

INITIAL DECISION RELEASE NO. 402
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13655

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

In the Matter of :
 :
THEODORE W. URBAN : INITIAL DECISION
 : September 8, 2010
 :

APPEARANCES: James G. Lundy, John E. Birkenheier, and Benjamin H. Hanauer for the
Division of Enforcement, Securities and Exchange Commission

David P. Burns, John H. Sturc, John W. F. Chesley, and Matthew R.
Estabrook for Theodore W. Urban

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

On October 19, 2009, the Securities and Exchange Commission (Commission or SEC) issued an Order Instituting Proceedings (OIP) 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). The OIP alleges that Theodore W. Urban (Urban), Ferris, Baker Watts, Inc.'s (FBW), General Counsel, Executive Vice President, and a voting member of the FBW Board of Directors (Board), the Executive Committee of the Board (Executive Committee), and the Credit Committee failed reasonably to supervise Stephen Glantz (Glantz), a broker, with a view to detecting and preventing Glantz's violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. A hearing was held from March 8 to March 24, 2010. The final brief was filed on June 29, 2010.¹

¹ I will cite to the transcript of the hearing as "(Tr. ___)." I will cite to the Division of Enforcement's (Division) and Respondent's exhibits as "(Div. Ex. ___)" and "(Urban Ex. ___)," respectively. I will cite to the Division's and Respondent's Post-Hearing Briefs, and the Division's Reply Brief, as "(Div. Post-Hearing Br. ___)," "(Urban Post-Hearing Br. ___)," and "(Div. Reply Br. ___)," respectively.

Pending Motions

I Grant Urban's Motion to Strike the Division's references in post-hearing filings to evidence not in the record filed June 8, 2010. Division Exhibits 240 and 242, two plea agreements, are not in evidence, and Division Exhibits 248, 251, 252, and 253 are in evidence to establish that they exist, not for the truth of their contents. I Grant the Joint Motion to Correct the Hearing Transcript filed on August 6, 2010.

Facts

The findings and conclusions herein are based on the entire record. I applied preponderance of the evidence as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

Urban

Urban attended Cornell University on scholarship and graduated with a Bachelor of Science degree, majoring in electrical engineering. Tr. 2665. While attending Catholic University Law School, where he was on the Law Review, he worked part-time at several federal agencies, including the Commission. Tr. 2665-67. Upon graduation in 1974, he worked for the Commission as a staff attorney, branch chief, and assistant director in the Division of Market Regulation. Tr. 2667-68. He left the Commission in October 1979 to become Deputy Director of Trading and Markets at the Commodity Futures Trading Commission. Tr. 2668-69. Urban became General Counsel at Ferris & Company, Inc. (Ferris & Company) in 1984, where he was the firm's only lawyer, it had one compliance officer, and he shared a secretary with Ferris. Tr. 2671.

In 2003 through 2005, Urban headed three FBW departments: Compliance, Human Resources, and Internal Audit and reported to Roger Calvert (Calvert), CEO.² Tr. 584; Div. Ex. 259 at 12. The Legal and Compliance departments at FBW were viewed as one entity. Tr. 2675. Urban saw their functions as serving the regulatory compliance and legal needs of the firm and basically providing legal and compliance advice to anyone and everyone within the firm. Tr. 2675-76. Urban denies the allegations in the OIP. Answer at 17; Urban Post-Hearing Br. passim.

FBW Board and Executive Committee

Baker Watts & Co, Inc. (Baker Watts), a Baltimore, Maryland, firm, merged with Ferris & Company, a Washington, D.C., firm, in 1988, to form FBW, a regional financial firm headquartered in both Baltimore and D.C. Tr. 1736, 2671. FBW, a registered broker-dealer and a registered investment adviser, specialized in the stocks of local community banks and other smaller companies

² Calvert is a graduate of the University of Virginia and earned an MBA at The College of William and Mary. He joined the municipal bond department of Baker Watts in 1974, became a partner in 1980, and president in 1987. At some point following the 1988 merger of Baker Watts and Ferris & Company, he became president and COO of FBW. Tr. 1736. In the period 2003 through 2005, Calvert's total annual compensation was between \$800,000 to \$1 million, plus significant stock options. Tr. 1938-41.

stocks. Tr. 423, 2019-20. FBW began negotiations with the Royal Bank of Canada (RBC) in 2007, an agreement to sell the firm and merge it into RBC was reached in February 2008, and RBC acquired FBW in June 2008. Tr. 1644, 1744, 1961; Urban Ex. 591.

In the period 2003-05, the Board was composed of George B. Ferris, Jr. (Ferris), Chairman, Calvert, Louis J. Akers (Akers), Wendy Gildemeister (Gildemeister), Sherry A. Gordon (Gordon), Craig Hartman (Hartman), Kevin Rast (Rast), Steven L. Shea (Shea), Adrian Teel (Teel), Urban, and Gail Winslow (Winslow), and it met six times a year.³ Tr. 582-84, 679, 1556-57, 1738-39, 2065. Two retail brokers rotated on the Board for periods of time. Tr. 1606, 1739. The Executive Committee was everyone except Gildemeister, Teel, Winslow, and the retail brokers. Tr. 1739-40, 1980, 2249. The Executive Committee and the Board considered policy issues; they did not consider matters involving problems with retail brokers, which they expected Retail Sales & Service (Retail Sales) and Compliance to resolve. Tr. 2619-20, 2633-34, 2649-55, 2852. Problems with brokers did not come before the Board because Compliance and the department in which there was an issue handled specific personnel issues. Tr. 2624-25. No Board member who testified could recall the Board ever considering an issue of broker misconduct, except where an arbitration decision or settlement cost FBW money. Tr. 2661, 2624-25. The FBW culture gave the operating departments a lot of autonomy. Tr. 2656-57. The Board did not consider any issue without Calvert's approval, and, if an issue got to the Board, people looked to Calvert for how they should vote. Tr. 2652-53.

During this same period, FBW had Written Supervisory Procedures in place, and the Board regularly received information on large margin accounts that always included several of Glantz's customers, and it approved salary advances for Glantz. Tr. 2943-44, Div. Ex. 259.

The Executive Committee and the Board learned of investigations by the Commission and the Justice Department and a lawsuit concerning Glantz's activities in October 2006. Tr. 2641, 2658.

FBW and Glantz

Calvert was President and CEO of FBW from 2003 through 2005, but Akers, head of Retail Sales, was the most powerful person at the firm. Tr. 595, 602, 961, 1648, 1736, 2203-04, 2399, 2622-23. Calvert gave Akers autonomy and deferred to him on issues involving Retail Sales. Tr. 2622-23, 2633, 2851. One Board member could not recall Calvert ever overruling Akers. Tr. 2623. Akers had been with FBW since 1989, but was forced to step down as CEO, in December 2001, when the firm learned of his significant gambling debts and tax problems. FBW loaned

³ This description is pieced together from several accounts. Ferris was the son of the founder of Ferris & Company. Gildemeister was Director of Operations and Senior Vice President. Tr. 389. Gordon was the head of Special Products and an Executive Vice President Tr. 1607, 2619-20. Hartman was CFO, Rast headed Taxable Fixed Instruments Trading, Shea was in charge of Equity Capital Markets, and Teel headed Municipal Capital Markets/Public Finance. Div. Ex. 259. Winslow was a Vice Chairman, an established, respected member of the firm, and one of FBW's most productive brokers. Tr. 1607-08.

Akers \$1.3 million and appointed him Vice Chairman of the Board and head of Retail Sales. Tr. 1741-42, 1815-16, 2002-03.

Akers was a big physical presence, a domineering personality, who was engaging to some and a bully to others. Tr. 416, 602, 970-71, 1602, 2202-03. Akers was aggressive towards everyone, he yelled at people, and he was always determined that his positions prevailed. Tr. 1602, 1648, 2203, 2685-86. Akers's relationship with Patricia Centeno (Centeno), Chief Compliance Officer and Compliance Director in the period January 1, 2003, until March 30, 2004, was contentious and adversarial. Tr. 2628-29. Centeno testified of multiple incidents in which Akers thwarted her compliance efforts. Tr. 592-93. In an incident that occurred after she left FBW, but which supports her position, Akers described the Compliance Director as a member of Hitler's Third Reich and a Compliance branch examiner as Frankenstein's lab assistant, Igor, at a fairly large meeting of branch managers in 2005. Tr. 962-63. Akers also joked that the good news was that FBW sold Compliance to Merrill Lynch. Tr. 1290. Akers's disparaging, unsupportive views of Compliance were well known among his subordinates. Tr. 962-63, 1290. Calvert heard about Akers's comments but took no action. Tr. 1819-21.

Akers and Patrick Vaughan (Vaughan), Assistant Head of Retail Sales, recruited Glantz to FBW in 2002.⁴ Tr. 1333, 1422. Glantz began working at FBW's Beachwood, Ohio, office (Beachwood) in January 2003. Tr. 36-37, 608. On December 31, 2002, his official start date, Glantz received an upfront \$800,000 signing bonus, which was considered high, embodied in a promissory note forgivable over a five-year period negotiated by Akers and Vaughan.⁵ Tr. 216-17, 1435, 1838; Div. Ex. 5, Urban Ex. 586 at 9157. Calvert testified he did not remember hearing of Glantz before January 2003; however, Calvert had dinner in Baltimore with Glantz, Vaughan, and DePalma, a FBW broker who recommended that FBW hire Glantz, on May 31, 2002. Tr. 453, 1333, 1422, 1834-35.

Akers had grown the retail operation substantially and, in 2003-05, Retail Sales accounted for 70 to 75% of FBW revenues. Tr. 391, 1600-01. Akers's power derived, in part, from the fear of some that he would take the big-producing brokers with him if he left the firm, and he supervised branch managers, branch management, and branch personnel. Tr. 585, 602, 1816, 2626-27, 2659. Glantz knew that Akers liked his high production and the syndicate business he was bringing to FBW, and he thought Akers liked him personally. Tr. 1459-60. Glantz spoke with Akers at least

⁴ According to Glantz, he had made \$500,000 his last year at Advest, but he switched firms because he had terrible gambling and drug habits and needed money. Tr. 1333. The record does not indicate how Glantz was able to meet FBW's requirement that new employees pass a drug test. Tr. 2711. Glantz testified that he used cocaine, alcohol, and opiates (Percocet, Vicodin, and Xanax) daily at times while employed at FBW, and he was diagnosed as bipolar in 2006. Tr. 1357-59. Urban had no knowledge of Glantz's drug use. Tr. 2711. Glantz credited his recovery to a nine-month residential drug treatment program offered by the Federal Bureau of Prisons. Tr. 1361.

⁵ Brokerage firms made such arrangements to make up for customer losses new brokers suffered when they transferred firms. Tr. 42. The amount was forgiven over time if the broker performed successfully with the firm for the duration of the contract. Tr. 42-45.

once a week. They had lunch or dinner on occasion, and Mrs. Akers, a real estate agent, helped him buy a home. Tr. 1460-61, 1534; Urban Ex. 521.

The unanimous evidence is that Akers had unquestioned overall authority over Retail Sales, he did not tolerate interference by anyone, even Calvert, and it was the responsibility of Retail Sales to supervise and to address problems with retail brokers. Tr. 1878, 2621-23, 2632-33. Gordon, who worked for Akers, testified to an experience where she went to discuss something with Calvert, who specified a day when Akers was supposed to be at the Hunt Valley branch office (Hunt Valley).⁶ However, Akers was in the Baltimore office (Baltimore), and Calvert was very nervous because Akers was in Urban's office and could observe Gordon talking with Calvert in Calvert's office. Gordon knew Calvert was concerned because Akers would be upset if he thought Calvert was interfering with a Retail Sales employee. Tr. 2640. Calvert told Gordon that their conversation never happened. On another occasion, Calvert told Gordon never to bring anything to the Board that did not have Akers's approval. Tr. 2638-40.

Akers and Vaughan considered Glantz a valuable broker because he was a top revenue producer, he could sell new issues, and he was a source of stock sold by syndicates for which there was significant broker demand. Tr. 1117-20, 1295, 1300, 1846-47, 1852-53, 1982, 2022, 2033. In the year ended December 31, 2003, Glantz ranked number seven in production among 252 FBW sales people. Tr. 30, 219, 228, 1850; Div. Ex. 76, Urban Ex. 589 at Bates 001. For FBW's fiscal year that ended February 29, 2004, Glantz was ranked number six. Tr. 1851-52; Urban Ex. 589 at Bates 7871. In the fiscal year that ended February 28, 2005, he ranked number two. Tr. 1852; Urban Ex. 589 at Bates 7883.

In an unusual arrangement that Calvert, Vaughan, and Horace W. Usry, Jr. (Usry), Director of Institutional Sales, approved, Glantz worked in Beachwood and at the Institutional Sales department (Institutional Sales) in Baltimore in 2003 and 2004, and he conducted business under both retail numbers (BW99 or BWA4) and an institutional number (IS34).⁷ Tr. 108, 195, 454, 728, 1443-44, 1984; Urban Exs. 507, 614. However, Shea, Executive Vice President and head of the Corporate Capital Market Division, which included Equity Institutional Sales headed by Usry, testified that Institutional Sales was never assigned to supervising Glantz. Tr. 1439, 1978, 1983-85, 2021, 2027. According to Shea, Usry did not mention Glantz's supervision to him, and no one raised concerns about Glantz or the IPOF Fund, an Ohio limited partnership of David Dadante (Dadante), general partner, and David and Christopher Dadante, limited partners.⁸ Tr. 460, 1988;

⁶ Gordon joined Ferris & Company in 1983. She became head of Special Products and joined the Board and the Executive Committee in early 1990. Tr. 2617-19.

⁷ Institutional accounts and retail accounts are sufficiently different that brokers specialized in one or the other. Institutional accounts were usually much larger and involved a business entity. They engaged in more active trading than retail accounts and in larger amounts. Most of FBW's institutional accounts were "delivery versus payment" accounts for which FBW executed the trades and delivered the securities to a bank for payment. Tr. 70-72. The BWA4 accounts were retail accounts but Institutional Sales received twenty percent of the commissions. Tr. 2925-26.

⁸ Dadante booked junkets to gambling locations from Cleveland, Ohio. Tr. 1327. Dadante and Glantz were friends who gambled and went on a number of trips to Las Vegas. Tr. 1519. William

Urban Ex. 598. The IPOF Fund allegedly looked at market opportunities and used margin extensively. Tr. 458-60; Div. Exs. 22, 79. Shea knew that Glantz was sitting at the Institutional Sales desk because he needed a place to sit in Baltimore and he was interested in knowing what went on with the IPOF Fund. Tr. 2023-24. Institutional Sales's contribution to FBW increased 107% in fiscal 2004 over the prior year, and it was a very profitable department. Tr. 2032; Urban Ex. 534 at Bates 0568, 0663.

As early as April 2003, Mark Weaver (Weaver), the Beachwood Branch Manager, understood Institutional Sales was monitoring Glantz's institutional accounts; however, Weaver approved new institutional accounts, he received information about Glantz's institutional trades, and the Activity Reports he received detailed information about Glantz's institutional accounts. Tr. 63-64, 82, 113, 125, 152-53, 158, 173-74, 234, 255-56; Urban Ex. 614. As branch manager, Weaver was FBW's first line of defense against illegal activities by brokers. Tr. 2369. Weaver was a college graduate with several licenses who had been in the securities industry since 1985 and had been branch manager since 2000. Tr. 33-34.

Glantz testified that he spent one week a month at most in Beachwood. Tr. 1347-48. According to Vaughan, Glantz worked in Baltimore because he had contacts in New York and he could help FBW gain syndicate sales. Tr. 454-55. According to Glantz, Baltimore was convenient because he was dating a woman who lived in New Jersey. Tr. 1345. Akers or Vaughan and Usry approved rental payments for Glantz's Baltimore apartment. Tr. 1346, 1443-51; Urban Ex. 584 at Bates 3198-99, 3201. Calvert did not recall being involved in the discussions, but he vaguely remembered Akers informing him of the arrangement, which was not often done for brokers. Tr. 1840-41. Calvert knew that Glantz split his time between the Beachwood and Baltimore offices, but he did not voice any concerns about his supervision. Tr. 1839-40. Calvert had lunch with Glantz and Usry, with whom Calvert did not often lunch, on April 15, 2003. Tr. 1839, 1842; Urban Ex. 576A at Bates 26785.

Calvert viewed Akers's primary function as recruiting and retaining brokers. Tr. 1741. Akers and Vaughan maintained a strong relationship with a lot of brokers they recruited to FBW. Tr. 1624, 1628, 1741.

FBW Business Managers had Information About Glantz.

Branch managers were charged with direct supervision of brokers, and FBW considered them the firm's first line of defense against sales practice violations. Div. Ex. 197 at 17402. Branch managers received reports for the accounts handled by brokers assigned to their branches and received numerous reports for this purpose. Tr. 395. The branch administrator was responsible for pulling off the system, daily, the record of all transactions for all accounts that belonged to the branch. Tr. 394-95. At the end of each day, a trade blotter would show all trades in the branch, and, the following morning, another report showed the same information in greater detail. Tr. 1012,

Salem (Salem), Glantz's gambling buddy, handled an account that Dadante had at Advest, Inc. (Advest) and kept Glantz informed about the account. Tr. 1336-37.

1105-07. Branch managers also had to approve directives that dealt with errors, cancellations, and corrections. Tr. 1012.

Vaughan decided that Weaver would supervise Glantz's retail accounts and Usry would supervise his institutional accounts.⁹ Tr. 456-57, 614-15. Glantz reported to Weaver, who reported to Vaughan, who had authority to fire brokers. Tr. 455, 1018. Glantz testified that Usry, who became a friend of Glantz's, told him he had refused to become his supervisor. Tr. 1350, 1422-23. Centeno believed that FBW did not have procedures in place for split supervision of Glantz; she considered Akers and Vaughan to be Glantz's supervisors and that Calvert had ultimate authority on supervision. Tr. 457, 615, 622. Centeno believed that Urban did not have the ability to hire or fire Glantz or make Glantz do certain things; that only a branch manager going through Akers, Akers himself, Vaughan or Calvert had those powers. Tr. 128, 445, 589, 1018, 1124.

Centeno told Weaver he was responsible for supervising all of Glantz's accounts because he was signing off on the new account forms, but Weaver claimed that Usry was responsible for the institutional accounts and that he had no authority because Glantz "went over his head." Tr. 465, 619-20. Centeno told Weaver he should call Glantz's customers. Tr. 620. Glantz does not recall any supervision, questions, or criticism from Weaver. Tr. 1436.

Glantz considered Akers to be his supervisor because he would call him, or Vaughan when Akers was unavailable, when he needed something. Tr. 1344-45, 1449. Glantz considered Akers his protector and that he could do pretty much what he wanted to do. Tr. 1351. When anyone questioned Glantz, he would refer them to Akers who would take care of it. Tr. 1459.

Each month, the Compliance Department sent branch offices a computer-generated Activity Report that flagged certain accounts for attention by the branch manager. The Activity Report showed accounts in which there were more than ten trades, commissions were out of line with equity in the account, the account had losses of 20% or more, or the account paid commissions over \$2,000.¹⁰ Tr. 62, 160. In June 2003, the Activity Report began showing commission-to-equity and

⁹ Credit for Glantz's institutional sales was divided eighty-twenty between Beachwood and Institutional Sales. Tr. 210-11. Weaver received a 1% override on the retail production of all brokers in the Beachwood office and a 1% override on 80% of Glantz's institutional sales. Tr. 210-11, 219. On March 5, 2003, Usry directed that Glantz be paid for his institutional business under the retail number BWA4 and that 80% be directed to Retail Sales and 20% be directed to Institutional Sales. Shea and Usry were to receive the standard override of 1 and 2% of Glantz's gross institutional sales. Later, Usry increased Institutional Sales's share to 30%. Div. Ex. 20; Urban Ex. 508. Shea received copies of Usry's directives, but he testified he did not know whether they were acted on. Tr. 2027. Shea received overrides on the gross commissions of the Institutional Sales department he supervised. Tr. 2026-27.

¹⁰ If an account appeared three times in the last twelve months, the Compliance Department could request the branch manager to take additional actions. Tr. 80, 1014.

turnover ratios.¹¹ The Activity Report listed a number of actions that the branch manager could take that included on-line review, which consisted of a computer search of activity and compliance-related concerns, an interview with the broker, an active account questionnaire or worksheet about the account filled out by the broker, requesting a client letter, client contact, and other.¹² Div. Exs. 212-15, 587, 614. The branch manager was to fill out the Activity Report by checking the action taken and return the completed report to Compliance. Tr. 621-22, 1012, 1017, 1108.

Glantz testified that he falsely classified some of his accounts as institutional accounts: the IPOF Fund, Debra Vinocur (Vinocur), whose account is the result of an insurance settlement, and Ziemba & Thatcher PS (Ziemba & Thatcher) – to lessen the scrutiny they would receive. Div. Ex. 250 at 34. In fact, in March 2003, the IPOF Fund, which had been a retail account, was shown on the Activity Report as an institutional account, and, in April, four other accounts, two of which had been retail accounts, were shown as institutional accounts.¹³ Urban Ex. 614 at Bates 22008, 22011. The largest and most active of these was the IPOF Fund. Centeno had concerns about the IPOF Fund that included, among other issues, its ownership, paperwork, investment objectives, purpose, and trading activities in Innotrac Corporation (NASDAQ: Inoc) (Innotrac), an illiquid, low-priced stock with a small float. Tr. 458-64, 469, 508; Div. Ex. 35.

FBW began making a market in Innotrac stock in 2002, at Usry's suggestion. Tr. 738. Some respected FBW brokers, including Usry, owned Innotrac or had clients who owned it prior to when Glantz joined FBW. Tr. 635-39, 734; Div. Ex. 27. Usry introduced Glantz to Innotrac in 2002, after he, Akers, Vaughan, Shea, and Burke met Glantz relative to his joining FBW. Tr. 1333-34, 2802. Innotrac was a "fulfillment" company, i.e., it filled orders for Internet retailers, was headquartered outside Atlanta, Georgia, had seven or eight distribution centers around the county, and generated \$80 or \$90 million in revenues. Tr. 907-09. The Wall Street Journal listed Innotrac as the best-performing stock in the first quarter of 2003. Tr. 508.

Urban requested the IPOF Fund's partnership agreement and a list of IPOF Fund investors from Glantz and was concerned when Glantz told him that Dadante said it was confidential. Tr. 1373-74. In April 2003, Glantz told FBW that he had known Dadante for fifteen years, but he was not sure who was part of the partnership and he was not sure that the IPOF Fund was set up as a partnership. Centeno considered the IPOF Fund's stated investment objectives, growth and income,

¹¹ A turnover ratio of 100 indicates that all equities in the account were sold and purchased once. Tr. 85. A commission-to-equity ratio compares commissions paid to the value of the contents of the account. Tr. 85.

¹² An account worksheet showed additional details about the account. Tr. 65. A client letter urged the client to review the account with the broker; it did not mention the concerns that motivated the letter. Tr. 92-93.

¹³ The four other accounts were ABN Amro, Inc., Topeka Capital, Vinocur, and Ziemba & Thatcher. Urban Ex. 614 at Bates 22011. Activities in Glantz's institutional accounts resembled FBW's retail accounts, and Glantz testified they were not institutional accounts. Tr. 71-72, 387.

inconsistent with the trading activity that occurred in the account.¹⁴ Tr. 490-91. Unlike most institutional accounts that place a large order and allowed FBW to execute trades, the IPOF Fund, in the person of Dadante, directly placed lots of small orders, limit changes, accompanied by lots of phone calls and instructions to Jack Belgrade (Belgrade), one of three institutional traders on the Institutional Sales desk.¹⁵ Tr. 696-98, 1337, 1440-41, 12346; Div. Ex. 39.

Centeno had questions about several of Glantz's accounts, including questionable trading activity which appeared unsuitable with their growth and income investment objectives, and she questioned whether the trades were authorized. Tr. 469-73. For example, Vinocur was a young widow with no other substantial assets and an unsophisticated investor. Her account was classified as an institutional account, and it had a high concentration of Innotrac stock and a high margin balance. Tr. 467-70. Centeno had similar concerns about the Fabrizi Trucking and Paving (Fabrizi Trucking) account and the Jeffrey Orchen Pension Profit Sharing Plan (Orchen Pension Plan) account, a profit-sharing account.¹⁶ Tr. 470-73.

In early 2003, Glantz lied to Gildemeister, about having permission from Calvert to trade in the IPOF Fund before the account arrived at FBW.¹⁷ Tr. 275-79, 389, 412-13. Vaughan wanted to make certain exceptions from house policy for Glantz's trading in the IPOF Fund, but Gildemeister and Centeno did not want to do so; they both sensed that something was not quite right about Glantz. Tr. 281-82.

A large number of Glantz's accounts appeared on the Activity Report for Beachwood regularly. Urban Ex. 614. For January 2003, Glantz's first month with FBW, he had sixteen of the twenty-five accounts listed on the Activity Report. Urban Ex. 614. Glantz's accounts that appeared on Activity Reports from June 2003 through March 2004 had very high turnover and commission-to-equity ratios, and many, if not most, of the accounts had conservative investment objectives. Tr. 170; Urban Ex. 614. For example, in July 2003, the Irwin Gilbert Trust (Gilbert) account had a turnover ratio of 595 and a commission-to-equity ratio of 8.13, and the Armand Guerrini (Guerrini)

¹⁴ As a general proposition, an account with growth and income objectives should consist of conservative investments, usually blue chip stocks of companies with solid balance sheets whose stock price is over five dollars a share. Tr. 1065-67.

¹⁵ Belgrade, Mark Laverghetta (Laverghetta), and a Ms. Hunt were the traders for Institutional Sales. Tr. 1614. They relayed orders to Robert "Moose" Bianco (Bianco), a market maker in Innotrac on the NASDAQ desk. The institutional traders reported to Usry who reported to Shea. Bianco reported to John Boo (Boo), head of NASDAQ Trading and Market Making, who also reported to Shea. Tr. 725, 730-32, 1439, 1614, 2752.

¹⁶ By its nature as a retirement account, a profit-sharing account should be constructed with conservative investments. Tr. 1066.

¹⁷ Gildemeister reported directly to Calvert and oversaw several back office departments: Purchase and Sales, Mutual Funds, Reorganization, Dividends, Clearance and Settlements, Account Transfers, Margins, New Accounts, IRA Processing, and Annuity Operations. Tr. 265-66, 2261. Gildemeister became a Board member in May 2005. Tr. 389.

account had a turnover ratio of 1044 and a commission-to-equity ratio of 6.4.¹⁸ Mr. Gilbert was 84 years of age and the Gilbert account's objectives were "growth and income." Tr. 1073; Div. Ex. 212, Urban Ex. 587 at Bates 27849.

FBW Committees

FBW had several significant committees. The Cost Control Committee, composed of Ferris, Calvert, Akers, and Hartman, reviewed the firm's operational and administrative costs. Tr. 2678. Ferris did not like the firm to spend money. Tr. 2684. If Ferris saw a cost in a monthly management report that he thought was high, Calvert, through the Cost Control Committee, would get an explanation from the manager. In mid-2002, shortly before the relevant period, the Cost Control Committee required Urban had to justify the staffing costs of the Legal and Compliance Departments. Tr. 1794-95, 2680-85; Urban Ex. 503.

The Credit & Risk Committee (Credit Committee) consisted of Calvert, Hartman, Urban, and Gildemeister.¹⁹ Urban Ex. 528 at Bates 18545. In 2003 and part of 2004, everyone on the Credit Committee was also on the Board, and everyone but Gildemeister was also on the Executive Committee. Tomiko Turpin (Turpin), Credit Risk Manager, took minutes until she left around June February 2004. Charles W. McNeilly (McNeilly) took over as Credit Risk Manager in January or and became a member of the Credit Committee. Tr. 274, 402, 1699, 2767; Div. Ex. 101, Urban Ex. 528. Everyone on the Credit Committee, which dealt mainly with unusual situations involving the extension of margin credit, reported to Calvert. Tr. 272-73, 366-68; Urban Ex. 528. McNeilly reported to Urban and Hartman, and he worked on special projects for Calvert with whom he talked more or less daily. Tr. 1698-99.

The Credit Committee acted as a group. Tr. 1707. Calvert considered Urban the focal point of Credit Committee communications and Urban was the person who handled communications with outside parties. Tr. 1974. McNeilly provided the Credit Committee members on a regular basis, perhaps weekly, statements that showed, among other things, accounts in which the firm had margin exposure, a list of accounts of concern, and securities with large concentrations on margin. Tr. 429-31, 1666, 1721-24, 1916, 1918; Urban Exs. 593-94. Glantz's accounts were consistently among the firm's largest margin debits, the IPOF Fund was the largest, or one of the largest, and Innotrac was on the top of the securities on margin in 2004 and 2005. Tr. 1915-23.

The Del Buono Memo

In January 2003, Glantz admitted that he signed his wife's name to an option agreement for a joint account, claiming he had power of attorney for her; however, no power of attorney was on

¹⁸ Irwin Gilbert was Vinocur's father. According to Glantz, his investment objective was preservation of capital. Glantz exercised discretion in his account. Tr. 1344.

¹⁹ Hartman graduated from The Ohio State University with a degree in Accounting and earned a Master's in Finance from Johns Hopkins University. He joined FBW as Controller in 1995 and moved up to CFO in August 2001. Tr. 2064.

file with FBW. Moreover, the day Glantz claimed he had power of attorney, FBW received a copy of a temporary restraining order that Glantz's wife had obtained against him. Tr. 449; Div. Ex. 16. Centeno told Vaughan and Urban that Glantz had lied and that she thought Glantz was going to be trouble, a concern she expressed throughout her tenure at FBW.²⁰ Tr. 450, 533-34.

In April or May 2003, Centeno told Urban that she and Sandra A. Del Buono (Del Buono), the person in Compliance assigned to Beachwood, had concerns about Glantz's supervision, and they were looking at trading in Innotrac, particularly by the IPOF Fund, and use of margin by Glantz's customers. Urban directed her to keep gathering information and to consolidate their thoughts for discussion or Credit Committee consideration.²¹ Tr. 611, 2712-13. Urban did not believe that Centeno had "conclusive evidence of manipulative intent or manipulative activity."²² Tr. 2714. Research, including information from Liam Burke (Burke) from FBW's Research Department, caused Urban to conclude that Innotrac was a real company that met the NASDAQ standards for listing. Tr. 2715-16. In Urban's opinion, Innotrac did not fit the profile of a company in which manipulation was likely because its CEO owned 52-53% of the stock and there was no selling. Tr. 2716. Also, Urban knew that several registered representatives including Mark Dyer (Dyer), an established, very successful FBW broker, who never presented any compliance problems, had invested in Innotrac. Tr. 2717-18.

On May 28, 2003, the Credit Committee considered a May 23, 2003, memorandum, "Trading Activity in Innotrac Corp. (INOC), IPOF Fund Account," that Centeno had Del Buono send to her, Urban, and Calvert, with copies to Gildemeister, Hartman, Turpin, Rick Leatherbarrow (Leatherbarrow), Sharon Pennington (Pennington), and Vaughan (Del Buono Memo).²³ Tr. 272,

²⁰ Centeno believed Glantz to be in desperate financial condition because he netted \$800,000 in late December 2002 or early January 2003, yet, in the spring of 2003, he requested early withdrawal of his IRA funds and requested that FBW issue him early paychecks. Tr. 452. Centeno knew Glantz had been referred to FBW by Tony DePalma (DePalma) who liked to gamble, that Glantz had a mistress in Atlantic City, New Jersey, and that FBW was paying, in part, for his living expenses in Baltimore. Tr. 453, 606. Centeno was concerned that he had a gambling or drug problem. Tr. 453.

²¹ Del Buono was an FBW Compliance officer from 1998 to June 2004. Tr. 948-49; Urban Ex. 635.

²² Urban and Centeno had a unique working relationship. He valued her strong-willed personality as required in her position and he gave her great leeway in carrying out her responsibilities. Tr. 2689. She kept him informed and he told her to challenge his positions and she often did. For example, he tolerated her direct questions of whether his failure to follow her advice was based on his financial stake in FBW. Tr. 532, 578. Their different approaches are demonstrated by a conversation in which Centeno characterized Glantz's mistress as a "bimbo" and Urban told her not to be so flip as she did not know the woman. Tr. 527.

²³ Leatherbarrow was at FBW for a year and a half in the mid-1990s and from January 2000 through December 2006. Tr. 1226. He was a compliance officer for FBW Capital Markets from 2003 to 2005. Tr. 1165-66. Pennington was in the Margin Department. Tr. 278.

321, 448, 2725; Div. Ex. 27, Urban Ex. 557. The Del Buono Memo was an effort by Centeno to have the Credit Committee consider the IPOF Fund account. Tr. 478-79. She addressed the Del Buono Memo to Calvert and other senior members of the firm so they could not claim later that they were not aware of Glantz and the IPOF Fund situation. Tr. 611-12.

The Del Buono Memo described concerns about the trading activity and use of margin in the IPOF Fund account, the status of the Innotrac common stock, and Glantz's trading Innotrac stock in the account. Tr. 314-15; Div. Ex. 27. It noted that FBW customers owned approximately 40% of Innotrac's total float and 19% of the outstanding shares. The Del Buono Memo showed at least seven Glantz customer accounts that had very large concentrations of Innotrac stock. The accounts of some respected FBW brokers, including Usry and Dyer held Innotrac, but no account came close to the amount of Innotrac held in the IPOF Fund. Tr. 316, 482-83, 489, 1109, 1112-14, 2717-18; Div. Ex. 27 at 2, App. B. Innotrac's 52-week low per share price was \$1.50 on October 11, 2002, and the 52-week high was \$6.65 on May 6, 2003. Div. Ex. 27 at 1, App. A. Innotrac's price rose in 2003. Tr. 639. Innotrac had traded at higher than \$6.65 prior to 2002. Tr. 2344.

The Del Buono Memo stated that the IPOF Fund account had a \$9.381 million margin debit balance, which continued to increase while the account purchased the stock of Innotrac and that the IPOF Fund qualified as a control person of Innotrac. It noted that Vaughan denied Glantz's representation that he had discussed the IPOF Fund in detail with Vaughan. Tr. 1877-78; Div. Ex. 27. In Centeno's view, the IPOF Fund was controlling the price of Innotrac stock, and its accumulation of shares in small lots almost daily resulted in raising the price. Tr. 484-85, 489, 762-63; Div. Ex. 27, App. C. The Del Buono Memo advised that: "The Compliance Department believes that the Firm needs to address the potential issues and arrive at some decisions regarding the concerns noted," and "[w]ithout question, there is and has been a breakdown is [sic] the supervisory responsibilities and who shares or owns supervisory responsibility over the activity in the [IPOF Fund] account and Mr. Glantz."²⁴ Tr. 486; Div. Ex. 27 at 1, 3.

As a result of the Del Buono Memo, FBW suspended purchases of Innotrac by the IPOF Fund and it placed the Regulation T (Reg.-T) requirement at 60% and a maintenance requirement of 60% on Innotrac in the IPOF Fund account.²⁵ Tr. 493, 625, 1880, 2354-55, 2721-25; Urban Ex. 513.

Urban believed that the Credit Committee directed him to: (1) address the IPOF Fund's filing requirements, and (2) speak with Retail Sales and Usry about Glantz's supervision and his accounts. Tr. 2724-25, 2920. Following the Credit Committee meeting, Urban accomplished getting the IPOF Fund and Dadante to make the necessary Schedule 13G and Form 3 filings, he

²⁴ Centeno was the Anti-Money Laundering Officer for FBW and submitted a Suspicious Activity Report (SAR), the contents of which are confidential, the day before the Credit Committee met. Tr. 650.

²⁵ Gildemeister stated that Reg.-T was a NYSE rule for handling extension of credit to customers. If a customer buys a security on margin, he or she must pay 50% by settlement date or else restrictions are put on the account. Tr. 266-71.

confirmed with Wasserman that the IPOF Fund was not a control person of Innotrac, and that it was an Ohio limited partnership. Tr. 622-25, 2361, 2738-41; Urban Exs. 520, 598. In June through August 2005, Urban received communications from Wasserman about a visit to Innotrac headquarters and conversations with the company's officers and counsel from a respected Atlanta firm that indicated positive financial results and the likelihood that Innotrac would be capable of doing an underwriting. Tr. 910-14.

Within a week or so of the Credit Committee's consideration of the Del Buono Memo, Urban, Akers, Vaughan, Centeno, and Del Buono had a conference call to discuss Centeno's and Del Buono's concerns. Tr. 2725-26, 2799-800. Urban's recollection is that Akers and Vaughan agreed to talk to Weaver in Beachwood about Glantz's supervision, and Akers challenged the Del Buono Memo's assertion that the IPOF Fund did not hold quality stocks.²⁶ Tr. 2726-27. Centeno's recollection is that Akers attacked the memorandum's credibility, yelled and screamed, and was abusive primarily to Urban. Tr. 495-96, 615.

As further follow-up, Urban spoke with Weaver, and he met with Glantz in Baltimore on June 4, 2003, at which time they discussed the IPOF Fund account reporting requirements, the Vinocur account, and supervision. Tr. 2728; Div. Ex. 40. Also on June 4, 2003, Urban sent an email to Vaughan, noting his communication with Weaver and discussion with Glantz, and requesting that Akers and/or Vaughan speak with him before their dinner with Glantz the next day. Tr. 2783; Div. Ex. 41. Urban told Centeno that Calvert understood everything and was "on board," and he consistently directed her to monitor the situation and to bring her findings to him. Tr. 473-74, 485, 495, 510, 630.

On June 9, 2003, Urban traveled to Ohio and met with Glantz and Weaver separately. Tr. 618, 2729-30; Div. Ex. 40. Those discussions clarified that Weaver was supposed to supervise the accounts for which Glantz used the account numbers BW99 and BWA4 (Beachwood), and Usry was to supervise those Glantz accounts with the IS34 number (Institutional Sales). Tr. 2737. Urban had a conversation with Usry in which he acknowledged supervision of Glantz's practices while he was on the Institutional Sales desk. Tr. 2737-38.

Centeno and Vaughan discussed the issues in the Del Buono Memo in the spring and summer of 2003, and she told Vaughan that Glantz had lied to her about having power of attorney for his wife. Tr. 614. Centeno told a number of people at FBW, including Ferris, Vaughan, and Weaver, that Glantz was a disaster waiting to happen. Tr. 466, 664-65.

Calvert believed the Del Buono Memo came to him as a member of the Credit Committee, not as CEO. Tr. 1859-60, 1869, 1871. He was dismayed at the issues, but he did not direct a response or get involved in responding. Tr. 1870-72. He was pleased that the recipients were the people who needed to address the issues. Tr. 1748-49. Calvert expected that people in various departments, Gildemeister, Hartman, and Urban, would independently address the issues "and if they were not able to satisfactorily resolve them, that it [sic] would come back to [him] and request

²⁶ It is not clear whether this is the meeting that Urban referenced in his investigative testimony where he met with Akers and Vaughan, who indicated they would see that Weaver became more attentive to Glantz's accounts. Div. Ex. 250 at 34.

[his] assistance.” Tr. 1751, 1868-69. Calvert expected Retail Sales and Compliance to address the issues and bring things to his attention if they could not resolve them, as Calvert “operated on so many issues beyond the issues in [the Del Buono Memo].” Tr. 1879.

Calvert testified that he did not follow up on the matters contained in the Del Buono Memo with Akers, with whom he talked almost daily, and not one person told him he or she expected him to do more. Tr. 1869-72. Centeno’s position that the IPOF Fund’s purchases were driving the Innotrac stock price higher did not “stick out” to Calvert. Tr. 1865.

On June 5, 2003, between Urban’s discussion with Akers and Vaughan on Glantz’s supervision and his trip to Beachwood, Del Buono sent Urban a memorandum, recommending that Glantz be subject to clearly delineated lines of supervision while a decision was being made as to who should supervise him. Tr. 515-16, 654; Urban Ex. 514. She did this after Glantz claimed to know nothing about orders to cancel and correct Innotrac trades in the IPOF Fund account and there were no cancel and correct records in Beachwood, yet such orders had to be approved by a branch manager and Compliance. Tr. 2743. Urban was puzzled by the memorandum because Glantz played no role in the IPOF Fund orders, which went directly to the Institutional Sales desk. Tr. 2744-45. Urban instructed Del Buono to check with Usry, and he discussed the situation with Belgrade, who assured him it was not a Compliance issue. Tr. 657, 2745-47; Urban Ex. 514. Urban communicated the information to Del Buono. Tr. 2747; Urban Ex. 516.

Urban called and met with Belgrade on June 6, 2003, in response to Centeno’s comments to him that Belgrade agreed with her that the IPOF Fund appeared to be manipulating the price of Innotrac. Tr. 506-07, 627-29, 2749-50; Div. Exs. 35, 48. In their conversation, Belgrade did not raise concerns about manipulation, but was upset that Dadante was calling him twenty-five to fifty times a day. Tr. 2752-54; Div. Ex. 48.

In June 2003, the Credit Committee imposed a restriction so that Glantz had to contact the Restricted Stock/Credit Risk Department prior to any purchases of Innotrac in the IPOF Fund account because the shares were considered control shares. Tr. 517-18; Div. Exs. 38, 52. The IPOF Fund filed a Form 3 and a Schedule 13G with the Commission, and, in July 2003, the restriction was lifted. Tr. 518; Urban Ex. 598. The IPOF Fund then bought more shares and the price of Innotrac increased, indicating to Centeno that the IPOF Fund caused the price to rise. Tr. 518-19; Div. Ex. 52. Centeno again told Urban that she thought Dadante was manipulating the price of Innotrac, but Urban did not think the facts demonstrated illegal manipulation. Centeno raised the issue of the potential manipulation of Innotrac stock with Urban on numerous occasions. Tr. 576-77, 630. Centeno also mentioned her concerns to various Board members, including Gildemeister, Gordon, and Hartman. Tr. 679-80.

The 2003 Annual Branch Compliance Inspection for Beachwood (Compliance Inspection) evidenced concern, “[a]s noted in an earlier memorandum,” that the branch manager may not be able to adequately supervise Glantz who split his time between Retail Sales in Beachwood and Institutional Sales in Baltimore.²⁷ Div. Ex. 55. The Compliance Inspection also noted that investments in the account of one Glantz customer, Mary H. Montanaro (Montanaro), were

²⁷ Urban and Akers received a copy of the Compliance Inspection. Div. Ex. 55.

inconsistent with its growth and income objectives, and that, in another Glantz account, Fabrizi Trucking, the account card was signed by an unauthorized person. Div. Ex. 55; Tr. 193

In late July 2003, Boo instructed traders not to accept orders that would create a down tick and thus limit short sale capability in Innotrac.²⁸ Tr. 520; Div. Ex. 57. According to Centeno, Urban was aware of the situation and was concerned. Tr. 521-22. Urban's testimony is that Leatherbarrow informed him of Boo's inquiry and he agreed with Leatherbarrow's advice to Boo, which found Boo's action appropriate. Tr. 2755. Urban was unaware of any connection that Glantz had with this situation. Tr. 2755. Hartman believed he commented to the members of the Credit Committee that trading in the IPOF Fund could be close to manipulation, but he never raised the matter to the Board. Tr. 2067-68.

Urban had a telephone conversation with Centeno and Del Buono, likely in early August 2003, to discuss Compliance issues that would need attention during Centeno's absence in late August or September. Tr. 2756; Div. Ex. 72. The subjects covered included the IPOF Fund, the Vinocur account, and Glantz's supervision. Div. Ex. 72. Urban followed up with a meeting with Vaughan about the need for someone in Retail Sales to get comfortable with Glantz's handling of the Vinocur account. Tr. 2759-60.

During her August 2003 performance review, Centeno told Urban that failure to resolve issues, including Glantz, Innotrac, and hiring certain brokers, had changed the risk profile of FBW and presented risks to her career. Tr. 530. Centeno believed that Calvert, Akers, Vaughan, Joe Martin, who worked for Akers, Shea, and sometimes Usry did not respect Compliance. Tr. 592, 601. In Centeno's opinion, Calvert avoided addressing conflicts and did not exercise his authority as CEO with respect to compliance activities. Tr. 678. She had lost confidence in FBW's handling of the Glantz situation.²⁹ Tr. 678-79.

On August 28, 2003, Gildemeister informed the Credit Committee by email that the IPOF Fund had a margin debit of almost \$9 million, that Dadante had opened another partnership account in the name of GSGI, that accounts at FBW held over 25% of the outstanding shares of Innotrac, and that seven Glantz accounts held Innotrac on margin. Div. Ex. 69. On Aug 20, 2003, the IPOF

²⁸ Boo believed the customer was trying to fix the price of Innotrac without expending capital. Tr. 706; Div. Ex. 57. In the spring of 2003, Boo believed that the IPOF Fund was marking the close in Innotrac stock by entering orders at the end of the day with no concern for price to create a misleading closing price. Boo directed his subordinates not to take such orders and copied Usry and Shea on the directive. Tr. 698-01, 729, 750; Div. Ex. 57. Boo believes that he raised concerns about apparent manipulation to Urban and Compliance. Tr. 784.

²⁹ Centeno resigned from FBW on March 30, 2004, in part, because Akers would not do what was required for compliance with respect to Glantz and the IPOF Fund, and undermined every compliance effort she undertook. Tr. 445, 551-52, 592. Centeno believed that Akers protected Glantz and that her working relationship with Akers was irreparable. Tr. 562, 663. I accept Centeno's testimony that Urban generally informed her of his conversations with Calvert in which he apprised Calvert of compliance concerns with Glantz and the IPOF Fund. Tr. 622, 676.

Fund had a total value of \$26.1 million, of which \$16.7 million was concentrated in Innotrac, and a margin balance of \$10.3 million. Div. Ex. 62. The value of assets other than Innotrac was \$9.4 million, which was insufficient to cover the margin debit in violation of the Credit Committee's conditions. Tr. 523. If it had become necessary to sell the Innotrac stock to satisfy a margin call, it would likely have destroyed the value of the stock. Tr. 523; Div. Ex. 62. The Orchen Pension Plan account had Innotrac as 92% of its holdings and had a 40% maintenance requirement on the stock following firm policy. Div. Ex. 69.

Glantz had signed off on the GSGI account for Dadante to circumvent the restriction not to buy any more Innotrac in the IPOF Fund account. Tr. 524, 1374-75; Div. Exs. 61, 64. Trades occurred in the GSGI account before Glantz signed the new account form and Weaver signed the client application, and manipulation, by way of wash sales, occurred in the account. Tr. 1375-76; Div. Exs. 71, 241 at 16-17. Urban replied to Gildemeister's email almost immediately, noting that he had preliminary discussions with Calvert and that the Credit Committee would meet that day. Div. Ex. 69. The Credit Committee put in an alternative test to address the concentration of Innotrac in the IPOF Fund account, the GSGI account was closed, and Gildemeister alerted Operations to watch for Dadante's name on account forms. Tr. 1376, 1458, 2379-80, 2767-71; Div. Ex. 70. According to Urban, the Credit Committee required that the value of non-Innotrac securities and 10% of the market value of Innotrac stock in the IPOF Fund account had to be equal to or greater than the margin debit. Tr. 2768. Also, FBW's Margin Department was to monitor the margin maintenance requirements. Tr. 2770.

On September 4, 2003, Urban traveled to Hunt Valley to discuss with Akers, Vaughan, and Glantz the GSGI incident, margin, and possible manipulative trading in the IPOF Fund account, concentrations of Innotrac in other accounts, and whether Innotrac stock had value. Tr. 1377-79, 2772, 2788; Div. Ex. 73, Urban Ex. 524. Urban wanted to cut off purchases of Innotrac, but Akers noted the amount of business that the IPOF Fund generated and, to keep the account happy, suggested allowing cash purchases of Innotrac. Tr. 1379. According to Urban, Vaughan said that someone needed to call Vinocur and get some level of assurance. Div. Ex. 73. Akers and Vaughan assured Urban that they would "get on Mr. Weaver to exercise his supervisory responsibilities at the branch level," and he believed they also told him that Glantz would be moving to Baltimore, where William Spencer (Spencer), an effective manager, was the branch manager. Tr. 2774-75, 2852-53.

Following the meeting, Urban told Centeno that she did not know everything and that he had it covered with Akers and Vaughan.³⁰ Tr. 526-27. In September 2003, the Credit Committee increased the margin requirement on the IPOF Fund to 60% on Innotrac stock and it also increased the margin requirement to 40% on any account that held Innotrac stock. Tr. 323, 330; Div. Exs. 33, 78.

In November 2003, FBW's Executive Committee gave Glantz a \$200,000 commission advance on the recommendation of Akers and Vaughan. Tr. 1463-64, 1855-56; Div. Ex. 75. Vaughan or Akers approved a \$20,000 advance to Glantz on August, 20, 2003, a \$30,000 advance

³⁰ Glantz testified that Akers told him, after Urban left the meeting, that he would take care of Urban. Tr. 1465.

on September 8, 2003, a \$40,000 advance on October 19, 2003, a \$30,000 advance in May 2005, a \$40,000 advance on August 2, 2005, and a \$40,000 advance on November 16, 2005. Tr. 2138-42; Urban Ex. 588. When he left FBW at the end of 2005, Glantz owed the firm \$430,000. Div. Ex. 230.

In January 2004, what is now the Commission's Philadelphia Regional Office (PHRO) conducted a regularly-scheduled examination of FBW's internal controls and financial operations. Urban Ex. 527. The mission was to take a macro level look at "how the firm operates, what procedures they have in place to monitor their business lines, their financials, their numbers," and to look at the balance sheet and income statement. Tr. 2502. Five examiners requested and received approximately five boxes of documents from FBW, and they specifically looked at six accounts, including the IPOF Fund. Tr. 2479-80, 2496. The materials provided included the Del Buono Memo with attachments, information about Innotrac, minutes of the Credit Committee, and FBW's top forty margin debits. Urban Ex. 586. Tracy D. Barry (Barry), an examiner who reviewed the IPOF Fund margin debits, did not see the Del Buono Memo during the examination.³¹ Tr. 2478-80. Barry interviewed Urban three to five times during the examination. Tr. 2497. Urban did not raise, and Barry did not inquire about Glantz's supervision, the suitability of investments in Glantz's accounts, possible manipulation in the price of Innotrac, or the unsuitable use of margin. Tr. 2497-500. On May 24, 2004, the PHRO sent a deficiency letter to FBW, which did not mention Glantz, manipulation, the IPOF Fund, or Innotrac. Tr. 2486-88; Urban Ex. 541.

Credit Committee Reaction to the IPOF Fund Owning More Innotrac Stock

On January 22, 2004, Centeno informed Urban that the IPOF Fund owned 26.37% of Innotrac's stock and that Innotrac had changed its bylaws to allow the IPOF Fund to acquire up to 40% of Innotrac stock. Tr. 535-36, 659-60, 2791-92; Urban Ex. 530. Centeno's facsimile to Urban included copies of postings on Google that opined that Innotrac's share price was being manipulated, which was also Centeno's opinion. Tr. 540-41; Div. Ex. 78A. On January 29, 2004, Del Buono forwarded to Centeno and Urban an email from Leatherbarrow, titled "IPOF & the emperor's new clothes," characterizing the IPOF Fund as a ticking time bomb and noting that, if people realized that Innotrac stock was worthless, the value of the other securities in the IPOF Fund account would likely be diminished by over a half a million dollars. Tr. 1167-68, 1171-72, 1174; Div. Ex. 77. Leatherbarrow testified that he meant if Innotrac became worthless; he did not believe Innotrac stock was worthless. Tr. 1229. Leatherbarrow believed that the IPOF Fund's trading activity was driving the price of Innotrac. Tr. 1170, 1229. Centeno feared that the margin balance in the IPOF Fund would leave FBW with an unsecured debt. She sensed that Urban was becoming more concerned but he continued to believe that FBW had the right controls in place. Tr. 544.

Urban was surprised and dismayed by the information in the January emails, particularly that the IPOF Fund's margin debit had grown to above \$16 million, and he immediately went into Calvert's office and found that Calvert did not know the information either. Tr. 2792-94. The

³¹ Barry, Senior Securities Compliance Examiner, joined the Commission in 1994. Urban Ex. 532. Barry holds a Bachelor's degree from La Salle University and is a CPA and a certified fraud examiner. Tr. 2500.

Margin group in the Operations Department had failed to apply the restrictions that the Credit Committee had applied to the account in September 2003. Tr. 2792-93.

On February 4, 2004, Urban sent an email, requesting that the Credit Committee meet the following day to revisit the IPOF Fund account, which it had not considered since September 2003. Tr. 2797; Div. Ex. 78. Attached to the email was a memorandum, with a copy to Vaughan, informing them that Innotrac had changed certain of its corporate provisions and now the IPOF Fund could acquire up to 40% of Innotrac shares and that, as of that date, the IPOF Fund had a margin debit of over \$18 million and an account value of over \$47 million, including Innotrac shares valued at over \$35 million.³² Div. Ex. 78. Urban urged the Credit Committee to “revisit this account immediately” because the restrictions imposed on purchases of Innotrac were ineffective, other holdings in the account were not of high quality and some were illiquid, FBW did not have much information about the account’s exit strategy from Innotrac or the creditworthiness of the IPOF Fund except for its FBW holdings. Urban noted that other Glantz accounts were substantial holders of Innotrac and that he concluded there “continues to be a lack of clear definition as to who has day-to-day supervisory responsibility” for Glantz. Div. Ex. 78.

On February 4, 2004, Calvert, in a memorandum, informed Belgrade of additional restrictions on trading in Innotrac in the IPOF Fund.³³ Tr. 1763; Div. Ex. 79. Shea did not that the following occurred that when Belgrade showed him Calvert’s memorandum: “this was a disaster waiting to happen but it’s not going to come back on us. Shea told Belgrade to go back and look at his paycheck, that Belgrade was getting paid too much money to worry about things like this.” Tr. 2048. Shea never disclosed any concerns about the IPOF Fund to Urban.

The Credit Committee met on February 5, 2004, at which time it prohibited the IPOF Fund from purchasing Innotrac and adopted five other points set out in a memorandum Urban drafted. Tr. 363-65, 660, 1233, 1466, 2381, 2807; Div. Ex. 80. When Urban wrote the February 4, 2004, memorandum, he became aware that the assurances he received from Akers, Vaughan, and Weaver, that Retail Sales would address concerns about Glantz’s supervision had not happened and Glantz had not transferred to Baltimore where he would be supervised by Spencer.³⁴ Tr. 2798-01. Urban

³² Urban furnished Calvert with material on the IPOF Fund account in advance of the meeting. Urban Ex. 608. On a daily basis, in the period November 3, 2003, through February 3, 2004, the IPOF Fund owned an average of 34.59% of the shares of Innotrac in the market. Div. Ex. 84 at Bates 13659. Before the Credit Committee meeting, Urban informed Glantz in writing that, per their discussion, Glantz would not accept any additional orders for Innotrac effective February 5, 2004, until the Credit Committee reviewed the IPOF Fund account. Tr. 545-47, 1382-83, 1468-69, 2911-13; Div. Ex. 83.

³³ The memorandum date is suspect because it describes a meeting that allegedly was held on February 9, 2004. Div. Ex. 79.

³⁴ In January 2004, the Gilbert account had a turnover ratio of 467 and a commission-to-equity ratio of 12.02. Tr. 176; Urban Ex. 614 at Bates 29907. Weaver did not contact any of Glantz’s clients to determine if trading was in line with their investment objectives. Tr. 171-72, 176-77.

knew that Akers was to meet with Dadante on February 9, 2004, to convey the Credit Committee's concerns. Tr. 2807-09.

According to Calvert, everyone on the Credit Committee was caught by surprise and considered this a crisis. Tr. 1972-73. The Credit Committee's primary focus was the danger to FBW from the size of margin debit. Tr. 2801, 2908. Urban does not recall whether he mentioned Glantz's supervision at the meeting. Tr. 2908-09. Calvert did not follow up with Akers or anyone about supervision of Glantz following receipt of Urban's February 4, 2004, memorandum to the Credit Committee. Tr. 1890. Calvert was overwhelmed by information on Innotrac purchases in the IPOF Fund account, so he did not give attention to the statement about Glantz's lack of supervision. Tr. 1762.

Calvert testified that he diligently kept a sheet of all items that were brought to him for follow-up, but no one came to him and told him he needed to address the issues Urban raised in his memorandum. Tr. 1890-92. Akers joked that, if you brought something to Calvert, you got a memorandum and it would be put on his pending sheet. Tr. 1892. When asked whether it was the CEO's responsibility to give directions, Calvert responded that it was the CEO's responsibility to delegate and that managers were responsible for letting people above them know if there were issues that were not adequately followed up on. Tr. 1892. Calvert agreed that Urban's February 4, 2004, memorandum to the Credit Committee was the second time in less than twelve months that he was informed in writing that there were supervisory responsibility issues related to Glantz. Tr. 1890. Calvert and Urban had regular conversations on a variety of issues. Calvert testified that Urban never came to him on the issue of Glantz's supervision. "It was never on one of my pending sheets. It was never something that I viewed as my responsibility to be followed up on." Tr. 1894.

Calvert faults Urban and Compliance for hiding the issue of Glantz's lack of supervision in a memorandum when the Credit Committee was focused on a bigger problem. Tr. 1891. If he had known that this was something he was charged with following up on, Calvert would have talked with Akers and Urban. Tr. 1892.

Gildemeister considered resigning from the Credit Committee out of frustration that it did not take more stringent action as to the IPOF Fund account. Tr. 370, 373-74. She had some power to impose restrictions unilaterally but she did not do so because Akers would not agree with any harsh action against the IPOF Fund or Glantz, and Calvert would have instructed her to remove any restrictions. Tr. 370-74.

Dealings with Glantz in 2004

On February 5, 2004, Leatherbarrow informed Urban that Advest placed an order for 10,000 shares of Innotrac, confirming Centeno's belief that the IPOF Fund had accounts at other places that made purchases when FBW would not do so. Tr. 547; Div. Ex. 83. Bianco believed that Advest orders were related to the IPOF Fund. Tr. 707, 709, 1223-24; Div. Ex. 83. Urban was also concerned. Tr. 547.

Akers, Vaughan, and Belgrade met with Dadante and attorney Steven Wasserman (Wasserman), a long-time friend of Glantz and counsel to the IPOF Fund, on February 9, 2004, to

discuss the Credit Committee's restrictions.³⁵ Tr. 859, 917, 1895, 2809; Div. Ex. 79. Prior to the meeting, at 7:58 a.m., Hartman informed Calvert and Akers that the IPOF Fund had paid commissions of \$329,449 from January through December 2003. Urban Ex. 531. At the meeting, Akers gave or showed Wasserman a memorandum, imposing the Credit Committee's restrictions on the IPOF Fund account. Div. Ex. 80. These included a restriction, effective February 4, 2004, prohibiting the further purchase of Innotrac shares in the IPOF Fund unless new cash was added to the account, and prohibiting any increase in the current \$18.5 million margin debit. Tr. 916-17, 1895, 1897-98; Div. Exs. 79-80.

Vaughan transferred Glantz from Beachwood to Baltimore, effective March 22, 2004, because he could not justify how Glantz was being supervised. Tr. 128, 237-38, 2809; Urban Ex. 535. Urban took assurance that Spencer would supervise the way a branch manager should, and he did not recall any compliance concerns about Glantz from February to March 2004. Tr. 2810. Glantz never considered Spencer, who was considered a strong manager, his supervisor.³⁶ Tr. 1354. Vaughan directed that Glantz's retail production and the cost of his sales assistant should be split 65/35 between Baltimore and Beachwood, and that supervision should be from Baltimore. Tr. 241; Div. Ex. 94, Urban Ex. 535.

The Credit Committee had a lot of meetings beginning in April 2004 and continuing throughout 2004 that discussed the IPOF Fund and Innotrac stock. Tr. 1900, 1903-04; Urban Ex. 592. Calvert acknowledged that:

[the Credit Committee was] relying on Mr. Glantz very heavily and that Mr. Glantz was active in our credit committee meetings. And although there had been instances as you point out cited where his credibility was questioned we were relying on him in many ways as part of our team to resolve the [Innotrac] IPOF [Fund] issue.

Tr. 1937. Glantz remembered attending four or five Credit Committee meetings. Tr. 1473, Div. Exs. 107, 109-10.

On April 7, 2004, Wasserman complained to Urban in an email, with copies to several people including Calvert, about a message from Centeno that contained a modification of the February memorandum and he represented that Dadante would agree to honor the new 60% equity level standard imposed upon him, only if he could withdraw half a million dollars from the account by April 15, 2004. Div. Ex. 99.

³⁵ Wasserman obtained a J.D. from Cleveland Marshall College of Law and has practiced law in the Cleveland, Ohio, area for 32 years. Tr. 858-59. One of his specialties is securities law, and Martindale-Hubbell shows him with an AV rating, which indicates that his peers consider him as having expertise. Tr. 875-76. He is a member of the Certified Grievance Committee of the Cleveland Metropolitan Bar Association and has served as an arbitrator with the NASD and FINRA. Tr. 876-77.

³⁶ Calvert and Spencer attended the same college and were friends. Calvert did not heed Spencer's warnings about Akers because he believed that Spencer was a competitor of Akers. Tr. 1821.

On April 12, 2004, Urban, on behalf of the Credit Committee, informed Glantz that the maintenance requirement for the IPOF Fund account had increased so that the value of equities in the account other than Innotrac and 10% of the value of Innotrac must equal or exceed the margin debit. Tr. 1471; Div. Ex. 101.

On April 13, 2004, Hartman emailed the Credit Committee, Calvert, Urban, and Gildemeister, with a copy to McNeilly, a proposal for drastic action. Hartman recommended that the IPOF Fund be made to leave FBW, that the margin requirement on Innotrac be raised to 100%, that FBS begin a systematic liquidation of Innotrac, and that no additional purchases be allowed in the account. Div. Ex. 102. Hartman pointed out that the IPOF Fund had been uncooperative by not supplying the partnership agreement or identifying the limited partners and that it had recently sold non-Innotrac stock to meet a margin call so that its margin debit was covered by more Innotrac stock, which is what FBW did not want to happen. Div. Ex. 102. Calvert knew that FBW had been trying to get the partnership agreement and partners identified for almost a year, but he considered Hartman's recommendations significant and unrealistic because the shares were illiquid and no other firm would want to take the shares with the huge margin debit.³⁷ Tr. 1767, 1899-900, 1967-68.

On April 15, 2004, Glantz emailed Urban, with a copy to Akers and a blind copy to Calvert, about directives to liquidate portions of the IPOF Fund. Urban Ex. 538. Glantz testified that Calvert called Dadante or Wasserman at Glantz's suggestion. Tr. 1479, 1482; Urban Exs. 538-39.

On April 16, 2004, in response to a request from Glantz, Urban allowed an unsolicited purchase of 5,000 Innotrac shares by one of his clients. Tr. 1384; Div. Ex. 106.

On April 19, 2004, Glantz emailed Calvert, with a copy to Urban, thanking him for calling Wasserman to discuss the IPOF Fund account. Tr. 1772; Urban Ex. 539.

On October 25, 2004, Glantz emailed Calvert, with a copy to Urban, updating him on the IPOF Fund and requesting that Dadante be allowed to trade non-Innotrac shares on a same-day substitution basis only. Tr. 1484; Div. Ex. 119. The email stated that Dadante's request would generate revenues for FBW and that he had averaged \$30,000 a month in commissions. Tr. 1485; Div. Ex. 119.

A branch manager received credit for 1% of the gross commissions of all brokers assigned to the branch office. Tr. 1024, 1149-50. If a branch achieved profitable targets, the branch manager received a bonus. Tr. 1150. Weaver benefited financially from Glantz's production and did not want him transferred from the branch.³⁸ Tr. 127, 130. In the twelve months ending February 29,

³⁷ There appears to be contradictory evidence that FBW was never able to get a copy of the partnership agreement and that it received a copy in early 2004. Tr. 460-63; Div. Ex. 250 at 20.

³⁸ Weaver claimed he had nothing to do with hiring Glantz, but he received \$35,558 due to Glantz's production while in the branch, which was referred to as a recruitment bonus. Tr. 126, 247-48; Div. Ex. 89.

2004, Beachwood's contribution to FBW's financial condition went from a negative \$478,984 in the prior year to a positive \$649,848;³⁹ broker commissions increased from \$1.5 million to \$2.24 million, or 57.9%, and the branch manager's override increased from \$34,834 to \$61,558, or 76.7%. Tr. 220-225, 2129-30; Urban Ex. 534 at 10635. Weaver was concerned about the trading activity in Glantz's accounts and he considered Glantz's supervision an issue, but he failed to carry out his supervisory responsibilities for Glantz, and his testimony tried to shift responsibility to the Compliance Department.⁴⁰ Tr. 117-19, 121, 170-72, 178, 1436. Weaver received a 1% override on Glantz's 35% production credited to Beachwood after Glantz transferred to Baltimore. Tr. 241, 245-46. When Glantz left, Weaver stated: "Steve's like a son and brother to those of us here in Beachwood and his presence will be desperately missed." Tr. 239; Urban Ex. 535.

On September 30, 2004, Glantz placed a cross-sale in which the IPOF Fund sold 50,000 Innotrac shares and four of his clients bought a total of 50,000 Innotrac shares. By not placing the sale in the open market, Glantz was able to raise revenue and prevent any diminution in Innotrac's market price which would have had an adverse affect on margin in his clients' accounts. Tr. 1386-88. Glantz did numerous of these sales that benefited the seller but not the buyer. Tr. 1388-89

Janet Sraver (Sraver) and Louis Silbert (Silbert) from Compliance examined the Baltimore branch over three days in early November 2004. Tr. 1263-65, 2190. Neither Sraver nor Silbert was shown, or briefed on, the Del Buono Memo prior to conducting the branch examination, which would have been helpful because they would not have had to recreate the information. Tr. 1259, 1261-62, 2164; Div. Ex. 27. Sraver and Silbert had concerns that many of Glantz's accounts, specifically Vinocur, the Orchen Pension Plan, Fabrizi Trucking, and Ziemba & Thatcher, purchased low price securities (mainly large concentrations of Innotrac), the accounts had high commission rates for short-term trading, and the investments appeared to be more speculative than the accounts' growth and income objectives would justify. Tr. 1257-58, 2159. Sraver had never seen similar trading activity by a broker, and Silbert considered Glantz a top compliance concern. Tr. 1259, 2162. Sraver agreed with the Del Buono Memo that trading was inflating the price of Innotrac stock. Tr. 1261. Silbert thought several accounts looked as if trades were made to prevent the price of Innotrac from falling. Tr. 2161, 2167. Sraver spoke with Jay Haas (Haas), Compliance Director from June 2004 until July 2006, and Urban about Glantz after she concluded her preparations for the examination, and Urban was concerned.⁴¹ Tr. 786, 948, 1262-63.

³⁹ The negative figure was caused by amortizing the cost of brokers who had transferred into Beachwood. Tr. 224-25.

⁴⁰ Weaver was not a credible witness. His testimony contained discrepancies, obvious errors, and he could not remember most of his conversations with or about Glantz on supervisory issues. Tr. 88-89, 94-95, 98-99, 102, 163-68, 188, 191, 194, 198, 206-15, 236-37. Weaver was not the subject of any government action and works at RBC Wealth Management in Beachwood, Ohio. Tr. 35.

⁴¹ Del Buono rejected Haas's claim that he was not briefed about Glantz when he became Compliance Director. Del Buono stated that she delayed her departure from FBW so that she could brief him, she specifically brought Glantz, the IPOF Fund, and Innotrac to his attention, and gave

Spencer expressed concerns to Sraver and Silbert about his ability as branch manager to supervise Glantz's accounts because Glantz was seldom in Baltimore and, when he was there, he worked on the institutional trading floor. Tr. 1257, 1264, 1293-94, 2162-63. Spencer said that he had brought his concerns about Glantz to Calvert's attention. Tr. 1293-94. Glantz also stated that everyone, including Calvert, was aware of his trading Innotrac in the IPOF Fund. Tr. 1309-10; Div. Ex. 125. Spencer did not know how Glantz was being supervised; however, he checked Glantz's accounts noted on the monthly Activity Report from April through November 2004. Tr. 1264, 2193-95; Div. Ex. 112.

Usry told the examiners that Glantz had a direct line to Vaughan and Akers and went over Spencer's head. Tr. 1299; Urban Ex. 546. Usry said that he did not see Glantz's trades. Urban Ex. 546. Sraver and Silbert concluded that Glantz did not tell the truth, their concerns were unresolved, and Usry was not supervising Glantz's institutional accounts. Tr. 1266-67, 1307, 2163; Div. Exs. 124-25; Urban Ex. 546. They shared the same concerns about Glantz's supervision as the Del Buono Memo. Tr. 2166-67.

On November 12, 2004, Sraver and Silbert wrote a thirteen-page memorandum to Urban and Haas to establish concerns about Glantz's trading.⁴² Tr. 1268. Div. Ex. 128. For example, Vinocur was a widow/homemaker with three dependents and annual income of less than \$200,000. She was an unsophisticated investor with an account balance of \$2.6 million and a margin balance of \$1.5 million. Her account was classified as an institutional account, and nineteen trades occurred in the account in September 2004. Tr. 1271; Div. Ex. 128 at 2, 7-9, 11. The memorandum raised concerns about the unsolicited nature of the trades, the amount of the commissions, the appropriateness of the trades given the investment objectives in the Vinocur account and similar questions about trading in twelve other Glantz accounts. Tr. 1271-76; Div. Ex. 128 at 2-7, 9-13. The memorandum questioned cross-selling 50,000 shares of Innotrac stock among Glantz's accounts in September 2004, which could have indicated an attempt to manipulate the stock price. Tr. 800-01, 1276-78; Div. Ex. 128 at 9-10. The memorandum states:

Based on our conversation with William Spencer, Horace Usry and Mark Weaver, and review of supervisory records and reports, it is our impression that the appropriate supervisory oversight is currently not in place for Mr. Glantz. During the production month, Mr. Glantz spends approximately 3-4 days working at the Institutional Desk in Baltimore and a like number of days in the Beachwood, Ohio branch. Mr. Glantz spends no time in the office afforded him in the Baltimore Branch. During our discussion, Mr. Glantz indicated that he does work from home when not in the office.

him files that included the Del Buono Memo. Tr. 2503; Urban Ex. 635. Urban testified he alerted Haas to concerns about Glantz. Tr. 2811-12.

⁴² It appears that Urban received the memorandum on or about November 16, 2004. Tr. 2389.

Discussions with Mr. Weaver, Mr. Spencer and Mr. Usry indicate that there has been no direct contact with any of the above referenced clients regarding the activity in their accounts.⁴³

Tr. 801, 1260, 1280; Div. Ex. 128 at 13.

On November 30, 2004, Urban met with Silbert, Sraver, and Haas to discuss the November 12 memorandum. Tr. 1269-70, 1281, 2169; Div. Ex. 129. Urban was very concerned. Tr. 1281. Glantz was the primary focus of the meeting. Tr. 2816. Sraver wrote a memorandum, dated December 7, 2004, to Spencer, memorializing what Urban wanted conveyed to Spencer on supervising Glantz. Tr. 2197-98, 2820; Div. Exs. 129, 131. The memorandum, which was never sent, would have required the Vinocur and Ziemba & Thatcher to be moved to strictly Retail Sales, and for Spencer to talk to Vinocur without Glantz present, and to sit with Glantz weekly to discuss his business. Urban thought that Glantz had new Baltimore retail numbers and that Spencer had been reviewing activity in Glantz's accounts since late February or March 2004. Tr. 2817. Usry was to be responsible for only truly institutional accounts. Tr. 2817-18.

Urban testified that his recollection is the memorandum was not sent to Spencer because Silbert learned of some intervening trades that concerned him in early December 2004. Tr. 1306, 2820. In fact, Silbert learned on December 3, 2004, that Glantz purchased 77,000 shares of Innotrac for the Gildenhorn Trust (Gildenhorn was Glantz's uncle), Vinocur, and Ziemba & Thatcher accounts, and that the IPOF Fund sold Innotrac shares on the same day. Silbert informed Urban, who directed him to get an explanation. Tr. 964-65. Silbert and Haas met with Glantz on December 10, 2004. Tr. 1393; Div. Exs. 133, 138, 141. Glantz lied and told Urban he did not know who at Advest was arranging certain trades.⁴⁴ Urban met with Boo, Leatherbarrow, and possibly Haas about Glantz's purchases and was distressed when Leatherbarrow contradicted Glantz's explanation for the purchases.⁴⁵ Tr. 714. Urban also directed Haas and Silbert to call the three

⁴³ The Baltimore Branch Examination Report, submitted January 27, 2005, identifies fifteen of Glantz's accounts under Trading Activity and Suitability and notes that the broker, not mentioning Glantz, is no longer part of the Baltimore retail branch. Div. Ex. 164 at 22-23.

⁴⁴ Glantz testified that, in fact, he had worked out the trades with Dadante and Salem so that Dadante could meet a margin call from Advest and that he had told this to Akers and Vaughan. Tr. 1390-92, 1487, 1490-93, 1498, 2860; Urban Ex. 552. They told him not to do it again and that they would take care of it. Tr. 1491. Glantz asked Akers to get Compliance and Silbert "off his back," which Glantz testified Akers did for a while. Tr. 1490. Akers and Vaughan did not share Glantz's disclosure with Urban.

⁴⁵ Later, on April 4, 2005, when the IPOF Fund made a Form 4 filing, Leatherbarrow wrote Urban an email, confirming that the IPOF Fund account at Advest sold Innotrac to several of Glantz's clients in December 2004. Tr. 1180-82, 2858, 2861-64; Div. Ex.180, Urban Ex. 628. Urban directed Leatherbarrow to examine whether there was a correlation between activity in the IPOF Fund accounts at other places and the IPOF Fund at FBW, but none was found. Tr. 2859-60. Urban had asked Glantz in December if he knew who at Advest originated the sales, but Glantz continued to insist that he did not know. Tr. 2860.

clients as soon as possible and find out what they knew of the transactions. Tr. 808, 2825; Div. Exs. 135-37. Urban testified that he told Calvert about the trades and asked that he not inform Akers because Compliance was going to communicate directly with customers. Tr. 2826.

At Urban's direction, Silbert called Glantz's customers – Gildenhorn, Vinocur, and Ziembra & Thatcher – in mid-December 2004. The clients told Silbert they knew nothing about the recent trades in their accounts, but they were not surprised because they entrusted their accounts to Glantz. Two of the clients knew nothing about margin and the third said he had been trying to get Glantz to reduce the size of the margin debit. Div. Exs. 135-37. Urban was surprised, disappointed, and dumbfounded that Weaver had not communicated with these retail customers. Tr. 2828. Glantz recalled Urban telling him that the IPOF Fund could not continue to sell to Glantz's other clients at FBW and that FBW would have to file a Form RE-3 to disclose Glantz's unauthorized trading.⁴⁶ Tr. 1394-95.

Special Supervision

Urban recalled meeting with Akers, Vaughan, and Haas in his office on December 14, 2004, to discuss Glantz's future at FBW, but Haas recalled that the meeting occurred on December 16.⁴⁷ Tr. 816, 2830. At the meeting, Urban and Haas recommended that Glantz be terminated. Akers was vehemently opposed and screamed at Urban in a loud, angry manner, complaining about the fact that Silbert had contacted Glantz's customers and criticizing Silbert's description of those conversations as inaccurate. Tr. 830, 968, 971, 2831-34; Div. Ex. 135-37. Akers accused Compliance of going on a witch-hunt to cause harm to Glantz and called one of the clients to confirm. Tr. 823-24, 969, 2833. Akers questioned Urban for wanting to drive a good producer out of the firm. Tr. 2833-34. Urban got visibly angry at Akers's verbal attack and shouted in defense of Compliance. Tr. 830. The meeting was sufficiently loud that someone from several offices away came and shut the door. Tr. 2834-37. Urban's recollection is that Akers and Vaughan, who supported Akers, left the meeting with the matter unresolved. Tr. 2834, 2837.

Urban and Haas had lunch with Silbert immediately after the meeting. Silbert was very upset that Akers and Vaughan questioned the truthfulness of his reports of client conversations and considered resigning. Tr. 832. Silbert vividly remembers that Urban looked like he had the weight of the world on his shoulders. Tr. 2201.

Calvert testified that he had no knowledge of the December 14, 2004, meeting until October 2006. Urban, however, believed he saw Calvert in the office on December 14, and Calvert's office

⁴⁶ The NYSE required that a member firm report sales practice abuses by a broker.

⁴⁷ The date is significant because Urban testified about a conversation with Calvert on the way to Compliance's holiday party, which Urban believed was on December 14 but a third-party email puts on December 16. Tr. 2897-98, 2934, 2941; Urban Ex. 578. I accept Urban's version since the first line of the memorandum, dated December 15, refers to further consideration of a discussion that occurred the previous day. Urban Ex. 557.

had a glass pane and was located just across the hall from his, so that the occupants of one office were visible from the other.⁴⁸ Tr. 1804, 1923-24, 2639-40, 2835-36; Urban Exs. 616, 616BL. If Calvert had been in his office, he would have heard the commotion because a person with an office further away heard the heated discussion and thought it had to do with Glantz. Tr. 2630-31. Urban recalled with certainty that Calvert asked him what the shouting was about later that day. Urban testified that he told Calvert that he had told Akers that Glantz ought to be fired and Akers disagreed. Tr. 2838, 2848-49.

The following day, December 15, 2004, Urban wrote Akers and Vaughan a memorandum, recommending that they terminate Glantz immediately.⁴⁹ Tr. 824, 967, 969, 975, 2842, 2844-45; Div. Ex. 143, Urban Ex. 557. Urban's memorandum noted that Glantz's business was heavily concentrated in a limited number of accounts that carry significant margin debits and that a large percentage of his business involved short-term holdings typically with little customer benefit but significant commissions. It stated that, as they were aware, Glantz had essentially been unsupervised for the entire two years he was with FBW.

He did not view himself as accountable to Mark Weaver; he was in geographic limbo for a period before settling in Baltimore; and he has continued to confuse supervision by seldom being in the office and dividing his time (and clients) between retail and institutional sales. Whether by design (to avoid supervision) or otherwise, two of the clearly retail accounts which are at issue now were designated by Steve as institutional accounts and did not appear on his retail runs.

Div. Ex. 143; Urban Ex. 557.

Urban's memorandum detailed the Innotrac purchases from Advest that Glantz made for the accounts of Gildenhorn, Vinocur, and Ziemba & Thatcher and that these customers did not initiate the purchases, although FBW had no written authorization for trading by Glantz. It noted that trading in the accounts exposed Glantz and FBW to potential claims of churning. The memorandum stated that Glantz had "no credibility and does not appear to deserve any." In response to arguments that Akers made at the meeting on December 14, Urban stated that he had agreed to consider retaining Glantz based on concerns that FBW could better manage issues, particularly concerns about Innotrac stock if Glantz remained with FBW, but that Urban had changed his mind because: (1) Glantz could not be trusted; (2) the Innotrac situation was beyond Glantz's control; and (3) Glantz had committed reportable offenses so it was better for FBW to take the strongest possible initiative at the present time. Tr. 817-20, 2844; Div. Ex. 143, Urban Ex. 557.

⁴⁸ Calvert testified he likely would have attended Compliance's holiday party, which Urban believed was on December 14, 2004. Calvert's calendar shows that he had lunch at a restaurant in the building and sent an email that morning from his office on that date. Tr. 1924-26; Urban Exs. 555, 576.

⁴⁹ The memorandum begun on December 15 was finished and transmitted on December 16. Calvert is not shown as a recipient and he denied receiving a copy; Urban believed he delivered a copy to Calvert on December 16, 2004. He intended to do so because they had discussed the trades that led to the events at issue. Tr. 2847-48, 2934.

Urban's recollection is that Akers came to his office on December 16 or 17, 2004, for a second, shorter, and uncontentious discussion. Tr. 2849. Akers made clear that he would not terminate Glantz and he appealed for a different resolution. Tr. 823-25, 971-72, 2849, 2930-31. Urban testified that he still believed termination was appropriate, but Akers insisted on special supervision and, if Akers would not accept his advice, special supervision was probably the next best thing. Tr. 2688-89, 2849. Urban concluded that there was a reasonable chance that Akers's special supervision of Glantz would succeed because his experience was that Akers accomplished those Compliance actions with which he agreed. Akers had a redemptive trait based on his personal experience, and he took brokers with personal problems under his wing to help them with some success. Tr. 2686-89, 2854. Akers acknowledged to Urban that other people had not paid sufficient attention to Glantz, but that he would make it happen, and Urban believed him. Tr. 2853.

Glantz and Akers signed a Special Supervision Memorandum, dated and effective on January 11, 2005, that warned failure to conform would result in immediate termination, and contained the following restrictions:

1. No further purchases of Innotrac allowed in any account, only liquidations;
2. Vinocur and Ziemba & Thatcher accounts were changed to retail accounts;
3. Glantz to work exclusively from Hunt Valley, but not on the Institutional Sales desk. Akers is his supervisory manager;
4. No discretion allowed in any account without written authorization received from Akers and Compliance;
5. Margin debit in Vinocur account will be reduced to zero within the next thirty days and provide Akers and Compliance with a written plan by January 15, 2005, to reduce margin debit in Ziemba & Thatcher and Gildenhorn accounts within three months;
6. Maintain well balanced and diversified portfolios for Vinocur, Ziemba & Thatcher, and Gildenhorn accounts consistent with their account objectives;
7. Glantz will give Akers a daily client contact log;
8. Glantz cannot wire funds from FBW accounts into which a personal check has been deposited for three days;
9. All client demographic, investment objectives, and financial information will be updated on Account Applications and Agreements as required within thirty days with an updated copy sent to each client for signature;
10. Glantz will appropriately mark orders as solicited or unsolicited;
11. Akers must approve in advance all IPO and secondary offering purchases;
12. Glantz will send all clients with margin balances relevant FBW and NYSE information; and
13. Akers will have direct contact with at least three of Glantz's clients each month and record the notes of his discussions.

Tr. 1238; Div. Exs. 158, 187.

Someone in Akers's management position did not usually assume the labor-intensive responsibilities of special supervision of a broker. Tr. 1021-22. Glantz testified that Akers told him

to calm down and let things blow over and to comply with the special supervision requirements. Tr. 1498-99; Div. Ex. 161.

On January 11, 2005, FBW filed the required Form RE-3, reporting that it discovered, during a routine branch examination and related review of client accounts, that Glantz had exercised discretion in client accounts without written permission, but that the Compliance Department had confirmed with each account holder that he or she had provided Glantz with oral authorization. Tr. 843-44, 865; Div. Exs. 159, 173. The Form RE-3 represented that Retail Sales, in consultation with Compliance, had reassigned Glantz to another branch and implemented a special supervision program which became effective on December 21, 2004.⁵⁰ Div. Ex. 159.

Urban testified that he told Calvert about Silbert's calls to Glantz's customers, that Glantz had lied about the nature of the trades and his relations with the accounts, and that Calvert asked him how the situation was resolved. Urban told him that Akers did not want to terminate Glantz but had committed to performing special supervision. Tr. 2850-51, 2932-34. Calvert did not indicate any disagreement with how the matter had been resolved, and Urban's experience was that Calvert typically deferred to Akers. Tr. 2851.

Calvert insisted that Urban never told the Credit Committee, the Executive Committee, or the Board of problems with Glantz's supervision or accounts, that Akers would not terminate Glantz, or that there was possible manipulation of Innotrac in the IPOF Fund account. Tr. 1777-80, 1805-06. Calvert testified that Akers, a close friend with whom he spoke almost daily, did not tell him that Urban recommended Glantz's termination or that Glantz was on special supervision. Tr. 1817, 1879, 2622.

Glantz began working at Hunt Valley, where Akers had his main office, under Akers's supervision in January 2005, and he was given broker number HV39.⁵¹ Tr. 1018, 1131, 1501, 2856. After he was on special supervision, many of Glantz's accounts continued to appear on the Activity Report as aggressively trading speculative stocks in accounts that had growth and income investment objectives. Tr. 1089. In February 2005, the Activity Report showed commission-to-equity ratios in some of Glantz's accounts of 10.74 (Giarraputo), 14.95 (Gildenhorn), 15.79 (Orchen Pension Plan), 19.83 (Morrison), 25.8 (Vinocur), and 15.72 (Ziembra & Thatcher). The IPOF Fund had a commission-to-equity ratio of 0.13. Tr. 1027; Div. Ex. 174. After Glantz was assigned to Hunt Valley, Geoffrey Harrison Brent (Brent), Hunt Valley branch manager had his assistant

⁵⁰ The Division considers the information disclosed insufficient. Tr. 841-44. Haas's investigative testimony is that Urban made the determination on what was stated in the filing, but Haas appears to have agreed that suitability, churning, and manipulation were grey areas, and Compliance was not sure it had enough evidence to make those representations. Tr. 841-43, 995-96

⁵¹ Glantz, however, testified that, in 2005, he spent three weeks a month at Hunt Valley, three or four days in Beachwood, and the remaining time working at home. Tr. 1501. However, the persuasive evidence is that Glantz spent very little time in Hunt Valley. Tr. 1022-23, 1091-92. Glantz advised his attorney around February 2005 that he was working at Beachwood. Tr. 866-67; Div. Ex. 173.

forward to Akers Activity Reports showing the activity in Glantz's accounts that warranted review. Tr. 1025, 1125. The turnover ratios in Glantz's accounts were in the hundreds for all accounts except the IPOF Fund. Brent considered these data beyond anything he had seen and a matter of very strong concern. Tr. 1027-29; Div. Ex. 174. The Activity Reports for March, April, and May 2005 showed similar data for several of Glantz's accounts. Tr. 1031-38; Div. Exs. 178, 188, 191. Brent considered certain holdings in the accounts unsuitable. Tr. 1074. Brent did not do anything with the information because Akers told him he was supervising Glantz. Tr. 1032, 1036, 1038.

On February 4, 2005, in an email to Akers with a copy to Haas, Glantz claimed he had satisfied all thirteen conditions of special supervision, and that, "PER [AKERS] AND T. URBAN OK," will work at Hunt Valley, Beachwood, or his laptop. Tr. 1397-98; Div. Ex. 165. Glantz claimed that Urban gave him permission to work at Beachwood while visiting his children, but Urban testified he never approved Glantz working out of Beachwood when he was on special supervision. Tr. 1398-99, 2856; Div. Ex. 226. On November 2, 2005, Haas told Weaver that Glantz was returning to Beachwood and that Weaver would take over special supervision from Akers, but Glantz never returned to Beachwood. Tr. 132, 134, 940; Div. Exs. 222, 227.

On February 4 and 11, 2005, Glantz complained to Akers and Vaughan that Compliance was hindering his ability to serve his clients. Tr. 1505-06, 1508; Div. Ex. 167, Urban Ex. 562. A Compliance examiner, Alesia Fennell (Fennell), wrote a memorandum to Haas on April 29, 2005, noting various provisions of the special supervision agreement with which Glantz had not complied. Div. Ex. 187. After Haas, who was monitoring the special supervision, reminded Akers that he was to call Glantz's customers and confirm their arrangements, Akers simply re-called the three customers with whom Silbert had talked. Div. Ex. 198. Urban did not recall seeing Fennell's memorandum and he believed, in April 2005, that Glantz's special supervision was going reasonably well based on reports from Haas, seeing emails from Glantz, and knowing Silbert was monitoring the accounts. Tr. 2855-56; Div. Ex. 181. At some point, Haas, who was handling special supervision for Compliance, told Urban he was having difficulty getting documentation to support the special supervision requirements. Tr. 2857.

On February 23, April 5, and May 13, 2005, McNeilly sent emails to Urban, describing what he considered suspicious transactions by Glantz in ATC Healthcare and questioning whether he should file a SAR. McNeilly thought Urban should request that Retail Sales provide Compliance with a written explanation. Tr. 1683; Div. Exs. 171, 184, 243. McNeilly did not know whether Urban took action on his memorandum, but, after several attempts to get a response, Urban told McNeilly that nothing more was necessary and no SAR was required. Tr. 1682-89.

The Examination Report for a Hunt Valley exam in June 2005 listed eighteen Glantz accounts as needing continued review and monitoring.⁵² Div. Ex. 202. Silbert, who worked on the examination, advised Brent to protect himself since Glantz was in the branch and, as manager, Brent

⁵² Sraver and Silbert worked on the Hunt Valley exam and discussed Glantz with Brent, who they knew was not Glantz's supervisor. Tr. 1130, 1287. Some of the same Glantz accounts are mentioned in both the Hunt Valley and Baltimore examinations. Tr. 1287-88, 2189; Div. Exs. 164, 202.

was sharing in branch revenues. Tr. 1010-11, 1041. However, Akers told Brent not to worry; it was not his responsibility. Tr. 1129. Nonetheless, beginning in August, with receipt of the July 2005 Activity Report, Brent began to do on-line reviews of Glantz's accounts shown on the Activity Report, he requested active account worksheets, and he had Compliance send a letter to each account holder.⁵³ Tr. 1046-50; Div. Exs. 205, 207, 209. In September 2005, Brent met with Glantz and told him that he did not like what he was seeing in some of his accounts.⁵⁴ Tr. 1104. Glantz defended his positions, told Brent he was not his manager, and walked out of the meeting. Tr. 1051-52. Brent did not voice his concerns to Akers, who had made clear to Brent that he was Glantz's supervisor. Tr. 1090. Brent did not inform Urban of his concerns about Glantz. Tr. 1130.

On May 24, 2005, the Credit Committee considered the December 2004 sales of Innotrac by the IPOF Fund account at Advest to Glantz's customers. Tr. 2861-64; Urban Ex. 628.

On June 29, 2005, Boo wrote Urban about an unusual purchase by Dadante of Innotrac stock in the IPOF Fund and stated that "the customer's approach to this order raises warning flags that could point to attempted price manipulation." Tr. 717; Div. Ex. 195. Leatherbarrow was concerned about manipulation; Urban said he needed to think about it, but that he would give Boo

⁵³ The account activity letters signed by the Compliance Director did not disclose any problems in the accounts, but urged the clients to review account activity and to contact the branch manager regarding questions about their accounts. The clients were to sign a copy of the letter and return it to Brent. Glantz was copied on the letters. Tr. 1153-56; Div. Ex. 209.

⁵⁴ Brent acknowledged that suitability determinations must consider an entire portfolio so that his judgments were initial reactions; however, the following information gave him concern. Tr. 1134-35. Brent considered that the Ziemba & Thatcher account had a lot of realized and unrealized losses for a profit-sharing plan, purchases of stock priced under five dollars did not suit the investment objectives, and \$33,000 annual income was not much yield for a \$2 million account with growth and income objectives. Tr. 1064-65; Div. Ex. 210. Sheila Scolnick (Scolnick) was a sixty-seven-year-old widow. Her trust account had growth and income as investment objectives. Div. Ex. 211. Over half the stocks in the Scolnick account had a market price of under \$5. The account had holdings valued at over \$300,000 and \$300 in annual income and, according to Brent, too many losses. Tr. 1075; Div. Ex. 211. Brent considered 1,000 shares of ATC Healthcare, Inc. (ATC Healthcare), priced at \$0.48 a share, speculative and unsuitable for the Scolnick account for which income was an objective. Tr. 1075-76; Div. Ex. 211. The Morrison account had growth and income objectives. Brent thought that the income was satisfactory, but the account had too many losses in aggressive trades that might have been speculative and it had too large a position in aggressive stocks. Tr. 1077; Div. Ex. 213. The Gilbert account had growth and income objectives; however, it held four aggressive stocks, had too many losses, and no annual income. Tr. 1073; Div. Ex. 212. Alan Scolnick was sixty-seven years old and his account had growth and income objectives. Brent found the account had too many speculative/aggressive positions, too many losses, and too much concentration in aggressive trades. Tr. 1083; Div. Ex. 214. Brent concluded that the Orchen Pension Plan with growth and income objectives had lost over 50% of its value in two years. The account had engaged in aggressive, speculative trading and it had no income whatsoever. Tr. 1948; Div. Ex. 215.

directions before leaving for vacation. Tr. 1188-91, 1248; Div. Ex. 196. Neither Boo nor Leatherbarrow could recall any follow up by Urban. Tr. 718, 1191. In the summer of 2005, Urban asked Boo to begin selling Innotrac in a way that would not impact the market price. Tr. 777.

On June 30, 2005, Urban sent Calvert a copy of the Annual Compliance Report (Compliance Report) mandated by the NYSE and NASD that Compliance prepared and Urban reviewed and signed. Div. Ex. 197. Calvert signed the Annual Compliance and Supervision Certification (CEO Compliance Certification) required by NASD Rule 3013(b) that basically stated that FBW had processes in place to reasonably meet NASD and Municipal Securities Rulemaking Board rules and federal securities laws and regulations, and attached the Compliance Report. Div. Ex. 197. The Compliance Report has a section on supervision that does not mention any specific problems with brokers. Ex. 197 at 17402.

On August 29, 2005, Calvert asked Urban the status of Glantz's supervision.⁵⁵ Tr. 1798-99. On November 16, 2005, Calvert informed Hartman that Akers had authority to grant Glantz a second \$200,000 advance against salary, but, in the future, Calvert did not want new advances until old advances had been paid. Tr. 1802-03; Div. Ex. 224.

Prior to November 3, 2005, Guerrini and his mother, Eleanor Klemm (Klemm), complained to Akers informally about Glantz. Div. Ex. 229.

On December 8, 2005, Glantz submitted his resignation to FBW.⁵⁶ An agreement between FBW and Glantz, negotiated by Wasserman representing Glantz and Urban representing FBW, provided that FBW would submit a "clean" U-5 form, indicating that Glantz's departure from FBW was without cause, without any reasons stated, and no derogatory information. Tr. 874; Div. Ex. 230. Glantz agreed to pay FBW \$430,000 owed on his forgivable loans and other obligations, cooperate on customer claims, and give an exit interview. Tr. 872-73; Div. Ex. 230. Glantz needed a clean Form U-5 to receive a signing bonus from another firm. Tr. 1413. Glantz left FBW at the end of 2005 and joined Sanders, Morris, Harris. Tr. 872-73, 1326.

As the result of law suits initiated after Glantz left FBW, FBW paid \$7.2 million to the receiver of the IPOF Fund and paid about \$1.285 million to Glantz's customers. Tr. 2068-76.

On February 10, 2009, the Commission issued a Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order in Ferris, Baker Watts, Inc., Exchange Act Release No. 59372. FBW was ordered to cease and desist from committing or causing any violations, or any future violations, of

⁵⁵ It appears that Calvert made the inquiry because a disgruntled employee mentioned Glantz in a memorandum she circulated broadly. Tr. 1798-99.

⁵⁶ Glantz claimed to have effectively left FBW in November 2005 and to have made \$1.2 million each of the last two years he was at the firm. Tr. 1412, 1462, 1534.

Section 17(a) of the Exchange Act and Exchange Act Rule 17a-8, censured, and ordered to pay disgorgement and prejudgment interest of \$300,656, and a civil money penalty of \$500,000.

Steering Committee

Calvert testified that the Board established the Steering Committee in October 2006 and that he did not participate in the Board's consideration of Urban's situation, giving the impression that he did not determine the outcome.⁵⁷ Tr. 1956-58. This is false. In fact, Calvert was responsible for Urban's departure from FBW because he chose people with ties to him to be on the Steering Committee,⁵⁸ he alleged he had no knowledge of events which the evidence shows he knew about or should have known about, and the Steering Committee and the Board based its decisions on Calvert's position that he lacked faith in Urban. Tr. 1633, 2637. Gordon recalled that the sole basis for the Steering Committee's recommendation to the Board was that FBW would be hurt if the CEO did not have confidence in the General Counsel, and Calvert did not have confidence in Urban. Tr. 2637. According to Gordon:

[there was] a [B]oard meeting where Roger Calvert simply said that he had lost confidence in Mr. Urban. And since he was the CEO of the firm and confidence in a general counsel is very important to [the] organization that he thought that was the reason that [FBW] should enter into a separation agreement with Mr. Urban and he asked the [B]oard to ratify that.

. . .

[there was] a [B]oard meeting where the [B]oard ratified the desire of Mr. Calvert to replace Mr. Urban as general counsel.

⁵⁷ I conclude that Calvert is not credible. Calvert testified that he did not know that Akers was hostile to compliance until the investigation of Glantz in 2006, yet he knew that Akers insulted the Compliance staff publicly and dismissed it as good fun and attempted humor by Akers. Tr. 1821-22. Calvert did not recall a conversation with Gildemeister, in early 2003, in which she told him Glantz lied and represented that Calvert gave Glantz authority to trade in the IPOF Fund before the account was transferred to FBW. Tr. 279, 1845. Calvert did not remember any conversation with Ferris about Centeno's concerns about Glantz, the IPOF Fund, Innotrac, Centeno's problems with Akers, or any compliance-related issue. Tr. 1831-32. However, in March 2004, Centeno had a lengthy exit interview with Ferris and told him that Glantz was a broker out of control, that the IPOF Fund was going "to blow up" on FBW, and concerns about Innotrac stock. Tr. 664-65. Ferris questioned Calvert about Centeno's concerns, and Calvert told Ferris that everything was under control and was being handled properly. Tr. 665-66.

⁵⁸ Teel and Rast both reported to Calvert, and they shared an alliance in that they had fixed-income backgrounds. Tr. 1554, 1596, 2635-36; Div. Ex. 259 at 12. Calvert would not have received most of the financial benefits he received as the result of the RBC acquisition of FBW if he had been terminated as the result of the Steering Committee's recommendations. Tr. 1949.

Tr. 2000-01.

The Steering Committee's purpose was to examine the facts surrounding Glantz's activities as a rogue broker and make recommendations to the Board, and to manage the Justice Department and Commission investigations. Tr. 1564-66, 1604-05, 1629. Shea testified that the Board was informed who was on the Steering Committee and certainly did not elect the members. Tr. 2050. Teel testified that Calvert invited him to be on the Steering Committee and told him that Calvert and Rast would be on it.⁵⁹ Tr. 1564. Gordon testified that Calvert recommended to the Board that he, Teel, and Rast be on the Steering Committee, and the Board accepted his recommendation. Tr. 2635. No other names were considered. Ferris joined the committee at a later date. Tr. 1956.

According to Teel, the Steering Committee had two bases for recommending that the Board place Urban on paid administrative leave and later negotiate a termination agreement consisting of a resignation and a severance package with Urban.⁶⁰ Tr. 1567-68. It found that Urban could be

⁵⁹ Teel directed Municipal Capital Markets/Public Finance and Rast headed Tax Exempt F.I. Trading. Div. Ex. 259 at 12. Teel joined FBW in 1994 after being recommended to Calvert and Ferris by a former associate. Tr. 1554-55, 1596-97. He is a graduate of the University of Maryland and the University of Baltimore Law School, but he never practiced law. Tr. 1554. Teel's experience was in fixed instruments; he had no experience in retail brokerage or compliance. Tr. 1598-99. Teel became FBW's COO on March 13, 2007, and he retired in 2008. Tr. 1587-89.

⁶⁰ Akers was placed on administrative leave and later negotiated a resignation and separation package. Tr. 1575, 1622.

Vaughan was placed on paid administrative leave on February 12, 2007, and, on March 22, 2007, he was reinstated as Executive Vice President at his former salary, but suspended for six months from supervising the trading or operation activities of any registered representative and required to take a course, "Supervision in the Securities Industry." Tr. 1572-73, 1616-18, 1624-25; Urban Ex. 621. The agreement between FBW and Vaughan provided that, following the suspension period, FBW would consider appointing Vaughan head of the private client group, Akers's former position, with oversight responsibility for retail, special products, and investment advisers. Tr. 1602, 1623; Urban Ex. 621. FBW made the appointment on March 22, 2007. Tr. 1618. FBW entered a change of control agreement or golden parachute with Vaughan on September 1, 2007, that provided that Vaughan would receive three times his compensation if he was discharged without cause. Tr. 1626; Urban Ex. 624. The Commission, pursuant to an Offer of Settlement, found that Vaughan failed reasonably to supervise Glantz with a view to detecting Glantz's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5. Vaughan was suspended from association in a supervisory capacity with any broker, dealer, or investment adviser for six months and ordered to pay \$16,627 in disgorgement and prejudgment interest, and a civil money penalty of \$50,000. Patrick J. Vaughan, Exchange Act Release No. 59375A (Feb. 10, 2009).

Usry did not cooperate with the Steering Committee and did not return to FBW. Tr. 1574.

potentially culpable because he did not bring to the Board issues concerning Glantz, including the IPOF Fund or Innotrac stock. Tr. 1563, 1568-69, 1571-72, 1577, 1650. Second, Calvert lacked confidence in Urban. Tr. 1960-61. Calvert was angry that he signed the CEO Compliance Certification that included a Compliance Report which did not mention the IPOF Fund. Tr. 936-38, 1570, 1632-33, 1959-60; Div. Ex. 197. Urban, however, believed, based on NASD pronouncements and conversations with colleagues, that the CEO Compliance Certification was to assure regulators that the firm had policies and procedures in place, and the Compliance Report was not to document instances where the policies and procedures did, or did not, work. Tr. 2867-68.

Calvert denied that Urban gave him a copy of his December 15, 2004, memorandum, recommending that Glantz be terminated. Tr. 1631-32; Div. Ex. 143. A search of Calvert's files did not show a copy of the memorandum. Tr. 1632. Calvert also was upset that Urban had not sent him information about possibly filing a SAR on ATC Healthcare, concerns about possible manipulation in Innotrac stock, and the Baltimore examination report. Tr. 1805.

It was sufficient for the Steering Committee that the CEO no longer had faith in Urban. Tr. 1633.

Calvert testified that he recused himself from the Steering Committee's decisions of matters involving Urban, and he denied attending the Board meeting at which the Steering Committee's recommendations were considered and adopted.⁶¹ Tr. 1568, 1586-87, 1958, 1961. Teel and Gordon remember Calvert being present at the Board meeting where the Steering Committee's recommendations were considered, but that Calvert left the room when the Board considered Urban. Tr. 1586-87, 1958, 1961, 2636.

In 2007, FBW and Calvert entered a change of control agreement (Golden Parachute) that guaranteed him two and a half million dollars if FBW was acquired. Tr. 1941. On May 21, 2008, RBC filed a Form F-4 Registration Statement under the Securities Act of 1933, indicating it had entered a letter agreement with Calvert to provide him with a base salary of \$150,000, quarterly bonuses of \$50,000, and a one-year transition bonus of \$250,000 prorated for the period between the effective date of the merger and the integration of FBW into RBC. Urban Ex. 591. The transition began in June 2008, his role was completed in October 2008, he did not receive any of the transition bonus, and the other amounts were prorated. Tr. 1942-44, 1946. RBC honored FBW's obligations under the Golden Parachute. Tr. 1945. RBC accelerated vesting of unvested FBW options for a number of individuals, including Calvert. Urban Ex. 591. RBC's vesting of his unvested options gave Calvert an approximately half a million dollar benefit. Tr. 1947-49. Calvert also received \$257,989 over a five-year period for incentive options that became disqualified options, and he received at least a twenty dollar premium on the sale of his vested FBW shares. Tr.

Belgrade and Laverghetta did not cooperate until they worked out a use immunity agreement with the United States Attorney in Cleveland, Ohio. Tr. 1614-16. They were placed on paid administrative leave and later allowed to return to work without any conditions. Tr. 1574-75.

⁶¹ Shea testified that Urban asked the Board to reconsider its decision to enter a termination agreement with him. Tr. 2000. Urban considered it inaccurate to say that he asked the Board to reconsider its request for his resignation. Tr. 2891.

1950-55; Urban Ex. 591. Calvert would not have been eligible to participate in RBC's acquisition of FBW and would not have received most of the financial benefits he received, if he had been terminated as a result of the Steering Committee's recommendations.⁶² Tr. 1938, 1949.

Urban's Evidence

The overwhelming evidence is that Urban was not responsible and had no authority for hiring, assessing performance, assigning activities, promoting, or terminating employment of anyone, outside of the people in the departments he directly supervised.⁶³ Tr. 230, 586, 589, 1599. FBW required that Compliance check on new registered representatives with regulatory issues in their background, and Compliance reviewed Glantz's record because it had some items. Urban signed off on hiring Glantz because his Form U-4 contained nothing unusual. Tr. 608, 2704-05; Div. Ex. 1. Glantz's Central Registration Depository record showed ten items related to the sale of limited partnerships in the 1980s, bankruptcy in 1992 - divorce related, and one non-material item. Tr. 2706; Div. Ex. 3. Glantz had no problems while employed at Advest, his most recent employer, which was considered a good firm. Tr. 2709-10. Outside of a few items, such as getting an account "locked down" because of ongoing illegal activities or not allowing a person with lots of items on his or her CRD to be hired, Compliance offered recommendations to FBW's business entities. Tr. 586, 589, 680-82, 2889-90.

Urban did not believe he was Glantz's supervisor or that he had authority to hire, fire, discipline, or direct the conduct of Retail Sales personnel without the concurrence of Akers or someone in Retail Sales management.⁶⁴ Tr. 2845; Answer at 2. For example, Urban testified, "[I]f there was an issue that compliance came to me saying that they had been advising [Retail Sales] to do A, B or C and their advice wasn't being followed, if I spoke with [Akers], there was a greater chance that the advice would be followed." Tr. 2687. Urban testified that Compliance could recommend that a broker be placed on special supervision but someone had to agree to exercise special supervision. Tr. 2887.

FBW's Written Supervisory Procedures, show Urban as the supervisor of "All Employees;" however, Centeno, who drafted the procedures, testified that "[a]ll employees indicated that Ted was in charge of providing legal advice to all employees, not that he supervised all employees." Tr. 591. Moreover, a PowerPoint presentation dated November 8, 2005, states that the Legal and

⁶² Calvert was not the subject of any government action.

⁶³ The record has at least one instance where Compliance closed an account because the account holder faced potential legal violations that Compliance believed could adversely impact FBW and the broker. The broker agreed. Tr. 146-67.

⁶⁴ There is a statement by Urban in the investigative record and testimony by Centeno that Compliance directed, rather than recommended, Retail Sales to place a broker on special or heightened supervision, impose requirements, and/or limited the broker's activities, but those are singular instances, not involving significant individuals, and do not agree with almost all the evidence. Tr. 683, 2888-90.

Compliance Department “[r]ecommends appropriate remedial action whenever deviations from the policies and procedures are detected” (emphasis added). Urban Ex. 565 at Bates 8615.

Throughout the 2003-05 period, the FBW Legal and Compliance functions were lightly staffed. When FBW had about 700 employees and about 275 brokers, the Legal Department had two lawyers: Urban and Dana Gloor, and Compliance had about seven or eight people.⁶⁵ Tr. 1737, 1740, 2790, 2813; Urban Ex. 503. Urban was a hands-on manager and was involved in all significant Legal and Compliance actions. It was not unusual for co-workers to get emails from Urban sent at 2:00 or 3:00 a.m. Tr. 662; Div. Ex. 143, Urban Ex. 557. Teel believed that the Legal Department took on huge responsibilities and workload without the necessary resources, so that often results were not timely. Tr. 1561.

FBW’s Legal Department was busy in 2003. In September 2003, just as Centeno began three months maternity leave, the New York State Attorney General announced a market timing investigation. Tr. 2788-89. Urban estimated that in the fall of 2003, he spent from 20 to 50% of his time handling allegations of market timing by four individuals at FBW. Tr. 2789. As the point person on changes to FBW’s Employee Stock Ownership Plan (ESOP), Urban was required to spend considerable time working with consultants. Tr. 1741, 2789-90. Centeno recalled that 2003 was a particularly hectic period because, in addition to changes in the ESOP plan, Legal and Compliance had to deal with a NYSE investigation of a broker, several arbitration cases, implementation of several new rules applicable to the securities industry, a joint NYSE/NASD examination, and several litigated matters being handled with outside counsel. Tr. 661-62.

In 2004, Urban worked at the Baltimore headquarters, but most of the Compliance staff was in D.C. until space was found in Baltimore. Tr. 2813. Besides location, Compliance had major staff changes in 2004. FBW was without a Compliance Director for over two months as Centeno left on March 30, 2004, and Haas was hired in June 2004. Tr. 551, 946. Also, in 2004, Del Buono left and Silbert and Sraver joined Compliance.⁶⁶ Tr. 2811. FBW was the subject of an unprecedented number of regulatory examinations in 2004. The Commission conducted a broker-dealer examination, focusing on Hunt Valley and the Annapolis branch office, and an investment adviser examination. The NYSE conducted a Financial/Operational exam and reviewed FBW’s research and Investment Banking departments. Div. Ex. 197 at Bates 7403.

⁶⁵ The record has a reference to another lawyer at FBW, Ms. Rutherford. Tr. 1716.

⁶⁶ Sraver left FBW employment in 2005 and stopped doing contract work for FBW in 2007 because she was dissatisfied with FBW’s treatment of compliance issues. A branch manager screamed at her for mentioning, in her branch examination, accounts managed by a broker who Retail Sales management would not allow the branch manager to terminate. Tr. 1285-86, 1291-92. Silbert earned a B.S. from George Washington University and began working in the securities industry in 1977. He had about twenty years of compliance experience, and began as a Senior Compliance Officer at FBW in July 2004. Tr. 2157-58.

There is no dispute that Urban was very busy and had limited staff.⁶⁷ The minutes of the Executive Board meeting on September 12, 2005, show Urban reporting on five of ten topics. Div. Ex. 258. Urban and outside counsel were working with another firm on litigation against two major financial institutions, and a disgruntled former Compliance employee had raised allegations about Compliance to the Executive Committee. Div. Ex. 258. Urban assured the Executive Committee that Compliance was operating in a reasonably effective manner given FBW's growth and significant expansion in regulation in recent years. Div. Ex. 258.

Urban has worked with Calvert since 1988. Urban's testimony is that they talked directly on a variety of subjects from two to ten times each day. Tr. 2699-700. Urban testified that it was his practice to keep Calvert informed about problems with registered representatives who were big producers. Tr. 2700. Beyond the frequent Credit Committee meetings, Urban had detailed discussions with Calvert about the IPOF Fund and the problems it posed to FBW and less detailed discussions that Glantz's supervision was not all it should be. Tr. 2869-70. Urban insisted that Calvert was aware at all relevant times of concerns about Glantz and the IPOF Fund. Tr. 2868-70. Urban had no doubt that he had discussions with Calvert about the violations that caused him to recommend Glantz's termination and that Calvert knew Urban advised Akers to terminate Glantz. Tr. 2870.

Akers and Urban had a somewhat complicated working relationship, but they got along reasonably well most of the time. Tr. 2685-86. Urban had worked with Akers for over ten years and his personal experience was that, if Akers agreed that something should get done, "you could pretty much count on it getting done." Tr. 2687.

[W]hen [Akers] insisted on special supervision as the proper disposition of Mr. Glantz's continued employment, it supported [Urban's] belief at the time that, okay, if that's what he wants to do, then the burden will be on him. And [Urban] thought there was a – at least a reasonable chance that [Akers] would get it done if he – if he put his heart into it, [Urban] was relatively confident that he would get it done.

Tr. 2688-89

Gordon, who joined FBW in 1983, about the same time as Urban, testified that, "[w]e were small enough that everyone knew each other pretty well, so you pretty much knew what was going on." Tr. 2617, 2657. She considered Urban honest and a person of integrity. Tr. 2640. Leatherbarrow, who worked closely with Urban during his seven years at FBW, respects Urban very much and considers him to have as much integrity as anyone he has ever known. Tr. 1227. Boo worked with Urban a long time and trusted him. Tr. 770. Sraver considered Urban honest with high ethical standards. Tr. 1292. Larry Bowers (Bowers), COO of the Montgomery County Public Schools, has known Urban for about seventeen years. Tr. 2506-07. Urban was the first public member of the Board of Investment Trustees (BOIT) for the Montgomery County Public Schools Employees Pension System (Fund). BOIT members have a fiduciary responsibility for investing the approximately \$750 million in assets held in trust for school system employees. Tr.

⁶⁷ In twenty years, FBW went from one to two lawyers in Compliance even though it had increased the number of employees considerably.

2508. Based on his working relationship with Urban, Bowers, who chairs BOIT, has supported appointing Urban to the Board on four separate occasions. Bowers considered Urban to be a man of integrity and a key person in protecting the interest of Fund members. Tr. 2511. Urban has a great deal of financial knowledge and experience that he has shared with the BOIT.

Urban went on administrative leave on November 14, 2006, and resigned from FBW on March 1, 2007. Tr. 2870-71. FBW officials signed Urban's Form 5 on March 12, 2007, that states he resigned voluntarily and he: (1) was not under internal review for violating investment-related statutes, regulations, rules or industry standards of conduct; (2) did not voluntarily resign after allegations were made that he violated investment-related statutes, regulations, rules or industry standards of conduct; and (3) was not permitted to resign after he was accused of failure to supervise in connection with investment-related statutes, regulations, rules or industry standards of conduct. Tr. 1589-91; Urban Ex. 613.

Separating from FBW, under these circumstances, has caused Urban severe personal and financial loss.⁶⁸ His professional opportunities have been damaged, and he estimates that he lost between \$800,000 and \$1.3 million in terms of his ownership interest because of the timing and conditions of separation from FBW. Urban was required to forfeit unvested stock options and he sold, or was required to sell, most of his FBW shares before the merger with RBC. Tr. 2871. Those shares could have been sold at a higher price if he had continued at FBW longer than his twenty-three years. Tr. 2871-72.

At the Division's direction, FBW calculated that, for fiscal years 2003 through 2005, Urban received \$13,706.82 as a bonus from the revenue pool created by Glantz's activities at FBW. Tr. 2078-83, 2148-49; Div. Ex. 254 at Tables 1, 3. The estimate is a calculation from various sources reflecting Glantz's earnings that went into a bonus pool from which Urban derived some benefit. However, the calculation is suspect because the bonus pool component, "Innotrac Commission Revenues," includes commissions earned by FBW brokers in addition to Glantz, and "Innotrac Trading Revenues" could include amounts from non-FBW customers. Tr. 2102-03.

Glantz's Testimony

Glantz admits he lied to the FBI and the SEC on successive occasions from February 1, 2006, until July 5, 2007. Tr. 1456, 1511, 1528. On September 26, 2007, Glantz pled guilty to one count of Securities Fraud, 15 U.S.C. §§ 78j(b), 78ff, and one count of Making a False, Fictitious or Fraudulent Statement, 18 U.S.C. § 1001(a)(2) in United States v. Glantz, No. 1:07-CR-464 (N.D. Ohio).⁶⁹ Div. Ex. 241. Glantz entered a cooperative agreement with the government as part of his

⁶⁸ His professional employment opportunities were further damaged when the Commission issued the Wells notice. Tr. 2872.

⁶⁹ Judge Kathleen M. O'Malley remarked that Glantz's lawyer had negotiated the deal of the century. Tr. 1419, 1421-22. Dadante pled guilty to two counts of securities fraud for running a \$50 million Ponzi scheme and for participating in the scheme to manipulate Innotrac stock. Div. Post-Hearing Br. 16, n.6. Dadante was sentenced to 156 months in prison followed by three years of supervised release, and ordered to pay over \$28 million in restitution on August 6, 2007. Div. Ex.

Plea Agreement. Tr. 1416. Glantz was sentenced to thirty-three months in prison, followed by three years of supervised release, and ordered to pay \$110,000 in restitution. He served approximately twelve months of a thirty-three month sentence with time off for good behavior and drug treatment. He was released on March 10, 2009. Tr. 1361-62.

Glantz testified that Vinocur's deceased husband began an account and, when he died, his wife, an unsophisticated investor, entrusted Glantz to do the right thing with a seven figure settlement she received. The account's objectives were more preservation of capital than growth and income. Tr. 1339-40. Glantz exercised discretion in the account and bought unsuitable investments. Tr. 1339, 1373. Gildenhorn is now eight-five years old. He put Glantz through school. Glantz admitted that he had discretion in the account and, beginning when he left Advest, he overtraded the account tremendously, putting Gildenhorn on margin, which he did not want, and breaking promises to take care of it. Tr. 1340-41. Gildenhorn's investment objectives were preservation of capital and growth. Tr. 1341. Jeffrey Orchen, a dentist, was a great friend who trusted Glantz to do the right thing with a profit-sharing account and a personal account. The account's objective was preservation of capital with some growth. Glantz exercised discretion in the account. Tr. 1340. Ziemba, an oral surgeon, was near retirement and pretty much trusted Glantz's judgment. Glantz exercised discretion in the account. Tr. 1339-40. Montanaro was in her late seventies; her investment objectives were preservation of capital and some income. Glantz exercised discretion in the account. Tr. 1341-43. Glantz exercised discretion in the Morrison account whose investment objectives were preservation of capital and some growth. Tr. 1342. The Scolnicks, both in their sixties, were referred to Glantz by a friend. Their investment objectives were preservation of capital and modest growth. Glantz exercised discretion in their accounts. Tr. 1342. Klemm, in her seventies, was a friend of Glantz's mother, who turned her account over to Glantz and trusted him to do the right thing. Tr. 1343. Guerrini's investment objectives were more growth. Tr. 1343. Glantz exercised discretion in the Klemm and Guerrini accounts. Tr. 1343. Glantz admitted buying ATC Healthcare, a very speculative penny stock, that was unsuitable for the Vinocur, Gilbert, Gildenhorn, Ziemba & Thatcher, Fabrizi Trucking, Montanaro, Morrison, Orchen Pension Plan, and Scolnick accounts and that he engaged in excessive, unauthorized trading and the use of margin for the purpose of earning commissions. Tr. 1399-409; Div. Exs. 202 at 9-12, 241 at 19. His deliberately illegal activities continued until the middle to last part of 2005. Tr. 1401, 1408-10.

Glantz admitted committing federal securities fraud and lying about his actions to the SEC and the FBI before July 5, 2007, and he testified that his admissions of securities fraud in the Plea Agreement are true. Tr. 1356-57, 1364-65, 1456, 1511, 1528. He acknowledged that, from about August 2002 through in or about November 2005, he and others artificially inflated and maintained the market price of Innotrac stock. Tr. 1365-66; Div. Ex. 241 at 11. Glantz also admitted to using marking the close as a manipulative device in the IPOF Fund and the accounts in which he exercised discretion. Tr. 1367-68; Div. Ex. 241 at 13. Glantz testified that Akers, Vaughan, and FBW's two traders, Belgrade and Laverghetta, knew that Innotrac trades were marking the close and that Akers and Vaughan did not care. Tr. 1514-16.

250 at 1. The Commission barred Dadante from association with any investment adviser. David A. Dadante, Investment Advisers Act Release No. 2678 (Nov. 29, 2007).

Glantz testified that he encountered Urban in early 2006 and Urban said, “I really don’t blame you . . . I dropped the ball.” Tr. 1414, 1510.

In May 2007, a psychiatrist, who allegedly was treating Glantz, submitted a statement to the Commission that Glantz was in no condition for a deposition. Tr. 1540; Urban Ex. 620. An attached facsimile from a doctor was written in all capital letters, which is the style that Glantz uses. Tr. 1485. Glantz admitted that he might have typed the statement for the doctor to sign, but denied that he signed the doctor’s signature. Tr. 1541.

The Commission issued an Order pursuant to an Offer of Settlement, barring Glantz from association with any broker or dealer in Stephen J. Glantz, Administrative Proceeding 3-13365, Exchange Act Release No. 59373 (Feb. 10, 2009).

Expert Testimony

David E. Paulukaitis (Paulukaitis), for the Division, was qualified as an expert on the operations and supervision of broker-dealers.⁷⁰ Tr. 2218. Paulukaitis believes John H. Gutfreund, 51 S.E.C. 93 (1992), set out the applicable standard of/for who is a supervisor and he sees a direct parallel between Urban and the Chief Legal Officer (CLO), Donald M. Feuerstein (Feuerstein), in Gutfreund. Div. Ex. 250 at 10.

In Paulukaitis’s opinion, Urban was Glantz’s supervisor and had supervisory responsibility as to Glantz by virtue of his senior level positions at FBW and his knowledge and involvement in addressing Compliance concerns about Glantz’s activities. Paulukaitis applied a facts and circumstances analysis.⁷¹ Tr. 2292-93, 2367. Paulukaitis reads Gutfreund to mean that Calvert, Gildemeister, and McNeilly were Glantz’s supervisors in certain matters because of their responsibilities and knowledge of Compliance concerns. Tr. 2254-2267, 2365-66.

Paulukaitis contended that Urban failed reasonably to supervise Glantz with a view to preventing violations of the Exchange Act because he did not reasonably and decisively respond to “red flags” concerning Glantz’s conduct and deficiencies in Glantz’s supervision. He characterized Urban’s actions as inadequate and ineffective, claiming he did not insist that Akers and Vaughan supervise Glantz or that Akers perform special supervision. He believed that, as a result of Urban’s failure to act, Glantz was able to engage in violative sales practices and to facilitate manipulation in trading Innotrac stock. Div. Ex. 250 at 3, 40-41.

⁷⁰ Paulukaitis earned a degree in Finance from the University of Alabama. From 1982 until 2005, he was with the NASD as an examiner, a supervisor of examiners, and Associate District Director in Atlanta, Georgia. Since 2005, Paulukaitis has been Managing Director of Mainstay Capital Markets Consultants, Inc. He has been an expert witness in NASD arbitrations and in state and federal proceedings. Div. Ex. 250.

⁷¹ By this, he meant “who the person is, what their background is, what their position is, what their authority is, what they’re being told to do, all of those factors have to be mixed together.” Tr. 2367. Paulukaitis believed that more than one person can fail to supervise in any particular situation. Tr. 2431-32.

Paulukaitis argued that the testimony of Compliance personnel, various written supervisory procedures, memoranda, and emails support his conclusion that Urban was Glantz's supervisor. Div. Ex. 250 at 12. Paulukaitis did not consider the Compliance Director, also named in the supervisory procedures, to be Glantz's supervisor. Tr. 2310. He considered Urban's directions to Compliance to call Glantz's customers and Urban's communications about Glantz on behalf of the Credit Committee to indicate that Urban supervised Glantz, but he did not consider the Compliance Director to be Glantz's supervisor because he was operating at Urban's direction. Tr. 2310, 2363-64; Div. Ex. 250 at 12.

Paulukaitis opined that Urban's responses to the following "red flags" were insufficient to fulfill his supervisory responsibilities: failure to (1) address the concerns raised in the Del Buono Memo; (2) take decisive action to address Glantz's handling of certain accounts raised by Del Buono and Centeno in August 2003; (3) initiate an inquiry into establishment of the GSGI account; (4) address FBW's potential exposure from growing levels of Innotrac purchased on margin in the IPOF Fund and inadequate supervision of Glantz; (5) inquire as to why and how Bianco concluded that the buy order from Advest was related to the IPOF Fund; (6) act on the November 2004 report from the Baltimore branch examiners, Urban's fourth written notice that Glantz was not being adequately supervised; (7) ensure that special supervision of Glantz was carried out; (8) take definitive action regarding trading in ATC Healthcare; (9) act on information that, in December 2004, Glantz's customers bought Innotrac shares from Dadante's personal account at Advest; and (10) act on concerns of Boo and two traders that Dadante was possibly manipulating Innotrac trading. Div. Ex. 250 at 14-32.

Paulukaitis believed that the Credit Committee tasked Urban with dealing with the compliance-related issues raised in the Del Buono Memo and that Urban took the matter up with Akers, Vaughan, and Usry. Tr. 2422-23. He noted that Akers and Vaughan, Glantz's supervisors, did not commit to dealing with the issues posed, and that, in a hypothetical situation, the CEO would have a duty to follow up. Tr. 2365. Paulukaitis acknowledged that it was Urban who raised to the Credit Committee the burgeoning margin debit in the IPOF Fund account when one would have expected the Margin department to have raised concerns. Tr. 2380-81.

Paulukaitis believed that Urban could well have prevented unsuitable trades in the Vinocur and Orchen Pension Plan accounts if he had personally conducted or directed follow-up monitoring between May 2003, when Del Buono and Centeno first raised questions, and November 2004, when Silbert and Sraver raised similar concerns.⁷² Div. Ex. 250 at 35, 38. Paulukaitis faulted Urban for taking no definitive action on reports that Akers was not carrying out his obligations under the special supervision provisions. Div. Ex. 250 at 37.

⁷² Paulukaitis acknowledged that, on January 31, 2003, the net equity in the Vinocur account (market value of assets less margin) was \$886,404; that on October 31, 2005, the net equity in the account was \$632,129; and that Vinocur had withdrawn \$597,800 in the intervening period. Tr. 2333-40; Urban Ex. 634.

Paulukaitis believed that a person who gets involved in a compliance problem becomes a supervisor, and a registered principal with authority has a duty to act to solve a problem. Tr. 2365-66. Paulukaitis did not give a definitive answer to whether it would have made a difference if Brent had raised his concerns about the suitability of investments in Glantz's accounts with his boss, Akers, who was reviewing Glantz's accounts. Tr. 2375. Paulukaitis found that Urban did not reasonably supervise by either allowing Glantz to return to Beachwood right after the special supervision provisions required that he work in Hunt Valley or not objecting strongly that Akers was allowing Glantz to do so.⁷³ Tr. 2404-11; Div. Exs. 161.

Paulukaitis contended that Urban was obligated to raise matters to Calvert and, if Calvert refused to act, above him to the Executive Committee and Board. In his opinion, it made no difference whether Urban believed he could not get people to act, he was obligated to take the steps and document that he did so. Tr. 2416-18. Paulukaitis did not believe that Urban needed Calvert's assistance to deal with concerns about Glantz. Tr. 2435.

Paulukaitis saw correspondence from Urban to Calvert that certainly raised concerns about Glantz, but he saw nothing suggesting that Urban needed assistance from Calvert to address concerns, complaining that Akers prevented Glantz's termination, informing Calvert of special supervision, or stating that Akers had failed to fulfill his obligations. Tr. 2435-36.

Marc I. Steinberg (Steinberg), appearing for Urban, was qualified as an expert on whether Glantz was subject to Urban's supervision.⁷⁴ Tr. 2524; Urban Ex. 636 at 1-2. Steinberg did not concede the applicability of Gutfreund to this situation; however, for his presentation, he assumed that determining who is a supervisor depends on whether a person, under the particular facts and circumstances, has the requisite degree of responsibility, ability, or authority to affect the conduct of the employee whose behavior is at issue. Tr. 2590-91; Urban Ex. 636 at 4. Steinberg observed that a literal application of Gutfreund would make a broker-dealer's General Counsel the supervisor of all the firm's brokers and others as well in the firm. Tr. 2591; Urban Ex. 636 at 5-6.

Because a literal application of the Gutfreund standard encompasses so much, Steinberg would establish the principle that a supervisor, for the purposes of Exchange Act Section 15(b)(4)(E), should be defined as a person who knows, or reasonably should know, that he or she has been given the authority and responsibility for exercising control over one or more activities of a supervised person that comes within the Commission's purview.⁷⁵ See Arthur James Huff, 50

⁷³ As has been noted, Urban testified that he never approved Glantz working out of Beachwood when on special supervision. Tr. 2856.

⁷⁴ Steinberg graduated from the University of Michigan, earned a J.D. at the University of Southern California, and an LL.M. from Yale University. At Southern Methodist University, Steinberg is the Rupert and Lillian Radford Professor of Law at the Dedman School of Law, Associate Dean for Research, and Director of the Corporate Director's Institute. He has authored twenty-two books and 125 law review articles. Urban Ex. 636, at 1.

⁷⁵ I reject Steinberg's recommendation, that to be a supervisor, a person must knowingly accept that responsibility because it is agreed that only negligence, a less severe standard of conduct, is required

S.E.C. 524, 532, 534-35 (1991); Tr. 2575-76; Urban Ex. 636 at 6-7. Steinberg noted that footnote 24 in Gutfreund cited this language from Huff. He also referenced N. Poser and J. Fanto, “Broker-Dealer Law and Regulation” Sec. 9.03[E], at 9-72 (4th ed. Supp. 2009), which finds that, in determining whether a compliance or legal officer is a supervisor, the Commission appears to have adopted the concurring opinion in Huff. Tr. 2614-15; Urban Ex. 636 at 7.

Steinberg testified that applying the Huff test shows that Urban was not Glantz’s supervisor for the following reasons:

1. Urban never knew, or reasonably should have known, that he was Glantz’s supervisor. Urban Ex. 636 at 8. Even assuming that Glantz was subject to Urban’s supervision, Urban was not negligent or careless in understanding that he was not Glantz’s supervisor. Citing Urban’s investigative testimony, Steinberg opined that Urban understood that he had authority to recommend certain action as to Glantz, but he did not understand that he could determine the discipline or other action as to Glantz. Urban believed his role was to advise and consult with Glantz’s supervisors; and, in situations where he did take action concerning Glantz, Urban did so in his role as inside counsel or agent of the Credit Committee. Urban Ex. 636 at 8-9. Steinberg found Urban’s belief that Glantz was not subject to his supervision reasonable because otherwise Urban would have been supervisor for every broker. Steinberg cited the investigative testimony of Centeno, Haas, Shea, Weaver, Del Buono, and Glantz to support his position that Urban had a reasonable belief that he was not Glantz’s supervisor. Urban Ex. 636 at 9-10.

2. Many of Urban’s actions were the “daily grist of the mill” matters for general counsels who oversaw compliance departments at broker-dealer firms. These include communications with respect to Glantz’s supervision, reviewing his CRD before hiring, consultations on filing a SAR in 2003 with respect to the IPOF Fund’s ownership of Innotrac stock, inquiring as to Innotrac’s legitimacy, declining McNeilly’s recommendation that a SAR be filed with respect to purchases of ATC Healthcare, and recommending Glantz’s termination. Urban Ex. 636 at 10-11.

3. It was customary for a General Counsel to take the following affirmative actions: make sure that the IPOF Fund made the necessary filings with respect to Innotrac stock acquisitions, order letters sent to Glantz’s clients, authorizing contact by Compliance personnel with Glantz’s clients, assist in drafting Glantz’s Special Supervision Memorandum, and determining that Glantz’s trading without written authorization was reportable on a Form RE-3, but not on a Form U-4. Urban Ex. 636 at 11-12.

4. Urban acted as the agent of the Credit Committee using his legal expertise. Tr. 2610; Urban Ex. 636 at 12-13.

5. Steinberg opined that Urban reasonably believed that he was not Glantz’s supervisor, citing investigative testimony from more than ten FBW employees that Akers was part of an atmosphere at FBW that was hostile to Compliance and that Akers was the only one at the firm with power to supervise or get rid of Glantz. Urban Ex. 636 at 13-16. Steinberg found Calvert’s belief

for a violation of Exchange Act Sections 15(b)(4)(E) and 15(b)(6) and negligence does not require knowledge. Div. Post-Hearing Br. at 3.

that Urban had authority to discipline or fire a registered representative not particularly relevant since it was unsupported and Calvert purportedly knew little about the particular facts involving Glantz and the IPOF Fund account.

Steinberg concluded that Urban did not have the requisite degree of responsibility, ability, or authority to affect Glantz's conduct and, thus, Gutfreund can be distinguished on its facts. Unlike Feuerstein, Urban did not direct FBW's collective response to Glantz's conduct and the IPOF Fund. Steinberg saw Urban's role as legal counsel to provide advice, consultation, and input. Urban Ex. 636 at 17.

Finally, Steinberg considered that the allegations are based on Urban's performance as General Counsel and claims that he acted negligently in performing his legal duties. He rejected the contention that the allegations involve Urban's actions as a non-lawyer. Urban Ex. 636 at 18. Steinberg argued that this proceeding is a departure from established policy and is contrary to sentiments expressed in William R. Carter, 47 S.E.C. 471, 504 (1981) and Scott G. Monson, 93 SEC Docket 7517 (June 30, 2008), about an attorney's non-public advice to its clients.

David A. DeMuro (DeMuro), appearing for Urban, was qualified as an expert on the industry standard for legal and compliance personnel, as opposed to supervisory responsibilities of business managers, in financial services firms in the period 2003-2005.⁷⁶ Urban Ex. 637. According to DeMuro, in the securities industry, the roles of people in the back office and the role of those performing advisory functions are distinct and non-supervisory; the people operating the business are the supervisors. DeMuro believed that the person being supervised has to know he is subject to a person's supervision and the supervisor must accept responsibility. Tr. 2969-70. He found that FBW employed the traditional supervisory structure with clear identification of supervisors. Tr. 2978.

DeMuro claimed support for his position in a White Paper on the Role of Compliance, Securities Industry Association, Compliance and Legal Division (Oct. 2005) (White Paper), which he contends describes the prevailing view of compliance's role and boundaries in a securities firm through the year 2005. Urban Ex. 637 at 5. DeMuro agreed with the White Paper's position that compliance departments were intended to support and advise and were never intended to replace supervisors or managers in the business departments: "[t]he management function in a securities firm, *not the Compliance Department function*, has the responsibility to supervise business units and to direct firm and employees activities to achieve compliance with applicable laws." Urban Ex. 637 at 6. Quoting again from the White Paper, "only supervisors have the authority to approve

⁷⁶ DeMuro is a graduate of the University of Michigan and holds a J.D. from Notre Dame Law School. DeMuro was with the Commission from about 1974 to 1984 in the Division and the Office of General Counsel. From 1984 through 2008, he was with Lehman Brothers and predecessor firms. He oversaw the Regulatory Law Group, and, from 1999 through 2008, he was a Managing Director and head of Global Compliance. DeMuro has served in various positions with professional associations such as the Securities Industry and Financial Markets Association and the NASD. He is presently a Senior Counsel with O'Melveny & Myers LLP. Urban Ex. 637.

business transactions’ or ‘remediate wrongful or potentially wrongful conduct.’” Urban Ex. 637 at 6.

In DeMuro’s opinion, a compliance department may only direct business activities in the very rare circumstance when the firm has expressly designated that power and authority and the compliance department knowingly agrees to undertake that responsibility. Tr. 2970; Urban Ex. 637 at 7. He cited Gutfreund as supporting his position, noting that a compliance officer with responsibility, authority, or ability to directly affect an employee’s behavior is a fact-specific and unique arrangement. Urban Ex. 637 at 8. DeMuro took issue with Paulukaitis’s positions that Gildemeister (Operations) and McNeilly (Anti-Money Laundering) were Glantz’s supervisors. Tr. 2969-70, 2972-73. DeMuro is unaware of any firm where an Anti-Money Laundering officer can go beyond advising and act unilaterally. He also questioned whether Urban could have successfully gotten Advest to identify its customers as part of an inquiry into possible manipulation. Tr. 2973, 2987.

DeMuro rejected the suggestion that, by making calls to Glantz’s customers or by accepting responsibility from the Credit Committee to speak to Glantz and others on issues, Urban became Glantz’s supervisor. He believed that, in the first instance, Compliance was doing its job, and, in the second, Urban was a messenger from the Credit Committee. Tr. 2983-85.

DeMuro found, based on the investigative testimony of Centeno, Weaver, and Leatherbarrow, that Urban and Compliance served an advisory role and they performed their advisory duties reasonably. He did not find Urban to be Glantz’s supervisor. Urban Ex. 637 at 24. In DeMuro’s experience, revenue-generating business people have the ability to affect the conduct of registered representatives, but, absent special circumstances, legal and compliance personnel do not. Urban Ex. 637 at 10.

DeMuro concluded that Urban was in the traditional advisory role of compliance, he was not Glantz’s supervisor, and he acted reasonably in voicing problems so that Glantz’s supervisors could address them. DeMuro viewed Compliance’s role in approving Glantz’s hiring as quintessential advisory. Urban Ex. 637 at 12.

DeMuro believed Urban’s conclusion in the May to June 2003 period, that the activities in the IPOF Fund were not necessarily manipulative, was reasonable. Urban Ex. 637 at 15. Innocrat was a real company, the IPOF Fund was a buyer, not a seller, it had sold at a much higher price in the past, orders were placed directly and not through Glantz, and the IPOF Fund and Dadante had made the necessary filing with the Commission. Urban used his seasoned professional judgment to respond to the situation with appropriate, measured action. Urban Ex. 637 at 15.

DeMuro found Urban’s recommendations to the Credit Committee consistent with his role as advisor and consultant, rather than as supervisor. According to DeMuro, Urban’s senior management position did not imbue him with the requisite ability, authority, or responsibility to affect Glantz’s conduct. No FBW manager asked Urban to supervise Glantz himself. Urban Ex. 637 at 16-17.

In DeMuro’s opinion, Urban acted reasonably in the period from late summer 2003 through early 2004, a period when the Compliance staff was stretched thin and faced an array of legal and

compliance matters. DeMuro cited Urban's investigative testimony to state that Urban recommended to Akers in late summer 2003 through early 2004, that Glantz needed closer supervision and Akers assured him Glantz would be transferred to Baltimore, where he would be under a seasoned supervisor. Urban Ex. 637 at 17. Urban met in September 2003 with Glantz, Akers, and Vaughan to flag concerns about the IPOF Fund. DeMuro believes Urban acted reasonably to the significant increase in the IPOF Fund's margin debit in January 2004. It was reasonable for Urban to rely on the business managers's assurances that they would implement his recommendations, that Glantz would be transferred, and his supervision enhanced. Urban Ex. 637 at 18-19.

DeMuro contended that, if Urban had the power to terminate Glantz, he would have done so in December 2004, rather than write a memorandum recommending that Akers and Vaughan do so. Urban Ex. 637 at 18-19. The fact that Akers signed Glantz's Special Supervision Memorandum demonstrates that Urban was not Glantz's supervisor. DeMuro finds it appropriate that FBW's Form RE-3 filing with the NYSE covered the activity that Urban could prove, Glantz's trading without authorization. Urban Ex. 637 at 22.

DeMuro considered Urban's handling of inquiries as to whether trading in ATC Healthcare was manipulative or merited a SAR reasonable. Similarly, he found no fault with Urban's treatment of information in an April 2005 email that the IPOF Fund was on the other side of December 2004 trades or, when he learned that the trading desk ignored Dadante's request, that it purchase shares from certain sources. Urban Ex. 637 at 23. DeMuro concluded that, given Akers refusal to fire Glantz, Urban had no choice but to have Compliance monitor Glantz's activities, and he reasonably left Glantz's future to the discretion of the business managers.

Arguments of the Parties

The Division argues that it has shown by a preponderance of the evidence that Glantz violated the antifraud provisions of the federal securities laws, and that Urban had supervisory responsibility over Glantz and failed reasonably to supervise him with a view to preventing those violations. The Division notes that in Gutfreund, the CLO was not a line supervisor and others shared supervisory responsibility; still, he was a supervisor because he had the requisite degree of responsibility, ability, or authority to affect the person's conduct when senior management informed him of the misconduct to obtain his advice and guidance and to involve him as part of management's collective response to the problem. Div. Post-Hearing Br. 4. The Division notes that, in Kirk Montgomery, 55 S.E.C. 485, 500 (2001), the Commission declared a chief compliance officer a supervisor because it was sufficient if the person plays a significant, even if shared, role in the firm's supervisory structure and that his authority was subject to countermand at a higher level. Div. Post-Hearing Br. 4-6. The Division maintains that there is a long line of cases in which individuals with less authority than Urban have been found to have failed to supervise. Div. Post-Hearing Br. 6.

The Division argues that the White Paper relied on by DeMuro supports its position:

Only in limited circumstances have the Commission and SROs brought failure to supervise actions against non-line personnel, such as Compliance Department

officers. These enforcement actions arise only when Compliance Department personnel have been specifically delegated, or have assumed, supervisory authority for particular business activities or situations, and therefore have “the requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.”

Div. Post-Hearing Br. 7 (citing White Paper at 11-12, quoting Gutfreund 51 S.E.C. at 113).

A major thrust of the Division’s case is that Urban comes within the scope of Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act because he failed to respond reasonably to red flags that Glantz’s conduct was illegal. Div. Post-Hearing Br. 12-57, 59-63. It is the Division’s position, citing Gutfreund, that once Urban became involved in addressing the red flags, he was obligated to respond vigorously and that he failed to do so. The Division details a number of incidents, red flags, and more, where it claims Urban acted unreasonably: Centeno’s concerns about Glantz and the IPOF Fund trading in Innotrac in the spring of 2003; the Del Buono Memo on May 23, 2003; the Credit Committee meeting on the Del Buono Memo; involvement in FBW’s response to the Del Buono Memo and other events; the Leatherbarrow email on January 29, 2004; turnover of Compliance personnel; findings in connection with the Baltimore examination in November 2004; Urban’s December 15, 2004, memorandum and meeting with Akers and Vaughan; allowing Akers to be Glantz’s special supervisor; heightened obligations after Glantz was placed on special supervision; failure to react reasonably to red flags in 2005; submission to Calvert of false assurances about FBW’s compliance efforts; and negotiations that resulted in a clean Form U-5 for Glantz on his resignation. Div. Post-Hearing Br. 12-57.

The Division contends that Urban was required to take concerns about Glantz’s conduct to FBW’s Board or Executive Committee, and, if they did not act, he was required to resign and report the matter to regulatory authorities. Div. Post-Hearing Br. 59-64. It believes that Urban acted recklessly in ignoring repeated red flags and in missing opportunities to detect and prevent Glantz’s fraud and significant investor losses. Div. Post-Hearing Br. at 68. It maintains that Urban’s supervisory failures were egregious and recurrent and occurred over a period of nearly three years. It notes that Urban has provided no assurances against future violations and has denied any wrongdoing.

Urban argues that Glantz was not subject to his supervision, his actions were reasonable under the circumstances, and the Division is not entitled to the relief it seeks. Urban Post-Hearing Br. 1-4, 60-83, 89-100. Urban maintains that the following actions he took were reasonably designed to prevent Glantz’s illegal conduct: encouraging Compliance to inquire into the IPOF Fund and ensuring that the Credit Committee considered the IPOF Fund; recommending that the Credit Committee restrict credit to the IPOF Fund and that the IPOF Fund make required Commission filings; urging increased vigilance of Glantz by Retail Sales and other business managers; instructing Compliance to perform additional diligence on Glantz; advocating strongly for Glantz’s termination and causing Compliance to make a NYSE filing as to Glantz; and advocating for strict terms of special supervision after senior business managers refused to terminate Glantz. Urban Post-Hearing Br. 3, 11-60.

Urban contends that a failure to supervise cannot be found where his reasonable actions were frustrated by Glantz's consistent lies, the failure of FBW business executives to fulfill their responsibilities, and Akers's and Vaughan's refusal to accept his advice, including terminating Glantz. Urban Post-Hearing Br. 12. Finally, Urban argues that consideration of the public interest factors show that no sanctions are warranted. The alleged errors were ones of omission and Urban did not seek personal gain or to disadvantage any investor. Urban did not act with a high degree of scienter, reckless disregard, or willful blindness. Urban's alleged violations are one incident in a life of honorable activities in the securities industry. There is no evidence that he was unjustly enriched to any material amount and there is no realistic likelihood that he will violate the securities laws in the future. Urban is semi-retired and his registrations have lapsed. Urban Post Hearing Br. 89-92.

Record Certification

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b) (1996), I certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on July 22, 2010.

Conclusions

Urban was credible.

Based on my observations of Urban's demeanor during his testimony and comparing his responses with other evidence in the record, I judge him to be honest and credible. Not one witness had concerns about his honesty, and persons, who worked with him for long periods of time both at FBW and in a civic endeavor with which he was involved for many years, were unanimous on his honesty and high ethical standards. Centeno, who worked very closely with Urban for ten years and who strongly disagreed with him at times, respects him and considers him absolutely honest and ethical. Tr. 578. The Division's expert noted, "[I]terally every witness that I heard that testified talked about [Urban's] integrity and his desire to do the right thing. I never heard anybody suggest anything to the contrary." Tr. 2437

Allegation - Urban failed reasonably to supervise Glantz with a view to detecting and preventing Glantz's alleged violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

Exchange Act Section 15(b)(6)(A)(i), in conjunction with Section 15(b)(4)(E), authorizes the Commission, if it is in the public interest, to censure, place limitations on the activities or functions, suspend for a period not to exceed twelve months, or bar from association with a broker or dealer, or from participating in an offering of penny stock, a person associated with a broker or dealer who "has failed reasonably to supervise, with a view to preventing violations of the provisions of such statute, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision."

No person is deemed to have failed reasonably to supervise any other person if:

- (i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and
- (ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe such procedures and system were not being complied with.⁷⁷

Reaching a determination on the legal issue requires conclusions on several factual issues, which I will do seriatim. The first two issues are whether it has been shown that Glantz committed violations of the federal securities statutes and regulations, and whether Urban was his supervisor.

Glantz violated the federal securities statutes, rules, and regulations while associated with FBW.

The preponderance of the evidence is that Glantz violated the anti-fraud provisions of the federal securities laws, and rules and regulations thereunder. This conclusion is based on Glantz's guilty plea to one count of securities fraud in United States v. Glantz, No. 1:07-CR-464 (N.D. Ohio Sept. 26, 2007), and Glantz's admissions of deliberate fraud, manipulation, and unauthorized and self-serving behavior in handling specific customer accounts in the period 2003 through 2005, which are supported by other evidence in the record.

Gutfreund

The Commission's views of who should be considered a supervisor among non-line personnel are set out in Gutfreund, which has carried considerable precedential clout since it was issued in 1992. In Gutfreund, CLO Feuerstein informed the three members of senior management that the submission of a false bid in an auction of U.S. Treasury securities by the head of the firm's Government Trading Desk, Paul Mozer (Mozer), was a criminal act which, while not required, should be reported to the government. Gutfreund, 51 S.E.C. at 108. Following the disclosure, neither Feuerstein nor the three executives investigated or disciplined Mozer or informed the government of the criminal acts for a number of months, during which the illegal activities continued. Id. at 98-101. Although not a decision, but a report of investigation issued pursuant to Section 21(a) of the Exchange Act, the Commission has cited Gutfreund favorably in many decisions. See, e.g., Conrad C. Lysiak, 51 S.E.C. 841, 844 n.13 (1993), aff'd, 47 F.3d 1175 (9th Cir. 1995); Montgomery, 55 S.E.C. at 495 n.24; George J. Kolar, 55 S.E.C. 1009, 1016-18 (2002).

Before beginning a point-by-point analysis of Gutfreund, there are significant factual differences that distinguish the two situations that are relevant in reaching a conclusion on the allegations. Gutfreund is very different factual from this situation in the following material respects. In the period 2003 through 2005, Glantz was a respected broker whose conduct was only suspect by some. Gutfreund involved known criminal conduct. In hindsight, Centeno's suspicions about Glantz were right on the mark, but, in 2003-04, they were only suspicions. FBW's Written

⁷⁷ Section 203(f) of the Advisers Act, in conjunction with Section 203(e)(6), mirrors the language of Section 15(b) of the Exchange Act.

Supervisory Procedures specified branch managers as the initial level of supervision, and Urban believed that FBW operated in this manner.

In the entire time Glantz was employed at FBW, not one branch manager in any retail office where Glantz was located –Weaver (Beachwood), Spencer (Baltimore), or Brent (Hunt Valley), who had available and should have reviewed detailed descriptions of Glantz’s transactions in his customer accounts – came to Urban with concerns about Glantz. Glantz’s Retail Sales supervisors, Akers and Vaughan, consistently represented that they were supervising Glantz. Usry, Glantz’s supervisor on his institutional transactions, made the same representations. Not one customer of Glantz complained about Glantz to Compliance and, when Compliance contacted three customers, they all knew Glantz was trading in their accounts, they were not knowledgeable about margin, but no one asked that Glantz be removed as his or her broker. The Credit Committee members had the Del Buono Memo and other information, and met frequently on matters involving Glantz. In addition to Urban, Credit Committee members, Calvert, Hartman, and Gildemeister, were on the Board and, as members, they received additional financial reports that showed Glantz had several accounts with enormous margin debits. In spite of information about Glantz, the enormous margin debit of the IPOF Fund, and concerns about Innotrak, no one – not Calvert, Akers, Vaughan, Shea, Usry, nor Hartman – ever came to Urban to voice concerns about Glantz’s conduct and possible manipulation. As late as April 2004, Glantz was in good standing with Calvert who invited him to attend several Credit Committee meetings and believed he could help FBW solve the IPOF Fund debit problems.

In Gutfreund, after senior management officials were explicitly informed of an illegal act, they did not discuss among themselves any actions to investigate Mozer’s conduct or to place limitations on Mozer for several months; Feuerstein’s role was that of a bystander, and he did not inform the Compliance Department of the situation. Gutfreund, 51 SEC at 113. This situation is unlike Gutfreund in that Urban was not a bystander, he took actions, and he shared information. Compliance began scrutinizing Glantz and the IPOF Fund shortly after Glantz joined FBW. Urban made no attempt to keep those concerns secret. Compliance, through Centeno and Del Buono, raised most of the issues that are the basis of the charges against Urban to the Credit Committee, most prominently in May 2003, less than five months after Glantz was recruited to FBW by Retail Sales.

Perhaps the most significant difference between the posture of Urban and Feuerstein in Gutfreund is that almost all the business leaders at FBW either lied to Urban or kept information from him, and people with clear supervisory responsibility over Glantz did not carry out their supervisory responsibilities. The undisputed evidence is that managers at FBW told Urban that Glantz was being supervised. Vaughan represented that Usry was supervising Glantz’s Institutional Sales, but, according to Glantz, Usry had refused to accept supervisory responsibility, and Shea, Usry’s boss, testified he knew nothing about Institutional Sales supervising Glantz. Akers assured Urban he would exercise special supervision of Glantz and he did not do so.

In addition to misrepresentations about supervision, Urban also had to deal with other instances of dishonest conduct by high management officials at FBW that were not present in Gutfreund. Shea’s comments to Belgrade in February 2004, indicate that he thought the IPOF Fund was a disaster waiting to happen, but the head of Equity Capital Markets did not share those

concerns with Urban. According to Glantz, Akers and Vaughan knew that he purchased Innotracs for his client accounts to benefit Dadante in December 2004, but they did not share this information with Urban.

Urban was Glantz’s supervisor.

Gutfreund set out the following test for who is a supervisor:

[D]etermining if a particular person is a “supervisor” depends on whether, under the facts and circumstances of a particular case, that person has a requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue. Thus, persons occupying positions in the legal or compliance departments of broker-dealers have been found by the Commission to be “supervisors” for purposes of Sections 15(b)(4)(E) and 15(b)(6) under certain circumstances.

. . .

Given the role and influence within the firm of a person in a position such as Feuerstein’s and the factual circumstances of this case, such a person shares in the responsibility to take appropriate action to respond to the misconduct. Under those circumstances, we believe that such a person becomes a “supervisor” for purposes of Section 15(b)(4)(E) and 15(b)(6). As a result, that person is responsible, along with the other supervisors, for taking reasonable and appropriate action. It is not sufficient for one in such a position to be a mere bystander to the events that occurred.

Gutfreund, 51 S.E.C. at 113.

In Gutfreund, Feuerstein was considered to be Mozer’s supervisor within the meaning of Exchange Act Sections 15(b)(4)(E) and 15(b)(6) because he was informed of serious misconduct by “senior management in order to obtain his advice and guidance and to involve him as part of management’s collective response to the problem,” and, under the factual circumstances, he shared responsibility to take appropriate action to respond to the misconduct. Gutfreund, 51 S.E.C. at 113. Since Urban was not Glantz’s supervisor in the sense that he did not have the power normally associated with supervision, the issue becomes whether, under these facts and circumstances, Urban had the “requisite degree of responsibility, ability or authority to affect” Glantz’s conduct. See Donald T. Sheldon, 51 S.E.C. 59, 71 (1992) (finding branch manager who hired and fired personnel to be a supervisor), aff’d 45 F.3d 1515 (11th Cir. 1995); Steven E. Muth, 86 SEC Docket 1217, 1241 (Oct. 3, 2005) (finding owner, regional sales manager, executive vice president, and board member was a supervisor because he participated in the decision to hire the broker at issue and the subsequent determination to suspend him and cause him to resign).

In Montgomery, the Commission found it sufficient that a person played “a significant, even if shared, role in a firm’s supervisory structure,” and “[t]he fact that he ‘share[d] in the responsibility to take appropriate action to respond to . . . misconduct,’ or that his authority was subject to

countermand at a higher level, does not negate a finding that he had supervisory responsibility.” 55 S.E.C. at 500-02, citing Gutfreund and James J. Pasztor, 54 S.E.C. 398 at 409 n.28 (1999) (Supervisor not “relieved of responsibility because he had to report to [firm president who] could overrule his decisions.”).

Even though Urban did not have any of the traditional powers associated with a person supervising brokers and the facts and circumstances of his situation are very different than in Gutfreund and its progeny, the case law dictates that Urban be found to be Glantz’s supervisor. As General Counsel, Urban’s opinions on legal and compliance issues were viewed as authoritative and his recommendations were generally followed by people in FBW’s business units, but not by Retail Sales. Urban did not direct FBW’s response to dealing with Glantz, however, he was a member of the Credit Committee, and dealt with Glantz on behalf of the committee. I agree with the opposing experts, Paulukaitis and Steinberg, that the language in Gutfreund, taken literally, would result in Glantz having many supervisors because many people at FBW acted to affect Glantz’s conduct in a variety of different ways.

Reasonable Supervision

Negligence is the applicable standard in assessing whether supervision was reasonable under the prevailing circumstances. See Huff, 50 S.E.C. at 528; Kevin Upton, 52 S.E.C. 145, 153 (1995); Thomas C. Bridge, 92 SEC Docket 3374, 3406 (Mar. 10, 2008), aff’d 96 SEC Docket 20805 (Sept. 29, 2009); Newbridge Secs. Corp., 96 SEC Docket 17672, 17738-39 & n.54 (June 9, 2009). Negligence is defined as:

[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others’ rights. The term connotes culpable carelessness.

BLACK’S LAW DICTIONARY 1056 (7th ed. 1999). “The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions.” Id. at 1273.

The necessity for supervision is a fact of life in the securities industry. “The supervisory obligations imposed by the federal securities laws require a vigorous response even to indications of wrongdoing.” Gutfreund, 51 S.E.C. at 108; see also Kolar, 55 S.E.C. at 1016. “In a large organization it is especially imperative that those in authority exercise particular vigilance when indications of irregularity reach their attention.” Gutfreund, 51 S.E.C. at 108 (citing Wedbush Secs., Inc., 48 S.E.C. 963, 967 (1988)).

In Gutfreund the Commission found that Feuerstein acted unreasonably because he did not direct an inquiry into the criminal conduct, he did not recommend appropriate procedures reasonably designed to prevent and detect future misconduct, he did not place any other limitations on Mozer, and he did not inform the Compliance Department of the misconduct. Gutfreund, 51 S.E.C. at 112. None of those elements are present here. Glantz’s conduct was not known to be criminal when he was at FBW. Urban had assurances that Glantz was being supervised. The Credit

Committee placed restrictions on Glantz's ability to trade, and Urban shared all his information with Compliance.

Urban acted reasonably in connection with the initial supervision of Glantz in 2003.

Based on the information he had, it was reasonable for Urban to believe that Akers and Vaughan had a reasonable supervisory structure in place for Glantz that had Retail Sales and Institutional Sales sharing responsibility. The Beachwood manager was a college graduate, experienced in the securities industry who recognized a branch manager's supervisory responsibilities. Both Centeno and Urban reminded Weaver that he was responsible for Glantz's supervision. Calvert knew that Glantz was splitting his time between the Beachwood and Baltimore offices, but he did not voice any concerns about his supervision.

In 2003, Urban and Compliance did not know that Weaver would not supervise Glantz or that Usry's boss, Shea, had not agreed that Institutional Sales would supervise Glantz's institutional sales. Urban did not know that Weaver, Akers, and Vaughan were not going to perform their supervisory responsibilities or that Usry, according to Glantz, had never intended to supervise him.

What Urban did know was that the firm's top management had decided on a method of supervision that his Chief Compliance Officer thought was unworkable. Without more than Centeno's suspicions and knowing Centeno's relationship with Akers was contentious and adversarial, it was reasonable for Urban to accept a supervisory structure designed by Akers and Vaughan, who were directly responsible for supervising Glantz.

Urban acted reasonably following the Del Buono Memo in May 2003.

The issue here is whether Urban satisfied the high standard established by Gutfreund:

Even where knowledge of supervisors is limited to "red flags" or "suggestions" of irregularity, they cannot discharge their supervisory obligations simply by relying on the unverified representations of employees. Instead, . . . "[t]here must be adequate follow-up and review when a firm's own procedures detect irregularities or unusual trading activity"

51 S.E.C. at 108 (citations omitted):

The Facts detail the several actions Urban took following the Del Buono Memo. Weaver claimed to have conducted an online review of activity in each of Glantz's accounts shown on an Activity Report and talked with Glantz. On May 30, 2003, Weaver told Vaughan that supervision of Glantz on the IPOF Fund account was okay, however the facts show that Weaver took no significant actions to supervise Glantz in 2003, while Glantz was assigned to Beachwood. Urban visited Beachwood and talked with Weaver and Glantz. He also talked to Usry about his duty to supervise Glantz's institutional sales under the scheme that Vaughan had ordered. There is nothing in the record that indicates Usry told Urban that he was not going to supervise Glantz's institutional sales. Urban received assurances from Glantz's top supervisors, Akers and Vaughan, more than once, that they would take measures to improve supervision of Glantz, but they did not do so.

Urban did not just simply rely on the unverified representations of employees. He relied on continuous representations by multiple individuals in high level managerial roles, some of whom he had known for years, and had no reason to distrust and he followed up with Compliance oversight of Glantz. The evidence is that none of Glantz's direct supervisors did what he was required to do and what he represented he was doing.

Urban understood in September 2003 that Retail Sales was transferring Glantz to Baltimore, where Spencer, who Urban knew and respected, would be his supervisor.

Given Urban's credibility, his reputation for integrity, his numerous good faith attempts to deal with Glantz's supervision, I find that Urban acted reasonably in these facts and circumstances.

Urban acted reasonably following Compliance's calls to Glantz's customers.

The evidence shows Urban to have been very busy with an assortment of issues, yet, within a few days of receipt of information from Silbert that Glantz's customers had scant information about trades in their accounts, he recommended Glantz's termination, and, within thirty days, he had Compliance file a Form RE-3 with the NYSE, citing Glantz for trading without written authorization. Silbert's memoranda are dated December 8 and 9, 2004, and Urban's memorandum is dated December 15, 2004. The Form RE-3 was filed on January 11, 2005.

I find Urban's actions to be reasonable.

Urban acted reasonably in connection with special supervision.

Based on the information he had, it was reasonable for Urban to believe that Akers's agreement to exercise special supervision over Glantz would prevent further behavior of the kind that caused Urban to recommend that Akers terminate Glantz. As General Counsel, it was reasonable for Urban to expect that a firm's Vice Chairman and head of Retail Sales would follow through on his commitment to supervise a broker he hired and for whom he was responsible. The evidence in the record indicates Urban has a reasonable basis for relying on Akers's representations.

I find Urban's actions to be reasonable.

Urban acted reasonably in connection with ATC Healthcare.

The Division believes that McNeilly's inquiry was a red flag and that Urban's reactions to it were unreasonable. I disagree. The statutory basis for a SAR is detailed and calls for an exercise of legal judgment.⁷⁸ As General Counsel, Urban dealt with a lot of matters. There is no persuasive

⁷⁸ The Currency and Financial Transactions Reporting Act of 1970, 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5330, requires that broker-dealers file a SAR to report a transaction, or a pattern of transactions, involving or aggregating at least \$5,000, that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or was conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirements of the statute; (3) has no business or apparent lawful purpose and the broker-dealer

evidence that he acted unreasonably by not promptly getting back to McNeilly, by not following McNeilly's recommendation as to further inquiry, and by deciding that filing a SAR was not necessary. Expert DeMuro agreed with Urban's judgment that the information did not require a SAR filing.

Going to the CEO was not a Reasonable Alternative for Urban.

If Urban could not rely on Akers's commitment to exercise special supervision, he had few, if any, options for further action. Urban knew that it would have been futile to go to Calvert, on paper Akers's superior, and seek to terminate Glantz despite Akers refusal to do so. The evidence is overwhelming that Calvert deferred to Akers on matters involving retail Sales. Calvert knew that there were supervisory concerns about Glantz, and he did absolutely nothing to support Compliance or Urban's efforts to assure that Glantz was supervised, despite being the CEO with ultimate responsibility for supervision.

A chief executive officer has ultimate affirmative responsibility upon learning of serious wrongdoing within the firm as to any segment of the securities market, to ensure that steps are taken to prevent further violations of the securities laws and to determine the scope of the wrongdoing.

Gutfreund, 51 S.E.C at 111.

Going to the Board or the Executive Committee was not a Reasonable Alternative for Urban.

Assuming that relying on Akers's commitment to exercise special supervision is considered unreasonable, the issue becomes whether Urban should have gone to the Board or Executive Committee with his recommendation to terminate Glantz. I believe that it was reasonable for Urban not to attempt to raise the issue with the Board because the unanimous evidence is that he would not have succeeded. It is undisputed that Calvert deferred to Akers on matters involving Retail Sales.

Without Calvert's support going to the Board would have been futile. Excluding Akers, four of the twelve remaining members worked for Akers (Gordon, Winslow, and the two brokers). Finally, Urban's belief that the Board did not consider this type of issue is confirmed by the evidence. I reject expert Paulukaitis's position that Urban was required to do what his best judgment told him was futile.

Exchange Act Sections 15(b)(4)(E)(i) and (ii).

In summary, Exchange Act Section 15(b)(4)(E)(i) provides that: (1) no person will be deemed to have failed reasonably to supervise any other person if there are supervisory procedures being applying which could reasonably be expected to detect and prevent the violations; and (2) the

knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves the use of the broker-dealer to facilitate criminal activity.

person discharging his or her duties and obligations under the supervisory procedures had no reasonable cause to believe they were not being complied with.

FBW had established supervisory procedures in place and Urban believed that they were being followed in the 2003 through 2005 period. My review of the evidence is that Urban performed his responsibilities in a cautious, objective, thorough, and reasonable manner. He believed people were carrying out their responsibilities and he repeatedly prodded them to do so to assure that Glantz was being adequately supervised. When he concluded in December 2004, that FBW's supervisory procedures were not being complied with and that Glantz's conduct was unacceptable, he moved to terminate Glantz.

I find that Urban did not fail to supervise Glantz given the provisions of Exchange Act Section 15(b)(4)(E)(i).

Public Interest

Exchange Act Section 15(b)(6)(A)(i), in conjunction with Section 15(b)(4)(E), authorizes the Commission, if it is in the public interest, to impose sanctions on a supervisor that has failed to supervise reasonably to prevent a violation of the securities laws. The Division believes that Urban meets this criteria and it is in the public interest for Urban to be required to disgorge \$13,707, plus prejudgment interest, which it calculates to be \$19,030 as of June 28, 2010, pay multiple third-tier civil penalties at \$100,000 for each supervisory failure, and be barred from association with any broker, dealer, or investment advisor in a supervisory capacity.⁷⁹ Div. Post-Hearing Br. 2, 67-71.

The public interest factors are the egregiousness of a person's actions, the isolated or recurring nature of the violations, the degree of scienter involved, the sincerity of a person's assurances against further violations, a person's recognition of wrongdoing, opportunities to commit future violations, and deterrence.⁸⁰ The Division does not contend that Urban acted with scienter. Urban does not believe that he did anything wrong. The evidence is that the public has no concern about future illegal conduct by Urban.

The Division's thorough presentation and its regulatory zeal are admirable, but, as noted, I disagree with its judgment and conclusions, and I disagree further with what it believes is in the public interest in this situation. Urban was the only person in FBW management who tried to deal with Glantz, a problem he did not create and I find his actions, in these facts and circumstances, reasonable. FBW reached an agreement with Urban that resulted in his retirement at a time and

⁷⁹ Urban makes the point that, because the parties have agreed that January 19, 2004, marks the beginning of the five-year statute of limitations, conduct on or prior to that date cannot be considered in determining whether to impose any limit on association or civil money penalty. Urban Post-Hearing Br. at 13 n.6.

⁸⁰ Steadman, 603 F.2d at 1140, aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1281 n.31 (1999); Sheldon, 51 S.E.C. at 86; McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005).

under conditions that caused Urban substantial financial loss, and the pendency of this proceeding has caused Urban loss of professional reputation, employment opportunities, expense, and pride. Only Vaughan, of all the persons in FBW management who were undeniably Glantz's supervisors, has been called to account for his actions.

I find that the Division has failed to prove the allegations in the OIP and that it is not in the public interest to impose the recommended sanctions on Urban.

Order

For all the reasons stated, I find that no remedial action is appropriate pursuant to Sections 15(b) and 21B of the Securities Exchange Act of 1934 and Sections 203(f) and 203(i) of the Investment Advisers Act of 1940, and I Order that the proceeding is dismissed.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Brenda P. Murray
Chief Administrative Law Judge