

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Anthony Lodati (CRD No. 4877082),

and

Brookville Capital Partners, LLC (CRD No.
102380),

Respondents.

DISCIPLINARY PROCEEDING
No. 2012030969801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Brookville Capital Partners, LLC (“Brookville” or “the Firm”) and its President, Anthony Lodati (“Respondents”), defrauded customers in connection with the sale of a private placement offering; made unsuitable recommendations to customers; and failed to establish, maintain or enforce a supervisory system, including written supervisory procedures (“WSPs”), reasonably designed to achieve compliance with the laws, rules and regulations governing the sale of private placements.

2. From January 2011 through October 2011, Respondents defrauded Brookville customers who invested in a private placement called Wilshire Capital Partners Group LLC (“Wilshire”). During the time Brookville was soliciting Brookville customers to invest in Wilshire, Lodati learned that an individual named John Mattera had effected transactions on behalf of Wilshire as Wilshire’s CEO and Managing Director, and also that Mattera had been sanctioned and

fined by the U.S. Securities and Exchange Commission (“SEC”) for securities fraud in 2010 and convicted of a felony by the state of Florida in 2003.

3. Lodati and Brookville also knew or should have known through adequate due diligence that the escrow company associated with the Wilshire transaction was controlled by Jonnie Ray Arnold. Arnold was sanctioned and fined by the SEC in 2010 in the same action as Mattera.

4. Lodati and Brookville did not disclose Mattera’s role in Wilshire or his criminal and regulatory background. Instead, Lodati and Brookville continued soliciting customers to invest in Wilshire, through which investors would purportedly have an indirect interest in pre-initial public offering (IPO) shares of Fisker Automotive.

5. In total, Brookville sold 29 of its customers over \$1 million worth of securities in Wilshire, as set forth in Exhibit A to this complaint.

6. In November 2011, the SEC sued Mattera, Arnold, and others in connection with a separate scheme through which they defrauded investors of \$13 million. These individuals were also criminally prosecuted and convicted, and Mattera has been sentenced to prison. Because Wilshire was related to the fraudulent scheme through Mattera, Arnold and his escrow company, and others, the SEC obtained a court order freezing all of Wilshire’s assets, including the interests owned by Brookville’s customers. The Brookville customers who invested in Wilshire cannot access their funds or their purported investment in Fisker stock.

7. By intentionally omitting known material information in connection with the sale of securities to Brookville customers, Lodati and Brookville willfully violated the Securities Exchange Act of 1934 § 10(b), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

8. Lodati was responsible for conducting due diligence on the Wilshire investment before Brookville could begin soliciting its customers. On April 25, 2011, Lodati certified that he had completed due diligence for the transaction with Wilshire. At that time, however, Lodati and Brookville's counsel knew that Brookville did not have several key documents necessary to complete due diligence, namely, an engagement letter between Brookville and Wilshire, an escrow agreement, or a signed Stock Purchase Agreement evidencing Wilshire's purchase of the Fisker stock.

9. Lodati and Brookville also disregarded numerous red flags relating to the ownership of the Fisker stock, the documents created for the transaction, and the individuals involved with Wilshire and other related entities.

10. Because Respondents failed to conduct adequate due diligence, they did not have a reasonable basis to believe the Wilshire investment was suitable for any customer before authorizing Brookville's brokers to recommend that Brookville customers invest in Wilshire, thereby violating NASD Rule 2310 and FINRA Rule 2010.

11. From April 2010 through December 2012, Brookville, acting by and through Lodati failed to establish, maintain, and enforce WSPs reasonably designed to ensure the Firm conducted adequate due diligence for private placements. As a result, Respondents violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

RESPONDENTS AND JURISDICTION

12. Anthony Lodati joined Brookville in November 2004 as an unregistered business manager. He became registered through Brookville with FINRA as a Financial and Operations Principal on February 7, 2006, and became registered as a General Securities Representative and Principal that same year. He remained the business manager at the Firm until he became President

of the Firm in early 2008. He became registered as an Investment Banking Representative in January 2010 and as an Operations Professional in December 2011.

13. Currently, Lodati is the President of Brookville and is registered with the Firm as a General Securities Representative, Financial and Operations Principal, Operations Professional, and Investment Banking Representative.

14. From at least 2007 through the present, Lodati has been responsible for the Firm's policies and procedures relating to, and the conduct of due diligence for the Firm's private placement offerings. As such, Lodati is the principal at Brookville responsible for creating the WSPs related to due diligence for private placements.

15. Lodati also controls Brookville through owning a majority share of Brookville's parent company.

16. Brookville Capital, LLC is a registered broker-dealer with its principal place of business in Uniondale, New York, and has been a member of FINRA under five different names since 1999. As of April 2014, the Firm employs 36 registered representatives at two branches, both located in Long Island, New York.

17. The Firm and Lodati have a disciplinary history.

18. In June 2010, FINRA issued a Letter of Acceptance, Waiver and Consent ("AWC") in which it found that Lodati and Brookville violated NASD Rule 2010 by selling securities to fifty investors using a private placement memorandum that failed to disclose a convicted felon's association with the issuer.

19. In the same action, FINRA found that, among other things, between 2006 and 2009 the Firm failed to establish and implement an AML program and related procedures adequate to identify, investigate and respond to red flags of suspicious activities; improperly facilitated the

distribution of approximately 20 million shares of various unregistered securities; failed to perform adequate due diligence to ensure that the transactions did not involve distributions of unregistered securities and/or restricted securities; made materially false representations and omitted material facts in soliciting the sale of securities; and used misleading telemarketing scripts that were not approved by a registered principal.

20. FINRA suspended Lodati's registrations as a Principal for two months and fined him \$30,000. The Firm was censured and fined \$200,000 and required to obtain an independent consultant to conduct a comprehensive review of Firm policies, procedures and controls related to the findings, including its due diligence systems and procedures with regard to reviews of issuers' management involved in private placement transactions.

21. In September 2013, FINRA issued an AWC in which it found that in 2008 and 2009 the Firm had failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with applicable rules related to sale of non-traditional ETFs; conducted insufficient due diligence regarding those non-traditional ETFs prior to authorizing its registered representatives to sell the products to retail customers; and violated SEC rules related to a contingent private placement offering. The Firm was censured and fined \$25,000, and ordered to pay restitution of \$23,578 plus interest. Lodati was personally censured and fined \$5,000 in connection with the charge relating to the contingent private placement offering.

22. Lodati is currently registered with FINRA and Brookville is currently a FINRA member firm; they are therefore subject to FINRA's jurisdiction pursuant to FINRA By-Laws Article IV, Section 1, and Article V, Section 2.

NON-RESPONDENTS

23. The Praetorian Global Fund, Ltd (the “Praetorian Fund”) was formed in 2010 by Mattera and his associate Bradford van Siclen and was registered in the British Virgin Islands as a professional mutual fund. Mattera and van Siclen also formed a number of affiliated LLCs, each of which was a Delaware limited liability company that purported to be a special purpose vehicle (“SPV”) to hold pre-IPO shares in a single company such as Fisker Automotive, Facebook, Bloom Energy, Groupon, and Zynga. From 2010 to 2011 Mattera and van Siclen sold interests in those affiliated SPVs through a number of broker-dealers.

24. G Power II LLC (“G Power II”) was one of the SPVs affiliated with the Praetorian Fund, and Mattera and van Siclen purportedly established it to acquire and hold pre-IPO shares of Fisker Automotive, an American automaker, founded in 2007, that developed one of the first plug-in hybrid electric cars.

25. Wilshire was a Delaware limited liability company Mattera formed in November 2010 purportedly to invest in clean energy and green technology. It was also intended to hold pre-IPO shares of Fisker.

26. Bradford van Siclen was Managing Director of the Praetorian Fund. He held himself out to Lodati as the Managing Member of Wilshire.

27. John Mattera was Managing Director and a founder of Wilshire. He also held himself out as, among other things, the Chairman of the Board of Advisors of the Praetorian Fund and the CEO of Wilshire.

28. Mattera was charged, along with others, by the SEC in 2009 for fraudulently attempting to avoid registration requirements by backdating promissory notes to obtain unrestricted shares of a company. Mattera was permanently enjoined in August 2010 from

violating Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and Section 5 of the Securities Act of 1933. Mattera was also barred from participating in an offering of penny stock and consented to paying disgorgement of \$70,000 plus prejudgment interest of \$8,766.94 and a civil penalty of \$70,000.

29. In 2003, the State of Florida convicted Mattera of grand theft in connection with an advance-fee loan scam.

30. First American Service Transmittal, Inc. ("FAST") was a Florida corporation that, on van Siclen's recommendation, Brookville agreed to use as an escrow agent for customers investing in Wilshire. John R. Arnold was its President, CEO, sole officer, and director. FAST was also the escrow agent used by the Praetorian Fund and its affiliated SPVs.

31. Arnold was also named in the 2009 SEC action against Mattera. Default judgment was entered against Arnold on June 11, 2010 and he was permanently enjoined from violating Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and Section 5 of the Securities Act of 1933 and barred from participating in an offering of penny stock. On October 19, 2010 Arnold was also fined \$65,000.

FACTS

Lodati Meets van Siclen

32. In late 2010 and early 2011, shortly after returning to the industry in his principal capacity following the AWC discussed in paragraphs 18-20 above, Lodati sought opportunities to create or participate in a private placement through which Brookville customers could obtain pre-IPO shares of high-profile companies.

33. In January 2011, Lodati met with a business acquaintance, AD, who was in the process of closing the member firm he ran with his father.

34. AD referred Lodati to van Siclen, an individual AD believed had access to pre-IPO shares of Fisker.

35. AD had been previously suspended and fined by FINRA for participating in the unlawful distribution of unregistered securities.

36. AD remained involved in the Wilshire Transaction, repeatedly communicating with Lodati by email and pressuring Brookville to sell interests in Wilshire.

37. During the time he was communicating with Lodati about the Wilshire transaction, AD was barred by FINRA from associating in any capacity with a FINRA member firm because AD refused to appear for on-the-record testimony in connection with FINRA's investigation of suspicious trading at his firm.

The Parties Begin to Negotiate a Deal Involving G Power II

38. In early February 2011, Brookville, through Lodati, agreed to enter into an agreement with van Siclen and the Praetorian Fund by which Brookville customers could invest in G Power II, an SPV affiliated with the Praetorian Fund.

39. Pursuant to the agreement, Brookville would act as a non-exclusive placement agent for G Power II, which purported to hold an interest in Series B-1 Convertible Preferred Stock of Fisker (the "Fisker Stock"). Brookville's customers, by investing in G Power II, would obtain an indirect interest in the Fisker shares.

40. Lodati was responsible for conducting due diligence regarding this transaction.

41. Lodati hired company counsel and due diligence counsel to assist Brookville with the transaction.

42. Lodati and Brookville relied on information provided by van Siclen in conducting the due diligence.

43. Lodati and Brookville conducted no due diligence into the Praetorian Fund and G Power II other than to request from van Siclen proof that G Power II owned the Fisker Stock.

44. Van Siclen did not promptly provide, and gave various excuses for not providing, information regarding proof of ownership of the Fisker Stock.

45. In late March 2011, after repeatedly asking for proof of G Power II's ownership interest in the Fisker Stock, Lodati and Brookville's counsel received copies of the certificates for the Fisker Stock, and learned it had actually been issued in the name of Wilshire, not G Power II.

46. Van Siclen told Brookville's counsel that the Fisker Stock was being transferred from Wilshire to G Power II.

47. On March 25, 2011, van Siclen sent Brookville's counsel a January 3, 2011 agreement signed by John Mattera as CEO of Wilshire and van Siclen as Managing Director of G Power II, evidencing the transfer of the Fisker Stock from Wilshire to G Power II.

48. That same day, Van Siclen proposed that Brookville customers purchase interests in Wilshire instead of G Power II and claimed he would "cancel the transfer [of the Fisker Stock] to Praetorian."

49. Despite knowing that Mattera was acting on behalf of Wilshire as its CEO, Brookville did not, at this time, conduct any due diligence as to Mattera.

The Focus Shifts to Wilshire

50. The parties agreed that Brookville would sell interests in Wilshire directly, rather than interests in G Power II.

51. Once the parties agreed to pursue a transaction to sell Brookville customers interests in Wilshire instead of in G Power II, Lodati concentrated Brookville's due diligence on confirming Wilshire owned the Fisker Stock.

52. Brookville's counsel, using due diligence conducted by Lodati and due diligence counsel, drafted or edited documents provided by van Sichen to create the Private Placement Memorandum used to solicit and sell interests in Wilshire, including a Cover Letter, a Wilshire Subscription Agreement, a Questionnaire, an Information Memorandum, a Wilshire Operating Agreement, and an Amendment to the Wilshire Operating Agreement (the "Wilshire PPM").

53. The Wilshire PPM set forth the terms of the transaction by which Brookville customers could purchase interests in Wilshire.

Lodati Certifies that Due Diligence is Complete

54. Brookville's WSPs and supervisory systems relied on a checklist developed in response to the 2010 AWC to ensure adequate due diligence was completed for private placement transactions such as the investment in Wilshire.

55. The checklist set forth a number documents to be obtained as part of the due diligence process, and required the principal of the Firm responsible for supervising due diligence to sign, certifying that sufficient due diligence had been completed and the Firm's brokers could proceed with soliciting customers to purchase securities in the offering.

56. The checklist did not, among other things, provide a means to identify the tasks necessary for the particular private placement at issue; tasks actually performed; how tasks had been completed (i.e. which documents or information had been reviewed, by whom, when it was reviewed); and where the results and information were maintained. The checklist also did not

allow the Firm to clearly note and track any open issues or questions related to the due diligence process.

57. On April 25, 2011, Lodati certified that due diligence had been completed for the Wilshire transaction by signing the checklist that was required by the Firm's WSPs.

58. Lodati consequently authorized and encouraged the Firm's brokers to begin selling interests in Wilshire, and the brokers and Lodati began to solicit and market the Wilshire investment to customers.

Respondents Fail to Collect Important Documents and Information for the Due Diligence File

59. At the time he certified due diligence was complete, Lodati knew Brookville was missing numerous documents required by the checklist in the Firm WSPs and necessary to completing adequate due diligence, including:

- a. An engagement letter between Brookville and Wilshire;
- b. An escrow agreement;
- c. A signed Stock Purchase Agreement for the initial purchase of the Fisker Stock by Wilshire;
- d. A signed Fisker Amended and Restated Investors' Rights Agreement; and
- e. A signed Fisker Amended and Restated Stockholders' Agreement.

60. Brookville was also missing information required by the Firm's WSPs related to the Firm's investigation of the entities and individuals involved in the transaction.

61. For example, as of the date he certified due diligence was complete, Lodati had not confirmed that appropriate and sufficient background checks had been completed for any individuals (other than van Siclen) associated with Wilshire, the Praetorian Fund, G Power,

FAST, or Fisker. In particular, Lodati failed to confirm that background checks had been completed for Mattera, Arnold, or any of the officers of Fisker.

62. Lodati also had not independently obtained background information or corporate formation documentation for the Praetorian Fund, Wilshire, or Fisker as of the date he certified due diligence was complete for the Wilshire transaction.

63. Lodati had not obtained written confirmation from Fisker or its transfer agent that the Fisker Stock was held in Wilshire's name as of the date he certified due diligence was complete for the Wilshire transaction.

The Signed Stock Purchase Agreement Leads Lodati to Discover Mattera's Fraud Background

64. On June 2, 2011, Lodati received the signed Stock Purchase Agreement for Wilshire's purchase of the Fisker Stock, dated November 5, 2010, and learned that Mattera, acting as the Managing Director of Wilshire, had purchased the Fisker Stock on behalf of Wilshire.

65. This was the second document Lodati or Brookville had received showing that Mattera was acting on behalf of Wilshire, contradicting van Sichen's assurances to Lodati and Brookville that he was the only individual involved in Wilshire.

66. Mattera had also held himself out publicly, since February 2011, as the founder and Managing Director of Wilshire.

67. On or around June 10, 2011, approximately one week after receiving the Wilshire Stock Purchase Agreement, Lodati learned through internet searches and conversations with van Sichen, that Mattera had a regulatory history.

68. Lodati discovered that the SEC sanctioned and fined Mattera for securities fraud in 2010 for fraudulently attempting to avoid registration requirements by backdating promissory notes to obtain improperly unrestricted shares of a company.

69. Van Siclen told Lodati that Mattera had invested in the Praetorian Fund and its affiliates, and was one of the directors of the Praetorian Fund.

70. Van Siclen admitted to Lodati that he had hidden Mattera's involvement with the Praetorian Fund and Wilshire from Lodati because van Siclen knew Mattera's securities fraud background was a "sticking point" for investors.

71. Van Siclen admitted to signing Mattera's name on an Amendment to Wilshire's Operating Agreement, but did not provide documentation that Mattera authorized him to do so.

72. Lodati and others at Brookville learned in mid-July 2011, through additional inquiry, that the State of Florida convicted Mattera of grand theft in 2003 in connection with an advance-fee loan scam.

Lodati Fails to Disclose Mattera's Involvement and Background

73. Despite discovering that Mattera had acted on at least two occasions to effect transactions on behalf of Wilshire and had a significant regulatory and criminal history, Lodati did not disclose this information or cause this information to be disclosed to Brookville customers he and the Firm were soliciting to invest in Wilshire, and did not stop the sales of interests in Wilshire to Brookville customers.

74. Instead, Lodati and Brookville continued to solicit customers, who thereafter purchased interests in Wilshire, through the end of October 2011 using the original PPM that did not disclose Mattera's role in Wilshire or his regulatory and criminal history.

Brookville Directs Customers to Use Escrow Accounts Unaffiliated with Wilshire

75. From the time Brookville brokers began soliciting customers to invest in Wilshire, Brookville instructed its customers to wire funds to purchase interests in Wilshire to a bank account managed by FAST for a separate Praetorian-related investment entity, G Power IV.

76. Van Siclen had provided the G Power IV account wiring instructions to Lodati on April 20, 2011, even though there was no escrow agreement in place and Brookville customers were investing in Wilshire, not G Power IV.

77. On June 1, 2011, Lodati entered into an escrow agreement on behalf of Brookville with Wilshire and FAST.

78. Even after signing the escrow agreement, Brookville did not instruct its customers to wire funds used to invest in Wilshire to the escrow account established by the escrow agreement with Wilshire and FAST.

79. Instead, between April and late-September 2011, Brookville continued to instruct customers investing in Wilshire to wire funds to the G Power IV account.

80. On September 26, 2011, FAST provided Brookville wiring instructions for a new escrow account Brookville customers were to use when investing in Wilshire. The account was “for the Praetorian Fund, LTD” with a payment reference of “Name of GPower” and did not refer to Wilshire.

81. Brookville thereafter instructed its customers to send money to the Praetorian Fund, LTD account rather than an account established for Wilshire.

82. Despite accepting customer funds, van Siclen ignored Brookville’s requests for, and did not timely provide Brookville confirmations and certificates that Brookville customers

would need to confirm their transactions and eventually use to convert interests in Wilshire to Fisker stock.

Lodati Ignores Transferability Limitations and Other Issues Related to the Fisker Stock

Certificates

83. On June 10, 2011, Lodati contacted Fisker to obtain, for the first time, confirmation in writing that Wilshire held the Fisker shares.

84. Fisker's counsel informed Lodati that Wilshire held Fisker shares, but that the shares had significant limitations on transferability. Specifically, Wilshire had represented when it purchased the shares that it was not purchasing them with a view to resale or distribution. Fisker informed Lodati that Wilshire's plan to sell the shares through an SPV may be a violation of the stock purchase agreement and Fisker could therefore rescind the sale of shares to Wilshire or deny a transfer of ownership of the Fisker shares from Wilshire to Brookville's customers.

85. Lodati and Brookville did not disclose these limitations on Wilshire's ability to transfer the Fisker stock to Brookville customers who invested in Wilshire.

Lodati Should Have Discovered Arnold's Regulatory Background

86. Lodati agreed to van Siclen's proposal that FAST act as escrow agent for the Wilshire transaction.

87. Lodati did not investigate FAST or the individuals associated with FAST.

88. Through adequate due diligence regarding FAST and its management, Lodati would have learned that John R. Arnold was President and CEO of FAST.

89. Lodati would also have learned that Arnold was one of the defendants sanctioned and fined by the SEC along with Mattera in 2010.

90. Van Siclen recommended the parties use his preferred escrow agent because he claimed FAST would hold the Fisker certificates, but Respondents and van Siclen did not execute any provision in the escrow agreement relating to the Wilshire transaction for FAST to hold the Fisker share certificates, and FAST never held the certificates.

Lodati Signs a Backdated Engagement Letter

91. On September 1, 2011, more than four months after certifying due diligence had been completed, at the recommendation of Brookville's due diligence counsel, Brookville created and backdated an Engagement Letter with the correct terms of the agreement "for regulatory and compliance purposes."

92. Lodati had known since April 28, 2011 that the parties did not have an engagement letter between Brookville and Wilshire, though the Firm's WSP's required one.

93. Lodati signed the new engagement letter on behalf of Brookville and van Siclen signed on behalf of Wilshire.

Brookville's Customers Invest in Wilshire

94. Between the end of April 2011 and October 31, 2011, 29 Brookville customers invested over \$1 million in Wilshire.

95. Lodati personally recommended at least seven clients invest in Wilshire.

96. At least five of Lodati's customers purchased interests in Wilshire.

97. As compensation for acting as placement agent for Wilshire, the Firm received a commission of 10% for each placement, for a total of \$104,066.80.

Wilshire is Connected to a Separate \$13 Million Fraud Run by Mattera, van Siclen, and Arnold

98. In November 2011, the SEC sued the Praetorian Fund and its affiliated SPVs, Mattera, van Siclen, FAST, Arnold, and others, alleging that, contrary to representations they

had made, the Praetorian Fund's affiliated funds held no shares of pre-IPO stock, and that Mattera and Arnold had used escrow accounts set up through FAST as personal bank accounts to support their lavish lifestyles (the "Praetorian Fraud").

99. Summary judgment was granted as to the fraud charges against Mattera, permanently enjoining Mattera from participating in the securities industry. Van Siclen did not dispute the SEC's charges, and summary judgment was granted as to the SEC's fraud charges against him and Arnold.

100. Mattera and van Siclen were also charged criminally for the conduct underlying the Praetorian Fraud by the United States Attorney's Office for the Southern District of New York.

101. Mattera and van Siclen both pled guilty to the criminal charges. Mattera was sentenced to 11 years in prison and ordered to forfeit \$11.8 million and to pay \$13.5 million in restitution. Van Siclen is awaiting sentencing on his criminal conviction.

102. As part of the Praetorian Fraud, Mattera had used \$1.75 million of G Power II investor proceeds to purchase the 2.6 million shares of the Fisker Stock that were held by Wilshire.

103. Most of Brookville's customers who invested in the Wilshire Interests had, at Brookville's direction, wired their money into the G Power IV account at FAST, which was controlled by Mattera and Arnold for use in the Praetorian Fraud.

104. As part of the SEC's investigation, in late 2011 the SEC froze the assets of Wilshire. Consequently, the Brookville customers who invested in Wilshire cannot access their funds or their purported investment in Fisker stock.

FIRST CAUSE OF ACTION

**(False and Misleading Statements in Connection with the Sale of Securities: Securities and Exchange Act of 1934 § 10(b), Rule 10b-5 thereunder, FINRA Rules 2020 and 2010)
(All Respondents)**

105. The Department realleges and incorporates by reference paragraphs 1-104 above.

106. Between the end of April 2011 and October 31, 2011, Brookville offered and sold over \$1 million in interests in Wilshire to 29 Brookville customers.

107. Brookville and Lodati made use of means or instrumentalities of interstate commerce, or of the mails, to solicit and sell interests in Wilshire.

108. In particular, Lodati and Brookville used electronic communications to distribute the Wilshire PPM to Brookville customers, discuss the transaction, and provide executed deal documents.

109. Brookville also used electronic communications to instruct customers on where to wire funds used to invest in Wilshire.

110. Lodati knew the information about Mattera's regulatory and criminal background and about his involvement in Wilshire was material to the investors in Wilshire.

111. At no time did Lodati or Brookville inform any Brookville customers as they were solicited to invest in Wilshire of Mattera's involvement with Wilshire or of his regulatory and criminal background.

112. Lodati and Brookville solicited customers to invest in Wilshire using a PPM that did not disclose any information about Mattera.

113. By virtue of the above conduct, Lodati and Brookville violated Securities Exchange Act of 1934 § 10(b), Rule 10b-5 thereunder, and FINRA Rule 2020. As a result, Lodati and Brookville also violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
(Pled in the Alternative to the First Cause of Action)
(Material Misrepresentations and Omissions: FINRA Rule 2010)
(All Respondents)

114. The Department realleges and incorporates by reference paragraphs 1-113 above.

115. FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

116. It is a violation of FINRA Rule 2010 for an associated person to negligently omit or misrepresent material facts in connection with the purchase or sale of a security.

117. Lodati knew or should have known Mattera’s involvement with Wilshire and his regulatory and criminal background were material, but did not disclose this information orally or through the PPM used in connection with the Wilshire transaction when they solicited investors to purchase interests in Wilshire.

118. By virtue of the above conduct, Lodati and Brookville violated FINRA Rule 2010.

THIRD CAUSE OF ACTION
(Sale of Unsuitable Products: NASD Rule 2310 and FINRA Rule 2010)
(All Respondents)

119. The Department realleges and incorporates by reference paragraphs 1-118 above.

120. NASD Rule 2310 was in effect during the entirety of the period during which Brookville conducted due diligence about, and sold interests in Wilshire.

121. Under NASD Rule 2310, a broker-dealer and its registered representatives must satisfy a “reasonable basis” suitability requirement, pursuant to which they must understand the recommended security or strategy and the risks involved and determine whether the recommendation is suitable for at least some investors.

122. As such, a firm must conduct a reasonable and sufficient investigation into the security to understand the potential risks and rewards inherent in such a recommendation and sale. This includes a reasonable investigation of the security as well as the issuer's representations about it.

123. Brookville, by Lodati, failed to conduct adequate due diligence of Wilshire, its principals, the Praetorian Fund, FAST, and Arnold.

124. Brookville, Lodati, and others Lodati was supervising ignored numerous red flags that arose while Lodati and others were conducting due diligence and after Brookville began selling the investment to customers, and they unreasonably relied on van Siclen's representations despite repeated instances where they learned van Siclen's representations were not true. These red flags included:

- a. Van Siclen did not promptly provide, and gave various excuses for not providing, information regarding which entity owned the Fisker shares;
- b. When the Fisker certificates were provided to Brookville, they were in the name of a different fund than van Siclen had indicated to Brookville;
- c. Van Siclen assured Lodati that he was the only individual involved with Wilshire, but Brookville received two documents and had other information at their disposal indicating John Mattera was acting on behalf of Wilshire to purchase or transfer the shares of Fisker;
- d. Mattera had a significant regulatory and criminal record;
- e. The documents van Siclen provided to Brookville regarding the formation of the Wilshire entity had inconsistent dates;

- f. There was no escrow agreement in place when Brookville began soliciting and selling interests in Wilshire;
- g. Without an escrow agreement in place, van Siclen provided Lodati and Brookville with wiring instructions for an account held in the name of a different fund, G Power IV, without any indication the funds would be held in escrow, and Brookville provided that account information to customers;
- h. Van Siclen recommended the parties use his preferred escrow agent because he claimed FAST would hold the Fisker certificates, but the parties failed to include any provision for FAST to hold the certificates in the eventual escrow agreement and FAST never held the certificates;
- i. After an escrow agreement had been executed for the Wilshire transaction, Lodati and Brookville caused their customers to continue sending money to the G Power IV account managed by FAST, rather than the account identified in the escrow agreement;
- j. On September 26, 2011, FAST provided Brookville a new account for its customers to use when investing in Wilshire, but the account was “for the Praetorian Fund, LTD” with a payment reference of “Name of GPower.” Brookville caused their customers to send money to that account;
- k. Van Siclen admitted to signing Mattera’s name on a proposed amendment to Wilshire’s Operating Agreement but did not provide documentations showing that Mattera authorized him to do so;

- l. Van Siclen did not provide confirmation of customer investment in the Wilshire investment to Brookville or its customers in a timely manner, repeatedly claiming he had sent the documents when he had not; and
- m. Lodati was introduced to van Siclen by AD, who was subsequently barred by FINRA, and thereafter pressured Lodati to sell interests in Wilshire.

125. These red flags should have indicated the need for additional investigation or led Lodati to not approve the transaction.

126. Brookville and Lodati did not understand the potential risks inherent in recommending the investment to customers.

127. Nonetheless, Lodati and Brookville recommended the securities to investors, including Brookville's customers.

128. As a result, Respondents Brookville and Lodati lacked a reasonable basis to believe that the recommendation of the private placement could be suitable for any customer, violating NASD Rule 2310 and FINRA Rule 2010.

FOURTH CAUSE OF ACTION
(Inadequate Supervisory Systems and Deficient WSPs:
NASD Rules 3010(a) and (b) and FINRA Rule 2010)
(All Respondents)

129. The Department realleges and incorporates by reference paragraphs 1-128 above.

130. NASD Rule 3010(a) requires each member to establish and maintain a system to supervise the activities of its registered and associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and NASD/FINRA Rules.

131. NASD Rule 3010(b) requires each member to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the

activities of registered representatives . . . that are reasonably designed to achieve compliance with applicable securities laws and regulations” and NASD/FINRA Rules.

132. Lodati was the principal at Brookville responsible for ensuring that the Firm’s policies and procedures related to due diligence for the Wilshire transaction were sufficient and adequately implemented.

133. During the duration of the Wilshire Transaction, Brookville failed to have adequate policies and procedures, including WSPs.

134. Brookville also failed to implement an adequate supervisory system related to the sale of private placements.

135. The Firm’s WSPs and the checklist to be completed by the Firm’s principal supervising the due diligence process for a private placement transaction were not adequately tailored to provide sufficient guidance in conducting due diligence and did not provide an adequate system for maintaining a record of due diligence for private placements, as described in paragraph 56, above.

136. Lodati also caused Brookville to fail to complete the due diligence steps required by the Firm’s WSPs with respect to the Wilshire transaction.

137. As described in paragraph 55, above, Lodati was required to obtain an engagement letter, escrow agreement, and a stock purchase agreement between Fisker and Wilshire prior to certifying that he had completed due diligence. He did not have those documents as of April 25, 2011, the date he certified due diligence was completed.

138. The due diligence letter provided by Brookville’s due diligence counsel also did not confirm that any background checks or necessary independent investigation had been completed for Wilshire, the Praetorian Fund, G Power or FAST, or any associated individuals.

139. Lodati knew of the missing or incomplete documents and information at the time he certified that due diligence was complete.

140. Lodati knew or should have known that the missing or incomplete documents and information identified in paragraphs 59 to 63, above, were material to the transaction.

141. By means of the foregoing conduct, Respondents Lodati and Brookville violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

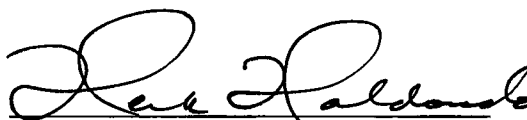
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondents be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;
- D. make specific findings that Respondents Lodati and Brookville willfully violated Securities Exchange Act of 1934 § 10(b) and Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 5/22/2014



Mark Maldonado, Senior Litigation Counsel
Margery Miller Shanoff, Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20850
Phone: 301-258-8561; Fax: 202-721-7530

EXHIBIT A

Name	Date of Investment	Amount
CD	6/7/2011	\$99,000
JN	6/7/2011	\$22,500
WS	6/15/2011	\$25,500
JR & AR	6/13/2011	\$30,000
MK & MK	6/13/2011	\$90,000
	7/28/2011	\$21,000
	9/9/2011	\$49,010
VN & RB	6/13/2011	\$30,000
RS	6/15/2011	\$30,000
	10/11/2011	\$50,000
RK & RSK	6/15/2011	\$4,200
RL	6/15/2011	\$6,000
CB	6/15/2011	\$12,000
CR	6/15/2011	\$30,000
TW & SW	6/21/2011	\$9,900
TA	6/21/2011	\$12,000
JS	6/21/2011	\$4,950
GS	6/24/2011	\$21,000
HA TRUST	6/24/2011	\$51,000
FV	7/14/2011	\$24,000
BV	7/13/2011	\$30,000
JR	7/14/2011	\$30,000
DK	7/19/2011	\$21,000
RV	7/20/2011	\$24,000
	10/7/2011	\$24,505
WW	7/20/2011	\$24,000
FP	7/29/2011	\$12,000
KB	8/30/2011	\$24,000
BC	8/30/2011	\$5,700
JA	9/30/2011	\$42,250
FP LTD.	9/30/2011	\$162,240
TO	10/7/2011	\$10,140
HS	10/31/2011	\$10,000