

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9620 / July 31, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72729 / July 31, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3884 / July 31, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31195 / July 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15790

In the Matter of

MICHAEL A. HOROWITZ

and

MOSHE MARC COHEN,

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER PURSUANT
TO SECTION 8A OF THE SECURITIES ACT
OF 1933, SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTION 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY ACT
OF 1940 AS TO MICHAEL A. HOROWITZ**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) as to Michael A. Horowitz (“Horowitz”)¹

¹ On March 13, 2014, the Commission instituted public administrative and cease-and desist proceedings pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, against Horowitz and co-respondent Moshe Marc Cohen (“Cohen”).

II.

Respondent Horowitz has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Respondent admits only the facts set forth in Annex A attached hereto and acknowledges that his conduct as set forth in Annex A violated the federal securities laws, admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 as to Michael A. Horowitz (“Order”), as set forth below.

III.

On the basis of this Order and Horowitz’s Offer, the Commission finds² that:

SUMMARY

1. These proceedings arise from a fraudulent scheme to profit from the imminent deaths of terminally ill hospice and nursing home patients through the purchase and sale of more than \$80 million in deferred variable annuities (“variable annuities”) between July 2007 and at least February 2008.

2. The scheme was orchestrated by Respondent Horowitz, then a registered representative of a large broker-dealer firm (“Broker-Dealer 1”). Horowitz, together with others, made material misrepresentations and used deceptive devices to obtain the personal health and identifying information (“ID and Health Data”) of terminally ill hospice and nursing home patients in order to designate them as annuitants on variable annuity contracts that Horowitz marketed to wealthy investors. Horowitz marketed these variable annuities – which are designed by their issuers to be long-term investment vehicles – as opportunities for short-term gains with a hedge against market losses. Horowitz recruited Respondent Cohen to facilitate the sale of additional “stranger-owned” annuities and they each obtained their firms’ approval of variable annuity sales by making material misrepresentations and omissions on trade tickets, customer account forms and/or point-of-sale forms, which the broker-dealer principals used to conduct investment suitability and related reviews. As a result of the Respondents’ fraudulent acts and practices, certain insurance companies unwittingly issued variable annuities that they would not otherwise have sold. The annuities sold during the scheme – which included five annuities sold to Horowitz’s close relatives for profits in excess of \$900,000 – generated lucrative upfront sales commissions for the Respondents, with Horowitz receiving more than \$300,000 and Cohen receiving more than \$700,000 in commissions.

² The findings herein are made pursuant to Horowitz's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

3. By virtue of the foregoing conduct and as alleged further herein, Respondent Horowitz, directly or indirectly, singly or in concert, engaged in acts, practices, schemes and courses of business that violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Respondent Horowitz also violated Sections 17(a)(1) and (2) of the Securities Act, and aided and abetted and caused violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. In addition, Respondent Horowitz violated Section 15(a) of the Exchange Act.

RESPONDENTS

4. **Michael A. Horowitz**, age 39, the scheme architect, resides in Los Angeles, California. Between June 2000 and August 2008, Horowitz was a registered representative at Broker-Dealer 1. He resigned during Broker-Dealer 1's investigation into his sale of the variable annuities at issue. Horowitz holds Series 7 and 66 licenses.

5. **Moshe Marc Cohen**, age 38, was a registered representative recruited to the scheme by Horowitz, and resides in Brooklyn, New York. He is not currently associated with any SEC-registered entity. From 2003 to February 2008, Cohen was a registered representative at Broker-Dealer 3. Broker-Dealer 3 terminated Cohen's employment on February 25, 2008 after he refused to cooperate with Broker-Dealer 3's internal review of Cohen's variable annuity sales at issue. Cohen held Series 6, 7, 24 and 63 licenses.

OTHER RELEVANT ENTITIES

6. **Broker-Dealer 1** is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

7. **Broker-Dealer 2** is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

8. **Broker-Dealer 3** is a broker-dealer and investment adviser registered with the Commission and headquartered in Oakdale, Minnesota.

9. **Raphael Health** was established by Harold Ten ("Ten")³ in or about June 2007, as a registered d/b/a of an existing non-profit 501(c)(3) organization. Also in or about June 2007, Ten set up a web page for Raphael Health, which described Raphael Health as an organization "dedicated to helping patients with a life limiting illness to live their remainder days in comfort and dignity." In fact, the purpose of Raphael Health was to obtain ID and Health Data of terminally ill patients for use in the purchase and sale of variable annuities.

³ On March 13, 2014, the Commission instituted settled public administrative and cease-and desist proceedings against Ten, which included collateral, investment company and penny stock bars, disgorgement, a civil penalty, and a cease-and-desist order. Exchange Act Release No. 71712, Admin. Proc. File No. 3-15787 (Mar. 13, 2014).

THE RESPONDENTS' SCHEME

Variable Annuities

10. Variable annuities are designed to serve as long-term investment vehicles, typically to provide income at retirement. Although variable annuities offer investment features similar in many respects to mutual funds, a typical variable annuity offers certain features not commonly found in mutual funds, including death benefits⁴ and/or bonus credits.⁵ Horowitz solicited wealthy individual and institutional investors to make large investments in variable annuities that offered these benefits.

Horowitz's "Stranger-Owned" Variable Annuities Investment Strategy

11. In or about May 2007, Respondent Horowitz devised the scheme that is the subject of this proceeding after learning about the features of certain variable annuity contracts offered by an annuity issuer ("VA Issuer").

12. In particular, Horowitz learned that, unlike traditional life insurance, these variable annuity contracts—as long as they were purchased under a certain dollar threshold—required neither a physical examination of, nor proof of an "insurable interest" in, the "annuitant," *i.e.*, the person whose death would trigger the products' payout provisions. Horowitz further determined that with respect to certain of the VA Issuer's deferred variable annuity products: (i) the VA Issuer provided an immediate "bonus credit" of up to 5% of the amount invested, which was credited to the contract owner's investment account; (ii) the contract owner could invest his or her premiums in mutual funds available under the contract; (iii) the annuities contained death benefit options; (iv) although substantial "surrender charges" were ordinarily assessed if the annuities were liquidated within the first 7-10 years, such charges were typically not incurred in the event of a death benefit payout; and (v) even if the annuitant died before the "surrender charge" period had run, the VA Issuer would not "claw back" any of the sales commissions it paid to the selling representative.

13. Horowitz developed a strategy to exploit these benefits by using terminally ill hospice and nursing home patients as the contract annuitants and soliciting wealthy individual and institutional investors to make large investments in variable annuities that offered these benefits.

⁴ The typical variable annuity death benefit provides for a payment to the beneficiary at the contract annuitant's death equal to either the value of the underlying investment portfolio or the purchase price of the annuity less any withdrawals, whichever is greater. This death benefit option allows an investor to profit from positive investment performance as part of the death benefit while providing a hedge against losses in the portfolio's value by providing for a payout equal to at least the amount invested in the annuity less any withdrawals. In the typical variable annuity, the contract owner is also the contract "annuitant." However, in the scheme described herein, hospice and nursing home patients unrelated to the contract owners were designated as the annuitants.

⁵ A bonus credit is a sum of money immediately credited to the contract owner's investment account by the annuity issuer (typically a percentage of the premiums being invested in the annuity contract). For example, certain investors that purchased variable annuities through Horowitz made an initial investment of \$1 million and received "bonus credits" that increased the value of their annuity by 5% (\$50,000) to \$1,050,000.

14. In each of these contracts, a terminally ill hospice or nursing home patient was designated as the contract annuitant. At least 16 terminally ill hospice patients were designated as annuitants in more than 50 variable annuities sold by Horowitz, Cohen, or other registered representatives recruited to the scheme. All of the hospice patients were residents of southern California or Chicago, Illinois.

15. The hospice patients designated as annuitants had no familial or business relationship with the investors who purchased the annuities. Instead, they were selected based on their terminal illnesses and the likelihood that they would die soon, and thereby trigger death benefit payouts in variable annuity contracts in the very near term. As part of his pitch to investors, Horowitz told them that he would supply the annuitants, with investors needing to furnish only their funds.

16. These “stranger annuitants” likewise had no contractual right to any portion of the death benefits paid out under the terms of the variable annuities sold during the scheme. Instead, each of the contracts directed these benefits be paid to one of the investor’s family members or relatives, or to a family trust created by the investor.

17. Anticipating that the annuitants would soon die, triggering death benefit payouts in the annuity contracts, Horowitz advised his customers to invest their premiums aggressively because if the value of their portfolio increased, they would receive the portfolio value as the death benefit payout. If the value of their portfolio decreased, the death benefit nonetheless guaranteed them a payout equal to the value of their premiums paid minus any withdrawals. Horowitz also advised his customers to invest large sums of money in each annuity they purchased to maximize their “bonus credit.”

18. Horowitz employed at least two varieties of fraud in carrying out his sale of “stranger-owned” annuities. First, Horowitz and others fraudulently obtained and used the ID and Health Data of certain unwitting terminally ill hospice and nursing home patients who were designated as annuitants. Second, Horowitz and Cohen falsified broker-dealer trade tickets, customer account forms and/or point-of-sale forms (including suitability questionnaires) to obtain supervisory approval of the annuities that were sold pursuant to the scheme. As a result of these fraudulent acts and practices, certain insurance companies, including VA Issuer, unwittingly issued variable annuities that they would not otherwise have sold.

HOROWITZ OBTAINS CONFIDENTIAL ID AND HEALTH DATA THROUGH DECEPTIVE PRACTICES

19. To implement his plan, Horowitz needed a ready supply of terminally ill persons, unrelated to the investors, to use as annuitants in variable annuity sales. Horowitz recruited certain individuals (“Annuitant Finders”) to identify the terminally ill persons to be used as annuitants. Working with Horowitz, these Annuitant Finders engaged in a scheme to obtain the patients’ confidential ID and Health Data, which they then fraudulently misused. Horowitz needed patients’ Health Data to confirm that the individuals he designated as annuitants had a terminal medical diagnosis. He needed their ID Data (including social security number and date of birth) to

designate them as annuitants and to submit death benefit claims to the issuers whose annuities he sold.

The California Annuitants

20. In May 2007, Horowitz approached Ten and described his stranger-owned annuities scheme to him. Because Ten worked at a non-profit 501(c)(3) organization (“Charity”), Horowitz asked Ten to assist him with identifying terminally ill patients and obtaining their confidential ID Data.

21. After a series of closed-door meetings between Horowitz and Ten at Charity’s offices in May 2007, Ten told his assistant that he was going to start a new charity, Raphael Health. Raphael Health was purportedly going to focus on providing charitable assistance exclusively to hospice care patients.

22. Raphael Health was used in the scheme to obtain patient ID and Health Data. On June 1, 2007, Ten filed a fictitious name certificate with the State of California, allowing one of his existing charities to do business under Raphael Health’s name.

23. Ten created a website for Raphael Health and set up Raphael Health email accounts. The Raphael Health webpage stated that Raphael Health was:

an organization dedicated to helping patients with a life limiting illness to live their remainder days in comfort and dignity.... Through the generosity of private and corporate philanthropists Raphael Health helps patients who[] have chosen hospice care and are at home or in a facility....

24. In reality, Raphael Health had no private or corporate donors, and its true purpose was to obtain patient ID and Health Data for Horowitz’s use in selling stranger-owned annuities. Raphael Health’s website failed to disclose these facts.

25. In July 2007, Ten opened a bank account in the name of Raphael Health, and funded it with several thousand dollars from his personal bank account. These funds were to be used for the charitable donations Ten planned to offer hospice patients as part of the plan to obtain their ID and Health Data.

26. Beginning in June 2007, Ten held Raphael Health out as a charity devoted to providing assistance to hospice patients. Ten solicited hospice care providers in Los Angeles, San Francisco and New Orleans by touting Raphael Health’s purported charitable services. In contemporaneous emails to those hospice care providers, Ten and his assistant described Raphael Health as a “non-profit 501(c)(3) organization.”

27. In June 2007, Ten met with the Director of Development of a southern California hospice care provider (“HCP”). During the June 2007 meeting, Ten told HCP’s Director of Development that Raphael Health

was an organization of some large, very high profile donors, the type of donors whose names are often on the sides of buildings at Universities, that sort of donor, Universities, hospitals. And that in this instance, they wanted to give and remain anonymous in that gift so that they had established Raphael Health...[Ten] indicated that they would like to see the patient, they would like to meet the patient. He, specifically. [sic] And the purpose for that was that they could tell – he could tell their donors or his donors who those individuals were that they were actually meeting – so he would be able to tell a story to help receive other donations to continue those donations to come into the individual patient requests that they were filling.

28. Ten's statements to HCP's Director of Development were false because, among other reasons, Raphael Health had no donors other than Ten.

29. Ten implied that there were conditions on the purported aid to be offered. First, only HCP hospice patients (*i.e.*, those who had been diagnosed with terminal illnesses and were receiving only palliative care in their home), as opposed to other HCP patients receiving in-home curative care or treatment, were eligible for Raphael Health's donations. Second, Ten capped the amount to be donated per patient at between \$250-\$500. Third, Raphael Health required that HCP provide it with the following information concerning any candidate for a donation: (i) the patient's name and address; (ii) the patient's date of birth; (iii) the patient's social security number; (iv) the patient's medical diagnosis; and (v) confirmation that the patient was receiving hospice care. This was the information that Respondent Horowitz needed to designate the hospice patients as annuitants. Finally, Ten conditioned the donations on his right to visit the HCP patient in question. Ten told HCP that he wanted to be able to tell his donors each patient's "story" to help raise additional donations for other patients. After visiting Raphael Health's website to confirm the legitimacy of the charity, the HCP administrator—grateful for what he understood to be Raphael Health's purely charitable donations to HCP's hospice patients—agreed to Ten's conditions.

30. Ten never told HCP that he planned to forward patient personal identifying information to Horowitz, or that Horowitz intended to sell annuity contracts to third parties who would profit when HCP patients died.

31. Between late July 2007 and at least December 2007, Ten met with multiple HCP hospice patients and with certain patients receiving care from other hospice providers. These meetings took place at the patients' homes. Horowitz attended many of these meetings.

32. Social workers from HCP also attended the meetings with HCP hospice patients. Ten told HCP social workers that he wanted to meet with the patients who were receiving charitable assistance from Raphael Health so he could tell their story to Raphael Health's "donors." According to one HCP social worker

When – at the meeting when we met with the patient in their home, before we met, they, he and [Horowitz], met me and stated that the patients – the

donors for this money did not want to give to hospitals. They didn't want to give to big organizations, that they would just receive a nameplate.

They wanted to see where their money was being spent; so therefore, Harold and [Horowitz] showed up. They had a box of candy for the patient.

Horowitz was present when Ten made these statements to the HCP social worker and knew them to be false. Horowitz did not, however, clarify or correct them in any way.

33. The patients, their families and their HCP health care providers all believed that the purpose of the visits was charitable. However, Horowitz's true purpose in visiting patients was to confirm that they were in fact dying, and, therefore, that they were suitable annuitants. Horowitz actively concealed his true purpose for attending from HCP and the hospice patients they visited, telling one HCP social worker that he represented persons "who were going to be making donations." This statement was materially false because Horowitz did not represent any donors and in fact there were never any donors to Raphael Health, other than Ten. Horowitz's statement was also materially misleading because he omitted the true purpose for his visit.

34. Unbeknownst to HCP and its patients, after each patient meeting, Ten provided Horowitz with the ID and Health Data that he obtained from HCP under false pretenses. Horowitz arranged for Ten to send the patient ID and Health Data to Horowitz's personal email account. Horowitz then used the patient ID and Health Data to sell variable annuities in which the hospice patients were designated as the contract annuitants.

35. Between July 2007 and at least December 2007, Ten provided Horowitz with the ID and Health Data of hospice patients in southern California. At least six of these patients were designated as annuitants in at least 18 variable annuities sold by Horowitz and a second representative whom Horowitz recruited to the scheme, with some of the patients designated as annuitants in multiple policies. Horowitz paid Ten at least \$130,000 for his services to the scheme.

36. As part of the ruse, Ten asked HCP to keep him informed of the health status of each patient whom he had visited, falsely telling HCP that Raphael Health's "donors" wanted to remain apprised of each patient's story. In reality, Horowitz and Ten wanted this information so they would know when each patient died so that Horowitz could timely file annuity death benefit claims for his customers, who then stood to receive payouts on their variable annuity investments. As part of the scheme, Ten obtained death certificates for each of the patients who had been designated as an annuitant and provided the death certificates to Horowitz for his use in filing death benefit claims.

37. HCP, its hospice patients, and their families were completely unaware that Horowitz had sold variable annuities on the lives of HCP hospice patients and that third parties stood to profit from their deaths.

38. HCP would not have released patient ID and Health Data to Ten or allowed Horowitz and Ten to meet with its patients if it had been aware of the true purpose of Raphael

Health and of Horowitz's scheme. Similarly, the patients and their caregivers would not have allowed Horowitz and Ten to meet with them had they known the true purpose of Raphael Health and of Horowitz's scheme.

Horowitz Travels to Chicago to Recruit Additional Annuitant Finders

39. In Fall 2007, Horowitz decided to grow his variable annuity business by expanding the pool of terminally ill individuals available to be designated as annuitants. He travelled to Chicago, Illinois in October 2007, and met with Menachem "Mark" Berger ("Berger"), an executive officer of a privately held company that owned and operated nursing homes in the Chicago area.

40. Horowitz agreed to pay Berger in exchange for his identification of hospice patients and in exchange for supplying Horowitz with the ID and Health Data of terminally ill individuals in the Chicago area. Berger recruited an associate, Debra Flowers ("Flowers"), to assist him in identifying terminally ill patients. As part of their arrangement, Berger and Flowers agreed to keep Horowitz and his associates apprised of the health status of the patient-annuitants, and Berger provided Horowitz and his associates with death certificates when the patients died.

41. Between November 2007 and February 2008, Berger and Flowers⁶ supplied Horowitz, or his associates, with the names and ID and Health Data of at least 10 terminally ill patients in Chicago. These patients were designated as annuitants in at least 7 variable annuities sold through Broker-Dealer 2, and in at least 28 variable annuities sold by Respondent Cohen. Horowitz paid Berger at least \$150,000 for his and Flowers' services to the scheme.

FRAUD IN THE EXECUTION OF BROKER-DEALER TRADE TICKETS AND POINT-OF-SALE FORMS

Horowitz Falsifies his Broker-Dealer 1 Trade Tickets

42. Between July 2007 and October 2007, Horowitz sold at least 14 deferred bonus variable annuities to his customers through his registration with Broker-Dealer 1.

43. For each of these 14 annuities, Horowitz designated a terminally ill hospice patient as the contract annuitant and used the patient ID and Health Data that he and Ten had fraudulently obtained from hospice care providers, through Raphael Health or directly from patients or their family caregivers. By designating patients with terminal medical diagnoses as the contract annuitants, Horowitz sought to guarantee that his customers would receive death benefit payouts within months of the annuities sales. For his part, Horowitz stood to receive lucrative upfront commissions on each stranger-owned annuity he sold.

⁶ On March 13, 2014, the Commission instituted settled public administrative and cease-and desist proceedings against Berger and Flowers, which included collateral, investment company, and penny stock bars and a cease and desist order. Berger was further ordered to pay disgorgement and a civil penalty. Exchange Act Release No. 71712, Admin. Proc. File No. 3-15787 (Mar. 13, 2014).

44. Horowitz marketed his stranger-owned annuities investment strategy to customers as an opportunity for obtaining short-term investment gains with a hedge against investment losses, and Horowitz's customers intended to use the variable annuities as short-term investment vehicles. However, Horowitz also knew that, in the event the "stranger annuitants" did not die within a matter of months, his customers would be locked into unsuitable, highly illiquid long-term investment vehicles that they would be unable to exit without paying substantial surrender charges.

45. To ensure that its registered representatives were selling suitable investments to their customers, and to ensure that the investment was being used for its intended purpose, Broker-Dealer 1 required its principals to review and approve each proposed sale of an annuity. As part of this process, Broker-Dealer 1 mandated that Horowitz complete an electronic trade ticket, including a suitability questionnaire, for every variable annuity that he sold. A Broker-Dealer 1 principal reviewed each trade ticket. Variable annuity applications could be submitted to the issuing insurance company only after principal approval of the ticket.

46. Each trade ticket required Horowitz to state how long the customer intended to hold the variable annuity being purchased. As part of the review process, Broker-Dealer 1's principals closely scrutinized the response to this question to ensure, among other things, that the customer intended to hold the investment for a period of time exceeding the surrender charge period in the deferred variable annuity contract being purchased. The 14 annuities that Horowitz sold through Broker-Dealer 1 had a nine year surrender charge period.

47. Knowing that his stranger-owned annuities sales would be rejected by Broker-Dealer 1's reviewing principals if he provided truthful timing information concerning his customers' intention to use the annuities as short-term investment vehicles, Horowitz submitted trade tickets falsely stating that his customers intended to hold their annuities from anywhere between 20 and 40 years. Horowitz submitted at least 14 trade tickets containing these materially false statements.

48. The same trade tickets also required Horowitz to state the relationship between the owner of the annuity and the annuitant. With respect to each trade ticket that Horowitz submitted for principal review, he falsely stated that there was a "partner" relationship between the owner and the annuitant.

49. In fact, there was no relationship, either familial or business, between the customers purchasing the annuities from Horowitz and the terminally ill hospice patients designated as annuitants. Indeed, the hospice patients had no idea that they had been designated as annuitants or that investors stood to profit from their deaths. Broker-Dealer 1's principals would not have approved Horowitz's annuities sales if they had known that there was no relationship between the annuity purchaser and the annuitant.

50. By providing false information about his customers, Horowitz fraudulently obtained principal approval of his stranger-owned annuities sales, which were then submitted to the variable annuity issuer. As a result of Horowitz's fraudulent acts and practices, the issuer then

unwittingly issued stranger-owned variable annuities to Horowitz's customers and paid out substantial upfront sales commissions to Horowitz.

Jane Doe 1: An Illustration of How Horowitz Carried Out the Scheme at Broker-Dealer 1

51. By way of example, Ten was approached by John Doe 1, who requested assistance for his wife, Jane Doe 1, who was dying of colon cancer.

52. John and Jane Doe 1 had a young son, and John Doe 1 had a full-time job. Jane Doe 1's condition had reached the point where she required 24-hour nursing, and John Doe 1 was requesting Ten's help with half of the nursing costs.

53. Ten told Horowitz about Jane Doe 1's condition and Horowitz decided to designate Jane Doe 1 as the annuitant in a variable annuity contract that he sold.

54. To that end, in late July 2007, Ten and Horowitz met with John and Jane Doe 1 at their home in Los Angeles, under the pretense of providing charitable assistance. Horowitz noted the meeting in his day-timer.

55. During their brief meeting, Ten discussed the aid that Jane Doe 1 would need, but neither Ten nor Horowitz ever mentioned variable annuities, or proposed designating Jane Doe 1 as an annuitant in variable annuities to be sold to third parties.

56. Shortly after this meeting—and unbeknownst to Jane and John Doe 1—Ten emailed Jane Doe 1's name and ID Data (including her social security number and date of birth) to Horowitz's personal email account.

57. On July 31, 2007, Horowitz sold a \$1.7 million variable annuity contract to a close family member in which Jane Doe 1 was designated as the annuitant.

58. In order to process this annuity sale, Horowitz completed an electronic trade ticket on which he identified Jane Doe 1 as the investor's "partner." This statement was false because there was no business, familial or other relationship between Jane Doe 1 and the investor.

59. In response to the investment access question on the trade ticket, Horowitz stated that the investor intended to hold the annuity for "25 years." In fact, as Horowitz knew, the investor intended to hold the investment only until Jane Doe 1 died, and Horowitz had selected Jane Doe 1 to be the annuitant because he understood her death to be imminent.

60. Based on these false representations, a Broker-Dealer 1 principal approved the trade ticket and Broker-Dealer 1 electronically submitted the investor's variable annuity application to the variable annuity issuer, which thereafter unwittingly issued a stranger-owned annuity contract.

61. The variable annuity issuer subsequently paid out a commission to Broker-Dealer 1, with Horowitz netting over \$28,500 in commissions on the sale of the annuity.

62. On August 5, 2007, four days after the annuity contract became effective, Jane Doe 1 died. John Doe 1 notified Ten of Jane Doe 1's death via email on August 14, 2007. John Doe 1 requested approximately \$1,200, representing half the cost of the 24-hour nursing coverage for Jane Doe 1.

63. Ten never responded to John Doe 1's August 14 email. Having received no aid or assistance, and no response from Ten, John Doe 1 wrote to Ten again on August 21 and told him to "use the money for someone else that is more in need."

64. Unbeknownst to John Doe 1, Ten thereafter obtained a copy of Jane Doe 1's death certificate and provided it to Horowitz. Horowitz used the death certificate to prepare a death benefit claim on the investor's annuity, which was then submitted to the issuer.

65. On October 19, 2007, the investor received a death benefit payout on the "Jane Doe 1" annuity of \$2,002,073.85. The investor realized a net profit on his initial \$1.7 million investment of \$302,073.85—representing a 17.7% rate of return over a period of two and a half months.

Horowitz Falsifies Broker-Dealer 2 Point-of-Sale Forms

66. In mid-November 2007, Horowitz's supervisors at Broker-Dealer 1 discovered that he was selling stranger-owned annuities and instructed him to immediately stop doing so.

67. At the time, Horowitz had over \$24 million in variable annuities business pending at Broker-Dealer 1.

68. Unable to sell additional stranger-owned annuities through Broker-Dealer 1, Horowitz sought assistance from a senior associated person of Broker-Dealer 2 ("Senior Rep") in completing the sale of stranger-owned annuities through an affiliate of Broker-Dealer 2.

69. Working with the office staff of the Broker-Dealer 2 affiliate, Respondent Horowitz completed the Broker-Dealer 2 new account forms and deferred variable annuity applications for the deferred variable annuities he had initially intended to sell to his customers through Broker-Dealer 1.

70. In each of those annuities, Horowitz designated a hospice patient as the contract annuitant, utilizing patient ID and Health Data that the Annuitant Finders had obtained and supplied to him. Horowitz did this in an effort to structure the annuities as short-term investment vehicles.

71. As was the case at Broker-Dealer 1, variable annuity sales at Broker-Dealer 2 were subject to principal review and approval to ensure that the proposed sale was suitable and that the

investment was being used for its intended purpose. Broker-Dealer 2 representatives were required to complete a new account form that required the representative to state the customer's investment time horizon (*i.e.*, when the customer anticipated accessing their investment) and to disclose certain financial profile information.

72. Broker-Dealer 2 also required its representatives to complete a "Variable Annuity Acknowledgement" form, specifically identifying the surrender charge period associated with the annuity being purchased. As part of the review process, a Broker-Dealer 2 principal closely scrutinized each customer's investment time horizon to ensure that it exceeded the surrender charge period in the deferred variable annuity contract being purchased.

73. Knowing that these stranger-owned annuity sales would be rejected by Broker-Dealer 2's reviewing principals if he provided truthful investment time horizons, Horowitz prepared new account forms falsely stating that the customers intended to hold their annuities from anywhere between 9 to 45 years.

74. The Senior Rep then recruited his subordinate business partner ("Signing Rep") to sign the new account forms and variable annuity applications as the selling registered representative. The Signing Rep agreed to do so in exchange for a percentage of the commissions to be earned on these annuities sales. The Signing Rep did not complete any variable annuity application paperwork or Broker-Dealer 2 new account forms, and he did not consider the purchasers of the annuities to be his customers.

75. By providing false customer information on the Broker-Dealer 2 new account forms, and by using a nominee broker to sign off on the required Broker-Dealer 2 point-of-sale paperwork, Horowitz fraudulently obtained principal approval of stranger-owned annuities sold through Broker-Dealer 2.

76. Working in this manner, between late November 2007 and mid-December 2007, Horowitz was able to effect the sale of at least 12 additional stranger-owned variable annuities – 2 of which were sold to a close Horowitz family member – through Broker-Dealer 2. During the same time period, Horowitz was not an associated person of Broker-Dealer 2, nor was he separately registered with the Commission as a broker or dealer.

Jane Doe 2: An Illustration of how Horowitz Continued the Scheme through Broker-Dealer 2

77. On November 19, 2007—after Horowitz had been instructed by Broker-Dealer 1 to stop selling stranger-owned annuities—Ten met with Jane Doe 2, a terminally ill HCP hospice patient, under the pretense of providing charitable assistance through Raphael Health. Horowitz travelled with Ten to Jane Doe 2's home.

78. Jane Doe 2, dying of stomach cancer, had previously told her HCP social worker about her desire to take her children to Disneyland before she passed away. HCP notified Raphael

Health about Jane Doe 2's request for assistance, after first determining that she likely would not live long enough to have her request processed through another well-known charitable foundation.

79. Raphael Health paid \$405 towards the cost of the trip to Disneyland, which Jane Doe 2 was able to take with her children. As a condition of the donation, Ten required HCP to provide him with Jane Doe 2's ID and Health Data prior to the visit and, thereafter, met with Jane Doe 2 at her home. During the brief meeting, neither Ten nor Horowitz mentioned variable annuities or proposed designating Jane Doe 2 as an annuitant in variable annuities to be sold to third parties.

80. On the drive back from Jane Doe 2's home, Horowitz asked Ten if he wanted to purchase an annuity on Jane Doe 2's life. Ten agreed to do so.

81. On the same day, Horowitz arranged for Ten to purchase a deferred variable annuity through Broker-Dealer 2, in which Jane Doe 2 was designated as the contract annuitant. Ten provided Horowitz with Jane Doe 2's ID and Health Data (including date of birth, address and social security number) that Horowitz needed in order to designate her as the annuitant in Ten's annuity. Ten invested \$1 million in the annuity.

82. To ensure that Ten's variable annuity application was approved by Broker-Dealer 2, Horowitz made several material false statements on Ten's Broker-Dealer 2 new account form. First, Horowitz falsely stated that Ten had a "27" year investment "time horizon" on his annuity. In fact, Ten intended to utilize the annuity as a short-term investment vehicle of no more than several months.

83. Second, Horowitz falsely stated that Ten's net worth was "\$15,000,000" and that Ten had liquid assets of "\$7,500,000." In fact, Ten's total net worth was no more than \$2 million; he had liquid assets of no more than \$750,000 to \$1 million; and he had margined his brokerage account to obtain the funds to purchase the annuity.

84. Horowitz falsely inflated Ten's financials because he knew that Broker-Dealer 2's principals were unlikely to approve a \$1 million investment in an illiquid, long-term investment vehicle by a customer with liquid assets equal to or less than that amount.

85. Finally, Horowitz had the Signing Rep sign off as the selling representative on Ten's new account form and variable annuity application while knowing that Ten had never spoken with the Signing Rep concerning the annuity and that the Signing Rep did not consider Ten his customer.

86. Based on Horowitz's and the Signing Rep's false representations, a Broker-Dealer 2 principal approved Ten's variable annuity purchase, and the variable annuity application was submitted to the issuer.

87. On or about November 26, 2007, the issuer unwittingly issued a stranger-owned deferred variable annuity contract to Ten in which Jane Doe 2 was the designated annuitant. Because he invested his \$1 million in a "bonus" annuity, Ten's account was credited with \$50,000.

88. On December 20, 2007, Jane Doe 2 died. Ten obtained a copy of her death certificate and provided it to Horowitz. Horowitz used the death certificate to prepare a death benefit claim on Ten's "Jane Doe 2" annuity, which was then submitted to the issuer.

89. Ten subsequently received death claim payouts from the issuer totaling \$1,050,322.60, realizing a net profit of over \$50,000 on his initial \$1 million investment.

Cohen's Role

90. By early Fall 2007, Horowitz had sold over \$20 million of the stranger-owned variable annuities to individual investors but desired to pump greater capital into the scheme. Searching for a large source of financing, Horowitz began pitching his scheme to institutional investors.

91. On or about October 25, 2007, Horowitz met with the principals of two affiliated hedge funds in New York City. As a result of the meeting, the principals decided to establish an affiliated entity, Institutional Investor 1, to facilitate the funds' joint investment in Horowitz's annuity scheme.

92. In December 2007, a certain variable annuity issuer terminated Horowitz's and the Signing Rep's appointments to sell its variable annuity products after determining that Horowitz and the Signing Rep had been selling stranger-owned annuities. Another variable annuity issuer subsequently terminated Horowitz's appointment to sell its annuities as well.

93. Unable to sell annuities through Broker-Dealer 1 or through the Signing Rep, Horowitz sought out a new broker through whom he could perpetuate his scheme.

94. In December 2007, Horowitz met with Cohen in Las Vegas and described his stranger-owned annuities investment strategy to him. At the time, Cohen was a registered representative with Broker-Dealer 3.

95. Horowitz told Cohen that he had a "hedge fund" client, who wanted to invest in stranger-owned variable annuities on a short-term basis. Horowitz told Cohen that Horowitz or his associates would supply Cohen with the customers and the hospice patient annuitants, while Cohen would serve as the registered representative on the additional tranche of stranger-owned variable annuities sales. In exchange, Cohen would pay Horowitz's associates a "consulting fee." Cohen agreed to the arrangement.

96. Between January and February 2008, Cohen, while an associated person of Broker-Dealer 3, sold at least 28 deferred variable annuities contracts to nominees of Institutional Investor 1, utilizing the deferred variable annuity products of at least 7 different insurance companies. Collectively, these nominees purchased approximately \$40 million in variable annuities.

97. In each of the annuities he sold, Cohen designated a hospice or nursing home patient as the contract annuitant, utilizing patient ID and Health Data supplied to Cohen by Horowitz's associates (who, in turn, had received the data from Berger and Flowers). Accordingly, Cohen knew that the annuities were being purchased with the intention of using them as vehicles for short-term investment.

98. As was the case at Broker-Dealers 1 and 2, variable annuities sales at Broker-Dealer 3 were subject to principal review to ensure that the proposed sale was suitable and that the investment was being used for its intended purpose. With respect to each annuity contract that he sold, Cohen was required to complete a "variable annuity point of sale" form. Among other information, Cohen was required to state when his customers intended to begin accessing their annuity investment, and whether they intended to do so during the surrender charge period.

99. As part of the principal review, Broker-Dealer 3 principals scrutinized the investment access information that Cohen provided on behalf of his customers to ensure that each customer would not need access to their investment during the surrender charge period in the annuity being purchased. Each of the variable annuity products that Cohen sold had a surrender charge period of at least 7 years.

100. Knowing that Broker-Dealer 3 would not approve his variable annuity sales if he provided truthful investment access information for his customers, Cohen provided false information regarding how soon the customers intended to access the investment (i.e., not before "11 to 15 years") on each of the 28 Broker-Dealer 3 "Annuity-Point of Sale" forms that he completed.

101. By providing false investment access information for the nominees of Institutional Investor 1, and by failing to disclose that they intended to access their annuities well within the surrender charge period, Cohen was able to fraudulently obtain principal approval of his stranger-owned annuities sales. As a result of Cohen's fraudulent acts and practices, the insurance companies whose variable annuities Cohen sold unwittingly issued stranger-owned variable annuities to Cohen's customers, and paid out substantial upfront sales commissions to Cohen.

ILL-GOTTEN GAINS

102. Horowitz earned a total of \$317,724 in sales commissions on the stranger-owned variable annuities that he sold. These commissions were paid by VA Issuer, which unwittingly issued stranger-owned annuities to the Horowitz's customers.

103. Close family members also purchased annuities from Horowitz, and paid him at least \$30,000 when they profited on their annuities sales.

VIOLATIONS

104. As a result of the conduct described above, Horowitz willfully violated Sections 17(a)(1) and 17(a)(2) of the Securities Act, which make it unlawful for any person, in the offer or

sale of any securities, directly or indirectly, (1) to employ devices, schemes or artifices to defraud, or (2) to obtain money or property by means of any materially false statement or materially misleading omission.

105. As a result of the conduct described above, Horowitz willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of a security, to (a) employ devices, schemes, or artifices to defraud, (b) make untrue statements of material fact or omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or (c) engage in acts, practices or courses of business which operate or would operate as a fraud or deceit upon persons.

106. As a result of the conduct described above, Horowitz willfully violated Section 15(a) of the Exchange Act, which makes it unlawful for any person, directly or indirectly, while acting as a broker or dealer, to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities when they are not registered with the Commission as a broker or dealer or associated with any entity registered with the Commission as a broker or dealer.

107. As a result of the conduct described above, Horowitz willfully aided and abetted and caused Broker-Dealer 1's violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(6) thereunder. Section 17(a) of the Exchange Act and Rule 17a-3(a)(6) thereunder require that every registered broker or dealer make and keep a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities. Implicit in these provisions is the requirement that information contained in a required record or report be accurate.

108. As a result of the conduct described above, Horowitz willfully aided and abetted and caused Broker-Dealer 1's and Broker-Dealer 2's violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(17) thereunder. Section 17(a) of the Exchange Act and Rule 17a-3(a)(17) thereunder require that every registered broker or dealer, and for each account with a natural person as a customer or owner, make and keep an account record, including, among other required information, the account owner's name, tax identification number, address, annual income, net worth, and the account's investment objectives. Implicit in these provisions is the requirement that information contained in a required record or report be accurate.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Horowitz's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Horowitz cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 15(a) and 17(a) of the Exchange Act and Rules 10b-5, 17a-3(a)(6) and 17a-3(a)(17) promulgated thereunder.

B. Respondent Horowitz be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Horowitz shall, within ten (10) days of the entry of this Order, pay disgorgement of \$347,724, prejudgment interest of \$103,025.21 and civil penalties of \$400,000, for a total payment of \$850,749.21, to the Securities and Exchange Commission. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Michael A. Horowitz as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Julie M. Riewe, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F. St., NE, Washington, DC 20549.

V.

It is hereby further ORDERED that these proceedings shall continue as to Respondent Moshe Marc Cohen.

By the Commission.

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15790

In the Matter of

MICHAEL A. HOROWITZ

and

MOSHE MARC COHEN,

Respondents.

**ANNEX A TO ORDER MAKING
FINDINGS AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTION
203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND
SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940 AS TO
MICHAEL A. HOROWITZ**

ANNEX A

Respondent Michael A. Horowitz admits only the facts set forth below (the “Admissions”) and acknowledges that his conduct violated the federal securities laws:

Variable Annuities

1. Variable annuities are designed to serve as long-term investment vehicles, typically to provide income at retirement. Although variable annuities offer investment features similar in many respects to mutual funds, a typical variable annuity offers certain features not commonly found in mutual funds, including death benefits¹ and/or bonus credits.²

¹ The typical variable annuity death benefit provides for a payment to the beneficiary at the contract annuitant’s death equal to either the value of the underlying investment portfolio or the purchase price of the annuity less any withdrawals, whichever is greater. This death benefit option allows an investor to profit from positive investment performance as part of the death benefit while providing a hedge against losses in the portfolio’s value by providing for a payout equal to at least the amount invested in the annuity less any withdrawals. In the typical variable annuity, the contract owner is also the contract “annuitant.” However, in the scheme described herein, hospice and nursing home patients unrelated to the contract owners were designated as the annuitants.

² A bonus credit is a sum of money immediately credited to the contract owner’s investment account by the annuity issuer (typically a percentage of the premiums being invested in the annuity contract). For example, certain investors that purchased variable annuities through Horowitz made an

Horowitz's "Stranger-Owned" Variable Annuities Investment Strategy

2. Between June 2000 and August 2008, Horowitz was a registered representative at Broker-Dealer 1. Broker-Dealer 1 is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

3. In or about May 2007, Horowitz devised a strategy to market variable annuities as short-term investments after learning about the features of certain variable annuity contracts offered by an annuity issuer ("VA Issuer"). Certain features of the annuity contracts were first disclosed to Horowitz by senior representatives of the VA Issuer, which sponsored a seminar for registered representatives of Broker-Dealer 1. Horowitz subsequently had meetings and email correspondence with a sales representative for the VA Issuer.

4. In particular, Horowitz learned from the VA Issuer that, unlike traditional life insurance, these variable annuity contracts—as long as they were purchased under a certain dollar threshold—required neither a physical examination of, nor proof of an "insurable interest" in, the "annuitant," *i.e.*, the person whose death would trigger the products' payout provisions. Horowitz further determined that with respect to certain of the VA Issuer's deferred variable annuity products: (i) the VA Issuer provided an immediate "bonus credit" of up to 5% of the amount invested, which was credited to the contract owner's investment account; (ii) the contract owner could invest his or her premiums in mutual funds available under the contract; (iii) the annuities contained death benefit options; (iv) although substantial "surrender charges" were ordinarily assessed if the annuities were liquidated within the first 7-10 years, such charges were typically not incurred in the event of a death benefit payout; (v) even if the annuitant died before the "surrender charge" period had run, the VA Issuer would not "claw back" any of the sales commissions it paid to the selling representative; (vi) the VA Issuer did not require an annuitant's signature on the annuity application; (vii) the VA Issuer did not require any representations of a familial or business relationship between the owner and the annuitant on its applications; and (viii) so long as the amount of the contract was \$2,000,000 or less, the VA Issuer did not perform any medical underwriting on the proposed annuitant.

5. Between July 2007 and October 2007, Horowitz sold at least 14 deferred bonus variable annuities to his customers through his registration with Broker-Dealer 1.

6. For each of these 14 annuities, Horowitz designated a terminally ill hospice patient as the contract annuitant. By designating patients with terminal medical diagnoses as the contract annuitants, Horowitz sought to guarantee that his customers would receive death benefit payouts within months of the annuities sales. For his part, Horowitz stood to receive lucrative upfront commissions on each stranger-owned annuity he sold.

initial investment of \$1 million and received "bonus credits" that increased the value of their annuity by 5% (\$50,000) to \$1,050,000.

7. The hospice patients designated as annuitants had no familial or business relationship with the investors who purchased the annuities. Instead, they were selected based on their terminal illnesses and the likelihood that they would die soon, and thereby trigger death benefit payouts in variable annuity contracts in the very near term.

8. These “stranger annuitants” likewise had no contractual right to any portion of the death benefits paid out under the terms of the variable annuities sold during the strategy. Instead, each of the contracts directed these benefits be paid to one of the investor’s family members or relatives, or to a family trust created by the investor.

9. Horowitz marketed his stranger-owned annuities investment strategy to customers as an opportunity for obtaining short-term investment gains with a hedge against investment losses, and Horowitz’s customers intended to use the variable annuities as short-term investment vehicles.

10. However, Horowitz’s strategy carried with it the risk that, if the “stranger annuitants” did not die within a matter of months, Horowitz’s customers would be locked into unsuitable, highly illiquid long-term investment vehicles that they would be able to exit only by paying substantial surrender charges.

Horowitz Obtains Patient ID and Health Data through Annuitant Finders

11. Horowitz needed to identify terminally ill persons to use as annuitants in variable annuity sales. Horowitz asked certain individuals, including Harold Z. Ten and Menachem “Mark” Berger, to identify the terminally ill persons to be used as annuitants.

12. Horowitz needed the personal identifying information of the terminally ill persons to designate them as annuitants and to submit death benefit claims to the issuers whose annuities he sold.

13. Between July 2007 and at least December 2007, Harold Ten provided Horowitz with the ID and Health Data of hospice patients in southern California. At least six of these patients were designated as annuitants in at least 18 variable annuities sold by Horowitz and a second representative, with some of the patients designated as annuitants in multiple policies.

False Statements on the Annuity Trade Tickets

14. To ensure that its registered representatives were selling suitable investments to their customers, and to ensure that the investment was being used for its intended purpose, Broker-Dealer 1 required its principals to review and approve each proposed sale of an annuity. As part of this process, Broker-Dealer 1 mandated that Horowitz complete an electronic trade ticket, including a suitability questionnaire, for every variable annuity that he sold. A Broker-Dealer 1 principal reviewed each trade ticket. Variable annuity applications could be submitted to the issuing insurance company only after principal approval of the ticket.

15. Each trade ticket required Horowitz to state how long the customer intended to hold the variable annuity being purchased. As part of the review process, Broker-Dealer 1's principals closely scrutinized the response to this question to ensure, among other things, that the customer intended to hold the investment for a period of time exceeding the surrender charge period in the deferred variable annuity contract being purchased. The 14 annuities that Horowitz sold through Broker-Dealer 1 had a nine year surrender charge period.

16. Horowitz submitted trade tickets falsely stating that his customers intended to hold their annuities from anywhere between 20 and 40 years. Horowitz submitted at least 14 trade tickets containing these materially false statements. Broker-Dealer 1's principals would not have approved Horowitz's annuities sales if he had provided truthful timing information concerning his customers' intention to use the annuities as short-term investment vehicles.

17. The same trade tickets also required Horowitz to state the relationship between the owner of the annuity and the annuitant. With respect to each trade ticket that Horowitz submitted for principal review, he falsely stated that there was a "partner" relationship between the owner and the annuitant.

18. In fact, there was no relationship, either familial or business, between the customers purchasing the annuities from Horowitz and the terminally ill hospice patients designated as annuitants. Broker-Dealer 1's principals would not have approved Horowitz's annuities sales if they had known that there was no relationship between the annuity purchaser and the annuitant.

19. By providing false information about his customers, Horowitz obtained Broker-Dealer 1 principal approval of his stranger-owned annuities sales, which were then submitted to the VA Issuer. The VA Issuer then unwittingly issued 14 stranger-owned variable annuities to Horowitz's customers and paid out substantial upfront sales commissions to Horowitz.

Ill-Gotten Gains

20. Horowitz earned a total of \$317,724 in sales commissions on the stranger-owned variable annuities that he sold. These commissions were paid by VA Issuer, which unwittingly issued stranger-owned annuities to the Horowitz's customers.

Conclusion

21. The above-described conduct by Horowitz was undertaken in connection with the purchase, offer, or sale of a security.

22. In connection with the violations described in the foregoing Admissions, Horowitz's actions were, at a minimum, reckless.