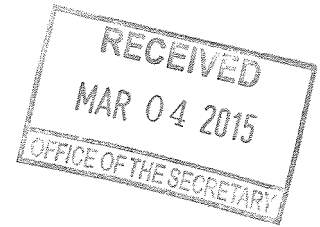


HARD COPY

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**



In the Matter of

DONALD J. ANTHONY, JR.,
FRANK H. CHIAPPONE,
RICHARD D. FELDMANN,
WILLIAM P. GAMELLO,
ANDREW G. GUZZETTI,
WILLIAM F. LEX,
THOMAS E. LIVINGSTON,
BRIAN T. MAYER,
PHILIP S. RABINOVICH, and
RYAN C. ROGERS,

Respondents.

**ADMINISTRATIVE PROCEEDING
File No. 3-15514**

**CAVALIER AFFIDAVIT SUPPORTING MOTION TO CORRECT MANIFEST
ERROR OF FACT AND TO SUBMIT ADDITIONAL EVIDENCE**

Roland M. Cavalier, being duly sworn deposes and states as follows:

1. I am the attorney for Respondent Frank Chiappone in the above captioned proceeding. This affidavit is submitted in support of Mr. Chiappone's motion to correct a mathematical error in the Initial Decision of the hearing officer made pursuant to SEC Rule 410, coupled with a Motion to Submit Additional Evidence in connection with the motion to correct, made pursuant to SEC Rule 452. The additional evidence offered relates to the mathematical error referenced herein.

2. Pursuant to the SEC Rules of Fair Practice, the motion to correct is addressed to the hearing officer, Hon. Brenda P. Murray, Chief Administrative Law Judge. The motion to admit additional evidence is directed to the Commission.

3. The disgorgement orders made in this case were all based upon commissions earned by the various Selling Respondents on sales made after a certain date, being February 1, 2008 (the “Cut-Off Date”). (See, Initial Decision, page 115).

4. In his affidavit, Mr. Chiappone points out that some \$40,947 in commissions that were computed as part of the disgorgement ordered by Hon. Brenda P. Murray, Chief Administrative Law Judge, were in fact commissions that were earned on sales made before February 1, 2008, the date that she determined was a date by which the various McGinn Smith brokers should have known that their bosses were marketing unsuitable private placement offerings. While we disagree with Judge Murray on that issue, that is a matter for another day.¹ The present motion only seeks to correct the computation made by Judge Murray, on the grounds that she ruled that all commissions with respect to sales made after February 1, 2008 should be disgorged, but then included within her computations commissions paid after February 1, 2008 to Mr. Chiappone, but earned with respect to sales made before the Cut-Off Date.

5. In fairness to Judge Murray, she may not have known that some of the commissions paid after the Cut-Off Date represented compensation for sales made before the Cut-Off Date. This is because the information needed to make that determination, while all contained in Divisions Exhibit 2, were not contained in a single section of that exhibit. Rather, in order to make that determination, the Judge would have had to correlate two different sub-exhibits within Division Exhibit 2, specifically, Palen Exhibit 4c and Palen Exhibit 4d.

¹ It is Respondent Chiappone’s position that by February 1, 2008, at which time the brokers were aware of the restructuring and interest cuts on the Four Funds (FINN, FEIN, FAIN & TAIN) and therefore should not have sold any more of the Four Funds offerings, but that this disclosure was not a “red flag” as to the so-called Trust Offerings that followed. This is because the trust offerings were secured by alarm and triple play collateral, and none of the brokers was yet aware that the earlier round of alarm contract offerings had been propped up by funds obtained from later offerings, the hallmark of what was becoming a Ponzi-like scheme.

6. Mr. Chiappone's affidavit explains this error in more detail, and will not be repeated here. He states under oath (via his affidavit) that all commissions circled in Exhibit "A" to his affidavit were from sales made before February 1, 2008, and constituted "trail commissions," which are continuing commissions paid after the initial commission on or about date of sale. For convenience of the court, Chiappone Ex. "A" is also attached as Exhibit "A" to this affidavit.

7. However, it is not necessary for this court to rely exclusively on Mr. Chiappone's word that the circled commissions were made with respect to sales taking place before February 1, 2008, as there is documentary evidence of that fact. And, this evidence is found in exhibits that were introduced into evidence by the Division.

8. By reviewing Exhibit "A" to Mr. Chiappone's affidavit, it is apparent that all of the circled commissions related to sales of the so-called "Four Funds" (FIIN, FEIN, FAIN & TAIN). By reviewing Palen Exhibit 4c to Division Exhibit 2, it can be established indisputably that Mr. Chiappone made no sales of the Four Funds after the Cut-Off Date of February 1, 2008.

9. Attached hereto as Exhibit "B" is a three-page excerpt from Palen Ex.4c to Div. Ex 2. As you can see from the highlighted line on the first page of Exhibit "B" (Page 8 of 10 of Palen Ex 4 and page 65 of Div. Ex. 2), the last sale of a Four Funds offering made by Mr. Chiappone took place on January 2, 2008, a full month before Judge Murray's Cut-Off Date for computing disgorgement.

10. The remainder of Exhibit "B" shows all sales made by Chiappone after January 2, 2008 and until McGinn Smith & Co. was shut down by the SEC. There are no sales of any of the Four Funds made by Mr. Chiappone during that time period.

11. By reason of the foregoing, it is respectfully submitted that the amount of disgorgement computed by Judge Murray should be corrected to subtract out the commissions on Four Funds offering *paid* after February 2, 2008, but earned on *sales made* before that Cut-Off Date. This would be in conformity with her own decision that “Selling Respondents, except Gamello, are ordered to disgorge all commissions *earned on sales after that date* [February 1, 2008] in the following amounts. ... (Initial Decision, page 115)(emphasis supplied).

12. Mr. Chiappone further moves to have Exhibit “A” to his affidavit admitted into evidence under SEC Rule 452, as there were reasonable grounds why it could not have been submitted at time of the hearings. This is because there was no Cut-Off Date established from which Mr. Chiappone could determine which commissions were subject to disgorgement and which were not.

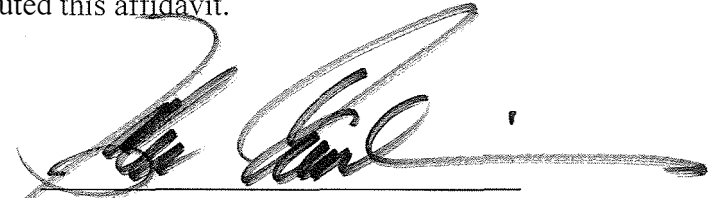
13. However, it is not necessary for this tribunal to grant the Rule 452 motion, as the page containing all of the relevant entries as to trailing commissions is already in evidence. Mr. Chiappone also attached as Exhibit “B” to his affidavit page 2 of 2 of Palen Ex. 4d (page 69 of Div. Ex. 2), which was introduced into evidence by the Division. For convenience, I have attached the same exhibit as Exhibit “C” to this affidavit. That exhibit contains all of the information needed to prove that the \$40,947 in commissions were with respect to sales of Four Funds, and coupled with Palen Ex. 4c to Div. Ex. 2, shows that all of the sales of Four Funds were made before Judge Murray’s Cut-Off Date. Hence, the only function of Chiappone’s Exhibits “A” & “B” are the handwritten circles further identifying the commissions paid on sales made before the Cut-Off Date, and his totaling of the amount.²

² For clarification, the transaction on Exhibit “B” hereto, dated 3/17/2008 (2nd line on Div. Ex. 2, page 66 (page 9 of 10 of Ex. 4c)) is not a sale. It is a transfer of a TAIN note owned by Frank Chiappone to his significant other.

14. By reason of the foregoing, a decision by the Commission not to grant the motion to introduce additional evidence should not result in a refusal by Judge Murray to grant the correction in the computational error.

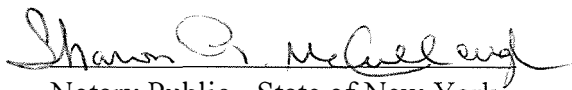
WHEREFORE, the undersigned has executed this affidavit.

Respectfully submitted,




Roland M. Cavalier, Esq.

Sworn to before me this
3rd day of March, 2015.



Notary Public - State of New York

SHARON R. MCCULLOUGH
Notary Public, State of New York
Albany



Clifton Park and Albany Brokers
Commissions Paid

Palen Exhibit 4d

Date	Description per Payroll Records	645 CHIAPPONE
10/15/2007	Firstline (TDML and FIRSLN)	\$ 5,900
11/15/2007	Firstline, TDML, CMSF 80%	\$ 2,400
11/15/2007	Firstline 90%	\$ 1,350
12/15/2007	Firstline 90%	\$ 8,168
12/15/2007	2007 Annual FAIN	\$ 7,860
1/15/2008	TDM Verifier 75%	\$ 675
1/15/2008	2008 Annual TAIN & FIIN	\$ 56,910
2/15/2008	TDM Verifier 75%	\$ 844
2/15/2008	Firstline, TDML, CMSF 80%	\$ 500
2/15/2008	Firstline 90%	\$ 2,025
2/15/2008	2008 Annual FEIN,tain & fiin	\$ 28,173
3/15/2008	TDM Verifier 75%	\$ 1,875
3/15/2008	Firstline, TDML, CMSF 80%	\$ 300
4/15/2008	TDM 75%	\$ 1,875
5/15/2008	Firstline, TDM, CMSF 80% (REALLY VERIFIER)	\$ 2,000
6/15/2008	TDM 75%	\$ 188
6/15/2008	Firstline 90%	\$ 4,320
8/15/2008	Net Private (Inex and MSTF)	\$ 1,215
10/15/2008	Fort13%	\$ 21,000
11/15/2008	Fort13%	\$ 3,000
12/15/2008	Fort13%, TDM Cable Roll	\$ 1,200
1/15/2009	Firstline, TDM, CMSF 80%	\$ 1,920
1/15/2009	2008 FAIN	\$ 245
1/15/2009	2008 TAIN	\$ 1,446
2/15/2009	Firstline, TDM, CMSF 80%	\$ 480
2/15/2009	2008 FAIN	\$ 245
2/15/2009	2008 TAIN	\$ 1,446
3/15/2009	2008 FAIN	\$ 245
3/15/2009	2008 TAIN	\$ 1,446
3/15/2009	Net Private (TDMV07R9% and TDMM Cable 09)	\$ 4,218
4/15/2009	2008 FAIN	\$ 245
4/15/2009	2008 TAIN	\$ 1,446
5/15/2009	2008 FAIN	\$ 245
5/15/2009	2008 TAIN	\$ 1,446
6/15/2009	Net Private (TDMM Cable 09 for April and May)	\$ 5,933
6/15/2009	2008 FAIN	\$ 245
6/15/2009	2008 TAIN	\$ 1,446
7/15/2009	2008 FAIN	\$ 435
7/15/2009	2008 TAIN	\$ 2,570
7/15/2009	Net Private (TDMV07R and TDMM CAB)	\$ 750
9/15/2009	Net Private (TDMM Benchmark)	\$ 5,023
9/15/2009	2008 FAIN	\$ 435
9/15/2009	2008 TAIN	\$ 2,570
10/15/2009	Net Private (TDMV and TDMM Benchmark)	\$ 805
TOTAL		\$ 531,844

FRANK H. CHIAPPONE
SUMMARY OF SALES

Palen Exhibit 4c

Broker ID	Investment Registration Name	Date	Product Code	Ticketed Amount
645	JAMES V GARGIULO & DIANE GARGIULO JTWROS	6/11/2007	FIRSTLN11.0	\$ 17,000
645	MICHAEL S DELLABELLA & CARMEN C DELLABELLA JTWROS	6/15/2007	TDMCAB48	\$ 24,000
645	M J GARGIULO, A M DAWAHARE TTEE JAMES V GARGIULO & FRANCES R GARGIULO TR, U/A 1	6/15/2007	FIRSTLN11.0	\$ 10,000
645	BARRY J LONG	6/18/2007	FIRSTLN11.0	\$ 25,000
645	SAEED A BAJWA CUST LINA S BAJWA UTMA NY	6/21/2007	FIRSTLN9.25	\$ 25,000
645	FLOYD L MAINES	6/28/2007	FIRSTLN9.25	\$ 50,000
645	HERB KAVET	7/11/2007	FIRSTLN9.25	\$ 50,000
645	BARBARA COHEN & NORMAN COHEN JTWROS	7/25/2007	TDML	\$ 10,000
645	ALBERT ELLIS	7/26/2007	TDML	\$ 10,000
645	ROSS WILLIAMS TTEE ROSS WILLIAMS TRUST U/A 9/13/02	8/9/2007	TAIN 7%	\$ 50,000
645	MARY L MOYNEHAN	8/20/2007	TDML	\$ 10,000
645	NFS/FMTC IRA FBO WILLIAM S SWEENEY	8/28/2007	TDML	\$ 10,000
645	ROBERT M FIUMARA & JACKIE FIUMARA JTWROS	9/7/2007	FIRSTLN9.25	\$ 50,000
645	JOYCE ROYAL PAUL	9/10/2007	FIRSTLN9.25	\$ 25,000
645	MICHAEL DELLABELLA & CARMEN DELLABELLA JTWROS	9/11/2007	FIRSTLN9.25	\$ 100,000
645	KHALID BAJWA & NAJMA BAJWA JTWROS	9/14/2007	TDML	\$ 25,000
645	DAVID K NAGENGAST	9/20/2007	TDML	\$ 25,000
645	ROSS WILLIAMS TTEE ROSS WILLIAMS TRUST U/A 9/13/02	10/1/2007	TDML	\$ 50,000
645	WILLIAM LUTZ & JANE LUTZ JTWROS	10/30/2007	FIRSTLN11B	\$ 25,000
645	BRUCE BECKER & ROBERTA BECKER JTWROS	11/5/2007	FIRSTLN11B	\$ 55,000
645	NFS/FMTC IRA FBO JOHN T WETZEL	11/6/2007	FIRSTLN11B	\$ 25,000
645	RICHARD H GILBERT	11/12/2007	FIRSTLN9.5B	\$ 10,000
645	MOHAN DHILLON & SHAMSHER K DHILLON TTEES ALLERGY & ASTHMA CONSULTANTS PC P/S	11/13/2007	FIRSTLN9.5B	\$ 10,000
645	SAEED A BAJWA CUST LINA S BAJWA UTMA/NY	11/15/2007	FIRSTLN9.25	\$ 25,000
645	LAW OFFICE OF JOHN SCARZAFAVA EMPLOYEES NEW COMPARABILITY PSP FBO JOHN SCARZA	11/26/2007	FIRSTLN9.5B	\$ 25,000
645	NFS/FMTC IRA FBO EDWARD L VALENTINE	11/29/2007	FAIN 7%08	\$ 25,000
645	NFS/FMTC IRA FBO ANNE T IDE	12/4/2007	FIRSTLN9.5B	\$ 50,000
645	RICHARD J MURPHY & MARY LOU MURPHY JTWROS	12/12/2007	FAIN 7%08	\$ 50,000
645	RUTH N. PAGE IRA BEAR STEARNS SEC CORP CUST	12/15/2007	FIIN 7%	\$ 10,000
645	US CHAMPIONSHIP RODEO FOUNDATION	12/18/2007	TAIN 7%08	\$ 80,000
645	KHALID BAJWA & NAJMA BAJWA JTWROS	12/26/2007	TAIN7.75%09	\$ 15,000
645	CHUNG S HWANG MD.TTEE SUSQUEHANNA ANESTHESIA AFFILIATES PC P/S/P DTD 7/1/94	12/31/2007	TDMVER36	\$ 20,000
645	SHEILA MELAMED	1/2/2008	FIIN 7.5%	\$ 10,000
645	DR AHMED OWAIS CUST SABA AHMED UTMA/NY	1/4/2008	FIRSTLN9.25	\$ 25,000
645	JAN C LUKENS	1/10/2008	TDMVER36	\$ 25,000
645	JAMES V GARGIULO & DIANE GARGIULO JTWROS	1/22/2008	FIRSTLN9.5B	\$ 50,000
645	JOHN P JEANNERET ASSOCIATES INC EMPLOYEE DEFINED BENEFIT PENSION PLAN DTD 11/15/	2/5/2008	TDMVER18	\$ 50,000
645	JOSHUA P JEANNERET & JASON P JEANNERET TTEES THE JOHN P JEANNERET INSURANCE TRU	2/7/2008	TDMVER18	\$ 50,000
645	ROBERT F BABCOCK & SUZANNE L BABCOCK REV TRUST	2/25/2008	TDMVER18	\$ 50,000
645	CHARLOTTE MAXEY ELLIS	2/25/2008	TDMVER18	\$ 40,000
645	BRUCE BECKER & ROBERTA BECKER JTWROS	3/6/2008	TDMVER18	\$ 50,000

FRANK H. CHIAPPONE
SUMMARY OF SALES

Palen Exhibit 4c

Broker ID	Investment Registration Name	Date	Product Code	Ticketed Amount
645	NFS/FMTC IRA FBO WILLIAM S SWEENEY	3/11/2008	TDMVER18	\$ 10,000
645	FRANK H CHIAPPONE TO DONNA A MACDONALD	3/17/2008	TAIN 10.25%	\$ 50,000
645	DR. MOHAN DHILLON & SHAMSHER DHILLON JTWROS	5/14/2008	TDMVER18	\$ 10,000
645	ROBERT F BABCOCK & SUZANNE L BABCOCK REVOCABLE TRUST SUZANNE L BABCOCK TRUSTE	5/15/2008	FIRSTLN11B	\$ 50,000
645	ALBERT ELLIS	5/15/2008	FIRSTLN11B	\$ 30,000
645	CYNTHIA A. DOTT	7/1/2008	MSTF	\$ 15,000
645	NFS/FMTC IRA FBO THOMAS J DOTT	7/1/2008	MSTF	\$ 30,000
645	NFS/FMTC IRA FBO WERNER H PAUL	7/7/2008	FEIN 10.25%	\$ 50,000
645	WILLIAM LUTZ & JANE LUTZ JTWROS	7/29/2008	INEX9%	\$ 25,000
645	SUZANNE L BABCOCK	9/23/2008	FORT13%	\$ 50,000
645	SAEED BAJWA & ZAKERA BAJWA JTWROS	9/25/2008	FORT13%	\$ 25,000
645	KENNETH W BARBER	9/25/2008	FORT13%	\$ 25,000
645	BRUCE BECKER & ROBERTA BECKER JTWROS	9/26/2008	FORT13%	\$ 50,000
645	MICHAEL S DELLABELLA & CARMEN D DELLABELLA JTWROS	9/26/2008	FORT13%	\$ 25,000
645	JOHN M SCHNEIDER	9/26/2008	FORT13%	\$ 100,000
645	ROSS WILLIAMS TTEE ROSS WILLIAMS TRUST U/A 9/13/02	9/26/2008	FORT13%	\$ 50,000
645	DR JERRY BILINSKI	9/29/2008	FORT13%	\$ 25,000
645	WILLIAM LUTZ & JANE LUTZ JTWROS	9/30/2008	FORT13%	\$ 25,000
645	JAMES C DANIELS	10/1/2008	FORT13%	\$ 25,000
645	GARY L. ARDIZZONE & BETHANY G. ARDIZZONE JTWROS	10/7/2008	FORT13%	\$ 25,000
645	BRUCE BECKER & ROBERTA BECKER JTWROS	12/22/2008	TDMVER0910%	\$ 50,000
645	CYNTHIA A. DOTT	12/29/2008	TDMVER0910%	\$ 15,000
645	WILLIAM LUTZ & JANE LUTZ JTWROS	12/29/2008	TDMVER0910%	\$ 25,000
645	RICHARD H GILBERT	1/30/2009	TDMVER0910%	\$ 10,000
645	ROSS WILLIAMS TTEE ROSS WILLIAMS TRUST U/A 9/13/02	2/2/2009	TDMMCAB09-9%	\$ 50,000
645	MICHAEL S DELLABELLA & CARMEN D DELLABELLA JTWROS	2/19/2009	TDMV07R9%	\$ 15,000
645	BARBER MEMORIAL HOME	2/20/2009	TDMV07R9%	\$ 25,000
645	WILLIAM LUTZ & JANE LUTZ JTWROS	2/27/2009	TDMMCAB09-9%	\$ 25,000
645	JAMES C DANIELS	3/9/2009	TDMMCAB09-9%	\$ 10,000
645	B LORIE BODE	3/10/2009	TDMMCAB09-9%	\$ 10,000
645	DR JERRY BILINSKI	4/2/2009	TDMMCAB09-9%	\$ 20,000
645	US CHAMPIONSHIP RODEO FOUNDATION	4/27/2009	TDMV07R9%	\$ 35,000
645	THE NATIONAL BANK OF COXSACKIE	5/5/2009	TDMMCAB09-9%	\$ 50,000
645	WILLIAM LUTZ & JANE LUTZ JTWROS	5/13/2009	TDMMCAB09-9%	\$ 35,000
645	SAEED A BAJWA CUST LINA S BAJWA UTMA/NY	5/28/2009	TDMMCAB0911%	\$ 25,000
645	ROBERT M FIUMARA & JACKIE FIUMARA JTWROS	6/22/2009	TDMMCAB09-9%	\$ 25,000
645	ROBERT F BABCOCK & SUZANNE L BABCOCK REVOCABLE TRUST SUZANNE L BABCOCK TRUSTE	7/22/2009	TDMV08R-9%	\$ 10,000
645	WILLIAM LUTZ & JANE LUTZ JTWROS	8/25/2009	TDMMBEN09-10%	\$ 10,000
645	WILLIAM LUTZ & JANE LUTZ JTWROS	8/25/2009	TDMMBEN09-9%	\$ 50,000
645	US CHAMPIONSHIP RODEO FOUNDATION	8/26/2009	TDMMBEN09-8%	\$ 20,000
645	BARBER MEMORIAL HOME	8/27/2009	TDMMBEN09-12%	\$ 15,000

FRANK H. CHIAPPONE
SUMMARY OF SALES

Palen Exhibit 4c

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645	BARBER MEMORIAL HOME	8/27/2009	TDMMBEN09-9%	\$ 10,000
645	B LORIE BODE	9/2/2009	TDMV07R9%	\$ 10,000
645	MARY EMERICK	9/4/2009	TDMMBEN09-11%	\$ 10,000
645	JOHN M SCHNEIDER	11/3/2009	TDMMBEN09-10%	\$ 50,000
TOTAL				\$ 13,572,000

Date	Description per Payroll Records	645 CHIAPPONE
10/15/2007	Firstline (TDML and FIRSTLN)	\$ 5,900
11/15/2007	Firstline, TDML, CMSF 80%	\$ 2,400
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8/15/2008	Net Private (Inex and MSTF)	\$ 1,215
10/15/2008	Fort13%	\$ 21,000
11/15/2008	Fort13%	\$ 3,000
12/15/2008	Fort13%, TDM Cable Roll	\$ 1,200
1/15/2009	Firstline, TDM, CMSF 80%	\$ 1,920
1/15/2009	2008 FAIN	\$ 245
1/15/2009	2008 TAIN	\$ 1,446
2/15/2009	Firstline, TDM, CMSF 80%	\$ 480
2/15/2009	2008 FAIN	\$ 245
2/15/2009	2008 TAIN	\$ 1,446
3/15/2009	2008 FAIN	\$ 245
3/15/2009	2008 TAIN	\$ 1,446
3/15/2009	Net Private (TDMV07R9% and TDMM Cable 09)	\$ 4,218
4/15/2009	2008 FAIN	\$ 245
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9/15/2009	2008 FAIN	\$ 435
9/15/2009	2008 TAIN	\$ 2,570
10/15/2009	Net Private (TDMV and TDMM Benchmark)	\$ 805
TOTAL		\$ 531,844

These were trail
commissions owed
to me for sales
before Feb 1st 2008

\$40,947.00

P. 115
COMMISSIONS