ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section ("Enforcement Section") of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the "Division") files this administrative complaint ("Complaint") in order to commence an adjudicatory proceeding against Cantella & Co., Inc. ("Respondent") for violating M.G.L. c. 110A, the Massachusetts Uniform Securities Act (the "Act") and 950 CMR 10.00 et seg. ("Regulations"). This Complaint focuses primarily on Cantella's materially false and misleading responses to inquiries made by the Division as to its structured products business, and on Cantella's overall failure to create, implement and enforce adequate policies and procedures that would enable reasonable supervision of its registered representatives.

The Enforcement Section seeks an order instructing the Respondent to permanently cease and desist from committing any further violations of the Act and Regulations, to require Cantella to pay an administrative fine in an amount and upon such
terms and conditions as the Director or Hearing Officer may determine, to censure Cantella, as well as requiring the Respondent to pay the Enforcement Section’s investigatory costs. In addition, the Enforcement Section requests the Director or Hearing Officer take any other appropriate actions against Cantella which may be in the public interest and necessary for the protection of Massachusetts investors.

II. SUMMARY

Between January 1, 2006 and July 11, 2007, Massachusetts registered agents of Cantella executed 62 transactions, totaling $1,264,288.00 in structured products. Despite these sales, Cantella failed to design, implement, or enforce written supervisory procedures specifically addressing transactions in structured products1 by Massachusetts agents.

Despite this reality, when the Division conducted an inquiry into Cantella's structured product business, the firm produced documents and made statements with the effect of misleading the Division as to the true nature and extent of Cantella's involvement in structured products. Included in Cantella's initial response to the Division were policies and procedures that the firm created only after receipt of the Division's inquiry, as well as references to structured product-specific training materials. These documents were not only relevant to the Division's investigation, but were material to assessing the firm's compliance with the Act. Nonetheless, rather than providing the Division with truthful and accurate information, Cantella provided misinformation with the effect of giving the false impression that the firm had a supervisory system in place

1 The Financial Industry Regulatory Authority (FINRA, formerly known as the National Association of Securities Dealers or NASD) defines structured products as “[s]ecurities derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance, and/or a foreign currency.” Structured Products, NASD Notice to Members 05-59, page 1 (September 2005).
during the entire relevant time period that specifically addressed structured products.

It was only after repeated written requests for clarification that Cantella admitted that it created documents only after receiving the Division's inquiry. The evidence will show that not only did Cantella provide false and misleading information to the Division, but the supervisory system it actually had in place was wholly deficient. Moreover, even those procedures that the firm attempted to pass off as genuine were themselves deficient. Perhaps most egregious is that the firm neither had, nor today has, a system to conduct firm-level, reasonable basis suitability for all structured products. To date, Cantella has no prohibition against registered representatives of Cantella soliciting customer sales in structured products before the firm's review of such products, nor does it require any sort of review or approval prior to sales of publicly-traded structured products. As an independent broker-dealer, these violations become all the more pronounced, especially with respect to Cantella's ceding its reasonable basis suitability obligation onto its agents. As such, this Complaint seeks to address Cantella's misleading responses to the Division, and the continuing supervisory deficiencies that have allowed Massachusetts agents to sell complex structured products without appropriate review.

III. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities, as provided for by the Act. The Act authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals offering and/or selling securities; and 3) those individuals transacting business as investment advisers within the Commonwealth.

2. The Division brings this action pursuant to the enforcement authority conferred
upon it by § 407A of the Act and M.G.L. c. 30A, wherein the Division has the authority
to conduct an adjudicatory proceeding to enforce the provisions of the Act and all
Regulations and rules promulgated thereunder.

3. This proceeding is brought in accordance with §§ 204, 404, and 407A of the Act
and its Regulations. Specifically, the acts and practices constituting violations occurred
within the Commonwealth of Massachusetts.

4. The Division specifically reserves the right to amend this Complaint and/or bring
additional administrative complaints to reflect information developed during the current
and ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred
during the approximate time period of January 1, 2006 to date (“Relevant Time Period”).

V. RESPONDENT

6. Cantella & Co., Inc. (“Cantella”) is a registered broker-dealer and an investment
adviser, headquartered at Two Oliver Street in Boston Massachusetts, 02109, with a
Central Registration Depository (“CRD”) number of 13905.

VI. OTHER INVOLVED AND RELATED PARTIES

7. Philip Charles McMorrow (“McMorrow”) is an investment adviser representative,
registered representative and direct owner of Cantella, and has a CRD number of 835197.
According to the CRD, McMorrow serves as the Supervisor/Person-in-Charge of
Cantella’s main office in Boston, Massachusetts and as the President of Cantella.

VII. FACTS AND ALLEGATIONS

A. Cantella Made Multiple Materially False and Misleading Statements to the
Division
1. Cantella Represented That It Had Policies and Procedures In Place Relative To Structured Products

8. On July 11, 2007, the Division sent an inquiry letter to Cantella (the “Division’s Initial Inquiry”). This inquiry requested, among other items, the production of written policies and procedures at Cantella concerning structured products during the relevant time period of January 1, 2006 to date, which were material to the Division’s investigation.

9. In response to the Division’s Initial Inquiry, on July 31, 2007, Cantella provided the Division with a document titled “Written Procedure regarding the supervision of Structured Products,” (herein referred to as “Supervisory Procedures”).

10. The Division requested further clarification from Cantella on August 2, 2007, regarding, among other items, the creation and effective date for the Supervisory Procedures that Cantella previously produced to the Division.

11. In their response dated August 9, 2007, Cantella stated that its “[i]nternal policies and procedures were updated on July 12, 2007” and these “[p]olicies and procedures were effective on July 12, 2007.” However, Cantella’s response failed to directly answer the Division’s basic question regarding when its policy was created.

12. The Division served Cantella with a subpoena duces tecum and ad testificandum on August 24, 2007 (the “Subpoena”) requesting additional information, including (1) whether Cantella had any written policies or procedures concerning structured products on or prior to the date of the Division’s Initial Inquiry, and (2) whether Cantella created such policies and procedures on or after the date of the Division’s Initial Inquiry.

13. In its September 21, 2007 response to the Subpoena, the firm admitted that
“Cantella did not have written policies and procedures that specifically referred to structured products prior to July 11, 2007.”

14. In this same response, Cantella also admitted that “[t]he written procedures that were produced to the Division on July 31, 2007 were created on July 11, 2007.”

15. When asked why Cantella failed to inform the Division that it created those policies and procedures in response to the Division’s Initial Inquiry, McMorrow testified:

   The Division did not ask when the policies and procedures were initiated. The letter said “to present” which is an open-ended time period, and I interpreted “to present” to mean the date of my response. If you intended it to be July 11th, January 1, 2006 through July 11, 2007, I believe you should have stated it in that manner.

16. The Division further questioned McMorrow as to why Cantella’s statements filed on August 9, 2007 were non-responsive, to which he testified as follows:

   Q. Where in that paragraph do you identify when the policy was created?
   A. It’s not identified in any way.
   Q. Okay, and the Division requested it; did it not?
   A. Yes, it did.
   Q. Why didn’t Cantella respond with a complete answer in telling the Division when the policy was created?
   A. Exhibit A was created on July 11th and July 12th. There was no representations made otherwise. I didn’t say the documentation in Exhibit A was in effect from January 1, ’06, forward.

17. Cantella submitted policies and procedures concerning structured products to the Division on July 31, 2007. Cantella did not disclose on July 31, 2007 that those policies and procedures were not in place at the time of the Division’s Initial Inquiry.

18. Cantella failed to disclose to the Division in its July 31, 2007 response, in its August 9, 2007 response, in its August 21, 2007, or in its August 29, 2007 response (the “First Four Responses”) that Cantella’s Supervisory Procedures were not in existence at the time Cantella received the Division’s Initial Inquiry, and that Cantella created them
directly in response to the Division’s Initial Inquiry.

19. The statements made in the above filings gave the false and misleading impression that Cantella had policies and procedures in place when, in fact, such procedures did not exist until Cantella created them in response to the Division’s inquiry.

2. **Cantella Represented That It Had Training Materials and That It Had Disseminated These Training Materials To Its Agents**

20. The Division’s Initial Inquiry also requested any training and educational materials at Cantella concerning structured products, information material to the Division’s investigation.

21. In its July 31, 2007 response to the Division’s Initial Inquiry, Cantella claimed that “[c]opies of internal training materials are enclosed as ‘Exhibit A,’” yet no training materials were included in Cantella’s response.

22. The Division subsequently requested Cantella provide these missing materials and, in its August 9, 2007 response, Cantella produced “Additional Training & Educational Materials” to the Division, including an email from November 2006 addressing reverse convertible products, and documents from various webpages apparently printed by Cantella on or after the date of the Division’s Initial Inquiry.

23. In this same response, Cantella stated that it had “[p]repared an updated training memorandum which also includes updated policies and procedures.”

24. In its response to the Division’s Subpoena, however, Cantella admitted that “a draft memorandum to all Registered Representatives was prepared on July 12, 2007 intended for distribution to all representatives” but that this draft “[w]as not issued at that time.”
25. Cantella failed to disclose until the Division’s fifth inquiry, that the memorandum dated August 9, 2007 from McMorrow to Cantella’s registered representatives was not an “updated training memorandum,” but a final draft of the memorandum first created on July 12, 2007 in response to the Division’s Initial Inquiry.

26. Cantella failed to timely disclose that it did not provide its registered representatives with any such a memorandum apprising them of the Supervisory Procedures until August 9, 2007.

27. In response to the Subpoena, Cantella stated that its initial contact with the Bond Trading desk “drawing attention to this product as a new focus of concern” occurred on July 11, 2007 at which time Cantella “informed the trading desk of new written procedures that would be implemented shortly.”

28. Cantella failed to timely disclose in any of its First Four Responses to the Division that it did not provide a copy of the Supervisory Procedures to the Bond Trading Desk until August 9, 2007.

29. Cantella’s Supervisory Procedures, produced in response to the Division’s Initial Inquiry, stated that “[a]ll supervisory staff have been provided with specific product training and documents to support their review of this area.”

30. Cantella failed to timely disclose in its First Four Responses to the Division that at least one member of its supervisory staff did not receive this training until “on or about August 6, 2007.”

31. It was only after the Division’s fifth request that Cantella, in its September 21, 2007 response, disclosed this information.

32. When asked on-the-record to clarify whether “[a]ll supervisory staff” that
Cantella claimed to have been provided with training and documents regarding structured products included branch supervisors of Cantella, McMorrow admitted that it was only in-house supervisory staff located at the Two Oliver Street branch office of Cantella in Boston that had been provided with such information.

33. Cantella failed to timely disclose that it did not provide its branch supervisors with a memorandum apprising them of the Supervisory Procedures until August 9, 2007.

34. The statements made in the above filings gave the false and misleading impression that Cantella had training materials, and had disseminated those materials to its agents.

3. Cantella Misrepresented the Full Extent Of Its Role In the Research, Solicitation and Marketing Of Structured Products

35. Throughout the Division’s investigation, Cantella has claimed that it does not maintain or provide to its representatives lists of available structured products, information that was material to the Division’s investigation.

36. Cantella stated in its August 21, 2007 response to the Division that “there is no so-called list of approved structured products prepared by the firm,” though the firm admitted that “[o]ccasionally, a representative may initiate an inquiry or request the bond trading desk to inform them of the availability of certain bonds or other products that could include a structured product.”

37. Cantella, in its August 29, 2007 response to the Division, reiterated that “Cantella does not maintain or provide any such list of structured products to its Representatives.”

38. Further, it stated in the same response that “Cantella does not provide this list [of structured products] to its representatives, rather it is the clearing firms who are the
sources of such information.”

39. The Division’s Subpoena requested that Cantella provide communications with the Bond Trading desk evidencing inquiries or requests regarding structured products. Cantella provided such emails as part of its September 21, 2007 response to the Division.

40. Among the emails Cantella produced were communications between the Bond Trading desk, bonddesk@cantella.com, and registered representatives of Cantella that consisted solely of, or included references to, lists of structured products the Bond Trading desk made available to registered representatives of Cantella.

41. On September 12, 2006, the Bond Trading desk sent an email to over 210 registered representatives of Cantella with the subject “Reverse Convertibles” that featured over ten “September Reverse Convertible Deals.”

42. On May 21, 2007, the Bond Trading desk sent an email to over 229 registered representatives of Cantella with the subject “**3 Days to Go**” that included an alert “ATTENTION: Our 5yr Global Basket Index Linked CD closes Today, May 21st @ 2pm eastern, everything else closes THURSDAY, May 24st [sic] @ 2 pm eastern.”

43. On June 5, 2007, the Bond Trading desk sent out an email to registered representatives of Cantella under the subject heading “8 Structured Deals for June—launch today,” that contained a list of both fully, partially, and non principal protected structured products.

44. On June 13, 2007 Cantella’s Bond Trading desk sent out an email with the subject “4 Structured CD offerings available for June” that went out to over two hundred registered representatives of Cantella.

45. Cantella produced emails to the Division as part of its September 21, 2007
response that indicated that during the Relevant Time Period, the Bond Trading desk was distributing information and lists regarding structured products to registered representatives of Cantella.

46. Despite the provision of these emails evidencing the contrary, Cantella stated on multiple occasions that it does not maintain or provide to its representatives lists of available structured products.

47. It was not until McMorrow testified before the Division on December 5, 2007 that Cantella admitted that its Bond Trading desk sends out mass emails that provide registered representatives of Cantella with lists of products, including those containing available structured products.

48. The Division’s Subpoena also requested information regarding marketing, sales, or promotional materials at Cantella related to structured products, which the Division deemed material to its investigation.

49. Cantella maintained that it did not have marketing, sales or promotional materials related to structured products.

50. A June 13, 2007 email from the Bond Trading desk to registered representatives of Cantella contained a list of structured products and the sentence, “[I]et me know if you would like to receive marketing material for any of these deals.”

51. In its September 21, 2007 response, the firm reiterated: “Cantelia does not have any marketing, sales or promotional material for structured products.”

52. Despite Cantella’s assertion in its cover letter, this same response contained sales and marketing materials, including documents titled “SILC Sales Points” and suggestions
for "Target Customers," including the line "No state restrictions – on sale until June 21, 2007."

53. On November 23, 2007, Cantella produced copies of five offering circulars that were attachments to emails from the Bond Trading Desk to registered representatives of Cantella.

54. The statements made in the above filings gave a false and misleading impression of Cantella’s true involvement with the research, solicitation, and marketing of structured products.

4. **Cantella’s Principals Signed Verifications As To the Completeness, Authenticity and Genuine Nature Of the Responses To the Division’s Requests**

55. On July 31, 2007, in response to the Division’s letter dated July 11, 2007, McMorrow executed a verification, subscribed and sworn before a notary public, that:

   This response to the letter dated July 11, 2007, including without limitation production of the requested documents, was prepared and assembled by our Compliance Department at my request from the records of Cantella & Co., Inc., and is complete and correct to the best of my knowledge and belief. The documents and information produced in response to this letter are authentic, genuine, and what they purport to be.

56. McMorrow edited the language of the verification, without authorization from the Division, stating:

   I have modified the so-called ‘Verification’ you prepared for my signature. I did not assemble any documents requested directly, but instructed senior staff members to conduct the requisite searches. The documents enclosed are authentic replicas of documents pertinent to this response.

...including without limitation production of the requested documents, was prepared and assembled under my personal supervision from the records of Cantella & Co., Inc., and is complete and correct to the best of my knowledge and belief. The documents and information produced in response to this letter are authentic, genuine, and what they purport to be.


59. On September 21, 2007, in response to the Division’s Subpoena, Cantella’s General Counsel executed a similar verification.

B. Cantella’s Lack of Reasonable Supervision

60. Cantella admitted to the Division that “[t]here is no so-called list of approved structured products prepared by the firm” and, as stated above, that “Cantella did not have written policies and procedures that specifically referred to structured products prior to July 11, 2007.”


62. Among the structured products sold were:

- Morgan Stanley Global Medium-Term Notes, Series C, Global Units, Series C;
- HSBC S&P 500 Index Linked Certificate of Deposit due June 30, 2010;
- JP Morgan Chase Bank, National Association Contingent Interest Rate CDs due June 19, 2008;
- JP Morgan Chase Bank, National Association Contingent Interest Rate CDs due April 25, 2008;
- Morgan Stanley Bank Equity-Linked CDs due November 30, 2011, linked to the S&P 500 Index;
- Morgan Stanley Equity-Linked and Currency-linked Certificates of Deposit;
- Morgan Stanley S&P 500 Equity-Linked CDs with 20% Minimum Index Interest;
- SunTrust Bank Index-Linked Certificates of Deposit Linked to Dow Jones Average Index due November 24, 2009;
- SunTrust Bank Index-Linked Certificates of Deposit Linked to an International Basket of the MSCI EAFE Index and the MSCI Emerging Markets Index due March 2, 2011;
- JPMorgan Chase Equity Linked CDs linked to a Basket Consisting of the NASDAQ 100 Index and the Nikkei 225 Index due January 31, 2012;
- The Bear Stearns Companies Inc. Medium-Term Notes, Series B due 7/29/11;
- Custodial Trust Company 4 Year Commodity Basket Principal Protected Certificate of Deposit
linked to NYMEX Light, Sweet Crude Oil, NYMEX Henry Hub Natural Gas, LME Aluminum, LME Copper, and LME Nickel;
- SunTrust Bank Index-Linked Certificates of Deposit Linked to a World Basket Consisting of the Dow Jones Industrial Average Index, Dow Jones Euro STOXX 50 Index, and the Nikkei-225 Stock Average Index due June 27, 2012;
- SunTrust Bank Currency Certificates of Deposit Linked to a Basket of Emerging Market Currencies (US Dollar Bearish Strategy) due June 29, 2009;
- BNP Paribas Medium Term Note Program Floating Rate Leveraged CMS Spread Notes Due 2027, Series 360;
- HSBC Finance InterNotes; and
- The Bear Stearns Companies Inc., Medium-Term Notes, Series B due 12/28/11.

63. Cantella did not conduct a firm-level, reasonable basis suitability review of structured products before allowing its registered representatives to sell such products.

64. The Subpoena requested documents evidencing Cantella’s review or approval of structured products. In its response, Cantella stated:

Prior to July 11, 2007, Cantella did not have a specific requirement for review or approval of structured products. Cantella reviewed such products as part of the daily review of all securities transactions by firm, as well as other supporting exception reports and the annual audits conducted of each branch office. Cantella did not have a pre-approval procedure in place as it does now for structured products.

65. Cantella’s Bond Trading Desk sent out an email on June 13, 2007 with a subject line of “4 Structured CD offerings available for June” to its registered representatives.

66. One registered representative of Cantella received this email from the Bond Trading desk containing a list of structured products and, within eight days sold at least $300,000 worth of one of those products to Massachusetts residents.

67. That registered representative had not sold a structured product before and according to a June 21, 2007 email he sent to Cantella’s Bond Trading desk, even on the day such sales were to be executed, was still requesting additional information on the product, asking: “Will it trade during the 2 years to maturity - / can clients sell it during that time” yet indicating “[w]e’ll be faxing approx 500k in orders over.”

68. McMorrow testified that the head trader of the Bond Trading desk could send
mass emails regarding products without prior approval from the firm.

69. The head trader of the Bond Trading Desk received information concerning structured products from issuers and underwriters and, in some cases, forwarded that information to registered representatives of Cantella.

70. The head trader of the Bond Trading Desk owns Crocker Securities LLC, another broker-dealer, and maintains registrations with both that firm and Cantella.

71. When asked on-the-record about the relationship between Crocker Securities LLC and Cantella, McMorrow stated that Cantella does not have access to Crocker Securities LLC’s records and probably does not have any way to monitor conflicts of interest that might arise with this individual in such a dual role, absent his cooperation.

72. Cantella identified a second individual as part of its Bond Trading Desk.

73. Several of the emails Cantella produced to the Division included communications between this second individual and registered representatives of Cantella regarding structured products.

74. The second individual is registered with Crocker Securities LLC, but is not registered with Cantella.

75. It was through emails from the Bond Trading Desk that a least one registered representative of Cantella learned of and subsequently executed transactions in a structured product on behalf of Massachusetts customers.

76. From January 1, 2006 to July 11, 2007, registered representatives of Cantella executed transactions in structured products totaling $1,264,288.00, including securities registered pursuant to the Securities Act of 1933.

77. Registered representatives of Cantella sold the structured products identified in
paragraph 62 above at a time when Cantella did not have written policies and procedures specific to structured products.

78. None of the registered representatives of Cantella had received training materials other than one email addressing solely reverse convertibles, at the time registered representatives made those 62 sales in structured products.

79. In the Subpoena, the Division requested that Cantella provide additional information as to the policies and procedures that were in use during the time of the structured product sales. In response, Cantella stated:

Because structured products are such a small part of our business, Cantella did not have written supervisory procedures in place specific to structured products prior to the Division’s inquiry. Rather, we reviewed such activities as part of our daily review of transactions, with further reliance on our supervisory systems to ensure our registered representatives adhered to the requirements for suitability and risk disclosure that apply to all securities transactions.

80. Cantella’s compliance and supervision of structured products was limited to the following: “Our representatives were held to reasonable standards of disclosure of the risks associated with the sale of any product in concert with the investment objectives and suitability standards applicable to each customer.”

81. Cantella represented to the Division in its August 29, 2007 response, that “[a]ny such transactions that would have occurred would have been reviewed as part of the daily compliance review of the trade blotters.”

82. In its Subpoena, the Division requested documents evidencing Cantella’s review or approval of transactions in structured products. In response, Cantella reiterated that:

It is Cantella’s standard practice to conduct a daily review of all customer transactions. Cantella’s standard practice is that a principal in the compliance department reviews the daily blotter (which contains all securities transactions) on the next business day and the blotter itself is initialed as evidence of such review.
83. Cantella produced their trade blotters for the days that their registered representatives sold structured products between January 1, 2006 and July 11, 2007.

84. Only one of the trade blotters, reflecting June 21, 2007 activity, for trades Cantella cleared through National Financial Services, LLC, contained the category “Risk Tolerance/Objective.”

85. The “Risk Tolerance/Objective” for one Massachusetts client was recorded on this June 21, 2007 blotter as “Aggressive/Tdg Profits.”

86. The most recent suitability update for this client listed the client’s investment objective as “Capital Appreciation,” not “Trading Profits.”

87. The stated investment objectives for a least one Massachusetts client on the trading blotter were inconsistent with the investment objectives on the most recent suitability profile.

88. Not all of trading blotters Cantella provided to the Division contained a column that reflected the client’s investment objectives and risk tolerance information.

89. At least one of the blotters Cantella produced to the Division that McMorrow reviewed and initialed, signifying his approval as a compliance principal, did not contain a column that reflected the client’s investment objectives and risk tolerance information.

90. When questioned on-the-record as to how he could analyze trades and make determinations as to suitability using only a blotter that did not contain such a column, McMorrow replied: “From this blotter, I can’t say that there is a determination made. There were trades done in ’06, and I’m sure the system has been enhanced since May of ’06.”

91. However, a trade blotter Cantella provided to the Division reflecting trades on
May 7, 2007 that McMorrow approved did not contain such a column.

92. When again asked how he makes a determination regarding customer suitability, and analyzes blotters for approval without knowing the customer’s investment objectives, McMorrow stated:

   I’m not required to look at every trade and look at every customer and second guess a rep whether or not it was suitable. It’s up to the rep to make that determination. We check the suitability based on our expertise, our knowledge of the rep, our knowledge of the client, and during the branch audit, we go extensively into history of accounts and background of the information.

93. When questioned as to how he makes a suitability determination without investment objectives contemporaneously with the transaction, McMorrow stated:

   Like I say, I don’t get excited about a low risk, product, suitability aspects of a low risk product... An investment rate bond, I don’t really get excited about whether, who buys it. The risk of loss is minimal.

94. The supervisory polices and procedures that Cantella originally attempted to pass off as genuine and effective are nevertheless inadequate.

95. Cantella’s current policies and procedures regarding structured products state that “…[t]he representative is responsible for the initial due diligence of the product.”

96. According to Cantella’s response to the Subpoena, “we still do not see any list or product until it is presented to Cantella in the form of a request for approval of a particular transaction.”

97. Cantella’s August 29, 2007 response to the Division stated that “[o]ur new procedures now require receipt of any disclosure documents prior to any sale of a structured product…”

98. Section 29.2 of Cantella’s Written Supervisory Procedures (herein referred to as “WSP Structured Product Amendment”) states: “All representatives who wish to present
a specific item to a client must obtain pre-approval to do so."

99. McMorrow’s August 9, 2007 memorandum to all registered representatives of Cantella regarding structured products (herein referred to as “August Memorandum”) states: “Any representative who wishes to participate in the sale of a structured product must notify the Compliance Department to obtain pre-approval to do so.”

100. In his testimony, McMorrow admitted that registered representatives of Cantella are not prohibited from, and indeed may solicit customer sales in structured products before such products are submitted for firm-level product approval and customer-level suitability analysis.

101. Cantella represented to the Division that it “[d]oes not have an approved list of structured products for new issues or for the secondary market.”

102. Cantella’s Amended Supervisory Procedures and WSP Structured Product Amendment define a structured products as referring to:

[A] hybrid instrument consisting of a corporate note (that may or may not bear interest) with a stated interest rate or an implied interest rate (consisting of a return linked to the performance of an additional index, basket of indexes, or a specific security such as AT&T).

103. McMorrow testified that despite the Amended Supervisory Procedures, registered representatives of Cantella do not have to obtain prior firm approval before executing transactions in publicly-traded structured products.

104. Nowhere in Cantella’s Amended Supervisory Procedures, WSP Structured Product Amendment, or August Memorandum are there statements that publicly-traded structured products are exempt from such a pre-approval process.

105. Cantella did not disclose, until McMorrow testified on December 5, 2007, that the firm’s current pre-approval process does not apply to publicly-traded structured products.
and that registered representatives of Cantella may solicit trades in any structured product prior to bringing such a product to the firm for approval.

C. Cantella Failed To Maintain, Update and Retain Its Books and Records

106. In a letter to the Division dated August 9, 2007, McMorrow stated that “[w]e do, of course, retain all supporting records of any transactions in structured products.”

107. For two of the Massachusetts residents that purchased structured products, Cantella was unable to produce a suitability form more recent than 2002.

108. According to Cantella, the compliance principal relies on such suitability forms as part of his or her review of customer transactions.

109. As evidence of its review or approval of structured product transactions, Cantella stated that its “[s]tandard practice is that a principal in the compliance department reviews the daily blotter (which contains all securities transactions) on the next business day and the blotter itself is initialed as evidence of such review.”

110. Cantella was initially unable to produce any of the trading blotters, in response to the Division’s Subpoena, evidencing such a review, and noted instead in its response that “Cantella is in the process of gathering the blotters responsive to this request and will make a supplemental production as expeditiously as possible.”

111. On October 17, 2007, approximately three weeks after the preceding statement was made, Cantella’s response to the Division stated:

Despite a diligent and continuing search, Cantella has not yet been able to locate original daily blotters reflecting transactions cleared through Bear Stearns for the period of 1/1/06 through 5/31/06. Cantella had retrieved these original blotters for an NASD audit earlier this year but now cannot locate them despite repeated attempts. (They presumably were placed in a box that was not properly labeled when sent to our Iron Mountain storage
When the original blotters are located, copies will be provided. It should be noted that originals of all responsive blotters for the same period from National Financial are enclosed. Given that Cantella has so far been unable to locate the original blotters for the transactions cleared by Bear Stearns from the period of 1/1/06 to 5/31/06, Cantella has retrieved copies of these blotters maintained by Bear Stearns.

112. Cantella was unable to produce evidence of compliance review, in the form of an original copy of the trading blotter initialed by a Cantella principal, for all transactions cleared by Bear Stearns on blotters less than two years old.

113. To date, Cantella has failed to produce the blotters evidencing compliance approval for any trades cleared through Bear Stearns for the first half of 2006.

VIII. VIOLATIONS OF SECURITIES LAWS

A. COUNT I – VIOLATION OF § 404

114. Section 404 of the Act provides in pertinent part:

It is unlawful for any person to make or cause to be made, in any document filed with the secretary or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

115. The Division herein re-alleges paragraphs 1 through 113 above.

116. Respondent Cantella’s representations in its filings made with the Division on July 31, 2007, August 9, 2007, August 21, 2007 and August 29, 2007 that it had policies and procedures in place relative to structured products prior to July 11, 2007, were false and misleading in material respects at the time and in light of the circumstances under which they were made and therefore constituted multiple violations of M.G.L. c. 110A, § 404.

B. COUNT II – VIOLATION OF § 404

117. The Division herein re-alleges paragraphs 1 through 113 above.
118. Respondent Cantella’s representations in its filings made with the Division on July 31, 2007, August 9, 2007, August 21, 2007 and August 29, 2007 that it had training materials and that it had disseminated these training materials prior to July 11, 2007, were false and misleading in material respects at the time and in light of the circumstances under which they were made and therefore constituted multiple violations of M.G.L. c. 110A, § 404.

C. COUNT III – VIOLATION OF § 404

119. The Division herein re-alleges paragraphs 1 through 113 above.

120. Respondent Cantella’s representations in its filings made with the Division on July 31, 2007, August 9, 2007, August 21, 2007 and August 29, 2007 as to its role in the research, solicitation, and marketing of structured products, were false and misleading in material respects at the time and in light of the circumstances under which they were made and therefore constituted multiple violations of M.G.L. c. 110A, § 404.

D. COUNT IV – VIOLATION OF § 203

121. Section 203 of the Act provides in pertinent part:

Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the secretary prescribes by rule or order, except as limited by section 15 of the Securities Exchange Act of 1934.

122. 950 C.M.R. 12.203(2) provides in pertinent part:

(2) Record Keeping Requirements. Each broker-dealer shall maintain the following records:

(a) Copies of confirmations of transactions required by SEC Rule 10b-10 (17 CFR 240.10b-10).

(b) records required to be maintained by SEC Rules 17a-3 and 4(17 CFR 240.17a-3 and 17 CFR 240.17a-4).

(c) records required to be maintained by any SRO or national exchange of which the broker-dealer is a member.
123. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 113 above.

124. The Respondent’s conduct, as described above, constitutes a violation of 950 CMR § 12.203 and M.G.L. c. 110A § 203, by failing to comply with applicable record keeping requirements.

E. COUNT V – VIOLATION OF § 204 (a)(2)(J)

125. Section 204 (a)(2)(J) provides in pertinent part:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant:-
(J) has failed reasonable to supervise agents, investment adviser representatives or other employees to assure to compliance with this chapter.

126. 950 CMR § 12.203(3)(a) provides in pertinent part:

Each broker-dealer must comply with the supervision requirements set forth in the NASD’s Rules of Fair Practice.

127. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 113 above.

128. The Respondent’s conduct, as described above, constitutes a violation of M.G.L. c. 110A § 204 (a)(2)(J) and 950 CMR § 12.203(3).

IX. STATUTORY BASIS FOR RELIEF

129. Violations, Cease and Desist Orders and Costs

130. Section 407(a) of the Act provides in pertinent part that:

If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in
his judgment may be necessary to carry out the purposes of [the Act].

131. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 113 above.

132. Respondent Cantella, directly and indirectly, engaged in the acts, practices, and courses of business set forth in the Complaint above, and it is the Division’s belief that Respondent Cantella will continue to engage in acts and practices similar in subject and purpose which constitute violations of the Act if not ordered to cease and desist.

X. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors to:

A. Require Respondent Cantella to cease and desist from further violations of the Act;

B. Censure Respondent Cantella;

C. Impose an administrative fine against Respondent Cantella in an amount and upon such terms and conditions as the Director or Hearing Officer may determine;

D. Require the Respondent to pay the Enforcement Section’s investigatory costs;

E. Take such further actions against Respondent Cantella which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

XI. RELIEF REQUESTED

Wherefore, the Enforcement Section of the Division requests that the Director or Hearing Officer take the following action:
A. Find that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;

B. Find as fact the allegations set forth in paragraphs 1 to 113 of the Complaint;

C. Enter an order requiring Respondent Cantella to cease and desist from further violations of the Act;

D. Censure Respondent Cantella;

E. Impose an administrative fine against Respondent Cantella in an amount and upon such terms and conditions as the Director or Hearing Officer may determine;

F. Require Respondent Cantella to pay the Enforcement Section’s investigatory costs;

G. Take such further actions against Respondent Cantella which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.
ENFORCEMENT SECTION
MASSACHUSETTS SECURITIES DIVISION
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Dated: December 11, 2007