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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16353

In the Matter of

SPRING HILL CAPITAL MARKETS, LLC,
SPRING HILL CAPITAL PARTNERS, LLC,
SPRING HILL CAPITAL HOLDINGS, LLC,
and KEVIN D. WHITE,

Respondents.

DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' MOTION *IN LIMINE* TO EXCLUDE EVIDENCE PURSUANT TO RULE 320

The Division of Enforcement ("Division") respectfully submits the following memorandum of law in opposition to "Respondents' Motion *in Limine* to Exclude All Evidence, Both Documentary and Testimonial, Relating to the Gramercy Trades That Is Irrelevant, Immaterial And Unduly Repitious [sic] to the Claims Asserted By the SEC" (the "Motion").

PRELIMINARY STATEMENT

Spring Hill Capital Markets, LLC ("SHCM"), Spring Hill Capital Partners, LLC ("SHCP"), Spring Hill Capital Holdings ("SHCH") (collectively the "Spring Hill Entities"), and Kevin D. White (collectively the "Respondents") seek to exclude evidence that they fear will "dirty-up Spring Hill and White." Motion at 5. To foster a false narrative that this case merely involves "minor technical violations of the Exchange Act," *Id.* at 2, Respondents urge the Court

to exclude evidence that reveals that White (and SHCH) acted with scienter, recklessness, and negligence in willfully aiding and abetting and causing primary violations charged in the order instituting proceedings ("OIP").[1] Indeed, Respondents go so far as to seek the exclusion of documents that directly refute claims made in the Motion, such as the erroneous contention that there was an "agreement to buy the bond" at the time White authorized his trader to purchase a security. By picking what facts the Division should not be allowed to share with the Court, Respondents clearly seek to promote a one-sided version of events. However, because the challenged evidence, which relates to White's contemporaneous communications and conduct, is directly relevant to the Division's burden of proof, the Motion should be denied in its entirety.

Additionally, Respondents' attempt to exclude documents revealing broker-dealer activity that occurred prior to March 4, 2010 is equally flawed. In support of this aspect of the Motion, Respondents focus the Court exclusively on a transaction involving a security known as GKKRE 2005-1A A1 (the "Gramercy bond"). However, the challenged exhibits are indisputably relevant to the pending Section 15(a) unregistered broker-dealer charges (which are mysteriously not addressed by the Motion) because they demonstrate broker-dealer activity that occurred before the March date on which FINRA sent SHCM a letter clearing it to commence operations. Accordingly, for multiple reasons, Respondents' efforts to exclude testimony and documents that directly relate to the controversy at issue in this Administrative Proceeding should be rejected outright by the Court.

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[1] The OIP charges that: (1) SHCP willfully violated Section 15(a) of the Securities and Exchange Act of 1934 (the "Exchange Act") by engaging in unregistered broker-dealer activity; (2) SHCM willfully violated Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 17a-3(a)(1), and 17a-11(b)(1) thereunder as a result of its failure to maintain accurate books and records and its failure to comply with net capital requirements; and (3) SHCH, the parent company of SHCP and SHCM, along with White, willfully aided and abetted and caused several of the above-referenced violations as well as a separate books and records violation on the part of Rafferty Capital Markets ("RCM"), a broker-dealer through which SHCP and SHCM cleared and settled their trades.

LEGAL DISCUSSION

As the Court has recognized, "Rule 320 recites the Administrative Procedure Act standard, 5 U.S.C. § 556(c)(3) and (d) for the reception of evidence: [T]he hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious." *In the Matter of Piper Capital Mgt., Inc.*, Admin. Proc. Ruling Release No. 569, 68 SEC Docket 316, 1998 WL 723357, at *2 (Oct. 1, 1998) (internal quotation marks omitted). "The notion of 'relevance' embodied in Rule 320 is broader than that concept under the Federal Rules of Evidence." *In the Matter of Russo Securities, Inc.*, 71 S.E.C. Docket 65, 1999 WL 1012303, at *2 (Nov. 9, 1999). This is because "[t]he Federal Rules of Evidence are designed for juries and do not apply to administrative adjudications. Administrative agencies such as the Commission are more expert fact-finders, less prone to undue prejudice, and better able to weigh complex and potentially misleading evidence than are juries." *Id.*

Although relevance is broadly construed in Administrative Proceedings, even under the narrowest definition of relevance and materiality, the testimony and exhibits Respondents seek to exclude is plainly relevant to the allegations in the OIP and should be admitted. However, in an attempt to present the Court with only those exhibits that cater to their version of events, Respondents resort to implausible and inconsistent positions. For example, Respondents argue that a Gramercy internal email thread covering the period March 16-17, 2010 that discusses the Gramercy bond transaction (Div. Ex. 110) should be excluded because "[t]hese emails are irrelevant as they occurred after Gramercy purchased the Gramercy Bond from SHCM." Motion at 7 (emphasis added). Yet, Respondents intend to introduce an even later Gramercy email, dated March 18, 2010 (Respondents' Exhibit 71), and a second March 18, 2010 email containing an attachment (Respondents' Exhibit 72) that is a memo concerning the prospective Gramercy

bond purchase. What accounts for Respondents' dramatically different perspective for why some post March 16 Gramercy emails are relevant while others purportedly are not? It turns out that Respondents' exhibits can be spun to support Respondents' contention that Gramercy purchased the Gramercy bond on March 16 so that SHCM's net capital deficiency was "only" an intra-day violation.[2] By contrast, the "irrelevant" exhibit challenged by Respondents, which shows that the memo contained in Respondents' Exhibit 72 was only a draft that was not reviewed much less approved until March 17, is consistent with the Division's position that no transaction had been agreed to by Gramercy on March 16.

Respondents' efforts to tilt the litigation in their favor by excluding evidence that contradicts their story is perhaps understandable, but still disappointing. Take, for example, Respondents' attempt to exclude Division Exhibit 89. Respondents repeatedly assert in their Motion and in their Prehearing Brief that Gramercy "failed to follow through on its agreement to buy the bond" on March 1, in an attempt to blame Gramercy and its CEO, Roger Cozzi, for White's decision to purchase a bond in violation of the net capital rule. *See, e.g.,* Motion at 2. However, the challenged exhibit makes clear that Cozzi explicitly told White that he would not be able to purchase the Gramercy bond until March 4 at the earliest and that "[i]f the bonds trade away in the interim, so be it." Div. Ex. 89. Respondents' defense that there was an agreement by Gramercy to buy the bond on March 1 obviously becomes a lot more plausible if Respondent can preclude the Division from introducing contemporaneous exhibits that refute and impeach his anticipated testimony, which is the sole basis for Respondents' Motion.

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[2] For example, Respondents appear to want to seize upon an error in an email from Lindsey O'Connor (someone not involved in negotiating the transaction), which reflected a purchase on "Tuesday" (March 16, 2010), a misstatement which conflicts with and is contradicted by several other Gramercy and Spring Hill records, which all identify the trade date as March 17, 2010.

To cite just one more example (out of several) of how the Motion really aims to eliminate evidence that contradicts Respondents' assertions in this litigation, Respondents have identified Division Exhibit 103 as an exhibit that is irrelevant "as no trade was consummated as the owner of the bond (Barlcays) [sic] refused to sell it to SHCM." Motion at 7. While Respondents are entitled to argue their interpretation of different exhibits, this particular interpretation is flatly contradicted by the SHCM trader involved in the communication who has previously stated that this document reflects "an agreement in principle" for his firm to purchase the bond from Barclays on March 15. Once again, though, Respondents' version of events would be bolstered hundred-fold if they get their way in excluding evidence that is only "irrelevant" because it directly challenges or contradicts the arguments they intend to make to the Court.

For these reasons alone, the Motion is devoid of merit. But, in addition to improperly seeking to present a one-sided story to the Court, Respondents' Motion should also be denied because it flatly mischaracterizes the nature of the instant case in order to make the Rule 320 argument seem plausible. Contrary to the portrait painted by Respondents, *see* Motion at 2, Respondents are not simply charged with technical violations: the violations set forth in the OIP are the product of, and were committed to cover up, pre-meditated, wrongful conduct on the part of the Spring Hill Entities and White. The challenged exhibits, which reveal that White and SHCH acted with the requisite scienter, recklessness, and negligence in willfully aiding and abetting and causing securities law violations are directly relevant to the controversy in this case.

Furthermore, this case involves more than the net capital and books and records charges, it also centers on SHCP's unregistered broker-dealer activity. Undeniably, the exhibits that Respondents seek to exclude are directly relevant to demonstrating how White and SHCH substantially participated and acquiesced in SHCP's unregistered broker-dealer activity. In

particular, because SHCM did not obtain a letter clearing them to commence operations as a broker-dealer until March 4, Div. Ex. 187, Respondents' request that the Court exclude exhibits revealing broker-dealer activity "that pre-date the March 1, 2010 [transaction]" solely because (Respondents claim) they are immaterial to the Gramercy bond transaction should be soundly rejected. In a similar vein, many of the witnesses whose testimony and communications Respondents seek to exclude are expected to testify not only on issues that are relevant to proving White's state of mind in connection with SHCM's net capital violation but also on issues relating to SHCP's unregistered broker-dealer activity, which are clearly relevant to the OIP.

In sum, Respondents seek to remove from the case relevant evidence demonstrating the deceptive and, at minimum, extremely reckless conduct White and the Spring Hill Entities engaged in so that they can turn around and argue to the Court, with a straight face, that this case is merely about "minor technical violations." This attempt to create a false narrative by removing unfavorable evidence and testimony from the Court's consideration should not be countenanced. The Motion should, therefore, be rejected in its entirety.

CONCLUSION

For all of the foregoing reasons, Respondent's Motion should be denied.

Dated April 30, 2015
New York, New York

DIVISION OF ENFORCEMENT

/s/ Nicholas A. Pilgrim
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CERTIFICATE OF SERVICE

I hereby certify that I served true copies by electronic mail of the foregoing Memorandum in Opposition to Respondents' Motion *in Limine* to Exclude Evidence Pursuant to Rule 320 on the following on the 30th day of April, 2015.

The Honorable Carol Fox Foelak
Administrative Law Judge
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Dated: April 30, 2015

/s/ Nicholas A. Pilgrim
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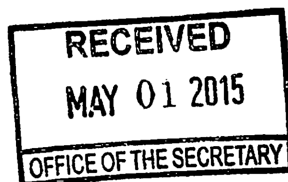

Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *In re Spring Hill Capital Markets, LLC, et al.*, AP File No. 3-16353

Dear Mr. Fields,

Enclosed please find an original and three copies of the Division's Memorandum of Law in Opposition to Respondents' Motion *In Limine* to Exclude Evidence Pursuant to Rule 320.

Respectfully submitted,

Daniel Loss
Counsel

cc: The Honorable Carol Fox Foelak (via email)

Ronald W. Dunbar, Jr., Esq. (via email)
Andrew E. Goloboy, Esq. (via email)
Counsel for Respondents