

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 13-cv-3669
)	
CHARLES J. DUSHEK, CHARLES S. DUSHEK, and CAPITAL MANAGEMENT ASSOCIATES, INC.,)	Jury Trial Demanded
)	
Defendants,)	
)	
and)	
)	
MARGARET L. DUSHEK,)	
)	
Relief Defendant.)	

COMPLAINT

The United States Securities and Exchange Commission alleges as follows:

NATURE OF THE ACTION

1. This case involves a fraudulent “cherry picking” scheme by Charles J. Dushek (“Dushek Sr.”), an investment adviser, and his son, Charles S. Dushek (“Dushek Jr.”) (collectively, “the Dusheks”). The Dusheks carried out their scheme through Dushek Sr.’s advisory firm, Capital Management Associates, Inc. (“CMA”).

2. The defendants engaged in cherry picking by assigning profitable trades to themselves, and unprofitable trades to CMA clients. They kept most of the profits, and saddled the clients with most of the losses. Many of the clients were senior citizens.

3. From 2008 to 2012, the Dusheks placed hundreds of millions of dollars in securities trades at CMA. For the vast majority of the trades, the Dusheks did not designate in advance whether they were trading client funds or personal funds.

4. At the time of trading, the Dusheks did not enter the trades as a “client” order or a “personal” order. At the time of trading, the Dusheks also did not create a written record of whether they were trading client funds or personal funds.

5. During testimony before the SEC, Dushek Sr. testified that he keeps a “record in my head, that’s it.” Dushek Sr. also testified that he has suffered from transient global amnesia, and that in the past five years, his “memory ability and cognitive abilities seem to be diminishing.”

6. The Dusheks delayed allocating the trades – often for days. The Dusheks typically waited at least one trading day – and often several days – before allocating the trades to client accounts or to personal accounts.

7. The Dusheks monitored market prices in the meantime, and waited to see if the trades were profitable before allocating the trades to the clients or to themselves. By the time they allocated the securities, the Dusheks knew whether the trades were profitable.

8. The Dusheks ultimately kept most of the winning trades, and allocated most of the losses to the clients. They assigned a disproportionate percentage of the profitable trades to themselves, and a disproportionate percentage of the unprofitable trades to the clients.

9. From 2008 to 2012, the Dusheks placed more than 13,500 trades in securities at CMA. More than 75% of the trades that the Dusheks allocated to themselves were profitable at the time of allocation. By comparison, fewer than 25% of the trades allocated to the clients were profitable at the time of allocation.

10. The Dusheks' personal accounts significantly outperformed the client accounts. From 2008 to 2012, the Dusheks reaped almost \$2 million in profits from their personal trading accounts at the time of allocation. By comparison, the clients suffered losses of over \$2 million at the time of allocation.

11. The disparate performance continued for years. The Dusheks profited, and the clients suffered losses.

12. For 17 consecutive quarters from 2008 to 2012, the Dusheks reaped positive returns in their personal accounts at the time of allocation. In sharp contrast, for 17 consecutive quarters from 2008 to 2012, the clients suffered negative returns at the time of allocation.

13. The Dusheks' personal accounts experienced high internal rates of return. For example, from 2008 to 2011, Dushek Sr.'s Roth IRA had an internal rate of return of almost 25,000%. Meanwhile, the vast majority of the clients experienced negative internal rates of return from 2008 to 2012.

14. The Dusheks – and Dushek Sr. in particular – used the illicit trading gains to finance an extravagant lifestyle. In fact, the scheme was their primary source of income.

15. Dushek Sr. drew no salary or other compensation as president of CMA. Even so, he withdrew more than \$1.8 million from his and his wife's personal CMA accounts between 2008 and 2012. He spent those funds on overseas vacations, a membership at an exclusive resort community, luxury cars, and an extravagant home featuring equestrian facilities.

16. CMA clients placed their money in the hands of Dushek Sr., entrusting him to invest their money and act in their best interest. That trust was misplaced. The Dusheks enriched themselves at the expense of the clients.

17. Dushek Sr. and CMA also misrepresented CMA's proprietary trading activities in a brochure distributed to clients. For example, that brochure falsely claimed that Dushek Sr. maintained "reports" of his proprietary trading activities that he submitted to an associate for review.

18. CMA's brochure further stated: "We do not merge or aggregate any client order with any employee order." That, too, was false. When the Dusheks placed orders, there were no designated client orders or employee orders. Instead, they made "block" purchases in CMA's brokerage accounts that were later allocated to client accounts or personal accounts, based on how the securities performed in the meantime.

19. By engaging in the conduct described above, Dushek Sr., Dushek Jr., and CMA violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Dushek Sr. and Dushek Jr. aided and abetted those violations, and Dushek Sr. is also liable for CMA's violations as a control person. Dushek Sr. and CMA also violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)], and Dushek Jr. aided and abetted those violations.

JURISDICTION AND VENUE

20. The SEC brings this action pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and 80b-9(e)].

21. This Court has jurisdiction over this action pursuant to Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)], Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)], and 28 U.S.C. § 1331.

22. Venue is proper pursuant to Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)] and Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)]. All of the defendants are inhabitants of, are found in, and transact business in the Northern District of Illinois, and many of the acts and transactions constituting the violations alleged in this Complaint occurred within the Northern District of Illinois.

23. Defendants, directly and indirectly, have made, and are making, use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts and transactions constituting the violations alleged herein.

DEFENDANTS

24. **Charles J. Dushek**, age 69, resides in Warrenville, Illinois. He founded CMA in 1995 and has controlled the firm ever since. Dushek Sr. has been the president of CMA since its inception in 1995. He is CMA's chief compliance officer. He owns CMA with his wife, Margaret Dushek, and his son, Dushek Jr. Dushek Sr. is registered with the Illinois Securities Department as an investment adviser representative for CMA and has also held several professional securities licenses. Dushek Sr. is engaged in the business of advising CMA clients, for compensation, about investments in securities.

25. **Charles S. Dushek**, age 37, is Dushek Sr.'s son and resides in Wheaton, Illinois. He has worked for CMA since 2007, and he is currently the vice president of administration. He has never held any securities licenses and is not a registered investment adviser representative.

26. **Capital Management Associates, Inc.** is an Illinois corporation with its principal place of business in Lisle, Illinois. CMA is engaged in the business of advising others, for compensation, about investments in securities. CMA is registered as an investment adviser with the Illinois Securities Department and with regulators in other states. CMA is not registered with

the SEC. As of April 2013, CMA had fewer than 100 clients and had approximately \$29 million in assets under management spread across 335 accounts. Most of CMA's clients are not high net worth individuals.

RELIEF DEFENDANT

27. **Margaret L. Dushek**, age 67, resides in Warrenville, Illinois and is married to Dushek Sr. She has a retirement account at CMA and holds several bank accounts jointly with Dushek Sr.

OTHER RELEVANT ENTITIES

28. **GreatBanc Trust Company**, an Illinois trust company based in Lisle, Illinois, is the custodian for CMA's accounts. In that capacity, GreatBanc holds CMA client funds and securities. GreatBanc also processes transactions made by CMA employees on behalf of the CMA accounts over which GreatBanc has custody.

FACTS

The Dusheks

29. Dushek Sr. has controlled the business and affairs of CMA since 2008. Dushek Sr. is responsible for the business policies and practices of CMA.

30. From 2008 to 2012, Dushek Sr. received no salary or wages from CMA. He also did not receive any dividends or distributions as a result of his ownership interest in CMA.

31. Instead, Dushek Sr. obtained income from his personal trading accounts at CMA. From 2008 to 2012, Dushek Sr.'s personal trading accounts at CMA were his primary source of income.

32. Dushek Jr. joined CMA in 2007 after his mortgage business failed and Dushek Sr. offered him a job. Dushek Jr.'s annual salary at CMA is \$36,000. Before joining CMA in 2007, Dushek Jr. had never purchased or sold securities.

33. Dushek Sr. and Dushek Jr. each controlled personal accounts at CMA. The personal accounts included: (1) Dushek Sr.'s Roth IRA; (2) Dushek Sr.'s former trading account (which closed in 2010); (3) Margaret Dushek's Roth IRA; (4) a CMA proprietary trading account; and (5) Dushek Jr.'s family trust account (collectively, the "personal accounts"). The Dusheks traded securities in those accounts from 2008 to 2012.

34. Dushek Sr. manages and has trading authority over client accounts at CMA.

35. Unlike Dushek Sr., Dushek Jr. does not manage any CMA client accounts. Dushek Jr. does not have trading authority over CMA client accounts, except to place trades at the direction of his father. Dushek Jr. does have trading authority over his personal accounts at CMA.

36. Together, the Dusheks placed thousands of trades at CMA from 2008 to 2012.

37. The Dusheks monitored how the securities performed between the time of purchase and the time of allocation. The Dusheks reviewed the performance of the securities before allocating them to client accounts or to personal accounts.

Dushek Sr.'s Clients

38. As investment advisers, Dushek Sr. and CMA owe fiduciary duties to their clients. Those duties include undivided loyalty and an affirmative obligation of utmost good faith and fair disclosure.

39. Dushek Sr. and CMA had a duty to not engage in cherry picking. Dushek Sr. knew that it would violate his duties to his clients to engage in cherry picking.

40. Many of Dushek Sr.'s clients are senior citizens. Their main investment objective is income generation, namely, creating investment income from an underlying portfolio of securities.

41. From 2008 to 2012, Dushek Sr. managed more than 50 client accounts (some of which closed during that period). Dushek Sr. wielded exclusive management authority over those accounts – Dushek Sr. was the only person at CMA who could authorize trades in those client accounts (collectively, the “Dushek Sr. client accounts,” or the “client accounts”). During most or all of that period, the aggregate value of those accounts exceeded \$5 million.

42. The cherry-picking scheme took place in the client accounts over which Dushek Sr. had exclusive management authority. CMA also maintained accounts for other clients, but those accounts were primarily managed by others at CMA.

43. Dushek Sr.’s clients signed investment advisory agreements with CMA. The agreements gave CMA and Dushek Sr. the authority to make trades on the clients’ behalf. The agreements state that, when engaging in other investment activities, CMA and its officers and employees will act in good faith, and that CMA’s policy is to allocate investment opportunities “on a fair and equitable basis relative to other accounts.”

44. Dushek Sr.’s clients paid fees to CMA. The clients paid an annual fee, plus a per-transaction fee for each trade placed in their accounts.

The Brokerage Accounts and the Custodian Accounts

45. CMA placed trades through two brokerage accounts. One account was maintained at Charles Schwab & Co., Inc. (“Schwab”), and the other account was maintained at E*Trade Securities, LLC (“E*Trade”). The securities ultimately settled into individual CMA accounts held by the custodian, GreatBanc. GreatBanc allocated the securities into those accounts, based on directives provided by the Dusheks.

46. Each brokerage account was an omnibus account. The brokerage accounts did not differentiate between securities purchased for clients, and securities purchased for the

Dusheks. Instead, all securities were pooled together. The brokerage firms did not maintain distinct accounts for individual CMA clients.

47. Dushek Sr. placed “block” trades in the brokerage accounts, without differentiating whether he was trading client funds or personal funds. Dushek Jr. also traded securities through CMA’s omnibus brokerage accounts at Schwab and E*Trade.

48. The Dusheks placed trades with Schwab and E*Trade by using each firm’s online trading platform. Trades placed on the Schwab and E*Trade online trading platforms were not linked to any particular CMA account. That is, the Dusheks did not place distinct trades that were tied to individual CMA accounts maintained at GreatBanc.

49. With rare exceptions, the Dusheks were the only CMA employees who placed trades directly on the Schwab and E*Trade online trading platforms. Others at CMA placed trades through internal order management software used by GreatBanc.

50. GreatBanc was the custodian of the securities in the client accounts and in the Dusheks’ personal accounts.

51. After placing “block” trades in the brokerage accounts, the Dusheks needed to allocate the securities to individual accounts at GreatBanc, meaning the accounts of individual clients or their personal accounts. Basically, the Dusheks purchased the securities *en masse*, and separated them later into individual accounts.

52. For example, on February 4, 2010, the Dusheks purchased a block of 1,250 shares of BP Plc (“BP”). On February 9, 2010, they instructed GreatBanc to allocate those 1,250 shares across 21 separate client accounts.

53. Similarly, on February 8, 2010, the Dusheks purchased a block of 1,000 shares of BP. On February 11, 2010, they instructed GreatBanc to allocate those 1,000 shares to one of their personal accounts.

54. After purchasing the securities, the Dusheks instructed GreatBanc how to allocate the securities into individual accounts, meaning distinct client accounts and distinct personal accounts for the Dusheks.

55. The Dusheks provided allocation information to GreatBanc, instructing GreatBanc to hold what securities in which accounts. GreatBanc, in turn, allocated the securities to distinct accounts, based on the instructions provided by the Dusheks.

56. GreatBanc kept track of the securities held in each account, based on the allocation instructions provided by CMA.

57. The Dusheks were solely responsible for allocating their trades to particular CMA accounts.

The Overlap in Securities

58. From 2008 to 2012, the Dusheks made thousands of purchases of equity securities totaling more than \$400 million. Most of the securities were common stock. They ultimately allocated those securities to the client accounts or to their personal accounts.

59. There was a high degree of overlap between the securities that were allocated to client accounts and the securities that were allocated to personal accounts. That is, largely the same sets of securities were allocated to client accounts and to personal accounts, albeit at different times for different trades. The primary difference was the profitability of the trades, not the identities of the securities that were traded.

60. The overwhelming majority of the purchases from 2008 to 2012 – approximately \$390 million of the more than \$400 million – were in securities that were allocated to client accounts at certain times, and to the Dusheks' personal accounts at other times.

61. For example, from July 1, 2008 to August 8, 2012, the Dusheks made over 100 purchases of BP shares, totaling approximately \$5.5 million. They ultimately allocated more than \$1.5 million of those purchases to Dushek Sr.'s client accounts, and approximately \$4 million to their personal accounts.

62. The Dusheks purchased approximately 627 different securities from July 1, 2008 to August 8, 2012. Of the 627 securities, the Dusheks allocated approximately 560 different securities to the client accounts, and allocated approximately 400 different securities to their personal accounts. Approximately 333 securities were allocated to both the client accounts and to the Dusheks' personal accounts, albeit for different trades at different times.

63. The overlapping pool of securities represented most of the trading, measured by dollar amount or by the number of trades. Relatively speaking, there was little trading in the 227 securities (*i.e.*, 560 minus 333) that were allocated only to the client accounts (and not to the Dusheks' personal accounts). Relatively speaking, there was little trading in the 67 securities (*i.e.*, 400 minus 333) that were allocated only to the Dusheks' personal accounts (and not to the client accounts). By dollar amount, the client-only securities and the Dushek-only securities represented a small fraction of the trading.

The Cherry Picking Scheme

No Distinction Between Client Orders and Personal Orders

64. When they purchased securities, the Dusheks did not specify at that time whether they were trading client funds or personal funds. At the time of trading, the Dusheks did not make any written record of whether they were placing trades for clients or for themselves.

65. When they entered a purchase order into the Schwab or E*Trade trading platform, the Dusheks did not designate, electronically or in writing, whether they were placing an order for clients or for themselves.

66. When they entered a purchase order into the Schwab or E*Trade trading platform, the Dusheks also did not create a contemporaneous record identifying whether they were trading for clients or for themselves.

67. Unlike the Dusheks, others at CMA placed client trades through order management software like Moxy. The order management software required the user to designate – before executing the trade – the account that was placing the order.

68. Nothing prohibited the Dusheks from placing the trades through Moxy or similar software. Indeed, the Dusheks occasionally used Moxy for one-off transactions for a specific account.

The Allocation Process

69. At CMA, the Dusheks combined their Schwab and E*Trade orders onto one tracking spreadsheet. They created a separate spreadsheet for each trading day. The Dusheks used the spreadsheet to track their orders for each day of trading.

70. The spreadsheet collected the Dusheks' executed trades in one document so that the Dusheks could determine where to allocate each trade.

71. CMA typically prepared the initial version of the spreadsheet on the day of trading, or the following day. The spreadsheet initially included trade information such as the name of the security, the price, the number of shares, and the brokerage firm.

72. The initial version of the spreadsheet typically did not specify whether the trades involved client funds or personal funds.

73. The initial version of the spreadsheet typically did not distinguish trades placed by Dushek Sr. from trades placed by Dushek Jr., even though Dushek Jr. was not authorized to make investment decisions on behalf of clients.

74. The Dusheks later allocated each trade by entering account numbers or names next to each trade on the spreadsheet.

75. The Dusheks typically did not enter account numbers or names next to each trade on the date of purchase. They typically did not enter account numbers or names next to each trade until the following day or later.

76. Instead of account numbers, the Dusheks often entered “Hold Chuck [Dushek Sr.]” or “Hold Chas [Dushek Jr.]” next to certain trades. These holds often stayed in place for several days after the trade date.

77. After the Dusheks entered an account number or name next to each trade, Dushek Jr. used the spreadsheet to manually input trade allocations into Moxy, the order management software used by GreatBanc. Since mid-2008, Dushek Jr. has been responsible for inputting trade allocations for the Dusheks’ trades into Moxy.

78. The Dusheks’ trades were not allocated to individual CMA accounts at GreatBanc until Dushek Jr. manually entered the allocations into Moxy. Dushek Jr. did not input allocations into Moxy until Dushek Sr. signed off on the spreadsheet.

Late Allocations

79. From 2008 to 2012, the Dusheks typically did not allocate the securities on the date of purchase. Instead, the Dusheks typically waited one to three trading days after the purchase before allocating the securities to client accounts or to personal accounts. In most cases, they allocated the securities two or three days after the date of purchase.

80. From 2008 to 2012, the Dusheks made more than 13,500 purchases in a common pool of securities, that is, securities that they allocated to client accounts at certain times and to their personal accounts at other times. More than 90% of those securities were allocated after the date of purchase. More than 70% of the securities were allocated at least two trading days after the date of purchase.

81. It was possible for the Dusheks to allocate the trades on the day of trading. The Dusheks could have placed trades through Moxy or other order management software, and designated the trades as client trades or personal trades when placing the orders. The Dusheks also could have prepared a record on the day of trading that allocated specific trades to client accounts or to personal accounts.

82. Unlike the Dusheks, another investment professional at CMA allocated more than 90% of his trades on the trade date during the same period.

Industry Standards

83. Allocating trades on the trade date is considered an industry standard in the investment management industry.

84. It is considered best practices in the investment management industry to determine trade allocations before a trade is placed or, barring that, immediately thereafter.

85. Same-day or pre-trade allocations are considered best practices because they protect against unfair allocation schemes such as cherry picking. For example, an investment adviser who determines allocations before placing a trade will not have the opportunity to cherry pick trades that become profitable after execution.

86. It is an industry standard in the investment management industry to have a written trade allocation policy.

87. CMA did not have a written trade allocation policy from 2008 to 2012.

88. The Dusheks are aware that same-day allocations are the industry standard. The Dusheks also are aware that it is the industry standard to have a written trade allocation policy. Nonetheless, they typically waited two or three trading days before allocating their trades, and CMA did not have a written allocation policy.

89. Representatives from CMA's custodian, GreatBanc, asked the Dusheks to adopt a written trade allocation policy in August 2011. GreatBanc also sent the Dusheks an example for their consideration. Instead of adopting an allocation policy, Dushek Sr. told GreatBanc representatives to stop telling him how to run his business.

Late Allocations Enabled the Dusheks to Cherry Pick Winning Trades

90. By delaying the allocations, the Dusheks were able to determine whether the trades were profitable before assigning the securities to the client accounts or the Dusheks' personal accounts. The late allocations gave the Dusheks the opportunity to cherry pick most of the profitable trades for themselves. The Dusheks exploited that opportunity, profiting at the expense of the clients.

91. From July 1, 2008 to August 8, 2012, the Dusheks made more than 16,000 purchases of equity securities, totaling approximately \$412 million. The vast majority of the

purchases – approximately \$393 million – were in a common pool of securities, that is, securities that were allocated at times to client accounts, and at other times to the Dusheks’ personal accounts. For example, the Dusheks purchased stock in BP, and they allocated some of the BP purchases to the client accounts, and some (at other times) to their personal accounts.

92. Security price data is available from the Center for Research in Securities Prices for approximately 13,500 of the purchases – totaling more than \$350 million – placed by the Dusheks in the common pool of securities (that is, securities that were allocated at times to client accounts, and at other times to the Dusheks’ personal accounts). Based on those purchases, the Dusheks allocated most of the gains to themselves, and most of the losses to the clients.

93. In fact, the Dusheks’ trades overall were unprofitable at the time of allocation. At the time of allocation, the Dusheks lost money from the approximately 13,500 trades (collectively), meaning the trades allocated to clients plus the trades allocated to their personal accounts. But the Dusheks reaped profits for themselves by allocating profitable trades to their personal accounts, and unprofitable trades to the clients.

94. The Dusheks allocated almost 10,000 of the approximately 13,500 purchases to their personal accounts, totaling more than \$250 million. The vast majority of those trades were profitable at the time of allocation.

95. More than 75% of the purchases that were assigned to the Dusheks’ personal accounts were profitable at the time of allocation.

96. In monetary terms, the Dusheks’ personal accounts received a disproportionate percentage of the profits. The Dusheks allocated over 90% of the trading gains, measured at the time of allocation, to their personal accounts.

97. The Dusheks allocated the remaining purchases – more than 3,500 of the approximately 13,500 purchases – to the client accounts. Fewer than 25% of those purchases were profitable when they were allocated to the clients.

98. In monetary terms, the client accounts received a disproportionate percentage of the losses. The client accounts absorbed 80% of the losses at the time of allocation.

99. The Dusheks profited from the cherry-picking scheme. From 2008 to 2012, the Dusheks' personal accounts achieved an aggregate return on investment of more than 0.7% at the time of allocation. The Dusheks realized nearly \$2 million in profits on those purchases.

100. The clients lost from the cherry-picking scheme. From 2008 to 2012, the client accounts experienced an aggregate return on investment of approximately -2.3% at the time of allocation. The clients experienced over \$2 million in losses at the time of allocation. Those losses were not necessarily realized at the time of allocation, however, because Dushek Sr. typically continued to hold the securities in the client accounts.

101. The Dusheks' personal accounts consistently outperformed the client accounts.

102. For 17 straight quarters from 2008 to 2012, the Dusheks' personal accounts achieved positive returns at the time of allocation. In contrast, the client accounts suffered 17 straight quarters of negative returns at the time of allocation. For 17 straight quarters, the Dusheks gained and the clients lost, measured at the time of allocation.

103. The odds are infinitesimal that the Dusheks' personal accounts could have achieved such disparate profitability if allocations were made “blindly,” that is, without reference to a trade's subsequent profitability.

The BP Example

104. The Dusheks' trading pattern in the stock of BP illustrates how they used late allocations to steer profitable trades to their personal accounts and dump unprofitable trades on Dushek Sr.'s clients.

105. From 2008 to 2012, the Dusheks made over 115 purchases of BP shares totaling over \$5 million.

106. Only two of those purchases were allocated on the trade date. The vast majority of the purchases – or over 85% – were not allocated until two days or three days after the date of purchase.

107. Approximately 80 of those purchases were profitable at the time of allocation. The Dusheks allocated all but one of the profitable purchases to their personal accounts, yielding profits of over \$40,000 at the time of allocation. The Dusheks allocated only one of the profitable trades to the clients, yielding profits of less than \$1,000 at the time of allocation.

108. The Dusheks did not allocate a BP purchase to their personal accounts until they observed a price increase and knew that they could lock-in a profit. For the vast majority of BP purchases allocated to their personal accounts, the Dusheks entered a sell order one day or more before the purchases were allocated.

109. Approximately 35 of the Dusheks' BP purchases were unprofitable at the time of allocation. The Dusheks allocated approximately two-thirds of those purchases to the clients, yielding over \$50,000 in losses at the time of allocation. These losses represented over 90% of the losses at the time of allocation for all of the Dusheks' BP purchases.

110. Overall, from 2008 to 2012, the Dusheks reaped almost \$40,000 in profits from BP purchases in their personal accounts. In contrast, the clients experienced losses of more than \$50,000 at the time of allocation.

The Dusheks Profited While the Clients Suffered Losses

111. The Dusheks' cherry-picking scheme enabled them to generate significant profits from relatively small average account balances, yielding high rates of return for their personal accounts. The Dusheks realized virtually all of those profits by regularly withdrawing their personal trading gains.

112. Measured by their actual rates of return, the Dusheks' personal accounts significantly outperformed the client accounts between 2008 and 2012.

113. For example, Dushek Sr.'s Roth IRA achieved a rate of return of almost 25,000% between 2008 and 2011. In contrast, almost all of Dushek Sr.'s clients suffered negative rates of return between 2008 and 2012.

The Dusheks' Scheme Financed Their Extravagant Lifestyle

114. From 2008 to 2012, the Dusheks withdrew more than \$2 million from their personal accounts. Most of the funds came from their cherry-picking scheme.

115. For example, Dushek Sr.'s personal accounts (including relief defendant Margaret Dushek's Roth IRA) held less than \$90,000 in May 2008. Yet those accounts had realized gains of more than \$1.7 million between 2008 and 2012. Dushek Sr. and his wife withdrew over \$1.8 million over that same period and contributed less than \$100,000. Similarly, Dushek Jr.'s personal account rarely had a monthly balance above \$5,000. Yet Dushek Jr.'s personal account had realized gains of more than \$450,000 over that same period, and he withdrew more than \$430,000. Dushek Jr. did not make any contributions to that account.

116. Dushek Sr. used those withdrawals to finance an extravagant lifestyle even though he drew no salary, wages, or dividends from CMA. He regularly used those profits to pay the mortgage on his 6,500 square-foot home, which includes a separate horse barn and fenced equestrian yard. Dushek Sr. also used those withdrawals to pay for high-end vehicles, including a Mercedes Benz SL550, membership in a luxury vacation resort, and vacations abroad.

117. Apart from Social Security, the trading profits from Dushek Sr.'s personal accounts were his only source of regular income.

118. Dushek Jr. also used those withdrawals to maintain his lifestyle, even though his annual salary at CMA was only \$36,000. Since 2008, he used those withdrawals to pay for, among other things, a boat slip and vacations to ski resorts and Hawaii. He also lives in a large five-bedroom home that was recently listed for approximately \$750,000.

119. Relief defendant Margaret Dushek benefitted from the cherry-picking scheme operated by her husband and son. She directly received at least \$1.5 million in proceeds from the scheme in the form of (1) realized trading gains she withdrew from her Roth IRA; and (2) realized trading gains that Dushek Sr. withdrew from other personal CMA accounts and deposited into bank accounts held jointly with her.

The Dusheks Ignored the Custodian's Repeated Requests to Allocate on the Trade Date

120. As early as 2011, GreatBanc complained to the Dusheks about their late allocations.

121. In August 2011, GreatBanc communicated its expectation that CMA allocate the trades by 4:00 p.m. on the trade date, and barring that, no later than 9:00 a.m. the next morning. Dushek Sr. replied by e-mail, saying that he did not attempt to manage GreatBanc's business

practices, and that the same should be true in the other direction. Dushek Sr. added: “[W]e are not governed by SEC oversight”

122. In October 2011, Dushek Sr. sent an e-mail to a representative of GreatBanc, claiming that he was seriously committed to an “immediate process change” to accelerate trade allocations.

123. Dushek Sr. was not seriously committed to accelerating trade allocations. The Dusheks continued to delay allocations until the next trading day or later.

124. From approximately August 2011 through at least April 2012, GreatBanc or its sub-custodian regularly sent Dushek Jr. e-mails listing any unallocated trades from the previous trading day. GreatBanc or its sub-custodian requested a prompt allocation of the trades.

125. GreatBanc maintained a log of Dushek Jr.’s responses to the e-mails. According to the log, Dushek Jr. gave a variety of excuses for his purported inability to allocate the trades in a timely manner. The reasons included that he was “out last Friday,” and that he was “out of town with sporadic internet access,” and that he was having “Computer issues,” and that his “computer crashed,” and that Dushek Sr. was “out of the office,” among others.

126. The excuses that Dushek Jr. gave to GreatBanc for late allocations conflicted with the reasons given by Dushek Sr. to GreatBanc. Dushek Jr. often claimed allocations were late because of computer “issues” or because he or Dushek Sr. were out of the office. Dushek Sr. blamed late allocations on CMA’s purported inability to see copies of the final trade “affirmation report” from the executing brokers.

127. The excuses were phony. The Dusheks managed to accelerate their trade allocations in August 2012, after receiving subpoenas from the SEC.

128. In or around 2011, GreatBanc, together with employees of its investment adviser affiliate, Pennant Management, Inc. (“Pennant”), noticed a very high rate of return in one of Dushek Sr.’s personal accounts. GreatBanc and Pennant also noticed that the Dusheks’ personal accounts performed significantly better than CMA client accounts.

129. On or about January 2012, Dushek Sr. met with a representative of GreatBanc and a representative of Pennant. At that meeting, the representatives of GreatBanc and Pennant asked Dushek Sr. whether he was engaging in cherry picking, given the unusually high returns in the personal accounts.

130. In response, Dushek Sr. denied that he was engaging in cherry picking. Instead, he claimed that he was an active day trader who had spent years developing a “short-term trading skill” for doing “scalping”-type trades where he would get in and out of a position very quickly, realizing small gains of 5 or 10 cents. In testimony before the SEC, Dushek Sr. claimed to have a “hard wired skill” for short-term trading.

131. Dushek Sr. apparently did not utilize that purported “skill” when trading for his clients.

Misrepresentations and Omissions

132. Like all investment advisers, CMA is required to provide clients with a brochure that describes in plain English the adviser’s business, conflicts of interest, fees, and other information. The brochure is a public document that is filed as part of the Form ADV that all investment advisers are required to file with the SEC or state regulatory bodies.

133. The Form ADV brochure is the primary disclosure document that investment advisers provide to their clients.

134. As CMA's president and chief compliance officer, Dushek Sr. controlled the content of CMA's Form ADV. Dushek Sr. also signed the Form ADV on behalf of CMA. CMA's brochure listed Dushek Sr. as CMA's contact person.

135. CMA's brochure made material misrepresentations about CMA's trading and allocation practices.

136. CMA's brochure stated: "Mr. Dushek is his own supervisor. He maintains on file in the firm's offices reports of his proprietary trading activities His proprietary trading activities' reports he submits to an associate for review."

137. Those statements were false and misleading. Dushek Sr. did not maintain reports of his proprietary trading activities at CMA's offices. Dushek Sr. also did not submit such reports about proprietary trading activities to an associate for review.

138. CMA's brochure stated: "CMA does not make short term trades in any security on the same day that buy or sell transactions are done for client holdings in the same security."

139. That statement was false and misleading. On some trading days, the Dusheks purchased securities that they later allocated to both the client accounts and to their personal accounts.

140. CMA's brochure stated: "We do not merge or aggregate any client order with any employee order."

141. That statement was false and misleading. When the Dusheks placed orders, there were no "client orders" or "employee orders." Instead, the Dusheks made "block" purchases in CMA's brokerage accounts, and later allocated the securities to client accounts or to personal accounts. Until those "block" purchases were allocated, there was no record – written or electronic – distinguishing orders for clients from orders for the Dusheks.

142. Dushek Sr., Dushek Jr., and CMA never disclosed to the clients that they were engaging in cherry picking.

The Dusheks Stopped Cherry-Picking After Learning of the SEC's Investigation

143. The Dusheks changed their behavior after receiving subpoenas from the SEC in August 2012.

144. After receiving the SEC's subpoenas, the Dusheks accelerated the timing of trade allocations. After receiving the subpoenas, the Dusheks allocated more than 70% of the client purchases on the trade date. In contrast, the Dusheks allocated fewer than 30% of the client purchases on the trade date during the weeks immediately preceding the subpoenas. This improvement occurred without any change to the trade "affirmation report" process on which Dushek Sr. previously blamed late allocations.

145. After receiving the SEC's subpoenas, the Dusheks also reduced their purchases of securities. During the 25 trading days before receiving the SEC's subpoenas, the Dusheks purchased more than \$7 million in securities. They later allocated approximately \$1.4 million of the securities to client accounts, and approximately \$5.6 million to their personal accounts. During the 25 trading days after receiving the SEC's subpoenas, however, the Dusheks purchased only \$1.7 million in securities. Tellingly, they allocated only \$80,000 in purchases to the clients, and allocated approximately \$1.6 million to their personal accounts.

146. After receiving the SEC's subpoenas, the Dusheks also became less successful when trading in their personal accounts. After receiving the SEC's subpoenas, the Dusheks' personal accounts were no longer profitable at the time of allocation. In fact, the personal accounts began to generate a rate of return in parity with the rate of return in the client accounts.

COUNT I

**Violations of Section 10(b) of the Exchange Act
and Rule 10b-5 Thereunder
(against Dushek Sr., Dushek Jr., and CMA)**

147. The Commission realleges and incorporates by reference paragraphs 1 through 146 as if fully set forth herein.

148. Dushek Sr., Dushek Jr., and CMA, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce or of the mails, directly or indirectly, used or employed devices, schemes, or artifices to defraud, and engaged in acts, practices, or courses of business which operated or would operate as a fraud and deceit upon other persons. Further, Dushek Sr. and CMA made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

149. Dushek Sr., Dushek Jr., and CMA acted with scienter.

150. Through the conduct described above, Dushek Sr., Dushek Jr., and CMA violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT II

**Control Person Liability
for Violations of Section 10(b) of the
Exchange Act and Rule 10b-5 Thereunder
(against Dushek Sr.)**

151. The Commission realleges and incorporates by reference paragraphs 1 through 146 as if fully set forth herein.

152. As alleged in Count I, CMA violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

153. At all times relevant to this Complaint, Dushek Sr. controlled CMA for purposes of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

154. By reason of the foregoing, Dushek Sr. is liable for CMA's violations alleged in Count I as a control person under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

COUNT III

Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (against Dushek Sr. and Dushek Jr.)

155. The Commission realleges and incorporates by reference paragraphs 1 through 146 as if fully set forth herein.

156. As alleged in Count I, Dushek Sr. and CMA violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

157. Dushek Sr. and Dushek Jr. each knowingly or recklessly provided substantial assistance to CMA in connection with the violations alleged in Count I. Further, Dushek Jr. knowingly or recklessly provided substantial assistance to Dushek Sr. in connection with the violations alleged in Count I.

158. Through the conduct described above, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Dushek Sr. is liable for CMA's violations alleged in Count I to the same extent as CMA, and Dushek Jr. is liable for CMA's and Dushek Sr.'s violations alleged in Count I to the same extent as CMA and Dushek Sr.

COUNT IV

**Violations of Section 206(1) of the Advisers Act
(against Dushek Sr. and CMA)**

159. The Commission realleges and incorporates by reference paragraphs 1 through 146 as if fully set forth herein.

160. Dushek Sr. and CMA acted as investment advisers as defined under the Advisers Act. Dushek Sr. and CMA, for compensation in the form of fees, were engaged in the business of advising CMA clients as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

161. Dushek Sr. and CMA, while acting as investment advisers, by use of the mails or the means and instrumentalities of interstate commerce, directly or indirectly employed devices, schemes or artifices to defraud their clients or prospective clients.

162. Dushek Sr. and CMA acted with scienter.

163. Through the conduct described above, Dushek Sr. and CMA violated Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT V

**Violations of Section 206(2) of the Advisers Act
(against Dushek Sr. and CMA)**

164. The Commission realleges and incorporates by reference paragraphs 1 through 146 as if fully set forth herein.

165. Dushek Sr. and CMA acted as investment advisers as defined under the Advisers Act. Dushek Sr. and CMA, for compensation in the form of fees, were engaged in the business of advising CMA clients as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

166. Dushek Sr. and CMA, while acting as investment advisers, by use of the mails or the means and instrumentalities of interstate commerce, directly or indirectly engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients.

167. Through the conduct described above, Dushek Sr. and CMA violated Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

COUNT VI

Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act (against Dushek Sr. and Dushek Jr.)

168. The Commission realleges and incorporates by reference paragraphs 1 through 146 as if fully set forth herein.

169. As alleged in Count IV and Count V, Dushek Sr. and CMA violated Sections 206(1) and 206(2) of the Advisers Act, respectively.

170. Dushek Sr. and Dushek Jr. each knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured CMA's violations of Sections 206(1) and 206(2) of the Advisers Act. Further, Dushek Jr. knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured Dushek Sr.'s violations of Sections 206(1) and 206(2) of the Advisers Act.

171. Through the conduct described above, Dushek Sr. is liable for CMA's violations of Sections 206(1) and 206(2) of the Advisers Act to the same extent as CMA. Dushek Jr. is liable for CMA's and Dushek Sr.'s violations of Sections 206(1) and 206(2) of the Advisers Act to the same extent as CMA and Dushek Sr.

COUNT VII

(against Relief Defendant Margaret Dushek)

172. The Commission realleges and incorporates by reference paragraphs 1 through 146 as if fully set forth herein.

173. At least \$1.5 million was transferred to accounts controlled by relief defendant Margaret Dushek or accounts for her benefit.

174. The monies received by relief defendant Margaret Dushek, as alleged above, constituted ill-gotten gains from the fraud of others.

175. Relief defendant Margaret Dushek has no legitimate claim to the ill-gotten funds she received as a result of the fraud of others, or to any assets that were acquired with those ill-gotten funds.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

A. Find that Dushek Sr., Dushek Jr., and CMA committed the violations charged and alleged above;

B. Enter an Order permanently enjoining and restraining:

- i. Dushek Sr. from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)], and from aiding and abetting violations of those provisions;
- ii. Dushek Jr. from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and from aiding and abetting violations of Section 10(b) of the Exchange Act [15

U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)];

- iii. CMA from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)];

C. Enter an Order requiring Dushek Sr., Dushek Jr., CMA, and relief defendant Margaret Dushek to disgorge all ill-gotten gains they have received as a result of the acts and conduct alleged herein, with prejudgment interest;

D. Enter an Order, pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] requiring Dushek Sr., Dushek Jr., and CMA to pay a civil penalty;

E. Retain jurisdiction over this action, in accordance with the principles of equity and the Federal Rules of Civil Procedure, in order to implement and carry out the terms of all orders that may be entered or to entertain any suitable application or motion for additional relief, within the jurisdiction of this Court; and

F. Grant such other relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury on all issues so triable.

Dated: May 16, 2013

Respectfully submitted,

s/ Steven C. Seeger

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