UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

RECEIVED
APR 19 2013
OFFICE OF THE SECRETARY

ADMINISTRATIVE PROCEEDING
File No. 3-15003

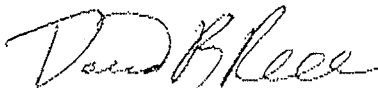
In the Matter of

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

Respondents.

DIVISION OF ENFORCEMENT'S POST-HEARING RESPONSE BRIEF

Respectfully submitted,



David Reece, Esq.
Texas Bar No. 24002810
B. David Fraser, Esq.
Texas Bar No. 24012654
Chris Davis, Esq.
Texas Bar No. 24050483
Janie Frank, Esq.
Texas Bar No. 07363050

United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 978-6476
(817) 978-4927 (facsimile)
ReeceD@sec.gov

COUNSEL FOR
DIVISION OF ENFORCEMENT

TABLE OF CONTENTS

TABLE OF CONTENTS .... i-ii
TABLE OF AUTHORITIES .... iii-v

I. INTRODUCTION 1

II. DISCUSSION 1

A. Respondents cannot escape accountability by changing the Division's allegations... 1

1. The Division alleges that the Respondents violated the law because they misrepresented what they knew and failed to disclose what they did not know, not that they should be punished for failing to detect Stanford's Ponzi scheme 2

2. The evidence developed in the hearing and discussed in the Division's briefing establishes the Division's factual allegations 3

3. The attempt by Respondents, particularly Green, to avoid liability by citing to cases arising out of the Madoff Ponzi scheme is a red-herring that should be rejected 5

B. The Respondents' reliance on the "Disclosed Statement," which itself Was misleading fails 9

C. Respondents cannot escape liability because, as they allege, they "reasonable relied" on others 16

1. None of the Respondents could have "reasonably relied" on the activities, if any, of any insider or outside counsel in connection with the conduct at issue 17

a. An examination of the record, rather than Respondents' bare assertions, reveals that Respondents' "reasonable reliance" arguments are founded on after-the-fact self-serving statements, not credible evidence 17

i. Bogar 17

ii. Young 22

iii. Green 23

b. Even if there were factual support for Respondents' self-serving claims, their reasonable reliance defense fails as a matter of law 24

2. It is irrelevant, and certainly does not excuse Respondents' conduct, that certain "well-respected" persons were associated with Stanford, particularly given that it is undisputed that such persons play no role related to the SIB CD 28

3. The attempt to rely on Pershing, far from explaining Respondents' conduct, only confirms their liability 32

D. The Respondents' remaining arguments are also unpersuasive 37

1. Green's efforts to avoid a finding of *scienter* and liability warps the record and fails as a matter of law 37

a. Green cannot shift all the blame to Allen Stanford 37

b. Green should not be allowed to disavow his own actions and words 38

2. Young's ad hoc challenges to his *scienter* fail 43

a. Young's knowledge of SIB's illiquid private equity investments confirms his *scienter* 44

b. Young cannot minimize his knowledge of concerns about SIB's auditor 45

c. Young cannot avoid liability by relying on FINRA's review of the marketing brochure 46

d. Young misapplies the standard necessary to impose remedies against him 47

III. CONCLUSION 49

TABLE OF AUTHORITIES

FEDERAL CASES

In the Matter of Alexander Reid & Co., Inc.,
40 S.E.C. 986 (1962)] 37

Alton Box Board Co. v. Goldman, Sachs & Co.,
560 F.2d 916 (8th Cir. 1977) 30-31

In re Am. Int'l Grp., Inc.,
2008 *Sec. Litg., 741 F. Supp. 2d 511 (S.D.N.Y. 2008)* 10

Arthur Lipper Corp. v. SEC,
547 F.2d 171 (2d Cir. 1976) 26-27

In the Matter of the Application of William K Cantrell,
52 S.E.C.1322 (1997) 16

In re Charles C. Carlson,
1977 SEC L 46 S.E.C. 1125 (1977) 25

Credit Suisse First Boston Corp. v. ARM Financial Group, Inc.
2001 WL 300733 (S.D.N.Y. Mar. 28, 2001) 11

Dodona I LLC v. Goldman, Sachs & Co.,
847 F. Supp. 2d 624, 10 Civ. 7497, 2012 WL 935815 (S.D.N.Y. Mar. 21, 2012) 10

Everest Securities, Inc. v. SEC,
116 F.3d 1235 (8th Cir. 1997) 26

Feeney v. SEC,
564 F.2d 260 (8th Cir. 1977) 26

In the Matter of the Application of G. K. Scott & Co.,
51 S.E.C. 961 *(1994)* 16

Hanly v. SEC,
415 F.2d 589 (2d Cir.1969) 27, 30

Howard v. SEC,
376 F.3d 1136 (D.C. Cir. 2004) 24, 25, 26

In the Matter of Arthur James Huff,
1991 SEC LEXIS 551 (1991) 25

Katz v. Financial Clearing and Services Corp.,
794 F. Supp. 88 (S.D.N.Y. 1992) 32

Le Bin Zhu v. Holder,
622 F.3d 87 (1st Cir. 2010)..21

In the Matter of Danny G. Pinkerton and Kevin N. Campbell,
Release No. 98, 63 S.E.C. D I.D. - 1996 WL 602648 Administrative
Proceeding File No. 3-8805 (October 18, 1996)..28

In the Matter of the Application of Frank L. Palumbo, et al.,
52 S.E.C. 467 (1995)..16

Panther Partners, Inc. v. Ikanos Commens, Inc.,
538 F. Supp. 2d 662 (S.D.N.Y. 2008)..10

In re Regeneron Pharm., Inc. Sec. Litigation,
No. 03 Civ. 3111, 2005 WL 225288 (S.D.N.Y. Feb. 1, 2005) 10, 15

SEC v. Cohmad Secs. Corp.,
2010 WL 363844 (S.D.N.Y. Feb. 2, 2010)] 5, 9

SEC v. Hasho,
784 F. Supp. 1059 (S.D.N.Y.1992)..27

SEC v. O'Meally,
2010 WL 3911444 (S.D.N.Y. Sept. 29, 2010)..26

SEC v. Milan Capital Group,
2000 WL 1682761 (S.D.N.Y. Nov. 9, 2000)..27

SEC v. Platinum Inv. Corp.,
No. 02 Civ. 6093(JSR), 2006 WL 2707319 (S.D.N.Y. Sep. 20, 2006) 27, 37

SEC v. Randy,
38 F. Supp. 2d 657 (N.D. Ill. 1999) 27

SEC v. Savoy,
665 F.2d 1310 (D.C. Cir. 1981)..25

Sanders v. John Nuveen & Co.,
524 F.2d 1064 (7th Cir. 1975) 31

Sorrell v. SEC,
679 F.2d 1323 (9th Cir. 1982) 26

U.S. v. Ebbers,
458 F.3d 110 (2nd Cir. 2006) 21

In the Matter of Valentine Capital Asset Management, Inc. and John Leo Valentine,
SEC Release No. IA-3090; File No. 3-14072 (Sept. 29, 2010) 40

In the Matter of the Application of Variable Investment Corp.,
1978 SEC LEXIS 746, 46 S.E.C. 1352 (1978) 16

Warren v. Tacher,
114 F. Supp. 2d 600 (W.D. Ky. 2000) 32

In re Urban,
2010 SEC LEXIS 2941 (Initial Decision Sept. 8, 2010) 24, 25

Wonsover v. SEC,
205 F.3d 408 (D.C. Cir. 2000) 26

I. INTRODUCTION

Each Respondent's brief, rather than explaining why he is not liable, actually underscores his liability by: focusing on questions largely irrelevant to this case; relying almost exclusively on after-the-fact, unsupported self-serving assumptions and assertions rather than credible evidence; and misconstruing the evidence to which they cite. These arguments fail, factually and legally, and should be rejected. In short, as established in the Division's initial brief, the Respondents flouted their responsibilities under the federal securities laws. Finally, in evaluating the Respondents' arguments, it is reasonable to ask, given the clear issues presented in this case, why the Respondents feel it is necessary to try to change the subject and misstate or ignore the record.

II. DISCUSSION[1]

A. Respondents cannot escape accountability by changing the Division's allegations.

As the Division cautioned they would during opening statements, each of the Respondents attempts to distract the Court by arguing at length that he should not be held liable because he did not know Allen Stanford was running a Ponzi scheme.[2] Stressing the apparently respected and high-profile people with whom Stanford surrounded himself, Respondents suggest they were fooled just like SGC's clients were. This diversion misses the point and, even worse, seeks to ignore

[1] The Respondents' arguments frequently overlap. In this section, the Division attempts to address overlapping arguments collectively to avoid unnecessary repetition while also addressing each Respondent's individual brief as appropriate. The Division offers the factual statements herein and in its Initial Brief as proposed findings of fact and legal conclusions.

[2] [*See for example*: Bogar's Br at 6-8, 35-38 ("The Record is Devoid of Any Evidence that Bogar Knowingly Participated in the SIBL Ponzi Scheme"); Green's Br. at 2 ("The Division's Order Instituting Proceedings seeks to portray Green as a fraud himself for failing to detect and halt the Ponzi scheme"); and Young's Br. at 11 "The Division has offered no evidence that Young acted with knowledge, or encountered 'red flags' or suspicious events creating reason for doubt to have alerted him to the improper conduct of Stanford, Davis, etc. or if the danger (Ponzi scheme) was so obvious that Young had to have been aware of it.").]

Respondents' well-established duties as securities professionals. As pled in the OIP, this case, at its core, is not about Allen Stanford or what he did. It is about what the Respondents did and failed to do.

I. The Division alleges that the Respondents violated the law because they misrepresented what they knew and failed to disclose what they did not know, not that they should be punished for failing to detect Stanford's Ponzi scheme.

Respondents' attempt to blame Allen Stanford notwithstanding, this case is about Danny Bogar (SGC's President), Bernerd Young (SGC's Chief Compliance Officer), and Jason Green (SGC's product manager and head of marketing for the SIB CD). And it is about what each Respondent did and failed to do in connection with marketing the SIB CD. [See OIP at ¶¶ 8, 9, 14-22, 23-29 and Tr. 23:14-25 (Division's opening statement)].

More specifically, as alleged by the Division, each Respondent violated the federal securities laws because he represented (or was otherwise responsible for representations) that: (1) investor funds would be pooled and invested in safe, diversified, liquid investments; (2) the investments would be managed by seasoned money managers following a conservative investment philosophy; (3) the returns on this conservative portfolio would be used to pay the promised yields; (4) SGC would receive a 3% fee on the SIB CD; (5) oversight of SIB's investments was provided through a number of entities, including SIB's auditor; SIB's Board, and the FSRC; (6) investors would be protected by SIB's "comprehensive insurance program." [OIP at ¶¶8, 9, 14-22, 23-29]. There is no dispute that these statements were false.

Moreover, each Respondent violated the federal securities laws because each knew and failed to disclose that: (1) he could not confirm any of the representations about SIB's investment portfolio due to SIB's lack of transparency (and, in Bogar's and Young's cases, knew that, contrary to these promises of liquidity, SIB actually invested millions of dollars in illiquid private equity);

(2) there was no insurance protecting the SIB CD deposits; (3) the full extent of compensation that SGC received from SIB extended far beyond the 3% fee disclosed to investors[3]; (4) multiple facts called into doubt SGC's representations about the SIB CD, including the facts that both SGC financial advisers and a number of third parties — such as Pershing, Snyder Kearney, and multiple independent CPAs — had expressed concerns about Antigua, the FSRC, SIB's auditor, SIB's lack of transparency, and the risk inherent in the SIB CD; and (5) there were other material facts calling into question SGC's assurances and omissions about the SIB CD, including — in Green's case — that Allen Stanford admittedly lost $600 million in December 2008 and had an ever-changing story regarding an admittedly critical capital contribution by Stanford in late 2008.

2. The evidence developed in the hearing and discussed in the Division's briefing establishes the Division's factual allegations.

As set out in the Division's initial brief, the crucial facts cannot be disputed:

- SGC and the Respondents told investors — by distributing marketing brochures and other materials to investors and as a result of training provided to SGC financial advisers — that investors could invest in a "certificate of deposit" that paid higher returns than a U.S. certificate of deposit because the pooled assets were managed by a global network of successful money managers. [See Division's Br. at 7-8, 21, 31-37.]

- In the same way, SGC and the Respondents minimized the risks associated with this admittedly unique offshore investment, assuring investors that SIB CDs were safe

[3] As the evidence in the record demonstrates, this disclosure was far from complete and accurate because it gave the false impression that the 3% fee was a one-time upfront payment instead of making it clear that, in truth, SGC received 3% of each CD's value each year during the life of the CD, even if rolled-over.

In addition, as the Respondents, each of whom served as a securities professional with duties to SGC's clients, knew or could have known with even a moment's reflection, SIB's investments returns (based, according to the Bank, on a "prudent" investment philosophy) had to be sufficiently high to cover not only interest obligations that far exceeded domestic certificates of deposits and not only the annual 3% trailing fee paid to SGC, but also extra compensation to SGC's financial advisers such as quarterly and "mega" bonuses, Top Producers Club trips to high-end destinations, and operating expenses. Yet there is not a shred of evidence that any of the Respondents ever attempted to try to reconcile this.

because the global network of money managers pooled their funds into a single portfolio (the "CD portfolio") that was invested in a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." [Division's Br. at 8]. As the Training and Marketing Manual SGC's financial advisers relied on put it: "Stanford International Bank's liquidity equals security, since it assures that the Bank has the resources to honor withdrawal requests as they appear." [Division's Br. at 34-37].

- SGC and the Respondents further minimized the risk to investors by promising them and training SGC's financial advisers to tell them that "depositor security" was provided by a "comprehensive insurance program" that made FDIC deposit insurance "relatively weak" in comparison. This representation was reinforced in the written documents given to investors, particularly the brochure. [Division's Br. at 34-37].

- But SGC and the Respondents intentionally failed to tell these investors that neither SGC nor the Respondents had any independent basis on which to vouch for how SIB invested the CD portfolio or whether their investments were safe at all. Contrary to their specific and bold promises about how SIB invested its assets, the U.S. broker-dealer was not allowed by SIB to obtain such verification. [Division's Br. at 48-52, 53 and 14-19].

- Each Respondent knew that, contrary to the alleged "comprehensive insurance program," investments in the SIB CD had no insurance protection at all. [Division's Br. at 9].

- In addition, Respondents failed to properly disclose the extent to which SGC was financially dependent and otherwise connected to SIB. [Division's Br. at 41-43].

- Bogar approved SGC's offer and sale of the SIB CDs, approved and was aware of SGC's use of the marketing documents containing the misrepresentations and omissions noted above, and approved and was aware (or was extremely reckless in not being aware) the information fed to SGC's financial advisers in the SIB CD training sessions and in the Training and Marketing Manual. [Division's Br. at 10, 31, 36 and 48; see also Tr. 2793:15-2794:10].[4]

- Young authorized SGC and its financial advisers to use the written materials containing the misrepresentations and omissions, conducted training sessions in which SGC's financial advisers were armed with the misrepresentations regarding the safety of the SIB CD, approved SGC's financial advisers' use of the Training and Marketing Manual, and took other actions that resulted in investors' being misled. These further actions include revising and approving misleading "talking points" and going on the "road show." [See, e.g., Div. Br. at 11, 48].

---

[4] Indeed, as that testimony demonstrates, Bogar admits he was responsible for the training and was aware of it, even attending at least portions of it.

- Green provided the misleading written materials to investors, was aware that SGC financial advisers he led also provided them, orally misled his own investors, led the training sessions along with Young, and otherwise acted to encourage and incentivize SGC's financial advisers to sell the SIB CD (by, for example, leading and directing the sales contests and by revising and distributing the "talking points" and the SIB 2008 Monthly Report). [See, e.g., Division's Br. at 12, 21-22; 31-37; 39-40; 56-57].

3. The attempt by Respondents, particularly Green, to avoid liability by citing to cases arising out of the Madoff Ponzi scheme is a red-herring that should be rejected.

Given the discussion above, Green's heavy reliance on *SEC v. Cohmad Secs. Corp.* and other Madoff-related cases to argue that the law does not support a fraud case against him is wrong. [*See, e.g.*, Green Br. at 64-65, relying on *Cohmad*, 2010 WL 363844, No. 09-CIV-5680-LLS (S.D.N.Y. Feb. 2, 2010)]. Unlike this case, in *Cohmad*, the Commission "[did] not allege statements or omissions by defendants that are fraudulent absent awareness or notice that Madoff's investment advisory business was a sham."[5] [Id. at *1 (emphasis added); see also the Commission's original *Cohmad* Complaint, available at http://www.sec.gov/litigation/complaints/2010/comp21718.pdf] Rather, the Commission charged the *Cohmad* defendants with having been participants in Madoff's Ponzi scheme. See *Cohmad* original Complaint at ¶1 ("This case charges the Defendants with knowingly or recklessly participating in Bernard L. Madoff's Ponzi scheme"). In this case, there is no allegation that the respondents participated in Allen Stanford's Ponzi scheme.

5 As discussed below, the Commission filed an Amended Complaint after this order was issued, resulting in agreed-to fraud judgments, but Green cites only to the decision addressing the original Complaint.

The various red flags that Respondents encountered are certainly relevant to assessing their *scienter*.[6] But, each Respondent's culpable state of mind is more than demonstrated by simply focusing on the undisputed evidence of what they knew (but that was frequently not told to investors). [See, e.g., Section A(1) above].

For example, as discussed at length in the Division's initial brief, the evidence confirms that:

- Each Respondent knew of SGC's financial dependence on revenues derived from SIB, including most prominently fees from sales of SIB CDs [See, e.g., Tr. 3345:18 – 3346:18, 3357:1-8];
- Each Respondent was aware of common ownership of SIB, SGC, and all other Stanford-related entities by Allen Stanford [Tr. 3342:20 – 3343:1];
- Each Respondent knew that SIB offered and sold, through only SGC, only one product in the U.S. – a proprietary product issued by an affiliated offshore bank in Antigua [Tr. 3343:2-9];

[6] Young's own arguments aptly illustrate this point. Young relies on guidance from the Commission's website related to common warning signs of Ponzi schemes, presumably to suggest he had no reason to suspect a Ponzi scheme. Contrary to Young's simplification, the well-known indicia of fraud schemes noted on the Commission's website and pointed out by Young in his brief only highlight Young's failure to engage in even the most basic inquiry in this case and confirms the egregiousness of his misconduct. For example, it is well-known (as noted on the Commission's website) that claimed high and overly consistent investment returns without any significant risk, achieved by secretive and allegedly sophisticated trading strategies, are frequently signs of fraud. Yet, that's exactly the situation Young and the other Respondents faced. [Div. Ex. 104, Pg. 26 of 389 ("SIB has successfully managed risks to the benefit of its depositors and itself for over twenty years"); Green Ex. 236, Pgs. 18 and 22 of 48 (classifying SIB CD as having low-to-moderate credit risk, low liquidity risk, no volatility, and high income); Tr. 367:4-9; 3289:3-8 (Young admits that SIB's portfolio returns were much more consistent than leading stock indices; from 1998-2007, SIB's returns ranged from 11.72% to 14.78%, while Dow Jones was extremely volatile (-16.76% to 25.22%)); Tr. 3214:7-20, 3121:1-4 (Young testified that Antiguan secrecy laws were given as reason why nobody at SGC could access SIB's portfolio)]. Nevertheless, Young, Bogar and Green, knowing these very facts, blindly accepted SIB and Allen Stanford's assurances and representations for years, even after learning specific alarming facts. Other factors common in fraud schemes -- like above-market financial incentives provided to encourage financial advisers to recommend that clients roll-over their CD investments – were also present.

- Each Respondent understood SIB was unlike a traditional commercial U.S. bank [Tr. 3343:10 – 3344:3];

- Each Respondent understood the SIB CD portfolio exhibited characteristics of a hedge fund [Tr. 3344:7 – 3345:9];

- Each Respondent understood (or could have easily learned) there were widespread allegations of: (i) corruption in Antigua and in the Antiguan government, (ii) Allen Stanford exerted undue influence in Antigua, and (iii) Allen Stanford made significant loans to the Antiguan government. [See, e.g., Tr. 3335:22 – 3337:5, 3337:20 – 3339:25, 3340:11 – 3341:16, 3352:10-17, 3609:13 – 3610:1, 3659:18 – 3661:3, 3661:24 – 3662:7; Div. Exs. 696, 698, 700, 705];

- Each Respondent knew that neither he nor SGC had access to SIB's investment portfolio to verify:
  - Size/assets [Tr. 3332:15-19];
  - Historical performance returns [Tr. 3330:23 – 3331:15]; and
  - Holdings, composition, allocations, diversification and, therefore, liquidity [Tr. 3331:16-19; 3332:20-25];

- Each Respondent knew clients and financial advisers asked to review SIB's investment portfolio [Tr. 3334:8-19];

- Each Respondent knew he could not verify all of the outside money managers investing SIB's portfolio [Tr. 3333:13-18, 3334:5-7, 3406:6-21];

- Each Respondent was aware of concerns among SGC financial advisers and managing directors about SIB's small, unknown auditor, C.A.S. Hewlett [Tr. 3382:14 – 3383:2];

- Each Respondent knew or was reckless in not realizing that SIB's Board of Directors, which included Allen Stanford, his father, his college roommate (Jim Davis), and one of his father's friends (O.Y. Goswick) – was not an independent board of directors [Tr. 3399:20-23, 3584:1-3, 3399:23 – 3403:8; Div. Ex. 510];

- Each Respondent knew that Pershing, SGC's clearing broker, became uncomfortable with SIB, unsuccessfully attempted to confirm the existence of SIB's assets for more than 18 months, and ultimately ceased processing wire transfers from Pershing accounts to SIB [Tr. 919:23 – 923:17, 925:21 – 926:13, 941:1 – 942:6, 957:9

960:14, 1005:17 – 1006:5, 1007:1-11, 1008:15-22, 1016:24 – 1017:5; Div. Exs. 284, 376, 377, 463, 483];

- Young knew that Snyder Kearney, LLP, a law firm engaged by SGC to conduct third-party due diligence of two proprietary private fund offerings being managed by affiliate Stanford Capital Management ("SCM"), raised significant questions about SIB and SIB's investment portfolio and ultimately terminated its engagement with SGC [Tr. 3569:19 – 3570:2, 1248 – 1262, 1268 – 1271, 1283:6-19, 1298:14-21; Div. Ex. 506];

- Each Respondent knew that CPAs, unaffiliated with Stanford, for at least two clients raised serious concerns, including the risk of a Ponzi scheme, about the legitimacy of SIB and its underlying investment portfolio [Div. Exs. 71, 653, and 667; Tr. 3449:10 – 3450:14, 3452:2-16, 3458:21 – 3460:24, 3461:5-24, 3464:15 – 3464:14].

- Bogar and Young knew that SGC's Merchant Banking group managed hundreds of millions of dollars of private equity investments for SIB – a fact in direct conflict to the representation in the Brochure that "[t]he Bank's assets are invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." [Div. Ex. 607, Pg. 5 of 17];

- Each Respondent knew or could have easily realized that, in spite of purportedly strict Antiguan secrecy laws that prevented anyone other than SIB from verifying SIB's investment portfolio, a group in Memphis, Tennessee led by Laura Pendergest-Holt (an employee of Stanford Financial Group Co.) and including several SGC-registered analysts were held out as managing the outside money managers with access to the entire portfolio. [Tr. 3491:13 – 3492:1, 3494:14 – 3498:25, 3500:3-13, 3503:19-23; Div. Exs. 720 and 726].

- Each Respondent knew, or at least was reckless in not knowing, that SGC FAs received outsized compensation for selling SIB CDs. [Tr. 3549:10-18, 3551:7-15; Div. Ex. 432, Pg. 7 of 47].

- Each Respondent knew SIB's investment portfolio posted overly consistent returns, despite varying market conditions and wildly volatile performance by leading stock indices. [Young Exs. 40 and 41; Tr. 3289:3-8]. From 1998 to 2007, SIB's portfolio returns ranged from 11.72% to 14.78%; conversely, the Dow Jones ranged from negative 16.76% to 14.78%. [*Id.*].

- At least four regulators (the SEC, FINRA, State of Florida OFR, and State of Louisiana OFI) emerged, all asking the same question: what's in the portfolio? [Tr. 3504:2 3505:11, 3508:8-12].

Indeed, as discussed in the Division's initial brief, the Respondents often took direct action to make sure such facts were not disclosed to other SGC employees or investors. [See, e.g., Division Br. at 60, discussing the Respondents' inaccurate cover story to explain Pershing's decision to cease wiring any funds related to the SIB CD].

In short, the allegations in this case are nothing like the original allegations in the *Cohmad* case and any effort to rely on that Court's analysis in that case have no place here. In fact, Green while focusing on the court's disposition of the original *Cohmad* Complaint fails to mention that the Commission subsequently filed an Amended Complaint in that case. The Amended Complaint alleged the "the defendants made material representations and omissions." No. 09-CIV-5680-LLS, Dkt. #35 at ¶1; see also the Commission's Amended Complaint, available at http://www.sec.gov/litigation/complaints/2010/comp21718.pdf. Based on the Amended Complaint, each of the Defendants consented to 10(b) and/or 17(a) fraud judgments. [See Case No. 09-CIV-5680-LLS, Dkt. #s 36-39.] This merely confirms Green's argument should be rejected.

B. The Respondents' reliance on the "Disclosure Statement," which itself was misleading, fails.

Respondents Green and Young claim they cannot be held liable because the "Disclosure Statement" provided to investors adequately informed investors of all material facts.[7] This argument fails for several independent reasons. In fact, as discussed below, the "disclosures" to which Respondents cling are themselves actionable.

---

[7] Notably, Bogar, perhaps recognizing that the Disclosure Statement falls far short of justifying any representations (or omissions) made to investors, does not make this argument. But of course, if he did, it would fail for the same reasons.

For example, Green notes that the Disclosure Statement states that participating in the SIB CD program involves "substantial risks" and that there could "be no assurance that [the portfolio managers] will continue to yield profitable results." [*See, e.g.* Green Initial Brief at 23]. But this is exactly the type of generic risk disclosures that courts routinely reject when defendants try to hide behind them. For example, in *Everest Securities, Inc. v. SEC*, 116 F.3d 1235, 1237 (8th Cir. 1997), an offering memorandum cautioned that the shares offered were "highly speculative, involve a high degree of risk and may not be appropriate for investors who cannot afford to lose their entire investments" and that prospective investors should carefully consider a number of "risk factors, among which was the warning that '[t]here can be no assurance that [the operators] will be able to operate profitably in the future." Despite such disclosures -- the very type of generic statements present here -- the Eighth Circuit upheld the Commission's affirmance of an NASD decision concluding that the defendants had distributed offering materials that, among other things, misrepresented the financial condition of the investment. *Id.* at 1239-40.

The result in *Everest Securities* reflects the well-settled rule that securities professionals have a duty to state risk accurately and completely. *Dodona I LLC v. Goldman, Sachs & Co.*, 847 F. Supp. 2d. 624, No. 10 Civ. 7497, 2012 WL 935815, at *16-7 (S.D.N.Y. Mar. 21, 2012) (citing *Panther Partners, Inc. v. Ikanos Commc'ns, Inc.*, 538 F. Supp. 2d 662, 669 (S.D.N.Y. 2008) ("[R]isk disclosures must accurately characterize the scope and specificity of the risk, as understood at the time the statements are made")). Consequently, generic risk disclosures are inadequate to shield defendants from liability for failing to disclose known specific risks. *In re Am. Int'l Grp., Inc., 2008 Sec. Litig.*, 741 F. Supp. 2d 511, 531 (S.D.N.Y. 2010); *In re Regeneron Pharm., Inc. Sec. Litig.*, No. 03 Civ. 3111, 2005 WL 225288, at *18 (S.D.N.Y. Feb. 1, 2005).

Applying these guidelines, the generic risk-related statements included in the Disclosure Statement cannot "cure" the explicit promises of safety and liquidity set out in the marketing brochure that SGC and the Respondents provided to investors. This is especially true because the Disclosure Statement fails to disclose the most salient risk of all: the fact that SGC (the exclusive U.S. broker-dealer for the SIB CD) had no transparency into the SIB CD portfolio or SIB's investment activities. The additional risks, detailed in the Division's initial brief and outlined above, that Respondents knew but hid from investors, only exacerbates this problem.

For example, in *Credit Suisse First Boston Corp. v. ARM Financial Group, Inc.*, the plaintiff investors alleged that the defendant issuer failed to disclose that the short-term funding contracts upon which it relied could be redeemed on as little as seven-days' notice, creating a tremendous liquidity risk that ultimately materialized, leading the issuer to suffer large losses and a corresponding collapse of its stock price. *See* Case No. 99 Civ. 12046, 2001 WL 300733, at *1–2 (S.D.N.Y. Mar. 28, 2001). The defendant sought shelter in the disclosure in its Form 10-K that the funding contracts "are designed and have historically been held by customers as long term cash investments, even though under most contracts customers have the option to liquidate their holdings with written notice of thirty days or less." *Id.* at *9. The Court rightly held that this disclosure was inadequate:

> [W]arnings of specific risks like those in the ARM Prospectus do not shelter defendants from liability if they fail to disclose hard facts critical to appreciating the magnitude of the risks described.... As aptly put by Judge Pollack in the context of the bespeaks caution doctrine, disclosures of risk provide "no protection to someone who warns his hiking companion to walk slowly because there might be a ditch ahead when he knows with near certainty that the Grand Canyon lies one foot away."

Id. at *8. That reasoning applies with equal force here. The generic "disclosures" of risk provided to SGC's clients fall far short of adequately disclosing the specific risks to investors.

Such specific risks included the facts that SGC was unable to obtain -- even in the face of insistent pressure from its clearing broker -- independent verification of the SIB CD portfolio; increasing pressure from multiple U.S. regulators related to the SIB CD; the scope of SGC's financial dependence on SIB; and increasing concerns from both its own financial advisers and outside parties about the viability and veracity of the SIB CD model. These factors certainly demonstrate that the generic statements in the Disclosure Statement cannot cure the specific assurances of safety and liquidity contained in the marketing brochure and, indeed, the Disclosure Document itself, which touted that SIB's investment methodology "is to minimize risk and achieve liquidity." [See, e.g., Young Exhibit 78 at BEY 732].

Similarly, the arguments Young and Green make related to the so-called "disclosures" related to SIB's insurance should be rejected. Each claims that the disclosure statement makes it clear that there was no deposit insurance. [See Young Br. at 7-8 and Green Br. at 23-24]. This argument is wrong on both the facts and the law.

Factually, the Disclosure Statement suggested only that the SIB CD did not possess *government-sponsored* insurance, as opposed to properly disclosing there was no insurance at all to cover deposits. Compounding the problem, the Disclosure Statement actually suggested the deposits were covered or protected by some type of private insurance coverage by listing a litany of policies SIB allegedly maintained (none of which, as Respondents admit they knew, covered deposits). This insurance was referred to in the SIB brochure and in the training materials as a "comprehensive insurance program."

The Disclosure Statement provided that:

> SIBL's products are not subject to the reporting requirements of any jurisdiction, nor are they covered by the investor protection or securities insurance laws of any jurisdiction such as [SIPC] or the bonding requirements thereunder. The CD deposits and the CD

> certificates are not insured by the [FDIC] or any other agency of the United States government or any state jurisdiction, or by any insurance program of the government of Antigua and Barbuda.
>
> [Young Ex. 78 at BEY 715; Young Ex. 79 at the 2nd page].

In another section, however, it re-assured investors that:

> The insurance coverage held by SIBL includes Property and Casualty, Exporter's Package, Vehicle, Worker's Compensation and Travel. Fidelity coverages include Bankers' Blanket Bond, Directors' and Officers' Liability, and Errors and Omissions Liability coverages. We also maintain Depository Insolvency insurance. We maintain excess FDIC and Depository Insolvency insurance, currently in the amount of US$20 million, for each of our major U.S. and foreign correspondent banks. **The latter insurance** protects us against the possible insolvency of specified financial institutions where we may place our own funds. This insurance does not insure customer deposits and is not the equivalent of the FDIC insurance offered on deposits at many institutions in the United States.

[Young Ex. 78 at BEY 728; Young Ex. 79 at Pg. 12. (emphasis added).]

These statements, of course, must be read in conjunction with the explicit assurance contained in the brochure, which all of the Respondents admit was provided to investors, that "depositor security" was provided by the bank's "comprehensive insurance program" and with the information provided to SGC financial advisers during their training.[58] As Green knew, he instructed SGC's financial advisers that there was a "bankers' blanket bond" policy that "covered fraud." [See, e.g., Division Exhibit 65 at p. 27]. This reference to a "bankers blanket bond" policy is repeated in the Disclosure Statement. But nowhere is it made clear that this policy provided no depositor security at all. Instead, the disclosure statement is careful to limit

---

[58] Green argues that statements in written documents override oral misstatements to investors. [Green Br. at 54-56, 58]. He conveniently ignores, however, that the written materials themselves, including both the brochure and even the Disclosure Statement, contain false or misleading statements that undercut this attempt to evade his oral misrepresentations.

its qualifying language to the "excess FDIC and Depository Insolvency insurance." [See also, Tr. at 297:3-298:7, discussing the plain reading of these provisions].

In short, while arguably cautioning that excess FDIC and depository insolvency insurance did not protect deposits, the disclosure says nothing to clarify that contrary to the assurances conveyed by the marketing brochure's "comprehensive insurance program" language the remaining policies provided no depositor security. Although Respondents continue to try to re-write the Division's allegations, this case is not about whether the Respondents misrepresented that deposits were covered by FDIC insurance.[9]

Indeed, as is made clear by the guidance provided by the Training and Marketing Manual, juxtaposing the absence of government-sponsored insurance while touting the "comprehensive insurance program" maintained by the Bank merely made it certain that at least some investors would be left with the clear (but unfortunately and admittedly false) impression that the bank's private insurance policies provided sufficient "depositor security" that is even stronger than government-sponsored insurance.

[9] While not directly at issue in this particular case, given the intentionally confusing manner that SIB's insurance coverage was discussed by SGC personnel, including the Respondents, and given the emphasis and incentives extended to FAs to sell the CD, it is hardly surprising that individual FAs would go even further and orally assure clients that government-sponsored insurance programs like SIPC and FDIC covered the clients' investments in the SIB CD. This risk was only exacerbated by the repeated and prominent references to SIB and SGC being part of the Stanford Financial Group, "an international network of affiliated companies employing more than 3,000 professionals in 12 countries." [Div. Ex. 742, Pg. 5 of 21]. The recurring connection between SIB and SGC, including placing their names on top of each other on the back page of the Brochure ("Stanford International Bank Ltd., A member of the Stanford Financial Group. Stanford Group Company Member FINRA and a member of the Stanford Financial Group."), only increased the risk of U.S. investors believing that the SIB CD was covered by SIPC or the FDIC. [Div. Ex. 607, at Pg. 15 and 17 of 17]. In fact, James Fontenot admits that he discussed with Cindy Dore the possibility that SIPC might offer some protection. [Tr. at 2750:11-2751:1] This risk only makes the misleading assurances at issue in this case more egregious.

As became clear during the testimony of both Young and Green, it is beyond dispute that SGC financial advisers and investors were confused about whether SIB possessed insurance protecting CD depositors. For example, Young admitted that financial advisers he trained emailed him questions related to insurance. [Tr. 3437:25 – 3438:3]. This is further confirmed by documentary evidence. [Div. Exs. 368, 448, 551, 552, 661, 438; *see generally* Tr. 3436 – 3444]. Finally, as Green admitted, Michael Koch, Young's hand-picked, right-hand man in SGC's compliance department, advised Green that financial advisers were confused about the insurance – so much so that some were talking about "the CD being insured."[10] [Tr. 3797:10-19]. Defying this warning, Green dismissed it out of hand and refused to stop using the misleading slide. [Id.]. And Young did nothing to correct him.[11]

The bottom line is that, if the Respondents had wanted to make sure investors were not confused by references to insurance policies, they could have simply omitted such references. The only reasonable inference to draw from the evidence is that the Respondents knew insurance was an issue for any product labeled with the iconic term "certificate of deposit" and they needed some type of statement related to insurance to comfort investors who raised the issue.

---

[10] It defies belief that Young did not know about this concern; if he didn't, he was certainly severely reckless given the warnings provided by his own compliance department.

[11] Neither Young nor Green can minimize this egregious conduct by noting that Young's training presentation contained a lone bullet-point on a single slide at the back end of a lengthy PowerPoint presentation (Div. Ex. 104, Pg. 63 of 243) that states "Not Insured." This isolated phrase is wholly insufficient, as a matter of law, to overcome the misleading statements contained in the Brochure, the remaining training materials, and even in the so-called Disclosure Statement itself. *See In re Regeneron Pharm., Inc. Sec. Litig.*, No. 03 Civ. 3111, 2005 WL 225288, at *18 (S.D.N.Y. Feb. 1, 2005) (stating that generic risk disclosures are inadequate to shield defendants from liability for failing to disclose known specific risks); *In re Regeneron Pharm. Sec. Litig.*, 1995 WL 228336, *4 (S.D.N.Y. March 10, 1995) (articulating that alleged disclosures made internally, not available to investors, are insufficient).

C. Respondents cannot escape liability because, as they allege, they "reasonably relied" on others.

All three Respondents claim that they cannot be held accountable for their fraudulent conduct because they "reasonably relied" on others and, thus, they argue, lacked *scienter*. This argument takes several forms: (1) each Respondent argues, or at least appears to suggest, that he reasonably relied on the actions of inside and/or outside counsel; (2) Green, and perhaps Bogar and Young, relies heavily on the fact that Stanford surrounded himself with "impressive" individuals and certain "reputable" firms; and (3) Bogar in particular (but also to some extent Green) relies heavily on the activities of SGC's clearing broker, Pershing. [12]

Again, however formulated, this attempt to rely on the efforts of others is fatally flawed, both as a factual matter and even if Respondents' views of the facts are credited, which they

[12] Young also suggests he relied on actions of Antigua's regulatory authority, the FSRC. First, it is well established that a securities professional cannot shift his obligations to regulators. *See, e.g., G. K. Scott & Co.*, 51 S.E.C. 961, 966 *n.21 (1994), aff'd, 56* F.3d 1531 (D.C. Cir. *1995); accord, e.g., William K Cantrell*, *52* S.E.C.1322, 1326 n.14 (1997); *Frank L. Palumbo*, 52 S.E.C. 467, 478 n.60 . (1995); *Variable Investment Corp.*, 46 S.E.C. 1352, *1354* n.6 (1978). But, in any event, Young's argument hinges on a December 2008 meeting with Leroy King at SIB's office in Antigua [Young Br. at 6]. Based on the well-known, longstanding corruption allegations about the Antiguan government and the widespread allegations that Stanford had loaned significant sums of money to the Antiguan government, Young admitted that it was necessary to approach his dealings with the FSRC with a certain amount of skepticism. [Tr. 3394:24 3395:8]. Yet, the record is devoid of evidence that Young exercised any skepticism in his dealings with King or the FSRC. In fact, just the opposite. After meeting with King in December 2008, Young joined with Green and Jonathan Batarseh in January 2009 to visit 10-12 SGC branch offices (the "road show") to "reemphasize or rediscuss with the financial advisers what [Young's] due diligence process was regarding the bank product." [Tr. 3318:19 - 3320:25]. Confusingly, Young claimed that the purpose of the road show was not to let everyone know that SIB was safe, sound, and on good footing, though presumably that's the conclusion he reached as a result of his due diligence on SIB and the SIB CD. Also, the audio and transcript from the Roadshow visit to the Dallas office seem to undermine Young's self-serving statement. [Div. Ex. 745]. Also of note, Young did not present any of the compliance disclosures during the road show. [Tr. 2366:7-10]

should not be – under the law. In fact, the relevant evidence on these issues only more firmly establishes each Respondent's *scienter* and liability.

1. None of the Respondents could have "reasonably relied" on the activities, if any, of any insider or outside counsel in connection with the conduct at issue.

Each Respondent argues he lacked *scienter* because he reasonably relied on the activities of certain "respected" outside and inside counsel. [See, e.g., Green's Br. at 18-20, Young's Br. at 4, 9, and 12; Bogar's Br. at 16-17].

a. An examination of the record, rather than Respondents' bare assertions, reveals that Respondents' "reasonable reliance" arguments are founded on after-the-fact self-serving statements, not credible evidence.

i. Bogar

Though Bogar assures the Court that "preeminent outside counsel" and "well-qualified and experienced in-house legal and compliance personnel" reviewed all the SIB CD disclosure documents and blessed them, there is no competent evidence in the record of a three-week trial to support (much less prove) that assertion. And even if there were such evidence, there is no evidence Bogar himself knew or was even told of such legal advice.[13]

For example, when asked his "understanding of the provenance" of the disclosure documents, Bogar responded:

> Well, I mean, like I say, Carlos Loumiet and Greenberg and eventually Hunton & Williams was the attorney. He set up the structure, he set up the documents *as far as I knew*. And I know

[13] Bogar also suggests he cannot be held liable because the CD program had been in place for years before he became President. He essentially argues that –despite his admission that he had authority over SGC's sale of the SIB CDs– he was powerless to change it (or apparently review it). This argument inaccurately presupposes that Bogar had no responsibilities related to SGC's marketing of the SIB CD and took no active steps to aid in that effort. For Bogar to suggest that he could serve as the President of SGC without ensuring that the firm's "premier product" was being truthfully marketed confirms his recklessness.

> Yolanda had a lot to do with it. I would imagine once it became you know, once the brokers started selling the product, *I'm sure* Lena had a lot to do with it, as well."

[Tr. 2607: 14-23 (emphasis added)]. This is pure speculation, not evidence. Rather than being told, much less confirming, that attorneys such as Loumiet and Yolanda Suarez or compliance-related persons such as Lena Stinson, created or approved the documents, Bogar simply assumed it. His testimony related to Mauricio Alvarado is equally vague and speculative. [Tr. 2609:1 – 7]. Indeed, Bogar admits that he knew only that people such as Suarez "were aware" of the offering documents, not that she had written or approved them. And he certainly offers no evidence about what information any attorney was provided, even if it is assumed (in the absence of any supporting evidence in the record) that such an attorney actually drafted or approved the offering documents. In fact, though Bogar's brief asserts that Ms. Suarez had been a securities lawyer at Greenberg Traurig, Bogar himself simply assumed her securities training. He had no knowledge about it.

Bogar's attempt to rely on another attorney, Rebecca Hamric, is particularly telling. [See Tr. at 615-2618]. In response to seeing her name in a document which discussed the disclosure documents, Bogar recalled that Hamric "was a person in legal who handled regulatory matters and, you know, really, all the disclosure documents, bank disclosure stuff, and so forth." [Tr. 2616: 13-18]. Bogar's reliance on Hamric is ironic, since Bogar admitted that he was not even sure if she was an attorney. [Tr. 2852:2-5].

Even given excessively leading questions about such a document [Bogar Exhibit 345], Bogar can only speculate: "it *looks like* Rebecca is working on some document, disclosure statement." [Tr. 2616: 19-23 (emphasis added)]. The best "evidence" Bogar can muster is his unsubstantiated assertion in response to a leading question. Similarly, when asked whether it

was his understanding that Rebecca Hamric, Lena Stinson, Rep Poppell and Jane Bates all worked on the disclosure documents, he answered simply: "Yes, I know they did." [Tr. 2616:24 - 2617:2]. He offered no documents or third-party testimony in support.

He also offered no details as to what type of review Hamric (or anyone else, for that matter) allegedly conducted of the disclosure documents. In addition, he failed to identify exactly which documents he was referring to when he said that the four people he identified had approved "the disclosure documents".

Also, to give serious consideration as to whether Bogar did indeed rely on the advice of an attorney in connection with believing that the "disclosure documents" were approved by legal personnel, it would be important to know what facts were known to those attorneys and what exactly they were asked to opine on or accomplish. For example, were they asked to consider SGC's responsibility in connection with marketing a proprietary product? The Respondents have pointed to no evidence of such a review or any evidentiary-based reason they would have assumed such a review.

For example, there is not even self-serving testimony claiming that any attorney had reviewed the Form ADV, one copy of which is contained in Division Exhibit 486. In fact, Bogar initially could not even recall the requirement that a registered investment adviser is required to disclose affiliated transactions. [Tr. 2895: 21 – 2896: 1].

Epitomizing Bogar's testimony was his response answer to a question about the Form ADV:

Q: Are you familiar with something called the Form ADV?

A: I've heard of the Form ADV.

Q: Are you familiar with a section of that form – I take it by your answers that you're not familiar with the fact that the Form ADV requires disclosure of affiliated transactions?

A: Look, we had a great accounting staff; and I'm sure they did that, if we had to do that.

Q: But you're the head of the business. I mean, you're not familiar with that. Is that what you're saying?

A: I don't recall, no.

[Tr. 2896:2-14].

Bogar was obviously not familiar with the form, or the requirement, and he seemed to think it was the accounting staff that filled out the form. Then he admitted he did not recall the form, even though he was the head of the SGC as a registered investment adviser firm. [Tr. 2896: 11-14]. Once he was shown the form, he then said it sounded familiar. [Tr. 2896: 15-24]. After admitting that the form failed to disclose the millions of dollars in fees for managing SIB's private equity investments, Bogar tried to say that the form was Stanford Capital Management's form. [Tr. 2897:13 - 2898: 15]. When it was pointed out to him that this was SGC's form, then Bogar guessed that it was Young or someone in his department who filled out the form. [Tr. 2897:12-19]. A few pages later, Bogar admits the Form ADV also fails to disclose the warrants that he and others got in the managed private equity companies. While Bogar said that he left "all that stuff" to the compliance department, he admitted that he did not read the Form ADV "that close". [Tr. 2906:13-19]. Thus, Bogar cannot hide behind his advice of counsel defense on the material omissions from the Form ADV. The fact that he was not even

familiar with the form is evidence of his extreme recklessness with regard to the disclosures that SGC was making to the public and its investors.[14]

In sum, all the Court is left with is Bogar's self-serving, after the fact "assumptions" that some attorney or some lawyer, somewhere, approved the offering documents. Courts rightly recognize that such unsubstantiated self-serving testimony is of dubious credibility and may be safely disregarded. *See, e.g., U.S. v. Ebbers*, 458 F.3d 110, 121-22 (2nd Cir. 2006) (in a criminal securities fraud case finding self-serving testimony to be of dubious credibility and limited probative value); *see also Le Bin Zhu v. Holder*, 622 F.3d 87, 92 (1st Cir. 2010) (self-serving statements of respondent, absent substantiation, were of limited evidentiary value). In any event, as discussed below, such conclusory "evidence" falls far short of the type of specific reliance on legal advice noted in the cases Bogar and the other Respondents cite.

Finally, no amount of "reliance" on the presence of attorneys erases the fact that Bogar knew the written materials related to the SIB CD were defective. Bogar knew that without any transparency into the SIB portfolio, SGC could not accurately represent one way or the other how the SIB portfolio was invested. [*See* Tr. 2881: 16-21 (Bogar admitted that it is not possible to understand the SIB CD without getting transparency into the SIB portfolio)]. But SGC and SIB nevertheless made extensive representations, for years, as to precisely how the portfolio was invested. SGC did not and could not verify that information. Bogar knew the disclosure documents did not contain any statement that SGC had no transparency into the SIB portfolio.

---

[14] Bogar also refers to segments of vague testimony to suggest he actually provided a level of oversight over attorneys and compliance officials. But his testimony supports no such inference and certainly does not suggest he had any interaction, much less supervision, over any work any attorney or compliance officer conducted in relation to either the SIB CD offering documents or SGC's marketing of the SIB CD. [See Tr. 2615-8, Ex. B 347.]

[*See* Tr. 2885:9 - 2886:10 (Bogar incredibly attempted to claim that SGC *did* disclose that it had no transparency into the portfolio, by claiming the opposite, that SGC had not lied and represented that it did have transparency)]. Tellingly, when confronted with the fact of this omission from the disclosure documents, Bogar fell back on a different excuse, which was that they were the "bank's documents", not SGC's. [Tr. 2886: 8-13].

ii. Young

Young's references to his supposed "reliance" on other professionals is equally unsupported.

For example, in his brief, Young asserts that the Training and Marketing Manual was "prepared by SIB Compliance and approved for content by SFG Legal, SFG Risk Management, and SFG Global Compliance." [Young Br. at 9]. Notably, Young fails to offer even self-serving testimony to support that assertion, but apparently asks the Court to simply take his unsworn word for it. The record, however, offers no evidence that any attorney or compliance official vetted the Training and Marketing Manual, and there is certainly no evidence to demonstrate the circumstances of such purported vetting.[15] The same defects plague Young's assertions that the Training and Marketing Manual was revised twice by SIB compliance and SFG legal. [Young Br. at 9].

---

[15] Indeed, at trial there was testimony that Oreste Tonarelli, a non-lawyer Young admits was registered with SGC, may have originally created the Manual. This, of course, does not absolve the Respondents' liability that arises in connection with the misrepresentations contained in the Manual, for the reasons discussed in the Division's initial brief. Likewise, Young's misplaced efforts to claim he used a different (arguably less fraudulent, but still misleading) version of the Manual fails for the reasons explained in the Division's initial brief.

Similarly, Young cannot support his assertion that he relied heavily on Lena Stinson, Rebecca Hamric, and Jane Bates, who (according to Young) all played significant roles with the written documents or in reviewing and responding to regulatory inquiries.[16] [Young Br. at 4].

As a threshold matter, it speaks volumes that he did not call *any* of these three individuals to testify at the hearing. Young listed all three individuals on his witness list, but apparently chose not to call them. As a result, all of Young's statements about his interactions with, and reliance on each are uncorroborated and self-serving. As noted above, such self-serving, unsubstantiated testimony from a defendant should be rightly devalued and is, ultimately, unpersuasive. That is especially true here, given the abundant problems with Young's testimony, as set out in pages 66-67 (Section III.(A)(3)(c)) of the Division's initial brief.

iii. Green

Green relies extensively on his own self-serving statements, which — almost without exception — are unsubstantiated by either documents or third-party witnesses. Perhaps most notably, Green claims that it was reasonable for him to rely on Allen Stanford's lawyers including Tom Sjoblom — to vet the representations in his stead. [See, e.g., Green Br. at 18-20, fn. 83-94]. Again, it is notable that Green did not call Sjoblom or any other lawyer as a witness to corroborate his testimony. Nor did he offer any documentary evidence to support it.[17] This is

---

16 In his brief, Young also claims that Hamric told him in 2006 that he would never get access to SIB's investment portfolio because of Antiguan secrecy law. [Young Br. at 14]. There is no evidence in the record to support this self-serving statement; in fact, both transcript references he cites to support this fact only mention Stinson and Bates. [Tr. 3214:7-16, 3221:13-16]. This is yet another flagrant attempt to include another reference in his brief to someone who was a lawyer -- presumably in an effort to support Young's unsupported argument that he relied on "lawyers."

17 This is especially notable in light of the fact that, as the Court is aware, the Respondents sought and could have obtained the relevant legal files — in addition to the Division's investigative file, which also contained many legal files and other documents from the lawyers.

also the case with respect to Green's claim that all of his sales and training presentations were reviewed and approved by legal and compliance. [See, e.g., Green Br. at 35-37, fn. 169-185]. Again, Mr. Green did not offer a single document or any third-party testimony to support this claim.[18] As noted above, such self-serving unsubstantiated statements are of no real value.

b. Even if there were factual support for Respondents' self-serving claims, their reasonable reliance defense fails as a matter of law.

Even if the Court accepts the Respondents self-serving statements at face value, this "evidence" is insufficient as a matter of law to eliminate the Respondents' *scienter*. For example, any reliance on cases such as *Howard v. SEC*, 376 F.3d 1136 (D.C. Cir. 2004), is based on a misapplication of the evidence here. In fact, attempting to rely on *Howard* actually turns the court's analysis in that case upside down. In *Howard*, the DC Circuit concluded that the defendant should not be held accountable for certain violations because it was undisputed that Howard had communicated directly with inside counsel about the propriety of the very conduct at issue and that the inside counsel told Howard that he [the inside counsel] had consulted with outside counsel and that the outside counsel had approved of the transaction. *See Howard*, 376 F.3d 1136, 1140, 1142, and 1147-1149. Likewise, in *Howard*, the defendant was specifically kept apprised of efforts by outside counsel to draft the relevant documents. Here, as noted above, there is no evidence in the record to support any similar findings about the conduct of Bogar, Young or Green. The specific reliance *Howard* placed in guidance from counsel (both inside and outside) is a far cry from the Respondents' "assumptions."[19]

---

[18] In fact, to the extent Compliance did review these materials, Green admitted that Michael Koch told him the insurance information in his presentations was misleading. Tr. 3797:10-25. Yet Green refused to remove it. Id.

[19] For many of the same reasons, *In re Urban*, 2010 SEC LEXIS 2941 (Initial Decision Sept. 8, 2010) does not apply here. That case was based solely on an allegation that Urban failed to properly supervise a registered representative. In contrast, in this case the Division's allegations are based on each Respondent's own actions, not his failure to supervise. In other

This is illustrated by the *Howard* court's observation that "[t]he exercise of independent, careful and informed legal judgment on difficult issues is critical to the flow of material information in the securities markets." *Howard*, 376 F.3d at 1148 n.20 (citation omitted). Here, there is no evidence whatsoever that any attorney exercised "independent, careful, and informed" analysis that was relied on by any of the Respondents. Moreover, the *Howard* court stressed the complex nature of the legal requirement at issue. *See Howard*, 376 F.3d at 1145. The contrast here could hardly be starker. It is hardly a secret that broker-dealers and investment advisers cannot assure their clients that a product is safe because it is based on a liquid portfolio when substantial information calls that product and that statement into question.[20]

---

words. *Urban* involved a failure to catch a rogue salesman. In this case, the Respondents were the rogue professionals and taught others to provide misleading information.

Young's reliance on *In re Huff*, 1991 SEC LEXIS 551 (Initial Decision March 1991) fails for exactly the same reasons. (allegations related to Huff's supervision of a rogue salesman (at *3) and decision based, in part, on lack of any new developments from the time Huff was hired to raise questions about the rogue salesman (at *12)).

[20] This is only further confirmed by *In re Charles C. Carlson*, 1977 SEC LEXIS 162 (1977), 46 S.E.C. 1125, 1132-33 (1977), another decision that Bogar and Young cite. There, as the D.C. Circuit, explained, the Commission held that a broker reasonably relied on a lawyer's advice (which turned out to be mistaken) and added that although a securities professional should have been familiar with the "rudiments" of securities laws, he should not be expected to "display finished scholarship in all of the fine points." *Howard*, 376 F.3d 1136 at 1148. Respondents' reliance on Carlson fails for several reasons: (i) while Carlson was "merely a salesman," Bogar, Green, and Young (who spent 19 years with the NASD) were senior executives of SGC; (ii) none of the Respondents points to any instances where they asked a lawyer for an opinion about anything relating to the matters in this case; and (iii) the court's discussion about Carlson's interactions with lawyers occurred in evaluating whether the sanction imposed against him was appropriate, i.e., after liability against him had already been established.

Similarly, Bogar's attempt to avoid the Court's analysis in *SEC v. Savoy*, 665 F.2d 1310, 1314 (D.C. Cir. 1981) is mistaken. [*See* Bogar Br. at 41 n.9]. While the *Howard* court noted that, contrary to a suggestion in dicta contained in *Savoy*, reliance on the advice of counsel need not be a "formal defense," the Court in no way suggested that the relevant inquiry was, as a substantive matter, different.

And, regardless of the facts related to advice received from counsel, the crux of the Court's decision in *Howard* hinged on its finding that, unlike cases such as *Wonsover v. SEC*, 205 F.3d 408, 415 (D.C. Cir. 2000), "the SEC is unable to identify any such unusual circumstances with regard [to the conduct at issue]."

As set out in length, during the hearing, in the Division's initial post-hearing brief, and above, the record in this case reflects that each Respondent was well-aware of "red flags" and suggestions of irregularities that demanded inquiry as well as adequate follow-up and review. *Howard*, 376 F.3d 1136 at 1149.

In other words, this case falls squarely in line with the well-established law that reliance on counsel is not reasonable in the face of red flags. *See, e.g., Wonsover v. SEC*, 205 F.3d 408, 415 (D.C. Cir. 2000) (no justifiable reliance on counsel excusing lack of inquiry by defendant in face of multiple red flags); *Sorrell v. SEC*, 679 F.2d 1323, 1327 (9th Cir. 1982) (when a party "ignores the obvious need for further inquiry, even in reliance on assurances from other brokers or attorneys, he violates the act") (citations omitted). A respondent cannot ignore the obvious need for further inquiry, even in reliance on assurances from other firm personnel or attorneys. *Sorrell* 679 F.2d at 1327 (citing *Feeney v. SEC*, 564 F.2d 260, 262 (8th Cir. 1977)). When a securities professional ignores an obvious need for further inquiry, even in reliance on assurances from other brokers or attorneys, he violates the law. *See, e.g., Everest Securities v. SEC*, 116 F.3d 1235, 1239 (8th Cir. 1997) (rejecting argument that defendants "properly relied on the information contained in the memorandum because it was provided to them by [the issuer and its] attorneys" because reliance on others did not excuse the defendants' lack of investigation).[21]

[21] As the Division has argued and established elsewhere, Respondents' arguments also fail because the attorneys he cites to were not disinterested or independent. *SEC v. O'Meally*, 2010 WL 3911444, at *4 (S.D.N.Y. Sept. 29, 2010); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 181-82

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

For example, each Respondent was aware of precisely the sorts of "red flags" that courts have made clear render reliance on an issuer or its counsel unreasonable:

- Common control between the issuer (SIB) and the broker-dealer (SGC). *See SEC v. Platinum Inv. Corp.*, No. 02 Civ. 6093(JSR), 2006 WL 2707319, at *3 (S.D.N.Y. Sep. 20, 2006) (Where the issuer was the privately held parent corporation of the dealer for whom the securities professional worked, and the issuer and the dealer were run by the same, related individuals-the broker's duty to conduct an independent investigation of materials submitted by the issuer applies equally to materials and statements submitted to the professional by officers."

- Offering documents that are questionable on their face, including rates that are substantially above-market. See *SEC v. Randy*, 38 F. Supp. 2d 657, 665-67 (N.D. Ill. 1999) ("[T]he promotional materials for Canadian Trade Bank were so questionable on their face as to put

(2d Cir. 1976). This lack of independence is especially critical here, given SGC's financial dependence on SIB.

Johnston on notice that further investigation was necessary to avoid misleading potential investors. These materials contained statements guaranteeing that the certificates of deposit would pay up to 12 to 14% interest annually. As the SEC correctly notes, these rates were substantially higher than the prevailing market rates for certificates of deposit issued by financial institutions that had their deposits insured by the Federal Deposit Insurance Corporation and that were advertised in newspapers of general circulation.")

- Conflicting information. *See, e.g.*, In the Matter of Danny G. Pinkerton and Kevin N. Campbell, Release No. 98, 63 S.E.C. Docket 193, Release No. ID - 98, 1996 WL 602648 (S.E.C. Release No.), Administrative Proceeding File No. 3-8805 (October 18, 1996) (Murray, J.) ("[Broker] deliberately ignored information which conflicted with what the issuer told him.")

- Above-market commissions on the product. See Campbell, supra. ("Campbell knew, ignored, and did not disclose to customers [. . .] that salespeople were receiving eleven percent commissions which were two or three times higher than on sales of NASDAQ listed stocks."

2. It is irrelevant, and certainly does not excuse Respondents' conduct, that certain "well-respected" persons were associated with Stanford, particularly given that it is undisputed that such persons play no role related to the SIB CD.

Respondents at trial, and Green in particular in his briefing, sought to rely on "impressive" individuals in lieu of actual exercise of their responsibilities.[22] First, Green never met with most of these people including Mike Oxley, Lyle Gramley, Madeleine Albright, and Paul Wolfowitz. Second, there is no evidence, other than Green's suppositions, that these people vetted SIB at all. And they certainly didn't vet the representations Green was making to the financial advisers and investors. In fact, Green admitted that Ms. Albright and Mr. Wolfowitz were nothing more than guest speakers at Stanford-related meetings. [Tr. 3717:25-3718:14]. Third, the mere fact that these people and others (who may actually have been associated with SIB) were well-credentialed is meaningless. For instance, Green touts SIB Director "Sir"

[22] Because this argument is addressed mainly by Green, the Division will focus its response on Green's position. But for the same reasons, neither Bogar nor Young could "reasonably rely" on the activities of these third parties and their presence does nothing to negate any of the Respondents' *scienter*.

Courtney Blackman — who, "like Warren Buffet, had a doctorate degree in finance from Columbia University." [Green Br. at p. 8, fn. 37]. This is of no legal import, and Green cites no authority to the contrary.[23] Conveniently, Green does not discuss other SIB directors, including former bankrupt gym owner Allen Stanford, his dad (who Green never met), his college roommate Jim Davis, and — most prominently — O.Y. "Bill" Goswick, SIB's director for investments whose credentials consisted of being a used-car dealer and rancher from Allen Stanford's home town (and who had had a stroke in 2000 which ultimately rendered him unable to communicate). [G-268 at 13; Tr. 2279:19-2280:24, 3964:10-3965:1].

Similarly, Green's claim that it was reasonable for him to rely on other parties to do his vetting for him falls far short both factually and legally. For instance, Green claims that it was his "view" that BDO Seidman and Lloyd's of London conducted a "rigorous review" of SIB. [Green Br. at 7, 63]. However, Green had no basis for this view. Green admits that he knew BDO was not SIB's auditor, and that he never spoke to BDO to confirm his "view" about their audit work. [Tr. 3993:1-6]. Likewise, there is no evidence in the record that Green did anything to confirm his purported understanding of what Lloyd's did before writing insurance policies to SIB. In fact, contrary to Green's assertion in his brief [Green Br. at p. 9, fn. 40; p. 42, fn. 207; p. 63, fn. 307], Jonathan Batarseh testified that he had no idea what Lloyd's did:

Q So, you don't understand what Lloyd's of London does when it's issuing an insurance policy, do you?

---

[23] Furthermore, the fact that Mr. Blackman shares a degree with Warren Buffet is factually ambiguous. After all, Michael Milken was Phi Beta Kappa at UC-Berkley and is a Wharton MBA. http://en.wikipedia.org/wiki/Michael_Milken#Education Jeff Skilling, another convicted felon, is a Harvard MBA and was one of the youngest partners in McKinsey Consulting's history. http://en.wikipedia.org/wiki/Jeffrey_Skilling Conversely, both Steve Jobs and Michael Dell were college dropouts. http://en.wikipedia.org/wiki/Steve_jobs#Early_life_and_education; http://en.wikipedia.org/wiki/Michael_Dell#Early_life_and_education.

A No.

[Tr. 2314:16-22]. At a more basic level, Mr. Batarsch — a longtime friend of Green's — acknowledged that he did no independent due diligence on the SIB CD, and was basing his understanding of SIB's oversight on nothing more than what he had been told (most likely by Green, among others). [Tr. 2311:18-25]. Mr. Batarsch also accompanied Green and Mr. Young on the "road show," during which the three of them went from office to office to comfort FAs regarding the safety of the SIB CD.[24] In short, regardless of his credentials, Mr. Batarsch — like Mr. Green — was nothing more than a cheerleader for the SIB CD, and did no independent vetting of the representations regarding SIB.

As the Second Circuit explained in *Hanly*:

> In summary, the standards by which the actions of each petitioner [five securities salesmen] must be judged are strict. He cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those which are reasonably ascertainable. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation. Where the salesman lacks essential information about a security, he should disclose this as well as the risks which arise from his lack of information.

Hanly, 415 F.2d at 597; *see also Alton Box Board Co. v. Goldman, Sachs & Co.*, 560 F.2d 916,

---

[24] Mr. Batarsch initially tried to deny the obvious purpose of the road show. However, he slipped up at one point in his testimony, acknowledging that the purpose of the trip was to discredit SIB's critics:

Q What was the purpose of having you on that trip? What was your role?

A You know, I think my role was more just my understanding based on the information that we had, some of the practical protections that we had at the bank. You know, if you wanted to discredit and just -- well, ignore that.

Mr. Batarsch also testified "What I tried to communicate on that trip was [. . .] we had insurance." Tr. 2311:6-9.

922 (8th Cir. 1977) ("[B]y holding the notes out as being creditworthy, Goldman, Sachs represented that it had made a thorough investigation on which it based its recommendation.").

These standards apply with even greater force here, where SGC was the exclusive U.S. broker-dealer for the SIB CD, was wholly-owned by the same individual, and received a substantial portion of its revenue from SIB. As the Seventh Circuit explained in the analogous situation of an underwriter: "[a]n underwriter's relationship with the issuer gives the underwriter access to facts that are not equally available to members of the public who must rely on published information. And the relationship between the underwriter and its customers implicitly involves a favorable recommendation of the issued security." *Sanders v. John Nuveen & Co.*, 524 F.2d 1064 at 1069-70 (7th Cir. 1975). Thus, "a greater quantity of information is 'reasonably ascertainable' by an underwriter than by a mere broker, and something more than published data must be analyzed if an underwriter is to discharge his duty of investigation. ... Although the underwriter cannot be a guarantor of the soundness of any issue, he may not give it his implied stamp of approval without having a reasonable basis for concluding that the issue is sound." *Sanders v. John Nuveen & Co.*, 524 F.2d 1064, 1071 (7th Cir. 1975), *vacated and remanded on other grounds*, 425 U.S. 929 (1976), *on remand*, 554 F.2d 790 (7th Cir. 1977), *rehearing denied*, 619 F.2d 1222 (7th Cir. 1980), *cert. denied*, 450 U.S. 1005 (1981).

That reasoning applies equally here and the Respondents cannot attempt to shift their responsibilities to others. *Sanders*, 524 F.2d at 1071 (rejecting underwriter's argument that its reliance on the issuer's audited, but inaccurate, financial statements was reasonable because leading banks that had extended millions of dollars of credit to the issuer also relied on those financial statements, holding that the standards of the federal securities laws controlled, not the reasonableness of a bank's credit investigation procedures).

3. The attempt to rely on Pershing, far from explaining Respondents' conduct, only confirms their liability.

Curiously, the Respondents, and Bogar in particular, seek to rely on the activities of Pershing, SGC's clearing broker, to suggest that the Respondents lacked *scienter*. Nothing could be further from the truth. First, regardless of what Pershing thought in 2005, Bogar apparently argues that Pershing could never thereafter re-assess the situation. That position makes no sense. In fact, Pershing's conduct – asking an increasing number of questions as more questionable information about SIB became known to them – is the type of conduct one would have expected from the Respondents here. Consequently, the Pershing-related evidence only emphasizes that the Respondents' knowledge of Pershing's concerns rendered their continued actions, at a minimum, severely reckless.

Bogar's argument interprets the evidence precisely backwards. In essence, he asks the Court to conclude that Pershing's termination of all wire transfers related to the SIB CD was irrelevant because Pershing continued to serve as a clearing broker for SGC. [Bogar's Br. at 22]. Instead, what is irrelevant is that Pershing continued non-SIB related business for SGC.[25] The significance of Pershing's actions lies in the undisputed fact that its only concern was the lack of transparency into the SIB CD portfolio. [Tr. at 854:21-24; 927:24-928:2].

The only reasonable inference from the evidence is that Bogar, as well as the other Respondents, fully understood the seriousness of Pershing's requests for transparency into SIB's

[25] Bogar wholly ignores the fundamental point that SGC, as the introducing broker, had fundamentally different – and stronger – duties than did Pershing, a clearing broker. *See, e.g., Warren v. Tacher*, 114 F. Supp.2d 600, 603 (W.D. Ky. 2000) (clearing firms not responsible for the action of introducing broker); *Katz v. Financial Clearing and Services Corp.*, 794 F.Supp. 88, 94 (S.D.N.Y. 1992) (introducing broker is not acting as agent of clearing broker). Likewise, he mischaracterizes Pershing's original due diligence efforts. As John Ward made clear, Pershing's initial due diligence focused on SGC, not SIB, in 2005. [Tr. 893:6-25].

portfolio. His refusal to admit this has led him to take inconsistent, after-the-fact, positions. For example, it is undisputed that Bogar and others at SGC began exploring other clearing broker options. [See, e.g., Division Ex. 280]. Yet, at the same time, Bogar claims – and indeed tries to trumpet – the fact that the clearing relationship was never in jeopardy. [*Id.*; *See* Tr. 854:10-20; 896:5 – 897:18]. The most plausible inference from the evidence is that Bogar knew that he and SGC would never be able to provide Pershing with any meaningful transparency into the SIB CD and should have a backup plan in case the clearing broker relationship was terminated.

The sequence of events is telling. After John Ward emailed Bogar on August 27, 2007, a list of additional items Pershing wanted on SIB's portfolio, Jim Davis instructed Bogar to "find that other option". [Division Exhibit 256]. Later, on December 12, 2007, Bogar emailed Davis, saying he needed to talk about Pershing, because "The issue with them is not going away." [Division Exhibit 265]. In an attempt to placate them as SGC had investors and even SGC financial advisers, Pershing was asked to visit Antigua.

Bogar promised Pershing transparency on that trip [Division Exhibit 269, p. 2 ("per our discussion", Pershing will see "the bank's balance sheet and supporting paperwork that reflects the assets")]. But when the Antiguan trip failed to produce the transparency they were expecting, Pershing executives escalated the issue. They scheduled another meeting in Memphis with Jim Davis, on March 6, 2008. Jim Davis and Pershing's CEO, Rich Brueckner, would be present. [Tr. 835:2 – 837:4]. This meeting did not go well. [Tr. 2669:13- 2671:2].

Shortly thereafter, the idea of having a CPA firm conduct a review of the bank assets arose. [Tr. 837:12 – 839:7].[26] Ward followed up with his March 17, 2008, email, which said Pershing did not need to specify the form of the review, but a "U.S. domiciled recognized

[26] As discussed in the Division's initial brief, if Bogar sincerely believed an accounting firm would be provided transparency, why, then, could SGC itself never obtain such transparency?

accounting firm" to conduct a review of the bank's assets and render their "professional opinion they are reflected accurately in the bank's balance sheet" would suffice. [Division Exhibits 274. 276].

It is clear from these events and documented conversations that Pershing's executives were demanding verification of SIB's hidden portfolio. Shortly after Bogar received the March 17, 2008 email, Bogar assigned Young and Fred Fram to look into other clearing alternatives. By April 25, 2008. Young emailed to Bogar his memo on SGC's options "seeking a clearing resolution outside of Pershing". These included buying a clearing firm, applying to become "self-clearing", or clearing as introducing broker to another firm, "such as National Financial". [Division Exhibit 280].

The timing of the consideration of these other clearing options is extremely telling. SGC was only two years into a five-year contractual commitment to Pershing. Yet, the pressure from Pershing to gain transparency into the SIB portfolio drove the Respondents to consider putting SGC through the turmoil of another conversion, on the heels of the previous one, to avoid providing the transparency Pershing wanted.[27] Bogar knew that Davis was never going to allow that, and therefore that he needed to "get that other option". This was confirmed on June 12, 2008, when Davis told Bogar in an email that they were not going to give Pershing what it wanted. [Division Exhibit 288]. But even before the June 12. 2008 email. Bogar knew Davis would never give Pershing what it wanted because the bank's transparency was "always a touchy

---

27 Ward testified that he had no idea that SGC was looking at these options. [Tr. 896:14 – 897:18].

subject" with Davis. [Tr. 2656:12-16 (discussing one of the Memphis meetings prior to the June 12, 2008 email)].[28]

Under these circumstances, Bogar's insistence that he never had any indication that Jim Davis was not going to permit any transparency into the SIB CD is disingenuous.[29] Bogar's various explanations, trying to distort what Davis meant are simply not believable. [Tr. 2725:12 - 2726: 6]. In the end, even he testified that he did not really recall what Davis said. [Tr. 2953:19]. But he admitted that the reference in Exhibit 288 to "Pershing's requests" was "absolutely" related to the transparency of the Bank. [Tr. 2951:18 - 2954:1]. And Davis said no.

Bogar's own contemporaneous words undercut his evasions at trial. On November 21, 2008, Bogar sent his "Monthly Metrics" report to Allen Stanford and Jim Davis. In that report, Bogar reported to the two top bosses of the Stanford family of companies that among SGC's "top three concerns" was this: "Pershing is getting more and more frustrated because we have *refused* to give them more info on SIB". [Division Exhibit 341(emphasis added)]. Bogar's choice of the word "refused" is a clear indication that Bogar knew that the Grant Thornton procedures

---

[28] Bogar's attempt to minimize Pershing's concerns by suggesting that it was merely a question raised by Mr. Closs is specious. In the first place, Ward's testimony made it clear that while Closs may have initiated the original request and the issue, it was not something that Pershing did not believe in, or did not want. Indeed, at the March 2008 meeting, the CEO of Pershing himself was present to press Jim Davis directly for transparency into the portfolio. The emails asking for information came from Ward. If this was only Closs's issue, it is unlikely the CEO would have attended the meeting, or that Pershing would have continued to press it. And of course, even if it were simply a question or concern of a single person in risk management, Bogar cannot explain why he didn't ask similar questions once the issue was fronted for him.

[29] At page 21, Bogar states that "Mr. Bogar was not told at any time by Mr. Davis that the Bank would not comply." At page 22, he states, Davis "never indicated that he would refuse implementation of the procedures" that Chuck Weiser worked out with Grant Thornton.

were not going to be pursued.[30] He knew already that Allen Stanford and Jim Davis had no intention of complying with the Grant Thornton procedures, or providing any transparency in any other manner. This monthly report was sent a mere three days before Ward emailed Pershing's ultimatum.[31] These contemporaneous documents are more credible that Bogar's self-serving testimony.

In summary, the actual evidence related to Pershing's activities merely confirms that Bogar and the other Respondents who knew about Pershing's concerns and drafted misleading talking points in response – acted with, at a minimum, severe recklessness. Given Pershing's concerns, it is impossible to deny that the lack of transparency into the SIB CD portfolio is crucial.[32] Nothing proves this better than the Respondents attempt to hide this fact from others when they created misleading talking points to, as Green put it, "stay on message" about Pershing's decision to wash its hands of SIB. Given the admittedly high esteem in which Bogar and the other Respondents held Pershing,[33] and given the trouble that SGC went through to

---

[30] Bogar's continual statements of his "belief" that he thought he (SGC or SIB) would eventually accommodate Pershing's requests for information. Such self-serving statements are not credible, given Davis's clear refusal to provide the information [Division Ex. 288] and Bogar's own use of the word "refused" in his contemporaneous November 21, 2008 Monthly Metrics report. [Division Exhibit 341].

[31] Ward sent Bogar Pershing's ultimatum on November 24, 2008. [Division Exhibit 342]. After clearing his proposed answer with Mauricio Alvarado first [Division Exhibit 343], Bogar sent his answer. [Division Exhibit 344]. By December 12, 2008, SGC had Pershing's answer, as by that time Pershing had cut off the wire transfers. [Division Exhibit 350].

[32] This is especially true since Bogar (and the other Respondents) had notice of multiple requests for the same information from other sources. [*See, e.g.*, Division Exhibit 277 (Financial adviser Lou Schaufele asking for more information); Division Exhibit 424; Tr. 2999:25 - 3001:22 (Louisiana state regulators asking for CD portfolio information)].

[33] He believed it was important to SGC's growth model to have Pershing, as opposed to Bear Stearns, as the clearing platform going forward. [Tr. 2624:20 – 2625:10]. Even in his post-hearing brief, Bogar is touting Pershing. [Bogar Br. at 18 (Pershing as a clearing firm that would

convert to Pershing, any denial of the significance is Pershing's relentless requests for information verifying SIB's portfolio is not credible.

D. The Respondents' remaining arguments are also unpersuasive.

1. Green's efforts to avoid a finding of *scienter* and liability warps the record and fails as a matter of law.

a. Green cannot shift all the blame to Allen Stanford

Green's central argument both at trial and in his briefing is that because Allen Stanford created a veneer of legitimacy around his fraud, Green was entitled to blindly pass Stanford's misrepresentations regarding that safety and security of the SIB CD to investors and financial advisers. The crux of this argument has been addressed above. Contrary to Green's protestations, this case is not about whether Green knew or should have known about Allen Stanford's fraud scheme – and there is no such allegation in the OIP. And it is not about whether Green himself believed the representations he made regarding the SIB CD were true. It is black letter law that the belief must be *reasonable*. None of the Respondents meet that standard and none are "shielded from liability if he actually believed the representations which he had no adequate basis to make." [*SEC v. Hasho*, 784 F. Supp. 1059, 1107 (S.D.N.Y. 1992) (citing *Alexander Reid & Co., Inc.*, 40 S.E.C. 986, 990-91 (1962)]; see also *SEC v. Platinum Inv. Corp.*, No. 02 Civ. 6093, 2006 WL 2707319, at *3 (S.D.N.Y. Sep. 20, 2006) (reliance on statements or materials from the one's employer or the issuer is legally insufficient)].[34]

"enhance" SGC; Pershing was "probably the largest and most sophisticated institution in the field.")].

[34] Very much like SIB, the issuer in *Platinum* was a privately-held affiliate of the dealer for whom the defendant worked, and the operations of the issuer and the dealer were heavily intertwined.

b. **Green should not be allowed to disavow his own actions and words.**

Green repeatedly distorts the record and seeks to use whatever advantage possibly available to avoid admitting his misconduct. Perhaps the most vivid example of this is Green's testimony regarding the Pershing "talking points" email. [Division Exhibits 355, 356] Green claims that he discussed this email, which attributes Pershing's decision to stop wires to "tax reporting" issues, with Ed Zelezen before sending it out. [Tr. 4062:8-14] Yet with Mr. Zelezen in the courtroom under oath, Green's attorney did not ask him a single question. And again, Green did not offer a single document supporting his version of events — which contradict the sworn testimony of both Mr. Zelezen and John Ward. [Tr. at 854:21-24; 927:24-928:2].

Similarly, Green tries to absolve himself from responsibility for the Training and Marketing Manual, arguing that he "had no involvement in drafting, editing, or overseeing the Training and Marketing Manual." [Green Br. at 46]. But the fact is, as Green admittedly knew, the Training and Marketing Manual (emphasis added) was distributed as part of the SIB CD training for SGC's domestic financial advisers — and Green led the marketing portion of the training. [Tr. 3929:17-21; see also, Tr. at 1163:25-1164:3 (Karvelis confirming that manual was distributed in conjunction with Green's training)]. He also knew it was available to financial advisers on the intranet. [Tr. 3949:25-3950:12]. And he also received it himself. [Division Ex. 90]. Green's claim did not know the content of the Training and Marketing Manual generally — and Page 8, specifically — is simply unbelievable.[35] [Tr. 3762:16-3763:8]. And Green's claim

[35] It is even more unbelievable in light of the public record. Green testified extensively (well over two hours) regarding the Training and Marketing Manual at Allen Stanford's criminal trial, confirming that he had "seen it before." [See criminal transcripts volumes 4-5 at 1031:17-1055:17, 1334:22-23, publicly available at http://www.scribd.com/doc/81304607/Allen-Stanford-Criminal-Trial-Transcript-Volume-4-Jan-26-2012 and http://www.scribd.com/doc/81305188/Allen-Stanford-Criminal-Trial-Transcript-Volume-5-Jan-27-2012]. Mr. Green testified extensively about the subheading of the manual entitled "How

that he never "used" the Training and Marketing Manual is beside the point. [Tr. 3762:7-8]. The point is that as part of their training program, Green (along Young) armed the financial advisers with the Training and Marketing Manual — which they took with them (and, as Green knew, had continuous access to on the intranet) to use in marketing the SIB CD to investors. [OIP at ¶¶15-17; Tr. 418:22-419:1; 1164:14-18].

Similarly, Green tries to cherry pick and distort the testimony of the investor witnesses in a misguided attempt to minimize his misconduct.[36] For example, Green twists James Stegall's testimony to claim that he knew he was investing in a risky product. [Green Br. at 31-32] Mr. Stegall was crystal clear that this was not the case, and that he and his wife could not afford to lose their SIB CD investment:

> Q And at that point in time once you retired and you mentioned your focus shifted, what was your main goal with respect to this money?
> A It's for income. We started drawing the interest off the CDs.
> Q Okay. And were you willing to risk that principal? Is this money you could afford to lose
> A No. It's all we had.

---

secure is Stanford International Bank." [Id. at 1048:20-1054:24]. Page 8 is contained within this section. [Division Ex. 742 at 11-12].

[36] Green also makes a great deal of the fact that Tom Moran did not appear to testify. As Green's counsel knows, Mr. Moran is ill and was instructed by his doctor not to testify. The Division has attached hereto as Exhibit A a letter produced to the Division during the trial. In light of the time spent on trial, the fact that representations to Mr. Moran were merely representative of Green's misconduct, and the fact that no defense counsel raised this as issue, the Division did not feel it necessary to belabor the point at the time.

In any event, as noted in the OIP, the quote in paragraph 29(a) was merely one example of many of the types of statements made by Green regarding the safety of the SIB CD. Aside from the testimony of the other investor witnesses, which adequately proves these types of statements, Green's own training presentations have him showing the SIB CD as having an extremely low risk profile which would be similar to that of U.S. treasuries. [Division Ex. 21 at 39-41 (SIB CDs have "low" credit risk — which is the same level of credit risk as cash and equivalents)].

Q And is this the money you were planning to live off of for your retirement?
A Yes.

[Tr. 1498:20-1499:1]

Green also claims that Stegall's testimony shows that the investors were not misled regarding the SIB-related compensation.[37] [Green Br. at 32] However, Mr. Stegall was clear that it would have been important for him to know about the full extent of compensation that SGC and Green were receiving from the SIB CDs. [Tr. 1506:22-1508:21; 1542:23-1545:1] So were Cindy Dore and Robert Smith. [Tr. 1415:15-1417:15; 1560:25-1561:11; 1562:24-1565:17]. Green likewise claims that Ms. Dore and Mr. Smith intended to invest in a risky product. [Green Br. at 26-30, 33] Again, both investors were clear that they were interested in capital preservation, and that they invested in the SIB CD based on Green's assurances about the safety of the product, as well as similar assurances in documents and presentations used by Green. [See, e.g., Tr. 1408:2-1409:6; 1414:1-1415:14; 1556:17-1558:3; 1559:22-1560:5]

Finally, Green repeatedly cites to the testimony of a number of witnesses -- some of whom he claims "overheard him interacting with customers" -- to support his assertion that he never misled any investors. [Green Br. at 3, 51, 56, 59]. However, two of those witnesses -- Mr. Comeaux and Mr. Batarseh -- were quite clear that they never saw Green present the SIB

[37] Green's brief refers to the "SIB CD referral fee." However, SGC's failure to disclose its SIB-related compensation and financial dependence goes far-beyond the referral fee -- including the sales contests, bonuses, special trips, Green's $3 million bonus, etc. [OIP at ¶¶20-27]. With respect to Mr. Stegall and Green's other advisory clients, Green himself had an affirmative duty to adequately disclose all conflicts of interest. [*In the Matter of Valentine Capital Asset Management, Inc. and John Leo Valentine*, SEC Release No. IA-3090; File No. 3-14072 (Sept. 29, 2010); Tr. 1502:17-1504:11 (establishing advisory relationship)]. SGC's after-the-fact letter, which discloses nothing other than the 3% fee to SGC and the fact that "*SGC* [not the individual financial adviser] *may* receive additional incentive bonus" falls far short of this standard. [G-247 at 13] (emphasis added)

CD to prospective investors.[38] The third, Mr. Fontenot, was not present at the meetings between Green and Mrs. Dore when Mrs. Dore testified that Green and another FA misled her regarding both the insurance protecting SIB and the safety of the underlying CD portfolio. [Tr. 2746:24-2747:4]. This leaves the investor testimony undisputed, aside from Green's bare denials.[39]

That Green is forced to stand alone on these issues is only further confirmed by his claim, based on a single email from 2004, that he applied an "uncompromising insistence" on the "golden rule" of suitability.[40] [Green Br. at 3-4.] Green, however, ignores overwhelming

---

[38] Mr. Batarseh testified: "To be honest with you, I don't think that I ever saw him in a client presentation to the best of my recollection. I never went to a client meeting." [Tr. 2276:10-12]. Comeaux acknowledged that Green officed in Baton Rouge, hundreds of miles from Mr. Comeaux's office in Houston, and that he could not recall ever participating in either a call or a meeting between Green and an investor. [Tr. 1105:19-1106:14]. Mr. Comeaux further acknowledged that Green was not forthright about all relevant information during his time at SGC. [Tr. 1097:17-1098:8]. Finally, Agent Walther confirmed that the FBI did not interview a single one of Green's investors. [Tr. 2249:12-14]

[39] It is striking that Green characterizes the investor testimony as "self-serving" or "biased." [Green Br. at 24, 57]. Only one investor had a familial relationship to anyone in this proceeding — Green's brother-in law and former SGC employee Walter Alvarez. Each investor called by the Division testified pursuant to administrative subpoenas and aside from whatever miniscule pro-rata share they might receive of any recovery from the respondents — has nothing to gain from lying about what Green told them. Green, conversely, is trying to save his career. In addition, the testimony of Messrs. Alvarez and Thevenot does not help Green's case. Mr. Alvarez testified that the subject of insurance never came up. [Tr. 2547:3-7]. Mr. Thevenot was a sophisticated investor, who had the luxury of having his personal CPA review the SIB CD and was willing to take on a risky investment. [Tr. 2697:5-6; 2703:21-22]. It is also notable that both Mr. Alvarez and Mr. Thevenot have backgrounds in banking and insurance, which kept them from being misled/confused about SIB's insurance coverage. [Tr. 2542:13-15; 2688:20-25].

[40] Green attempts to bolster his lack of documentary evidence by citing to documents and testimony that are not on point. [Green Br. at 4, fn. 7]. All four exhibits cited by Green reference the same slide, which only addresses suitability in passing — if at all. [G-254 at 20; G-261 at 32; G-264 at 30; G-268 at 30]. In addition, this slide must be read in the context of the related slides, which greatly downplay the risks associated with the SIB CD and emphasize that SIB has "successfully managed this risk to the benefit of depositors [. . .] for nearly twenty

evidence to the contrary. Marty Karvelis testified that he had no memory of Green mentioning the "golden rule" during his training, and that "the vast emphasis of the training was sales." [Tr. 1179:20-1180:12.] Most importantly, the allocations of Green's own investors undercut his argument. For example, James Stegall, a retiree looking for steady income and principal preservation, had as much as 60% of his portfolio in the SIB CD. [Tr. at 1496:5-23; 1498:41499:5]. Robert Smith, also a retiree looking for a conservative investment, had roughly 50% of his retirement savings allocated to the SIB CD. [Tr. at 1560:15-24]. In short, what Green actually did with his client's money is far more probative than what he claims to have said. In addition, these real-world allocations are consistent with Green's model allocations, which recommended that income investors put 20-50% of their savings in the SIB CD. [Division Ex. 104 at 34]. These allocations, both modela and, more importantly, real-world, simply cannot be squared with Green's claim that he had an "uncompromising insistence" on suitability.[41] Nor

years." [G-254 at 19]. In fact, 21 of the 38 slides in Green's presentation downplay the risks of the SIB CD by emphasizing the factors that purportedly "mitigat[e]" the risks of the SIB CD. [G-254 at 16-18, 20-37]. Furthermore, Comeaux's testimony — again, cited out of context — does not support Green. Comeaux merely stated, "I have no reason to think" Green wasn't mindful of his suitability obligations when recommending the SIB CD to his clients. [Tr. 1058:16-22]. As a threshold matter. Mr. Comeaux never saw Green present the SIB CD to an investor. [Tr. at 1105:10-1106:14]. Furthermore. Comeaux testified that: (1) he was uncomfortable with the sales contests that Green ran — and stepped down as SGC President, in part, as a result of the focus on the SIB CD [Tr. 1039:3-1040:2; 1033:18-1035:17]; (2) he believed Green's model allocations were inappropriate [Tr. 1099:22-1100:8]; and (3) Green withheld material information regarding the risks of the SIB CD [Tr. 1097:17-1098:8].

[41] Green would apparently have us believe that Messrs. Smith and Stegall, who retired after long careers working at chemical/oil plants in Louisiana, were "aggressive" income investors who were willing to knowingly place over half of their life savings in an uninsured, offshore product that carried "substantial" risk and no principal protection. [Green Br. at 44-46]. This does not pass the smell test, and is contradicted by the sworn testimony of both investors.

can the fact that — as Mr. Green's own expert admits — his training presentations contain no reference to the "golden rule." [Tr. 4295:22-4296:6][42]

2. **Young's ad hoc challenges to his *scienter* fail.**

In his initial brief, Young seeks to discredit several arguments the Division advanced at trial. He fails. As an initial matter, because it highlights his "stop at nothing" approach to avoid liability, it is worth noting Young's inaccurate and unfair accusations against the Division's expert witness. In an attempt to discredit the conclusions drawn by the Division's expert, Young repeats a false claim made at trial, namely, that, according to Young, the expert could not identify any substantive documents from Young's due diligence file. [Young Br. at. 6-7]. This assertion misstates and contorts the record. Doug Henderson listed Young's due diligence files among the documents he reviewed in preparing his expert report in this matter. [Division Ex. 746, Pgs. 19 and 38 of 384; Tr. 2117:6 – 2118:7; 2126:17 – 2127:4; 2132:18 – 2133:11]. When questioned on cross-examination, Doug Henderson identified in detail most, if not all, of the documents in Young's due diligence file and explained the circumstances Young cites here. Mr. Henderson's testimony, and

[42] In a misleading attempt to avoid his own words, Green tries to argue that the Division used the "wrong" example of his training presentations. Green states that the Division "repeatedly cited and relied on slide presentations Green never prepared or used." This specious claim greatly distorts the record. The presentation Green refers to as one he never used comprises the second attachment to the email in question, pages 85-123 of Division Ex. 104. However, the Division primarily used the first attachment to Division Ex. 104, pages 2-34, which Green admittedly used to train financial advisers. See, e.g., Tr. at 1156:5-1160:20. To the extent the Division used the second attachment at trial, it focused on slides that were substantively identical to the first attachment to Division Ex. 104, to Green's own exhibits, or to other presentations admittedly used by Green: Tr. 1161:7-18, Division Ex. 104 at 88, Division Ex. 104 at 30, Division Ex. 21 at 23, G-264 at 27, G-254 at 23 (no shareholder dividends ever taken); Tr. 1162:1-19, Division Ex. 104 at 93-97, Division Ex. 104 at 31, G-264 at 28, G-254 at 22-25 (investment philosophy, process, and oversight). Finally, testimony during trial established that Green's presentations were consistent over time, and that the actionable misrepresentations regarding the safety and security of the SIB CD were present in all versions of his presentations. [Tr. at 1347:4-1360:21]. This includes the presentations Green gave to investors, which notably did not include the disclosures from the compliance presentations. [G-254].

Young's attempt to misconstrue it, further corroborates Mr. Henderson's expert conclusions. [Tr. 1842:19 – 1844:1; 1845:11-14].

a. Young's knowledge of SIB's illiquid private equity investments confirms his *scienter*.[43]

Young cannot explain away the fact that he knew SGC managed a substantial amount of SIB assets that were in the form of illiquid private equity investments. Young alleges in his brief that the Division has not offered any evidence that Young knew, or was reckless in not knowing, that SGC managed SIB's private portfolio. [Young Br. at 12]. To the contrary, the record is replete with evidence that Young knew that SGC managed SIB's private equity investments pursuant to an agreement between SGC and SIB.[44] [See generally Tr. 3471 – 3484; Div. Exs. 530, 503, 476, 439, 670]. Indeed, Young received quarterly spreadsheets prepared by Ozzie Pi which specifically segregated the private equity investments owned by SIB. [Div. Exs. 530, 503, 476, 439, 670]. Whatever the source of these assets, this knowledge, at the very least, should have caused further inquiry to determine if these assets were part of the SIB CD portfolio.

And, this is not changed by Young's unsubstantiated representation (even if true) that Stanford's personal money was purportedly being used for both entities. According to Young, Tom Sjoblom advised him that SGC did not need to produce documents to the SEC relating to the private equity investments that SGC managed for Stanford Venture Capital Holdings ("SVCH"), because the funds used to purchase those investments were allegedly derived from Stanford's personal money and not from CD depositors. [Young Br. at 3]. Of course, this has nothing to do with the SIB investments being managed by SGC. But even if it did, Young intentionally failed to

---

43 As explained in the Division's initial brief, this is also true of Bogar.

44 Young also knew that SGC represented to the SEC in May 2005 that SIB had only one investment portfolio. [Tr. 3486:14 – 3487:16; Young Ex. 113 at BEY 005854].

follow up or buried his head in the sand to avoid finding out the truth. Under the circumstances of this case, as discussed above, Young could not simply rely on a single statement from Allen Stanford's lawyer.

b. Young cannot minimize his knowledge of concerns about SIB's auditor.[45]

To avoid the common-sense and common concerns about SIB's auditor, Young argues that the Division offered no evidence that C.A.S. Hewlett, SIB's auditor, was ever cited for unauthorized, unethical, or illegal acts by Antiguan or sovereign authorities. [Young Br. at 5]. Young's argument falls short.

First, it is undisputed that Young never met with, spoke to, or even attempted to contact Hewlett. [Tr. 3383:3-9]. Young also conceded that he never went by Hewlett's office on any of his due diligence trips to Antigua. [Tr. 3383:10-12]. In fact, the only due diligence that Young performed on Hewlett was printing pages off the websites of two accounting associations that showed Hewlett was registered with those associations. [Tr. 3383:21 – 3384:5; 3207:5 3208:16].

Second, Young admitted that it was widely-known within SGC that financial advisers, managing directors, and newly-hired securities professionals strongly believed SIB should have a larger, more reputable auditor. [Tr. 3382:14 3383:2; 354:25 – 355:14; 424:17 426:16]. Last, Young knew that SIB purported to pay Hewlett $60,000 to audit a $6-8 billion, globally-diverse investment portfolio. [Div. Ex. 624, Pg. 25 of 38, Note 10; Tr. 3384:12 3385:5]. However, Young did not know whether that was a reasonable fee to pay for such services, nor did he seek guidance on that issue. [Tr. 3385:6-15].

---

45 It goes without saying that this was not the only "red flag" Young ignored. It is, however, one of the few that Young tried to rebut.

c. Young cannot avoid liability by relying on FINRA's review of the marketing brochure.

Young argues that he should not be held liable because FINRA sent him a letter in January 2008 finding that the SIB CD Brochure submitted by Young, containing revisions required by FINRA, appeared consistent with FINRA Rule 2210. [Young Br. at 7]. This is simply not true.

For example, on cross-examination, Young conceded that FINRA was not in a position to verify statements of fact about SIB's portfolio contained in the Brochure. [Tr. 3395:16-25; see also Tr. 1737:11-17]. Moreover, Young was in a much better position to verify these facts, yet he never advised FINRA's Advertising Department that neither he, nor anyone at SGC could verify any of the representations in the Brochure about SIB's portfolio.

In fact, in FINRA's January 2008 letter, FINRA advises Young that "it is assumed that the material does not omit material facts, contain statements that are not factual, or offer opinions that do not have a reasonable basis" and that "[t]he views expressed herein are solely advisory and do not constitute findings of compliance with, or violations of FINRA or SEC rules." [Young Ex. 81 at BEY 6400; Tr. 1738:4 - 1739:10].

Finally, the FINRA review did not address the representations at issue in this case. And, notwithstanding these changes required by FINRA, as explained elsewhere, the updated Brochure was materially misleading and contained misrepresentations that Young knew were misleading or incomplete – including, for example, the representation that "[t]he bank's assets are invested in a well-diversified portfolio of highly marketable securities issued by stable

governments, strong multinational companies, and major international banks." [Tr. 1738:12 1739:23].[46]

FINRA's limited role in reviewing certain aspects of the brochure does not excuse Young's intentional and reckless misconduct.

d. Young misapplies the standard necessary to impose remedies against him.

Young admits in his brief that a finding of willfulness requires merely an intent to do the act which constitutes a violation," not intent to violate the law. But he nevertheless argues that that the Division has offered no evidence that Young intended to do any act(s) which constituted a violation. [Young Br. at 4]. However, it is undisputed that Young intended to, and did a variety of specific acts that resulted in securities laws violations and which frequently also confirm his *scienter*, including:

- approving SGC's use of the Offering Documents with U.S. investors [Tr. 3348:16 – 3349:12; 3352:23 - 3353:1; 3353:7-13; 3405:13-17];
- training SGC financial advisers using the Training & Marketing Manual and the PowerPoint training presentation [Div. Exs. 104, 742; Tr. 1163:18 1164:13, 3414:21 – 3415:5; 3260:21 – 3261:10; 3419:15 3421:20];
- allowing (in fact, mandating) SGC financial advisers to use the Training & Marketing Manual [Div. Ex. 17; Tr. 3261:15-18, 3421:21 – 3422:25];
- conducting due diligence on SIB and the SIB CD and failing to verify[47] the representations made about SIB's portfolio in the offering documents, the Training & Marketing Manual, and the training presentations, while failing to answer the ultimate

[46] And, as the Court knows, a securities professional may not excuse his conduct by relying on the actions of a regulatory authority.

[47] Young argues that the Division has known since at least 2005 that SIB would not authorize disclosure of the asset mix of the SIB portfolio. [Young Br. at 13]. Even several years later, Young continues to overlook the obvious inconsistency between this position and the fact he knew as SGC's CCO that: (i) SGC managed SIB's private equity investments [Tr. 3471:19 3472:13, 3477 - 3482; Division Ex. 570]; and (ii) a group in Memphis, Tennessee led by Laura Pendergest-Holt and several SGC-registered analysts purportedly had complete access to SIB's investment portfolio. [Tr. 3491:13 – 3492:1, 3494:14 3498:25, 3500:3-13, 3503:19-23; Div. Exs. 720 and 726]. And, of course, the Division kept asking, unlike Young.

question — *what's in the portfolio?* [Tr. 3355:15-20; 3406:6-21; 3504:2 – 3505:11; 3508:8-12];

- approving misleading talking points that were disseminated to investors by SGC and its financial advisers [Tr. 3583:7 – 3585:21, 3586:12-25, 3591:14 – 3592:8; Div. Exs. 510, 511, 512, 525, 544, 546];[48]

- allowing SGC to participate in undisclosed single-product sales contests and to offer outsized financial incentives to financial advisers for SIB CD sales [Tr. 3552:13-15, 3553:6-17, 3555:20 – 3556:2, 3556:17 – 3559:11; Div. Exs. 86, 406, 432, 497, 633]; and

- approving misleading responses ("damage control with a SIB client") to concerns raised by CPAs of at least two SGC clients without independently verifying several representations in the communications [Tr. 3452:2-16; 3460:9-24, 3465:11-25; 3434:2-5, 3444:11 – 3453:11; Div. Exs. 71, 74, 79, 653, 658, 660, 661, 666, 667].

There can be no doubt that Young acted willfully and with *scienter*.

---

48 Young offers another incredible explanation for why he "was not aware of any misrepresentations or omissions of material facts" when he reviewed and approved a "Media Talking Points" memorandum in February 2009. [Young Br. at 15]. Several essential facts, including Young's own explanation, discredit this assertion. First, Young knew that SGC had no idea what was in SIB's portfolio, how it was allocated/invested, whether the portfolio's historical returns were accurate, and how much money actually comprised the portfolio; SGC's complete lack of knowledge of this material information surely was an "omission of a material fact." Second, the "Media Talking Points" memorandum to which Young refers and on which the Division examined Young at trial [Div. Ex. 550], is dated February 14, 2009, not February 16th. [Compare Div. Ex. 550 to Young Br. at 15, line 7]. Third, by February 14, Young had learned of a problem with the Disclosure Statement more than a week earlier, on February 5. [Young Br. at 14]. Young's own testimony about the "peculiar" reactions of Bogar and Stinson to Young's inquiry to learn more information about the issue with the Disclosure Statement belies his testimony that any number of relatively minor, immaterial things could have been "the issue." [Tr. 3255-3256]. Bogar refused to discuss the issue with Young until an attorney was present to "preserve attorney-client privilege." [Tr. 3240:9-12]. Stinson's answer "was very peculiar ... I can't talk to you about it. We're in the 24- to 48-hour quiet period." [Tr. 3241:1-5]. Having worked with both individuals for more than 2 ½ years, Young knew these reactions were anything but normal, and likely signified a major issue with the Disclosure Statement. Finally, Young learned on February 13th that Sjoblom and Proskauer Rose, LLP had resigned as counsel to the Stanford entities. [Tr. 3589:7-23; Div. Ex. 545].

III.
CONCLUSION

Bogar, Young, and Green each knowingly or with severe recklessness made material misrepresentations and omissions to investors concerning the SIB CD. They should not be permitted to escape the consequences of flouting their responsibilities under the federal securities laws by invoking after-the-fact assumptions and distortions of the evidence.

April 19, 2013

Respectfully submitted,

David Reece, Esq.
Texas Bar No. 24002810
B. David Fraser, Esq.
Texas Bar No. 24012654
Chris Davis, Esq.
Texas Bar No. 24050483
Janie Frank, Esq.
Texas Bar No. 07363050

United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 978-6476
(817) 978-4927 (facsimile)
ReeceD@sec.gov

COUNSEL FOR
DIVISION OF ENFORCEMENT

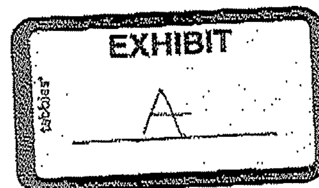
Baton Rouge Clinic Internal Medicine
7373 Perkins Road
Baton Rouge LA 70808
Phone: 225-769-4044

To Whom It May Concern,

I am writing regarding my patient ,Thomas J. Moran date of birth [redacted]. Mr.Moran will be unable to appear in court or for video deposition due to medical procedures being performed over the next week for his worsening medical illnesses. I appreciate your concern in this matter

Sincerely,

Vincent V. Tumminello J.R. M.D.



U.S. SECURITIES AND EXCHANGE COMMISSION

RECEIVED
APR 19 2013
OFFICE OF THE SECRETARY

DIVISION OF ENFORCEMENT
FORT WORTH OFFICE - TRIAL UNIT
801 Cherry Street, Burnett Plaza, Suite 1900
Fort Worth, Texas 76102

TELECOPIER TRANSMITTAL COVER SHEET

DATE: **April 19, 2013**

TO: **Office of the Secretary** OFFICE: **SEC**

TELEPHONE NO.: TELECOPIER NO.: (202) 772-9324

FROM: Rebecca Fairchild Office: FWRO Trial Unit

TELEPHONE NO.: (817) 900-2608 TELECOPIER NO.: (817) 978-4927

TOTAL NUMBER OF PAGES 59, INCLUDING COVER SHEET.

REMARKS:

In the Matter of Bogar, Young and Green. 3-15003.

Division of Enforcement's Post-Hearing Response Brief

Original will be forwarded via UPS.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS TRANSMISSION, PLEASE CALL THE ABOVE NUMBER. THE MAIN FAX NUMBER FOR THE DIVISION OF DIVISION OF ENFORCEMENT, FORT WORTH OFFICE, TRIAL UNIT IS (817) 978-4927.

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and/or exempt from disclosure. If the reader of this message is not the intended recipient or an employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail. Thank you.