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 DMITRIOS KOUTSOUBOS	:

RESPONDENT RALPH CALABRO'S OPENING
BRIEF IN SUPPORT OF PETITION FOR REVIEW

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INTRODUCTION

Ralph Calabro respectfully submits this Brief in Support of Petition for Review of the Initial Decision dated November 8, 2013 (the "Initial Decision") of Administrative Law Judge Cameron Elliot (the "ALJ"). The Initial Decision found that Mr. Calabro churned the account of [redacted] and ordered him (1) to cease and desist from violations and future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, (2) barred from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, (3) to disgorge $282,000 plus prejudgment interest, and (4) to pay a $150,000 penalty.

Calabro takes exception with each of these rulings, and submits his Petition for Review to clear his name. Indeed, despite his unwavering faith in having serviced [redacted] account in a manner consistent with [redacted] repeatedly-stated and confirmed intent and with proper industry practice, and despite the evidence and legal principles that secure that faith, Calabro has relinquish his career as a registered broker. Calabro nevertheless respectfully requests that the Commission reverse the Initial Decision as it is legally erroneous and factually clearly erroneous. Should the Commission determine to uphold the finding that Calabro churned Williams' account, it should, at a minimum, modify the Initial Order to vacate any monetary obligation. Disgorgement is not only unnecessary now that it appears Williams was compensated through a private settlement, but is unnecessary given that Calabro's career in the broker-dealer industry has ended and any further monetary relief or penalties are unnecessarily punitive.[1]

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[1] The settlement with Williams is reflected in Mr. Calabro's CRD record maintained with FINRA. The Broker Check database reflects a $2,500,000 settlement having been entered with [redacted] and another customer in settlement of a related arbitration. (*See* Appendix Ex. 1.)

PRELIMINARY STATEMENT AND BACKGROUND

At the heart of the Division's churning case against Calabro was the question: "What if?" Because had Calabro foreseen the date and extent to which the market began *to recover* in March 2009, at the close of the "Great Recession," this entire proceeding may never have occurred. [redacted]—a retired economics professor who had long-term investment experience in both public and private investments and who demonstrated, in writing, his ability to monitor, analyze and maintain control of his account—would have simply continued to profit employing the strategies Calabro recommended. Indeed, had [redacted]' account not experienced its rapid and severe decline borne of a rapid and unforeseen market *recovery*, the ratio metrics to which the Division pointed as its evidence of excessive trading, and which became a cornerstone of the ALJ's churning decision, would have remained well below the turnover and cost/equity churning guideposts set forth in past Commission and court decisions. To state it simply, "what if" Calabro has foreseen the end of the Great Recession and thus avoided the loss in value in the [redacted] account? There would not have been the loss that prejudicially skewed the metrics to make it appear as if trading in Williams' account was excessive; there would not have been the loss that enabled Williams to assert that he lost control of his account or assert that the risk associated with the short-term trading he wanted in real time was unintended (when he signed repeated documents to the contrary); and there would not have been the "massive loss" which "persuaded" the ALJ to label Calabro a fraudster, when the law correctly applied to the mostly incontestable facts commanded the opposite finding.

The central events involved in this case date back to the fall of 2007, when Calabro predicted—along with only a handful of other brokers (but notably few, if any, government officials)—the world-wide economic and market collapse beginning in November 2007 now referred to as the Great Recession. Calabro based his prediction on economic indicators he

noticed in the standard business cycle (about which Calabro was self-taught) combined with a technical analysis of various chart-based trends (about which Calabro was also self-taught). (Tr. 3970, 3973-79.) Based in these long-accepted economic theories and indicators, and upon his tireless motivation and effort, Calabro recommended a strategy to [redacted] of shorting the stock of companies in sectors that the standard business cycle indicated were the next to decline. (Tr. 4078-82.) [redacted] had previously opened an account with Calabro in October 2007. (Calabro Ex. 43.) The strategy Calabro recommended, by definition, involved shorter-term trading and increased risk particularly if the market spiked upward, and required Calabro's extensive, day-to-day monitoring and effort, which was all fully explained to his customers, including [redacted]. To be sure, had Calabro intended to recommend trades in [redacted]' account for the principal purpose of generating commissions—the *sine qua non* of churning—a much easier method would have been to trade in and out of analyst-recommended stocks on a short-term basis; Calabro chose instead devote himself to the more time-consuming, day-today analysis and monitoring inherent in a shorter term trading strategy to maximize his clients' potential profits.

Calabro's strategy initially proved correct, for as the entire world now knows, national economies and markets declined substantially and rapidly in 2008 through March of 2009. (Tr. 4158.) Throughout that period, Calabro relied upon the standard business cycle to predict trends—such as the failure of major banks and insurance companies—based upon which [redacted] (along with Calabro's other customers) sold stocks short and profited handsomely. (Tr. 4104.) [redacted]' profits in 2008 were so rapid and extreme—contrary to the moderate or conservative investing objectives he professed to have when testifying during the trial—that he withdrew over $200,000 to purchase a home for his daughter and for other purposes. (Tr. 4173.)

The disclosed risks associated with short-selling materialized and [redacted]' account suffered losses beginning in March 2009. As proved at trial, Calabro's failure—if it can be called one—was not the volume of trades recommended in [redacted]' account; indeed, [redacted]' signed documents declaring his understanding that Calabro's shorter term strategy involved a higher volume of trades. Calabro's failed instead to predict the impact the Commission's freeze on short selling in September 2008, followed by quantitative easing, troubled asset relief, mark-to-market asset pricing rule changes and other government intervention, would have on market performance (Tr. 4105-09, 4159-62)—all of which could be viewed as having *interfered with* the standard business cycle upon which Calabro placed principal reliance.

[redacted]' substantial loss (along with losses sustained by two other Calabro customers, Waldo Willhoft and Harold Moore) grew into the Commission's Order Instituting Proceedings against Calabro (and others) on September 10, 2012 (the "OIP"). The OIP charged Calabro with churning the accounts of [redacted], [redacted] and [redacted] claiming that (1) Calabro engaged "in excessive trading for [his] own gains in disregard of the customers' conservative investment objectives and low or moderate risk tolerances for the purpose of generating commissions," (2) Calabro "exercised *de facto* control over the accounts of the three customers," and (3) "turnover ratios" and "annualized break-even rates of return" were "excessive in light of Calabro's customers' investment objectives and experiences, ages and financial needs." (OIP ¶¶7-8.)

After a seventeen-day hearing—only a fraction of which involved Calabro—the ALJ issued the Initial Decision on November 18, 2013 finding that Calabro churned [redacted]' account. The ALJ further ruled that the evidence was insufficient to conclude that Calabro churned [redacted]'s or [redacted]'s accounts. The present Petition for Review follows. For the reasons set forth below, the Commission should now reverse the Initial Decision.

THE ELEMENTS OF CHURNING AND SUMMARY OF ARGUMENT

Actionable churning occurs when a broker trades "without regard to the customer's investment interests" "for the purpose of generating commissions." *Thompson v. Smith Barney, Harris Upham & Co.*, 709 F.2d 1413, 1416 (11th Cir. 1983); *Olson v. E.F. Hutton & Co., Inc.*, 957 F.2d 622, 628 (8th Cir. 1992). The charge has three elements: (1) the broker's "control" of the account, (2) excessive trading in light of the customer's "'investment objectives'" and (3) *scienter*. *Thompson*, 709 F.2d at 1416-17 (quoting *Miley v. Oppenheimer & Co.*, 637 F.2d 318, 324 (5th Cir. 1981)). Because active trading may be appropriate in many instances while in others it may not, whether active trading rises to the level of unlawful churning depends on the specific circumstances judged against established legal guideposts. In a nutshell, "[t]he essence of a churning claim is not a particular transaction, it is the aggregation of transactions, allegedly excessive in number, judged in relation to the plaintiff's investment objectives and the market conditions at that time." *Baselski v. Paine Webber Jackson & Curtis Inc.*, 514 F. Supp. 535, 541 (N.D. Ill. 1981); *see Gopez v. Shin*, 736 F. Supp. 51, 58 (D. Del. 1990).

As demonstrated below, the Initial Decision is both legally and factually erroneous, and should be reversed or modified for four reasons. *First*, and as demonstrated in Point I, the ALJ misapplied the legal standards and the facts upon which he found that Calabro exercised *de facto* control of Williams' account. The uncontested facts are that [redacted] is a highly educated former economics professor who understood the strategy Calabro proposed and monitored his account. [redacted] also repeatedly declared substantial investment experience in various documents he signed. The ALJ either disregarded these facts or found them "beside the point" because, he found, [redacted] was not a "sophisticated investor" and his educational and teaching experience did not include finance or investments. The test for *de facto* control, however,

required the ALJ to focus on whether [redacted] had sufficient intelligence and understanding to reject a recommendation he found unsuitable, not whether he was a sophisticated investor. *See Follansbee v. Davis, Skaggs & Co.*, 681 F.2d 673, 677 (9th Cir. 1982). The ALJ never attempted to make that predicate determination, and thus misapplied the law and the facts.

The *second* reason the Initial Decision should be reversed, as further explained in Point II, is that the ALJ erroneously held that the trading in [redacted]' account was excessive based upon a finding—contrary to the contemporaneous written record—that [redacted]'s investment objective was moderate or conservative and upon unreliable expert opinions as to the volume of trades in [redacted]' account. The expert opinions were inherently unreliable because the witness was not only unqualified, but he failed to account for the substantial anomalies that permeated his analysis due to the unique intersection in this case of an account predominantly involved in short trading which rapidly lost substantial equity value. When those factors were pointed out during the trial, the unreliability of the opinions became apparent. Perhaps more importantly, a more suitable statistical calculation performed to account for the anomalies demonstrated that the volume of trades in [redacted]' account was consistent with his objective to engage in short trading to take advantage of the market decline.

The *third* reason the Initial Decision should be reversed, as further explained in Point III, is that the ALJ erroneously held that Calabro acted with *scienter*. The ALJ principally focused on his predicate, but erroneous, rulings that Calabro controlled and excessively traded [redacted]' account. The predicate findings are incorrect, but nevertheless the ALJ further erred because the test for *scienter* goes beyond whether the two other elements of churning are satisfied. After all, not only would the *scienter* element become superfluous if the law were as the ALJ applied, but a *per se* finding of *scienter* would undercut the core issue in any churning charge: whether the

broker's *intent* was to serve his or her customer or principally to trade to generate commissions. The prior intent insulates the broker from being accused of churning whereas the latter is the essence of the fraud-based charge.

Finally, should the Commission determine to uphold the ALJ's churning ruling, it should nevertheless modify the Initial Order to eliminate any obligation to disgorge, pay interest, or pay a penalty. Disgorgement is unnecessary because, as Calabro's CRD record indicates, [redacted] was already compensated as part of a private settlement. And any penalty, given Calabro's exit from the brokerage industry, would be unduly punitive—stated simply, Calabro has already been deprived of his career. In any event, Calabro is financially unable to pay any level of disgorgement or penalty.

ARGUMENT

I. THE INITIAL DECISION SHOULD BE REVERSED BECAUSE THE ALJ APPLIED AN INCORRECT STANDARD AND THEN ERRONOUSLY FOUND THAT CALABRO EXERCISED *DE FACTO* CONTROL

A. The *De Facto* Control Legal Standard

The Division offered no evidence that Calabro exercised *actual* control over Williams' account. Rather, the ALJ found that Calabro exercised "*de facto* control" of Williams' account. (Initial Decision at 98, 107-08.) The "touchstone" of *de facto* control is "whether or not the customer has *sufficient intelligence and understanding* to evaluate the broker's recommendations *and to reject one when he thinks it unsuitable.*" *Follansbee*, 681 F.2d at 677 (emphasis added). "If a customer is fully able to evaluate his broker's advice and agrees with the broker's suggestions, the customer retains control of the account." *Newburger, Loeb & Co., Inc. v. Gross*, 563 F.2d 1057, 1069-70 (2d Cir. 1977); *see Morris v. Commodity Futures Trading Com'n*, 980 F.2d 1289, 1296 (9th Cir. 1992) ("Even though broker control may be inferred from the broker-

customer relationship, 'a customer retains control of his account if he has sufficient financial acumen to determine his own best interests,' even if he acquiesces in the broker's management of the account") (quoting *Follansbee*, 681 F.2d at 677 and *Carras v. Burns*, 516 F.2d 251, 258-59 (4th Cir. 1975)); *Hebda v. Harbinger Group, Inc.*, 2014 WL 234469, at *4 (E.D. Mich. Jan. 22, 2014) ("'Where a customer has the independent capacity to accept or reject his broker's recommendations, he cannot accuse his broker of having control over his account even if he habitually follows his broker's recommendations.'") (quoting *Moran v. Kidder Peabody & Co.*, 609 F. Supp. 661, 666 (S.D.N.Y. 1985)).

The uncontested facts demonstrated that Williams had the intelligence and understanding to evaluate Calabro's investment recommendations, and that he further admitted to his ability to reject any such recommendations he found unsuitable. The ALJ disregarded these uncontested facts and applied an incorrect legal standard, and thus his conclusion that Calabro exercised *de facto* control was erroneous. For this reason alone, the Initial Decision should be reversed.

B. The ALJ Erroneously Discounted Williams' Intelligence And Understanding of Mr. Calabro's Trade Recommendations

As explained above, the customer's level of intelligence and understanding of the broker's trade recommendations, and whether each was "sufficient," are fundamental factors in any consideration of *de facto* control. For example, in *Follansbee*, a core fact to which the Ninth Circuit pointed in determining a broker's lack of *de facto* control was the customer's intelligence, demonstrated by a degree in economics, a course in accounting, and having read and understood corporate financial reports. 681 F.2d at 677. Similarly, in *Morris*, the customer's "professional education" in medicine and his "investment and business experience" were core facts in disproving *de facto* control. 980 F.2d at 1295-96. And in *Xaphes v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 632 F. Supp. 471, 483 (D. Maine 1986), the court viewed

the customer's graduation from law school, and thus his intelligence despite his less than stellar legal career, as a crucial factor in finding that he maintained control of his account.

[redacted] was well-educated and intelligent too—perhaps even more educated than the customers in *Follansbee*, *Morris* and *Xaphes*—having earned an MBA. But in this case, unlike the investor with only an economics degree in *Follansbee*, or the investor with the medical professional degree in *Morris*, or even the investor with the law degree in *Xaphes*, [redacted] went on to *teach quantitative analysis for 30 years*—as a *Professor of Economics*—at California Polytechnic University. (Tr. 1398:10-1400:8; *see* Initial Op. at 107.) If anyone was "sufficiently" educated to understand the investments Calabro recommended, it was [redacted].

The ALJ nevertheless erroneously ruled [redacted]' education and decades of economics experience as a university professor beside the point because his "education focused on economics, marketing and accounting" and he "did not teach courses relating to finance or investment." (Initial Op. at 107-08.) We are unaware of any case that limits the relevant evidentiary "intelligence" to understand investment recommendations to aspects of a customer's education or employment experience that relate solely to degrees or jobs in "finance or investment," and for good reason. The test established by countless cases is whether the customer's experience is sufficient to enable him or her to evaluate a broker's recommendation, not whether the experience is specific to finance or investments. *See Newburger*, 563 F.2d at 1069-70. Even the "school of hard knocks" has been ruled an important component of intelligence, and even when that school was in the construction industry and not in finance or investing, as it was in *M & B Contracting Corp. v. Dale*, 601 F. Supp. 1106, 1111 (E.D. Mich. 1984). In sum, the ALJ discounted the wrong fact; [redacted]' 30 years as an economics professor, combined with his MBA and undergraduate educational experience, proved "sufficient

intelligence" to evaluate Calabro's trade recommendations and strategy regardless of whether those experiences focused on finance or investments.

The ALJ also erroneously ruled that [redacted]' understanding of short selling was "beside the point." (Initial Decision at 108.) The settled law is to the contrary, and dictates that [redacted]' "understanding" of core investments Calabro recommended as part of his shorting strategy is a crucial "point." Short of considering [redacted]' admitted understanding, the ALJ was otherwise unable to (and thus he did not) answer the ultimate critical question—whether [redacted]' intelligence and understanding was sufficient to enable him to "evaluate" Calabro's "recommendations and to reject one when he thinks it unsuitable." *Follansbee*, 681 F.2d at 677.

The evidence of [redacted] understanding of the investments Calabro recommended went way beyond his admission that he believed "the economy was going to fall" based on "reading newspapers, looking at the television, things of that nature" (Tr. 1535:12-19), and if that occurred, he "understood the basic concept" that he "could sell the stock now and buy it back at a reduced price." (Tr. 1426:13-19; 1428:20-1429:1.) [redacted]' also closely followed the nature and performance of investments in his account. In one instance in February 2008, shortly after Calabro predicted the market turn and recommended his customers invest "short," [redacted] did a "quick analysis" of the types of investments in his account, calculated gains and losses, the tax impact of net gains, dividends received, commissions paid, and identified the remaining holdings together with the unrealized gains and losses for each short investment. (Calabro Exs. 47, 48.) In the cover letter to Calabro accompanying his analysis, [redacted] further demonstrated his understanding that his account was invested "short," commenting that "Hopefully, the 'short'

gods will turn in our favor in the not too distant future." (*Id.*)[2] [redacted]' ability to monitor his account performance, and to communicate with Calabro about his past and hopeful future performance, is only further proof of his retained control that the ALJ disregarded. *See Norniella v. Kidder Peabody & Co., Inc.*, 752 F. Supp. 624, 629 (S.D.N.Y. 1990) (investors maintained control over account where they monitored and raised questions about the accounts with stockbroker).

Indeed, the ALJ discounted [redacted]' understanding of his investments and ability to analyze and track them as irrelevant because those uncontested facts were "not evidence of, and cannot be interpreted as, securities trading experience" or the "ability to pick stocks." (Initial Decision at 108.) The ability to "pick stocks," however, is not a factor in determining *de facto* control; whether [redacted] was "sufficiently" able to understand Calabro's investment recommendations is the critical predicate factor and, as demonstrated above, Williams' understanding and ability to analyze Calabro's investment recommendations was all but uncontested. *Follansbee*, 681 F.2d at 677. And while "securities trading experience" would likely have been of help to [redacted] in understanding Calabro's investment recommendations, it is far from a deciding factor especially where, as here, [redacted] admitted his understanding, and his educational, professorial and analytical abilities proved his ability to understand. In any event, [redacted] repeatedly boasted to having more than 30 years of investment experience in signed documents he delivered to J.P. Turner and Newbridge Securities. (Calabro Ex. 54, DOE Exs. 10, 48.) The ALJ's determination to disregard [redacted]' repeated signed admissions in favor of his after-the-fact and contrary trial plea of investment ignorance and his failure to read documents he signed was clearly in error. *See First Union Discount Brokerage Services, Inc. v.*

[2] Ultimately, [redacted] showed his capacity by not only analyzing his account, but doing the same for [redacted]. (Calabro Ex. 49.)

Milos, 997 F.2d 835, 846 n.21 (11th Cir. 1993) (investors "may derive neither comfort nor legal protection from their willingness to sign [margin and option] contracts without reading them"); *Coleman v. Prudential Bache Sec., Inc.*, 802 F.2d 1350, 1352 (11th Cir. 1986) ("absent a showing of fraud or mental incompetence, a person who signs a contract cannot avoid her obligations under it by showing that she did not read what she signed").

The ALJ heavy reliance upon [redacted]' acquiescence to Calabro's investment recommendations was also misplaced. (Initial Decision at 108.) While routine adherence to a broker's recommendations is sometimes a factor in determining *de facto* control, "[t]he fact that a customer follows the advice of his broker does not in itself establish control." *Matter of IFG Network Securities, Inc., et al.*, 84 S.E.C. Docket 2942, Admin. Proc. File No. 3-11179 (February 10, 2005), To the contrary, "[i]f the customer, based on the information available to him and his ability to interpret it, can independently evaluate his broker's recommendations, the customer, not the broker, has control of the trading." *Id.* As explained above, [redacted] was fully able to "interpret" and "independently evaluate" Calabro's recommendations.

Finally, the ALJ pointed to alleged unauthorized trading in [redacted]' account as evidence of *de facto* control. (Initial Decision at 108.) The specific "evidence" of this was a single sale of J.P. Morgan options of which [redacted] was aware, because he testified to having raised the trade and its profitability with Calabro in real time, and a more general statement that Williams had learned of trades from his review of the trade confirmations he received. (Tr. 1450-51, 1459.) Indeed, Williams felt no hesitation to raise questions concerning trades in his account or his account performance. (Tr. 1452-53.) And with respect to the J.P. Morgan trade, [redacted]' expressed concern was with a discrepancy in what Calabro believed constituted a profit from the sale, not the sale itself. (Tr. 1459.) Nevertheless, the events surrounding the

alleged unauthorized sale of J.P. Morgan options demonstrates [redacted]' control, because—assuming his assertion accurate—he felt comfortable raising a concern with Calabro, felt sufficiently intelligent to challenge the extent to which the trade was profitable, and felt satisfied enough to make it clear that despite the purported unauthorized trade, he "trusted [Calabro] up until the very end." (Tr. 1503.) *See Xaphes*, 632 F. Supp. at 471 (a "well-educated, sophisticated investor" who "monitored his account constantly and in great detail, checking confirmation slips as they were sent to him, checking the monthly statements, and making notes about the account for himself and his accountants" had "sufficient financial acumen to determine his own best interests"). Stated simply, [redacted] retained control.

C. Williams Understood His Ability To Reject Recommendations

The mostly uncontested evidence proved that [redacted] had "sufficient intelligence," independent capacity and understanding of Calabro's investment recommendations to maintain control of his account. But the mainly uncontested evidence also proved that [redacted] knew aware that in exercising his intelligence and understanding, he was capable of rejecting recommendations at any time. Indeed, [redacted] admitted as much at trial:

> Q. And you felt at any time that you did not want a particular trade or a particular thing to happen in your account, you felt comfortable saying no? You may not have, but you felt comfortable saying it?
>
> A. If I had a reason to say it, I would have said it, yes.
>
> Q. And you believe based upon your relationship with Mr. Calabro, he would have followed your objection, correct?
>
> A. I think he would have, yes. (Tr. 1632:25-1633:10.)

Having had sufficient intelligence and understanding to analyze Calabro's investment recommendations, and having understood his ability to reject any such recommendation he found unsuitable, [redacted] retained control of his account. The

ALJ's ruling to the contrary misapplied the law and disregarded the central, critical, and mostly uncontested facts in this regard. As such, the Initial Decision should be reversed since the ALJ's finding of *de facto* control was both erroneous in law and clearly erroneous in fact.

II. THE ALJ APPLIED AN INCORRECT STANDARD AND ERRED IN FINDING THE TRADING IN WILLIAMS' ACCOUNT EXCESSIVE

A. Whether Trading Is Excessive Depends On The Circumstances

It bears repeating that "the essence of a churning claim is not a particular transaction, it is the aggregation of transactions, allegedly excessive in number, judged *in relation to the plaintiff's investment objectives and the market conditions at that time.*" *Baselski*, 514 F. Supp. at 541 (emphasis added). After all, trading in an account intended for shorter term trading *is expected to be more frequent* than an account with a long-term hold objective. *See Costello v. Oppenheimer & Co., Inc.*, 711 F.2d 1361, 1369 (7th Cir. 1983) (where "the goals of an investor are aggressive or speculative, as opposed to conservative and circumspect, it is easier to conclude that a given course of trading has not been excessive"); *Hotmar v. Lowell H. Listrom & Co.*,808 F.2d 1384, 1386 (10th Cir. 1987) (same); *Follansbee*, 681 F.2d at 676 ("a trader looking for quick, short-term gains, and taking short-term gains and losses requires frequent trading"); *Newburger*, 563 F.2d at 1070 ("a greater volume of activity will normally be expected" in a speculation account). The "starting point" in determining whether trading was excessive, accordingly, is the account objectives for they "significantly illuminate the context in which the trading took place and, indeed, form standards against which the allegations of excessiveness may be measured." *Costello*, 711 F.2d at 1369.

The true objectives of a given account cannot be conclusively understood by simply assigning labels such as "aggressive," "speculation" or "conservative"; the intended strategy for

the account also matters. For instance, few would debate that investing a customer's entire liquid assets in a single penny stock *to hold for the long term* would generally be considered "speculative." *See In the Matter of Joseph J. Barbato*, Admin. Proc. File No. 3-8575 at 6 (November 12, 1996) (a "penny stock is a low priced stock . . . generally associated with a very small, risky company, typically a start-up company or a company that has not been in existence very long"). Any trading in the stock, however, could be considered excessive because, although the account was marked "speculative," the *objective* was to *hold* the shares, not trade them.[3] By the same token, writing covered calls is generally viewed as a "conservative" objective. *See Grove v. Shearson Loeb Rhoades, Inc.*, 1983 WL 1321 at *1 (S.D. Fla. May 31, 1983) ("purpose of engaging in covered call writing is to earn the income from the selling of the call and to provide a hedge against the possible decline in price of the underlying security").[4] Although the covered-call account objective is "conservative," the trading volume would be expected to be higher than the "aggressive" buy and hold penny stock strategy because options expire and would need to be renewed with new trades to pursue the account strategy.

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[3] Trading in the stock would be an example of "'a difference between *aggressive* investing and *excessive* trading." *Michael David Sweeney*, Admin Proc. File No. 3-7126, Rel. No. 29884 (Oct. 30 1991); *In the Matter of Shearson Lehman Hutton, Inc.*, Exchange Act Rel. No. 26766 (April 28, 1989).

[4] A covered call is when "a person sells ('writes') a call option to buy stock he or she owns." 1983 WL 1321 at *1. The Chicago Board Options Exchange recognizes that writing covered calls it is a conservative strategy: "It allows an investor to be paid for assuming the obligation of selling underlying shares at a specified price higher than purchase price, in return for a reduced downside risk from holding underlying shares (a lower break-even point)." http://www.cboe.com/strategies/equityoptions/coveredcalls/part6.aspx; *see* Poser, *Options Account Fraud: Securities Churning In A New Context*, 39 Bus. Law 571 (Feb. 1984).

It is for this reason that the "starting point" in determining whether an account was excessively traded is not the customer's labeling of his or her investment objectives in hindsight. The starting point is instead determining the objective and strategy intended for the account, in light of the market conditions at the time the trading investments occurred. The ALJ "started" at an incorrect "point" when he credited [redacted] declaration at trial that his "risk tolerance was moderate or conservative" and his "investment objectives were more in line with preservation of capital and capital appreciation" as a predicate to ruling that the account excessively traded. (Initial Decision at 108.)

Indeed, the correct "starting point" was whether the strategy ascribed to the [redacted] account at the applicable time was expected to generate a higher volume of trades. The ALJ initially disregarded the question because he was "not persuaded that this makes a difference here" despite his recognizing that a "short-sale strategy necessarily involves short-term trading, and generally leads to higher account trading metrics." (*Id.* at 109.) The ALJ instead concluded that trading to implement a short strategy—which he determined is aggressive and speculative—should be measured against a "lower" trading volume guideline. (*Id.*) The ALJ's conclusions were incorrect; the account objective for [redacted]' account was to engage in shorter term trading, and therefore the ALJ should have measured the volume of trades against an expectation at the relevant time that it would be higher—not "lower."

B. Williams' Account Objective Was To Engage In Shorter Term, More Aggressive, Trading

[redacted] testified that in late 2007, when he and Calabro concluded "the economy was going to fall" and the market was "going to go, down," Calabro recommended a short strategy to take advantage of the impending decline. [redacted] "understood the basic concept" that "you could sell the stock now and buy it back at a reduced price." (Tr. 1426:13-19; 1428:20-1429:1;

1535:12-19.) When further asked whether he "understood [he was] short in the account and [he] wanted the stock market to go down," [redacted] hesitated to have empathy for the millions who lost money in the crash, and then asserted said "I didn't want it to go down, but that's where we thought it was going to go, down." (Tr. 1614:9-13.)

[redacted] understanding of his account strategy was thus clear and accurate. Indeed, in a "short" transaction, the investor "borrows" shares and then sells them to the market for the then-stated market price in the hope the price declines and the shares can be repurchased for less. (Tr. 3246:10-19) The "short" sale is the "opening transaction," and the later purchase is the "closing transaction." (Tr. 3248:17-23.) Should the price of the borrowed and sold shares fall in the interim, the investor profits from the difference, but if the price increases, the investor must repurchase shares at the higher price to return them to the lender with the investor taking a loss in the amount of the difference. (Tr. 3251:21-3252:2.)

Unlike owning stock (where the most an investor can lose is its full value), an investor who sells short owns nothing and takes monetary risk potentially exceeding the full value of his entire account because the related stock price could rise to a level where the assets in the account are insufficient to repurchase the stock. For this reason, and as the Division's expert confirmed, "[a] short investment is typically a shorter term investment." (Tr. 3244:23-3245:2.) Because they expire, options too "are meant to be short-term investments." (Tr. 3244:10-22.)

As the ALJ acknowledged, [redacted] admitted to having been aware of Calabro's strategy to engage in short sales. (Initial Decision at 44.) The contemporaneous written evidence of [redacted]' objective that his account would engage in shorter term trading, however, was even stronger. For instance, in February 2008, shortly after Calabro predicted the market turn and recommended the short strategy, [redacted] did a "quick analysis" of his account in which he

calculated gains and losses, the tax impact of net gains, dividends received, commissions paid, the remaining holdings and any unrealized gains and losses. (Calabro Exs. 47, 48.) In the handwritten cover letter to Calabro enclosing the analysis, [redacted] confirmed his understanding of the "short" trading strategy in the account, commenting that "Hopefully, the 'short' gods will turn in our favor in the not too distant future"—meaning that he hoped the market would decline. (*Id.*) Consistent with his hope and account objective, the "short gods" smiled on [redacted] throughout 2008 and into 2009. (Tr. 1614:14-23.)

Given his understanding of the intended shorter term investment strategy for his account, it should have come as no surprise that [redacted] executed multiple documents confirming his shorter-term, more aggressive, account objective. Upon opening his account on October 26, 2007, [redacted] signed a New Account Form stating that his account objectives were "Speculation," "Trading Profits" and "Capital Appreciation" and his risk tolerance was "Aggressive." (Calabro Ex. 43.) Eleven months later, [redacted] confirmed his account objectives in an Options account application he signed on September 24, 2008, in which he acknowledged that options trading involves "a high degree of risk" and that "due to the short term nature of options it is likely" he "may be trading such options to a greater degree than with stocks and/or bonds"; in an attached Options Suitability Questionnaire, [redacted] confirmed as "correct" his interests in "speculation" and "growth." (*Id.*) (Calabro Ex. 45.) But those were not the only written confirmations of [redacted] interest in and objective of shorter-term trading.

On March 9, 2009, [redacted] signed an Active Account Suitability Questionnaire ("AASQ") which contained all of [redacted] account information on a single page (requiring him simply to look up to know what he was signing). (DOE Ex. 10.) The AASQ reiterated his account objectives of "Growth," "Trading Profits," "Speculation" and "Short-Term Trading."

(*Id.*) Attached to the AASQ was a single page Supplement containing information about "**What You Should Know About Active Trading**" and imploring [redacted] to "*PLEASE READ CAREFULLY.*" (*Id.*) The Supplement reiterated the risks associated with [redacted]' interest in shorter-term trading, making it clear in its introduction that "[a]ctive trading can involve a higher degree of risk, increased costs and is suitable only for risk tolerant investors." (*Id.*) The Supplement also provided additional detail, stating that (1) active trading "should be entered into only by investors who understand the nature of the risk involved and are financially capable to sustain a loss of part or all of their capital," (2) "[d]ue to the higher degree of activity, overall commissions on your account may tend to be greater than a buy and hold strategy," (3) "[y]our portfolio value may tend to be more volatile with shorter-term trading," and (4) "[h]igh-risk tolerance and investment objectives consistent with high-risk investing are appropriate to an active account." (*Id.*) In signing the Supplement, [redacted] acknowledged that "**I have read and understand the Active Account Suitability Supplement Agreement as required.**" (*Id.*)[5]

The ALJ disregarded all of [redacted]' signed confirmations because '[redacted] consistently and emphatically testified" that the documents he signed "contained inaccurate information, including his investment objectives and risk tolerance." (Initial Decision at 109.) In this regard, the ALJ was in error, for as explained above, a person cannot avoid obligations or

[5] The documents [redacted] signed in connection with his J.P. Turner account were not the only documents reflecting his interest in taking risk with his certain of his investments during the relevant time period. For example, on April 14, 2009, [redacted] opened an account with Newbridge Securities in which he specified an "Investment Objective" of "Speculation" and a "Risk Tolerance" of "Aggressive." (Calabro Ex. 54.) The form even defined "Speculation" as seeking "[m]aximum total return involving a higher degree of risk through investment in a broad spectrum of securities." (*Id.*) And he was reminded every month that "Speculation" was his objective on the first page of each monthly statement. (Calabro Ex 56) (Tr. 1550:2-7.) [redacted] also invested in high risk private and unregistered oil exploration securities for which the subscription agreements—which [redacted] produced for the same investments—disclosed the investments' "high degree of risk." (Calabro Exs. 75-78.)

representations made in signed documents by simply asserting that the documents were not reviewed prior to signing. *See First Union Discount Brokerage Services*, 997 F.2d at 846 n.21; *Colèman*, 802 F.2d at 1352. Perhaps more importantly, the Commission does not "blindly" accept self-serving testimony that is contradicted by overwhelming documentary evidence. *See Kenneth R. Ward*, 56 S.E.C. 236, 260 (March 19, 2003), *aff'd*, 75 F. App'x 320 (5th Cir. 2003). The overwhelming documentary evidence—including information contained in pre-printed, single page, forms—proved [redacted] understanding that his account was intended to trade in the short term, and that there were significant risks associated with his stated objectives.

For all these reasons, the ALJ erred in determining that [redacted]' investment objectives were "moderate of conservative." (Initial Decision at 108.) [redacted]' real-time objective—as he admitted and as the overwhelming documentary evidence proved—was to engage in shorter term trading, which by definition involved an increased volume of trades. It was that predicate investment objective against which the ALJ should have evaluated whether the volume of trades in Williams' account was excessive.

C. The ALJ Should Have Disregarded The Purported Expert Testimony

It is well-recognized that the level at which trading in an account becomes excessive is a "recondite subject." *Costello*, 711 F.2d at 1369. Because there is no "'magical per annum percentage' that establishes per se excessiveness" (*In the Matter of Pryor, McClendon, Counts & Co.*, Exchange Act Rel. No. 8245 (June 26, 2003); *In the Matter of Gerald E. Donnelly*, Exchange Act Rel. No. 39990 (Jan. 5, 1996), the Commission and the courts have considered two metrics as *indicators* of excessive trading—the turnover and cost/equity ratios. Neither on its own, however, "necessarily demonstrates churning" and the purpose of each is to introduce "*some measure of objectivity or certainty*" in determining whether an account was excessively

traded. *Costello*, 711 F.2d at 1369 (emphasis added); *see Craighead v. E.F. Hutton & Co.*, 899 F.2d 485, 490 (6th Cir. 1990) (same). When the underlying methodology and factual predicates upon which each ratio is calculated are unreliable, as they were here, the objectivity those metrics afford fails and therefore any calculation based upon those metrics should be disregarded in the first instance. *See also* SEC Rule 320 (irrelevant evidence "shall" be disregarded).

Indeed, ensuring a strong measure of reliability in formulas and their applications is the very reason the United States Supreme Court requires trial courts to evaluate the admissibility of expert testimony both from a standpoint of the proposed expert's ability to provide the testimony (based on the witness' experience, educational background, and the like) and from a standpoint of the reliability of the proposed expert conclusions (based upon the acceptability and accuracy of the methods employed). *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993). While at present the Commission has not yet accepted the applicability of *Daubert* in administrative hearings, courts hold that "the spirit of *Daubert*" applies because "'[j]unk science' has no more place in administrative proceedings than in judicial ones." *Niam v. Ashcroft*, 354 F.3d 652, 660 (7th Cir. 2004); *see Elliott v. CFTC*, 202 F.3d 926, 934 (7th Cir. 2000) ("*Daubert* and *Kumho Tire* were decided in the context of admissibility, but the principle for which they stand-that all expert testimony must be reliable-should apply with equal force to the weight a[n agency] factfinder accords expert testimony.").

In an attempt to show the trading in Williams' account was excessive, the Division offered the purported expert testimony of Louis J. Dempsey, whose opinions should have been excluded or at minimum disregarded. Dempsey had never previously been qualified as a churning expert (much less an expert who analyzed an account that employed a short trading strategy), and based his opinions on a review of "the Division's technical analysis relating to

alleged churning," not upon his own independent analysis. (Tr. 3140:18-21) (DOE Ex. 155 at 2.) Dempsey's lack of experience and failure to conduct an independent analysis, however, were not the only reasons his opinions were unreliable and should have been disregarded.

The principal reason Dempsey's opinions concerning trading volume in the Williams account should have been disregarded is that they were based upon a faulty methodology that failed to account for the short strategy employed in, or the large market spike beginning in March 2009 which resulted in a rapid decline in the equity value of, the Williams account. For example, one metric upon which Dempsey—and the ALJ—relied is the "turnover" ratio which measures the theoretical number of times account equity is used in a given period by comparing the average equity value in the account to the value of *purchases*. Thus, where there is a purchase of stock using the entire account equity (say $100), and the value does not fluctuate throughout the period ($100), the turnover rate is 1: $1 = \frac{\$100\ purchase}{\$100\ average\ equity}$ (Tr. 3250:16-21) (Calabro Demo Ex. 3). Because equity fluctuates, a change in average equity skews turnover without their having been being additional transactions. (Tr. 3251:14-17.) Thus, if the price of the stock dropped to $50 and the average equity value for the period was thus $75, the turnover increases to 1.33 due simply to price movement of the stock: $1.33 = \frac{\$100\ purchase}{\$75\ average\ equity}$ (Tr. 3250:22-3251:13.) Churning occurs when a broker *trades* "for the purpose of generating commissions" (*Thompson*, 709 F.2d at 1416); by definition, it cannot occur *absent trading* even where the turnover rate in an account increases due to market forces.

Indeed, the House Committee on Interstate and Foreign Commerce recognized that "if values of portfolio securities change significantly, the [turnover] formula will not accurately reflect the ratio of the amount of purchases to the amount of total capital available for investment." (Calabro Ex. 82 at 452.) Given the rapid decline of the [redacted] account equity,

the mathematical anomaly born of a market spike would significantly have changed the outcome of Dempsey's turnover opinion. For example, assuming the value of opening transactions in [redacted] account suffered no decline from its starting value other than the cost of the trades, the turnover ratio calculation would have dropped from the 8 Dempsey concluded to 5.4: $5.4 = \frac{\$8,588,124}{\$1,875,661 - \$296,713}$ or $turnover = \frac{total\ opening\ sales}{beginning\ equity - commissions}$. (DOE Ex. 155.) Dempsey made no adjustment to account for the equity value decline.

The anomaly is magnified where transactions in an account are predominantly "short" sales because *both* the purchase price *and* the average equity fluctuate. For instance, where there is a short sale of stock (for say $100) and the value remains the same throughout the period after which the stock is repurchased (for $100), the turnover rate is 1. But if the price of the stock goes up $50 (to $150), the account equity drops by an equal amount to $50 because $50 in additional equity will be necessary to repurchase the stock to close the trade (known as "mark to market"). Thus, the same magnitude of stock price movement as in the previous "long" example causes turnover to balloon to 2 simply because the transaction was "short": $2 = \frac{\$150\ purchase}{\$75\ average\ equity}$ (Tr. 3252:3-3253:11.) As Dempsey conceded, "it would modify turnover," and have a "really big impact" during "a very large spike in the marketplace upward" – precisely what happened during the alleged "churn" period in this case. (Tr. 3042:9-11; 3253:12-16; 3256:22-25.)

Dempsey did nothing for the short anomaly either. Its impact became readily apparent at trial when an "apples to apples" calculation of "opening transactions" divided by average equity was conducted, which he stated "you could" do. (Tr. 3255:9-21.) Accounting for the short nature of [redacted] account alone resulted in a reduction in turnover from the 8 Dempsey initially opined to 6.6: $6.6 = \frac{\$8,588,124\ short}{\$1,299,800\ average\ equity}$ (Tr. 3274:23-3275:8) (DOE Ex. 155 at 17.)

Having failed to account for the severe market forces and the short nature of the [redacted] account, the methodology Dempsey employed to determine turnover was unreliable and his calculations should have been disregarded.

The cost/equity metric, like turnover, is also driven by the average account equity for a given period. As demonstrated above, a drop in equity impacts turnover without any additional transactions; the same is true with the cost/equity metric which compares the costs associated with maintaining the account and the average account equity for the period. For example, if commissions on $100 in purchases were $10, and the value of the shares remained the same, the cost/equity is 10%: $.1 = \frac{\$10\ cost}{\$100\ average\ equity}$. But should average equity decline to $50, the cost/equity doubles to 20% without any further transactions having occurred or costs having been incurred: $.2 = \frac{\$10\ cost}{\$50\ average\ equity}$. Thus, Dempsey made it clear that an "account that declines rapidly can also have an impact on the return on equity calculations" (Tr. 3278:21-3279:1); Michael Bresner ("Bresner"), J.P. Turner's Executive Vice President, testified it would cause it to "go up dramatically" (Tr. 3041:12-17); and Michael Issacs, J.P. Turner's compliance chief during the period, confirmed. (Tr. 2635:2-7.)

Dempsey did not account for the large market spike, and resulting rapid decline in average equity in the [redacted] account in calculating the cost/equity ratio. Accounting for the rapid decline in [redacted] account equity shows the magnitude with which volatile market forces distorted Dempsey's cost/equity calculation. For example, assuming the transaction costs remained the same in [redacted] account, but it suffered no decline from its starting value, the

cost/equity is reduced from 22.9% to 18.7% (Tr. 3281:8-3283:3): $18.7\% = \frac{\$296,713}{\$1,875,661 - \$296,713}$ (DOE Ex. 155 at 17.)[6]

In short, Dempsey concluded that turnover and cost/equity *under ordinary circumstances* are "inherently" "not precise." (Tr. 3283:19-24.) [redacted] account was out of the ordinary in that it combined the distorting anomaly inherent in "short" accounts with an additional distorting anomaly inherent in rapidly declining accounts. Dempsey made no adjustment to account for those anomalies and, as demonstrated above, the results were material. The ALJ erred in refusing to disregard Dempsey's opinions as unreliable in the first instance.

D. The Trading Volume In The Williams Account Was Consistent With Industry Guideposts

The ALJ erroneously relied upon Dempsey's opinions in concluding that Calabro churned [redacted]' account—finding "the account had an annualized turnover rate of eight, and a cost equity factor of 22.9%"—because it too failed fully to account for the anomalies Dempsey himself ultimately was forced to concede. In any event, the theoretical lines the ALJ ruled were conclusive of excessive trading—six annually for turnover and 15% to 20% for cost/equity (Initial Decision at 99)—are inapplicable in this case. Both theoretical lines indicating excessive trading are certainly recognized, but only with respect to accounts with *conservative* objectives. As the ALJ in *In the Matter of J.W. Barclay* explained:

> No turnover rate is universally recognized as determinative of churning, but an annualized portfolio turnover rate in excess of 6 is generally presumed to reflect excessive trading *if the customer's objective is conservative*. . . . On occasion, the Commission has found excessive trading based on turnover rates of less than 4 where the customer's objective is conservative. . . . *Of course, if a customer wants to speculate, the portfolio turnover rate could be unlimited.*

---

[6] The formula is $cost/equity = \frac{transaction\ costs}{starting\ equity - transaction\ costs}$ (Tr. 3281:8-3283:3.)

Admin. Proc. File No. 3-10765 (October 23, 2003) (emphasis added); *see Newburger*, 563 F.2d at 1070 (turnover of seven not excessive as "a greater volume of activity will normally be expected" given the customer's objectives included speculation). Dempsey explained, by contrast, that "[t]here is no stated theoretical line for an account that is moderate or aggressive" with "regard to turnover." (Tr. 3274:18-22.) The ALJ in *Barclay* further explained that a "cost-to-equity ratio of 15% to 21% on a *conservative* account generally indicates churning." *Barclay*, *supra* (emphasis added); *see In the Matter of Sage Advisory Services LLC*, Exchange Act Rel. No. 44600 at n.10 (July 27, 2001) (same).

Here, as explained above, the ALJ erroneously concluded that the objective attached to the [redacted] account was moderate or conservative investing, where in fact [redacted]' intent was to take advantage of a declining market through selling short. The strategy was risky, as Calabro explained and the documents [redacted] signed made clear, and was inherently shorter term than a buy and hold strategy. As the Division's expert confirmed that "[a] short investment is typically a shorter term investment." (Tr. 3244:23-3245:2; *see* Tr. 3244:10-22 [options "are meant to be short-term investments"].) The ALJ should have started with the predicate that [redacted] objective necessitated a higher volume of trading.

Moreover, when a more relevant calculation is conducted to account for the short nature of the account combined with its rapid decline, the turnover ratio drops to between 5.4% and 6.6% and the cost/equity drops to 18.7%. Given the expected higher trading volume associated with Calabro's short strategy, these ratios were reasonable under the guidelines for evaluating whether an account was excessively traded. *See Newburger*, 563 F.2d at 1070 (turnover ratio of seven not excessive "in light of the character of the account" and that "a greater volume of

activity will normally be expected" in a speculative account). Indeed, even Dempsey admitted that the adjusted ratios presented at least a close call:

> Q. And when you're comparing [the recalculated ratios] to an aggressive account where the customer marks the account aggressive and understands that there is going to be a lot of trading in the account, once you get into this range, it becomes a much closer question as to whether or not it was in fact churning, right?
>
> A. Correct. (Tr. 1384:2-9.)

In short, the ALJ's ruling that [redacted] account was excessively traded was erroneous. Williams' objective was to engage in short trading which necessarily involved a higher volume of trades, and the common ratios used to measure excessive trading, when calculated to account for the short nature of the account and its rapid decline, demonstrate that the higher volume of trades were reasonable. For these separate reasons, the Initial Decision should be reversed.

III. CALABRO DID NOT COMMIT FRAUD

Separate from excessive trading and control, the Division was duty-bound to prove Calabro acted with *scienter*, which the Supreme Court holds is "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). *Scienter* in a churning case is when a broker trades "without regard to the customer's investment interests" and "*for the purpose of generating commissions.*" *Thompson*, 709 F.2d at 1416 (emphasis added); *see In re Donald A. Roche*, Exchange Act Release No. 38742 (SEC June 17, 1997) (same). Thus, short of a purpose of generating inflated commissions, there is no actionable churning.

The ALJ found *scienter* because "Calabro engaged in unauthorized and excessive trading and he unilaterally devised and carried out an investment strategy contrary to Williams' investment objectives and risk tolerance, which resulted in substantial gain for Calabro and a massive loss for Williams." (Initial Decision at 110.) As explained above, the trading volume

associated with [redacted] account was consistent with the short strategy of which [redacted] was fully aware and intended. While [redacted] account ultimately declined, it was not before the account had already risen by over $1 million at which time there were no claims of churning or unauthorized trading alleged. And while true that [redacted]' account thereafter suffered a substantial decline because of Calabro's failure to anticipate the impact of government economic intervention, the fact that the account declined is not indicative of an intent to make trade recommendations for the principal purpose of generating commissions.

In this case it was not. Calabro "testified at length" about his strategy which during the alleged "churn period" involved short sales and associated options trades. (*See* Tr. 3946-3984; 4073-4077.) Calabro's strategy was also transparent. And [redacted] made clear that when he and Calabro concluded "the economy was going to fall" and they "thought [the market] was going to go, down," Calabro explained his short strategy and [redacted] "understood the basic concept" that "you could sell the stock now and buy it back at a reduced price." (Tr. 1426:13-19; 1428:20-1429:1; 1535:12-19; 1614:9-13-23); (Calabro Exs. 47, 48); *see Hotmar,* 808 F.2d at 1386 (where broker "freely shared all his knowledge and information," the court unable "to perceive any real evidence of deception" by the broker, notwithstanding the customer "suffered substantial losses while [the broker] was receiving substantial commissions").

That Calabro's strategy was transparent was confirmed by J.P. Turner's Executive Vice President, Michael Bresner, who testified both he and another supervisor, James McGrath, closely scrutinized Calabro's account activity. (Tr. 3046:25-3047:4; *see* 4172:9-4173:8.) McGrath even reviewed Calabro's research, and spoke to some of his customers to determine if they were satisfied. (Tr. 3050:24-3052:3.) The ALJ found the supervisor scrutiny to be a red herring; to the contrary, supervisor approval of a strategy is indicative of Calabro's good faith

Stated simply, the "strongest evidence" proving that Calabro lacked *scienter* or purpose to overtrade his Customers' accounts is that he, in fact, followed a strategy which he explained to each of his customers and which was reviewed and approved by his superiors.

In short, the Division failed to prove Calabro acted with *scienter*. For this separate reason, the Initial Decision should be overruled.

IV. SHOULD THE COMMISSION RULE THAT CALABRO CHURNED WILLIAMS' ACCOUNT, THE INITIAL DECISION SHOULD NEVERTHELESS BE MODIFIED TO ELIMINATE ANY MONETARY PAYMENT

As demonstrated above, the ruling that Calabro churned [redacted] account was erroneous and should be reversed. Should the Commission decide to uphold the ruling, it should nevertheless modify the Initial Decision to reduce or eliminate the monetary components of the decision. There should be no order of disgorgement and any penalty is unduly punitive.

The Initial Decision ordered Calabro to disgorge $282,000 plus interest relating to the costs and commissions associated with [redacted] account. Subsequent to the hearing, it appears [redacted] entered into a private settlement of his claims relating to his J.P. Turner account (along with Willhoft) for $2.5 million. (*See* Appendix Ex. 1.) Given [redacted] appears to have been compensated for loss associated with his J.P. Turner account, the Commission should overrule the amount ordered disgorged, in particular where, as here, Calabro is no longer a broker and there is no further need for deterrence. *See S.E.C. v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996) ("Settlement payment may properly, however, be taken into account by the court in calculating the amount to be disgorged").

For similar reasons, the Commission should also overrule the $150,000 penalty issued by the ALJ. As the ALJ concluded, Calabro acted with the "lowest level of scienter" of the respondents in the case (Initial Decision at 122), and has now left the brokerage industry. Given

his low level of determined *scienter*, the material facts that undermine the ALJ's churning decision in the first instance, and a lack of any need for deterrence given his departure from the industry, Calabro's loss of career is penalty enough.

CONCLUSION

For all the foregoing reasons, the Initial Decision should be reversed, or in the alternative, modified to overrule disgorgement, interest and any monetary penalty.

Dated: March 4, 2014

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Exhibit 1

BrokerCheck Report

RALPH CHRISTOPHER CALABRO

CRD# 2689492

Report #35368-46986, data current as of Tuesday, March 04, 2014.

About BrokerCheck®

BrokerCheck offers information on all current-and many former-FINRA-registered securities brokers, and all current and former FINRA-registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

- **What is included in a BrokerCheck report?**
  BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above.
  Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.
- **Where did this information come from?**
  The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:
  - information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
  - information that regulators report regarding disciplinary actions or allegations against firms or brokers.
- **How current is this information?**
  Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.
- **What if I want to check the background of an investment adviser firm or investment adviser representative?**
  To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at http://www.adviserinfo.sec.gov. In the alternative, you may search the IAPD website directly or contact your state securities regulator at http://www.nasaa.org.
- **Are there other resources I can use to check the background of investment professionals?**
  FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.

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RALPH C. CALABRO

CRD# 2689492

This broker is not currently registered with FINRA.

Report Summary for this Broker

This report summary provides an overview of the broker's professional background and conduct. Additional information can be found in the detailed report.

Broker Qualifications

This broker is not currently registered with FINRA.

This broker has passed:

- 1 Principal/Supervisory Exam
- 1 General Industry/Product Exam
- 1 State Securities Law Exam

Registration History

This broker was previously registered with the following FINRA firm(s):

NATIONAL SECURITIES CORPORATION
CRD# 7569
NEW YORK, NY
01/2011 - 12/2013

J.P. TURNER & COMPANY, L.L.C.
CRD# 43177
PARLIN, NJ
03/2004 - 02/2011

RAIKE FINANCIAL GROUP INC.
CRD# 38095
WOODSTOCK, GA
11/2001 - 03/2004

Disclosure Events

All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.

Are there events disclosed about this broker? **Yes**

The following types of disclosures have been reported:

Type	Count
Regulatory Event	1
Customer Dispute	7

Broker Qualifications

Registrations

This section provides the self-regulatory organizations (SROs) and U.S. states/territories the broker is currently registered and licensed with, the category of each license, and the date on which it became effective. This section also provides, for every brokerage firm with which the broker is currently employed, the address of each branch where the broker works.

This broker is not currently registered with FINRA.

Broker Qualifications

Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below.

This individual has passed 1 principal/supervisory exam, 1 general industry/product exam, and 1 state securities law exam.

Principal/Supervisory Exams

Exam	Category	Date
General Securities Principal Examination	Series 24	10/19/2001

General Industry/Product Exams

Exam	Category	Date
General Securities Representative Examination	Series 7	12/13/1995

State Securities Law Exams

Exam	Category	Date
Uniform Securities Agent State Law Examination	Series 63	12/15/1995

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at www.finra.org/brokerqualifications/registeredrep/.

Registration and Employment History

Registration History

The broker previously was registered with the following FINRA firms:

Registration Dates	Firm Name	CRD#	Branch Location
01/2011 - 12/2013	NATIONAL SECURITIES CORPORATION	7569	NEW YORK, NY
03/2004 - 02/2011	J.P. TURNER & COMPANY, L.L.C.	43177	PARLIN, NJ
11/2001 - 03/2004	RAIKE FINANCIAL GROUP INC.	38095	WOODSTOCK, GA
03/2001 - 12/2001	NATIONAL SECURITIES CORPORATION	7569	SEATTLE, WA
11/1998 - 04/2001	PRESTON LANGLEY ASSET MANAGEMENT, INC.	35733	NEW YORK, NY
10/1998 - 10/1998	RAS SECURITIES CORP.	28212	NEW YORK, NY
03/1997 - 10/1998	ROYCE INVESTMENT GROUP, INC.	10494	WOODBURY, NY
11/1996 - 03/1997	JARON EQUITIES CORP.	5764	HICKSVILLE, NY
03/1997 - 03/1997	WILLIAM SCOTT & CO. L.L.C.	14979	UNION, NJ
03/1996 - 09/1996	GREENWAY CAPITAL CORP.	25152	NEW YORK CITY, NY
12/1995 - 04/1996	MEYERS POLLOCK ROBBINS, INC.	13436	NEW YORK, NY

Employment History

Below is the broker's employment history for up to the last 10 years.

Please note that the broker is required to provide this information only while registered with FINRA and the information is not updated after the broker ceases to be registered. Therefore, an employment end date of "Present" may not reflect the broker's current employment status.

Employment Dates	Employer Name	Employer Location
01/2011 - Present	NATIONAL SECURITIES CORP	NEW YORK, NY
03/2004 - 01/2011	JP TURNER AND CO	MATAWAN, NJ

Other Business Activities

This section includes information, if any, as provided by the broker regarding other business activities the broker is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. This section does not include non-investment related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.

Registration and Employment History

Other Business Activities, continued

No information reported.

Disclosure Events

What you should know about reported disclosure events:

1. All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.

2. **Certain thresholds must be met before an event is reported to CRD, for example:**
   - A law enforcement agency must file formal charges before a broker is required to disclose a particular criminal event.
   - A customer dispute must involve allegations that a broker engaged in activity that violates certain rules or conduct governing the industry and that the activity resulted in damages of at least $5,000.

3. **Disclosure events in BrokerCheck reports come from different sources:**
   - As mentioned at the beginning of this report, information contained in BrokerCheck comes from brokers, brokerage firms and regulators. When more than one of these sources reports information for the same disclosure event, all versions of the event will appear in the BrokerCheck report. The different versions will be separated by a solid line with the reporting source labeled.

4. **There are different statuses and dispositions for disclosure events:**
   - A disclosure event may have a status of *pending, on appeal,* or *final.*
     - A "pending" event involves allegations that have not been proven or formally adjudicated.
     - An event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
     - A "final" event has been concluded and its resolution is not subject to change.
   - A final event generally has a disposition of *adjudicated, settled* or *otherwise resolved.*
     - An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
     - A "settled" matter generally involves an agreement by the parties to resolve the matter. Please note that brokers and brokerage firms may choose to settle customer disputes or regulatory matters for business or other reasons.
     - A "resolved" matter usually involves no payment to the customer and no finding of wrongdoing on the part of the individual broker. Such matters generally involve customer disputes.

For your convenience, below is a matrix of the number and status of disclosure events involving this broker. Further information regarding these events can be found in the subsequent pages of this report. You also may wish to contact the broker to obtain further information regarding these events.

	Pending	Final	On Appeal
Regulatory Event	1	0	0

Customer Dispute	2	5	N/A

Disclosure Event Details

When evaluating this information, please keep in mind that a discloure event may be pending or involve allegations that are contested and have not been resolved or proven. The matter may, in the end, be withdrawn, dismissed, resolved in favor of the broker, or concluded through a negotiated settlement for certain business reasons (e.g., to maintain customer relationships or to limit the litigation costs associated with disputing the allegations) with no admission or finding of wrongdoing.

This report provides the information exactly as it was reported to CRD and therefore some of the specific data fields contained in the report may be blank if the information was not provided to CRD.

Regulatory - Pending

This type of disclosure event involves a pending formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulatory agency such as the Securities and Exchange Commission, foreign financial regulatory body) for alleged violations of investment-related rules or regulations.

Disclosure 1 of 1

Reporting Source:	Regulator
Regulatory Action Initiated By:	UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Sanction(s) Sought:	Other: N/A
Date Initiated:	09/10/2012
Docket/Case Number:	3-15015
Employing firm when activity occurred which led to the regulatory action:	JP TURNER & COMPANY, LLC
Product Type:	Other: UNKNOWN TYPE OF SECURITIES
Allegations:	SEC ADMIN RELEASES 33-9359, 34-67810, IA RELEASE 3461, INVESTMENT COMPANY ACT OF 1940 RELEASE 30197, SEPTEMBER 10, 2012: THE SECURITIES AND EXCHANGE COMMISSION ("COMMISSION") DEEMED IT APPROPRIATE AND IN THE PUBLIC INTEREST THAT PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS BE INSTITUTED PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 ("SECURITIES ACT"), SECTIONS 15(B) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 ("EXCHANGE ACT") AND SECTION 9(B) OF THE INVESTMENT COMPANY ACT OF 1940 ("INVESTMENT COMPANY ACT") AGAINST RALPH CALABRO ("CALABRO"). THE DIVISION OF ENFORCEMENT ALLEGED THAT: CALABRO SERVED AS A

REGISTERED REPRESENTATIVE ("RR") OF THE PARLIN, NEW JERSEY BRANCH OFFICE OF A BROKER-DEALER FROM MARCH 2004 UNTIL JANUARY 2011.

BETWEEN JANUARY 1, 2008 AND DECEMBER 31, 2009, CALABRO, AND TWO OTHER RRS, COLLECTIVELY "CHURNED" THE ACCOUNTS OF SEVEN CUSTOMERS BY ENGAGING IN EXCESSIVE TRADING FOR THEIR OWN GAINS IN DISREGARD OF THE CUSTOMERS' CONSERVATIVE INVESTMENT OBJECTIVES AND LOW OR MODERATE RISK TOLERANCES FOR THE PURPOSE OF GENERATING COMMISSION BUSINESS. THEIR MISCONDUCT GENERATED COMMISSIONS, FEES AND MARGIN INTEREST TOTALING APPROXIMATELY $845,000 WHILE THE DEFRAUDED CUSTOMERS SUFFERED AGGREGATE LOSSES OF APPROXIMATELY $2,700,000.

DURING THE RELEVANT PERIOD, CALABRO ENGAGED IN CHURNING THE ACCOUNTS OF THREE CUSTOMERS. CALABRO EXERCISED DE FACTO CONTROL OVER THE ACCOUNTS OF THE THREE CUSTOMERS.

THE ANNUALIZED TURNOVER RATIOS IN THE ACCOUNTS RANGED FROM 8 TO 13, AND THE ANNUALIZED BREAK-EVEN RATES OF RETURN RANGED FROM 22.9 PERCENT TO 31.8 PERCENT. THE TRADING IN THESE ACCOUNTS WAS EXCESSIVE IN LIGHT OF CALABRO'S CUSTOMERS' INVESTMENT OBJECTIVES AND EXPERIENCES, AGES AND FINANCIAL NEEDS.

CALABRO KNOWINGLY OR RECKLESSLY ENGAGED IN THE CONDUCT. CALABRO RETAINED A PORTION OF THE COMMISSIONS AND FEES EARNED BY THE BROKER-DEALER FOR THE TRADES. CALABRO'S CUSTOMERS SUFFERED APPROXIMATE LOSSES OF $2,300,000. CALABRO KNOWINGLY OR RECKLESSLY DISREGARDED HIS CUSTOMERS' INVESTMENT OBJECTIVES, FINANCIAL SITUATIONS AND INTERESTS FOR HIS OWN FINANCIAL GAIN.

AS A RESULT OF THE CONDUCT, CALABRO WILLFULLY VIOLATED SECTION 17(A) OF THE SECURITIES ACT AND SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 THEREUNDER, WHICH PROHIBIT FRAUDULENT CONDUCT IN THE OFFER AND SALE OF SECURITIES AND IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES.

Current Status: Pending

Summary: SEC INITIAL DECISION RELEASE 517, NOVEMBER 8, 2013: THE INITIAL DECISION FOUND THAT RALPH CALABRO (CALABRO) CHURNED THE ACCOUNT OF ONE CUSTOMER AND DID NOT CHURN THE ACCOUNTS OF TWO OTHER CUSTOMERS.

THE ADMINISTRATIVE LAW JUDGE ("ALJ") FOUND THAT CALABRO ENGAGED IN UNAUTHORIZED AND EXCESSIVE TRADING AND HE UNILATERALLY DEVISED AND CARRIED OUT AN INVESTMENT STRATEGY CONTRARY TO THE CUSTOMER'S INVESTMENT OBJECTIVES AND RISK TOLERANCE, WHICH RESULTED IN A SUBSTANTIAL GAIN FOR CALABRO AND A MASSIVE LOSS FOR THE CUSTOMER. THE ALJ CONCLUDED THAT CALABRO ACTED INTENTIONALLY, THAT IS, WITH SCIENTER, AND CHURNED THE CUSTOMER'S ACCOUNT.

IN CONSIDERING THE SANCTION, THE ALJ FOUND THAT THE ACTIONS OF CALABRO WERE EGREGIOUS AND RECURRENT. HE RECKLESSLY DISREGARDED HIS CUSTOMER'S CONSERVATIVE INVESTMENT OBJECTIVES AND RISK TOLERANCES AND PURSUED AN ACTIVE TRADING STRATEGY GENERATING THOUSANDS OF DOLLARS IN COMMISSIONS. CALABRO UNILATERALLY DEVISED AND EXECUTED AN INVESTMENT STRATEGY CONTRARY TO THE CUSTOMER'S INVESTMENT OBJECTIVES. CALABRO'S VIOLATIONS SPANNED MONTHS AND INVOLVED HUNDREDS OF TRADES. CALABRO ACTED WITH SCIENTER. CALABRO HAS FAILED TO RECOGNIZE THE WRONGFUL NATURE OF HIS ACTIONS AND HAS NOT MADE ANY ASSURANCES AGAINST FUTURE VIOLATIONS. IN FACT, HE INSISTS THAT NO VIOLATIONS OCCURRED. CALABRO CONTINUES TO WORK IN THE SECURITIES INDUSTRY TODAY, SO HIS PROFESSION PRESENTS OPPORTUNITIES TO VIOLATE THE SECURITIES LAWS AGAIN.

IT IS ORDERED THAT, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTION 203(K) OF THE INVESTMENT ADVISERS ACT OF 1940, RALPH CALABRO SHALL CEASE AND DESIST FROM COMMITTING OR CAUSING VIOLATIONS OR FUTURE VIOLATIONS OF SECTION 17(A) OF THE SECURITIES ACT OF 1933 AND SECTION 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 10B-5 THEREUNDER.

IT IS ORDERED THAT, PURSUANT TO SECTION 15(B) OF THE SECURITIES EXCHANGE ACT OF 1934, RALPH CALABRO IS BARRED FROM ASSOCIATION WITH A BROKER, DEALER, INVESTMENT ADVISER, MUNICIPAL SECURITIES DEALER, MUNICIPAL ADVISOR, TRANSFER AGENT, OR NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.

RALPH CALABRO SHALL DISGORGE $282,000 PLUS PREJUDGMENT INTEREST OF $34,975.90, PLUS ADDITIONAL PREJUDGMENT INTEREST DUE FROM JUNE 1, 2013, THROUGH THE LAST DAY OF THE MONTH PRECEDING WHICH PAYMENT IS MADE. RALPH CALABRO SHALL PAY A CIVIL MONEY PENALTY IN THE AMOUNT OF $150,000.

THE INITIAL DECISION SHALL BECOME EFFECTIVE IN ACCORDANCE WITH AND SUBJECT TO THE PROVISIONS OF RULE 360 OF THE COMMISSION'S RULES OF PRACTICE, 17 C.F.R. § 201.360. THE INITIAL DECISION WILL NOT BECOME FINAL UNTIL THE COMMISSION ENTERS AN ORDER OF FINALITY. THE COMMISSION WILL ENTER AN ORDER OF FINALITY UNLESS A PARTY FILES A PETITION FOR REVIEW OR MOTION TO CORRECT MANIFEST ERROR OF FACT OR THE COMMISSION DETERMINES ON ITS OWN INITIATIVE TO REVIEW THE INITIAL DECISION AS TO A PARTY. IF ANY OF THESE EVENTS OCCUR, THE INITIAL DECISION SHALL NOT BECOME FINAL AS TO THAT PARTY.

Reporting Source:	Firm
Regulatory Action Initiated By:	UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Sanction(s) Sought:	Other: N/A
Date Initiated:	09/10/2012
Docket/Case Number:	3-15015
Employing firm when activity occurred which led to the regulatory action:	J.P. TURNER & COMPANY LLC
Product Type:	Other: UNKNOWN
Allegations:	ALLEGES THAT REP WILLFULLY VIOLATED SECTION 17(A) OF THE SECURITIES ACT AND SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 WHICH PROHIBITS FRAUDULENT CONDUCT IN THE OFFER AND SALE OF SECURITIES AND IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES.
Current Status:	Pending

Reporting Source:	Broker
Regulatory Action Initiated By:	UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Sanction(s) Sought:	Other: N/A
Date Initiated:	09/10/2012
Docket/Case Number:	3-15015

Employing firm when activity occurred which led to the regulatory action:	J.P. TURNER & COMPANY LLC
Product Type:	Other: UNKNOWN
Allegations:	SEC ADMIN RELEASES 33-9359, 34-67810, IA RELEASE 3461, INVESTMENT COMPANY ACT OF 1940 RELEASE 30197, SEPTEMBER 10, 2012: THE SECURITIES AND EXCHANGE COMMISSION ("COMMISSION") DEEMED IT APPROPRIATE AND IN THE PUBLIC INTEREST THAT PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS BE INSTITUTED PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 ("SECURITIES ACT"), SECTIONS 15(B) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 ("EXCHANGE ACT") AND SECTION 9(B) OF THE INVESTMENT COMPANY ACT OF 1940 ("INVESTMENT COMPANY ACT") AGAINST RALPH CALABRO ("CALABRO"). THE DIVISION OF ENFORCEMENT ALLEGED THAT: CALABRO SERVED AS A REGISTERED REPRESENTATIVE ("RR") OF THE PARLIN, NEW JERSEY BRANCH OFFICE OF A BROKER-DEALER FROM MARCH 2004 UNTIL JANUARY 2011. BETWEEN JANUARY 1, 2008 AND DECEMBER 31, 2009, CALABRO, AND TWO OTHER RRS, COLLECTIVELY "CHURNED" THE ACCOUNTS OF SEVEN CUSTOMERS BY ENGAGING IN EXCESSIVE TRADING FOR THEIR OWN GAINS IN DISREGARD OF THE CUSTOMERS' CONSERVATIVE INVESTMENT OBJECTIVES AND LOW OR MODERATE RISK TOLERANCES FOR THE PURPOSE OF GENERATING COMMISSION BUSINESS. THEIR MISCONDUCT GENERATED COMMISSIONS, FEES AND MARGIN INTEREST TOTALING APPROXIMATELY $845,000 WHILE THE DEFRAUDED CUSTOMERS SUFFERED AGGREGATE LOSSES OF APPROXIMATELY $2,700,000. DURING THE RELEVANT PERIOD, CALABRO ENGAGED IN CHURNING THE ACCOUNTS OF THREE CUSTOMERS. CALABRO EXERCISED DE FACTO CONTROL OVER THE ACCOUNTS OF THE THREE CUSTOMERS. THE ANNUALIZED TURNOVER RATIOS IN THE ACCOUNTS RANGED FROM 8 TO 13, AND THE ANNUALIZED BREAK-EVEN RATES OF RETURN RANGED FROM 22.9 PERCENT TO 31.8 PERCENT. THE TRADING IN THESE ACCOUNTS WAS EXCESSIVE IN LIGHT OF CALABRO'S CUSTOMERS' INVESTMENT OBJECTIVES AND EXPERIENCES, AGES AND FINANCIAL NEEDS. CALABRO KNOWINGLY OR RECKLESSLY ENGAGED IN THE CONDUCT. CALABRO RETAINED A PORTION OF THE COMMISSIONS AND FEES EARNED BY THE BROKER-DEALER FOR THE TRADES. CALABRO'S CUSTOMERS SUFFERED APPROXIMATE LOSSES OF $2,300,000. CALABRO KNOWINGLY OR RECKLESSLY DISREGARDED HIS CUSTOMERS' INVESTMENT OBJECTIVES, FINANCIAL SITUATIONS AND INTERESTS FOR HIS OWN FINANCIAL GAIN. AS A RESULT OF THE CONDUCT, CALABRO WILLFULLY VIOLATED SECTION 17(A) OF THE SECURITIES ACT AND SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 THEREUNDER,

WHICH PROHIBIT FRAUDULENT CONDUCT IN THE OFFER AND SALE OF SECURITIES AND IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES.

Current Status: Pending

Summary: SEC INITIAL DECISION RELEASE 517, NOVEMBER 8, 2013: THE INITIAL DECISION FOUND THAT RALPH CALABRO (CALABRO) CHURNED THE ACCOUNT OF ONE CUSTOMER AND DID NOT CHURN THE ACCOUNTS OF TWO OTHER CUSTOMERS. THE ADMINISTRATIVE LAW JUDGE ("ALJ") FOUND THAT CALABRO ENGAGED IN UNAUTHORIZED AND EXCESSIVE TRADING AND HE UNILATERALLY DEVISED AND CARRIED OUT AN INVESTMENT STRATEGY CONTRARY TO THE CUSTOMER'S INVESTMENT OBJECTIVES AND RISK TOLERANCE, WHICH RESULTED IN A SUBSTANTIAL GAIN FOR CALABRO AND A MASSIVE LOSS FOR THE CUSTOMER. THE ALJ CONCLUDED THAT CALABRO ACTED INTENTIONALLY, THAT IS, WITH SCIENTER, AND CHURNED THE CUSTOMER'S ACCOUNT. IN CONSIDERING THE SANCTION, THE ALJ FOUND THAT THE ACTIONS OF CALABRO WERE EGREGIOUS AND RECURRENT. HE RECKLESSLY DISREGARDED HIS CUSTOMER'S CONSERVATIVE INVESTMENT OBJECTIVES AND RISK TOLERANCES AND PURSUED AN ACTIVE TRADING STRATEGY GENERATING THOUSANDS OF DOLLARS IN COMMISSIONS. CALABRO UNILATERALLY DEVISED AND EXECUTED AN INVESTMENT STRATEGY CONTRARY TO THE CUSTOMER'S INVESTMENT OBJECTIVES. CALABRO'S VIOLATIONS SPANNED MONTHS AND INVOLVED HUNDREDS OF TRADES. CALABRO ACTED WITH SCIENTER. CALABRO HAS FAILED TO RECOGNIZE THE WRONGFUL NATURE OF HIS ACTIONS AND HAS NOT MADE ANY ASSURANCES AGAINST FUTURE VIOLATIONS. IN FACT, HE INSISTS THAT NO VIOLATIONS OCCURRED. CALABRO CONTINUES TO WORK IN THE SECURITIES INDUSTRY TODAY, SO HIS PROFESSION PRESENTS OPPORTUNITIES TO VIOLATE THE SECURITIES LAWS AGAIN. IT IS ORDERED THAT, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTION 203(K) OF THE INVESTMENT ADVISERS ACT OF 1940, RALPH CALABRO SHALL CEASE AND DESIST FROM COMMITTING OR CAUSING VIOLATIONS OR FUTURE VIOLATIONS OF SECTION 17(A) OF THE SECURITIES ACT OF 1933 AND SECTION 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 10B-5 THEREUNDER. IT IS ORDERED THAT, PURSUANT TO SECTION 15(B) OF THE SECURITIES EXCHANGE ACT OF 1934, RALPH CALABRO IS BARRED FROM ASSOCIATION WITH A BROKER, DEALER, INVESTMENT ADVISER, MUNICIPAL SECURITIES DEALER, MUNICIPAL ADVISOR, TRANSFER AGENT, OR NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION. RALPH CALABRO SHALL DISGORGE $282,000 PLUS PREJUDGMENT INTEREST OF $34,975.90, PLUS ADDITIONAL PREJUDGMENT INTEREST DUE FROM JUNE 1, 2013, THROUGH THE LAST DAY OF THE MONTH PRECEDING WHICH PAYMENT IS

MADE. RALPH CALABRO SHALL PAY A CIVIL MONEY PENALTY IN THE AMOUNT OF $150,000. THE INITIAL DECISION SHALL BECOME EFFECTIVE IN ACCORDANCE WITH AND SUBJECT TO THE PROVISIONS OF RULE 360 OF THE COMMISSION'S RULES OF PRACTICE, 17 C.F.R. § 201.360. THE INITIAL DECISION WILL NOT BECOME FINAL UNTIL THE COMMISSION ENTERS AN ORDER OF FINALITY. THE COMMISSION WILL ENTER AN ORDER OF FINALITY UNLESS A PARTY FILES A PETITION FOR REVIEW OR MOTION TO CORRECT MANIFEST ERROR OF FACT OR THE COMMISSION DETERMINES ON ITS OWN INITIATIVE TO REVIEW THE INITIAL DECISION AS TO A PARTY. IF ANY OF THESE EVENTS OCCUR, THE INITIAL DECISION SHALL NOT BECOME FINAL AS TO THAT PARTY.

Customer Dispute - Settled

This type of disclosure event involves a consumer-initiated, investment-related complaint, arbitration proceeding or civil suit containing allegations of sale practice violations against the broker that resulted in a monetary settlement to the customer.

Disclosure 1 of 4

Reporting Source:	Firm
Employing firm when activities occurred which led to the complaint:	J.P. TURNER & COMPANY LLC
Allegations:	UNSUITABILITY, CHURNING, NEGLIGENCE, FRAUD, BREACH OF FIDUCIARY DUTY AND BREACH OF CONTRACT.
Product Type:	No Product
Alleged Damages:	$100,000.00
Is this an oral complaint?	No
Is this a written complaint?	No
Is this an arbitration/CFTC reparation or civil litigation?	Yes
Arbitration/Reparation forum or court name and location:	FINRA
Docket/Case #:	CASE #12-00524
Filing date of arbitration/CFTC reparation or civil litigation:	02/28/2012

Customer Complaint Information

Date Complaint Received:	02/28/2012
Complaint Pending?	No
Status:	Settled
Status Date:	04/18/2012
Settlement Amount:	$7,500.00
Individual Contribution Amount:	$0.00

Reporting Source:	Broker
Employing firm when activities occurred which led to the complaint:	JP TURNER & COMPANY LLC
Allegations:	UNSUITABILITY,CHURNING,NEGLIGENCE,FRAUD,BREACH OF FIDUCIARY DUTY AND BREACH OF CONTRACT.
Product Type:	No Product
Alleged Damages:	$100,000.00
Is this an oral complaint?	No
Is this a written complaint?	No
Is this an arbitration/CFTC reparation or civil litigation?	Yes
Arbitration/Reparation forum or court name and location:	FINRA
Docket/Case #:	12-00524
Filing date of arbitration/CFTC reparation or civil litigation:	02/28/2012

Customer Complaint Information

Date Complaint Received:	03/05/2012
Complaint Pending?	No
Status:	Settled
Status Date:	04/18/2012
Settlement Amount:	$7,500.00
Individual Contribution Amount:	$0.00

Disclosure 2 of 4

Reporting Source:	Firm
Employing firm when activities occurred which led to the complaint:	J.P. TURNER & COMPANY LLC

Allegations:	CHURNING, UNAUTHORIZED TRADES, UNSUITABILITY, BREACH OF CONTRACT AND BREACH OF FIDUCIARY DUTY.
Product Type:	No Product
Alleged Damages:	$1,200,000.00
Is this an oral complaint?	No
Is this a written complaint?	No
Is this an arbitration/CFTC reparation or civil litigation?	Yes
Arbitration/Reparation forum or court name and location:	FINRA
Docket/Case #:	CASE #12-00408
Filing date of arbitration/CFTC reparation or civil litigation:	02/16/2012

Customer Complaint Information

Date Complaint Received:	02/16/2012
Complaint Pending?	No
Status:	Settled
Status Date:	06/26/2013
Settlement Amount:	$2,500,000.00
Individual Contribution Amount:	$0.00
Summary:	THIS ARBITRATION SETTLED WITH ANOTHER ARBITRATION FOR A COMBINED SETTLEMENT AMOUNT OF $2500000.00. THE ATTORNEY'S FOR THESE CASES WILL DISTRIBUTE ACCORDINGLY.

Reporting Source:	Broker
Employing firm when activities occurred which led to the complaint:	JP TURNER & COMPANY LLC
Allegations:	CHURNING,UNAUTHORIZED TRADES,UNSUITABILITY,BREACH OF CONTRACT,AND BREACH OF FIDUCIARY DUTY.

Product Type:	No Product
Alleged Damages:	$1,200,000.00
Is this an oral complaint?	No
Is this a written complaint?	No
Is this an arbitration/CFTC reparation or civil litigation?	Yes
Arbitration/Reparation forum or court name and location:	FINRA
Docket/Case #:	CASE #12-00408
Filing date of arbitration/CFTC reparation or civil litigation:	02/16/2012

Customer Complaint Information

Date Complaint Received:	03/02/2012
Complaint Pending?	Yes
Status:	
Status Date:	12/06/2013
Settlement Amount:	$2,500,000.00
Individual Contribution Amount:	$0.00

Disclosure 3 of 4

Reporting Source:	Firm
Employing firm when activities occurred which led to the complaint:	J.P. TURNER & COMPANY LLC
Allegations:	CHURNING, MISREPRESENTATION, UNAUTHORIZED TRADING, UNSUITABLE INVESTMENTS, COMMON LAW FRAUD AND BREACH OF FIDUCIARY DUTY.
Product Type:	No Product
Alleged Damages:	$2,500,000.00
Is this an oral complaint?	No

Is this a written complaint?	No
Is this an arbitration/CFTC reparation or civil litigation?	Yes
Arbitration/Reparation forum or court name and location:	FINRA
Docket/Case #:	CASE #11-01692
Filing date of arbitration/CFTC reparation or civil litigation:	05/09/2011

Customer Complaint Information

Date Complaint Received:	05/09/2011
Complaint Pending?	No
Status:	Settled
Status Date:	06/26/2013
Settlement Amount:	$2,500,000.00
Individual Contribution Amount:	$0.00
Summary:	THIS ARBITRATION SETTLED WITH ANOTHER ARBITRATION FOR A COMBINED SETTLEMENT AMOUNT OF $2,500,000 THE ATTORNEY'S FOR THESE CASES WILL DISTRIBUTE ACCORDINGLY. RECEIVED AMENDED SOC ON 06/06/2011 ADDING CLAIMANTS [CUSTOMERS].

Reporting Source:	Broker
Employing firm when activities occurred which led to the complaint:	J.P. TURNER & COMPANY LLC
Allegations:	CHURNING, MISREPRESENTATION,UNAUTHHORIZED TRADING,UNSUITABLE INVESTMENTS,COMMON LAW FRAUD AND BREACH OF FIDUCIARY DUTY.
Product Type:	No Product
Alleged Damages:	$2,500,000.00
Is this an oral complaint?	No

Is this a written complaint?	No
Is this an arbitration/CFTC reparation or civil litigation?	Yes
Arbitration/Reparation forum or court name and location:	FINRA
Docket/Case #:	CASE#11-01692
Filing date of arbitration/CFTC reparation or civil litigation:	05/09/2011

Customer Complaint Information

Date Complaint Received:	05/09/2011
Complaint Pending?	No
Status:	Settled
Status Date:	12/06/2013
Settlement Amount:	$2,500,000.00
Individual Contribution Amount:	$0.00

Disclosure 4 of 4

Reporting Source:	Broker
Employing firm when activities occurred which led to the complaint:	J.P. TURNER & COMPANY LLC
Allegations:	CHURNING, UNSUITABILITY, NEGLIGENCE AND BREACH OF FIDUCIARY DUTY.
Product Type:	No Product
Alleged Damages:	$119,451.00

Customer Complaint Information

Date Complaint Received:	
Complaint Pending?	
Status:	Arbitration/Reparation

Status Date:	12/31/2007
Settlement Amount:	
Individual Contribution Amount:	

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.:	FINRA CASE NO. 07-03604
Date Notice/Process Served:	12/31/2007
Arbitration Pending?	No
Disposition:	Settled
Disposition Date:	01/16/2009
Monetary Compensation Amount:	$84,000.00
Individual Contribution Amount:	$75,000.00
Summary:	UPON ADVICE OF COUNSEL AND WITHOUT ADMITTING ANY LIABILITY, THE PARTIES AGREED TO SETTLE THIS MATTER IN ITS ENTIRETY. REPRESENTATIVE CONTINUES TO DENY ANY ALLEGATIONS OF WRONGDOING, WHICH REMAIN UNPROVEN, AND AGREED TO SETTLE THIS MATTER IN ORDER TO END THE DISTRACTION OF LITITGATION.

Customer Dispute - Closed-No Action/Withdrawn/Dismissed/Denied

This type of disclosure event involves (1) a consumer-initiated, investment-related arbitration or civil suit containing allegations of sales practice violations against the individual broker that was dismissed, withdrawn, or denied; or (2) a consumer-initiated, investment-related written complaint containing allegations that the broker engaged in sales practice violations resulting in compensatory damages of at least $5,000, forgery, theft, or misappropriation, or conversion of funds or securities, which was closed without action, withdrawn, or denied.

Disclosure 1 of 1

Reporting Source:	Broker
Employing firm when activities occurred which led to the complaint:	J.P. TURNER & COMPANY LLC
Allegations:	CLIENT ALLEGES THAT ACCOUNT FAILED TO PERFORM AS BROKER REPRESENTED.
Product Type:	Equity Listed (Common & Preferred Stock)
Alleged Damages:	$0.00
Alleged Damages Amount Explanation (if amount not exact):	NO DAMAGE AMOUNT ALLEGED. FIRM COULD NOT MAKE A GOOD FAITH DETERMINATION THAT IT WOULD BE LESS THAN $5000.00.
Is this an oral complaint?	No
Is this a written complaint?	Yes
Is this an arbitration/CFTC reparation or civil litigation?	No

Customer Complaint Information

Date Complaint Received:	09/20/2009
Complaint Pending?	No
Status:	Closed/No Action
Status Date:	09/24/2009
Settlement Amount:	
Individual Contribution Amount:	

Customer Dispute - Pending

This type of disclosure event involves (1) a pending consumer-initiated, investment-related arbitration or civil suit that contains allegations of sales practice violations against the broker; or (2) a pending, consumer-initiated, investment-related written complaint containing allegations that the broker engaged in, sales practice violations resulting in compensatory damages of at least $5,000, forgery, theft, or misappropriation, or conversion of funds or securities.

Disclosure 1 of 2

Reporting Source:	Firm
Employing firm when activities occurred which led to the complaint:	J.P. TURNER & COMPANY LLC AND NATIONAL SECURITIES CORPORATION
Allegations:	CHURNING, UNAUTHORIZED TRADING, UNSUITABILITY, MISREPRESENTATION AND VIOLATION OF STATE AND FEDERAL SECURITIES LAWS.
Product Type:	Other: ETFS
Alleged Damages:	$150,000.00
Is this an oral complaint?	No
Is this a written complaint?	No
Is this an arbitration/CFTC reparation or civil litigation?	Yes
Arbitration/Reparation forum or court name and location:	FINRA
Docket/Case #:	13-03632
Filing date of arbitration/CFTC reparation or civil litigation:	12/16/2013

Customer Complaint Information

Date Complaint Received:	12/26/2013
Complaint Pending?	Yes
Settlement Amount:	
Individual Contribution Amount:	

Disclosure 2 of 2

Reporting Source:	Firm
Employing firm when activities occurred which led to the complaint:	J.P. TURNER & COMPANY LLC
Allegations:	CLIENT ALLEGES FRAUD, CHURNING, UNAUTHORIZED TRADING, UNSUITABILITY, NEGLIGENCE, MISREPRESENTATION, BREACH OF CONTRACT AND BREACH OF FIDUCIARY DUTY.
Product Type:	No Product
Alleged Damages:	$924,254.00

Arbitration Information

Arbitration/CFTC reparation claim filed with (FINRA, AAA, CFTC, etc.):	FINRA
Docket/Case #:	12-02365
Date Notice/Process Served:	07/05/2012
Arbitration Pending?	Yes

Reporting Source:	Broker
Employing firm when activities occurred which led to the complaint:	JP TURNER & COMPANY INC
Allegations:	CLIENT ALLEGES FRAUD CHURNING,UNAUTHORIZED TRADING,UNSUITABILITY,NEGLIGENCE,MISREPRESENTATION,BREACH OF CONTRACT AND BREACH OF FIDUCIARY DUTY.
Product Type:	No Product
Alleged Damages:	$924,254.00

Arbitration Information

Arbitration/CFTC reparation claim filed with (FINRA, AAA, CFTC, etc.):	FINRA
Docket/Case #:	12-02365
Date Notice/Process Served:	07/05/2012

Arbitration Pending? Yes

End of Report

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