

**NSCP 2009 National Membership Meeting
Philadelphia PA**

**Compliance Officer
Self-Protection Plan**

**Anne C. Flannery, Morgan, Lewis & Bockius LLP
John M. Ivan, Janney Montgomery Scott LLC
Diane P. Novak, Toyota Financial Services**

October 7, 2009

RECENT DEVELOPMENTS IN COMPLIANCE OFFICER LIABILITY

While enforcement cases involving chief compliance officers (“CCO”) or other compliance professionals continue to represent a relatively small portion of the regulators’ docket, there are several recent cases worth noting in which the compliance officer’s failures were deemed sanctionable. These SEC and FINRA cases involving CCOs reflect a focus on failures to perform delegated compliance and/or supervisory routines, such as establishing or ensuring compliance with required policies and procedures. We also discuss one SEC case (*Ferris, Baker Watts, Inc.*), where the member firm’s failure to follow through on deficiencies uncovered by the compliance department led to liability for the firm.*

I. SEC

A. *In re Stephen Cheryl Bauman*, SEC Admin. Proc. No. 3-13551 (July, 17 2009)

1. The SEC found that between July 1, 2001 and approximately mid-September 2006, J.P. Turner & Company (“Turner”) failed to adopt and implement policies and procedures designed to safeguard customer records and information as required by Regulation S-P. During this time, Bauman served as either Turner’s chief compliance officer (“CCO”) or assistant chief compliance officer (“ACCO”).
2. The SEC found that during her tenure as CCO, Bauman did nothing to ensure that Turner adopted policies and procedures for compliance with Regulation S-P. Specifically, none of the editions of Turner’s registered representative manual or its branch manager manual issued between 2001 and 2005 made mention of the rule or described how to protect customer records.
3. The SEC further found that when Turner finally included a reference to the rule in its manuals in 2005 when Bauman became ACCO, it simply restated the rule and delegated all responsibility for implementation to Bauman. The manuals did not address any relevant safeguards associated with customer records, including how to dispose of them properly.
4. Turner’s compliance failures became clear in September 2006 when a Turner employee improperly disposed of customer records for more than 5,000 current and former customers by leaving them in the street to be collected by a vendor who was contracted to destroy them. The records were not collected. They remained on the curb until Turner retrieved them on September 14, and Turner was unable to confirm that it retrieved all of the records.

This outline was prepared by Anne C. Flannery, partner, and Percy Ross, associate, resident in the New York office of Morgan Lewis & Bockius LLP. Portions of the outline have been included in materials previously published by Morgan Lewis. This outline is current as of July 30, 2009. Copyright 2009, Morgan Lewis & Bockius LLP.

5. The SEC found that Bauman caused the firm's violation of Regulation S-P and ordered that she cease and desist from further violations. Bauman consented to the settlement without admitting or denying the allegations. The SEC did not impose any further sanctions but ordered that Bauman cooperate with any further investigations or proceedings by the SEC.
 6. As noted at Section II. C. below, FINRA brought a related case against Bauman in which she consented to certain sanctions.
- B. *In the Matter of Prime Capital Services, Inc., et al.*, SEC Admin. Proc. No. 3-13532 (June 30, 2009)
1. The SEC filed an administrative proceeding against Prime Capital Services, Inc. ("PCS"), its president (Michael Ryan), its CCO (Rose Rudden), its parent company (Gilman Ciocia, Inc.), and several PCS registered representatives and their supervisors in connection with PCS representatives' allegedly unsuitable sale of variable annuities to senior citizens solicited during free lunch seminars sponsored by Gilman Ciocia.
 2. The SEC alleged that between 1999 and 2007, the 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. The SEC also charged that Gilman Ciocia aided and abetted PCS's fraud by arranging free-lunch seminars in and around several senior citizen communities in Florida where the registered representatives would recruit senior citizens as customers and induce them into buying unsuitable variable annuities.
 4. The SEC alleged that Rudden was a compliance officer at PCS from 2001 onward who became the designated CCO in 2005. During that time she was also the CCO for PCS's affiliated investment adviser and supervised compliance personnel, as well as supervisors and registered representatives.
 5. The SEC alleged that PCS' president and other supervisors allegedly failed to supervise and failed to establish and implement an effective system of supervision regarding the review of variable annuity transactions and customer complaints. They also did not respond adequately to red flags.
 6. As to CCO Rudden specifically, the SEC alleged that she failed to address numerous red flags that surfaced in branch exam reports she reviewed about the unsuitability of variable annuity sales by numerous brokers, the deficiencies in paperwork required by the firm's procedures and the inadequacy of review by office supervisors.

7. In addition, Rudden allegedly ignored the fact that at least one broker refused to submit his variable annuity activity to supervisory review for over a year and she allowed another broker, whose registration had been revoked by the state, to continue to solicit customers while another broker completed the transaction materials.
 8. The SEC also alleged that Rudden failed to adequately investigate customer complaints, failed to take action when a local supervisor expressed problems with a broker's actions and approved at least 1 variable annuity transaction about which the local supervisor had concerns.
 9. The matter is ongoing and no settlements have been announced.
- C. *In the Matter of Grant Bettingen, Inc.* ("GBI"), SEC Admin. Proc. File No. 3-1403 (March 6, 2009); and *In the Matter of M. Grant Bettingen* ("Bettingen"), SEC Admin. Proc. File No. 3-13402 (Mar. 6, 2009)
1. The SEC settled a matter against registered broker-dealer GBI for failing reasonably to supervise a registered representative who improperly sold debt securities in private placement offerings. The firm failed to have any written supervisory procedures in place for private offerings for over 11 months and then failed to ensure those procedures were followed after adoption.
 2. The SEC alleged that from January 2004 to December 2005, Christopher J. Johndrow ("Johndrow"), a GBI registered representative, made misrepresentations to investors about profits that they would earn (1% monthly) from private placement offerings despite the fact that a review of the issuer's financial statements would have revealed that the issuer was not making a profit. Johndrow also allegedly cold called prospective investors despite the fact he was offering private placements and instructed sales agents that he supervised to cold call investors and make similar misrepresentations.
 3. GBI consented to a censure, and to pay disgorgement of \$88,675.
 4. The SEC settled a related action against M. Grant Bettingen, the president, compliance manager, and indirect owner of GBI, for failing to supervise Johndrow. In addition to his failure to implement written policies concerning private placement offerings, Bettingen did not follow existing firm procedures, including the failure to conduct quarterly office exams of GBI offices, including Johndrow's office, which could have led to the discovery of the violations. Further, the SEC alleged that Bettingen failed to put Johndrow on heightened supervision (required by firm policy), even though Bettingen was aware that Johndrow had been discharged by a

former broker-dealer for failing to adequately supervise his branch and for “selling away” violations.

5. Bettingen consented to a civil penalty of \$35,000 and a bar from associating in a supervisory capacity with any broker or dealer for 3 years.

D. *In the Matter of Ferris, Baker Watts, Inc.* (“Ferris”), SEC Admin. Proc. File No. 3-13364 (Feb. 10, 2009); *In the Matter of Patrick J. Vaughan*, SEC Admin. Proc. File No. 3-13367 (Feb. 10, 2009)

1. The SEC settled a matter against Ferris for failing to design reasonable systems to implement written supervisory policies and procedures to prevent and detect violations of the securities laws and failing to file Suspicious Activity Reports (“SARs”).
2. Between August 2002 and November 2005, Stephen Glantz, a registered representative employed by Ferris, participated in a scheme to manipulate the market for the stock of Innotrac Corp. (“Innotrac”), a NASDAQ security in which Ferris made a market.
3. With respect to Innotrac, Glantz and other non-Ferris employees allegedly engaged in a variety of devices (*e.g.*, marking the closing price of the stock, engaging in matched and wash trades, and attempting to artificially create down bids to suppress short selling of Innotrac) designed to manipulate the price of the stock. Glantz also made unauthorized and unsuitable trades in Innotrac and certain other securities. In September 2007, Glantz pled guilty to securities fraud and subsequently was sentenced to, among other sanctions, 33 months in prison. In February 2009, Glantz was barred from association with any broker, dealer, or investment adviser.
4. Despite warnings about Glantz’s history of customer complaints and “questionable reputation” before joining Ferris, the firm’s senior executives permitted Glantz to work under a special arrangement, allowing him greater freedom and less supervision than other Ferris registered representatives. For example, Glantz was assigned to one branch office but was permitted to work at a different branch several days each week, which enabled him to evade Ferris’ supervision.
5. Red flags regarding Glantz’s conduct had been raised orally by the Compliance Department on numerous occasions and in writing on two occasions during the relevant time period. Despite these warnings, the firm’s senior executives opted not to take action.
6. The SEC also alleged that information available to Ferris concerning the alleged market manipulation of Innotrac should have prompted Ferris to file SARs. By failing to do so, the firm allegedly violated the Bank Secrecy Act.

7. Ferris consented to a censure and agreed to pay a civil penalty of \$500,000 and to disgorge approximately \$222,000.
 8. The SEC also settled an action against Patrick Vaughan, Ferris's Director of Retail Sales, for failing reasonably to supervise Glantz to detect and prevent violations of the securities laws and reasonably respond to red flags regarding Glantz's misconduct and special working arrangement. Vaughn consented to a six-month suspension from any supervisory or investment advisory capacity, a civil penalty of \$50,000, and disgorgement of over \$12,000.
- E. *SEC v. Chanin Capital LLC (D.D.C. Apr. 28, 2008) and In the Matter of A. Carlos Martinez (SEC Admin. Proc. File No. 3-13032) May 1, 2008*
1. The SEC filed a civil complaint against Chanin Capital LLC ("Chanin"), a broker dealer, for failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material non-public information, as required under Section 15(f) of the Securities Exchange Act of 1934 ("Exchange Act").
 2. The SEC alleged that between 1999 and September 15, 2003, Chanin had no consistent system for collecting signed acknowledgements or ensuring compliance with the firm's insider trading prevention policies. The firm lacked records evidencing that any employee sought or received pre-clearance to place a single securities trade. Although it had more than 35 employees at the time, Chanin did not collect more than four signed insider trading policy acknowledgements in 1999, 2000, or 2001.
 3. The SEC alleged that while Chanin's policies and procedures improved in 2003, they were still insufficient. For example, beginning in 2003, Chanin held mandatory training sessions related to the insider trading policy but did not track which employees attended. As another example, Chanin required employees to disclose their existing personal trading accounts at one point in time, but it did not compel disclosure of accounts that employees opened subsequently. Finally, Chanin failed to collect signed insider trading policy acknowledgements from all employees in 2003, including Chanin's two principals.
 4. Chanin consented to pay a \$75,000 penalty.
 5. A. Carlos Martinez, who served as Chanin's CCO and Chief Financial Officer, was responsible for implementing and enforcing the firm's insider trading prevention policies and procedures. In a companion administrative proceeding against Martinez, the SEC alleged that he aided and abetted Chanin's violations by failing to maintain policies and procedures to prevent the misuse of material non-public information.

6. Martinez consented to a cease-and-desist order against future violations, a censure, and a civil penalty of \$25,000.
 7. This appears to be the first time that the SEC has brought charges against a CCO for aiding and abetting violations of 15(f). It also appears to be the first time that the Commission implied that failing to adopt policies that the SEC staff has said it views as “minimum standards,” but not required by the 1934 Act, could result in liability under 15(f).
- F. *In the Matter of the Application of Robert E. Strong*, SEC Admin. Proc. File No. 3-12599 (Mar. 4, 2008)
1. On appeal, the SEC reviewed and affirmed disciplinary action taken by the National Adjudicatory Counsel (“NAC”) of NASD Regulation against Robert E. Strong, CCO of Jesup & Lamont Securities Corp. (“J&L”). Among other findings, the NAC concluded that Strong failed to supervise the personal securities trading of a J&L research analyst in violation of NASD Conduct Rules.
 2. The NAC decision affirmed in part and modified in part an NASD hearing panel decision imposing a nine month suspension and a \$15,000 fine. The NAC reduced the fine to \$10,000 and set aside the suspension entirely because it did not find Strong’s conduct to be as egregious as the hearing officer did. The NAC found significant that Strong was the lone compliance employee in a forty-person firm that historically had neglected compliance responsibilities, the violations occurred shortly after Strong began working for the firm, and Strong did not personally benefit from the infractions.
 3. As J&L’s CCO, Strong was responsible for J&L’s compliance with an NASD rule that restricted the personal trading of research analysts and mandated the inclusion of certain disclosures in research reports. Strong revised J&L’s written supervisory procedures to require prior approval by the CCO before any research analysts could place a personal securities transaction. According to the revised procedures, the CCO was required to retain evidence of his review of analysts’ trading.
 4. The SEC found no evidence that Strong ever reviewed analysts’ trading, discussed the pre-approval requirement with employees, or provided training on the procedures so that employees understood and would follow the requirements.
 5. Between July 2, 2002 and September 30, 2003, a J&L research analyst (Davis) executed approximately 178 trades without prior approval from Strong. Of those, 41 transactions were sales of stock that Davis had recently recommended as “buys” or “strong buys.” The trades netted Davis a gain of \$116,000.

6. Strong began reviewing analysts trading in April 2003 and discovered that Davis was trading without pre-approval; however, he did not take action to address the issue with Davis until August 2003 when he told Davis to get prior approval before trades. Strong neither addressed the compliance violations internally nor informed NASD Regulation of Davis' misconduct or the Firm's non-compliance with the NASD rule.
 7. The SEC affirmed the NAC's fine of \$10,000 and imposition of costs against Strong.
- G. *In the Matter of Trautman, Wasserman & Company, Inc., Gregory O. Trautman, Samuel M. Wasserman, Mark Barbera, James A. Wilson, Jr., Jerome Snyder, and Forde H. Prigot*, SEC Admin. Proc. File No. 3-12559 (Feb. 14, 2008)
1. Following a contested proceeding in which the SEC staff alleged a scheme to defraud mutual funds through deceptive market timing, Trautman Wasserman & Company, Inc. ("TWCO") and its principals (Trautman and Wasserman) were found to have evaded mutual funds' efforts to restrict TWCO's hedge fund customers' market timing of mutual funds. TWCO's conduct generated significant revenues for TWCO while diluting the value of investments of other mutual fund customers. An ALJ revoked the registration of TWCO, barred Trautman and Wasserman from association with a broker dealer in any capacity and ordered TWCO to disgorge \$9,040,000; Trautman to disgorge \$1,373,799.75, plus prejudgment interest; and M. Wasserman to disgorge \$25,000.
 2. TWCO's mutual fund trading department consisted principally of two registered representatives ("RRs"), James A. Wilson, Jr. ("Wilson") and Scott A. Christian ("Christian"). Wilson, Christian, and others at TWCO were notified by numerous mutual funds that frequent trading by TWCO's customers violated prohibitions in the mutual funds' prospectuses, and the mutual funds instructed TWCO to stop permitting its customers to trade those funds. Ignoring the letters, the TWCO RRs then employed deceptive tactics to continue trading the mutual funds.
 3. According to the SEC, TWCO's former Chief Administrative Officer, Jerome Snyder ("Snyder"), and its former CCO, Prigot, each took steps to deceive mutual fund companies about TWCO's customers' market timing to evade the mutual fund companies' efforts to curtail the practice.
 4. In a separate settled proceeding against Prigot, the SEC found that Prigot received numerous warning letters from mutual funds but failed to stop the market timing. Prigot also signed numerous account opening forms for TWCO, which were then used by Wilson and Christian to deceive mutual funds about the identity of their customers and to continue to market time mutual funds.

5. When questioned by the mutual funds whether certain trades were market timing trades, Prigot told the mutual fund representatives that the RR numbers associated with the accounts in question were house RR numbers even though he knew that the trades were performed by Wilson and Christian and were market timing trades.
6. In a settled order to which he consented, the SEC found that Prigot willfully aided and abetted and caused the violations of the other respondents and their customers. Prigot was ordered to cease and desist from further violations of Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 10b-3 thereunder, suspended from association with any broker dealer or investment adviser for 6 months and ordered to pay a \$30,000 civil penalty.

II. FINRA

- A. *Strasbourgger, Pearson, Tulcin, Wolff, Inc. and Michael J. Schumacher*, FINRA Case #2007009468801 (July 2009)
 1. FINRA settled a matter with Strasbourgger, Pearson, Tulcin, Wolff, Inc., (“Strasbourgger”) and its president and former chairman Michael Schumacher in which the firm was censured and fined \$100,000 jointly and severally with Schumacher and required to retain an independent consultant to conduct a review of its compliance procedures.
 2. Schumacher was also the firm’s AML compliance officer and FINOP. He consented to a 10 day plenary suspension from association with any FINRA member firm and a 30 day suspension as a principal and agreed to be jointly and severally liable for the \$100,000 fine noted above.
 3. FINRA found that Strasbourgger failed to implement policies and controls and an appropriate system of follow up with respect to its activities on the NYSE trading floor. Further, the firm had inadequate compliance procedures with respect to its branch office.
 4. FINRA also found that Strasbourgger failed to supervise review of its electronic communications, to have adequate AML policies and failed adequately to review and supervise the personal trading and email communications of Schumacher.
 5. Further, FINRA found that Schumacher failed to discharge his supervisory duties as president and chairman and failed to document error account trades made by floor brokers.
 6. Finally, FINRA found that the firm employed independent contractors without adequately complying with NYSE regulations, handled options accounts activity in violation of NYSE regulations and failed to comply with the firm element of the continuing education rule.

7. Schumacher's 30 day suspension in any principal capacity was in effect from July 6, 2009 through August 4, 2009, and his concurrent 10 day suspension in any principal capacity was in effect from July 6, 2009, through July 17, 2009.

B. *NEXT Financial Group, Inc. ("NEXT") and Karen Eyster, FINRA Case #2006007058101 (July 2009)*

1. FINRA settled a matter against NEXT and Karen Eyster, NEXT's former Chief Operating Officer and CCO, related to various supervisory and other violations from January 2005 through April 2008, primarily involving the firm's failure to supervise its branch managers.
2. According to FINRA, the lack of reasonable policies and procedures resulted in the firm's failure to detect the churning of customer accounts by one of its managers as well as excessive markups and markdowns by other brokers.
3. Among numerous other supervisory failures, FINRA found that the firm failed to implement supervisory controls, adequately test its systems, prepare required reports and otherwise take certain measures with regard to its branch managers that the firm represented to FINRA it had taken following a FINRA examination.
4. FINRA found that Eyster, as both the former CCO and COO, and the principal responsible for the firm's supervisory systems and written procedures, failed to create a reasonable system for supervising OSJ managers and branch managers.
5. FINRA also noted that in June 2008, NEXT had been fined \$125,000 and ordered to cease and desist from further violations of Regulation S-P by the SEC following a contested hearing in which it was found that the firm had disclosed nonpublic personal information about its customers to nonaffiliated third parties without allowing customers to opt out of providing such information.
6. NEXT consented to a fine of \$1 million, restitution of \$5,638.86 and adoption of various written supervisory procedures with regard to several areas of its business, the completion of which must be certified by the firm's CCO.
7. Eyster consented to a 2 month suspension in any supervisory or principal capacity, re-qualification as a principal prior to acting in a principal capacity, completion of 15 hours of training and a fine of \$35,000.

C. *J.P. Turner & Co., LLC (“Turner”), S. Cheryl Bauman and Robert S. Meyer, FINRA (June 4, 2009) (See also, related SEC case noted at Section I. A. above)*

1. FINRA settled a matter with Turner, S. Cheryl Bauman (Turner’s CCO and AML Compliance Officer), and Robert S. Meyer (a Turner branch manager), in which it alleged that between March 2005 and September 2006, Turner failed to establish effective AML policies and procedures. In addition to the 2009 SEC settlement described above, Bauman was previously sanctioned by the NASD in 2006 for supervisory failures and suspended from any principal association for 3 months.
2. FINRA found that Turner, acting through Bauman, failed to design and implement reasonable AML procedures and that as a result the firm failed to detect red flags involving suspicious conduct by its customers and a former Turner principal and failed to file SARs on numerous occasions when red flags were present. FINRA also found that AML tests performed in 2005 and 2006 by an independent consultant were inadequate because they failed to address Turner’s monitoring of suspicious transactions.
3. Apart from AML violations, FINRA found that Turner paid transaction-based referral fees to an unregistered individual in exchange for institutional orders. FINRA also found that the firm failed to:
 - a. report customer complaints timely and accurately and failed to maintain records of such complaints;
 - b. maintain required customer information, including financial status, tax status, investment objectives, customer age, required signatures, tax IDs or SSNs, employment information, broker-dealer associations, telephone numbers, dates of birth, income and net worth;
 - c. amend or timely amend Forms U-4 or U-5 to report disclosable events;
 - d. honor clients’ requests to join the firm’s Do Not Call (“DNC”) list and permitted brokers to call individuals on the firm’s and/or the national DNC list; and
 - e. adequately supervise the verification of orders and cancellation of trades at branch offices, including failing to enforce a “Special Supervisory Agreement” in 2004 and 2005 with a branch office with a high number of trade cancellations.

4. Turner consented to a fine of \$525,000. Meyer consented to be jointly and severally liable for a \$5,000 fine and to be suspended as a principal for 1 month.
5. Bauman consented to a total fine of \$30,000, parts of which were joint and several with either Turner or Meyer, and an 18 month suspension as a principal.

D. *Park Financial Group, Inc. (“Park”), Gordon Charles Cantley and David Farber*, FINRA Case #2008011713701 (June 4, 2009)

1. FINRA settled a matter with Park, Gordon Charles Cantley (Park’s owner and former CEO, President, CCO, and AML Compliance Officer) and David Farber (a Park trader), in which it alleged that Park failed to establish effective AML policies and procedures.
2. Cantley had previously been sanctioned by the NASD; at the time of the FINRA settlement, he was serving a 2 year bar entered in an SEC settlement. He was barred permanently after a criminal conviction arising from the same facts as the SEC bar. Specifically, on April 11, 2007, the SEC brought a settled action in which it alleged that Park and Cantley aided and abetted a “pump-and-dump” scheme and failed to file SARs. In that matter Park consented to a censure, a cease-and-desist order, disgorgement of approximately \$30,000 and a fine of \$50,000, while Cantley consented to a cease-and-desist order, a bar from association with any broker or dealer (with a right to reapply after two years), and a fine and disgorgement totaling approximately \$33,000.
3. FINRA found that between September 2004 and April 2008, Park’s AML program was not specifically tailored to the firm’s business. For example, Park’s AML policies did not specifically address penny-stock trading although many of Park’s customers, some of whom had committed securities-related violations, traded penny stocks. In addition, Park failed to adequately enforce its AML policies by not identifying or investigating red flags and failing to file SARs.
4. FINRA also alleged that between August 2004 and April 2008, Park, through Cantley, failed to retain instant messages sent or received by certain of its registered representatives. Furthermore, Park did not implement supervisory procedures regarding instant message retention or review until April 2006.
5. Park, acting through Farber, also allegedly participated in the sale of unregistered securities of two issuers. Farber opened issuer-affiliate accounts and unlawfully sold millions of shares of restricted stock. Farber also engaged in front-running by trading for his personal or relatives’ accounts after learning of impending block trades in the same securities.

6. FINRA alleged that Park, through Cantley, failed to have adequate supervisory systems reasonably designed to detect sales of unregistered stock or front-running.
7. Finally, Park allegedly failed to maintain minimum required net capital on three days in December 2007 and failed to file notices that its net capital had fallen below certain required thresholds.
8. Park consented to a censure and a fine of \$400,000 and agreed to hire a consultant to review its AML program. Cantley consented to a permanent bar from association with any FINRA member. Farber consented to a fine of \$25,000 and a 30-day suspension.

E. *Mutual Services Corporation, Dennis S. Kaminski, Susan Coates, Michael Poston, Denise Roth, Gari C. Sanfilippo, Kevin L. Cohen and J. Graham Taylor*, FINRA Disc. Proc. No. EAF0400630001 (December 16, 2008), appeal pending

1. On December 16, 2008, a FINRA Hearing Panel issued a decision, after a contested hearing, sanctioning Mutual Services Corporation (“MSC”) and several of its officers and employees, including Michael Poston, its CCO, and his successor CCO (Dennis Kaminski), who was also the CAO, for various failures relating to the firm’s review of variable annuities, the accuracy of its books and records, its conduct during a FINRA exam and inquiry, and its compliance with FINRA Rule 8210 requests.
2. In the wake of an earlier NASD settlement, MSC had established a daily review procedure to identify variable annuity transactions that triggered one or more “red flags” and these transactions appeared on a daily blotters for review. The CCO and other compliance supervisors became aware that the blotters were not being reviewed in a timely manner but did not take action to address the failure.
3. Supervisors backdated the blotters to give the appearance that they had been reviewed timely.
4. The CCO modified the firm’s Written Supervisory Procedures and directed his assistant to backdate the procedures to make it appear that the firm changed its procedures to include review of a monthly trend report.
5. Two personnel in Compliance then created documentation produced to FINRA which made it appear that MSC had been using the new monthly trend report for several months.
6. MSC was fined \$500,000 for failing to supervise its variable annuity business and for failing to supervise the creation of accurate books and records. MSC was fined an additional \$1 million for creating and maintaining inaccurate books and records. MSC was fined an additional \$10,000 for failing to conduct timely FINRA Rule 3010 reviews and

another \$25,000 for failing to respond fully and completely to FINRA's requests for information in this matter.

7. Michael Poston, the CCO, was suspended from all principal capacities for 6 months and fined \$10,000 for failure to supervise. Additionally, the CCO was suspended from all principal capacities for 30 days and fined another \$10,000 for failing to conduct timely internal reviews pursuant to FINRA Rule 3010. The sanctions are to run consecutively.
8. MSC's Chief Administrative Officer, Dennis S. Kaminski (who also succeeded Poston as CCO) and the Director of Operations were both suspended from all principal positions for six months and fined \$50,000 for failure to supervise the review of the blotters.
9. Three additional compliance personnel were barred in all capacities for creating and maintaining inaccurate books and records.

F. *Tejas Securities Group, Inc. and Michael Lee Cuckler, FINRA Case #2006003679802 (July 2008)*

1. FINRA settled an investigation involving allegations that Tejas and Cuckler, its CCO, violated FINRA and SEC rules regarding the firm's research reports, as well as several other FINRA rules on various topics.
2. With respect to research reports, FINRA alleged that Tejas, through Cuckler:
 - a. failed to disclose in four research reports that the firm or its analyst who authored the research reports had a financial interest in the securities of the subject company;
 - b. failed to disclose risks that could prevent the subject company from achieving Tejas's price target for the company;
 - c. failed to disclose that Tejas had managed or co-managed a public offering for the subject company of one of the firm's research reports;
 - d. allowed research analysts to purchase securities of companies that they covered within 30 days prior to publication of a research report on the company and permitted an analyst to sell securities of a subject company in a manner that was inconsistent with his published research recommendation; and
 - e. permitted an individual who did not hold the requisite research licenses to publish research reports.

3. Besides allegations related to research reports, FINRA alleged that Tejas, through Cuckler, failed to supervise adequately a registered representative's securities transaction; failed to investigate red flags related to a group of accounts with possible suspicious activity; failed to enforce the Firm's AML procedures; failed to record timestamps on order tickets; and failed to collect required information concerning clients who participated in PIPE transactions.
4. Tejas and Cuckler consented to censures. Tejas consented to a fine of \$175,000, of which Cuckler was jointly and severally liable for \$15,000. Tejas also agreed to retain an independent consultant to review the firm's supervisory systems, procedures and training related to its securities business, including research reports.

G. *Kensington Capital Corp. ("Kensington"), Abram Silver and Jeffrey Simon, FINRA Case #2005000094003 (April 2008)*

1. FINRA alleged that Kensington, through its employee co-respondent Jeffrey Simon, aided and abetted market manipulation of an over-the-counter bulletin board common stock. The primary violator was an individual barred from the securities industry and that man's brother who had a retail account at Kensington.
2. Kensington consented to findings that through co-respondent Abram Silver, its president, majority owner and CCO, the firm failed to establish written supervisory procedures related to trading and market making and failed to supervise Simon's trading and market making activities. These failures enabled Simon to assist in the stock price manipulation.
3. FINRA also concluded that through Silver, the firm failed to establish and implement AML procedures to monitor suspicious transactions and to comply with the Bank Secrecy Act.
4. The firm consented to a censure and an \$85,000 fine, of which Simon was jointly and severally liable for \$10,000. Kensington also agreed to retain an independent consultant to review the firm's trading and anti-money laundering policies, systems and procedures. Simon also consented to a six-month suspension and to re-qualify as a general securities representative by taking the Series 7 examination.
5. Silver consented to a \$10,000 fine and a 90-day suspension as a principal, agreed not to serve as CCO, and agreed to certain AML continuing education.