

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.



Frederick W. Shultz
(CRD No. 5239977),



and



Respondents.

DISCIPLINARY PROCEEDING
No. 2009019837302

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This case involves numerous violations of FINRA Rules, all stemming from the Respondents' extensive involvement with Midwest Investment Partners, LLC. One or more of the Respondents (a) owned and managed Midwest Investment for compensation without making the required outside business disclosures to Brookstone Securities, Inc., the broker-dealer with which Respondents were associated, (b) participated in the sale of securities issued by Midwest Investment without notice to or approval from Brookstone, (c) caused the records of Brookstone

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to be inaccurate in connection with the sales of Midwest Investment securities, (d) falsified Brookstone compliance questionnaires, (e) misused customer funds intended for investment in Midwest Investment securities, and (f) failed to cooperate with FINRA's investigation of this matter.

FACTS

2. Between approximately January 2008 and October 2009, [REDACTED] was the president, and Frederick W. Shultz ("Shultz") was the chief financial officer, of Harvest Holding Company, LLC ("Harvest Holding"), also known as Harvest Companies, LLC and Harvest Financial, Inc. ("Harvest Financial"). [REDACTED] owned 75% and Shultz owned 5% of Harvest Holding. [REDACTED] and Shultz were also on the Board of Directors of Harvest Holding.

3. Between approximately January 2008 and October 2009, Harvest Holding had approximately eight subsidiaries, one of which was Harvest Midwest Group, LLC ("Harvest Midwest"), and of which Harvest Holding was at least a 50% owner. [REDACTED] was the President, CEO, and 75% owner, of Harvest Midwest. Shultz was the Chief Financial Officer and 5% owner of Harvest Midwest. [REDACTED] and Shultz were also directors of Harvest Midwest.

4. On or about January 24, 2008, a Certificate of Organization was filed with the Indiana Office of the Secretary of State, creating Midwest Investment Partners, LLC ("Midwest Investment"). Respondent [REDACTED] was identified in the Certificate of Organization as the Registered Agent of Midwest Investment.

5. Harvest Midwest controlled Midwest Investment's day-to-day operations. Midwest Investment's primary business purpose was to invest in fixed income instruments or entities that invested in fixed income instruments. Between approximately January 2009 and

October 2009, Midwest Investment purchased shares of Arcanum Equity Fund ("Arcanum") and Vestium Equity Fund ("Vestium"), which in turn purportedly invested in notes and provided monthly income to investors.

6. On December 21, 2010, the Securities and Exchange Commission filed a complaint in the United States District Court for the Middle District of Florida, against the two managing members of Arcanum and Vestium, as well as others, alleging that the managing members engaged in a fraudulent scheme to misappropriate \$34 million they raised for Arcanum and Vestium. The SEC alleged that the managing members bankrupted the two funds by steering millions to themselves. The SEC alleged that, to carry out the fraudulent scheme, the defendants misrepresented the performance and profitability of Arcanum and Vestium, misrepresented how they used investor funds, and misrepresented the safeguards over Vestium investors' money. The SEC alleged that, as a result, Arcanum and Vestium voluntarily filed for Chapter 7 bankruptcy and are now under the control of court-appointed trustees.

7. Between approximately January 2008 and October 2009, [REDACTED] and Shultz failed to give prompt written notice to their employer broker-dealer, Brookstone Securities, Inc. ("Brookstone"), that they were being compensated for owning, and participating in the management of, Midwest Investment, in violation of NASD Rules 2110 and 3030, and FINRA Rule 2010.

8. Respondents [REDACTED] and [REDACTED] were also registered representatives of Brookstone. Between approximately January 2008 and June 2009, [REDACTED], Shultz, [REDACTED], and [REDACTED] sold, or participated in the sale of, securities of Midwest Investment consisting of non-operating membership interests to public customers pursuant to a Regulation D private placement offering, without giving prior written notice to, and receiving

prior written approval from, Brookstone, in violation of NASD Conduct Rules 2110 and 3040 and FINRA Rule 2010.

9. [REDACTED] and Shultz completed Brookstone-issued Outside Business Schedules in April 2008 and April 2009, and responded by not disclosing their activities regarding Midwest Investment and falsely reporting that in 2009 that Midwest Investment was still in the “planning stages” when Midwest Investment had been incorporated on January 24, 2008 and was an ongoing business concern .

10. Between approximately July through October 2009, and after Brookstone approved the sale of Midwest Investment securities, Shultz and [REDACTED] also failed to ensure that transactions involving their sales of the securities to public customers were recorded on Brookstone’s books and records, in violation of NASD Conduct Rule 3040 and FINRA Rule 2010. In addition, because the sales of Midwest securities were not recorded on Brookstone’s books and records, Shultz and [REDACTED] caused the books and records of Brookstone to be inaccurate, in contravention of FINRA Rules 3110 and Exchange Act Rule 17a-3, and in violation of FINRA Rule 2010.

11. Shultz subsequently misused approximately \$147,000 of customer funds invested in Midwest Investment in violation of FINRA Rules 2150 and 2010.

12. In violation of FINRA Rules 2010 and 8210, [REDACTED] failed to completely respond to requests for information, Shultz failed to appear for an on-the-record interview (“OTR”), and [REDACTED] failed to both timely respond to requests for information and to timely appear for an OTR.

RESPONDENTS AND JURISDICTION

13. [REDACTED] entered the securities industry in October 1988 as an Investment Company/Variable Products Representative with a FINRA registered firm. Between June 2007

and November 2009, [REDACTED] was registered in the same capacity with Brookstone Securities, Inc., a FINRA registered firm. [REDACTED] is not currently registered in any capacity with a FINRA firm. Although [REDACTED] has not been associated with a FINRA firm since November 2009, 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 firm and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA firm and with failing to completely respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA firm.

14. Between approximately June 2007 and November 2009, Shultz was registered as an Investment Company/Variable Products Representative with Brookstone. Shultz was not previously, and is not currently, registered in any capacity with a FINRA firm. Although Shultz has not been associated with a FINRA firm since November 2009, 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 firm and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA firm, including failing to timely respond to FINRA requests for information and with failing to appear for *on-the-record* testimony during the two-year period after the date upon which he ceased to be associated with a FINRA firm.

15. [REDACTED] entered the securities industry in January 1988 as an Investment Company/Variable Products Representative with a FINRA registered firm. Between February 2008 and November 2009, [REDACTED] was registered in the same capacity with Brookstone. [REDACTED]

is not currently registered in any capacity with a FINRA firm. Although [REDACTED] has not been associated with a FINRA firm since November 2009, 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 firm and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA firm, including failing to timely respond to FINRA requests for information and with failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be associated with a FINRA firm.

16. [REDACTED] entered the securities industry in June 1987 as an Investment Company/Variable Products Representative with a FINRA registered firm. Between April 2005 and October 2009, [REDACTED] was registered as a General Securities Representative with Brookstone. [REDACTED] is not currently registered in any capacity with a FINRA firm. Although [REDACTED] has not been associated with a FINRA firm since October 2009, 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 firm and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA firm.

**FIRST CAUSE OF ACTION
OUTSIDE BUSINESS ACTIVITIES
BY RESPONDENTS [REDACTED] AND SHULTZ
Violations of NASD Rules 3030 and 2110 and FINRA Rule 2010**

17. The Department realleges and incorporates by reference paragraphs 2 through 6, 13 and 14 above.

18. Between approximately January 2008 and October 2009, [REDACTED] and Shultz received compensation for owning and participating in the management of Midwest Investment.

19. [REDACTED] and Shultz engaged in these activities without providing prompt written notice to Brookstone.

20. The acts, practices, and conduct described above constitute violations of NASD Rules 2110 and 3010 and FINRA Rule 2110 by [REDACTED] and Shultz.

SECOND CAUSE OF ACTION
PRIVATE SECURITIES TRANSACTIONS
BY RESPONDENTS [REDACTED], SHULTZ, [REDACTED] AND [REDACTED]
Violations of NASD Conduct Rules 3040 and 2110 and FINRA Rule 2010

21. The Department realleges and incorporates by reference paragraphs 2 through 6 and 13 through 16 above.

22. Between approximately January 2008 and October 2009, [REDACTED], Schultz, [REDACTED] and [REDACTED] sold a total of approximately \$4.6 million in Midwest Investment securities to approximately 28 investors.

23. Between approximately January 2009 and October 2008, Shultz participated in each sale of Midwest Investment securities effected by Brookstone representatives. Shultz made the Regulation D filing with the SEC for the sale of Midwest Investment securities. He processed the customer funds received from the sales of Midwest Investment securities and invested the funds with Arcanum Equity Fund or Vestium Equity Fund. He also kept, and in most cases signed, the subscription agreements and other offering documents.

24. Between approximately January 22, 2008 and February 2009, [REDACTED] engaged, for compensation, in private securities transactions by participating in the sale of approximately \$1.1 million in Midwest Investment securities to five investors as set forth on Exhibit A, which is attached hereto and incorporated by reference.

25. Between approximately August 2008 and June 2009, [REDACTED] engaged, for compensation, in private securities transactions by participating in the sale of approximately \$3.1

million in Midwest Investment securities to 20 investors, as set forth on Exhibit A, which is attached hereto and incorporated by reference.

26. ██████ participated in the sale of Midwest Investment securities by, among other things:

- a. referring investors and other registered representatives to ██████ or others for the possible purchase of Midwest Investment stock;
- b. recommending the sale of Midwest Investment stock when asked by potential investors for his opinion as to whether they should invest in Midwest Investment; and
- c. assisting investors in completing the paperwork necessary to open a Brookstone securities account and other documents necessary to invest in Midwest Investment, and forwarding the documentation to Midwest Investment.

27. In or about March 2009, ██████ participated in private securities transactions, for compensation, by engaging in the sale of approximately \$109,000 in Midwest Investment securities to two investors, as set forth on Exhibit A, which is attached hereto and incorporated by reference.

28. ██████, Shultz, ██████ and ██████ failed to give written notice of their intention to participate in the sales of the Midwest Investment securities to, and failed to receive written approval from, Brookstone, prior to engaging in such activities.

29. It was not until approximately June 2009 that Brookstone approved, in any form, the sale of Midwest Investment securities to investors.

30. Between approximately July and October 2009, Shultz and ██████ also failed to ensure that the sales of Midwest Investment shares, in which Shultz and ██████ participated and which totaled approximately \$600,311.00, were recorded on Brookstone's books and records.

31. The acts, practices, and conduct described above constitute violations of NASD Rules 2110 and 3040 and FINRA Rule 2010 by [REDACTED], Shultz, [REDACTED] and [REDACTED].

**THIRD CAUSE OF ACTION
CAUSING INACCURATE BOOKS AND RECORDS
BY RESPONDENTS SHULTZ AND [REDACTED]
Violations of FINRA Rules 3110 and 2010**

32. The Department realleges and incorporates by reference paragraphs 2 through 6, 14 and 15 above.

33. Between July and October 2009, Shultz and [REDACTED], as a result of their failure to ensure that the sales of Midwest Investment securities in which they participated were recorded on Brookstone's books and records, caused the books and records of Brookstone to be inaccurate, in contravention of FINRA Rule 3110 and Exchange Act Rule 17a-3.

34. The acts, practices, and conduct described above constitute violations of FINRA Rules 3110 and 2010 by Shultz and [REDACTED].

**FOURTH CAUSE OF ACTION
MISSTATEMENTS ON COMPLIANCE QUESTIONNAIRES
BY RESPONDENTS [REDACTED] AND SHULTZ
Violations of NASD Conduct Rule 2110 and FINRA Rule 2010**

35. The Department realleges and incorporates by reference paragraphs 2 through 6, 13 and 14 above. On or about April 30, 2008, [REDACTED] and Shultz each completed and signed a Brookstone-issued Outside Business Interests Schedule, which requested an identification of all outside business activities. [REDACTED] and Shultz completed the schedules without disclosing their involvement with Midwest Investment.

36. On or about April 4, 2009, [REDACTED] completed and signed a Brookstone-issued Outside Business Interests Schedule, which requested an identification of all outside business activities. [REDACTED] completed the schedule with the following disclosure concerning Midwest

Investment: “In the planning stages of a) working with an investment group dealing in medium term notes 7 hrs/wk [and] b) a marketing company and an energy conservation company 2 hrs/wk.” This disclosure was false because Midwest was well beyond the planning stages at the time, and in fact was an active, ongoing business.

37. On or about April 7, 2009, Shultz completed and signed a Brookstone-issued Outside Business Interests Schedule, which requested an identification of all outside business activities. Shultz completed the schedule with the following disclosure concerning Midwest Investment: “In the planning stages of a) working with an investment group dealing in medium term notes 6 hrs/wk [and] b) a marketing company and an energy conservation company 1hr/wk.” This disclosure was false because Midwest was well beyond the planning stages at the time, and in fact was an active, ongoing business.

38. The acts, practices, and conduct described above constitute violations of NASD Conduct Rule 2110 and FINRA Rule 2010 by [REDACTED] and Shultz.

**FIFTH CAUSE OF ACTION
MISUSE OF CUSTOMER FUNDS
BY RESPONDENT SHULTZ
Violations of FINRA Rules 2150 and 2010**

39. The Department realleges and incorporates by reference paragraphs 2 through 6 and 14 above.

40. Between approximately January 2008 and November 2009, Shultz, as the Chief Financial Officer of Harvest Holding and a manager of Midwest Investment, maintained Midwest Investment’s checking account and the Midwest Investment check register that memorialized the flow of customer funds received and disbursed by Midwest Investment.

41. Midwest Investment, during all relevant times, maintained a checking account at J.P. Morgan Chase Bank, N.A. The Midwest Investment check register reflects that, on

September 18, 2009, the Midwest Investment checking account had a balance of \$13,504.31.

42. The Midwest Investment check register also reflects that customer W.H. purchased \$174,500 in Midwest Investment securities on September 23, 2009, and that the \$174,500 received from W.H. was deposited in the Midwest Investment checking account on the same date.

43. The Midwest Investment check registered further reflects that customers L.H. and M.H. purchased \$200,000 in Midwest Investment Securities on October 4, 2009, and that the \$200,000 received from L.H. and M.H. was deposited in the Midwest Investment checking account on the same date.

44. The \$374,500 in funds from customers W.H., L.H. and M.H. were to be invested in Vestium, as intended by the customers.

45. Without the knowledge or consent of W.H., L.H. and M.H., Shultz misused the customers' funds by 1) leaving the \$374,000 in customer funds in the Midwest Investment checking account and not investing the \$374,500 in Vestium, as intended by the customers, and 2) by making seven so-called "distributions of profits" totaling \$147,000 to Harvest Holding. There were no profits received by Midwest from its investments during August, September and October 2009, and no other deposits were made to the Midwest Investment checking account other than the funds obtained from W.H., L.H. and M.H.

46. The "distributions of profits" were made through a series of checks drawn by Shultz on Midwest Investment's checking account. Shultz signed the checks, which were made payable to the order of Harvest Holding, a company that he controlled with [REDACTED], among others.

47. The acts, practices, and conduct described above constitute violations of FINRA Rules 2150 and 2010 by Shultz.

**SIXTH CAUSE OF ACTION
FAILURE TO RESPOND
BY RESPONDENT [REDACTED]
Violation of FINRA Rules 8210 and 2010**

48. The Department realleges and incorporates by reference paragraphs 2 through 6 and 13 above.

49. On or about January 22, 2010, FINRA staff, pursuant to and in accordance with FINRA Rule 8210, requested that [REDACTED] provide information related to Midwest Investment, including an accounting of the funds received from, and profit allocations to, its investors.

50. [REDACTED] response was due on or before February 5, 2010.

51. On February 5, 2010, FINRA staff provided [REDACTED] counsel with an extension to February 19, 2010 to respond to its January 22, 2010 request for information.

52. On February 16, 2010, FINRA staff received a partial response to the request for information.

53. On February 19, 2010, FINRA staff, pursuant to and in accordance with the provisions of FINRA Rule 8210, sent a second written request for information to [REDACTED] counsel for the remaining information that he had not provided.

54. To date, [REDACTED] has not responded fully to FINRA's request for information.

55. The acts, practices, and conduct described above constitute a violation of FINRA Rules 8210 and 2010 by [REDACTED].

SEVENTH CAUSE OF ACTION
FAILURE TO APPEAR FOR AN ON-THE-RECORD INTERVIEW
BY RESPONDENT SHULTZ
Violation of FINRA Rules 8210 and 2010

56. The Department realleges and incorporates by reference paragraphs 2 through 6 and 14 above.

57. On or about December 3, 2009, FINRA staff, pursuant to and in accordance with FINRA Rule 8210, requested that Shultz appear for an on-the-record interview ("OTR") on December 18, 2009 in Chicago, Illinois.

58. On or about December 17, 2009, Shultz informed FINRA staff that he could not appear for an OTR on December 18, 2009, because he had just retained counsel and needed time to prepare with his attorney.

59. On or about January 5, 2010, FINRA staff, pursuant to and in accordance with FINRA Rule 8210, requested that Shultz appear for an OTR in Louisville, Kentucky, on January 15, 2010.

60. On or about January 14, 2010, Shultz's counsel withdrew due to a conflict of interest. On the same day, and at approximately the same time, FINRA staff placed Shultz on the record in Louisville, Kentucky, at which time he declined to answer any questions until he was represented by counsel.

61. On or about January 26, 2010, FINRA staff, pursuant to and in accordance with FINRA Rule 8210, requested that Shultz appear for an OTR on February 18, 2010 in Chicago, Illinois.

62. On or about February 12, 2010, a voicemail was left with FINRA staff by another attorney who claimed he represented Shultz. The attorney stated that Shultz's OTR needed to be

rescheduled because he had just spoken with Shultz, and a member of Shultz's family was suffering from an illness.

63. On or about February 16, 2010, FINRA staff had a telephone conversation with Shultz's attorney. The attorney told FINRA staff that it was difficult for Shultz to appear in Chicago for an OTR because of issues relating to members of Shultz's family. FINRA staff advised Shultz's attorney that another OTR could be scheduled with sufficient advance notice to allow Shultz to make the necessary arrangements so as to be able to appear for an OTR in Chicago, Illinois. Accordingly, FINRA staff asked Shultz's attorney to contact the staff with proposed dates.

64. On or about February 19, 2010, FINRA staff had not heard from Shultz's counsel about a proposed date, and therefore, pursuant to and in accordance with FINRA Rule 8210, requested that Shultz appear for an OTR on March 5, 2010 in Chicago, Illinois.

65. On or about March 4, 2010, FINRA staff received a letter by facsimile from Shultz's attorney. In the letter, the attorney wrote that, "...with permission from my client to communicate our conversation, I counseled him as to the ramifications of not attending. I was directed to inform you that Mr. Shultz would not be in attendance and to request the address as to where to send his license...."

66. On or about March 5, 2010, Shultz failed to appear for his OTR.

67. The acts, practices, and conduct described above constitute a violation of FINRA Rules 8210 and 2010 by Shultz.

**EIGHTH CAUSE OF ACTION
FAILURE TO TIMELY RESPOND TO REQUESTS FOR INFORMATION
AND TO TIMELY APPEAR FOR AN OTR
BY RESPONDENT [REDACTED]
Violation of FINRA Rules 8210 and 2010**

68. The Department realleges and incorporates by reference paragraphs 2 through 6 and 15 above.

69. On or about November 13, 2009, FINRA staff sent a letter to [REDACTED], pursuant to FINRA Rule 8210, requesting that he appear for an OTR on December 1, 2009 at FINRA's District Office in Chicago, Illinois. FINRA, in the letter, further requested that [REDACTED] confirm, by November 23, 2009, that would appear for the OTR on December 1, 2009, or contact FINRA in order to agree upon another mutually acceptable date and time. The request was sent via first class mail to [REDACTED] CRD address of record, which also was his last known address. The request was also sent, via first class mail and facsimile, to D.Z., Chief Compliance Officer, Brookstone Securities, Inc., 2920 Drane Field Rd., Lakeland, Florida ("[REDACTED] work address"). The first class mailings were not returned. The receipt for the certified mailing to [REDACTED] CRD address was returned, apparently signed by VG, presumably a member of [REDACTED] family. The facsimile was successfully transmitted.

70. On or about November 20, 2009, FINRA staff sent a request for information to [REDACTED], pursuant to FINRA Rule 8210, seeking documentation related to his participation in the sale of Midwest Investment shares and the compensation he received from his participation in the sale of Midwest Investment shares. The staff specifically noted that the documents were required in preparation for the OTR testimony scheduled for December 1, 2009. A response was due on or before November 30, 2009. The request was sent via first class mail to [REDACTED] CRD address of record, which also was his last known address, and via first class mail and facsimile to

D.Z., Chief Compliance Officer, Brookstone Securities, Inc., 2920 Drane Field Rd., Lakeland, Florida ("██████ work address"). The first class mailings were not returned. The facsimile was successfully transmitted.

71. On or about November 27, 2009, FINRA staff received a telephone call from attorney S.G., who informed the staff that he was representing ██████ and that he and ██████ needed additional time to respond to the staff's November 20, 2009 request for information. S.G. further informed the staff that he and ██████ needed additional time to prepare for the OTR. FINRA staff agreed to postpone the OTR, and asked S.G. to contact staff in order to reschedule another date.

72. On or about December 3, 2009, having not heard from S.G., FINRA staff sent a second request for information to S.G., pursuant to FINRA Rule 8210, seeking documentation related to ██████ participation in the sale of Midwest Investment shares and the compensation that ██████ received from his participation in the sale of Midwest Investment shares. A response was due on or before December 11, 2009. The request was sent via first class mail to the address that S.G. provided to the staff on the same date. The request was also sent via first class mail and facsimile to D.Z., Chief Compliance Officer, Brookstone Securities, Inc., 2920 Drane Field Rd., Lakeland, Florida ("██████ work address"). The first class mailings were not returned. The facsimile was successfully transmitted.

73. FINRA staff also sent another letter to S.G. on December 3, 2009, pursuant to FINRA Rule 8210, requesting that ██████ appear for an OTR at 9:30 a.m. on December 17, 2009 at FINRA's District Office in Chicago, Illinois. FINRA, in the letter, further requested that S.G. confirm, by December 11, 2009, that ██████ would appear for the OTR on December 17, 2009, or contact FINRA in order to agree upon another mutually acceptable date and time. The

request was sent via first class and certified mail to S.G.'s office in Louisville, Kentucky. The first class mailing was not returned. The receipt for the certified mailing was returned, apparently signed by DM, presumably an employee in the law office.

74. On or about December 10, 2009, FINRA staff received a telephone call from S.B., an attorney from Milwaukee, Wisconsin, who advised that he was considering representing [REDACTED].

75. During another telephone call with FINRA staff on December 11, 2009, S.B. confirmed that he was not representing [REDACTED] yet, and acknowledged that [REDACTED] was to appear for an OTR on December 17, 2009. S.B. also stated that, if he chose to represent [REDACTED], he would contact staff. FINRA staff advised S.B. that no extension of the OTR scheduled for December 17, 2009, was being granted because S.B. had not yet decided to represent [REDACTED].

76. On December 17, 2009, [REDACTED] failed to appear for an OTR at FINRA's District Office in Chicago, Illinois.

77. Instead, at approximately 12:30 p.m., on December 17, 2009, [REDACTED] left a telephone message with FINRA staff, stating that he "... just got a call from my attorney. I know we're supposed to be up there today, but [S.B.] did call you and now they're trying to find me another attorney...."

78. FINRA staff, after receiving [REDACTED] December 17, 2009 voicemail message, telephoned S.B., who confirmed that he was not representing [REDACTED]. S.B. further told FINRA staff that he was representing [REDACTED], but he had never spoken with [REDACTED] until [REDACTED] called him on December 17, 2009.

79. FINRA staff then returned [REDACTED] telephone call on December 17, 2009, and advised [REDACTED] that the staff was going to recommend formal disciplinary action for his apparent

violation of FINRA Rule 8210 for not responding to the requests for information and for failing to appear for the OTR. FINRA staff further told [REDACTED] that, if he wished to mitigate the apparent violation of Rule 8210, he should produce the requested documents as soon as possible and confirm a date that he would appear for an OTR.

80. On or about January 25, 2010, pursuant to FINRA Rule 9552, a Notice of Suspension was sent to [REDACTED], advising him that he would be suspended on February 18, 2010 for failing to respond to the 8210 requests specified in paragraphs 65 and 67 above and failing to appear for an OTR. The Notice of Suspension was sent to [REDACTED] CRD address, overnight delivery and first class mail.

81. On or about February 18, 2010, pursuant to FINRA Rule 9552, a Notice of Suspension was sent to [REDACTED], advising him that he was suspended from associating with any FINRA member in any capacity for failing to respond to the 8210 requests specified in paragraphs 65 and 67 above and failing to appear for an OTR. [REDACTED] was further advised that, if he failed to request a termination of the suspension within six months of the date of the notice, he would be automatically barred on July 28, 2010, from associating with any FINRA member in any capacity. The Notice of Suspension was sent to [REDACTED] CRD address, via first class mail and FedEx overnight delivery. The first class mailing was not returned. The receipt from FedEx reflects that the overnight mailing was delivered to [REDACTED] CRD address.

82. On or about July 22, 2010, in a letter dated July 22, 2010, from D.M., an attorney in St. Louis, Missouri, [REDACTED] responded to the staff's requests for information first made on or about November 20, 2009, or nearly eight months late.

83. On or about August 20, 2010, D.M. sent FINRA staff further documents in response to the staff's requests for information first made on or about November 20, 2009.

84. [REDACTED] therefore failed to respond timely to requests for information made pursuant to FINRA Rule 8210.

85. On August 25, 2010, [REDACTED] appeared for an OTR at FINRA's District Office in Chicago, Illinois, first requested by FINRA staff on or about November 13, 2009, or approximately nine months late.

86. [REDACTED] therefore failed to timely appear for an OTR, as requested pursuant to FINRA Rule 8210.

87. The acts, practices and conduct described above constitute violations of FINRA Rules 8210 and 2010 by [REDACTED].

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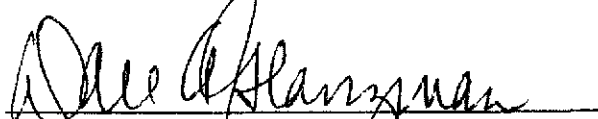
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the panel:

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

Date: April 8, 2011

FINRA DEPARTMENT OF ENFORCEMENT



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Exhibit A to Department of Enforcement v. [REDACTED], et al.
Sales of Midwest Investment shares

Participation in Sales by [REDACTED] (Paragraph 27 of the Complaint)

<u>Name</u>	<u>Amount of Investment</u>	<u>Date of Investment</u>
KL	\$500,000	01/22/08
CM	100,000	08/13/08
CC	100,000	11/17/08
HG	300,000	12/02/08
MD	<u>100,000</u>	02/06/08
Total	\$1,100,000	

Participation in Sales by [REDACTED] (Paragraph 28 of the Complaint)

<u>Name</u>	<u>Amount of Investment</u>	<u>Date of Investment</u>
PB	\$249,000	08/01/08
RB	159,000	10/06/08
JC	99,500	12/04/08
DJ	188,000	10/13/08
SL	166,000	10/01/08
BN	98,500	01/24/09
GS	100,000	10/30/08
RW	51,000	12/30/08
RD	151,500	07/09/09
BK	247,000	03/04/09
AM	39,250	08/08/09
	25,000	04/03/09
WH	174,500	12/17/08
JF and NF	79,821	08/17/09
JW	154,000	08/21/08
RK	210,000	10/02/08
ME	200,000	08/16/08
RB	120,000	09/02/09
DH	62,000	10/17/08
LH and MH	200,000	10/05/09
DW	250,000	08/03/09
R.M. and B.M.	34,000	03/02/09
L.W.	<u>75,000</u>	03/04/09
Total	\$3,024,071	

Participation in Sales by [REDACTED] (Paragraph 30 of the Complaint)

R.M. and B.M.	\$ 34,000	03/02/09
L.W.	<u>75,000</u>	03/04/09
Total	\$109,000	