

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KIRK LYNN FERGUSON
(CRD No. 1307741),

and

GARY HUME
(CRD No. 1216949),

Respondents.

DISCIPLINARY PROCEEDING
No. 2012030459101

Hearing Officer - DW

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: December 27, 2016

INTRODUCTION

Disciplinary Proceeding No. 2012030459101 was filed on April 19, 2016, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Gary Hume ("Respondent" or "Hume") submitted an Offer of Settlement ("Offer") to Complainant dated December 21, 2016. 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, Respondent has consented, without admitting or denying the allegations of the Complaint (as amended by the Offer of Settlement), and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint (as amended by the Offer of Settlement), and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Gary Hume (CRD No. 1216949) entered the securities industry in 1983 and was first registered as a FINOP in July 1984. He joined ACAP as a FINOP in September 1991.

Hume was registered with ACAP as a Financial and Operations Principal from September 10, 1991 to August 3, 2015, a General Securities Representative and a General Securities Principal from April 4, 1997 to August 3, 2015, a Limited Representative - Investment Banking from May 6, 2010 to August 3, 2015, an Equity Trader from August 18, 2006 to August 3, 2015, and as an Operations Professional from December 14, 2011 to August 3, 2015.

Hume served as ACAP's AMLCO from 2009 to August 2015. Between July 2011 and August 2015, Hume also acted as a compliance officer at ACAP.

As noted, Hume has a disciplinary history related specifically to the sale of unregistered securities, and supervision and AML monitoring concerning the same. Pursuant to the Tenth Circuit's decision, described below, Hume was suspended from association with any FINRA member firm in any capacity, from August 3, 2015, through February 2, 2016.

Although Hume is no longer registered or associated with a FINRA member, 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 effective date of termination of Hume's registration with ACAP, namely, August 3, 2015; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

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

SUMMARY

Between January 2011 and December 2013 (the "Relevant Period"), ACAP Financial Inc. ("ACAP" or the "Firm"), acting through Kirk Lynn Ferguson in his capacity as ACAP's President and Chief Compliance Officer ("CCO"), and Gary Hume, the Anti-Money Laundering Compliance Officer ("AMLCO") (collectively, the "Respondents"), facilitated the liquidation of over 3.3 billion shares of four unregistered microcap stocks that two customers deposited into their accounts at the Firm.

The accounts at issue were opened for two corporations by an individual named VB. While VB was the only authorized contact on both accounts, ACAP permitted her husband, JMB, to exercise control over both accounts and to direct ACAP to liquidate unregistered penny stocks in the accounts. But ACAP failed, in the face of red flags, to conduct an investigation into JMB. Thus, the Firm failed to discover JMB's significant securities-related disciplinary history, which included being barred by the NASD and being barred by the SEC from participating in penny stock offerings.

The penny stock liquidation activity in the two aforementioned accounts (the "VB/JMB-Controlled Accounts") followed the same pattern: (1) the accounts acquired penny stocks or debt

¹ The findings herein are pursuant to Respondent Hume's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

instruments that were later converted into purported free-selling shares of penny stocks; (2) VB and/or JMB liquidated the shares shortly after deposit; and (3) VB and/or JMB wired the proceeds out of their accounts shortly after the sales. Sales of certain of the penny stocks often represented a significant percentage of the stock's outstanding shares and its daily trading volume. Further, the shares were not registered with the Securities and Exchange Commission ("SEC"), nor were the sales exempt from registration. Thus, Respondents violated FINRA Rule 2010 by causing the sale of unregistered securities in contravention of Section 5 of the Securities Act of 1933 ("Securities Act"). From these illicit sales, VB and JMB generated over \$5 million in proceeds, and the Firm collected approximately \$144,010 in commissions.

Also throughout the Relevant Period, numerous other Firm customers liquidated billions of shares of penny stocks in transactions that presented numerous red flags, yet Respondents often failed to detect the red flags, and, even when red flags were detected, the Respondents took no action to investigate them or determine whether to file a Suspicious Activity Report ("SAR"). Collectively, these failures show that ACAP and Hume, as the Firm's AMLCO, violated FINRA Rules 3310 and 2010 by failing to establish and implement policies and procedures that could reasonably detect and cause the reporting of suspicious activity.

OTHER RELEVANT RESPONDENTS

ACAP Financial Inc.

ACAP (CRD No. 7731) was a Salt Lake City, Utah-based broker-dealer and first registered with FINRA beginning on December 12, 1978. The Firm was expelled from FINRA membership on December 6, 2016, pursuant to an Order Accepting Offer of Settlement issued in connection with this proceeding. During the Relevant Period, the Firm's largest business line,

and its primary source of revenue, was liquidating low-priced securities (also referred to as “penny stocks”).

In April 2015, the United States Court of Appeals for the Tenth Circuit affirmed a long-appealed FINRA decision (Complaint No. 2007008239001), in which ACAP was fined \$100,000 for selling unregistered securities in violation of Section 5, and Hume was suspended from the securities industry for six months and fined \$25,000 for egregious supervisory violations in connection with the Firm’s sale of unregistered securities. The two-count Complaint filed in that matter alleged that from May 9, 2005 through July 26, 2005, ACAP sold over 27,000,000 unregistered shares of a thinly-traded penny stock, and that ACAP and Hume failed to reasonably supervise the registered representative responsible for the sales, and failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with the applicable securities laws and regulations. The Firm and Hume stipulated to liability concerning the allegations in both causes of action.

In March 2012, ACAP and Hume were again sanctioned by FINRA for penny stock-related rule violations, this time in connection with the Firm’s AML program (AWC No. 20090176019). In particular, from January 2009 through June 2011, the Firm, and Hume as its AMLCO, failed to establish and maintain an adequate system to monitor for, detect, and investigate suspicious activity to determine whether the Firm needed to file a SAR, and failed to have an adequate system or procedures to report suspicious activity. Ultimately, the Firm was fined \$10,000 and required to engage an independent consultant to review its AML procedures, and Hume was suspended for 45 days and required to complete 40 hours of AML training.

Kirk Lynn Ferguson

Kirk Lynn Ferguson (CRD No. 1307741) entered the securities industry in 1984 and was first registered as a Financial and Operations Principal (“FINOP”) and General Securities Representative in 1985 and as a General Securities Principal in 1987 with Alliance Securities Corporation.

Ferguson acquired ACAP in 1991 and has been its sole owner since that time. Throughout the Relevant Period, Ferguson served as ACAP’s owner, President, FINOP, CEO, CFO, and CCO, and the direct supervisor of registered representative Hume.

Ferguson held the following registrations at ACAP until he terminated his registrations on December 9, 2016, and ACAP was expelled from FINRA membership on December 6, 2016: Financial and Operations Principal, General Securities Representative, General Securities Principal, Limited Representative - Investment Banking, and Operations Professional.

FACTS

A. ACAP and Hume Facilitated the Liquidation of Penny Stocks through the VB/JMB-Controlled Accounts

1. ACAP Customer VB Opens Two ACAP Accounts

VB opened the two VB/JMB-Controlled Accounts at ACAP during the Relevant Period. The first account, opened in May 2011, was for a Florida corporation called BL. According to the new account forms prepared for BL, VB was the only authorized contact for the account. Later, in December 2012, VB opened an ACAP account for a second Florida corporation called MLJ. Like BL, the MLJ new account forms listed VB as the only authorized contact for the account.

Throughout the Relevant Period, Hume was the only registered representative at ACAP assigned to the BL and MLJ accounts.

Despite that VB was the only person authorized to effect securities transactions on behalf of BL and MLJ, the primary contact email address associated with the BL and MLJ accounts was for VB's husband JMB. Throughout the Relevant Period, ACAP and Hume permitted both VB and JMB to liquidate penny stocks in both the BL and MLJ accounts, even though JMB was never listed as a person authorized to effect securities transactions in either account.

2. Hume Failed to Conduct Due Diligence on JMB in the Face of Red Flags and Failed to Discover his Relevant Disciplinary History

Hume was aware that JMB was directing trades in accounts over which he held no trading authority and that those accounts were depositing thinly traded low-priced securities and promptly liquidating those securities and wiring out the proceeds.

However, despite the presence of these red flags, Hume never conducted any due diligence on JMB.

However, had Hume conducted any due diligence on JMB, he would have discovered that prior to the Relevant Period, JMB was barred by the NASD in all capacities and was barred by the SEC from engaging in penny stock activities.

In 1998, JMB was barred by the NASD from association with any member firm for conducting a securities business through a member firm while his registration was inactive; falsifying firm records, confirmations, order tickets and customer account statements; and engaging in a scheme to circumvent NASD and various state registration requirements by deliberately processing transactions under another registered representative's number. In addition to being barred, JMB was censured and fined \$100,000.

In September 2001, the SEC filed a complaint against JMB and others in the United States District Court for the Southern District of Texas (the "JMB Complaint"). The JMB

Complaint alleged, among other things, that JMB liquidated millions of unregistered shares of stock in violation of Sections 5(a) and 5(c) of the Securities Act.

In connection with the September 2001 SEC action, a Final Judgment was entered against JMB, pursuant to which he was permanently enjoined from violating Sections 5(a) and 5(c), and ordered to disgorge \$350,000. In November 2001, the SEC instituted an administrative proceeding that barred JMB from participating in any penny stock offering, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Despite JMB's significant and relevant disciplinary history, ACAP and Hume permitted the VB/JMB-Controlled Accounts to liquidate millions of shares of penny stocks at ACAP without conducting a reasonable inquiry and without considering whether a SAR needed to be filed, if appropriate. Indeed, throughout the Relevant Period, the VB/JMB-Controlled Accounts sold over 3.3 billion shares of unregistered penny stocks, which generated over \$5 million in proceeds.

3. ACAP Facilitated the Liquidation of Millions of Unregistered MPIX Shares through the VB/JMB-Controlled Accounts

During the Relevant Period, Mindpix Corporation ("MPIX") was not a reporting company pursuant to the Securities Exchange Act of 1934 (the "Exchange Act").

Between June 2012 and August 2013 (the "MPIX Liquidation Period"), VB and JMB engaged in a pattern of depositing shares of MPIX stock into the VB/JMB-Controlled Accounts, liquidating the shares shortly after depositing them, and wiring the proceeds out of the account shortly after the sales. Schedule A, attached to and fully incorporated by reference into the

Complaint, summarizes the deposit and liquidation activity of MPIX stock in the VB/JMB-Controlled Accounts.

The VB/JMB-Controlled Accounts acquired a substantial percentage of their shares of MPIX stock in one of two ways: (1) by purchasing stock directly from an affiliate of MPIX, or (2) by purchasing convertible debt issued by MPIX and converting the debt to MPIX stock.

Between June 2012 and May 2013, VB and JMB deposited 491,700,000 shares of purchased or converted MPIX stock into the VB/JMB-Controlled Accounts.

During the MPIX Liquidation Period, VB and JMB liquidated all of the shares of MPIX that they had purchased or converted, purportedly pursuant to the Rule 144 safe harbor exemption. Soon after the VB/JMB-Controlled Accounts received payment for the MPIX shares, VB and JMB caused the proceeds of the sales to be wired from the VB/JMB-Controlled Accounts to outside bank accounts.

Throughout the MPIX Liquidation Period, VB and JMB sold a significant percentage of MPIX shares issued and outstanding, which made up a significant percentage of daily market volume. From June 25, 2012 through September 30, 2013, the VB/JMB-Controlled Accounts were responsible for approximately 43% percent of the outstanding shares of MPIX sold into the market, reaching as high as 49.91% of total market volume on a given day.

The VB/JMB-Controlled Accounts sold shares of MPIX on 216 of 278 trading days during the MPIX Liquidation Period; and throughout the same period, MPIX shares sold by the VB/JMB-Controlled Accounts represented greater than 25% of the stock's daily market volume on 145 of 278 trading days.

The VB/JMB-Controlled Accounts received over \$2.8 million from the sale of MPIX shares during the MPIX Liquidation Period.

ACAP received approximately \$80,283 in sales commissions for liquidating MPIX shares through the VB/JMB-Controlled Accounts during the MPIX Liquidation Period.

Ferguson approved the sales as exempt from registration pursuant to Rule 144.

a. MPIX was a shell company and went through several name changes

MPIX was originally incorporated in Delaware in September 1986 as Analyst Express, Inc. The company then went through three name changes, moved its state of domicile to Nevada in 2004, and acquired Mindpix, Inc. in 2007. In October 2007, the surviving company changed its name to Mindpix Corporation.

On August 25, 2012, MPIX filed with OTC Markets its Unaudited Restated Financial Statements for the Year Ended December 31, 2011 (the “2011 MPIX Financials”). The 2011 MPIX Financials stated that MPIX “operates a collection of multimedia and family entertainment content with the association of their affiliated company and with four main operating divisions: Music, Studios, Networks, and Technologies . . . [MPIX] owns licensing rights to manufacture and market a music library catalog of worldwide known songs from a list consisting of over 17,500 music master recordings.” MPIX’s 2011 income statement reported zero revenue and an annual net loss of \$1,542,498. MPIX’s 2011 balance sheet reported only two assets: cash and cash equivalents totaling \$6,004, and “[n]on-exclusive rights to music libraries” valued at \$40 million.

In June 2013, while JMB and VB continued to liquidate MPIX shares, MPIX restated its 2011 and 2012 financials. MPIX’s revised 2011 balance sheet reported that the company had no assets in 2011, and its 2012 balance sheet reported only \$9,995 in cash assets. Pertinently, “non-exclusive rights to music libraries” was no longer listed as an asset on either the 2011 or 2012 balance sheet. The explanation for this revision was that “[d]uring the year ended December 31,

2011, the Company recognized an impairment loss equal to the total purchase price of the music rights of \$1,600,000 because management determined that the underlying library had no value to the Company due to its inability to perfect its rights to the library.”

b. MPIX shares were not held for the required one-year holding period

The VB/JMB-Controlled Accounts acquired nearly all of their MPIX shares from two sources: an entity called eMax Media Inc. (“eMax Media”), and an entity called New Unified Corp. (“New Unified”). Both entities were affiliated with MPIX. In some instances, the VB/JMB-Controlled Accounts made payments directly to MPIX to acquire certain MPIX shares.

On or about January 19, 2011, eMax Media’s parent company, eMax Worldwide, Inc., issued a press release announcing that it had formed New Unified as a new subsidiary corporation to invest in real estate and oil and gas extraction. The contact person for the press release was a representative from eMax Worldwide, Inc. (“eMax Worldwide”) named RW.

On or about June 22, 2011, eMax Media announced that it merged with MPIX. In connection with that merger, MPIX issued 400,000,000 shares of its common stock in exchange for all of the common stock in eMax Media. Thereafter, eMax media shareholders owned approximately 81% of MPIX common stock issued and outstanding. As part of the merger, EJ became the president and a director of MPIX. In addition, subsequent to the merger, RW, the CEO of eMax Media’s former parent company, eMax Worldwide, became the CEO of the newly combined entity, which operated under the name Mindpix, Corp (MPIX).

A news release issued by eMax Worldwide after the eMax Media-MPIX merger described that RW remained the active CEO of eMax Worldwide, and the release included information about the business operations of Mindpix, eMax Media, and New Unified. In June 2012, EJ served as President of eMax Media and the Vice-President of eMax Media Group, Inc.

Thus, both eMax Media and New Unified were affiliates of MPIX, as that term is defined in Rule 144, and the securities acquired by the VB/JMB-Controlled accounts were “restricted securities” as defined under Rule 144(a)(3)(i). Because MPIX was not a reporting company, all of the VB/JMB-Controlled Accounts’ sales of MPIX stock acquired from eMax Media and New Unified were subject to a one-year holding period, which commenced on the day that the VB/JMB-Controlled Accounts had fully paid for the MPIX shares.

The VB/JMB-Controlled Accounts purchased MPIX shares with a view to immediately resell the shares. All MPIX shares sold by the VB/JMB-Controlled Accounts during the MPIX Liquidation Period were held for less than one year.

None of the foregoing shares of MPIX stock were registered with the SEC.

4. ACAP Facilitated the Liquidation of Millions of Unregistered TDEY Shares through the BL Account

During the Relevant Period, TDEY was not a reporting company pursuant to the Exchange Act.

Between August 2012 and December 2013 (the “TDEY Liquidation Period”) JMB and VB engaged in a pattern of depositing shares of TDEY into the BL account, liquidating the shares shortly after depositing them, and wiring the proceeds out of the account shortly after the sales. Schedule B, attached to and fully incorporated by reference into the Complaint, summarizes the deposit and liquidation activity of TDEY stock in the BL account.

JMB and VB acquired shares of TDEY stock by purchasing convertible debt issued by TDEY and converting the debt to TDEY stock.

JMB and VB purchased a portion of TDEY convertible debt from an affiliate of TDEY. Specifically, from July 2012 through December 2012, JMB and VB purchased, in a series of

eight transactions, portions of notes that were later converted into 232,000 shares of TDEY stock (the “Affiliate TDEY Stock”).

Between August 2012 and October 2013, JMB and VB deposited 935,000,000 shares of TDEY stock, including the Affiliate TDEY Stock, into the BL account in 19 separate transactions.

During the TDEY Liquidation Period, JMB and VB liquidated all of the shares of TDEY stock that they had purchased and converted, purportedly pursuant to the Rule 144 safe harbor exemption. Soon after JMB and VB received payment for the TDEY shares, they caused the proceeds of the sales to be wired from the BL account to outside bank accounts.

Throughout the TDEY Liquidation Period, JMB and VB sold a significant percentage of TDEY shares issued and outstanding, which made up a significant percentage of daily market volume. From August 22, 2012, through June 30, 2013, the BL account was responsible for approximately 83% percent of the outstanding shares of TDEY sold into the market, reaching as high as 92% of total market volume on a given day.

The BL account sold shares of TDEY on 111 of 328 days during the TDEY Liquidation Period; and throughout the same period, TDEY shares sold by the BL account represented greater than 25% of the stock’s daily market volume on 39 of 328 trading days, and constituted greater than 50% of the daily market volume on 7 days.

Further, throughout the TDEY Liquidation Period, JMB and VB repeatedly deposited and sold shares of TDEY stock that approached, but never exceeded, ten percent (10%) of the total number of shares issued and outstanding.

BL received approximately \$1.7 million from the sale of TDEY shares during the TDEY Liquidation Period.

ACAP received approximately \$51,783 in sales commissions for liquidating TDEY shares through the BL account.

Ferguson approved the sales as exempt from registration pursuant to Rule 144.

a. TDEY was a shell company and went through several name changes

TDEY was a Florida corporation engaged in the marketing and sale of 3D conversion technology. Between 2006 and 2008, TDEY's predecessor entities went through approximately three name changes.

TDEY reported nominal assets on its balance sheet and a net loss from operations on its income statement for the periods ending March 31, 2012 through December 31, 2013.

On June 4, 2012, TDEY filed with OTC Markets a Company Information and Disclosure Statement for the Period Ended March 31, 2012 (the "TDEY Disclosure Statement"). The TDEY Disclosure Statement stated that "[s]ince August 1997, the Company has never been characterized as a shell in its prior filings with OTC Markets as management relayed to successor management over time. Indeed, the Company is currently not a shell and has not been for some years. However, new management (which has not been with the Company since inception) has been advised that, indeed, the Company was (prior to 1997) a shell company as defined and acknowledges the accuracy of such characterization as to prior periods. Very specifically, new management states categorically that TDEY has never been a shell since prior to the February 2008 effective date of the substantively revised Rule 144, which for the first time, this introduced 'not a shell' (ever) standard."

b. TDEY shares were not held for the required one-year holding period

BL acquired all of its TDEY shares and convertible debt from a single source: an individual named SS.

The TDEY Disclosure Statement identified all TDEY shareholders that owned more than five percent (5%) of any class of TDEY's equity securities. As of March 31, 2012, TDEY identified "SS IRA" as its single-largest holder of TDEY Common Stock, owning 31,250,000 shares, and representing 31.43% of all common shares outstanding. By virtue of his significant ownership stake in TDEY, SS was an affiliate of TDEY, and the securities BL acquired from SS were "restricted securities" as defined under Rule 144(a)(3)(i). Because TDEY was not a reporting company, all of BL's sales of TDEY stock acquired from SS were subject to a one-year holding period, which commenced on the day that BL had fully paid for the TDEY shares.

BL purchased TDEY shares with a view to immediately resell the shares. All TDEY shares sold by BL during the TDEY Liquidation Period were held for less than one year.

None of the foregoing shares of TDEY stock were registered with the SEC.

5. ACAP Facilitated the Liquidation of Millions of Unregistered PRPM Shares through the BL Account

During the Relevant Period, PRPM was not a reporting company pursuant to the Exchange Act.

Between July 2011 and November 2013 (the "PRPM Liquidation Period"), JMB and VB engaged in a pattern of depositing shares of PRPM stock into the BL account, liquidating the shares shortly after depositing them, and wiring the proceeds out of the account shortly after the sales. Schedule C, attached to and fully incorporated by reference into the Complaint, summarizes the deposit and liquidation activity of PRPM in the BL account.

JMB and VB acquired shares of PRPM stock by purchasing convertible debt issued by PRPM and converting the debt to PRPM stock.

During the PRPM Liquidation Period, JMB and VB purchased, in a series of eight transactions, notes that were later converted into 1,910,000,000 shares of PRPM stock.

During the PRPM Liquidation Period, JMB and VB liquidated all of the shares of PRPM stock that they had purchased and converted, purportedly pursuant to the Rule 144 safe harbor exemption. Soon after JMB and VB received payment for the PRPM shares, they caused the proceeds of the sales to be wired from the BL account to outside bank accounts.

Throughout the PRPM Liquidation Period, JMB and VB sold a significant percentage of PRPM shares issued and outstanding, which made up a significant percentage of daily market volume. From August 16, 2011, through October 31, 2013, the BL account was responsible for approximately 43% of the outstanding shares of PRPM sold into the market, reaching as high as 99% of total market volume on a given day.

Further, throughout the PRPM Liquidation Period, JMB and VB repeatedly deposited and sold shares of PRPM stock that approached, but never exceeded, ten percent (10%) of the total number of shares issued and outstanding.

BL received approximately \$241,249 from the sale of PRPM shares during the PRPM Liquidation Period.

ACAP received approximately \$8,487 in sales commissions for liquidating shares through the BL account.

Ferguson approved the sales as exempt from registration pursuant to Rule 144.

a. PRPM was a shell company and went through several name changes

PRPM was a Wyoming corporation, originally domiciled in Nevada, which “engaged in the funding and acquisitions of software and mixed media companies.” PRPM’s predecessor entities went through numerous name changes.

PRPM shares management with TDEY, an issuer that was also liquidated by the VB/JMB-Controlled Accounts.

PRPM reported a net income loss from operations for the periods ending July 31, 2011 through July 31, 2013. PRPM reported nominal assets for the periods ending January 31, 2012 through July 31, 2013.

None of the foregoing shares of PRPM stock were registered with the SEC.

6. ACAP Facilitated the Liquidation of Millions of Unregistered CGRA Shares through the BL Account

During the Relevant Period, CGRA was not a reporting company pursuant to the Exchange Act.

On June 15, 2012, JMB and/or VB deposited two million shares of CGRA stock into the BL account in connection with a debt-conversion transaction. Between September 2012 and February 2013 (the “CGRA Liquidation Period”), JMB and VB liquidated all two million CGRA shares, and wired the proceeds out of the BL account shortly after each sale. Schedule D, to and fully incorporated by reference to the Complaint, summarizes the deposit and liquidation activity of CGRA stock in the BL account.

During the CGRA Liquidation Period, JMB and VB liquidated all of the shares of CGRA stock that they had purchased, purportedly pursuant to the Rule 144 safe harbor exemption. Soon after JMB and VB received payment for the CGRA shares, they caused the proceeds of the sales to be wired from the BL account to outside bank accounts.

Throughout the CGRA Liquidation Period, JMB and VB sold a significant percentage of CGRA shares issued and outstanding, which made up a significant percentage of daily market volume. On five days BL’s sales of CGRA made up 100% of total daily market volume in the security; on seven days BL’s sales of CGRA made up over 75% of total daily market volume; and on twelve days BL’s sales made up over 50% of total daily market volume.

BL received approximately \$153,028 from the sale of CGRA shares during the CGRA Liquidation Period.

ACAP received approximately \$3,457 in sales commissions for liquidating CGRA shares through the BL account.

Ferguson approved the sales as exempt from registration pursuant to Rule 144.

a. CGRA was a shell company

For the nine months ended September 30, 2012, CGRA reported no revenue and total assets of less than \$15,000.

None of the foregoing shares of CGRA stock were registered with the SEC.

B. Additional Red Flags and Suspicious Activity in the VB/JMB-Controlled Accounts

Throughout the Relevant Period, a review of the facts surrounding the penny stock transactions in the VB/JMB-Controlled accounts revealed the following red flags indicative of potentially suspicious activity:

- a. JMB's significant and relevant regulatory disciplinary history;
- b. JMB was permitted by ACAP to exercise control in BL's and MLJ's accounts when JMB lacked written trading authorization for the two accounts;
- c. The regular and large deposits of shares of thinly-traded, low-priced, microcap stocks into the VB/JMB-Controlled Accounts;
- d. Records provided to the Firm when penny stocks were deposited contained internal inconsistencies and/or omitted necessary documents. For example, Firm customers purported to acquire penny stocks through a convertible note, but purchase agreements provided by the customers did not reference a note. In other instances, the documents provided to the Firm did not include a copy of

the note or the contract that assigned a portion of the note to the customer. In yet another example, the rate of conversion utilized by the customer to obtain shares was either not stated in the note, or was different than the rate stated in the note;

- e. The consistent and distinct manner in which the VB/JMB-Controlled Accounts acquired penny stocks, *i.e.*, the acquisition of a debt instrument and the prompt conversion to stock;
- f. The pattern of activity in the VB/JMB-Controlled Accounts of large deposits of shares of the same thinly-traded microcap stocks, liquidations of the shares shortly after the deposits, and withdrawals or wiring out of the liquidation proceeds shortly after the sales;
- g. Both BL and MLJ – which were commonly owned and controlled – acquired and simultaneously liquidated shares of thinly-traded penny stocks;
- h. Liquidations of penny stocks in the VB/JMB-Controlled Accounts constituted a substantial percentage of the stocks' total daily market volume and a substantial percentage of the total shares outstanding;
- i. The de minimis amount of money for which the VB/JMB-Controlled Accounts acquired shares of penny stocks, relative to the proceeds generated from the liquidation of such shares;
- j. The number of name changes, and the nominal assets and revenues of penny stock issuers whose shares were deposited and liquidated in the VB/JMB accounts;

- k. Legal opinions provided by Firm customers stated that there was no attempt to independently verify any information provided by the seller or the issuer, and that the attorneys, in rendering their opinions, relied on the seller's and the issuer's representations to permit the removal of the restricted legend for the shares at issue;
- l. Documents upon which attorneys relied in rendering legal opinions concerning the removal of restrictive legends were listed in the legal opinions, but were not provided to the Firm to review;
- m. In certain instances, in which BL purchased shares intending to resell them, BL transmitted payments for penny stocks directly to the issuer, contrary to other documents that indicated the purchase transactions were between BL and a non-issuer third party;
- n. Records provided to the Firm that reported the number of total outstanding shares of a deposited penny stock differed significantly from the amount of total outstanding shares reported by the issuer for the same time period; and
- o. Documents provided to the Firm often lacked evidence of payment of consideration for the acquisition of the debt instrument and/or shares, thus preventing the Firm from effectively verifying relevant holding periods.

C. Additional Suspicious Penny Stock Activity in ACAP Customer Accounts

Throughout the Relevant Period, ACAP customers' penny stock transactions, series of transactions, or the facts surrounding the customers' penny stock transactions, revealed red flags indicative of potentially suspicious activity:

Customer 1

- a. From January 2011 through September 2013, Customer 1 deposited and liquidated unregistered shares of SNDY, a penny stock issued by Solos Endoscopy, Inc. Throughout that time, Hume was the registered representative assigned to Customer 1's account.
- b. On March 29, 2013, amidst Customer 1's penny stock liquidations, entities and persons affiliated with Customer 1 were enjoined by the SEC from engaging in penny stock activities. Among the parties enjoined by the SEC were another ACAP customer, BACU, and MJ, the co-founder of Customer 1. Hume was entirely unaware that MJ was in any manner affiliated with Customer 1.
- c. While Hume performed limited diligence on Customer 1's deposits of SNDY, he failed to collect evidence of when Customer 1 paid full consideration for a block of SNDY shares deposited on August 8, 2013. Wire transfer documents provided to Hume listed BACU as the "company" involved with a partial payment for shares of SNDY. Hume failed to identify that BACU was enjoined by the SEC and failed to identify that BACU was named within the wire transfer documents supporting a partial payment of SNDY shares.
- d. Between June 2, 2011, and September 30, 2013, Customer 1 sold over 609 million shares of SNDY through its ACAP account, which represented over 62% of SNDY's outstanding shares during the same period. Customer 1 was responsible for over 25% of SNDY's daily trading volume on 156 of 582 trading days during the same period, and on 20 trading days, the daily trading volume attributed to Customer 1 exceeded 50%. On 11 trading days, the

amount of SNDY sold by Customer 1 through its ACAP account exceeded 75%, reaching as high as 92.79%, of daily market volume on a single day. Customer 1 received approximately \$2.37 million from SNDY sales, and ACAP earned commissions of approximately \$61,058.

- e. Hume never determined the percentage of SNDY's outstanding shares that were sold through Customer 1's account. Hume knew generally that Customer 1's sales of SNDY constituted a substantial amount of the daily total market volume, and considered that to be a red flag, but he failed to further investigate Customer 1's liquidation activity.

Customer 2

- f. On January 22, 2013, Customer 2 paid \$8,500 for 85 million shares of ERBB, a penny stock issued by Tranzbyte Corporation. On March 5, 2013, Customer 2 purchased an additional 5 million shares of ERBB for approximately \$38,000. All 90 million shares were deposited into Customer 2's ACAP account.
- g. On March 6, 2013, a stock promotion website published an advertisement for ERBB that described it as "our New Epic Pick!" Customer 2 paid \$25,000 for the one-day advertisement.
- h. Customer 2 began to liquidate his 90 million shares on March 6, 2013 – the same day that the stock promotion advertisement was published. Ultimately, Customer 2 received approximately \$839,000 in proceeds from sales of ERBB, and ACAP earned approximately \$29,844 in related commissions.
- i. Hume was not aware either of the one-day ERBB stock promotion published on March 6, 2013, or that Customer 2 was involved with any stock promotion

activity for ERBB, thus he was unable to evaluate whether the activity presented a red flag.

- j. Hume knew that Customer 2 “made a substantial amount of money” from the sale of ERBB, and considered that fact to be a red flag, but failed to take any action in response to this red flag.
- k. Customer 2 wired over \$500,000 from its sale of ERBB shares on March 15, 2013. Hume did not consider the immediate wire transfer of ERBB funds from Customer 2’s account to be suspicious.

Customer 3

- l. From March 21, 2012, through December 17, 2013, Customer 3 deposited and liquidated 489,199 shares of WCUI, a penny stock issued by Wellness USA, Inc., through its ACAP account. Hume was the registered representative assigned to Customer 3’s account.
- m. Hume was also the registered representative assigned to the account of NRC, another ACAP customer. Both Customer 3 and NRC were corporate entities. During the time that Customer 3 was liquidating shares of WCUI, NRC paid for two one-day stock promotions of WCUI, each of which were published on November 29, 2012. Payment for the stock promotion activity included free-trading shares of WCUI.
- n. Hume knew that the account documentation for both Customer 3 and NRC listed the same contact person, but took no steps to investigate the relationship between the two accounts, or to determine how the contact person was related to each account. Had Hume conducted such investigation, he would have

discovered that Customer 3 held an ownership interest in NRC, and thus, that the same person responsible for purchasing two stock promotions was simultaneously liquidating the same security.

- o. Customer 3 received approximately \$535,386 in proceeds from sales of WCUI, and ACAP earned approximately \$18,761 in related commissions.

Customer 4

- p. From January 24, 2013, through April 24, 2013, Customer 4 deposited and liquidated 501,607 shares of MSEI, a penny stock issued by Mainstreet Entertainment, Inc. Customer 4 received approximately \$739,914 in sales proceeds from its MSEI sales, and ACAP earned approximately \$30,047 in related commissions.
- q. Customer 4's new account documents indicate that Customer 4 is a foreign corporation based in the British Virgin Islands. One of the addresses listed on Customer 4's new account forms was a Hong Kong address. Hume approved the opening of Customer 4's ACAP account.
- r. The authorized individual associated with Customer 4's account was JM. In June 2001, JM was enjoined by the SEC for engaging in insider trading and for filing false reports with the SEC, and was ultimately barred from acting as an officer and director for a period of five years, and ordered to pay disgorgement and penalties exceeding \$43,000.
- s. Despite the presence of red flags, Hume failed to conduct due diligence on JM as the authorized individual associated with an account held by a foreign corporation. Thus, Hume failed to discover JM's securities-related disciplinary

history, and the Firm permitted the account to liquidate millions of shares of penny stocks absent heightened scrutiny.

Customer 5

- t. From April 9, 2013, through June 18, 2013, Customer 5 deposited and liquidated shares of AMBS, a penny stock issued by Amarantus Bioscience Inc. Customer 5 received its shares of AMBS as compensation for conducting a marketing campaign for AMBS. However, Hume as the registered representative assigned to Customer 5, and as AMLCO, failed to discover that this was the source of Customer 5's shares of AMBS.
- u. Customer 5 received approximately \$559,328 in sales proceeds from its liquidation of 11,843,333 shares of AMBS, and ACAP earned approximately \$18,070 in related commissions.

Customer 6

- v. From October 21, 2011 through July 30, 2013, Customer 6 deposited and liquidated shares of WTII, a penny stock issued by Water Technologies Inc. During the time that Customer 6 was liquidating shares of WTII, Customer 6 paid \$75,000 for a one-day stock promotion of WTII that was published on March 30, 2012. Within days, Customer 6 sold hundreds of thousands of shares of WTII.
- w. The registered representative that approved the sales, and Hume as AMLCO, failed to discover that Customer 6 had sold shares of WTII on the same day that Customer 6's paid stock promotion advertisement was published.

- x. MB was the authorized contact for Customer 6. On or around August 3 and August 7, 2012, five ACAP customers emailed the Firm to advise that MB was authorized to make trades in their accounts for shares of TADF, a penny stock issued by Tactical Air Defense Services, Inc.
- y. Further, MB, purportedly on behalf of his alleged fiancé, attempted to obtain control over the account of another ACAP customer, BB, during early November 2012.
- z. While the Firm had written procedures concerning authorizing a third-party to effect securities transactions in customer accounts, the Firm failed to abide by those procedures when it permitted MB to effect trades in its customers' accounts. Consequently, four million shares of TADF were liquidated from BB's account on November 4, 2012, which was the day of BB's death, and further liquidations occurred after her death, which also violated the Firm's WSPs.
- aa. MB's father and ex-wife also held accounts at the Firm through which TADF shares were deposited and liquidated.
- bb. In total, MB had relationships with nine ACAP accounts through which approximately 2.1 billion unregistered shares of TADF were deposited and liquidated, and which generated approximately \$1.8 million in sales proceeds. The Firm's commissions from TADF sales totaled \$73,671.
- cc. Among the documents that the Firm received from customers that liquidated TADF and WTII shares was a legal opinion from an attorney, MP, which stated that TADF and WTII shares were free selling in the hands of the Firm's

customers. However, attorney MP was enjoined by the SEC, on January 12, 2011, from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act (negligent securities fraud), prior to the Firm's customers liquidating the related shares.

Customer 7

- dd. From August 16, 2012 through February 11, 2013, Customer 7 deposited and liquidated 5,184,900 shares of TRKP, a penny stock issued by TurkPower Corporation. Customer 7 received approximately \$501,250 in sales proceeds from its TRKP sales, and ACAP earned approximately \$10,897 in related commissions.
- ee. According to Customer 7's account opening documents, Customer 7 shared a mailing address with TRKP.
- ff. When Customer 7 opened its ACAP account in August 2012, it owned 4,295,000 million shares of TRKP. Documents provided to the Firm when Customer 7 opened its account stated that Customer 7 was an affiliate of TRKP. Approximately one month later, Customer 7 reported to the Firm that it "owned or controlled" over 11 million shares of TRKP, and acknowledged that it was an affiliate of TRKP.
- gg. In addition, when Customer 7 opened an account at ACAP, the authorized contact for the account was KO. Prior to this account being opened, KO pleaded guilty to criminal money laundering conspiracy and was barred by the SEC from associating with any broker-dealer. Nevertheless, Hume approved the opening of the account.

D. ACAP's Written Supervisory Procedures and Anti-Money Laundering Program

Throughout the Relevant Period, ACAP had in effect two versions of its Written Supervisory Procedures. The first version, dated July 7, 2011, was in effect from the beginning of the Relevant Period until November 8, 2012. The second version was dated November 9, 2012, and was in effect from that date through the end of the Relevant Period (referred to individually as the "2011 WSPs" and the "2012 WSPs," and collectively as the "WSPs").

Each version of the WSPs contained a chapter titled Anti-Money Laundering Program and a subchapter titled Money Laundering, which together set forth the Firm's anti-money laundering procedures (referred to individually as the "2011 AML Program" and the "2012 AML Program," and collectively as the "AML Program").

Throughout the Relevant Period, Ferguson was the Firm's CCO and was responsible for establishing and maintaining the supervisory system, policies and procedures for all areas of the Firm. Ferguson was also responsible for supervising the activities of numerous ACAP registered representatives, including Hume.

Hume was the Firm's AMLCO throughout the Relevant Period, and was responsible for overseeing the Firm's anti-money laundering program.

The AML Program contained a subchapter titled Detecting Potential Money Laundering, which designated Hume as the principal responsible for ensuring compliance with the procedures set forth in that subchapter. The AML Program provided that Hume, as the Firm's AMLCO, was responsible for overseeing and implementing the Firm's AML program, investigating suspicious activity, and reporting such activity when necessary. ACAP's AML Program further provided, with respect to detecting potential suspicious activity, that "[a]nother designated

supervisor will review the [AMLCO's] accounts.” Ferguson was the principal at ACAP who was responsible for reviewing Hume's accounts.

ACAP's AML Program required that the Firm file a SAR for transactions that were suspicious as indicated by the red flags in the AML Procedures. The AML Program stated that “[s]uspicious activities include a wide range of questionable activities; examples include trading that constitutes a substantial portion of all trading for the day in a particular security; heavy trading in low priced securities; [and] unusually large deposits of funds or securities” among others.

ACAP's AML Program also required the AMLCO to review reports and other available information to detect questionable patterns of activity, including patterns of unusual size, volume, or types. Pursuant to ACAP's AML Program, “[i]tems reviewed include[d] trading and wire transfer transactions in the context of other account activity to determine if a transaction lacks financial sense or is suspicious because it is an unusual transaction or strategy for that customer.”

ACAP's AML Program further stated that: “[m]onitoring will be conducted using available exception reports or review of a sufficient amount of account activity to permit identification of patterns of unusual size, volume, pattern or type of transactions . . . or involve red flags (indicators of potential money laundering) which are included in the Money Laundering policy. . . .”

The AML Program further stated that the Firm used the following tools to identify potential suspicious activity:

- a. Transaction information including disbursement of funds or securities;
- b. Education of firm personnel, particularly supervisors in Operations areas;

- c. Employee reports of potential suspicious activity forwarded to the AML Compliance Officer; and
- d. Information or reports provided by a clearing firm, if applicable for business introduced to a clearing firm.

Despite the requirements of ACAP's AML Program, Hume did not review or otherwise monitor the deposits and liquidation of penny stocks at ACAP for suspicious activity. Instead of conducting an independent review or monitoring the deposits and subsequent liquidations, Hume relied entirely on Ferguson and the registered representative assigned to the customers' accounts to bring indicators of potentially suspicious activity to his attention.

Throughout the Relevant Period, ACAP did not use any exception reports that addressed anomalous transactions in microcap or low-priced securities, nor did it utilize any exception reports or other automated or manual systems that adequately monitored for patterns of deposits and liquidations of unregistered securities necessary to adequately detect, investigate, and report, if applicable, suspicious activity.

To the extent that the Firm was actually detecting and investigating suspicious activity, the Firm failed to maintain any evidence of its conduct. Beginning in approximately March 2013, Hume maintained an excel spreadsheet to monitor for price increases by comparing the price of a security at the time of a customer's deposit against the price of that security at the time of its subsequent sale. However, the price information for most of the customers was incomplete. Furthermore, the excel spreadsheet did not evidence that the Firm monitored for any other suspicious activity.

1. Red Flags Indicating Potential Suspicious Activity

To detect suspicious activity, the Firm's AML Program specifically identified various risk indicators (red flags) that may suggest potential money laundering or other suspicious or fraudulent activity. The red flags listed in the AML Program included, among others:

- a. The customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations.
- b. The customer engages in suspicious activity involving the practice of depositing penny stocks, liquidating them, and wiring proceeds. A request to liquidate shares may also represent engaging in an unregistered distribution of penny stocks which may also be a red flag. [FINRA Regulatory Notice 09-05]
- c. The customer, for no apparent reason or in conjunction with other red flags, engages in transactions involving certain types of securities, such as penny stocks, which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)
- d. The customer maintains multiple accounts, or maintains accounts in the names of family members or corporate entities, for no apparent business purpose or other purpose.

While ACAP's WSPs: (a) referenced the red flags identified in Regulatory Notice 09-05, which may indicate a customer is selling unregistered securities; (b) stated that registered representatives should be aware of the red flags; and (c) required a designated supervisor to

review for those red flags, the WSPs failed to set out procedures to adequately detect those red flags and provide sufficient guidance as to how to conduct a reasonable searching inquiry.

Specifically, the WSPs did not clearly communicate the steps required in order to conduct the background inquiry on: (a) the issuer, its affiliates, officers and directors; (b) other key persons and entities associated with the issuer, including its attorneys; (c) persons controlling activity in the account seeking to liquidate restricted securities; and (d) attorneys who issued opinion letters regarding the registration and exemption status of securities.

2. ACAP's Policies and Procedures Concerning Shell Companies

The AML Program stated that shell companies can represent a potential money laundering risk. Shell companies were described as “non-publicly traded corporations . . . that typically have no physical presence and generate little or no independent economic value.” The AML Program further stated that, “[s]tate laws allow shell companies to obscure company structure, ownership, and activities, so there is little transparency to enable ACAP Financial to understand with whom they are dealing.”

The AML Program further stated that shell companies were subject to review, which may include: obtaining information about underlying owners, and obtaining assurances from the shell company representative that principals have been screened.

3. Policies and Procedures Related to the Sale of Penny Stocks

The 2011 AML Program contained few details specific as to how the Firm would monitor its penny stock trading activity in order to detect potential money laundering. It did, however, state that “[t]rading penny stocks (which may involve unregistered distributions) . . . in particular, will be monitored when [it] occur[s].”

The 2012 AML Program contained an additional set of procedures that, while not specifically attributed to penny stocks, impacted all transactions in which Firm customers deposited large quantities or dollar values of securities. In particular, the procedures required that the Firm's registered representatives use "a Large Block Questionnaire for deposits of securities for share amounts equal to or greater than 300,000 shares or \$50,000 or higher in value," and that "all securities deposits are required to have [Clearing Firm's] Deposited Securities Request form (DSR) . . . along with the appropriate documents showing how the securities were obtained. This may include copies of the certificates, note documents, payments, attorneys [sic] opinions, SEC filings, statements from transfer agents, and any other documents which would give [ACAP] a reasonable [sic] basis to believe that the securities are free trading and may be sold in a public transaction. After ACAP's review is completed a signed Indemnification Form is attached to the file and transmitted to [Clearing Firm] for further review. After [Clearing Firm's] review is completed the securities will then be moved into a NET position in [Clearing Firm's] computer system at which time the customer may sell the position."

The WSPs contained subchapters titled Sale of Control or Restricted Stock, Unregistered Resales of Restricted Securities, and Penny Stocks (collectively, the "Penny Stock Procedures"), which described the Firm's policies and procedures governing the sale of unregistered securities.

The Penny Stock Procedures stated that Firm personnel should review transactions involving the unregistered resale of restricted securities on a daily basis in the course of reviewing order records and transaction reports. Specifically, principals and operations personnel were required to review transactions for red flags, which, if identified, would require

registered representatives to obtain information from customers concerning the customer and the block of securities being sold in order to confirm that securities are not unregistered or restricted.

The Penny Stock Procedures further described red flags indicating that a customer may be liquidating unregistered securities; registered representatives of the Firm were required to be familiar with these red flags. Examples of red flags included:

- a. A customer opens a new account and delivers physical certificates representing a large block of thinly-traded or low-priced securities.
- b. A customer has a pattern of depositing physical share certificates, immediately selling the shares and then wiring out the proceeds of the resale.
- c. A customer deposits share certificates that are recently issued or represent a large percentage of the float for the security.
- d. The company was a shell company when it issued the shares.
- e. A customer with limited or no other assets under management at ACAP Financial receives an electronic transfer or journal transactions of large amounts of low-priced, unlisted securities.
- f. The issuer has been through several recent name changes, business combinations or recapitalizations, or the company's officers are also officers of numerous similar companies.
- g. The issuer's SEC filings are not current, are incomplete, or nonexistent.

The Penny Stock Procedures further stated that when a registered representative is confronted with a customer wanting to sell a block of stock where there may be a question about the registered status of the stock, the following questions should be asked:

- a. How long has the customer held the securities?

- b. How did the customer acquire the securities?
- c. Does the customer intend to sell additional shares of the same class of securities through other means?
- d. Has the customer solicited or made any arrangement for the solicitation of buy orders in connection with the proposed resale of unregistered securities?
- e. Has the customer made any payment to any other person in connection with the proposed resale of securities?
- f. How many shares or other units of the class are outstanding, and what is the relevant trading volume?

**FIRST CAUSE OF ACTION
SALES OF UNREGISTERED SECURITIES
(VIOLATIONS OF FINRA RULE 2010)**

Section 5 of the Securities Act of 1933 prohibits sales of securities that are not registered with the SEC, unless the sales are exempt from registration.

Section 4(1) of the Securities Act (n/k/a/ Section 4(a)(1) of the Securities Act), 15 U.S.C. § 77d(a)(1), exempts “transactions by any person other than an issuer, underwriter, or dealer” from the registration requirements of Section 5. Under Section 2(a)(11) of the Securities Act, 15 U.S.C. § 77b(a)(11), the term “underwriter” is defined as “any person who has purchased from an issuer with a view to . . . distribution of any security,” and the term “issuer” is defined to include “any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.” Compliance with Rule 144 establishes a safe harbor against a claim that an individual or entity is an “underwriter.”

Under Rule 144, an “affiliate of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer.”

The Rule 144 safe harbor exemption is not available to any security issued by an issuer that is a shell company or was a shell company and has not complied with Rule 144(i)(2).

FINRA Rule 2010 requires members, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.” Distributions of unregistered securities made in contravention of Section 5 violate high standards of commercial honor and just and equitable principles of trade.

BL’s and MLJ’s Liquidations of MPIX Violated Section 5

As detailed above, the Rule 144 safe harbor and the Section 4(a)(1) exemption are unavailable for the subject sales of shares of unregistered MPIX stock, and therefore could not be relied upon by ACAP, because:

- a. BL and MLJ acquired restricted shares of MPIX from affiliates, as defined in Rule 144(a)(1), and therefore did not meet the one-year holding period required pursuant to Rule 144(d)(1); and
- b. MPIX had no or nominal operations, and either (i) no or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets, and did not demonstrate that it was not a “shell” company by complying with the requirement as set forth in Rule 144(i)(2).

BL's Liquidations of TDEY Violated Section 5

As detailed above, the Rule 144 safe harbor and the Section 4(a)(1) exemption are unavailable for the subject sales of shares of unregistered TDEY stock, and therefore could not be relied upon by ACAP, because:

- a. BL acquired the Affiliate TDEY Stock from an affiliate of TDEY, as defined in Rule 144(a)(1). As a result of acquiring the Affiliate TDEY Stock, BL did not meet the one-year holding period required pursuant to Rule 144(d)(1); and
- b. TDEY had no or nominal operations, and either (i) no or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets, and did not demonstrate that it was not a “shell” company by complying with the requirement as set forth in Rule 144(i)(2).

BL's Liquidations of PRPM Violated Section 5

As detailed above, the Rule 144 safe harbor and the Section 4(a)(1) exemption are unavailable for the subject sales of certain shares of unregistered PRPM stock, and therefore could not be relied upon by ACAP, because:

- a. PRPM had no or nominal operations, and either (i) no or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets, and did not demonstrate that it was not a “shell” company by complying with the requirement as set forth in Rule 144(i)(2).

BL's Liquidations of CGRA Violated Section 5

As detailed above, the Rule 144 safe harbor and the Section 4(a)(1) exemption are unavailable for the subject sales of certain shares of unregistered CGRA stock, and therefore could not be relied upon by ACAP, because:

- a. CGRA had no or nominal operations, and either (i) no or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets, and did not demonstrate that it was not a “shell” company by complying with the requirement as set forth in Rule 144(i)(2).

Section 4(4) of the Securities Act (n/k/a/ Section 4(a)(4) of the Securities Act), 15 U.S.C. § 77d(a)(4), exempts brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market, but not the solicitation of such orders, from the registration requirements of Section 5. Among other conditions a firm must meet to take advantage of the exemption under Section 4(a)(4), a firm must conduct a reasonable inquiry such that it is unaware of circumstances suggesting that the customer is an underwriter of the securities sold or that the transaction is part of an illegal, unregistered distribution of the issuer's securities.

As detailed above and below, the Section 4(a)(4) exemption is unavailable to Respondents because they failed to conduct reasonable inquiries of the circumstances surrounding the foregoing deposits and sales of unregistered shares of MPIX, TDEY, PRPM and CGRA.

ACAP sold the foregoing shares of MPIX, TDEY, PRPM and CGRA for its customers through use of the means or instruments of transportation or communication in interstate commerce and the mails, by selling the shares through the over-the-counter market, by

corresponding about the deposits and corresponding sales through the mail and email, and by communicating about them in phone calls.

No registration statement has been filed with the SEC or was in effect for the foregoing shares of MPIX, TDEY, PRPM, and CGRA stock, and the shares of these four microcap stocks were sold in transactions that were not exempt from registration with the SEC.

By engaging and participating in the foregoing sales of unregistered securities in transactions not subject to an exemption from the registration requirements, ACAP, through Ferguson and Hume, acted in contravention of Section 5, and thus Hume violated FINRA Rule 2010.

**FOURTH CAUSE OF ACTION
AML VIOLATIONS
(VIOLATIONS OF FINRA RULES 3310 AND 2010)**

FINRA Rule 3310(a) requires members to “[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under [the Bank Secrecy Act] and the implementing regulations thereunder.”

Pursuant to the USA PATRIOT Act of 2001 (the “Patriot Act”), which amended the Bank Secrecy Act (“BSA”), the United States Department of the Treasury requires suspicious transaction reporting by broker-dealers. The implementing regulation issued by the U.S. Department of the Treasury, 31 C.F.R. § 1023.320 (recodified from 31 C.F.R. § 103.19 on March 1, 2011), requires broker-dealers to file with FinCEN “a report of any suspicious transaction relevant to a possible violation of law or regulation.” The regulation further provides that:

A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least \$ 5,000, and the broker-dealer knows, suspects, or has reason to suspect that the

transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the broker-dealer to facilitate criminal activity.

In NASD Notice to Members 02-21 (“NTM 02-21”), the NASD provided guidance for AML compliance programs. NTM 02-21 sets forth a non-exhaustive list of examples of red flags indicative of potential money laundering and suspicious activity and advised that if firms detect red flags, they should perform additional due diligence before proceeding with a transaction.

In NASD Notice to Members 02-47, the NASD provided additional guidance to firms regarding their AML obligations and the filing of SARs. Specifically, the NASD reminded firms that “[t]he rule is intended to encourage broker/dealers to evaluate customer activities and relationships and design an appropriate monitoring program; the [FinCEN] release suggests that firms use a ‘risk-based approach’ in monitoring for suspicious transactions.”

Throughout the Relevant Period, Hume failed to follow the instructions contained in the Firm’s AML Program, including by failing to conduct due diligence on the Firm’s customers in

the presence of red flags. As a result, Hume failed to identify that Firm customers had securities-related disciplinary histories, and that individuals with a beneficial interest in ACAP accounts were paying for stock promotions while they were simultaneously liquidating penny stocks of the same security. Hume also failed to identify that multiple Firm customers had control or a beneficial interest in more than one ACAP account, and failed to identify that one Firm customer had a criminal conviction for conspiracy to commit money laundering.

Hume also failed to identify suspicious activity concerning customers' deposits and liquidations of penny stocks, and the wiring of sales proceeds from the customers' ACAP accounts. In many instances, while Hume received supporting documents in connection with penny stock deposits, he failed to review the underlying documents to attempt to identify red flags or suspicious activity. Hume further failed to adequately investigate suspicious penny stock activity, even in instances where he identified red flags, and failed to consider whether to report potentially suspicious activity by filing a SAR, where appropriate.

Further, Hume did not monitor for stock promotions of issuers whose penny stocks were deposited and sold through ACAP customer accounts. Nor did Hume implement policies or procedures that would require the Firm or any of its registered representatives to monitor whether customers paid for promotional activity concerning penny stocks that the customers deposited and liquidated through their ACAP accounts.

Hume also failed to analyze and evaluate daily and aggregate trading volume for penny stocks that were liquidated through ACAP customer accounts. In this regard, Hume failed to identify instances where Firm customers' liquidations of penny stocks represented a significant percentage of the underlying securities' outstanding shares, and/or represented a significant percentage of the daily trading volume in the security.

The Firm's AML Program stated that the Firm conducted AML monitoring by "using available exception reports or review[ing][] a sufficient amount of activity to permit identification of patterns of unusual size, volume, . . . or [other activity that] involve[d] red flags" However, Hume as AMLCO did not review any exception reports throughout the Relevant Period, and did not himself review or monitor deposits and liquidations of penny stocks for suspicious activity. Rather, Hume relied entirely on Ferguson and other registered representatives to identify potentially suspicious activity and to bring that activity to Hume's attention, without providing any guidance or training on how and when to identify this activity.

Specifically, Hume failed to identify as potentially suspicious the liquidation of over 3.3 billion shares of MPIX, TDEY, PRPM, and TDEY from the VB/JMB-Controlled Accounts, and failed to identify as potentially suspicious the numerous red-flags described above in Sections III.B and III.C of the Facts.

Based on the foregoing, Hume failed to adequately implement the Firm's AML program, and as a result Hume violated FINRA Rules 3310(a) and 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 Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be:

- barred from association with any FINRA member in all capacities.

The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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



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