UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. NAVELLIER & ASSOCIATES, INC., and LOUIS NAVELLIER, Defendants.	Case No. JURY TRIAL DEMANDED

COMPLAINT

Plaintiff United States Securities and Exchange Commission ("the Commission") alleges the following against Defendants Navellier & Associates, Inc. ("Navellier") and its principal, Louis Navellier ("Mr. Navellier"), and hereby demands a jury trial:

SUMMARY OF THE ACTION

1. From 2010 to 2013, investment adviser Navellier and its principal, Mr. Navellier, defrauded their clients and prospective clients, misleading them about the performance track record of the "Vireo AlphaSector" investment strategies that Navellier offered.

2. Through their conduct, Navellier and Mr. Navellier violated the fiduciary duty that every investment adviser has to its clients and prospective clients—to put client interests first, to deal with them with the utmost honesty, to disclose to them all conflicts or potential conflicts of interest, and to use reasonable care in providing them with investment advice.

3. First, when Navellier performed its (inadequate) due diligence, it ignored and concealed red flags indicating that the investment strategies had not performed as advertised. Instead, Navellier branded the strategy with a new name, "Vireo AlphaSector" and proceeded to

recommend it to clients. Second, Navellier created and distributed advertisements and client communications about Vireo AlphaSector's performance track record, even though it knew it lacked information to support such statements. These marketing materials, which were based on information originally obtained from the strategies' model manager, F-Squared Investments, Inc. ("F-Squared"), were materially false. Finally, when they fully understood that the track record from F-Squared had been fabricated, Navellier and Mr. Navellier recognized that their marketing materials with this false information could get them into legal trouble. Instead of truthfully informing their clients about their prior misrepresentations and telling clients the truth about the performance track record, Navellier and Mr. Navellier arranged to sell the Vireo line of business directly to F-Squared—profiting handsomely while keeping the fraud hidden.

4. **Performing Inadequate Due Diligence and Ignoring Red Flags in the Results, and Marketing Vireo AlphaSector to Clients Anyway:** When performing its due diligence on the AlphaSector strategies, and while marketing and selling Vireo AlphaSector to its clients and prospective clients, Navellier ignored and concealed several red flags that the performance track record of Vireo AlphaSector was not based on live trading since 2001—as F-Squared had represented—and that the track record was substantially inflated. Despite these red flags, Navellier recommended Vireo AlphaSector to clients and prospective clients, using performance track record statements it knew it could not verify and which it understood were probably false.

5. **Misrepresenting Vireo AlphaSector's Performance Track Record in Navellier's Advertisements and Client Communications:** Navellier disseminated marketing materials for its Vireo AlphaSector strategies, which falsely stated that the strategies and the performance track record for the period from April 2001 to September 2008 were real. In fact, the strategies had not even existed during this period and the performance track record was back-

tested, which is a way of constructing a “track record” for an investment strategy for the period before the strategy actually existed. Navellier knew that it had not—and could not—verify the performance track record it was advertising, but it touted that track record anyway. Even after F-Squared’s CEO admitted that the performance track record was back-tested, various Navellier representatives continued to misrepresent the track record and the company failed to correct its previous false statements. While Navellier modified its statements about the Vireo AlphaSector track record several times, neither Navellier nor Mr. Navellier ever told their Vireo AlphaSector clients that Navellier’s prior statements about Vireo AlphaSector’s track record had been false.

6. **Selling the Vireo Business Instead of Disclosing Prior Misrepresentations to Clients:** Mr. Navellier knew that the Vireo AlphaSector track record could not be validated and, over time, concluded the track record was fabricated and that Vireo AlphaSector was based on a fraud. Eventually, he worried that Navellier’s prior false statements about Vireo AlphaSector could get Navellier into legal trouble (including with the Commission) so, in the summer of 2013, he arranged to sell the Vireo AlphaSector line of business to F-Squared for approximately $14 million. In this way, he profited from the company’s successful marketing of a fraudulent performance record, without correcting Navellier’s misrepresentations to its fiduciary clients or disclosing the conflicts-of-interest he and Navellier had in selling Vireo AlphaSector.

7. Through the activities alleged in this Complaint, Navellier and Mr. Navellier, while acting as investment advisers, have employed devices, schemes and artifices to defraud their investment advisory clients and have engaged in acts, transactions, practices and courses of businesses which operated as a fraud on their investment advisory clients, in violation of Sections 206(1) and (2) of the Investment Advisers Act of 1940 (“Advisers Act”). Mr. Navellier also aided and abetted Navellier’s violations of Advisers Act Sections 206(1) and (2). In

addition, Navellier violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder by publishing and distributing advertisements and other client communications containing untrue material information.

8. The Commission seeks:

a. entry of appropriate permanent injunctions, including an injunction prohibiting Defendants from further violations of the relevant provisions of the federal securities laws;

b. disgorgement of Defendants' ill-gotten gains, plus pre-judgment interest; and,

c. imposition of civil penalties due to the egregious nature of Defendants' violations.

JURISDICTION AND VENUE

9. The Commission seeks a permanent injunction and disgorgement pursuant to Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]. The Commission seeks the imposition of a civil penalty pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

10. The Court has jurisdiction over this action pursuant to Sections 209(d), 209(e) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), 80b-14].

11. Venue is proper in this District because, at all relevant times, Navellier and Mr. Navellier served advisory clients in Massachusetts and directed advertisements and other client communications to clients and prospective clients in Massachusetts. The part of Navellier's business about which Navellier and Mr. Navellier made fraudulent representations and omissions and violated the advertising rule was based on a model manager agreement with F-Squared, a business based in Wellesley, Massachusetts. Finally, Navellier employed a marketing and client

services staff person in Marblehead, Massachusetts, who sold Vireo AlphaSector to Navellier's clients from there.

12. In connection with the conduct described in this Complaint, Defendants directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

13. Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

DEFENDANTS

14. **Navellier & Associates, Inc. ("Navellier")** is an investment adviser that has been registered with the Commission since October 1987 and is headquartered in Reno, Nevada. As of March 16, 2017, Navellier had approximately $1 billion in assets under management. During the time period described here, Navellier had between approximately $2.4 billion and $3.5 billion in assets under management.

15. **Louis Navellier ("Mr. Navellier")**, age 59, resides in Manalapan, Florida and Reno, Nevada. Mr. Navellier is the founder and principal of Navellier. Since the founding of Navellier, Mr. Navellier has been its Chief Investment Officer and Chief Executive Officer. From 2009 to August 2013, Mr. Navellier owned at least 75% of Navellier. In August 2013, Navellier sold its Vireo AlphaSector business to F-Squared. At that time, Mr. Navellier acquired complete ownership of Navellier. Mr. Navellier reviewed Navellier's investment models at least weekly, according to Navellier's Form ADV, filed with the Commission on September 18, 2012. Mr. Navellier held final authority to decide what products and investment vehicles Navellier

offered its clients. His control of the business extended to the sale of business lines, such as the sale of the Vireo AlphaSector-related portion of Navellier's business. Mr. Navellier also exercised control of hiring, promoting, demoting and firing Navellier staff.

RELATED ENTITY

16. **F-Squared Investments, Inc. ("F-Squared")** was a Wellesley, Massachusetts-based investment adviser founded in 2006 and registered with the Commission from March 2009 until January 2016. In October 2009, F-Squared entered into a model manager agreement with Navellier whereby F-Squared provided Navellier with trading signals to carry out the Vireo AlphaSector strategies on behalf of Navellier's clients. On December 22, 2014, the Commission instituted a settled fraud action against F-Squared. F-Squared admitted to making the materially false claims that (a) the AlphaSector index strategy had been used to manage real client assets from April 2001 to September 2008, when in fact the strategy did not even exist during that time period and F-Squared had used a back-test to fabricate AlphaSector's performance "track record"; and that (b) AlphaSector had a performance track record that significantly outperformed the S&P 500 Index from April 2001 to September 2008, when the reported performance of AlphaSector was actually substantially inflated because of a computation error by F-Squared when fabricating AlphaSector's back-tested performance "track record."

STATEMENT OF FACTS

The Origins of the "Vireo AlphaSector" Strategies

17. In or around September 2009, Navellier started to explore doing business with F-Squared. Historically, Navellier and Mr. Navellier had focused their investment advice (and the

investment vehicles they offered) on “growth” strategies that performed well in rising markets. In contrast, F-Squared offered investing strategies, branded under the name “AlphaSector,” whose stated purpose was to protect investors from downturns in the stock market while still allowing those investors to profit when the stock market went up. Certain Navellier executives found the AlphaSector strategies attractive because they perceived their clients’ (and prospective clients’) growing appetite for downside protection strategies after the 2008 stock market collapse.

18. Navellier’s desire to offer an AlphaSector-related product led it to consider partnering with F-Squared through a “model manager agreement.” Under that “model manager agreement,” Navellier would establish investment products that followed F-Squared’s AlphaSector strategies. In other words, the Navellier investment product would invest Navellier’s clients’ money following the strategies – specifically, the buy and sell instructions – established and provided by F-Squared.

Navellier’s Due Diligence, Although Incomplete, Reveals Problems

19. As an initial step in determining whether to enter the model manager agreement with F-Squared, Navellier’s Chief Compliance Officer (“CCO”) conducted due diligence on F-Squared and the AlphaSector strategies. As part of the due diligence process, F-Squared gave Navellier several pieces of false information.

20. First, F-Squared represented to Navellier that AlphaSector had been used to manage real client assets from April 2001 to September 2008, often calling it a “live” track record. In reality, no assets tracked an AlphaSector strategy until at least late 2008.

21. Second, F-Squared represented to Navellier that the track record had significantly outperformed the S&P 500 Index from April 2001 to September 2008 and gave to Navellier purported performance results and data showing this track record. In reality, this track record was substantially overstated.

22. In conducting due diligence, Navellier's CCO asked to review documents, such as brokerage statements, that would validate the AlphaSector track record. F-Squared and its CEO denied the request, claiming they could not provide the requested information because of a confidentiality agreement with the entity that had originally developed the AlphaSector strategy.

23. As a result, Navellier's due diligence efforts failed to corroborate F-Squared's claims about the April 2001 to September 2008 track record. Nor could Navellier corroborate F-Squared's claims that any investor money had even been invested using the AlphaSector strategy between April 2001 and September 2008.

24. In addition, although F-Squared provided Navellier with what F-Squared claimed were historical trading signals supposedly supporting AlphaSector's performance, Navellier never confirmed whether the signals had actually been used historically. Nor did Navellier even scrutinize this information to determine whether the signals could even have been generated on the dates in question. Nor did Navellier ever analyze whether the signals F-Squared provided would produce the results F-Squared claimed. Had Navellier checked F-Squared's claimed historical performance using the buy and sell signals provided by F-Squared, it would have discovered that the performance reported by F-Squared—which Navellier later repeated verbatim—was miscalculated and substantially overstated.

25. Navellier failed to exercise reasonable care and failed to conduct sufficient due diligence to determine whether F-Squared's buy or sell signals had actually been generated or

used in any trading decisions during the April 2001 through September 2008 period. Likewise, Navellier failed to exercise reasonable care and failed to conduct sufficient due diligence to determine whether the signals would have produced the claimed performance track record.

Navellier's Due Diligence Report Puts Navellier Management—Including Mr. Navellier—on Notice of Problems

26. In or around October 2009, a group of Navellier executives, including Mr. Navellier and Navellier's President, its CCO, and its Vice President of National Accounts/Sales, reviewed the results of the due diligence process that the CCO had performed.

27. On October 5, 2009, after reviewing a number of documents F-Squared had provided and after speaking with F-Squared's CEO and other personnel, Navellier's CCO drafted an "Executive Summary," which outlined the due diligence findings relative to F-Squared and AlphaSector.

28. Adopting many of F-Squared's representations, the Executive Summary described the AlphaSector trading system as, "originally developed and used by a large wealth management group located on the east coast. They are not in the business of promoting such systems and therefore licensed it to [F-Squared]. There is a confidentiality agreement that prevents [F-Squared] from divulging who they are." Not only was there nothing to identify who the mysterious east coast wealth management group was, the Navellier team was also well aware that the data underlying the performance track record remained shrouded in secrecy. The Executive Summary highlighted that "[t]hey flat out won't show the math to us…."

29. Navellier, its CCO, and Mr. Navellier knew that the due diligence Navellier had conducted raised significant unanswered questions about the AlphaSector products and F-

Squared's claims about those products. Indeed, the CCO noted that F-Squared's refusal to answer these questions concerning its products would ordinarily have "knock[ed] them out of contention" (that is, that Navellier would not ordinarily do business with F-Squared or offer the AlphaSector strategies).

30. The CCO cited four factors leading to his decision to recommend the AlphaSector products, in spite of the problems flagged in the due diligence process:

i. that another "medium-sized mutual fund family" had (according to F-Squared's CEO) performed "significant" due diligence and had chosen to move forward with partnering with F-Squared;

ii. that F-Squared "began reporting the holdings/trades to the NASDAQ which had used the data to calculate and publish the indices since October 2008" (though there was no explanation why holdings and trades had not been reported before that time);

iii. that the F-Squared Board of Advisors included some individuals who were relatively well-known in the securities industry (though the CCO had not spoken to any of them); and,

iv. the "backgrounds of the principals" of F-Squared.

Despite Its Due Diligence Results, Navellier Pushes Ahead with Marketing the AlphaSector Strategy Under Its Own Brand

31. Despite the problems revealed in the due diligence process, the Due Diligence Executive Summary laid out a "Marketing Battle Plan" for marketing the new product. The "Battle Plan" recommended marketing the new product to "firms we know well, who are leaders in the retirement and annuity channels" and "direct to our [Navellier's] database of individual investors."

32. Following the circulation of the Due Diligence Executive Summary (sometime between October 5, 2009 and October 19, 2009), Navellier's senior executives, including Mr.

Navellier, Navellier's President, its CCO, and its Vice President of National Accounts/Sales, approved the AlphaSector strategies for sale. To handle the marketing of these strategies, Navellier designated a newly-created Vireo AlphaSector business unit.

33. On October 19, 2009, Navellier entered into the Model Manager Agreement, allowing Navellier to invest client assets using the AlphaSector strategies. According to the Model Manager Agreement, Navellier agreed to pay F-Squared a portion of its advisory fee as compensation for F-Squared's services as the model manager. As Navellier was one of the first investment advisers to partner with F-Squared to market AlphaSector strategies to investors, F-Squared agreed to let Navellier rebrand AlphaSector as its own. Navellier called this line of business "Vireo AlphaSector" and created a number of products based on the AlphaSector strategies including Vireo AlphaSector Premium and Vireo AlphaSector AllWeather Premium. In October 2010, Navellier renamed the AllWeather strategy "Navellier Vireo AlphaSector Allocator Premium." In April 2011, Navellier changed the name again to "Vireo AlphaSector Allocator Premium." And in April 2012, Navellier simplified the name to "Vireo Allocator" (hereinafter, collectively, "Vireo Allocator").

34. Navellier licensed AlphaSector strategies from F-Squared and, in turn, marketed AlphaSector-based strategies to its clients and to investment professionals who had relationships with Navellier's clients. Most of Navellier's Vireo AlphaSector clients were clients of financial intermediaries, and many of those clients also signed investment management agreements with Navellier.

35. Under Navellier's investment advisory agreements with its clients, Navellier agreed to act as an investment adviser to the clients. The agreements gave Navellier authority to direct the purchase and sale of securities in the clients' accounts and to supervise the investment

and reinvestment of the securities, cash, and other investments in those accounts. As investment advisers to these clients, Navellier owed each client a fiduciary duty of undivided loyalty and utmost good faith to act in the clients' best interests.

36. For advertisements it distributed or circulated, Navellier was required to make and keep true, accurate and current records or documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return that it claimed the strategies had achieved.

37. In marketing its own advisory services, Navellier published charts and other data reflecting a historical performance track record of the AlphaSector strategy between 2001 and 2008, even though F-Squared had not provided Navellier with any documentary support for its claims that there was any active investment in the strategy during that time. These charts and data were used in client presentations, marketing materials and other communications provided to numerous clients, investors, and potential investors. But Navellier never made or kept records or documents sufficient to form the basis for, or demonstrate the calculation of, the claimed historical performance of AlphaSector.

38. In sum, Navellier knew or was reckless in not knowing that it lacked a reasonable basis to believe that its Vireo AlphaSector's advertising claims were accurate when it recommended the AlphaSector strategy to clients.

Navellier Repeatedly and Explicitly Misrepresented That the Vireo AlphaSector Strategies' Performance Was Based on Live Track Records and That It Was Not Back-Tested

39. From May 2010 through August 2011, Navellier advertised its Vireo AlphaSector strategy by incorporating and adapting portions of F-Squared's advertisements into its own

advertisements. These advertisements echoed F-Squared's representations, claiming that there was a track record of actual investments between 2001 and 2008, and that the AlphaSector strategy had outperformed various investment performance benchmarks during the 2001 to 2008 period. Navellier disseminated these advertisements to its clients and prospective clients, even though it lacked a reasonable basis to believe that its claims of exceptional performance between 2001 and 2008 were either a) accurate or b) based on actual live trading during that time.

40. Navellier's Vireo AlphaSector advertisements included explicit (and entirely false) representations that the historical performance of AlphaSector was "not back-tested." "Back-testing" involves the retroactive application of an investment strategy or methodology to a historical set of data. Back-tested performance attempts to indicate how a product constructed with the benefit of hindsight would have performed during a certain period in the past *if* the product had been in existence during that time. In other words, how the model would have performed during a time period before the model was actually created. Back-tested performance carries the risk of "data mining." That is, with the benefit of hindsight, the back-tester may examine multiple strategies and selectively pick one that works very well for the specific time period being tested. This process elevates the risk that reports of positive performance will simply be the result of hindsight, and may not reflect any true success in predictive modeling for future investments. By not disclosing that the Vireo AlphaSector strategies were back-tested, Navellier failed to inform its clients about the particular risks of investing in back-tested strategies.

41. For instance, Navellier's advertisements for Vireo Allocator, which were approved or disseminated on or about May 10, 2010 and August 30, 2010, each stated that the strategy had a "Live track record for the U.S. Equity sleeve" and that the strategy had been

"stress tested across two bear markets." The August 30, 2010 advertisement explicitly stated that the strategy was "not back-tested," as did Vireo Allocator advertisements approved or disseminated on or about October 22, 2010 and August 25, 2011. Each of the Vireo Allocator advertisements between August 2010 and August 2011 also stated that the strategy had an "inception date of April 1, 2001," indicating (falsely) that April 2001 was when the strategy was first employed.

42. Navellier's advertisements for Vireo AlphaSector Premium Portfolio approved or disseminated on or about August 30, 2010; August 11, 2011; and August 25, 2011, all claimed that the strategy had a "live track record, stress tested across two bear markets" and that the strategy was "not back-tested." Like the Allocator advertisements, each of these advertisements also claimed that the strategy had an "inception date of April 1, 2001."

43. In no advertisement did Navellier state that the Vireo AlphaSector performance was, in fact, back tested.

44. Navellier's AlphaSector advertisements for this period also substantially overstated the performance of the back-tested track record during the 2001–2008 period, based on Navellier's uncritical reiteration of the false information provided by F-Squared. In each of Navellier's advertisements, the reported performance was substantially inflated for the period before September 2008. F-Squared had given Navellier performance numbers that were not only false (in that they did not reflect actual trading activity) but were also mis-computed. Even as a back-test, the F-Squared figures were grossly overstated due to an error in the method of computation. For the period April 2001 to September 2008, if the F-Squared AlphaSector strategy had been accurately computed it would have shown an approximate gain of 38% (versus

28% for the S&P 500 Index). Instead, due to the error in computation, F-Squared reported a gain of up to 135%.

45. The Vireo AlphaSector advertisements included a chart that showed the historical performance of the AlphaSector between 2001 and 2008 as compared to the Dow Jones Moderate Global Index, the S&P 500 Index, and/or a blended index used by Navellier. The chart cited performance of the "Manager" or "Index" for that time period, giving the impression that the graph reflected actual performance, even though F-Squared did not exist until 2006. The chart itself purported to show the cumulative performance of the AlphaSector strategies, including the time period 2001 to 2008, and claimed that it had significantly outperformed at least one of the indices listed above during that period. Navellier included these performance claims in Vireo Allocator advertisements approved or disseminated on or about May 10, 2010; August 30, 2010; October 22, 2010; April 14, 2011; August 25, 2011; and January 26, 2102; and in Vireo Premium advertisements approved or disseminated on or about August 30, 2010; August 11, 2011; August 25, 2011; October 19, 2011; November 21, 2011; and February 17, 2012.

46. Navellier's Vireo AlphaSector advertisements were distributed to investment firms, including at least one entity in Massachusetts, in order to attract new clients.

47. Navellier's advice to clients and prospective clients to invest in the AlphaSector strategies also included these claims about the performance track record.

Navellier Learned Conclusively that the AlphaSector Track Record was a Sham—Based on Retrospective Back-Testing—Yet Failed to Disclose This Information to Its Clients

48. In March 2011, as part of Navellier's efforts to have its Vireo AlphaSector strategies offered for sale on large investment platforms, Navellier's CCO arranged for F-Squared's CEO to speak by telephone with an analyst for a third-party investment adviser. The analyst had been reviewing Vireo AlphaSector strategies in connection with the third-party investment adviser's consideration of whether to offer the strategy on its own marketing platform.

49. During the March 2011 call, which included the analyst, F-Squared's CEO, and Navellier's CCO, the analyst asked F-Squared's CEO about the performance track record of the AlphaSector Premium Index (upon which the Vireo AlphaSector strategy was based). In response, the F-Squared CEO admitted that the Index was not based on actual trades beginning in April 2001, that investor assets had not "tracked" the strategy during that time, and that there was no composite to verify the performance.

50. This admission from F-Squared's CEO confirmed for Navellier that the AlphaSector "track record" between April 2001 and September 2008 was, in fact, back-tested and not based on the "live" trading of actual assets.

Even Though Navellier and Mr. Navellier Recognized the Fraud in the Performance Claims Navellier Had Disseminated to its Clients, Navellier Representatives Continued to Repeat Those False Claims

51. On March 16, 2011, Mr. Navellier emailed Navellier's President and its CCO describing an "ambush" he experienced while attending an event hosted by a third-party investment adviser. According to an invitation for the event, Mr. Navellier was scheduled to

speak to representatives of the investment adviser about Vireo and the current market outlook. In his email, Mr. Navellier noted that he had told "folks that the Vireo composite has been GIPS verified and that [Navellier's CCO] went through all the trades, since that was what I was told." He stated that if Navellier "used the index argument, we are dead." Mr. Navellier wrote that, "if we have been using an index to sell Vireo, we have to get ready to blame FX2…." In follow-up emails that day, Navellier's CCO told the Head of Sales that "'We are dead' is not what we want [Mr. Navellier] to be thinking about."

52. On May 22, 2011, Mr. Navellier emailed Navellier's President, its CCO, and its Head of Sales. Mr. Navellier stated, "[u]nless somebody shows me the confirms, F2 is merely a model and I am protecting the firm from potential fraud, so we must not talk about F2 as being base[d] on real $ since 2001."

53. Despite Mr. Navellier's recognition that Navellier lacked any basis to believe that F-Squared's strategy had actually been used to invest money as far back as 2001, Navellier and Mr. Navellier took no actions to further investigate the matter or to inform Navellier's clients that Navellier's prior representations about the strategy were false. To the contrary, Mr. Navellier told his senior staff, "I am not stopping Vireo sales" and instead, on May 22, 2011, directed that all "tough questions" should be directed to Navellier's CCO.

54. Although, by no later than May 2011, Mr. Navellier recognized Navellier was selling a potential fraud, Navellier continued to advertise Vireo AlphaSector Premium Portfolio as having a "live track record." An August 11, 2011 advertisement falsely represented that the strategy was "not back-tested" and that it had an "inception date of April 1, 2001." The advertisement contained the misleading and overstated performance graph and lacked the kind of disclosures that would have been necessary to make it not misleading.

55. By August 2011 (and while Navellier was disseminating a Vireo Premium advertisement representing that the strategy had a "live track record;" was "not back-tested;" and had an "inception date of April 1, 2001"), Mr. Navellier had become convinced that the AlphaSector track record was fraudulent and hatched his plan to wash his hands of the matter by selling, or spinning off, Navellier's Vireo business unit. Mr. Navellier's conclusion was based, in part, on information he learned from speaking with F-Squared's CEO. At about that time, Mr. Navellier told Navellier's President, CCO, and head of sales about his conclusion that the track record was fraudulent; about his plan to sell the Vireo line of business; and about his concerns that Navellier's statements about the AlphaSector performance track record could bring regulatory (including Commission) scrutiny and potential liability for fraud.

56. After that, Navellier stopped claiming in its own ads that the AlphaSector performance was "not back-tested." But at no point did Navellier notify Navellier clients who had invested in the Vireo AlphaSector strategies that the company's previous representations about the AlphaSector strategies were false or inaccurate.

57. On January 26, 2012, Navellier began using an advertisement for its Vireo Allocator that contained the misleading performance graph showing returns back to 2001. In this advertisement, Navellier included a disclaimer that "some of the returns presented reflect hypothetical performance an investor would have obtained had it invested in the manner shown and does not represent returns that an investor actually attained" and that "hypothetical back-tested performance has many inherent limitations."

58. Navellier did not remove claims about the 2001 to 2008 performance from its AlphaSector advertisements until June 2012.

Navellier Sales Staff Repeat and Amplify Navellier's Written False Representations When Marketing Vireo AlphaSector

59. Both before and after Mr. Navellier recognized the fraud in the statements about the performance track record, Navellier's sales people continued to market Vireo AlphaSector as not back-tested. Navellier's sales people consistently marketed Vireo AlphaSector's April 2001 to September 2008 track record as based on actual client investments during the time period May 2010 to August 2013.

60. From May 2010 to August 2013, Navellier sales staff, including its Director of Marketing, told clients and potential clients that AlphaSector's historical performance was produced by an actively-traded strategy that had been traded with real investor assets in real time. Navellier's Director of Marketing also told clients and potential clients that a "family office" had been following the strategy since 2000 or 2001. These claims were false.

61. In 2011, when another Navellier sales representative received questions from third-party advisers or clients to whom he was marketing Vireo AlphaSector concerning the historical basis for the AlphaSector products' track record, he informed them that the Vireo AlphaSector strategy had a ten-year track record. This too was false.

62. Navellier sales people routinely represented that a private wealth advisor had employed the AlphaSector strategy to invest real assets in the same securities and over the same period in the index—essentially, that the index was a proxy for the track record of accounts that followed AlphaSector.

63. Although Navellier's disclosures for its own Vireo AlphaSector advertisements eventually dropped claims that the strategies were not back-tested, Navellier sales staff continued to market Navellier's Vireo AlphaSector products to clients and prospective clients using

marketing materials produced by F-Squared. Navellier's sales staff routinely gave prospective clients presentations and other information from F-Squared's website and supplied them with links to F-Squared's website. These F-Squared materials falsely represented that the AlphaSector strategy was "not backtested," and included the overstated historical performance.

64. In addition to Navellier's and F-Squared's marketing materials, Navellier's sales staff also used Morningstar "tear sheets" containing the purported performance for the 2001 to 2008 period to show prospective clients the purported performance of the Vireo AlphaSector strategies. F-Squared had generated Morningstar tear sheets for each of the AlphaSector strategies that it offered using Morningstar's software. But, although the tear sheets bore the Morningstar logo, the sheets merely used the performance data supplied by F-Squared; not data verified by some third party (such as Morningstar). Additionally, the tear sheet stated that the strategies had an inception date of 2001. Thus, when Navellier sales personnel used tear sheets to show the pre-2009 performance of Vireo Premium or Vireo Allocator, they were again disseminating false performance track record information.

65. On several occasions between September 15, 2012 and May 20, 2013, Navellier sales staff forwarded to intermediaries outdated Vireo AlphaSector marketing materials that included the false historical performance back to 2001, the false representation that the index inception date was April 1, 2001, and the false representation that the index was "not back-tested." Typically, the Navellier sales staff supplied a 2011 version of the Vireo Allocator Premium marketing presentation, along with a link to an audio "webinar" from the same period.

Navellier and Mr. Navellier Confirm that Navellier's Prior Representations about AlphaSector Products Were False, But They Still Don't Tell Most of Their Clients

66. By no later than August 2011, Mr. Navellier knew that Navellier had made misrepresentations about the AlphaSector strategies, and he knew that Navellier had adopted and repeated F-Squared's misrepresentations.

67. On September 13, 2012, while visiting an intermediary firm, Mr. Navellier fielded questions about Vireo AlphaSector from a wholesaler from the intermediary firm. The wholesaler showed Mr. Navellier certain sales materials and a power point presentation created by F-Squared, which apparently had been given to the wholesaler by a Navellier sales representative in support of Vireo AlphaSector sales efforts. Mr. Navellier was concerned that the use of the performance track record and "simulated … performance numbers" would potentially lead to lawsuits and SEC investigations. As a result of the discussion between Mr. Navellier and the wholesaler, the wholesaler decided that it would be "exiting our business with Vireo."

68. In an apparent response to this meeting, Mr. Navellier directed Navellier's President to send a September 14, 2012 email to all Navellier employees directing them to discontinue use of non-Vireo AlphaSector sales material. The email, on which Mr. Navellier was copied, recognized that "unapproved marketing materials may have been or is (sic) currently being used by Navellier Sales personnel to promote the Vireo Investment Strategies."

69. Even after the September 14, 2012 email, no one at Navellier attempted to correct the misrepresentations Navellier had previously made to current or prospective clients. Moreover, despite the directive, various Navellier employees continued to forward F-Squared sales materials to intermediary firms and prospective clients. These materials falsely stated that

the AlphaSector strategy was "not backtested," and included the overstated historical performance.

Rather Than Disclose His Company's Misrepresentations to its Clients, Mr. Navellier Sells the Vireo Business, Putting His Clients Directly Into the Hands of F-Squared

70. In August 2013, Mr. Navellier executed on the plan he laid out two years earlier, and sold the Vireo AlphaSector business to F-Squared for $14 million dollars.

71. At the time of sale, Vireo AlphaSector had approximately six-thousand accounts valued at approximately $1.4 billion.

72. At no time before or after this sale did Mr. Navellier correct the firm's prior misrepresentations to its clients. Nor did he direct anyone else at Navellier to correct the misrepresentations. Nor did Navellier or Mr. Navellier disclose any conflict of interest or potential conflict of interest in the sale—namely that a goal of the sale (and the delivery of those clients to F-Squared, who had originated the fraudulent misrepresentations) was for Navellier to avoid potential liability for its role in marketing a fraudulent track record for Vireo AlphaSector.

FIRST CLAIM

Fraudulent Conduct by an Investment Adviser
Violation of Section 206(1) of the Advisers Act
(Navellier, Mr. Navellier)

73. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 72 above as if set forth fully herein.

74. At all relevant times, Navellier and Mr. Navellier were "investment advisers" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)]. Mr.

Navellier was an "investment adviser" by virtue of his ownership, management and control of Navellier. Both Navellier and Mr. Navellier received compensation in the form of money from clients as compensation for investment advice, and both were in the business of providing investment advice concerning securities, for compensation.

75. As set forth above, Navellier and Mr. Navellier made materially false and misleading statements and omissions to their investment advisory clients and engaged in a scheme to defraud those clients by concealing material information regarding the performance track record of the investment strategies they offered.

76. Navellier and Mr. Navellier, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly or recklessly have employed or are employing devices, schemes, or artifices to defraud a client or prospective client.

77. As a result, Navellier and Mr. Navellier have violated and, unless enjoined, will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. §80b-6(1)].

SECOND CLAIM

Fraudulent Conduct by an Investment Adviser
Violation of Section 206(2) of the Advisers Act
(Navellier, Mr. Navellier)

78. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 77 above as if set forth fully herein.

79. At all relevant times, Navellier and Mr. Navellier were "investment advisers" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)]. Mr. Navellier was an "investment adviser" by virtue of his ownership, management and control of

Navellier. Both Navellier and Mr. Navellier received compensation in the form of money from clients as compensation for investment advice, and both were in the business of providing investment advice concerning securities, for compensation.

80. As set forth above, Navellier and Mr. Navellier made materially false and misleading statements and omissions to their investment advisory clients and engaged in a scheme to defraud those clients by concealing material information regarding the performance track record of the investment strategies they offered.

81. Navellier and Mr. Navellier, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly, recklessly, or negligently have engaged or are engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client.

82. As a result, Navellier and Mr. Navellier have violated and, unless enjoined, will continue to violate Section 206(2) of the Advisers Act [15 U.S.C. §80b-6(2)].

THIRD CLAIM

In the Alternative, Aiding and Abetting Navellier's Violations of Sections 206(1) and 206(2) of the Advisers Act (Mr. Navellier)

83. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 82 above as if set forth fully herein.

84. At all relevant times, Navellier was an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)] .

85. By engaging in the conduct set forth above, Navellier, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally,

knowingly, recklessly, or negligently: (a) has employed or is employing devices, schemes, or artifices to defraud; or (b) has engaged or is engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client, in violation of Sections 206(1) and 206 (2) of the Advisers Act [15 U.S.C. §80b-6(1) & (2)].

86. By engaging in the conduct set forth above, and with respect to Mr. Navellier, in the alternative to the First and Second Claims, Mr. Navellier knowingly or recklessly provided substantial assistance to Navellier in its violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §80b-6(1) & (2)].

87. As a result, Mr. Navellier aided and abetted, and unless enjoined, will continue to aid and abet Navellier's violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §80b-6(1) & (2)], and is liable under those sections pursuant to Section 209(f) of the Advisers Act [15 U.S.C. §80b-9(f)].

FOURTH CLAIM

Fraudulent, Deceptive or Manipulative Conduct by an Investment Adviser: Publishing, Circulating, or Distributing Advertisements Containing Untrue Material Facts Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) Thereunder (Navellier)

88. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 87 above as if set forth fully herein.

89. Section 206(4) of the Advisers Act prohibits any investment adviser from engaging in "any act, practice, or course of business which is fraudulent, deceptive, or manipulative," and authorizes the Commission to prescribe rules designed to prevent such conduct.

90. Rule 206(4)-1(a)(5) thereunder (the "Advertising Rule") prohibits a registered investment adviser from publishing, circulating, or distributing advertisements containing untrue statements of material facts, or that are otherwise false or misleading.

91. At all relevant times, Navellier was a registered investment adviser.

92. As set forth above, Navellier disseminated to its clients numerous advertisements containing (a) a fabricated track record for its Vireo AlphaSector products and/or (b) F-Squared-produced presentations and websites which contained false representations concerning the AlphaSector track record and its history.

93. As a result, Navellier violated, and unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. § 80b-4] and Rule 206(4)-1(a)(5) [17 C.F.R. § 275.206(4)-1(a)(5)].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter permanent injunctions, including an injunction restraining Defendants and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of Sections 206(1), (2), and (4) of the Advisers Act [15 U.S.C. §80b-6(1), (2), & (4)], and Rule 206(4)-1(a)(5) [17 C.F.R. § 275.206(4)-1(a)(5)].

B. Require Defendants to disgorge their ill-gotten gains and losses avoided, plus pre-judgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

C. Require Defendants to pay an appropriate civil monetary penalty pursuant to Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)];

D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and,

E. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION
By its attorneys,

/s/ Marc Jones ______________________________

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