

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-13655

SEC
Mail Processing
Section

In the Matter of

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Theodore W. Urban

Washington, DC
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AMICUS BRIEF OF
NATIONAL SOCIETY OF COMPLIANCE PROFESSIONALS
ON REVIEW OF INITIAL DECISION

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ON REVIEW OF INITIAL DECISION**

Pursuant to Rule 210(d) of the Rules of Practice of the Securities and Exchange Commission (“Commission”), 17 C.F.R. § 201.210(d) (2006), the National Society of Compliance Professionals (“NSCP”) hereby files its Amicus Brief on Review of the Initial Decision in the above-captioned proceeding.¹

Theodore Urban was the General Counsel of Ferris, Baker Watts, Inc. (“FBW”), a registered broker-dealer, where he headed three departments: Compliance, Human Resources, and Internal Audit. (I.D. 2.) The Legal and Compliance Departments at FBW were viewed as one entity. (*Id.*) Urban was charged with failing to reasonably supervise Stephen Glantz, a broker, who subsequently admitted to securities fraud, manipulation, and unauthorized trading in customer accounts. (I.D. 49.) The Division of Enforcement argued that once Urban became aware of and involved in addressing the red flags raised by Glantz’s conduct, Urban became a supervisor of Glantz, was obliged either to obtain Glantz’s dismissal or to resign himself, and—having done neither—merited multiple third-tier penalties of \$100,000 and a bar from association with any broker, dealer, or investment adviser in a supervisory capacity. (I.D. 47, 56.) In her Initial Decision, Chief Administrative Law Judge Murray concluded that Urban had

¹ *In the Matter of Theodore W. Urban*, Initial Decision (“I.D.”) Release No. 402 (Sept. 8, 2010).

supervisory responsibility for Glantz, but further found that Urban had acted reasonably under the facts and circumstances presented, so that no remedial action was appropriate. (I.D. 48-57.) Chief Judge Murray dismissed the proceeding. The Division has petitioned the Commission for review of the dismissal. Urban has cross-petitioned for review of Chief Judge Murray's ruling that he was Glantz' supervisor. On October 22, 2010, the Commission issued an Order granting both petitions for review, and scheduling both parties' initial briefs for filing today.

Both the Division and Urban have consented to the filing of NSCP's amicus brief in support of Urban's petition for review of the ALJ's decision that Urban was Glantz' supervisor. On that issue, Chief Judge Murray found that Urban "did not have any of the traditional powers associated with a person supervising brokers." (I.D. 52.) Nevertheless, Chief Judge Murray concluded that Urban was Glantz' supervisor because his "opinions on legal and compliance issues were viewed as authoritative and his recommendations were generally followed by people in FBW's business units, but not by Retail Sales." (*Id.*) In reaching this conclusion, she also noted that Urban was a member of the Credit & Risk Committee, and "dealt with Glantz on behalf of the committee." (*Id.*)

Chief Judge Murray's holding represents a significant expansion of potential supervisory liability for compliance personnel. By making supervisory status turn on whether a person's opinions are viewed as authoritative and generally are respected within the organization, the standard announced in the initial decision punishes the very type of legal and compliance personnel whose energy and independence the Commission should most wish to protect and foster. Public policy dictates that a compliance professional must maintain independence from the business side of an organization where, with very rare exceptions, the role of supervisor appropriately resides. Diffusing that role under a vague standard of "shared responsibility" undermines the responsibility of line supervision, while leaving the compliance officer confused regarding what activities qualify for potential liability.

This case presents the Commission with an opportunity to revisit and clarify the role of a supervisor at a broker-dealer, and to delineate clearly when a compliance professional crosses the line into supervision. Alternatively, the Commission should consider whether that task is best undertaken by rulemaking, which would permit the Commission to assess the supervisory role on a full record rather than in the narrow and fact-bound context of litigation.

I. STATEMENT OF INTEREST OF THE *AMICUS CURIAE*

NSCP is the largest organization in the securities industry serving compliance professionals exclusively through education, certification, publications, consultation forums, and regulatory advocacy. Since its founding in 1987, NSCP membership has grown to over 1,800 members including compliance professionals at broker-dealers, investment advisers, banks, insurance and investment companies, and hedge funds.

NSCP's fundamental mission is to set the standard for excellence in the securities compliance profession.² That mission is directed at the interests of compliance programs and compliance officers. NSCP accordingly supports a regulatory scheme that: (i) promotes practices that support market integrity and the interests of investors; (ii) creates clarity as to a firm's obligations to provide a reasonable system of supervision; (iii) promotes requirements that enable compliance officers to create reasonably workable programs; and (iv) avoids requirements or mandated tasks that are more costly or less efficient in realizing a regulator's public policy objectives, thereby increasing the difficulty facing a compliance officer in the discharge of his or her duties.

² This commitment is exemplified, among other things, by the time and resources NSCP, and the industry professionals whose volunteer services it marshals, have devoted in the past three years to the development of a voluntary certification and examination program for compliance professionals, the "Certified Securities Compliance Professional TM" (CSCP TM).

II. ARGUMENT

A. The Statute and the Commission's Pronouncements Demonstrate that Compliance Personnel Should be Held Liable for Failure to Supervise Only in Very Limited Circumstances

1. The Statutory Language

As relevant to this case, Sections 15(b)(4)(E)³ and 15(b)(6)(A)(i)⁴ of the Securities Exchange Act (“Exchange Act”) give the Commission authority to sanction a person associated with a broker or dealer who has “failed reasonably to supervise, with a view to preventing violations of the provisions of [the Exchange Act and its associated rules], another person who commits such a violation, *if such other person is subject to his supervision.*”⁵ The history of the phrase “if such other person is subject to his supervision” demonstrates that those words should not be regarded as boilerplate, or a mere tautology. The SEC Staff’s original 1963 draft of Section 15(b)(4)(E) simply would have permitted the Commission to sanction any person who has “failed reasonably to supervise such other person.”⁶ The Industry Liaison Committee to whom the SEC Staff sent that draft suggested modifications that more specifically defined a failure to supervise. The Liaison Committee’s language, which tracks the language of Section 15(b)(4)(E) today, limited supervisory liability to a person who has:

*failed reasonably to supervise, with a view to preventing violations of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision.*⁷

³ 15 U.S.C. 78o(b)(4)(E) (2009).

⁴ 15 U.S.C. 78o(b)(6)(A)(i) (2009).

⁵ 15 U.S.C. 78o(b)(4)(E) (2009) (Emphasis added).

⁶ *Memorandum of the SEC with Respect to Changes in H.R. 6789 Between its Submission to the Industry Liaison Committee and its Introduction in Congress, reprinted in Investor Protection: Hearings on H.R. 7890, H.R. 6793 and S. 1642 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce, 88th Cong. 1st Sess., pt. 1, at 654.*

⁷ *See Comparative Print of the Initial Draft Bill First Proposed to the Industry Liaison Committee and Draft Submitted by the Commission and Introduced as H.R. 6789 and H.R. 6793*

The Commission ultimately offered this language to Congress. In the subsequent SEC Technical Statement presented during Senate and House hearings on the matter in June 1963, the Commission described the scope of the broker-dealer's liability for inadequate supervision as follows: "[A] supervisory person would be responsible only if the employee who violated was subject to his supervisory jurisdiction."⁸

"It is ... 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'"⁹ A court – or the Commission sitting as an adjudicatory body – is obliged "to give effect, if possible, to every clause and word of a statute," and should be "'reluctan[t] to treat statutory terms as surplusage' in any setting."¹⁰ To accord no weight to the phrase "if such other person is subject to his supervision" would violate these principles. And while it is true that the Exchange Act contains no definition of the words "subject to his supervision,"

[t]he lack of a statutory definition of a word does not necessarily render the meaning of a word ambiguous, just as the presence of a definition does not necessarily make the meaning clear. ... If Congress employs a term susceptible of several meanings, as many terms are, it scarcely follows that Congress has authorized an agency to choose any one of those meanings. As always, the 'words of the statute should be read in context, the statute's place in the overall statutory scheme should be considered, and the problem Congress sought to solve should be taken into

reprinted in *Investor Protection: Hearings on H.R. 7890, H.R. 6793 and S. 1642 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce*, 88th Cong. 1st Sess., pt. 1 at 656, 661-62 (emphasis in original).

⁸ *Technical Statement of the SEC Relating to S. 1642*, reprinted in *SEC Legislation, 1963, Hearings before Subcomm. of Senate Comm. on Banking & Currency on S. 1642*, 88th Cong., 1st Sess. (1963) at 363.

⁹ *Alaska Dept. of Environmental Conservation v. E.P.A.*, 540 U.S. 461, 489 (2004), quoting *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

¹⁰ *Duncan v. Walker*, 533 U.S. 167, 174 (2001), quoting *U.S. v. Menasche*, 348 U.S. 528, 538-539 (1955).

account' to determine whether Congress has foreclosed the agency's interpretation.¹¹

Where, as here, the agency itself has already offered a definition – “subject to his supervisory jurisdiction” – that is consistent with the common meaning of the term “supervision” in the employment context, a radically different definition such as “susceptible to his influence” is not an available approach to construing the statute.

2. The Commission’s Pronouncements

The statutory language and the legislative history described above were the point of departure for *Arthur J. Huff*,¹² which, along with *John H. Gutfreund*,¹³ marked the watershed in the Commission’s pronouncements on whether a legal or compliance officer is subject to supervisory liability.

In *Huff*, the Commission dismissed failure to supervise charges brought against Arthur James Huff, a Senior Registered Options Principal at PaineWebber. Huff had been charged with failing to supervise a retail broker who violated the securities laws as well as a branch office manager who failed in his own supervisory duties over the broker.¹⁴ Though not addressing the question of whether Huff was a supervisor pursuant to Section 15(b)(4)(e), Chairman Breeden and Commissioner Roberts concluded that Huff had reasonably discharged his supervisory duties over the broker.¹⁵ Commissioners Lochner and Schapiro concurred in the dismissal but wrote separately to express their view that Huff could not be regarded to have failed to supervise the broker because, as a factual matter, the broker was not subject to Huff’s supervision. They

¹¹ *Goldstein v. SEC*, 451 F.3d 873, 878 (D.C. Cir. 2006), quoting *PDK Labs. Inc. v. DEA*, 362 F.3d 786, 796 (D.C. Cir. 2004).

¹² Exchange Act Rel. No. 29017, 50 S.E.C. 524, 1991 WL. 296561 (Mar. 28, 1991) (concurring opinion of Commissioners Schapiro and Lochner).

¹³ Exchange Act Rel. No. 31554, 52 SEC 2849, 1992 WL. 362753 (Dec. 3, 1992) and accompanying Section 21(a) Report regarding Donald Feuerstein (the “Feuerstein Report”).

¹⁴ 1991 WL. 296561 at *1.

¹⁵ *Id.* at *5.

concluded that “the most probative factor that would indicate a person is responsible for the actions of another is whether that person has the power to control the other’s conduct. This view is supported by the common meaning of the term ‘supervision,’ when used in the employment relationship to which the statute refers and by the statutory language ‘subject to his supervision’ which also seems to emphasize control.”¹⁶ Focusing on whether Huff had the ability to hire or fire the violator and thus, had the ability to control the violator’s conduct, Commissioners Lochner and Schapiro concluded that Huff was not a supervisor.¹⁷

Gutfreund was a settled administrative case brought against line management of Salomon Brothers Inc. that the Commission accompanied with a Section 21(a) Report (the “Feuerstein Report”) which considered the supervisory liability of Donald Feuerstein, Salomon’s Chief Legal Officer. Feuerstein was told by senior management that the head of Salomon’s government trading desk had submitted a false bid in an auction of U.S. Treasury securities and urged senior management to report the actions to proper authorities.¹⁸ Neither those authorities nor Salomon’s Compliance Department were informed of the improper conduct for a number of months, during which time the illegal activities continued.¹⁹ In analyzing Feuerstein’s role in the matter, the Commission noted that “[e]mployees of brokerage firms who have legal or compliance responsibilities do not become ‘supervisors’ for purposes of Sections 15(b)(4)(E) and 15(b)(6) solely because they occupy those positions.”²⁰ However, the Commission reasoned that because Feuerstein had the “requisite degree of responsibility, ability or authority to affect”

¹⁶ *Id.* at *7.

¹⁷ *Id.*

¹⁸ 1992 WL 362753 at *5.

¹⁹ *Id.* at *8.

²⁰ *Id.* at *15.

the trader's conduct and failed to take the necessary steps to remediate that conduct, he failed to supervise the trader adequately.²¹

Since 1992, when the Feuerstein Report was issued, the role of Compliance has continued to evolve, fostered in part by Commission and SRO rulemaking. Typically, a modern compliance department "performs an advisory, monitoring and education role to support management's supervisory responsibility and its efforts to achieve compliance with government and self-regulatory organization rules and regulations and firm policies."²² Compliance officers generally are not given the ability to remediate wrongful activity or authorize and approve business transactions. This function is left to management and business lines, with the advice and monitoring of a compliance department.²³

The Commission's recent regulatory pronouncements have attempted to maintain Compliance as a function distinct from management. For example, in the context of Rule 206(4)-7 under the Investment Advisers Act²⁴ (requiring that "each adviser registered with the Commission [] designate a chief compliance officer to administer its compliance policies and procedures"), the Commission noted in its adopting release that "[h]aving the title of chief compliance officer does not, in and of itself, carry supervisory responsibilities. Thus, a chief compliance officer appointed in accordance with Rule 206(4)-7 (or Rule 38a-1 under the Investment Company Act) would not necessarily be subject to a sanction by us for failure to

²¹ *Id.* *Gutfreund* also noted that the concurring opinion in *Huff*, which emphasized "control," was consistent with *Gutfreund's* statement of the standard. *Id.* at n. 24. Ten years later *George J. Kolar*, another opinion written by two Commissioners, offered the view that the concurrence in *Huff* had "never been adopted by the Commission." *George J. Kolar*, Exchange Act Rel. No. 46127, 77 S.E.C. 2944, 2002 WL 1393652 at 5 & nn. 7-8 (June 26, 2002). However, *Kolar* – a line supervisor tasked with investigating wrongdoing, and not a compliance officer – was found to have had control in any event, leaving the *Kolar* Commissioners' view on *Huff* as dictum. *Id.*

²² See *White Paper on the Role of Compliance*, Securities Industry Association, Compliance and Legal Division (October 2005) ("White Paper") at 3.

²³ White Paper at 10.

²⁴ 17 C.F.R. § 275.206 (4)-7 (2003).

supervise other advisory personnel.”²⁵ Similar concerns were evident in the approval process for NASD Rule of Conduct 3013. As originally proposed by NASD, that rule would have required both the broker-dealer’s Chief Executive Officer and the Chief Compliance Officer to certify the firm’s compliance system.²⁶ Following the initial comment period, NASD abandoned the Chief Compliance Officer certification. In its release approving Rule 3013, the Commission still found it appropriate to note that “responsibility for discharging compliance policies and written supervisory procedures rests with the *business line supervisors* and consultation on the certification [by the firm’s Chief Executive Officer] *does not by itself establish a signatory as having such line supervisory responsibility.*”²⁷

The bulk of the Commission’s post-*Gutfreund* enforcement cases on failure to supervise have been brought against business personnel, while only a small minority, consisting in the main of settled cases, have been pursued against those in compliance roles.²⁸ These cases typically arise when a compliance person has been specifically delegated supervisory

²⁵ *Final Rule: Compliance Programs of Investment Companies and Investment Advisers*, Investment Company Act Rel. No. 26299, Fed. Reg. 7038 at n. 73 (Dec. 17, 2003).

²⁶ *NASD Notice to Members 03-29* at 1 (June 2003).

²⁷ *See Self Regulatory Organizations; Order Approving Proposed Rule Change by the NASD Relating to Chief Executive Officer Certification and Designation of Chief Compliance Officer*, Exch. Act Rel. No. 34-50347 (Sept. 10, 2004) (emphasis added). Rule 3013 itself also emphasizes the advisory role of the Chief Compliance Officer who “is the *primary advisor* to the member on its overall compliance scheme and the particularized rules, policies and procedures that the member adopts.” (Emphasis added). The rule emphasizes that compliance personnel provide advice and monitoring, while the responsibility for carrying out and supervising the business of a firm lies with the business line managers: “IM- 3013 provides that the responsibility for discharging compliance polices and written supervisory procedures rests with the firm’s business line supervisors. These supervisors are persons responsible for executing supervisory policies and procedures that Rule 3010 requires firms to establish and adopt.” *NASD Notice to Members 04-71* at n.5 (October 2004); *see also* White Paper at 11.

²⁸ White Paper at 11-12. Not at issue here are cases, brought outside the supervisory context, in which a compliance officer was directly involved in wrongdoing, such as *David A. Zwick*, Admin. Proc. File No. 3-12639, 91 S.E.C. 2079, 2007 WL 3119764 (Oct. 25, 2007) (barring a CCO who had participated in a scheme with a sales person he supervised to provide kickbacks).

responsibility in an identified area of concern,²⁹ or has wholly abdicated a function – such as creating procedures – that was entrusted to Compliance.³⁰

B. Into Uncharted Waters: The Initial Decision in *Urban*

While noting many factual differences between this case and *Gutfreund* (I.D. 49-51), Chief Judge Murray relied on *Gutfreund's* language to rule that once a legal or compliance officer – at least, one with sufficient *gravitas* within the relevant organization – becomes involved in formulating management's response to a problem, that person becomes responsible for taking action. There is no other interpretation to put on a decision ruling that Urban was a supervisor because his "opinions on legal and compliance issues were viewed as authoritative and his recommendations were generally followed by people in FBW's business units" (I.D. 52) while at the same time finding that Urban:

- "did not have any of the traditional powers associated with a person supervising brokers" (I.D. 52);
- "did not direct FBW's response to dealing with Mr. Glantz" (*Id.*); and
- "was not responsible and had no authority for hiring, assessing performance, assigning activities, promoting, or terminating anyone, outside of the people in the departments he directly supervised" (I.D. 35).³¹

²⁹ See, e.g., *Merriman Curhan Ford & Co., D. Jonathan Merriman, and Christopher Aguilar*, Exchange Act Rel. No. 60976, 2009 WL 3757969 at 4, 7 (Nov. 10, 2009) (finding that CEO had delegated relevant supervisory responsibility to General Counsel and Chief Compliance Officer Aguilar); *Kirk Montgomery*, Exchange Act Rel. No. 45161, 76 S.E.C. 1173, 2001 WL 1618266 at 6 (Dec. 8, 2001) (opinion in EAJA proceeding finding Division "substantially justified" in pursuing Chief Compliance Officer where firm's written procedures made CCO "responsible for the implementation and execution of the home office review procedures and policies").

³⁰ See e.g., *Grant Bettingen*, Admin Proc. File No. 3-13402, 95 S.E.C. 1027, 2009 WL 572255 (Mar. 6, 2009) (failure to supervise on part of president and compliance manager of firm because the firm did not implement written policies and procedures concerning private placement offerings).

³¹ Chief Judge Murray also referred to Urban's role on FBW's Credit Committee, but did not explain how that role, which consisted of membership on a four-person committee and

By abstracting the language, but not the facts, of *Gutfreund*, Chief Judge Murray changed the law. Among the “facts and circumstances” in the Feuerstein Report were the fact that Feuerstein, the Chief Legal Officer of Salomon Brothers, was informed by senior management of criminal misconduct at the firm and (1) failed to inform the Compliance Department, which reported to him, of the misconduct and (2) took no other action despite senior management’s reliance on him to direct the firm’s response to prior instances of misconduct. These facts alone take Feuerstein beyond the status of a respected advisor who is informed of, and asked to opine on, misconduct.

An approach to supervisory status that turns fundamentally on a compliance officer’s exposure to “red flags” and his or her reputation for making authoritative recommendations strays very far indeed from the statutory language “subject to his supervision” and the concept of “supervisory jurisdiction.” It lacks both principle and predictability, and serves only to confuse all concerned. And it is no answer to that confusion to say that at the end of the day, a compliance officer will not be sanctioned if his or her supervision (or non-supervision) is found to have been done “reasonably.” In Urban’s case, he is still litigating “reasonableness” five years after both he and Glantz left FBW.

C. The Role of Supervisor Should Remain with Management, and Compliance Professionals Must Maintain their Independence in Order to Objectively Assess Situations Where Individuals Could be Violating Rules and Regulations

Extending supervisory liability to “authoritative” compliance personnel is also contrary to public policy and the traditional role of compliance as independent evaluator and guide. Vigor, independence and objectivity are at the core of the compliance profession. From the Commission’s point of view – let alone that of the compliance officer – it is little short of

involvement in delivering the committee’s decisions to the relevant business units (I.D. 10, 17-19) – constituted “supervision.”

perverse to penalize a compliance officer because his “opinions on legal and compliance issues were viewed as authoritative and his recommendations were generally followed by” the firm in which he works. Such a standard serves only to reward the weak, the uninterested, and the ineffectual. Application of that standard is particularly odd, of course, where the “supervisor’s” recommendations were not generally followed by the very part of the organization that the Commission would now charge him with supervising – in the case of Urban and FBW, Retail Sales. (I.D. 52.)

1. Independence is Crucial to an Effective Compliance Program

Though Urban is an attorney, advice and guidance of the type that he offered are typical of both counsel and compliance professionals. Vigorous compliance programs are a key aid to management’s efforts to combat misconduct and malfeasance. In order to maintain the ability to root out misconduct, compliance personnel must have open communication with business personnel and advise freely on suspect behavior. This requires that the role of Compliance be clearly defined as one that provides support and advice, but that does not involve control over line employees. Supervision of such employees should be left in the hands of management, who has the ultimate authority to control employee activity, which Compliance typically lacks.³² Compliance programs were never intended to replace business supervisors, but to supplement their supervisory roles by providing independent observation and advice.

It is, perhaps, easy to say that “more supervisors are always better” and that fear of supervisory liability will promote better compliance. It will not. If compliance officers are compelled to bet their careers that their advice, when given, actually will be carried out, then those compliance officers will have been incentivized not to learn about problems or—if knowledge is thrust upon them—to render only anodyne advice that they feel is certain to be

³² White Paper at 2-3.

carried out. Such an approach deprives the business supervisors of the unvarnished opinions of the compliance officer, to the detriment of the business supervisor's own response to the problem, the Commission's regulatory goals, and the protection of investors.

Though it concerns a counsel to a firm, a recent case, *Scott G. Monson*,³³ is instructive here. In *Monson*, an in-house attorney was charged with having "caused" his company's violation by providing faulty legal advice concerning mutual fund trading. The Commission dismissed the administrative proceeding against Monson, noting that such a proceeding would interfere with Monson's "ability to provide unbiased, independent legal advice regarding the securities laws."³⁴ So too for the compliance professional. Fear of repercussions from a failure to supervise charge will have a chilling effect on the compliance professional's sound judgment and ability to objectively assess any given situation. Conversely, a compliance professional who is free to analyze and determine the appropriateness of the activities and systems of a particular firm will be more likely to seek out and address those violations that the Commission hopes to prevent, or halt.

D. This Case Presents an Opportunity to Harmonize the Roles of Compliance Officer and Supervisor

Chief Judge Murray's holding on Urban's supervisory status departs from the statute and even, as described above, from *Gutfreund*. Accordingly, it should be set aside. At the same time, it provides the Commission with an opportunity to enunciate a clear standard that compliance professionals can follow, thus permitting them to make compliance programs more effective in dealing with misconduct in the industry.

The Commission should revisit the *Gutfreund* and *Huff* cases and their progeny and reaffirm that supervisory liability can only befall a compliance officer where the erring employee

³³ Inv. Co. Act Rel. No. 28323, 93 SEC 1898, 2008 WL 2574441 (June 30, 2008).

³⁴ 2008 WL 2574441 at *5.

is “subject to the supervision” of that compliance officer. At its broadest, supervisory liability should be limited to compliance persons whose responsibility as supervisors is specifically laid out in Commission rules, firm policies and procedures, or by a management directive that gives the compliance officer specific supervisory duties in response to a specific situation, and in circumstances where the compliance officer is aware that he or she has been tasked with those duties. Such a standard would comport with the core concepts in Commission precedent, as well as conform to the language of Section 15(b)(4)(E) of the Exchange Act and the legislative history behind it. The Commission should also reaffirm its repeated statements that compliance personnel are not considered supervisors by virtue of their compliance positions alone, thus preserving their independence from the business side of the organization and avoiding the diffusion of line management’s responsibilities.

Alternatively, if the Commission wishes to consider the relationship between supervision and compliance on a broader factual record than that afforded by this proceeding, the Commission should set aside the ruling that Urban was a supervisor and undertake rulemaking, as it already has done in its promulgation of rules related to chief compliance officers at investment advisers and investment companies, as noted above.

III. CONCLUSION

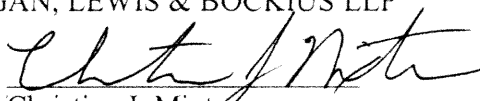
For the foregoing reasons, the Commission should reverse the Initial Decision that Urban was a supervisor.

Dated: November 22, 2010

Respectfully submitted,

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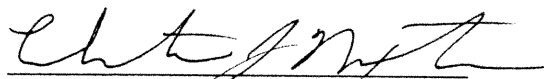
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2010, I caused a copy of the foregoing Amicus Brief of National Society of Compliance Professionals on Review of Initial Decision to be served upon:

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