

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. MAYER, PHILIP S. RABINOVICH, and RYAN C. ROGERS,

Respondents.

**ADMINISTRATIVE PROCEEDING**

**File No. 3-15514**

**ANSWER OF ANDREW G. GUZZETTI**

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Respondent Andrew G. Guzzetti, by and through his attorneys, Sallah Astarita & Cox, LLC, in response to the allegations of the Order Instituting Administrative and Cease-and-Desist Proceedings in the above referenced matter, alleges as follows:

**OVERVIEW**

Mr. Guzzetti is a 30 year veteran of the securities industry. He has been married for 44 years, has two children and four grandchildren. He spent first 13 years of his post-college life as a football and baseball coach in upstate New York and entered the securities industry in 1983 at Shearson & Company. Mr. Guzzetti remained with that entity, through its mergers, until 2002. During that time he built a reputation for hiring and training financial consultants, and for a period of time was with Shearson's National Training Department in Chicago. He was also a branch office manager, and was responsible for training new managers. In 2002 he left the securities industry and returned to academia.

In September 2004, Mr. Guzzetti was hired by McGinn-Smith as the head of retail. His task was to transition the firm from a transactional, commission based business to a fee-based, management of accounts business model – in other words, transitioning the financial consultants

to be exactly that – consultants rather than salesmen. Mr. Guzzetti was also asked to oversee the recruiting of new brokers, retaining a new clearing firm, creating a new wealth management platform for the fee-based business. In 2007 and 2008 he spent the majority of his time developing an investment program for baby-boomers and post-retirement career and investment plans.

Prior to the institution of the proceedings, Mr. Guzzetti had no disciplinary or regulatory history.

Mr. Guzzetti's involvement with the Four Funds and Trusts at issue herein was non-existent. He was not involved in the creation or management of the funds. While he was a supervisor of the MS & Co. Clifton Park office, his supervisory responsibility did not include the Four Funds or Trusts at issue, which were supervised by Mr. McGinn and Mr. Smith. Mr. Guzzetti's involvement was to act as a messenger between management who controlled the funds and the brokers, simply passing along information, or setting up conference calls. He did not make any presentations regarding the funds, did not approve or review subscription agreements nor did he supervise the activities of the funds or the sales of the funds in any way. In fact, he did not become a supervisor of anyone, for any purpose, until October 2006.

Mr. Guzzetti did not have any substantive information regarding the Funds or the Trusts, he had no decision making authority regarding the investments and questions regarding the funds and trusts were directed to David Smith or Tim McGinn.

Although the Division now claims that Mr. Guzzetti was aware of "red flags" which should have caused him to conduct an investigation of the products, such investigations were beyond the scope of his duties, but Mr. Guzzetti was not aware of any such red flags, was not

aware of any misrepresentations that the Division alleges were made, and had no knowledge of any conduct by the brokers that would constitute a violation of the securities laws.

In fact, Mr. Guzzetti had every reason to believe that the investments at issue were proper and legitimate.

### **RESPONDENTS**

1. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 1 of the Order.

2. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 2 of the Order.

3. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 3 of the Order.

4. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 4 of the Order.

5. Mr. Guzzetti admits the allegations contained in paragraph 5 of the Order.

6. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 6 of the Order.

7. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 7 of the Order.

8. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 8 of the Order.

9. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 9 of the Order.

10. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 10 of the Order.

11. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 11 of the Order.

12. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 12 of the Order.

13. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 13 of the Order.

14. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 14 of the Order.

15. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 15 of the Order.

16. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to allegations contained in paragraph 16 of the Order.

17. Mr. Guzzetti lacks sufficient knowledge and information to allow him to form a belief as to the allegations contained in paragraph 17 of the Order.

18. Mr. Guzzetti lacks sufficient knowledge and information to allow him to form a belief as to the allegations contained in paragraph 18 of the Order.

19. Mr. Guzzetti lacks sufficient knowledge and information to allow him to form a belief as to the allegations contained in paragraph 19 of the Order.

20. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 20 of the Order in as much as they relate to other Respondents in this matter. Mr. Guzzetti denies the allegations contained in paragraph 20

of the Order in as much as they relate to him, or are designed to impute knowledge to him, including the allegations of sub-paragraph (c). As stated above, Mr. Guzzetti did not have supervisory responsibility over the activities related to the Four Funds or the Trusts.

21. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 21 of the Order.

22. Mr. Guzzetti lacks sufficient information and knowledge to form a belief as to the allegations contained in paragraph 22 of the Order but believes that Smith prepared the private placement memorandum ("PPMs"), set the terms of the offerings, and made all the investment decisions.

23. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 23 of the Order.

24. Mr. Guzzetti neither admits nor denies the allegations of paragraph 24 of the Order as same purports to quote "the PPMs." The documents speak for themselves.

25. Mr. Guzzetti lacks sufficient information and knowledge to form a belief as to the allegations contained in paragraph 25 of the Order in as much as they pertain to the investment experience of Smith. Mr. Guzzetti denies the remaining allegations of the paragraph. As to the portion which purports to quote "the PPMs" the documents speak for themselves.

26. Mr. Guzzetti neither admits nor denies the allegations of paragraph 26 of the Order as same purports to quote "the PPMs" and ancillary documents. The documents speak for themselves.

27. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 27 of the Order.

28. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 28 of the Order.

29. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 29 of the Order.

30. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegation contained in paragraph 30 of the Order but Mr. Guzzetti believes that McGinn returned to MS & Co. in 2006. Upon information and belief, Mr. Guzzetti believes that the allegation that trust offerings were created to fund entities engaged in specific areas, such as burglar alarm service, triple play service, or luxury cruises is true.

31. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to all of the allegations contained in paragraph 31 of the Order.

32. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to all of the allegations contained in paragraph 32 of the Order.

33. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to all of the allegations contained in paragraph 32 of the Order.

34. Mr. Guzzetti denies the allegations contained in paragraph 34 of the Order.

35. Mr. Guzzetti denies the allegations contained in paragraph 35 of the Order in so far as the allegations within pertain to him personally. Mr. Guzzetti lacks sufficient information to enable him to form a belief as to the allegations regarding the actions of the other respondents.

36. Mr. Guzzetti denies the allegations contained in paragraph 36 of the Order.

37. Mr. Guzzetti denies the allegations contained in paragraph 37 of the Order.

38. Mr. Guzzetti is not required to respond to the allegations contained in paragraph 38 of the Order as same do not pertain to him. To the extent a response is required, Mr. Guzzetti denies the allegations contained in paragraph 38 of the Order.

39. Mr. Guzzetti denies the allegations contained in paragraph 39 of the Order.

40. Mr. Guzzetti denies the allegations contained in paragraph 40 of the Order.

41. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 41 of the Order.

42. Mr. Guzzetti lacks sufficient information and knowledge to enable him to form a belief as to the allegations contained in paragraph 42 of the Order.

43. Mr. Guzzetti denies the allegations contained in paragraph 43 of the Order.

44. Mr. Guzzetti denies the allegations contained in paragraph 44 of the Order.

45. Mr. Guzzetti denies the allegations contained within paragraph 45 of the Order.

46. Mr. Guzzetti denies the allegations contained in paragraph 46 of the Order as to the occurrence of a meeting in that general time period but cannot confirm the date.

47. Mr. Guzzetti denies the allegations contained in paragraph 47 of the Order.

48. Mr. Guzzetti denies the allegations contained in paragraph 48 of the Order.

49. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 49 of the Order.

50. Mr. Guzzetti denies the allegations contained in paragraph 50 of the Order.

51. Mr. Guzzetti denies the allegations contained in paragraph 51 of the Order.

52. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 52 of the Order.

53. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 53 of the Order.

54. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 54 of the Order.

55. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 55 of the Order.

56. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 56 of the Order.

57. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 57 of the Order.

58. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 58 of the Order.

59. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 59 of the Order.

60. Mr. Guzzetti lacks sufficient information and knowledge to enable to form a belief as to the allegations contained in paragraph 60 of the Order.

61. Mr. Guzzetti denies the allegations contained in paragraph 61 of the Order, Mr. Guzzetti was not responsible for supervising “registered representatives with regards to the Four Funds and Trust Offerings”, and did not supervise any representatives in any way until approximately October 2006.

62. Mr. Guzzetti denies the allegations contained in paragraph 62 of the Order, and specifically denies that he had “direct supervisory responsibility of the Respondents” or that he “issu[ed] instructions and guidance” as to the transactions at issue. Mr. Guzzetti also denies that



he was responsible for “awarding commissions” as alleged in paragraph 62 of the Order. Mr. Guzzetti admits that after October 2006 he was a supervisor for some of the MS & Co. brokers for their general securities activities, but denies that he had any supervisory responsibility for the Four Funds and the Trusts.

63. Mr. Guzzetti admits that he forwarded emails to brokers summarizing products that were available, as alleged in paragraph 63 of the Order, but denies authoring the emails and summaries. As to the email which is quoted, the full email, and the context in which it was written are in documents, which speak for themselves.

64. Mr. Guzzetti denies the allegations contained in paragraph 64 of the Order.

65. Mr. Guzzetti denies the allegations contained in paragraph 65 of the Order.

66. Mr. Guzzetti lacks sufficient information and knowledge to form a belief as to the allegations contained in paragraph 66 of the Order relating to the actions of other Respondents. Mr. Guzzetti denies the allegations contained in paragraph 66 in as far as they may apply or relate to him personally.

67. Mr. Guzzetti lacks sufficient information and knowledge to form a belief as to the allegations contained in paragraph 67 of the Order relating to the actions of other Respondents. Mr. Guzzetti denies the allegations contained in paragraph 67 in as far as they may apply or relate to him personally.

68. Mr. Guzzetti denies the allegations contained in paragraph 68 of the Order.

#### **AFFIRMATIVE DEFENSES**

1. The OIP fails to adequately allege any misrepresentation or omission of a material fact made by the Mr. Guzzetti and fails to adequately allege that the Mr. Guzzetti knew of any misrepresentation or omission of a material fact by any other person.

2. The OIP fails to allege that the Mr. Guzzetti was aware that any of the broker respondents had made any misrepresentation or omission of a material fact or made by any other Respondent of which the Mr. Guzzetti had knowledge.

3. The OIP fails to allege any reliance by any investor on any misrepresentation or omission that Mr. Guzzetti was aware of, or had control over.

4. Mr. Guzzetti did not knowingly assist in the commission of securities violations. Mr. Guzzetti did not act recklessly nor was he a culpable participant in any of the alleged violations.

5. Mr. Guzzetti performed his supervisory responsibilities in accordance with the scope of his authority and did so in a reasonable and diligent fashion.

6. The broker-dealer had sufficient policies and procedures in place to prevent and detect violations, and Mr. Guzzetti followed those procedures and policies to the extent they applied to his supervisory responsibilities.

7. Mr. Guzzetti reasonably discharged his duties pursuant to the firm's procedures and system.

8. Mr. Guzzetti had no reasonable cause to believe that the firm's procedures and system were not being complied with.

9. Mr. Guzzetti did not have supervisory responsibility, ability, authority or control regarding the products at issue nor for the business activity at issue.

10. Mr. Guzzetti did not have the authority or responsibility to prevent the violations which are alleged to have occurred in the OIP.

11. The OIP fails to make specific allegations against specific Respondents, therefore making it difficult to adequately respond to the allegations as contained in the order.

12. The OIP fails to state a claim upon which relief can be granted.

13. There is no basis for a cease and desist order against the Mr. Guzzetti as there is no risk of future violations.

14. The claims set forth in the OIP against the Mr. Guzzetti are barred by the statute of limitations.

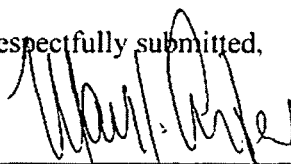
15. The claims set forth in the OIP against the Mr. Guzzetti are barred by the doctrines of waiver, estoppel and laches.

16. Mr. Guzzetti reserves the right to amend this answer at the matter proceeds and additional information becomes available.

WHEREFORE, it is respectfully requested that the relief sought in the Order Instituting Proceedings be denied in its entirety and that the Mr. Guzzetti be awarded such additional relief as may be deemed appropriate.

Dated: November 15, 2013

Respectfully submitted,



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Mark J. Astarita

SALLAH, ASTARITA & COX, LLC  
*Attorneys for Respondent Andrew Guzzetti*  
60 Pompton Avenue  
Verona, New Jersey 07044  
973-559-5566