UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15003

In the Matter of

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

Respondents.

RESPONDENT JASON T. GREEN'S POST-HEARING REPLY BRIEF

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Pursuant to Rule 340 and the Court's March 1, 2013 Order, Respondent Green[1] files this Post-Hearing Reply Brief.

I. INTRODUCTION.

The Division has the burden of proving the allegations in the OIP by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 96 (1981). To satisfy this burden, the Division must show that its evidence, "when considered and compared with that opposed to it, has more convincing force, and produces in th[e] Court's mind the belief that what is sought to be proved is more likely true than not true." *Merzon v. Cnty. of Suffolk*, 767 F. Supp. 432, 444-45 (E.D.N.Y. 1991) (citation and quotation marks omitted). The Division has not met its burden – or even come close. When carefully analyzed and viewed in context, the evidence shows that Green engaged in no wrongdoing.

[1] All capitalized terms have the meaning ascribed to them in Green's Initial Brief unless otherwise indicated.

In essence, the Division has two complaints against Green. The first is that he supposedly relied "blindly" on inaccurate information he received about the SIB CDs and then "blindly" passed on that information to investors. This complaint has no merit because:

- Green did not rely on or do anything blindly. The record is replete with examples of him investigating, of him asking questions of management, legal, and compliance, and of him following up when he needed more or better information.

- Green's inquiries concerned every major issue in this case – for example, the propriety of SIB preserving the confidentiality of the specific holdings in its portfolio, the propriety of the compensation plans for SIB CDs, the nature of the risks associated with the SIB CDs, the existence of depositor insurance, the adequacy of his training materials and presentations, and the adequacy of SIB's Offering Documents.

- Dr. Ross testified that, on each of these subjects, it was reasonable for Green to rely on what he learned from management, legal, and compliance. The applicable jurisprudence strongly supports this view. *E.g., Howard v. S.E.C.*, 376 F.3d 1136, 1153 n.20 (D.C. Cir. 2004) (collecting cases).

- The Division has failed to cite any evidence that undercuts Dr. Ross's conclusion and has failed to cite any authorities that say reliance on trusted management, counsel, and compliance is unreasonable. These failures lead to another – the failure to prove that Green acted unlawfully.

The Division's second complaint is that Green supposedly misrepresented the critical features of the SIB CDs to individual customers. This complaint, like the first, has no merit. Not only is it more likely than not that Green was truthful; the evidence is clear that he was, because:

- The only unbiased investor who testified, whom the Division does not even mention, who left high school before he graduated and who invested $1M in SIB CDs and lost his deposit, told the Court that Green encouraged him to read the Offering Documents, explained to him that the SIB CD's potentially exposed investors to "substantial risks," and made sure he understood there was no depositor insurance.

- The other investors who testified, who supposedly believed their investments were "safe" and "insured," received documents that told them just the opposite, beginning with the first sentence on the first page, which states that an investment in the SIB CDs involved "substantial risks." These same witnesses, moreover, when pressed, admitted that they were not seeking anything like risk-free investments and that Green's discussion of the risks focused on comparisons

between the SIB CDs and equity or balanced mutual funds, not on comparisons between SIB CDs and traditional CDs.

- Every financial advisor who addressed these subjects, with the exception of the admitted perjurer Bobby Allison, testified that Green explained to them that there was no depositor insurance and that he never even hinted the SIB CDs were safe.

- The FBI thoroughly investigated SIB and Green and concluded both that Allen Stanford and his co-conspirators had carefully hidden their fraud from Green and that Green's memory was very reliable and his factual accounts of all the relevant events were accurate and truthful.

In sum, the Division has failed to meet its burden of proof on every claim. The Division has not show that it's more likely than not that Green acted negligently, let alone fraudulently. Indeed, while Green has no obligation to prove anything, he has in fact proven that his conduct was honest and reasonable throughout. Green therefore respectfully requests that the Court conclude no action against him is warranted.

II. THE DIVISION FAILED TO SHOW A PRIMARY VIOLATION.

A. Green Acted Reasonably Regarding SIB's Policy of Preserving the Confidentiality of Its Portfolio Holdings.

The Division faults Green for allegedly taking what it calls SIB's "black box" at face value and for "fail[ing] to require SGC to disclose that SGC was unable to confirm SIB's representations about the investment portfolio underlying the SIB CD." (OIP at ¶ 18(a); Division's Initial Br. at 13-30.) Both criticisms are misguided.

1. Green Diligently Investigated SIB's Confidentiality Policy and Reasonably Concluded That SIB Could Lawfully Preserve the Confidentiality of Its Portfolio Holdings.

The Division objects that, in concluding that SIB could lawfully keep the contents of its investment portfolio confidential, Green unjustifiably relied on the explanations for confidentiality he was given by management, legal, and compliance, and that he did not do

enough to challenge those explanations. This objection has no merit. (Division's Initial Br. at 13-18.)

Green spent considerable time educating himself on SIB's investment strategies and portfolio. As part of that process, he spoke to senior management at both SIB and SGC. (Green's Initial Br. at 6-10.) He spoke to lawyers and compliance specialists. (*Id.*) He learned that, while SIB would disclose general information about its portfolio, it would not disclose the identity of the portfolio's underlying holdings. He was given two explanations for this policy. The first was that treating the individual holdings as proprietary information protected SIB's competitive advantage. The second was that Antiguan privacy law required keeping the holdings confidential. (Green's Initial Br. at 16-19, 40-41, 65.) Both explanations were plausible.

a. Confidentiality Was Designed to Help SIB Achieve and Preserve a Competitive Advantage.

Several senior executives of SIB told Green that SIB's investment strategies were proprietary and, hence, kept confidential to avoid having the competition copy them. (Green's Initial Br. at 16-19, 40-41, 65.) Legal and compliance confirmed this for Green. (Green's Initial Br. at 40-41, 65.) The explanation was eminently plausible. Indeed, it is standard in the investment world, where many types of money managers adhere to the same or a similar practice. As the Division's own expert conceded, most, if not all, of the money managers in the $2 trillion hedge fund industry decline to disclose details about their portfolio for the same reason: A hedge funds' trading strategies are proprietary in nature and secrecy is pivotal to maintaining an edge over the competition.[2] (Green's Initial Br. at 14-15, 66.) Banks, too, rarely, if ever, disclose to purchasers of traditional CDs the identities of individual loans in the banks'

[2] Green testimony at 3760:9-11.

portfolios. Nor do banks provide this information to common shareholders. Mutual funds, moreover, only disclose their underlying holdings a few times each year, and then only "as of" a much earlier date. *See* SEC Release Nos. 33-9392, 34-49333 (Feb. 27, 2004) (requiring mutual funds to disclose their holdings on a quarterly basis within 60 days from the end of the previous quarter); *see also* 17 C.F.R. § 210.12–12. Consequently, no mutual fund investor will ever know, at any given time, the identity of the individual holdings in the funds he or she owns.[3]

b. Confidentiality Was Designed to Facilitate Compliance With Privacy Laws.

In addition to being told the portfolio's holdings were proprietary information, Green was advised by former Greenberg Traurig partner and SFG general counsel, Yolanda Suarez, that Antiguan privacy laws did not allow SIB to disclose its portfolio's individual holdings.[4] Dr. Ross testified that Green could reasonably rely on this advice. She testified, too, that it would be considered a "circumvention" of the legal and compliance departments for Green to have second guessed their advice and that it would be unreasonable to have required Green to retain and pay his own, personal counsel for legal advice on the subject. (Green's Initial Br. at 18-20.)

To the extent the Division contends that, rather than rely on Suarez, Green should have researched and determined the law himself, the Division has gone way too far. Green has no legal training, must rely on an attorney such as Suarez for legal advice, and has no professional basis for disagreeing with the advice given. Indeed, taken to its logical conclusion, the Division's position would mean that no one in the industry could ever reasonably rely on the advice of corporate counsel, but – whether trained in the law or not – would have to reach his or

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[3] The Division cannot fault Green for reasonably believing confidentiality was required by competitive concerns when unequivocal representations to that effect were made to him by senior executives, compliance personnel and counsel, especially when the SEC has no rule or regulation that requires disclosure.

[4] Green testimony at 3760:1-15.

her own determination of the law or retain and pay for separate counsel. This implausible concept would not further public policy or investor knowledge.

c. SIB's System of "Checks And Balances" Reinforced Green's Confidence in the Information He Received and in the Plausibility of SIB's Commitment to Confidentiality.

In forming his views about the confidentiality of SIB's portfolio holdings, Green did more than just rely on advice from management, legal, and compliance, although that reliance alone would have sufficed. Equally important to him were the multiple "checks and balances," or "compensating controls," as Dr. Ross referred to them, that provided powerful oversight of SIB's portfolio and that he reasonably believed helped ensure it was managed as represented to the public. The oversight began with SIB's trusted board and management, including Holt's stable of award-winning analysts in Memphis, who invested part of the portfolio and who oversaw the outside money managers.[5] (Green's Initial Brief at 7-9.)

Green also understood that SIB's auditor, its Antiguan regulator, and its insurers provided additional oversight and protections. Specifically, SIB's auditor, C.A.S. Hewlett, which was a firm of certified accounting professionals and which had been approved by the Antiguan financial regulatory authority, performed periodic audits and provided quarterly audited financial statements.[6] SIB's regulator, the Financial Services Regulatory Commission ("FSRC"), received

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[5] Industry veteran Shaw was so impressed with the work the Memphis group did he testified that their reports were "up to a standard equal to the best research I had seen in 25 years." (Shaw testimony at 411:20-412:7.) ("[W]hat we did receive was a quarterly piece that was published. It was a research piece that was published. It was very well done. It was up to a standard equal to the best research I had seen in years. It wasn't dramatically better, but it was as good. . . . I found that piece to be a very bright light of credibility on the bank because it gave me insight into what the managers were thinking.").

[6] Green testimony at 3702:18-3704:19. The Division's attempt to belittle the stature of C.A.S. Hewlett and the supposed concerns about its competence (and to criticize Green for allegedly not heeding those concerns) are not supported by the record. All who testified about calls for a change of the auditor noted that the primary issue was a marketing issue: C.A.S. Hewlett was not a recognizable name in contrast to, for example, the Big Four accounting firms. (Green testimony at 4033:20-4035:10; Finkelstein testimony at 354:25-355:19.) Even Shaw, who testified maintaining C.A.S. Hewlett for as long as SIB did bore some risk, was adamant that he had

quarterly reports from SIB on the bank's holdings and conducted annual on-site examinations of the bank.[7] SIB's insurers, in particular Lloyd's of London, which underwrote a $50 to $100 million policy for the bank itself, provided yet "another set of eyes," another layer of protection, by conducting a rigorous review of the bank's procedures using one of the world's largest insurance brokers and a firm specializing in risk reviews.[8] BDO Seidman, an internationally renowned accounting firm and the auditor for SGC, Stanford Financial Group, and Stanford Group Holdings, provided still another layer of protection. Because BDO Seidman had to be confident about the reliability of SIB's numbers, given the substantial revenue the other Stanford entities generated from SIB, BDO Seidman's involvement buttressed SIB's use of C.A.S. Hewlett and reinforced Green's confidence that SIB's portfolio was being invested and managed as represented.

Finally, Green understood that both the regulatory regime and the regulatory system that oversaw SIB's operations were "strong." Led by Ambassador Leroy King, a 38-year Wall Street veteran with Bank of America, the FSRC had a highly trained staff to oversee SIB and other banks operating in Antigua. Batarseh, Green's PCG chief of staff and a CPA formerly with KPMG, who had analyzed the spreadsheets SIB was required to submit to the FSRC, confirmed for Green that "there is nowhere to hide. This is complete and total transparency. It is far superior to an audit."[9] The perceived strength of Antigua's regulatory regime and system was reinforced, in Green's mind, by the fact that Antigua was a signatory to the Basel I Accords,

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no concerns about the competence and quality of C.A.S. Hewlett's work. (Shaw testimony at 425:17426:16; 456:25-458:11.)

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

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

9 Green testimony at 3894:6-22; *see also* Batarseh testimony at 2343:8-2347:14.

which mandated strict capital requirements.[10] When Antigua signed on to Basel II in 2008, leading to even stricter, risk-adjusted capital requirements, Green's confidence grew.[11] Given all of these checks and balances, including the perceived rigorous, disinterested third-party review of SIB's assets, Green reasonably believed SIB's underlying portfolio was managed appropriately and provided sufficient transparency.

d. Prominent, Independent Organizations Provided Additional Validation.

The reasonableness of Green's view was further validated by a number of reputable organizations that vetted SIB and SGC, that expressly considered SIB's policy of preserving the confidentiality of its underlying portfolio, and that nonetheless decided to associate themselves with the Stanford entities and to assume the risks inherent in that association. SGC's and SIB's lengthy vetting in 2005 by Pershing, LLC, the nation's largest clearing broker, is especially noteworthy. Green learned from Bogar and others about the negotiations and the extensive due diligence Pershing conducted on SIB before becoming SGC's new clearing broker,[12] and he understood that a key focus of Pershing's due diligence was "the transparency with regards to [SIB's] portfolio."[13] Pershing's subsequent agreement to become SGC's new clearing firm –

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[10] The Division's attempts to belittle the state of the Antiguan regulatory regime because the 2004 IMF report noted a number of areas that needed improving are unavailing. Green's overall favorable opinion was the same as that of the Pershing legal and compliance departments, which concluded after months of due diligence that the IMF had "favorably reviewed" the Antiguan regulatory regime and banking system. (B-395 at 2; Green's Initial Br. at 12, 14-17.) Pershing's conclusions provide compelling evidence of the reasonableness of Green's beliefs.

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

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

[13] Green testimony at 3881:25.

despite SIB's refusal to provide full public transparency – provided great comfort to Green and his colleagues.[14] (Green's Initial Br. at 12-18.)

e. ***The Myth of "Blind Acceptance."***

Inexplicably, the Division asserts that Green "blindly accept[ed]" the explanation that SIB's trading strategies were proprietary and its portfolio was confidential. (Division's Initial Br. at 15.) The record shows just the opposite. For starters, Green went to the very top and checked with SIB's chief investment officer, Laura Pendergest-Holt, who told him the specific

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[14] Shaw testimony at 445:17-447:8 (noting that Pershing's extensive due diligence and subsequent agreement to clear for SGC "signaled to me that [SGC] had passed with flying colors whatever the requirements were of Pershing"); *see also* Bogar testimony at 2627:2-2628:23; Weiser testimony at 2451:9-2452:16. Green understood, as well, that Bear Stearns, SGC's clearing broker before Pershing, had done extensive due diligence on the Stanford entities and the SIB CD product. After completing its due diligence, moreover, Bear Stearns served for years as SGC's clearing broker. (Green testimony 3722:9-18 (testifying that "Bear Stearns had done extensive due diligence on all of the businesses of Stanford, including the International Bank, had been down there, visited it and looked at it and, so, similarly favorable to Pershing, accepting us as an introducing broker").)

NFS, an affiliate of Fidelity, added further validation to Pershing's due diligence findings when it both conducted extensive due diligence on the Stanford entities in 2008, after Pershing had done its due diligence to become SGC's clearing broker, and subsequently agreed to clear portions of SGC's business. (Green testimony at 3885:20-3886:10; Weiser testimony at 2466:9-23; *id.* at 2468:42469:14; *id.* at 2533:17-2534:8; Bogar testimony at 2716:6-2719:17.)

After Pershing became the clearing broker, Green was not involved in discussions pertaining to SIB's portfolio transparency. His focus was on pricing and servicing issues with Pershing, as both Green and Batarseh testified. (Green testimony at 3882:15-3883:6; Batarseh testimony at 2417:5-9.) Moreover, Green and Batarseh understood that in May 2007 Russia sued Pershing's parent company, Bank of New York Mellon, for $22.5 billion arising out of BNY Mellon's involvement in an alleged tax and money laundering scheme in Russia. (Green testimony at 3883:7-3884:8; Batarseh testimony at 2371:15-2373:3; G-298.) After discussions with Pershing's Ed Zelezen, Green and Batarseh got the impression that Pershing's appetite for international banks was "waning." One reason for the growing concern was that questions were being raised about whether SIB's customers were properly reporting their foreign SIB accounts to the treasury for tax purposes. Both Pershing and one of SGC's other clearing brokers, Fidelity, raised questions about it. (Green testimony at 3884:9-3886:16; Batarseh testimony at 2371:15-2373:3.)

Despite Green's and Batarseh's testimony, the Division erroneously asserts that Green's draft email to Bogar announcing that Pershing's decision to stop wiring money to SIB was based, in part, on concerns about tax reporting was knowingly false. In fact, Green ran the email by Stanford and Bogar, who was the point man regarding Pershing. (Bogar testimony at 2982:3-2983:21; D-355.) Additionally, Green called Zelezen at Pershing and read the email to him over the telephone – and Zelezen approved the message. (Green testimony at 4062:8-14 ("I read this statement to Ed Zelezen over the phone before I sent it because I wanted to make sure. "Hey, I'm saying Pershing is this, Pershing's that. I need to confirm that this is accurate." Ed said, "Fine. Send it.").) Given that it has the burden of proof, if the Division genuinely believed Green had testified falsely about the tax issues and about Zelezen, the Division easily could have called Zelezen back in rebuttal, which, of course, it did not do.

holdings would not be disclosed because of the proprietary nature of the bank's strategies.[15] He also went to the very top of legal and compliance and was advised by the general counsel that SIB's portfolio would not and could not be disclosed as a matter of law.

Even so, the Division insists that Green should have pressed one of Holt's subordinates for details. Specifically, in the Division's view, Green was negligent for not soliciting the information from Fred Palmliden, who, coincidentally, was tracking the outside investment managers' accounts via an Excel spreadsheet. (Division's Initial Br. at 17.) The record is devoid of evidence that anyone, including Green, knew or should have known that Palmliden was the person in charge of the spreadsheets for the money managers. Even more important, the Respondents' expert, Dr. Ross, with decades of experience as a senior compliance official and as a senior due diligence officer with a number of regional and national brokerage firms, testified that such behavior "would have been counterproductive" and "characteristic of circumventing" the chain of command, especially when the Chief Investment Officer had expressly stated the information was confidential.[16] Dr. Ross further confirmed that Green could reasonably rely on the advice of legal and compliance.[17]

Yet another problem with the Division's reliance on Palmliden is that his testimony –that he readily would have discussed the contents of his spreadsheets with the Respondents – is inconsistent with the results of the FBI's investigation on the same subject. As Special Agent Walther testified: "During the investigation, individuals in the Memphis group stated that they had been told that they were not to discuss what they were doing, what they did, the investments

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[15] Green testimony at 3759:17-25 ("They have had a proprietary strategy that they did not want to disclose. So, they would not, you know, much like a hedge fund or others, they had proprietary trading strategy. They didn't want to disclose it for fear that others would copy it and they would lose their advantage.").

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

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

with financial advisors in particular."[18] Green likewise had been told by Palmliden's direct supervisor, Ken Weeden, that the Memphis Group was under clear instructions from Holt and Davis not to discuss SIB's portfolio.[19] The Division's insistence that Green should have gone behind Holt's and Suarez's back and sought out the information from subordinates is itself unreasonable.

As with its contention that Green should not have relied on legal advice received from the general counsel (*see* Brief at 3), the logical conclusion of the Division's position is that no one could reasonably rely on information obtained from one whose job it was to know that information. Thus, for example, according to the Division, Green could not reasonably rely on the chief investment officer for information on investments or reasons for the non-disclosure of specific investments, but instead had to go behind her back and independently investigate for himself. Similarly, according to the Division, Green could not rely on compliance or legal to provide guidance on compliance matters or issues of law but had to conduct his own, independent inquiries. In essence, this contention by the Division serves to undermine the very protocol established by the SEC, which mandates compliance departments and chief compliance officers; there would be no reason for such personnel if others could not reasonably rely on them to do their jobs. Logically, it also would mean no employee could rely on the statements, research, or due diligence of another employee, even one assigned the specific task at issue. Thus, under the Division's theory, Green could not rely on Holt or Suarez and no registered representative could rely on Green – including the very brokers whose testimony the Division

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[18] Walther testimony at 2179:21-2180:5.

Palmliden's testimony was inconsistent with what he told the FBI during his interviews in one other aspect, too. Contrary to his testimony in this proceeding, he told the FBI he thought the Memphis Group to which he belonged was managing Allen Stanford's equity in SFG. (Walther testimony at 2238:25-2239:3, 17-20.)

[19] Green testimony at 3982:21-3983:12.

relied on at the hearing. Instead, each broker would be compelled to conduct his or her own independent investigation, just as the Division insists Green should have done.

2. *Green Reasonably Relied on Legal and Compliance to Determine the Adequacy of the Offering Documents, Including Whether to Disclose Details About SIB's Portfolio Transparency.*

As discussed in more detail in Green's Initial Brief, Green understood the Offering Documents had been prepared by a team of knowledgeable, sophisticated professionals – prominent outside counsel, together with able in-house counsel and compliance personnel.[20] He understood, moreover, that in-house counsel and compliance continuously vetted the factual accuracy and legal adequacy of these materials.[21] Like his colleagues, Green relied on the firm's legal and compliance team to ensure the Offering Documents contained adequate disclosures and complied with all applicable rules and regulations.[22] Dr. Ross confirmed that this was standard industry practice and that it was reasonable for Green to rely on SGC's in-house legal and compliance team, as well as outside counsel, and to trust in their competence and integrity.[23] Green's and Dr. Ross's view is very similar to that of the Division's own witness, Ben Finkelstein, while he was at Lehman Brothers:

> Well, when you say "verify," one, these documents have to be vetted by the compliance department. So, the responsibility in terms of the accuracy of this information . . . I don't know how one assumes it's not accurate without -- I couldn't at Lehman Brother[s] go to Dick Fuld [the CEO] and say, I don't believe our financial statements are accurate. *There is a certain amount of trust that you*

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

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

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

[23] Ross testimony at 4178:23-4180, 4180:13-4181:5.

believe that the information you are seeing written on internal documents is accurate.[24]

Dr. Ross confirmed, as well, that Green had no obligation to perform institutional due diligence on any products the firm offered and that Green had no duty to second guess legal and compliance's work or their legal opinions, let alone a duty to hire his own, independent attorney to review and evaluate the appropriateness of their work.[25]

Of course, Green's reliance on legal and compliance to ensure the Offering Documents satisfied all applicable rules and regulations entailed deferring to the judgment of legal and compliance on what disclosures were required in those documents. Given what he had been advised by management, legal, and compliance about the rationale for confidentiality, coupled with what he had been advised about the various "checks and balances" that provided several layers of protection for investors (discussed above), the Division failed to show that Green was unreasonable in believing additional disclosure regarding the SIB portfolio was not necessary or that there was no "substantial likelihood" such a disclosure would "significantly alter the total mix of information" available to the reasonable investor.

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[24] Finkelstein testimony at 349:21-350:6 (emphasis added).

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

Green's belief was particularly influenced by his conversations with Sjoblom, SGC's regulatory counsel, in 2005. (Green's Initial Br. at 18-20, 48-49.) The Offering Documents were one of the topics (among many others) that he and Sjoblom discussed. Sjoblom was clear that the Offering Documents complied with applicable rules and regulations. (Green's Initial Br. at 18-20, 48-49.)

The Division suggests that Green's testimony regarding Sjoblom should not be credited because Green supposedly "offered no indication at all as to what disclosures he (or anybody else) had made to Sjoblom, whether he (or any person) actually asked Sjoblom to provide advice as to the legality of any particular conduct, or, if such a question was asked, which conduct was the subject to the inquiry." (Division's Initial Br. at 54 n.47.) But the Division has seriously misconstrued the evidence. Green's *unrebutted* testimony establishes that he disclosed all relevant facts to Sjoblom and specifically asked him for advice on the legality of his conduct, as well as that of SIB and SGC. (*See* Green's Initial Br. at 1820; 48-49.)

The initial conversation Sjoblom and Green had in June or July 2005 lasted one to two hours.[26] Sjoblom introduced himself as a partner with the law firm of Chadbourne & Parke (later Proskauer Rose), which SGC had retained as regulatory enforcement counsel.[27] Green testified that at the time he was "very concerned" and "wanted to make sure [he] was not doing anything inappropriate, that the company wasn't doing anything inappropriate. So, [he] just bared [his] soul" and "told [Sjoblom] everything [Green] knew" and provided "full and complete disclosure."[28] To that end, Green discussed with Sjoblom:

> [E]verything about my [my] involvement with the International Bank CD and particularly the sales practices. At that time, I was already captain of the

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

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

[28] Green testimony at 3839:25-3840:7.

> Superstars team; so, I told him all about the Superstars team, about being the captain, about the TPC, how that was being run, about the compensation to the advisors.
>
> * * *
>
> Sales contests, compensation, bonus, the referral fee, the ***disclosure documents***, everything. We covered soup to nuts.[29]

After "full and complete disclosure," Green asked Sjoblom his views on the appropriateness and lawfulness of what he, SGC, and SIB were doing. Sjoblom responded that "[he] saw no problems here whatsoever" and opined that Green's conduct, as well as the business of SIB and SGC, were lawful.[30] The division ignores this uncontradicted testimony.

Green and Sjoblom spoke again a few months later in September 2005, at which point Sjoblom had completed his own due diligence on the Stanford entities, including SIB. Sjoblom then again confirmed the advice he had given Green earlier in the month on the SIB Offering Documents:

> It is legitimate. Not only was I impressed. I was very impressed. And we just need to get the SEC comfortable with it. They don't understand it. It's different, and that's going to be my job is to communicate this. I do think there are a couple of minor disclosure changes that we will need to make in some of the documents; but other than that, I think we're fine.[31]

Sjoblom also confirmed his earlier advice regarding the sales practices:

> Q Did [Sjoblom] say anything to you in that subsequent conversation, say, in September of 2005 that was different from the conclusion he shared with you about his view on sales contests, bonuses, compensation program overall, and referral fees?
>
> A No, that was exactly the same. The difference between the two meetings is he had gone to the bank. I think you asked me what he had said. He said he had carte blanche. I remember that. He said, you know, "They gave me carte blanche. I saw anything I wanted, talked to anyone I wanted." And, so, he had

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[29] Green testimony at 3839:16-22; 3840-8-12 (emphasis added).

[30] Green testimony at 38415-16.

[31] Green testimony at 3842:15-22.

also been to Memphis, actually. So, he went to Memphis, as well. So, he had seen everything.[32]

Green and Sjoblom communicated again in January 2009. At that time, Green was interviewed by FINRA examiners as part of what SGC personnel were told was a routine examination.[33] Green and Sjoblom spoke before and after Green's interview, which Sjoblom attended via telephone.[34] In their conversations, the subjects Green and Sjoblom had discussed in 2005 came up again. Both times, Sjoblom reaffirmed with Green the advice he had given then, and further advised that his assessment had not changed. Sjoblom attributed the renewed regulatory scrutiny to what he called a "post-Madoff reaction" that made the regulators "extra vigilant."[35]

Faced with Green's *unrebutted* testimony regarding the advice he received from Sjboblom, the Division faults Green, after the fact, for not "subpoena[ing] attorneys to testify." (Division's Initial Br. at 54 n.47.) It is the Division, however, that has the burden of proof. The Division could have issued subpoenas had it truly believed the attorneys would contradict Green's version of the events. That it chose not to is telling. Similarly, the Division could on cross examination have tested Green's testimony regarding the advice he received from Sjoblom, but the Division chose not to ask Green a single question about it. Further, the Division has failed to cite a single document and failed to cite the testimony of a single witness that undercuts Green's testimony. There is, in short, not one shred of evidence in the record that contradicts Green's testimony regarding Sjboblom. What's more, Green's testimony is supported by the

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[32] Green testimony at 3842:23-3843:11.

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

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

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

lawsuit the Stanford Receiver filed, pursuant to Rule 11, against Sjoblom and his former law firms.[36]

Moreover, the SEC has failed to cite a single rule, a single regulation or a single case that says a broker who recommends a hedge fund, a bank stock or a mutual fund must advise customers that he does not, at the time of the recommendation, know the identity of the holdings in the hedge fund, the loans in the bank portfolio, or the securities in the mutual fund. And, if disclosure is not required in these circumstances, there is no good reason for finding it was nonetheless required by SGC. The Division has failed to identify any principled basis for distinguishing between the different types of cases – for finding that disclosure is optional in the former but obligatory in the latter. If the SEC believed disclosure were obligatory in every instance, the SEC has only itself to blame for not requiring it by rule, especially where reasonable people could readily disagree. The SEC should not be permitted to set rules through litigation, after the fact, that it has not seen fit to set through its authorized rule-making process. If the Division believes its view should be the rule, the Division should go through the proper channels to get a rule passed, not seek through litigation that which it could not or did not obtain through more appropriate channels.

3. Applicable Authority Reinforces the Reasonableness of Green's Views.

For decades now, courts have held that individuals may reasonably rely on the work and advice of competent individuals in their fields of expertise. *E.g., In re Charles C. Carlson*, 46 S.E.C. 1125, 1132-33 (1977) (announcing and applying reasonable reliance doctrine in the context of a broker's actions pursuant to advice from legal counsel). As the D.C. Circuit has explained, "[a]n essential means by which securities professionals comply with the law is

[36] *See* G-91 at ¶¶ 93-112.

through the guidance of counsel." *Howard v. S.E.C.*, 376 F.3d 1136, 1153 n.20 (D.C. Cir. 2004) (collecting authorities). "[R]eliance on the advice of counsel need not be a formal defense; it is simply evidence of good faith, a relevant consideration in evaluating a defendant's" state of mind and reasonableness. *Id.* at 76 F.3d at 1147 (citing *Bisno v. United States*, 299 F.2d 711, 719 (9th Cir. 1961)). In other words, "[a]s a former SEC commissioner put it, the 'reliance defense . . . is not really a defense at all but simply some evidence tending to support a defense based on due care and good faith.'" *Id.* at 2247-48 & n.19 (quoting Bevis Longstreth, *Reliance on Advice of Counsel as a Defense to the Securities Law Violations*, 37 Bus. Law. 1185, 1187 (1982)).

Courts frequently apply the "reasonable reliance" doctrine in rejecting allegations of scienter and negligence, where a securities professional was advised by legal counsel that his conduct complied with applicable law. The D.C. Circuit's application of the reasonable reliance doctrine in *Howard* is especially significant here. There, the D.C. Circuit rejected the SEC's allegations of securities fraud against a senior executive of a broker-dealer who was in charge of institutional brokerage services. 376 F.3d at 1138, 1147, 1149-50. The SEC alleged that the executive had violated his "ongoing obligation" to "protect investors from illegality" when he failed to independently verify the accuracy and legality of information in private placement offering documents. *Id.* at 1138, 1147. The D.C. Circuit disagreed, holding that the executive had reasonably and in good faith relied on representations from management and advice from counsel. *Id.* at 1148. It faulted the SEC for "disregard[ing]" "powerful evidence" of the executive's good faith and reasonableness, including (1) representations from senior management of an affiliate broker-dealer, (2) advice from experienced outside counsel, and (3) information from the head of the broker-dealer's finance department, who previously "had been a lawyer with the SEC's Division of Market Regulation." *Id.* at 1138-39, 1146-1148. The D.C.

Circuit's analysis applies with equal force here, where there is "powerful evidence" of Green's good faith and reasonableness.

Courts have likewise applied the reasonable reliance doctrine in circumstances involving advice received from trusted management. The decision in *In the Matter of Theodore Urban*, AP Release No. 402, 2010 WL 3500928 (Initial Dec. Sept. 8, 2010) (Murray, C.J.), is illustrative. There, Chief Judge Murray held that the former general counsel of a broker-dealer reasonably relied "on continuous representations by multiple individuals in high level managerial roles" who, it turned out, had "almost all . . . either lied to [him] or kept information from him." *Id.* at 43. The court concluded that the former general counsel had sufficiently followed up and questioned the senior executives' information, even though he never detected the fraudulent conduct, and hence "ha[d] a reasonable basis for relying on [their] representations," especially since some of the senior executives "he had known for years, and had no reason to distrust." *Id.* at 46-47.

For all these reasons, Green's conduct regarding disclosure of portfolio holdings is legally acceptable. The Division has failed to rebut the "powerful evidence" of Green's good faith and reasonableness and has clearly failed to meet its burden of proof.

B. The Division Cannot Reasonably Tie Green to Documents He Neither Authored Nor Used.

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

The Division tries to saddle Green with responsibility for the Training and Marketing Manual – Exh. D-742. (Division's Initial Br. at 32-37.) But, in doing so, the Division ignores the evidence at trial, which established that Green had no involvement in drafting, editing or overseeing the document. Green testified that he did not participate in drafting or revising it and

that he never used it in training or otherwise.[37] None of the witnesses who observed Green conduct training with financial advisors or interact with customers suggested Green used the Training and Marketing Manual in any form. Moreover, Special Agent Walther from the FBI clarified who was responsible for the Training and Marketing Manual: She testified that Oreste Tonarelli told her during his FBI interviews that he was the author of it,[38] and she also confirmed that Green was not involved in either its drafting or any of its revisions.[39] Tonarelli and compliance were responsible both for revisions to and the use of the manual, and Green understood that the manual had been vetted and approved by the compliance departments of both SIB and SGC, as well as by the legal departments of both.[40] (Green's Initial Br. at 47-48.)

Undeterred by the record, the Division charges Green must have reviewed the manual and known it was available to financial advisors on SGC's intranet portal and at training presentations. (Division's Initial Br. at 32.) But the record does not support either charge. Instead, it shows at most that, while Green may at some point have given the Manual a cursory review, he was not enamored with Tonarelli's CD presentations and had no desire to review, much less study, Tonarelli's manual in preparing his own materials. (Green's Initial Br. at 35.) Nor did Green have a duty to review or revise the Manual from a legal or compliance standpoint.[41] He reasonably trusted that SGC and SIB legal and compliance had done their job of ascertaining the adequacy and lawfulness of the manual and had updated it, when and if

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

38 Walther testimony at 2177:1-11.

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

40 Green testimony at 3951:24-25 ("I knew it [the training and marketing manual] was reviewed by compliance, reviewed by legal."); *see also* Walther testimony at 2178:4-11.

41 *See* Green testimony at 3763:10-21; Ross testimony at 4207:4-24.

needed.[42] All, he understood, had found it to be accurate, and had determined that it complied with applicable laws and regulations.[43] Dr. Ross confirmed that Green could reasonably rely on the analysis and conclusions of these various sources.[44] It was not Green's responsibility to second-guess these sources or to examine and revise a document they had already reviewed and approved.[45] Under the circumstances Green acted reasonably, and the Division failed to establish otherwise.

2. Green Neither Created Nor Used the SIB Brochure.

Again, ignoring the evidence, the Division contends that the SIB Brochure was an "offering document" and that Green "used" the Brochure in presenting the CDs to potential investors. (Division's Initial Br. at 7, 12.) Both assertions are unsupported by the record.

To begin, as Green's Initial Brief explains at length, the Brochure was not an offering document. The term "Offering Documents," in reference to the SIB CD's, was unquestionably a defined term; it referred exclusively to the Subscription Agreement, the Investor Questionnaire, and the Disclosure Statement.[46] Those are the documents Green and other financial advisors were instructed to and did provide to potential investors prior to every purchase pursuant to SGC's policy.[47] (Green's Initial Br. at 6.) The term did not include the Brochure.

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[42] Green testimony at 3843:16-24; Ross testimony at 4207:4-24; *see also* Finkelstein testimony at 362:13-25; 349:16-350:11; 362:13-25; 396:15-20 (testifying that he understood the compliance and legal departments at SGC would "vet" the presentations, including representations about the portfolio).

[43] Green testimony at 3760:21-3763:10; Walther testimony at 2177:7-2178:21; Ross testimony at 4207:15-24.

[44] Ross testimony at 4207:4-24.

[45] Ross testimony at 4179:20-4180:12; Green testimony at 3843:20-24.

[46] *E.g.*, G-15 ("Subscription Agreement and Investor Questionnaire") at 4 (STANP_0079055) (defining "Offering Documents" as the "Subscription Agreement, the Investor Questionnaire, and the Disclosure Statement"). Contrary to what the Division has suggested, the SIB brochure (D-607) was not an offering document. *See* Young testimony at 3259:21-25 (defining the brochure as a "stand-alone marketing piece" that is not an offering document).

[47] Green testimony at 3924:7-3925:25, 3926:1-10, 3927:25-3929:17, 3932:13-3933:5 (testifying customers received offering documents pursuant to firm mandatory firm policy that was strictly enforced); Fontenot testimony at 2741:19-2742:21 (same); Shaw testimony at 449:3-17, 460:18-463:21 (same); Comeaux testimony

Green, moreover, did not use the SIB Brochure (*e.g.*, D-607.) in presenting the SIB CD to potential investors.[48] At most, as Green candidly testified, he found out later that his sales assistant occasionally used the pocket in the back of the Brochure to hold the Offering Documents.[49] It was the latter that Green encouraged potential investors to read and discussed with them.[50] Equally important, it was the latter that potential investors were required to represent in writing they had read before investing.

Further, as with the Tonarelli manual, Green had no duty to review and revise the Brochure from a legal or compliance standpoint. He reasonably trusted that SGC and SIB legal and compliance had done their job of ascertaining its adequacy and lawfulness,[51] and understood that both had found it to be accurate and determined that it complied with applicable laws and regulations.[52] Dr. Ross confirmed that Green reasonably could rely on the analysis and conclusions of legal and compliance.[53] Green had no duty to second-guess these responsible sources or to examine and revise a document they had already reviewed and approved. Green thus acted reasonably, and the Division failed to prove otherwise.

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at 1063:15-1064:12 (same); Young testimony at 326013-20 (testifying that it was a firm requirement – without which a CD sale could not be made – to provide customers with a disclosure statement and subscription agreement and investor questionnaire prior to a CD purchase).

48 Green testimony at 3954:3-12.

49 Green testimony 3954:312.

50 Thevenot testimony at 2699:11-13 ("As a matter of fact, I think the first page [of the disclosure statement] talked about substantial risks; and Jason wanted to make sure that I understood that.").

51 Green testimony at 3843:16-24; Ross testimony at 4207:4-24; *see also* Finkelstein testimony at 362:13-25; 349:16-350:11; 362:13-25; 396:15-20 (testifying that he understood the compliance and legal departments at SGC would "vet" the presentations, including representations about the portfolio).

52 Green testimony at 3979:2-10.

53 Ross testimony at 4207:4-24.

C. Green Acted Reasonably in Responding to Third-Party Inquiries.

1. Green Acted Reasonably in Delegating to SGC's Compliance Department Inquiries From Outside Investors Criticizing SIB.

The Division faults Green for not taking more seriously comments by customers purportedly warning of alleged improprieties at SIB. (Division Initial Br. at 28-30.) But, as both Young and Green testified, these so-called "warnings" simply regurgitated stale news stories or otherwise referenced information that was long obsolete. Additionally, Green, who was on vacation when all of the referenced emails arrived,[54] made certain that SGC's able compliance department accepted responsibility for responding.[55]

The first so-called "warning" was a February 20, 2007 email a financial advisor in Florida received from one of his clients, Electri International. It was largely based on stale news, highlighting an April 1999 Treasury advisory warning U.S. financial institutions of the hazards of the Antiguan financial system and its loose anti-money laundering standards.[56] The email, however, ignores that the Treasury withdrew the 1999 advisory in 2001 – roughly six years *before* Electri drafted its email.[57] The email refers, as well, to a five-year old *The Wall Street Journal* article from March 2002, supposedly showing Allen Stanford's alleged political clout in Antigua and the corruption of Antigua's ruling political figure, Lester Bird. Once again, however, Electri relied on old news that was no longer accurate: By the time Electri sent the email, the Bird regime had been ousted by the Spencer regime, which was hostile to Allen Stanford.[58] Given these deficiencies, the Electri email simply was not currently credible,

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[54] Young testimony at 3623:11-3624:10; Green testimony at 3850:7-3851:16; G-248.

[55] Green testimony at 3851:17-3852:2 (noting that he was on vacation during the arrival of both inquiries and delegated responding to them to the compliance department).

[56] *E.g.*, D-74 at 5.

[57] Young testimony at 3618:5-3620:2; G-293.

[58] Young testimony at 363620:7-3622:10; Green testimony at 3852:20-3853:10; G-294.

especially when contrasted with the due diligence done by sophisticated institutions like Pershing, which in 2005 had vetted SIB to the fullest – with complete knowledge of the negative press on SIB and Allen Stanford, including the 1999 Treasury advisory and the 2002 *The Wall Street Journal* article.[59]

The second email relied on by the Division forwarded a CPA's report from Billy Hall, a client out of SGC's Atlanta office.[60] Like the Electri email, the Hall email relied on stale news. While purportedly quoting a "recent article" from the *Philadelphia Inquirer*, the email actually quotes an article that was five years old – from August 2002.[61] Likewise, the email's allegation that "[SIB] may be susceptible to a dependence on new deposits," which the Division contends is code for a Ponzi scheme, was an old claim that already had been tested and rejected. Three years earlier, for example, in 2004, a three-member arbitration panel had been confronted with the allegation that SIB was a Ponzi scheme; after a full hearing on the merits, however, the panel dismissed that claim with prejudice.[62] Just as important, neither Pershing nor Bear Stearns nor Fidelity had been deterred by the assertion.

Against this background, the Division's claim that Green ignored the Hall and Electri emails is unfounded. The information and sources mentioned in both were stale.[63] Moreover, given the age of the news, Green did what would be expected of the head of the retail division of a broker-dealer, especially one who was on vacation: he passed on the inquiries to the compliance department – the very department tasked with responding to such matters. Dr. Ross,

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[59] Green testimony at 3852:20-3853:10.

[60] *E.g.*, D-71.

[61] Young testimony at 3625:20-3628:17; D-71.

[62] Young testimony at 3629:6-3630:23; Comeaux testimony at 1112:14-1114:3; G-230.

[63] Both Green and Young also had the impression that the CPAs' objectivity may not have been above reproach, either. The AIPCA recently had relaxed its standards regarding the sale of financial products by CPAs, who subsequently were competing for business with broker-dealers. (Young testimony at 3622:10-3623:3; Green testimony at 3852:8-19.)

with decades of senior-level compliance experience, testified that was an acceptable action and, indeed, the preferred response for Green to make. [64] Moreover, she agreed that there was no reason for Green to follow up upon his return from vacation because "[t]hat's ordinarily the procedure . . . within any brokerage firm."[65]

2. *Green Acted Reasonably Regarding the Due Diligence SGC Compliance Asked A Third Party to Do On Proprietary Products of Stanford Capital Management.*

The Division also strains to tie Green to the SGC compliance department's retention of Snyder Kearny to conduct due diligence on a proprietary product from Stanford Capital Management ("SCM"). (Division's Initial Br. at 25-27.) Green's *unrebutted* testimony shows that he was never meaningfully involved in the process. Indeed, Green's only involvement consisted of reviewing an email from Michael Koch, before Snyder Kearney was engaged, explaining why the SGC compliance department thought a third-party due diligence engagement was "prefer[able]" for the new SCM product line.[66] Young, who signed the Snyder Kearney engagement letter, spearheaded and supervised the effort as the chief compliance and due diligence officer at SGC.[67] Green had no further communications about Snyder Kearny or about the proprietary products at issue, and no knowledge of either the concerns Snyder Kearney raised, or its later termination of the engagement.[68] No witness testified otherwise. No document suggested otherwise.

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64 Ross testimony at 4208:10-4209:12.

65 Ross testimony at 4209:10-16.

66 Green testimony at 3853:16-3854:8 ("My only involvement with Snyder Kearney was I was sent an e-mail -- I believe it was by Michael Koch -- explaining the need to hire this outside third party on these discretionary asset management accounts done by Stanford Capital Management and kind of getting my buy-in. Getting my buy-in translates to the private client group was likely going to have to pay for it. So, that was it. That's all I knew. I never knew anything else about it. I didn't know -- I think there was a little discussion about Snyder Kearney. Are they the right person? Is there any conflict of interest? Once they were engaged and moved on, I never heard anything else about it.").

67 Kearney testimony at 1264:2-9.

68 Green testimony at 3854:9-15.

The Division nonetheless boldly contends that Green should have concluded that the compliance department's due diligence on SIB had been inadequate. (Division's Initial Br. at 25-26.) The Division's theory rests on a June 5, 2008 email in which Michael Koch explains to Green, that in light of a "recent SEC action versus Banc of America Investment Services regarding inadequate or improper vetting of proprietary products utilized in their discretionary wrap fee programs," the compliance department had concluded that the "preferable solution" to vet SCM's new proprietary product would be "an outside consultant/law firm."[69] As Green understood, Koch sent the email to get his "buy-in" since Green's retail group would pay for the engagement.[70]

The Division claims the Koch email should have alerted Green that the SGC compliance department had done inadequate due diligence on the SIB CDs. (Division's Initial Br. at 25-26.) But, for a professional in charge of a broker-dealer's retail operations, the far more plausible inference to draw from the email was that the SGC compliance department was competent and on top of things: it was keeping abreast of regulatory developments and taking the necessary action. The Division overreaches by insisting that Green should instead have concluded SGC's due diligence on a different, unrelated product was inadequate. The Division's insistence is an even more problematic given Green's role on the retail side of SGC, without any compliance or institutional due diligence obligations. As Dr. Ross testified, it was not Green's job to conduct compliance or due diligence of the firm's products, let alone to tell the compliance department

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[69] D-444.

[70] Green testimony at 3853:21-3854:8 ("My only involvement with Snyder Kearney was I was sent an e-mail -- I believe it was by Michael Koch -- explaining the need to hire this outside third party on these discretionary asset management accounts done by Stanford Capital Management and kind of getting my buy-in. Getting my buy-in translates to the private client group was likely going to have to pay for it. So, that was it. That's all I knew. I never knew anything else about it. I didn't know -- I think there was a little discussion about Snyder Kearney. Are they the right person? Is there any conflict of interest? Once they were engaged and moved on, I never heard anything else about it.").

how to conduct its business: "Brokerage firms have very well-defined specialized roles, and you would not want someone who was responsible for revenue to be doing due diligence or documents."[71]

Against this background, the Division's contention that Snyder Kearney's requests for information about SIB and Snyder Kearney's subsequent termination of the engagement should have put Green on alert that SGC's due diligence on SIB was inadequate has no merit.

D. Green Acted Reasonably Regarding SIB's Compensation Plans and Disclosures.

1. Green Reasonably Relied on Management, Legal, and Compliance in Ascertaining the Lawfulness of SIB's Compensation Plans.

The Division faults Green for participating in and overseeing an allegedly improper sales contest and other incentive compensation programs starting in 2004. (Division's Initial Br. at 37-40.) Green, however, consulted with SGC legal and compliance, as well as with outside counsel, about the appropriateness of both the sales contests and the compensation programs. Everyone he spoke with told him the sales and compensation practices were lawful.[72] (Green's Initial Br. at 18-20.) Tellingly, the Division does not cite any rule or regulation that would forbid the sales contest or any other compensation feature of SIB's Accredited Investor CD Program. (*See* Green's Initial Br. at 62-64.)

The discussions Green had with Sjoblom again prove critical to Green's understanding of the propriety of SIB CD's compensation program and sales practices. In 2005, Green provided full disclosure to Sjoblom regarding his " involvement with the International Bank CD and particularly the sales practices," his role as "captain of the Superstars team," "the TPC, how that was being run, about the compensation to the advisors," the "[s]ales contests, compensation,

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[71] Ross testimony at 4208:10-19.

[72] Ross testimony at 4187:8-4188:12 (opining it was reasonable for Green to "believe that both compliance and legal had blessed the bonus program," "the compensation structure," "the referral fees," and that "the compensation structure" and "the bonuses and bonus program were lawful").

bonus, [and] the referral fees."[73] Sjoblom, who had been retained as SGC's regulatory counsel, twice advised, in June and then again in September 2005, that "[he] saw no problems."[74] (Green's Initial Br. at 18-20.) Sjoblom reiterated his advice in January 2009, before and after Green was interviewed by FINRA personnel as part of a purported routine examination.[75] (Green's Initial Br. at 48-49.) Dr. Ross testified that Green reasonably could rely on legal and compliance and on Sjoblom alerting him should Sjoblom's advice to him at any time no longer be accurate.[76]

The Division also ignores the efforts by Green and others, starting in 2007, to diversify, to reduce (and then to discontinue) SGC's participation in the TPC, and to end the Super Stars' participation in the sales contests.[77] The Respondents accomplished this objective toward the end of 2008, at which point the Super Stars no longer participated.[78] The goal was to increase SGC's independence and to continue to build a full-service, high-end boutique brokerage firm.[79] As part of that process, SGC hired McLagan to review SGC's compensation model.[80] McLagan eventually prepared a report on compensation for SGC.[81]

Without justification, the Division now attempts to turn the well-intentioned effort to diversify against Green, contending that some of the McLagan report's purportedly unfavorable conclusions should have convinced Green that SGC's compensation scheme was unlawful.

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

74 Green testimony at 38415-16.

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

76 Ross testimony at 4189:13-4190:4.

77 Bogar testimony at 2789:5-2790:5; 2791:11-2792:14; Green testimony at 3866:16-22.

78 Green testimony at 4009:4-23; Bogar testimony at 2784:15-2789:13.

79 Green testimony at 3866:6-22; Bogar testimony at 2784:15-2789:13.

80 Bogar testimony at 2784:12-20-2785:20.

81 D-271.

(Division's Initial Br. at 40.) Green reasonably expected SGC's legal and compliance departments, which were aware of the report, to advise him if either thought the report's concerns warranted a change.[82] Neither did. Throughout, moreover, Green's view of the compensation program was influenced by Sjoblom's representation that the program complied with all applicable rules and regulations.[83] Additionally, Green had serious concerns about the accuracy of the assumptions underpinning the report's conclusions, and, hence, did not believe the report to be accurate.[84] Dr. Ross testified it was reasonable for Green to continue to rely on Sjoblom's advice until he heard otherwise, and that the reasonableness of Green's reliance on the advice received from Sjoblom and from SGC legal and compliance would not have been diminished by the McLagan report, given the serious doubts he and others had about the report's assumptions.[85]

The Division has failed to establish that Green acted contrary to law in relying on legal and compliance to ascertain the lawfulness of SGS's compensation program as it related to the sale of the SIB CDs.[86]

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82 Green testimony at 3898:1-16, 4066:12-4067:19, 4069:13-4070:17; Ross testimony at 4189:13-4190:4.

83 Green testimony at 3875:23-3876:23 (testifying he never was advised by Sjoblom or SGC legal and compliance that the SIB CD compensation model violated any laws, rules, or regulations but would have expected to hear if that were that the case); Ross testimony at 4189:5-22 (opining it was reasonable for Green to continue to rely on the advice of legal and compliance that the sales practices and compensation in connection with the SIB CDs complied with applicable rules and regulations even in the face of the McLagan report, especially given the fundamental flaws Green detected in the report's methodology).

84 Green testimony at 3855:8-3865:21 (noting the SIB CD compensation model was improperly compared to the domestic bank CD compensation model; explaining how the SIB CD compensation assumptions McLagan used were inaccurate; and explaining how, even using the McLagan report numbers, SGC financial advisors were not better compensated than their peers); *see* Ross testimony at 4189:12-18 (validating Green's concerns over the McLagan report).

85 Ross testimony at 4188:24-4189:18.

86 Green also regularly emphasized the "Golden Rule" of suitability to avoid financial advisors allocating an unsuitable portion of their customers' portfolio to the SIB CDs at the expense of generating higher sales compensations. (Green Initial Brief at 4, 45-46.)

2. *Green Reasonably Relied on Legal and Compliance in Ascertaining the Adequacy of the Disclosures of the SIB Compensation Plan to Investors.*

The Division likewise criticizes Green for allegedly not disclosing enough to investors about the incentive compensation paid to SGC and its financial advisors in connection with the sale of the SIB CDs. (Division's Initial Br. at 40.) Once again, however, the Division overlooks that Green reasonably believed the Offering Documents adequately disclosed to investors the referral fee and other compensation for the SIB CDs, and that Green followed firm policy by giving the Offering Documents to potential investors and by encouraging potential investors to read them. (*See* Green's Initial Br. at 31, 53, 60.)

Given the level of detail provided, the Division cannot reasonably contend that Green – a non-lawyer – should have concluded the Offering Documents – drafted by some of the country's finest law firms – warranted additional disclosures on fees and bonuses:

- Under the heading "Referral Fees," the Disclosure Statement states: "Referral Fees are paid to persons who introduce Depositors to us. See 'Description of U.S. Accredited Investor CD Program, Referral Fees' on page 9 for a more detailed discussion of these fees. We currently pay a referral fee of 3% to our affiliate Stanford Group Company. Such fees are subject to change on an annual basis. Referral fees paid to others will not reduce the principal amount of your CD Deposit or the interest earned thereon."[87]

- Later, the Disclosure Statement says: "We may engage certain persons to introduce potential Depositors to the U.S. Accredited Investor CD and pay them a referral fee. *We may also pay additional incentive bonuses to our representatives.* You may obtain information regarding any of these fees from us upon written request. Among the firms with which SIBL has entered into referral agreements is Stanford Group Company."[88]

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

[88] *Id.* at 8 (STAN P_0078937) (emphasis added). The Division's assertion that "SGC's only disclosure regarding incentive compensation was a form letter – sent after the SIB CD had been recommended and sold is contradicted by the Disclosure Statement itself, which was given to all investors, and which expressly told them: "We may also pay additional incentive bonuses to our representatives." (Division's Initial Br. at 38 n.31.) Sending the letter after the purchase, moreover, highlighted the issue and focused investor attention on the subject.

- Lastly, under a section titled "Affiliate Transactions," the Disclosure Statement explains: "SIBL and an affiliated company, Stanford Financial Group Company ('SFG') have had a marketing and service contract in force since 1995, which provides us with marketing and management services for a negotiated fee. * * * We are also party to a referral fee agreement with SGC. The fees paid pursuant to the referral fee agreement with SGC are calculated as a percentage of SGC's referred client portfolio, and are currently 3%, negotiated annually. Referral fees paid do not reduce the principal amount of any CD Deposits or any interest earned theron."[89]

Investors also received a letter subsequent to their purchase disclosing to them the 3% annual referral fee and other incentive compensation, to which they could object in writing if they did not want to pay it.[90] (Green's Initial Br. at 32, 64.)

Even if the Offering Documents and other materials had not sufficiently disclosed the referral fees and other compensation to investors, which they did, Green was reasonable in believing that management, legal, and compliance at SIB and at SGC, together with outside counsel, had taken sufficient steps to ensure the adequacy of the disclosures, and that his own disclosures to investors likewise were adequate. Sjoblom's advice, in particular, strongly bolsters this conclusion. Sjoblom specifically advised Green that the SIB CD accredited investor program, including its compensation features, the sales contest, and the Offering Documents, complied with all applicable rules and regulations.[91] Dr. Ross testified that it was eminently reasonable for Green to rely on this and other advice he received.[92] (Green's Initial Br. at 65.)

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89 *Id.* at 8 (STAN P_0078945).

90 Those letters were sent to Green's customers. *See, e.g.*, G-247 at JG-013.

91 The Division also assumes, without addressing, much less establishing, that the information on sales incentives would have been material to the average investor. Stegall's testimony suggests otherwise. Stegall acknowledged receiving a letter discussing referral fees after his purchase. When questioned about the letter, which disclosed that SGC was receiving a 3% referral fee "on an annual basis," Stegall acknowledged "that as long as I got my payment, I was not concerned about what fees they were paying anybody; so, this was not important to me[.]" (Stegall testimony at 1418:3-14; G-247 at JG-013.) Similarly, when questioned about the referral fee letter's disclosure that "SGC may receive additional incentive bonus for financial advisors who aid in the sale of SIBL's CD," he testified: "It wouldn't have mattered to me as long as they made my payments that we agreed, my percentage of what I was going to get." (Stegall testimony at 1418:18-1419:2; G-247 at JG-013.) Whether or not the information was material, however, Green could reasonably believe it was not. So

Finally, Green was not responsible for drafting the Offering Documents and hence may not be held liable for any deficiencies in those documents.[93] (Green's Initial Br. at 55.)

E. Green Never Suggested That the SIB CDs Were "Safe," And He Reasonably Relied on the Offering Documents, Approved By Legal and Compliance, to Adequately Disclose the SIB CDs' Risks.

The Division erroneously suggests that Green told SGC financial advisors and investors that the SIB CDs were "safe." (Division's Initial Br. at 31-31, 50-51.) Green denied he ever represented the SIB CDs to be "safe" or led anyone to believe they were. (Green's Initial Br. at 51-54.) Every SGC financial advisor who overheard Green interacting with customers or watched his training presentations corroborated this testimony. Those advisors uniformly testified that Green disclosed the "substantial risk" of investing in SIB CDs and never downplayed those risks. (Green's Initial Br. at 41, 51-54.) The one unbiased investor who testified, Thevenot, also corroborated Green's testimony. (Green's Initial Br. at 41.) Thevenot's testimony was clear and unequivocal: "As a matter of fact, I think the first page [of the disclosure statement] talked about substantial risks; and Jason wanted to make sure that I understood that."[94] Even Green's customers who were called by the Division and quoted in the OIP conceded, when pressed, that they understood from Green that buying a SIB CD was only

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long as his belief was reasonable, which it was, no basis for liability exists. *See, e.g., In the Matter of Theodore Urban*, 2010 WL 3500928, at *46-47.

92 Ross testimony at 4179:3-4180:12.

93 The OIP does not allege Green failed to disclose the financial dependence of SGC on SIB (OIP at ¶¶ 25-27 (allegations against SGC)) or that Green failed to disclose other sources of revenue from SIB and other affiliate transactions (OIP at ¶ 18(c) (allegations against Bogar and Young)). To the extent the Division argues Green should be liable for any of those alleged misrepresentations or omissions (*see* Division's Initial Br. at 31-33), they are not supported by any allegations in the OIP. *See, e.g., In the Matter of Cosmetic Center, Inc., et al.*, AP Release 329, 2007 WL 1245314 at *9 n.24 (Initial Dec. April 30, 2007) (Murray, C.J.) (declining to consider evidence submitted by the Division "because these allegations were not in the OIP").

94 Thevenot testimony at 2699:11-13.

slightly less risky than buying an S&P 500 mutual fund or a balanced mutual fund.[95] (Green's Initial Br. at 26-34.)

Faced with this strong record refuting the OIP's allegations, the Division quotes out of context a variety of snippets from Green's PowerPoint presentations to financial advisors. For example, citing a single word on a single page from a thirty-four page PowerPoint that was used in an hour-long presentation, the Division states that Green represented to financial advisors that SIB CDs were designed for investors seeking "safety." (Division's Initial Br. at 31 (quoting D-104 at 13).) Context, however, is critical, as SGC's financial advisors readily understood.[96] In the PowerPoint, the term "safety" is used, not in discussing market risk, but in discussing a very

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[95] The Division alleges, too, that Green had no basis to tout the SIB portfolio's liquidity. (Division Initial Br. at 8-9, 33, 48). This allegation is unfounded for several reasons. Just like his colleagues, Green reasonably believed the SIB portfolio was broadly diversified and highly liquid. (Green testimony at 3742:6-15; *id.* at 3819:4-24; *id.* at 3954:20-3956:19; Bogar testimony at 2875:1-12; Comeaux testimony at 1067:23-1068:4; Young testimony at 3406:6-25.) So, too, did reputable institutions such as Bear Stearns, Fidelity, and Pershing, as well as some of the nation's top law firms, such as Chadbourne Parke, Proskauer Rose, Greenberg Traurig, and Hunton & Williams, which vetted SIB before agreeing to do business with it and SGC. (Green testimony at 3722:2-24 (describing Pershing due diligence); *id.* at 3722:9-18 (testifying that "Bear Stearns had done extensive due diligence on all of the businesses of Stanford, including the International Bank, had been down there, visited it and looked at it and, so, similarly favorable to Pershing, accepting us as an introducing broke"); *id.* at 3837:1-21, 3823:9-3838:8, 3839:10-15, 3839:16-3840:12, 3841:5-3842:13, 3842:23-3844:3 (discussing interactions with and due diligence by Tom Sjoblom); Ward testimony at 0857:25-0864:20, 872:21-0874:13 (discussing Pershing due diligence); B-394; B-395; Bogar testimony at 2626:13-2627:11, 2628:19-25 (discussing due diligence process with Pershing); *id.* at 2571:22-2573:11 (discussing work by Carlos Loumiet).) Dr. Ross testified that Green reasonably could rely on representations from management, legal, and compliance regarding diversification and liquidity. (Ross testimony at 4178:23-4180:6, 4181:6-4182:3, 4186:24-4187:7.)

Green went even further, however, in seeking to confirm that the portfolio was in fact diversified and liquid. He reviewed the bank's financial statements. He investigated the bank's Antiguan regulatory regime that oversaw its business and ascertained its holdings on a regular basis. He interviewed people who oversaw the international portfolio managers. (Green testimony at 3956:14-16 ("I spoke to people that had gone to Europe and were directly involved in managing the portfolio. I had conversations with them, drilled down[.]").) He spoke to bank personnel, including SIB's president. (Green testimony at 3707:15-3714:7; 3956:10-19.) The Division's assertion that he should have done still more – that he should have double checked (i) the due diligence of the compliance department, the legal department, and outside counsel, (ii) the veracity of the statements made by SIB management, and (iii) the accuracy and reliability of SIB's auditor – is totally removed from both the realities and the practicalities of a brokerage business and from Green's role and responsibilities. (Ross testimony at 4179:3-4182:23; 4188:20-4189:4.) Indeed, Dr. Ross, with decades of experience as a senior compliance official and as a senior due diligence officer with a number of regional and national brokerage firms, testified that such conduct "would have been counterproductive" and "characteristic of circumventing" the chain of command. (Ross testimony at 4180:11-12.)

[96] Finkelstein testimony at 362:4-12 ("There has to be a context. These are bullet points.").

different subject – SIB's location "in the minimal-tax financial jurisdiction of Antigua, West Indies."[97] The financial advisors who listened to Green's presentation understood this; none of them was confused. In fact, every financial advisor who testified stated that he understood the risks of investing in the SIB CDs and that Green never misrepresented any aspect of it in his presentations.[98] (Green's Initial Br. at 39-46.) Objective investors who testified said exactly the same.[99]

Taking another snippet out of context, the Division asserts that "Green's earlier presentations show a highly misleading chart that purports to show the SIB CDs as being as safe, or safer, than true conservative investments such as high-quality bond funds." (Division's Initial Br. at 32 n.25.) It is the Division's assertion, however, that is misleading. Green's first ever presentation to Karvelis and others (G-250), which was approved by legal and compliance like all that followed, did not claim the SIB CDs were safer than "true conservative investments." The referenced "chart" shows the credit risk of "High Quality Bonds and Funds" as being "low" (for short and intermediate term bonds) or "moderate" (for long-term bonds of 20-30 years, taking into account future uncertainties that may affect the bonds' credit quality).[100] A subsequent chart shows the SIB CDs as having a credit risk of low-to-moderate (keeping in mind

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97 D-104 at 13.

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

99 Thevenot testimony at 2699:7-13 ("Q Did Mr. Green encourage or discourage you from reading those documents, sir? A No. He wanted me to be informed. It was a part of the -- I'll call it a part of the disclosure. As a matter of fact, I think the first page talked about substantial risk; and Jason wanted to make sure that I understood that.").

100 G-250 at DS00127.

that SIB CDs had a maximum maturity of five years).[101] The chart then refers to 25 "mitigating factors" that justify the low-to-moderate credit risk ranking.[102] (Green's Initial Br. at 36-37.) Therefore, the chart clearly assigns a lower risk rating to the "High Quality Bonds or Funds" with a comparable run-time to that of the SIB CDs.

The low to moderate risk assessment assigned to the SIB CDs, moreover, was consistent with the risk categories assigned to other products that Green was following at the time and considered similar, like Jean-Marie Eveillard's First Eagle Global Fund. (Green's Initial Br. at 10-11.) It was also consistent with Green's understanding that SIB for years had successfully used multiple "mitigating factors" to limit the potentially substantial risks of investing in SIB CDs.[103] (Green's Initial Br. at 8-9.)

The Division tries, as well, to link Green to a draft PowerPoint presentation – D-21 – that he neither drafted nor approved, let alone used in any of his presentations.[104] D-21 is obviously an unfinished draft. It has manifold placeholders; many of the slides are repetitive; and many are out of place. For example, page 57 (56 of the slideshow) lists "[s]lides intended to be added to future versions."[105] What follows are 43 slides that are out-of-order, duplicative, and sometimes unformatted or illegible.[106] What's more, eleven slides in D-21 are identical to slides that were in Michael Koch's draft presentation (G-258), which Green expressly rejected. (*See* Green's Initial Brief at 38-39.) Green Demonstrative 2 provides a full picture of D-21's inaccuracies and

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[101] G-250 at DS00128.

[102] G-250 at DS00129; Green testimony at 3819:25-3820:13.

[103] The Division also neglected to mention that the chart found in the Karvelis presentation was removed and never again used in subsequent presentations. (Green testimony at 3784:25-3785:11.)

[104] Green testimony at 3821:17-23.

[105] D-21 at 57.

[106] D-21 at 58-100.

discrepancies, including a total of 68 pages (out of 100) never used in any of Green's presentations (G-254; G-261; G-264; G-268). (Green Demonstrative 2, attached as Exhibit "A.")

Moreover, there is no evidence that Green ever presented D-21 to anyone, let alone that he approved or revised it. It is telling that, after Green denied ever using the chart contained in D-21 and denied ever telling anyone that the credit risk for the SIB CDs was "low,"[107] the Division chose not to ask him a single question about the presentation or the chart in D-21 or the discrepancies between the chart in D-21 and G-250.[108] Nor did the Division introduce any documentary or testimonial evidence that cast doubt on Green's testimony.

The Division failed to meet its burden of showing that Green misrepresented the risks of investing in the SIB CDs, much less that he did so negligently or fraudulently.[109]

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[107] Green testimony at 3821:17-23.

[108] The Division used Exhibit 21 just once, when asking Karvelis to identify the presentation as one that was "similar" to the presentation Green gave to SGC financial advisors. Karvelis initially did not recognize the chart but noted it looked "familiar." (Karvelis testimony at 1348:16-21 ("Q: Let's look at Slides 39 through 41. * * * These may be new. Do you remember having seen this chart before? A: (Reviewing document) I don't recall seeing the actual chart. It looks familiar, but I don't recall it."). Only after walking him through the presentation charts (G-250 at DS00127-129) – without pointing out the significant differences in the risk assignments in the charts – did the Division lead Karvelis to say that the chart in G-250 "looks like the same chart" in D-21. (Karvelis testimony at 1349:22-1356:21.) Of course, as it turns out, the charts are not the same given the differing risk levels assigned to the SIB CDs and other securities.

[109] The Division also claims Green sent out the SIB's Q3 Report in October 2008, "highlighting SIB's 'stability' and the fact that SIB purported to have 'capital and lots of liquidity," despite knowing that markets worldwide were down and "there was nowhere to hide in this market." (Division's Initial Br. at 61 n.56.) In Green's experience, however, it was possible to weather even serious downturns; the money managers he was following, and who, he believed, were employing many of the same strategies SIB was using, emerged from the Tech Wreck unscathed, with the First Eagle Global Fund, for example, averaging 10% returns through that timeframe. (Green testimony at 3750:19-3752:9; *see* G-297.) Likewise, SIB had posted strong returns during the Tech Wreck, which was a big reason for Green to recommend the CDs after many of his customers' portfolios had suffered significant losses during the same period. (Green testimony at 3746:18-3747:10.)

The Division further contends that Green's February 13, 2009 email to Dirk Harris, encouraging him to distribute Allen Stanford's legal and compliance approved letter assuring investors SIB continued to be a strong institution (D-213) proves Green's scienter. The Division charges that Green's conduct was particularly callous because he had just heard from Pendergest-Holt that she was in fact managing only a portion of SIB's portfolio. (Division's Initial Br. at 62-63.) But Green did not just accept Pendergest-Holt's statement regarding the portion of the SIB portfolio she managed without taking further steps to rule out any impropriety. He called SIB's president, Juan Rodriguez Tolentino, who assured him SIB's assets "were there," after explaining he had just met with the FSRC and after reading to Green some of the account statements from outside money managers he had just pulled in connection with the FSRC's review. (Green testimony at 3906:22-3910:6.)

F. Green Never Told Or Implied to Anyone That SIB CDs Were Insured And Acted Reasonably in Relying on the Offering Documents, Approved by Legal and Compliance, to Adequately Disclose the Lack of Depository Insurance.

1. Green Always Disclosed to SGC Financial Advisors And Potential Investors That the SIB CDs Were Not Insured.

Green never misrepresented or implied to anyone, including potential investors and financial advisors, that an investment in SIB CDs was protected by depository insurance; in fact, he expressly stated that there was no depository insurance on the SIB CDs.[110] With perhaps the exception of admitted perjurer Bobby Allison, Green's testimony was corroborated by every

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Moreover, contrary to what the Division maintains, Green was far from nonchalant about communications with the public. For example, Green cautioned against issuing a February 15, 2009 draft press release by the Stanford public relations office before a number of items he questioned were adequately verified, stressing "the need to be accurate in all of our communications." (Green testimony at 3910:11-1914:20; G-303; G-304.) As Green's email shows, his communication with Harris was motivated by the calls Green was receiving from investors who had not seen the legal and compliance approved letter; he believed investors should receive a copy of all communications issued by SIB that had been approved by legal and compliance. (*See* D-213.)

It is also important to note that Green halted SIB CD sales on February 5, 2009, eight days before the exchange with Harris. (Green testimony at 3898:1-3899:5.) Similarly, SIB CD early redemptions were halted on February 10, 2009, three days before the exchange with Harris. (Green testimony at 3902:7-3903:2.) Thus, at the time of the exchange with Harris, investors could no longer purchase CDs or redeem them early (i.e., make any decision to buy or sell).

The Division also mischaracterizes Shaw's testimony regarding the Stanford Investment Model ("SIM"). As the 2007 edition of the Stanford Eagle Magazine explains, SIM was not meant to replicate, let alone mirror, the SIB portfolio. SIM "offers three portfolio choices – Income, Balanced and Growth." (G-82 at 14.) "As of the date of this Stanford EAGLE the targeted return for the Income Model is 3-6 percent; for the Balanced Model, 6-10 percent; and for the Growth Model, returns in excess of 10 percent." (*Id.)* The Division cannot explain how one could accomplish three different returns using a single SIB mirror portfolio. Moreover, a reading of the remainder of the Stanford Eagle article on SIM reveals that there is not a single mention of SIB or its portfolio.

The Division likewise mischaracterizes Fontenot's testimony on the alleged losses customers were suffering in SGC's SIM accounts. Contrary to the Division's assertion that the SIM product "was supposed to replicate the performance of the SIB portfolio" (Division's Initial Br. at 61 n.56), it "was meant to replicate, not exactly, but closely, the investment *strategy* that was undertaken as part of the SIB product." (Fontenot testimony at 2748:12-19 (emphasis added).) As noted above, there were three separate SIM products, each with different performance targets, none of which attempted to replicate the performance of the SIB portfolio, which, given its size, had many more tools at its disposal that could not be employed in individual SIM portfolios.

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

- 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."[115]

- "YOU MAY LOSE YOUR ENTIRE INVESTMENT UNDER CIRCUMSTANCES WHERE WE MAY BE FINANCIALLY UNABLE TO REPAY THOSE AMOUNTS. PAYMENTS OF PRINCIPAL AND INTEREST ARE SUBJECT TO RISK."[116]

(Green's Initial Br. at 23-24.) An investor who is told she "can lose [her] entire investment" cannot reasonably claim she believed that same investment was insured against loss. Thevenot's testimony was clear as to what Green really told investors: "there was no insurance."[117]

The Division also asserts Green's legal and compliance approved presentations to financial advisors implied the SIB CDs were insured. (Division's Initial Br. at 56.) The Division continues to press this point even though every single financial advisor who testified in this proceeding unequivocally stated Green always affirmatively stated there was no depositor insurance.[118] Moreover, the particular PowerPoint slide in Green's presentations discussing insurance makes clear that the point was not insurance, but "oversight."[119] Indeed, the page in

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

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

[117] Thevenot testimony at 2699:21-24.

Thevenot's testimony makes clear that he did not testify out of a sense of loyalty for or friendship with Green. (*See* Thevenot testimony at 2706:23-2707:5 ("Q: And were you a friend of Mr. Green's, Mr. Thevenot? A: No. Like I say, I've had maybe, I don't know, seven or eight hours of face time with him in my entire life. So, we had a friendly business relationship or a cordial business relationship; but there was never anything, any kind of personal friendly kind of thing going on.").)

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

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

Green's presentations that mentions insurers is styled "Appropriate Oversight."[120] Consistent with the "Appropriate Oversight" theme of the slide, Green described the insurers' underwriting procedures, including the insurers' use of a risk consultant, as creating "another set of eyes coming in there and providing some oversight."[121] He discussed insurers "oversight" as the last topic, after discussing the oversight provided by SIB's "Board of Directors," "experienced bank managers," "outside auditors," and "bank regulators and examiners."[122] (Green's Initial Br. at 41-44.)

Although Green always affirmatively stated there was no depository insurance on the SIB CDs, as every witness to attend one of Green's presentations testified,[123] the Division faults Green for not having his own bullet point that said "not insured," like the one contained in the compliance presentation that immediately followed his. (Division's Initial Br. at 56-57.) This criticism misses the mark in several ways. *First*, Green's presentation was given in conjunction with the one by the compliance department; therefore, the financial advisors attending Green's presentation also attended the compliance department's presentation. *Second*, what counts is that Green affirmatively stated – whether in writing or otherwise – that there was no depositor insurance, as every financial advisor witness confirmed. After all, as the Division's witness,

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120 G-254 at 25); G-261 at 28; G-264 at 26; G-268 at 26.

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

122 G-254 at 25; G-261 at 28; G-264 at 26; G-268 at 26.

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

Finkelstein, testified, "there has to be a context. These are bullet points."[124] It is therefore critical to review them in the context of how the presenter filled in the context around the bullet points. That context – corroborated by every financial advisor witness to attend Green's presentations – was: the insurers provide "another set of eyes"; but "[t]here is no[] [deposit insurance] for this product."[125] (Green's Initial Br. at 41-44.)

Dr. Ross agreed that Green's characterization of the insurers under the explicit heading "Additional Oversight" as "another pair of eyes" made sense and was entirely appropriate, especially given that Green's presentation was vetted and approved by legal and compliance.[126] Additionally, as Dr. Ross recognized, the compliance department presentation that immediately followed Green's also emphasized that deposits were "not insured."[127] (Green's Initial Br. at 41-43.)

Against this background, the Division has failed to show by a preponderance of the evidence that Green in any way made misrepresentations regarding the SIB CDs insurance.

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[124] Finkelstein testimony at 362:4-12.

[125] Green testimony at 3815:1-3816:4 ("Well, that was the whole point of talking about the insurance was that it provided another set of eyes that it comes under the heading of "appropriate oversight." ***It was very clear to everyone that the product was not insured in any way, that it was not providing any depositor insurance. Everyone understood that. It was clearly communicated to financial advisors and to clients.*** The insurance reference here is for the bank. This is bank insurance. And, so, again, as I would point out, you know, Lloyd's of London, a company like that, before they are going to underwrite a 50- to 100 million-dollar policy for Stanford International Bank that's going to cover directors and officers or banker's blanket bond, which we say here covers fraud, and I would mention, you know, such as embezzlement if a teller were to embezzle money. Before they are going to underwrite that risk, they are going to come in and do whatever due diligence and underwriting they need to do to make sure that the bank has appropriate policies, it has appropriate procedures, it's following these policies and procedures. They're going to do a risk assessment. And, so, you know, it was providing an additional incidence of credibility, an indicator of credibility for the bank. That's all it was. You know, not a huge point. ***But I would camp here and stress to everyone this is not to be confused in any way with deposit insurance. There is none for this product.***" (emphasis added)).

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

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

Rodriguez-Tolentino are identical in content (D-125). Green, therefore, did not "edit" the letter.[128]

III. THE DIVISION FAILED TO SHOW A SECONDARY VIOLATION.

The Division asserts that Green aided and abetted, as well as caused, SGC's purported violation of Section 206(1) and (2) of the Advisers Act by SGC's misrepresentation of key features of the SIB CDs and its failure to disclose purportedly significant conflicts of interest between SGC and SIB. (Division's Initial Br. at 72-77.) The Division, however, has failed to establish by a preponderance of the evidence that Green knowingly and substantially assisted in the alleged violative conduct. (Green's Initial Br. at 66-67.) As the record establishes, Green acted reasonably, relying on legal and compliance in ascertaining the adequacy of the disclosures by SIB and SGC to potential investors. (Green's Reply Br. at 1-16, 25-41.)

IV. THE DIVISION'S REQUESTED RELIEF SHOULD BE DENIED.

A. The Division Has Failed to Show That Disgorgement Is Warranted, Its Calculations Are Inaccurate, And Its Requested Amounts Are Excessive.

No disgorgement is warranted because the Division failed to establish that Green committed wrongdoing. Even if the Division had met its burden, however, the amounts the Division seeks in disgorgement are excessive and not supported by the Division's own forensic accounting.

The Division seeks disgorgement in the amount of $2,613,506.47 in the form of SIB CD commissions ($554,929.35), SIB quarterly bonuses ($38,648.33), and Branch MD quarterly

[128] The Division's assertion that Green did not do enough after the "oh, shit" moment goes too far. Green in fact pressed Stanford hard to understand the discrepancy between cash and cash equivalents and the $541 million in added capital from Stanford. He was told that the $541 contributed to SIB was invested in securities. (Green testimony at 4045:6-4047:17.) Stanford's explanation was consistent with what Green already knew. Stanford had been saving for the Island's project and decided to contribute the money instead to SIB. Green testimony at 4047:13-21.) And it was also consistent with Green's understanding of how wealthy people referred to cash as including their investments in securities. (Green testimony at 4047:22-4048:1 ("And I had for 20 years had guys like Peter Thevenot, when they talked about their investments with me, they said, "Well, you got my cash. I got this." And we might not have any cash in there; so, it was very consistent. . . .").

compensation ($2,019,928.79).[129] (Division's Initial Br. at 79.) The Division fails, however, to show how Green's entire Branch MD compensation is tied to the fraud at SIB or his alleged wrongdoing. Courts have long held that "disgorgement may not be used punitively" and that it applies only to "property causally related to the alleged wrongdoing." *SEC v. First City Financial Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989). As a result, "the SEC generally must distinguish between legally and illegally obtained profits." *Id.* SGC was a full-service brokerage firm that offered a wide variety of regular brokerage products that were not tied to the SIB CDs. Even the OIP's calculation shows that, on average, 43.23% of SGC's revenues were not SIB-related. (*See* OIP at ¶ 26 (showing from 2004 to 2008 the average percentage of revenue tied to SIB was 57.77%).) Therefore, the Division has failed to prove the amount of Green's Branch MD compensation that is "causally related" to the alleged wrongdoing.

The Division, in addition, seeks disgorgement of $3 million Allen Stanford donated to charitable institutions at Green's church. (Division's Initial Br. 79.) The record, however, is clear that Green never received any of that money. All $3 million was paid directly from Allen Stanford personally to a charitable institution. Green had negotiated this arrangement with Stanford before any conditions triggering payment were met:

> A Well, to state it briefly, I was offered by Mr. Stanford a million dollars per year for 2004, 2005, 2006.
>
> Q For doing what?

[129] The Division relies exclusively on the analysis and accounting done by Karyl Van Tassel. However, Van Tassel's analyses and accounting are inherently flawed. For example, Van Tassel testified that SIB had money in-flows of $160,954,977 in October 2008, $85,950,768 in November 2008, $95,038,513, $78,005,949 in January 2009, $36,174,143 in February 2009 and, from those numbers, made the logical leap that all of it was new investor deposit money. (Van Tassel testimony at 0137:10-22.) But the analysis does not distinguish between money flowing into the bank from liquidations of accounts at SIB's external money managers and new depositor money. In fact, the SIB spreadsheets used to track CD purchases and redemptions – on which the Division relied heavily in other contexts – show heavy redemptions for the same time periods making Van Tassel's analysis highly unreliable. (*See* G-299 (showing $482 million net withdrawals from SIB worldwide for October and November 2008 alone); *see also* Green testimony at 3889:2-3890:15.) It also is telling that the Division never produced any of the data and materials underpinning Van Tassel's analyses before trial and, despite repeated requests, never produced the underlying materials during trial.

A If the Superstars team set -- hit the goals that he had established for the team in those individual years, then he would offer to give me a million dollars per year. I asked him if -- and this was before I had ever earned it. It was still just an offer. I asked him if he would be willing to pay it to a nonprofit, rather than give it to me.

Q The full amount or just some portion of the amount?

A That was his question? He said, "All of it?" And I said, "All of it, yes. All of it."

* * *

Q And, so, what happened after that, Mr. Green?

A Well, we did hit the goals and he did give the money and the majority of it did go to people living in developing nations all over the world, to help them, you know, basically.

Q Did any of it go to you in any form or fashion?

A He paid it out of his personal checking account directly to the nonprofit. I did not see one cent.

Q So, you reached an agreement with him before you had fulfilled any of the criteria for earning a bonus? You reached an agreement with him that if the Superstars did, in fact, fulfill certain criteria, he would make a donation out of his pocket --

A Correct.

Q -- to certain designated charities by you?

A Yes.[130]

Special Agent Walther confirmed Green's testimony.[131] Moreover, even the forensic accounting of Karyl Van Tassel that the Division relies on in computing the amounts to be disgorged does not list the $3 million in bonus money as having been received by Green.[132]

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[130] Green testimony at 3878:3-3879:20.

[131] Q Are you familiar, Ms. Walther, with any donations that Allen Stanford made to Mr. Green's church?

A Yes, I am.

Q What do you know about that? Mr. Green was eligible for a bonus for meeting a sales goal set by Mr. Stanford for the group that Mr. Green managed at the time, and that bonus was up to a million dollars per year. Mr. Green asked Mr. Stanford to, rather than paying the bonus to Mr. Green, to make a donation to Mr. Green's church.

Q And what was the total amount of the bonuses, to the best of your knowledge, that Mr. Stanford – the total amount of the donations that Mr. Stanford made to Mr. Green's church?

A I believe it was 3 million.

Given Green never received any of the $3 million, and given the money was made as a personal donation from Stanford to the charitable organization, there is no basis in law or equity to order disgorgement of those amounts. "[T]he purpose of disgorgement is to deprive the wrongdoer of his ill-gotten gains and deter future violations of the law." *SEC v. Seghers*, 298 F. App'x 319, 336 (5th Cir. 2008) (citing *SEC v. AMX, Int'l, Inc.*, 7 F.3d 71, 76 n.8 (5th Cir. 1993)). Here, Green never obtained any "ill-gotten gains" as he never received any of the $3 million. Therefore, the Division failed to establish, as it must, Green's "*actual* profits on the tainted transactions [to] at least presumptively satisfy[y]" its burden to show that "its disgorgement figure reasonably approximates the amount of unjust enrichment." *SEC v. First City Financial Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989) (emphasis added).[133]

B. The Division Has Failed to Show That Civil Penalties Or Collateral Bars Are Warranted.

1. The Division's Requested Civil Penalties for Alleged Wrongdoing Predating August 31, 2007 Are Time-Barred.

The Division's requested civil penalties are subject to the five-year statute of limitations of 28 U.S.C. § 2462,[134] *see Gabelli v. SEC*, --- S. Ct. ----, 2013 WL 691002, at *3 (2013), stating that:

(Walther testimony at 2180:7-21.)

[132] Division Demonstrative 1.

[133] Even if the Division had not failed to meet its burden in a variety of ways, so that the $3 million charitable donation by Stanford should be disgorged, Green should not be required to pay pre-judgment interest on that amount. Payment of prejudgment interest is meant to "prevent[] a defendant from profiting from his securities violations," but no more. *SEC v. Sargent*, 329 F.3d 34, 40-41 (1st Cir. 2003). Given Green never had the benefit of that money, directly or indirectly, he could not have "profited" from it; equity, hence, requires that he not be ordered to pay pre-judgment interest on that amount. *See SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996) ("The decision of whether to order prejudgment interest, like the decision to grant disgorgement and in what amount, is left to the district court's 'broad discretion.'").

[134] Neither the Securities Act, the Exchange Act nor the Advisers Act contains a statute of limitations provision for SEC civil enforcement actions. *See, e.g., Zacharias v. SEC*, 569 F.3d 458, 471 (D.C. Cir. 2009) (Securities Act); *SEC v. Johnson*, 87 F.3d 484, 486 (D.C. Cir. 1996) (Exchange Act); *SEC v. Jones*, 476 F. Supp. 2d 374, 380 (S.D.N.Y. 2007) (Investment Advisers Act).

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. § 2462.

The Supreme Court recently held that 28 U.S.C. § 2462 begins to run at the time of the violation. *Gabelli*, 2013 WL 691002, at *8 (declining to apply the discovery rule to Section 2462 "[g]iven the lack of textual, historical, or equitable reasons to graft a discovery rule onto the statute of limitations"). Therefore, the Division's requested relief for civil penalties based on alleged illegal activity predating August 31, 2007 is time-barred. Specifically, the Division's claims arising out of Green's alleged misrepresentations to Dore, Moran, Smith, and Stegall are time-barred. The record shows that the alleged conduct occurred well before August 2007.[135] Moreover, the record is equally clear that Green handed over his entire book of business to Layfield and Harris in early 2007, when he became the president of the Private Client Group, and no longer had any interactions with customers.[136] Therefore, those claims are time-barred.[137]

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[135] Dore testimony at 1396:23-1463:14 (testifying to events involving Green from 2000-2002); Stegall testimony at 1482:24-1547:13 (testifying to events involving Green from 2002 to 2006); Smith testimony at 1548:6-1601:24 (testifying to events involving Green up to 2004).

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

[137] The Division's request for an industry bar based on conduct that predates August 31, 2007 also is time-barred for the same reasons. Courts have held that where an industry bar is punitive in nature, the five-year statute of limitations of 28 U.S.C. § 2462 applies. For example, in *Johnson v. SEC*, 87 F.3d 484, the D.C. Circuit applied Section 2462 to hold that a six-month suspension and a censure were time-barred because they were primarily punitive in nature. 485-86 (D.C. Cir. 1996). As an initial step, the *Johnson* court construed the term "penalty" as it is used in 28 U.S.C. § 2462 given the provision does not provide a definition. "[G]uided . . . by the Supreme Court's common-sense rule that '[c]ourts properly assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry ordinary, contemporary, common meaning,'" *id.* at 487 (quoting *Pioneer Inv. Servs. Co. v. Brun Assoc. Ltd. Partnership*, 507 U.S. 380, 388 (1993) (second brackets in original)), the court "conclude[d] that a 'penalty,' as the term is used § 2462, is a form of punishment imposed by the government for unlawful or proscribed conduct, which goes beyond remedying the damage caused to the harmed parties by defendant's action." *Id.* at 488. Against this background, the court found that the SEC's sanctions – a censure and six-month suspension – was sufficiently punitive in nature to constitute a "penalty" under 28 U.S.C. § 2462. *Id.* at 488-89. The court explained that the suspension did not

2. *The Division Has Not Established Conduct Warranting Civil Penalties, Let Alone Maximum Third Tier Penalties.*

No civil penalties are warranted because the Division failed to establish that Green committed wrongdoing.[138] What's more, even if the Division had been able to meet its burden, the most it could have established is that Green committed a negligent violation of Section 17(a) of the Securities Act or Section 206(2) of the Advisers Act, justifying no more than a First Tier penalty. *See, e.g., S.E.C. v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (finding negligent violation of Section 206(2) of the Advisers Act warranted no more than a First Tier penalty).

For the same reasons, the Division's request for full collateral bars is not warranted.[139]

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only limit the defendant's ability to earn a living during the six-month suspension but would have a more long-term effect and repercussions on her ability to pursue her career given such sanctions must be disclosed to the public and become part of the defendant's permanent public record. "These collateral consequences of the censure and suspension, while not the central determinant in whether a sanction reaches penalty status, do suggest its punishment-like qualities." *Id.* at 489. The court further noted that the SEC's sanctions "would less resemble punishment if the SEC had focused on [the defendant's] current competence or the degree of risk she posed to the public." *Id.* However, the sanctions here were not based on any general finding of [the defendant's] unfitness as a supervisor, nor any showing of the risk she posed to the public, but rather were based on [the defendant's] alleged failure[s] . . . ." *Id.* The inquiry into the defendant's current competence, on the other hand, was merely "*pro forma.*" *Id.* 490. Accordingly, the court determined that the SEC's enforcement action was time-barred under 28 U.S.C. § 2462. *See id.* 491-92. *See also, e.g., S.E.C. v. Bartek*, 484 F. App'x 949, 957 (5th Cir. 2012), *cert. dismissed*, No. 12-1000, 2013 WL 1234876 (2013) (upholding lower courts statute of limitation ruling on director's and officer's bar and permanent injunction given their "stigmatizing effect and long-lasting repercussions" rendered the remedies punitive in nature).

Here, the Division's requested bars will have a penalizing effect on Green, while the Division's inquiry into Green's future threat to the investing public is only "pro forma." Accordingly, the requested industry bars, to the extent based on conduct predating August 31, 2007, is time-barred.

[138] For the same reasons, the Court should deny the Division's request for a cease-and-desist order. (Division's Initial Br. at 83.)

[139] The Divisions contends full collateral bars are warranted because Green "pose[s] a continuing threat to the investing public because [his] fraudulent activities were egregious and recurrent." (Division's Initial Br. at 86.) The Court should find that no collateral bars are warranted given the Division's failure to show any wrongdoing. However, should the Court find wrongdoing, the *Steadman* factors do not justify collateral bars because Green's misconduct, at worst, amounted to negligence.

The Court must weigh "the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations." *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd*, 450 U.S. 91 (1981). Even if the Division proved wrongdoing by a preponderance of the evidence, Green's culpability, at worst, raises to the level of negligence. However, the imposition of a collateral bar requires "willful" acts, as the Division correctly notes. *See* 15 U.S.C. § 80b-3(f); *id.* § 80a-9(b); *id.* 15(b)(6)(A). Likewise, the Division has not shown any likelihood of future violations, other than to point to Green's alleged

V. CONCLUSION.

The Division has not met its burden of proof. The Division alleges that Green blindly relied on information he received on the SIB CDs and then blindly passed it on to investors. But the evidence shows that Green acted honestly and, reasonably. He conducted his own due diligence (pursuant to his obligation as a registered representative) on the SIB CDs, on SIB's key personnel, on SIB's investment strategies, on SIB's overall portfolio allocations, and he followed up on new developments. The Division has not established any facts or cited any legal authority showing Green could not reasonably rely on the information he received from senior management, legal counsel, the compliance department, the regulator, and the auditor.

The Division further alleges that Green passed on the unverified information to investors and then lied to them about the SIB CDs being "safe" and "insured." Every former SGC financial advisor who testified, however, said Green never told anyone the SIB CDs were "insured" or "safe." The one objective investor who testified was clear that Green never told him that the SIB CDs were safe or insured, either. Further, the alleged misrepresentations are contradicted by the Offering Documents Green gave to investors, which disclosed the substantial risks of investing and the lack of depository insurance.

For all these reasons, the Court should find that the Division failed to prove the OIP's allegations against Green by a preponderance of the evidence.

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past wrongdoing. However, "[t]o say that past misconduct gives rise to an inference of future misconduct is not enough." *Id.* Therefore, the Division has not shown that collateral bars are appropriate even if the Court found wrongdoing.

D-21 shares 11 slides with another presentation (G-258) that Green expressly rejected.

# of Common	Description of Common Slides (D-21 & G-258)[1]	D-21 Slide #
1	SIB Investment Philosophy	17
2	SIB Performance Impl. & Monitoring	18
3	Investment Policy Results: Higher Int.	19
4	Investment Policy and Methodology	20
5	Structure	21
6	Privately Owned	22
7	SIB Investment Vehicles	24
8	TDF 90-22.1 Requirement	27
9	Premium Accounts (Int'l Only)	33
10	Express Accounts (Int'l Only)	34
11	Supplementary Services	35

[1] *These slides are contained in both D-21: "Green Tonarelli Revised" and G- 258: "SIB CD Train BEY2," which Green declined to present. See G-258 and G-257 (transmitting G-258) and G-72, at 1-3 (declining to present G-258).*

D-21 contains 68 pages not contained in any presentation made by Green.

Pages Added	Description of Pages Only in D-21[1]	D-21 Page #
1	Regulatory Process 2	10
2	Antigua vs. US - KYC	11
3	SIB Portfolio Management	16
4	SIB Investment Philosophy	17
5	SIB Performance Impl. & Monitoring	18
6	Investment Policy Results: Higher Int.	19
7	Investment Policy and Methodology	20
8	Structure	21
9	Privately Owned	22
10	SIB Investment Vehicles	24
11	TDF 90-22.1 Requirement	27
12	SIB Performance Account	32
13	Premium Accounts (Int'l Only)	33
14	Express Accounts (Int'l Only)	34
15	Supplementary Services	35
16	SIB Routine Operations	36
17	Risk-Return Chart Page	37
18	Traditional Fixed Income Investments	38
19	Traditonal Equity Investments	39
20	Alternative Investments	40
21	Footnotes from Charts	41
22	Asset Allocation for Clients	47
23	SIB Cost Structure	54
24	SIB Ranking	55
25	Ending Notes (Rough Draft Designation)	56
26	Pie Chart - Four Asset Classes	58
27	Four Pies - Asset Class Breakdown	59
28	Industry Breakdwon Pie	60
29	Four Pies - Asset Class Breakdown	61
30	Currency Breakdown Pie	62
31	Four Pies - Asset Class Breakdown	63
32	Alternatives Breakdown Pie	64
33	Four Pies - Asset Class Breakdown	65
34	Partial Excel Sheet	66
35	Excel Sheet-Bank Deposit Rankings	67

D-21 contains 68 pages not contained in any presentation made by Green.

Pages Added	Description of Pages Only in D-21[1]	D-21 Page #
36	Excel Sheet - Total Assets	68
37	Return vs. Financial Cost	69
38	Excel Sheet- Return vs. Cost Data 1	70
39	Excel Sheet- Return vs. Cost Data 2	71
40	Baker_Botts Excel File Name 1	72
41	Baker_Botts Excel File Name 2	73
42	Cost Structure Bar Graphs	74
43	Cost Structure Data - Excel Sheet	75
44	Blank Excel Column	76
45	SGC IAG MFP+ Excel Sheet 1	77
46	SGC IAG MFP+ Excel Sheet 2	78
47	SGC IAG MFP+ Excel Sheet 3	79
48	SGC IAG MFP+ Excel Sheet 4	80
49	Country Ranking by Deposits - Excel 1	81
50	Country Ranking by Deposits - Excel 2	82
51	Country Ranking by Deposits - Excel 3	83
52	Country Ranking by Deposits - Excel 4	84
53	Country Ranking by Deposits - Excel 5	85
54	Country Ranking by Deposits - Excel 6	86
55	Stanford Eagle Logo	87
56	Bank Ratios - Excel Sheet 1	88
57	Bank Ratios - Excel Sheet 2	89
58	Bank Ratios - Bar Graphs	90
59	Bank Ratios - Excel Sheet 3	91
60	Blank Excel Column	92
61	Total Assets Bar Graph	93
62	Bank Ratios - Excel Sheet 4	94
63	Bank Ratios - Excel Sheet 5	95
64	Country Ranking by Deposits - Excel 7	96
65	Excel Sheet-Bank Deposit Rankings	97
66	Excel Sheet - Total Assets	98
67	SIB 10-Year Performance Graph	99
68	SIB 10-Year Performance Graph	100

[1] *The above pages were only found in D-21, not in any of the presentations shown to have been given by Green (i.e., G-254, G-264, G-268, & G-261).*