

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 61079 / November 30, 2009**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2957 / November 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 MAKING FINDINGS AND IMPOSING  
REMEDIAL SANCTIONS PURSUANT TO  
SECTION 15(b) OF THE SECURITIES  
EXCHANGE ACT OF 1934 AND SECTION 203(f)  
OF THE INVESTMENT ADVISERS ACT OF  
1940 AS TO CHRISTIE A. ANDERSEN**

**I.**

On June 30, 2009, the Securities and Exchange Commission (“Commission”) instituted administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Christie A. Andersen (“Andersen” or “Respondent”).

**II.**

Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings

brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 as to Christie Andersen ("Order"), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Respondent**

1. Andersen, 39, is a resident of Greenacres, Florida. She joined the Boca Raton branch office of Prime Capital Services, Inc. ("PCS") 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 registered representatives in the Boca Raton office until she left PCS in October 2006. While at PCS, Respondent was an employee of Gilman Ciocia, Inc. ("G&C"), and was licensed to sell securities and as a securities principal. Since leaving PCS, Respondent has served as the chief compliance officer of a broker-dealer.

#### **Relevant Entities**

2. Gilman Ciocia, Inc. 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., a broker-dealer registered with the Commission, and Asset & Financial Planning, Ltd., an investment adviser registered with the Commission. Respondent was an employee of G&C during the time of the conduct at issue in these proceedings. G&C was registered with the Commission as an investment adviser from 2000 through 2006.

3. Prime Capital Services, Inc. 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"). Respondent was associated with PCS during the time of the conduct at issue in these proceedings.

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

## Background

4. From at least 2004 through 2006 (the “relevant period”), representatives associated with PCS offered and sold variable annuities to senior citizen customers in south Florida. At various times during the relevant period, a registered representative in PCS’s Boca Raton office (the “Registered Representative”) was among those offering and selling variable annuities to senior citizens. Most of the Registered Representative’s customers had attended G&C’s free-lunch seminar, during which he touted PCS’s financial services in general and, during most of the relevant period, variable annuities in particular.

5. 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. Earnings accumulate on a tax deferred basis and are taxed as ordinary income upon withdrawal. Each variable annuity contract offers subaccounts to which a contract owner may allocate premiums. The subaccounts invest in underlying funds 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, and other fees are assessed for the management of the underlying funds by investment advisers. The variable annuities the Registered Representative 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.

6. During some or all of the relevant period, the Registered Representative induced customers to purchase variable annuities by means of material misrepresentations and omissions. For example: he 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; he 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; he 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; he 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.

7. Many of the variable annuities sold by the Registered Representative 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.

8. Compared to other investment products, which generally paid less than three percent in sales commissions, the variable annuities sold by the Registered Representative generally paid approximately a six percent gross sales commission to PCS. As compensation, PCS paid out to the Registered Representative as much as seventy percent of the sales commission. During the relevant period, the Registered Representative earned millions of dollars in sales commissions from variable annuity transactions.

9. Most of customers who bought variable annuities from the Registered Representative met him at free-lunch seminars that G&C marketed and arranged. At the free-lunch seminars, the Registered Representative 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 the Registered Representative at PCS's Boca Raton office, where during one-on-one sales meetings, he sold them variable annuities.

#### Variable Annuity Sales at PCS's Boca Raton, Florida Office

10. The Registered Representative'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 the Registered Representative's customer files included inaccurate information about customers' net worth, liquid assets and/or income. The registered representative violated Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and aided and abetted PCS's violation of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

11. Annual branch exams from the Boca Raton office from 2004 through 2006, which Respondent reviewed at least for 2004 and 2005, 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.

12. Paperwork for the Registered Representative's variable annuity customers contains patterns that indicate the sales were unsuitable for individual customers' needs and circumstances. As one example, the Registered Representative's customer disclosure forms acknowledging understanding of the terms of the investment were initialed by the Registered

Representative's assistant, not the customers. This would have been evident to the Respondent from the handwriting of the initials, which belonged to the 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 did not follow up on these patterns, make inquiries or take any remedial action.

13. The Registered Representative 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, the Registered Representative 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. The Registered Representative earned more than \$5,000 in sales commissions. Respondent approved some of the transactions, but failed to review others.

b. In 2004 and 2005, the Registered Representative 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. The Registered Representative earned more than \$16,000 in sales commissions. Respondent approved some of the transactions, but failed to review others.

c. In 2006, the Registered Representative 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. The Registered Representative 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, Respondent approved the transaction as suitable.

d. In 2003 and 2004, the Registered Representative 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. The Registered Representative's 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 the Registered Representative nor Respondent 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. Respondent approved some of the transactions, but failed to review others.

#### Respondent's Failure to Reasonably Supervise

14. Respondent failed to respond reasonably to red flags of wrongdoing in the variable annuity sales practices of the Registered Representative, and thereby failed to detect and prevent the Registered Representative's violations of Section 17(a) of the Securities Act, Section

10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and his aiding and abetting PCS's violation of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. For example, Respondent knew that:

a. successive annual branch exams in 2003 through 2005 indicated deficiencies in the disclosures the Registered Representative provided to his variable annuity customers, and resulted in their purchasing unsuitable investments with terms and limitations of which they were unaware or which they misunderstood.

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. The Registered Representative's 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 Respondent instructed her to stop that practice.

d. documentation in certain of the Registered Representative's customer files in 2003 through 2005 indicated that variable annuities were unsuitable for those customers.

15. As a result of the conduct described above, Respondent failed reasonably to supervise pursuant to Section 15(b)(6) of the Exchange Act, which incorporates by reference Section 15(b)(4)(E), and pursuant to Section 203(f) of the Advisers Act, which incorporates by reference Section 203(e)(6), with a view to preventing and detecting the registered representative's violations of the federal securities statutes, rules and regulations.

### **Undertaking**

Respondent undertakes to provide cooperation to the Commission and its staff in its investigation and litigation related to the matters described herein. Specifically, Respondent undertakes to: upon reasonable request by the Commission or its staff, and on reasonable notice, and without service of a subpoena, Respondent will provide documents or other information, and accept service and take all reasonable actions to make herself available to testify truthfully at any interview, investigative testimony, deposition, at any judicial proceeding related to this Order and at any administrative proceeding arising as a result of the Commission's investigation relating to the matters described herein. This provision shall not be construed to waive Respondent's applicable attorney-client, work product or other privileges recognized under federal law, if asserted timely and in good faith.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act it is hereby ORDERED that:

A. Respondent be, and hereby is, suspended from association in a supervisory capacity with any broker, dealer or investment adviser for a period of twelve months, effective on the second Monday following the entry of this Order.

B. Respondent shall, within thirty days of the entry of this Order, pay a civil money penalty in the amount of \$10,000.00 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Christie A. Andersen as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew M. Calamari, Associate Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, 4<sup>th</sup> Floor, New York, NY 10281-1022.

C. Respondent shall provide to the Commission, within thirty days after the end of the twelve-month suspension period described above, an affidavit that she has complied fully with the sanctions set forth in Section IV.A. and IV.B above.

By the Commission.

Elizabeth M. Murphy  
Secretary