# HARD COPY

# 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, RECEIVED MAY 06 2015

Respondents.

## DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' MOTION IN LIMINE RELATING TO STATUTE OF LIMITATION

The Division of Enforcement ("Division") respectfully submits the following memorandum of law in opposition to Respondents' "Motion *in Limine* to Preclude All Evidence, Either Documentary or Testimonial, of Conduct or Actions relating to the SEC's Charge that Spring Hill Capital Partners, LLC Acted as an Unregistered Broker Dealer or, in the Alternative, to Preclude All Evidence Prior to January 22, 2010 as Irrelevant and Immaterial to Determining Liability or Remedies Because Such Conduct is Outside the Five Year Statute of Limitation Applicable to the SEC's Claim" (the "Motion").

#### PRELIMINARY STATEMENT

For nearly one year, at the direction of founder-CEO Kevin White and parent company Spring Hill Capital Holdings, LLC ("SHCH"), Spring Hill Capital Partners, LLC ("SHCP"), an unregistered entity, held itself out to the market as a broker-dealer, soliciting customer business that resulted in approximately 100 matched trades of asset-backed securities and generated more than \$4 million in transaction-based compensation. At the same time, Spring Hill Capital Markets, LLC ("SHCM"), an affiliated entity also controlled by White, deceived FINRA with repeated lies about SHCP's business activities and revenues that Respondents now seek to bury with their Motion.

This is simply far from the case of "highly technical" illegal conduct that Respondents wish it were and which, in any event, would not change the fact that none of the Division's charges is time-barred and that the Motion must be denied.

#### LEGAL DISCUSSION

Respondents' argument that SHCP's unregistered broker-dealer activity "cannot be considered to determine either liability or remedies" pursuant to the limitations period in 28 U.S.C. § 2462 is completely meritless.

Section 2462 of Title 28 of the United States Code states that an action seeking the enforcement of "any civil fine, penalty, or forfeiture, pecuniary or otherwise" must commence within five years from the date the claim first accrued.

As an initial matter, it is well-settled that Section 2462 does not limit the time for the Commission to file claims seeking equitable or remedial relief, such as cease and desist orders, disgorgement, and prejudgment interest. *See, e.g., Riordan v. SEC*, 627 F.3d 1230, 1234-35 (D.C. Cir. 2010) (cease and desist order not subject to five-year statute of limitations); *Terence Michael Coxon*, Sec. Act. Rel. No. 8271, 56 S.E.C. 934, 967 n.60 (Aug. 21, 2003) (Commission Opinion) (same); *Herbert Moskowitz*, Exch. Act Rel. No. 45609, 55 S.E.C. 658, 683-85 (Mar. 21, 2002) (same); *Zacharias v. SEC*, 569 F.3d 458, 471-72 (D.C. Cir. 2009) (disgorgement and

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prejudgment interest not subject to five-year statute of limitations); *Dennis J. Malouf*, Initial Decisions Rel. No. 766, 2015 SEC LEXIS 1251 (Apr. 7, 2015) (concluding that "equitable and remedial claims are not barred by [Section 2462] or any other applicable statute of limitations"); *SEC v. McCaskey*, 56 F. Supp. 2d 323, 324, 326 (concluding that "[n]o statute of limitations applies to the SEC's claims for equitable remedies," including injunctions, disgorgement, and officer bar); *SEC v. Kelly*, 663 F. Supp. 2d 276, 286 (S.D.N.Y. 2009) ("[T]he great weight of case law . . . supports the SEC's contention that equitable remedies are exempted from section 2462's limitations period."). "Courts have found that SEC suits for equitable and remedial relief . . . are not governed by § 2462 because they are not actions or proceedings for a 'penalty' within the meaning of the statute." *SEC v. Tandem Mgmt. Inc.*, No. 95-civ-8411, 2001 WL 1488218 at \*6 (S.D.N.Y. Nov. 21, 2001).

Respondents' reliance on a single, outlier case from the Southern District of Florida for the contention that enforcement actions for equitable relief and disgorgement are subject to the five-year statute of limitations, which is contrary to Commission precedent, is clearly misplaced. *See* Motion at 6 (citing *SEC v. Graham*, 21 F. Supp. 3d 1300, 1307-11 (S.D. Fla. 2014)). As Judge Patil recently explained in *Malouf*, "I am not persuaded by [the *Graham*] opinion's reasoning that the longstanding precedents on the pertinent limitations period were swept aside ... by the Supreme Court's decision in *Gabelli*, which specifically noted that its holding did not extend to injunctive relief and disgorgement claims." *Dennis J. Malouf*, Initial Decisions Rel. No. 766, 2015 SEC LEXIS 1251 (Apr. 7, 2015) (citing *Gabelli v. SEC*, 133 S. Ct. 1216, 1220 n.1 (2013)). Indeed, the overwhelming weight of post-*Gabelli* authority rejects the interpretation proposed by Respondents and is consistent with the longstanding rule that the Section 2462 limitation period does not apply to equitable or remedial claims. *See, e.g., SEC. v. LeCroy*, Civil

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Action No. 2:09-cv-2238, 2014 U.S. Dist. LEXIS 126836, at \*2-5 n.1 (N.D. Ala. Sept. 5, 2014); SEC v. Geswein, Case No. 5:10cv1235, 2 F. Supp. 3d 1074, 2014 WL 861317, at \*9 (N.D. Ohio Mar. 5, 2014); SEC v. Amerindo Inv. Advisors Inc., No. 05 Civ. 5231, 2014 WL 2112032, at \*11 (S.D.N.Y. May 6, 2014); SEC v. Syndicated Food Serv. Int'l., Inc., 2014 WL 1311442, at \*25 (E.D.N.Y. Mar. 28, 2014); SEC v. Radius Capital Corp., 2013 WL 3716394, at \*2 n.2 (M.D. Fla. July 15, 2013); SEC v. Fujinaga, No. 2:13-cv-1658, 2014 WL 4977334, at \*6 (D. Nev. Oct. 3, 2014). In short, the Graham opinion, "which nearly all Respondents discuss in support of their arguments that Section 2462 extends to all causes of action, is not controlling law and is an outlier." Donald J. Anthony, Jr., Initial Decisions Rel. No. 745, 2015 SEC LEXIS 707 (Feb. 25, 2015).

Moreover, Respondents' argument that the Division's claims for civil penalties relating to SHCP's unregistered broker-dealer activity are time barred because they "accrued . . . more than five years" ago is similarly baseless. The Division does not dispute that certain unregistered broker-dealer activity by SHCP occurred more than five years before the Order Instituting Proceeding ("OIP") was filed. However, SHCP committed new and independently actionable violations of Section 15(a) of the Securities and Exchange Act of 1934 within the limitations period through the solicitation and conduct of approximately 40 more trades and the generation of nearly \$1 million in additional transaction-based compensation (85% retained by SHCP), while simultaneously and repeatedly holding itself out to the market as a broker-dealer.<sup>1</sup> *See Donald J. Anthony, Jr.*, Initial Decisions Rel. No. 745, 2015 SEC LEXIS 707 (Feb. 25, 2015) ("The Commission has long permitted penalties to be sought for violations occurring within the limitations period, even when similar violations first occurred outside that period."); Guy P.

<sup>&</sup>lt;sup>1</sup> These trades and the associated revenues are reflected in SHCP's 2010 trade blotter (Div. Ex. 138), the relevant excerpts of which are attached hereto as Exhibit A.

*Riordan*, Exch. Act Release No. 61153, 2009 SEC LEXIS 4166, at \*74 (Dec. 11, 2009) ("Five of [respondent's] approximately eighty agency securities transactions . . . occurred . . . within the five-year period before the institution of this proceeding. Accordingly . . . this proceeding is not time-barred."). Respondents' contention that, here, there was only a single violation from which ill-effects subsequently resulted completely disregards the illegal trading activity and marketing efforts which persisted through at least February 2010. Respondents' reliance on *Gabelli* is again misplaced because that case "concerns the 'discovery rule' and simply does not . . . stand for the proposition that continuing or new violations are immune to action because the statute of limitations period runs from the first violation." *Donald J. Anthony, Jr*, Initial Decisions Rel. No. 745, 2015 SEC LEXIS 707 (Feb. 25, 2015).

Finally, Respondents' contention that "at the very least, this Court should exclude all evidence regarding . . . conduct that occurred prior to . . . the OIP" must be rejected because, as the Commission has previously held, "Section 2462 does not constitute an evidentiary bar" and "[e]vidence of matters that occurred before the applicable limitations period may be admitted." *Terence Michael Coxon*, Sec. Act. Rel. No. 8271, 56 S.E.C. 934 (Aug. 21, 2013) (Commission Opinion); *see also Joseph J. Barbato*, 53 S.E.C. 1259, 1278 n.26 (1999) ("Statutes of limitation do not act as an evidentiary bar. Therefore courts may admit evidence of misconduct outside of an applicable limitations period."); *Guy P. Riordan*, Sec. Act. Rel. No. 9085, 2009 SEC LEXIS 4166 (Dec. 11, 2009) ("We may consider conduct occurring [outside the limitations period], to establish such matters as [the respondent's] course of conduct, motive, intent, or knowledge in committing violations that are within the limitations period. We may also consider such conduct in deciding whether to impose a cease-and-desist or disgorgement order because such an order . . . is not subject to Section 2462."); *Terry T. Steen*, Exch. Act. Rel. No. 40055, 53 S.E.C. 618

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(June 1, 1998) (Commission Opinion) (rejecting contention that Commission cannot consider conduct that occurred outside limitations period in determining appropriate term of suspension).

Respondents' transparent objective is to preclude evidence revealing that White and SHCH knew SHCP's unregistered broker-dealer conduct was improper so that they can cast this case merely as one of "highly technical" wrongdoing. However, for all the reasons set forth above, Section 2642 does not provide an avenue for Respondents to construct their false narrative. In sum, the Division's claims are not time-barred and evidence of conduct more than five years before the OIP is admissible. Moreover, this evidence can and should be considered in granting the remedies sought pursuant to the OIP.

#### **CONCLUSION**

For all of the foregoing reasons, the Motion should be denied in its entirety.

Dated May 4, 2015 New York, New York

#### DIVISION OF ENFORCEMENT

<u>/s/ Nicholas A. Pilgrim</u> Nicholas A. Pilgrim Daniel M. Loss Securities and Exchange Commission New York Regional Office Brookfield Place, 200 Vesey Street, Suite 400 New York, NY 10281 Tel: 212.336.0924 Email:pilgrimn@sec.gov

#### **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 4th day of May, 2015.

The Honorable Carol Fox Foelak Administrative Law Judge Securities and Exchange Commission 100 F Street, NE Washington, DC 20549 alj@sec.gov

Ronald W. Dunbar, Jr., Esq. Dunbar Law PC 197 Portland Street Boston, MA 02114 Counsel for Respondents

Dated: May 4, 2015

<u>/s/ Nicholas A. Pilgrim</u> Nicholas A. Pilgrim Division of Enforcement's Memorandum of Law in Opposition to Respondents' Motion *in Limine* Relating to Statute of Limitation

# **EXHIBIT A**

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152 Euro CA015	1/22/2010	01027201	Buy	X30234097128	17 250000	1,505,000	0 675000000	5,740,875.00	1,001,913 44	Credit Suisse						16 349 252 1	262,197.05	1,419,749 54
153 Ears CMD3	1/22/2010	1/27/2010	Sell	X30234091121	17 50000	1,505,000	0.67500000	5,740,175.00	5,023,265,63	DB London	0.25000000	14,332.19	10,021.48	1 3,004.27	17,024.21	24 212,217,1	265,901.32	1,506,774.15
154 Bure CMD 5	1/25/2009	0102/12/1	Buy	LL91216ILOSX	60.375000	3,000,000	0.91424098	2,742,734 99	1,655,926.25	Bank of America						1,772,675.46	21 106'592	1,506,774 15
155 Euro CMDS	6002/52/1	0102/12/1	Sell	X30289122677	60.525.000	3,000,000	16671070	2,742,734.99	1,660,040,36	DB London	000000051 0	411411	5,741.24	101 10	4,510.05	1,771,415.71	266,762.51	02 159 (151
156 W/B2	1/13/2009	0102/12/1	Buy	017591AB9	000529-16	1,500,000,00	0 97337809	1,460,006.71	1,117,711,1	Barcleys						1,778,416,71	266,762.51	1,311,654,20
157 WBS	1/25/2009	0102/02/1	Sell	017F91AB9	91 50000	1,500,000,00	0 97111109	1,460,006.71	1,365,106.21	KBW	1 17500000	11 11 11 11	0.878,72	1 4106.27	21,268.66	1,805,751 84	270,961.71	1,534,923.06
154 Bure RMB3	277.010	2/2/2010	Buy	X50275791084	17,10000	1,000,000	1 00000000	2,000,000 00	00 000 212	Back of America						1,105,791 14	17.101.012	1,514,923.06
155 Euro RMBS	2/2/2010	010225/2	Sell	X30275791084	17.750000	2,000,000	1 00000000	2,000,000 00	755,000 50	DB London	0 65000008	13,000 00	17,776.15	15 2,666.51	15,110.32	1,123,561.69	273,535 30	1,550,051 31
156 UK CMBS	2/5/2010	0100/01/2	Boy	X30279812697	61.00000	15,000,000	0.976473100	14,647,096.50	1,934,721.17	Barclays						1,123,561 69	271,515 30	10,000,011
135 UK CMBS	2/5/2010	2/10/2010	Sell	XS0279112597	61.400000	15,000,000	0.976473100	14,647,096.50	12211,199,1	DB London	0.40000000	11.112.12	91,109,16	13,771.37	11.011 14	\$1 22 515 1	117,306.61	1,621,071,17
156 UK CMBS	2/5/2010	2/10/2010	Buy	X502330001936	71.750000	6,000,000	0 915345365	5,912,072.19	4,241,911,10	Berdays						1215,212,1	117,306.61	1,628,071.17
157 UK CMBS	2/5/2010	2/10/2010	Sell	X50233008936	72 150000	6,000,000	0 945345365	9,212,072.19	4,265,560.09	DB London	0.4000000	21,641.29	17,057.34	14 5,551.60	11,404,74	1,952,635 19	292,165 24	16 495 659 1
154 UK RADIS	21/2010	2/11/2010	Page	X302406053	19 050000	10,000,000	0.665580653	6,635,806.53	12 206 226 2	DB London						1,952,435 19	292,665 24	1,659,569.91
159 LIC BARIS	01023/2	2/1/2010	Sett	X3014060551	19 100000	10,000,000	0.665580653	6,655,806,53	1910/121016	Berdeys	0.05000000	1,127.90	5,214.85	1223	4,432.65	1,957,650.04	191,647 51	1,664,002.57
	2/1/2010	2/1/2010	100	X30284077186	13 40000	10,000,000	0.665580652	6,633,806.52	10 162'056'5	DB London						1,957,650.01	293,647.51	1,664,002.57
141 UK RMBS	2/1/2010	2/11/2010	Sell	X50284077186	19 50000	10,000,000	Q 665580652	6,655,806.52	5,956,546.84	Chi	0.10000000	6,635.01	10,429.79	1,564.47	1,145.32	1,968,079.87	295,211 91	1,672,867.89
162 Euro CMB3	2/10/2010	2/16/2010	Buy	170004082761	77 250000	2,100,000	1 00000000	2,100,000.00	1,622,250 00	IP Margen						1,968,079.87	295,211.91	1,672,167.19
161 Euro CMB3	2/10/2010	2/16/2010	Sell	170004082761	77,750000	2,100,000	1 00000000	2,100,000.00	1,632,750 00	DB London	0.5000000	10,500 00	14,403.31	1 2,160.51	12,242,17	1,982,483.24	297,372.49	1,615,110 75
164 Earo CMB15	2/11/2010	2/16/2010	Buy	XS0267535737	6.250000	\$,000,000	0.576993579	2,884,967.90	6FOLCON	Barclays						1,982,483 24	297,3371 49	1,615,110.75
165 Ears CMBIS	2/11/2010	2/16/2010	Sell	X802673555737	6.425000	\$,000,000	0.576991579	2,114,967.90	61.625,231	DB London	0.17500000	5,04170	6,925.55	1,034.03	5,006.73	1,949,404 79	298,411.32	1,640,997.48
144 UK RMBIE	0102/21/2	2122216	Bue	38741 YCK3	59 50000	1,000,000	1 10000000	2,000,000.00	1,190,000.00	DB London						61 104/645/1	294,411.32	1.000,007 41
167 UK RADIS	2/17/2010	2/12/2010	Sell	31741 YCK3	59 750000	2,000,000	1 00000000	2,000,000 00	1,191,000.00	Bank of America	0.25000000	5,000.00	5,000.00	0 750.00	4,250.00	1,994,408,79	299,161.32	1,695,247.48
161 Ever CLD	2/11/2010	0105/42/2	Buy	X302022540	11 500000	1,000,000	1 013635056	12 271, 650,2	2,610,161,77	DB London						1,994,408 79	26 191,662	1,005,247 48
169 Ears CL.O	2/11/2010	0102/12/2	Sell	X3024125411	\$130000	\$,000,000	1 013655056	5,068,275.28	2,701,090,107,2	IP Morgan	1 10000000	91,228.95	123,031.71	1 11,469.76	104,661 96	2,117,540.51	317,631.08	1, 199, 600, 11
170 Euro CLO	2/11/2010	0102/12/1	Pur	X50292425117	50.750000	1,000,000	1 00000000	\$ 000,000 00	2,537,500 00	DB London						2,117,540.51	10169/110	1, 799,909.43
171 Euro CLO	0102/11/2	0102/12/2	Sell	XS0292425117	\$2,00000	5,000,000	1 00000000	5,000,000.00	2,600,000.00	Morgan Stanley	1,25000000	62,500.00	14,756,25	5 12,653 44	11 202,12	2,201,496.76	330,214.51	1,171,612.24
172 Eurs CLO	2/11/2010	0102/12/2	Buy	5NV020261	23 00000	3,000,000	1 0000000	5,000,000.00	1,150,000 00	DB London						2,201,195,76	330,284 51	1,871,612.24
171 EastCLO	2/18/2010	0102/62/2	Sell	5NY020261	24 000000	\$,000,000	1 00000000	5,000,000.00	1,200,000.00	Guggenbeim	1 0000000	30,000.00	67,415.00	0 10,122 75	\$1,962.25	2,269,311,76	340,407.26	1,921,934 49
174 Euro CLO	2/11/2010	0102/02/2	Buy	X30233964307	19 00000	4,700,000	1 00000000	4,700,000,00	1,111,000 00	DB London						2,269,311.76	340,407.25	1,931,974.49
175 Euro CLO	2/11/2010	2/21/2010	Set	X30233964307	40.20000	4,700,000	1 00000000	4,700,000.00	1,119,400.00	Morgan Stanley	1,2000000	36,400.00	76,123.01	1 11,418.46	64,701.62	2,345,564 14	351,225,73	1,991,679,11
176 Eurs CLO	2/11/2010	0102/12/1	Buy	\$1121091202X	27 00000	2,000,000	1.00000000	2,000,000.00	540,000.00	DBLondon						2,345,504.14	131,025,135	11 649 (651
177 Earn CLO	211/2010	0102/122	Sell	X3023601119	21 060000	2,000,000	1 00000000	2,000,000.00	561,200.00	Cai	1 06000000	21,200.00	21,613 64	4 4,292.05	24, 321, 59	2,374,116.48	11211/251	2,014,000 71
171 Farm CLO	2/22/2010	175/2010	Buy	20450415205X	100.750000	1,250,000	1 00000000	1,250,000 00	1,259,775.00	Buckys						2,974,118,41	356,117.777	2,018,000 71
179 EarsCLO	2/17/10	0102527	340	20650615205X	101 100000	1,250,000	1 00000000	02 000'052'1	1,253,750.00	DB London	0.15000000	4,775.00	5,904.94	4 113.74	5,019 20	1+ 110'011'I	117,001.51	2,023,019 90
110 Euro CLO	0102/22/2	273/2010	Ber	X30293695114	65 000000	1,000,000	1.00000000	1,000,000 00	650,000.00	DB London						2110/011/2	117,001.51	2,023,019.90
111 Euro CLO	- 0102/22/2	102/222	Sell	X30293695144	66 000000	1,000,000	1 00000000	1,600,000 00	440,000.00	Bartleys	1 00000000	10,000.00	11,497.00	0 2,024.55	11,472.45	2,993,520.42	339,021.06	St tar 160'2
112 5130 010	2/12/2010	273/2010	Buy	X5027347171	100.750000	4,000,000	1 00000000	1,000,000 0	4,030,000.00	Bardaya						27 025 (6572	359,021 06	2014,497.35
III EURO CLO	0102/22/2	2735/2010	Sell	X30272347171	101.100000	4,000,000	1,00000000	4,000,000 00	4,044,000.00	DB London	0.1500000	14,000.00	11,195.50	0 2,134.37	(F 190'91	2,412,416.22	361,162.43	2,050,553.76
114 Euro CMBS	0102/92/2	\$372010	Bur	X50277726500	39.05000	10,000,000	0.970251924	9,702,519.24	37.111,117,1	JP Morgan						2,412,416.22	361,862.43	7,010,513 78
115 Euro CNBS	0102/92/2	1772010	Sell	X30277726500	39.150000	10,000,000	0 970251924	9,702,519.24	3,791,536.21	DB London	0.1000000	21 202'6	19,705,81	1 1,996 20	17.110.11	2,425,724.19	163,151,631	2,061,865,56
114 Law CLO	276/2010	1///010	Buy	129201120EX	64 50000	5,000,000	1 00000000	5,000,000,00	1,225,000.00	DB London						2,425,724.19	10111101	2,061,465,56
117 East CLO	0102/92/2	\$102010	Sell	1292071920EX	63 250000	\$,000,000	1 (00000000	3,000,000 00	3,262,500.00	Nomura London	0.75000000	37,500.00	51,415 00	0 7,715.25	43,719,75	2,477,159.19	11.772,177.	2,103,545,31
111 Tune CLO	2/26/2010	0102/1/1	Buy	X30236025804	31 000000	6,200,000	1 00000000	4,200,000.00	1,596,000 00	Cai						2,477,159.19	11,573.11	2,105,585,511
119 Ears CLO	2/26/2010	0102/07	Sell	X30236025804	59 00000	6,200,000	1 00000000	6,200,000.00	3,451,000.00	RBS London	1 00000000	\$2,000.00	02 910 21	12,755 11	72,213,72	2,562,191.39	314,329.76	2,177,868 63
150 Rate CLO	0102/92/2	0102/07	Buy	430871AB9	70,50000	12,400,000	1.00000000	12,400,000 00	1,742,000.00	DB London						2,562,198,39	314,329.76	2,177,058.63
191 Euro CL/O	2/26/2010	1/1/2010	340	410871AB9	11 000000	12,400,000	1.00000000	12,400,000.00	1,154,000.00	Credit Suisse	0 50000000	61,000.00	13,039,20	0 12,755.01	21.012,07	2,647,237,59	197,015 64	2,230,151,05
	TOTALS															1,47,137.59	107,015.64	1,150,151,152

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION NEW YORK REGIONAL OFFICE 3 WORLD FINANCIAL CENTER SUITE 400 NEW YORK, NEW YORK 10281-1022

> WRITER'S DIRECT LINE (212) 336-9134 LossD@sec.gov

May 4, 2015

Via UPS

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 of Enforcement's Memorandum of Law in Opposition to Respondents' Motion *in Limine* relating to the statute of limitations in the above referenced matter.

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