UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MICHAEL A. BRESSMAN, Defendant.	Civil Action No. _____ JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission" or "SEC") alleges the following against defendant Michael A. Bressman ("Bressman" or "Defendant"):

SUMMARY

1. This case involves a fraudulent "cherry-picking" scheme carried out by Bressman in his role as a securities broker. From at least January 2012 through February 2018, Bressman secretly misused his access to his customers' brokerage accounts to enrich himself and two of his family members at the expense of his customers—most of whom were "Main Street" investors with relatively modest investment portfolios. As a result of his deceptive scheme, Bressman received at least $700,000 in ill-gotten gains.

2. Cherry-picking occurs when a broker, who buys and sells securities on behalf of his brokerage customers, defrauds those customers by purchasing stock and then waiting to see whether the price of the stock goes up, or down, before allocating the trade. If the stock goes up, the broker keeps the trade for himself or a set of "favored" accounts. If the stock goes down, the broker puts the trades into other, disfavored customer accounts. In other words, the broker "cherry-picks" the profitable trades for himself or certain favored accounts, while giving unprofitable trades to his other customers.

3. To carry out the cherry-picking scheme here, Bressman frequently purchased large quantities of stock using a block trading or "allocation" account (the "Allocation Account"). Bressman made these stock purchases without specifying whether the trade was for one or more of his brokerage customers or his own personal securities trading account. Then, Bressman typically

waited to see whether the price of the stock he had purchased in the Allocation Account went up or down during the day of the trade (the "Trade Day"). If a stock's price went up, Bressman routinely transferred that stock from the Allocation Account to his own account (the "Personal Account") or an account jointly held by his sister-in-law and her husband (the "Family Account"). Most frequently, Bressman transferred the profitable trades to his Personal Account. By contrast, if the price of the stock went down during the Trade Day, Bressman routinely transferred the stock to one or more accounts held by his other customers (the "Customer Accounts").

4. In those instances that Bressman transferred a winning trade to his Personal Account, he often closed out the position on the same day. These "day trades" allowed Bressman to immediately lock in his gains. In those instances that Bressman transferred a losing trade to one or more Customer Accounts, he typically held the position in the Customer Account(s) for an extended period of time as a "buy and hold" investment. Through this scheme, Bressman misappropriated profits that should have gone to his Customer Accounts, and avoided losses that should have been borne by his Personal Account and the Family Account.

5. Bressman's conduct violated various antifraud statues and Commission rules, including Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act ("Exchange Act") and Ruled 10b-5(a) and 10b-5(c) thereunder.

6. Based on these violations, the Commission seeks: (1) entry of a permanent injunction prohibiting Bressman from further violations of the relevant provisions of the federal securities laws; (2) disgorgement of ill-gotten gains for the period covered by the applicable statute of limitations, plus pre-judgement interest; (3) the imposition of a civil monetary penalty; and (4) such other and further relief as the Court deems just and proper.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to the enforcement authority conferred upon it by Sections 20(b) and 20(d)(1) of the Securities Act [15 U.S.C. §§ 77t(b) & 77t(d)(1)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)].

8. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), and 78aa].

9. Defendant, directly or indirectly, made use of the means and instrumentalities of interstate commerce, of the mails or of the facilities of a national securities exchange in connection with the transactions acts, practices, and course of business alleged herein.

10. Venue is proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77(v)(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa], because certain of the transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within the District of Massachusetts. Among other things, Bressman made certain of the fraudulent trade allocations while in Massachusetts.

DEFENDANT

11. Michael A. Bressman ("Bressman"), age 61, resides in Montville, New Jersey, and until recently, worked as a securities broker. From approximately 2010 to May 2018, Bressman was associated with a registered broker-dealer (the "Brokerage Firm") located in Chatham, New Jersey. The Brokerage Firm terminated Bressman's employment on May 4, 2018. Bressman held Series 63, 65 and 66 licenses.

ALLEGATIONS

A. BACKGROUND

12. From at least January 2012 through February 2018 (the "relevant period"), Bressman acted as a securities broker for more than 60 individuals and families, many of whom had entrusted Bressman with their retirement savings. Each of these customers held one or more accounts with the Brokerage Firm, to which Bressman had access.[1] For the majority of these customers, Bressman was given discretionary trading authority, meaning that he could buy and sell stock for those accounts without receiving approval from the customer for each transaction. For his other accounts, Bressman was supposed to obtain approval from the customer before making a trade on the customer's behalf. Even in the case of these accounts, Bressman was responsible for entering the trades and, absent specific customer instructions to the contrary, could determine the time and price at which securities were bought and sold for the customer.

[1] The Brokerage Firm is an introducing broker. All of the relevant accounts described herein were maintained by, and cleared through, a separate clearing brokerage firm (the "Clearing Firm"). Bressman did not have any direct relationship with the Clearing Firm.

13. Each of Bressman's customers paid the Brokerage Firm a commission when Bressman bought or sold securities on his or her behalf. The Brokerage Firm, in turn, paid Bressman a portion of these trading commissions.

14. Two of Bressman's brokerage customers were his sister-in-law and her husband, the holders of the Family Account. Bressman exercised discretionary authority over the Family Account. In addition to buying and selling securities for the Customer Accounts or the Family Account, Bressman could buy and sell securities for himself through the Personal Account.

15. Bressman could place trades for the Customer Accounts, the Family Account or his Personal Account in two ways. First, Bressman could buy or sell securities directly in a Customer Account, the Family Account, or the Personal Account. Alternatively, Bressman could make trades using the Allocation Account and then subsequently distribute those trades to a selected Customer, Personal, and/or Family Account(s). An allocation or "omnibus" account is a type of account used for large purchases of stock or trades in which a broker is purchasing the same stock for several different customers at the same time. Typically, a broker purchases stock in an allocation account and then transfers the stock to one or more participating customer accounts. These transfers are usually referred to as "allocations." When used appropriately, an allocation account may reduce trading costs, by allowing the broker to execute one large transaction instead of several smaller transactions, and ensures that all customers purchasing the same stock at the same time receive the same price.

16. The Allocation Account used by Bressman worked as follows: First, Bressman would place an order to purchase securities in the Allocation Account using an online trading platform provided to the Brokerage Firm and its brokers by the Clearing Firm. These orders did *not* identify which accounts were participating in the trade (*i.e.*, which accounts were supposed to receive the stock from the Allocation Account after the trade was executed). After the trade was executed, Bressman would use the online trading platform to either (a) sell the stock using the Allocation Account or (b) allocate the stock from the Allocation Account to one or more other accounts. Stock purchased in the Allocation Account could be allocated to Bressman's Personal Account, the Family Account, one or more Customer Accounts, or some combination thereof. If Bressman sold the stock directly from the Allocation Account, he would later have to allocate both the purchase transaction and the sale transaction to one or more of these accounts, again using the online trading platform.

17. During the relevant period, Bressman was the only person who made decisions about the trades made in, and the allocations made from, the Allocation Account.

B. DEFENDANT'S FRAUDULENT SCHEME

18. During the relevant period, Bressman misused the Allocation Account to disproportionately allocate profitable trades to his Personal Account and the Family Account and, conversely, to disproportionately allocate unprofitable trades to the Customer Accounts.

19. During the relevant period, Bressman placed approximately 5,000 trades using the Allocation Account. When Bressman purchased stock using the Allocation Account, he typically delayed making any allocation to another account, or otherwise indicating which account was supposed to receive the resulting stock. This delay in making an allocation enabled Bressman to watch how the stock performed in the hours after the trade before deciding how to allocate it. Bressman then could, and did, make allocations based on the stock's performance after the trade.

20. When the price of the stock went up during the Trade Day (a "winning trade"),[2] Bressman, on disproportionately frequent basis, allocated the winning trade to his Personal Account, the Family Account, or both. Most often, Bressman allocated winning trades solely to his Personal Account. Conversely, when the price of the stock went down during the Trade Day (a "losing trade"), Bressman, on a disproportionately frequent basis, allocated the stock to one or more Customer Accounts.

21. In a significant number of cases, when Bressman allocated a winning trade to his Personal Account, Bressman then locked in his gains on the winning trade by selling the security as a day trade. In fact, when Bressman saw the price of a particular stock go up, he often immediately sold the stock from the Allocation Account, *before* allocating it to his Personal Account (or any other account). Once his profit was guaranteed, Bressman then allocated both the purchase and the sale of the stock to his Personal Account, realizing an immediate profit for himself and taking on zero risk of price decline from such trades.

22. By contrast, when Bressman allocated losing trades to his customers, he did not immediately sell the stock resulting from those losing trades from the Customer Accounts in most cases. Instead, Bressman typically kept these stocks in the Customer Accounts for an extended

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[2] Specifically, a "winning trade" is defined as a purchase that is profitable based on (a) the actual sale price of the stock, if the stock was sold on the Trade Day or (b) the closing price of the stock on the Trade Day, if the stock was not sold on the Trade Day. A "losing trade" is defined as a purchase that was not profitable based on (a) the actual sale price of the stock, if the stock was sold on the Trade Day or (b) the closing price of the stock on the Trade Day, if the stock was not sold on the Trade Day. Similar rules apply to "short sales" when considering "winning" and "losing" trades" and "losing trades."

period of time as so-called "buy-and-hold" investments. While the value of these holdings either rose or fell after the Trade Day, Bressman's fraudulent allocations unfairly deprived his customers of first-day profits and saddled them with first-day losses.

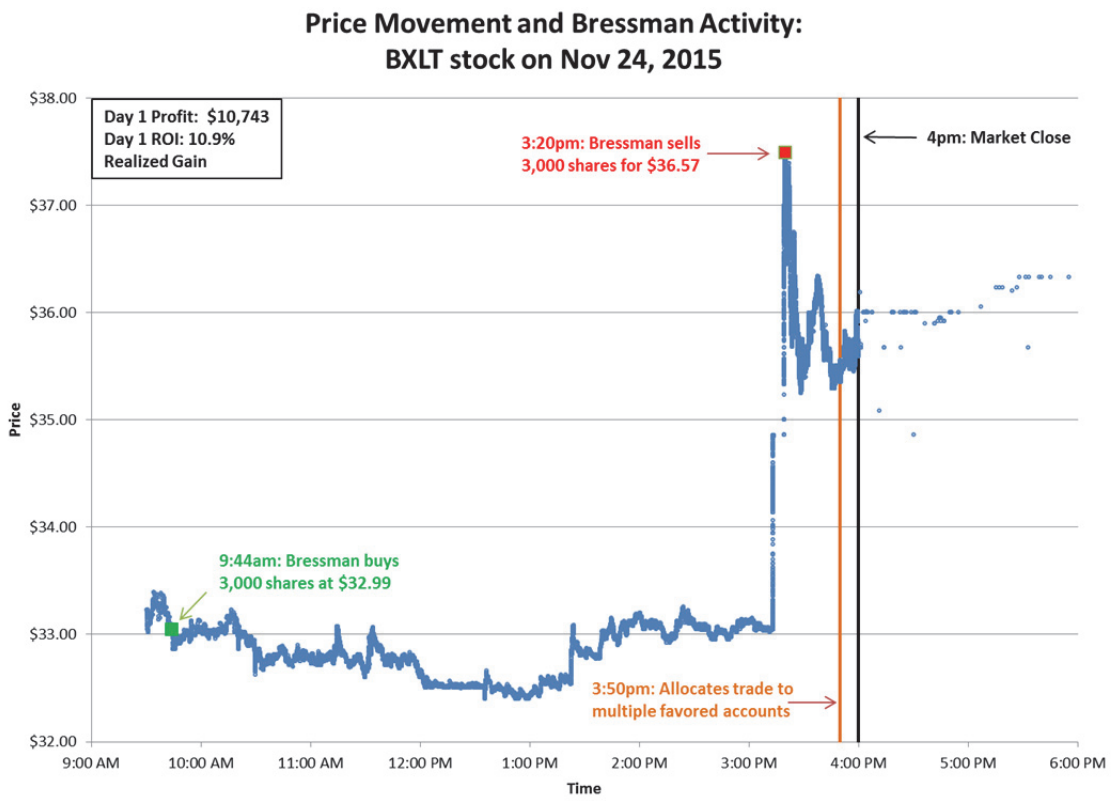
23. When Bressman allocated losing trades to the Customer Accounts, he never told the affected customers that the reason they had received these particular trades was to help him and his family members avoid trading losses. Indeed, Bressman never revealed to his customers in any way that he was cherry-picking profitable trades to enrich himself and his family members at their direct expense. Instead, Bressman deceived his customers so that he could continue to receive both illicit profits from the scheme and from the commissions his customers paid him for making trades.

24. In the case of each of his discretionary-account customers, Bressman had affirmative fiduciary duties of loyalty, fairness and good faith. These duties required Bressman to, among other things, act in the best interest of his customers when making trading or allocation decisions. Bressman violated these fiduciary duties by making allocations that were based on his own greed and self-interest, rather than his customers' interests.

C. EXAMPLES OF DEFENDANT'S FRAUDULENT TRADE ALLOCATIONS

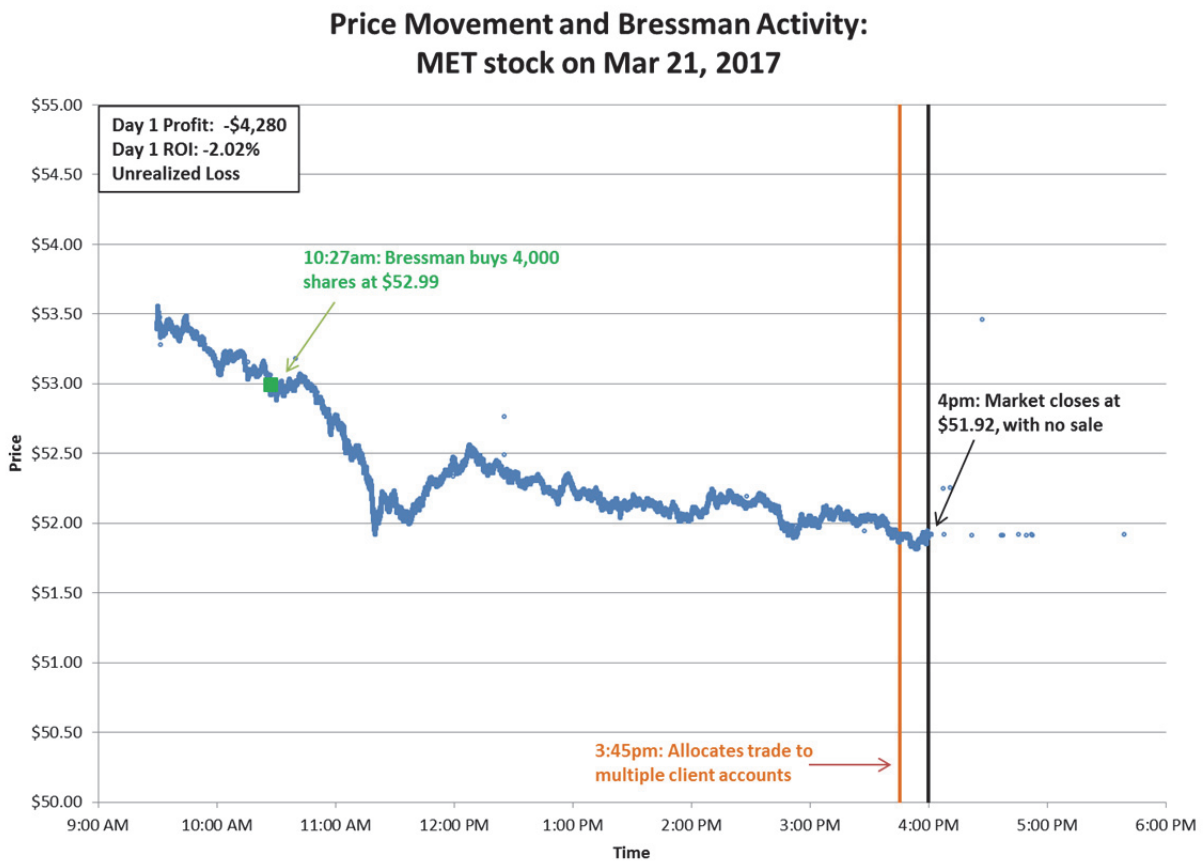
25. Bressman's fraudulent conduct in allocating winning trades to himself and his family members as day trades, and allocating losing trades to his customers, can be illustrated by the following examples.

26. On November 24, 2014, Bressman allocated a winning day trade in the pharmaceutical company Baxalta, Inc. ("BXLT") worth more than $10,000 to himself and his family members, as shown in the chart below:



27. As shown above, Bressman purchased the BXLT stock using the Allocation Account in the morning, but delayed making any allocation of the stock for over six hours. This delay allowed Bressman to see how the stock would perform. Once the price of the BXLT stock (shown in blue) increased dramatically in the late afternoon, Bressman sold the stock from the Allocation Account as a day trade. Once the profit from this day trade was locked-in, Bressman then allocated the entire trade to his Personal Account and the Family Account. Bressman's other customers did not receive any allocation from the highly profitable BXLT trade.

28. As another example, on March 21, 2017, Bressman allocated a losing trade of 4,000 shares of stock in MetLife, Inc. ("MET") to certain Customer Accounts, giving these customers the resulting one-day loss of $4,280. This fraudulent allocation is shown in the chart below:



29. As shown above, Bressman purchased the MET stock using the Allocation Account in the morning, but again delayed making an allocation for more than five hours. In this case, the price of MET stock went down during the day. At the very end of the trading day, when the price of the stock was still down, Bressman allocated the losing trade to a group of Customer Accounts. Bressman did not give any part of this losing trade to his Personal Account or the Family Account.

C. DEFENDANT CONTINUED HIS SCHEME AFTER THE IMPLEMENTATION OF A PRE-CLEARANCE REQUIREMENT

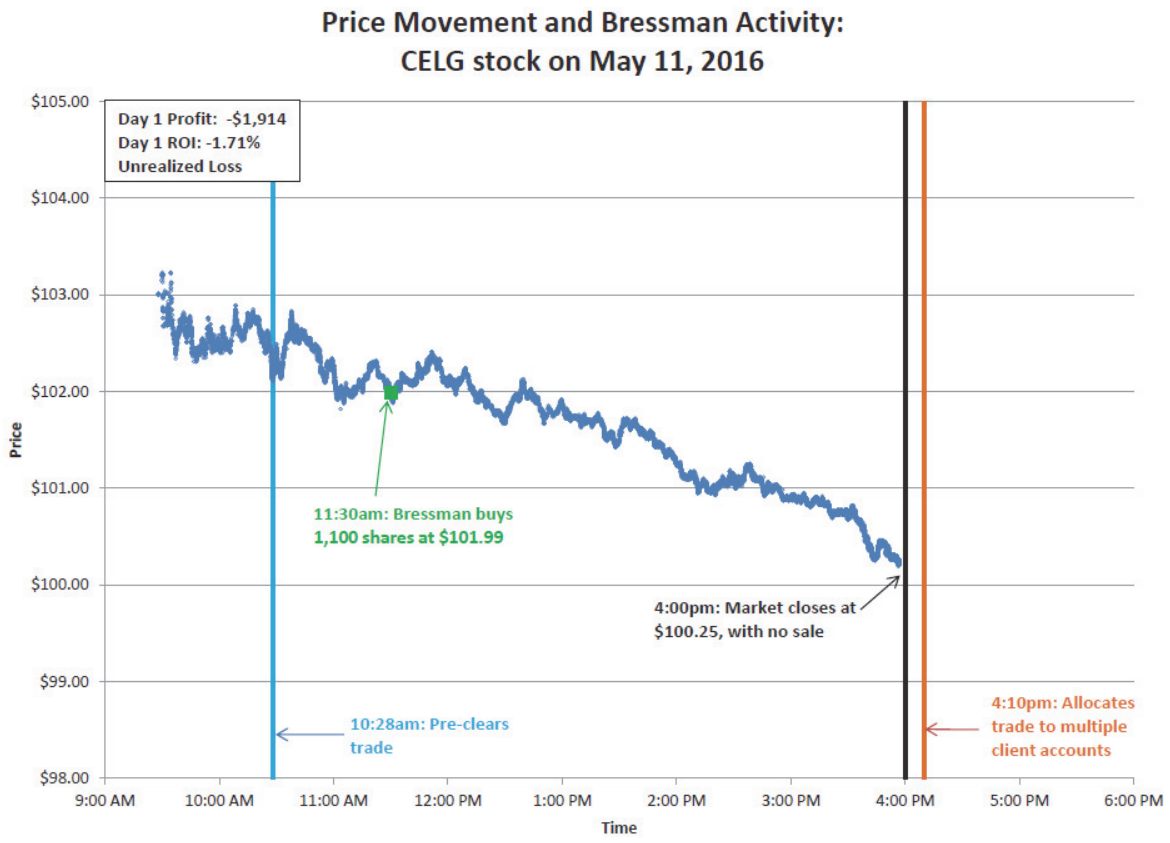
30. In February 2016, the Brokerage Firm told Bressman that he would need to begin complying with the Brokerage Firm's pre-clearance process for all of his personal trades, including trades that Bressman made in the Allocation Account and then allocated to his Personal Account. Under the Brokerage Firm's policies, "pre-clearing" a trade meant that a broker had to submit a form to a designated Brokerage Firm employee indicating, among other things, (a) the stock that the broker planned to trade; (b) whether the broker planned to buy or sell the stock; (c) the number of shares to be purchased or sold and (c) whether any "advisory clients" (*i.e.* customers) of the Brokerage Firm had a current order for the stock.

31. The implementation of this pre-clearance process did not stop Bressman's fraudulent trading scheme. In many instances, Bressman waited to submit the pre-clearance form until well after he placed the initial trade in the Allocation Account. This delay enabled him to continue to see whether the stock went up or down before making his allocation decisions.

32. In other instances, Bressman submitted a preclearance form indicating that he intended to buy a security, but then still allocated the security to his customers. Specifically, in 56 instances, Bressman submitted a pre-clearance form to the Brokerage Firm stating that a particular trade was for his own account, and that no customers had a current order for the stock, but then later allocated the entire trade to a group of Customer Accounts. These trades performed significantly worse than the pre-cleared trades Bressman allocated to his Personal Account. Specifically, the pre-cleared trades allocated entirely to Customer Accounts had a win rate of less than 30% and an average first-day *loss* of 0.49%, while the pre-cleared trades allocated entirely to Bressman's personal account had a win rate of 84% and an average first-day *gain* of 0.45%. This disparity indicates that Bressman continued to make allocation decisions based on the post-trade performance of the stock, even after the imposition of the pre-clearance requirement.

33. For example, at 10:28 a.m. on May 11, 2016, Bressman submitted a pre-clearance form to the Brokerage Firm indicating that he planned to purchase stock in the biotechnology company Celgene Corporation ("CELG") for his Personal Account. On the pre-clearance form, Bressman stated that no customers had a current order for CELG stock and that he was not considering purchasing CELG stock for any of his customers.

34. As shown on the chart below, Bressman purchased CELG shares using the Allocation Account at 11:30 a.m. Despite having told the Brokerage Firm that this trade was intended for his Personal Account, Bressman did not allocate the trade to his Personal Account. Instead, Bressman delayed making any allocation and waited more than four hours to see how CELG stock would perform. During this period, the price of CELG steadily declined. Finally, after the market had closed for the day and Bressman could see that the CELG stock had closed down, he allocated the entire trade to a group of Customer Accounts. The Customer Accounts lost $1,914 as a result. Bressman's Personal Account did not receive any of the CELG stock, and therefore did not share in this loss, even though he had told the Brokerage Firm on the pre-clearance form that the trade was for his Personal Account and that he was not even considering the trade for his customers.



D. THE RESULTS OF DEFENDANT'S FRAUDULENT SCHEME

35. During the relevant period, Bressman regularly engaged in the type of fraudulent and self-serving trade allocations described above. During the relevant period, Bressman allocated approximately 1,610 trades to the Personal Account and the Family Account, approximately 1,179 of which were profitable on the first day, for a success rate of approximately 73%. The vast majority of these winning trades – 1,070 trades – were allocated to the Personal Account. By contrast, of the 3,371 trades Bressman allocated to the Customer Accounts during the same period, approximately 600 were profitable on the first day, a success rate of just 18%.

36. This scheme allowed Bressman to personally obtain at least $700,000 more than he would have received had he fairly allocated the trades. Additionally, Bressman's fraudulent allocations to the Family Account caused his family members to receive approximately $50,000 more than they otherwise would have received.

37. In the case of the Personal Account, at least $650,000 of Bressman's ill-gotten gains were attributable to day trades in which Bressman closed out the trade on the same day it was made. In total, Bressman made 807 day trades for himself, 92.1% of which were profitable. Virtually all

(99%) of these profitable day trades involved instances in which Bressman sold the stock from the Allocation Account before making an allocation, thereby ensuring that the trade was profitable before giving it to himself.

38. By contrast, Bressman's customers bore the cost of his fraud, collectively receiving approximately $750,000 less than they would have, absent Bressman's scheme.

First Claim for Relief

(Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder) [15 U.S.C § 78j(b) and 17 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c)]

39. The Commission repeats and incorporates by reference the allegations in paragraphs 1-32 above as if set forth fully herein.

40. By reason of the foregoing, Defendant, directly or indirectly, acting intentionally, knowingly or recklessly, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce or the facilities of a national securities exchange or the mail: (a) employed or is employing devices, schemes or artifices to defraud; or (b) engaged or are is engaging in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

41. By engaging in the conduct described above, Defendant has violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act of the Exchange Act and Rule 10b-5(a) and 10b-5(c) thereunder.

Second Claim for Relief

(Violations of Section 17(a)(1) of the Securities Act) [15 U.S.C § 77q(a)(1)]

42. The Commission repeats and incorporates by reference the allegations in paragraphs 1- 32 above as if set forth fully herein.

43. By reason of the foregoing, Defendant, directly or indirectly, acting intentionally, knowingly or recklessly, in connection with the offer or sale of securities, by use of the means or instruments of transportation or communication interstate commerce or by use of the mails, employed or is employing devices, schemes or artifices to defraud.

Third Claim for Relief
(Violations of Section 17(a)(3) of the Securities Act)
[15 U.S.C § 77q(a)(3)]

44. The Commission repeats and incorporates by reference the allegations in paragraphs 1- 32 above as if set forth fully herein.

45. By reason of the foregoing, Defendant, directly or indirectly, acting recklessly or negligently, in connection with the offer or sale of securities, by use of the means or instruments of transportation or communication interstate commerce or by use of the mails, engaged or are is engaging in acts, practices or courses of business which operate as a fraud or deceit.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Defendant and each of his agents, servants, employees and attorneys and those persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of a similar purpose or effect, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and 10b-5(c) thereunder [17 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c)], and Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and 77q(a)(3)];

B. Require Defendant to disgorge the ill-gotten gains generated and the losses avoided during the period covered by the applicable statute of limitations, plus pre-judgment interest;

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

D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

E. Grant such other relief as the Court deems just and proper.

JURY DEMAND

The Commission hereby demands a trial by jury on all claims so triable.

Dated: September 12, 2018
New York, New York

On behalf of the Commission:

/s/ Vanessa De Simone

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