specific Misrepresentations He Purportedly Included in His Presentations Are Misguided.*

[73] The Division asserts that, in his training presentations, Green intentionally or negligently misrepresented the liquidity of the SIB portfolio, the insurance protection SIB provided to investors, and the suitability of allocating up to 50% of an investor's portfolio to SIB CDs.[193] The trial record does not support these allegations.

(a) The Division's Assertions About Liquidity Are Unfounded.

[74] Just like his colleagues, Green reasonably believed the SIB portfolio was broadly diversified and highly liquid.[194] So, too, did reputable institutions such as Bear Stearns, Fidelity, and Pershing, as well as some of the nation's top law firms, such Chadbourne Parke, Proskauer Rose, Greenberg Traurig, and Hunton & Williams, which vetted SIB before agreeing to do

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[190] Green testimony at 3794:2-7; G-72; *see also* Green testimony at 3793:10-23.

[191] G-D-1 (Reconciliation 5).

[192] Green testimony at 3796:16-3797:9; G-D-1 (Reconciliation 6).

[193] *E.g.*, OIP at ¶¶ 14-19, 21.

[194] Green testimony at 3742:6-15; *id.* at 3819:4-24; *id.* at 3954:20-3956:19; Bogar testimony at 2875:1-12; Comeaux testimony at 1067:23-1068:4; Young testimony at 3406:6-25.

business with it and SGC.[195] Dr. Ross testified that Green reasonably could rely on representations from management, legal, and compliance regarding diversification and liquidity.[196]

[75] Green went even further, however, to confirm that the portfolio was in fact diversified and liquid. He reviewed the bank's financial statements. He investigated the bank's Antiguan regulatory regime that oversaw its business and ascertained its holdings on a regular basis. He interviewed people who oversaw the international portfolio managers.[197] He spoke to bank personnel, including the SIB president.[198] The Division's assertion that he should have done more – that he should have double checked the due diligence of the compliance department, the legal department, and outside counsel, the veracity of the statements made by SIB management, and the accuracy and reliability of SIB's auditor – is totally removed from both the realities and the practicalities of a brokerage business and from Green's role and responsibilities.[199] Indeed, Dr. Ross, with decades of experience as a senior compliance official and as a senior due diligence officer with a number of regional and national brokerage firms, testified that such conduct "would have been counterproductive" and "characteristic of circumventing" the chain of command.[200] Likewise, Green was reasonable – as were his colleagues – in relying on the advice

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[195] Green testimony at 3722:2-24 (describing Pershing due diligence); *id.* at 3722:9-18 (testifying that "Bear Stearns had done extensive due diligence on all of the businesses of Stanford, including the International Bank, had been down there, visited it and looked at it and, so, similarly favorable to Pershing, accepting us as an introducing broke"); id. at 3837:1-21, 3823:9-3838:8, 3839:10-15, 3839:16-3840:12, 3841:5-3842:13, 3842:23-3844:3 (discussing interactions with and due diligence by Tom Sjoblom); Ward testimony at 0857:25-0864:20, 872:21-0874:13 (discussing Pershing due diligence); B-394; B-395; Bogar testimony at 2626:13-2627:11, 2628:19-25 (discussing due diligence process with Pershing); *id.* at 2571:22-2573:11 (discussing work by Carlos Loumiet).

[196] Ross testimony at 4178:23-4180:6, 4181:6-4182:3, 4186:24-4187:7.

[197] Green testimony at 3956:14-16 ("I spoke to people that had gone to Europe and were directly involved in managing the portfolio. I had conversations with them, drilled down[.]").

[198] Green testimony at 3707:15-3714:7; 3956:10-19.

[199] Ross testimony at 4179:3-4182:23; 4188:20-4189:4:

[200] Ross testimony at 4180:11-12.

of management, legal counsel, and compliance that SIB could not provide the individual portfolio holdings because the information was proprietary and confidential, and because Antiguan privacy laws prohibited the disclosure.[201]

(b) The Division's Assertions About Insurance Are Unfounded.

[76] Notwithstanding what the Division alleges, Green never misrepresented or implied to anyone, including potential investors and financial advisors, that an investment in SIB CDs was protected by depository insurance.[202] His testimony was corroborated by virtually every former SGC employee who testified[203] – with the exception of admitted perjurer Bobby Allison – as well as by the only unbiased investor witness to testify, Thevenot.[204]

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[201] Ross testimony at 4190:16 4192:8; Green testimony at 3759:8-3760:15.

[202] Green testimony at 3797:24-25 ("I stressed to people this does not provide depositor insurance."); *id.* at 3804:5-20 (noting that the compliance department's presentations (by either Ms. Bates or Mr. Young) that followed Green's also stressed there was no depository insurance).

[203] **Insurance**: Finkelstein testimony at 400:12-18 (he understood SIB CDs were not insured and never heard Green say anything to the contrary); Shaw testimony at 496:21-497:12 (based on training by Green he made clear to his customers that the SIB deposits were uninsured); Comeaux testimony at 1061:15-1062:12 (he knew SIB CDs were not insured and he never heard an advisor say that they were, nor did he ever hear from others that advisors were stating to customers that there was depositor insurance); *id.* at 1062:13-25 (he is confident Green never told anyone the SIB CDs were insured and "it would break my heart if I heard that from him"); Karvelis testimony at 1342:22-1344:10 (he never heard Green or any advisor claim there was depository insurance on the SIB CDs); Batarseh testimony at 2263:16-2265:1 (Mr. Green made clear there was no principal protection); *id.* at 2271:17-24 (Green never told anyone the deposits were insured); Thevenot testimony at 2699:21-24 ("there was no insurance"); Fontenot testimony at 2736:7-19 (Green never mentioned any insurance that protected depositors); Bogar testimony at 2794:20-2795:22 (he believed wholeheartedly that everyone associated with SGC knew the SIB CDs were not insured).

Safety: Finkelstein testimony at 402:6-16 ("I would be surprised, yes," if Green claimed the SIB CDs were as safe as Treasuries); Shaw testimony at 465:17-466:4 (he understood Green's presentations were consistent with the disclosure statement and subscription agreement); Comeaux testimony at 1066:8-13 (he never told anyone the SIB CDs were safe and would be shocked if Green told that to anyone); *id.* at 1123:9-25 (he heard Green present the SIB CDs two or three times, and he never heard Green say a single thing that Comeaux thought was a misrepresentation); Batarseh testimony at 2265:2-2266:24 (Green explained the SIB CDs had substantial risks); *id.* at 2271:25-2272:12 (he never heard Green say that the SIB CDs were "safe" in any way); Thevenot testimony at 2699:11-13 ("As a matter of fact, I think the first page [of the disclosure statement] talked about substantial risks; and Jason wanted to make sure that I understood that."); Fontenot testimony at 2736:20-2737:24 (Green's presentations explained that the SIB CDs had substantial risk but that historically the bank had managed the risk well).

[204] Thevenot testimony at 2694:24-2697:16; 2698:16-2700:10.

Moreover, the Division's attempt to imply that Chuck Vollmer, a financial advisor in the Longboat Key office, was under the impression there was depository insurance and passed that information on to clients is incorrect.

[77] As all of Green's training presentations make clear, he discussed insurance and SIB's insurers only in the context of oversight.[205] Indeed, the page in his presentations that discusses insurance is styled "Appropriate Oversight."[206] Green described the insurers' underwriting procedures, including the insurers' use of a risk consultant, as creating "another set of eyes coming in there and providing some oversight."[207] Dr. Ross testified that Green's characterization of the insurers under the explicit heading "Additional Oversight" as "another pair of eyes" made sense and was entirely appropriate, especially given that Green's presentation was vetted and approved by legal and compliance.[208] Additionally, as Dr. Ross recognized, the compliance department presentation that immediately followed Green's also emphasized that deposits were "not insured."[209]

[78] Nor, contrary to what the Division alleges, did Green ever tell potential investors or financial advisors that the SIB CDs were "safe" investments or fail to mention the "substantial risk" of an investment in SIB CDs, as revealed in the first sentence of the SIB Disclosure

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The Division cited a February 19, 2009 email thread between Vollmer and one of his customers, wherein Vollmer proclaims he was told about insurance coverages as recently as the road show trip by Young, Batarseh, and Green. (*See* D-368; Young testimony at 3443:2-3444:10.) Whatever Vollmer may have said about insurance in 2009, however, after the fraud was disclosed and the panic ensued, Green made it very clear to him – and to all SGC financial advisors – that the SIB CDs were not insured. Indeed, Vollmer received an email from Green in July 2006, in response to a request from Vollmer regarding insurance, that advised him Green believed the insurance coverage for the bank was only between $50 and $100 million. (G-72 at 4.) Likewise, Vollmer, who attended Green's training sessions – for example, the one Green gave to the Boca Raton office in September 2006 (whose branch manager oversaw Vollmer and his team) – was told then there was no depository insurance. (*See* G-264; Young testimony at 3634:14-3635:15.)

[205] G-254 at 25 (discussing insurers under "Appropriate Oversight"); G-261 at 28 (same); G-264 at 26 (same); G-268 at 26 (same).

[206] G-254 at 25); G-261 at 28; G-264 at 26; G-268 at 26.

[207] Green testimony at 3744:16-24; *see also* Batarseh testimony at 2263:16-2265:1 (describing insurance underwriting process as another set of eyes for oversight).

[208] Ross testimony at 4194:6-4197:2.

[209] Ross testimony at 4197:3 4199:18; G-261 at 62 (Young's presentation); G-71 at 16 (Bates's presentation).

Statement.[210] Every unbiased witness corroborated Green's testimony on these subjects.[211] Even witnesses with a clear bias conceded Green told them the SIB CD's were simply less risky than the equity markets, which he reasonably believed them to be.[212]

[79] Green's view that the SIB CDs carried substantial potential risks that were mitigated by the broad range of factors discussed above, rendering the overall risk at the low end of the moderate range, if not lower, was reinforced and validated by other investments he followed. Most notably, the First Eagle Global Fund of renowned investor Jean Marie Eveillard was consistently classified at the bottom end of the moderate range or lower. Dr. Ross explained that Green's reliance on First Eagle was sound and "based on Morningstar's methodology, Morningstar being one of the premiere research firms when it comes to mutual funds," and that, in light of the Morningstar analysis, SIB and First Eagle "had a comparable risk rating."[213]

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[210] Green testimony at 3741:22-3743:12 (discussing portfolio goal and risk mitigation strategies); *id.* at 3817:5-3819:1 (detailing discussions about risk during presentations); *id.* at 3920:2-3921:15, 3933:23-3934:14, 3981:9-16 (explaining how he always fully disclosed risks to customers and never downplayed the risks).

[211] Finkelstein testimony at 402:6-16 ("I would be surprised, yes," if Green claimed the SIB CDs were as safe as Treasuries); Shaw testimony at 465:17-466:4 (he understood Green's presentations were consistent with the disclosure statement and subscription agreement); Comeaux testimony at 1066:8-13 (he never told anyone the SIB CDs were safe and would be shocked if Green told that to anyone); *id.* at 1123:9-25 (he heard Green present the SIB CDs two or three times, and he never heard Green say a single thing that Comeaux thought was a misrepresentation); Batarseh testimony at 2265:2-2266:24 (Green explained the SIB CDs had substantial risks); *id.* at 2271:25-2272:12 (he never heard Green say that the SIB CDs were "safe" in any way); Thevenot testimony at 2699:11-13 ("As a matter of fact, I think the first page [of the disclosure statement] talked about substantial risks; and Jason wanted to make sure that I understood that."); Fontenot testimony at 2736:20-2737:24 (Green's presentations explained that the SIB CDs had substantial risk but that historically the bank had managed the risk well).

[212] Comeaux testimony at 1066:8-13 (he never told anyone the SIB CDs were safe and would be shocked if Green told that to anyone); *id.* at 1123:9-25 (he heard Green present the SIB CDs two or three times, and he never heard Green say a single thing that Comeaux thought was a misrepresentation); Batarseh testimony at 2265:2-2266:24 (Green explained the SIB CDs had substantial risks); *id.* at 2271:25-2272:12 (he never heard Green say that the SIB CDs were "safe" in any way); Thevenot testimony at 2699:11-13 ("As a matter of fact, I think the first page [of the disclosure statement] talked about substantial risks; and Jason wanted to make sure that I understood that."); Fontenot testimony at 2736:20-2737:24 (Green's presentations explained that the SIB CDs had substantial risk but that historically the bank had managed the risk well); Dore testimony at 1408:23-1409:2; 1432:19-20 ("safer than the stock market"); Stegall testimony at 1487:6-9; *id.* at 1522:10-14 9 (same).

[213] Ross testimony at 4201:8-42003:3; G-297.

(c) The Division's Assertions About Suitability Are Unfounded.

[80] The Division's assertion that Green used an allocation model in his training presentations to encourage a 50% SIB CD allocation to "conservative, income investors" is inaccurate.[214] For starters, Green did not create the allocation model his PowerPoint slides reference.[215] The model referenced in his slides is based on the Stanford Investment Model designed by Pendergest-Holt and her team, along with Finkelstein and his partner, and was widely distributed by Pendergest-Holt's team, as well as by the SGC analyst group.[216]

[81] Contrary to the Division's allegations, moreover, not all income investors are "conservative" investors. The Stanford Investment Model was designed to apply to all investors and to cover a full range of return objectives – for example, income, growth, and balanced. The Division confused investor return objectives with investor risk tolerances – for example, conservative, moderate, and aggressive. Finkelstein's testimony and the Stanford Asset Management Brochure (identified as G-193) he helped create make the distinction between return objectives and risk tolerances clear.[217] Finkelstein's brochure and the Stanford Asset Management Program it's based on were designed solely for income investors.[218] The two together provide customers seeking income with "tailored investment strategies for conservative, moderate, **and** aggressive investors."[219] Both the Stanford Asset Management Brochure and the

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[214] OIP at ¶ 21.

[215] *E.g.*, G-261 at 33.

[216] Green testimony at 3826:7-20.

[217] Green testimony at 3827:23-3828:1.

[218] Green testimony at 3828:7-3829:22.

[219] G-193 at 4 (emphasis added); Green testimony at 3827:20-3829:20; Finkelstein testimony at 401:3-21 (agreeing that an income investor could be "conservative, moderate, or aggressive"); *see also* Ross testimony at 4200:11 ("most firms present models").

Stanford Investment Model, like Green's presentations, were approved by legal and compliance.[220]

[82] In discussing the Stanford Investment Model with financial advisors, Green focused on the different types of return objectives and the different types of risk tolerances investors might have. In doing so, he emphasized – as did Young and Finkelstein during their testimony[221] – that suitability determinations are highly individualized.[222] They are not an exact science. They are, instead, a subject about which reasonable minds can differ, sometimes significantly.[223] Thus, each advisor had to determine for himself or herself, based on the individual circumstances of the customer, what percentage allocation to SIB CDs, if any, was appropriate.[224]

[83] Further, Green made clear that the most important rule for advisors to follow in discussing SIB CDs with customers was the "Golden Rule" of suitability: Recommend allocating only a suitable portion of a customer's portfolio to SIB CDs.[225] In keeping with his "Golden Rule," Green testified that, if an investor had a "moderate risk temperament, . . . it would be entirely appropriate to invest on the higher end of that . . . because [in Green's view] the SIB CD [w]as a balanced, diversified portfolio with risk controls in place."[226] If, on the other hand, the

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220 Ross testimony at 4178:23-4180, 4180:13-4181:5, 4206:17-4207:3 (opining Green was reasonable in relying on management, legal, and compliance ascertaining the accuracy and adequacy of the offering documents and his presentations); Finkelstein testimony at 62:13-25; 349:16-350:11; 362:13-25; 396:15-20 (testifying about legal and compliance's vetting of statements pertaining to the SIB CDs); *see also* Shaw testimony at 421:22-422:12 (describing ongoing vetting by the compliance department).

221 Young testimony at 3428:1-9; Finkelstein testimony at 400:19-402:5; Ross testimony at 4200:7-13.

222 Green testimony at 3830:25-3831:5.

223 Finkelstein testimony at 401:10-402:5 (agreeing that "reasonable people can disagree about the level of risk in a security," that "there can be a broad range of disagreement," and "hence a broad range of reasonableness" in determining suitability).

224 Green testimony at 3830:6-24.

225 Green testimony at 3832:6-3834:18; *see also* G-261 at 32; G-249.

226 Green testimony at 3830:11-15.

investor was "conservative," Green suggested to advisors that the allocation be smaller -- "perhaps 20 percent, perhaps none."[227]

[84] Dr. Ross agreed with Green's advice. She testified that Green was reasonable in viewing the SIB CDs as "akin to a balanced portfolio" or "balanced fund," much like Eveillard's First Eagle Global Fund.[228] Dr. Ross noted that the SIB portfolio, as presented to advisors and to the public, had "a comparable risk rating and underlying assets, as well as allocation model," to First Eagle.[229] She testified that, so long as the "Golden Rule" was followed, it was entirely appropriate for "an aggressive income accredited investor to invest 50 percent of his assets into a moderate risk, balanced fund managed by some of the world's premiere money managers."[230] Indeed, in her view, a "moderate income accredited investor" could likewise reasonably invest "50 percent of his assets into a moderate risk balanced fund."[231] Doug Shaw, by the end of 2008, had invested nearly half of his net worth in SIB CD's.[232]

5. Green Neither Created Nor Used the Training and Marketing Manual.

[85] At trial, the Division sought to saddle Green with responsibility for the Training and Marketing Manual – Exh. D-742. In fact, the Division put the Training and Marketing Manual at the center of its case against him.[233] The evidence at trial, however, established that Green had no involvement in drafting, editing or overseeing the Training and Marketing Manual. Green testified that he did not participate in drafting or revising it and that he never used it in training or

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227 Green testimony at 3830:16-18.

228 Ross testimony at 4201:8-4202:4.

229 Ross testimony at 4201:14-4202:4.

230 Ross testimony at 4205:19-4206:1.

231 Ross testimony at 4206:2-16.

232 Shaw testimony at 483:17-25 (testifying that, in December 2008, he had $1.45 million invested in SIB CDs, which was about "45 percent, 40 percent" of his net worth, and that he "felt very good about [that allocation]").

233 *See* D-742.

otherwise.[234] None of the witnesses who testified who observed Green conduct training with financial advisors or interact with customers suggested Green used the Training and Marketing Manual in any form. Over the Division's objection, Special Agent Walther from the FBI clarified who was responsible for the Training and Marketing Manual. She testified that Oreste Tonarelli told her during his FBI interviews that he was the author of it.[235] She also confirmed that Green was not involved in either its drafting or any of its revisions.[236] Tonarelli and compliance were responsible for revisions to and the use of the manual.[237]

[86] Further, Green understood that, as was the case with the Offering Documents and his own training presentations, the Training and Marketing Manual had been vetted and approved by the compliance departments of both SIB and SGC, the legal departments of both, and outside counsel. All, he understood, had found it to be accurate, and had determined that it complied with all applicable laws and regulations.[238] Dr. Ross confirmed that Green could reasonably rely on the analysis and conclusions of these various sources.[239] It was not Green's responsibility to second-guess these sources or to examine and revise a document they had already reviewed and

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234 Green testimony at 3761:21-3763:8.

235 Walther testimony at 2177:1-11.

236 Walther testimony at 2175:2-2178:3.

237 Walther testimony at 2177:7-2178:21; Green testimony at 3760:21-3763:10.

238 Green testimony at 3951:24-25 ("I knew it [the training and marketing manual] was reviewed by compliance, reviewed by legal."); *see also* Walther testimony at 2178:4-11. Moreover, given Green was not enamored with Tonarelli's CD presentations, he had no desire to review the Training and Marketing Manual in preparing his own materials. (*See* Green testimony at 3763:10-21.) Likewise, he had no duty to review the manual from a legal or compliance viewpoint. Moreover, he reasonably trusted SGC and SIB legal and compliance had done their job of ascertaining the adequacy and lawfulness of the manual. (Green testimony at 3843:16-24; Ross testimony at 4207:4-24; *see also* Finkelstein testimony at 362:13-25; 349:16-350:11; 362:13-25; 396:15-20 (testifying that he understood the compliance and legal departments at SGC would "vet" the presentations, including representations about the portfolio).

239 Ross testimony at 4207:4-24.

approved. The Division's attempts to tie Green to the Training and Marketing Manual therefore fail.[240]

E. Green Was Neither Involved in Nor Consulted About Any of the Relevant Regulatory Matters.

[87] Prior to the collapse of SIB in early 2009, the only regulatory examination or investigation Green was involved in or was consulted about occurred in 2005. Green was not involved in or consulted about any of the examinations and investigations that the Division contends raised "red flags" for some in 2006, 2007, and 2008.[241] No documents, no witnesses suggest otherwise.

[88] As noted above, Green met and consulted twice with SIB's respected regulatory counsel in the summer and fall of 2005.[242] The topic was the investigation the SEC was conducting at that time. During those meetings, Sjoblom advised Green that the business of SIB and SGC, as well as the SIB CD program, complied with all applicable laws, and that every facet of Green's involvement with the SIB CD program and his work at SGC was compliant with applicable rules and regulations.[243] Following their meetings, Green understood that Sjoblom had convinced the

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[240] The same holds true with regard to the Stanford International Bank brochure. (*E.g.*, D-607.) Green did not use the brochure in presenting the SIB CD to potential investors. (Green testimony at 3954:3-12.) Moreover, none of the witnesses suggested that he ever used the brochure to present the SIB CDs to potential investors. Occasionally, he later found out, his sales assistant would use the pocket in the back of the brochure to hold the offering documents. (Green testimony 3954:312.)

Moreover, Green found out from Young after the fact that SGC was "dinged" by the NASD in connection with a "minor infraction" regarding the brochure and that the firm was taking the corrective action the NASD had requested. (Green testimony at 3848:12-3849:15.)

[241] Green testimony at 3848:12-3849:5. Moreover, Green never was made aware of the contents of the November 29, 2006 subpoena. Likewise, he was never made aware of the January 3, 2008 FINRA letter or the August 29, 2008 FINRA letter. (Green testimony at 3836:14-3836:19.)

[242] *See* Brief at 17-18.

[243] Green testimony at 3837:1-21; *id.* at 3823:9-3838:8; *id.* at 3839:10-15; *id.* at 3839:16-3840:12; *id.* at 3841:5-3842:13; *id.* at 3842:23-3844:3.

SEC of his conclusions, just as Sjoblom had convinced him. Green had no reason to believe otherwise until early 2009.[244]

[89] Green and Sjoblom did not communicate again until January 2009. At that time, Green was interviewed by FINRA examiners as part of what SGC personnel were told was a routine examination.[245] Green and Sjoblom spoke before and after Green's interview with FINRA, which Sjoblom listened in on via telephone.[246] In their conversations before and after the interview, the subjects Green and Sjoblom had discussed in 2005 came up again. Both times, Sjoblom reaffirmed with Green the advice he had given then and further advised that nothing had changed in his assessment. Sjoblom attributed the renewed regulatory scrutiny to a "post-Madoff reaction," as he called it, that made the regulators "extra vigilant."[247]

[90] Less than a month later, Green was devastated to learn that SIB was not the company he thought it to be, that his confidence in SIB's management had been seriously misplaced, and that Allen Stanford, Jim Davis, and Laura Pendergest-Holt had been looting the company and deceiving him and many others for many years.[248]

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[244] While Green did learn from Young sometime in 2006, after the fact, that SGC had entered into a settlement with FINRA in connection with the SIB brochure, Young advised him that the only sanction imposed on the firm was a $10,000 fine. Green testimony at 3848:12-3849:8. Based on his conversations with Young, Green understood that SGC's mistake pertaining to the brochure was a "minor infraction," and that the firm was taking appropriate corrective action going forward. Green testimony at 3849:9-15.

[245] Green testimony at 3898:1-16, 4066:12-4067:19, 4069:13-4070:17; Bogar testimony at 2801:23-2802:13, 2808:21-2809:3.

[246] Green testimony at 3898:1-16, 4066:12-4067:19, 4069:13-4070:17.

[247] Green testimony at 4066:12-4067:19, 4069:13-4070:17.

[248] Walther testimony at 2182:1-6 ("In my experience when I first looked at this case, I was surprised that a Ponzi scheme would last that long. Normally, they have a run of a couple of years; and then they die.").

III. LEGAL ARGUMENT

[91] The OIP alleges that Green violated various securities laws by purportedly making or allowing others to make misrepresentations about the following:

- The "safety" of the SIB CDs;[249]
- The insurance that applied to the SIB CDs;[250]
- The liquidity of the SIB portfolio's underlying holdings;[251]
- The lack of transparency of the SIB portfolio's underlying holdings;[252] and
- The referral fees and other compensation paid to SGC and its advisors on the sale of the SIB CDs.[253]

[92] The Division has the burden of proving these allegations by a preponderance of the evidence. *E.g., Steadman v. SEC*, 450 U.S. 91, 97-104 (1981). To meet its burden, the Division must establish that Green actually made the alleged misrepresentations or allowed them to be made, that the misrepresentations were material, and that Green made them or allowed them to be made either with scienter or negligently.[254] The evidence at trial shows the Division failed to meet its burden.

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[249] OIP at ¶¶ 29(a) & (c).

[250] OIP at ¶¶ 17, 18(b); 29(b).

[251] OIP at ¶ 14(a), 16.

[252] OIP at ¶ 18(a).

[253] OIP at ¶¶ 21-22.

[254] *See SEC v. Hopper*, No. CIV.A. H-04--1054, 2006 WL 778640, at *9 (S.D. Tex. Mar. 24, 2006) ("[T]o state a claim under section 10(b) and Rule 10b-5, the SEC must allege that Defendants: (1) used a fraudulent device, made a material misrepresentation or omission, or committed an act that operated as a fraud or deceit; (2) in connection with the purchase or sale of securities; and (3) acting with scienter." (citing *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999)); *SEC v. Seghers*, 298 F. App'x. 319, 327 (5th Cir. 2008) ("To show a violation of § 17(a)(1), the Commission must prove (1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with scienter. To show that a defendant has violated § 17(a)(2) or § 17(a)(3), the Commission need only show that the defendant acted with negligence." (citing *Aaron v. SEC*, 446 U.S. 680, 697, 702 (1980))); *see also, e.g., In the Matter of Warren Lammert, Lars Soderberg, and Lance Newcomb*, AP Release No.348, 2008 WL 1867960, at *16 (April 28, 2008) (Foelak, ALJ) (materiality an element of each claim).

A. Green Did Not Misrepresent the "Safety" of the SIB CDs as Alleged in the OIP.

[93] The OIP's allegation that Green made or allowed others to make unlawful representations about the "safety" of the SIB CDs has no merit. The evidence shows that Green never represented SIB CDs to be a safe investment, that the representations he made were reasonable, and that, even if his representations were ambiguous, which they were not, any error he allegedly made was immaterial.

1. *Green Did Not Represent to Investors or Financial Advisors That SIB CDs Were Safe.*

[94] Green denied that he ever represented the SIB CDs to be safe or led anyone to believe they were safe.[255] Green's testimony was corroborated by every SGC financial advisor who testified who overheard him interacting with customers or watched his training presentations. Those advisors uniformly testified that Green never downplayed the risks of investing.[256] Green's testimony was also corroborated by the one unbiased investor who testified, Thevenot.[257] Thevenot's testimony was clear and unequivocal: "As a matter of fact, I think the first page [of the disclosure statement] talked about substantial risks; and Jason wanted to make sure that I understood that."[258] Even Green's customers who were called by the Division and quoted in the OIP conceded that they understood from Green that buying a SIB CD was only slightly less risky than buying an S&P 500 mutual fund or a balanced mutual fund.

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255 *See* Brief at 32-34.

256 *See* Brief at 42-43.

257 *See* Brief 26, 43.

258 Thevenot testimony at 2699:11-13.

2. *The Record Does Not Support a Finding of Scienter or Negligence.*

[95] The OIP's "safety" allegation lacks merit for the additional reason that the Division failed to establish by a preponderance of the evidence that Green acted with scienter or that he was negligent.[259] Green reasonably believed he adequately disclosed to investors and to advisors the risks of investing in SIB CDs. He read the Offering Documents, which disclosed the "substantial risk" of investing and contained the warning that investors could "lose their entire investment."[260] He followed firm policy and gave the Offering Documents to all potential investors.[261] He reasonably concluded that legal and compliance had drafted the documents, edited them, and believed them to be accurate, and that legal and compliance would otherwise have prohibited their use.[262] There is no good reason to infer that Green told potential investors the SIB CDs were safe after giving them documents that plainly contradicted him on this very point. Nor is it plausible to conclude Green told advisors the SIB CDs were safe since Green had every reason to believe that advisors would read the very same documents and would uncover his error with ease. Just as important, Green's risk disclosures to customers and advisors were based on and tracked the risk disclosures in the Offering Documents. To the extent the Offering Documents did not sufficiently disclose those risks, Green was nonetheless reasonable in believing that management, legal, and compliance, at SIB and at SGC, together with outside counsel, had ensured the adequacy of the disclosures and that what he told customers was accurate.[263]

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[259] "Scienter is required to establish violations of Securities Act Section 17(a)(1) and Exchange Act Section 10(b)[.]" *In the Matter of Warren Lammert, Lars Soderberg, and Lance Newcomb*, AP Release No. 348, 2008 WL 1867960, at *15 (April 28, 2008) (Foelak, ALJ) (citing SEC v. Steadman, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992)). "Scienter, in relation to securities fraud, is 'the intent to deceive, manipulate, or defraud.'" *SEC v. Kornman*, 391 F. Supp. 2d 477, 493 (N.D. Tex. 2005) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193-94 (1976); citing *Trust Co. of La. v. N.N.P. Inc.*, 104 F.3d 1478, 1490 (5th Cir. 1997); *Mercury Air Group, Inc. v. Mansour*, 237 F.3d 542, 546 (5th Cir. 2001)). Additionally, "scienter may be satisfied by proof that the defendant acted with severe recklessness." *See id.* (citing *Shushany v. Allwaste, Inc.*, 992 F.2d 517, 521 (5th Cir. 1993). Recklessness is "'limited to those highly unreasonable omissions or misrepresentations that involve

[96] Additionally, to the extent the SIB CD Offering Documents, the brochure or the Training and Marketing Manual contained material misstatements or omissions, the misstatements or omissions may not be attributed to Green. The evidence establishes that Green was not responsible for drafting, revising or reviewing any of the specified documents.[264] Those tasks were the responsibility of the SGC, SFG, and SIB legal and compliance departments, of their outside counsel, and, in the case of the Training and Marketing Manual, of its author, Tonarelli.[265] Thus, as in *In the Matter of Warren Lammert*,[266] where this Court found that "Janus's legal department had responsibility for drafting the prospectus language" and, on that basis, concluded "the Division [was] unable to establish that any of the respondents 'personally made the untrue statements or omissions," Green did not make and was not responsible for making any of the alleged misrepresentations or omissions contained in the SIB CD Offering Documents, the Brochure, or the Training and Marketing Manual. Green, therefore, is not liable for any material misrepresentation or omission in those documents.

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not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it.'" *Nathenson v. Zonagen Inc.*, 267 F.3d 400, 408 (5th Cir. 2001) (citing *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 961-62 (5th Cir. 1981)). "The methods to demonstrate extreme departure from the standards of ordinary care may include 'a conscious purpose to avoid learning the truthfulness of a statement,' or an 'egregious refusal to see the obvious, or to investigate the doubtful.'" *McNamara v. Bre-X Minerals Ltd.*, 197 F. Supp. 2d 622, 674 (E.D. Tex. 2001) (citing *McNamara v. Bre-X Minerals Ltd.*, 57 F. Supp. 2d 396, 404 (E.D. Tex. 1999)).

"Scienter is not required to establish a violation of Sections 17(a)(2) or 17(a)(3) of the Securities Act[.]" *In the Matter of Warren Lammert*, 2008 WL 1867960, at *16. "Negligence, defined as the failure to exercise reasonable care, is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act." *In the Matter of Trautman Wasserman & Co., Inc.*, et al., AP Release 340, 2008 WL 149120, at *12 (Jan. 14, 2008) (collecting authorities).

260 *See* Brief at D-644 at 6 (STAN P_0078932).

261 *See* Brief at 32.

262 *See* Brief at 7, 18-23.

263 *See* Brief at 7, 18-23.

264 *See* Brief at 18-23.

265 *See* Brief at 18-23, 48-49.

266 2008 WL 1867960, at *18.

3. *The Written Risk Disclosures in the Offering Documents Render Any Alleged Ambiguities or Inaccuracies in Green's Verbal Disclosures Immaterial.*

[97] Materiality is an essential element of the charges the Division has filed against Green.[267] The Division has not shown and cannot show, however, that the misrepresentations it alleges Green made regarding the risks of the SIB CDs were material.

[98] The Supreme Court has repeatedly held that misrepresentations and omissions are material only if there is a "substantial likelihood" that correction of the misrepresented fact or disclosure of the omitted fact "would have been viewed by a reasonable investor as having significantly altered the total mix of information made available." *Basic v. Levinson*, 485 U.S. 224, 331 (1988); *see also TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). "It is not sufficient to [show] that the investor *might* have considered the misrepresentation or omission important." *Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 162 (2d Cir. 2000) (emphasis added).

[99] Following the mandate in *Basic*, courts across the country have consistently rejected as not actionable allegations of verbal (mis)representations that, as here, contradict the representations in written offering materials. *E.g., Carr v. Cigna Secs., Inc.*, 95 F.3d 544, 547 (7th Cir. 1996) (Posner, J.) ("If a literate, competent adult is given a document that in readable and comprehensible prose says X (X might be, 'this is a risky investment'), and the person who hands it to him tells him, orally, not-X ('this is a safe investment'), our literate, competent adult cannot maintain an action for fraud [.]"); *Myers v. Finkle*, 950 F.2d 165, 167 (4th Cir. 1991) ("Investors are charged with constructive knowledge of the risks and warnings contained in the private placement memoranda [of their investments].").

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[267] *See* n. 259 (listing case law showing materiality is an element of a claim under Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act).

[100] Indeed, "'even lies are not actionable' when an investor possesses information sufficient to call the misrepresentation into question." *Phillips v. LC Int'l*, 190 F.3d 609, 617 (4th. Cir. 1999) (quoting *Teamsters Local 282 Pension Trust Fund v. Angelos*, 762 F.2d 522, 529 (7th Cir. 1985) (Easterbrook, J.)); *see also Acme Propane, Inc. v. Tenexco, Inc.*, 844 F.2d 1317, 1322 (7th Cir. 1988) (oral misrepresentations are not material to investment decisions when investors have received written documents that conflict with the spoken statements); *Porter v. Shearson Lehman Bros. Inc.,* 802 F. Supp. 41, 54-56 (S.D. Tex. 1992) (broker's alleged statement that partnership was insured against capital losses was immaterial where prospectus described the types of losses covered by the partnership's insurance policy on its drilling operations and where the description did not include capital losses).[268]

[101] The policy considerations for such a rule are compelling. Judge Easterbrook articulated them clearly thirty years ago:

> [A]n investor cannot close his eyes to a known risk. If the investor already possesses information sufficient to call the representation into question, he cannot claim later that he relied on or was deceived by the lie. This is not because he has a duty to investigate lies or prevent intentional torts, though; it is, rather, because the securities laws create liability only when their is a "substantial likelihood" that the misrepresentation "significantly altered the 'total mix' of information" that the investor possesses. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). If the investor knows enough so that the lie or omission still leaves him cognizant of the risk, then there is no liability. *The investor cannot ask a court to focus on the lie and ignore the remaining pieces of information already available to him. . . .*

Angelos, 762 F.2d at 530 (other citations omitted) (emphasis added).

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[268] *Cf. Davidson v. Wilson*, 973 F.2d 1391, 1401 (8th Cir. 1992) (holding limited partnership investor's reliance on alleged oral misrepresentations that contradicted the written offering materials was "unjustified as a matter of law"); *Treacy v. Simmons*, No. 89 CIV. 7052 (JFK), 1991 WL 67474, at *7 (S.D.N.Y. Apr. 23, 1991) (holding where limited partnership prospectus disclosed risky nature of investment, it was "glaring[ly] unjustifiable" for investor to rely on the verbal misrepresentations by his broker that contradicted the written offering materials); *Brown v. E.F. Hutton Group, Inc.*, 735 F. Supp. 1196, 1202 (S.D.N.Y. 1990) (holding "the alleged oral misrepresentations by [the broker]" that "flew in the face of numerous cautionary statements in the written offering materials" could not form a basis for "reasonabl[e]" reliance").

[102] Here, the Disclosure Statement informs every investor that the purchase of a SIB CD involves "substantial risk" and that she could "lose [her] entire investment."[269] Under *Basic*, the Division's charge of wrongdoing based on Green's alleged verbal misstatements about the safety of the SIB CDs to investors such as Bishop, Dore, Moran, Smith, and Stegall – all of whom received the Offering Documents – should be dismissed.[270] Even if Green had made those misstatements, which he did not, the misstatements would be immaterial and, hence, not actionable.

B. Green Did Not Misrepresent the Insurance Features of the SIB CDs as Alleged in the OIP.

1. Green Did Not Represent to Investors or Advisors that the SIB CDs Were Protected by Insurance.

[103] Green denied ever having misrepresented the insurance features of the SIB CDs.[271] His testimony was corroborated by every SGC financial advisor who testified who overheard him interacting with customers or who watched his training presentations.[272] It was also corroborated

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269 *See* Brief at D-644 at 6 (STAN P_0078932).

270 It is also noteworthy that the disclosure statement advises potential investors that the disclosure statement is the only authoritative source containing all the information for the SIB CD offering:

> WE HAVE NOT AUTHORIZED ANY DEALER, SALES REPRESENTATIVES OR ANY OTHER PERSONS TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS IN CONNECTION WITH THIS OFFERING OTHER THAN TOSE CONTAINED IN THIS DISCLOSURE STATEMENT. IF GIVEN OR MADE, SUCH INFORMATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY SIBL.

(D-644 at 17 (STAN P_0078945); *see also id.* at 7 (STAN P_0078932) ("The only information that will have any legal effect will be that expressly represented in this Disclosure Statement and the accompanying Subscription Agreement and Investor Questionnaire (the 'Offering Documents').") Against this background, any representations contradicting the disclosure statement fail for this additional reason. *E.g., One-O-One Enterprises, Inc. v. Caruso*, 848 F.2d 1283, 1286 (D.C. Cir. 1988) (Bader Ginsburg, J.) (holding (verbal representations conflicting with written agreement containing integration clause were "immaterial").

271 *See* Brief at 26, 32, 42-45.

272 *See* Brief at 42-45.

by the one unbiased investor witness to testify, Thevenot.[273] Just as he did on the subject of safety, Thevenot testified clearly and unequivocally on the subject of insurance: "there was no insurance."[274]

2. ***The Record Does Not Support a Finding of Scienter or Negligence.***

[104] The Division failed to establish by a preponderance of the evidence that Green acted with scienter or that he was negligent. Green reasonably believed he adequately disclosed to investors and SGC financial advisors that there was no depository insurance for the SIB CDs.[275] He followed firm policy and gave the Offering Documents to potential investors. The documents disclosed the lack of depository insurance and warned investors they could "lose their entire investment."[276] Green reasonably concluded that legal and compliance believed these disclosures to be adequate and that legal and compliance otherwise would not have permitted the documents to be used. There is no good reason to infer Green told his customers their deposits were insured after giving them documents that clearly contradicted him on this very point.

[105] Additionally, to the extent the SIB CD Offering Documents, the brochure, or the Training and Marketing Manual contained material misstatements or omissions, the misstatement or omissions may not be attributed to Green. *In the Matter of Warren Lammert*, 2008 WL 1867960, at *18. The evidence establishes that Green was not responsible for drafting, revising, or reviewing any of these documents.[277] Green, therefore, is not liable for any material misrepresentations or omissions in them.

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[273] *See* Brief 43 n.203.

[274] Thevenot testimony at 2699:21-24

[275] *See* Brief at 42-45.

[276] *See* Brief at 32.

[277] *See* Brief at 18-23, 48-49.

3. The Written Insurance Disclosures in the Offering Documents Render Any Ambiguities or Inaccuracies in Green's Verbal Disclosures Immaterial.

[106] Just like the verbal misrepresentations regarding safety that Green allegedly made to investors, the verbal misrepresentations he allegedly made regarding insurance are contradicted by unequivocal disclosures in the Offering Documents Green gave all potential investors.[278] Specifically, the Disclosure Statement tells potential investors in the first sentence that the purchase of a SIB CD involves "substantial risk's and, elsewhere, that they may "lose their entire investment."[279] It tells potential investors in capital letters on the first page that SIB CDs are not protected by FDIC or SIPC insurance. And it lists the types of insurance SIB has obtained and does not include depositor protection on the list.[280] In fact, the paragraph containing the list ends by saying: "This insurance does not insure customer deposits and is not the equivalent of the FDIC insurance offered on deposits at many institutions in the United States."[281] Under these circumstances, even if Green's representations about insurance conflicted with the representation in the Disclosure Statement, which they did not, his would be immaterial. *Porter,* 802 F. Supp. at 54-56 (broker's alleged statement that partnership was insured against capital losses was immaterial where the prospectus described the types of insurance available and the description did not include coverage for capital losses).[282]

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[278] *See* Brief at 7, 18-23.

[279] D-644 at 2, 6 (STAN P_0078927, 32).

[280] D-644 at 10 (STAN P_0078940).

[281] D-644 at 10 (STAN P_0078940).

[282] *See also* Brief at 56-58.

C. Green Did Not Misrepresent the Referral Fees and Other Compensation Regarding the SIB CDs as Alleged in the OIP.

1. Green Did Not Misrepresent the Referral Fees and Other Compensation to SIB CD Investors.

[107] Green denied ever having misrepresented the referral fees and other compensation paid in connection with the SIB CDs.[283] His testimony was corroborated by every SGC financial advisors who testified who overheard him interacting with customers or watched in his training presentations. It was corroborated, as well, by Thevenot.[284] No witness contradicted Green's testimony.

2. The Record Does Not Support a Finding of Scienter or Negligence.

[108] The Division failed to establish by a preponderance of the evidence that Green acted with scienter or that he was negligent. Green reasonably believed the Offering Documents adequately disclosed to investors the annual referral fee and other compensation for the SIB CDs. He followed firm policy by giving the Offering Documents to potential investors.[285] There is no good reason to infer that Green would have misrepresented to potential investors the SIB CDs' fees knowing the Offering Documents he had given them and the referral fee disclosure letter they would soon receive clearly contradicted him.[286]

[109] Additionally, to the extent the Offering Documents and other materials did not sufficiently disclose the referral fees and other compensation, Green was nonetheless reasonable in believing that management, legal, and compliance, at SIB and at SGC, together with outside counsel, had ensured the adequacy of the disclosures and that what he told customers was accurate. The advice he received from Sjoblom in 2005 bolsters this conclusion. Sjoblom

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283 *See* Brief 25-26.

284 *See* Brief 26, 29, 33-34.

285 *See* Brief at 32.

286 *See* Brief at 54.

specifically advised him that the SIB CD accredited investor program, including its compensation features, the sales contest, and the Offering Documents, complied with all applicable rules and regulations.[287] Consistent with Sjoblom's advice, the Division has not cited any existing rule or regulation that would have barred referral fees or sales contests under the circumstances here. This provides yet another reason to reject the Division's charges. *See In the Matter of IFG Network Secs., Inc., et al.*, AP Release No. 273, 2005 WL 328278, at *25-26 (Feb. 10, 2005) (Foelak, ALJ) (dismissing charges pertaining to mutual fund sales practices for lack of an applicable SEC rule or regulation).

[110] Further, to the extent the SIB CD Offering Documents, the brochure, the Training and Marketing Manual, or the SIB annual reports contained material misstatements or omissions, the misstatements or omissions may not be attributed to Green. The evidence establishes that Green was not responsible for drafting, revising, or reviewing any of these documents.[288] Green, thus, is not liable for any misrepresentations or omissions in those documents. *In the Matter of Warren Lammert*, 2008 WL 1867960, at *18.

3. The Written Disclosures Regarding Fees and Compensation in the Offering Documents Render Any Ambiguities or Inaccuracies in Green's Verbal Disclosures Immaterial.

[111] The verbal misrepresentations regarding the SIB CDs' referral fees and other compensation that Green allegedly made, just like those he allegedly made regarding safety and insurance, are contradicted by the disclosures in the Offering Documents. Green provided potential investors with the Offering Documents. Investors then received a follow-up letter from SIB, and later received SIB's Annual Reports. These documents disclosed the following:[289]

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[287] *See* Brief at 18-20, 50.

[288] *See* Brief at 18-23, 48-49.

[289] *See* Brief at 25-26.

- The annual 3% referral fee was disclosed in all three -- in the Disclosure Statement, in the subsequent referral fee letter sent to investors, and in SIB's annual reports. Those documents make clear that SGC's referral fee is based on a percentage of its customers' deposits at SIB.[290]

- The Disclosure Statement notifies potential investors of the sales contests. It states that SIB pays a referral fee and "additional incentive bonuses" to persons who aid in the sale of SIB CDs. Potential investors are encouraged to submit a written request to receive more information on those incentive bonuses, if interested.[291]

[112] Thus, while the record shows there were no misrepresentations regarding the referral fees and other compensation in connection with the SIB CDs, any alleged verbal misrepresentations, even if they had been made, would have been immaterial given the contradictory disclosures in the Offering Documents.[292]

D. Green Did Not "Fail" to Require SGC to Disclose That It Was Unable to Confirm SIB's Representations About SIB's Portfolio as Alleged in the OIP.

[113] The Division alleges that Green "failed to require SGC to disclose that SGC was unable to confirm SIB's representations about the investment portfolio underlying the SIB CD, including portfolio performance and liquidity."[293] The Division is mistaken for multiple reasons.

[114] *First*, Green was not involved in drafting or revising the Offering Documents for the SIB CDs.[294] Nor was he obligated to be. Those tasks were the responsibility of the SGC, SFG, and

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[290] *See* Brief at G-247 at JG-013.

[291] *See* Brief at 25-26.

[292] *See also* Brief at 56-58.

The hearing record also establishes that the alleged omissions were not material to the average investor for other reasons. In responding to questions about the referral fee and other incentive compensation the OIP asserts should have been disclosed in more detail, one of the Division's own witnesses testified that these were "not important" to him. He also testified "that as long as I got my payment, I was not concerned about what fees were paying anybody; so, this was not important to me. . . ." (Stegall testimony at 1418:3-14. G-247 at JG013.) Likewise, when questioned about the referral fee letter's disclosure that "SGC may receive additional incentive bonuses for financial advisors who aid in the sale of SIBL's CD," he testified: "It wouldn't have mattered to me as long as they made my payments that we agreed, my percentage of what I was going to get." (Stegall testimony at 1418:18-1419:2. G-247 at JG-013.) Thus, the disclosure of referral and incentive fees, regardless of the level of detail, was not material. *See Basic*, 485 U.S. at 231.

[293] OIP at ¶ 18(a).

SIB legal and compliance departments, together with their outside counsel.[295] Green deferred to legal and compliance to determine whether the Offering Documents should "disclose that SGC was unable to confirm SIB's representations about the investment portfolio underlying the SIB CD."[296] But his deference was not merely passive; he also actively inquired. He spoke to management and to legal.[297] His discussions with Sjoblom are illustrative. Sjoblom specifically advised him that the Offering Documents complied with all applicable rules and regulations,[298] and assured him, as did in-house counsel, that SIB had a legitimate legal basis for keeping its portfolio confidential.[299] As Dr. Ross testified, Green's reliance on legal and compliance was reasonable.[300] Thus, under the circumstances, the Division failed to establish that Green violated the law, let alone that he acted with scienter or acted negligently.

[115] *Second*, Green did more than just rely on legal and compliance, and did not take management's public pronouncements about performance and liquidity at face value. He did research on the bank himself and followed up as new information became available.[301] His research and personal observations confirmed that SIB management was competent and honest, that it had outstanding analysts and money managers working for it, that it was vigilant in overseeing the portfolio, and that it used a number of strategies and techniques to mitigate or reduce the risks of investing.[302] The disclosures in SIB's Annual Reports about the portfolios

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294 *See* Brief at 18-23, 48-49.

295 *See* Brief at 18-23, 48-49.

296 OIP at ¶ 18(a).

297 Brief at 6-8, 18-23.

298 Brief at 18-20, 50-51.

299 Brief at 18-23.

300 Brief at 23.

301 *See* Brief at 6-10.

302 *See* Brief at 6-10.

asset allocation and sector weightings conveyed legitimacy, as did the many prominent money managers and analysts the company reportedly used and the many awards they regularly received.[303]

[116] SIB's system of checks and balances bolstered Green's conclusions. Based on all he read and heard, Green reasonably understood that reliable, independent third parties regularly investigated SIB's operations and verified its portfolio and its performance. Specifically, he understood that the bank's primary regulator, the FSRC, was a competent organization run by honest officials that conducted rigorous quarterly and annual reviews that included verification of SIB's holdings.[304] He likewise understood SIB's FSRC-approved auditor, C.A.S. Hewlett, verified SIB's financials every year.[305] He understood, as well, that BDO Seidman, the auditor for SGC and SFG, was confident about the reliability of C.A.S. Hewlett's audited financials because BDO Seidman itself had to rely on them.[306]

[117] Green was so confident in SIB's management and in its system of checks and balances that he recommended several members of his family invest large sums in SIB CDs. Others shared Green's confidence. Batarseh, for example, a former KPMG CPA, thought the checks and balances were adequate.[307] So did Shaw and Fontenot, who invested substantial amounts of their own money in SIB.[308] All of them understood, moreover, that the lack of transparency for SIB's underlying portfolio was far from unique in the industry. As the Division's own expert conceded, managers of hedge funds rarely, if ever, disclose the underlying holdings in their

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303 Brief at 6-10.

304 Brief at 8-10.

305 Brief at 8-9.

306 Brief at 8-9.

307 Brief at 5, Batarseh testimony at 2343:7-2347:14.

308 Shaw testimony at 455:1-458:17; Fontenot testimony at 2755:23-2757:4

portfolios to investors.[309] This lack of transparency has not prevented the hedge fund industry from growing into a $2 trillion industry.[310] Just as the Division cannot plausibly argue that lack of transparency makes it unreasonable for financial advisors to recommend hedge fund investments to customers or for customers to accept such recommendations, the Division cannot plausibly argue that Green acted unreasonably by not requiring SIB or SGC to provide greater transparency.

[118] *Fourth*, notwithstanding the Division's allegations and its expert's testimony to the contrary, the relative secrecy surrounding SIB's investment model did not constitute a red flag that should have triggered a duty to investigate further. Courts have consistently, rejected the notion that portfolio secrecy constitutes a red flag, most recently in connection with the Madoff Ponzi scheme. *See, e.g.*, *SEC v. Cohmad Secs. Corp.*, No. 09 Civ. 5680(LLS), 2010 WL 363844, at *4 (S.D.N.Y. Feb. 2, 2010) (rejecting argument that "Madoff's secrecy warned defendants of fraud" as "'fraud by hindsight'" and finding Madoff's secrecy was a successful marketing strategy to create an "air of prestige and exclusivity" but not a red flag for fraud).

[119] Similarly, despite the lack of full transparency, neither the performance of the SIB CDs nor the lack of a prominent auditor was a red flag indicating fraud. *See, e.g., id.* at 5 ("In light of Madoff's established reputation as a successful and respected investment adviser, the high returns he produced were not generally perceived (even by professionals) as a badge of fraud."); *Saltz v. First Frontier, LP*, 782 F. Supp. 2d 61, 72 (S.D.N.Y. 2010), *aff'd*, 485 F. App'x 461 (2d Cir. 2012) ("For twenty years, Madoff operated this fraud without being discovered and with only a handful of investors withdrawing their funds as a result of their suspicions. An inference of scienter based on publicly available red flags is simply not as cogent and compelling as the

[309] *See* Henderson testimony at 1901:10-1904:22.

[310] *See* Henderson testimony at 1901:10-1904:22.

opposing inference of nonfraudulent intent."); *Stephenson v. Citco Grp. Ltd.*, 700 F. Supp. 2d 599, 623–24 (S.D.N.Y. 2010) (finding no red flags even though independent auditor, Friehling and Horowitz, was small, not well known, and not properly certified"); *Anwar v. Fairfield Greenwich Ltd.*, No. 09 Civ. 0118(VM), 2010 WL 3341636, at *65 (S.D.N.Y. Aug. 18, 2010) (rejecting following red flags, if known to auditor, as indicative of intent to deceive: "Madoff did not provide electronic confirmations to the Funds that he managed, and instead gave them delayed, paper confirmation of supposed trades [;] ... Madoff purport[ed] to turn consistent investment returns during good times and bad times in the market[;] . . . All of the Funds' assets were managed by Madoff, who acted as investment advisor, broker-dealer, and custodian of those assets—a highly unusual arrangement with no checks and balances"); *In re Tremont Secs. Law, State Law and Ins. Litig.*, 703 F. Supp. 2d 362, 371 (S.D.N.Y. 2010) (rejecting red flags where "plaintiffs do not assert that the [defendants] knew that Madoff's returns could not be replicated by others").

E. Contrary to Allegations in the OIP, Green Acted Reasonably in Discussing the Liquidity of SIB's Portfolio with Investors.

[120] Green conducted himself reasonably in touting the liquidity of SIB's portfolio. Green understood that SIB's portfolio was primarily invested in a highly liquid and globally diversified portfolio of securities. Green's view was based on the Offering Documents, on SIB's annual financials, and on the Company's system of "checks and balances," as well as numerous conversations he had with Davis, Pendergast-Holt, Rodgriguez-Tolentino, and others.[311] Green had no reason to second-guess or doubt the numerous representations he heard and read about the liquidity of the SIB portfolio. Like his colleagues, as well as many reputable financial

[311] *See* Brief at 6-10, 18-23, 48-49.

institutions and law firms, Green reasonably believed those representations to be true.[312] The Division therefore errs in alleging that Green violated the law in his discussions with investors and advisors about liquidity.

F. The Record Does Not Support a Finding of Either "Aiding and Abetting" Or "Causing" Liability.

[121] The OIP also charges Green with "willfully aid[ing] and abet[ing] and caus[ing] SGC's violations of Section 15(c)(1) of the Exchange Act" and "Sections 206(1) and (2) of the Advisers Act."[313] These charges, like the others, have no merit.

[122] "Aiding and abetting" liability under the federal securities laws requires "(1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; also conceptualized as scienter in aiding and abetting antifraud violations; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation." *In the Matter of Warren Lammert, Lars Soderberg, and Lance Newcomb*, AP Release No. 348, 2008 WL 1867960, at *16 (Feb. 10, 2005) (collecting cases). "Causing" liability under the federal securities laws requires "(1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the respondent knew, or should have known, that his conduct would contribute to the violation." *Id.* at 17 (collecting cases).

[123] Both sets of charges fail because the Division has not proven by a preponderance of the evidence a primary violation by SGC of Section 15(c) of the Exchange Act or Section 206 of the

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[312] *See* Brief at 6-21.

[313] OIP at ¶¶ 32-33.

Advisers Act.[313] Likewise, given Green's reasonable conduct, the Division failed to prove the remaining two elements of aiding and abetting and causing liability.[314]

CONCLUSION

[124] For the reasons given above, the Court should find that the Division failed to prove the OIP's allegations against Green by a preponderance of the evidence.

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[313] *See* Brief at 51-68.

[314] *See* Brief at 51-68.