

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

ITRADEDIRECT.COM (CRD No. 18281),

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2009016159101**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During 2008 through 2010, iTRADEdirect.com ("iTrade") operated a boiler room out of its Selden, New York office. Registered representatives at the firm routinely cold-called potential customers, and opened accounts and conducted unauthorized trades for individuals who never agreed to become customers or buy securities through iTrade. The firm also falsified account records, made recommendations to potential customers without a basis for determining whether the investment was suitable, failed to report more than 50% of the complaints it received from customers, violated the net capital books and records requirements, and refused to allow FINRA to inspect and copy certain of the firm's books and records as part of an on-site examination.

2. By virtue of this conduct, the firm, which is now defunct, violated NASD Conduct Rules 2120, 2310, 3070, and 3110(a); NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December

15, 2008); Sections 10(b), 15(c)(3) and 17(a) of the Securities Exchange Act, and Rules 10b-5, 15c3-1, 17a-3, 17a-5, and 17a-11 thereunder.

RESPONDENT

3. **ITRADEDIRECT.COM** (CRD No. 18281) became a member firm in 1986. The main office of the firm was in Boca Raton, Florida, although that office had only two registered persons during the relevant time period. iTrade has had branch offices in New York City, Florida, Michigan, California, and Long Island, although only the Long Island branch office was active during the time period relevant to this Complaint. The Long Island office, located first in Hauppauge, then in Selden, and finally, briefly, in Farmingville, was owned by a registered principal of the firm.

4. At all times relevant to the investigation, the firm was principally owned by a corporate entity, iTRADEnow.com Corp, which is principally owned by an individual who was also the President and Chief Executive Officer of the firm.

5. iTrade filed a Form BDW on May 28, 2010, and its membership was cancelled on or about June 29, 2010 for non-payment of an arbitration award.

6. Although Respondent has not been a FINRA member firm since June 29, 2010, it remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article IV, Section 6 of FINRA's By-Laws, because (1) the Complaint is being filed within two years after the date upon which it ceased to be a FINRA member and (2) the Complaint charges it with misconduct committed while it was a FINRA member.

7. iTrade has been the subject of numerous disciplinary actions, by FINRA and by state regulators, including:

- a. a cease and desist order and notice of intent to revoke registration issued by

the Connecticut Banking Commissioner on June 3, 2010, based on allegations of failing to disclose a \$68 per transaction handling fee, employing unregistered agents, and allowing the use of unapproved sales scripts (currently pending);

- b. a January 10, 2010 settlement with the Illinois Securities Department against the firm, its President/Chief Executive Officer, and Chief Compliance Officer, for failure to supervise a registered representative who allegedly provided false information about a customer and engaged in unauthorized, excessive, and unsuitable trading, in which the respondents agreed to pay restitution of \$150,000 to the customer;
- c. an April 6, 2009, Letter of Acceptance, Waiver and Consent in which iTrade was censured and fined \$20,000 for OATs reporting and related supervisory violations by FINRA; a November 27, 2007, Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$45,000 by FINRA for selling preferred shares of its parent company through a private placement memorandum which contained inaccurate or misleading statements, for failing to supervise and train the registered representatives selling the private placement, and failing to conduct adequate due diligence regarding the private placement;
- d. a January 24, 2007 Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000 for failing to retain email; and
- e. a December 6, 2004, Letter of Acceptance, Waiver and Consent in which the firm was fined \$20,000 for failure to supervise in connection with

supervision of private placement sales, Form U4 updates, complaint reporting, allowing a registered representative to do business in two states without being registered, and related matters.

**THE SALES PRACTICE VIOLATIONS (FIRST,
SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION)**

8. During the period September 2008 through January 2010, iTrade and its registered representatives engaged in a widespread practice of cold calling potential customers and creating accounts and buying stock for persons who did not agree to buy stock or open accounts. In addition, in many instances, the firm and representatives created new account forms which misstated the "customers'" net worth, income, investment experience, and/or risk tolerance, and the representatives often failed to ascertain this information, making it impossible for them to fulfill their suitability obligations.

9. The typical pattern involved iTrade representatives cold calling potential customers, often repeatedly. In many instances, the potential customers agreed to allow the representative to send information about a stock and about iTrade, often as a means of ending the call. iTrade then created new account documents and placed purchase orders in the name of those new "customers." In many instances, the representatives made recommendations to these potential customers without obtaining information about their financial condition, investment experience, risk tolerance, and/or investment objective. They frequently falsified this information on new account documents.

10. B.A.¹ received cold calls from various representatives at iTrade who were trying to get him to open an account in 2009, including Adam S. In order to get one of the callers off

¹ The initials refer to non-customers solicited by iTrade representatives to open accounts and the registered representatives. They will be identified in separate filings by the Department of Enforcement following the receipt of the respondent's answer, as will be the customers or potential customers referenced in other portions of this Complaint.

the phone, B.A. agreed to allow iTrade to send him information. He refused to provide his personal information to iTrade, and never agreed to open an account or buy any stock through iTrade. iTrade nonetheless bought 100 shares of ProShares Trust in B.A.'s name on August 28, 2009 for approximately \$1,170. iTrade's New Account Information sheet falsely stated that B.A. had extensive experience in stocks, bonds, funds, and options, a high risk tolerance, an investment objective of trading/speculation, income of \$100,000 per year, and a net worth of \$1 million.

11. M.A. received a cold call in August 2009 from iTrade registered representative P.S., who was trying to get him to open an account with iTrade. P.S. tried to sell him stock in a company called Duoyuan Global Water, Inc. M.A. told P.S. to send him some information on his firm and on Duoyuan. A few days later M.A. received a package, which included some new account paperwork and a letter explaining that he owed iTrade approximately \$3,000 for a purchase of 100 shares of Duoyuan made on his behalf on August 25, 2009. P.S. never discussed M.A.'s investment experience, investment objectives, or risk tolerance with him. Although M.A. had never traded stocks, bonds, mutual funds or options, P.S. indicated on the New Account Information sheet that M.A. had extensive experience in stocks, moderate experience in bonds and funds, and little experience in options. He also indicated on the new account information sheet that M.A. had a net worth of \$750,000, when M.A. actually had no net worth or retirement savings.

12. R.A. was cold called by iTrade registered representative R.N. A second registered representative, T.M., tried to get R.A. to invest in ProShares Trust, telling him that the stock was going up. R.A. told T.M. that he had never invested before, and only has a life insurance policy. R.A. told T.M. to send information about the stock and iTrade. On June 5.,

2009, iTrade purchased 100 shares of ProShares Ultra Basic Materials Fund for approximately \$2,000 in R.A.'s name without his authorization. T.M. created a New Account Information sheet that represented R.A. as having two years of experience in the market. The New Account Information sheet did not have any indication of his risk tolerance or investment experience.

13. M.B. was cold called by iTrade registered representative Anthony S. in late April 2009, who tried to get M.B. to open an account and buy shares of ProShares, asserting that he knew the stock was going to go up very soon, and that he was expecting a 20% return on it. He told M.B. that this would be an opportunity to get in on the ground floor, and that the opportunity would not be there long. M.B. told Anthony S. that he did not want to invest, and never agreed to open an account or purchase any security. On April 17, 2009, iTrade bought 100 share of ProShares Ultra Basic Materials Fund for M.B. without his authorization at a cost of approximately \$1,575. M.B. never discussed his investment experience, risk tolerance, or investment objectives with Anthony S. or anyone else from iTrade.

14. A.B. was cold called on September 17, 2009, by iTrade registered representative Adam S. They discussed two stocks, Sinovac Biotech Ltd. and Melco Crown Entertainment Ltd. During that conversation, A.B. agreed to open an account and purchase Melco Crown Entertainment, but refused to invest in Sinovac until he had a chance to look into the company himself. He specifically refused to use margin. Adam S. never asked A.B. about his investment objectives or risk tolerance. Contrary to A.B.'s direction, iTrade bought 100 shares of Sinovac for him on September 17, 2009 for approximately \$1000. On November 10, 2009, iTrade sold 3,000 shares of Melco Crown Entertainment for approximately \$13,400 and bought another 2,500 shares of the same stock for approximately \$10,860 in A.B.'s account without authorization.

15. J.D. was cold called by iTrade registered representative P.S. three times between April and October 2008. In late October 2008, P.S. tried to get him to buy stock called LDK Solar Company, telling J.D. that he had lost money he could have earned because he did not act on his recommendation from the three previous calls, and telling him that he needed to get in on LDK Solar immediately because he knew that J.D. would make at least 15%. J.D. told P.S. that he could send some information, but that J.D. he needed to discuss it with his wife before purchasing any stock. On October 29, 2008, iTrade bought 100 shares of LDK Solar for approximately \$1,600 for J.D. without his authorization. P.S. never discussed J.D.'s financial condition, investment experience, risk tolerance or investment objectives with him. J.D. was retired with no income other than Social Security, had a net worth under \$250,000, and had never invested in options. However, iTrade indicated on the New Account Information sheet that J.D. had income of \$90,000 per year, a net worth of \$500,000, and a little experience in options.

16. R.E. received a cold call from iTrade registered representative Anthony S. in approximately November 2008. Anthony S. tried to get him to buy a stock called OptionsXpress Holding Company, telling R.E. that it was a great stock and a once in a lifetime opportunity. R.E. did not agree to buy the stock, and told Anthony S. that he was not interested in opening an account. He agreed to allow iTrade to send him documents. On November 20, 2008, iTrade bought 100 shares of OptionsXpress Holding Company for R.E. for approximately \$1,275, and repeatedly called R.E. to try to get him to pay for the stock. The financial information on the New Account Application and New Account Information sheet for R.E. was inaccurate. The New Account Application reports income and liquid net worth of \$500,000-999,999 and total net worth of \$2,500,000 or more, and the New Account Information sheet shows annual income of

\$500,000 and net worth of \$5 million. In reality, R.E.'s income was approximately \$350,000, and his liquid net worth approximately \$200,000. Although R.E. considers himself to be a conservative investor, the New Account Application represents his objective to be speculation and his risk tolerance aggressive. The New Account Application also represents him as having had extensive experience investing in stocks, bonds, and options, and limited experience in mutual funds, UITs, and annuities. In reality, R.E. had never invested in securities or had a brokerage account.

17. G.F. received a cold call from iTrade registered representative C.L., who tried to get him to open an account with iTrade and buy Citigroup stock, telling him that Citigroup was underpriced and had nowhere to go but up. He told C.L. that while he might be inclined to buy Citigroup at some point, he was not interested in purchasing any stock with someone over the phone. G.F. never agreed to open an account or purchase any stock with iTrade. C.L. never asked him about his investment objectives or risk tolerance. On December 31, 2009, iTrade bought 500 shares of Citigroup for G.F. at a cost of approximately \$2,100.

18. E.G. received cold call in approximately January 2009 from iTrade registered representative Adam S., who was trying to get him to open an account with iTrade and buy a security, ProShares. Adam S. told E.G. that the price of the stock was going to double or at least go up significantly. E.G. did not agree to open an account or buy any shares, telling Adam S. that he may be interested in investing with him in the future but wanted more information on the firm and the stock. iTrade nonetheless bought 200 shares of ProShares Ultra Basic Materials Fund in his name on January 20, 2009 for over \$2,600. E.G. never discussed his investment experience, investment objectives or risk tolerance with anyone at iTrade. The only account he ever maintained was an IRA. He had no experience in options and bonds and a little experience

with stocks and mutual funds, and considers his risk tolerance to be conservative and his investment objective to be growth. iTrade's New Account Information form for E.G. reports extensive experience in stocks, bonds, mutual funds, and options, high risk tolerance, and an investment objective of trading/speculation.

19. J.G. was cold called by iTrade registered representative D.P. in or about November 2008, who tried to get him to open an account and buy KBR, Inc. stock, which the D.P. said he knew was going to go up. J.G. told D.P. he wanted information about iTrade and the stock before he would agree to open up an account or make a trade with him, and that he wanted to do his own independent research. Despite this, iTrade bought 200 shares of KBR, Inc. for J.G. on November 4, 2008 for more than \$3,100. D.P. called him repeatedly to try to get him to pay for the stock. D.P. never asked J.G. about his investment objectives, risk tolerance, investment strategy or past investment experience.

20. [REDACTED] was cold called by iTrade registered representative Anthony S. in late December 2009, trying to get him to open an account with iTrade and buy a Excel Maritime Carriers stock. C.H. did not agree to open an account or buy any shares, but iTrade bought 300 shares of that stock for him on December 17, 2009 at a cost of almost \$2,000. Anthony S. continued to call him, trying to get him to pay for the stock, claiming that he taped their conversations and that C.H. had to send him money or there would be problems

21. J.H. received a cold call from iTrade registered representative D.P., recommending that he buy Sinovac Biotech stock. He told D.P. that he was not interested at the moment, but that iTrade could send him information about the stock. On September 1, 2009, iTrade bought 200 shares of Sinovac stock for J.H. for over \$2,400. D.P. never asked him about his investment objectives, risk tolerance, or financial condition, but created a New Account

Information form that showed income of \$250,000, liquid net worth of \$1,000,000, and net worth of \$2,500,000.

22. [REDACTED] received cold calls from iTrade registered representative D.P., who recommended that he look at various stocks on every call. [REDACTED] always told D.P. that he was not interested in iTrade, and never authorized iTrade to make any trades for him. iTrade bought 100 shares of ProShares Ultra Basic Materials Fund in his name on October 7, 2009 at a cost of approximately \$2,100. The social security number, email address, common stock investment experience, annual income and net worth sections on the New Account Information form created by iTrade were all inaccurate.

23. B.J. received a cold call from iTrade registered representative Adam S. in December 2009. Adam S. aggressively tried to get him to open an account and invest in the ProShares UltraShort Real Estate Fund, telling him that something big was supposed to happen with the stock, and that B.J. would make a lot of money by investing with him. B.J. repeatedly told Adam S. that he was not interested in opening an account with him and his firm because he did not do business with people who randomly call him on the phone. Adam S. eventually asked if he could send some information; B.J. told him he could send whatever he wanted, but it would not change his mind. On December 8, 2009, iTrade bought 200 shares of the ProShares UltraShort Real Estate Fund in his name for approximately \$1,700. Adam S. never asked B.J. about his investment objectives or risk tolerance.

24. J.J. received a cold call from iTrade registered representative Adam S. in September 2009, trying to get J.J. to open an account and invest in short real estate exchange traded fund. J.J. told him to send some information. On September 8, 2009, iTrade bought 100 shares of the ProShares UltraShort Real Estate Fund in his name at a cost of more than \$1,200.

J.J. had never purchased a bond or invested in options. His net worth was approximately \$500,000, and Adam S. never asked him about his investment objectives or risk tolerance. The New Account Information sheet maintained by iTrade showed his net worth to be \$1,000,000, his investment objective to be trading/speculation, his risk tolerance to be high; and his investment experience in stocks, bonds, funds and options to be extensive.

25. C.J. was cold called by iTrade registered representative C.L. in or around November 2009. C.L. was trying to get C.J. to open an account and buy Citigroup and other stocks through iTrade during the initial telephone call, guaranteeing the performance of Citigroup. On November 17, 2009, iTrade purchased 1,000 shares of Citigroup for C.J. at a cost of more than \$4,300 without C.J.'s authorization. C.J. has very limited experience in stocks, bonds, options, and mutual funds, annual income of \$55,000, and a net worth of \$1,000,000. He never told C.L. that he had extensive experience in stocks, bonds, and mutual funds, and moderate experience in options, or that he had a net income of \$100,000 or net worth of \$1,000,000, as reported on the iTrade New Account Information sheet for him.

26. J.K. was cold called numerous times in June 2009 by iTrade registered representative C.L., who tried to get him to open an account and buy some Citigroup stock. J.K. repeatedly told C.L. he was not interested, but C.L. refused to take no for an answer, so J.K. told him to just send some information. He asked J.K. for his social security number. When J.K. refused to provide it, C.L. told J.K. to give him the first three digits and he would put in the rest of the numbers. On June 29, 2009, iTrade bought 300 shares of Citigroup stock for J.K. at a cost of approximately \$970, although J.K. never agreed to open an account or purchase any stock through iTrade. C.L. represented on the New Account Information sheet for J.K. that J.K. had an annual income of \$100,000, net worth of \$4,000,000, extensive experience in stocks, bonds, and

mutual funds, and moderate experience in options. In reality, J.K.'s income was approximately \$25,000, his net worth had never been \$4,000,000, and he had never bought a bond, mutual fund, or option.

27. M.K. received a cold call from iTrade registered representative C.L. in December 2009 recommending that he buy Citigroup stock. He agreed to consider opening an account with iTrade, but specifically told C.L. he wanted to research the stock. M.K. filled out and returned the new account forms iTrade sent him, but decided to buy Citigroup through another account he had elsewhere. On December 3, 2009, iTrade bought 250 shares of Citigroup for more than \$1,000 in M.K.'s name without his authorization.

28. [REDACTED] received a cold call from iTrade registered representative N.M. in early January 2009. N.M. tried to get him to open an account with iTrade and to buy a stock called ProShares, telling J.M. that he expected the stock to go up to a certain dollar amount and that if he bought the stock right away he could earn a certain percentage. [REDACTED] told N.M. that it was a bad time for him to invest because he had just gone through a divorce, but that he could send some information. N.M. persistently called [REDACTED] but [REDACTED] never agreed to buy stock or open an account with iTrade. However, iTrade purchased 100 shares of ProShares Ultra Basic Materials Fund for [REDACTED] at a cost of more than \$1,600 on January 7, 2009. N.M. also created a New Account Information sheet in which he represented that [REDACTED] had income of \$150,000, a net worth of \$1,000,000, extensive experience trading stocks, bonds, and funds, little options experience, a high risk tolerance, and an investment objective of trading/ speculation. In reality, [REDACTED] had no investment experience in bonds, funds, and options, and very little experience with stocks. The New Account Information sheet also inaccurately stated that [REDACTED] had an account at another brokerage firm, and misstated his date of birth. [REDACTED] never

discussed his personal financial information, investment objectives, risk tolerance or investment experience with N.M..

29. [REDACTED] received a cold call from iTrade registered representative Adam S. in August 2009, telling him that a particular stock was supposed to go up about 50% in the next 30 days. [REDACTED] told Adam S. that he was not interested, but the representative kept talking so fast that [REDACTED] told him to just send some information and that he would do his own independent research, and maybe consider doing business with him. [REDACTED] never agreed to open an account or purchase any stock with iTrade. On August 20, 2009, iTrade purchased 100 shares of ProShares UltraShort Real Estate Fund for approximately \$1,300 in his name. Adam S. never asked him about his investment objectives or risk tolerance, but nevertheless generated a New Account Information sheet with such information.

30. [REDACTED] received several cold calls from iTrade registered representative D.P. during 2009. On September 2, 2009, D.P. recommended Sinovac Biotech, and [REDACTED] told D.P. that he may send an application and that he would look into doing a transaction. iTrade purchased 200 shares of Sinovac for [REDACTED] on September 2, 2009 for almost \$1,800. [REDACTED] never authorized that purchase or discussed a specific number of shares that he might buy with the representative. D.P. never discussed [REDACTED] investment objectives or risk tolerance with him, but created a New Account Information Form with inaccurate information about [REDACTED] common stock investment experience, annual income, net worth and liquid net worth.

31. J.N. started receiving cold calls from iTrade registered representative D.P. in early 2009. He always told D.P. that he was not interested. In August or September 2009, D.P. called and recommended Sinovac Biotech. J.N. told him he could send him something about

the stock and that he would take it to his current stockbroker to look into. On August 20, 2008, iTrade bought of 200 shares of Sinovac for J.N. for almost \$2,000 without authorization. D.P. never asked J.N. about his investment objectives, risk tolerance, or financial condition, but created a New Account Information sheet that represented J.N. as having a high risk tolerance, growth and trading/speculation as his investment objective, annual income of \$400,000, and net worth of \$1,500,000.

32. T.P. received a cold call from iTrade registered representative Adam S. in November 2009. The next month, Adam S. called T.P. again and, when T.P. said he would consider opening up an account, passed him on a senior broker, N.M., who solicited him to buy MannKind Corporation stock. N.M. told T.P. that he would not be charged a commission and that N.M. would only take a cut of the profits if the customer made money. Based on this, T.P. agreed to buy the stock. When he received the paperwork, he saw that iTrade had charged him a \$65 handling fee.

33. R.S. received a cold call from iTrade registered representative P.S. in December 2008. R.S. agreed to open an account. He agreed to purchase two stocks in late 2008 and early 2009, TEREX Corp. and J.P. Morgan Chase. P.S. routinely called R.S. to solicit large dollar amount purchases in stocks that R.S. had never heard of. P.S. was "completely overbearing" in trying to get him to buy stock in Direxion Daily, but R.S. repeatedly told P.S. that he was not interested in that stock. The only trades he authorized were for TEREX and J.P. Morgan Chase. P.S. never discussed R.S.'s risk tolerance or investment objectives with him. On April 7, 2009 iTrade sold short 1,000 shares of Simon Property Group at a price of \$37.18 without R.S.'s authorization and contrary to his specific instruction to the representative that he did not want to short any stocks. iTrade covered the short on April 21, 2009 at a price of \$45.21, also without

R.S.'s consent, and purchased 6,000 shares of Direxion Daily on margin without authorization on the same day for almost \$81,000.

34. Z.S. received a cold call from iTrade registered representative D.P. in late 2009, trying to induce him to buy shares of Rino International Corp. D.P. called Z.S. three times over one or two weeks. He never asked Z.S. about his investment objectives or risk tolerance. During the second call, D.P. suggested that Z.S. buy 100 shares of Rino International, and Z.S. asked D.P. to send him some paperwork to look at. On January 5, 2010, iTrade bought 100 shares of Rino International for Z.S. without authorization for more than \$3,000.

35. E.S. was cold called by iTrade registered representative Anthony S. in December 2008, who tried to get him to open an account with iTrade and buy a security, ProShares, by telling him that ProShares was a great stock that was going up, and that something favorable would be happening with the company. E.S. did not agree to open an account or buy any stock, but asked Anthony S. to send information about the company. On December 15, 2008, iTrade bought 200 shares of ProShares Ultra Basic Materials Fund for E.S. for more than \$3,000. Anthony S. called him to try to get him to pay for this unauthorized trade, claiming that the stock was up and that E.S. needed to send money to lock in the gains. E.S. told him that he did not want the stock, but Anthony S. and another person, who Anthony S. said was his partner, aggressively continued to call E.S., demanding payment for the stock. E.S. never discussed his financial condition, investment objectives, or investment experience with Anthony S. or anyone else at iTrade. The New Account Application represents his net worth as between \$1,000,000-\$2,500,000; in reality, it is about \$500,000. It shows his liquid net worth as about \$200,000-\$500,000; it is really between \$50,000 and \$100,000. The New Account Application indicates that his investment objective is "Speculation" and his risk tolerance "Aggressive." Anthony S.

never asked this; had he done so, E.S. would have told him that he was a conservative investor seeking a balanced portfolio. Finally, the New Account Application misrepresents E.S.'s investment experience as including extensive experience in stocks and options, and limited experience in mutual funds, annuities, UITs, and commodities. E.S. had only opened his first brokerage account in October 2008, and had never bought option, annuities, UITs, or commodities.

36. P.S. received a cold call from iTrade registered representative T.M. in January 2010. The representative tried to convince him to invest in ProShares Ultra Basic Materials Fund. T.M. never discussed P.S.'s investment objectives or risk tolerance with him. P.S. agreed to open an account, but refused to agree to invest in anything yet. Despite this, on January 5, 2010, iTrade bought 100 shares of ProShares Ultra Basic Materials Fund in his name at a cost of more than \$3,500.

37. J.S. was cold called by iTrade registered representative Anthony S. in late May 2009. J.S. agreed to open an account with iTrade with the understanding that he might use it buy any security that he might become interested in buying in the future. Anthony S. said that he can surely afford 500 shares of Excel Maritime Carriers, and J.S. told that him he could afford 500 shares of Excel Maritime Carriers, but did not want to buy any stock at the time. On May 28, 2009, iTrade purchased 500 shares of Excel Maritime Carrier in J.S.'s account without authorization for more than \$5,000. Anthony S. called him six or seven times, aggressively trying to get him to pay for the trade, telling him that the stock had already gone up \$3. Someone else from iTrade, who was introduced as the "senior member" of the team, called J.S. along with Anthony S. to pressure him some more to try to get him to pay for the stock. J.S. never discussed his personal financial information or investment objectives with Anthony S.

The information regarding his income on the New Account Application generated by iTrade is incorrect. It represents J.S.'s income as \$500,000-\$999,999; in reality, during the preceding few years, his annual income was not close to that range.

38. P.V. was cold called by iTrade registered representative C.L. in November 2009 who was trying to get him to open an account at iTrade and buy Citigroup stock, telling him Citigroup was at an all time low and there was only limited time to get in at the price. P.V. told C.L. he could send some information about Citigroup for him to review, but never agreed to open an account or purchase any stock with iTrade. iTrade nevertheless bought 500 shares of Citigroup in P.V.'s name on November 23, 2009 at a cost of almost \$2,200. C.L. never asked P.V. about his investment objectives or my risk tolerance. C.L. created a New Account Information sheet representing that P.V. had annual income of \$175,000, a net worth of \$1,000,000, extensive experience in stocks, bonds, and mutual funds, moderate experience in options, high risk tolerance, and an investment objective of trading/speculation. In reality, P.V.'s income and net worth were lower than that reported by the representative, and he was a risk-averse investor whose investment objectives have never been trading or speculation who had minimal experience with stocks and mutual funds.

39. On October 29, 2008, iTrade bought 200 shares of KBR Inc. costing approximately \$2,775 in the name of an individual, B.W., who had never agreed to buy stock from iTrade. The New Account Information sheet indicated that B.W. was a speculative and aggressive investor with extensive knowledge of stocks, bonds, and options, which was inaccurate in that he had no options experience. The net worth on the New Account Information sheet exceeded the amount he reported to the registered representative who opened

the account, D.P. In addition, B.W. never agree to open a margin account, but the KBR purchase was made on margin.

40. H.W. began receiving cold calls from iTrade registered representative Anthony S. in mid-July 2009. Anthony S. called repeatedly to try to get him to open an account with iTrade, sometimes calling four or five times a day. In January 2010, H.W. told Anthony S. to send him more information on the stock he was soliciting, and that he would tell him if he wanted to invest. H.W. never authorized iTrade to buy stock for him and never agreed to open an account with iTrade. On January 5, 2010, iTrade bought 100 shares of Chicago Bridge & Iron in H.W.'s name at a cost of almost \$2,200. H.W. never discussed his investment experience, investment objectives or risk tolerance with Anthony S. Although his net worth was between \$500,000 and \$999,999, the iTrade New Account Application for H.W. indicates a net worth of over \$1,000,000, an investment objective of speculation, and an aggressive risk tolerance.

41. W.W. received a cold call from iTrade registered representative P.S. in January 2010, who was trying to get him to open an account and buy stock in Rino International Corp., telling W.W. that he was expecting this stock to triple in price. W.W. told P.S. that he wanted to look into the stock himself, and rejected P.S.'s efforts to get him to commit on the spot, telling him repeatedly that he wanted to see some information in writing. Although he never authorized iTrade to buy stock for him, iTrade bought 100 shares of Rino International Corp. for W.W. on January 7, 2010 at a cost of more than \$3,100. W.W. has only purchased one stock in his life, and has never invested in bonds. P.S. never discussed his risk tolerance or investment objectives with W.W., but created a New Account Information sheet that represented W.W. as having extensive experience in stocks and moderate experience in bonds.

42. D.Y. received a cold call from iTrade registered representative P.S. in September 2008, trying to sell him some stock in a Latin American mining company. P.S. told him he needed to purchase the stock immediately because P.S. expected the stock price to go up between 30% and 50% in the next thirty to sixty days. D.Y. told P.S. he could send some information and he would think about purchasing the stock, but D.Y. never agreed to buy the stock. On September 25, 2008, iTrade nonetheless bought 100 shares of Rino International Corp. in D.Y.'s name at a cost of almost \$2,500. D.Y. never discussed his risk tolerance or investment objectives with P.S., and has no investment experience in options or bonds. iTrade's New Account Information sheet for D.Y. shows moderate experience in bonds and funds, and little experience in options.

43. S.Y. received a cold call from iTrade registered representative N.M. in late 2008 or early 2009. N.M. was soliciting a stock called ProShares, which he described as a "hot stock." S.Y. told N.M. that he did not want to purchase anything right away, but would follow the stock. N.M. tried soliciting him again on May 18, 2009, telling him that he had another hot stock, Valero, that he knew was going to go up, and that S.Y. needed to purchase the stock immediately because something was going on which would cause this to be a big growth time for the company, and that he needed to lock the stock in now because he was timing the market. S.Y. told N.M. that before he agreed to purchase any stock he needed to discuss it with his wife. He agreed to allow N.M. to send some information about the stock and his company. N.M. suggested that he make a \$2,000 investment for which he would not be charged any commissions or fees. S.Y. said he would consider making a \$2,000 investment, but reiterated that he needed to look at the information and discuss it with his wife. He never agreed to open an account or make a trade, and never discussed his personal financial information, investment

objectives, risk tolerance or investment experience with N.M. On May 18, 2009, iTrade bought 100 shares of Valero in his name for more than \$2,100, and charged a commission of \$1 and handling fee of \$65.

44. R.Y. received a cold call from iTrade registered representative N.M. in August 2009, trying to get him to open an account and buy an exchange-traded fund. The fund was trading at about \$25, and N.M. urged R.Y. to buy it immediately because he said he "knew" it was going to hit between \$32 and \$35 in the next few months. S.Y. told the representative he was a retired police officer without a lot of money. After repeated urging by the representative, S.Y. told him to just send some information and that he might consider doing a little business with him. S.Y. never agreed to open an account or purchase any stock with iTrade, but iTrade bought 200 shares of ProShares Ultra Basic Materials Fund for him on August 7, 2008, for approximately \$2,600. The representative continued to call him to try to get him to pay for the stock for a number of months, even using private numbers because S.Y. and his wife would not answer the phone when they saw the representative's telephone number.

45. The registered representatives engaging in the conduct described above were under the control of iTrade.

FIRST CAUSE OF ACTION

Unauthorized Trading and Opening of Accounts (Sec. 10(b) of the Securities Exchange Act, Rule 10b-5 thereunder, NASD Conduct Rules 2110 and 2120, and FINRA Conduct Rule 2010)

46. Paragraphs 1 through 45 are repeated and realleged herein.

47. All of the purchases described above in the names of B.A., M.A., R.A., M.B., J.D., R.E., G.F., E.G., J.G., [REDACTED] J.H., [REDACTED] B.J., J.J., C.J., J.K., M.K., [REDACTED] [REDACTED] J.N., T.P., R.S. (except for the purchases of TEREX Corp. and J.P.

Morgan Chase), Z.S., E.S., P.S., J.S., P.V., B.W., H.W., W.W., D.Y., S.Y., and R.Y. were unauthorized. None of those customers agreed to purchase securities.

48. iTrade opened accounts in the names of B.A., M.A., R.A., M.B., J.D., R.E., G.F., E.G., J.G., [REDACTED] J.H., [REDACTED] B.J., J.J., C.J., J.K., [REDACTED] [REDACTED] [REDACTED] I.N., T.P., Z.S., E.S., P.S., J.S., P.V., B.W., H.W., W.W., D.Y., S.Y., and R.Y. without their authorization. None of those customers agreed to open an account at iTrade.

49. By repeatedly engaging in unauthorized trading and opening customer accounts without authorization, by intentionally failing to disclose that it was making these purchases, and by issuing false confirmations and undertaking other efforts to induce potential customers to pay for unauthorized trades, iTrade directly, and as control person over its registered representatives, engaged in fraudulent conduct in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Conduct Rule 2120, and NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

50. In addition, by repeatedly engaging in unauthorized trading and opening customer accounts without authorization, iTrade directly, and as control person over its registered representatives, failed to observe high standards of commercial honor and just and equitable principles of trade, thereby violating NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

SECOND CAUSE OF ACTION

Unsuitable Recommendations (NASD Conduct Rules 2310 and 2110 and FINRA Conduct Rule 2010)

51. Paragraphs 1 through 50 are repeated and realleged herein.

52. iTrade, through its registered representatives, made recommendations to customers B.A., M.A., R.A., M.B., J.D., R.E., G.F., E.G., J.G., C.H., B.J., I.J., C.J., J.K., [REDACTED] J.N., R.S., Z.S., E.S., P.S., J.S., P.V., H.W., W.W., D.Y., S.Y., and R.Y. without obtaining the information necessary to make suitability determinations. The information that iTrade failed to obtain included the investment objectives, risk tolerance, financial condition, and investment experience of the customers.

53. Under NASD Conduct Rule 2310, a registered representative must have "reasonable grounds for believing that [a] recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs," and must "make reasonable efforts to obtain information concerning," among other things, the customer's financial status and investment objectives.

54. By recommending the purchase of specific securities to these customers without obtaining information necessary to make suitability determinations, including their financial status, investment objectives, and risk tolerance, iTrade directly, and as control person over its registered representatives, violated Conduct Rule 2310, and by so doing also violated NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

THIRD CAUSE OF ACTION

False Books and Records (Exchange Act Sec. 17(a), Rule 17a-3 thereunder, NASD Conduct Rules 3110 and 2110 and FINRA Conduct Rule 2010)

55. Paragraphs 1 through 54 are repeated and realleged herein.

56. iTrade, through its registered representatives, created false new account documentation, including falsified New Account Information sheets and New Account Applications, for customers B.A., M.A., R.A., J.D., R.E., E.G., J.H., C.H., J.J., C.J., J.K., [REDACTED] J.N., E.S., J.S., P.V., B.W., H.W., W.W., and D.Y. The documents set forth false, inaccurate, and/or baseless information regarding the customers' income, net worth, investment experience, risk tolerance, and/or social security numbers.

57. Exchange Act Rule 17a-3(a)(17)(i)(A) requires that firms maintain a record of certain information for each customer who is a natural person. This information includes, among other things, the customer's annual income, net worth, and investment experience. FINRA Conduct Rule 3110(a) requires members to make and preserve records in accordance with Rule 17a-3.

58. By creating and maintaining false records of these items, iTrade directly, and as control person over its registered representatives, violated Section 17(a) of the Exchange Act, Rule 17a-3(17)(i)(A), and Conduct Rule 3110(a), and by so doing also violated NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

FOURTH CAUSE OF ACTION

**Fraudulent Use of Margin without Authorization
(Sec. 10(b) of the Securities Exchange Act, Rule 10b-5 thereunder,
NASD Conduct Rules 2110 and 2120, and FINRA Conduct Rule 2010)**

59. Paragraphs 1 through 58 are repeated and realleged herein.

60. On November 3, 2008, customer T.R. explicitly told his registered representative at iTrade, K.D., not to buy anything on margin. On November 5, 2008, iTrade purchased 7,500 shares of Excel Maritime Carriers, Ltd. stock on margin for him on using the entire available margin balance in the account.

61. Customer A.B. (mentioned in paragraph 14 above) specifically told his iTrade registered representative that he did not want to use margin because of "bad experiences" he had with it in the past. He signed a margin agreement because registered representative Adam S. told him that margin would be available if A.B. decided to use it in the future, but that it would not be used without A.B.'s authorization. In October 2009, iTrade utilized margin in A.B.'s account, without his authorization, to effectuate purchases of common stock of Melco Crown Entertainment. In late November and December 2009, iTrade's clearing firm began selling off the Melco Crown Entertainment stock to meet margin.

62. When customer R.S. (mentioned in paragraph 33 above) agreed to open an account at iTrade, he specifically told iTrade registered representative P.S. that he did not want to make any purchases on margin. On or about April 21, 2009, iTrade bought 6,000 shares of Direxion Daily stock on margin without authorization. R.S. learned about this use of margin when he began receiving margin calls.

63. By knowingly using margin without its customers' permission, and in direct contravention of the customers' instructions, iTrade directly, and as control person over its

registered representatives, engaged in fraudulent conduct in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and NASD Conduct Rule 2120, and by so doing also violated NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

FIFTH CAUSE OF ACTION

Failure to Disclose Customer Complaints (NASD Conduct Rule 3070(c), NASD Conduct Rule 2110, and FINRA Conduct Rule 2010)

64. Paragraphs 1-63 are repeated and realleged herein.

65. Between approximately May 1, 2008 and December 31, 2009, iTrade received but failed to report numerous customer complaints, as required by Conduct Rule 3070. In particular, iTrade failed to report the thirty customer complaints set out in paragraphs 66 through 93 below.

66. J.A. sent an email to an on April 1, 2009, complaining about registered representative N.M.'s sales tactics. He wrote:

I received a call from one your employees, [N.M.] soliciting for your company. When I told him I was not interested he called me a [REDACTED] and hung up. While I could not care less about what he thinks of me, someone he does not know, his tactics and/or lack of professionalism should certainly concern iTrade. I definitely would not give your company consideration nor would I recommend you to any of my associates.

67. R.A.B. sent an email to his registered representative, D.P., on August 1, 2008 in which he complained that iTrade should have had a better discussion of "fees/requirements/time constraints," and noted that one stock had already had a 25% loss.

68. [REDACTED] sent an email to iTrade on December 11, 2008, alleging that her iTrade broker caused her losses of \$20,000 through "very bad solicited recommendations," and removed \$50 from her account without authorization.

69. P.B. complained in the summer and fall of 2008. On July 30, 2008, he sent an email to his registered representative, K.C., stating

I have gotten two more margin call letters asking for a lot of money, and have not been able to reach you. I also noticed that NWA went above \$10.00 twice in the last 5 days or so. What gives? Were you able to reverse the sale of NWA that was NOT supposed to take place July 11? Did you sell any NWA when it went higher? Do I have any NWA left? What is going on with my account? Am I broke?

He followed this up with a July 30, 2008 email to K.C., asking whether he had been able to reverse the premature sale of NWA from July 11, 2008. On September 11, 2008 he sent an email to iTrade's Chief Compliance Officer, B.S., asking what happened to the quarterly interest payments he was supposed to receive for his \$50,000 investment in the iTrade parent company private placement. Then, on October 28, 2008, P.B. sent another email to the Chief Compliance Officer, complaining as follows:

I have been trying to contact you on the phone. I also tried contacting [the president of iTrade]. His voicemail box is full. I am requesting a return of my \$50,000 of private placement shares of iTrade that I purchased recently in anticipation of your firm's IPO which has not occurred. My account number is [REDACTED] I never received a certificate from your firm nor any of the dividends that were promised on this escrow account. I have already contacted FINRA about this matter and I am hopeful we can settle this without the need for arbitration.

70. [REDACTED] sent an emails to his registered representative, C.S., on February 23, 2009 in which he complained that he had gone from a \$4 gain to a \$4 loss on his investment in UYM, going on to state:

I get it your sales pitch is just to get accounts started, high pressure sales and no support after the account is opened. Let's see...we have lost 50% since its high 1 week after I bought it and you all are asleep at the wheel. Dumb. Shame on you once...I emailed you and your response was null....shame on me for not pulling the plug on you then...

71. G.C. complained to his registered representative, J.L., by email dated May 4, 2009, stating that the stock he bought was "[n]ot looking so good. I gave you a shot and I have to say I am not happy."

72. [REDACTED] sent an email on August 15, 2008 to iTrade alleging unauthorized trading.

[REDACTED] stated, in part:

Last week while I was undergoing surgery [C.M.] executed several trades without my knowledge or permission. He has since sold the stock he acquired without my authorization resulting in a net loss of more than \$9,000. I assume your firm has an ombudsman or other internal oversight authority. I am willing to discuss this situation with that individual before I take this to the SEC.

73. J.D. (previously referred to in paragraph 15) complained to iTrade registered representative P.S. and iTrade's clearing firm about unauthorized trading by email dated November 4, 2008. He wrote:

I am sorry to see the misinformation which has arrived. At no time did I authorize you to purchase on my behalf any securities, stocks, or other fiduciaries. What my recollection of our discussion was; you were to send me an outline of your "program" as we discussed it on the phone. At no time did I agree to purchase any stocks. I am sending the documents back to you via Fed ex unsigned.

74. S.H. complained to iTrade registered representative C.S. by email about numerous inaccuracies in his new account documentations. He noted that his name was spelled incorrectly, that the date of birth was wrong, that the address was wrong, that his employment was incorrect, that his investment profile was listed as speculative and aggressive, that the income bracket was wrong, and that the investment knowledge was at least partially incorrect.

75. M.H. sent the following email to iTrade registered representative D.P. on May 19, 2009:

I have decided that I am not going to invest any more money with you, and will transfer the money I have back to my account. I have lost over 50% of my money, and the other recommendations you gave me have not done much. Your

investment approach and style are not consistent with mine at this stage of my life.

76. E.L. complained to iTrade registered representative D.P. by email on September 2, 2008, asking why the price for a trade was above the daily high and why the ticket had a markup, which the customer claimed not to understand.

77. [REDACTED] (previously referred to in paragraph 30) complained by email to registered representative D.P. on September 17, 2009 that an unauthorized trade had been done in his name.

78. M. P. complained about poor performance by email to iTrade registered representative D.P. on October 3, 2008. He wrote, "[I]t goes without saying I am sure I am very unhappy. On the verge of being financially ruined....at l[e]ast from investment perspective. I don't even want to think about how much I have lost there, but getting destroyed[,] called out of margin everywhere I turn."

79. V.P. sent an email to two iTrade registered representatives, Anthony S. and C.S., on December 10, 2010 complaining about the performance in his account and the communication between himself and the brokers.

80. S.P. complained by email to iTrade registered representative D.P. on October 20, 2008, stating:

It appears my margin call \$10,000 payment to Sterne, Agee and Leach has been in fact posted and received into my account. What a mess!!!! In my opinion before we get attorneys involved etc. we need to look at this and see how we can put together this account back to where it was prior to October 10 and ensure balances are where they are supposed to be. Having had a chance to look into this a little deeper and consult with my legal counsel, and based on the conversations on October 7th and emails etc we should really try to fix this.

On October 21, 2008, he sent another email to D.P. complaining about an unexecuted trade, stating, "when we spoke it was at \$1.30 and it closed at 1.62. On approx 10,000 shares thats

[sic] approx \$3,200 we missed out on. Once again due to technical issues between iTrade and your clearing house, I lose!!!"

81. B.P. complained to iTrade registered representative T.S. by email dated September 12, 2009 that the proceeds of a sale were being held in his account and not, as instructed, remitted to the client.

82. [REDACTED] complained to two iTrade employees, D.P. and L.W., by email on February 2, 2009, stating that she had not agreed to make a purchase for which she received a confirmation. She wrote that her understanding is that she would receive documentation and speak to a registered representative again before making any purchase.

83. [REDACTED] sent an email to iTrade registered representative J.L. on May 23, 2008, alleging an unauthorized sale.

84. J.R. sent the following email to iTrade registered representative P.S. on July 15, 2008:

Please reply with the current value of my account. Humor me. This has been a major disappointment. The sad thing is my Edward Jones guy, who made me roughly \$120,000 last year, told me I was making a mistake. Would you say he was correct? ... I sure as hell would. If there is anything in there, close my account and mail the proceeds to the address where you mail my statements. I hope there's enough there to take my Ed Jones rep out for lobster. \$30,000 lobster....Close my account at your earliest convenience.

85. T.R. sent an email to iTrade registered representative K.D. on November 12, 2008, complaining that the firm and the representative charged him commissions of \$5,276 and markups -- "a sly form of a commission" -- of \$7,200, while causing a net loss of more than \$20,000. He noted that K.D. had promised not to charge commissions if T.R. did not make money, and thus requested a refund of the \$12,476 in commissions and markups. He also noted

that he had explicitly told K.D. not to buy anything on margin, despite which the representative bought 7,500 shares of a stock on margin on November 5, 2008.

86. D.S. sent an email to iTrade registered representative S.C. on February 17, 2009, complaining that he was being charged commissions on purchases when the representative had promised to only charge commissions "on the back" if the trade was profitable. He also indicated that S.C. had made an unauthorized trade, writing "I would not of authorized the TNA had we discussed prior to your decision to own it in my account."

87. K.S. sent an email to iTrade registered representative D.P. on November 4, 2009 seeking a "plan of action," as previously promised, to address the performance of his account. K.S. protested that if he had left account where it was, "it would be worth about 56k right now instead of \$15k." He went on to state:

I'd like to see more activity on your side that makes sense, like buying for \$2.85 and selling when the stock hits \$3.10 instead of holding it until the stock hits \$2.00....I see you are on my side for buying stocks, but where have you been when I should be selling these things.

88. M.S. complained to iTrade registered representative R.N. by email on March 11, 2009, indicating that R.N. had made an unauthorized trade: "As I told you when I discussed this I would look at it and make a determination of whether to proceed. I NEVER said I would buy the stock, I said I would review the material."

89. E.V. sent a complaint by email to iTrade registered representative P.S. on October 4, 2009, objecting to his having charged commissions when the representative had promised to charge only \$1, plus the ticket fee, until the losses in his account were made up. The next day, E.V. sent an email to iTrade's Chief Compliance Officer, B.S., complaining that the representative had lost all of the money in his accounts and made trades without E.V.'s knowledge.

90. B.W. (previously referred to in paragraph 39) sent an email to iTrade registered representative D.P. on October 30, 2008, which was copied to a general firm address, noting that he had never agreed to buy stock during their telephone call; that the price on the confirmation was higher than the stock price that day; that he never agreed to open a margin account; that the new account form indicated that he was a speculative and aggressive investor with extensive knowledge of stocks, bonds, and options; and that the net worth on the form exceeded the amount he told the representative on the phone. He also noted that, contrary to the account agreement, no fee schedule was enclosed.

91. R.W. complained to the firm by letter dated March 13, 2008, alleging poor performance and excessive fees and commissions. In the customer's words, "Your accounting firm is not doing a very good job. Very difficult figuring out how much I am getting screwed." The customer complained that he lost \$6,528.47 in 2007, and that the firm had taken in 16.92% of his profits as commissions to date in 2008.

92. D.Y. (previously referred to in paragraph 42) sent an email to registered representative P.S. and employee L.W. on September 22, 2008, stating that he had not authorized a trade made by iTrade.

93. In addition to the complaints described above, iTrade entered into settlements with three customers without disclosing the underlying complaints. Specifically:

- a. On July 8, 2008, iTrade agreed to settle a complaint by customer R.N. for \$2,500.
- b. On February 23, 2009, iTrade agreed to settle a complaint by [REDACTED] by paying him \$1,482.

c. On March 27, 2009, iTrade agreed to settle a complaint by customer

[REDACTED]

94. All of the settlement agreements described in the preceding paragraph referred to complaints of "certain improprieties" with respect to their accounts and representatives. Therefore, the complaints underlying the settlements should have been, but were not, reported under Conduct Rule 3070.

95. During the same time period described in paragraphs 65 through 93 above, iTrade reported only reported twenty-eight complaints, fewer than half of those it received.

96. None of the complaints identified in paragraphs 66 through 93 were reported under NASD Conduct Rule 3070. By failing to report these complaints, iTrade violated NASD Conduct Rule 3070(c), and by so doing also violated NASD Conduct Rule 2110 for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

**NET CAPITAL AND BOOKS AND RECORDS VIOLATIONS
(SIXTH, SEVENTH, EIGHTH, AND NINTH CAUSES OF ACTION)**

97. Paragraphs 1 through 96 are repeated and realleged herein.

98. iTrade failed to maintain accurate books and records, failed to accurately calculate its net capital position, failed to report when it was in or near net capital deficiency, and operated while in net capital deficiency at various times between the third quarter of 2008 and the first half of 2010.

99. iTrade calculated its minimum excess net capital requirement as \$5,000 for purposes of its FOCUS reports and net capital compliance.

100. iTrade used its riskless principal account to engage in thousands of proprietary trades. It held many of its "cancelled" trades overnight, for days, or even longer, and recognized

trading profits and losses on its income statements. It held stock in its riskless principal trading account overnight, or for extended periods of time, when customers did not pay for the stock, at least eighteen times between May 1, 2008 and the end of 2008, and at least twenty-two times in 2009.

101. Under Exchange Act Rule 15c3-1(a)(2)(ii)(B), a broker that effects more than ten transactions per year for its own investment account is subject to a \$100,000 net capital requirement. Therefore, as a result of the use of the riskless principal account discussed above, iTrade's required excess net capital was \$100,000, not \$5,000.

102. In addition, iTrade failed to record material liabilities on its books and records, including commissions payable to a registered representative who owned the Long Island branch office of iTrade, unsecured customer debits reported by iTrade's clearing firm, a customer arbitration, and an agreed-upon settlement with a state regulator, as described in the following four paragraphs.

103. The Long Island branch office owner was contractually entitled to receive 95% of the gross commissions earned by the office, from which the representatives' commissions and office expenses were paid. He was also entitled to a share of the commissions earned by certain of the registered representatives for whom he supplied "lead cards." However, the firm failed to record all the amounts payable to him as commissions due, frequently recording a lower amount due than it actually paid in commissions the following month.

104. iTrade failed to record its outstanding unsecured customer debits as liabilities. Its clearing firm reported the average high and low unsecured debits to iTrade on a monthly basis. The amount ranged from an average low of \$39 (in March 2009) to an average high of \$15,900

(in September 2008), and exceeded \$10,000 for every month between July 2008 and February 2009.

105. iTrade failed to properly account for an arbitration filed in February 2009 until an award was issued against the firm in April 2010. The customer sought compensatory damages of \$150,000, plus unspecified punitive damages, costs, and attorneys' fees, alleging unsuitable recommendations of "aggressive" equities and use of margin, excessive trading, and failure to supervise. There was no disclosure or recognition of this pending action in the firm's FOCUS filings for 2009 or March 2010. At a minimum, it should have included the action from the time it was filed until it was decided. If the firm determined that it was not probable and ascertainable enough to be booked as a liability, the amount sought (\$150,000) should have at least been included in the firm's Aggregate Indebtedness for net capital calculation purposes.

106. iTrade did not adequately account for its liability arising from an action brought by the Illinois Securities Department in May 2009. The department brought an action against the firm and two of the firm's employees based on alleged mismanagement of a customer's account. The amount sought by the state was \$1.55 million, which increased the firm's net capital requirement by \$103,333, as reflected in the firm's FOCUS reports for June 30 and September 30, 2009. In December 2009, the respondents and the state agreed to settle the case for restitution of \$150,000. The settlement was issued on January 13, 2010. However, the firm dropped the contingent liability from its December 31, 2009 and March 31, 2010 FOCUS reports, but did not add the agreed-upon unpaid settlement to its actual liabilities.

SIXTH CAUSE OF ACTION

Inaccurate Books and Records (Sec. 17(a) of the Exchange Act, Rule 17a-3(a)(2) thereunder, NASD Conducts Rule 3110 and 2110, and FINRA Conduct Rule 2010)

107. The allegations of paragraphs 1 through 106 are repeated and realleged herein.

108. As set forth above, iTrade's books and records did not accurately reflect all of its actual and contingent liabilities.

109. By failing to maintain accurate books and records, iTrade violated Section 17(a) of the Exchange Act, Rule 17a-3(a)(2) (ledgers or other records reflecting assets, liabilities, income, expenses and capital accounts), and NASD Rule 3110, and by so doing also violated NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

SEVENTH CAUSE OF ACTION

Inaccurate Net Capital Calculations and Reporting (Sec. 17(a) of the Exchange Act, Rule 17a-5(a) thereunder, NASD Conduct Rules 3110 and 2110, and FINRA Conduct Rule 2010)

110. The allegations of paragraphs 1 through 109 are repeated and realleged herein.

111. iTrade's net capital requirements and positions stated on its FOCUS reports were inaccurate in that (1) the firm misreported its required net capital as \$5,000 when it should have reported its required net capital as \$100,000, as a result of the use of its riskless principal account described in paragraphs 100 through 101 above; (2) its net capital was miscalculated as a result of the inaccurate calculation of its liabilities; and (3) the firm failed to consider its contingent liabilities arising from the arbitration discussed above in calculating its aggregate indebtedness.

112. By failing to accurately record and report its net capital, net capital requirement, and excess net capital, iTrade violated Sec. 17(a) of the Exchange Act, Rule 17a-5(a) (net capital

reporting forms), and NASD Conduct Rule 3110, and by so doing also violated NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

EIGHTH CAUSE OF ACTION

Operating a Broker-Dealer With Insufficient Net Capital (Sec. 15(c)(3) of the Exchange Act, Rule 15c3-1(a) thereunder, NASD Conduct Rule 2110, and FINRA Conduct Rule 2010)

113. The allegations of paragraphs 1 through 112 are repeated and realleged herein.

114. iTrade reported net capital of \$111,583 at the end of the third quarter of 2008. If it was properly treated as having minimum net capital of \$100,000, the firm would have had excess net capital of only \$11,583. Moreover, the unsecured customer debits for the end of the period were \$13,094, and the amount owed to the Long Island branch owner was approximately \$15,000. Therefore, when the net capital is corrected, the firm had a net capital deficiency at the end of the third quarter of 2008 of \$16,511.

115. As of December 31, 2008, even without correcting the understated liabilities, iTrade was operating while in net capital deficiency. It reported net capital of \$97,592, and excess net capital of \$86,609 (based on a net capital requirement of \$10,983). Using the correct \$100,000 net capital requirement, the firm had a net capital deficiency of \$2,408 as of December 31, 2008.

116. At year end 2009, iTrade reported net capital of \$154,944. The firm calculated its net capital requirement as \$11,004, leaving it with excess net capital of \$143,940.

117. However, iTrade failed to include the Illinois claim in its aggregate indebtedness. If the firm properly accounted for the \$150,00 settlement agreement with Illinois, it would have only had \$4,944 in net capital, less than its stated requirement of \$11,004. In addition, the

unsecured customer debits for the end of the period were \$2,957, further reducing its net capital, resulting in a deficiency of \$9,017.

118. By operating while in net capital deficiency, the firm violated Exchange Act Sec. 15(c)(3) and Rule 15c3-1(a) thereunder, and by so doing also violated NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

NINTH CAUSE OF ACTION

Violation of the Net Capital "Early Warning" Requirement (Sec. 17(a) of the Exchange Act, Rule 17a-11(c)(3) thereunder, NASD Conduct Rule 2110, and FINRA Conduct Rule 2010)

119. The allegations of paragraphs 1 through 118 are repeated and realleged herein.

120. Exchange Act Rule 17a-11(b)(1) requires that a broker provide notice to the Securities and Exchange Commission and FINRA if its net capital is less than that required under Exchange Act Rule 15c3-1.

121. As set forth in the preceding Cause of Action, iTrade's net capital was deficient as of September 30, 2008; December 31, 2008; and December 31, 2009. Despite this, iTrade failed to provide the notice required under the Exchange Act for any of these deficiencies.

122. By failing to make these required reports, iTrade violated Exchange Act Sec. 17(a) and Rule 17a-11(b)(1) thereunder, and by so doing also violated NASD Conduct Rule 2110 (for conduct pre-dating December 15, 2008) and FINRA Conduct Rule 2010 (for conduct on or after December 15, 2008).

REFUSAL TO ALLOW COPYING OF RECORDS

TENTH CAUSE OF ACTION

**Refusal to Comply with a Procedural Rule 8210 Request Trading
(Procedural Rule 8210 and FINRA Conduct Rule 2010)**

123. The allegations of paragraphs 1 through 122 are repeated and realleged herein.

124. iTrade maintained substantially all of its books and records, including financial and customer records, on a server and computers in its Long Island office.

125. FINRA staff decided to conduct an on-site data capture of this electronic information, the format in which the firm maintained substantially all of its books and records, because of the firm's repeated failures to make timely document production to FINRA staff, indications of data loss, unreported customer complaints, and indications of possible wide-spread sales practice violations and other possible misconduct.

126. On July 20, 2009, FINRA staff visited the offices of iTrade at 701 Middle Country Road, Selden, New York.. The staff informed iTrade's Chief Compliance Officer that it was there to conduct a forensic data capture of the books and records of iTrade stored on computers and a server at that office, pursuant to the authority in Procedural Rule 8210 to "inspect and copy" books and records of member firms. The staff provided iTrade's Chief Compliance Officer with a letter citing the applicable provisions of Procedural Rule 8210 authorizing the staff to inspect and copy a firm's books, records, and accounts, and requiring firms to provide information orally, in writing, or electronically. Despite this, the Chief Compliance Officer refused to allow the staff to obtain any books or records of iTrade pursuant to the data capture.

127. In fact, the firm refused to allow the staff access to the computers until the following week. By the time the staff did obtain access, on July 27, 2009, at least one computer

had been disabled and other files had been tampered with. For instance, the staff was unable to obtain access to the hard drive of a computer maintained by one of iTrade's employees, who was responsible for maintaining the firm's computer systems. The hard drive had been encrypted, and the employee claimed to be unable to unencrypt it.

128. A forensic analysis later showed that one of the hard drives on the firm's server had been removed or taken off line at some time between July 20 and July 27, 2009.

129. By virtue of its refusal to allow prompt access to and copying of its records, iTrade violated Procedural Rule 8210 and by so doing also violated FINRA Conduct Rule 2010.

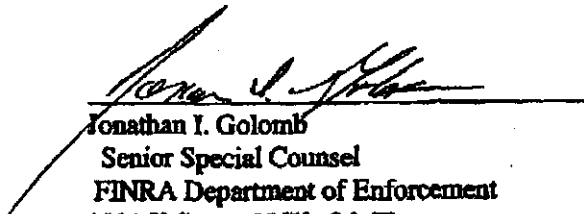
PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) of the FINRA Code of Procedure be imposed; and
- B. order that each respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330 of the FINRA Code of Procedure.

FINRA DEPARTMENT OF ENFORCEMENT

Date: February 11, 2011



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