

COMPLIANCE OFFICER LIABILITY
SRO Subcommittee of the ABA Securities
Litigation Committee
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I. EXECUTIVE SUMMARY

This outline was prepared for the January 18, 2012 program about Compliance Officer Liability sponsored by the SRO Subcommittee of the ABA Securities Litigation Committee.¹ It includes a summary of significant SEC and FINRA cases involving a compliance or supervisory failure by Chief Compliance Officers (“CCOs”) and other compliance officers for registered broker-dealers and investment advisers for the period from January 1, 2010 through December 31, 2011.² The outline does not include cases against individuals whose alleged misconduct arose principally from their non-compliance officer roles, such as CEO, CFO or other principal, where such persons also were designated as the CCO or a compliance officer.

II. SEC CASES AGAINST COMPLIANCE OFFICERS

- A. *In the Matter of Gilford Securities, Incorporated* (“Gilford”), *Ralph Worthington, IV, David S. Kaplan, and Richard W. Granahan*, Admin. Proc. File No. 3-14574 (Sept. 30, 2011)
1. The SEC filed settled administrative proceedings against Gilford, a New York-based broker-dealer, as well as Ralph Worthington, IV (Gilford’s Chief Executive Officer and Chairman of the Board), David S. Kaplan (Sales Manager at Gilford’s New York office), and Richard W. Granahan (Gilford’s CCO).
 2. According to the SEC, from January 2005 to December 2007, Gilford broker M.S. Gregg Berger (“Berger”) participated in a series of fraudulent pump-and-dump schemes involving the sale of microcap stocks resulting in proceeds in excess of \$33 million. Berger facilitated the trading of over 30 million shares of low-priced, thinly-traded microcap stocks, which coincided with spam e-mail campaigns and the release of corporate news for stocks that previously had little or no trading volume. Berger generated approximately \$1.1 million in sales commissions from these unregistered sales. Berger was indicted in February 2011 for conspiracy to commit securities fraud and wire fraud, and has pled guilty to the conspiracy charge.
 3. The SEC alleged that Gilford facilitated Berger’s unregistered, non-exempt resale of over 30 million shares in more than 20 customer accounts, in willful violation of Sections 5(a) and 5(c) of the Securities Act. Gilford allegedly made no inquiries and ignored obvious red flags concerning the unregistered sales. The SEC also charged Gilford with

¹ The Subcommittee is co-chaired by Andrew W. Sidman of Bressler, Amery & Ross, P.C., David C. Boch of Bingham McCutcheon, LLP and Anne C. Flannery of Morgan Lewis & Bockius LLP.

² This outline was prepared by Anne C. Flannery, partner and Regina Schaffer-Goldman, associate of the New York office of Morgan Lewis & Bockius LLP. Portions of the outline will appear in the Morgan Lewis & Bockius LLP Outline titled “2011 Year in Review: SEC and SRO Enforcement Developments Regarding Broker-Dealers” (“Morgan Lewis Outline”) available at http://www.morganlewis.com/pubs/LIT_2011YearInReview.pdf. The Outline was prepared by several Morgan Lewis partners and associates including the author. Copyright 2012, Morgan, Lewis & Bockius LLP.

failing to adequately supervise Berger because it did not have a system to implement its policies and procedures regarding the prevention and detection of sales of unregistered stock and the review of unusual order tickets.

4. The SEC further alleged that Worthington, as founder, CEO, and Chairman, had ultimate responsibility for Gilford's supervisory policies and procedures, and implementation of these policies and procedures, yet failed to adequately supervise Berger's trading activity. Kaplan, as the Sales Manager, allegedly failed to follow Gilford's policies and procedures relating to review of internal email correspondence. Both Worthington and Kaplan purportedly ignored obvious red flags, including Berger's selling of large volumes of low-priced, little known securities on behalf of overseas customers (often the only securities sold in the account).
5. Granahan, Gilford's CCO and AML officer, allegedly failed to file SARs in response to Berger's suspicious trading activities.
6. All respondents consented to the entry of cease-and-desist orders against them. Gilford and its CCO, Granahan, were censured, while Worthington and Kaplan were suspended from association in a supervisory capacity with any broker or dealer for one year. Gilford was ordered to pay disgorgement of \$275,000, prejudgment interest of \$77,113, and a civil penalty of \$260,000. Kaplan was ordered to pay \$225,000, prejudgment interest of \$63,092, and a civil penalty of \$30,000. Worthington and Granahan, the CCO, were ordered to pay civil penalties of \$45,000 and \$20,000, respectively.

B. *In the Matter of the Application of Dennis Kaminski for Review of Disciplinary Action Taken by NASD, Admin. Proc. File No. 3-14054 (September 16, 2011)*

1. This SEC decision was an appeal by Dennis Kaminski, a former principal and supervisor of the compliance department of broker-dealer Mutual Services Corporation ("MSC"), from an NASD decision sanctioning Kaminski for failing to supervise MSC's variable annuity trading activity.
2. According to the SEC opinion, Kaminski supervised MSC's compliance department throughout his tenure. In 2004, when the alleged misconduct occurred, he served as an executive vice president of the firm and its chief administrative officer. He was also a member of MSC's management committee and was responsible for the firm's day-to-day operations, overseeing its compliance, operations, and legal departments.
3. In July 2007, the NASD Department of Enforcement ("Enforcement") charged Kaminski with one count of "fail[ing] to carry out [his] supervisory responsibilities" and "fail[ing] to reasonably supervise the firm's review of its variable annuity transactions" in violation of NASD Rules 3010(a) and 2110. An evidentiary hearing was held at which Kaminski was represented by counsel, gave testimony, and submitted exhibits into evidence.

4. On December 16, 2008, the NASD Hearing Panel found that Kaminski had violated NASD Rules 3010(a) and 2110 by failing to reasonably supervise MSC's review of its variable annuity transactions between approximately March 15, 2004 and May 31, 2004. The Panel determined that Kaminski should be suspended in all principal capacities for six months and fined \$50,000. Among other findings, the Hearing Panel found that Kaminski's testimony was not credible, that he knew by March 2004 that the compliance department was "in crisis," and that he ordered the compliance department to suspend certain reviews of variable annuity activity that had been instituted by MSC in conjunction with an earlier NASD settlement.
5. The NASD National Adjudicatory Council ("NAC") elected to review the Hearing Panel's sanction determination with respect to Kaminski. The NAC concluded that Kaminski's misconduct was egregious. It held that Kaminski was involved in MSC's settlement of the 2001 NASD disciplinary action concerning the firm's failure to properly supervise its variable annuity trading, and that he knew that MSC had instituted the review procedures he ordered be suspended.
6. The NAC found that, despite this knowledge, Kaminski failed to reasonably supervise MSC's review of its variable annuity transactions. The NAC affirmed the \$50,000 fine imposed on Kaminski, but increased the six-month principal suspension to an eighteen-month suspension in all capacities and required that Kaminski re-qualify before acting in any capacity requiring qualification.
7. In a lengthy opinion on appeal, the SEC (by Commissioners Aguilar and Paredes with Chairman Schapiro and Commissioner Walter not participating) sustained the NAC's findings of violations and the increased sanctions imposed.

C. *In the Matter of Wunderlich Securities, Inc. ("WSI"), Tracy L. Wiswall, and Gary K. Wunderlich, Jr.*, Admin. Proc. File No. 3-14403 (May 27, 2011)

1. In a settled proceeding, the SEC found that WSI, a registered investment adviser and broker-dealer, willfully violated several antifraud and compliance provisions of the Advisers Act and the rules thereunder.
2. The SEC's order also found that Wiswall and Wunderlich willfully aided and abetted and caused certain of WSI's violations. During the relevant periods, Wiswall served as WSI's CCO, and Wunderlich served as WSI's chief executive officer ("CEO").
3. In summary, the SEC found that from at least 2007 through 2009, WSI overcharged advisory clients for commissions and other transactional fees in violation of Section 206(2) of the Advisers Act; failed to satisfy the disclosure and consent requirements of Section 206(3) of the Advisers Act when WSI engaged in principal trades with advisory clients; failed to adopt, implement, and review written policies and procedures as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; and failed to

establish, maintain, and enforce a written code of ethics as required by Section 204A of the Advisers Act and Rule 204A-1 thereunder.

4. According to the SEC, Wiswall was a cause of WSI's violations relating to the firm's principal trades with advisory clients. In addition, both Wiswall and Wunderlich willfully aided and abetted and caused WSI's violations relating to its written policies and procedures and written code of ethics.
5. The SEC Order found that prior to becoming WSI's CCO in 2004, Wiswall was a senior compliance examiner with the NASD, with several years experience in broker-dealer compliance but little or no practical experience with the regulatory requirements applicable to investment advisers, including those regulatory requirements specifically applicable to SEC-registered advisers.
6. In 2006, after filing a Form ADV to register with the SEC as an investment adviser, WSI expanded its advisory operations significantly, adding more than \$70 million in new client assets under management and converting hundreds of its existing fee-based brokerage accounts to investment advisory accounts, adding approximately another \$100 million to its advisory assets under management.
7. Among other issues, the SEC found that WSI charged excessive advisory fees, and between 2007 and September 2009, also engaged in thousands of principal transactions with its clients without the appropriate disclosures and client consents. According to the SEC Order, Wiswall, who was responsible for monitoring overall compliance with the Advisers Act, was placed on notice of the principal transaction issue in August 2007 by a consultant to WSI who had been hired to conduct a review in light of Wiswall's inexperience in the area.
8. WSI and Wiswall disregarded the disclosure and consent requirements until at least 2008, when the SEC's examiners discovered the violations. Wiswall also failed to create and implement adequate advisory compliance manuals, or distribute the required code of ethics to WSI personnel.
9. Wiswall agreed to a money penalty of \$50,000, a censure, and cease-and-desist order. Wunderlich agreed to a \$45,000 penalty, a censure, and cease-and-desist order. WSI agreed to retain an independent consultant with a broad mandate to review and report on WSI's compliance over a three-year period, as well as to pay a \$125,000 penalty, disgorgement of \$369,336.15, and prejudgment interest of \$38,288.54.

D. *In the Matter of Legend Securities, Inc. ("Legend") and Salvatore Caruso*, Admin. Proc. File No. 3-14389 (May 16, 2011)

1. In an enforcement action arising out of the production of documents and information during an examination, the SEC charged Legend and Caruso, its CCO, with providing false documents to the examination staff.
2. In 2009, the SEC examination staff commenced an examination of Legend. As part of its examination, the staff requested that Legend produce various employment records for its associated persons. When Legend discovered that it did not have certain forms, including

compliance-related documents concerning one of its associated persons, Caruso asked the associated person to sign forms that were backdated to appear as though they were signed when the associated person began his employment at Legend. Caruso then provided these backdated forms to the examination staff.

3. The Commission entered an order directing Legend and Caruso to cease and desist from committing violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder and imposing a civil penalty of \$50,000 on Legend and \$25,000 on Caruso.

E. *In the Matter of Frederick O. Kraus*, Admin. Proc. File No. 3-14326 (Apr. 7, 2011); *In the Matter of David C. Levine*, Admin. Proc. File No. 3-14327 (Apr. 7, 2011); *In the Matter of Marc A. Ellis*, Admin. Proc. File No. 3-14328 (Apr. 7, 2011)

1. The SEC filed settled administrative proceedings against three former brokerage executives of Tampa-based GunnAllen Financial, Inc. (“GunnAllen”) for failing to protect confidential information about their customers.
2. The SEC’s order alleged that as GunnAllen was winding down its business operations in 2010, its former president, Kraus, and former national sales manager, Levine, violated customer privacy rules by improperly transferring customer records to another firm. Kraus allegedly authorized Levine to take customer information from more than 16,000 GunnAllen accounts, including customer names, addresses, account numbers, and asset values, to Levine’s new employer. The SEC’s order charged Kraus and Levine with violating Regulation S-P, an SEC rule that requires firms to protect confidential customer information from unauthorized access and release to unaffiliated third parties.
3. According to the settled order to which he consented, Ellis, as CCO from July 2005 to February 2009, was responsible for implementing and maintaining policies and procedures ensuring the firm’s compliance with Regulation S-P, including the Safeguard Rule mandating broker-dealers adopt written policies and procedures reasonably designed to protect customer records and information. Ellis was also responsible for reviewing the adequacy of GunnAllen’s written supervisory procedures contained in its Written Supervisory Procedures Manual, including those concerning the Safeguard Rule. Ellis, with the assistance of the firm’s Assistant CCO, directed and oversaw GunnAllen’s annual reviews of its written supervisory procedures in 2007 and 2008.
4. Although Ellis was advised of certain laptop thefts which compromised the security of customer information, of the misappropriation of password information, and of improper monitoring of employee emails with customers by a former employee, the SEC found that Ellis failed to advise the firm to supplement its Regulation S-P procedures to protect customer information or to comply with the rule. As a result, the SEC found that

Ellis had willfully aided and abetted and caused GunnAllen's violations of Regulation S-P.

5. Kraus, Levine, and Ellis each consented to the entry of cease and desist orders, as well as monetary penalties in the amount of \$20,000 (for both Kraus and Levine) and \$15,000 (for Ellis).

F. *In the Matter of Elizabeth Pagliarini* ("Pagliarini"), Admin. Proc. File No. 3-14273 (Feb. 24, 2011)

1. Pagliarini was the CCO and AML Compliance Officer of Hunter World Markets, Inc. ("HWM") from October 2004 through May 2008. The SEC settled administrative proceedings brought against Pagliarini, alleging that she failed to supervise Tony Ahn, a registered representative, between 2005 and 2007 and that she aided and abetted HWM in its violations of the Exchange Act and related rules.
2. Ahn violated the Exchange Act by executing trades, including wash trades, the apparent purposes of which were to manipulate the prices of microcap companies stock and to generate over \$600,000 in sales credits to HWM, which the firm considered to be the equivalent of commissions.
3. The SEC alleged that Pagliarini failed to follow HWM's procedures to follow up on suspicious trades that lacked business sense or that exhibited a lack of concern regarding risks, commissions, or other transaction costs.
4. The SEC also alleged that Pagliarini aided and abetted HWM's violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require broker-dealers to comply with certain provisions of the BSA, including a requirement that firms file SARs with the Financial Crimes Enforcement Network. The SEC alleged that HWM violated Rule 17a-8 when it failed to file SARs with respect to: several large money transfers into and out of the brokerage account of Florian Homm, one of HWM's co-owners; a large transfer of funds to a third party account at a Canadian bank by Colin Heatherington; and Ahn's wash trades, described above.
5. As HWM's CCO and AML Compliance Officer, Pagliarini was responsible for causing the firm to file SARs, but failed to do so with respect to Homm's suspect money transfers, the Heatherington transfer, or Ahn's wash trades.
6. As part of the settlement, Pagliarini agreed to a cease-and-desist order, a suspension from acting in a supervisory capacity with any broker or dealer for twelve months, and a civil penalty of \$20,000.

G. *In the Matter of The Buckingham Research Group, Inc.* (“Buckingham Research”), *Buckingham Capital Management, Inc.* (“Buckingham Capital”), and *Lloyd S. Karp*, Admin. Proc. File No. 3-14125 (Nov. 17, 2010)

1. The SEC filed a settled administrative proceeding against Buckingham Research, Buckingham Capital, and Karp in which it alleged that Buckingham Research (a registered broker-dealer and institutional equity research firm principally providing research to hedge funds and other institutional investors) and its subsidiary Buckingham Capital (a registered investment adviser) failed to establish, maintain, and enforce policies and procedures reasonably designed to prevent the misuse of material, nonpublic information.
2. Buckingham Capital and Buckingham Research share certain facilities and executives, and maintain adjoining space. The SEC alleged that the firms’ material, nonpublic information policies and procedures failed to account for the nature of their interconnected businesses.
3. According to the SEC, although Buckingham Research had a written procedure to address the misuse of material, nonpublic information, it did not follow its written procedure. In addition, the SEC alleged that Buckingham Capital’s written policies and procedures were not sufficiently clear to enable employees to understand their responsibilities. The SEC further alleged that Buckingham Capital created “replacement” compliance documents in lieu of incomplete or missing compliance records and produced them to SEC examination staff without disclosing that such records were “replacements.”
4. Buckingham Research and Buckingham Capital agreed to censures and to pay civil penalties in the amounts of \$50,000 and \$75,000, respectively. The respondents also consented to cease and desist orders.
5. Buckingham Research and Buckingham Capital further agreed to retain an independent consultant to conduct a comprehensive review of their policies, practices, and procedures.
6. As to Karp, who was the CCO of Buckingham Research and Buckingham Capital, the SEC alleged that he failed to discharge his responsibility for establishing and administering the firms’ compliance programs. According to the SEC, “Karp was aware of [certain] compliance weaknesses and failures and either failed to act or failed to correct them.”
7. Karp agreed to a censure and to pay a \$35,000 civil penalty.

H. *In the Matter of Theodore W. Urban*, Admin Proc. File No. 3-13655 (Sep. 8, 2010)

1. In 2009, Ferris, Baker Watts, Inc. (“Ferris”), its former CEO, its former director of retail sales, and a registered representative, Stephen Glantz (“Glantz”), who was engaged in market manipulation, settled proceedings with the SEC. The former CEO and former director of retail sales settled

- failure to supervise charges regarding the activities of Glantz, the registered representative.
2. As to Ferris, the SEC's settlement described its alleged failure to design reasonable systems to implement its written supervisory policies and procedures to prevent and detect violations of the securities laws and its alleged failure to file SARs.
 3. Contemporaneously with the filing of the settled actions against Ferris and the three former employees, the SEC instituted a failure to supervise proceeding against Theodore Urban. Mr. Urban was Ferris' general counsel and headed three departments: Compliance, Human Resources and Internal Audit. The SEC alleged that Urban ignored and/or failed to adequately follow up on numerous red flags concerning the registered representative's trading, including several issues to which he was alerted by the Compliance Department.
 4. On September 8, 2010, following a lengthy hearing, Chief Administrative Law Judge Brenda Murray issued a fifty-seven page decision. Although Chief Judge Murray found that Urban "did not have any of the traditional powers associated with a person supervising brokers," she nevertheless concluded that he was Glantz's supervisor because his "opinions on legal and compliance issues were viewed as authoritative and his recommendations were generally followed by people in [his firm's] business units, but not by Retail Sales."
 5. Chief Judge Murray determined, however, that Urban had acted reasonably under the facts and circumstances presented and dismissed the proceeding.
 6. The Division of Enforcement petitioned the Commission for a review of the dismissal; Urban cross-petitioned for a review of Chief Judge Murray's ruling that he was Glantz's supervisor.
 7. Urban also petitioned for the Commission to summarily affirm Chief Judge Murray's decision. On December 7, 2010, the Commission denied Urban's motion because "a normal appellate process" rather than a summary affirmance was appropriate as "the proceeding raises important legal and policy issues, including whether Urban acted reasonably in supervising Glantz and responded reasonably to indications of his misconduct, whether securities professionals like Urban are, or should be legally required to 'report up,' and whether Urban's professional status as an attorney and the role he played as FBW's general counsel affect his liability for supervisory failure."
 8. This matter is being closely watched by the industry in light of Chief Judge Murray's holding that significantly expands potential supervisory liability for legal and compliance personnel.³ Oral argument is currently set for February 7, 2012.

³ Demonstrating the importance of this case, the SIFMA Legal and Compliance Society and the National Society of Compliance Professionals ("NSCP") both filed amicus briefs with the SEC supporting Urban. We note that Morgan Lewis acted as counsel for the NSCP in this matter.

- I. *In the Matter of Pinnacle Capital Markets LLC (“Pinnacle”) and Michael A. Paciorek (“Paciorek”), Admin. Proc. File No. 3-14026 (Sep. 1, 2010)*
1. The SEC settled an administrative proceeding against Pinnacle and Paciorek, its president and CCO, alleging that the firm did not comply with an AML rule that requires firms to verify and document the identities of their customers.
 2. Section 17(a) of the Exchange Act and Rule 17a-8 thereunder require that broker-dealers comply with certain provisions of the BSA, including the customer identification program (“CIP”) rule, under which firms must establish procedures for identifying and verifying their customers.
 3. The SEC alleged that from October 2003 through August 2006, Pinnacle did not appropriately verify the identity of a number of its corporate account holders. Further, between 2003 and November 2009, the firm did not verify the information regarding most of its omnibus account holders. In so doing, Pinnacle did not follow its own CIP procedures.
 4. In settling the SEC’s action, Pinnacle agreed to a cease and desist order and consented to a censure and a \$25,000 civil penalty.
 5. Paciorek was alleged to have caused the firm’s violations because, as the CCO, he was responsible for ensuring that Pinnacle met its AML obligations.
 6. In settling the SEC’s action, Paciorek agreed to a cease and desist order.
- J. *In the Matter of Ronald S. Bloomfield, Robert Gorgia, Victor Labi, John Earl Martin, Sr., and Eugene Miller, Admin. Proc. File No. 3-13871 (Apr. 26, 2011)*
1. In April 2010, the SEC had filed administrative proceedings against the president (Eugene Miller), the CCO (and sole compliance officer) (Robert Gorgia), and three registered representatives of Leeb Brokerage Services, Inc. (“Leeb”), a defunct broker-dealer, for facilitating unregistered sales of penny stocks to investors through a variety of pump-and-dump schemes.
 2. The SEC alleged that Leeb’s clients routinely delivered large blocks of penny stocks into their Leeb accounts. Leeb’s registered representatives allegedly then sold the stock to the public without conducting a reasonable inquiry to confirm that a registration statement was in effect and also failed to respond to clear red flags that the customers’ trades were illegal.
 3. The SEC also alleged that Miller and Gorgia, who supervised the registered representatives, failed to carry out their supervisory responsibilities. Specifically, the supervisors failed to respond to red flags that allegedly should have caused the supervisors to more closely examine the activities of the registered representatives and their clients.
 4. The SEC further alleged that in response to the suspicious trading by Leeb’s clients, the firm should have filed SARs, but did not do so in violation of the Bank Secrecy Act.
 5. In August 2010, the SEC settled its charges against Miller. Miller consented to a cease-and-desist order, certain undertakings, a \$50,000 civil

penalty, and a one-year suspension from associating with any broker or dealer in a supervisory capacity.

6. In April 2011, after a hearing in the case against the remaining respondents, ALJ Murray issued a lengthy initial decision finding each of the respondents, including Gorgia, had engaged in violative conduct and imposed permanent bars and cease-and-desist orders against each of them.
7. Gorgia also served as Leeb's Financial Principal and CFO; further, during part of the time that he was CCO for Leeb, he served as part-time CFO and CCO for another broker-dealer.
8. ALJ Murray found that Leeb's supervisory procedures manual named Gorgia as a supervisor "in numerous sections." The ALJ also found that Gorgia believed he had the power to terminate one of the respondent brokers and proudly characterized himself to others as "the new sheriff in town."
9. The decision also found that Gorgia's testimony at the hearing was not credible, that he "failed to do so many things required of a CCO," and that he had made numerous false statements to various persons, including Leeb's clearing broker, in the face of various concerns expressed to him about the activities of the brokers.
10. ALJ Murray also found that Gorgia aided and abetted and caused Leeb's violations of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-8 by failing to file SARs on numerous occasions with respect to activities at Leeb that raised various red flags.
11. As noted above, ALJ Murray ordered that Gorgia be barred from association with a broker-dealer and from participating in any offering of a penny stock. It also ordered Gorgia to pay a money penalty of \$100,000. Gorgia was further ordered to cease and desist from violating Section 17(a) of the Exchange Act and Exchange Act Rule 17a-8.

K. *In the Matter of vFinance Investments, Inc. ("vFinance") and Richard Campanella*, Admin. Proc. No. 3-12918 (July 2, 2010)

1. This opinion by the Commission is an appeal from a 2008 initial decision by ALJ Mahoney finding that vFinance and Campanella, its former CCO (and for a period of time, president), had failed to preserve and promptly produce certain email and other records created by an errant registered representative whose alleged misconduct was under investigation by the Division of Enforcement.
2. ALJ Mahoney found that vFinance had violated and Campanella had aided and abetted violations of Exchange Act Section 17(a) and Exchange Act Rules 17a-4(b)(4) and 17a-4(j). ALJ Murray had ordered both respondents to cease and desist from further violations, censured Campanella and fined the firm \$100,000 and Campanella \$30,000.
3. On appeal, the SEC affirmed the findings of violations and the sanctions below but also imposed a two-year supervisory bar against Campanella, in addition to the cease-and-desist order and \$30,000 fine.

4. Although it found that Campanella was promoted to the position of president in August 2006, most of the conduct reviewed arose when he was the CCO. Further, the SEC found that Campanella was responsible as CCO for the preservation of the firm's business records, oversaw compliance audits of the firm's branches (including that of the branch in which the broker was found to have withheld and ultimately destroyed various responsive records), and retained responsibility for, and was personally involved in, various aspects of the firm's record production to the Division.
5. Among other things, the SEC found that Campanella had substantially assisted the firm's delays in producing documents as well as its failure to preserve various email communications, despite actual notice that the broker in question was repeatedly using an email service other than the one captured by the firm. The opinion was also critical of Campanella's allowing the broker to retrieve responsive material himself for production to the Division.
6. Based on forensic evidence offered at the hearing before ALJ Murray, the SEC also found that the broker had effectively destroyed responsive material after learning of the Division's request for all communications and that Campanella's decision to allow the broker's hard drive to be retained in a non-WORM format "was a substantial causal factor" in the firm's failure to preserve. The SEC rejected the idea that Campanella could only be deemed to have aided and abetted the failure if he actually assisted in destroying the records.
7. The SEC held that Campanella acted with the requisite degree of scienter to establish aiding and abetting, finding that his "conduct, particularly given his status as [CCO], was extremely reckless, and often knowing."
8. In affirming the monetary fine and cease-and-desist order, and in imposing a two-year supervisory bar, the SEC concluded that his conduct was egregious and the sanctions were necessary to discourage Campanella from repeating similar misconduct in the future.

L. *In the Matter of Prime Capital Services, Inc.*, ("PCS"), *Michael P. Ryan, Rose Rudden, Christine Andersen, et al.*, Admin. Proc. No. 3-13532 (Initial Decision: June 25, 2010) (Settled Order: Mar. 16, 2010)

1. The SEC initially brought on order for proceedings in June 2009 against Prime Capital Services, Inc., its parent company, Gilman Ciocia, Inc. ("G&C"), and several individual principals and registered representatives, as well as PCS President Michael Ryan and CCO Rose Rudden. The case related to PCS representatives' sale of variable annuities to customers whom they solicited during free-lunch seminars.
2. The SEC alleged that, between 1999 and 2007, PCS representatives sold approximately \$5 million of variable annuities to elderly clients in south Florida using misleading sales pitches, and that, in many cases, the

investments were unsuitable based on the customers' ages, liquidity, and investment objectives.

3. PCS representatives allegedly told various customers that the variable annuity was guaranteed not to lose money, the customers would receive a guaranteed rate of return, and/or they would have access to invested funds whenever they needed it. During the relevant time period, at least 23 customers were induced to buy at least 35 variable annuities.
4. The SEC charged PCS, Ryan, and Rudden with failing to supervise because they did not: implement written supervisory procedures; review and follow up on branch exams; review and approve variable annuity transactions; respond to customer complaints; comply with state regulatory orders; and supervise certain individuals.
5. The SEC alleged that G&C aided and abetted PCS's fraud by arranging free-lunch seminars in and around several senior citizen communities in Florida. At such seminars, the registered representatives recruited senior citizens as customers and induced them into buying variable annuities.
6. In November 2009, the SEC settled related charges against Christine Andersen, a PCS compliance officer, for failing to supervise. Andersen consented to a \$10,000 civil penalty and a one-year suspension. She also agreed to cooperate with the SEC staff's investigation.
7. In March 2010, PCS and G&C agreed to settle the matter, accepting sanctions including: (i) censures; (ii) cease and desist orders; and (iii) several undertakings, including retaining an independent compliance consultant, placing limitations on the functions that certain employees (including PCS's president and chief compliance officer) could perform, and notifying and making whole affected clients. In addition, PCS agreed to disgorge nearly \$100,000 as well as prejudgment interest, and G&C agreed to pay a civil penalty of \$450,000.
8. The remaining respondents, including CCO Rudden and PCS President Ryan, and a number of the PCS representatives contested the matter.
9. In June 2010, after a hearing on the charges against them, ALJ Foelak issued a lengthy initial decision which found Ryan and Rudden liable for failing to supervise and ordered each to pay a \$65,000 civil penalty. Both were also barred from association in a supervisory capacity with any broker, dealer, or investment adviser with the right to reapply after one year.
10. The PCS representatives also were found liable and ordered to cease and desist from further wrongdoing and to each pay a \$130,000 civil penalty. Further, they were barred from association with any broker, dealer, or investment adviser. They were also required to disgorge amounts ranging from \$2900 to \$41,992.

III. FINRA CASES AGAINST COMPLIANCE OFFICERS

A. *Department of Enforcement v. X*, Hearing Panel Decision (December 30, 2011)

1. In a case not yet reported on FINRA's website, a Hearing Panel found that the Department of Enforcement ("Enforcement") had failed to prove by a preponderance of evidence that X, the CCO of a broker-dealer, had failed to supervise a registered representative who had engaged in numerous unsuitable variable annuity exchanges and made misrepresentations and omissions of material fact on forms provided to clients and the firm. The Hearing Panel therefore dismissed the complaint.
2. According to the decision, Enforcement had filed a complaint in June 2010 alleging that the registered representative ("K"), the manager of the principal review desk ("B"), and X violated certain FINRA rules arising from K's variable annuity business. K and B settled before the proceeding went to a hearing.
3. The only charge against X was that he failed to supervise K in violation of NASD Rules 3010 and 2110. Although Enforcement acknowledged that X was not a business line supervisor of K, it alleged that he should be deemed a supervisor because of his "involvement with K's variable annuity exchanges," citing the SEC report of investigation, *John H. Gutfreund*, 51 SEC 93 (1992).
4. During the relevant time period, X oversaw a 13-person Compliance Department and was a non-voting member of the firm's Risk Management Committee. He was not an officer of the broker-dealer and he reported on a dual basis to the General Counsel and to the President of the firm. The firm's written supervisory procedures provided that the Compliance Department had advisory and monitoring functions. The Hearing Panel found that neither X nor his department had supervisory responsibility for the firm's registered representatives or their supervisors.
5. The Hearing Panel found that K's supervisors (B and another person) had developed concerns about K's exchanges of numerous variable annuities after moving to the firm and learning he could not transfer annuities already held by his clients because they were proprietary to his former firm. They consulted X, as CCO, about an aspect of their concerns, and X recommended a course of action the supervisors agreed to take.
6. The Hearing Panel found that while the supervisors followed some aspects of X's recommendation, including speaking with a sample of K's customers to make sure they understood the nature of the surrender charges incurred from the exchanges, they never conveyed to X the true extent of K's misconduct or that some customers did not understand the product, let alone the surrender charges.
7. The Hearing Panel found that the facts presented were completely distinguishable from those in *Gutfreund* and that X "did not have 'the responsibility, ability or authority' to affect [K]'s conduct and thus, did

not become his supervisor.” Accordingly, the complaint against X was dismissed.

B. *In the Matter of Mark M. Mercier* (September 29, 2011)

1. Mercier was the CCO of Brookstone Securities Inc., and as a principal of the firm and acting in his capacity as CCO, he was a person responsible for approving private placement offerings.
2. According to the AWC, the firm’s written supervisory procedures with respect to private placements did not address what due diligence should be performed where the firm acted as selling agent only. However, there was an unwritten practice in such cases for the CCO to share responsibility to perform certain due diligence tasks.
3. Mercier signed the selling agreement for a particular private placement in which his firm made \$490,000 in sales prior to Mercier’s termination by the firm.
4. According to the AWC, Mercier performed no due diligence other than to review the private placement memorandum. Had he done so, a number of red flags would have come to his attention, including the precarious state of the issuer’s financial condition and the absence of any formal audit of the issuer’s financial statements by an outside accounting firm.
5. Mercier consented to a \$5,000 fine and a three-month suspension as a principal.

C. *In the Matter of Susan Margaret Labant* (Aug. 19, 2011)

1. This is a companion case to the settlement *In the Matter of Robert W. Baird & Co. Inc.* (“Baird”) (February 11, 2011), in which FINRA alleged that between January 2005 and March 2010, Baird failed to comply with the locate requirements of Regulation SHO (“Reg SHO”), engaged in related supervisory violations, and failed to disclose its market maker status in certain equity research reports.
2. According to FINRA’s AWC in *Baird*, the firm had released significant numbers of proprietary, institutional, retail, and employee short sale orders for execution without valid locates. FINRA also alleged that the firm’s traders entered an indeterminable number of short sale orders for which locates were not obtained or documented.
3. In its AWC against Labant, a former Assistant Compliance Director at Baird, FINRA found that Labant “was the person responsible for, among other things, the firm’s Capital Markets’ Regulation SHO compliance.” In this role, her responsibilities included establishing policies and procedures designed to achieve compliance with Reg SHO. FINRA charged, however, that Labant failed to implement a “comprehensive and effective framework” for compliance with Reg SHO. FINRA criticized Labant in the following respects:

- a. the policies and procedures drafted and/or reviewed by Labant and subsequently put in place by the firm were not reasonably designed to comply with certain requirements of Reg SHO;
 - b. Labant failed to review and/or coordinate the firm's Reg SHO-related policies and procedures established for various areas of the firm;
 - c. the written policies and procedures she created or reviewed were unreasonable and in some instances incorrect; and
 - d. Labant did not coordinate the firm's stock loan desk's role and responsibility regarding Reg SHO.
4. According to FINRA, as a result of these deficiencies, "among other reasons," the firm experienced systemic Reg SHO-related operational and supervisory problems.
 5. FINRA also charged that Labant failed to take reasonable steps to remedy the firm's violations even after being informed of various deficiencies by NYSE examiners.
 6. Labant's conduct allegedly violated NASD Rule 3010, NASD Conduct Rule 2110, and FINRA Rule 2010.
 7. Labant consented to a nine-month suspension as a principal, a \$10,000 fine, and the requirement that she re-qualify as a principal before resuming such activities.

D. *Department of Enforcement v. Synergy Investment Group, LLC ("Synergy"), Jeffrey D. Jones, and Thurman R. Crawford* (December 1, 2011)

1. FINRA issued an order accepting offers of settlement from Synergy, Jones and Crawford, which resolved a complaint filed against them on April 5, 2011. Jones was the Director of Compliance, General Counsel, and a registered principal of Synergy, a broker-dealer at which Crawford was a registered representative.
2. According to the order, Synergy, through Jones, failed to conduct reasonable due diligence regarding securities issued pursuant to a private placement that Crawford sold to five Synergy customers for a total investment of \$850,000. Jones also signed the selling agreement for the offering.
3. According to the FINRA order, Synergy and Jones did not even follow the firm's inadequate written supervisory procedures in their review and approval of the new product offered by the issuer and virtually no due diligence was performed. According to FINRA, had Synergy had reasonable due diligence procedures in place and followed such procedures, it would have discovered that the issuer had missed payments to investors on other similar offerings, and that its CEO had been sued by the State of California for fraud and been barred from the insurance industry. Subsequent to the offering, the SEC sued the issuer and its executives for fraud, alleging, among other things, that the defendants had misappropriated the proceeds of the offering made to Synergy clients.

4. Jones consented to a three-month suspension in any principal capacity and a \$10,000 fine. Synergy received a censure and was fined \$20,000 in light of restitution payments it demonstrated it was making to affected clients. Crawford agreed to a \$10,000 fine and a 60-day suspension in all capacities with any FINRA member firm.

E. *Department of Enforcement v. ValMark Securities, Inc. (“ValMark”) and Richard Arceci* (November 21, 2011)

1. In a case involving the same private placement issuer as *Synergy*, above, FINRA issued an order accepting offers of settlement from ValMark and Arceci which resolved a complaint filed against them on March 4, 2011. Arceci was the CCO, Chief Legal Officer, and a registered principal of ValMark, a broker-dealer.
2. According to the FINRA order, Arceci approved ValMark’s participation in several private placements through which registered representatives sold over \$10 million of securities offered by an affiliate of the issuer mentioned in *Synergy*, above.
3. According to the order, ValMark and Arceci failed to: perform adequate due diligence; supervise the offering; and follow up on numerous red flags about the liquidity of the issuer, which would impair its ability to make payments to the investors. ValMark also continued to sell securities after being apprised of material misrepresentations in offering documents.
4. In settling, ValMark was ordered to pay restitution of \$350,000. Arceci agreed to pay a \$10,000 fine and was suspended for 10 days as a principal.

F. *Zulina Visram* (May 27, 2011)

1. According to the AWC, Visram was the CCO and designated AML Compliance Officer of her firm during the relevant period of time at issue (2005-2009).
2. As AML Compliance Officer, the AWC found that Visram failed to: properly implement the firm’s written AML policies and procedures in a manner to detect and prevent suspicious activity; conduct any meaningful AML-related reviews of trade activity; obtain AML-training; and timely file SARs.
3. As CCO in 2008 and 2009, until her voluntary termination from the firm, the AWC found that Visram was the person designated to establish, maintain, and enforce the firm’s supervisory procedures but that she did not take steps to test and verify that the firm’s supervisory activities were reasonably designed and implemented to detect and prevent manipulative and fraudulent trading activity.
4. The AWC also found that Visram’s 2008 and 2009 annual reports to senior management pursuant to FINRA Rule 3012 did not detail the system of supervision required.
5. Visram consented to a six-month plenary suspension and a \$20,000 fine.

G. *Robin Fran Bush* (March 1, 2011)

1. According to the AWC, Bush, a former CCO for Newbridge Securities Corporation (“Newbridge”), failed to establish, maintain, and enforce a supervisory system and written procedures relating to private offerings sold by Newbridge to its customers. Bush also failed to conduct adequate due diligence with respect to various private offerings made available to Newbridge customers.
2. Bush was the subject of two prior enforcement actions by FINRA (or the NASD) in 2007 and 2010 for various supervisory failures for which she was suspended as a principal and/or fined.
3. Bush consented to a six-month suspension from associating in a principal capacity and to pay a fine of \$15,000.

H. *David E. Niederkrome and Stephen R. Rodgers* (January 24, 2011)

1. This AWC involved Niederkrome, the CEO of a broker-dealer he founded known as NWT Financial Group (“NWT”) and Rodgers, who was the CCO during the relevant time period.
2. According to the AWC, Niederkrome, as CEO, authorized an associated person at NWT to participate in various private securities transactions involving the management of three hedge funds and sales of hedge fund interests to investors, but failed to supervise those activities.
3. In addition, Rodgers and Niederkrome failed to take appropriate action when information came to their attention about the potential unsuitability of certain hedge fund transactions by NWT customers.
4. Both Rodgers and Niederkrome had been previously sanctioned by FINRA in 2010 for supervisory failures. In that matter, Rodgers was fined \$15,000 and Niederkrome was fined \$10,000.
5. As to the instant case, the AWC found that Rodgers and Niederkrome, each of whom was designated as a person to review and approve new accounts, reviewed the opening of four IRA rollover accounts opened for the stated purpose of investing in the hedge funds being offered by the associated person described above. Although the investors had identified their investment objectives as “safety of principal,” Rodgers and Niederkrome approved the transactions without inquiry as to whether the proposed investments were suitable.
6. Rodgers consented to a 60-day principal suspension and a \$5,000 fine. Niederkrome consented to a six-month principal suspension and a \$15,000 fine.

I. *Jay Lynn Thacker* (January 20, 2011)

1. According to the AWC, Thacker, the CCO for Meadowbrook Securities, LLC during the relevant timeframe and the person designated by the firm

as the principal responsible for approving private placements, failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance in the area of private placements.

2. Notwithstanding the foregoing designation, the AWC found that Thacker approved certain private placements without performing any due diligence, other than reading the offering memorandum. Further, the AWC found that by the time of the offerings, there were serious red flags about such offerings that Thacker failed to address.
3. Thacker consented to a six-month suspension as a principal and a \$10,000 fine.

J. *George Edward Dragel* (December 20, 2010)

1. Dragel was a principal and the CCO for TradeRight Securities, Inc. (“TradeRight”) during the relevant time period. Dragel had been the subject of two prior state disciplinary actions for failing to timely amend his own Form U-4 and for failing to register with another state as a “securities salesperson.”
2. According to the AWC, TradeRight, through Dragel, permitted an unregistered person to trade in the firm’s proprietary account. As a result of that activity, the individual’s company received \$479,039 in commissions from TradeRight. At the time, this individual’s trading was the sole trading activity in the firm’s proprietary account.
3. TradeRight’s written supervisory procedures required that any person who engaged in activities subject to the registration requirements of SROs, including trading securities, must complete the necessary registration and licensing requirements prior to engaging in such activities. TradeRight’s procedures specified that Dragel was responsible for registration and licensing.
4. According to the AWC, despite the foregoing, Dragel knew of the individual’s trading during an almost two-year period but did not require him to be licensed or to cease trading.
5. Dragel consented to a two-month supervisory suspension and re-qualification as a principal. Based on a sworn statement as to his financial status, no fine was imposed.

K. *Cambridge Legacy Securities, L.L.C.* (“Cambridge”) and *Tommy Edward Fincher* (November 29, 2010)

1. Similar to several of the AWC’s referenced above, FINRA found that Cambridge and Fincher, its CCO at the time, failed to establish, maintain or enforce supervisory policies and procedures for the review and offering of private placements.
2. According to the AWC, Fincher approved the sale of a private placement offering without performing any due diligence and ignored various red

flags which should have alerted him to the precarious financial status of the issuer.

3. Cambridge agreed to a censure and to pay \$218,400 as restitution to customers. Fincher agreed to a six-month suspension as a principal and a \$5,000 fine.

L. *Department of Enforcement v. Legacy Trading Co., LLC (“Legacy”) and Mark Uselton* (Oct. 8, 2010)

1. FINRA brought a contested action against Legacy and Mark Uselton, Legacy’s President, CEO, and CCO, in which it alleged that the respondents violated rules concerning locate and delivery requirements for short sales and failed to cooperate with FINRA’s investigation. The Hearing Panel issued a decision on March 12, 2009, finding against the respondents in several respects.
2. The Hearing Panel also found that Uselton failed to timely update his Form U-4 to reflect FINRA’s investigation.
3. According to the Hearing Panel, Uselton failed to provide requested documents to FINRA and gave false testimony during on-the-record interviews before asserting his Fifth Amendment right not to incriminate himself.
4. As a result of the respondents’ failure to cooperate, Legacy was expelled from FINRA membership, and Uselton was barred from associating with any member firm.⁴ In addition, the respondents were fined jointly and severally \$907,035 for the short sale violations (representing a \$100,000 fine in addition to Legacy’s profits from the short sale transactions), \$50,000 for the books and records violations, and \$50,000 for the supervisory violations. Uselton was also fined \$2,500 for the Form U-4 violation.
5. The respondents appealed the ruling to FINRA’s National Adjudicatory Council (“NAC”), which affirmed the Hearing Panel’s findings and sanctions. NAC, however, did not impose the sanctions for the books and records, supervisory, and U-4 violations.

M. *Trillium Brokerage Services, LLC (“Trillium”) and Rosemarie Johnson* (Sep. 13, 2010)

1. FINRA settled a matter with Trillium in which it alleged that, between November 2006 and January 2007, nine proprietary traders at Trillium engaged in an illicit high-frequency trading strategy in which they entered numerous, and often large, layered, non-bona fide orders in NASDAQ securities, to intentionally create the false appearance of substantial buying or selling pressure in specific stocks.

⁴ Legacy ceased to be a member of FINRA in 2008. However, FINRA retained jurisdiction over the firm because the complaint was filed while Legacy was a member firm and related to conduct that occurred while Legacy was still a FINRA member.

2. After placing a buy limit order, a trader placed non-bona fide sell orders at prices outside of the NASDAQ best bid or offer. The perceived buying or selling pressure created by the large, non-bona fide orders induced unsuspecting market participants to enter orders that were then executed against the trader's original limit order. Within seconds after the Trillium limit orders were filled, the traders immediately canceled the non-bona fide orders. The scheme allegedly occurred by using sell limit orders and layered non-bona fide purchase orders as well.
3. As a result of this strategy, Trillium traders received prices that were better than prices that would have been available to them on at least 46,152 occasions. These trades yielded profits of approximately \$575,000, of which Trillium retained approximately \$173,000.
4. FINRA further alleged that Trillium, through Johnson, the firm's Director of Trading and CCO, failed to have adequate supervisory systems in place to prevent and detect manipulative trading strategies. For example, Trillium did not reasonably review all order activity and did not implement an order monitoring system until July 2007.
5. Trillium consented to a censure and a fine of \$1 million. Trillium was also required to disgorge \$173,000 in profits. FINRA settled with the nine traders, as well as the Director of Trading and CCO. The 11 individuals were fined a total of \$802,500 (with fines ranging from \$12,500 to \$220,000), ordered to disgorge approximately \$290,000, and suspended for periods ranging from six months to two years.
6. Johnson, the CCO, agreed to be fined \$50,000 and suspended for one year in a principal capacity.

N. *Olympia Asset Management, Ltd. ("Olympia") and Tim Poulos (August 24, 2010)*

1. According to the AWC, Poulos was the CCO and designated AML Compliance Officer for Olympia and the person responsible for the review and reporting of customer complaints.
2. Over a three-year period, Olympia received ten customer complaints which it did not report as required by FINRA rules.
3. Poulos and Olympia agreed to be censured and jointly and severally agreed to a \$10,000 fine.

O. *Kenneth Brown (July 23, 2010)*

1. Although settled in mid-2010, this AWC relates to conduct that arose at various times between 2003 and 2006 when Brown was the CCO (2002-2004) or the designated AML Compliance Officer (2002-2006) for Newbridge Securities Corporation ("Newbridge").
2. In 2008, Brown had been sanctioned by FINRA, had consented to a joint and several fine of \$10,000, and had been suspended as a principal for 15 days relating to supervisory and review failures with respect to variable annuity seminar materials that were deemed misleading.

3. According to the AWC, Brown failed to detect suspicious activity and timely file SARs in his capacity as AML officer.
4. Further, as CCO, the AWC found that Brown failed to: establish and maintain an adequate supervisory system; detect and prevent the sale of unregistered securities by a Newbridge representative; failure to report customer complaints and timely file various amendments to Form U-4 and U-5; and failure to supervise Newbridge personnel to whom the latter task had been delegated.
5. Brown consented to a one-year suspension in a principal capacity, a \$5,000 fine, and completion of 8 hours of AML training.

P. *Brookville Capital Partners LLC, formerly known as New Castle Financial Services LLC* (“New Castle”) (Jun. 7, 2010)

1. FINRA settled a matter with New Castle in which it alleged that the firm, through its CCO and other compliance officers, principals, and registered representatives, engaged in certain violations, including:
 - a. AML and related violations from October 2005 through August 21, 2008, including failing to: establish and implement an adequate AML program and procedures; identify, investigate, and respond to red flags in connection with suspicious account activity; timely file a SAR; and provide AML training in 2006;
 - b. improperly facilitating the distribution of approximately 20 million shares of various unregistered securities from September 2007 through March 2008;
 - c. selling securities to 50 public investors in December 2007 using a private placement memorandum that failed to disclose a convicted felon’s association with the issuer;
 - d. operating an unregistered branch office for approximately six months in violation of the restriction on business expansion in the firm’s membership agreement;
 - e. at various times from June 2008 through October 2009, failing to maintain accurate books and financial records, filing inaccurate FOCUS reports, failing to maintain minimum net capital requirements on two dates, and improperly classifying and accounting for funds;
 - f. engaging in improper telephone solicitations for an approximately four-month period by making materially false representations and omitting material facts in connection with the sale of securities to four potential customers and using misleading telemarketing scripts that were not approved by a registered principal; and
 - g. numerous other compliance-related and supervisory violations.
2. New Castle consented to a censure, a \$200,000 fine, and undertakings to retain an independent consultant to review the firm’s policies, systems, and procedures, and to have each of its associated persons complete 16 hours of AML continuing education training. The firm also agreed to

cooperate in any investigations of any persons in connection with past events described in the AWC, including promptly producing information and documents without the need for a Rule 8210 request.

Q. *Westpark Capital, Inc.* (“Westpark”), *William A. Morgan, and Jason S. Stern* (March 31, 2010)

1. FINRA settled a matter with Westpark, Morgan (its former CCO), and its Chief Operations Officer (“COO”) in which it alleged that from February 2006 to July 2007, the firm failed to establish and maintain a reasonably designed supervisory system and written procedures and that the officers failed to supervise six brokers who committed sales practice violations that caused losses in at least 19 customer accounts. The brokers worked at two Long Island branch offices that subsequently were closed by the firm.
2. According to FINRA, the brokers executed unauthorized trades, churned and engaged in unsuitably excessive trading, and reported solicited trades as unsolicited.
3. FINRA alleged that the CCO and COO failed to adequately scrutinize the brokers’ conduct in general and failed to investigate and address numerous red flags in particular. The red flags included that one of the branch managers had previously been suspended for failure to supervise, and that certain of the brokers had previously been associated with disciplined and/or expelled firms, had been disciplined themselves, and/or had a history of customer complaints.
4. FINRA alleged that the firm’s deficiencies included inadequate heightened supervision, inadequate monitoring for unsuitably excessive trading, no system for analyzing the fairness of markups, and unqualified branch office supervisors.
5. Westpark consented to a censure, a fine of \$100,000, and restitution of \$300,000. Morgan, the former CCO, consented to a four-month suspension in any principal capacity and a fine of \$5,000, and the COO consented to a three-month suspension in any principal capacity and a fine of \$20,000.
6. In related actions, FINRA barred a former branch manager from acting in any principal capacity and permanently barred two former brokers. The former branch manager also was ordered to pay a \$10,000 fine and one of the former brokers was ordered to pay over \$110,000 in restitution to customers. A case against a third broker is still pending.

R. *Department of Enforcement v. Richard Michael Bowers* (April 20, 2010)

1. Following a contested hearing, a Hearing Panel decision was issued finding that Bowers, while serving as CCO for First Dunbar Securities Corporation (“Dunbar”), permitted an unregistered person (Gary Laskowski), who indirectly owned and controlled Dunbar, to act as a principal of the firm.

2. During part of the relevant period, Bowers was also the President of Dunbar.
3. As to the unregistered principal issue, the Hearing Panel found that Bowers permitted Laskowski, whose financial infusions of capital were relied upon by Dunbar, “to assert his will” on various management, compensation, and recruitment issues. Laskowski also regularly attended Firm board meetings, was in frequent contact with firm employees, and overrode firm employee’s decisions.
4. The Hearing Panel rejected Bowers’ defense that FINRA examiners made no reference to Laskowski’s role in their 2006 exam of the firm.
5. The Hearing Panel also held that Bowers failed to establish, maintain, and enforce a supervisory system and procedures reasonably designed to achieve compliance with applicable rules and regulations, including failing to address registration and principal registration issues, the identification and inspection of branch offices, outsourcing functions, review and approval of outside business activities, or the approval of advertising materials.
6. The Hearing Panel ordered that Bowers be suspended for two months as a principal and be fined \$5,000 for allowing Laskowski to act as an unregistered principal. It also required that he re-qualify in all principal capacities. As to Bowers’ supervisory failures, the Hearing Panel ordered that Bowers be sanctioned with a letter of caution. Bowers was further ordered to pay the hearing costs of \$3,607.

S. *Joseph A. Bailey* (April 5, 2010)

1. The AWC found that Bailey, an unregistered associated person, acted as the CCO of Brean Murray, Carret & Co., LLC and its predecessor firm from July 2005 through June 2006.
2. According to the AWC, the duties Bailey performed required that he be registered as a Securities Representative or Limited Representative, and as a Securities Principal, but that Bailey did not qualify by examination for those registrations.
3. Bailey agreed to a censure, a \$10,000 fine, and a 10-day plenary suspension.