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FINANCIAL INDUSTRY REGULATORY AUTHORITY

REGISTRATION & DISCLOSURE

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Brian M. Wurdemann (CRD No. 4206425),

Respondent.

DISCIPLINARY PROCEEDING

No. 200700946301

HEARING OFFICER:

COMPLAINT

SUMMARY

1. From 2002 through 2004, Respondent Brian M. Wurdemann ("Wurdemann"), a former general securities representative ("GSR") of Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD No. 4206425) (the "Firm" or "Merrill Lynch"), recommended and effected numerous unsuitable covered call options transactions in the accounts of seven customers, four of which were retired employees of United Parcel Service ("UPS"). The accounts for each of the seven customers include spouse accounts and joint family accounts.

2. After opening accounts with Wurdemann at Merrill Lynch, each of the seven customers transferred UPS stock, often large positions, to one or more of their Merrill Lynch accounts. The seven customers had little or no investment experience and no experience trading options. Despite their lack of experience, covered call options were repeatedly written against their UPS shares over an extended period of time.

3. All seven customers expressed a desire to maintain the UPS shares against which

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the covered calls were to be written. Nevertheless, Wurdemann recommended, implemented and carried out a protracted practice of writing calls with an exercise price below the existing market price ("in-the-money" and "deep-in-the-money" calls) in a rising UPS market that all but assured that the calls would be exercised, requiring the customers to sell away their shares.

4. To avoid exercise, and to satisfy the customers' wishes to maintain their shares, the calls had to be repurchased, often at a substantial loss. Further, if the calls were exercised, the stock had to be repurchased, typically at an even greater cost. Wurdemann did not adequately explain to these unsophisticated investors the risks associated with the strategy. These customers did not understand how the call transactions were applied to the strategy or whether and to what extent such transactions were generating losses for their accounts.

5. In total, the customers suffered approximately four million dollars in losses.

6. Wurdemann also created and sent false and misleading communications summarizing account information regarding covered call options to a customer which indicated that the customer was apparently generating sizable covered call income in his accounts. However, the alleged covered call income was actually just "premiums" generated by the open covered call positions in customer's accounts, and not realized "income." As such, it appeared to the customer that he was earning more money in the covered call strategy than in actuality.

7. Based upon the foregoing conduct, Wurdemann violated NASD Rules 2310(a), 2860(b)(19), 2210(d)(1), 2220(d)(1) and 2110.

RESPONDENT AND JURISDICTION

8. Respondent Wurdemann has been registered with FINRA since October 2000. He currently holds the following licenses: series 7, series 31 and series 66. From May 2000 through January 2008, Wurdemann was employed with Merrill Lynch. He became a GSR with

the Firm in or about October 2000. Wurdemann remained in that position until January 2008. In January 2008, Wurdemann left the Firm voluntarily and became employed at a FINRA member firm in New York. Wurdemann is currently employed as a GSR at a FINRA member firm and is therefore subject to FINRA's jurisdiction.

BACKGROUND

Brian Wurdemann

9. From May 2000 through January 2008, Wurdemann worked as a GSR at Merrill Lynch's World Financial Center Office in New York, New York. Prior to working at Merrill Lynch, Wurdemann worked as a tax accountant at his father's accounting office, "W & A."

10. Upon being hired by Merrill Lynch, Wurdemann worked with the RVH Group, a group of GSRs who had an "alliance" with W & A and who serviced UPS employees and retirees ("UPSers") who were referred from W & A by utilizing, among other things, covered call writing. Until approximately 2006, all of Wurdemann's 40 to 45 Merrill Lynch clients were UPSers, many of whom were tax clients of W & A.

11. Wurdemann implemented the aforementioned covered call writing strategy with his customers within the first year after he passed the Series-7 exam.

Covered Call Writing

12. Writing covered calls involves holding or purchasing the underlying instrument and selling a call against the position in that instrument. The buyer of the call is paying a "premium" to the writer for the right to purchase a certain quantity of the underlying instrument at a set price (the "strike price").

13. While the premium received when a call is written represents cash-flow to the call writer, it is not "income" since the call position is still open. An assessment of profit and loss

cannot be made until the call position closes by: 1) expiring worthless (in the case where the price of the underlying instrument does not reach the strike price); or 2) the call writer buys back the call (to prevent exercise or close the position). Also, if the call has been exercised, and the writer desires to keep the position (as was the typical case when the complaining customers' calls were exercised), profit and loss cannot be determined until after the writer repurchases the instrument.

14. Calls can be sold "in-the-money," "at-the-money" or "out-of-the-money" depending on the amount and type of risk the investor is willing to take. Selling an in-the-money call offers a higher degree of downside protection but eliminates most upside profit potential, whereas selling an out-of-the-money call offers less downside protection but leaves room for large upside profit potential. Importantly, selling an out-of-the-money call, while producing smaller premiums, reduces the risk of exercise. Investors who are not anxious to part with a stock but hope for some incremental gain sometimes use this strategy.

15. The recurring writing of calls against a long position in a security is often referred to as "rolling." When utilizing a rolling strategy, the call contracts and their strike prices can be "rolled out/forward," "rolled up" or "rolled down." Specifically, rolling out or forward occurs when the writer of the covered call goes into the market (prior to expiration or exercise) *buys* back the call (at the current market price) then *writes* another covered call (with the same strike price) with an expiration date further "out" in time. The same scenario is also true when rolling up or down except the strike price selected will be raised or lowered accordingly.

16. The risks attendant to a rolling out/forward strategy are particularly accentuated where the call writer does *not* want to sell his or her underlying security and is writing in-the-money or deep in-the-money calls. "This means that the [investor] would buy back the current

written call and sell a longer-term call with the same deep in-the-money strike price. This strategy limits the stock's upside potential and may necessitate buying back the written option at a loss should the price of the underlying stock increase. The client would, in effect, be writing uncovered calls. Rolling forward 'deep-in-the-money calls' *is not* considered a conservative covered call writing strategy.”¹

**WURDEMANN'S UNSUITABLE RECOMMENDATIONS AND FAILURE TO
ADEQUATELY EXPLAIN THE RISKS OF THE COVERED CALL WRITING
STRATEGY**

Customer AW

17. AW, a UPS retiree, was also an accounting client of Wurdemann's father. AW was referred to Wurdemann from another UPS retiree who had financial and tax dealings with Wurdemann and Wurdemann's father. High school educated, AW had no prior covered call experience and little to no investment experience. He was an unsophisticated and inexperienced investor.

18. After speaking with Wurdemann, AW opened a number of accounts with Merrill Lynch in or about December 2000 with Wurdemann as his financial advisor. At the time, AW was approximately 61 years old. AW transferred approximately 146,000 UPS shares to his Merrill Lynch accounts and at least three of these accounts were engaged in the writing of covered calls. These accounts were in AW's name and his wife's name, MW ("AW's accounts").

19. Covered call writing began in AW's accounts with Wurdemann in or about March 2002. At that time, AW and MW instructed Wurdemann that they did not want to sell their UPS stock against which the calls were being written.

¹ 2007 Merrill Lynch Global Private Client Compliance Department Operating Procedures Manual.

20. Between March 2002 and November 2004, approximately six-of-37 UPS covered call positions written in AW's accounts were exercised. On each of the six occasions, the shares were repurchased in AW's accounts. The offset between the price obtained by virtue of exercise and the cost to repurchase the shares resulted in substantial debits to AW's respective accounts.

21. Approximately 26-of-37 calls written in AW's accounts during this period were repurchased prior to exercise or expiration. Similar to the calls that were exercised, the cumulative offset between the sale price of these calls and the cost to repurchase resulted in significant losses to AW. Notably, repurchased calls were repeatedly rolled out/forward to a future date. Often, the premium received in the "rolled out" calls only temporarily offset the losses generated from the repurchase of the previous calls. When many of the rolled out positions were closed, the losses mounted.

22. The majority of the calls that were repurchased and rolled out/forward, as well as those that were exercised and then the shares repurchased, had been written in-the-money or deep in-the-money. The vast majority of the covered calls for AW's accounts between March 2002 and November 2004, were written with a strike price of either \$55 or \$60. Between 2002 and 2004, the average monthly UPS closing price was always above \$55 and was above \$60 for 30 of the 36 months in those years. During that period, UPS shares closed below \$55 on only approximately four days. Further, between 2003 and 2004, when covered call writing in the seven customers' accounts was most active, the price of UPS shares was trending upward.

23. The repurchases in AW's accounts were often made at prices substantially higher than the premium taken in when the calls were written. Many of these in-the-money and deep in-the-money calls were repurchased to avoid exercise of these calls. The call and share

repurchases were also consistent with AW and MW's discussions with Wurdemann that they desired to retain ownership of their UPS shares.

24. Wurdemann recommended, implemented and carried out the strategy of repeatedly "rolling out/forward" these in-the-money and deep in-the-money covered calls to a future date and AW followed Wurdemann's recommendations. In all, AW lost approximately \$2 million as a result of following Wurdemann's covered call strategy.

25. In addition, Wurdemann failed to adequately explain to AW the risks associated with the covered call writing strategy that he recommended, implemented and carried out in his accounts. As such, AW did not fully understand the risks associated with the in-the-money and deep-in-the-money covered calls that were repeatedly rolled out/forward in his accounts.

Customers JW and MS

26. AW gifted some of his UPS shares to his five children including JW and MS. Both JW and MS opened accounts with Merrill Lynch.

27. JW's accounts, which were maintained with his wife DW, held approximately 8,000 shares of UPS in January 2003 when covered call writing began with Wurdemann. At the time, JW was approximately 33 years old.

28. MS's account held approximately 5,000 shares of UPS in August 2003. When covered call writing began in her account with Wurdemann, MS was approximately 41 years old.

29. Like AW, neither JW nor MS wanted to sell their UPS stock. Also like AW, neither JW nor MS had any prior experience in options trading.

30. Between January 2003 and November 2004, approximately one-of-21 covered call positions written in one of JW's accounts was exercised. Like his father's accounts, the UPS shares in JW's account were repurchased resulting in a substantial debit to JW's account.

31. Approximately 18-of-21 calls written in JW's accounts during the period he invested with Wurdemann were repurchased prior to exercise or expiration. Like the call that was exercised, the cumulative offset between the sale price of these calls and the cost to repurchase resulted in significant losses to JW. Notably, similar to the activity in AW's accounts, repurchased calls were repeatedly rolled out/forward to a future date. Often, the premium received in the "rolled out" calls only temporarily offset the losses generated from the repurchase of the previous calls. When many of the rolled out positions were closed, the losses mounted.

32. The majority of the calls that were repurchased, as well as the call that was exercised and then the shares repurchased, had been written in-the-money or deep in-the-money. The repurchases in JW's accounts were often made at prices substantially higher than the premium taken in when the calls were written. Many of these in-the-money and deep in-the-money calls were repurchased to avoid exercise of these calls. The repurchases were also consistent with JW's desire to retain ownership of his UPS shares.

33. Wurdemann recommended, implemented and carried out the strategy of repeatedly "rolling out/forward" these in-the-money and deep in-the-money covered calls to a future date and JW followed Wurdemann's recommendations. Many of these calls were written in a rising UPS market. In all, JW lost approximately \$157,000 as a result of following Wurdemann's covered call strategy.

34. In addition, Wurdemann failed to adequately explain to JW the risks associated with the covered call writing strategy that he recommended, implemented and carried out in his accounts. As such, JW did not fully understand the risks associated with the in-the-money and deep-in-the-money covered calls that were repeatedly rolled out/forward in his accounts.

35. Calls were written in MS's account less frequently and over a shorter period of time than in her brother and father's accounts, nevertheless, losses accumulated quickly.

36. Between August 2003 through November 2004, four covered calls were written in MS's account. Each call was written in-the-money or deep-in-the-money with a strike price of \$60 and during a rising UPS market. Each was thereafter repurchased and resulted in a loss. Like her brother and father's accounts, the four repurchased calls were systemically rolled out/forward to a future date. The premium received in the "rolled out" calls only temporarily offset the losses generated from the repurchase of the previous calls. When each of the rolled out positions were closed, the losses mounted.

37. Most of the repurchases in MS's account were made at prices substantially higher than the premium taken in when the calls were written. These in-the-money and deep in-the-money calls were repurchased to avoid exercise of these calls. The repurchases were also consistent with MS's desire to retain ownership of her UPS shares.

38. Wurdemann recommended, implemented and carried out the strategy of repeatedly "rolling out/forward" these in-the-money and deep in-the-money covered calls to a future date and MS followed Wurdemann's recommendations. In all, MS lost approximately \$60,000 as a result of following Wurdemann's covered call strategy.

39. In addition, Wurdemann failed to adequately explain to MS the risks associated with the covered call writing strategy that he recommended, implemented and carried out in her account. As such, MS did not fully understand the risks associated with the in-the-money and deep-in-the-money covered calls that were repeatedly rolled out/forward in her account.

Customer JC

40. JC retired from UPS in 2002 with approximately 18,000 shares of UPS stock. JC, like AW, is also a high school educated UPS retiree with little to no investing experience prior to becoming a Merrill Lynch/Wurde mann customer. He too was an unsophisticated investor with no prior covered call experience.

41. In or about Spring 2001 after meeting with Wurde mann in JC's home, JC opened various accounts with Wurde mann. Approximately three of the accounts that JC opened traded covered calls. The accounts were in his name and his wife's name, AC ("JC's Accounts"). At the time, JC was approximately 61 years old.

42. Covered call writing began in JC's accounts with Wurde mann in or about July 2001 with repeated covered call transactions beginning in late 2002. In his initial meeting with Wurde mann, JC told Wurde mann that he wanted to hold his UPS stock against which calls were written.

43. Between July 2001 and November 2004, approximately two-of-28 covered call positions written in JC's accounts were exercised. Like the accounts of AW and JW, the UPS shares in JC's account were repurchased on both occasions resulting in a substantial debit to JC's accounts.

44. Approximately 24-of-28 calls written in JC's accounts were repurchased prior to exercise or expiration. Notably, the strike price of most all of the calls written in JC's accounts was \$60. Like the calls that were exercised, the cumulative offset between the sale price of these calls and the cost to repurchase resulted in significant losses to JC. Notably, similar to the activity in the aforementioned customer accounts, repurchased calls were repeatedly rolled out/forward to a future date. Often, the premium received in the "rolled out" calls only

temporarily offset the losses generated from the repurchase of the previous calls. When many of the rolled out positions were closed, the losses mounted.

45. The majority of the calls that were repurchased, as well as the calls that were exercised and then the shares repurchased, had been written in-the-money or deep in-the-money. The repurchases in JC's accounts were often made at prices substantially higher than the premium taken in when the calls were written. Many of these in-the-money and deep in-the-money calls were repurchased to avoid exercise of these calls. The repurchases were also consistent with JC's desire to retain ownership of his UPS shares.

46. Wurdemann recommended, implemented and carried out the strategy of repeatedly "rolling out/forward" the in-the-money and deep in-the-money covered calls to a future date and JC followed Wurdemann's recommendations. Many of these calls were written in a rising UPS market. In all, JC lost approximately \$359,000 as a result of following Wurdemann's covered call strategy.

47. In addition, Wurdemann failed to adequately explain to JC the risks associated with the covered call writing strategy that he recommended, implemented and carried out in his accounts. As such, JC did not fully understand the risks associated with the in-the-money and deep-in-the-money covered calls that were repeatedly rolled out/forward in his accounts.

Customer SR

48. SR is JC's nephew and a UPS retiree. He was also a tax client of Wurdemann's father. SR was an unsophisticated investor with little to no investing experience prior to becoming a Merrill Lynch/Wurdemann customer and no prior covered call experience.

49. SR met with Wurdemann, along with his uncle, JC, during the above referenced Spring 2001 meeting that occurred at JC's home. SR did not open accounts with Wurdemann

until early 2003 when he retired from UPS. At that time, SR owned approximately 62,000 UPS shares. SR opened various accounts with Merrill Lynch, three of which were used to trade covered calls. These accounts were held in his name, his wife's name, PR and his daughter's name, KR ("SR's Accounts"). At the time, SR was approximately 56 years old.

50. Covered call writing began in SR's accounts with Wurdemann in or about February 2003. SR told Wurdemann that he did not want to risk his UPS stock against which calls were written. Between February 2003 and November 2004, approximately four-of-30 of the calls written in SR's account were exercised. Like the aforementioned customers whose shares were repurchased after exercise, UPS shares were repurchased in SR's accounts resulting in substantial debits to his accounts.

51. Approximately 25-of-30 calls written in SR's accounts were repurchased prior to exercise or expiration. Notably, the majority of the strike prices of the calls written in SR's accounts were \$55 or \$60. Like the calls that were exercised, the cumulative offset between the sale price of these calls and the cost to repurchase resulted in significant losses to SR. Notably, similar to the activity in the aforementioned customer accounts, repurchased calls were repeatedly rolled out/forward to a future date. Often, the premium received in the "rolled out" calls only temporarily offset the losses generated from the repurchase of the previous calls. When many of the rolled out positions were closed, the losses mounted.

52. The majority of the calls that were repurchased, as well as the calls that were exercised and then the shares repurchased, had been written in-the-money or deep in-the-money. The repurchases in SR's accounts were often made at prices substantially higher than the premium taken in when the calls were written. Many of these in-the-money and deep in-the-

money calls were repurchased to avoid exercise of these calls. The repurchases were also consistent with SR's desire to retain ownership of his UPS shares.

53. Wurdemann recommended, implemented and carried out the strategy of repeatedly "rolling out/forward" the in-the-money and deep in-the-money covered calls to a future date and SR followed Wurdemann's recommendations. Many of these calls were written in a rising UPS market. In all, SR lost approximately \$700,000 as a result of following Wurdemann's covered call strategy.

54. In addition, Wurdemann failed to adequately explain to SR the risks associated with the covered call writing strategy that he recommended, implemented and carried out in his accounts. As such, SR did not fully understand the risks associated with the in-the-money and deep-in-the-money covered calls that were repeatedly rolled out/forward in his accounts.

Customer CF

55. CF is a current UPS employee. CF met Wurdemann as a result of being a tax client of his father. CF had little to no investing experience prior to becoming a Merrill Lynch/Wurdemann customer and no prior covered call experience.

56. CF opened various accounts with Merrill Lynch in or about early 2003. Only one of these accounts, however, was used to trade covered calls. At that time, she had approximately 16,000 shares of UPS stock. The accounts were held in her name. At the time, CF was approximately 45 years old.

57. Covered call writing began in CF's account in or about Spring 2003, after meeting with Wurdemann. CF also did not want to risk her UPS stock against which calls were written. Between April 2003 and April 2004, approximately six covered calls were written in CF's account. None of the calls expired and none of them were exercised.

58. Five-of-six calls were repurchased prior to exercise or expiration. The sixth call had an expiration of October 29, 2004 and had yet to be repurchased at the time CF originally complained about Wurdemann. Each call was written in-the-money or deep-in-the-money with a strike price of \$60 and during a rising UPS market. Each repurchased call resulted in a loss. Like the aforementioned customers, the five repurchased calls were systemically rolled out/forward to a future date. The premium received in the "rolled out" calls only temporarily offset the losses generated from the repurchase of the previous calls. When each of the rolled out positions were closed, the losses continued to mount.

59. All of the repurchases in CF's account were made at prices higher than the premium taken in when the calls were written. These in-the-money and deep in-the-money calls were repurchased to avoid exercise of these calls. The repurchases were also consistent with CF's desire to retain ownership of her UPS shares.

60. Wurdemann recommended, implemented and carried out the strategy of repeatedly "rolling out/forward" the in-the-money and deep in-the-money covered calls to a future date and CF followed Wurdemann's recommendations. Many of these calls were written in a rising UPS market. In total, CF lost approximately \$79,000 as a result of following Wurdemann's covered call strategy.

61. In addition, Wurdemann failed to adequately explain to CF the risks associated with the covered call writing strategy that he recommended, implemented and carried out in her account. As such, CF did not fully understand the risks associated with the in-the-money and deep-in-the-money covered calls that were repeatedly rolled out/forward in her account.

Customer FH

62. FH is a UPS retiree and was a tax client of Wurdemann's father. He graduated from high school then went into the Navy. He started at UPS right out of the Navy and worked there through retirement in 1995. FH was an unsophisticated investor with no prior covered call experience and little or no investing experience prior to becoming a Merrill Lynch/Wurdemann customer. When FH retired, he owned approximately 62,000 shares of UPS stock.

63. In or about September 2002, FH opened at least four accounts with Merrill Lynch, two of which were used to trade covered calls. These accounts were held in his name and his wife's name, DH ("FH's Accounts"). At the time, FH was approximately 62 years old.

64. Covered call writing began in FH's accounts with Wurdemann in or about December 2002. Like other complaining customers, FH told Wurdemann that he had no intention of selling his UPS stock. Between December 2002 and November 2004, approximately six-of-23 covered call positions written in Hanna's accounts were exercised. Like the aforementioned customers whose shares were repurchased after exercise, UPS shares were repurchased in FH's accounts resulting in substantial debits to his accounts.

65. Approximately 14-of-23 calls were repurchased prior to exercise or expiration. Notably, all of the calls written in FH's account, with very limited exception had a strike price of either \$55 or \$60. As was common among the other complaining customers' accounts, the majority of FH's calls were written in-the-money or deep in-the-money. Like the calls that were exercised, the cumulative offset between the sale price of these calls and the cost to repurchase resulted in significant losses to FH. Notably, similar to the activity in the aforementioned customer accounts, repurchased calls were repeatedly rolled out/forward to a future date. Often, the premium received in the "rolled out" calls only temporarily offset the losses generated from

the repurchase of the previous calls. When many of the rolled out positions were closed, the losses continued to mount.

66. The majority of the calls that were repurchased, as well as the calls that were exercised and then the shares repurchased, had been written in-the-money or deep in-the-money. The repurchases in FH's accounts were often made at prices substantially higher than the premium taken in when the calls were written. Many of these in-the-money and deep in-the-money calls were repurchased to avoid exercise of these calls. The repurchases were also consistent with SR's desire to retain ownership of his UPS shares.

67. Wurdemann recommended, implemented and carried out the strategy of repeatedly "rolling out/forward" the in-the-money and deep in-the-money covered calls to a future date and FH followed Wurdemann's recommendations. Many of these calls were written in a rising UPS market. In all, FH lost approximately \$500,000 as a result of following Wurdemann's covered call strategy.

68. In addition, Wurdemann failed to adequately explain to FH the risks associated with the covered call writing strategy that he recommended, implemented and carried out in his accounts. As such, FH did not fully understand the risks associated with the in-the-money and deep-in-the-money covered calls that were repeatedly rolled out/forward in his accounts.

WURDEMANN'S FALSE AND MISLEADING COMMUNICATIONS SENT TO CUSTOMER AW

69. Shortly after opening his accounts, AW told Wurdemann that he had trouble understanding his account statements regarding his covered calls. Thereafter, between approximately September 2002 and April 2003, Wurdemann created and sent to customer AW monthly written summaries of account statements which contained a section entitled "Covered Call Income" which indicated (in dollars) that AW was *apparently* generating sizable covered

call income in his accounts over this time period. However, the *alleged* covered call income was actually just “premiums” (cash flow) generated by the *open*, or “rolled out,” covered call positions in AW’s accounts, and not *realized “income.”*

70. Wurdemann also miscalculated the dollar value of premiums that he memorialized on the summaries. Additionally, monthly tallies of the alleged “Covered Call Income” that Wurdemann calculated on these summaries concluded with an *open* call position that had not yet been repurchased or expired. As such, it appeared to AW that the amounts of money identified in these summaries were realized income, not unrealized premiums.

71. By including open positions in his calculations of “Covered Call Income” and miscalculating the dollar value of premiums, Wurdemann misled AW into believing that he was earning more money in the covered call strategy than he was in actuality.

FIRST CAUSE OF ACTION

(NASD Rules 2310, 2860(b)(19) and 2110)

Unsuitability

72. The Department repeats, re-alleges and incorporates by reference paragraphs 1 through 71 above.

73. As described above in paragraphs 17 through 68, Wurdemann recommended numerous covered call options transactions to customers which were unsuitable in view of the customers’ investment objectives, investment experience and circumstances.

74. In particular, all seven customers had no prior covered call experience and were not aware of the risks associated with the type of covered call strategy that Wurdemann recommended, implemented and carried out for their accounts. The customers did not have the

knowledge and experience to evaluate the risks associated with the covered call strategy or transactions implemented in their accounts.

75. Wurdemann recommended that the seven customers engage in a covered call writing strategy that included the repeated "rolling out/forward" of in-the-money and deep-in-the-money calls, many of which were written in a rising UPS market and some written more than \$10 in-the-money. To avoid exercise, and to satisfy the customers' wishes to maintain their UPS stock positions, calls had to be repurchased, often at a substantial loss. Similarly, if the calls were exercised, the stock had to be repurchased, often at a substantial cost to the customers. As a result of the covered call strategy that Wurdemann recommended, implemented and carried out for the seven customers' accounts, all seven customers realized substantial losses in their accounts.

76. Based on the financial situations and needs of the seven customers as expressed by those customers, Wurdemann did not have reasonable grounds for believing that his investment recommendations regarding the covered call strategy and transactions were suitable.

77. Wurdemann did not have reasonable grounds to believe that the recommended transactions were not unsuitable for these customers, or a reasonable basis for believing that these customers had the knowledge and experience necessary to evaluate the risks of the covered call strategy and transactions that he recommended.

78. By reason of the foregoing, Wurdemann's conduct constitutes separate and distinct violations of NASD Rules 2310, 2860(b)(19) and 2110.

SECOND CAUSE OF ACTION

NASD Rule 2110

Failure to Adequately Explain the Risks of the Covered Call Writing Strategy

79. The Department repeats, re-alleges and incorporates by reference paragraphs 1 through 78 above.

80. As described above in paragraphs 17 through 68, Wurdemann failed to adequately explain to one or more customers the risks associated with the covered call writing strategy that Wurdemann recommended, implemented and carried out in their accounts.

81. As such, the seven customers did not fully understand the risks associated with the in-the-money and deep-in-the-money covered calls that were repeatedly rolled out/forward in their accounts.

82. By reason of the foregoing, Wurdemann's conduct constitutes a violation of NASD Rule 2110.

THIRD CAUSE OF ACTION

NASD Rules 2210(d)(1), 2220(d)(1) and 2110

False and Misleading Communications

83. The Department repeats, re-alleges and incorporates by reference paragraphs 1 through 82 above.

84. As described above in paragraphs 69 through 71, Wurdemann created and sent to customer AW communications summarizing account information regarding covered call options which were false, exaggerated, unwarranted or misleading regarding the apparent income AW was generating from the covered calls written in his account. As such, Wurdemann misled AW

into believing the information in these summaries was an accurate summary of his covered call income and that he was earning more money in the covered call strategy than in actuality.

85. By reason of the foregoing, Wurdemann's conduct constitutes separate and distinct violations of NASD Rules 2210(d)(1), 2220(d)(1) and 2110.

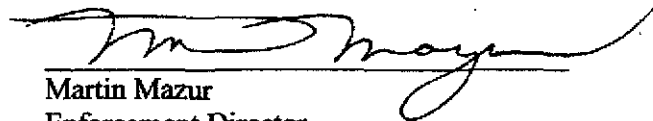
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including monetary sanctions, and that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: May 18, 2009



Martin Mazur
Enforcement Director

Linda Riefberg
Vice President and Chief Counsel

Gino Ercolino
Senior Counsel

Kelli Stieh
Counsel

FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, NY 10005
(646) 315-7334
(202) 689-3435 fax
gino.ercolino@finra.org