

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Wilson-Davis & Co., Inc.
(CRD No. 3777),

James C. Snow
(CRD No. 2761102),

and

Byron B. Barkley
(CRD No. 12469).

Respondents.

DISCIPLINARY PROCEEDING
NO. 2012032731802

HEARING OFFICER:

COMPLAINT

The Department of Enforcement (Department) alleges:

SUMMARY

1. From January 1, 2011 through April 30, 2014 (“the Relevant Period”), Wilson-Davis & Co., Inc. (“Wilson-Davis” or the “Firm”), James Snow, the Firm’s President and Chief Compliance Officer, and Byron Barkley, the Firm’s Head of Trading, disregarded many critical supervisory obligations.

2. This failure to supervise resulted in the Firm (1) committing willful violations of federal securities regulations; (2) failing to act in accordance with an order of a FINRA disciplinary Hearing Panel; and (3) having a patently deficient system of supervision as it relates to key aspects of its business.

3. In particular, between July 9, 2012 and April 29, 2013,¹ the Firm, acting through its former registered representative, A.K.,² failed to find locates for at least 122 short transactions effected in four low-priced stocks. The Firm improperly relied on the bona-fide market maker exemption pursuant to Rule 203(b)(2) of Regulation SHO under the Securities Exchange Act of 1934: the Firm's claim that it acted as a market maker in the relevant stocks was false.

4. As a result, the Firm willfully violated Rule 203(b)(1) of Reg SHO and FINRA Rule 2010.

5. A.K.'s improper short selling occurred because the Firm and Barkley failed to reasonably supervise his trading. The Firm and Barkley thereby violated NASD Rule 3010(a) and FINRA Rule 2010.

6. The Firm and Snow also failed to establish and maintain reasonable supervisory systems and written supervisory procedures ("WSPs") concerning the use of the market maker exemption, locate requirements and overall compliance with Reg SHO during the Relevant Period. As a result, the Firm and Snow violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

7. During the Relevant Period, the Firm and Snow also failed to reasonably supervise R.C., an equity trader at the Firm. R.C. was permitted to work at the Firm without a heightened supervision plan in place, despite an order by a FINRA disciplinary Hearing Panel requiring such a plan. When a plan was belatedly prepared, it was inadequate and R.C. was not, even then, properly supervised. The Firm and Snow thereby violated NASD Rule 3010(a) and FINRA Rule 2010.

¹ A.K. was registered with Wilson-Davis from September 2008 to July 9, 2013.

² A.K. was separately sanctioned by FINRA pursuant to an AWC issued on November 3, 2015.

8. The Firm and Snow also failed to enforce the Firm's own WSPs regarding heightened supervision when a disciplinary complaint was filed against R.C. and P.D., the Firm's primary owner, again violating NASD Rules 3010(a) and FINRA Rule 2010.

9. The Firm and Snow's failure to adequately supervise A.K. and R.C. was part of a broader supervision problem at the Firm. The Firm and Snow failed to implement a reasonable supervisory system to supervise the Firm's registered personnel and activities of the Firm during the Relevant Period in violation of NASD Rule 3010(a) and FINRA Rule 2010. Even today, principals at the Firm disagree about who was responsible for supervising registered personnel during the Relevant Period.

10. The Firm and Snow also failed to reasonably supervise instant message communications for the Firm's registered representatives during the Relevant Period, again in violation of NASD Rule 3010(a) and FINRA Rule 2010.

11. Finally, the Firm and Snow, who was also the Firm's AML Compliance Officer, failed to establish and implement anti-money laundering ("AML") policies and procedures reasonably expected to cause the detection and reporting of suspicious transactions in violation of FINRA Rules 3310(a) and 2010 and failed to conduct adequate AML training in violation of FINRA Rules 3310(e) and 2010.

RESPONDENTS AND JURISDICTION

12. Wilson-Davis has been a FINRA registered broker-dealer since December 1968.

13. Most of the Firm's business during the Relevant Period consisted of buying and selling penny stocks for its customers and for its own accounts.

14. The Firm maintains its principal place of business in Salt Lake City, Utah and has branch offices in Centennial, Colorado, West Palm Beach, Florida, and Rancho Mirage, California.

15. The Firm currently has 35 registered representatives. During the Relevant Period, it had between 32 and 44 registered representatives.

16. Snow was the Firm's President, Chief Compliance Officer and AML Compliance Officer throughout the Relevant Period.

17. Snow entered the securities industry in June 1996 when he associated with Wilson-Davis. He first became registered (a) in November 1996 as a General Securities Representative; and (b) as a General Securities Principal in March 1997. He remains registered in those capacities. He has been registered with Wilson-Davis throughout his employment in the securities industry and is currently registered with the Firm.

18. Barkley was the Firm's Vice President and Head of Trading throughout the Relevant Period.

19. Barkley entered the securities industry in January 1969 when he associated with Wilson-Davis. He first became registered (a) in May 1969 as a General Securities Representative; (b) as a General Securities Principal in March 1997; and (c) as an Equity Trader in September 1999. He has been registered with Wilson-Davis throughout his employment in the securities industry and is currently registered with the Firm in those capacities.

20. FINRA has jurisdiction over Wilson-Davis pursuant to Article IV, § 1(a)(1) of the By-Laws and FINRA Rule 0140, and over Snow and Barkley pursuant to Article V, § 2(a)(1) of the By-Laws and FINRA Rule 0140 as the Firm is a FINRA member and Snow and Barkley are registered through the Firm.

FACTS

A.K.'s Short Sales

21. A.K. was a proprietary trader for Wilson-Davis during the Relevant Period.
22. Between July 9, 2012 and April 29, 2013, the Firm, acting through A.K., failed to find locates for 122 short transactions effected in four low-priced stocks.
23. The four stocks involved in the short transactions were: China Teletch Holding ("CNCT"), Lot 78, Inc. ("LOTE"), PM&E, Inc. ("PMEA"), and Preventia, Inc. ("PVTA").
24. During the time of the short selling, each stock was quoted on either the OTCBB or pink sheets.
25. Each was also, around that time, the subject of promotional activity, such as questionable press releases and Internet touting.
26. A.K.'s trading in these four stocks was not consistent with bona-fide market making activities. Rather, the trading was speculative, with no attempt to provide liquidity to the market.
27. A.K. never traded in any of the four stocks for more than a week and the Firm had little to no history of making a market in the stocks prior to the commencement of A.K.'s speculative short selling.
28. In each stock, A.K. engaged in the same pattern of trading: over the course of one to three trading days, he accumulated a short position in the stock while posting bid quotations for Wilson-Davis that were significantly away from the inside bid, he carried the short position overnight (or in some cases longer) and then covered the entire short position, while posting offer quotations for Wilson-Davis that were significantly away from the inside offer.

29. A.K. consistently executed transactions in all four stocks away from the quotations posted for Wilson-Davis.

30. Wilson-Davis initiated quotes at most two days prior to A.K.'s shorting activity and maintained its quotes in these stocks only until the day of, or up until a few days after, A.K. covered his entire position.

31. The Firm was not regularly and continuously posting two-sided quotes in the four stocks, posted quotes significantly away from the national best bid and offer, accumulated positions and held positions overnight or traded in and out of the stock in a single day.

32. Despite the Firm not acting as a bona-fide market maker, A.K. placed the orders to sell shares of the four stocks short and neither he nor anyone else at the Firm made any effort to borrow, arrange to borrow, or locate the securities.

33. A.K. was able to participate in this activity, including trading in LOTE that almost led to the Firm's demise, because of the Firm's lack of an adequate supervisory system, lack of adequate supervisory procedures and lack of adequate supervision concerning market making and short sales.

34. A.K. built up a huge short position in LOTE by repeatedly entering short sale orders throughout the day on April 24, 2013.

35. A.K.'s trading in LOTE was completely inconsistent with bona-fide market making activity.

36. A.K. was caught when the market moved against him, leaving the Firm with a naked short position of over 1 million shares.

37. This trade nearly led to the Firm's demise. The Firm was only able to cover the short position in LOTE by obtaining substantial financial assistance in the form of a \$4 million loan.

38. During the Relevant Period, Wilson-Davis did not have reasonable supervisory systems, including written supervisory policies and procedures, to: (1) define the limitations of the bona-fide market maker exception to the locate requirement; (2) detect and prevent misuse of the market maker exception to the locate requirement; (3) document any reviews to be performed with respect to Reg SHO or monitor compliance with Reg SHO; (4) establish protocols for escalating issues noted by supervisors in the course of their responsibilities in connection with Reg SHO reviews; (5) provide guidance on how supervisors should conduct Reg SHO reviews; and, (6) provide guidance on how supervisors were to document their Reg SHO reviews.

39. The Firm also failed to implement reasonable supervisory systems and procedures to assess whether its traders were engaging in bona-fide market making activity or complying with Reg SHO, despite the Firm making markets in over 200 stocks on any given day.

40. As the President and Chief Compliance Officer of the Firm, Snow was responsible for establishing and maintaining adequate supervisory systems and procedures.

41. Barkley was the principal responsible for supervising the Firm's trading desk during the Relevant Period.

42. However, Barkley was not qualified to supervise the Firm's market making activity. For example, Barkley did not know the difference between proprietary trading and market making activity.

43. Barkley never reviewed the quote activity or monitored any of the Firm's quotes in any of the 200 stocks in which the Firm made a market simultaneously.

44. Barkley was responsible for supervising A.K. during the period between July 9, 2012 and April 29, 2013.

45. A.K. was a major producer for the Firm and contributed a substantial amount to the Firm's revenues.

46. Barkley did very little to supervise A.K. (who worked out of the Firm's branch office in Colorado) and essentially permitted A.K. to trade as he wished.

47. Barkley never reviewed any quotes or exception reports to determine whether A.K. was participating in bona-fide market making and complying with Reg SHO.

48. Barkley failed to review or otherwise supervise the 122 occasions in which the Firm, through A.K., failed to properly obtain a locate for short sale transactions.

49. Barkley failed to supervise A.K.'s activity in LOTE notwithstanding the amount of the Firm's capital at risk.

50. Similarly, Snow failed to review or otherwise supervise A.K.'s trading activity to ensure it was bona-fide market making and was in compliance with Reg SHO.

Supervision of Registered Personnel

51. The Firm and Snow failed to establish and implement a reasonable supervisory system to supervise the Firm's registered personnel.

52. According to the Firm's WSPs, Snow was the direct supervisor of the registered sales personnel at the Firm during the Relevant Period.

53. Notwithstanding that, Snow has claimed not to have had any responsibility for directly supervising registered persons at the Firm during the Relevant Period.

54. Instead, the Firm and principals of the Firm identified P.D. as the direct supervisor of the registered sales personnel, a contention P.D. has denied.

55. To the extent P.D. was supervising the registered representatives, his limited presence in the office left a significant gap in supervision during the Relevant Period. P.D., who is now 89 years old, has been reducing his time in the office over the past several years. He was only in the office a few hours per day during the Relevant Period.

56. The Firm and Snow did not implement a supervisory system or procedures to supervise its registered sales personnel when P.D. was not in the office.

57. As a result of the lack of an organized supervisory system, the Firm did not effectively supervise its registered personnel.

58. The Firm also had no adequate supervisory system in place to supervise the registered principals at the Firm.

59. The Firm could not identify specific direct supervisors for any of the principals.

60. The Firm's WSPs identified P.D. as the supervisor of the registered principals during the Relevant Period, but P.D. again denied that he had any direct supervisory responsibilities then and he was only in the office a few hours per day.

Heightened Supervision

61. According to the Firm's WSPs, Snow was responsible for identifying employees as candidates for heightened supervision and for determining the scope of such heightened supervision should circumstances justify.

62. He was also required to document the decision of whether or not to impose heightened supervision.

63. The filing of a complaint by a regulator was, per the WSPs, one of the criteria that should trigger a review by Firm Compliance to determine if heightened supervision was necessary.

64. FINRA filed a complaint against Wilson-Davis and R.C. for engaging in sales of unregistered shares of a penny stock on December 27, 2010 and filed an amended complaint against R.C. for the same misconduct on October 4, 2011.

65. FINRA's complaint also charged P.D. with failing to supervise R.C.'s unregistered sales and failing to establish and maintain adequate supervisory systems.

66. Despite the complaint being filed in December 2010 and the amended complaint filed in October 2011, neither Snow nor anyone else at the Firm conducted a review to determine whether R.C. or P.D. should be placed on heightened supervision.

67. Neither Snow nor anyone else at the Firm prepared a memorandum or other document evidencing any review or determination regarding heightened supervision, including whether heightened supervision for P.D. or R.C. was necessary or appropriate as a result of the filing of the complaint.

68. In November 2011, Wilson-Davis and P.D. settled the supervisory and other charges in the complaint.

69. R.C. proceeded to hearing and, on June 8, 2012, the Hearing Panel issued its decision finding R.C. liable for violating Section 5 of the Securities Act of 1933.

70. As part of his sanction for violating Section 5, the Hearing Panel ordered that R.C. could only be employed by a member firm that agreed to subject him to heightened supervision for a one-year period.

71. In direct violation of the Hearing Panel order, Wilson-Davis and Snow permitted R.C. to be employed at the Firm and to continue performing his normal duties at the Firm for approximately two months after the Hearing Panel decision without devising a heightened supervision plan or placing him on heightened supervision.

72. The Firm finally prepared a Heightened Supervision Memorandum for R.C. on or around August 6, 2012.

73. The Firm's WSPs stated that a written plan of heightened supervision should identify the scope of supervision, including the type, frequency, time period, and how supervisors should document compliance with the terms of the plan.

74. The heightened supervision plan was required to be signed by the registered representative and his/her supervisor, and the supervisor was required to certify that such heightened supervision was being performed.

75. The heightened supervision plan for R.C. was deficient because it did not identify the individual(s) responsible for implementing the plan, it was not signed by R.C.'s supervisor and it did not identify the form and frequency of the supervisor's certification of compliance with the plan. Moreover, P.D., R.C.'s *de facto* supervisor for the plan, failed to certify to Firm Compliance that the supervision was conducted as required by the WSPs.

76. Despite the fact that R.C.'s Heightened Supervision Memorandum was purportedly issued and signed by Snow, Snow had no recollection of any involvement with identifying R.C. as a candidate for heightened supervision, drafting a heightened supervision plan for R.C., determining the scope of R.C.'s heightened supervision or implementing R.C.'s heightened supervision.

77. Wilson-Davis and Snow failed to ensure that R.C. was, in fact, subject to heightened supervision as required by the Hearing Panel's order.

78. The Firm used the same supervisor, P.D., who had already been found to have failed to supervise R.C. with regard to the underlying violation, as the supervisor to implement R.C.'s heightened supervision.

79. In addition, Snow knew or should have known that P.D. was in the office for only a few hours per day at the time, thereby making heightened supervision of R.C. impossible. Despite that, the Firm and Snow failed to implement any reasonable system to supervise R.C. when P.D. was not in the office.

80. The practical result was that R.C. was subject to little or no different, and arguably less, supervision after the Hearing Panel's order as he was during the time when he committed the violation for which he was sanctioned.

Supervision of Instant Messages

81. Wilson-Davis and Snow failed to reasonably supervise instant message (IM) communications for the Firm's registered representatives.

82. Snow delegated the review of IM communications to an unregistered person, S.D., and did not take reasonable and appropriate action to ensure that the delegated function was being executed properly.

83. Instead, Snow solely relied upon S.D.'s review of the IM communications and waited for S.D. to raise any issues to him. Neither did Snow implement any system of follow-up or review to ensure that SD was performing his delegated function of IM review.

84. Snow did not know the frequency of S.D.'s IM review or the criteria S.D. used to conduct his review of IMs.

Failure to Establish and Implement Anti-Money Laundering Policies and Procedures

85. Wilson-Davis failed to establish and implement adequate AML policies and procedures to detect, investigate and report, where appropriate, suspicious trading activity.

86. Snow, as the Firm's President, Chief Compliance Officer and AML Compliance Officer during the Relevant Period, was responsible for ensuring that the Firm's AML program

was adequately tailored to the risks posed by the Firm's business and for establishing an AML program to mitigate those risks.

87. The Firm's AML program required Snow to implement the Firm's AML policies and procedures to detect red flags indicative of suspicious activity, investigate those red flags and report suspicious activity by filing a Suspicious Activity Report (SAR), as appropriate.

88. The Firm and Snow failed to establish or maintain AML policies and procedures that were properly tailored to the risks posed by its penny stock business.

89. Specifically, the Firm's AML policies and procedures failed to include red flags indicative of suspicious and potentially manipulative trading associated with transacting in penny stocks, including but not limited to matched orders, wash sales, and pre-arranged trading.

90. Although the Firm had generic procedures prohibiting manipulation, the Firm had no procedures defining how to identify and investigate manipulative trading schemes, particularly in the context of the Firm's penny stock business.

91. The Firm and Snow also failed to implement AML policies and procedures reasonably expected to cause the detection and reporting of suspicious transactions.

92. Although Snow was explicitly delegated the responsibility in the Firm's WSPs to review for suspicious trading activity, he claimed he did not have any responsibility for detecting suspicious or unusual trading activity.

93. Snow also never delegated those responsibilities to anyone else.

94. As a result, the Firm had no organized system in place to actively review trading for potentially suspicious activity. The Firm also did not utilize any manual or automated exception reports reasonably designed to detect instances of potentially manipulative and suspicious trading activity at the Firm.

95. Snow was also responsible for ensuring that the Firm provided adequate AML training to its staff.

96. During the Relevant Period, however, the Firm failed to provide adequate AML training to its employees to enable them to identify suspicious trading activity and potentially manipulative trading.

97. Despite Wilson-Davis's business of engaging almost exclusively in penny stocks, the Firm failed to provide its staff with adequate materials regarding the risks and red flags associated with penny stock activity.

98. As a result of Snow's failure to detect and investigate potentially suspicious trading activity, he failed to detect and investigate trading activity when presented with red flags indicative of suspicious trading activity in VHMC, a little-known, highly illiquid penny stock.

99. The potentially suspicious trading activity in VHMC occurred from April 2012 through at least November 2012.

100. Snow's failure to implement an AML program to detect and investigate suspicious trading activity resulted in hundreds of potentially suspicious transactions in VHMC being allowed to continue for a period of approximately eight months without review to assess the legitimacy of the trading.

101. There were a multitude of red flags indicative of potentially suspicious activity in VHMC that Snow should have recognized had he established and implemented an appropriate AML program. The red flags were:

- a. Prior to the Firm's trading activity in the stock, VHMC was a dormant, little-known penny stock. Prior to April 10, 2012, the first day Wilson-Davis

customers actively began trading VHMC, the stock had only traded on five days in the two prior years.

- b. VHMC was a shell company with little to no operations.
- c. During the eight-month period of activity in VHMC, Wilson-Davis customers comprised 70% of the total market volume in the stock. Wilson-Davis was 100% of the total market volume on 50% of the trading days during the eight-month period. On an additional 17% of the trading days during the eight-month period, Wilson-Davis was 100% of the total buy or sell volume of the stock.
- d. Many of the Firm's buy and sell orders of VHMC of substantially the same size were placed at substantially the same price and at substantially the same time, typical of pre-arranged and/or matched trading.
- e. Significant price fluctuation occurred in VHMC. During the eight-month period, the price of VHMC rose from \$.40 to \$5.00.
- f. Wilson-Davis dominated the buy-side activity of VHMC. R.C. had one customer, PC, who began acquiring shares of VHMC over an eight-month period. The SEC filings stated PC was providing consulting services to VHMC. The account opening documents for PC also stated that PC's registered agent was VHMC's CEO.
- g. Wilson-Davis dominated the sell side activity of VHMC through customers of J.N., a Wilson-Davis broker. Many of the sellers were relatives and friends of VHMC's former CEO, JMC.
- h. There were matched buys and sells of VHMC among the Firm's customers. R.C.'s customer, PC, whose registered agent was VHMC's then current CEO,

repeatedly purchased the stock from J.N.'s customers, the friends and relatives of VHMC's former CEO. The buy and sell orders were often placed close in time, for similar quantities, and at the same limit prices.

102. Snow never reviewed the VHMC trading activity for AML purposes nor directed anyone else to do so.

103. As a result, the Firm and Snow never took any investigative steps to assess whether filing a SAR with regard to the activity in VHMC was warranted.

FIRST CAUSE OF ACTION

REGULATION SHO

Willful Violations of Rule 203(b)(1) of Regulation SHO and Violation of FINRA Rule 2010 (Wilson-Davis)

104. The Department re-alleges and incorporates by reference paragraphs 1 through 103 above.

105. Rule 203(b)(1) of Reg SHO states that, subject to certain exceptions, a "broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) Documented compliance with this paragraph (b)(1)."

106. Typically, broker-dealers obtain and document locates in order to comply with this requirement.

107. Rule 203(b)(2)(iii) of Reg SHO sets forth an exception to the locate requirement for short sales executed by market makers. That exception applies only in connection with bona-fide market making activities.

108. A bona-fide market maker is a “broker-dealer that deals on a regular basis with other broker-dealers, actively buying and selling the subject security as well as regularly and continuously placing quotations in a quotation medium on both the bid and ask side of the market.”

109. The proposing and adopting releases for Reg SHO provide guidance as to what constitutes “bona-fide” market making activities. Indications that a firm may not be engaged in bona-fide market making are that the firm is: (1) not continuously posting two-sided quotes (if quotes are not continuous and/or there are only one-sided quotes this may be indicative of proprietary trading); (2) executing trades away from the trader’s own published quotes; (3) activity that is related to speculative selling strategies or investment purpose of the broker-dealer and is disproportionate to the usual market making patterns or practices of the broker-dealer in that security; and (4) failing to maintain a net flat position at end of day.

110. A.K.’s trading in the four stocks for which Wilson-Davis failed to find locates for 122 short transactions was not bona-fide market making activity.

111. Wilson-Davis did not borrow the securities or enter into a bona-fide arrangement to borrow the securities, have reasonable grounds to believe that the securities could be borrowed so that they could be delivered on the date delivery was due, or make any effort to borrow the securities in the 122 short transactions.

112. Wilson-Davis did not qualify for the market maker exemption with regard to the 122 short transactions.

113. As a result of the foregoing conduct, Wilson-Davis willfully violated Rule 203(b)(1) of Reg SHO of the Exchange Act and also violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

SUPERVISION

Violations of NASD Rules 3010(a) and (b) and FINRA Rule 2010 (Wilson-Davis, Snow and Barkley)

114. The Department re-alleges and incorporates by reference paragraphs 1 through 113 above.

115. Assuring proper supervision is a critical component of broker-dealer operations.

116. Member firms are required to establish and maintain a system to supervise activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

117. The presence of supervisory procedures alone is not enough. Procedures must be implemented properly and adequately to assure compliance.

118. In addition to requiring an adequate supervisory system, the duty of supervision includes the responsibility to detect and investigate “red flags” that suggest that misconduct may be occurring and to act upon the results of such investigation. Once indications of irregularity arise, supervisors must respond appropriately.

Failure to Supervise Reg SHO

119. Wilson-Davis and Snow failed to establish and maintain reasonable supervisory systems and WSPs in connection with the use of the market maker exemption, locate requirements, and overall compliance with Reg SHO during the Relevant Period.

120. The Firm and Barkley failed to reasonably supervise A.K.'s trading activities between July 9, 2012 and April 29, 2013 and failed to ensure A.K.'s trading activities complied with the Reg SHO.

121. The Firm's inadequate supervisory system, procedures and supervision resulted in numerous violations of Reg SHO.

Failure to Supervise Registered Representatives and Principals

122. NASD Rule 3010(a)(5) specifically required "[t]he assignment of each registered person to an appropriately registered representative(s) and/or principal(s) who shall be responsible for supervising that person's activities."

123. Wilson-Davis and Snow failed to ensure appropriate supervisors were assigned to supervise each registered representative and registered principal.

124. As a result, Wilson-Davis and Snow failed to implement a reasonable supervisory system to supervise the registered representatives and principals at the Firm during the Relevant Period.

Failure to Supervise Heightened Supervision

125. Wilson-Davis and Snow also failed to enforce the Firm's procedures regarding heightened supervision in 2011 and 2012.

126. Snow failed to review the circumstances and document the decision of whether or not to impose heightened supervision on R.C. and P.D. after a disciplinary complaint was filed against them.

127. The Firm and Snow further acted in knowing violation of a Hearing Panel order when permitting R.C. to remain employed and perform his normal duties between the issuance of the Hearing Panel decision and August 6, 2012 without heightened supervision.

128. Even after a heightened supervision plan was established for R.C., Wilson-Davis and Snow failed to ensure that R.C. was, in fact, subject to heightened supervision as required by the Hearing Panel's order.

Failure to Supervise IM Communications

129. Wilson-Davis and Snow also failed to reasonably supervise IM communications for the Firm's registered representatives.

130. As a result of the all of foregoing conduct, Wilson-Davis and Snow violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

131. As a result of the foregoing conduct, Barkley violated NASD Rule 3010(a) and FINRA Rule 2010.

THIRD CAUSE OF ACTION

ANTI-MONEY LAUNDERING

**Violations of FINRA Rules 3310 and 2010
(Wilson-Davis and Snow)**

132. The Department re-alleges and incorporates by reference paragraphs 1 through 131 above.

133. FINRA Rule 3310(a) requires all member firms to "[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions required pursuant to 31 U.S.C. § 5318(g) and the implementing regulations thereunder."

134. The United States Department of the Treasury issued the implementing regulation, 31 C.F.R. § 103.19(a)(1), on July 2, 2002. It provided that, with respect to any transaction after December 31, 2002, "[e]very broker or dealer in securities within the United

States . . . shall file with FinCEN . . . a report of any suspicious transaction relevant to a possible violation of law or regulation.”

135. NASD’s Notice to Members (NTM) 02-21 and 02-47 emphasized each firm’s duty to detect red flags and, if detected, “perform additional due diligence before proceeding with the transaction.”

136. NTM 02-47 further advised broker-dealers of their duty to file a SAR for any suspicious transactions occurring after December 31, 2002.

137. The SAR form used by broker-dealers identifies 20 “Type[s] of suspicious activity” that must be reported, including: “Market manipulation,” “Prearranged or other non-competitive trading,” “Securities fraud” and “Wash or other fictitious trading.”

138. Wilson-Davis and Snow failed to establish and implement adequate AML policies and procedures to detect, investigate and report, where appropriate, suspicious trading activity.

139. The Firm and Snow failed to detect and investigate trading activity in VHMC despite the presence of numerous red flags indicative of potentially suspicious activity as a result of the failure to establish and implement adequate AML policies and procedures.

140. The Firm and Snow never took any investigative steps to assess whether filing a SAR with regard to the activity in VHMC was warranted as a result of the failure to establish and implement adequate AML policies and procedures.

141. FINRA Rule 3310(e) mandates that firms “provide ongoing [AML] training for appropriate personnel.”

142. The Firm and Snow failed to conduct adequate AML training during the Relevant Period.

143. As a result of the foregoing conduct, Wilson-Davis and Snow violated FINRA Rules 3310(a) and (e) and 2010.

RELIEF REQUESTED

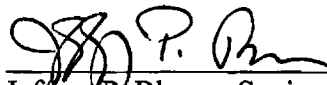
WHEREFORE, the Department respectfully requests that the Panel:

- 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), including monetary sanctions, be imposed, including that Respondent Wilson-Davis be required to disgorge fully any and all ill-gotten gains 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; and
- D. make specific findings that Respondent Wilson-Davis willfully violated Rule 203(b)(1) of Reg SHO of the Exchange Act.

FINRA DEPARTMENT OF ENFORCEMENT

DATED: December 16, 2016

Respectfully submitted,



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