

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

Department of Enforcement,

Complainant,

v.

EKN Financial Services, Inc.
(CRD #113525),

Anthony Ottimo, Sr. (CRD #2974369),

AND

Thomas Giugliano (CRD #2804591),

Respondents.

Disciplinary Proceeding
No. 2008011665801

Hearing Officer: LBB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: October 12, 2012

INTRODUCTION

Disciplinary Proceeding No. 2008011665801 was filed on June 24, 2011 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). The Department amended this Complaint on October 12, 2011. That Amended Complaint was amended as set forth in an Offer of Settlement, which Respondents submitted to the Department on September 19, 2011.

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, Respondents have consented, without admitting or denying the allegations of the Amended Complaint (as further amended by the Offer of Settlement), and solely for the purposes of this proceeding and any other 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 Amended Complaint (as further amended by the Offer of Settlement), and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA.

BACKGROUND

A. EKN Financial Services, Inc.

EKN has been a member of FINRA since November 27, 2001. As of September 19, 2012, the date Respondents submitted the Offer of Settlement, the Firm employed 41 registered representatives and maintained one office location, in Melville, NY within Member Regulation's District 10. EKN's primary source of revenue is equity trading on an agency and principal basis. In addition, it handles fixed income trading, proprietary trading and private placements. EKN is subject to FINRA's jurisdiction as a FINRA regulated entity.

B. Anthony Ottimo and Thomas Giugliano

Ottimo first became registered with the NASD in October 1997 and has been registered with EKN since 2001. Giugliano first became registered with the NASD in 1996 and has been registered with EKN since 2001. Ottimo and Giugliano, as employees of EKN, are each subject to FINRA's jurisdiction. They each own approximately 45% of EKN through their ownership of EKN's parent company.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. This case arises out of Respondents' ongoing defiance of the securities laws, NASD and FINRA By-Laws and Rules and indeed, FINRA's authority to regulate their conduct. Reflecting this defiance, despite (a) the Securities and Exchange Commission's June 6, 2008 bar of Ottimo from associating with any broker or dealer in a supervisory capacity (the SEC Bar), imposed on him for, among other things, causing EKN to violate the securities laws and (b) not being registered as a general securities principal. Since June 16, 2008, Respondent, Ottimo has acted, and continues to act as Respondent, EKN Financial Services, Inc.'s (EKN) Chief Executive Officer (CEO).

2. Contrary to fact, EKN and its President, Respondent, Thomas Giugliano represented falsely to FINRA that Ottimo was no longer acting as EKN's CEO, a principal or supervisor in among others, EKN's Form BD, Ottimo's partial U5 and Giugliano's June 27, 2008 letter to FINRA, where he claimed that EKN was "making sure" that Ottimo obeyed the SEC Bar. As recently as March 8, 2011, EKN represented falsely to FINRA Staff that since "Ottimo was removed from the firm's Form BD as CEO on June 8, 2008," it has "never filled" the CEO position.

3. To the contrary, EKN's own documents demonstrate that Ottimo is still EKN's CEO in name and in deed. Since June 2008, Ottimo has acted as CEO, principal and/or supervisor in:

- executing Certifications which, by rule can only be signed by the "Chief Executive Officer (or equivalent officer)";
- hiring, supervising and determining the compensation of Firm personnel;

- negotiating and executing agreements on behalf of the Firm;
- controlling EKN's finances, retaining signatory authority over EKN's bank accounts; and
- holding himself out as CEO to EKN's clearing firm, issuers and other third parties.

4. The Department brought this action to hold Respondents, EKN, Ottimo and Giugliano responsible for these brazen actions and for the host of other violations set forth below.

5. EKN, Ottimo and Giugliano's improper actions with respect to Ottimo acting as EKN's CEO, a general securities principal and in a supervisory capacity are summarized above. As set forth in greater detail in the first four causes of action of the Amended Complaint, in so doing, EKN, Ottimo and/or Giugliano violated a host of NASD and FINRA By-Laws and NASD and FINRA Rules, including NASD By-Laws, Article IV, Section 1(c) and Article V, Section 2(c), (renamed FINRA By-Laws, Article IV, Section 1(c) and Article V, Section 2(c) on July 30, 2007), FINRA By-Laws, Article III, Section 3(b), Article V, Section 1, NASD Rules 1021, 2110, 3010, 3011, 3012 and 3013, FINRA Rules 1122, 2010 and 3130, NASD IM 1000-1 and MSRB Rule G-41.

6. Further, through Ottimo and/or Giugliano, EKN has engaged in other conduct violating a wide range of SEC, NASD and FINRA rules and certain federal securities laws, including:

- (i) Making materially false misrepresentations to FINRA in seeking and obtaining FINRA approval for a subordinated loan and loan extensions (Fourth Cause of Action);
- (ii) Failing to establish and maintain procedures reasonably designed to achieve compliance with Anti-Money Laundering (AML) rules and

regulation and failing to both detect and report suspicious activity (Fifth Cause of Action);

- (iii) Conducting a securities business while in a Net Capital deficiency, preparing inaccurate Net Capital Computations, failing to file accurate notifications of Net Capital deficiencies, and failing to record accurately expenses and liabilities in its books and records (Sixth Cause of Action);
- (iv) Failing to disclose judgments and liens on Ottimo's and Giugliano's respective Forms U4 (Seventh Cause of Action);
- (v) Failing to file or amend Forms U4 and U5 to disclose regulatory and customer complaints (Eighth Cause of Action);
- (vi) Failing to supervise EKN's registered representatives and associated persons in numerous areas, including financial operations, heightened supervision, producing managers and customer funds (Ninth Cause of Action);
- (vii) Failing to maintain emails and other correspondence with the public or evidencing review of incoming and outgoing correspondence (Tenth Cause of Action); and
- (viii) Failing to respond to FINRA requests for documentation and information as to, among others, its parent company and investors (Eleventh Cause of Action).

7. The time period relevant to the Amended Complaint is January 17, 2007 to October 17, 2010, other than as specifically set forth herein. The time period relevant to Paragraphs 82-86 and 124-138 is December 30, 2011 through April 20, 2012.

8. Other than as specifically set forth herein, from at least January 17, 2007 until June 6, 2008, Ottimo and Giugliano knew, or should have known, of EKN's regulatory violations and compliance and supervisory deficiencies. Other than as specifically set forth herein, from at least June 6, 2008 to October 17, 2010, Giugliano knew, or should have known, of EKN's and Ottimo's regulatory violations and EKN's compliance and supervisory deficiencies. However, while serving as EKN's CEO and President, respectively, Ottimo and Giugliano failed to act in any meaningful or reasonable supervisory manner to address these violations and compliance and supervisory deficiencies.

RESPONDENTS AND JURISDICTION

9. EKN (CRD No. 113525) has been a FINRA regulated broker dealer since November 27, 2001. The Firm currently employs approximately 41 registered representatives at its office in Melville, New York.

10. Respondent Ottimo (CRD No. 2974369) became registered with FINRA in 1997 and has been registered with EKN since 2001. He currently holds General Securities Representative (Series 7), Uniform Securities Agent (Series 63) and Registered Options Principal (Series 4) licenses. EKN terminated his General Securities Principal (Series 24) license on June 16, 2008. As set forth above, since June 2008, he has not been eligible to serve as an officer, General Securities Principal or in a supervisory capacity. During all times relevant to the Amended Complaint, he has owned approximately 45% of the stock of EKN's owner, Margate Capital, a dissolved New York corporation.

11. Respondent, Giugliano (CRD No. 2804591) became registered with FINRA in 1996 and has been registered with EKN since 2001. Giugliano holds General Securities Representative (Series 7), General Securities Principal (Series 24) and Uniform Securities Agent

(Series 63) licenses. He serves as EKN's President and during all times relevant to the Amended Complaint, he has owned approximately 45% of the stock of EKN's owner, Margate Capital.

**Ottimo Operated in a Supervisory Capacity Despite a Supervisory Bar
and As a General Securities Principal Without Being So Registered
(FINRA By-Laws, Article III, Section 3(b) and Article V, Section 1, NASD Rules 1021 and
2110 and FINRA Rule 2010)
Respondents EKN, Ottimo and Giugliano**

12. Pursuant to Article III, Section 3(b) of the FINRA By-Laws, "[n]o person shall continue to be associated with a member ... if such person ... becomes subject to a disqualification under Section 4."

13. Under that Section 4, "disqualification" includes "any 'statutory disqualification' under Section 3(a)(39) of the" Securities Exchange Act.

14. Pursuant to FINRA By-Laws, Article V, Section 1, "[n]o member shall permit any person associated with the member to engage in the investment banking or securities business unless the member determines that such person ... is not subject to a disqualification under ... Section 4." Pursuant to NASD Membership and Registration Rule 1021(a), any person who functions in a principal capacity must be registered as such. Pursuant to Rule 1021(a)(2), "officers" are required to be registered as principals.

15. NASD Rule 2110 required that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. As of December 15, 2008, that rule was renumbered as FINRA Rule 2010.

16. On September 30, 2005, the SEC sued Ottimo, EKN and an unregistered person associated with EKN for engaging in market timing mutual funds using multiple, "cloned" accounts to evade the funds' restrictions on market timing and fund exchanges in a given fund family.

17. On June 6, 2008, Ottimo was barred by the SEC from acting in a supervisory capacity. In its Bar Order, the SEC found that Ottimo had been aware that, among other things, EKN was opening multiple accounts for customers to engage in market timing and misleading the mutual funds by concealing (a) the identities of the customers trading in these funds, (b) the identities of EKN registered representatives servicing these accounts and (c) the EKN branch they worked in. The SEC further found that Ottimo had caused EKN to violate securities laws relating to, among other things, the requirement that a firm's representatives be appropriately registered.

18. Ottimo's SEC Bar constituted a "statutory disqualification" under Section 3(a)(39) of the Exchange Act and therefore, a "disqualification," as defined in Article III, Section 4 of the FINRA By-Laws.

19. By letter dated June 12, 2008, FINRA wrote to Giugliano informing him that Ottimo now had "barred status" and requesting that Giugliano respond in writing to the District Director outlining the steps EKN had taken to comply with the sanction imposed against Ottimo.

20. On June 16, 2008, EKN filed a partial Form U5 for Ottimo, terminating his registration as a General Securities Principal.

21. On June 23, 2008, EKN removed Ottimo as its CEO in the FINRA Contact System, claiming that it was replacing him as CEO with Giugliano.

22. On June 27, 2008, EKN amended its Form BD, deleting the "CEO" title in its identification of Ottimo. Giugliano signed this Execution, representing to FINRA that "the information and statements contained herein are ... current, true and complete."

23. By letter to FINRA that same day, Giugliano specified eight steps EKN had taken to make "sure that Anthony Ottimo does not act in a supervisory capacity," including amending EKN's Form BD and removing him as EKN's CEO.

24. Contrary to EKN and Giugliano's statements to FINRA, and despite Ottimo's lack of a principal license and the SEC Bar, EKN and Giugliano permitted, and continue to permit, Ottimo to be, act as, and hold himself out as, EKN's CEO and as a principal. As a result, Ottimo (a) improperly executed EKN's April 1, 2009 and April 1, 2010 Annual Certifications of Compliance and Supervisory Processes, (b) held himself out as EKN's CEO to third parties, namely the following individuals:

1. TG
2. RR
3. SN
4. RG
5. VB
6. LO
7. MB
8. SA
9. AA
10. JB
11. SB
12. JB2
13. RB
14. CC
15. CB
16. BB
17. RB2
18. HB
19. DB
20. SB
21. JB3
22. KB
23. KB2
24. SB
25. GB
26. HB2
27. LB
28. JC

29. MC
30. CC
31. SD
32. JD
33. TD
34. ED
35. DD
36. BE
37. PE
38. EF
39. JF
40. JF2
41. RG
42. MG
43. RH
44. GH
45. MI
46. RJ
47. BK
48. MK
49. KK
50. FK
51. DK
52. NL
53. KL
54. JL
55. EL
56. RL
57. GL
58. RM
59. GM
60. CM
61. LM
62. WM
63. RM
64. JM
65. SM
66. RM
67. JM2
68. SM2
69. KN
70. PP
71. RP
72. GP
73. AR
74. DR

- 75. KR
- 76. BR
- 77. HR
- 78. JR
- 79. TR
- 80. JR2
- 81. CS
- 82. MS
- 83. BS
- 84. KS
- 85. LS
- 86. BS2
- 87. HS
- 88. AS
- 89. WS
- 90. SW
- 91. TW
- 92. SW2
- 93. TW2
- 94. MZ
- 95. SZ

and the following institutions,

- 96. AI
- 97. BM
- 98. BF
- 99. BDE
- 100. CWI
- 101. CCP
- 102. DS
- 103. EB
- 104. GPT
- 105. GMB
- 106. HI
- 107. IET
- 108. IEAH
- 109. KCM
- 110. LC
- 111. LGH
- 112. LSS
- 113. SS

(c) entered into agreements on behalf of EKN, namely:

- 1. July 28, 2008 Memorandum of Understanding with LC, LLC,

2. February 10, 2009 Uniform Submission Agreement in EKN v. Scott Shapiro arbitration;
3. June 1, 2009 Clearing Agreement Addendum;
4. August 18, 2009 Agreement between EKN and BDE;
5. August 26, 2009 Confidentiality and Non-Circumvention Agreement between EKN and DSS, Inc.;
6. October 5, 2009 Agreement between EKN and Ab, Inc.;
7. December 30, 2009 Agreement between EKN and GPT;
8. February 23, 2010 Agreement between EKN and KCM Corp.;
9. January 5, 2010 Bank Confirmation Letter to C4W, Inc.;
10. March 3, 2010 Agreement between EKN and CCP, Ltd;
11. April 23, 2010 Agreement between EKN and SS Corp.;
12. May 18, 2010 Clearing Agreement between EKN and LC, LLC;
13. July 2, 2010 Lease Agreement between EKN and GMBC, LLC;
14. July 21, 2010 Service Agreement between EKN and BF L.P.;
15. July 28, 2010 Investment Banking and Financial Advisory Agreement between EKN and ESB Corp.;
16. September 21, 2010 Engagement Agreement between EKN and IEAH, Inc.;
17. October 4, 2010 Letter Agreement between EKN and IE, LLC for EKN to act as Financial Advisor and Placement Agent; and
18. October 7, 2010 Schedule of Services with B;

(d) negotiated agreements on behalf of EKN, namely

1. SSC
2. GPT
3. LC
4. DSS; and
5. AI

(e) participated in management decisions, namely as to hiring, firing and compensation of personnel, lines of business, and investment banking relationships and;

(f) controlled EKN's finances, including retaining signatory authority over EKN's bank accounts, signing the vast majority of EKN's checks, directing funds to and from EKN and its clearing firm, supervising FOCUS reports and EKN's accounting and supervising EKN's Chief Financial Officer.

25. The above actions required registration as a General Securities Principal to comply with NASD Rule 1021.

26. As a supervisor, since the date of the SEC Bar, Ottimo has (a) supervised registered representatives, namely:

- a. TG
- b. MB
- c. RB
- d. SS
- e. AS

(b) supervised the financial and operational functions of the Firm by retaining signatory authority over EKN's bank accounts, signing the vast majority of EKN's checks, directing funds to and from EKN and its clearing firm, supervising FOCUS reports and EKN's accounting, and supervising EKN's Chief Financial Officer,

(c) hired personnel, namely:

- 1. DL; and
- 2. JV

(d) fired personnel, namely:

- 1. SS; and
- 2. AS

and (e) set employee compensation for the following representatives:

- 1. LZ;
- 2. TO;
- 3. LO; and
- 4. JA.

27. Ottimo's continued association with EKN in a supervisory capacity violated the SEC Bar. Because he was associated with EKN in a capacity in which he was disqualified, Ottimo violated FINRA By-Laws, Article III, Section 3(b) and EKN violated FINRA By-Laws, Article V, Section 1.

28. As a result of the foregoing conduct, EKN, Ottimo and Giugliano committed separate and distinct violations as follows: (a) the Firm, Ottimo and Giugliano violated NASD Rules 1021(a) and 2110 from June 2008 to December 14, 2008 and NASD Rule 1021(a) and FINRA Rule 2010 from December 15, 2008 to October 17, 2010¹; (b) Ottimo violated FINRA By-Laws, Article III, Section 3(b); and (c) EKN violated FINRA By-Laws, Article V, Section 1.

**Failing to Keep Form BD Information Current and Accurate
(NASD and FINRA By-Laws, Art. IV, Sec. 1(c),
NASD Rule 2110, FINRA Rules 1122 and 2010 and NASD IM 1000-1)
Respondents EKN and Giugliano**

29. Pursuant to NASD By-Laws, Article IV, Section 1(c), (renamed FINRA By-Laws, Article IV, Section 1(c) on July 30, 2007), EKN was required to keep its membership information current at all times.

30. Pursuant to NASD IM 1000-1 (effective to August 16, 2009) and FINRA Rule 1122 (effective as of August 17, 2009), EKN was required to ensure that its filings with FINRA with respect to its membership and registration were complete and accurate and not misleading.

31. On January 22, 2003, EKN and the NASD entered into a Membership Agreement where, in its Certification, EKN represented that the information it had filed with the NASD was "current, true and complete" and it agreed "that the information contained in Form BD will be kept current and accurate by properly amending the form as changes occur."

¹ On December 15, 2008, FINRA Rule 2010 superseded NASD Rule 2110, however, the language of the rule remained the same.

32. In that Membership Agreement, Giugliano signed on behalf of EKN directly below these Certifications and a warning that “[a]ny activity that does not conform to the provisions set forth in this Agreement may form the basis for disciplinary action by NASD against Ehrenkrantz King Nussbaum, Inc. [EKN Financial Services, Inc.’s predecessor], its owners, or associated persons.”

33. On July 8, 2009, EKN and FINRA entered into an amended Membership Agreement where EKN made the same representations in its Certifications.

34. Once again, Giugliano signed directly below the Certifications, with the same representations by EKN and the same warning of potential disciplinary action against EKN, its owners and associated persons.

35. As set forth in the Amended Complaint, EKN has not kept its information with respect to its Chief Executive Officer and Ottimo’s conduct current and accurate in its Form BD.

36. As a result of the foregoing conduct, EKN and Giugliano committed separate and distinct violations as follows: the Firm (a) violated NASD and FINRA By-Laws, Article IV, Section 1(c), and (b) acting through Giugliano, violated NASD Rule 2110 (for conduct prior to December 15, 2008), NASD IM 1000-1 (for conduct prior to August 17, 2009), FINRA Rule 1122 (for conduct from August 17, 2009 to October 17, 2010) and FINRA Rule 2010 (for conduct from December 15, 2008 to October 17, 2010).

**Failure to Have Person Eligible to Serve as Chief Executive Officer Make Annual
Certification of Compliance and Supervisory Processes and Have Chief Compliance
Officer Submit Annual Supervisory Report to Senior Management
(NASD Rules 2110, 3012, 3013, FINRA Rules 2010 and 3130)
Respondents EKN, Ottimo and Giugliano**

37. Pursuant to NASD Rule 3012, firms must designate and specifically identify a principal who shall prepare and submit a report at least annually to a member of senior

management which details the firm's system of supervisory controls, summarizes the results of the tests and any exceptions, and details any additional or amended supervisory procedures created in response to the test results (the Annual Supervisory Report).

38. NASD Rule 3012 further requires that firms establish, maintain and enforce supervisory control policies and procedures that are reasonably designed to provide heightened supervision over activities of producing managers who generate 20% or more of the revenue of the business unit that they supervise.

39. NASD Rule 3013, superseded by FINRA Rule 3130, which became effective on December 15, 2008, requires that each firm have its chief executive officer certify annually that the firm has processes in place to establish, maintain, review, test and modify written compliance policies and supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, and federal securities laws and regulations. In addition, NASD Rule 3013 and FINRA Rule 3130 require that a firm's chief executive officer has conducted one or more meetings with its chief compliance officer in the preceding twelve months to discuss such compliance and supervisory processes.

40. For 2008, EKN failed to comply with Rule 3012 as its Annual Supervisory Report was not submitted to a person eligible to serve as a member of its senior management or eligible to meet to discuss the Annual Supervisory Report. For that year, EKN violated NASD Rule 3013 as it did not have a person eligible to serve as its CEO execute its Annual Certification of Compliance and Supervisory Processes. Instead, Ottimo signed this Certification as EKN's purported CEO.

41. For 2009, EKN failed to comply with Rule 3012 as its Annual Supervisory Report was not submitted to a person eligible to serve as a member of its senior management or eligible

to meet to discuss its Annual Supervisory Report. For that year, EKN violated FINRA Rule 3130 as it did not have a person eligible to serve as its CEO execute its Annual Certification of Compliance and Supervisory Processes. Instead, Ottimo signed this Certification as EKN's purported CEO.

42. As a result of the foregoing conduct, EKN, Ottimo and Giugliano committed separate and distinct violations as follows: the Firm, (a) acting through Ottimo and Giugliano, violated NASD Rules 2110, 3012 and 3013 for conduct prior to June 6, 2008, (b) acting through Giugliano, violated NASD Rules 2110, 3012 and 3013 for conduct from June 6, 2008 to December 15, 2008, and (c), acting through Giugliano, violated NASD Rule 3012 and FINRA Rules 2010 and 3130 for conduct from December 15, 2008 to October 17, 2010.

**Material Misrepresentations to FINRA
(NASD Rule 2110 and FINRA Rule 2010)
Respondents EKN and Giugliano**

43. By letter dated June 12, 2008, FINRA requested that EKN and Giugliano assert the steps EKN had taken to comply with the SEC sanction imposed against Ottimo.

44. As set forth above at Paragraphs 20-23, EKN and Giugliano represented to FINRA that Ottimo was no longer (i) EKN's CEO; (ii) a principal of EKN; or (iii) acting in a supervisory capacity. All of these statements were false and/or misleading, and Giugliano knew, or should have known, them to be false and/or misleading.

45. On or around May 30, 2006, EKN, acting through Ottimo, executed a Subordinated Loan Agreement (the "Loan Agreement") with its clearing firm, Legent Clearing, Inc., ("Legent") in the amount of \$300,000, due to mature on June 30, 2007.

46. In that Loan Agreement, signed by Ottimo, EKN expressly acknowledged that "[t]his instrument embodies the entire agreement between the Broker-Dealer and Lender and no

other evidence of such agreement has been or will be executed without the prior written consent of NASD.”

47. EKN submitted this Loan Agreement to NASD for its approval and based on EKN’s representations, NASD approved this Loan Agreement on June 15, 2006, as well as two subsequent requests to extend the loans in June 2007 and June 2008.

48. In fact, when Ottimo signed this Loan Agreement on behalf of EKN, he had already entered into an undisclosed “Side Agreement” on March 13, 2006. In this “Side Agreement,” contrary to the representations made in the Loan Agreement, EKN and Legent had agreed that EKN would not have to pay principal and interest on the loan if EKN met certain conditions, including generating a certain amount of revenue to Legent.

49. This undisclosed Side Agreement was material as it enabled EKN to carry on its books and records an allegedly subordinated loan which was in fact not subordinated. As EKN was unlikely to have to repay it, the amount of the loan should not have been carried on EKN’s books as an asset for net capital purposes.

50. By signing this Loan Agreement and submitting the 2007 and 2008 loan extension requests to FINRA, knowing that the Loan Agreement contained a materially false representation, EKN made material misrepresentations to FINRA.

51. None of the above material misrepresentations have been corrected to date.

52. As a result of the foregoing conduct, EKN and Giugliano committed separate and distinct violations as follows: The Firm violated NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008) and Giugliano violated NASD Rule 2110 and FINRA Rule 2010 by causing the Firm to commit the violations set forth in Paragraphs 20-23 and 44.

**Anti-Money Laundering Violations
Failure to Establish and Enforce an Adequate
Anti-Money Laundering Compliance Program
(NASD Rule 2110 and 3011(a); FINRA Rule 2010; MSRB Rule G-41)
Respondents EKN, Ottimo and Giugliano**

53. NASD Rule 3011(a) required EKN to “[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder.”

54. MSRB Rule G-41 applies the requirements described above to municipal securities dealers such as EKN.

55. From September 2006 to June 2009, EKN failed to establish and implement an AML Compliance Program reasonably expected to detect and report suspicious activity, as set forth below in Paragraph 61.

56. From at least September 2006 to June 2009, Giugliano knew, or should have known, of these failures. From at least September 2006 to June 6, 2008, Ottimo knew or should have known of these failures.

57. Pursuant to the Department of Treasury’s implementing regulation, 31 CFR § 103.19(a)(1), “[e]very broker or dealer in securities within the United States . . . shall file with FinCEN . . . a report of any suspicious transaction relevant to a possible violation of law or regulation.”²

58. In Notice to Members 02-21, FINRA’s predecessor, the NASD emphasized that each broker-dealer has a duty to detect red flags that may indicate money laundering and where detected, “to perform additional due diligence before proceeding with the transaction.”

² FinCEN is the Financial Crimes Enforcement Network of the United States Department of the Treasury (Treasury).

59. In its AML Compliance and Supervisory Procedures, EKN stated that it would monitor accounts for suspicious activity by (a) monitoring transactions, including trading and wire transfers, to be on the alert for red flags that signaled possible money laundering and (b) where a red flag was detected for any activity conducted or attempted through the Firm, file a SAR or investigate further and where warranted, file a SAR.

60. From January 2006 through May 2009, as a result of EKN's deficient AML Compliance Program, the Firm failed to detect red flags suggesting possible suspicious activity, which would have required EKN to perform due diligence to assess whether it was necessary for it to file a SAR or adequately document its reasons for determining that filing a SAR was not necessary. EKN's books and records, account documents and transactions records provided the Firm with reasons to know or suspect suspicious activity that should have caused it to consider whether or not to file a SAR.

61. The suspicious activity that EKN failed to consider whether to report consisted of the following:

- a. HK – Individual accounts opened by a foreign national on or about October 9, 2005 and May 16, 2006. HK was an officer of AF Corp., a Pink Sheets “private equity” incubator with no operating history that was a flower company until shortly after HK opened his first EKN account. HK sought to deposit approximately \$500 million of purported Venezuelan bearer bonds into his account. EKN forwarded these bearer bonds to its clearing firm to deposit into HK's account. EKN's clearing firm rejected the bonds due to their suspicious nature and unanswered beneficial ownership questions. Further, HK attempted to offer \$650 million of fraudulent, “cash-backed” bonds allegedly issued by his

Pink Sheets company. These bonds were not accepted by the Depository Clearing Corporation and EKN's clearing firm wanted nothing to do with the bonds or HK's company's business;

- b. AA – A corporate account opened by GM on or about October 19, 2005 with “Moderate” risk tolerance and an investment objective of “Long Term Growth.” In a manner inconsistent with its stated risk tolerance and investment objective, AA traded Treasury Bonds, including short sales, followed by wiring funds to third parties, using five different banks and account numbers. Three attempted wire transfers were returned due to non-matching beneficial owner and account numbers;
- c. PHC – A corporate account opened on or about May 10, 2006. PHC day-traded more than \$5,000,000,000 in Treasury Bonds on margin over a seven-month period, a strategy inconsistent with the account's investment objective of “Current Income.” When a \$5 million wire transfer was arriving into the account, PHC's principal, DL, identified this as consisting of “earned investment funds. This amount was more than 20 times PHC's professed net income and significantly greater than its alleged net worth;
- d. The JW Fund – A corporate account opened on or about August 1, 2007 with GS as principal. GS was formerly barred by the British Columbia Securities Commission for announcing a non-existent financing arrangement with a Swiss bank. The JW Fund traded in the stock of a Pink Sheets company headquartered in Thailand, of which GS was a former officer. The JW Fund's account address was the same New York address as the Pink Sheets company's U.S. location. The

JW Fund deposited hundreds of millions of shares of that penny stock with liquidations and wire transfers following soon thereafter. Most of these wire transfers were structured in amounts of less than \$10,000; and

- e. SF - A corporate account opened by FY on January 11, 2006 with "Current Income" as the account objective. The account journaled millions of shares in a penny stock to other accounts at EKN, including ones held by a "consultant" to that penny stock company and GG, an insider at that penny stock company who had denied to EKN the publicly available information that he was an officer of a public company; From at least September 2006 until June 6, 2008, Ottimo and Giugliano knew, or should have known, that EKN had failed to timely detect, investigate and report this suspicious activity. From at least June 6, 2008 to October 17, 2010, Giugliano knew, or should have known, that EKN had failed to timely detect, investigate and report this suspicious activity.

62. As a result of the foregoing conduct, EKN, Ottimo and Giugliano committed separate and distinct violations as follows: the Firm (a) willfully violated MRSB Rule G-41, (b) acting through Ottimo and Giugliano, violated NASD Rules 2110, 3011(a) and 3011(c), for conduct prior to June 6, 2008, (c) acting through Giugliano, violated NASD Rules 2110, 3011(a) and 3011(c), for conduct from June 6, 2008 to December 15, 2008 and (d) acting through Giugliano, violated NASD Rules 3011(a) and 3011(c) and FINRA Rule 2010, for conduct from December 15, 2008 to October 17, 2010.

**Net Capital and Recordkeeping Violations
(NASD Rules 2110 and 3110, FINRA Rule 2010 and Securities Exchange Act Rules 15c3-1,
15c3-1(a)(2)(iii), 15c3-1(c)(2), 17a-3(a)(2), 17a-3(a)(11), 17a-4, 17a-5(a)(2)(iii), 17a-5(d) and
17a-11)**

Respondents EKN, Ottimo and Giugliano

63. Securities Exchange Act of 1934 (Exchange Act) Rule 15c3-1 requires each broker-dealer to have and maintain its minimum net capital requirement. A firm violates this rule if it conducted securities business at any point during a day when it failed to meet its minimum net capital requirement.

64. Under Exchange Act Rule 15c3-1(a)(2)(iii), as a broker-dealer conducting a securities business, EKN was required to maintain a certain minimum net capital. From September 30, 2008 to October 23, 2008 (Period I), December 23, 2008 to January 5, 2009 (Period II), June 15 to June 26, 2009 (Period III), December 31, 2009 (Period IV) and November 17, 2010 (Period V), the Firm failed to meet that minimum net capital requirement.

65. Under Exchange Act Rule 15c3-1(c)(2), EKN was required to use the accrual method of accounting to ensure a proper matching of revenues and expenses and accurately reflect its financial condition.

66. Under Exchange Act Rule 17a-11, EKN was required to notify the SEC the same day its net capital declined below its minimum allowed amount.

67. Under Exchange Act Rule 17a-3(a)(2) and NASD Rule 3110, EKN was required to make and keep its books and records current with ledgers reflecting all assets and liabilities, income, expense and capital accounts.

68. Under Exchange Act Rule 17a-3(a)(11) and NASD Rule 3110, EKN was required to preserve a record of its trial balances, and record a computation of its aggregate indebtedness and net capital as of the trial balance date, pursuant to Exchange Act Rule 15c3-1.

69. Under Exchange Act Rule 17a-4 and NASD Rule 3110, EKN was required to preserve its records for a minimum of three or six years, depending on the records created.

70. Under Exchange Act Rule 17a-5(a)(2)(iii), EKN was required to file Part IIA of Form X-17A-5 within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where that date is other than the end of the calendar quarter.

71. Under Exchange Act Rule 17a-5(d), EKN was required to file an audited financial statement on an annual basis.

72. During Periods I, II and III, FINRA advised EKN in writing that, without the required net capital, the Firm could not engage in the securities business, other than customer liquidations. However, despite having deficient net capital, EKN continued conducting a securities business during these periods.

73. EKN failed to create and maintain current and accurate books and records relating to the Firm's financial condition, resulting in the Firm submitting to FINRA inaccurate net capital Computations as of March 31, 2009; May 3, 7, 28 and 29, 2009; June 16, 18, 19 and 23, 2009; October 27, 2010; November 17, 18, and 19, 2010, and filing inaccurate FOCUS Reports for the periods ending August 24, 2007, June 30, 2008, March 31, 2009, April 30 2009, May 31, 2009, and December 31, 2009.

74. EKN failed to file accurate notifications of its failures to make and keep current books and records, to maintain its required minimum net capital, and of its net capital falling below the early warning threshold of 120%. Specifically, on June 3, 16, and 18, 2009, the Firm filed three separate electronic early warning threshold notifications, each of which was inaccurate.

75. On June 3, 2009, EKN filed a notification that its net capital had fallen below the 120% early warning threshold of \$120,000 during the period May 25–28, 2009. Its calculated

net capital of \$108,175 was inaccurate as it did not include all accrued liabilities. Additionally, in EKN's filing, it stated that its net capital calculation was as of Thursday, May 28, 2009, contrary to its representation to FINRA that the net capital calculation was actually as of Monday, May 25, 2009.

76. On June 16, 2009, EKN reported its failure to make and keep current and accurate its books and records from March 12 to June 15, 2009. This notification was inaccurate as EKN failed to properly accrue its liability for a June 2008 SEC fine.

77. On June 18, 2009, EKN reported its failure to maintain the required minimum net capital with a deficiency in the amount of \$45,181 from June 16–18, 2009, updating its June 16th notification of its failure to make and keep current books and records. Its reported net capital deficiency of \$45,181 was inaccurate as it did not include all of its accrued liabilities.

78. As of November 17, 2010, EKN failed to report that its net capital had declined below the minimum required amount pursuant to Exchange Act Rule 17a-11(b)(1); failed to report pursuant to Exchange Act Rule 17a-11(c) that its aggregate indebtedness was in excess of 1200% of its net capital; and failed to report that its books and records were not current pursuant to Exchange Act Rule 17a-11(d).

79. From August 1, 2007 to July 31, 2009, the Firm failed to account for all expenses and liabilities on the required accrual basis, thereby inaccurately reporting its liabilities and its net capital on its FOCUS reports to FINRA.

80. From August 17, 2009 to November 17, 2010, EKN failed to accurately reflect all liabilities incurred by the firm, including not considering as contingent liabilities any pending lawsuits and not accurately booking liabilities from certain vendors, namely New York State

Department of Taxation and Finance, C H Partners, GEC, AE, SE, W M, M B PC, SMK, Law Office of B S, G E LLP, The Hd and I C.

81. EKN also failed to maintain all bills, paid or unpaid, for a period of not less than three years, including for two years in an easily accessible place. The Firm further failed to maintain documents reflecting a purported loan from Ottimo and Giugliano, a Legent MARV account and a purported EKN asset held at C Bank in the name of EKN's counsel with no such corresponding entry on the Firm's books.

82. According to EKN's Purchase and Sales Blotter on December 30, 2011 (the last business day of the year) EKN executed 47 solicited transactions in customer accounts. EKN calculated net capital as follows on December 30, 2011:

- Net capital requirement: \$31,459 (calculated as 6 2/3% of \$471,889, EKN's aggregate indebtedness ("AI") on that date).
- Net Capital: \$35,113
- Excess Net Capital: \$3,654

83. EKN's capital requirement, however, was increased from \$31,459 to \$44,459 due to a variety of adjustments to its liabilities. As such, the Firm's net capital on December 30, 2011 was actually:

Net Capital (Deficit): (\$168,781.16)

Excess Net Capital (Deficit): (\$213,240.99)

84. Accordingly, EKN conducted a securities business on December 30, 2011 while failing to maintain its minimum required net capital.

85. Moreover, EKN's December 2011 Audit Report was issued on February 29, 2012. The report revealed the EKN's aggregate indebtedness had reached 1,344% (calculated as

\$471,889/ \$35,113), which was over the 1200% threshold. EKN failed to notify FINRA and the SEC of this information by March 1, 2012.

86. Furthermore, the Audit Report also indicated that the Firm's net capital (\$35,113) was less than 120% of its capital requirement (calculated as $\$31,459 \times 120\% = \$37750.80$). EKN failed to notify FINRA and the SEC of this information by March 1, 2012.

87. As a result of the foregoing conduct, EKN, Ottimo and Giugliano committed separate and distinct violations as follows: the Firm (a) willfully violated Exchange Act Rules 15c3-1, 15c3-1(a)(2)(iii), 15c3-1(c)(2), 17a-3(a)(11), 17a-3(a)(2), 17a-4, 17a-5(a)(2)(iii), 17a-5(d) and 17a-11, (b) acting through Ottimo and Giugliano, violated NASD Rules 2110 and 3110, for conduct prior to June 6, 2008, (c) acting through Giugliano, violated NASD Rules 2110 and 3110, for conduct from June 6, 2008 to December 15, 2008, and (d) acting through Giugliano, violated NASD Rule 3110 and FINRA Rule 2010, for conduct on or after December 15, 2008.

**Failures to Disclose Judgments and Liens On Ottimo and Giugliano's Forms U4
(NASD and FINRA By-Laws, Art. V, Sec. 2, NASD Rule 2110, FINRA Rules 1122 and 2010
and NASD IM 1000-1)
Respondents EKN, Ottimo and Giugliano**

88. At all times relevant to the Amended Complaint, the Form U4 contained the question, "Do you have any unsatisfied judgments or liens against you." At all times relevant to this Complaint, NASD By-Laws Art. V, Sec. 2 (effective to July 29, 2007) and FINRA By-Laws Art. V, Sec. 2 (effective from July 30, 2007 to the present) have required Ottimo and Giugliano's registrations to be kept current at all times. This requirement includes amending their Forms U4 to report unsatisfied judgments and liens against them.

89. Pursuant to NASD IM 1000-1 (effective to August 16, 2009) and FINRA Rule 1122 (effective as of August 17, 2009), EKN was required to ensure that its filings with FINRA with respect to its associated persons' registrations were complete and accurate and not

misleading. Similarly, Ottimo and Giugliano were required to ensure that their registrations were complete and accurate and not misleading.

90. From 1997, when he first became registered with the NASD to March 30, 2011, Ottimo failed to amend his Form U4 to report judgments and liens filed against him. The dates, judgment creditors and amounts of these judgments and liens were:

6/10/1997	S Bank of L	\$251,979.00
1/20/2000	NYS Tax Department	\$13,316.00
7/16/2001	NYS Dept. of Taxation	\$878.00
6/24/2002	NYS Department of Taxation	\$500.65
2/25/2005	Internal Revenue Service	\$11,955.50
2/21/2007	Internal Revenue Service- Manhattan District	\$37,950.36
11/10/2009	A A	\$327,000.00
6/4/2009	B M LLC	\$36,590.15
7/15/2009	Internal Revenue Service- Manhattan District	\$16,888.06
3/22/2010	S W and S	\$27,405.55

91. On March 30, 2011, Ottimo amended his Form U4 to disclose the above still unsatisfied judgments other than the June 4, 2009 B M LLC judgment, which he did not disclose.

92. From March 2008 to July 2010, Giugliano failed to amend his Form U4 to report judgments against him in a timely manner. The dates, judgment creditors and amounts of these judgments were:

3/10/2008	S P Associates, LLC	\$161,740.73
11/10/2009	A A	\$327,000.00

93. By reason of the foregoing failures to disclose unsatisfied judgments and liens on Ottimo's and Giugliano's respective Forms U4 in a timely manner, EKN, Ottimo and Giugliano committed separate and distinct violations as follows: the Firm, (a) acting through Ottimo and Giugliano, violated (and, through Ottimo, willfully violated) NASD By-Laws Article V, Section 2(a), NASD Rule 2110 and IM 1000-1, for conduct prior to July 30, 2007, (b) acting through Ottimo, willfully violated FINRA By-Laws, Article V, Section 2, NASD Rule 2110 and IM 1000-1, for conduct from July 30, 2007 to June 5, 2008, (c) acting through Giugliano, violated FINRA By-Laws, Article V, Section 2, NASD Rule 2110 and IM 1000-1, for conduct from July 30, 2007 to June 5, 2008 and violated NASD Rule 2110 and IM 1000-1, for conduct from June 6, 2008 to December 15, 2008, and (d) acting through Giugliano, violated FINRA Rules 1122 and 2010, for conduct from December 15, 2008 to October 17, 2010.

**Improper Reporting
(NASD Rule 2110, NASD By-Laws Art. V, Secs. 2 and 3, FINRA By-Laws, Art. V, Secs. 2
and 3; FINRA Rule 2010)
Respondents EKN, Ottimo and Giugliano**

94. EKN was required to submit amendments to its registered representatives' Forms U4 (or Form U5 for terminated representatives) within 30 days of learning of the facts and circumstances giving rise to the amendment. Among the reportable events were (a) customer complaints alleging sales practice violations with a claim for compensatory damages of \$5000 or more, (b) having an involuntary bankruptcy petition filed against a broker or dealer based upon events that occurred while a registered representative exercised control over it; (c) being the subject of a regulatory complaint for alleged securities violations; and (d) being named as a respondent/defendant in an investment-related, consumer-initiated arbitration or litigation alleging one or more sales practice violations. NASD By-Law Article V, Section 3 (renamed as

of July 30, 2007 as FINRA By-Law Article V, Section 3), stated that a firm must file a Form U5 no later than 30 days after the termination of a registered person.

95. EKN failed to report in a timely manner:

- a. a Registered Representative's (MA) (1) felony indictment and (2) guilty plea to a reduced charge; and
- b. Registered Representative's (RB) June 26, 2007 termination.

96. At least eight separate times, the Firm failed to amend or timely amend a registered representative's Form U4 or Form U5 to disclose a reportable event:

- a. On February 22, 2007, Customer JR filed a complaint against representative, ShSa alleging sales practice violations and damages in excess of \$18,000. The Firm failed to amend this representative's Form U4 to disclose this reportable event;
- b. On July 11, 2007, Customer GCG, Inc. filed an arbitration alleging sales practice violations by RW and damages in excess of \$1.2 million and the Firm failed to file an amended U4 until July 2, 2009;
- c. On October 29, 2007, the State of Montana initiated a regulatory action against LL for, among other things, excessive trading. On April 7, 2008, LL consented to a fine and agreed to never seek registration in Montana. However, the Firm failed to file an amended U4 to disclose this reportable event for LL;
- d. On October 29, 2007, the State of Montana initiated a regulatory action against IS for, among other things, excessive trading and against GT for supervision failures. On April 7, 2008, IS consented to a fine and permanent ban from the State of

Montana. The Firm failed to file any amended Forms U5 to disclose these reportable events for IS or GT;

- e. On May 31, 2007, Customer CE filed a complaint against ShSh alleging sales practice violations and seeking damages in excess of \$19,000. The Firm did not amend ShSh's Form U4 and did not disclose this until filing his Form U5 on September 17, 2007;
- f. ScSh was the CEO of a broker-dealer that was the subject of an involuntary bankruptcy proceeding brought by a creditor on May 22, 2007, had a civil judgment filed against him on July 13, 2007 and had the State of New York file a tax lien on August 23, 2007. The Firm did not amend his Form U4 to disclose the bankruptcy proceeding until July 26, 2007 or disclose the judgment and tax lien until March 4, 2008;
- g. On March 7, 2007, Customer HJK filed a complaint against GL for sales practice violations seeking damages in excess of \$100,000. The Firm did not disclose that complaint on GL's Form U4 until May 3, 2007; and
- h. On November 27, 2007, Customer LB and his company GEG filed a lawsuit against EKN and Ottimo alleging, among other things, unauthorized trading. EKN and Ottimo did not disclose that lawsuit until January 4, 2008.

97. The Firm failed to make a Form U4 filing within 30 days of hire for KiKu, CJ, HeMa, PhLi, StPa and RiEm.

98. As a result of the foregoing conduct, EKN, Ottimo and Giugliano committed separate and distinct violations as follows: the Firm, (a) acting through Ottimo and Giugliano, violated (and, through Ottimo, willfully violated) NASD By-Laws Article V, Sections 2 and 3

and NASD Rule 2110, for conduct prior to July 30, 2007, (b) acting through Ottimo and Giugliano, violated (and, through Ottimo, willfully violated) FINRA By-Laws, Article V, Sections 2 and 3 and NASD Rule 2110, for conduct from July 30, 2007 to June 5, 2008, (c) acting through Giugliano, violated NASD Rule 2110 for conduct from June 6, 2008 to December 15, 2008 and (d) acting through Giugliano, violated FINRA Rule 2010 for conduct from December 15, 2008 to October 17, 2010. Further, Ottimo failed to report the GEG lawsuit in a timely manner in willful violation of NASD Rule 2010 and FINRA By-Laws, Article V, Section 2.

**Failures to Supervise
(NASD Rules 2110, 3010, 3012, 3013, FINRA Rules 2010 and 3130)
Respondents EKN, Ottimo and Giugliano**

99. To comply with NASD Rule 3010(a), EKN was required to "establish and maintain a system to supervise each registered representative's activities . . . that is reasonably designed to achieve compliance with . . . applicable . . . Rules." To comply with NASD Rule 3010(b), EKN was required to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives . . . that are reasonably designed to achieve compliance with . . . applicable Rules"

100. To comply with NASD Rule 3012, EKN was required to designate and specifically identify one or more principals to establish, maintain and enforce a system of supervisory control policies that test procedures already in place, and improve upon or amend those regulations as necessary.

101. NASD Rule 3013 (effective to December 14, 2008), superseded by FINRA Rule 3130 (effective on December 15, 2008) states that firms such as EKN must certify annually that

they have processes in place to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures designed to achieve compliance with relevant regulations.

102. EKN did not adequately supervise its registered representatives and associated persons by failing to:

- a. Establish and maintain an overall supervisory system reasonably designed to operate without Ottimo acting in a supervisory capacity;
- b. Establish and maintain an overall supervisory system reasonably designed to operate without Ottimo acting in a principal capacity;
- c. From January 17, 2007 to March 30, 2008, prepare and maintain signed copies of Heightened Supervision Memos for three registered representatives purportedly placed under heightened supervision, namely Ottimo, Giugliano and MF, and identify four registered representatives who generated sufficient complaints of sales practice abuse to be candidates for heightened supervision during that period, namely ShSa, DM, SM and FE;
- d. During the 12 month rolling period, September 1, 2008 through August 31, 2009, identify Giugliano and others as producing managers who should have been placed on heightened supervision due to their generation of more than 20% of the firm's revenue;
- e. From August 17, 2009 to October 17, 2010, prepare or maintain Heightened Supervision Memos for Ottimo, Giugliano and KN and identify as candidates for heightened supervision the following personnel: MB (regulatory complaints), RC (3 sales practice complaints in previous 2 years), BS (regulatory complaints), CSS

(regulatory complaints), DZ (regulatory complaints) and JH (statutory disqualification);

- f. From January 17, 2007 to March 30, 2008, adequately supervise or have an adequate system in place to monitor funds and securities moving into and out of customer accounts, including incoming wires; Supervise MB as EKN's Financial Operations Principal and his preparation and maintenance of EKN's financial books and records, including failing to identify anyone responsible for supervising MB;
- h. Maintain evidence of an annual inspection of its main office for all of 2007 and a branch office in New York City from April 1, 2007 to February 1, 2008; and
- i. Conduct a reasonable independent main office inspection on June 17, 2009. RB, the Firm's Compliance Officer and designated branch office manager of EKN's Woodbury, NY main office, was improperly permitted to conduct the office inspection for that office. Further, RB's main office inspection report was inadequate as it failed to adequately address and test key issues respective to the Firm's business model and past disciplinary history, including safeguarding customer funds and securities, maintaining books and records, supervising customer accounts serviced by the branch manager, transmitting funds between customer and registered representatives, transmitting funds between customers and third parties, validating changes in customer account information and customer change of address requests.

103. As a result of the foregoing conduct, EKN, Ottimo and Giugliano committed separate and distinct violations as follows: the Firm, (a) acting through Ottimo and Giugliano,

violated NASD Rules 2110, 3010, 3012 and 3013, for conduct prior to June 6, 2008, (b) acting through Giugliano, violated NASD Rules 2110, 3010, 3012 and 3013, for conduct from June 6, 2008 to December 15, 2008, and (c) acting through Giugliano, violated NASD Rules 3010 and 3012 and FINRA Rules 2010 and 3130, for conduct from December 15, 2008 to October 17, 2010.

**Correspondence Retention and Review Violations
(Exchange Act Section 17(a), Exchange Act Rule 17a-4, NASD Rules 2110, 3010(d)(2)
and 3110 and FINRA Rule 2010)
Respondents EKN, Ottimo and Giugliano**

104. Exchange Act Section 17(a)(1) and Rule 17a-4 thereunder as well as NASD Rule 3110 require firms to retain all correspondence.

105. NASD Rule 3010(d)(2) requires that member firms review incoming and outgoing written and electronic correspondence with the public relating to its securities or investment banking business.

106. EKN violated these rules by:

- a. Failing to maintain emails for August 17, 2009 – October 22, 2009 and Instant Messages, BlackBerry Messages and text messages for August 17, 2009 – October 17, 2010;
- b. Failing to evidence review of incoming and outgoing correspondence from January 17, 2007 – January 31, 2008 and emails from August 17, 2009 – October 17, 2010; and
- c. Failing to evidence supervisory review of emails from August 17, 2009 – October 17, 2010.

107. As a result of the foregoing conduct, EKN, Ottimo and Giugliano committed separate and distinct violations as follows: the Firm (a) violated Exchange Act, Section 17(a),

Exchange Act Rule 17a-4, (b) acting through Ottimo and Giugliano, violated NASD Rules 2110, 3010(d)(2) and 3110, for conduct prior to June 6, 2008, (c) acting through Giugliano, violated NASD Rules 2110, 3010(d)(2) and 3110, for conduct from June 6, 2008 to December 15, 2008, and (d) acting through Giugliano, violated NASD Rules 3010(d)(2) and 3110 and FINRA Rule 2010, for conduct from December 15, 2008 to October 17, 2010.

**Failures to Respond to Rule 8210 Requests
(FINRA Rules 2010 and 8210)
Respondents EKN, Ottimo and Giugliano**

108. FINRA Rule 8210(a)(1) requires “a member, person associated with a member, or person subject to the Association's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by Association staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding.”

109. On September 10, 2009, FINRA sent a Rule 8210 request to EKN's Compliance Officer by email, copying Ottimo and Giugliano, requesting that EKN provide, among other things, certain specified corporate records, documents relating to EKN's (a) parent, (b) affiliates and related companies and (c) alleged investors.

110. EKN provided some of the information FINRA requested, but failed to provide the documentation requested or complete information on these subjects.

111. When EKN did not provide the requested corporate documents and information by the September 17, 2009 deadline, FINRA sent separate Rule 8210 requests by email to EKN's Chief Compliance Officer, copying Ottimo and Giugliano each time, requesting these and other documents relating to EKN's parent, affiliates and investors. FINRA sent EKN these follow-up

requests on September 21, 2009 and September 30, 2009, stating that “[t]o date, we have not received a full response” to FINRA’s 8210 requests and seeking by October 7, 2009, “any corporate documentation relating to the following parents and/or affiliates:

1. Margate Capital;
2. X Holding Corporation;
3. X LLC;
4. X Fincap;
5. MFN;
6. EKN Asset Management Group, Inc.; and
7. Ehrenkrantz Growth Fund.”

112. For each of these requests, Ottimo, Giugliano and EKN’s Chief Compliance Officer opened these emails and for each request, they were aware that (a) EKN had not provided FINRA with the documents FINRA had requested and (b) FINRA had warned that a failure to comply with its Rule 8210 request may subject EKN to disciplinary action.

113. On October 8, 2009, the Firm responded, stating that “EKN is in the process of locating the requested documentation and will forward it to FINRA as soon as possible.” However, EKN did not provide this documentation and to date, has never provided it.

114. FINRA followed up with the same request in October 15, 2009 and October 26, 2009 emails containing these Rule 8210 requests, namely that

‘In your response letter dated October 8, 2009 for the bullet item below, the firm stated that ‘EKN is in the process of locating the requested documentation and will forward it to FINRA as soon as it is available.’

Please provide any corporate documentation relating to the following parents and/or affiliates:

1. Margate Capital;
2. X Holding Corporation;
3. X LLC;
4. X Fincap;
5. MFN;
6. EKN Asset Management Group, Inc.; and

7. Ehrenkrantz Growth Fund.'

115. EKN did not respond to these October 15, 2009 and October 26, 2009 requests.

116. FINRA's September 10, September 21, September 30, October 15 and October 26, 2009 Rule 8210 requests were all sent by email to the EKN email address for EKN's Chief Compliance Officer. For each of these requests, FINRA's email was opened at that EKN email address. For each of these September 10, September 21, September 30, October 15 and October 26, 2009 Rule 8210 requests, FINRA also sent a copy of the request to Ottimo and Giugliano's EKN email addresses. For each of these requests, FINRA's email was received at Ottimo and Giugliano's EKN email addresses.

117. On November 2, 2009, FINRA sent EKN a further Rule 8210 request on these same issues by Certified Mail, Return Receipt Requested and First Class Mail addressed to EKN's main office, then located in Woodbury, New York. This Rule 8210 request was received at EKN and signed for by "A. Ottimo." FINRA received the confirmation and receipt on November 4, 2009.

118. On November 3, 2009, FINRA sent a copy of its November 2, 2009 Form 8210 request to Ottimo and Giugliano's EKN email addresses as well as the email address for EKN's Chief Compliance Officer. This Form 8210 request was received at each of these three EKN email addresses.

119. In its November 2, 2009 request, FINRA advised EKN that it had not received the documents and information requested in its September 10, September 21, September 30, October 15 and October 26, 2009 Rule 8210 requests and sought the same items requested in the same language set forth in Paragraph 114 above.

120. In its November 2, 2009 Rule 8210 request, FINRA requested that EKN provide the remaining documents and information by no later than November 9, 2009. For the sixth time, FINRA warned that a failure to comply with its request may subject the individuals and EKN to disciplinary action.

121. To date, EKN, Ottimo and Giugliano have failed to provide FINRA with the requested documents and other information relating to EKN's parent, affiliates and related companies and alleged investors, despite its October 8, 2009 representation that "EKN is in the process of locating the requested documentation and will forward it to FINRA as soon as it is available."

122. EKN's failure to produce the requested documentation and information impeded the investigation that led to this proceeding. Ottimo and Giugliano were aware of these Rule 8210 requests and impeded EKN from producing the requested documentation and information.

123. As a result of the foregoing conduct, the Firm, Ottimo and Giugliano committed separate and distinct violations of FINRA Rules 8210 and 2010.

**Failure to Conduct Due Diligence on a Regulation D Offering
(NASD Conduct Rule 3010 and FINRA Rule 2010)
Respondent Giugliano**

124. On or about February 29, 2012, EKN, acting through Giugliano, began selling a special purpose vehicle (the Fund) to accredited investors. Each investor was provided a copy of the Fund's Private Placement Memorandum (PPM).

125. EKN was the Fund's only placement agent.

126. According to the Fund's PPM, its main objective was to purchase shares of social media companies prior to the anticipated initial public offering of such companies. The Fund is

now closed and its shares are no longer being offered. The Fund raised approximately \$3.8 million from 20 investors during its offering period.

127. Giugliano signed the Fund's selling agreement on behalf of EKN on March 23, 2012. Giugliano sold \$400,000 worth of the Fund to one customer before execution of the selling agreement.

128. EKN's written supervisory procedures and NASD Conduct Rule 3010 required EKN to conduct due diligence for any Regulation D offering, such as the Fund, before considering that offering for sale to customers. EKN, through Giugliano, failed to conduct the required due diligence on the Fund.

129. Giugliano was the principal who approved the Fund offering on behalf of EKN. Moreover, Giugliano sold shares of the Fund to customers without the required due diligence having been performed by EKN or a selling agreement in place with the Fund.

130. Had the required due diligence been performed, Giugliano would have learned that the Fund's PPM contained misleading statements in the biographical description for one of the Fund managers.

131. As a result of the foregoing misconduct, Giugliano violated NASD Conduct Rule 3010 and FINRA Rule 2010.

**Negligent Omission of Material Facts
(FINRA Rule 2010)
Respondent Giugliano**

132. EKN entered into an advisory agreement (the Agreement) with Company A, signed by Giugliano on behalf of EKN, on January 25, 2012.

133. Company A is an education company that purportedly owns and operates private boarding schools in China.

134. Pursuant to the Agreement, EKN agreed to generate a wider distribution of Company A's common stock and expose Company A to institutional investors and the broker-dealer community in exchange for a fee and shares of Company A's common stock. EKN and Company A wanted to get Company A listed on a national exchange.

135. The Agreement covered a six-month period, and provided for EKN to receive an initial due diligence/advisory fee of \$25,000 due upon agreement execution. In addition, the Agreement indicated that Company A would give EKN 150,000 shares of restricted stock upon agreement execution and another 150,000 shares of restricted stock at the expiration of the Agreement. The Agreement also provided that two EKN employees responsible for conducting the due diligence of Company A receive 60,000 and 15,000 restricted shares of Company A, respectively, as compensation. EKN and Giugliano would receive the remaining shares.

136. From March 2, 2012 to April 20, 2012, Giugliano sold shares of Company A to customers without disclosing to the customers at the point of sale that EKN had entered into the Agreement with Company A to get the stock listed on an exchange for a fee and 300,000 shares of restricted Company A stock. These are material facts, which should have been disclosed to customers prior to their purchases of Company A shares.

137. In addition, this material information was not disclosed in any of the offering documents for Company A.

138. As a result of the foregoing misconduct, Giugliano violated FINRA Rule 2010. Based on the foregoing, EKN (a) violated NASD Rules 1021, 3011, 3012, 3013 and 3110; FINRA Rules 1122, 2010, 3130 and 8210; NASD By-Laws, Article IV, Section 1(c), Article V, Sections 2 and 3; FINRA By-Laws, Article IV, Section 1 and Article V, Section 1; Exchange Act, Section 17(a); and MSRB Rule G-41 and (b) willfully violated NASD Rule 2110

and IM 1000-1; NASD By-Laws Article V, Section 2 and 3; FINRA By-Laws Article V, Sections 2 and 3; and Exchange Act Rules 15c3-1, 17a-3, 17a-4, 17a-5 and 17a-11.

Based on the foregoing, Ottimo (a) violated NASD Rules 1021, 3011, 3012, 3013 and 3110; FINRA Rule 8210; NASD By-Laws Article V, Section 3; and FINRA By-Laws, Article III, Section 3 and Article V, Section 1 and (b) willfully violated NASD Rule 2110 and IM 1000-1; FINRA Rule 2010; NASD By-Laws Article V, Sections 2 and 3, and FINRA By-Laws, Articles 2 and 3.

Based on the foregoing, Giugliano violated NASD Rules 1021, 2110, 3010, 3011, 3012 and 3013, 3110, and IM 1000-01; FINRA Rules 1122, 2010, 3130 and 8210; NASD By-Laws Article V, Section 2; and FINRA By-Laws, Article V, Sections 1, 2 and 3.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents 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, EKN is expelled from membership in FINRA;

Respondent, Ottimo is barred from association in any capacity with a FINRA member firm;

Respondent, Giugliano is barred from association in a principal capacity with a FINRA member firm, suspended from association in any capacity with a FINRA member firm for twelve months; and is fined \$150,000.

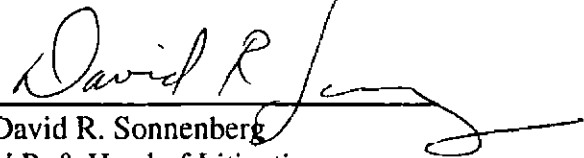
The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant

to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to read "David R. Sonnenberg", is written over a horizontal line.

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