

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Thomas J. Brough (CRD No. 2403390),
Eric R. Elliott (CRD No. 1418906),
Brian J. Falabella (CRD No. 4177162), and
Jonathan J. Sheinkop (CRD No. 2812671),

Respondents.

Disciplinary Proceeding
No. 2007011348301

Hearing Officer - Rochelle S. Hall

**ORDER ACCEPTING OFFER OF
SETTLEMENT OF
BRIAN J. FALABELLA**

Date: September 3, 2010

INTRODUCTION

Disciplinary Proceeding No. 2007011348301 was filed on May 28, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Brian J. Falabella submitted an Offer of Settlement (Offer) to Complainant dated August 12, 2010. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Falabella has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other

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proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Falabella's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Falabella first became registered with FINRA through Brookstreet as a General Securities Representative (GSR) on August 25, 2000, where he remained so registered until July 3, 2007. While associated with Brookstreet, Falabella worked as a broker from Brookstreet offices in Long Island, New York. Since February 10, 2009, Falabella has been registered as a GSR through another member firm. Pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA retains jurisdiction over Falabella in that he is currently registered with a member firm and was registered at the time the complaint was filed.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:¹

SUMMARY

From August 2004 through April 2007, Falabella, while a registered representative of Brookstreet, induced six customers to invest in complex, illiquid, and risky CMOs. CMOs are mortgage backed securities, collateralized by pools of private home mortgages. Through misrepresentations and omissions, Falabella led customers to believe that through CMO investments they could safely achieve consistently high annual returns, in some cases up to 12%,

¹ The findings herein are pursuant to Respondent Falabella's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

year after year, regardless of market conditions, with the government backing the investments. The particular CMOs that Falabella bought for his customers were generally not government guaranteed, and were subject to price volatility and to uncertain cash flows and maturities, based on changes in interest rates. There was no reasonable basis for the projected returns.

Falabella failed to disclose material characteristics of, and risks associated with, different CMOs with substantially different payment structures and interest rate sensitivity.

Falabella failed to investigate adequately and understand the CMO products, and did not have reasonable grounds to believe that the individual CMO purchases were suitable for each customer. The CMOs were not suitable investments for these customers, many of whom were retired and/or unsophisticated, and sought income and capital preservation with little or no risk. For some customers, the risk was further magnified through buying CMOs on margin at the recommendation of Falabella.

Compounding the misconduct, Falabella improperly exercised discretionary authority to buy and sell the securities without written authorization from Brookstreet and the customers.

The customers were exposed to significant risks, which they did not understand, and which Falabella did not take the time to understand or ignored. Many customers suffered considerable losses to their retirement savings.

By virtue of this misconduct, Falabella violated NASD Conduct Rules 2310(a), 2510(b) and 2110.

BACKGROUND

At all times, Brookstreet was headquartered in Irvine, California and had approximately 400 offices nationwide.

The CMO Program

Between on or about January 15, 2004 and June 5, 2007, CP, a broker in a Brookstreet branch office in Boca Raton, Florida, ran a firm-wide program to facilitate the purchase and sale of CMOs for retail customers (the "CMO Program"). CP bought large CMO blocks in the marketplace and proposed to Brookstreet brokers, including Falabella, the allocation of smaller positions in those bonds to specific retail customer accounts.

Beginning around May 2004, Falabella learned of the CMO Program through breakout sessions at Brookstreet annual meetings and through conference calls. During the period May 2004 through May 2005, CP and certain other brokers at Brookstreet presented the CMO Program to Brookstreet's brokers, including Falabella, as follows:

- a. The CMO Program offered Brookstreet brokers an opportunity for their retail customers to invest in government backed bonds, which were AAA rated, and was designed to achieve capital preservation and income;
- b. Brokers should expect customers to achieve consistently high annual returns of 8% to 10% in cash accounts and as high as 15% in margin accounts;
- c. CP would purchase institutional CMO blocks from the marketplace at a discount and propose to Brookstreet brokers the allocation of smaller positions in those bonds for sale to retail customers;
- d. The customer positions would later be repackaged into larger blocks for resale at favorable institutional prices;
- e. Customers could sell positions acquired within 90 days; and
- f. Customer portfolios would contain CMO bonds that hedged against interest rate fluctuations to protect principal and generate the projected annual returns.

Without independently investigating the individual products offered, starting in August 2004, Falabella recommended that customers invest through Brookstreet in what he represented as government backed bonds, generally stating that customers should expect consistently high

annual returns, in some cases up to 12%, with little or no risk to principal. Falabella failed to conduct any reasonable inquiry concerning the CMO investments. Had he done so, he would have known that these products, which were high risk and complex, were unsuitable for the customers.

Once the customers agreed to invest, Falabella, throughout the course of the CMO Program, advised CP and/or his assistants of cash and margin available in each customer's account, which information Falabella understood would be used as a basis for the recommended allocation of CMOs to individual customer accounts.

CP's office sent to Falabella recommendation sheets of proposed CMO purchases and sales and Bloomberg CMO Security Descriptions (Bloomberg DES pages), containing certain important information about the proposed CMO purchases, corresponding to bond CUSIP numbers.

Upon receipt of the recommendation sheets, Falabella and/or his assistants, throughout the course of the CMO Program, completed and sent order tickets for the purchase and sale of CMOs in the customer accounts to the Boca Raton office. The transactions were executed in the customer accounts without prior communication with Falabella's customers.

Falabella knew of all trades and had full access to information concerning his customer account portfolios.

The CMOs Purchased

The CMOs purchased for the customers were complex and were highly sensitive to interest rate changes.

Some of the CMOs purchased for Falabella's customers included CMOs that were guaranteed by the United States government through Government National Mortgage

Association (GNMA or Ginnie Mae). Certain other CMOs were issued by government sponsored entities, Federal National Mortgage Association (FNMA or Fannie Mae) and Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac). All of these CMOs are commonly referred to as “agency CMOs.”

Falabella represented to his customers that the CMOs purchased for their accounts would be backed by the government. In fact, less than 10% of the CMOs purchased were backed by the government through Ginnie Mae. With those purchases, any guarantee as to principal applied only to the par value of the security, and not to any premium paid. Most of the CMOs were issued by government sponsored entities for which there was no explicit government guarantee and, therefore, were subject to credit risk.

Starting as early as March 2005, and contrary to Falabella’s representations to his customers, non-agency CMOs issued by private entities (“private label CMOs”) were also purchased for customers. Private label CMOs carried material credit risks and were often less liquid than CMOs issued by the government and government sponsored entities.

Approximately 23% of the CMOs purchased for the customers were issued by private entities, such as investment banks and financial institutions, with no government backing and additional credit risk.

Cash flows from underlying mortgages included (i) interest, (ii) scheduled principal repayment, and (iii) any payment in excess of the scheduled principal repayment. The CMO prospectuses defined the structure of each CMO and the distribution of the cash flows among different classes (known as “tranches”).

The customers were primarily placed in CMO Inverse Floaters, Interest-Only and Inverse Interest-Only tranches.

CMO Inverse Floater tranches are structured so that interest payments move in the opposite direction of an interest rate index, such as the London Interbank Offered Rate (LIBOR). They are designed to pay interest and principal from underlying mortgage pool payments. Inverse Floaters often have “multipliers” embedded in their coupon formulas (also known as “levers”), which cause the Inverse Floater to react dramatically to changes in the reference interest rate index, and thereby magnify interest rate risks. Rising interest rates generally cause an Inverse Floater’s value and interest payments to drop and may extend receipt of return of principal on the underlying mortgages beyond the anticipated average life of the CMO. Should the investor wish to sell the Inverse Floater in a rising interest rate environment, rather than waiting for the final principal payment, the trading price could be significantly lower than the original purchase price.

CMO Interest-Only tranches are structured to pay interest only from a mortgage pool stream and increase in value when interest rates rise and the rate of prepayment of mortgages decreases. They sell at a discount to their “notional” principal amount (the principal balance used to calculate the amount of interest due). Interest-Only tranches have no face or par value and, as the notional principal amortizes and prepays, the cash flow and market value of the Interest-Only declines. Accordingly, investors in Interest-Only tranches may receive back less cash than they initially invested. In fact, Interest-Only tranches are at risk of expiring worthless if the related principal balance is paid off prior to the maturity date of the bond.

As early as 1993, FINRA advised that Interest-Only and Inverse Floater tranches, as with other high-risk tranches, are only suitable for “sophisticated investors” with a “high-risk profile.” *Members’ Obligation to Customers When Selling Collateralized Mortgage Obligations (CMOs)*, NASD Notice to Members 93-73 (1993).

CMO Inverse Interest-Only tranches are also high-risk and are structured so that interest payments move in the opposite direction of an interest rate index, such as LIBOR, and also sell at a discount to their notional principal amount. They have no face or par value and, as the notional principal amortizes and prepays, the cash flow and market value of the Inverse Interest-Only declines. As with Interest-Only tranches, Inverse Interest-Only tranches can expire worthless if the related principal balance is paid off prior to the maturity date of the bond.

Additionally, many of the CMO tranches discussed above, which the customers purchased, were part of support tranches, standing in line behind other bond classes for receipt of cash flow. Support tranches typically expose the investor to the greatest level of risk associated with prepayment of underlying mortgages.

Most of the CMOs purchased for the customers were small, odd-lot positions that were difficult to sell in the marketplace without a substantial discount in price, unless sold as part of a larger block with other customer positions.

CMOs do not trade on an exchange and dealers do not publish daily quotes or bid, ask and closing price information. In this case, CMO tranches were valued by a pricing service using complex theoretical pricing models. The pricing service based its price estimates on institutional round lots and not odd-lot positions in determining estimated values of the customer positions. The price estimates were reflected on customer account statements. These prices were only estimates of the bond values and often varied substantially from prices obtained through actual market bids or offers.

There was no active retail market for CMOs generally. Consequently, the only reliable way for Brookstreet customers to liquidate small, odd-lot CMO positions without receiving substantially lower prices was for Respondents to instruct the Boca Raton office to place a

customer account on “sell only” status, whereby CP would decide when to propose re-constituting and selling blocks of CMOs. Accordingly, customers were left either holding onto their illiquid positions, or trying to sell their small positions at substantial discounts.

Failure to Ensure the Suitability of the CMOs Purchased

As set forth in NASD Notice to Members 93-73, “[i]n light of the complexity and varying risk characteristics of CMOs, . . . associated persons must be conversant in all characteristics of CMOs to assess adequately the suitability of CMOs for their customers. Moreover, they must ensure that their customers understand the characteristics and risks of CMOs.”

Falabella did not understand, nor take adequate steps to understand, either how the different CMOs would react to changes in interest rates or, more generally, the risks associated with the bonds in each customer’s portfolio. Consequently, Falabella failed to communicate this essential information to his customers.

Falabella did not understand and generally did not review or consider the information contained on the Bloomberg DES pages made available to him. The Bloomberg DES pages set forth various material information concerning a bond, including, by way of example:

- a. The issuer;
- b. Basic characteristics of the CMO tranche;
- c. For Inverse Floaters, the interest rate formula (with multiplier);
- d. Information about expected payments and the life of the bond based on various assumptions concerning mortgage prepayment rates;
- e. Ratings for private label bonds;
- f. Volatility information; and
- g. Minimum dollar denomination for trading.

Falabella did not review any prospectuses, prospectus supplements or any offering circulars relating to the particular CMO tranches purchased. Those documents provide essential

information concerning the bonds, including disclosure of various applicable risk factors that an investor should consider before investing.

Brookstreet advised Falabella about, and made available to him, "An Investor's Guide to CMOs" ("Guide to CMOs"), published by the Bond Market Association (now known as the Securities Industry and Financial Markets Association). While the Guide contained material questions that Falabella should have posed to his customers before each CMO purchase, he failed to do so. While some customers received the Guide through Falabella or Brookstreet, the customers either did not review it or fully understand it.

While it was the obligation of Falabella to consider and carefully assess the suitability of every individual CMO purchase in connection with his customer portfolios, he did not do so.

Falabella also failed to ensure that his customers understood the characteristics and risks of CMOs.

Falabella Failed to Take Into Account Adverse Material Information

During the course of the CMO Program, Falabella was made aware of, but failed to adequately take into account, various warning signs indicating that (i) the representations he made to his customers were untrue, (ii) he had omitted to disclose material facts which were necessary for his customers to make informed decisions about their investments, (iii) the program was unsuitable for his customers, and (iv) the CMO positions allocated to customer accounts exposed his customers to significant, undisclosed risks. Examples are set forth below.

As a broker recommending CMOs to customers, Falabella knew, or should have known, that the market for CMOs in the mid-1990s had essentially collapsed and could do so again.

Falabella had received SIFMA's Guide to CMOs, which Brookstreet advised him about and made available to him, yet failed to take into account basic risks associated with CMOs that were discussed in the brochure.

Falabella knew, or should have known, by March 2005 that private label CMOs would be purchased and/or had been acquired for his customers.

Falabella knew, or should have known, that the individual CMOs acquired for each customer were likely illiquid and, if marketable at all, would be sold at a substantial discount.

By at least mid-September 2005, Brookstreet's compliance department had alerted Falabella to various risks associated with CMOs that must be disclosed to customers, by providing a Brookstreet CMO disclosure form indicating that the CMOs carried far greater risks than CP had initially disclosed to Falabella.

In October 2005, the value of CMO positions in Brookstreet customer accounts dropped approximately 10% to 20%, which was a warning sign to Falabella of the pricing volatility of the CMOs. CP told Falabella that the drop in price was due to a pricing vendor revising its pricing models and these estimates were not reflective of the higher prices at which the bonds would be sold. At that point, Falabella, lacking an understanding of how CMOs were priced, had further reason to question the suitability of the program for his customers.

From November 2005 through June 2007, Falabella knew, or should have known, of inconsistent performances and bond allocations among his customer accounts, and during that time frame, Falabella had reason to question the suitability of the CMO Program and the investments.

At all relevant times, Falabella knew, or should have known, that certain Interest-Only tranches in his customer accounts had expired worthless and that other Interest-Only positions could expire with losses to principal.

At all relevant times, Falabella knew, or should have known, that certain Inverse Floaters could be or were redeemed or called, resulting in money invested being returned sooner than anticipated, potentially requiring reinvestment at lower interest rates.

Falabella knew, or should have known, by as early as May 2006, that private label CMOs rated below AAA had been purchased for certain customers.

By May 2006, Falabella knew, or should have known, based on new disclosures appearing on CMO trade confirmations, of the speculative nature of the CMOs purchased, and various risks regarding CMO investments.

By mid-August 2006, Brookstreet's compliance department alerted Falabella that, according to Brookstreet policy, all customers in the CMO Program must be accredited investors with investment objectives of growth and income, with an objective of speculation preferred and required in margin accounts.

By February 23, 2007, Brookstreet's compliance department, among other things, encouraged Falabella to have existing customers complete a new, detailed CMO disclosure form.

Falabella ignored or otherwise failed to respond to these and other warning signs when making statements to his customers about investing in CMOs. Consequently, Falabella (i) made to his customers, and failed to correct, various material misrepresentations and omissions regarding investing in CMOs, and (ii) continued to recommend and cause to be effected unsuitable CMO purchases for his customers. Throughout his participation in the CMO Program, Falabella had increasing knowledge and awareness from the above-referenced warning

signs and other negative information that he was misrepresenting and omitting to disclose material facts to customers.

The CMO Program Collapsed

In mid-June 2007, Brookstreet discontinued operations after failing to meet margin calls associated with CMOs held in participating customer accounts.

Many customers investing in the CMO Program suffered significant losses and/or were left holding onto their illiquid positions.

SECOND CAUSE OF ACTION

Falabella's Material Misrepresentations and Omissions

Falabella made material misrepresentations and omitted to disclose material information at least negligently and, in so doing, violated his obligation to observe high standards of commercial honor and just and equitable principles of trade.

From August 2004 through April 2007, Falabella made misrepresentations of material facts, and omitted to disclose material facts, to customers PA, LK, GM, CN, and RW and TW, in connection with each customer's CMO investments.

Falabella's material misrepresentations included, but were not limited to, the following:

- a. Statements to PA, LK, and RW and TW that there was no risk to principal;
- b. Statements to PA that the high interest bonds carried zero risk;
- c. Statements to PA, CN, and RW and TW that the bonds were safe and government backed;
- d. Statement to LK that the investment was in government bonds;
- e. Statement to PA that the bonds were AAA rated;

- f. Statements to LK that the CMO program was a safe investment similar to investing in a “blue chip” stock fund;
- g. Statements to CN that purchasing the CMO bonds on margin was safe and low risk;
- h. Statements to PA that the expected annual return on the bonds was 10% and greater if margin was used;
- i. Statements to GM that the expected annual return on the bonds was 12%;
- j. Statements to RW and TW that the expected annual return on the bonds would range from 10% to 12%;
- k. Statements to LK, and RW and TW that the CMO bonds could be liquidated in three months; and
- l. Statements to CN that the bonds would be diversified.

Falabella’s omission of material facts included, but were not limited to, the following:

- a. Failing to disclose to PA, LK, GM, CN, and RW and TW the characteristics of, and risks associated with, the CMOs;
- b. Failing to disclose to PA, LK, GM, CN, and RW and TW anything about different CMO tranches and how changes in interest rates impact performance and risk of the different tranches;
- c. Failing to disclose to PA, LK, GM, and CN that private label CMOs would be acquired and the characteristics of, and additional risk associated with, those products;
- d. Failing to disclose to PA, LK, and GM that high yield CMO (junk) bonds would be acquired and the characteristics of, and additional risk associated with, those products;

e. Failing to disclose to LK that margin would be used to purchase CMOs, and further failure to disclose to LK, PA, and CN the costs and the risks associated with trading on margin, including that the use of margin would materially increase the risk associated with specific types of bonds;

f. Failing to disclose to PA, LK, and CN that smaller CMO positions were illiquid and less marketable than larger positions; and

g. Failing to disclose to PA and CN the potential for delay in liquidating CMO positions.

Additional Material Omissions by Falabella

Falabella also failed to provide his customers with material information concerning the bonds as contained in prospectuses, prospectus supplements or any offering circulars relating to the particular CMO tranches purchased, which documents disclosed various applicable risk factors that an investor should consider before investing.

Moreover, before October 2005, Falabella failed to advise his customers how CMOs were priced and that values reflected on account statements were estimates only.

By reason of the foregoing misrepresentations and omissions, Falabella violated NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION

Falabella's Unsuitable Recommendations

Falabella recommended risky and illiquid CMO positions to his customers without investigating and understanding the products. Falabella lacked reasonable grounds to believe that the CMO Program and CMO investments were suitable for his customers as he lacked an

understanding of the material characteristics of, and risks associated with, the CMOs offered, which was necessary to make an affirmative suitability determination.

Moreover, Falabella never considered whether individual CMO purchases were suitable for particular customers. Notwithstanding CP's role in proposing allocations to Falabella, Falabella had an independent, non-delegable duty to determine the suitability of each proposed purchase for each of his customers, but failed to fulfill that duty.

Additionally, Falabella did not have reasonable grounds to believe that the use of margin was suitable for customer CMO purchases as he did not fully understand how changes in interest rates would impact the investments, and his customers on margin were unaware of the magnified risks associated with the use of margin.

Even after Falabella doubted and/or had reason to doubt the suitability of the CMO Program, he continued to facilitate, approve and/or cause to be effected additional CMO purchases.

Furthermore, Falabella lacked reasonable grounds to believe that the CMO Program and CMO investments were suitable for his customers based upon their disclosed investment experience, investment objectives, financial situation and needs. Falabella not only recommended that his customers participate in the CMO Program, he also recommended each CMO purchase for his customers by approving, facilitating and/or causing to be effected the CMO purchases.

Customer PA

When recommending CMOs to PA, who opened an account at Brookstreet, Falabella did not have reasonable grounds to believe that the CMOs were suitable for PA, based on PA

advising Falabella that he wanted his portfolio to have investments that were more conservative than equities, and that he sought growth from his investments.

Based on Falabella's recommendation, in September 2004, PA initially invested approximately \$297,421.31 in CMOs, and ultimately invested a total of approximately \$687,585.11 in CMOs (both amounts exclude margin and any CMO returns that were reinvested). From September 2004 through September 2006, there were a total of 85 CMO purchases for PA's account, consisting of 27 Interest-Only positions (including 13 private label positions), 42 Inverse Floaters (including two private label positions), 12 Inverse Interest-Only positions (including 3 private label positions), and 4 other complex bond positions (including 2 private label positions, with one position rated BBB-).

At Falabella's recommendation, margin was used to finance various CMO purchases in PA's account. Falabella did not have reasonable grounds to believe that purchasing CMOs on margin was suitable for PA, as Falabella lacked an understanding of how the margin purchases would materially increase the risks associated with specific types of CMO positions.

PA was unaware of the characteristics and risks of the CMOs purchased for his account and the risks associated with using margin to finance CMO purchases.

Falabella received approximately \$41,401.72 in commissions from the CMO transactions in PA's account. As of June 30, 2007, PA's losses (realized and unrealized) from investing in CMOs through Falabella were approximately \$108,183.65.

Customer LK

When recommending CMOs to LK, who had accounts at Brookstreet, Falabella did not have reasonable grounds to believe that the CMOs were suitable for LK, based on LK advising

Falabella of his limited investment experience and that he wanted conservative investments with limited risk and capital preservation and growth.

Based on Falabella's recommendation, in April 2005, LK initially invested approximately \$163,395.32 in CMOs, and ultimately invested approximately \$183,087.19 in CMOs (both amounts exclude margin and any CMO returns that were reinvested). From April 2005 through April 2007, there were a total of 31 CMO purchases for LK's accounts, consisting of 8 Interest-Only positions (including 6 private label positions), 16 Inverse Floaters, and 7 Inverse Interest-Only positions (including 3 private label positions).

Margin was used to finance various CMO purchases in one of LK's accounts. Falabella did not have reasonable grounds to believe that purchasing CMOs on margin was suitable for LK, as Falabella lacked an understanding of how the margin purchases would materially increase the risks associated with specific types of CMO positions.

LK was unaware of the characteristics and risks of the CMOs purchased for his accounts. LK did not want to use margin and was unaware that Falabella's recommendations included the use of margin to finance CMO purchases. LK was also unaware of the increased costs and risks of using margin to finance CMO purchases.

Falabella received approximately \$6,483.13 in commissions from the CMO transactions in LK's accounts. As of June 30, 2007, LK's losses (realized and unrealized) from investing in CMOs through Falabella were approximately \$11,212.05.

Customer GM

When recommending CMOs to GM, who opened an account at Brookstreet, Falabella did not have reasonable grounds to believe that the CMOs were suitable for GM, based on

Falabella's understanding that GM wanted a portfolio that was less volatile and safer than investing in equities.

Based on Falabella's recommendation, in May 2005, GM initially invested approximately \$97,076.61 in CMOs, and ultimately invested a total of approximately \$97,570.14 in CMOs (both amounts exclude any CMO returns that were reinvested). From May 2005 through March 2007, there were a total of 24 CMO purchases for GM's account, consisting of 6 Interest-Only positions (including 4 private label positions), 11 Inverse Floaters and 6 Inverse Interest-Only positions (including 4 private label positions), and one additional complex, private label bond position.

GM was unaware of the characteristics and risks of the CMOs purchased for his account.

Falabella received approximately \$3,857.58 in commissions from the CMO transactions in GM's account. As of June 30, 2007, GM's losses (realized and unrealized) from investing in CMOs through Falabella were approximately \$42,068.34.

Customer CN

When recommending CMOs to CN, who had two accounts at Brookstreet, Falabella did not have reasonable grounds to believe that the CMOs were suitable for CN, based on Falabella's understanding that CN wanted his portfolio to be comprised of investments that were safer and more conservative than equities, and CN advising Falabella that his investment objectives included capital preservation and growth.

Based on Falabella's recommendation, in August 2004, CN initially invested approximately \$113,613.17 in CMOs, and ultimately invested a total of approximately \$250,000.00 in CMOs (both amounts exclude margin and any CMO returns that were reinvested). From August 2004 through August 2005, there were a total of 48 CMO purchases

for CN's accounts, consisting of 16 Interest-Only positions (including 4 private label positions), 28 Inverse Floaters (including one private label position), and 4 Inverse Interest-Only positions (including one private label position).

At Falabella's recommendation, margin was used to finance various CMO purchases in CN's accounts. Falabella did not have reasonable grounds to believe that purchasing CMOs on margin was suitable for CN, as Falabella lacked an understanding of how the margin purchases would materially increase the risks associated with specific types of CMO positions.

CN was unaware of the characteristics and risks of the CMOs purchased for his accounts and the risks associated with using margin to finance CMO purchases.

Falabella received approximately \$12,299.47 in commissions from the CMO transactions in CN's accounts. In August 2005, CN's losses (realized gains and unrealized losses) from investing in CMOs through Falabella were approximately \$80,452.05. In September 2005, CN transferred his CMO positions to another brokerage firm.

Customers RW and TW

When recommending CMOs to RW and TW, who had an existing account at Brookstreet, Falabella did not have reasonable grounds to believe that the CMOs were suitable for RW and TW, based on Falabella's understanding that RW and TW wanted to move their portfolio from equities to more conservative investments based on their financial situation and needs, and RW and TW advising Falabella that they wanted safe, non-risky investments consistent with their desire for capital preservation and income.

Based on Falabella's recommendation, in March 2005, RW and TW initially invested approximately \$114,435.28 in CMOs, and ultimately invested a total of approximately \$204,415.28 in CMOs (both amounts exclude any CMO returns that were reinvested). From

March 2005 through March 2007, there were a total of 43 CMO purchases in RW and TW's account, consisting of 10 Interest-Only positions (including 7 private label positions), 26 Inverse Floaters (including 2 private label positions), and 7 Inverse Interest-Only positions (including 2 private label positions).

RW and TW were unaware of the characteristics and risks of the bonds purchased.

Falabella received approximately \$6,024.79 in commissions from the CMO transactions in RW and TW's account. In February 2008, RW and TW realized a total of approximately \$33,116.85 in realized losses from investing in CMOs through Falabella.

By reason of the foregoing unsuitable recommendations to his customers, Falabella violated NASD Conduct Rules 2310(a) and 2110.

FOURTH CAUSE OF ACTION

Falabella's Improper Exercise of Discretion

Falabella exercised discretionary authority in customer accounts without obtaining prior written authorization from his customers and Brookstreet's prior written acceptance of the accounts as discretionary. During the following periods, Falabella exercised discretion in the accounts of six customers noted below, by facilitating, approving and/or causing to be effected, the following CMO purchase and sale transactions:

	Customers	Time Period	CMO Transactions
a.	PA	09/20/04 – 05/29/07	157
b.	LK	04/07/05 – 06/14/07	56
c.	GM	05/12/05 – 04/11/07	42
d.	CN	08/24/04 – 09/09/05	71
e.	RW and TW	03/18/05 – 06/14/07	74
			Total = 400

By reason of the foregoing exercise of discretion in his customer accounts, Falabella violated NASD Conduct Rules 2510(b) and 2110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent Falabella from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent Falabella be suspended from associating with any FINRA member in any and all capacities for a period of six months.

Respondent Falabella has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Falabella, no monetary sanctions have been imposed.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

Additionally, Falabella agrees and undertakes to fully and promptly cooperate with FINRA in any and all investigations and/or disciplinary proceedings, of any person or entity, concerning conduct at and/or relating to Brookstreet during the time period he was associated with the firm. In connection with such cooperation, Falabella agrees that he shall, without the necessity of a FINRA Rule 8210 request: 1) Produce promptly information and documents as requested by FINRA staff; and 2) Appear and testify fully, completely and truthfully at any interview and/or disciplinary hearing as requested by FINRA staff.

Falabella further agrees that notice by FINRA staff requesting his cooperation may be served by regular mail or facsimile on his attorney, as follows:

James D. Sallah, Esq.
Sallah & Cox, LLC
2101 NW Corporate Blvd., Ste. 218
Boca Raton, FL 33431
(561) 989-9080 (telephone)
(561) 989-9020 (facsimile)

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority



Gary A. Chodosh, Senior Regional Counsel
FINRA Department of Enforcement
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