

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71712 / March 13, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30979 / March 13, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15787

In the Matter of

**HAROLD TEN,
MENACHEM “MARK”
BERGER, and
DEBRA FLOWERS,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to 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 Harold Ten (“Ten”), Menachem “Mark” Berger (“Berger”), and Debra Flowers (“Flowers”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940,

Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

SUMMARY

1. These proceedings arise from a fraudulent scheme to profit from the imminent deaths of terminally ill hospice and nursing home patients through the purchase and sale of more than \$80 million in deferred variable annuities (“variable annuities”) between July 2007 and at least February 2008.

2. The scheme was orchestrated by Michael A. Horowitz (“Horowitz”), then a registered representative of a large broker-dealer firm (“Broker-Dealer 1”). Horowitz, together with Ten, and Berger and Flowers (employees of Chicago area nursing homes), made material misrepresentations and used deceptive devices to obtain the personal health and identifying information (“ID and Health Data”) of terminally ill hospice and nursing home patients in order to designate them as annuitants on variable annuity contracts that Horowitz marketed to wealthy investors. Horowitz marketed these variable annuities – which are designed by their issuers to be long term investment vehicles – as opportunities for short-term gains. Horowitz and the other registered representatives he recruited to the scheme (collectively, the “Registered Representatives”) obtained their firms’ approval of the variable annuity sales by making material misrepresentations and omissions on trade tickets, customer account forms and/or point-of-sale forms, which the broker-dealer principals used to conduct investment suitability reviews.

RESPONDENTS

3. **Harold Ten**, age 50, is a resident of Los Angeles, California. Ten was recruited to the scheme by Horowitz to identify terminally ill persons and obtain their ID and Health Data, and supply it to Horowitz for use in variable annuities transactions (a role hereinafter referred to as “annuitant finder”). In or about June 2007, Ten began to conduct business as “Raphael Health,” an entity that purported to provide charitable assistance to patients in hospice care.

4. **Menachem “Mark” Berger**, age 40, is a resident of Chicago, Illinois. Also recruited by Horowitz as an “annuitant finder” for the scheme, Berger is the executive director of an entity which owns and operates nursing home facilities in Chicago, Illinois. Berger is also the owner of Patient Financial Services, Inc., an entity that purported to be in the business of providing financial support to individuals with terminal medical diagnoses.

5. **Debra Flowers**, age 37, is a resident of Chicago, Illinois. Flowers served as an “annuitant finder” for the scheme after being recruited by Berger. At various times, Flowers has been employed by Berger as an admissions and marketing director for nursing homes managed by Berger.

¹ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

6. **Horowitz**, the scheme architect, was employed as a registered representative of a large, wire-house broker-dealer firm during part of the relevant time period (“Broker-Dealer 1”).

7. **Broker-Dealer 1** is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

8. **Broker-Dealer 2** is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

9. **Broker-Dealer 3** is a broker-dealer and investment adviser registered with the Commission and headquartered in Oakdale, Minnesota.

10. **Raphael Health** was established by Ten in or about June 2007, as a registered d/b/a of an existing non-profit 501(c)(3) organization (“Charity”). Also in or about June 2007, Ten set up a web page for Raphael Health, which described Raphael Health as an organization “dedicated to helping patients with a life limiting illness to live their remainder days in comfort and dignity.” At all relevant times, Raphael Health’s activities were overseen by Ten.

11. **Patient Financial Services LLC** is an Illinois limited liability company with its principal place of business in Lincolnwood, Illinois. Patient Financial Services was incorporated in Illinois and, during the relevant time period, purported to be in the business of providing financial support to patients with terminal medical diagnoses.

THE RESPONDENTS’ SCHEME

12. In or about May 2007, Horowitz devised a scheme to exploit the death benefit and “bonus credit” components of the variable annuity contracts he subsequently sold by designating terminally ill hospice and nursing home patients as the contract annuitants.

13. Variable annuities are designed to serve as long-term investment vehicles, typically to provide income at retirement. Although variable annuities offer investment features similar in many respects to mutual funds, a typical variable annuity offers certain features not commonly found in mutual funds, including death benefits² and/or bonus credits.³ Horowitz solicited wealthy individual and institutional investors to make large investments in variable annuities that offered these benefits.

² The typical variable annuity death benefit provides for a payment to the beneficiary at the contract annuitant’s death equal to either the value of the underlying investment portfolio or the purchase price of the annuity less any withdrawals, whichever is greater. This death benefit option allows an investor to profit from positive investment performance as part of the death benefit while providing a hedge against losses in the portfolio’s value by providing for a payout equal to at least the amount invested in the annuity less any withdrawals. In the typical variable annuity, the contract owner is also the contract “annuitant.” However, in the scheme described herein, hospice and nursing home patients unrelated to the contract owners were designated as the annuitants.

³ A bonus credit is a sum of money immediately credited to the contract owner’s investment account by the annuity issuer (typically a percentage of the premiums being invested in the annuity contract). For example, certain investors that purchased variable annuities through Horowitz made an initial investment of \$1 million and received “bonus credits” that increased the value of their annuity by 5% (\$50,000) to \$1,050,000.

14. In each of these contracts, a terminally ill hospice or nursing home patient was designated as the contract annuitant. At least 16 terminally ill hospice patients were designated as annuitants in more than 50 variable annuities sold by the Registered Representatives. All of the hospice patients were residents of southern California or Chicago, Illinois.

15. The hospice patients designated as annuitants had no familial or business relationship with the investors who purchased the annuities. Instead, they were selected based on their terminal illnesses and the likelihood that they would die soon, and thereby trigger death benefit payouts in variable annuity contracts in the very near term. As part of his pitch to investors, Horowitz told them that he would supply the annuitants, with investors needing to furnish only their funds.

16. These “stranger annuitants” likewise had no contractual right to any portion of the death benefits paid out under the terms of the variable annuities sold during the scheme. Instead, each of the contracts directed that these benefits be paid to one of the investor’s family members or relatives, or to a family trust created by the investor.

17. Anticipating that the annuitants would soon die, triggering death benefit payout elections in the annuity contracts, Horowitz advised his customers to invest their premiums aggressively because if the value of their portfolio increased, they would receive the portfolio value as the death benefit payout. If the value of their portfolio decreased, the death benefit nonetheless guaranteed them a payout equal to the value of their premiums paid minus any withdrawals. Horowitz also advised his customers to invest large sums of money in each annuity they purchased to maximize their “bonus credit.”

18. Horowitz employed at least two varieties of fraud in carrying out his sale of “stranger-owned” annuities. First, Horowitz (as well as Respondents Ten, Berger and Flowers) fraudulently obtained and used the ID and Health Data of certain unwitting terminally ill hospice and nursing home patients who were designated as annuitants. Second, the Registered Representatives falsified broker-dealer trade tickets, customer account forms and/or point-of-sale forms (including suitability questionnaires) to obtain supervisory approval of the annuities that were sold pursuant to the scheme.

Respondents Ten, Berger and Flowers Obtain Confidential ID and Health Data through Deceptive Practices

19. To implement his plan, Horowitz needed a ready supply of terminally ill persons, unrelated to the investors, to use as annuitants in variable annuity sales. Horowitz recruited Ten and Berger to identify the terminally ill persons to be used as annuitants. Berger then recruited Flowers. Working with Horowitz, these “annuitant finders” engaged in a scheme to obtain the patients’ confidential ID and Health Data, which they then fraudulently misused. Horowitz needed patients’ Health Data to confirm that the individuals he designated as annuitants had a terminal medical diagnosis. He needed their ID data (including social security number and date of birth) to designate them as annuitants and to submit death benefit claims to the issuers whose annuities he sold.

Ten, Raphael Health and the California Annuitants

20. Horowitz approached Ten in May 2007 and described his stranger-owned annuities scheme to Ten.

21. After a series of closed-door meetings between Horowitz and Ten at Charity's offices in May 2007, Ten told his assistant that he was going to start a charity called "Raphael Health." Raphael Health was purportedly going to focus on providing charitable assistance exclusively to hospice care patients.

22. Raphael Health was used in the scheme to obtain patient ID and Health Data. On June 1, 2007, Ten filed a fictitious name certificate with the State of California, allowing one of his existing charities to do business under the name "Raphael Health."

23. Ten created a website for Raphael Health and set up Raphael Health email accounts. The Raphael Health webpage stated that Raphael Health was

an organization dedicated to helping patients with a life limiting illness to live their remainder days in comfort and dignity.... Through the generosity of private and corporate philanthropists Raphael Health helps patients who[] have chosen hospice care and are at home or in a facility....

24. In reality, Raphael Health had no private or corporate donors, and its true purpose was to obtain hospice patient ID and Health Data for Horowitz's use in selling stranger-owned annuities on those patients' lives. Raphael Health's website failed to disclose these facts.

25. In July 2007, Ten opened a bank account in the name of Raphael Health, and funded it with several thousand dollars from his personal bank account. These funds were to be used for the charitable donations Ten planned to offer hospice patients as part of the plan to obtain their ID and Health Data.

26. Beginning in June 2007, Ten held Raphael Health out as a charity devoted to providing assistance to hospice patients. Ten solicited hospice care providers in Los Angeles, San Francisco and New Orleans by touting Raphael Health's purported charitable services. In contemporaneous emails to those hospice care providers, Ten and his assistant described Raphael Health as a "non-profit 501(c)(3) organization."

27. In June 2007, Ten met with the Director of Development of a southern California hospice care provider ("HCP") During the June 2007 meeting, Ten told HCP's Director of Development that Raphael Health

was an organization of some large, very high profile donors, the type of donors whose names are often on the sides of buildings at Universities, that sort of donor, Universities, hospitals. And that in this instance, they wanted to give and remain anonymous in that gift so that they had established Raphael Health....[Harold Ten] indicated that they would like to see the patient, they would like to meet the patient. He, specifically. And the purpose for that was that they could tell – he could tell their

donors or his donors who those individuals were that they were actually meeting – so he would be able to tell a story to help receive other donations to continue those donations to come into the individual patient requests that they were filling.

28. Ten's statements to HCP's Director of Development were false because, among other reasons, Raphael Health had no donors other than Ten himself.

29. Ten implied that there were conditions on the purported aid to be offered. First, only HCP hospice patients (*i.e.*, those who had been diagnosed with terminal illnesses and were receiving only palliative care in their home), as opposed to other HCP patients receiving in-home curative care or treatment, were eligible for Raphael Health's donations. Second, Ten usually capped the amount to be donated per patient at between \$250-\$500. Third, Raphael Health required that HCP provide it with the following information concerning any candidate for a donation: (i) the patient's name and address; (ii) the patient's date of birth; (iii) the patient's social security number; (iv) the patient's medical diagnosis; and (v) confirmation that the patient was receiving hospice care. This was the information that Horowitz needed to designate the hospice patients as annuitants. Finally, Ten conditioned the donations on his right to visit HCP patient in question. Ten told HCP that he wanted to be able to tell his donors each patient's "story" to help raise additional donations for other patients. After visiting Raphael Health's website to confirm the legitimacy of the charity, HCP administrator—grateful for what he understood to be Raphael Health's purely charitable donations to HCP's hospice patients—agreed to Ten's conditions.

30. Ten never told HCP that he planned to forward patient personal identifying information to Horowitz, or that Horowitz wanted to sell annuity contracts to third parties who would profit when HCP patients died.

31. Between late July 2007 and at least December 2007, Ten met with multiple HCP hospice patients and with certain patients receiving care from other hospice providers. These meetings took place at the patients' homes. Horowitz attended many of these meetings.

32. Social workers from HCP also attended the meetings with HCP hospice patients. Ten told the HCP social workers that he wanted to meet with the patients who were receiving charitable assistance from Raphael Health so he could tell their story to Raphael Health's "donors." According to one HCP social worker

When – at the meeting when we met with the patient in their home, before we met, they, he and [Horowitz], met me and stated that the patients – the donors for this money did not want to give to hospitals. They didn't want to give to big organizations, that they would just receive a nameplate.

They wanted to see where their money was being spent; so therefore, Harold and [Horowitz] showed up. They had a box of candy for the patient.

33. The patients, their families and their HCP health care providers all believed that the purpose of the visits was charitable. However, Horowitz's true purpose in visiting patients

was to confirm that they were in fact dying, and, therefore, that they were suitable annuitants. Horowitz actively concealed his true purpose for attending from HCP and the hospice patients that he visited.

34. Unbeknownst to the HCP and its patients, after each patient meeting, Ten provided Horowitz with the ID and Health Data that he obtained from the HCP under false pretenses. Horowitz, in turn, used patient ID and Health Data to sell variable annuities in which the hospice patients were designated as the contract annuitants.

35. Between July 2007 and at least December 2007, Ten provided Horowitz with the names and ID data of hospice patients in southern California. At least six of these patients were designated as annuitants in at least 18 variable annuities sold by Horowitz and a second representative that Horowitz recruited to the scheme, with some of the patients designated as annuitants in multiple policies.

36. As part of the ruse, Ten asked HCP to keep him informed of the health status of each patient whom he had visited, falsely telling HCP that Raphael Health's "donors" wanted to remain apprised of each patient's story. In reality, Horowitz and Ten wanted this information so they would know when each patient died and Horowitz could file annuity death benefit claims for his customers, who then stood to receive payouts on their variable annuity investments. As part of the scheme, Ten obtained death certificates for each of the patients who had been designated as an annuitant and provided the death certificates to Horowitz for his use in filing death benefit claims.

37. HCP, its hospice patients, and their families were completely unaware that Horowitz had sold variable annuities on the lives of HCP hospice patients and that third parties stood to profit from their deaths.

38. Ten has never been registered with the Commission as a broker or dealer, or been an associated person of a registered broker or dealer. However, during the relevant period and based on the foregoing, Ten was an associated person of Horowitz, who was acting as a broker, but who was not separately registered as a broker or dealer.

Ten Purchases an Annuity on the Life of an HCP Hospice Patient

39. Ten also purchased an annuity on the life of one of the HCP hospice patients he visited. On November 19, 2007, Ten met with "Jane Doe," a terminally ill HCP hospice patient, under the pretense of providing charitable assistance through Raphael Health. Horowitz traveled with Ten to Jane Doe's home.

40. Jane Doe, dying of stomach cancer, had previously told her HCP social worker about her desire to take her children to Disneyland before she passed away. HCP notified Raphael Health about Jane Doe's request for assistance, after first determining that she would likely not live long enough to have her request processed through another well-known charitable foundation.

41. Raphael Health reimbursed HCP for the cost of the trip to Disneyland, which Jane Doe was able to take with her children. As a condition of the donation, Ten required HCP to

provide him with Jane Doe's ID and Health Data prior to the visit and thereafter met with Jane Doe at her home. During the brief meeting, neither Ten nor Horowitz mentioned variable annuities or proposed designating Jane Doe as an annuitant in variable annuities to be sold to third parties.

42. On the drive back from Jane Doe's home, Horowitz asked Ten if he wanted to purchase an annuity on Jane Doe's life. Ten agreed to do so. On the same day, Horowitz arranged for Ten to purchase a deferred variable annuity through Broker-Dealer 2, in which Jane Doe was designated as the contract annuitant. Ten provided Horowitz with Jane Doe's ID and Health Data (including date of birth, address and social security number) that Horowitz needed in order to designate her as the annuitant in Ten's annuity. Ten invested \$1 million in the annuity.

43. On or about November 26, 2007, a deferred variable annuity was issued to Ten in which Jane Doe was the designated annuitant. Because he invested his \$1 million in a "bonus" annuity, Ten's account was credited with \$50,000.

44. On December 20, 2007, Jane Doe died. Ten obtained a copy of her death certificate and provided it to Horowitz. Horowitz used the death certificate to prepare a death benefit claim on Ten's "Jane Doe" annuity, which was then submitted to the issuer.

45. Ten subsequently received death claim payouts from the issuer totaling \$1,050,347.64, realizing a net profit of \$50,347.64 on his initial \$1 million investment.

Berger, Flowers and the Chicago Annuitants

46. In Fall 2007, Horowitz decided to grow his variable annuity business by expanding the pool of terminally ill individuals available to be designated as annuitants. He travelled to Chicago, Illinois in October 2007, and met with Respondent Berger. Berger was an executive officer of a privately held company that owned and operated nursing homes in the Chicago area.

47. Horowitz told Berger that he was selling variable annuities on the lives of terminally ill hospice patients to wealthy investors and, through his conversations with Horowitz, Berger understood that the annuitants' deaths were critical to Horowitz's investment strategy.

48. Horowitz told Berger that he needed the ID and Health Data of patients with a life expectancy of three to six months. As a nursing home executive, Berger had access to patient medical files containing patient ID and Health Data.

49. Horowitz agreed to pay Berger \$25,000 for each patient that Berger identified. Half of that amount was to be paid up front, with the remaining \$12,500 to be paid when the patient-annuitant died. As part of their arrangement, Berger also agreed to keep Horowitz apprised of the health status of the patient-annuitants, and to provide Horowitz with death certificates when the patients died.

50. Berger, in turn, recruited Respondent Flowers to approach terminally ill nursing home patients and their families. Flowers was, at various times, a nursing home admissions director and a marketing consultant.

51. Flowers recruited a third health care provider, "Health Care Provider 1," to the scheme. Like Berger and Flowers, Health Care Provider 1 had access to patient medical records and the ability to identify patients admitted to hospice care. Flowers agreed to compensate Health Care Provider 1 in exchange for his identifying patients admitted to hospice care.

52. By virtue of their access to confidential patient medical files, Berger, Flowers and/or Health Care Provider 1 identified terminally ill hospice patients at nursing homes and elsewhere in the Chicago area and, in some instances, were able to obtain the patients' confidential ID and Health Data. They focused their efforts on indigent patients.

53. Flowers then approached certain of these terminally ill patients (or caregiving family members of the patients) under the guise of providing charitable financial assistance or under other false pretenses. For instance, Flowers told the caregivers of several hospice patients that she represented "companies looking to take tax write-offs," and that the companies were offering "no obligation funeral insurance." Flowers told another caregiver that she represented a "group of rich investors who invested in charities that helped patients who were in poor health and had financial problems."

54. Flowers' true purpose in meeting with the terminally ill patients and/or their caregivers was to obtain their signature on a document that Horowitz (or others working with him) had provided to her for use with the patients. This document was misleadingly titled "Standard Authorization, Release and Indemnity for Release of Medical and Personal Information (HIPAA Compliant)." However, the document was anything but a "standard" HIPAA release. The "providers" identified in the release were not, in fact, health care providers, but rather were the Registered Representatives participating in Horowitz's scheme. Furthermore, in small boilerplate print, the release purported to authorize the Registered Representatives' use of the signing patient's ID and Health Data "in connection with" the sale of variable annuities. By its terms, the release further required the signing hospice patient to indemnify the Registered Representatives against all losses, claims or other damages incurred by the Registered Representatives resulting from the use of the hospice patients' ID and Health Data in the sale of variable annuities. This document did not, however, authorize the release of patient ID and Health Data to Berger or Flowers (who then provided Horowitz and/or his associates with patient ID and Health Data).

55. Flowers obtained signatures on these purported "releases" under false pretenses. For example, she told certain caregivers that the release was a "receipt" for the money being offered. In at least one instance, Flowers engaged in a "bait and switch." She first showed the patient's caregiver purported tax forms, which Flowers contended the caregiver needed to sign so that the parties making the charitable donation could obtain their tax write off. Flowers then shuffled the purported tax forms, replacing them with a copy of the release and signature pages from annuity applications, which the caregiver then unwittingly signed.

56. As the scheme evolved, Berger incorporated Patient Financial Services (“PFS”). Flowers provided certain hospice patients and their caregivers with a business card falsely identifying Flowers as a “Financial Consultant” for PFS. In fact, Flowers had no financial training and had never worked in the financial industry. Furthermore, Flowers did not understand what a variable annuity was and had no idea how it operated. She could not have explained the mechanics of a variable annuity to any of the patients or their caregivers.

57. Berger drafted a PFS brochure, which offered up to \$5,000 to patients with “a terminal diagnosis [and]...a prognosis of between one and six months.” Flowers and Health Care Provider 1 disseminated this brochure to hospice patients, health care providers and funeral homes. The PFS brochure failed to disclose that, in exchange for a monetary payment, patients would be asked to release their ID and Health Data to the Registered Representatives for use in the sale of variable annuities.

58. The PFS brochure further stated that: “As a participant, you will not be subject to any financial risk through this program.” As Berger knew, or was reckless in not knowing, this assertion was false because the release the hospice patients or their caregivers were required to sign before receiving any donation required the signing patients to indemnify the Registered Representatives against any losses sustained in their use of the patient’s ID and Health Data.

59. Horowitz instructed Respondent Flowers to fax him the signed releases and the patient’s ID and Health Data as soon as possible. This was because the Registered Representatives wanted to sell variable annuities on the lives of the patients before they died. As the scheme evolved, Horowitz began instructing Flowers to send the releases to third parties working with him to facilitate annuities sales through other registered representatives.

60. Between November 2007 and February 2008, Berger and Flowers supplied Horowitz, or his associates, with the names and Id data of at least 10 terminally ill patients in Chicago. These patients were designated as annuitants in at least 7 variable annuities sold through Broker-Dealer 2, and in at least 34 variable annuities sold through Broker-Dealer 3.

61. Berger tracked the number of annuities sold on the lives of hospice patients whose ID and Health Data he and Flowers provided, and sought compensation from Horowitz and his associates based on the number of annuities sold.

62. Berger and Flowers continued to monitor the status of patients designated as annuitants until they died, often supplying Horowitz or his associates with real time reports on the patients’ medical conditions. For instance, in April 2008, Berger provided the following update concerning patients who had been designated as annuitants:

[Hospice Patient A] can be problematic. She was deteriorating at the point we signed her up but has shown signs of improvement since shes [sic] been on hospice. She is still on hospice but her prognosis cant [sic] be determined and it can take another 6 mos possibly.

[Hospice Patient B] has been in and out of the hospital due to his COPD and is still very weak and on O2 will update when starts taking turn for worse

[Hospice Patient C] is on 100% O2 and is septic from her wounds and immune system is slowly shutting down. Her prognosis is very poor and doesn't have much time

[Hospice Patient D] has liver failure and it is untreatable. It is just a matter of time until it shuts down

[Hospice Patient E] has stage 4 lung cancer and is already non-verbal and deteriorating quickly.

All in all, based on the nurses assessments it seems that 3 of the patients are critical w/I the next month or 2, 1 is questionable based on the COPD and one may last longer than they thought....The shame in this is that all of these were the first round and as we learned the process better the more current ones are expiring quickly including those you were not able to process.

63. As part of their arrangement, when the patients died, Respondent Flowers obtained death certificates for the patients and provided them to the Registered Representatives or their associates so that they could file annuity death benefit claims on behalf of their customers.

64. Neither Berger nor Flowers has ever been registered with the Commission as a broker or dealer, or been an associated person of a registered broker or dealer. However, during the relevant period and based on the foregoing, Berger and Flowers were associated persons of Horowitz, who was acting as a broker, but who was not separately registered as a broker or dealer.

Ill-gotten Gains

65. Horowitz paid Respondent Ten at least \$130,800 in exchange for the hospice patient ID and Health Data that Ten gave him, and which Horowitz needed to sell the stranger-owned variable annuities described above. Ten also earned net profits of at least \$50,347 on the deferred variable annuity that he purchased on the life of Jane Doe.

66. Horowitz paid Berger \$150,000 in exchange for the hospice and nursing home patient ID and Health Data that Respondents Berger and Flowers gave him, and which the Registered Representatives needed to sell the stranger-owned annuities described above. Of that amount, Berger kept at least \$119,000. Flowers received and retained at least \$11,000 from Berger in exchange for her role in the scheme.

VIOLATIONS

67. As a result of the conduct described above, Respondents Ten, Berger and Flowers willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

68. As a result of the conduct described above, Respondents Ten, Berger and Flowers willfully aided and abetted and caused Horowitz's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

Disgorgement and Civil Penalties

69. Respondent Flowers has submitted a sworn Statement of Financial Condition dated May 24, 2013, a sworn declaration dated October, 31, 2013, and other evidence, and has asserted her inability to pay disgorgement plus prejudgment interest and a civil penalty.

Undertakings

70. In connection with this proceeding and any related judicial or administrative action or investigation commenced by the Commission, or to which the Commission or The Division of Enforcement ("Division") is a party, Respondent Ten (i) agrees to appear and be interviewed by Division staff at such times and places as the staff requests upon reasonable notice; (ii) will produce all non-privileged documents and any other materials to the Division as requested by the Division's staff, wherever located, in the possession, custody, or control of the Respondent; (iii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission or the Division for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; and (iv) appoints Respondent Ten's attorney, John Potter, Esq. (of Quinn Emanuel, Urquhart & Sullivan, LLP, 50 California Street, 22nd Floor, San Francisco, CA 94111) as agent to receive service of such notices and subpoenas.

71. In connection with this proceeding and any related judicial or administrative action or investigation commenced by the Commission, or to which the Commission or the Division is a party, Respondent Berger (i) agrees to appear and be interviewed by Division staff at such times and places as the staff requests upon reasonable notice; (ii) will produce all non-privileged documents and any other materials to the Division as requested by the Division's staff, wherever located, in the possession, custody, or control of the Respondent; (iii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission or the Division for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; and (iv) appoints Respondent Berger's attorney, Gary Caplan, Esq. (of Reed Smith, LLP, 10 South Wacker Drive, 40th Floor, Chicago, IL 60606) as agent to receive service of such notices and subpoenas.

72. In connection with this proceeding and any related judicial or administrative action or investigation commenced by the Commission, or to which the Commission or the Division is a party, Respondent Flowers (i) agrees to appear and be interviewed by Division staff at such times and places as the staff requests upon reasonable notice; (ii) will produce all non-privileged documents and any other materials to the Division as requested by the Division's staff, wherever located, in the possession, custody, or control of the Respondent; (iii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission or the Division for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; and (iv) appoints Respondent Flowers' attorney,

Gary Caplan, Esq. (of Reed Smith, LLP, 10 South Wacker Drive, 40th Floor, Chicago, IL 60606) as agent to receive service of such notices and subpoenas.

In determining whether to accept the Offers, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

Respondent Ten

A. Respondent Ten cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Ten be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by Respondent Ten will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Respondent Ten, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Ten shall pay disgorgement of \$181,147.64, prejudgment interest of \$20,858.80 and a civil money penalty in the amount of \$90,000, for a total payment of \$292,006.44, to the United States Treasury. Payment shall be made in the following installments: \$146,003.44 to be paid within ten (10) days of the entry of this Order and \$146,003 to be paid within three hundred and sixty (360) days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Harold Ten as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

Respondent Berger

A. Respondent Berger cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Berger be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by Respondent Berger will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Berger shall pay disgorgement of \$119,000, prejudgment interest of \$11,579.61 and a civil penalty of \$100,000, for a total payment of \$230,579.61 to the United States Treasury. Payment shall be made in the following installments: \$58,000.61 to be paid within ten (10) days of the entry of this Order and thereafter, quarterly payments of \$43,144.75 to be made on the following dates: March 31, 2014; June 30, 2014; September 30, 2014 and December 31, 2014. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Menachem Berger as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

Respondent Flowers

A. Respondent Flowers cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Flowers be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by Respondent Flowers will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Flowers shall pay disgorgement of \$11,057 plus prejudgment interest of \$978.49, but that payment of such amount is waived, and the Commission is not imposing a penalty against Respondent Flowers, based upon Respondent's sworn representations in her Statement of Financial Condition dated May 24, 2013, her sworn declaration dated October 31 2013 and other documents submitted to the Commission.

F. The Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent Flowers provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent,

misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Jill M. Peterson
Assistant Secretary