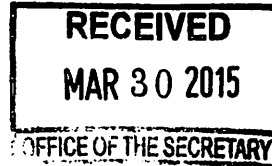


**ADMINISTRATIVE PROCEEDING
File No. 3-15514**

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.



**DIVISION OF ENFORCEMENT'S
RESPONSE TO RESPONDENT ANDREW GUZZETTI'S
MOTION TO CORRECT THE INITIAL DECISION**

Respondent Andrew Guzzetti's motion to correct arises from a single date reference on page 111 of the Initial Decision, which states: "Guzzetti agreed that as Clifton Park branch manager, beginning in *October 2006*, he supervised registered representatives working from that office, which would have concluded Anthony, Feldmann, Chiappone, and Gamello." Initial Decision ("ID") at 111 (emphasis added). Emphasizing the undisputed fact that he assumed the title of branch manager in October 2008, not October 2006, Guzzetti jumps to the conclusion that "the error has a significant impact on the statute of limitations issue and may prejudice Guzzetti in the future." Guzzetti Br. at 1. Guzzetti is wrong. At best, this is a simple typographical error that has no broader impact on any aspect of the Initial Decision.

Although the issue raised by Guzzetti is not material in the overall context of the Initial Decision, if any action is required then it should merely be to change "October 2006" at the top of page 111 to "October 2008." Guzzetti, however, grossly exaggerates the importance of this

minor issue apparently to support his argument about the statute of limitations. For two reasons, this argument should be rejected.

First, there is no factual dispute about when Guzzetti took the title of branch manager, and the Initial Decision identifies the correct date twice. ID at 23 (“Guzzetti held the title of branch manager for the Clifton Park office starting in October 2008”); ID at 24 (“[Guzzetti] did not become branch manager for Clifton Park until October 2008”).

Second, Guzzetti’s mistake is to assume that there is any significance to the date he was named a branch manager at McGinn Smith & Co., Inc. (“MS & Co.”). As the Initial Decision makes clear, a “facts and circumstances” test determines supervisory status, and there is overwhelming evidence establishing that Guzzetti was the Selling Respondents’ supervisor during the nearly six years he worked at MS & Co. ID at 23-30, 110-11. This conclusion does not turn on the date Guzzetti assumed the title of branch manager.

Guzzetti took a supervisory role from the moment he joined MS & Co. in September 2004 because, among other reasons, “the retail sales force reported to him on products and finding new clients.” ID at 23. Nothing in the ID even remotely suggests that Guzzetti’s supervisory responsibilities began when he took the branch manager title. On the contrary, the Initial Decision emphasizes Guzzetti’s “actual responsibilities and authority” from 2004 through 2010 to conclude that he was a supervisor throughout his years at MS & Co., which includes the period for which civil penalties are appropriate. ID at 110-111 (citation omitted).

Guzzetti himself admits that his supervisory role pre-dated 2008 by pointing out that the 2007 compliance manual gave him “responsibility for outside representatives,” including Bill Lex. Guzzetti Br. at 3. Even Guzzetti’s Answer admits that he became a supervisor in October 2006. Guzzetti Br. Ex. A at 2. In any event, the finding that Guzzetti was a supervisor during

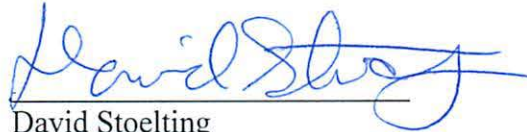
the entire period he worked at MS & Co. is more than adequately supported by the evidence. ID at 23-30, 110-11.

Guzzetti's attempt to transform this isolated typographical error into something significant and prejudicial is without merit. If any action is required of this immaterial matter, it can be addressed by changing the "2006" at the top of page 111 of the Initial Decision with "2008."

Dated: New York, NY
March 27, 2015

Respectfully submitted,

DIVISION OF ENFORCEMENT



David Stoelting
Haimavathi V. Marlier
Michael D. Birnbaum
Securities and Exchange Commission
200 Vesey Street, Suite 400
New York, NY 10281
(212) 336-0174 (Stoelting)
(212) 336-1055 (Marlier)
(212) 336-0523 (Birnbaum)