

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILSON-DAVIS & CO., INC.
(CRD No. 3777),

JAMES C. SNOW, JR.
(CRD No. 2761102),

LYLE WESLEY DAVIS
(CRD No. 62352),

BYRON BERT BARKLEY
(CRD No. 12469),

and

CRAIG STANTON NORTON
(CRD No. 349405),

Respondents.

Disciplinary Proceeding
No. 2016048837401

Hearing Officer—DRS

**ORDER ACCEPTING OFFER
OF SETTLEMENT**

Date: July 16, 2021

INTRODUCTION

Disciplinary Proceeding No. 2016048837401 was filed on July 19, 2019, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA or Complainant). Respondents Wilson-Davis & Co., Inc., James C. Snow, Jr., Lyle Wesley Davis and Byron Bert Barkley submitted an Offer of Settlement (Offer) to Complainant dated July 7, 2021. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule

9270(e)(3). The finding, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondents have consented, without admitting or denying the allegations of the Complaint (as amended by the Offer), and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings of violations consistent with the allegations of the Complaint (as amended by the Offer), and to the imposition of the sanctions set forth below, and fully understand that this Order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Wilson-Davis & Co., Inc.

Wilson-Davis has been a FINRA member since December 1968. The firm is based in Salt Lake City, Utah, and employs approximately 35 registered individuals in three branch offices located in Salt Lake City, Utah; Centennial, Colorado; and West Palm Beach, Florida. Wilson-Davis is a self-clearing broker-dealer that specializes in microcap liquidation and trading. Wilson-Davis customers regularly deposit and liquidate microcap securities, and the firm participates in market making activities to facilitate such liquidations. During all relevant times, Wilson-Davis's primary source of revenue has been retail commissions from its customers' microcap liquidation and trading activity. FINRA possesses jurisdiction over Wilson-Davis because the firm currently is a FINRA member.

On May 15, 2019, the firm entered into an offer of settlement with the Securities and Exchange Commission (SEC Admin. Release No. 34-85867) and censured, fined \$300,000 and agreed to undertakings (including an Independent Consultant to review the firm's AML

program) for failing to file Suspicious Activity Reports (SARS) when it knew, suspected, or had reason to suspect that certain penny stock transactions it executed on behalf of its customers involved the use of its firm to facilitate fraudulent activity or had no business or apparent lawful purpose, in willful violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

James C. Snow, Jr.

James Snow entered the securities industry in 1996, when he became associated with Wilson-Davis. Since that time, Snow has been registered as a General Securities Representative. In early 1997, Snow became registered as a General Securities Principal. At all relevant times, Snow served as Wilson-Davis's President, CCO, and AMLCO with overall responsibility for the firm's supervisory systems and procedures as well as the firm's AML program. FINRA possesses jurisdiction over Snow because he currently is registered with FINRA and associated with a FINRA member firm.

Lyle Wesley Davis

Lyle Davis (CRD No. 62352) entered the securities industry in 1969, when he became registered with FINRA through his association with Wilson-Davis. Since 1969, Davis has been registered as a General Securities Representative, a General Securities Principal, and a Registered Options Principal. Since 1985, Davis has been registered as a Financial Operations Principal ("FINOP"). Since March 2017, Davis has served as the firm's Chief Executive Officer ("CEO"). FINRA possesses jurisdiction over Davis because he currently is registered with FINRA and associated with a FINRA member firm.

Byron Bert Barkley

Byron Barkley (CRD No. 12469) entered the securities industry in 1969, when he became registered with FINRA through his association with Wilson-Davis. Since 1969, Barkley

has been registered as a General Securities Representative and, after he passed the Series 24 examination in 1997, as a General Securities Principal. Since 1999 and throughout the time relevant to the Complaint, Barkley was also registered as an Equity Trader. At all times relevant to this Complaint, Barkley was a Vice President and head of the firm's trading department. FINRA possesses jurisdiction over Barkley because he currently is registered with FINRA and associated with a FINRA member firm.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:¹

III.

SUMMARY

Wilson-Davis is a self-clearing broker-dealer that specializes in microcap liquidation and trading. Despite the known risks associated with the firm's microcap liquidation business, from February 2015 through October 2015, Wilson-Davis and its "Designated Supervisors"—James Snow (the firm's President, Chief Compliance Officer ("CCO"), and Anti-Money Laundering Compliance Officer ("AMLCO")), Byron Barkley (the firm's head of trading), and Lyle Davis (the firm's Chief Executive Officer ("CEO") and Financial Operations Principal ("FINOP"))—failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules.

These same "Designated Supervisors" failed to reasonably supervise registered representative and market maker Craig Stanton Norton's trading in NuGene International, Inc.

¹ The findings herein are pursuant to Respondents Wilson-Davis & Co., Inc., James C. Snow, Jr., Lyle Wesley Davis, and Byron Bert Barkley's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

(ticker, “NUGN”) stock by ignoring various “red flags” of potentially suspicious or manipulative trading set forth in the firm’s WSPs, which also failed to establish how the firm’s trading activity should be supervised to detect and prevent such trading. In practice, no one at Wilson-Davis—including Snow, Davis, and Barkley—was conducting a reasonable review of microcap liquidation and trading activity to detect and prevent potentially suspicious or manipulative trading, including Norton’s trading activity in NUGN in 2015. As a result, Wilson-Davis, Snow, Davis, and Barkley violated FINRA Rules 3110(a), 3110(b), and 2010.

Further, from February 2015 through October 2015, Wilson-Davis and Snow, who was responsible for the firm’s anti-money laundering (“AML”) program, failed to establish and implement AML policies and procedures reasonably designed to detect, investigate and report, if necessary, suspicious activity related to the firm’s microcap liquidation business. As a result, numerous “red flags” of suspicious activity related to NUGN trading and liquidation activity went undetected and unaddressed. By failing to implement a reasonable AML program, Wilson-Davis and Snow violated FINRA Rules 3310(a) and 2010.

Finally, during the examination that led to this disciplinary proceeding, Wilson-Davis and Davis provided inaccurate or misleading information to FINRA in response to a Rule 8210 request in violation of FINRA Rules 8210 and 2010.

FACTS

I. NUGN—SUSPICIOUS TRADING AND LIQUIDATION ACTIVITY

A. The Bling-NuGene Reverse Merger

On December 26, 2014, Bling Marketing Inc. (“Bling,” listed under the ticker symbol “BLMK”) and NuGene entered into an Agreement and Plan of Merger.

In connection with the merger, Bling’s board of directors approved a 15.04-for-1 stock split in the form of a stock dividend payable to the holders of Bling’s common stock. Upon

closing of the merger, each recipient of the stock dividend received an additional 14.04 shares of BLMK common stock for each share of BLMK common stock held.

Before the merger and stock split, BLMK common stock was listed on the Over-the-Counter Bulletin Board (“OTCBB”) and Pink Sheets Best Bid and Offer (“PINKBBO”).

BLMK, however, had no reported trading volume prior to the merger.

Prior to the merger, Bling purported to be actively conducting business, but the company was a thinly capitalized “wholesale affordable jewelry” company with nominal revenue. Bling described itself as a “shell company” in SEC filings until September 2014, when it first earned revenue and claimed it was no longer a shell company. Bling reported that, as of September 30, 2014, it had approximately \$25,275 in total assets and \$14,286 in year-to-date operating losses, as well as additional operating losses prior to the merger.

NuGene had been incorporated in 2006 and focused on the development and marketing of skin care products. According to public filings related to the merger, NuGene had limited prior operational activity and very limited sales. As of September 30, 2014, NuGene reported \$68,620 in assets and \$48,317 in year-to-date net income.

After the merger, the combined company’s stock continued to trade on the OTC market under the ticker symbol BLMK until February 3, 2015, when the company’s new ticker symbol became effective and the company began trading as NUGN.

B. The “Lock-Up/Leak-Out” Agreement

In connection with the Bling-NuGene merger, 30 out of 77 existing Bling shareholders sold approximately 11 million shares of BLMK common stock to 38 individuals. According to public filings, the majority of the stock sold by these 30 Bling shareholders in connection with

the merger—approximately 7 million shares—was subject to trading restrictions, as described in a “Lock-Up/Leak-Out” agreement.

Under the terms of the Lock-Up/Leak-Out agreement, shareholders were prohibited from selling any shares of NUGN stock subject to the agreement (*i.e.* the stock was “locked up”) for the first 75 days after the agreement was ratified. Thereafter, shareholders were permitted to incrementally sell (*i.e.*, could “leak out”) shares over the ensuing 150 days, provided that each shareholder sold no more than 20% of the shares they owned that were subject to the Lock-Up/Leak-Out agreement in any 30-day period.

The Lock-Up/Leak-Out agreement contained an escape clause that served to reduce and/or cancel the above-referenced trading restrictions prior to expiration by their own terms, if NUGN were to achieve specific levels of market capitalization. In particular, according to the agreement, if on three consecutive trading days the closing price of NUGN shares achieved a market capitalization for the company of \$160 million, 50% of each shareholder’s remaining unsold shares would be released from the agreement. If the closing price of NUGN shares achieved a market capitalization for the company of \$200 million on three consecutive trading days, the entire balance of each shareholder’s remaining unsold shares would be released from the trading restrictions set forth in the agreement.

Thus, shareholders of NUGN stock with shares subject to the Lock-Up/Leak-Out agreement would benefit from the company’s stock achieving these levels of market capitalization because some or all of such shareholders’ stock would be released from the agreement’s trading restrictions.

Bling-NuGene publicly announced the existence of the Lock-Up/Leak-Out Agreement in its January 2015 public filings made in connection with the merger.

At least 14 Wilson-Davis customers deposited NUGN shares that were subject to the Lock-Up/Leak-Out Agreement.

The first Wilson-Davis customer to deposit NUGN stock with the firm, AA (controlled by SH), began the deposit process on February 19, 2015. AA later provided Wilson-Davis with a copy of the Lock-Up/Leak-Out agreement in connection with its NUGN deposit.

At least six Wilson-Davis customers provided the firm with copies of the Lock-Up/Leak-Out Agreement or attorney opinion letters referencing the Lock-Up/Leak-Out Agreement in connection with their NUGN deposits with the firm.

C. Wilson-Davis Becomes an OTC Market Maker for NUGN

An “OTC market maker” is a FINRA member that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular OTC equity security in an interdealer communication system reflecting a willingness to buy and sell the security on its own or its customers’ behalf on a regular or continuous basis.

Since approximately 2005, Norton typically has selected OTC stocks in which to make a market based upon requests from one or more of his retail customers in order to facilitate their orders to buy or sell a particular microcap security.

From 2013 through 2015, the majority of Norton’s income through Wilson-Davis was from commissions paid by Norton’s customers’ liquidation and trading activity in OTC microcap securities, as opposed to sharing firm profits from proprietary trading.

Around 2005, Norton attended an OTC investor conference in Las Vegas, where he met RW, AL, SH, and LB—all of whom opened accounts with Norton at Wilson-Davis and transacted in NUGN. Since meeting this group at the 2005 conference in Las Vegas, Norton has received several customer referrals through this group, including, in particular, RM (who

controlled an entity named RC), JS (who controlled an entity named CC), JF (who controlled an entity named RH), and MT (who controlled an entity named CD). All of these individuals and entities were involved in the suspicious trading activity involving NUGN.

On December 18, 2014, just prior to the Bling-NuGene merger announcement, either Norton or his assistant, both of whom were located in Wilson-Davis's office in Centennial, Colorado, telephoned numbers associated with Wilson-Davis customers RM, AL, SW, and JF.

A few days later, on or about December 20, 2014, RM (through his entity RC) acquired hundreds of thousands of shares of BLMK stock in a series of private transactions with existing BLMK shareholders, including several members of the same family. Later, in March 2015, RM privately sold some of this stock to other Wilson-Davis customers CC (controlled by JS), MS (controlled by AL), and PG and VH (entities connected to KC). CC, MS, PG, and VH deposited the NUGN shares bought from RM into accounts with Wilson-Davis.

In addition, at least 12 other Wilson-Davis customers who deposited NUGN stock with the firm apparently acquired their shares in similar private transactions, just prior to the merger, at or around the same time as Wilson-Davis customer RM.

Prior to December 2014, Wilson-Davis and Norton knew or should have known that RM, JF, and AL, as well as other Wilson-Davis customers who eventually transacted in NUGN, namely SH, MT, KC, JS, JC, and RW, had a history of engaging together in potentially suspicious activity involving other microcap securities. Specifically, during the period from June 2012 through November 2013, the firm had received several regulatory requests from FINRA staff concerning activity in other OTC microcap stocks traded by these customers. In addition, in November 2013, Wilson-Davis was named a defendant in a civil lawsuit alleging that the firm

aided and abetted a network of its customers—including JF, RW, KC, JC, and MT—in orchestrating a “pump-and-dump” in another OTC microcap security.

On or about January 26, 2015—after the Bling-NuGene merger but before the company began trading as NUGN—Norton completed and submitted to Wilson-Davis an application to become a market maker in BLMK stock.

On the market maker form, Norton identified JF as the firm customer who made him familiar with BLMK and indicated that the reason for making a market in the stock was “assist[ing] customer acquisition.” Although the Bling-NuGene merger had been announced in the company’s public filings, Norton’s market maker application for BLMK did not reference NuGene or the recent merger. Indeed, in response to a question on the form, “Has there been a reverse merger,” Norton falsely answered, “no.”

When Norton submitted the completed BLMK market maker request form to his Wilson-Davis supervisors, the stock had only publicly traded on one day in its history—on January 6, 2015, Broker Dealer A had bought 500 shares of BLMK at \$0.13 per share.

When asked to make a market in BLMK, Norton never asked JF why he wanted to buy a stock that had only traded 500 shares on one trading day in its history. Moreover, while JF placed an order with Norton for his entity RH to buy NUGN stock on February 3, 2015, JF never purchased the stock through Norton at Wilson-Davis and his order to buy the stock expired unfilled seven days after he placed it.

D. Norton Buys NUGN at \$5 Per Share, Thereby Helping to Nullify The Lock-Up/Leak-Out Agreement

On February 24, 2015, Norton used Wilson-Davis’s proprietary trading account to purchase 250 shares of NUGN at \$5.00 per share from Broker-Dealer A.

Prior to Norton's February 24 purchase, NUGN traded in few public transactions—all of them through Broker-Dealer A and not one above \$2.25 per share. Specifically, on or about February 4, 2015, Broker-Dealer A began attempting to sell NUGN stock at \$2.00. Although the stock had undergone a dilutive 15.04-for-1 forward stock split since it last traded on January 6, 2015, Broker-Dealer A's offer to sell the stock at higher prices were met and, in early trading on February 4, 2015, Broker-Dealer A sold a total of 1,350 shares of NUGN in a series of transactions at prices between \$2.00 and \$2.25 per share.

Soon after Broker-Dealer A's sales on February 4, 2015, demand for the stock fell abruptly, as the highest offer in the market to buy NUGN stock dropped from \$2.00 per share to just \$0.25 per share. That afternoon, Broker-Dealer A sold its remaining 5,170 shares of NUGN, which it had purchased on January 6, 2015, to one of its customers at \$0.26 per share, setting the closing price for the stock on February 4, 2015 at \$0.26 per share.

From February 5 through February 23, 2015, there was no trading volume in NUGN stock. Thus, on each of these trading days, the closing price for NUGN remained at \$0.26 per share reflecting most recent trade on February 4, 2015.

During this time of market inactivity, from February 5 through February 23, 2015, Broker-Dealer A attempted to sell NUGN stock. Specifically, starting on February 5, 2015, Broker-Dealer A began offering to sell NUGN stock at \$10.00 per share—a price 38 times greater than the last reported market transaction in the stock which occurred on February 4, 2015 at \$0.26 per share. There was no market interest at that price and, on February 6, 2015, Broker-Dealer A lowered its offer to sell NUGN stock to \$5.00 per share. There was no market interest at this lower price either, until Norton's February 24 purchase.

On February 24, 2015, when Norton accepted Broker-Dealer A's offer and purchased 250 shares of NUGN at \$5.00 per share, he did so without attempting to negotiate price. He did so even though, at the time of his \$5.00 purchase, the highest offer to buy NUGN stock reflected in the market was \$2.25 per share and Wilson-Davis's own offer to buy the stock (publicly quoted by Norton, as a market maker) was \$1.33 per share.

Norton's \$5.00 purchase of NUGN on February 24, 2015 represented 100% of the stock's daily market volume that day and set the closing price for the stock at \$5.00.

Over the next two trading days, Broker-Dealer A sold additional shares of NUGN stock in three transactions at \$5.00 per share. These three transactions represented 100% of NUGN's daily market volume on February 25 and 26, 2015, and resulted in setting the stock's closing price at \$5.00 per share for three consecutive days.

According to calculations in Wilson-Davis's files, NUGN had approximately 41 million shares outstanding during the three-day period from February 24 through February 26, 2015. Based on those calculations, NUGN closing at \$5.00 per share for three consecutive days would result in NuGene's daily market capitalization exceeding \$200 million. As a result of such market capitalization, pursuant to the terms of the Lock-Up/Leak-Out Agreement, Wilson-Davis customers with NUGN stock subject to the agreement were free to sell all their NUGN holdings regardless of the agreement's restrictions.

Over the next few months, more than a dozen Wilson-Davis customers deposited over three million shares of NUGN stock with the firm that would have been subject to the trading restrictions set forth in the Lock-Up/Leak-Out Agreement absent the trading at \$5.00 per share that occurred on February 24 through 26, 2015.

E. Wilson-Davis and Norton Facilitate NUGN Liquidation, During a Stock Promotion Paid for by One of Their Customers

Between February 25, 2015, and March 30, 2015, Wilson-Davis customers deposited over 2.6 million shares of NUGN stock with the firm. During this time, these deposits into Wilson-Davis' accounts represented over 20% of NUGN's public "float" or tradable securities (*i.e.* outstanding shares, less control securities).

Wilson-Davis customer AA's deposit of nearly 1.4 million shares of NUGN—which it had initiated on February 19—settled into its Wilson-Davis account on or about March 2, 2015, shortly after Norton helped nullify the Lock-Up/Leak-Out Agreement.

In connection with AA's deposit, Wilson-Davis received a copy of the Lock-Up/Leak-Out Agreement, as well as a legal opinion from AA's lawyer dated February 20, 2015, that referenced the agreement's trading restrictions.

In addition, Wilson-Davis obtained its own legal opinion regarding AA's deposit of NUGN, dated February 27, 2015, which warned the firm:

[W]e note that there is very little trading volume in this stock, that the issuer has recently announced an acquisition and the termination of its shell status, and that the company has issued a number of press releases in the last 30 days. Under these circumstances, we believe that [Wilson-Davis] should impose substantial and conservative volume limitations on this customer's sales without regard to the limits imposed by the Lockup/Leakout Agreement or the expiration of that agreement.

The firm received at least 17 similar warnings in connection with NUGN deposits by other customers, but the firm never placed any volume restrictions on NUGN sales by its customers.

Shortly after AA's deposit of NUGN, Norton's customer RM (through his entity RC) paid \$4.4 million dollars to create and disseminate a 28-page color brochure promoting NUGN and encouraging investors to buy NUGN stock. Among other things, the NUGN stock

promotion brochure claimed that the price of NUGN shares “could fly from \$1.27 to \$25.08” and “could send NUGN shares soaring 1,875%.”

From early February through June 2015, RM (through his entity RC) was the single largest buyer and seller of NUGN stock through RC’s account at Broker-Dealer A. RC deposited over 2.8 million shares of NUGN with Broker-Dealer A in February 2015, and over the course of the following months, RC bought and sold over \$9 million worth of NUGN stock through Broker-Dealer A, generating over \$5 million in net sales proceeds.

In addition, during the same time, RM was associated with the Wilson-Davis account for the entity BB, which deposited and sold NUGN stock through Norton, generating over \$600,000 in sales proceeds.

AA (controlled by SH), which ultimately became the largest buyer and seller of NUGN stock at Wilson-Davis, began liquidating its NUGN holdings coincident with the launch of the NUGN stock promotion. From March 11 through March 31, 2015, AA sold over 420,000 shares (or over 30%) of the NUGN stock it had deposited with Wilson-Davis generating approximately \$800,000 in sales proceeds over this 20-day period. Moreover, during this period of liquidation activity in March 2015, AA wired a significant portion of its NUGN liquidation proceeds out of its Wilson-Davis account.

Over the following months, AA continued to liquidate the NUGN stock it deposited with the firm, but also bought significant amounts of the stock. These purchases occurred at times when other Wilson-Davis customers were liquidating their NUGN deposits through Wilson-Davis and Norton, thereby helping to mitigate the expected downward price pressure that such liquidations would otherwise have on a thinly traded security and create the false appearance of strong demand for the stock at increased prices.

By August 2015, AA's liquidation and trading activity in NUGN through Wilson-Davis had generated over \$2 million in net trading profits.

F. Norton Engaged in Potentially Suspicious or Manipulative Trading Activities While His Customers Liquidated Newly-Acquired NUGN Holdings

After Norton helped nullify the Lock-Up/Leak Out agreement, NUGN's market price fell from its high—the \$5.00 closing price on February 24 through 26—to just \$1.27 per share at close on March 9, 2015.

After early March 2015, NUGN's market price steadily increased from \$1.27 per share on March 9, 2015 to close at \$4.31 per share on June 10, 2015. During this three-month period from March 2015 through June 2015, NUGN's closing price declined in value on two consecutive trading days on only one occasion (on March 18 and 19).

On June 10, 2015, NuGene announced that it had been “requested by OTC Markets Group to comment on recent trading and promotional activity concerning NUGN common stock.” The June 10 release stated:

OTC Markets informed [NuGene] that it has become aware of certain promotional activities concerning [NuGene's] stock. Included among the promotional activities was a mailer authored by MicroCap Marketplace promoting [NuGene] and encouraging investors to purchase NUGN shares. The mailer's disclaimer also stated that a non-management affiliated third-party shareholder of [NuGene] created and distributed this “advertisement.” This promotional activity coincided with higher than average trading volume and fluctuations in NUGN stock price. We are unaware of the full nature and content of this promotional activity, who else may be responsible and the extent of its dissemination. Neither [NuGene], nor its management, directors, nor other controlling shareholders are to our knowledge associated with any promotional mailers which tout [NuGene] or which encourage investors to purchase NUGN shares. To our knowledge none of our management or directors (two of whom are our principal or controlling shareholders) sold or purchased NUGN securities within the past 30 days.

The higher than average trading activity referenced by NuGene in its June 10 press release was largely the result of the trading by Norton and his customers.

To facilitate liquidation of NUGN stock at the highest possible prices, beginning in early March 2015, Norton began coordinated trading among his customers to help further the appearance of active trading in the stock at stable or increasing prices, while the firm's customers liquidated their NUGN holdings. This potentially suspicious or manipulative activity sometimes occurred between customer accounts at Wilson-Davis, where Norton, as an OTC market maker, entered orders for and executed both sides of the NUGN trades. On other occasions, Norton used Wilson-Davis's proprietary trading account to execute potentially suspicious or manipulative trades. This coordinated trading helped create the false impression of active trading and demand for the stock at stable or increasing prices while the NUGN stock promotion was underway.

Specifically, on March 2 and 3, 2015, Norton engaged in coordinating trading with one of his customers, FS, raising the reported price of NUGN stock. Specifically, toward the end of the trading day on March 2, 2015, Norton entered an order on FS's behalf to buy 700 shares of NUGN at a maximum price of \$1.60 per share. Seconds later, Norton filled FS's order by short selling 700 shares of NUGN from his proprietary account at \$1.50 per share, even though the last reported trade for NUGN in the market was at \$1.36 per share. Norton's late-day trade with FS on March 2 set the closing price for the stock at \$1.50 per share, \$0.14 higher than the last reported trade in the market at the time, which was at \$1.36 per share.

Then, on March 3, 2015, Norton placed an order on FS's behalf to sell at \$2.00 per share the NUGN stock she had just acquired from Norton the day before at \$1.50 per share. As the market opened on March 3, 2015, Norton filled FS's order by buying FS's shares to cover his short position (which he had opened the day before to sell stock to FS) at an average price of \$2.13 per share. Norton engaged in this trading with FS even though it caused him to cover

Wilson-Davis's short position at a loss. Norton's morning trade with FS on March 3, 2015, was the first NUGN trade of the day and increased the reported market price of NUGN over the previous day's close of \$1.50—which he had set, as described above.

In addition, Norton made the last trade of the day in NUGN on March 3, 2015, when he sold 100 shares of NUGN out of Wilson-Davis's proprietary trading account at \$2.12 per share. This trade resulted in a price increase over the last reported trade from \$2.00 to \$2.12 and increased the closing price of NUGN stock by \$0.62 over the prior day's close.

In the early stages of the NUGN deposit and liquidation activity, Norton used his position as a NUGN market maker to coordinate trading in NUGN among his customers to further the appearance of an active and stable market for NUGN. Norton's customers would often use "not held" buy or sell orders, which essentially gave Norton, as a market maker, discretion to buy or sell NUGN stock at various prices or amounts to coordinate trading between his customers. In other instances, Norton and his customers would cancel, replace or change existing orders in price or quantity to coordinate trading between Wilson-Davis customers.

On March 10, 2015, Norton acquired a sizable position in NUGN on behalf of Wilson-Davis through a series of purchases from Broker-Dealer A. Specifically, in rapid succession on March 10, Broker-Dealer A sent five requests directly to Norton for him to buy a total of 37,000 shares of NUGN at an average price of \$1.33 per share. Norton bought all of the NUGN stock offered by Broker-Dealer A, ostensibly to fill a buy order for Wilson-Davis customer MS (controlled by AL), which Norton entered in the midst of buying the stock from Broker-Dealer A.

Norton did not use the stock he purchased from Broker Dealer A to fill MS's order on March 10, 2015. Instead, Norton held the stock overnight and sold it the next day, including one

transaction with his own customer KS, at prices above the last reported trade for the stock, resulting in trades that increased the reported market price of the stock.

On several occasions during March and April 2015, Norton used his position as a NUGN market maker to coordinate trading in NUGN between and among his customers:

- a. On March 12, 2015, Norton facilitated a cross trade between his own customers, AA and JM, entering or changing orders to execute the trade during the last minutes of the trading day, when AA sold 7,900 shares of NUGN at \$1.64 per share and Norton bought the same amount at the same price for JM.
- b. On March 26, 2015, Norton executed a cross trade between his own customers, when AA sold 100,000 shares of NUGN at \$1.63 per share and Norton bought the same amount of shares at the same price for Wilson-Davis customer CC. This trade resulted from an existing order for AA to sell NUGN at the market that remained unfilled for several weeks.
- c. On March 27, 2015, Norton executed a cross trade between his own customers, when AA sold 3,400 shares of NUGN at \$1.96 per share and Norton bought the same amount of shares at the same price for FEI. To execute this trade, Norton entered an order to buy 3,400 shares of NUGN for FEI, which he then changed to a different share amount, before executing the trade of 3,400 shares.
- d. On March 31, 2015, Norton executed a series of cross trades between his own customers, when AA sold 50,000 shares of NUGN at \$1.98 per share to CD in a series of trades throughout the day coordinated by Norton. These cross trades accounted for over 40% of NUGN's trading volume on March 31.
- e. On April 1, 2015, Norton executed another series of cross trades between his own customers, when AA sold another 40,000 shares of NUGN at \$1.98 per share to CD in a series of trades throughout the day coordinated by Norton. These cross trades accounts for over 40% of NUGN's trading volume on April 1.
- f. On April 2, 2015, Norton used Wilson-Davis's proprietary trading account to buy NUGN stock from AA and he then resold the vast majority of it to Wilson-Davis customer CD at increasing prices throughout the day.
- g. On April 24, 2015, Norton used Wilson-Davis's proprietary trading account to buy 17,500 shares of NUGN from customer CE at \$2.45 per share and simultaneously sold 15,000 of these shares to MS at the same price.
- h. Later the same day, on April 24, 2015, Norton sold another 5,000 shares of NUGN to MS and simultaneously bought 2,500 shares each from Wilson-Davis customers BB (associated with RM) and CE.

From March through April 2015, AA liquidated over 970,000 shares of NUGN through Norton, while Wilson-Davis customers CD (controlled by MT), MS (controlled by AL), and CC (controlled by JS) bought over 320,000 shares of the stock. This coordinated buying and selling resulted from Norton entering and executing orders on both sides of the market for these customers, thereby creating the false impression of active trading and demand for the stock at steadily increasing prices, while the NUGN stock promotion was underway.

From March 2, 2015 through May 13, 2015, Norton and his customers' NUGN trading activity dominated the market. During this time, Wilson-Davis accounted for 50% or more of NUGN's daily market volume on 24 out of a possible 51 trading days. Specifically, Wilson-Davis's trading in NUGN accounted for 50% or more of NUGN's total daily trading volume on the following days: March 11–12, March 25–26, March 30–April 2, April 6–9, April 13–16, April 22, April 24, April 28–29, May 6, and May 11–13.

Indeed, by early April 2015, Wilson-Davis was responsible for at least 50% of all NUGN's trading volume since the stock began trading in January 2015. This trend continued throughout April 2015, when NUGN trading activity at Wilson-Davis accounted for at least 65% of the stock's total trading volume for the month of April 2015.

From May through June 2015, Wilson-Davis customers with existing sizable positions in the stock continued to buy NUGN through Norton, while other Wilson-Davis customers were selling. In particular, between May 20 and May 28, 2015, AA bought back over 200,000 shares of NUGN at prices averaging 50% higher than it had previously sold the stock in March and April 2015. Moreover, during this period of buying activity, AA often increased the price of its buy orders to obtain trade executions at higher prices, including, at times, entering buy orders to buy the stock at prices *above* the highest price at which someone was offering to sell NUGN

stock in the market, resulting in trade executions through Wilson-Davis at increasing prices and the false impression of strong demand at such prices. AA's buying also helped mitigate downward pressure on the price of the stock that would be expected from the liquidation activity of other Wilson-Davis customers, including 2B, CD, MS, CC, and others, who sold significant NUGN holdings on the same days AA was buying.

Similarly, in June 2015, Norton continued to buy NUGN for AA on the same days he was liquidating NUGN holdings for other Wilson-Davis customers. In addition to AA's buying, Norton bought significant amounts of NUGN stock for MS (controlled by AL), SI (also controlled by AL), and CD (controlled by MT), while other members of Norton's network of customers were liquidating their NUGN deposits, in June 2015.

In particular, in June 2015, MS (controlled by AL) bought over 75,000 shares of NUGN at an average price of \$4.13, even though it had purchased over 300,000 shares of NUGN in a series of private transactions with RC at just \$1.40 per share a few weeks earlier.

In June 2015, AA continued to buy and sell NUGN stock, providing market support while other Wilson-Davis customers liquidated their holdings. By the end of May 2015, AA had sold over 1.2 million shares of NUGN at an average price of \$2.17 per share. Nevertheless, in June 2015, AA bought back over 474,000 NUGN shares at an average price of \$4.07 per share, while it continued to liquidate NUGN at lower prices.

By the end of June 2015, the NUGN stock promotion was underway and trading volume away from Wilson-Davis had increased significantly. Thereafter, Norton's customers continued to liquidate NUGN stock, but without significant buying support from AA, MS, CD, and other Norton customers, the stock's price steadily declined from \$3.79 per share at the end of June 2015 to \$1.45 by September 2015.

In total, between February and October 2015, Wilson-Davis had over 20 customers deposit over 4 million shares of NUGN stock—most of which had been acquired from third parties for pennies a share just prior to the Bling-NuGene merger.

From March 2015 through October 2015, Wilson-Davis customers liquidated over 3.2 million of these shares, generating almost \$10 million in net sales proceeds. In particular, customers who purchased NUGN stock privately from RM (through RC) generated over \$2.5 million in NUGN sales proceeds coincident with the NUGN stock promotion.

In total, from February through October 2015, Wilson-Davis and Norton generated over \$500,000 in commissions and fees from NUGN transactions. In particular, in just three months from March 3, 2015 to June 9, 2015, Norton generated approximately \$415,000 in commissions from his customers' NUGN trading.

II. WILSON-DAVIS SUPERVISORY SYSTEM AND AML PROGRAM

A. Supervisory Structure and Responsibilities

At all relevant times, Wilson-Davis maintained WSPs, which under a section entitled “Designation of Supervisors,” designated Snow, Davis, and Barkley as the principals responsible for the supervision of Wilson-Davis’s business lines.

As the firm’s President, Snow was responsible for overall firm supervision, including the firm’s supervisory systems and WSPs. And as the firm’s AMLCO, he also was responsible for developing the firm’s AML program, as well as supervising the firm’s overall compliance with AML requirements, including investigating suspected money laundering activities, other financial crimes, and taking corrective action when necessary.

Lyle Davis was responsible for monitoring the firm's trading volume and managing the firm's resulting daily cash calls. He was also responsible for reviewing customer trading from the prior day for potentially suspicious activity.

In June 2015, Davis became the firm's Chairman of the Board and became responsible for supervising the firm's Retail Sales Personnel Group.

Barkley was the firm's head of trading and was responsible for supervising the firm's trading department and market making activity. At all relevant times, Barkley was Norton's direct supervisor.

B. Wilson-Davis's Review and Supervision of Trading Activity

At all relevant times, Wilson-Davis's WSPs recognized the obligation to refrain from engaging in potentially suspicious or manipulative activity. Other than providing examples of such activity, however, the firm's WSPs failed to specify any process or procedures regarding how the firm should monitor for such activity or what should be done if it was identified.

In practice, during the relevant period, no one at Wilson-Davis was supervising the firm's trading activities for the purpose of detecting and preventing potentially suspicious or manipulative trading activity.

As noted above, Snow had overall responsibility for the firm's supervisory system and had responsibility for reviewing and supervising the firm's business, including the trading activities of Norton. Snow, however, did not ensure that the firm had a supervisory system reasonably designed to achieve compliance with applicable securities laws, regulations and rules—including those that prohibit manipulative trading. Nor did Snow review the firm's trading in an effort to detect and prevent market manipulation.

Snow did not detect Norton's potentially suspicious or manipulative trading in NUGN. Barkley, as the firm's head of trading, was responsible for directly supervising the firm's traders and for reviewing and supervising their trading activities, including the trading activities of Norton.

Barkley's review and supervision of the firm's trading activity consisted of self-described "real time" reviews, where he purportedly watched all the firm's trading on a daily basis as it was occurring on his computer screen and made a "mental note of the amount of money" in the trade. Barkley's "real time" review could not be reasonably expected to identify potentially manipulative trading activity, including patterns of trading throughout a trading day or across several trading days or between or among Wilson-Davis accounts.

In addition, Barkley was aware of the firm's trading volume in particular stocks from his review of the firm's daily cash calls from the National Securities Clearing Corporation ("NSCC"). Despite knowing about the firm's significant trading volume in NUGN stock on several days between March and April 2015 (as described above), Barkley never took any action to limit or restrict Norton's or the firm's customers' trading volume in the stock.

Barkley did not detect Norton's potentially suspicious or manipulative trading in NUGN. From February 2015 through June 2015, Davis's review and supervision of the firm's trading activity consisted of monitoring the same NSCC daily cash calls at which Barkley looked, preparing a "Customer Volume Report" for select securities, and reviewing a summary of the previous day's trading.

For NSCC cash calls, Davis would prepare a report with NSCC charges resulting from trading volume that he thought was notable and send it to Barkley. Although, from time to time during the relevant period, Davis' NSCC report reflected significant trading volume for the firm

in NUGN stock, no one at Wilson-Davis ever took any action to limit or restrict the firm's trading volume in NUGN stock based on the NSCC daily cash calls.

Davis also prepared a "Customer Volume Report" that he manually created on a daily basis from at least February 2014 until June 2015. The report included trading by specific customers in specific stocks that Davis or others at the firm selected. The report would highlight if a particular customer's daily trading volume in one of the selected stocks was at least 30% higher than the stock's 10-day average trading volume. If so, Davis or another principal would notify the representative trading that stock, but he otherwise took no action.

In any event, neither Davis nor the firm selected NUGN for monitoring based upon the Customer Volume Report.

Finally, Davis would review a one- or two-page consolidated report summarizing all customer trading from the prior day by security, number of transactions, and total share and dollar amount involved. Although Davis relied on this summary report as the firm's review of customer trading activity for supervision purposes, the report could not be reasonably expected to identify potentially suspicious or manipulative trading (including coordinated or matched trading, as identified by the firm's WSPs). The report did not list or even sample particular trades. Nor did it identify any particular trade or the firm customers associated with trades. The report also did not allow Davis to identify whether Norton may have used Wilson-Davis's proprietary trading account to coordinate trading between firm customers.

Davis did not detect Norton's potentially suspicious or manipulative trading in NUGN.

Until June 2015, the firm had no automated exception reports or review system to identify potentially manipulative trading activity for review. Around June 2015, Davis began using certain computer-generated exception reports to review customer trading.

During the relevant period, Wilson-Davis's WSPs prohibited the firm or firm employees from "engag[ing] in a practice of effecting cross transactions for the purpose of supporting or maintaining the market price of a security."

In that regard, Wilson-Davis had a policy of requiring pre-approval for internal cross trades, which would have encompassed the trading alleged above.

Neither Norton nor anyone else at Wilson-Davis sought or obtained approval for any of the NUGN cross trades as alleged above.

C. Wilson-Davis's AML Program

At all relevant times, Wilson-Davis's written AML program was memorialized in the firm's WSPs, which designated Snow, as the AMLCO, "responsible for overseeing [Wilson-Davis's] anti-money laundering program" and "investigating suspected money laundering activities, other financial crimes, and taking corrective action when necessary."

In addition, the firm's AML policies specifically provided that detecting and preventing potential money laundering activities was "an obligation of each employee of the firm," and that "[i]t is important that the Firm, as well as all employees, remain diligent and active participants in the Firm's anti-money laundering (AML) program."

The firm's AML policies further provided that "employees should be aware of and keep an eye out for activity that may indicate potential money-laundering or other financial crimes." They further provided that the firm could avoid money-laundering schemes by, among other things, "[b]eing familiar with the customer's financial resources, business activities and sources of funds" "at the time an account is opened as well as during the operation of a customer's account."

In addition, the firm's AML policies listed numerous "risk indicators (red flags) that may suggest potential money laundering," including:

- a. The customer (or a person publicly associated with the customer) has a questionable background . . . indicating possible criminal, civil, or regulatory violations . . .
- b. The customer wishes to engage in transactions that lack business sense or apparent investment strategy or that are inconsistent with the customer's stated business strategy.
- c. For no apparent business purpose or other reason, the customer has multiple accounts under a single name or multiple names (including family members or corporate entities); there may be a large number of interaccount or third-party transfers; the customer has opened multiple accounts with the same beneficial owners or controlling parties for no apparent business reason.
- d. The customer engages in prearranged or other non-competitive trading, including wash or cross trades of illiquid securities.
- e. Two or more accounts trade an illiquid stock suddenly and simultaneously.
- f. Customer's trading patterns suggest that he or she may have inside information.
- g. The customer, for no apparent reason or in conjunction with other 'red flags,' engages in transactions involving certain types of securities, such as penny stocks..., which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)
- h. Buying and selling securities with no purpose or in unusual circumstances (e.g., churning at customer's request).

Wilson-Davis's AML policies also contained a section entitled "Detecting Potential Money Laundering," which stated that the review of transactions for "patterns of an unusual size, volume, pattern or type of transaction, geographic factors such as whether jurisdictions designated as 'non-cooperative' are involved, or involve 'red flags' (indicators of potential money laundering)" were to be "daily and ongoing."

Other than referring the reader to the red flags of money laundering, however, the AML procedures provided no explanation of what constituted a transaction of “unusual size, volume, pattern or type,” nor did they identify what, if any, “daily” or “ongoing” reports firm supervisors should have been reviewing.

Wilson-Davis’s WSPs explicitly identified as potentially suspicious “trading that constitutes a substantial portion of all trading for the day in a particular security; trading or journaling between / among accounts, particularly between related owners; late-day trading; heavy trading in low-priced securities; unexplained wire transfers . . . ; [and] unusually large deposits of funds or securities.”

The firm, however, was not monitoring to identify and, if necessary, investigate such activity with a view toward detecting and preventing market manipulation. Snow did not review the firm’s trading activity at all, and the firm’s other “Designated Supervisors” (Barkley and Davis) conducted only limited reviews of the firm’s trading activities (as described above). This limited review, however, was not designed to identify such activity as potentially suspicious in connection with customers’ NUGN liquidation and trading activity.

D. Red Flags Associated with NUGN Liquidation and Trading

From December 2014 through October 2015, Wilson-Davis and the firm’s designated supervisors—Snow, Barkley, and Davis—failed to detect, escalate, or investigate numerous red flags of potentially suspicious activity associated with the firm’s customers’ liquidation and trading in NUGN, including:

- a. In a short period, over 20 different customers deposited millions of shares of a thinly-traded, little known microcap security (NUGN) that they obtained in privately negotiated sales with third parties, including numerous members of the same family, just before this former shell company issuer (BLMK) announced a reverse merger, change in business line, and stock symbol change.

- b. At least 12 Wilson-Davis customers obtained their NUGN stock at or around the same time (mid-December 2014), and Wilson-Davis knew or had reason to know that several of these customers had garnered regulatory scrutiny for their microcap trading activity.
- c. Several customers who deposited NUGN stock with the firm had questionable backgrounds, including SH (who was involved with prior stock promotions that garnered regulatory scrutiny), MT (who was fined \$1.4 million by the State of Texas in 2005 for an illegal email stock promotion), and others who were named with Wilson-Davis in a lawsuit alleging that they engaged in a “pump and dump” scheme through the firm (including JF, RW, KC, JC, and MT).
- d. Several of the original BLMK shareholders who sold their stock to Wilson-Davis customers were members of the same family (including NF, EF, MF, and SF), who were related to BLMK’s former CEO (DK), which was readily ascertainable from an Internet search for the former CEO’s name.
- e. Stock deposit paperwork for several customers was incomplete and missing pages, including the reverse side of stock certificates and pages or sections of applicable stock purchase agreements. In addition, more than a dozen Wilson-Davis customers who deposited NUGN stock with the firm used the same private attorney to provide opinion letters regarding their stock.
- f. The total stock deposited by Wilson-Davis customers represented a significant percentage of NUGN’s public float.
- g. At least eight Wilson-Davis customers—namely, AA, PE, MS, BB, AM, RG, KL, and CM—opened accounts with the firm only a few weeks prior to their NUGN deposit and liquidation activity. Seven of these customers (with the exception of MS) held no other securities in their accounts until they deposited their NUGN shares and two customers (AA and KL) began selling their NUGN holdings the day after depositing the stock; thereafter, they then began wiring the proceeds of these sales out of their Wilson-Davis accounts.
- h. Wilson-Davis customer RM (through his entity RC) paid \$4.4 million for the NUGN Stock Promotion), which the issuer addressed publicly in June 2015, yet Wilson-Davis apparently failed to identify or address the stock promotion.
- i. Shortly after depositing their stock and in the midst of a stock promotion paid for by one of Wilson-Davis’s customers (RM), Wilson-Davis customers liquidated millions of dollars’ worth of their newly-acquired, low-cost NUGN stock, while other Wilson-Davis customers with existing sizeable positions in the stock—namely AA, MS, and CD—engaged in significant buying activity in the stock.
- j. Overall, Wilson-Davis’s and its customers’ trading in NUGN dominated the market from late February through early May 2015, including several trading days

where NUGN trading through Wilson-Davis alone accounted for 50% or more of the stock's daily trading volume.

- k. Wilson-Davis and its customers engaged in trading indicative of potential market manipulation, including coordinated trading between Wilson-Davis customers and the firm.

III. PRODUCTION OF INACCURATE OR MISLEADING SUPERVISION DOCUMENTATION

On March 4, 2016, pursuant to FINRA Rule 8210, FINRA requested that Wilson-Davis produce “[s]upervisory records evidencing review of all trading activity in NUGN” from May 5, 2014 through October 7, 2015.

When he received notice of FINRA’s Rule 8210 request, Davis knew that FINRA was investigating Wilson-Davis’s supervision of NUGN trading activity because the request specifically sought records related to the firm’s supervision of trading in NUGN.

On or about April 6, 2016, Wilson-Davis and Davis produced documents that purported to be responsive to FINRA’s March 4th request. Specifically, the firm and Davis produced to FINRA staff a printed spreadsheet for part of the requested time period containing handwritten markings next to certain NUGN transactions.

The April 6, 2016 response provided by Wilson-Davis and Davis did not include any statement or explanation indicating when the spreadsheet was printed or prepared, or when Davis or anyone else had made the handwritten markings.

The spreadsheet was not a record of Davis’s “supervisory review” of NUGN trading activity, as sought by FINRA’s March 4, 2016 request. Instead, as Davis testified at his OTR interview, the electronic spreadsheet was generated by Davis with the addition of handwritten notations to purportedly “redo” his review of the trading, *after* he received FINRA’s March 4th Rule 8210 request.

The firm did not have any documents responsive to FINRA's March 4th Rule 8210 request for the time period covered by Davis's retroactively generated and initialed spreadsheet. Rather than inform FINRA that the firm did not have responsive documents reflecting Davis's supervisory review of NUGN trading for the entire time period requested, Davis and Wilson-Davis generated and produced the newly-generated spreadsheet, which was not a contemporaneous supervision record responsive to FINRA's request.

**DEFICIENT SUPERVISORY SYSTEM AND FAILURE TO SUPERVISE
Violation of FINRA Rules 3110(a), 3110(b) and 2010
(Wilson-Davis, Snow, Davis, and Barkley)**

FINRA Rule 3110(a) requires member firms to "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules."

FINRA Rule 3110(b) requires member firms to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."

A violation of FINRA Rule 3110 also violates FINRA Rule 2010.

As alleged herein, from February 2015 through October 2015, Wilson-Davis, Snow, Barkley, and Davis failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with the applicable securities laws and regulations and FINRA rules. The firm's WSPs acknowledged the firm's legal obligation to avoid engaging in or facilitating manipulative behavior, but the WSPs did not explain how the firm's trading activity would be supervised to ensure compliance with that obligation or what should be done if such activity was detected. Moreover, the firm's system of reviewing trading

activity was limited and could not be reasonably expected to detect and prevent manipulative trading activity at the firm in microcap securities, such as the potentially suspicious or manipulative trading in NUGN.

During the same period, Wilson-Davis, acting through its principals, Snow, Barkley, and Davis, also failed to reasonably supervise Norton's trading activities in NUGN to ensure compliance with federal securities laws and regulations, and with applicable FINRA rules. The firm and these three designated supervisors failed to detect or otherwise ignored numerous "red flags" of potentially manipulative activity by Norton and his customers related to NUGN (as described above), including failing to reasonably detect and respond to activity identified as indicative of potential manipulation by the firm's WSPs.

By virtue of the foregoing, Wilson-Davis, Snow, Davis, and Barkley violated FINRA Rules 3110(a), 3110(b) and 2010.

**UNREASONABLE AML SYSTEM
Violation of FINRA Rules 3310(a) and 2010
(Wilson-Davis and Snow)**

FINRA Rule 3310(a) requires member firms to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder.

A violation of FINRA Rule 3310 also constitutes a violation of FINRA Rule 2010.

A significant portion of Wilson-Davis's business involved the deposit and liquidation of microcap stocks by its customers. This business line involves heightened risks.

From February 2015 through October 2015, however, Wilson-Davis failed to establish and implement policies and procedures reasonably tailored to address the risks posed by the

firm's microcap liquidation business and to detect and cause the reporting of transactions required under the Bank Secrecy Act and implementing regulations.

While the firm's WSPs identified various "red flags" of potentially suspicious activity, including red flags associated with customer stock deposits and potentially manipulative trading activity, the firm's AML policies failed to describe how the firm or its registered representatives should review or monitor customer stock deposits or subsequent trading activity to detect and investigate such red flags.

Moreover, other than instructing registered representatives to escalate red flags of potentially suspicious activity to the firm's AMLCO, the firm's AML policies failed to describe how the firm would investigate such red flags or how, if at all, the identification and investigation of suspicious activity would be documented by the firm or its registered representatives.

As the firm's designated AMLCO, Snow was responsible for overseeing Wilson-Davis's AML program, including the establishment of compliant AML policies and procedures. He failed to establish and implement compliant AML policies and procedures.

Moreover, Snow failed to implement the firm's AML policies and procedures. Although Snow was responsible for reviewing and approving stock deposits, he only conducted limited reviews of stock deposit activity at the firm, and he did not regularly review stock deposits for "red flags" of potentially suspicious activity. In addition, Snow failed to ensure that Wilson-Davis's trading activity was monitored with a view toward detecting, investigating, and reporting, if necessary, potentially manipulative trading.

Snow's failure to implement a reasonable AML program resulted in numerous red flags related to the firm's customers' deposit and liquidation of NUGN stock to go undetected and

uninvestigated—despite that the firm’s own AML policies listed many red flags indicative of potentially suspicious activity.

By virtue of the foregoing, Wilson-Davis and Snow violated FINRA Rules 3310(a) and 2010.

**PROVIDING INACCURATE OR MISLEADING INFORMATION TO FINRA
Violation of FINRA Rules 8210 and 2010, Both Independently
and by Virtue of Violating Rule 8210
(Wilson-Davis and Davis)**

FINRA Rule 8210(a)(1) authorizes FINRA, in the course of an investigation, to require persons subject to its jurisdiction to “provide information orally [or] in writing . . . with respect to any matter involved in the investigation” FINRA Rule 8210(c) requires such persons to provide such information when requested by FINRA.

In addition, even if the request is not directed to a specific associated person, an individual may nevertheless violate Rule 8210 when he or she is aware that inaccurate or misleading information is being provided to FINRA by the member firm in response to a request for information issued pursuant to Rule 8210.

Providing inaccurate or misleading information to FINRA staff in response to a Rule 8210 request violates Rule 8210.

In addition, such conduct is inconsistent with just and equitable principles of trade and, thus, independently violates FINRA Rule 2010.

In response to a request for documents and information issued by FINRA staff pursuant to Rule 8210, Wilson-Davis and Davis provided FINRA with an inaccurate or misleading spreadsheet purporting to represent a contemporaneous annotated record of the firm’s and Davis’s daily review, including handwritten notations, and supervision of the firm’s trading activity in NUGN, when, in fact, no such responsive documents evidencing the review existed.

By providing FINRA with the inaccurate or misleading spreadsheet purporting to respond to FINRA's request, Wilson-Davis and Davis violated FINRA Rule 8210.

In addition, by providing FINRA with the inaccurate or misleading spreadsheet with handwritten notations, Wilson-Davis and Davis violated FINRA Rule 2010, both independently and by virtue of violating Rule 8210.

CONCLUSION

Based on the foregoing, Respondents Wilson-Davis, Snow, Davis and Barkley violated FINRA Rules 3110(a) and (b) and 2010; Wilson-Davis and Snow violated FINRA Rules 3310(a) and 2010; and Wilson-Davis and Davis violated FINRA Rule 8210 and further violated FINRA Rule 2010, both independently and by virtue of violating Rule 8210.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by FINRA of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondents be sanctioned as follows:

- **Wilson-Davis & Co., Inc.**

- A censure;
- \$500,000 fine;
- Business Line Restriction

Wilson-Davis shall not accept for deposit for any firm customer account (excluding clearing services for other broker-dealer customers and/or proprietary market making) any low-priced security (defined as any equity

security that does not trade on a national securities or qualified foreign exchange and trades at a price of less than \$5.00 per share at the time it is submitted to Wilson-Davis for deposit) until the firm certifies to FINRA that it has implemented the Current Recommendations (defined below) of an Independent Consultant. However, Wilson Davis may accept for deposit and/or execute orders to sell such low-priced securities if: (1) Wilson-Davis obtains and retains a trade confirmation evidencing that the securities were purchased on the open market or documentation evidencing the securities were obtained pursuant to an effective registration statement under the Securities Act of 1933 or documentation evidencing that the securities have been listed in an effective resale registration statement under the Securities Act of 1933; (2) the securities were deposited at Wilson-Davis prior to the issuance of the Order Accepting the Offer of Settlement in this case, provided that all such sales otherwise comply with the firm's legal obligations, including under Section 5 of the Securities Act of 1933; and (3) stocks that are issued by companies subject to the periodic reporting requirements of Section 13 or 15(d) of the Exchange Act and such companies have filed all periodic reports required during the preceding 12 months; and

- Undertaking for Independent Consultant

- 1. Wilson-Davis has undertaken to do the following:

- (a) Retain at its own expense within 30 days of the date of the Notice of Acceptance of Offer of Settlement, an Independent Consultant not unacceptable to FINRA to conduct a comprehensive review of the

adequacy of the firm's compliance with its supervisory and AML compliance obligations in connection with its market making activities in low-priced securities and sale of low-priced securities for firm customer accounts, including, but not limited to:

- (i) customer onboarding and due diligence, including, customers' civil, criminal and/or regulatory background;
- (ii) market making activities in connection with low-priced securities; and
- (iii) customer orders to buy or sell and trading of low-priced securities.

(b) The Independent Consultant shall promptly provide recommendations to Wilson-Davis regarding its supervisory and AML compliance obligations on the issues listed above ("the Current Recommendations"). The Independent Consultant shall conduct a higher level review of the efforts undertaken by the previous independent consultant (Thornton & Associates) retained in regard to AML and Supervision as part of the SEC Undertaking, as set forth in the May 15, 2019 SEC Order, and provide any additional recommendations (hereinafter "Additional AML Recommendations") regarding Wilson-Davis's systems, procedures, and controls for detecting, monitoring, and investigating suspicious activity relating to customer deposits and liquidation activity through Wilson-Davis. Wilson-Davis shall meet with the Independent Consultant to

address and implement the Additional AML Recommendations within 45 days of the Additional AML Recommendations being provided.

(c) The Independent Consultant, any firm with which the Independent Consultant is affiliated, and any person engaged to assist the Independent Consultant in performance of his or her duties, shall not have provided consulting, legal, auditing, or other professional services, to, or had any affiliation with, Respondents during the two years prior to the date of the Order Accepting Offer of Settlement;

(d) Cooperate with the Independent Consultant in all respects, including providing the Independent Consultant with access to Wilson-Davis's files, books, records, and personnel, as reasonably requested for the above-mentioned review. Wilson-Davis shall require the Independent Consultant to report to FINRA on its activities as FINRA may request and shall place no restrictions on the Independent Consultant's communications with FINRA. Further, upon request, Wilson-Davis shall make available to FINRA any and all communications between the Independent Consultant and Wilson-Davis and documents reviewed by the Independent Consultant in connection with this review. Once retained, Wilson-Davis shall not terminate the relationship with the Independent Consultant without FINRA's written approval; Wilson-Davis shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or

privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to FINRA;

(e) At the conclusion of the Independent Consultants' review, which shall be no more than 120 days after the date of the Order Accepting Offer of Settlement, require the Independent Consultant to submit to the firm and FINRA staff a written report ("the Initial Report"). The Initial Report shall, at a minimum, (i) evaluate and address the adequacy of Wilson-Davis's supervision and AML compliance with respect to the firm's market making activities in low-priced securities and sale of low-priced securities for firm customer accounts, including, but not limited to customer onboarding and due diligence, including, customers' civil, criminal and/or regulatory background, market making activities in connection with low-priced securities, and customer orders to buy or sell and trading of low-priced securities; (ii) provide a description of the review performed and the conclusions reached; and (iii) as may be needed, make recommendations regarding how Wilson-Davis should modify or supplement its processes, controls, policies, systems, procedures, and training to manage its regulatory and other risks in relation to the areas described above (*i.e.* the Current Recommendations); and

(i) Within 60 days after delivery of the Initial Report, Wilson-Davis shall adopt and implement the Current Recommendations of the Independent Consultant, or, if Wilson-Davis considers a recommendation to be, in whole or in part, unduly burdensome or

impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. Wilson-Davis shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA (“Proposed Alternative Procedures”).

(ii) Within 30 days of any Proposed Alternative Procedures, Wilson-Davis shall require the Independent Consultant to: (i) reasonably evaluate the alternative procedure(s) and determine whether they will achieve the same objective as the Independent Consultant’s original Current Recommendations; and (ii) provide Wilson-Davis and FINRA with a written decision reflecting its determination (“Written Report Regarding Proposed Alternative Procedures”). Wilson-Davis must abide by the Independent Consultant’s ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

(iii) Within 30 days after the issuance of the later of the Independent Consultant’s Initial Written Report Regarding Proposed Alternative Procedures (if any), Wilson-Davis shall provide the Independent Consultant and FINRA staff with a written implementation report, certified by an officer of Wilson-Davis, attesting to, containing documentation of, and setting forth

the details of Wilson-Davis's implementation of the Independent Consultant's recommendations. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. FINRA may make reasonable requests for further evidence of compliance, and Wilson-Davis agrees to provide such evidence.

(f) Require the Independent Consultant to submit an Initial Written Report to Wilson-Davis and FINRA at the conclusion of the Independent Consultant's higher level review of the firm's prior AML and supervision findings (as described above), which shall be no more than 120 days after the date of the Order Accepting Offer of Settlement. Thereafter, the Firm shall address and implement the Independent Consultant's Additional AML Recommendations, if any, within 45 days of the Additional AML Recommendations being provided in the same manner as described above with respect to the Independent Consultant's Current Recommendations, including the resolution of disputes and the firm's certification.

(g) Require the Independent Consultant to enter into a written agreement that, for the duration of this engagement and for a period of two years from the completion of this engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing, or other professional relationship with Wilson-Davis, or any of its present or former affiliates, directors, officer, employees, or agents acting in their

capacity as such. Any firm with which the Independent Consultant is affiliated, and any person engaged to assist the Independent Consultant in the performance of its duties pursuant to this Order Accepting Offer of Settlement, shall not, without prior written consent of FINRA, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Wilson-Davis or any of Wilson-Davis's present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

2. Upon written request showing good cause, FINRA may extend any of the procedural dates set forth above.

- **James C. Snow, Jr.**

- A 2-year suspension from associating with any FINRA member in all principal capacities; and
- \$30,000 fine.

- **Lyle Wesley Davis**

- A 3-month suspension from associating with any FINRA member in all capacities followed by a 21-month suspension from associating with any FINRA member in all principal capacities; and
- \$30,000 fine.

- **Byron Bert Barkley**

- A 2-year suspension from associating with any FINRA member in all principal capacities; and
- \$30,000 fine.

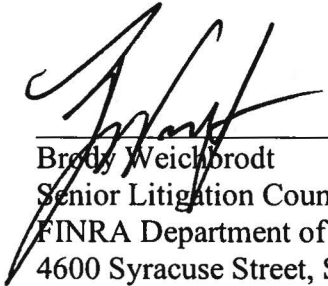
Respondents agree to pay the monetary sanctions upon notice that the Offer has been accepted and that such payments are due and payable. Respondents have submitted Election of Payment forms showing the method by which they propose to pay the fines imposed.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the Director
of ODA, by delegated authority



Brody Weichbrodt
Senior Litigation Counsel
FINRA Department of Enforcement
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