

BMS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DAVID L. ROTHMAN,

Defendant.

Civil Action No.

Jury Demanded

12 5412

COMPLAINT

A TRUE COPY CERTIFIED FROM THE RECORD
DATED: SEP 21 2012
ATTEST: Steve Tomasz
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

SUMMARY

1. This matter involves a fraud conducted by David L. Rothman ("Rothman") through Rothman Securities, Inc. ("RSI"), a broker-dealer registered with the Commission. From 2006 to 2011, Rothman issued false account statements to certain elderly and unsophisticated investors that materially overstated the value of their investment accounts. When the investors discovered that Rothman had misrepresented the value of their investments, Rothman engaged in a scheme to conceal his fraudulent conduct by agreeing to pay those investors the investment returns he reported on the false account statements. When Rothman could no longer afford to make those payments, he misappropriated funds from another elderly and unsophisticated investor and from two trust accounts for which he serves as trustee. Rothman also used a substantial portion of the misappropriated funds for his personal benefit.

2. By making payments to the investors to whom he sent false account statements, Rothman maintained these individuals as customers and concealed his fraudulent conduct.

3. As a result of the conduct described in this Complaint, defendant Rothman has violated, and unless restrained and enjoined, will continue to violate, Section 17(a) of the Securities Exchange Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], to enjoin such acts, transactions, practices, and courses of business; obtain disgorgement plus prejudgment interest; and for other appropriate relief.

5. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

6. Venue is proper because certain of the acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the Eastern District of Pennsylvania. In addition, defendant Rothman works and resides in the Eastern District of Pennsylvania and RSI is located within this district.

7. In connection with the conduct alleged in this Complaint, Rothman directly or indirectly made use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange.

DEFENDANT

8. David L. Rothman, age 48, is a resident of Richboro, Pennsylvania. During all relevant times, Rothman was a registered representative, Vice President, and minority owner of RSI. Rothman obtained his Financial Industry Regulatory Authority (“FINRA”) Series 7, 24, 51 and 63 licenses between 1985 and 2003. Rothman is a general securities principal and deals directly with RSI customers.

RELATED PARTY

9. RSI, headquartered in Southampton, PA, is a Pennsylvania corporation that, since October 1983, has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act. RSI is a mutual fund retailer and municipal securities broker. RSI is owned by Rothman and his parents.

FACTS

10. Beginning at least as early as 2006, Rothman prepared and sent cover letters and account statements that overstated the value of two of his customers’ investment accounts. Rothman inflated the customers’ investment accounts by increasing either the amount or price of the shares they owned.

11. By issuing false account statements, Rothman at times exaggerated these customers’ returns and at other times concealed the fact that their account values were in decline. As a result, Rothman was able to maintain his business relationship with these customers and he continued to earn compensation from the investment products he sold to them.

Customer A

Rothman Made Material Misrepresentations And Omissions To Customer A.

12. Customer A is a retired couple that has been a customer of RSI for over twenty years. Customer A resides in Delaware. Beginning in 2006, Rothman caused monthly account statements overstating the value of their investment accounts to be prepared and sent to Customer A.

13. From 2006 through January 2010, Rothman prepared at least 20 RSI account statements for Customer A's accounts that were false. These statements overstated the value of Customer A's accounts by between 16% and 262%.

14. Throughout this time period, Rothman caused Customer A to make numerous purchases and sales of securities. For example, on November 6, 2006, Customer A purchased 458 shares of Mutual Fund A and sold 125 shares of Mutual Fund B. On November 25, 2009, Customer A sold 69 shares of Mutual Fund C and purchased 66 shares of Mutual Fund D.

15. Rothman also caused Customer A to redeem shares of mutual funds on several occasions. On December 5, 2006, for example, Customer A redeemed 83 shares of Mutual Fund B. On February 5, 2007, Customer A redeemed 198 shares of Mutual Fund E and, on April 4, 2007, Customer A redeemed 64 shares of Mutual Fund C.

16. Rothman received compensation for these mutual fund transactions.

17. Rothman included cover letters with the false account statements he sent to Customer A. Many of these cover letters contained false and misleading statements hand written by Rothman. For example, a letter accompanying the June 1, 2009 statement of accounts included a handwritten note from Rothman that stated, "[a]ccounts are up \$12,990!! this month. Corporate bonds are doing very well. Call me anytime!" In fact, the balance on the accounts was up less than \$3,500.

18. Rothman's September 1, 2009 cover letter to Customer A also contained false statements. Rothman wrote: "Accounts are up \$4,224.92 this month! I will send you \$1,000 from account and reinvest the remainder! Call me anytime!" In fact, the account lost approximately \$1,000 for the month.

19. An October 2, 2009 cover letter to Customer A from Rothman falsely stated: "Accounts were up \$2,978.53 this month! We took \$1,000 of profit last month and sent it to you so accounts were really plus \$3,978.53. Call me anytime!" The \$1,000 of profit in August 2009 was actually an approximate \$1,000 loss, and the account earned only about \$1,300 in September, not the \$2,978 Rothman claimed.

20. Rothman also made oral misrepresentations to Customer A. Rothman told Customer A that they could withdraw between \$4,000 and \$5,000 from their accounts each month without depleting their principal. From April 2009 through October 2009, Customer A relied on this representation from Rothman and withdrew at least \$4,250 per month.

21. Rothman's claim that Customer A could withdraw between \$4,000 and \$5,000 a month without depleting their principal investment was false.

22. Frequently, Customer A's account balances was at least \$200,000 lower than Rothman reported to them, and their monthly withdrawals of cash, along with a decline in the price of the securities, ultimately caused the value of their accounts to fall to a range between \$107,000 and \$119,000.

23. Rothman deliberately concealed the value of Customer A's investment accounts by issuing fictitious account statements, making false statements in cover letters and making false oral representations regarding the status of their investment accounts with RSI.

24. Rothman engaged in a pattern of material misrepresentations and omissions to deceive Customer A into believing that he was fulfilling their investment objectives when, in fact, he was not.

25. Customer A purchased and sold securities based on the material misrepresentations described above and Customer A continued to allow Rothman to manage their investments and earn compensation.

Customer A Discovered The Misrepresentations And Omissions.

26. In or around January 2010, Customer A discovered that, although their RSI account statements reported over \$405,000 in account value, their actual holdings were, in fact, worth substantially less than the amount reported by Rothman.

27. In February 2010, Rothman and Customer A signed an "Agreement/Contract" providing that Rothman would pay Customer A \$5,000 per month until their accounts reached \$406,000. Under the terms of the agreement, Rothman also agreed to take out a \$350,000 life insurance policy on himself with Customer A as beneficiaries, in the event that he died before their RSI account balances reached \$406,000.

28. At Rothman's direction, the agreement contained a confidentiality provision stating, "as requested by David L. Rothman, [the parties] agree that this arrangement is between the three (3) parties involved only, and is not to be discussed with anyone."

29. Pursuant to the agreement, Rothman paid Customer A \$5,000 per month from February 2010 through approximately November 2011 and then ceased making payments.

30. On or about December 7, 2011, Customer A filed a Statement of Claim with FINRA's Office of Dispute Resolution against Rothman and other respondents alleging, among other things, that Rothman provided them with false account statements. On May 16, 2012,

Rothman and other respondents executed a Settlement Agreement with Customer A to resolve the dispute in exchange for a payment in the amount of \$75,000 to Customer A.

Customer B

Rothman Made Material Misrepresentations And Omissions To Customer B.

31. Customer B is a retired couple who reside in both Florida and Pennsylvania. From at least late 2007 through mid-2010, Customer B received monthly statements from Rothman purportedly summarizing the account values of their holdings in various mutual funds and other securities. Rothman caused these RSI account statements to be prepared and mailed to Customer B. On at least one occasion, Rothman handed Customer B copies of their RSI account statements during a meeting regarding their investments.

32. Beginning in approximately September 2007, Rothman drafted and sent account statements to Customer B overstating the value of their account holdings. For example, in the March 2, 2009 RSI account statement, Rothman reported that Customer B's holdings were worth \$792,862.58. In fact, their holdings were only worth approximately \$301,000 and, therefore, the account statement overstated the account value by approximately 163%. The following month, Rothman overstated their holdings by approximately 121%. Rothman, through the end of June 2010, continued to send Customer B false account statements that he prepared. Customer B's June 2010 account statement reported that they had holdings worth \$1,040,217. The true value of their account holdings, however, was approximately \$504,600.

33. Throughout this period, Rothman caused Customer B to continue to purchase and sell shares of mutual funds. For example, Customer B sold shares of Mutual Fund F on January 8, 2008, February 27, 2008, July 9, 2008 and November 11, 2008. Customer B sold shares of Mutual Fund G on December 10, 2008. Customer B also purchased shares of Mutual Fund H on

March 18, 2008, March 16, 2009, and March 15, 2010. Finally, Customer B purchased shares in Mutual Fund I on March 5, 2009.

34. Rothman received compensation for these mutual fund transactions.

35. Rothman engaged in a pattern of material misrepresentations and omissions that deceived Customer B into believing that Rothman was fulfilling their investment objectives when, in fact, he was not.

36. Customer B purchased and sold securities based on the misrepresentations contained in the false account statements and Customer B continued to allow Rothman to manage their investments and earn compensation.

Customer B Discovered The Misrepresentations And Omissions.

37. In July 2010, Customer B confronted Rothman about the value of their accounts and Rothman admitted that the statements he prepared did not reflect actual account balances. Rothman agreed to pay Customer B the difference between the actual value of their accounts and the value that Rothman reported to them on the June 30, 2010 RSI statement of accounts.

38. On July 19, 2010, Rothman agreed to pay Customer B \$3,000 a month beginning August 1, 2010, plus additional quarterly payments, until their accounts reached \$1,040,217 – the fictitious dollar amount he reported on their RSI account statements for June 30, 2010. Rothman also agreed to send them statements containing both the actual value of the accounts and the actual value of the accounts assuming the accounts started with \$1,040,217.

39. On or about July 28, 2010, Rothman wrote, by hand, a signed statement on behalf of “Rothman Agency,” which reads:

- I will pay [Customer B] \$3,000 monthly starting August 1st, 2010. This will continue until their investment account reaches \$1,040,000 plus interest!

- I will add money on a quarterly period starting October 2010. I will add a minimum of \$50,000 each quarter until account value is above \$1,040,000!!
- I will make sure account value is back over \$1,040,000 within 2 years from today plus interest!
- This is due to statement errors in valuation and accounting. Values are off more than \$495,000!!
- If [Customer B] pass[es] away I will pay account to their children!!

40. Customer B's July 27, 2010 RSI account statement reported the value of their accounts to be \$543,769. Beginning in July or August 2010, Rothman also sent Customer B monthly spreadsheets that purported to show the "profit" they would have earned on their accounts if they actually had \$1.04 million. Thus, for example, the September 2010 statement stated: "Beginning Acct Value \$1,043,533.35; Profit/Loss for Month \$686.50; Multiply 2x Profit \$1,373.10; Ending Acct Value \$1,044,906.45."

41. From August 2010 through May 2011, Rothman paid Customer B \$514,000. The following chart shows the transfer of funds from Rothman's personal bank account to Customer B's bank account. Rothman wrote varying memos on the checks describing the payments in different ways.

| Date | Amount | Form of payment | Memo on check |
|-------------------|----------|-----------------|---------------|
| August 6, 2010 | \$3,000 | Cash | NA |
| September 1, 2010 | \$3,000 | Cash | NA |
| October 1, 2010 | \$3,000 | Cash | NA |
| October 12, 2010 | \$1,000 | Cash | NA |
| October 12, 2010 | \$59,000 | Check | Deposit |

| | | | |
|-------------------|-----------|-------|------------|
| November 1, 2010 | \$128,000 | Check | Loan |
| November 16, 2010 | \$100,000 | Check | Investment |
| December 1, 2010 | \$28,000 | Check | Investment |
| January 3, 2011 | \$4,250 | Check | Payment |
| January 4, 2011 | \$3,750 | Check | Payment |
| February 1, 2011 | \$4,000 | Check | Gift |
| February 9, 2011 | \$4,000 | Check | No memo |
| March 2, 2011 | \$8,000 | Cash | NA |
| May 25, 2011 | \$165,000 | Check | Investment |
| Total | \$514,000 | | |

42. On multiple occasions from July 2010 through May 2011, Customer B met with Rothman regarding the discrepancies in the account statements. For a meeting in October 2010, Rothman prepared an eight point “Agenda.” The first point was to “APOLOGIZE to [Customer B].”

43. On or about October 12, 2010, Rothman drafted and signed an additional statement for Customer B stating that he would put \$5,000 monthly into Customer B’s checking account “to pay against principal of \$216,000 until the balance is paid in full!!”

44. During one of the October 2010 meetings, Rothman claimed he was having trouble continuing to make payments to Customer B. Ultimately, Customer B received full payment, in part, from funds Rothman misappropriated from another of Rothman’s customers.

Customer C

45. Customer C is a 94 year old retiree who has been a customer of RSI for approximately 30 years. From December 2010 through May 2011, Rothman misappropriated approximately \$463,000 from Customer C's investments.

46. Rothman used Customer C's funds to make payments of \$193,000 to Customer B and \$5,000 to Customer A. In addition, Rothman used at least \$180,000 of Customer C's funds for his personal benefit, of which over \$50,000 was withdrawn through automated teller machines at hotels and casinos in New Jersey and Aruba. The remaining funds were withdrawn using checks made payable to Rothman or by bank teller transactions.

Rothman Misappropriated Over \$335,000 By Liquidating Customer C's Mutual Funds To Pay Customers A and B and Others.

47. On at least six occasions from May 6, 2011 until May 11, 2011, Rothman caused Customer C to redeem mutual funds worth over \$335,000. The authorization notices directed that the redemption checks be mailed to RSI, rather than to Customer C. Ultimately, Rothman caused these funds to be deposited into checking accounts that he controlled. Specifically, Rothman caused the following mutual funds to be redeemed:

| Mutual Fund Family | Dollar Amount | Date of Redemption Checks |
|---------------------------|----------------------|----------------------------------|
| Fund A | \$96,539.57 | May 6, 2011 |
| Fund A | \$10,797.28 | May 9, 2011 |
| Fund B | \$7,847.21 | May 9, 2011 |
| Fund C | \$100,000 | May 6, 2011 |
| Fund C | \$100,000 | May 9, 2011 |

| | | |
|--------|--------------|--------------|
| Fund C | \$20,081.13 | May 11, 2011 |
| Total | \$335,265.19 | |

48. Customer C did not give Rothman permission to use these funds for Rothman's personal benefit.

49. Rothman spent much of the money from the mutual fund redemptions for his personal benefit, and to pay Customer B. Rothman withdrew over \$114,000 for himself through automated teller machine transactions, checks made out to Rothman and bank teller withdrawals. In addition, on May 25, 2011, Rothman paid \$165,000 to Customer B.

**Rothman Misappropriated Over \$110,000
From Customer C's Fixed Annuity To Pay Customers A and B.**

50. In November 2010, Customer C redeemed a fixed annuity from Life Insurance Company A in the amount of \$110,344.90. According to a statement RSI sent Customer C in November 2010, the annuity had been issued in September 2007 and was set to mature in September 2015. Customer C received the check from Life Insurance Company A on or about November 24, 2010. After endorsing it, Customer C transferred the check to Rothman.

51. Rothman wrote: "Pay to David Rothman" on the back of the check and deposited it into his personal bank account. Customer C authorized Rothman to deposit the proceeds from the redemption in Rothman's bank account with the understanding from Rothman that Rothman would maintain the investment funds for Customer C's benefit.

52. Customer C did not authorize Rothman to transfer the funds to any other individual or spend the funds for Rothman's personal benefit.

53. Rothman immediately began spending the proceeds from Customer C's fixed annuity redemption. From December 2 through December 31, 2010, Rothman withdrew

approximately \$18,400 in cash and wrote himself checks that totaled \$47,500. In addition, Rothman transferred \$28,000 to Customer B and \$5,000 to Customer A.

54. When depositing the proceeds from the annuity redemption, Rothman reported to a bank representative that Customer C was a friend who authorized Rothman to deposit the check into his personal bank account. Rothman falsely reported to the bank representative that the purpose of the transaction was so that Rothman could help pay Customer C's bills.

Rothman Misappropriated \$17,000 From Customer C.

55. In October 2011, Rothman visited Customer C at his home in Philadelphia. During this visit, Rothman noticed a check that Customer C had received for a certificate of deposit that had been liquidated in the amount of \$17,221. Customer C planned to deposit it into his bank account. Rothman offered to invest it in a manner that would exceed what Customer C would earn at his bank. Customer C consented to have Rothman invest the check for Customer C's benefit.

56. Rothman did not invest the proceeds of this check, but rather deposited it into his personal bank account on October 4, 2011.

57. Rothman told Customer C that he had invested his money and, thereafter, reported to a relative of Customer C that the non-existent investment had increased in value to \$20,000.

Rothman Created Misleading Documents To Conceal His Misappropriation Of Customer C's Funds.

58. In an effort to conceal the misappropriation of Customer C's funds, Rothman created a false document, which is unsigned and undated, that purports to be a "Private Annuity" for the benefit of Customer C.

59. The document reads:

Private Annuity for [Customer C]

1. \$338,636.16 Investment to receive
\$2,700.00/per month for as long as you live.
This is a 10% interest payout monthly.

60. From June to November 2011, Rothman gave Customer C five checks in the amount of \$2,700.00 each from his personal bank account. The memo section on the checks for June and July 2011 states: "INCOME ANNUITY" and "Private Annuity" respectively. The memo section on the checks for September and November 2011 states: "Loan Payment" and "interest" respectively.

61. After Rothman misappropriated the fixed annuity redemption check, liquidated Customer C's mutual funds and the proceeds of Customer C's certificate of deposit, Rothman created an additional document that purports to show that Customer C lent money to Rothman. This document lists the money he misappropriated from Customer C and phantom gains on some of the monies he claimed to be investing under the heading "[Customer C] Funding of the Loan for David Rothman."

62. Customer C did not knowingly or intentionally lend money to Rothman. Rothman has not repaid Customer C the amount of these purported "loans." In fact, other than the five \$2,700 payments from the fictitious "Private Annuity," Rothman has not repaid Customer C the money that he misappropriated from him.

**Rothman Misappropriated Money From
Two Trust Accounts and Used a Portion to Pay Customers A and B.**

63. In March 2007, Rothman opened checking accounts for two trusts for which he was the sole trustee. The beneficiaries of the trusts were relatives of two former RSI customers. Although Rothman was not the beneficiary of the trusts, beginning in November 2009, he routinely deposited trust assets into bank accounts that he controlled.

64. Between November 2009 and March 2011, Rothman issued twelve checks totaling \$92,600 from one of the trusts' checking accounts and he deposited the proceeds of these checks into a bank account that he controlled. The memo section on all but one of the checks reads: "Investment."

65. At least \$5,000 from this account was used to pay Customer A.

66. Between February 2010 and May 2010, Rothman issued four checks totaling \$19,600 from a second trust bank account he controlled and he deposited the proceeds of these checks into a bank account that he controlled. The memo section of all of these checks states: "Investment."

67. At least \$2,650 of the funds from this trust bank account was used to pay Customer A.

68. At all times relevant, in connection with the actions alleged above, Rothman acted with scienter.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act

69. The Commission realleges and incorporates by reference paragraphs 1 through 68 above, as if the same were fully set forth herein.

70. From at least 2006 through 2011, by engaging in the conduct alleged herein, Defendant Rothman knowingly or recklessly, in the offer or sale of securities, directly or indirectly, singly or in concert, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly:

- a. employed devices, schemes or artifices to defraud;
- b. obtained money or property by means of, or made, untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in light of the circumstance under which they were made not misleading; and/or
- c. engaged in transactions, practices, or courses of business that operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

71. By engaging in the foregoing conduct, Defendant Rothman violated, and unless restrained an enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

72. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 71, above, as if the same were fully set forth herein.

73. From at least 2006 through 2011, by engaging in the conduct alleged herein, Defendant Rothman knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or instrumentality of interstate commerce or of the mails, or the facilities of a national securities exchange:

- a. employed devices, schemes, or artifices to defraud;

- b. made untrue statements of material facts, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

74. By engaging in the foregoing conduct, Defendant Rothman violated, and unless restrained an enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining Defendant Rothman from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

II.

Ordering Defendant Rothman to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint;

III.

Ordering Defendant Rothman to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

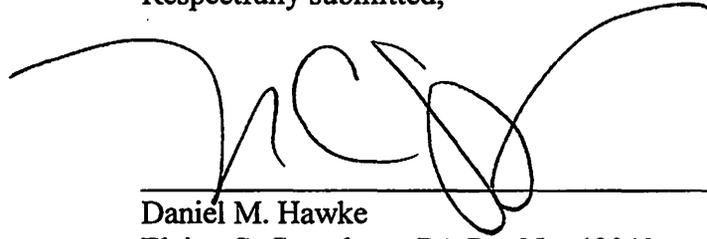
V.

Retaining jurisdiction of this action for purposes of enforcing any final judgments and orders; and

VI.

Granting such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MCH', is written over a horizontal line.

Daniel M. Hawke
Elaine C. Greenberg, PA Bar No. 48040
Kingdon Kase, PA Bar No. 37952
G. Jeffrey Boujoukos, PA Bar No. 67215
Nuriye Uygur, PA Bar No. 88930
Jennifer F. Miller, PA Bar No. 82826

Attorneys for Plaintiff:

SECURITIES AND EXCHANGE COMMISSION
Philadelphia Regional Office
701 Market Street, Suite 2000
Philadelphia, PA 19106
Telephone: (215) 597-3100

Dated: September 21, 2012