UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION	:	
Plaintiff	:	
v.	:	C.A.: 15-CV-000191-S-LDA
PATRICK CHURCHVILLE, CLEARPATH WEALTH MANAGEMENT, LLC	:	
Defendants	:	
and	:	
CLEARPATH MULTI-STRATEGY FUND I, L.P. CLEARPATH MULTI-STRATEGY FUND II, L.P. CLEARPATH MULTI-STRATEGY FUND III, L.P. HCR VALUE FUND, L.P	:	
Relief Defendants	:	

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION TO ENFORCE STAY AND FOR INJUNCTIVE RELIEF

Spire Securities LLC ("Spire") asks the Court to stay two arbitration proceedings before the Financial Industry Regulatory Authority ("FINRA") that are inextricably linked to Patrick Churchville and ClearPath Wealth Management, LLC ("ClearPath"). Those arbitration proceedings, brought by 26 of Churchville's investors, involve claims that Spire failed to properly supervise its alleged agent – Churchville. These claims fall squarely within the scope of the Court's July 30, 2015 Order (ECF No. 16) (the "July 30 Order"). The Court should enforce its Order and stay all pending FINRA proceedings initiated by: Herbert Pfeffer, Myrna Barzelatto, David Freilicher, William Bernstein, Hal Nass, Ellen Nass, Lawrence Eisner, Amy Eisner, Robert Skollar, Holla4, LLC, Marc Hyman, Kirstine Schaeffer, John Skalicky, Jean Schram, Richard Schram, Paul Posnick, Helene Posnick, Robert Gluckin, the Estate of Joan B.

Gluckin, Thomas Herrmann, Carolyn Herrmann, HFP Holdings, LLC, and Lynn Bruce on behalf of the Betty Ziernicki Trust (the "FINRA Claimants").

The July 30 Order staying all civil legal proceedings that in any way involve Patrick Churchville, ClearPath, and the other named Relief Defendants establishes a broad – and explicit – stay of proceedings:

> 32. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are stayed until further Order of this Court:
>
> All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Defendants, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants' past or present officers, directors, managers, agents, or general partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").
>
> 33. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.
>
> 34. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.

Through two separate Statements of Claim, the FINRA Claimants initiated arbitration against Spire on April 4, 2016, and against Spire, Suzanne McKeown, and David Blisk (collectively the "Spire Defendants") on May 24, 2017, concerning alleged failure to supervise Churchville and ClearPath.[1] See Statements of Claim dated April 4, 2016 and May 24, 2017, attached as Exhibit 1 and Exhibit 2 respectively. Those Statements of Claim allege that Spire's

[1] David Blisk is Spire's Chief Executive Officer and Suzanne McKeown is Spire's Chief Compliance Officer.

failure to supervise caused the FINRA Claimants to lose approximately $22 million. See Ex. 1, pp. 16-20. Spire denies these allegations and denies that FINRA has jurisdiction to arbitrate these claims – notwithstanding the Court's Order, because none of the FINRA Claimants in the first arbitration were Spire customers and only a few of the FINRA Claimants in the second arbitration were Spire Customers. See Spire's Answer to April 4, 2016 Statement of Claim, attached without accompanying exhibits as Exhibit 3.[2] However, those FINRA Claimants that were Spire customers did not purchase the ClearPath investments through Spire. Blisk Dec. ¶ 8. For the purposes of this this motion and application, however, the Court need not resolve the merits of those claims. The FINRA Claimants have brought claims that directly relate to Mr. Churchville's and ClearPath's conduct. Not only are the FINRA Claimants' actions related to this action, resolution of the FINRA Claimants' claims require resolution of underlying issues concerning Mr. Churchville's and ClearPath's civil liability vis-à-vis the FINRA Claimants. The Court's Order plainly applies.

Accordingly, Spire moves pursuant to Fed. R. Civ. P. 65(b) for a temporary restraining order and injunction against the FINRA Claimants, staying all proceedings initiated by them before FINRA and enjoining the FINRA Claimants from pursuing any further action in anyway related to their investments with Churchville or ClearPath in any forum except this Court.

A temporary restraining order is necessary to prevent further violation of the Court's July 30 Order and to protect Spire and the individual Spire defendants from incurring additional expense, spending additional time defending two arbitration claims that should have been brought in this forum, and as a result of the May 24, 2017 claim, having to report this matter on

[2] Spire Defendants' time to answer or otherwise respond to the second arbitration statement of claim expires on July 15, 2017, unless extended by consent.

FINRA's Central Registration Depository ("CRD") which is visible to members of the investing public.[3]

BACKGROUND

Spire is broker-dealer firm based in Reston, Virginia. Declaration of Spire CEO David Blisk ¶ 4 ("Blisk Dec.) attached as Exhibit 4. It is an SEC registered broker-dealer and a FINRA member. Blisk Dec. ¶¶ 5-6. Spire never sold or solicited the sale of any of the funds that the FINRA Claimants claim to have purchased through ClearPath. Blisk Dec. ¶¶ 8-9. Only a few of the FINRA Claimants in the second claim ever executed a customer agreement with Spire. None of FINRA Claimants purchased their ClearPath Fund investments through Spire. Blisk Dec. ¶ 9.

Patrick Churchville had a limited relationship with Spire as a securities broker only, and not as an investment advisory representative, from August 2009 to February 2011. Blisk Dec. ¶¶ 10-11. During that period, Churchville introduced a few customer relationships to Spire and had no customer or regulatory issues.

ClearPath, which Churchville managed, was an independent, SEC registered investment adviser unaffiliated with Spire. Blisk Dec. ¶ 12. Spire had no involvement in the management of ClearPath, the marketing of its services, or distribution of any of the funds that became the subject of the SEC proceedings involving Churchville and ClearPath. Blisk Dec. ¶¶ 13-14.

According to the FINRA Claimants, they all invested in funds through ClearPath. Exhibit 1 p. 9, Exhibit 2 p. 3. The FINRA Claimants do not claim that they made investments through Spire, were Spire customers, or had any relevant interactions with any individual affiliated with Spire – except for their interactions with Mr. Churchville while he was acting on behalf of ClearPath. See Exhibit 1 and Exhibit 2. The FINRA Claimants do not allege that Spire

[3] By causing Spire to make this required disclosure, the FINRA claimants are causing reputational harm to Spire and its officers.

defrauded them, or misled them in any way. See Exhibit 1 and Exhibit 2. All of their allegations concerning Spire relate to Churchville's and ClearPath's conduct; namely that Spire failed to discover ClearPath's fraudulent conduct and that Spire failed to adequately supervise Churchville. See Exhibit 1 pp. 11-34 and Exhibit 2 pp. 20-41. Spire has asserted that Churchville's alleged misconduct did not occur until 2013, two years after his limited affiliation with Spire terminated.

PRODCEDURAL HISTORY

The first two claimants filed their statement of claim against Spire on April 4, 2016. Lieberman Dec. ¶ 2, attached as Exhibit 5. Spire answered the statement of claim on July 15, 2016 and filed a motion to dismiss on July 18, 2016. Lieberman Dec. ¶ 3. It was not until November 29, 2016 that the FINRA panel issued an order denying Spire's motion to dismiss. Lieberman Dec. ¶ 5.

On December 3, 2016, Spire filed a complaint in the United States District Court for the Southern District of New York seeking injunctive relief and requesting that the court enforce the stay entered in this action. Lieberman Dec. ¶ 6. On December 13, 2016, the court entered an order dismissing Spire's complaint without prejudice. See December 13, 2016 order, attached as Exhibit 6.

Thereafter, the first two claimants served Spire with discovery requests on January 13, 2017. Lieberman Dec. ¶ 8. During discovery, these claimants disclosed that they had filed Proofs of Claim with the Receiver in this action on January 13, 2017. Lieberman Dec. ¶ 8.

On May 24, 2017, the remaining claimants filed their statement of claim. Exhibit 2. Spire's response to this statement of claim is due July 15, 2017. Lieberman Dec. ¶ 9. At this time, Spire does not know which of these claimants have filed proofs of claim with the Receiver.

ARGUMENT

The Court should grant Spire's application for a temporary restraining order because Spire has no other remedy at law to enforce the Court's July 30 Order and ensure that any claims brought against Spire related to ClearPath's conduct are brought only in this forum. Spire will suffer irreparable harm if it is forced to arbitrate these disputes against parties who were not its customers and with whom it had no established relationships. See Graham v. Smith, 292 F. Supp. 2d 153, 159 (D. Me. 2003) ("forcing a party to arbitrate a dispute that it has not agreed to arbitrate is irreparable harm.") (quoting Raytheon Eng'Rs & Constructors, Inc. v. SMS Schloemann-Siemag Akiengesellschaft, 2000 U.S. Dist. LEXIS 5718 at *13 (N.D. Ill. March 16, 2000)); see also Md. Cas. Co. v. Realty Advisory Bd. on Labor Rels., 107 F.3d 979, 984-85 (2d Cir. 1997). Spire should not be forced to expend time and resources defending itself against meritless claims in an improper forum where the FINRA Claimants (or their counsel at a minimum) have actual knowledge of the Court's Order, yet refuse to comply with the stay. Importantly, these claims represent an existential risk to Spire, its employees, and the associated person who are affiliated with Spire.

When determining whether to grant a temporary restraining order, courts apply the same standard as a motion for a preliminary injunction. See Levesque v. Maine, 587 F.2d 78, 80 (1st Cir. 1978). To obtain injunctive relief, Spire must show: 1) that it is likely to succeed on the merits of its motion; 2) Spire is likely to suffer irreparable harm in the absence of preliminary relief; 3) that the balance of equities tips in Spire's favor; and 4) that an injunction is in the public interest. Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc., 645 F.3d 26, 32 (1st Cir. 2011) (quoting Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)). "The [Supreme] Court has repeatedly held that the basis for injunctive relief in the federal courts has

always been irreparable injury and the inadequacy of legal remedies." Id. (quoting Weinberger v. Romero-Barceló, 456 U.S. 305, 312 (1982).

1. Spire will likely succeed on its motion to enforce.

Spire asks the Court to enforce the July 30 Order against the FINRA Claimants. Spire is likely to succeed on the merits of its motion because the plain language of the Court's Order applies to the FINRA Claimants and to their claims. The July 30 Order, in relevant part, states:

> 32. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are stayed until further Order of this Court:
>
> All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Defendants, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants' past or present officers, directors, managers, agents, or general partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").
>
> 33. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.
>
> 34. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.

The arbitration proceedings that the FINRA Claimants initiated fall within the definition of "Ancillary Proceedings" contained in Paragraph 32 of the Court's Order. First, arbitration proceedings are explicitly included. Second, the arbitration proceedings in question revolve around the conduct of two of the Receivership Defendants (Churchville and ClearPath) and around the precise conduct that caused the Securities and Exchange Commission ("SEC") to

initiate this civil action. Both the SEC and the FINRA Claimants allege that Churchville and ClearPath: 1) misappropriated investor funds; 2) used investor funds to purchase Churchville's house; and 3) used investor funds to make payments to other investors. Consequently, the relevant FINRA arbitrations are legal proceedings involving actions taken by Churchville and ClearPath that fall within the definition of Ancillary Proceedings. The stay applies.

2. Spire is likely to suffer irreparable harm if the Court does not enforce the stay.

If Spire is forced to continue with the pending FINRA arbitrations, it will continue to expend time and resources even though it did not agree to arbitrate with the FINRA Claimants. Requiring a party to arbitrate a dispute when that party has not consented to arbitration constitutes irreparable harm. Graham, 292 F. Supp. 2d at 159 (D. Me. 2003). Since Spire did not have a customer relationship with many of the FINRA Claimants, those individuals did not execute account establishment agreements – or any other agreements – with Spire. Blisk Dec. ¶¶ 7-8. Those individuals are strangers to Spire.

Moreover, defending these arbitrations places a significant financial and reputational burden on Spire and its officers. Blisk Dec. ¶¶ 16-19.

3. The balance of the equities favors enforcement of the Court's Order.

The FINRA Claimants have brought claims that are legally and factually infirm. Nonetheless, Spire recognizes that these parties have the right to bring good faith claims if they are brought in the appropriate forum. But FINRA arbitration is not the appropriate forum. The SEC has already initiated civil proceedings against Churchville and ClearPath in this forum and the Court has implemented a stay of other related civil proceedings. FINRA arbitration is also not the appropriate forum where at least two of the FINRA Claimants have filed a proof of claim

in this action. See Proof of Claim filed by Myrna Barzelatto on January 2, 2017, attached as Exhibit 7.[4] A representative of the Receiver confirmed that Mr. Pfeffer filed a proof of claim.

Each of the FINRA Claimants allege that they made investments with Churchville and ClearPath. Exhibit 1 and Exhibit 2. Certainly, they knew or had reason to know that Churchville's operations were based in Rhode Island since ClearPath maintained an address in Providence, Rhode Island. Each of the FINRA Claimants anticipated that any dispute involving their investments with Churchville and ClearPath may be litigated in Rhode Island. As reflected in Spire's answer to the first statement of claim, these claimants received offering documents prepared by ClearPath. Spire was not involved in any of the offering materials received by these claimants. Moreover, each of the FINRA Claimants that filed a proof of claim in this matter consented to the jurisdiction of this Court "for all purposes and agree[d] to be bound by its decisions, including, without limitation, a determination as to the validity and amount of any Claims asserted against the Receivership Entities." Exhibit 7, p. 10.

Based on these circumstances, the balance of equities favors Spire and a stay of the FINRA arbitrations. Doing so will preserve the status quo consolidating all claims involving the ClearPath funds and prevent the parties from incurring further costs until the Court reaches final resolution on Spire's motion. The FINRA Claimants will not be harmed – all but two filed their statement of claim in May 2017. See Exhibit 2.

4. The public interest favors resolving all claims related to Churchville's and ClearPath's conduct in one forum.

This Court is undoubtedly deeply familiar with the facts and circumstances surrounding the investments in the ClearPath funds and Churchville's conduct. To the extent claims concerning that conduct must be litigated, they should be litigated in one forum. The SEC

[4] Exhibit 7 has been redacted to remove all account numbers.

initiated its civil suit against ClearPath and Churchville in this forum, approximately one year before the first of the FINRA Claimants filed their statement of claim. See Exhibit 1. Further, the public interest favors enforcement of the Court's Orders and not permitting the FINRA Claimants to seek alternate avenues for recovery in derogation of that Order.

CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court issue a temporary restraining order staying all proceedings initiated by them before the Financial Industry Regulatory Authority and enjoining the FINRA Claimants from pursuing any further action in anyway related to their investments with Churchville or ClearPath in any forum except this Court until the Court decides Plaintiffs' Motion to Enforce Stay.

SPIRE SECURITIES, LLC

By its Attorneys,

/s/ Andrew S. Tugan

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plieberman@evw.com

Dated: June 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's Electronic Filing System. A copy of the foregoing was also sent to counsel for the FINRA claimants by first class mail and electronic mail to:

Adam J. Gana
Adam J. Weinstein
Gana LLP
345 Seventh Avenue
21st Floor
New York, NY 10001
agana@ganallp.com

/s/ Andrew S. Tugan

#

EXHIBIT 1

FINRA ARBITRATION Submission Agreement

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

Myrna Barzelatto
Myrna Wendlinger Family Limited Partners
Herber Pfeffer

16-01018

Name(s) of Respondent(s)

Spire Securities, LLC

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.

2. The parties hereby state that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules.

3. The parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Dispute Resolution or the arbitrator(s). The parties further agree and understand that the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure.

4. The parties agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.

5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

Spire Securities, LLC Date
State Capacity if other than individual (e.g., executor, trustee, corporate officer)

LC43A: SUBMISSION AGREEMENT
idr: 03/30/2015

RECIPIENTS:
Corporate Officer, Spire Securities, LLC
1840 Michael Faraday Dr., Suite 105, Reston, VA 20190

SECTION 8: SUBMISSION AGREEMENT AND ELECTRONIC SIGNATURE

FINRA Arbitration Submission Agreement

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

Ms. Myrna Barzelatto

Myrna Wendlinger Family Limited Partnership

Mr. Herber Pfeffer

and

Name(s) of Respondent(s)

SPIRE SECURITIES, LLC

The undersigned parties ("parties") understand that an electronic signature below means that the party certifies that the information entered on the form is true and accurate, and that the party agrees to the terms of the following Submission Agreement.

The parties hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.

The parties hereby state that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules. The parties further agree and understand that the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure.

The parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s).

The parties agree to abide by and perform any award(s) rendered. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.

Electronic Signature

By entering your electronic signature below, you are one of the following: (1) the claimant; or (2) a person with legal authority to bind the claimant; or (3) a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the claimant; or (4) an attorney who has actual or implied written or verbal power of attorney from the claimant to sign on the claimant's behalf and thus, bind the claimant to the terms of the Submission Agreement as if the claimant signed the form personally.

Signatures

Claimant	Signature	Capacity	Date
Ms. Myrna Barzelatto	/Adam Gana/	as attorney	04/04/2016
Myrna Wendlinger Family Limited Partnership	/Adam Gana/	as attorney	04/04/2016
Mr. Herber Pfeffer	/Adam Gana/	as attorney	04/04/2016

I certify that the information entered on the form is true and accurate, and agree to the terms of the Submission Agreement, whether submitted manually or electronically. If I electronically signed the form, I certify that I entered my signature personally.

GANA LLP
Adam J. Gana, Esq.
Adam J. Weinstein, Esq.
345 Seventh Avenue
21st Floor
New York, NY 10001

Attorneys for Claimants

BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY

----------X

MYRNA BARZELATTO, individually and on behalf of the MYRNA WENDLINGER FAMILY LIMITED PARTNERSHIP, and HERBERT PFEFFER,

FINRA No.:

Claimants,

v.

SPIRE SECURITIES, LLC,

Respondents.

----------X

STATEMENT OF CLAIM

Myrna Barzelatto, individually and on behalf of the Myrna Wendlinger Family Limited Partnership ("Ms. Barzelatto") and Herbert Pfeffer ("Mr. Pfeffer") bring this claim pursuant to the Financial Industry Regulatory Authority ("FINRA") Code of Arbitration Procedure, by and through their attorneys, Gana LLP, against Respondent Spire Securities, LLC ("Spire Securities" or "Respondent").

Claimants bring this arbitration proceeding before FINRA pursuant to the agreement entered into by the parties and/or FINRA Rule 12200, which requires a member or an associated person to arbitrate disputes arising out of the associated person or member's business activity and/or the contract entered into between the parties. Claimants purchased the securities in question

and are residents predominantly in the state of New York and requests a hearing location closest to Claimants' residences. Claimants also asks that an all-public panel hear Claimants case. Claimants seeks damages of approximately $300,000 plus interest, attorneys' fees, and all forum fees.[1] Accordingly, Claimants allege, upon information and belief, as follows:

CLAIMANTS

1. ***Myrna Barzelatto, individually and on behalf of the Myrna Wendlinger Family Limited Partnership***

Claimant Myrna Barzelatto resides at 300 Martine Ave. Apt. 5K, White Plains, New York, 10601 at times relevant to this dispute.

2. ***Herbert Pfeffer***

Claimant Herbert Pfeffer resides at 14 Clubway, Hartsdale, New York, 10530 at times relevant to this dispute.

RESPONDENT

Spire Securities, LLC

Spire Securities, LLC's principal place of business is 1840 Michael Faraday Drive, Suite 105, Reston, Virginia, 20190. Spire Securities is a member of FINRA with Central Registration Depository Number ("CRD") 144131 and registered with the Securities and Exchange Commission ("SEC") 8- 67635. Since Spire Securities is registered to conduct securities business in the state of New York and Rhode Island and the conduct alleged herein occurred within New York and Rhode Island with New York residents, Spire Securities' conduct was required to comply with New York and Rhode Island law as well as the rules and regulations of the SEC and FINRA.

INTRODUCTION

[1] Claimant reserves the right to amend the amount of damages ultimately claimed at hearing upon completion of discovery.

This case is about Spire Securities' failure to supervise Patrick Churchville ("Mr. Churchville"), a registered broker and investment advisor. Since at least December 2010, Mr. Churchville used his investment advisory firm in order to defraud at least 200 investors out of approximately $11,000,000 through the creation and implementation of several different investment schemes.

Mr. Churchville operated a series of private funds[2] through his firm ClearPath Wealth Management ("ClearPath Wealth"). Mr. Churchville misappropriated and misused his investors' cash and assets in his fraudulent scheme that involved outright theft, false accounting entries, shadow accounts, and misrepresentations to his investors (the "ClearPath Investment Scheme"). In classic Ponzi-scheme fashion, Mr. Churchville had the Funds misallocate and misappropriate investor assets and then used monies that were due to be distributed to particular investors to pay for new investments or to fund distributions to unrelated investors. Mr. Churchville also misappropriated investor funds by using fund assets to secure undisclosed borrowing and by repaying the borrowed funds with investor profits. In one particular egregious example, Mr. Churchville stole approximately $2.5 million of investors' funds to purchase Churchville's home overlooking the Narragansett Bay.

By September 2013, Fund investors requested Mr. Churchville distribute their investments only to be delayed by continued lies and deceptions concerning the investments' status and worth

[2] These funds include the ClearPath Multi-Strategy Fund I, L.P. ("MSF I"), ClearPath Multi-Strategy Fund II, L.P. ("MSF II"), ClearPath Multi-Strategy Fund III, L.P. ("MSF III") and HCR Value Fund, L.P. ("HCR Value" and collectively, the "Funds").

in order to lull investors. Later the SEC determined that the ClearPath Funds were a Ponzi-like fraud scheme.[3]

Despite the numerous red flags of misconduct, Spire Securities failed to supervise, monitor, and detect Mr. Churchville ClearPath Investment Scheme while he was registered with the firm. ClearPath Wealth was a disclosed investment related business activity that was required to be supervised to ensure that Mr. Churchville was conducting his business in accordance with the securities laws. Spire Securities either failed to put in place reasonable supervisory systems to detect Mr. Churchville's misconduct or failed to implement those systems.

Respondent's failure to supervise Mr. Churchville has left investors with substantial losses to their irreplaceable life savings.

FACTUAL BACKGROUND

1. Mr. Churchville's ClearPath Investment Scheme Background

Mr. Churchville was registered with Spire Securities when he began to conduct the ClearPath Investment Scheme. From August 2009 until February 2011, Mr. Churchville was registered with Spire Securities out of the firm's Providence, Rhode Island branch office location. In addition, Mr. Churchville's CRD report discloses that since December 2007, Mr. Churchville was licensed as an investment advisor through ClearPath Wealth Management ("ClearPath Wealth") as the firm's principal. The same information is recorded on Mr. Churchville's IARD.

During this time period, Mr. Churchville operated a brokerage and investment advisory business out of his Providence office location. Starting as early as 2008, Mr. Churchville and ClearPath Wealth managed a series of private investment funds that were structured as limited

[3] *SEC v. Patrick Churchville, et al,* Case No. 1:15-cv-00191-S-LDA, (U.S. Dist. RI) (May 7, 2015) (available at: https://www.sec.gov/litigation/complaints/2015/comp23255.pdf)

liability partnerships where ClearPath was the adviser to the Funds pursuant to management agreements between ClearPath Wealth and each of Funds. Investors in each of the private funds held limited partnership interests in those funds pursuant to Limited Partnership Agreements entered into. ClearPath Wealth and Mr. Churchville offered different investment series in a variety of different investments including commercial secured loans, collections of other private funds, direct investments in private companies, and in publicly traded equities and bonds.

Mr. Churchville's ClearPath Investment Scheme consisted of a series of misappropriated investor funds from the funds ClearPath Wealth managed through various means and mechanisms. In some instances misappropriated funds were used to cover various business and personal expenses. Other times Mr. Churchville transferred cash from one fund to another, or from the Funds to ClearPath Wealth's bank account to cover expenses. In other wrongful uses, Mr. Churchville would borrow against the Funds' assets and investments in order to cover business and personal expenses and make other investments held by ClearPath Wealth.

When Mr. Churchville's investment strategy proved profitable, Mr. Churchville would keep the profits for himself. However, when the investments lost money Mr. Churchville used monies that were owed to Fund investors to repay loans made to initiate the investment positions. Because of Mr. Churchville diversions of Fund monies from the Funds for other purposes Mr. Churchville used money from other investors to cover the created holes and shortfalls and to make redemption payments to investors who demanded their money back.

Mr. Churchville's fraud began in December 2010, when Mr. Churchville diverted approximately $1.6 million in proceeds from the redemption of an investment made in the MSF III fund. Proceeds from the MSF III Fund redemption totaled approximately $6.6 million and were received by MSF III on December 22, 2010. Instead of distributing the $6.6 million in proceeds to the investors Mr. Churchville diverted $1.6 million for his own uses. Between December 23,

2010 and January 13, 2011, Mr. Churchville wrongfully transferred approximately $600,000 from MSF III's bank account at Bank of American to ClearPath Wealth's main operating bank account at Bank of America.

ClearPath Wealth and Mr. Churchville then paid various ClearPath Wealth expenses, including payroll and fees for accountants, valuation consultants, attorneys, and the Funds' administrator. Mr. Churchville also transferred $30,000 Mr. Churchville personal accounts between December 29, 2010 and January 3, 2011 as capital distributions from ClearPath Wealth. In addition, Mr. Churchville also used approximately $980,000 of funds to invest in a Rhode Island-based pharmaceutical product incubator fund (the "Incubator Fund"). However, even though MFS III Fund money was the investment was not allocated to those investors accounts and instead were simply left as ClearPath Wealth's investments that Mr. Churchville could hold for his own benefit.

Mr. Churchville made these unauthorized transfers because the prior balance in ClearPath Wealth's main operating account was less than $16,000 and there was insufficient money for ClearPath Wealth to continue to operate its business without resorting to stealing client funds. The MSF III Fund recorded some of the transfers to ClearPath Wealth as a receivable even though loans between the entities were not permitted in their agreements and ClearPath Wealth did not repay the MSF III Fund loan.

In January 2011, Mr. Churchville distributed the remaining approximately $4.9 million of the original $6.6 million to investors. Mr. Churchville did not disclose to investors that this distribution was substantially less than the actual amount received for the redemption nor did he disclose that he had spent the remaining redemption proceeds as detailed above.

To conceal the misappropriation of funds from the MSF III Fund Mr. Churchville raised money from new investors to fund what was represented as a $2 million healthcare receivables-

related investment in the MSF III Fund. Mr. Churchville used $1.6 million of the new cash from new investors to pay the remaining distributions due to the original investors classic Ponzi fashion.

From here onward Mr. Churchville continued to use near money and loaned money to make up shortfalls and repay old investors. For instance, Mr. Churchville raised approximately $4.9 million for an investment in Oppenheimer Public Markets Series ("OPCO"), an investment portfolio in balanced equities and bonds. However, approximately $2.5 million of investor funds were ultimately used to buy a house for Mr. Churchville and $1.6 million of investor funds were used to plug the hole caused by the stolen funds that was supposed to be for the MSF III Fund healthcare receivables-related investment described above. Mr. Churchville accomplished this theft by placing 100% of the funds into government agency and short-term U.S. Treasury bonds and then creating a "shadow accounts" to borrow against the investors' assets to the maximum allowed by Oppenheimer.

Eventually, Mr. Churchville was forced by Oppenheimer to repay the margin loan which resulted in only $585,000 being left in the OPCO account of the original $4.9 million. Then, on or about October 2, 2012, Mr. Churchville transferred the $585,000 to the HCR Value Fund, an entirely different fund for the purposes of making payments to investors on an entirely different investment.

ClearPath Wealth and Mr. Churchville continued in numerous other similar schemes as those described above to regularly commingling investor contributions and distributions across different investments, misuse investments for purposes unrelated to the investments, borrow against investor securities, and then plug holes created by the activity with new investor money. Mr. Churchville silenced inquisitive or concerned investors with hush money by making large payments to certain investors who raised questions regarding the disposition of their investments

ClearPath and Churchville also made misstatements stemming from the loss of funds from their investment in healthcare receivables. The investment was later alleged to have been involved in a Ponzi scheme where investors lost $23 million.

Mr. Churchville waited until September 2013, when the principals of the healthcare receivables investments were indicted to notify investors of these losses. Most likely, Mr. Churchville waited because the news of the loss caused investors begin to request that Mr. Churchville return what remained of their assets. But because Mr. Churchville was engaged in his own Ponzi scheme with the remaining assets he was unable to return the requested money and deflected the requests through a series of misrepresentations about why they could not then give investors back their money. Nonetheless, Mr. Churchville continued to operate his ClearPath Investment Scheme.

Upon information and belief, Spire Securities knew or discovered the misconduct and investment fraud or should have known through the presence of numerous and unavoidable "red flags" of misconduct that existed. For instance, Mr. Churchville's emails disclosed that:

> PLEASE READ THIS WARNING: All e-mail sent to or from this address will be received or otherwise recorded by Spire's corporate e-mail system and is subject to archival, monitoring and/or review, by and/or disclosure to, someone other than the recipient.

Due to the brokerage firm's lax supervision it was only in 2015, when the SEC brought action against Mr. Churchville that investors could know they had been the victims of fraud. The brokerage firm missed numerous red flags that proper supervision would have detected and prevented Claimants from suffering losses. Those red flags include that: (1) Mr. Churchville conducted his fraudulent schemes out of his disclosed outside business activity that involved investment related activity; (2) that Mr. Churchville's ClearPath Wealth was an unprofitable business in or about January 2010 that suddenly, without explanation, obtained large amounts of

capital and became immensely profitable; (3) Mr. Churchville corresponded from the Providence, Rhode Island office location involving the fraudulent investment scheme that was not reviewed by the brokerage firm even though the correspondence stated Mr. Churchville's affiliation with Spire Securities; (4) met investors at the Providence office to discuss the fraudulent investments; (5) Spire Securities failed to audit or keep records of ClearPath Wealth's books and records that would have revealed that Mr. Churchville inappropriately commingled ClearPath Wealth's funds with investor funds; (6) while Mr. Churchville disclosed their involvement in ClearPath Wealth the brokerage firm failed to supervise the operations or inquire into how the ventured was financed; and (7) Mr. Churchville suffered inexplicable declining sales revenue and assets under management during the time period.

On May 7, 2015, the SEC brought an action against Mr. Churchville and ClearPath Wealth to cease and desist his fraudulent activities.

2. Herbert Pfeffer

Herbert Pfeffer is 74 years old and retired from his occupation as a surgeon in 1999. Mr. Pfeffer obtained his medical degree at New York University. Mr. Pfeffer met Mr. Churchville through another investor of his in 2009. Shortly thereafter Mr. Pfeffer began investing with Mr. Churchville. Then in December 2009, Mr. Pfeffer and contacted his long time friend and co-Claimant Ms Barzelatto to meet with Mr. Churchville about potential investments.

Mr. Pfeffer invited Ms. Barzelatto to accompany him to a lunch meeting with Mr. Churchville. At the lunch meeting, Mr. Churchville explained his investments in healthcare receivables. According to Mr. Churchville, he had been successfully investing clients in healthcare receivables which he claimed were highly collateralized with virtually no downside risk. Mr. Churchville stated that the expected returns were around 20% when the money was invested for about 16 months and the investment matured at the end of that time.

Due to Mr. Churchville's misrepresentations Mr. Pfeffer invested approximately $197,000 into the ClearPath Funds. On Mr. Pfeffer's statements when one investment would mature the money would be rolled over into another healthcare receivable investment with accumulated interest. In reality, Mr. Churchville's account statements were false and misrepresented the value of the investments made and did not disclose the loans, personal expenses, and the use of new investor money to pay old investors that comprised the actual use of Mr. Pfeffer's funds.

In September 2013, Mr. Churchville contacted his investors to disclose that the healthcare receivable company he had invested in, Account Receivable Services LLC, ("ARS") had been found to be a Ponzi-scheme and its principals indicted for fraud. Thereafter, Mr. Churchville blamed investor losses on the Ponzi-scheme investment and not the Ponzi-scheme that Mr. Churchville had been running with his clients' money through ClearPath Wealth.

Had Spire Securities acted properly to supervise Mr. Churchville millions of dollars in investor losses could have been avoided. Claimant lost substantial and irreplaceable life savings due to Respondent's misconduct.

3. Myrna Barzelatto

Myrna Barzelatto is 78 years old and works as a registered nurse. Ms. Barzelatto obtained a college degree and a masters degree from Pace University. Ms Barzelatto is a long-time friend of co-Claimant Mr. Pfeffer. Mr. Pfeffer told Ms. Barzelatto that he had been successfully investing with Mr. Churchville for a while. In or about December 2009, Mr. Pfeffer invited Ms. Barzelatto to accompany him to a lunch meeting with Mr. Churchville.

At the lunch meeting, Mr. Churchville explained his investments in healthcare receivables. Based upon Mr. Churchville's representations Ms. Barzelatto invested a total of $75,000 in three ClearPath Funds and received back liquidations of $22,490 of one of the funds in or about October 2011.

On Ms. Barzelatto's statements when one investment would mature the money would be rolled over into another healthcare receivable investment with accumulated interest. In reality, Mr. Churchville's account statements were false and misrepresented the value of the investments made and did not disclose the loans, personal expenses, and the use of new investor money to pay old investors that comprised the actual use of Ms. Barzelatto's investments.

In September 2013, Mr. Churchville contacted his investors to disclose that ARS had been found to be a Ponzi-scheme and its principals indicted for fraud. Thereafter, Mr. Churchville blamed investor losses on the Ponzi-scheme investment and not the Ponzi-scheme that Mr. Churchville had been running with his clients' money through ClearPath Wealth.

Had the Spire Securities acted properly to supervise Mr. Churchville millions of dollars in investor losses could have been avoided. Claimant lost substantial and irreplaceable life savings due to Respondent's misconduct.

CLAIMS

I. Respondents Failed to Supervise Mr. Churchville Fraudulent Activities in Violation of FINRA Rules

The FINRA Rules require that member firms have and implement specific safeguards to ensure that their associated persons do not violate FINRA Rules. If the member firm unreasonably fails to stop the associated person's wrongdoing, the member firm is responsible for damages arising from that failure. Here, Respondent unreasonably failed to stop Mr. Churchville's illegal selling of securities and is liable for damages arising out of their registered representative's wrongdoing.

A broker-dealer owes a duty to all of its customers under FINRA Rule 3010 to properly monitor and supervise its employees. FINRA Rule 3010 states:

> Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and

> other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member...

FINRA Rule 3010: SUPERVISION.

A failure to supervise claim requires showing: "(i) an underlying securities law violation; (ii) association of the registered representative or other person who committed the violation; (iii) supervisory jurisdiction over that person; and (iv) failure of the broker-dealer and/or supervisory personnel to reasonably supervise the person who violated the securities laws." *See In re Phila. Investors, LTD.*, S.E.C. Rel. No. 123, 1998 WL 122180 at*11 (Mar. 20, 1998).

FINRA Rule 3010 also holds firms to a reasonable supervision standard that is to be determined based on the particular facts of each case. *Department of Enforcement v. Kernweis*, 2000 WL 33299605 at *13 (N.A.S.D.R. 2000). This standard is violated "where a supervisor was aware only of 'red flags' or 'suggestions' of irregularities." *In the Matter of the Application of Michael H. Hume* ("Hume"), Exchange Act Rel. No. 35608, 52 S.E.C. 243, 1995 SEC LEXIS 983, at*5 (Apr. 17, 1995). In addition, the SEC has noted that "[l]iability for failure to supervise may be imposed when a supervisor '[fails] to learn of improprieties when diligent application of supervisory procedures would have uncovered them.'" *Kernweis*, 2000 WL 33299605 at *13 (*quoting In re Scudder Investments, Inc.* ("Scudder Investments"), Investment Act Rel. No. 24218, 1999 SEC LEXIS 2737, at *18 (Dec. 22, 1999). "Under such circumstances a supervisor cannot discharge his or her supervisory obligations simply by relying on the unverified representations of employees." *Hume*, 52 S.E.C. 243, 1995 SEC LEXIS 983, at*5.

As shown below, Respondent failed to reasonably supervise their broker's activities.

A. Mr. Churchville Committed An Underlying Securities Violation

As alleged above, Mr. Churchville violated federal, state, and FINRA securities laws constituting an underlying securities violation. The ClearPath Investment Scheme was sold without substantial risk disclosures and with unbalanced promises of returns. The agreements and representations made Mr. Churchville purported that investor funds would be used to purchase healthcare receivables for holding periods of about 16 months and backed by collateral.

However, investors received no information concerning the background of the underlining issuer, the nature of the risks in the investment, operating or other balance sheet statements showing prior performance or updates on current performance, or any other information an investor would typically expect to receive.

In addition, Mr. Churchville knew that that Claimants' funds were not invested in legitimate offerings and that instead their funds were commingled and otherwise used for various investment and non-investment related purposes including Mr. Churchville's personal living expenses, ClearPath Wealth's operating expenses, among other misuses.

B. Mr. Churchville Was Associated With the Brokerage Firms

Under FINRA Rule 12100(r) a "Person Associated with a Member" includes "a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA." Further, "a person formerly associated with a member is a person associated with a member."

Mr. Churchville is a formerly associated person of Spire Securities. Accordingly, there is no dispute that Respondents were responsible for supervising their associated persons in selling and advising Claimants on the investments at issue in this case. *See John Hancock Life Ins. Co. v. Wilson*, 254 F.3d 48, 58-59 (2d Cir. 2001) (*citing First Montauk Sec. Corp. v. Four Mile Ranch*

Dev., 65 F.Supp.2d 1371, 1379 (S.D.Fla.1999) ("A dispute that arises from a firm's lack of supervision over its brokers arises in connection with its business.").

C. Respondent Had Supervisory Jurisdiction Over their Registered Representatives

In addition to FINRA Rule 3010, numerous other notices to members, FINRA, SEC, and court decisions hold the securities laws impose upon broker-dealers the duty and obligation to properly monitor and supervise its employees. NTM 97-19: Heightened Supervision ("Firms are reminded of their long-standing responsibilities to implement reasonable procedures designed to detect and prevent rule violations and to correct deficiencies in, and violations of, relevant laws, rules, and regulations."); *see also* NTM 98-38 ("Rule 3010(c) imposes upon a member the obligation to review the activities of each office, which includes the periodic examination of customer accounts to detect and prevent irregularities and abuses.")

FINRA has also specifically stated that members have supervisory jurisdiction responsibilities to detect and monitor associated persons outside business activities. As far back as 1986, the NASD warned its members that the conduct of its registered representatives most frequently resulting in violations of NASD rules involved unauthorized private securities transactions. *See*, NASD Notice To Members 86-65. Indeed, the NASD explicitly directed this warning to firms that employ registered representatives stating that such firms "are responsible for monitoring their activities in a manner reasonably intended to detect violations of Article III, Section 40 of the Rules of Fair Practice" (now codified as FINRA Rule 3040). *Id.*; *see also* NASD Notice To Members 01-79 (stating "members should review their supervisory and compliance procedures to make sure that their reporting requirements are clear and complete and that each associated person receives appropriate education and training regarding the sale of notes.").

In particular both the SEC and FINRA have expressed concerns that off-site locations may be used by brokers to conceal outside business activities and fraud. *Staff Legal Bulletin No. 17:*

Remote Office Supervision, S.E.C. Release No. SLB-3A (CF), 2004 WL 5698359, at * 1 (Mar. 19, 2004) ("Some broker-dealer firms have geographically dispersed offices staffed by only a few people, and many are not subject to onsite supervision. Their distance from compliance and supervisory personnel can make it easier for registered representatives (representatives) and other employees in these offices to carry out and conceal violations of the securities laws."); NTM 98-38 ("[t]o be effective...[supervision] must be designed to monitor securities-related activities and detect and prevent regulatory compliance problems of such associated persons working at unregistered offices...").

The SEC and FINRA have repeatedly advised firms, like Respondent, that they are responsible for supervising all of their representatives' sales of securities, whether sold through "regular" channels or not. Under FINRA Rule 3040 "No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule."[4] FINRA has warned firms that it is their responsibility to "review their supervisory procedures to make sure that they are reasonably designed to achieve compliance with [FINRA] Rules 3030 and 3040 regarding outside business activities and private securities transactions..." NTM 01-79: Selling Away And Outside Business Activities.

In enforcing this FINRA Rules 3010 and 3040, the SEC and NASD have repeatedly fined, censured and de-registered firms that failed to prevent their brokers from "selling away." *See, e.g., In re Kolar*, Exchange Act Rel. No. 46127, 2002 SEC Lexis 1647 (June 26, 2002) (suspending Dean Witter supervisor who failed to detect and prevent broker's sales of investments, promoted

[4] FINRA Rule 3040(e)(1) defines "Private securities transaction" as "any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission." Clearly the Pillar Notes were securities sold outside the regular course of Respondent's employment and were not registered with the SEC.

as collateral-backed promissory notes in "Lease Equity Fund, Inc."); *In re Kunz*, Exchange Act Rel. No. 45290, 2002 SEC Lexis 104 (Jan. 16, 2002) (disciplining broker-dealer that failed to prevent broker's sales of "Wholesale Mortgage Loan Participation Interests"); *In re Consolidated Investment Serv.*, Exchange Act Rel. No. 36687, 1996 SEC Lexis 83; 52 S.E.C. 582 (Jan. 5, 1996) (suspending firm for failing to detect and prevent broker's sales of $5 million of non-existent "Agency CD Notes"); *In re Royal Alliance Assoc.*, Exchange Act Rel. No. 38174, 1997 SEC Lexis 113 (Jan. 15, 1997) (disciplining firm that failed to stop two branch managers from selling Ponzi schemes); *In re Stuart, Coleman & Co.*, Exchange Act Rel. No. 38001, 1996 SEC Lexis 3266 (Dec. 2, 1996) (disciplining firm where branch manager had permitted registered representatives to sell fraudulent limited partnership interests, even though firm had explicitly refused written request for permission); *In re Prospera Financial Serv., Inc.*, Exchange Act Rel. No. 43352, 2000 SEC Lexis 2034 (Sept. 26, 2000) (holding firm responsible for failure to supervise part-time representatives, because "allowing a registered representative to engage in outside business activities involves the risk that the representative will use his outside business to carry out or conceal violations of the securities laws.").

Therefore, Respondent had an obligation to employ effective supervisory procedures in order to monitor and detect outside business activities.

D. Respondent Failed To Reasonably Supervise their Agents

The FINRA Rules provide the standard of care a firm must adhere to in order to reasonably supervise their agents. NASD NTM 99-45 states that:

> [i]t is important that members not only review their supervisory systems and procedures to ensure that they are current and adequate, but also conduct inspections to determine whether the systems and procedures are being followed.

This standard is violated when either: (1) awareness of 'red flags' are not followed up with proper supervision; and (2) policies and procedures are deficient resulting in failure to detect 'red flags.' *See In the Matter of the Application of Michael H. Hume* ("Hume"), Exchange Act Rel. No. 35608, 52 S.E.C. 243, 1995 SEC LEXIS 983, at*5 (Apr. 17, 1995). (liability imposed "where a supervisor was aware only of 'red flags' or 'suggestions' of irregularities" and fails to follow up.); *Kernweis*, 2000 WL 33299605 at *13 (*quoting In re Scudder Investments, Inc.*, Investment Act Rel. No. 24218, 1999 SEC LEXIS 2737, at *18 (Dec. 22, 1999). ("[l]iability for failure to supervise may be imposed when a supervisor '[fails] to learn of improprieties when diligent application of supervisory procedures would have uncovered them."')

There have been numerous ruling and notices putting the industry on notice as to the policies and procedures needed to properly supervise brokers. Such "[i]nspections of unregistered offices should include, among other things, a review of any on-site customer account documentation and other books and records, meetings with individual registered representatives to discuss the products they are selling and their sales methods, and an examination of correspondence and sales literature." NTM 98-38: NASD Reminds Members Of Supervisory And Inspection Obligations, pg. 274. Further, "[u]nannounced visits may be appropriate, particularly where there are indicators of misconduct or potential misconduct, or 'red flags.'" *Id.*; *see also In Re Mabon Nugen & Co.*, Exchange Act Rel. No. 27301, 44 S.E.C. Docket 1116 (Sept. 27, 1989). (the SEC stated that effective supervision by broker-dealers is a critical element which should ensure regulatory compliance through a system of follow-ups and reviews); *In re Stuart, Coleman & Co.*, Exchange Act Rel. No. 38001, 1996 SEC Lexis 113 (Jan. 15, 1997) (the court held the firm "failed to institute and implement adequate compliance control procedures over the branch office because it failed to take measures including...conducting unannounced branch office inspections and using inspection criteria...to detect and prevent the securities law violations...").

In particular, the SEC has stated that firms must employ measures to monitor "the use of personal computers" in remote offices to detect misappropriation of customer funds, selling away, and unauthorized trading, among other things. *Staff Legal Bulletin No. 17: Remote Office Supervision*, 2004 WL 5698359, at *4 (*citing SG Cowen Securities Corp.*, Release No. 34-48335 (Aug. 14, 2003) ("The Commission found that SG Cowen and Lehman Brothers did not have supervisory procedures reasonably designed to prevent and detect Gruttadauria's generation of falsified account statements on personal computers."). FINRA has also found that firm's compliance policies that do not provide for proper supervision of emails are inadequate. *In re Dawson James Securities, Inc.*, Letter of Acceptance, Waiver and Consent ("AWC") No. 20080125468-02, (FINRA Apr. 4, 2014). In addition, the "[e]stablishment of policies and procedures alone is not sufficient to discharge supervisory responsibility. It also is necessary to implement measures to monitor compliance with those policies and procedures." *In re Prospera Financial Services, Inc.*, S.E.C. Release No. 43352, 2000 WL 1424360 at *5 (S.E.C. Sept. 26, 2000) (*citing Thomson & McKinnon*, Exchange Act Release No. 8310, 43 S.E.C. 785, 788 (1968) ("Although it was registrant's stated policy...it failed to establish an adequate system of internal control to insure compliance with such policy."); *Sutro Brothers & Co.*, Exchange Act Release No. 7052, 41 S.E.C. 443, 464 (1963) ("registrant did not expand its supervisory procedures to keep pace with the rapid expansion of its operations").

Many brokerage firms argue that they can supervise brokers through annual self-reporting questionnaires from the brokers themselves. However, such practices have been found to be deficient as a matter of law. *In re Prospera Financial Services, Inc.*, S.E.C. Release No. 43352, 2000 WL 1424360 at *6 (S.E.C. Sept. 26, 2000) (firm sanctioned where it "relied upon the representative's unverified assertions regarding the propriety of his outside activities and the source and amount of his other income."); *PFS Investments, Inc.*, Exchange Act Release No. 40269, 67

SEC Docket 2032, 2038 (July 28, 1998); *In re Quest Capital Strategies, Inc., et al.*, SEC Release No. 1990, 2001 WL 1230619 at *6 (S.E.C. Oct. 15, 2001) ("Relying on a subordinate's assurances is hardly an effective method of preventing or detecting violations."). In *Consolidated Investment Services,* the SEC specifically rejected that supervision is adequate where "representatives were required, on an annual basis, to complete a compliance questionnaire....[because] Applicants took no steps to verify the questionnaires and assumed that the registered representatives were answering them truthfully." Exchange Act Release No. 36687, 1996 WL 20829, at *4 (Jan. 5, 1996). In sum, "[i]f a firm's established procedures for preventing and detecting fraud by employees come down in the last analysis to taking the employee's word on explanations when questionable events are looked into, then the procedures cannot be very effective." *In Re Shearson, Lehman Brothers, Inc.,* 36 SEC Docket 754, 49 SEC 619, Admin. Proc. File No. 3-6733 (8-12324)(801-00517), Release No. 34-23640 (Sept. 24, 1986).

Here, Respondent failed to supervise Mr. Churchville's ClearPath Wealth outside business activities when it allowed Mr. Churchville to recommend and sell fraudulent investments and commingled client funds in ClearPath Wealth's operating accounts for business expenses. Respondent ignored numerous "red flags" that should have alerted the firm to Mr. Churchville's misconduct.

First, Spire Securities knew that Mr. Churchville owned and operated a ClearPath Wealth that was engaged in securities related sales while he was also associated with Respondent. Second, Mr. Churchville operated virtually all aspects of his ClearPath Investment Scheme out of the Providence location including communications, phone calls, and correspondence. Respondent was required to examine and inspect all of Mr. Churchville's work location in order to ensure that improper securities business was not engaged in and that the broker met the brokerage firm's compliance policies. Had the brokerage firms reviewed Mr. Churchville's operations they would

have discovered evidence of his illegal businesses dealings with clients including unexplainable cash transfers from client funds to the ClearPath Wealth's operating account.

Fourth, Mr. Churchville's declining production numbers while increasing ClearPath's profitability should have cried out for heighted supervision under the FINRA Rules. *Staff Legal Bulletin No. 17: Remote Office Supervision,* 2004 WL 5698359, at *3 (*citing SG Cowen Securities Corp.,* Release No. 34-48335 (Aug. 14, 2003) ("Red flags that could suggest the existence or occurrence of illegal activity and might prompt an unannounced inspection include:...4) an increase or change in the types of investments or trading concentration that a representative in a remote office is recommending or trading; (5) an unexpected improvement in a representative's production, lifestyle, or wealth...").

Here, the Spire Securities failed to take any action to ensure that Mr. Churchville would be properly supervised. Adequate supervisory procedures would have put the Spire Securities on notice much sooner and would have allowed authorities to return Claimants' assets still in the scheme's pool of funds and otherwise prevented future payments. Instead, Respondent consciously looked the other way while Mr. Churchville pilfered Claimants' retirement savings.

II. Negligent or Intentional Misstatements in U-5 Filings, Failure to Warn Clients, and Failure to Warn Regulators

Brokerage firms are liable for damages caused by:

(1) Negligently or intentionally misstating the cause and reason for termination on the U-5 statement;

(2) Failing to warn clients that the broker was terminated due to customer complaints or suspicious activity that may affect the client;

(3) Failing to warn appropriate regulatory agencies that the broker's conduct may be a violation of the securities law or FINRA Rules.

See Twiss v. Kury, 25 F.3d 1551, 1556 (11th Cir. 1994) (finding that the "[brokerage firm], at the time [broker] left its employ, a legal obligation to report the fact of his termination to the

Department, to accurately state the reason for such termination, and to specify any illegal or unprofessional activity committed to [broker] then known by [brokerage firm]"); *see also Dolin v. Contemporary Fin. Solutions, Inc.*, 622 F. Supp. 2d 1077, 1084 (D. Colo. 2009) ("find[ing] that [plaintiffs' negligence claim] applies to the context of not only negligent hiring, but also negligent supervision and negligent failure to monitor, investigate, and report [to the Alabama Securities Department]."); *SII Investments, Inc. v. Jenks*, 370 F. Supp. 2d 1213, 1215 (M.D. Fla. 2005) (Firm can be found liable for failure to warn its clients that the broker was terminated because there were three customer complaints against the broker known by the firm at the time of termination).

FINRA has also warned brokerage firms against failing to not fully and accurately complete U-5 forms. In NTM 88-67 the NASD stated that:

> Items 13-15 on Form U-5 ask for information concerning apparent misconduct by a person while associated with the firm submitting the Form U-5. A "yes" answer to Items 13-15 must be accompanied by a detailed explanation of the apparent misconduct. **Failure to provide accurate answers to Items 13-15 may deprive the NASD of its ability to detect violations** and subsequently sanction persons for violations of the NASD's rules and other applicable federal statutes and regulations. **Failure to provide this information may also subject members of the investing public to repeated misconduct** and may deprive member firms of the ability to make informed hiring decisions.

(emphasis added).

Upon information and belief, the brokerage firms, intentionally or through negligent supervision, failed to file complete and accurate U-5 Form with FINRA, properly notify regulatory authorities, or warn their own clients of Mr. Churchville's illegal activities.

III. Respondent is Liable for their Agent's Misconduct Under the Theories of Control Person Liability and Respondeat Superior

A. "Control Person" Liability

Respondent is also liable to Claimants for all their agent's misconduct under the theory of "control person" liability. Both federal and state securities acts impose "control person" liability on all persons who have the power, direct or indirect, exercised or not, to control another's sale of securities. *See, e.g.*, 15 U.S.C.A. § 78t (2011) (stating "every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable...").

As used in all such securities acts, "the term 'control' . . . means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise." *G.A. Thompson & Co. v. Partridge*, 636 F.2d 945, 957 (5th Cir. 1981). The Ninth Circuit Court of Appeals explained that broker-dealers are conclusively the "control persons" of their registered representatives because:

> [A]s a practical matter the broker-dealer exercises control over its registered representatives because the representatives need the broker-dealer to gain access to the securities markets.... [A] person cannot lawfully engage in the securities business unless he or she is either registered with the NASD as a broker-dealer or as a person associated with a broker-dealer. Because a sales representative must be associated with a registered broker-dealer in order to have legal access to the trading markets, the broker-dealer always has the power to impose conditions upon that association, or to terminate it.... Moreover, because the broker-dealer is required by statute to establish and enforce a reasonable system of supervision to control its representatives' activities, the broker-dealer necessarily exerts ongoing control over the types of transactions made by the representative . . .

Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1573-74 (9th Cir. 1990).

Respondent is the "control persons" of their registered representatives at all times relevant to this dispute. Therefore, Respondent is liable for their agents' misconduct, including but not

limited to, Mr. Churchville's unsuitable recommendations and material misrepresentations and omissions in the sale of his fraudulent investments.

B. Respondeat Superior

Respondent is liable to Claimants for all of Mr. Churchville's misconduct under the theory of respondeat superior. Broker dealers are vicariously liable for the acts of its agents and employees committed in the scope of employment. The doctrine of *respondeat superior* imposes liability on an employer for the wrongful acts of his agent committed within the scope of employment. *See Armstrong Jones & Co. v. S.E.C*, 421 F.2d 359 (6th Cir. 1970), *cert, denied*, 398 U.S. 958 (1970) (in action by SEC against firm under Exchange Act for failure to supervise, liability thereunder is akin to *respondeat superior*); *see also* Restatement (Second) of Agency § 261 ("A principal who puts a servant or other agent in a position which enables the agent, while apparently acting within his authority, to commit fraud upon third persons is subject to liability to such third persons for the fraud").

Most jurisdictions refuse to subscribe to the notion that somehow selling securities is conduct outside the scope of employment. "[U]nder Pennsylvania law a principal is liable to third parties for the frauds, concealments etc. of his agent committed within the scope of his employment **even though the principal did not authorize or know of such conduct, even if he forbade such acts.**" *Carroll v John Hancock Distributors, Inc.*, CIV.A. 92-5907, 1994 WL 87160 at *4 (E.D. Pa. Mar. 14, 1994) (emphasis added); *see also Jairett v First Montauk Sec. Corp.*, 153 F Supp 2d 562, 571 (E.D. Pa. 2001) ("[W]here the relationship involves a broker-dealer..."a stringent duty to supervise employees does exist.") (citations omitted).

In *Carroll v. John Hancock Distributors, Inc.* In *Carroll*, the plaintiffs allege that their brokers sold interests in oil and gas limited partnerships away from the brokers' employer firm. *Id.* at *1. The investments were not registered securities under the Pennsylvania and federal

securities laws. *Id.* John Hancock argued "that plaintiffs lack any evidence of John Hancock's culpable conduct in these transactions..." *Id.* at *6. However, the court disagreed holding that "[w]e view controlling case law as permitting the imposition of respondeat superior liability in cases such as this one involving broker-dealers." *Id.* (*citing Sharp v. Coopers and Lybrand,* 649 F.2d 175 (3d Cir. 1981); *Rochez Brothers, Inc. v. Rhoades,* 527 F.2d 880 (3d Cir. 1975); *see also Hollinger v. Titan Capital Corp.,* 914 F.2d 1564 (9th Cir. 1990)); *see also Paul F. Newton & Co. v. Texas Commerce Bank,* 630 F.2d 1111, 1119 (5th Cir. 1980) ("It is consistent with the remedial purpose of the federal securities acts to require a brokerage firm that provides an employee with the means to carry out fraudulent practices to pay damages to a victim of those practices when the employee it has chosen acts within the course and scope of his employment."); *Sharkey v. Lasmo,* 992 F.Supp. 321 at 323 (S.D.N.Y. 1998) ("doctrine 'does not require that the act have conferred any particular benefit, financial or otherwise, on the employer,' where the act is 'sufficiently similar' to acts authorized by the employer."); *Federal Savings and Loan Insurance Corp. v. Shearson-American Express,* 658 F.Supp. 1331 at 1335 (D.P.R. 1987) ("That...the transactions were carried out 'outside of the firm'...is not controlling, since the nature of the activity may be within the corporation's usual business activities.").

Courts have held that respondeat superior liability is created by the "special duties that certain employers assume under the federal securities laws when their conduct is likely to exert strong influence on important investment decisions." *Sharp v. Coopers & Lybrand,* 649 F.2d 175, 181 (3d Cir. 1981). As also explained by the Fifth Circuit, "most investors rely upon the reputation and prestige of the brokerage firm rather than the individual employees with whom they might deal. Such firms should be held accountable if employees they select utilize the firm's prestige to practice fraud upon the investing public." *Paul F. Newton & Co. v. Texas Commerce Bank,* 630 F.2d 1111, 1119 (5th Cir. 1980); *Henricksen v. Henricksen,* 640 F.2d 880, 887 (7th Cir. 1981)

(*cited by Sharp v. Coopers & Lybrand,* 649 F.2d at 182) ("(U)nder common law principles, a principal is liable for the deceit of its agent committed in the very business he was appointed to carry out. This is true even though the latter's specific conduct was carried on without knowledge of the principal.") *see also* Restatement (Second) of Agency § 261 ("A principal who puts a servant or other agent in a position which enables the agent, while apparently acting within his authority, to commit fraud upon third persons is subject to liability to such third persons for the fraud"). Similarly, the sixth circuit has emphasized that the broker-dealer has "an affirmative obligation to prevent use of the prestige of its firm to defraud the investing public." *Holloway v. Howerdd,* 536 F.2d 690, 696 (6th Cir. 1976).

As explained by one court:

> Stokes's theft occurred only because the Defendants enabled him to sell securities as their registered agent. A reasonable inference is that Stokes's agent status with the Defendants aided the Defendants' presence in the market place. Stokes's duty was to complete securities transactions in accordance with securities laws and NASD rules. To that extent, the acquisition and disposition of Plaintiffs' assets were within the actual scope of Stokes's duties as the Defendants' agent...A contrary rule would cause injury unfair to the investing public.

As You Sow v. AIG Fin. Advisors, Inc., 584 F. Supp. 2d 1034, 1047 (M.D. Tenn. 2008) (*citing See Henricksen v. Henricksen,* 640 F.2d 880, 887 (7th Cir. 1981), *cert denied,* 454 U.S. 1097, 102 S.Ct. 669, 70 L.Ed.2d 637 (1981); *Alvarado v. Morgan Stanley Dean Witter, Inc.,* 448 F.Supp.2d 333 (D.P.R. 2006).

Mr. Churchville was a registered securities representative and was employed to offer, sell, and advise clients concerning investment products. Thus, Respondent is responsible for all of their securities related activities including the fraudulent investment scheme. Regardless of whether or not Respondent prohibited Mr. Churchville from engaging in fraudulent activities, Respondent is responsible for their agent's securities conduct.

IV. Respondent Participated in the Sale of Unregistered Investments

The ClearPath Investment Scheme funds offering constitute Regulation D offerings. Regulation D contains three exemptions from the requirement to register the securities. However, even if the offerings meet one of these exemptions, the issuer must file a "Form D" after first selling the security. *See* Regulation D Offerings, SEC Website, available at http://www.sec.gov/answers/rule504.htm.

Upon information and belief Mr. Churchville and Respondent failed to register the investments and never filed the requisite Form D.

V. Respondent Violated their Suitability Obligations

A broker-dealer and its brokers have a duty to recommend only suitable investments to their clients. A member is required to make recommendations according to the following fundamental suitability obligations: (1) a broker must have a reasonable basis to believe, after performing adequate due diligence, that the recommendation could be suitable for *some* investors, also known as "reasonable basis" suitability; and (2) a broker must have reasonable grounds to believe that the recommendation is suitable for the specific customer at issue, also known as "customer specific" suitability. *See, e.g., Dep't of Enforcement v. Michael F. Siegel*, 2007 WL 1928639, at *12 (N.A.S.D.R. 2007).

The scope of these duties are defined in FINRA Rule 2310, also known as the "Suitability Rule," which provides:

> (a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have **reasonable grounds** for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to her other security holdings and as to her financial situation and needs.
>
> (b) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers

> where investments are limited to money market mutual funds, a member shall make **reasonable efforts to obtain information** concerning:
>
> (1) the customer's financial status;
> (2) the customer's tax status;
> (3) the customer's investment objectives; and
> (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

See NASD Rule 2310, RECOMMENDATIONS TO CUSTOMERS (SUITABILITY) (emphasis added).

A. Reasonable Basis

Respondent did not have a reasonable basis to recommend the investment ventures to Claimants. FINRA's Notice to Members 05-59 states, "[t]o discharge its reasonable basis suitability obligation, a member must perform appropriate due diligence to ensure that it understands the nature of the product, as well as the potential risks and rewards." *See* FINRA Notice to Members 05-59, STRUCTURED PRODUCTS. After engaging in this analysis, the member must have a reasonable basis to believe that the products are suitable for *some* investors.

Respondent did not understand the nature of the speculative ventures Mr. Churchville placed Claimants into because the ventures did not have a demonstrated track record and were fraught with unknown variables and lacked proper investment risk disclosures. Respondent conducted no due diligence on the investments, the issuer, management, or any other indicator that would have suggested that the ClearPath Investment Scheme investment would or could be prudently invested in. The payment of interest and the liquidity upon maturity of the funds was wholly dependent on factors that could be neither known to outsiders nor reasonably predicted and depended upon such factors as Mr. Churchville's business operating expenses, living expenses, needs, whims, and discretionary authority to repay some or none of the investment at any time and at any rate.

Furthermore, Respondent had no reasonable basis to believe that the funds were suitable for *any* investor. The funds lacked any mention of risk, guaranteed both interest payments and return of principle at maturity, had varying redemption dates, and had undisclosed fees and conflicts of interest. Despite the existence of the above-mentioned risk factors and the fact that the funds have been declared fraudulent by the SEC, these products would not have been suitable at the time they were recommended to Claimants.

B. Overconcentration

A broker-dealer is liable for a claim of unsuitability when it overconcentrates a client's account with risky, speculative and illiquid non-conventional or alternative investments. *See In re Holland*, Exchange Act Release No. 36,621, 60 S.E.C. Docket 2935 (Dec. 21, 1995) (good faith immaterial to broker liability). Even if Respondent were to assert that Claimants agreed to overconcentrate their holdings by investing the investments, a broker's suitability obligations are not absolved. In *Holland*, the SEC concluded:

> Even if we were to accept [the broker's] view that these clients wanted to speculate and were aware of the risks-a conclusion not supported on this record-the Commission has held on many occasions that the test is not whether [the clients] considered the transactions in their account suitable, but whether [the broker] fulfilled the obligation he assumed when he undertook to counsel [them], of making only such recommendations as would be consistent with [their] financial situation and needs.

Id. at 736-37 (citing *In re Erdos*, 47 S.E.C. 985, 989 (Nov. 16, 1983)); *see also In re Wickswat*, 50 S.E.C. 785, 786-87 (Nov. 6, 1991); *In re Phillips & Co.*, 37 S.E.C. 66, 70 (Apr. 9, 1956) (applying the NASD's suitability rule).

Claimants trusted Respondent and their agent to recommend investments in accordance with prudent management principles and their specific financial situations. Instead, Mr.

Churchville invested a substantial amount of Claimants' assets into the highly speculative and illegal funds.

C. Customer Specific Suitability

FINRA Rule 2310 also requires the broker to have a reasonable basis to believe that the recommendation is suitable for the particular customer based on the customer's investment profile. The investment profile includes items such as: financial situation, tax status, investment objectives, risk tolerance, age, and investment experience. *See* FINRA Rule 2310, Recommendations to Customers (Suitability). Further, FINRA states, "[i]n the context of a Regulation D [private placement] offering... A BD also must be satisfied that the customer 'fully understands the risks involved and is...able...to take those risks.'" FINRA NTM 10-22, OBLIGATION OF BROKER-DEALERS TO CONDUCT REASONABLE INVESTIGATIONS IN REGULATION D OFFERINGS, 4. Furthermore, when a broker dealer is affiliated with the issuer of the security, the broker must

> ensure that its affiliation does **not compromise its independence** as it performs its investigation. The BD must **resolve any conflict of interest that could impair its ability to conduct a thorough and independent investigation.** Indeed, its affiliation with the issuer typically would raise expectations by its customers, particularly some retail customers, that the BD has special expertise concerning the issuer.

Id. at 5.

Respondent recommended unsuitable risky, speculative, and illiquid investments in unspecified investments to Claimants with primarily retirement funds regardless of individual needs and investment objectives. Furthermore, given the unsuitability of the funds for *any* investor, Respondent could not properly match the investment objectives of clients to an investment in the funds.

VI. Respondent Violated FINRA Rule 2210 (Communications with Customers), 2010 (Fiduciary Duty), 2020 (Fraud), and IM-2310-2 (Fair Dealing with Customers)

FINRA Rule 2010 requires members to "observe high standards of commercial honor and just and equitable principles of trade" in conducting their business. FINRA Rule 2020 also prohibits members from effecting "any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance." IM-2310-2 - "Fair Dealing with Customers" is cross-referenced by both of the aforementioned provisions and provides a non-exhaustive list of activities that would be inconsistent with the foregoing principals. *See* IM-2310-2: FAIR DEALING WITH CUSTOMERS. The first section of IM-2310-2 outlines member and associated persons obligations in dealing with customers as follows:

> (a)(1) Implicit in all member and registered representative relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of the Association's Rules, with particular emphasis on the requirement to deal fairly with the public.

Respondent egregiously and intentionally violated many of the subsections of IM-2310-2, including but not limited to:

> **(iv) Misuse of Customers' Funds or Securities**
> Unauthorized use or borrowing of customers' funds or securities.
>
> (B) In addition, other fraudulent activities, such as forgery, **non-disclosure or misstatement of material facts, manipulations and various deceptions, have been found in violation of Association Rules.** These same activities are also subject to the civil and criminal laws and sanctions of federal and state governments.
>
> ***
>
> **(5) Recommending Purchases Beyond Customer Capability**
> Recommending the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

Respondent made misstatements and omissions of information in their agent's communication with Claimants concerning the funds and their investments. In addition, the

recommendation to purchase the funds were beyond many of the Claimants' ability to commit and were unreasonable.

Respondent also had a duty to provide Claimants with sound investment advice that fairly and accurately described the nature of the investments and the risks associated with the investments. Instead, Respondent made negligent misrepresentations and omissions to Claimants in violation of the FINRA Rules. FINRA Rule 2210(d) states in relevant part:

> All member communications with the public shall be based on principles of fair dealing and good faith, must be **fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security**, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

FINRA Rule 2210(d) COMMUNICATIONS WITH THE PUBLIC (emphasis added). In the context of a broker who prepares a private placement memorandum, any "material misstatements and omissions about... the amount and timing of distributions and the targeted return of principal to investors violate[] FINRA Rule 2010, which requires BDs to comply with just and equitable principles of trade." FINRA NTM 10-22, OBLIGATION OF BROKER-DEALERS TO CONDUCT REASONABLE INVESTIGATIONS IN REGULATION D OFFERINGS, 5.

VII. Respondent Made Negligent or Fraudulent Misrepresentations and Omissions to Claimants in Violation of Federal and State Securities Law

A. Federal and New York State Securities Law

Respondents made material misrepresentations and omissions to Claimant in violation of federal securities laws. Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange to use or employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or

contrivance in contravention of such rules and regulations as the Securities and Exchange Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. *See* 15 U.S.C.S. §78j. The SEC, pursuant to 15 U.S.C.S. §78j, promulgated S.E.C. Rule 10b-5 (codified at 17 C.F.R. § 240.10b-5).[5]

In a typical § 78j(b) private action, a plaintiff must prove: (1) a material misrepresentation or omission; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.

Similarly, in order to prove common law fraud in New York, a plaintiff must demonstrate: (1) a false representation of material fact; (2) knowledge by the party who made the representation that it was false when made; (3) justifiable reliance by the plaintiff; and (4) resulting injury. *See Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 291 (2d Cir. 2006).

B. Respondent Made Material Misrepresentations and Omissions of Information

Respondent made numerous material misrepresentative and omissions to Claimants in course of their dealings concerning the funds. The investments risks, underlining investments, fees, costs, return date, liquidity, tax consequences, and the legal status of the funds were all misrepresented or omitted by Respondent to Claimants.

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[5] Rule 10b-5 makes it unlawful:

a) to employ any device, scheme, or artifice to defraud;
b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

In sum, the truthful disclosure list concerning the funds is far shorter than the aspects of the funds that were misrepresented to Claimant. Virtually every aspect Mr. Churchville's transactions with Claimants was tainted by fraud.

VIII. Punitive Damages

As a cause and consequence of the Respondent's misconduct in supervising Mr. Churchville and in the handling of Claimants' investment funds, Claimants suffered compensatory and other damages of approximately $300,000. The panel should also award punitive damages, interest at the legal rate as well as attorneys' fees, and costs.

Arbitrators have the power to award exemplary, or in other words, punitive damages. As the United States Supreme Court held in *Mastrobuono v. Shearson Lehman Hutton. Inc.*, 514 U.S. 52 (1995), the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, grants arbitrators plenary authority to consider and make an award of punitive damages notwithstanding any provision of state law to the contrary.

Here, punitive damages should be assessed against Respondent and is wholly warranted due to the firms' intentional and willful failure to oversee Mr. Churchville business activities. The callousness to the consequences which Respondent have shown cry out for a remedy that will not only make Claimants whole, but prevent a repetition of these events which have become all too common place in the industry. Every year millions of investors funds are stolen by brokers employed by brokerage firms that ask for the public's trust and confidence and then those same brokerage firms attempt to run away when the criminal acts of those they employ are discovered. The perils that investors face when trusting the brokerage industry is fostered through a policy of scant compensation for victims that profits the industry even when brokerage firms fail in their most basic duties.

FINRA firms continue to behave in a way that suggests that a lack of supervision, and the relatively small amounts of damages that result, are merely a cost of doing business to be borne rather than problem to be corrected. An award that falls short of assessing punitive damages will not take the necessary step of impressing upon Respondent the indisputable need to supervise and manage its employees in accordance with the rules of law and the business ethics of fair trade.

CONCLUSION

WHEREFORE, Claimants requests that this Panel award damages from the Respondents as follows:

1. Compensatory damages for a sum of $300,000;
2. Interest at the statutory rate;
3. Attorneys' Fees;
4. Expert Fees;
5. Forum Fees;
6. Punitive Damages;
7. Such other and further relief as this Panel deems just and proper.

Dated: April 4, 2016

Respectfully Submitted,
GANA LLP

By: _____

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Attorneys for Claimants

EXHIBIT 2

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Attorneys for Claimants

BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY

----------X

In the matter of the arbitration between,

DAVID FREILICHER, WILLIAM BERNSTEIN, HAL NASS, ELLEN NASS, LAWRENCE EISNER, AMY EISNER, ROBERT SKOLLAR, HOLLA 4 LLC, MARC HYMAN, KIRSTINE SCHAEFFER, JOHN SKALICKY, JEAN SCHRAM, RICHARD SCHRAM, PAUL POSNICK, HELENE POSNICK, ROBERT GLUCKIN, ESTATE OF JOAN B. GLUCKIN, THOMAS HERRMANN, CAROLYN , HERRMANN, HFP HOLDINGS, LLC, and LYNN BRUCE on behalf of the BETTY ZIERNICKI TRUST,

FINRA No.:

Claimants,

v.

SPIRE SECURITIES LLC, SUZANNE MCKEOWN, and DAVID BLISK,

Respondent.

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STATEMENT OF CLAIM

The above-captioned claimants ("Claimants") bring this claim pursuant to the Financial Industry Regulatory Authority ("FINRA") Code of Arbitration Procedure, by and through their

attorneys, Gana LLP, against Respondents Spire Securities, LLC ("Spire Securities"), Suzanne McKeown ("Ms. McKeown"), and David Blisk ("Mr. Blisk" and collectively "Respondents").

Claimants bring this arbitration proceeding before FINRA pursuant to the agreement entered into by the parties and/or FINRA Rule 12200, which requires a member or an associated person to arbitrate disputes arising out of the associated person or member's business activity or the contract entered into between the parties. Claimants purchased the securities in question and are residents of the states of Rhode Island, Connecticut, New York, New Jersey, South Carolina, Pennsylvania, and California but are predominantly residents in the state of New York and the New York area and request a hearing location closest to Claimants' residences in New York. Claimants also asks that an all-public panel hear Claimants' case. Claimants seeks damages of approximately $22,000,000 plus interest, attorneys' fees, and all forum fees.[1] Accordingly, Claimants allege, upon information and belief, as follows:

INTRODUCTION

This case is about Spire Securities' and its principals' failure to supervise Patrick Churchville ("Mr. Churchville"), a registered broker and investment advisor. Since at least 2008, Mr. Churchville used his investment advisory firm in order to defraud investors and cause investment losses to at least 200 investors of at least $27,000,000 through the creation and implementation of several different investment schemes.[2] Each of the Claimants named herein were victims of Mr. Churchville's fraud.

[1] Claimants reserve the right to amend the amount of damages ultimately claimed at hearing upon completion of discovery.

[2] *See SEC v. Patrick Churchville, et al,* Case 1:15-cv-00191-S-LDA, [Doc. 85], ¶ 3, ¶ 84 (D. RI, Aug. 26, 2016)

Mr. Churchville operated a series of private funds[3] (the "ClearPath Funds") through his firm ClearPath Wealth Management ("ClearPath Wealth"). Mr. Churchville misappropriated and misused his investors' cash and assets in his fraudulent scheme that involved outright theft, false accounting entries, shadow accounts, and misrepresentations to his investors (the "ClearPath Investment Scheme").

In classic Ponzi-scheme fashion, Mr. Churchville had the Funds misallocate and misappropriate investor assets and then used monies that were due to be distributed to particular investors to pay for new investments or to fund distributions to unrelated investors. Mr. Churchville also misappropriated investor funds by using fund assets to secure undisclosed borrowing and by repaying the borrowed funds with investor profits. In one particular egregious example, Mr. Churchville stole approximately $2.5 million of investors' funds to purchase Churchville's home overlooking the Narragansett Bay.

By September 2013, ClearPath Fund investors requested Mr. Churchville distribute their investments only to be delayed by continued lies and deceptions concerning the investments' status and worth in order to lull investors. Later the SEC determined that the ClearPath Funds were a Ponzi-like fraud scheme.[4]

Despite the numerous red flags of misconduct, Spire Securities and its principals failed to supervise, monitor, and detect Mr. Churchville's ClearPath Investment Scheme while he was registered with the firm. ClearPath Wealth was a disclosed investment related business activity

[3] These funds include the ClearPath Multi-Strategy Fund I, L.P. ("MSF I"), ClearPath Multi-Strategy Fund II, L.P. ("MSF II"), ClearPath Multi-Strategy Fund III, L.P. ("MSF III") and HCR Value Fund, L.P. ("HCR Value" and collectively, the "Funds").

[4] *SEC v. Patrick Churchville, et al,* Case No. 1:15-cv-00191-S-LDA, (U.S. Dist. RI) (May 7, 2015) (available at: https://www.sec.gov/litigation/complaints/2015/comp23255.pdf)

that was required to be supervised to ensure that Mr. Churchville was conducting his business in accordance with the securities laws. Spire Securities failed to put in place reasonable supervisory systems to detect Mr. Churchville's misconduct and failed to implement systems the firm possessed to monitor such activity.

Respondents' failure to supervise Mr. Churchville has left investors with substantial losses to their irreplaceable life savings.

FACTUAL BACKGROUND

I. CLAIMANTS

1. David Freilicher

David Freilicher is sixty-three years old. He resides at 65 Central Park West, New York, NY 10023 and has resided at that address at all times material hereto. Mr. Freilicher spent the majority of his career working for an advertising company, before co-founding a new social media platform with Claimant, Robert Skollar.

Mr. Freilicher initially met Mr. Churchville in or around the late 1990's or early 2000's. Mr. Freilicher invested in various ClearPath Funds from 2008 through 2012 investing nearly $4,000,000 in the ClearPath Funds while receiving only a fraction of that amount back in distributions.

Mr. Churchville's investment advice to Mr. Freilicher was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

2. William Bernstein

William Bernstein is sixty-two years old. He resides at 29 Hazelton Road, Barrington, RI 02806 and has resided at that address at all times material hereto. Mr. Bernstein is a retired disabled veteran with a high school education.

Mr. Bernstein first met Mr. Churchville in or around 2006. Thereafter, Mr. Churchville moved to Spire Securities and recommended the ClearPath Funds and shorting U.S. Treasuries. Mr. Bernstein suffered damages of approximately $750,000.

Mr. Churchville's investment advice to Mr. Bernstein was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

3. Hal and Ellen Nass

Hal Nass is seventy-two years old. His wife, Ellen is seventy. The Nasses reside at 35 Forrest Hill Drive, Voorhees, NJ 08043 and have resided at that address at all times material hereto. Mr. Nass is a retired veterinarian. Ms. Nass is a retired teacher. The Nasses met Mr. Churchville in or around 2006 or 2007.

Thereafter, Mr. Churchville recommended investing approximately $750,000 in the ClearPath Funds from 2008 through 2012 causing substantial losses. Mr. Churchville also recommended shorting U.S. Treasuries which caused additional losses.

Mr. Churchville's investment advice to the Nasses was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

4. Lawrence and Amy Eisner

Lawrence Eisner is fifty-nine years old. His wife, Amy is fifty-eight. The Eisners reside at 7 Hemlock Lane, Coventry, CT 06238 and have resided at this address at all times material hereto. Mr. Eisner has a degree in electrical engineering. Mrs. Eisner is a retired teacher. They met Mr. Churchville in or around 2008.

Thereafter, Mr. Churchville recommended the Eisners invest approximately $1,800,000 in the ClearPath Funds from 2009 through 2013 causing substantial losses. Mr. Churchville also recommended shorting U.S. Treasuries which caused additional losses.

Mr. Churchville's investment advice to the Eisners was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

5. Robert Skollar and Holla4, LLC

Robert Skollar is sixty-six years old. He is a member of Holla4, LLC. Robert Skollar currently resides at 75 East End Avenue, New York, NY 10028 and has resided at that address at all times material hereto. Robert Skollar worked in advertising before cofounding a new social media platform with Claimant, David Freilicher. Mr. Skollar met Mr. Churchville in or around 2003.

Thereafter, Mr. Churchville recommended Mr. Skollar invest approximately $5,000,000 in the ClearPath Funds from 2009 onward and reinvesting his funds in other ClearPath Funds. Mr. Churchville also recommended shorting U.S. Treasuries which caused additional losses.

Mr. Churchville's investment advice to Mr. Skollar was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

6. Marc Hyman

Marc Hyman is sixty-eight years old. He resides at 5700 North Ocean Blvd., North Myrtle Beach, SC 29582 and has resided at that address at all times material hereto. Mr. Hyman is a real estate developer. Mr. Hyman met Mr. Churchville in or around 2008. Thereafter, Mr. Churchville recommended Mr. Hyman invested approximately $400,000 in the ClearPath Funds.

Mr. Churchville's investment advice to Mr. Hyman was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

7. Kirstine Schaeffer and John Skalicky

Kirstine Schaeffer is seventy years old. Her husband, John Skalicky is seventy-six. Ms. Schaeffer and Mr. Skalicky reside at 46 Annapolis Terrace, San Francisco, CA 94118 and have resided at that address at all times material hereto. Ms. Schaeffer has has spent the majority of her career as a consultant for Kris Schaeffer & Associates. Mr. Skalicky worked as a freelance editor and writer before retiring in or around 2007. Ms. Schaeffer and Mr. Skalicky first met Mr. Churchville in or around 2002.

Thereafter, Mr. Churchville recommended Mr. Skalicky and Ms. Schaeffer invest approximately $2,700,000 in the ClearPath Funds from 2008 through 2011. Mr. Skalicky and Ms. Schaeffer only received a fraction of those funds back in distributions and sales.

Mr. Churchville's investment advice to Mr. Skalicky and Ms. Schaeffer was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

8. Jean and Richard Schram

Jean Schram is sixty-eight years old. Her husband, Richard, is seventy. The Schrams currently reside at 2279 Clay Street, San Francisco, CA 94115. From December 2010 until March 2012 the Schrams lived at 1909 Stockton St., San Francisco CA 94113 and from July 2008 until December 2010 the Schrams lived at 225 Chestnut St., San Francisco CA 94133. Ms. Schram is semi-retired and does some consulting work for the family business. Mr. Schram still works full

time for the family business. The Schrams first met Mr. Churchville in or around 2009 through Claimant Ms. Schaeffer.

Thereafter, Mr. Churchville recommended the Schrams invest approximately $2,000,000 in the ClearPath Funds from 2009 through 2011. The Schrams only received a fraction of those funds back in distributions and sales. Mr. Churchville also recommended shorting U.S. Treasuries which caused additional losses.

Mr. Churchville's investment advice to the Schrams was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

9. Paul and Helene Posnick

Paul Posnick is seventy-eight years old. His wife, Helene is sixty-six. The Posnicks currently reside at 1365 York Avenue, New York, NY 10021 but have resided at 330 East 79th St., New York, NY at times material hereto. Mr. Posnick is retired, while Ms. Posnick still works as a freelance interior designer. The Posnicks met Mr. Churchville through Claimant, Robert Skollar, in or around 2008.

Thereafter, Mr. Churchville recommended the Posnicks invest approximately $1,600,000 in the ClearPath Funds from 2009 through 2011. The Posnicks only received a fraction of those funds back in distributions and sales.

Mr. Churchville's investment advice to the Posnicks was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

10. Robert Gluckin and the Estate of Joan B. Gluckin

Robert Gluckin is seventy-three years old. His later wife, Joan, passed away in September 2015 after losing her battle with lung cancer. Mr. Gluckin is the executor of Ms. Gluckin's estate.

Mr. Gluckin resides at 6 Starling Road, Randolph, NJ 07869, where he and his late wife have resided at all times material hereto. The Gluckins met Mr. Churchville through Mr. Gluckin's brother-in-law, Claimant, Marc Hymann. Thereafter, Mr. Churchville recommended the Gluckins invest approximately $500,000 in the ClearPath Funds.

Mr. Churchville's investment advice to the Gluckins was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

11. Thomas and Carolyn Herrmann and HFP Holdings, LLC

Thomas Herrmann is sixty-one years old and his wife, Carolyn, is fifty-seven. The Herrmanns reside at 75 Kellers Farm Road, Easton, CT 06612 and have resided at that address at all times material hereto. Mr. and Mrs. Herrmann are members of HFP Holdings, LLC. The Herrmanns first met Mr. Churchville in or around 2001.

Thereafter, Mr. Churchville recommended the Herrmanns invest approximately $1,800,000 in the ClearPath Funds from 2009 through 2012 causing substantial losses. Mr. Churchville also recommended shorting U.S. Treasuries which caused additional losses.

Mr. Churchville's investment advice to the Herrmanns was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

12. Lynn Bruce on behalf of the Betty Ziernicki Trust

Lynn Bruce resides at 105 Asmara Way, Easton, CT 06612 and has resided at that address at all times material hereto. Ms. Bruce is the trustee and beneficiary of the Betty Ziernicki Trust established by her mother who passed away several years ago from cancer. Ms. Bruce's mother was a nurse and attended Catholic University. Ms. Bruce's father was in the U.S. Air Force.

Thereafter, Ms. Bruce's father became the CEO of a company that developed ground penetrating radar. Ms. Bruce's father passed away prior to the events at issue. Ms. Ziernicki met Mr. Churchville in or around 2008.

Thereafter, Mr. Churchville recommended Ms. Ziernicki invest approximately $2,800,000 in the ClearPath Funds causing substantial losses.

Mr. Churchville's investment advice to the Ms. Ziernicki was unsuitable, consisted of material misrepresentations and omissions of information described infra, breached his duty to his client, and Respondents failed to supervise Mr. Churchville with respect to the conduct alleged herein.

II. RESPONDENT

1. Spire Securities, LLC

Spire Securities, LLC's principal place of business is 1840 Michael Faraday Drive, Suite 105, Reston, Virginia, 20190. Spire Securities is a member of FINRA with Central Registration Depository Number ("CRD") 144131 and registered with the Securities and Exchange Commission ("SEC") 8- 67635. Since Spire Securities is registered to conduct securities business in the states of Rhode Island, Connecticut, New York, New Jersey, South Carolina, Pennsylvania, and California and the conduct alleged herein occurred within residents of those states, Spire Securities' conduct was required to comply with the laws of those states as well as the rules and regulations of the SEC and FINRA.

2. Suzanne McKeown

Suzanne McKeown is the Chief Compliance Officer of Respondent Spire Securities. Ms. McKeown is registered with FINRA with CRD 1814114. Ms. McKeown is registered to conduct securities business and supervise Spire Securities. Specifically, Ms. McKeown was ultimately responsible for the firm's policies and procedures and to ensure they were sufficient to supervise

Mr. Churchville's activities. Ms. Mckeown's conduct was required to comply with the laws of the states of Claimants residences as well as the rules and regulations of the SEC and FINRA.

3. David Blisk

David Blisk is the CEO of Respondent Spire Securities. Mr. Blisk is registered with FINRA with CRD 2155652. Mr. Blisk is registered to conduct securities business and supervise Spire Securities. Specifically, Mr. Blisk was ultimately responsible for the firm's policies and procedures and to ensure they were sufficient to supervise Mr. Churchville's activities. Mr. Blisk's conduct was required to comply with the laws of the states of Claimants residences as well as the rules and regulations of the SEC and FINRA.

MR. CHURCHVILLE'S CLEARPATH INVESTMENT SCHEME

Mr. Churchville was registered with Spire Securities when he began to conduct the ClearPath Investment Scheme. From August 2009 until February 23, 2011, Mr. Churchville was registered with Spire Securities out of the firm's Providence, Rhode Island branch office location. In addition, Mr. Churchville's CRD report discloses that since December 2007, Mr. Churchville was licensed as an investment advisor through ClearPath Wealth as the firm's principal. The same information is recorded on Mr. Churchville's IARD.

During this time period, Mr. Churchville operated a brokerage and investment advisory business out of his Providence office location. Starting as early as 2008, Mr. Churchville and ClearPath Wealth managed the ClearPath Funds that were structured as limited liability partnerships where ClearPath Wealth was the adviser pursuant to management agreements. Investors in each of the private funds held limited partnership interests in those funds pursuant to Limited Partnership Agreements entered into. ClearPath Wealth and Mr. Churchville offered different investment series in a variety of different investments including commercial secured

loans, collections of other private funds, direct investments in private companies, and in publicly traded equities and bonds.

A. Fraud Overview

Mr. Churchville's ClearPath Investment Scheme consisted of a series of misappropriated investor funds from the accounts of the ClearPath Funds that ClearPath Wealth managed. In some instances, misappropriated funds were used to cover various business for ClearPath Wealth and Mr. Churchville's personal expenses. Other times Mr. Churchville transferred cash from one ClearPath Fund to another, or from a ClearPath Fund to ClearPath Wealth's bank account to cover expenses. In other wrongful uses, Mr. Churchville would borrow against the ClearPath Funds' assets by arraigning lines of credit in order to cover business and personal expenses and use part of the borrowed funds secured by investor capital to make other investments held by outside of the ClearPath Fund by ClearPath Wealth.

When Mr. Churchville's investment strategy proved profitable, Mr. Churchville would keep the profits for himself instead of providing the benefits to ClearPath Fund partners. However, when the investments lost money Mr. Churchville used monies that were owed to ClearPath Fund investors to repay loans made to initiate the outside investment positions. Because of Mr. Churchville diversions of ClearPath Fund monies from the funds for other purposes Mr. Churchville used money from other investors to cover the created holes and shortfalls and to make redemption payments to investors who demanded their money back.

B. The JER Receivables Fraud

Beginning in April 2008, the ClearPath Funds and Mr. Churchville made a series of investments with a New Jersey-based entity called JER Receivables, LLC ("JER Receivables"). JER Receivables was run by Jonathan Rosenberg ("Mr. Rosenberg"). JER Receivables was used by Mr. Rosenberg as a feeder fund for International Portfolio, Inc. ("IPI") – an entity which

acquired accounts receivables from hospitals (past due patient accounts), bundled them into investment portfolios, and then sold the portfolios at a discounted rate. However, Mr. Rosenberg and his co-conspirators used entities like JER Receivables, Receivable Partners, LLC ("RP LLC"), and International Portfolio Access, LLC ("IPA") to perpetrate a Ponzi scheme that defrauded investors of more than $148 million.[5]

Mr. Churchville provided investor funds to JER Receivables pursuant to "Participation Agreements" whereby the ClearPath Funds purchased an interest in the future cash flows from the health care receivables portfolios controlled by JER Receivables. From July 2008 through February 2010, Mr. Churchville invested approximately $19 million of investor money with JER Receivables, using nine Participation Agreements. The portfolios were named after Greek letters: Alpha, Epsilon, Eta, Mu, Omicron, PI, Rho, Xi and Zeta. Spire Securities failed to conduct any due diligence on JER Receivables or Mr. Rosenberg before allowing Mr. Churchville to enter into agreements with JER Receivables and to make recommendations to Claimants to invest in the ClearPath Wealth Funds.

By June 2010, Mr. Churchville admitted in his plea agreement[6] that he knew that the JER Receivables investments were not producing returns and that the ClearPath Funds had been subjected to fraudulent and misleading representations about the expected rates of return and other aspects of the investments. Mr. Churchville and ClearPath Wealth did not notify their investors

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[5] *New Jersey Man Guilty of $148 Million Investment Fraud Scheme,* Department of Justice (available at: https://www.justice.gov/usao-md/pr/new-jersey-man-guilty-148-million-investment-fraud-scheme) (Feb. 25, 2016)

[6] *Investment Advisor to Plead Guilty to Orchestrating $21M Dollar Ponzi Scheme, DOJ* (Jul. 5, 2016) (available at: https://www.justice.gov/usao-ri/pr/investment-advisor-plead-guilty-orchestrating-21m-dollar-ponzi-scheme

of this development and instead hid the ClearPath Funds' substantial losses in the JER Receivables investments.

In order to hide the losses, Mr. Churchville colluded with Mr. Rosenberg to misappropriate other investor funds to pay off the JER Receivables investments to make the investment appear profitable. Mr. Churchville worked with Mr. Rosenberg to use his entity RP LLC to hide the losses. Beginning in February 2011, Mr. Churchville created a series of nine "loan" agreements with RP LLC which are named "RP1" through "RP9". The loan agreements falsely recited that the purpose of the loans was to fund RP LLC's purchase of health care receivables but instead used new investor money as well as investor funds already under Mr. Churchville's control to fund the fake RP LLC investments.

The funds to RP LLC were simply recycled through the entities back to investors ClearPath Fund investors. ClearPath Funds sent investor funds to RP LLC, which sent funds to JER Receivables, which then sent the funds back to the ClearPath Funds as if the funds were the payment of principal and interest owed on the JER Receivables loans. ClearPath Wealth and Mr. Churchville continued to solicit investors for additional money thereafter to repay investors in the RP LLC loans whose funds were already used to repay JER Receivable investors. In total, ClearPath Wealth and Mr. Churchville misappropriated approximately $21 million from ClearPath Wealth investors in the course of the JER Receivables / RP LLC scheme.

C. Misappropriation of Investor Funds

In December 2010, Mr. Churchville continued to defraud investors in various other ways when Mr. Churchville diverted approximately $1.6 million in proceeds from the redemption of an investment made in the MSF III fund. Proceeds from the MSF III Fund redemption totaled approximately $6.6 million and were received by MSF III on December 22, 2010. Instead of distributing the $6.6 million in proceeds to the investors Mr. Churchville diverted $1.6 million for

his own uses. Between December 23, 2010 and January 13, 2011, Mr. Churchville wrongfully transferred approximately $600,000 from MSF III's bank account at Bank of American to ClearPath Wealth's main operating bank account at Bank of America.

Also starting in December 2010, ClearPath and Mr. Churchville sent investors capital account statements that omitted to disclose that their accounts had been encumbered by the use of their assets for unrelated purposes and that certain investments had in fact been redeemed. These statements are client communications and account statements that Spire Securities was obligated to obtain and supervise. However, the firm never took steps to independently verify or even inquire as to the accuracy of the statements Mr. Chuchville provided to clients.

ClearPath Wealth and Mr. Churchville then paid various ClearPath Wealth expenses, including payroll and fees for accountants, valuation consultants, attorneys, and the Funds' administrator. Mr. Churchville also transferred $30,000 to Mr. Churchville personal accounts between December 29, 2010 and January 3, 2011 as capital distributions from ClearPath Wealth. In addition, Mr. Churchville also used approximately $980,000 of funds to invest in a Rhode Island-based pharmaceutical product incubator fund (the "Incubator Fund"). However, even though MFS III Fund money was used for the investment the investment was not allocated to investor accounts and instead was kept as ClearPath Wealth's investment that Mr. Churchville could hold for his own benefit. In this way Mr. Churchville used client funds for the benefit of entities he controlled.

Mr. Churchville made these unauthorized transfers because the prior balance in ClearPath Wealth's main operating account was less than $16,000 and there was insufficient money for ClearPath Wealth to continue to operate its business without resorting to stealing client funds. The MSF III Fund recorded some of the transfers to ClearPath Wealth as a receivable even though

loans between the entities were not permitted in their agreements and ClearPath Wealth did not repay the MSF III Fund loan.

In January 2011, Mr. Churchville distributed the remaining approximately $4.9 million of the original $6.6 million to investors. Mr. Churchville did not disclose to investors that this distribution was substantially less than the actual amount received for the redemption nor did he disclose that he had spent the remaining redemption proceeds as detailed above.

To conceal the misappropriation of funds from the MSF III Fund Mr. Churchville raised money from new investors to fund what was represented as a $2 million healthcare receivables-related investment in the MSF III Fund. Mr. Churchville used $1.6 million of the new cash from new investors to pay the remaining distributions due to the original investors in classic Ponzi fashion.

From here onward, Mr. Churchville continued to use new money and loaned money to make up shortfalls and repay old investors. For instance, Mr. Churchville raised approximately $4.9 million for an investment in Oppenheimer Public Markets Series ("OPCO"), an investment portfolio in balanced equities and bonds. However, approximately $2.5 million of investor funds were ultimately used to buy a house for Mr. Churchville and $1.6 million of investor funds were used to plug the hole caused by the stolen funds that was supposed to be for the MSF III Fund healthcare receivables-related investment described above. Mr. Churchville accomplished this theft by placing 100% of the funds into government agency and short-term U.S. Treasury bonds and then creating a "shadow accounts" to borrow against the investors' assets to the maximum allowed by Oppenheimer.

Eventually, Mr. Churchville was forced by Oppenheimer to repay the margin loan which resulted in only $585,000 being left in the OPCO account of the original $4.9 million. Then, on or about October 2, 2012, Mr. Churchville transferred the $585,000 to the HCR Value Fund, an

entirely different fund for the purposes of making payments to investors on an entirely different investment.

ClearPath Wealth and Mr. Churchville continued to conduct numerous other similar schemes as those described above by regularly commingling investor contributions and distributions across different investments, misuse investments for purposes unrelated to the investments, borrow against investor securities, and then attempt to plug the holes created by the the previous activity with new investor money. Mr. Churchville silenced inquisitive or concerned investors with hush money by making large payments to certain investors who raised questions regarding the disposition of their investments

Mr. Churchville waited until September 2013, when Mr. Rosenberg and other principals of IPI were indicted to notify investors of these losses. Most likely, Mr. Churchville waited because the news of the loss caused investors to request that Mr. Churchville return what remained of their assets. But because Mr. Churchville was engaged in his own Ponzi scheme with the remaining assets he was unable to return the requested money and deflected the requests through a series of misrepresentations about why they could not then give investors back their money. Nonetheless, Mr. Churchville continued to operate his ClearPath Investment Scheme.

D. Spire Securities Failed to Supervise Mr. Churchville

Spire Securities knew or should have known of Mr. Churchville's continuing misconduct and investment fraud through the presence of numerous and unavoidable "red flags." For instance, Mr. Churchville's emails disclosed that:

> PLEASE READ THIS WARNING: All e-mail sent to or from this address will be received or otherwise recorded by Spire's corporate e-mail system and is subject to archival, monitoring and/or review, by and/or disclosure to, someone other than the recipient.

Due to the brokerage firm's lax supervision it was only in 2015, when the SEC brought action against Mr. Churchville that investors could know they had been the victims of fraud.

The brokerage firm missed numerous red flags that proper supervision would have detected and prevented Claimants from suffering losses. Those red flags include that:

(1) Mr. Churchville conducted his fraudulent schemes out of his disclosed outside business activity that involved investment related activity;

(2) no supervisor at Spire Securities conducted due diligence on the ClearPath Funds beyond ensuring that regulation D filing existed;

(3) no supervisor at Spire Securities investigated or conducted due diligence on the investments made by the ClearPath Funds such as JER Receiables, its operating history, principals, internal controls, and other factors relevant in making a determination that the investment would be suitable for at least some investors. Spire Securities failed to obtain Mr. Chuchville's due diligence files, verify Mr. Churchville's due diligence findings, or independently conduct due diligence on any of the ClearPath Funds and underlining investments.

(4) when Spire Securities hired Mr. Churchville he was already marketing and selling the ClearPath Funds to investors. Spire Securities and its principals maintained deficient pre-hiring procedures because those procedures failed to analyze the ClearPath Wealth and the ClearPath Funds such as conducting the due diligence described above, checking the profitability of ClearPath Wealth by analyzing the firm's bank and operating records, or inspecting the branch that the firm intended to create by hiring Mr. Churchville. Further, Mr. Churchville had no prior experience selling private placements and running private equity funds that should have prompted greater scrutiny by Spire Securities before affiliating with Mr. Churchville and allowing him to continue to sell the ClearPath Funds. Instead, Spire Securities employed Mr. Churchville based upon the unverified assurances by Mr. Churchville;

(5) Mr. Churchville's ClearPath Wealth business was an unprofitable business in or about January 2010 that suddenly, without explanation, obtained large amounts of capital and became immensely profitable;

(6) Mr. Churchville corresponded from the Providence, Rhode Island branch office location involving the fraudulent investment scheme. With the exception of emails, Mr. Churchville's other correspondences including account statements, account summaries, consolidated account reports, marketing materials, and investment statements were not collected or reviewed by the brokerage firm;

(7) Mr. Churchville was scheduled to be audited and inspected and left the firm specifically to avoid supervision. Consequently, Respondents failed to ever audit Mr. Churchville's location or warn their own clients that Mr. Churchville resigned to avoid an inspection;

(8) Spire Securities only recorded liquid securities traded through ClearPath Wealth on the firm's books and records pursuant to NASD Rule 3040. Spire Securities failed to record the private equity transactions on the firm's books and records even though the firm approved of the transactions nor did Spire Securities obtain client statements for any investments conducted through ClearPath Wealth (either liquid or the private equities) in violation of industry rules; and

(9) Spire Securities failed to ensure that investors were not overconcentrated in the ClearPath Funds, were appropriately qualified for private placement investments, or otherwise collect any information concerning the investors in the ClearPath Funds. Had Respondents compared the information the firm did collect concerning Claimants to the amounts Claimants were investing in the ClearPath Funds the firm would have determined that in many instances the concentration in the ClearPath Funds was unsuitable.

E. Mr. Churchville Pleads Guilty to the Foregoing Facts

On May 7, 2015, the SEC brought an action against Mr. Churchville and ClearPath Wealth to cease and desist his fraudulent activities. At that time investors learned that Mr. Churchville had not simply made bad market bets, but had in fact defrauded them of millions of dollars.

On July 5, 2016, the Department of Justice brought a criminal complaint against Mr. Churchville. On March 9, 2017, the SEC barred Mr. Churchville from the securities industry. On March 16, 2017, the United States District Court of Rhode Island sentenced Mr. Churchville to 84 months in federal prison. As part of Mr. Churchville's guilty plea he has admitted to the substantive fraud allegations made against him.

LEGAL CLAIMS

I. Respondent Failed to Supervise Mr. Churchville Fraudulent Activities in Violation of FINRA Rules

The FINRA Rules require that member firms have and implement specific safeguards to ensure that their associated persons do not violate FINRA Rules. If the member firm unreasonably fails to stop the associated person's wrongdoing, the member firm is responsible for damages arising from that failure. Here, Respondent unreasonably failed to stop Mr. Churchville's illegal selling of securities and is liable for damages arising out of their registered representative's wrongdoing.

A broker-dealer owes a duty to all of its customers under FINRA Rule 3010 to properly monitor and supervise its employees. FINRA Rule 3010 states:

> Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member…

FINRA Rule 3010: SUPERVISION.

A failure to supervise claim requires showing: "(i) an underlying securities law violation; (ii) association of the registered representative or other person who committed the violation; (iii) supervisory jurisdiction over that person; and (iv) failure of the broker-dealer and/or supervisory personnel to reasonably supervise the person who violated the securities laws." *See In re Phila. Investors, LTD.*, S.E.C. Rel. No. 123, 1998 WL 122180 at*11 (Mar. 20, 1998).

FINRA Rule 3010 also holds firms to a reasonable supervision standard that is to be determined based on the particular facts of each case. *Department of Enforcement v. Kernweis*, 2000 WL 33299605 at *13 (N.A.S.D.R. 2000). This standard is violated "where a supervisor was aware only of 'red flags' or 'suggestions' of irregularities." *In the Matter of the Application of Michael H. Hume* ("Hume"), Exchange Act Rel. No. 35608, 52 S.E.C. 243, 1995 SEC LEXIS 983, at*5 (Apr. 17, 1995). In addition, the SEC has noted that "[l]iability for failure to supervise may be imposed when a supervisor '[fails] to learn of improprieties when diligent application of supervisory procedures would have uncovered them.'" *Kernweis*, 2000 WL 33299605 at *13 (*quoting In re Scudder Investments, Inc.* ("Scudder Investments"), Investment Act Rel. No. 24218, 1999 SEC LEXIS 2737, at *18 (Dec. 22, 1999). "Under such circumstances a supervisor cannot discharge his or her supervisory obligations simply by relying on the unverified representations of employees." *Hume*, 52 S.E.C. 243, 1995 SEC LEXIS 983, at*5.

As shown below, Respondent failed to reasonably supervise their broker's activities.

A. Mr. Churchville Committed An Underlying Securities Violation

As alleged above, Mr. Churchville violated federal, state, and FINRA securities laws constituting an underlying securities violation. The ClearPath Investment Scheme was sold without substantial risk disclosures and with unbalanced promises of returns. The agreements and representations made Mr. Churchville purported that investor funds would be used to purchase healthcare receivables for holding periods of about 16 months and backed by collateral.

However, investors received no information concerning the background of the underlining issuer, the nature of the risks in the investment, operating or other balance sheet statements showing prior performance or updates on current performance, or any other information an investor would typically expect to receive.

In addition, Mr. Churchville knew that that Claimants' funds were not invested in legitimate offerings and that instead their funds were commingled and otherwise used for various investment and non-investment related purposes including Mr. Churchville's personal living expenses, ClearPath Wealth's operating expenses, among other misuses.

B. Mr. Churchville Was Associated With the Brokerage Firms

Under FINRA Rule 12100(r) a "Person Associated with a Member" includes "a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA." Further, "a person formerly associated with a member is a person associated with a member."

Mr. Churchville is a formerly associated person of Spire Securities. Accordingly, there is no dispute that Respondent was responsible for supervising their associated persons in selling and advising Claimants on the investments at issue in this case. *See John Hancock Life Ins. Co. v. Wilson*, 254 F.3d 48, 58-59 (2d Cir. 2001) (*citing First Montauk Sec. Corp. v. Four Mile Ranch Dev.*, 65 F.Supp.2d 1371, 1379 (S.D.Fla.1999) ("A dispute that arises from a firm's lack of supervision over its brokers arises in connection with its business.").

C. Respondent Had Supervisory Jurisdiction Over their Registered Representatives

In addition to FINRA Rule 3010, numerous other notices to members, FINRA, SEC, and court decisions hold the securities laws impose upon broker-dealers the duty and obligation to properly monitor and supervise its employees. NTM 97-19: Heightened Supervision ("Firms are

reminded of their long-standing responsibilities to implement reasonable procedures designed to detect and prevent rule violations and to correct deficiencies in, and violations of, relevant laws, rules, and regulations."); *see also* NTM 98-38 ("Rule 3010(c) imposes upon a member the obligation to review the activities of each office, which includes the periodic examination of customer accounts to detect and prevent irregularities and abuses."); NTM 96-33 (requiring brokerage firms employing RIAs to record transactions on their books and records and supervise them as if conducted through the firm).

FINRA has also specifically stated that members have supervisory jurisdiction responsibilities to detect and monitor associated persons outside business activities. As far back as 1986, the NASD warned its members that the conduct of its registered representatives most frequently resulting in violations of NASD rules involved unauthorized private securities transactions. *See*, NASD Notice To Members 86-65. Indeed, the NASD explicitly directed this warning to firms that employ registered representatives stating that such firms "are responsible for monitoring their activities in a manner reasonably intended to detect violations of Article III, Section 40 of the Rules of Fair Practice" (now codified as FINRA Rule 3040). *Id.*; *see also* NASD Notice To Members 01-79 (stating "members should review their supervisory and compliance procedures to make sure that their reporting requirements are clear and complete and that each associated person receives appropriate education and training regarding the sale of notes.").

In particular both the SEC and FINRA have expressed concerns that off-site locations may be used by brokers to conceal outside business activities and fraud. *Staff Legal Bulletin No. 17: Remote Office Supervision,* S.E.C. Release No. SLB-3A (CF), 2004 WL 5698359, at * 1 (Mar. 19, 2004) ("Some broker-dealer firms have geographically dispersed offices staffed by only a few people, and many are not subject to onsite supervision. Their distance from compliance and supervisory personnel can make it easier for registered representatives (representatives) and other

employees in these offices to carry out and conceal violations of the securities laws."); NTM 98-38 ("[t]o be effective...[supervision] must be designed to monitor securities-related activities and detect and prevent regulatory compliance problems of such associated persons working at unregistered offices…").

The SEC and FINRA have repeatedly advised firms, like Respondent, that they are responsible for supervising all of their representatives' sales of securities, whether sold through "regular" channels or not. Under FINRA Rule 3040 "No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule."[7] FINRA has warned firms that it is their responsibility to "review their supervisory procedures to make sure that they are reasonably designed to achieve compliance with [FINRA] Rules 3030 and 3040 regarding outside business activities and private securities transactions…" NTM 01-79: Selling Away And Outside Business Activities.

Therefore, Respondent had an obligation to employ effective supervisory procedures in order to monitor Mr. Churchville's ClearPath Wealth outside business activities.

D. Respondent Failed To Reasonably Supervise their Agents

The FINRA Rules provide the standard of care a firm must adhere to in order to reasonably supervise their agents. NASD NTM 99-45 states that:

> [i]t is important that members not only review their supervisory systems and procedures to ensure that they are current and adequate, but also conduct inspections to determine whether the systems and procedures are being followed.

[7] FINRA Rule 3040(e)(1) defines "Private securities transaction" as "any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission." Clearly the ClearPath Funds were securities sold outside the regular course of Respondent's employment. Accordingly, either Respondents were required to prohibit the sales or supervise them in accordance with the rule.

This standard is violated when either: (1) awareness of 'red flags' are not followed up with proper supervision; and (2) policies and procedures are deficient resulting in failure to detect 'red flags.' *See In the Matter of the Application of Michael H. Hume* ("Hume"), Exchange Act Rel. No. 35608, 52 S.E.C. 243, 1995 SEC LEXIS 983, at*5 (Apr. 17, 1995). (liability imposed "where a supervisor was aware only of 'red flags' or 'suggestions' of irregularities" and fails to follow up.); *Kernweis*, 2000 WL 33299605 at *13 (*quoting In re Scudder Investments, Inc.*, Investment Act Rel. No. 24218, 1999 SEC LEXIS 2737, at *18 (Dec. 22, 1999). ("[l]iability for failure to supervise may be imposed when a supervisor '[fails] to learn of improprieties when diligent application of supervisory procedures would have uncovered them."')

There have been numerous ruling and notices putting the industry on notice as to the policies and procedures needed to properly supervise brokers. Such "[i]nspections of unregistered offices should include, among other things, a review of any on-site customer account documentation and other books and records, meetings with individual registered representatives to discuss the products they are selling and their sales methods, and an examination of correspondence and sales literature." NTM 98-38: NASD Reminds Members Of Supervisory And Inspection Obligations, pg. 274. Further, "[u]nannounced visits may be appropriate, particularly where there are indicators of misconduct or potential misconduct, or 'red flags.'" *Id.*; *see also In Re Mabon Nugen & Co.*, Exchange Act Rel. No. 27301, 44 S.E.C. Docket 1116 (Sept. 27, 1989). (the SEC stated that effective supervision by broker-dealers is a critical element which should ensure regulatory compliance through a system of follow-ups and reviews); *In re Stuart, Coleman & Co.*, Exchange Act Rel. No. 38001, 1996 SEC Lexis 113 (Jan. 15, 1997) (the court held the firm "failed to institute and implement adequate compliance control procedures over the branch office because it failed to take measures including...conducting unannounced branch office inspections and using inspection criteria...to detect and prevent the securities law violations...").

In particular, the SEC has stated that firms must employ measures to monitor "the use of personal computers" in remote offices to detect misappropriation of customer funds, selling away, and unauthorized trading, among other things. *Staff Legal Bulletin No. 17: Remote Office Supervision*, 2004 WL 5698359, at *4 (*citing SG Cowen Securities Corp.,* Release No. 34-48335 (Aug. 14, 2003) ("The Commission found that SG Cowen and Lehman Brothers did not have supervisory procedures reasonably designed to prevent and detect Gruttadauria's generation of falsified account statements on personal computers."). FINRA has also found that firm's compliance policies that do not provide for proper supervision of emails are inadequate. *In re Dawson James Securities, Inc.,* Letter of Acceptance, Waiver and Consent ("AWC") No. 20080125468-02, (FINRA Apr. 4, 2014). In addition, the "[e]stablishment of policies and procedures alone is not sufficient to discharge supervisory responsibility. It also is necessary to implement measures to monitor compliance with those policies and procedures." *In re Prospera Financial Services, Inc.,* S.E.C. Release No. 43352, 2000 WL 1424360 at *5 (S.E.C. Sept. 26, 2000) (*citing Thomson & McKinnon,* Exchange Act Release No. 8310, 43 S.E.C. 785, 788 (1968) ("Although it was registrant's stated policy…it failed to establish an adequate system of internal control to insure compliance with such policy."); *Sutro Brothers & Co.,* Exchange Act Release No. 7052, 41 S.E.C. 443, 464 (1963) ("registrant did not expand its supervisory procedures to keep pace with the rapid expansion of its operations").

Many brokerage firms argue that they can supervise brokers through annual self-reporting questionnaires from the brokers themselves. However, such practices have been found to be deficient as a matter of law. *In re Prospera Financial Services, Inc.,* S.E.C. Release No. 43352, 2000 WL 1424360 at *6 (S.E.C. Sept. 26, 2000) (firm sanctioned where it "relied upon the representative's unverified assertions regarding the propriety of his outside activities and the source and amount of his other income."); *PFS Investments, Inc.,* Exchange Act Release No. 40269, 67

SEC Docket 2032, 2038 (July 28, 1998); *In re Quest Capital Strategies, Inc., et al.,* SEC Release No. 1990, 2001 WL 1230619 at *6 (S.E.C. Oct. 15, 2001) ("Relying on a subordinate's assurances is hardly an effective method of preventing or detecting violations."). In *Consolidated Investment Services,* the SEC specifically rejected that supervision is adequate where "representatives were required, on an annual basis, to complete a compliance questionnaire....[because] Applicants took no steps to verify the questionnaires and assumed that the registered representatives were answering them truthfully." Exchange Act Release No. 36687, 1996 WL 20829, at *4 (Jan. 5, 1996). In sum, "[i]f a firm's established procedures for preventing and detecting fraud by employees come down in the last analysis to taking the employee's word on explanations when questionable events are looked into, then the procedures cannot be very effective." *In Re Shearson, Lehman Brothers, Inc.,* 36 SEC Docket 754, 49 SEC 619, Admin. Proc. File No. 3-6733 (8-12324)(801-00517), Release No. 34-23640 (Sept. 24, 1986).

Here, Respondent failed to supervise Mr. Churchville's ClearPath Wealth outside business activities when it allowed Mr. Churchville to recommend and sell fraudulent investments and commingled client funds in ClearPath Wealth's operating accounts for business expenses. Respondent ignored numerous "red flags" that should have alerted the firm to Mr. Churchville's misconduct.

First, Spire Securities knew that Mr. Churchville owned and operated a ClearPath Wealth that was engaged in securities related sales while he was also associated with Respondent. Second, Mr. Churchville operated virtually all aspects of his ClearPath Investment Scheme out of the Providence location including communications, phone calls, and correspondence. Respondent was required to examine and inspect all of Mr. Churchville's work location in order to ensure that improper securities business was not engaged in and that the broker met the brokerage firm's compliance policies. Had the brokerage firms reviewed Mr. Churchville's operations they would

have discovered evidence of his illegal businesses dealings with clients including unexplainable cash transfers from client funds to the ClearPath Wealth's operating account.

Third, Respondents failed to take reasonable steps to comply with FINRA requirements to record transactions in the ClearPath Funds on the firm's books and records, monitor for suitability, or review Mr. Churchville's due diligence into the investment vehicles the ClearPath Funds established relationships with. Respondents knowingly allowed Mr. Churchville to engage in transactions in private placement securities and knowingly failed to collect and record any information concerning the transactions. To this day Respondents have no idea how many investors, what amount of funds, or when Claimants and others invested in the ClearPath Funds even though Respondents specifically approved the activity and had the obligation to supervise as a result. In fact, Respondent Spire Securities has admitted through pleadings in other cases concerning Mr. Churchville's fraud to serious supervisory deficiencies in the firms record retention policies.

Here, the Spire Securities and its principals failed to take any action to ensure that Mr. Churchville would be properly supervised. Adequate supervisory procedures would have put Respondents on notice much sooner and would have allowed authorities to return Claimants' assets still in the scheme's pool of funds and otherwise prevented future payments. Instead, Respondents consciously looked the other way while Mr. Churchville pilfered Claimants' retirement savings.

II. Negligent or Intentional Misstatements in U-5 Filings, Failure to Warn Clients, and Failure to Warn Regulators

Brokerage firms are liable for damages caused by:

(1) Negligently or intentionally misstating the cause and reason for termination on the U-5 statement;

(2) Failing to warn clients that the broker was terminated due to customer complaints or suspicious activity that may affect the client;

> (3) Failing to warn appropriate regulatory agencies that the broker's conduct may be a violation of the securities law or FINRA Rules.

See Twiss v. Kury, 25 F.3d 1551, 1556 (11th Cir. 1994) (finding that the "[brokerage firm], at the time [broker] left its employ, a legal obligation to report the fact of his termination to the Department, to accurately state the reason for such termination, and to specify any illegal or unprofessional activity committed to [broker] then known by [brokerage firm]"); *see also Dolin v. Contemporary Fin. Solutions, Inc.,* 622 F. Supp. 2d 1077, 1084 (D. Colo. 2009) ("find[ing] that [plaintiffs' negligence claim] applies to the context of not only negligent hiring, but also negligent supervision and negligent failure to monitor, investigate, and report [to the Alabama Securities Department]."); *SII Investments, Inc. v. Jenks*, 370 F. Supp. 2d 1213, 1215 (M.D. Fla. 2005) (Firm can be found liable for failure to warn its clients that the broker was terminated because there were three customer complaints against the broker known by the firm at the time of termination).

FINRA has also warned brokerage firms against failing to not fully and accurately complete U-5 forms. In NTM 88-67 the NASD stated that:

> Items 13-15 on Form U-5 ask for information concerning apparent misconduct by a person while associated with the firm submitting the Form U-5. A "yes" answer to Items 13-15 must be accompanied by a detailed explanation of the apparent misconduct. **Failure to provide accurate answers to Items 13-15 may deprive the NASD of its ability to detect violations** and subsequently sanction persons for violations of the NASD's rules and other applicable federal statutes and regulations. **Failure to provide this information may also subject members of the investing public to repeated misconduct** and may deprive member firms of the ability to make informed hiring decisions.

(emphasis added).

Upon information and belief, the brokerage firms, intentionally or through negligent supervision, failed to file complete and accurate U-5 Form with FINRA, properly notify regulatory authorities, or warn their own clients of Mr. Churchville's illegal activities.

Had Respondents at anytime executed their supervisory obligations the firm could have warned Claimants, stopped Mr. Churchville's fraud, and Claimants could have taken ameliorative steps at an earlier time.

III. Respondents are Liable for their Agent's Misconduct Under the Theories of Control Person Liability and Respondeat Superior

A. "Control Person" Liability

Respondents are also liable to Claimants for all their agent's misconduct under the theory of "control person" liability. Both federal and state securities acts impose "control person" liability on all persons who have the power, direct or indirect, exercised or not, to control another's sale of securities. *See, e.g.*, 15 U.S.C.A. § 78t (2011) (stating "every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable…").

As used in all such securities acts, "the term 'control' . . . means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise." *G.A. Thompson & Co. v. Partridge*, 636 F.2d 945, 957 (5th Cir. 1981). The Ninth Circuit Court of Appeals explained that broker-dealers are conclusively the "control persons" of their registered representatives because:

> [A]s a practical matter the broker-dealer exercises control over its registered representatives because the representatives need the broker-dealer to gain access to the securities markets.... [A] person cannot lawfully engage in the securities business unless he or she is either registered with the NASD as a broker-dealer or as a person associated with a broker-dealer. Because a sales representative must be associated with a registered broker-dealer in order to have legal access to the trading markets, the broker-dealer always has the power to impose conditions upon that association, or to terminate it.... Moreover, because the broker-dealer is required by statute to

> establish and enforce a reasonable system of supervision to control its representatives' activities, the broker-dealer necessarily exerts ongoing control over the types of transactions made by the representative . . .

Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1573-74 (9th Cir. 1990).

Respondents are the "control persons" of their registered representatives at all times relevant to this dispute. Therefore, Respondents are liable for their agents' misconduct, including but not limited to, Mr. Churchville's unsuitable recommendations and material misrepresentations and omissions in the sale of his fraudulent investments.

B. Respondeat Superior

Respondents are liable to Claimants for all of Mr. Churchville's misconduct under the theory of respondeat superior. Broker dealers are vicariously liable for the acts of its agents and employees committed in the scope of employment. The doctrine of *respondeat superior* imposes liability on an employer for the wrongful acts of his agent committed within the scope of employment. *See Armstrong Jones & Co. v. S.E.C*, 421 F.2d 359 (6th Cir. 1970), *cert, denied*, 398 U.S. 958 (1970) (in action by SEC against firm under Exchange Act for failure to supervise, liability thereunder is akin to *respondeat superior*); *see also* Restatement (Second) of Agency § 261 ("A principal who puts a servant or other agent in a position which enables the agent, while apparently acting within his authority, to commit fraud upon third persons is subject to liability to such third persons for the fraud").

Most jurisdictions refuse to subscribe to the notion that somehow selling securities is conduct outside the scope of employment. "[U]nder Pennsylvania law a principal is liable to third parties for the frauds, concealments etc. of his agent committed within the scope of his employment **even though the principal did not authorize or know of such conduct, even if he forbade such acts."** *Carroll v John Hancock Distributors, Inc.*, CIV.A. 92-5907, 1994 WL 87160 at *4 (E.D.

Pa. Mar. 14, 1994) (emphasis added); *see also Jairett v First Montauk Sec. Corp.,* 153 F Supp 2d 562, 571 (E.D. Pa. 2001) ("[W]here the relationship involves a broker-dealer…"a stringent duty to supervise employees does exist.") (citations omitted).

In *Carroll v. John Hancock Distributors, Inc.* In *Carroll,* the plaintiffs allege that their brokers sold interests in oil and gas limited partnerships away from the brokers' employer firm. *Id.* at *1. The investments were not registered securities under the Pennsylvania and federal securities laws. *Id.* John Hancock argued "that plaintiffs lack any evidence of John Hancock's culpable conduct in these transactions…" *Id.* at *6. However, the court disagreed holding that "[w]e view controlling case law as permitting the imposition of respondeat superior liability in cases such as this one involving broker-dealers." *Id.* (*citing Sharp v. Coopers and Lybrand,* 649 F.2d 175 (3d Cir. 1981); *Rochez Brothers, Inc. v. Rhoades,* 527 F.2d 880 (3d Cir. 1975); *see also Hollinger v. Titan Capital Corp.,* 914 F.2d 1564 (9th Cir. 1990)); *see also Paul F. Newton & Co. v. Texas Commerce Bank,* 630 F.2d 1111, 1119 (5th Cir. 1980) ("It is consistent with the remedial purpose of the federal securities acts to require a brokerage firm that provides an employee with the means to carry out fraudulent practices to pay damages to a victim of those practices when the employee it has chosen acts within the course and scope of his employment."); *Sharkey v. Lasmo,* 992 F.Supp. 321 at 323 (S.D.N.Y. 1998) ("doctrine 'does not require that the act have conferred any particular benefit, financial or otherwise, on the employer,' where the act is 'sufficiently similar' to acts authorized by the employer."); *Federal Savings and Loan Insurance Corp. v. Shearson-American Express,* 658 F.Supp. 1331 at 1335 (D.P.R. 1987) ("That...the transactions were carried out 'outside of the firm'...is not controlling, since the nature of the activity may be within the corporation's usual business activities.").

Courts have held that respondeat superior liability is created by the "special duties that certain employers assume under the federal securities laws when their conduct is likely to exert

strong influence on important investment decisions." *Sharp v. Coopers & Lybrand,* 649 F.2d 175, 181 (3d Cir. 1981). As also explained by the Fifth Circuit, "most investors rely upon the reputation and prestige of the brokerage firm rather than the individual employees with whom they might deal. Such firms should be held accountable if employees they select utilize the firm's prestige to practice fraud upon the investing public." *Paul F. Newton & Co. v. Texas Commerce Bank,* 630 F.2d 1111, 1119 (5th Cir. 1980); *Henricksen v. Henricksen,* 640 F.2d 880, 887 (7th Cir. 1981) (*cited by Sharp v. Coopers & Lybrand,* 649 F.2d at 182) ("(U)nder common law principles, a principal is liable for the deceit of its agent committed in the very business he was appointed to carry out. This is true even though the latter's specific conduct was carried on without knowledge of the principal.") *see also* Restatement (Second) of Agency § 261 ("A principal who puts a servant or other agent in a position which enables the agent, while apparently acting within his authority, to commit fraud upon third persons is subject to liability to such third persons for the fraud"). Similarly, the sixth circuit has emphasized that the broker-dealer has "an affirmative obligation to prevent use of the prestige of its firm to defraud the investing public." *Holloway v. Howerdd,* 536 F.2d 690, 696 (6th Cir. 1976).

As explained by one court:

> Stokes's theft occurred only because the Defendants enabled him to sell securities as their registered agent. A reasonable inference is that Stokes's agent status with the Defendants aided the Defendants' presence in the market place. Stokes's duty was to complete securities transactions in accordance with securities laws and NASD rules. To that extent, the acquisition and disposition of Plaintiffs' assets were within the actual scope of Stokes's duties as the Defendants' agent...A contrary rule would cause injury unfair to the investing public.

As You Sow v. AIG Fin. Advisors, Inc., 584 F. Supp. 2d 1034, 1047 (M.D. Tenn. 2008) (*citing See Henricksen v. Henricksen,* 640 F.2d 880, 887 (7th Cir. 1981), *cert denied,* 454 U.S. 1097, 102

S.Ct. 669, 70 L.Ed.2d 637 (1981); *Alvarado v. Morgan Stanley Dean Witter, Inc.,* 448 F.Supp.2d 333 (D.P.R. 2006).

Mr. Churchville was a registered securities representative and was employed to offer, sell, and advise clients concerning investment products – including the ClearPath Funds. Thus, Respondents are responsible for all of their securities related activities including the fraudulent investment scheme. Regardless of whether or not Respondents prohibited Mr. Churchville from engaging in fraudulent activities, Respondents are responsible for their agent's securities conduct.

IV. Respondents Violated their Suitability Obligations

A broker-dealer and its brokers have a duty to recommend only suitable investments to their clients. A member is required to make recommendations according to the following fundamental suitability obligations: (1) a broker must have a reasonable basis to believe, after performing adequate due diligence, that the recommendation could be suitable for *some* investors, also known as "reasonable basis" suitability; and (2) a broker must have reasonable grounds to believe that the recommendation is suitable for the specific customer at issue, also known as "customer specific" suitability. *See, e.g., Dep't of Enforcement v. Michael F. Siegel*, 2007 WL 1928639, at *12 (N.A.S.D.R. 2007).

The scope of these duties are defined in FINRA Rule 2310, also known as the "Suitability Rule," which provides:

> (a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have **reasonable grounds** for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to her other security holdings and as to her financial situation and needs.
>
> (b) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, a

> member shall make **reasonable efforts to obtain information** concerning:
>
> (1) the customer's financial status;
> (2) the customer's tax status;
> (3) the customer's investment objectives; and
> (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

See NASD Rule 2310, RECOMMENDATIONS TO CUSTOMERS (SUITABILITY) (emphasis added).

A. Reasonable Basis

Respondents did not have a reasonable basis to recommend the investment ventures to Claimants. FINRA's Notice to Members 05-59 states, "[t]o discharge its reasonable basis suitability obligation, a member must perform appropriate due diligence to ensure that it understands the nature of the product, as well as the potential risks and rewards." *See* FINRA Notice to Members 05-59, STRUCTURED PRODUCTS. After engaging in this analysis, the member must have a reasonable basis to believe that the products are suitable for *some* investors.

Respondents did not understand the nature of the speculative ventures Mr. Churchville placed Claimants into because the ventures did not have a demonstrated track record and were fraught with unknown variables and lacked proper investment risk disclosures. Respondents conducted no due diligence on the investments, the issuer, management, or any other indicator that would have suggested that the ClearPath Investment Scheme investment would or could be prudently invested in. The payment of interest and the liquidity upon maturity of the funds was wholly dependent on factors that could be neither known to outsiders nor reasonably predicted and depended upon such factors as Mr. Churchville's business operating expenses, living expenses, needs, whims, and discretionary authority to repay some or none of the investment at any time and at any rate.

Furthermore, Respondents had no reasonable basis to believe that the funds were suitable for *any* investor. The funds lacked any truthful mention of risk, promised interest payments and return

of principle at maturity, had varying redemption dates, and had undisclosed fees and conflicts of interest. Despite the existence of the above-mentioned risk factors and the fact that the funds have been declared fraudulent by the SEC, these products would not have been suitable at the time they were recommended to Claimants.

B. Overconcentration

A broker-dealer is liable for a claim of unsuitability when it overconcentrates a client's account with risky, speculative and illiquid non-conventional or alternative investments. *See In re Holland*, Exchange Act Release No. 36,621, 60 S.E.C. Docket 2935 (Dec. 21, 1995) (good faith immaterial to broker liability). Even if Respondents were to assert that Claimants agreed to overconcentrate their holdings by investing the investments, a broker's suitability obligations are not absolved. In *Holland*, the SEC concluded:

> Even if we were to accept [the broker's] view that these clients wanted to speculate and were aware of the risks-a conclusion not supported on this record-the Commission has held on many occasions that the test is not whether [the clients] considered the transactions in their account suitable, but whether [the broker] fulfilled the obligation he assumed when he undertook to counsel [them], of making only such recommendations as would be consistent with [their] financial situation and needs.

Id. at 736-37 (citing *In re Erdos*, 47 S.E.C. 985, 989 (Nov. 16, 1983)); *see also In re Wickswat*, 50 S.E.C. 785, 786-87 (Nov. 6, 1991); *In re Phillips & Co.*, 37 S.E.C. 66, 70 (Apr. 9, 1956) (applying the NASD's suitability rule).

Claimants trusted Respondents and their agent to recommend investments in accordance with prudent management principles and their specific financial situations. Instead, Mr. Churchville invested a substantial amount of Claimants' assets into the highly speculative and illegal funds.

C. Customer Specific Suitability

FINRA Rule 2310 also requires the broker to have a reasonable basis to believe that the recommendation is suitable for the particular customer based on the customer's investment profile. The investment profile includes items such as: financial situation, tax status, investment objectives, risk tolerance, age, and investment experience. *See* FINRA Rule 2310, Recommendations to Customers (Suitability). Further, FINRA states, "[i]n the context of a Regulation D [private placement] offering… A BD also must be satisfied that the customer 'fully understands the risks involved and is…able…to take those risks.'" FINRA NTM 10-22, OBLIGATION OF BROKER-DEALERS TO CONDUCT REASONABLE INVESTIGATIONS IN REGULATION D OFFERINGS, 4. Furthermore, when a broker dealer is affiliated with the issuer of the security, the broker must

> ensure that its affiliation does **not compromise its independence** as it performs its investigation. The BD must **resolve any conflict of interest that could impair its ability to conduct a thorough and independent investigation**. Indeed, its affiliation with the issuer typically would raise expectations by its customers, particularly some retail customers, that the BD has special expertise concerning the issuer.

Id. at 5.

Respondent recommended unsuitable risky, speculative, and illiquid investments in unspecified investments to Claimants with primarily retirement funds regardless of individual needs and investment objectives. Furthermore, given the unsuitability of the funds for *any* investor, Respondents could not properly match the investment objectives of clients to an investment in the funds.

Further, since Respondents failed to collect any customer information concerning Claimants and their ClearPath Funds investments Respondents could not analyze or evaluate the recommendations being made by Mr. Churchville.

V. Respondents Violated FINRA Rule 2210 (Communications with Customers), 2010 (Fiduciary Duty), 2020 (Fraud), and IM-2310-2 (Fair Dealing with Customers)

FINRA Rule 2010 requires members to "observe high standards of commercial honor and just and equitable principles of trade" in conducting their business. FINRA Rule 2020 also prohibits members from effecting "any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance." IM-2310-2 - "Fair Dealing with Customers" is cross-referenced by both of the aforementioned provisions and provides a non-exhaustive list of activities that would be inconsistent with the foregoing principals. *See* IM-2310-2: FAIR DEALING WITH CUSTOMERS. The first section of IM-2310-2 outlines member and associated persons obligations in dealing with customers as follows:

> (a)(1) Implicit in all member and registered representative relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of the Association's Rules, with particular emphasis on the requirement to deal fairly with the public.

Respondents egregiously and intentionally violated many of the subsections of IM-2310-2, including but not limited to:

> **(iv) Misuse of Customers' Funds or Securities**
> Unauthorized use or borrowing of customers' funds or securities.
>
> (B) In addition, other fraudulent activities, such as forgery**, non-disclosure or misstatement of material facts, manipulations and various deceptions, have been found in violation of Association Rules.** These same activities are also subject to the civil and criminal laws and sanctions of federal and state governments.
>
> ***
>
> **(5) Recommending Purchases Beyond Customer Capability**
> Recommending the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

Respondents made misstatements and omissions of information in their agent's communication with Claimants concerning the funds and their investments. In addition, the recommendation to purchase the funds were beyond many of the Claimants' ability to commit and were unreasonable.

Respondents also had a duty to provide Claimants with sound investment advice that fairly and accurately described the nature of the investments and the risks associated with the investments. Instead, Respondent made negligent misrepresentations and omissions to Claimants in violation of the FINRA Rules. FINRA Rule 2210(d) states in relevant part:

> All member communications with the public shall be based on principles of fair dealing and good faith, must be **fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security**, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

FINRA Rule 2210(d) COMMUNICATIONS WITH THE PUBLIC (emphasis added). In the context of a broker who prepares a private placement memorandum, any "material misstatements and omissions about... the amount and timing of distributions and the targeted return of principal to investors violate[] FINRA Rule 2010, which requires BDs to comply with just and equitable principles of trade." FINRA NTM 10-22, OBLIGATION OF BROKER-DEALERS TO CONDUCT REASONABLE INVESTIGATIONS IN REGULATION D OFFERINGS, 5.

VI. Respondent Made Negligent or Fraudulent Misrepresentations and Omissions to Claimants in Violation of Federal and State Securities Law

A. Federal and Relevant State Securities Common Law and Blue Sky Statutes

Respondents made material misrepresentations and omissions to Claimants in violation of federal securities laws. Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate

commerce or of the mails, or of any facility of any national securities exchange to use or employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Securities and Exchange Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. *See* 15 U.S.C.S. §78j. The SEC, pursuant to 15 U.S.C.S. §78j, promulgated S.E.C. Rule 10b-5 (codified at 17 C.F.R. § 240.10b-5).[8]

In a typical § 78j(b) private action, a plaintiff must prove: (1) a material misrepresentation or omission; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.

Similarly, Claimants, as residence of several states, were entitled to the protections of their respective states Blue Sky Securities Statutes and common law concerning breach of fiduciary duty, negligence, and fraud in their respective states.

B. Respondents Made Material Misrepresentations and Omissions of Information

Respondents made numerous material misrepresentative and omissions to Claimants in course of their dealings concerning the funds as alleged in detail *supra.*

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[8] Rule 10b-5 makes it unlawful:

a) to employ any device, scheme, or artifice to defraud;
b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

VII. Punitive Damages

As a cause and consequence of the Respondents' misconduct in supervising Mr. Churchville and in the handling of Claimants' investment funds, Claimants suffered compensatory and other damages of approximately $22,000,000. The panel should also award punitive damages, interest at the legal rate as well as attorneys' fees, and costs.

Arbitrators have the power to award exemplary, or in other words, punitive damages. As the United States Supreme Court held in *Mastrobuono v. Shearson Lehman Hutton. Inc.*, 514 U.S. 52 (1995), the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, grants arbitrators plenary authority to consider and make an award of punitive damages notwithstanding any provision of state law to the contrary.

Here, punitive damages should be assessed against Respondents and is wholly warranted due to the firms' intentional and willful failure to oversee Mr. Churchville business activities. The callousness to the consequences which Respondents have shown cry out for a remedy that will not only make Claimants whole, but prevent a repetition of these events which have become all too common place in the industry. Every year millions of investors' funds are stolen by brokers employed by brokerage firms that ask for the public's trust and confidence and then those same brokerage firms attempt to run away when the criminal acts of those they employ are discovered. The perils that investors face when trusting the brokerage industry is fostered through a policy of scant compensation for victims that profits the industry even when brokerage firms fail in their most basic duties.

FINRA firms continue to behave in a way that suggests that a lack of supervision, and the relatively small amounts of damages that result, are merely a cost of doing business to be borne rather than problem to be corrected. An award that falls short of assessing punitive damages will

not take the necessary step of impressing upon Respondents the indisputable need to supervise and manage its employees in accordance with the rules of law and the business ethics of fair trade.

CONCLUSION

WHEREFORE, Claimants requests that this Panel award damages from the Respondent as follows:

1. Compensatory damages for a sum of $22,000,000;
2. Interest at the statutory rate;
3. Attorneys' Fees;
4. Expert Fees;
5. Forum Fees;
6. Punitive Damages;
7. Such other and further relief as this Panel deems just and proper.

Dated: May 24, 2017

Respectfully Submitted,
GANA LLP

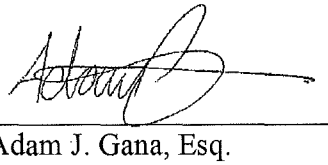
By: 

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EXHIBIT 3

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Attorneys for Respondent

BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY

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MYRNA BARZELATTO, individually and on behalf of the MYRNA WENDLINGER FAMILY LIMITED PARTNERSHIP, and HERBERT PFEFFER,

Claimants,

v. FINRA NO.: 16-01018

SPIRE SECUTRITIES, LLC,

Respondents.

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RESPONDENT'S ANSWER

Respondent Spire Securities, LLC ("Spire") by and through its undersigned counsel of record hereby submits this Answer to the Statement of Claim ("SOC") of the above-referenced Claimants. Spire has also filed a Motion to Dismiss the Claimants' SOC pursuant to FINRA Code of Arbitration Rules 12206 and 12506. Spire has submitted to the jurisdiction of FINRA exclusively, and for the limited purposes only, of the determination of its Motion to Dismiss.

Any allegation concerning Spire in the SOC not expressly admitted is hereby denied.

I. INTRODUCTORY STATEMENT

A. FINRA Has No Jurisdiction of This Matter

Section 12200 of the General Arbitration Rules of FINRA ("Rules") provides that parties must arbitrate a dispute under the Code if: (1) arbitration is required by a written agreement or (2) requested by a customer. (3) the dispute is between a customer and a member or an associated person of a member and (4) arises in connection with the business activities of the member or associated person. (Emphasis added)

Based on FINRA's Rule requirements, there is no FINRA jurisdiction over these Claimant's allegations. First, neither Claimant has a written agreement with Spire which contains an arbitration provision identifying FINRA as the entity having jurisdiction to hear the controversy. Second, neither Claimant is, or ever was, a "customer" of Spire. Third, the SOC relates to business activities of Claimants who admit that they were customers of an investment adviser, ClearPath Wealth Management, LLC ("CWM"), that was not affiliated with Spire. Fourth, CWM was not a FINRA member firm. Patrick Churchville, ("Churchville") although an associated person of Spire Securities, a broker-dealer, during the period 2009 through February 2011, was affiliated only in the registered capacity of a securities broker (i.e., registered representative), and not as an investment adviser representative ("IAF") of Spire. Churchville maintained a separate registered investment adviser ("RIA") and conducted business activities with Claimants as the principal of CWM, his RIA, and not as a broker of Spire. Fifth, and most importantly, Claimant's alleged claims do not arise in connection with any business activities of Spire (qua "registered representative") or Churchville (qua "associated person") of Spire. The business activities of Claimants exclusively involved CWM, an SEC-registered investment adviser, Churchville, as the principal/owner of CWM, and Claimants made investments in the

Funds offered by Churchville through CWM. These offering documents are not mention or refer to Spire in any way.

Claimants had written investment management agreements only with CWM and executed all required documents and agreements to purchase investments offered through and by Churchville and CWM. Claimants now complain about these investments offered by, and purchased though, CWM in 2009. Claimants payments for their investments were made to CWM and not Spire, Claimants paid advisory fees to CWM, and received distributions, statements, K1's and other information about their investment exclusively from CWM, including Form ADV, and 2A/2B disclosure documents about CWM and Churchville. Claimants did not conduct any "business activities" with Spire at any time that involved the Funds marketed by CWM that are the subject of their Claim. Claimants' investment advisory activities with and through CWM were not conducted with Churchville in his registered securities broker status with Spire.

Section 12203 of the Rules empowers the Director to "decline to pursue the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and intent of the Code, the subject matter of the dispute is inappropriate... Only the Director may exercise the authority under this Rule."

Based on the allegations of the SOC, and the fact that the Claimants appear to have purposefully avoided providing copies of the relevant CWM documents/agreements relating to the "business activities" that they now complain of, and in fact have acted in disregard of a judicial Stay Order affecting all ancillary proceedings such as this proceeding, it is clear that the intent of the Code and the subject matter of this dispute, mandates the Director's determination FINRA that arbitration of this claim be denied.

In determining "business activities of the member", it is essential to take into consideration the facts that Claimants entered into an investment agreement with CWM, an SEC registered investment adviser, received all documents required to be provided to clients of CWM, received and executed agreements relating to their Fund purchases through CWM, paid for their investments through CWM, and received statements, tax reports and all other communications about their investments from and through CWM and Churchville, as the principal, owner and CCO of CWM. Claimants did not establish any "business activities" with Spire at any time.

Section 12206(a) of Rules specifies that a claim is not eligible for submission to arbitration under the Code "where six years have elapsed from the occurrence or event giving rise to the claim." Based on the allegations of the SOC, the occurrence or event giving rise to the claim, (i.e., purchase of the Fund) occurred in 2009. This claim was filed with FINRA (albeit improperly and without any jurisdictional basis) more than six years later, in May, 2016. Accordingly, noncompliance with Rule 12206(a) by the Claimants is a separate, independent basis to reject jurisdiction of this claim.

Section 12212 of the Rules, specifies sanctions that a Panel may impose on a party for failure to comply with any provision of the Code, or any order of the Panel. Sanctions can include:

a) Assessing monetary penalties payable by a party

b) Precluding evidence

c) Making adverse inferences

d) Assessing attorney's fees, costs and expenses.

A Panel can also dismiss a claim, defense or arbitration with prejudice to refiling as a sanction for material non-compliance. Accordingly, Respondent seeks sanctions under this Rule as specified herein.

B. Claimants Have No Customer Relationship with Spire

Claimants are strangers to Spire who never established a customer relationship or opened any securities accounts with Spire. Claimants never executed a written customer agreement with Spire containing an arbitration clause. Claimants did not conduct any securities or business transactions with or through Spire, never paid any commissions or fees to Spire, and did not receive any confirmations or monthly account statements from Spire reflected business activity conducted with Spire. Claimants never communicated or consulted with Spire in any manner about any investment. Claimants seek recovery for their CWM investment losses from a Broker-Dealer that they never dealt with on any level. Without an executed customer agreement containing an arbitration clause between Claimant's and Spire, and without having conducted any securities business with Spire, FINRA has no jurisdiction of this claim and cannot validly accept this matter for arbitration.

The Claimants know that Churchville and CWM are defunct and insolvent as a consequence of an SEC investigation during 2014. A Receiver was recently appointed by the U.S. SEC and approved by U.S. District Court in Rhode Island, to recover assets, and eventually provide a Fund through which to offer restitution to CWM investors who were defrauded by Churchville and CWM. By filing this claim without having a jurisdictional basis to do so, Claimants are in violation of a judicial Stay Order preventing the assertion of any ancillary legal proceedings. Based on all of the transactional documents that Claimants received from and

executed with CWM and Churchville, there can be no doubt that they knew that they were investing with CWM and never established a client/customer relationship with Spire. They also know from the CWM offering documents that Spire had no involvement with CWM or any of its offered Funds (Limited Partnerships). The disclosure documents received by Claimants from Churchville and CWM made perfectly clear who they were investing with: Churchville, CWM and the Funds.

Upon information and belief and as admitted in the SOC, on or about December, 2009, Claimants established separate investment advisory agreements with Churchville and CWM. Based on the unsupported and general conclusory statements of the SOC, Claimants admit that in approximately December, 2009, each of them made investments in one or more of the Clear Path Funds (see SOC, page 3 footnote 2). Claimants could only purchase the Clear Path Funds through Churchville and CWM. Claimants admit that Churchville was responsible for the "Clear Path Investment Scheme" that was identified by the SEC in 2015.

Spire was not responsible for the supervision of CWM, an SEC registered investment advisor, that was controlled, managed and operated exclusively by Churchville. Spire had no affiliation with CWM. Spire did not offer its clients CWM- sponsored investments in any Fund, nor did it solicit its clients to invest through CWM or Churchville. Spire Securities is a broker-dealer offering clients the ability to effect securities transactions on a commission basis. Fee based advisory services are offered through a separate entity, Spire Wealth Management, LLC, ("Spire Wealth"), an SEC registered investment adviser. Claimants did not establish a customer relationship with Spire Wealth, and did not effect any advisory business with Spire Wealth.

Claimants also admit that on May 7, 2015, the U.S. Securities & Exchange Commission ("SEC") initiated an enforcement action against both Churchville and CWM. The SEC action,

which apparently forms the factual basis of the SOC, does not mention Spire and no actions by the SEC, or any other regulator, have been asserted against Spire relating to Churchville or CWM.

C. Claimants are in Violation of a Stay Order.

The Claimants know that Churchville and CWM are defunct and insolvent. A Receiver has been appointed by the U.S. SEC and accepted by the U.S. District Court in Rhode Island, to recover assets, and eventually provide a Fund through which to offer restitution to CWM investors who were defrauded by Churchville and CWM. By filing this claim against Spire without having a jurisdictional basis to do so, Claimants are in violation of a judicial Stay Order preventing the assertion of any ancillary legal proceedings. Claimants seek recovery for their CWM investment losses from a Broker-Dealer that they never dealt with on any level. Based on all of the transactional documents that Claimants received from and executed with CWM, there can be no doubt that they knew that they never established a client/customer relationship with Spire, and that Spire had no involvement with CWM or any of its offered Funds (Limited Partnerships). The disclosure documents received by Claimants from Churchville and CWM made clear who they were dealing with: Churchville, CWM and the Funds. The SEC Complaint is a matter of public record, as are the subsequent appointment of the Receiver and issuance of the Stay Order. This filing is a violation of such Order. (See Exhibit 8).

Upon information and belief, on or about December, 2009, Claimants established separate investment advisory agreements with Churchville and his SEC registered Investment Adviser, CWM. Based on the unsupported and general conclusory statements of the SOC, Claimants admit that in approximately December, 2009, each of them made investments in one

or more of the Clear Path Funds (see SOC, page 3 footnote 2). Claimants could only purchase the Clear Path Funds through Churchville and CWM. Claimants admit that Churchville was responsible for the "Clear Path Investment Scheme" that was identified by the SEC in 2015.

Claimants also admit that on May 7, 2015, the U.S. Securities & Exchange Commission ("SEC") initiated an enforcement action against both Churchville and CWM. The SEC action, which apparently forms the factual basis of the SOC, does not mention Spire and no actions by the SEC, or any other regulator, have been asserted against Spire relating to Churchville or CWM. Claimants curiously ignored the fact of the issuance of a Stay Order, the purpose of which is to consolidate all investment claims so that any recovery of assets would be distributed "pro rata". Claimants' filing of this proceeding with FINRA is in clear violation of the Stay and a blatant attempt to seek recovery outside of the Receivership process, thereby potentially enabling them to improperly recover twice. Fatal to Claimant's action is the fact that they have utterly failed to establish any basis for FINRA jurisdiction over this claim.

D. Claimants Established a Customer Relationship with Churchville and an SEC-Registered Investment Adviser CWM.

The documents prepared by Churchville (through his retained attorneys, Edwards and Angell) on behalf of CWM and its affiliated funds and given to Claimants by Churchville and CWM, unmistakably establish the customer relationship established was with CWM. Spire had absolutely no involvement, participation, control or affiliation with either CWM or any of its Funds. The true facts in this matter are that Claimants established a customer relationship exclusively with CWM through Churchville, in his role as principal, owner and CCO of his SEC registered investment adviser CWM. All documents Claimants received and/or executed relating

to their investment advisory accounts with CWM and investments in the ClearPath Funds, (which are specified in the SOC), were prepared by Churchville and/or his attorneys. None of the extensive documents relating to Churchville's and CWM's offering of the Funds mention or refer to Spire anywhere. Upon information and belief, Claimants executed CWM new account suitability documents, an investment advisory agreement with CWM and were provided at the times of their purchase transactions with all or some of the following materials:

1. CWM filed an SEC form Reg. D, and its filing made on October 20, 2009, stated that no sales compensation or finder's fees expenses were paid to any Broker Dealer (See Exhibit 1 at page 4 and 5).
2. CWM's Form ADV was filed with the SEC in 2009. This filing, and subsequent annual ADV filings, do not mention or include any references to Spire (See Exhibit 2). CWM was required under SEC rules and regulations to provide a copy of its ADV to every client, and to have client's acknowledge receipt of the ADV.
3. Churchville as the principal of CWM was also required to send clients, on an annual basis, Parts 2A/2B of the adviser's "brochure materials". This information provides clients with a clear disclosure written in plain English, about 7 specified areas, including: the business practices, conflicts of interests, fees, and background of CWM, the Investment Adviser, including its officers and employees who provide advice to clients. Disciplinary information covering the past ten (10) years is also required to be disclosed, as are details of the advisers brokerage practices. Upon information and belief, Claimants would have received CWM's 2A/2B disclosure documents annually, for each year that they remained clients of CWM.

4. As clients of CWM, each of the Claimants would have received and been required to execute a CWM Investment Management Agreement, between CWM as the investment adviser and management company, and Clear Path Healthcare Receivables Investment Fund, L.P. ("Fund or Limited Partnership") (see Exhibit 3). There is no mention or reference to Spire in this Agreement or LP instrument.
5. As clients of CWM, Claimants' received a CWM Healthcare Receivables Investment Summary ("Summary") (See Exhibit 4). There is no mention of or reference to Spire in the Summary. CWM established the suitability standards of the client in order to invest in the Fund and are clearly enunciated in the Summary. It must be assumed that each Claimant met these standards at the time they submitted the required documents and made their investments to and through CWM. Claimant's made the following representations to CWM:
    - $1 million minimum net worth
    - Sophisticated investor
    - Financial ability and willingness to accept risk
    - Lack of liquidity
    - Fund objectives may not be achieved
    - Investors may not receive return on investment
6. The management of the Fund was clearly identified in the Summary. The Fund Service Providers were also identified, among other disclosures. There was no disclosure that mentioned or referred to Spire in the Summary or any other CWM/Fund documents.
7. As clients of CWM and investors in the Fund, Claimants would have received a Limited Partnership Agreement of ClearPath Healthcare Receivables Investment Fund, L.P.

("Agreement"), or any of the other CWM Funds that were offered by Churchville and CWM, and available to be purchased, dated as of August 20, 2009.[1] (See Exhibit 5). There is no mention of, or reference to, Spire in the Agreement or Fund materials. Upon the execution this Agreement, or one of the other Fund Agreements, each of the Claimants became limited partners of the Fund. Healthcare Receivables Investments, LLC was the General Partner of the Fund. Only Churchville and CWM are referenced in the Agreement and Fund documents. Upon information and belief, all investors/limited partners received periodic information statements, as well as K1's for tax reporting purposes, from CWM or the Fund.

8. As clients of CWM, each of the Claimants received and executed Subscription Documents ("Documents") for the Fund (See Exhibit 6). Claimants could not acquire any CWM-affiliated Fund unless the subscription agreements were completed. Like all of the other documents relating to CWM and its Healthcare Receivable Funds, there is no reference to, or mention of Spire, anywhere in the Documents. The Documents were to be delivered to Churchville's office address, together with each Claimant's payment. The Subscription Agreement itself is dated as of 2009. Each of the Claimants made the representation that each of them had the knowledge and experience in financial and business matters as to be able to evaluate the merits and risks of this investment.

9. Exhibit 1 to the Documents are each investor's Investment Company Act representations. (See Exhibit 7). It is submitted that each of the Claimants' would have been required to execute Exhibit 7 to the Documents in order to qualify as an eligible investor in the Fund.

[1] Other Funds could have been offered by Churchville and CWM at later dates to these Claimants. upon information and belief, no CWM offered Fund or LP mentioned or referred to Spire.

D. Claimants Have No Standing to Allege a Failure to Supervise by Spire

The SOC mirrors the allegations of the SEC Complaint relating to CWM's "fraudulent scheme":

1. Churchville misappropriated and misused investors' monies;
2. Churchville's scheme involved outright theft, false accounting entries and, shadow accounts, intended to conceal his conduct and actions;
3. Churchville made misrepresentations to investors;
4. Churchville was the mastermind of a classic Ponzi Scheme;
5. Churchville misappropriated investor funds by using fund accounts established with custodial firms to receive undisclosed borrowings and repay for borrowed funds (emphasis added);
6. Churchville stole investor funds to purchase a home;
7. Churchville used lies and deceptions to solicit customers to make the investments in CWM and its Funds.

None of these allegations in the SOC, which were taken directly from the SEC's Complaint, mention, refer to or include any allegation involving Spire. That is because Spire had no involvement with the management or operation of CWM, any of the Funds, or as a custodian lender or seller. Claimants had no customer relationship or securities dealings at all with Spire. Importantly, the misconduct described in the SOC and the SEC complaint by Churchville arose long after his limited affiliation with Spire as a securities broker had ended in 2011.

Claimants erroneously allege that CWM and the Funds were "required to be supervised" by Spire. There is no basis in fact or law for such allegation. Spire's supervisory obligation ended when Churchville's association did in February, 2011. Spire's supervisory obligation is

owed to customers. Claimants did not have a customer relationship with Spire and did not execute any securities brokerage account agreement with Spire. Churchville was the President and CCO of CWM. CWM was an independent, SEC registered investment adviser ("RIA"), unaffiliated with Spire. Churchville was the authorized supervisor of the SEC-registered investment adviser. Churchville managed, controlled and directed the operations of his RIA and the Funds, as well as the marketing and offering of his RIA's advisory services or investments in the Funds to CWM prospective clients. Churchville's RIA was required to provide every client with a copy of its Form ADV and additional disclosure documents, known as 2A and 2B. CWM's ADV and 2A/2B documents did not mention or refer to Spire. Importantly, Spire was not list in CWM's ADV as either a direct or indirect owner or in any other capacity, relationship or affiliation. Claimants were aware of their customer relationship with CWM and that they never sought or established a customer relationship with Spire.

Most importantly, Claimants admit that Churchville was associated with Spire merely as a securities broker only during the period from August, 2009 through February, 2011. Claimant's never established either securities accounts or separate investment advisory accounts with Spire. Churchville, while a registered representative of Spire for securities transactions, did not effect any securities or advisory business for Claimants with or through Spire. Claimants only established an investment advisory relationship with CWM through which each of them made Fund purchases for which they represented they were sophisticated, high net worth individuals who were cognizant of the risks of the investment. Spire supervised Churchville's securities-related business which was not conducted by these Claimants. based upon a review of Spire's customer records by Spire's CCO, no accounts were established or business conducted through Spire by these Claimants. Critically, the SEC Complaint established that Churchville's

misconduct occurred years after his limited association as a securities broker with Spire had ended.

II. DENIALS

Spire denies each and every allegation, statement or conclusion set forth in the Claimant's SOC, Factual Background, parts 1, 2 and 3, from page 4 through 11, inclusive.

Spire lacks knowledge or information sufficient to form a belief as to the truth or falsity of Claimant's statements in their SOC relating to (a) Churchville's or CWM's account statements, (b) investor contacts, (c) Barzelatto's or Pfeffer's specific investments in any Fund offered by CWM, including but not limited to, Account Receivable Services, LLC ("ARC") or Health Care Receivable Investment Fund, L.P. As a separately registered SEC investment adviser, CWM's account statements and Churchville's contacts with Claimants had nothing to do with Spire, Claimant's Fund transactions were unrelated to Spire's business activities, and none of the Claimants established a customer relationship with Spire. All monies paid to CWM or any Fund by Claimants, or distribution received by Claimants from CWM or any Fund, were not related to business activities of Spire.

Spire denies each and every claim alleged against it set forth in the claims section of the SOC.

Spire asserts that Churchville was only affiliated with Spire Securities as a securities registered representative for a limited period of time between August, 2009 and February 2011. During such period Churchville did not introduce Claimants to become customers of Spire, or solicit investments in CWM or the Funds on behalf of Spire. None of the investments allegedly made by Claimants referred to in the SOC involved Churchville's activities as a securities broker

of Spire. The investments allegedly made by Claimants were made through CWM and not Spire. The Claimants never executed a customer agreement with Spire, did not receive account statements, transaction confirmations, new account agreements or pay any commissions or fees to Spire for any product or service. Claimants did not send any funds to Spire or enter any orders through Churchville that were placed for execution on Spire's trade platform for execution. In fact, Claimant's did not conduct any securities or investment banking business with Spire or its Custodian firm.

Spire agrees with the Claimant's assertion that under FINRA Rule 3010, Spire owes a supervision duty to its "customers." However, Claimants were never "customers" of Spire, and therefore Spire had no supervisory obligations to Claimants concerning CWM, an SEC-registered investment adviser that was not affiliated with Spire, or any limited partnership or fund that was solicited by Churchville or through CWM.

Spire denies each and every claim alleged against it in the SOC relating to Churchville's and CWM alleged securities laws violations. The SOC does not establish that either Claimant established a customer account with Spire that Spire could supervise or periodically examine. CWM's custodian was not Spire's custodian, and Spire had no ability to access CWM's customer account records, or its custodian's records. CWM was an SEC registered investment adviser that was not affiliated with Spire. CWM conducted no business activities with Spire.

Upon information and belief, Churchville's and CWM's alleged improper activities concerning the Claimant's investments in CWM-sponsored Funds, occurred after Churchville terminated his securities broker affiliation with Spire in February 2011. In fact, the SOC asserts that Churchville waited until the principal officers of the Healthcare Receivables Fund were indicted in September 2013, to notify investors. Upon information and belief, Claimants were

notified about problems in 2013 and took no action against CWM or Churchville. The SEC did not assert its formal action against Churchville and CWM until 2015.

Spire denies that it missed any "red flag" warning it of misconduct by Churchville or CWM involving these Claimants, or any other CWM customer, from 2009 through February of 2011, or thereafter. Spire had no involvement with CWM's customers or any of its customer's advisory business transactions. Based on the allegations in the SEC Complaint, the SOC and Churchville's Form U4/Form U5, the alleged Churchville and CWM improprieties arose in 2013, several years after Churchville's association as a securities broker representative ended. Further, the Churchville and/or CWM improprieties appear to have been expertly concealed by Churchville and others. The SOC clearly admits that Claimants Fund investments were related to Churchville's independent SEC-registered investment advisers, CWM. As disclosed to Claimants in its Form ADV and brochure disclosures, and in the Fund offering documents, CWM had no affiliation or relationship with Spire, and Spire had no involvement in CWM or the Funds. The alleged fraudulent activities occurred during 2013 and later, and involved accounts established by Churchville at other financial institutions that were unaffiliated with Spire.

Spire lacks knowledge or information sufficient to form a belief as to the truth or falsity of the statements in the SOC relating to distributions from CWM Funds paid to Claimant Barzelatto's CWM investment management account in October 2011. By that time, Churchville was no longer affiliated with Spire as a securities broker. Monies paid by Claimants to CWM or its Funs, or distributions received by Claimants from CWM or its Funds have nothing to do with Spire.

Spire agrees with Claimants statement in the SOC that it has a duty to recommend suitable investments to its clients. (emphasis added). Spire denies it had such duty to Claimants,

who were never Spire clients. Spire never recommended CWM or any of its Funds to Claimants. Claimants never dealt with Spire about any investment opportunity. Claimants were never clients of Spire to whom such obligation was owed. Claimants had a customer relationship solely with CWM which offered the Funds. Upon information and belief, Claimants received from CWM, (and Churchville as CWM's principal officer) all disclosure documents required to be reviewed and approved by CWM in order for Claimants to make their investments in the Funds. Upon information and belief, CWM and the Funds relied on Claimants representations and warranties in the offering materials as to their suitability for investment in the Funds. There is no mention to or reference of Spire in the offering materials received by Claimants.

Spire denies that it had a duty to file CWM's form Reg D exemption with the SEC. In fact, CWM filed such notice with SEC, which was available to members of the investing public on the SEC's website. Spire was not the issuer of any Fund offered through CWM. As a matter of law, Spire did not offer any CWM-sponsored Fund to its clients or these Claimants who were not customers of Spire.

Spire denies that it made any negligent, fraudulent or material misrepresentations or omission to Claimants. In fact, Spire made no statements about CWM or any Fund to Claimants, and denies that it communicated with Claimants about CWM or any Fund investments offered by CWM. Claimants were in privity of contract only with CWM and the Funds they purchased through CWM, based on Churchville's solicitations and the offering documents the Claimants received, reviewed, executed, and returned to CWM. Upon information and belief, Claimants executed a customer agreement or investment management agreement with CWM and Churchville. Such agreements created their adviser/client relationship. Such agreement or

agreements did not mention or refer to Spire, and Claimants never had a customer agreement containing an arbitration agreement with Spire.

Spire denies that it violated FINRA rules or regulations, state or federal securities laws relating to the Funds, CWM, or Churchville. Spire denies that it owed either of these Claimants any duty of supervision or suitability.

Spire denies that Claimants are entitled to an award of any compensatory or punitive damages from it.

All other allegations, claims or statements in the SOC relating to Spire are denied.

III. FINRA LACKS JURISDICTION

A. THIS CLAIM IS NOT ARBITRABLE BEFORE FINRA BECAUSE THERE IS NO EXECUTED WRITTEN AGREEMENT BETWEEN CLAIMANTS AND SPIRE TO ARBITRATE CONTROVERSIES

Arbitration of claims between customers and broker-dealers are based upon a written agreement between such parties that contains an arbitration agreement. There is no such agreement between either of the Claimants and Spire. There is no allegation in the SOC that Claimants executed Spire's written Customer agreements. These Claimants were never customers of Spire. Neither of them executed Spire's customer agreements, which include an arbitration provision. FINRA has no jurisdiction of this matter because the specific claims of these Claimants are not properly subject to arbitration.

"The duty to arbitrate rests on contract and submission to arbitration is compellable only to the extent that there is an agreement to do so. The role of the courts is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract and the judicial task is limited to construing the agreement for the purpose. Thus whether a dispute is arbitrable comprises two questions: (1) whether there exists a valid agreement to arbitrate at all under the contract in question... and if so, (2) whether the

particular dispute sought to be arbitrated falls within the scope of the arbitration agreement." Singer Co. v. Tappan Co., *403 F. Supp. 322, 329 (S.D.N.Y. 1975) aff'd, mem. 544 F.2d 513 (2d Cir. 1976);* National Union Fire Ins. Co. v. Belco Petroleum Corp., *88 F.3d 129, 135 (2d Cir. 1996).*

The strong federal policy in favor of arbitration is not available to these Claimants because a requirement of arbitration is an issue referable to arbitration under an agreement in writing for such arbitration. (See, Federal Arbitration Act, 9 U.S.C. Section 3), ("FAA"). No proceedings can be arbitrated unless a validly formed, enforceable and a written arbitration agreement exists. *Raymond James Financial Services, Inc. v. Cary*, 708 F. 3d 382, 385-86 (4th Cir. 2013). Claimants cannot produce such written agreement with Spire containing an arbitration clause. Because arbitration is "a matter of consent, not coercion", *Volt Info. Svis, Inc. v. Board of Trustees of Leland Stanford Jr. Univ.*, 489 U.S.S 468, 479 (1989), Spire has not consented to arbitrate controversies with any of these Claimants. Claimants are without a contractual basis for their claims against Spire.

FAA 9 U.S.C. Sections 1-2, creates a "body of federal substantive law of arbitrability applicable to any arbitration agreement within the coverage of the Act." *Paine Webber Inc. v. Bybyk*, 81 F.3d. 1193,1198 (2d Cir. 1996), quoting *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Claimants have failed to provide any evidence that a written arbitration agreement was executed by them and Spire, or include a copy of the signed, written arbitration agreement between each of them and Spire. There is no such agreement.

Under Section 4 of the FAA, an assigned party is required to have a written agreement for arbitration as a condition precedent for issuance of the Court's Order directing parties to arbitration in accordance with the terms of the agreement. Claimants have no such written agreement with Spire, and therefore are unable to proceed to arbitration before FINRA. In fact,

New York Courts have jurisdiction to prevent this proceeding from continuing without proof that a written agreement to arbitrate exists between the parties.

Only where there is such a valid customer agreement, is there a possibility to determine whether the particular dispute sought to be arbitrated falls within the scope of the arbitration provisions contained in the agreement. *Stolt-Nielsen, SA. v. Animal Feed International Corp.*, 559 U.S. 662, 681, 130 S. Ct. 1758, 1773, 176 L. Ed. 2d 605 (2010). Arbitration is a matter of contract and the parties' consent to arbitrate controversies. *Scher v. Bear Stearns & Co.*, 723 F. Supp. 211, 214 (S.D.N.Y. 1989). That does not exist in this matter.

In the financial services industry, arbitration provisions, together with required disclosures, are typically found in the member firm's customer agreement. An executed agreement is generally considered a "condition precedent" to the establishment of a securities account with the member firm. Upon information and belief, it is submitted that Claimant's have such agreement only with their investment adviser CWM, and no such agreement with Spire. In fact, Claimants have not provided a copy of their executed customer agreement with CWM. Claimants do not have any agreement to arbitrate with Spire, since they were never customers of Spire.

The FAA was enacted to promote the enforcement of privately entered agreements to arbitrate according to their terms. *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 US. 52, 54, 115 S. Ct. 1212, 1312 (1995). *Hartford Accident & Indemnity Co. v. Swiss Reinsurance Am. Corp.*, 246 F. 3d 219, 226 (2nd Cir. 2001). Without an agreement to arbitrate, there can be no arbitration, and no forum can create jurisdiction over any party in the absence of the party's written agreement to arbitrate with another party. There is also no arbitration clause for any Court or forum to interpret. The essential requirement of the meeting of the minds for

arbitrability of Claimant's SOC does not exist here. There is no written agreement between Claimants and Spire containing an arbitration provision, and this particular dispute involving the registered investment adviser CWM, its former principal officer and CCO and its offering of Funds, does not involve Spire.

Spire cannot be compelled to arbitration without a contractual basis for concluding that it has agreed to do so with these Claimants. Without a valid written agreement to arbitrate evidencing a meeting of the minds of both parties to such agreement, there is no enforceable agreement and therefore no ability to arbitrate. Mutual assent to all essential terms of a contract are essential. See *Stolt-Nielson*, at 1775; *Ross v. American Express Co.*, 547 F. 3d 137, 143 (2nd Cir. 2008). *Schurr v. Austin Galleries of Ill.*, 719 F. 2d 571, 576 (2nd Cir. 1983).

Claimants cannot assert any countervailing authorities that would enable them to pursue a FINRA arbitration claim against Spire without a valid, written agreement executed by them and Spire, and which contains an arbitration provision. *Louis Dreyfes Negoce S.A. v. Blystad Shipping & Trading Inc.* 252 F. 3d 218, 224 (2nd Cir. 2001). Without a valid, written agreement containing an arbitration provision, there is nothing for FINRA, or a Court, to enforce. *Rent-a-Center, West Inc. v. Jackson*, 561 U.S. 63, 67 (2010); *Nayal v. HIP Network Service. IPA, Inc.*, 620 F. Supp. 2d. 566, 569 (S.D.N.Y 2009). The U.S. Supreme Court has stated: the FAA does not require parties to arbitrate when they have not agreed to do, nor does it prevent parties who do agree to arbitrate from excluding certain claims from the scope of their arbitration agreement. *Volt Info-Sciences, Inc. v. Bd of Trustees of Leland Stanford, Jr. Univ.*, 489 U.S. 468, 478 (1989).

In New York, it has been determined that the party seeking to compel arbitration "must make a prima facie initial showing that an agreement to arbitrate existed before the burden shifts

to the party opposing arbitration to put the making of an agreement " in issue". *Hines v. Overstock.com, Inc.*, 380 F. Appx 22, 24 (2nd Cir. 2010); *Harrington v. A + L. Sounding Co. Inc.*, 602 F. 3d 113, 124 (2nd Cir. 2010) citing *Green Tree Fin. Corp. – Alabama v. Randolph*, 531 U.S. 79, 91-92 (2000). Claimants have not and cannot make this initial showing that an executed agreement to arbitrate with Spire ever existed.

New York CPLR Article 75 provides that Court's assume "the gatekeeper role" of deciding whether a valid agreement to arbitrate was made. *AR&S Transp, LLC v. Odyssey Logistics & Technology Corp.*, 22 AD 3d 750, 752, (2nd Dept. 2005); *MLPF & S Inc. v. Benjamin*, 1 AD 3d. 39, 43 (1st Dept. 2003). Under both the FAA and Article 75 the same ultimate conclusion is reached: the right to require arbitration does not extend to a party who has not signed the agreement pursuant to which arbitration is sought unless the right of the non-signatory to arbitrate is expressly provided for in the agreement. *In re Miller*, 40 AD 3d 861, 862 (2nd Dept. 2007). Neither Spire nor the Claimants executed the same written agreement, which in the case of a BD such as Spire would be a Customer Agreement, containing an arbitration provision. Accordingly, Spire cannot be required to submit to arbitrate any dispute which it has not agreed to so submit. *US Steel Workers of America v. Gulf Navigation Co., v. Verizon Communications, Inc.* 32 AD 3d 709, 710 (1st Dept. 2007).

Because there has been no written arbitration agreement with Spire presented by Claimants, the general presumption is that court's, not arbitrators, decide the issue of arbitrability. This presumption can be rebutted only with "clear and unmistakable evidence from the arbitration agreement, as construed by relevant state law, that the parties intended that the question of arbitrability be decided by the arbitrator." *Contec Corp. v. Remote Solution Co.*, 398 F. 3d 205, 208 (2nd Cir. 2005). Since there is no "clear and unmistakable evidence" established in

a written arbitration agreement executed between Claimants and Spire, FINRA has no jurisdiction to determinate the issue of arbitrability. FINRA rules, the N.Y. CPLR Art 75, the FAA, and judicial precedent are all in agreement: there is no arbitrable controversy by these Claimants against Spire. No arbitration agreement has been produced, and none can be since Claimants were never customers of Spire. There is no language of an arbitration clause for FINRA or a Court to construe or interpret. Neither of the Claimant's evidenced an intent to arbitrate any "claims or controversy" with Spire. Spire never executed any agreement with Claimants, with or without an arbitration provision! The facts, law and context of the claim unmistakably establishes the conclusion that there is no FINRA jurisdiction over Claimant's SOC in so far as any claims are alleged against Spire. FINRA has no jurisdiction in this matter and this Claim must be dismissed.

FINRA, and any arbitrator supplied by FINRA, derives his/her authority from the intent of the parties, as expressed through their agreement to arbitrate. In the instant situation, there is no private agreement to arbitrate. As decided in *AT&T Technologies, Inc. v. Communication Workers*, 475 U.S. 643, 648-49 (1986), "arbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration." In the instant matter, there is no private agreement to arbitrate between Spire and these Claimants and therefore no grant of authority to FINRA or any of its arbitrators.

> *"An arbitrator has no general charter to administer justice for a community that transcends the parties. He is rather part of a system of self-government created and confirmed to the parties. United Steelworkers of America v. Warrior & Gulf Nav. Co, 365 U.S. 574, 581 (1960).*

FINRA does not have subject matter jurisdiction over any issues outside the scope of the parties' written arbitration, and therefore may not even consider any other issues. *Edward D.*

Jones & Co. v. Sorrells, 957 F.2d 509, 512 (7th Cir. 1992). Absent the written arbitration agreement between these Claimants and Spire, the uniform submission agreement executed by Claimants does not confer jurisdiction[2]. The failure by Claimants to produce a written agreement to arbitrate controversies with Spire that has been executed by the parties is fatal to this claim. FINRA lacks jurisdiction to arbitrate, and therefore, this claim must be dismissed.

B. SPIRE WILL SUFFER IRREPARABLE HARM IF FINRA COMPELS IT TO DEFEND AN ARBITRATION WHERE THERE IS NO JURISDICTION BECAUSE CLAIMANTS ARE NOT "CUSTOMERS" OF SPIRE AND DID NOT CONDUCT BUSINESS ACTIVITIES WITH SPIRE

FINRA Code Rule 12200 provides three requirements in order for it to have jurisdiction of a dispute. First, a written agreement or contract. Second, a dispute between a FINRA member and its "customer". Third, the dispute arises "in connection with the business activities of the member and its customer." Claimants have failed to comply with any of the three required elements of Rule 12200. There is no separate, written arbitration agreement between a Spire and these Claimants. Claimants are not "customers" of Spire. Spire conducted no business activities with either of these Claimants. See, *Oppenheimer & Co, Inc., v. Neidhardt*, 93 Civ. 3854, 1994 WL 176976 at 1 (S.D.N.Y. May 5, 1994), aff'd 56 F. 3d. 352 (3rd Cir. 1995), *Morgan Keegan & Co. v. Silverman*, 706 F. 3d 526, 564 (4th Cir. 2013).

Unfortunately, the FINRA Code contains no definition of the terms "customer", other than to indicate it excludes a broker-dealer. Rule 12200(i). Judicial precedent has filled this definitional gap by deciding that a "customer" of a broker-dealer is an individual or entity that has business dealings with the member, and such "customer" relied on the member for advice. *Wachovia Bank, N.A. v. VCG Special Opportunities Master Fund, Ltd.*, 08 Civ. 5655, 2010 WL

[2] Spire is under no obligation to execute and provide a commission agreement in this matter.

1222026, at 3 (S.D.N.Y. Mar 29, 2010). It cannot be rationally argued that anybody who is not an actual a "customer" of a member is entitled to compel arbitration with a member firm under FINRA rules. "Customers" need to have an actual customer relationship with the FINRA member it asserts claims against. *UBS v. Voegelli*, 684 F. Supp. 2d. 35 (S.D.N.Y. 2010). It is the exclusive province of the courts to determine whether someone is a "customer", and such interpretation of the FINRA rule must be consistent with the reasonable expectations of the FINRA member. *Wachovia Bank National Association v. VCG Special Opp's Master Fund, Ltd.*, 661 F. 3d 164, 171 (2nd Cir. 2011). As will be shown herein, Spire's reasonable expectations cannot be that these Claimants are its "customers" without a written agreement and the "business activities" of CWM, the Fund, and these Claimants cannot be construed as either a reasonable expectation of Spire, or business activities of Spire. Claimants do not allege that they conducted any business activities with Spire.

1. Claimants Were Not Spire "Customers"

In *Carilion Clinic*, 706 F. 3d at 325, it was held that a "customer" is one who purchases commodities or services from a FINRA member in the course of the member's business activities insofar as those activities are covered by FINRA's regulation, namely the activities of investment banking and securities business." Moreover, the "purchaser" must establish a "direct" relationship with the FINRA member; an indirect relationship is not sufficient. *Sun Trust Banks, Inc. v. Turnberrry Cap. Management LP*, 945 F. Supp. 2d 415, 424-25 (S.D.N.Y. 2013).

There are many examples of this definition of "customer" that have been provided by the courts, and a summary of several of them are determinative to the facts in the instant matter that Spire did not have business activities with these Claimants:

a) Having an account with the FINRA member *Citigroup Global Markets, Inc. v. Abbar*, 761 F. 3d 268, 275 (2nd Cir. 2014);

b) Purchase of underwriting services prior to bond issuance, *Carilion Clinic, Id.* at 327-28;

c) Purchase of auction services from the member, *UBS Financial Services, Inc. v. W. Va. Univ. Hosp, Inc.*, 660 F. 3d 643, 648-49 (2nd Cir. 2011);

d) Merely receiving "financial advice" without purchasing an investment or brokerage related service directly from the member, does not establish a customer. *Fleet Boston Robertson Stephens, Inc. v. Innoxex, Inc.*, 364 F. 3d 770, 773 (8th Cir. 2001);

e) The purchase of an underwritten security issued by a member firm through a third party, does not create a customer relationship. *Morgan Keegan*, 706 F. 3d. at 564, 567.

The SOC is devoid of any allegations relating to Claimants establishment of a customer account with Spire the direct or indirect purchase of anything from Spire at any time, or any other business connection to Spire. Additionally, these Claimants had no personal contact with Spire regarding CWM or the Fund. No payments of any kind were delivered by Claimants to Spire, and no distributions of any kind were received by Claimants from Spire, or even Spire's Custodian. There are no allegations that Churchville ever stated that he was acting on behalf of Spire. Such statement, even if made, was contradicted by the documents that Claimants received, reviewed and executed concerning CWM and the Fund. Claimants could not have reasonably believed that they were purchasing any security (or an exempt private placement) from Spire based on the documents provided by CWM or the Fund. In fact, Claimants knew or

should have known that CWM was an SEC registered investment adviser, unaffiliated with Spire and not a FINRA member. Claimants were, in reality, exclusively customers of CWM. Spire had no knowledge of Claimants investments through CWM, was never contacted about the CWM offering of the Funds, and no ability to monitor CWM client business.

Importantly, Claimants made their investment decisions independently, and without having entered into a customer agreement with Spire. Their business activity was exclusively with CWM, not Spire. There is only one conclusion from these indisputable facts: Claimants have no "customer" status. There is no question that Claimants do not have an enforceable agreement to arbitrate any dispute with Spire. Claimants allegations in the SOC do not relate to activity in a securities brokerage account that they maintained with Spire.

2. SOC Does Not Allege That Customer Relationship Existed

Courts have determined that FINRA intended that its members be required to arbitrate disputes with its customers (emphasis added) comprising a full array of parties with whom the member has business dealings. (emphasis added). (See, *Wachovia*, at 3).[3] The SOC does not allege or provide any evidence that Claimants established customer relationships with Spire by executing the required account agreements and affecting transactions through Spire. No copy of the executed account agreement has been offered as an exhibit, because none exist. The CWM offering materials do not mention or refer to Spire anywhere. Claimants have failed to comply with Rule 12206 or to meet the judicial standards to be considered a "customer" eligible to arbitrate against a member. Under FINRA's Code Rule 12206, Claimants were never "customers" of Spire. Additionally, without achieving "customer" status, FINRA is devoid of

[3] The cited cases involve a unique context involving auction rate securities and a member firm's underwriting dealings with an issuer. Further, FINRA created Special Arbitration Procedures for ARS investors.

jurisdiction and cannot proceed administratively with this matter. See FINRA Rule 12213(a)(1), Forum Selection.

Spire has not opted out of the availability of the judicial system for alleged disputes with individuals who are complete strangers to the firm. Spire has accepted arbitration of disputes with its own customers who have entered into a written arbitration agreement with Spire and have actual business dealings with Spire. A customer of Goldman Sachs, Wells Fargo, UBS, Bank of America Merrill Lynch, who has executed a written agreement with one of those firms, does not also magically became a Spire customer, capable of asserting claims and seeking damages from Spire for investment advisory transactions that the customer effected with one of these firms. Moreover, upon information and belief, CWM was not a FINRA member firm, and therefore even Claimants claims against CWM and Churchville would not be eligible for submission to FINRA under the Code.

FINRA must recognize the distinction made by its Arbitration Code between "customers" of a member, and "strangers". Recognition must also be made of the requirement for there to have been direct business activities between a member firm and its customers. There was no customer/relationship or direct business activity between Spire and these Claimants. FINRA must recognize that Courts throughout the country have determined that the lack of a customer relationship and failure to have had any direct business activity with the member is dispositive of Rule 12206 issues. Even tangential links between an investor and a member firm does not change the business activity requirement that the member firm provide investment or brokerage services. See, *Sun Trust Banks, Inc. v. Turnberry Capital Management, LP* No. 13 Civ. 879 (NRB), 945 F. Supp. 2d 415 (2013), where the court held that Turnberry was not a customer of Sun Trust even though Sun Trust prepared the documents for purchase that was effected through

another member firm. Accord, *UBS Securities, LLC v. Voegli*, 684 F. Supp. 2nd 351, 356 (S.D.N.Y. 2010); *Berthel Fisher & Co. Financial Services, Inc. v. Larmon*, 2011 WL 3294682 (D. Minu. Aug 1, 2011), aff'd 695 F. 3d 749 (8th Cir. 2012).

Based on the instant SOC, there are no allegations that Spire had any role or involvement in the production of the offering documents. The documents themselves prevent any such assumption from being made.

This SOC requires FINRA to exceed its jurisdictional limits under the Code. Basic principles of contract law are to be applied, and those principles preserve that this dispute falls outside the permissible scope of FINRA arbitration. See, *Goldman Sachs & Co. v. Golden Empire Schools Financing Authority*, 764 F. 3d 210, 214-216 (2nd Cir. 2014).

C. U.S. DISTRICT COURT HAS APPOINTED A RECEIVER OVER CWM/ CHURCHVILLE ASSETS AND ISSUED A "STAY" ORDER ENJOINING ALL ANCILLARY LEGAL PROCEEDINGS, INCLUDING ARBITRATION PROCEEDINGS

Claimant's actions involving the instant FINRA arbitration proceeding violates the terms of a U.S. District Court Order of Rhode Island ("Court") Staying the ability of third party's from seeking "self-help". (See Exhibit 8). A FINRA Panel and FINRA's Director of Arbitration would be in violation of the specific provisions of the Court's Stay Order if it accepts jurisdiction of this claim and denies Spire's Motion to Dismiss. Further, Claimants and their counsels have violated FINRA Rules, provisions of the FAA and the Stay Order by asserting this claim knowing that the Stay was issued and that there is no agreement to arbitrate.

After the filing of the SEC Complaint on May 7, 2015, the Court granted an injunction and freeze order requested by the SEC over Churchville and CWM assets at the following financial institutions: Bank of America, Citizens Bank, Commerce Bank and Fidelity. All CWM

fund assets were deposited into an escrow account, placed under the control of a Receiver appointed by the SEC, Stephen Del Sesto, Esq. ("Receiver") on July 30 2015.

The Court's Order of July 30, 2015, included an injunction, enjoining third party's from "interference" with the Receiver's marshalling of assets. The issued injunction prohibits the use of "self-help", or enforcing a lien upon Receivership property. This injunction prohibits judgments, assessments, or orders against any Receivership property, or interfering in any manner with the exclusive jurisdiction of the Court over the Receivership Estate.

The Court's Order also "stays all legal proceedings of any nature, including... arbitration proceedings, or other actions of any nature... defined as Ancillary Proceedings." All such Ancillary Proceedings are stayed and enjoined from commencing or continuing any legal proceedings.[4] Claimant's SOC and filing with FINRA are in violation of the Court's Stay and subject to an injunction preventing the start or continuation of any ancillary proceeding, such as this claim.

V. AFFIRMATIVE DEFENSES

FIRST AFFIMATIVE DEFENSE

1. The Claim fails to set forth any valid claims against Spire upon which relief can be granted by a FINRA Dispute Resolution Panel of Arbitrators. The Claim is devoid of factual details identifying the execution of a written customer agreement containing arbitration provision between Claimants and Spire. Further, Claimants were not "customers" of the member firm

[4] During November 2015, the Receiver issued a written notice to all investors, together with a copy of the July 30, 2015 Court Order and stay of proceedings. A March 1, 2016 Receiver notice directed all investors to preserve all records regarding Churchville and CWM. Upon information and belief, Claimants received these notices.

Spire and conducted no business activity with Spire. Accordingly, FINRA Rules, the FAA and judicial precedent deny the jurisdiction basis of the claims against Spire.

SECOND AFFIRMATIVE DEFENSE

2. Any damages allegedly sustained by Claimants resulted from their culpable conduct, fault and/or lack of diligence in connection with Claimants investment advisory accounts with a non-FINRA member, CWM, and Claimant's direct dealing with Churchville.

THIRD AFFIRMATIVE DEFENSE

3. All claims asserted by Claimants against Spire are barred by FINRA Rules 12200, 12206, and Doctrines of Ratification, Laches, Estoppel, Waiver and/or Unclean Hands.

FOURTH AFFIRMATIVE DEFENSE

4. All claims asserted by Claimants against Spire are stayed pursuant to a valid Order of the U.S. District Court, state of Rhode Island.

FIFTH AFFIMATIVE DEFENSE

5. The Claim fails to set forth any valid claims against Spire upon which relief can be granted. The Claim is devoid of factual details involving transactions occurring at Spire. The Claim is devoid of factual details involving alleged failures to supervise.

SIXTH AFFIRMATIVE DEFENSE

6. Any damages allegedly sustained by Claimants resulted from the culpable conduct, fault and/or lack of diligence of the Claimants, with no act or omission on the part of Spire contributing thereto.

SEVENTH AFFIRMATIVE DEFENSE

7. The claims alleged against Spire are defective in that the Claimants failed to mitigate their alleged damages for transactions occurring while Claimants' accounts were maintained at Spire.

EIGHTH AFFIRMATIVE DEFENSE

8. To the extent that the Statement of Claim makes any allegations against Spire involving a breach of fiduciary duty, such claims are barred and may not proceed under applicable law and FINRA Rules. The Claimants have not alleged or provided any documents establishing that either of them ever established an account or accounts at Spire.

VI. CONCLUSIONS

WHEREFORE, based on the foregoing, Spire requests the following relief:

1. The Panel grant the Motion to Dismiss with prejudice that has been supported by this Answer;
2. FINRA issue a ruling that: it does not have jurisdiction over this ineligible claim; Claimants were never customers of Spire; Claimants did not execute a customer agreement with Spire containing an arbitration agreement; Claimants did not engage in any business activities with, by or through Spire;
3. FINRA has no jurisdiction of Claimant's claims under its Rules, the FAA, a District Court Stay Order, and judicial precedent;
4. No compensatory damages, interest, attorney's fees, expert fees, forum fees, punitive damages, or any other relief is available in favor of Claimants and against Spire;

5. Spire cannot be held responsible for the acts or omissions of an unaffiliated SEC registered investment adviser and its principal officer who was also its founder, CCO and sole owner;
6. The SOC is devoid of factual details which are essential to assure that Claimant's claims are eligible for submission to arbitration and not outside the six year period of eligibility pursuant to Rule 12206, Time Limits;
7. Spire is entitled to be awarded its reasonable attorneys fees and costs in defending against this frivolous and bad faith claim.
8. Claimants are not entitled to any other relief from the Panel that would involve Spire;
9. All of Claimant's claims against Spire must be dismissed with prejudice in all respects.

Respectfully submitted,

PAUL A. LIEBERMAN

EATON & VAN WINKLE LLP
3 Park Avenue, 16th Floor
New York, New York 10016
Tel.: 212.779.9910
Fax: 212.779.9928
plieberman@evw.com
Attorneys for Respondent

Dated: July 14, 2016

Table of Exhibits

Exhibit	Description
1.	CWM Form Reg. D
2.	CWM Form ADV with 2A Disclosure Brochures for CWM and Churchville.
3.	CWM Investment Management Agreement
4.	CWM Healthcare Receivables Investment Summary
5.	CWM Investment Fund L.P. Agreement
6.	CWM Subscription Agreement
7.	Investor Investment Company Act Representations
8.	Stay Order

EXHIBIT 4

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. PATRICK CHURCHVILLE, CLEARPATH WEALTH MANAGEMENT, LLC, Defendants, and CLEARPATH MULTI-STRATEGY FUND I, L.P., CLEARPATH MULTI-STRATEGY FUND, II, L.P., CLEARPATH MULTI-STRATEGY FUND, III, L.P., HCR VALUE FUND, L.P. Relief Defendants, and SPIRE SECURITIES, LLC, Interested Party.	Case No. 15-cv-00191-S-LDA **DECLARATION OF DAVID L. BLISK**

I, David L. Blisk, hereby depose and state as follows:

1. I am the founder of Spire Securities, LLC ("Spire") and am its President.

2. I submit this declaration in support of Spire's motion to enforce the stay order, for a temporary restraining order, and for injunctive relief.

3. I have personal knowledge of all facts stated herein.

4. Spire is a broker-dealer firm with offices in Reston, Virginia and McLean, Virginia.

5. Spire is registered with the Securities and Exchange Commission as a broker-dealer.

6. Spire is also registered as a member firm with the Financial Industry Regulatory Authority ("FINRA").

7. The individuals that initiated the first FINRA arbitration against Spire on April 4, 2016, Herbert Pfeffer and Myrna Barzelatto were never Spire customers and did not execute Spire's account establishment agreements, which contain an arbitration provision.

8. Some of the individuals that initiated the second, separate FINRA arbitration against Spire, David Blisk, and Suzanne McKeown on May 24, 2017, were Spire customers, however none of those individuals purchased investments in Patrick Churchville's ClearPath funds through Spire.

9. Spire never sold or solicited the purchase of Churchville's ClearPath funds.

10. Patrick Churchville was associated with Spire Securities as a Series 7 licensed, registered representative from August 2009 to February 2011.

11. Patrick Churchville was never associated with Spire as an investment adviser or investment adviser representative.

12. ClearPath Wealth Management, LLC ("ClearPath"), an SEC-registered investment adviser, was never affiliated with Spire.

13. Spire had no involvement in the management of ClearPath.

14. Spire never marketed to any customer any of ClearPath's services or the several funds identified in the SEC proceedings against Churchville and ClearPath.

15. I previously authorized Spire's attorneys to seek a temporary restraining order and injunctive relief in New York courts based on the claimants' FINRA jurisdictional nexus to New

York, after Spire learned that these claimants filed proofs of claim with the Receiver in this action.

16. The amount of total claimed damages in two pending FINRA arbitrations substantially exceeds the current net capital of Spire.

17. Defending against these improper FINRA arbitrations represents a serious threat to Spire's continued viability and to the reputations of its officers, directors, employees, associated registered representatives.

18. Spire estimates that its legal costs to defend the separate FINRA arbitration will be a minimum of $300,000.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 2017.

/s/ David L. Blisk
David L. Blisk

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. PATRICK CHURCHVILLE, CLEARPATH WEALTH MANAGEMENT, LLC, Defendants, and CLEARPATH MULTI-STRATEGY FUND I, L.P., CLEARPATH MULTI-STRATEGY FUND, II, L.P., CLEARPATH MULTI-STRATEGY FUND, III, L.P., HCR VALUE FUND, L.P. Relief Defendants, and SPIRE SECURITIES, LLC, Interested Party.	Case No. 15-cv-00191-S-LDA **DECLARATION OF PAUL A. LIEBERMAN**

I, PAUL A LIEBERMAN, hereby declare and state as follows:

1. I am an attorney licensed to practice in the District of Columbia, and States of New York and New Jersey. I am a partner of the New York law firm, Eaton & Van Winkle LLP. I have submitted a Motion for Admission Pro Hac Vice through local counsel Andrew S. Tugan, of the firm Hinkley, Allen & Snyder, LLP.

2. I represent Spire Securities, LLC ("Spire"), an SEC-registered broker-dealer and FINRA member-firm, the movant herein in the defense of the two FINRA Dispute Resolution arbitration claims asserted by the individuals identified in the Memorandum of Law. The first arbitration claim was filed with FINRA on April 6, 2016, by Claimants Myrna

Barzelatto ("Barzelatto"), a trust account controlled by Ms. Barzelatto, and Herbert Pfeffer ("Pfeffer").

3. On July 15, 2016, I submitted an Answer to the first arbitration and separately filed a Motion to Dismiss on July 18, 2016, in compliance with FINRA procedural rules.

4. Neither Claimant was at any time a customer of Spire, and neither of them executed a Spire standard account agreement which contained an arbitration provision pursuant to securities industry practices and the Federal Arbitration Act.

5. On November 29, 2016, the FINRA arbitration panel denied Spire's Motion to Dismiss.

6. On December 3, 2016, Spire filed a Complaint in the U.S. District Court for the Southern District of New York seeking injunctive relief and requesting that the court enforce the "stay" that had been entered in the SEC proceeding in the U.S. District Court of Rhode Island.

7. On December 13, 2016, the New York court dismissed Spire's Complaint without prejudice, primarily on jurisdictional grounds involving the Stay Order.

8. Spire was forced to participate in discovery pursuant to FINRA rules, and did so "under protest." Claimants produced during discovery a copy of Barzelatto's filed Proof of Claim with the Received on January 13, 2017. I subsequently contacted the Receiver's law office and spoke with an attorney who confirmed that Pfeffer had also submitted a Proof of Claim.

9. On May 24, 2017, a representative of my client advised me that it received from FINRA a copy of the second Statement of Claim ("Second Claim"). Pursuant to FINRA rules, Spire's Answer is due on July 15, 2017.

10. The same law firm represents both sets of Claimants.

11. I have not been able to determine how many of the Claimants in the Second Claim have filed Proofs of Claim with the Receiver.

12. The amount of total claimed damages in both of these proceedings substantially exceeds the current net capital of Spire Securities. The defense of these improper FINRA arbitrations constitutes an existential threat to the continued viability of the Firm, its officers, directors, employees, associated registered representatives and their clients who are members of the investing public. The legal defense costs in both of these matters are estimated at a minimum of $300,000.

13. The issuance of injunctive relief is necessary in order to prevent a miscarriage of justice by these Claimants who have violated the judicial Stay Order.

14. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: New York, New York
June 13, 2017

Paul A. Lieberman, Esq.

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPIRE SECURITIES LLC,

Plaintiff,

-against-

FINRA DISPUTE RESOLUTION, RICHARD BERRY, SANDRA PARKER, MYRNA BARZELATTO, HERBERT PFEFFER, ADAM GANA, DANIEL GWERTZMAN,

Defendants.

16-CV-9507 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS the parties attended an order to show cause hearing on December 13, 2016 to address Plaintiff's motion for a temporary restraining order and preliminary injunction;

WHEREAS Plaintiff voluntarily dismissed its claims against Adam Gana and Daniel Gwertzman;

WHEREAS the Court dismissed Plaintiff's claims against FINRA Dispute Resolution, Richard Berry, and Sandra Parker;

WHEREAS the Court denied Plaintiff's motion for a temporary restraining order and preliminary injunction against the remaining Defendants; and

WHEREAS during the hearing, Plaintiff voluntarily dismissed its complaint against the remaining Defendants;

IT IS HEREBY ORDERED that Plaintiff's complaint is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). The Clerk of Court is respectfully directed to terminate docket entry 8 and to close the case.

SO ORDERED.

Date: December 13, 2016
New York, New York

VALERIE CAPRONI
United States District Judge

EXHIBIT 7

MYRNA BARZELATTO

January 2, 2017

Stephen F. Del Sesto, Esq.
Donoghue Barret and Singal, PC
One Cedar Street Suite 300
Providence, RI 02903

Dear Mr. Del Sesto:

Enclosed please find Proof of Claim documentation for SEC proceedings against Clearpath Wealth Management and Patrick Churchville.

Please note the original purchases were made in the name of Myrna Wendlinger Family Limited Partnership, for which I was the General Partner and Limited Partner. Later I dissolved the Family Limited Partnership and all assets were transferred and held directly in my name, Myrna Barzelatto. I will provide documentation regarding the Family Limited Partnership if necessary. The documents enclosed substantiate the change in name of the account for the investments made with Clearpath Wealth Management.

Please notify me for any additional information.

Thank you for your efforts.

Very truly yours,

Myrna Barzelatto

300 MARTINE AVE. WHITE PLAINS, NY 10601
VOICE: 914. 615-9458 • CELL: 914.403-7434

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. PATRICK CHURCHVILLE, CLEARPATH WEALTH MANAGEMENT, LLC, Defendants, and CLEARPATH MULTI-STRATEGY FUND I, L.P., CLEARPATH MULTI-STRATEGY FUND II, L.P., CLEARPATH MULTI-STRATEGY FUND III, L.P., HCR VALUE FUND, L.P., Relief Defendants.	)	Case No. 15-CV-00191-S-LDA

NOTICE OF CLAIMS BAR DATE AND PROCEDURES FOR SUBMITTING PROOFS OF CLAIM

TO: ALL CLAIMANTS OF PATRICK CHURCHVILLE AND THE CLEARPATH WEALTH MANAGEMENT, LLC RECEIVERSHIP ENTITIES

PLEASE TAKE NOTICE OF THE FOLLOWING:

On September 23, 2016, the United States District Court for the District of Rhode Island (the "District Court") entered an Order in the above-captioned case (the "Claims Bar Date Order") establishing **January 21, 2017 at 5:00 p.m. (Eastern Standard Time)** as the deadline (the "Bar Date") for certain claimants to submit a completed and signed Creditor Proof of Claim Form and/or an Investor Proof of Claim Form under penalty of perjury, together with supporting documentation, against the following entities: Patrick E. Churchville, ClearPath Wealth Management, LLC, ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., and ClearPath Multi-Strategy Fund III, L.P. (collectively, the "Receivership Entities").

1. **WHAT IS THE BAR DATE?**

The Bar Date is the date by which the individuals and entities described below must submit a Creditor Proof of Claim Form and/or an Investor Proof of Claim Form with the Receiver in the

Holders of claims that arose after July 30, 2015 including "Administrative Claimants" that provided goods or services to the Receivership Entities or the Receiver at the request of the Receiver after the Receiver was appointed on July 30, 2015 are not required to submit a Proof of Claim Form prior to the Bar Date.

This notice is being sent to many persons and entities that have had some relationship or have done business with the Receivership Entities. The fact that you have received this notice does not necessarily mean that you are a Claimant, that you have a valid claim, or that the District Court or the Receiver believes you have a claim against the Receivership Entities.

3. DO I NEED TO SUBMIT A CREDITOR PROOF OF CLAIM FORM AND/OR AN INVESTOR PROOF OF CLAIM FORM IF I HAVE PREVIOUSLY SUBMITTED EVIDENCE OF A CLAIM TO THE RECEIVER?

Yes. A Claimant that previously has submitted evidence of a Claim with the Receiver must submit a Creditor Proof of Claim Form and/or an Investor Proof of Claim Form evidencing such Claim in order to be entitled to receive a distribution from any of the Receivership Entities.

4. WHAT ARE THE CONSEQUENCES OF NOT SUBMITTING A CREDITOR PROOF OF CLAIM FORM AND/OR AN INVESTOR PROOF OF CLAIM FORM?

ANY CLAIMANT WHO IS REQUIRED TO SUBMIT A PROOF OF CLAIM FORM, BUT THAT FAILS TO DO SO IN A TIMELY MANNER, WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW FROM ASSERTING, IN ANY MANNER, SUCH CLAIM AGAINST THE RECEIVERSHIP ENTITIES AND THEIR RESPECTIVE PROPERTY OR ESTATES; WILL NOT BE PERMITTED TO OBJECT TO ANY DISTRIBUTION PLAN PROPOSED BY THE RECEIVER ON ACCOUNT OF SUCH CLAIM; WILL BE DENIED ANY DISTRIBUTIONS UNDER ANY DISTRIBUTION PLAN IMPLEMENTED BY THE RECEIVER ON ACCOUNT OF SUCH CLAIM; AND WILL NOT RECEIVE ANY FURTHER NOTICES ON ACCOUNT OF SUCH CLAIM. FURTHER, THE RECEIVERSHIP ENTITIES AND THEIR RESPECTIVE PROPERTY OR ESTATES WILL BE DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO SUCH CLAIM.

HOLDERS OF INVESTOR CLAIMS WHO HAVE RECEIVED ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, INCLUDING INCOME, INTEREST, REDEMPTIONS AND/OR RETURN OF CAPITAL, WHO FAIL TO FILE A TIMELY AND PROPERLY EXECUTED INVESTOR PROOF OF CLAIM SHALL BE SUBJECT TO THE TERMS OF THIS SECTION 4 INCLUDING HOLDERS OF SUCH INVESTOR CLAIMS WHO ARE HEREINAFTER SUBJECT TO SUIT BY THE RECEIVER FOR RECOVERY OF ANY DISTRIBUTIONS MADE TO SUCH INVESTOR BY ANY OF THE RECEIVERSHIP ENTITIES PRIOR TO THE COMMENCEMENT OF THIS RECEIVERSHIP.

documentation and records reflecting or regarding any withdrawals ever made by or payments received by the Claimant from any Receivership Entity or the Receiver; copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, or evidence of perfection of lien; and other documents evidencing the amount and basis of the Claim. DO NOT SEND ORIGINAL DOCUMENTS. If such supporting documentation is not available, please explain why in an addendum that is attached to your Proof of Claim Form.

Please do not submit the following types of materials with a Creditor Proof of Claim Form or Investor Proof of Claim Form unless requested by the Receiver: (1) marketing brochures and other marketing materials received from Receivership Entities; (2) routine or form correspondence received from Receivership Entities; (3) copies of pleadings on file in any case involving the Receiver or the Receivership Entities; and (4) other documents received from Receivership Entities that do not reflect Claimant specific information concerning the existence or value of a Claim.

8. REQUESTS FOR ADDITIONAL INFORMATION AND INTERVIEWS

If after receiving a Creditor Proof of Claim or Investor Proof of Claim, the Receiver determines that he needs additional information to review and process a Claim, the Receiver may contact the Claimant by telephone or email to request such additional information from the Claimant. A Claimant shall submit to an interview by the Receiver if the Receiver, in his discretion requests an interview to facilitate processing of the Claimant's Claim.

9. COOPERATION

The Court has directed all parties and Claimants to cooperate with the Receiver to the maximum extent possible to achieve swift resolution of disputes concerning Claims. **ALL CLAIMANTS SHOULD UNDERSTAND THAT RECOVERY WILL, IN ALL LIKELIHOOD, BE SIGNIFICANTLY LESS THAN THE VALUE OF ANY RESPECTIVE CLAIM.**

10. RESERVATION OF RIGHTS

The Receiver reserves the right to dispute, or assert offsets or defenses as to the nature, amount, liability, classification, or otherwise against, any amounts asserted in any Creditor Proof of Claim Form and/or Investor Proof of Claim Form. Nothing set forth in this notice or the Proof of Claim Form shall preclude the Receiver from objecting to any Proof of Claim Form, on any grounds.

Dated this 6th day of October, 2016.

BY ORDER OF THE HONORABLE WILLIAM E. SMITH
UNITED STATES DISTRICT COURT JUDGE

Receiver
Stephen F. Del Sesto, Esq., as and only as Court- Appointed Receiver

INVESTOR PROOF OF CLAIM IS TO BE FILED WITH RECEIVER – DO NOT FILE WITH COURT

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. PATRICK CHURCHVILLE, CLEARPATH WEALTH MANAGEMENT, LLC, Defendants, and CLEARPATH MULTI-STRATEGY FUND I, L.P., CLEARPATH MULTI-STRATEGY FUND II, L.P., CLEARPATH MULTI-STRATEGY FUND III, L.P., HCR VALUE FUND, L.P., Relief Defendants.	Case No. 15-CV-00191-S-LDA

INVESTOR PROOF OF CLAIM FORM
Please Type or Print in the Boxes Below
Do NOT use Red Ink, Pencil, or Staples

FOR RECEIVER'S USE ONLY
Investor Claim No.:_____
Date Received:__/__/_____

BAR DATE: JANUARY 21, 2017

PART I: TRANSFEREE IDENTIFICATION

Name of Individual (Last, First) or Entity
BARZELATTO, MYRNA

If Entity, Name (Last, First) of Individual Completing Form on behalf of Entity: For mly. Myrna Wendlinger Family Limited partnership — Title: General Partner.

Street Address: 300 Martine Ave. Apt. 5K

City	State	Zip Code
White Plains	NY	10601

Foreign Province	Foreign Postal Code	Foreign Country Name/Abbreviation

440905.1

Telephone Number (Primary)
914-403-7434

Telephone Number (Alternate)
914-615-9458

Email Address
mbarzel@aol.com.

PART II: INVESTOR CLAIM

Please list all contributions that you made to investment funds managed by Patrick Churchville and/or ClearPath Wealth Management LLC.

CONTRIBUTION NO. 1

Date of Contribution: May 5, 2011

Amount of Contribution: 30,000

Receivership Entity Contributed to (if known): Clearpath Wealth Management

Name of Fund Contributed to (if known): Clearpath Healthcare Receivables Investment Fund LP.

Other relevant details about Contribution:

CONTRIBUTION NO. 2

Date of Contribution: Oct. 12, 2011

Amount of Contribution: 25,000

Receivership Entity Contributed to (if known): Clearpath Wealth Management

Name of Fund Contributed to (if known): Clearpath Healthcare Receivables FUND LP

Other relevant details about Contribution:

CONTRIBUTION NO. 3

Date of Contribution: _____

Amount of Contribution: _____

Receivership Entity Contributed to (if known): _____

Name of Fund Contributed to (if known): _____

Other relevant details about Contribution: _____

_____

_____

CONTRIBUTION NO. 4

Date of Contribution: _____

Amount of Contribution: _____

Receivership Entity Contributed to (if known): _____

Name of Fund Contributed to (if known): _____

Other relevant details about Contribution: _____

_____

_____

Please list all distributions that you received from Patrick Churchville and/or ClearPath Wealth Management, LLC.

DISTRIBUTION NO. 1

Date of Distribution: 5/4/12

Amount of Distribution: $5,365.92

Receivership Entity from which Distribution came (if known): Clearpath Wealth Management

Name of Fund from which Distribution came (if known): Clearpath Multistrategy Fund

440905.1

Classification of Distribution (if known)[1]: Health Care Receivables

Other relevant details about Distribution: _____

DISTRIBUTION NO. 2

Date of Distribution: 6/1/11

Amount of Distribution: 1383

Receivership Entity from which Distribution came (if known): Clearpath Wealth Management

Name of Fund from which Distribution came (if known): Clearpath Multi-Strategy Fund.

Classification of Distribution (if known): _____

Other relevant details about Distribution: Health Care Receivables

DISTRIBUTION NO. 3

Date of Distribution: 10/3/12

Amount of Distribution: 1396

Receivership Entity from which Distribution came (if known): Clearpath Wealth Mgmnt

Name of Fund from which Distribution came (if known) Clearpath Multi-Strategy

Classification of Distribution (if known): _____

Other relevant details about Distribution: Health Care Receivables

[1] Please indicate whether the distribution was classified in particular manner. For example, the distribution may have been classified as a return of capital, interest payment on contribution or an advance on a future distribution. Please note, that the distribution may not have been classified in any particular manner, in which instance, you should simply mark this line "not applicable".

440905.1

DISTRIBUTION NO. 4

Date of Distribution: _____

Amount of Distribution: _____

Receivership Entity from which Distribution came (if known): _____

Name of Fund from which Distribution came (if known): _____

Classification of Distribution (if known): _____

Other relevant details about Distribution: _____

_____

_____

(IF NEEDED, PLEASE USE ADDITIONAL SHEETS ATTACHED BELOW)

Investor Claim Status

__ Check if you are aware that anyone else has filed an Investor Proof of Claim Form relating to your Claim. (Attach statement giving particulars).

__ Check if the address entered on this form differs from the address on the envelope sent to you by the Receiver (if you received this form via mail).

Check here if this Investor Proof of Claim:

__ Amends a previously filed Investor Proof of Claim Form, dated: _____

__ Replaces a previously filed Investor Proof of Claim Form, dated: _____

__ Supplements a previously filed Investor Proof of Claim Form, dated: _____

YOU MUST READ AND SIGN THE RELEASE AND THE CERTIFICATE OF TRUTHFULNESS. FAILURE TO SIGN THE RELEASE AND THE CERTIFICATE OF TRUTHFULNESS MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.

SUPPORTING DOCUMENTATION: Please attach to your Investor Proof of Claim Form only documents (including copies of emails and other electronic data) that support your Investor Proof of Claim Form. Such documentation may include, but is not limited to: copies of personal

checks, cashier's checks, wire transfer advices; account statements and other documents evidencing the investment or payment of funds; any written contract or agreement made in connection with any investment in or with any Receivership Entity; a chronological accounting of all money received by the Claimant from any Receivership Entity or the Receiver, whether such payments are denominated as the return of principal, interest, commissions, finder's fees, sponsor payments, or otherwise; copies of all documentation and records reflecting or regarding any withdrawals ever made by or payments received by the Claimant from any Receivership Entity or the Receiver; copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, or evidence of perfection of lien; and other documents evidencing the amount and basis of the Claim. DO NOT SEND ORIGINAL DOCUMENTS. If such documentation is not available, please attach an explanation of why the documents are not available.

Please do not submit the following type of materials with your Investor Proof of Claim Form unless requested by the Receiver: (1) marketing brochures and other marketing materials received from the Receivership Entity; (2) routine or form correspondence received from the Receivership Entities; (3) copies of pleadings on file in any case involving the Receiver or the Receivership Entities; and (4) other documents received from Receivership Entities that do not reflect Claimant specific information concerning the existence or value of a Claim.

VERIFICATION OF CLAIMS: All Investor Proof of Claim Forms submitted are subject to verification by the Receiver and approval by the Court. It is important to provide complete and accurate information to facilitate this effort. Claimants must be willing to submit to an interview and may be asked to supply additional information to complete the claims process.

CONSENT TO JURISDICTION: By submitting your Investor Proof of Claim Form, you consent to the jurisdiction of the United Stated District Court for the District of Rhode Island for all purposes and agree to be bound by its decisions, including, without limitation, a determination as to the validity and amount of any Claims asserted against the Receivership Entities. In submitting your Investor Proof of Claim Form, you agree to be bound by the actions of the United States District Court for the District of Rhode Island even if that means your Claim is limited or denied.

CERTIFICATE OF TRUTHFULNESS: Pursuant to 28 U.S.C § 1746, I, the undersigned, hereby certify, **under penalty of perjury under the laws of the United States of America**, that all of the information provided in this Investor Proof of Claim Form, including all Schedules and attachments to the Investor Proof of Claim, is true and correct and that the undersigned is authorized to make this Claim.

Myrna Barzelatto — January 15, 2017

(Sign your name here) (Date)

MYRNA BARZELATTO

(Type or print your name here)

440905.1

Investor, Meyna Barzelatto
(Capacity of person(s) signing)

Submit your Investor Proof of Claim Form and supporting documentation to the Receiver: (1) by mail to: Stephen F. Del Sesto, Esq., Court-appointed Receiver, Donoghue Barrett & Singal, P.C., One Cedar Street, Suite 300, Providence, Rhode Island 02903; (2) by courier service, overnight service or hand delivery addressed to: Stephen F. Del Sesto, Esq., Court-appointed Receiver, Donoghue Barrett & Singal, P.C., One Cedar Street, Suite 300, Providence, Rhode Island 02903; or, (3) by electronic mail, as an attachment in portable document format (.pdf), to clearpathreceiver@dbslawfirm.com.

Reminder Checklist:
1. Please sign the above declaration.
2. Remember to attach supporting documentation, if available.
3. Keep a copy of your claim form and all supporting documentation for your records.
4. If your contact information changes, please send the Receiver updated information.

ADDITIONAL CONTRIBUTION DISCLOSURE

CONTRIBUTION NO. __

Date of Contribution: _____

Amount of Contribution: _____

Receivership Entity Contributed to (if known): _____

Name of Fund Contributed to (if known): _____

Other relevant details about Contribution: _____

_____

_____

CONTRIBUTION NO. __

Date of Contribution: _____

Amount of Contribution: _____

Receivership Entity Contributed to (if known): _____

Name of Fund Contributed to (if known): _____

Other relevant details about Contribution: _____

_____

_____

ADDITIONAL DISTRIBUTION DISCLOSURE

DISTRIBUTION NO. __

Date of Distribution: _____

Amount of Distribution: _____

Receivership Entity from which Distribution came (if known): _____

Name of Fund from which Distribution came (if known): _____

Classification of Distribution (if known): _____

Other relevant details about Distribution: _____

_____

_____

DISTRIBUTION NO. __

Date of Distribution: _____

Amount of Distribution: _____

Receivership Entity from which Distribution came (if known): _____

Name of Fund from which Distribution came (if known): _____

Classification of Distribution (if known): _____

Other relevant details about Distribution: _____

_____

_____

MILLENNIUM TRUST COMPANY

2001 Spring Road, Suite 700 Oak Brook, Illinois 60523 630.368.5600

For the Account of:
BARZELATTO TOD , MYRNA

Account #:

Account Type: Individual - Custody

Transaction History (Continued)

4/ 1/2012 - 6/30/2012

Date	Description	Cash Amount	Cost Basis	Realized Gain/Loss
TOTAL SWEEP ACTIVITY		$2,572.88	($2,572.88)	$0.00

* Transactions settled after statement date.

0741-01-b1-1001456-0004-0007636

Millennium Trust Company

820 Jorie Blvd. Suite 420
Oak Brook, IL 60523
866.338.4552 Telephone
630 472 5969 Fax

www.mtrustcompany.com/fidelity

PRIVATE PLACEMENT INVESTMENT DIRECTION

A ACCOUNT INFORMATION

Account Name: MYRNA WENDLINGER FAM PARTNERSHIP

Millennium Account No: Daytime Phone No.:

E-mail Address:

B INVESTMENT INFORMATION

Name of Investment to be Purchased: ClearPath Healthcare Receivables Investments Fund LP

Series or Class:

Investment Amt: $ 30,000.00 or ☐ All available funds (See Millennium Investment Requirements on Page 3.)

☑ Initial Purchase ☐ Additional Purchase

Type of Investment:

☐ Limited Liability Company ☑ Limited Partnership ☐ Private Stock

☐ Other (specify):

Please send any applicable investment documentation to the Investment Issuer/Sponsor by:

☑ U.S. Mail

☐ Overnight Delivery - I hereby authorize the applicable Overnight Delivery fee be charged to my account for this service request unless I designate a third party below.

☐ Third Party - Charge Carrier: Account No.:

Name on Carrier's Account:

C INVESTMENT ISSUER/SPONSOR CONTACT DETAILS

Contact Name: Maria Valletta Phone No.: 401-455-3794

E-mail Address: mvalletta@clearpathwealth.com Fax No.: 866-422-3245

D ACCOUNT OWNER ACKNOWLEDGEMENTS

CAREFULLY READ THE FOLLOWING INFORMATION BEFORE SIGNING.

The Account Owner must complete answers to any and all suitability questions posed by the Investment Sponsor/Issuer and review the subscription agreement and other applicable investment documents before Millennium Trust Company (Millennium) will process this investment direction. The Account Owner should execute and sign all documents related to the investment and then submit the documents to Millennium to sign and execute as the Custodian. Pursuant to this Investment Direction, the purchaser will be Millennium Trust Company, LLC Custodian FBO (Account Owner) (see Millennium Investment Requirements on Page 3).

The Account Owner directs Millennium to execute the purchase of the above-named investment in the Account Owner's self-directed custodial account (Account), and in doing so hereby makes the following representations:

Please continue to page two to complete this form.

D ACCOUNT OWNER ACKNOWLEDGEMENTS CONTINUED

By executing this direction below you acknowledge, represent and agree to the following:

1. *Investment Documentation, Representations, and Suitability Requirements.* You have read and understand all offering information pertaining to the purchase of the investment. You have read and reviewed each representation made within the subscription agreement and/or related documents, which you have filled out as appropriate for the purchase of the investment referenced above, and you specifically represent and warrant that you meet all the suitability requirements applicable to the purchase of this investment. You will indemnify and hold Millennium harmless from any damages or losses arising from any such representations you have made or authorized including those regarding your personal financial information and/or your retirement plan(s) financial information which may be considered a part of the subscription agreement which you are requesting that Millennium now sign as custodian on behalf of your Account. You hereby authorize Millennium to work with the investment issuer/sponsor of the above referenced investment in order to complete the transaction.
2. *Investment Terms and Risks.* You have reviewed and approved all of the terms of the investment. You have evaluated the risks involved with this particular investment and conducted a complete review of the underlying investments or operations, as well as of the principals involved to the extent you felt appropriate. You acknowledge that, in general, private placements (i) are considered to entail more risk than registered securities, (ii) have little (and sometimes no) liquidity when compared to publicly traded investments, and (iii) can present difficulties in obtaining timely and accurate valuations and that the accuracy of such valuations are not Millennium's responsibility.
3. *No Advice; General Indemnification.* You understand that Millennium has not evaluated this investment and you acknowledge you have not received any investment advice from Millennium. You acknowledge that any documents acquired by Millennium on the above offering was solely to determine that the investment is administratively feasible for Millennium under the above-referenced account. Millennium reserves the right not to accept custody of any given investment. You are not expecting or relying on Millennium to protect you or your account from fraud, poor investment performance or an investment that is otherwise not suitable for you or your Account.
4. *Retirement and Health Savings Accounts Only; No Prohibited Transactions.* You understand that certain transactions are prohibited under Internal Revenue Code Section 4975 and ERISA. You further understand that the determination of whether the transaction directed hereby is a prohibited transaction or "party in interest" transaction depends on the facts and circumstances surrounding the purchase. You warrant and represent that the offering entity or any affiliate thereof is neither a "disqualified person" as defined in Section 4975(e)(2) of the Internal Revenue Code, that you have consulted with such advisors and attorneys as you deem necessary and appropriate, and have determined among other things, that this investment does not constitute a prohibited transaction as defined in Internal Revenue Code Section 4975, nor a "party in interest" transaction (as defined in Section 3(14) of ERISA). This determination specifically covered, if applicable, the situation where you, a member of your immediate family or your investment advisor or broker is a sponsor/principal/ shareholder/manager/investment advisor of the investment, and you have been assured and concluded that the transaction based on the specific circumstances is not a prohibited transaction.
5. *Retirement and Health Savings Accounts Only; Unrelated Business Taxable Income (UBTI).* Should the above referenced investment produce income subject to UBTI, you understand that you must direct Millennium to file a Form 990-T tax return and authorize your Account to pay the tax on such income. You hereby indemnify and hold Millennium harmless for production of the tax form and the payment of said tax, or for any damages if you fail to direct the appropriate payment or fail to have the appropriate information/direction to Millennium.
6. *Ownership of Investment.* The registered owner of the investment is required to be Millennium Trust Company, LLC Custodian FBO Account Owner (see Millennium Investment Requirements). To ensure that the investment documentation properly reflects your Account as the registered owner, you authorize and direct Millennium to execute all necessary investment documentation as Custodian of your Account and to make any necessary changes and corrections to any investment documents you may have completed and/or executed. To the extent necessary, this authorization shall be considered and function as a limited power of attorney in favor of Millennium. You will not request or accept payments of income or other distributions directly from the investment issuer/sponsor and will not make contributions to the investment other than through your Account. The restrictions you have agreed to in the preceding sentence are required for a health savings account and an IRA or other retirement account due to the nature of those accounts including tax and prohibited transaction issues. While other custody accounts may not have these issues, and you are free to invest other funds in your chosen investment outside of your custody account, Millennium has requested that you adhere to them in order to allow Millennium to properly perform its recordkeeping and other custodial duties as to the funds placed in your Account.
7. *Indemnification.* You agree to indemnify and hold Millennium harmless from any claim and from any liability for any loss, damage, injury or expense which may occur as a result of its carrying out of this Investment Direction or by reason of holding this investment in your Account. In addition, you have read all Millennium documents including the Custodial Agreement and Disclosure Statements.
8. *Ongoing Representations.* You agree that you will immediately notify Millennium in the event of any of the foregoing representations are no longer true.
9. *Investment Amount. You agree that the* actual dollar amount invested may be reduced by transaction fees, past due account fees, or any account cash balance requirement. See applicable fee schedule for transaction fees.
10. *Further Investments.* If you direct or if you have authorized your investment advisor to direct additional investments into the investment being purchased pursuant to this Investment Direction, you represent, confirm and agree that you will have taken all actions necessary to determine that all the representations, warranties, statements, undertakings and agreements contained in this Direction remain true, correct and equally apply to any future purchases of the investment.

Please continue to page three to complete this form.

D ACCOUNT OWNER ACKNOWLEDGEMENTS CONTINUED

MILLENNIUM INVESTMENT REQUIREMENTS

The investment must be registered in the name of Millennium Trust Company, LLC, Custodian FBO Account Owner (Insert Account Owner's Name), Account Number (Insert Millennium Account Number). Taxable accounts which will use the Account Owner' Social Security Number or Tax ID; IRAs, other retirement accounts and Health Savings accounts will use Millennium's Tax ID # 36 – 4400066.

E ACCOUNT OWNER'S SIGNATURES

The undersigned hereby agrees to the above direction, terms, and requirements and confirms the representations, in paragraphs (1) through (10) above.

Myrna Barzelatto
Printed Name

Myrna Barzelatto
Signature of Account Owner/Authorized Signer

5/5/11
Date

Myrna BARZELATTO
Printed Name

Signature of Additional Authorized Signer *(if required)*

Date

CLEARPATH HEALTHCARE RECEIVABLES FUND, L.P.

AGREEMENT FOR PURCHASE OF ADDITIONAL PARTNERSHIP INTERESTS

This Agreement is to be used only by existing Limited Partners of ClearPath Healthcare Receivables Fund, L.P. (the "Partnership") purchasing additional limited partnership interests of the Partnership (the "Interests") in the same name. It may not be used by new Limited Partners.

The undersigned, Myrna Wendlinger Fam Partnership ("Limited Partner"), and the Partnership, hereby agree as follows:

Purchase Date and Amount - The Limited Partner desires to purchase additional Interests on, May 6, 2011 (the "Purchase Date") and in the amount as set forth below in accordance with the terms of the Limited Partnership Agreement of the Partnership, as amended from time to time (the "Partnership Agreement"). The Limited Partner is entering into this Agreement relying solely on the facts and terms set forth in this Agreement, the Confidential Private Offering Memorandum of the Partnership (the "Memorandum") dated May 2008, as amended from time to time, the Partnership Agreement and the Subscription Agreement previously executed by the Limited Partner and accepted by the Partnership.

Amount of Additional Subscription: $ 30,000.00

Payment Instructions - Payment in United States currency by bank-to-bank wire transfer or check in the amount of the subscription must be received by the Partnership at least one business day prior to the Purchase Date. Payment by wire transfer should be sent to:

ClearPath Healthcare Receivables Fund LP
Bank of America
ABA # 026009593
Acct #

Continuing Representations and Agreements - In consideration of the Partnership's acceptance of this offer to purchase additional Interests and recognizing its reliance thereon, the Limited Partner agrees, represents and warrants to the Partnership that all representations, warranties and information previously provided to the Partnership in the Subscription Agreement previously executed by the Limited Partner or otherwise continue to be true and accurate and all agreements set forth in such documents are hereby reaffirmed and continue to be binding on the Limited Partner.

Authority of Signatory - If the Limited Partner is an entity, the person executing this Agreement for the Limited Partner and the Limited Partner each represent that such person has the full power and authority under the Limited Partner's governing instruments, and has been duly authorized to do so, and the Limited Partner has the full power and authority under its governing instruments to acquire Interests. This Agreement constitutes a valid and binding agreement of the Limited Partner and is enforceable against the Limited Partner in accordance with its terms. If the Limited Partner is an individual, the Limited Partner represents that the Limited Partner has legal competence and capacity to execute this Agreement.

RP Loan H
MTC Acct

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Purchase Date.

ClearPath Healthcare Receivables Fund, LLC
General Partner

By: X
Name: Patrick Churchville
Title: President / GP

Limited Partner

Myrna Wendlinger Fam Partnership
Name of Limited Partner

x Myrna Barzelatto
Signature of Limited Partner or Authorized Signatory[1]

Myrna Barzelatto Trustholder
Name & Title of Authorized Signatory
general partner

[1]If the Limited Partner is an IRA or a self-directed pension plan or this Agreement is being executed by a directed trustee the custodian or trustee of the Limited Partner executes this Agreement and the fiduciary who directed the IRA's or pension plan's investment in the Partnership is required to execute the representation on the next page.

RP Loan 4

MTC Acct',

CLEARPATH HEALTHCARE RECEIVABLES FUND, L.P.

AGREEMENT FOR PURCHASE OF ADDITIONAL PARTNERSHIP INTERESTS

This Agreement is to be used only by existing Limited Partners of ClearPath Healthcare Receivables Fund, L.P. (the "Partnership") purchasing additional limited partnership interests of the Partnership (the "Interests") in the same name. It may not be used by new Limited Partners.

The undersigned, Myrna Wendlinger Family Part ("Limited Partner"), and the Partnership, hereby agree as follows:

Purchase Date and Amount - The Limited Partner desires to purchase additional Interests on, 10/12 2011 (the "Purchase Date") and in the amount as set forth below in accordance with the terms of the Limited Partnership Agreement of the Partnership, as amended from time to time (the "Partnership Agreement"). The Limited Partner is entering into this Agreement relying solely on the facts and terms set forth in this Agreement, the Confidential Private Offering Memorandum of the Partnership (the "Memorandum") dated May 2008, as amended from time to time, the Partnership Agreement and the Subscription Agreement previously executed by the Limited Partner and accepted by the Partnership.

Amount of Additional Subscription: $ 25,000

Payment Instructions - Payment in United States currency by bank-to-bank wire transfer or check in the amount of the subscription must be received by the Partnership at least one business day prior to the Purchase Date. Payment by wire transfer should be sent to:

ClearPath Healthcare Receivables Fund LP
Bank of America
ABA # 026009593
Acct #

Continuing Representations and Agreements - In consideration of the Partnership's acceptance of this offer to purchase additional Interests and recognizing its reliance thereon, the Limited Partner agrees, represents and warrants to the Partnership that all representations, warranties and information previously provided to the Partnership in the Subscription Agreement previously executed by the Limited Partner or otherwise continue to be true and accurate and all agreements set forth in such documents are hereby reaffirmed and continue to be binding on the Limited Partner.

Authority of Signatory - If the Limited Partner is an entity, the person executing this Agreement for the Limited Partner and the Limited Partner each represent that such person has the full power and authority under the Limited Partner's governing instruments, and has been duly authorized to do so, and the Limited Partner has the full power and authority under its governing instruments to acquire Interests. This Agreement constitutes a valid and binding agreement of the Limited Partner and is enforceable against the Limited Partner in accordance with its terms. If the Limited Partner is an individual, the Limited Partner represents that the Limited Partner has legal competence and capacity to execute this Agreement.

RP Loan G
12115673I

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Purchase Date.

ClearPath Healthcare Receivables Fund, LLC
General Partner

By: X _____
Name:
Title:

Limited Partner

Myrna Barzelatto
Name of Limited Partner

X Myrna Barzelatto
Signature of Limited Partner or Authorized Signatory[1]

_____
Name & Title of Authorized Signatory

[1]If the Limited Partner is an IRA or a self-directed pension plan or this Agreement is being executed by a directed trustee the custodian or trustee of the Limited Partner executes this Agreement and the fiduciary who directed the IRA's or pension plan's investment in the Partnership is required to execute the representation on the next page.

MILLENNIUM
TRUST COMPANY

2001 Spring Road, Suite 700 Oak Brook, Illinois 60523 630.368.5600

BARZELATTO 000840

Account #:

Account Type: Individual - Custody

Myrna Barzelatto
32 Meadowbrook Rd
White Plains, NY 10605

Statement Period
04/01/2012 - 06/30/2012

For all of us, life is a continuing process of change - marriage, a new home, a new job, divorce and death. If your name, marital status or address has recently changed, it is important to notify Millennium Trust to make sure your account information is current. It is also important to regularly review your account beneficiaries to determine if you want to update the beneficiaries listed. To update your account, please contact your client service team and they will walk you through the process.

CONFIDENTIAL

0741-01-b1-1001466-0002-0007634

MILLENNIUM TRUST COMPANY

2001 Spring Road, Suite 700 Oak Brook, Illinois 60523 630.368.5600

For the Account of:
BARZELATTO TOD , MYRNA

Account #

Account Type: Individual - Custody

BARZELATTO 000841

Account Detail

	Quantity	Unit Price	Cost Basis	Market Value	Unrealized Gain/Loss
CASH EQUIVALENTS					
TEXAS CAPITAL BANK INTEREST BEARING DEMAND ACCOUNT	0.0300	$1.0000	$0.03	$0.03	$0.00
Total Cash Equivalents			$0.03	$0.03	$0.00
OTHER ASSETS					
CLEARPATH MULTI-STRATEGY FUND III, LP F/K/A CLEARPATH HEALTHCARE RECEIVABLES INVESTMENTS FUND, LP	55,000.0000	$1.0000	$55,000.00	$55,000.00	$0.00
Total Other Assets			$55,000.00	$55,000.00	$0.00
Grand Total			$55,000.03	$55,000.03	$0.00

CONFIDENTIAL

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