INITIAL DECISION RELEASE NO. 395
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13550

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	
J.P. TURNER & COMPANY, LLC	:	INITIAL DECISION
	:	May 19, 2010
	:	

APPEARANCES: Alex Rue, Mark Harrison, and Shaun Murnahan for the Division of Enforcement, Securities and Exchange Commission.

Terry Weiss, Eric Gold, and John Sten for J.P. Turner & Company, LLC.

BEFORE: Robert G. Mahony, Administrative Law Judge.

The Securities and Exchange Commission (SEC or Commission) issued its Order Instituting Proceedings (OIP) on July 17, 2009, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that J.P. Turner & Company, LLC (J.P. Turner or Respondent), a registered broker-dealer, willfully violated Rule 30(a) of Regulation S-P (the Safeguard Rule), 17 C.F.R. § 248.30(a), by failing to have written policies and procedures that addressed administrative, technical, and physical safeguards for the protection of customer records and information and that were reasonably designed to provide the security and protection of those records as required by the Safeguard Rule. As relief for the alleged violations, the Division of Enforcement (Division) seeks a cease-and-desist order, disgorgement, and a civil money penalty.

A three-day public hearing was held in Atlanta, Georgia, during October 27-29, 2009. Additionally, the Division and J.P. Turner have filed proposed findings of fact, proposed conclusions of law, and supporting briefs. The findings and conclusions in this Initial Decision are based on the entire record.[1] Preponderance of the evidence was applied as the standard of

[1] References in this Initial Decision to the hearing transcript are noted as "(Tr. ___.)". References to the Division's Exhibits and Respondent's Exhibits are noted as "(DX ___.)" and "(RX ___.)," respectively; Exhibits numbered 1-14, 16-18, and 21-66 for both the Division and Respondent are identical. Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), post-hearing pleadings filed by the Division on December 7, 2009, and on January 19, 2010, and by Respondent on January 8, 2010, were considered. References to the Division's Post-hearing Brief and its Reply to Respondent's Brief are noted as "(Div. Br. at ___.)" and "(Reply Br. at

proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision were considered and rejected.

STATUTORY AND REGULATORY BACKGROUND

Congress enacted the Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act (the Act), Pub. L. No. 106-102, 113 Stat. 1338, in November 1999. Of relevance to this proceeding, Section 501(b) of the Act required the Commission, among other federal regulators, to establish standards for financial institutions relating to administrative, technical, and physical safeguards for customer records and information. See 15 U.S.C. § 6801(b). The stated objectives of these standards are: "(1) to insure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of those records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer." Id.

The Commission adopted Rule 30 of Regulation S-P for the safeguard of customer information, along with other regulations required by the Act in June 2000. Privacy of Consumer Financial Information (Regulation S-P), Exchange Act Release No. 42,974 (June 22, 2000), 65 Fed. Reg. 40,334 (June 29, 2000). Reciting verbatim the objectives quoted above from the Act, the Safeguard Rule required every broker, dealer, investment adviser, and investment company registered with the Commission to adopt policies and procedures reasonably designed to meet these objectives. See 65 Fed. Reg. at 40,357, 40,371-372. Neither the Safeguard Rule nor the Act define the terms "customer records and information" and "substantial harm or inconvenience."

The Commission amended the Safeguard Rule late in 2004, re-designating it as Rule 30(a) and requiring, for the first time, that the policies and procedures adopted under the Safeguard Rule be in writing. See Disposal of Consumer Report Information, Exchange Act Release No. 50,781 (Dec. 2, 2004), 69 Fed. Reg. 71,322 (Dec. 8, 2004).[2] At this same time, the Commission created the Disposal Rule, or Rule 30(b), dealing with the disposal of "consumer report information." Id. In creating the Disposal Rule, the Commission stated that it "believe[s] that most firms have policies and procedures for disposal of customer information as part of the policies and procedures required under the [S]afeguard [R]ule that could be applied to consumer report information." 69 Fed. Reg. at 71,325. Compliance with the amendment was mandatory by July 1, 2005. Id.

As currently in effect, the Safeguard Rule requires that:

> Every broker, dealer, and investment company, and every investment adviser registered with the Commission must adopt written policies and procedures that

---

___.)," respectively. References to Respondent's Post-hearing Brief are noted as "(Resp't Br. at ___.)".

[2] Respondent also entered a copy of this Commission release taken from the Commission website. (RX 86.)

address administrative, technical, and physical safeguards for the protection of customer records and information. These written policies and procedures must be reasonably designed to:

(1) Insure the security and confidentiality of customer records and information;
(2) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and
(3) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

17 C.F.R. § 248.30(a) (July 1, 2005).

FINDINGS OF FACT

I. Respondent and Employees

J.P. Turner

J.P. Turner is a national broker-dealer headquartered in Atlanta, Georgia, that has been registered with the Commission and a member of the Financial Industry Regulatory Authority (FINRA)[3] since 1997. (Answer; Tr. 32; DX 19 at 18.) Its Atlanta office contains the firm's headquarters, with operations personnel, and a broker-dealer Branch Office, with approximately thirty registered representatives. (Tr. 33; DX 19 at 18.) In 2006, J.P. Turner had approximately 488 independent contractor registered representatives, working out of over 150 independent branch offices, including 48 Offices of Supervisory Jurisdiction, located throughout the United States. (Answer; Tr. 33.)

Compliance Personnel

During the times relevant to these proceedings, J.P. Turner has had several persons fill the role of Chief Compliance Officer (CCO)[4] for the firm. (Tr. 74, 143, 309.) At J.P. Turner, it is the CCO's duty to "establish, maintain, and enforce the [f]irm's supervisory system," to guide the Assistant Chief Compliance Officer (ACCO) in updating and distributing the firm's written procedures, and, with the ACCO, to prepare "Compliance Memos" regarding changes in industry regulations and/or internal procedures. (DX 19 at 18-19; RX 22-29 at 18-19; RX 30 at 18, 20-21; RX 60 at 18-19.)

[3] In 2007, FINRA changed its name from the National Association of Securities Dealers (NASD). See Exchange Act Release No. 56,146 (July 26, 2007). FINRA is a self regulatory organization that monitors securities firms doing business in the United States. It is registered under Exchange Act § 15A, 15 U.S.C. § 78o-3, with the Commission, which regulates and oversees its operations.

[4] The hearing witnesses and records in evidence both appear to use the title CCO and "Director of Compliance" interchangeably. (Tr. 74, 123; DX 6 at 2, 51 at ¶ 1.0 and ¶ 2.6.)

S. Cheryl Bauman (Bauman) was employed by J.P. Turner as Assistant Director of Compliance in February 1999. (Tr. 74.) In August 1999, she was promoted to CCO and remained in that position until June 2004; at which time, Stephen Bowlin (Bowlin) joined J.P. Turner as CCO and Bauman became ACCO. (Tr. 74-75, 143; Resp't Br. at 5.) Bauman remained ACCO until she left J.P. Turner in March 2008. (Tr. 75.) Bowlin was with J.P. Turner until July 2006, when Michael Isaac (Isaac), J.P. Turner's current CCO, replaced him. (Tr. 143, 309; Resp't Br. at 5, 13.)

Bauman previously worked for the NASD and Chatfield Dean & Co., Inc. (Tr. 74.) She has an undergraduate business degree from the University of Colorado and took accounting courses at the University of Maryland. (Id.) Bowlin has a Bachelor of Arts in Political Science from the University of Tennessee and has worked for several companies in the securities industry since 1992. (Tr. 142-43.) Prior to joining J.P. Turner, Isaac worked for the NASD from October 1999 to June 2006, where he was a securities examiner and conducted audits of broker-dealers. (Tr. 310-11.) He has a bachelor's degree in Finance from the University of West Georgia. (Tr. 309.)

Other Relevant Employees

James Attaway (Attaway) is the Director of Information Technology (IT) for J.P. Turner, with duties involving the security of the company's computer systems. (Tr. 263.) He has held this position for about seven years and currently has a three-person staff. (Id.) Around 2005, he had a staff of six employees, including himself. (Tr. 264.) Attaway has approximately seventeen years of IT experience and has earned several certifications in the field. (Tr. 264-65.) He attended college and served in the United States Army, each for two years. (Id.)

In 1999, J.P. Turner engaged John R. Exley (Exley), a licensed securities broker, to operate as a registered representative in its Tampa Office of Supervisory Jurisdiction. (RX 15.) Under the terms of his agreement with J.P. Turner, Exley served as an independent contractor. (Id.) Exley was Branch Manager of an office that closed in 2001, and this position gave him access to physical copies of customer records, which were still in his possession in September 2006. (RX 75.) By 2006, Exley was an employee registered representative in the Atlanta Office. (Tr. 33.)

II. Exley Incident and SEC Examination[5]

Anthony Dean Russell (Russell) is a Branch Chief in the Office of Compliance Inspections and Examinations (OCIE) at the Commission's Atlanta Regional Office. (Tr. 41.) On September 14, 2006, Russell saw a local news report about customer records left on the

[5] The events briefly described here were the impetus of the Division's case against J.P. Turner. On October 9, 2009, Respondent filed a Motion in Limine to exclude references to these events. During a prehearing conference, the Motion in Limine was granted to the extent that the Exley incident is not evidence of the allegations against J.P. Turner in this proceeding. (Oct. 21, 2009, Preh'g Tr. 5-6.) The Exley incident is discussed to a limited degree in order to give background to the emergence of these proceedings.

curbside of a home in Alpharetta, Georgia, and that the records belonged to J.P. Turner. (Tr. 41-42, 64.) The next day Russell reported what he had seen to his immediate supervisors, the Atlanta OCIE Assistant and Associate Regional Directors, and they watched the news story again on the internet. (Tr. 42, 53.) They decided that Russell and his staff would conduct an immediate examination of J.P. Turner to find out more about the records that had been left and the circumstances that led to them being on the curbside. (Id.) More specifically, the Atlanta OCIE staff wanted to determine what J.P. Turner was doing about the discarded records. (Id.) For example, whether J.P. Turner was securing the records and notifying customers of the potentially compromised information. (Tr. 53.) The staff also wanted to arrange a review of the firm's compliance policies and procedures regarding the protection of customer records in accordance with Regulation S-P. (Tr. 42, 53-54.)

The staff first went to J.P. Turner the afternoon of September 15, 2006, to inquire about the records and then returned the next week to examine the firm's policies and procedures. (Tr. 42.) The staff discovered that the records had been left by Exley at his home, as he apparently had contracted with a company to pick up and destroy the records; but, the company failed to do so and Exley never followed up on it. (Tr. 64-65.) The customer records remained on the curb, unsecure, for approximately two weeks. (RX 75.) J.P. Turner had no involvement with the disposal contract. (Tr. 65.)

During the examination of J.P. Turner's records, Russell and his staff reviewed several versions of the firm's Written Supervisory System & Procedures Manuals for the Main Office, its Branch Managers, and its Registered Representatives published from October 8, 2004, through June 29, 2006. (Tr. 47-52; DX 19-21, 24, 32, 34, 60, 63-66.)[6] He also reviewed the Registered Representative Agreement between J.P. Turner and Exley and a Receipt and Acknowledgement of J.P. Turner Employee Manual signed by Exley in 2006. (Tr. 45-47; DX 15, 17.) Russell stated that the staff examined these various documents looking for policies and procedures that related to the Safeguard Rule but did not find any. (Tr. 42-44, 70.)[7] As a result, the Commission brought this proceeding against J.P. Turner, alleging that it violated the Safeguard Rule by failing to have the required written policies and procedures.

---

[6] During Russell's testimony, the Division referred him to DX 63, the Main Office Manual updated May 8, 2006, and to DX 64-66, the Main Office, Registered Representative, and Branch Manager Manuals, respectively, all updated June 29, 2006. These Exhibits (DX 63-66) were also entered in the record as DX 23, 22, 35, and 31, respectively, and RX 23, 22, 35, and 31, respectively.

[7] During his testimony, Russell was asked to review DX 52, a Main Office Manual updated October 8, 2004, and confirm that it did not contain any reference to the Safeguard Rule or any policies and procedures on Regulation S-P, which he did. He also reviewed DX 19-21, the Main Office, Registered Representative, and Branch Manager Manuals, respectively, all updated January 11, 2006. He confirmed that, while the Main Office Manual referenced that the ACCO would develop policies relating to Regulation S-P, none of the manuals contained actual compliance procedures. (Tr. 43-44, 47-50; DX 19 at 265.) The parties stipulated that Russell's responses would be the same for the manual updates made on April 20, 2006 (DX 32, 34, 60), May 8, 2006 (DX 63), and June 29, 2006 (DX 64-66), which covered the time up to Russell's September 2006 examination. (Tr. 51-52.)

III. J.P. Turner's Policies and Procedures relating to the Safeguard Rule

J.P. Turner contends that it had written policies and procedures that complied with the Safeguard Rule. (Resp't Br. at 3-4.) It states that the following documents evidence its compliance: its various Written Supervisory Procedures Manuals, its annual Privacy Policy, its Registered Representative Agreement, its Employee Manual, and the NASD Webcast on the Safeguard Rule. (Resp't Br. at 4-13.) The contents of each of J.P. Turner's various manuals, policy documents, memos, and training materials issued or in effect during the relevant time, July 2005 to September 2006, are discussed below.

1. Written Supervisory Procedures Manuals

When Bauman first joined J.P. Turner, she amended the manuals containing the company's written supervisory system and procedures and, from time to time, had them updated. (Tr. 75.) While J.P. Turner had divided its system and procedures into three manuals in 1999—Main Office, Branch Manager, and Registered Representative guides, the Branch Manager and Registered Representative guides had not been updated, and, thus, J.P. Turner was using only the Main Office version as its written supervisory manual by the time Bowlin became CCO. (Tr. 93.)

October 2004 Manual

The amended Safeguard Rule required that policies and procedures addressing the administrative, technical, and physical safeguards for the protection of customer records and information be in writing by July 1, 2005. See 69 Fed. Reg. 71,322. On this date, J.P. Turner's most recent version of its Written Supervisory System & Procedures Manual was updated through October 8, 2004.[8] (RX 52.) The October 2004 Manual makes no direct reference to Regulation S-P or the Safeguard Rule. (Id.)

Despite the absence of a direct reference to Regulation S-P or the Safeguard Rule, Respondent cites several sections of the October 2004 Manual as demonstrative of its written procedures on the safeguarding of customer information, beginning with Section 2.7, titled "Requests for Information from Outside Sources." (Resp't Br. at 6.) In Section 2.7, the Manual states that "[i]nformation regarding customer accounts, the Firm and its individuals is considered confidential and may be released only to those authorized to receive it." (RX 52 at 18.)

Respondent also references Sections 2.13, titled "Computer Records, Equipment, and Software," and 2.14, titled "Electronic Communications Policy," as containing relevant written safeguard procedures. (Resp't Br. at 6-8.) Attaway noted that these sections deal with computer security relative to protecting client information, including warnings against downloading computer viruses; requiring passwords for access; having a password protection system, encryption, and firewalls; and requiring appropriate business usage. (Tr. 272-88; RX 52 at 22-

[8] The Manual also lists a December 7, 2004, date next to the October date. (RX 52.) The parties accepted October as the appropriate revision date. (Tr. 44-45; Resp't Br. at 6.)

25.) However, neither of these sections detail procedures for handling customer documents. Furthermore, the policies in these sections focus on e-mail and computer records but not specifically on the kinds of customer records and information covered by Regulation S-P.

Section 9 of the Manual, titled "Accounts," deals with customer accounts. (RX 53 at 99-120.) In Section 9, registered representatives are instructed to collect various types of customer information, such as Social Security numbers, annual income, net worth, and dates of birth; to complete various account documents, including New Account Forms, IRS Forms W-9, Cash Account Agreements, and Active Account Suitability Questionnaires; and to assess customer investment objectives. (Id.) However, there is no discussion in this section of procedures for safeguarding this information, once obtained.

Section 6, titled "Financial and Operations Procedures," of the October 2004 Manual also discusses the requirements to maintain certain documents and information and to disseminate certain forms and documents to customers. (RX 53 at 68-86.) Section 6, like Section 9, does not address the Safeguard Rule, or other areas of Regulation S-P, such as the requirement to provide privacy policies to customers.

January 2006 Manual

In November 2005, J.P. Turner's compliance department, working with consulting firm, Capital Markets Compliance (CMC),[9] prepared updated Written Supervisory System & Procedures manuals, which were published in January 2006 with updates made to all three manuals—Main Office/Firm Version, Branch Manager's Guide, and Registered Representative's Guide. (Tr. 92-93, 144-146; DX 19-21.) Unlike the October 2004 Manual, the January 2006 Main Office Manual mentions Regulation S-P in two brief passages. (DX 19 at 265, 268.) In an almost verbatim quotation of the Safeguard Rule, the Manual states that:

> The ACCO is responsible for the development of reasonable administrative, technical & physical safe guards to protect the privacy of customer account records. Pursuant to Regulation SP of Gramm Leach Bliley (sic), the ACCO's procedures must accomplish 3 objectives:
>
> 1. insure the security and confidentiality of customer records and information;
> 2. protect against any anticipated threats or hazards to the security or integrity of customer records and information; and
> 3. protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

[9] The CMC team was a group made up of former NASD and SEC staffers. (Tr. 146.) Bowlin hired them to update J.P. Turner's policies and procedures manuals and to ensure that these manuals complied with securities industry rules and regulations (Tr. 166-67), including NASD Notice to Members 05-49 (DX 84) on the 2005 Safeguard Rule amendment requiring written policies and procedures, which Bowlin had seen at its release (Tr. 144, 146). Bowlin reviewed the materials CMC created and checked that those materials were up-to-date and in order. (Tr. 146.)

(DX 19 at 265.) Cf. 17 C.F.R. § 248.30(a). Given the use of the word "development," this text indicates that Bauman, ACCO at the time (Tr. 74-75), was responsible for creating safeguard procedures. This section continues, stating:

> The ACCO will ensure that all customer account records are accessible only by authorized personnel (registered representatives & qualified operations staff). The physical records will be maintained in a locked file cabinet, and the ACCO will instruct the Controller to keep the file cabinet locked when the files are not in use. . . . [T]he CCO will randomly spot check the file cabinet on a quarterly basis to determine if the records are adequately secured.

(DX 19 at 265.) This passage is the only one in the January 2006 Main Office Manual that provides any instruction on the handling of customer records and information relating to the Safeguard Rule. However, this passage does not provide instruction on the appropriate uses of the records and information, such as whether records can be removed from the office and how to secure them if moved, or how to protect records and information from view by unauthorized parties when not locked.

Bauman testified that she ensured that customer files were locked up. (Tr. 88-89, 105-106.) When she conducted audits, she verified that the records were in locked files and held in a secure place. (Tr. 87, 106.) The original documents from customers' files were kept at J.P. Turner's main office in Atlanta; these records were placed on microfiche or maintained physically in a secure location—locked in a file cabinet within a locked office. (Tr. 87-88, 106.) The branch offices were required to have locked files or to limit access to customer files. (Tr. 88, 113.) These procedures were tested by the compliance staff in an internal audit every August. (Tr. 88.) However, Bauman could not say whether contractors kept their own copies of records. (Tr. 89.) But, she was aware that employees were allowed to take their customers' records with them when they left J.P. Turner's employment, which they did. (Tr. 86, 91.)

The second passage in the January 2006 Main Office Manual that references Regulation S-P deals with the dissemination of J.P. Turner's Privacy Policy to customers, as required under 17 C.F.R. §§ 248.4-248.9. (DX 19 at 268.) It contains no instructions on the safeguarding of customer records and information or other information related to the Safeguard Rule. (Id.)

Subsequent Manuals

Issac became familiar with Regulation S-P and, specifically, the Safeguard Rule while working for the NASD. (Tr. 311.) Following a review of the firm's policies after he joined J.P. Turner, Isaac believed that policies pertaining to Regulation S-P did not require his focus. (Tr. 316-17.) He felt that other firm policies and procedures needed his immediate attention, for instance, those dealing with registered representative sales practices. (Id.)

From the time of issuance of the January 2006 Manual until March 2007, at least ten subsequent versions of J.P. Turner's Written Supervisory System & Procedures, Main Office/Firm Version Manual were issued. (RX 22-30, 60.) Each contained identical passages

referencing Regulation S-P as were found in the January 2006 Manual. (RX 22 at 257, 259-60; 23 at 265, 268; 24-26 at 257, 259-60; 27-30 at 259, 261-62; 60 at 265, 268.) None of these manuals contained additional procedures with regard to safeguarding customer records and information.

2. Privacy Policies

Around 2001, Bauman learned of Regulation S-P, in particular through NASD Notice to Members 00-66 and NASD Regulatory & Compliance Alert 15.2 Summer 2001. (Tr. 76-77; DX 12, 81.)[10] At that time, she took steps to conform the firm's Privacy Policy with that of its clearing firm, Fiserv Securities. (Tr. 76.) She then sent the updated Privacy Policy to J.P. Turner's customer base and published it on J.P. Turner's website. (Id.) The Privacy Policy explained how personal information was collected and the safeguards the firm provided, but the documents did not specifically direct the registered representatives on how to protect the information. (Tr. 82-83; RX 47.)

When the requirement to have written policies and procedures regarding the Safeguard Rule came into effect in 2005, Bowlin testified that J.P. Turner's Privacy Policy dated May 2004 was in effect and that it was the active policy through 2006, when he left the firm.[11] (Tr. 165; RX 58.) The 2004 Privacy Policy describes J.P. Turner's information and security procedures as including:

- Access controls on customer information systems, including controls to authenticate and permit access only to authorized individuals . . .
- Physical access restrictions at locations containing customer information, such as buildings, computer facilities and record storage facilities to restrict access to unauthorized individuals.
- Encryption of electronic customer information where appropriate.
- Stringent pre-employment screening . . . and segregation of duties for employees with responsibilities for or access to customer information.
- Monitoring systems and procedures to detect actual and attempted attacks on or intrusions into customer information systems.

[10] DX 80 is also a copy of NASD Notice to Members 00-66.

[11] Despite Bowlin's testimony, there is inconsistency as to which policy was in effect in 2005. The parties Exhibits 14 and 59 both contain a revision date of "2/06," but handwritten on Exhibit 59 is the year 2005 and on Exhibit 14 is the year 2006. (RX 14, 59.) Apart from these handwritten notations and minor differences in the document titles, these policies are identical. (Id.) Even though privacy policies were created and disseminated annually (Tr. 136, 155-56, 311-12) and there is a unique policy in evidence for every year 2001-2004 and 2006-2007 (RX 47, 49, 50, 58, 14, 73), there is no Privacy Policy in evidence that is clearly indicated as in use in 2005. Bauman testified that a revision to the Privacy Policy was made in 2005, which added an opt-out provision. (Tr. 135-36.) The 2004 Privacy Policy (RX 58) does not contain this provision, but Exhibit 59 does. While the parties treated Exhibit 59 as the 2006 update, there was uncertainty as to its original draft date. (Tr. 97-98.)

- Response programs that specify actions to be taken when JP Turner suspects or detects that unauthorized individuals may have gained access to customer information systems.
- A disaster recovery plan to protect against loss of or damage to customer information due to potential environmental hazards, such as fire and water damage or technical failures.

(RX 58.) Similar to the passage referring to Regulation S-P in the January 2006 Manual, Bauman notes that the second bullet in the Privacy Policy refers to J.P. Turner's locked files and offices and its limits on the physical access to information. (Tr. 113; RX 47.) While customers were the primary audience for the Privacy Policy, it was also distributed to employees. (Tr. 165; 356.) These bullet points were also in the firm's prior versions of its Privacy Policy dating back to 2001 (Tr. 109-110); however, there were slight differences in the wording, such as the use of the phrase "nonpublic personal information" instead of "customer information" in the second through fourth bullets (RX 47, 49-50). The prior versions did not contain the final bullet on disaster recovery. (RX 47, 49-50.)

Several of the bullets in the Privacy Policy dealt with computer security. (RX 58.) Attaway testified about the 2003 Privacy Policy, but he also noted that the computer security provisions were in effect in 2005 and 2006. (Tr. 269-71; RX 50.) Attaway stated that information concerning the firm's computer policy for the safeguarding of client information was not contained in only one Written Supervisory System & Procedures manual, but rather the computer policy can be found in multiple locations. (Tr. 291-92.)

In the 2006 version of its Privacy Policy, J.P. Turner removed the bullets regarding the features of its information and security procedures. (RX 14, 59.) Bowlin testified that he did not play any role in revising the document from the 2004 to the 2006 version. (Tr. 175.) With regard to safeguarding personal information, the 2006 Privacy Policy states that J.P. Turner maintains "physical, electronic, and procedural security measures" and has "internal policies governing proper handling of client information," in a section titled, "How do we protect the security and confidentiality of personal information we collect about you." (RX 14, 59.) Bauman testified that this language refers to J.P. Turner's policies regarding the scanning of documents and password protections on its computer systems. (Tr. 98-99.) This is the only reference in the 2006 Privacy Policy on the policies and procedures for safeguarding customer information, and it does not provide details with regard to what specific policies and procedures the firm has in place. (RX 14, 59.)

3. Other Memos and Communication

With respect to the Safeguard Rule, Bowlin stated that Bauman implemented the firm's safeguarding policies through provisions in its employee confidentiality agreements, in the Privacy Policy, and in the Registered Representative Agreement. (Tr. 150.) He believed that these documents all highlighted the importance of safeguarding and protecting customer information and were part of J.P. Turner's procedures. (Id.) Although Bauman does not recall the specific times when some actions were taken with regard to safeguarding customer information pursuant to Regulation S-P, she knows that J.P. Turner adopted a disaster recovery

program, developed a log-in system for mail, scanned documents on a secure scanning system, and sent out a new Privacy Policy shortly after the enactment of Regulation S-P. (Tr. 95, 99.)

Agreements with Employees

J.P. Turner had contractual agreements with its registered representatives who served at licensee offices. (DX 15, RX 74.) Section 11 of the Registered Representative Agreement in place in 1999, titled "Non-Disclosure," contains provisions with regard to the handling of confidential information during the contractually determined time period; information deemed confidential included customer names and "any other information concerning customers." (DX 15 at 5.) When registered representatives left J.P. Turner, they were allowed to take their customer files with them. (Tr. 83-84, 91, 119-20.) The only information given with regard to safeguarding this customer information was not to "use or disclose" it. (DX 15, RX 74.) Bauman stated that the "Non-Disclosure" section was in the Registered Representative Agreement for the years 2005 through 2008. (Tr. 121.) The record contains copies of agreements dated January 7, 1999, and February 25, 2009, which contain virtually identical "Non-Disclosure" provisions.[12] (DX 15, RX 74.)

In addition to the Written Supervisory System & Procedures manuals, J.P. Turner also had an Employee Manual that was distributed to all employees in its Atlanta Home Office. (Tr. 117; Resp't Br. at 11.) In a "Confidential Information" section in that Employee Manual, Home Office employees were reminded of confidentiality agreements they were required to sign upon employment with J.P. Turner.[13] (RX 16.) This section also informed employees that "customers [entrust them] with important information relating to their businesses. The nature of this relationship requires maintenance of confidentiality. In safeguarding the information received, J.P. Turner [] earns the respect and further trust of [its] customers and suppliers." (Id.)

When employees received the Employee Manual, they were required to sign a Receipt and Acknowledgement, confirming that they had read and received it. (Tr. 117; RX 17.) The Receipt and Acknowledgement also contained language regarding confidentiality, stating that confidential information received as part of employment with J.P. Turner, such as "customer lists, pricing policies, and other related information" is proprietary to the firm and must not be "given out or used outside of J.P. Turner," and that upon termination employees are instructed not to "utilize or exploit this information" with any others for three years. (RX 17.)[14] Respondent contends that the Receipt and Acknowledgment "emphasizes [to employees] the importance of guarding confidential customer information." (Resp't Br. at 12; Tr. 117-18.)

[12] The February 2009 Agreement is dated "2/25/2009" at the top of each page; however, there is a footnote at the bottom of each page indicating that the document was updated March 29, 2009.
[13] The parties' Exhibit 16 is represented to be an excerpt from the 2000 Employee Manual. (Tr. 117; Resp't Br. at 11-12.) No full copy of the Employee Manual was placed in evidence and the Exhibit contains no identifying titles or dates. A similar, though recently revised, Employee Manual was in place in 2005. (Tr. 118.)
[14] The parties' Exhibit 17 is a Receipt and Acknowledgement signed by Exley on March 30, 2006.

Memoranda to Employees

Shortly after being hired, Bauman sent out a books and records memorandum discussing what files needed to be made and how they were to be kept. (Tr. 86-87.) This memorandum was sent to every new branch and was periodically re-sent firm-wide as a reminder. (Tr. 87.) An email from Bauman sent to unknown recipients on February 8, 2007, with the subject: "Books and Records requirements . . ." and containing an attachment discussing the Books and Records Rules of Exchange Act 17a-3 and 17a-4, was placed into evidence. (RX 41.) Bauman did not testify about this memorandum nor any other like it at the hearing. No representation was made that any of the books and records memoranda sent by Bauman contained specific procedures relating to the Safeguard Rule.[15]

On June 16, 2006, Bowlin sent an email to "everyone" at J.P. Turner requesting that they "[p]lease take a few minutes to view this timely and important Webcast." (Tr. 123-24, 167-68, 175; RX 6.) The Webcast, titled "Important Issues in Customer Data Protection," was created by the NASD and instructed brokers how to safeguard customer information and deal with related issues. (Tr. 124, 168-171, 175-76; RX 7.) It was the first webcast to come from the NASD since the revision of Regulation S-P. (Tr. 124, 168.) In the September 2006 Commission examination of J.P. Turner, Russell recalls that J.P. Turner had a Webcast document that concerned important issues involving customer data protection. (Tr. 62-63; RX 6-7.) Similar to J.P. Turner's Privacy Policy and its various versions of the Main Office Written Supervisory System & Procedures manuals, the NASD Webcast instructs viewers to review their company's procedures, but Bowlin did not include reference to any further policies or procedures in his email requesting employees to view the Webcast. (RX 6-7.)

In response to the Exley incident, Issac prepared two memoranda dated October 13, 2006, and June 11, 2007, dealing with the obligation of registered representatives to insure the confidentiality of client records if they are removed by a representative who has left J.P. Turner. (Tr. 317-21; RX 38, 68.) As with the 2007 Books and Records email discussed earlier, the actual memoranda produced by Isaac do not indicate the existence or adequacy of J.P. Turner's written policies and procedures relating to the Safeguard Rule from July 2005 to September 2006. However, Isaac believes that these memoranda added further clarification to J.P. Turner's existing Regulation S-P policies and procedures and were intended to broaden the detail in those policies and procedures. (Tr. 325-26, 336-37, 362-63.) In preparing these memoranda, Issac used the NASD Webcast, among other materials, which he characterized as an educational part of the firm's policies and procedures on Regulation S-P. (Tr. 321-23; RX 6.)

[15] The attachment line and the text of the 2007 Books and Records email reference an attached memorandum on safeguarding customer information, specifically addressing the Branch Offices' responsibilities. (RX 41.) However, the exhibit, as placed in the record, does not contain the attached memorandum. (Id.) Even if the memorandum were included, given its February 2007 date, it would provide no relevance to the issue of determining the adequacy of J.P. Turner's written safeguard policies and procedures from July 2005 to September 2006.

Employee Training and Meetings

Bauman indicated that she and Bowlin discussed the Safeguard Rule requirements in compliance meetings and branch audits. (Tr. 96, 124, 170-171, 175.) Additionally, J.P. Turner had national training calls and bi-weekly calls to advise J.P. Turner employees about the firm's compliance policies. (Tr. 95, 111-12, 152; RX 39.) During these calls, it was Bowlin's practice to advise employees of any notices or communications from regulatory bodies, such as the NASD notices that were issued in conjunction with the Safeguard Rule. (Tr. 152.) Similarly, Issac spoke to employees on a September 26, 2006, national conference call about compliance issues, specifically the Privacy Policy and securing customer information. (RX 39.) Also, Bauman noted that J.P. Turner had a continuing education system, which included the NASD Webcast among other courses. (Tr. 128-29.)

4. Earlier Regulatory Examinations

Russell supervised two examinations of J.P. Turner, one in December 2004 and the September 2006 examination addressed earlier. (Tr. 41-42, 54.) Although he does not specifically recall findings relative to Regulation S-P when the Commission examined J.P. Turner in December 2004, he noted that reviewing a firm's policies and procedures was usually a routine part of the examination process. (Tr. 54-56.) However, Russell also noted that the procedures relating to the Safeguard Rule were not required to be in writing until July 1, 2005. (Tr. 57, 68.)

Bauman noted that J.P. Turner was audited annually by the NASD/FINRA from 2005 to 2008 and by the Commission in 2004 and that in none of these audits were deficiencies recorded with regard to safeguarding procedures or compliance with Regulation S-P. (Tr. 126-27, 362.) Bowlin served as J.P. Turner's liaison with the Commission during its 2004 examination, and he did not recall any concerns raised about the firm's Regulation S-P policies and procedures. (Tr. 163-64.) Likewise, Issac stated that, since he joined J.P. Turner, the NASD/FINRA has conducted audits, but there were no deficiencies with respect to Regulation S-P. (Tr. 313.)

From his experience at the NASD, Issac stated that Regulation S-P was added as a mandatory part of the NASD's audit review after its creation. (Tr. 311-12.) But, prior to 2005, the Safeguard Rule was not included in the audit module relating to Regulation S-P. (Id.) The NASD's audit of Regulation S-P from 2001 to 2005 focused on the elements relating to the annual creation and dissemination to customers of privacy policies. (Id.)

IV. Expert Testimony

Louis Dempsey (Dempsey) testified as an expert witness for the Division. (Tr. 207-08.) He has twenty years experience in the securities industry, both at government regulatory agencies and private consultants to broker-dealers. (Tr. 205-07.) Within that twenty years, Dempsey worked twice for the SEC, rising to a position as a branch chief managing OCIE examinations and overseeing two NASD/FINRA offices. (Tr. 206.) In 2006, he formed Renaissance Regulatory Services; as its President and CEO, Dempsey is responsible for regulatory and compliance consulting for broker-dealers and investment advisers, conducting

compliance and mock audits and assisting firms to correct deficiencies found by regulators, including firms that employ a large number of independent contractors. (Tr. 206-07.)

Dempsey reviewed J.P. Turner's written compliance policies and procedures that were produced to the SEC for the period 2001-2007. (Tr. 208, 231-32.) Dempsey opined that, for the period beginning in July 2005 through at least March 2007, J.P. Turner's policies and procedures "were lacking and inadequate and not consistent with industry standards;" although J.P. Turner made revisions to its procedures, it never addressed the Safeguard Rule. (Tr. 210.) He noted that J.P. Turner added a reference to Regulation S-P and a directive to the ACCO in its supervisory manuals but never put any policies and procedures in place. (Tr. 210, 236-37.) Additionally, he pointed out that the privacy policy states that J.P. Turner will establish policies and procedures, but it did not do so. (Tr. 210-11.) J.P. Turner did not announce a policy statement as to how the firm or the registered representatives are going to protect customer information. (Tr. 211.) Dempsey stated that there was no documentary support for the testimony of Bauman and Bowlin concerning the implementation of the procedures they discussed, although industry practice required firms to document their supervisory processes. (Tr. 227-28.) Dempsey considered the NASD Webcast to be a training tool, but not part of the firm's written policies and procedures. (Tr. 233.)

While Dempsey agreed that the Commission, in its amendment to the Safeguard Rule, established a flexible standard for each firm to tailor the policies and procedures to its own needs as long as they are in writing (Tr. 250-52, RX 86), in his opinion, J.P. Turner's Privacy Policies were not part of the firm's written policies and procedures as required by the Safeguard Rule. (Tr. 211, 237-38.) He noted that these Privacy Policies stated that J.P. Turner would maintain policies and procedures but did not provide a method for safeguarding customer information; rather, they were statements to customers. (Tr. 237-39; DX 47, 49, 50.)

Dave Paulukaitis (Paulukaitis) testified as an expert witness for Respondent. (Tr. 342-79.) He is a Managing Director with Mainstay Capital Markets Consultants, Inc., in Atlanta, where he has worked since April 2005. (Tr. 343-45; RX 77.) Previously, he was with NASD for twenty-three years as an examiner of broker-dealers and registered representatives; a supervisor of examiners; and, finally, as Associate District Director, overseeing all the regulatory programs in the Atlanta district. (Id.) In connection with his testimony, Paulukaitis reviewed the policies and procedures J.P. Turner had in place pertaining to compliance with Regulation S-P. (Tr. 343-44; RX 77.) Among other things, he reviewed the firm's Written Supervisory System & Procedures Manuals, its Privacy Policies, and the investigative testimony of Exley, Isaac, Bauman, and Bowlin. (Tr. 349.)[16]

Paulukaitis emphasized that Regulation S-P does not require that the policies and procedures be in written supervisory manuals. (Tr. 358.) He contends that the ultimate purpose of the Safeguard Rule is not only to insure that confidential customer information is protected

[16] While Paulukaitis finds the investigative testimony of Exley persuasive on the issue of the adequacy of J.P. Turner's safeguarding policies (Tr. 351), Exley did not testify at the hearing and his investigative testimony is not in the hearing record. Therefore, no weight will be accorded to it in establishing the adequacy of J.P. Turner's compliance with the Safeguard Rule.

but for those involved with customer information to understand the protection process developed by their firm and to apply their firm's standards, which may go beyond the basic regulatory requirements, such as using the intranet or webcasts. (Tr. 359-60.) Noting that it is up to the broker-dealer to choose how best to convey compliance information, Paulukaitis stated that the broker-dealers should determine what is reasonable, what works best for them, and periodically review and update their methods as necessary. (Tr. 360.) Paulukaitis acknowledged that NASD Conduct Rule 3010 requires FINRA broker-dealer members to have all of their policies and procedures in writing. (Tr. 367.)

Paulukaitis says that the firm's Privacy Policy was given to employees and not just customers, but concedes that the listed privacy considerations are not broken down into specific procedures to describe what J.P. Turner is doing for each. (Tr. 355-56; RX 58.) Rather, it gives the customer an overview and tells the employees what their responsibilities are. (Tr. 356.) The 2004 Privacy Policy does not instruct the registered representatives as to how to achieve the "prioritizing security of information" outlined in the Privacy Policy. (Tr. 370-71; RX 58.) Paulukaitis also opines that Attaway's testimony about the firm's internal systems that were designed to safeguard electronically-stored client information demonstrates the adequacy of J.P. Turner's written policies and procedures. (Tr. 354-55.)

DISCUSSION AND CONCLUSIONS

The Division alleges that J.P. Turner willfully violated Rule 30(a) of Regulation S-P by "failing to have written policies and procedures" that comply with the regulatory aims of the Safeguard Rule from its amendment in July 2005 through September 2006. (OIP at ¶ 9.)[17] The Safeguard Rule required J.P. Turner to "adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information" that are "reasonably designed" to secure and protect customer information. 17 C.F.R. § 248.30(a). A procedure is defined as a "particular way of accomplishing something" or "a series of steps followed in a regular definite order." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 929 (10th ed. 1998). Even interpreting the Safeguard Rule liberally, the fact remains that none of the documents J.P. Turner provided in evidence give a method for or steps describing how its registered representatives should safeguard their customers' information.

[17] At the hearing, the Division moved, pursuant to 17 C.F.R. § 201.200(d)(2), to amend the OIP to add a violation of the Safeguard Rule for J.P. Turner's alleged failures to have unwritten policies and procedures between July 2001 and July 2005, in violation of prior Rule 30. (Tr. 141.) This motion was denied because this allegation is outside "the scope of the original order." 17 C.F.R. § 201.200(d)(2). While the Division's additional allegation still relates to the Safeguard Rule, it deals with a time when broker-dealers were not required to have policies and procedures in writing. The matter of unwritten policies and procedures was not properly presented or prepared for by the parties prior to the hearing. Following the hearing, the Division filed a Renewed Motion to Amend the OIP, requesting the inclusion of violations of Rule 30 from July 1, 2001, until July 1, 2005. Again, the Division's motion is denied. The hearing focused on Respondent's written policies and procedures. Respondent was not put on notice that presentation of evidence regarding unwritten policies and procedures would be necessary and, therefore, to add this allegation now would prejudice Respondent.

While it is true that the Commission chose not to adopt minimum standards for the Safeguard Rule's written requirement, but rather allowed broker-dealers to adopt "written policies and procedures . . . for the protection of customer records and information" that are "reasonably designed" to meet the regulation's goals, J.P. Turner did not adopt reasonable procedures. At best, J.P. Turner only briefly mentions in writing its intention to develop procedures, but nowhere in any of the written compliance materials provided to J.P. Turner employees are there explicit procedures (i.e., actual details of actions that should be taken) for safeguarding customer records and information, especially for physical copies of such information.

Furthermore, while the Safeguard Rule may not provide minimum standards for written policies and procedures, as a FINRA member, J.P. Turner is subject to FINRA rules and requirements and the notices interpreting them. Of relevance here, NASD Conduct Rule 3010, among other provisions, requires members to establish a supervisory system and develop and maintain written supervisory procedures. FINRA guidance on Rule 3010 explains that "written supervisory procedures document the supervisory system that has been established to ensure that compliance guidelines are being followed and to prevent and detect prohibited practices." See NASD Provides Guidance On Supervisory Responsibilities, NASD Notice to Members 99-45 (June 1999). While a compliance guideline may discuss a given regulation by describing its elements, written procedures instruct the reader on the steps necessary to ensure that the rule is being followed. Id. Thus, under FINRA's standards, J.P. Turner's written materials regarding the Safeguard Rule might be called compliance guidelines, but they are not procedures. Written supervisory procedures are not adequate if they contain only a list of prohibited activities, but do not specify methods for supervisors to detect and prevent such activities. See Richard F. Kresge, 90 SEC Docket 3072, 3089 (June 29, 2007); Gary E. Bryant, 51 S.E.C. 463, 471 (1993); Kochcapital, Inc., 51 S.E.C. 241, 247-48 (1992).

On the July 1, 2005, deadline for having written policies and procedures pursuant to the Safeguard Rule, the operative documents evidencing J.P. Turner's safeguarding policy were its three October 2004 Written Supervisory System & Procedures Manuals and its 2004 Privacy Policy.[18] Respondent also claims that confidentiality and non-disclosure provisions in its Employee Manual (RX 16), its Receipt and Acknowledge form for the Employee Manual (RX 17), and its Registered Representative Agreement (RX 15) "reinforce" and "emphasize[]" the importance of confidentiality of customer information. (Resp't Br. at 11-12.) While these documents may "highlight the importance of safeguarding and protecting customer information" (Tr. 150), none of them contains procedures addressing how employees should implement the firm's policy.

The only document resembling procedures is the 2004 Privacy Policy. However, this document is addressed to customers not employees, though it was provided to employees. But, as Paulukaitis concedes, the document does not go far enough in establishing the specific steps

[18] But see supra note 11. If the parties' Exhibit 59 was in effect in 2005, then even less information regarding the procedures for safeguarding customer records and information was written at the time of the July 1, 2005, effective date.

that employees should take in safeguarding customer information, but rather gives only an overview. (Tr. 356, 370-71.) Furthermore, the abbreviated procedures provided in the 2004 Privacy Policy were removed from the 2006 version.

As seen throughout the various Written Supervisory System & Procedures Manuals, Privacy Policies, and other agreements and memos in evidence, J.P. Turner's written policies and procedures relating to the Safeguard Rule are piecemeal references to various regulations or general policies. J.P. Turner's compliance documentation does not satisfy the requirement for "reasonably designed" policies and procedures for the safeguard of customer records and information. There were no direct instructions to the registered representatives, who were the ones that collected and maintained the customer information. Instead, J.P. Turner's Manuals and Privacy Policies made references to nonexistent procedures. Similarly, the NASD webcast instructed viewers to review their company's procedures, but, with no actual procedures in place, there was nothing to review, lessening the effectiveness of such training. Dempsey's testimony is persuasive in finding that J.P. Turner's policies and procedures "were lacking and inadequate and not consistent with industry standards." (Tr. 210.)

J.P. Turner notes that it was never cited for a violation of the Safeguard Rule through annual audits from the NASD/FINRA, and it contends that the Commission's staff did not find deficiencies in the firm's policies and procedures during its 2004 examination, which would have included a component on Regulation S-P. (Resp't Br. at 3, 18.) However, it is well settled that respondents cannot shift responsibility for compliance to FINRA or the Commission. See William H. Gerhauser, 53 S.E.C. 933, 940 & n.17 (1998) (collecting cases). "A regulatory authority's failure to take early action neither operates as an estoppel against later action nor cures a violation." Id.; see also Steven C. Pruette, 46 S.E.C. 1138, 1141 & n.17 (1978) (collecting cases). Under this precedent, it was unreasonable for J.P. Turner to equate NASD/FINRA or Commission staff "inaction" with tacit approval of J.P. Turner's procedures. Furthermore, a primary impetus in revising the Safeguard Rule to require that the policies and procedures be in writing was that the Commission recognized the difficulty its staff was having in auditing unwritten policies and procedures. See 69 Fed. Reg. at 71,325.

J.P. Turner failed to adopt written policies and procedures required by the Safeguard Rule from July 2005 through September 2006. The minimal written documentation that J.P. Turner had that referred to safeguarding customer records and information was not sufficient to met the standard set by the Safeguard Rule that policies and procedures be reasonably designed for the security and protection of customer information. Furthermore, J.P. Turner's continued publication of its Written Supervisory System & Procedures manuals containing incomplete and deficient safeguarding policies and procedures demonstrate that J.P. Turner's violation of the Safeguard Rule was willful.

SANCTIONS

This proceeding was brought pursuant to Exchange Act Sections 15(b) and 21C, and the Division requests pursuant to these sections, and Exchange Act Section 21B, that J.P. Turner be ordered to cease-and-desist from violations of Rule 30(a), to pay a substantial second-tier civil money penalty, and to pay nominal disgorgement. (Div. Br. at 30-36; Reply Br. at 9-13.) J.P.

Turner contends that it did not violate Rule 30(a), that a cease-and-desist order is not necessary because there is no likelihood of future violations, and that neither civil money penalties nor disgorgement are appropriate. (Resp't Br. at 21-30.)

I. Cease-and-Desist Order

Section 21C(a) of the Exchange Act authorizes the Commission to impose a cease-and-desist order upon any person who "is violating, has violated, or is about to violate" any provision of the Exchange Act or the rules and regulations thereunder. 15 U.S.C. § 78u-3(a). With respect to this proceeding, Regulation S-P is a regulation under the Exchange Act. The Commission has provided the standard for issuing cease-and-desist relief, explaining that the Division must show some risk of future violations. See KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1183-92 (2001), petition denied, 289 F.3d 109 (D.C. Cir. 2002). However, it also ruled that such a showing would be "significantly less than that required for an injunction" and that, "absent evidence to the contrary," a single past violation ordinarily suffices to raise a sufficient risk of future violations. Id. at 1185, 1191. In some instances, the Commission may also "consider the function that a cease-and-desist order serves in alerting the public that a respondent has violated the securities laws." Id. at 1192.

Along with the risk of future violations, the Commission considers the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the respondent's opportunity to commit future violations. Id. In addition, the Commission considers whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceeding. Id. "[T]he Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive." Conrad P. Seghers, 91 SEC Docket 2293, 2298 (Sept. 26, 2007) (citing Robert W. Armstrong, III, 85 SEC Docket 3011, 3039 (June 24, 2005) (quoting KPMG Peat Marwick LLP, 54 S.E.C. at 1192).).

All of J.P. Turner's compliance personnel who testified at the hearing noted that they were aware of the requirements of the Safeguard Rule. Over the course of at least a year-and-a-half and ten revisions to its Main Office Written Supervisory System & Procedures Manual, J.P. Turner's only reference to Regulation S-P continued to be the same paragraph stating that the ACCO was responsible for the development of policies and procedures for compliance with the Safeguard Rule. However, the evidence establishes that, for at least a year-and-a-half, J.P. Turner failed to develop written procedures. Despite this obvious deficiency, Issac stated that he determined this section of the Manual was adequate and focused on other areas for improvement.

The protection of customer records and information is extremely important. A firm's failure to properly instruct its employees on the steps necessary to safeguard this information leaves customers vulnerable to fraud, identity theft, and substantial financial and personal inconvenience. It is quite possible that without proper procedures an employee could inadvertently or carelessly release sensitive customer information. Through its continued delay

in implementing adequate written procedures, J.P. Turner failed to recognize the importance of the provisions of the Safeguard Rule.

It is essential for the protection of its customers that J.P. Turner have adequate written policies and procedures to safeguard customer records and information to avoid future harm to its customers. J.P. Turner is active in the securities business. It has not presented persuasive evidence that it recognizes the wrongful nature of its conduct, nor has it presented meaningful assurances against future violations. Absent such assurances, the risk of future violations is present. As such, issuance of a cease-and-desist order against J.P. Turner is appropriate.

II. Civil Money Penalty

Under Section 21B(a)(1) of the Exchange Act, the Commission may assess a civil penalty in a proceeding brought under Section 15(b)[19] if a respondent has willfully violated the Exchange Act or the rules or regulations thereunder. 15 U.S.C. § 78u-2(a)(1). Exchange Act Section 21B(b) specifies a three-tier system identifying the maximum assessment amount for a civil penalty. 15 U.S.C. § 78u-2(b). For each "act or omission" by a non-natural person, in this instance a corporation, the adjusted maximum amount of a penalty in the first tier is $65,000; in the second tier, it is $325,000; and in the third tier, it is $650,000.[20] Id. To impose a second-tier penalty, the act or omission must have "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." 15 U.S.C. § 78u-2(b)(2). To impose a third-tier penalty, the facts must meet the requirements for a second-tier penalty and the act or omission must also have "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission." 15 U.S.C. § 78u-2(b)(3).

The Commission also must find that a money penalty is in the public interest. See 15 U.S.C. § 78u-2(a). Six factors may be relevant to the public interest determination: (1) fraud, deceit, manipulation, or the deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other factors as justice may require. 15 U.S.C. § 78u-2(c).

The Division argues that there are two alternative methods to determine the number of acts or omissions and, thus, the amount of civil penalties to be assessed in this proceeding. (Div. Br. at 32-34.) Under one method, it contends that the entire course of conduct from July 2005 to

---

[19] While this proceeding was brought pursuant to Exchange Act Section 15(b), the Division did not seek remedies afforded under this provision, which, for example, allows the Commission to censure, place limitations on the activities of, or suspend or revoke the registration of a broker-dealer that has willfully violated any provision of the Exchange Act, 15 U.S.C. § 78o(b)(4).

[20] As required by the Debt Collection Improvement Act of 1996, the Commission has periodically increased the maximum penalty amounts for violations. See 17 C.F.R. §§ 201.1001, .1002, .1003, .1004. Because the violation alleged in this proceeding occurred between July 2005 and September 2006, the adjusted maximum penalty amounts in 17 C.F.R. § 201.1003 govern and are reflected here.

September 2006 was a single violation of Rule 30(a). (Div. Br. at 33.) Whereas the other holds that each deficient republication of J.P. Turner's written manuals was part of a series of violations as to which multiple penalties (one per republication) would be appropriate. (Div. Br. at 33-34.)

In contrast to the Division's position (Div. Br. at 32), J.P. Turner's conduct was not severe enough to be deemed "reckless" under the standards of Exchange Act Section 21C. J.P. Turner did make attempts to comply with Regulation S-P and specifically, though less effectively, with the Safeguard Rule. Attaway demonstrated that J.P. Turner did take steps to protect electronic information and to document these protections for the employees. However, J.P. Turner's procedures for the physical protection of customer information were inadequate. It left important information vulnerable and violated Rule 30(a). Therefore, an assessment of a first-tier civil money penalty on J.P. Turner for this violation, which is deemed to be a single violation as of July 1, 2005, is warranted. Given J.P. Turner's continued failure to create written policies and procedures in compliance with the Safeguard Rule despite the issuance of at least ten versions of its Main Office Written Supervisory System & Procedures manual, which stated that such policies and procedures would be developed, this civil money penalty will be assessed at the maximum amount allowable under the first-tier.

III. Disgorgement

Section 21B(e) of the Exchange Act allows the Commission to seek an order requiring disgorgement, including prejudgment interest, in administrative proceedings in which the Commission may impose a money penalty. 15 U.S.C. § 78u-2(e). The Commission may also seek disgorgement and prejudgment interest in cease-and-desist proceedings pursuant to Section 21C(e) of the Exchange Act. 15 U.S.C. § 78u-3(e). The primary purpose of disgorgement is to "deprive the violators of their ill-gotten gains" and thereby deter future violators by making violations of the securities laws "unprofitable." SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1474 (2d Cir. 1996) (citations omitted).

The Division contends that J.P. Turner saved $5,000 through its delay in implementing adequate policies and procedures to comply with the Safeguard Rule. (Div. Br. at 35.) There is no evidence to support a finding that J.P. Turner's delay allowed it to profit or earn ill-gotten gains and, thus, an order of disgorgement is inappropriate.

RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on January 8, 2010, as amended per Respondent's request of January 19, 2010, and subsequent events to add the following filings:

Date Filed	Event Description
01/08/2010	Respondent's Post-hearing Brief (fax copy; hard copy received 01/11/2010).

01/08/2010	Counterstatement to Division's Proposed Findings of Fact and Conclusions of Law (fax copy; hard copy received 01/11/2010).
01/19/2010	Division's Post-hearing Reply.

ORDER

IT IS ORDERED, pursuant to Section 21C of the Securities Exchange Act of 1934, that J.P. Turner & Company, LLC, shall cease and desist from committing or causing any violations or future violations of Rule 30(a) of Regulation S-P, 17 C.F.R. § 248.30(a); and

IT IS FURTHER ORDERED, pursuant to Section 21B of the Securities Exchange Act of 1934, that J.P. Turner & Company, LLC, shall pay a civil money penalty of $65,000.

Payment of the civil money penalty shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by wire transfer, certified check, United States Postal money order, bank cashier's check, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying Respondent and the proceeding designation, shall be delivered to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. A copy of the cover letter and the instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision pursuant to Rule 111 of the Commission's Rules of Practice. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of my order resolving the motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact, or unless the Commission determines on its own initiative to review this Initial Decision as to any party. If any of these events occur, the Initial Decision shall not become final as to that party.

_____

Robert G. Mahony
Administrative Law Judge