

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Pinnacle Partners Financial Corporation
(CRD No. 145523),

and

Brian K. Alfaro (CRD No. 4049120),

Respondents.

DISCIPLINARY PROCEEDING
No. 2010021324501

Note for Electronic Transmission of This Complaint:
The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.

FIRST AMENDED COMPLAINT

The Department of Enforcement alleges:

Summary

1. This case involves ongoing fraudulent sales of unregistered securities in eight private placement offerings perpetrated by Brian K. Alfaro ("Alfaro") and his wholly-owned firm Pinnacle Partners Financial Corporation ("Pinnacle"). Alfaro and Pinnacle operate a boiler room where numerous registered representatives place thousands of cold calls weekly to solicit investments in Alfaro's captive oil and gas drilling joint ventures. The operators of the ventures are entities owned or controlled by Alfaro. Alfaro and Pinnacle raised over \$10 million from over 100 investors for offerings that materially misrepresented or omitted facts. From August 2008 to the present, Alfaro and Pinnacle have continuously offered and sold fraudulent offerings to investors

throughout the United States. These ongoing fraudulent sales have caused and will continue to cause significant harm to Pinnacle's customers. As a result of the foregoing conduct, Respondents Pinnacle and Alfaro willfully violated and continue to violate Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rules 2110 and 2120, and FINRA Rules 2010 and 2020.

2. From August 2008 to the present, Pinnacle and Alfaro have materially misrepresented or omitted facts related to the South Bayou Crook Chene, Pangaea, Normanna Deep, Normanna North, Victoria Secret, French Town, East Wharton, and Montague Legacy offerings they sold to investors. Pinnacle and Alfaro provided investment summaries to all of the investors in these offerings. The investment summaries included numerous misrepresentations and omissions. Specifically, Alfaro received reports about prospects from operators, and deleted material information that was unfavorable before forwarding information contained in the reports to the investors. Pinnacle and Alfaro never informed investors of Alfaro's alteration of the reports or of the deleted information. Pinnacle and Alfaro also provided investors with maps that omitted numerous dry, plugged, and abandoned wells near their projected drilling sites. In the investment summaries, Pinnacle and Alfaro grossly inflated natural gas prices, projected natural gas reserves, estimated gross returns, and estimated monthly cash flows. In addition, Pinnacle and Alfaro distributed an offering document claiming that a previous offering had distributed \$14,287,436.46 when the actual distribution was less than \$1.5 million. As a result of the foregoing conduct, Respondents Pinnacle and Alfaro willfully violated Section 10(b) of the Securities

Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rules 2110 and 2120, and FINRA Rules 2010 and 2020.

3. From January 2009 to November 2010, Alfaro misused customer funds to (1) meet obligations for previous offerings, (2) cover Alfaro's personal expenses, and (3) make cash payments to Alfaro personally. As Alfaro admitted to FINRA staff, the only way Alfaro Oil and Gas could meet its financial obligations to drill the investors' wells and meet obligations to previous investors, after spending investor funds in this fashion, was to raise additional funds from investors or tap Alfaro's personal resources. As a result of the foregoing conduct, Respondent Alfaro violated NASD Rule 2330 and FINRA Rules 2150 and 2010.
4. From August 23, 2008 to September 24, 2010, Pinnacle and Alfaro offered and sold unregistered securities. Pinnacle, acting through Alfaro or other representatives employed by the firm, engaged in general solicitations by offering Alfaro's joint ventures to investors through the boiler room operated by Pinnacle and Alfaro before an existing relationship was established. Specifically, Pinnacle and Alfaro pitched offerings on the initial cold call and sent out offering materials immediately following the initial cold call. As a result of the foregoing conduct, Respondents Pinnacle and Alfaro, by acting in contravention of Section 5 of the Securities Act of 1933, violated FINRA Rule 2010 and NASD Rule 2110.
5. Pinnacle and Alfaro systematically destroyed documents, maintained inaccurate books and records, failed to properly report numerous written investor complaints related to the allegations in this complaint, and failed to properly amend Forms U-4 for settlements related to customer grievances in excess of \$15,000. As a result of the

foregoing conduct, Respondents Pinnacle and Alfaro violated Article V, Section 2, of FINRA's By-Laws, NASD Rules 3070 and 2110, and FINRA Rule 2010.

Respondent Pinnacle willfully violated Section 17 of the Securities Exchange Act of 1934, Rule 17a-4 thereunder, and NASD Rule 3110. By causing Pinnacle's violations of Section 17 of the Securities Exchange Act of 1934, Rule 17a-4 thereunder, and NASD Rule 3110, Respondent Alfaro violated NASD Rule 2110 and FINRA Rule 2010.

6. From August 2008 through March 2010, Pinnacle's supervisory system and written procedures were not reasonably designed to ensure compliance with e-mail retention requirements. Among other things, the firm's procedures did not provide for any reasonable follow-up and review to ensure that copies of all e-mail communications were captured and maintained. As a result of the foregoing conduct, Respondents Pinnacle and Alfaro violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

Respondents and Jurisdiction

7. **Respondent Pinnacle Partners Financial Corporation** has been a member of FINRA since March 7, 2008. The firm's President and Chief Compliance Officer is Alfaro. Pinnacle is 100% owned by Silver Star Resources, LLC, which is wholly-owned by Alfaro. The firm's off-site Financial and Operations Principal resigned on September 27, 2010. Pinnacle operates pursuant to the (k)(2)(i) exemptive provisions of SEC Rule 15c3-3 and only conducts a securities business selling oil and gas private placements pursuant to SEC Regulation D. The firm has twelve registered individuals in its sole office.

8. Pinnacle is currently operating as a registered firm. The violations alleged herein occurred while Pinnacle was a FINRA-registered firm. FINRA has jurisdiction to file this complaint against Pinnacle pursuant to Article IV, Section 1 of FINRA's By-Laws.
9. **Respondent Brian K. Alfaro** entered the securities industry in October 1999 through registered firm The Champion Group, Inc. ("Champion"). Alfaro was terminated by Champion in June 2006. Alfaro is currently employed by registered firm Pinnacle Partners Financial Corporation. He has Series 7, 39, and 63 licenses.
10. The violations alleged herein occurred while Alfaro was associated with Pinnacle. FINRA has jurisdiction to file this complaint against Alfaro pursuant to Article V, Section 2 of FINRA's By-Laws.
11. **Non-party Silver Star Resources, LLC** ("Silver Star") is wholly-owned by Alfaro, and it is the sole owner of Pinnacle. Silver Star Resources is utilized by Alfaro to increase the cost to investors for leases originally acquired by Alfaro. Silver Star charged exorbitant fees to investors without providing any identifiable services.
12. **Non-party Alfaro Oil and Gas, LLC** ("Alfaro Oil and Gas") is wholly-owned by Alfaro and acts as the managing venturer for almost all offerings sold by Pinnacle and Alfaro. Alfaro Oil and Gas charged exorbitant additional fees to all investors that are not typically incurred by other interest holders in similar oil and gas drilling projects.

FIRST CAUSE OF ACTION
Fraud in the Offering or Sale of a Security
Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder,
NASD Rules 2110 and 2120, and FINRA Rules 2010 and 2020, against Pinnacle and Alfaro

13. The Department realleges and incorporates by reference paragraphs 1 through 12 above.
14. Pinnacle and Alfaro offered and sold securities to investors located throughout the United States from their boiler room in San Antonio, Texas. The eight securities at issue in this First Cause of Action were marketed as joint venture interests for participation in the acquisition of working interests and net revenue interests in oil and gas wells. The eight offerings were South Bayou Crook Chene, Victoria Secret, Normanna North, Normanna Deep, Pangaea, French Town, East Wharton, and Montague Legacy.
15. Pinnacle and Alfaro failed to disclose to all investors that **none** of the joint ventures offered through Pinnacle and Alfaro had ever been profitable for anyone other than Pinnacle, Alfaro, and entities owned and controlled by Alfaro. Alfaro utilized two non-registered entities which charged fees to investors that made each of the offerings less likely to be profitable. Silver Star is wholly-owned by Alfaro, and it is the sole owner of Pinnacle. Alfaro Oil and Gas is wholly-owned by Alfaro and acts as the managing venturer for almost all offerings sold by Pinnacle and Alfaro. Silver Star and Alfaro Oil and Gas charged exorbitant additional fees to all investors that are not typically incurred by other interest holders in similar oil and gas drilling projects.
16. Silver Star charged all investors for purported lease acquisition costs. Although Silver Star provided no identifiable services to investors, Alfaro, by causing investors

to make payments to Silver Star, increased the Victoria Secret lease acquisition cost over 50%. The extent of Silver Star's exorbitant fees was never disclosed to investors.

17. Pinnacle and Alfaro's solicitations created the false impression that Alfaro Oil and Gas was an oil and gas operator. Alfaro Oil and Gas entered into "turnkey agreements" with all investors in the eight offerings at issue offered and sold by Pinnacle and Alfaro. Turnkey agreements are drilling contracts under which the drilling contractor agrees to perform stated functions for an agreed-upon price. This typically limits the liability exposure for a contractor's actions. The turnkey agreement claimed that Alfaro Oil and Gas would be paid to "...acquire the Prospect and drill and complete the Prospect well, including, but not limited to, the setting of production casing or, if necessary, the plugging and abandoning of a dry hole..." The turnkey agreement also claimed that: "Alfaro shall conduct all of its efforts in a good and workmanlike manner and with reasonable due diligence." Alfaro Oil and Gas has never acted as an operator or actually drilled an oil and gas well. In the offerings sold by Pinnacle and Alfaro, Alfaro Oil and Gas served solely as a minority interest holder in prospects that were run by actual operators.

18. Despite the limited role of Alfaro Oil and Gas, Pinnacle and Alfaro sold the eight joint venture interests to all investors at prices that were as much as 100% to 200% more than the cost estimates received from the operators to drill the wells. As a result, investors received minority interests in oil and gas prospects at prices that included substantial additional costs 1) to cover overhead, 2) to compensate the numerous boiler room employees, and 3) to fund Alfaro's lifestyle. Neither Pinnacle

nor Alfaro disclosed the drilling cost estimates to investors. Thus, investors were not aware that they paid 100% to 200% more than the drilling cost estimate totals for the interests they acquired.

19. Pinnacle and Alfaro routinely materially misrepresented or omitted facts that were provided to them by the wells' actual operators. As discussed more specifically below, Pinnacle and Alfaro materially misrepresented or omitted facts related to the South Bayou Crook Chene, Victoria Secret, Normanna North, Normanna Deep, Pangaea, French Town, East Wharton, and Montague Legacy offerings.

The South Bayou Crook Chene Offering

20. The South Bayou Crook Chene offering was dated July 10, 2008. From at least August 2008 until January 2009, Pinnacle and Alfaro offered and sold the South Bayou Crook Chene offering to investors. Alfaro prepared an investment summary and provided it to all investors with the South Bayou Crook Chene offering materials. The investment summary was copied verbatim from a report Alfaro received from the operator – with the exception of one sentence. The first page of Alfaro's executive summary and the report provided by the operator stated: "Cumulative production. . . has been in excess of 12.5MMBO + 49 BCFG. At least two wells are still producing from this field, the Kerr McGee B-3 and the Hilcorp 4-B. The B-1 may also be producing." However, Alfaro deleted the next sentence stating: "***All currently producing wells are very marginal.***" (emphasis added). This would have been material information to investors. Pinnacle and Alfaro never informed investors of Alfaro's alteration of the report or of the deleted information.

The Pangaea Offering

21. The Pangaea offering was dated March 8, 2010. Pinnacle and Alfaro offered and sold the Pangaea offering to investors from at least March 2010 to September 2010. The Pangaea offering document provided to all investors discusses Alfaro and Alfaro Oil and Gas' management experience. The offering document states: "As of 2006 Mr. Alfaro has served as a corporate officer of Primera Energy Partners, LLC. In that capacity he has had success in the following prior activities: . . ." The offering document then details a number of previous offerings. The first offering listed is South Brushy Creek. Alfaro misrepresented that South Brushy Creek made "cash distribution to partners" of \$14,287,436.46. This number is grossly inflated from the actual figure of less than \$1.5 million. This material misrepresentation made it appear as if Alfaro's previous offering had been exponentially more profitable than it really was.
22. The first four offerings detailed in the management section of the Pangaea offering documents were sorted by their "cash distribution to partners." The South Brushy Creek offering was listed as the highest cash distribution to partners, at over \$14 million which, as stated previously, was grossly inflated. The second highest cash distribution to partners was less than \$450,000, and the third highest was less than \$250,000. None of the other offerings listed cash distributions to partners of over \$200,000. Alfaro continued the Pangaea offering without correcting this misrepresentation even after this error was brought to his attention.

The Victoria Secret Offering

23. The Victoria Secret offering was dated January 5, 2009. Pinnacle and Alfaro offered and sold Victoria Secret to investors from at least January 2009 to July 2009. Each unit offered and sold to investors represented a .41% working interest in the venture. The investment summary included with the offering materials and extensively utilized during sales calls with all investors contained projected natural gas reserves of \$630,000,000, estimated gross returns of \$1,890,000 to \$2,310,000 (for each investor's .41% working interest), and estimated monthly cash flow of \$6,300 to \$12,600 (for each investor's .41% working interest) based on natural gas prices of \$7.00 per MCF. (MCF is the abbreviation for one thousand cubic feet, one of the standard units of measurement for natural gas.) Pinnacle and Alfaro had no basis for predicting that the wellhead price for natural gas was \$7.00 per MCF when Victoria Secret was offered by Pinnacle and Alfaro to investors. According to the U.S. Energy Information Administration, the wellhead price for natural gas was \$5.15/MCF in January 2009, \$4.19/MCF in February 2009, \$3.72/MCF in March 2009, \$3.43/MCF in April 2009, \$3.45/MCF in May 2009, \$3.45/MCF in June 2009, and \$3.43/MCF in July 2009. Alfaro inflating the projected natural gas price caused the potential natural gas reserves, estimated gross returns, and estimated monthly cash flow to increase dramatically. The chart below illustrates the magnitude of Pinnacle and Alfaro's misrepresentations:

Natural Gas Price per MCF	Potential Natural Gas Reserves	Estimated Gross Returns/per .41% working interest	Estimated Monthly Cash Flow/per .41% working interest
\$7.00 (Alfaro's number)	\$630,000,000	\$1,890,000 to \$2,310,000	\$6,300 to \$12,600
\$5.15 (January actual number)	\$463,500,000	\$1,390,500 to \$1,699,500	\$4,635 to \$9,270
\$4.19 (February actual number)	\$337,100,000	\$1,131,300 to \$1,382,700	\$3,772 to \$7,542
\$3.45 (May/June actual number)	\$310,500,000	\$931,500 to \$1,138,500	\$3,105 to \$6,210

Notwithstanding the fact that natural gas prices may fluctuate, the projected price conveyed by Pinnacle and Alfaro was unreasonable and materially misrepresented projected reserves, estimated gross returns, and estimated monthly cash flow.

24. In June and July 2009, Alfaro sent correspondence to investors claiming that Victoria Secret's operator "required special equipment" and was waiting for a rig. Alfaro also stated that drilling should occur in the next 45 to 60 days. At a time when natural gas prices were below \$3.50/MCF, Alfaro continued to make his projections to investors with calculations based on a price of \$7.00/MCF: "We are extremely excited about this prospect which is targeting reserves in excess of \$630,000,000.00 and should reach a total depth of 15,000'." At the time Alfaro sent this correspondence, targeted reserves were less than \$315,000,000.

The Normanna Deep Offering

25. The Normanna Deep offering was dated February 10, 2009. Pinnacle and Alfaro offered and sold the Normanna Deep offering to investors from at least February 2009 to May 2009. The investment summary included with the offering materials and extensively utilized during sales calls with all investors contained projected natural gas reserves of \$350,000,000, estimated gross returns of \$1,050,000 to \$2,100,000 (for each investor's .41% working interest), and estimated monthly cash

flow of \$6,300 to \$9,450 (for each investor's .41% working interest) based on natural gas prices of \$7.00 per MCF. Pinnacle and Alfaro had no basis for predicting that the wellhead price for natural gas was \$7.00 per MCF when Normanna Deep was offered by Pinnacle and Alfaro to investors. According to the U.S. Energy Information Administration, the wellhead price for natural gas was \$4.19/MCF in February 2009, \$3.72/MCF in March 2009, \$3.43/MCF in April 2009, and \$3.45/MCF in May 2009.

The chart below illustrates the magnitude of these misrepresentations:

Natural Gas Price per MCF	Potential Natural Gas Reserves	Estimated Gross Returns/per .41% working interest	Estimated Monthly Cash Flow/per .41% working interest
\$7.00 (Alfaro's number)	\$350,000,000	\$1,050,000 to \$2,100,000	\$6,300 to \$9,450
\$4.19 (February actual number)	\$209,500,000	\$628,500 to \$1,257,000	\$3,771 to \$5,656.50
\$3.45 (May/June actual number)	\$172,500,000	\$517,500 to \$1,035,000	\$3,105 to \$4,657.50

Notwithstanding the fact that natural gas prices may fluctuate, the projected price conveyed by Pinnacle and Alfaro was unreasonable and materially misrepresented projected reserves, estimated gross returns, and estimated monthly cash flow.

The Normanna North Offering

26. The Normanna North offering was dated December 9, 2009. From at least December 2009 until May 2010, Pinnacle and Alfaro offered and sold the Normanna North offering to investors. Although Alfaro utilized a natural gas price of \$5.00 per MCF – rather than the inflated \$7.00/MCF he had utilized in the Normanna Deep and Victoria Secret offerings, for example – Alfaro prepared an investment summary provided to all investors that contained material misrepresentations and omissions. Specifically, he provided maps to all investors detailing over ten producing wells near the proposed drilling site. The maps highlighted the producing wells and noted their

production quantities; however, the maps failed to disclose that there were also over ten wells that were dry, plugged, and abandoned near the proposed drilling site. This information was readily available to Alfaro and was not provided to investors.

The French Town Offering

27. The offering document for French Town 2-H is dated July 23, 2010. Pinnacle and Alfaro began selling the investment in early August 2010 and are continuing to receive investor funds from the project. The participation agreement between Alfaro Oil & Gas and Gultex/Frenchtown Acres is dated "September __, 2010." According to Alfaro Oil and Gas' website, the French Town 2-H well was drilled to total depth on January 7, 2010. As this well was already drilled over six months before the offering document, there was no need to drill a well; however, the offering document provided by Pinnacle and Alfaro to investors incorrectly stated that their investment would be used to acquire, drill, and complete a well.
28. Pinnacle and Alfaro also failed to disclose to French Town investors that only \$1.4 million of the \$2.1 raised for this project would be sent to the operator, as the costs were already known for this well that had already been drilled.
29. Alfaro and Pinnacle provided every French Town investor with an investment summary. The investment summary included with the offering materials and extensively utilized during sales calls with all investors contained projected estimated gross returns of \$787,500 to \$967,500 (for each investor's 1.34% working interest), and estimated monthly cash flow of \$4,050 to \$6,750 (for each investor's 1.34% working interest) based on projected daily gas production of 3,000/MCF to 5,000/MCF. The investment summary contained grossly inflated projected daily gas

production numbers. Pinnacle and Alfaro had no basis for predicting that the daily gas production would be 3,000/MCF to 5,000/MCF when French Town was offered by Pinnacle and Alfaro to investors. In fact, Alfaro Oil and Gas' lead geologist for the French Town offering had previously informed Alfaro that he expected initial production of 1,000/MCF to 1,500/MCF per day, dropping to about 500/MCF to 600/MCF per day in six to eight months, and then leveling out at 350/MCF to 450/MCF per day after a year. Pinnacle and Alfaro never provided any French Town investors with the estimates provided by the lead geologist.

30. Despite the fact that his "geophysicist stamp" was included and he was listed as the "lead geologist" in the French Town offering materials, Alfaro Oil and Gas' lead geologist was unaware that Alfaro had unilaterally increased the daily gas production projection for the French Town offering to 3,000/MCF to 5,000/MCF per day. When confronted with the offering materials provided by Pinnacle and Alfaro to investors, the lead geologist testified under oath that he was previously unaware that these numbers had been provided to investors, and that he was upset that his name was associated with the inflated numbers provided by Alfaro and Pinnacle to investors.
31. The French Town offering materials also included a "senior geologist" for the project. Alfaro Oil and Gas' senior geologist was also unaware that Alfaro had unilaterally increased the daily gas production projection for the French Town offering to 3,000/MCF to 5,000/MCF. The senior geologist had also previously informed Alfaro that he expected initial production of 1,000/MCF to 1,500/MCF per day. When confronted with the offering materials provided by Pinnacle and Alfaro to investors,

the senior geologist testified under oath that the daily production numbers provided by Pinnacle and Alfaro to investors were not attainable.

32. Alfaro and Pinnacle provided investors with initial production information for eight similar producing gas wells near the French Town well; however, Alfaro and Pinnacle failed to disclose that the **actual production** for all eight of these wells was substantially less than the projections contained in the French Town investment summary. Alfaro and Pinnacle's projected daily gas production numbers were 3,000/MCF to 5,000/MCF. If any of the eight similar wells ever had actual daily gas production that exceeded 3,000/MCF – that level of production was extremely short-lived. Within ten months, none of the eight similar wells was producing over 1,000/MCF per day, and the daily production from all of these wells continued to decline. The **lowest** daily production value provided by Alfaro and Pinnacle was significantly higher than that of any of the eight similar producing wells. The actual production numbers for the eight similar wells were hundreds of percent less than the projected production numbers. As a result, Pinnacle and Alfaro materially misrepresented projected daily production, estimated gross returns, and estimated monthly cash flow for the French Town offering.

The East Wharton Offering

33. The East Wharton offering was dated October 26, 2009. By December 8, 2009, Alfaro had reached the maximum 15 units and \$1,183,200 detailed in the offering; however, Pinnacle and Alfaro continued to add investors and oversell the offering. Alfaro's drilling costs for the well were \$658,272 for a 16% working interest. His completion costs were estimated to be \$160,000.

34. The East Wharton well was drilled in January 2010, and the operator sent completion ballots out to all industry partners. After a review of the preliminary well tests, one partner elected not to complete the well based on data related to the well's potential production. This required the departing partner to forfeit all of the funds it had paid for drilling and testing costs as well as any future interest in the well. On February 23, 2010, Alfaro elected to not only complete the well, but also to purchase the working interest of the non-consenting partner. This allowed Alfaro to obtain an additional 5% working interest while only paying for the completion costs associated with the interest. Pinnacle and Alfaro never disclosed to any investor that the industry partner had abandoned the project because it did not like the data related to the well's potential production, or that the units being sold were acquired solely by paying completion costs because the industry partner was unwilling to pay completion costs after analyzing data related to the well's potential production.
35. After February 23, 2010, Alfaro sold interests in the East Wharton offering to an additional nine investors using the same non-amended private placement memorandum, resulting in a total of 33.0662 units being sold (rather than the 15 unit maximum listed in the offering materials) and a total investment of \$1,886,764 (rather than the \$1,183,200 listed in the offering materials).
36. There are numerous material misstatements in the offering document, including the location of the well, the well's specifications, and the turnkey cost to investors. When confronted with these facially inaccurate items in the offering materials, Alfaro admitted to the staff that the East Wharton offering materials contained numerous false and inaccurate statements.

37. East Wharton investors' funds continue to be at risk. As recently as September 16, 2010, Alfaro sold additional units in East Wharton to two Victoria Secret investors, as a means to transfer the interests of the Victoria Secret investors from the undrilled project. According to Pinnacle's blotter and Alfaro, there is still \$130,256 to be collected from East Wharton investors. According to Alfaro, these funds will be forwarded to Pinnacle in the future, Pinnacle will receive a 15% commission, the funds will be placed in the offering's operating account, and Alfaro will be entitled to use these investor funds for any business or personal expense Alfaro deems appropriate.

The Montague Legacy Offering

38. Pinnacle and Alfaro are currently selling at least one new offering, Montague Legacy.

The Montague Legacy offering is dated November 1, 2010, and the offering documents feature misrepresentations and omissions that are similar to those made in previous offerings. It is a turnkey offering to raise \$4,943,840. On November 11, 2010, Pinnacle and Alfaro sold three units (\$65,000 initial subscription and \$269,000 total commitment). Between November 11 and November 23, 2010, Alfaro and Pinnacle sold an additional 7.75 units to six customers resulting in an additional \$146,623.50 in payments and a \$696,632 total commitment.

39. As discussed in the previous paragraph, Alfaro and Pinnacle made their first sale of the Montague Legacy offering on November 11, 2010. On November 12, 2010, the staff discovered a negative balance reflected in Alfaro Oil and Gas' general ledger cash account and discussed it with the accountant shared by Alfaro Oil and Gas, Pinnacle, and Alfaro. According to the accountant, escrow was broken in the

Montague Legacy offering and investors' funds were immediately transferred by Alfaro from the offering's account to Alfaro Oil and Gas' bank account. As a result of this transfer, the negative balance in Alfaro Oil and Gas' bank account was covered by utilizing investor funds from the Montague Legacy offering the day after they were received.

40. Investors' funds continue to be at risk. Alfaro recently informed the staff that Pinnacle and Alfaro are selling and intend to keep selling the Montague Legacy offering to investors, and the funds raised from existing and new investors will be forwarded to Pinnacle, Pinnacle will receive a 15% commission, the funds will be placed in the offering's operating account, and Alfaro is then entitled to use these investor funds for any business or personal expense Alfaro deems appropriate.
41. The maps in the Montague Legacy offering materials reference nearby wells producing over 100 BOPD (barrels of oil per day); however, the wells referenced are more than two miles away and some are more than nine miles away. However, nearby wells, not identified in the offering materials, have verifiable production of less than one BOPD, and within a half-mile radius of the proposed well location there are two plugged wells and one dry hole. Despite the fact that information concerning all of these nearby wells was readily available to Alfaro and Pinnacle, this material information was not disclosed to investors in the offering materials.
42. The Montague Legacy offering documents also reference a nearby well that had been drilled but had not reported any verifiable production at the time of the offering; however, the offering materials list the well's initial production as 800 BOPD and averaging 600 BOPD. When the Staff contacted the operator regarding this well, it

was informed that the numbers listed in the Montague Legacy offering documents for the well were inflated. This was confirmed by a recent Texas Railroad Commission filing related to the well.

Pinnacle, Alfaro, and Alfaro's Entities Improperly Utilized a "Professional Geoscientist" Stamp with the Offerings

43. In the Victoria Secret, Normanna Deep, Normanna North, Pangaea, French Town, East Wharton, and Montague Legacy offerings, Alfaro affixed a "Professional Geoscientist" seal of a geoscientist whose license had expired, in the executive summary of each offering that Pinnacle and Alfaro provided to potential investors. The Texas Geoscience Practice Act states that this seal should be used on reports prepared or supervised by a licensed geoscientist. Tex. Occ. Code Ann. § 1002. However, the well operator from whom Alfaro Oil and Gas purchased minority interests, rather than the individual whose stamp appears on investments offered by Pinnacle and Alfaro, provided the reports. In addition, the geoscientist whose stamp was utilized in all offerings offered and sold by Pinnacle and Alfaro in 2009 and 2010 was no longer licensed in the State of Texas. Pinnacle, Alfaro, and his related entities utilized this expired stamp in their 2009 and 2010 offerings.
44. When confronted with the use of his stamp, Alfaro Oil and Gas' "lead geologist" testified under oath that he was unaware that Alfaro and Pinnacle utilized his stamp without his knowledge, authorization, or consent for many of the private placement offerings prior to the Montague Legacy offering.
45. As a result of the foregoing conduct, Respondents Pinnacle and Alfaro willfully violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rules 2110 and 2120, and FINRA Rules 2010 and 2020. The

conduct occurring between August 2008 and December 14, 2008 violated NASD Rules 2110 and 2120, and the conduct occurring between December 15, 2008 and September 2, 2010 violated FINRA Rules 2010 and 2020.

**SECOND CAUSE OF ACTION
Misuse of Customer Funds
NASD Conduct Rule 2330 and
FINRA Rules 2150 and 2010, against Alfaro**

46. The Department realleges and incorporates by reference paragraphs 1 through 45 above.
47. The “investment summary” provided by Pinnacle and Alfaro to investors in the Victoria Secret and Normanna Deep offerings detailed a “payment schedule” with three installments: (1) first installment (subscription), (2) second installment (drilling, testing and pipe), and (3) third installment (completion). Alfaro Oil and Gas served as the Managing Venturer of the joint ventures, and it also served as the joint ventures’ drilling contractor.

The Victoria Secret Offering

48. The Victoria Secret offering raised approximately \$1.5 million; however, the well has never been drilled. Alfaro removed almost \$1 million of investor funds for his personal and business use. As of August 16, 2010, 21 investors remained in the Victoria Secret offering, representing more than \$973,000 in investor funds. As of July 31, 2010, the bank accounts associated with this offering contained approximately \$40,000. Numerous investors provided Pinnacle and Alfaro with their money based on Alfaro’s request for their funds for “drilling and testing” the Victoria Secret well. Alfaro never informed investors that their funds were not utilized for

drilling and testing the Victoria Secret well – or that he had spent almost all of their funds for unrelated business and personal purposes.

49. The joint operating agreement for this offering indicated that Alfaro Oil and Gas would be required to pay at least \$895,740 to drill this well. Alfaro admitted to FINRA staff that the only way he could meet his financial obligations to drill the Victoria Secret well – and pay for any obligations pursuant to his numerous turnkey agreements with investors – would be to raise additional funds from investors or tap his personal resources.
50. Responding to investors’ concerns about delays in the Victoria Secret joint venture, Alfaro represented that he would process refunds. Because he had already extracted funds for his own use and benefit, Alfaro could not promptly process the refunds as had been promised. Following Alfaro’s depletion of the Victoria Secret funds, Alfaro Oil and Gas sent a demand letter withdrawing its commitment to the Victoria Secret project. This eliminated the potential drilling obligation for which Alfaro Oil and Gas lacked sufficient funds. In a further effort to avoid refunding investors’ funds and to retain Alfaro Oil and Gas’ grossly inflated “drilling costs,” Alfaro contacted investors and persuaded them to transfer their interests in Victoria Secret to other projects in lieu of receiving a refund. Alfaro transferred many of the Victoria Secret investors into other fraudulent offerings that were oversubscribed and contained material misrepresentations or omissions. Pinnacle and Alfaro have received and will continue to receive investor funds related to these fraudulent offerings. Alfaro contends that he is entitled to dissipate these investor funds for any business or personal purpose.

The Normanna Deep Offering

51. The Normanna Deep offering was dated February 10, 2009. Pinnacle and Alfaro started receiving funds from Normanna Deep investors in March 2009, and the Normanna Deep escrow account received more than \$500,000 in first installment “subscription” funds from investors through May 2009. The well has never been drilled; however, Alfaro removed over \$500,000 of investor funds for his personal and business use.
52. The bank statements for the Normanna Deep escrow account reflect the following activity:
- Deposits of \$108,930 in March 2009;
 - Deposits of \$376,125 in April 2009;
 - Transfers of \$300,000 to the Normanna Deep operating account and \$16,339.50 to Pinnacle in April 2009;
 - Deposits of \$38,880 in May 2009; and
 - Transfers of \$50,000 to the Normanna Deep operating account and \$56,418.75 to Pinnacle in May 2009.

The Normanna Deep escrow account received no deposits in June or July 2009;

however, Alfaro transferred another \$100,832 from the Normanna Deep escrow account to the Normanna Deep operating account and Pinnacle during this time.

Every investor dollar that Alfaro transferred from the Normanna Deep escrow account to the Normanna Deep operating account was transferred the same month – and often the same day – to Alfaro Oil and Gas’ operating account. On July 31, 2009, the ending balance in Normanna Deep’s escrow account was \$344.75. The balance in the Normanna Deep operating account was never more than one cent from July 2, 2009 until December 31, 2009.

53. Before the end of 2009, Alfaro informed Normanna Deep investors that the operator had determined that the Normanna Deep well would not be drilled. At this time, Alfaro had already spent nearly all of the Normanna Deep investors' funds. Alfaro Oil and Gas' financial situation was precarious as well. On December 28, 2009, the general ledger of Alfaro Oil and Gas reflected that the company's liabilities exceeded its assets. On December 29, 2009, Alfaro's accountant informed him that Alfaro Oil and Gas needed \$50,000 to pay for Normanna North expenses, and that it owed approximately \$75,000 in commissions to Pinnacle for Normanna North sales.
54. Beginning in late 2009, Alfaro contacted all 26 Normanna Deep investors and convinced them to transfer their interests in Normanna Deep to the Normanna North offering. He also requested that the Normanna Deep investors immediately provide a second installment payment for the purpose of "drilling and testing" the Normanna North offering. On December 29, 2009, the Normanna North general ledger reflected that \$281,005 was received to record transfers from Normanna Deep investors. The Normanna North general ledger reflects similar entries in 2010. Since Alfaro had already spent the Normanna Deep investors' funds, he utilized the "drilling and testing" funds he requested and received from them to reimburse their Normanna Deep investments that he had depleted. The highly inflated "drilling costs" charged by Alfaro to the Normanna Deep investors enabled him to replenish the funds he had dissipated and still have funds remaining to pay for the actual drilling costs.
55. As a result of the foregoing conduct, Respondent Alfaro violated NASD Rule 2330 and FINRA Rules 2150 and 2010. The conduct occurring between January 2009 and

December 14, 2009 violated NASD Rule 2330, and the conduct occurring between December 15, 2009 and November 2010 violated FINRA Rule 2150.

THIRD CAUSE OF ACTION
Unregistered Offerings
Section 5 of the Securities Act of 1933, FINRA Rule 2010,
and NASD Rule 2110, against Pinnacle and Alfaro

56. The Department realleges and incorporates by reference paragraphs 1 through 55 above.
57. From August 23, 2008 to September 24, 2010, Pinnacle and Alfaro operated a boiler room where approximately ten registered representatives placed thousands of cold calls every week to solicit investments in Alfaro's captive oil and gas joint ventures. Interests in the joint ventures are securities and were not registered pursuant to the Securities Act of 1933. These offerings are not exempt from registration pursuant to Section 502(c) of Regulation D of the Securities Act of 1933 because Pinnacle, acting through Alfaro or other representatives employed by the firm, engaged in general solicitations by offering the joint ventures before an existing relationship between the firm and potential investor was established – as early as the initial cold call. Specifically, Pinnacle and Alfaro engaged in unregistered offerings with respect to the South Bayou Crook Chene, North Hillje, Victoria Secret, and Southwest Red Fish offerings by discussing the offerings on the initial cold call and sending out offering materials immediately following the initial cold call.
58. As a result of the foregoing conduct, Respondents Pinnacle and Alfaro, by acting in contravention of Section 5 of the Securities Act of 1933, violated FINRA Rule 2010 and NASD Rule 2110. The conduct occurring between August 23, 2008 and

December 14, 2008 violated NASD Rule 2110, and the conduct occurring between December 15, 2008 and September 24, 2010 violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION
Failure to Report, Accurately Report, and Maintain Rule 3070 Filings
and Failure to Update and Timely Update Forms U-4
Article V, Section 2 of FINRA By-Laws,
NASD Conduct Rule 3070, and FINRA Rule 2010, against Pinnacle and Alfaro

59. The Department realleges and incorporates by reference paragraphs 1 through 58 above.
60. NASD Rule 3070 requires member firms to provide FINRA with statistical and summary information regarding customer complaints by the 15th day of the month following the calendar quarter in which customer complaints are received by the firm. This rule assists FINRA in monitoring on a real-time basis the ongoing compliance of member firms and associated persons with applicable securities laws and regulations.
61. Between October 2009 and June 2010, Pinnacle and Alfaro failed to properly disclose and report the following matters related to Pinnacle and Alfaro that relate directly to the allegations in this complaint:
- two written customer complaints pursuant to NASD Rule 3070;
 - two customer complaints settled for more than \$15,000 pursuant to NASD Rule 3070; and
 - one settlement related to a customer complaint pursuant to NASD Rule 3070.

As a result of the foregoing conduct, Respondents Pinnacle and Alfaro violated NASD Rule 3070 and FINRA Rule 2010.

62. Article V, Section 2, of FINRA's By-Laws provides that application for registration with FINRA by any person shall be made by a process established by FINRA and on a prescribed form signed by the applicant. Section 2(c) provides that every

application for registration (Form U-4) filed with FINRA shall be kept current at all times by supplementary amendments which must be filed within 30 days after learning of the facts or circumstances giving rise to the amendment.

63. Despite the requirements of Article V, Section 2, Pinnacle and Alfaro failed to amend Forms U-4 for Pinnacle and Alfaro in three separate instances as a result of settlements entered into by Pinnacle and Alfaro related to customer grievances in excess of \$15,000. As a result of the foregoing conduct, Respondents Pinnacle and Alfaro violated Article V, Section 2, of FINRA's By-Laws and FINRA Rule 2010.

FIFTH CAUSE OF ACTION

Books and Records

**Section 17 of the Securities Exchange Act of 1934,
Rule 17a-4 thereunder, and NASD Rule 3110, against Pinnacle, and
NASD Rules 3010 and 2110, and FINRA Rule 2010, against Pinnacle and Alfaro**

64. The Department realleges and incorporates by reference paragraphs 1 through 63 above.
65. From August 23, 2008 through March 28, 2010, Pinnacle failed to retain copies of all firm correspondence, and it failed to maintain information necessary to access records and indexes stored on the firm's electronic storage media with FINRA. During this time period, Alfaro served as the firm's President and Chief Compliance Officer.
66. From August 23, 2008 to approximately September 2, 2010, Alfaro improperly diverted e-mail to his personal e-mail account and deleted all e-mails related to Pinnacle and offerings sold by Pinnacle and Alfaro.
67. From August 2008 through September 2010, Pinnacle's supervisory system and written procedures were not reasonably designed to ensure compliance with e-mail retention requirements. Among other things, the firm's procedures did not provide

for any reasonable follow up and review to ensure that copies of all e-mail communications were, in fact, being captured and maintained.

68. As a result of the foregoing conduct, Respondent Pinnacle willfully violated Section 17 of the Securities Exchange Act of 1934, Rule 17a-4 thereunder, NASD Rules 3110, 3010, and 2110, and FINRA Rule 2010. As a result of the foregoing conduct, Respondent Alfaro violated NASD Rules 3010 and 2110 and FINRA Rule 2010. By causing Pinnacle's violations of Section 17 of the Securities Exchange Act of 1934, Rule 17a-4 thereunder, and NASD Rules 3110, Respondent Alfaro violated NASD Rule 2110 and FINRA Rule 2010. The conduct occurring between August 23, 2008 and December 14, 2008 violated NASD Rule 2110, and the conduct occurring between December 15, 2008 and September 2, 2010 violated FINRA Rule 2010.

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 be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- B. order that the Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- C. make specific findings that Respondents Pinnacle Partners Financial Corporation and Brian K. Alfaro willfully violated Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and that Respondent Pinnacle Partners Financial Corporation willfully violated Section 17 of the Securities Exchange Act of 1934 and 17a-4 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

December 3, 2010



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