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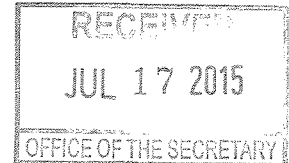
**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**

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.



**RESPONDENT FRANK H. CHIAPPONE'S  
INDIVIDUAL BRIEF TO THE COMMISSION**

**TUCZINSKI, CAVALIER & GILCHRIST, P.C.**

54 State Street, Suite 803  
Albany, New York 12207

518.463.3990

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## PRELIMINARY STATEMENT

The Enforcement Division (“Division”) initiated proceedings against ten registered representatives in connection with long term fraudulent conduct perpetrated by David Smith (“Smith”) and Timothy McGinn (“McGinn”) which, together with the market collapse of 2007-08 caused extensive investor losses. Smith and McGinn misused investors’ funds to rescue failed offerings with monies from other offerings, took outrageous (sometimes undisclosed) fees, and used investor money to support lavish lifestyles. McGinn and Smith were permanently barred by FINRA and subsequently convicted on criminal charges. The lies and deceptions of McGinn and Smith continued undiscovered for more than a decade. The ALJ’s ruling that the Respondent brokers violated securities laws is essentially based on her theory that they should have uncovered the fraud that McGinn and Smith had concealed so well for so long.

**Chiappone’s Background.** Chiappone has worked in the securities industry for 34 years, holding series 7, 24, 63 & 66 licenses, is a certified retirement counselor and holds insurance licenses for life, accident and health.<sup>1</sup> Prior to this case, his record was spotless, having never been disciplined by the SEC, NASD or FINRA, never named in a customer lawsuit or arbitration, and never been the subject of a written complaint.<sup>2</sup>

Chiappone joined McGinn, Smith & Co. (“MS&Co.”) in 1988, resigning in December, 2009.<sup>3</sup> Chiappone never sold private placements until he arrived at MS&Co.<sup>4</sup> He was never an owner, director or officer of MS&Co. or its affiliates,<sup>5</sup> including issuer companies.

Over time, MS&Co. successfully portrayed to investors, employees, and regulators that it was a substantial, successful brokerage house, with a history of private placements involving

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<sup>1</sup> Chiappone testimony, Transcript (hereinafter “Tr.”) pp. 5399 – 5400.

<sup>2</sup> See, Chiappone Broker Check Report, Ex. FC-16, and Chiappone Testimony, Tr., pp. 5400 - 02.

<sup>3</sup> Chiappone testimony, Tr. pp. 5402 – 5403.

<sup>4</sup> Chiappone testimony, Tr. p.5412 – 5413.

<sup>5</sup> Chiappone testimony, Tr., pp. 5405 – 5412 (as to sales manager duties; pp.5411 (not a director or officer).

burglar alarm revenues. The perceived success of those offerings engendered in Chiappone a trust and confidence in McGinn and Smith, that only later was discovered to be misplaced.<sup>6</sup> Chiappone sold offerings referenced in the OIP because he believed that the track record of pre-OIP offerings established MS&Co's ability to locate and structure profitable deals involving recurring monthly revenues.<sup>7</sup> Of 64 pre-OIP offerings Chiappone sold, 61 offerings paid all interest and returned all principal to investors.<sup>8</sup>

**Organizational Structure of MS&Co.; Due Diligence Team.** MS&Co. was managed by Smith and McGinn. It employed two compliance officers, a CFO,<sup>9</sup> in-house counsel, outside counsel, an accounting staff, back office personnel and, most importantly, a well-qualified due diligence team. MS&Co. was not a boiler room or fly-by-night operation.

The due diligence team was assembled during the pre-2003 alarm offerings. Attorney Mary Ann Cody headed the team. She testified in detail on the due diligence team's work.<sup>10</sup> Several team members were recruited from the leasing division of KeyCorp., a super-regional bank. They were experienced in due diligence procedures and recurring monthly revenues, a hallmark of the Trust Offerings.<sup>11</sup> They visited alarm companies, reviewed operations, read alarm contracts, and phoned alarm customers to verify contract revenues.<sup>12</sup> Written records of diligence investigations were stored at MS&Co. headquarters.<sup>13</sup> In short, MS&Co. ran a first-class operation in terms of vetting prospective investment products.

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<sup>6</sup> Chiappone testimony, Tr. pp. 5413 – 5414).

<sup>7</sup> Chiappone testimony, Tr., pp.5412 – 13 as to products sold; pp. 5466 – 67 as to success of early alarm deals.

<sup>8</sup> Chiappone testimony, Tr. pp. 5466 – 5467 (testimony that only 3 or 4 of the 64 pre-2003 offerings did not pay investors in full).

<sup>9</sup> Chiappone testimony, Tr. pp. 5416 – 5417.

<sup>10</sup> Tr. pp. 4544 - 4549.

<sup>11</sup> Chiappone testimony, Tr. pp. 5419 – 5422; Cody testimony, Tr. pp. 4547 – 4548.

<sup>12</sup> Cody testimony, Tr. p. 4546.

<sup>13</sup> Cody testimony, Tr. pp. 4548.

Results of the diligence investigations were passed on to the brokers via in-person presentations by due diligence team members, who discussed the features, merits and risks of each offering,<sup>14</sup> including the business model, specific assets being purchased, pricing/discounts on assets purchased, risk factors, structure of the note tranches, interest rates and credit quality.<sup>15</sup> Brokers could and did ask questions, including Chiappone, who testified that when he asked questions he received satisfactory answers.<sup>16</sup>

When McGinn left MS & Co. in 2003 to form Integrated Alarm Service Group (“IASG”), some team members went with him,<sup>17</sup> but they returned to MS&Co. when McGinn returned in 2006.<sup>18</sup> That team performed due diligence on the Trust Offerings sold in late 2006 and thereafter, providing investigative services similar to that performed on the pre-2003 offerings.<sup>19</sup>

**Chiappone’s Practices; Suitability.** The rules governing Chiappone’s suitability obligations during times referenced in the OIP, were NYSE Rule 405 (“know your customer” rule - now known as customer-specific suitability), and NASD Rule 2310 on product suitability (now known as reasonable basis suitability).<sup>20</sup> Factors he considered in assessing suitability of a product for a given client included age, education, income, net worth, time horizon, risk tolerance, investment objectives, assets held outside of MS&Co., need for liquidity,<sup>21</sup> and risks of the proposed investment.

While nothing in his licensing exams or continuing education indicated a broker was personally responsible to perform due diligence on investment products, Chiappone understood his

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<sup>14</sup> Chiappone testimony, Tr. pp. 5422 – 5423; Cody testimony, Tr. pp. 4553 – 4555.

<sup>15</sup> Chiappone testimony, Tr. pp. 5423 – 5426; Cody testimony, Tr. pp. 4553 – 4555.

<sup>16</sup> Chiappone testimony, Tr. pp. 5426 – 5427; Cody testimony, Tr. pp. 4555.

<sup>17</sup> Cody Testimony, Tr. p. 4557.

<sup>18</sup> Chiappone testimony, Tr. pp. 5430 – 5431, 5447 – 5448 and 5568.

<sup>19</sup> Chiappone testimony, Tr. pp. 5431 – 5432.

<sup>20</sup> Chiappone testimony, Tr. pp. 5432 – 5433. The bifurcation of the suitability concept into “reasonable basis” and “customer-specific” appears to have been codified in FINRA Rule 2111, which was not in effect during the time period represented in the OIP.

<sup>21</sup> Chiappone testimony, Tr. pp. 5433 – 5435.

obligation to *understand* the features, merits and risks of each offering. But, he did not believe he needed to duplicate due diligence team's work. Respecting the division of labor within the MS&Co. structure, he reasonably relied on the work of the due diligence team to perform reasonable basis suitability.<sup>22</sup>

Chiappone did not offer private placements to all clients; only those for whom he deemed private placements were suitable.<sup>23</sup> Less than *one in five* (about 19%) of his customers was ever sold a private placement.<sup>24</sup> He never recommended that any customer purchase only private placements,<sup>25</sup> and customers generally had marketable securities in accounts with MS&Co. or other firms.<sup>26</sup> He never used discretionary authority to purchase a private placement.<sup>27</sup> He also sold stocks, bonds, mutual funds and insurance products to clients who purchased private placements.<sup>28</sup> Chiappone ensured that all of his customers were issued a PPM, and completed, signed and returned the investor questionnaire and subscription agreement, and that the information the customer provided supported his customer-specific determination.<sup>29</sup> Most importantly, the ALJ made no factual finding that he violated his duty to perform customer-specific suitability or to understand the nature of the products he recommended.

**No Knowledge of Fraud.** Not until after the SEC's investigation was completed, did Chiappone learn that many pre-2003 alarm offerings had been rescued with proceeds of IASG's IPO, and with new investor's money from the Four Funds offerings.<sup>30</sup> The record lacks any

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<sup>22</sup> Chiappone testimony, Tr. 5435 – 5436.

<sup>23</sup> Chiappone testimony, Tr. 5436 – 5437 and 5453 – 5454. .

<sup>24</sup> Chiappone testimony, Tr. 5441 – 5443.

<sup>25</sup> Chiappone testimony, Tr. 5438.

<sup>26</sup> Mirochnik testimony, Tr. 3117.

<sup>27</sup> Chiappone testimony, Tr. 5454.

<sup>28</sup> Chiappone testimony, Tr. 5413. In a few cases, he sold only private placements to clients who owned marketable securities in accounts with other brokerage firms. See, testimony of Jerry Mirochnik, Tr., p. 3117.

<sup>29</sup> Chiappone testimony, Tr. 5452.

<sup>30</sup> Exhibit Div-002 (¶¶ 24-50, pages 8-16).

evidence that Chiappone was ever aware of any infirmity or irregularity in the finances of the pre-2003 alarm deals, until Ms. Palen testified at the hearings in this matter.<sup>31</sup>

**Cause of Investor Losses.** Unbeknownst to investors, employees, and regulators, Smith and McGinn systematically misused investor funds raised in the OIP-referenced offerings. That misapplication of investor funds was concealed by McGinn and Smith and was not reported by the company's chief financial officer, who surely knew about their actions. As admitted in a handwritten document authored by Smith, the fraudulent conduct dated back to at least late 1999 or early 2000.<sup>32</sup> This, coupled with the losses due to the liquidity crisis of 2007-08, was what caused investor losses. Neither Chiappone nor the other brokers were involved in the conduct that caused the losses. That is, losses were not due to false statements or omissions made in selling securities of dubious value; losses were caused by post-sale misuse of investor funds by Smith and McGinn, and to some extent to the collapse of liquidity caused by the market melt-down of 2007-08. Distilled to its essence, The ALJ ruled that Chiappone committed securities fraud because he failed to ferret out the improper, criminal acts of his superiors.

## LEGAL ARGUMENT

### **INCORPORATION OF JOINT BRIEF ARGUMENTS.**

Chiappone incorporates by reference all arguments made in the Respondents' Joint Brief, including the following:

- (1) Objections to limitations on size of briefs to less than provided in SEC Rules.
- (2) 28 U.S.C. §2462 bars all claims asserted in the OIP.

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<sup>31</sup> Testimony of Chiappone, Tr. 5466 – 5468.

<sup>32</sup> See the so-called "Dave Smith Confession," Exhibit Livingston-31 (Tr. 5619, mistakenly marked as Ex. Livingston-30 at Tr. 5613. A typed version is also in evidence as Ex. Livingston-32 (Tr. 5619). For testimony establishing the time frame of the undated document, see Chiappone testimony, Tr. 5613 – 5615.

(3) The ALJ ignored that, under Supreme Court precedent, Exchange Act §10(b) and Securities Act §17(a)(1) liability may be imposed only for intentional or reckless conduct, not present in this case.

(4) There is no general fiduciary duty on an individual stockbroker to a customer in a non-discretionary account.

(5) Disclosures contained in the Private Placement Memorandums (PPM's) do not constitute "red flags" – to the contrary, they comport with industry standard practice to disclose risk factors in writing.

(6) Disclosures in the PPM's are binding on investors, regardless of whether they read the PPM's, so long as the PPM's were provided to the investor.

(7) The information in the PPM's satisfy the provisions of Reg. D, Rule 502, relied on by the ALJ in imposing Securities Act §5 violations on Respondents.

(8) The ALJ erred in concluding that Respondents violated subsections 17(a)(2) & 17(a)(3) by reason of allegedly negligent conduct;

(9) The ALJ erred in concluding that Respondents violated Securities Act §5.

(10) Respondents were deprived of the equal protection and due process rights, and the proceeding was unconstitutional.

(11) The introduction of evidence of transactions (including Four Funds sales) that occurred more than five years prior to the filing of the OIP was prejudicial error, contaminating the entire proceedings.

## CHIAPPONE'S INDIVIDUAL ARGUMENTS:

### Point I. Industry Bar/Suspension and Cease & Desist Order Not Supported by Existing Case Law.

The ALJ ordered that Chiappone be suspended for twelve months,<sup>33</sup> disregarding numerous cases holding that the critical criteria in imposing a suspension, bar, or cease and desist order (injunctive relief) is whether there is a reasonable likelihood the proscribed conduct will continue.

The ALJ acknowledged that the *Steadman* factors<sup>34</sup> must be given consideration when considering an industry bar.<sup>35</sup> Nevertheless, she performed no factual analysis of *Steadman* as applied to Chiappone, premising her decision upon the *sole factual finding* that Chiappone currently works in the securities industry, stating: “[T]he Respondents currently work in the securities industry, so there appears to be a strong likelihood for recurrence” (Initial Decision, p.113, hereinafter “Decision”). The ALJ recites no facts supporting her conclusion that Chiappone is likely to continue to sell proprietary private placements. As precedent, The ALJ cites only an SEC release<sup>36</sup> in which the Commission barred an investment advisor whose conduct was considered “egregious” (market manipulation), who acted with *scienter*, engaged in repeated violations and whose assurances as to future violations were of doubtful sincerity.<sup>37</sup> None of those factors apply to Chiappone’s actions. The ALJ cites no case holding that mere continued participation in the industry creates a likelihood of future violations. A search of cases involving suspensions/bars/injunctions turns up no case that imposes such a sanction **solely** founded on defendant’s remaining employed in the securities industry. Most importantly, the ALJ ignores Chiappone’s testimony that he has not sold *nor even offered* a single private placement since leaving MS&Co. in late 2009. At present, it

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<sup>33</sup> Decision, pp. 112-113, 117 (industry bar) & 114, 117 (cease & desist order).

<sup>34</sup> The *Steadman* factors are found in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5<sup>th</sup> Cir. 1979).

<sup>35</sup> See, Decision, p. 113.

<sup>36</sup> Decision p.113, citing *Donald L. Koch*, Exchange Act Release #72179, 2014 SEC LEXIS 1684.

<sup>37</sup> *In re Donald L. Koch*, 2014 SEC LEXIS 1684 at\*19-20.

has been 5½ years since he sold a private placement, strong proof that the likelihood he will again do so is nil. Also, the ALJ ignored the fact that Chiappone never sold private placements when working at other firms – only with MS&Co. – and that firm no longer exists.

**A. Precedent Mandates a Finding of Likelihood of Future Violations.**

Numerous cases hold that cease and desist orders, industry bars and suspensions are predicated upon the likelihood of future violations. See, e.g., *SEC v. Manor Nursing Centers*, 458 F2d 1082, 1101 (2d Cir. 1972) (“the critical question . . . in deciding whether to issue a permanent injunction in view of past violations is whether there is a reasonable likelihood that the wrong will be repeated”). This language in was cited approvingly in Chief Justice Burger’s concurring opinion in *Aaron v. SEC*, noting that, to obtain injunctive relief, the Commission must *always* show a likelihood of future violations:

It bears mention that this dispute [about whether *scienter* is required for certain violations], though pressed vigorously by both sides, may be much ado about nothing. *This is so because of the requirement in injunctive proceedings of a showing that “there is a reasonable likelihood that the wrong will be repeated.”* (citations omitted). . . . *Because the Commission must show some likelihood of a future violation, defendants whose past actions have been in good faith are not likely to be enjoined. . . .* ” *Aaron v. SEC*, 446 U.S. 680 at 703 (1980)(emphasis supplied).

The majority opinion further noted that, although *scienter* is not a requisite element of a violation of ’33 Act §17(a)(2) & (3), that is not to say “that *scienter* has no bearing at all on whether a district court should enjoin a person violating or about to violate those sections:

“In cases where the Commission is seeking to enjoin a person ‘*about* to engage in any acts or practices which . . . *will* constitute ‘ a violation of those provisions, the Commission must establish a sufficient evidentiary predicate to show that such future violation may occur.” (emphasis in original) (citation omitted) *Aaron*, 446 U.S. at 701.

Circuit court decisions to similar effect include *SEC v. Culpepper*, 270 F2d 241, 249 (2d Cir. 1959) (“critical question . . . in cases such as this is whether there is a reasonable expectation



that the defendants will thwart the policy of the Act by engaging in activities proscribed thereby”); *SEC v. Bausch & Lomb*, 565 F.2d 8, 18 (2d Cir. 1977) (“the Commission cannot obtain relief without positive proof of a reasonable likelihood that past wrong-doing will recur”). See also, *SEC v. Commonwealth Chemical Securities* wherein the Second Circuit discussed the “reasonable likelihood” test in detail, stating:

“In some cases the collateral consequences of an injunction can be very grave . . . . The Securities Act and the Securities Exchange Act speak, after all, of enjoining ‘any person [who] is engaged or about to engage in any acts or practices ‘which constitute or will constitute a violation’ (citation omitted). Except for the case where the SEC steps in to prevent an ongoing violation, this language seems to require a finding of ‘likelihood’ or ‘propensity’ to engage in future violations (citations omitted). As said by Professor Loss, ‘the ultimate test is whether Defendant’s past conduct indicates . . . that there is a reasonable likelihood of further violation in the future’. . . . *Our recent decisions have emphasized, perhaps more than older ones, the need for the SEC to go beyond the mere facts of past violations and demonstrate a realistic likelihood of recurrence*” (emphasis supplied). *Commonwealth Chemical*, 574 F.2d 90, at 99-100 (2d Cir. 1978).

Other cases containing essentially identical language to that in *Commonwealth Chemical* include *SEC v. Universal Major Industries*, 446 F.2d 1044, 1048 (2d Cir. 1976); *SEC v. Parklane Hosiery*, 558 F.2d 1083 (2d Cir. 1977); *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir. 1959); and *SEC v. Milan Capital Group*, 2000 U.S. Dist. LEXIS 16204 (S.D.N.Y. 2000).

Finally, there is authority holding that a broker’s conduct after the initiation of proceedings can be considered in reviewing sanctions imposed (*McCarthy v. SEC*, 406 F.3d 179 (2d Cir. 2005)). The *McCarthy* court stated that the purpose of sanctions is remedial, not punitive in nature, noting that the defendant had an exemplary record both before and after initiation of proceedings:

“It is familiar law that the purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers. In *Wright v. Securities & Exchange Commission*, we noted that the Securities Exchange Act ‘authorizes an order of expulsion not as a penalty but as a means of protection investors . . . . The purpose of the order is remedial, not penal’ (citations omitted). The Commission itself has recognized this (citation omitted). It is well-settled that such administrative proceedings are not punitive but remedial. When we suspend or bar a person, it is to

protect the public from future harm at his or her hands. Our foremost consideration must therefore be whether McCarthy's sanction protects the trading public from further harm." . . . [F]or nine years McCarthy has proven himself to be a rule-abiding trader. Even at the time the Board summarily imposed the two-year suspension, McCarthy had been trading without incident for six years." (406 F.3d at 188-189).

For the past 5½ years, Chiappone has proven himself to be rule-abiding broker. He sold no private placements, and has migrated his practice towards investment advisory, fee-based relationships,<sup>38</sup> and the use of insurance company products, where the product sponsors are well-known, well-capitalized public companies.<sup>39</sup>

**B. The Steadman Factors.** The *Steadman* factors were laid out by the Fifth Circuit as follows:

" . . . [A] fuller explanation of the need for these sanctions is required. At least the Commission specifically ought to consider and discuss with respect to Steadman the factors that have been deemed relevant to the issuance of an injunction: 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*, 603 F2d at 1140).

Analysis of the Steadman factors, as applied to Chiappone follows:

**C. Sincerity of Assurances Against Future Violations.** Chiappone testified that in the four plus years since he left MS&Co.<sup>40</sup> and affiliated with another broker, he has neither sold nor even offered a private placement to any customer.<sup>41</sup> No proof was introduced that contradicted his testimony. If conduct speaks louder than words, then Chiappone's conduct surely establishes that there is scant likelihood he will sell private placements in the future.

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<sup>38</sup> Chiappone testimony, Tr., 5612 - 5613.

<sup>39</sup> Tr. 5612.

<sup>40</sup> It was 4+ years when he testified. It is now well over 5½ years since he sold a private placement.

<sup>41</sup> Chiappone testimony, Tr. 5611 - 5613.

**D. Lack of Scierter Affecting Suspension or Bar.** Injunctive relief is more appropriate where Defendant's conduct involves a high degree of scienter (*SEC v. Posner*, 16 F3d 520, 521-522 (2d Cir. 1994); *SEC v. Milan Capital, supra*; and *SEC v. Drexel Burnham Lambert*, 837 F. Sup. 587, 611 (SDNY 1993)). The ALJ made no finding that Chiappone was a primary actor or even peripherally involved in the misuse of investor funds or other illicit activities. The Division's own summary witness agreed that, in a 2½ year investigation, she found no proof that Chiappone was even *aware* of the fraud committed by his superiors. The ALJ ruled that Chiappone "was at least negligent" as to violations of '33 Act §§17(a)(2) & (3),<sup>42</sup> never finding that he engaged in intentional wrongdoing. Hence, Chiappone's conduct does not rise to the level of scienter requisite to justify the suspension and cease and desist order imposed.

**E. Egregiousness of Defendant's Actions.** Chiappone can hardly be found to have acted egregiously, as the SEC essentially asserts negligence in failing to detect the illicit conduct committed by McGinn and Smith, and failure to see "red flags" which (as noted below) were not red flags at all. Bruce Becker, a Chiappone customer called to testify by the Division, who lost considerable funds, stated that he considered Chiappone to be an honest broker.<sup>43</sup>

**F. Defendant's Recognition of Acts.** While never believing that his sales of private placements were wrongful at the time sales were made, Mr. Chiappone clearly has become aware of the risks inherent in *proprietary* private placements – where the issuer and broker are commonly controlled. However, his refusal to offer *any* private placements after he left MS&Co. shows his recognition of the risks posed by proprietary product.

**G. Remoteness of Violations.** Another consideration in determining the appropriateness of injunctive relief is the remoteness of defendant's violations. See, *SEC v. Rind*,

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<sup>42</sup> Decision, p. 100.

<sup>43</sup> Becker testimony, Tr. 2496.

991 F.2d 1486, 1492 (9<sup>th</sup> Cir. 1993)(“A court can and should consider the remoteness of the defendant’s past violations in deciding whether to grant the requested equitable relief”); *Profitt v. FDIC*, 200 F3d 855,862 (D.C. Cir. 2000)(permanent bar<sup>44</sup> ruled punitive in nature because the injunction was “based solely on Profitt’s long past conduct and made no attempt to evaluate his present fitness or competence”). In *SEC v. Jones*<sup>45</sup> the court made a similar finding, stating:

“The Court also notes that several years have passed since Defendants’ alleged misconduct apparently without incident. This fact further undercuts the Commission’s assertion that Defendants pose a continuing risk to the public.” (*SEC v. Jones*, 476 F.Supp.2d at 384).

It is now 5½ years since Chiappone sold a private placement<sup>46</sup>, a significant time period supporting the lack of need to suspend him to protect the investing public. Any inference of future violations from past misconduct is overcome by Mr. Chiappone’s having had no blemishes whatsoever on his record prior to joining MS&Co., and none since becoming employed with a new brokerage firm.

**H. Burden of Proof on Likelihood of Future Violations.** The burden of proof on establishing the factual foundation required for an injunction is upon the government (*SEC v. Culpepper*, 270 F2d 241, 250; *SEC v. Bausch & Lomb*, 565 F2d 8, 18 (“[T]he moving party must satisfy the court that [injunctive] relief is needed”). The Division failed to carry its’ burden of proof, producing no evidence suggesting Chiappone was likely to resume selling private placements.

**I. Punitive Effect of Sanctions.** A 12-month suspension would likely cause irreparable harm to Mr. Chiappone, as his customers would migrate to other brokers while he was suspended, rendering the sanction punitive in nature. While generally giving deference to SEC

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<sup>44</sup> *Profitt* involved a proceeding by the FDIC to permanently bar a bank director from the industry.

<sup>45</sup> 476 F.Supp.2d 375 (SDNY 2007)

<sup>46</sup> Palen Schedule 4c to Division Ex. 2 shows Chiappone’s last sale to be dated Nov. 3, 2009. See also Tr. 5613, where Chiappone testifies that he has not sold a private placement since he disaffiliated with McGinn Smith in late 2009.

decisions regarding choice of sanctions,<sup>47</sup> courts have noted that the sanction chosen must be designed to protect investors, but not to punish a regulated person. *Paz Secs., Inc. vs. SEC*, 566 F.3d 1172, 1175 (D.C. Cir 2009) (Paz II); *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1113 (DC Cir. 1988). See also, *SEC v. Jones*:

“[An] injunction preventing future violations of the securities laws can be more punitive than remedial . . . . [T]he degree and extent of the consequences to the subject of the sanction must be considered as a relevant factor in determining whether the sanction is a penalty. The practical effect of such an injunction here would be to stigmatize Defendants in the investment community and significantly impair their ability to pursue a career.” (*SEC v. Jones*, 476 FSupp2d at 385)(citations omitted).

**J. Limitations in Scope.** All securities referenced in the OIP were private placements, primarily fixed income notes. There was no allegation that Chiappone ever engaged in typical broker misconduct (churning, front running, penny stocks, etc.). Hence, suspension from industry participation would be completely unnecessary to protect the investing public. Should the Commission determine that some sanction is justified, it is submitted that the interests of public protection require no more than a ban on proprietary private placements.

**Point II. The Application of *Hanly* to Chiappone’s Case is an Unwarranted Extension of *Hanly*’s Holding.**

Legal arguments pertaining to the ALJ’s application of the *Hanly* precedents are primarily detailed in Respondents’ Joint Brief. This brief will supplement those arguments.

**A. Investor Losses Not Caused by Broker Misconduct:** Chiappone’s conduct in recommending private placements did not *cause* any investor losses. Analysis of cases imposing a duty to investigate shows they all include one critical factor – the making of affirmative (materially false) statements and/or omission to state facts necessary to render other statements not

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<sup>47</sup> See, e.g., *Seghers v. SEC*, 548 F.3d 129, 135 (D.C.Cir. 2008); *WHX Corp. v. SEC*, 362 F.2d 854, 859 (D.C. Cir. 2004).

misleading.<sup>48</sup> Each case imposing a duty to investigate cited by the ALJ involved an affirmative material representation so obviously indicative of fraud that the failure to investigate was tantamount to reckless behavior.

In *Hanley*,<sup>49</sup> the misrepresentations and omissions in the sales process were a direct causal factor in investors' losses, since the issuer company (Sonic) was already in financial distress and its stock seriously impaired at the time of sale. The same is true as to other cases citing *Hanly* in imposing a duty to investigate. In this matter, the issuer companies were not financially troubled *at the time securities were sold* – rather, it was the post-sale misuse of investor monies by Smith and McGinn that significantly contributed to investor losses, most prominently use of investor funds to rescue earlier failed offerings and to support their lavish lifestyles.<sup>50</sup> The ALJ made no finding that Chiappone misstated or omitted to state material facts on any offering. Thus, the ALJ expanded *Hanly* to impose a duty to investigate in the absence of affirmative misrepresentations or omissions. No case, rule or regulation that so holds has been found.

The ALJ instead predicated her decision on Chiappone's failure to unearth the illicit activities of his superiors, which went unnoticed by the SEC, NASD & FINRA for years. Ms. Palen, the Division's summary witness and a certified fraud examiner<sup>51</sup>, testified that she took three years to fully understand the nature and extent of the fraud,<sup>52</sup> but that she found no document and

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<sup>48</sup> See, e.g., *Abbondante v. SEC*, 209 Fed. Appx. 6 (2d Cir. 2006)(representative made affirmative representations to purchasers that their money would be invested according to a successful trading strategy involving, that [the money manager] had earned millions using this strategy, that the strategy would be profitable regardless of whether the market went up or down so long as it was volatile, that the formula would produce high returns, and investors could expect to earn approximately 6-10% on their investments per month)

<sup>49</sup> *Hanly v. SEC*, 415 F2d 589 (2d Cir. 1989).

<sup>50</sup> That the principals of MS&Co. were involved in systemic fraud was not known to anyone until early 2010.

<sup>51</sup> See Tr. 400-401 as to Palen's status as a certified fraud examiner.

<sup>52</sup> Ms. Palen began working on the case in April or May of 2011 (Tr. 302). She worked on the case for three years, spending approximately half her time on the McGinn, Smith matter (Tr. 391-393).

no other evidence that any of the brokers participated in the fraudulent activity described in the OIP, nor were they even aware of the fraud until the FBI raid in April, 2010.<sup>53</sup>

Cases imposing a duty to investigate typically involve brokers who know that they are selling impaired securities. The fact that Chiappone bought \$90,000 of MS&Co. private placements likewise sold them to his mother and other family members clearly indicates he had no misgivings about the suitability of the private placements he sold.<sup>54</sup>

**B. ALJ Ignored Due Diligence Performed by MS&Co.** *Hanly* also notes that the *degree* of independent investigation required varies in each case.<sup>55</sup> In this matter, Respondents were entitled to rely on the substantial investigations conducted by the MS&Co. due diligence team, as testified to by Mary Ann Cody, former MS&Co. in-house counsel. Ms. Cody testified that the due diligence team: (i) visited alarm companies whose receivables were being purchased; (ii) read each alarm contracts being financed; (iii) phoned alarm customers to confirm revenue streams; and (iv) kept due diligence records in fire-proof safes (Tr. pp. 4545 – 4546). The ALJ made no finding that MS&Co. failed to perform the diligence described by Ms. Cody, she simply ignored that testimony. Mr. Chiappone testified that the due diligence team returned to MS&Co. in 2006<sup>56</sup> and performed due diligence on the alarm and triple play deals (Trust Offerings) sold from 2006–2009. Mr. Chiappone was entitled to rely on the work done by the due diligence team, who were trained and experienced in vetting the Trust Offerings, involving recurring monthly revenues, a business model with which they were well familiar.

**C. The Application of Hanly Ignores Industry Rules and Practices.** The major problem with the ALJ's application of the *Hanly* precedents is that it turns the manner in which the

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<sup>53</sup> Tr. 393-399, 494-501.

<sup>54</sup> Chiappone Testimony, Tr. 5610 – 5611.

<sup>55</sup> *Hanly*, 415 F2d at 597.

<sup>56</sup> Chiappone testimony, Tr. 5430 & 5447

brokerage industry is structured on its head. Brokerage firms employ analysts to study securities and make recommendations. Registered representatives then sell what the analysts and investment committees recommend. MS&Co. private offerings were structured by investment bankers and vetted by the in-house due diligence team,<sup>57</sup> as required by the 2007 and 2008 Compliance Manuals introduced into evidence, which clearly stated that MS&Co. “will make a reasonable investigation” of each private placement it underwrote.<sup>58</sup>

Application of *Hanly* in this matter would require Respondents to disregard the work of the persons assigned to conduct due diligence on the offerings, perform the entire due diligence on their own, and make recommendations based upon their own analysis, a task for which most registered representatives utterly lack the necessary education, training, or expertise. That is not the holding of the *Hanly* precedents.

The Division’s expert witness acknowledged that no Respondent in this case is a “member” within the meaning of the NASD/FINRA regulatory scheme.<sup>59</sup> NASD Notice to Members 03-71, issued November 2003, distinguished “due diligence” or “reasonable-basis” suitability, which it imposed exclusively on “members,” (brokerage firm), from “customer-specific” suitability imposed on both members and “associated persons” (individual stockbrokers), stating:

[P]erforming due diligence is crucial to a **member’s** obligation to undertake the required reasonable-basis suitability analysis.... Accordingly, a **member must perform appropriate due diligence** to ensure that **it** understands the nature of the product, as well as the potential risks and rewards associated with the product. Moreover, the fact that a member intends to offer an NCI [non-conventional investment] only to institutional investors does not relieve **the member of its responsibility to conduct due diligence** and a reasonable-basis suitability analysis. (Notice 03-71, p. 767-768, emphasis added.)

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<sup>57</sup> Testimony of Mary Ann Cody, TR. 4545 – 4552.

<sup>58</sup> MS & Co. 2007 Compliance Manual, Guzzetti Ex. 2, at p.42 (in evidence at Tr. 2996); MS&Co. 2008 Compliance Manual, Division exhibit DIV – 329, at page 44.

<sup>59</sup> Testimony of Robert Lowry, Tr. 865.



Thus, the obligation for “due diligence/reasonable-basis suitability” (determining that the product is suitable for at least some investors) is placed exclusively on the member firm; not on the individual broker.

Chiappone contends that none of industry practices, NASD/FINRA regulatory rules and pronouncements, nor case law require him to duplicate due diligence on investment products that has already been performed by the brokerage firm employing him. Hence, for the reasons described in the Joint Brief and outlined above, it is submitted that liability cannot be predicated on Chiappone’s failure to duplicate the investigations conducted by the due diligence team, who had the training, background and experience necessary to perform those tasks.

**Point III. Chiappone Did Not Ignore Any “Red Flags.”**

The ALJ’s finding of a duty to investigate is posited upon the theory that Chiappone was reckless or negligent in failing to consider certain incidents to be “red flags” and immediately stop selling all MS&Co. private placements. The ALJ held that brokers ignored four specific “red flags” outlined below, finding that these incidents triggered a “duty to inquire” (Decision pp. 91-93). Chiappone’s contests these findings, as set forth below.

**A. Restructuring of Four Funds.** The ALJ determined that, on January 8, 2008, when McGinn and Smith announced the restructuring of the Four Funds junior notes (Decision p. 92), Chiappone should have ceased selling all MS&Co. offerings. Chiappone contends that the lowering of interest payments on some of the Four Funds notes was not a red flag, given that the financial industry was suffering through one of the most severe global credit market melt-downs in history, resulting in collapse of major financial institutions. However, even if the restructuring were a red flag, it would only apply to the Four Funds junior notes (interest continued to be paid on senior and senior subordinated notes) and certainly not to the subsequent Trust Offerings because,

as the Division expert witness (Mr. Lowry) admits in its expert witness report, the Four Funds and Trust offerings were entirely different types of investments. Mr. Lowry, in his report (Exhibit Div-001, p. 25) states “These offerings [the Trust Offerings] were not at all similar to the income notes [Four Funds notes] ....”<sup>60</sup> Moreover, the Division admits as much in its proposed Findings of Fact submitted to The ALJ after the hearings, wherein it states “The Four Funds Had a Totally Different Mandate than the Pre-2003 Trust Offerings.”<sup>61</sup>

Aside from these admissions, the following differences are readily apparent:

<u>Four Funds:</u>	<u>Trust Notes (Alarm &amp; Triple Play):</u>
Investments Managed by Smith Blind Pool Unlimited discretion in selecting investments	Structured and managed by McGinn Investments disclosed in advance Limited to Alarm and Triple Play contracts (recurring monthly revenues)
New Concept for MS & Co Included investments in equity	Long history of deals with alarm receivables Invested only in debt or contract receivables

So, The ALJ’s findings that brokers should have ceased selling Trust Offerings upon the restructuring of the Four Funds junior notes is simply not supported by the facts, and is even contradicted by the Division’s own arguments. In any event, even if the restructuring was a red flag, Chiappone never sold a Four Funds offering after the January 8, 2008 meeting.<sup>62</sup>

**B. Nondisclosure of Firstline Bankruptcy as Red Flag.** Firstline investments were initially offered during 2007, and Firstline filed for bankruptcy in January 2008. McGinn and Smith learned of the bankruptcy shortly after it was filed, but did not disclose this to the registered representatives. To further conceal the bankruptcy, they secretly continued to make interest payments to Firstline investors using non-Firstline funds.<sup>63</sup> Even worse, they encouraged brokers to

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<sup>60</sup> Lowry Report, at p. 25 of 35 (Exhibit Div-001).

<sup>61</sup> Division Proposed Findings of Fact, at p.32 (paragraph heading “A” to Point VIII).

<sup>62</sup> Proof Chiappone sold no Four Funds after January 8, 2008 is found at Div. Ex 002 [Palen Ex. 4c].

<sup>63</sup> Testimony of Lowry, Tr. 844; Rabinowitz, Tr. 2840; Chiappone, Tr. 2605; Cross of Bennet, Tr. 4078.

continue selling Firstline notes.<sup>64</sup> When they finally did disclose the bankruptcy, they failed to disclose all relevant facts (claiming interest payments were funded by an undisclosed “white knight”), and telling brokers they planned to buy the Firstline assets in a bankruptcy auction, to assist Firstline investors in recovering at least some of their investment.<sup>65</sup> To bolster their continuing charade, they sent emails to the brokers, updating them on progress of the Firstline “rescue plan,” assuring them that they were pursuing purchase of the Firstline assets, even including drafts of purchase agreements.<sup>66</sup> They did not disclose that MS&Co. did not have sufficient funds to purchase the assets. That all-important detail was not disclosed until after the brokers had already left MS&Co., in late 2009.<sup>67</sup>

Chiappone first learned of Firstline’s bankruptcy on September 3, 2009, approximately 18 months after the bankruptcy occurred,<sup>68</sup> whereupon he immediately stopped selling Firstline.<sup>69</sup> He also decided to resign from MS&Co. and began seeking employment with another firm, departing MS&Co. in December, 2009. While FirstLine may be a red flag, the record establishes that Chiappone not only stopped selling Firstline, but only sold one other MS&Co. investment (not Firstline) after the Firstline disclosure.<sup>70</sup> Hence, any claimed violation of this red flag was *di minimus*. Note that, while Palen Ex. 4c to Div. Ex. 2 shows two sales, dated September 2<sup>nd</sup> and 4<sup>th</sup> 2009, the actual sales took place earlier, as Ms. Palen confirmed that the dates on this chart represent the date funds were deposited into the issuer’s account; not dates of sale (Palen testimony, Tr. pp. 239-240).

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<sup>64</sup> Chiappone Testimony, Tr. 5572 – 5573.

<sup>65</sup> Chiappone Testimony, Tr. 5578 – 5579.

<sup>66</sup> Chiappone Testimony, Tr. 5580 – 5584; Exhibits Div-197 & Div-199.

<sup>67</sup> Chiappone Testimony, Tr. 5584 – 5585, Exhibit Div-200.

<sup>68</sup> Chiappone Testimony, Tr. 5573 – 5575.

<sup>69</sup> Chiappone Testimony, Tr. 5578.

<sup>70</sup> Chiappone Testimony, Tr. 5588 – 5589, Decision p.15 & fn. 25, Palen Ex. 4c to Div. Ex 2.

C. **Conflicts of Interest/Transactions with Affiliates.** The ALJ ruled certain conflicts of interest (arising from McGinn's and Smith's dual roles as principals of the issuers and principals of the broker) and certain transactions with affiliates were both red flags (Decision, pp. 91-92). The ALJ completely ignored the fact that all conflicts and related-party transactions were fully disclosed in writing in the PPM's. Each of the Four Funds PPMs specifically stated that a fund could purchase assets from MS&Co. affiliated, but would not pay a price higher than was paid by the affiliate.<sup>71</sup> Conflicts were likewise disclosed in the PPM's of the Trust Offerings.<sup>72</sup> It was never claimed that Chiappone was involved in a conflict of interest of any sort, nor was he accused of participation in a transaction with affiliates.

In summary, there was no credible proof that Chiappone ever ignored a red flag to the detriment of any customer.

**Point IV. Chiappone Did Not Violate Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, or Rule 10b-5.**

In 1980, the U.S. Supreme Court held scienter was required for actions brought by the SEC under '33 Act §17(a)(1), '34 Act §10(b) and Rule 10b-5, also holding that scienter was not an element for claims made under '33 Act §17(a)(2) & (3), both as to private actions and Commission injunctive actions.<sup>73</sup> The ALJ acknowledges these scienter requirements, and further states that reckless disregard for the truth will suffice to establish scienter (Decision, p.98, citing *South Cherry*).<sup>74</sup> *South Cherry* sets the following standard for a finding of reckless disregard for the truth:

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<sup>71</sup> What was not known to Chiappone was that, in certain instances, the principals who controlled the companies actually sold assets to the Four Funds for more than the purchase price paid by the original purchaser. There was no testimony or other proof adduced that Mr. Chiappone knew about any of this misconduct.

<sup>72</sup> See, Division Exhibits 63, 68,69,73,264-269,376,438,462-265 & 590.

<sup>73</sup> *Aaron v. SEC*, 446 U.S. 680, 691, 100 S. Ct. 1945 (1980).

<sup>74</sup> *South Cherry St.,LLC v. Hennessee Group, LLC*, 573 F.3d 98,109 (2d Cir. 2009).

“By reckless disregard for the truth, we mean “conscious recklessness—*i.e.*, a state of mind *approximating actual intent*, and *not merely a heightened form of negligence*,” (citation omitted). . . . In elaborating as to what may constitute recklessness . . . we have referred to conduct that “ ‘at the least ... is highly unreasonable and which represents an extreme departure from the standards of ordinary care to the extent that *the danger was either known to the defendant or so obvious that the defendant must have been aware of it,*’ ” (citation omitted); . . . or ignored *obvious* signs of fraud,” and hence “should have known that they were misrepresenting material facts ....” (emphasis in original). *South Cherry*, 573 F3d at 109.

As detailed below, there was no proof that Chiappone’s sales practices rose to this level of recklessness described in *South Cherry*.

**Customer Testimony Regarding Chiappone:** No one testified credibly that Mr. Chiappone ever misrepresented material facts about the Trust Offerings or omitted any material facts. Yet, the ALJ purported to find recklessness in Chiappone’s transactions with three customers, two of whom testified for the Division, concluding that Chiappone “was reckless in offering and selling securities based on material misrepresentations and omissions that he made to witnesses who purchased his private placements (Decision, p. 100). The record proves otherwise.

**Gary Ardizzone:** The ALJ cites Ardizzone’s claim that, based on conversations with Chiappone, he believed his FEIN and TAIN (Four Funds) investments were similar to the alarm deals he had previously purchased. Before reaching the merits, it must be noted that the sales of FEIN and TAIN were both made before September 23, 2008, and are beyond the period of limitations, and thus cannot form the basis for sanctions against Chiappone.<sup>75</sup> Moreover, Ardizzone’s claim that he thought FEIN and TAIN were alarm offerings is not credible, as he was issued PPM’s describing the nature of these Four Funds investments (Tr. pp.2768 & 2793), and he admitted to reading portions of the PPMs (Tr. pp. 2769 & 2793). Those PPM’s clearly granted Smith an unrestricted hand in purchasing investments for the Four Funds.<sup>76</sup> Chiappone testified that

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<sup>75</sup> FEIN was sold 12/15/2006, and TAIN was sold 5/23/2005. See Palen Ex. 4c to Div. Ex. 2.

<sup>76</sup> See Division Exhibits 5,6,9 & 12 (PPM;s for FEIN and TAIN).

he did specifically discuss the blind pool nature of the Four Funds with Ardizzone.<sup>77</sup> Most importantly, Ardizzone recanted his claim that Chiappone mislead him as to the nature of the FEIN and TAIN investments on cross-examination:

Examination by Division:

Q. Did you understand that TAIN – was it your belief at the time that TAIN was another alarm-type product?

A. That was my belief in any of these private placement things.

Q. Did that belief stem from anything other than your conversations with Mr. Chiappone?

A. No (Transcript 2771)

Cross Examination: Upon cross, he admitted (haltingly) that this was his *impression*, but that Chiappone never actually told him that. [Mr. Cavalier, referencing FEIN note]:

Q. Did Mr. Chiappone tell you that this was an alarm deal?

A. My understanding was all of these private placement things were based on the alarm business in one form or another.

Q. Well, my question to you is not what you understood. My question is, did he *tell you* that this was an alarm deal?

A. Again, my understanding from conversations with him – we had many, many conversations.

Q. Do you –

A. Whenever he had something to sell he would call and we would talk.

Q. **Do you have a specific recollection of Mr. Chiappone telling you that this was an alarm deal?**

A. **No.**

[Transcript 2796:20 – 2797:13]

There was no other testimony that Chiappone made false statements to Ardizzone, *or to any other customer!* In sum, the ALJ's finding is unsupported by credible evidence.

The ALJ also cites a sale of Fortress (Trust Offering) to Ardizzone in October of 2008, finding scienter in Chiappone's knowledge at time of sale that the Four Funds junior notes had already been restructured. However, as noted above, the Four Funds restructuring in no way constitutes as a "red flag" for the Trust Offerings, since the Division admits they were entirely separate types of investments in their expert report. This stretch to find recklessness on

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<sup>77</sup> Chiappone testimony, Tr. 5485 – 5486.

Chiappone's part doesn't satisfy the requirements for scienter. Moreover, the ALJ ignored the fact that investor losses on both the Four Funds and Trust Offerings were not due to inherent flaws in the product *a time of sale*, but rather due to post-sale misuse of investor funds by McGinn and Smith and to global market conditions.

**Bruce Becker:** ALJ Murray further posits a finding of recklessness on Chiappone's sale of two Trust Offerings to Bruce Becker. Becker was a credible witness. Although called by the Division, Becker testified on cross-examination that he:

- (i) declined to purchase Four Funds because he was uncomfortable with the blind pool structure of the investment, *which was explained to him by Chiappone*.<sup>78</sup> This casts further doubt on Ardizzone's claim that he thought the Four Funds were the same as the alarm notes.
- (ii) was willing to assume moderate risk (Tr. 2913-2914);
- (iii) received PPMs on all MS & Co. private placements (Tr. 2916-2918);
- (iv) relied on the past successes of the pre-2003 alarm offerings in purchasing investments in 2007 and thereafter (Tr. 2920 & 2922);
- (v) had adequate means to support his needs without accessing funds from the MS & Co. investments (Tr. 2925) and a net worth of \$5 million in 2008-09 (Tr. 2927-2928 & 2936);<sup>79</sup>
- (vi) understood there was liquidity risk in private placements (Tr. 2930);
- (vii) understood the high interest rates in the notes indicated a higher credit risk (Tr. 2930-2931);
- (viii) didn't always purchase offerings that Chiappone recommended (Tr. 2937); and
- (ix) he had formerly invested in derivative securities [highly risky], but stopped due to risk (Tr. 2941-2942); and
- (x) his total investment in private placements was less than 5% of his net worth (Tr. 2936).

Becker further admitted on cross-examination that he still did business with Chiappone and considered Chiappone to be an honest broker.<sup>80</sup> Finally, Becker (besides Ardizzone, the only witness to testify against Chiappone) actually purchased an investment from Chiappone after he testified for the Division!<sup>81</sup> Yet in spite of all this testimony, The ALJ concluded that Chiappone

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<sup>78</sup> Becker testimony, Tr. 2936:22 – 2937:21; Chiappone testimony, Tr. p. 5486.

<sup>79</sup> Becker's net worth at the time he sold his company was about \$14 million (Tr. 2939).

<sup>80</sup> Becker testimony, Tr. 2496.

<sup>81</sup> Chiappone testimony, Tr. 5438 (Becker purchased an investment from Chiappone after he testified for the Division).

violated securities laws by selling Trust Offerings to Becker in September and December 2008 “without mentioning any misgivings about McGinn or Smith” (Decision p.100). It is submitted that there isn’t even a hint of wrongdoing and no suggestion of scienter in his dealings with Becker, nor with Ardizzone.

The only other transaction cited by the ALJ is a single sale of a Trust Offering (TDMM Benchmark-10% note) to John Schneider on 11/3/2009, some two months after Chiappone first learned of the Firstline bankruptcy (Decision, p.100). The ALJ did not identify any material misstatement or omission in the sale to Schneider, Schneider did not testify, and there was no proof that Chiappone engaged in any practice or course of conduct that would operate as a fraud on Schneider.

Moreover, at the time of that sale, McGinn and Smith were still lying to the brokers, telling them MS&Co. was going to purchase the Firstline assets out of bankruptcy,<sup>82</sup> so Chiappone was still being misled by Smith and McGinn.

In summary, the elements of a claim under ’33 Act §17(a), ’34 Act §10(b) or Rule 10b-5 have not been established, even as to the subsections of §17(a) that don’t require intent or recklessness as scienter. No witness testified and no other proof was introduced that Chiappone “employed any device, scheme or artifice to defraud” (’33 Act §17(a)(1)), that he “made any untrue statement of a material fact” or omitted to state facts that would violate ’33 Act §17(a)(2) or ’34 Act, § 10(b) and Rule 10b-5 , or engaged in a practice or course of business that would operate as a fraud or deceit (’33 Act 17(a)(3). Rather, all representations as to the private placement offerings were made by MS&Co., in writing via the PPM’s. The record is bare of any statement, promise, projection or other representation as to a specific offering.

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<sup>82</sup> Chiappone testimony, Tr. 5572-5578.



The ALJ's legal conclusions against Chiappone are not based upon affirmative untruths or intentional non-disclosures. Instead, they are based upon a perceived failure on his part to have discovered the fraud that was perpetrated by his superiors. It is submitted that this is insufficient to satisfy the clearly worded statutory text of the fraud-based provisions of the '33 Act and the '34 Exchange Act.

In conclusion, while several cases recognize that scienter may be found in recklessness (or a reckless disregard for the truth), they also acknowledge limitations on non-intentional conduct. In *South Cherry*, the Second Circuit elaborated on what constitutes recklessness in private actions: “By reckless disregard for the truth, we mean ‘conscious recklessness – i.e., a **state of mind approximating actual intent, and not merely a heightened form of negligence**’” (citation omitted) (emphasis in original). *South Cherry*, 573 F3d at 109 (quoting from *Novak v. Kasaks*, 213 F3d 300, 306 (2d Cir. 2000)). In *Press Chemical*, the Second Circuit held that “[t]he scienter needed in connection with securities fraud is intent ‘to deceive, manipulate, or defraud’ or knowing misconduct” (citing *First Jersey Secs., Inc.*, 101 F.3d at 1467). *Press Chemical*, *supra*, 166 F.3d at 538.

In *Novak*, the court in noting that recklessness is harder to identify than intentional conduct, likewise put some definition as to exactly what conduct may be viewed as “reckless”:

“[W]e define reckless conduct as: at the least, conduct which is ‘highly unreasonable’ and which represents ‘an extreme departure from the standards of ordinary care ... to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.’” *Novak*, 216 F.3d at 308.

Numerous other cases contain definitions of recklessness that closely parallel that enunciated by the *Novak* court.<sup>83</sup> What is clear from these cases is that the conduct at issue must rise beyond simple negligence or inattention to detail. “Reckless conduct includes ‘not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it’” (*SEC v. Randy*, 38 F. Supp. 2d 657, 670 (ND Ill. 1999), citing *Meadows v. SEC*, 119 F.3d 1219, 1226 (5<sup>th</sup> Cir. 1997)).

In *Merkin v. Gabriel Capital, LP*, the Southern District of New York, citing to *South Cherry*, observed that an investment advisor who recommended investments in a fund that turns out to be a Ponzi scheme will not ordinarily be held liable for securities fraud unless there exist particular facts giving rise to a strong inference that the advisor either had fraudulent intent, or acted with “conscious recklessness” as to the truth or falsity of the advisor’s statements to the investor. *Merkin*, 817 F. Supp. 2d 346, 357 (S.D.N.Y. 2011). The facts in *Merkin* closely parallel those now at issue. Chiappone sold what he thought were legitimate investments, and had no information to the contrary until after he had departed from MS&CO.

While the above-cited cases involve private claims, they do provide guidance as to what conduct constitutes scienter by “recklessness” and have been cited in civil enforcement actions by the SEC. The scienter requirement has been similarly interpreted by courts in cases brought by the Division. *See, e.g., SEC v. Sayegh*, 906 F. Supp 939, 946 (S.D.N.Y. 1995) (“Scienter may be established by proving conduct that was knowing, intentional, or reckless, as opposed to merely negligent”). Something more than mere negligence, amounting to an extreme departure from the standards of ordinary care is required to establish scienter in civil proceedings brought by the

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<sup>83</sup> *See, e.g., Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital*, 531 F.2d 190,194 (2d Cir. 2008); *Chill v. General Elec. Co.*, 101 F.3d 263, 269 (2d Cir. 1996)(quoting *Rolf v. Blythe, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978). *See also, Kalnit v. Eichler*, 264 F3d 131, 142(2d Cir. 2001).

Commission. See, *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11<sup>th</sup> Cir. 1982), in which the panel stated:

“Scienter may be established by a showing of knowing misconduct or *severe recklessness*. The standard in this circuit has been set forth in *SEC v. Southwest Coal and Energy Co.*, 624 F.2d 1312 (5<sup>th</sup> Cir. 1980). Proof of recklessness would require a showing that the defendant’s conduct was an extreme departure of the standards of ordinary care, ... which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.” *Carriba Air*, 681 F.2d at 1324.

In the *Southwest Coal* case cited in *Carriba Air*, above, the Fifth Circuit noted:

“[t]he degree of recklessness in one’s disregard for the truth necessary to serve as scienter is extremely high. ... Reckless conduct may be defined as a highly unreasonable omission, *involving not merely simple, or even in excusable negligence*, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it. (citations omitted). An important factor in this regard is the degree of intentional wrongdoing evident in a defendant’s past conduct (citation omitted). (emphasis supplied) *Southwest Coal*, 624 F.2d at 1321, fn. 17.

In so stating, the panel in *Southwest Coal* panel noted that the original formulation of this standard of recklessness was articulated in a federal district court (*Franke v. Midwestern Okla. Devel. Auth.*, 428 F. Supp. 719 (W.D. Okla. 1976)), but that it has been followed in the Third, Sixth and Seventh Circuits, as well as the Fifth and Eleventh Circuit.<sup>84</sup> The D.C. Circuit may require “extreme recklessness.” See, *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (“Although the [Supreme] Court has left the question open ... we have determined, along with a number of other circuits, that extreme recklessness may also satisfy this intent requirement”).

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<sup>84</sup> Cases cited by the court in *Southwest Coal* for this standard of recklessness are: *Accord, e.g. McLean v. Alexander*, 599 F.2d 1190, 1197 (3d Cir. 1979) (quoting Franke standard); *Mansbach v. Prescott, Ball & Turben*, 598 F.2d 1017, 1025 (6th Cir. 1979) (same); *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir.) cert. denied, 434 U.S. 875, 98 S. Ct. 225, 54 L. Ed. 2d 155 (1977) (same). See also, *Broad v. Rockwell Int’l Corp.*, 614 F.2d 418 (5<sup>th</sup> Cir. 1980).

**C. Law Applied to Facts Involving Chiappone's Activities.**

Mr. Chiappone was not charged (and no evidence was adduced) with making false statements or omissions to state a material fact. He testified, as did the two witnesses who appeared on his behalf, and the two Division witnesses, that in every case, the private placements he sold were preceded by PPM's, subscription agreements and investor questionnaires. He described the procedures for sending out investor packets, and return of the executed questionnaire and subscription agreement. Chiappone testified that he disclosed the lack of liquidity risk inherent in private placements, and the PPM's contained written disclosures of myriad risk factors, as well as certain conflicts of interest.<sup>85</sup> No one testified credibly that Mr. Chiappone ever misrepresented the relevant facts about the Trust Offerings. All sales of Four Funds were made more than five years before the filing of the OIP.

**Point VI. Sale of Unregistered Securities (Section 5 of '33 Act).**

**A. Chiappone Did Not Violate Section 5.** The Division argued that §5 of the Securities Act was violated due to failure to qualify for the Regulation D exemption. The ALJ ruled that §5 was violated as to the Four Funds, finding that each Four Fund offering had more than 35 unaccredited investors, and the that Rule 502 information requirements were not fulfilled (Decision, 93-95). First of all, since all sales of the Four Funds investments by all Respondents occurred more than five years from the filing of the OIP, no finding of a §5 violation can be predicated on those offerings, at least as to the Division's request for civil penalties and industry bars/suspensions. Chiappone also contends that the Division's claim for disgorgement of commissions likewise fails, under the holding of *SEC v. Graham*, 21 F. Supp. 3d 1300, 1310-11 (S.D. Fla. 2014) ("disgorgement ... can truly be regarded as nothing other than a forfeiture (both

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<sup>85</sup> Chiappone testimony, Tr. 5701 (disclosure to clients of illiquid nature of Four Funds); Mirochnik testimony, Tr. 3117 – 3118. See also Chiappone testimony, Tr. 5659 as to risks inherent in non-marketable private placements.

pecuniary and otherwise), which remedy is expressly covered by § 2462”). The application of 28 U.S.C.A. 2462 is dealt with in detail in the Joint Brief. However, even if *Graham* is not controlling law, at best, the SEC can only obtain disgorgement, as the Division’s own exhibits clearly establish that all sales of the Four funds were made beyond the period of limitations (Palen Exs. 4a-4s to Div. Ex.2).

As to the Trust Offerings, the Division conceded that all offerings made during the period of limitations had 35 or less unaccredited investors (Decision p.35), and the Division’s own exhibits proved that all Trust Offerings were accompanied by PPM’s.<sup>86</sup> The ALJ refused to integrate the Trust Offerings, and ruled Respondents met the five-factor Test of Rule 502(a). She found, however, that Rule 506 was not available to Respondents, on the sole grounds that Respondents did not provide financial and non-financial information to non-accredited investors per Rule 502(b)(Decision pp.96-97). In so doing, she totally ignored that fact that the PPM’s contained the disclosure materials that would have satisfied Rule 502, *both as to accredited and unaccredited investors*. The Trust PPM’s specifically provided that “Additional information is available upon request to the Trust” and “Only additional information provided by the Trust may be relied upon.”<sup>87</sup> She apparently determined that Respondents should have provided information beyond that in the PPM’s, which contradicts the instruction in the PPM. Since that is the sole basis for the ALJ’s finding that §5 was violated as to the Trust Offerings, it cannot stand.

**B. Willfulness/Scienter re Section 5.** Should the Commission find a §5 violation occurred, the issue of scienter becomes relevant. The degree of culpability required to establish a §5 violation is not clear. Some courts, including the Southern District of New York, have determined that *scienter* is not an element of liability for §5 claims. See, *SEC v. Universal*

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<sup>86</sup> Division Exhibits 63, 68,69,73,264-269,376,438,462-265 & 590.

<sup>87</sup> See, e.g. Div. Ex. 14 @ p.15.

*Express, Inc.*, 475 F. Supp. 2d. 412, 422 (S.D.N.Y. 2007); and *SEC v. Platinum Inv. Corp.*, 2006 U.S. Dist. LEXIS 67460, at [5], holding that to prove a §5 violation, the SEC must only show: (a) lack of a registration statement as to the securities sold, (b) the offer or sale of securities, and (c) use of interstate facilities, such as the phone or mails.

Decisions of appellate courts on the requirements to establish a §5 violation are less clear, particularly in the D.C. Circuit. In *Zacharias v. SEC*,<sup>88</sup> the SEC administrative law judge opined that §5 imposes strict liability, but also based the decision on a factual finding that respondent knew or should have known of the lack of registration. The Circuit Court then declined to pass on the issue of whether strict liability applied, affirming the SEC’s finding that petitioner Zacharias knew or should have known [of the public distribution].<sup>89</sup>

However, even if scienter is not strictly applicable to a determination of liability, it can and should be taken into account in determining whether the §5 violation was willful, which goes to the remedy that is appropriate to impose upon the broker. In *Kane v. SEC*, the Eighth Circuit held that the reasonableness of the registered representative’s belief that the shares were exempt from registration was relevant to the willfulness of the violation of §5.<sup>90</sup>

The Eighth Circuit, in the context of a sanction imposed for violation of the §§5(a) & 5(c) has held that willfulness implies something more than mere negligence:

“The Commission sanctioned Wasson . . . for *willfully* violating §5 of the Act and *willfully* aiding and abetting the violation of that provision. Wasson challenges the finding that he acted willfully, claiming that his behavior . . . was merely negligent. . . Relying on *Ernst & Ernst v. Hochfelder, supra*, Wasson submits that willfulness as “a state of mind condition requires something more than negligence.” . . . *We agree that the concept of willfulness implies something more than mere negligence. (Wasson v. SEC, 558 F.2d 879, 887 (8<sup>th</sup> Cir. 1977)).*

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<sup>88</sup> *Zacharias v. SEC*, 569 F.3d 458 (D.C. Cir. 2009).

<sup>89</sup> *Zacharias*, 569 F.3d at 465-466.

<sup>90</sup> *Kane v. SEC*, 842 F.2d 194, 198 (8<sup>th</sup> Cir. 1988). Kane’s conduct was found to be willful.

The court then noted that conduct involving disregard or reckless indifference to known facts could be regarded as “willful.” In *Stead v. SEC*, the Tenth Circuit applied a test of “willfulness” that involved wrongdoing on the part of the stockbroker, finding that the SEC’s determination that Stead “knew or should have known that there was no registration [was] well supported by the evidence” (*Stead*, 444 F.2d at 716). It is submitted that Chiappone’s sale of Four Funds offerings (which had more than 35 unaccredited investors) is not governed by *Stead* or *Wasson*.<sup>91</sup> Not only did he not know that total sales of all brokers exceeded the 35 investor limit, he had no way of knowing what sales had been made by other brokers at any given point in time, as MS&Co. had four offices in three states. Chiappone testified that he lacked knowledge of how many unaccredited investors were sold by other brokers, as neither Ms. Sicluna nor anyone else ever advised him of the count.<sup>92</sup> While this may not avoid a violation of §5, it surely should be considered in determining what sanction, if any, is appropriate. Because it is likely that David Smith intentionally withheld information from the brokers on the number of unaccredited investors, it is respectfully requested that no suspension or monetary penalties be levied with respect to the §5 claims against Mr. Chiappone.

**Point VII. Scienter as Applied to Civil Penalties.**

The ALJ approved Tier III penalties (Decision pp 115-116). In order to impose even a Tier II penalty, 15 U.S.C. § 77h-1(g) and 15 U.S.C. § 78u-(d)3(A) require acts that “involved fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement. A Tier III penalty has the same requirements, plus substantial losses to other persons, or in the case of the ’33 Act provisions, substantial gain to the offender.

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<sup>91</sup> It must be noted that the broker was found to have violated ’33 Act §5 in *Wasson*, as the court found he ignored an obvious need for further inquiry, and failed to disclose all relevant information to his superiors. Likewise, in the *Nees* case and the *Stead* case cited in *Wasson*, the courts found that, although willfulness implied wrongdoing, the respondent brokers had in fact knew or should have known of the lack of registration.

<sup>92</sup> Chiappone testimony, Tr. 5493 – 5495.

There is authority supporting scienter requirements regarding the civil penalties. In *SEC v. Kern*, the Second Circuit, in assessing Tier II and Tier III penalties under the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, assumed, without deciding, that scienter is necessary to an imposition of Tier III Penalties.<sup>93</sup>

In assessing civil penalties, the court may take into account the fact that respondents were required to pay substantial sums in disgorgement (*SEC v. Whittemore*, 691 F. Supp.2d 198, 209 (D.D.C. 2010)). In *Whittemore*, the court imposed a \$25,000 civil penalty where the maximum Tier III penalty was \$ 120,000, finding it ample for the purpose of deterrence, where the defendants were all required to disgorge all of their profits on a pump and dump scheme.<sup>94</sup> In assessing the amount of the penalty, the court may take into account the “essential and active roles the individuals played in perpetrating the fraud ....” (*SEC v. Lybrand*, 281 F.Supp.2d 726, 732 (S.D.N.Y. 2003)). Of course, under *Gabelli*,<sup>95</sup> the amount of the penalties must be determined only with reference to those sales occurring after September 23, 2008. Hence, it is submitted that civil penalties are not appropriate as to Chiappone, considering that the central allegation in this case is not that Chiappone participated in or was even aware of any illicit conduct, but that he failed to ferret out the wrongful acts of others.

**Point IX. Chiappone Cannot be Held Responsible Acts of For Smith and McGinn.**

For good reason, there are limits on the scope of liability for failure to discover fraudulent conduct of others. See, *Novak v. Kasaks*, *supra*, 216 F.3d 300, 309; *South Cherry Street, LLC v. Hennessee Group, LLC*, 573 F.3d 98, 100 (2d Cir. 2009). By its very nature, fraud such as that perpetrated by Smith and McGinn is secretive. The suggestion that Respondents’ performance of

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<sup>93</sup> *SEC v. Kern*, 425 F.3d 143, 153 (2d Cir. 2005). The court did not decide the scienter issue, as it found defendants conduct would have met a scienter requirement.

<sup>94</sup> *Whittemore*, 691 F.Supp.2d at 208-209.

<sup>95</sup> *Gabelli v. SEC*, 133 S.Ct. 1216 (2013).



additional due diligence on a given offering would have revealed the secretive post-sale fraud ignores reality, particularly in light of regulators' failures to discover the fraud during the same time period. That their activities were concealed is established by David Smith's own admission in a handwritten letter to McGinn, written in late 1999 or early 2000:

[I]f our trusts go into default everything else will come apart. . . . The default of the trusts will . . . *cause us to lose brokers and at least their confidence in us*, bring on crushing litigation and devastating publicity and I am convinced prosecution by regulators or worse. . . . I believe we are at risk for the raising of investment dollars that are now clearly unlikely to be repaid in full. . . . More recently, those dollars for the most part are used to fulfill investment promises to earlier investors. . . . [W]e are now in possession of indisputable empirical evidence that the new investments have no chance of being repaid in full. . . . We both know why we don't make that disclosure [disclose losses in investments] because such disclosure *would cause or salesmen to cease selling* and investors to cease buying, *thus we are misleading both our own employees and customers.*" (Livingston Ex. 31<sup>96</sup>; Tr. pp. 5616-5618.

This is irrefutable evidence the Smith and McGinn intentionally mislead their own brokers for ten years. Yet, in spite of the fact that the SEC failed to uncover any of the material aspects of the fraud in its' 2004 examination, and NASD failed to do so in its' 2006 and 2007 examinations, The ALJ ruled that Mr. Chiappone should be severely punished for his inability to uncover a fraud committed by others and deliberately concealed by its perpetrators, for a period of over ten years.<sup>97</sup> The ALJ's holding that the brokers should have uncovered the fraud should be reversed.

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<sup>96</sup> Originally mislabeled as Livingston Ex. 30).

<sup>97</sup> As to the SEC and NASD examinations, see Exhibits Div-370, Div-341 & Div-501.

**CONCLUSION**

Based on the foregoing, Respondent Chiappone respectfully requests that the Commission reverse the Decision and dismiss the proceedings., with prejudice.

Dated: July 16, 2015

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Roland M. Cavalier', written over a horizontal line.

Roland M. Cavalier, Esq.  
TUCZINSKI, CAVALIER & GILCHRIST, P.C.  
54 State Street – Suite 803  
Albany, New York 12207  
(518) 463-3990 Ext. 309  
(518) 426-5067 Fax

CERTIFICATE OF SERVICE

I, Roland M. Cavalier, hereby certify that on this 17<sup>th</sup> day of July, 2015, I served a true and complete copy of Respondent Frank A. Chiappone's Individual Brief, together with the Affidavits of Frank Chiappone and Roland Cavalier upon the following parties in this action as follows:

**Original and three (3) copies via UPS Overnight to:**

Securities and Exchange Commission  
Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F. Street, NE  
Mail Stop 1090  
Washington, D.C. 20549  
Facsimile (202) 772-9324

**One (1) copy via UPS Overnight and Electronic Mail to:**

David Stoelting, Michael D. Birnbaum & Haimavathi V. Marlier  
Securities & Exchange Commission  
Division of Enforcement  
200 Vesey Street – Suite 400  
New York, NY 10281-1022  
[stoeltingd@sec.gov](mailto:stoeltingd@sec.gov)

**Courtesy Copies via U.S. Mail and Electronic Mail to:**

Richard D. Feldmann, Pro Se  
16 Regina Court, Apt. 2-B  
Delmar, New York 12054-1829  
[delmarfeldmann@gmail.com](mailto:delmarfeldmann@gmail.com)

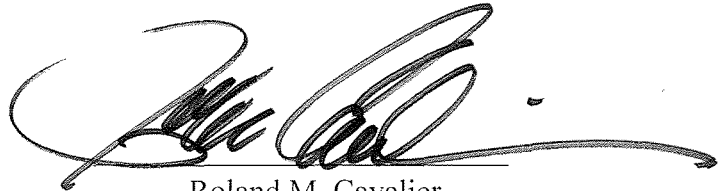
Loren Schechter, Esq.  
Duane Morris, LLP  
1540 Broadway  
New York, New York 10036-4086  
[lschechter@duanemorris.com](mailto:lschechter@duanemorris.com)

Mark J. Astarita, Esq.  
Sallah Astarita & Cox, LLC  
60 Pompton Avenue  
Verona, New Jersey 07044  
[mja@sallahlaw.com](mailto:mja@sallahlaw.com)

Matthew G. Nielsen, Esq.  
Andrews Kurth, LLP  
1717 Main Street, Suite 3700  
Dallas, Texas 75201  
[matthewnielsen@andrewkurth.com](mailto:matthewnielsen@andrewkurth.com)

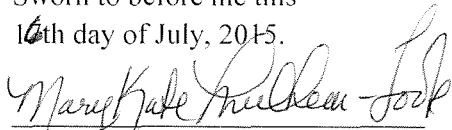
M. William Munno, Esq.  
One Battery Park Plaza  
New York, New York 10004  
[munno@sewkis.com](mailto:munno@sewkis.com)

Gilbert Abrahamson, Esq.  
One Presidential Blvd., Suite 315  
Bala Cynwyd, Pennsylvania 19004  
[gabramson@gbalaw.com](mailto:gabramson@gbalaw.com)



Roland M. Cavalier

Sworn to before me this  
16<sup>th</sup> day of July, 2015.

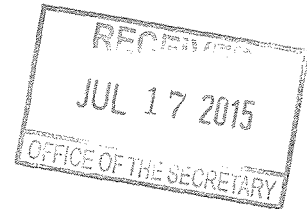
  
Notary Public – State of New York

MARY KATE MULHERN-FOOTE  
Notary Public, State of New York  
No. 6150030  
Qualified in Albany County  
Commission Expires July 24, 2018

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-15514



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In the Matter of,

FRANK H. CHIAPPONE,  
ANDREW G. GUZZETTI,  
WILLIAM F. LEX,  
THOMAS E. LIVINGSTON,  
BRIAN T. MAYER, and  
PHILIP S. RABINOVICH

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**ATTORNEY'S CERTIFICATION REGARDING PAGE REQUIREMENTS**

ROLAND M. CAVALIER, states under oath that he is the attorney for Respondent Frank Chiappone in this matter and that he was the person primarily responsible for the individual Brief being submitted on behalf of Mr. Chiappone. According to the electronic word count obtained from the Microsoft word program upon which the Brief was prepared, the Brief contains less than 10,000 words, excluding cover page, table of contents and table of authorities.

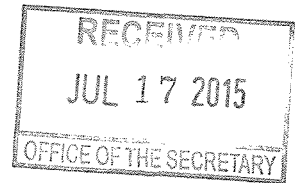
Dated: July 17, 2015

TUCZINSKI, CAVALIER & GILCHRIST, P.C.

By: 

ROLAND M. CAVALIER

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING

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ANDREW G. GUZZETTI,  
WILLIAM F. LEX,  
THOMAS E. LIVINGSTON,  
BRIAN T. MAYER, and  
PHILIP S. RABINOVICH

**AFFIDAVIT SUPPORTING  
MOTION FOR LEAVE TO  
ADDUCE ADDITIONAL  
EVIDENCE**

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STATE OF NEW YORK     )  
                                          )SS.:  
COUNTY OF ALBANY     )

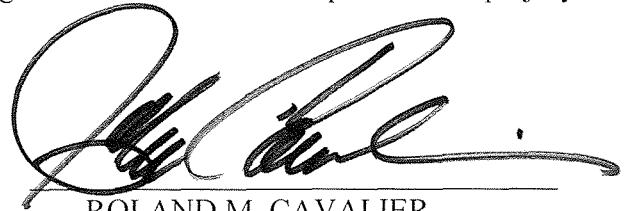
ROLAND M. CAVALIER, being an attorney duly licensed to practice in the State of New York, does hereby state and affirm as follows:

1. This Affidavit supports a motion made pursuant to SEC Rules of Practice, Rule 452 requesting to submit additional evidence on behalf of Respondent Frank H. Chiappone.
2. The additional evidence consists solely of an Affidavit by Respondent Frank Chiappone, which relates to Mr. Chiappone's legal argument that the 12-month suspension from practice ordered by the ALJ in the Initial Decision was inappropriate.
3. At the trial, Mr. Chiappone testified that he had not sold, nor offered, a single private placement security (the securities which are the sole subject of the above-captioned action) since he left

McGinn Smith & Company in early 2009.

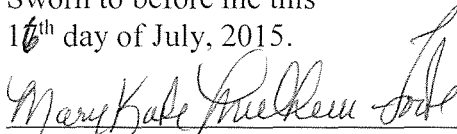
4. As Mr. Chiappone states in his attached Affidavit, at this point in time, he still has not sold, nor even offered, a private placement security of any kind to any customer or potential customer. Hence, Mr. Chiappone claims that he has avoided the very type of conduct that the Division of Enforcement claims violated securities law (which Mr. Chiappone disagrees with) for a period in excess of five (5) years. Accordingly, Mr. Chiappone contends that no industry bar, nor cease and desist order is required for the protection of the investing public.

IN WITNESS WHEREOF, the undersigned has signed this Affidavit under penalties of perjury.



ROLAND M. CAVALIER

Sworn to before me this  
17<sup>th</sup> day of July, 2015.

  
Notary Public, State of New York

MARY KATE MULHERN-FOOTE  
Notary Public, State of New York  
No. 6150030  
Qualified in Albany County  
Commission Expires July 24, 2018

United States of America  
Before the  
Securities and Exchange Commission

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-15514

In the Matter of,

FRANK H. CHIAPPONE,  
ANDREW G. GUZZETTI,  
WILLIAM F. LEX,  
THOMAS E. LIVINGSTON,  
BRIAN T. MAYER, and  
PHILIP S. RABINOVICH

Administrative  
Proceeding File  
No. 3-15514

Part I: Summary Financial Disclosure Statement

Full Name: Chiappone, Frank H.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] :

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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Administrative  
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No. 3-15514

Part II: Detailed Financial Disclosure Information

Full Name: Chiappone, Frank H.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

