

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Milkie Ferguson Investments, Inc. (CRD No. 17606),

[REDACTED]
[REDACTED]
Daniel Levin (CRD No. 707280),
and
[REDACTED]

Respondents.

DISCIPLINARY PROCEEDING
No. 2009016271801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This case involves serious failures by Milkie Ferguson Investments, Inc. ("Milkie Ferguson") and two of its principals to properly supervise certain areas of the firm's business, including the sale of private placements and contingency offerings. Specifically, the firm failed to detect, or to follow up on, a number of red flags that would have alerted them to problems with two of the offerings they sold: the Provident Royalties, LLC oil and gas offerings and the Retirement Value LLC life settlement offering. Both the Provident Royalties offerings and the Retirement Value offering are now in receivership, based on allegations of fraud committed by the issuers of the offerings. For most of the period in question, the firm had no supervisory procedures in place addressing these areas of its business. These failures by the

firm also led to impermissible sales by the firm of unregistered securities. The case also includes advertising violations; violations pertaining to a contingency offering made by the firm; and charges against two individual registered representatives associated with the firm.

RESPONDENTS AND JURISDICTION

2. Milkie Ferguson Investments, Inc. became a FINRA member in October 1986, and was headquartered in Dallas, Texas. Milkie Ferguson filed Form BDW on July 26, 2012. During all periods mentioned herein, Milkie Ferguson conducted a general securities business, and cleared its transactions through another member firm. The Firm is primarily owned by [REDACTED] President (over 75%). Before filing Form BDW, Milkie Ferguson employed 15 registered persons and maintained 10 branch offices.
3. Respondent [REDACTED] was the President, Chief Executive Officer, Chief Operating Officer, and principal owner of Milkie Ferguson. He first entered the securities industry in 1979 as a General Securities Representative of a FINRA member firm. Edward Milkie became associated with Milkie Ferguson in 1986. Although it has filed Form BDW, Milkie Ferguson has not yet filed a Form U5 for [REDACTED]. [REDACTED] is currently associated with another FINRA member firm.
4. Respondent [REDACTED] was the Vice President of Milkie Ferguson. He entered the securities industry in 1987 as a General Securities Representative of a FINRA member firm. He currently holds Series 7, 24, 63, and 65 licenses. [REDACTED] became associated with Milkie Ferguson in 2000. Although it has filed Form BDW, Milkie Ferguson has not yet filed a full Form U5 for [REDACTED]. [REDACTED] is currently associated with another FINRA member firm.

5. Respondent Daniel Levin was a General Securities Representative at Milkie Ferguson. He entered the securities industry in 1980 as a General Securities Representative of another member of FINRA. He currently holds Series 7, 63, and 65 licenses. Levin became associated with Milkie Ferguson in 2004. On June 26, 2012, Milkie Ferguson filed a Form U5 for Levin, terminating his association with it as of the prior day. Levin is currently associated with another FINRA member firm.
6. Respondent [REDACTED] during all periods mentioned herein, was a General Securities Representative at Milkie Ferguson. He entered the securities industry in 1992 as a General Securities Representative of another member of FINRA. In 2003, [REDACTED] became associated with Milkie Ferguson. On January 27, 2012, Milkie Ferguson filed a Form U5 for [REDACTED] terminating his association with it as of January 17, 2012. Although [REDACTED] has not been associated with a FINRA member firm since January 17, 2012, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

BACKGROUND

Provident Shale Royalty offerings

7. From at least November 2007 through January 2009, Milkie Ferguson was a selling group member for Provident Royalties, LLC's ("Provident's") oil and gas Shale Royalties private placement offerings.

8. Milkie Ferguson entered into selling agreements with Provident for five of the Shale

Royalties offerings:

Offering	Date of Selling Agreement
Shale Royalties 6	11/26/2007
Shale Royalties 7	1/23/2008
Shale Royalties 12	6/2/2008
Shale Royalties 14	7/22/2008
Shale Royalties 18	10/24/2008

Each of the Shale offerings issued preferred stock and set out to pay a monthly dividend (typically 1.5% per month) for a term, generally two years, after which the investor's principal would be returned. The investment purpose was "to engage in all aspects of the oil and gas business, including acquiring real estate, leases, mineral rights, and conducting exploration and development activities."

9. According to the Form D filed for each of the Shale Royalties offerings sold by Milkie Ferguson, the offerings were exempt from registration under Rule 506 of Regulation D.
10. In January 2009, Provident stopped making dividend payments on its Shale Royalty offerings and informed the selling group brokers, including Milkie Ferguson, that all fund raising activities of Provident had ceased and all offerings were closed. Provident filed Chapter 11 bankruptcy on June 22, 2009. On July 7, 2009, the Securities and Exchange Commission obtained injunctive relief against Provident based on allegations that Provident had made a series of fraudulent offerings of preferred stock and limited partnership interests.

Retirement Value Life Settlements

11. From mid-2009 through the beginning of 2010, Milkie Ferguson was a licensee of Retirement Value, LLC, and sold the company's investment products to its customers. Retirement Value offered securities structured as loans secured by interests in life insurance policies purchased from policy holders by Retirement Value. Returns promised to investors were to be dependent on the mortality experience of the insureds.
12. On March 29, 2010, the Texas State Securities Board obtained an emergency cease and desist order issued against Retirement Value, and on May 5, 2010, had a receiver appointed to take over the business. The order was obtained based upon allegations of fraud including misrepresentation of protections available to investors, misrepresentation of risks and returns, and omissions and misstatements of key facts about the principals of Retirement Value. The receiver subsequently discovered that life expectancy information had been misrepresented to investors—life expectancies on the insureds had been shortened such that the potential return to the investors would appear to be greater. The receiver also discovered that investors were not made irrevocable co-beneficiaries on the insurance policies and that investor funds were not placed into escrow, contrary to representations made in sales literature prepared by Retirement Value.
13. Before the TSSB obtained the cease and desist order, Milkie Ferguson sold over \$10,000,000 of Retirement Value securities to its customers, receiving more than \$1,800,000 in selling commissions.

Daniel Levin's Radio Show Investment Talk

14. Levin, a registered representative employed by Milkie Ferguson, hosted a weekly radio show titled "Investment Talk" that aired on radio stations in the Dallas/Fort Worth metropolitan areas for an hour each Saturday and Sunday. Levin also hosted a similar radio show that aired in Los Angeles, where [REDACTED] another Milkie Ferguson registered representative, served as a co-host. Levin began hosting the Texas show around 1991. When Levin moved to Milkie Ferguson in 2004, Milkie Ferguson became the sponsor of the Texas and Los Angeles radio programs and accepted responsibility for the content. During the shows, Levin discussed investment products—primarily "alternative investments" such as life settlements, oil and gas royalty investments, and investments in senior living real estate developments—and responded to phone calls from listeners.

15. Milkie Ferguson and Levin also created and published a website regarding life settlement investments – www.lifesettlementsource.net. Levin sought permission from Milkie Ferguson to publish this website in May 2007, which [REDACTED] approved on behalf of Milkie Ferguson. The website went live on July 26, 2007.

Milkie Ferguson's Other Regulation D Offerings

16. Milkie Ferguson first began selling private placements in late 2006 or early 2007. [REDACTED] Milkie Ferguson's branch manager, and JM, Milkie Ferguson's Chief Compliance Officer at the time, were designated as the supervisors for private placements. Although Milkie Ferguson had started engaging in this new line of business, it did not add any written supervisory procedures regarding private placements until July 2009.

TRA Bryan

17. TRA Bryan Investors, LP ("TRA Bryan") was a limited partnership formed to invest in the construction, development, and maintenance of senior assisted living facilities in Bryan, Texas. The TRA Bryan offering claimed to be exempt from registration under the Securities Act of 1933. Milkie Ferguson was selling TRA Bryan partnership interests by at least February 2010.

Dino Partners, LP

18. In 2007, Milkie Ferguson began selling its first private placement offering for Dino Partners, LP. The Dino Partners' offering was an "all or none" contingent offering expected to raise \$1,440,000, with the intent of acquiring property in Glen Rose, Texas, on which it would develop and operate a hotel.

FIRST CAUSE OF ACTION

Advertising Violations by Milkie Ferguson and Daniel Levin
(Violations of NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(D),
and 2110, and FINRA Rule 2010)

19. The Department realleges and incorporates by reference paragraphs 1-18 above.
20. On July 12, 2008, and July 26, 2008, Levin hosted his weekly radio show, "Investment Talk." In these two shows, Levin made unwarranted and misleading statements and claims, exemplified by, but not limited to, the following:
- a. "Life settlement . . . best investments I've seen in 25 years bar none." (7/12/08 and 7/26/08)
 - b. "Great upside potential on an average rate of 15 to 18% annualized rate on your money." (7/26/08)
 - c. "You will be paid handsomely for it in the future." (7/26/08)

- d. "If you can double your money in the next 3, 5, 7, years you have done so much better than any other investment." (7/26/08)
- e. "I think the risk of your principal is virtually zero." (7/26/08)
- f. "How would you like to make money off the natural gas industry . . . I'm trying to get you 15% rate of return for two years and then you get your money back." (7/26/08)
- g. "These life settlements will be the best investment you ever see." (7/26/08)
- h. "I want you to make 15 to 18% on your money with little risk." (7/26/08)
- i. "I've talked to my friends . . . the oil and gas experts here and they say there are no risk." (7/26/08)
- j. "Would you like to make 15% annualized rate of return on your money?" (7/12/08)
- k. "How would you like to double your money anywhere from 3 to 5 years. . ." (7/12/08)
- l. "I have a two year investment that will pay you 15%." (7/12/08)
- m. "In my opinion we can't lose." (7/12/08)
- n. "I would say that within a year or two most major brokerage firms will have them and they're going to give it to you at 8% return not 15 to 18%." (7/12/08)

21. On the "Investment Talk" radio show that aired July 26, 2008, Levin also stated, "I bet you if you leave that money alone then you will do two and a half to three times the growth every ten years . . . maybe 35 is . . . maybe 100 in ten years and maybe 300 in . . . 20 years." This statement, along with certain of the others alleged in paragraph 20(a) through 20(n),, violated NASD Rule 2210(d)(1)(D), which prohibits a member from making predictions or projections of a security's performance, or implications that gain or income realized in the past will be repeated in the future.
22. From July 26, 2007 to at least October 14, 2009, Milkie Ferguson and Levin also made unbalanced statements on their website (www.lifeselementsource.net) regarding life

settlements. These statements failed to provide a sound basis for evaluating an investment in the contracts and products. The website should have disclosed that investors should consider costs, restrictions, and tax issues when considering selling or investing in a life settlement. In addition, the website should have provided a comprehensive discussion of the characteristics of the project. Finally, the website also contained statements and claims for which no reasonable basis was provided, exemplified by the following:

- a. "Life settlement, the purchase of a life insurance policy by a third party from the policy owner for investment purposes, is one of the fastest growing trends in the financial markets today, historically providing a 15% to 16% annualized rate of return for the investor."
- b. "It's relatively low risk, potentially high yield return has offered many investors a great diversification tool and the opportunity to 'hedge' against the volatility of the stock market."

These statements violated NASD Rule 2210(d)(1)(A), which provides that "communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security, industry, or service."

- 23. In addition, from July 26, 2007 to at least October 14, 2009, Milkie Ferguson and Levin made unwarranted statements and claims on their website regarding life settlements.

- a. "Unaffected by Market and Economic Conditions. - There's no need to worry about which way the wind is blowing. The returns on life settlements, unlike

stocks, mutual funds and other investments, are unaffected by market fluctuations, business cycles, the economy or global unrest.”

- b. “Life settlements are similar to zero-coupon bonds. They are purchased at discounts to their face value which fall into general brackets according to the life expectancy of the owner or insured.”
- c. “Superior Yield Potential – In comparing the potential yields from life settlements as opposed to other forms of investment, it can quickly be seen that this immunity to economic and market conditions make life settlements an attractive choice. Not only are your investments safe from these market risks they have the opportunity to provide exceptional return on investments.”
- d. “It’s relatively low risk, potentially high yield return has offered many investors a great diversification tool and the opportunity to “hedge” against the volatility of the stock market.”
- e. “With professional such as Life Partners, Inc., Dan Levin and Associates, IRA Plus South West, and Stanford Group Company, we can insure not only the highest level of experience but the highest possible return on your Life Settlement Investments.”

These statements violated NASD Rule 2210(d)(1)(B), which prohibits a member from making “any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public.”

24. As a result of the foregoing, Respondents Milkie Ferguson and Levin violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(D) and 2110 (for conduct occurring before December 15, 2008), and FINRA Rule 2010 (for conduct occurring after December 15, 2008).

SECOND CAUSE OF ACTION

General Solicitation by Respondents Milkie Ferguson, Daniel Levin, and [REDACTED]
(Violations of NASD Rule 2110 and FINRA Rule 2010)

25. The Department realleges and incorporates by reference paragraphs 1-24 above.
26. Section 5 of the Securities Act of 1933 prohibits the sale of unregistered securities. Private placement securities offerings are typically exempt from registration under SEC Rule 506 of Regulation D; however, the exemptions to Regulation D are unavailable if the unregistered securities are offered for sale to the general public.
27. As alleged above, the Provident Shale Royalty offerings were unregistered securities offered pursuant to the exemptions offered by Rule 506 of Regulation D. These offerings could not be sold through general solicitations and still maintain their exempt status.
28. On the "Investment Talk" radio show, Levin discussed the Provident Shale Royalty offerings and promoted them as attractive alternative investments to his listeners. Specifically, Levin made the following statements about the Provident Shale Royalty offerings during his radio show on July 12, 2008:
- a. "I have a two year investment for you that is paying 15%. And then we are going to sell our mineral rights. We are not drilling for oil. We are not taking any chance here. We are buying cash flow. We are buying existing, producing wells in the Fort Worth area, in the Ardmore, Oklahoma area. The

company I'm dealing with is going to pay us 15% per year for the next two years and then sell the mineral rights off then give our money back. Here's the risk. The breakeven number is natural gas has to stay above \$5/M. Right now, it's at \$13. Demand would have to go down 75%. Demand ain't going anywhere for natural gas. We have to have it."

- b. "There's a two year investment. Now, I invested my money about eight months ago. It took this company about four months to raise \$30 million starting last November, December. Then it took – they did it again. Then it took about 60 days to raise \$30 million. The last time they did it, it took 40 days. They're coming out this week with another offering. Probably take 20 days. Here's what they do. They take, let's say \$30 million bucks of your money. They go to the Barnett Shale out of Ft. Worth area and in what's called the Woodford Shale out of Ardmore, Southwest Oklahoma area. They buy up existing, producing mineral right acreage. There's a bunch of wells on their land. They're getting cash flow. That cash flow pays us 15% for the next two years. They know people are going to come in and drill more on their land. There's no risk to us, to us when they drill, but if they hit, then we get a percentage of what they hit...This is a preferred stock in a partnership. That 15% income which comes monthly starting at about four months is taxed at the 15% bracket like a stock dividend."
- c. "It's for accredited investors, number one. \$50,000 for the life settlements, \$25,000 for the natural gas two year investment."

29. Additionally, Levin made the following statements about the Provident Shale Royalty offering during his Texas radio show on July 26, 2008:
- a. "There's a company in Dallas. They've been raising money for years. What they do, is they take your \$30 million. They go to the Barnett Shale, or they go up to the Woodford Shale near Ardmore and they buy up mineral rights."
 - b. "They're going to pay you, starting in about four months, a monthly income for two years of 15% per year for two years, and then they're going to give you your money back."
30. The actions detailed above constitute general solicitations. These statements, and others made by Levin during his Texas show, were designed to procure orders for Provident Shale Royalty offerings. Although the statements did not name the investments specifically, they were part of an overall scheme designed to awaken an interest in the offerings and were the first step in a campaign to sell these securities. These statements were not made to customers with whom Milkie Ferguson, Levin or [REDACTED] (or the issuer) had a pre-existing and substantive relationship, but rather broadcast indiscriminately to the general public – essentially, anyone with access to a radio within range of the radio signal.
31. After making the statements on the radio show, Milkie Ferguson, Levin and [REDACTED] sold Provident Shale Royalty offerings to customers. Because the securities had lost their exemption from registration under Regulation D as a result of the general solicitation described above, Levin's and [REDACTED] sales were impermissible sales of unregistered securities, in contravention of Section 5 of the Securities Act of 1933.

32. As a result of the foregoing, Respondents Milkie Ferguson, Levin and [REDACTED] violated NASD Rule 2110 (for conduct occurring before December 15, 2008) and FINRA Rule 2010 (for conduct occurring after December 15, 2008), by acting in contravention of Section 5 of the Securities Act of 1933.

THIRD CAUSE OF ACTION

Contingent Offering Violations by Milkie Ferguson
(Willful Violations of SEC Rules 10b-9 and 15c2-4 and NASD Rule 2110)

33. The Department realleges and incorporates by reference paragraphs 1-32 above.
34. Under SEC Rule 10b-9, it is a manipulative or deceptive device or contrivance to represent that a security is being sold as an "all or none" offering unless the consideration paid will be returned to the purchaser if the conditions are not met. Under this rule, if the terms of the contingent offering are modified, the offering will terminate and the investor funds must be returned. An offering period may be extended only if three conditions are met:
- a. Prior to the contingency deadline, a reconfirmation offer must be made to all subscribers that discloses the extension of the offering and any other material updates;
 - b. The reconfirmation offer must be structured so that the subscriber affirmatively elects to continue his investment; and
 - c. The reconfirmation offer must be made far enough in advance so that any subscriber who does not elect to continue his investment will have his funds returned promptly.

Similarly, under SEC Rule 15c2-4, a broker-dealer has two options upon receiving an investor's funds: (1) to promptly deposit the funds in a separate bank account as agent or trustee for the investor; or (2) to promptly transmit the funds to an unaffiliated bank, which has agreed in writing to act as escrow agent. Milkie Ferguson violated SEC Rules 10b-9 and 15c2-4 with respect to its sale of the interests in the Dino Partners, LP private placement.

35. The Dino Partners offering was an "all or none" contingent offering seeking to raise \$1,440,000. The Use and Return of Funds section in the Dino Partners LP Limited Partnership Interest Subscription Agreement provided that:

- a. All funds raised will be deposited in an escrow account in the name of Dino Development, LLC; and
- b. Should the total aggregate purchase price of \$1,440,000 not be received by January 19, 2007, moneys deposited by subscribers shall be promptly returned without interest.

36. The offering was initially set to close on January 19, 2007. The termination date of the offering was extended at least four times without any notice to customers. The offering was extended from January 2007 to February 16, 2007; from February 2007 to September 28, 2007; from September 2007 to November 2, 2007; and finally from November 2007 to December 31, 2007. The termination date of the offering as provided for in the fourth extension was December 31, 2007.

37. In January 2008, without returning investor funds, Dino Partners, LP amended its limited partnership agreement and changed the terms of the related subscription agreement to

delete the use and return of funds provision in the previous subscription agreements that created the deadline by which it would sell the 48 units and raise \$1,440,000.

38. The offering actually closed on February 15, 2008, and after raising only \$1,320,000 – less than the full contemplated amount of the offering in the original and amended subscription agreements described above. No funds were returned to investors after the offering had failed to raise the full amount, rendering false the representation in the first five subscription agreements that the money would be promptly returned if the full amount was not raised.
39. Milkie Ferguson did not inform investors of the extensions to the closing deadline or the subsequent changes to the partnership agreement and the removal of the use of funds provision in the last subscription agreement, nor did Milkie Ferguson obtain reconfirmations from investors that each was affirmatively electing to continue his or her investment. Moreover, when the use of funds provision was removed from the limited partnership agreement and subscription agreement, neither Milkie Ferguson nor Dino Partners returned investors funds. Finally, the offering closed and investors' funds were released to Dino Partners even though only 41 units had been sold and \$1,230,000 had been raised.
40. Neither Milkie Ferguson nor Dino Partners, LP entered into an escrow agreement providing for the handling of investors' funds pending the closing of the offering.
41. Milkie Ferguson was paid a total of \$57,091.50 in commissions for its participation in the Dino Partners, LP offering.

42. As a result of the foregoing, Respondent Milkie Ferguson willfully violated Securities Exchange Act Sections 10(b), 15(c), and SEC Rules 10b-9 and 15c2-4, and NASD Rule 2110.

FOURTH CAUSE OF ACTION

Failure to Supervise by Failing to Conduct Due Diligence and to Respond to Red Flags
against Respondents Milkie Ferguson, [REDACTED] and [REDACTED]
(Violations of NASD Rules 3010, 2110 and FINRA Rule 2010)

43. The Department realleges and incorporates by reference paragraphs 1-42 above.
44. Milkie Ferguson, [REDACTED] and [REDACTED] failed to adequately supervise the sale of private placements, in violation of NASD Rules 3010, 2110 and FINRA Rule 2010 because they failed to conduct adequate due diligence and respond to red flags on at least two private placements that the firm offered to customers: the Provident Shale Royalties offerings and the Retirement Value LLC offering.

Provident Shale Royalties Offerings

45. [REDACTED] the President of Milkie Ferguson, was responsible for conducting due diligence on behalf of Milkie Ferguson and had supervisory authority over due diligence on the Shale offerings. None of the principals at Milkie Ferguson, including [REDACTED] had any particular experience with the oil and gas industry or investments, other than reading periodicals regarding the commodity prices and trends.
46. Milkie Ferguson entered into a selling agreement to sell Provident's Shale Royalty 12 offering on June 2, 2008; to sell Provident's Shale Royalty 14 offering on July 22, 2008; and to sell Provident's Shale Royalty 18 offering on October 24, 2008. [REDACTED] acting for Milkie Ferguson, did little more than scan the "Due Diligence Books" for the different

offerings that the firm received from the wholesaler for Provident. Milkie Ferguson, acting through [REDACTED] failed to conduct its own reasonable investigation as a basis for its recommendation that customers purchase the Shale offerings, did not adequately verify the issuer's representations in the offering documents, and did not review (1) formation documents, (2) escrow documents, (3) ownership or title documents relating to wells allegedly owned, (4) financial statements or performance reports from previous projects, or (5) internal audit controls of the issuer.

47. Moreover, neither [REDACTED] nor any other firm principal requested or reviewed third-party due diligence reports that were available for the Shale Royalty 12 and 14 offerings from Mick & Associates. The Mick & Associates' reports raised numerous concerns and red flags. For Shale Royalties 14 in particular, the Mick & Associates report noted that Provident and its affiliated entities were collectively reporting (as a group) a net operating loss of \$8 million for the first five months of 2008. The report also noted that the affiliated Provident entities were collectively reporting about \$40 million of affiliated account receivables at the time, which was up from \$25 million as of March 30, 2008 and \$10 million as of year-end 2007. The report recommended that Provident should establish a formal set of guidelines to follow when engaging in affiliated-party transactions and that the procedures should expressly clarify that the money raised in one program may not be advanced to another program for the purpose of making distributions to investors. The report also expressed the author's desire to see third-party validation of Provident's financial for the remaining fiscal quarters in 2008.

48. As a result of the foregoing, Respondents Milkie Ferguson and ████████ violated NASD Rules 3010 and 2110 (for conduct occurring before December 15, 2008), and FINRA Rule 2010 (for conduct occurring after December 15, 2008).

Retirement Value Life Settlements

49. ████████ was responsible for conducting due diligence on and had supervisory responsibility on due diligence for Retirement Value.
50. In early 2009, representatives of Milkie Ferguson met with the wholesaler for Retirement Value, a new life settlements investment company, and became interested in selling the investment. Retirement Value promised returns to investors of 16.5% and paid commissions of between 16-18%.
51. Milkie Ferguson, acting through ████████ failed to respond reasonably to red flags discovered during its due diligence of the Retirement Value offering. Milkie Ferguson's due diligence efforts relied almost exclusively on conversations and meetings held with DG, the President of Retirement Value. Before making the decision to sell Retirement Value, ████████ on behalf of Milkie Ferguson, spoke to executives at Retirement Value to learn about the structure of the company. ████████ had concerns about the structure of the investment as a loan and the fact that the investors were not owners of the underlying insurance policy. Although he discussed these issues with Retirement Value, none of these concerns was resolved, and Milkie Ferguson decided to sell the investment without resolution of the concerns.
52. ████████ also conducted internet searches on the executives to learn about their backgrounds, but was not concerned when the searches showed that in June 2009 the Texas Department

of Insurance had moved to have DG's insurance license revoked for his earlier participation in the sale of life settlements that the Securities and Exchange Commission had alleged was a Ponzi scheme. Instead, [REDACTED] simply relied on DG's explanation as to the regulatory action by the Texas Department of Insurance.

53. Levin, acting on behalf of Milkie Ferguson, also contacted the wholesaler for Life Partners, another life settlement investment that Milkie Ferguson had been selling previously. The wholesaler, CC, raised in an email several concerns regarding Retirement Value, including the following:

- a. That Retirement Value had not processed or closed on one policy yet;
- b. Concerns regarding the licensure of the individual picking the policies to purchase and his track record in terms of picking profitable policies;
- c. Concerns regarding the sustainability of Retirement Value's high promised investor returns and high commissions, particularly as the demand for policies went up in the future;
- d. The fact that Retirement Value allowed unlicensed people to sell their product;
- e. Concerns regarding what would happen when life settlements are determined to be a security and Retirement Value's sales force is unqualified and unable to sell it;
- f. That Retirement Value had no track record; and
- g. Concerns regarding what happens if the company goes out of business and who actually owns and is the beneficiary of the policies.

Levin shared these concerns with [REDACTED] but [REDACTED] failed to respond to them.

54. Levin also raised CC's concerns with DG, the President of Retirement Value, who responded by offering CC a 2% override commission on all Milkie Ferguson sales of Retirement Value if he would give the investment his blessing. CC declined to approve Retirement Value in exchange for the override. After confirming that the 2% override commission could instead be paid to Milkie Ferguson, in addition to the 16% regular commission that Retirement Value was offering, [REDACTED] signed the selling agreement with Retirement Value on behalf of Milkie Ferguson.
55. On August 27, 2009, approximately one month after signing the selling agreement, [REDACTED] and other Milkie Ferguson principals met with Retirement Value executives at the Retirement Value offices in New Braunfels, Texas. Before the visit, [REDACTED] requested that DG have documentary information available on Retirement Value's structure so that [REDACTED] could see how the numbers were trending to date. [REDACTED] also requested that the Milkie Ferguson group meet with the lawyers acting as escrow agents who were to maintain custody of the life insurance policies and funds. When they arrived at the Retirement Value offices, however, there was no documentary information available for [REDACTED] to review and the lawyers were not available for them to meet. Rather, [REDACTED] talked exclusively with the Retirement Value executives about how the investment worked and concluded that he was satisfied.
56. Also after signing the selling agreement, Retirement Value's DG requested that Milkie Ferguson not refer to the product as a life settlement, but rather as a "resale" of life insurance, and that instead of using the term "investors", they refer to them as "participants." The explanation for this request was that Retirement Value had been

trying for three years to remove all words that might attract attention of regulators. Again, [REDACTED] was not concerned by this.

57. As a result of the foregoing, Respondents Milkie Ferguson and [REDACTED] violated NASD Rules 3010 and FINRA Rule 2010.

FIFTH CAUSE OF ACTION

Insufficient Written Supervisory Procedures, by Milkie Ferguson and [REDACTED]
(Violations of NASD Rules 3010 and 2110, and FINRA Rule 2010)

58. The Department realleges and incorporates by reference paragraphs 1-57 above.
59. NASD Rule 3010(b) requires that each member “establish, maintain and enforce written procedures to supervise the types of business in which it engages.” Written supervisory procedures are deficient if they failed to address a line of business in its entirety, or if they fail to memorialize any of the following:
- a. Specific identification of the individual(s) responsible for supervision.
 - b. The supervisory steps and reviews to be taken by the appropriate supervisor.
 - c. The frequency of such reviews.
 - d. How such reviews shall be documented.
60. As described in the Third and Fourth Causes of Action, Milkie Ferguson engaged in both private placement offerings (Regulation D offerings) and contingent offerings during the period from 2007 to 2009. Milkie Ferguson’s written supervisory procedures in place during this time (dated August 8, 2005 and July 18, 2008), however, did not address either of these lines of business. Although the August 8, 2005 procedures indicated that JM was responsible for the sale of private placements, the July 18, 2008 procedures indicated “N/A” as responsible for supervision of this area.

61. The firm's written supervisory procedures failed to address how private placements were reviewed and approved for sale by the firm, and failed to address the due diligence to be conducted prior to approval.
62. The firm's written supervisory procedures failed to address the regulatory requirements related to private placements, and specifically, Regulation D, the offering exemption relied upon in the Provident and TRA Bryan offerings.
63. The firm's written supervisory procedures failed to address the suitability of recommendations for investments in private placements. In fact, although offerings in both Provident and TRA Bryan were limited to accredited investors, numerous Milkie Ferguson customers who invested in those offerings were either not accredited, or the firm lacked documentation evidencing that they were accredited.
64. During the period when the firm was selling interests in the Dino Partners contingency offering—January 2007 through February 2008—Milkie Ferguson's written supervisory procedures failed to include any provisions regarding the sale of contingency offerings, including the establishment of escrow accounts or the requirement that investor funds be returned if the contingency was not met. In addition, no individual at the firm was designated as responsible for the supervision of this area.
65. [REDACTED] as the President and Chief Executive Officer of Milkie Ferguson during the period in question, was responsible for the overall supervision of the firm.
66. As a result of the foregoing, Respondents Milkie Ferguson and [REDACTED] violated NASD Rules 3010 and 2110 (for conduct occurring before December 15, 2008), and FINRA Rule 2010 (for conduct occurring after December 15, 2008).

SIXTH CAUSE OF ACTION

**Failure to Supervise, by Milkie Ferguson and [REDACTED]
(NASD Rules 3010 and 2110 and FINRA Rule 2010)**

67. The Department realleges and incorporates by reference paragraphs 1-66 above.
68. Aizen was the Milkie Ferguson principal responsible for the supervision of Levin and [REDACTED] for approval of their use of the Texas and Los Angeles radio shows to promote firm products, as well as for their use of a firm website. [REDACTED] approved the publication and contents of Levin's website on life settlements in 2007. Additionally, [REDACTED] was the principal primarily responsible for reviewing the contents of Levin's radio shows, but did not regularly review the shows, even after FINRA's Advertising Regulation department raised concerns regarding the contents. [REDACTED] review and supervision of the radio shows and the website was inadequate to prevent both the violative advertising made on the shows, as well as the general solicitation to the public that resulted in the firm's sale of unregistered securities.
69. As a result of the foregoing, Respondents Milkie Ferguson and [REDACTED] violated NASD Rules 3010 and 2110 (for conduct occurring before December 15, 2008), and FINRA Rule 2010 (for conduct occurring after December 14, 2008).

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;

- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;
- D. make specific findings that Respondent Milkie Ferguson willfully violated Rules 10b-9 and 15c2-4 of the Securities Exchange Act 1934.

FINRA DEPARTMENT OF ENFORCEMENT

Date: September 7, 2012

Handwritten signature of Andrew A. Favret in black ink, followed by the initials "/cs".

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