BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C.

In the Matter of the Application of

Cantone Research, Inc., Anthony Cantone, and Christine Cantone,

For Review of Action Taken by

FINRA

File No. 3-18999

BRIEF OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY IN OPPOSITION TO APPLICATION FOR REVIEW

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I. INTRODUCTION

From 2010 to 2013 Cantone Research Inc. ("CRI") and its president, Anthony Cantone ("Cantone"), negligently and fraudulently sold Certificates of Participation (COPs) in high-risk private placements in the form of promissory notes issued by a real estate developer named Christopher Brogdon ("Brogdon"). Cantone's private placement documents described Brogdon's decades of business history in glowing terms. Despite the rosy picture they painted in the documents, Cantone and CRI knew or should have known that Brogdon was barred twice from the securities industry; was at the helm of a several companies that declared bankruptcy, including companies Cantone misleadingly described in only positive terms; controlled a company that was subject to millions of dollars in tax liens; and breached a stock repurchase agreement. Cantone did not inform his investors of these facts. By conveying only positive information about Brogdon to prospective investors, and omitting any mention of Brogdon's

lapses and financial failures, Cantone gave investors a false and misleading picture of Brogdon's professional character, integrity, and business acumen.

Cantone compounded his misconduct by deliberately concealing that Brogdon almost immediately failed to make timely payments on the notes underlying the COPs by covering the late payments with undisclosed short-term loans. After the COPs were sold and when Brogdon started missing payments—a lapse consistent with Brogdon's checkered past—Cantone did not disclose these troubling facts to investors. Instead, he concealed the information to increase his own returns, while exposing investors to additional undisclosed risks. Cantone also persuaded some of his investors to extend two of the COPs beyond their original maturity dates ("extension agreements") by telling the investors that the reason for the extension was an impending sale of the property, rather than the real reason for any extension—Brogdon's inability to pay.

In addition, during this period, Christine Cantone, Cantone's wife, was his supervisor and served as CRI's Chief Compliance Officer. Christine Cantone, who has a FINRA disciplinary history for failing to supervise a representative who sold fraudulent investments to customers, was aware of numerous red flags concerning Cantone's sales of the COP offerings to CRI customers. She knew, for example, that Brogdon had failed to make several required interest and principal payments. Christine Cantone nevertheless failed to ensure that Cantone disclosed this information to investors, including CRI customers.

Applicants seek to paint a starkly different picture of the events at issue on appeal—a picture which does not track the facts in the record. They try to draw Cantone as an innocent party in these deals. They shift the blame for his and CRI's omissions and misrepresentations to others and try to minimize Brogdon's serious legal and financial woes—both before and during the deals at issue. These images of Cantone do not withstand the harsh light of the record.

Cantone is a seasoned securities professional who carelessly ignored red flags in Brogdon's past and lied to investors about the financial security of the man behind the investments in which they had placed their money. Cantone financially benefited from the increases in fees and interest rates in the extension agreements, and he surreptitiously provided financial support to the earlier deals to ensure that he could attract investors, and money, for later deals.

FINRA's National Adjudicatory Council ("NAC") correctly determined that Cantone and CRI should have disclosed to investors the fact that Brogdon was twice barred by NASD; the approximately $4 million in federal tax liens filed against a retirement/ nursing home company while Brogdon was its chairman; the bankruptcy filing of another such company while Brogdon was its chairman; and a state appellate court decision concerning Brogdon's failure to honor a personal guaranty that he had originally proposed to induce a stock sale. The NAC concluded that CRI and Cantone's misconduct related to these omissions was negligent and violated Sections 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act"), and FINRA Rule 2010. For this misconduct, the NAC imposed at three-month suspension in all capacities for Cantone and a $50,000 fine, jointly and severally, with CRI.

The NAC further correctly concluded that CRI's and Cantone's failures to disclose that Cantone and CRI were covering Brogdon's late and missed payments, and substantial financial problems with the preceding deals, were material to investors in the last Brogdon deal. The NAC also found the at CRI and Cantone omitted to those investors who participated in the extension agreements that CRI and Cantone had covered Brogdon's late and missed payments, as well as had misrepresented or omitted the true reasons for and the new terms of the extension agreements, and that information was material. These misrepresentations and omission were made with scienter and constituted fraud under Section 10(b) of the Securities Exchange Act of

1934 ("Exchange Act"), Exchange Act Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010. For this, the NAC imposed a one-year suspension for Cantone in all capacities and a $100,000 fine, jointly and severally, with CRI.

Finally, the NAC correctly concluded that Christine Cantone and CRI's significant supervisory lapses violated FINRA Rule 3010 and warranted a two-year suspension of Christine Cantone in any principal or supervisory capacity. The NAC also fined Christine Cantone $73,000, jointly and severally with CRI.

The NAC's findings of violations are fully supported by the record and the sanctions it imposed are neither excessive nor oppressive. As explained more fully in this brief, the Commission should reject applicants' primary arguments on appeal that their failures to disclose Brogdon's biographical history and payment problems were not material and that they relied on advice of counsel with respect to the disclosures. We respectfully ask the Commission to follow well-established precedent and affirm the NAC's findings of violations and the sanctions it imposed.

II. FACTUAL BACKGROUND

A. Parties

CRI has been a FINRA member since 1990. RP 840. Cantone is CRI's majority owner and its president. *Id.* Cantone entered the securities industry in 1982 and was registered as a general securities representative and general securities principal at all relevant times. RP 840; 6370.

Christine Cantone first registered with FINRA through CRI as a general securities representative in 1996. RP 1304. During the relevant period, she was a minority owner of CRI

and served as the CRI's vice-president and chief compliance officer ("CCO"). RP 1304; 6416-18.

B. CRI's Early Deals with Brogdon

Cantone first met Brogdon in 2003, through James Friar, a registered representative Cantone had hired to work at CRI earlier that year. RP 861. Friar knew Brogdon from previous municipal bond deals. *Id.* Friar also introduced Cantone to attorney Michael Gardner, who prepared the prospectuses for the earlier Brogdon bond deals. Cantone participated in multiple bond offerings with Brogdon that Friar brought to CRI. RP 932; 1108. Friar informed Cantone that Brogdon was barred from the securities industry in 1985. RP 867; 1793. Around the same time, Friar showed Cantone a Forbes article about Brogdon called "Hello, Sucker." RP 862-68; 1805-08. That article asserted that Brogdon was a former bond salesman barred from the securities industry who kept defrauding investors by "hand[ing] the underwriting job to a collection of sleazy brokers," describing the securities being sold by Brogdon as "garbage." RP 1805-08. The article detailed how Brogdon had defaulted or refinanced ten municipal bond deals at that point. *Id.* Friar explained away the concerns and vouched for Brogdon's reliability. Cantone decided to trust Friar's experience over the Forbes article. RP 863. Cantone thus failed to investigate any red flags stemming from the troubling allegations laid out in the article. RP 862. Had Cantone acted on the many red flags, he would have learned that:

- On July 16, 1984, Brogdon was censured, barred, and fined $10,000 by NASD. The hearing committee found that Brogdon engaged in unauthorized transactions in violation of NASD's anti-fraud rule. Specifically, the hearing committee held that "Brogdon effected the unauthorized purchase of transactions in the customer's account for his own nefarious purposes and revealed his scheme to his superior only after the firm had sustained losses of staggering proportions." RP 1781-85.
- On January 28, 1985, NASD censured, barred, and fined Brogdon $50,000, finding that "Brogdon devised and employed a scheme to circumvent [a] clearing firm's $500,000 limitation on financing ... as part of a scheme to deceive. RP 1787-93.

- In 1996, the IRS filed multiple tax liens, totaling approximately $4 million, against Retirement Care Associates ("RCA") when Brogdon served as that company's Chairman. RP 929; 1810.

- In 1999, while Brogdon was serving as its Chairman, NewCare Health Corporation ("NHC") a public corporation that managed assisted living facilities and nursing homes, declared bankruptcy. Brogdon was subsequently fired by NHC's board. RP 930; 1881; 1883.

- In 2003, a Georgia state appellate court affirmed a summary judgment against Brogdon in a civil lawsuit that found that Brogdon had failed to honor stock repurchase guarantees. RP 932; 1887-91.

Beginning in 2008, after Friar's departure, Cantone wanted additional information a regarding the negative background Friar had disclosed to him before the municipal bond offerings in 2003. RP 1118. In response to a request from Cantone, Brogdon provided CRI with a copy of a letter from Brogdon's attorneys, which purported to respond to questions and concerns raised by an unrelated asset management company. RP 6803-05. In relevant part, the letter (which addressed only one of the two NASD bars) claimed that Brogdon had decided to ignore NASD's complaint against him alleging net capital violations because he lacked funds to litigate and had decided not to return to the securities business. *Id.* The letter then noted that despite Brogdon's bar, the Nasdaq Listing and Qualifications Committee had approved RCA's application for listing on the NASDAQ. At the time, Brogdon was Chairman and Chief Executive Officer of RCA and its major stockholder. *Id.*

C. Overview of COPs

Beginning in 2008, CRI began offering securities in the form of COPs to its customers. RP 821. The COPs were issued by limited liability companies ("LLCs") controlled by Cantone and CRI. All the COPs were tied to underlying real-estate redevelopment projects controlled by Brogdon. RP 6529; 6579; 6639; 6699. Cantone and CRI created an LLC that purchased a promissory note from an entity controlled by Brogdon and issued COPs in the purchased note to

customers of CRI for each offering. Four of the five COP offerings at issue here involved nursing homes and assisted living facilities which Brogdon acquired, developed, and managed. RP 6749-6774. The fifth and final deal involved a residential real estate project on land Brogdon purchased, but the project was operated by a builder experienced in constructing single-family homes. *Id.* Cantone admitted that he was responsible for the due diligence for these private placements. RP 941.

The Brogdon-related COPs were substantially similar. The notes earned 10 percent interest annually, payable quarterly. At maturity, the investors were to receive their principal. RP 827. If Brogdon sold or refinanced the project, investors would receive a share of any profit or capital gain realized by Brogdon. *Id.*

1. The Confidential Disclosure Memoranda

For each offering, Cantone provided investors with a Confidential Disclosure Memorandum ("CDM") that described the offering. RP 6529; 6579; 6639; 6699. The CDM for each offering was similar in form and substance. The CDMs noted that the information in the CDM had been provided by Brogdon, and that Cantone had conducted due diligence and believed that the information contained therein was accurate and correct. RP *e.g.* 6533.

The CDMs for the Brogdon-related COPs at issue in this case all contained a section with an exclusively positive biographical information about Brogdon, with information going back to 1987. RP 939-41. The biography touted Brogdon's experience in the nursing home industry, represented that Brogdon had worked in the "assisted living, nursing home and retirement community business for more than 20 years," and stated that he served as Chairman of the Board for RCA, which also operated assisted living and retirement homes, from 1991 to 1998. *Id.* The

CDMs stated that from 1998 to 1999, he was the chairman of NHC, a Nasdaq-listed company. *Id.*

2. The Brogdon Guaranty

Apart from the Cherokee Offering, each CDM contained a guaranty committing either Brogdon or another entity closely related to Brogdon to make prompt payments of interest and principal (the "Brogdon Guaranty"). This guaranty named Brogdon, his wife, and the Brogdon Family, LLC as guarantors. RP *e.g.* 6621-6627. The Brogdon Guaranty ensured that the guarantors, for the benefit of the holders of the COPs, "absolutely and unconditionally" guaranteed the "prompt payment and performance, as and when due, of all . . . obligations." *Id.* The guarantors also agreed to pay all expenses, including legal fees the issuing LLC might incur to enforce the Guaranty. *Id.*

D. Cantone and CRI Offered and Sold COPs to CRI Customers

For of five Brogdon-related offerings could pay back its investors the principal investments by the original maturity dates. RP 954; 958; 986; 1071; 1072; 1076; 1087; 1092; 6529; 6579; 6639; 6699.[1] Nor could Brogdon make many of the interest payments as required.

CRI and Cantone never told investors about the defaults. Their investors were unaware because the Cantone made numerous payments or "bridge loans" to cover Brogdon's late and missed payments. RP 1279; 1282-84; 4665; 4666; 4671. Cantone continued to solicit and accept new investor funds even after Brogdon had failed to make required payments. A summary of Brogdon's many defaults and other financial issues, are described below.[2]

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[1] The fifth deal had a maturity date of May 15, 2018, after Enforcement filed its complaint. RP 6749.

[2] In 2015, the Commission sued Brogdon for a massive fraudulent scheme that involved "secretly divert[ing]" investor funds to "pay for his and his wife's lavish lifestyles or to prop up

1. Columbia Financial, LLC

Cantone and CRI established Columbia Financial, LLC ("Columbia Financial"), to affect the acquisition of an independent and assisted living facility in Columbia, South Carolina (the "Columbia Offering"). RP 6529-6559. On February 1, 2010, Columbia Financial offered $1.7 million of COPs in a promissory note issued by the Brogdon-controlled Polo Road Assisted Living, LLC ("Polo Road"). *Id.* The Columbia Offering note matured on February 1, 2012. Polo Road did not repay the principal. RP 956; 656. Brogdon also failed to make interest payments that were due on May 1, 2012 and August 1, 2012 and Cantone wired his own funds to Columbia Financial to make these interest payment to investors. RP 2770; 2787-2803. Cantone did not disclose this information to investors.

a. First Columbia Extension Agreement

On October 1, 2012, Cantone agreed to extend the Polo Road note maturity to February 1, 2013 ("First Columbia Extension Agreement"). RP 2805-10. The First Columbia Extension Agreement stated that Polo Road had been unable to pay principal because the facility had not achieved sufficient occupancy. RP 966-67; 2805. The agreement increased Brogdon's interest on the note to 14 percent, added $68,000 more in principal, an extension fee of more than $80,000, and attorney's fees of $3,000. RP 2806. Cantone did not distribute the First Extension Agreement to investors. Instead, on October 23, 2012, he wrote and sent a letter to investors. The letter did not disclose that Polo Road had defaulted "because the facility has not yet attained the expected occupancy" or that it was "unable to pay its obligations under the Note" as set forth in the First Extension Agreement. RP 968-69; 2805. Cantone instead represented to investors

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his entire business enterprise." The investor funds allegedly misused include investors' funds in the COP offerings at issue here, including Chestnut and Cherokee. R. 2023-57; *see also* https://www.sec.gov/divisions/enforce/claims/brogdon.htm. Pursuant to SEC Rule of Practice 323, 17 C.F.R. § 201.323, we ask that the Commission take official notice of the federal court action against Brogdon.

that the extension was "granted because the Debtor...had a potential buyer for the facility" and "the property will be sold in the near future" for a "profit." RP 968-69; 2811.

b. Second Columbia Extension Agreement

On January 21, 2013, Brogdon informed Cantone he would again be unable to pay Columbia Offering investors the principal due on February 1, 2013 because of the facility's low occupancy. On February 5, 2013, Cantone told Brogdon he was willing to extend the due date again, postponing the maturity date to February 1, 2014 ("Second Columbia Extension Agreement"). RP 2815-19. Cantone emailed Brogdon that Brogdon needed to pay an additional $68,000 to cover interest to investors, plus $1,000 in attorney's fees. RP 2816. Cantone, however, did not disclose to investors that Polo Road had failed to make required interest payments, that CRI and Cantone had covered those missed payments, or that Polo Road was unable to return investors' principal when due.

Brogdon continued to miss interest payment deadline and Cantone continued to loan Columbia Financial funds to cover interest payments in May, August, and November 2013, and February 2014. RP 2861-62; 2863; 2865.

2. Chestnut Financial, LLC

Cantone created Chestnut Financial, LLC ("Chestnut Financial"), in February 2011 to offer COPs to purchase two notes issued by Brogdon entities to finance the acquisition and development of a campus of assisted living residences—Chestnut Independent Living, LLC, and Highlands Assisted Living, LLC (the "Chestnut Offering"). RP 987; 6602; 6621.

Brogdon failed to make interest payments due on September 1, 2011, March 1, 2012, June 1, 2012, September 1, 2012, and December 1, 2012. The Cantones loaned Chestnut

Financial the funds so that Chestnut could make the interest payment to investors. RP 1000-2; 3508; 3520; 3521; 3525-37; 3549-40; 3543-46; 3547-51.

On May 24, 2013, Chestnut Financial sent an invoice to Brogdon reflecting unpaid interest payments for March, June, and September 2012, and March 2013, and interest that would be due on June 1, 2013, plus administrative fees, for approximately $350,000. RP 3563-64.

In December 2013 and March 2014, Cantone again loaned the funds to Chestnut Financial to make interest payments to investors that Brogdon should have paid. RP 1071; 3565-66; 3567. Cantone did not disclose to investors that it was Cantone, and not Brogdon, paying the interest. RP 1003.

3. Oklahoma Financial, LLC

Cantone created Oklahoma Financial, LLC ("Oklahoma Financial"), in or around June 2011 to offer COPs to purchase a promissory note issued by Oklahoma Operating, LLC ("Oklahoma Operating"), a Brogdon entity (the "Oklahoma Offering"). RP 1072; 6639.

Brogdon did not pay the principal when it came due in July 2013. RP 1076; 6679. On July 10, 2013, Oklahoma Financial and Oklahoma Operating executed an agreement, extending the maturity date of the note to January 15, 2014 ("Oklahoma Extension Agreement"). RP 4147-51. Under the Oklahoma Extension Agreement, Brogdon agreed to increase the interest rate from 10 percent to 14 percent, make an additional interest payment of $56,000, and pay an "extension fee" of $56,000. The increased interest led to the previous $84,000 interest payment being increased to $112,000, payable on July 15, 2013, October 15, 2013, and January 15, 2014. *Id.*

In a letter Cantone sent to Oklahoma investors describing the Oklahoma Extension Agreement, Cantone wrote that Brogdon had agreed to keep paying 10 percent interest. The letter does not disclose the increase to 14 percent. RP 4145.

Brogdon defaulted on the principal payment that was due on January 15, 2014. RP 1211.

4. Cedars Financial, LLC

Cantone created Cedars Financial, LLC ("Cedars Financial") to offer COPs to purchase a promissory note, issued by Cedala, LLC, ("Cedars Offering"). RP 1086; 6699.

On August 19, 2011, Brogdon provided Cantone with income statements for Cedala that revealed that Cedala had sustained the following net losses for the years 2008, 2009, and 2010—($109,735.73), ($232,349.04), and ($127,525.92.13), respectively. RP 4407-4415. Cantone did disclose these losses to investors. RP 1213.

In December 2012, June 2013, and September 2013, Cedala failed to make its interest payments to Cedars Financial. RP 1089-91. On each occasion, Cantone "loaned" Cedars Financial funds from his joint account with Christine Cantone to pay interest to investors. RP 4417-20.

5. Cherokee Financial, LLC

Cherokee was the final Brogdon-related COP. Cantone created Cherokee Financial, LLC ("Cherokee Financial") to offer COPs in a promissory note issued by Arcadia Partners, LLC ("Arcadia"), an entity owned and managed by Brogdon (the "Cherokee Offering"). RP 6749. The promissory note was secured by a deed, subordinate to a senior deed held by participants in a bond issue by Brogdon's entity, Chelsea Investments, LLC ("Chelsea"), which raised the funds for the purchase of the land. RP 6750

Brogdon had purchased land, on which he planned to build age-restricted townhomes with a clubhouse and other common areas. Brogdon's partner was a real estate developer, Bruce Alexander. RP 6749. Arcadia planned to use the proceeds from the Cherokee Offering for constructing the first phase of the project, with Alexander's company to construct the homes and manage the project. *Id.* With the note purchase, the Cherokee Offering and its investors acquired an ownership interest in Arcadia. *Id.*

The Cherokee Offering did not mention the Brogdon Guaranty. Instead, Brogdon's Chelsea guaranteed the prompt payment of interest and principal (the "Chelsea Guaranty"). After years of missed and payments, Cantone finally lost faith in the Brogdon Guaranty. RP 1259; 1263. Cantone was also told by Gardner that Cantone if he included the Brogdon Guaranty in the Cherokee CDM, he would have to disclose Brogdon's "multiple failures to perform under previous guaranties." RP 1263; 6297. Thus, in an effort to avoid having to disclose Brogdon's significant financial issues, Cantone and Gardner agreed not to include a Brogdon Guaranty in the Cherokee CDM. RP 1103. Although Cantone and Gardner changed the name of the guaranty, Brogdon was still a crucial component of the transaction, and his participation a selling point to investors, with the CDM noting that "***Christopher F. Brogdon is the central participant*** in the transactions described in this Confidential Disclosure Memorandum . . . *Id* (emphasis added).

III. PROCEDURAL HISTORY

On November 20, 2015, Enforcement filed a five-cause complaint against CRI, Cantone, and Christine Cantone. RP 1-32. The first cause of action alleged that CRI and Cantone knowingly or recklessly made fraudulent misrepresentations and omissions of material facts in connection with the offer and sale of five Brogdon-related COPs from 2010 to April 2013, in willful violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA

Rules 2020 and 2010. In the alternative, Enforcement alleged in cause two of the complaint that Cantone and CRI made these alleged misrepresentations or omissions negligently, violating Sections 17(a)(2) and (3) of the Securities Act, and thereby violating FINRA Rule 2010. The fifth and final cause of action alleged that CRI and Christine Cantone were responsible for Cantone's supervision, and while aware of the negative facts material to the Brogdon-related COP offerings, failed to supervise Cantone, in violation of NASD Rule 3010 and FINRA Rule 2010.

The Hearing Panel issued its decision on May 12, 2017. RP 13667-13752. Both Enforcement and applicants appealed the Hearing Panel's findings to the NAC. RP 13773-75. In its January 16, 2019 decision, the NAC concluded that Brogdon's two NASD bars, the Georgia appellate court decision, the RCA tax lien, and the NHC bankruptcy should have been disclosed to investors in all five of the offerings. RP14181-14230. The NAC ruled that CRI and Cantone's omissions concerning Brogdon's biography were negligent, in violation of Sections 17(a)(2) and (3) of the Securities Act, and FINRA Rule 2010. The NAC suspended Cantone for three months and fined him and CRI, jointly and severally, $50,000.

The NAC also concluded that CRI and Cantone should have disclosed to prospective Cherokee Offering investors that: (1) Brogdon had missed or made late interest payments to investors in the previous offerings; (2) Brogdon's arrearage of more than $350,000 owed to the Chestnut Offering; and (3) the financial problems facing the Columbia, Chestnut, and Cedars offerings. The NAC further found that the undisclosed and increasingly frequent missed payments of interest and principal in the offerings, the undisclosed increase in the interest rate, and the additional fees Cantone charged Brogdon for the extensions were material to the Columbia and Oklahoma Extension Agreements. The NAC determined that CRI and Cantone

acted with scienter, and willfully violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010, affirmed the Hearing Panel decision that the missed and late payments should have been disclosed to investors when Cantone and CRI agreed to the extension agreements in Columbia and Oklahoma. *Id.* However, the NAC determined that that there were no material late interest payments that needed to be disclosed to investors of the original Columbia, Chestnut, original Oklahoma, or Cedars Offerings, and that the first "late" payments of Columbia, Chestnut, or Cedars were not material to any investors. The NAC imposed a one-year suspension on Cantone and fine of $100,000, jointly and severally with CRI.

Finally, the NAC concluded that CRI and Christine Cantone failed to properly supervise Cantone. The NAC imposed a two-year suspension in principal or supervisory capacities on Christine Cantone and a $73,000 fine, jointly and severally with CRI. This appeal followed.

IV. ARGUMENT

The record overwhelmingly supports the NAC's findings that CRI and Cantone made negligent misrepresentations when they omitted material facts about Brogdon's decades-long negative business background in the CDMs distributed to investors in all five deals, in violation of Sections 17(a)(2) and (3) of the Securities Act, and FINRA Rule 2010. The record also supports the NAC's findings that CRI and Cantone fraudulently failed to disclose the terms of the Columbia and Oklahoma Extension Agreements and Brogdon's missed and late payments to investors when Cantone and CRI agreed to the extension agreements. In addition, the late and missed interest and principal payments and the substantial debt that Brogdon incurred in the preceding offerings should have been disclosed to the Cherokee investors the evidence supports that CRI and Cantone acted with scienter, and their willful omissions and misrepresentation

violate Section 10(b) of the Securities Exchange Act, Exchange Act Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010. The Commission should affirm the NAC's findings.

A. CRI and Cantone Made Negligent Omissions

The NAC correctly found that CRI and Cantone negligently omitted material facts concerning unflattering elements of Brogdon's biography. Section 17(a)(2) of the Securities Act makes it unlawful in the offer or sale of securities "to obtain money or property by means of any untrue statement" or omission of a material fact. Section 17(a)(3) prohibits, in the offer or sale of any securities, engaging "in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." Sections 17(a)(2) and (3) do not require a showing of scienter; negligence is sufficient. *United States v. Aaron*, 446 U.S. 680, 685-86 n.6 (1980). Negligent conduct under Sections 17(a)(2) and (a)(3) is a failure "to use the degree of care and skill that a reasonable person of ordinary prudence and intelligence would be expected to exercise in the situation." *SEC v. True North Fin. Corp.*, 909 F. Supp. 2d 1073, 1122 (D. Minn. 2012). Such negligent misrepresentations also violate FINRA Rule 2010. *See Dep't of Enforcement v. Pellegrino*, Complaint No. C3B050012, 2008 FINRA Discip. LEXIS 10, at *13-14 n.13 (FINRA NAC Jan. 4, 2008), *aff'd*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843 (Dec. 19, 2008) (citing *Dep't of Enforcement v. Reynolds*, Complaint No. CAF990018, 2001 NASD Discip. LEXIS 17, at *44, *47 (NASD NAC Jun. 25, 2001)).

1. The NAC Correctly Concluded the Omitted Brogdon Biographical Information Was Material

Establishing whether a particular event is material, under both Section 17a of the Securities Act and Section 10b-5 of the Exchange Act, is a facts and circumstances-driven undertaking—there is no bright-line test of materiality. See *Matrixx Initiatives v. Siracusano*, 563 U.S. 27, 38-44 (2011). The NAC correctly concluded that, based on the biographical

information in the CDMs and the investments at issue, four events in Brogdon's past should have been disclosed to investors in all five deals. Courts and the Commission long have held that "information relating to those who are responsible for the success or failure of the enterprise is clearly material." *Thomas J. Fittin, Jr.*, 50 S.E.C. 544, 546 n. 3 (1991) (*citing Schwarm & Co.*, 47 S.E.C. 785, 788 (1982)); *SEC v. Murphy*, 626 F.2d 633, 643 (9th Cir. 1980)). Information bearing on their integrity "is an essential ingredient of informed investment decision." *Franchard Corp.*, 42 S.E.C. 163, 170 (1964). That information is not just material; it is "crucial to the investment decision." *SEC v. Murphy*, 626 F.2d at 643. Applicants counter that none of these events are material. They are incorrect. CRI's and Cantone's misrepresentations and omissions concerning Brogdon were categorically material. All the offerings at issue were closely identified with Brogdon personally. Brogdon was the central figure on whom the success or failure of each enterprise depended. He also personally guaranteed four of the five offerings in issue and controlled the entity that guaranteed the fifth. Cantone and CRI were obligated to provide potential investors with a balanced picture of Brogdon's past successes and failures. They did not.

a. NASD Bars

There is no dispute that Brogdon was the central participant in each of the COP offerings at issue. Brogdon controlled each of the projects, and each of the COP offerings was guaranteed by Brogdon or a Brogdon-controlled entity. The success of these projects depended largely on Brogdon, his ability to successfully complete and sell the projects, and the reliability of his guarantee. As a result, adverse facts that cast doubt on Brogdon, his competence, integrity, or his reliability would be material to investors. That Brogdon was *twice* barred from the securities industry is just such a fact.

In 1984, NASD the hearing committee found that "Brogdon effected the unauthorized purchase of transactions in the customer's account ***for his own nefarious purposes*** and revealed his scheme to his superior only after ***his firm had sustained losses of staggering proportions.***" RP 1784. NASD's decision held that Brogdon's presence in the securities industry posed a "substantial threat [to investors] and cannot be countenanced." *Id.* NASD therefore barred Brogdon from the securities industry.

In 1985, NASD held that "Brogdon devised and employed a scheme to circumvent [a] clearing firm's $500,000 limitation on financing ... ***as part of a scheme to deceive***" and again barred Brogdon. RP 1793.

A reasonable investor would consider Brogdon's history of "unauthorized" transactions for "nefarious" purposes, his "egregious misconduct," and that he engaged in a "scheme to deceive" to be important information in deciding whether to invest in a speculative security that relied, mainly, on Brogdon.

Applicants contend that the age of the bars make them immaterial. Yet the CDMs that Applicants distributed to investors described Brogdon's contemporaneous experience in universally positive terms, increasing the relevance of the NASD bars from the same period. Applicants cannot describe Brogdon's business history in such positive terms without disclosing his negative history over a comparable period.

Applicants further maintain that the Nasdaq's decision to permit Brogdon to act as an officer of a listed company in 1997 undercuts the materiality of the NASD bars. This argument also fails. The only evidence of the Nasdaq approval is the contents of the CDMs distributed by Cantone describing Brogdon's history in glowing terms, with no note of his negative history. No information is in the record explaining what information was provided to the Nasdaq before the

approval of the listing (which also is not in evidence). Moreover, the NAC correctly noted that the analysis of whether to permit Brogdon to act as an officer is distinct from the issue of materiality. The only question for materiality is whether the information significantly affected the total mix of information available to investors, the information need not itself be so negative that it would prevent that person from being an officer of a listed company.

Without any underlying documentation concerning the Nasdaq's decision, given the disparate analyses involved in assessing fitness to serve as an officer despite the bars, and because of the severity of the misconduct underpinning Brogdon's two lifetime bars, the NAC correctly determined that the bars are material and should have been disclosed.

b. RCA Liens

The NAC correctly concluded that including Brogdon's tenure at RCA in the CDMs, without mentioning RCA's tax liens, was materially misleading. The CDMs used by Cantone and CRI to promote the COPs highlighted Brogdon's chairmanship of RCA but disclosed no negative information relating to RCA. Once Cantone and CRI sought to sell COPs on the premise that Brogdon's success at RCA was a reason to trust his business acumen, it was incumbent on them to disclose any facts that would have significantly altered the total mix of information concerning that chairmanship. Courts and the Commission have both recognized that substantial tax liens are material information that must be disclosed to investors. *See, e.g., Mathis v. SEC*, 671 F.3d 210, 219-220 (2d Cir. 2012). Brogdon's experience with RCA was discussed in an exclusively positive light and is presented as an example of his experience and success in the healthcare industry.

Applicants appear to argue that there was no reason for the NAC to conclude that RCA's tax liens reflected negatively on the company or on Brogdon's business acumen because there is

no negative implication from a tax lien. Applicants also argue that Brogdon personally cannot be faulted for tax liens imposed on RCA while he was chairman. Opening Br. at 16. However it was Cantone and CRI that credited Brogdon with causing RCA's purported success in the CDMs. It is at least just as likely that Brogdon contributed to RCA's tax issues. This also is why applicants' arguments that RCA's tax liens are not related to the specific offerings at issue fails — Cantone and CRI put RCA's failures and liabilities at issue by touting Brogdon's supposed success at RCA as a reason for investing in securities dependent on projects under Brogdon's control. Cantone should have provided balanced and accurate information about Brogdon's term at RCA by informing investors about RCA's tax liens. By omitting the fact the RCA, during Brogdon's term as chairman, was subject to a substantial federal tax lien, each CDM misrepresented the character of Brogdon's tenure with RCA to the detriment of potential COP investors.

Once Cantone and CRI chose to focus on Brogdon's supposed success at RCA, together with his purported success over twenty-five years in the nursing home industry, they were required also to disclose negative information that occurred during his tenure as chairman that would significantly affect investors' view of those supposed successes.

The NAC correctly concluded that the approximately $4 million in federal tax liens filed against RCA during the same period that the CDMs tout Brogdon's Chairmanship were material, and the Commission should affirm this finding.

c. The NHC Bankruptcy

Applicants argue that the 1999 bankruptcy of NHC, which managed assisted living facilities and nursing homes and was controlled by Brogdon, was immaterial. The NAC correctly found that it was material. In the CDMs Cantone and CRI stated, without elaboration that, "[i]n 1998 and 1999, Mr. Brogdon was also Chairman of NewCare Health Corporation, a

Nasdaq-listed company in the assisted living and nursing home business." RP 940; 6535-36; 6585; 6645-46; 6705-06; 6755. NHC filed for federal bankruptcy protection on June 22, 1999, and approximately two weeks later, the board fired Brogdon. RP 1881. NHC's new management blamed Brogdon and other top management for failing to pay health insurance premiums, even though the funds had been withheld from employees' paychecks. *Id.*

Applicants argue that Brogdon's biography only neutrally mentions his tenure at NHC which "cannot by construed as a representation of success," and moreover, a duty to disclose only arises when an "omitted fact was necessary to render a preexisting statement not misleading." Applicants Br. at 13. These arguments miss their target.

Highlighting Brogdon's work as the chairman of NHC helped foster the impression that Brogdon was a successful veteran of the nursing care industry. By including information about NHC, this invited investors to conclude that Brogdon was a valuable partner whose experience in the healthcare industry would be an asset to the venture. Brogdon's biography focuses exclusively on the positive aspects of his career and is rendered misleading by the omission of NHC's bankruptcy under Brogdon's leadership. Moreover, Brogdon's tenure at NHC was marred by another discloseable event discussed below—that while acting as NHC's CEO, Brogdon was sued to compel his compliance with a stock repurchase agreement

Applicants erroneously claim that Enforcement failed to identify a logical inference that a past bankruptcy would bear negatively on Brogdon's business reputation. This argument is directly contradicted by the Commission's recent decision in *Louis Ottimo*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588, at *31 (June 28, 2018), *appeal docketed*, No. 18-2534 (2d Cir. filed Aug. 24, 2018). There, the defendant was accused of fraud for omitting negative information about his past businesses from a private placement memorandum which he

used to solicit investors. Ottimo's PPM contained a self-prepared biography which disclosed the defendant's prior experience as CEO of Jet One Jets. The PPM failed to disclose that Jet One had filed for bankruptcy and the commission held this omission to be material. The Commission held that "[t]he statements the PPM included about Jet One Jets were clearly relevant to investors' assessment of Ottimo's management abilities" and determined that Jet One's bankruptcy was a "fact[] that a reasonable investor would want to consider in deciding whether to invest in a venture managed by Ottimo." *Id.* at *33. Even more compelling, Jet One Jets's business model was unrelated to Ottimo's PPM venture, while here the bankruptcy occurred in the same arena—the healthcare industry.

Other courts have reached the same conclusion when evaluating disclosures that emphasize management's business experience but fail to disclose past bankruptcies. *See, e.g., SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1323-24 (11th Cir. 1982) (finding material principals' involvement with bankrupt airline and with other failed business ventures); *SEC v. Enter. Sols., Inc.*, 142 F. Supp. 2d 561, 575-76 (S.D.N.Y. 2001) (failure to disclose company bankruptcy while principal was its CEO was material).

NHC's bankruptcy is a material event because a reasonable investor would want to know if they were investing their money in a project being run by an individual who had a history of helming companies facing significant financial issues in the very field in which he touted his experience. Thus, the Commission should affirm the NAC's findings.

d. Georgia Court Action

The NAC correctly found that Cantone and CRI had a duty to disclose the fact that Brogdon, acting as NHC's CEO, and NHC were sued to compel their compliance with a stock

repurchase agreement.[3] Despite touting the personal guaranty of Brogdon in each of the first four offerings at issue, and a guaranty by a Brogdon-related entity in the Cherokee Offering, Cantone and CRI did not disclose that Brogdon was found to have violated what a Georgia appellate court described as "essentially a personal guaranty" in a case involving NHC. RP 1887-1890. The earlier guaranty agreement that Brogdon refused to honor was similar to his guarantees of the offerings here. In the Georgia case, Brogdon induced a company to purchase a significant amount of NHC stock when he was NHC's CEO and shareholder. Brogdon agreed to buy the stock back if the company requested he do so within a year. The company made a timely request, but Brogdon refused. When Brogdon was sued, summary judgment was entered against him because there was no question that he was in breach. On appeal, the Georgia court of appeals affirmed, holding that he was in breach and could not try to avoid his obligation by claiming that the agreement violated federal securities law.

Applicants argue that this information is immaterial because "[t]here is no evidence to suggest that Brogdon failed to do what the court ordered him to do...." Opening Br. at 18. This argument is misguided because it fails to recognize that the NAC held this information to be material because Brogdon "forc[ed] investors to litigate" in order to enforce the guarantee. NAC decision at 29-30. The summary judgment order against Brogdon and NHC is material information because a reasonable investor would be substantially likely to view the COP guarantee as far less valuable if they knew that enforcing the guarantee might require a lawsuit.

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[3] The record refers to Brogdon as both CEO (RP 1887) and Chairman (RP 1881) of NHC.

Indeed, the Cantones did have to resort to lawsuits against Brogdon to enforce the Brogdon Guaranty more than once.[4]

Applicants also argue that Brogdon's refusal to honor his agreements is not material because there is no evidence that the stock repurchase agreement was "similar" to the personal guarantees at issue. Opening Br. at 18. But the Georgia court explicitly concluded that the repurchase agreement was functionally the same as a personal guaranty. Applicants also argue that Brogdon cannot be faulted for litigating the dispute, but the issue was decided and affirmed on summary judgment. This means that two courts looking at the issue determined that there was no question that Brogdon was liable—a fact investors relying on similar agreements by Brogdon would want to know. That Brogdon made his investors sue and engage in protracted litigation for years to get what courts determined they were unquestionably entitled to is also something reasonable investors would want to know.

Given the importance of the Brogdon Guaranty and the fact that Brogdon controlled every entity obligated on the notes, there is a substantial likelihood that a reasonable investor deciding whether to purchase COPs in Brogdon-related offerings would consider the court's decision that Brogdon refused to honor a similarly binding guarantee to be an important fact that could alter the mix of available information. Thus, the Commission should affirm the NAC's finding that the Georgia lawsuit is material.

2. CRI and Cantone's Omissions Were Negligent

It is negligent for a registered representative to fail "to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation ... [Negligence] connotes culpable carelessness." *John P. Flannery*, Initial Decisions Release No, 438, 2011 SEC LEXIS

[4] For example, on January 4, 2016, state court in Georgia granted summary judgment against Polo Road for breaching the promissory note. RP 10257-10266.

3835, at *104 (Oct. 28, 2011) (quoting Black's Law Dictionary 1056 (7th ed. 1999)). This standard of care imposes a duty on a registered representative to take reasonable steps to become informed about a recommended security and to do more than to rely unquestioningly on information provided. *Reynolds*, 2001 NASD Discip. LEXIS 17, at *43-44. CRI and Cantone had a duty to take reasonable steps to become informed about Brogdon, who was central to the potential success or failure of the COP offerings. They had an obligation "to investigate and verify" Brogdon's background. *Id.* at *44 n. 25. CRI and Cantone did not fulfill this obligation. As a result, they were unaware of one of the NASD bars, the tax liens, the Georgia court decision, and the NHC bankruptcy, which we have found to be material facts that should have been disclosed to investors in the COPs. By omitting this material information, they violated the requisite standard of care, violated Section 17(a)(2) and (3) of the Securities Act, and violated the high standards of commercial honor and just and equitable principles of trade that FINRA Rule 2010 mandate.

B. CRI and Cantone Fraudulently Omitted and Misrepresented Material Facts In The Offer Or Sale of Securities

The NAC correctly found that CRI and Cantone fraudulently omitted and misrepresented late and missed interest and principal payments, and the reasons underlying and the terms of the extension agreements in the Columbia and Oklahoma Offerings[5], and failed to disclose to

[5] CRI and Cantone should have disclosed to those investors that they covered Brogdon's late and missed payments that preceded the extension agreements. As to the First Columbia Extension Agreement, they should have disclosed to investors that Brogdon defaulted on the original maturity date of the principal and that the Cantones covered Brogdon missed interest payments to Columbia Financial that were due on May 1, 2012 and August 1, 2012, and to Chestnut Financial on March 1, 2012, June 1, 2012, and September 1, 2012. As to the Second Columbia Extension Agreement they should have disclosed the above, as well as loans for Brogdon's missed December 1, 2012 interest payment to Chestnut and the December 2012 interest payment to Cedars. As to the Oklahoma Extension Agreement, they should have disclosed to investors all the above missed payments, as well as that Cantone loaned Columbia Financial funds to cover Brogdon's missed interest payment in May 2013, loaned Chestnut

Cherokee Offering investors the late and missed interest and principal payments and financial issues Brogdon experienced in the preceding offerings, in violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rule 2020.

Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 prohibit the use, in connection with the purchase or sale of any security, of any fraudulent and deceptive acts and practices. See 15 U.S.C. § 78j(b), 17 C.F.R. § 240.10b-5. For the Commission to sustain the NAC's findings of fraud, the evidence must demonstrate that Cantone and CRI: (1) misrepresented or omitted, (2) material facts, (3) with scienter, (4) in connection with the purchase or sale of securities, (5) by means of interstate commerce. *See SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1466-1467 (2d Cir. 1996). A preponderance of the evidence establishes each of these elements.

CRI and Cantone's fraudulent omissions also violated FINRA's antifraud rule, FINRA Rule 2020, which, like Exchange Act Section 10(b) and Rule 10b-5, prohibits members from effecting or inducing purchases and sales of securities by deceptive means. Conduct that violates the Commission's or FINRA's rules, including the antifraud rules, also violates FINRA Rule 2010, which requires associated persons to observe high standards of commercial honor and just and equitable principles of trade. *See William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *14-15 (Mar. 31, 2016), *aff'd sub nom. Harris v. SEC*, 712 F. App'x 46 (2d Cir. 2017).

1. Extension Agreements

Cantone failed to inform COP holders in the Columbia and Oklahoma offerings, when considering whether to submit to the extension agreements, of Brogdon's earlier missed and late

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Financial funds to cover Brogdon's missed interest payments in March and June 2013, and loaned Cedars Financial funds to cover Brogdon's missed June 2013 interest payment.

payments, the increased interest and fees that Cantone would receive from the extensions, and that Brogdon was unable to repay investors their principle. The NAC found that Cantone and CRI acted intentionally to omit these material facts and the Commission should affirm their findings over the applicants' baseless objections.

a. Extension Agreements are Securities

To begin with, applicants argue that any omissions that they made when seeking to secure extension agreements from COP holders in the Columbia and Oklahoma projects were not sufficiently connected to a security and could not constitute actionable securities fraud under Section 10b of the Exchange Act. Applicants seek to distinguish *United States. v. Durham*, 766 F.3d 672 (7th Cir. 2014), from the facts of this case, but they rely only on the differing procedural posture of the cases and not the substance of the law. Opening Br. at 35. Contrary to applicants' assertions, *Durham* is on point because Cantone and CRI were also engaged in a continuing fraud and cover-up of their misrepresentations. In *Durham*, defendants were convicted of securities fraud under Section 10(b) and Rule 10b-5. Defendants had sold "investment certificates" that paid interest at regular intervals. *Durham,* 776 F.3d at 676. When the certificates became due, investors could redeem them for the face value of the certificate or renew their investment. *Id.* Many of the misrepresentations alleged at trial were made after a particular investor had purchased an investment certificate. *Id.* at 682-83. Defendants argued that these misrepresentations, therefore, were not made "in connection with" the purchase or sale of a security and asked for a jury instruction to that effect. *Id.* at 683. The district court refused to give such an instruction, and defendants appealed that decision to the Seventh Circuit. *Id.* at 678. The Seventh Circuit noted that the Supreme Court has broadly interpreted the phrase "in connection with" in Section 10(b) as "merely requiring a misrepresentation 'coincid[ing]' with a

securities transaction." The Seventh Circuit then held that misrepresentations made after the initial purchase of the certificates were made "in connection with" the purchase or sale of a security because they could have induced investors not to redeem their investments. The Court explained:

> [Defendants'] investors made decisions to buy, renew, or redeem their certificates based on a massive fraud that included lulling statements about the delayed interest payments as well as misrepresentations intended to induce delayed redemptions. The reliable payment of interest was precisely what gave the investment certificates value and would have played a large role in an investor's decision to cash out an existing certificate, renew that certificate . . . or buy one for the first time. *Id.* at 683.

The same result applies here. CRI and Cantone failed to disclose information to investors in Columbia and Oklahoma that would have been material to their decision whether to accept Cantone's offer to buy back their securities or to hold them through the extended term. CRI's and Cantone's failure to disclose this information was "in connection with" the purchase or sale of a security. *See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006) (holding that when the Court has interpreted "in connection with" in the context of Section 10(b), it has espoused a broad interpretation, stating that "[u]nder our precedents, it is enough that the fraud alleged 'coincide' with the securities transaction."); *SEC v. Zandford*, 535 U.S. 813, 819 (2002) (holding that Section 10(b) should be construed flexibly and adopting the SEC's broad reading of the phrase "in connection with"); *see also Fischer v. NYSE*, 408 F. Supp. 745, 755 (S.D.N.Y. Jan. 16, 1976) ("[t]his court long ago observed that extension agreements are separate transactions under the securities laws."). For these reasons, the Commission should find that the extension agreements were made in connection with the purchase or sale of a security.

b. Materiality

The NAC also correctly determined that there was a substantial likelihood that reasonable Columbia and Oklahoma investors when deciding whether to continue to participate in the

offerings would consider terms of the extension agreements that Cantone failed to disclose, and misrepresented to Oklahoma investors, and Brogdon's numerous missed and late payments which preceded the extension agreements, to significantly alter the total mix of available information. As the number of Brogdon's failures to pay interest and principal timely increased, so did Cantone's complaints to Brogdon that he was injuring his reputation and making it difficult for Cantone to find additional investors for upcoming offerings. In numerous emails to Brogdon, Cantone made clear that he knew that investors would want to know that Brogdon had failed to make interest and principal payments. For example, Cantone wrote:

- It was "difficult to have investors send more money for other offerings when they feel insecure based on past offerings." RP 2763.
- "It will become increasingly difficult for me to fund projects if we do not keep our commitments on past projects. My salesmanship with investors only goes so far; when you make a guarantee to make a timely payment, you need to make the payment. I do what I can to minimize the damage caused by the late payments. RP 2765.
- "It hurts Brogdon's reputation (and my ability to fund future projects) when interest and principal is not paid when due because investors get concerned about his guarantee." RP 3499-500
- There "is an indication that [Brogdon] is stretched too far and that his guarantee is no longer reliable." RP 3500.
- "It is very difficult for me to convince investors to send more money for the Brogdon deals (like the Oklahoma deal I am now working) when interest on past deals is late." RP 3499.
- "The problem is even worse because I have about 100 investors that can file a lawsuit against me for not enforcing the terms of the agreements on the various projects we financed. You guaranteed the prompt payment of interest and principal. Yet I had to pay back the principal to five investors who did not want to extend the Polo Road/Columbia Note to avoid complaints to FINRA." RP 3555.

Applicants argue that the terms of the extension agreements could not be "concealed," that Cantone disclosed that Brogdon had payment issues to investors, and in any event, the extension agreements themselves reference Brogdon's inability to pay. Opening Br. at 38. Each

argument fails. First, the NAC decision doesn't find that Cantone and CRI concealed the maturity dates of the extension, only the details of the extension agreements themselves (increased interest rate and fees paid to Cantone and Brogdon's cash flow problems). Next, it isn't in dispute that investors knew that some of their payments were late (hence complaints from investors documented by Cantone in his emails to Brogdon)—what they were unaware of was that Cantone was loaning Brogdon the funds to make the payments.[6] Finally, the fact that the extension agreements contained the real reasons for the extension is a red herring—the record is clear that those agreements were not given to the investors.

The reasons behind the extension agreements and their terms would have been material to investors. For that reason, the Commission should affirm.

c. Scienter

CRI and Cantone knew of Brogdon's missed and late payments of interest and principal before the date of the extension agreements and they knew of the changes to the terms of the notes, specifically the additional fees and higher interest rate they charged Brogdon. As detailed

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[6] There is no documentary evidence that Cantone informed investors that Brogdon missed payments in other offerings before extending the maturity dates for the Columbia and Oklahoma notes. To the contrary, applicants agreed with FINRA examiners that:

> The Firm agrees that Columbia ought to have made disclosure to investors that Polo Road [the obligor of the Columbia Promissory Note] had failed to make interest payments to Columbia and that Columbia was making interest payments to investors with funds loaned by [Anthony Canton] or affiliates ...The Firm has implemented a policy to ensure full disclosure of material post-closing events to all investors. RP 847; 4651; 4665.

Furthermore, in his OTR, when asked if he informed Columbia investors that he had made interest payments that Brogdon missed, Cantone testified he "probably did not mention ... that I was lending the money to Columbia out of my pocket. I'm not sure that I did." RP 856-57. When asked during the OTR to explain what he told clients about having paid interest to COP investors, Cantone replied: "It was irrelevant. I don't think I discussed it with too many people. Maybe one or two people that asked." RP 858.

above, there is no question that Cantone understood that disclosing these issues to investors could undermine the deals. Thus, Cantone and CRI decided to withhold, or in the case of the Oklahoma Extension Agreement, misrepresent, the actual terms of the extension agreements and the reasons why the extensions were needed (Brogdon's inability to pay).

The First Columbia Extension Agreement forthrightly stated that Brogdon was unable to make required payments, but Cantone did not send the extension agreement to investors. Instead, he sent them a letter after the fact stating only that he had granted the extension because Brogdon had a prospective purchaser for the facility. RP 968-69; 2811. The First Columbia Extension Agreement charged additional fees to Brogdon and increased the interest rate from 10 to 14 percent, and Cantone determined the additional 4 percent would go to him, not to the investors. Cantone did not disclose these changes to the investors. RP 2806. In addition, by the time of the extension, Brogdon had made more late interest payments to Columbia and Chestnut. Cantone did not disclose these facts in his letter to investors.

After Brogdon told Cantone in January 2013 that he was unable to repay the principal because of low occupancy of the assisted living facility and independent living apartments, Cantone offered a second extension. RP 4147-51. By the Second Columbia Extension Agreement, Brogdon had been unable to make two more interest payments, but Cantone did not disclose these to Columbia investors. These missed payments are material facts that should have been disclosed to the Columbia investors contemplating whether to continue to participate in the extended offering with a party who was unable to make payments as required.

The Oklahoma Extension Agreement made similar changes, increasing the interest rate from 10 to 14 percent and charging Brogdon additional fees. RP 4147-51. As with the Columbia extension, Cantone did not send the extension agreement to investors. In the letter he

sent to them, he falsely stated the 10 percent interest rate would continue, and he did not disclose the additional four percent he was charging. RP 4145. Cantone justified this in his OTR testifying that the investors were "not interested in my 4 percent extra I'm getting." RP 1079. The omissions and the misrepresentation in the extension agreements are material. In addition, Brogdon had failed to make additional timely interest payments to investors in other COPs prior to the Oklahoma Extension Agreement: one to Columbia, one to Chestnut and two to Cedars that Cantone did not disclose.

Therefore, the NAC correctly found that CRI and Cantone acted with scienter, intentionally failing to disclose Brogdon's missed or late payments, and the changes to the interest rate, to Columbia and Oklahoma investors, and misrepresenting the changed interest rate paid after the extension to Oklahoma, depriving the investors of material facts when deciding whether to continue to participate in the offerings with extended maturity dates.

2. Cherokee Offering

Brogdon was an active participant in the Cherokee project, but an accurate depiction of his background was materially omitted from the Cherokee CDMs. As with every other COP offering, Brogdon brought the Cherokee project to the attention of Cantone. Cantone had Michael Gardner draft CDM for the Cherokee project nearly identical to the preceding four deals, with the slight exception that a Brogdon-owned LLC would offer the guarantee instead of Brogdon himself. Even though a separate legal entity—Chelsea LLC—was guaranteeing the COPs, negative information concerning the legal and professional history of the person who would have to fund the LLC was information that would "significantly alter[] the 'total mix' of information made available" to the reasonable investor. *SEC v. Carriba Air, Inc.*, 516 F. Supp. 120, 129 (1981) (*quoting TSC Indus. v. Northway*, 426 U.S. 438, at 449 (1976)).

a. Materiality

Applicants argue that Brogdon's history—his negative biographical information as well as Brogdon's defaults and missed and late payments—was irrelevant to the Cherokee offering, effectively believing that investors were indifferent to his role in that offering. They argue this despite having drafted CDMs that expressly stress the importance of Brogdon's role in the Cherokee offering. The NAC saw through applicants' attempt to draft around disclosing numerous missed and late payments by companies under Brogdon's control by simply changing the offering to include a guarantee by another Brogdon-controlled entity rather than Brogdon himself. Brogdon himself had breached his personal guarantees, a fact the attorney advising Cantone and CRI noted, but Brogdon-controlled entities had also defaulted on each of the prior offerings. Inserting another Brogdon controlled entity into the mix did not eliminate the materiality of the prior breaches.

At the time of the Cherokee offering Cantone and CRI knew that Cherokee's "central participant" had failed to make required interest payments, which Cantone covered, or failed to make required principal payments in the four previous deals. Cantone had also negotiated undisclosed interest rate increases and fees in the First and Second Columbia Extension Agreements. In addition, at the time of these solicitations, Cantone had accused Brogdon of being "in default" and questioned the reliability of Brogdon's "guarantee" several times. RP 959; 961-62; 976; 990-93; 1065-66; 2763; 2765; 2827; 3501; 3556. Moreover, just four days before the date of the Cherokee CDM, Chestnut generated an invoice showing that Brogdon owed $350,000 in unpaid interest and administration fees. RP 1404; 1069-7; 3563. In addition, Cantone had reviewed the Cedala income statements that showed that Cedala had sustained the following net losses for the years 2008, 2009 and 2010. RP 1088-89; 1409; 4409; 4412; 4415.

Cantone was also aware, based on 2012 year-end income provided by Brogdon, that the following assisted living facilities all showed negative net income figures: Cedars ($115,226.59), Chestnut ($1,101,034.84), and Columbia ($803,937.30). RP 1097-98; 4511; 4514; 4517, 4520; 4523.

Applicants contend that, even though Brogdon was the "the central participant in the transaction," they could avoid disclosing his many defaults and missed payments because they tweaked the guaranty to avoid this disclosure. Applicants' arguments fail.

First, it is irrelevant that Brogdon was not personally guarantying the notes. The entity that was giving the guaranty was owned by and under Brogdon's control. It is also is irrelevant that the person designated as the "Developer" in the agreement was not Brogdon. R. 6749. When the Cherokee COPs were sold, Brogdon was the manager and owned 100% of Arcadia Partners, LLC, the entity issuing the note underlying the COPs. *Id.* He would continue to manage the entity and own more of it than the developer after the transaction closed, meaning payment on the notes and the success of the project still depended on Brogdon. *Id.* The developer was merely the contractor who was responsible for construction and who had a smaller stake in the project. Arcadia Partners would still operate under Brogdon's direction as its managing member.

The NAC correctly concluded that Brogdon was sufficiently central to the Cherokee offering that his biographical information, prior defaults and missed and late payments in other Brogdon offerings would have been material to purchasers of Cherokee COPs. The Commission should thus affirm.

b. Scienter

The NAC correctly concluded that CRI and Cantone acted with scienter when they failed to inform prospective Cherokee investors of Brogdon's growing number of missed interest and

principal payments to investors in the prior offerings. Cantone deliberately substituted the Chelsea Guaranty for the Brogdon Guaranty to avoid disclosing Brogdon's record of missed payments, as Gardner told Cantone he would need to do if the CDM contained the Brogdon Guaranty. Furthermore, as stated above, Cantone made clear through his emails that he knew that investors would want to know that Brogdon had failed to make interest and principal payments – and acted deliberately to conceal that information from them.

C. Applicants' Advice of Counsel Defense Fails

Applicants claim they could not have acted with scienter because they relied on the advice of an attorney, Michael Gardner. Opening Brief at 31. The NAC correctly rejected this contention because there was no evidence that Gardner was informed of all the material facts, was asked to give any opinion, or what the substance of that advice might have been.

Reliance on counsel is an affirmative defense that may be invoked only when the following elements are satisfied: (1) the respondent made full disclosure to counsel, (2) appropriately sought to obtain relevant legal advice, (3) obtained it, and then (4) reasonably relied on the advice. *Markowski v. SEC*, 34 F.3d 99, 104-05 (2d Cir. 1994). Courts consider it important that the advice of counsel the client received was based on a full disclosure. It is not possible to make out an advice of counsel claim without producing the actual advice from an actual lawyer. *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *40-41 (SEC Nov. 14, 2008), *aff'd sub nom. Berger v. SEC*, 347 F. App'x. 692 (2d Cir. 2009).

"Good faith reliance on the advice of counsel means more than simply supplying counsel with information." *Enter. Sols.*, 142 F. Supp. 2d at 576. Hiring an attorney without actively seeking out advice on the specific issue, and without receiving advice on the entire issue in question, cannot support an advice of counsel defense. *SEC v. Scott*, 565 F. Supp. 1513, 1535

(S.D.N.Y. 1983) (noting that defendant's "complacent attitude" and failure to "actively" seek the advice of counsel was insufficient to establish the defense). Reliance is not a complete defense, meaning it cannot overcome the direct evidence of scienter discussed above. *Howard Brett Berger*, 2008 SEC LEXIS 3141, at *40.

Applicants have not met their burden.

There is no evidence in the record that Cantone or anyone else ever sought Gardner's advice relating to the bulk of Brogdon's disciplinary history. To the contrary, Cantone testified only that he assumed that Gardner was aware of this information based on Gardner's pre-2003 experience with Brogdon-related municipal bond offerings. RP 940. Beginning in 2008, CRI and Cantone did not provide Gardner with any information concerning lawsuits and tax liens filed against Brogdon and Brogdon's entities or bankruptcy filings made by Brogdon's entities. RP 929; 932; 949.

There also was insufficient evidence that Gardner was provided with complete information about Brogdon's indictment and disciplinary history. Cantone testified that he emailed Gardner a copy of a May 2008 letter from Brogdon's attorney that discussed Brogdon's indictment and Brogdon's 1984 NASD action (but not the 1985 NASD action). Yet CRI could not produce a copy of this email or any reply from Gardner. Nor did Gardner did not reduce any purported advice to writing. Here, Cantone provided no evidence on what advice he sought or what advice was "affirmatively provided." The sum and substance of Cantone's testimony was that Gardner prepared the offering materials and should have told him to include these negative events if he thought necessary. RP 940. Cantone never even claimed that he explicitly sought Gardner's counsel on these issues.

Moreover, there is no evidence that Cantone or CRI disclosed to their attorney the details of the many times between May 2010 and February 2013 that a Brogdon entity failed to make a required interest payment or failed to return investors' principal. Nor was there any evidence documenting a request for legal advice on the amendments providing Cantone and CRI additional fees in connection with the extensions. Cantone's assumption about Gardner's prior dealings with Brogdon-related offerings and his "hands-off policy" cannot establish an advice of counsel defense. *See Dist. Bus. Conduct Comm. v. Prendergast*, Complaint No. C3A960033, 1999 NASD Discip. LEXIS 19, at *41 n.7 (NASD NAC July 8, 1999), *aff'd*, 55 S.E.C. 289 (2001) (holding that a respondent could not establish an advice of counsel defense where the respondent "merely asserts, in conclusory fashion, that an attorney assisted in preparing various materials related to the offering at issue" but did not "provide any information regarding what specific advice he affirmatively sought or what advice was affirmatively provided.").

Applicants place great weight on an email Gardner wrote to Cantone on April 10, 2013, suggesting that if the Brogdons personally guaranteed the Cherokee offering, their prior breaches of other personal guarantees would need to be disclosed. R. 6297. The email did not discuss whether CRI and Cantone should disclose the prior defaults of the Brogdon-related entities, but whether CRI and Cantone would need to disclose that "Chris and Connie" Brogdon had failed to honor previous guaranty agreements. Gardner concluded that CRI and Cantone would have to disclose this fact. *Id.* There was no evidence that CRI, Cantone, or anyone else sought Gardner's advice whether to disclose any other of the material omissions outline above. Furthermore, at the time the Cherokee CDM was prepared and issued, Gardner was no longer CRI's nor Cantone's attorney—Gardner represented only Brogdon and his entities. On May 28, 2013, Cantone emailed Gardner clarifying that Chris Flannery, not Gardner, represented CRI and

Cherokee.[7] R. 13364. Cherokee never paid Gardner for any legal advice; the only payments that Cherokee made for legal advice went to Flannery. RP 4595. *Prendergast*, 1999 NASD Discip. LEXIS 19, at*41 n.7 (rejecting a respondent's advice of counsel claim where the relationship between counsel and the party invoking the defense was unclear).

For these reasons, the Commission should affirm.

D. The Commission Should Affirm the NAC's Finding that Christine Cantone Failed to Reasonably Supervise Cantone and CRI

The NAC correctly determined that Christine Cantone failed to supervise her husband in violation of NASD Rule 3010(a) and FINRA Rule 2010. Under CRI's written supervisory procedures ("WSPs"), Christine Cantone's supervisory responsibilities included reviewing emails and correspondence and ensuring that representatives under her supervision, including her husband, Cantone, conducted thorough due diligence. R 1306-7. She also handled the books for the Brogdon-related COPs. RP 1305.

Christine Cantone was required to review Cantone's emails daily to ensure his messages were truthful and balanced, and to make sure that Cantone performed his due diligence for the COP offerings. RP 1307. Christine Cantone testified that she discussed Brogdon's 1984 NASD bar with Gardner but had no other discussions with him regarding Brogdon's past. RP 1600. She also was aware of numerous red flags concerning Cantone's and CRI's sales and extensions of the COP offerings. Through her review of Cantone's emails and her discussions with him, Christine Cantone knew when Brogdon failed to make timely interest payments in the Columbia,

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[7] By the time of the Cherokee Offering, Cantone had lost faith in Gardner's competence as a lawyer. Cantone had learned that Gardner had failed to file several blue sky disclosures for all of the past COP projects. RP 1264. After discovering Gardner's failures, Cantone brought on a new attorney and admitted in his hearing testimony that he did so because of Gardner's "incompetence." *Id.* If Cantone thought Gardner was incompetent, he could not rely in his purported advice on the Cherokee deal in good faith. *See United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1194 (2d Cir. 1989) ("an advice-of-counsel defense presupposes the defendant's solicitation of advice in good faith").

Chestnut, and Cedars offerings, and missed principal payments in the Columbia offering. She also participated with Cantone in directing funds from their joint bank account to make interest payments when Brogdon failed to do so in Columbia, Chestnut, and Cedars. RP 1396; 1400-01; 1405. Christine Cantone herself wrote the checks to cover the Brogdon's missing payments. *Id.* She knew when Cantone extended the maturity dates of the notes in the Columbia and Oklahoma offerings and changed the terms of these offerings by increasing the interest rate Brogdon was to pay and assessing him additional costs; that Cedala sustained losses in 2008, 2009, and 2010; that by May 2013, Brogdon owed more than $350,000 in interest to investors in the Chestnut offering; and that by the end of 2012, the Brogdon entities sustained losses of more than $2 million. RP1394-95; 1404; 1409; 1411. Despite her knowledge of these red flags, Christine Cantone took no steps to address them. By not doing so, she failed in her supervisory obligations as designated by the WSPs. As a result, the Commission should affirm the NAC's findings that Christine Cantone, and through her, CRI, violated NASD Rule 3010 and FINRA Rule 2010.

E. The Sanctions Are Appropriate to Protect Investors and the Public Interest and to Promote Market Integrity

The Commission should affirm that NAC's sanctions, which are well-supported by the record and are neither excessive nor oppressive. Section 19(e)(2) of the Exchange Act guides the Commission's review of FINRA's sanctions, and provides that the Commission may eliminate, reduce, or alter a sanction if it finds that the sanction is excessive, oppressive, or imposes a burden on competition unnecessary or appropriate to further the purposes of the Exchange Act. In considering whether sanctions are excessive or oppressive, the Commission gives significant weight to whether the sanctions are within the allowable range of sanctions under FINRA's Sanction Guidelines ("Guidelines"). *See Vincent M. Uberti*, Exchange Act Release No. 58917,

2008 SEC LEXIS 3140, at *22 (Nov. 7, 2008) (noting that Guidelines serve as "benchmark" in Commission's review of sanctions).

The sanctions the NAC imposed on Cantone, CRI, and Christine Cantone are neither excessive nor oppressive and serve to protect investors, market integrity, and the public interest. The sanctions imposed on each applicant are meaningful sanctions that are consistent with FINRA's Sanction Guidelines and will serve to deter future misconduct. The Commission should therefore affirm the sanctions imposed in their entirety.

1. CRI's and Cantone's Fraudulent and Negligent Omissions and Misrepresentation

For Cantone's and CRI's fraudulent omissions and misrepresentation related to their failure to disclose Brogdon's missed and late payments and terms of the extension agreements to investors participating in the Columbia and Oklahoma Extension Agreements, and their failures to disclose Brogdon's missed and late payment and the negative material financial information related to Brogdon's projects to Cherokee investors, the NAC suspended Cantone for one year and fined Cantone and CRI $100,000, jointly and severally. For negligently failing to disclose to investors in all five of the offerings Brogdon's negative financial and legal history, the NAC imposed an additional three-month suspension on Cantone in all capacities and a joint and several fine on Cantone and CRI of $50,000.[8] The NAC ordered the suspensions run consecutively.

[8] Applicant's brief erroneously argues that the NAC imposed a one-year suspension and $100,000 fine for the "negligence based claims." Applicants Br. at 43. This is incorrect. In fact the NAC imposed a three-month suspension for the "negligence based claims"—well within the applicable Guideline range. NAC Decision at 42, 45.

For an individual charged with intentional or reckless omissions of material fact in the sales of securities, the Sanction Guidelines strongly recommend considering a bar.[9] If there are mitigating circumstances, the Guidelines recommend a suspension in any or all capacities for six months to two years, and a fine of $10,000 to $146,000.[10] For a firm, the Guidelines recommend suspension of any or all activities for up to two years, and strong consideration of expulsion from FINRA membership if there are aggravating circumstances.[11] For negligent misrepresentations and omissions, the Guidelines recommend suspension of an individual in any or all capacities for 31 days to two years, a fine of $2,500 to $73,000, and, for a firm, considering a suspension with respect to a limited set of activities for 90 days.[12] Finally, the Guidelines direct the adjudicator to consider the Principle Considerations in Determining Sanctions that apply to all sanction determinations in its assessment of the severity of respondents' violations.[13]

The NAC determined that CRI's and Cantone's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder were serious. While the intentional nature of CRI's and Cantone's misconduct is an aggravating factor, the NAC noted that CRI and Cantone's intentional material misrepresentation and omissions were limited to the extensions of the Columbia and Oklahoma Offering notes and the solicitation of investments in the Cherokee offering.[14] The NAC considered it aggravating that CRI's and Cantone's fraudulent conduct

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9 *See FINRA Sanction Guidelines* 90 (2017) http://www.finra.org/sites/default/files/2017_Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 *Guidelines*, at 8 (Principal Considerations in Determining Sanctions, No. 13).

involved numerous acts, constituting a pattern, and occurred over a significant period of time.[15] Cantone notified Columbia investors of the first extension of the note's maturity in October 2012, of the second in February 2013, and he notified Oklahoma investors of the extension of their note in July 2013, a span of ten months. When Cantone notified investors of each of the extension agreements, he failed to inform them that he had covered Brogdon's multiple late payments. Cantone also solicited investors in Cherokee without disclosing the missed payments to prospective investors. It is also aggravating that Cantone has not acknowledged responsibility for his misconduct, even though he did not conduct any independent due diligence with respect any investigation into Brogdon's background.[16] The NAC also found Cantone's lack of candor with FINRA examiners during a June 2013 FINRA examination aggravating.[17] The examiners asked him if there had been any defaults or late payments in the private placements during the review period, and he said no. RP 1458. However, by that point in time Brogdon had made a number of late interest payments and had failed to pay the Columbia note principal when due, and Cantone had extended the maturity date twice.

Applicants argue that the NAC erred in overruling the Hearing Panel's determination that Cantone acted in good faith to protect investors.[18] In the first place, the NAC's determination

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15 *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 8).

16 *Id.* (Principal Considerations in Determining Sanctions, No. 2).

17 *Id.* (Principal Considerations in Determining Sanctions, No. 10).

18 Applicants make several implied arguments against the imposition of liability or sanctions that hold no weight. First, contrary to applicants' argument, the fact that the COP investors were sophisticated investors does not excuse CRI and Cantone's material misrepresentations and omissions. *See Anthony Fields, CPA*, Exchange Act Release No. 74344, 2015 SEC LEXIS 662 (Feb. 20, 2015) ("a sophisticated person is [as] entitled to the protection of the antifraud provisions of the securities laws," as a less knowledgeable investor).

did not affect the sanctions—they were not increased as a result. And the record reflects that Cantone did not act in good faith. By keeping the deals afloat, and increasing fees and interest rates payable to him and CRI, Cantone made more money for himself. Moreover, Cantone's protestations of altruism are undermined by his own words: "[]I had to pay back the principal to five investors who did not want to extend the Polo Road/Columbia Note ***to avoid complaints to FINRA***." RP 3556. Cantone was motivated by greed and self-preservation, and the NAC did not err in concluding he did not act in good faith.

For negligently failing to disclose to investors in all five of the offerings four material events in Brogdon's history, the NAC concluded that it was appropriate to impose an additional three-month suspension on Cantone in all capacities, and an additional joint and several fine on Cantone and CRI in the amount of $ 50,000. With thirty years of professional and industry experience, Cantone knew, or should have known, that spotlighting only positive information and failing to investigate multiple red flags concerning Brogdon's background would violate antifraud provisions of the federal securities laws and FINRA rules. As a result, the Commission should affirm the sanctions imposed.

2. Christine Cantone's Failure to Supervise

For Christine Cantone's failure to supervise, the NAC imposed a two-year suspension in all principal and supervisory capacities with a requirement that she requalify as a principle, and it also fined her $73,000, jointly and severally, with CRI. For the reasons below, the Commission should affirm this sanction.

Similarly, applicants argue that the risk disclosures in the CDMs excuse any alleged omissions or misrepresentations. Again, this is not the case. The fact that the CDMs contained generic statements regarding risk of loss and did not guarantee profit does not excuse Cantone from liability for the omissions and misrepresentation that he made to investors. See *Flannery*, 2014 SEC LEXIS 4981, at *71-73. Finally, that other nursing home deals with Brogdon were profitable is irrelevant – those deals are not part of this case and profitability is wholly unrelated to matter before the Commission.

The Sanction Guidelines recommend for a failure to supervise a fine in the range of $5,000 to $73,000, and suspending the responsible individual in all supervisory capacities for up to 30 business days and limiting the activities of the appropriate branch office or department for up to 30 business days.[19] In egregious cases, the Guidelines direct the adjudicator to consider limiting the activities of the branch office or department for a longer period or suspending the firm with respect to any or all activities or functions for up to 30 business days.[20] The adjudicator is also directed to consider suspending the responsible individual in any or all capacities for up to two years or barring the responsible individual.[21]

The NAC properly considered that this was not the first supervisory violation for Christine Cantone and CRI. In February 2012, Christine Cantone and CRI entered into an Offer of Settlement with FINRA in which she was suspended for three months in any principal capacity, fined $10,000 jointly and severally with CRI, and ordered to pay $200,000 in partial restitution to customers jointly and severally with CRI. RP 1745-1779. Without admitting or denying the allegations, Christine Cantone and CRI consented to the entry of findings that Christine Cantone failed to supervise reasonably a CRI registered representative who sold fraudulent investments to firm customers and misappropriated approximately $1.6 million of customers' funds. *Id.* The Guidelines' directive to adjudicators to impose progressively escalating sanctions on recidivists led the NAC to determine that a more significant suspension is warranted here.[22]

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19 *Id.* at 104.

20 *Id.*

21 *Id.*

22 *Guidelines*, at 2 (Disciplinary sanctions should be more severe for recidivists).

The NAC correctly found the supervision failures here troubling. CRI, acting through Christine Cantone, failed to supervise adequately CRI and Cantone's conduct related to the Brogdon-related COPs. CRI, through Christine Cantone, ignored many red flags, particularly with respect to numerous late and missed payments by Brogdon. Christine Cantone was also responsible for signing the checks to cover Brogdon's late and missed payments. Christine Cantone testified that she was aware of these issues, but did nothing about them, deferring to her husband's business judgment. "Assuring proper supervision is a critical component of broker-dealer operations." *Dep't of Enforcement v. Rooney*, Complaint No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *59 (FINRA NAC Jul. 23, 2015) (*quoting Pellegrino*, 2008 SEC LEXIS 2843, at *33). Given that the supervisory violations here are serious, the lack of any mitigating factors, and that Christine Cantone is a recidivist, the NAC properly concluded that CRI and Christine Cantone should be fined, jointly and severally, $73,000 and that Christine Cantone should be suspended in all principal and supervisory capacities for two years, with the requirement that she requalify after her suspension.

V. CONCLUSION

In contravention of the antifraud provisions of the Exchange Act and FINRA rules, Cantone ignored his unequivocal duty as a securities professional to disclose all material information in offering documents and extension agreements for the sale of securities. Christine Cantone also failed to supervise her husband's conduct in relation to the offerings. The evidence of applicants' misconduct is abundant and unambiguous. The suspensions and fines imposed by the NAC for Cantone, CRI, and Christine Cantone's misconduct are fully supported by the record and appropriate under the facts and circumstances of this case. The Commission

therefore should dismiss the application for review, sustain FINRA's disciplinary action, and affirm the sanctions imposed by the NAC.

Respectfully submitted,

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Tel.: (202) 728-8816

Dated: July 15, 2019

CERTIFICATE OF COMPLIANCE

I, Colleen Durbin, certify that this Brief of FINRA in Opposition to the Application for Review complies with the length limitation in SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 13,754 words.

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Dated: July 15, 2019

CERTIFICATE OF SERVICE

I, Colleen Durbin, certify that on this 15th day of July, 2019, I caused the original and three copies of the brief in opposition to application for review in the matter of Application for Review of Cantone Research Inc., Anthony Cantone and Christine Cantone, Administrative Proceeding No. 3-18999, to be served by messenger on:

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F St., NE
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Different methods of service were used because courier service could not be provided to Mr. Wolper and Ms. VonderHeide.

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VIA MESSENGER

Vanessa A. Countryman
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RE: In the Matter of the Application of Cantone Research, Inc., Anthony Cantone, and Christine Cantone Administrative Proceeding No. 3-18999

Dear Ms. Countryman:

Enclosed please find the original and three copies of the Brief of FINRA In Opposition To Application for Review in the above-captioned matter.

Please contact me at (202) 728-8816 if you have any questions.

Sincerely,

Colleen Durbin

cc: Alan M. Wolper, Esq.
Heidi E. VonderHeide
Melanie Campbell