ADMINISTRATIVE PROCEEDING
FILE NO. 3-14355
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
:
DONALD L. KOCH AND :
KOCH ASSET MANAGEMENT, LLC :
:
:

RESPONDENT DONALD L. KOCH AND KOCH ASSET MANAGEMENT, LLC'S POST-HEARING MEMORANDUM OF LAW

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES AND RULES

INTRODUCTION

In this action is no self-dealing or profit to Donald Koch or KAM. There is no motive for securities fraud. There is no injury to the clients. There is no injury to the markets and the public. The building blocks of market manipulation – artificial prices, self-dealing at the expense of clients and injury to market and the public – are missing.

What is present in this case is largely undisputed evidence that:

- KAM and Donald Koch have faithfully served their clients and friends for years;

- That KAM and Donald Koch have successfully implemented an investment program grounded in experience and the academic economic literature;

- The program yielded very good returns – some might say extraordinary returns – for clients as reflected the profits made by Mrs. Smith, Tampsco, Jim Ewoldt, Don Cyril and others;

- Testimony from a former SEC Chief Economist that the trading techniques used here to acquire shares of High Country, Carver Financial and Cheviot which include transactions at the end of the day and priced at or over the bid were not only appropriate but required to purchase these securities in these markets;

- Testimony from a former SEC Chief Economist that there is no evidence of marking the close in the transactions where KAM purchased shares of Carver Financial and Cheviot;

- Testimony from a former SEC Chief Economist establishing that the purchases of High Country securities were at prices consist with those of other transactions in the stock before and after;

- Testimony from a KPMG partner that each of the security purchases here was in accord with KAM's long standing investment program; and

- Profitable investments for Mrs. Smith and Tampsco.

The record here is also repeat with misunderstandings and allegations built on snippets of transactions and fragments of tapes – the building blocks of the OIP and the Division' claims:

- A marking the close charge built on claims centered on trading at the end of the day and period, purchasing at prices at or over the bid and setting the closing price. Yet it is undisputed that in these markets the only way to acquire blocks of stock is to utilize these techniques as experienced traders know;

- A best execution claim that is built on the supposition that each purchase here was made at or above the bid to push up the price. Yet the undisputed evidence demonstrates that in these markets it is a common and often necessary trading tactic to pay at or over the bid to acquire blocks of securities as KAM did;

- A failure to maintain records claim based on not producing one e-mail which was part of a chain and an unsupported claim about redaction. Yet the undisputed evidence from a KPMG partner is that KAM had excellent record keeping systems and that forensic testing established every relevant record was produced – there was no redaction;

- A failure to implement procedures charge which ignores KAM's meticulous code of conduct, appointment of a chief compliance officer and the fact that its actions were carefully monitored in the best and only way possible for a sole proprietorship – by keeping clients fully informed of each transaction so they could monitor there investments.

In the end the only injury here is to clients who have been deprived of the services of a good and faithful investment advisor who has made them extraordinary profits over the years. In the end the only injury is to an investment advisor and his firm which has been deprived of the opportunity to continue serving his clients and friends.

Now is the time to end the misunderstandings and misperceptions on which this case has been built. Now is the time to dismiss the OIP and all of the charges against Donald Koch and KAM.

BACKGROUND

On April 25, 2011 the Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings (the "OIP") naming as Respondents Mr. Koch and KAM. Mr. Koch and KAM responded to the OIP on May 20, 2011. In the OIP, the Division of Enforcement made three key allegations which Respondents deny:

First, the Division alleges that on four days in 2009, Mr. Koch and KAM instructed a trader at Huntleigh Securities Corporation ("Huntleigh") to execute trades at the end of the trading day in an attempt to mark the close in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act. OIP, ¶¶ 26-27. According to the OIP the Huntleigh trader bought 1,400[1] shares of High Country Bank Corporation ("HCBC") on September 30, 2009, 600 shares of HCBC on October 30, 2009, 2,000 shares of HCBC on November 30, 2009, and 3,200 shares of HCBC on December 31, 2009. OIP, ¶¶ 7, 10, 13, 16. The OIP also alleges that the trader acquired 6,000[2] shares of Cheviot Financial Corporation ("CHEV") and 200 shares of Carver Bancorp, Incorporated ("CARV") on December 31, 2009. OIP, ¶¶ 18-19. The motive, according to the Division, was to "artificially improve the reported monthly performance for each account holding that security." OIP, ¶ 6. As a corollary to this claim, the Division alleges that Respondents did not seek best execution on the trades. OIP, ¶ 21.

Second, the Division alleges that KAM violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder by failing to adequately maintain certain books and records, and that Mr. Koch aided and abetted that violation. OIP, ¶ 29. Third, the Division alleges that KAM violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to implement written policies and procedures reasonably designed to prevent violation of the Advisers Act, and that Mr. Koch aided and abetted such violations. OIP, ¶ 28.

A hearing was held in this matter from January 10, 2012 through January 13, 2012, on January 17, 2012, and on January 20, 2012.[3] Three fact witnesses testified on behalf of the

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1 The OIP incorrectly states that KAM acquired 1,400 shares of HCBC on September 30, 2009. OIP, ¶ 7. KAM in fact acquired 2,000 shares of HCBC on September 30, 2009. Exh. R039 at 41.

2 The OIP incorrectly states that KAM acquired 6,000 shares of CHEV on December 31, 2009. OIP, ¶ 18. KAM in fact acquired 6,667 shares of CHEV on December 31, 2009. Exh. R039 at 28.

3 Following the conclusion of the testimony in this matter, the Division marked seven new exhibits – proposed exhibits 340-346 – and offered them for admission into evidence. In an effort to avoid a dispute over these exhibits, Respondents attempted to negotiate a compromise on the question, to no avail. Respondents therefore

Division: Catherine Marshall, Eli Straeter, and Jeffrey Christanell. One summary witness, Stephen Glascoe, testified on behalf of the Division. Four fact witnesses testified on behalf of Respondents: Donald Cayce, James Ewoldt, Faith Heidtbrink, and Donald Koch. Two expert witnesses, John Schneider of KPMG and Professor Gregory Jarrell, testified on behalf of Respondents.

Many of the facts surrounding this matter remain largely undisputed.

I. Mr. Koch and KAM

Mr. Koch is the founder and president of KAM. Tr. at 786-87 (Koch). Prior to founding KAM, Mr. Koch had an extensive background in economics and commercial banking. Tr. at 766 (Koch). In particular, he worked for nine years at the Barnett Banks of Florida ("Barnett") as Chief Economist and Strategic Planner and then for five years as Senior Vice President, Director of Research at the Federal Reserve Bank of Atlanta. Tr. at 766-68, 780 (Koch).

During his tenure at Barnett, Mr. Koch evaluated smaller banks for potential acquisition by Barnett, and made recommendations regarding those banks. Tr. at 767-75 (Koch). In doing so, Mr. Koch devised a particular strategy for evaluating a bank's value and later began investing on his own behalf using the principles he had developed at Barnett. Tr. at 784 (Koch).

Essentially, Mr. Koch had learned through his experience that community banks were undervalued properties that, eventually, would be bought by larger banks. Tr. at 784-86 (Koch). In determining if a particular bank is a good investment Mr. Koch begins with an examination of the demographics of the bank's region, to determine whether it was an area to which people are likely to move, and, by extension, need banks. Tr. at 828 (Koch). After he's assesses the

object to the admission of these materials which, from examining their content, appear to be little more than an effort to contradict portions of testimony without giving the relevant witnesses an opportunity to respond and without giving Respondents the opportunity to conduct redirect. The admission of these exhibits would be unfair, particularly at this late date when briefing is nearly complete.

geographic possibilities of a region, Mr. Koch then researches the bank itself: its management; its officers and directors; its branches; and its financial information. Tr. at 834-35 (Koch). Using all of that information, he determines the bank's book value, adjusted to take into account assets and liabilities Mr. Koch believed were not accounted for in traditional book value calculations. The result is a figure he calls the bank's tangible book value, or TBV.

Once Mr. Koch ascertains that a bank is a good investment, KAM purchases and holds the stock for the long term, typically 5 to 10 years. Tr. at 884 (Koch); Tr. at 1089-90 (Jarrell). His method has proven very successful. Tr. at 786 (Koch).

Mr. Koch never had any desire to have clients or become an investment advisor. Tr. at 786 (Koch). He initially invested only on his own behalf, but eventually his friends and acquaintances began asking him to manage their funds as well. Tr. at 788 (Koch). Mr. Koch was reluctant to manage money for other people because he understood it to be a great responsibility and wanted to make sure his investment philosophy worked and would not lose money. Tr. at 788-89 (Koch). He believed that when a client gave him money to manage, it was his responsibility to do no harm, and he ran KAM, which he opened to serve his clients, with that philosophy. Tr. at 786-87, 819 (Koch).

When he began KAM, Mr. Koch hired a lawyer to draft an investment advisor agreement.[4] Tr. at 797 (Koch); Exh. R006. The investment advisor agreement set forth KAM's investment strategy:

> Advisor shall provide advice and discretionary management services to Owner regarding the investment of securities by Owner. Advisor shall provide advice

4 KAM also adopted a written policies and procedures manual in 2008. Tr. at 812 (Koch); Exh. 279. The policies and procedures manual contained provisions regarding KAM's core principles, its code of ethics, and its promise to seek best execution for client trades. Tr. at 813-19 (Koch); Exh. 279 at 3, 5-11, SEC-KOCH 7156. The KAM policies and procedures manual was available to any client, or anyone at all, who wanted to review it. Tr. at 686 (Heidtbrink).

> and discretionary management services to Owner regarding the initial investment and reinvestment of such securities from time to time in accordance with the investment objective of Owner which is to invest in securities (primarily publicly traded) of financial institutions which generally have assets of at least $100 million and which are perceived to be undervalued based upon the value of the institution's assets and the quality of the institution's management.

Exh. R006, ¶ 1; Exh. R036 at 4.

Mr. Koch also repeatedly explained KAM's investment philosophy and objectives to his clients. Exh. R006, ¶ 1; Tr. at 798 (Koch). Prior to a client signing the investment advisor agreement, Mr. Koch met with the client as many as five times in order to make sure the client understood that KAM would direct investment only in small financial institutions. Tr. at 798 (Koch). He also explained how he arrived at a company's tangible book value, and that he bought stock at below tangible book value. Tr. at 798 (Koch).

Throughout KAM's entire nearly 20-year history, it always directed trading on behalf of its clients based on a consistent investment philosophy, which had grown out of Mr. Koch's experience in the commercial banking industry. Tr. at 825-26 (Koch). Mr. Koch and KAM's clients generally received excellent returns, thanks to KAM's stated policy of investing in small financial institutions. Tr. At 944 (Schneider) (referring to the three stocks at issue here, HCBC, CHEV and CARV).

In particular, the accounts cited in the OIP had excellent returns. Alice and Philip Smith, Mr. Koch's original clients, invested approximately $127,000 over time with KAM. Tr. At 806 (Koch). By the time Mrs. Smith passed away in 2010 (her husband died in 2005) their combined accounts were worth approximately $1.5 million after having withdrawn approximately $533,000. Tr. at 802, 806 (Koch). Tampsco, the other account implicated by the OIP, was an investment vehicle for a large family in St. Louis. Tr. At 807-08 (Koch). Tampsco's returns were even better than the Smiths'. Tr. at 807-08 (Koch).

Many of KAM's accounts, including the Smiths' accounts and the Tampsco account, were custodianed at Huntleigh Securities Corporation ("Huntleigh"). Mr. Koch generally instructed Huntleigh traders, including Mr. Christanell, to seek the particular stocks he wanted at their discretion, but with a purchase limit price of Mr. Koch's calculated tangible book value. Tr. at 879-80 (Koch); Tr. at 551-52 (Christanell). Even so, Mr. Christanell did not understand Mr. Koch's investment philosophy or why Mr. Koch traded the way he did; Mr. Christanell simply knew what stocks Mr. Koch wanted and what his limits were. Tr. at 902-03 (Koch).

II. KAM's Purchases in CARV, CHEV and HCBC

KAM purchased 2,000[5] shares of HCBC on September 30, 2009, 600 shares of HCBC on October 30, 2009, 2,000 shares of HCBC on November 30, 2009, and 3,200 shares of HCBC on December 31, 2009. On December 31, 2009 KAM purchased 6,667[6] shares of CHEV and 200 shares of CARV. OIP, ¶¶ 7, 10, 13, 16, 18-19. The OIP alleges that each purchase was made at an artificial, manipulated price which did not reflect best execution and that in each instance KAM set the closing price and "marked the close" as part of an effort to "artificially improve the reported monthly performance for each account . . ." on the monthly brokerage statement each KAM client received from their respective brokerage firm. OIP, ¶¶ 5-6, 21.

The Division's allegations are not supported by the proof it offered at the hearing and the record. To the contrary, the largely undisputed evidence in the record contradicts the Division's allegations. Not only did the Division fail to establish an artificial price, but also the evidence demonstrates that the prices KAM paid for the stocks it purchased were in keeping with the

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5 Again, the OIP incorrectly states that KAM acquired 1,400 shares of HCBC on September 30, 2009. KAM in fact acquired 2,000 shares of HCBC on September 30, 2009. Exh. R039 at 41.

6 The OIP incorrectly states that KAM acquired 6,000 shares of CHEV on December 31, 2009. OIP, ¶ 18. KAM in fact acquired 6,667 shares of CHEV on December 31, 2009. Exh. R039 at 28.

market. Likewise, not only did the Division fail to establish any benefit to Mr. Koch or KAM but, to the contrary, the evidence demonstrates that such actions would be completely contrary to the long-term investment program that had been so successful for KAM's clients over the years.

A. December 31, 2009 Purchase of CARV

Carver Bancorp, Inc. is a community bank based in Harlem, New York, with more than $800 million in assets Tr. at 850 (Koch). Using his TBV analysis Mr. Koch believed Carver to be an excellent takeover target, and has been directing investment in Carver, with the ticker symbol CARV, since the late 1990s. Tr. at 850, 852 (Koch). Based on Mr. Koch's assessment in 2009, Carver's stock had a TBV in excess of $20 per share.[7] Tr. at 854 (Koch). This meant that KAM wanted to acquire shares at an average cost of no more than $20 per share but at a lower price when market conditions permitted. Tr. at 842-43, 859 (Koch).

As of December 2009, Carver stock was one of the most illiquid held by KAM clients; it had a bid-ask spread of 12.8% in 2009, indicative of high illiquidity. Exh. R039 at 23-24; Tr. at 1056-57, 1059, 1080 (Jarrell). That meant that a potential purchaser would have to search for liquidity, that is, a time when the security is available and can be purchased. Tr. at 1083-85 (Jarrell).

On December 31, 2009 KAM purchased 200 shares of Carver at an average price of $9.0475 per share which was slightly below the closing price of $9.05 for the day. Exh. 278 at 3. Thus the price paid was almost $11 below tangible book value, making the purchase a very favorable transaction in the context of KAM's investment program. Tr. at 821 (Koch).

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[7] By the end of 2010 Mr. Koch altered his analysis of Carver Financial due to non-performing assets the bank had acquired and KAM liquidated the positions of its clients in the security. Tr. at 852-853 (Koch).

The purchase was made for KAM by Mr. Christanell. On December 31, 2009 at 13:01:32 (1:32 p.m.),[8] Mr. Christanell entered a limit order in Huntleigh's system for 1,000 shares of CARV with a limit price of $9.05. Tr. at 1100 (Jarrell); Exh. 278 at 3. Mr. Koch did not email Mr. Christanell to purchase 1,000 shares of CARV, nor is there an audio taped conversation in which Mr. Koch or anyone directed Mr. Christanell to put in a limit order at $9.05 for 1,000 shares.

The only reference to CARV prior to the entry of the order came during a conversation which, according to Exhibit 191, took place at 12:41 p.m.[9] In that conversation Mr. Christanell notes that the spread for CARV is $8.10 to $9.05 and that there have not been any trades that day: "No trades. No volume . . ." but there are 2,000 shares offered at $9.05. Mr. Koch authorized the purchase of Carver shares, responding "so what you do at the end of the day, pop that one. . .," to which Mr. Christanell responds "Yeah, five." Exh. 191.

That conversation contains no reference to the quantity or the limit order price. Mr. Christanell's statement of "5" may mean 5,000 shares, although it is not clear. Accordingly, either there were other conversations not reflected on the tape since Huntleigh policy required all orders to be oral (Tr. at 170 (Marshall)), or Mr. Christanell utilized his discretion and acted within the general parameters that Mr. Koch typically authorized, that is, trying to purchase a

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8 Times listed in the text are those on the exhibit. For ease of reference the parenthetical following the reference is the time stated in Eastern Standard Time (or, where applicable, in Eastern Daylight Time).

9 In addition to the other questions regarding the reliability of the tapes (Tr. at 101-07), the evidence clearly establishes that the time for at least one conversation is incorrect. Division Exhibit 192 is represented to have taken place at 3:48 p.m. EST, a few minutes prior to the 4:00 p.m. close of the market. Yet in the text of the conversation Mr. Christanell states that the market is closed. This demonstrates that the time on the tape for at least this conversation fragment is wrong and off by more than 12 minutes. Whether the times represented on the other tapes are accurate cannot be determined by comparison of the content to the time extracted from the Huntleigh system. Since all of the times came from the same screen shot (Exh. 319) the available evidence suggests that either the computer generating the times deviated for unexplained reasons for one conversation but not others, or the times for other fragments and perhaps all are inaccurate. There also is no evidence in the record that they were not altered or modified in some way.

block of at least 1,000 to 2,000 shares with a limit order capping the price that would be paid below TBV but at an amount which will create the best chance to acquire the stock as Mr. Koch testified (Tr. at 879-80 (Koch); Tr. at 551-52 (Christanell)).

In this instance entering a limit order at $9.05 for 1,000 shares gave KAM the opportunity to purchase the stock at a price lower than the existing bid in the market since any execution would be at the best available price up to that bid. Tr. at 1100-02 (Jarrell). Waiting until the close of the market to buy the shares maximized the opportunity for KAM to purchase the shares at a lower price because other traders might appear toward the close since that it typically when the markets are most liquid. Tr. at 1065 (Jarrell); R039 at 14-15. It also ensured that the stock would be acquired since there was an offer of 2,000 shares at $9.05 in the market. Exh. 191.

Subsequently, Messrs. Christanell and Koch briefly discussed purchasing shares of CARV at what appears to be 3:09 p.m., when Mr. Christanell states that he is thinking of "just buying like 300 shares at 9.05" at the end of the trading day. Mr. Koch agreed. Exh. 190.[10] The 1,000 share $9.05 limit order was not modified. Exh. 278.

Mr. Christanell routed an order for 200 shares of CARV to the market at 15:58:36 (3:58:36 p.m.) or less than two minutes before the market close. The order was filled in two

[10] In this conversation Mr. Koch tells Mr. Christanell to "get a print." The Division argues the phrase refers to establishing a closing price. Division Br., ¶ 104. This interpretation hinges on the theory that Mr. Koch was only interested in establishing a closing price, not acquiring the stock. If that were true, and in view of the Division's theory regarding the reasons for marking the close, there would be no need to purchase any stock since at the point of the conversation no trades had taken place and under Huntleigh's procedures a closing price for statement purposes could have been established by entering a bid at the desired price at the close of the market. Exh. 191 (tape of conversations). [The odd lot transaction involving 3 shares at the market opening would not establish the closing price (*see* Exh. R039 at 36)]. This contention is at odds with the fact that Mr. Koch expressed disappointment at the end of the day with the number of shares purchased. Exh. 192. Accordingly, a more plausible reading is that it refers to displaying a price – print – on the trading tape so that it attracts market attention and the opportunity to purchase the stock if possible. This is consistent with Mr. Koch's repeated statements that he wanted to acquire the difficult to purchase stock and hold it. Tr. 819, 890, 924 (Koch). It is also consistent with the fact that on December 31, as well as on the other dates at issue in this case, KAM purchased and held significant blocks of securities.

parts, one execution of 100 shares for $9.045 at 15:58:37 (3:58 p.m.) and a second execution of 100 shares for $9.05 at the same time. Exh. 278 at 3; Tr. at 1101-02 (Jarrell); Exh. R039 at 36. The executions were at the then best available prices under the $9.05 limit price, ensuring that KAM's purchases received best execution. Tr. at 591 (Christanell).

In the end, the purchases were at the low price of the day of $9.045 and the bid price of $9.05. Tr. at 959-60 (Schneider). The average price paid by KAM for the 200 shares is $9.0475, slightly below the high price of the day. Exh. 278 at 3. Based on the executions it is apparent that another seller appeared in the market shortly before the close. Thus KAM's trading tactic secured a slight savings in price while acquiring the stock.

The closing price for CARV on December 31, 2009 was set by a trade for 200 shares at $9.05 at 16:00:03 (4:00:03 p.m.) just seconds after the close by a non-KAM market participant. Exh. R036 at 36; Tr. at 1102 (Jarrell). Again, it is clear that other buyers waited until the close to purchase shares.

B. <u>December 31, 2009 Purchase of CHEV</u>

Cheviot Financial Corporation, ticker symbol CHEV, is a small community bank around Cincinnati that Mr. Koch has invested about ten years, similar to Carver. Tr. at 844, 846-47 (Koch).

Before investing in CHEV, as with all of his investments, Mr. Koch visited branches, took pictures, reviewed all of its financial information and met the management. Tr. at 845-48 (Koch); R018. He continues to periodically review and analyze its financial statements and talk with its management to ensure that it continues to be a good long-term investment for KAM clients. Tr. at 848-49 (Koch).

Mr. Koch calculated the tangible book value for CHEV shares to be about $12 to $15 per share. Accordingly KAM's investment program specified that the average share price for the bank stock had to be at or below that price range. Tr. at 798 (Koch).

CHEV is one of the most illiquid stocks held by KAM clients. Exh. R039 at 24. It has a bid-ask spread of 4.9% compared to the average NASDAQ stock which has a spread of 0.24%. R 39 at 23-24. In 2009 it did not trade on over 10% of the business days when the market was open. Exh. R039 at 25.

The illiquidity of the stock made shares of CHEV difficult to obtain at times, thus requiring the use of trading tactics which vary with the market conditions. Tr. at 879 (Koch); Tr. at 609-11 (Christanell). It also meant that KAM clients frequently purchased shares at differing prices, sometimes below the daily high/low average but in some instances above that average. Exh. R036 at 7. About half of the time those transactions were at prices that were below the monthly high/low average while the other half of the time they were above that average. Exh. R036 at 8.

Shortly before Christmas 2009, KAM sought unsuccessfully to acquire a block of CHEV shares. To try and obtain a block of CHEV securities KAM utilized a trading technique recommended Mr. Christanell, an institutional trader. Tr. at 609-11 (Christanell). The approach combined a large order with a low price to try to draw sellers to the market. Specifically, Mr. Christanell entered an order for 5,000 shares with a limit price near the then bid price. Tr. at 609-11 (Christanell). The strategy failed and no stock was acquired. Tr. at 609-11 (Christanell).

Therefore, on December 31, 2009 KAM reversed the Christanell pre-Christmas strategy in its efforts to acquire a block of CHEV shares. Mr. Koch believed that the end of the year would be an opportune time to acquire CHEV stock since at that time people tend to sell their securities to raise cash thus giving increased liquidity to the markets. Tr. at 894 (Koch). Mr. Christanell confirmed that in fact the last day of the year was very busy. Exh. 192. Indeed, as the market drew to a close that day he was completing the execution of orders for KAM and five other institutional traders. *Id.*

Cheviot is only referenced on one of the December 31, 2009 tape fragments. After telling Mr. Koch the then current spreads Mr. Koch suggests a price for the limit order of $0.52 to $0.77 over the then bid price. The two men agree "that should be pretty easy. . . ." Exh. 191. The tactic of was the reverse of the failed pre-Christmas approach.

While the two men did not discuss a specific number of shares in this tape fragment, Mr. Koch stated that the trader could do "whatever you need to do there." *Id.* Mr. Christanell understood that KAM only wanted to acquire blocks of at least 1,000 or more shares.

An order for 5,000 shares was entered into Huntleigh's system at 13:01:15 (1:15 p.m. EST). It was a limit order with a top per share price of $8.25. R039 at 30; Tr. at 1092 (Jarrell). Mr. Christanell chose to wait over two hours before routing the order to the street at 15:40:12 (3:40 p.m. EST). At that time he sent two orders of 2,000 shares each to the street. Exh. 278. Sending orders of this size to the street is consistent with Mr. Christanell's approach as an institutional trader, but not that of Mr. Koch who preferred small executions so as not to disturb the market.[11]

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[11] For example, in a pre-opening discussion on December 31, 2009 Mr. Koch told Mr. Christanell to "go market share 100s" when acquiring shares of HCBC. Exh. 189. Mr. Koch also instructed Mr. Christanell to not disturb the market when acquiring shares at the end of September 2009. *See* Background Section II.C.4, *infra.*

The strategy worked, and KAM began obtaining small executions almost immediately. Exh. 278 at 1, 3; Exh. R039 at 30.

At 15:54:05 (3:54:05 p.m.) Mr. Christanell revised the order, increasing it to 7,000 shares but retaining the same limit price. Exh. 278 at 1; Exh. R039 at 31. The limit order price had been set in an earlier conversation with Mr. Koch. Exh. 191. There is no reference in any of the tape fragments authorizing Mr. Christanell to increase the size of the order. The revision appears to be consistent with the general approach Mr. Koch had authorized the trader to employ which permitted him to acquire blocks of selected stocks within certain price limits when the shares became available. Tr. at 903 (Koch).[12]

Mr. Christanell routed two 1,000 share orders to the street under the revised order immediately at 15:59:20:03 (3:59:20 p.m. EST). Exh. 278 at 1. The executions continued with KAM acquiring its last 200 shares prior to the close at 15:59:53 (3:59:53 p.m. EST) at $7.799. Exh. 278; Exh. R039 at 31. KAM purchased 6,667 shares of CHEV. *Id.*[13]

The KAM purchases did not set the closing price in CHEV. Exh. R039 at 31; Tr. at 251 (Glascoe). Approximately 40 seconds prior to the close one or more unknown buyers purchased an additional 872 shares of CHEV in a transaction which set the closing price. Exh. R039 at 31. Apparently other buyers agreed with Mr. Koch that the last day of the year at the end of the trading day would be a good time to acquire the security and that the prices were favorable.

KAM's average purchase price for its block of shares was $7.837 which is at least over $4 below TBV. Exh. 278 at 1. Each execution obtained by KAM was at the then market price.

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[12] In November Mr. Christanell purchased 2,000 shares of HCBC and obtained ratification of the transaction after the fact from Mr. Koch. *See* Argument Section I.A.1, *infra*.

[13] KAM did purchase 667 shares of CHEV shortly after the official market close according to the records prepared by Professor Jarrell. Exh. R039 at 31. This transaction is not reflected in the trading records placed in evidence by the Division. *See* Exh. 278. Professor Jarrell's records therefore may explain Mr. Christanell's post-closing comment to Mr. Koch that he kept placing orders after the close. Exh. 192; Exh. R039 at 31.

The firm and its clients thus obtained the best execution available under the then existing market conditions according to the uncontroverted evidence in the record. Tr. at 591 (Christanell); Exh. 278 at 1, 3.

C. **Purchases of HCBC in the fourth quarter of 2009**

High Country Bank Corporation is another of Mr. Koch's preferred community banks. Tr. at 837 (Koch). He has reviewed and purchased stock in the bank, ticker symbol HCBC, since the late 1990's, after he unsuccessfully attempted to purchase the entire bank. Tr. at 837-38 (Koch).

Under Mr. Koch's TBV rubric, HCBC is worth approximately $25 per share. Tr. at 841 (Koch). Thus, while he would try to purchase shares of HCBC at the lowest possible price, TBV served as the upper limit for the average price of an acquisition. Tr. at 842 (Koch).

HCBC share are traded on the bulletin board; the difference between trading on the bulletin board and on an over-the-counter auction market or the NASDAQ is significant. An order on the bulletin board must be taken to each venue or market maker for execution. Tr. at 565-66 (Christanell). This makes for a slower execution process than in the over-the-counter market auction market where the order is displayed and purchasers or sellers, as the case may be, can all bid for the order, a quicker execution. Tr. at 566-67 (Christanell).

HCBC shares are extremely illiquid. It has a bid-ask spread of 32.6% compared to one of 0.24% for the typical security listed on NASDAQ. Exh. R039 at 23-24. In Professor Jarrell's experience, it is "very hard to find a security that has that high of an average bid-ask spread over a one-year period. That's very illiquid. That's why I want to use a new term like non-liquid." Tr. at 1079 (Jarrell). Between June 1, 2009 and January 31, 2010, it only traded on only 30 days and, for the all of 2009, it only traded 40 days. Tr. at 979-80 (Schneider); Exh. R036 at 33; Tr. at

1083 (Jarrell); Exh. R039 at 25. Stated differently, HCBC did not trade on 212 of the 252 trading days in 2009 or over 84% of the time. Exh. R039 at 25.

HCBC's extreme illiquidity results in exceptional volatility, meaning that virtually every time it is traded, the share prices bounce between the very wide bid price and ask price. Tr. at 1103-04 (Jarrell); Exh. R039 at 39. For example, a trade with a transaction price at the bid would represent a sale to the dealer Professor Jarrell explained. Tr. at 1104 (Jarrell); Exh. R039 at 39. In contrast, a trade with a transaction price at the ask would represent a buy from the dealer. Tr. at 1104 (Jarrell); Exh. R039 at 39. In 2009 in particular, HCBC stock routinely experienced a large bid-ask bounce. Tr. at 1106-08 (Jarrell); Exh. R039 at 40. This swing occurred whenever anyone trades in HCBC, not just KAM. Tr. at 1109 (Jarrell); Exh. R039 at 40. In short, any transaction in HCBC results in price movement and can cause wide swings, the bid-ask bounce. Tr. at 1139 (Jarrell).

The illiquidity of HCBC shares coupled with its price volatility and the resulting price swings requires any would be purchaser to employ a variety of trading techniques to acquire the security, particularly if the acquisition is to be done within specified price limitations. These include looking at the most liquid time of the trading day, which is toward the close of the market. Tr. at 1064, 1076 (Jarrell); Tr. at 863 (Koch); Exh. R039 at 15-15. It also may mean trying to purchase the security at the end of periods when holders of the security are more likely to sell such as months, quarters and years. Tr. at 861-62 (Koch); Exh. 193 (Christanell noting he was very busy at year end and had 5 institutional orders to fill). In addition, if the purchaser is interested in acquiring a block of HCBC shares, it may have to be acquired at a price which is in excess of the ask price in the market. Tr. at 1128-29 (Jarrell).

KAM purchased HCBC shares 26 times from 1998 through 2009. In six instances the acquisitions were made in month end transactions. Exh. R036 at 20. The other purchases were made at different point in the month. This is in accord with KAM's overall trading pattern. Exh. R036 at 9. The purchases were made at a variety of prices, some of which were above the median daily or monthly price while others were below. Exh. R036 at 7-8. The average purchase price was always below the $25 TBV calculated by Mr. Koch. Tr. at 841 (Koch).[14]

1. September 30, 2009 Purchase of HCBC

On September 30, 2009 KAM purchased 2,000 shares of HCBC stock at an average price of $20.3794. Exh. 278 at 5; Exh. R039 at 43; Exh. R036 at 21. The shares were allocated to the account of long time KAM client, Mrs. Smith, whose account had excess cash in need of an investment with a good yield. Tr. at 907-08 (Koch).

At 11:25:52 a.m. Mr. Christanell entered an order into the Huntleigh system for KAM to purchase 400 shares. Exh. 278 at 5; Exh. R039 at 43; Tr. at 1111-12 (Jarrell); Exh. 039 at 43. It was a limit order with a cap price of $18, meaning that KAM would pay below that price for the shares, but no more than the $18 price per share. *Id.*; Tr. at 577 (Christanell). The limit price

[14] The Division's claim that because KAM paid $23.99 for one execution of 120 shares of HCBC and that this is the highest price at which the security has traded in recent years does not support its market manipulation allegation. First, the comparison chart utilized by the Division compares a September 30, 2009 intra-day trading price with closing prices after that date. Exh. 316. Intra-day trading prices and closing prices are not comparable.

Second, and perhaps more importantly, the question is why KAM would pay that price at the time. An examination of intra-day trading prices before September 30, 2009 for HCBC demonstrates that in various instances the ask price for the stock was in fact at or over its September 30, 2009 intra-day high. Appendix B, at 10-11. (The pertinent trading data, drawn from public sources, is compiled in a table in Appendix B, attached here. The Court can in its discretion take judicial notice of this data. Division Br. at 11 n.1). This trading history would have provided KAM with more than a reasonable basis for valuing the security at that price level. More importantly, the average price of the HCBC acquisitions on September 30, 2009, which is the price paid by the client was $20.3794. Exh. 278 at 5. That price is also below TBV which is the critical point for KAM clients. Tr. at 880-82 (Koch).

was $7 below TBV. Tr. at 868 (Koch).[15] There are no taped conversations or emails reflecting the origin of the order.

Mr. Christanell began routing the order to the street for execution almost immediately (11:26:12 a.m.) in small 400 share segments. Exh. 278 at 5. Within three minutes the order began to fill, first with an execution for 200 shares at 11:29:42 a.m. followed by a second at 11:41:38 a.m. for another 200 shares. The first execution was at $18 per share. Exh. 278; Exh. R039 at 43. The second took place at $16 per share. *Id.* While typically prices tend to increase or "ladder up" as executions take place, as Mr. Christanell testified, once he routed orders to the street they were executed or filled at the "best offers out there," ensuring that KAM got the best execution for its purchases. Tr. at 579-80 (Christanell).

At 11:56:59 a.m. Mr. Christanell replaced or revised KAM's limit order, increasing the number of shares to be acquired to 600 but reducing the limit price too $16.00 per share. Exh. 278 at 5; Tr. at 1113 (Jarrell); Exh. R039 at 43. [16] There are no taped telephone calls or emails

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15 The Division appears to base part of its analysis on a flawed understand of limit orders. When discussing the routing of orders to the street the Division describes the transaction this way: "Christanell routed the remaining 400 shares to the street at a price of $24 per share . . ." Division Br., ¶ 57; *see also* Division Br., ¶¶ 78, 93, 99, 106. This suggests that the price cap for a limit order is displayed to the street. It is not. Tr. at 591-92 (Christanell); Tr. at 1092-94, 1128-29 (Jarrell). When a limit order is entered into the Huntleigh system, the number of shares to be purchased and the limit price to be paid is entered. Exh. 278 at 5. The limit price is a cap, that is, the highest price that the trader is willing to pay for the security. Tr. at 590-91 (Christanell). When either the entire order or parts of it are routed to the street for execution, only the quantity of securities to be purchased or sold is displayed to the market, not the limit price. Tr. 591-91 (Christanell). Thus the market only knows the number of shares the trader is seeking to purchase or sell. *Id.* If there are traders in the market willing to buy or sell a sufficient quantity of securities to fill the order, it will be filled provided that the prices at which the trader is willing to enter into a transaction are at or below the limit price. *Id.* The purpose of the limit price is to delimit the exposure of the trader by precluding the market from executing orders in a laddering up effect which could go over the top price the trader is willing to pay. Tr. at 859-60 (Koch). It is for this reason that Mr. Koch does not use market orders – they permit the market to execute the transaction at whatever price the sellers demands. Tr. at 859-60 (Koch). Thus, to the extent the Division suggests that the limit price for KAM's orders somehow influenced or impacted the transaction except to limit risk, its supposition is incorrect.

16 The Division refers to this and other revisions during the trading day of September 30, 2009 and on other days as a "new" order. *See., e.g.,* Div. Br., ¶ 57. This is incorrect. The trading records from Huntleigh put in evidence by the Division use the term "replaced." Exh. 278. Professor Jarrell referred to it as a revision. Exh. R039 at 43. The difference is significant. If each of the orders entered for KAM on September 30 constituted a

regarding the modification to the order. Mr. Christanell did not testify about the modification. Based on the executions obtained in response to the initial order, the revision, which seeks more shares at a lower price, appears to be an adjustment in trading strategy to then existing market conditions.

At 12:03:18 p.m. KAM obtained an execution, purchasing 180 shares at $16.00 per share. Exh. 278 at 5. The order then remained unfilled for over 2 hours. Exh. 278 at 5; Exh. 39 at 43.

At 2:12 p.m. Mr. Koch received an email from Mr. Christanell which told him the then existing spread for HCBC and of the partial execution of KAM's order. Exh. 148. This email told Mr. Koch that "no one's home. No one wants to do a deal." Tr. at 875 (Koch). He went on to explain that while small amounts of HCBC securities could be acquired, the transactions to that point and the spreads told him that KAM would not be able to acquire a block of 1,000 to 2,000 shares or more and for purchases of less than that since "the commission for the broker is greater than the economic value. So 580 shares [purchased to this point] is a hard share price to place if you're trying to be even through your client base." Tr. at 876. (Koch).

At 2:43 p.m. Mr. Koch sent an email to Mr. Christanell. Exh. 12. At that point, the KAM order routed to the street shortly after noon had not been completely filled for about one and three quarters hours. Exh. 278 at 5; Exh. R039 at 43. During that period the spreads for HCBC had remained fairly constant. At the time of the execution for 180 shares they were at $11.70 to $20. Exh. R039 at 43. At the time of the email the bid had increased by one cent to $11.71 but the ask remained at $20. *Id.*

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new order, then in fact KAM would have been seeking a total of 3,000 shares on September 30. In that instance its orders at the conclusion of the day would only have been partially filled. This approach is inconsistent with Exh. 278 at 5 since the column "Total" shows the amount of the order on September 30 never increases above 2,000 shares. Thus the correct reading of the evidence is that on September 30 KAM had one order which was revised twice as described in the text above eventually increasing the amount of shares to be purchased to a total of 2,000 shares and that the revisions at first lowered the limit price and later increased it. Accordingly, at the end of the day KAM's order had been filled.

In an email with a time stamp of 6:43 PM (GMT) (2:43 p.m. EDT) Mr. Koch directed Mr. Christanell to "move the last trade right before 3pm up to as near to $25 as possible without appearing manipulative." Exh. 148. The reference to $25 is the maximum Mr. Koch was willing to pay for the security. Tr. at 841 (Koch). Increasing the limit to about $5 over the bid was an effort to ensure that KAM could purchase the stock Mr. Koch testified. Tr. at 875-876; 880-81 (Koch).

Professor Jarrell explained the transaction this way: "KAM had been successful earlier in the day of filling . . .small orders at prices inside the ask . . . But now when you go to 2,000 in this kind of market, you know, experienced traders are going to know that your going to now be outside the ask probably. But nonetheless still you see the success at filling . . .." Tr. at 1114 (Jarrell).

The directive in the email to not "appearing manipulative" was intended to ensure that KAM obtained the best available prices. As Mr. Koch explained:

> Well, you know, I had – I had not worked with this gentleman long, so I –Know he was an institutional trader . . . and most of his activities were large block transactions. The last thing in the world you want is to be the elephant in the room, is to go there and sometime, and get – say, I'm an institutional player, get 5,000 shares. If he gives that signal to the market, the bid/ask goes – and I'm guessing here – 30, 35. You destroy the entire market. So I am asking him to be as invisible as you can, to be as low key as you can, to do this as small of an increment as you can without jumping up and down in the room, showing who you are, showing that you're an institutional trader. Tr. at 879 (Koch).

Three minutes after receiving the e-mail Mr. Christanell at 14:15:28 p.m. (2:15 p.m. EDT) entered a modified or revised limit order again into the Huntleigh system. Exh. 278 at 5; Exh. R039 at 43. It increased the total shares to be purchased to 2,000 shares and increased the limit price to $25.00. Exh. 278 at 5; Tr. at 491-92 (Christanell); Tr. at 1113-14 (Jarrell); Exh. R039 at 43.

Mr. Christanell continued to route the order to the street in pieces. Exh. 278 at 5. KAM continued to obtain executions at prices which laddered up from $20 per share to a high of $24 per share. Exh. 278 at 5; Exh. R039 at 45. Each piece or segment of the order received the best price then available and thus the best execution. Tr. at 591 (Christanell). The limit price of $25 protected KAM clients from a price run up and ensured that shares would be acquired consistent with the firm's stated investment objectives. Tr. at 881-82 (Koch).

At 15:59:43 (4:59:43 p.m. EDT) KAM made its last purchase of 400 shares. The price receded slightly to $23.50 from its inter-day high. Exh. 278 at 5; Exh. R039 at 43. The transaction set the closing price. Tr. at 1111 (Jarrell); Exh. R039 at 42.

On September 30, 2009 KAM acquired a block of 2,000 HCBC shares at an average price of $20.39, almost $5 below TBV. Tr. at 883 (Koch); Exh. 278 at 5. Mr. Koch was pleased with the acquisition since it fit within KAM's long established investment objectives. Tr. at 883-84 (Koch).[17]

2. <u>The October 30, 2009 Purchase of HCBC</u>

On October 30, 2009 KAM purchased 600 shares o f HCBC stock. Exh. R039 at 48. In the time leading up to that transaction, and in fact though much of the month there has been little

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[17] The Division's own brief details how Mr. Christanell's trading in HCBC according to Mr. Koch's suggested strategy resulted in purchases of stock:

At 14:47:07 p.m. EDT, Mr. Christanell routed an order for 200 shares at $16.00 per share, "<u>but he did not get any executions</u>." Division Br., ¶ 57 (emphasis added). Therefore, in order to acquire stock, he later revised the limit order and proceeded to route an order to the street for 1,000 shares with a limit price of $24.50 per share. "<u>Within minutes</u>," he had purchased 480 shares, then 400 shares, and then an additional 120 shares. Division Br., ¶ 57 (emphasis added). He was then able to route the remaining 400 shares to the street at 15:59:21 p.m. EDT, which resulted in an execution just 22 hundredths of a second later, at 15:59:43 p.m. EDT.

This detail not only demonstrates the fact that Mr. Koch was right, HCBC stock would trade at the end of the day and would have to be bought close to the ask, but also reflects the general market principles for HCBC. As Professor Jarrell testified, trading in illiquid stocks is very commonly done at the end of the trading day. Tr. at 1063, 1068-69 (Jarrell); Exh. R036 at 14-15, 17.

to no trading in HCBC. Tr. at 1117 –1118 (Jarrell). In the morning of October 30 there is no trading; the spread is "very wide." Tr. at 1118 (Jarrell).

Mr. Christanell entered an order on behalf of KAM for 1,000 shares of HCBC with a limit price of $24.00 per share at 10:55:33. Exh. 278 at 3; Exh. R039 at 48. There are no emails which relate to this order. There are no audio tapes that relate to this order.

The spread for HCBC was $13.25 to $14 at the time the order is entered into the Huntleigh system. Exh. R039 at 48. It is "very wide." Tr. at 1118 (Jarrell). "[A]n experienced trader is going to know that that $14 is probably invalid, because look how close it is to 13.25 that's probably not even – that's probably a stale – a stale quote, and it's not even going to be honored." Tr. at 1119 (Jarrell).

In October Mr. Koch was utilizing "exactly the same tactical approach" he used in September to try and purchase the security. Tr. at 887 (Koch). That meant that he was "waiting for those two or three or four participants who may be around the stock, I'm trying to shake the bushes, get them out . . ." so KAM could purchase the stock. Tr. at 887 (Koch).

He was not watching the market however. Rather, "I probably have a standing order. If you see some stock, show it to me. . . If he [Mr. Christanell] sees a block of stock, pick it up . .. [there were] very clear [pricing] limits . . . Tangible book value . . ." Tr. at 888 (Koch).

At 15:45:20 (3:45 p.m. EDT) an order for 600 shares was routed to the street as a market order and rejected. Following three more rejections it was replaced with an identical 1,000 share market order at 15:45:48 (3:48 p.m. EDT); 600 shares of the order was routed to the street. Exh. 278 at 3.

That afternoon KAM acquired 600 shares of HCBC. The first 200 were purchased at $14.00 per share at 15:46:35 (3:46 p.m.). Then 800 shares were acquired by another purchaser at the same $14 price followed by a KAM purchase of an additional 200 at $18.00 per share at 15:47:04 (3:47 p.m.). KAM made its final purchase at 15:47:36 (3:47 p.m.) and a final 200 at $19.75 per share.[18] Tr. at 886 (Koch); Exh. R036 at 26; Exh. 278 at 3; Exh. R039 at 48.

KAM's last purchase with about just under 2.5 minutes left in the trading day set the closing price. Exh. R039 at 48.

For the day KAM acquired 600 shares at prices ranging from $14.00 and $19.75 on October 30, 2009. The average price, which is the one paid by the client, was $17.25. Tr. at 965 (Schneider); Exh. R036 at 26; Exh. 278 at 3.

3. November 30, 2009 Purchase of HCBC

On November 30, 2009, KAM purchased 2,000 shares of HCBC at an average price of $17.245. Exh. 278 at 3. At 11:14:20 a.m. Mr. Christanell entered an order in Huntleigh's system for 2,000 shares of HCBC with a limit price of $20 per share. Exh. 278 at 3; Tr. at 1114-15 (Jarrell); Exh. R039 at 53. Mr. Christanell later revised that limit order twice, once at 15:51:20 (2:51 p.m. EST) and a second time at 15:52:05. (2:52 p.m. EST). Exh. 278 at 3. In each instance the revision left unchanged the number of shares but the second raised the limit price by $1 to $21 per share. Exh. 278 at 3; Tr. at 1114-15 (Jarrell); Exh. R039 at 53.

The spreads on November 30, 2009 were at $14 to $17 when the order was entered into the system and at the time of its revision. Exh. R039 at 53; Exh. 278 at 3.

Mr. Christanell did not route the order to the street for execution until 15:56:47 (3:56 p.m. EST) when he sent an order to the street for 1,000 shares. Exh. 278 at 3. This resulted in an

[18] Again, the Division's brief demonstrates that Mr. Koch's understanding of the market was accurate. Mr. Christanell – acting on his own – placed a market order for 600 shares at 15:45:48 p.m. EDT. ¶ 69. "<u>Within minutes</u>" he bought 200 shares at $14.00 per share, then 200 shares at $18.00 per share, and finally 200 shares at $19.75 per share. ¶ 69. Just as Mr. Koch indicated, putting in a market order resulted in the price climbing on its own. Tr. at 860 (Koch). Ms. Marshall also confirmed that market orders often resulted in prices escalating. Tr. at 197 (Marshall); Tr. at 971 (Schneider).

initial execution for 200 shares at $17 per share 15:57:45 (3:57:45 p.m. EST) which was followed seconds later with another execution for 800 shares at the same price. Exh. 278 at 3; Exh. R039 at 53.

At 15:58:29 (3:58:29 p.m.) Mr. Christanell routed the second portion of the order to the street. Exh. 278 at 3. In less than a minute he obtained an execution for 1,000 shares at $17.49 per share. Exh. 278 at 3; Exh. R039 at 58. The last transaction, which took place 30 seconds prior to the close, was the market closing price. Exh. R039 at 58.

After the close of the market,[19] Mr. Christanell sent Mr. Koch an email indicating that he had purchased 2,000 shares of HCBC for $17.25. Exh. 15. It stated "sorry, just looked like someone had them for sale." *Id.* During his testimony Mr. Christanell admitted that the email was to ratify the transaction. Tr. at 596 (Christanell).

Mr. Koch agreed that he ratified the transaction. Tr. at 889 (Koch) He testified that Mr. Christanell had standing instructions to the purchase certain securities in blocks within certain price limits if available. Tr. at 903 (Koch).

4. <u>December 31, 2009 Purchase of HCBC</u>

On December 31, 2009 KAM purchased 3,200 shares of HCBC, in addition to shares of CHEV and CARV. Exh. R039 at 58. It was the end of the year, a day Mr. Koch considered to be good for acquiring illiquid stocks because people tend to try and monetize there securities, that is, sell them to raise cash for a variety of reasons. Tr. at 861-62 (Koch). Mr. Koch's belief

19 The email is time stamped 10:05 p.m. Mr. Christanell testified that the time is incorrect since he never stays at work that evening. Tr. at 597 (Christanell). Typically Mr. Christanell reported shortly after the close of the market. *See* Exh. 12; Exh. 192.

was apparently shared by other traders since the day was very busy, according to Mr. Christanell and, even at the end of the day, he had several institutional orders to execute. Exh. 192.

In anticipation of the year end, Mr. Koch emailed Mr. Christanell on December 28, 2009, instructing him to purchase HCBC on the last day of the year and toward the end of the trading day. Tr. at 899 (Koch). Mr. Koch knew that HCBC shares would be difficult to acquire since it only trades a few days a year and the spreads for the stock are consistently wide. Tr. at 928 (Koch). He also knew that shortly before Christmas KAM tried but failed to purchase shares of CHEV which is not as illiquid as HCBC. *See* Background Section II.B, *supra*. He thus saw the end of the year, and particularly the end of the day, as a good opportunity to purchase one of his favorite securities. Tr. at 899-900, 901 (Koch).

In their pre-opening conversation, Mr. Koch authorized Mr. Christanell to use what ever trading tactics he found appropriate, noting "You know – I don't want to tell you your job." Exh. 189.

At 9:06:00 a.m. on December 31, 2009, Mr. Christanell entered an order for 5,000 shares of HCBC with a limit price of $25 for KAM in Huntleigh's system. Exh. 278 at 1; Exh. R039 at 58. He did not route the order to the street for execution for almost seven hours. Exh. 278 at 1.

Although the two men spoke on the telephone three more times before the close of the market, there was little reference to HCBC. Exh. 188, 191 & 193. The conversations focused on other securities. *Id.*

Consistent with Mr. Koch's beliefs regarding the trading opportunities that may be available at year end, in one conversation in late morning, he told Mr. Christanell that Ms. Heidtbrink was looking into what "they might want to move up toward the end of the year," a reference to the fact that she would look at KAM's clients' portfolios and determine if which might need more stock. Exh. 193; Tr. at 904 (Koch). As Mr. Koch's assistant, Ms. Heidtbrink did not place trades and would not have called a Huntleigh trader to tell him to purchase a security in order to get it to close at a particular price; she would therefore have been reviewing portfolios in order to assess client positions. Tr. at 214-15 (Marshall); Tr. at 904 (Koch).

In another call Mr. Koch reiterated his instruction from September to trade in small amounts, using 100 or 200 share increments for HCBC, as well as CHEV and CARV. Exh. 190.

At 15:52:03 (3:52:03 p.m.) Mr. Christanell first attempted to route an order to the street for HCBC shares for KAM. The 2,500 share order was rejected. At 15:55:12 (3:55:12 p.m.) Mr. Christanell tried again, this time with a 3,000 share order and it went to the street. Exh. 278 at 1. The order ignored Mr. Koch's instruction from earlier in the day to proceed in small lots. The reason for that directive was to avoid being the elephant in the room and disturbing the market. *See* Background Section II.C.1, *supra.*

Within less than a minute KAM began getting small executions first for 200 shares at $16.80, then for 700 at $16.99, then 800 at $17, 200 at $17.50, 900 at $17, 100 at $17 and then 300 at $17.50. Exh. 278 at 1; Exh. R039 at 58. The final two executions came in the last 90 seconds of trading, both for 200 shares at $19.50. *Id.*

KAM acquired 3,200 shares of HCBC at an average price of $17.33 per share.[20] Exh. 278 at 1. KAM's price range for HCBC was between $16.80 and $19.50 on December 31, 2009. Tr. at 966-67 (Schneider); Exh. R036 at 28; R039 at 61. The closing price for HCBC was $19.50, and was set at 15:59:28 p.m. EST. Exh. R039 at 58.

After the close Mr. Christanell informed Mr. Koch about the results for the day. Exh. 192. Mr. Christanell explained it was a busy day and acquiring HCBC was difficult because the

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[20] As the Division's brief again shows, the order resulted in six separate executions, with prices escalating as time went on as Mr. Koch knew they would. Division Br., ¶ 94; Tr. at 860 (Koch).

stock is traded on the bulletin board rather than in an auction market. There a purchase order had to go venue to venue to get an execution rather than just putting the order out into the market for auction. At the same time he was trying to execute KAM's order, he was also working on five other institutional orders. "But I got 3,200 , and I – like I said, apologize . . . " Exh. 192. The order had been for 5,000 shares, but he ran out of time because he misjudged how long acquiring the stock on the bulletin board would take. Exh. 278 at 1; Exh. 192.

II. <u>Respondents Produced All Available Documents</u>

Once the Division had initiated its investigation into these trades and requested documents from Respondents, first by letter and then by subpoena, Ms. Heidtbrink and Mr. Koch went through all of KAM's extensive files and provided the Division with thousands of pages of responsive documents. Tr. At 713-17 (Heidtbrink). They were meticulous, and produced everything they could find. Tr. At 716-17 (Heidtbrink).

Further, KPMG conducted a forensic review of electronic devices with possible information relevant to this proceeding, four desktop computers, five hard drives and two thumb drives. The forensic review demonstrated that everything that the Division requested during this course of its investigation that was available to KAM was produced. Tr. at 1009 (Schneider); Exh. R036 at 57.

In the end, the Division attempts to demonstrate a books and records violation by relying on three emails – Exhibits 148, 149 and 150 – that Respondents did not produce. Division Br., ¶¶ 142-45; Exh. 148; Exh. 149; Exh. 150. The Division later in its brief relies on only one email – Exhibit 148 – as the basis for the alleged books and records violation. Division Br. at 61-62. This is likely because the three emails are in fact different branches of one email chain. Exh. 148; Exh. 149; Exh. 150.

At any rate, the Division fails to note that Respondents produced many emails, including allegedly the December 23, 2009 emails and the December 28, 2009 email requesting that Mr. Christanell purchase HCBC at the end of the year both of which are relied on by it. Exh. R033; Exh. 186; November 29, 2010 letter from S. Sherman to J. Riewe and A. Aderton attaching documents for production, at KAM7052-55 (attached hereto as Appendix C).

III. KAM Had Adequate Procedures

KAM had policies had procedures which governed its operations. Exh. 279. Those policies and procedures included a provision that precluded marking the close. Exh. 279 at 4. KAM implemented those procedures in the only manner possible by taking two steps. First, it designated a chief compliance officer, Mr. Koch. Since the firm is a sole proprietorship he is the only person who could assume that role.

Second, the firm's procedures were bolstered in the only manner possible, through transparency. It maintained detailed records of each client transaction. Each quarter with its billing statements, the firm furnished clients with an update of their positions. Tr. at 695 (Heidtbrink). This supplemented the monthly statements furnished to each client by their brokerage firm. Tr. at 695 (Heidtbrink); Tr. at 139 (Marshall). In addition, each client received a confirmation of each purchase or sale of a security from their account by KAM. Tr. at 138 (Marshall). Finally, KAM clients at Huntleigh Securities also had the ability to monitor their accounts on line. Tr. at 47-48 (Marshall).

Accordingly, each KAM client could fully monitor each transaction in their account. If there was any question, it could be immediately presented it to Mr. Koch. The firm has not received client complaints. Tr. at 684 (Heidtbrink). Thus KAM's actions were fully monitored in the only manner possible, and perhaps the most effective since the securities positions belonged to the clients.

ARGUMENT

I. Exchange Act Section 10(b) and Advisers Act Section 206 Allegations

The Division has alleged that Respondents violated Section 10(b) of the Exchange Act and Sections 206(1) and 206(2) of the Advisers Act by marking the close and failing to get best execution. In the OIP this claim is predicated on creating an artificial price, setting the closing price and creating false values on client account statements as a result of the artificial price to deceive the clients.

Exchange Act Section 10(b) and Advisers Act Section 206 are antifraud provisions which prohibit market manipulation, of which marking the close is a form.[21] *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462, 473, 97 S.Ct. 1292, 51 L.Ed.2d 480 (1977) ("The language of § 10(b) gives no indication that Congress meant to prohibit any conduct not involving manipulation or deception."); *Superintendent of Ins. of State of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12, 92 S.Ct. 165, 30 L.Ed.2d 128 (1971). In addition, the Section 206 claim is predicated on a breach of fiduciary, that is the advisor acting for his personal benefit and to the detriment of the client. *See SEC v. Capital Gains*, 375 U.S. 180, 190 (1963) (discussing Congress' estimation of the duty of investment advisors).

Market manipulation is defined in terms of causing an <u>artificial</u> price for a stock, drawing investors into the market based on false trading activity or similar deceptive activity *Santa Fe Industries, Inc. v. Green*, 430 U.S. at 476 ("The term ['manipulation'] refers generally to practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity.") However, where market transactions reflect

[21] The Commission has defined "marking the close" as "the practice of attempting to influence the closing price of a stock by executing purchase or sale orders at or near the close of the market," a type of market manipulation. *In the Matter of Graham*, Release No. 40727, 1997 WL 530040, at *8 n.4 (Nov. 30, 1998).

genuine demand, they are not manipulative. *See In the Matter of Bowen*, Release No. 41, 1993 WL 518667, at *19 (Dec. 8, 1993). Indeed, "a primary objective of the Exchange Act" is "to give investors markets where prices may be established by the free and honest balancing of investment demand with investment supply." *In the Matter of Pack*, Release No. 32374, 1993 WL 183820, at *2 (May 27, 1993) (citing H.R. Rep. No. 1383, 73d Cong., 2d Sess. (1934) at 11). "The laws that forbid market manipulation should not encroach on legitimate economic decisions lest they discourage the very activity that underlies the integrity of the markets they seek to protect." *See In re Amaranth Nat. Gas Commodities Litig., L.L.C.*, 587 F. Supp. 2d 513, 535 (S.D.N.Y. 2008).

In order to establish market manipulation under Section 10(b) and Section 206(1), the Division must demonstrate a strong inference of scienter.[22] *Aaron v. SEC*, 446 U.S. 680, 691, 100 S.Ct. 1945, 64 L.Ed.2d 611 (1980); *SEC v. Czarnik*, 2010 WL 4860678, at *6 (S.D.N.Y. Nov. 29, 2010). The Second Circuit has held that scienter can be established in the context of securities fraud by demonstrating motive and opportunity or strong circumstantial evidence of conscious misbehavior or recklessness. *In re Centerline Holding Co. Securities Litig.*, 380 Fed. Appx. 91, 92 (2d Cir. 2010). As detailed below, Argument Section I.A.1, *infra*, the Division has not established a motive for Mr. Koch to attempt to mark the close.

In the absence of a showing of motive, the inference of scienter can be raised by demonstrating "strong circumstantial evidence of conscious misbehavior or recklessness," "though the strength of the circumstantial allegations must be correspondingly greater if there is no motive." *ECA, Local 134 IBEW Jt. Pension Trust of Chicago v. JP Morgan Chase Co.*, 533

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[22] Section 206(2) carries a negligence standard, *see Aaron*, 446 U.S. at 692, but the Commission must still prove manipulation per the standards set forth herein. *See SEC v. Gotchey*, 1992 WL 385284, at *2 (4th Cir. Dec. 28, 1992).

F.3d 187, 198-99 (2d Cir. 2009) (citations omitted) (granting motion to dismiss where plaintiffs had not established strong circumstantial evidence of conscious misbehavior or recklessness). Further, "the inference of scienter must be 'more than merely plausible or reasonable – it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent.'" *SEC v. Czarnik*, 2010 WL 4860678, at *6 (S.D.N.Y. Nov. 29, 2010).

Assuming, however, that Respondents had the requisite intent – which they did not – the critical question is whether, in an alleged market manipulation case, intent to move a stock price in conjunction with purely legal acts is barred by Section 10(b) and Section 206. Three circuit courts have considered the issue.

First, the Third Circuit has held that intent plus a legal act does not constitute market manipulation. *See generally GFL Adv. Fund, Ltd. v. Colkitt*, 272 F.3d 189 (2001). In *GFL*, the court found that the at-issue short sales were not attributable to false information injected into the marketplace or other action which would *artificially* depress share prices. *See id.* at 204. The fact that the short sales may have contributed to a price decline did not matter, because there was no reason to believe that the price had gone down artificially; that is, the decrease was the produce of legitimate trading. *Id.* at 207. The court listed numerous cases in which short selling was problematic because it involved "some other deceptive practice" that did artificially affect the stock price. *Id.* On the other hand, the Third Circuit held, a claim for market manipulation requires deceptive behavior in conjunction with the activity at issue that either injects inaccurate information into the marketplace or creates artificial demands for the securities. *Id.* at 211.

Second, in *U.S. v. Mulheren*, the Second Circuit deliberately avoided directly deciding the issue. *See* 938 F.2d 364, 368 (1991). However, in overturning the defendant's convictions for market manipulation, the court found that there was no evidence of the defendant's subjective intent to move the share price; the government's evidence amounted only to the defendant's potential knowledge of various parties' positions in the stock, including some alleged knowledge gained through ambiguous conversation about the stock. *See id.* at 369-70. The court also pointed out that none of the "traditional badges of manipulation" were evident: there was no profit or personal gain to the alleged manipulator; the alleged manipulator purchased significantly more shares than would have been necessary simply to move the price; there was no evidence that any manipulation had been undertaken in the past; and the shares were purchased "conspicuously on the open market." *See id.* at 370-71. The court therefore, while avoiding the direct issue of whether intent plus legal acts can lead to liability, suggested that manipulation involving a legal act would require some other "traditional badge of manipulation." *Id.* And as the court noted, generally, "[w]hen [a] transaction is effected for an investment purpose . . . there is no manipulation, even if an increase or diminution in price was a foreseeable consequence of the investment." *Id.* at 368.

Third, the D.C. Circuit upheld liability for manipulation where the allegations ostensibly included only intent, but in fact relied on other indicia of manipulation. *Markowski v. SEC*, 274 F.3d 525, 530 (2001). The court pointed not only to the manipulative intent, but also noted that evidence, though not definitive, had been submitted that the defendant had purchased far more stock than could be explained by a genuine investment and in the underlying case there was deceptive conduct. *See id.* Thus the court was able to conclude that the facts of the case supported a manipulation finding.

In sum, although only the Third Circuit has adopted a *per se* rule against liability based only on pure intent and legal acts, the Second Circuit has suggested that indicia of manipulation beyond mere intent is required and the D.C. Circuit has relied on such indicia. All three courts have recognized recognize the inherent difficulty in distinguishing between wrongful and lawful trading activity in the absence of any actual wrongful act.

Thus, in order to rely on intent, courts generally look for a "plus factor" such as profits, numerous instances of the at-issue trading, or luring investors while selling personally held stock. Basing manipulation on open market transactions in the absence of such "plus factors" raises the grave risk of prohibiting otherwise lawful conduct and risks undercutting the statutory requirement that there be deceptive conduct. The Division should be required to introduce evidence of some "plus factor." *See Mulheren*, 938 F.2d at 368, 372. This is particularly true in view of the allegations in the OIP which is built on an artificial price, establishing a closing price and client deception – a plus factor.

In close cases where the evidence of manipulation is not clear, courts err on the side of finding that manipulation did not occur in cases involving lawful activity and only an alleged intent to manipulate. *See Mulheren*, 938 F.2d at 368, 372. Without deceptive conduct, courts are hard-pressed to find manipulation. *See In re Pfizer Securities Litig.*, 584 F. Supp. 2d 621, 640 (S.D.N.Y. 2008) ("Here, because Plaintiffs allege no deceptive course of conduct going beyond misrepresentations or omissions, their [Section 10(b)] market manipulation claims must be dismissed.").

Without a "plus factor" the Division must <u>at least</u> establish that but for the manipulative intent, the defendant would not have conducted the transaction. *See SEC v. Masri*, 523 F. Supp. 2d 361, 372 (S.D.N.Y. 2007). Stated differently, if a transaction has a legitimate economic purpose, the Division must establish that the at-issue trade would not have been made absent the alleged manipulative intent. *Id.*

A. <u>Respondents Did Not Manipulate the Market</u>

Here, Respondents sought and received best execution for their clients.[23] Tr. at 818 (Koch); Exh. 279 at SEC-KOCH 7156; Tr. at 591 (Christanell). The prices Respondents received in the at-issue purchases were a product of the market and, as such, were not artificial. Exh. R039 at 45, 50, 55, 60. Perhaps more importantly, KAM purchased shares of High Country, Cheviot and Carver as part of an on-going and highly successful investment program in accord with its undertaking to the clients. Since each acquisition was made for a legitimate economic purpose and not at an artificial price or to deceive clients, it is axiomatic that they could not have marked the close or failed to secure best execution – the Division's claims must fail.

1. <u>The Division Has Not Established the Requisite Scienter</u>

The Division has failed to establish the required scienter. Here the Division's assertion that Mr. Koch tried to mark the close in order to inflate the values on client brokerage statements is not supported by, and is contrary to, the record. The claim is built on Exh. 310 – which tabulates for all KAM accounts – including family accounts which is clearly wrong – the total impact of its claimed violations. Regardless of the propriety of this methodology it fails to support the Division's claim. No KAM client ever saw the numbers calculated by the Division. The only numbers KAM clients would see are those in their personal brokerage statements. If those numbers are calculated for the average KAM client, the impact is immaterial.

Likewise, the Division's assertion that Mr. Koch tried to mark the close to establish a high price and increase his quarterly advisory fees is also wrong. Assuming the Division's attempt to estimate those fees is correct – and it is not – the impact again was immaterial. Exh. R036 at 70. Its methodology is not correct however because it ignores the evidence. If there had

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[23] Best execution means getting the optimal combination of price, speed and liquidity for a securities trade. *See Kurz v. Fidelity Mgmt. & Rsch. Co.*, 556 F.3d 639, 640 (7th Cir. 2009).

been no trades in CHEV on December 31, 2009 and if Huntleigh inserted the bid price the statements of KAM clients, the undisputed evidence demonstrates that it would have no impact on KAM's quarterly fees since the firm would use a fair value to calculate the fees, not the Huntleigh value. Tr. at 704-05 (Heidtbrink).

The Division has also failed to present "strong circumstantial evidence" in lieu of a motive. The Division has failed to demonstrate that such evidence exists or even rebut Respondents' demonstration that the Division's arguments are flawed. First, KAM's trades did not set the closing price for CARV or CHEV on December 31, 2009. R039 at 31, 36. Without it the claim must as here fail, and the uncontroverted evidence demonstrates that KAM did not set the closing price for either security. Tr. at 1174 (Jarrell); R039 at 31. Indeed, as Professor Jarrell testified, this is a key element of a mark the close claim. Tr. at 1096-97 (Jarrell).

Second, there is no evidence that KAM's trading created an artificial price in CARV, CHEV or HCBC. The effect on CARV's price on December 31, 2009 was, if anything, minimal. Tr. at 1103 (Jarrell); R036 at 11. It cannot be disputed that in routing each segment of the KAM order's to the street for execution, and then having those order segments executed at market prices, that KAM and its clients obtained the then best available market price and best execution. Tr. at 591 (Christanell). This is consistent with the testimony of Mr. Koch who flatly denied any intent to mark the close. Tr. at 893 (Koch).

For example, the evidence demonstrates that the prices paid by KAM for HCBC stock on September 30, 2009 were the result of market forces and were not artificial. In view of the extreme illiquidity of the shares which make purchases and sales virtually comparable to a private negotiation, it is clear that any transaction will move the price:

"Q. So with HCBC, virtually any time you buy any significant amount of this stock you're going to move the price? A. Yes, sir. You're going to have to live with that. The alternative is don't transact in the stock. But that same reason, that same high bid-ask spread is also a good reason to buy and hold it for a long period of time. . . .And the fact that it's so illiquid can translate into huge long-term gains on that stock over time." Tr. at 1139 (Jarrell).

Since simply moving the price does not mean that an artificial price is created, and in view of the bid-ask bounce impact on the share price, the critical test of artificiality which is key to the notion of mark the close here is to compare the closing price to others for a two month period on either side of transaction. Tr. at 1116-1117 (Jarrell). On September 30, 2009 the closing price was $23.50. In the two months prior (eliminating KAM transactions) it was $23.48 and in the two months after (eliminating KAM transactions) it was $19.75. Exh. R039 at 45. Based on this analysis, which is not disputed by any evidence in the record, Professor Jarrell concluded that KAM's purchases on September 30, 2009 were comparable to other transactions. Tr. at 1117 (Jarrell). He put it this way: "If KAM had tried to buy those 2,000 share, but that large position, at an point in time in the prior two months, 23.48 would probably be the minimum price that they would have been able to pay and probably north of that . . . " Tr. at 1116 (Jarrell).

Mr. Schneider bolstered this view, testifying that KAM's transactions for Mrs. Smith's account followed a consistent pattern over time, in that trades made within the last three trading days of a month were made within the stock's price range for a particular period. Tr. at 983-88; Exh. R036 at 36-38.

Third, the record contains no evidence that KAM's purchases did not receive best execution in the market. To the contrary Mr. Christanell testified that when he executed these orders they received best execution. Tr. at 591 (Christanell). Absent this proof, the Division's claim regarding best execution fails.

Fourth, the record does not support the Division's claim that placing trades at the end of the month and at the end of the day is part of marking the close is not supported by the record. To the contrary, as Professor Jarrell testified it is well established that the markets are deeper and more liquid toward the end of the trading day and at the end of periods. Tr. at 1063 (Jarrell); Exh. R036 at 14-15. Mr. Koch confirmed this fact in his testimony. Tr. at 863 (Koch). This point is also supported by the experience of Mr. Christanell who stated that December 31, 2009 was a very busy day and at the end of the trading day he had five institutional orders to execute. Exh. 192.

Fifth, the Division's claim that using an order set at the ask price constitutes marking the close is simply wrong. As Professor Jarrell established in his uncontroverted testimony, to acquire a block of shares in an illiquid stock such as CARV an experienced trader knows that the price will have to be at the ask or above the bid. Tr. at 1089-90 (Jarrell).

Finally, Division attempts to support its allegations by relying on the testimony of Mr. Christanell, who claimed that KAM and Mr. Koch only wanted to establish a closing price at the end of each month for CARV, CHEV and HCBC is misplaced. Mr. Christanell's claim is not credible since it is contradicted by his own actions and uncontested facts in the record:

- On September 30, 2009 KAM purchased 2,000 shares of HCBC; Exh. R039 at 43;
- On October 30, 2009 KAM purchased 600 shares of HCBC; Exh. R039 at 48;
- On November 30, 2009 KAM purchased 2,000 shares of HCBC; Exh. R039 at 53;
- On December 30, 2009 KAM purchased 3,200 shares of HCBC, 6,667 shares of CHEV and 200 shares of CARV. Exh. R039 at 31, 36 & 58.

All of those shares – except for some CARV stock – were held until at least the time the accounts were transferred from KAM in the wake of the OIP.[24] Tr. at 922-24 (Koch). Thus Mr. Christanell's claim is flatly contradicted by his own actions since he acquired all of these shares for KAM.

Fifth, Mr. Christanell's contention that he only acted on the orders of Mr. Koch – another claim relied on by the Division in making its assertions – is also belied by his actions and the record in this case.

- On November 30 2009 Mr. Christanell purchased 2,000 shares of HCBC for KAM. Despite his claim to the contrary, an email he sent to Mr. Koch on that date after the close of the market established that he did not have an order from KAM for the purchase: "HCBC – Bot 2000 @ 17.245 – Sorry, just looked like someone had them for sale." Exh. 15. On cross-examination he admitted that Mr. Koch ratified the purchase after it was made. Tr. at 596 (Christanell). Mr. Koch confirmed the point in his testimony. Tr. at 889, 903-04 (Koch).
- The November 30, 2009 purchase was made under the general guidelines Mr. Koch provided of acquiring blocks of selected stocks such as HCBC at favorable prices when available in the market. Tr. at 903-04 (Koch).[25]
- On November 30, 2009 the last execution on Mr. Christanell's order was at 15:59:30, or 30 seconds before the close. It is undisputed that he did not route any orders to the street in the remaining 30 seconds in an effort to establish a closing price at or over $20 per share. Exh. 278; R 39 at 53.
- The December 31, 2009 tape fragments demonstrate that Mr. Christanell exercised his discretion in purchasing shares of CARV in terms of the limit order price and the size of the order. *See* Background Section II.A, *supra*.

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24 The Division's statement that Mr. Koch does not know what ultimately happened to the shares purchased on the dates at issue in this case is only partially correct. Division Br., ¶ 140. After the accounts were transferred out of KAM following the issuance of the OIP, Mr. Koch does not know what actions, if any, each account owner took with respect to his or her account as he testified. *See, e.g.*, Tr. 884-85 (Koch). However, prior to that time Mr. Koch does know what happened to the securities: they were held in the client accounts and not sold in accord with KAM's investment program, with the exception of CARV, due to Mr. Koch's changed assessment of the institution. Tr. at 922-24 (Koch).

25 It appears that Mr. Christanell also made the purchases of HCBC shares in October pursuant to this standing grant of authority and that Mr. Koch ratified the transaction after the fact. *See* Background Section II.C.2, *supra*.

Sixth, Mr. Christanell's claims at the hearing that he tried repeatedly to mark the close is belied by his actions at the time of placing the trades:

- As a market professional for 15 years he knew the meaning of marking the close. Tr. at 476 (Christanell).

- He knew he was prohibited from manipulating the market or marking the close. Tr. at 544-45 (Christanell).

- He knew if a client attempted to engage in prohibited conduct that he was required to report it to the compliance department. Tr. at 545 (Christanell).

- He failed to make any report to the compliance department regarding any of the purchase orders he executed for Mr. Koch and KAM in the fourth quarter of 2009. Tr. at 544-545 (Christanell).

- When confronted with a claim of marking the close he wrote in his U-5 that he had done noting wrong. Exh. 25.[26]

Seventh, Mr. Christanell's claims that he tried repeatedly to mark-the-close are contrary to his own actions in executing purchase orders for KAM:

- On November 30, 2009 the last execution on Mr. Christanell's order was at 15:59:30 (3:59:30 p.m. EST) or about 30 seconds prior to the close. Exh. 278 at 3. He did not route any orders to the street in the remaining 30 seconds of the trading day to try and establish a higher closing price. *Id.*

- On October 30, 2009 the last execution on Mr. Christanell's order was at 15:47:36 (3:47:36 p.m.) or about 12.6 minutes prior to the close. Exh. 278; R039 at 49. He did not route any orders to the street in the remaining 12.6 minutes of trading to try and establish a higher closing price. *Id.*

- On September 30, 2009 the last execution on Mr. Christanell's order was at 15:59:43 (3:59:43 p.m.). Exh. 278; R039 at 43. He did not route any orders to the street in the remaining 12.6 minutes of trading to try and establish a higher closing price. *Id.*

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[26] Only now after the expiration of the one year bar from the securities industry in his settlement with the Commission has expired and he is eligible to apply for re-entry to the securities business under circumstances where acceptance of responsibility is critical has he claimed that the purchase orders he executed for KAM were intended to be manipulative. *See In the Matter of Huntleigh Securities Corp. and Jeffrey S. Christanell*, Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, dated April 25, 2011, at 6.

Eighth, the Division's claim that Mr. Koch tried to mark the close when purchasing CARV to inflate the values on the monthly statements received by firm clients is incorrect and not supported by the evidence. The claim is based on Exhibit 310 which is incorrect and based on a flawed assumption:

- The Exhibit includes all advisory and family clients. It is beyond cavil that Mr. Koch had no reason to inflate his own account statements or those of his family.
- The tabulations for all the advisory clients are based on the incorrect assumption that the millions of dollars in value listed in the exhibit would be seen by KAM clients and some how influence them. There is no evidence that the chart or the totals listed on the chart were ever seen or even available to KAM client.
- Rather, the evidence demonstrates that each client received their monthly account statement. Tr. at 139-40 (Marshall). Thus, the only values that would be seen by a KAM client would be those on their statements. Any impact on the individual monthly statements would have been immaterial. Appendix A at III.[27]
- To the contrary, if the goal was to inflate the values on the monthly statements as claimed by the Division, KAM and Mr. Koch would have selected other stocks which were more widely held by clients. Indeed, CHEV is not even included in the list of the 10 most widely held stock among KAM clients. R036 at 50.[28]

Finally, the Division's claim that Mr. Koch marked the close to inflate KAM's fees in September and December are not supported by the record.

- The increase in the fees for the third and fourth quarters of 2009 show that the amounts would have been immaterial even assuming the calculations are correct, which they are not. Exh. 311.

27 Appendix A contains a table which calculates the percentage increase in the value of the average portfolio for each stock in this action and as a composite utilizing the methodology followed by the Division. In each instance the impact is immaterial. The values in Appendix A were calculated from the Division's chart and its Exhibits 258-60 and 275-77.

28 The Division's efforts craft a motive for fraud from a series of communications between Mr. Koch and Huntleigh regarding the ability of clients to review their brokerage records online and the firm's pricing policy for monthly statements for stock that do not trade on the last day of the month is misguided. Division's Br., ¶¶ 31-36, 54-55. As Ms. Marshall explained, Mr. Koch always received the same information as his clients. When online access was instituted it was the first time that the clients would have a service from the broker that Mr. Koch would not receive. Tr. at 177-78 (Marshall). In any event, if the concern was the value inserted by the firm on the monthly account statements, KAM could easily and without cost put a bid in the market on days such as September 30 and December 30 when there were no trades except theirs which would have set a value or purchased a small quantity of stock. *See* Exh. 12. There was no need to buy large blocks of securities.

- In calculating the fees for the two quarters the Division attempted to adopt the Huntleigh method for inserting a value on the brokerage statements when a security did not trade on the last day of the month. This is not the method KAM used. Thus the calculation is inapposite.[29]

- It is undisputed that if a stock did not trade on the last day of the month that KAM calculated the fair value of the security and used that value to calculate fees. A notice regarding the calculation was attached to the billing statement. Tr. at 704-05 (Heidtbrink). No client ever called to complain. Tr. at 704 (Heidtbrink).

2. Alleged Intent Coupled With Lawful Activity Should Not Support Market Manipulation Allegations

The record here contains no evidence of any "plus factor." Respondents did not set the closing price for either CARV or CHEV on December 31, 2009. Nor did their trading in HCBC on any of the four dates at issue result in a real impact on the price; rather, the closing prices for HCBC on those dates were in keeping with the ask price for HCBC in the surrounding months. Respondents did not conduct the type of trading at issue on numerous occasions. Respondents held the stock they acquired; they did not lure investors into the market and then dump the stock. Respondents did not gain substantial fees as a result of their allegedly manipulative trading activity. Even if Respondents had been attempting to increase their clients' portfolios overall – which they were not – they would have done so by trading in stocks more widely held by their clients for greater increases across the board; HCBC was only the sixth most widely held stock, CHEV was ninth, and CARV was not even in the top ten stocks most widely held by KAM clients. Tr. at 1001-02 (Schneider); Exh. R036 at 50.

Here, even if intent is assumed – which Respondents maintain it cannot be given their overall trading philosophy and strategy, coupled with their genuine desire to acquire and hold the

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[29] Assuming that Mr. Koch was attempting to inflate the values on client brokerage statements or KAM's fees, the three securities here would not have been the appropriate vehicles. The most widely held stock by KAM clients is First Niagara Fin Group followed by Ocean First Financial, New Alliance Bancorp and Pulaski Bank. High Country is only number on the top ten list while Carver is number nine. Cheviot or CHEV does not appear on the top ten list. Exh. R036 at 50.

at-issue stock – that alleged intent can be coupled only with lawful activity. That is insufficient to sustain a charge of market manipulation and fails to prove the key elements in the OIP.

The fact that KAM placed orders at the close of the market also fails to support a claim of marking the close. The academic literature firmly establishes that the end of the trading day is when there is the most liquidity. Exh. R039 at 14-16. Accordingly, this is a particularly good time to try and purchase illiquid stocks such as HCBC. Tr. at 1136-37 (Jarrell). Moreover, trading late in the day is an entirely legal activity.

Similarly, the fact that Mr. Koch directed that the limit orders be priced over the then bid price does not support a claim of mark the close. To the contrary, to acquire a block of an illiquid stock such as HCBC the purchaser is going to have to pay a premium such as this.[30] Tr. at 1117 –1118 (Jarrell). Thus it is the norm, and in no way unlawful, to purchase illiquid stocks at or close to the ask price.

Moreover, the fact that KAM's trading constituted 100% of the trading volume on September 30 as stated by the Division does not support an inference that the purchases were manipulative. Division Br., ¶ 58. If this were true then any trader who placed purchased or sold HCBC shares on any of the 212 trading days when the stock did not trade would be guilty of market manipulation. Exh. R039 at 25; Exh. R036 at 34. Indeed, this position would also suggest that the traders who sold KAM the 2,000 shares of HCBC on September 30 were also

[30] The Division's claim that the intra-day trading price of $24 per share KAM paid to acquire 120 shares supports is the highest price paid for HCBC shares since the date of the transaction is based on a faulty comparison. The Division's chart attempts to compare an intra-day trading price with a series of closing prices. Exh. 316. As previously noted, the two are not the same.

The Division's chart, Exhibit 316, attempts to compare an HCBC intra-day trading price on September 30, 2009 with closing prices after that time. The two are not the same. Indeed, if a comparison is made to intra-day trading prices prior to the KAM transaction, it is clear that there at some points the shares did trade at or over the intra-day high for September 30. Appendix B at 10-11. This would give KAM and Mr. Koch more than a reasonable basis for the transactions, particularly in view of the extensive analysis done to determine the maximum average share price that clients should pay.

complicit in market manipulation since KAM could only be 100% of the volume if those sellers participated in the market. And there is nothing illegal about being the only purchaser of a stock on a given day.

In the end, there is no evidence of or even a credible allegation of deceptive conduct here. As such, Respondents' lawful activity coupled only with an alleged intent can not support a claim of market manipulation. This is particularly true here in view of the allegations in the OIP.

3. Respondents Had a Legitimate Purpose For Their Trades

Without a "plus factor" the Division must at least establish that but for the manipulative intent, the defendant would not have conducted the transaction. *See SEC v. Masri*, 523 F. Supp. 2d 361, 372 (S.D.N.Y. 2007). Stated differently, if a transaction has a legitimate economic purpose, the Division must establish that the at-issue trade would not have been made absent the alleged manipulative intent. *Id.*

Here that is clearly not the case. Respondents had a clear legitimate purpose in seeking to acquire CARV, CHEV and HCBC stock. Respondents' investment philosophy was to acquire illiquid bank stocks and hold them for at least five to ten years. Trading to mark the close would not further that strategy. Even more specifically, Respondents made the at-issue trades here in order to acquire stock for clients who had significant cash holdings and needed long-term equity investments; investment in stable long-term equities would yield a minimum of 4%, while holding cash in sweep accounts result in only minimal yield.

The trades at issue here reflected the genuine operation of supply and demand principles. The record contains no evidence that the prices for the stocks was artificial. Indeed, the pricing was consistent with the days and months surrounding the four days at issue here. There is therefore no requisite causal link between Respondents' activity and any artificial price.

Furthermore, the transactions benefited KAM clients. The HCBC trades on September 30, 2009 and October 30, 2009 were allocated to Alice Smith's account; the HCBC trades on November 30, 2009 were allocated to Philip Smith's account. Tr. at 873, 889 (Koch). In doing so, Mr. Koch was seeking to provide those accounts, which had a significant amount of cash, with high yielding securities. Tr. at 872-73 (Koch). KAM's purchases of HCBC stock on September 30, 2009 thus benefited a long time client by putting idle cash to work in accord with the investment program selected by Mrs. Smith. Tr. at 907-08 (Koch).

The CARV, CHEV and HCBC trades on December 31, 2009 were allocated to long time KAM client Tampsco. Tr. at 907; Exh. 036 at 44. This put a valuable asset in the client account, investing idle cash making virtually no return to work for the benefit of the client. Tr. at 907-08 (Koch). Further, the investment was in accordance with KAM's investment strategy which the client agreed to when first becoming a client in 1993. Exh. R006, ¶ 1; Tr. at 798 (Koch). That strategy had proven to be very successful for Tampsco and other KAM clients over the years. Tr. at 1003-04 (Schneider); R036 at 53; Tr. at 807-08 (Koch).

In the end, there is no evidence in the record that Mr. Koch did not have a valid economic reason for making the at-issue trades. Further, the record contains no evidence that, but for an improper motive, Mr. Koch would not have made the trades. The Division has wholly failed to prove its case.

II. <u>Respondents' Books and Records Complied With the Advisers Act</u>

Under Rule 204-2(7) of the Advisers Act, an investment adviser must maintain "[o]riginals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security:

Provided, however, (a) That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and *(b)* that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof." Advisers Act Rule 204-2(a)(7).

Mr. Koch and KAM kept and maintained well kept systems of records for all client transactions maintained all records required under Rule 204-2(a)(7). Tr. at 822 (Koch); Tr. at 684-85 (Heidtbrink). KAM retained every trade confirmation, a trade log, the trade allocation sheets, monthly statement, request for funds, and copies of checks from the brokerage house to clients for funds withdrawn. Tr. at 822-23 (Koch); Tr. at 684-85 (Heidtbrink). And as Mr. Schneider testified, KAM tracks client accounts in its MMP system, through which it also provides clients with quarterly statements. Tr. at 1005-06 (Schneider); Exh. R036 at 55.

The Division's claim that KAM and Mr. Koch failed to properly respond to its document requests during the underlying investigation is simply wrong. The claim appears to be based on the claim that KAM did not produce one email, Exhibit 148, from Mr. Koch to Mr. Christanell which was produced by the brokerage firm. Failing to produce one email does not constitute an inadequate response.

The Division's claim that KAM and Mr. Koch produced a "redacted" version of Exhibit 150, which is what became Exhibit 151 at trial, is wrong. Division Br., ¶ 43. There is no evidence that Exhibit 151 produced by KAM is redacted. While it is correct that Exhibit 150 is an email chain and the final portion of that chain appears in Exhibit 151 as produced by KAM that does not mean that the document is redacted. Notably, Exhibit 151 clearly states on its face that it is "page 1 of 1," while Exhibit 150 runs onto a second page. Exh. 151; Exh. 150.

Moreover, Exhibit 150 is clearly a chain of emails between Messrs. Koch and Christanell. There is no copy to Fay Heidtbrink, Mr. Koch's assistant. Yet Exhibit 151 produced by KAM clearly shows came from Ms. Heidtbrink as the Division admits. Exh. 151. The email on its face is the final tabulation of the trades for the day. The undisputed testimony establishes that Mr. Koch (or if he was unavailable Huntleigh) forward the final trades for the day to Ms. Heidtbrink since it was her task to allocate the shares to the proper client account and record the transaction in the firm's records. Tr. at 700 (Heidtbrink). Thus, in the normal course of KAM's business Exhibit 151 would have been forwarded to Ms. Heidtbrink. There was no need to send her the entire email chain since it did not contain information necessary for her to complete her responsibilities. In any event, if the Division in fact thought the email was redacted it should have raised the issue on cross-examination of Mr. Koch, Ms. Heidtbrink or John Schneider who examined KAM's productions. Its failure to do so undercuts its claim which, in nothing more than speculation.

At any rate, Respondents produced many pages of documents in response to the Division's subpoena during its investigation of this matter, and conducted a forensic search of their files and produced all responsive documents resulting from that search. Tr. at 1009 (Schneider); Exh. R036 at 57.

The Division posits that Respondents destroyed the email because of the supposedly incriminating information they contained. This is simply more unsupported speculation. As the

Division well knows, Respondents produced other emails and information that it has relied upon in its case. Tr. at 1009 (Schneider); Exh. R036 at 57; Tr. at 716-17 (Heidtbrink). In particular, Respondents produced the December 28, 2009 email that the Division has relied upon as evidence that Respondents attempted to mark the close, as well as other emails that the Division would couch as inculpatory. Exh. R033; Exh. 186; November 29, 2010 letter from S. Sherman to J. Riewe and A. Aderton attaching documents for production, at KAM7052-55 (attached hereto as Exhibit 1). Thus there is no reason to draw any inference from this email other than Respondents diligently collected documents in response to the Division's requests and should not be held in violation of Rule 204-2(a)(7) on the basis of one email.

III. Respondents' Policies and Procedures Complied With the Advisers Act

Section 206(4) of the Advisers Act states that an adviser may not engage "in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative." Advisers Act Section 206(4). Under Rule 206(4)-7 of the Advisers Act, an investment adviser must (1) adopt and implement written policies and procedures reasonably designed to prevent violation by the adviser or its supervised persons, of the Advisers Act and the rules that the Commission has adopted under the Advisers Act; (2) review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to Section 206(4) and the effectiveness of their implementation; and (3) designate an individual (who is a supervised person within the meaning of the Advisers Act[31]) responsible for

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31 A "supervised person" under the Advisers Act is "any partner, officer, director (or any other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser." Section 202(a)(25).

administering the policies and procedures that the adviser adopts under Rule 206(4)-7(a). Advisers Act Rule 206(4)-7.

In commenting on the application of its rules to a small business the Commission has noted "[b]ecause [] small firms typically engage in a limited number and range of transactions and have one or two employees, their internal compliance programs would be markedly less complex than those of their large firm counterparts. In addition, we anticipate that these firms will turn to a variety of industry representatives, commentators, and organizations that have developed outlines and model programs that these firms can tailor to fit their own situations." *In re Compliance Programs of Investment Companies and Investment Advisers*, Release No. 2107, at *11 (Feb. 5, 2003); *see also Custody of Funds or Securities of Clients by Investment Advisers*, Release No. 2968, at *18 (Dec. 30, 2009). KAM, by hiring counsel and drafting its own manual, therefore went beyond what the Commission anticipated an essentially one-person firm would do in implementing policies and procedures to comply with Rule 206(4)-7.

KAM implemented its procedures in the only manner possible by taking two steps. First, it designated a chief compliance officer, Mr. Koch. Since the firm is a sole proprietorship he is the only person who could assume that role.

Second, the firm's procedures were bolstered in the only manner possible, through transparency. It maintained detailed records of each client transaction. Each quarter with its billing statements, the firm furnished clients with an update of their positions. Tr. at 695 (Heidtbrink). This supplemented the monthly statements furnished to each client by their brokerage firm. Tr. at 695 (Heidtbrink); Tr. at 139 (Marshall). In addition, each client received a confirmation of each purchase or sale of a security from their account by KAM. Tr. at 138

(Marshall). Finally, KAM clients at Huntleigh Securities also had the ability to monitor their accounts on line. Tr. at 47-48 (Marshall).

Accordingly, each KAM client could fully monitor each transaction in their account. If there was any question, it could be immediately presented it to Mr. Koch. The firm has not received client complaints. Tr. at 684 (Heidtbrink). Thus KAM's actions were thus fully monitored in the only manner possible, and perhaps the most effective since the securities positions belonged to the clients.

CONCLUSION

The Division has wholly failed to prove the key allegations in the OIP.[32] It has failed o demonstrate that Mr. Koch and KAM engaged in marking the close, did not get best execution, failed to keep the required records or that KAM did not properly implement its policies and procedures. To the contrary the record here demonstrates that Mr. Koch and KAM did not violate Section 10(b) of the Exchange Act, Sections 206(1) and 206(2) of the Advisers Act,

[32] In the event the Court finds against Respondents, the damages the Division has suggested vastly exceed the alleged wrongdoings and gains. Division Br. at 62-71. First, a cease-and-desist order is unnecessary, as Respondents are no longer in the investment advisory business and there is little likelihood that they ever will be again. *SEC v. Perez*, 2011 WL 5597331, at *5 (S.D. Fla. Nov. 17, 2011). Mr. Koch has amended his ADV, indicating that he is retired. Tr. at 922 (Koch). KAM's registration with the SEC expires in March 2012 and it cannot reregister with the state of Missouri, which it would now have to under the Dodd-Frank Act, due to this proceeding. Tr. at 787, 922 (Koch). At any rate, KAM no longer has any clients. Tr. at 922 (Koch). Similarly, a permanent bar from the industry, as with a cease-and-desist order, would serve little purpose where both Mr. Koch and KAM are already effectively out of the industry. Any argument that Mr. Koch has failed to accept responsibility for his actions is at odds with his right to defend this action. *See id.* In that vein, the Division's mention of settlement discussions is not probative of whether Mr. Koch should be barred from the industry. Division Br., ¶ 139.

Second, an order of disgorgement would be minimal, given the *de minimis* alleged gains – a slight increase in fees – to Respondents. Exh. R036 at 72. Along those lines, a third tier civil penalty is wholly out of keeping with the alleged gains. The Division's chart in support of its argument for a third tier penalty is flawed for at least two glaring reasons. Division Br. at 67. One, it makes it appear as though the alleged total increase in client accounts is the amount that Respondents gained from their alleged wrongful acts. Even if Respondents had committed those acts, they did not receive millions of dollars; rather, they would have received the modest increase in fees depicted in Appendix A, even using the Division's flawed calculations. Appendix A at III. Two, the figures are themselves miscalculated, and, for example, include all of the Koch family accounts, for which no fees were paid and for which there would be no reason to overstate the portfolios. *See* Appendix A at I.

Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, or Section 204 of the Advisers and Rule 204-2(a)(7). Rather, they acted only in accord with KAM's long established and very successful investment policies for the benefit of firm clients.

Accordingly, Respondents respectfully request that the proceeding be dismissed.

Dated: February 29, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondent Donald L. Koch and Koch Asset Management, LLC's Post-Hearing Memorandum of Law was filed with the Secretary's office at the Securities & Exchange Commission, served on Judge Carol Fox Foelak and Suzanne J. Romajas at 100 F Street, N.E., Washington, D.C. 20549 by hand on February 29, 2012, and by e-mail at RomajasS@sec.gov on February 29, 2012.

/s/ Thomas O. Gorman
Thomas O. Gorman

Appendix A

I. The Division alleges that Koch overstated the value of KAM accounts by a total amount of $3,578,379.88. The Division's figure, however, contains an error in the number of shares owned by a Koch family account; therefore, the Division calculation should have been $3,578,840.68, or a difference of $460.80. Additionally, the Division calculated overstatement included Koch family accounts that should be excluded as follows:

A. The Division did not properly exclude the Koch family accounts. As such, the Division's proposed findings are overstated by $895,274.28, offset by the $460.80 difference mentioned above, or net $894,813.48.

B. The Division's assessed overstatement should be amended to exclude the figure calculated directly above, as follows:

Reconciliation		
Division assessed overstatement	$	3,578,379.88
Less: Koch and family account, calculated per Division	$	(895,274.28)
Add: Error in Division calculation		460.80
Adjustments to Division alleged overstatement		**(894,813.48)**
Revised overstatement considering adjustments to the Division methodology	$	2,683,566.40

CONCLUSION: The Division's calculated alleged overstatement appears to be overstated by **$894,813.48**.

II. The Division exhibited the alleged total portfolio overstatement, but each advisory client account should be reviewed individually as clients only see his/her individual monthly statement. Furthermore, the Division used dollar amounts in their calculation, but using dollar amounts is misleading because each account has different amounts in their portfolio; therefore, using percentages is a more appropriate illustration.

Assuming that the Division's alleged overstatement calculation is accurate and excluding the Koch and family accounts, the impact on the average individual accounts would be as follows:

Security	Date	No. of Non-Koch Accounts Holding Security	Average Shares Held per Non-Koch Account	Average Portfolio Value	Average Non-Koch Accounts Overstatement	Average Non-Koch Accounts Overstatement
HCBC	09/30/2009	26	3,842	$ 1,136,863.97	$ 45,339.23	4.0%
HCBC	10/30/2009	26	3,865	$ 1,090,454.31	$ 22,225.23	2.0%
HCBC	11/30/2009	26	3,942	$ 1,105,417.01	$ 13,758.65	1.2%
HCBC	12/31/2009	27	3,915	$ 1,129,976.55	$ 7,829.63	0.7%
CARV	12/31/2009	35	6,195	$ 1,096,738.57	$ 10,221.33	0.9%

III. The Division alleged that investor advisor fees were overstated. Assuming that the Division's alleged overstatement calculation is accurate (which it is not, as discussed in I, above), and excluding the Koch and family accounts as these are not subject to investor advisor fees, the impact on the individual accounts would be as follows:

Security	Date	Increase in Fees due to Overstatement	No. of Accounts with Waived Fees	Increase in Fees due to Overstatement (excludes accounts with waived fees)
HCBC	09/30/2009	$ 2,947.05	5	$ 2,832.00
HCBC	12/31/2009	$ 528.50		$ 509.00
CARV	12/31/2009	$ 894.37		$ 828.78
	Subtotal	$ 1,422.87	9	$ 1,337.78
	TOTAL	**$ 4,369.92**		**$ 4,169.78**

Appendix B

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
1/2/2008							
1/3/2008						20.25	
1/4/2008						20.25	
1/7/2008						20.25	
1/8/2008						20.25	
1/9/2008						20.25	
1/10/2008	100	20.25	20.25	20.25	20.25	20.25	
1/11/2008						20.25	
1/14/2008						20.25	
1/15/2008						20.25	
1/16/2008						20.25	
1/17/2008						20.25	30.00
1/18/2008						20.25	
1/22/2008							
1/23/2008						20.25	
1/24/2008	279	22.00	22.00	30.00	30.00	19.10	22.00
1/25/2008						19.10	22.00
1/28/2008							
1/29/2008						19.25	
1/30/2008						19.25	
1/31/2008						19.25	25.00
2/1/2008						19.25	
2/4/2008	150	25.00	25.00	25.00	25.00	19.25	
2/5/2008							
2/6/2008							
2/7/2008							
2/8/2008	3,500	19.25	19.25	19.25	19.25	19.25	25.00
2/11/2008							
2/12/2008							
2/13/2008							
2/14/2008							
2/15/2008							
2/19/2008						19.25	25.00
2/20/2008						19.25	
2/21/2008						19.25	25.00
2/22/2008						19.25	
2/25/2008						19.25	
2/26/2008						19.25	30.00
2/27/2008						19.25	25.00
2/28/2008							
2/29/2008						19.25	25.00

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
3/3/2008							
3/4/2008							
3/5/2008						19.25	
3/6/2008						19.25	
3/7/2008						19.25	22.00
3/10/2008	17,240	19.50	19.50	19.50	19.50		
3/11/2008						19.50	
3/12/2008							
3/13/2008						19.50	
3/14/2008						19.50	22.00
3/17/2008	200	19.50	19.50	19.50	19.50	18.00	19.50
3/18/2008						18.10	19.50
3/19/2008						18.10	19.50
3/20/2008	800	19.50	19.50	19.50	19.50		
3/24/2008	1,000	18.00	18.00	18.30	18.30	18.00	
3/25/2008						18.00	
3/26/2008	300	18.00	18.00	18.25	18.25		
3/27/2008						17.00	19.75
3/28/2008						16.10	25.00
3/31/2008							
4/1/2008						17.00	19.75
4/2/2008						17.00	19.75
4/3/2008						17.00	19.75
4/4/2008						16.10	19.75
4/7/2008						16.10	19.75
4/8/2008							
4/9/2008						17.00	19.75
4/10/2008							
4/11/2008							
4/14/2008						16.10	19.75
4/15/2008						17.00	19.75
4/16/2008						17.00	19.75
4/17/2008						17.00	19.75
4/18/2008						16.60	19.75
4/21/2008						16.35	19.75
4/22/2008	1,473	19.75	19.75	25.00	24.50	20.00	24.50
4/23/2008						20.00	24.50
4/24/2008	200	24.50	24.50	24.50	24.50	20.00	24.50
4/25/2008	500	20.00	20.00	20.00	20.00	20.25	
4/28/2008	525	20.25	20.00	20.25	20.00	19.55	
4/29/2008						19.55	

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
4/30/2008						19.55	24.50
5/1/2008						19.55	
5/2/2008	100	19.55	19.55	19.55	19.55	19.80	
5/5/2008						19.80	
5/6/2008						20.00	25.00
5/7/2008						19.80	24.50
5/8/2008						20.00	24.50
5/9/2008						20.00	
5/12/2008							
5/13/2008						19.52	24.50
5/14/2008						19.52	24.50
5/15/2008							
5/16/2008						19.53	
5/19/2008						19.53	24.50
5/20/2008						19.53	20.00
5/21/2008							
5/22/2008						19.53	24.50
5/23/2008						19.53	20.00
5/27/2008						19.53	24.50
5/28/2008						19.53	20.00
5/29/2008						19.60	
5/30/2008						19.60	20.00
6/2/2008						19.75	20.00
6/3/2008	1,500	20.00	19.80	23.50	19.80	19.75	23.00
6/4/2008						19.75	23.00
6/5/2008						19.75	23.00
6/6/2008						19.60	23.00
6/9/2008						19.75	23.00
6/10/2008						19.80	24.50
6/11/2008						20.00	24.50
6/12/2008						20.00	24.50
6/13/2008						19.80	
6/16/2008						20.00	24.50
6/17/2008						19.55	
6/18/2008						20.25	24.50
6/19/2008						20.30	24.50
6/20/2008						20.30	24.50
6/23/2008						20.30	24.50
6/24/2008						20.30	
6/25/2008						20.25	24.50
6/26/2008						20.50	24.50

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
6/27/2008						19.55	
6/30/2008						20.55	23.42
7/1/2008						20.50	23.42
7/2/2008						20.75	23.42
7/3/2008						20.55	
7/7/2008						20.75	23.42
7/8/2008						20.75	23.42
7/9/2008						20.75	23.42
7/10/2008						20.75	23.42
7/11/2008						20.80	
7/14/2008						20.80	23.42
7/15/2008							
7/16/2008						21.00	23.42
7/17/2008						21.00	23.42
7/18/2008	1,072	21.00	21.00	21.00	21.00	20.55	23.42
7/21/2008	400	20.55	20.50	20.55	20.50	19.52	20.50
7/22/2008						19.52	20.50
7/23/2008						19.52	20.50
7/24/2008						19.52	20.50
7/25/2008						19.52	20.50
7/28/2008						19.52	20.30
7/29/2008						19.52	20.30
7/30/2008						19.52	20.30
7/31/2008						19.52	20.30
8/1/2008						19.55	20.30
8/4/2008						19.55	20.30
8/5/2008						19.55	20.30
8/6/2008						19.52	20.30
8/7/2008						19.52	20.30
8/8/2008						19.52	20.30
8/11/2008	600	20.00	19.58	20.00	20.00	19.58	20.00
8/12/2008						19.00	20.00
8/13/2008	750	20.00	20.00	20.00	20.00	19.60	20.00
8/14/2008						19.60	20.00
8/15/2008							
8/18/2008						19.60	20.00
8/19/2008						19.60	20.00
8/20/2008						19.60	20.00
8/21/2008						19.60	20.00
8/22/2008						19.60	20.00
8/25/2008						19.58	20.00

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
8/26/2008						19.60	20.00
8/27/2008						19.60	20.00
8/28/2008						19.60	20.00
8/29/2008	100	19.60	19.60	19.60	19.60	19.60	20.00
9/2/2008						19.58	20.00
9/3/2008						19.70	20.00
9/4/2008						19.70	20.00
9/5/2008						19.70	20.00
9/8/2008						19.70	20.00
9/9/2008						19.70	20.00
9/10/2008						19.70	20.00
9/11/2008							
9/12/2008						19.70	20.00
9/15/2008	300	19.70	19.70	19.70	19.70	19.70	20.00
9/16/2008						19.70	20.00
9/17/2008						19.70	20.00
9/18/2008	359	19.70	19.70	19.70	19.70	19.70	20.00
9/19/2008						19.70	20.00
9/22/2008						19.70	20.00
9/23/2008						19.70	20.00
9/24/2008						19.70	20.00
9/25/2008	578	19.70	19.70	19.70	19.70	19.70	20.00
9/26/2008						19.00	
9/29/2008						19.70	20.00
9/30/2008						19.70	20.00
10/1/2008						19.70	20.00
10/2/2008	500	20.00	20.00	20.00	20.00	19.70	20.00
10/3/2008	445	19.70	19.70	19.70	19.70	19.00	20.00
10/6/2008						19.00	20.00
10/7/2008						19.00	20.00
10/8/2008							
10/9/2008						18.00	20.00
10/10/2008						18.00	19.70
10/13/2008						19.00	19.70
10/14/2008						19.00	19.70
10/15/2008						19.00	19.70
10/16/2008						19.00	19.70
10/17/2008						19.00	
10/20/2008						19.00	20.00
10/21/2008						19.00	20.00
10/22/2008						19.00	20.00

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
10/23/2008						19.00	20.00
10/24/2008							
10/27/2008						19.00	20.00
10/28/2008						19.00	20.00
10/29/2008						19.00	20.00
10/30/2008						19.00	20.00
10/31/2008						19.00	
11/3/2008						15.00	20.00
11/4/2008						19.00	20.00
11/5/2008						18.00	20.00
11/6/2008	925	20.00	20.00	20.00	20.00	19.00	
11/7/2008	400	19.00	16.00	19.00	16.00	16.00	19.50
11/10/2008							
11/11/2008							
11/12/2008	100	18.00	18.00	18.00	18.00	16.05	18.00
11/13/2008						16.05	18.00
11/14/2008						16.05	18.00
11/17/2008						16.05	18.00
11/18/2008							18.00
11/19/2008						16.05	18.00
11/20/2008						16.05	18.00
11/21/2008						16.05	18.00
11/24/2008						16.05	18.80
11/25/2008						16.05	18.80
11/26/2008						16.05	18.80
11/28/2008						16.05	18.80
12/1/2008	1,184	18.80	18.80	19.00	19.00		19.00
12/2/2008						16.05	19.00
12/3/2008						16.05	19.00
12/4/2008						16.05	19.50
12/5/2008							19.50
12/8/2008						16.05	
12/9/2008						16.05	19.50
12/10/2008	350	16.05	13.00	16.05	13.00	13.00	18.00
12/11/2008						13.00	18.00
12/12/2008						13.05	18.00
12/15/2008						13.05	18.00
12/16/2008						13.05	18.00
12/17/2008						13.05	18.00
12/18/2008						13.05	18.00
12/19/2008						13.05	18.00

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
12/22/2008						13.05	18.00
12/23/2008						13.05	18.00
12/24/2008						13.05	18.00
12/26/2008						13.05	18.00
12/29/2008						13.05	18.00
12/30/2008						13.05	18.00
12/31/2008						13.15	18.00
1/2/2009						13.15	18.00
1/5/2009						13.15	18.00
1/6/2009						13.15	18.00
1/7/2009						13.15	18.00
1/8/2009						13.15	18.00
1/9/2009						15.05	17.45
1/12/2009						15.05	17.45
1/13/2009						15.05	17.45
1/14/2009	622	15.00	13.58	15.00	15.00	13.25	
1/15/2009						13.25	
1/16/2009						13.15	19.50
1/20/2009						13.25	19.50
1/21/2009						15.00	19.50
1/22/2009						15.00	19.50
1/23/2009						15.00	19.50
1/26/2009						15.00	19.50
1/27/2009	1,216	15.00	13.50	15.00	13.50	13.25	15.00
1/28/2009						13.25	15.00
1/29/2009						13.25	15.00
1/30/2009						13.25	15.00
2/2/2009						10.26	15.00
2/3/2009						10.30	15.00
2/4/2009						13.10	15.00
2/5/2009						10.30	15.00
2/6/2009						10.30	
2/9/2009						10.30	15.00
2/10/2009						10.30	15.00
2/11/2009						10.30	15.00
2/12/2009						10.30	15.00
2/13/2009						10.30	15.00
2/17/2009						10.30	15.00
2/18/2009						10.30	15.00
2/19/2009						10.30	15.00
2/20/2009						10.30	15.00

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
2/23/2009						10.30	15.00
2/24/2009						10.30	15.00
2/25/2009	200	13.50	13.50	13.50	13.50	10.30	15.00
2/26/2009						10.30	15.00
2/27/2009						10.30	15.00
3/2/2009							
3/3/2009	262	10.30	10.30	13.50	13.50		
3/4/2009							
3/5/2009							
3/6/2009							
3/9/2009							
3/10/2009							
3/11/2009							
3/12/2009							
3/13/2009							
3/16/2009							
3/17/2009							
3/18/2009							
3/19/2009	472	15.00	13.50	15.00	13.50		
3/20/2009							
3/23/2009							
3/24/2009							
3/25/2009							
3/26/2009							
3/27/2009							
3/30/2009							
3/31/2009	1,700	15.00	13.50	15.25	13.50		
4/1/2009							
4/2/2009							
4/3/2009							
4/6/2009							
4/7/2009	200	15.00	13.50	15.00	13.50		
4/8/2009							
4/9/2009							
4/13/2009							
4/14/2009							
4/15/2009							
4/16/2009	850	15.00	10.50	15.00	10.50		
4/17/2009	100	14.95	14.95	14.95	14.95		
4/20/2009							
4/21/2009							

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
4/22/2009	309	15.00	10.60	15.00	10.60		
4/23/2009							
4/24/2009							
4/27/2009							
4/28/2009							
4/29/2009							
4/30/2009							
5/1/2009							
5/4/2009							
5/5/2009							
5/6/2009							
5/7/2009							
5/8/2009							
5/11/2009							
5/12/2009	1,148	12.50	10.60	12.50	12.50		
5/13/2009							
5/14/2009							
5/15/2009	100	13.00	13.00	13.00	13.00		
5/18/2009							
5/19/2009							
5/20/2009							
5/21/2009							
5/22/2009	200	11.00	11.00	11.00	11.00		
5/26/2009							
5/27/2009							
5/28/2009							
5/29/2009							
6/1/2009							
6/2/2009							
6/3/2009							
6/4/2009							
6/5/2009							
6/8/2009							
6/9/2009							
6/10/2009							
6/11/2009							
6/12/2009							
6/15/2009							
6/16/2009							
6/17/2009							
6/18/2009							

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
6/19/2009	500	11.05	11.05	11.05	11.05		
6/22/2009							
6/23/2009							
6/24/2009							
6/25/2009							
6/26/2009							
6/29/2009							
6/30/2009							
7/1/2009							
7/2/2009							
7/6/2009							
7/7/2009							
7/8/2009							
7/9/2009							
7/10/2009							
7/13/2009							
7/14/2009							
7/15/2009							
7/16/2009							
7/17/2009							
7/20/2009							
7/21/2009							
7/22/2009							
7/23/2009							
7/24/2009							
7/27/2009							
7/28/2009							
7/29/2009							
7/30/2009							
7/31/2009							
8/3/2009	600	25.00	11.60	25.00	25.00		
8/4/2009							
8/5/2009							
8/6/2009							
8/7/2009							
8/10/2009							
8/11/2009							
8/12/2009							
8/13/2009							
8/14/2009							
8/17/2009							

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
8/18/2009							
8/19/2009							
8/20/2009							
8/21/2009							
8/24/2009							
8/25/2009							
8/26/2009							
8/27/2009							
8/28/2009							
8/31/2009							
9/1/2009							
9/2/2009							
9/3/2009	1,200	18.43	17.00	23.49	17.00		
9/4/2009							
9/8/2009	12,420	23.48	10.01	23.48	11.71		
9/9/2009	700	12.00	11.60	12.00	11.60		
9/10/2009	350	11.60	11.60	11.60	11.60		
9/11/2009							
9/14/2009							
9/15/2009							
9/16/2009							
9/17/2009							
9/18/2009							
9/21/2009							
9/22/2009							
9/23/2009							
9/24/2009							
9/25/2009							
9/28/2009							
9/29/2009	400	17.00	17.00	22.00	18.00		
9/30/2009	1,980	18.00	16.00	23.99	23.50		
10/1/2009	1,380	14.00	12.25	17.00	17.00		
10/2/2009							
10/5/2009							
10/6/2009							
10/7/2009							
10/8/2009							
10/9/2009							
10/12/2009							
10/13/2009							
10/14/2009							

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
10/15/2009							
10/16/2009							
10/19/2009	100	17.00	17.00	17.00	17.00		
10/20/2009							
10/21/2009							
10/22/2009							
10/23/2009	200	19.00	19.00	19.00	19.00		
10/26/2009							
10/27/2009							
10/28/2009							
10/29/2009	200	13.26	13.26	13.26	13.26		
10/30/2009	1,400	14.00	14.00	19.75	19.75		
11/2/2009							
11/3/2009	1,751	15.00	15.00	15.00	15.00		
11/4/2009	446	13.75	13.75	13.75	13.75		
11/5/2009							
11/6/2009							
11/9/2009							
11/10/2009							
11/11/2009	446	13.75	13.75	13.75	13.75		
11/12/2009	8,750	14.00	13.00	19.50	13.00		
11/13/2009	100	13.00	13.00	13.00	13.00		
11/16/2009	246	17.00	17.00	17.00	17.00		
11/17/2009							
11/18/2009	500	13.25	13.25	13.25	13.25		
11/19/2009							
11/20/2009							
11/23/2009	1,249	15.00	15.00	15.00	15.00		
11/24/2009							
11/25/2009							
11/27/2009							
11/30/2009	2,000	17.00	17.00	17.49	17.49		
12/1/2009	1,000	17.50	17.50	17.50	17.50		
12/2/2009							
12/3/2009							
12/4/2009							
12/7/2009	200	17.00	17.00	17.00	17.00		
12/8/2009							
12/9/2009							
12/10/2009							
12/11/2009							

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
12/14/2009	300	14.50	14.50	14.50	14.50		
12/15/2009							
12/16/2009	4,000	15.00	15.00	15.00	15.00		
12/17/2009							
12/18/2009							
12/21/2009							
12/22/2009							
12/23/2009							
12/24/2009							
12/28/2009							
12/29/2009							
12/30/2009							
12/31/2009	3,600	16.80	16.80	19.50	19.50		
1/4/2010							
1/5/2010							
1/6/2010	100	15.00	15.00	15.00	15.00		
1/7/2010							
1/8/2010							
1/11/2010							
1/12/2010							
1/13/2010							
1/14/2010							
1/15/2010							
1/19/2010							
1/20/2010							
1/21/2010							
1/22/2010	2,000	17.00	15.00	17.00	15.00		
1/25/2010							
1/26/2010							
1/27/2010							
1/28/2010	165	15.00	15.00	15.00	15.00		
1/29/2010							
2/1/2010							
2/2/2010							
2/3/2010							
2/4/2010							
2/5/2010							
2/8/2010							
2/9/2010							
2/10/2010							
2/11/2010							

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
2/12/2010							
2/16/2010							
2/17/2010							
2/18/2010							
2/19/2010							
2/22/2010							
2/23/2010	1,000	17.00	17.00	17.00	17.00		
2/24/2010							
2/25/2010	200	17.00	17.00	17.00	17.00		
2/26/2010							
3/1/2010							
3/2/2010	800	17.00	17.00	17.00	17.00		
3/3/2010							
3/4/2010							
3/5/2010							
3/8/2010							
3/9/2010							
3/10/2010							
3/11/2010							
3/12/2010							
3/15/2010							
3/16/2010							
3/17/2010	200	17.00	17.00	17.00	17.00		
3/18/2010							
3/19/2010							
3/22/2010							
3/23/2010							
3/24/2010							
3/25/2010							
3/26/2010							
3/29/2010							
3/30/2010							
3/31/2010	150	16.99	16.99	16.99	16.99		
4/1/2010	150	15.75	15.75	15.75	15.75		
4/5/2010							
4/6/2010							
4/7/2010							
4/8/2010							
4/9/2010							
4/12/2010							
4/13/2010							

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
4/14/2010	300	16.00	16.00	16.00	16.00		
4/15/2010	1,100	15.75	14.25	15.75	14.25		
4/16/2010							
4/19/2010							
4/20/2010							
4/21/2010							
4/22/2010							
4/23/2010	100	14.25	14.25	14.25	14.25		
4/26/2010							
4/27/2010							
4/28/2010							
4/29/2010	300	14.25	14.25	14.25	14.25		
4/30/2010	100	15.99	15.99	15.99	15.99		
5/3/2010							
5/4/2010	102	15.99	15.99	15.99	15.99		
5/5/2010							
5/6/2010							
5/7/2010							
5/10/2010							
5/11/2010							
5/12/2010							
5/13/2010							
5/14/2010							
5/17/2010							
5/18/2010							
5/19/2010							
5/20/2010							
5/21/2010							
5/24/2010	748	14.99	14.99	15.00	15.00		
5/25/2010							
5/26/2010						14.40	15.00
5/27/2010	500	15.00	15.00	15.00	15.00		
5/28/2010						14.40	15.00
6/1/2010						14.40	15.00
6/2/2010	133	15.00	15.00	15.00	15.00	14.40	15.00
6/3/2010	100	15.00	15.00	15.00	15.00	14.40	15.00
6/4/2010						14.40	15.00
6/7/2010	1,224	15.00	15.00	15.00	15.00	14.40	15.00
6/8/2010						14.40	15.00
6/9/2010						14.40	15.00
6/10/2010						14.40	15.00

Source: Bloomberg

HCBC US Equity

Date	PX_VOLUME	PX_OPEN	PX_LOW	PX_HIGH	PX_LAST	PX_BID	PX_ASK
6/11/2010	1,884	15.00	15.00	15.75	15.75	15.50	16.00
6/14/2010	553	16.00	16.00	16.00	16.00	16.00	16.75
6/15/2010	398	16.00	16.00	16.00	16.00	16.00	17.00
6/16/2010	470	16.10	16.00	16.10	16.00	15.00	17.00
6/17/2010						15.00	17.00
6/18/2010						15.00	17.00
6/21/2010						15.00	17.00
6/22/2010						15.00	17.00
6/23/2010	225	17.00	15.01	17.00	15.01	14.75	16.99
6/24/2010	100	14.75	14.75	14.75	14.75	14.50	15.00
6/25/2010						14.50	15.00
6/28/2010						14.50	15.00
6/29/2010						14.50	15.00
6/30/2010						14.50	15.00

Appendix C

THOMPSON COBURN LLP

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November 29, 2010

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VIA ELECTRONIC & U.S. MAIL

Julie Riewe, Assistant Director of Enforcement
Adam S. Aderton, Senior Counsel
United States Securities & Exchange Commission
Division of Enforcement
100 F Street, NE
Washington, DC 20549-5010

Re: In the Matter of Koch Asset Management (MHO-11383)

Dear Ms. Riewe and Mr. Aderton:

Enclosed are additional documents bates-labeled KAM 007048-007055 located by Koch Asset Management that are responsive to Request 2 of the June 10, 2010 subpoena directed to Koch Asset Management. Other than the notes, I believe these are duplicates of documents previously provided by Huntleigh Securities and used during Mr. Koch's testimony. We will be happy to discuss this along with other matters tomorrow at our meeting.

This letter and the documents provided herein contain confidential and proprietary information of Koch Asset Management, LLC. Pursuant to 17 C.F.R., § 200.83, we request that these documents be treated as confidential under the Freedom of Information Act.

Very truly yours,

Thompson Coburn LLP

By
Steven M. Sherman

SMS/klw

Enclosure

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