

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ACAP FINANCIAL, INC.
(CRD No. 7731),

and

GARY HUME
(CRD No. 1216949),

Respondents.

Disciplinary Proceeding
No. 2007008239001

Hearing Officer – MAD

HEARING PANEL DECISION

May 3, 2011

Respondent ACAP violated Conduct Rule 2110 by selling unregistered securities in violation of Section 5 of the Securities Act of 1933. For this violation, ACAP is fined \$25,000. Respondents ACAP and Hume violated Conduct Rules 3010 and 2110 by failing to reasonably supervise a registered representative in connection with the sale of unregistered securities and by failing to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations. For this violation, ACAP is (1) fined \$50,000, (2) required to revise its procedures to ensure that they are reasonably designed to comply with the requirements of Section 5, including but not limited to the deficiencies found in this proceeding, (3) required to retain an independent consultant to review and approve the firm’s revised procedures, and (4) suspended from the activity of receiving unregistered penny stocks, including those represented by unlegended stock certificates, and liquidating those positions, until it has implemented its revised procedures after approval by the independent consultant; and Hume is (1) fined \$10,000, (2) suspended from associating with any FINRA member firm in all principal capacities for one year, and (3) required to re-qualify by examination as a principal before he re-enters the securities industry in any principal capacity.

Appearances

For Complainant: Jonathan I. Golomb, Washington, DC, FINRA, DEPARTMENT OF ENFORCEMENT.

For Respondents: James R. Kruse, Esq. and Paula W. Faerber, Esq.

DECISION

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) brought this disciplinary proceeding against Respondents ACAP Financial, Inc. (“ACAP”), Vincent Michael McGuire (“McGuire”), and Gary Hume (“Hume”). McGuire, a registered representative at ACAP, agreed to a settlement with Enforcement, leaving ACAP and Hume as the Respondents in this proceeding. The First Cause of Action alleges that between May 9 and June 30, 2005, ACAP sold unregistered securities, in violation of Section 5 of the Securities Act of 1933 (“Securities Act”), and violated Conduct Rule 2110.¹ The Complaint alleges that ACAP sold 27 million unregistered shares of a thinly-traded penny stock, Greyfield Capital, Inc. (“Greyfield”), resulting in proceeds of approximately \$46,000 for its customers. The Second Cause of Action alleges that ACAP and Hume, McGuire’s supervisor, failed to (1) reasonably supervise McGuire in connection with the sale of the unregistered securities and (2) establish, maintain, and enforce written procedures reasonably designed to achieve compliance with the applicable securities laws and regulations, in violation of Conduct Rules 3010 and 2110.

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidate rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondents’ alleged misconduct.

II. PROCEDURAL HISTORY

On June 7, 2010, Enforcement filed the Complaint, and on July 7, 2010, Respondents ACAP and Hume filed their answer and requested a hearing. On October 27, 2010, the parties filed a Joint Motion as to Stipulations, Liability, and Procedures for Disposition Without a Hearing. The parties stipulated to certain facts in the Complaint and to the liability of ACAP and Hume. The Hearing Officer granted the motion and canceled the hearing. The Hearing Panel, composed of the Hearing Officer and a current and former member of District 3, decided this case based on the written record.

Based on a careful review of the entire record, the Hearing Panel makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

A. Respondents

Respondent ACAP has been a member firm since 1978.² The firm is based in Salt Lake City, Utah.³ The majority of the firm's business consists of trading lower-priced Bulletin Board and Pink Sheet securities.⁴

Respondent Hume entered the securities industry in 1988.⁵ Since November 1991, he has been employed by ACAP.⁶ Hume is registered as a General Securities Representative, General Securities Principal, as well as other capacities.⁷ During the time period relevant to this Complaint, Hume was ACAP's Compliance Officer and head trader.⁸ In 2005, he maintained

² Stip. ¶ 1. The firm was named Alliance Capital Corporation until 1991. *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* ¶ 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

supervisory responsibilities for virtually all of the registered representatives in ACAP's home office, including McGuire.⁹

B. The Issuer: Greyfield

Greyfield, the issuer of the securities at issue in this case, was formed in August 1998, as a Nevada corporation.¹⁰ In April 2002, Greyfield was assigned the symbol GRYF on the Pink Sheets.¹¹ On May 24, 2002, Greyfield began trading in the over-the-counter market at a price of \$1.40 per share.¹² Between May 2002 and May 2005, there were only four trades in Greyfield's stock totaling 1,330 shares.¹³ After the initial trade, the remaining three trades were at \$.01 per share.¹⁴

C. Issuance of Greyfield Stock

As of April 2005, Greyfield had no business operations.¹⁵ In April 2005, MF, a resident of Kamloops, British Columbia, Canada, and two colleagues took control of Greyfield by providing false documents to the transfer agent.¹⁶ MF used a signature stamp he had obtained from a former president of Greyfield to generate letters appointing two of his colleagues as the controlling officers and directors of the company.¹⁷ Once in control, MF arranged for the distribution of hundreds of millions of unregistered shares of Greyfield stock to himself, nominees, and others, including stock promoters.¹⁸

⁹ *Id.* ¶¶ 2, 32.

¹⁰ *Id.* ¶ 3. The company was originally named Mountain Crest, Inc. *Id.* It changed its name in April 2002. *Id.* ¶ 4.

¹¹ *Id.* ¶ 4.

¹² *Id.* ¶ 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* ¶ 7.

¹⁶ *Id.* ¶ 6.

¹⁷ *Id.*

¹⁸ *Id.* ¶ 8. In November 2006, the Securities and Exchange Commission ("SEC") and the British Columbia Securities Commission ("BCSC") announced settlements with MF and one of his colleagues for market manipulation and sale of unregistered Greyfield securities. *Id.* ¶ 20.

Greyfield issued 477 million shares to Gold Technologies, LLC, a Texas corporation owned by MF.¹⁹ MF caused the transfer agent to break the shares up into groups and to send them to various entities and individuals at the time the shares were issued.²⁰ In April and May 2005, MF caused 65 million shares to be issued to his business associate, BC; 90 million shares to be issued to BC's wife; and 92 million shares to be issued to Gold Technologies.²¹ The remainder was issued to other entities and individuals.²²

D. Promotion of the Greyfield Stock

Greyfield created an active market for its stock through its stock promotion.²³ During the time that MF facilitated the Greyfield stock distribution, Greyfield promoted its stock by issuing press releases touting its business prospects.²⁴ The average daily Greyfield trading volume from May 6 through July 26, 2005, was approximately 1,580,000 shares.²⁵ The stock price rose from \$.04 per share to \$.05 per share during the first two weeks of trading, but fell precipitously thereafter.²⁶ By the first week of June 2005, the price dropped to less than \$.01 per share and thereafter never rose above that amount.²⁷

E. Deposits and Sales of Greyfield Stock at ACAP

In 2003, McGuire opened accounts at ACAP for BC, Gold Technologies, and MF.²⁸ Gold Technologies deposited a certificate for 25 million Greyfield shares on May 3, 2005.²⁹ Between

¹⁹ *Id.* ¶¶ 9, 11.

²⁰ *Id.* ¶ 12.

²¹ *Id.*

²² *Id.*

²³ *Id.* ¶ 23.

²⁴ *Id.* ¶ 18.

²⁵ *Id.* ¶ 19. On July 29, 2005, the SEC issued an order suspending the trading in the Greyfield securities for ten days. The SEC order found that there were questions concerning Greyfield's corporate domicile, the identity of its officers and directors, the validity of its newly issued shares, and the accuracy of information in its press releases. *Id.* ¶ 20.

²⁶ *Id.* ¶ 19.

²⁷ *Id.*

²⁸ *Id.* ¶ 13. MF referred BC to McGuire. *Id.*

²⁹ *Id.* ¶ 15.

May 9 and May 17, 2005, it sold 423,684 shares in five transactions.³⁰ On July 6, 2005, Gold Technologies deposited a 10 million share certificate, and then, between July 8 and July 26, it sold an additional 7.3 million shares in six trades.³¹ The Greyfield certificates deposited into the Gold Technologies account, dated April 28, 2005, did not bear a restricted legend.³² The total proceeds of these sales for the Gold Technologies account were \$34,604.86.³³

The BC account received 20 million shares by certificate on May 3, 2005.³⁴ Like the Gold Technologies account, the Greyfield stock certificate for the BC account was unlegended and dated April 28, 2005.³⁵ The BC account sold all of the shares in seven transactions between June 17 and June 30, 2005.³⁶ The total proceeds of the sales in the BC account were \$11,435.00.³⁷

In total, between May 3 and July 6, 2005, 55 million shares of Greyfield (approximately 11% of the issued and outstanding shares) were deposited into the BC and Gold Technologies accounts at ACAP.³⁸ Between May 9 and June 30, 2005, ACAP sold more than 27 million shares of Greyfield from these accounts into the public markets, for proceeds of approximately \$46,000.³⁹

McGuire accepted the orders, filled out the order tickets, and obtained market-maker quotes for all of the above Greyfield sales.⁴⁰ There was no registration statement in effect for the

³⁰ *Id.*

³¹ *Id.*

³² *Id.* ¶¶ 24, 26.

³³ *Id.* ¶ 15.

³⁴ *Id.* ¶ 16.

³⁵ *Id.* ¶¶ 24, 26.

³⁶ *Id.* ¶ 16.

³⁷ *Id.*

³⁸ *Id.* ¶ 14.

³⁹ *Id.*

⁴⁰ *Id.* ¶ 17.

Greyfield securities either when the securities were issued or when the sales took place.⁴¹ In addition, the sales of the Greyfield securities were not made in compliance with any applicable exemption from registration under the Securities Act.⁴²

F. Failure to Supervise

Neither Hume, who was both ACAP's Compliance Officer and McGuire's supervisor, nor ACAP took adequate measures to ensure that McGuire did not engage in the sale of unregistered securities in violation of Section 5 of the Securities Act.⁴³ Hume and ACAP failed to take adequate steps to ensure that McGuire ascertained (1) whether the securities were registered, (2) how and from whom the customers obtained their shares, (3) whether and when the shares were paid for, and (4) whether the transactions were subject to any exemption from registration.⁴⁴ Despite the indications that the sale of Greyfield shares from accounts at ACAP may have been part of an illegal unregistered distribution, they undertook no efforts to determine whether the Greyfield shares were eligible for sale without registration.⁴⁵ Instead, they simply relied upon the fact that the subject certificates did not bear a restrictive legend and the clearance of the certificates by the transfer agent.⁴⁶

G. Inadequate Written Supervisory Procedures

Hume was responsible for creating and updating ACAP's written supervisory procedures.⁴⁷ ACAP did not have any written or formal procedures regarding restricted stock

⁴¹ *Id.* ¶ 21.

⁴² *Id.* ¶ 22.

⁴³ *Id.* ¶ 27.

⁴⁴ *Id.* ¶ 28.

⁴⁵ *Id.* ¶ 26.

⁴⁶ *Id.*

⁴⁷ *Id.* ¶ 29.

transactions or the receipt of certificates.⁴⁸ The firm's written procedures manual provided no guidance to determine if stock was freely tradable.⁴⁹

IV. CONCLUSIONS OF LAW

A. Violation of Section 5 of the Securities Act

Section 5(a) of the Securities Act prohibits any person, directly or indirectly, from selling a security in interstate commerce unless a registration statement is in effect as to the offer and sale of that security or there is an applicable exemption from the registration requirements. Section 5(c) prohibits the offer or sale of a security unless a registration statement as to such security has been filed with the SEC, or an exemption is available.⁵⁰ The purpose of the registration requirements is to “protect investors by promoting full disclosure of information thought necessary to informed investment decisions.”⁵¹ A violation of Section 5 of the Securities Act constitutes a violation of Conduct Rule 2110.⁵²

Here, ACAP stipulated that it sold unregistered shares in violation of Section 5 of the Securities Act.⁵³ No registration statement was in effect with respect to the Greyfield securities that are the subject of the Complaint. ACAP sold the securities on behalf of its customers. The sales involved interstate activity because the shares were sold into the over-the-counter market, thereby entering interstate commerce. In addition, they were quoted on the Pink Sheets, a

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 15 U.S.C. § 77e(a) and (c); see also *Jacob Wonsover*, Exchange Act Rel. No. 41123, 1999 SEC LEXIS 430, at *15-16 (Mar. 1, 1999), *aff'd*, 205 F.3d 408 (D.C. Cir. 2000).

⁵¹ *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953).

⁵² See *Alvin W. Gebhart*, Exchange Act Rel. No. 53136, 2006 SEC LEXIS 93, at *54 n.75 (Jan. 18, 2006) *rev'd and remanded in part on other grounds sub. nom Gebhart v. SEC*, 2007 U.S. App. LEXIS 27183 (9th Cir. Nov. 21, 2007) (“Further, because we have consistently held that a violation of a Commission or NASD rule or regulation is inconsistent with just and equitable principles of trade, we find that the Gebharts’ sale of the unregistered MHP notes also constitutes a violation of NASD Conduct Rule 2110.”); *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999); see *William H. Gerhauser*, 1998 SEC LEXIS 2402, at *20-21 (Nov. 4, 1998).

⁵³ *Id.* ¶ 31.

national communications medium. Accordingly, the Hearing Panel finds that ACAP violated Section 5 of the Securities Act and thereby violated Conduct Rule 2110.⁵⁴

B. Supervisory Violations

“Assuring proper supervision is a critical component of broker-dealer operations.”⁵⁵ Conduct Rule 3010(a) requires that FINRA members “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 the Rules of [FINRA].”⁵⁶ Conduct Rule 3010(b) further requires that a member “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of [FINRA].”⁵⁷ The standard of “reasonableness” is determined based on the particular circumstances of each case.⁵⁸

ACAP and McGuire stipulated to the supervisory violations alleged in the Complaint.⁵⁹ They failed to undertake adequate efforts to ensure that McGuire ascertained the information necessary to determine whether the customers’ unregistered Greyfield shares could be sold in compliance with Section 5 of the Securities Act.⁶⁰ They also failed to make any reasonable inquiry into whether the customers were underwriters with respect to the transactions or whether

⁵⁴ See e.g., *Dep’t of Enforcement v. Midas Securities*, No. 2005000075703, slip op. at 9 (N.A.C. Mar. 3, 2011).

⁵⁵ *Richard F. Kresge*, Exchange Act Rel. No. 55988, 2007 SEC LEXIS 1407, at *27 (June 29, 2007).

⁵⁶ NASD Conduct Rule 3010(a).

⁵⁷ NASD Conduct Rule 3010(b).

⁵⁸ See, e.g., *Christopher Benz*, Exchange Act Rel. No. 38440, 1997 SEC LEXIS 672, at *12 (Mar. 26, 1997) (citing *In re Consol. Inv. Servs., Inc.*, Exchange Act Rel. No. 36687, 1996 SEC LEXIS 83 (Jan. 5, 1996)).

⁵⁹ *Id.* ¶ 32.

⁶⁰ *Id.* ¶ 25.

the transactions were a part of a distribution of securities of the issuer.⁶¹ Instead, they followed ACAP's practice of relying on the lack of a restrictive legend on the stock certificates and the clearance through transfer without restriction.⁶²

ACAP did not have any written or formal procedures regarding restricted stock transactions or the receipt of certificates.⁶³ Hume, ACAP's Compliance Officer, was responsible for creating and maintaining its written supervisory procedures.⁶⁴ He failed to take appropriate action to cause ACAP to adopt and implement appropriate procedures for handling the sale of stock deposited in unlegended certificate form.⁶⁵ As a result, Hume failed to take the steps necessary to ensure that ACAP had procedures that were reasonably designed to detect and prevent illegal sales of securities.⁶⁶

The Hearing Panel finds that ACAP and Hume failed to adequately supervise McGuire in connection with the sale of unregistered securities, as required by Conduct Rule 3010(a), and failed to establish, maintain, and enforce written supervisory procedures, as required by Conduct Rule 3010(b), thereby violating Conduct Rule 2110, which requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade."⁶⁷

V. SANCTIONS

A. Violation of Section 5 of the Securities Act

The FINRA Sanction Guidelines ("Guidelines") for the sale of unregistered securities provide for a fine of \$2,500 to \$50,000, and, in egregious cases, for suspension of the firm with

⁶¹ *Id.* ¶ 29.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* ¶ 30.

⁶⁶ *Id.*

⁶⁷ A violation of Conduct Rule 3110 also is a violation of Conduct Rule 2110, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade. *Kresge*, 2007 SEC LEXIS 1407, at *42.

respect to any and all activities or functions for up to 30 business days or until procedural deficiencies are remedied.⁶⁸ The Guidelines further set forth specific considerations for such violations, four of which are applicable to this case: (1) whether the respondent attempted to comply with an exemption from registration; (2) share volume and dollar amount of transactions involved; (3) whether the respondent had implemented reasonable procedures to ensure that it did not participate in an unregistered distribution, and (4) whether the respondent disregarded “red flags” suggesting the presence of unregistered distribution.⁶⁹ In addition, the Hearing Panel considered the Principal Considerations in Determining Sanctions⁷⁰ and ACAP’s size and financial statements, which Respondents submitted.

The Hearing Panel determined that ACAP did not attempt to ascertain if the Greyfield stock was registered or if an exemption from registration applied. Instead, it relied on the lack of a restricted legend and clearance by the transfer agent. The law is clear that reliance on transfer agents that a stock was “free trading” will not excuse a broker’s failure to make a reasonable inquiry into the facts.⁷¹ The Hearing Panel noted that while the dollar amount of the sales was not high, a large number of shares were sold to members of the public. In total, the Gold Technologies and BC accounts sold approximately 27 million shares, generating sales proceeds of approximately \$46,000.⁷² Because ACAP had no written supervisory procedures addressing unregistered stocks and unlegended stock certificates, there was no guidance for ACAP’s registered representatives.

⁶⁸ FINRA Sanction Guidelines 24 (2011), www.finra.org/sanctionguidelines.

⁶⁹ *Id.*

⁷⁰ *Id.* at 6-7.

⁷¹ See *Wonsover*, 1999 SEC LEXIS 430, at *29-30 (finding that reliance on transfer agent and respondent’s firm did not relieve the individual broker of his obligation to explore whether shares are freely tradable); *Robert G. Leigh*, Exchange Act Rel. No. 27667, 1990 SEC LEXIS 153, at *14 (Feb. 1, 1990) (“the transfer agent’s willingness to reissue the certificates without restrictive legends did not relieve [the registered representative] of his obligation to investigate.”).

⁷² Stip. ¶ 14.

ACAP argued that it was a victim of MF's misconduct; however, ACAP had an independent obligation to ensure that it did not sell unregistered securities. The Hearing Panel found ACAP's failure to conduct any due diligence on the Greyfield stock to be problematic. There were "red flags," which should have caused a further inquiry. First, Greyfield was an unknown, development-stage company with little trading history that had recently undergone a change in control.⁷³ Second, large blocks of Greyfield stock were deposited within weeks of being issued.⁷⁴ In fact, ACAP received more than 10% of Greyfield's issued and outstanding shares.⁷⁵ Third, the customers began liquidating their shares soon after depositing them. Fourth, at the time of the sales, Greyfield was issuing press releases promoting its business prospects.

The Hearing Panel finds that the misconduct of ACAP was egregious. ACAP turned a blind-eye to the registration requirements of Section 5 of the Securities Act. Taking all of the foregoing factors into careful consideration, and in the absence of any mitigating factors, the Panel finds that a \$25,000 fine is the appropriate remedial sanction.

B. Supervisory Violations

The Guidelines for failing to supervise recommend, in egregious cases, suspending the responsible individual in any and all capacities for up to two years or imposing a bar. In a case against a member firm, the Guidelines recommend, in egregious cases, suspending the firm with respect to any and all activities or functions for up to two years or expulsion. The Guidelines

⁷³ See *Charles F. Kirby*, Exchange Act Rel. No. 47149, 2003 SEC LEXIS 46, at *21-22 (Jan. 9, 2003) (discussing how petitioner failed to make an appropriate showing where company at issue had limited assets, limited trading history, and very little public information regarding the company's business).

⁷⁴ See *Steven E. Scott*, Exchange Act Rel. No. 43656, 2000 SEC LEXIS 2635, at *10 (Dec. 1, 2000) (stating that if a broker is asked to sell a substantial amount of a thinly-traded security, he must take all necessary steps to make sure that controlling persons are not involved); *Distribution by Broker-Dealers of Unregistered Secs.*, Exchange Act Rel. No. 6721, 1962 SEC LEXIS 74, at *4-5 (Feb. 2, 1962) (discussing how it must be assumed that the issuer is the source of unregistered securities appearing in substantial amounts in the market over a short period of time).

⁷⁵ Stip. ¶ 14.

further recommend the imposition of a fine between \$5,000 and \$50,000.⁷⁶ The specific considerations for failure to supervise are: (1) whether the respondent ignored “red flag” warnings that should have resulted in additional supervisory scrutiny, (2) the nature, extent, size and character of the underlying misconduct, and (3) the quality and degree of the supervisor’s implementation of the firm’s supervisory procedures and controls.

The Guidelines for deficient supervisory procedures recommend a fine between \$1,000 and \$25,000, and, in egregious cases, suspending the responsible individual in any or all capacities for up to one year. For member firms, the Guidelines recommend suspending the firm with respect to any and all activities or functions until the procedures are amended to conform to the rule requirements.⁷⁷ The specific considerations direct adjudicators to consider whether the deficiencies (1) allowed violative conduct to occur or escape detection and (2) made it difficult to determine the individual or individuals responsible for specific areas of supervision or compliance.⁷⁸

The Hearing Panel determined that the supervisory violations by ACAP and Hume were egregious. ACAP and Hume ignored the “red flags” associated with the sale of the unregistered Greyfield securities. As noted above, the volume of the sales was significant and represented a substantial share of the market. ACAP’s and Hume’s failure to implement adequate procedures allowed the Section 5 violations to occur. The Panel found the lack of procedures troubling, especially in light of the fact that the majority of ACAP’s business consisted of lower-priced Bulletin Board and Pink Sheet securities. Hume’s investigative testimony revealed that he abdicated his supervisory responsibility with respect to the sale of unregistered securities. Simply

⁷⁶ Sanction Guidelines 105.

⁷⁷ *Id.* at 106.

⁷⁸ *Id.*

put, Hume and ACAP relied exclusively on their clearing firm and conducted no independent due diligence to ensure that the stock could be sold in compliance with the registration requirements.

The Sanction Guidelines explain that the principal goal of sanctions is “to remediate misconduct by preventing the recurrence of misconduct, improving overall standards in the industry, and protecting the investing public.”⁷⁹ In this case, the Hearing Panel found that ACAP’s and Hume’s demonstrated disregard of Conduct Rule 3010 poses a serious risk to the investing public. The Hearing Panel concluded that the appropriate sanctions under the facts and circumstances of this case are as follows: ACAP is (1) fined \$50,000, (2) required to revise its procedures to ensure that they are reasonably designed to comply with the requirements of Section 5, including but not limited to the deficiencies found in this proceeding in connection with the liquidation of unregistered penny stocks, (3) required to retain an independent consultant with experience in designing and evaluating broker-dealer procedures, who shall be not unacceptable to Enforcement, to review and approve ACAP’s revised procedures as being reasonably designed to achieve compliance with the requirements of Section 5, and (4) suspended from the activity of receiving unregistered penny stocks, including those represented by unlegended stock certificates, and liquidating those positions, until it has implemented its revised procedures after approval by the independent consultant.

Hume is fined \$10,000, suspended for one year in all principal capacities, and required to re-qualify by examination as a principal before he re-enters the securities industry in any principal capacity. The Panel determines that re-qualification is necessary because Hume lacks sufficient knowledge and familiarity with the rules and laws governing the sale of unregistered

⁷⁹ *Id.* at 2.

securities. The record sufficiently demonstrated a number of “red flags” concerning the Greyfield sales, which Hume ignored.

VI. ORDER

Based on careful consideration of all the evidence, the Hearing Panel imposes the following sanctions:⁸⁰

A. ACAP

For violating Conduct Rule 2110 by selling unregistered securities in violation of Section 5, ACAP is fined \$25,000. For violating Conduct Rules 3010 and 2110 by failing to reasonably supervise McGuire in connection with the sale of unregistered securities and failing to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations, ACAP is (1) fined \$50,000, (2) required to revise its procedures to ensure that they are reasonably designed to comply with the requirements of Section 5, including but not limited to the deficiencies found in this proceeding in connection with the liquidation of unregistered penny stocks, (3) required to retain an independent consultant with experience in designing and evaluating broker-dealer procedures, who shall be not unacceptable to Enforcement, to review and approve ACAP’s revised procedures as being reasonably designed to achieve compliance with the requirements of Section 5, and (4) suspended from the activity of receiving unregistered penny stocks, including those represented by unlegended stock certificates, and liquidating those positions, until it has implemented its revised procedures after approval by the independent consultant.

⁸⁰ The Hearing Panel considered all of the parties’ arguments. They are rejected or sustained to the extent that they are inconsistent with the views expressed herein.

If this decision becomes FINRA's final action in this matter, ACAP's suspension from receiving and liquidating unregistered penny stocks will begin at the opening of business on Tuesday, July 5, 2011, and continue until its procedures have been revised and approved by an independent consultant in accordance with this decision. ACAP's monetary sanction shall be due and payable on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

B. Gary Hume

For violating Conduct Rules 3010 and 2110 by failing to reasonably supervise McGuire in connection with the sale of unregistered securities and failing to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations, Hume is fined \$10,000, suspended from associating with any FINRA member firm in all principal capacities for one year, and required to re-qualify by examination as a principal before he re-enters the securities industry in any principal capacity.

If this decision becomes FINRA's final disciplinary action, Hume's suspension shall begin at the opening of business on Tuesday, July 5, 2011, and end July 4, 2012. Hume's fine shall be due and payable on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

In addition, both ACAP and Hume shall pay a \$750.00 administrative fee. The fee shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

Maureen A. Delaney
Hearing Officer
For the Hearing Panel

Copies to:

ACAP Financial, Inc. (*via overnight courier and first-class mail*)
Gary Hume (*via overnight courier and first-class mail*)
James R. Kruse, Esq. (*via electronic and first-class mail*)
Paula W. Faerber, Esq. (*via electronic and first-class mail*)
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