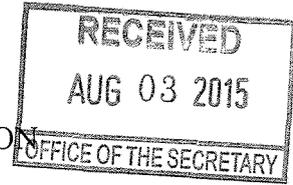


UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING

File No. 3-16344

In the Matter of)
 EDGAR LEE GIOVANNETTI,)
Respondent.)

RESPONDENT'S POST HEARING FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROPOSED FINDINGS OF FACT

- A. Mr. Giovannetti did not know in April, August or September of 2009 that facts regarding his efforts to redeem his investment in Argonaut or the resulting loan from Argonaut of \$50,000.00 were required to be disclosed on the form ADV.**
- 1. The loan in April, 2009, was an advance on redemption of Mr. Giovannetti's Argonaut investment.**
- a. Mr. Giovannetti viewed the loan of \$50,000.00 as an advance on his invested funds which he could not redeem from Argonaut.
 - b. Mr. Giovannetti by e-mail dated April 20, 2009 requested Argonaut to allow him to "draw down 50k out of the global fund." (Ex. 220)
 - c. A request to "draw down" \$50,000.00 is consistent with asking for a redemption.

- d. Vicki Lawson, chief compliance officer of Commerce Square Trading, understood the “draw down” language to mean a request to redeem. (Tr. 734)
- e. Ed Nummi, compliance officer at CSG Holdings, testified that the request for a “draw down” was a request to redeem the investment in the Argonaut fund and “was consistent with what Mr. Giovannetti had told me as well.” (Tr. 1055)
- f. Argonaut knew that Mr. Giovannetti was requesting a redemption of his investment. Argonaut’s e-mail reply to his request was under the subject matter heading “global equities investment/redemption.” (Ex. 221)
- g. Argonaut recognized his request for a redemption but refused it saying “While we can’t provide a mid-month redemption ... [w]e can loan you the \$50,000.00 ... and you agree to pay it back by July 1 either directly or via a redemption in the fund (which is quarterly). If this makes sense, I will have our cfo draft a quick note and we can wire tomorrow.” (Id.)
- h. Mr. Giovannetti agreed to the proposal for the loan that would be paid back either directly by July 1 or via a redemption. That same day he wrote: “That will be fine and I will pay the loan down without redeeming unless I have no other options.” (Id.)
- i. Argonaut’s CEO, David Gerstenhaber, wrote Mr. Giovannetti in an e-mail dated April 20, 2009: “Glad we can make it work.” Argonaut’s subject line of the e-mail was: “Re: global equities investment/redemption” (Ex. 222)
- j. The next day, Tuesday, April 21, 2009, the Argonaut cfo forwarded the promissory note via e-mail and acknowledged in the covering e-mail the agreement: “As discussed, you can choose to pay this back directly or via a partial redemption from your investment in global equities at the end of the quarter. If this is satisfactory, please sign and notarize and send us your wire instructions.” (Ex. 223)
- k. The “satisfactory” conditions for repayment of the promissory note as stated in writing in the e-mail transmitting it were accepted when Mr. Giovannetti signed and had his signature notarized. It would be paid back either “directly or via a partial redemption from his investment in global equities....” (Ex.223, 225)
- l. Mr. Giovannetti had made it clear to Argonaut that his preference was to pay the note directly without redeeming. But, if he had no other option, he would redeem as the source of payment. (Ex. 222)

- m. Argonaut's chief executive officer told Mr. Giovannetti: "Well, look, you know, you don't want to redeem, we're going to do well, I don't want you to redeem unless you just have to." (Tr. 146).
- n. Mr. Giovannetti consistently has asserted that at the time he viewed the transaction as an advance on his investment and that he did not want to redeem his investment unless he had no other choice but to use the invested funds to pay the note. (Tr. 145-47, 1132-34)
- o. On June 3, 2009, in keeping with the agreement he had entered into with Argonaut, Mr. Giovannetti authorized in writing the liquidation and redemption of his investment in Argonaut. (Ex. 255)
- p. It was Mr. Giovannetti's understanding all along, based on the agreements reached in April, 2009, that if he had no option but to exercise a quarterly redemption, the \$50,000.00 advance would be netted from the funds payable to him from the redemption. (Tr. 191, 1134)

2. Mr. Giovannetti, by initially seeking to liquidate his own investment, had no intent to borrow money, but intended to use his own money for his personal obligations.

- a. Mr. Giovannetti was not intending to borrow money in April, 2009, when he requested of Argonaut to draw down on his investment. He could have borrowed money from a lot of places. (Tr. 151).
- b. Instead he intended to use his own money to meet his obligations. He went to Argonaut because that was where he had liquidity in his personally invested funds. (Tr. 151)
- c. Even though a redemption was not possible at that moment because of timing issues, Argonaut said it would work it out for him. (Tr. 152)
- d. Mr. Giovannetti had known the CEO of Argonaut for 20 years and they were good friends. (Id.) "I viewed it as money I already had; I just couldn't get my hands on it right then. And he made it liquid for me at a time when I needed to have it liquid. I viewed it as really my money. He was just giving me an advance...." (Id.)
- e. Mr. Giovannetti viewed his need to "draw down" his investment in the Global fund as the result of a short term cash flow problem derived from the decision of the owners of CSG to withhold distributions after the March 19, New York Complaint. (Tr. 134) "I was paid a salary in the company and got no other means of income other than a distribution of earnings.... And we stopped making any distributions in the company due

to all of this stuff going on.... So we agreed to ... stop making distributions until we see where all of this led" (Tr. 136-38)

3. **Because he viewed it that he essentially was using his own money, Mr. Giovannetti believed in April of 2009, at the time, he did not have to disclose the redemption/loan transaction.**
- a. Mr. Giovannetti did not think he needed permission to take down the \$50,000.00 from Argonaut in the redemption/loan transaction. (Tr. 160) Accordingly, he did not think he needed to do anything more than he did and did not think he needed pre-approval before making "the arrangement with Argonaut." (Id.)
 - b. Mr. Ed Balsmann joined CSG from the private practice of law in 2007. He had all the prerequisites necessary to be the firm's Chief Compliance Officer holding both the Series 7 and Series 24 licenses.
 - c. Ed Balsmann, in his capacity as Chief Compliance Officer, was well aware of Mr. Giovannetti's financial situation and that he was liquidating his personal investments, including the Argonaut investment.
 - i. Mr. Giovannetti thought that Ed Balsmann, counsel and chief compliance officer, knew about his investment in Argonaut and knew about the redemption; that Mr. Balsmann knew about the things that Mr. Giovannetti was involved in. (Tr. 459)
 - ii. Mr. Balsmann's office was next door to Mr. Giovannetti's and the two often discussed Mr. Giovannetti's financial problems because of the decision to freeze distributions to owners. (Tr. 1135)
 - iii. Mr. Balsmann was involved in making the decision that CSG would freeze distributions to its owners. (Id.)
 - iv. Mr. Giovannetti did not sit down with Mr. Balsmann and formally ask permission to liquidate the Argonaut investment or to take an advance against redemption. Mr. Giovannetti believed Mr. Balsmann was aware of the redemption request. (Tr. 465, 463)
 - v. Mr. Balsmann testified that in the period of time around 2008/09 he was aware of Mr. Giovannetti's financial problems. (Tr. 599) His knowledge of those problems coincided with the New York case which was filed in March, 2009. (Id.; Ex. ELG 1)
 - vi. Mr. Balsmann acknowledged that he learned of Mr. Giovannetti's financial problems directly from Mr. Giovannetti, from Miles Fortas and other officers in the company. (Tr. 600-01)

- vii. Mr. Balsmann testified that he knew that Mr. Giovannetti was liquidating his personal assets to cover his obligations. (Tr. 601-02)
- viii. Mr. Balsmann and Mr. Giovannetti worked late many nights together. Mr. Giovannetti told him he would have to liquidate investments he had built up and had held for a while, “including Heritage, Argonaut and others.” (Tr. 1136)

4. CSG’s and Mr. Giovannetti’s financial problems resulted from a complaint filed by the SEC in the United States District Court for the Southern District of New York.

- a. On March 19, 2009, the SEC filed a complaint that identified a scandal in the New York State Common Retirement Fund by which an individual working for an investment advisory firm, Searle & Co., was alleged to have received unmerited payments from consultants seeking to do investment business with the Retirement Fund. The payments were alleged to have been an “undisclosed *quid pro quo* arrangement” required by the State’s Deputy Comptroller and Chief Investment Officer who also was sued. (Ex. ELG 1)
- b. CSG was not named as a party, but was identified as one of the consultants that had contacted the Deputy Comptroller to manage a portion of the New York Common Retirement Fund’s hedge fund portfolio. (Id.)
- c. Within a week of the filing of the Complaint, on March 26, 2009, CSG wrote the Staff Attorney of the Division of Enforcement for the New York Regional Office of the SEC describing specifically every step CSG had taken in its negotiations and citing to the full array of its disclosures of the financial details of its contracts, including disclosures the Complaint incorrectly alleged were non-existent. The letter ended with the plea: “Justice requires that the SEC take immediate action to correct the inaccurate allegations involving CSG’s disclosures before irreparable damage is suffered by CSG.” (Ex. ELG 2)
- d. On May 28, 2009, the SEC issued a Wells Notice to CSG that the Commission was considering the filing of a civil action in federal court against it for violations of various securities laws regarding the New York Common Retirement Fund.
- e. CSG retained the New York firm of Paul, Weiss, Rifkind, Wharton & Garrison, LLP, which filed CSG’s Wells Submission on June 30, 2009, rebutting the allegations of the Wells Notice. (Ex. ELG 8)

- f. CSG also engaged the Giuliani Law Firm in New York as additional counsel. (Tr. 1024-25)
- g. Mr. Fortas described the publicity arising out of the SEC claims as creating “[m]assive challenges” to CSG’s business. (Tr. 960) Within a 12 month period CSG lost nearly one third of its business “not to mention the opportunity cost of losing new business prospects or current prospects that had been in the pipeline because of allegations contained in that document related to us.” (Tr. 961) The financial impact on CSG was a significant loss of revenue, coupled with significant loss of time and money, including the costs of attorneys’ fees for defense. (Tr. 961-2)
- h. Ms. Lawson confirmed that the case caused significant publicity issues that impacted the firm in many ways, including the firm’s relationship with its clients and the firm’s financial capability. (Tr. 670; Ex. 260, 254)
- i. Distributions to owners of CSG because of the case were ultimately reduced to zero. (Tr. 962)
- j. Mr. Fortas identified the devastating financial impact of the New York action on CSG for several years. For example, a comparison of the financial statements for the three years 2008, 2009 and 2010 showed:
 - i. Distributions to all owners in 2008 (before the New York action) totaled \$5,328,222.00. (Ex. ELG 10; Tr. 943)
 - ii. Distributions to all owners in 2009 (after the New York action) totaled \$514,753.00. (Ex. ELG 11; Tr. 946)
 - iii. Distributions to all owners in 2010 (after the New York action) totaled \$40,000.00. (Ex. ELG 11; Tr. 948)
- k. In July, 2009, a settlement demand on the New York State matter was issued by the government that would require CSG to make a payment of \$5.8 million. The Company was determined that it had done nothing wrong and rejected the settlement demand. (Tr. 281) The Compliance Department at CSG confirmed that the allegations regarding proper disclosures were not true. (Tr. 1024)
- l. Because of the allegations in the Complaint, the owners of CSG stopped making distributions in 2009 in order to ensure sufficient funds for the costs of defense. The decision to cease distributions in 2009 caused Mr. Giovannetti’s financial position to be detrimentally impacted. (Tr. 1129, 1135-36)

5. While the Department chooses to infer from Mr. Giovannetti’s statements that his desire to keep his financial situation private proves an intent to

deceive customers by being secret about the redemption/note, the facts show that his desire for privacy was intended to prevent public disclosure of the dire financial condition of CSG and him personally.

- a. Not only was Mr. Giovannetti's dire financial position well known throughout the Company, CSG's financial deterioration after the filing of the New York action was likewise well known within the Company. (Tr. 599-601, 960, 670)
- b. Mr. Balsmann, Ms. Lawson and Mr. Fortas each had intimate knowledge of the financial disaster within the Company and the impact on Mr. Giovannetti. (Id.).
- c. CSG and Mr. Giovannetti were within their rights to protect from disclosure to third parties information about the financial crisis in the Company. The compliance department at CSG properly disclosed all financial information required by the ADV during the relevant time. The only financial disclosure required on the Forms ADV issued by CSG in 2009 and 2010 reported the following financial condition:
 - i. August, 2009 No Balance Sheet Required (Ex. 7, p. 6)
 - ii. December, 2009 No Balance Sheet Required (Ex. 8, p. 6)
 - iii. April, 2010 No Balance Sheet Required (Ex. 12, p.6)
 - iv. July, 2010 No Balance Sheet Required (Ex. 9, p. 6)
- d. The Form ADV changed in 2011 and the following was reported on the forms dated March 31, 2011 (Ex. 10), August 24, 2011 (Ex. 15), and March 28, 2012 (Ex. 11). At Item 18 of each of those ADV forms, CSG made the following statement regarding its financial condition:

“CSG lacks any financial impairment that will preclude the firm from meeting contractual commitments to clients. CSG has no financial commitment that impairs its ability to meet contractual and fiduciary commitments to clients, and has not been the subject of a bankruptcy proceeding.”
- e. The Division is not arguing in this case that either CSG or Mr. Giovannetti was required to disclose further information about its or his financial condition in 2009 or that Mr. Giovannetti was not permitted to request of Argonaut personnel that the financial information regarding himself and CSG should not be disclosed to the public.
- f. Mr. Giovannetti has explained his e-mail statement of April 21, 2009¹: “I don't want anyone to be aware of this but you and me” (Ex. 224) as

¹ The e-mail was intended for Mr. Jarrett Posner at Argonaut, but by stroke of the computer key was inadvertently addressed to Ms. Kristi Jernigan. Mr. Posner's e-mail address is JPosner@argonautcap.com (Ex. 223); Ms.

meaning that he did not want public dissemination about the financial hard times imposed on CSG.

- i. Mr. Giovannetti's e-mail of the previous day had disclosed to Argonaut one of the reasons he was in need of redeeming \$50,000.00 out of his invested funds was that "my firm is not able to pay me yet over 350k in earnings from last year." (Ex. 220)
- ii. Mr. Giovannetti did not want his communications made public because they had information about his and CSG's financial situation in it. (Tr. 1143)
- iii. He said: "Because I was sharing with him (Argonaut) problems we were having within our firm which was, you know, being brought out in the past in a very bad way, and I wanted him to keep it private that we weren't able to, you know --- that we were experiencing a great deal of difficulty in our firm, and I hadn't been able to get my distributions due to the fact that what we were dealing with in the firm and it made for legal expenses and I didn't want that out to the streets." (Tr. 238)
- g. Mr. Giovannetti flatly denies that the April 21, 2009 e-mail request for privacy was intended to keep redemption/loan information from the Wilson, Canale, or Starnes families, pension fund clients, individual clients, prospective clients or CSG partners. (Tr. 168-69)

6. Until March, 2009, Mr. Giovannetti was closely monitoring the performance of his personal investments, including the monthly statements from The Argonaut Global Equities Fund. After March, 2009, his attention was diverted to exclusive focus on the effort to save CSG from implosion following the filing of the New York case and he no longer turned his attention to the monthly statements.

- a. Mr. Giovannetti admitted that from December, 2008 through February, 2009, he was concerned about the flat or declining performance of his investment in the Argonaut Global Equities Fund (the "Global Fund").² (Ex. 115, 264, 207, 266)
 - i. Between January and March of 2009, Mr. Giovannetti expressed significant concern to Argonaut that the performance of his

Jernigan's e-mail address is [REDACTED] (Ex. 224). Mr. Giovannetti testified that he must have hit the j key on his computer and the wrong address popped up without his realizing it. Ms. Jernigan had nothing to do with the redemption transaction. (Tr. 163-64)

² Mr. Giovannetti originally had been invested in The Argonaut Flagship Fund (the "Flagship Fund"), but moved his investment into the Global Fund in August, 2008. (Tr. 53) No client of CSG was invested in the Global Fund. (Tr. 86)

investment in the Global Fund was much worse than in the Flagship Fund. “Partner³ ... I’m confused because it says the Global Equity Fund is down 20 percent. That isn’t right is it?” (Ex. 115; Tr. 62).

- ii. During this period, in the first quarter of 2009, Mr. Giovannetti resigned himself to the comparative negative performance of the Global Fund vis-à-vis the Flagship Fund. “I guess I was transferred out of [Flagship] on its low and into Global on its high. Sounds like my luck.” (Ex. 203; Tr. 76). “The funds I was in and believed expresses your true talents was up 15 percent last year, and my assets were down 25 percent I don’t blame you at all because I know how hard you work to manage all the assets entrusted to youIn short, I hope I can recover and benefit from the long-term performance I know you by.” (Ex. 206; Tr. 79-80)

- b. In early March, 2009, David Gerstenhaber, owner of Argonaut, personally explained to Mr. Giovannetti why timing of his change of investment from the Flagship Fund into the Global Fund in August of 2008 had resulted in his investment performing “far worse than that of either of the funds last year.” Mr. Gerstenhaber counseled Mr. Giovannetti “to be a little patient here.... I am firmly committed to generating performance in both of our vehicles and to seeing them grow. Hang in there and let me do the hard work!” (Ex. 210)

- c. After the shock of the March 19, 2009 filing of the complaint in the New York case, CSG underwent an operational sea-change and Mr. Giovannetti’s attention, focus and concerns were forced to shift almost exclusive to saving the Company.
 - i. Mr. Giovannetti described it: “Prior to the complaint, we had had a great 20 years. After the complaint, we were trying to retain the clients and the employees that we had grown and built over the last five years.” (Tr. 1109)

 - ii. He further described that the issuance of the Wells Notice “was a torpedo right in the engine room...” (Tr. 1117).

 - iii. Ms. Lawson identified Mr. Giovannetti, after March 19, as running the operation to shore up the client relations problems. (Tr. 673)

 - iv. Mr. Giovannetti was spearheading damage control regarding client retention efforts, after March 19, according to Mr. Fortas. (Tr. 962)

³ Mr. Giovannetti was addressing the e-mail to David Gerstenhaber the owner of Argonaut. He explained that calling people “partner” or “pard” is just a “Southern thing.... It doesn’t mean anything.” (Ex. 115; Tr. 59)

- d. After the March 19, 2009, filing of the complaint in the New York case, Mr. Giovannetti no longer was paying attention to statements received in his office from Argonaut. His attention was focused “on what was most important to me from my asset perspective, which was my ownership interest in the firm.” (Tr. 90) After March, the Argonaut statements were being put in a file in his office by his assistant and he was not looking at the statements; Mr. Giovannetti was focused on trying to do what he needed to do at the company. (Tr. 98-99)
 - e. The Division offered into evidence the Argonaut statements for Mr. Giovannetti’s investment in the Global Fund for the months of April 30, 2009 (Ex. 268); May 31, 2009 (Ex. 270); and June 30, 2009 (Ex. 305), which, because of shift of his attention due to the turmoil at CSG, he did not look at and which his assistant put in the file when they came to the office. (Tr. 98-99)
 - f. Clearly the record is devoid of further e-mails or correspondence, after March 19, 2009, between Mr. Giovannetti and Argonaut or anyone else discussing or raising issues about the Global Fund’s performance or, for that matter, anything else about the Global Fund, except for the events of April 20 and 21 surrounding Mr. Giovannetti’s request to redeem \$50,000.00 out of his investment. None of those April communications discuss the value of the Global Fund.
- 7. Argonaut’s Flagship Fund under the management of David Gerstenhaber during all of the relevant time period has been recognized as an exceptional investment opportunity that has never had a down year since it was started in 2000.**
- a. On August 7, 2008, Mr. Giovannetti authorized the transfer of his investment funds out of the Flagship Fund (the Argonaut Aggressive Global Partnership) into the Global Fund. (Ex. 106; Tr. 54)
 - b. The Flagship Fund was touted in *Barrons* as using a global macro strategy which in 2008 gained 12.3% while the Standard & Poor’s 500 fell 37% and the Credit Suisse/Tremont Global Macro Index slid 4.6%. The three year average return was 11.7% compared with with the S&P which was down more than 8% each year. Since its inception, the fund “soared 18.4% annually, versus a broad market decline of 3.8% and a 12.7% gain by the average global macro fund.” (Ex. ELG 18)
 - c. Gerstenhaber is a Yale graduate who received a master’s in economics from Cambridge University on a Fulbright scholarship. (Id.)

- d. *Barrons* glowing assessment of Mr. Gerstenhaber and the Flagship Fund describes his winning strategies in U.K. interest rates, emerging markets, and Japanese construction, among others. (Id.)
 - e. Four months before the *Barrons* assessment appeared in print, Mr. Giovannetti wrote , regarding a client to whom the firm had recommended Argonaut: “My view is that Argonaut has been a good long term investment....” (Ex. 108).
 - f. Mr. Giovannetti constantly talked to his colleagues and their clients about Argonaut because of his belief “in David Gerstenhaber and his ability to manage capital in a superior fashion.” (Ex. 318) Mr. Giovannetti has known Mr. Gerstenhaber for over 20 years. (Tr. 152)
 - g. The record in this case is devoid of any proof that any investor advised by Mr. Giovannetti did anything but hold a successful investment in Argonaut. No one has testified as to having lost money.
 - h. No one was ever harmed relating to Argonaut because, as Mr. Nummi testified, “[t]he “performance in Argonaut went up.” (Tr. 1082)
 - i. Mr. Stockstill representing Firefighters’ Retirement System (FRS), a Louisiana pension fund, acknowledged the importance of the economic performance of Argonaut as the reason FRS did not terminate its investment in the Flagship Fund at the time it terminated its relationship with CSG. (Tr. 879)
 - j. Mr. Rust, executive director of the Municipal Retirement System for the State of Louisiana (MERS), testified that as of the date of the trial MRS still holds its investment in Argonaut. Its performance has been positive every year though it had not matched the 8% average annual rate of return the Board had targeted at some time prior to 2003. Argonaut’s positive performance was maintained even in the bad years of 2008 and 2009 where “markets in some cases actually quit functioning.” Under MERS’ current investment advisor, Meketa Investment Group from Boston, Massachusetts, which reviews MERS entire portfolio on a monthly basis, MERS retains its investment in Argonaut. (Tr. 848-853)
8. **CSG’s business was to recommend money managers to clients and it implemented a research advisory board to review money managers’ performance before recommending them to its clients; Mr. Giovannetti did not receive an incentive payment or commission from client investments.**
- a. CSG did not have discretion over clients’ funds and did not make investments for clients. (Tr. 39)

- b. CSG recommended investment managers with which clients could form an investment relationship, some of which were hedge funds. (Id.)
- c. CSG would recommend investment managers to clients only after its research advisory board vetted potential managers for recommendation. The firm operated by teams usually consisting of a senior consultant, a junior consultant and an analyst involved in every relationship. After considering the results of the research, the firm would make a formal recommendation to a client. (Tr. 47-48)
- d. The vetting process did not allow Mr. Giovannetti to make recommendations to clients unilaterally. (Tr. 47)
- e. If as a result of the process employed by the Firm to determine whether an investment manager would be recommended and if Mr. Giovannetti was managing the client relationship with the Firm, he would deliver the recommendation to the client. (Tr. 50)
- f. Mr. Giovannetti received no incentive compensation. (Tr. 138) He received no commission on investments made by clients. (Tr. 1082) His only source of income was from salary and distributions by the Company. (Tr. 138) Mr. Giovannetti was not part of a bonus pool and did not receive a percentage of revenues. (Tr. 957-58)

9. The Memphis meetings arranged by Mr. Giovannetti in May, 2009 for Mr. Gerstenhaber were not a quid pro quo for the advancement of funds.

- a. Contrary to the unsupported implications by the Division that May meetings arranged by Mr. Giovannetti between Mr. Gerstenhaber and clients who were investors in Argonaut were somehow a *quid pro quo* for the advance on Mr. Giovannetti's invested funds, the timing of the e-mail communications between Argonaut and Mr. Giovannetti shows otherwise.
 - i. For example, on April 20, 2009, Mr. Gerstenhaber conveyed the clear understanding that the meetings were already set up when he commented in an e-mail to Mr. Giovannetti: "See you in a few weeks." (Ex. 222)
 - ii. Mr. Gerstenhaber had been invited to speak at the client conference in May. (Tr. 442)
 - iii. On April 24, Ms. Scalisi at Argonaut confirmed with Mr. Giovannetti about travel plans being made but expressed that she could not remember from prior discussions whether Mr. Gerstenhaber's wife was to attend dinner. She recalled a dinner had been specifically set, but could not remember from the

previous discussions about which night it was to be. (Ex. 233; Tr. 348)

- iv. On April 25, Mr Giovannetti described the previously planned events as a cocktail party and dinner Wednesday night and a BBQ on the river on Thursday night. (Id.)
 - v. The foregoing, coupled with the expanded client relationship role forced on Mr. Giovannetti, after the March 19 New York complaint, to shore up client relations, demonstrate that his planning of the client conference, dinner and BBQ in Memphis was part of the business salvage plan, was already well in the works and had no connection with his request to redeem his own investment from the Global Fund.
- b. Contrary to the unsupported implication by the Division that the May meetings with Mr. Gerstenhaber and other CSG clients were somehow a *quid pro quo*, the work Mr. Giovannetti had undertaken to set up meetings with existing CSG clients is more accurately explained as a perfectly legitimate part of his effort to shore up client relations in the face of turbulent negative publicity arising out of the New York suit.
- i. During the client conference in May, for example, Mr. Giovannetti arranged a meeting for Mr. Gerstenhaber and the Wilson family, a long-time client of CSG. (Tr. 352)
 - 1. The Wilson family [REDACTED]
[REDACTED] (Tr. 353)
 - 2. The Wilson family had hired CSG in the 1990's and knew Argonaut's Mr. Gerstenhaber. (Tr. 1120)
 - 3. Tony Graves was an employee of CSG until 2008 when he went in house with the Wilson's family office. When he was employed at CSG, Mr. Graves was heavily involved in following all of the Wilson investments, including Argonaut. He knew the Argonaut relationship for a long time and since he continued with the Wilson family, he remained involved in working and analyzing the Argonaut transactions for them. (Tr. 1120-21)
 - 4. [REDACTED] Wilson, the oldest son, asked Mr. Giovannetti to tell Mr. Gerstenhaber to come out during the May, 2009, client conference and meet with the family. (Tr. 353)

5. Mr. Giovannetti assumed, but did not know if, the meeting took place because he did not go to it. (Tr. 353)
- ii. Mr. Giovannetti only assumes that Mr. Gerstenhaber met with the Canale family in May, because even though he set up the meeting he did not go to it.
 1. Like the Wilson family, the Canale family [REDACTED] [REDACTED] (Tr. 354)
 2. The Canale family had known the Argonaut investments and people well for years going back into the 1990's. (Tr. 1122)
 - iii. [REDACTED] Starnes, [REDACTED] [REDACTED]
 1. Mr. Starnes had independent working knowledge of Mr. Gerstenhaber and the Argonaut Fund. (Tr. 1125)
 2. Tony Graves, before he left employment with CSG in 2008, managed with Mr. Giovannetti the Starnes family relationship. (Tr. 1125)
- c. The questions of the Division at the trial implying a connection between the April request for a draw down of his investment in Argonaut and the tasks imposed on Mr. Giovannetti to shore up client relations for CSG are based on speculation and conjecture. Mr. Giovannetti, time and again, denied that there was any such connection.
 - i. After the March 19, 2009, filing of the New York Complaint, Mr. Giovannetti was charged by his firm to stem negative publicity and shore up client relations. (Tr. 1109, 673, 962)
 - ii. "We were doing a lot of things to try to protect and preserve our reputation and make sure our clients got the full story." (Tr. 112) CSG hired a crisis management team out of New York. (Tr. 116). Among other things, he caused the issuance of press releases, conducted a webinar and met with clients. (Tr. 115-16)
 - iii. The Division's effort to incorrectly infer a connection between the redemption issue and deliberate, intentional non-disclosure of the April transaction between Argonaut and Mr. Giovannetti is

exemplified by a series of questions relating to a press release dated May 22, 2009. (Tr. 115-22)

1. The press release (Ex. 269) was prepared by the crisis management team hired by CSG and was in response to a negative article that was first published by *Forbes* on May 21, 2009 (Ex. 260).
2. Among other things, the release directed parties seeking additional information about CSG to its Form ADV Part 2 on the CSG website (Tr. 118)
3. Mr. Giovannetti acknowledged that the Form ADV did not contain a disclosure of the redemption/loan transaction. (Tr. 119)
4. Mr. Giovannetti denied the questions of the Division at trial that at the time (April, May and June of 2009) he “knew about the conflict of interest created by your debt to Argonaut, right?” (Tr. 119) and that it should have been disclosed on the Form ADV. Mr. Giovannetti explained exactly how he viewed the transaction in May, 2009:

“I did not view – I’m not saying I was right or wrong. I’m just saying I didn’t view the promissory note, at the time, that I had with Argonaut as a loan from a money manager. I viewed it as an advance from a further – future redemption.

I viewed it – right or wrong, I had more money with Argonaut than the promissory note, so it was kind of like collateral against the promissory note. ...

I had requested a partial redemption from my investment. I had requested a \$50,000 redemption, basically, in April, and for various reasons they couldn’t do it that way. So they suggested, We’ll give you a promissory note to help you with your issues, and then you can pay the promissory note back in the future, or you can make a redemption to cover the promissory note.

And that’s how we – that was the arrangement that we made. That was the deal that we agreed to. So at that point in time, I viewed the promissory note as an advance against a distribution or I could pay the promissory note off with other funds.

But I viewed it that I had more money with them than they had advanced me, and that’s how I viewed it.” (Tr. 120-22)

- d. Mr. Giovannetti’s efforts to qualify Kristi Jernigan as a representative of Argonaut with existing CSG clients was part of his client relations efforts

and there is no proof that doing so was a *quid pro quo* as a result of the April advance on his Global Fund investment.

- i. Mr. Giovannetti recommended Kristi Jernigan to Argonaut as a potential employee in December, 2008. (Ex. 115)
- ii. Argonaut was a very successful money manager for CSG clients. (Ex. Ex. ELG 18)
- iii. Mr. Giovannetti's role after the publicity crisis following the New York State action was to run the business and strengthen relationships. (Tr. 673, 962)
- iv. As part of that process, Mr. Giovannetti developed a client conference to take place in May to bring together and share interest among CSG clients and money managers.⁴
 - a. During the conference, Mr. Giovannetti interfaced with both clients and money managers in his effort to display their mutual strengths and benefits. (*See, e.g.*, Ex. 246, 248).
 - b. Mr. Giovannetti's purpose was to facilitate meetings between them, which Mr. Giovannetti was not going to attend, and to pass "along what the client's interest is to the guy that's going to be meeting with them so they can have a productive meeting." (Tr. 378)
 - c. Mr. Giovannetti established that the information about clients he passed to money managers was in the manner requested by the client. "If it was appropriate and the client wanted me to do so, I would." (Tr. 383)
 - d. Mr. Giovannetti denied that he would pass information without the client's specific authorization. (*Id.*) He denied that he was talking behind their backs. He testified that he was "emailing them or calling them or whatever I was doing to try to set up meetings. (Tr. 372)
 - e. In some cases the individual was a close friend of Mr. Gerstenhaber, (*Id.*) or had known him and worked with him for many years as was the cases with the Wilsons and the Canales. (Tr. 1120, 1122)

⁴ During a lengthy colloquy, Counsel for Mr. Giovannetti objected that no charge had been raised that Mr. Giovannetti had acted improperly in any way concerning the May meetings and his facilitating the flow of information between clients and money managers. (Tr. 379-81)

- f. Mr. Giovannetti could not recall each conversation he had had over six years ago during or after the meeting. (Tr. 386-88)
 - g. When asked regarding one client (the Wilsons, who for many years had been invested with Argonaut and were well acquainted with Mr. Gerstenhaber) that was “very anxious to meet with” Argonaut, Mr. Giovannetti commented there was “lots of money there.” Mr. Giovannetti did not remember if he told the Wilson family he used that phrase, but he pointed out the obvious, that in Memphis, everyone knows of the wealth of the Wilson family. The family patriarch, [REDACTED] Wilson, [REDACTED] [REDACTED] (Tr. 353, 390)
 - h. Mr. Giovannetti volunteered that he could help with the meeting between Ms. Jernigan and Shelby County, Tennessee in which Memphis is located. He explained that his offer to help related to nothing more than making introductions to the right people. (Tr. 392)
 - i. Amazingly, the Division continually challenged whether Mr. Giovannetti had authority from the Canale family to impart information about them to Argonaut. (E.g., Tr 354, 357-61, 366-68, 370-72) The Canale family at the time was the largest percentage owner of CSG, holding a one-third interest, and Mr. Robinson was the Canale CEO, speaking for himself and the Canale family. (Tr. 26, 31)
 - j. There is no proof in the record that Mr. Giovannetti in facilitating meetings between clients and prospective clients with Argonaut improperly conveyed any information without authority. As noted above, Mr. Giovannetti testified that he was authorized to engage in these discussions.
- v. Ms. Jernigan was an active participant at the May client conference and Mr. Giovannetti introduced her to people because he had committed to “help Kristi meet people and get to know people in the industry.” (Tr. 361)
- a. Mr. Giovannetti wanted Mr. Gerstenhaber to know he was helping Ms. Jernigan, because Mr. Giovannetti had told him he would. (Tr. 364)

- b. Mr. Giovannetti arranged the meetings between Mr. Gerstenhaber and the Wilsons and Canales, who were already long time clients of Argonaut, and wanted her to make sure he was aware of that. (Tr. 368)
 - c. Mr. Giovannetti wanted Ms. Jernigan to get the credit for the other meetings. (Tr. 368-69)
 - vi. Without regard to the fact that there is no charge that Mr. Giovannetti conducted himself improperly in arranging the May conference, or in imparting information between money managers or clients, there is no proof from any client at the meeting that Mr. Giovannetti acted improperly in anyway. It is noteworthy that the Division issued subpoenas to many of the people that were involved in the meetings: Spence Wilson, Mike Robinson, John Canale, Chris Canale, Art Seessel, Kristi Jernigan, among others, and released them without calling them to the stand.
- 10. In July, 2009, Mr. Giovannetti thought that the agreement described in the April e-mails to deduct the \$50,000.00 advance against his investment had been implemented at the time of the redemption.**
- a. It is true that the promissory note executed by Mr. Giovannetti to Argonaut did not describe that repayment could be by a redemption of his investment, but the e-mail from Argonaut transmitting the note did: “you can choose to pay this back directly or via a partial redemption from your investment in global equities...” (Ex. 223)
 - b. In June, Mr. Giovannetti recalls telling Deborah (Debbie) West, his administrative assistant “it doesn’t look like we’re going to get a distribution ... of my earnings, so we better put a redemption notice in for Argonaut.” (Tr. 190).
 - c. Debbie West handled many of Mr. Giovannetti’s affairs with his full authority. (Tr. 188-89)
 - d. Having told Argonaut that he would pay the loan down “without redeeming unless I have no other options” (Ex. 222), Mr. Giovannetti, because he had not received the hoped for distribution from the firm, exercised the redemption option on June 3, 2009. (Ex. 255, Tr. 190)
 - e. In April, much of the redemption/loan transaction correspondence was handled between Debbie West for Mr. Giovannetti and Mr. Brian Kessler for Argonaut. (Ex. 311)
 - f. On July 27, 2009, Mr. Kessler sent an e-mail to Debbie West attaching an invoice for repayment of the note. (Id.)

- g. Ms. West forwarded the Kessler e-mail of July 27, 2009, to Mr. Giovannetti who, on July 29, 2009 sent her a return e-mail stating: "Let me know what I need to do. Did we get the redemption from them? where is it?" (Id.)
- h. Ms. West responded that same day that he had received "\$76,284. Your balance is \$84,417." (Id.)
- i. When Mr. Giovannetti received the e-mails, he was travelling and his attention was focused totally on what was going on in the firm. (Tr. 189, 194-95) His expectation was that Ms. West would handle the transaction with Mr. Kessler under the agreement that he had with David Gerstenhaber (Tr. 194) and at the time, he believed that was what happened. (Tr. 195)
- j. Mr. Giovannetti testified that he thought the \$84,417 balance described by Ms. West in the e-mail related to Argonaut in some way. When he read the e-mail, he did not correlate the balance to being the amount in his bank account. (Tr. 185, 86)
- k. At the trial, after having been led through statements going back nearly 9 months, most well before March 19, 2009, Mr. Giovannetti acknowledged that doing the math in the court room "\$84,761 less \$50,000 doesn't leave you with \$76,284." (Tr. 193)
- l. The only e-mail sent directly to Mr. Giovannetti from Argonaut during the July 27-29 time period was from Jarrett Posner and stated that "our cfo will be sending you the note for repayment after your recent redemption...." (Ex. 307A) Mr. Giovannetti read the e-mail to mean that Argonaut was "sending [him] a copy of the note, after your redemption...." (Tr. 198-99) He recalls his thought about the e-mail when he received it was that Argonaut was sending him the cancelled note indicating it had been repaid out of the distribution. Being sent the note was consistent with it having been paid. (Tr. 199) Admitting that he probably did not spend a lot of time processing the various e-mails during that time frame, Mr. Giovannetti stated that this particular e-mail meant to him that Argonaut was going to process the redemption, retire the note and send him a copy of the note and the redemption. His belief was that the transaction "was being done the way David [Gerstenhaber] and I had discussed." (Tr. 1138-41)
- m. Mr. Kessler sent a follow up e-mail to Ms. West on July 30 and she responded confirming that Mr. Giovannetti had been out travelling the whole time covered by the e-mails, had been in a series of meetings, and

that she had not been able to get the matter in front of him. She said she would get back to Mr. Kessler asap. (Ex. 326)

- n. Mr. Giovannetti remembers Ms. West approaching him at the end of July that Mr. Kessler had written about the note. He told her it had been paid “because that’s the way we set it up in the first place.” (Tr. 1151)

11. Ed Balsmann’s memorandum to Mr. Giovannetti on August 5, 2009 explained that the promissory note had been reviewed by the compliance department as part of its routine surveillance, made specific observations, gave plain instructions and inquired about the current status of the promissory note.

- a. Ed Balsmann was head of the CSG compliance department when the August 5, 2009 memorandum was written. (Ex. 316) He was general counsel and, as chief compliance officer, managed the Compliance Department. “He managed the compliance responsibilities in the firm, reporting responsibilities in the firm, and the legal responsibilities.” (Tr. 205)
- b. The memorandum attached a copy of the promissory note. (Ex. 316)
 - i. Because the attached copy of the promissory note is not in e-mail form and because it was reviewed by the e-mail system, it had to have been attached to an e-mail.
 - ii. There are three copies of the promissory note in the record. One is executed (Ex. 225). The second is the one attached to Mr. Balsmann’s memorandum which is not executed. (Ex. 316) The third is attached to Jarrett Posner’s e-mail transmission to Mr. Giovannetti of April 21, 2009 and is not executed. (Ex. 223)
- c. Because the unexecuted promissory note was found as part of the routine e-mail review, the compliance department was fully aware of the contents of the e-mail from Argonaut to Mr. Giovannetti of the e-mail of April 21, 2009, transmitting the unexecuted promissory note. The e-mail from Argonaut openly confirms the payment option to be from either a direct payment or a partial redemption. It also bears the key words: promissory note, redemption, loan, etc. (Id.)
- d. Mr. Balsmann’s memorandum demonstrates the compliance department’s awareness that the promissory note was issued to Argonaut Management LP, a manager of CSG client assets. Also, it notes that the compliance department’s investigation included a review of CSG’s Q1 2009 client assets. (Id.) Accordingly, the compliance department was aware of the identity of the clients who were invested with Argonaut and the amount

invested by each. From Q1 2009 client assets review, Mr. Balsmann was able to determine that of the seven CSG clients on the list “some [are] relationships that you work on.” (Ex. 316)

- i. Ms. Lawson confirmed that not all of the listed names were relationships Mr. Giovannetti worked with. (Tr. 716) She confirmed that the clients listed as 1, 2, 3, 6, and 7 were those he worked on. (Tr. 719) Mr. Giovannetti also identified the names on the list that he worked on as the Canale Family (1, 2, and 3), Starnes (6) and Wilson (7) (Tr. 1143-44)
 - ii. According to Mr. Balsmann and Ms. Lawson, Mr. Giovannetti worked very closely with the Canale group (1, 2, and 3), with Michael Starnes (6) and with Spence Wilson (7). (Tr. 575, 716)
 - iii. Mr. Balsmann identified Joe Meals as the client relationship representative for CGS with No. 4 on the list, Firefighters’ Retirement System of Louisiana (FRS), and with No. 5 on the list, MERS, both of which were Louisiana retirement system clients. (Tr. 575). Mr. Stockstill, Executive Director of FRS confirmed that Mr. Meals was FRS’ relationship representative for CSG (Tr. 872). Mr. Rust, Executive Director of MERS confirmed that Mr. Meals was MERS relationship representative for CSG. (Tr. 824) Mr. Meals was the CGS representative who worked with the retirement systems clients in Louisiana. (Id.)
- e. Mr. Balsmann wrote Mr. Giovannetti: “CSG’s Code of Ethics does not specifically restrict borrowing money from investment managers...” (Ex. 316) Mr. Giovannetti read the statement to mean he had not violated the CSG Code of Ethics. (Tr. 1145)
- f. Mr. Balsmann clearly identified the borrowing of money from an investment manager as a potential, not an actual, conflict of interest: “[T]he borrowing of money by CSG employees from investment managers that manage CSG client assets creates a potential conflict of interest in that such CSG employee may be more inclined to recommend the utilization of such investment manager due to the personal indebtedness to such investment manager.” (Ex. 316)
- i. Mr. Giovannetti recommended Argonaut as an investment manager based on its excellent record of performance. (Ex. ELG 18, Tr. 1125)
 - ii. His clients, the Canale Group, Mr. Starnes and Mr. Wilson all knew Mr. Gerstenhaber and had met with him at various times. They were sophisticated investors. (Tr. 1120-25)

iii. Mr. Giovannetti did not know from Mr. Balsmann's memo "that it was a conflict that I borrowed money from Argonaut. What I knew is what was written here and what Ed was telling me, is that it could potentially be a conflict of interest, it could potentially be something we need to disclose. And he went on to tell me what he suggested I do." (Tr. 203)

g. Mr. Balsmann's memorandum asked Mr. Giovannetti to confirm if the debt was extinguished or still in place. "If the indebtedness is still in place, a brief disclosure to the clients that you work with that invest with Argonaut will be in order." (Ex. 316)

i. Mr. Balsmann did not tell Mr. Giovannetti that the fact he had received the loan from Argonaut should be disclosed. The disclosure to the three named persons should be made only if the loan were still in existence. (Id.)

ii. Mr. Giovannetti was a strong supporter of CSG's work to strengthen the legal and compliance functions and relied on those departments to make compliance determinations. (Tr. 204)

iii. It was important to Mr. Giovannetti that he had not violated the Code of Ethics. He understood that disclosure might be in order: "if this note was still in existence, which I did not think it was at the time, is that I should inform some of these clients on this list that I worked with, you know, in writing and put that – whatever I would write to them in the file. That's what I read this to be saying to me." (Tr. 204)

12. Mr. Giovannetti responded on August 8, 2009, to Mr. Balsmann's memorandum of three days earlier and explained precisely that he was a personal investor in Argonaut, that Argonaut had been unable to honor his redemption request, that it made a loan to him until the window to redeem was open, that he redeemed his investment and paid the loan.

a. Mr. Giovannetti's response e-mail (Ex. 320) covered the issues that had been presented to him by Mr. Balsmann's earlier memorandum (Ex. 316).

b. Mr. Giovannetti's explanation of what happened in April was consistent with the e-mails between him and Argonaut of April 21 and 22. "The notice was beyond the standard period as stated in the PPM so rather than make an exception for me they decided the best way to assist me with my personal needs was to make a loan from their management company until the window to redeem was open." (Id.; *compare* Ex. 220, 221, 222, 223)

- c. At trial, Mr. Giovannetti explained his understanding that, in keeping with the e-mails between him and Argonaut in April, the redemption had been used to pay back the note. (Tr. 206-11)
- d. He further explained how his previous concern about the performance of his Argonaut investment account expressed in November and December, 2008, and January and February, 2009 had become a back burner issue for him and not in his thought process. "March 16 of that particular year, which is when the SEC filed the complaint and CSG was named, and it was a game-changer for me. And I was totally involved and totally engaged in managing that matter. That's where my mind set was.... All I can tell you is I thought it was handled the way we had discussed. I didn't think through how it was handled, whether that was a net redemption or whether that was – hit my checking account and Debbie was going to wire-transfer." (Tr. 207-08)
- e. Mr. Giovannetti recognized that if the note had not been paid, his disclosure obligation as stated in Mr. Balsmann's memorandum was to "write three of these clients here and advise them of that and put a copy of what we effectively wrote in the file. That's what I knew." (Tr. 210-11)
- f. Mr. Giovannetti's understanding of Mr. Balsmann's instructions is exactly consistent with the language of the Memorandum that, "if the indebtedness is still in place," Mr. Giovannetti should write three letters, one each to the Canales, Mr. Starnes and Mr. Wilson and put them in the file. (Ex. 316)
- g. Nothing in Mr. Balsmann's Memorandum told Mr. Giovannetti that the disclosure was of such materiality that it was required to be made in the firm's ADV. (Id.)

13. Mr. Giovannetti became aware for the first time in September, 2009, that the note was not paid and he searched for an avenue to make the payment.

- a. On September 1, 2009, Mr. Kessler wrote Ms. West that the note had not been paid. (Ex. 326)
- b. Ms. West forwarded the e-mail to Mr. Giovannetti that same day. He recalls that he phoned Argonaut and spoke with Mr. Jarrett Posner to try to figure out why it did not go down the way "we had agreed." Mr. Posner explained to him the facts about what had happened and Mr. Giovannetti told him he would have to get back to him after he could "figure out what to do with this." (Tr. 1152)

- c. Ms. West responded to Mr. Kessler that same day that Mr. Giovannetti is aware he had not made the payment and was working on arrangements to clear the debt. (Ex. 326)
- d. Following his conversation with Mr. Posner at Argonaut, Mr. Giovannetti reached out to Mr. Robinson who was the CEO of D. Canale & Co. to seek financial assistance. That inquiry was ultimately unsuccessful. (Tr. 1153-54)
- e. Mr. Giovannetti sent an e-mail to David Gerstenhaber through the CSG e-mail system on October 2, 2009:

David.

I need your help. Your management company loaned me \$50k until I was able to redeem my Argonaut investment in Aug. I have not been able to pay it back yet due to the major legal expenses the firm has incurred protecting ourselves in the NYS matter. I feel terrible about it but we have not been in a position to distribute over \$1m in profits from last year. I may not have the liquidity to pay this off until year end.... I have not contacted your CFO yet because I was hoping to get a distribution in Oct. but that is not going to happen. (Ex. 329)

- f. The e-mail was marked CONFIDENTIAL, but that label was not intended to keep information from the compliance department. As a precaution because it contained sensitive financial information that CSG had not made distributions of over a million dollars to its owners. It had nothing to do with an attempt to hide the text from the compliance department at CSG. When he wrote the e-mail, he knew that all e-mails were reviewed by compliance. (Tr. 1155)

14. Mr. Giovannetti's knowledge that the CSG Compliance Department conducted routine e-mail surveillance of his e-mails and US Postal service correspondence establishes that he had no intent to hide the Argonaut transaction.

- a. CSG employed an e-mail surveillance system implemented by the compliance department that was well known to all employees, including Mr. Giovannetti.
 - i. Vicki Lawson was a member of the compliance department at CSG. (Tr. 623)
 - ii. Ms. Lawson confirmed that she was part of the effort at CSG to upgrade the compliance department to make sure it was doing what it should do. Mr. Giovannetti was supportive of the effort. (Tr. 684)

- iii. She described one of the compliance procedures in place when she began employment at CSG as a routine review of e-mail traffic. (Tr. 685)
 - iv. She recalled that all e-mail accounts were in one service from a surveillance viewpoint. (Tr. 686-87)
 - v. According to Ms. Lawson, the e-mail surveillance system was built on lexicons, meaning that it would pick up certain key words, such as: "guaranteed loan, fraud, churning." (Tr. 689) The system was set up to pick up the word, "loan." (Tr. 690, 707).
 - vi. Ms. Lawson established that CSG had in place an education process to teach its employees about their duties under compliance and about how the compliance department monitored the employees' work. (Tr. 691)
 - vii. Ms. Lawson, Mr. Fortas and Mr. Balsmann were engaged in the effort to conduct CSG "enterprisewide training". (Tr. 693)
 - viii. The training included teaching employees that "emails were reviewed and surveilled." (Tr. 694)
 - ix. Mr. Balsmann testified that since at least February, 2007, when he began working at CSG, on at least a monthly basis, the compliance department reviewed e-mails of all employees "as part of the compliance and supervision program of the firm." The e-mail review system selected e-mails for review by use of different keywords. (Tr. 489, 570-71)
 - x. Mr. Nummi confirmed that a number of individuals, including Ms. Lawson, Ms. Montgomery and Mr. Fortas had access to the e-mail review system and that the system operated through the firm's e-mail domain through CSG Holdings. The system monitored all communications and was well known to all of the employees throughout the company. (Tr. 1043-44)
- b. CSG also had a monitoring system to conduct surveillance over United States Postal Service mail by which all mail that came into the firm was handled from a compliance standpoint. All mail that was reviewed as part of the compliance process was handled by employees that were trained to handle incoming and outgoing mail. All mail came into one area in the holding company. (Tr. 695-96)

- c. Mr. Giovannetti knew that the compliance department engaged in a routine practice of reviewing electronic mail communications within CSG and that all of his emails were being reviewed. He did not try to hide information from anyone during the time that he was sending and receiving e-mails relating to Argonaut. (Tr. 1141-42) He did not try to blind his e-mails from the CSG e-mail system and the review that was done of them by compliance. (Tr. 1141-43)
- d. Ms. Lawson testified that Mr. Giovannetti's e-mail address was at CSG Holdings, LLC and she was not aware that he had any private e-mail addresses during 2009 and 2010. (Tr. 688) All of the e-mails introduced in the record regarding communications to or from Mr. Giovannetti are addressed as lee.giovannetti@csgholdingsllc.com.
 - i. There are numerous e-mails in the record between Mr. Giovannetti and Argonaut officials written over many months relating to the terms draw-down, redemption, loan, promissory note, note, payment on loan, inability to pay the loan, etc. (*See, e.g., Ex. 220, 221, 222, 223, 224, 225, 326, 329, 339*)

15. At the time Mr. Giovannetti learned three weeks later that the note had not been paid, he was subsumed in survival problems at CSG. His immediate thought was to try to pay the loan off and he did not think to write the three letters.

- a. The first thing that Mr. Giovannetti focused on when he learned on September 1, 2009, that the loan had not been paid off was that he needed to call Mr. Gerstenhaber or Mr. Posner at Argonaut to make some kind of arrangement because he did not have the ability to pay it off. (Tr. 226)
- b. Mr. Giovannetti admitted more than once that, when he learned the note was not paid, he should have done what Mr. Balsmann had directed him to do in the Memorandum and that he was wrong not to have done. He wished he had written the clients as Mr. Balsmann had told him to do. (Tr. 235) He testified:

“I should have written a letter to those clients immediately informing them of the situation; I should have put a copy of that letter in the file; and I should have made sure Ed saw it and then allow him and compliance and the people to do what needed to be done.” (Tr. 1189).
- c. He explained the issue arose “at a very, very bad time” when his attention was focused on managing the company. (Tr. 227-28) His explanation about why he did not think to do what Mr. Balsmann told him was simple: it did not occur to him to write the letters because all else had taken a back

seat to “whether or not the firm was going to survive.” That issue “consumed my entire thought process.” (Tr. 236)

- d. Having explained all the circumstances about why he did not think to follow up on Mr. Balsmann’s direction in the Memorandum, he made the clear statement that he was not making excuses and acknowledged that it was his error not to have done so. (Tr. 1188, 1189)

B. As a result of his testimony before the SEC in August, 2011, acknowledging that he had not been able to pay the note, CSG disclosed the existence of the loan in its August 24, 2011 ADV.

1. The disclosure of the loan from Argonaut was disclosed in the CSG August 24, 2011, ADV and was drafted by Mr. Fortas and Mr. Nummi.

- a. The August 24, 2011, ADV disclosure stated:

“Loan from Argonaut Management, L.P. to Lee Giovannetti, CEO of CSG Holdings, LLC. In 2009, Mr. Giovannetti borrowed \$50,000 at 3.10% interest as an advance of a redemption related to his investment in Argonaut’s long/short hedge fund. Repayment has not been made and is pending. This presents a potential conflict in that CSG may recommend Argonaut over other money managers as a result of the loan.” (Ex. 15)

- b. The ADV disclosure occurred as a result of a question to Mr. Giovannetti by Mr. John Sherrick of the SEC. When asked if the Argonaut loan had been repaid, Mr. Giovannetti responded: “No, it has not.” (Tr. 1039)
- c. Mr. Nummi, acting general counsel of CSG and a member of the CSG compliance group, who attended the questioning of Mr. Giovannetti, testified that immediately afterwards he reviewed the file at CSG regarding the Argonaut issue and the documents contained in it, including the promissory note. (Tr. 1044-45) He also immediately reached out to Argonaut and spoke with Mr. Kessler in order “to identify and verify essentially that the note was still outstanding.” (Tr. 1048)
- d. Mr. Nummi reviewed the terms of the promissory note. He knew all the essential terms of the note, including the maturity date and the pre and post maturity interest rates. He knew the note was in default. (Tr.1045-47)
- e. Ms. Lawson also saw the promissory note and was aware of the maturity date and the pre- and post-maturity interest rates. (Tr. 705-06)

- f. After reviewing the documentation, Mr. Nummi spoke with Mr. Kessler who told him the loan was still outstanding and that Argonaut only wanted to collect the principal balance. (Tr. 1049-50)
- g. He spoke with Mr. Giovannetti who told him the substance of why the note was still in existence. (Tr. 1050, 1054)
- h. Mr. Nummi testified that the statements made at the time by Mr. Giovannetti to Mr. Nummi about the circumstances of the loan “have proven to be true.” (Tr. 1065) He confirmed this statement after having reviewed the promissory note, the other evidence regarding the redemption of his interest in that fund, and the settlement with the SEC that found the ADV disclosure was insufficient. (Tr. 1065-67)
- i. Mr. Nummi worked in conjunction with Mr. Fortas to draft the disclosure that appeared in the August 24, 2011 ADV. (Tr. 1052) He and Mr. Fortas prepared several versions before settling on the final for publication in the ADV. (Id.)
- j. He believed he did not review the e-mails, because it was Mr. Fortas and Ms. Lawson who had access to them. (Tr. 1054)
- k. Mr. Nummi reviewed the e-mails regarding the redemption/loan transaction that had flowed between Argonaut and Giovannetti in April, 2009 (Ex. 220, 221, 222) and testified that the language of the e-mails was consistent with Mr. Giovannetti’s statements to him at the time. (Tr. 1054-60)
- l. At the time they prepared the ADV, Mr. Fortas was fully licensed and qualified in order to be the Chief Compliance Officer of CSG (Tr. 1053) and Mr. Nummi, while not having an investment advisor’s license, had served, prior to coming to CSG, as a compliance officer at Dean Witter Reynolds and as chief compliance officer at INVEST Financial Corporation, Jefferson Pilot Securities and Gunn Allen Financial. He also was employed by the SEC in the Office of Compliance, Inspections, and Examination. (Tr. 1019)
- m. In drafting the August 24, 2011 ADV disclosure, he and Mr. Fortas followed “the commission’s mandate that any and all relevant facts have to be disclosed to clients in the ADV.” (Tr. 1054)
- n. Mr. Nummi stated that Mr. Giovannetti did not have expertise in compliance. While he was “one of the better salesmen I’ve run across in the financial services community” he relied on the compliance department for direction. Mr. Giovannetti regularly asked Mr. Nummi questions

about what he should do with respect to compliance issues of which he was aware and was open and aboveboard in such discussions. Mr. Giovannetti did what Mr. Nummi asked him to do. (Tr. 1061-63)

- o. In response to the question whether he expected Mr. Giovannetti to tell the compliance department what to put in the ADV, Mr. Nummi responded “Mr. Fortas and myself drafted the ADV.” (Tr. 1071)

2. Until August, 2011, Mr. Giovannetti, based on the direction of the CSG Compliance Department, did not know the Argonaut loan was subject to ADV disclosure.

- a. Mr. Balsmann told Mr. Giovannetti in his Memorandum of August 5, 2009, that the fact that there was a loan from Argonaut did not create a disclosure obligation, unless it had not been repaid. (Ex. 316) Mr. Balsmann made this statement apparently even before he knew the circumstances explained to him by Mr. Giovannetti on August 8, 2009, regarding the redemption request and agreement to repay either directly or by redemption. (*Compare* Ex. 316 and Ex. 320)
- b. In contrast to his direction regarding loans, the same day, August 8, 2008, Mr. Balsmann told Mr. Giovannetti that his having invested funds with Argonaut “could be potentially be construed as a potential conflict of interest” and required disclosure. (Ex. 321) Mr. Balsmann told Mr. Giovannetti that the compliance department was amending “the firm’s disclosures” to reflect that “from time to time firm employees may be investors ... with money managers as recommended to clients.” (*Id.*)
- c. CSG’s ADV dated August 6, 2009, was distributed to all firm clients and disclosed the investment issue as follows:

“CSG and its related persons may have invested, and may continue to invest, their personal funds in investments similar to those recommended by CSG or money managers recommended by CSG for the management of client assets. CSG’s Code serves to limit conflicts of interest in these cases through transaction monitoring.” (Ex. 7)
- d. This ADV disclosure about which Mr. Giovannetti was informed describes the disclosure requirements when CSG employees may have invested with a money manager in the past. The disclosure stands in stark contrast to Mr. Balsmann’s direction vis-à-vis a possible past, but paid, loan that need not be disclosed. And, if it was a current unpaid loan, disclosure would be limited to those persons who were customers of the employee who received the loan from a money manager and were also invested with the money manager. (*Compare* Ex. 321 and 7 with Ex. 316)

- e. The difference between the two disclosure requirements has the appearance of relegating the loan situation on a decidedly lower and less important level than the investment situation from a disclosure point of view. (Id.)
- f. Mr. Giovannetti also knew that the ADV investment disclosure was drafted by Mr. Balsmann to specifically address his investment relationship with Argonaut and that he did not require a similar ADV disclosure regarding the loan relationship. (Id.)
- g. Mr. Balsmann acknowledged that preparation and filing of ADVs were his responsibility and that the CEO of the company did not sign them. (Tr. 529)
- h. There is nothing in the record that at any time before August, 2011, the direction to Mr. Giovannetti limiting disclosure to three people was ever corrected or modified or put on a level of disclosure responsibility equal to what had been explained to him about the ADV disclosure of an investment relationship.

3. Mr. Giovannetti's review of his commercial banking financial statement with Mr. Balsmann was not related to the Argonaut situation.

- a. On February 4, 2010, Mr. Giovannetti received via E-mail and First Class U. S. Mail to his counsel two demand letters from a commercial bank demanding payment of two commercial debts: (1) on a guaranty of the debt of Giovannetti Development Company, LLC on two notes secured by real estate with an outstanding balance for the two of \$370,000 and (2) on a debt to First Citizens National Bank of \$108,337.81. Both demands included accruing interest and attorneys' fees and were for payment in ten days or legal action would ensue. (Ex. 19)
- b. Mr. Giovannetti immediately notified Mr. Robinson and Mr. Balsmann of the demands in order to discuss how to restructure his commercial debt to prevent him from going into bankruptcy. (Tr. 255)
- c. Attached in the package that included the two letters regarding the collection action on the two commercial debt obligations was a financial statement Mr. Giovannetti had prepared 4 months earlier. As he explained there were many things not shown on the financial statements that were not related to Mr. Giovannetti's personal and direct commercial/bank debt. (Tr. 254, 263) It does not show Mr. Giovannetti's tax obligations or contingent liabilities (such as the indirect guarantee of the Giovannetti Development Company debt on which one of the demand letters was based). (Ex. 19)

- d. Mr. Giovannetti and Mr. Balsmann discussed that a personal bankruptcy would have a major impact on CSG and that a better solution than his bankruptcy was necessary while CSG was fighting it out in the public market. Mr. Giovannetti authorized Mr. Balsmann to discuss restructuring his commercial/bank debt to avoid the bankruptcy. (Tr. 262-63)
- e. The purpose of the communications at the time was solely directed to showing his commercial bank loans and his personal assets to assist the restructuring effort. (Tr. 255) “Anything that was a commercial bank debt” was shown on the liability side. (Tr. 256)
- f. Argonaut was not a commercial/bank debt that would be considered or intended to be part of the debt restructure with commercial lending institutions. (Tr. 255) It was not at issue.
- g. The personal financial situation mentioned in his e-mails that he discussed with Mr. Balsmann was the immediate demand for payment within 10 days of Mr. Giovannetti’s guarantee of the Giovannetti Development Company debt regarding development property on Cole Road in Memphis, Tennessee. (Id.) As previously noted the Giovannetti Development Company obligation was not listed on the financial statement. It came to be essential for discussion at the time because of the demand for payment and impending legal action. (Ex. 19)

4. At the time of the Commercial/Bank debt demand crisis created by the letters from First Citizens National Bank, Mr. Giovannetti’s choice to not meet with his partners had nothing to do with Argonaut.

- a. Contrary to the implication that Mr. Giovannetti’s decision not to meet face to face with his partners regarding “his personal financial affairs” had nothing to do with Argonaut. It was entirely related to the fallout created by the First Citizen National Bank demand on his personal guarantee regarding Giovannetti Development Company, a business he was involved in with his brother, the matter at hand with which he was dealing. (Ex. 19; Tr. 272)
- b. At the time, he was not under any pressure to resolve the Argonaut loan, the immediate pressure was the other obligations he could not meet and those received his primary attention. (Tr. 274)
- c. Mr. Balsmann was working with a solution to deal with the First Citizen National Bank demand that included a discussion with his partners whether Mr. Giovannetti could receive a distribution from the firm and if the firm could support him through the period with a loan guarantee. (Tr. 278)

- d. Mr. Giovannetti's statement to Mr. Balsmann that he did not want to meet with the partners at the time was generated by his belief that it was not the right approach "to have an open forum and me there and all of a sudden talking about this." "It was a highly emotional thing." (Tr. 272) My partners would have been much more comfortable talking about the situation and "being very, very candid about it without me being there. I felt that. I knew that. And that's exactly what I meant." (Tr. 265, 271, 272, 273, 279)
- e. Contrary to the implication by the Division, the Argonaut situation had nothing to do with this issue.

5. Ms. Lawson's testimony is incorrect that Mr. Giovannetti in February or March, 2011 in response to a specific question about the Argonaut loan told her it was paid. The surrounding circumstances demonstrate that her initial denial that she asked the question was correct.

- a. Ms. Lawson testified that Mr. Giovannetti received and filled out an annual certification questionnaire, one question of which asked if there were loans from customers and that Mr. Giovannetti's answer only mentioned a loan regarding Lighting Science Group and Marvin Bruce. (Tr. 637).
- b. Ms. Lawson was clear that the questionnaire was related not to CSG, but to the broker-dealer, Commerce Square Trading. (Tr. 636)
- c. Ms. Lawson also testified that Mr. Giovannetti held his license as an investment advisor agent and that the Argonaut customer relationship was handled by him and "was with Consulting Services Group, LLC." (Tr. 635)
- d. She testified at trial that in the March, 2011 period, she met with Mr. Giovannetti and asked him: "Are there any loans? The answer was no.... other than the Marvin Bruce Lighting Science loan." (Tr. 639)
- e. Ms. Lawson was next asked by the Division at the trial the following direct question:

Q: Okay. Did you ask him anything specific with respect to the Argonaut loan?
A: No.
(Id.)
- f. The Division then attempted to impeach her testimony at trial by cross examining Ms. Lawson with testimony she gave in February, 2012 (at which no representative of Mr. Giovannetti was present for cross

examination): “He told me in a meeting during our internal review which would have been February through March, that he had repaid the loan.” (Tr. 643)

- g. Mr. Giovannetti submits that Ms. Lawson’s recollection was correct in her original answer and her memory was faulty and incorrect in the revised answer she gave over the objection of counsel for Mr. Giovannetti, for at least the following reasons:
- i. After Mr. Giovannetti testified before the SEC in August, 2011, that the loan was not paid, Ms. Lawson identified the FINRA form 4530 that was filed on October 10, 2011 and stated that she was involved in preparing it. (Ex. 520, Tr. 748-52) Ms. Lawson testified that she had no reason to believe that what was written on the form was not accurate. (Tr. 750) She confirmed that it was important to properly detail the disclosure event to FINRA. “It was important to me to report the facts as we were aware of the facts at the time of reporting Rule 4530.” (Tr. 751)
 - ii. The form 4530 did not mention Mr. Giovannetti as having misled Ms. Lawson earlier that year about the loan having been paid. The disclosure statement read in pertinent part:

“In 2009, upon discovery of the transaction, Mr. Balsmann, CSG’s former CCO, inquired as to the status of the loan. Mr. Giovannetti stated that the loan had been paid off. However, in 2011, upon discussion with SEC examiners, Mr. Giovannetti indicated that the loan remained outstanding. Inquiry and confirmation with Argonaut by the firm verified the loan’s existence.” (Tr. 750)
 - iii. Ms. Lawson admits that there was nothing stated in the form 4530 that Mr. Giovannetti made an inappropriate statement to her in February or March of that year about whether the loan had been repaid. (Tr. 752)
 - iv. Ms. Lawson identified Mr. Fortas and Mr. Nummi as having worked with her in preparing the form 4530. (Tr. 750) Mr. Fortas had no recollection of Ms. Lawson ever telling him that in February or March of 2011 Mr. Giovannetti said he had paid the Argonaut note. (Tr. 1003) Mr. Nummi recalled no conversation in which Vicki Lawson stated that she had a conversation with Mr. Giovannetti sometime in February or March of 2011 where he told her that the loan was paid. (Tr. 1071)
 - v. Mr. Giovannetti confirmed that he did not tell Ms. Lawson in February or March of 2011 that the note had been paid. (Tr. 1156)

- vi. Mr. Fortas stated that the investigation by the SEC that resulted in the single charge at issue in this case was broad sweeping and required CSG to produce millions of pages of documents. (Tr. 968-69)
- vii. In spite of that massive production, there has been no document introduced in this case that substantiates Ms. Lawson's trial testimony after she reversed her earlier testimony. There is no record of a conversation of February or March, 2011, either that she asked Mr. Giovannetti about the Argonaut loan or that he told her then it had been repaid. On the other hand all of the documentation and testimony supports her first statement at trial that she did not ask Mr. Giovannetti about the Argonaut loan at that time.
- h. The questionnaire Ms. Lawson described as having been filled out by Mr. Giovannetti before her meeting with him in February or March 2011 has not been produced and is not in the record.
- i. Even so, there is no issue but that the Argonaut loan was obtained by Mr. Giovannetti's effort to redeem his investment in Argonaut and that the customer relationships identified to him as relevant and described by Mr. Balsmann were Argonaut customers through Mr. Giovannetti's work at CSG, not Commerce Square Trading customer relationships. There is no evidence that FINRA took any action against Mr. Giovannetti regarding a failure to disclose the Argonaut loan for any reason, much less because of a contention that Argonaut was a customer of Commerce Square Trading. Nor is there any proof that Mr. Giovannetti thought of Argonaut as a customer of Commerce Square Trading.

C. Events after the Disclosure of the Repaid Note.

1. Ms. Lawson's testimony that Mr. Giovannetti misled her in 2011 about the Argonaut loan is incorrect.

- a. On October 10, 2011, after his answer the previous August to the SEC that the loan was unpaid, Mr. Giovannetti prepared a Memorandum to CSG Compliance regarding Argonaut. (Ex. 519) Ms. Lawson described the Memorandum as "once again say[ing] the loan had been repaid, that the loan had been paid back, which was not the case." (Tr. 649) Ms. Lawson read a statement in the Memorandum written by Mr. Giovannetti: "It wasn't until recently that I was able to retire the loan due ..." and testified when she saw it she knew it wasn't true. (Tr. 755-56)

- b. The circumstances, however, conclusively demonstrate that Mr. Giovannetti did not write the Memorandum of October 10, 2011 with the intent to deceive anyone.
- i. Mr. Nummi testified at some length that, at the time, he was working to find a way to get the Argonaut note paid. (Tr. 1075) Mr. Giovannetti “was aware that I was working on it, raising funds.” (Tr. 1076)
 - ii. Mr. Giovannetti knew that Mr. Nummi was engaged in discussions with Mr. Robinson, the Canales and the other partners on accomplishing the goal. (Id.)
 - iii. Mr. Giovannetti’s and Mr. Nummi’s offices were adjacent and Mr. Nummi recalled that Mr. Nummi would yell out to Debbie West, who served in the dual role at the time as Mr. Giovannetti’s secretary and Mr. Nummi’s paralegal, that he was leaving to go to Mr. Robinson’s office at the Canale company, stating: “ ‘ I’m going to get the funds’ or ‘I’m going to get money’ or something along those lines.” (Tr. 1076, 1163)
 - iv. Mr. Giovannetti, when he wrote the memo, understood that Mr. Nummi was making arrangements to provide the financing to pay off the Argonaut loan. He recalled Mr. Nuumi one afternoon walking out the door saying: “I guess, you know, I’m going downtown to get the money.” Mr. Giovannetti understood that he was going to the Canales. (Tr. 1163-64)
 - v. At the time Mr. Giovannetti wrote the Memorandum, he understood that Mr. Nummi had been successful in getting something worked out. (Tr. 1165-66).
 - vi. To be sure the Memorandum was accurate, however, he forwarded it first to Mr. Nummi for his approval on the same day, October 10, 2011. In an e-mail dated Monday October 10, 2010, Mr. Giovannetti wrote Mr. Fortas, with a copy to Ms. Lawson and Mr. Nummi: “I have given Rick (Nummi) a draft memo to approve regarding the Argonaut loan.” Mr. Fortas, with a copy to Mr. Nummi and Ms. Lawson responded that same day: “Perfect. Thank you.” (Ex. 518)
 - vii. The next day, Ms. Lawson wrote: to Rick (Nummi), with a copy to Mr. Fortas and Mr. Giovannetti: “Please provide the memorandum concerning Argonaut when available. Thanks.” (Ex. 522)

- viii. Mr. Giovannetti sent the Memorandum to Mr. Nummi for his review and approval because Mr. Giovannetti “wanted it to be an accurate statement to Miles, who had requested the memo.” (Tr. 1166)
- ix. Mr. Nummi acknowledged that he received the Memorandum from Mr. Giovannetti and explained:
- “Clearly, obviously, he gave me the memo. I don’t specifically recall that sentence being in there. I agree with you, at the end of the day, I would have looked at that and said, ‘Wait a minute.’ But concurrent with that, Mr. Giovannetti was aware and had sought assurances from me, ‘Do you think we can get this thing paid off?’ And I believe that I had said to him I think that I’ll be able to get this done.
- So I’m out running around the countryside, and maybe that’s an optimistic statement given to Mr. Giovannetti. But at the end of the day, that’s my only explanation that I can come up with at this point....” (Tr. 1079)
- x. Mr. Nummi also identified a Memorandum to him from Miles Fortas dated October 13, 2010, in which Mr. Fortas identified an “Amortization schedule attached for Argonaut. Let me know if this is agreed to.” (Ex. ELG 21) Mr. Nummi identified the amortization schedule as part of what he was working on, at the same time he was working with the Canales and the company to accomplish getting Argonaut paid off. (Tr. 1081)
- xi. It is clear from the record that Ms. Lawson contention that the Memorandum misled her is not correct. She admitted that when she saw it, on October 11, 2011, she knew the Argonaut loan had not been paid off. (Tr. 755) She asked Miles Fortas and Lee Giovannetti and was told no. (Tr. 756)
- xii. Mr. Fortas confirmed that Mr. Nummi went to see Mr. Robinson and the Canales to provide a credit facility to pay Argonaut. At the time, Mr. Fortas expected that the Canales or Robinson would lend Mr. Giovannetti money to satisfy the loan. (Tr. 995)
- xiii. Mr. Fortas also confirmed that when the Memorandum was delivered to him, he was aware the loan was still outstanding because Mr. Nummi had not informed him of any mechanism for payment. (Tr. 996) Mr. Fortas further identified the amortization schedule dated October 13, 2011 and commented: “we were going to present this repayment plan to Argonaut: Hey, here’s how he’s going to repay it.” (Tr. 999)

- c. Ms. Lawson also suggested that Mr. Giovannetti should have disclosed loans he received from Mr. Robinson, CEO at Canale, Fred Hodges, his retired, former partner and co-founder of CSG, and his mother. FINRA reviewed those loans and concluded no action should be taken. (Ex. 513; Trs. 742-45)
2. **The Division's questions to Mr. Giovannetti attacking his recollection of why he was mistaken in late July, 2009, that the redemption funds had paid the advance, go to the vagaries of his memory and not the fact of the disclosure. His recollections were recorded years after the event, after the non-payment was disclosed and after the debt was fully paid.**
- a. Mr. Giovannetti disclosed to the SEC in August, 2011, that the Argonaut debt had not been paid and disclosure was made by CSG that the loan was outstanding in the August 24, 2011 ADV. (Ex. 15)
- b. The loan was fully paid on July 20, 2012, with interest accrued to that date under the terms of the note. The full payment was \$63, 044.00. (Ex. 614)
- c. On June 27, 2013, over 4 years after the fact of the Argonaut transaction, Mr. Giovannetti was questioned by the Division concerning the loan. Mr. Nummi was present. (Tr. 1091)
- i. Mr. Nummi recounted that Mr. Giovannetti testified in 2013 from his recollection that the difference in performance of the Argonaut Global Fund in which he was invested and the Argonaut Flagship Fund in which clients of CSG were invested caused his mistake that there were sufficient funds in his account to both have redeemed the loan and been paid the funds he received in July, 2009. (Tr. 1092-93) Mr. Nummi also described that Mr. Giovannetti charted out for him on scratch paper the difference in performance of the two funds. (Tr. 1094)
- ii. Mr. Giovannetti acknowledged at trial that, "after seeing all the documents and seeing what I've seen and going through this process that was not an accurate statement. I was – I told them what I told them at the time because that's what I believed.... The way I remembered it." (Tr. 1197)
- d. Mr. Giovannetti obviously did not recount the events of November, 2008 through March of 2009, correctly, but he was correct in memory that, at that time, he had understood there was a substantial difference in the performance between the Argonaut Global Fund and the Argonaut Flagship Fund. (Ex. 203, 206; Tr. 76, 79-80)
- e. His memory of not reviewing Argonaut statements of account received by his office was also partially correct, in that, after the filing of the New

York action in March of 2009, the Argonaut statements no longer occupied his attention which became, after that time, fully directed to saving CSG, to improving employee morale, to shoring up client relations, and to countering the adverse publicity. (Tr. 98-99, 673, 962, 1109, 1117)

- f. With all due respect to Mr. Nummi, his recollection that Mr. Giovannetti told him about his calculation error at a time before August, 2013 is probably also faulty. This would seem to be the case because there are no other reports in the record that Mr. Giovannetti explained it that way. While Mr. Giovannetti talked to many people about not having paid the loan, including Mr. Balsmann in 2009, the SEC in August, 2011, Mr. Fortas, Ms. Lawson and Mr. Nummi in 2011 and afterwards and wrote about what happened in 2009 and 2011, the only written report of the comparison recollection is the August, 2013 transcript and the only oral report is from Mr. Nummi who attended the August, 2013 deposition.
- g. Further, the ADV disclosure that was prepared by Mr. Fortas and Mr. Nummi does not report the event that way. (Ex. 15)

3. Mr. Giovannetti is fully aware that in September, 2009, when he learned that Argonaut had not been paid, he should have made the disclosures required of him by Mr. Balsmann, and should have told Mr. Balsmann of the non-payment.

- a. Mr. Giovannetti realizes that he is responsible for the failure to disclose the non-payment of the Argonaut transaction and is not making excuses for his failure. (Tr. 1189)

“I should have written a letter to those clients immediately informing them of the situation; I should have put a copy of that letter in the file; and I should have made sure Ed saw it and then allow him and compliance and the people to do what needed to be done.” (Id.)
- b. He is not blaming the compliance department for his failure to disclose the non-payment. (Tr. 239).
- c. The lengthy explanation in the trial of circumstances surrounding the reactions, both company wide and by the public, to the filing of and the efforts to stem the effects of the New York suit and Wells Notice that were issued in March and June, respectively, of 2009 are not intended to place blame on others for Mr. Giovannetti’s failure to give notice. They are the circumstances that explain in large measure Mr. Giovannetti’s focus of attention, throughout the time period beginning in March, 2009, that have bearing on the non-disclosure issue. (See, Transcript generally)

- d. Mr. Giovannetti fully recognizes that he did not do what he needed to do which was “obviously go tell Ed and write a letter to these clients I had in there, which is what he advised me to do. I didn’t do that.” (Tr. 241)
- e. Mr. Giovannetti fully recognizes today that disclosure should have been made to every client to whom CSG recommended Argonaut. (Id.)
- f. Mr. Giovannetti reaffirmed his commitment to compliance. He believes his respect for compliance was always there which is why he supported the expansion of the compliance department. (Tr. 1190)
- g. Mr. Giovannetti confirmed his respect for the regulatory system in the past and “much more now after what I’ve been through.” (Id.)

D. Mr. Giovannetti acknowledges his fiduciary duties.

1. Mr. Giovannetti has understood all along that he has a fiduciary duty to his clients.

- a. Mr. Giovannetti acknowledged time after time when questioned by counsel for the Division of his fiduciary duty owed to his clients. (*See*, Transcript generally)
- b. He understood and understands that his fiduciary duty requires him to put the client’s interest above his own. (Tr. 42)
- c. He understood and understands that his fiduciary duty required him to put his clients’ interest above the interests of money managers. (Id.)
- d. He understood and understands that his fiduciary duty required him to disclose to the clients, prospective clients, all conflicts of interest or potential conflicts of interest. (Id.)

2. Mr. Giovannetti understands now that his fiduciary duty includes making full disclosure to his clients of potential conflicts of interest and that disclosure of the non-payment to Argonaut should have been made on the Firm’s ADV at the time he discovered the non-payment.

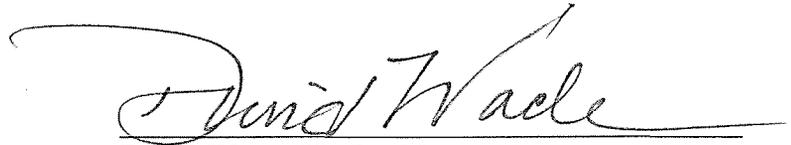
- a. While Mr. Giovannetti does not know exactly the specific things that need to be disclosed and not disclosed, he knows that that “potential conflicts of interest and related parties and things of that nature” are what is disclosed on the ADV. (Tr. 42)
- b. At the time, in 2009, he definitely understood that disclosure of the non-payment to the clients designated in Mr. Balsmann’s Memorandum of August 5, 2009, was in order. (Tr. 209-11)

- c. Mr. Giovannetti now realizes that disclosure of the Argonaut non-payment should have been made to every client. (Tr. 241)

II. PROPOSED CONCLUSIONS OF LAW

1. Mr. Giovannetti acted as an investment adviser in recommending Argonaut to CSG clients for compensation.
2. Mr. Giovannetti had a fiduciary duty to CSG's clients including a duty to disclose conflicts of interest which might incline him to render advice which is not disinterested.
3. Mr. Giovannetti's indebtedness to Argonaut was a conflict of interest which would have been material to a reasonable investor.
4. Mr. Giovannetti's indebtedness to Argonaut constituted a conflict of interest that should have been disclosed to CSG's clients and prospective clients on Forms ADV.
5. Mr. Giovannetti failed to disclose his indebtedness to Argonaut to his clients.
6. Mr. Giovannetti failed to disclose the Argonaut indebtedness to CSG's compliance officers until August 19, 2011.
7. Mr. Giovannetti is responsible for the Forms ADV and Forms ADV Part 2A and Part II filed with the SEC between August 2009 until August 19, 2011 to be materially inaccurate in failing to disclose the Argonaut conflict of interest.
8. Mr. Giovannetti acted negligently in failing to make appropriate disclosures required to be made to CSG's clients.
9. Mr. Giovannetti did not act recklessly or intentionally in failing to make appropriate disclosures required to be made to CSG's clients.
10. Mr. Giovannetti did not act with scienter in failing to make appropriate disclosures required to be made to CSG's clients.
11. Sanctions are to be imposed based on the facts and circumstances of each case considering the factors set out in Steadman.

Respectfully submitted,

A handwritten signature in cursive script that reads "David Wade". The signature is written in black ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

Undersigned Counsel for the Respondent hereby certifies that, on the date set forth below, he served RESPONDENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW as follows:

Pat Huddleston II
Paul T. Kim
Senior Trial Counsel
Securities and Exchange Commission
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Secretary Brent J. Fields
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VIA EMAIL AND FEDERAL EXPRESS

VIA EMAIL AND FEDERAL EXPRESS

Hon. Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
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Washington, DC 20549-1090

VIA EMAIL AND FEDERAL EXPRESS

This 30th day of July, 2015.



David Wade
Attorney for Respondent Edgar Lee Giovannetti