

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
June 30, 2009**

**ADMINISTRATIVE PROCEEDING
File No. 3-13532**

In the Matter of

**Prime Capital Services, Inc.,
Gilman Ciocia, Inc.,
Michael P. Ryan,
Rose M. Rudden,
Christie A. Andersen,
Eric J. Brown,
Matthew J. Collins,
Kevin J. Walsh,
Mark W. Wells,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS 15(b)
AND 21C OF THE SECURITIES EXCHANGE
ACT OF 1934, AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), against Prime Capital Services, Inc. (“PCS”), Gilman Ciocia, Inc. (“G&C”), Michael P. Ryan (“Ryan”), Rose M. Rudden (“Rudden”), Christie A. Andersen (“Andersen”), Eric J. Brown (“Brown”), Matthew J. Collins (“Collins”), Kevin J. Walsh (“Walsh”) and Mark W. Wells (“Wells”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Gilman Ciocia, Inc. (“G&C”), is an income tax preparation business headquartered in Poughkeepsie, New York. It also offers financial services in New York, New Jersey, Pennsylvania and Florida through its wholly-owned subsidiaries, Prime Capital Services, Inc. (“PCS”), a broker-dealer registered with the Commission, and Asset & Financial Planning, Ltd. (“AFP”), an investment adviser registered with the Commission. All the individual respondents were employees of G&C during the time of the conduct at issue in these proceedings. In fiscal year 2007, approximately ninety percent of G&C’s revenue was derived from commissions and fees from financial services, including commissions from sales of variable annuities, and the remaining approximately ten percent of revenue was derived from tax preparation and accounting services. G&C was registered with the Commission as an investment adviser from 2000 through 2006. G&C’s common stock is quoted on the OTC Bulletin Board under the symbol “GTAX.”

2. Prime Capital Services, Inc. (“PCS”) is a wholly-owned subsidiary of G&C that provides securities brokerage services. It is registered with the Commission as a broker-dealer and is a member of the Financial Industry Regulatory Authority (“FINRA”). All the individual respondents were associated with PCS during the time of the conduct at issue in these proceedings. A significant percentage of the revenue generated by PCS from 1999 through February 2007 came from sales of variable annuities. PCS operates under a management agreement with G&C under which PCS remits revenues to G&C, and G&C pays various expenses for PCS including personnel compensation, training, and marketing costs associated with free-lunch seminars that are provided by PCS’s registered representatives and are used to recruit new customers. Prior to November 2003, marketing for the seminars was provided by G&C’s in-house telemarketing department; since November 2003, G&C has paid for marketing and PCS has reimbursed G&C pursuant to the management agreement. PCS and G&C consolidate their financial statements and are under common control.

3. Michael P. Ryan (“Ryan”), 51, of Poughkeepsie, New York, has been the president of PCS and AFP since at least 2000, and the president and chief executive officer of G&C since 2002. Since 2000, Ryan has worked with the successive chief compliance officers of PCS, who have reported to him. Ryan also was directly involved with state licensing issues of certain registered representatives. Ryan is licensed to sell securities and as a general securities principal.

4. Rose M. Rudden (“Rudden”), 57, of Hyde Park, New York, started work in PCS’s compliance department in 2001 and has been serving as the most senior compliance officer since 2004, although she did not officially take the title of chief compliance officer until April 2005. She supervises compliance department employees in Poughkeepsie, and supervisors and registered representatives in offices around the country, including Florida. Rudden is licensed to sell securities and as a securities principal. She is an employee of G&C and also serves as AFP’s chief compliance officer.

5. Christie A. Andersen (“Andersen”), 39, of Green Acres, Florida, joined PCS’s Boca Raton branch office in 2002 as a compliance officer and became the supervisor of the office in 2004. As a supervisor, she reviewed and approved variable annuity transactions for Respondent Mark W. Wells and others until she left PCS in October 2006. While at PCS, Andersen was an employee of G&C and was licensed to sell securities and as a securities principal. In addition, since leaving PCS, Andersen has been a representative of an investment adviser and its chief compliance officer.

6. Eric J. Brown (“Brown”), 40, of Highland Beach, Florida was a registered representative associated with PCS in its Delray Beach and Boynton Beach offices from 1998 until March 2006. Brown was an employee of G&C during his tenure at PCS. While associated with PCS, Brown was the subject of a multi-phase regulatory action by the State of Florida Department of Financial Services, including revocation of his insurance license in December 2003, reinstatement of his insurance license in April 2004 with restrictions prohibiting sales of variable annuities to new customers over the age of 65, and permanent revocation of his license to sell insurance in January 2006. FINRA barred Brown from association with a broker-dealer as of October 5, 2007.

7. Matthew J. Collins (“Collins”), 37, of Boynton Beach, Florida has been a registered representative associated with PCS in its Delray Beach and Boynton Beach offices since 2001 and was Respondent Brown’s supervisor from September 2002 until early 2005. Collins is an employee of G&C and a licensed representative of AFP. He also is licensed to sell securities and as a securities principal, in addition to having state insurance licenses. The State of Florida Department of Financial Services placed Collins on probation for one year starting in December 2006 and fined him \$5,000 after a settled proceeding in which it alleged Collins made misrepresentations on insurance applications, specifically, that he represented that he was the sales agent on variable annuity transactions that Respondent Brown actually had solicited.

8. Kevin J. Walsh (“Walsh”), 42, of Viera, Florida was a registered representative associated with PCS in its Melbourne, Florida office from 1998 to 2007. He was an employee of G&C during his association with PCS, and also a representative of AFP. Walsh is licensed to sell securities.

9. Mark W. Wells (“Wells”), 42, of Boca Raton, Florida has been a registered representative associated with PCS in the Boca Raton office since May 2001. Wells, an employee of G&C and representative of AFP, is licensed to sell securities.

B. FRAUDULENT SALES OF VARIABLE ANNUITIES TO SENIORS AND FAILURE TO SUPERVISE VARIABLE ANNUITY TRANSACTIONS

Overview of Fraudulent Sales Practices

1. From approximately November 1999 through February 2007 (the “relevant period”), representatives associated with Respondent PCS offered and sold variable annuities to senior citizen customers in south Florida. At various times during the relevant period, Respondents

Brown, Collins, Walsh and Wells, while associated with PCS and employed by Respondent G&C, were among those offering and selling variable annuities to senior citizens. Most of their customers had attended G&C's free-lunch seminars in south Florida communities, during which the four representatives touted PCS's financial services in general and, during most of the relevant period, variable annuities in particular. The seminar script, which the representatives used during their presentations, had been provided to them by PCS.

2. Variable annuities are long-term investments with an insurance component.

The insurance component provides a death benefit for the owner's beneficiaries, guaranteeing that they will receive at least the amount of principal the owner invested (excluding any withdrawals or outstanding loans), regardless of the variable annuity's investment value at the time of the insured person's death. As with other life insurance products, earnings accumulate on a tax deferred basis and are taxed as ordinary income upon withdrawal. Each variable annuity contract includes subaccounts which have investment strategies similar to retail mutual funds, such as growth, speculation or money market. Variable annuity issuers charge fees that include annual mortality, expense and administrative fees, as well as fees for the management of the subaccounts by investment advisers. The variable annuities Respondents Brown, Walsh and Wells sold were also structured so that a sales charge was not incurred upon purchase but was instead charged if, during the first six to eight years, the owner surrendered the contract for cash, withdrew funds above a certain amount from the account, or exchanged the variable annuity for another annuity. Those charges, called surrender charges, were highest during the initial years of the variable annuity, typically starting at approximately six to eight percent of the amount the customer invested. The charges decreased over the surrender period. The owner of a variable annuity contract can reallocate his or her investment among the available subaccounts offered through the variable annuity without incurring surrender charges.

3. During some or all of the relevant period, Respondents Brown, Walsh and

Wells induced customers into purchasing variable annuities by means of material misrepresentations and omissions. For example: these representatives sometimes told customers that the principal invested in the variable annuity was guaranteed not to lose money, without disclosing that the guarantee was triggered by the death of an annuitant, and without disclosing that until the annuitant's death the value could fluctuate and decline; they sometimes promised customers that the customers would receive a guaranteed return on their investment without disclosing that such return would be paid only over the course of the annuitization period if, in the future, the customers elected to annuitize; they sometimes told customers they would have access to their invested money whenever they needed it, omitting to tell them about charges for early withdrawals above a certain amount; they often failed to disclose to customers the ownership costs of variable annuities, which in some cases were more than three percent annually of the invested amount. Certain written disclosures provided to customers, and other records in customers' files, were incomplete and/or inaccurate, and in some cases were altered after the customer signed to make it appear that disclosures had been provided and that the sales were suitable when, in fact, they were not.

4. Many of the variable annuities sold by Respondents Brown, Walsh and

Wells were unsuitable investments based on the customers' ages, incomes, liquid assets and

investment objectives. For example, because of their advanced age, some customers who wanted full access to their money were unlikely to outlive the period during which they would pay surrender fees on their variable annuities, and other customers were induced to invest more than seventy-five percent of their liquid assets in variable annuities with limitations and/or fees on withdrawals. In addition, variable annuities limited access to the invested principal that was expressly contrary to some customers' objectives for their money.

5. During times when Florida authorities had revoked or restricted Respondent Brown's license to sell insurance, Respondent Collins signed as the associated person on the account for variable annuities Brown solicited. Thus, on paperwork for the customer and the variable annuity issuing company, Collins misrepresented who sold the variable annuity.

6. Compared to other investment products, which generally paid less than three percent in sales commissions, the variable annuities sold by Respondents Brown, Collins, Walsh and Wells generally paid approximately a six percent gross sales commission to Respondent PCS. As compensation, PCS typically paid out approximately half of the sales commission to Brown, Collins and Walsh, and as much as seventy percent of the sales commission to Wells. During the relevant period, PCS, Brown, Walsh and Wells each earned millions of dollars in sales commissions from variable annuity transactions, and Collins earned hundreds of thousands of dollars.

7. During the relevant period, based on the recommendations of Respondents Brown, Walsh and Wells, at least twenty-three customers were induced to buy at least thirty-five variable annuities, investing an aggregate of nearly \$5 million.

8. Most of twenty-three customers who bought variable annuities from Respondents Brown, Walsh and Wells met these registered representatives at free-lunch seminars that Respondent G&C marketed and arranged. At the free-lunch seminars, Brown, Walsh and Wells discussed tax and financial planning, including during most of the relevant period, variable annuities. After the seminars, the customers were invited to schedule private appointments with Brown, Walsh and Wells. The variable annuities were sold in one-on-one sales meetings at Respondent PCS's offices in Delray Beach, Boynton Beach, Melbourne and/or Boca Raton, Florida.

9. Respondent G&C's free-lunch seminars were instrumental in providing a steady stream of variable annuity customers to Respondents PCS, Brown, Walsh and Wells. G&C arranged and marketed the seminars, including identifying prospective customers, sending them invitations, otherwise advertising the seminars, preparing presentation materials, and training PCS representatives to make seminar presentations. Many members of the public who attended seminars ultimately purchased variable annuities through PCS representatives, including Brown, Walsh and Wells, and those representatives recruited almost all their customers at G&C's free-lunch seminars.

Overview of Failure to Supervise Variable Annuity Transactions

10. From at least 1999 through 2007, Respondent Ryan was the president of Respondent PCS. From at least 2004 through 2007, Respondent Rudden was the highest ranking compliance officer, who also participated in branch examinations and reviews of variable annuity transactions. Ryan and Rudden had supervisory authority over the other individual respondents because they had the ability to control the other individual respondents' conduct by, among other things, terminating their employment, withholding their compensation, levying fines, requiring heightened supervision if they determined there was a need of closer oversight, or any combination of those and other measures.

11. Respondent PCS had written supervisory procedures, including procedures specifically pertaining to the sale and supervisory review of variable annuity transactions. Respondent Ryan, as PCS's president, was responsible for implementing PCS's written supervisory procedures. However, neither Ryan nor PCS put systems in place to implement many of the written supervisory procedures. Therefore, PCS's and Ryan's supervision of Brown, Collins, Walsh and Wells could not reasonably be expected to detect or prevent their violations of the federal securities statutes, rules and regulations.

12. At times during the relevant period, Respondent Andersen was the direct supervisor for Respondent Wells and Respondent Collins was the direct supervisor for Respondent Brown. As supervisors, Andersen and Collins were responsible for reviewing variable annuity transactions for suitability and approving them if they were suitable or rejecting them if they were not. Andersen approved certain variable annuity transactions of Wells' and failed to review others. Collins failed to review Brown's variable annuity transactions.

13. During all or part of the relevant period, Respondents Ryan, Rudden, Andersen and Collins failed to respond reasonably to red flags of wrongdoing in the variable annuity sales practices of Respondents Brown, Walsh and/or Wells, and thereby failed to detect or prevent Brown's, Walsh's and/or Wells' violations of the federal securities statutes, rules and regulations.

Variable Annuity Sales at PCS's Delray Beach and Boynton Beach Branch Offices

14. Respondent Brown's misrepresentations to variable annuity customers included misleading statements and material omissions about access to invested money, guaranteed minimum returns and/or guarantees against losses. Some of Brown's customer files included inaccurate information about customers' net worth, liquid assets and/or income.

15. Respondent Brown made material misrepresentations and omissions, and/or sold unsuitable variable annuities to senior citizen customers, including in the following instances:

a. In 2000 and 2001, Respondent Brown induced an elderly couple into buying at least ten variable annuities, including several that were purchased by partially surrendering the variable annuity contracts Brown sold them a year earlier. The purchases and

redemptions generated more than \$50,000 in sales commissions for PCS, of which more than \$20,000 was paid out to Respondent Brown. As a result of the transactions, more than three-quarters of the couple's liquid assets was invested in illiquid variable annuities. No supervisor reviewed or approved the transactions.

b. In 1999 and 2000, Respondent Brown induced a 76-year-old widow to rearrange her diversified portfolio of stocks and bonds so that eighty percent of her assets was invested in variable annuities with surrender periods during which time access to her money would be limited. The concentration in variable annuities was unsuitable and contrary to the customer's investment objectives. The sales generated approximately \$16,000 in commissions for Brown and approximately the same amount in net commissions to Respondent PCS. Among the transactions Brown orchestrated was the purchase of a variable annuity and its subsequent liquidation for reinvestment in another variable annuity at a cost of \$20,000 in surrender charges for the early withdrawal. No supervisor reviewed or approved the transactions.

c. In 2000, Respondent Brown induced a 68-year-old widow to use money from a maturing bank certificate of deposit to buy a variable annuity in her retirement account. Documents surrounding the variable annuity investment included a forged customer signature with the customer's name misspelled. Respondents Ryan and Rudden later confirmed with a handwriting expert that the customer's signature was not genuine. Brown earned approximately \$3,000 in sales commissions and Respondent PCS earned slightly more. No supervisor reviewed or approved the transaction.

d. In 2001, Respondent Brown induced a 79-year-old customer to partially redeem a variable annuity to fund a new variable annuity purchase. The exchange caused the customer to lose approximately \$20,000 worth of the death benefit in the original variable annuity. When the customer noticed it, he was within the time period to reverse the transaction at no cost and instructed Brown to do so. Brown delayed. The customer died. The customer's widow lost approximately \$20,000 in death benefit due to Brown's misconduct. No supervisor reviewed or approved the exchange that caused the customer to lose approximately \$20,000 worth of death benefits.

16. Respondent Collins, who was Respondent Brown's supervisor from 2002 to 2005, failed to review or approve variable annuity business Brown wrote. Respondent Rudden was advised of this in an October 2003 branch exam that noted Collins' failure to supervise Brown.

17. In December 2003, the State of Florida Department of Financial Services revoked Respondent Brown's license to sell insurance. In April 2004, Brown consented to reinstatement of his insurance license with a restriction that prohibited him from marketing variable annuities to new customers over the age of 65. During the period when his license was revoked or restricted, Brown continued to solicit variable annuity business including to customers over the age of 65. Respondent Collins, who was Brown's supervisor at those times, knew of the revocation and subsequent restriction and took no action to curtail Brown's activities. In fact, for new variable annuity customers over the age of 65 whom Brown solicited in violation of his licensing restriction, Collins signed the paperwork and misrepresented himself as the associated

person on the account. In addition, Respondents Ryan and Rudden knew of Brown's solicitations during the period when his license was revoked and/or restricted but did not take action to stop his marketing activities. It was not until February 2005 that they placed him on "heightened supervision," requiring that Brown's variable annuity sales be reviewed before being submitted to the variable annuity issuing companies.

18. Monthly reports in 2004 and annual branch exams from the Delray Beach and Boynton Beach offices from 2003 through 2006, which Respondent Rudden reviewed, included descriptions of disclosure and documentation deficiencies and details of Respondent Brown's unsuitable variable annuity sales to senior citizen investors. For example, branch exams revealed that for Brown's variable annuity transactions, disclosure forms were missing or missing key information, that elderly customers had invested high percentages of their liquid assets in illiquid variable annuities, and that no supervisor had reviewed certain transactions. The monthly reports Collins submitted to Rudden's compliance department in 2004, and an evaluation of Brown's free-lunch seminar that Rudden reviewed, also indicated that during times when Brown's insurance license was revoked or restricted, he continued to market variable annuities at G&C's free-lunch seminars without regard to specific, state-imposed limitations on his marketing activities.

19. Brown and Collins made material misrepresentations and omissions, and/or sold unsuitable variable annuities to senior citizen customers, including in the following instances:

a. In 2005, Respondent Brown recommended to a disabled customer's father that he invest all of his son's liquid assets in a variable annuity with an eight-year surrender period. The disabled customer had an annual income of approximately \$13,000, and was neither consulted on the investment nor signed any of the forms authorizing it. Brown knew the customer's father had signed his son's name on the forms. Respondent Collins purported to guarantee the customer's signature, although neither he nor Brown had ever met the customer, or had seen any documentation verifying the customer's signature. A supervisor approved the transaction.

b. In 2004 and 2005, Respondent Brown induced an octogenarian couple to exchange six variable annuities that they owned for six others that Brown recommended, costing them more than \$61,000 in surrender fees. At the time, Brown was prohibited by state orders from marketing variable annuities to new customers over the age of 65, and Respondent Collins signed as the associated person on the account for the transactions. A supervisor approved the transactions after discussing them with Respondent Rudden.

c. In 2004, Respondent Brown induced a septuagenarian couple to buy two variable annuities at a time when Brown's insurance license was revoked. Brown's name and representative information is crossed out on the paperwork for the transactions, and Respondent Collins, who was Brown's supervisor at the time, signed as the associated person on the account. Brown initially was credited with the sales commission of more than \$5,000. No other supervisor reviewed or approved the transactions.

d. In 2004, Respondent Brown induced a 72-year-old customer to buy a variable annuity at a time when Brown was prohibited from marketing variable annuities to new customers over the age of 65. Respondent Collins' name, information and signature appear on the paperwork for the customer's transaction as the associated person on the account in places where Brown's information is crossed out, and Collins earned a sales commission of more than \$1,000. Collins was Brown's supervisor at the time of the transaction, but no other supervisor reviewed or approved the transaction.

Variable Annuity Sales at PCS's Melbourne, Florida Branch Office

20. During the time period from late 2003 through 2004, Respondent Walsh refused to submit most of his variable annuity business to his supervisor for review, which violated Respondent PCS's written supervisory procedures. Walsh's supervisor complained numerous times about Walsh's misconduct to Respondent Rudden, who acknowledged the problem and involved Respondent Ryan in addressing the behavior. During the time period when Walsh refused to submit his variable annuity business for supervisory review, Respondents Rudden did not curtail Walsh's sales activities; Walsh continued to sell hundreds of variable annuities during that time. Rudden took no remedial action against Walsh for his misconduct. Walsh earned approximately \$385,000 in sales commissions from his variable annuities business in 2004, and PCS retained approximately the same amount from those transactions.

21. Respondent Walsh's misrepresentations to variable annuity customers included misleading statements and material omissions about access to invested money, guaranteed minimum returns and/or guarantees against losses. In some cases, Walsh selected subaccount allocations for the variable annuity investments that were inconsistent with customers' investment objectives. Some of Walsh's customer files included inaccurate information about customers' net worth, liquid assets and/or income.

22. Branch exams from the Melbourne office from 2003 through 2006, which Respondent Rudden reviewed, included details of unsuitable variable annuity sales to senior citizen investors. For example, branch exams reflected that Walsh's business was almost exclusively selling variable annuities to senior citizens, and investing high percentages of those elderly customers' liquid assets in illiquid variable annuities. The branch exams also reflected missing explanations of investments, missing disclosures – including costs associated with variable annuities – and purported disclosures that customers had not acknowledged receiving.

23. Walsh made material misrepresentations and omissions, and/or sold unsuitable variable annuities to senior citizen customers, including in the following instances:

a. In 2005, Respondent Walsh induced a 69-year-old customer to convert her two retirement portfolios into two variable annuities with seven-year surrender periods during which access to her money was limited. Although the customer wanted to participate in market returns, Walsh invested her entirely in money market subaccounts within her two variable annuities. The customer's paperwork contains multiple inaccuracies, including the purported issuance of a prospectus dated several months after the transaction, and a length of investment

experience that would have required the customer to have started investing at age eleven. Walsh earned nearly \$6,000 in sales commissions. More than a month after the transaction, a supervisor retroactively approved one of the two variable annuities the customer bought. His approval was based on the tax benefits of the investment, even though the assets had previously been in a tax-advantaged retirement account. No supervisor reviewed or approved the other variable annuity.

b. In 2004, Respondent Walsh induced an octogenarian customer to invest \$100,000 – or about seventy-five percent of her liquid assets – in a variable annuity, earning Walsh more than \$2,000 in sales commissions. A supervisor retroactively approved the transaction months after the sale on grounds that did not apply to the customer’s circumstances, including that the customer, who was already in the lowest tax bracket, would benefit from tax deferral available for a variable annuity.

c. In 2004 and 2005, Respondent Walsh induced a 77-year-old customer to invest in two variable annuities, earning Walsh and PCS nearly \$8,000 each in sales commissions. After the customer learned of an annual administrative charge that he said Walsh did not disclose at the time of sale, the customer terminated his investments and paid \$12,000 in early withdrawal charges. Disclosure forms in the customer’s file indicate that after the customer signed them, Walsh added information about fees and other terms of the investment. The transactions were retroactively approved by a supervisor months after the sales.

d. In 2001, Respondent Walsh induced an 80-year-old customer to invest more than three quarters of his liquid assets in variable annuities. Walsh earned more than \$6,000 in sales commissions in transactions that were unreviewed by a supervisor, and limited the customer’s access to his money for eight years.

Variable Annuity Sales at PCS’s Boca Raton, Florida Office

24. Respondent Wells’ misrepresentations to variable annuity customers included misleading statements and material omissions about access to invested money, guaranteed minimum returns and/or guarantees against losses. Some of Wells’ customer files included inaccurate information about customers’ net worth, liquid assets and/or income.

25. Annual branch exams from the Boca Raton office from 2004 through 2006, which Respondent Rudden reviewed, included details of unsuitable variable annuity sales to senior citizen investors, including high percentages of elderly customers’ liquid assets invested in illiquid variable annuities, and ongoing deficiencies in disclosure forms provided to customers to explain the terms of their variable annuity investments. In addition, net worth figures frequently matched figures for liquid assets, even where customers already owned variable annuities.

26. Respondent Andersen, who reviewed the 2004 and 2005 Boca Raton branch exams, advised Respondent Rudden in 2004 that she was having difficulty managing her duties as supervisor for Respondent Wells and others, and sought assistance reviewing variable annuity transactions for suitability. Rudden took no action in response to Andersen’s concerns, which left Wells and others with supervision Andersen indicated was inadequate.

27. Paperwork for Respondent Wells' variable annuity customers contain patterns that indicate the sales were unsuitable for individual customers' needs and circumstances. As one example, Wells' customer disclosure forms acknowledging understanding of the terms of the investment were initialed by Wells' assistant, not the customers. This is evident from the handwriting of the initials, which belonged to Wells' sales assistant and bears no resemblance to the customers' authentic signatures. As another example, explanations of the reason for investing in variable annuities are not initialed by customers, as required by the firm's form. Respondent Andersen did not follow up on these patterns, make inquiries or take any remedial action.

28. Wells made material misrepresentations and omissions, and/or sold unsuitable variable annuities to senior citizen customers, including in the following instances:

a. In 2004 and 2005, Respondent Wells induced a 71-year-old woman to liquidate her retirement account and invest all of her retirement savings – which was more than half her net worth – in variable annuities. Wells earned more than \$5,000 in sales commissions. Andersen approved some of the transactions, but others were unreviewed by a supervisor.

b. In 2004 and 2005, Respondent Wells induced a 65-year-old retiree into buying six variable annuities in his trading and retirement accounts, thereby subjecting the customer to limitations for eight years on about two-thirds of his liquid assets. Wells earned more than \$16,000 in sales commissions. Andersen approved some of the transactions, but others were unreviewed by a supervisor.

c. In 2006, Respondent Wells induced an 80-year-old widow to exchange a variable annuity that was out of its surrender period for a new one that limited her access to half her net worth for six years. Wells earned more than \$6,000 in sales commissions. Despite a comparison that showed the customer's new annuity would cost more in fees and be worth less in the future than her old one, and despite the customer's age and concentration of her net worth in the variable annuity, Andersen approved the transaction as suitable.

d. In 2003 and 2004, Respondent Wells induced a 67-year-old widow to invest nearly eighty percent of her liquid assets in variable annuities with surrender periods as long as eight years, earning nearly \$15,000 in sales commissions. Wells' assistant discouraged the customer from seeking a comparison form that Florida requires be offered to variable annuity customers by instructing her to initial a box declining the comparison; neither Wells nor Respondent Andersen questioned the sales assistant's written indication that the customer should decline the comparative information form. Paperwork in the customer's file indicates signed documents were copied and altered. Andersen approved some of the transactions, but others were unreviewed by a supervisor.

e. In 2007, Respondent Wells induced a septuagenarian couple to invest \$100,000 of their approximately \$148,000 in liquid assets in a variable annuity with a seven-year surrender period, earning him more than \$3,000 in sales commissions. The transaction was approved by a supervisor.

f. In 2006, Respondent Wells induced a retired couple to buy matching variable annuities, generating for himself more than \$4,000 in sales commissions. The customers did not understand the fee structure of their investments, and were misled regarding the returns they could expect. The transactions were approved by a supervisor after the application was submitted to the variable annuity issuing company.

Supervisory Failures of Respondents PCS, Ryan, Rudden, Andersen and Collins

29. Respondent PCS had written supervisory procedures, including some specifically pertaining to the sale and supervisory review of variable annuity transactions. Respondent Ryan, as PCS's president, was responsible for implementing PCS's written supervisory procedures. However, neither Ryan nor PCS had a system in place to implement the written supervisory procedures. Therefore, Ryan's and the firm's supervision of Brown, Collins, Walsh and Wells could not reasonably be expected to detect or prevent their violations of the federal securities statutes, rules and regulations. For example, PCS and Ryan failed to implement the firm's written supervisory procedures in the following ways:

a. Respondents PCS and Ryan failed to implement a system for review and follow-up of branch exams that reasonably could have been expected to detect and prevent violations of the federal securities laws by Respondents Brown, Collins, Walsh and Wells. Respondents Rudden and Andersen reviewed branch exams from Delray Beach, Boynton Beach, Melbourne and/or Boca Raton that included repeated indications of fraudulent and/or unsuitable variable annuity sales by Brown, Collins, Walsh and/or Wells, such as missing or deficient disclosure documents, patterns of similar customer profiles for which variable annuities were not suitable, and repeated instances of elderly customers investing large percentages of their assets in variable annuities.

b. Respondents PCS and Ryan failed to implement a system for supervisory review and approval of variable annuity transactions that reasonably could have been expected to detect and prevent violations of the federal securities laws by Respondents Brown, Collins, Walsh and Wells. Brown, Collins, Walsh and Wells sold many variable annuities that were never reviewed by a supervisor, or were not reviewed by a supervisor until long after the transaction. Certain variable annuity transactions of Brown, Walsh and Wells were unsuitable based on information in the customers' files.

c. Respondents PCS and Ryan failed to implement a system for responding to customer complaints that reasonably could have been expected to detect and prevent violations of the federal securities laws by Respondents Brown, Collins and Walsh. Variable annuity customers of Brown and Walsh sent numerous complaints to the firm, regarding, among other things, the unsuitability of their investments, misrepresentations and omissions during sales meetings, and in one instance, forgery. Respondent Rudden, who drafted many of the replies to customers, inadequately investigated the complaints and instead relied on the statements of Brown, Collins and Walsh, who had no oversight in responding to customers' complaints of their variable annuity sales practices. While PCS documented the complaints and replies, there was no action by

the firm in response to complaints that reasonably would have led to detection and prevention of securities law violations by Brown, Collins and Walsh.

d. Respondents PCS and Ryan failed to implement a system to comply with state regulatory orders, such as the revocation and restriction of Respondent Brown's insurance license. Had PCS and Ryan implemented a system to enforce the restriction on Brown's sales of variable annuities, it is likely that Brown's fraudulent sales of variable annuities would have been prevented and detected.

e. Respondents PCS and Ryan also failed to implement a reasonable system for supervision of Respondent Brown, including failure to devote adequate resources to his supervision. In particular, Ryan unreasonably delegated Brown's supervision from 1999 to 2001 to a former chief compliance officer at PCS. The former chief compliance officer complained to Ryan that she was having difficulty managing her dual responsibilities as chief compliance officer and Brown's supervisor, and told Ryan that she needed help supervising Brown effectively. Ryan's delegation to her while she was burdened with compliance responsibilities was unreasonable because she told him she was overwhelmed by her duties, and he failed to follow up to determine whether the delegated responsibilities were being exercised diligently.

30. Respondent Ryan, from 2000 through 2006, failed to respond reasonably to red flags of wrongdoing in the variable annuity sales practices of Respondent Brown, and thereby failed to detect and prevent Brown's violations of the federal securities statutes, rules and regulations. For example, Ryan knew that:

a. in contravention of State orders, Respondent Brown was marketing variable annuities during times when his insurance license was revoked or restricted.

b. numerous customers submitted complaints against Respondent Brown, including a credible accusation that Brown forged a customer's signature to sell an unsuitable variable annuity, and credible assertions that Respondent Collins was misrepresenting himself as the associated person on the account for variable annuities that Brown solicited.

31. Respondent Rudden from 2004 through 2007 failed to respond reasonably to red flags of wrongdoing in the variable annuity sales practices of Respondents Brown, Collins, Walsh and Wells, and thereby failed to detect and prevent their violations of the federal securities statutes, rules and regulations. For example, Rudden knew that:

a. branch exams from 2003 to 2006 in Delray Beach, Melbourne and Boca Raton that she received -- including one that she personally participated in -- reflected Respondents Brown's, Collins', Walsh's and Wells' noncompliance with firm procedures and their fraudulent and/or unsuitable sales of variable annuities. In particular, the branch exams that Rudden participated in and/or reviewed noted inadequate explanations of variable annuity sales, incomplete disclosure forms, uniform investment objectives and/or time horizons of all reviewed files, patterns of seniors investing high percentages of their assets in variable annuities, and lack of supervisory review and approval of certain variable annuity transactions.

b. customers had complained that Respondents Brown and Walsh had misled them in connection with their variable annuity purchases, and/or over-concentrated their investment portfolios in variable annuities.

c. Respondent Collins' supervisor was concerned about the suitability of variable annuity sales to two elderly investors. Respondent Rudden inquired into one of them and instructed the supervisor to approve it. She made no inquiry into the other, but based on Rudden's instruction to approve the first transaction, Collins' supervisor approved that one, as well.

d. numerous customers submitted complaints against Respondent Brown, including a credible accusation that Brown forged a customer's signature to sell an unsuitable variable annuity, and credible assertions that Respondent Collins was misrepresenting himself as the associated person on the account for variable annuities that Brown solicited.

e. monthly reports from Respondent Collins indicated that Respondent Brown continued to give seminars at which he discussed variable annuities at a time when Brown's state license to sell insurance had been revoked and/or was restricted insofar as it prohibited marketing variable annuities to new customers over the age of 65.

f. Respondent Brown's variable annuity business was devoid of supervision during Respondent Collins' tenure as Brown's supervisor.

g. Respondent Walsh for more than a year refused to submit variable annuity business he wrote for supervisory review.

h. Respondent Andersen was unable to provide adequate suitability reviews for variable annuities sold from the Boca Raton office, including those sold by Respondent Wells. In 2004, Andersen appealed to Rudden for assistance in conducting suitability reviews, indicating that she recognized her own inability to detect compliance problems.

32. Respondent Andersen failed to respond reasonably to red flags of wrongdoing in the variable annuity sales practices of Respondent Wells, and thereby failed to detect and prevent Wells' violations of the federal securities statutes, rules and regulations. For example, Andersen knew that:

a. successive annual branch exams in 2003 through 2005 indicated deficiencies in the disclosures Respondent Wells provided to his variable annuity customers.

b. successive annual branch exams in 2003 through 2005 indicated that almost all randomly selected files were variable annuities sold to senior citizens involving high concentrations of customers' liquid assets, and that customers had uniform investment objectives and/or time horizons.

c. Respondent Wells' assistant continued to initial customer disclosure forms that should have been initialed by the customers themselves as an acknowledgment of having received disclosures in 2004 and 2005, even after Andersen instructed her to stop that practice.

d. documentation in certain of Respondent Wells' customer files in 2003 through 2005 indicated that variable annuities were unsuitable for those customers.

33. Respondent Collins failed to follow Respondent PCS's procedures requiring review of variable annuity transactions. Collins failed to review Respondent Brown's variable annuity sales.

34. Respondent Collins failed to respond reasonably to red flags of wrongdoing in the variable annuity sales practices of Respondent Brown, and thereby failed to detect and prevent Brown's violations of the federal securities statutes, rules and regulations. For example, Collins knew that:

a. Respondent Brown sold variable annuities in 2003 and 2004 when the state had revoked Brown's license to sell insurance.

b. Respondent Brown marketed variable annuities in 2004 and 2005 to new customers over age 65 after a State order prohibited such activity.

C. VIOLATIONS

1. As a result of the conduct described above, Respondent PCS willfully violated: Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities; Section 15(c) of the Exchange Act, which prohibits a broker or dealer from engaging in fraudulent conduct in connection with the purchase or sale of securities; and Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, which require brokers and dealers to make and keep current certain books records relating to its business for prescribed periods of time and furnish them to the Commission as necessary and appropriate for the public interest; and failed reasonably to supervise pursuant to Section 15(b)(4)(E) of the Exchange Act with a view to prevent and detect violations of the federal securities statutes, rules and regulations by Respondents Brown, Collins, Walsh and Wells.

2. As a result of the conduct described above, Respondent G&C aided, abetted and caused Respondent PCS's violations of: Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities; and Section 15(c) of the Exchange Act, which prohibits a broker or dealer from engaging in fraudulent conduct in connection with the purchase or sale of securities.

3. As a result of the conduct described above, Respondents Ryan, Rudden, Andersen and Collins failed reasonably to supervise pursuant to Section 15(b)(6) of the Exchange Act, which incorporates by reference Section 15(b)(4)(E), with a view to preventing and detecting violations of the federal securities statutes, rules and regulations by Respondents Brown, Collins, Walsh and Wells.

4. As a result of the conduct described above, Respondents Brown, Collins, Walsh and Wells willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities; and aided, abetted and caused Respondent PCS's violation of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, which require brokers and dealers to make and keep current certain books and records relating to its business for prescribed periods of time and furnish them to the Commission as necessary and appropriate for the public interest.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 203(f) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act and disgorgement pursuant to Section 203(j) of the Advisers Act;

D. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent PCS should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 15(b)(4)(E), 15(c) and 17(a) of the Exchange Act and Rules 10b-5 and 17a-3 thereunder, and whether Respondent PCS should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act.

E. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent G&C should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-5 thereunder, and whether Respondent G&C should be

ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act.

F. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents Ryan, Rudden, Andersen and Collins should be ordered to cease and desist from committing or causing violations of and any future violations of Section 15(b)(4)(E) of the Exchange Act.

G. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents Brown, Collins, Walsh and Wells should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 17(a) of the Exchange Act and Rules 10b-5 and 17a-3 thereunder; and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If any Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him or her upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness

or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary