SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

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

Respondents.

ADMINISTRATIVE PROCEEDING

File No. 3-015514

RESPONDENT ANDREW G. GUZZETTI'S
INDIVIDUAL REPLY BRIEF IN SUPPORT OF HIS PETITION FOR REVIEW

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STATEMENT OF FACTS

The actions of Messrs. McGinn and Smith, not the Respondents in this matter, led to the losses suffered by investors in the funds at issue. (Div. Ex. 453, 459 and 460). The Respondents in this matter were defrauded by McGinn and Smith as well, as was the NASD, FINRA, and the SEC.

The DOE's allegations that the pre-2003 McGinn Smith & Co. ("MS") trusts were a part of McGinn and Smith's fraud has no bearing on the allegations against Guzzetti or the Selling Respondents.[1] No evidence was presented that the Selling Respondents were aware, or could have been aware, that the pre-2003 MS trusts were anything other than successful offerings where investors were regularly paid interest and returned their principal.

References to the pre-2003 trusts are a red herring meant to distract the Commission from the real issue at hand. In addition, all events or occurrences prior to September 23, 2008 are outside of the applicable statutes of limitations and cannot be the basis for finding of a violation.

This pattern of attempting to distract the Commission, and the ALJ, continues when the DOE references MS's net capital issues. The fact the firm was seeking a capital infusion has nothing to do with the alleged violations. MS's net capital situation is unrelated to the success or failure of the offerings at issue, which were distinct and separate entities from MS.

The DOE also intentionally misrepresents the nature of the economy as a whole. The fact that Smith stated that the restructure of the Four Funds was as a result of the "economic crisis" does not contradict Guzzetti's statement that the Four Funds had no correlation to the equity markets. (See, Division Opposition to Respondents' Joint Brief ("DOE Opp. to RJB"), at 22).

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[1] Selling Respondents include Donald J. Anthony, Frank H. Chiappone, Richard D. Feldmann, William P. Gamello, William F. Lex, Thomas E. Livingston, Brian T. Mayer, Philip S. Rabinovich and Ryan C. Rogers; riot Guzzetti. Division of Enforcement's Prehearing Memorandum ("DOE Opening Statement"), at 2; Division of Enforcement's Post-Hearing Brief, at I.

The U.S. economy is comprised of substantially more than the equity markets. A disaster in the credit markets could cripple investments throughout the economy which have no correlation to the distinct and separate equity markets. The DOEs choice to play dumb regarding the difference between the markets as a whole and the equity markets is disingenuous at best.

This pattern of misleading the Commission continues with the DOEs discussion of red flags. In her decision, the ALJ discusses 10 red flags identified by the DOE. However, on page 91 of the ALJ's Initial Decision (ID), the ALJ states that at least 6 of these 10 red flags are not red flags at all.[2]

According to the ID, the only actual red flags in this case were conflicts of interest created by the offerings, transactions with affiliates, the January 2008 Four Funds restructure, and the Firstline bankruptcy meeting in September of 2009. (See, ID at 91-93). However, none of these are actually red flags.

First, the fact that the offerings created a potential conflict and involved transactions with affiliates is not a red flag as same was disclosed to each prospective investor through the offering materials. These were standard disclosures and are not out of the ordinary. (Tr. 3941:2-13; 4039:21–4040:8). Prior to investing, all investors were aware of possible conflicts of interest and that each offering may be involved in affiliated transactions.

In addition, it should be noted that the ALJ incorrectly identifies changes in the Four Funds which occurred in January 2008. While the ALJ states that the Four Funds "defaulted," in actuality, just the interest rate of the junior Four Funds notes was reduced. However, at the time of the January 2008 meeting, the economy was beginning its tailspin. Credit markets were freezing up and it would not be surprising or out of the ordinary for an investment vehicle, which was based

[2] The DOE has not requested a review of the ID, and cannot ignore the ALJ's rulings.

on lending money to businesses, to restructure in the face of such economic calamity. This was not a red flag considering the situation in which it occurred and it was certainly not a default.

Further, the DOE and ALJ do not cite to any evidence which would support a finding that the Selling Respondents were aware of the Firstline bankruptcy prior to the September 2009 meeting. In fact, DOE admits that the Respondents were not aware of the bankruptcy prior to September 2009. (See, DOE Findings of Fact, ¶ 178).

While the DOE may find it innocuous that the ALJ referred to Guzzetti as a supervisor on the first day of the trial, the entire purpose of the hearing, as it relates to Guzzetti, was to allow for the ALJ to make that decision after hearing the arguments of both parties. For her to refer to him as a supervisor on the first day of the hearing is evidence that the ALJ had made her decision only minutes into the DOE's case, if not earlier.

Guzzetti's only involvement with the Four Funds and Trusts was to act as a conduit, passing information about the offerings from McGinn and/or Smith to the brokers at the firm. (Tr. 3227:4-3229:3, 4606:6-10, 4630: 16-4631: 16, 4632:21-4634:12). Guzzetti was never responsible for reviewing or approving purchases of the offerings at issue. (Tr. 3227:7-3229:3). Even after becoming the branch office manager of MS's Clifton Park office, supervision of the private placements remained the responsibility of McGinn or Smith, depending on the offering. (Tr. 3225:7-10, 3227:7-3229:3).

ARGUMENT

I. There Can Be No Supervisory Violation Without A Primary Violation.

For the reasons described in the Respondents' Joint and Individual Briefs and Replies, the Selling Respondents did not commit any violations to support a supervisory violation by Guzzetti. In addition, the written supervisory procedures at MS, and all of the evidence admitted during the

hearings, shows that individuals other than Guzzetti were tasked with the responsibility of supervising private placements. Finally, all of the offerings were first registered prior to September 23, 2008, and any alleged registration violations occurred outside of the applicable statute of limitations. Therefore, the ID should be reversed and the charges against Guzzetti should be dismissed.

II. The DOE Never Requested Sanctions Against Mr. Guzzetti

In its Prehearing Memorandum, i.e. its Opening Statement, as well as the OIP, the DOE limited its request for disbarment, cease-and-desist orders, and disgorgement of all commissions to Selling Respondents only. (DOE Opening Statement, at 20-22). The Second Circuit Court of Appeals has held that "the binding effect of an opening statement within the four comers of a single trial, are . . . well established." (United States v. McKeon, 738 F.2d 26 (2d Cir. 1984)).[3] As a result, the ALJ erred in suspending Guzzetti because she failed to recognize a key distinction regarding this issue. In her decision, the ALJ confines her discussion to the Division's prehearing brief (its opening statement). However, the objection was that the Division did not seek equitable relief in either the OIP or its opening statement; i.e. a suspension of Guzzetti was never requested. Therefore, the ID should be reversed and the charges against Guzzetti should be dismissed.

III. The DOE Failed To Meet Its Burden

In order to show that Guzzetti committed a supervisory violation under 15 U.S.C. § 78o(b)(4)(E) the DOE had the burden of showing that 1) there were established procedures that were reasonably designed to prevent violations and 2) Guzzetti failed to "reasonably discharge[] his duties and obligations . . . [under] such procedures." (15 U.S.C. § 78o(b)(4)(E)).

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[3] Though the DOE argues that this case is not on point, it stands for the proposition that the DOE is limited by the contents of their opening statement during a single trial.

The arbitrary and capricious nature of the ALJ's decision is made clear when one considers the section of the 2007 and 2008 Supervisory Compliance Manuals (SCM) entitled "**PRIVATE PLACEMENT/LIMITED PARTNERSHIPS.**" This section of the 2007 and 2008 SCMs describes the due diligence requirements, subscription procedures, and approval process for the sale of private placements. (Ex. AG-2, at 42; Div. Ex. 329 at 44).

The ALJ ignored these sections of the SCMs which specifically required all purchases of private placements or limited partnerships be reviewed and accepted by a principal of the firm. (Ex. AG-2, at 42; Div. Ex. 329 at 44). Guzzetti was never a principal of MS

Although the DOE continuously argues that there is no evidence that the private placements at issue were "walled off" from other areas of supervision, that argument is directly contradicted by the section of the SCMs which specifically addresses private placements. Therefore, the ID should be reversed and the charges against Guzzetti should be dismissed.

IV. Guzzetti's Actual Responsibilities At MS Are Not Evidence Of Supervisory Responsibilities.

Guzzetti's responsibilities at MS were not those of a sales supervisor for the transactions at issue. Guzzetti's function was that of a sales manager, not a line supervisor, for most of the relevant time period. In addition, Guzzetti spent much of his time developing programs or services that would benefit MS clients (Tr. 4607:17-25) and giving seminars around the New York City and Albany area. (Tr. 4615:8-4616:20)

Guzzetti was also involved in hiring, recruiting, and communicating deal availability to the brokers and he worked with Mayer to locate a new clearing firm for MS in 2005, which have no bearing on whether Guzzetti supervised the transactions at issue, and is outside the applicable statute of limitations. (Tr. 2962:14-21; 4654:4-8).

Guzzetti was never involved in the preparation, dissemination, or supervision of the transactions at issue and the ALJ's decision should be reversed and all charges against Guzzetti should be dismissed.

V. Guzzetti Did Not Have Supervisory Responsibility For The Offerings At Issue.

A. ALJ Ignored Witness Testimony And Evidence.

The DOE's Opposition actually makes Guzzetti's point for him. It provides clear evidence that the ALJ ignored testimony of witnesses and evidence admitted during the hearings. The DOE cites to two separate pages in the ID to support its argument that the ALJ found the testimony of Lex and Mayer lacked credibility regarding who was their supervisor.

However, in both sections of the ID to which the DOE cites there is no discussion of supervision or Guzzetti by the ALJ. (See, ID at 103, 105). Instead, the ALJ discussed how the testimony of Lex and Mayer was in contradiction to their "investigative testimony" and the testimony of other witnesses.

This highlights exactly the point that Guzzetti is making and raises a significant issue. As the DOE points out, Lex identified four separate individuals who were his supervisor and Mayer identified David Smith as being his direct supervisor and states that Guzzetti later became his supervisor for the "operational things." (See, DOE Opposition to Individual Briefs ("DOE Opp. to IBs"), p. 40.) The sale of private placements is not "operational" in nature.

In addition, Gamello testified: "I really don't know [Guzzetti's] exact role. There was no branch manager. I was in the Clifton Park office and there was no branch manager there when I started. So, Dave Smith basically was in charge of the firm. Andy Guzzetti was head of retail sales. ***I don't know his exact responsibilities***." (Tr. 1737: 1 3-19 (emphasis added)). Clearly the ALJ found his testimony to be credible as he was exonerated.

Rogers testified that "[a]t one point, yes; I think [Guzzetti] was a report." However, Rogers identified four other individuals he considered to be his supervisors including Livingston, Smith, McGinn and Mayer. (Tr. 3675:8-19). Even after Rogers and other Selling Respondents identified multiple individuals as their supervisors, the DOE didn't follow up and get a precise answer regarding the transactions at issue.

Rather amazingly, the ALJ made no effort to rectify these discrepancies. Without resolution of this issue, a decision regarding supervision cannot be made. After all, as the DOE's own expert testified, a firm like MS would be expected to have a number of different supervisors with different responsibilities. (Tr. 1136: 15-25). Apparently the ALJ was not concerned with Guzzetti's actual responsibilities at the firm.

In reality, however, it does not appear that the ALJ actually found the previous testimony of the Respondents to be any more credible, but rather just those portions which support the DOE's claims. As stated in Guzzetti's IB, the ALJ cherry picked portions of testimony and documentary evidence, while completely ignoring others without any reasonable basis or explanation for doing so.

The DOE makes additional arguments that are completely without merit regarding the evidence and testimony. The DOE alleges that because no one told Guzzetti not to supervise the private placements at issue he must have had supervisory responsibilities. The DOE also argues that since there is no document which states that Guzzetti is not responsible for supervising the transactions at issue, he must be responsible for supervising the transaction at issue.

Following the DOE's arguments to its absurd conclusion, every single person in MS was responsible for supervising the transactions at issue because they were never told not to and no

document says they shouldn't. This is ridiculous and is a classic attempt by the DOE to inappropriately shift its burden to Guzzetti in this matter.

Guzzetti testified that Mr. Smith established a procedure for the review and approval of the transactions at issue and he followed those procedures. (Tr. 3007:1 8-3008:8) In addition, the Division's own evidence, which includes the SCMs, clearly support his position that a procedure was established and he was not given responsibilities related to the transactions at issue.

The DOE also attempts to excuse the fact that the ALJ ignored the testimony of Guzzetti's expert, FINRA Board of Governors member Kevin Carreno, because he did not review Guzzetti's emails. Carreno was retained to testify as to what role Guzzetti had within MS and the normal responsibilities of someone in that position. Carreno's testimony was not dependent on the content of the emails, but rather the actual responsibilities of Guzzetti.

Presumably the DOE also discounts the testimony of its own expert witness. Despite being tasked with opining on supervision at MS from 2003-2009, DOE expert Robert Lowry testified that despite having the 2007 SCM in his possession, and testifying that it was the starting point for a supervision analysis, he did not even know the 2007 SCM existed until Guzzetti's attorney requested that it be admitted into evidence. (Tr. 1154:14-18, 1154:24-1155:4; 1122:17-1124:5; 1155-5-22).

Unlike Carreno, the DOE's own expert ignored documents that he himself testified should have been the starting point of his analysis. At least in part, the ALJ relied on the fatally flawed testimony of Lowry in making her decision against the Respondents, while at the same time ignoring the unchallenged testimony of other experts and witnesses. Therefore, the ID should be reversed and the charges against Guzzetti should be dismissed.

B. The Supervisory Manuals Name Smith And McGinn As Private Placement Supervisors.

As the ALJ did in her decision, the DOE completely ignores the numerous sections of the SCMs that specifically give supervisory responsibilities to individuals other than Guzzetti.

As stated in Guzzetti's IB, the only specific responsibility delegated to Guzzetti that isn't directly contradicted by another portion of the 2007 SCM was "for communications and distribution of sales materials to all outside RRs." (Ex. AG-2, at 37). In addition, although this section discusses securities transaction made by outside RRs, that responsibility is not delegated to Guzzetti. (Id.) This section of the manual also gives various responsibilities to the "Compliance Officer." (Id.) The only person identified as a compliance officer anywhere in the manual is David L. Smith. (Id. at 3, 4, 12, 25, 28, 30, 39, 45, and 55).

In addition, the ALJ completely fails to address the section of the SCMs entitled **"PRIVATE PLACEMENTS/LIMITED PARTNERSHIPS."** It is odd that the ALJ would ignore the impact of these sections considering that both the Division and Guzzetti's expert witnesses agreed that the compliance manuals are the first place to start when doing a supervisory review. (Tr. 1154:14-18; 1154:24-1155:4; 4832:13-20).

As discussed above, the section of the 2007 and 2008 SCMs entitled **"PRIVATE PLACEMENTS/LIMITED PARTNERSHIPS"** gives the responsibility for reviewing and approving sales of the offerings with the principals of the firm, not Guzzetti. The ALJ completely failed to consider the language of this section in finding against Guzzetti and provides no basis for her decision to completely ignore same.

Although the DOE argues that there is no evidence that the private placements at issue were "walled off" from other areas of supervision, that argument is directly contradicted by the

section of the SCMs which directly and specifically addresses private placements and do in fact wall them off, setting specific procedures, and identifying specific supervisors.

The simple fact is that Guzzetti was never made responsible for supervising the transactions at issue as a result of the procedures in place at MS As a result, he cannot be found to have failed to discharge his supervisory responsibilities in relation to the transactions at issue. Therefore, the ID should be reversed and the charges against Guzzetti should be dismissed.

C. Branch Office Procedures.

The Branch Office Procedures Manual (BOM) referenced by the DOE was never authenticated at trial and there is no evidence supporting that same was in effect during Guzzetti's employment at MS Despite the DOEs arguments, the fact that the BOM references NFS does not prove that it was in effect and being used by MS during the relevant time period. MS's relationship with NFS began in 2005, which puts it outside of the statute of limitations. It is just as likely that the BOM presented by the DOE was a draft version that was never made effective, or if it was effective as of 2005, whether it was still in effect when Guzzetti became a supervisor.

The uncontroverted testimony of Guzzetti is that he had no recollection of ever even seeing the BOM, let alone if it was in effect. (Tr. 3005:17-20). The fact that Respondents did not object to its admittance into the record has absolutely no bearing on whether the manual was in effect and being used by MS at all, let alone during the relevant time period.

Despite this fact, the DOE cites to a section of the BOM which requires branch office managers to review the daily trade blotter to support their argument that Guzzetti "fail[ed] to conform to even minimal supervisory standards." (See, DOE Opposition to Individual Briefs ("DOE Opp. to IBs"), at 43). This argument has three fatal flaws and ignores the evidence.

First, there is no evidence that BOM was ever in effect at MS. Second, Guzzetti testified that he reviewed the trading blotter on a daily basis and there is no evidence to the contrary. (Tr. 3146:19-3147:3; 3225:11-22). Third, because the private placements were supervised by Smith or McGinn, and no other supervisor, the private placements did not appear on the daily trade blotters. As a result, Guzzetti was not responsible for review of these products, and they were not part of his daily activity review. (Tr. 3252:7-22). This is simply another attempt by the DOE to twist the facts to fit their fanciful narrative.

D. The ALJ Relied On Facts Which Have No Bearing On Whether Guzzetti Failed To Discharge His Supervisory Responsibilities.

The ALJ bases her decision regarding Guzzetti on 5 factors. First, the ALJ alleges that Guzzetti supervised the transactions because he and Mayer worked to secure a new clearing firm. (ID at 110). Locating a new clearing firm has nothing to do with supervision and is clearly operational in nature. (See, DOE Opp. to IBs, p. 40.)

Second, the ALJ found that Guzzetti was a supervisor because he attended a board meeting with McGinn, Smith, Livingston, and Mayer to discuss the firm's financial condition during the worst economic crisis of our lives. (ID at 110). Attendance at a board meeting to allegedly discuss MS financial issues is not a supervisory activity and is not evidence that Guzzetti's supervisory responsibilities.

Third, the ALJ based her decision on portions of compliance manuals which, as discussed in depth above and in Guzzetti's IB, which is incorporated by reference, are contradictory and provide no clear picture of who is responsible for supervising the transactions at issue. (ID at 110-111).

Fourth, the ALJ held that Guzzetti was a supervisor of the transactions at issue because he challenged the head of capital markets in an email. (ID at 111). It is unclear how a dispute between

two employees of the firm evidenced by a single sentence in one email is evidence that Guzzetti had supervisory responsibilities. An argument between two co-workers is evidence of nothing more than an argument between co-workers; it is not evidence of supervision.

Fifth, because the ALJ interpreted Guzzetti's morning emails to be an attempt to push products on the sales force, she found Guzzetti to have failed in discharging his supervisory responsibilities. (ID at 110). The evidence is clear that Guzzetti was not telling the sales force to push those products, or offer them to individuals that were not qualified. (Tr. 4622:10-23). The purpose of the morning availability emails was simply to inform individuals of what products were available for sale, i.e., the function of a sales manager, not of a line supervisor. (Tr. 4619:4-14).

In addition, while the ALJ may find it to be "too fine of a distinction" that Guzzetti was a supervisor, but not the supervisor of these transactions, that is the entire issue. (ID at 110). As the ALJ correctly held, "[i]n each situation a person's ***actual responsibilities*** and authority . . . will determine whether he . . . is a 'supervisor' for purposes of [Exchange Act] Sections 15(b)(4)(E) and (6)." (See, ID at 110; citing *Ronald S. Bloomfield*, 2014 SEC LEXIS 698, at *40 (quoting *John H. Gutfreund,* Exchange Act Release No. 31554, 1992 SEC LEXIS 2939, at *47 n.24 (Dec. 3, 1992)) (emphasis added)).

The ALJ appears to have made no distinction regarding Guzzetti's actual responsibilities, despite the fact that individuals in the securities industry often have multiple supervisors who are responsible for different area of the business. (Tr. 1136: 15-21). The ALJ simply states that she believes Guzzetti had the requisite control to make him a supervisor and provides no reasoning for coming to such a conclusion other than the factors discussed above.

Each of the factors discussed above, other than the contradictory compliance manuals, has absolutely nothing to do with supervision. If supervision is truly judged by control as the ALJ

alludes, the greatest proof of control is the ability to fire someone and Guzzetti did not have the power to fire anyone at MS (Tr. 4625:2-5). Therefore, the ID should be reversed and the charges against Guzzetti should be dismissed.

E. Redemption Policy.

The DOE alleges that "Guzzetti dismisses the relevance of the many emails he sent and received regarding redemption requests." Not only did Guzzetti dismiss the emails and alleged redemption policy, so did the ALJ, as she specifically found that there was no redemption policy. (ID at 93). As stated in Guzzetti's IB, the DOE's entire case against Guzzetti was almost entirely premised on its false allegation that the investments at issue had a redemption policy, and that policy was a glaring "red flag." The fact that the ALJ found that such a policy did not exist, eviscerates the DOE's claims against Guzzetti. Furthermore, the ALJ found that there was no evidence that a single investor was prevented from redeeming because a replacement could not be found. (ID at 93).

F. Guzzetti Did Not "Push" MS Products To The Selling Respondents.

Both the ALJ and the DOE ascribe significance to Guzzetti's morning notes emails that simply does not exist. The DOE alleges that the fact that Smith "liked the idea of [Guzzetti's] morning notes everyday" is somehow evidence of Guzzetti's leadership and supervision. While we agree that this evidence of Guzzetti's leadership as sales manager, the mere fact that he passed on information from Smith, McGinn, or Sicluna to the sales team is not evidence of supervision.

The DOE also puts an inordinate amount of significance on the fact that Guzzetti's emails were in all capitals. However, had the DOE actually looked through the bulk of Guzzetti's emails, they would have realized that many of Guzzetti's emails were written in caps no matter what the

subject matter. The capital letters are not evidence of emphasis on the part of Guzzetti, but rather an example of the manner in which he types his email messages.

The weakness of the DOE's argument is evidenced by the fact that after writing that the use of all caps was an example of "Guzzetti strongly encourage[ing] brokers to recommend McGinn Smith Securities to their customers" the DOE does not provide an example. The fact of the matter is, there is not a single email where Guzzetti tells the brokers "sell these products."

Guzzetti was not pushing any products on anyone. His morning note emails simply informed the sales force of the products that were available. (Tr. 4622:10-23). (Guzzetti received this information from Smith, McGinn or Sicluna and passed it on to the sales force. Tr. 4621:7-14). Guzzetti was telling the brokers "if you have an accredited investor in [a money market account], that does not have to keep the money liquid" the FAIN investment may appear to be an attractive choice. (Tr. 3029: 15-24).

Guzzetti was certainly not telling brokers to make unsuitable recommendations to their clients and his morning note emails certainly do not provide proof that Mr. Guzzetti was responsible for supervising the transactions at issue in this matter. Therefore, the ID should be reversed and the charges against Guzzetti should be dismissed.

VI. The DOE Failed To Address The Fact That The Case Law Relied On By The ALJ Is Inapposite To The Matter At Hand.

Through its failure to even address the argument, the DOE concedes that the case law relied on by the ALJ are inapposite to the matter at hand. For example, *In the Matter of Gutfreund, et al.*, No. 3-7930, 1992 SEC LEXIS 2939, 51 S.E.C. 93, 113 (Dec. 3, 1992) the Respondent, Mr. Fuerstein, was found to have gained supervisory responsibility ***only*** after he became "involved in formulating management's response to the problem. (*In the Matter of Gutfreund, et al.*, No. 3-7930, 1992 SEC LEXIS 2939 at 48-49 (Dec. 3, 1992)). Unlike the matter at hand, Respondent

Fuerstein's was saddled with the responsibility to insure that the misconduct was addressed by reason of his involvement in addressing the issue; he did not.

In the Matter of Bloomfield, the Respondent was found to have committed a supervisory violation because he was the direct supervisor of the individuals alleged to have committed violations and was involved in formulating the firm's response to concerns expressed by its clearing firm, thereby creating an affirmative obligation to follow up on those concerns. (*In the Matier of Bloomfield, et. al.*, No. 3-387 1, 20 11 WL 159 1553 (Apr. 26, 20 11), aff'd.20 1 4 WL 768828 (S.E.C. Feb. 27, 20 14)).

In *Kolar*, the Respondent was found to have failed in discharging his duty to supervise because his supervisor "entrusted Kolar with the specific responsibility of investigating the serious allegations that had been made against [the broker]." (*In the Matter of Kolar*, No. 3-9570, 2002 SEC LEXIS 3420, 17, 55 S.E.C. 1009, 10 18 (S.E.C. June 26, 2002)). Kolar's supervisor testified that he "relied on and trusted Kolar's judgment with respect to that investigation." (Id.) Therefore, on appeal the Commission found that "in that instance, Kolar was specifically vested with supervisory authority." (Id.) Guzzetti was never "specifically vested with supervisory authority" in connection with the transaction at issue in this matter, and any reliance on *Kolar* is misplaced.

Each of these cases is inapposite to the matter at hand and it was reversible error for the ALJ to use this case law as the basis of her decision against Guzzetti. There is no evidence that Guzzetti was tasked with supervising the transactions at issue or that he was involved with formulating any plans to address issues created by these offerings. Therefore, the ID should be reversed and the charges against Guzzetti should be dismissed.

VII. There Was Insufficient Evidence To Support A Year Long Suspension Of Guzzetti.

Although this argument was unaddressed by the DOE in their Opposition to Guzzetti's individual brief, it is important to once again note that the evidence admitted into the record was insufficient to support a yearlong suspension. There is no evidence of any supervisory failure of Guzzetti within the applicable statute of limitations, i.e., after September 23, 2008. The only evidence cited by the ALJ after that date are a few emails related to the alleged redemption policy, which the ALJ found did not exist.

The DOE's evidence established that there were no sales of the Four Funds by these brokers after the disclosures by McGinn and Smith, and limited sales of the trust offerings. The number and nature of these transactions do not support a year suspension for Guzzetti, in particular when he was not the individual supervising or approving the sales. As a result, it was an error of law to find that Guzzetti violated Exchange Act Section 15(b)(6)(A)(i), in conjunction with Section 15(b)(4)(E), by failing to supervise Selling Respondents for these transactions.

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CONCLUSION

For the reasons stated herein, and in Respondents Joint and Individual Briefs and Replies, the ALJ's initial decision should be reversed and all charges against Guzzetti should be dismissed in their entirety.

Dated: October 28, 2015

Respectfully submitted,

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October 28, 2015

VIA FEDEX AND FACSIMILE

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Re: In the Matter of Donald J. Anthony, Jr., *et al.*
Admin. Proceeding No. 3-15514

Dear Sir/Madam:

This firm represents Respondent Andrew Guzzetti in the above referenced matter. Enclosed for filing you will find an original and three (3) copies of the following documents:

1. Respondent Guzzetti's Individual Reply Brief; and
2. Certificate of Service (only one copy included)

If there are any issues with respect to the above referenced documents, please contact the undersigned at our Verona, New Jersey office.

Respectfully,

s/ Michael D. Handelsman

Michael D. Handelsman

cc: David Stoelting, Esq. (via FedEx and Email)
All other Respondents' Counsel (via Email)

CERTIFICATE OF SERVICE

I, Michael D. Handelsman, Esq., hereby certify that on this 28th day of October 2015, I served a true and accurate copy of Respondent Andrew Guzzetti's Individual Reply Brief, upon the following:

Original and three (3) copies via Federal Express and one (1) copy via Facsimile to:

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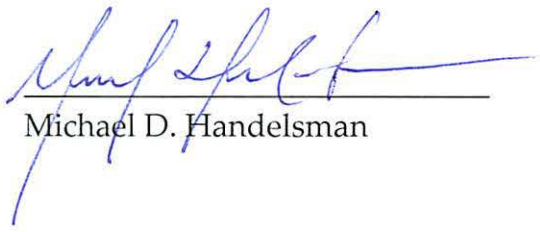

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