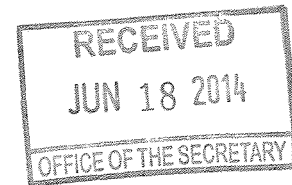


United States of America  
Before the Securities Exchange Commission

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Administrative Proceeding File 3-15737  
In the Matter of Thomas C. Gonnella, Respondent

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**TRIAL BRIEF AND MOTION IN LIMINE ON BEHALF OF  
RESPONDENT THOMAS C. GONNELLA**

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A. Introduction and Motion In Limine to Preclude Testimony of Ryan King

By its claim in this case, the Division of Enforcement (the “Division”) seeks to transform a young bond trader’s violation of his employer’s internal policies into willful violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, without regard to plain and prudent distinctions between a workplace misstep justifying employment consequences and a fraud on the market requiring a regulatory remedy. Undergirding the Division’s over-aggressive analysis of the conduct at issue is an over-aggressive and newly-minted tactic which strikes at the fundamental fairness of this proceeding and counsels in favor of preclusion of the testimony of a cooperating witness.

In 2011, Respondent Thomas C. Gonnella, was a 26 year-old trader at Barclays with an unblemished record, excellent credentials and an impeccable reputation. Gonnella traded in esoteric asset-backed bonds which were typically bought and sold within a relatively small universe. One of Barclays’ general methods of profit maximization was an “aged inventory policy,” by which it sought to induce its traders not to hold a security for too long or suffer a charge affecting the traders’ bottom line. From time to time, Gonnella received reports from his superiors alerting him to aged bonds in his account. As a result, Gonnella from time to time offered the bonds to others within the relevant arena as a way to avoid a charge. Gonnella was not thereby trying to keep devalued bonds off of Barclays’ books or conceal Barclays’ ownership of the bonds. To the contrary, Gonnella believed the bonds were a good investment for Barclays, and so advised potential counter-parties precisely to convince them to buy them and assume the risk of ownership.

During a six-month period in 2011, Gonnella sold a number of bonds to one of the counter-parties he had approached, Ryan King of Gleacher & Company. In so doing, Gonnella made clear that he considered the bonds a good investment, was selling them solely to avoid a charge under Barclays' aged inventory policy, and would likely buy them from King in the future. King did not buy all of the bonds offered to him by Gonnella, sold them back to Gonnella either the following day or weeks later, and took a loss on at least one of the bonds. Whether King owned the bonds on behalf of Gleacher for a day or a period of weeks, it was understood that Gleacher had beneficial ownership of the bonds during that time, and had assumed the risk (and potential benefits) associated with ownership. In fact, when the transactions came to the attention of King's experienced supervisor at Gleacher, Robert Tirschwell, he was upset that King had acquired the bonds as "a favor" to Gonnella and had thereby assumed "the risk" associated with the bonds without proper analysis:

So I didn't ask [King] about the exact nature of the favor [he did for Gonnella] but as he offered it up to me, given my experience in life, I felt like you bought a bond and you gave me the risk of a bond you didn't do your homework on, not okay. So that bond needs to go, we need to have a confrontation on how we do business the right way. . . . we lose a lot of money because they didn't do their homework.

Deposition of Robert Tirschwell at 35 [Attached as Exhibit A].

The testimony of King and Tirschwell in their depositions to the Division about the steps taken by Gleacher to sell some of the bonds and rid itself of the associated risks are completely contradictory. According to King, he attempted to extricate himself from the transactions by telling Gonnella that Tirschwell would register a complaint with Gonnella's supervisor if Gonnella did not buy the bonds. Deposition of Ryan King at 50-52 [Attached as

Exhibit B]. According to King, Tirschwell directed that the sale to Barclays be routed through an inter-dealer broker. Exhibit B at 81-83, 91.

Tirschwell acknowledged in his deposition that he was upset with King's purchase of the bonds and the associated assumption of risk, but testified that he had issued no mandate that *Barclays* buy back the bond (as opposed to any other counter-party), did not threaten to call Gonnella's supervisor at Barclays, and did not instruct King to route the trade with Barclays through an inter-dealer broker. Exhibit A at 43-44, 56.

For his part, Gonnella believed King when he said that Tirschwell had directed the use of inter-dealer brokers to consummate the last of the transactions, and believed King when he said that Tirschwell had threatened to contact his supervisor. In the end, though Gonnella believed that his sales of the bonds to King were a legitimate way to circumvent Barclays' aged inventory policy in the first place, King's report of his purported conversations with Tirschwell scared him. Gonnella engaged in conduct, such as use of unrecorded means to speak to King, that violated Barclays' policies or carelessly gave the appearance of doing so. Either way, Gonnella will not claim at the hearing in this matter that Barclays was without cause to terminate his employment. Rather, Gonnella will argue vigorously that his violation of Barclays' rules does not justify the Division's charges of fraud on the market.

Meanwhile, the Division is left with the key contradictions between King and Tirschwell. One of them plainly lied under oath in giving deposition testimony. Because the subjects of the perjury are conversations to which only King and Tirschwell were privy, one would hope that the Division would have erred on the side of fairness, would have credited Tirschwell's view that Gleacher had assumed the risk associated with the bonds, and would not

have charged Gonnella. Instead, the Division has chosen to implement a newly-minted technique at the hearing of this matter: it has entered into cooperation and settlement agreements with King that leave open the amount of his civil penalty until after he testifies against Gonnella.

The Division has chosen not to identify Tirschwell as a prospective witness at the hearing in this matter, nor his prior testimony as a prospective exhibit. The Division has also chosen not to identify its cooperation and settlement agreements with King as prospective exhibits. The settlement agreement, which *Gonnella* intends to offer at the hearing [attached hereto as Exhibit C], provides as follows in Part IV: King “agrees to additional proceedings in this proceeding to determine what, if any, civil penalties . . . are in the public interest.”

For many years, the United States Department of Justice has required its cooperating defendants to plead guilty to the crimes they committed, but leaves sentence until after the defendant’s cooperation is complete, that is, until the defendant has completed giving testimony at any and all trials of co-defendants. The government thereby argues that the cooperator’s incentive to be truthful is enhanced because a federal judge will typically impose sentence only after the cooperator’s testimony is complete and can be evaluated. The Division has attempted to import that protocol into this proceeding, but the Division misses the key distinction that makes the protocol permissible in the context of criminal cases, and impermissible here. In criminal cases, sentence is imposed by a representative of the judicial branch of government, a judge appointed pursuant to Article III of the Constitution, who supervises the case. By contrast, the Division here has reserved the power to decide King’s penalty to the agency, and then only after King gives testimony against Gonnella. While the Division has certain discretion in settling its cases against respondents, it crosses the line when it

enters into cooperation and settlement agreements<sup>1</sup> that keep a material ingredient of the penalty preserved to the executive branch.

In effectively delegating King's penalty to the agency, the Division encroaches on a quintessential judicial function. In *United States v. Mistretta*, 488 U.S. 361, 381-82 (1989), the Supreme Court found that the “greatest security against tyranny – the accumulation of excessive authority in a single Branch – lies . . . in a carefully crafted system of checked and balanced power within each branch.” The checks and balances inherent in our constitutional separation of powers are a “self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of another.” *Id.*

Here, the Division transgresses this principle by permitting an agency of the Executive Branch to investigate and prosecute a securities violation *and* to determine a sanction for that violation *after* it has determined whether it is satisfied with the respondent/cooperator’s testimony. It effectively “unites the power to prosecute and the power to sentence within one Branch.” *Id.* at 391 n.17. The Supreme Court has put it thus:

It is this concern of encroachment and aggrandizement that has animated our separation-of-powers jurisprudence and aroused our vigilance against the “hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power.” *Ibid.* Accordingly, we have not hesitated to strike down provisions of law that either accrete to a single Branch powers more appropriately diffused among separate Branches or that undermine the authority and independence of one or another coordinate Branch. . . . [W]e have upheld statutory provisions that to some degree commingle the functions of the Branches, but that pose no danger of either aggrandizement or encroachment.

*Mistretta*, 488 U.S. at 382.

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<sup>1</sup> The Cooperation Agreement is attached as Exhibit D.

Precluding King's testimony is the only remedy that sufficiently preserves the independence and fundamental fairness of these proceedings, and protects Gonnella from the risk of false testimony created by this apparently newly-minted wrinkle implemented by the Division.

B. Gonnella Did not Violate the Anti-Fraud Provisions

In relevant part, Section 10(b) forbids the use of any "manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. § 78j(b). Rule 10b-5 makes it unlawful, in relevant part (a) to employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.<sup>2</sup> 17 C.F.R. § 240.10b-5.

Gonnella's sales to King were entered into to circumvent or evade Barclay's internal policies and procedures. In that vein, they, at most, violated the spirit and possibly the letter of Barclay's aged inventory policy. But that violation of an employer's regulatory policies cannot become shoehorned into securities fraud under the guise of Section 17 and 10b liability.

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<sup>2</sup> Liability under Section 17(a) differs somewhat from that expressed in Rule 10b-5, but for the purposes of this trial brief, the differences are not significant. The Division also alleges that Gonnella caused Barclays to make and keep inaccurate books and records, in violation of the statutory and rule-based requirement that broker-dealers make and keep ledgers and other documents reflecting an accurate assessment of the firm's assets and liabilities. That determination flows from the primary question of whether Gonnella engaged in fraudulent conduct under Section 10b, and so we focus in this Brief on that primary question.

Section 10b is not a catchall<sup>3</sup> to regulate all manner of deceptive conduct that occurs in an employer-employee context at a broker-dealer. Employment disputes and banal violations of internal policies do not become securities fraud merely because they occur at a broker-dealer, as Section 10(b) and Rule 10b5 (as well as Section 17a) are not mechanisms to police activity that implicates an employer and its employee's compliance with internal policy. *Rodriguez-Ortiz v. Margo Caribe, Inc.*, 490 F.3d 92 (1st Cir. 2007). Instead, the primary purpose of Section 10b is to protect the investing public from trading practices inimical to fair dealing. *See United States v. Bilzerian*, 926 F.2d 1285, 1297 (2d Cir. 1991) (citing *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 477-78 (1977)); *Travis v Anthes Imperial, Ltd.*, 473 F.2d 515 (8th Cir. 1973); *Fox v Prudent Resources Trust*, 382 F. Supp. 81 (E.D. Pa. 1974); *SEC v M. A. Lundy Associates*, 362 F Supp 226 (D. R.I. 1973).

Section 10b was not designed to regulate or govern corporate management or mismanagement. *See Superintendent of Ins. v. Bankers Life & Casualty Co.*, 404 U.S. 6 (1971); *Acito v. IMCERA Group*, 47 F.3d 47, 54 (2d Cir. 2005); *St. Louis Union Trust Co. v Merrill Lynch, Pierce, Fenner & Smith, Inc.* 562 F. 2d 1040, 1048 (8th Cir. 1977). Similarly, issues and conduct relating to employee compensation or incentives are not proper subjects of a Section 10b prosecution. *See Acito*, 47 F.3d at 54. Nor was it intended to bring within its ambit "every imaginable breach of fiduciary duty in connection with a securities transaction." *St. Louis Union*,

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<sup>3</sup> Rule 10b-5 has been described as a "catchall anti-fraud provision" *Herman & MacLean v. Huddleston*, 459 U.S. 375, 382 (1983), though it has also been noted that what it "catches" must be fraud. *See Chiarella v. United States*, 445 U.S. 222, 232 (1980) (noting that "not every instance of financial unfairness constitutes fraudulent activity under Section 10b"). More, courts have limited the application of Rule 10b-5 to conduct that violated Section 10b. *E.g. United States v. O'Hagan*, 521 U.S. 642, 661 (1997); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 214 (1976); *SEC v. Dorozhko*, 606 F. Supp. 2d 321, 328 (S.D.N.Y. 2008).



562 F.2d at 1048. More, Section 10b does not require that individuals or entities that enter into securities transactions freely disclose their underlying motives or subjective beliefs about entering into the transaction. *See Alabama Farm Bureau Mut. Casualty Co. v American Fidelity Life Ins. Co.*, 606 F.2d 602 (5th Cir. 1979).

That is not to say that liability under Section 10b and Rule 10b-5 cannot be derived from an employee's breach of duties owed to an employer, from misappropriation of material information, or from a deprivation of the employee's honest services. *E.g.*, *SEC v. Talbot*, 530 F.3d 1085 (9th Cir. 2008); *SEC v. Clark*, 915 F.2d 439, 443 (9th Cir. 1990); *United States v. Newman*, 664 F.2d 12 (2d Cir. 1981). Those cases evince an independent violation of a regulatory statute in the context of an employee-employer relationship. Here, however, the Division's complaint wrongly seeks to convert an employee's purported dereliction, subversion or breach of the employer's internal policy into an independent violation of an external statute.

Even if the charged violation was a proper conceptual framework for the prosecution of this type of conduct, the lack of a material misstatement or omission would be fatal. Materiality in the context of securities fraud refers to the impact of the misstatement on a decision to buy or sell a security. *See Basic v. Levinson*, 485 U.S. 224, 231-34, 240 (1988) (holding that material facts under the aegis of securities fraud are those that a reasonable investor would consider important or significant in making a trading decision); *Bilzerian*, 926 F.2d at 1298 (setting forth materiality standard as facts a "reasonable shareholder would consider [] important in making an investment decision") (citing *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976))." A reasonable investor would not have considered important or significant Gonnella's efforts to avoid Barclays' aged inventory policy by selling the bonds to King.

Stock parking is the *sine qua non* of the Division's case. As much as the Division may try to argue to the contrary, if it cannot prove parking on the facts at issue, its claim cannot be sustained. To prevail in this matter, the Division needs to show a non-shift in risk and benefits of ownership, an adequate bad-faith motive and a real agreement to reverse the transaction as opposed to an informal expectation. If the Division fails to prove *any* one of those three, then its charges fail. The fact that it will not be able to prove any of those three characteristics is dispositive and makes this case not a particularly close call.

In *Yoshikawa v. SEC*, 192 F.3d 1209 (9th Cir. 1999), the Ninth Circuit reversed an SEC finding that a broker-dealer violated NASD rules by engaging in illegal parking to evade net capital requirements set by the SEC and Paine Webber, the broker-dealer's clearing firm. The broker had engineered a series of trades between the firm's inventory account, his own personal trading account, and his retirement account, and subsequent repurchases shortly thereafter, usually with minor price differentials and admittedly for the purpose of compliance with external net capital requirements. *Id.* at 1210-11. The NASD had found that the broker-dealer engaged in the sham securities transactions at issue in order to "conceal true ownership" of the stocks and impermissibly prevent the firm from falling below net capital requirements, thus misrepresenting the true state of the firm's finances, although it notably dismissed the NASD's allegations of fraud.

After reviewing numerous cases that discussed or dealt with parking in one form or another, the Court found that parking has three elements: "(1) a pre-arrangement to sell and then buy back securities [to conceal true ownership]; (2) on the same, or substantially the same, terms [thus keeping the market risk entirely on the seller]; (3) for a bad-faith purpose,

accomplished through a sham transaction in which nominal title is transferred to the purported buyer while the economic incidents of ownership are left with the purported seller.” *Yoshikawa*, 192 F.3d at 1211. But ultimately, only one of the five transactions possibly fit those parameters, and that trade was where the broker admitted that the repurchase was effectuated merely to “return” the shares to the firm’s inventory account after a “temporary” sale, which could have indicated a bad-faith pre-arrangement in the broker’s own mind. *See id.* at 1215.

Elsewhere, in *United States v. Jones*, 900 F.2d 512, 515 (2d Cir. 1990), the Second Circuit defined parking as essentially “a purported transfer of ownership in securities combined with a secret agreement providing the “seller” with the right to repurchase them at a later date. The ‘seller’ receives the tax benefits of a loss realized by the ‘sale’; the ‘buyer’ is compensated for the ‘cost of carrying’ the securities. Since the agreement to resell ensures that the ‘seller’ never loses control of the securities, the government considers ‘parking’ a form of tax and securities fraud.” Thus, even though stock parking is not an activity explicitly proscribed by statute, if done in a certain way, it can violate certain statutory provisions the same as any fraudulent scheme might, even if not addressed in explicit terms. *See Bilzerian*, 926 F.2d at 1299-1301 (upholding conviction premised on parking scheme relating to reporting requirements of beneficial ownership). Thus, parking stock will rise to the level of a statutory violation if it implicates the sorts of representations that bear on investment decisions, and would thus become securities fraud.

Similarly, in *United States v. Russo*, 74 F.3d 1383, 1388 (2d Cir. 1996), the Second Circuit upheld a securities fraud conviction premised, in part, on the following parking scheme in the service of a larger stock manipulation:

Petrokansky engaged in another method of "hiding" *Lopat* and *EAS* stock from the market. On instructions from Russo, Petrokansky placed *Lopat* or *EAS* with customers by guaranteeing them that K&C would buy the stock back in one or two weeks at a small profit of an eighth or sixteenth of a dollar per share. When the time came to buy back the stock, Petrokansky presented sell tickets reflecting a higher price than the customer had paid or than was posted on NASDAQ that day. Petrokansky would often immediately park the same stock with a new customer.

Parking *Lopat* and *EAS* stock accomplished the same purpose as making unauthorized placements: it kept *Lopat* and *EAS* off the market and out of K&C's account. In so doing, the parking created a false impression of *Lopat's* and *EAS's* vitality on the market and freed K&C from responsibility for the stock. Unlike the unauthorized placements, however, the parking bore a cost to K&C, namely, the profits it paid out to the customers who held the stock.

The evils and risks of parking are apparent on the face of these facts in ways that are simply not present here, because the conduct at issue effected a fraud on the market and the investing public.<sup>4</sup> The Court in *Russo* did not offer a precise definition of what parking is and is not, but affirmed because the government's theory of parking remained constant: the broker-dealer employer of the three defendants "perpetrated a fraud on the market by divorcing the financial risk of owning *Lopat* and *EAS* from legal ownership of the stock." *Id.* at 1393.

Filtered through the prism of *Yoshikawa*, Gonnella's trades with King fall short of the definition of parking articulated in that case and as understood in others. Upholding the Division's claim here requires a finding of an agreement, a sham transaction and parking. There was no agreement, the transactions were bona fide, and there was no parking.

As the Court in *Yoshikawa* noted, merely because a transaction is entered into with a particular purpose in mind – whether that motive is to avoid an aged inventory charge or

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<sup>4</sup> *Russo* also noted that parking may or may not rise to the level of a 10b-5 violation. 74 F.3d at 1393. If even certain forms of stock parking do not constitute a 10b-5 violation, then neither does Gonnella's conduct – which indisputably is not stock parking.

to prevent net capital levels from falling below or rising above a certain threshold – does not mean that the transaction is illegitimate, illegal or that it constitutes parking. 192 F.3d at 1219. “There is nothing dishonorable about such conduct; if there were, securities trading could never take place.” *Id.* The securities transactions become parking only when, independent of whether an improper motive exists, they are not “actual, bona fide transactions just like any other in the marketplace.” *See id.* Like in *Yoshikawa*, that Gonnella ended up repurchasing some of the bonds shortly after he sold them is not relevant or illegitimate in itself, absent proof that they were not genuine, bona fide trades in which Gleacher shouldered the risk and benefits of ownership for the period in which it held the bonds.

Plainly, Gonnella’s trades with King lack the hallmarks of parking discussed in these cases. Because Gleacher ran the financial risk and concomitant benefits of ownership of the bonds at issue, there was no divorce between risk (or benefit) and ownership; they remained unified. More, as the hearing will establish, the discussions between King and Gonnella are peppered with qualifiers like “maybe” and “likely,” terms which are antithetical to the definite and precise language that characterizes agreements by sophisticated players in the commercial marketplace. No one receiving an assurance or representation that a counter-party would “likely” take some course of action would believe that such an expression of intent would qualify as a binding agreement. Simply put, no one (and certainly not the likes of Barclays) does business based on the confidence of “likelies.”

There was no agreement or pre-arrangement because the most important terms and conditions were *not* agreed upon in advance. At most, Gonnella created in King an expectation that Gonnella would repurchase the bonds. Whether King was objectively

reasonable in that expectation is not material, because even if so, it was still only an expectation. In New York (and virtually any jurisdiction), an expression of interest to effect further action does not constitute an agreement. In fact, such a rule would lead to absurd results and would virtually shut down commerce. And while an agreement to purchase securities need not be in writing in New York under the statute of frauds, it nevertheless must bear the contractual indicia of a meeting of the minds. An enforceable contract requires an “agreement with respect to all material terms.” *Matter of Express Indus. & Term. Corp. v. New York State Dept. of Transp.*, 93 N.Y. 2d 584, 589, 715 N.E. 2d 1050 (1999). Here, the existence of an agreement is precluded by the fact that Gonnella and King did *not* have any understanding as to material terms of Barclays’ repurchase of the bonds, nor even that there definitely *would* be a repurchase. *See Cobble Hill Nursing Home v Henry & Warren Corp.*, 74 N.Y. 2d 475, 482, 548 N.E. 2d 203, (1989) (“If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract”). “[D]efiniteness as to material matters is of the very essence in contract law. Impenetrable vagueness and uncertainty will not do.” *Joseph Martin, Jr., Delicatessen, Inc. v. Schumacher*, 52 N.Y.2d 105, 109, 417 N.E. 2d 583 (1981) (citing authority). It is no different when it comes to the purchase and sale of securities. More, even an agreement to agree (not the situation here), leaving for the future the negotiation of some material term, does not constitute an enforceable contract. *Joseph Martin*, 52 N.Y. 2d at 109-10.

The trades at issue followed no set pattern as to the **intervals** (some repurchases occurred the day after the initial sale, while still others took place much later); **timing** (some were at the end of the month while others were in the middle of the month); **pricing** (some were bought back at prices slightly higher, somewhat higher, or lower than the price of the initial sale

to Gleacher); **quantity** (sometimes King sold back all of the bonds purchased while at others he sold back only partials of them); **initial purchase** (sometimes King purchased all of what Gonnella offered and sometimes only particular bonds); **triggering event** (some occurred in the ordinary course whereas others were brought about through the intervention of King's supervisor); and **execution** (some were direct trades between King and Gonnella whereas others occurred through an inter-dealer broker).

None of these discrepancies would have been necessary if there was a pre-arrangement or an agreement that Barclays buy back the bonds it sold to Gleacher. *See Yoshikawa*, 192 F.3d at 1217-18 (transactions were not parking because they lacked a "particular pattern that would suggest a bad-faith buy-back scheme," as well as differences in terms – purchase and sale price were at prevailing market levels and sales occurred at different times). Those terms would have been part of the agreement. The only consistent feature of the trades collectively was that they were all effected at fair market value and within the bid-ask spread, itself an indicator that the transactions were above-board and bona fide.

Another indicia of a bona fide transaction was that Robert Tirschwell, King's supervisor at Gleacher, was uncomfortable with "the risk" that King had assumed by doing a favor for Gonnella without proper analysis. Exhibit A at 35. And that answers the question – the fact that Gleacher was the party running the risk and obtaining the interest and principal proves that it was the true owner of the bonds and not just the nominal owner.

Barclays' aged inventory policy exists for the apparent purpose of incentivizing traders to turn over positions that lie dormant for a sufficient period of time and are not making money. When the trader makes trades to come into compliance with the policy, it is odd that

Barclays is then cast as the victim of a fraudulent scheme. Whatever can be said about Gonnella's conduct, he was fired. This proceeding is not the proper venue to evaluate the merits or propriety of that decision. The most that can be said here is that Gonnella's conduct was a matter dealt with internally as an employment-related decision. The remedy must remain an internal (to Barclays) sanction because no conduct triggers the anti-fraud provisions.

For all of these reasons, Gonnella respectfully moves to preclude the testimony of Ryan King, and will establish the facts and conclusions as set forth in this brief at the hearing scheduled for July 7, 2014.

June 16, 2014



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# EXHIBIT A

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

SPRING HILL CAPITAL MARKETS            )  
  ) File No. NY-8690  
  )

WITNESS: ROBERT TIRSCHWELL

PAGES: 1 through 84

PLACE: Securities and Exchange Commission

3 World Financial Center  
New York, New York 10281

DATE: Friday, February 14, 2013

The above-entitled matter came on for investigation,  
pursuant to notice, at 9:25 a.m.

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<p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>In the Matter of:</p> <p>SPRING HILL CAPITAL MARKETS ) File No. NY-8690</p> <p>WITNESS: ROBERT TIRSCHWELL )</p> <p>PAGES: 1 through 84</p> <p>PLACE: Securities and Exchange Commission 3 World Financial Center New York, New York 10281</p> <p>DATE: Friday, February 14, 2013</p> <p>The above-entitled matter came on for investigation, pursuant to notice, at 9:25 a.m.</p>	<p>1</p> <p>2 CONTENTS</p> <p>3 WITNESS: EXAMINATION</p> <p>4 David Straub 4</p> <p>5 EXHIBITS: DESCRIPTION IDENTIFIED</p> <p>6 96 Subpoena of Robert Tirschwell 7</p> <p>7 97 Compilation of documents re positions 67</p> <p>8 98 Compilation of e-mails, 10/20-31/11 71</p> <p>9 99 Compilation of ABS information 73</p> <p>10 100 Supervisor checklist 75</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 PREVIOUSLY MARKED:</p> <p>16 1 5</p> <p>17 82 48</p> <p>18 89 54</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 On behalf of the Securities and Exchange Commission:</p> <p>5 JOSHUA PETER, ESQ.</p> <p>6 CELESTE A. CHASE, ESQ.</p> <p>7 Securities and Exchange Commission</p> <p>8 3 World Financial Center</p> <p>9 New York, New York 10281</p> <p>10 (212) 336-1100</p> <p>11</p> <p>12 On behalf of the Witness:</p> <p>13 THOMAS FLEMING, ESQ.</p> <p>14 Olshan</p> <p>15 Park Avenue Tower</p> <p>16 65 East 55th Street</p> <p>17 New York, New York 10022</p> <p>18 MADELEINE DOWLING, ESQ.</p> <p>19 STEFFEN HEMMERICH, ESQ.</p> <p>20 Sidley Austin LLP</p> <p>21 787 Seventh Avenue</p> <p>22 New York, New York 10019</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 PROCEEDINGS</p> <p>2 MR. PATER: We're on the record on February</p> <p>3 14, 2013 at 9:46 a.m. Good morning, Mr. Tirschwell. I'm</p> <p>4 going to place you under oath, would you please raise your</p> <p>5 right hand. Do you swear to tell the truth, the whole</p> <p>6 truth and nothing but the truth?</p> <p>7 THE WITNESS: Yes.</p> <p>8 Whereupon,</p> <p>9 ROBERT TIRSCHWELL</p> <p>10 was called upon as a witness in this matter, and after</p> <p>11 having been first duly sworn, was examined by counsel and</p> <p>12 testified as follows:</p> <p>13 MR. PATER: You can put your hand down. Would</p> <p>14 you please state and spell your full name for the record.</p> <p>15 THE WITNESS: Robert Moyse Tirschwell.</p> <p>16 MR. PATER: If you can state the middle and</p> <p>17 last name, spell it rather.</p> <p>18 THE WITNESS: M-O-Y-S-E, Tirschwell,</p> <p>19 T-I-R-S-C-H-W-E-L-L.</p> <p>20 MR. PATER: Were you ever known by another</p> <p>21 name?</p> <p>22 THE WITNESS: No.</p> <p>23 MR. PATER: My name is Joshua Pater, I'm here</p> <p>24 with Celeste Chase, we are officers of the Commission for</p> <p>25 purposes of this proceeding. This is an investigation by</p>

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1 or what he had been doing?  
 2 A No.  
 3 Q Did you ask him?  
 4 A No, I said we're not in the business of doing  
 5 favors, I felt like I understood what the nature of the  
 6 favor was as far as I felt it was and he told me the truth  
 7 as I understood at the time. He didn't need to tell me he  
 8 had done a favor and raised the flag himself for his buddy  
 9 at Barclays. He in fact did tell me that, so he was being  
 10 truthful with me in that regard as far as I was concerned.  
 11 So I said don't do any more favors, that's not the  
 12 business that we're in here and I think I got that message  
 13 across.  
 14 Q Before you saw the markdown that you  
 15 referenced, I think you said there might have been a  
 16 couple hundred thousand dollars, had you had any  
 17 discussion with Ryan King in which he told you that he  
 18 planned to use the profit on a different transaction in  
 19 order to mark down -- to make that markdown?  
 20 A No.  
 21 Q If he -- strike that.  
 22 BY MS. CHASE:  
 23 Q You said that you didn't have the conversation  
 24 with Mr. King that exactly what the favor was at the time  
 25 but you came to your own conclusions as to what he was

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1 doing. What did you think Mr. King was doing with the  
 2 trade?  
 3 A Could you say that a different way.  
 4 Q Sure, I can try.  
 5 A I want to make sure I answer the right  
 6 question.  
 7 Q I believe you testified you didn't have a  
 8 conversation with Mr. King as to what the favor was in  
 9 fact. Is that right?  
 10 A Correct.  
 11 Q But I also believe that you said that you  
 12 formed your own opinion as to what he was doing. Is that  
 13 correct?  
 14 A Yes.  
 15 Q So what was your opinion as to what Mr. King  
 16 was doing with respect to the favor?  
 17 A Again it's a good question. Favor, I don't  
 18 want to dance around this, is the term that people use in  
 19 all sorts of ways, sometimes people use it as a way of  
 20 marketing, "can you do me a favor and buy a bond,"  
 21 sometimes it's a result of "I need to clear this up, can  
 22 you do me a favor and take these out," sometimes you're  
 23 actually doing somebody a favor. You're actually doing  
 24 somebody a favor by buying these bonds, they don't want to  
 25 deal with it. So I didn't ask him about the exact nature

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1 of the favor but as he offered it up to me, given my  
 2 experience in life, I felt like you bought a bond and you  
 3 gave me the risk of a bond you didn't do your homework on,  
 4 not okay. So that bond needs to go, we need to have a  
 5 confrontation on how we do business the right way.  
 6 BY MR. PATER:  
 7 Q Is there something you wanted to add?  
 8 A People make mistakes, you know what I mean,  
 9 about how they do business and I usually look at the  
 10 opportunity where people make a mistake, a professional  
 11 mistake like that, they buy a bond, they write something  
 12 down wrong, they misjudge something, we lose a lot of  
 13 money because they didn't do their homework. It's an  
 14 opportunity for me to engage with that person as to what  
 15 we expect in terms of our people and so I had that  
 16 conversation with him, I've had it with other people.  
 17 Q I want to go back actually to the concept of  
 18 marking briefly.  
 19 A Sure.  
 20 Q You already testified about the process. My  
 21 question is if a trader intentionally delayed marking down  
 22 a position after he or she knew that the market had moved  
 23 against him or her, would that be of concern to you?  
 24 A Yes.  
 25 Q Why is that?

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1 A I need my books and records to accurately  
 2 reflect market price of all time, as best as the trader  
 3 recognizes it.  
 4 Q So if the trader ascertains a market movement,  
 5 he or she should not wait to reflect that in his or her  
 6 marks.  
 7 A No.  
 8 Q And is that something that you with the firm  
 9 would have a way of monitoring, that's not a particularly  
 10 precise question but I guess to the extent there are  
 11 checks against that, can you explain a little bit what  
 12 they are.  
 13 A Well as I said earlier, we get an exception  
 14 report about where third party pricing is on bonds and  
 15 where they don't match up within a certain range we go and  
 16 follow up with the individual trader who is responsible  
 17 for that bond or whatever. So that would be the most  
 18 likely -- that's how that would bubble up.  
 19 Q And so I'm clear, you might have already  
 20 addressed this but do you recall with respect to Mr.  
 21 King's positions in particular how often, if you know, how  
 22 often you would receive third party remarks?  
 23 A I don't. We received third party marks  
 24 everyday I guess. I don't know how it matched up, I don't  
 25 know who did the matching up. It was at least once a

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1 A Yes, Trish Spredd is Gleacher's in-house chief  
 2 lawyer person and she has a lieutenant in Compliance named  
 3 Brian McDonough.  
 4 Q Earlier you testified that you understood Mr.  
 5 King was terminated because -- I think you said because he  
 6 was untruthful concerning a parking scheme. Is that a  
 7 fair characterization?  
 8 A Basically.  
 9 Q Now --  
 10 A That was uncovered in the course of me having  
 11 told Legal that we might have an issue here and they  
 12 performed their own diagnostics.  
 13 MS. DOWLING: I just want you to be very  
 14 careful about what your disclosing, about what Legal did,  
 15 attorney/client privilege.  
 16 A That was the reason I think he was fired.  
 17 Q So giving your counsel time to consider the  
 18 question, my question is is your understanding that Mr.  
 19 King may have been engaged in parking based on  
 20 conversations you had with attorneys?  
 21 MS. DOWLING: You're getting right into the  
 22 attorney/client privilege there.  
 23 MR. PATER: I'm trying to -- I'll withdraw the  
 24 question.  
 25 Q Why do you understand that Mr. King was engaged

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1 in parking?  
 2 MS. DOWLING: Do you only know that from  
 3 conversations with counsel?  
 4 THE WITNESS: Yes, I only know that third  
 5 party.  
 6 MS. DOWLING: Just leave it there.  
 7 THE WITNESS: Okay.  
 8 Q You gained that understanding -- strike that.  
 9 Did you ever discuss with Mr. King whether he was engaged  
 10 in parking?  
 11 A No. At the very -- after the investigation  
 12 started word filtered back down to my partner, Robert Fein  
 13 -- don't go there? The answer is no. I'm sorry, I don't  
 14 understand all the machinations.  
 15 MR. FLEMING: Rob, that's me directing you  
 16 just not talk about conversations that were with counsel  
 17 but let me say that it's my understanding that counsel did  
 18 do a review of the situation but that review was protected  
 19 by privilege but the result was that Ryan King was  
 20 terminated.  
 21 MR. PATER: Okay.  
 22 Q You told Mr. King to sell the bond that had  
 23 been marked down, so going back a little bit in time, I  
 24 think you said he responded that it might take him a  
 25 couple days or something like that. Is that right?

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1 A Yes.  
 2 Q And did you have any other conversations with  
 3 him about how that was going or whether he was going to be  
 4 able to sell the bond?  
 5 A I just told him to keep me up to date. Every  
 6 day that went by and we hadn't sold it, I was like what  
 7 are we looking at. He said "I'm working on something,"  
 8 "okay."  
 9 Q Did he give you any information on what he was  
 10 working on?  
 11 A No. He was trying to sell the bond.  
 12 Q Did he tell you whether he was trying to sell  
 13 the bond back to Barclays?  
 14 A I asked if Barclays would buy the bond back and  
 15 he said that was not possible.  
 16 Q Did he give any other explanation or  
 17 information about why it was not possible?  
 18 A No.  
 19 Q Do you know what ultimately happened to the  
 20 bond?  
 21 A I think he kicked it out through a broker.  
 22 Q Did you ever instruct Mr. King that he needed  
 23 to sell the bond back to Barclays?  
 24 A No.  
 25 Q Did you ever tell Mr. King that -- strike that.

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1 Did you ever threaten to call the supervisor of Mr. King's  
 2 buddy at Barclay to discuss the situation?  
 3 A No.  
 4 Q You recall no conversation with Mr. King in  
 5 which you suggested you might make such a call?  
 6 A No.  
 7 Q You said you think the bond was sold to a  
 8 broker. Do you know who the firm was or what the firm  
 9 was?  
 10 A I don't recall.  
 11 Q Did you give Mr. King any instruction  
 12 concerning which broker or which firm it should be sold  
 13 to?  
 14 A No.  
 15 Q When he sold the bond that we've been  
 16 discussing, did you have any discussion with him about it  
 17 at that point, do you recall?  
 18 A About what?  
 19 Q Did he come and tell you he was able to find a  
 20 buyer?  
 21 A He said "I think I have someone," I believe he  
 22 must have -- I don't know exactly what happened, he  
 23 surveyed the landscape and he was able to sell the bond in  
 24 the context of where he had it marked.  
 25 Q Around this time were there any other bonds

<p>Page 53</p> <p>1 A Yes. I'm giving this away but had Ryan not 2 told me that -- I asked him why he owned the bond, had he 3 not told me that he had done a favor for his brother I 4 would never have known any of this until something else 5 happened. It's only because he told me that that I 6 realized that that was a note to self. 7 Q The bond that you referenced, the BAYC 074AA1, 8 do you see according to this in line 15 the bond is sold 9 on November 3, 2011? 10 A Yes. 11 Q And it's sold to, it says here Euro Arms. Do 12 you see that? You'll have to say yes or no. 13 A Yes. 14 Q Do you know what Euro Arms is? 15 A I think it's a broker. 16 Q And sitting here today do you recall whether 17 that was the firm to which the bond we've been discussing 18 was sold by Mr. King? Apart from looking at this do you 19 recall whether Euro Arms was the broker? 20 A I remember something about Euro. 21 Q Did you direct Mr. King to sell it to a 22 particular broker? 23 A No. 24 Q Turn to the second page of the exhibit, do you 25 see the bonds, the last two sets of trades? We've already</p>	<p>Page 55</p> <p>1 A Okay. 2 Q So I referred you to lines 11 through 14. Do 3 you see the BAYC 07 bond there? 4 A Yes. 5 Q And I guess if you compare, if you can have 6 before you the other document as well, the first page of 7 Exhibit No. 82. You'll need to turn to the other page. 8 Do you see in line 15 the BAYC bond is sold from Gleacher 9 on November 3. 10 A I'm sorry, what number are we doing? 11 Q So if you're on 82, you're at line 15. 12 A Okay. 13 Q It's sold on November 3, then it's sold to Euro 14 Arms. 15 A Yes. 16 Q And if you look at the other document -- 17 A Look at that. 18 Q Line 14, you see the same bond, same amount, 19 slightly different price I think and same trade and settle 20 dates. Do you see that? 21 A Yes. 22 Q And the counterparty is listed as Euro Brokers. 23 Do you see that? 24 A I do. 25 Q And there's a buy by Barclays. Do you see</p>
<p>Page 54</p> <p>1 discussed the prices concerning the LBSBC, do you see that 2 bond in lines 29 and 30? 3 A I'm sorry, I lost my train of thought. I'm 4 sorry. 5 Q That's fine. 6 A I just spaced out. 7 Q That's acceptable. I'll just refer you to 8 lines 29 and 30, do you see the bond listed there? 9 A Yes. 10 Q Do you recall -- my question is whether you 11 recall any conversations whatsoever with Mr. King about 12 that bond in late 2011? 13 A No. 14 Q Same question with respect to the following 15 bond, PELS 2001? 16 A No. 17 Q I'm going to hand you -- hold onto that, I'm 18 going to hand you another document that's previously been 19 marked as Exhibit No. 89. Do you see lines 11 through 14, 20 the same BAYC bond that's on the first page of Exhibit No. 21 82? 22 A Yes. 23 Q Sorry, I meant to represent to you that what 24 I've marked as Exhibit No. 89 are excerpts taken from the 25 blotter of a trader at Barclays.</p>	<p>Page 56</p> <p>1 that? 2 A I do, if this is Barclays. 3 Q Right, which I will tell you it is. Before -- 4 strike that. Did you know at any point in 2011 whether 5 Mr. King had arranged to sell that bond to Barclays but 6 being routed through another broker? 7 A No. 8 Q I take it you did not instruct him to do that. 9 A No. 10 Q And you don't recall Mr. King informing you 11 whether he planned to do so. 12 A No. 13 Q A similar question, if you turn to the second 14 page of Exhibit No. 82, at the bottom I pointed you to a 15 PELS bond. Do you see that sale on line 32? 16 A I do. 17 Q And if you'll compare it to the purchase at the 18 bottom of Exhibit No. 89, do you see it appears to be the 19 same bond, same face, same trade and settle dates, 20 slightly different price? 21 A I do. 22 Q And one says Murphy and the other says Murphy &amp; 23 Durieu, do you see that? 24 A I do. 25 Q Do you know what Murphy &amp; Durieu is?</p>

# EXHIBIT B

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

In the Matter of )  
 ) File No.  
SPRING HILL CAPITAL MARKETS, LLC ) NY-8690  
 )

WITNESS: RYAN KING

PAGES: 1 - 111

PLACE: 3 World Financial Center  
New York, New York

DATE: Wednesday  
October 10, 2012

The above-entitled matter came on for hearing  
at 9:49 a.m.



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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  In the Matter of  SPRING HILL CAPITAL MARKETS, LLC  WITNESS: RYAN KING  PAGES: 1 - 111  PLACE: 3 World Financial Center New York, New York  DATE: Wednesday October 10, 2012  The above-entitled matter came on for hearing at 9:49 a.m.		1 INDEX 2 3 WITNESS EXAMINATION BY PAGE 4 5 R. King Mr. Pater 4 6 Ms. Chase 29 7 Mr. Pater 31 8 Ms. Chase 42 9 Mr. Pater 49 10 Mr. Levine 103 11 Mr. Pater 105  12 EXHIBITS 13 EXHIBIT NO. PAGE 14 78 Subpoena 7 15 79 Response to FINRA 29 16 80 Email 59 17 81 Documents Bates stamped 63 18 BARC2681 & 2686 19 82 Blotter excerpt 69 20 83 Documents Bates stamped 73 21 BARC2690, 2691, 2697, 2699 22 84 Documents Bates stamped 84 23 GLEACHER 7 & 8, BARC6352 24 85 Bloomberg exchange 86 25 86 Bloomberg exchange 86	
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1 APPEARANCES: 2 3 FOR THE SEC: 4 5 JOSHUA PATER, ESQ. 6 -and- 7 CELESTE CHASE, ESQ. 8 United States Securities and Exchange Commission 9 3 World Financial Center 10 New York, New York 11 12 FOR THE WITNESS: 13 MATTHEW L. LEVINE, ESQ. 14 THE LAW OFFICES OF MATTHEW L. LEVINE, PLLC 15 565 Fifth Avenue, 7th Floor 16 New York, New York 10017 17 18 19 20 21 22 23 24 25		1 PROCEEDINGS 2 MR. PATER: We are on the record on 3 October 10, 2012, at 9:49 a.m. Good morning, Mr. 4 King. 5 THE WITNESS: Good morning. 6 MR. PATER: I'm going to place you under 7 oath. Would you please raise your right hand. Do 8 you swear or affirm to tell the truth, the whole 9 truth and nothing but the truth? 10 THE WITNESS: I do. 11 Whereupon, 12 RYAN KING, 13 after having been first duly sworn/affirmed, was 14 examined and testified as follows: 15 EXAMINATION BY 16 MR. PATER: 17 Q. You can put your hand down. Would you 18 please state and spell your name for the record? 19 A. Ryan, R-y-a-n, Christopher, 20 C-h-r-i-s-t-o-p-h-e-r, King, K-i-n-g. 21 Q. Were you ever known by another name? 22 A. No. 23 Q. My name is Joshua Pater, I'm here with 24 Celeste Chase and we are officers of the Commission 25 for the purposes of this proceeding.	

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1 MR. PATER: And do you recall who the  
 2 trader was at the inter-dealer broker?  
 3 THE WITNESS: I can't remember the guy's  
 4 name. I know the bond with the inter-dealer broker,  
 5 it was a Colle, C-o-l-l-e, I want to say it was 05  
 6 182 perhaps.  
 7 MR. PATER: Do you remember the bond with  
 8 Mr. Baird?  
 9 THE WITNESS: The ticker was ABCMT, and it  
 10 was 2007, I think it might have been dash B1 space B,  
 11 but I know it was a 2007 B bond, but there were a  
 12 couple of them.  
 13 MR. PATER: Let's go off the record at  
 14 10:52.  
 15 (A recess was taken.)  
 16 MR. PATER: We're back on the record at  
 17 11:02 a.m.  
 18 EXAMINATION BY  
 19 MR. PATER:  
 20 Q. Mr. King, is it correct that during the  
 21 break you had no substantive discussion with any  
 22 member of the staff?  
 23 A. Yes.  
 24 Q. I understand from your counsel that  
 25 there's something you'd like to add or clarify.

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1 A. Yes, just that in that conversation with  
 2 Robert Tirschwell on that Thursday in question, I  
 3 believe the last week in October, when I disclosed  
 4 that Barclays might not be able to buy the two  
 5 remaining bonds back, the BAYC and whichever of the  
 6 aircraft bonds, that Robert Tirschwell said to call  
 7 Barclays and tell them that they either buy the bond  
 8 back and that if they didn't buy the bond back that  
 9 he would contact Tom Gonella's supervisor and both of  
 10 us would be out of a job.  
 11 Q. That's what Mr. Tirschwell told you?  
 12 A. Yes.  
 13 Q. Had you told Mr. Tirschwell of your  
 14 expectation or understanding that Mr. Gonella was  
 15 going to buy the bond back but he had failed to do so  
 16 when --  
 17 MR. LEVINE: The word he used was  
 18 expectation. I just want to be careful about that  
 19 question.  
 20 MR. PATER: Sure.  
 21 Q. The expectation that you had concerning  
 22 the BAYC bond that Mr. Gonella would repurchase it  
 23 from you, did you convey that expectation to Mr.  
 24 Tirschwell in the conversation on that Thursday?  
 25 A. Yes.

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1 Q. Was it after that that he told you in  
 2 substance call Gonella and get him to buy it back?  
 3 A. It was actually we had this conversation  
 4 and Tirschwell pulled me aside, maybe an hour later,  
 5 to a side conference room. So that would be while he  
 6 figured out the hour, hour and a half, how he wanted  
 7 to handle it, and he pulled me aside and said, call  
 8 your buddy at Barclays, tell him he's buying the  
 9 bonds back or I will call up his supervisor.  
 10 Q. So I understand, this first conversation  
 11 you had with Mr. Tirschwell about the bond on that  
 12 Thursday, it was in that conversation that you  
 13 conveyed your expectation to Mr. Tirschwell?  
 14 A. Yes.  
 15 Q. And then it was maybe an hour, hour and a  
 16 half later that he instructed you to get Mr. Gonella  
 17 to buy the bond back, in substance?  
 18 A. Yes.  
 19 Q. And the rest of what you related?  
 20 A. And then everything.  
 21 Q. Okay.  
 22 A. And when I called on the cell phone, I  
 23 believe I also told him the thing about Tirschwell  
 24 and the job, threatening to, in essence, I guess  
 25 light a fire.

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1 MS. CHASE: I have just maybe one or two  
 2 questions for clarification. So you mentioned that  
 3 at first Gonella told you that he might not be able  
 4 to buy back the BAYC bond. Did he also tell you he  
 5 might not be able to buy back one of the airplane  
 6 bonds?  
 7 THE WITNESS: Yes.  
 8 Q. Did he tell you why he might not be able  
 9 to?  
 10 A. I'm trying to remember specifically. He  
 11 didn't, he just said -- this was the evening after we  
 12 had done the first airplane bond, and he said that  
 13 somebody on his end saw that trade and was asking him  
 14 just about it and I can't remember specifically, it  
 15 was pretty vague, but he sounded, for want of a  
 16 better term spooked, and he was saying to me I don't  
 17 know, I don't know if I can buy back the other two  
 18 bonds.  
 19 And when I talked to him on that Thursday,  
 20 after the conversation with Tirschwell, he said, in  
 21 essence, oh, yeah, I was overreacting last night, it  
 22 shouldn't be a problem. And I said something to the  
 23 effect of, well, that's good because if you don't buy  
 24 these bonds back, you know, he's going to call up  
 25 your boss.

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1 trade just cause we're their clients and they take  
 2 this out.  
 3 Q. Is this something you discussed with Mr.  
 4 Gonella before these final two transaction, this  
 5 being the use of inter-dealer brokers?  
 6 A. Yes.  
 7 Q. Was it your idea or his idea to use an  
 8 inter-dealer broker?  
 9 A. I believe it was Robert Tirschwell's  
 10 suggestion.  
 11 Q. Can you place that in the time line, was  
 12 that in one of the Thursday conversations that Mr.  
 13 Tirschwell suggested that?  
 14 A. It was either in the conversation where he  
 15 told me to call Tom Gonella or subsequently  
 16 thereafter on that Thursday.  
 17 Q. And you think Mr. Tirschwell is the one  
 18 who first raised the possibility of using an  
 19 inter-dealer broker?  
 20 A. Yes.  
 21 Q. Did you ask him why he suggested that?  
 22 A. No.  
 23 Q. Did you have any understanding of why he  
 24 would suggest that?  
 25 A. No, I don't.

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1 Q. Is there any reason you couldn't sell the  
 2 bonds directly to Mr. Gonella?  
 3 A. No.  
 4 Q. The inter-dealer brokers don't work for  
 5 free, right, they earn something in the spread?  
 6 A. Yes.  
 7 Q. So is there any reason to pay the  
 8 inter-dealer brokers for standing in between  
 9 transactions that you've arranged with Mr. Gonella?  
 10 A. Like I said, they take us out and so  
 11 sometimes we try to get them involved in trades where  
 12 necessarily they weren't involved in the genesis of  
 13 it just to pay them, that's how they get paid.  
 14 Q. What do you mean by they take us out?  
 15 A. Just normal, just client entertainment,  
 16 just a dinner or something like that.  
 17 Q. Oh, I see. So did you believe that Mr.  
 18 Tirschwell suggested this -- strike that. Did Mr.  
 19 Tirschwell identify a particular inter-dealer broker  
 20 or brokers to use?  
 21 A. No.  
 22 Q. He just floated the idea, as best as you  
 23 can recall?  
 24 A. Yes.  
 25 Q. Did you choose the inter-dealer brokers

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1 that ultimately were used?  
 2 A. No.  
 3 Q. Do you recall who did?  
 4 A. I don't know, I don't know.  
 5 Q. Well, let me back up. Mr. Tirschwell  
 6 makes a suggestion, as best as you can recall, and  
 7 you convey that suggestion to Mr. Gonella; is that  
 8 right?  
 9 A. Yes.  
 10 Q. And does Mr. Gonella say anything in  
 11 response?  
 12 A. I don't remember specifically, but he  
 13 heard what I told him and said okay. I don't want to  
 14 put words in his mouth.  
 15 Q. Well, just what you remember coming out of  
 16 his mouth. Did you and Mr. Gonella at some point  
 17 agree that these trades would be done through an  
 18 inter-dealer broker?  
 19 A. Yes.  
 20 Q. And do you recall when that agreement was  
 21 struck?  
 22 A. No.  
 23 Q. Do you recall which inter-dealer brokers  
 24 you used?  
 25 A. Murphy and Durieu on this Pals trade, and

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1 I believe the Euro Brokers on the BAYC trade.  
 2 Q. Were there particular traders that you  
 3 communicated with at Murphy or Euro Brokers?  
 4 A. There were a few guys. I don't remember  
 5 specifically who it was.  
 6 Q. Do you know someone named Frank Mistero?  
 7 A. Yes.  
 8 Q. Do you know where he worked in 2011?  
 9 A. Euro Brokers.  
 10 Q. Had you done trades with Mr. Mistero  
 11 before?  
 12 A. I had, I don't know if I had at Gleacher,  
 13 but I had when I was at Barclays though.  
 14 MR. PATER: I'm going to ask the court  
 15 reporter to mark Exhibit 84.  
 16 (Three documents Bates stamped GLEACHER7  
 17 and 8 and BARC6352 were marked as Exhibit 84 for  
 18 identification; as of this date.)  
 19 Q. I'm handing you what has just been marked  
 20 Exhibit 84. For the record, Exhibit 84 consists of  
 21 three documents Bates stamped GLEACHER7, GLEACHER8  
 22 and BARC6352. You can take a minute to look at each  
 23 of those and let me know when you've had a chance.  
 24 A. Okay.  
 25 Q. Can you identify the first two pages, do

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1 BAYC 07 4's; do you see that?  
 2 A. Yes.  
 3 Q. Mr. Gonella comes back a little bit later  
 4 with a 64 and a half offer; do you see that?  
 5 A. Yes.  
 6 Q. And two lines later Mr. Mistero writes:  
 7 It's your boy. Do you see that?  
 8 A. Yes.  
 9 Q. And a few minutes later Mr. Gonella  
 10 responds: I'll lift that and pay you a tick on top  
 11 if that works. Do you see that?  
 12 A. Yes.  
 13 Q. Mr. Mistero writes a little bit later: He  
 14 is almost in office waiting to confirm exact size.  
 15 Do you see that?  
 16 A. Yes.  
 17 Q. Did you expect that Mr. Mistero would let  
 18 Mr. Gonella know that the BAYC bond was coming from  
 19 you?  
 20 A. Different brokers offer it differently.  
 21 Q. Well, my question is I had understood from  
 22 your earlier testimony that you discussed using an  
 23 inter-dealer broker with Mr. Gonella; is that right?  
 24 A. Yes.  
 25 Q. So let me ask you this, sitting here today

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1 reading this Exhibit 85 for the first time, I assume,  
 2 does it surprise you that Mr. Mistero told Mr.  
 3 Gonella it's your boy?  
 4 A. Not really.  
 5 Q. Is that because the plan was to sell this  
 6 bond back to Mr. Gonella albeit through a third  
 7 party?  
 8 A. No, that's not how I would read this.  
 9 Q. Was that not the plan?  
 10 A. I knew that I was going to sell the bond.  
 11 Q. You knew that you were going to sell the  
 12 bond to --  
 13 A. To a third party broker.  
 14 Q. And that's something you discussed with  
 15 Mr. Gonella?  
 16 A. Yes.  
 17 Q. This is after Mr. Gonella had told you  
 18 that when he earlier said he couldn't buy the bond  
 19 back, in fact, he had been overreacting; is that  
 20 right?  
 21 A. Yes.  
 22 Q. So at this point, as far as you were  
 23 aware, Mr. Gonella was able to buy the bonds back  
 24 from you?  
 25 A. That he was able to generate a bid, yes.

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1 Q. Did you expect that he would do so through  
 2 Mr. Mistero?  
 3 A. I had no -- I had no input or say or  
 4 didn't offer any as to which third party broker we  
 5 would use.  
 6 Q. So apart from who chose Mr. Mistero --  
 7 strike that. Earlier I think you testified, but  
 8 correct me if I'm wrong, that although Mr. Tirschwell  
 9 told you the idea of using an inter-dealer broker,  
 10 you're not sure who selected the inter-dealer brokers  
 11 that ultimately were used; is that correct?  
 12 A. All I can tell you is that he floated that  
 13 idea and I told it to Tom, and that's the last input  
 14 I had on it.  
 15 Q. So how did you know to offer this bond to  
 16 Mr. Mistero?  
 17 A. Again, seeing these brings things to light  
 18 and -- I can't --  
 19 MR. LEVINE: He's asking about your  
 20 memory, not these things.  
 21 A. Yeah, I know, and I'm trying to remember.  
 22 Can you repeat the question?  
 23 Q. Sure. How did you know to offer the bonds  
 24 to Mr. Mistero?  
 25 A. If my memory serves, I think actually that

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1 Tom may have sent me a text message while I was in  
 2 the car coming back from the airport.  
 3 Q. Is this the trip to Boston?  
 4 A. Yes.  
 5 Q. Do you believe that he sent you a text  
 6 message indicating in substance that you should offer  
 7 the bond to Mr. Mistero?  
 8 A. Yes.  
 9 Q. Do you have the same phone now that you  
 10 had around November 2011?  
 11 A. Yes.  
 12 Q. Did you check to see whether you had any  
 13 text messages between you and Mr. Gonella in the  
 14 recent past?  
 15 A. No.  
 16 Q. And so do you believe that it was that  
 17 text message that prompted you to offer the bond to  
 18 Mr. Mistero?  
 19 A. Yes.  
 20 Q. You can put those documents aside.  
 21 Actually, sorry, the blotter, the excerpt blotter,  
 22 Exhibit 82, just for reference, the last entries are  
 23 the Pals bond and I believe you testified that you  
 24 think that October 27 would be the Thursday that  
 25 we've been discussing; is that right?

# EXHIBIT C

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

**ADMINISTRATIVE PROCEEDING**

File No.

In the Matter of

Ryan King,

Respondent.

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**OFFER OF SETTLEMENT  
OF RYAN KING**

**I.**

Ryan King ("King" or "Respondent"), pursuant to Rule 240(a) of the Rules of Practice of the Securities and Exchange Commission ("Commission") [17 C.F.R. § 201.240(a)] submits this Offer of Settlement ("Offer") in anticipation of public administrative and cease-and-desist proceedings to be instituted against him by the Commission, pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act").

**II.**

This Offer is submitted solely for the purpose of settling these proceedings, with the express understanding that it will not be used in any way in these or any other proceedings, unless the Offer is accepted by the Commission. If the Offer is not accepted by the Commission, the Offer is withdrawn without prejudice to Respondent and shall not become a part of the record in these or any other proceedings, except for the waiver expressed in Section VI with respect to Rule 240(c)(5) of the Commission's Rules of Practice [17 C.F.R. § 201.240(c)(5)].

**III.**

On the basis of the foregoing, the Respondent hereby:

A. Admits the jurisdiction of the Commission over him and over the matters set forth in the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the

Investment Company Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order");

B. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party and without admitting or denying the findings contained in the Order, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, consents to the entry of an Order by the Commission containing the following findings<sup>1</sup> and remedial sanctions set forth below:

#### Summary

1. Between May and November 2011, King, at the time a trader at Firm B, agreed with a trader named Thomas Gonnella, who worked at Firm A, to defraud Firm A by temporarily placing ten securities from Gonnella's trading book at Firm A in King's trading book at Firm B. The purpose of this arrangement was to allow Gonnella to avoid charges to his trading profits, and ultimately his year-end bonus, that would result from holding the securities for too long. Instead of incurring those charges or selling the securities in bona fide market transactions, and in violation of Firm A's policies, Gonnella placed the securities with King, who purchased them on behalf of Firm B, with the understanding that Gonnella would repurchase them thereafter and that Firm B would not be exposed to market risk because Gonnella's would repurchase them at a profit to Firm B at the expense of Gonnella's employer, Firm A.

2. Gonnella placed ten securities with King. With respect to nine securities, Gonnella, on behalf of Firm A, repurchased them before the securities had even settled in Firm B's account. With respect to the tenth security, Gonnella did not immediately repurchase it. He later did so at a loss to Firm B, but made Firm B whole by selling it two other bonds from Gonnella's trading book at Firm A at prices favorable to Firm B and unfavorable to Firm A. King then used the resulting profit on the two bonds to offset the loss incurred on the tenth security.

3. In total, Gonnella and King's trades caused Firm A to lose approximately \$171,000. Gonnella and King never told their firms the truth about their trades, which was that they were not bona fide market transactions but were done solely to reset the holding period on securities in Gonnella's trading book and allowed Firm B to earn improper profits at Firm A's expense.

4. After Gonnella's supervisor began inquiring about the trades, Gonnella and King interposed interdealer brokers in subsequent transactions and spoke on their cell phones to evade detection. They continued to conduct round-trip trades until Firm A detected Gonnella's conduct and summarily fired him. Firm B later fired King for the same misconduct.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

### Respondent

5. King, age 35, was a registered representative with Firm B from February 2009 through December 2011. Firm B was then, and is today, a broker-dealer registered with the Commission. King held Series 7 and 63 licenses. He resides in New York, NY.

### Other Relevant Person

6. Gonnella, age 29, was a registered representative with Firm A from September 2008 through December 2011. Firm A was then, and is, a broker-dealer and investment adviser dually registered with the Commission. Since February 2012, Gonnella has been a registered representative with another registered broker-dealer. Gonnella holds Series 7 and 63 licenses. He resides in New York, NY.

### Prearranged Transactions in May 2011

7. On May 31, 2011, Gonnella offered to sell King several asset-backed bonds issued by Bayview Commercial Asset Trust ("BAYC"). Gonnella wrote, "i have 4 small bonds that i'm looking to turnover today for good ol' month end/aging purposes . . . i like these bonds . . . and would more than likely have a higher bid for these later this wk when the calendar turns . . ."

8. Gonnella's reference to "aging purposes" was to Firm A's aged inventory policy, which encouraged the firm's traders to turn over their trading positions by penalizing them if they held those positions for too long. Gonnella's offer to King was prompted by his desire to evade the penalties under the policy: a charge to Gonnella's trading profits at Firm A and the resulting negative impact on his year-end bonus.

9. Shortly after being contacted by Gonnella, King agreed to buy on behalf of Firm B two of the BAYC bonds Gonnella had offered at prices of \$56 and \$54 per bond, with settlement scheduled for June 3, 2011.

10. The next day, June 1, 2011, before the BAYC bonds had settled in Firm B's account, Gonnella repurchased them from King at prices of \$57 and \$55 per bond, thereby providing an immediate profit of approximately \$23,000 to Firm B at the expense of Firm A and resetting the clock on the holding period for these bonds in Gonnella's book. Had these prearranged transactions not occurred, Firm A would have continued to own the two BAYC bonds, just as it had before the transactions, only without paying Firm B approximately \$23,000. There was no negotiation over the repurchase prices.

### Prearranged Transactions in August 2011

11. On August 29, 2011, Gonnella again contacted King: "let's talk tmrw. Have some aged bonds that I might offer you, if you're game . . . maybe do what we did a few months ago w/ some of those bayc's . . ."



12. The next day, August 30, 2011, King wrote: "so I can help you with some aged items today?" Gonnella then offered three BAYC bonds to King at prices of \$72, \$73, and \$40 per bond. In response, King asked, "when would you be looking to purchase something similar? end of the week?" Gonnella replied, "yes. Most likely."

13. King then agreed to buy on Firm B's behalf the three BAYC bonds that Gonnella had offered at the prices Gonnella proposed, with settlement scheduled for September 2, 2011.

14. The next day, August 31, 2011, before the BAYC bonds had even settled in Firm B's account, Gonnella repurchased two of the three bonds at prices of \$73.75 and \$40.75 per bond, thereby providing an immediate profit of approximately \$48,000 to Firm B at the expense of Firm A. As for the third bond — a BAYC 07-4A A1 bond — on September 7, 2011, Gonnella repurchased \$12 million of the \$19.65 million he had sold to King at a price of \$72.125 per bond, thereby providing an immediate profit of approximately \$14,000 to Firm B at the expense of Firm A. Had these prearranged transactions on August 31 and September 7 not occurred, Firm A would have continued to own these BAYC bonds, just as it had before the transactions, only without paying Firm B approximately \$14,000. As in May 2011, there was no negotiation over the repurchase prices.

15. Also on August 31, 2011, Gonnella sold King five additional bonds on which he faced aged inventory charges. Two days later, on September 2, Gonnella repurchased these five bonds, each at a slight markup, and again before Firm B had taken delivery of them. As a result of these trades, Firm B earned a profit on each of the bonds, for a total profit of approximately \$84,000, at Firm A's expense. Had these prearranged transactions not occurred, Firm A would have continued to own the five bonds, just as it had before the transactions, only without paying \$84,000 to Firm B.

#### **Prearranged Transactions in October 2011**

16. As noted, on September 7, 2011, Gonnella repurchased \$12 million of the BAYC 07-4A A1 bond he had sold to King on August 30, which left King still holding \$7.65 million of the bond.

17. On multiple occasions in September 2011, King urged Gonnella to repurchase the remaining portion of the BAYC 07-4A A1 bond, and Gonnella assured him that he would do so. On September 22, 2011, Gonnella wrote, "have patience, if you can. Still like them, and eventually want them . . . but not in September." Gonnella assured King that he would buy the remainder of the bond in October.

18. During the time that King held the BAYC 07-4A A1 bond, Gonnella and King were aware that its market value was declining. Although King was supposed to mark the positions in his trading book to fair value each day, he delayed marking down the BAYC 07-4A A1 bond.

19. On October 11, 2011, King and Gonnella agreed to do additional trades that would result in a profit to King's book at Firm B so that King could use that profit to offset the

mark-to-market loss on the BAYC 07-4A A1 bond. Gonnella offered to sell King two bonds known as PALS and LBSBC on which Gonnella was set to incur aged inventory charges at the end of October. Gonnella wrote to King, "when you sell these later this month, mark down the [BAYC 07-4A A1 bond] accordingly . . ." King agreed to buy the PALS and LBSBC bonds on Firm B's behalf.

20. The next day, October 12, Gonnella wrote to King that he was interested in buying back all three of the bonds in question — the PALS and LBSBC bonds, as well as the remaining portion of the BAYC 07-4A A1 bond — in the last week of October, in what Gonnella called a "package bid."

21. On October 26, 2011, consistent with the earlier arrangement between them, Gonnella repurchased the LBSBC bond from King at a markup of more than 18% over its sale price two weeks earlier. This repurchase resulted in a profit of approximately \$215,000 to Firm B. Had the prearranged transactions in the LBSBC bond not occurred, Firm A would have continued to own that bond, just as it had before the transactions, only without paying \$215,000 to Firm B and without missing out on an interest payment of \$215,000 between October 11 and 26.

22. After Gonnella's supervisor noticed the repurchase of the bond at a mark-up from Firm B, he confronted Gonnella about it. Gonnella and King spoke by cell phone multiple times on October 26 and 27 about their trading plans in order to avoid having their conversations overheard or recorded by their firms.

23. On October 27, 2011, Gonnella repurchased the PALS bond at a markup of almost 9% above the sale price at which he had sold it to King two weeks before. However, whereas prior prearranged trades between Gonnella and King had been conducted without intermediaries, Gonnella's repurchase of the PALS bond was routed through an interdealer broker. The repurchase of the PALS bond resulted in a profit of approximately \$227,000 to Firm B and approximately \$5,600 to the interdealer broker. Had the prearranged transactions in the PALS bond not occurred, Firm A would have continued to own the bond, just as it had before the transactions, only without paying approximately \$227,000 to Firm B and approximately \$5,600 to an interdealer broker.

24. In keeping with the plan discussed earlier with Gonnella, King marked down to fair value the remaining \$7.65 million of the BAYC 07-4A A1 bond. Then, on November 3, 2011, he sold it back to Gonnella at a price of \$64.53 per bond, which resulted in a loss to Gleacher of approximately \$445,000. Like the repurchase of the PALS bond, Gonnella and King routed the repurchase of the remaining portion of the BAYC 07-4A A1 bond through an interdealer broker. Although Firm B incurred a loss on the trade, this loss was recouped through the "package bid" in which Gonnella repurchased the LBSBC and PALS bonds at a markup and also through periodic principal and interest payments that Firm B had received while holding the remainder of the BAYC 07-4A A1 bond and the LBSBC bond. Had these transactions not occurred, Firm A would have continued to own the remainder of the BAYC bond, just as it had before, only without paying approximately \$1,900 to an interdealer broker and without missing out on periodic principal and interest payments.

25. In each of his round-trip transactions with Gonnella, King recorded the first leg as a straightforward "purchase" in his firm's books and records, without any reference to his understandings with Gonnella that the latter would thereafter repurchase the bond and that Firm B therefore was not exposed to the true risk of owning such bonds.

26. As a result of the trades described above, Gonnella and King both were terminated in late 2011.

27. As a result of the conduct described above, King willfully aided and abetted and caused violations by Gonnella of Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities or in connection with the purchase or sale of securities.

28. Additionally, King willfully aided and abetted and caused Firm B's violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(2) thereunder, which require that each registered broker-dealer make and keep current ledgers (or other records) reflecting all assets and liabilities, income, and expense and capital accounts relating to the broker-dealer's business. As a result of the conduct described above, Firm B's ledgers did not accurately reflect the understandings reached between King and Gonnella as to their prearranged trades.

#### IV.

Pursuant to the Order, Respondent agrees to additional proceedings in this proceeding to determine what, if any, civil penalties pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, and Section 9(d) of the Investment Company Act against Respondent are in the public interest. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws described in the Order; (b) Respondent agrees that he may not challenge the validity of the Order; (c) solely for the purposes of such additional proceedings, the allegations of the Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

#### V.

On the basis of the foregoing, Respondent hereby consents to the entry of an Order by the Commission imposing the following sanctions pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act:

A. King shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 17(a) of the Exchange Act, and Rules 10b-5 and 17a-3 thereunder.

B. King be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock;

with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

D. Any reapplication for association by King will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of \$22,606.80 and prejudgment interest of \$1,503.66 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Ryan King as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Joseph Boryshansky, Senior Trial Counsel, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

#### VI.

By submitting this Offer, Respondent hereby acknowledges his waiver of those rights specified in Rules 240(c)(4) and (5) [17 C.F.R. §201.240(c)(4) and (5)] of the Commission's Rules of Practice. Respondent also hereby waives service of the Order.

#### VII.

Respondent understands and agrees to comply with the terms of 17 C.F.R § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Respondent's agreement to comply with the terms of Section 202.5(e), Respondent: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding in the Order or creating the impression that the Order is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Respondent does not admit the findings of the Order, or that the Offer contains no admission of the findings, without also stating that the Respondent does not deny the findings; and (iii) upon the filing of this Offer of Settlement, Respondent hereby withdraws any papers previously filed in this proceeding to the extent that they deny, directly or indirectly, any finding in the Order. If Respondent breaches this agreement, the Division of Enforcement may petition the Commission to vacate the Order and restore this proceeding to its active docket. Nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

#### VIII.

Consistent with the provisions of 17 C.F.R. § 202.5(f), Respondent waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein.

**IX.**

Respondent hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Respondent to defend against this action. For these purposes, Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

**X.**

Respondent understands that by settling to a bar with the right to reapply as specified in the Commission's Order, Respondent will be able to make an application to reapply after the specified time period. This application, however, does not guarantee reentry. Rather, Respondent's application will be subject to the applicable law governing the reentry process and Respondent's reentry will be subject to the discretion of the Commission. An application made to a self-regulatory organization will be reviewed by the self-regulatory organization and the Commission pursuant to Rule 19h-1 [17 C.F.R. 240.19h.1] and applicable rules of the self-regulatory organization. An application made directly to the Commission will be reviewed under the processes specified in Rule 193 of the Commission's Rules of Practice [17 C.F.R. 201.193], or as specified in the order in this proceeding. To the extent a state licensing authority may require reapplication for a state license, state law may apply.

**XI.**

Respondent states that he has read and understands the foregoing Offer, that this Offer is

made voluntarily, and that no promises, offers, threats, or inducements of any kind or nature whatsoever have been made by the Commission or any member, officer, employee, agent, or representative of the Commission in consideration of this Offer or otherwise to induce him to submit to this Offer.

6<sup>th</sup> Day of January, 2014

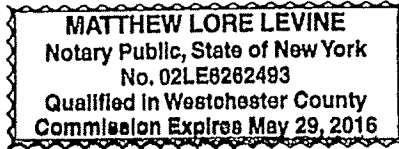
Ryan King  
Ryan King

STATE OF NEW YORK        }  
  }  
COUNTY OF NEW YORK    }

SS:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of January, 2014, by RYAN KING, who  is personally known to me or                    who has produced a                    driver's license as identification and who did take an oath.

Matthew J. Levine  
Notary Public  
State of New York  
Commission Number     :  
Commission Expiration    :



# EXHIBIT D



UNITED STATES OF AMERICA  
SECURITIES AND EXCHANGE COMMISSION

COOPERATION AGREEMENT

1. In connection with an investigation relating in part to trades done by Ryan C. King ("Respondent") while employed at Gleacher & Co., Secs., Inc. ("Investigation"), the Division of Enforcement ("Division") of the United States Securities and Exchange Commission ("Commission") and Respondent enter into this cooperation agreement ("Agreement") on the following terms and conditions:

COOPERATION

2. The Respondent agrees to cooperate fully and truthfully in the Investigation and any other related enforcement litigation or proceedings to which the Commission is a party (the "Proceedings"), regardless of the time period in which the cooperation is required. In addition, the Respondent agrees to cooperate fully and truthfully, when directed by the Division's staff, in an official investigation or proceeding by any federal, state, or self-regulatory organization ("Other Proceedings"). The full, truthful, and continuing cooperation of the Respondent shall include, but not be limited to:

a. producing all non-privileged documents and other materials to the Commission as requested by the Division's staff, wherever located, in the possession, custody, or control of the Respondent;

b. appearing for interviews, at such times and places, as requested by the Division's staff;

c. responding fully and truthfully to all inquiries, when requested to do so by the Division's staff, in connection with the Proceedings or Other Proceedings;

d. testifying at trial and other judicial proceedings, when requested to do so by the Division's staff, in connection with the Proceedings or Other Proceedings;

e. accepting service by mail or facsimile transmission of notices or subpoenas for documents or testimony at depositions, hearings, trials or in connection with the Proceedings or Other Proceedings;

f. appointing his undersigned attorney as agent to receive service of such notices and subpoenas;

g. waiving the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, when requested to appear by the Division's staff; and

h. entering into tolling agreements, when requested to do so by the Division's staff, during the period of cooperation.

## VIOLATION OF AGREEMENT

3. The Respondent understands and agrees that it shall be a violation of this Agreement if he knowingly provides false or misleading information or materials in connection with the Proceedings or Other Proceedings. In the event of such misconduct, the Division will advise the Commission of the Respondent's misconduct and may make a criminal referral for providing false information (18 U.S.C. § 1001), perjury (18 U.S.C. § 1621), making false statements or declarations in court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402) and/or obstructing justice (18 U.S.C. § 1503 *et seq.*).

4. The Respondent understands and agrees that it shall be a violation of this Agreement if he violates the federal securities laws after entering into this agreement. It is further understood and agreed that should the Division determine that the Respondent has failed to comply with any term or condition of this Agreement, the Division will notify the Respondent or his counsel of this fact and provide an opportunity for the Respondent to make a submission consistent with the procedures set forth in the Securities Act of 1933 Release No. 5310. Under these circumstances, the Division may, in its sole discretion and not subject to judicial review, recommend to the Commission an enforcement action against the Respondent for any securities law violations, including, but not limited to, the substantive offenses relating to the Investigation. Nothing in this agreement limits the Division's discretion to recommend to the Commission an enforcement action against the Respondent for future violations of the federal securities laws, without notice, to protect the public interest.

5. The Respondent understands and agrees that any statute of limitations applicable to any action or proceeding against him authorized, instituted, or brought by or on behalf of the Commission or to which the Commission is a party arising out of the Investigation, including any sanction or relief that may be imposed therein, is tolled or suspended from the date the Agreement is executed until the commencement of an enforcement action against the Respondent related to the Investigation or the Respondent provides written notice of unilateral termination of the Agreement to the Division. The Respondent will not assert any claim or defense based on the passage of time from the date of this Agreement to the commencement of any action or proceeding against him authorized, instituted, or brought by or on behalf of the Commission or to which the Commission is a party arising out of the Investigation including any sanction or relief that may be imposed therein, whether such claim or defense is constitutional, statutory (including any statute of limitations or Section 4E(a) of the Securities Exchange Act of 1934) or equitable (including laches or other equitable doctrines).

## COMPLIANCE WITH AGREEMENT

6. Subject to the full, truthful, and continuing cooperation of the Respondent, as described in Paragraph 2, and compliance with the federal securities laws, if the Division recommends an enforcement action or proceeding against the Respondent arising from the Investigation, it will inform the Commission of the fact, manner, and extent of his cooperation during the Proceedings and recommend appropriate credit based upon the analytical framework set forth by the Commission in 17 CFR § 202.12. Upon the written request of the Respondent, the Division also may issue a letter to other federal, state or self-regulatory organizations detailing his cooperation during the Proceedings.

7. The Respondent understands and agrees that this Agreement does not constitute a grant of immunity by the Commission, nor is it any other form of final disposition. If the Respondent fully satisfies his obligations under this Agreement, among other alternatives, the Division may recommend and the Commission may accept a settlement offer from the Respondent in the form of an Offer or Consent, or agree to such other disposition deemed appropriate by the Division and the Commission.

8. The Respondent understands and agrees that this Agreement does not bind the Commission or any other federal, state or self-regulatory organization. The Division cannot, and does not, make any promise or representation as to whether or how the Commission may act on enforcement recommendations associated with this Investigation or the Respondent. The Commission has absolute discretion to accept or reject any enforcement recommendations made by the Division.

9. The Respondent understands and agrees that the Agreement only applies to enforcement actions arising from the Investigation and does not relate to any other violations or any individual or entity other than the Respondent.

10. King agrees to consent to the entry of an order, without admitting or denying the findings contained in the order, finding that he willfully aided and abetted and caused violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933, Sections 10(b) and 17(a) of the Securities Exchange Act of 1934, and Rules 10b-5 and 17a-3 thereunder, and the Division agrees to recommend that the Commission accept this offer to fully resolve the Investigation as to King.

#### VOLUNTARY AGREEMENT

11. The Respondent's decision to enter into this Agreement is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than those contained in this Agreement.

12. The Respondent has read and understands this Agreement. Furthermore, he has reviewed all legal and factual aspects of this matter with his attorney and is fully satisfied with his attorney's legal representation. The Respondent has thoroughly reviewed this Agreement with his attorney and has received satisfactory explanations concerning each paragraph of the Agreement. After conferring with his attorney and considering all available alternatives, the Respondent has made a knowing decision to enter into the Agreement.

#### ENTIRETY OF AGREEMENT

13. This Agreement constitutes the entire agreement between the Division and the Respondent, and supersedes all prior understandings, if any, whether oral or written, relating to the subject matter herein.

14. This Agreement cannot be modified except in writing, signed by the Respondent and a representative of the Division.

15. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring the Division or the Respondent by virtue of the authorship of any of the provisions of the Agreement.

The signatories below acknowledge acceptance of the foregoing terms and conditions.

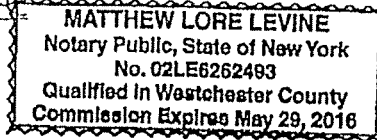
RESPONDENT

January 6<sup>th</sup>, 2014

Ryan C. King  
Ryan C. King

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of January, 2014 by Ryan C. King, who  is a personally known to me or        who has produced a ~~valid driver's license as identification and who did take an oath.~~

Matthew Levine  
Notary Public  
State:  
Commission number:  
Commission expiration:



RESPONDENT'S COUNSEL

Approved as to form:

JANUARY 6, 2014

Matthew L. Levine  
Matthew L. Levine, Esq.  
565 Fifth Avenue, 7th Floor  
New York, New York 10017  
(212) 880-9517

SECURITIES AND EXCHANGE COMMISSION  
DIVISION OF ENFORCEMENT

1-7, 2014

Andrew M. Calamari  
Andrew M. Calamari  
Regional Director  
New York Regional Office