UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **DANIEL BOGAR,** **BERNERD E. YOUNG, and** **JASON T. GREEN** **Respondents.**	**Administrative Proceeding** **File No. 3-15003** **Judge Carol Fox Foelak**

POST HEARING BRIEF OF DANIEL BOGAR

THE TAYLOR LAW OFFICES, P.C.

Thomas L. Taylor III
Texas State Bar: 19733700
taylor@tltaylorlaw.com
Andrew M. Goforth
Texas State Bar: 24076405
goforth@tltaylorlaw.com

4550 Post Oak Place Drive, Suite 241
Houston, Texas 77027
Tel: 713.626.5300
Fax: 713.402.6154

COUNSEL FOR DANIEL BOGAR

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

I. PRELIMINARY STATEMENT

This proceeding arises from a massive Ponzi scheme perpetrated through the offer and sale of certificates of deposit ("CDs") of Stanford International Bank Ltd. ("SIBL" or the "Bank"). The fraudulent scheme -- one of the largest and most noted in recent financial history -- was perpetrated by Allan Stanford and a close group of confederates, all of whom have been indicted and convicted in criminal proceedings brought by the United States of America. None of the foregoing is in dispute and these basic facts were conceded by Respondent Bogar and the other Respondents at the outset.

The perpetration of a massive fraud by Allan Stanford and his close confederates is not an issue in the present proceeding; it is taken as given. The question before this Court and which has been the subject of extensive hearings before this Court is whether Daniel Bogar, acting as the principal executive officer of Stanford Group Company ("SGC") -- a registered broker dealer -- violated the anti-fraud provisions of the federal securities laws as set forth in the Order Instituting Proceedings ("OIP"). At the opening of these proceedings, counsel for Mr. Bogar asked this Court (1) to "focus with pinpoint accuracy on the charges against each individual and judge each individual only on the charges made against that individual and the evidence presented" and (2) to assess the conduct of each Respondent "not in hindsight, not with all the knowledge that we have about what is now a legend and focus on [each Respondent's] state of mind at the time of [the] conduct" in question, the circumstances that surrounded their involvement, and what they specifically did in response to those circumstances." (Transcript of Proceeding pp 35.) ("Tr. __.") After three weeks of testimony and receipt of documentary evidence it is clear that the charges leveled against Mr. Bogar in the OIP are not supported by the evidence. In fact, had this matter arisen from the activities of a broker-deal bearing a generic, less-notable name, it is almost inconceivable that the Commission would have charged its chief

executive officer with violations of the anti-fraud provisions under similar facts and circumstances. The size, scope and infamy of the SIBL Ponzi scheme is no substitute for proof of violative conduct by each individual Respondent.[1]

No evidence was presented at hearing that Mr. Bogar engaged in intentional misconduct -- not a shred. Certain of the statutory violations charged against Mr. Bogar can be sustained upon proof of conduct which is less than intentional. The evidentiary record as it stands, however, is equally barren of evidence which will support the statutory violations charged against Mr. Bogar even upon a less stringent requirement for proof of scienter. In fact, the evidence presented at hearing is overwhelming that Mr. Bogar acted reasonably with respect to all of the matters which are the subject of the OIP and discharged his responsibilities as the chief executive officer of SGC in compliance with the requirements of the federal securities laws and consistent with industry standards.

This Court may and should assess the conduct of Mr. Bogar in light of his state of mind and under all of the facts and circumstanced surrounding the conduct which is alleged to be violative of the federal securities laws. Consideration of evidence in this regard, is not formulaic and countless decisions in the federal courts and before the Commission's Administrative Law

[1] In some aspects the scope and duration of the SIBL Ponzi scheme rendered it less readily detectable by those outside of Allen Stanford's inner circle. While most Ponzi schemes have a limited lifespan and collapse, at most, within a couple of years, the SIBL scheme persisted for more than a decade with no evidence of loss on the part of investors, no filed arbitrations and no intervention by regulators. While most Ponzi schemes emerge outside of mainstream financial institutions, the SIBL Ponzi scheme was distributed through a financial institution that was pervasively regulated by the Securities and Exchange Commission (the "Commission"), by the NASD (later FINRA) and by the regulators of various states. SGC, through which the CD's were sold in the United States, was a mainstream broker-dealer subject to the scrutiny of regulators and due diligence procedures of Pershing LLC ("Pershing"), one of the largest and most sophisticated financial services institutions in the United States.

Judges confirm this basic principle. The evidence presented at hearing clearly has established the following:

- Upon commencement of his services as the principal executive officer of SGC, Mr. Bogar became aware that for a number of years SGC had participated in the offer and sale of SIBL CDs to the public (upon virtually identical offering documents) without incident -- without customer losses or arbitrations and without regulatory intervention; (Tr. 2606-7.)
- SGC for a number of years had been advised by preeminent, national law firms with respect to a broad range of matters including, in particular, the offer and sale of the SIBL CDs and the offering documents upon which the product was sold; (Tr. 2608-9.)
- Senior management of the Stanford group of companies included legal and compliance personnel of unquestionable credentials based in some cases upon prior experience with major national law firms. These senior legal and compliance personnel were assisted by ample infrastructure in both areas; (Tr. 2608-9.)
- SGC was -- and for years had been -- heavily reliant upon revenues associated with the sale of SIBL CDs. It also housed a large and diverse traditional brokerage business which cleared through Bear Stearns, a major Wall Street financial institution; (Tr. 2625, 2605-6.)
- It was known generally -- and specifically known by legal and compliance personnel, and by multiple regulatory bodies -- (1) that the portfolio underlying the CD program was not transparent; (2) that SIBL was an off-shore entity subject

to the regulation of a jurisdiction other than the United States (specifically Antigua) (Tr. 2627.); (3) that the product was not the equivalent of a traditional United States certificate of deposit; and (4) that the SIBL CDs had consistently, and without exception, generated a yield greater than traditional United States certificates of deposit; (Tr. 2627, Tr. 2626.)

- The Stanford group of companies and Allen Stanford had a high profile in the political and financial worlds and were assisted by a Board of Advisors -- populated by preeminent individuals from business, government and finance -- which regularly received presentations and information with respect to the business of the Stanford entities including the sale of SIBL CDs. (See discussion infra pp. 13-14.)

The foregoing facts and circumstances -- clearly supported by all evidence presented at the hearing -- bear upon Mr. Bogar's state of mind and provide the context in which his conduct should be assessed. All of the following facts and circumstances regarding the specific conduct of Mr. Bogar in connection with the matters in issue also are clearly established:

- Upon assuming responsibility as the principal executive officer of SGC, he embarked upon a business plan to broaden the broker-dealer's business base and the decrease its reliance on the SIBL CDs and other intercompany revenue sources as a percentage of revenue primarily for the purpose of improving the business valuation of the firm; (Tr. 2596-2600.)
- In support of his business plan, he actively recruited mainstream registered representatives from traditional wire houses (i.e. Merrill Lynch, UBS and others)

which had the collateral effect of improving the firm's product mix and decreasing its reliance on the CDs as a revenue source; (Tr. 2569, Tr. 2588-9.) (Ex. B 131.)

- He initiated appropriate oversight of the compliance and legal functions within the broker-dealer and established an appropriate level of communication with those officials including, most notably, their interaction with regulators and oversight of sales practice and disclosure matters; (See discussion infra pp. 13-14.)
- He recruited and employed Respondent Young -- a former NASD District Director -- to enhance the compliance capabilities of SGC and upon employing Mr. Young, initiated communications with regulators bearing responsibility for SGC; (See discussion infra pp. 16.)
- Consistent with the business plan to build a more diverse and mainstream presence as a broker dealer, he initiated a clearing relationship with Pershing which necessarily implicated greater scrutiny of the business and compliance profile of the firm; (See discussion infra pp. 17-22.)
- He confirmed that regulatory inquiries were being addressed and that inquiries by the Commission were being responded to by preeminent, national enforcement counsel who opined in writing that the firm's business was lawful and compliant; (Tr. 2796-8.)
- He acted diligently and in good faith to attempt to cause SIBL to provide greater transparency in response to information requests from Pershing, SGC's clearing broker; (Tr. 2662, Tr. 857, Tr. 877. Tr. 879) (Ex. B 124, B 197, B 355.)

- He took all appropriate steps to ensure himself that responsible subordinate officials were attending to the training of registered professionals engaged in the sale of securities, including the CD product, and also assured himself that responsible subordinates were delegated with due diligence responsibilities; (Tr. 2615-8, Tr. 2793.)
- Immediately upon learning of the fraudulent nature of the SIBL CD program, he terminated all sales of the CDs by SGC and initiated the process engaging a third party for an internal investigation and sought replacement counsel for the purpose of self-reporting to the Commission. (Ex. B 357, B 388, B 296.)

The Division of Enforcement has not and cannot controvert evidence establishing the foregoing conduct by Mr. Bogar. In the alternative, the Division asks this Court to find violations of the federal securities laws contending that -- notwithstanding all of the foregoing facts and circumstances -- Mr. Bogar should have known of the underlying SIBL Ponzi scheme because of various purported "red-flags." The Division's contentions in this regard are supported only by the argumentative and speculative constructs of an expert witness and have no basis in evidence or logic.

- The Division contends that major fraud was signaled because SIBL was domiciled in Antigua and regulated by Antiguan law. But SIBL's off-shore provenance had been known by everyone concerned (including regulators) for years, if not decades. Among other facts bearing upon this purported "red-flag," it is noteworthy that Mr. Bogar accompanied officials of Pershing to Antigua in connection with Pershing's due diligence efforts. The Chief Compliance Officer ("CCO") of Pershing commented favorably upon their impression of SIBL's

Antiguan-based personnel. (Ex. B 394.) Pershing personnel also commented favorably upon the Antiguan government's conduct vis-à-vis international regulatory norms. (Ex. B 395.) The Division would support this "red-flag" contention with random adverse commentary regarding Antigua retrieved -- after-the-fact -- from the internet; but the Division has not connected any of these fragments of information to Mr. Bogar or articulated any basis upon which he should have been aware of them.

- The Division contends that the SIBL fraud should have been detected because Pershing, as SGC's clearing broker, sought greater transparency of the SIBL portfolio. This contention ignores the fact that Pershing knew that the portfolio was not transparent from the outset but still, after extensive due-diligence, became SGC's clearing broker. (Tr. 2627-8, Tr. 898-9, Tr. 806.) It also ignores the fact that Pershing -- notwithstanding the obvious reputational and financial risks implicated by its clearing relationship -- repeatedly declared its intention to continue its relationship with SGC until virtually the last day of its existence. (Ex. B 279, B 356, DOE 206.) If anything, Pershing's conduct and attitude toward SGC provided comfort and assurance, not the contrary.
- The Division contends that the SIBL fraud should have been detected because of two or three random customer/customer representative letters, none of which resulted in litigation or regulatory referral. The Division presented no evidence -- and could not have presented evidence -- that these isolated pieces of correspondence were transmitted to Mr. Bogar or that he ever had any knowledge of them whatsoever.

- The Division contends that Mr. Bogar should have detected the SIBL fraud because of regulatory inquiries related, *inter alia*, to the CD portfolio. This ignores the fact that the SIBL CDs had been offered for many years with substantially the same documentation under the scrutiny of various regulators including the Commission, with no enforcement action ever having been initiated. It also ignores the fact that these enforcement inquiries were being responded to by nationally-known enforcement counsel who purportedly had engaged in extensive due diligence on the SIBL CD program and had determined it be compliant with applicable laws and regulation. (Tr. 2610-2, Ex. B 341.) More globally, this contention ignores also the fact that all broker-dealers of any size and scope respond to regulatory inquiries on a daily basis as a matter of routine.
- The Division apparently contends that Mr. Bogar should have detected the SIBL fraud because a law firm engaged by the compliance department (without Mr. Bogar's knowledge) to conduct due diligence on an unrelated product, requested information on the SIBL CD portfolio. Apart from the speculative and insubstantial nature of this contention, there is no evidence whatsoever in the record that this law firm ever communicated with Mr. Bogar or that Mr. Bogar had any knowledge of the engagement. In fact, the principal of the outside law firm, John Kearney, testified to the contrary. (Tr. 1267.)
- Although Mr. Bogar's involvement in the management of private equity investments on behalf of Stanford entities is not specifically characterized as a "red-flag," the Division apparently contends that because of this activity in respect of private equity investments, he should have known that the portfolio underlying

> the SIB CDs was not as described to investors. These contentions are unavailing. First, such investments are not proscribed by the CD offering documents. But more importantly, there is no competent evidence that these private equity investments were actually part of the portfolio underlying the CD program. In fact, the testimony of those involved with the private equity investments is uniformly that there was no understanding that these interests were part of the "CD portfolio"; nor is there any document in evidence to that effect. (Tr. 701, Tr. 2449.)

The Division has failed to meet its burden of proof in regard to the elements necessary to establish that Mr. Bogar committed primary or secondary violations of the anti-fraud provisions of the federal securities laws. The Division's allegations that Mr. Bogar is liable for primary violations of §17(a) of the Securities Act, §10(b) of the Exchange Act and Rule 10b-5 thereunder fail because the evidence does not establish that Mr. Bogar engaged in fraudulent conduct as prescribed in the federal securities laws.

The charges that Mr. Bogar is liable for (1) primary violations of §17(a)(1) of the Securities Act, §10(b) of the Exchange Act and Rule 10b-5 thereunder; (2) causing violations of §§10(b) and 15(c)(1) of the Exchange Act and Rule 10b-5 thereunder and §206(1) of the Advisers Act; and (3) aiding and abetting any securities law violations also fail because the evidence does not establish that Mr. Bogar acted with scienter -- either by knowingly participating in the SIBL Ponzi scheme or through conduct which rose to the level of extreme recklessness.

The charges that Mr. Bogar is liable for primary violations of §17(a)(2) and (3) of the Securities Act and that he caused violations of §206(2) of the Advisers Act fail because the evidence does not establish that Mr. Bogar acted negligently in carrying out his duties as the principal executive officer of SGC. The charges that Mr. Bogar aided and abetted or caused any violation of the securities laws also fail because the evidence does not establish that Mr. Bogar (1) knowingly and substantially assisted the conduct that constitutes the violation; or (2) committed an act or omission which was a cause of a violation and which Mr. Bogar knew, or should have known, would contribute to a violation.

Because the Division has not established the elements necessary to support a finding that Mr. Bogar committed primary or secondary violations of the anti-fraud provisions of the federal securities laws, all charges against Mr. Bogar in the OIP must be dismissed with prejudice.

II. STATEMENT OF FACTS

A. Background

Danny Bogar began his business career in a small family wireless distribution business and proceeded to grow that business into a large, public company generating hundreds of millions of dollars in revenue. Ultimately, he became the president of CellStar Corporation ("CellStar") for the Americas. (Tr. 2556-7.) After determining that a management buyout of CellStar was not feasible, he began to consider other options and after many years in the wireless communications industry, sought a career change. Although he had a distant familial connection (through Mrs. Bogar) to Jim Davis, he had virtually no contact with him prior to a chance encounter at the funeral of Mrs. Bogar's grandmother. (Tr. 2558-9.)

After some discussion of the Stanford companies providing financing for a proposed venture, the discussion turned to the possibility of Mr. Bogar's joining the Stanford companies.

After months of discussion, in August 2000 Mr. Bogar joined Stanford Financial Group ("SFG") in its offices in Miami where he was charged generally with developing and overseeing a merchant banking/private equity portfolio for SFG. (Tr. 2564-6.) In connection with these responsibilities, he directed his time and attention to acquainting himself with these investments and joined the boards of several of the entities efforts. He recruited Osvaldo Pi to assist in these activities, Mr. Pi having served as Chief Financial Officer at CellStar. (Tr. 2567-8.) At this juncture, Mr. Bogar had no knowledge of SIBL and there was no indication that SIBL held any ownership interest in the merchant banking portfolio. (Tr. 2566.)

Over time, Mr. Bogar's activities related to SGC expanded as he participated, in conjunction with investment bankers Rocky Stein and Bill Fusselman, in expansion of SGC's business into the capital markets arena. This expansion became a part of an overall business plan calculated to grow SGC into a mainstream, national broker dealer. (Tr. 2569.)

Mr. Bogar reported directly to Jim Davis but also became acquainted with Yolanda Suarez, a member of senior management of the Stanford entities along with Allen Stanford and Mr. Davis. (Tr. 2571.) Mr. Bogar learned that Ms. Suarez was a former attorney of the Greenberg Traurig firm, where she had been a protégé of Carlos Loumiet who served as the Stanford entities' primary outside counsel with respect to all matters related to financial services. Over the ensuing nine years Mr. Bogar had contact with Ms. Suarez and Mr. Loumiet, who continued to be the firm's "go-to" attorney with respect to these substantive areas. Mr. Loumiet's representation of the Stanford entities continued after he moved his practice from Greenberg Traurig to Hunton & Williams and through Stanford's demise in 2009. (Tr. 2028-9, Ex. G 90.)

In or about 2004, Mr. Bogar expanded his involvement in the affairs of SGC as he assisted with the integration of a group of registered representatives recruited from UBS into the firm. This group had brought with them to SGC a retail brokerage book of business which became the prototype for the mainstream, fee-based business which Mr. Bogar sought to recruit into SGC. (Tr. 2588-90.)

B. Appointment as Principal Executive Officer of SGC

Arising from Mr. Bogar's increased involvement with SGC's specific businesses (in particular his involvement in expansion of the traditional brokerage business) in or about 2005 senior management, through Jim Davis, requested that he become the principal executive officer of SGC. Having accepted that responsibility, he embarked upon a business plan that would lead to substantial growth and diversification. The substance of this plan was to continue the growth of the institutional capital markets business while expanding the retail business by building offices through the southeastern United States and recruiting mainstream brokers, primarily from wire houses like UBS and Merrill Lynch. As a specific component of the business plan, it was Mr. Bogar's objective to diversify the product mix of the firm thereby reducing SGC's reliance on SIBL CD sales and other intercompany transactions as a source of revenue (Tr. 2598-2600.) This strategy was motivated by the understanding that the business valuation of the firm would be impaired if it had an undue reliance on an affiliate. (Tr. 2599.) Consistent with that objective it became an objective to reduce the SIBL CD revenue as a percentage of SGC's overall revenue. Mr. Bogar's efforts in this regard succeeded and, notwithstanding that the SIBL CD business increased in the absolute sense, the CD revenue was reduced as a percentage of the total revenues of the firm. (Tr. 2065-6.) (Tr. 2602-3, Ex. B 131 pp 9.)

Consistent with the business plan to diversify the product base and decrease reliance on the sale of the SIBL CDs, Mr. Bogar also initiated a review of compensation for the firm's

registered representatives. Working in conjunction with CCO Bernie Young and Jason Green (who headed sales for the private client group) a compensation system was devised to place greater emphasis on assets under management as opposed to sales of the CD product. Pursuant to this initiative, Joan Stack, SGC's head of global human resources, engaged a consulting firm to study the existing compensation system. Proposed changes in the compensation system were rolled out at a meeting at or about January 2008. (Tr. 2784-6, Ex. B 399, B 400.)[2]

C. Initial Knowledge and Understanding of the Business of SGC

From the inception of his stewardship of SGC, Mr. Bogar was aware that the SIBL CDs sales were central to the firm's business. In this regard, it was his understanding that the SIBL CD product had been offered and sold the public for at least 20 years, and that SGC had been selling the product in the United States since at least 1997. (Tr. 2606-7.) He learned that there had never been customer losses, customer complaints or other problems associated with the sale of the product; nor had there ever been customer litigation or arbitration or regulatory intervention of any kind related to the sale of the SIBL CDs. Mr. Bogar also learned that the structure of the CD's Regulation D offering and the associated disclosure documents had been developed under the guidance of Carlos Loumiet as a partner of Greenberg Traurig and subsequently Hunton & Williams. (Tr. 2607.) He learned that Lena Stenson, a compliance professional with many years of experience, also had been intimately involved in the structure and sale of the CDs, along with Yolonda Suarez, a securities lawyer -- and Loumiet protégé -- with a background at Greenberg Traurig. (Tr. 2608.) Moreover, at or about the time Mr. Bogar

[2] Consistent with the initiatives to change the compensation system, Mr. Bogar also moved to deemphasize participation by SGC representatives in the "Top Producers Club" which was conducted by SIBL for representatives selling the CDs world-wide. The last TPC meeting was held in the summer of 2008. SGC, under Mr. Bogar's leadership initiated a "Top Performer's Club" which was based upon assets under management rather than the sales of any particular product. The first meeting of the "Top Performer's Club" was held in January 2009. (Tr. 2791-2.)

became principal executive officer of SGC, Mauricio Alvarado, a corporate attorney with a background at Vinson & Elkins -- a preeminent Texas-based law firm -- had been recruited to function as the general counsel of the Stanford companies, including SGC. [3] (Tr. 2608-9.) After Mr. Alvarado became involved in the affairs of SGC, he supervised "everything legal and everything regulatory" working alongside Yolanda Suarez and outside counsel in this regard. (Tr. 2609.)

From the inception of his service as principal executive officer of SGC, Mr. Bogar was aware that the Stanford entities -- and Allen Stanford personally -- were surrounded by prominent individuals from of the financial and political worlds. In particular, Mr. Bogar became familiar with the Stanford International Advisory Board which, although not functioning as a governing body, was comprised of a group of individuals who were regularly briefed, in detail, on the business of the Stanford companies. These individuals had implicitly associated their public reputations with Stanford. The membership of this advisory board included Representative Mike Oxley (of Sarbanes-Oxley renown), a former President of Switzerland, Adolf Ogi (who was also involved in the international Olympic committee), Ambassador Peter Romero, and Lee Brown, a former Mayor of the city of Houston. (Tr. 2762-8, Ex. DOE 316.)

D. Oversight of the Compliance Function at SGC

Mr. Bogar recognized, at the outset, his responsibility to oversee the compliance function of the broker-dealer subject to appropriate delegation of those responsibilities. Jane Bates, an experienced industry professional, was already in place when Mr. Bogar assumed his responsibilities and was functioning as SGC's Chief Compliance Officer. Mr. Bogar initiated a series of meetings with Ms. Bates, who advised him of the licensing requirements associated

[3] Mr. Alvarado was employed by Stanford Financial Group which, as an administrative entity provided his services as general counsel to SGC.

with his status as principal of the firm. He proceeded to fulfill those requirements. At Mr. Bogar's request, Ms. Bates briefed him -- orally and in writing -- on the status of the firm's compliance efforts and pending matters. He also acquainted himself with other personnel involved in SGC's compliance function including Rep Poppel and Lena Stenson, who was head of global compliance for all of the Stanford entities. The briefings by Ms. Bates were memorialized, in part, in a memorandum summarizing the status of relevant compliance matters. (Tr. 2610-2, Ex. B 341.) Among other matters referenced in the memorandum, there is reference to the outcome of the firm's most recent NASD audit:

> "2004 accomplishments"... "Successful closure to most recent NASD audit - no substantive findings."

The memorandum also references NASD's approval to "expand the firm including adding FAs and offices." (Tr. 2610-12, Ex. B 341.) Thus, Mr. Bogar embarked upon his service as principal executive officer of SGC with the state of mind that the firm had been scrutinized by NASD which gave it a clean bill of health. *Id.* He also proceeded with the knowledge that the CD sales program which was central, at that point, to SGCs business had proceeded, problem free, for many years under the guidance of preeminent legal counsel and experienced compliance professionals. [4]

[4] The Respondents in the above-entitled action jointly propounded the testimony of Patricia Ross, PhD. Ms. Ross detailed her credentials before the Court including her service as Chief Compliance Officer of Wells Fargo Securities, Inc. in which capacity she had exercised compliance oversight of over 2000 registered representatives with a direct report to the Chief Executive Officer of the firm. Ms. Ross testified that Mr. Bogar, as chief executive officer of SGC had performed the functions of that office in all material respects consistent with industry standards and practices. In this regard, Ms. Ross focused with particularity upon (1) his role in providing strategic direction to the firm (Tr. 4109-10); (2) generally overseeing and interacting with two Chief Compliance Officers (Tr. 4111-4.); (3) general oversight and understanding -- pursuant to delegation -- of the manner in which legal and compliance personnel were interacting with regulators (Tr. 4126-8.)(Tr. 4115-6.); (4) interacting with the legal department with respect to disclosure issues (Tr. 4119-25.); (5) his role with respect to product due diligence (Tr. 4129-31.); and (6) his role with respect to training. (Tr. 4132-3.)

E. Oversight With Respect to Training

As part his overall supervision of SGC, Mr. Bogar informed himself with respect to training with respect to sales practices, compliance, new products and operations. (Tr. 2792-3.) As chief executive officer of the broker dealer, Mr. Bogar did not conduct training personally or directly and did not prepare, revise or approve specific training materials. (Tr. 2793-4.)

Mr. Bogar assured himself that the appropriate training was taking place through written and verbal communications and through reports received from individuals tasked with training. (Tr. 2793.) Mr. Bogar learned that Jane Bates, CCO, was conducting training with respect to CD sales, in conjunction with Eddie Rollins who had become head of "private client." (Tr. 2793.) Subsequently, when Mr. Young joined as CCO and Jason Green became head of the private client group, they assumed direct responsibility for these training efforts related to sales practices and the product. (Tr. 2793.) Mr. Bogar did not specifically review or approve specific training materials. It was his clear understanding, however, that the SIBL CD was not covered by deposit insurance. (Tr. 2794-5.) Consistent with that understanding, he understood that the product was never presented -- to the knowledge of SGC management -- as a deposit-insured product. He also was aware generally the offering documents explicitly stated that the product was not FDIC insured. It was Mr. Bogar's clear understanding that any individual presenting a contrary review of the product regarding FDIC insurance would be terminated by Compliance. (Tr. 2795-6.)

F. Disclosure documents related to the SIBL CD sales program

The disclosure documents used in connection with the sale of SIBL CD's -- to Mr. Bogar's understanding -- had been in use in substantially the same form for a number of years during which there were no customer losses, complaints, customer litigation or regulatory intervention. As the chief executive officer of the broker dealer, he had no role in drafting, revising those documents or in passing, in detail, upon their legal sufficiency. (Tr. 2617.) He

assured himself that they had been prepared with the involvement of preeminent outside counsel and that they had been disseminated under the guidance of well-qualified and experienced in-house legal and compliance personnel. His general oversight regarding the use of these documents is exemplified in a memorandum demonstrating that legal personnel were overseeing and updating the disclosure documents. (Tr. 2615-8, Ex. B 347.)

Mr. Bogar continued to monitor legal and compliance professionals in performance of their functions at SGC throughout the time of his service as the principal executive officer. In 2006, he took affirmative steps to enhance SGC's compliance capabilities. (Tr. 2620-1.) The need to enhance compliance arose because of the improvement and diversification of its product mix and the recruitment of new registered representatives from mainstream broker-dealers. (Tr. 2621.) In this regard, Mr. Bogar recruited -- and with the concurrence of senior management including Mauricio Alvarado and Lena Stenson -- hired Bernie Young to replace Jane Bates as Chief Compliance Officer. (Tr. 2621-2.) Mr. Young's credentials and competence to fulfill that role were beyond question in that he had served for many years at the NASD including a term of service as a District Director. (Tr. 2623.) (Ex. B 348.) Mr. Bogar's confidence in Mr. Young was bolstered by his previous contact with him as a consultant to the firm with respect to compliance with FINRA advertising rules. (Tr. 2622.)

At the inception of Mr. Young's employment, Mr. Bogar and Mr. Young initiated a series of meetings to establish relationships with regulators in various FINRA offices. From the inception of Mr. Young's employment through the termination of SGC's business in February 2009, Mr. Young served as Chief Compliance Officer and Due Diligence Officer as delegated by Mr. Bogar subject to his overall supervision. (Tr. 2624.) Consistent with industry standards, Mr.

Bogar, as chief executive officer of the broker dealer delegated compliance and due diligence responsibilities to Mr. Young, subject to his overall supervision. (Tr. 2806-7, Ex. B 350.)

G. Establishment of a Clearing Relationship with Pershing LLC

When Mr. Bogar became the principal executive officer of SGC it cleared its brokerage transactions through Bear Stearns. A part of the business plan to expand and enhance SGC as a mainstream, national broker-deal, Mr. Bogar, in conjunction with Eddie Rollins who had been hired to head SGC's private client business, initiated a plan to replace Bear Stearns with Pershing LLC -- probably the largest and most sophisticated institution in the field. (Tr. 2625.) (Tr. 802.)

Implicit in this change was enhanced scrutiny and great transparency. This initiative was resisted by Allan Stanford, Jim Davis, Yolanda Suarez and Mauricio Alvarado as well as Jay Comeaux and Al Trullenque. (Tr. 2626-7.) The resistance of this group to the change was based upon their belief that Pershing, as a more conservative clearing institution, would have concerns or develop concerns regarding the CD product and the lack of transparency of its underlying portfolio (Tr. 2626.) Mr. Bogar and Eddie Rollins prevailed in this policy dispute and Mr. Bogar took the lead in negotiations with Pershing to establish the clearing relationship.

The lack of transparency of the CD portfolio was known and understood by all concerned from the outset. It was fully aired with Pershing from the beginning and certainly never emerged as a surprise to anyone. (Tr. 2627-8, Tr. 898-9, Tr. 806.) The negotiation and execution of a clearing agreement between Pershing and SGC was treated by both sides as a matter of major consequence. (Tr. 2628.) Mr. Bogar dealt primarily with John Ward, who had become the Pershing Relationship Manager for SGC. But the establishment of the clearing relationship was elevated to top management not only of Pershing, but of its parent. Thus, in connection with the initial discussions, Mr. Bogar met with the Chief Executive Officer of the Bank of New York of which Pershing was a subsidiary. Rich Brueckner the Chief Executive Officer of Pershing LLC

also participated in the discussions. (Tr. 2628.) In these initial discussions, the CD portfolio -- and its lack of transparency -- were presented in high relief. As Mr. Bogar recounted at hearing, he advised Pershing senior management that "we have a major propriety product; it's off-shore; and ... there's no transparency." (Tr. 2627.) Thus, a general understanding of the SIBL CD product, its lack of transparency and the reasons for the lack of transparency were a focus of discussions from the very beginning. (Tr. 2627-8.)

Pershing commenced due diligence procedures with respect to SGC, its affiliates including, very specifically, SIBL and its product line. (Tr. 804-5.) Pershing's due diligence team consisted of some of its most senior legal and compliance officials, including Tres Arnet of the Legal Department and Claire Santeniello, Pershing's Chief Compliance Officer. (Tr. 2631.) Not only did the due diligence team visit all of SGC's offices; the team also visited offices of the Stanford affiliates and specifically met with officials of SIBL onsite in Antigua. (Tr. 2630.) The due diligence memoranda reflect careful analysis of various aspects of the business of SGC and its affiliates and include comments regarding the notably high yield generated by the CD, the fact that the issuer of the CDs was domiciled in and regulated by Antigua and the apparent competence of regulatory personnel not only at SGC but SIBL. Informed by these extensive due diligence procedures, in December 2005 Pershing entered into a five year clearing agreement with SGC. (Tr. 804-6, Ex. B 394, B 395, B 396.)

In 2006 Richard Closs became the new head of risk management at Pershing. (Tr. 875-6.) Mr. Ward implied to Mr. Bogar that these requests for information were directly attributable to Mr. Closs rather than to Pershing institutionally or to Mr. Ward himself. (Tr. 2643.) In response, a telephone call was arranged between Mr. Closs and Laura Pendergest-Holt, joined by Eddie Rollins. The call did not produce results satisfactory to Mr. Closs. Nonetheless, Mr. Bogar

heard nothing further about the matter until in or about June 2007. At that time, Mr. Bogar and his wife along with Yolanda Suarez attended a Pershing-sponsored dinner in Florida. Conversation at this event centered not only on requests but rather upon an expansion of the Pershing/SGC relationship into Latin America. (Tr. 2637-9, Ex. DOE 230 pp 1.)

The positive tone of the Pershing/SGC relationship was highlighted in an email from Mr. Ward to Mr. Bogar in which he commented "Pershing is proud to be in partnership with the Stanford group of companies as you build a first class financial services enterprise." *Id.* In the same communication, Pershing indicated it wanted to gain a greater understanding of the portfolio investment policy and construct of the portfolio. This request for additional information was predicated not upon questions regarding the authenticity or legality of the product, but rather upon "SGC's reliance upon the referral fees generated from SIBL, and the ability of SIBL to continue generating returns to pay these referral fees." *Id.* Mr. Bogar shared Richard Closs's concerns regarding the balance sheet impact of reliance upon income from an affiliate. (Tr. 2639-40.) And Mr. Bogar observed that "when Pershing or anyone else looks at SGC/SGH a third of our revenues come from an affiliate, SIBL. The relevance of this is that even though we have a decent balance sheet we get no credit for it." (Tr. 2641-4, Ex. DOE 260.) Thus, Mr. Bogar received the Richard Closs-driven inquiries to be related to balance sheet and predictability of income issues rather than to any implication regarding the integrity of SIBL or its product.

As of June 2007 and thereafter, Mr. Bogar's state of mind was that he would be able to accommodate Pershing's requests for information with SIBL's management (particularly Jim Davis) concerns regarding disclosure of the portfolio. And Mr. Bogar commenced efforts to accommodate those competing concerns. In subsequent meetings involving Pershing and SGC

personnel, Pershing representatives continued to articulate the concern as related to the "dependence of the broker dealer on the Bank." (Tr. 2648-50.) (Ex. DOE 240, pp 1-2.) Questions related to the Bank's portfolio continued to be only one the many matters discussed at meetings between representatives from both parties. (Tr. 2667-8, Ex. B 364, Tr. 2715, Tr. 2721, Tr. 882.)

Mr. Bogar instigated a visit by Pershing representatives to Antigua to meet with SIBL and Antiguan regulatory officials; Mr. Bogar accompanied Tres Arnet, John Ward and Richard Closs to Antigua for the purpose of these meetings and it was confirmed to Mr. Bogar that although Mr. Closs had not been satisfied in his request for additional information, the meetings had satisfied Tres Arnet, Pershing's general counsel. (Tr. 2663-6.) (Ex. B 363.)

In pursuit of his objective of accommodating the parties' concerns, Mr. Bogar enlisted SGC's Chief Financial Officer, Chuck Weiser to assist in the transmission of information to Pershing. Mr. Weiser was instrumental in seeking the involvement of a third party accounting firm for this purpose. (Tr. 2672-3.) In ensuing months, he devised a mechanism by which to accommodate the concerns of Pershing and concerns of Mr. Davis regarding the secrecy of the portfolio. (Tr. 2727-30, Ex. DOE 323 pp 1.) (Tr. 2713-5, Ex. DOE 274. pp 1.) Mr. Bogar was not told at any time by Mr. Davis that the Bank would not comply. (Tr. 2661-3.) Indeed, throughout the relevant time frame, it was Mr. Bogar's state of mind that accommodation could be reached.[5] (Tr. 2725.)

Throughout the fall of 2008, Mr. Weiser continued to work to achieve implementation of procedures by which Grant Thornton would review information and transmit it to Pershing.

[5] At some time late in 2008, SGC explored the possibility of a new clearing relationship with Fidelity, and in connection with these discussions Mr. Bogar arranged a visit to SIBL in Antigua. Fidelity's' representatives'' reaction to SIBL in Antigua was "generally positive." (Tr. 2719, Ex. DOE 319.)

Although, Mr. Bogar and Mr. Weiser never obtained Mr. Davis's final consent to these procedures, he never indicated that he would refuse implementation of the procedures. It continued to be Mr. Bogar's belief that an accommodation could be reached. At no time did Pershing personnel indicate to Mr. Bogar in any respect that they would consider terminating the clearing relationship with SGC because the review procedures were not implemented. (Tr. 2772.)

Pershing's (specifically Richard Closs's) request for greater transparency regarding the SIBL portfolio was never accommodated. But there was never any suggestion by Pershing -- articulated to Mr. Bogar or to anyone else at SGC -- that their concerns in this regard had been elevated to the point at which the clearing relationship itself was in jeopardy. (Tr. 884, Tr. 2672, Tr. 2772, Tr. 2780.) Indeed, all evidence is to the contrary. Until virtually the end of SGC's existence, Pershing representatives affirmed to SGC representatives their intention to move forward with the clearing relationship and to accommodate various business concerns which had arisen between the parties. (Ex. B 279, B 356, DOE 206.)

Toward the end of December 2008, Pershing made a determination to cease transmitting wire transfers from Pershing-housed accounts to SIBL. This determination by Pershing did not implicate any other change in the relationship. Pershing's determination in this regard was communicated to the sales force at SGC. (Tr. 2772-4.) In fact, having made the determination not to transmit funds from Pershing accounts to SIBL, Pershing remitted to SGC a $5 million clearing deposit which previously had been required. (Tr. 2775-6, Ex. B 389.)

In January 2009, Mr. Bogar and others met with Pershing representatives including Richard Brueckner, Pershing's Chief Executive Officer, at which meeting Pershing confirmed its commitment to the clearing relationship with SGC pursuant to which Pershing continued to house -- and account to clients for -- billions of dollars of traditional brokerage assets which were

owned by SGC's retail clients. (Tr. 2777-8.) (Ex. B 355.) The upshot of this meeting was confirmed in writing in February 2009 at which time Mr. Zelezen of Pershing wrote, "as validated in your meeting with our CEO last week, Pershing remains committed to our partnership with Stanford." (Tr. 2781-3, Ex. B 279 pp 1.) (Ex. B 356.)

H. Management Of Private Equity Investments on Behalf of Stanford Financial Group

Mr. Bogar's initial focus when he joined the Stanford entities was the management of certain private equity/merchant banking investments of Stanford Financial Group. He served on the boards of some of these entities and recruited Osvaldo Pi (formally Chief Financial Office of Cell Star) to work in this area. After becoming chief executive officer of SGC, Mr. Bogar continued, generally, to monitor these investments but his involvement on a day-to-day basis necessarily decreased as he assumed broader and greater responsibilities for the broker dealer. (Tr. 0703.) (Tr. 2583.)

Chuck Weiser was recruited to SGC by Mr. Bogar; he subsequently became its Chief Financial Officer. He also exercised responsibility with respect to the portfolio of merchant banking investments. As he testified, and as is supported in documented evidence, over time some percentage interest in these investments was transferred to SIBL; in addition, a new entity Stanford Venture Capital Holdings was also formed to hold percentage interests that previously had been held by SFG. (Tr. 2575.) (Tr. 2582.) (Tr. 2584.) Both Mr. Bogar and Mr. Weiser testified that these transfers were tax driven. (Tr. 2582.) (Tr. 2447.) There is no evidence in the record that Laura Pendergest-Holt, or her group of SIBL portfolio managers in Memphis, or European money managers which she oversaw, were involved in any way in the management of the merchant banking portfolio which was hendled by SFG/SVCH personnel in Miami. Concomitantly, the Miami based personnel who oversaw the merchant banking portfolio, never

understood these merchant banking investments to be involved in any way with the SIBL CD program. Indeed, Osvaldo Pi testified to the following:

> "Q: Did you ever gain -- during you work at Stanford Group Companies, did you ever gain a general understanding of who managed the CD-based portfolio -- in other words, the portfolio represented which underlay the CDs?
>
> A: No, because it was totally unrelated to my job." (Tr. 701.)

Similarly, Charles Weiser testified that in connection with his merchant banking responsibilities that he had no contact whatsoever with the Memphis group (Tr. 2449.)

There is no evidence in the record that the private equity/merchant banking investment managed in Miami were part of a portfolio underlying the SIBL CD offerings. Karyl Van Tassel, an accounting expert witness whose testimony was propounded by the Division, announced -- through pure metaphysics and speculation -- that the private equity investments were part of a "CD portfolio." As she conceded on cross examination, she had never seen a single original document supporting that characterization which was of her own invention. There certainly is no competent testimony placing the private equity investments in a "CD portfolio."[6] (Tr. 136-4.)

Certainly it was never Mr. Bogar's understating that these merchant banking investment had anything to do with the SIBL CD program. (Tr. 2566.) (Tr. 2585-6.)

I. Awareness of Regulatory Inquiries

As discussed *supra* at pp 13-14 -- upon becoming chief executive officer of SGC, Mr. Bogar was briefed by the firm's CCO regarding the status of regulatory and self-regulatory matters. (Ex. B 341, B 342, B 346, B 347.) He received information, *inter alia*, regarding the satisfactory completion of the firm's immediately preceding NASD audit. Moreover, he

[6] The testimony of percipient witnesses is consistent with the SIBL interest in the private equity investments being carried as balance sheet equity by the Bank. (Tr. 0703-4) (Tr. 2450.)

received a report indicating that an SEC inquiry regarding the CD program had been referred to FINRA for further review implicating, facially, a reduced level of scrutiny, if anything. (Tr. 4159-60, Ex. 351.)

In or about November 2006, Mr. Bogar became aware that an SEC subpoena had been served upon SGC related to the sale of SIBL CDs and sales practices associated with it. Mauricio Alvarado, acting as SGC's general counsel, made it clear that he was supervising the response to the subpoena. Mr. Alvarado also made clear that he was engaging and supervising Chadbourn Parke as outside enforcement counsel and, in particular, that Thomas Sjoblom a former senior SEC enforcement official and partner at Chadbourn Parke would be spearheading the firm's response. Mr. Bogar was advised that there was nothing he should do with regard to the response. (Tr. 2796.) Mr. Bogar was never asked to testify with regard to that inquiry nor was he interviewed with respect to it. (Tr. 2798.) Mr. Sjoblom's written response to the inquiry was subsequently distributed to Mr. Bogar and others. Mr. Bogar reviewed it and was satisfied (1) that the matter had been appropriately responded to; and (2) that in the view of Chadbourne & Parke the CD sales program was lawful and compliant. Mr. Bogar heard nothing further with regard to the SEC's inquiry about the CD program until around or about December 2008 when Mr. Young advised him of the pendency of an SEC regulatory examination. (Tr. 2799.) Either Mr. Young or Mr. Alvarado advised Mr. Bogar that the SEC wanted to interview him; the SEC staff conducted a 20-30 min interview of Mr. Bogar in a conference room at SGC. (Tr. 2799-2801.) Mr. Sjoblom monitored the interview by telephone and there was no follow up to it. It was Mr. Bogar's understanding that the compliance department was responding appropriately to document requests related to the exam. Also in December 2008, Mr. Bogar was made aware of a FINRA examination being conducted at one or more of SGC's branches. FINRA staff did not

make a request to interview Mr. Bogar with respect to this examination which was represented as a "routine" exam. (Tr. 2808-9.)

J. Discovery of the SIBL Fraud and Termination of CD Sales

In or about January 2008, Mr. Bogar attended a meeting in Phoenix attended by Allen Stanford, Mauricio Alvarado and others. During the course of that meeting Mr. Bogar learned for the first time that Mr. Sjoblom -- still acting as SEC enforcement counsel for the entities -- intended to present Mr. Stanford, Laura Pendergest-Holt and Juan Rodriguez for testimony before the Commission's staff. In connection with this testimony, Mr. Bogar learned that the witnesses would be examined with respect the portfolio underlying the SIBL CDs. Mr. Bogar learned that there was to be a subsequent meeting in Miami in the Stanford aircraft hanger offices. Although he was not specifically invited to attend, he chose to do so, hoping to learn more about the pending matter before the Commission. (Tr. 2812.) Although the so-called "hangar meeting" was convened during the third week of January in Miami, Mr. Stanford did not appear. Mr. Sjoblom participated by telephone. But because of Mr. Stanford's absence, little was discussed about the SEC matter. There was discussion of reducing overhead and otherwise responding to the turbulence in the financial markets which had overtaken SGC during the fall. (Tr. 2814.) Another meeting was to be held in Miami in or about the first week of February at which attendees would include Allen Stanford, Laura Pendergest-Holt, Jim Davis, Juan Rodriguez, Lena Stenson, and Tom Sjoblom. At this juncture, Mr. Alvarado was continuing to coordinate Stanford's response to the SEC. Mr. Bogar believed that the developments were positive at least to the extent that once the SIBL portfolio was disclosed, it would ease the way for transparency with Pershing, as the clearing broker. (Tr. 2814-5.)

A meeting of the principals was convened in Miami during the first week of February and proceeded on and off for several days. On or about the third day of the meetings, Jim Davis and

Laura Pendergest-Holt began to describe -- for the first time -- details of the three tiers of the SIBL CD portfolio. (Tr. 2820-1.) In connection with these disclosures, Mr. Bogar learned for the first time that notwithstanding consistent misrepresentations to the contrary, Laura Pendergest-Holt managed only a small sliver of the overall portfolio. Worse still, it was disclosed for the first time to those outside the Allen Stanford inner-circle that tier three -- a huge component of the portfolio -- was comprised of personal loans to Allen Stanford and associated real estate investments. In substance, the crux of the SIBL Ponzi scheme was revealed for the first time to Mr. Bogar and presumable to others in attendance at the meeting other than Allen Stanford, Jim Davis, Laura Pendergest-Hold and Juan Rodriguez. (Tr. 2822-3.)

Mr. Bogar determined in conjunction with others that the sale of the CDs would have to be terminated forthwith, notwithstanding Mr. Sjoblom's advice that the matter could be resolved through corrective disclosure. Within hours of these disclosures Mr. Bogar instructed that the sale of the CDs be terminated; he transmitted this instruction to the sales force through Jason Green. (Tr. 2825-6, Ex. B 357.) On the following morning, conference call was held with SGC's managing directors and all of the sales and marketing materials were withdrawn, the sale of the CDs terminated.

Shortly after the termination of the CD sales, Mr. Sjoblom and his firm resigned from representation of the Stanford entities in connection with the SEC inquiries and advised Mr. Bogar to engage other counsel. (Tr. 2838, Ex. B 383.) He proceeded apace to identify counsel and in conjunction with Lena Stenson began work on engaging an independent third party to conduct an internal investigation consistent with applicable law. He was in the process of engaging Simpson Thatcher & Bartlett for the purpose of self-reporting to the Commission when

the Commission commenced its civil injunctive action against the Stanford entities and obtained the appointment of a Receiver. (Tr. 2835-7, Ex. B 296.)

III. ARGUMENT

The Division alleges that Mr. Bogar "willfully violated" Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5]. (OIP ¶¶30 – 31.) It further alleges that Mr. Bogar "willfully aided and abetted and caused" SIBL's and SGC's violations of Section 10(b) and Rule 10b-5 of the Exchange Act and SGC's violations of Section 15(c)(1) of the Exchange Act [15 U.S.C. §78o(c)(1)] and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §80b-6(1) and 15 U.S.C. §80b-6(2)]. (OIP ¶¶31 – 34.) These statutes and regulations all prohibit fraudulent conduct in connection with the offer and/or sale of securities. *SEC v. Pasternak*, 561 F. Supp. 2d 459, 498 (D. N.J. 2008); *SEC v. Steadman*, 967 F.2d 636, 641, n.3 (D.C. Cir. 1992) ("*Steadman*"). The Division's burden of proof to establish the alleged violations is a preponderance of the evidence. *See Steadman v. SEC*, 450 U.S. 91, 97 – 104 (1981). As the evidentiary record in this proceeding makes clear, the Division has wholly failed to establish that Mr. Bogar is liable for either primary or secondary violations of the securities laws.

A. Relevant Legal Standards

1. Primary Violations of the Securities Laws

To establish a primary violation of the antifraud provisions of the securities laws, the Division must prove that Mr. Bogar (or SIBL and/or SIB, in regard to the secondary violations charged against Mr. Bogar), through jurisdictional means, (1) engaged in "fraudulent conduct"; (2) in connection with the purchase or sale of securities; and (3) with the requisite scienter. *SEC v. Tambone*, 417 F. Supp. 2d 127, 131 (D. Mass. 2006) (citing *Aaron v. SEC*, 446 U.S. 680, 695

(1980), and *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 196 (1976)); *SEC v. George*, 426 F.3d 786, 792 (6th Cir. 2005); *Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979).

Scienter is required to establish a primary violation of §17(a)(1) of the Securities Act, §10(b) of the Exchange Act and Rule 10b-5 thereunder, §15(c)(1) of the Exchange Act and §206(1) of the Advisers Act. *Pasternak*, 561 F. Supp. 2d at 498 (citing *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996)); *George*, 426 F.3d at 792; *see Steadman*, 967 F.2d at 641, n.3 (*citing Aaron*, 446 U.S. 680, 695 – 97 (1980) and *Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979)). The term "scienter" refers to "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron*, 446 U.S. at 686, n. 5 (*quoting Hochfelder*, 425 U.S. 185, 194, n. 12 (1976)). The scienter requirement may be satisfied by a showing of extreme recklessness, *Steadman*, 967 F.2d at 641 (collecting cases), which "is an 'extreme departure from the standards of ordinary care, … which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'" *Id.* at 641 – 42 (quoting *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977)). Extreme recklessness "is not merely a heightened form of ordinary negligence," *id.* at 641, but rather "a lesser form of intent." *Id.* at 642 (quoting *Sanders v. John Nuveen & Co.*, 554 F.2d 790, 793 (7th Cir. 1977)).

Establishing a primary violation of Securities Act §17(a)(2) and (3) and Advisers Act §206(2) requires a showing of negligence. *Aaron*, 446 U.S. at 701 – 702; *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963). Negligence is the failure to exercise reasonable care. *SEC v. O'Meally*, No. 06-cv-6483, 2012 U.S. Dist. LEXIS 76072, at *7 (S.D.N.Y. May 30, 2012); *IFG Network Sec., Inc.*, 88 SEC Docket 1374, 1389 (July 11, 2006).

2. Aiding and Abetting Violations of the Securities Laws

To establish that Mr. Bogar "willfully aided and abetted" a violation by SIB or SGC, the Division must establish that (1) SIB or SGC committed a primary securities law violation; (2) Mr. Bogar had awareness or knowledge that his role was part of an overall activity that was improper; and (3) Mr. Bogar knowingly and substantially assisted the conduct that constitutes the violation. *See Woods v. Barnett Bank of Ft. Lauderdale*, 765 F.2d 1004, 1009 (11th Cir. 1985) (quoting *Woodward v. Metro Bank of Dallas*, 522 F.2d 84, 94 – 95 (5th Cir. 1975)) (collecting cases); *In re Lammert*, Release No. 348, 93 S.E.C. Docket 5676 (2008).

Awareness or knowledge that one's role was part of an overall activity that was improper is characterized as scienter in aiding and abetting antifraud violations. "Awareness of wrongdoing means knowledge of wrongdoing." *Howard v. SEC*, 376 F.3d 1136, 1141 (D.C. Cir. 2004). Extreme recklessness may satisfy the scienter requirement for aiding and abetting liability.[7] *Id.* at 1143. The Division must establish that (1) Mr. Bogar acted with knowledge; (2) there was a danger so obvious that Mr. Bogar must have been aware of it; or (3) that Mr. Bogar "encountered 'red flags' or 'suspicious events creating reason for doubt,'" and was reckless in failing to have been "alerted ... to the improper conduct of the primary violator." *Id.* at 1143 (citation omitted).

3. Causing Violations of the Securities Laws

To establish that Mr. Bogar is liable for "causing" a violation of the securities laws by SIB or SGC, the Division must establish that (1) SIB or SGC committed a primary securities law violation; (2) an act or omission by Mr. Bogar was a cause of the violation; and (3) Mr. Bogar knew, or should have known, that his conduct would contribute to the violation. *Robert M.*

---

[7] As stated *supra*, extreme recklessness "is not merely a heightened form of ordinary negligence," but rather "a lesser form of intent." *Steadman,* at 641, 642.

Fuller, 56 S.E.C. 976, 984 (2003), *pet. denied*, No. 03-1334 (D.C. Cir. 2004); *In re Lammert*, Release No. 348, 93 S.E.C. Docket 5676 (2008). The requisite mental state necessary to establish liability for "causing" a violation is the requisite mental state necessary to establish the underlying primary violation. *Howard*, 376 F.3d at 1141.

B. Bogar Did Not Violate the Securities Laws

The Division's allegations that Mr. Bogar is liable for primary violations of §17(a) of the Securities Act, §10(b) of the Exchange Act and Rule 10b-5 thereunder fail because the evidence does not establish that Mr. Bogar engaged in fraudulent conduct.

The charges that Mr. Bogar is liable for (1) primary violations of §17(a)(1) of the Securities Act, §10(b) of the Exchange Act and Rule 10b-5 thereunder; (2) causing violations of §§10(b) and 15(c)(1) of the Exchange Act and Rule 10b-5 thereunder and §206(1) of the Advisers Act; and (3) aiding and abetting any securities law violations also fail because the evidence does not establish that Mr. Bogar acted with scienter -- either by knowingly participating in the SIBL Ponzi scheme or through conduct which rose to the level of extreme recklessness.

The charges that Mr. Bogar is liable for primary violations of §17(a)(2) and (3) of the Securities Act and that he caused violations of §206(2) of the Advisers Act fail because the evidence does not establish that Mr. Bogar acted negligently in carrying out his duties as the principal executive officer of SGC. The charges that Mr. Bogar aided and abetted or caused any violation of the securities laws also fail because the evidence does not establish that Mr. Bogar (1) knowingly and substantially assisted the conduct that constitutes the violation; or (2) committed an act or omission which was a cause of a violation and which Mr. Bogar knew, or should have known, would contribute to a violation.

The burden is on the Division to establish all elements of the primary and secondary violations alleged against Mr. Bogar; they have failed to do so.

1. Bogar Did Not Violate the Securities Laws Because He Did Not Engage in Fraudulent Conduct

The Division has failed to establish that Mr. Bogar engaged in any "fraudulent conduct." To prove this first element of a primary violation of the antifraud provisions of the securities laws, the Division must establish that Mr. Bogar, personally, (1) made an untrue statement of material fact; (2) omitted a fact that rendered a prior statement misleading; or (3) committed a manipulative or deceptive act as part of a scheme to defraud. *Tambone*, 417 F. Supp. 2d at 131 – 32. Because the Division has failed to establish that Mr. Bogar's conduct falls within any of these three categories, charges that Mr. Bogar violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder are unsupportable.

a. Bogar Did Not Make Any Untrue Statements of Fact

The Division has failed to establish that Mr. Bogar made an untrue statement of material fact because to the extent the Offering Documents contained material misstatements, such misstatements were not made by Mr. Bogar nor can they otherwise be attributed to him. Mr. Bogar had no responsibility for drafting the Offering Documents. (Tr. 2617.) There is no evidence that he had any input into the language used in them, or that he was asked to review or otherwise comment on the language used. As President of SGC Mr. Bogar was not "involved in the drafting, producing, reviewing and/or disseminating of the [allegedly] false and misleading statements," *Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 75 – 76 (2d Cir. 2001), contained in the Offering Documents, or any other securities offered by SGC. Nor are those tasks generally within the purview of a broker dealer's chief executive. (Tr. 4119-21.)

The Supreme Court has held that "the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011). The Court went on to hold that:

> Without control, a person or entity can merely suggest what to say, not "make" a statement in its own right. One who prepares or publishes a statement on behalf of another is not its maker. And in the ordinary case, attribution within a statement or implicit from surrounding circumstances is strong evidence that a statement was made by--and only by--the party to whom it is attributed. This rule might best be exemplified by the relationship between a speechwriter and a speaker. Even when a speechwriter drafts a speech, the content is entirely within the control of the person who delivers it.

Id.

SIBL is the "maker" of all statements in the Offering Documents because SIBL had the "ultimate authority" over the final language of those statements, and over "whether and how to communicate" those statements. The Offering Documents were drafted and approved by compliance and legal professionals on behalf of SIBL. (Tr. 2607) Further, the statements in the Offering Documents were specifically attributed to SIBL. (Ex. DOE 644, p. 17) ("We [SIBL], not SGC, are solely responsible for the contents of this Disclosure Statement and the other Offering Documents.").

Even if the language in the Offering Documents was reviewed and modified by Respondent Young as alleged by the Division (OIP, ¶ 7), the ultimate authority over the statements as made in the final versions of those documents -- whether to accept or reject any modifications made to the language -- was held by SIBL. And, even if Mr. Bogar were responsible for the content of the Offering Documents, that does not alter his liability under the Commission's doctrine of reasonable reliance, analyzed *infra* at §III.B.2.b.1. The Commission

and the federal courts of appeals have squarely held that individuals with due-diligence responsibilities may reasonably rely on others for the content of client-facing materials. *Howard*, 376 F.3d at 1148.

b. Bogar Did Not Omit a Fact That Made a Prior Statement Misleading

Mr. Bogar also cannot be held liable for any omission that rendered a prior statement misleading. As the Court in *Tambone* held, "an individual owes a duty to clarify a misleading statement only if that statement is attributable to the individual." *Id.*, 417 F. Supp. 2d at 135 (citing *SEC v. PIMCO Advisors Fund Mgt. LLC*, 341 F. Supp. 2d 454, 468 (S.D.N.Y. 2004) and *SEC v. Druffner*, 353 F. Supp. 2d 141, 148 (D. Mass. 2005)) (holding that because defendants "were not responsible for the misleading disclosures in the funds' prospectuses, they were under no duty to correct those statements if they became misleading"). Here, as discussed *supra*, Mr. Bogar was not responsible for the disclosures in the Offering Documents and, therefore, was under no duty to correct the disclosures if they became misleading. *Id.*

c. Bogar Did Not Commit a Manipulative of Deceptive Act as Part of a Scheme to Defraud

Just as the Division has not established that Mr. Bogar made any misrepresentations or omissions, it has also failed to establish that Mr. Bogar committed any manipulative or deceptive act as part of a manipulative device or contrivance to defraud. *See Hochfelder*, 425 U.S. 185, 199 nn. 20 – 21 (1976). In *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462 (1977), the Supreme Court held that "'[m]anipulation' is 'virtually a term of art when used in connection with securities markets,'" *id.* at 476 (quoting *Hochfelder*, 425 U.S., at 199), and that it "refers generally to practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity." *Id.*

The Division has failed to establish -- or even present evidence with respect to -- any manipulative or deceptive act made by Mr. Bogar as part of the SIBL Ponzi scheme. Mr. Bogar did not attempt to conceal or hide information about the SIBL CD or SGC's role in offering it to clients. Mr. Bogar engaged Pershing as clearing broker for SGC -- encountering resistance in doing so -- which he knew would conduct a thorough due diligence review of both SGC and affiliates such as SIBL. (Tr. 2625) Mr. Bogar provided Pershing with information during its initial due diligence work, and later appointed the SGC CFO to work with Pershing and SIBL to find common ground on a solution to Pershing's increasing need for transparency into the SIBL portfolio. (Tr. 2672-3.) In fact John Ward, the Pershing's relationship officer for the SGC engagement, confirmed that Mr. Bogar was at all times honest and forthright with him in their dealings together, and that Mr. Bogar acted in good faith in attempting to implement or respond to requests for information by Pershing. (Tr. 856-7, 878) Mr. Bogar's actions were in no way deceptive and actually increased transparency into SGC and SIBL.

The Division's allegations that Mr. Bogar violated the antifraud provisions of the federal securities laws are unavailing because the evidence does not establish that Mr. Bogar engaged in any "fraudulent conduct," whether making an untrue statement of material fact, omitting a fact that rendered a prior statement misleading or committing a manipulative or deceptive act as part of a scheme to defraud. These charges must be dismissed with prejudice.

2. Bogar Did Not Violate or Cause Violations of the Securities Laws, or Aid and Abet Any Violations of the Securities Laws, Because He Did Not Act with Scienter

The Division has further failed to establish that Mr. Bogar is liable for (1) primary violations of §17(a)(1) of the Securities Act, §10(b) of the Exchange Act and Rule 10b-5 thereunder; (2) causing violations of §§10(b) and 15(c)(1) of the Exchange Act and Rule 10b-5 thereunder and §206(1) of the Advisers Act; and (3) aiding and abetting any securities law

violations, because the evidence does not support the allegations that Mr. Bogar acted with scienter. Specifically, the evidence does not support the conclusion that (1) Mr. Bogar acted with knowledge of or intent to defraud; (2) there existed a danger so obvious that Mr. Bogar must have been aware of it; or (3) that Mr. Bogar was reckless in failing to have been alerted to fraudulent conduct upon encountering "red flags" or "suspicious events."

a. The Record is Devoid of Any Evidence that Bogar Knowingly Participated in the SIBL Ponzi Scheme

The Division has failed to proffer any evidence whatsoever -- documentary or testimonial -- that Mr. Bogar had actual knowledge of the SIBL Ponzi scheme. Any allegation to the contrary is belied by the actions taken by Mr. Bogar following his becoming the chief executive of SGC.

As detailed *supra*, Mr. Bogar embarked upon a business plan to grow and expand the operations of SGC, including the expansion of the retail brokerage and investment advisory businesses through the recruitment of mainstream brokers with books of business consisting of traditional assets. This necessarily reduced revenue from the SIBL CD referral fee as a percentage of total revenue (Tr. 2598-2600, 2602-3, Ex. B 131) Implementing the business plan required a front end investment, including for expanding offices and infrastructure necessary to support a larger workforce. Bogar secured a commitment that SGC would receive the necessary capital contributions to implement the plan, (Tr. 2596-7.), and such contributions were made to SGC (through Stanford Group Holdings, its parent).[8]

[8] The Division mischaracterizes the capital contributions into SGC as evidence that SGC was a failing enterprise which had no cash flow and was only able to remain operational because it received additional funds. (Tr. 113) However the capital contributions into SGC were necessary as a result of the expansion of the business, and were disclosed to regulators pursuant to FINRA rules. (Tr. 3146-8, Ex. Y 10.)

As part his overall supervision of SGC, Mr. Bogar informed himself with respect to training with respect to sales practices, compliance, new products and operations. (Tr. 2792-3.) As chief executive officer of the broker dealer, Mr. Bogar did not conduct training personally or directly and did not prepare, revise or approve specific training materials. (Tr. 2793-4.)

Mr. Bogar's actions in overseeing the compliance function of SGC further support the conclusion that he had no knowledge of the ongoing fraud perpetrated by Allan Stanford and James Davis. Mr. Bogar assured himself that the appropriate training of FAs was taking place (Tr. 2792-3), and further monitored the legal and compliance professionals in performance of their functions at SGC throughout his tenure as its principal executive officer. Mr. Bogar took affirmative steps to enhance SGC's compliance capabilities by recruiting and hiring Respondent Young as Chief Compliance Officer and Due Diligence Officer as delegated by Mr. Bogar, subject to his overall supervision. (Tr. 2624.) Mr. Bogar supported Respondent Young in this role and gave him authority over the department, which was certainly reasonable given Young's background with the NASD.

Mr. Bogar also initiated SGC's clearing relationship with Pershing, consistent with building a presence as a mainstream broker dealer, which necessarily implicated greater scrutiny of the business and compliance profile of the firm and the SIBL affiliated product. (Tr. 2626-7.) Mr. Bogar hired Respondent Young as CCO to enhance SGC's compliance capabilities as a result of the firm's growth in size and diversification of its product mix. The evidence establishes that Mr. Bogar's actions -- at all times -- were consistent with the implementation of this business plan, and inconsistent with a person involved in a global Ponzi scheme seeking to defraud public investors.

The Division has further failed to establish any financial motive whatsoever from which one could infer that Mr. Bogar knowingly participated in the fraudulent scheme perpetrated through SIBL. There is no evidence in the record that Mr. Bogar received any "fruits" of the SIBL Ponzi scheme or other remuneration beyond his regular compensation package; nor has the Division established that Mr. Bogar's compensation was excessive or above market value for similar positions in the securities industry. The implication that Mr. Bogar would assume the risk of participating in a global fraudulent scheme in exchange for his regular compensation strains credulity.

There is no evidence in the record that establishes or tends to establish that Mr. Bogar had knowledge that Allan Stanford, James Davis and others were perpetrating a global Ponzi scheme through the Stanford group of companies and fueled by the sale of the SIBL CDs. The fraudulent nature of the SIBL CD was irreconcilable with Mr. Bogar's vision for growing SGC into an independently valuable mainstream broker dealer and the conduct of Mr. Bogar in achieving that vision, including the Pershing engagement.

b. Bogar Did Not Act with Extreme Recklessness in Performing His Duties as President of SGC

The Division has failed to establish that Mr. Bogar should be held liable for primary and secondary violations of the securities laws because he encountered dangers so obvious that he must have been aware of fraud, acted with knowledge that his role was part of an overall activity that was improper, or was reckless in not being alerted to the improper conduct of Allen Stanford, James Davis and others when he purportedly encountered "red flags."

The Division set out many purported "red flags" which, taken in isolation and hindsight, may tend to cast SIBL in a negative light. However, Mr. Bogar was not reckless in failing to be alerted to wrongdoing when he encountered this information (to the extent he was ever aware of

it), particularly under the totality of the circumstances. To the extent these "red flags" involve information about the Offering Documents, the domicile and jurisdiction of SIBL, or transparency into the CD portfolio, such information had been known for years by legal and compliance professionals and regulators, and had not resulted in any adverse action against the Bank. In fact, "rather than red flags, [Mr. Bogar] encountered green [lights], as outside and inside counsel [and compliance professionals] approved" all aspects of the CD offering by SGC and SGC's responses to any attendant regulatory inquiry. *Howard*, 376 F.3d at 1147.

1) Bogar Reasonably Relied on the Approvals and Statements of Others

At the outset of analyzing Mr. Bogar's purported recklessness, it is important to note that as the chief executive officer of SGC, Mr. Bogar was entitled reasonably to rely on the representations and statements of others -- in lieu of conducting an independent verification -- in performance of his duties, including the approval of documents and actions by highly qualified compliance and legal professionals. This doctrine of reasonable reliance -- that an individual may reasonably rely on the work or statements of others -- is reflected in decisions of the Commission dating back more than thirty years. *See, e.g., In re Carlson*, 1977 SEC LEXIS 162, at *17 – 21 (Initial Dec. Mar. 28, 1977) ("It was enough that persons whom he reasonably regarded as more sophisticated in these matters than he was himself assured him" that his conduct was in compliance with the securities laws).

Reasonable reliance "support[s] a defense based on due care or good faith," and therefore functions to negate a finding of fraudulent intent, recklessness, and even negligence. *See Howard,* 376 F.3d at 1147 – 48. This is the case even if the individual has due-diligence responsibilities, *see, e.g., In re Huff,* 1991 SEC LEXIS 551, at *4 – 5, *8, *11 – 12 (Comm'n Op. Mar. 28, 1991), and even if the representations that the individual relied on were falsehoods, turned out to be wrong, or led to violations of the securities laws. *In re Urban,* 2010 SEC LEXIS

2941, at *138, *148 (Initial Dec. Sept. 8, 2010) ("almost all the business leaders at [the firm] either lied to Urban or kept information from him"; nonetheless, "Urban ha[d] a reasonable basis for relying on [those] representations"); *Howard,* 376 F.3d at 1148 n.21 (holding that an individual who was responsible for marketing reasonably relied on information that "turned out to be wrong").

In *Urban,* Chief Judge Brenda Murray dismissed all of the Division's claims against Theodore Urban, General Counsel and Executive Vice President at Ferris, Baker Watts, Inc., based largely on this doctrine. According to the court, the "major thrust" of the Division's complaint -- much like in the Division's OIP here -- was that Urban had failed reasonably to respond to "red flags" that a broker's conduct was illegal. 2010 SEC LEXIS 2941, at *127. The Division maintained that Urban's response to those red flags was inadequate and ineffective, alleging that Urban "acted recklessly in ignoring repeated red flags and in missing opportunities to detect and prevent [the] fraud and significant investor losses." *Id.* at *129.

However, Chief Judge Murray held that -- despite these red flags -- Urban reasonably discharged his duties, placing particular significance upon his reasonable reliance "on continuous representations by multiple individuals in high level managerial roles." *Id.* at *147. The court emphasized that, in fact, "almost all the business leaders at [the firm] either lied to Urban or kept information from him." *Id.* at *138. Nonetheless, the Chief Judge concluded that "Urban ha[d] a reasonable basis for relying on [those] representations" at that time. *Id.* at *148.

In *In re Dean Witter Reynolds Inc.*, 2001 SEC LEXIS 99 (Initial Dec. Jan. 22, 2001), the Division argued that a broker-dealer's policies and procedures were unreasonable, in part, because they allowed the compliance department to rely on statements made by branch managers, without conducting an independent verification. *Id.* at *36, *140 – 41, *146 – 47. The

compliance department in *Dean Witter* had due diligence functions -- the duty "to collect, assess, and transmit information to, and request and evaluate information from, [others]," *id.* at *36 -- but the court still held that independent verification was unnecessary. "[I]t is reasonable to rely on [the branch manager's] conclusions," the court reasoned, because branch managers "are generally experienced and are subject to specific licensing requirements," and they have "potential liability for failure to perform," *id.* at *140 – 41.

In *Howard,* the Commission alleged that Nicholas P. Howard, whose job entailed marketing securities to institutional investors, had done so without independently confirming the accuracy and legality of certain information in offering documents, in contravention of his "ongoing obligation" to "protect investors from illegality." 376 F.3d at 1138, 1147. Those client-facing documents were improper, the Commission argued, because they omitted necessary disclosure language, and Howard had thus facilitated a securities violation by allowing the documents to be filed.

However, the D.C. Circuit held that Howard's reasonable reliance on management and legal counsel[9] showed good faith and negated any plausible inference of scienter. *Id.* at 1148. The court observed that the Commission had "disregarded" "powerful evidence" that Howard did not act with scienter when he allowed the documents to be used with clients, *id.* at 1138, 1148, including evidence that Howard had reasonably relied on reviews and approvals by: (1) executives in the Capel Group, an affiliate of Howard's broker-dealer, *id.* at 1139, 1146; (2)

[9] The reasonable-reliance doctrine relied on by Mr. Bogar is distinct from the "reliance on counsel" defense articulated in *SEC v. Savoy Indus., Inc.*, 665 F.2d 1310, 1314 n.28 (D.C. Cir. 1981). Bogar's reasonable reliance on the statements of others, including attorneys employed and engaged by SGC and SFG, does not require a showing of the elements of the "reliance on counsel" defense. *See Howard,* 376 F.3d at 1147 – 48 (It would have been erroneous for the Commission to have relied on *Savoy Indus.* in analyzing Howard's actions). As discussed, Bogar's reliance on the statements of others negates the Division's allegations of scienter and negligence if his reliance was reasonable.

outside counsel, who had "more than 20 years of experience" practicing securities law, *id.* at 1147; and (3) the head of the broker-dealer's finance department, an individual who "had been a lawyer with the SEC's Division of Market Regulation," *id.* at 1139, 1146-47. The court noted that Howard was "a non-lawyer," and that "a non-lawyer has no real choice but to rely on counsel." *Id.* at 1148 n.20 (bracket omitted). The court altogether ignored the fact that Howard had conducted no due diligence, noting that Howard was "on vacation" during a significant part of the relevant time period and "skimmed" only one of the documents, *id.* at 1139, 1147. Yet the court concluded that, "[i]n this case, rather than red flags, Howard encountered green ones, as outside and inside counsel approved" the information in question. *Id.* at 1147.

In *Lammert*, this Court found that "[t]o the extent that the prospectus language contained a material misstatement or omission, it cannot be attributed to any of the Respondents ... [because the] legal department had responsibility for drafting the prospectus language." *In re Lammert*, Release No. 348, 93 S.E.C. Docket 5676 (2008).

The foregoing authority is "on all fours" with Mr. Bogar's reliance on the statements and approvals of numerous professionals both inside and outside of Stanford. Mr. Bogar could and did reasonably rely on legal and compliance personnel "whom he reasonably regarded as more sophisticated in these matters than he was himself." *Carlson*, 1977 SEC LEXIS 162, at *20. Representations regarding the SIBL CD and Offering Documents were made by "multiple individuals in high level managerial roles," *Urban*, at *147, including executives of SGC and SIBL, the affiliate involved in the offering,[10] outside counsel with "years of experience" in the practice of financial services and banking[11] and securities law[12], and experienced compliance

[10] Allan Stanford, James Davis, Yolanda Suarez, Lena Stinson and, later, Mauricio Alvarado.
[11] Carlos Loumiet and his colleagues at Greenberg Traurig and Hunton and Williams.
[12] Thomas Sjoblom and his colleagues at Chadbourne & Parke and Proskauer Rose.

professionals. *Howard*, 376 F.3d at 1139, 1146 – 47. It was reasonable for Mr. Bogar to rely on the conclusions of such persons because they were "generally experienced[, ...] subject to specific licensing requirements, ... [and have] potential liability for failure to perform." *Dean Witter*, at *140 – 41.

Some of these representations were outright "lie[s]," and some simply "turned out to be wrong," but the reasonableness of Mr. Bogar's reliance on them cannot be discounted in hindsight. Furthermore, the evidence establishes that Bogar did not act to conceal any information regarding the SIBL CD. The general belief at Stanford, shared by Bogar, legal and compliance personnel and FAs, was that the SIBL CD was a good product for customers for which it was suitable, and that the representations made in the Offering Documents were accurate and in compliance with the securities laws and regulations.

2) Bogar Did Not Encounter Any Purported "Red Flags"

Under the foregoing authority, Mr. Bogar's reliance on the statements and approvals of compliance and legal professionals is unassailable. The Division and its expert point to several purported "red flags" in alleging that Mr. Bogar is liable for violating the Securities laws, but the Division has failed to meet its burden of proof in this regard. Several of these purported "red flags" were not even known by Mr. Bogar. Other information the Division claims were "red flags" cannot be viewed as such given the totality of information available at the time and the general understanding of persons both inside and outside of the Stanford group of companies -- nor was Mr. Bogar reckless because this information did not alert him to improper activity or that he played a role in such activity.

The Division attributes several purported "red flags" to Mr. Bogar on which it has proffered no evidence to show that Mr. Bogar was ever aware of such information. The Division presented no evidence -- and could not have presented evidence -- that Mr. Bogar received or

ever had any knowledge of certain customer/customer representative letters analyzing the SIBL CD (Ex. DOE 746G-746J). Even to any extent the Court holds these to be red flags, they are not attributable to Mr. Bogar. Nor did any of these isolated communications result in litigation or regulatory referral, which would have been elevated to the chief executive. Additionally, there is no evidence whatsoever that Mr. Bogar had any knowledge regarding -- or contact with -- a law firm engaged by the compliance department to conduct due diligence on an unrelated product, which firm requested information on the SIBL CD portfolio. (Tr. 1267.)

The purported failure to respond to other "red flags" raised by the Division does not rise to the level of extreme recklessness necessary to support a finding of scienter in violating, aiding and abetting or causing violations of the securities laws.

SIBL's domicile in Antigua and its regulation by the FSRC was common knowledge and had been for years, if not decades. Pershing's its Chief Compliance Officer and senior legal counsel commented favorably upon both SIBL's Antiguan-based personnel and the Antiguan government's conduct vis-à-vis international regulatory norms following a due diligence trip to SIBL in Antigua in 2005. (Tr. 862-3, Exs. B 394, 395) The existence of negative press (in the context of SIBL's consistent regulatory approval and other positive information about Antigua) does not rise to the level of a "red flag" because it would not alert a reader to improper conduct, and such isolated instances of negative information are further discounted in light of the positive information available to Mr. Bogar on Antigua. (Ex. B 394, 395). Notwithstanding the preceding, the Division has wholly failed to articulate any basis upon which Mr. Bogar was or should have been aware of them. Nor was the size or domicile of the SIBL auditor C.A.S. Hewlett a "red flag." Bogar held the belief, like others, that a larger, more renowned auditor would be preferable, but because it would lend a higher degree of credibility to the CD product

from a marketing perspective, not because of concerns about the auditor's integrity. (Tr. 2889-90.) Only when viewed in hindsight could SIBL's Antiguan auditor alert one to the existence of improper conduct.

Additionally, Pershing's requests for information in regard to the SIBL portfolio also do not rise to the level of a "red flag." As discussed supra, Pershing was aware of the SIBL CD, that there was a lack of transparency into the underlying portfolio, and SGC's reliance on revenue from CD referral fees from the inception of its relationship with SGC, and still became SGC's clearing broker. (Tr. 804-6.) It further ignores Pershing's declared intention to continue its relationship with SGC until virtually the last day of its existence -- notwithstanding the obvious reputational and financial risks implicated by its clearing relationship. (Ex. B 279.) Pershing's conduct in fact provided comfort and assurance, not a red flag to improper conduct. Pershing's inquiry into the SIBL CD portfolio was motivated, not by any suspicion regarding the legitimacy of SIBL, but rather in the general business analysis of risk to Pershing associated with a client having a less diversified revenue stream. (Tr. 2639-40.) This had been the case with SGC since the inception of the Pershing relationship, and was in fact being directly addressed under Mr. Bogar's leadership.

SGC's receipt of regulatory inquiries related, *inter alia*, to the SIBL CD would also not have alerted a Mr. Bogar to improper conduct. As an initial matter, the SIBL CDs had been offered for years with substantially the same documentation and under scrutiny of various regulators -- including the Commission -- with no resulting enforcement action. Furthermore, these regulatory inquiries were responded to by nationally-known enforcement counsel -- who purportedly had engaged in extensive due diligence on the SIBL CD program and had

determined it be authentic and compliant with applicable laws and regulation.[13] (Tr. 2796, 2799.)

To the extent the Division's allegations regarding Mr. Bogar's prior position in the merchant banking division of SFG and involvement in private equity deals is meant as a "red flag" which should have alerted him to improper conduct at SIBL because SIBL acquired ownership interests in certain of those transactions, the ownership by SIBL of private equity is mischaracterized by the Division, as shown by the evidentiary record. Notwithstanding that the Offering Documents did not proscribe such investments, there is no competent documentary evidence that these private equity investments were actually part of the portfolio underlying the CD program or were financed by SIBL depositor funds. In fact, testimony uniformly shows that these interests were not believed by anyone to be or characterized as part of the CD portfolio. (Tr. 701, 2449, 2585-6.)

The SIBL CD rates of return and the referral fees paid to SGC and its FAs were also not a red flag, as alleged by the Division, nor was the "Top Producers Club" sales contest held by SIBL. The CD referral fee was approved by compliance, and was in line with fees on other offshore investment products. (Tr. 2877.) Furthermore, Mr. Bogar and the other Respondents initiated a change in the FA compensation system to place emphasis on assets under management as opposed to sale of the CD product; the changes were rolled out at or about January 2008. (Tr. 2784-6, Ex. B 399, B 400.) Bogar also deemphasized participation in SIBL's "Top Producers

[13] While it is true that red flags may render otherwise reasonable reliance unreasonable, *see Dean Witter*, 2001 SEC LEXIS 99, at *173, it is also true that an individual may reasonably rely on another person's apparent resolution of a red flag. *See Huff*, 1991 SEC LEXIS 551, at *7 – 9; *Urban*, 2010 SEC LEXIS 2941, at *127, *148. Therefore, even if the items identified by the Division constitute red flags, Mr. Bogar could -- and did -- reasonably rely on the apparent resolution of those red flags by in-house counsel, outside counsel, compliance professionals and others, who repeatedly assured him that the securities laws were being complied with. In any event, no red flags came to Mr. Bogar's attention.

Club," and implemented a new incentive competition that was based upon assets under management rather than the sales of any particular product, the first meeting of which was held in January 2009. (Tr. 2791-2.)

The Division's allegations that Mr. Bogar acted with scienter are inconsistent with Mr. Bogar's actions. It was not recklessness on the part of Mr. Bogar that the purported "red flags" alleged by the Division did not alert him to improper activity by Allan Stanford, James Davis and others at SIBL.

3. Bogar Did Not Cause Violations of the Securities Laws Because He Did Not Act Negligently

The Division has not established that Mr. Bogar acted negligently in performing his duties as the chief executive officer of SGC. Mr. Bogar's actions are well within the standards of due care required for a person in his position.

Mr. Bogar consistently demonstrated reasonable management and leadership behavior in running SGC. Lacking a background in the securities industry, Mr. Bogar hired and empowered highly experienced and competent securities industry professionals to manage the compliance responsibilities of SGC, including Respondent Young, a former NASD District Director. Being a non-lawyer, Mr. Bogar relied on experienced in-house and outside counsel to handle regulatory inquiries, including Maurico Alvarado (formerly of Vinson and Elkins) and Thomas Sjoblom (at the law firms of Chadbourne & Park and Proskauer Rose). (Tr. 2796, 2799.) Mr. Bogar delegated issues to the personnel on his team with the experience and expertise to handle them. When SIBL did not disclose information in a manner acceptable to Pershing, Bogar assigned his chief financial officer Chuck Weiser with the task of working out a solution which would be acceptable to SIBL and Pershing, and worked with Mr. Weiser towards implementing an acceptable alternative solution. (Tr. 2672-3.)

Mr. Bogar also addressed the operational issues facing SGC in a reasonable manner. At the outset of his time as chief executive, Mr. Bogar recognized that SGC needed to reduce its reliance on affiliate revenue from SIBL referral fees, and he implemented a business plan to do so, which was successful -- CD referral fees as a percentage of revenue decreased year on year. (Ex. B 131.) When regulatory inquiry surfaced, Mr. Bogar and Respondent Young addressed the issue through competent and experienced legal counsel, (Tr. 2796, 2799), and Mr. Bogar satisfied himself that the relevant issues were handled properly and finally. Upon learning of issues with the SIBL portfolio disclosures in February of 2009, Mr. Bogar immediately worked with counsel to halt the sale of the CD by SGC FAs. (Tr. 2825-6, Ex. B 357.)

4. Bogar Did Not Aid and Abet Violations of the Securities Laws Because He Did Not Knowingly and Substantially Assist the Violative Conduct

Mr. Bogar did not knowingly and substantially assist the conduct that constitutes the primary violation of the securities laws, and therefore cannot be liable for aiding and abetting a primary violation by SIBL or SGC. "[T]he analysis required by this factor must be particularly exacting in cases involving non-disclosure" to avoid holding an individual liable as an aider and abettor "even though he or she was unaware of the need to disclose information withheld by those primarily liable." *SEC v. Washington County Utility Dist.*, 676 F.2d 218, 226 (6th Cir. 1982) (citing *SEC v. Coffey*, 493 F.2d 1304, 1317 (6th Cir. 1974)). The Division "must show that the silence of the accused aider and abettor was consciously intended to aid the securities law violation." *Id.* (quotations omitted).

As the record establishes, the SIBL CDs had been sold under essentially the same Offering Documents for years prior to Mr. Bogar's tenure as chief executive of SGC. Mr. Bogar had no role in drafting, reviewing or modifying those documents. While Mr. Bogar oversaw the persons responsible for training the FAs on the SIBL CD, including SGC's chief compliance

officer, he did not draft, review or modify those documents, and reasonably relied on compliance professionals that they were within industry regulations.

Mr. Bogar's behavior is patently distinguishable from that of the defendant in *Washington County Utility Dist.* There, the defendant was actively involved in gaining approval of the bond offering at issue and, in fact, "the Board of Commissioners invariably followed Patrick's recommendations in passing the bond resolutions." *Id.* at 226. Furthermore, "Patrick was responsible for negotiating the terms of each offering and, in at least one instance, submitted information which was included in the offering circular." *Id.* Mr. Bogar's actions are not reconcilable with this substantial, active involvement in the securities offering.

In *In the Matter of Paul A. Flynn*, Rel. No. ID-316 (Aug. 2, 2006), the Court concluded that the respondent had not substantially assisted the illegal late trading hedge fund clients on the entity's trading platform. There, the respondent had an active role in facilitating the approval of the trading platform that enabled the hedge fund clients' illegal trading, and was aware that the trading platform enabled such trading in an undetectable way. *Id.* at *28. Notwithstanding the respondent's substantial, active participation in the approval of the trading platform, the Administrative Law Judge concluded that the respondent did not provide "substantial assistance" where his efforts were not out of the ordinary and he was unaware that the clients' trading was illegal. In the instant case, Bogar was uninvolved in the approval of the mechanisms through which the SIBL CDs were sold, which had been in place for years upon his arrival. To the extent he supervised persons involved in the training and sale of the CDs, he reasonably relied on assurances that SGC was in compliance with the securities laws, being wholly unaware that the sale of the CDs was in violation of the law.

The Division has failed to establish the evidence necessary to prove that Bogar knowingly and substantially assisted the conduct that constitutes the primary violation of the securities laws and therefore failed to show Bogar aided and abetted those violations.

5. Bogar Did Not Cause Violations of the Securities Laws Because He Did Not Commit an Act or Omit to Act Which Was a Cause of the Violation or Know That His Conduct Would Contribute to the Violation

For the same reasons that Mr. Bogar did not aid and abet SIBL or SGC's alleged violations, he also did not cause SIBL or SGC's alleged violations.[14] As discussed above, Bogar had no role in the drafting, reviewing or modifying of the Offering Documents, under which SIBL CDs had been sold for years prior to Mr. Bogar's tenure as chief executive of SGC. Mr. Bogar and acted with due care in his supervision of the employees responsible for sales and compliance functions, including the training of FAs, and reasonably relied on compliance professionals that training and sales were performed within industry regulations. Mr. Bogar, as established above, was wholly unaware that the sale of the CDs was in violation of the law and was not negligent in reasonably relying on statements to that effect by the legal and compliance professionals at SGC and SIBL.

IV. CONCLUSION

The Division has failed to meet its burden of proof with regard to all dispositive elements of the primary and secondary securities violations alleged against Respondent Bogar. All charges should be dismissed with prejudice, and the Division is not entitled to any of the relief sought in the OIP. The Order Instituting Proceedings should be dismissed in all respects as against Respondent Bogar.

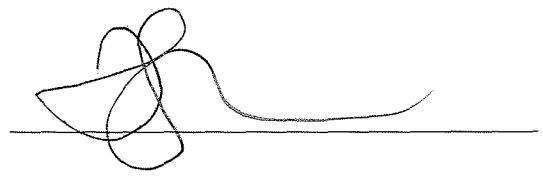
---

[14] To the extent scienter is required to prove the primary violation, scienter is also required for purposes of "causing liability." *See Howard*, 376 F.3d at 1141. Without a showing of scienter, the Division cannot establish "causing" liability for the primary violations of any alleged securities laws, except for Advisers Act §206(2); however, as discussed above, the Division cannot even establish that Bogar acted negligently.

Dated April 5, 2013

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: 

Thomas L. Taylor III
Texas State Bar: 19733700
taylor@tltaylorlaw.com
Andrew M. Goforth
Texas State Bar: 24076405
goforth@tltaylorlaw.com

4550 Post Oak Place Drive, Suite 241
Houston, Texas 77027
Tel: 713.626.5300
Fax: 713.402.6154

COUNSEL FOR RESPONDENT DANIEL BOGAR

CERTIFICATE OF SERVICE

In accordance with the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing *Post-Hearing Brief of Respondent Daniel Bogar* was served on the following persons on April 5, 2013 as follows:

Via FedEx:

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

(Original and 3 Copies)