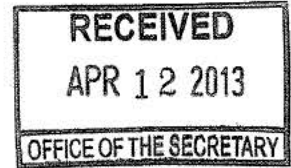


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15015



In the Matter of

MICHAEL BRESNER;
RALPH CALABRO;
JASON KONNER; and
DIMITRIOS KOUTSOUBOS

Respondents.

DIVISION OF ENFORCEMENT'S INITIAL POST-HEARING BRIEF

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
INTRODUCTION	1
FACTS	2
A) Churning of Customer Accounts at JP Turner	2
1) Ralph Calabro	5
a) Calabro Customer Harold Moore	7
b) Expert Findings on the Moore Account	10
c) Calabro Customer Wayne Willhoft	11
d) Expert Findings on Willhoft 247 Account	17
e) Expert Findings on Willhoft 805 Account	17
f) Calabro Customer Wayne Williams	18
g) Expert Findings on the Williams Account	22
2) Jason Konner	22
a) Konner Customer James Carlson	24
b) Expert Findings on the Carlson Account	28
c) Konner Customer Gordon Miller	29
d) Expert Findings on the Miller Account	32
3) Dimitrious Koutsoubos	33
a) Koutsoubos Customer Teddy Bryant	34
b) Expert Findings on the Bryant Account	37
c) Koutsoubos Customers Bruce and Pamela Mills	38
d) Expert Findings on the Mills Account	41

4) Frequency of Trades	41
B) JP Turner’s Supervisory Structure	42
C) Development and Design of the Active Account Review System ...	42
D) Bresner Failed To Take Meaningful Supervisory or Other Action In Connection With The Accounts of Konner’s and Koutsoubos’s Defrauded Customers, Despite Red Flags Indicative of Churning	46
1) Bresner Was Solely Responsible for Level 4 Review and Took No Action Beyond Keeping AVP Commission Restrictions In Place	46
2) Expert Findings on Bresner’s Failure to Supervise	50
- LEGAL DISCUSSION	53
A. Calabro, Konner and Koutsoubos Violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder	53
1) The Trading Recommended by Calabro, Konner and Koutsoubos Was Excessive	55
a) The Trading in the Accounts at Issue Was Inconsistent with the Customers’ True Investment Objectives	55
b) The Turnover Ratio and Breakeven Rate Of the Trading Recommended by Calabro, Konner and Koutsoubos Far Exceeds Levels of Presumptive Churning	59
2) Calabro, Konner and Koutsoubos Controlled the Accounts at Issue	60
3) Scienter	64
B. Bresner Failed Reasonably To Supervise Koutsoubos and Konner	68
1) Bresner Failed To Take Basic Supervisory Steps	70
2) Bresner Failed To Respond to Red Flags	70
RELIEF REQUESTED/PUBLIC INTEREST	72
A. Cease-and-Desist Orders Against Calabro, Konner and Koutsoubos ...	72

B. Disgorgement Plus Prejudgment Interest Against Calabro, Konner and Koutsoubos	73
C. Civil Penalties	75
D. The Court Should Bar Respondents From The Securities Industry	79
CONCLUSION	80

TABLE OF AUTHORITIES

CASES	PAGE(S)
<u>Arceneaux v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</u> , 767 F.2d 1498 (11 th Cir. 1985)	59
<u>Armstrong v. McAlpin</u> , 699 F.2d 79 (2d Cir. 1983)	54, 64
<u>Costello v. Oppenheimer & Co., Inc.</u> , 711 F.2d 1361 (June 22, 1983)	55, 56
<u>Cruse v. Equitable Sec. of New York, Inc.</u> , 678 F. Supp. 1023 (S.D.N.Y. 1987)	60
<u>Ernst & Ernst v. Hochfelder</u> , 425 U.S. 185 (1976)	53
<u>Franks v. Cavanaugh</u> , 711 F. Supp. 1186 (S.D.N.Y. 1989)	59, 64
<u>Herman & MacLean v. Huddleston</u> , 459 U.S. 375, 391 (1983)	54
<u>In re Al Rizek</u> , Exchange Act Release No. 41725, 1999 SEC LEXIS 1585, at *17 (Aug. 11, 1999) (Commission opinion)), <u>aff'd</u> , <u>Rizek v. SEC</u> , 215 F.3d 157 (1 st Cir. 2000)	54, 59
<u>In re Albert Vincent O’Neal</u> , Exchange Act Release No. 34116, 1994 SEC LEXIS 1639, at *5-6 (May 26, 1994)	64
<u>In re Blinder Robinson & Co.</u> , Exchange Act Release No. 19057, 1982 SEC LEXIS 878, at *5 (Sept. 17, 1982) (Commission opinion)	69
<u>In re Dale E. Frey</u> , Admin. Proc. File No. 3-10310, 2003 SEC LEXIS 306 (Feb. 5, 2003)- (initial decision)	53
<u>In re David Wong</u> , Exchange Act Release No. 45426 (Feb. 8, 2002)	65
<u>In re Donald A. Roche</u> , 1997 SEC Lexis 1283 (June 17, 1997)(Commission opinion) .	64
<u>In re Donald T. Sheldon</u> , Exchange Act Release No. 31475, 51 SEC 59 (Nov. 18, 1992) (Commission opinion), <u>aff'd</u> 45 F.3d 1515 (11 th Cir. 1995)	69
<u>In re Edwin Kantor</u> , Exchange Act Release No. 32341, 1993 WL 167840 (May 20, 1993) (settled)	69
<u>In re Frederick H. Joseph</u> , Exchange Act Release No. 32340, 1993 WL 167828 (May 20, 1993) (settled)	69

<u>In re Gary W. Chambers</u> , Exchange Act Release No. 27963, 1990 SEC LEXIS 808 (Apr. 30, 1990) (settled)	70
<u>In re John H. Gutfreund</u> , Exchange Act Release No. 31554, 1992 SEC LEXIS 2939, at *41 (Dec. 3, 1992) (21(a) report)	69
<u>In re KPMG Peat Marwick, LLP</u> , 74 S.E.C. 357, 2001 WL 47245 at *24 (Jan. 19, 2001)	72
<u>In re Laurie Jones Canady</u> , Exchange Act Release No. 41250, 1999 SEC LEXIS 669 (Apr. 5, 1999) (Commission opinion)	59
<u>In re Mark Gilbert Platt</u> , Exchange Act Release No. 8275 (Aug. 25, 2003)	60
<u>In re Michael David Sweeney</u> , Admin. Proc. File No. 3-7126, Rel. No. 29884, 1991 WL 716756 (Oct. 30, 1991)	64
<u>In re Sage Advisory Services</u> , Exchange Act Release No. 44600, 2001 SEC LEXIS 1482, (July 27, 2001) (settled)	59
<u>In re Sandra Simpson</u> , Exchange Act Release No. 45923, 2002 SEC LEXIS 1278 (May 14, 2002) (Commission opinion)	54, 59, 60, 63
<u>In the Matter of Al Rizek</u> , Admin. Proc. File No. 3-9041, 1999 SEC LEXIS 1585 (Aug. 11, 1999)	61
<u>In the Matter of Joseph J. Barbato</u> , Admin. Proc. File No. 3-8575, 1996 SEC LEXIS 3138 (1996)	61
<u>In the Matter of Eric J. Brown</u> , Admin. Proc. File No 3-13535, Exchange Act Rel. No. 34-66752, 2012 WL 1143573 (Apr. 5, 2012)	78
<u>In the Matter of Eric J. Brown</u> , Admin. Proc. File No 3-13535, Exchange Act Rel. No. 34-66469, 2012 WL 625874 (Feb. 27, 2012)	78
<u>In the Matter of Newbridge Securities Corp.</u> , Admin. Proc. File No. 3-13099, Rel No. 380, 2009 WL 1684744 (June 9, 2009)	78
<u>In the Matter of Richard C. Spangler, Inc.</u> , 46 S.E.C. 238 (1976)	72, 80
<u>In the Matter of Robert G. Weeks</u> , Admin. Proc. File No. 3-9952	76
<u>In the Matter of Shearson Lehman Hutton, Inc.</u> , Exchange Act Release No. 26766, 1989 SEC LEXIS 778 (April 28, 1989)	56
<u>Karlen v. Friedman & Co.</u> , 688 F.2d 1193 (8 th Cir. 1982)	64

<u>Mihara v. Dean Witter & Co., Inc.</u> , 619 F.2d 814 (9 th Cir. 1980)	54, 59, 60, 64
<u>Miley v. Oppenheimer & Co.</u> , 637 F.2d 318 (5 th Cir. 1981), <u>reh'g denied</u> , 642 F. 2d 1210 (5 th Cir. 1981)	54, 55
<u>Moran v. Kidder Peabody & Co.</u> , 609 F. Supp. 661 (S.D.N.Y. 1985)	54
<u>Newburger, Loeb & Co. Inc. v. Gross</u> , 563 F.2d 1057 (2d Cir. 1977), <u>aff'd in part, rev'd in part</u> , 611 F. 2d. 423 (2d Cir. 1979), <u>cert. denied</u> , 434 U.S. 1035 (1978)	54
<u>Rogers v. Sterling Foster & Co.</u> , 222 F. Supp. 2d. 216 (E.D.N.Y. 2002)	53
<u>Rolf v. Blyth, Eastman, Dillon & Co.</u> , 424 F. Supp. 1021 (S.D.N.Y. 1977), <u>aff'd</u> , 570 F.2d 38 (2d Cir. 1978), <u>cert. denied</u> , 439 U.S. 1039 (1978)	54
<u>Rush v. Oppenheimer & Co.</u> , 592 F. Supp. 1108 (S.D.N.Y. 1984), <u>vacated</u> , 596 F. Supp. 1529 (S.D.N.Y. 1984), <u>rev'd</u> , 779 F. 2d 885 (2d Cir. 1985)	54
<u>Schofield v. First Commodity Corp. of Boston</u> , 793 F.2d 28 (1 st Cir. 1986)	64
<u>SEC v. Falbo</u> , Civil Action No. 92 Civ. 6836, 1998 U.S. Dist. LEXIS 16020 (S.D.N.Y. 1998)	53
<u>SEC v. First City Financial Corp., Ltd.</u> , 890 F.2d 1215 (D.C. Cir. 1989)	74
<u>SEC v. McNulty</u> , 137 F.3d 732 (2d Cir. 1998)	53
<u>Sharp v. Coopers & Lybrand</u> , 649 F.2d 175 (3 rd Cir. 1981)	65
<u>Steadman v. SEC</u> , 603 F.2d 1126 (5 th Cir. 1979, <i>aff'd on other grounds</i> , 450 U.S. 91 (1981)	72, 80
<u>Zaretsky v. E.F. Hutton & Co., Inc.</u> , 509 F. Supp. 68 (SDNY 1981)	60

STATUTES, REGULATIONS AND RULES

Section 17(a) of the Securities Act	2, 53, 73, 80
Section 10(b) of the Exchange Act and Rule 10b-5	2, 53, 54, 73, 80
Section 15(b)(4)(E) of the Exchange Act	2, 67, 68, 69, 79
Section 15(b)(6) of the Exchange Act	2, 79

Section 15(b)(6)(A)(i) of the Exchange Act 68

Section 21B of the Exchange Act 2, 73, 75, 76, 77, 78

Section 203 of the Advisers Act 2, 68, 75, 78, 79

Section 203(f) of the Advisers Act 2, 68, 79

Section 203(e)(6) of the Advisers Act 68

Section 9(b) of the Investment Company Act 2

Section 9 of the Investment Company Act 2, 73, 75, 76

Pursuant to Rule of Practice 340, the Division of Enforcement (“Division”) respectfully submits this Post-Hearing Brief in connection with the hearing held from January 28 – February 20, 2013.

I. INTRODUCTION

At various times between January 2008 and December 2009, three registered representatives at JP Turner & Co., LLC (“JP Turner”) – Respondents Ralph Calabro (“Calabro”), Jason Konner (“Konner”) and Dimitrious Koutsoubos (“Koutsoubos”) – churned the accounts of several customers. In each instance, Respondents Calabro, Konner and Koutsoubos enticed investors with little or no experience in high-risk investments to trust them, and thereafter, convinced them to invest aggressively and trade often without ever adequately disclosing the risks involved. During the relevant period, the turnover and breakeven rates for each of the investors at issue exceeded levels presumptive of churning and, in many cases, were more than double the presumptive churning level. Not surprisingly, these customers collectively lost approximately \$2.7 million and paid approximately \$845,000 in commissions, fees, and margin interest to JP Turner, which in turn paid a portion of the commissions and fees to the three registered representatives.

In addition, Michael Bresner (“Bresner”), who during the relevant time was the firm’s head of supervision, Executive Vice President and a senior member of management, failed reasonably to supervise Konner and Koutsoubos. Given the high commissions generated by the customers’ accounts, Bresner had direct supervisory responsibility and was required to personally review the underlying trading. Despite numerous red flags suggesting churning, Bresner took no meaningful action to investigate or prevent the churning.

The Division seeks cease and desist orders and industry bars against Calabro, Konner and Koutsoubos for violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) for this fraudulent conduct. The Division also seeks disgorgement along with prejudgment interest against them. The disgorgement sought by the Commission is based upon the retained portions of the sales commissions that Calabro, Konner and Koutsoubos received as payment for the trades during the churn periods. The Division further seeks against Calabro, Konner and Koutsoubos a civil penalty pursuant to Section 21B of the Exchange Act and Section 9 of the Investment Company Act, and that they be barred from the securities industry.

The Division also seeks a supervisory bar against Bresner pursuant to Section 15(b)(6) of the Exchange Act, which incorporates by reference Section 15(b)(4)(E) of the Exchange Act and pursuant to Section 203(f) of the Investment Advisers’ Act (“Advisers Act”), for failing reasonably to supervise Konner and Koutsoubos, who each willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Division also seeks against Bresner a civil penalty pursuant to Section 203 of the Advisers Act.

II. FACTS

A. Churning of Customer Accounts at JP Turner

At various times between January 2008 and December 2009, Calabro, Konner and Koutsoubos collectively churned the accounts of seven customers and personally received in the aggregate approximately \$720,000 in commissions and fees, while the accounts suffered an

aggregate loss of approximately \$2.7 million.¹ The chart below summarizes the churning activity by customer:

Registered Representative	Account	Time Period	Turnover (Annual Basis)	Cost to Equity Ratio	Total Losses	Commissions Paid by Customer ²	Commissions and Fees Retained by Registered Representative
Calabro	[REDACTED]	02/09-11/09	13	29.3%	\$805,337	\$118,917	\$110,000
Calabro	[REDACTED]	12/08-11/09	8	22.9%	\$1,026,546	\$297,515	\$282,000
Calabro	[REDACTED]	12/08-11/09	10	31.8%	\$123,745	\$98,146	\$90,000
Calabro	[REDACTED]	12/08-11/09	9	29.3%	\$407,491	\$116,162	\$110,000
Konner	[REDACTED]	01/09-12/09	17	34.6%	\$54,119	\$87,686	\$55,000
Konner	[REDACTED]	06/09-11/09	18	28.2%	\$80,504	\$35,700	\$23,000
Koutsoubos	[REDACTED]	01/08-12/08	56	73.3%	\$189,801	\$47,000	\$30,000
Koutsoubos	[REDACTED]	12/08-07/09	28	41.2%	\$3,902	\$31,486	\$20,000

[DOE Ex. 155]

As will be demonstrated below, the defrauded customers generally had similar investment experiences with JP Turner. Notably, in nearly every instance, the customers: (1) had

¹ Commissions charged to customers of JP Turner typically ranged between one and five percent of each trade, depending on the size of the trade. The commission split between the firm and each registered representative varied. See DOE Ex. 155.

² Refers to the total commissions paid to JP Turner, a portion of which was retained by the registered representative.

³ See DOE Ex. 155, pp. 12-15, ¶¶ 22-25.

⁴ See DOE Ex. 155, pp. 15-17, ¶¶ 26-29.

⁵ See DOE Ex. 155, pp. 7-8, ¶¶ 16-18.

⁶ See DOE Ex. 155, pp. 10-12, ¶¶ 19-21.

⁷ See DOE Ex. 155, pp. 18-21, ¶¶ 32-35.

⁸ See DOE Ex. 155, pp. 21-23, ¶¶ 36-39.

⁹ See DOE Ex. 155, pp. 24-27, ¶¶ 42-45.

¹⁰ See DOE Ex. 155, pp. 27-29, ¶¶ 46-49. The Division notes that in his report, Dempsey inadvertently did not make a finding with respect to the portion of commissions from the [REDACTED] account retained by Koutsoubos. Because the section of Dempsey's report dealing with Koutsoubos' other customer, [REDACTED], makes clear that he used Koutsoubos' investigative testimony that he retained 65% of gross commissions when approximating Koutsoubos' retained commissions, the Division has performed that calculation and provided the result above for the Court's consideration.

conservative investment objectives and low or moderate risk tolerances; (2) signed blank or pre-filled account documents that identified inaccurate investment objectives, risk tolerances, and investment experience levels; and (3) were generally unsophisticated in securities trading. In fact, three of the defrauded customers had never opened a brokerage account prior to their JP Turner accounts. The remaining customers had previously held conservatively-managed brokerage accounts, and the trading in those accounts was well below the level in their JP Turner accounts.

At the time they opened their JP Turner accounts, three customers were retired or semi-retired and four customers were small business owners who devoted much of their time and energy to running their businesses. All of the customers relied upon the purported expertise of their registered representatives to manage their accounts in accordance with their intended investment objectives, which they generally conveyed to their registered representative when they opened their accounts or were never asked about by their broker.

While their accounts were non-discretionary, all of the defrauded customers relied almost exclusively on their JP Turner registered representative to make investment decisions. None of the customers initiated significant trading activity and nearly all of the trades during the churning periods were solicited by their brokers. The customers rarely, if ever, rejected any trading recommendations made by their registered representatives, and were generally unable to evaluate such recommendations independently due to lack of time, resources, and expertise.

The account-opening and related documents for these customers typically identifies investment objectives of speculation, short-term trading, and trading profits as well as aggressive risk tolerances. However, in most instances, the customers did not select these objectives. Instead, at the request of their registered representatives, the customers either signed blank or pre-filled forms. The customers also lacked the sophistication to recognize the significance of

the forms or the meaning of the terminology used. To the extent the customers read the documents, they did not understand the implications of the investment objectives and risk tolerance selections and trusted that their registered representatives would manage the account in a manner consistent with their true investment objectives and financial situation.

1. Ralph Calabro

Respondent Ralph Christopher Calabro, age 39, resides in Matawan, New Jersey. [T. 79]¹¹ Calabro graduated from Xaverian High School in Brooklyn in 1991. [T. 91-92] He attended Kingsborough Community College in Brooklyn for less than two years, and took some courses at the Fashion Institute of Technology in New York, but holds no formal secondary degree. [T. 92] Calabro has held a Series 7 securities license that allows him to recommend stocks, bonds and options to brokerage clients for 18 years. [T. 92-93] He also holds a Series 63 “Blue Sky” license and a Series 24 license that permits him to be a brokerage principal/supervisor. Calabro previously faced a churning claim in an arbitration that was settled for cash in 2008. [T. 88-89]

Calabro currently works as a registered representative for National Securities. [T. 105] Prior to that, he worked as a registered representative for JP Turner from early 2004 through January 2011.¹² [T. 104-05] While working at JP Turner, Calabro oversaw customer accounts, made recommendations to customers regarding their accounts, and acted as a securities principal. [T. 114-15] Calabro worked in the Parlin, NJ office of JP Turner, which was an Office of Supervisory Jurisdiction (“OSJ”) with Calabro serving as the principal/supervisor. [T. 121]

¹¹ Exhibits from the trial will be identified by their exhibit number (“DOE Ex. ___” for the Division’s exhibits; “C-___” for Respondent Calabro’s exhibits; “JK-___” for Respondent Konner’s exhibits; “DK-___” for Respondent Koutsoubos’s exhibits; and “B-___” for Respondent Bresner’s exhibits). The transcript of the trial will be identified as “T. ___.”

¹² In the decade before joining JP Turner, Calabro worked for approximately ten other securities industry firms, none for longer than 2 years, 4 months. [T. 98-103; DOE Ex. 1]

While employed by JP Turner, Calabro was responsible for originating his own business, which he did using cold calls and referrals. [T. 136-37]

During his time at JP Turner, Calabro claims to have sought as customers investors who were active traders and risk takers. [T. 143] He claims to have looked for individuals (preferably accredited investors) wanting to invest money they could afford to lose into an account set up with speculative objectives. [T. 139-40; 143-46] Calabro admitted that because of his approach to the market, his clients needed to understand and ability have the ability to withstand risk. [T. 182] Calabro claims that, during the cold calling process, he questioned potential customers to confirm that his investment style was appropriate for them. [T. 175-85] This included specifically asking about their investment objectives and risk tolerance. [T. 190-195] He claims to have often used charts to explain his trading strategy – which supposedly was based on Keynesian theory as expressed over a “parabola cycle” – to customers. [T. 160-61; 172-73] Calabro did not look for investors seeking a steady rate of return on a large portion of their net worth, did not recommend CDs or mutual funds, and did no financial planning for customers. [T. 142-44]

During 2008 and 2009, Calabro filled out the account opening documents for more than 50% of his new customers. [T. 194] At that time, he managed accounts for approximately 70 JP Turner brokerage customers. [T. 185] Most of those customers received JP Turner’s Active Account Suitability Questionnaire and Supplement forms, which typically meant the accounts had been flagged at Level 2 or higher on the firm’s Active Account Review System (“AARS”). [T. 236] Despite claiming that he generally sought authorization from customers before executing trades in their accounts, Calabro could not state that he always received pre-authorization from the customers at issue in this case. [T. 229-31]

Regarding compensation, Calabro did not receive a salary while working at JP Turner,

but instead received a percentage of commissions and fees generated by his customers' accounts. At JP Turner, customers were typically charged a commission ranging from 1% to 5% per trade on both purchases and sales. [T. 134-35; 218-219] Under his contract with JP Turner, Calabro retained 85% of all commissions generated by his customers' accounts up to \$25,000/month, and he kept 90% of all commissions that exceeded \$25,000. [T. 219-20] Calabro also kept \$9 of a \$39 ticket charge imposed by JP Turner on every transaction, and he received 1/10 of 1% on an annual basis of the average daily balance of his customers' margin trading accounts. [T. 220-21] In 2008, Calabro was the top commission-earner among registered representatives at JP Turner, making approximately \$2 million. [T. 296; DOE Ex. 202] In 2009, he was the third highest-ranked commission-earner in the firm, making \$1.7 million. [T. 297; DOE Ex. 203] During the churn periods for the three customers identified in this case, Calabro earned a total of approximately \$592,000 in commissions from the trading in those customers' accounts alone. [DOE Ex. 155]

a. Calabro Customer [REDACTED]

[REDACTED] lives in Mt. Ulla, North Carolina.¹³ [T. 611] A lifelong resident of that area, [REDACTED] attended West Rowan High School, but did not graduate. [T. 612] Obtaining a GED in 1983, [REDACTED] never attended college, nor took any business, accounting or investment-related courses. [T. 612-13] [REDACTED] founded ProTech Mechanical, Inc., a steel fabrication business specializing in industrial construction, in 1992, and remains the owner/operator of that business today. [T. 614-15] [REDACTED] is an unsophisticated investor. Before he opened his account with JP Turner, he had an IRA account with mutual fund holdings, but had not traded equities, options or on margin and had very limited knowledge of how securities work. [T. 617; 622; 646; 659-60] In fact, prior to December 2008, [REDACTED] had never had a

¹³ Moore was 44 years old during the churn period.

brokerage account or traded securities. [T. 617; 657]

██████ was introduced to Calabro by ██████'s accountant, who had been ██████'s accountant for thirteen years. [T. 618.] At Calabro's suggestion, ██████ opened a JP Turner brokerage account in December 2008. [T. 617-18; 622]¹⁴ Through ProTech Mechanical, ██████ had a \$1,000,000 line of credit, a fact that he shared with Calabro early on in the relationship. [T. 628; 638] Calabro often encouraged ██████ to borrow money from the line of credit and invest the funds in his JP Turner account. In fact, Calabro assured ██████ that investments of "borrowed" money would be successful. [T. 628; 638; 681-82] ██████ ultimately invested \$750,000 of funds drawn on the line of credit – after Calabro told him that his potential profits were "unlimited" if he accessed those funds. [T. 672; 684] ██████'s total investment in the JP Turner account was approximately \$1,085,000, which was 75% of his net worth. [T. 672; 689]

██████ told Calabro about his lack of securities trading experience at the time the account was opened. [T. 622; 645-646] Calabro represented to ██████ that, irrespective of whether the market was going up or down, Calabro would make him lots of money. [T. 620; 623] In addition, Calabro told ██████ that if ██████ did not make money, Calabro would not make money, leading ██████ to believe that Calabro's compensation was contingent on making a profit. [T. 707] ██████ did not understand what it means to short stock, nor did he understand Calabro's strategy generally. [T. 620-21; 623] Even today, he does not understand securities options or options trading. [T. 646; 659-60] ██████ is not a risk-taker, and told Calabro multiple times that he could not afford to lose the money he was investing. [T. 626-29] At the time he opened his account, ██████ invested approximately \$250,000, which was taken out of his

¹⁴ The relevant exhibits relating to the establishment, maintenance and funding of ██████'s account at JP Turner include DOE Ex. 13 (account application of JPK 829820), DOE Ex. 34 (composite exhibit including account application, margin application and options suitability questionnaire), DOE Ex. 35 (██████'s electronic wire transfers from his business line of credit to his JP Turner account), DOE Ex. 5 (JPT Statements for ██████'s account JPK-829820 for Churn Period February through November 2009) and DOE Ex. 36 (JPT Statements for ██████'s account before and after churn period).

business and constituted essentially all of his liquid assets. [T. 628; 637-38]

Despite having been told by [REDACTED] about his limited investment experience, at the time the account was opened Calabro did not ask [REDACTED] about the extent of his investment history, annual income, estimated net worth, marital status, or liquid assets. [T. 634-38] In addition, Calabro sent [REDACTED] only the signature page for the brokerage account application form used by JP Turner, which [REDACTED] signed and gave back to Calabro. [T.630-34] The complete brokerage account application – which [REDACTED] saw for the first time after either the SEC or FINRA began their investigations – reflected that his investment objectives were speculation, trading profits and capital appreciation. [T. 634; 639; 647] It further reflected that his risk tolerance was aggressive and that his general investment knowledge was good. [T. 640; 641] At the same time, Calabro had [REDACTED] sign a blank margin application and a blank options suitability questionnaire. Calabro led [REDACTED] to believe these forms were necessary for opening an account. [T. 658-60] Both documents were subsequently filled out by Calabro, and the options suitability questionnaire reflected investment objectives of speculation and growth. Yet, Calabro never asked [REDACTED] what his investment objectives or risk tolerance were. [T. 639-40] Further, [REDACTED] did not understand what speculation, trading profits and capital appreciation meant as those terms were used on the account application, and his true risk tolerance was conservative – a fact that [REDACTED] tried to communicate to Calabro by telling him he could not afford to lose his investment. [T. 640-41; 644-45]

During a meeting at Calabro's office in March 2009, Calabro represented to [REDACTED] that he could not lose more than \$125,000 while investing with Calabro. [T. 628] In fact, Calabro told [REDACTED] that he was not going to lose *any* money because, with Calabro's strategy, he would make money whether the market was going up or down. [T. 630] [REDACTED] repeatedly told Calabro that he could not afford to lose his investment. [T. 640-41; 678-79] Based on Calabro's

presentation and his long-standing relationship with ██████'s accountant, ██████ trusted Calabro, and, based on what Calabro said, believed that his losses would be limited to \$125,000. [T. 648; 683-84] After the account was opened and became active, Calabro controlled the trading – he made the decisions on when to buy the stocks that were purchased, and when to sell the stocks that were sold, decisions which were routinely approved by ██████ when called by Calabro. [T. 674-75; 700; 704] Calabro did not always call ██████ when executing trades, and thus ██████ did not know how frequently Calabro was trading. [T. 703; 705] ██████ very rarely made any recommendations for trades to Calabro, and in the two instances he did (Ford and BB&T), Calabro did not purchase the stock. [T. 700-02] ██████ never recommended that Calabro sell any stocks in the account because he knew nothing about stocks. [T. 702]

During the period from February-November 2009, there were approximately 222 transactions in ██████'s account consisting of trades in both stocks and options. [T. 706-07] The value of ██████'s account progressively decreased between March-November 2009 from \$773,000 to just \$185,000. [T. 692-95] At the time he closed the account in February 2010, the account was worth only \$140,000. [T. 699-700] ██████ never made a withdrawal until he closed the account. [T. 691; 695]

b. Expert Findings on the ██████ Account

Louis Dempsey, the Division's expert on churning, performed an independent analysis of the trading activity in the eight accounts of the customers who testified at the hearing. His review identified elements of churning such as excessive trading exhibited by high turnover rates, high cost equity factors, and substantial losses in all eight accounts. [DOE Ex. 155] Upon reviewing the activity in the ██████ account and the monthly statements, Dempsey concluded that between February and November 2009, Calabro engaged in trading patterns indicative of churning by executing over 99 sales transactions totaling \$3,496,252.95 and over 123 purchase

transactions totaling \$4,469,011.82. These trades resulted in losses in the account of approximately \$805,337. Calabro's aggressive trading in this account resulted in an annualized equity turnover of 13 times, more than double the presumptive churning level of 6. The cost equity factor was 29.3%. The trading activity generated commissions and fees to JP Turner of \$118,917. Dempsey confirmed that virtually all of the transactions in the [REDACTED] account were marked solicited, indicating that Calabro exercised control over the trading in the account. Based on Calabro's testimony during the investigation that his payout ratio was 95% of gross commissions, Calabro earned commissions of over \$110,000 as a result of the trading activity in the [REDACTED] account. [DOE Ex. 155, pg. 13 **The [REDACTED] Account Trading Activity**, ¶23]

c. Calabro Customer [REDACTED]

[REDACTED] lives in Claremont, California.¹⁵ A lifelong resident of that area, [REDACTED] earned his living by refurbishing cars bought at auction and then reselling them. [REDACTED] also spent a few years building custom houses. At the time of his testimony, [REDACTED] had been retired for the past 7-10 years. [T. 1031-32; 1034-39] A self-described unsophisticated investor, [REDACTED] does not have the personal knowledge and background to trade stocks on his own. [T. 1039] Graduating from Cal Poly in 1963, he majored in marketing and sales, took no investment-related courses and took only one course each in accounting and finance. [T. 1033-44] [REDACTED] owns a computer that he uses solely for online car auctions, and he has never used that computer for online trading or investment research. [T. 1355-58]

In 2007-2008, [REDACTED] opened two brokerage accounts with JP Turner. [T. 1055-56; 1111-12] When he opened these accounts, [REDACTED] had an annual income of between \$50,000 and \$100,000 and a net worth of over \$500,000. [T. 1061; 1063-64] One of the accounts, the 247 account, was funded largely with money that belonged to [REDACTED]'s wife. [T. 1068] The

¹⁵ Willhoft was 68 years old during the churn period.

other account, account 805, was initially opened in his individual name, but was later converted into an account for the ██████████ family trust.¹⁶ [T. 1073-74]

Prior to opening these accounts, ██████████ and his wife each had a brokerage account with Smith Barney, and those accounts had been in existence for 20 years. [T. 1039-41; 1068] Bill Grant was ██████████'s registered representative at Smith Barney. [T. 1041] In his Smith Barney account, ██████████ through Grant, executed two to three trades a year and ██████████ relied on Grant to recommend trades. [T. 1042-43] ██████████ was very conservative in his trading in this account. [T. 1043] For example, ██████████ purchased municipal bonds and school bonds in these accounts. ██████████ always held his investments in his Smith Barney accounts for the long-term. [T. 1044-45] Prior to opening his accounts with JP Turner, ██████████ had never bought or sold options, nor had he bought or sold commodities. [T. 1048] ██████████ also had never previously used margin. [T. 1049]

██████████ opened his accounts with J.P. Turner based on multiple telephone calls he had with Ralph Calabro. [T. 1049] ██████████ did not know Calabro before Calabro called him and he did not know how Calabro got his number. [T. at 1050] In these calls, Calabro told ██████████ he could pick good stocks and that he could sell stocks in an up market or a down market and make money either way. Calabro did not discuss a trading strategy with ██████████ and ██████████ "trusted [Calabro] to make good [recommendations]." ██████████ found Calabro very convincing. [T. 1051; 1054]

¹⁶ The relevant exhibits relating to the establishment and maintenance of ██████████'s two accounts at JP Turner include DOE Ex. 37 (account application of JPK 686247 dated 2/5/2007), DOE Ex. 39 (Account Update Form for 247 account dated 4/20/2007), DOE Ex. 38 (account application of JPK 765805 dated 1/6/2008), DOE Ex. 6 (account statements for 805 account for churn period from December 2008 through November 2009), DOE Ex. 7 (account statements for 247 account for churn period from December 2008 through November 2009), DOE Ex. 9 (AASQ and supplement for both ██████████ accounts dated 3/13/2009), DOE Ex. 40 (Options Suitability Questionnaire and Option Trading Agreement for ██████████ 805 account), DOE Ex. 41 (Options Suitability Questionnaire and Option Trading Agreement for ██████████ 247 account) and DOE Ex. 42 (margin account application and agreement for Willhoft 247 account).

After the first few trades Calabro recommended made money, ██████ transferred his money from his Smith Barney account to Calabro at JP Turner. [T. 1051] At the point that ██████ signed the account opening documents for account 247, ██████ had known Calabro for 2-3 months and had a level of confidence in him. [T. 1073-74] When ██████ signed the account opening application for the 247 account in February 2007, he saw only the last page of the application, which he signed and returned to Calabro. [DOE Ex. 37; T. 1055-56] ██████ did not see the completed application until he testified in late 2010 in connection with the SEC investigation of this matter. [T. 1058-59] ██████ and Calabro did discuss the basic information contained on the application, but ██████ did not complete the application and Calabro did not discuss the application with ██████. [T. 1059-60; 1062] Calabro also did not discuss the four categories of investment objections on the application with ██████. [T. 1066] ██████ told Calabro the account was to be very conservative. [T. 1064-65] The investment objectives listed for Willhoft – capital appreciation, trading profits and income – were not accurate. [T. 1064-66] The investment objectives should have been preservation of capital, income and capital appreciation. [T. 1064-65]

Two months after signing the account opening application, ██████ received an account update form. [DOE Ex. 39; T. 1076-77] ██████ signed the form in blank. The handwriting on the form is Calabro's, as admitted by Calabro. [T. 1078; T. 267] Calabro did not discuss any of the questions on the form with ██████. [T. 1079-81] The updated account form is incorrect in several ways. First, the form states that ██████'s primary investment objectives were speculation, trading profits, and capital appreciation. These were not Willhoft's true investment objectives, and ██████ and Calabro had no discussions about his investment objectives in April 2007, at the time that the account update form is dated. [T. 1084-86]

Second, on the account update form, it states that ██████'s risk tolerance was

“Aggressive,” which was a change from the account opening application in which ██████’s risk tolerance was identified as “Moderate.” ██████’s risk tolerance had not changed, and ██████ had no discussions with Calabro about his risk tolerance in connection with ██████’s signing the form. [T. 1079-80] ██████ never intended to be an aggressive investor in any of his JP Turner accounts. [T. 1084] Third, the form erroneously states that ██████’s net worth was \$8 million. At the time, ██████’s true net worth was approximately \$3 million. ██████ had no discussions with Calabro about his net worth in connection with this form. [T. 1080-82] Finally, ██████’s annual income at that time was still \$50,000 to \$100,000. The form erroneously states that his income was up to \$150,000. [T. 1078-79]

In January 2008, ██████ signed the account opening application for account 805. [DOE Ex. 38] As with the application for account 247, ██████ only received the signature page of the application. [T. 1111-13] The account application contains the same errors reflected on the account update form for account 247, including adding speculation as an investment objective and listing aggressive as the risk tolerance. [T. 1116-21] Calabro did not discuss any of the information on this form with ██████ in January 2008. [T. 1115-16] ██████ did intend for account 805 to be slightly more moderately traded than account 247, but ██████ was not a risk-taker with regards to either account. [T. 1121-22] Ultimately, ██████ put one-third to one-half of his net worth in his JP Turner accounts. [T. 1169]

██████ and Calabro talked two to three times a week about ██████’s accounts. [T. 1099-1100] Although ██████ did not grant Calabro discretionary authority to trade in ██████’s JPT accounts, there were times when Calabro made trades in ██████’s accounts without seeking preauthorization from ██████. [T. 1099; 1100-02] When Calabro recommended trades to ██████, ██████ usually agreed with Calabro’s recommendation. [T. 1100-02] On the one occasion ██████ suggested a stock trade to Calabro, Calabro talked

██████████ out of it and the transaction did not occur. [T. 1104]

The majority of stocks recommended by Calabro were for companies that ██████████ had never heard of, so he had to rely on Calabro's judgment and superior knowledge because he did not know anything about the company. [T. 1103] Calabro never provided ██████████ with any research about stocks he was recommending to him, and ██████████ never personally researched any of Calabro's proposed stock transactions because he did not know how to conduct such research. [T. 1104-05] All of the trading in ██████████'s JP Turner accounts was initiated by Calabro's recommendations. [T. 1105-06]

In these calls, ██████████ and Calabro never discussed how much money ██████████ was willing to lose in his accounts. Because his Smith Barney account had never lost a dime, ██████████ assumed that the same would hold true for these accounts. [T. 1067-68; 1122] Calabro never asked ██████████ questions about his specific investment knowledge or his past experience investing stocks. [T. 1070-72; 1098-99; 1123-24] Calabro also did not discuss options trading or limited partnership investments with ██████████. [T. 1070-72; 1124] ██████████ did not recall ever saying "no" to a trade recommended by Calabro. [T. 1076] ██████████ believed that Calabro was looking out for ██████████'s interests in recommending stocks. [T. 1106]

In addition to recommending that ██████████ invest in stocks, Calabro also recommended several other types of investments. Specifically, Calabro recommended that ██████████ invest in buildings. Calabro told ██████████ that this type of investment was conservative and that it paid a good monthly income. Calabro never provided ██████████ with any offering documents, and ██████████ made his investment decision solely based on Calabro's representations that it was a good, solid investment. Ultimately, ██████████ invested \$200,000 in a building in Atlanta and \$200,000 in a building in Cincinnati. ██████████ received income from these investments for approximately six months; he has received no income from these investments for several years.

██████ learned later that these investments were limited partnership investments, a type of investment about which ██████ had no knowledge. [T. 1127-32]

██████ relied solely on Calabro for all trades done in both accounts. ██████ did not intend either account to have a high volume or frequency of stock transactions at the time each account was opened. ██████ did not closely monitor trading in the accounts because it was too hard to keep up with. [T. 1132-33] ██████ received trade confirmations from JP Turner, but he did not really know how commissions were calculated. [T. 1107-08] In 2008, when his accounts began losing money, ██████ complained to Calabro that JP Turner was charging him commissions on transactions where he lost money. [T. 1110]

At some point, ██████ confronted Calabro, telling him the level of trading in the accounts was too high and that he was unable to keep track of the transactions because there were too many. [T. 1134-35] For example, Calabro would buy stock on Monday and sell it by Friday. ██████ would receive the buy confirmation on Wednesday or Thursday, but it would be days later before he received the sales confirmation. [T. 1134-35] In order to calculate the commission, ██████ would have to take the confirmations and add or subtract to determine if he gained or lost on the transactions. This happened in both accounts. [T. 1134-35] ██████ paid \$116,419 in commissions, fees and margin interest on account 805 between December 2008 and November 2009 based on 155 securities transactions. During this time period, the account lost \$407,491. [T. 1167; 69] ██████ paid \$98,158 in commissions on account 247 between December 2008 and November 2009 based on 145 securities transactions. [T. 1167-69]

██████ was never contacted by anyone at JP Turner other than Calabro about his accounts. [T. 1139] In 2009, ██████ received an Active Account Suitability Questionnaire and Supplement. [DOE. Ex. 9] ██████ and Calabro did not discuss the information contained on the document. [T. 1147] As with the other documents associated with his account, ██████

signed this document in blank. [T. 1147] This form, like the others, contains multiple errors. Most importantly, [REDACTED] and Calabro did not discuss the investment objectives section of this form. [REDACTED]'s investment objectives were conservative for account 247 and slightly more moderate for account 805. Accordingly, the short-term trading, speculation, trading profits and growth reflected on the form are inaccurate. In addition, [REDACTED] had never purchased stock on margin, and he never made a \$300,000 or \$600,000 trade. [T. at 1149-59]

d. Expert Findings on Willhoft 247 Account

Upon reviewing the [REDACTED] 247 account and monthly statements, Dempsey concluded that, during the period from December 2008 through November 2009, the trading was consistent with churning, as Calabro executed 68 sales transactions totaling \$2,544,060.77, and 77 purchase transactions totaling \$2,990,786.24. These trades resulted in losses in the [REDACTED] 247 account of over \$123,000. The aggressive trading in this account resulted in an equity turnover of 10 times on an annualized basis. Further, the cost equity factor or the return that the [REDACTED] would have to earn to cover fees and expenses was 31.8%. The trading activity generated commissions and fees to JP Turner of approximately \$98,146. Dempsey also noted from reviewing the account statements in [REDACTED] 247 that the majority of transactions were marked as solicited indicating that Calabro exercised control over the direction of trading in the account. Based on Calabro's testimony during the investigation that his payout ratio was 95% of gross commissions, Calabro earned commissions as a result of his activity in this account of over \$90,000. [DOE Ex. 155, pg. 7-8 **The [REDACTED] 247 Trading Activity**, ¶16]

e. Expert Findings on [REDACTED] 805 Account

Upon reviewing the [REDACTED] 805 account and the monthly statements, Dempsey concluded that the trading during the period of December 2008 to November 2009 was consistent with churning, as Calabro effected over 73 sale transactions totaling \$2,763,384.51,

and 82 purchase transactions totaling \$3,725,840.96. These trades resulted in losses in the [REDACTED] 805 account of approximately \$407,491. This trading activity resulted in an annualized turnover of the equity in the account of 9 times. Further, Dempsey determined that the cost equity factor as a result of this activity was 29.3%. Commissions and fees generated by this aggressive trading activity were \$116,162. As was the case in the [REDACTED] 247 account, virtually all of the transactions in the [REDACTED] 805 account during the review period were solicited by Calabro, thereby evidencing his control over the direction of the trading in the account. Based on Calabro's testimony during the investigation that his payout ratio was 95% of gross commissions, Calabro earned commissions in this account of over \$110,000 as a result of his activity. [DOE Ex. 155, pg. 10 **The [REDACTED] 805 Trading Activity**, ¶19]

f. Calabro Customer [REDACTED]

[REDACTED] lives in Claremont, California. [T. 1390-93] For thirty years, [REDACTED] taught statistics, quantitative management, introduction to business, production management and production related courses to students at Cal Poly University. [T. 1399-1400] [REDACTED] retired from teaching in 1995, and he receives a California state retirement pension and in later years social security. [T. 1392-93; 1424-25]. [REDACTED] does not consider himself to be a sophisticated investor; he currently has no active brokerage accounts, and has only had three in his life. [T. 1402-03; 1406] He has never taken courses related to stock market investing, and never taught any finance or investment courses. [T. 1399-1400] While he did subscribe to the Wall Street Journal for a two-year period, [REDACTED] does not typically read investment-related periodicals or watch investment-related television shows, and he does not know what a chat board is. [T. 1411] [REDACTED] does not own a computer, does not know how to turn on his wife's computer, and has never had an e-mail account in his name. [T. 1446-47]

Prior to opening his account with JP Turner, ██████ had a brokerage account at Smith Barney that he opened in 1991 and closed in 2008. The account consisted of common stocks, mutual funds and muni bonds. ██████ continued to hold 95% of the stocks that were purchased in the account until he closed it. [T. 1406-09.] ██████ never bought options or traded on margin in the Smith Barney account, and he relied on his registered representative to select the stocks that were purchased. [T. 1409-10.] ██████ opened another brokerage account at Newbridge Securities in 2008 or 2009. [T. 1403] That account is now closed. The Smith Barney, JP Turner, and Newbridge brokerage accounts constitute ██████' entire investment experience.

In the fall of 2007, ██████ received a recommendation from his friend of more than 40 years, ██████, to speak with Calabro about possibly investing with Calabro. [T. 1414] ██████' Smith Barney broker had retired and he was felt the account was being neglected. [T. 1408-09; 1414] ██████ indicated at the time he liked Calabro and recommended him to ██████ based on Calabro's claims to be able to invest successfully in an up or down market. [T. 1414-15] After a short conversation with Calabro, ██████ opened an account with JP Turner in October 2007 and began funding the account in late November or early December 2007. [T. 1414-16; DOE Ex. 43] ██████ closed his Smith Barney account when he opened his JP Turner account and used the funds from his Smith Barney account to fund his JP Turner account. [T. 1406-07] ██████ initially funded the account with \$200,000. Over the course of the next several months, ██████ ultimately transferred a total of \$1.7 million to the account. [T. 1417-18]

██████ signed the account opening application on October 31, 2007.¹⁷ [DOE Ex. 43]

¹⁷ The relevant exhibits relating to the establishment and maintenance of ██████' account at JP Turner include DOE Ex. 43 (account application of JPK 755982), DOE Ex. 8 (JPT statements for ██████ account for

Much of the information on the application, including all of the information in the Account Owner profile, was added to the form after ██████ signed it, and much of it is wrong. [T. 1436-42] The form indicates ██████' primary investment objective was speculation, but ██████ did not intend to speculate in the account. [T. 1442-43] In addition, ██████' risk tolerance was not aggressive, as marked on the form, but instead was conservative or moderate. [T. 1444] ██████' annual income – which he never discussed with Calabro – was \$100,000, not the \$150,000 reflected on the application. [T. 1437-38] And ██████' net worth was not \$3 million. [T. 1438-39] Calabro never discussed the form or the investment objectives marked on it with ██████. [T. 1443-44] Calabro was fully aware, however, that ██████ was retired at the time the account was opened. [T. 1421-23] In fact, ██████ had retired from his 30 year teaching career in 1995, more than 12 years before he opened his JP Turner account. [T. 1392-93]

██████' goal in his JP Turner account was to protect the money he currently had and to make a fair return on the money invested. [T. at 1430-31] Calabro never asked questions about ██████' true investment objectives. ██████ was not a risky or speculative investor. [T. 1431-33] ██████ testified that if he had filled out the investment objectives on the account opening form, he would have listed preservation of capital, income and capital appreciation. [T. 1443] Calabro told ██████ that he could make him money in an up economy or a down economy. [T. 1426] Calabro also told ██████ he would take care of him as he had taken care of his friend, ██████. Calabro explained to ██████ that he engaged in short sales, which was a new and foreign concept to ██████. Specifically, Calabro explained that in a down economy,

Churn Period December 2008 through November 2009), DOE Ex. 44 (handwritten notes of ██████ to Calabro re his account), DOE Ex. 45 (Active Account Suitability Questionnaire and Supplement dated 3/18/2009), DOE Ex. 46 (Supp. Application for margin privileges) and DOE Ex. 47 (completed JPT Options Suitability Questionnaire and Option Trading Agreement).

you sell stock now, which you later buy back at a reduced price and make money. ██████ did not fully understand what short selling meant, and still does not, but trusted Calabro and went along with Calabro's recommendations. [T. 1426; 1428-29]

Between late 2007 and early 2008, ██████ and Calabro spoke about once a week, with Calabro normally making the calls. [T. at 1420-23] ██████ never recommended stock transactions to Calabro, and did no investment research of his own. [T. 1452; 1456-57] Calabro told ██████ which securities he was buying, or going to buy, and what stocks he was shorting. ██████ relied on Calabro's recommendations 100% of the time and always accepted Calabro's recommendations. [T. 1449-50; 1456] ██████ never discussed or challenged Calabro's recommendations because he did not feel he had the background or knowledge to do so. [T. 1450] ██████ believed that Calabro was looking out for ██████' best interest. [T. at 1458-59] Although ██████ did not give Calabro discretionary authority, Calabro made trades for ██████ without seeking preauthorization. [T. 1450-51] During the churn period, which for ██████' account is December 1, 2008 through November 30, 2009, Calabro executed 271 trades in ██████' account. [T. at 1506-08.]

██████ received an Active Account Suitability Questionnaire and Supplement in March 2009. [DOE. Ex. 45] He signed the form in blank and returned it. None of the information appearing on the form was written by ██████, and virtually all of it is untrue or inaccurate. [T. 1478, 1479-85] In particular, the investment objectives of short-term trading, speculation, trading profits and growth are not accurate; ██████' true investment objectives at the time were safety of principal and income. [T. 1481-82] Other account documents sent to ██████ were similarly signed in blank and later filled out by Calabro containing inaccurate information and untrue investment objectives. [DOE Ex. 46; T. 1490-95; DOE Ex. 47; 1495-1500]

██████ lost \$1.3 million in his JP Turner account over approximately a 1 year period.

[T. 1434] ██████ had approximately 65% of his net worth in his JP Turner account. [T. 1508] When ██████ confronted Calabro as the losses in his account began to mount, Calabro told him that the account would turn around. [T. 1434-35; 1452-53] Although Calabro never mentioned commissions to ██████, ██████ confronted Calabro about the commissions he was paying. In response, Calabro told ██████ that active trading was necessary because of the volatility of the economy. [T. 1461-62; 1504] This was the first time Calabro discussed active trading with ██████. [T. 1461-62]

g. Expert Findings on the ██████ Account

Upon reviewing the activity in the ██████ account and the monthly statements, Dempsey concluded that during the period from December 2008 through November 2009, Calabro engaged in trading patterns consistent with churning by executing over 122 sales transactions totaling \$8,588,124.41 and over 149 purchase transactions totaling \$11,015,161.13. These trades resulted in losses in the account of approximately \$1,026,546 and generated commissions and fees to JP Turner of approximately \$297,515. Calabro's aggressive trading in this account resulted in an annualized equity turnover of 8 times on an annualized basis and a cost equity factor was 22.9%. Dempsey confirmed that virtually all of the transactions in the ██████ account were marked solicited, indicating Calabro's control over the trading in the account. Based on Calabro's testimony during the investigation that his payout ratio was 95% of gross commissions, Calabro earned commissions of over \$282,000 as a result of the trading activity in the ██████ account. [DOE Ex. 155, pg. 15-16 **The ██████' Account Trading Activity, ¶27**]

2. Jason Konner

Jason Ivan Konner, age 39, lives in Brooklyn, New York. [T. 304] Konner graduated from Abraham Lincoln High School in 1991. [T. 305] He attended Kingsborough Community

College in Brooklyn for approximately three months and did not receive a degree. [T. 305-06] Konner obtained a Series 7 securities license in September 1994. [T. 307] He also holds a Series 63 “Blue Sky” license. [T. 307] He has worked in the securities industry since 1994 and has worked at more than a dozen industry employers over the past eighteen years. [DOE Ex. 16]

Konner currently works in the securities industry at Diversified Private Equity Corporation in New York. [T. 312] Prior to that, he was a registered representative in the Brooklyn branch office of JP Turner from September 2006 to December 2011. [T. 308] Konner’s primary responsibility at JP Turner was managing customer accounts and updating customers on the market, including making trading recommendations. [T. 319-20; 346] One of Konner’s other responsibilities as a registered representative at JP Turner was to generate new business by obtaining new clients. [T. 320-21] To get new clients, Konner purchased leads and made cold calls. [T. 321; 323] Because of Konner’s speculative style of investing, it was important that his customers be knowledgeable about investing, and that they understood and wanted to engage in speculation. [T. 321-23; 325] Konner also understood that it was important that his customers have the financial resources to engage in speculation and active trading. [T. 332] Konner claims that, as part of the customer prospecting process, he typically asked potential new customers for a wide variety of information meant to make sure that his investment style was suitable for them, including asking about their investment experience and objectives. [T. 324-27] Konner claimed that he warned his clients that any investment they made might decrease in value and even result in a total loss, but he did not specifically warn them about the risks and costs of active trading. [T. 329-31; 333-34] As a result, Konner never discussed the breakeven rate or turnover rate of an account with a potential or existing customer, even though “the accounts [he] was handling . . . [were] set up for speculative and high rate of trading.” [T. 332-34] Konner typically filled out the account opening documents for his new customers. [T.

342-43] In some instances, he either filled out portions of JP Turner active account documents such as the Active Account Suitability Questionnaire, or arranged for someone else in his office to partially fill them out, before sending them to the customer for signature. [T. 370-72]

Regarding compensation, Konner did not receive a salary while working at JP Turner; he instead received a percentage of commissions and fees generated by his customers' accounts. At JP Turner, customers were typically charged a commission ranging from 1% to 5% per trade on both purchases and sales. [T. 350] Under his arrangement with JP Turner, Konner retained 65% of all commissions generated by his customers' accounts. [T. 316-17] Konner claimed to negotiate with his customers, on a trade by trade basis, the commission charged on every transaction. [T. 349]

a. Konner Customer [REDACTED]

[REDACTED] is a resident of Winfield, Iowa.¹⁸ [T. 1652] A lifelong citizen of Iowa, Carlson attended Iowa State University and received a degree in animal science before beginning a career in farming. [T. 1654-55] Since that time, [REDACTED] primary occupation for over thirty years has been corn and soybean farming. [T. 1655-56]

[REDACTED] is not a sophisticated investor. [T. 1656] He does not believe he has the knowledge or expertise to trade stocks on his own. [T. 1656-57] His investment experience prior to opening his JP Turner account was limited to IRAs holding mutual funds and a single brokerage account that typically traded less than five times a year. [T. 1658-63] The pre-existing brokerage account was not self-directed and [REDACTED] described it as conservative. [T. 1662-64] He typically relies on the recommendations of his broker for the few trades made each year. [T. 1662-64] [REDACTED] does not perform any investment research for that account, and never engaged in active trading. [T. 1662-63; 1669] He does not appear to understand what the

¹⁸ [REDACTED] was 57 years old during the bulk of the churn period.

term “investment objective” means as it is used in the securities industry, and was unable to articulate the investment objectives in his pre-JP Turner account. [T. 1662] He does not regularly read investment-related periodicals, nor watch investment-related TV shows. [T. 1664] He does not own a computer, and while his wife does own one, he uses it “very little.” [T. 1656.]

██████ opened his JP Turner account in July 2007 following a series of cold calls from Konner. [T. 1666-67] During the course of these calls, which began in April, ██████ found Konner to be a good salesman and gained confidence in Konner’s knowledge about investing. [T. 1666-69] By the time the account was opened, ██████ had begun to trust Konner because he believed Konner knew what he was doing and was looking out for ██████’s best interest. [T. 1675-76] During the calls before the account was opened, ██████ told Konner he was a farmer. [T. 1670] Regarding his personal investment experience, ██████ told Konner that previously he had not done any research, but instead “had always left it up to somebody else” to direct any securities trading. [T. 1669] As stated, ██████ did not understand investment objectives and risk tolerance as those terms are used in the securities industry, and in the early discussions, told Konner in simple terms that he “wanted to make money” and “didn’t want to lose money.” [T. 1672-73] Konner did not explain speculation to ██████; in fact, ██████ has no recollection of speculation or active trading even being discussed. [T. 1674] ██████ did not recall Konner asking him about his annual income, investable assets, or other aspects of his financial situation at the time, nor did he recall Konner asking whether ██████’s retirement planning was set and secure. [T. 1670-71] Konner never discussed a trading strategy with ██████, either before the account was opened or after. [T. 1673-74]

██████ received a brokerage account application from JP Turner that had already been filled out for him.¹⁹ [DOE Ex. 49; T. 1676-77] He had discussed the form and the information requested with Konner on the phone prior to receiving it. [T. 1678] The financial figures on the form were accurate for ██████ as of July 2007. The investment objectives on the form are ranked: (1) trading profits; (2) speculation; and (3) capital appreciation. [DOE Ex. 49] ██████ did not select the investment objectives, and did not fully understand the choices. [T. 1679-80] ██████ did not agree to speculate or seek trading profits, although he was willing to “take a few chances” with the small amount of money (\$6,500) he was using to fund the account. [T. 1676; 1680]

In April 2008, ██████ received a pre-filled account update form from JP Turner. [DOE Ex. 50; T. 1693] By that time, ██████ had increased the amount of invested funds to approximately \$200,000, using money he obtained from sales of grain and that he would need in the fall to pay farming bills. [T. 1695-96] The money represented 60-70% of his liquid assets at the time. [T. 1697] ██████ told Konner several times that he could not afford to lose his investment, and he conveyed to Konner that having more money at stake reduced his willingness to take risks. [T. 1696-97] The pre-filled account update form included investment objectives ranked: (1) speculation; (2) trading profits; (3) income; (4) preservation of capital; and (5) capital appreciation. [DOE Ex. 50] The risk tolerance rankings identified on the form were: (1) aggressive; (2) moderate; and (3) conservative. [DOE Ex. 50] ██████ still did not fully understand the investment objective choices, and the rankings were not accurate. [T. 1698-1700] ██████ again told Konner that he “[couldn’t] afford to lose all this money” [T. 1698]

¹⁹ The relevant exhibits relating to the establishment, maintenance and funding of ██████’s account at JP Turner include DOE Ex. 49 (July 18, 2007 account application of JPK 726010), DOE Ex. 50 (April 6, 2008 account update form), DOE Ex. 51 (May 1, 2008 margin account application), DOE Ex. 52 (pre-filled active account letter), DOE Ex. 53 (March 23, 2009 signed version of pre-filled active account letter), DOE Ex. 54 (February 21, 2010 active account letter), DOE Ex. 128 (JPT statement for ██████’s account before churn period) and DOE Ex. 129 (JPT statements for ██████’s account during churn period).

██████ also noted that the form had an updated net worth figure of \$2.5 million (compared with \$700,000 as reflected on the account opening form) and investable assets figure of \$750,000 (up from \$200,000), and told Konner “I’m not worth near that.” [DOE Ex. 50; T. 1700-01] ██████ signed the form because “[Konner] said it didn’t mean anything. He said just initial it. I told him, I said, well, I’m not worth two and a half million. He said, well, that doesn’t really mean anything.” [T. 1702]

██████ subsequently received additional pre-filled forms with inflated financials and incorrect investment objectives, including a Supplemental Application for NFS Margin Account Privileges in May 2008, and an Active Account Suitability Questionnaire and Supplement in March 2009, which he signed despite their errors because Konner had told him that they didn’t mean anything.²⁰ [DOE Exs. 51, 52 and 53; T. 1703-14] ██████ never told anyone at JP Turner that his investment objectives were speculation or short-term trading. [T. 1710] ██████ did write in 4 per week in the blank for frequency of trades on the March 2009 Active Account Suitability Questionnaire. Konner, however, continued to recommend considerably more trades than that as quickly as April 2009, and several months thereafter. [DOE Ex. 129; T. 1725]

Once the account was open and trading, Konner would communicate with ██████ by phone, calling him to recommend purchases and sales in the account. [T. 1681-83] Konner typically did most of the talking, and ██████ seldom asked any questions. [T. 1683] ██████ took a passive role and relied on Konner to direct the trading in the account. [T. 1684] ██████ could only recall one trade that he initiated during 2008 and 2009, and even that stock had been recommended to him by someone else. [T. 1726] As time went on, ██████ found it “very

²⁰ ██████ received another Active Account Suitability Questionnaire in February 2010 that was not pre-filled. [DOE Ex. 54] On it, he listed his net worth as \$800,000 and his liquid net worth as \$400,000. The form does not reflect either speculation or short-term trading as investment objectives, but instead shows trading profits. ██████ does not recall making that choice but assumes he did. [T. 1716]

difficult” to keep up with the trading in the account due to the number of trades and the number of companies involved, most of which he had never heard of. [T. 1686; 1725-26] ██████ was not doing any independent investment research, and when making decisions on Konner’s recommendations, ██████ typically had only the information Konner gave him over the phone. [T. 1687; 1688-89; 1721-22] ██████ trusted Konner and relied on his knowledge and expertise, and in 2008 and 2009, followed Konner’s recommendations “100%” of the time. [T. 1689-90; 1722]. Konner also executed a significant number of trades without preauthorization from ██████; when asked whether he received a call before every trade, ██████ replied “No. Oh, no. I would have been on the phone all day.” [T. 1720; 1722] ██████ never discussed commissions with ██████ after the first couple trades in 2007. [T. 1675] ██████ did not keep track of commissions on trades in his account. [T. 1690]

b. Expert Findings on the ██████ Account

Upon reviewing the activity in the ██████ account and the monthly statements, Dempsey concluded that, during the period from January through December 2009, Konner engaged in trading patterns consistent with churning by executing over 118 sale transactions totaling \$4,163,638.86 and over 134 purchase transactions totaling \$4,419,365.84. These trades resulted in losses in the ██████ account of approximately \$54,119 and generated commissions to JP Turner of \$87,686, and margin interest of \$3,546. Konner’s aggressive trading in this account resulted in an annualized equity turnover of 17, almost triple the presumptive level for churning (i.e., 6), and the cost equity factor was 34.6%. Dempsey also concluded that virtually all of the transactions in the ██████ account were marked solicited, indicating Konner’s control over the trading in the account. Based on Konner’s testimony that his payout ratio was 65% of gross commissions, Dempsey concluded that Konner earned commissions of over \$55,000 as a result

of the trading activity in the [REDACTED] account. DOE Ex. 155, pg. 18-19 **The [REDACTED] Account Trading Activity**, ¶33.

c. **Konner Customer [REDACTED]**

[REDACTED] is a resident of Paullina, Iowa.²¹ [T. 1922-23] Another lifelong citizen of Iowa, [REDACTED] graduated from Rock Valley High School in 1941 and did not attend college. [T. 1924] He was a grain farmer raising corn and soybeans from a young age until his retirement in 1985. [T. 1924-25]

[REDACTED] is not a sophisticated investor. [T. 1926] He does not believe he has the knowledge or expertise to trade in stocks on his own. [T. 1926] Prior to opening his JP Turner account in 2009, [REDACTED] had never had a brokerage account and thus had *no* previous securities investment experience. [T. 1926] He does not own a computer (and did not own one in 2009), and has never performed any investment research beyond “watch[ing] the newspaper on a few stocks”²² [T. 1925-27] He does not watch investment-related TV shows. [T. 1927]

[REDACTED] opened his JP Turner account in May 2009 after being cold called by Konner. [T. 1928-29] [REDACTED] believes he spoke to Konner more than once before agreeing to open an account. [T. 1929] [REDACTED] got the impression during these calls that Konner was “a very good salesman, a high pressure one.” [T. 1930] [REDACTED] also thought Konner “was knowledgeable about investing,” and was impressed that Konner was with a brokerage firm in New York. [T. 1930] At that time, [REDACTED] believed a broker “would look out for his customers.” [T. 1935] Konner told [REDACTED] that the stock market was going to go up, and it would be to [REDACTED]’s advantage to invest in it. [T. 1929] [REDACTED] told Konner during these early calls that [REDACTED] was a

²¹ [REDACTED]

²² [REDACTED] took a two-year free subscription to a magazine called *Trader* prior to 2009. According to him, “it didn’t cover too much in stock,” but instead dealt with traders on Wall Street. [T. 1927]

“lifelong farmer” and that he had no prior investment experience. [T. 1930-31] Regarding his financial situation as it existed at the time, ██████ tried several times to tell Konner that he did not have large sums of loose cash for stock trading, but Konner “didn’t want to take no for an answer.” [T. 1932] Konner did not ask ██████ whether he was financially comfortable in his retirement. [T. 1932] Regarding investment objectives, ██████ told Konner that he “just wanted to buy stock that would appreciate in value.” [T. 1932] ██████ does not believe he discussed the idea of speculating in stocks with Konner before the account was opened. [T. 1933] According to ██████, “commissions were [n]ever really mentioned in any depth at all,” and there was no discussion of the risks of active trading. [T. 1931; 1934]

Konner convinced ██████ to open an account and sent him a pre-filled brokerage account application.²³ [T. 1928-29; 1936-40; DOE Ex. 18] The financial information that had been written in for ██████ in the account owner profile section was incorrect. [T. 1938-41] For example, the form listed ██████’s “Estimated Net Worth” as \$4 million, despite written instructions that the figure should be calculated “exclusive of home and farm.” [DOE. Ex. 18] ██████ explained that while his estimated net worth including his farm was at least \$4 million, it was only a “couple hundred thousand” without the farm. [T. 1940-41] The pre-filled form also ranked the investment objectives as: (1) speculation; (2) trading profits; and (3) capital appreciation. [DOE Ex. 18] ██████ disagreed with putting speculation first and communicated that to Konner. [T. 1941-43] ██████ also disagreed with the risk tolerance selection of “aggressive,” preferring “moderate” instead. [T. 1943-44] In addition, the form had been filled out to reflect that ██████, who had never had a brokerage account before, had “extensive” general

²³ The relevant exhibits relating to the establishment, maintenance and funding of ██████’s account at JP Turner include DOE Ex. 18 (pre-filled account application of JPK 862681), DOE Ex. 19 (May 29, 2009 signed account application), DOE Ex. 20 (December 18, 2009 signed active account letter), DOE Ex. 134 (pre-filled active account letter) and DOE Ex. 136 (JPT statements for ██████’s account during churn period).

investment knowledge. [DOE Ex. 18] ██████ “told Konner more than once that I was a novice trader, that I had to rely on his experience.” [T. 1944-45] ██████ believes he refused to sign it as it was filled out – in particular because he “didn’t like what they had filled in” on the investment objectives – and sent it back unexecuted, but was later called by Konner and talked into agreeing to the contents of the form. [T. 1941-42] Konner convinced ██████ by telling him that it was to ██████’s advantage to sign it, and that by signing it, Konner could do a “better job trading for” ██████. [T. 1947] ██████ signed the application on May 29, 2009 and returned it to JP Turner, opening account JPK862681. [T. 1945; DOE Ex. 19]

After the account was opened, Konner began to call ██████ to recommend trades. [T. 1948; DOE Ex. 136] ██████ generally did not initiate trades on his own and relied on Konner’s recommendations with respect to what stocks to buy and sell. [T. 1948; 1965] During 2009, ██████ was not doing any independent investment research, and he typically did not know anything about the companies being recommended apart from what Konner told him over the phone. [T. 1963-64] Moreover, Konner typically did not tell ██████ anything specific about the companies, saying only “their stock was better than anything else.” [T. 1963] ██████ did not question the frequency with which Konner recommended trades because he thought Konner “was always trading to my advantage.” [T. 1949] During these calls, which ██████ described as “[h]igh pressured salesmanship, where [Konner] didn’t want to take no for an answer,” Konner did most of the talking and ██████ rarely asked questions. [T. 1949] Comparing Konner to a door-to-door vacuum cleaner salesman that “just talked and talked and talked until I said yes,” ██████ always agreed to Konner’s recommendations. [T. 1951; 1965] ██████ indicated that he approved the transactions because Konner recommended them, and because he trusted Konner. [T. 1964-65] Konner and ██████ did not typically discuss commissions – in fact, ██████ never

negotiated commissions with Konner, and did not realize they could be adjusted. [T. 1950]

██████ did not keep a tally of the commissions he was charged in 2009. [T. 1951]

In December 2009, six months after his account was opened, and after the period during which ██████'s account was churned, Miller received a pre-filled Active Account Suitability Questionnaire and Supplement from JP Turner. [DOE Ex. 134; DOE Ex. 20] ██████ was unaware of why he received the form. [T. 1953] Like the pre-filled brokerage account application, much of the information provided on the Active Account Suitability Questionnaire was inaccurate. For example, the net worth figure that had been written on the form was \$4 million, and like the brokerage account application, was not accurate when ██████'s farm (which he was unwilling to sell) was excluded. [T. 1954-55] At the time ██████ received the form, he told Konner that the bulk of his money was tied up in that real estate. [T. 1954-55] The investment objectives and risk tolerance were not accurate for ██████ at the time. [T. 1955-56] In addition, ██████ did not have "20+" years of prior investment experience. [T. 1957] ██████ explained that he did not sign the form right away, but after a "pep talk" from Konner, signed and returned the form as requested. [T. 1953; 1960-61]

d. Expert Findings on the ██████ Account

Upon reviewing the activity in the ██████ account and the monthly statements, Dempsey concluded that, during the 6 month period from June through November 2009, Konner engaged in trading patterns consistent with churning by executing over 26 sale transactions totaling \$911,730.91 and over 37 purchase transactions totaling \$1,134,017.40. These trades resulted in losses in the ██████ account of approximately \$80,497 and generated commissions to JP Turner of \$35,700. Konner's aggressive trading in this account resulted in an annualized equity turnover of 18, which is triple the presumptive level of churning, and the cost equity factor was 28.2%. Dempsey concluded that virtually all of the transactions in the Miller account were

solicited, indicating Konner's control over the trading in the account. Based on Konner's testimony that his payout ratio was 65% of gross commissions, Dempsey concluded that Konner earned commissions of over \$23,000 as a result of the trading activity in the [REDACTED] account. DOE Ex. 155, pg. 21-22 **The [REDACTED] Account Trading Activity**, ¶37.

3. Dimitrious Koutsoubos

Dimitrious Koutsoubos, age 36, is a resident of Ocean, New Jersey. [T. 472]

Koutsoubos graduated from high school in 1994, and attended two colleges but never obtained a college degree. [T. 474] Koutsoubos obtained a Series 7 securities license and a Series 63 "Blue Sky" securities license in 1999. [T. 474]

Koutsoubos currently works in the securities industry at Caldwell International Securities, and has since June 2011. [T. 484-85; 494-95] From August 2009 to June 2011, Koutsoubos solicited investors for several companies, including Find.com, Bidthatproject.com and London Metals Market, LLC. [T. 477-81; 485-89; 1965-67] Prior to that, from November 1999 to August 2009, Koutsoubos was a registered representative with JP Turner. [T. 476] Koutsoubos split time between the Brooklyn branch of the firm and the Fort Lauderdale/Deerfield Beach branch. [T. 497]

Koutsoubos' primary responsibility at JP Turner was to manage brokerage customer accounts. One of Koutsoubos's other responsibilities as a registered representative at JP Turner was to prospect new customers through cold calls. [T. 496-97] Koutsoubos purchased leads on the internet, seeking "[h]igh net worth accredited investors" that "were not investing money that they needed to live on" and that were "able to assume risk." [T. 506-07] Koutsoubos claimed to verify a potential clients' status as an accredited or speculation-appropriate investor by asking suitability questions during the prospecting process. [T. 507] This process included asking about their personal investment history, current investor status, age, occupation, annual income,

retirement readiness, net worth and investable assets. [T. 508-11] Koutsoubos was uncertain whether it included discussing asking potential investors about their investment objectives or risk tolerance. [T. 510] Once a prospect agreed to open an account, Koutsoubos typically went over the brokerage account application with them and filled it out before having it typed up by others at JP Turner and sent to the customer for signature.²⁴ [T. 511-14; 579] Koutsoubos claimed that he explained the investment objective and risk tolerance choices to new customers under certain circumstances. [T. 512-13]

While working at JP Turner during 2008 and 2009, Koutsoubos managed the accounts of more than 100 brokerage customers. [T. 520-21] He “recommended a lot of trades”² and often asked customers to make a decision on a recommendation on the spot. [T. 521; 524] Regarding compensation, Koutsoubos received a percentage of commissions and fees generated by his customers’ accounts instead of a salary. [T. 543] Under his arrangement with JP Turner, Koutsoubos generally retained 60% of commissions generated by his customers’ accounts. [T. 541] For reasons internal to JP Turner, however, Koutsoubos claims to have received only 30% of the commissions for the two accounts at issue in this case. [T. 540-42]

a. Koutsoubos Customer [REDACTED]

[REDACTED] is a resident of Holly Springs, Mississippi.²⁵ [T. 844-45] [REDACTED] graduated from Middleton High School in Middleton, Tennessee and attended one semester at the University of Tennessee at Martin. [T. 846] [REDACTED] owns [REDACTED] [REDACTED] in Holly Springs, Mississippi, which he has operated for 23 years. [T. 846-47; 889] He also owns and operates [REDACTED], in Blue Mountain,

²⁴ In some instances, Koutsoubos also filled out Active Account Suitability Questionnaires for his customers and sent the pre-filled form out for signature. [T. 551-52; DOE Ex. 27]

²⁵ [REDACTED]

Mississippi. [T. 890]

██████ does not consider himself to be a sophisticated investor. [T. 847] ██████ has virtually no education beyond high school and has never taken any classes in finance, accounting or economics. [T. 888] Prior to opening his account at JP Turner, ██████ had two other brokerage accounts with total invested funds of around \$70,000. [T. 848-49] ██████ made very few, if any, trading recommendations in those accounts, took a buy-and-hold approach in them, and the accounts were not heavily traded. [T. 848-49; 878] He does not watch investment-related TV shows, nor does he subscribe to any investment-related periodicals. [T. 850]

██████ opened his JP Turner account in February 2005 with a different registered representative.²⁶ [T. 850-51; DOE Ex. 32] ██████'s brokerage account application reflects an investment objective of growth and a risk tolerance of medium. [T. 856-57; DOE Ex. 32] By May 2005, ██████ received a call from JP Turner indicating that his registered representative had been changed to Koutsoubos. [T. 851; 853] Between February and May 2005, Bryant's account saw a total of 7 trades. [DOE Ex. 148] Upon taking over the account, Koutsoubos told ██████ he was going to make him "a lot of money." [T. 853] Koutsoubos did not ask ██████ whether he was an experienced investor, what his investment objectives were, or what his risk tolerance was. [T. 853-54] ██████ independently told Koutsoubos – at the time, and again later – that his risk tolerance was actually conservative. [T. 854-55; 865] ██████ also subsequently told Koutsoubos that he "didn't want to lose money. I wanted to earn money and be conservative." [T. 855-56]

In March 2007, ██████ received an unsolicited account update form from JP Turner. [T.

²⁶ The relevant exhibits relating to the establishment, maintenance and funding of ██████'s account at JP Turner include DOE Ex. 32 (February 23, 2005 account application), DOE Ex. 143 (March 15, 2007 account update form), DOE Ex. 27 (May 8, 2009 active account letter), DOE Ex. 25 (JPT statement for ██████ account during churn period) and DOE Ex. 148 (JPT statements for ██████'s account from February 2005 through August 2010).

858-59; DOE Ex. 143] ██████ does not recall whether the form was filled out when he received it, but he remembers Koutsoubos “just said, sign where I put the stars and send back, I’ll take care of the rest.” [T. 859] None of the substantive account information on the form is in ██████’s handwriting. [T. 859-60] The account update form reflects a new risk tolerance of aggressive and new investment objectives of speculation, trading profits and capital appreciation. ██████ has no recollection of discussing investment objectives or risk tolerance with Koutsoubos at the time, however, and never told Koutsoubos that his investment objectives or risk tolerance had changed since he opened the account, or that his new risk tolerance was aggressive and new investment objectives included speculation. [T. 861-62]

After the account had been assigned to Koutsoubos for some time, Koutsoubos complained that he was having difficulty reaching ██████ and they discussed Koutsoubos having discretionary authority to make trades in the account. [T. 865-866] In addition, when the market started to decline, Koutsoubos suggested that ██████ authorize Koutsoubos to day trade in the account. [T. 869] Koutsoubos subsequently exercised control and in some instances made trades in the account without preauthorization from ██████. [T. 865-66; 873-74] During the market downturn (presumably in 2008), ██████ suggested coming out of the market by converting his investments into cash, but Koutsoubos talked him out of it. [T. 869-70]

In May 2009, ██████ received an Active Account Suitability Questionnaire and Supplement from JP Turner. [T.870-72; DOE Ex. 27] ██████ recalled that by the time he received the forms, “the losses were already pretty substantial” and “we were just kind of grasping at straws.” [T. 872] The Questionnaire contains a variety of information purportedly from ██████, and reflects investment objectives of short-term trading, speculation and trading profits. [DOE Ex. 27] It has two sets of handwritten brackets on the left side that have a handwritten line above the word “initial,” and also includes an “X” and the word “sign” just to

the left of the signature line at the bottom. [DOE Ex. 27] ██████ does not recall whether the Questionnaire was filled out or not when he received it, but the only handwriting he recognized as his own were the initials and his signature. [T. 871] He did not circle the investment objectives marked on the Questionnaire. [T. 872]

Over the life of the account, ██████ estimates that he invested around \$250,000 with Koutsoubos, which was approximately 25% of his net worth. [T. 864; 876; DOE Ex. 148] ██████ relied on Koutsoubos' recommendations 98-99% of the time when making trades in the account. [T. 866; DOE Ex. 25] Koutsoubos encouraged ██████ to follow his recommendations, telling him "you sell lumber, and I'll take care of the stocks." [T. 867] ██████ did not perform independent research on the companies Koutsoubos recommended. [T. 867] At the time Koutsoubos was managing his account, ██████ believed Koutsoubos was looking out for ██████'s best interest when making recommendations. [T. 867] ██████ typically received trade confirmations from JP Turner after trades occurred in the account, but did not always review them due to work commitments. [T. 872-73] When making recommendations, Koutsoubos generally did not tell Bryant how much he would be paying in commission. [T. 873]

b. Expert Findings on the ██████ Account

Upon reviewing the activity in the ██████ account and the monthly statements, Dempsey concluded that during the period from January through December 2008, Koutsoubos engaged in trading patterns consistent with churning in the ██████ account by executing over 99 sale transactions totaling \$4,202,728.03 and over 92 purchase transactions totaling \$4,032,172.11. These trades resulted in losses in the ██████ account of approximately \$189,801. Koutsoubos's aggressive trading in this account resulted in an annualized equity turnover of 56 times, more than 9 times the presumptive churning level of 6, and the cost equity factor was 73.3%, and generated commissions to JP Turner of approximately \$47,000, and margin interest of over

\$6,000. Dempsey noted that the month end equity in the account over the entire period ranged from a high of \$177,559 to a low at the end of the review period of \$7,269. Further, Dempsey noted that although the period covered in his review was all of calendar year 2008, the majority of the activity occurred in the months of January through October 2008. Dempsey concluded that virtually all of the transactions in the [REDACTED] account were solicited, indicating Koutsoubos's control over the account. Based on Koutsoubos's testimony during the investigation that his payout ratio was 65% of gross commissions, Dempsey concluded that Koutsoubos earned commissions of over \$30,000 as a result of the trading activity in the [REDACTED] account. DOE Ex. 155, pg. 24-25 **The [REDACTED] Account Trading Activity**, ¶43.

c. Koutsoubos Customers [REDACTED]

[REDACTED] and [REDACTED] live in Metairie, Louisiana. [T. 2133; 2340] Lifelong residents of the New Orleans area, [REDACTED] graduated from Warren Easton High School and [REDACTED] graduated from St. Joseph Academy. [T. 2134; 2340] Neither attended college. [T. 2134; 2341] Now retired, [REDACTED] worked as an insurance salesman for close to thirty years. [T. 2134-35] [REDACTED] is also retired, but previously worked as a legal secretary for 22 years and later operated a beauty supply franchise for 17 years. [T. 2341-42]

[REDACTED] are not sophisticated investors. [T. 2135-36; 2342-43] When asked to characterize her knowledge of the stock market, [REDACTED] responded “[z]ero,” and when the same question was posed to him, [REDACTED] answered “[p]retty much none.” [T. 2135; 2342] They have a limited educational background and neither has ever worked in the securities industry. [T. 2134-35; 2341] They have very limited experience trading in securities, and in fact, neither of them had ever opened a brokerage account before they opened their JP Turner account. [T. 2135-36; 2342-43] Since that time, they opened an account at E*TRADE, but

explained that the account was opened only to allow them to sell the last remaining position that they had held in their JP Turner account. [T. 2342-43] The account currently has a balance less than \$1,000. [T. 2342] The only investment not suggested by Koutsoubos that they have made since Koutsoubos's departure from JP Turner is a \$600 interest in an Alaskan gold mine. [T. 2135-36; 2343]

██████████ opened their JP Turner account in September 2006 following a cold call from Koutsoubos.²⁷ [T. 2137-38; 2343-44; DOE Ex. 144] ██████████' brokerage account application reflects investment objectives of speculation and trading profits and a risk tolerance of aggressive, but the form may have been blank when ██████████ received it, and in any event, they did not fill out those parts of the form. [T. 2141-42; 2348-49; DOE Ex. 144] ██████████ did not understand much of the form, especially the investment objective choices. [T. 2142; 2349; 2353] At the time the account was opened, Koutsoubos did not ask ██████████ about their investment objectives or risk tolerance, and ██████████ never indicated they wanted to speculate or take a lot of risk in the account. [T. 2139-2143; 2345-2346; 2349] Both ██████████ testified that their true risk tolerance was conservative. [T. 2142; 2350]

When making calls to recommend trades, Koutsoubos spoke very quickly and typically tried to "talk ██████████ into whatever he wanted [them] to do at that time." [T. 2357] Koutsoubos often recommended trading in and out of a security over a short period of time. [T. 2145; 2358] ██████████ ██████████ complained about those recommendations on more than one occasion, suggesting they buy and hold Apple stock. [T. 2145] However, ██████████ typically agreed, after arguing with Koutsoubos, to trust Koutsoubos' experience and go with the recommendation. [T.

²⁷ The relevant exhibits relating to the establishment, maintenance and funding of the ██████████ account at JP Turner include DOE Ex. 144 (September 30, 2006 account application), DOE Ex. 28 (September 7, 2007 active account letter), DOE Ex. 29 (March 20, 2009 active account letter), DOE Ex. 26 (JPT statements for the ██████████ account from December 2008 through July 2009) and DOE Ex. 149 (JPT statements for the ██████████ account from October 2006 through July 2010).

2145; 2157-58] Koutsoubos never brought up commissions with ██████ except to say, late during the relationship, that he would forego commissions because they were losing money. [T. 2156; 2386]

██████ received two Active Account Suitability Questionnaire and Supplement letters from JP Turner, one in September 2007 and another in March 2009. [DOE Ex. 28; 29] ██████ did not understand why the forms were sent to them. [T. 2153; 2362] The investment objectives identified on the forms – short-term trading, speculation and trading profits in September 2007 and short-term trading and speculation in March 2009 – were inaccurate. As ██████ testified; “I would have never circled speculation or short-term trading.” [Doe Ex. 28; 29; T. 2153] ██████ circled the investment objectives on the September 2007 form, but testified that she had done so at Koutsoubos’ suggestion “because [she] didn’t know what to put in the blanks and what to fill out.” [T. 2361-62] Koutsoubos “told [her] what to put” on the form and directed her to circle those investment objectives. [T. 2362-64] ██████ also recalled discussing the March 2009 form with Koutsoubos, and likewise recalled Koutsoubos telling her how to fill out the “[i]nvestment objectives, prior investment experience, size of trades, frequency of trades.” [T. 2371] ██████ did not understand what short-term trading, speculation or trading profits meant. [T. 2365-66] Other information on the forms was also inaccurate. [T. 2149-53; 2360-73]

██████ invested around \$300,000 in their JP Turner account using funds that had been saved for retirement. [T. 2143-2145; 2353] It constituted close to 100% of their liquid net worth. [T. 2144-45; 2354] ██████ relied heavily on Koutsoubos’ recommendations; approximately 95% of the trades in the account were made in response to his recommendations. [T. 2148; 2356; DOE Ex. 26] The only stocks ██████ ever recommended were Apple and Loreal cosmetics. [T. 2147-48; 2356] ██████ did not keep track of the trading in their

account. [T. 2157]

After he left JP Turner, Koutsoubos contacted [REDACTED] about investing in Find.com. [T. 2158-60; 2386-88] Koutsoubos encouraged [REDACTED] to invest by suggesting that they could recoup some of the losses they had suffered in their JP Turner account. [T. 2158-60] Koutsoubos did not make any risk disclosures about the investment. [T. 2387] [REDACTED] invested in Find.com. [T. 2386-88] They lost their money. [T. 2388]

d. Expert Findings on [REDACTED] Account

Upon review of the activity in [REDACTED] account and the monthly statements, Dempsey concluded that, during the period from December 2008 through July 2009, Koutsoubos engaged in trading patterns consistent with churning in [REDACTED] account by executing over 87 sale transactions totaling \$1,588,555.91 and over 100 purchase transactions totaling \$1,506,355.95. These trades resulted in losses in [REDACTED] account of approximately \$3,902, and generated commissions to JP Turner of approximately \$31,486, and margin interest of approximately \$1,533. Koutsoubos's aggressive trading in this account resulted in an annualized equity turnover of 28 times, more than 6 times above the level presumptive of churning, and the cost equity factor was 41.2%. Dempsey concluded that virtually all of the transactions in the Mills account were solicited, indicating Koutsoubos's control over the direction of the trading in the account. DOE Ex. 155, pg. 27 [REDACTED] **Account Trading Activity**, ¶47.

4. Frequency of Trades

As reflected in the table below, all but three of the customers²⁸ signed forms associated

²⁸ Despite appearing on the AARS at a level requiring he receive an Active Account Suitability Questionnaire and Supplement, [REDACTED] did not receive these forms until he closed his account. Prior to the time period that Calabro churned his account, however, [REDACTED] signed an options suitability questionnaire that listed the "frequency of trades" in his account as "50-60 per year." [DOE Ex. 34] From March 2009 through November 2009, the period his account was churned, approximately 222 transactions took place in his account. [REDACTED]'s account appeared on the AARS at a level requiring an Active Account Suitability Questionnaire after the period that Konner churned his

with active trading indicating a “frequency of trades” that Calabro, Konner, and Koutsoubos subsequently exceeded by significant margins.

Registered Representative		Date of Form	Type of Form	Frequency of Trades Listed	Frequency of Trades During Relevant Time Period
Calabro	██████████	March 2009 <i>DOE Ex. 45</i>	Suitability Questionnaire <i>DOE Ex. 45</i>	3-6 Per Month <i>DOE Ex. 45</i>	13 in April 2009 38 in May 2009 45 in June 2009 <i>DOE Ex. 8; T. 1486-90</i>
Calabro	██████████	March 2009 <i>DOE Ex. 9</i>	Suitability Questionnaire <i>DOE Ex. 9</i>	10 Per Month <i>DOE Ex. 9</i>	26 in June 2009 19 in July 2009 <i>DOE Ex. 7; T. 1154-56</i>
Calabro	██████████	March 2009 <i>DOE Ex. 9</i>	Suitability Questionnaire <i>DOE Ex. 9</i>	10 Per Month <i>DOE Ex. 9</i>	27 in June 2009 17 in July 2009 <i>DOE Ex. 6; T. 1152-54</i>
Konner	██████████	March 2009 <i>DOE Ex. 53</i>	Suitability Questionnaire <i>DOE Ex. 53</i>	4 Per Week <i>DOE Ex. 53</i>	33 in April 2009 32 in June 2009 30 in Sep. 2009 <i>DOE Ex. 129; T. 1725</i>
Koutsoubos	██████████	March 2009 <i>DOE Ex. 29</i>	Suitability Questionnaire <i>DOE Ex. 29</i>	4 Per Week <i>DOE Ex. 29</i>	54 in April 2009 45 in May 2009 26 in June 2009 <i>DOE Ex. 26</i>

B. JP Turner’s Supervisory Structure

For JP Turner’s offices of supervisory jurisdiction (“OSJ”), the registered representatives were directly supervised by branch managers, who in turn reported to, and were supervised by one of four area vice presidents (“AVPs”). [T. 2512-14; DOE Ex. 171] For smaller, non-OSJ offices, registered representatives were supervised directly by an AVP, who in turn was supervised by Bresner, the Head of Supervision. [T. 2512 & 2514]

C. Development and Design of the Active Account Review System

Beginning in late 2006, senior managers at JP Turner participated in meetings to design and implement a system to monitor active trading at the firm. [T. 2811-12] The firm had previously utilized a monitoring system based on annualized turnover rates, but determined to switch to a system that tracked return-on-investment (“ROI”), *i.e.* the level of fees and

account ██████████ did not have a Suitability Questionnaire on file during the period his account was churned by Koutsoubos even though it appeared at the highest levels on the AARS.

commissions as a percentage of account equity. [T. 2795] The meetings were generally attended by personnel heads from the compliance, supervisory and information technology departments as well as executive members of the firm. Through these meetings, the management team developed what came to be known as the Active Account Review System (“AARS”), which became operational in November 2007. [T. 2524; 2528; 2811-12] The mechanics of the system, discussed below, were understood and collectively approved by various senior level individuals, which included Bresner. [T. 2811-12]

As implemented, on a quarterly basis the AARS identified accounts with specific ROI levels, and required that certain supervisory actions be taken at each level. [T. 2530 & 2532.] Specifically, for each customer account, the system calculated as ROI the total commissions and fees as a percentage of the average equity in the account over the trailing twelve-month period. [T. 2520.] The AARS flagged actively traded accounts that fell into four levels, requiring different supervisory actions at each level. [DOE Ex. 92; T. 2529-32] At Levels 1 and 2, first-line supervisors, and at Levels 3 and 4, more senior supervisors, were directed to review the account or take other action. [DOE Ex. 172; T. 2550-75]

Level 1 Accounts:

For each account tagged at Level 1 (ROI between 10 and 15 percent), the system sent an e-mail to first-line supervisors²⁹ requiring that they conduct an unspecified “review” of the system. [T. 2550-51; DOE Ex. 172] The firm did not provide guidance on how to conduct this review. [T. 2542 & 2537-38] Supervisors were only required to access the AARS and click a box on a summary account screen that identified the ROI level, thereby memorializing the

²⁹ First line supervisors included: (1) OSJ branch managers supervising the office’s registered representatives, (2) AVPs supervising registered representatives associated with non-OSJ branch offices, and (3) AVPs supervising the trading of OSJ branch managers.

“review.” [T. 2552-53; DOE 172]

Level 2 Accounts:

At Level 2 (ROI between 15 and 20 percent, or ROI of 10 to 15 percent and turnover rate exceeding six), the system sent an e-mail to first-line supervisors requiring that they conduct the same undefined review of the account. [T. 2557-560] There were a list of additional actions that the first-line supervisor could take, which included: (1) computing a profit and loss analysis, (2) discussing the account with the registered representative, (3) calling the customer, or (4) restricting the amount of commissions a registered representative could charge to a customer.

[T. 2534] The first-line supervisor, however, was not required to take any of these actions. [T. 2560; DOE Ex. 172 (“Principal must indicate what action, *if any*, is being taken on the account.”) (emphasis added)]

Additionally, for all accounts initially tagged at Level 2 or at a higher level, the compliance department sent the customer a form cover letter with an attached Active Account Suitability Supplement (“suitability supplement”) and Active Account Suitability Questionnaire (“suitability questionnaire”). [T. 2545-46 & 2557-58; DOE Ex. 20] The letter requested that customers complete, sign, and return the suitability questionnaire identifying their investment objectives and risk tolerance, as well as the “frequency of trades” associated with the account. [T. 2663; DOE Ex. 20]

Customers were also required to sign the suitability supplement certifying that they had read an attached boilerplate summary of risks associated with active trading. [T. 2545-46; DOE Ex. 20] If the customer failed to return these forms, compliance personnel would restrict the account which prevented any purchases from being made in the account. [T. 2673] In order to trade in the account, the registered representative would need to take action to ensure that the forms were returned. [T. 2673] In some instances, the registered representative would print a

copy of the forms and fill in customer information (e.g., investment objectives and risk tolerance) before resending to the customer for the customer to sign. [T. 2673 & 2731] The cover letter, suitability supplement and suitability questionnaire were sent only once per 12-month period, even if the AARS repeatedly flagged an account as actively traded in that period.³⁰ [T. 2560-61]

Level 3 Accounts:

At Level 3 (ROI between 20 and 25 percent), AVPs, notified via e-mail, were required to perform the same undefined “review” of the account and to conduct at a minimum a profit and loss analysis. [T. 2565-66] The firm did not provide guidance on how to conduct this review or what steps to take to respond to a suspicious profit and loss analysis for the account. [T. 2542, 2537-38; 2569; 2779; 2834-35] In addition, at this level, the firm’s Written Supervisory Procedures stated that “[p]rincipals with a pattern of accounts that reach Level III may be subject to disciplinary action by the Firm.” The term “pattern” was not defined. [E.g., DOE Ex. 79, p. 268; see also parallel discussions of active accounts in DOE Exs. 80-86]

Level 4 Accounts:

At Level 4 (ROI greater than 25 percent), Bresner, notified via e-mail, was required to perform a review of the account and take “appropriate” action. [T. 2570-71; 2573; 2835-37] The appropriate action typically consisted of Bresner soliciting recommendations from AVPs regarding the treatment of an account, or independently determining the appropriate action to take on an account with respect to the registered representative handling that account. [T. 2779]

³⁰ After the initial forms were returned, a second set would be sent after one year, assuming the customer’s account was then still at Level 2 or higher on the AARS. [T. 2561]

D. Bresner Failed to Take Meaningful Supervisory or Other Action in Connection with the Accounts of Konner's and Koutsoubos's Defrauded Customers, Despite Red Flags Indicative of Churning

1. Bresner was Solely Responsible for Level 4 Review and Took No Action Beyond Keeping AVP Commission Restrictions in Place

Michael Allen Bresner, age 69, is a resident of Atlanta, Georgia. [DOE Ex. 89; T. 2737] Bresner holds a BBA from City College of New York and attended the Bernard Baruch Graduate School of Business but did not take a degree. [T. 2740-41] A 45-year veteran of the securities industry, Bresner has worked at a number of brokerage firms, been an officer-level employee since 1982, and has held positions as high as president. [T. 2750-52] He holds a number of securities licenses, including Series 4 (options principal), Series 7 (general securities), Series 24 (general securities principal), Series 27 (financial and operations principal), Series 53 (municipals principal), Series 63 (Blue Sky) and Series 66 (registered investment adviser), and he also holds a separate supervisory analyst license. [T. 2742] In 2004, while serving as the president of National Securities, Bresner was subject to a 30-day supervisory suspension and a \$25,000 fine in connection with a FINRA (then NASD) action against the firm. [T. 2750; DOE Ex. 89] The NASD's factual claims regarding Bresner involved a failure to properly identify supervisory red flags. [T. 2750-51]

Bresner is currently working in the securities industry as Senior Vice President of Due Diligence for JP Turner. [T. 2739] Prior to that, from February 2005 through March 2012, Bresner served as JP Turner's Executive Vice President ("EVP"). As EVP, Bresner was the head of supervision at JP Turner, as acknowledged by Bresner, firm President Bill Mello, and Bresner's primary report, Chief Operations Officer Dean Vernoia. [T. 2752-54] The chain of command within JP Turner at the time Bresner served as EVP started with the registered representatives, who were supervised either by branch principals, or for offices that did not have

a branch principal, by Area Vice Presidents (“AVP”). [T. 2760-62] Branch principals were in all instances supervised by the AVPs. The AVPs, in turn, reported directly to Bresner. [T. 2760-62]

As discussed above, in November 2007, JP Turner implemented the AARS system to allow supervisors to better monitor active trading. [T. 2795; 2806-07] Under AARS, the trigger factor in the system was return on investment (“ROI”), with turnover rate continuing to play a role at Level 2.³¹ [T. 2795] As implemented by JP Turner, a supervisor in AARS like Bresner could click on an account number and see: (1) commissions and fees paid in the last 90 days; (2) commissions and fees paid during the last year; (3) the average market value of the account over the past twelve-month period; (4) the ROI calculation in the account based on that average market value; and (5) the turnover calculation in the account based on that average market value. [T. 2820-21] At Level 4, the highest level in the system and reserved for accounts where ROI exceeds 25%, Bresner, as EVP, had sole responsibility for reviewing the accounts. [T. 2805; DOE Exs. 79-86] In fact, Bresner was the only person allowed to enter the AARS system to review accounts at Level 4, and was the only person who could make an entry or take other supervisory action with respect to accounts flagged at that level. [T. 2775-76] As a result, all Level 4 entries made in AARS during 2008 and 2009 were personally entered by Bresner. [T. 2794-95]

Among the Level 4 accounts Bresner reviewed in 2008 and 2009 were Konner customer [REDACTED] and Koutsoubos customers [REDACTED] and [REDACTED]. Once those accounts reached Level 4, the firm’s written supervisory procedures required that Bresner personally review the underlying trading activity and take any appropriate actions. [T. 3351-52;

³¹ Bresner acknowledged that a turnover rate in excess of 6 can be considered presumptive of churning. [T. 2801-02]

DOE Exs. 79-86] The following chart³² sets forth certain account information for these customers during the period that their accounts were churned:

Registered Representative	Churned Time Period	# of times on Level 4	ROI Ratios (%) on Firm's AARS	Turnover Rates on Firm's AARS	Date of Suitability Questionnaire ("SQ")	Frequency of Trades Listed on SQ	Actual Trades During Churned Period
Konner	1/09 -12/09	1 st Q 2009 2 nd Q 2009 3 rd Q 2009 <i>DOE Exs. 98,113</i>	1 st Q 2009: 46.24 2 nd Q 2009: 27.31 3 rd Q 2009: 29.79 <i>DOE Exs. 98,113</i>	1 st Q 2009: 19.97 2 nd Q 2009: 15.56 3 rd Q 2009: 16.61	3/2009 <i>DOE Ex. 53</i>	4 per wk <i>DOE Ex. 53</i>	33 in Apr. 2009 32 in Jun. 2009 30 in Sept. 2009 <i>DOE Ex. 128</i>
Koutsoubos	1/08 -12/08	1 st Q 2008 2 nd Q 2008 3 rd Q 2008 4 th Q 2008 <i>DOE Exs. 99, 114</i>	1 st Q 2008: 41.02 2 nd Q 2008: 36.21 3 rd Q 2008: 35.84 4 th Q 2008: 31.38 <i>DOE Exs. 99, 114</i>	1 st Q 2008: 15.07 2 nd Q 2008: 20.05 3 rd Q 2008: 22.43 4 th Q 2008: 25.47	<i>Missing from Firm Files for Bryant</i>	<i>Missing from Firm Files for Bryant</i>	191 in 12 months <i>DOE Ex. 148</i>
Koutsoubos	12/08 -7/09	2 nd Q 2009 <i>DOE Exs. 100, 115</i>	2 nd Q 2009: 33.69 <i>DOE Exs. 100,115</i>	2 nd Q 2009: 17.69	3/2009 <i>DOE Ex. 29</i>	4 per wk <i>DOE Ex. 29</i>	54 in Apr. 2009 45 in May 2009 26 in Jun. 2009 <i>DOE Exs. 26, 199</i>

Bresner had a variety of options when taking action in response to the AARS Level 4 flagging of these accounts. As reflected in an April 11, 2008 e-mail from JP Turner's Admin. System to Bresner notifying him of Level 4 accounts for 1st quarter 2008, "[a]t this level, the **EVP has discretion to take any measures deemed appropriate.**"³³ [DOE. Ex. 97 (emphasis added)] Bresner admits that he could have contacted the customers to confirm their investment objectives and risk tolerance (among a wealth of other information relevant to active trading), and/or used the questionnaires that were part of AARS for that purpose. [T. 2863; DOE Ex. 93] He also admitted he could have restricted trading in the accounts, and did not dispute that he could have placed a registered representative on heightened supervision in connection with a

³² The information summarized in this chart also appears in Bresner's testimony, in the AARS "snapshots" produced by JP Turner for each of the three customers, and in the Division's related demonstrative exhibits. [T. 2906-80; DOE Exs. 98; 99; 100; DOE Exs. 113; 114; 115]

³³ Bresner chose to distribute the quarterly Level 4 notification e-mails to the AVPs, and to confer with them and seek advice regarding what action to take with respect to the flagged accounts, but ultimately Bresner made the required entries in Level 4 because he was the only supervisor who could. [T. 2837-38]

Level 4 review. [T. 2927-28; 2952-53; 2975-76] In addition, Bresner also sat on JP Turner's hiring committee. [T. 2765-67] One of the functions of the hiring committee was to deal with disciplinary and other adverse actions to be taken against registered representatives at the firm. [T. 2768] One of the areas of focus for the committee was sales practice concerns such as churning. [T. 2501] As a member of the hiring committee, Bresner had a number of disciplinary tools available to him for dealing with registered representative misconduct. [T. 2770] These included fines, mandated continuing education, heightened supervision,³⁴ letters of admonishment, or recommended termination, among others. [T. 2501-02; 2770]

Bresner never took the most basic and prudent supervisory actions for the accounts over which he had direct supervisory responsibility. In 2008 and 2009, in connection with his responsibilities for Level 4 account review, he never: (1) personally contacted any customers to confirm that they were comfortable with the level of trading in their accounts and that such trading was consistent with their actual investment objectives; (2) explored with the representatives the reasons for the high level of activity, or whether that activity was consistent with any legitimate trading strategy; (3) placed any representative on heightened supervision based on trading activity; (4) imposed a reduction or limitation on the volume of trading in an account; or (5) temporarily or permanently closed an account. [T. 2841-43; 2853-55; 2896-2901] Any of these actions would have been appropriate for the [REDACTED], [REDACTED] or [REDACTED] accounts because, as reflected on the chart above, the level of trading in the [REDACTED] and [REDACTED] accounts exceeded the frequency of trades listed on on-file Active Account Suitability Questionnaires for those accounts and there was no such form on file for [REDACTED]. The only

³⁴ Bresner testified that at JP Turner, heightened supervision was imposed in response to certain types of misconduct that did not typically include excessive trading or suspected churning. [T. 2787-92] He gave no explanation of why the firm limited heightened supervision in such a way.

action Bresner took with respect to any of the approximately 250 accounts he reviewed quarterly was to impose (or, in most instances, simply keep in place AVP-imposed) commission restrictions.³⁵ [T. 2838-40] Neither Bresner nor the firm ever imposed any disciplinary action against Konner or Koutsoubos during the time they worked at JP Turner. [T. 2768-69]

2. Expert Findings on Bresner's Failure to Supervise

John E. Pinto was engaged by the Division to render an expert opinion and provide testimony concerning the adequacy of the supervision exercised by Bresner when he had sole and direct responsibility for reviewing and taking appropriate action relative to the trading activity in certain customer accounts for which Koutsoubos or Konner acted as registered representative that had reached Level 4 classification under JP Turner's AARS. Specifically, Pinto's opinion addresses Bresner's supervision of the trading activity that took place in the account of Konner's customer [REDACTED], and in the accounts of Koutsoubos' customers [REDACTED] and [REDACTED]. [DOE Ex. 156, Pinto Report, **Scope of Engagement**, ¶4, pg. 5]

Pinto's report states that NASD Conduct Rule 3010 sets forth the basic duty of a broker-dealer to establish, maintain and enforce a system to properly supervise all of its businesses, and the activities of each of its registered representatives and associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD/FINRA rules. A supervisory system includes elements such as automated exception reports and surveillance programs to monitor for unusual trading activity in customer accounts. Written supervisory and compliance procedures that are reasonably designed to

³⁵ JP Turner did impose commission restrictions on registered representatives, including Calabro, Konner and Koutsoubos, based on active trading as identified by the AARS system. Neither Bresner nor Chief Compliance Officer Michael Isaac, however, considered commission restrictions to be a disciplinary action. [T. 2502; 2779-80]

prevent and detect violations are also a critical aspect of an overall supervisory system. Importantly, these "...written supervisory procedures would instruct the supervisor on which reports produced by the supervisory system the supervisor is to review as part of his or her supervisory responsibilities, including a description of how often these reports should be reviewed, the steps to be taken if suspicious activity is discovered, and how to document the supervisor's oversight activities."³⁶ [DOE Ex. 156, Pinto Report, **Industry Supervision Standards**, ¶VII, pg. 7]

Pinto's report notes that the AARS was put in place by JP Turner as its primary source to track actively traded customer accounts. All Level 4 customer accounts were the direct supervisory responsibility of Bresner to review and take appropriate actions, the latter being an undefined and unspecific term in JP Turner's written supervisory procedures. [DOE Ex. 156, Pinto Report, **JP Turner Active Account Review System**, ¶VII, pg. 8] Pinto concluded that it is uncontested that Bresner, as the Executive Vice President and head of supervision, was designated pursuant to JP Turner's written supervisory procedures with the responsibility to personally perform a review of all Level 4 customer accounts and to take appropriate actions. Simply stated, in this very important role involving customers who experienced the highest level of account trading activity and commissions charged, Bresner as the designated front line supervisor failed to reasonably meet his supervisory responsibilities. [DOE Ex. 156, Pinto Report, **Bresner Had Responsibility for All Level 4 Customer Accounts**, ¶VII, pg. 8]

Regarding his opinions, Pinto concluded that Bresner failed to reasonably meet his supervisory responsibilities as the Executive Vice President and head of supervision designated pursuant to JP Turner's written supervisory procedures with the responsibility to personally supervise and perform a review of all customer accounts whose level of active trading activity

³⁶ NASD Notice to Members 99-45

reached an ROI that was greater than 25 percent, and to take appropriate action. [DOE Ex. 156, Pinto Report, **Summary of Opinions**, ¶VI(1), pg. 6] Pinto also concluded that as the person with frontline supervisory responsibility for the Level 4 accounts of Bryant, Mills and Carlson, Bresner ignored and failed to follow up on several red flags that warranted his immediate attention and review which demonstrated that the trading activity in the Bryant, Mills and Carlson accounts was excessive, far exceeded the levels of trading frequency defined as acceptable by these customers, and not appropriate in light of these customers' investment experience, risk tolerance and investment objectives. [DOE Ex. 156, Pinto Report, **Summary of Opinions**, ¶VI(2), pg. 6]

In reaching his conclusion that Bresner failed to supervise, Pinto found significant that Bresner failed to place Koutsoubos or Konner on heightened supervision or to take any other disciplinary action against either representative for excessive trading activity in any Level 4 customer account, including █████, █████t and █████, when in Pinto's opinion, such action was warranted under the circumstances. [DOE Ex. 156, Pinto Report, **Summary of Opinions**, ¶VI(3), pg. 6] Pinto also noted that Bresner never restricted trading or took any other supervisory action to address the underlying issue of excessive trading activity in the █████, █████ and █████ Level 4 accounts in 2008 or 2009, when in Pinto's opinion, such action was necessary. The only action taken by Bresner in carrying out his supervisory responsibilities for Level 4 customer accounts was to impose limitations or took other actions relative to the amount of per trade commissions to be charged, which actions were wholly inadequate and failed to meet regulatory standards. Further, Bresner never imposed any restrictions or took other actions relative to the extent or frequency of the trading activity itself. [DOE Ex. 156, Pinto Report, **Summary of Opinions**, ¶VI(4), pg. 6] Finally, Pinto opined that Bresner failed to develop and follow policies or procedures as to what actions he would take to review customer account

activity in Level 4 accounts, or to set forth the type of actions deemed appropriate in follow up.

[DOE Ex. 156, Pinto Report, **Summary of Opinions**, ¶VI(5), pg. 6]

III. LEGAL DISCUSSION

A. Calabro, Konner, and Koutsoubos Violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

Section 17(a) of the Securities Act prohibits using the mails or instruments of interstate commerce in the offer or sale of securities to (1) employ any device, scheme, or artifice to defraud; (2) use false statements or omissions of material fact to obtain money or property; or (3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser of securities. In re Dale E. Frey, Admin. Proc. File No. 3-10310, 2003 SEC LEXIS 306, at *45 (Feb. 5, 2003) (initial decision). Section 10(b) of the Exchange Act and Rule 10b-5 make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security to (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement or omission of a material fact; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. Id.

To state a claim under the antifraud provisions, the Division must show that the defendants acted with scienter. See Rogers v. Sterling Foster & Co., 222 F. Supp. 2d 216, 268-9 (E.D.N.Y. 2002); Frey, 2003 SEC LEXIS 306, at *45. Scienter is defined as “a mental state embracing intent to deceive, manipulate, or defraud.” Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976). Recklessness satisfies the scienter requirement in a civil enforcement action under Section 10(b) and Rule 10b-5. See SEC v. Falbo, Civil Action No. 92 Civ. 6836, 1998 U.S. Dist. LEXIS 16020, at *2 (S.D.N.Y. 1998); SEC v. McNulty, 137 F.3d 732, 737 (2d Cir. 1998) (stands for the proposition that willful ignorance satisfies scienter). Proof of scienter can

be inferred from circumstantial evidence. See Herman & MacLean v. Huddleston, 459 U.S. 375, 391 (1983).

Churning violates the antifraud provisions. See Mihara v. Dean Witter & Co., Inc., 619 F.2d 814, 820-21 (9th Cir. 1980); Newburger, Loeb & Co. Inc. v. Gross, 563 F.2d 1057, 1069 (2d Cir. 1977), aff'd in part, rev'd in part, 611 F. 2d. 423 (2d Cir. 1979), cert. denied, 434 U.S. 1035 (1978). Sandra K. Simpson, Exchange Act Release No. 45923 (May 14, 2002) (Commission opinion). Churning occurs “when a broker engages in excessive trading in disregard of the customer’s investment objectives for the purpose of generating commission business.” Rolf v. Blyth, Eastman, Dillon & Co., 424 F. Supp. 1021, 1039-40 (S.D.N.Y. 1977), aff’d, 570 F.2d 38 (2d Cir. 1978), cert. denied, 439 U.S. 1039 (1978). To establish a claim of churning, the Division must prove (1) trading in the account that is excessive in light of the investor’s investment objectives, (2) explicit or de facto control over that trading by the broker, and (3) scienter on the part of the broker, which is established either by evidence of intent to defraud or by evidence of willful and reckless disregard of the customer’s interests. See In re Al Rizek, Exchange Act Release No. 41725, 1999 SEC LEXIS 1585, at *17 (Aug. 11, 1999) (Commission opinion)), aff’d, Rizek v. SEC, 215 F.3d 157 (1st Cir. 2000); Miley v. Oppenheimer & Co., 637 F.2d 318, 324 (5th Cir. 1981), reh’g denied, 642 F. 2d 1210 (5th Cir. 1981); Moran v. Kidder Peabody & Co., 609 F. Supp. 661, 666 (S.D.N.Y. 1985); Rush v. Oppenheimer & Co., 592 F. Supp. 1108, 1112 (S.D.N.Y. 1984), vacated, 596 F. Supp. 1529 (S.D.N.Y. 1984), rev’d, 779 F. 2d 885 (2d Cir. 1985). “Churning, in and of itself, may be a deceptive and manipulative device under section 10(b), the scienter required by section 10(b) being implicit in the nature of the conduct.” Armstrong v. McAlpin, 699 F.2d 79, 91 (2d Cir. 1983).

1. The Trading Recommended by Calabro, Konner and Koutsoubos was Excessive

a. The Trading in the Accounts at Issue was Inconsistent with the Customers' True Investment Objectives

Courts have held that when determine whether trading is excessive, the test is whether the transactions effected by the registered representative were excessive in light of the customer's investment objectives. Miley, 637 F.2d at 324; Costello v. Oppenheimer & Co., Inc., 711 F.2d 1361, at 1368 (7th Cir. 1983) ("[t]he essential issue of fact is whether the volume of transactions, considered in light of the nature and objectives of the account, was so excessive as to indicate a purpose on the part of the broker to derive a profit for himself at the expense of his customer.").

The trading in the accounts at issue was excessive by any standard. Calabro's customers at issue were [REDACTED], [REDACTED] and [REDACTED]. From February through November 2009, there were 222 trades in the [REDACTED] account. From December 2008 through November 2009, there were 145 trades in the [REDACTED] account and 155 trades in the [REDACTED] account. For the same time period, there were 271 trades in the [REDACTED] account. Konner's customers were [REDACTED] and [REDACTED]. From January through December 2009, there were 252 trades in the [REDACTED] account. From June through December 2009, there were 63 trades in the [REDACTED] account. Koutsoubos' customers were [REDACTED] and [REDACTED]. From January through December 2008, there were 191 trades in the [REDACTED] account. From December 2008 through July 2009, there were 187 trades in [REDACTED] account. Even standing alone, such large numbers of trades over such short time frames demonstrate the excessive trading that took place in these accounts.

Calabro, Konner and Koutsoubos will undoubtedly argue that the defrauded customers' account documents identified aggressive investment objectives (typically including speculation, trading profits and/or short-term trading), and an aggressive risk tolerance. Those account documents, however, cannot shield the Respondents in this case for at least two reasons.

First, as the Commission has previously recognized, even assuming, *arguendo*, the customers had wanted to manage their accounts aggressively or to speculate (which the evidence shows they clearly did not), “[t]here is a difference between *aggressive* investing and *excessive* trading.” Michael David Sweeney, Admin. Proc. File No. 3-7126, Rel. No. 29884, 1991 WL 716756 at *3 (Oct. 30, 1991) (emphasis added) (Commission opinion; “Even if we were to assume that the customers authorized the [brokers] to manage their accounts aggressively, they did not authorize them to deplete those accounts through commissions, markups and margin charges.”) Similarly, in upholding an NASD Disciplinary Proceeding involving violations of the NASD (now FINRA) rule prohibiting excessive trading, the Commission has held that although the customer may have authorized a broker to manage her account aggressively, she did not authorize him to deplete her account through commissions and margin charges. See In the Matter of Shearson Lehman Hutton, Inc., Exchange Act Release No. 26766, 1989 SEC LEXIS 778, at *6 (April 28, 1989) (Commission opinion noting that “[t]here is a difference between aggressive investing and excessive trading”). See also Costello v. Oppenheimer & Co., Inc., 711 F.2d 1361, 1369 (7th Cir. 1983)(court stated, “Delineation of an investor’s goals is, however, only the first step in showing that a particular course of trading has been excessive. In the usual case, statistical evidence is introduced to establish the level of activity in the account and the amount of profit to the broker.”).

Here, the registered representatives sought out unsophisticated investors, disclosed nothing about the costs of active trading while touting possible profits, and abused the trust and reliance their customers placed in them by recommending trade after trade. None of these customers was sufficiently sophisticated as an investor to independently appreciate the impact of the ever-larger commission tally that effectively (combined with trading losses) depleted their accounts. In short, no one who understands the cumulative cost of active trading would willingly

agree to trades recommended so frequently that even breaking even is, over the long term, impossible.

Second, there is substantial evidence that the account opening and updating documents did not accurately reflect the customers' true investment objectives. As an initial matter, the evidence showed that either the registered representatives filled out the document for all of the customers at issue, or told them how to fill it out. The assertion that such important and easily filled-in information was pre-filled for the customers' convenience is not credible, especially when considered against the much more likely inference that it was done to ensure that the form contained information *necessary to avoid compliance interference while pursuing active trading*. For example, Calabro's customers testified that they signed blank documents and did not discuss their investment objectives with Calabro. [T. 630-60 [REDACTED]; 1055-56; 1064-66; 1073-86; 1111-16 [REDACTED]; 1436-44; 1478-85 [REDACTED]] He also had been told that they either wanted the account managed conservatively or could not afford to lose their money. [T. 626-28; 640; 644-45 [REDACTED]; 1064-66 [REDACTED]] Moreover, there is no explanation for the April 2007 account update (fully completed in Calabro's handwriting, [DOE Ex. 39, T. 267]) that changed [REDACTED]'s investment objectives to speculation, trading profits and capital appreciation and his risk tolerance to aggressive. [REDACTED] and Calabro never discussed those changes and the new choices did not reflect [REDACTED]'s true conservative objectives and tolerance. [DOE Ex. 39; T. 1076-82]

Regarding Konner's customers, [REDACTED] received an application with the investment objectives already on it. [T. 1676-77] He also had no idea why he received the April 2008 account update form that changed some of his suitability information. [T. 1694] Moreover, [REDACTED]'s testimony strongly suggests that he did not understand the meaning or the purpose of investment objectives, and he also told Konner – months before the churn period – that he could

not afford to lose his investment, and that the financial figures Konner had *simply made up* for his April 2008 account update form were inflated and wrong. [T. 1662; 1696-1702] Konner's other customer, ██████, who had never had a brokerage account before, testified that in regards to investment objectives, he told Konner he "just wanted to buy stock that would appreciate in value" and that he did not have large sums of loose cash for stock trading. [T. 1932] He also testified that he originally refused to sign the brokerage account application Konner sent him because Konner had marked speculation as an investment objective, but ██████ agreed after Konner told him it would be to his advantage to sign it, and that if he signed it, Konner could do a "better job trading for" him. [T. 1942-47]

██████, one of Koutsoubos' customers, had an investment objective of growth and a risk tolerance of medium on file with JP Turner when Koutsoubos took over his account. [T. 856-57; DOE Ex. 32] There is no explanation for the March 2007 account update that changed his investment objectives to speculation, trading profits and capital appreciation and his risk tolerance to aggressive. ██████ has no recollection of discussing those changes with Koutsoubos and never told Koutsoubos those were his choices. [T. 861-62] The document shows on its face, however, that the choices were merely initialed by ██████ – they are not in his hand. [DOE Ex. 143; T. 859-60] Koutsoubos told ██████ "sign where I put the stars and send it back, I'll take care of the rest." [T. 859] For ██████ account documents, they testified that they did not fill them out (or filled them out at Koutsoubos' direction) and did not understand the investment objective choices. [T. 2141-42; 2348-49; 2353; 2361-66] Accordingly, in every instance, the circumstances surrounding how the investment objectives came to be marked on the account documents shows the registered representatives were plainly on notice that they were inaccurate.

b. The Turnover Ratio and Breakeven Rate of the Trading Recommended by Calabro, Konner and Koutsoubos Far Exceeds Levels Presumptive of Churning

Courts have often used two metrics in churning cases when determining whether trading is excessive. One of those metrics is turnover ratio. The turnover ratio in an account measures the number of times during a given period that the securities in an account are replaced by new securities. Although no specific turnover rate is definitive, a rate in excess of six is generally presumed to reflect excessive trading. Arceneaux v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 767 F.2d 1498, 1502 (11th Cir. 1985); Mihara, 619 F.2d at 821; Franks v. Cavanaugh, 711 F. Supp. 1186, 1191 (S.D.N.Y. 1989).

The other metric is cost-to-equity ratio, sometimes called a breakeven rate or (as in JP Turner's AARS) return on investment. The cost-to-equity ratio determines the percentage of return on the customer's average net equity needed to pay broker-dealer transactional charges and other expenses or, in other words, the amount of return necessary for the account to break even. A registered representative is presumed to have excessively traded an account when the trading is so extensive that the account requires a 20% cost-to-equity ratio. See In re Sage Advisory Services, Exchange Act Release No. 44600, 2001 SEC LEXIS 1482, at *15 (July 27, 2001) (settled) (citing Rizek, 1999 SEC LEXIS 1585, at *17); In re Sandra Simpson, Exchange Act Release No. 45923, 2002 SEC LEXIS 1278, at * 49 (May 14, 2002) (Commission opinion) (Annualized turnover rates of 2.10 to 8.09 and annualized breakeven rates of 11.98% to 54.95% are excessive); In re Laurie Jones Canady, Exchange Act Release No. 41250, 1999 SEC LEXIS 669, at *17 (Apr. 5, 1999) (Commission opinion) (Annualized turnover rates ranging between 3.83 and 7.28 and breakeven levels of 8.96% to 27.48% are excessive).

Based on these commonly used metrics, Calabro, Konner and Koutsoubos excessively traded in the defrauded customers' accounts. As discussed, the defrauded customer accounts in

this case involve turnover ratios greatly exceeding 6 and breakeven rates significantly greater than 20%. Specifically, the accounts show the following:³⁷

Broker	Calabro			Konner		Koutsoubos	
██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
Turnover Ratio	13	10 / 9	8	17	18	56	28
Breakeven Rate	29.3%	31.8% / 29.3%	22.9%	34.6%	28.2%	73.3%	41.2%

2. Calabro, Konner and Koutsoubos Controlled the Accounts at Issue

A key factor in determining whether control exists is whether the customer lacks the ability to manage the account and routinely follows the recommendations of the registered representative (as opposed to exercising independent judgment). Mihara, 619 F.2d at 821. Registered representatives may “exercise *de facto* control where a customer places his trust and faith in a broker and routinely follows his broker’s advice.” Cruse v. Equitable Sec. of New York, Inc., 678 F. Supp. 1023, 1030-31 (S.D.N.Y. 1987) (noting that “factors relevant to the element of control include the discretion given the broker-dealer, the age, education, intelligence, and business and investor experience of the client, the relationship between client and broker, and the reliance placed by the customer on his broker, citing to Zaretsky v. E.F. Hutton & Co., Inc., 509 F. Supp. 68, at 74 (SDNY 1981); see also In re Mark Gilbert Platt, Exchange Act Release No. 8275 (Aug. 25, 2003) (in a default judgment, ALJ found registered representative had *de facto* control of the accounts since the unsophisticated customers relied on his recommendations); Simpson, 2002 SEC LEXIS 1278, at *53 (*de facto* control shown by numerous unauthorized transactions and customers’ general lack of investment knowledge and

³⁷ The information reflected in the chart is supported by DOE Ex. 155.

sophistication); In the Matter of Al Rizek, Admin. Proc. File No. 3-9041, 1999 SEC LEXIS 1585 at * 19 (Aug. 11, 1999) (Commission opinion rejecting respondent appeal of control issue; “Although Rizek’s customers may have been successful businessmen and most of them had some degree of higher education, they were totally lacking in the degree of investor sophistication necessary to understand Rizek’s strategy and unable to make any sort of independent evaluation of that strategy.”); In the Matter of Joseph J. Barbato, Admin. Proc. File No. 3-8575, 1996 SEC LEXIS 3138, at *50-51 (1996) (Although a customer “had some prior investment experience, authorized the transactions in his account, and kept records of his trades, he lacked vital information about the investments he was making ... [and] was unable to make an independent evaluation” of the broker’s recommendations.”).

As noted by the ALJ in the Rizek initial decision, a variety of factors come into play when determining the control element with respect to non-discretionary accounts:

Some factors to consider in determining whether or not a broker controlled an investor's account include: the investor's sophistication; the investor's prior securities experience; the trust and confidence the investor has in the broker; whether the broker initiates transactions or whether the investor relies on the recommendations of the broker; the amount of independent research conducted by the investor; and the truth and accuracy of information provided by the broker.

In the Matter of Al Rizek, Admin. Proc. File No. 3-9041, 1998 WL 73209 at *13 (Feb. 24, 1998).

In this case, Calabro, Konner and Koutsoubos exercised *de facto* control over their customers’ non-discretionary accounts. None of the defrauded customers were sophisticated investors. [T. 612-60 (██████); 1034-58 (██████); 1399-1447 (██████); 1654-69 (██████); 1922-27 (██████); 847-50; 878 (██████); 2134-36, 2341-43 (██████)] None of them had extensive prior investing experience – ██████, ██████ and ██████ had never had a brokerage account before, and ██████, ██████, ██████ and ██████ all had one or two pre-existing accounts that

were conservatively managed, sparsely traded, and directed by recommendations from the brokers for those accounts. [T. 617; 657 (██████████); 1039-49 (██████████); 1402-10 (██████████); 1658-64, 1669 (██████████); 1926 (██████████); 848-49, 878 (██████████); 2135-36, 2342-43 (██████████)] All of the defrauded customers placed great trust and confidence in their brokers during the time that excessive trading was taking place, and believed that their brokers were looking out for their best interest. [T. 648; 683-84 (██████████); 1051, 1054, 1073-74, 1103-06 (██████████); 1426, 1428-29, 1458-59 (██████████); 1666-69, 1675-76 (██████████); 1935, 1949, 1964-65 (██████████); 867 (██████████); 2145, 2157-58 (██████████)] The evidence overwhelmingly showed that, in all the accounts at issue, the brokers initiated nearly all the transactions, the customers had essentially no input, and the customers relied on their brokers' recommendations when trades were made. [T. 674-75, 700-02, 704 (██████████); 1100-06, 1132-33 (██████████); 1450-57 (██████████); 1683-90, 1722 (██████████); 1948, 1965 (██████████); 866 (██████████); 2148, 2356 (██████████); DOE Ex. 155] And because the customers were relying so heavily on their brokers, none of them were doing any independent research – indeed, most felt like they lacked the knowledge and experience to do the research necessary to trade in stocks on their own. [T. 702 (██████████); 1105-06 (██████████); 1456-57 (██████████); 1656-57, 1687-89, 1721-22 (██████████); 1926, 1963-64 (██████████); 867 (██████████); 2147-48; 2356 (██████████)] Regarding the truth and accuracy of the information provided by the brokers, most of the customers knew only what their brokers told them, which was they lacked the sophistication or the research skills to analyze. [T. 674-75; 700-04 (██████████); 1103-04 (██████████); 1450 (██████████); 1687-90, 1721-22 (██████████); 1963-64; 2147-48 (██████████)] Indeed, the information that should have been conveyed – the level of commissions being charged and their long-term impact when engaging in active trading – was typically not mentioned at all by Calabro, Konner or Koutsoubos. [T.707 (██████████); 1107-10 (██████████); 1504 (██████████); 1675 (██████████); 1931, 1934 (██████████); 873 (██████████); 2156, 2386 (██████████); see also 332-34 (Konner

admission that he never discussed risks of active trading, breakeven rate, or turnover ratio)] And finally, the evidence adduced at the hearing showed that, despite the fact that these accounts were technically non-discretionary, Calabro, Konner and Koutsoubos in many instances engaged in unauthorized trading in the customers' accounts. [T. 703, 705 (████████); 1099, 1100-02 (████████); 1451-52 (████████); 1720, 1722 (████████); 866, 873-74 (████████)] As the Commission has previously found, unauthorized trading in non-discretionary supports a finding of de facto control in the churning context. Simpson, 2002 SEC LEXIS 1278, at *53 (“[d]e facto control was shown by the many unauthorized transactions and the customers’ general lack of investment knowledge and sophistication, which left control of the account in the hands of [the respondent]”)

At the hearing, the customers’ testimony demonstrated that they were all unsophisticated investors who lacked the ability to understand the trading strategies (to the extent there was one) being used, or to make an independent evaluation of that strategy. They had no, or very limited, prior experience investing in securities. As evidenced as much by the large investments they entrusted to their brokers as by their testimony, the customers all placed great confidence and trust in their brokers. The customers uniformly testified that they relied on the recommendations of their brokers, who as evidence by the account statements initiated virtually every trade during the churn periods. Most of the customers could recall only one or two trades they had even suggested, and in several instances, those trades were not made. They also uniformly testified they were not doing any independent research, and the brokers had to be aware of that from the tenor of the discussion when recommendations were made. And the most important information for the customers to consider when making trading decisions – the risks of active trading – was never imparted. The unauthorized trades similarly weigh in favor of a finding of control. Thus, based on the factors previously applied in Commission proceedings determining control for

purposes of churning, Calabro, Konner and Koutsoubos clearly had de facto control over the accounts at issue.

The fact that the customers received account statements and trading confirmations does not negate the de facto control exercised by Calabro, Konner and Koutsoubos. Mere receipt of the account statements and confirmation slips does not establish that the customers understood what was happening in their accounts.³⁸ All of the customers were unsophisticated securities investors who relied on and trusted their respective registered representative. See Michael David Sweeney, Admin. Proc. File No. 3-7126, Rel. No. 29884, 1991 WL 716756 at *4 (Oct. 30, 1991) (Commission opinion; on churning control element, “[t]he fact that the customers received confirmations and monthly statements does not change our conclusion [that broker controlled account]”); Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 36 (1st Cir. 1986) (investor did not ratify firm’s unauthorized actions or excessive fees by failing to object to them after receiving account statements); Karlen v. Friedman & Co., 688 F.2d 1193, 1200 (8th Cir. 1982).

3. Scienter

The specific scienter requirement for churning is met where the registered representative acts to benefit himself by earning commissions, rather than acting for the benefit of his customer. Donald A. Roche, 1997 SEC LEXIS 1283, at *12-13, (citing Mihara., 619 F.2d at 820-21; In re Albert Vincent O’Neal, Exchange Act Release No. 34116, 1994 SEC LEXIS 1639, at *5-6 (May 26, 1994). In the context of churning, the requisite scienter may be “implicit in the nature of the conduct.” Franks v. Cavanaugh, 711 F. Supp. 1186, 1191 (S.D.N.Y. 1989 quoting Armstrong v. McAlpin, 699 F.2d 79, 91 (2d Cir. 1983)). Scienter also may be established upon a showing of

³⁸ There was ample evidence showing that JP Turner’s account statements did not reflect the commissions paid by customers, and that the trading confirmations typically required some calculations to determine the commission paid.

recklessness. Sharp v. Coopers & Lybrand, 649 F.2d 175, 193 (3rd Cir. 1981). The scienter element may also be inferred from the commissions charged by the registered representatives. See In re David Wong, Exchange Act Release No. 45426 (Feb. 8, 2002); see also In re Donald A. Roche, 1997 SEC Lexis 1283 (June 17, 1997)(Commission opinion)(concluding that the fact that client accounts sustained large losses while the registered representative generate substantial commission income can show that the registered representative acted in reckless disregard of his customer's interest and account objectives).

A number of facts in evidence demonstrate Calabro's, Konner's and Koutsoubos' scienter.³⁹ Perhaps the strongest evidence of scienter is the lack of any trading strategy or other explanation justifying the large number of trades in the accounts at issue. Konner and Koutsoubos both testified that they looked for investors looking to speculate in the market, but stopped short of explaining why that translated into the intense trading reflected in their customers' accounts.⁴⁰ [T. 328-38; 507] And while Calabro testified at length about his supposed trading strategy, he had no basis for recommending trading that was inconsistent with his customers' investment objectives, which, as they testified, were essentially conservative. Al Rizek, Admin. Proc. File No. 3-9041, 1999 SEC LEXIS 1585 at * 19-20 (Aug. 11, 1999) (Commission churning opinion discussing scienter; rejects defense of good faith belief in active trading strategy, which was "no justification for recommending it to unsophisticated customers who were incapable of making an independent judgment, when he knew that the extremely high risk was directly contrary to the customers' conservative investment objectives"); Michael David

³⁹ In addition to the discussion below, the unauthorized trading in the customers' accounts also supports an inference of scienter. [T. 703, 705 (Moore); 1099, 1100-02 (Willhoff); 1451-52 (Williams); 1720, 1722 (Carlson); 866, 873-74 (Bryant)]

⁴⁰ Further showing his state of mind, Konner acknowledged that a high level of trading could pose financial risk to a customer's account, but he never discussed with his customers the impact that the total commissions and fees generated by active trading would have on their account, or the concepts of breakeven rate and turnover ratio. [T. 332-33; 337]

Sweeney, Admin. Proc. File No. 3-7126, Rel. No. 29884, 1991 WL 716756 at *3 (Oct. 30, 1991) (Commission opinion; “although the list may have provided support for the purchase or sale of individual stocks, the [brokers] had an obligation to analyze the particular situation . . . [i]nstead, they ignored their customers’ individual objectives and needs and plunged all of their customer accounts into a destructive trading strategy whose chief beneficiaries were themselves”); Wong, Exchange Act Release No. 45426 (Feb. 8, 2002). As evidenced by the very high cost-to-equity rates, turnover ratios and commission levels, Calabro, Konner and Koutsoubos acted with scienter by executing the transactions in the defrauded customers’ accounts for their personal monetary benefit. Calabro, Konner and Koutsoubos knew that their customers were unsophisticated securities investors who relied on them to manage their accounts and ensure that their investments were in compliance with their true risk tolerances and investment objectives. Instead of honoring those expectations, however, the brokers recommended hundreds of trades for the purpose of generating additional commissions.

The brokers’ actions also show their scienter. Starting with Calabro, his customers’ testimony shows that he engaged in deceit and manipulation with each of them. Calabro’s practice of adding critical investment objective and risk tolerance information to his brokerage account applications either after they were signed by the customers, or giving customers only the last page to sign so that the objectives were undisclosed, was obviously manipulative and deceitful and applies to all the customers at issue. [T. 630-60 (Moore); 1055-56; 1064-66; 1073-86; 1111-16 (Willhoft); 1436-44; 1478-85 (Williams)] Moreover, in response to a direct question from Moore about possible losses, Calabro represented to Moore that he could not lose more than \$125,000, a statement that Moore – who had never had an account before – plainly relied upon. [T. 628; 648; 683-84] Calabro also encouraged Moore to borrow money from his company’s line of credit and assured him that such an investment of borrowed money would be

successful. [T. 628; 638; 681-82] And as discussed earlier, there is no explanation for the April 2007 account update (in Calabro's handwriting) that changed Willhoft's investment objectives in favor of more risk, as Willhoft and Calabro never discussed those changes and the new choices did not reflect Willhoft's true conservative objectives and tolerance. [DOE Ex. 39, T. 267; 1076-82]

Konner also engaged in deceit and manipulation. For example, Carlson testified that, upon receipt of the April 2008 account update form Konner had filled out and sent to him, Carlson told Konner that the financial figures were inflated. [T. 1700-02] Carlson, with his limited investment experience, did not understand that the form had implications for how actively his account could be traded. [T. 1702] As a registered representative regularly interfacing with JP Turner's compliance department, Konner did understand those implications, however, which is likely why the update was sent in the first place. In response to being told by Carlson that the changes in the account information – which included a jump in net worth from \$700,000 to \$2.5 million that Konner had no basis for whatsoever – was not even close to accurate, Konner told Carlson “that doesn't really mean anything” and asked him to sign the form. [T. 1700-1702] Similarly, Miller, who was 85 years old at the time, had never had a brokerage account before, and believed a broker should look out for the customer's best interest, testified that Konner was a high-pressure salesman who “just talked and talked and talked until [Miller] said yes.” [T. 1949; 1951; 1965]

Regarding Koutsoubos, Bryant testified that he received a pre-filled March 2007 account update form changing his original, more conservative investment objectives and risk tolerance to more risk-friendly ones, but he had not discussed such changes with Koutsoubos and never agreed to those changes. [T. 858-62] Thus, the most plausible explanation is that Koutsoubos filled it out and sent it in hopes that Bryant would, as he testified Koutsoubos asked him to do,

“sign where I put the stars and send back.” [T. 859] Similarly, Mrs. Mills testified that their communications with Koutsoubos were a manipulative means to an end: “most of the time he would talk us into whatever he wanted us to do at that time.” [T. 2357] She also recounted that when they received the March 2009 Active Account Suitability Questionnaire and didn’t understand it, Koutsoubos told her how to fill it out, including the “[i]nvestment objectives, prior investment experience, size of trades, frequency of trades,” but did not explain to her what those choices meant. [T. 2371-73; DOE Ex. 29]

Additionally, the registered representatives knew, or should have known, that the trading levels in many customers’ accounts vastly exceeded the “frequency of trades” indicated by the customers in associated account documents. Nevertheless, the churning respondents took advantage of their defrauded customers’ naiveté and loyalty and engaged in a trading that directly conflicted with the actual desires and investment objectives of such customers.

Finally, Calabro, Konner and Koutsoubos’s churning earned them each substantial financial gain. In the aggregate, the three earned over \$720,000 in commissions and fees, while their customers’ associated losses totaled more than \$2.7 million.

B. Bresner Failed Reasonably to Supervise Koutsoubos and Konner

Section 15(b)(4)(E) of the Exchange Act provides that the Commission may sanction a broker-dealer for failing reasonably to supervise, with a view to preventing violations of the federal securities laws, another person who commits such a violation. Section 15(b)(6)(A)(i) of the Exchange Act, incorporating by reference Section 15(b)(4)(E), permits the Commission to sanction any individual who fails reasonably to supervise others within the meaning of Section 15(b)(4)(E). Under Section 203(f) of the Advisers Act, which incorporates by reference to Section 203(e)(6), the Commission may also seek sanctions where an associated person has failed reasonably to supervise, with a view to preventing violations of the federal securities laws

and rules thereunder, another person subject to the associated person's supervision who commits such violations.

Section 15(b)(4)(E), however, provides that no person will be deemed to have failed reasonably to supervise if: (1) there were established procedures which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by another person; and (2) the person at issue reasonably discharged the duties and obligations incumbent upon him under the established procedures and had no reason to believe that the procedures were not being complied with. The Commission has also noted that where a firm does not have established procedures, or system for applying those procedures, which together could not have expected to prevent and detect the securities violations, the "affirmative defense provisions of Section 15(b)(4)(E) . . . do not apply." In re John H. Gutfreund, Exchange Act Release No. 31554, 1992 SEC LEXIS 2939, at *41 (Dec. 3, 1992) (21(a) report).

The responsibility for the supervisory function of a registered broker-dealer rests upon the most senior members of management. See In re Donald T. Sheldon, Exchange Act Release No. 31475, 51 SEC 59, 79 (Nov. 18, 1992) (Commission opinion), aff'd 45 F.3d 1515 (11th Cir. 1995); In re Frederick H. Joseph, Exchange Act Release No. 32340, 1993 WL 167828, at *5 (May 20, 1993) (settled). In addition, red flags and suggestions of irregularities demand inquiry as well as adequate follow up and review. See Gutfreund, SEC LEXIS 2939, at *34. Moreover, "[w]hen indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the federal securities laws." In re Edwin Kantor, Exchange Act Release No. 32341, 1993 WL 167840, at *5 (May 20, 1993) (settled). However, the duty to supervise adheres without regard to whether red flags are evident, since a failure of supervision implies a failure to discover violations when diligent application of supervisory procedures would have revealed them. See In re Blinder Robinson & Co., Exchange Act Release

No. 19057, 1982 SEC LEXIS 878, at *5 (Sept. 17, 1982) (Commission opinion); see also In re Gary W. Chambers, Exchange Act Release No. 27963, 1990 SEC LEXIS 808, at *8-10 (Apr. 30, 1990) (settled) (broker-dealer lacked supervisory policies and procedures to prevent suitability and churning violations by registered representatives; no supervisor was assigned responsibility for reviewing account activity).

1. Bresner Failed to Take Basic Supervisory Steps

As noted above, Bresner had a variety of options when taking action in response to the AARS Level 4 flagging of these accounts. Bresner admits that he could have contacted the customers to confirm their investment objectives and risk tolerance. [T. 2863] He also admits he could have restricted trading in the accounts, and could have placed a registered representative on heightened supervision in connection with a Level 4 review. [T. 2927-28; 2952-53; 2975-76] However, Bresner never took the most basic supervisory actions with respect to these accounts. He never personally contacted any customers to confirm that they were comfortable with the level of trading in their accounts and that such trading was consistent with their actual investment objectives, or explored with the representatives the reasons for the high level of activity, or whether that activity was consistent with any legitimate trading strategy. [T. 2841-43; 2853-55; 2896-2901] He never placed Calabro, Konner or Koutsoubos on heightened supervision. [Id.] Such action was necessary in light of the number of times the accounts at issue appeared at Level 4, and because the level of trading in the Carlson and Mills accounts exceeded the frequency of trades listed on on-file Active Account Suitability Questionnaires for those accounts. The only action Bresner took was to impose (or, in most instances, simply keep in place AVP-imposed) commission restrictions. [T. 2838-40]

2. Bresner Failed to Respond to Red Flags

During the relevant period, the accounts belonging to customers Carlson, Bryant and the

Mills presented Bresner with multiple red flags that Konner and Koutsoubos were churning these accounts. A cursory review of the AARS by Bresner would have revealed that the ROI and turnover levels for each of the quarters they appeared at Level 4 exhibited levels much higher than 20 and six, respectively, levels that already reflected presumptive excessive trading of an account. The AARS also revealed that accounts belonging to Bryant and Carlson continued to appear on the system at Level 4 even after Bresner imposed associated commission restrictions.⁴¹

Additionally, Bresner was aware, or should have been aware, that Konner and Koutsoubos each engaged in trading activity that far exceeded the “frequency of trades” identified in the suitability questionnaire for the accounts belonging to customers Carlson and the Mills. As the table in Section II.E.1. shows, during the period his account was churned, customer Carlson signed a suitability questionnaire which identified the frequency of trades as “4 per week.” [DOE Ex. 53] His account statements, however, indicate that in the months that followed, the actual trading that took place vastly exceeded what was provided in the suitability questionnaire. [DOE Ex. 128⁴²] Similarly, the actual trading that occurred in the Mills’ account vastly exceeded the frequency of trades identified in the suitability questionnaire that they signed during the period Koutsoubos churned their account. [DOE Exs. 29; 24⁴³]

Bresner was directly responsible for supervising Level 4 accounts. As discussed, defrauded customers’ accounts managed by Konner or Koutsoubos appeared at Level 4 during the relevant churning periods. This should have raised red flags for Bresner given: (1) accounts

⁴¹ Bresner typically limited commissions on Konner’s and Koutsoubos’s accounts appearing at Level 4 of the AARS to either one percent of each trade or a flat commission ranging between \$50 and \$100 per trade.

⁴² See April 2009 account statement (33 trades); June 2009 account statement (32 trades); and September 2009 account statement (30 trades).

⁴³ See April 2009 account statement (54 trades); May 2009 account statement (45 trades) and June 2009 account statement (26 trades).

at Level 4 had ROI levels greater than 25 percent, which is presumptive of excessive trading, (2) some of these accounts repeatedly appeared at Level 4, even after commission restrictions were placed on the accounts, (3) Konner and Koutsoubos each engaged in trading activity that far exceeded the “frequency of trades” identified in the suitability questionnaire signed by some of their defrauded customers, and (4) one of Koutsoubos’s defrauded customers had no suitability questionnaire on file, even though the customer’s account repeatedly appeared on Level 4.

IV. RELIEF REQUESTED/PUBLIC INTEREST

A. Cease-and-Desist Order Against Calabro, Konner and Koutsoubos

Section 8A of the Securities Act and Section 21C of the Exchange Act and authorize the Commission to impose cease-and-desist orders against any person who, among other things, has committed or caused violations of the Securities Act or the Exchange Act respectively. While there must be “some” risk of future violations to impose such relief, that risk:

need not be very great to warrant issuing a cease-and-desist order. Absent evidence to the contrary, a finding of violation raises a sufficient risk of future violation. To put it another way, evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering him to cease and desist.

In re KPMG Peat Marwick, LLP, 74 S.E.C. 357, 2001 WL 47245 at *24 (Jan. 19, 2001). When determining whether to impose a cease-and-desist order, the Court should consider a range of traditional factors, including:

the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91

(1981); see also In the Matter of Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976). No one criterion is dispositive.

At the hearing, the Division demonstrated that Calabro's, Konner's, and Koutsoubos' violative conduct was egregious. They willfully or recklessly disregarded their customers' investment objectives and recommended trading that resulted in staggeringly high turnover and breakeven rates while generating thousands of dollars in commissions. In addition, the infractions were not isolated, but instead took place over months and even years of time, involving hundreds of trades. In this case, none of the registered representative Respondents has made any gesture towards recognizing the wrongful nature of their conduct, insisting instead that no violations occurred, and relatedly, there have been no assurances against future violations. And all three of the registered representative Respondents continue to work in the securities industry and, thus, their occupation presents opportunities for future violations.

Accordingly, based upon the evidence presented at the hearing in this matter, the Court should order Respondents Calabro, Konner and Koutsoubos to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Disgorgement Plus Prejudgment Interest Against Calabro, Konner and Koutsoubos

Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act and Section 9(f)(5) of the Investment Company Act allow the Commission to seek an order requiring disgorgement, including prejudgment interest, in cease-and-desist proceedings brought under Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 9 of the Investment Company Act. In addition, Section 21B(e) of the Exchange Act and 9(e) of the Investment Company Act provides a basis for disgorgement in administrative proceedings.

Disgorgement is designed to deprive a wrongdoer of his ill-gotten gains, which in a churning case equate to the portion of the commissions retained by the broker. Rizek, 1999 SEC

LEXIS 1585. Because separating legal from illegal profits exactly may at times be a near-impossible task, disgorgement need only be a reasonable approximation of profits causally connected to the violation. SEC v. First City Financial Corp., Ltd., 890 F.2d 1215, 1231 (D.C. Cir. 1989). In this case, Division churning expert Dempsey reviewed and verified the staff's analysis of trade blotter commission for the trades in question and calculated the portion of those commissions retained by Calabro, Konner and Koutsoubos using the retention percentages those Respondents had testified to in the underlying investigation. [DOE Ex. 155] Based on Dempsey's calculations, disgorgement of the following amounts is appropriate: Respondent Calabro should be ordered to disgorge \$592,000 (\$110,000 for Moore, \$282,000 for Williams, \$90,000 for Willhoft 247, and \$110,000 for Willhoft 805).⁴⁴ [DOE Ex. 155, pp. 6-17] Respondent Konner should be ordered to disgorge \$78,000 (\$55,000 for Carlson and \$23,000 for Miller). [DOE Ex. 155, pp. 18-23] Respondent Koutsoubos should be ordered to disgorge \$50,000 (\$30,000 for Bryant and \$20,000).⁴⁵ [DOE Ex. 155, pp. 23-29]

Regarding prejudgment interest, Rule of Practice 600 specifies that it should begin on the first day of the month following each violation. 17 § C.F.R. 201.600(a). Accordingly, the Division has computed prejudgment interest using the first day of the month following the relevant churn periods. Under these facts, prejudgment interest for Calabro totals \$73,424.60

⁴⁴ The Division notes Calabro's testimony at the hearing indicating that he received only 85% of monthly commissions under \$25,000, and Koutsoubos' testimony indicating that he received only 30% of the commissions generated by the two accounts at issue. As reflected in the Dempsey report, those percentages differ from the investigative testimony used to calculate the portion of commissions retained by the Respondents. The Division recognizes that if the Court credits Respondents' testimony (which was otherwise unsupported by documents or corroboration), these figure may be reduced. In that event, the Court need only apply the percentage determined to be correct to the raw commission totals verified by Dempsey in DOE Ex. 155.

⁴⁵ As noted earlier, Dempsey's report inadvertently does not make a finding with respect to the portion of commissions from the Mills' account retained by Koutsoubos. The Division used the methodology applied by Dempsey in the section of his report dealing with Koutsoubos' other customer, Teddy Bryant (i.e., 65% of gross commissions) to approximate the \$20,000 figure. Disgorgement need only be a reasonable approximation of profits causally connected to the violation. First City Financial Corp., Ltd., 890 F.2d at 1231.

(\$13,643.07 for Moore, \$34,975.90 for Williams, \$11,162.56 for Willhoft 247, and \$13,643.07 for Willhoft 805). Prejudgment interest for Konner totals \$9,466.23 (\$6,613.57 for Carlson and \$2,852.66 for Miller). Prejudgment interest for Koutsoubos totals \$7,810.04 (\$5,028.18 for Bryant and \$2,781.86 for the Mills).⁴⁶

C. Civil Penalties

Section 21B of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act authorize the Commission to impose civil monetary penalties in public administrative proceedings against any person who, among other things, has willfully violated the Securities Act or the Exchange Act. Additionally, Sections 8A(g) of the Securities Act, 21B(a) of the Exchange Act and Section 9(d) of the Investment Company Act authorize the imposition of civil monetary penalties in cease-and-desist proceedings instituted pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act and Section 9 of the Investment Company Act, respectively.

In considering under this section whether a penalty is in the public interest, the Commission may consider:

- (1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;
- (2) the harm to other persons resulting either directly or indirectly from such act or omission;
- (3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;
- (4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization . . . ;
- (5) the need to deter such person and other persons from committing such acts or omissions; and
- (6) such other matters as justice may require.

⁴⁶ For the Court's convenience, the Division is including a Prejudgment Interest Report supporting its calculation as Exhibit A to this Post-Hearing Brief.

Section 21B(c) of the Exchange Act, 15 U.S.C.A. § 78u-2(c); Section 9(d)(3) of the Investment Company Act, 15 U.S.C.A. § 80a-9(d)(3). “Not all factors may be relevant in a given case, and the factors need not all carry equal weight.” In the Matter of Robert G. Weeks, Admin. Proc. File No. 3-9952.

Section 21B(b) of the Exchange Act provides that the Commission may impose one of three tiers of civil penalties. The tiers are as follows:

(1) First tier

The maximum amount of penalty for each act or omission described in subsection (a) of this section shall be \$5,000 for a natural person or \$50,000 for any other person.

(2) Second tier

Notwithstanding paragraph (1), the maximum amount of penalty for each such act or omission shall be \$50,000 for a natural person or \$250,000 for any other person if the act or omission described in subsection (a) of this section involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(3) Third tier

Notwithstanding paragraphs (1) and (2), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 for any other person if--

(A) the act or omission described in subsection (a) of this section involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(B) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

15 U.S.C.A. § 78u-2(b). The penalty amounts are periodically adjusted by the Commission to account for increases in the cost of living. The bulk of the violative conduct (i.e., the churn periods) herein ended after March 3, 2009.⁴⁷ The amounts of civil monetary penalties applicable are, therefore, the amounts reflected in that revision to the penalties provided for in Section 21B(b) of the Exchange Act, 15 U.S.C.A. § 78u-2(b). See Adjustment of civil monetary

⁴⁷ Koutsoubos' conduct in the Bryant account is the only exception, thus falling under Table III, 17 C.F.R. § 201.1003. Under that adjustment, third tier penalties for natural persons may be imposed up to \$130,000.

penalties—2009, Table IV, 17 C.F.R. § 201.1004. Accordingly, first tier penalties for any violation may be imposed up to \$7,500 for a natural person. When the violation involves fraud, second tier penalties may be imposed up to \$75,000 for a natural person. A third tier civil penalty of up to \$150,000 for a natural person if the violation involved fraud or deceit and the violation resulted in substantial losses to other persons, created a significant risk of substantial losses to other persons, or resulted in substantial pecuniary gain to the person who committed the violation.

In this case, civil penalties against the Respondents are in the public interest. As discussed above, the conduct of Calabro, Konner and Koutsoubos involved fraud, deceit, and manipulation, and Bresner's conduct involved deliberate or reckless disregard of a regulatory requirement. The customers in this case suffered serious harm – amounting collectively to \$2.7 million in losses – resulting either directly (with respect to the brokers) and indirectly (with respect to Bresner) from that conduct. By corollary, Calabro, Konner and Koutsoubos were unjustly enriched, retaining approximately \$720,000 from the commissions paid by their customers. And because all the Respondents continue to work in the securities industry, there is a need to deter them and other persons from committing such acts or omissions in the future.

With respect to Calabro, Konner and Koutsoubos, the Division respectfully requests that the Court impose maximum amount third tier penalties for each customer who was a victim of churning. Section 21B(b)(3) of the Exchange Act provides that a third tier penalty shall be imposed if the act involved fraud, deceit, or manipulation, and resulted in substantial losses to other persons, or resulted in substantial pecuniary gain to the person who committed the act. As detailed at length above, Calabro, Konner and Koutsoubos engaged in a course of conduct marked by fraud, deceit and manipulation, their customers collectively lost \$2.7 million dollars, and the Respondents profited approximately \$720,000. The Commission has recently stated, in the context of civil penalties stemming from variable annuities sales violations by individuals

associated with a broker-dealer, that “[w]e agree with the Division that the penalties should be applied per customer” In the Matter of the Application of Eric J. Brown, et al., Admin. Proc. File No. 3-13532, Exchange Act Rel. No. 34-66469, 2012 WL 625874 at *16-17 (Feb. 27, 2012) (Commission opinion). Thus, in this case, the civil penalties against the registered representatives should be: \$450,000 against Calabro (\$150,000 multiplied by 3 customers), \$300,000 against Konner (\$150,000 multiplied by 2 customers), and \$280,000 against Koutsoubos (\$150,000 for the Mills, whose churning period ended in July 2009, and \$130,000 for Bryant, whose churning period ended in December 2008).

With respect to Bresner, the Division respectfully requests that the Court impose a maximum amount third tier civil penalty of \$150,000 for Bresner’s reckless failure to identify red flags and take appropriate supervisory action in this case. As the Commission recently observed in an opinion denying a motion to reconsider civil penalties, “failures to supervise are serious violations. Supervisors are the first line of defense against wrongdoing by their subordinates.” In the Matter of Eric J. Brown, et al., Admin. Proc. File No. 3-13532, Exchange Act Rel. No. 34-66752, 2012 WL 1143573 at *2 (Apr. 5, 2012). Section 21B(b)(3) of the Exchange Act provides that a third tier penalty shall be imposed if the act involved deliberate or reckless disregard of a regulatory requirement, and resulted in substantial losses to other persons, or resulted in substantial pecuniary gain to the person who committed the act. Bresner’s conduct, which involved the failure to take even the most basic supervisory steps in fulfilling responsibilities that fell only to him under the AARS, and failing to adequately identify and respond to the red flags surrounding these customers’ accounts, demonstrates reckless disregard of a regulatory requirement. Moreover, Bresner’s failure to supervise indirectly resulted in substantial losses (as well as created a significant risk of substantial losses to other persons), while resulting in substantial pecuniary gain to the brokers. See In the Matter of Newbridge

Securities Corp., Admin. Proc. File No. 3-13099, Rel. No. 380, 2009 WL 1684744 at *60-61 (June 9, 2009) (finding third tier civil penalties permissible for failure to supervise where pecuniary gains to fraudster supervisee were substantial). In addition, Bresner is a recidivist. [T. 2750-51]. Accordingly, the Court should impose a civil penalty of \$150,000 against Bresner.

D. The Court Should Impose a Collateral Industry Bar Against Respondents Calabro, Konner and Koutsoubos and a Supervisory Bar Against Respondent Bresner

Section 15(b)(4)(D) of the Exchange Act authorizes the Commission to censure, place limitations on the activities, functions, or operations of, or suspend for a period not exceeding twelve months, or revoke the registration of any broker, where it is in the public interest to do so, and where the broker has been found to have violated the securities statutes. Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to impose similar sanctions on persons associated with an broker or dealer, including barring such person from the securities industry. In addition, Section 15(b)(4)(E) of the Exchange Act works in tandem with Section 15(b)(6)(A) of the Exchange Act to authorize the Commission to bar a person associated with a broker or dealer from the securities industry for failure “reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision.” 15 U.S.C.A. § 78o-4(b)(4)(E); See also Sections 203(e) and (f) of the Advisers Act (15 U.S.C.A. 80b-3(e) and (f)).

The established criteria for determining what sanctions are appropriate in the public interest include deterrence and:

the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); see also In the Matter of the Application of Eric J. Brown, et al., Admin. Proc. File No. 3-13532, Exchange Act Rel. No. 34-66469, 2012 WL 625874 at *12-13 (Feb. 27, 2012); In the Matter of Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976). As the Commission recently noted in Brown, the inquiry into the public interest is a flexible one, and no one factor is dispositive.

For the reasons discussed in Section IV.A. above, applying the Steadman factors in support of a cease-and-desist order, the Division submits that the Court should impose a bar against Calabro, Konner and Koutsoubos in all capacities and a supervisory bar against Bresner.

V. CONCLUSION

For the foregoing reasons, the Court should find that Calabro, Konner and Koutsoubos willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that as a result of that conduct, Bresner failed reasonably to supervise Konner and Koutsoubos, persons subject to his supervision, with a view to preventing and detecting violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by Konner and Koutsoubos. Further, the Court should impose sanctions in the public interest as requested by the Division.

Respectfully submitted, this 12th day of April, 2013.

Respectfully submitted,

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EXHIBIT A



U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Ralph Calabro PJI on \$110K Disgorgement arising from Moore Account

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$110,000.00
01/01/2010-03/31/2010	4%	0.99%	\$1,084.93	\$111,084.93
04/01/2010-06/30/2010	4%	1%	\$1,107.81	\$112,192.74
07/01/2010-09/30/2010	4%	1.01%	\$1,131.15	\$113,323.89
10/01/2010-12/31/2010	4%	1.01%	\$1,142.55	\$114,466.44
01/01/2011-03/31/2011	3%	0.74%	\$846.74	\$115,313.18
04/01/2011-06/30/2011	4%	1%	\$1,149.97	\$116,463.15
07/01/2011-09/30/2011	4%	1.01%	\$1,174.20	\$117,637.35
10/01/2011-12/31/2011	3%	0.76%	\$889.53	\$118,526.88
01/01/2012-03/31/2012	3%	0.75%	\$884.09	\$119,410.97
04/01/2012-06/30/2012	3%	0.75%	\$890.69	\$120,301.66
07/01/2012-09/30/2012	3%	0.75%	\$907.19	\$121,208.85
10/01/2012-12/31/2012	3%	0.75%	\$914.03	\$122,122.88
01/01/2013-03/31/2013	3%	0.74%	\$903.37	\$123,026.25
04/01/2013-05/31/2013	3%	0.5%	\$616.82	\$123,643.07
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
01/01/2010-05/31/2013			\$13,643.07	\$123,643.07



U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Ralph Calabro PJI on \$282K Disgorgement arising from Williams Account

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$282,000.00
01/01/2010-03/31/2010	4%	0.99%	\$2,781.37	\$284,781.37
04/01/2010-06/30/2010	4%	1%	\$2,840.01	\$287,621.38
07/01/2010-09/30/2010	4%	1.01%	\$2,899.85	\$290,521.23
10/01/2010-12/31/2010	4%	1.01%	\$2,929.09	\$293,450.32
01/01/2011-03/31/2011	3%	0.74%	\$2,170.73	\$295,621.05
04/01/2011-06/30/2011	4%	1%	\$2,948.11	\$298,569.16
07/01/2011-09/30/2011	4%	1.01%	\$3,010.23	\$301,579.39
10/01/2011-12/31/2011	3%	0.76%	\$2,280.44	\$303,859.83
01/01/2012-03/31/2012	3%	0.75%	\$2,266.50	\$306,126.33
04/01/2012-06/30/2012	3%	0.75%	\$2,283.40	\$308,409.73
07/01/2012-09/30/2012	3%	0.75%	\$2,325.71	\$310,735.44
10/01/2012-12/31/2012	3%	0.75%	\$2,343.25	\$313,078.69
01/01/2013-03/31/2013	3%	0.74%	\$2,315.92	\$315,394.61
04/01/2013-05/31/2013	3%	0.5%	\$1,581.29	\$316,975.90
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
01/01/2010-05/31/2013			\$34,975.90	\$316,975.90



U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Ralph Calabro PJI on \$90K Disgorgement arising from Willhoft 247 Account

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$90,000.00
01/01/2010-03/31/2010	4%	0.99%	\$887.67	\$90,887.67
04/01/2010-06/30/2010	4%	1%	\$906.39	\$91,794.06
07/01/2010-09/30/2010	4%	1.01%	\$925.49	\$92,719.55
10/01/2010-12/31/2010	4%	1.01%	\$934.82	\$93,654.37
01/01/2011-03/31/2011	3%	0.74%	\$692.79	\$94,347.16
04/01/2011-06/30/2011	4%	1%	\$940.89	\$95,288.05
07/01/2011-09/30/2011	4%	1.01%	\$960.71	\$96,248.76
10/01/2011-12/31/2011	3%	0.76%	\$727.80	\$96,976.56
01/01/2012-03/31/2012	3%	0.75%	\$723.35	\$97,699.91
04/01/2012-06/30/2012	3%	0.75%	\$728.75	\$98,428.66
07/01/2012-09/30/2012	3%	0.75%	\$742.25	\$99,170.91
10/01/2012-12/31/2012	3%	0.75%	\$747.85	\$99,918.76
01/01/2013-03/31/2013	3%	0.74%	\$739.13	\$100,657.89
04/01/2013-05/31/2013	3%	0.5%	\$504.67	\$101,162.56
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
01/01/2010-05/31/2013			\$11,162.56	\$101,162.56



U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Ralph Calabro PJI on \$110K Disgorgement arising from Willhoft 805 Account

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$110,000.00
01/01/2010-03/31/2010	4%	0.99%	\$1,084.93	\$111,084.93
04/01/2010-06/30/2010	4%	1%	\$1,107.81	\$112,192.74
07/01/2010-09/30/2010	4%	1.01%	\$1,131.15	\$113,323.89
10/01/2010-12/31/2010	4%	1.01%	\$1,142.55	\$114,466.44
01/01/2011-03/31/2011	3%	0.74%	\$846.74	\$115,313.18
04/01/2011-06/30/2011	4%	1%	\$1,149.97	\$116,463.15
07/01/2011-09/30/2011	4%	1.01%	\$1,174.20	\$117,637.35
10/01/2011-12/31/2011	3%	0.76%	\$889.53	\$118,526.88
01/01/2012-03/31/2012	3%	0.75%	\$884.09	\$119,410.97
04/01/2012-06/30/2012	3%	0.75%	\$890.69	\$120,301.66
07/01/2012-09/30/2012	3%	0.75%	\$907.19	\$121,208.85
10/01/2012-12/31/2012	3%	0.75%	\$914.03	\$122,122.88
01/01/2013-03/31/2013	3%	0.74%	\$903.37	\$123,026.25
04/01/2013-05/31/2013	3%	0.5%	\$616.82	\$123,643.07
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
01/01/2010-05/31/2013			\$13,643.07	\$123,643.07



U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Jason Konner PJI on \$55K Disgorgement arising from Carlson Account

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$55,000.00
02/01/2010-03/31/2010	4%	0.65%	\$355.62	\$55,355.62
04/01/2010-06/30/2010	4%	1%	\$552.04	\$55,907.66
07/01/2010-09/30/2010	4%	1.01%	\$563.67	\$56,471.33
10/01/2010-12/31/2010	4%	1.01%	\$569.35	\$57,040.68
01/01/2011-03/31/2011	3%	0.74%	\$421.94	\$57,462.62
04/01/2011-06/30/2011	4%	1%	\$573.05	\$58,035.67
07/01/2011-09/30/2011	4%	1.01%	\$585.13	\$58,620.80
10/01/2011-12/31/2011	3%	0.76%	\$443.27	\$59,064.07
01/01/2012-03/31/2012	3%	0.75%	\$440.56	\$59,504.63
04/01/2012-06/30/2012	3%	0.75%	\$443.85	\$59,948.48
07/01/2012-09/30/2012	3%	0.75%	\$452.07	\$60,400.55
10/01/2012-12/31/2012	3%	0.75%	\$455.48	\$60,856.03
01/01/2013-03/31/2013	3%	0.74%	\$450.17	\$61,306.20
04/01/2013-05/31/2013	3%	0.5%	\$307.37	\$61,613.57
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
02/01/2010-05/31/2013			\$6,613.57	\$61,613.57



U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Jason Konner PJI on \$23K Disgorgement arising from Miller Account

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$23,000.00
01/01/2010-03/31/2010	4%	0.99%	\$226.85	\$23,226.85
04/01/2010-06/30/2010	4%	1%	\$231.63	\$23,458.48
07/01/2010-09/30/2010	4%	1.01%	\$236.51	\$23,694.99
10/01/2010-12/31/2010	4%	1.01%	\$238.90	\$23,933.89
01/01/2011-03/31/2011	3%	0.74%	\$177.05	\$24,110.94
04/01/2011-06/30/2011	4%	1%	\$240.45	\$24,351.39
07/01/2011-09/30/2011	4%	1.01%	\$245.52	\$24,596.91
10/01/2011-12/31/2011	3%	0.76%	\$185.99	\$24,782.90
01/01/2012-03/31/2012	3%	0.75%	\$184.86	\$24,967.76
04/01/2012-06/30/2012	3%	0.75%	\$186.23	\$25,153.99
07/01/2012-09/30/2012	3%	0.75%	\$189.69	\$25,343.68
10/01/2012-12/31/2012	3%	0.75%	\$191.12	\$25,534.80
01/01/2013-03/31/2013	3%	0.74%	\$188.89	\$25,723.69
04/01/2013-05/31/2013	3%	0.5%	\$128.97	\$25,852.66
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
01/01/2010-05/31/2013			\$2,852.66	\$25,852.66



U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Dimitrios Koutsoubos PJI on \$30K Disgorgement arising from Bryant Account

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$30,000.00
02/01/2009-03/31/2009	5%	0.81%	\$242.47	\$30,242.47
04/01/2009-06/30/2009	4%	1%	\$301.60	\$30,544.07
07/01/2009-09/30/2009	4%	1.01%	\$307.95	\$30,852.02
10/01/2009-12/31/2009	4%	1.01%	\$311.06	\$31,163.08
01/01/2010-03/31/2010	4%	0.99%	\$307.36	\$31,470.44
04/01/2010-06/30/2010	4%	1%	\$313.84	\$31,784.28
07/01/2010-09/30/2010	4%	1.01%	\$320.46	\$32,104.74
10/01/2010-12/31/2010	4%	1.01%	\$323.69	\$32,428.43
01/01/2011-03/31/2011	3%	0.74%	\$239.88	\$32,668.31
04/01/2011-06/30/2011	4%	1%	\$325.79	\$32,994.10
07/01/2011-09/30/2011	4%	1.01%	\$332.65	\$33,326.75
10/01/2011-12/31/2011	3%	0.76%	\$252.01	\$33,578.76
01/01/2012-03/31/2012	3%	0.75%	\$250.46	\$33,829.22
04/01/2012-06/30/2012	3%	0.75%	\$252.33	\$34,081.55
07/01/2012-09/30/2012	3%	0.75%	\$257.01	\$34,338.56
10/01/2012-12/31/2012	3%	0.75%	\$258.95	\$34,597.51
01/01/2013-03/31/2013	3%	0.74%	\$255.93	\$34,853.44
04/01/2013-05/31/2013	3%	0.5%	\$174.74	\$35,028.18
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
02/01/2009-05/31/2013			\$5,028.18	\$35,028.18



U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Dimitrios Koutsoubos PJI on \$20K Disgorgement arising from Mills Account

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$20,000.00
09/01/2009-09/30/2009	4%	0.33%	\$65.75	\$20,065.75
10/01/2009-12/31/2009	4%	1.01%	\$202.31	\$20,268.06
01/01/2010-03/31/2010	4%	0.99%	\$199.90	\$20,467.96
04/01/2010-06/30/2010	4%	1%	\$204.12	\$20,672.08
07/01/2010-09/30/2010	4%	1.01%	\$208.42	\$20,880.50
10/01/2010-12/31/2010	4%	1.01%	\$210.52	\$21,091.02
01/01/2011-03/31/2011	3%	0.74%	\$156.02	\$21,247.04
04/01/2011-06/30/2011	4%	1%	\$211.89	\$21,458.93
07/01/2011-09/30/2011	4%	1.01%	\$216.35	\$21,675.28
10/01/2011-12/31/2011	3%	0.76%	\$163.90	\$21,839.18
01/01/2012-03/31/2012	3%	0.75%	\$162.90	\$22,002.08
04/01/2012-06/30/2012	3%	0.75%	\$164.11	\$22,166.19
07/01/2012-09/30/2012	3%	0.75%	\$167.15	\$22,333.34
10/01/2012-12/31/2012	3%	0.75%	\$168.42	\$22,501.76
01/01/2013-03/31/2013	3%	0.74%	\$166.45	\$22,668.21
04/01/2013-05/31/2013	3%	0.5%	\$113.65	\$22,781.86
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
09/01/2009-05/31/2013			\$2,781.86	\$22,781.86