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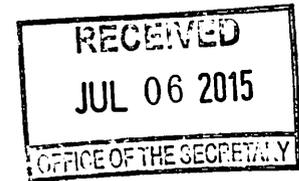
**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**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

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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The Division of Enforcement (“Division”) respectfully submits its proposed Findings of Fact and Conclusions of Law, pursuant to the Commission’s Rule of Practice 340.

PROPOSED FINDINGS OF FACT¹

A. Respondents and Relevant Entities

1. **Spring Hill Capital Markets, LLC (“SHCM”)**, is a registered broker-dealer organized under the laws of Delaware and headquartered in New York. (Answer ¶ 6.) It is majority owned, through SHCH, by Kevin White. (*Id.*) SHCM’s broker-dealer registration became effective on February 26, 2010, and the firm was authorized to commence operations on March 4, 2010. (Div. Ex. 187 at SH-AP-00000253-255; White Tr. 315:12-316:10, 338:12-16.)

2. **Spring Hill Capital Partners, LLC (“SHCP”)**, a Delaware company headquartered in New York, has never been registered with the Securities and Exchange Commission (the “Commission”) in any capacity. (Stipulations Entered into by the Parties, 5/6/15 (“Stip.”) ¶ 2.) It is majority owned, through SHCH, by Kevin White. (Stip. ¶ 3.) From May 2009 until SHCM commenced operations in March 2010, SHCP traded securities in SHCP-designated customer accounts held by Rafferty Capital Markets, LLC (“RCM”). (*See* Stip. ¶ 8; Div. Ex. 138A; Heaney Tr. 748:20-23, 750:12-19, 764:13-19; Tedeschi Tr. 811:16-20.) SHCP has had no business activity since SHCM commenced operations. (Stip. ¶ 4.)

3. **Spring Hill Capital Holdings, LLC (“SHCH”)**, a Delaware company headquartered in New York, is a holding company that is the sole direct owner of SHCP, SHCM,

¹ References to the Hearing Transcripts are denoted by “Tr.” preceded, where applicable, by the testifying witness’ last name and followed by the page number(s). References to exhibits introduced by the Division are abbreviated as “Div. Ex. ___”, while exhibits introduced by Respondents are abbreviated as “Resp. Ex. ___”. “Findings ¶ ___” refers to paragraphs within these Proposed Findings of Fact and Conclusions of Law. Where undisputed facts are alleged in a given paragraph of the Order Instituting Proceedings and admitted in the corresponding paragraph of Respondents’ Answer, this brief uses the notation “Answer ¶ ___” to refer to the paragraph number in both documents.

and Spring Hill Management Company, LLC (“SHMC”) (collectively, “Spring Hill” or the “Spring Hill entities”). (Answer ¶ 5.) SHCH is majority owned by Kevin White. (*Id.*; Stip. ¶ 3.) Since June 2009, SHCH has exercised exclusive authority to manage the business and affairs of all the Spring Hill entities, including exclusive power to “manage[], deal[] with and dispose[] of” their assets and funds. (Div. Exs. 1G at § 1.4; 180B at § 1.4; 180D at §1.4; 302; Tr. 484:12-486:5; Supplemental Stipulations Entered into by the Parties, 5/11/15 (“Supp. Stip.”) ¶ 2.) SHCH has never been registered with the Commission in any capacity. (Answer ¶ 5.)

4. **Kevin D. White**, age 52, founded the Spring Hill entities and is their CEO. (Answer ¶ 8.) Through SHCH, White is responsible for executive management of the Spring Hill entities and is involved in all aspects of their decision-making and policy. (Div. Exs. 8 at SH-SEC0011742; 1H at F325, F347; Tr. 484:12-485:6.) He holds Series 3, 7, 9, 10, 24, and 63 licenses. (Answer ¶ 8.) He previously was associated with three registered broker-dealers, including Lehman Brothers (“Lehman”) from 1991 to 2008, where White served ten years as a Managing Director. (*Id.*; Div. Ex. 1K at 1-2; White Tr. 218:12-14.) White had various roles at Lehman in the area of fixed income and asset-backed securities, including Head of Global Institutional Client Group Sales and Global Head of Securitized Products Syndicate. (Div. Ex. 1K at 1-2; White Tr. 433:12-435:7.) During much of his tenure at Lehman, White’s responsibilities included monitoring of adherence to securities industry compliance requirements, monitoring registrations of staff, and other compliance duties. (*Id.*)

5. **Rafferty Capital Markets, LLC (“RCM”)**, a New York company headquartered in Garden City, New York, is a broker-dealer registered with the Commission. (Stip. ¶¶ 5-6.) During the relevant period, RCM provided trade clearing and processing services for trades

introduced by SHCM and SHCP. (Div. Exs. 121 at SH-SEC0000982; 204 at RCML-SEC-001647; White Tr. 419:24-420:5; Tedeschi Tr. 811:16-20; Heaney Tr. 748:20-23.)

B. White Forms SHCP and Offers Broker-Dealer Services

6. In the wake of the 2008 collapse of Lehman, White, a 17-year Lehman veteran, formed his own broker-dealer firm, SHCP. (White Tr. 273:6-12, 520:2-523:18). When he launched SHCP in 2008 and 2009, White, who first became licensed in the securities industry in 1991 (Series 3, 7, and 63) and who had served for a decade as a Managing Director at Lehman, had nearly two decades of experience in the industry. (Div. Ex. 1K.) With this experience, White understood that firms had to register with FINRA or other regulatory organization as a prerequisite to operating a broker-dealer business in the United States. (White Tr. 323:16-20.)

7. In 2009, White also knew that soliciting business for a broker-dealer, effecting transactions in securities, and receiving commission-based compensation were all hallmarks of broker-dealer activity requiring a firm to register. (White Tr. 507:8-20.) White, therefore, knew his firm had to apply for a FINRA license since, in his words, “we knew we were going to build our own broker-dealer,” but he also did not want to wait for the FINRA application to be approved before buying and selling securities in order to earn commissions. (White Tr. 535:12-536:7) (“[I] realized it was going to take – I think it’s 270 days to complete, and we didn’t have the – we didn’t have the time to sit and do nothing for nine months, and so we knew the concept of a piggyback arrangement was introduced to us.”) White opted to incorporate a second entity, SHCM, in June 2009 to apply for the mandatory FINRA registration, while offering broker-dealer services to customers through SHCP, which introduced its trades through RCM, without disclosing its securities trading to FINRA. (Div. Exs. 1G; 2 at 2; 204.)

8. An obvious reason for why “we didn’t have the time to sit and do nothing for nine months” was financial: SHCP was started in October 2008 “when Barclays let go of the whole real estate group,” but the firm did not receive “[o]ur first dollar of revenue” until it received a contract with Gramercy Capital Corp. (“GCC”). (White Tr. 524:15-17, 530:16-17, 533:14-17). Until the revenue came (several months after SHCP was founded) White and another individual had to personally fund “a Spring Hill checkbook” that was used to pay approximately 8 to 10 SHCP employees in 2008 and 2009. (White Tr. 533:7-13; Tedeschi Tr. 786:7-14.) After SHCP began offering customers broker-dealer services, however, approximately 90 percent of the firm’s income came from its trading activity. (Div. Ex. 185.)

C. White Arranges for SHCP to Receive Commission Income in Exchange for Introducing Securities Trades Through RCM

9. After Lehman’s collapse, there were many investors looking to invest in the types of structured finance securities that White and others at Spring Hill had specialized in, with several smaller broker-dealers emerging to capitalize off the perceived opportunities of trading these types of securities, which were available at distressed prices for those who were able to source the bonds.² (Tedeschi Tr. 789:12-791:14.) Unwilling to wait months for FINRA approval before his firm could earn revenue by advising customers and trading securities on their behalf, in early 2009, White approached Michael Rafferty (“Rafferty”), a close acquaintance and the president of Rafferty Holdings, LLC, to discuss his business plans, and the two negotiated an arrangement to enable SHCP to begin trading securities. (Rafferty Tr. 1042:20-22, 1044:2-24; White Tr. 416:7-24, 534:8-17, 535:5-9, 536:17-25.) As set out in their written correspondence,

² According to White, his firm specializes in “structured finance products,” including ABS (asset-backed securities), CMBS (commercial mortgage-backed securities), RMBS (residential mortgage-backed securities), CDOs (collateralized debt obligations), and CLOs (collateralized loan obligations). (White Tr. 219:22-220:23.)

RCM would “act as B/D of record for [Spring Hill’s] registered reps,” “keep a fair percentage of the commissions,” and “cover [its] own clearing personnel,” while SHCP would pay the “associated clearing costs,” “retain the remain[ing] commissions,” and “manage the business [itself].” (Div. Ex. 127.) This meant that SHCP would be responsible for maintaining the client relationships, effecting the securities transactions, and managing its traders, (Rafferty Tr. 1089:16-24; *see also* White Tr. 418:11-419:2), while SHCP would “piggyback” on RCM’s clearing arrangement. (White Tr. 535:5-536:7.)

10. Pursuant to White’s negotiations with Rafferty, SHCP was entitled to 85 percent of the trading revenues, with RCM to receive the balance for processing and clearing the SHCP-introduced trades. (Div. Ex. 204; White Tr. 416:25-417:12; Fell Tr. 1146:8-13.) White sought 85 percent of the trading revenue because his firm “had the relationships and they were transacting the business.” (Rafferty Tr. 1085:12-22.) In April 2009, the business relationship negotiated by White and Rafferty was memorialized in a written agreement designed to “facilitate transactions initiated by [SHCP] with clients.” (Div. Ex. 204 at RCML-SEC-001642; Stip. ¶ 7.) “Attachment A” to the agreement specified, “RCM shall provide clearing and trade processing for trades introduced by [SHCP]. RCM will . . . ensure that said trades are processed on a timely basis. RCM shall provide the necessary compliance and review associated with such trades For the above Services performed, [SHCP] agrees to pay RCM 15% of all gross revenues for trades settled and processed by RCM on behalf of [SHCP].” (*Id.* at RCML-SEC-001647; *see also* Martens Tr. 1207:7-11.)³ In addition, certain SHCP employees were to be

³ The contemplated compliance and review function related to RCM performing back-office duties such as making sure counterparties were accredited. (Div. Ex. 204 at RCML-SEC-001647; Martens Tr. 1183:18-1184:4, 1199:21-1200:15.) While certain versions of an undated “Attachment A” provided that SHCP’s offices would be registered as a branch office of RCM, SHCP and RCM elected not to do so for undisclosed reasons. (Martens Tr. 1190:25-1191:6, 1191:21-1192:7.)

registered as “independent” representatives of RCM. (Div. Ex. 204 at RCML-SEC-001647.) Contrary to his claim that he never reviewed this agreement, (White Tr. 425:22-426:8), White received and reviewed copies of the agreement prior to its execution. (Div. Exs. 192-193; 275-276; Rafferty Tr. 1087:5-9.)

11. From June 3, 2009 onward, all operations of SHCP (and subsequently SHCM) were directed by SHCH, a holding company, which exercised its “full and exclusive right, power and authority” to manage SHCP and to conduct SHCP’s business and affairs by permitting the unregistered broker-dealer activity to take place. (Div. Exs. 4 at SH-SEC0011644; 180B; Supp. Stip. ¶ 2; White Tr. 483:5-9, 484:12-485:6.) SHCH exercised its supervisory and management “right, power and authority” over both SHCP and SHCM primarily through White, the CEO of SHCM, the Managing Director of SHCP, and the 80 percent owner of SHCH. (Div. Exs. 1H at F000347; 180B; White Tr. 218:2-7, 305:19-24.)

D. White and SHCH Manage and Supervise SHCP’s Broker-Dealer Business

12. Consistent with the original framework envisioned by White and Rafferty, SHCP managed its trading business independently of RCM. (Rafferty Tr. 1089:16-24.) Under White’s and SHCH’s direction and management:

- a. SHCP maintained its own blotter, which the firm referred to in its internal records as its “Master Trade Blotter.” (Stip. ¶¶ 8-9; Div. Exs. 138A; 205; O’Neill Tr. 103:6-8, 117:8-13, 189:2-19; Hohenstein Tr. 549:6-25, 657:13-16, 659:6-24, 660:13-661:2, 662:12-19.) A section of the blotter identified SHCP’s “Monthly BD Totals,” in reference to the unregistered entity’s “broker-dealer revenues.” (Div. Ex. 138A at Tab “Monthly BD Totals”; O’Neill Tr. 103:23-104:12, 154:4-8.) The blotter was maintained with the knowledge of White, (O’Neill Tr. 185:3-11), who wanted his company to keep track of its trading activity independent from the firm it cleared through, because, in White’s words, “we’re trading regularly and wanted to keep records, so we understand the trades, the counterparties, the pricing, the revenue. Everything. So it was a way for us to inventory our trading activity, manage our trading activity.” (White Tr. 333:3-24.)

- b. SHCP made its own trading decisions. (*See* White Tr. 609:25-610:6.) RCM only learned about trades after SHCP entered into them. (Heaney Tr. 748:24-749:2; *see also* White Tr. 305:10-12.)
- c. SHCP made its own decisions about what securities investment advice to provide its customers, without any input from RCM. (White Tr. 611:3-10.)
- d. SHCP-employed traders were supervised by White, without the involvement of any RCM employee, and without access to RCM's supervisory procedures. (White Tr. 222:20-223:3, 257:12-18, 421:23-422:6; Fell Tr. 1139:17-20; Martens Tr. 1178:18-25, 1185:14-23, 1200:11-15; Quinn Tr. 872:20-22.) The registered representative designation of SHCP employees like Tedeschi who traded "ha[d] nothing to do with what he [did] on a daily basis on trading." (White Tr. 325:24-326:8.) RCM personnel therefore distinguished SHCP's traders from RCM's "actual" registered representatives. (Div. Ex. 114; Martens Tr. 1203:7-1204:5.)
- e. SHCP-employed traders worked in Spring Hill's own offices, in a different location than RCM. (Rafferty Tr. 1090:22-1091:4; Fell Tr. 1139:2-16; Martens Tr. 1184:5-13, 1199:25-1200:10; Tedeschi Tr. 812:5-12; White Tr. 423:11-424:4.)
- f. SHCP-employed traders communicated with customers and counterparties using SHCP's own e-mail and Bloomberg messaging addresses services to which RCM lacked access; thus, SHCP's electronic communications could not be reviewed or archived by RCM. (Martens Tr. 1184:14-1185:2; 1201:6-9; *see also* White Tr. 424:6-25; Tedeschi Tr. 796:12-22, 808:6-8.) When communicating via e-mail, SHCP-employed traders also used a SHCP signature block that made no mention of RCM. (*See, e.g.*, Div. Ex. 299; Tedeschi Tr. 819:19-821:5.)
- g. Compensation for SHCP-employed traders was determined by White and his SHCP partners, without any involvement by RCM (White Tr. 608:13-609:24; Rafferty Tr. 1090:5-21; Tedeschi Tr. 813:15-24, 815:12-18; Martens Tr. 1185:9-13, 1185:24-1186:7; O'Neill Tr. 120:15-121:8.) Such compensation came out of SHCP's 85 percent share of the trading revenues (O'Neill Tr. 216:16-19; Martens Tr. 1187:3-1187:11), with White intent to preserve as much of the transaction-based compensation as possible for the unregistered entity. (Tedeschi Tr. 812:21-814:12.)
- h. SHCP made its own hiring and firing decisions for SHCP's traders, without any involvement by RCM (White Tr. 609:16-24.). In recruiting employees, White described SHCP as its own "Broker-Dealer." (Div. Ex. 38; White Tr. 451:15-19.)
- i. SHCP produced its own marketing materials, which held the firm out as its own broker-dealer and did not even refer to RCM. (*See, e.g.*, Div. Exs. 20-37; 40-52; 52A; 56A; 57B; 58A; 63; 65; 66A; 67; 67B.) RCM played no role in the creation or review of such materials and had no input into which investment firms SHCP solicited for trades. (Rafferty Tr. 1092:8-12; White Tr. 609:25-610:6, 610:20-611:2.)

E. SHCP Receives Commission Income for Unregistered Broker-Dealer Activity Which Enriches White and SHCH

13. From May 2009 through February 2010, SHCP regularly sourced bonds for customers, and it conducted approximately 95 trades in securities in SHCP-designated accounts – that is, 95 purchases and 95 contemporaneous sales – earning approximately \$3,953,608 in transaction-based compensation, net of RCM’s 15 percent clearing fee.⁴ (Div. Ex. 138A at Tab “Monthly BD Totals,” Tab “2009” - Cell 126Y, Tab “2010– Cell 78AB; Stip. ¶ 10; Tedeschi Tr. 840:20-841:9; O’Neill Tr. 110:2-16.) This income was based on the difference between the prices at which SHCP bought and sold the securities and was recorded as “trade revenue” in SHCP’s blotter.⁵ (Div. Ex. 138A at Tab “2009” - Columns R-V, Tab “2010” - Column S-W.) SHCP’s 2009 and 2010 income statements recorded a combined \$4,632,730 in “commission income” less a combined “RCM Capital Fee” of \$679,122 to equal the \$3,953,608 in net SHCP trade revenue reflected in the firm’s blotter. (Div. Exs. 185; 215A at 83-94 (2009 general ledger recording SHCP’s “commission income”); Hohenstein Tr. 670:5-8, 670:19-22, 671:11-20, 674:9-14; *see also* Div. Ex. 214 at SH-AP-00000322; O’Neill Tr. 152:4-153:11.)

14. Spring Hill trader Lauren O’Neill, who both maintained Spring Hill’s trade blotter and served as SHCP/SHCM’s point person to discuss with RCM the firm’s monthly invoices,

⁴ This amount includes approximately \$199,598 in trade revenue earned by SHCP (net of RCM’s clearing fee) for trades entered into on February 26, 2010 and settled on March 3, 2010, after the effective date of SHCM’s registration but before SHCM commenced operations. (Div. Exs. 138A (“Monthly BD Totals” Tab and “2010” Tab Trade Numbers 184-191), 187.)

⁵ SHCP’s revenue derived from its ability, as agent, to source bonds and to successfully negotiate prices between counterparties and investors for the purchase and sale of those bonds. For example, with respect to his efforts in February 2010 (prior to SHCM’s registration) to broker a deal on behalf of Gramercy Capital Corp. (“GCC”) with its CEO Roger Cozzi, White explained “**we’re acting as an agent, so we’re trying to facilitate a trade**” which entailed negotiations White described as “a number of iterative conversations that take place to get to the point where you can actually transact.” (White. Tr. 232:6-234:2.) (emphasis added.)

testified that that the commission income identified in SHCP's profit and loss statement represented revenues from broker-dealer activity. (Div. Ex. 214; O'Neill Tr. 154:9-155:2; *see also* White Tr. 334:14-19, 348:9-11, 354:6-15; Quinn Tr. 879:19-23.) Additionally, prior to sending the firm's tax preparer and accountant the firm's combined income statements, which referred to SHCP's "commission income" earned in 2009 and 2010, Spring Hill's current CFO Andre Hohenstein verified that the reported commission income reflected "the revenues that we have on our books that match our trade tickets." (Hohenstein Tr. 669:5-670:8, 674:5-14.)

15. Since SHCP piggybacked on RCM's clearing arrangement, SHCP's net \$3,953,608 in transaction-based compensation was initially deposited between May 2009 and March 2010 into Spring Hill-designated accounts at RCM's clearing firms. (Heaney Tr. 750:5-16, 764:13-19; Martens Tr. 1174:22-1175:3, 1187:17-1188:5). During that period, SHCP directed RCM to pay a total of \$540,000 out of SHCP's \$3,953,608 share directly to the registered representatives employed by SHCP. (Div. Exs. 226 (\$100,000); 230 (\$25,000); 11 (\$25,000); 241 (\$190,000); 247 (\$100,000); 244 (\$100,000); *see also* Div. Ex. 215A at 103.) The amounts and timing of these payments were determined solely by SHCP, with White instructing O'Neill how much of SHCP's revenue should be paid out to traders like "PT" [Paul Tedeschi], (Div. Ex. 130; Rafferty Tr. 1090:5-21; Tedeschi Tr. 813:15-20, 815:12-18; Martens Tr. 1185:9-13, 1185:24-1186:7; O'Neill Tr. 120:15-121:8), and such payments were recorded as expenses on SHCP's income statements. (Div. Exs. 185; 214 at SH-AP-00000322.)

16. The \$3,413,608 balance of SHCP's share of the trade revenues (i.e., \$3,953,608 minus \$540,000 paid directly to the traders) was transferred from RCM to SHCP via monthly checks or electronic wires into SHCP's corporate bank account between July 2009 and April 2010. (Div. Exs. 1W; 206B at SEC-JPMC-P-64; 206C at SEC-JPMC-P-73; 206D at SEC-

JPMC-P-85; 206E at SEC-JPMC-P-95; 206F at SEC-JPMC-P-105; 206G at SEC-JPMC-P-119; 206H at SEC-JPMC-P-128; 206I at SEC-JPMC-P-132; 206J at SEC-JPMC-P-138; *see also* O’Neill Tr. 119:23-120:2.)

17. SHCH not only directed and acquiesced in SHCP’s unregistered broker-dealer activity: it also profited from its subsidiary’s trading activity and it managed the revenues generated by SHCP. (Div. Exs. 1B at F209; 1V; 217B; 302 & 302A.) Specifically, SHCH directed SHCP to transfer approximately \$2.7 million of its trade revenues to affiliated entities, in lieu of equity distributions to SHCH: \$108,000 went to SHCM (to provide capital in connection with SHCM’s broker-dealer application) and about \$2.6 million went to cost-bearing affiliate SHMC (principally to pay for expenses of the Spring Hill entities after SHCP suspended its operations). (Div. Exs. 1B at F209; 1V; 217B; 302; 302A; Stip. ¶¶ 12-13; *see also* Hohenstein Tr. 715:6-16 (indicating that SHCP’s revenues were used to fund SHCH expenses).)

18. As the 80 percent owner of the Spring Hill entities, White benefitted personally from SHCP’s unregistered broker-dealer activity, receiving \$2.1 million in equity distributions and salary for 2010. (Div. Exs. 1C; 196 at Part II-L; 302A at Column L.)

F. White Holds Out SHCP as a Broker-Dealer to Prospective Investors

19. While earning millions of dollars in transaction-based compensation, SHCP also consistently held itself out as a broker-dealer to prospective clients, most of the times without mentioning RCM or disclosing the fact that SHCP was unlicensed.⁶ Numerous pitch books customized for investment firms such as Square Mile Capital Management, Ellington

⁶ On occasion, SHCP circulated “quarterly updates” to White’s “personal advisors.” (Div. Ex. 75; Resp. Ex. 60; White Tr. 611:11-614:16.) Unlike the marketing decks sent to prospective customers, these updates sent to his friends disclosed SHCP’s pending FINRA application and its relationship with RCM. (*Id.*) Additionally, Spring Hill at one point prepared a deck that was “not [a] marketing piece[s]” for Société Générale with these disclosures. (White Tr. 614:17-616:25; Resp. Ex. 62.)

Management Group, Tower Research Capital, State Street, Oak Hill Advisors, Appaloosa Management, and other financial institutions touted SHCP's "Broker/Dealer" services as designed to satisfy "a full range of client needs" relating to ABS, CMBS, RMBS, CDOs, and other securitized products. (*See* Div. Exs. 20-37; 39-52b; 57-58b; 63; 66-67B.) According to White, the purpose of such materials was to demonstrate to potential clients why they should find SHCP worthy of doing business with. (White Tr. 467:22-468:13.)

20. Frequently, White personally circulated the marketing decks, which showcased for prospective clients "recent broker/dealer activity" by SHCP and proclaimed, "Our Broker/Dealer is active across the spectrum of structured finance asset classes, with a focus on esoteric and illiquid securities. (*See, e.g.*, Div. Exs. 33; 33A; 40; 49.) Describing SHCP's business activities and what services it could provide to investors, these materials stated: "The Broker/Dealer trades securities on an agency basis, focusing on highly structured consumer and non-consumer ABS, CMBS, and RMBS We trade with a wide range of institutions and asset managers across a broad geographic footprint." (*See, e.g.*, Div. Exs. 33A at SH-AP-00001414, SH-AP-00001421; 40 at SH-SEC0008190, SH-SEC0008197.)

21. At the time White distributed these pitch books in 2009 and early 2010 he knew that soliciting business for a broker-dealer was a hallmark of broker-dealer activity requiring registration. (White Tr. 507:8-20.) For this reason, during the hearing White initially claimed that the decks he sent to individuals like Mr. Bolin, a hedge fund executive, were not "marketing activities" but instead "just informational." (Div. Ex. 49; White Tr. 438:25-439:21.) However, after being confronted with several of these marketing decks offering prospective investors "early looks at hard-to-access opportunities in securities" and his own e-mails accompanying the decks stating that he sought to "find[] a way to work together as advisor, broker-dealer or capital

partner,” (Div. Exs. 52; 52A at 7), White abandoned this argument and acknowledged that these decks were, in fact, designed to accomplish “marketing 101” goals as his firm sought to attract the attention of companies like Lazard Freres, Blackstone, Appaloosa Management, and GE Capital that managed large sums of investment capital. (White Tr. 467:13-468:13.) White also acknowledged that his purpose in distributing these decks was to give prospective customers “a summary of what [SHCP] was trying to do and where [his] firm could create value or find opportunity for potential clients” and that he reviewed and was “very involved” in drafting these marketing materials. (White Tr. 454:9-455:15.)

22. White and SHCP’s marketing activities were successful. Multiple recipients of SHCP’s pitch books subsequently became customers of SHCP. For example, SHCP prepared a customized overview for Bracebridge Capital (“Bracebridge”) in November 2009 highlighting SHCP’s ability to provide clients “early looks at hard to access opportunities and securities through [its] relationships with key market players.” (Div. Ex. 40 at 1, 8; White Tr. 444:7-16.) Two months later, Bracebridge engaged SHCP to buy a bond for about \$16 million. (Div. Ex. 138A at Tab “2010” – Trade No. 128.)

23. Similarly, in June 2009, SHCP tailored a pitch book for MSD Capital, L.P. (“MSD”), holding out SHCP as a “Broker/Dealer” and identifying investment opportunities in structured securities. (Div. Ex. 20 at 1, 11, 14.) The following month, MSD traded a fixed income security through SHCP. (Div. Ex. 138A at Tab “2009 – Trade No. 15.) Likewise, in September 2009, SHCP described its “Broker/Dealer” services in a pitch book prepared for Citi, which subsequently engaged SHCP to buy a bond for about \$6 million. (Div. Ex. 65 at 1, 10; *see also* 138A at Tab “2010” – Trade No. 161.)

24. In addition to disseminating marketing materials, White made personal pitches on behalf of SHCP and commonly found new opportunities for SHCP to buy or sell securities for customers. (Tedeschi Tr. 819:13-18; *see, e.g.*, Div. Exs. 74; 175.) For example, in late 2009 and early 2010, White, on behalf of SHCP and without any mention of RCM, solicited acquaintance Roger Cozzi, the CEO of GCC, for a potential purchase of CDO bonds. (Cozzi Tr. 732:18-733:4, 733:16-19, 734:20-735:18; Supp. Stip. ¶ 1; Div. Exs. 74, 89, White Tr. 224:12-225:2, 225:17-226:17, 231:14-21, 237:21-238:19.) White also reached out to an acquaintance who worked at Indicus Advisors (“Indicus”) to get “involved in your buy/sells,” that is, offering to buy or sell CLOs for Indicus as an “intermediary.” (Div. Ex. 62; 301; White Tr. 491:7-492:6, 494:11-495:8; Tedeschi Tr. 818:13-819:18.)

25. In December 2009, White in effect cold-called an Appaloosa Management hedge fund executive and followed up with a note identifying SHCP as a “structured finance-focused . . . broker dealer.” (Div. Ex. 49; White Tr. 439:22-441:12) White also sent a press account that described SHCP, based on an interview with White, as a “broker/dealer [that] matches buyers and sellers for structured products.” (Div. Exs. 49; 49A at SH-AP-33; White Tr. 448:8-450:3.)

26. In February 2010, prior to the registration of SHCM, White also pitched SHCP’s broker-dealer business to Chris Dillon, an acquaintance employed as a hedge fund portfolio manager at Concordia Advisors. (Dillon Tr. 645:11-15, 646:2-647:12; Div. Ex. 63.) White told Dillon, as he did other industry contacts, that he had formed “his own broker-dealer platform” and that he would send him a “pitch book” to see if there was any business they could do together. (Dillon Tr. 646:11-24, 647:17-648:3; White Tr. 452:21-454:8, 478:21-479:10.)

27. Additionally, prior to the registration of SHCM, White pitched Blackstone executive Garrett Moran, whom White had met at a social function, on his firm’s ability to buy

and sell real estate debt securities. (Div. Ex. 59; White Tr. 465:11-467:12.) White made no mention of RCM, either in speaking to Moran or in his follow-up correspondence trumpeting SHCP's "Broker/Dealer" business. (Div. Exs. 58; 58A at 5, 9, 12; White Tr. 466:2-10.)

28. Beyond soliciting customers for agency trades, White actively sought other broker-dealer engagements on behalf of SHCP. For example, after telling a former Lehman colleague who worked at investment advisor Rosemawr Management ("Rosemawr") that he had started his own broker-dealer firm, White sent his former colleague a marketing piece highlighting that SHCP had recently restructured and distributed a bond, which was a securitization of legal fees owed by certain tobacco companies. (Div. Exs. 60 at 2; 61; White Tr. 474:8-14, 478:21-479:10.) The "trade highlight" touted SHCP's success in sourcing, restructuring, and placing the entire outstanding face amount of the illiquid security, achieving "efficient execution for both buyers and seller." (Div. Ex. 60 at 2.) White confirmed that in addition to creating and sourcing the bond, SHCP educated investors about the mechanics of how it worked. (White Tr. 475:21-477:9; *see also* Div. Ex. 60 at 2.) He also acknowledged that an investor reading the trade highlight, which advertised his firm's ability to "leverage its vast network of capital markets partners to develop liquidity for illiquid securities," would reasonably conclude that SHCP had the ability to match buyers and sellers for complex securitized products. (Div. Ex. 60 at 2; White Tr. 477:10-478:7; *see also* White Tr. 507:8-20.)

29. Another marketing piece circulated by White, this time to the investment bank Greenhill, provided a "Broker/Dealer Snapshot" touting SHCP's unique qualifications to both "trade and originate" securities. (Div. Ex. 66; 66A at 6; White Tr. 482:4-8.) The deck was named "SHCP BD Deck" (in reference to SHCP's broker-dealer business) and listed contact information for SHCP's "Broker/Dealer Key Contacts." (Div. Ex. 66; 66A at 12; White Tr.

481:9-23.) As with the other marketing materials White distributed, RCM was not mentioned in this “SHCP BD Deck.” (Div. Ex. 66.) White conceded that he distributed similar marketing materials touting SHCP’s broker-dealer business in 2009.⁷ (White Tr. 472:10-19.)

30. Consistent with White’s myriad representations to the market, Spring Hill trader and long-term employee O’Neill conceded that SHCP provided broker-dealer services, and even White admitted, in reference to Spring Hill’s trading activities in 2009 and 2010, that “we were – an agent and broker-dealer.” (O’Neill Tr. 89:20-25, 93:14-16; White Tr. 273:6-12.) White’s contradictory testimony, e.g., his claim that RCM was the broker-dealer, is inconsistent with his contemporaneous representations to industry participants in 2009 and 2010 that he had started his own brokerage firm, which transacted in structured finance products, (Div. Exs. 38; 49; 49A; 52; 61; White Tr. 452:21-453:11, 466:1-10, 478:17-479:5; Dillon Tr. 646:10-649:7), information he and his firm steadfastly concealed from FINRA. (White Tr. 376:8-378:4.)

G. While Marketing SHCP as a Broker-Dealer, White and SHCM Deceive FINRA

1. *White and Spring Hill Conceal the True Nature of SHCP’s Business Activities from FINRA*

31. White admits that he knew in 2009 that soliciting business for a broker-dealer, effecting transactions in securities, and receiving commission-based compensation were hallmarks of broker-dealer activity. (White Tr. 507:8-20.) Moreover, White, a securities professional with nearly two decades of experience, also knew that the revenue RCM remitted to

⁷ Due to Spring Hill’s failure to retain electronic correspondence until February 2010, the Division had access to only a small fraction of SHCP’s solicitation efforts. (Div. Exs. 270 at 1; 12; White Tr. 506:21-25; Quinn Tr. 906:14-907:2.) However, that fraction reveals several examples of White and SHCP holding the firm out as a broker-dealer. (See Findings ¶¶ 19-29, *supra*.) In fact, from 2009 onwards, White was openly discussing with his colleagues and acquaintances his proposed plans for SHCP to function as, among other things, a brokerage commission-type business. (See Rafferty Tr. 1069:4-14.)

SHCP constituted “commission” or “mark-up” income from trading activity. (White Tr. 384:4-8.) Nevertheless, from May 2009 through February 2010, SHCP earned millions of dollars buying and selling fixed income securities, (Div. Exs. 138; 185), and from July 2009 through February 2010, SHCP created and disseminated dozens of marketing overviews soliciting opportunities to broker transactions for securities investors, all without registering. (Div. Exs. 20-32; 34-37; 39-48; 50-51; Stip. ¶ 2.)

32. Furthermore, when White formed SHCM and had that entity apply for registration with FINRA in July 2009, he and his Spring Hill associates withheld from FINRA the true nature of SHCP’s business activities. In particular, while directing and marketing SHCP’s unregistered broker-dealer business, White at the same time arranged for its affiliate SHCM to apply for broker-dealer registration in July 2009. (*See* Div. Ex. 1.) As indicated in SHCM’s Form NMA and explained in its business plan attached thereto, after registration SHCM intended both to earn commissions by trading fixed income securities and to settle and clear its trades through a piggyback arrangement with RCM. (Div. Exs. 1 at 5; 3 at F2183; 1A at F80, F181, F198; Veres Tr. 18:5-19:15, 72:3-72:21; White Tr. 383:4-384:3.) Yet, in response to several inquiries from FINRA about SHCP’s business activities, Spring Hill never disclosed that SHCP was conducting an identical transactional business that generated millions of dollars commissions from trading fixed-income securities and settling and clearing its trades through RCM. (*See* Div. Ex. 185; Steers Tr. 946:9-15, 947:25-948:14; Veres Tr. 28:16-29:2, 31:12-17; 35:6-17, 42:16-25, 49:16-50:3, 58:12-16; 64:18-65:3, 58:12-16; 69:6-17; White Tr. 400:15-21.)

33. To the contrary, while holding out SHCP as a “Broker/Dealer” to the market, (*e.g.*, Div. Exs. 49; 66A), maintaining a trade blotter to track SHCP’s “BD” revenue, (Div. Ex. 138A), recruiting talent for SHCP’s “Broker-Dealer,” (Div. Ex. 38; White Tr. 451:15-19),

describing SHCP to industry acquaintances as a “broker-dealer,” (Dillon Tr. 646:11-24; White Tr. 478:21-479:10), and recording about \$4 million in “commission income” on SHCP’s profit and loss statements, (Div. Exs. 185, 214), Spring Hill repeatedly represented to FINRA that SHCP did “not conduct a securities business” and was only a “consulting firm.” (See Div. Exs. 1D (representing to FINRA that SHCP “offers management consulting services” and “does not conduct a securities business”); 1F (representing to FINRA that SHCP offers “non-transaction-related services” and “does not conduct a securities business”); 1C (organizational chart submitted to FINRA identifying SHCP as a “consulting firm”); 2 at 2 (reflecting representation to FINRA that SHCP “is only providing consulting services by evaluating businesses and providing advisory services as to what options are available to clients interested in restructuring their debt”); Veres Tr. 28:16-29:2, 30:6-16, 32:12-18, 33:20, 35:6-17, 84:9-13.) White and Spring Hill claimed SHCP offered only “non-transaction related services” even though SHCP maintained its own trading records because “we’re trading regularly and wanted to keep records, so we understand the trades, the counterparties, the pricing, the revenue.” (White Tr. 333:3-24.)

34. As of August 2009, the Spring Hill entities represented to FINRA that their total year-to-date revenues consisted of \$527,198 in “advisory fees,” when their actual general ledgers for that time period recorded just a fraction of that for advisory services (none of it from RCM), but \$559,574 in “commission income” from trades. (Div. Exs. 1X; 215A Tab “SH Cap Partners – Accrual” Cells 796O & 814O.) In addition, Spring Hill provided FINRA with a background description of White that did not mention his role supervising SHCP traders. (Div. Exs. 1I; 1J; White Tr. 222:6-223:3.) Confronted by multiple documents his firm submitted to FINRA, including documents he was copied on, White conceded that from 2009 through at least late

2011, his firm consistently told regulators, including FINRA and Commission staff, that SHCP only earned consulting revenues. (Div. Exs. 8; 178; White Tr. 502:25-503:6.)

35. Spring Hill also falsely identified \$108,000 that SHCP had received from RCM as consulting income. (Div. Exs. 1A at F85 (business plan submitted to FINRA representing that SHCP received \$108,000 from RCM on July 13, 2009 “for consulting services rendered”); 1B at F209 (amended business plan submitted to FINRA representing the same).) When Spring Hill made these false representations, White knew that, under his firm’s agreement and relationship with RCM, SHCP was receiving transaction-based income, i.e., trading-generated revenue. (Div. Ex. 204 at RCML-SEC-001648; White Tr. 384:4-8.)

36. White admitted that the commissions that SHCM anticipated earning and that it discussed in its business plan as projected revenue were a reference to the revenue earned from the mark-up between the “buy” price and the “sell” price of a security, and acknowledged that, at the time of SHCM’s FINRA application, SHCP was already receiving “commission”/ “mark-up” payments generated by its employees’ trading activity. (White Tr. 383:4-384:8, 400:15-23.) Yet, in response to numerous FINRA inquiries concerning SHCP’s activities between July 2009 and February 2010, Spring Hill never disclosed that the unregistered SHCP was engaged in an identical transactional business to the one SHCM was applying for broker-dealer registration to be able to conduct or that it was already receiving commissions. (See Steers Tr. 946:9-15, 947:25-948:14; Veres Tr. 26:24-27:5, 28:16-29:2, 31:12-17; 35:6-17, 42:16-25, 49:16-50:3, 58:12-16; 64:18-65:3, 69:6-17; White Tr. 400:15-21.)

2. *White Participated in Spring Hill’s Deception of FINRA*

37. White was aware of and participated in the many misrepresentations made by Spring Hill to FINRA. (See Quinn Tr. 920:4-13, 923:2-924:4, 925:22-926:3.) Specifically,

White regularly received updates on SHCM's FINRA application from his colleagues and learned of the questions being asked by FINRA and materials being prepared in response. (Quinn Tr. 909:12-910:13; *see also* Rafferty Tr. 1098:15-25.) Moreover, White knew his firm was telling FINRA that SHCP did not conduct a securities business. (Div. Exs. 1D; 8 at SH-SEC-11747-11749; Quinn Tr. 925:22-926:3, 923:12-924:4.) White also participated in discussions concerning describing revenue RCM sent to SHCP as consulting payments rather than commissions, and he received documents submitted to FINRA containing this misrepresentation. (Div. Ex. 8 at SH-SEC-11747-11749; Quinn Tr. 920:4-13, 923:2-11; White Tr. 379:8-16, 496:12-18.)

38. Significantly, at a membership interview for SHCM in November 2009, which was designed in part for FINRA to confirm the accuracy and completeness of the firm's written submissions, FINRA asked White, the firm's CEO, to describe the firm's proposed business activities as well as the business activities of its affiliate, SHCP.⁸ (Veres Tr. 40:21-41:9, 41:10-42:8; *see also* Div. Ex. 5 at 2; Steers Tr. 943:19-23; White Tr. 387:20-23.) Rather than disclose the truth, White reiterated the inaccurate information represented in SHCM's prior written representations, telling FINRA that SHCP was an advisory business that earned only consulting and advisory fees. (Veres Tr. 42:9-25, 49:16-50:3; Steers Tr. 946:9-15; *see also* Div. Exs. 2 at F2251; 7 at 1-2.) Further, although White now claims he did not read the information presented above his signature, at the conclusion of the interview White personally attested to the accuracy and completeness of his firm's representations as required by NASD Rule 1014's Standards for Admission. (Div. Ex. 6 at F2199; Veres Tr. 46:18-47:8; White Tr. 388:4-389:20.)

⁸ FINRA was particularly interested in the business activities of (and consistency of revenues earned by) SHCP, because SHCH had directed SHCP's revenue to be used to capitalize SHCM for purposes of meeting its net capital requirement. (*See* Veres Tr. 41:10-16; 25:3-26:8; 30:6-16; Div. Exs. 3 at 4; 4 at 9-10; 7 at 2-3.)

39. In a follow-up letter that White was copied on sent to FINRA on SHCM's behalf after the membership interview, the firm, through its agent, again expressly denied that SHCP engaged in a securities business, and it represented that the SHCP offered only "management consulting services, including analytics and non-transaction related services." (Div. Ex. 8 at SH-SEC-11747-11749; Veres Tr. 53:16-54:4.) Then, in February 2010, as a prerequisite to SHCM's registration, White reaffirmed the truth and completeness of his firm's application, which included numerous documents containing the false representation that payments SHCP received from RCM were for "consulting" fees when White knew they were actually commissions (the same type of income Spring Hill told FINRA that SHCM planned to generate) and understood the distinction between the two. (Div. Exs. 10 at 3; 1A at F85; 1B at F209; 1W; 220; 226; Veres Tr. 61:24-62:16; White Tr. 383:4-384:8; 385:17-20.)

40. As part of SHCM's registration with FINRA, White was obligated to obtain his Series 24, which required him to study for an exam that covered, among other things, Section 15(a) of the Exchange Act. (White Tr. 323:11-20; Div. Ex. 197.) That section explicitly states that to operate lawfully as a broker-dealer a person other than a natural person, e.g., a firm, must be registered with the Commission in accordance with Section 15(b) of the Exchange Act unlike a natural person, who only needs to be associated with a registered broker-dealer. (Div. Ex. 197.) Thus, it is undeniable that during the same time period in which Spring Hill concealed from FINRA SHCP's trading activity and commission income, White knew that FINRA registration was required for firms to operate as broker-dealers. (White Tr. 323:11-20.) Indeed, there would have been no reason to conceal SHCP's trading activity and commission income from FINRA unless White and Spring Hill knew that SHCP's introduction of trades through RCM and receipt of transaction-based commissions was inappropriate. (White Tr. 480:5-18.)

3. ***Spring Hill Manipulates its Records to Disguise its Trading Revenue as “Consulting” Income***

41. From the onset of their relationship in May 2009 onwards, all of the revenue that SHCP received from RCM came from introducing trades. (Fell Tr. 1146:22-1147:2; Rafferty Tr. 1094:7-11, 1095:6-11; O’Neill Tr. 134:25-135:10, 136:20-25.) Consequently, the aggregate payments by RCM to SHCP (including the direct payments to the registered representatives) precisely equaled the \$3,953,608 of commission income recorded in SHCP’s trade blotter and on its income statements. (O’Neill Tr. 108:19-110:18, 144:11-145:9, 148:22-149:6.)

42. Although White knew that the revenue SHCP earned constituted “commission” or “mark-up” income from trading activity, (White Tr. 384:4-8), during the months in which SHCM’s application was pending, SHCP prepared monthly schedules that characterized the transfers from RCM as “consulting payments.” (O’Neill Tr. 125:20-126:16; *see also* Div. Exs. 226 (June 2009); 228 (July 2009); 230 (Aug. 2009); 233B (Sept. 2009); 11 (Oct. 2009); 238 (Nov. 2009); 241 (Dec. 2009); 247 (Jan. 2010); 244 (Feb. 2010); 249 (Mar. 2010).) Spring Hill adopted this false characterization of SHCP’s revenue so that the unregistered entity’s invoices would correspond to SHCM’s representations to FINRA that money received from RCM was for “consulting services rendered.” (Div. Ex. 1A at F85, 1B at F209.) White, who knew that receipt of commission-based income was a hallmark of broker-dealer activity requiring registration with FINRA, (White Tr. 507:8-20), understood the difference between commissions and consulting payments, and was copied on multiple e-mails falsely identifying SHCP’s income as “consulting” fees, but he claims he never questioned why the firm’s trading revenue was being described as consulting payments. (Div. Exs. 198-199; 202; White Tr. 385:17-25, 407:3-8.)

43. In addition to mischaracterizing its revenue, SHCP, with White’s knowledge and approval, requested that RCM only transfer a portion of the monthly trading revenue earned by

the firm, with SHCP choosing to carry over the balance of its trade revenues to subsequent months. (O'Neill Tr. 137:23-138:15; *see also* Div. Ex. 126 (noting that SHCP schedules detailed "what they made during the month . . . , how much is being carried forward from the prior month, and how much they want [RCM] to pay out".)) For example, with respect to a January 2010 invoice, Spring Hill partner John Fernando recommended, and "KW [White] also approved," that SHCP direct RCM to remit to SHCP an even-number figure of \$1,000,000 from the gross trading revenue earned by SHCP "leaving \$490,872.78 at [RCM]." (Div. Ex. 130; O'Neill Tr. 138:23-139:7, 204:3-205:6.)

44. White knew that the purpose behind leaving nearly half-a-million of SHCP's commission income sitting in RCM's account was to "keep payments from [RCM] at a flat rate considering our 'consulting' agreement." (Div. Ex. 130.) As O'Neil testified, everyone copied on her e-mail [Div. Ex. 130] knew that SHCP's relationship with RCM involved introducing trades and earning revenue based on those trades. (O'Neill Tr. 136:20-25.) However, because FINRA had requested bank records for SHCP (since it was the designated source of funding to enable SHCM to satisfy its initial net capital requirement), Spring Hill's management wanted SHCP's bank records to show "flat" or even-numbered figures coming from RCM, which would appear more consistent with "consulting payments" than commission income earned from trading activity. (Div. Ex. 130; *see also* Div. Exs. 1 at F000057 (Form NMA showing attachments of SHCP bank statements to show sufficient wherewithal to fund SHCM); 3 at F002185-86 (FINRA letter requesting additional SHCP bank records, invoices, or copies of check.)) FINRA had to rely on the bank statements Spring Hill provided. (Veres Tr. 68:2-17.) By controlling how much of its commission income it received in monthly transfers from RCM, Spring Hill, with White's approval, was able to keep payments at "a flat rate" to mirror

consulting fees. (Div. Ex. 130; *Compare* Div. Exs. 206C at SEC-JPMC-P-0000073 (SCHP bank statement only reflecting \$75,000 monthly payment from RCM); 206D at SEC-JPMC-P-0000085 (same); 206F-I *with* Div. Exs. 11; 226; 228; 230; 233; 233B, 238, 241, 244; 247; 249 (monthly invoices sent to RCM showing true amounts of monthly revenue earned by SHCP).)

45. White claimed that he was “indifferent” to how much of his start-up’s firm’s revenue was collected on a monthly basis because he knew that such commissions “rightfully” belonged to SHCP. (White Tr. 405:21-406:16.) According to White, he left his two partners to decide amongst themselves how much of the firm’s revenue should be collected from RCM and that in partner meetings in which they provided him with updates on how much revenue the firm generated on a monthly basis they never discussed how much of that revenue they should collect or were collecting. (White Tr. 334:6-23; 406:17-407:2.)⁹ White’s testimony, however, is inconsistent not only with the documentary record showing him approving of the decision to take out a “flat rate” amount of \$1,000,000 for the January invoice, (Div. Ex. 130), but with the common sense proposition that the owner of a newly-formed business would not be “indifferent” to the idea of leaving nearly half-a-million dollars in revenue sitting uncollected so that it could not be quickly accessed and could not be invested for short-term gains unless he or she believed there was a benefit to *not* receiving the money. (*Compare* White Tr. 405:6-406:3 *with* Div. Ex. 130 (Egan recommending “We should try to retain as much of the cash we generate as possible.”) *and* Div. Ex. 201 (Egan recommending in an e-mail sent to White and Fernando post-FINRA approval that Spring Hill “collect the full A/R balance”).) In this case, the perceived

⁹ White similarly testified that he does not recall any discussions at the firm concerning how much of SHCP’s money should be collected from RCM on a monthly basis. (White Tr. 404:17-406:3.) White also claims that he does not remember questioning why O’Neill put the word “consulting” in quotes and that he does not recall having any discussions with her concerning her comment about keeping SHCP’s monthly receipts of revenue from RCM at a “flat rate” given their “consulting” agreement. (Div. Ex. 130; White Tr. 407:3-11.)

benefit of not taking out all of SHCP's earned revenue was to have "flat rate" payments reflected on SHCP's bank records at a time SHCM's net capital was being assessed so that these payments would look like flat rate "consulting payments" rather than commission income. (See Div. Ex. 273 (Fernando recommending post-FINRA approval that all of the firm's money could be collected from RCM).)

46. FINRA, unaware of SHCP's broker-dealer activities and repeatedly deceived by Spring Hill, approved SHCM's registration and cleared it to begin broker-dealer operations on March 4, 2010. (Div. Ex. 187 at SH-AP-00000253-255; Veres Tr. 21:16-22:22, 63:25-64:7, 69:6-17.) Immediately thereafter, Spring Hill began to collect from RCM the full amount of the trading revenue it earned on a monthly basis by introducing trades. (Div. Exs. 94; 125; 157B; 170A-170Q.)¹⁰ Additionally, after SHCM obtained FINRA clearance, O'Neill, at the instruction of, and with the approval of her supervisors, changed the RCM invoices Spring Hill sent out to collect trading revenue such that the invoices no longer made any references to so-called "consulting payments." (*Id.*; O'Neill Tr. 127:7-21, 129:2-133:3.)

H. SHCM Commences Broker-Dealer Operations and Shortly Thereafter Commits Multiple Securities Violations

1. SHCP's Business Activities are Transitioned Over Entirely to SHCM

47. When SHCM obtained FINRA approval to commence operations, SHCP became a dormant entity. (Stip. ¶ 4; White Tr. 595:25-596:7.) In other words, once SHCM received the FINRA clearance White knew was required for a firm to lawfully operate as a broker-dealer, he

¹⁰ The Division reserves its objections to the exclusion of certain of the exhibits at the hearing that are cited herein, including exhibits in the 170 range, 200, and 208A-W. These SHCM bank statements and monthly invoices confirm that after SHCM was registered, it consistently requested and received monthly transfers from RCM covering the *full* amount of the trading revenue it was owed for its trading activities unlike SHCP, which, while SHCM's registration was pending, only withdrew partial "flat rate" amounts of its trading revenue to make it appear SHCP was purportedly receiving "consulting" payments, albeit for the same trading activity SHCM subsequently engaged in.

immediately allowed SHCP to go “dormant” and began conducting its activities through SHCM. (*Id.*) Tellingly, White testified that the “primary businesses” of SHCM were “advisory and capital markets facilitation” and that “capital markets facilitation” meant “[a]cting as agents, trading bonds on behalf of clients.” (White Tr. 219:18-220:10; *see also* Quinn Tr. 870:6-13 (testifying that SHCM conducted a securities business involving trading securities).)

48. After SHCM received permission to commence business on March 4, 2010, Spring Hill’s financial records reflected that trade revenues were being earned by SHCM rather than SHCP, (*see* Div. Ex. 199), but nothing substantive changed in the way Spring Hill introduced trades, had its trades processed and cleared, or earned transaction-based compensation. (*See* O’Neill Tr. 101:9-13, 117:4-20; Martens Tr. 1201:22-25, 1202:2-9, 1202:13-19, 1207:7-15; Tedeschi Tr. 809:6-12, 811:16-20.) For example:

- Spring Hill continued to introduce its trades to RCM and to piggyback on RCM’s clearing arrangements. (Tedeschi Tr. 809:6-12; O’Neill Tr. 101:9-13, 117:18-20; Martens Tr. 1201:22-25; Fells Tr. 1152:7-1153:7.)
- RCM continued to fulfill a back-office function to process and settle Spring Hill’s trades. (Tedeschi Tr. 810:4-11, 811:16-20.)
- The clearing fee that Spring Hill paid to RCM remained the same. (O’Neill Tr. 117:4-7; Martens Tr. 1202:13-15.) Thus, Spring Hill’s 85 percent share of the revenues for its trades it introduced to RCM also remained the same. (Div. Ex. 121; O’Neill Tr. 117:21-118:2; Martens Tr. 1207:7-15.)
- There continued to be an account designated for Spring Hill’s trades at Merrill Lynch Broadcort (“Broadcort”), the clearing firm used by RCM. (Martens Tr. 1202:16-19.)
- Spring Hill’s trading revenues continued first to be collected by RCM, the broker-dealer it introduced its trades to, and then to be paid to Spring Hill. (O’Neill Tr. 119:23-120:1, 120:9-14; Heaney Tr. 779:5-24; *see also* Div. Exs. 157B; 170J-170L.)
- Spring Hill continued to use the same blotter to record its trades and revenues. (O’Neill Tr. 117:8-13, 113:20-114:15; White Tr. 332:15-21.)
- Spring Hill continued to have the same traders, who continued to work from Spring Hill’s office (not RCM’s), whose job duties remained the same, and most of whom continued to

be registered representatives of RCM. (O'Neill Tr. 117:14-17; Martens Tr. 1202:7-9; Tedeschi Tr. 811:25-813:5.)

- Spring Hill's counterparties also continued to receive letters from RCM identifying the registered representatives as authorized traders. (Div. Ex. 156; Quinn Tr. 939:5-16; Tedeschi Tr. 811:25-821:4.)
- The counterparties also remained subject to RCM's approval. (Martens Tr. 1202:10-12.)

In short, there were no changes at all in the day-to-day relationship between Spring Hill and RCM from before to after SHCM became a registered broker-dealer. (Martens Tr. 1202:2-6.)

2. *SHCM, at White's Instruction, Commits a Net Capital Violation and Maintains False Books and Records to Conceal its Misconduct*

49. On March 1, 2010, after the effective date of SHCM's registration but before it received authorization to commence business, (Div. Ex. 187; White Tr. 338:12-16), White instructed trader Paul Tedeschi to buy \$15 million face amount of a bond issued by a CDO known as Gramercy Real Estate CDO 2005-1 (the "Gramercy CDO"). (Supp. Stip. ¶ 4; Div. Ex. 78; White Tr. 221:13-20.) In February 2010 (prior to SHCM's effective date), White offered to broker a deal involving the Gramercy CDO to Cozzi, the CEO of GCC, whose subsidiary managed the Gramercy CDO. (Supp. Stip. ¶¶ 1, 3). Cozzi initially expressed interest in the bond at a price up to \$75, but on February 25 told White that, following discussions with counsel, GCC could not purchase the bond until after an upcoming earnings release on March 4. (Supp. Stip. ¶ 3; Div. Ex. 89 at 1-2; White Tr. 243:18-244:10.) As Cozzi explained, "[i]f the bonds trade away in the interim, so be it." (Supp. Stip. ¶ 3; Div. Ex. 89 at 1.)

50. White understood that GCC could not buy the bond until after the earnings call. (White Tr. 244:15-21, 299:22-300:2.) Nevertheless, with "another guy [] circling," (Div. Ex. 78), and the bonds poised to "trade away," (Div. Ex. 76) – which would have deprived Spring Hill of the potential opportunity to profit by brokering the transaction – White directed Tedeschi,

who reported to him, to purchase the bond despite not having a customer order for it. (Div. Ex. 78; Supp. Stip. ¶ 4; White Tr. 222:6-223:3, 254:20-255:4.) Cozzi did not approve or even know about Spring Hill's purchase. (Cozzi Tr. 742:15-743:5.)¹¹

51. At the time White instructed Tedeschi to "lift" the Gramercy CDO, White knew that his firm could only engage in matched trades because "[w]e [did not] have the capital" to buy the bond without a customer order. (White Tr. 253:25-254:6.) White testified that, unlike all prior Spring Hill trades, which took place simultaneously and on a matched basis, it took multiple days after this transaction before his firm found a purchaser for the bond. (White Tr. 344:12-345:3; Tedeschi Tr. 794:13-17.) In ordering Tedeschi to buy the bond, White expected that GCC "would buy the bond" in the future (i.e., after the earnings call), but he knew there was no "exact . . . agreement," including no agreement on price. (White Tr. 251:12-21, 259:15-18, 275:8-17, 279:6-14.) Tedeschi, whose bonus and compensation was primarily decided by White, believed that the appropriate way to execute matched trading involved having a commitment or an agreement from a buyer before purchasing a bond. (Tedeschi Tr. 815:12-816:20, 842:18-

¹¹ White's claim that Cozzi instructed him to purchase the bond before the earnings call cannot be credited. (Cf. White Tr. 243:18-247:25.) Not only is White's unsupported assertion contradicted by Cozzi's testimony and February 25 e-mail [Div. Ex. 89], *see supra*, it is also not supported by closer-in-time documents such as a March 4 Gmail communication of Tedeschi's narrating the chronology of events. (Div. Ex. 99 at 10:40-41AM.) White's claim that Cozzi instructed him to buy the bond is also belied by White's own contemporaneous communications with potential "financing" sources like Eugene Gorab and William Bohnsack because, in seeking to reassure potential financiers, White would have had every incentive to disclose that the end-buyer had already committed to buy the bond and had, in fact, instructed White to do so on his behalf, yet White's correspondence conspicuously does not state that Cozzi instructed him to buy the bond. (Div. Exs. 76; 83.) Instead, White, desperate to find "financing," informed third-parties that "[Cozzi] wanted to buy but lawyers wouldn't let [GCC] buy until the pre-earnings call. . . . **The bonds were going to trade away so we bought them for 3/10 settle.**" (*Id.*) (emphasis added). Moreover, when a sale was finally negotiated and consummated between White and Cozzi, this negotiation occurred no earlier than March 16, 2010, the day after the earnings call occurred. (Div. Exs. 104, 146.) These facts confirm Cozzi's testimony and Tedeschi's statement: to wit, Cozzi told White no decision could be made until after the earnings call.

843:13.) However, he followed White's instruction and arranged an extended settlement schedule with Citi ("T+7 settle") so that delivery of the bond could take place after GCC's earnings release when GCC, White expected, would be in a position to make the "contemplated" purchase. (Supp. Stip. ¶ 5; Div. Exs. 78; 97.)

52. After the March 1 purchase, with White's approval, SHCP/SHCM withheld the trade ticket from RCM for ten days, i.e., between March 1 and March 11, 2010. (Div. Exs. 80; 140; Heaney Tr. 760:10-17; Supp. Stip. ¶ 6.) Spring Hill's decision, approved by White, was to conceal the ticket from RCM until after RCM was contacted by Citi regarding settlement or Spring Hill found a buyer. (Div. Ex. 140; O'Neill Tr. 175:23-176:3, 176:11-18, 179:3-10.) As a result, RCM did not learn about the March 1 purchase until March 11, when it received an inquiry from Citi and then had to reach out to Spring Hill to confirm. (Div. Ex. 106; Supp. Stip. ¶ 9; Heaney Tr. 759:14-760:9.)

53. Had Spring Hill sent the ticket for the March 1 "buy-side" transaction on the trade date without a corresponding "sell-side" ticket, it would have raised alarm bells at RCM. (Heaney Tr. 760:21-25.) White knew that RCM expected Spring Hill to only engage in agency trading, (Supp. Stip. ¶ 7), and he also knew that final price agreement, which was lacking between Spring Hill and Gramercy, was a prerequisite to facilitating a trade as agent. (*See* White Tr. 233:15-234:2.) White also understood that RCM wanted to be alerted to the trade on the date the trade was agreed to with Citi. (Supp. Stip. ¶ 7; Heaney Tr. 749:17-21.)

54. White's decision to withhold the trade ticket was prompted by the fact that he knew RCM expected Spring Hill to only conduct matched trades, (Supp. Stip. ¶ 7), and he learned after the purchase that his plan to complete a sale of the Gramercy CDO would, in the best case scenario, be delayed since GCC had postponed its earnings call until March 15, several

days after the scheduled delivery date from Citi. (Supp. Stip. ¶ 8; Div. Exs. 97; 99 at 10:40-41 AM (Tedeschi explaining that he told White to “check w/ Cozzi one more time before we buy the bonds. And he says ‘just lift them.’ [O]k. . . . then he calls Cozzi, who says that they delayed their earnings announcement by a week so can’t make a decision until the 15th.”).)

55. After Cozzi confirmed with White that he would not be able to make a decision to purchase the Gramercy CDO until his earnings call had provided the market with the same information GCC had concerning the bond, and that the earnings call had been moved to March 15, 2010, (Div. Exs. 89; 99 at 10:41 AM), White approached numerous possible counterparties in an effort to temporarily “finance” the bond. (Div. Exs. 76; 81; 83; 107; White Tr. 293:6-12, 295:19-22, 300:23-301:3, 304:6-17, 306:24-307:13.) All of the parties White approached for “financing” declined, with one explaining, “We can’t do it. It is ostensibly ‘parking’, which would put me in a very precarious place that ethically [I] won’t go to.” (Div. Ex. 77 at 1.) Another possible counterparty told White that “legal shot it down.” (Div. Ex. 81.) Notwithstanding these two responses which raised concerns of legal impropriety, White did not check with a compliance officer or attorney about the propriety of his “financing” proposal. (White Tr. 298:20-24, 302:3-7.) White also never reached out to RCM to apprise them of the situation or request financing. (White Tr. 308:3-309:2.)

56. Desperate to avoid a situation where RCM declined to honor the Gramercy CDO trade when Citi reached out to settle the transaction, on March 11, 2010,¹² SHCM sold the bond at \$70.25 to Barclays with the plan to repurchase it shortly thereafter. (Supp. Stip. ¶ 10; Div. Exs. 91; 143; White Tr. 309:11-14; O’Neill Tr. 187:14-188:3.) This March 11 sale was

¹² As of the March 10 expected delivery of the bond, Spring Hill had still not secured a counterparty, but it got a reprieve when “back office inefficiency” at Citi further delayed the settlement, prompting White to exclaim, “Sometimes it’s better to be lucky than good!” (Div. Ex. 81.)

arranged, with White's approval, between Tedeschi and a friend of his at Barclays, and it was arranged after Tedeschi had offered that White "needs to play up the fact that we're not asking them to buy this thing for good. We're telling them that we will buy it back from them on the 15th." (Div. Ex. 99 at 10:02AM; Tedeschi Tr. at 801:6-13, 826:7-827:13.)

57. SHCM's trade blotter, which was reviewed by White on a daily or weekly basis, falsely indicated that the bond purchase from Citi and the bond sale to Barclays both took place March 12, instead of on the actual dates of the trades, March 1 and March 11, respectively. (Div. Exs. 133; 133A; 138; 138A; White Tr. 331:18-24, 334:24-335:7, 341:2-16, 342:14-18.) In addition, as a result of Spring Hill's failure to disclose the March 1 trade ticket, RCM's books did not reflect the bond purchase from Citi for at least ten days. (Supp. Stip. ¶ 11.) Prior to White approving his firm's decision to withhold the March 1 trade ticket and prior to SHCP/SHCM falsifying its trade blotter, White had studied for the Series 24 and knew that registered broker-dealers like RCM and SHCM needed to keep accurate trade blotters and that their blotters had to stay current. (White Tr. 319:16-22, 323:21-324:12.)

58. Just one day after selling the bond to Barclays, Tedeschi, with White's express approval, offered to repurchase the bond, on behalf of SHCM, at \$70.75, providing a gain to Barclays of \$87,000 in exchange for its temporary ownership of the bond. (Div. Ex. 152; Tedeschi Tr. 828:12-20, 838:6-839:11.) This was three days before GCC's March 15 earnings release, and there was still no agreement from GCC to buy the bond at a specific price. In other words, for the second time in less than two weeks, SHCM, which White knew did not have the capital to buy bonds outright, sought to conduct a trade without a customer order in place, thereby taking on the risk that GCC would again move its earnings call or simply select not to buy the bond after all. (*See id.*; White Tr. 253:25-254:6; Chan Tr. 969:8-25; 1007:4-20.)

59. SHCM and Barclays reached an agreement in principle on the terms of the repurchase at approximately 12:49 PM on March 15. (Div. Ex. 103; Tedeschi Tr. 833:4-8.) On the morning of March 16, White approved SHCM's formal execution of the trade with Barclays, (Div. Ex. 46), even though he knew there was no customer order from GCC, and his employee Tedeschi executed the trade. (Div. Exs. 147; 151; Supp. Stip. ¶ 12; White Tr. 312:4-22, 350:10-15.) The trade ticket evidencing SHCM's purchase, which Barclays sent to Tedeschi's Spring Hill e-mail address, stated, "BARCLAYS SELLS TO SPRINGHILL." (Div. Ex. 151.)¹³ RCM did not learn of the trade until the day after it occurred. (Div. Ex. 150.) Spring Hill included the transaction on a spreadsheet sent to RCM identifying "Spring Hill Capital Markets March Trades." (Div. Exs. 157; 157A at Row 206.) When White authorized Tedeschi to sell and then buy back the Gramercy CDO from Barclays, White was a registered representative of SHCM, not RCM. (White Tr. 261:3-262:17, 263:16-265:6; Quinn Tr. 936:14-937:24.) At the time of the trade SHCM recorded securities transactions on a trade-date basis, a fact which White as CEO was aware of. (Div. Ex. 155 at SH-AP-685, 692; Chan. Tr. 965:9-966:7.)

60. Hours after execution of the purchase from Barclays, SHCM was still working on obtaining account set up documentation from GCC, which was required before a transaction with GCC could take place. (Heaney Tr. 762:6-22.) At approximately 6:17 PM on March 16, 2010, White e-mailed Tedeschi, "Done @ \$74," appearing to indicate that GCC would be willing to buy the bond from SHCM at a price of \$74 and that an agreement in principle had been reached similar to the one SHCM had reached with Barclays on March 15, one day prior. (Div. Ex. 104; White Tr. 312:23-313:3.) At 6:31 PM, a SHCM employee notified RCM by e-mail that they would "likely have a trade with [GCC] tomorrow[.]" (Div. Ex. 154.) Heaney, the recipient of

¹³ Typically the trader or salesperson who writes up the ticket provides the trade note description. (Tedeschi Tr. 800:16-23.)

the e-mail, understood that the sale to GCC had yet to take place but was anticipated to occur the next day. (*Id.*; Heaney Tr. 761:19-762:5.) On March 17, 2010, the sale of the bond to GCC was executed, and a trade ticket was issued stating “SPRING HILL SELLS TO GRAMERCY.” (Div. Exs. 148-149.) At the time of the transaction, the Spring Hill trader identified on the ticket, Patrick Quinn was, like White, a registered representative of SHCM, but not RCM. (Div. Ex. 319; White Tr. 261:3-262:17, 263:16-265:6; Quinn Tr. 936:14-937:24.)

61. Quinn testified that the sale of the bond to GCC took place on March 17. (Quinn Tr. 876:4-7.) Additionally, SHCM and GCC each confirmed that trade date to RCM, whose clearing arrangement with Broadcort was used to settle the transaction. (Div. Ex. 150.) SHCM recorded March 17 as the trade date. (Div. Exs. 138A, 173A.) However, SHCM falsified its blotter to make it appear that its March 16 purchase of the Gramercy CDO from Barclays had also occurred on March 17, the same day of the sale to GCC, just as SHCM had falsified the same blotter to make it appear the March 1 purchase from Citi had occurred on March 12, purportedly the same day as the sale of the Gramercy CDO to Barclays. (*Id.*)

62. Because the purchase of the Gramercy CDO from Barclays actually occurred on March 16, at minimum several hours before the sale of the bond to GCC was executed, SHCM’s March 16 purchase of the bond resulted in a net capital violation for the firm.¹⁴ (Div. Ex. 320 at

¹⁴ Pursuant to SHCM’s piggyback relationship with RCM, RCM’s clearing arrangement with Broadcort was used to settle both the purchase from Barclays and the sale to GCC in an account specially designated for SHCM trades. (Div. Exs. 314; 318; Heaney Tr. 763:15-764:19, 781:4-15; Chan Tr. 967:9-968:4, 973:21-974:23, 982:15-23, 983:17-984:8, 1018:15-1019:12.) Tedeschi, who still works for White and is represented by White’s counsel, testified that his purchase of the Gramercy CDO bond from Barclays was on behalf of RCM. (Tedeschi Tr. 787:7-9, 852:17-21; White Tr. 257:17-18.) In fact, though, the transaction was recorded in SHCM’s blotter, reflected in SHCM’s FOCUS report, and included on a spreadsheet of “Spring Hill Capital Markets March Trades.” (Chan Tr. 974:24-976:16, 1019:13-25; Div. Exs. 157; 157A; 138A at Tab “2010-SHCM” - Trade Nos. 206 & 207; 313.) Further, Tedeschi used his Spring Hill e-mail and Bloomberg addresses to execute the transaction. (Div. Exs. 147; 151; Chan Tr. 1017:15-23.) At the time, none of the three Spring Hill employees communicating with GCC was even a registered representative of RCM.

3; Chan Tr. 970:2-13, 972:12-973:13, 985:14-986:17, 1007:10-14.) Specifically, on March 16, 2010, SHCM had net capital of between approximately \$200,000 and \$395,508 before application of the haircut to the value of the Gramercy CDO. (Div. Ex. 216; Div. Ex. 320 at 2.) Factoring in the applicable haircut, the purchase reduced SHCM's capital by approximately \$1 million, resulting in a substantial net capital deficiency for SHCM until it sold the position to GCC no earlier than several hours later (Div. Ex. 320 at 4-5; Chan Tr. 961:2-17.)

63. White knew that SHCM was obligated to remain net capital compliant at all times, and he understood the requirement to provide same day notice to the Commission in the event of a net capital deficiency. (White Tr. 316:15-317:4, 317:13-23; Steers Tr. 943:19-944:16.) Nevertheless, SHCM failed to provide such notice. (White Tr. 317:24-318:5.)

I. White and SHCM Try to Mislead the Commission as They Misled FINRA

64. In 2011, when the Commission's Office of Compliance Inspections and Examinations ("OCIE") conducted an examination of SHCM, SHCM once again resorted to deception to conceal both SHCP's unregistered broker-dealer activity and the March 2010 net capital violation described above. Once again, White was aware and approved of his firm's attempt to deceive a securities regulator. (Div. Ex. 187.) Specifically, in late October 2011, after OCIE asked SHCM to explain "consulting" payments totaling \$1.9 million that SHCP received from RCM for introducing trades in January and February 2010, Hohenstein sent an e-mail

(Div. Ex. 319 at 1; Tedeschi Tr. 834:11-17; Quinn Tr. 937:5-18; White Tr. 264:3-265:6.) In fact, RCM did not even learn about the purchase from Barclays or the sale to GCC until after the trades were entered into. (Div. Ex. 150; Heaney Tr. 782:25-783:14.) The relevant trade tickets also identified Spring Hill as the transacting party. (Div. Exs. 148, 151.) Moreover, SHCM received 85 percent of the trade revenues, or \$414,375 net of RCM's 15 percent clearing fee. (Div. Exs. 138A at Tab "2010 - SHCM" - Cell W18; 157B; 170C at 1; White Tr. 314:13-15; Chan Tr. 977:17-978:13, 979:15-981:4, 1016:16-1017:6.) Chan testified that, as a result of each of these objective factors, the purchase of the Gramercy CDO from Barclays was clearly done on behalf of SHCM. (Chan Tr. 979:15-981:4, 985:3-13, 1015:10-1019:25, 1021:22-1022:2.)

informing White and his partner Egan of the questions and explaining that he did not have sufficient information to respond. (Div. Exs. 70 at SH-AP-00001430; 177; White Tr. 499:5-500:16; Hohenstein Tr. 689:23-691:12.) After running the issue by White and Egan, on November 3, 2011, Hohenstein, in an e-mail copying White, falsely represented to OCIE that the revenue was paid because “SHCP provided consultation and advice to [RCM],” (Div. Ex. 178; Hohenstein Tr. 692:7-694:23), when, in fact, as White knew and as Hohenstein eventually admitted,¹⁵ the payments from RCM to SHCP were not for providing “consultation and advice” to RCM; instead, they reflected trading revenue generated by “trades introduced by Spring Hill to [RCM] in January and February 2010.” (Div. Exs. 130; 137; 204; Hohenstein Tr. 694:9-700:25; *compare* White Tr. 499:5-502:2 *with* 383:12-384:8.)

65. In addition to the above-described misrepresentation to OCIE which White was aware of, SHCM provided manipulated income statements for SHCP to the Division in 2013 to foster the false narrative that SHCP had provided consulting services. (Div. Ex. 280 at SH-AP-1326-1327.) Unlike SHCP’s actual income statements for 2009 and 2010 which recorded the firm’s receipt of commissions, payments to registered representatives, and RCM clearing fee, the income statement that SHCM’s CFO Hohenstein created after the fact for the Division removed references to all three. (*Compare* Div. Ex. 185 *with* Div. Ex. 280 at SH-AP-1326-1327; *see also* Hohenstein Tr. 676:11-677:18.) In an attempt to conceal SHCP’s broker-dealer activity, the income statement Hohenstein prepared expressly for the Division – while reporting to White and the other Spring Hill partners – replaced “commission income” with “consulting income,”

¹⁵ Spring Hill finally provided a truthful explanation for the revenue SHCP had received in January and February 2010 from RCM only after OCIE replied to Hohenstein’s misleading November 3, 2011 response with a follow-up inquiry requiring that SHCM “explain the specific role SHCP employees played in the transactions and how the remuneration figure of \$1 million paid in January 2010 and \$900,000 to be paid in February 2010 was arrived at.” (Div. Ex. 71.)

reduced the income recorded by the amount of the deleted clearing expenses, and relabeled the registered representative payments as “direct consulting expenses.” (Div. Ex. 280 at SH-AP-1327; Hohenstein Tr. 677:25-679:9, 680:14-18.)

66. In 2014, in a similar attempt to mislead the Division, Spring Hill produced 2009 and 2010 SHCP income statements in the identical QuickBooks-generated format as SHCP’s actual income statements for those same periods, but with the content doctored to hide SHCP’s broker-dealer activity. (*Compare* Div. Exs. 283A & 283B *with* Div. Ex. 185.) Whereas the versions of the 2009 and 2010 SHCP income statements that Hohenstein exported from QuickBooks in early 2011 to send Spring Hill’s accountant accurately identified SHCP’s commission income, RCM’s clearing fee, and payments to registered representatives, the version he prepared for Spring Hill to provide to the Division once again changed “commission income” to “consulting income,” deleted the expense line for RCM’s clearing fee, and disguised payments to the registered representatives as “consulting expenses.” (Hohenstein Tr. 682:6-687:10; Div. Exs. 283A; 283B.) White swore out an affidavit vouching for these doctored records.¹⁶

67. Additionally, when the Commission’s OCIE staff brought issues concerning the accuracy of SHCM’s trade blotter to the firm’s attention in 2011, SHCM, managed and directed by White and SHCH, produced an “updated trade blotter” that continued to reflect inaccurate dates for SHCM’s purchases of the Gramercy CDO both from Citi and Barclays in a second attempt to cover-up Spring Hill’s net capital violation. (Div. Exs. 87; 173; 173A; White Tr. 337:2-340:3, 340:10-348:8.) The newly falsified entries in Spring Hill’s trade blotter continued to conceal the fact that Spring Hill had engaged in unregistered broker-dealer activity before March 4, by obscuring the true March 1 trade date for the initial Gramercy CDO purchase, and

¹⁶ (*See, e.g.*, Div. Exs. 307-309; 309A-B; 310-311.) The Division reserves its objection to the exclusion of these exhibits. (Tr. 511:8-25.)

hid the net capital violation, by falsely showing the purchases and sales of the Gramercy CDO as having occurred on the same day. (Div. Exs. 87; 173; 173A; White Tr. 338:12-340:3.) White knew in March these trades had not been matched, he believed that it would be a securities law violation for SHCM to engage in trading activity before it was cleared to do so on March 4, and he and his partners did not want the firm's records to show pre-March 4 trading activity. (Div. Exs. 198; 199; White Tr. 339:22-340:3.)¹⁷

J. White Repeatedly Claims He Knew Nothing While Blaming Everyone Else

68. Throughout the hearing, White repeatedly attempted to distance himself from his Spring Hill's misconduct by blaming his partners and RCM personnel for any wrongdoing and claiming that he was left in the dark concerning what Spring Hill disclosed to regulators. For example, White testified that he does not know who at Spring Hill decided to inform FINRA that SHCP received "consulting" fees as opposed to commissions or why internal communications at Spring Hill referred to SHCP's trading revenues as "consulting payments." (White Tr. 383:12-385:2, 403:20-407:11.) However, White was copied on several documents between 2009 and 2011 mischaracterizing SHCP's trading revenue as payments for consulting. (*See, e.g.*, Div. Exs. 8, 130, 178, 199-200, 273.) White's defense that, although he knew SHCP received commissions and had a transactional business, he "deferred to" others and never inquired why his employees and partners at Spring Hill were describing SHCP's revenue to FINRA (and later OCIE) as payments for consultation services is unbelievable. (*Compare id. with* White Tr.

¹⁷ For this reason, Spring Hill also made certain that SHCM did not receive any revenues for trades introduced to RCM prior to its broker-dealer clearance date. (*See* Div. Ex. 198; O'Neill Tr. 133:4-134:16; White Tr. 507:8-20.) For March 2010, Spring Hill thus prepared two different payment invoices, one invoice for trades executed before SHCM was allowed to commence broker-dealer activities (with trade revenues termed "consulting payments" and directed to SHCP) and the other invoice for trades executed after March 4 (with the "consulting" language removed and the payments directed to SHCM). (Div. Exs. 157B; 203; 249; O'Neill Tr. 128:9-20, 132:14-133:3.)

385:11-386:10, 407:3-11, 423:11-424:4, 500:6-503:14) Indeed, the only reason for why White would not question his receipt of documents describing SHCP's commission income as consulting payments is that he already knew why this language was being used: to conceal from first FINRA and then OCIE SHCP's unregistered broker-dealer activity.

69. White further claimed that (1) he spent only a "few hours" preparing for the application; (2) he does not recall receiving updates on the FINRA application; (3) he did not know SHCM had told FINRA that SHCP did not conduct a securities business; and (4) he did nothing to assure himself of the accuracy of his firm's representations to FINRA during the application process besides rely on other people to decide what information to disclose. (White 380:11-381:25, 383:12-384:19, 386:11-387:15, 389:5-392:11, 408:6-22, 413:11-18, 415:6-416:6.) However, White conceded that the FINRA application was very important to his firm, (White Tr. 392:3-6), and acknowledged that he knew it would look bad to FINRA if, because he was uninformed, he provided information during the membership interview (e.g., about SHCP's business activities) that was inconsistent with what FINRA had been provided in written submissions. (White Tr. 391:2-8.) Moreover, as Quinn, SHCM's point person on the FINRA application, testified, White received drafts of documentation to be submitted to FINRA, regularly received updates on the FINRA application, and was interested in receiving such updates because the application with FINRA "was relevant to everything we were doing." (Quinn Tr. 909:4-910:13, 911:9-19, 923:12-924:4.) Quinn also confirmed that, contrary to White's several denials, there were internal communications at Spring Hill concerning whether to describe their revenue to FINRA as commissions or consulting payments that White participated in and that White and the other partners all knew that the firm was telling FINRA that SHCP did not conduct a securities business. (Quinn Tr. 920:4-13, 925:22-926:3.)

70. Additionally, consistent with Quinn's testimony that the FINRA application "was relevant to everything we were doing," (Quinn Tr. 910:3-6), during a subsequent routine FINRA exam in July 2010, White and his staff spent weeks preparing because "I knew if we weren't successful in our exam, then we wouldn't have a broker-dealer, and that would be – that would be critically important, or it would be a big blow to our vision of creating a merchant banking business." (Div. Exs. 14; 15; White Tr. 397:2-9.) It is, therefore, implausible that concerning his firm's crucial application with FINRA, White would have been as hands-off and unaware of what his firm was representing to FINRA (or OCIE) as he now claims. (*See also* Div. Ex. 178.)

CONCLUSIONS OF LAW

1. As a result of the conduct described above in the Proposed Findings of Fact section, SHCP willfully violated Section 15(a) of the Exchange Act by effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security by making use of the mails or any means or instrumentality of interstate commerce, without being registered with the Commission in accordance with Section 15(b) of the Exchange Act.

2. As a result of the conduct described above in the Proposed Findings of Fact section, White and SHCH substantially assisted, and willfully aided and abetted and caused SHCP to commit, violations of Section 15(a) by operating as an unregistered broker-dealer.

3. As a result of the conduct described above in the Proposed Findings of Fact section, SHCM willfully violated the net capital rule because it did not maintain its minimum net capital requirement "at all times" as required by Section 15(c)(3) of the Exchange Act and Rule 15c3-1(a) thereunder. In addition, SHCM willfully violated Section 17(a) of the Exchange Act and Rule 17a-11(b)(1) by failing to give notice to the Commission on March 16 that its net capital declined below the minimum amount required under Rule 15c3-1.

4. As a result of the conduct described above in the Proposed Findings of Fact section, White and SHCH willfully aided and abetted and caused SHCM to commit, violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c-3(a) and 17a-11(b)(1) thereunder.

5. As a result of the conduct described above in the Proposed Findings of Fact section, SHCM willfully violated Section 17(a) of the Exchange Act and Rule 17a-3(a)(1) thereunder because it failed to make and keep current books and records as required by those provisions. SHCM's records included inaccurate and false trade date entries for the purchase and sale of the Gramercy CDO with counterparties Citi, Barclays, and GCC.

6. White and SHCH have stipulated that they willfully aided and abetted and caused violations by RCM of Section 17(a) of the Exchange Act and Rule 17a-3(a)(1) thereunder, which require that each broker-dealer registered with the Commission make and keep current blotters (or other records of original entry) containing an accurate itemized daily record of all purchases and sales of securities.

7. Pursuant to Section 15(b) of the Exchange Act and Section 9(b) of the Investment Company Act, based on the conduct found above it is in the best interest of the public to censure SHCM and to bar White from association with any brokers, dealers, investment advisers, municipal securities dealers, municipal advisors, transfer agents, nationally recognized statistical rating organizations, or from participating in an offering of penny stock.

8. A cease-and-desist order against SHCM, SHCP, SHCH, and White is also appropriate to prevent violation and any future violation of the statutes and rules as provided by Section 21C of the Exchange Act and Section 9(b) of the Investment Company Act.

9. Under Section 21B of the Exchange Act and Sections 9(b) and 9(d) of the

Investment Company Act, the Commission may impose a civil money penalty on a respondent who willfully violated (or willfully aided and abetted a violation of) the Securities Act or the Exchange Act, if the penalty is in the public interest. The public interest is assessed with respect to these statutory factors: (1) deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) the need for deterrence; and (6) such other matters as justice may require. *See* 15 U.S.C. § 80b-3(i)(3). Civil monetary penalties in the amount of \$225,000, \$725,000, \$950,000, and \$172,500 are appropriate against SHCM, SHCP, SHCH, and White, respectively, pursuant to Section 21B(a-b) of the Exchange Act and Section 9(d)(1-2) of the Investment Company Act.

10. Accounting and disgorgement are authorized pursuant to Sections 21B and 21C of the Exchange Act and Section 9(e) of the Investment Company Act. (Tr. 5:13-15) (“[T]he statute of limitations does not apply when it comes to cease and desist and disgorgement, and [pre-limitations period conduct] can be taken into account in the case of a finding of liability in the area of sanctions.”) Factoring in prejudgment interest, SHCM, SHCH, and White are jointly and severally liable for \$4,840,991.36 (\$3,953,608 plus prejudgment interest) in disgorgement for the violations of Section 15(a) described herein.

Dated June 26, 2015
New York, New York

DIVISION OF ENFORCEMENT

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CERTIFICATE OF SERVICE

I hereby certify that I served true copies by electronic mail of the foregoing Proposed Findings of Fact and Conclusions of Law on the following on the 26th day of June, 2015.

The Honorable Carol Fox Foelak
Administrative Law Judge
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Dated: June 26, 2015

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