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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

DANIEL BOGAR,

BERNERD E. YOUNG, and

JASON T. GREEN

ADMINISTRATIVE PROCEEDING
File No. 3-15003

Respondents.

RESPONDENT BERNERD E. YOUNG'S RESPONSE TO DIVISION OF ENFORCEMENT'S POST HEARING BRIEF DATED APRIL 5, 2013

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I. INTRODUCTION

The Division's four - year crusade to have the maximum penalties imposed upon Young could never be better illustrated by a comparison of the Division's Initial Brief with the Record. This Reply will reveal the lengths at which the Division will go to distort the record and have this Court find Young unjustifiably liable for securities acts violations. It had no evidence when it issued the Wells Notice in 2010 after self-serving hearsay interviews with former Stanford Group Company and Stanford Financial Group personnel who had substantially more "hands on" roles in developing, modifying and approving the content of the SIB Disclosure Statement, SIB International Sales Brochure and SIB Training and Marketing Manual, and preparation and use of the "Training Deck" for the SGC Financial Associates Compliance training. The Record clearly confirms that Jane Bates, Lena Stinson and Rebecca Hamric were those persons, yet they are not respondents in this or other OIP's.

The Division accuses Young of attempting to clothe Stanford in a façade of legitimacy while all the while participating in bilking investors' of Billions of Dollars. The Division has attempted to complete its professional annihilation of Young by offering evidence through testimony from its band of highly opinionated yet embarrassingly unprepared witnesses and Young's former NASD supervisor (Henderson), the Division's paid fact witness (Van Tassel) who could not establish Young's compensation (after also having been paid approximately $25,000,000 Dollars by the Stanford Receiver, she could at least get this "small point" accurate), perjured witness (Palmliden), ever-so-often lying witness (Bobby Allison), highly compensated

(potentially yielding over $1,000,000 in warrant exercises) but never disclosing to Compliance witness (Pi).

These witnesses, individually or as a whole, failed to offer evidence sufficient to establish the liability for which the Division seeks to have imposed upon Young.

II. **DIVISION'S INITIAL BRIEF**:

Mischaracterization of Witness Testimony

1. The Division ignores Young's inquiry (and its response) as to whether Fraser wanted him to review other Antiguan laws in the Division's Exhibit to better answer the line of inquiry being elicited by the Division. Tr 3392-3394. Fraser ignored Young's testimony and changed his line of questioning. Tr 3396-3398.

2. Regarding the allegation that the overwhelming source of SGC required operating capital was from SIB CD sales and fees, the Division ignores the evidence and refuses to acknowledge that the SGC Capital was from Allen Stanford or Stanford Group Holdings, not SIB; Tr 3133-37; 3483, 3361. The capital contributions were timely disclosed with NASD/FINRA through required filings with NASD/FINRA. Tr 3146-3148; Young Exhibit 10.

3. The Division attempts to mislead the Court by mischaracterizing Young's testimony regarding the existence and use of the December 2007 and September 2008 Training and Marketing Materials. In preparing their expert witness for trial and during trial the Division attempted to conceal the existence of these later versions of the Training and Marketing Material in an attempt to mislead their expert witness and the Court into believing that the 2006 Training and Marketing

Manual was the only document of its kind used to train FAs. **{Tr. 346-347, 533, 1042-1043, 1394, 1466}.** When in fact, one of the Division's own witnesses testified that he knew the document was updated and had seen several different versions of the Training and Marketing Manual, and that it was available on the firms intranet.{Tr.**414-415, 491-492}.** Having had access to SGC's compliance files for four years prior to trial, which included SGC's training logs, the Division intentionally withheld copies of the later versions from its Expert Witness. The SEC also attempted to camouflage their attempts to mislead the Court and the witnesses into believing that the 2006 Training and Marketing Manual was the only document used to train FA's. Moreover, knowing that their witnesses would be unable to identify the version of the Training and Marketing Manual used during their training, the Division couched its questions to witnesses as "is this similar to the presentation you were shown". Tr. 1042-1043; 1385; 1412; 1414.

The Division never provided any concrete evidence in the form of detailed training or other records showing which version of the Training and Marketing Manual was utilized at any particular training conducted of FAs by Young and or Green, nor did it provide any testimony from any FA who had been trained by Young. Instead, all of the Division's witnesses, including Shaw, Karvelis, and Finkelstein testified that they were trained by Jane Bates, not by Young. Tr. 333; 479-480; 1154; and 1203. It is reprehensible that the Division would have the Court find that Young "armed FA's" with misleading information, when they failed to establish which version of the Training and Marketing Materials were in fact utilized by Young, and were unable to produce any witnesses who testified

that Young utilized the 2006 Training and Marketing Manual. In their Post Hearing Brief, the Division again attempts to mislead the Court by stating that "Young never referenced these allegedly new "versions" in his Wells Submission, all the while knowing that Young has never been provided direct access to his department's files at SGC prior to his Wells submission. Instead, the Division offers a flimsy email in which Young's assistant forwarded the wrong set of training materials – this is not concrete evidence of the document's use, but rather is simple evidence of human error. SGC kept detailed logs of each FA that was trained, together with copies of the presentation utilized for that training. The Division had full access to these records for four years prior to trial and undoubtedly chose not to use them or provide Young with access to them prior to his Wells submission. [DOE #93 – One email from Willie North is not overwhelming evidence].

As further evidence of the Division's attempts to mislead the court and mischaracterize Young's testimony, the Division would have the Court believe that the new versions added additional misleading language by suggesting that the insurance program covers "fraud." To be completely truthful, the Division should have noted that the 2007 and 2008 versions of the Training and Marketing Manual stated that there was "Operational Fraud Coverage" provided by Lloyds of London. Young Exh. 75 at BEY 003832 and Young Exh. 76 at STAN P_0055255. The Division failed to provide any evidence or fact witness testimony that Young ever stated that the insurance program protected against any and all types of fraud as the Division would have the Court believe.

III. DIVISION WITNESSES

A. **Van Tassel**: Paid Fact Witness. See discussion, supra. The Division is asking the Court to take notice that the 5th Circuit signed off on the District Court's canonization of Van Tassel and her determinations set forth in her declarations provided "clear, numerical support for the creative reverse engineering undertaken" [by the Ponzi scheme]. Young respectfully objects to this Court taking such notice in light of Van Tassel's inability to answer one question about one item on the Division's Demonstrative Exhibit #1. It is remarkable that the Division's hired gun or forensic saint, as the case may be (whose previous declarations in the Stanford Receiver case were heavily relied upon by Henderson to form the basis of many of his opinions), could not answer one simple question regarding Young's compensation. Tr 0216-0218. The Oracle system was in fact a program used to process reimbursement of out of pocket expenses for Young. In this regard, the presentation of a Demonstrative Exhibit without testimony as to how each component of illustrated "compensation" was reached is no evidence at all. The Division failed to prove that Young was paid $1,300,000 in compensation or any compensation, and therefore seeking a disgorgement of that amount (or any amount) is unwarranted.

B. **Henderson**: His many foibles are set forth in Young's Proposed Findings of Fact and Conclusions of Law. In summary, his mini treatise on "red flags" which were ignored by Young were: (i) aged and unsubstantiated press releases and blogs of how corrupt a nation Antigua was in the early 2000s ; (ii) C.A.S. Hewlett was too small an audit firm to perform audit services for SIB, while admitting that he was aware that Bernie Madoff had been audited by a 2- person audit staff firm while on his watch as

head of NASD's New York District Office; (iii) sales contests were prohibited or at least viewed with disdain in the securities industry yet acknowledging that such prohibitions were limited to mutual funds and variable annuities and (iv) the FSRC may have been incapable or suspect as a regulator of SIB. Henderson testified, and the Division has accepted, that Young's due diligence trips were superficial yet the Division failed to offer any evidence to support its claim and his opinion. Henderson's failure to review critical evidence to support some of his opinions has been discussed in Young's initial post hearing filing. He acknowledged that he was unprepared and had not done "his homework."

C. **Pi:** Received hundreds of thousands of Warrants in Deals without Disclosing to Compliance; see also, Div Ex 650 at 209 of 613; Tr 3158. Tr 688.

D. **Karvelis**: SIB CD never sold on basis of depositor insurance. Tr 1343-1344.

E. **Allison**; Brazenly refused to acknowledge that he was subject of a Consent Order issued by the Arkansas Securities Department (No. 94-20-S) on April 20, 1994; and when presented with documentary evidence, accused Green's counsel of manufacturing the FINRA BrokerCheck and Arkansas Consent Order; Tr 553-560-639, and this witness stated that he never met with or talked to Young. Tr 540.

F. **Weiser**: Testified that not all SGC fees were tied to SIB CD sales; Tr 3358-3366 and that fees paid by SFG to SGC not SIB.

G. **Stegall**: Stegall was presented presumably to testify as the mythical reasonable investor who would have wanted to know about fees paid to SGC by SIB before he had made a purchase of the SIB CD. After Stegall answered the deftly-coached questions propounded on direct examination, Stegall testified truthfully and predictably as would a

reasonable investor: As long as I was getting my check, "I was not concerned about the fees they paid anybody." Tr 1518. The Division would also like one to forget that Stegall and all witness investors were accredited investors capable of reading the Offering Documents, or wizened enough to hire a professional to adequately explain or criticize the content of said documents..

H. Palmliden: Palmliden perjured himself while testifying for the Division, to wit, Palmliden testified that the Tier 2 investment portfolio which was "managed" by the Memphis Group belonged to Stanford International Bank. Tr. 720-721. However, as evidenced by testimony presented at trial by FBI Special Agent, Vanessa Walther ("Agent Walther"), when he was interviewed [Tr. 2227] by Agent Walther, Palmliden told her that the money which was being handled by the Memphis Group was in fact Stanford Financial Group moneys, not Stanford International Bank. Agent Walther went on to describe how Palmliden told her that it was his belief that the assets which he identified as comprising Tier 2 of the investment portfolio, were in fact Mr. Stanford's equity in Stanford Financial Group. Tr. 2238-2239. Moreover, Agent Walther testified, that Palmliden told her in his interview that "it was Mr. Stanford's money, not money of investors at Stanford International Bank." Tr 2239.17-25.

Palmliden went on to testify that had he been told that the investment portfolio was made up of three tiers – Tier 1, Tier 2 and Tier 3. Tr. 721. Agent Walther however testified that "Our investigation found that the tiers, the terminology "tiers" was not something that was widely known throughout the company. Actually even calling it "tiers", the Treasury Department used the term "tiers" to differentiate between cash, cash equivalents, and investments. But it was not known by the sales and marketing, the

broker/dealer side. The tiers were not something that was known until much – till towards the very end of the company's existence just prior to the SEC appointing a Receiver...The actual calling things "tiers" was known by – was done by very few people. The prevailing view within the company until the company collapsed was that Ms. Holt and her group in Memphis managed the entire portfolio". Tr. 2179.

The Division attempts to ignore testimony offered at length during the trial and instead mischaracterize Palmliden's testimony as testimony by all of the individuals in the Memphis Group, to wit. "it is undisputed that individuals in Memphis ... were never told that they were prohibited from allowing SGC employees, much less SGC executives from learning information about the CD portfolio." [*emphasis added*]. Contrary to what the Division and Palmliden would have the Court believe, Agent Walther further 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 with financial advisors in particular." Tr. 2179-2180. Agent Walther further contradicted Palmliden's testimony, and supported the Respondent's testimony, when she testified that during her investigation she determined that Ms. Holt in fact specifically instructed her team members not to discuss the tiers with anyone at SGC. "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 with financial advisors in particular." Tr. 2179-2180.

With respect to the Antiguan privacy laws, the Division falsely claims that "The Respondents have offered no explanation as to why those employees were able to circumvent the allegedly applicable Antiguan privacy laws, but SGC was not.", when in

fact each of the Respondents testified as to their understanding of the Antiguan privacy laws and which were based not only on discussions with inside and outside legal counsel as well as the Antiguan Regulator charged with responsibility for enforcement of such regulations. Tr. 2943, 3492-3493, 3760 and 3967.

IV. LEGAL ANALYSIS

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The Division has failed to offer any credible evidence that Young acted with a "mental state embracing an intent to deceive, manipulate or defraud" SGC clients. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n. 12 (1976). Nor has the Division offered any evidence that Young's conduct was reckless i.e., highly unreasonable and represented an *extreme* [emphasis added] departure from the standards of ordinary care. *Rolf v. Blyth, Eastman Dillon & Co.,* 570 F.2d 38, 47 (2d Cir. 1978) quoting *Sanders v. John Nuveen & Co.,* 554 F.2d 790, 793 (7th Cir. 1977). Likewise, the Division has offered no evidence that Young strayed, extremely or otherwise, from his responsibilities set forth in the (i) SGC's Written Supervisory Procedures (WSP). Young Ex 013, or from his duties and obligations forth in SGC's articles of incorporation, bylaws or any corporate governance formalities adopted and employed by SGC, Young's employer.

Willfulness

A finding of "willfulness" requires evidence that Young intended to "do the act which constituted a violation." *See Wonsover v. SEC,* 205 F.3d 408, 413-415 (D.C. Cir. 2000); *Steadman v. SEC*, 603 F.2d 1126, 1135 (5th Cir. 1979). Therefore, the Division must establish that Young intended to disseminate materials that he knew to be false or was reckless in not knowing the Disclosure Statement and the Training and Marketing Manual contained material

misrepresentations or omissions of same. First, the Division must establish by a preponderance of the evidence that the Disclosure Statement and Training and Marketing Manuel contained such misleading material and that Young knew or should have known that the material was misleading. The Division has failed to meet the first element; therefore, a finding of willfulness cannot lie.

Aiding and Abetting

For aiding and abetting liability under the federal securities laws, the Division must establish (i) a primary or independent securities law violation committed by another party ; (ii) awareness or knowledge by the aider and abettor that his role was part of an overall activity was improper; and (iii) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. *See Graham v. SEC,* F.3d 994, 1000 (D.C. Cir. 2000); *Woods v Barnett Bank of Ft. Lauderdale,* 765 F.2d 1004, 1009 (11th Cir. 1985); *Investors Research Corp. v. SEC,* 628 F.2d 168, 178 (D.C. Cir. 1980). The Division has offered no evidence that Young was aware that his role was part of an overall activity was improper, or that he knowingly and substantially assisted the conduct of others in carrying out their scheme.

Janus Capital Group, Inc. v. First Derivative Traders

In *Janus Capital Group, Inc. v. First Derivative Traders*, ____ U.S. ____, 131 S. Ct. 2276, 180 L.Ed.2d 166 (2011), the U.S. Supreme Court considered a case in which First Derivative Traders sued Janus Capital Group (JCG), a publically traded company that created the Janus fund of mutual funds organized in a Massachusetts business trust, i.e., the Janus Investment Fund (JIF). Janus capital Management (JCM) provided JIF with investment advisory services. As the securities laws require, JIF issued prospectuses describing the investment strategy and operations of its mutual funds to investors.

First Derivative alleged that JCG and JCM caused mutual fund prospectuses to be issued for Janus Mutual funds and made them available to the investing public which created the misleading impression that JCG and JCM would implement measures to curb market timing in the Janus funds and had the truth been known the Janus funds would have been less attractive to investors.

Each one of the Janus entities had observed the corporate formalities the Supreme Court held that the maker of a statement is the person or entity with the ultimate authority over the statement, including its content and whether and how to communicate. Without control, a person or entity can merely suggest what to say, not "make" a statement in its own right. See *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.* 511 U.S. 164, 180, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994).

To be liable under Rule 10b-5, 17 C.F.R. §240(10b)-(5), Young must have "made" the alleged material misstatements in the Bank's disclosure statement over which he had no control or authority to do.

The Supreme Court also rejected the Government's definition which would have permitted liability for a person who provides fake or misleading information that another person then puts into a statement. In *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 165, 128 S.Ct. 761, 1969 L.Ed.2d 627 (2008) the Supreme Court held that even when information about transactions were later incorporated into false statements, there was no reason to treat participating in the drafting of a false statement differently from engaging in deceptive transactions, when each is merely an undisclosed act preceding the decision of an independent entity to make a public statement.

The Division has based its case on the failure of Young to disclose the lack of transparency even while promising investors that the product was safe. Although this premise has been flawed from the outset of its case, assuming *arguendo,* that Young had the authority to require such a disclosure, the Division offers no legal authorities to support its position. Therefore, it has only offered an opinion unsupported by precedent.

SUMMARY

RESPONDENT, Bernerd E. Young, respectfully requests that the OIP and all charges against Young be DISMISSED in their entirety.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of Respondent Young's Reply Brief has been served on all counsel of record via electronic transmission on this the 23rd day of April, 2013.

s/ J.Randle Henderson
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