

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & COMPLIANCE

Department of Enforcement,

Complainant,

v.

Brookstone Securities, Inc.
(CRD No. 13366),

Antony Lee Turbeville
(CRD No. 1721014),

Christopher Dean Kline
(CRD No. 2597293) and



Respondents.

DISCIPLINARY PROCEEDING
No. 2007011413501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period from July 2005 through July 2007, Brookstone Securities, Inc., acting through registered representatives Antony Lee Turbeville and Christopher Dean Kline (collectively, "Respondents"), fraudulently induced certain retail customers to invest in complex, high-risk collateralized mortgage obligations ("CMOs"), mortgage-backed securities that are collateralized by pools of private home mortgages. Respondents utilized discretionary trading authority to execute transactions in Inverse Floater bonds, hedged to a very small degree by

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purchases of Interest Only and/or Tiered-Index Bond CMOs in both cash and margin accounts, for eight mostly senior and/or retired customers for whom the risk and complexity was unsuitable.

2. Through material misrepresentations and omissions, Respondents led the customers to believe that by investing in the recommended CMOs, they could safely achieve high annual returns of 10% or more, with the government backing the investments. In reality, the CMOs that Respondents purchased for the customers were not government guaranteed, and were subject to price volatility and to uncertain cash flows and maturities, based on changes in interest rates.

3. Respondents intentionally or recklessly failed to adequately disclose material characteristics of, and the various risks associated with, CMO investments. For example, they failed to disclose to the elderly and/or retired customers that under certain circumstances, the customers may have to hold their CMO bonds to maturity, in some instances up to 20 to 30 years, in order to receive return of their investment principal. Respondents also failed to adequately disclose the additional risks associated with utilizing margin to purchase CMOs, including the impact that margin interest could have on any net investment returns or that the use of margin could exacerbate investment losses.

4. Respondents did not have reasonable grounds to believe that the CMO purchases were suitable for the elderly and/or retired customers, who ranged in age from 64 to 94 years old. The CMOs were not suitable investments for the specific customers involved in this matter, who generally sought income with limited risk for their retirement funds. For some customers, the

risk was further magnified by Respondents' purchases of CMOs on margin in the customers' accounts.

5. As a result of the CMO purchases recommended by Respondents, many of the elderly and/or retired customers suffered considerable losses of their retirement savings.

6. By virtue of such conduct, Respondents willfully violated § 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2110, 2120 and 2310(a).

7. Brookstone and Turbeville also made statements that lacked a sound basis, omitted material information and made misleading statements in correspondence sent to certain CMO customers, in violation of NASD Rules 2110, 2210(d)(1)(A) and 2210(d)(1)(B).

8. Brookstone and its Chief Compliance Officer, [REDACTED] also failed to monitor certain customer discretionary accounts, and failed to adequately supervise customer CMO accounts and transactions by investigating red flags indicating that the CMO investments were unsuitable for certain customers, in violation of NASD Rules 2110, 2510(c) and 3010(b).

9. Finally, Brookstone, Turbeville and [REDACTED] failed to enforce Brookstone's procedures regarding safeguarding customer information by allowing confidential customer information to be transmitted through non-secure, web-based Internet e-mail accounts, in violation in NASD Rules 2110 and 3010(b).

RESPONDENTS AND JURISDICTION

10. Brookstone Securities, Inc. is currently, and was during all times relevant hereto, a member of FINRA and registered as a broker-dealer with the U.S. Securities and Exchange Commission. Brookstone purchased predecessor broker-dealer RISE, Inc. on July 14, 2005. RISE, Inc. had been a member of FINRA since April 8, 1983. Brookstone is a private

corporation that is over 75% directly owned by Antony Lee Turbeville. The firm currently employs 157 registered personnel and operates 44 branch offices.

11. Antony Lee Turbeville entered the securities industry in July 1987, when he associated with a FINRA member firm. He subsequently registered with 11 different member firms, including Brookstone in April 2005. Turbeville serves as a General Securities Principal and a Registered Representative with Brookstone. He is also the firm's Chairman of the Board, Chief Executive Officer, and a 75% owner. Additionally, Turbeville is a Registered Investment Advisor with, and a direct owner of, Brookstone Investment Advisory Services. During his career in the securities industry, Turbeville obtained Series 6, 7, 24 and 63 securities licenses.

12. Christopher Dean Kline entered the securities industry in February 1995, when he associated with a FINRA member firm. He subsequently associated with six different member firms, including Brookstone in April 2005. Kline is registered as a General Securities Representative with the firm. He is also a Registered Investment Advisor with Brookstone Investment Advisory Services. During his career in the securities industry, Kline obtained Series 7 and 63 securities licenses.

13. [REDACTED] entered the securities industry in July 2003, when he associated with a FINRA member firm. He subsequently registered with Brookstone in June 2005. [REDACTED] currently serves as the firm's President, Chief Operating Officer, Chief Compliance Officer and Financial and Operations Principal. He is also a direct owner of Brookstone Investment Advisory Services. During his career in the securities industry, [REDACTED] obtained Series 4, 7, 24, 27, 53 and 63 securities licenses.

14. FINRA retains jurisdiction over Brookstone because it is currently registered as a FINRA member firm, and over Turbeville, Kline and [REDACTED] because they are each currently registered with a FINRA member firm.

BACKGROUND

Brookstone's CMO Program

15. During the period from July 2005 to July 2007, Brookstone had a consulting arrangement with DG, a registered representative with a FINRA member firm, whereby DG identified and recommended certain CMOs to Respondents Turbeville and [REDACTED] for purchase by Brookstone and its customers. Pursuant to the arrangement, DG and his unregistered assistant were given access to Brookstone customer account information, which they in turn used to make both firm-wide and account-specific recommendations for CMO purchases.

16. After reviewing and approving DG's recommendations, Turbeville and [REDACTED] advised Brookstone registered representatives of the availability of certain CMO products for their customers.

17. Brookstone regularly purchased large blocks of CMO bonds from DG and his employer member firm. The value of the blocks ranged from approximately \$200,000 to over \$4 million. Each month, Brookstone, acting primarily through Turbeville and Kline, sold at least one block of bonds out of customer accounts, and purchased at least one block of bonds into customer accounts.

18. According to Respondents, the CMO bonds were suitable for customers who expressed interest in above-average potential income, who had reasonable net worth and emergency cash, and who were willing to accept the volatility and risk of the products.

19. None of the elderly and/or retired customers at issue in this case met all of these criteria. For example, none of the customers were willing to accept the volatility and risks associated with the CMO investments.

20. Respondents claim that the risks associated with the CMO bonds were mitigated by their investment strategy. Specifically, Respondents claim that they utilized diversification (multiple positions), hedging (pairing Inverse Floaters with Interest Only and/or Tiered Index Bonds) and active management, to offset the risks associated with the bonds.

21. None of Respondents' efforts was effective in mitigating the risk in customer accounts due to the concentration of highly leveraged Inverse Floaters; the trading practices employed in the customers' accounts; and the use of margin in several accounts.

22. With regard to hedging, Respondents claims that they utilized Interest Only and/or Tiered Index Bonds as a partial offset for declines in Inverse Floater values in a rising rate environment. However, the majority of the purchase transactions executed by Respondents were for Inverse Floater CMOs. Only a limited number of Interest Only and/or Tiered Index Bonds were purchased for customer accounts. For example, customer JG's accounts had over 94% of nearly \$1.2 million invested in Inverse Floaters as of May 2006. Customer CP's accounts had over 99.5% of over \$2.2 million in assets invested in Inverse Floaters as of June 2006. Finally, customer MR's accounts had over 95% of approximately \$1.1 million invested in Inverse Floaters as of September 2006.

23. Respondents claim that they also mitigated risk associated with the CMO bonds by actively managing customer accounts to respond to changes in the market and the interest rate environment. On a monthly basis, Respondents Turbeville and Kline primarily sold existing Inverse Floater positions in customer accounts and replaced them with new Inverse Floater

positions. In many instances, losing bonds were sold at a discount, thereby causing customers to realize the losses and forfeit the principal guarantee, in order to purchase bonds with higher coupons closer to par.

24. None of the transactions served to reduce the investors' exposure to interest rate risk, since for the most part, Inverse Floaters were merely being replaced with new Inverse Floaters.

25. In fact, while interest rate risk remained constant, transaction costs in the customers' accounts escalated. For example, during the period from approximately July 2005 to July 2007, Respondents executed purchase transactions for CMO bonds worth approximately \$65,509,831, or roughly \$2,891,732 per month. During the same period, the Respondents executed CMO sell transactions worth approximately \$61,557,293, or about \$2,676,404 per month. In total, the firm earned approximately \$2,342,044, or nearly \$102,000 per month, in commissions on CMO bond transactions.

26. Respondents' active management resulted in relatively high turnover rates in the customers' cash and margin accounts. For example, cash accounts experienced turnover rates between one and two, while margin accounts experienced turnover rates generally ranging from two to four. Because the firm charged over 3% on all new purchases and smaller commissions on some liquidations, annualized commission expense was generally well over 4% for cash accounts, and higher for margin accounts. In fact, margin accounts generally experienced annualized commission and margin interest expenses between 10% and 15%.

27. Respondents' active management did little to reduce the risk or potential for loss in customer accounts. In fact, the management served to realize losses and forfeit principal protection in many cases due to the liquidation of bonds at a loss. Commission costs and margin

interest resulting from this active management also served to increase the cost-to-equity maintenance ratio and to eat away at investors' principal. The end result was that returns were significantly limited during periods of stable or falling interest rates, and losses were exacerbated during periods of rising interest rates.

The CMOs Purchased

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

29. A CMO is a type of mortgage-backed security in which different bond classes, called tranches, are issued to participate in different components of the cash flows, which include (i) interest, (ii) scheduled principal repayment, and (iii) any payment in excess of the scheduled principal repayment. The tranches are structured to have their own risk characteristics and maturity range. In this way, investors can select a bond offering with the characteristics that most closely meets their needs. Collateral for the securitization may represent a pool of mortgages or a mortgage pass-through. CMO bonds issued by government-sponsored entities (such as Fannie Mae and Freddie Mac) are guaranteed by the entities as to principal and interest payments to investors. There is no explicit government guarantee of CMOs issued by government-sponsored entities and, therefore, the CMOs were subject to some credit risk.

30. Respondents purchased Inverse Floater CMOs and, to a much lesser extent, Interest Only and Tiered Index Bonds for the customers.

31. Inverse Floater CMO bonds 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.

32. Interest Only CMO bonds 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 CMOs 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 CMO are at risk of expiring worthless if the related principal balance is paid off prior to the maturity date of the bond.

33. As early as 1993, FINRA advised that Interest Only and Inverse Floater CMO, as with other high-risk CMOs, 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).

34. Tiered Index Bonds are also high-risk and are structured so that their interest rate is tied to a specified index or market rate (normally LIBOR). So long as this index or market rate is below a predetermined “strike” rate, the interest rate on the Tiered Index Bond

remains fixed. If, however, the specified index or market rate rises above the "strike" rate, the interest rate on the tiered index bond will decrease.

Failure to Ensure the Suitability of the CMOs Purchased

35. 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 . . . ensure that their customers understand the characteristics and risks of CMOs."

36. Although the Respondents did provide the customers with some disclosures regarding the CMO investments, most of the customers did not understand the disclosures in light of the fact that they had not previously invested in CMO bonds; and had limited investment knowledge and experience.

37. Respondents failed to ensure that their customers understood the characteristics and risks of CMOs.

FIRST CAUSE OF ACTION

**FRAUD - MISREPRESENTATIONS AND OMISSIONS
BY RESPONDENTS BROOKSTONE, TURBEVILLE AND KLINE**

**(Violation of § 10(b) of the Exchange Act, Rule 10b-5 promulgated thereunder,
and NASD Conduct Rules 2120 and 2110)**

38. The Department realleges and incorporates by reference paragraphs 1 through 37 above.

39. In connection with the purchase or sale of CMOs, Brookstone, Turbeville and Kline directly or indirectly, by the use of means or instrumentalities of interstate commerce (including by telephone), or of the mails, each knowingly, willfully or recklessly: (i) employed devices, schemes, or artifices to defraud, (ii) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the

circumstances under which they were made, not misleading, concerning the CMO investments, or (iii) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon their customers. Respondents also effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent device or contrivance.

Turbeville's Material Misrepresentations and Omissions

40. From July 2005 through July 2007, Turbeville knowingly, willfully or recklessly made misrepresentations of material facts, and omitted to disclose material facts in connection with offers and sales of CMO investments to customers MR, BC and BB, two retirees and one soon-to-be retiree who ranged in age from 64 to 84.

41. Turbeville's material misrepresentations and omissions included, but were not limited to, the following:

- a. Statements to MR and BC that the CMO investments would generate annual returns of 10% or more, and further representations to MR that expected annual returns were higher in margin accounts;
- b. Failing to adequately disclose to MR, BC and BB the specific characteristics of, and risks associated with, the CMO investments; and
- c. Failing to adequately disclose to MR the costs of trading on margin and the specific risks associated with trading on margin, including that the use of margin would materially increase the risk associated with specific types of CMO bonds.

Kline's Material Misrepresentations and Omissions

42. From July 2005 through July 2007, Kline knowingly, willfully or recklessly made misrepresentations of material facts, and omitted to disclose material facts in connection with offers and sales of CMO investments to customers CP, JG, HP, SB and LD, five retirees who ranged in age from 68 to 94.

43. Kline's material misrepresentations and omissions included, but were not limited to, the following:

- a. Statements to CP that she could not lose money in CMO bonds because they were guaranteed government bonds;
- b. Statements to SB that the CMO bonds were guaranteed by the government;
- c. Statements to CP that buying on margin was the only way to make money;
- d. Statements to JG that using margin was the safest way to achieve the returns that she wanted;
- e. Failing to adequately disclose to CP, JG, HP, SB and LD the specific characteristics of, and risks associated with, CMO investments; and
- f. Failing to disclose to CP, JG and HP the costs of trading on margin and the specific risks associated with trading on margin, including that the use of margin would materially increase the risk associated with specific types of bonds.

44. By reason of the foregoing misrepresentations and omissions, Brookstone, Turbeville, and Kline willfully violated § 10(b) of the Exchange Act, Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110.

SECOND CAUSE OF ACTION
(ALTERNATIVE TO FIRST CAUSE OF ACTION)
NEGLIGENT MISREPRESENTATIONS AND OMISSIONS
BY RESPONDENTS BROOKSTONE, TURBEVILLE AND KLINE

(Violation of NASD Conduct Rule 2110)

45. The Department realleges and incorporates by reference paragraphs 1 through 44, except with respect to the description of conduct as fraudulent, willful, intentional or reckless as contained in paragraphs 3, 6, 39, 40, 42 and 44.

46. Alternatively, each Respondent made material misrepresentations and omitted to disclose material information, as more fully described above, at least negligently, and, in so doing, violated their obligation to observe high standards of commercial honor and just and equitable principles of trade.

47. By reason of the foregoing, Brookstone, Turbeville and Kline violated NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION
UNSUITABLE RECOMMENDATIONS
BY RESPONDENTS BROOKSTONE, TURBEVILLE AND KLINE
(Violation of NASD Conduct Rules 2310(a) and 2110)

48. The Department realleges and incorporates by reference paragraphs 1 through 44 above.

49. During the period from July 2005 to July 2007, Brookstone, acting through Turbeville and Kline, recommended high-risk CMO investments to eight elderly and/or retired customers who ranged in age from 64 to 94.

50. Brookstone, Turbeville and Kline lacked reasonable basis for believing that the CMO investments were suitable for the specific customers in this matter based upon the

customers' disclosed age, investment experience, investment objectives, financial situation and/or risk tolerance.

51. Brookstone, Turbeville and Kline also did not have reasonable grounds to believe that the use of margin was suitable for certain customers' CMO purchases.

Turbeville's Unsuitable Recommendations

Customer MR

52. When recommending CMOs to MR, a 72-year-old retiree whose highest level of education was high school, Turbeville did not have reasonable grounds to believe that the CMOs were suitable for MR. Prior to his retirement, MR was a mobile homes salesman. He had limited investment knowledge. MR's prior investment experience consisted of investing in CDs, money market funds, municipal bonds and mutual funds through accounts at other FINRA member firms.

53. Based on Turbeville's recommendation, MR invested approximately \$1.1 million with Turbeville, who in turn purchased Inverse Floater and Interest Only CMO bonds for MR's accounts. The CMO positions comprised approximately 78% of MR's liquid net worth.

54. At Turbeville's recommendation, margin was used to finance various CMO purchases in MR's accounts. Turbeville did not have reasonable grounds to believe that purchasing CMOs on margin was suitable for MR. In some instances, Turbeville permitted excessive use of margin, which was inconsistent with MR's age and risk tolerance. At times, the margin balance in MR's account ranged between 30% and 50% of the total portfolio value, such that margin calls in the amounts of \$5,000 and \$15,500 were generated on the accounts in June 2006 and July 2006, respectively.

55. MR's accounts incurred margin interest expenses in the amount of approximately \$225,000, and commission expenses of over \$276,000.

56. MR's losses from investing in CMOs through Turbeville were approximately \$120,000.

Customer BC

57. When recommending CMOs to BC, a 64-year-old soon-to-be retiree, Turbeville did not have reasonable grounds to believe that the CMOs were suitable for BC's IRA based on BC advising Turbeville that she would be retiring soon, that her investment objective was income and that she was risk averse and wanted to preserve her capital.

58. Based on Turbeville's recommendation, BC invested \$237,000 with Turbeville, who in turn purchased Inverse Floater and Interest Only CMO bonds for BC's account. The CMO positions comprised approximately 85% of BC's liquid net worth.

59. BC's losses from investing in CMOs through Turbeville were approximately \$38,000.

Customer BB

60. When recommending CMOs to BB, an 84-year-old retired widow, Turbeville did not have reasonable grounds to believe that the CMOs were suitable for BB, based on her age, the fact that she was retired, and the her low risk tolerance.

61. BB had limited investment knowledge and her investment experience consisted of investing in equity and bond mutual funds through an IRA, and in blue chip stocks and equity and bond funds through a trust account.

62. BB's total net worth, excluding primary residence, was approximately \$140,000.

63. Based on Turbeville's recommendation, BB invested approximately \$50,000, or roughly 40% of her liquid net worth, with Turbeville, who in turn purchased Inverse Floater, Interest Only and Tiered Index CMO bonds for BB's account.

64. BB's losses from investing in CMOs through Turbeville were approximately \$1,700.

Kline's Unsuitable Recommendations

Customer CP

65. When recommending CMO investments to customer CP, an 81-year-old widow, Kline did not have reasonable grounds to believe that CMOs were suitable for CP, who had very limited investment knowledge, no experience with CMO investments and lower risk tolerance.

66. Based on Kline's recommendation, CP invested over \$4.1 million with Kline, who in turn purchased Inverse Floaters and Interest Only CMO bonds for CP's accounts. The CMO positions comprised approximately 90% of CP's total net worth, excluding her primary residence.

67. At Kline's recommendation, margin was used to finance various CMO purchases in CP's accounts. Kline did not have reasonable grounds to believe that purchasing CMOs on margin was suitable for CP.

68. CP accounts incurred over \$317,000 in margin interest expenses, and over \$307,000 in commission expenses.

69. CP's losses from investing in CMOs through Kline were over \$759,000.

Customer JG

70. When recommending CMO investments to customer JG, a 77-year-old widow, Kline did not have reasonable grounds to believe that CMOs were suitable for JG, who had limited investment knowledge and no prior experience investing in CMOs or margin trading.

71. Based on Kline's recommendation, JG invested approximately \$1.3 million with Kline, who in turn purchased Inverse Floater and Interest Only CMO bonds for JG's accounts. The CMO positions represented the majority of JG's net worth exclusive of her primary residence.

72. At Kline's recommendation, margin was used to finance various CMO purchases in JG's accounts. Kline did not have reasonable grounds to believe that purchasing CMOs on margin was suitable for JG.

73. JG's accounts incurred over \$140,000 in margin interest expenses and over \$197,000 in commission expenses.

74. JG's losses from investing in CMOs through Kline were over \$358,000.

Customer HP

75. When recommending CMO investments to customer HP, an 81-year-old retired business owner, Kline did not have reasonable grounds to believe that CMOs were suitable for HP, whose prior investment experience consisted of investing in blue chip stock. HP had never invested in CMOs prior to meeting Kline.

76. Based on Kline's recommendation, HP invested approximately \$2 million with Kline, who in turn purchased Inverse Floater and Interest Only CMO bonds for HP's accounts. The CMO positions represented most of HP's liquid net worth.

77. At Kline's recommendation, margin was used to finance various CMO purchases in HP's accounts. Kline did not have reasonable grounds to believe that purchasing CMOs on margin was suitable for HP.

78. HP's accounts incurred over \$124,000 in margin interest expenses and over \$188,000 in commission expenses.

79. HP's losses from investing in CMOs through Kline were over \$335,000.

Customer SB

80. When recommending CMO investments to customer SB, a 94-year-old retiree, Kline did not have reasonable grounds to believe that CMOs were suitable for SB, who had limit investment knowledge and no experience trading on margin. SB's prior investment experience consisted primarily of investing in mutual funds and variable annuities. His investment objective was preservation of capital.

81. Based on Kline's recommendation, SB invested approximately \$315,000 with Kline, who in turn purchased Inverse Floater and Interest Only CMO bonds for SB's accounts. The CMO positions represented the majority of SB's liquid net worth.

82. At Kline's recommendation, margin was used to finance various CMO purchases in SB's accounts. Kline did not have reasonable grounds to believe that purchasing CMOs on margin was suitable for SB.

83. SB's accounts incurred approximately \$33,000 in commission expenses.

84. SB's losses from investing in CMOs through Kline were approximately \$48,000.

Customer LD

85. When recommending CMO investments to customer LD, a 68-year-old retiree, Kline did not have reasonable grounds to believe that CMOs were suitable for LD. His prior

investment experience consisted of investing in mutual funds, blue chip stock and corporate bonds; he had no experience investing in CMOs. LD's investment objectives were income and preservation of capital.

86. Based on Kline's recommendation, LD invested approximately \$510,000 with Kline, who in turn purchased Inverse Floater and Interest Only CMO bonds for LD's accounts. The CMO positions represented the majority of LD's net worth, excluding his primary residence.

87. LD's accounts paid approximately \$37,000 in commissions.

88. LD's losses from investing in CMOs through Kline were approximately \$27,000.

89. By reason of the foregoing unsuitable recommendations to their respective customers, Brookstone, Turbeville and Kline violated NASD Conduct Rules 2310(a) and 2110.

FOURTH CAUSE OF ACTION

RESPONDENTS BROOKSTONE AND TURBEVILLE'S VIOLATIONS OF NASD ADVERTISING PROVISIONS

(Violation of NASD Rules 2110, 2210(d)(1)(A) and 2210(d)(1)(B))

90. The Department realleges and incorporates by reference paragraphs 1 through 44 and 48 through 89 above.

91. Brookstone and Turbeville made misrepresentations, omitted material facts and used misleading statements in letters sent to certain customers who invested in CMOs through Brookstone and Turbeville.

92. Specifically, in a letter dated April 5, 2006, Brookstone and Turbeville failed to provide a sound basis for evaluating certain of the information presented. For example, there was not a sound basis for the following statements: "[w]e are on the back end of the interest rate cycle" and "[a]lso remember, at some point, interest rates should again begin to fall."

93. Brookstone and Turbeville omitted to state material facts in a letter dated May 4, 2006. The letter contained the following statement: "[w]hat this means to you is that holding the bonds to life will result in a return of principal value plus interest due along the way" and "[t]he average life of bonds in your portfolio is 3-5 years."

94. There was no disclosure in the May 4 letter that interest paid on IF CMOs would go down as current interest rates rose; or that a CMO's average life fluctuates depending on the actual rate at which mortgage holders prepay underlying mortgages and changes in interest rates.

95. Both the April 5 and the May 4 letters contained misleading statements.

96. For example, the April 5, 2006, letter contained the following statements: "look at each bond on your statement as 100 instead of its current value," and "[y]our account continues to produce income while it matures back to par."

97. These statements were misleading because they falsely imply that the customer's bonds would mature at 100.

98. The "Value at Par (All Accounts with Margin Balance)" document that was attached to the May 4 letter was misleading in that it failed to provide material information regarding the data presented within the "Current Price," "Current Factor," and "Value at Par" columns. There was also no disclosure pertaining to the date and time that the Current Price data was calculated; no explanation of the Current Factor data, including how its applied; no explanation of par value and no clear disclosure that the par values cited are not actual market values of the listed CMOs; and no disclosure referring the customer to a source for the current market value of the listed CMOs.

99. By reason of the foregoing, Brookstone and Turbeville violated NASD Rules 2110, 2210(d)(1)(A) and 2210(d)(1)(B).

FIFTH CAUSE OF ACTION

RESPONDENTS BROOKSTONE AND [REDACTED]

FAILED TO REVIEW CUSTOMER DISCRETIONARY ACCOUNTS

(Violation of NASD Conduct Rules 2510(b) and 2110)

100. The Department realleges and incorporates by reference paragraphs 1 through 44 and 48 through 99 above.

101. During the period from July 2005 through July 2007, Brookstone, acting through [REDACTED] failed to review all customer discretionary accounts at frequent intervals in order to detect and prevent transactions that were excessive in size or frequency in view of the financial resources and character of the accounts as required by Brookstone's written supervisory procedures.

102. As Brookstone's Chief Compliance Officer, [REDACTED] was responsible for monitoring the firm's discretionary accounts and enforcing the firm's written procedures.

103. [REDACTED] admitted during on-the-record testimony that aside from initially approving some new accounts and approving each CMO bond transaction, he did not periodically review CMO cash or margin discretionary accounts, except for those accounts that might be randomly selected during his random monthly account reviews.

104. [REDACTED] could not identify any instances where he had reviewed a CMO cash or margin discretionary account during his random reviews.

105. By reason of the foregoing, Brookstone and [REDACTED] violated NASD Conduct Rules 2110 and 2510(c).

SIXTH CAUSE OF ACTION
SUPERVISORY VIOLATIONS
BY RESPONDENTS BROOKSTONE, TURBEVILLE AND [REDACTED]

(Violation of NASD Conduct Rules 2110 and 3010(b))

106. The Department realleges and incorporates by reference paragraphs 1 through 44 and 48 through 105 above.

107. During the period from July 2005 through July 2007, Brookstone, acting through [REDACTED] failed to adequately supervise customer CMO accounts and transactions.

108. [REDACTED] reviewed and approved most of Brookstone's CMO accounts and transactions.

109. [REDACTED] failed to investigate several red flags indicating that the CMO investments were unsuitable for certain customers.

110. The red flags included:

111. All of the CMO transactions were executed in discretionary accounts;

112. A high percentage of the CMO transactions were executed in accounts owned by customers who were retired and/or above 65 years of age;

113. A high percentage of the CMO accounts indicated identical investment objectives;

114. Certain accounts that had what was no greater than a moderate risk tolerance were investing in high-risk CMO securities; and

115. Certain accounts with the investment style and risk tolerance listed as "Moderate" were permitted to trade on margin.

116. During the period from July 2005 through July 2007, Brookstone, acting through Turbeville and [REDACTED] failed to enforce Brookstone's procedures regarding safeguarding customer information.

117. In July 2005, Brookstone entered into a consulting agreement with a registered representative, who was associated with another FINRA member firm, to provide trading and CMO bond expertise.

118. The representative and his unregistered assistant routinely used their personal *Hotmail* and *AOL* e-mail accounts to send and receive confidential customer account information to and from Turbeville and [REDACTED]

119. The web-based accounts could be accessed from external computers that were not bound by either Brookstone's or the registered representative's employer member firms' internet security policies and protocols.

120. Brookstone's procedures required that customer information be safeguarded.

121. Brookstone failed to provide customers with the opportunity to opt out of the above-described information-sharing arrangement.

122. By reason of the foregoing, Brookstone, [REDACTED] and Turbeville willfully violated NASD Conduct Rules 2110 and 3010(b).

RELIEF REQUESTED

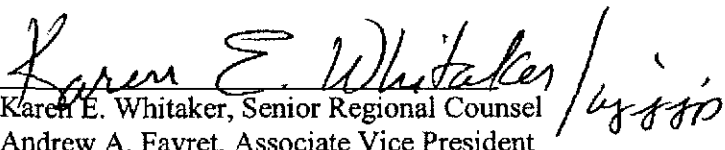
WHEREFORE, the Department respectfully requests that the panel:

- A. Order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondents each be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- B. Order that each of the Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and

- C. Make specific findings that Respondents Brookstone's, Turbeville's and Kline's conduct, as alleged in the First Cause of Action, and Respondents Brookstone's, [REDACTED] and Turbeville's conduct, as alleged in the Sixth Cause of Action, was willful.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 30, 2009


Karen E. Whitaker, Senior Regional Counsel
Andrew A. Favret, Associate Vice President
and Regional Chief Counsel
FINRA Department of Enforcement
12801 North Central Expressway
Suite 1050
Dallas, TX 75243
Phone: 972-716-7610; Fax: 972-716-7612
Email: Karen.Whitaker@finra.org and
Judy.Peters@finra.org (legal assistant)