

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

OCT 01 2012  
OFFICE OF THE SECRETARY

**In the Matter of**

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

**RESPONDENTS.**

ADMINISTRATIVE PROCEEDING  
FILE NO.: 3-15015

**RESPONDENT MICHAEL  
BRESNER'S ANSWER AND  
DEFENSES TO THE ORDER  
INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST  
PROCEEDINGS**

Pursuant to Rule 220 of the Securities and Exchange Commission's Rules of Practice, Respondent Michael Bresner answers the Order Instituting Administrative and Cease-and-Desist Proceedings ("OIP"), dated September 10, 2012, as follows:

**GENERAL RESPONSE**

Mr. Bresner first learned of the Division of Enforcement's allegations that he failed to supervise Jason Konner and Dimitrios Koutsoubos with respect to trading in three clients' accounts *after* the Commission filed the OIP on September 10, 2012. In May 2011, when the Division provided Mr. Bresner a Wells Notice, it did not disclose to counsel that it was recommending charges based on Mr. Bresner's alleged failure to supervise Mr. Konner or Mr. Koutsoubos. The Wells Notice addressed only the activities of Ralph Calabro. Accordingly, Mr. Bresner's Wells Submission addressed allegations that he failed to supervise Mr. Calabro; alleged violations that were not pursued nor the subject of the OIP. Mr. Bresner was not given an opportunity to address the Division's allegations that Mr. Bresner failed to allegedly supervise Mr. Konner and Mr. Koutsoubos in connection with three clients' accounts in any Wells

Submission before the OIP was filed. As he was not advised of the clients at issue, Mr. Bresner was not asked about any of the customers identified by the Division or the trading in their accounts in his testimony during the investigation. The scope of the investigation, lack of disclosure of accounts in question, coupled with over a year's absence of contact following the irrelevant Wells Notice, speak to a lack of due process.

Not surprisingly, Mr. Bresner's ability to respond to the allegations would be hampered by the absence of specificity in the OIP. However, following counsel's request for more information, the Division has identified three customers' accounts.<sup>1</sup> Thus, Mr. Bresner's responses below are conditioned on the assumption that the Division's representations as set forth in Mr. Sullivan's email communication regarding the identity of the customers' accounts at issue are complete.

## **FIRST DEFENSE**

### **I.**

**Paragraph I.** Paragraph I of the OIP contains no factual allegations, and thus, no response is required. To the extent Paragraph I can be considered to contain factual allegations, they are denied.

### **II.**

**Paragraph II. A.1.** Mr. Bresner avers that he is age 68 and resides in Atlanta, Georgia. Mr. Bresner was employed as Executive Vice President at J.P. Turner & Company, LLC ("JP Turner") from 2005 to March 2012. Since March 2012, Mr. Bresner has been employed as the Senior Vice President for Due Diligence and New Products at J.P. Turner. Mr. Bresner admits

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<sup>1</sup> Following a direct request for the identity of the accounts at issue, Division Counsel Edward G. Sullivan advised Peter J. Anderson, Mr. Bresner's counsel, in an email dated September 13, 2012 of "[t]he accounts Mr. Bresner will need to be responding on his failure to supervise charge are:.."

that he has also been an associated person with J.P. Turner & Company Capital Management, LLC (“JP Turner Capital”), an Atlanta, Georgia, based limited liability company that has been registered with the Commission as an investment adviser since 2007. Mr. Bresner denies the remaining allegations in Paragraph II.A.1.

**Paragraph II. A.2.** Mr. Bresner lacks sufficient information to admit or deny the allegations in the first sentence of Paragraph II. A.2. Mr. Bresner admits the allegations in the second sentence of Paragraph II. A.2. Mr. Bresner lacks sufficient information to admit or deny the allegations in the third sentence of Paragraph II. A.2.

**Paragraph II. A.3.** Mr. Bresner lacks sufficient information to admit or deny the allegations in the first sentence of Paragraph II. A.3. Mr. Bresner admits the allegations in the second sentence of Paragraph II. A.3. Mr. Bresner lacks sufficient information to admit or deny the allegations in the third sentence of Paragraph II. A.3.

**Paragraph II. A.4.** Mr. Bresner lacks sufficient information to admit or deny the allegations in the first sentence of Paragraph II. A.4. Mr. Bresner admits the allegations in the second sentence of Paragraph II. A.4. Mr. Bresner lacks sufficient information to admit or deny the allegations in the third sentence of Paragraph II. A.4.

**Paragraph II. B.5.** Mr. Bresner admits the allegations in Paragraph II. B.5.

**Paragraph II. C.6.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in Paragraph II. C.6.

**Paragraph II. C.7.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in Paragraph II. C.7.

**Paragraph II. C.8.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in Paragraph II. C.8.

**Paragraph II. C.9.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in Paragraph II. C.9.

**Paragraph II. C.10.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in Paragraph II. C.10.

**Paragraph II. C.11.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in Paragraph II. C.11.

**Paragraph II. C.12.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in Paragraph II. C.12.

**Paragraph II. C.13.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in Paragraph II. C.13.

**Paragraph II. D.14.** Mr. Bresner admits in part and denies in part the allegations contained in Paragraph II. D.14. During 2008 and 2009, there were at times five AVPs, each responsible for the direct supervision of registered representatives in non-OSJ locations and of the branch managers in OSJ locations. The AVPs reported to Mr. Bresner but he did not hold the title of “Head of Supervision.”

**Paragraph II. E.15.** Mr. Bresner admits in part and denies in part the allegations contained in Paragraph II. E.15. The ROI was computed as a percentage of market value, not equity.

**Paragraph II. E.16.** Mr. Bresner admits the allegations contained in Paragraph II. E.16.

**Paragraph II. E.17.** Mr. Bresner admits that at Level 2 (ROI between 15 and 20 percent), the Active Account Review (“AARS”) system sent an email to first-line supervisors requiring that they review the accounts and take one of four suggested actions: (1) compute a

profit and loss analysis, (2) discuss the account with the broker, (3) call the customer, or (4) restrict commissions. Mr. Bresner denies the remaining allegations in Paragraph II. E.17.

**Paragraph II. E.18.** Mr. Bresner admits the allegations contained in Paragraph II. E.18 and further states, if the questionnaire was not returned to the Compliance Department in due course, the account was not permitted to trade.

**Paragraph II. E.19.** Mr. Bresner admits the allegations contained in Paragraph II. E.19.

**Paragraph II. E.20.** Mr. Bresner denies the allegations in Paragraph II E.20 as stated. The e-mail transmitting the account for review states, "The EVP has discretion to take any measures he deems appropriate." Mr. Bresner avers that it was his practice to consult with the appropriate AVP and obtain his or her recommendation/concurrence as to the appropriate action to be taken.

**Paragraph II. F.21.** Mr. Bresner admits the allegations in the first sentence of Paragraph II. F.21. Mr. Bresner denies the remaining allegations in Paragraph II. F.21 as stated. Mr. Bresner avers that once Konner and Koutsoubos had an account reach Level 4, under the firm's procedures, the accounts were directed to Mr. Bresner's attention. To that end, Mr. Bresner and the applicable AVP reviewed the account activity and it was Mr. Bresner's practice to consult with the appropriate AVP and obtain his or her recommendation as to appropriate action with respect to the accounts. Mr. Bresner denies that he became the supervisor of Konner and Koutsoubos when accounts of their clients appeared on a Level 4 report. Their supervisor remained the OSJ Manager, John Williams.

**Paragraph II. F.22.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in the first sentence of Paragraph II. F.22. The OIP does not contain sufficient information for Mr. Bresner to admit or deny the allegations in the second sentence of

Paragraph II F.22. Nevertheless, Mr. Bresner understands from the Commission, see footnote 1, *supra*, that the account referenced in the second sentence of Paragraph II. F.22 is Account No. XXX-X1076. Assuming the account referenced in the second sentence of Paragraph II. F.22. of the OIP is Account No. XXX-X1076, Mr. Bresner admits that the account appeared on the AARS at Level 4 three times during the period from January 2009 to December 2009. Mr. Bresner lacks sufficient information to admit or deny the remaining allegations in Paragraph II. F.22.

**Paragraph II. F.23.** Mr. Bresner lacks sufficient information to admit or deny the allegations contained in the first two sentences of Paragraph II. F.23. The OIP does not contain sufficient information for Mr. Bresner to admit or deny the allegations in the third sentence of Paragraph II. F.23. Nevertheless, Mr. Bresner understands from the Commission that the account referenced in the third sentence of Paragraph II. F.23 is Account No. XXXXX6518, see footnote 1, *supra*. Assuming the account referenced in the third sentence of Paragraph II F.23. of the OIP is Account No. XXXXX6518, Mr. Bresner admits that during the period from January 2008 to December 2008, the account appeared on the AARS four consecutive times at Level 4. Mr. Bresner lacks sufficient information to admit or deny the allegations in the fourth sentence of Paragraph II. F.23. The OIP does not contain sufficient information for Mr. Bresner to admit or deny the allegations in the fifth sentence of Paragraph II. F.23. Nevertheless, Mr. Bresner understands from the Commission that account referenced in the fifth sentence of Paragraph II. F.23 is Account No. XXX-X8771, see footnote 1, *supra*. Assuming the account referenced in fifth sentence of Paragraph II. F.23. of the OIP is Account No. XXX-X8771, Mr. Bresner admits that during the period from December 2008 to July 2009, the account appeared on the AARS

once at Level 4. Mr. Bresner lacks sufficient information to admit or deny the remaining allegations in Paragraph II. F.23.

**Paragraph II. F.24.** Mr. Bresner denies that he was the supervisor of Konner and denies that he failed to take appropriate action. Mr. Bresner admits that the Level 4 accounts had ROI greater than 25 percent. Assuming that this allegation refers to Account Nos. XXX-X1076, XXXXX6518, and XXX-X8771, Mr. Bresner admits that when these accounts had annualized turnover rates greater than six. Assuming that this allegation refers to Account Nos. XXX-X1076 and XXXXX6518, Mr. Bresner admits that these accounts appeared at Level 4 after commission restrictions were placed on the accounts because the ROI is based the trailing twelve-month period, as the Division alleges in Paragraph II. E.15. An account might remain at Level 4 despite the imposition of severe restrictions on commissions after the account's first appearance following a quarter's activity because the calculation is based on the total commissions and fees as a percentage of the market value in the account over the trailing twelve-month period. Mr. Bresner lacks sufficient information to admit or deny whether Konner and Koutsoubos each engaged in trading activity that far exceeded the "frequency of trades" identified in the suitability questionnaire signed by the two of their customers. Mr. Bresner lacks sufficient information to admit or deny whether one of Koutsoubos's customers had no suitability questionnaire on file, even though the customer's account appeared on Level 4.<sup>2</sup> Mr. Bresner denies the remaining allegations in Paragraph II. F.24.

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<sup>2</sup> The suitability questionnaires were generated by the Compliance Department, sent to the client whenever the Compliance Department deemed appropriate and returned by the client to the Compliance Department. Mr. Bresner was not involved in the questionnaire process nor were the executed questionnaires provided to him by the Compliance Department.

**Paragraph II. F.25.** Mr. Bresner admits the allegations contained in the first sentence of Paragraph II. F.25. Mr. Bresner denies the remaining allegations in Paragraph II. F.25.

**Paragraph II. G.26.** Mr. Bresner lacks sufficient information to admit or deny the allegations in Paragraph II. G.26.

**Paragraph II. G.27.** Mr. Bresner denies the allegations contained in Paragraph II. G.27.

**Paragraph II. G.28.** Paragraph II. G.28. contains no factual allegations, and thus, no response is required. To the extent Paragraph II. G.28. can be considered to contain factual allegations, they are denied.

### **III. and IV.**

Mr. Bresner believes that these Administrative Proceedings are unfounded in that he did not violate any provision of the securities laws cited by the Commission. Mr. Bresner requests that the October 29, 2012, hearing in this matter proceed as scheduled, should Mr. Bresner's Motion to Dismiss be denied. He further requests the matter be dismissed in its entirety with no remedial actions deemed necessary or appropriate. Mr. Bresner acted reasonably in his supervision of the accounts as they appeared on Level 4 of the AARS as required under the J.P. Turner system of supervision and did not cause the violations by Konner and Koutsoubos of which the Division complains.

### **SECOND DEFENSE**

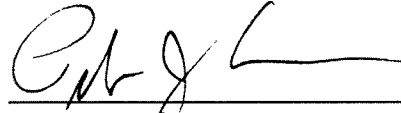
The Division of Enforcement has failed to state a cause of action upon which relief can be granted.



**THIRD DEFENSE**

The Division of Enforcement has failed to comply with federal statutory deadlines.

Respectfully submitted this 28 day of September, 2012.



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