

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

COPY

In the Matter of

**LAURENCE I. BALTER d/b/a
ORACLE INVESTMENT RESEARCH**

File No. 3-17614

**RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR A MORE DEFINITE STATEMENT**

I. INTRODUCTION.

Respondent, Laurence I. Balter, doing business as Oracle Investment Research (collectively "Mr. Balter" or "Respondent"), submits this memorandum of points and authorities in support of his motion for a more definite statement as to certain of the allegations in the Order Instituting Administrative and Cease-And-Desist Proceeding commencing this proceeding ("OIP"), pursuant to Rule 220(d) of the Securities and Exchange Commission's Rules of Practice.

Specifically, Respondent asks for an order compelling the Division to provide a More Definitive Statement that identifies:

1. Transactional details (time, date, issuer or stock, number of shares traded) of the transactions upon which the claim is based that Mr. Balter fraudulently allocated

profitable trades to himself instead of “Client A”, presumably Brian Barbata and his family’s accounts.

2. Documents, verbal agreements or testimony that establish the terms of the fee agreements upon which the Division’s claims that profits should have been allocated on a “first-day returns” basis using only a single Barbata account, rather than a holistic analysis of fair allocations of actual profits among all Barbata accounts under management by Mr. Balter, as was actually and fairly allocated by Mr. Balter and as Mr. Barbata testified he believed was the parties’ actual agreement;
3. Transactional details (time, date, issuer or stock, number of shares traded, and market capitalization of issuer at the time of transaction) upon which the Division claims that Mr. Balter defrauded his clients by trading before them or alongside them with respect to the same issuer’s shares;
4. Transactional details (time, date, issuer or stock, number of shares traded, diversification and industry concentration information) of each transaction which allegedly caused the Fund to violate the diversification and, separately, the industry concentration standards upon which the OIP is based.
5. Client communication details (who, what, when, how and to whom) in which Mr. Balter allegedly made representations to clients that there will be no double dipping; and exactly what charges, if any, violated such representation on a client by client basis.

II. STATEMENT OF FACTS.

A. The OIP.

On or around October 4, 2016, the Securities and Exchange Commission issued the OIP alleging that

Balter engaged in three distinct schemes. First, he fraudulently allocated profitable trades to his own accounts to the detriment of several client accounts. Second, Balter falsely told his SMA clients who invested in the Fund that they would not pay both advisory fees and Fund management fees for the portions of their accounts invested in the Fund. Third, Balter made trades for the Fund that deviated from two of its fundamental investment limitations.

OIP, ¶1. At paragraph 11, the OIP adds that there are multiple days on which Mr. Balter traded ahead of his clients. At paragraph 12, the OIP alleges that Mr. Balter's emails underreported losses. At paragraphs 13 and 14, the OIP alleges that Mr. Balter's unjust allocations resulted in him reaping modest profits while his clients suffered losses during specific narrow timeframes. At paragraphs 16 and 17, the OIP accuses Respondent of telling his clients that he would not "double dip" (advisory fees in the account holding the Fund, plus fees inside the fund). Paragraphs 18 through 25 accuse Mr. Balter of violating the fundamental investment limitations of diversification and industry concentration.

Mr. Balter needs a More Definitive Statement providing the foregoing details in order to have a fair opportunity to adequately prepare his defenses and responses at the hearing in this case.

III. LEGAL ARGUMENTS.

A. The OIP Does Not Include Sufficient Information To Give Respondent A Fair Opportunity To Adequately Prepare a Defense.

Rule 200(b) of the SEC Rules of Practice requires the Division to provide in its OIP a "plain statement of the matters of fact and law to be considered and determined." 17 C.F.R. §201.200(b)(3). It is bedrock principle of due process that, through the OIP, Respondents "are entitled to be sufficiently informed of the charges against them so that they may adequately

prepare their defense." David F. Bandimere, Admin. Proceeding File No. 3-15124, Order (ALJ Feb. 11, 2013) (hereinafter "Bandimere"). While Respondents are not entitled to receive the Division's evidence at this time, allegations that are "vague, ambiguous, and generalized" will not suffice. Alfred M. Bauer, Admin. Proceeding File No. 3-9034, 62 SEC Docket 2273, Order (ALJ Aug. 27, 1996) (CFF) (hereinafter "Bauer").

In applying this standard, judges consider the need for clarity in the context of the "magnitude" of the particular case. *Donald T. Sheldon*, Admin. Proceeding File No. 3-6626, 52 SEC Docket 427, Order (ALJ June 9, 1986) (hereinafter "*Sheldon*"). In cases like this one involving numerous transactions over an extended period of time and voluminous discovery, "the boundaries of the allegations need to be reasonably precise in order to give respondents a reasonable opportunity to prepare their defense." *Id* at *2 (granting motion, in part, and ordering Division to provide, among other things, a list of securities and individuals involved in the alleged misconduct); see also *J. W. Barclay & Co., Inc.*, Admin. Proceeding File No. 3-10765, Order (ALJ June 13, 2002) (hereinafter "*J. W. Barclay & Co.*") (granting motion, in part, because "[t]his case has the prospect of becoming unmanageable because of the number of actively-defending Respondents (nine), the size of the Division's investigative file (more than thirty boxes of non-privileged materials), and the Division's stated intent to present evidence of fraudulent activity that took place more than five years before the OIP was issued").

The claims in this case are aimed at a handful of transactions, emails and agreements among thousands of transactions, thousands of emails and hundreds of accounts managed by the Respondent covering hundreds of clients over several years. There is no valid justification for the Division to play hide the ball with respect to the specific transactions and emails upon which its claims are based.

The Judge has the discretion to order such relief. In *Robert M Winston*, Admin. Proceeding File No. 3-6986, 52 SEC Docket 456, Order (ALJ Apr. 28, 1988), the Judge denied a motion for a more definite statement yet still directed the Division to produce some details sought by the respondents in that matter. The Judge recognized that "in appropriate cases, discretion may be exercised to direct that information be given to respondents if doing so will have the effect of expediting the proceedings" and where there is no claim doing so would "prejudice" the Division's case. *Id* at *1; see also *Fin. Programs, Inc.*, Admin. Proceeding File No. 3-2564, 52 SEC Docket 94, Order (Sept. 25, 1970); *Dempsey-Tegeler & Co., Inc.*, Admin. Proceeding File No. 3-2393, 52 SEC Docket 85, Order (June 16, 1970).

On or around October 4, 2016, the Securities and Exchange Commission issued the OIP alleging that

Balter engaged in three distinct schemes. First, he fraudulently allocated profitable trades to his own accounts to the detriment of several client accounts. Second, Balter falsely told his SMA clients who invested in the Fund that they would not pay both advisory fees and Fund management fees for the portions of their accounts invested in the Fund. Third, Balter made trades for the Fund that deviated from two of its fundamental investment limitations.

OIP, ¶1. At paragraph 11, the OIP adds that there are multiple days on which Mr. Balter traded ahead of his clients. At paragraph 12, the OIP alleges that Mr. Balter's emails underreported losses. At paragraphs 13 and 14, the OIP alleges that Mr. Balter's unjust allocations resulted in him reaping modest profits while his clients suffered losses during specific narrow timeframes. At paragraphs 16 and 17, the OIP accuses Respondent of telling his clients that he would not "double dip" (advisory fees in the account holding the Fund, plus fees inside the fund).

Paragraphs 18 through 25 accuse Mr. Balter of violating the fundamental investment limitations of diversification and industry concentration.

Mr. Balter needs further details with respect to each of such allegations in order adequately to prepare his defenses and responses to be prosecuted at the hearing in this proceeding.

B. Trade Details of Alleged Inequitable Trade Allocations.

The OIP fails to allege the specific transactions upon which the claims are based, by date, amount, specific securities purchased or sold, and the relief sought with respect to each transaction. Such information is necessary for Respondent to focus his limited resources on the transactions at issue with respect to such allegation, to appreciate his risk of failing to aggressively defend the OIP, and to determine which defenses and responses may apply to each such transaction at issue in this proceeding..

With respect to the allocation of trades, the Respondent requests detailed allegations identifying which specific profitable trades were not allocated equitably, by date, securities sold or bought, the number of shares of such security bought or sold and the profit allocation relating to that specific trade.

C. Facts Establishing Agreement With Client A Re Allocation Of Profits and Losses.

Notably, Respondent's expert's analysis reveals that over the relatively short course of the management of all accounts of so called "Client A" (presumably Brian Barbata's and his family's accounts), the allocations were almost perfectly proportioned. See expert report of John Duval without exhibits, at **Exhibit 1**. Moreover, the client was undercharged the agreed fee by hundreds of thousands of dollars. *Id.* Accordingly, it appears that, contrary to the allegations in the OIP, Client A was treated more than fairly by Mr. Balter.

It is also noteworthy that the manner of the Division's calculation is unsupported by any allegation referencing an agreement to allocate profits and losses in the manner upon which the Division's claims are based. To the best of Mr. Balter's knowledge, there is no written or verbal agreement between Client A and Mr. Balter pursuant to which the parties agreed to allocate profits, much less one involving a complex analysis of "first-day returns" in only one account and only over very specific time periods constructed purposefully by the Division to create the illusion of a fraud. See OIP, ¶14. Indeed, Mr. Barbata testified under oath that he did not expect anything other than that trades were generally allocated on a pari passu or pro rata basis. See Excerpts of Examination Transcript at **Exhibit 2** p. 40.

As far as Mr. Balter is aware, there was simply no agreement, and no industry standard, that dictates that Mr. Balter was required to allocate profits on a "first-day returns" basis offered by the Division. Indeed, such method well could have resulted in an allocation that was not in keeping with the pari passu or pro rata allocation of profits that both Mr. Barbata and Mr. Balter agreed to and aspired to achieve. In the face of these facts, the Division has cherry picked inexplicably the dates set forth in paragraphs 13 and 14 of the OIP and unidentified transactions within that narrow date range in an apparent effort to distort the fair allocation of such profits and losses, rather than take a holistic analysis of the fairness of the allocations based on the entire period under management and all accounts under management, as both Client A and Mr. Balter agreed would be done.

Respondent requests an order directing the Division to produce a More Definitive Statement providing facts to establish the justification for its distortive approach to the profit allocation analysis contained in the OIP, so that the Respondent can understand the merits of such claim and prepare his defense.

**D. Trade Details Of All Trades Ahead of Clients – Trades In Large Cap Stocks
Do Not Violate Mr. Balter’s Code of Ethics.**

With respect to the claim that Mr. Balter traded ahead of his clients in a manner that benefitted Mr. Balter, the Division should be required to identify the trades upon which it bases such claim by date and time of each trade, the security involved, the market capitalization of the security at the time of the trade and the number of shares and amount of money exchanged both on Mr. Balter’s behalf and on behalf of his clients. This information is particularly relevant to these allegations because where the market capitalization of the stock exceeds \$500 million, such trades are exempted from the prohibition against trading ahead of clients due to the impossibility of affecting the stock price with the relevant trades. That is particularly obvious in the context of the relatively small accounts managed for Mr. Balter’s benefit and for the benefit of his clients, respectively.

Because the price of large capitalization stock could not conceivably be affected by Mr. Balter’s relatively nominal trades on behalf of himself and his clients, or both, the Code of Ethics for Oracle Investment Research expressly exempts from the timing restrictions *issuers having a market capitalization of more than \$500 million*. See Oracle Investment Research Code of Ethics, section II.G, submitted herewith at **Exhibit 3**.

The Division should be compelled to identify the transactions at issue so that Respondent is able to prepare a defense in this case to the effect that Mr. Balter complied with the Code of Ethics because in each and every case in which Mr. Balter has been accused of trading ahead of his clients, the trade involved an issuer having a market capitalization of more than \$500 million.

Moreover, the identification of the actual trades would allow Mr. Balter to form a defense that the timing of such trades was the result of happenstance only. For each trade identified by the Division that benefitted Mr. Balter and not his clients, there is undoubtedly another trade that

could be identified by Mr. Balter that benefitted his clients over Mr. Balter due solely to the inadvertent timing of such trades. Because the timing of these relatively miniscule trades in large capitalization companies could not possibly have moved the stock price, there obviously was no actual effect of the timing of such trade, which could only be proven out by the Respondent once the trades upon which the claims are based are identified by date, time, number of shares and security.

E. Which Trades Deviated From 2 Fundamental Investment Limitations?

The OIP indicates that Respondent deviated from the diversification and industry concentration standards set for the Fund. See OIP ¶¶ 18-25. An expert analysis of both issues was undertaken by the Fund, whose expert concluded that the Fund had complied with both standards in every single trade executed over its entire existence, without exception. See **Exhibit 4**, expert Report of S. Lane Genetowsky (without exhibits). Accordingly, in order to prepare his defense, Respondent needs to have the Division identify each transaction that it believes violated such standards, by date, type of security, industry type (as to the industry standard allegations) and number of shares.

a. Which Trades Violated The Diversified Fund Standard?

The Fund's Statement of Additional Information filed January 3, 2011 designates the Fund as "diversified" under the requirements of Investment Company Act of 1940. Section 5(b)(1) of the Investment Company Act of 1940 defines diversified companies as follows:

(1) "Diversified company" means a management company which meets the following requirements: At least **75 per centum** of the value of its **total assets** is represented by **cash and cash items (including receivables)**, Government securities, securities of other investment companies, and other securities for the purposes of this calculation limited in respect of any **one issuer** to an amount **not greater in value than 5 per centum** of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer. [Emphasis added.]

Respondent is confident that he complied at all times with such standard. To the extent the Division believes that the Genetowsky report is incorrect and that there are transactions that did, indeed, violate the diversification standard, it should be compelled to identify such transactions by date, security, industry and number of shares transacted so that the Respondent can prepare his defense with respect to such transactions.

**b. Respondent Requests The Specific Transactions Upon Which
Violations of Industry Concentration Are Based.**

The Fund's Statement of Additional Information, filed January 3, 2011, states that the Fund "may not ... invest 25% or more of its net assets, calculated at the time of purchase and taken at market value, in securities of issuers in any one industry." Mr. Balter contends that he properly utilized the SIC codes published by the United States Department of Labor to categorize the industry to ensure compliance with the industry concentration representation, above, and had multiple discussions with the Board and the auditors to ensure the propriety and precision of such categorizations. Mr. Balter contends that he ensured such compliance with each and every trade.

The expert Report of S. Lane Genatowski attached hereto at **Exhibit 4** (without exhibits) confirms such compliance. If the Division disagrees with the Genatowski report, it should be compelled to provide a more definitive statement to identify, specifically, which transactions it contends to be violative of the industry concentration requirements, so that Respondent may properly prepare his defense.

F. Which Fees Violated No Double Dipping Representation To Which Clients?

The OIP claims that Respondent told "many of his clients in emails and verbal conversations that he would not 'double dip.'" OIP ¶16. The Respondent needs the Division to identify the specific clients, emails and verbal representations upon which these claims are based

(who, what, when, how, to whom). If, for example, six of hundreds of clients received such representations, then the claim should be limited to the double dipping that the Division is able to establish occurred with respect to those six clients only. Only through identification by the Division would Respondent be given an opportunity to review such correspondence, interview the persons claiming such representations and assess the fees at issue with respect to that client.

Notably, Mr. Balter's ADV notified clients that his fees could be up to 2.5 %. See **Exhibit 5** hereto. The Division does not contend, and could not honestly contend, that all fees and cost reimbursements for any of Mr. Balter's clients exceeded that 2.5% charge. Instead, the Division is contending only that the fees (which the Division implicitly concedes were below the allowable 2.5% ceiling in the ADV even including any double dipping), should have been even lower than they were. In order to provide Respondent with an opportunity to prepare his defenses, the Division should be compelled to submit a more definitive statement that not only identifies the details necessary to identify the specific alleged representation, but also the amount of the fees charged, the period covered by such charges, the extent to which such fees constituted a management fee charged to them as a result of their investment in the Fund, and such client's overall portfolio for such period and the management fees (apart from the Fund's fee) that was charged by Mr. Balter for his advisory services.

G. Identify Emails That Underreported Losses.

The allegation at paragraph 12 of the OIP that Mr. Balter sent his clients daily emails that underreported losses. Such allegation requires a more definitive statement to allow Mr. Balter to identify the specific emails upon which such allegation is based, by date, author, recipient and subject matter. Such information is necessary for the Respondent to prepare his defense and, in particular, put into context the email at issue. For example, while there were undoubtedly inadvertent errors made in daily correspondence, Mr. Balter might be able to establish that most,

if not every other, email contained accurate information and even may have included errors of equal significance overstating losses or understating profits. Such emails would tend to establish the innocence of such misrepresentation, if any, and the overall accuracy of the daily information provided to the clients.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request an order compelling the Commission to produce a More Definitive Statement in support of its OIP identifying, with particularity, all facts alleged that would support such relief as against Respondent, including identifying, with particularity, each of the facts detailed above. Such factual allegations are necessary to afford Respondent a fair opportunity to prepare his defenses and responses to such allegations at the hearing on this matter.

Dated: Santa Monica, California
November 4, 2016

CORRIGAN & MORRIS, LLP

By: Brian T. Corrigan

Brian T. Corrigan

(bcorrigan@cormorllp.com)

Stanley C. Morris

(scm@cormorllp.com)

Corrigan & Morris LLP

201 Santa Monica Blvd., Suite 475

Santa Monica, CA 90401

(310) 394-2828 Tel.

(310) 394-2825 Fax

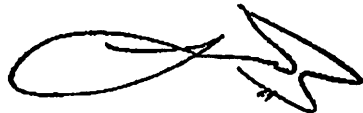
Attorneys for Respondent

DECLARATION OF LAURENCE BALTER

I, Laurence Balter, declare as follows:

1. I am over 18 years old. I have personal knowledge of the facts stated herein and if called on would and could testify competently thereto.
2. Attached hereto at **Exhibit 1** is a true and correct copy of the expert report of John Duval, without exhibits.
3. Attached hereto at **Exhibit 2** is a true and correct copy of excerpts of the transcript of the examination of Brian Barbata.
4. Attached hereto at **Exhibit 3** is a true and correct copy of excerpts of Oracle Investment Research Code of Ethics, including section II.G.
5. Attached hereto at **Exhibit 4** is a true and correct copy of the Report of S. Lane Genetowsky (without exhibits).
6. Attached hereto at **Exhibit 5** is a true and correct copy of excerpts of my Form ADV.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed in Kihei , Hawaii on November 3, 2016.



Laurence Balter

BEFORE THE SECURITIES AND
EXCHANGE COMMISSION

IN THE MATTER OF LAURENCE I. BALTER
d/b/a ORACLE INVESTMENT RESEARCH,

Respondent.

SEC Case No.: SF-3954

EXPERT REPORT OF JOHN J. DUVAL, JR.

July 18, 2016

Table of Contents

List of Exhibits	3
I. Qualifications	4
a. Damage Calculation and Trade Allocation Related Experience	4
II. Assignment Scope and Methodology.....	5
a. Information Sources.....	6
III. Summary of Opinions	6
IV. Background on Trade Allocation, Performance Measurement, and the Balter Strategy.....	6
a. Trade Allocation	6
b. Performance Measurement.....	7
c. Balter Pattern Day Trading Strategy.....	8
V. Opinions.....	9
a. Opinion 1: The SEC’s calculation of “first-day returns” is flawed.....	9
b. Opinion 2: A correct analysis would have to consider the performance of the Balter and client accounts over the entire time at issue.....	10
c. Opinion 3: In order to prove wrongdoing by Balter, the SEC must show that the economic returns for the strategy, over the time at issue, were inequitable based on each account’s size.	10
d. Opinion 4: The Balter and Barbata account returns were not inequitable over the time at issue.....	11
e. Opinion 5: There is no evidence of wrongdoing in the actual allocation of profits and losses as compared to a simple, unadjusted pro-rata allocation.....	11
e. Opinion 6: The Barbata accounts were undercharged \$165,146 of management fees.....	12
f. Opinion 7: Accounting for the adjusted pro-rata allocation of gains and losses and the payment of the uncharged fee amount, the net <i>benefit</i> to the Barbata accounts was \$120,021.....	13
VI. Conclusion	14

List of Exhibits

1. Curriculum Vitae of John J. Duval, Jr.;
2. Balter/Oracle Profit and Loss Calculation;
3. Barbata/Molokai Investments Inc. Profit and Loss Calculation;
4. Barbara and Balter Cash Flow and Internal Rate of Return Comparison;
5. Balter Percentage-based v. Actual P/L Allocation Analysis;
6. Allocation-Adjusted Profit and Loss;
7. Actual v. Allocation-Adjusted Profit and Loss Summary;
8. Net Benefit Analysis.

This report is authored by John J. Duval, Jr. of Accelerant LLC, a securities litigation consulting firm located in Staatsburg, New York. My curriculum vitae can be found at Exhibit 1.

My opinions are based upon the documents I have reviewed. Should any additional discovery, documents, or evidence be provided, I reserve the right to amend and alter my opinions.

I. Qualifications

1. My experience in the investment community spans over 21 years, dating back to 1994. During that time, I have held positions as a Financial Advisor with Merrill Lynch in New York for 10 years, founded and managed my own Registered Investment Advisory firm for four years, managed a family office for a \$100 million net worth family, and founded and managed a hedge fund.
2. For the past 11 years, I have been the Managing Partner and an expert witness at Accelerant, a securities litigation consulting firm. I have broad and deep experience in complex investments and strategies, including: hedge funds, fund-of-funds, liquid alternatives, private equity, venture capital, managed futures, structured products, securitized products, and other private placements, as well as equities, fixed income, options, and insurance.
3. I am also an expert in securities rules, regulations, and industry custom and practice. I hold the FINRA Certified Regulatory and Compliance Professional ("CRCP") designation from the FINRA Institute at Wharton. FINRA describes the CRCP program as "a comprehensive and rigorous course of instruction on the foundation, theory and practical application of securities laws and regulation." My testimony frequently includes discussion of FINRA suitability and supervisory rules, registered investment advisor duties and obligations, and standard industry practice.
4. As part of my practice, I am often called upon to create damage models, prepare statistical analyses, and to analyze offering documents. I am experienced in analyzing large data sets and have used a variety of statistical and analytic techniques for pulling the meaning out of data.
5. I have been retained in well over 300 securities cases, participated in over 50 mediations, and have testified or been deposed over 40 times in arbitrations, state, and federal courts. My consulting and testimony has been for plaintiffs, defendants, and regulators, including: FINRA, the State of Kansas Securities Commission, and the Department of Labor. I am also an arbitrator for FINRA.

a. Damage Calculation and Trade Allocation Related Experience

6. During my 11 years working as a securities litigation consultant I have created hundreds of damage analyses, including, but not limited to:
 - a. Profit and Loss reports;
 - b. Market-Adjusted Damages;
 - c. Comparable Investment Analyses;
 - d. Leveraged/Deleveraged Damage Models;
 - e. Fee Comparisons, and;
 - f. Statistical-based Damages;
7. Almost all of my engagements have involved some form of damage analysis and I have been accepted as a damages expert in multiple arbitral and civil forums.
8. While at Merrill Lynch, I managed discretionary accounts for five years as an investment advisor in the Personal Investment Advisor program. In this program, I managed discretionary accounts for approximately 40 clients and was responsible for allocating shares purchased or sold in block trades across the managed accounts.

II. Assignment Scope and Methodology

9. I have been retained by Corrigan & Morris LLP on behalf of Respondent Laurence I. Balter/Oracle Investments Inc. to:
 - a. Review the relevant documents in this matter;
 - b. Form an opinion about whether or not clients Brian and Wendy Barbata and/or Molokai Investments, Inc. were damaged by the Balter trade allocations;¹
 - c. Calculate a profit and loss report on the relevant Balter and Barbata accounts;
 - d. Calculate an alternative profit and loss report on the relevant Balter and Barbata accounts based on a pro-rata distributions of the actual monthly profit and loss.
 - e. Calculate the amount a 1.5 percent fee would have come to and adjust the actual profit and loss for any uncharged amount.
10. My firm has been compensated for our work at the following hourly rate schedule: Experts, \$550/hour; Analysts, \$250/hour; Administrators, \$125/hour; Data Entry, \$30/hour. My compensation is in no way contingent upon my opinions nor the outcome of the case.

¹ Hereafter I will refer to the Balter/Oracle account as the "Balter accounts" and the Barbata/Molokai accounts as the "Barbata accounts".

a. Information Sources

11. Corrigan & Morris LLP has provided access to documents which include, but are not limited to, the following:
 - a. Draft SEC Order Instituting Administrative and Cease and Desist Proceedings, dated October 17, 2015;
 - b. Statements for the Balter and Barbata accounts.
 - c. I have also had a number of conversations with Laurence Balter.

III. Summary of Opinions

12. Opinion 1: The SEC's calculation of "first-day returns" is flawed.
13. Opinion 2: A correct analysis would have to consider the performance of the Balter and Barbata accounts over the entire time at issue.
14. Opinion 3: In order to prove wrongdoing by Balter, the SEC must show that the economic returns for the strategy, over the time at issue, were inequitable based on each account's size.
15. Opinion 4: The Balter and Barbata account returns were not inequitable over the time at issue.
16. Opinion 5: There is no evidence of wrongdoing in the actual allocation of profits and losses as compared to a simple, unadjusted pro-rata allocation.
17. Opinion 6: The Barbata accounts were *undercharged* \$165,146 of management fees.
18. Opinion 7: Accounting for the pro-rata allocation of the gains and losses and the payment of the uncharged fee amount, the net *benefit* to the Barbata accounts was \$120,021.

IV. Background on Trade Allocation, Performance Measurement, and the Balter Strategy

a. Trade Allocation

19. Industry custom and practice is to allocate trades on a pro-rata basis immediately before or after the trade is placed. The pro-rata basis is a simple calculation based upon the relative account size of each account the advisor is managing.

25. Furthermore, there are no bright line limits to composite dispersion. GIPS guidance states clearly:⁴

While internal dispersion (of returns) is one measure to determine how consistently the firm has implemented its strategy across the portfolios in the composite... There is no general rule for a maximum amount of composite dispersion.

Thus, GIPS standards recognize the inevitable reality of performance dispersion across separately managed accounts.

c. Balter Pattern Day Trading Strategy

26. Balter engaged in what is known as “pattern day trading”. FINRA defines pattern day trading as follows:⁵

You will be considered a pattern day trader if you trade four or more times in five business days and your day-trading activities are greater than six percent of your total trading activity for that same five-day period.

27. Importantly, an advisor is considered a pattern day trader if the broker-dealer has a reasonable basis to believe that the advisor is a pattern day trader or has engaged in prior pattern day trading in an account. In its guidance, FINRA writes:⁶

Your brokerage firm also may designate you as a pattern day trader if it knows or has a reasonable basis to believe that you are a pattern day trader... In general, once your account has been coded as a pattern day trader, the firm will continue to regard you as a pattern day trader even if you do not day trade for a five-day period. This is because the firm will have a “reasonable belief” that you are a pattern day trader based on your prior trading activities.

28. Mr. Balter began his pattern day trading in the Barbata accounts in May 2012 and it continued through December 31, 2013, when he stopped managing the accounts.

⁴ *Id.* at 7-8.

⁵ FINRA; Day-Trading Margin Requirements: Know the Rules; Available at <http://www.finra.org/investors/day-trading-margin-requirements-know-rules>; Accessed July 12, 2016. The SEC also uses the FINRA definition. See U.S. Securities and Exchange Commission; Fast Answers – Pattern Day Trader; Available at <https://www.sec.gov/answers/patterndaytrader.htm>; Accessed July 12, 2016.

⁶ *Id.*

29. As part of his strategy, he allocated trades between the Barbata accounts depending on which accounts had funds available in them. In this way, the strategy was account agnostic.
30. In keeping with the FINRA definition of pattern day trading accounts, *all* of the accounts in our analysis had pattern day trading in them, even if they did not have pattern day trades in each of the 20 months the strategy was in place.
31. The pattern day trading took place in the following accounts:
- Barbata:⁷
 - Brian and Wendy Barbata Joint; Fidelity; 647-054186;
 - Brian Barbata Individual; Fidelity; 647-834270;
 - Molokai Investments Inc.; Fidelity; 637-754277;
 - Molokai Investments Inc.; TD Ameritrade; 926-054538;
 - Brian and Wendy Barbata Joint; TD Ameritrade; 926-054559;
 - Balter:⁸
 - Oracle Investment Research; Fidelity; 656-064564;
 - Laurence and Regina Balter Joint; Fidelity; 637-264768;
 - Laurence and Regina Balter Joint; Fidelity; 926-054557;
32. Also, as will be discussed below, *all* the the Barabata accounts were undercharged the 1.5 percent management fee over the entire 20-month period.

V. Opinions

My opinions are as follows:

a. Opinion 1: The SEC's calculation of "first-day returns" is flawed.

33. The SEC appears to have calculated something they call "first-day returns", however, they do not provide a report or explain how this metric is calculated.⁹

⁷ See Exhibit 2. I have excluded three Barbata Fidelity accounts from the analyses with account numbers ending: 151, 178, and 143 (an IRA and two Interisland Petroleum, respectively.) Although I do not have a complete set of statements for these accounts, they appear to have had combined balances of approximately \$2.5 million.

⁸ See Exhibit 3.

⁹ See SEC Draft Order Instituting Administrative and Cease-and-Desist Proceedings, Dated November 17, 2015, at 5.

34. It appears that the “first-day returns” examine the performance of trades that Mr. Balter allocated to his own accounts and to those of his clients. While these “first-day returns” may be uneven, I believe the methodology is flawed.

35. Economic returns are earned by investors on the trade day, second day, and every day thereafter that a position is carried in their account. By only looking at the returns on the first day a position is initiated, the SEC has created a distorted picture of the actual economic returns earned in the various accounts.

36. Commensurately, any claim of wrongdoing based on this distorted picture is itself distorted.

b. Opinion 2: A correct analysis would have to consider the performance of the Balter and client accounts over the entire time at issue.

37. The foundation of almost all forensic investment analyses is a profit and loss report. These reports give a true analysis of how the investments have performed over time. Importantly, they insure that deposits are not counted as gains nor withdrawals as losses.

38. Once a profit and loss report has been completed, other analyses can be created from it. I have created a profit and loss report for both the Balter and Barbata accounts.¹⁰

39. Upon information and belief, the SEC has not prepared such an analysis for any of the Balter or Barbata accounts.

c. Opinion 3: In order to prove wrongdoing by Balter, the SEC must show that the economic returns for the strategy, over the time at issue, were inequitable based on each account’s size.

40. As discussed above, an investment advisor’s clients are not only invested in a position on the trade date, but on the next day, and the next, and every day thereafter until the position is closed.

41. Correspondingly, they receive economic returns on each day the position is held, including the trade date and every day thereafter.

42. If trade allocations are inappropriate (for instance, if a manager was allocating losing trades to clients and winning trades to his own account) the implications would not be limited to the gains and losses on the trade date, but also thereafter. Thus any analysis of wrongdoing must consider the

¹⁰ See Exhibits 2 and 3.

entire account performance for the entire time the alleged behavior took place.

43. Indeed, because of the power of compounding, analysis of an accounts entire performance could show even *more* inequitable performance than just looking at the first-day returns.

d. Opinion 4: The Balter and Barbata account returns were not inequitable over the time at issue.

44. If the allocations were inequitable, the results should show up in the returns of the respective accounts over time.

45. However, they do not.

46. Remarkably, over the 20-month period of May 2012 through December 2013, the Balter and Barbara accounts had almost identical performance.

47. The Balter accounts had an unannualized internal rate of return of -19.71 percent while the Barbara accounts had an unannualized internal rate of return of -20.32 percent.¹¹ That equates to a 61 basis point difference, or 3.1 basis points per month.¹²

48. On an *annualized* basis, the Balter and Barbata internal rates of return were -12.33 percent and -12.73 percent, respectively. This amounts to a 40 basis point annual difference over the same 20-month period.

49. If the allocations were truly inequitable, one would expect the returns to be heavily skewed in favor of the Balter accounts. However, they are only trivially in favor of the Balter accounts. The 40 basis point annualized difference is within what would be expected from each set of accounts having large differences in the amounts and timing of their deposits and withdrawals.

e. Opinion 5: There is no evidence of wrongdoing in the actual allocation of profits and losses as compared to a simple, unadjusted pro-rata allocation.

50. A comparison of the actual allocation of gains and losses to what would have been allocated on a simple, unadjusted, pro-rata basis between the Balter

¹¹ See Barbata and Balter Cash Flow and Internal Rate of Return Comparison, Exhibit 4, attached.

¹² *Id.* One full percent is equal to 100 basis points.

and Barbata accounts shows a small cumulative difference of \$8,934.¹³ This difference can be seen in the table below.

Table 1: Monthly Cumulative Actual Benefit to Balter/(Barbata)¹⁴

Month	Cumulative Actual Benefit to Balter/(Barbata)
May-12	(64,763)
Jun-12	(66,093)
Jul-12	(91,357)
Aug-12	(115,890)
Sep-12	(112,290)
Oct-12	(105,168)
Nov-12	(87,203)
Dec-12	(219,779)
Jan-13	(196,644)
Feb-13	(237,397)
Mar-13	(261,224)
Apr-13	(221,599)
May-13	4,654
Jun-13	6,579
Jul-13	(9,767)
Aug-13	(72,210)
Sep-13	(66,484)
Oct-13	(48,685)
Nov-13	(16,240)
Dec-13	8,934

51. To put this difference in perspective, there were \$494,077,483 in total purchases in the combined Balter and Barbata accounts.¹⁵ Thus the cumulative difference in profit and loss allocation over the entire two year period is less than two one-thousands of one percent of the total purchases amount, or 0.000018.

e. Opinion 6: The Barbata accounts were undercharged \$165,146 of management fees.

¹³ See Balter Percentage-based v. Actual P/L Allocation Analysis, Exhibit 5, attached.

¹⁴ *Id.*

¹⁵ See Balter and Barbata Profit and Loss reports, Exhibits 2 and 3, attached.

52. The Oracle Investment Research March 2, 2011 ADV II, states:¹⁶

Management fees are paid quarterly and are negotiable based on (sic) complexity of each client. Fees do not to (sic) exceed 2.50% per annum of the client's entire account balance

Fees are due on the fifteenth day of the calendar quarter, and may be billed directly to the client or deducted from the advisory account automatically depending on the contractual relationship with client.

Fees are based on the client's account asset value as of the last business day of the previous Calendar quarter.

53. Balter historically charged Barbata a 1.5 percent annual fee in their managed accounts, but did not charge a fee in most of the accounts in the new strategy.

54. Indeed, if the account profits and losses had been allocated on an adjusted pro-rata basis, and the 1.5 percent annual fee been assessed against those adjusted balances, a total of \$291,178 in fees would have been charged.¹⁷

55. However, only \$126,032 of fees were charged. The difference of \$165,146 was the amount the Barbata accounts were undercharged.

f. Opinion 7: Accounting for the adjusted pro-rata allocation of gains and losses and the payment of the uncharged fee amount, the net *benefit* to the Barbata accounts was \$120,021.

56. As discussed above, the industry custom and practice is to allocate trades based on the relative size of the accounts being managed under a given strategy.

57. Had the Balter and Barbata account trades been allocated on a pro-rata basis, the Barbata accounts would have been allocated \$45,125 *less* in losses. Commensurately, the Balter accounts would have been allocated \$45,125 *more* in losses.¹⁸

¹⁶ Oracle Investment Research ADV II, March 2, 2011; Item 5 Fees and Compensation. (No page numbers.)

¹⁷ See the Allocation-Adjusted Profit and Loss, Exhibit 6, attached. In this analysis I adjusted the actual allocation of the total gains and losses by the percentage each account made of the total Balter and Barabata assets. I also calculated the 1.5% fee based off these adjusted account values.

¹⁸ See the Actual v. Allocation-Adjusted Profit/Loss, Exhibit 7, attached.

58. However, this analysis only accounts for the uncharged fee when calculating the percentages for allocating the gains and losses. It does not account for the actual *payment* of the full management fee.
59. The uncharged fee amount was \$165,146. That represents a benefit to the Barbata accounts. If that amount is netted against the \$45,125 of losses that the Barbata accounts were over-allocated, the net benefit is \$120,021.¹⁹ Commensurately, the net detriment to the Balter accounts was \$120,021.²⁰
60. In short, the Barbata accounts benefited by \$120,021 from the *actual* allocations and undercharging of fees.

VI. Conclusion

61. Based on my experience, my review of the documents, and my own analyses, there was no wrongdoing by Mr. Balter and/or Oracle Investment Research in the trade allocations over the time period at issue. This can be clearly seen in the percentage-based allocation and internal rate of return, which is within industry dispersion norms. If there was wrongdoing, these would be heavily skewed in favor of Mr. Balter.
62. Furthermore, if the trades had been allocated as the SEC claims they should have been, and the customary fees been charged, the Barbara accounts would be worse off by \$120,021.

Respectfully submitted,



John J. Duval, Jr.

¹⁹ See the Net Benefit Analysis, Exhibit 8, attached.

²⁰ *Id.*

0001

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. SF-03954-A

5 ORACLE INVESTMENT RESEARCH)

6

7 WITNESS: Brian Barbata

8 PAGES: 1 through 89

9 PLACE: Securities and Exchange Commission

10 44 Montgomery Street, Suite 2800

11 San Francisco, California

12 DATE: Wednesday, January 6, 2016

13

14 The above-entitled matter came on for hearing,

15 pursuant to notice, at 12:47 p.m.

16

17

18

19

20

21

22

23

24 Diversified Reporting Services, Inc.

25 (202) 467-9200

0002

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 REBECCA LUBENS, ESQ.

5 MONIQUE WINKLER, ESQ.

6 Division of Enforcement

7 Securities and Exchange Commission

8 44 Montgomery Street, Suite 2800

9 San Francisco, California 94104

10 (415) 705-2500

11

12

13 On behalf of the Witness:

14 BRIAN BARBATA, PRO SE

15

16 Also Present:

17 PAMELA HEIJMANS, SEC OCIE

18 CONNOR HURLEY, SEC DERA (Via Telephone)

19

20

21

22

23

24

25

0003

1 CONTENTS

22 Q Did you -- so, again, regardless of whether
23 you saw this or not, did you believe that Mr. Balter
24 was placing client trades prior to his own personal
25 trades?

0024

1 A When you say prior -- placing prior, do you
2 mean -- you mean in a -- in an actual floor trade the
3 timing or do you mean giving priority to, you know, to
4 trade?

5 In other words, would he think, "Hey, here's
6 a good trade. I think I'll go do it and then I'll
7 recommend it to my clients in a few days"?

8 Q Mm-hmm.

9 A Or -- this is my question -- or "We're
10 trading a whole bunch of stuff and I'm in first and
11 Terry's in second and Brian's in third"?

12 Those are a little different questions.

13 Q Understood. That's a very good
14 clarification. Let's stick with the latter.

15 A Okay.

16 Q So did you believe on any given day when he
17 was placing trades in a particular security, that he
18 was trading for himself before his clients?

XXX

19 A I don't think I cared.

XXX

20 Q Okay.

21 A I mean, I didn't have a belief one way or the
22 other. I just don't think I cared.

XXX

23 Q Okay. And why not?

24 A Because, you know, one of the things I liked
25 about Laurence was that he did have his own money on
0025

1 the table a lot of the time, if not all the time, and I
2 thought -- I guess I think right now, as I think about
3 it -- that that seemed fair.

4 I mean, we're all investors and I trusted him
5 not to do anything that would disadvantage anybody
6 else, but I never thought about when trades were placed
7 in terms of the exact timing of the orders.

XXX

8 Q Okay. Did you -- you also mentioned -- when
9 you were asking what my question meant, you mentioned
10 the concept of him giving himself a better price and --
11 you know, giving himself a better trade than you, let's
12 say, on a given day.

13 Is that something that would have mattered to
14 you?

15 A Well, yes, but it could have happened
16 accidentally.

17 Q Mm-hmm.

XXX

18 A I mean, I just don't know how those things
19 work, but I could imagine that if Laurence calls up
20 whoever does the trading for Fidelity, for example, and
21 said, "Okay. I want to make the following trades for
22 Chevron Corporation. Da-dip, da-dip, da-dip, da-dip,
23 da-dip," and he reads them all of, and the guy on the

25 responsibility to manage my accounts and he seemed to

0027

1 take that responsibility very seriously, and it just --
2 the thought never crossed my mind that it would be
3 anything but -- but his first responsibility.

4 Q When you say he seemed to take that
5 responsibility very seriously, what's your basis for
6 that; why did you have that impression?

7 A Well, he's just -- he was a very serious guy,
8 he was a very studious guy. I don't know. He read a
9 lot. He communicated with me a lot on these things.

10 When we or I would lose money, he would
11 agonize over it. I remember him saying, you know, "I
12 think I'm getting an ulcer," or, you know, "My wife
13 took me to the hospital and I can't sleep because of
14 that trade I did the other day," you know.

15 I mean, he just really -- he really seemed to
16 take it very personally that I do -- that my accounts
17 do well, yeah.

18 Q Did you -- you can put that Exhibit 10 aside.

19 I want to ask you a few questions about a day
20 trading strategy that I understood you pursued while
21 you were Mr. Balter's client.

22 Is that true?

23 Did you authorize Mr. Balter to essentially
24 day trade in your accounts?

25 A Well, I think day trading is a term of art,

7 having an SEC audit so we can't really issue a new
8 license," and he was all frustrated with things that
9 were going on and he had some clients dropping out and
10 he was saying, you know, "I can't do this anymore," and
11 that was the end of that.

12 Q So you mentioned that -- what should I refer
13 to this strategy as?

14 A Day trading is fine.

15 Q Okay.

16 A As long as we understanding that it might not
17 be your definition.

18 Q That's fine as you've defined it, this day
19 trading strategy.

20 You said you understood at some point it was
21 just you and him trading.

22 A Yeah.

23 Q Is that correct?

24 A Yeah, yeah.

25 Q And that's something that Mr. Balter told

0036

1 you?

2 A Yeah. Like I said, I think I asked him, "How
3 many of your clients," and that's when I found out, and
4 I probably said something like, "So I'm the only fool?"

5 You know?

6 Q Right.

7 But you understood he was trading for his own

9 that. Initially I thought he was -- this was something
10 new that he was doing for several clients.

11 So it wasn't until I asked him how many
12 clients that he said, "It's just you and me."

13 Q Okay. And when do you think you asked him
14 that?

15 A I don't remember. I mean, I don't know. I
16 just really don't remember. Half way through the whole
17 period, whatever that was.

18 Q Okay. And is that something you would have
19 liked to know earlier, that you were the only client he
20 was implementing this strategy for?

21 A I mean, you always like to have more
22 information rather than less. I think the proper
23 answer to the question is I don't know that it would
24 have made any difference.

25 Q Okay.

0038

1 MS. WINKLER: Did you find that out before or
2 after you sustained the fairly significant losses in
3 your account?

4 THE WITNESS: Before.

5 MS. WINKLER: Okay.

6 THE WITNESS: Definitely before.

7 BY MS. LUBENS:

8 Q But -- and did you understand from the
9 beginning that Mr. Balter was trading for his own

10 accounts as well?

11 A No, not from the beginning.

12 Q Okay. When did you come to understand that

13 he was trading for his own accounts, too?

14 A I think just when I asked that question,

15 whenever that was, and I can't really tell you.

16 Q Okay. Did you ever understand during the

17 period of your relationship with Mr. Balter while he

18 was implementing this strategy that he would be trading

19 for both of your accounts in the same block trading

20 account?

21 A You know, the first time I ever heard those

22 terms were when you called me on the phone and, you

23 probably remember, I said, "The what?" Because I'd

24 never heard that term before and you had to explain to

25 me what "block trading" meant, so --

0039

1 Q And this -- we don't even need to use that

2 term. It's just -- it's easy, you know, to have a

3 common reference.

4 A That's fine.

5 Q But did you ever understand that Mr. Balter

6 was trading for both of your accounts in the same

7 account literally at the same time?

8 A No, no. It's a technical issue as far as I

9 was concerned. If I had known, I probably wouldn't

10 have cared.

XXX

11 Q Okay. Did you know or ever understand during
12 the period of your relationship with Mr. Balter that he
13 was executing trades for both of your accounts in the
14 same account, a block trading account, and then
15 allocating the trades to your own respective accounts
16 after he already knew what the profits and losses of
17 the trades were?

18 A No.

19 Q Is that something you knew --

20 A No.

21 Q -- at the time of your relationship with Mr.
22 Balter?

23 A No, I didn't know that until you explained it
24 to me.

25 Q And is that something that you would have
0040

1 liked to know?

2 A I guess I would have only liked to know it if
3 it wasn't going to be, you know -- I guess the only
4 word I can think of is *pari passu*, a financial term. XXX

5 You know what that means. I mean, I would have always
6 expected things to be done *pro rata*.

7 Q And just so the record is clear, I want to
8 make sure I understand what you mean by that.

9 What do you mean by *pro rata* or *pari passu*?

10 A Well, if the block had been \$10,000 -- well,
11 \$9,000 of mine and \$1,000 of his, then whatever the

12 results would be would be 10 percent and 90 percent.

13 That's right.

14 Q Did you -- did you know -- or did you ever
15 authorize Mr. Balter to decide whether to allocate the
16 trade to your account or his account after he knew what
17 the profits and losses were?

18 A No, I didn't. As I said, I don't remember
19 ever even hearing the word "allocation."

XXX

20 Q Okay. Did you ever authorize Mr. Balter to
21 decide how to split a trade in the block account after
22 he knew what the profits and losses were?

23 A Well, I understand you're doing things for
24 the record, but as I said, I didn't know there was such
25 a thing as a "block account," so no.

0041

1 Q Or, again, not to use that term, but did you
2 ever understand that he was trading for both of you in
3 the same account and then --

4 A No.

5 Q -- at the end of the day, after the profits
6 and losses were known, deciding how much to put in your
7 account and how much to put in his account --

8 A No.

9 Q -- of the trade?

10 A No. Sorry to disrupt your question, but no.

11 If I had given it any thought consciously, I
12 would have thought he was trading in some account that

16 aware of.

17 If he traded in a block account, as I now
18 understand it, and allocated everything pro rata, I
19 wouldn't care whether it was in a block account or
20 separate accounts or whatever.

XXX

21 So anything other than that, I would care
22 about.

23 Q Mm-hmm. Can I just -- do you mind just this
24 one example? Can you indulge me?

25 A Sure.

0045

1 Q So I just want to make sure I've shown it to
2 you and, you know, gotten the -- all the recollection
3 you have.

4 A Okay.

5 Q So if you take a look at this first page,
6 these are the trades. The first -- these are both
7 trades -- the trades made on October 1st and October
8 3rd are both trades in AAPL Put Options. They are the
9 same security, so they both have the same strike price,
10 they both have the same expiration date, and you can
11 see that by looking at Column 6 where you see the
12 security. So 12 is the strike price and 13 is the
13 expiration date.

14 And so if you look at the top of the first
15 page of Exhibit 50, you can see that Mr. Balter
16 purchases a hundred AAPL Put Options for \$6.25. You

17 can see the quantity of -- it's in 22 and the price is
18 in 23. And then the action, the time, is in 21.

19 So you can see the purchase of a hundred AAPL
20 Put Options --

21 A How would I know it's Balter? There's no
22 names on here.

23 Q So I will represent to you that this is an
24 account over which only Mr. Balter had trading
25 authority.

0046

1 A Okay.

2 Q So these are purchases that Mr. Balter made
3 in the block account, a hundred AAPL Put Options at a
4 price of \$6.25 at 12:36 p.m. He sold them
5 approximately 10 minutes later -- you can see that
6 under the "sell orders" -- at a lower price. You can
7 see that in Columns 21 and 23.

8 And then if you turn over the page and you
9 look at the top of the second page, this is the
10 allocation of those trades.

11 If you look under October 1st -- so, sorry,
12 yeah, second page you see the allocation.

13 And what you can see is that first row where
14 you see the 1 next to it is Mr. Balter's account and
15 the 2 is your account.

16 This was a losing trade. Mr. Balter
17 allocated five percent of the losing trades to himself

23 that was inadvertent. We've received no information in
24 this investigation that Mr. Balter was charging you a
25 fee in this fashion.

0052

1 What I --

2 A No, I think my understanding was that the
3 allocations were a way of him taking his fee.

XXX

4 Q Okay. So that's not information we have.

5 What I do -- information we do have is that
6 we have received information, I can't tell you from
7 whom, that you gave Mr. Balter carte blanche, you know,
8 sort of authority to allocate these trades as he saw
9 fit and, you know -- and that you were willing to
10 weather the losses, you know, in some cases sort of at
11 his discretion.

12 And so one of the questions we asked you when
13 we interviewed you several months ago was whether you
14 ever gave Mr. Balter authority to sort of allocate the
15 gains and losses as he saw fit.

16 A And I've sat here and said before no. I
17 don't remember ever talking about allocations of any
18 sort.

19 Q Did you --

20 A I don't know what third party you would be
21 talking about. You know, Laurence is not a third
22 party. But there was never anybody in any of our
23 discussions. There was never any third party in any of

ORACLE INVESTMENT RESEARCH

CODE OF ETHICS

I. Statement of General Principles

This Code of Ethics has been adopted by The Oracle Investment Research (the “Adviser”) for the purpose of instructing all employees, officers, and directors of the Adviser in their ethical obligations and to provide rules for their personal securities transactions. All such persons owe a fiduciary duty to the Adviser’s clients. A fiduciary duty means a duty of loyalty, fairness and good faith towards the clients, and the obligation to adhere not only to the specific provisions of this Code but to the general principles that guide the Code. These general principles are:

- The duty at all times to place the interests of clients first;
- The requirement that all personal securities transactions be conducted in a manner consistent with the Code of Ethics and in such a manner as to avoid any actual or potential conflict of interest or any abuse of any individual’s position of trust and responsibility; and
- The fundamental standard that such employees, officers, and directors should not talk inappropriate advantage of their positions or of their relationship with clients.

It is imperative that the personal trading activities of the employees, officers, and directors of the Adviser be conducted with the highest regard for these general principles in order to avoid any possible conflict of interest, any appearance of a conflict, or activities that could lead to disciplinary action. This includes executing transactions through or for the benefit of a third party when the transaction is not in keeping with the general principles of this Code. All personal securities transactions must also comply with the Adviser’s Insider Trading Policy and Procedures. Employees shall comply at all times with all applicable federal securities laws.

Federal securities laws means the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, the Investment Company Act of 1940, the Investment Advisers Act of 1940, Title V of the Gramm-Leach-Bliley Act, any rules adopted by the Securities & Exchange Commission under any of these statutes, the Bank Secrecy Act as it applies to funds and investment advisers, and any rules adopted thereunder by the Securities & Exchange Commission or the Department of the Treasury. Employees shall at all times maintain the confidentiality of client identities, security holdings, financial circumstances and other confidential information. Employees shall report any violations of this Code of Ethics promptly to the Compliance Officer.

II. Definitions

A. Advisory Employees: any employee, officer, or director of the Adviser (or of any company in a control relationship to the Adviser) who, in connection with his or her regular functions or duties, participates in or makes recommendations with respect to the purchase or sale of securities; and any natural person who controls the Adviser and who obtains information about recommendations with respect to the purchase or sale of securities. The Compliance Officer will maintain a current list of all Advisory Employees.

B. Automatic Investment Plan: a program in which regular periodic purchases (or withdrawals) are made automatically in (or from) investment accounts in accordance with a predetermined schedule and allocation. An Automatic Investment Plan includes a dividend reinvestment plan.

C. Beneficial Interest: ownership or any benefits of ownership, including the opportunity to directly or indirectly profit or otherwise obtain financial benefits from any interest in a security.

D. Compliance Officer: the Compliance Officer is Lawrence I. Balter, or with respect to him, _____

E. Employee Account: each account in which an Employee or a member of his or her family has any direct or indirect Beneficial Interest or over which such person exercises control or influence, including, but not limited to, any joint account, partnership, corporation, trust or estate. An Employee's family members include the Employee's spouse, minor children, any person living in the home of the Employee and any relative of the Employee (including in-laws) to whose support an Employee directly or indirectly contributes.

F. Employees: the employees, officers and directors of the Adviser, including Advisory Employees. The Compliance Officer will maintain a current list of all Employees.

G. Exempt Transactions: transactions which are 1) effected in an amount or in a manner over which the Employee has no direct or indirect influence or control, 2) pursuant to an Automatic Investment Plan, 3) in connection with the exercise or sale of rights to purchase additional securities from an issuer and granted by such issuer pro-rata to all holders of a class of its securities, 4) in connection with the call by the issuer of a preferred stock or bond, 5) pursuant to the exercise by a second party of a put or call option, 6) closing transactions no more than five business days prior to the expiration of a related put or call option, 7) inconsequential to any Fund because the transaction is very unlikely to affect a highly liquid market or because the security is clearly not related economically to any securities that a Fund may purchase or sell, 8) involving shares of a security of a company with a market capitalization in excess of \$500 million.

XXX

H. Funds: any series of any investment company to which the Adviser provides investment advice.

I. Related Securities: securities issued by the same issuer or issuer under common control, or when either security gives the holder any contractual rights with respect to the other security, including options, warrants or other convertible securities.

J. Securities: any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate or interest or participation in temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase (including options) any of the foregoing; except for the following: 1) securities issued by the government of the United States, 2) bankers' acceptances, 3) bank certificates of deposit, 4) commercial paper, 5) high quality short-term debt instruments, including repurchase agreements, and 5) shares of unaffiliated registered open-end investment companies, other than exchange traded funds.

K. Securities Transaction: the purchase or sale, or any action to accomplish the purchase or sale, of a Security for an Employee Account. The term Securities Transaction does not include transactions executed by the Adviser for the benefit of unaffiliated persons, such as investment advisory and brokerage clients.

REPORT OF S. LANE GENATOWSKI
FOR CONSULTATIVE PURPOSE ONLY

I. Summary of Engagement & Opinion

1. I have been asked by counsel for Laurence Balter to consult in regards to a Wells notice received from the Securities Exchange Commission ("SEC"), and to provide opinions on two issues in response to that letter. Specifically:

- To review the position records of the Oracle Mutual Fund (the "Fund") to determine whether or not the industry concentration limit of 25% under the Investment Company Act Rel. No. 9011 (Oct. 30, 1975) (the "Concentration Limit") was violated from January 12, 2011 through August 20, 2013¹, the entirety of the fund's life (the "Investment Period").
- To review the records of the Fund, to determine whether or not the diversification requirement of 75% under Section 5 (b) (1) of the Investment Company Act of 1940 (the "Diversification Requirement") was violated during the Investment Period.

2. For the reasons, based on the work and subject to the assumptions more fully set forth below, I have reached the following opinions:

- The Fund was in compliance with the Concentration Limit during the Investment Period.
- The Fund was in compliance with the Diversification Requirement during the Investment Period.

3. In reaching these opinions and preparing this report, I have relied on my background and experience, as well as the documents, data, and other information and assumptions as noted in the footnotes of this report. At my instruction and under my supervision and review, I was

¹ There are nine trading days for which there are records after August 20, 2013, however on each of these days the sole investment held is the Fidelity Money Market Fund (Ticker FNSXX).

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

15. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

² <https://www.sec.gov/info/edgar/siccodes.htm>
³ www.spcapitaliq.com

[REDACTED]

IV. [REDACTED]

[REDACTED]

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND REPORT BY EXEMPT REPORTING ADVISERS

Primary Business Name: ORACLE INVESTMENT RESEARCH

CRD Number: 153401

Other-Than-Annual Amendment - All Sections

Rev. 10/2012

1/29/2014 3:22:18 PM

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 4.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):

ORACLE INVESTMENT RESEARCH, LLC

B. Name under which you primarily conduct your advisory business, if different from Item 1.A.:

ORACLE INVESTMENT RESEARCH

List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of

[] your legal name or [] your primary business name:

D. (1) If you are registered with the SEC as an investment adviser, your SEC file number:

(2) If you report to the SEC as an exempt reporting adviser, your SEC file number:

E. If you have a number ("CRD Number") assigned by the FINRA's CRD system or by the IARD system, your CRD number: 153401

If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

F. Principal Office and Place of Business

(1) Address (do not use a P.O. Box):

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

If this address is a private residence, check this box: [x]

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for SEC registration, if you are registered only with the SEC, or if you are reporting to the SEC as an exempt reporting adviser, list the largest five offices in terms of numbers of employees.

(2) Days of week that you normally conduct business at your principal office and place of business:

[x] Monday - Friday [] Other:

Normal business hours at this location:

0900-1700

(3) Telephone number at this location:

(4) Facsimile number at this location:

G. Mailing address, if different from your principal office and place of business address:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

If this address is a private residence, check this box: []

H. If you are a sole proprietor, state your full residence address, if different from your principal office and place of business address in Item 1.F.:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

I. Do you have one or more websites?

Yes No

[] [x]

Item 5 Fees and Compensation

Management fees are paid quarterly and are negotiable based on complexity of each client. Fees do not to exceed 2.50% per annum of the client's entire account balance.

Fees are due on the fifteenth day of the calendar quarter, and may be billed directly to the client or deducted from the advisory account automatically depending on the contractual relationship with client.

Fees are based on the client's account asset value as of the last business day of the previous Calendar quarter.

The Adviser does not generate fees from trade commissions or sales of products. The only revenue generated by the firm is based on the asset value of the account.

Important disclosure:

Private clients who invest in any of the mutual funds that we directly manage are credited the management fee, less the internal expense charged by Fidelity the firm's custodian.

We do not "double-dip".

For example:

Suppose a client is charged 1.50% annually on \$500,000 invested in a diversified portfolio which may include stocks, bonds or other mutual funds in their Fidelity account. Furthermore, let us suppose that \$100,000 of this portfolio is invested in the Oracle Mutual Fund as part of their overall asset allocation of which the firm as the Fund's Investment Advisor receives an advisory fee of .75% annual fee from all fund investors.

Here is how the math works in this example:

Client portfolio	\$500,000	Annual Fee @ 1.50%	-\$6,500
Amount of portfolio in Oracle Mutual Fund	\$100,000	Credit of annual management fee @ 0.75%	+\$750
Fidelity's internal mutual fund charge		@.40%	-\$400
Annual Fee			-\$6,150
Effective Annual Rate			1.20%

We utilize Advent® software within Fidelity accounts to keep track of these credits and debits and it is automatically calculated in the client fee reports.

Please note: All brokerage firms charge internal fees to all mutual fund companies. It may be less expensive to hold the Oracle Mutual Fund outside of a Fidelity account and directly with the Fund's custodian bank. However, in some cases this difference may be offset for the convenience of having all assets under one statement for consolidation and trading purposes.