

FINRA
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Richard J. Buswell

[CRD No. 4770105],

and

Herbert S. Fouke

[CRD No. 5523938],

and

Brookstone Securities, Inc.

[CRD No. 13366],

and

Antony L. Turbeville

[CRD No. 1721014],

and

David W. Locy

[CRD No. 4682865],

and

Mark M. Mercier

[CRD No. 1884246],

Respondents.

Disciplinary Proceeding

No. 2009017275301

Hearing Officer: MC

ORDER ACCEPTING
OFFER OF SETTLEMENT

Date: September 27, 2011

INTRODUCTION

Disciplinary Proceeding No. 2009017275301 was filed on June 28, 2010, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondents Brookstone Securities, Inc., Antony L. Turbeville, and David W. Locy (Respondents) submitted an Offer of Settlement (Offer) to Complainant dated September 8, 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 Complaint, as amended by the Offer, 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 Complaint, as amended by the Offer, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of the Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

1. Brookstone Securities, Inc, acting through its president David W. Locy, failed to supervise Buswell regarding his sale of the investments in the privately-held corporations and his other unsuitable recommendations. In addition, Brookstone failed to supervise Buswell regarding his other sales practice violations. Brookstone failed to establish, maintain, and enforce reasonable supervisory procedures in the following four areas: (1) due diligence; (2) prevention and detection of unsuitable recommendations resulting from excessive trading, excessive use of margin, and over-concentration; (3) the new account application process; and (4) the reviews of customer accounts required by the procedures.
2. Advanced Blast Protection, Inc. ("Advanced Blast") was a corporation that claimed to have developed a bullet-resistant glass "designed to stop hostile fire while allowing return fire through the material without compromising ballistic integrity." Advanced Blast planned to complete a \$12.5 million private placement by December 15, 2008 and a \$25 million public offering or follow-on private placement by June 2009. In advance of these

planned offerings, Advanced Blast needed to borrow funds to support its operations. To bridge the time period to completion of the first offering, Advanced Blast issued units consisting of 10% unsecured bridge notes maturing December 15, 2008 and warrants to purchase common stock of a successor company to Advanced Blast (First AB Units). Advanced Blast failed to raise sufficient capital through the sale of the First AB Units, and it then issued units consisting of 10% unsecured promissory notes maturing March 15, 2009 and additional warrants (Second AB Units). Advanced Blast neither repaid the holders of the First or Second AB Units nor exchanged their warrants for common stock. Advanced Blast filed for Chapter 11 bankruptcy protection in June 2009.

3. The Brookstone Securities, Inc. private placement offering was a self-offering by the broker-dealer that is a Respondent in the complaint. It was a high-risk speculative offering, available only to accredited investors. Brookstone Securities has ceased paying the dividend on the offering.
4. Respondent Brookstone Securities, Inc. ("Brookstone") has been a member of FINRA since April 8, 1983. During all periods mentioned herein, Brookstone was a registered broker-dealer with the United States Securities and Exchange Commission and a member of FINRA.
5. David W. Locy entered the securities industry on August 5, 2003, as a General Securities Representative of a FINRA member firm. Locy, during all periods mentioned herein, was associated with member firm Brookstone Securities, Inc. and was registered with FINRA under Article V of the By-Laws as a Financial and Operations Principal, Registered Options Principal, Municipal Securities Principal, General Securities Principal, and General Securities Representative, and subsequently, on December 15,

2009, as an Investment Banking Representative, which registrations remain currently in effect. Locy was the Chief Operating Officer and President of Brookstone during all periods referenced in the Complaint.

6. Antony L. Turbeville entered the securities industry on September 4, 1987, as an Investment Company and Variable Contracts Products Representative of a FINRA member firm. Turbeville, during all periods mentioned herein, was associated with member firm Brookstone Securities, Inc. and was registered with FINRA under Article V of the By-Laws as an Investment Company and Variable Contracts Products Representative, General Securities Principal, and General Securities Representative, and subsequently, on February 19, 2010, as an Investment Banking Representative, which registrations remain currently in effect. Brookstone Capital Management which is owned by Turbeville is a 75% owner of Brookstone Securities, Inc. During all periods referenced in the Complaint, Turbeville was Chief Executive Officer of Brookstone.

FINDINGS AND CONCLUSIONS

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

7. From on or about July 9, 2008 to on or about January 14, 2009, Buswell and Fouke, while associated with Brookstone Securities, Inc., made misrepresentations and/or omissions of material fact in connection with the sale of First and Second AB Units to customers SB, MB, JS, JG, CG, JY, GY, SH, EH, JO, AN and PN.
8. Customers SB, MB, JS, JY, GY, SH, EH, JO, AN, and PN entered into Subscription Agreements with Advanced Blast for the purchase of First AB Units.

¹ The findings herein are pursuant to Respondents Brookstone Securities, Inc., Antony L. Turbeville, and David W. Locy's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

9. Based upon conversations with Turbeville and with representatives of Advanced Blast, Buswell and Fouke understood that Advanced Blast had a firm commitment from Jesup & Lamont to underwrite a \$12.5 million private placement for Advanced Blast stock. They further understood that Advanced Blast was obligated to pay the principal and interest of the bridge notes of the First AB Units from the \$12.5 million raised in the offering. As shown by the Private Placement Memorandum for the \$12.5 million offering and engagement letter between Advanced Blast and Jesup & Lamont, this understanding was incorrect.
10. Both the Private Placement Memorandum for the \$12.5 million offering and the engagement letter for Jesup & Lamont was available to Buswell and Fouke. Both documents state that Jesup & Lamont would act as the placement agent only and not as an underwriter. The engagement letter makes clear that Jesup & Lamont could withdraw as placement agent for any reason at any time. In fact, Jesup & Lamont did withdraw as placement agent and did not provide financing to Advanced Blast.
11. The Private Placement Memorandum was not provided to the customers identified in Paragraph 8 above, notwithstanding a receipt acknowledgement contained in the Subscription Agreements.
12. Based upon their erroneous belief that Jesup & Lamont was obligated to sell or purchase the private placement in Advanced Blast, Buswell and Fouke, while associated with Brookstone, told purchasers of the First AB Units identified in Paragraph 8 above that the Bridge Notes were guaranteed. Buswell and Fouke had no reasonable basis for making this guarantee given the description of Jesup & Lamont's limited role in the Private Placement Memorandum. Buswell and Fouke, while associated with Brookstone,

disclosed no risks regarding the financing or regarding the financial health of Jesup & Lamont or Advanced Blast.

13. In addition to guaranteeing the payment of the Bridge Notes, Buswell and Fouke, while associated with Brookstone, provided unwarranted price predictions to the customers regarding the future price of common stock for which the Warrants of the First AB Units would be exchangeable. According to Buswell and Fouke, the Warrants were valuable because shares of Advanced Blast were already worth \$5 a share. Buswell and Fouke, while associated with Brookstone, provided price predictions to the customers, claiming that the shares would go up in value to \$15 a share. Because neither the shares nor the Warrants were being traded at the time the Warrants issued, Buswell and Fouke could not determine their value. Furthermore, the offering documents issued by Advanced Blast made clear that the exercise price would be the lower of \$5 per share or another undetermined number.
14. Buswell and Fouke, while associated with Brookstone, guaranteed the payment at maturity of the Promissory Notes issued in the Second AB Units. Buswell and Fouke stated these instruments were safe due to the existence of an escrow account, leading the customers to believe that funds raised by the sale of the anticipated private placement would be held in escrow for redemption of the Promissory Notes. The Escrow Agreement, which was not provided to the customers, provides that the first \$1.5 million raised in the private placement would be escrowed, and then paid to Advanced Blast after investments reached that level.
15. The Private Placement Memorandum for Advanced Blast Protection made clear that Jesup & Lamont had no commitment to provide financing for the private placement or a

later public offering. In the absence of financing by Jesup & Lamont, repayment of the Bridge Notes and Promissory Notes was dependent upon the financial condition of Advanced Blast. The Private Placement Memorandum identified risk factors such as the company's limited operating history, the lack of liquidity, the absence of dividends, legal proceedings, continuing capital requirements, and potential creditor claims arising from the operating losses of a technology company recently acquired by Advanced Blast Protection. Buswell and Fouke, while associated with Brookstone, recklessly or knowingly failed to disclose the risk that the financing would not occur and recklessly or knowingly failed to disclose the other risks outlined in the Private Placement Memorandum.

16. On or about September 30, 2008, Buswell and Fouke, while associated with Brookstone, guaranteed to SH and EH that they would receive back their principal investment in First AB Units plus a 10% return on their investment by December 2008. Buswell and Fouke further represented that the Advanced Blast Warrants were worth \$7 a share and later would be worth \$15 a share. Although Buswell never invested personal funds in Advanced Blast, Buswell represented to SH and EH that he had invested 70% of his own funds in Advanced Blast. At the inducement of Buswell and Fouke, SH and EH invested \$100,000 in First AB Units.
17. On or about July 15, 2008, Buswell and Fouke, while associated with Brookstone, guaranteed to JO that he would receive back his original investment in First AB Units plus an additional 10% during the month of December 2008. At the time of JO's purchase, Buswell and Fouke told him the Advanced Blast Warrants were worth \$5 a share. This representation was misleading. The value of the Warrants was dependent

upon the success of Advanced Blast and the existence of a secondary market. At the inducement of Buswell and Fouke, JO invested \$25,000 in First AB Units.

18. On or about July 22, 2008 and on or about August 7, 2008, Buswell and Fouke, while associated with Brookstone, represented to JY and GY that they were guaranteed to receive back the return of their original investment in First AB Units plus a 10% return by December 2008. Buswell and Fouke also told JY and GY that the Warrants issued as part of the First AB Units would be worth \$15 a share. At the inducement of Buswell and Fouke, JY and GY invested \$160,000 in First AB Units.
19. On or about December 19, 2008 and January 5, 2009, Buswell and Fouke, while associated with Brookstone, guaranteed to JG and CG that their investment in Second AB Units would result in a return of their investment no later than March 15, 2009. Buswell and Fouke further stated that on June 9, 2009, the company would go public and the shares they would receive for their Warrants would be worth at least \$5 a share. They also stated that the funds the customers would invest would be held in escrow to ensure payment of the Promissory Notes at maturity. In connection with the January 5, 2009 transaction, Buswell and Fouke told JG and CG that a private equity firm would be buying all of the shares held by individual investors and that the share price would jump to at least \$15 a share. At the inducement of Buswell and Fouke, JG and CG invested \$250,000 in Second AB Units.
20. On or about July 21, 2008, Buswell and Fouke, while associated with Brookstone, guaranteed to AN and PN that an investment in First AB Units would provide a return of principal plus 10% interest and Warrants. Buswell and Fouke further told AN and PN

that the Warrants of the First AB Units would be worth \$15. At the inducement of Buswell and Fouke AN and PN invested \$25,000 in First AB Units.

21. On or about July 9, 2008, and January 14, 2009, Buswell and Fouke, while associated with Brookstone, guaranteed to SB and MB that an investment in Advanced Blast would provide a return of their principal in December 2008 and March 2009. Buswell and Fouke also told SB and MB that an investment in Advanced Blast was as safe as depositing money in a bank. At the inducement of Buswell and Fouke, SB and MB invested \$275,000 in First AB Units and \$125,000 in Second AB Units.
22. On or about September 16, 2008 and September 29, 2008, Buswell and Fouke, while associated with Brookstone, guaranteed to JS that an investment in First AB Units would provide a return of principal plus 10% by the end of 2008. Buswell and Fouke further represented that due to the bridge loans received, Advanced Blast had the financing to be sold publicly in the stock market. At the inducement of Buswell and Fouke, JS purchased \$250,000 in First AB Units.
23. Buswell and Fouke failed to inform investors of any risks associated with the investments in First and Second AB Units and specifically did not discuss the risks outlined in the Private Placement Memorandum that could result in the investors losing their entire investment.
24. In connection with the purchase or sale of First and Second AB Units, Buswell and Fouke, intentionally or recklessly, by the use of means of interstate commerce or of the mails, (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not

misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

25. The conduct described in paragraphs 7 through 24 constitutes willful violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110 and 2120, and FINRA Rules 2010 and 2020 by Brookstone Securities, Inc.
26. From on or about June 13, 2008 to on or about October 16, 2008, Buswell, while associated with Brookstone, made misrepresentations and/or omissions of material fact in connection with the sale of the private placement of Brookstone Securities, Inc. units consisting of Class B Common Stock and Warrants to purchase Class A common Stock to customers JS, SB, MB, JY and GY. The Private Placement Memorandum (PPM) for the Brookstone self-offering stated that the investment was speculative, involving a high degree of risk, and was only suitable for persons who could risk losing their entire investment. The PPM also stated that the investment was illiquid. Buswell made representations directly contrary to the provisions contained in the PPM.
27. On or about October 16, 2008, Buswell, while associated with Brookstone, represented to JS that he would invest \$200,000 of JS's funds in a private placement called Lightstone. In direct contradiction of his representation, he invested the funds in the Brookstone Securities, Inc. private placement. After JS discovered that he was invested in Brookstone, Buswell assured him that Brookstone would provide a return of 7% to 8% per year.
28. On or about June 13, 2008 and August 21, 2008, Buswell, while associated with Brookstone, represented to SB and MB that he would invest their \$100,000 in the

Lightstone private placement. In direct contradiction of his representation, he invested the funds in the Brookstone Securities, Inc. private placement. No investment was ever made in Lightstone. After SB and MB discovered that they were invested in Brookstone, Buswell assured them that investing in Brookstone was like investing in a money market fund or in a certificate of deposit. Buswell stated that there was no risk to the investment, and that SB and MB could have access to their money whenever they wished.

29. On or about July 22, 2008, Buswell, while associated with Brookstone, represented to JY and GY that the Brookstone private placement was a safe investment, that JY and GY could expect an annual return of 7%, and that the investment could be liquidated two weeks after purchase. JY and GY invested \$100,000 in the Brookstone Securities, Inc. private placement.
30. Buswell had no basis for making the representations described above to JS, SB, MB, JY, and GY. In fact, due to the statements regarding risk and illiquidity in the Private Placement Memorandum, Buswell acted recklessly or knowingly because he knew or should have known that the representations that he made to the customers were false.
31. In connection with the purchase of sale the Brookstone Securities, Inc. private placement, Buswell, intentionally or recklessly, by the use of means of interstate commerce or of the mails, (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

32. The conduct described in paragraphs 26 through 31 constitutes willful violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110 and 2120, and FINRA Rules 2010 and 2020 by Brookstone Securities, Inc.
33. During the period from on or about June 13, 2008 through on or about January 14, 2009, Buswell and Fouke, while associated with Brookstone, recommended and effected the sale of First and Second AB Units and the Brookstone Securities, Inc. private placement to SB, MB, JY, GY, AN and PN without having a reasonable basis to believe that the transactions were suitable given the financial circumstances and condition of the customers.
34. In addition, during the same time period described in paragraph 33, Buswell, while associated with Brookstone, recommended and effected the sale of the Brookstone private placement to customers SB, MB, JY and GY without having a reasonable basis to believe that the transactions were suitable given the financial circumstances and condition of the customers.
35. Both the Advanced Blast and the Brookstone investments were high risk and, according to their offering documents, were appropriate only for accredited investors: those who had either a net worth exceeding \$1 million or annual income exceeding \$200,000.
36. Buswell and Fouke, while associated with Brookstone, recommended the purchase by SB and MB \$400,000 of First and Second AB Units, and Buswell recommended their investment of \$175,000 in the Brookstone Securities private placement. SB and MB identified their investment style as conservative on the new account form and listed annual income of \$150,000. The customers had a net worth that was below \$1 million. Their level of income and net worth precluded them from qualifying as accredited

investors under either private placement. Despite the customers' desire to invest conservatively, Buswell and Fouke recommended that they invest 74% of their liquid net worth in these high-risk, unsuitable securities. The customers lost their entire investment of \$400,000 in first and Second AB units and \$175,000 in Brookstone Securities.

37. Buswell and Fouke, while associated with Brookstone, also recommended the purchase by JY and GY of \$160,000 in First AB Units. Buswell recommended their investment of \$100,000 in Brookstone Securities. JY and GY identified their investment style as conservative on their new account form and listed income as their primary investment objective, with preservation of capital as their secondary investment objective. The customers listed their annual income as \$125,000, and had a net worth of \$840,000. JY and GY's limited income and net worth precluded them from qualifying as accredited investors. The recommendation by Buswell and Fouke to place 34% of the customers' liquid net worth in these private investments was inconsistent with their desire to invest conservatively and unreasonable given with their financial condition. The customers lost their entire investment of \$160,000 in First AB Units and \$100,000 in Brookstone Securities.
38. Buswell and Fouke also recommended the purchase by AN and PN of \$25,000 in First AB Units. AN and PN identified their investment style as moderate on their new account form and stated their first three investment objectives to be growth, income, and preservation of capital. The customers had an annual income of \$135,000 and a net worth of \$535,000. Their income and net worth precluded them from qualifying as accredited investors. Given their investment objectives and financial condition, Buswell and Fouke could have no reasonable basis for recommending their investment in the

Advanced Blast Bridge Notes. The customers lost their entire investment of \$25,000 in First AB Units.

39. The conduct described in paragraphs 33 through 38 constitutes violations by Brookstone Securities, Inc. of NASD Conduct Rules 2310 and 2110, and FINRA Rule 2010.
40. During the period from on or about September 30, 2008 through on or about March 25, 2009, Buswell, while associated with Brookstone, recommended and effected unsuitable transactions in the accounts of customers JS, GY and CG without having a reasonable basis for the recommendations. Buswell recommended a trading strategy that relied upon frequent trading, use of margin, and concentration of the accounts in a small number of financial stocks. The trading strategy was unsuitably risky for the customers given what Buswell knew or should have known about the financial circumstances and investment objectives of the customers.
41. On his new account form for his individual brokerage account, JS stated a moderate investment style with a primary objective of growth and a secondary objective of preservation of capital. He was 55 years old and owned a company that installed garage doors.
42. Buswell, while associated with Brookstone, recommended a strategy of frequent trading in JS's account. From September 25, 2008 to March 31, 2009, JS's individual brokerage account with Brookstone incurred a turnover ratio of 10.82 (18.56% annualized), a commission-to-equity ratio of 27.52% (47.18% annualized), a cost-to-equity ratio of 30.82% (52.83% annualized) and a trading loss of \$1,473,560.03 (or 94.21% of the value of the account). Buswell effected 280 transactions in the account, generating

approximately \$123,344.65 in commissions. The frequent trading was unsuitable given JS's investment objectives for the account.

43. In addition, Buswell, while associated with Brookstone, recommended that JS make use of margin in the account. Although JS initially told Buswell that he did not want to use margin, JS reluctantly agreed to sign a margin agreement based upon Buswell's urging. From December 2008 to February 2009, Buswell traded more than 50% of the account on margin. Due to the margin balances, JS's account incurred \$14,738.01 in margin interest by March 31, 2009. In addition, the significant margin balances coupled with market losses resulted in margin calls in January 2009 that required JS to deposit \$525,000 into the account in order to avoid completely depleting the account. The amount of margin used was unsuitable given JS's moderate investment style and objectives of growth and preservation of capital.
44. Prior to investing with Buswell, JS had a portfolio diversified among numerous stocks and mutual funds and diversified among sectors. Buswell, however, recommended that JS concentrate his account in three financial stocks: (1) Barclays ADR (\$411,600); (2) ING Group ADR (\$368,520); and (3) Royal Bank of Scotland ADR (\$356,495). Together these stocks comprised 79% of the value of the account and 47.35% of JS's liquid net worth. Concentration of JS's trading account in three stocks in the same sector exposed JS to a level of risk incompatible with JS's moderate risk tolerance and investment objectives.
45. Buswell exercised *de facto* control over the account of JS because he used discretion without prior written authorization from JS and because JS relied on Buswell to such an extent that he did not independently evaluate Buswell's recommendations.

46. On her new account form, GY states that she is a conservative investor, listing growth as her primary investment objective and preservation of capital as her secondary objective. She was employed as a health inspector.
47. Buswell, while associated with Brookstone, recommended a frequent trading strategy for GY's account. From October 15, 2008 to January 30, 2009, GY's individual brokerage account with Brookstone incurred a turnover ratio of 4.22 (12.67% annualized), a commission-to-equity ratio of 21.62% (64.86% annualized); a cost-to-equity ratio of 23.39% (70.16% annualized) and a trading loss of \$158,502.85 (or 99.59% of the value of the account). Buswell effected 118 transactions in the account, generating approximately \$17,000.29 in commissions. The frequency of trading was unsuitable given GY's conservative investment style and investment objectives.
48. In addition, Buswell, while associated with Brookstone, recommended that GY make use of margin in the account. GY had not previously used margin and did not initially agree to use margin in the account. Buswell, however, received the positions from GY's prior investment firm on October 15, 2008 and immediately began to trade on margin. Not until a month later, on November 15, 2008, did GY sign a margin agreement. In December 2008, more than 50% of the account was on margin. Due to the large margin balances, the account had incurred \$1,388.98 in margin interest as of March 31, 2009. The significant margin balances combined with market losses resulted in large margin calls in the account. The margin calls depleted the account, because GY could not provide additional funds to cover the margin calls. The use of margin was unsuitable given GY's conservative risk tolerance and investment objectives.

49. Prior to investing with Buswell, GY had a brokerage account that consisted of six stocks and one mutual fund and a managed account consisting of cash and 65 separate stocks. These positions were all transferred to GY's individual brokerage account with Buswell. Despite her prior diversification, Buswell recommended that GY concentrate her account in two financial stocks; (1) ING Group ADR (\$88,800) and (2) Royal Bank of Scotland ADR (\$121,360). These stocks collectively totaled 82% of the value of the account and 25% of GY and JY's liquid net worth. Concentration of GY's trading account in two stocks in the same sector exposed GY to a level of risk incompatible with GY's conservative risk tolerance and investment objectives.
50. Buswell exercised *de facto* control over the account of GY because he used discretion without prior written authorization from GY and because GY relied on Buswell to such an extent that she did not independently evaluate Buswell's recommendations.
51. On her new account form for her individual brokerage account, CG states a moderate investment style with a primary investment objective of growth and a secondary investment objective of income. She lists preservation of capital as her third investment objective and chose aggressive and speculation as her least important investment objectives.
52. Buswell, while associated with Brookstone, recommended a strategy of frequent trading in her account. From December 12, 2008 to April 9, 2009, CG's individual brokerage account with Brookstone incurred a turnover ratio of 16.25% (48.75% annualized), a commission-to-equity ratio of 11.08% (33.25% annualized); a cost-to-equity ratio of 12.80% (38.39% annualized) and a trading loss of \$123,378.09 (or 42.74% of the value of the account). Buswell effected 223 transactions in the account, generating

approximately \$26,012.01 in commissions. The frequency of trading was unsuitable given CG's risk tolerance and investment objectives.

53. In addition, Buswell, while associated with Brookstone, recommended that CG make use of margin in the account. Although CG told Buswell that she did not want to trade on margin, Buswell recommended that CG use margin and had her sign a margin agreement on the day the account was opened (December 4, 2008). Buswell immediately began trading on margin in CG's account. For the months February 2009 and March 2009, he traded more than 50% of the account on margin. Due to the large margin balances, the account incurred \$4,022.12 in margin interest by March 31, 2009. The significant margin balances and market losses caused very large margin calls in CG's account in March 2009. The margin calls required CG to fund the account with \$44,350 in order to avoid completely depleting the account. The use of margin in the account was unsuitable given CG's stated risk tolerance and investment objectives.
54. Prior to investing with Buswell, CG had a portfolio diversified among cash, municipal bonds, stocks, and exchange traded funds. Buswell, however, concentrated 100% of CG's individual brokerage account in three financial stocks: (1) Barclays ADR (\$205,600); (2) ING ADR (\$180,400); and (3) Wells Fargo (\$363,000). These stocks collectively totaled 100% of the value of the account and 29.96% of JG and CG's liquid net worth. Concentration of CG's trading account in three stocks in the same sector exposed CG to a level of risk incompatible with CG's moderate risk tolerance and investment objectives.

55. Buswell exercised *de facto* control over the account of CG because he used discretion without prior written authorization from CG and because CG relied on Buswell to such an extent that she did not independently evaluate Buswell's recommendations.
56. On his new account form for his individual brokerage account, JG states a moderate investment style with a primary investment objective of growth and a secondary investment objective of income. Like CG, he lists preservation of capital as his third investment objective and chose aggressive and speculation as his least important investment objectives.
57. Buswell, while associated with Brookstone, recommended a strategy of frequent trading in his account. From January 8, 2009 to April 9, 2009, JG's individual brokerage account with Brookstone incurred a turnover ratio of 16.51% (66.05% annualized), a commission-to-equity ratio of 1.47% (5.87% annualized); a cost-to-equity ratio of 3.39% (13.55% annualized) and a trading loss of \$822,696.79 (or 61.69% of the value of the account). Buswell effected 306 transactions in the account, generating commissions of approximately \$9,118.94.
58. In addition, Buswell, while associated with Brookstone, recommended that JG make use of margin in the account. JG told Buswell that he did not want to trade on margin. Buswell, however, recommended that JG sign a margin agreement on January 27, 2009, one week after JG opened the account. Buswell immediately began trading on margin in JG's account. For the months February 2009 and March 2009, he traded more than 50% of the account on margin. Due to the large margin balances, the account incurred \$11,938.58 in margin interest by March 31, 2009. The large margin balances and market losses caused very large margin calls in JG's account in March 2009. The margin calls

required JG to fund the account with \$182,000 in order to avoid completely depleting the account. The use of margin in the account was unsuitable given JG's stated risk tolerance and investment objectives.

59. Prior to investing with Buswell, JG had a managed account diversified among cash eight municipal bonds and 54 stocks. Buswell concentrated 100% of CG's individual brokerage account in three financial stocks: (1) Barclays ADR (\$771,000); (2) ING ADR (\$676,500); and (3) Wells Fargo (\$1,089,000). These stocks collectively totaled 100% of the value of the account and, due to the use of margin, over 100% of JG and CG's liquid net worth. Concentration of JG's trading account in three stocks in the same sector exposed JG to a level of risk incompatible with JG's moderate risk tolerance and investment objectives.
60. Buswell exercised control over the account of JG because he used discretion without prior written authorization from JG.
61. The conduct described in paragraphs 40 through 60 constitutes violations by Brookstone Securities, Inc. of NASD Conduct Rules 2310 and 2110, and FINRA Rule 2010.
62. During the period from on or about September 30, 2008, through on or about March 25, 2009, Buswell, while associated with Brookstone, exercised discretion without prior written authorization in the accounts of customers JS, GY, JY, JG and CG.
63. From October 8, 2008 to March 11, 2009, Buswell effected 214 trades in the account of JS without first discussing the trades with JS. Though required by the firm, Buswell did not have a prior written agreement with JS allowing him to use discretion, nor was the account accepted as discretionary by the firm.

64. From November 14, 2008 to February 10, 2009, he effected 30 trades in the account of JY and GY without first discussing the trades with them. Though required by the firm, Buswell did not have a prior written agreement with JY and GY allowing him to use discretion, nor was the account accepted as discretionary by the firm.
65. From December 10, 2008 to February 6, 2009, he effected 291 trades in the accounts of JG and CG without first discussing the trades with them. Though required by the firm, Buswell did not have a prior written agreement with JG and CG allowing him to use discretion, nor was the account accepted as discretionary by the firm.
66. The conduct described in paragraphs 62 through 65 constitutes violations of NASD Conduct Rules 2510 and 2110, and FINRA Rule 2010 by Brookstone Securities, Inc.
67. During the period from on or about June 13, 2008 to on or about March 25, 2009, Brookstone Securities, acting through Locy, failed to reasonably supervise registered representative Buswell.
68. Locy was the Chief Operating Officer and President of Brookstone during the entire time period.
69. Locy was aware of red flags that required reasonable investigation by them. Locy did not reasonably follow up on the red flags.
70. Locy was aware of the following red flags that should have alerted him to the need to investigate Buswell's sales practices and determine whether trading restrictions, heightened supervision, or discipline were warranted:
 - (i) Locy was aware by October 15, 2008, of a complaint filed by a customer against Buswell asserting claims of excessive trading, unsuitable use of margin, and

misrepresentation. Based only upon Buswell's explanation, the firm dismissed the matter as a personal vendetta by the customer. The firm never contacted the customer or imposed any additional supervision on Buswell.

- (ii) Locy was aware in November of 2008 that Buswell had charged excessive commissions in the account of JS. During the first month that JS's account was opened, the account received a transfer of approximately \$1.6 million in equities. Buswell liquidated these assets, charging a commission of \$148,000 or 9%. The compliance department determined that the firm should reimburse \$70,000 to JS. Despite the excessive commissions, the firm never contacted the customer and did not impose any additional supervision on Buswell.
- (iii) By November 2008, Brookstone's Chief Compliance Officer had recommended to Locy that Buswell be placed on heightened supervision. His recommendation was rejected.
- (iv) Locy was aware that Buswell was financially unstable. From the beginning of his employment with Brookstone, Buswell made weekly requests for advances on commissions. At one time, Brookstone had outstanding advances to Buswell of as much as \$100,000. Despite this red flag, the firm took no steps to scrutinize Buswell's sales practices.
- (v) Beginning in July 2008, Buswell began appearing on the firm's active trading report. Between July 18, 2008 and January 31, 2009, the report noted 709 active trading exceptions for Buswell. Locy was aware of Buswell's frequent appearance on the report, because he reviewed the report on a monthly basis and was responsible for addressing the exceptions on the report. Locy took no steps to contact Buswell's

customers, place Buswell on heightened supervision, or restrict his trading. He simply reviewed the exceptions and initialed the report, noting that the exceptions had been cleared.

- (vi) On or about January 7, 2008, Locy received an information request from FINRA regarding an investigation of Buswell. A customer had stated that Buswell had engaged in private securities transactions by attempting to sell interests in Buswell's branch office. Despite receipt of the letter, the firm took no steps to investigate Buswell's activities.
- (vii) By mid-January 2009, several of Buswell's customers were subject to large margin calls in their accounts. For instance, JS was required to deposit \$525,000 to avoid depleting the account. In addition, GY's account was depleted due to her inability to cover the large margin calls. Locy was aware of the margin calls, and took no steps other than limiting margin on any one account to \$100,000 and requiring initial equity of 70% with maintenance equity.
- (viii) In early February, EH, a customer of Buswell, contacted the firm to complain about activity in her account. The firm determined that unauthorized trading had taken place in the account, and reimbursed her \$50,000. But the firm did not impose heightened supervision on Buswell at this time. Locy was aware of the reimbursement to EH.

71. Despite these numerous red flags, Brookstone took no steps to contact customers or place Buswell on heightened supervision. Not until January 26, 2009, did the firm place any limits on trading, and those limits were narrowly limited to Buswell's use of margin. It was only after another series of very large margin calls in Buswell's accounts in March

2009 that the firm took action. The firm finally suspended Buswell's trading authority on March 26, 2009.

72. In addition, Locy knew that Buswell had never sold private placements before becoming a registered representative with Brookstone. Although Turbeville made a firm-wide web presentation to encourage all Brookstone brokers to sell Advanced Blast Protection, Locy was aware that the Advanced Blast investments were sold almost exclusively by Buswell to his Lafayette, Louisiana clientele. Locy also knew that the Advanced Blast Protection investments and Brookstone Securities private placement were suitable only for accredited investors with a high level of risk tolerance. Despite Buswell's lack of experience and the high risk nature of the investments, Locy did nothing to ensure that Buswell was making the accurate representations and disclosures in the sales presentations and that Buswell was making suitable recommendations.
73. The conduct described in paragraphs 67 through 72 constitutes willful violations of NASD Conduct Rules 3010 (a) and (b) and 2110, and FINRA Rule 2010 by Respondents Brookstone Securities, Inc. and Locy.
74. Turbeville and Locy delegated responsibility to Mercier to conduct due diligence on Advanced Blast. Both Turbeville and Locy were aware, however, of red flags indicating problems with the Advanced Blast offering and indicating a lack of due diligence. Neither Turbeville nor Locy took steps to investigate those red flags.
75. During the period from on or about July 9, 2008 through on or about January 14, 2009, Brookstone Securities, Inc., acting through Turbeville and Locy, failed to establish, maintain, and enforce supervisory procedures reasonably designed to prevent violations of NASD Conduct Rule 2310 regarding suitability.

76. Brookstone Securities, Inc. had written supervisory procedures in place during the time period, requiring due diligence to be conducted by the firm prior to its selling private placements. The firm was required under its procedures to review corporate documentation regarding subsidiaries, review a schedule of stock ownership, a description of material contracts, audited financials for the prior three years, tax returns for the prior three years, litigation for the prior three years, a schedule of contingent liabilities, and a schedule of corporate debts, among other matters.
77. Under the written supervisory procedures, Mercier as the Chief Compliance Officer was responsible for ensuring that the offering complied with the due diligence requirements set forth in the procedures.
78. Mercier performed only a superficial review of the offering, and failed to complete the steps required by the written supervisory procedures.
79. Locy never evaluated the financial situation of Advanced Blast and was unsure whether the financials had been audited by a certified public accountant.
80. No one visited the Advanced Blast facility before approval of the offering.
81. Despite the requirements of the firm's own written supervisory procedures, neither Turbeville nor Locy took any steps to ensure that the due diligence process had been completed by Mercier.
82. In June 2009, Advanced Blast filed a bankruptcy petition under Chapter 11 in the Southern District of Florida Fort Lauderdale Division.
83. The conduct described in paragraphs 74 through 82 constitute violations of NASD Conduct Rules 3010(a) and (b) and 2110, and FINRA Rule 2010 by Brookstone Securities, Inc., Turbeville, and Locy.

84. Turbeville and Locy created Brookstone's deficient supervisory system in place during the period from on or about July 9, 2008 through on or about January 14, 2009. Brookstone's procedures were also inadequate to prevent and detect unsuitable recommendations resulting from excessive trading, excessive use of margin, and over-concentration.
85. Although the written supervisory procedures assigned a principal to supervise each of its 163 registered representatives, in practice, the principal assigned to an individual was to be available to answer questions only. The principals did not review trades or correspondence.
86. In fact, the assignments were so devoid of real meaning that Buswell's supervisor did not learn of his supervisory status until nine months after Buswell had been hired.
87. Turbeville and Locy were aware of the lack of supervisory controls, because together they had created this supervisory structure.
88. Furthermore, the firm's new account application process was flawed.
89. For each new product purchased by a client, the broker completed a separate new account form.
90. For instance, a different new account form would be completed for each private placement or other product purchased in a particular customer's account. No general client profile would be linked to the account.
91. Each new account application was completed in a fashion tailored to the product purchased.

92. Thus, the reviewing principal was unable to obtain an accurate picture of the customer's financial status, investment objectives, and investment history when reviewing a transaction for suitability.
93. The firm's written supervisory procedures required the Compliance Department to conduct the following reviews and to take the following actions concerning client accounts:
- Review all items on exception reports and determine if any further action is warranted;
 - Rigorous scrutiny and regular review of all margin accounts;
 - Review a monthly printout of all trading activities for each registered representative for excessive trading for any given client;
 - Review a monthly printout for high concentration of any security in an account;
 - Review on a daily basis of all transactions for suitability; and
 - Review of monthly active account reports to identify potential churning.
94. The firm's procedures were unreasonable, because they failed to identify the specific reports that the Compliance Department was to review and provided no guidance on the actions or analysis that should occur in response to the reports. In addition, although the procedures listed sample client monitoring calls as part of the monthly reviews, the procedures qualified this requirement by stating "as deemed appropriate." The procedures do not state the circumstances that would make client contact appropriate and do not identify who should make the contact.

95. In practice, the Compliance Department conducted a daily review of trade blotters from their clearing firm. The only other document used by Compliance was a surveillance report that identified all trades in an account in excess of 15 during a 30-day rolling period (the "Active Trading Report").
96. For instance, between July 18, 2008 and January 31, 2009, the Active Trading Report noted 709 active trading exceptions for Buswell. Locy was aware of Buswell's frequent appearance on the report, because he reviewed the report on a monthly basis and was responsible for addressing the exceptions on the report. Locy took no steps to contact Buswell's customers, place Buswell on heightened supervision, or restrict his trading. He simply reviewed the exceptions and initialed the report, noting that the exceptions had been cleared.
97. Turbeville and Locy knew or should have known of the limited reviews conducted by the compliance department and neither took steps to address the inadequate system.
98. Turbeville and Locy were aware or should have been aware that the system for gathering and analyzing new account information was inadequate, because the Chief Compliance Officer began making attempts to change the system immediately upon his hire in March 2008.
99. The conduct described in paragraphs 84 through 98 constitutes a violation of NASD Conduct Rules 3010 (a) and (b) and 2110, and FINRA Rule 2010 by Respondents Brookstone Securities, Inc., Turbeville, and Locy.

Based on the foregoing, Respondent Brookstone Securities, Inc. willfully violated Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110, 2120,

3010 (a), 3010 (b) and FINRA Rules 2010 and 2020. In addition, Respondent Brookstone Securities, Inc. violated NASD Conduct Rules 2110, 2310, 2510, and 3010 (a) and (b) and FINRA Rule 2010.

Based on the foregoing, Respondent Antony L. Turbeville violated NASD Conduct Rules 2110, 3010 (a) and 3010 (b) and FINRA Rule 2010.

Based on the foregoing, Respondent David W. Locy willfully violated NASD Conduct Rules 2110, 3010 (a) and 3010 (b) and FINRA Rule 2010. In addition, Respondent David W. Locy violated NASD Conduct Rules 2110, 3010(a) and 3010 (b) and FINRA Rule 2010.

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 Respondents be assessed the following sanctions:

A. Imposing sanctions against Brookstone Securities, Inc. of a censure and fine in the amount of \$200,000. Respondent Brookstone Securities, Inc. agrees to pay the monetary sanction upon notice that this Order has been accepted and that such payments are due and payable. Respondent Brookstone Securities, Inc. has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

B. Imposing sanctions against Antony L. Turbeville of a fine in the amount of \$10,000 and a three month suspension from association with any FINRA member in a principal capacity. Respondent Turbeville agrees to pay the monetary sanction upon notice that this Order has been accepted and that such payments are due and payable. Respondent Turbeville

has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

C. Imposing sanctions against David W. Locy of a fine in the amount of \$10,000 and a three month suspension from association with any FINRA member in a principal capacity. Respondent Locy agrees to pay the monetary sanction upon notice that this Order has been accepted and that such payments are due and payable. Respondent Locy has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

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

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to read "Laura Leigh Blackston", is written over a horizontal line.

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