

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

FILED by SB D.C.  
JUN 11 2009  
STEVEN M. LARIMORE  
CLERK U. S. DIST. CT.  
S. D. of FLA. - MIAMI

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

AURA FINANCIAL SERVICES, INC.,  
RONALD E. HARDY, JR.,  
PETER C. DUNNE,  
QAIS R. BHAVNAGARI,  
DIPIN MALLA,  
SANDEEP SINGH, and  
RAYMOND RAPAGLIA,

Defendants.

Civil Action File No.

09-21592

CIV-MORENO / TORRES

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") files this complaint and alleges the following:

SUMMARY

1. From approximately October 2005 through at least April 2009, Aura Financial Services, Inc. ("Aura"), a Birmingham, Alabama based broker-dealer

registered with the Commission, and six of its registered representatives, Ronald E. Hardy, Jr. (“Hardy”), Peter C. Dunne (“Dunne”), Qais R. Bhavnagari (“Bhavnagari”), Dipin Malla (“Malla”), Sandeep Singh (“Singh”), and Raymond Rapaglia (“Rapaglia”) (collectively, “Defendants”) used fraudulent sales practices to induce customers to open and fund Aura brokerage accounts.

2. Then, Defendants rampantly “churned” these accounts by causing numerous trades to be executed which enriched Defendants through brokerage commissions and, in some cases, mark-ups, while depleting the customers’ balances through trading losses and excessive transaction costs. Many of the trades effected by Defendants were unauthorized by the customers.

3. Through their conduct, Defendants have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] promulgated thereunder.

### **JURISDICTION AND VENUE**

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2); Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]; and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Aura maintains an office in Miami, Florida, a

location in this district, where Bhavnagari, Malla, and Singh work, and during the course of the scheme maintained an office in Pembroke Pines, Florida, where Rapaglia worked.

5. Aura has made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

#### **DEFENDANTS**

6. Aura Financial Services Inc. is an Alabama corporation headquartered in Birmingham, Alabama, with offices in Islandia, New York and Miami, Florida. Formerly, Aura maintained an office in Pembroke Pines, Florida. Aura has been registered with the Commission as a broker-dealer since 1997.

#### **Representatives on Long Island**

7. Ronald E. Hardy, Jr., 34 years of age and a resident of Port Jefferson Station, New York, has been associated with Aura as a registered representative in its Islandia branch office since June 2007.

8. Peter C. Dunne, 35 years of age and a resident of Medford, New York, was associated with Aura as a registered representative in its Islandia branch office from March 2008 until August 2008.

**Representatives in South Florida**

9. Qais R. Bhavnagari, 28 years of age and a resident of Sunny Isles, Florida, has been associated with Aura as a registered representative in its Miami branch office since May 2005.

10. Dipin Malla, 28 years of age and a resident of West Palm Beach, Florida, has been associated with Aura as a registered representative in its Miami branch office since April 2005.

11. Sandeep Singh, 29 years of age and a resident of West Palm Beach, Florida, has been associated with Aura as a registered representative in its Miami branch office since January 2003.

12. Raymond Rapaglia, 47 years of age and a resident of Pembroke Pines, Florida, was associated with Aura as a registered representative in its Pembroke Pines branch office from March 2003 until August 2008.

**FACTS**

**I. Background**

13. “Churning” occurs when a securities broker buys and sells securities for a customer’s account, without regard to the customer’s investment interests, for the purpose of generating commissions.

14. Aura's written supervisory procedures acknowledge that: "It is considered a manipulative, deceptive or fraudulent device when a customer's account experiences excessive trading otherwise known as churning. Indications of churning exist when a registered representative exerts control over the customer's account (explicitly in a discretionary account or implicitly in the relationship with the customer), and the account's activity displays excessive trading patterns and the activity does not conform to the customer's objective."

15. Two metrics which are useful in detecting potential churning are an "annual turnover rate," and a "cost to equity ratio" (which is also known as a "breakeven percentage").

16. The annual "turnover rate" is the number of times per year a customer's securities are replaced by new securities. It is calculated by dividing the gross amount of securities or investments purchased in the customer's account during a given period by the average value of the equity in the account during that same time period. For example, if an investor purchased \$7 million of securities in one year, and the average equity in his account was \$1 million during that year, the account turned over seven times.

17. A “cost to equity ratio” or “breakeven percentage” determines the rate of return that an account would have had to earn on an annual basis in order to cover transaction costs, and thus to break even.

18. A “margin” account is a brokerage account in which the broker lends the customer cash to purchase securities. The loan in the margin account is collateralized by the securities and cash in the customer’s account.

19. A “margin call” is a broker’s demand that a customer deposit additional money or securities or sell assets in the account in order to bring the customer’s margin account up to the minimum maintenance margin. If the value of securities held as collateral in a customer’s margin account drops sufficiently, a “margin call” will be made and the account holder will be required to deposit more cash or sell a portion of stock.

20. Buying securities on margin, that is, with borrowed money, increases risk because both gains and losses are amplified. Buying securities on margin also increases commissions.

21. The Defendants made a practice of opening up many new accounts as margin accounts, including many of those belonging to the fifteen customers described in detail below, even where they had not conferred with the customer about the risks of margin.

## **II. Fraudulent Churning and Abusive Sales Practices**

22. From approximately October 2005 through at least April 2009, Aura and, during various periods, six of its registered representatives (Hardy, Dunne, Bhavnagari, Malla, Singh, and Rapaglia) used fraudulent sales practices to induce customers to open and fund Aura brokerage accounts.

23. For example, in at least fifteen separate instances, customers (“the Fifteen Customers”), having been cold-called, or otherwise introduced to one of the aforementioned Defendants, opened Aura brokerage accounts.

24. The majority of the Fifteen Customers had, in fact, investment objectives of “growth” or “capital appreciation,” with a corresponding risk tolerance of “moderate” to “conservative.” However, in at least some cases, the Aura representatives marked more aggressive investment objectives or risk tolerances on the customers’ new account applications.

25. Thereafter, the accounts of the Fifteen Customers were traded inconsistently with their investment objectives or risk tolerances.

26. Most of the Fifteen Customers was unsophisticated in securities trading, and all relied solely on one or more Defendants, the respective registered representative for the account, to make investment decisions for their account.

27. The relevant registered representatives exercised *de facto* control over the accounts of each of the Fifteen Customers.

28. None of the Fifteen Customers understood the total transaction costs they were incurring through their trading with Aura.

29. Collectively, the accounts of the Fifteen Customers generated total gross commissions of over \$1 million for Defendants during 2008, almost one-sixth of the total commissions generated by all Aura accounts during that time.

30. During the same time period, the accounts of the Fifteen Customers suffered a combined loss of over \$3.5 million as a result of Defendants' sales practices.

31. Defendants' misconduct has taken place in three Aura branch offices; two in Florida in Miami and Pembroke Pines, and one office located in Islandia, New York.

**A. Violations by Hardy**

**The Anthony C. Account**

32. Anthony C., 71, a resident of Palm Desert, California, was cold-called by Hardy to open a securities investment account with Aura in early 2008.

33. Based upon Hardy's claim that he would recommend profitable investments, Anthony C. agreed to open an individual account at Aura (xxxx-5235).

34. Subsequently, in May 2008, Anthony C. closed the individual account and opened a new, joint account with his ex-wife (xxxx-2084). Both Anthony C. and his ex-wife (collectively, the Anthony C.s) have very limited investment experience and had never before traded stocks, primarily trading in mutual funds prior to opening the Aura accounts. Anthony C. relied on Hardy to recommend and conduct trading in the Aura joint account.

35. Anthony C.'s individual account was converted to a margin account shortly after it was opened, and the Anthony C.s' joint account was opened as a margin account. However, Anthony C. had not requested or agreed to a margin account. In fact, Anthony C. did not know what margin was until he began receiving margin calls from Aura.

36. The new account forms completed for both Anthony C.'s individual account and for the Anthony C.s' joint account listed "Capital Appreciation/Growth" as the investment objective and "Moderate" as risk tolerance.

37. The new account forms drafted by Hardy for both Anthony C.'s individual account and for the Anthony C.s' joint account indicate income of \$100,000 to \$199,999 and net worth of \$800,000 to \$999,999. However, Anthony C.'s actual gross income and net worth were only a small fraction of these amounts.

38. Anthony C. had no significant prior trading experience and relied totally on Hardy's recommendations. Hardy exercised *de facto* control over Anthony C.'s account.

39. Only once did Anthony C. request that Hardy purchase a particular stock, GameTech International, Inc. Anthony C. asked Hardy not to sell this stock. However, Hardy later sold this stock against Anthony C.'s wishes.

40. On numerous occasions Hardy traded in the Anthony C.s' joint account without informing him or his wife.

41. Between May and July 2008, Hardy executed a total of 50 buy and sell transactions in the Anthony C.s' account.

42. By the end of July, the Anthony C.s' joint account had a negative balance, having lost over \$38,000 including commission charges and fees of approximately \$29,000.

43. The Anthony C.s' joint account was excessively traded, and the account had an annualized turnover rate of 199 and a cost to equity ratio of over 566%.

#### **The Allen L. Account**

44. Allen L., 44, a resident of Carlock, Illinois, opened an Aura account in October 2008 after receiving periodic cold calls from Hardy for nearly nine months. Allen L., at the time, was an unsophisticated investor who had never traded securities.

45. Allen L. relied on Hardy to recommend securities, but never gave Hardy discretionary authority over the account. Hardy conducted unauthorized trades in Allen L.'s account from soon after it was opened until it was closed in January 2009. Hardy exercised *de facto* control over Allen L.'s account.

46. Between October and December 2008, Hardy excessively traded Allen L.'s account, effecting 51 transactions. No more than five of these transactions were authorized. The transactions effected by Hardy resulted in a turnover rate of 14 for that period and an annualized turnover rate of 56.

47. Allen L. invested approximately \$264,000 during this time period and incurred losses of approximately \$150,000, while paying \$25,000 or more in commissions and fees.

48. Allen L.'s account was set up as a margin account, but he did not understand how margin worked. In October or November 2008, Allen L. began to receive margin calls. After receiving the margin calls, Allen L. tried on many occasions to reach Hardy to discuss them. When Allen L. did reach Hardy, Hardy repeatedly misrepresented the account's margin balance to Allen L.

49. In late November or early December 2008, Allen L. instructed Hardy to stop using margin in his account. However, Hardy continued to conduct unauthorized margin trading. While he was conducting the unauthorized margin trading, Hardy repeatedly told Allen L., falsely, that margin was no longer being used.

50. Allen L. frequently attempted to contact Hardy to discuss the account and express his concerns, but rarely succeeded. On the rare occasions Allen L. reached Hardy, Hardy assured Allen L. that he would address the problems.

#### **The John L. (Illinois) Account**

51. John L. (Illinois), 66, a Carlock, Illinois resident, opened an Aura account in October 2008 at the urging of his son, Allen L., who had opened an Aura account at that time. John L. (Illinois) was an unsophisticated investor who had never previously traded securities.

52. Hardy conducted unauthorized trades in John L. (Illinois)'s account from soon after it opened until it was closed in January 2009.

53. In fact, between October and December 2008, Hardy traded the account excessively, effecting 27 transactions, resulting in a turnover rate of 18 for that period and an annualized turnover rate of 73. Hardy exercised *de facto* control over John L. (Illinois)'s account.

54. John L. (Illinois) invested over \$42,000 during this time period and incurred losses of nearly \$27,000, while paying over \$11,400 in commissions and fees.

55. Hardy made a practice of not returning John L. (Illinois)'s phone calls.

#### **The Robert M. Account**

56. Robert M., 65, a resident of White Plains, New York, received a cold call from Hardy in August 2007. During the call, Hardy convinced Robert M. to open an investment account and an IRA with Aura.

57. Robert M. funded his investment account with approximately \$120,000 in deposits and his IRA account, a rollover from an account previously held at another institution, with approximately \$230,000.

58. When the accounts were first opened, Hardy regularly called Robert M. to obtain his pre-authorization for proposed transactions and to inform Robert M. that his investments were profitable. Robert M. always followed Hardy's trading advice and did not contact Hardy to initiate trades.

59. Over time, however, Hardy called less and less frequently and began engaging in unauthorized trading.

60. Robert M. had never provided discretionary authority to Hardy for either of his two Aura accounts. Nonetheless, Hardy began making numerous trades in Robert M.'s account without his prior authorization. Thus, Hardy exercised *de facto* control over Robert M.'s account.

61. Robert M. was surprised to receive margin calls in his investment account, as he did not recall agreeing to a margin account.

62. When Robert M. questioned him about the margin calls, Hardy told Robert M. not to worry about them and stated that he would take care of it. Eventually, when Robert M. called Hardy to inquire about his accounts, including the unauthorized trading, Hardy would not even return his phone calls.

63. Between January and August 2008, Hardy traded excessively, effecting 36 transactions in Robert M.'s Aura investment account. By the time Hardy's trading stopped, Robert M.'s investment account had remaining value of

only \$2,585. For the time period January through December 2008, this trading yielded an annual turnover rate of 556, and a breakeven percentage of over 1,750%. Aura charged Robert M. \$72,987 in commissions, markups, and fees and \$1,004 in margin interest.

64. Additionally, between January and July 2008, Hardy effected 234 transactions in Robert M.'s Aura rollover IRA, at an annual turnover rate of 68, while charging Robert M. \$102,661 in commissions, markups, and fees. To break even on his Aura rollover IRA, Robert M. would have had to achieve a return of over 428%. By June 30, 2008, the value of Robert M.'s rollover IRA account was a mere \$516.

#### **The Christopher G. Account**

65. Christopher G., 55, a resident of San Francisco, California, began receiving cold calls from Hardy in mid-2008.

66. During the fourth or fifth such call, in September 2008, Hardy told Christopher G. that if he would open a new account with Aura and fund it within seven days, Hardy would "reserve" shares in a specific stock at the previous day's closing price for him.

67. Christopher G. opened an investment account in September 2008 in response to this conversation. In November 2008, Christopher G. rolled over an IRA account from another broker-dealer to Aura (xxxx-9946).

68. Christopher G. relied upon Hardy to recommend and conduct trading in his Aura accounts, but did not give Hardy discretionary authority.

69. Hardy never obtained Christopher G.'s authorization prior to making trades in the IRA account. Moreover, Hardy conducted unauthorized margin trades in both of Christopher G.'s accounts after being asked to stop using margin. Thus, Hardy exercised *de facto* control over both of Christopher G.'s accounts.

70. Hardy's trading of Christopher G.'s IRA account in 2008 yielded an annual turnover ratio of 64, and a breakeven percentage of 55.9%.

71. Hardy consistently and repeatedly misrepresented the balances in Christopher G.'s accounts to him.

72. Between September and December 2008, Christopher G. paid Hardy and Aura over \$49,000 in commissions, mark ups, and other fees in his two Aura accounts.

#### **The Roderick H. Account**

73. Roderick H., 66, of West Chazy, New York, was cold-called by Hardy in February 2009. Roderick H. has very limited experience investing in securities.

74. Hardy claimed to Roderick H. that he could make a return of 12% to 15% annually for him. Based on this claim, Roderick H. opened an account with Aura.

75. Hardy did not ask Roderick H. about his investment objective or risk tolerance. However, Roderick H.'s investment objective was growth and his risk tolerance is conservative.

76. Roderick H. has relied on Hardy to recommend and conduct trading in his Aura account, and has always followed Hardy's trading recommendations. Thus, Hardy has exercised *de facto* control over Roderick H.'s account.

77. Hardy has traded Roderick H.'s account excessively. For the month of April 2009, Aura's Largest 500 Account report reflected that Hardy's trading resulted in an annual turnover rate of 92.6 and a cost to equity ratio or break even percentage of 383%.

78. Roderick H. has received confirmations for the transactions in his account. Most, if not all, of these confirmations have shown a \$60 handling fee. Roderick H. believes that this \$60 is the total he has paid in commissions and fees to Aura for each transaction. Some of the confirmations Roderick H. has received for transactions have also shown a "mark up". However, Roderick H. does not know what a mark up is.

**B. Violations by Dunne**

**The Foncie O.s Account**

79. Foncie O., 59, a resident of Maxton, North Carolina, opened his first securities investment account with another broker-dealer in the 1980s, and has some limited investment experience.

80. In May 2008, Dunne cold called Foncie O., asking him to open an account at Aura. Foncie O. opened a joint account with his wife (collectively, “the Foncie O.s”).

81. On Dunne’s recommendation, the account was opened as a margin account. This was the first time that Foncie O. ever had a margin account.

82. The Foncie O.s sought to preserve their capital with moderate risk; however, Dunne completed their new account application to indicate that they were seeking speculation with an aggressive risk tolerance.

83. In early May 2008, the Foncie O.s funded the account with a deposit of approximately \$6,500, agreeing on Dunne’s recommendation to invest that entire amount in one particular stock. After the price of the stock they had bought on Dunne’s recommendation went up, the Foncie O.s deposited an additional \$78,000 in the Aura account.

84. Neither of the Foncie O.s provided Dunne with discretionary authority over their Aura account at any time. Nonetheless, Dunne made numerous trades. With the sole exception of the initial purchase of stock, all of the trades in the Foncie O.s' account were unauthorized. Thus, Dunne exercised *de facto* control over the Foncie O.s' account.

85. From May through July 2008, Dunne executed a total of forty-eight buy and sell transactions in the Foncie O.s' account.

86. The value of the Foncie O.s' account decreased by \$72,824 during that same period, including commission charges and fees of almost \$44,000. The account was excessively traded. The annualized turnover rate for the account was 313, and the cost to equity ratio was 250%.

#### **The John L. (Minnesota) Account**

87. John L. (Minnesota), 54, a resident of Lakeville, Minnesota, opened an Aura account in April 2008 after receiving multiple cold calls from Dunne for a period of over three months.

88. As John L. (Minnesota) told Dunne, he had extremely limited investing experience, having had only two small brokerage accounts prior to the one at Aura.

89. John L. (Minnesota) never provided discretionary authority to anyone at Aura to trade his account, and never contacted Aura to initiate a trade. Dunne relied upon Aura personnel to recommend potential trades, which he always accepted. Thus, Dunne exercised *de facto* control over the John L. (Minnesota) account.

90. Between April and August 2008, Dunne excessively traded the account. Dunne effected 53 transactions in John L. (Minnesota)'s account, resulting in a turnover ratio of 53 for that period and annualized turnover rate of 117. Larson's account would have had to achieve a return on investment of almost 417% to cover the total costs associated with the account.

91. After Dunne left Aura in August 2008, John L. (Minnesota) frequently attempted to contact the new Aura representative assigned to his account. However, neither the new representative nor any other representative of Aura would return John L. (Minnesota)'s calls or answer his questions.

92. John L. (Minnesota) invested approximately \$69,000 with Aura and lost virtually all of these funds, while paying over \$68,000 in commissions and fees.

**C. Violations by Bhavnagari**

**The Ajay B.s Account**

93. Ajay B., 59, and his wife (“the Ajay B.s”), residents of Lawton, Oklahoma, were cold-called in September 2007 by Bhavnagari.

94. During that initial conversation, Bhavnagari claimed that he had a good track record trading securities because he focused on a few companies and their stocks, and limited the number of Aura accounts that he serviced.

95. Later, the Ajay B.s met with Bhavnagari at Aura’s offices. In this meeting, Bhavnagari guaranteed the Ajay B.s that their stock transactions would be safe, and that the transactions would be secured by “insurance.”

96. As Bhavnagari knew, these statements were misleading. The Securities Investor Protection Corporation (“SIPC”) does reimburse investors for losses caused by the bankruptcy or insolvency of a broker-dealer. However, SIPC does not cover losses incurred as the result of market activity or fraud. Bhavnagari omitted to disclose to the Ajay B.s that the insurance provided by SIPC does not cover trading losses.

97. Based on Bhavnagari’s representations, the Ajay B.s subsequently opened a joint brokerage account at Aura (xxxx-3470) with a stated investment

objective of capital appreciation. Cumulatively, they funded their account with \$900,000.

98. The Ajay B.s did not give discretionary authority to Bhavnagari or anyone else at Aura Financial to trade in their Aura account without obtaining their advance approval of each proposed transaction.

99. The Ajay B.s never requested Bhavnagari or Aura make particular transactions. Instead, when given the opportunity, they gave permission to Bhavnagari for various trades he suggested from time to time. After May 2008, Bhavnagari stopped contacting the Ajay B.s to request authorization to make trades, and only contacted them to request that they deposit more money into their account.

100. From January through December 2008, Bhavnagari executed a total of 259 buy and sell transactions in the Ajay B.s' account. Many of these transactions were unauthorized, in that they were made without the Ajay B.s' knowledge or approval. All of the transactions after May 2008 in the Ajay B.'s account were unauthorized. Thus, Bhavnagari exercised *de facto* control over the Ajay B.'s account.

101. Throughout the course of 2008, the Ajay B.s' account sustained losses totaling over \$1 million, including commission charges and fees of \$270,114 and margin interest in the amount of \$22,134.

102. Neither Ajay B. nor his wife understood the amount of money Aura and Bhavnagari were making in commissions during 2008.

103. Ajay B. asked Bhavnagari about his commissions, after noting a heightened number of trades during certain time periods. Bhavnagari told Ajay B. that when the trades resulted in a profit, he received a commission of 1% to 2%. This statement was false or misleading, in that Bhavnagari also received commissions on trades which were not profitable.

104. During 2008, the Ajay B.s' account was excessively traded, and showed an annualized turnover rate of 54 and a cost to equity ratio (or "break even") of almost 55%.

105. In the last week of March 2009, Ajay B. instructed Bhavnagari and Aura to close the joint account, which was then valued between \$220,000 and \$250,000.

### **The Suresh D. Account**

106. Suresh D., 38, a resident of McLean, Virginia, opened an account at Aura (xxxx-2136) in or around April 2008 after having been cold-called by Bhavnagari.

107. In the initial phone call, Bhavnagari claimed that he could increase Suresh D.'s wealth in a short period of time.

108. Suresh D., having minimal investment experience, opened the account seeking capital appreciation with a conservative risk tolerance. However, without conferring with Suresh D., Bhavnagari completed the new account application to list an investment objective of speculation and an aggressive risk tolerance.

109. Suresh D. funded the account with over \$850,000.

110. Between April and September 2008, Bhavnagari excessively traded the account, executing 34 transactions, resulting in an annualized turnover rate of 12.

111. Beginning in June 2008, Suresh D.'s account began to sustain losses, prompting Suresh D. to repeatedly instruct Bhavnagari, on multiple occasions between June and September 2008, to immediately cease trading and liquidate the account.

112. Instead of liquidating the account as instructed, Bhavnagari continued to make unauthorized trades in Suresh D.'s account over the course of 2008.

Bhavnagari exercised *de facto* control over Suresh D.'s account.

113. In addition, on several occasions, Bhavnagari falsely stated to Suresh D. that he intended to wire the funds as instructed.

114. By the time Suresh D.'s account was finally closed in September 2008, Bhavnagari's misconduct had resulted in over \$333,000 in losses, while Bhavnagari and Aura collected over \$57,000 in commissions and other fees from the account.

**D. Violations by Malla**

**The Vijay K. Account**

115. Vijay K., 57, a resident of St. Thomas, Pennsylvania, was contacted by Malla in October 2005 and convinced to open a margin account with Aura (xxxx-6790). At that time, Vijay K. informed Malla that he had no securities investment experience, never had a securities brokerage account, and had significant health problems.

116. Moreover, Vijay K. specifically told Malla that he wanted to be very conservative because he could not afford to lose his investment and would need his money returned on April 30, 2008 to pay for medical costs.

117. Malla told Vijay K. that Aura was like a bank and that it would protect Vijay K.'s money. Malla also promised Vijay K. that his investments would provide a return of 4.4% per year and that his money was protected by The Securities Investor Protection Corporation. As Malla knew, these statements were misleading, as Malla had no basis for promising a particular rate of return and omitted to disclose to Vijay K. that no insurance protected him from trading losses.

118. In January 2008, Vijay K. had a balance of \$69,424 in his Aura account and had deposited \$41,000 over the course of the year.

119. Vijay K. never provided discretionary authority over his account to Malla or anyone else at Aura. Nevertheless, Malla exercised *de facto* control over Vijay K.'s account by consistently trading in it without first obtaining Vijay K.'s authorization. Malla's trading reduced Vijay K.'s account balance to a mere \$294 by December 2008.

120. Between January and September 2008, Malla excessively traded the account, effecting 59 transactions. Most, if not all, of these transactions were unauthorized. These transactions constituted an annual turnover rate of 19, and resulted in Vijay K. being charged over \$43,300 in commissions and fees. To break even, Vijay K. would have had to achieve a return of more than 68%.

121. In March 2009, Vijay K. complained to Aura that Malla had churned his account. Vijay K. also filed an arbitration claim with FINRA.

**The Arunbhai P. Accounts**

122. Arunbhai P., 59, is a resident of Sharonville, Ohio.

123. In mid-2007, Malla called Arunbhai P. concerning an Aura account Arunbhai P. had previously opened for his son through another representative no longer affiliated with Aura.

124. During the call, Malla convinced Arunbhai P. to transfer his IRA to Aura (xxxx-6474) and also to open an investment account (xxxx-7405).

125. Arunbhai P. did not provide discretionary authority to Malla, and never contacted Malla to initiate a trade.

126. Arunbhai P. trusted Malla and agreed to Malla's investment recommendations 100% of the time. Thus, Malla exercised *de facto* control over Arunbhai P.'s account.

127. In January 2008 Arunbhai P. had a balance of \$37,783 in his Aura investment account. During 2008, Arunbhai P. deposited a total of \$17,500 to the existing balance of the account. By December 2008, Arunbhai P.'s Aura investment account balance had been reduced to \$17,463.

128. Between January and October 2008, Malla excessively traded Arunbhai P.'s Aura investment account, and effected 39 transactions, creating an annual turnover rate of 13.26, while charging Arunbhai P. \$8,724 in commissions, markups, and fees, and \$2,377 in margin interest. Additionally, to break even, A.P. would have had to achieve a return on his investment of over 27%.

129. Malla told Arunbhai P. that he would be charged commissions based on the size of the profits, with greater commissions for greater profits. As Malla knew, this statement was false and/or misleading.

**E. Violations by Singh**

**The Sripad D.s Account**

130. Sripad D., 48, a resident of Holmdel, New Jersey, opened a joint account at Aura (xxxx-2503) with his wife (collectively, "the Sripad D.s"), in 2005. The Sripad D.s' Aura account remained dormant, with little to no activity, until 2007.

131. In approximately June 2007, when Sripad D. was thinking of closing the Aura account, he received a call from Singh. Singh claimed, falsely, to be the supervisor of the registered representative who had been handling the Sripad D.s' account. Singh convinced the Sripad D.s to keep their Aura account open with Singh as the new assigned representative.

132. Singh told Sripad D. that the account would be charged a 10% commission for transactions that made a profit and no commission for transactions that incurred a loss. This statement was false.

133. The Sripad D.s did not provide discretionary authority to Singh or anyone else at Aura.

134. However, Singh often made trades in the Sripad D.s' account and told Sripad D. after the fact. Thus, Singh exercised *de facto* control over the Sripad D.s' account.

135. In 2008, the Sripad D.s made net deposits of \$553,335 into their Aura account, which Singh traded aggressively and frequently.

136. Between January 11 and November 21 2008, Singh excessively traded the account, effecting approximately 100 transactions in the Sripad D.s' Aura account. The customers were charged \$169,277 in commissions, markups, and fees, and \$31,955 in margin interest. The Sripad D.s suffered a loss of almost \$1.4 million in their Aura account. To break even, the Sripad D.s would have had to achieve a return of almost 55%.

**F. Violations by Rapaglia**

**The Shirley D. Account**

137. Shirley D., 60, a resident of Coral Springs, Florida, opened an Aura account (xxxx-3254) jointly with her daughter in September 2006 after meeting Rapaglia through an ad he placed in the newsletter of the church they both attended.

138. As Shirley D. told Rapaglia, she had no previous investment experience and did not want to expose her investments to significant risk.

139. Rapaglia told Shirley D., falsely, that significant losses were not possible due to his expertise and “SEC safeguards”.

140. Shirley D. never gave Rapaglia discretionary authority over the account, and Rapaglia never asked her permission before making a trade. Instead, Rapaglia made unauthorized trades in the account from the time it was opened until June 2008 when trading losses, commissions, and fees had consumed nearly all of Shirley D.’s investment of \$335,000. Rapaglia exercised *de facto* control over Shirley D.’s account.

141. Between January and May 2008 alone, Rapaglia effected 36 transactions in Shirley D.’s account, resulting in a turnover rate of 40 for that period and an annualized turnover rate of 95. For the same period, the transactions

by Rapaglia effected cost Shirley D. over \$23,200 in commissions and fees.

Shirley D. would have had to achieve a return on investment of almost 138% to cover the total costs associated with the account.

142. On several occasions, Rapaglia asked Shirley D. to sign pre-prepared letters purporting to express her satisfaction with his performance as a broker, as well as pre-prepared "intent to maintain active account" letters. The letters contained information that was incorrect, including misstated investment objective and risk tolerance and overstated income.

143. Rapaglia told Shirley D. that the income was overstated in these letters because Aura would be more interested in larger numbers.

144. Additionally, Rapaglia told Shirley D. that he needed for her to sign the pre-prepared letters in order for him to qualify for bonuses from Aura.

These statements were false and/or misleading.

145. Rapaglia also persuaded Shirley D. to use margin without explaining the relevant risks.

146. After Rapaglia began using margin loans in her account, Shirley D. received margin calls. When Shirley D. called Rapaglia to discuss the margin calls, he told her that he would "take care of them." This statement was misleading,

as Rapaglia did not explain that funds would be taken from Shirley D.'s account to meet the margin calls.

### **The Noreen S. Account**

147. Noreen S., 55, a resident of Pembroke Pines, Florida, opened an IRA (xxxx-4716) account and an investment account (xxxx-3938) at Aura in September 2006 after meeting Rapaglia through a fellow registered nurse.

148. Noreen S. was an unsophisticated investor who had never traded securities. Noreen S. was induced to open the accounts by Rapaglia's claim to have recently turned a client's \$10,000 investment into \$700,000 within 18 months.

149. As a further inducement, Rapaglia told her, falsely, that significant losses were not possible due to his expertise and "SEC safeguards." In fact, there are no "SEC safeguards" that guarantee that investors will not suffer losses.

150. Rapaglia conducted unauthorized trades in Noreen S.'s account from its inception through May 2008, when trading losses, commissions, and fees had consumed nearly all of the funds. Rapaglia exercised *de facto* control over Noreen S.'s account.

151. Specifically, Between January and May 2008, Rapaglia effected 52 transactions in Noreen S.'s accounts, none of which were authorized, at an

annualized turnover rate of 23 and a breakeven percentage of 91%, while charging over \$10,500 in commissions and fees. Overall, Noreen S. invested approximately \$194,000 with Aura, the majority of her net worth, and lost virtually all of these funds.

152. On at least two occasions, Rapaglia asked Noreen S. to sign letters of “intent to maintain active account,” which contained inaccurate information. Rapaglia told Noreen S., falsely, that her signature to the letters was required to qualify him for bonuses.

153. Moreover, in addition to churning, Rapaglia persuaded Noreen S. to use margin without explaining the risks and repeatedly told her not to pay attention to changes in her account balance.

## **II. Aura’s Control and Supervision**

154. Hardy, Dunne, Bhavnagari, Malla, Singh, and Rapaglia violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

155. Hardy, Dunne, Bhavnagari, Malla, Singh, and Rapaglia were, at all relevant times, all registered representatives of Aura.

156. Aura controlled Hardy, Dunne, Bhavnagari, Malla, Singh, and Rapaglia, directly or indirectly, at all relevant times. Aura had the power to control

how the representatives did their jobs. In addition, Aura was required to supervise the representatives with a view to preventing violations of laws.

157. Although Hardy, Dunne, Bhavnagari, Malla, Singh, and Rapaglia were nominally independent contractors, they acted as Aura's agents or employees.

158. Hardy, Dunne, Bhavnagari, Malla, Singh, and Rapaglia were acting within the scope of their employment or work for Aura at the time they committed the violations described above.

159. For all relevant time periods, Aura gave Hardy, Dunne, Bhavnagari, Malla, Singh, and Rapaglia authority to act on its behalf in interactions with customers.

160. Accordingly, Hardy, Dunne, Bhavnagari, Malla, Singh, and Rapaglia had apparent authority to act on behalf of Aura.

161. Aura failed to take reasonable steps to prevent churning practices by the registered representatives.

162. Aura maintained at least two periodic reports, provided to management personnel, that readily showed that certain Aura accounts had both high turnover ratios and break even percentages: the "Largest 500 Accounts Report" (ranked by commissions generated) and a "Monthly Active Account Report."

163. These two reports contained turnover ratios and break even percentages for each customer. All of the most egregiously churned accounts appear in the Largest 500 Reports for the last six months of 2008, along with the names of the registered representatives responsible for the trading.

164. These reports also included information indicating the investment objectives and risk tolerances of the account holders, which were inconsistent with the ongoing trading in the accounts.

165. Thus, Aura was aware of high turnover in many accounts, including those of the Fifteen Customers.

166. Aura had additional reasons to supervise closely several of the other Defendants.

167. From the time Hardy joined Aura in June 2007 through December 2008, Aura received numerous complaints about him, including at least thirteen from customers alleging serious wrongdoing such as forgery, unauthorized trading, and churning. In June 2007, Aura received at least three customer complaints alleging that Hardy had forged new account forms to open accounts at a prior broker-dealer without customer authorization. In September 2007, Aura received a fourth customer complaint alleging forgery by Hardy. In January 2008, Aura received a customer complaint alleging unauthorized trading by Hardy. That same

month, Aura received a separate customer complaint alleging that Hardy had opened an account without customer authorization, and then performed unauthorized trading in the account. In February 2008, Aura received two customer complaints, forwarded to it by FINRA, alleging unauthorized trading, among other violations by Hardy. In April 2008, another customer called Aura and made a verbal complaint that Hardy had churned his account and conducted unauthorized trading. In August 2008, Aura received yet another customer complaint of unauthorized trading by Hardy. In October and November, 2008, two more customers called Aura to complain of unauthorized trading by Hardy. In December 2008, a customer complained to Aura that Hardy had failed to follow his instructions.

168. Additionally, Aura was aware that the Department of Enforcement of the Financial Industry Regulatory Authority (“FINRA”), in May 2008, filed a disciplinary proceeding against Hardy and Robert A. Bellia, Jr., who supervises Hardy at Aura. The FINRA Department of Enforcement’s Complaint alleged that Hardy falsified certain new account records to establish three customer accounts at a prior employer, the Salomon Grey firm, between March and October 2004. The Complaint also alleged that Bellia failed to adequately supervise Hardy during this time period at Salomon Grey, despite the fact that Hardy had been placed on a

system of “heightened supervision” by Salomon Grey’s compliance department because of a history of unauthorized trading complaints while he was associated with other broker-dealers.

169. Similarly, several Aura clients had complained to the firm about unauthorized trading by Dunne. In August, September, and October 2008, three separate customers complained to Aura accusing Dunne of unauthorized trading. In December 2008, a fourth customer complained to Aura that Dunne had failed to follow the customer’s instructions.

170. In June 2008, Aura received a customer complaint alleging unauthorized trading by Bhavnagari.

171. In March 2007, Aura received a customer complaint alleging unauthorized trading by Singh. In July 2008, another customer complained to Aura that Singh failed to sell stock when the customer instructed him to do so.

172. In April 2008, a customer complained to Aura of churning and unauthorized trading by Rapaglia. In June and December 2008, two other customers wrote Aura complaining of unauthorized trading by Rapaglia.

173. Aura’s response to apparent churning was to send to the holder of each potentially churned account an “Active Account Letter.” The letter asked the account owner to sign it and return it to the firm.

174. However, Aura was aware that most of the active account letters it sent out were never signed by the account owner and returned. Aura did not take any reasonable steps to follow up with account owners with high turnover in the numerous instances where the letters were not returned.

## VIOLATIONS

### COUNT ONE- FRAUD

#### Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

175. Paragraphs 1 through 174 are hereby realleged and are incorporated herein by reference.

176. Over the time periods stated in the following paragraph, Defendants, in connection with the offer and sale of securities described herein, by the use of the means and instruments of interstate commerce and by use of the mails, directly and indirectly, knowingly or recklessly:

- (a) employed devices, schemes, or artifices to defraud;
- (b) obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities, all as more particularly described in the paragraphs above.

177. The time periods of the violations were as follows:

- (a) For Aura, October 2005 through April 2009 or later.
- (b) For Hardy, August 2007 through April 2009 or later.
- (c) For Dunne, April 2008 through August 2008.
- (d) For Bhavnagari, September 2007 through March 2009 or later.
- (e) For Malla, October 2005 through December 2008 or later.
- (f) For Singh, June 2007 through November 2008 or later.
- (g) For Rapaglia, September 2006 through June 2008.

**COUNT TWO-FRAUD**

**Violations of Sections 17(a)(2) and 17(a)(3)  
of the Securities Act [15 U.S.C. § 77q(a)(2) and (a)(3)]**

178. Paragraphs 1 through 174 are hereby realleged and are incorporated herein by reference.

179. Over the time periods stated in the following paragraph, Defendants, in the sales of securities, directly or indirectly, obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in light of the circumstances

under which they were made, not misleading and/or engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon the purchasers of securities, all as more particularly described above.

180. The time periods of the violations were as follows:

- (a) For Aura, October 2005 through April 2009 or later.
- (b) For Hardy, August 2007 through April 2009 or later.
- (c) For Dunne, April 2008 through August 2008.
- (d) For Bhavnagari, September 2007 through March 2009 or later.
- (e) For Malla, October 2005 through December 2008 or later.
- (f) For Singh, June 2007 through November 2008 or later.
- (g) For Rapaglia, September 2006 through June 2008.

181. While engaging in the courses of conduct described above, Defendants, directly or indirectly, made use of the mails, or means or instruments of transportation or communication in interstate commerce, or means or instrumentalities of interstate commerce.

182. By reason of the foregoing, Defendants violated and, unless restrained and enjoined, will continue to violate sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)].

**COUNT THREE-FRAUD**

**Violations of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

183. Paragraphs 1 through 174 are hereby realleged and are incorporated herein by reference.

184. Over the time periods stated in the following paragraph, Defendants, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce or by use of the mails, or any facility of any national securities exchange, directly or indirectly:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon other persons, as more particularly described above.

185. The time periods of the violations were as follows:

- (a) For Aura, October 2005 through April 2009 or later.
- (b) For Hardy, August 2007 through April 2009 or later.
- (c) For Dunne, April 2008 through August 2008.

- (d) For Bhavnagari, September 2007 through March 2009 or later.
- (e) For Malla, October 2005 through December 2008 or later.
- (f) For Singh, June 2007 through November 2008 or later.
- (g) For Rapaglia, September 2006 through June 2008.

186. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes, and artifices to defraud, made untrue statements of material facts or omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendants acted with scienter, that is, with the intent to deceive, manipulate or defraud, or with a severe reckless disregard for the truth.

187. By reason of the foregoing, Defendants, directly and indirectly violated and, unless restrained and enjoined, will continue to violate section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission, respectfully prays for:

I.

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants committed the violations alleged herein.

II.

Permanent injunctions enjoining the Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5] and Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

III.

Preliminary injunctions enjoining Defendants Aura, Hardy, Bhavnagari, Malla, and Singh, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5] and Section 17(a) of the

Securities Act [15 U.S.C. § 77q(a)].

IV.

An order requiring disgorgement of all ill gotten gains or unjust enrichment by Defendants, with prejudgment interest, to effect the remedial purposes of the federal securities laws.

V.

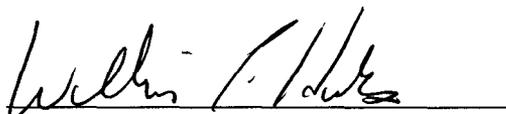
An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] imposing civil penalties against the Defendants.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

DATED: June 11, 2009

RESPECTFULLY SUBMITTED,



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