

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD J. BUSWELL
(CRD No. 4770105),

and

HERBERT S. FOUKE
(CRD No. 5523938),

Respondents.

Disciplinary Proceeding
No. 2009017275301

Hearing Officer – MC

DEFAULT DECISION

January 4, 2012

Respondents Richard J. Buswell and Herbert S. Fouke are barred from associating with any FINRA member firm in any capacity for: (i) making material misrepresentations and omissions in connection with the sales of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5 thereunder, NASD Conduct Rules 2110 and 2120, and FINRA Conduct Rules 2010 and 2020; and (ii) making unsuitable recommendations to customers, in violation of NASD Conduct Rules 2110 and 2310, and FINRA Conduct Rule 2010. Because of the bars, no additional sanctions are imposed upon Respondent Buswell for exercising discretion in customer accounts without prior written authorization, in violation of NASD Conduct Rules 2110 and 2510, and FINRA Conduct Rule 2010.

Appearances

Laura Leigh Blackston, Senior Regional Counsel, and Andrew A. Favret, Associate Vice President and Regional Chief Counsel, New Orleans, Louisiana, for the Department of Enforcement.

No appearances by or on behalf of Respondents.

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaint on June 28, 2010, alleging misconduct by five individual respondents and FINRA member firm Brookstone Securities, Inc. ("Brookstone"). The charges against Brookstone and three individual respondents have been settled, and therefore they are no longer parties to this proceeding. Of the remaining charges, two causes of action are directed jointly at Respondents Richard J. Buswell and Herbert S. Fouke ("Respondents"), and three are directed solely against Buswell. All of the charges arise from sales of investments by Buswell and Fouke when they were registered with Brookstone.

Enforcement served the Complaint and Notices of Complaint upon Respondents by certified mail at their residential addresses as they appear in FINRA's Central Registration Depository. Both Respondents failed to file an Answer. Consequently, on September 27, 2011, Enforcement filed a Motion for Entry of Default Decision, accompanied by the Declaration of Laura Leigh Blackston and 12 exhibits.¹

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

At all times relevant to the Complaint, Buswell was registered with FINRA through Brookstone as an Investment Company and Variable Contracts Products Representative and a General Securities Representative. After the termination of his employment with Brookstone on April 3, 2009, Buswell registered through another FINRA member firm, where he remained until May 15, 2009. Although Buswell is not currently employed with a FINRA member firm, he

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which include Laura Leigh Blackston's Declaration Supporting a Motion for Entry of Default Decision as to Respondents Richard J. Buswell and Herbert S. Fouke, and the exhibits attached to the Declaration. The Declaration will be referred to as "Decl." or "Blackston Decl." The exhibits are referred to as "CX-___."

remains subject to FINRA's jurisdiction for the purposes of this disciplinary proceeding because the misconduct alleged in the Complaint occurred while he was registered, and the Complaint was filed less than two years after his registration was terminated.²

Similarly, at all times relevant to the Complaint, Fouke was associated with or registered through Brookstone. After his termination from Brookstone on April 7, 2009, Fouke was registered with FINRA through another member firm from April 15 until May 15, 2009, when his registration was terminated. Like Buswell, therefore, Fouke remains subject to FINRA's jurisdiction for the purposes of this disciplinary proceeding because he was registered when the alleged misconduct occurred, and the Complaint was filed less than two years after the termination of his last registration.³

B. Default

Enforcement served the Notice of Complaint and Complaint by first-class certified mail on Respondents at their CRD addresses on June 28, 2010.⁴

On July 2, 2010, FINRA received the return receipt for the certified mailing sent to Fouke's CRD address reflecting a delivery date of June 29, 2010, with the signature "Germaine Fouke."⁵ On August 3, 2010, the certified mailing to Buswell was returned to FINRA with the notations "Left Notice 6/29, 2nd Not 7-21, ret 7-26" and "Unclaimed."⁶ Neither Respondent filed an Answer to the Complaint.⁷

² Decl. ¶¶ 5-7.

³ Decl. ¶¶ 8-10.

⁴ Decl. ¶ 75.

⁵ Fouke testified in an on-the-record interview with FINRA that Germaine Fouke is his wife. Decl. ¶ 77.

⁶ Decl. ¶ 76.

⁷ Decl. ¶ 79.

On July 27, 2010, Enforcement served the Complaint and Second Notice of Complaint on Respondents at their CRD addresses by first-class certified mail.⁸ On August 2, 2010, Enforcement received the return receipt for the certified mailing of the Complaint and Second Notice of Complaint to Fouke bearing the signature “Germaine Fouke” indicating delivery on July 29, 2010.⁹ On August 6, 2010, Enforcement received the return receipt for the certified mailing of the Complaint and Second Notice of Complaint to Buswell with the signature “B. Buswell” indicating delivery on July 29, 2010.¹⁰ Nonetheless, neither Respondent has filed an Answer to the Complaint.

By serving the Complaint, Notice of Complaint, and Second Notice of Complaint upon Respondents by certified mail at their CRD addresses, Enforcement complied with the requirements of Rule 9134 and provided them with sufficient notice that the Complaint had been filed.¹¹ By failing to file an Answer, Respondents defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons set forth below, the Default Motion is granted.

C. Violations

1. Background

The sales practices violations alleged against Respondents are related to their recommendations of investments in Advanced Blast Protection, Inc. (“Advanced Blast”) and a private placement of Brookstone.¹² Advanced Blast claimed that it had developed a bullet-resistant glass, which prevented penetration by incoming gunfire but allowed outgoing gunfire to

⁸ Decl. ¶ 80.

⁹ Decl. ¶ 81.

¹⁰ According to Enforcement, Buswell testified that his mother is named Bonnie Buswell. Decl. ¶ 82.

¹¹ FINRA Procedural Rule 9134(a); *Dep’t of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent’s most recent CRD address) (*citing Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹² Complaint ¶ 1.

pass through it. Advanced Blast planned to issue a \$12.5 million private placement by December 15, 2008, followed by a \$25 million public offering or a second private placement by June 2009. Before doing so, Advanced Blast needed to raise funds to support its operations. To accomplish this, Advance Blast issued investment units consisting of unsecured bridge notes and warrants to purchase common stock of a successor company to Advanced Blast (“First AB Units”). When this failed to raise sufficient capital, Advance Blast issued investment units consisting of unsecured promissory notes and additional warrants (“Second AB Units”).¹³

Respondents incorrectly believed that Advanced Blast had secured a commitment from a firm to underwrite the \$12.5 million private placement, even though the private placement memorandum clearly reflected that the firm would act as a placement agent only and that it could withdraw as placement agent for any reason at any time. The firm did withdraw and provided no financing to Advanced Blast.¹⁴

Advanced Blast failed to repay holders of the First and Second AB Units, failed to exchange their warrants for common stock, and filed for Chapter 11 bankruptcy protection in June 2009.¹⁵

¹³ Complaint ¶ 5.

¹⁴ Complaint ¶¶ 16-17.

¹⁵ Complaint ¶ 5.

2. By Making Material Misrepresentations and Omissions in Connection with Sales of Investments in Advanced Blast, Buswell and Fouke Violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), SEC Rule 10b-5 thereunder, NASD Conduct Rules 2110 and 2120, and FINRA Conduct Rules 2010 and 2020¹⁶

From on or about July 9, 2008, to on or about January 14, 2009, Respondents made numerous misrepresentations and omissions of material fact to customers who purchased First and Second AB units.¹⁷ For example, Respondents represented to 12 customers who purchased First AB Units that the bridge notes were guaranteed, even though there was no reasonable basis for the representation.¹⁸ Respondents did not inform the customers of any of the risks involved. They instead made unwarranted price predictions for the common stock for which the warrants of the First AB Units were to be exchangeable, telling customers that the Advanced Blast shares would increase from \$5 to \$15 per share.¹⁹

Respondents also guaranteed that payment would be made at maturity of the promissory notes issued in the Second AB Units, and stated to customers that the notes were safe because of the existence of an escrow account, leading customers to believe incorrectly that all of the funds raised by the private placement would be held in escrow for redemption of the promissory notes.

In fact, there was no commitment for financing for the private placement or later public offering. The repayment of the notes was dependent upon the financial condition of Advanced

¹⁶ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). On that date, NASD Conduct Rules 2110 and 2120 were replaced by FINRA Conduct Rules 2010 and 2020, respectively. This decision relies on the NASD and FINRA Conduct Rules in effect at the time of the alleged misconduct. Thus, the misrepresentations and omissions of material fact Respondents made in connection with sales of investments prior to December 15, 2008, violated NASD Conduct Rules 2110 and 2120; those made on or after December 15, 2008, violated FINRA Conduct rules 2010 and 2020. The applicable rules are available at www.finra.org/rules.

¹⁷ Complaint ¶ 14.

¹⁸ Decl. ¶ 14.

¹⁹ Complaint ¶¶ 19-20.

Blast. Although it was available to them, Respondents did not provide the private placement memorandum to customers, and they did not inform customers of the risk factors described in the private placement memorandum. The risk factors included material facts, such as the company's limited operating history, lack of liquidity, the absence of dividends, legal proceedings in which the company was involved, continuing capital requirements, and potential creditor claims from operating losses of another company recently acquired by Advanced Blast.²⁰ Respondents knew or should have known the representations they made were inconsistent with the Advanced Blast private placement memorandum.²¹

Respondents made a number of additional unwarranted claims and misrepresentations.

For example:

- Respondents assured customers SH and EH they would receive their principal investment in First AB Units plus a 10% return within three months of their investment, and that the Advanced Blast Warrants would be worth \$15 per share. Buswell, who invested no personal funds, falsely claimed to SH and EH that he had invested 70% of his own funds in Advanced Blast. Based on these misrepresentations, SH and EH invested \$100,000 in First AB Units.²²
- Respondents told customers JO and JS they would receive repayment of their original investments in First AB Units plus 10% within a few months. Relying on Respondents' representations, JO invested \$25,000 and JS invested \$250,000 in First AB Units.²³
- Respondents stated to customers JY, GY, AN, and PN that they were guaranteed to receive the principal they invested in First AB Units plus 10%, and that the warrants issued to them would be worth \$15 per share. As a result, JY and GY invested \$160,000 in First AB Units, and AN and PN invested \$25,000.²⁴
- Respondents guaranteed to customers SB and MB that their investments in the First and Second AB Units would result in a return of their principal within a few months and that their investments were as safe as if they were deposited in a bank.

²⁰ Complaint ¶¶ 18, 21-22.

²¹ Decl. ¶ 31.

²² Complaint ¶ 23.

²³ Complaint ¶¶ 24, 29.

²⁴ Complaint ¶¶ 25, 27.

In reliance, SB and MB invested \$275,000 in First AB Units and \$125,000 in Second AB Units.²⁵

In the course of making their misrepresentations and omissions, Respondents utilized the means of interstate commerce by speaking to their customers on the telephone, sending documents to them by overnight mail, and sending completed agreements to Brookstone's offices by mail.²⁶

In sum, in connection with the sales of these securities, Respondents intentionally or recklessly, by use of means of interstate commerce or of the mails, made untrue statements and omissions of material fact, thereby violating Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, NASD Conduct Rules 2110 and 2120, and FINRA Conduct Rules 2010 and 2020, as alleged in the Complaint's First Cause of Action.

3. By Making Material Misrepresentations and Omissions in Connection with Sales of Investments in Brookstone's Private Placements, Buswell Violated Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110 and 2120, and FINRA Rules 2010 and 2020

From on or about June 13, 2008, to on or about October 16, 2008, Respondent Buswell made material misrepresentations and omissions of material fact to five customers in connection with selling investments in the Brookstone private placement. The private placement memorandum for the self-offering made clear that the investment was speculative, high-risk, illiquid, and suitable only for persons able to risk losing the entirety of their investments.²⁷

Buswell falsely represented to several customers that he would invest their funds in a private placement called "Lightstone." Instead, Buswell invested \$200,000 of customer JS's funds and \$100,000 of SB and MB's funds in the Brookstone private placement. When JS

²⁵ Complaint ¶ 28.

²⁶ Decl. ¶¶ 32-33.

²⁷ Complaint ¶ 34.

learned that his investment was not in Lightstone, Buswell assuaged JS's concerns by making an unwarranted assurance that Brookstone would provide a return of seven to eight percent per year. When SB and MB discovered that they had invested in Brookstone instead of Lightstone, Buswell falsely assured them that there was no risk; that they could have access to their funds at any time; and that the investment was tantamount in safety to a certificate of deposit or investing in a money market fund.²⁸

In addition, Buswell misrepresented to JY and GY that the Brookstone private placement was safe; he made unwarranted claims that it would yield an annual return of seven percent; and he told them that it could be liquidated within two weeks after purchase. Relying on these representations, JY and GY invested \$100,000 in the Brookstone private placement.²⁹

Buswell had no basis for the representations he made to JS, SB, MB, JY, and GY about the Brookstone offering. He made the representations recklessly or knowing they were false because he knew or should have known, based on the private placement memorandum, that Brookstone's self-offering was highly speculative and risky.

In the course of making these material misrepresentations and omissions, Buswell spoke with the customers by telephone about their investments and used an overnight mail service to send and retrieve documents related to the investments, and to send them to Brookstone's headquarters.³⁰ Therefore, Buswell used the means of interstate commerce and the mails to make misrepresentations or omissions of material fact in connection with the sales of securities, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, NASD Conduct

²⁸ Complaint ¶¶ 35-36.

²⁹ Complaint ¶ 37.

³⁰ Decl. ¶¶ 34, 38-40.

Rules 2110 and 2120, and FINRA Rules 2010 and 2020, as alleged in the Second Cause of Action of the Complaint.

4. By Making Unsuitable Recommendations, Buswell and Fouke Violated NASD Conduct Rules 2110 and 2310, and FINRA Rule 2010.

From on or about June 13, 2008, through on or about January 14, 2009, Buswell and Fouke recommended First and Second AB Units, and Buswell recommended the Brookstone private placement, to customers without having a reasonable basis to believe the investments were suitable for them, considering their financial circumstances.³¹ The Advanced Blast and Brookstone investments were high risk and appropriate only for an accredited investor, with either a net worth exceeding \$1 million or annual income over \$200,000.³²

For example, Customers SB and MB characterized themselves as conservative investors on their new account forms and indicated they had an annual income of \$150,000. Their net worth was below \$1 million. For these reasons, they did not qualify as accredited investors for either Advanced Blast or the Brookstone private placement. Nonetheless, Buswell and Fouke recommended that they invest \$400,000 in the First and Second AB Units. Buswell further recommended that they invest \$175,000 in the Brookstone private placement. They committed 74 percent of their liquid net worth to these risky, speculative investments, all of which they lost.³³

Similarly, customers JY and GY indicated on their new account forms that they were conservative investors. The forms reflected that JY and GY had income as their primary investment objective, and preservation of capital as their secondary investment objective. Their joint annual income was \$125,000, and their net worth was below \$1 million. Therefore they,

³¹ Complaint ¶¶ 42, 43.

³² Complaint ¶ 44.

³³ Complaint ¶ 45.

like SB and MB, did not qualify as accredited investors. Despite these facts, Buswell and Fouke recommended that they invest \$160,000 in First AB Units. Buswell recommended they invest an additional \$100,000 in the Brookstone private placement. JY and GY followed the recommendations, committing 34 percent of their liquid net worth in these investments. JY and GY lost the entire amount.³⁴

Finally, customers AN and PN identified themselves as “moderate” investors on their new account form, with investment objectives of growth, income and preservation of capital. Their annual income was \$135,000, and their net worth was \$535,000, well below the levels required for them to qualify as accredited investors. Upon the recommendations of Buswell and Fouke, which were unreasonable in light of their customers’ investment objectives and financial condition, AN and PN invested \$25,000 in First AB Units. They lost their entire investment.³⁵

By making these recommendations, which were unsuitable and without a reasonable basis considering their customers’ financial condition and investment objectives, Buswell and Fouke violated NASD Conduct Rules 2110 and 2310, and FINRA Rule 2010, as alleged in the Third Cause of Action.

5. By Recommending Transactions That Were Unsuitable Because of Excessive Trading, Overconcentration, and Use of Margin, Buswell Violated NASD Conduct Rules 2110 and 2310, and FINRA Rule 2010

From on or about September 30, 2008, through on or about March 25, 2009, Buswell recommended and engaged in a trading strategy that was unsuitable for the four customers involved. The strategy employed excessively frequent trading, use of margin, and concentration

³⁴ Complaint ¶ 46.

³⁵ Complaint ¶ 47.

of customer accounts in a small number of securities that, together, exposed the customers to unsuitable risks considering their financial circumstances and investment objectives.³⁶

Customer JS

Customer JS, according to his new account form, was a moderate investor with a primary objective of growth and a secondary objective of preservation of capital. JS, age 55, owned a garage door installation company.³⁷ Buswell recommended and employed a strategy of frequent trading in JS's account. From September 25, 2008, to March 31, 2009, Buswell effected 280 transactions in JS's account, which generated \$123,344.65 in commissions. During this six-month period, JS's account had a turnover ratio of 10.82 percent (18.56 percent annualized); a commission-to-equity ratio of 27.52 percent (47.18 percent annualized); a cost-to-equity ratio of 30.82 percent (52.83 percent annualized); and a trading loss of \$1,473,560.03 (94.21 percent of the account value).³⁸ Buswell effectively controlled JS's account because he used discretion without prior written authorization from JS, and JS relied on Buswell's recommendations, following them without making any independent evaluation.³⁹

Buswell also recommended margin trading to JS. Initially JS informed Buswell he did not want to engage in margin trading, but subsequently, at Buswell's recommendation, signed a margin agreement. From December 2008 to February 2009, Buswell traded over 50 percent of the account on margin, causing JS to incur \$14,738.01 in margin interest by March 31, 2009. The margin balances, in addition to losses to the account, caused margin calls in January 2009, forcing JS to deposit \$525,000 into the account to prevent it from being completely depleted.

³⁶ Decl. ¶ 48.

³⁷ Complaint ¶ 51.

³⁸ Complaint ¶ 52.

³⁹ Complaint ¶ 55.

The frequency of trading and the amount of margin used, were unsuitable for JS, considering his investment objectives as a moderate investor.⁴⁰

Finally, Buswell recommended that JS concentrate his account, which had been diversified both in terms of investment sectors and the number of stocks and mutual funds, into three financial stocks: Barclays ADR; ING Group ADR; and Royal Bank of Scotland ADR. As a result of Buswell's recommendation, JS's account was concentrated in these three financial stocks, resulting in 79 percent of the account value being concentrated in a single sector. This concentration exposed JS to a level of risk inconsistent with his moderate risk tolerance and conservative investment objectives.⁴¹

Customer GY

Customer GY, employed as a health inspector, described herself on her new account form as a conservative investor with growth and preservation of capital, respectively, as her primary and secondary investment objectives.⁴² From October 15, 2008, to January 30, 2009, Buswell executed 118 trades in GY's account, generating approximately \$17,000.29 in commissions. Buswell's excessive trading created a turnover ratio of 4.22 percent (12.6 percent annualized); a commission-to-equity ratio of 21.62 percent (64.86 percent annualized); a cost-to-equity ratio of 23.39 percent (70.16 percent annualized); and a trading loss of \$158,502.85 (99.59 percent of the value of the account), altogether unsuitably excessive in light of GY's conservative nature as an investor and her investment objectives.⁴³ As with JS's account, Buswell controlled GY's account, exercising discretion without prior written authorization from GY. GY relied on

⁴⁰ Complaint ¶¶ 52-53.

⁴¹ Complaint ¶ 54.

⁴² Complaint ¶ 56.

⁴³ Complaint ¶ 57.

Buswell, deferring entirely to his recommendations without making any independent evaluation of them.⁴⁴

Similar to JS, at the outset of her experience with Buswell, GY had a diversified account with six stocks, a mutual fund, and a managed account with cash and 65 different stocks. Buswell recommended that she concentrate in two financial stocks, ING Group ADR and Royal Bank of Scotland ADR. Relying on the recommendation, GY did so, and the two financial stocks made up 82 percent of the account's value, and 25 percent of GY and JY's net worth. Taking into consideration GY's conservative risk tolerance and investment objectives, this concentration of GY's assets in two stocks from the same sector was unsuitable for her.⁴⁵

As he did with JS, Buswell recommended trading on margin to GY. She had not previously traded on margin, and was initially reluctant. Immediately after Buswell received GY's positions from her previous investment firm on October 15, 2008, and a month before GY signed a margin agreement, Buswell engaged in margin trading. In December 2008, over half of the account was on margin. By March 31, 2009, margin interest was \$1,388.98. Account losses and margin balances caused large margin calls that depleted the account because GY was unable to provide the funds necessary to cover the margin calls. Buswell's margin trading was unsuitable for GY, given her conservative risk tolerance and investment objectives.⁴⁶

Customer CG

CG's new account form described her as a moderate investor with investment objectives listed, in descending order of priority, growth, income, and preservation of capital. She listed

⁴⁴ Complaint ¶ 60.

⁴⁵ Complaint ¶ 59.

⁴⁶ Complaint ¶ 58.

speculation as the least important of her objectives.⁴⁷ From December 12, 2008, to April 9, 2009, Buswell recommended and engaged in a pattern of excessive trading in CG's account.⁴⁸ As with the customers described above, Buswell controlled the activity in CG's account, used discretion without prior written authorization, and CG relied entirely on Buswell's recommendations, without conducting any independent evaluation.⁴⁹

In those four months, Buswell executed 223 trades, generating \$26,012.01 in commissions, and causing a turnover ratio of 16.25 percent (48.75 percent annualized); a commission-to-equity ratio of 11.08 percent (33.25 percent annualized); a cost-to-equity ratio of 12.8 percent (38.39 percent annualized); and a trading loss to CG of \$123,378.09 (42.74 percent of her account value).⁵⁰

As with the other customers described above, Buswell recommended to CG that she trade on margin. CG did not initially wish to do so, but on Buswell's recommendation, CG signed a margin agreement on the day she opened her account. In February and March 2009, Buswell traded more than half of the account on margin. Margin interest came to \$4,022.12 by March 31, 2009. Losses in the account plus the significant margin balances caused margin calls in March 2009, requiring CG to fund the account with \$44,350. Buswell's use of margin in CG's account was excessive and unsuitable in light of her investment objectives.⁵¹

Before CG opened her account with Buswell, her portfolio was diversified, consisting of cash, municipal bonds, stocks, and exchange traded funds. Consistent with his practices described above, Buswell concentrated CG's entire account in three financial stocks: Barclay's

⁴⁷ Complaint ¶ 61.

⁴⁸ Complaint ¶ 62.

⁴⁹ Complaint ¶ 65.

⁵⁰ Complaint ¶ 62.

⁵¹ Complaint ¶ 63.

ADR, ING ADR, and Wells Fargo. The account represented 29.96 percent of JG and CG's liquid net worth. This concentration of CG's account in three stocks in the same sector was unsuitable, and exposed CG to risk of loss inconsistent with her moderate investment objectives.⁵²

Customer JG

JG, according to his new account form, was a moderate investor with growth and income as his primary and secondary objectives. He also listed preservation of capital as an objective, and stated that speculation was his least important investment objective.⁵³ From January 8, 2009, to April 9, 2009, Buswell recommended and employed a strategy of excessive trading in JG's account.⁵⁴ Buswell controlled the account, exercising discretion in its management without, however, obtaining prior written authorization from JG.⁵⁵

In the three months Buswell controlled JG's account, he executed 306 transactions, generating commissions of approximately \$9,118.94. This excessive trading created a turnover ratio of 16.51 percent (66.05 percent annualized); a commission-to-equity ratio of 1.47 percent (5.87 percent annualized); and a cost-to-equity ratio of 3.39 percent (13.55 percent annualized). The account suffered a trading loss of \$822,696.79, or 61.69 percent of its value.⁵⁶

As with the above customers, Buswell recommended trading on margin in JG's account. Like those customers, JG was reluctant, but at Buswell's recommendation, on January 27, a week after opening the account, he signed a margin agreement. In February and March 2009, Buswell traded over half of the account on margin, which incurred margin interest of \$11,938.58

⁵² Complaint ¶ 64.

⁵³ Complaint ¶ 66.

⁵⁴ Complaint ¶ 67.

⁵⁵ Complaint ¶ 70.

⁵⁶ Complaint ¶ 67.

by March 31, 2009. Losses in the account, and the margin balances, caused large margin calls in March 2009, requiring JG to fund the account with \$182,000. The excessive use of margin in JG's account was unsuitable and inconsistent with his investment objectives.⁵⁷

Before opening his account with Buswell, JG's account was diversified among cash, eight municipal bonds, and 54 stocks. Buswell, however, concentrated the entirety of JG's account in the same three financial stocks as he did with CG, exposing JG to an unsuitable level of risk.⁵⁸

In sum, Buswell recommended and executed transactions in a trading strategy unsuitable for the customers in light of their investment objectives and financial situations, in violation of NASD Conduct Rules 2110 and 2310, and FINRA Conduct Rule 2010, as alleged in the Complaint's Fourth Cause of Action.

6. By Exercising Discretion in Trading in Customer Accounts without Prior Written Authorization, Buswell Violated NASD Conduct Rules 2110 and 2510, and FINRA Conduct Rule 2010

From on or about September 30, 2008, through on or about March 25, 2009, Buswell exercised unauthorized discretion in the accounts of customers JS, GY, JY, JG, and CG. Buswell did not obtain prior written authorization from any of these customers, as he was required to do by Brookstone's policies. Brookstone did not accept any of the accounts as discretionary. Despite these facts, Buswell improperly executed 214 trades in JS's account, 30 trades in the account of JY and GY, and 291 trades in the accounts of JG and CG, in violation of NASD Conduct Rules 2110 and 2510, and FINRA Conduct Rule 2010, as charged in the Complaint's Fifth Cause of Action.⁵⁹

⁵⁷ Complaint ¶ 68.

⁵⁸ Complaint ¶ 69.

⁵⁹ Complaint ¶¶ 73-77.

III. Sanctions

For the violations described above, characterizing them as egregious, Enforcement recommends imposing bars from associating with any FINRA member firm in any capacity upon both Buswell and Fouke.⁶⁰ Enforcement's recommendation is well supported and appropriate.

Material Misrepresentations and Omissions of Material Facts in Sales of Securities: First Cause of Action (Buswell and Fouke) and Second Cause of Action (Buswell)

FINRA's Sanction Guidelines for intentional misrepresentations or omissions of material fact recommend a suspension of 10 business days to two years, or, in egregious cases, a bar.⁶¹ The material misrepresentations and omissions Buswell and Fouke made to their customers in connection with the sale to them of investments in First and Second AB Units were clearly egregious. Buswell and Fouke knew or should have known that the private placement memoranda described the investments as risky, with the potential for loss of investor funds, no guaranteed return, limited escrow protection for principal invested, and no guarantee that the offered warrants would possess any intrinsic value. Nonetheless, they told customers the principal they invested would be protected by an escrow account, made groundless price predictions and guarantees of profit, described the investments as safe, and failed to disclose risks.

Buswell compounded his misconduct by making similarly unfounded, material misrepresentations and omissions in recommending and selling investments in the Brookstone private placement.

⁶⁰ As the factual findings above demonstrate, by their misconduct, Buswell and Fouke caused their customers to suffer significant financial losses. Enforcement represents, however, that Brookstone settled with the customers for their losses. For that reason, Enforcement does not seek the issuance of an order for restitution. Motion for Entry of Default Decision, p. 4.

⁶¹ *FINRA Sanction Guidelines* at 88 (2011).

Therefore, for violating Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, NASD Conduct Rules 2110 and 2120, and FINRA Conduct Rules 2010 and 2020, in the sales of investments in the First and Second AB Units as described in the First Cause of Action, Buswell and Fouke are barred from associating with any FINRA member firm in any capacity.

In addition, for violating the same securities regulations and NASD and FINRA rules in connection with the sales of investments in the Brookstone private placement as described in the Second Cause of Action, Buswell is barred from associating with any FINRA member firm in any capacity.

Unsuitable Recommendations: Third Cause of Action (Buswell and Fouke)

For violating NASD Conduct Rule 2310 by making unsuitable recommendations, the Guidelines call for a fine of \$2,500 to \$75,000, suspension in any capacity for 10 business days to one year and, in egregious cases, consideration of a longer suspension up to two years, or a bar.⁶²

The Respondents' recommendations were grossly unsuitable for the customers in this case. The customers had conservative to moderate risk tolerances, and there was no question that their investment objectives were focused on income, growth, and preservation of capital. Buswell and Fouke nonetheless recommended that they invest in the highly speculative securities, with disastrous results. For these reasons, for making unsuitable recommendations to customers to invest in the First and Second AB Units and the Brookstone private placement, as described in the Third Cause of Action, Buswell and Fouke are barred from associating with any FINRA member firm in any capacity.

⁶² *Guidelines* at 94.

Unsuitable Recommendations and Excessive Trading, Overconcentration, and Use of Margin: Fourth Cause of Action (Buswell)

Buswell's recommendations of use of margin, concentration of investments, and frequency of trading were part of an investment strategy that was excessively risky for the customers on whose behalf he employed it, given their financial circumstances and conservative investment objectives. Buswell's repeated engagement in the strategy constituted an egregious course of conduct. The consequences, as noted above, were costly to customers JS, GY, CG, and JG. For these reasons, it is appropriate to bar Buswell from associating with any FINRA member firm for the unsuitable recommendations he made to his customers as described in the Fourth Cause of Action.

Unauthorized Exercise of Discretion: Fifth Cause of Action (Buswell)

NASD Conduct Rule 2510 requires a broker to obtain a customer's written authorization before exercising discretion in an account, and requires that the broker's firm accept the account as a discretionary account. The Guidelines identify two Principal Considerations in Determining Sanctions: (i) whether a customer gave an express or implied grant of discretion; and (ii) whether firm policies prohibited discretionary trading or prohibited the respondent from engaging in it. The Guidelines recommend a fine of \$2,500 to \$10,000, and in egregious cases, a suspension in any capacity for 10 to 30 business days.⁶³

In this case, Enforcement characterizes Buswell's violations as egregious and therefore recommends imposition of the maximum recommended sanctions. Enforcement notes that Buswell's customers received statements and confirmations reflecting Buswell's discretionary trades, suggesting Buswell could argue that he had their implied authority to effect the trades. Enforcement notes further, however, that Brookstone required its registered representatives to

⁶³ *Guidelines* at 85.

file a written request for designating an account as discretionary; that Buswell did not submit such a request; and that Brookstone did not designate any of the accounts as discretionary.

Under the circumstances of this case, Enforcement's recommendations are reasonable and, absent the bars, would be imposed. In light of the bars, however, it is unnecessary to impose the additional sanctions Enforcement recommends for Buswell's violations as described in the Fifth Cause of Action.

IV. Conclusion

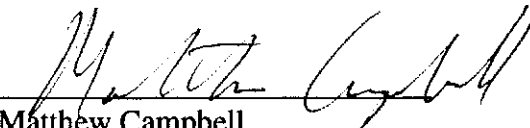
For making material misrepresentations and omissions in connection with the sales of securities, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, NASD Conduct Rules 2110 and 2120, and FINRA Conduct Rules 2010 and 2020, as charged in the First Cause of Action, Respondents Richard J. Buswell and Herbert S. Fouke are barred from associating with any FINRA member firm in any capacity. An additional bar is imposed against Respondent Buswell for misrepresentations and omissions made by him in connection with the sales of securities, also in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, NASD Conduct Rules 2110 and 2120, and FINRA Conduct Rules 2010 and 2020, as charged in the Second Cause of Action.

For making unsuitable recommendations to customers, in violation of NASD Conduct Rules 2110 and 2310, and FINRA Conduct Rule 2010, as charged in the Third Cause of Action, Respondents Buswell and Fouke are barred from associating with any FINRA member firm in any capacity.

In addition, Respondent Buswell is barred from associating with any FINRA member firm in any capacity for recommending excessive trading, overconcentration of investments, and use of margin trading to customers, in violation of NASD Conduct Rules 2110 and 2310, and FINRA Conduct Rule 2010, as charged in the Fourth Cause of Action.

Finally, because of the imposition the bars, no additional sanction is imposed upon Respondent Buswell for exercising discretion in customer accounts without prior written authorization, in violation of NASD Conduct Rules 2110 and 2150, and FINRA Conduct Rule 2010, as charged in the Fifth Cause of Action.

If this decision becomes FINRA's final disciplinary action, the bars shall be effective immediately.


Matthew Campbell
Hearing Officer

Copies to:

Richard J. Buswell (*via overnight courier and first-class mail*)
Herbert S. Fouke (*via overnight courier and first-class mail*)
Laura Leigh Blackston, Esq. (*via electronic mail and first-class mail*)
Andrew A. Favret, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

**FINRA
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Richard J. Buswell [CRD No. 4770105],

and

Herbert S. Fouke [CRD No. 5523938],

and

Brookstone Securities, Inc.

[CRD No. 13366],

and

Antony L. Turbeville [CRD No. 1721014],

and

David W. Locy [CRD No. 4682865],

and

Mark M. Mercier [CRD No. 1884246],

Respondents.

**Disciplinary Proceeding
No. 2009017275301**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Richard J. Buswell, while registered with Brookstone Securities, Inc. (Brookstone), made misrepresentations and omissions of material fact to customers in connection with the sale of investments in Advanced Blast Protection, Inc. and a self-offering of the securities of Brookstone. Buswell also made unsuitable recommendations and sales to customers with conservative investment objectives. In addition, Buswell recommended an unsuitable trading strategy in his customers' accounts that relied upon frequent trading, use of margin, and concentration of the accounts in a small number of financial

stocks. The trading strategy was unsuitably risky for the customers given what Buswell knew about the financial circumstances and investment objectives of the customers. Finally, Buswell exercised discretion in the accounts of customers without prior written authorization.

2. Herbert S. Fouke was associated with Brookstone and introduced his friends and colleagues from the construction industry to Buswell. Fouke made misrepresentations and omissions of material fact to customers in connection with the sale of investments in Advanced Blast Protection, Inc.
3. Brookstone Securities, Inc, acting through its CEO Antony L. Turbeville and its president David W. Locy, failed to supervise Buswell regarding his sale of the investments in the privately-held corporations and his other unsuitable recommendations. In addition, Brookstone failed to supervise Buswell regarding his other sales practice violations. Brookstone failed to establish, maintain, and enforce reasonable supervisory procedures in the following four areas: (1) due diligence; (2) prevention and detection of unsuitable recommendations resulting from excessive trading, excessive use of margin, and over-concentration; (3) the new account application process; and (4) the reviews of customer accounts required by the procedures.
4. Mark M. Mercier was the Chief Compliance Officer of Brookstone and failed to follow the firm's procedures regarding the due diligence required in connection with the sale of the investments in private corporations.
5. Advanced Blast Protection, Inc. ("Advanced Blast") was a corporation that claimed to have developed a bullet-resistant glass "designed to stop hostile fire while allowing

return fire through the material without compromising ballistic integrity.” Advanced Blast planned to complete a \$12.5 million private placement by December 15, 2008 and a \$25 million public offering or follow-on private placement by June 2009. In advance of these planned offerings, Advanced Blast needed to borrow funds to support its operations. To bridge the time period to completion of the first offering, Advanced Blast issued units consisting of 10% unsecured bridge notes maturing December 15, 2008 and warrants to purchase common stock of a successor company to Advanced Blast (First AB Units). Advanced Blast failed to raise sufficient capital through the sale of the First AB Units, and it then issued units consisting of 10% unsecured promissory notes maturing March 15, 2009 and additional warrants (Second AB Units). Advanced Blast neither repaid the holders of the First or Second AB Units nor exchanged their warrants for common stock. Advanced Blast filed for Chapter 11 bankruptcy protection in June 2009.

6. The Brookstone Securities, Inc. private placement offering was a self-offering by the broker-dealer that is a Respondent in this complaint. It was a high-risk speculative offering, available only to accredited investors. Brookstone Securities has ceased paying the dividend on the offering.

RESPONDENTS AND JURISDICTION

7. Respondent Brookstone Securities, Inc. (“Brookstone”) has been a member of FINRA since April 8, 1983. During all periods mentioned herein, Brookstone was a registered broker-dealer with the United States Securities and Exchange Commission and a member of FINRA.

8. Richard J. Buswell entered the securities industry on June 7, 2004, as an Investment Company and Variable Contracts Products Representative of a FINRA member firm. Buswell, during all periods mentioned herein, was associated with member firm Brookstone Securities, Inc. and was registered with FINRA under Article V of the By-Laws as an Investment Company and Variable Contracts Products Representative and a General Securities Representative. Although Buswell has not been associated with a FINRA member firm since May 15, 2009, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.
9. David W. Locy entered the securities industry on August 5, 2003, as a General Securities Representative of a FINRA member firm. Locy, during all periods mentioned herein, was associated with member firm Brookstone Securities, Inc. and was registered with FINRA under Article V of the By-Laws as a Financial and Operations Principal, Registered Options Principal, Municipal Securities Principal, General Securities Principal, and General Securities Representative, and subsequently, on December 15, 2009, as an Investment Banking Representative, which registrations remain currently in effect. Locy was the Chief Operating Officer and President of Brookstone during all periods referenced in this Complaint.
10. Antony L. Turbeville entered the securities industry on September 4, 1987, as an Investment Company and Variable Contracts Products Representative of a FINRA member firm. Turbeville, during all periods mentioned herein, was associated with

member firm Brookstone Securities, Inc. and was registered with FINRA under Article V of the By-Laws as an Investment Company and Variable Contracts Products Representative, General Securities Principal, and General Securities Representative, and subsequently, on February 19, 2010, as an Investment Banking Representative, which registrations remain currently in effect. Turbeville was the 75% owner and Chief Executive Officer of Brookstone during all periods referenced in this Complaint. .

11. Mark M. Mercier entered the securities industry on October 25, 1989 as a General Securities Representative of a FINRA member firm. Mercier, during all periods mentioned herein, was associated with member firm Brookstone Securities, Inc. and was registered with FINRA under Article V of the By-Laws as a Financial and Operations Principal, Registered Options Principal, Government Securities Principal, General Securities Principal, and General Securities Representative. Mercier is currently registered with another member firm and his registrations remain currently in effect. Mercier was the Chief Compliance Officer for Brookstone from on or about May 16, 2008 to on or about November 14, 2008.
12. Herbert S. Fouke entered the securities industry on September 11, 2008, as a General Securities Representative of Brookstone Securities, Inc. Fouke, during all periods mentioned herein, was associated with member firm Brookstone Securities, Inc. and was registered with FINRA under Article V of the By-Laws as a General Securities Representative. Although Fouke has not been associated with a FINRA member firm since May 15, 2009, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be

associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

FIRST CAUSE OF ACTION

Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110 and 2120,
FINRA Rules 2010 and 2020 – Material Misrepresentations and Omissions
Regarding the Investment in Advanced Blast,
Against Buswell, Fouke, and Brookstone Securities, Inc.

13. The Department realleges and incorporates by reference paragraphs 1-12 above.
14. From on or about July 9, 2008 to on or about January 14, 2009, Brookstone Securities, Inc., acting through Buswell and Fouke, made misrepresentations and/or omissions of material fact in connection with the sale of First and Second AB Units to customers SB, MB, JS, JG, CG, JY, GY, SH, EH, JO, AN and PN.

Sales of First AB Units

15. Customers SB, MB, JS, JY, GY, SH, EH, JO, AN, and PN entered into Subscription Agreements with Advanced Blast for the purchase of First AB Units.
16. Based upon conversations with Turbeville and with representatives of Advanced Blast, Buswell and Fouke understood that Advanced Blast had a firm commitment from Jesup & Lamont to underwrite a \$12.5 million private placement for Advanced Blast stock. They further understood that Advanced Blast was obligated to pay the principal and interest of the bridge notes of the First AB Units from the \$12.5 million raised in the offering. As shown by the Private Placement Memorandum for the \$12.5 million offering and engagement letter between Advanced Blast and Jesup & Lamont, this understanding was incorrect.

17. Both the Private Placement Memorandum for the \$12.5 million offering and the engagement letter for Jesup & Lamont was available to Buswell and Fouke. Both documents state that Jesup & Lamont would act as the placement agent only and not as an underwriter. The engagement letter makes clear that Jesup & Lamont could withdraw as placement agent for any reason at any time. In fact, Jesup & Lamont did withdraw as placement agent and did not provide financing to Advanced Blast.
18. The Private Placement Memorandum was not provided to the customers identified in Paragraph 15 above, notwithstanding a receipt acknowledgement contained in the Subscription Agreements.
19. Based upon their erroneous belief that Jesup & Lamont was obligated to sell or purchase the private placement in Advanced Blast, Buswell and Fouke, acting on behalf of Brookstone, told purchasers of the First AB Units identified in Paragraph 15 above that the Bridge Notes were guaranteed. Buswell and Fouke had no reasonable basis for making this guarantee given the description of Jesup & Lamont's limited role in the Private Placement Memorandum. Buswell and Fouke, acting on behalf of Brookstone, disclosed no risks regarding the financing or regarding the financial health of Jesup & Lamont or Advanced Blast.
20. In addition to guaranteeing the payment of the Bridge Notes, Buswell and Fouke, acting on behalf of Brookstone, provided unwarranted price predictions to the customers regarding the future price of common stock for which the Warrants of the First AB Units would be exchangeable. According to Buswell and Fouke, the Warrants were valuable because shares of Advanced Blast were already worth \$5 a share. Buswell and Fouke, acting on behalf of Brookstone, provided price predictions to the customers,

claiming that the shares would go up in value to \$15 a share. Because neither the shares nor the Warrants were being traded at the time the Warrants issued, Buswell and Fouke could not determine their value. Furthermore, the offering documents issued by Advanced Blast made clear that the exercise price would be the lower of \$5 per share or another undetermined number.

Sales of Second AB Units

21. Buswell and Fouke, acting on behalf of Brookstone, guaranteed the payment at maturity of the Promissory Notes issued in the Second AB Units. Buswell and Fouke stated these instruments were safe due to the existence of an escrow account, leading the customers to believe that funds raised by the sale of the anticipated private placement would be held in escrow for redemption of the Promissory Notes. The Escrow Agreement, which was not provided to the customers, provides that the first \$1.5 million raised in the private placement would be escrowed, and then paid to Advanced Blast after investments reached that level.
22. The Private Placement Memorandum for Advanced Blast Protection made clear that Jesup & Lamont had no commitment to provide financing for the private placement or a later public offering. In the absence of financing by Jesup & Lamont, repayment of the Bridge Notes and Promissory Notes was dependent upon the financial condition of Advanced Blast. The Private Placement Memorandum identified risk factors such as the company's limited operating history, the lack of liquidity, the absence of dividends, legal proceedings, continuing capital requirements, and potential creditor claims arising from the operating losses of a technology company recently acquired by Advanced Blast Protection. Buswell and Fouke, acting on behalf of Brookstone, recklessly or

knowingly failed to disclose the risk that the financing would not occur and recklessly or knowingly failed to disclose the other risks outlined in the Private Placement Memorandum.

Specific Customer Misrepresentations and Omissions

23. On or about September 30, 2008, Buswell and Fouke, acting on behalf of Brookstone, guaranteed to SH and EH that they would receive back their principal investment in First AB Units plus a 10% return on their investment by December 2008. Buswell and Fouke further represented that the Advanced Blast Warrants were worth \$7 a share and later would be worth \$15 a share. Although Buswell never invested personal funds in Advanced Blast, Buswell represented to SH and EH that he had invested 70% of his own funds in Advanced Blast. At the inducement of Buswell and Fouke, SH and EH invested \$100,000 in First AB Units.
24. On or about July 15, 2008, Buswell and Fouke, acting on behalf of Brookstone, guaranteed to JO that he would receive back his original investment in First AB Units plus an additional 10% during the month of December 2008. At the time of JO's purchase, Buswell and Fouke told him the Advanced Blast Warrants were worth \$5 a share. This representation was misleading. The value of the Warrants was dependent upon the success of Advanced Blast and the existence of a secondary market. At the inducement of Buswell and Fouke, JO invested \$25,000 in First AB Units.
25. On or about July 22, 2008 and on or about August 7, 2008, Buswell and Fouke, acting on behalf of Brookstone, represented to JY and GY that they were guaranteed to receive back the return of their original investment in First AB Units plus a 10% return by December 2008. Buswell and Fouke also told JY and GY that the Warrants issued

as part of the First AB Units would be worth \$15 a share. At the inducement of Buswell and Fouke, JY and GY invested \$160,000 in First AB Units.

26. On or about December 19, 2008 and January 5, 2009, Buswell and Fouke, acting on behalf of Brookstone, guaranteed to JG and CG that their investment in Second AB Units would result in a return of their investment no later than March 15, 2009. Buswell and Fouke further stated that on June 9, 2009, the company would go public and the shares they would receive for their Warrants would be worth at least \$5 a share. They also stated that the funds the customers would invest would be held in escrow to ensure payment of the Promissory Notes at maturity. In connection with the January 5, 2009 transaction, Buswell and Fouke told JG and CG that a private equity firm would be buying all of the shares held by individual investors and that the share price would jump to at least \$15 a share. At the inducement of Buswell and Fouke, JG and CG invested \$250,000 in Second AB Units.
27. On or about July 21, 2008, Buswell and Fouke, acting on behalf of Brookstone, guaranteed to AN and PN that an investment in First AB Units would provide a return of principal plus 10% interest and Warrants. Buswell and Fouke further told AN and PN that the Warrants of the First AB Units would be worth \$15. At the inducement of Buswell and Fouke AN and PN invested \$25,000 in First AB Units.
28. On or about July 9, 2008, and January 14, 2009, Buswell and Fouke, acting on behalf of Brookstone, guaranteed to SB and MB that an investment in Advanced Blast would provide a return of their principal in December 2008 and March 2009. Buswell and Fouke also told SB and MB that an investment in Advanced Blast was as safe as

depositing money in a bank. At the inducement of Buswell and Fouke, SB and MB invested \$275,000 in First AB Units and \$125,000 in Second AB Units.

29. On or about September 16, 2008 and September 29, 2008, Buswell and Fouke, acting on behalf of Brookstone, guaranteed to JS that an investment in First AB Units would provide a return of principal plus 10% by the end of 2008. Buswell and Fouke further represented that due to the bridge loans received, Advanced Blast had the financing to be sold publicly in the stock market. At the inducement of Buswell and Fouke, JS purchased \$250,000 in First AB Units.
30. Buswell and Fouke failed to inform investors of any risks associated with the investments in First and Second AB Units and specifically did not discuss the risks outlined in the Private Placement Memorandum that could result in the investors losing their entire investment.
31. In connection with the purchase of sale of First and Second AB Units, Buswell and Fouke, intentionally or recklessly, by the use of means of interstate commerce or of the mails, (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.
32. The conduct described in paragraphs 14 through 31 constitutes willful violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110 and 2120, and FINRA Rules 2010 and 2020 by Buswell, Fouke, and Brookstone Securities, Inc.

SECOND CAUSE OF ACTION

**Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110 and 2120,
FINRA Rules 2010 and 2020 – Material Misrepresentations and Omissions
Regarding the Private Placement Brookstone Securities,
Against Buswell and Brookstone Securities, Inc.**

33. The Department realleges and incorporates by reference paragraphs 1-32 above.
34. From on or about June 13, 2008 to on or about October 16, 2008, Brookstone Securities, Inc., acting through Buswell, made misrepresentations and/or omissions of material fact in connection with the sale of the private placement of Brookstone Securities, Inc. units consisting of Class B Common Stock and Warrants to purchase Class A common Stock to customers JS, SB, MB, JY and GY. The Private Placement Memorandum (PPM) for the Brookstone self-offering stated that the investment was speculative, involving a high degree of risk, and was only suitable for persons who could risk losing their entire investment. The PPM also stated that the investment was illiquid. Buswell made representations directly contrary to the provisions contained in the PPM.
35. On or about October 16, 2008, Buswell, acting on behalf of Brookstone, represented to JS that he would invest \$200,000 of JS's funds in a private placement called Lightstone. In direct contradiction of his representation, he invested the funds in the Brookstone Securities, Inc. private placement. After JS discovered that he was invested in Brookstone, Buswell assured him that Brookstone would provide a return of 7% to 8% per year.

36. On or about June 13, 2008 and August 21, 2008, Buswell, acting on behalf of Brookstone, represented to SB and MB that he would invest their \$100,000 in the Lightstone private placement. In direct contradiction of his representation, he invested the funds in the Brookstone Securities, Inc. private placement. No investment was ever made in Lightstone. After SB and MB discovered that they were invested in Brookstone, Buswell assured them that investing in Brookstone was like investing in a money market fund or in a certificate of deposit. Buswell stated that there was no risk to the investment, and that SB and MB could have access to their money whenever they wished.
37. On or about July 22, 2008, Buswell, acting on behalf of Brookstone, represented to JY and GY that the Brookstone private placement was a safe investment, that JY and GY could expect an annual return of 7%, and that the investment could be liquidated two weeks after purchase. JY and GY invested \$100,000 in the Brookstone Securities, Inc. private placement.
38. Buswell had no basis for making the representations described above to JS, SB, MB, JY, and GY. In fact, due to the statements regarding risk and illiquidity in the Private Placement Memorandum, Buswell acted recklessly or knowingly because he knew or should have known that the representations that he made to the customers were false.
39. In connection with the purchase of sale the Brookstone Securities, Inc. private placement, Buswell, intentionally or recklessly, by the use of means of interstate commerce or of the mails, (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they

were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

40. The conduct described in paragraphs 34 through 39 constitutes willful violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110 and 2120, and FINRA Rules 2010 and 2020 by Buswell and Brookstone Securities.

THIRD CAUSE OF ACTION

**NASD Conduct Rules 2310 and 2110, and FINRA Rule 2010 –
Recommendation of Unsuitable Investments in Advanced Blast Against Buswell, Fouke, and
Brookstone Securities, Inc.**

41. The Department realleges and incorporates by reference paragraphs 1-40 above.
42. During the period from on or about June 13, 2008 through on or about January 14, 2009, Brookstone, acting through Buswell and Fouke, recommended and effected the sale of First and Second AB Units and the Brookstone Securities, Inc. private placement to SB, MB, JY, GY, AN and PN without having a reasonable basis to believe that the transactions were suitable given the financial circumstances and condition of the customers.
43. In addition, during the same time period described in paragraph 42, Brookstone, acting through Buswell only, recommended and effected the sale of the Brookstone private placement to customers SB, MB, JY and GY without having a reasonable basis to believe that the transactions were suitable given the financial circumstances and condition of the customers.

44. Both the Advanced Blast and the Brookstone investments were high risk and, according to their offering documents, were appropriate only for accredited investors: those who had either a net worth exceeding \$1 million or annual income exceeding \$200,000.
45. Buswell and Fouke, acting on behalf of Brookstone, recommended the purchase by SB and MB \$400,000 of First and Second AB Units, and Buswell recommended their investment of \$175,000 in the Brookstone Securities private placement. SB and MB identified their investment style as conservative on the new account form and listed annual income of \$150,000. The customers had a net worth that was below \$1 million. Their level of income and net worth precluded them from qualifying as accredited investors under either private placement. Despite the customers' desire to invest conservatively, Buswell and Fouke recommended that they invest 74% of their liquid net worth in these high-risk, unsuitable securities. The customers lost their entire investment of \$400,000 in first and Second AB units and \$175,000 in Brookstone Securities.
46. Buswell and Fouke, acting on behalf of Brookstone, also recommended the purchase by JY and GY of \$160,000 in First AB Units. Buswell, acting on behalf of Brookstone, recommended their investment of \$100,000 in Brookstone Securities. JY and GY identified their investment style as conservative on their new account form and listed income as their primary investment objective, with preservation of capital as their secondary investment objective. The customers listed their annual income as \$125,000, and had a net worth of \$840,000. JY and GY's limited income and net worth precluded them from qualifying as accredited investors. The recommendation by Buswell and Fouke to place 34% of the customers' liquid net worth in these private investments was

inconsistent with their desire to invest conservatively and unreasonable given with their financial condition. The customers lost their entire investment of \$160,000 in First AB Units and \$100,000 in Brookstone Securities.

47. Buswell and Fouke also recommended the purchase by AN and PN of \$25,000 in First AB Units. AN and PN identified their investment style as moderate on their new account form and stated their first three investment objectives to be growth, income, and preservation of capital. The customers had an annual income of \$135,000 and a net worth of \$535,000. Their income and net worth precluded them from qualifying as accredited investors. Given their investment objectives and financial condition, Buswell and Fouke could have no reasonable basis for recommending their investment in the Advanced Blast Bridge Notes. The customers lost their entire investment of \$25,000 in First AB Units.
48. The conduct described in paragraphs 42 through 47 constitutes violations by Brookstone, Buswell and Fouke of NASD Conduct Rules 2310 and 2110, and FINRA Rule 2010.

FOURTH CAUSE OF ACTION

NASD Conduct Rules 2310 and 2110, and FINRA Rule 2010 – Recommendation of Unsuitable Transactions due to Excessive Trading, Overconcentration, and Use of Margin, Against Buswell and Brookstone Securities, Inc.

49. The Department realleges and incorporates by reference paragraphs 1-48 above.
50. During the period from on or about September 30, 2008 through on or about March 25, 2009, Brookstone Securities, acting through Buswell, recommended and effected

unsuitable transactions in the accounts of customers JS, GY and CG without having a reasonable basis for the recommendations. Buswell recommended a trading strategy that relied upon frequent trading, use of margin, and concentration of the accounts in a small number of financial stocks. The trading strategy was unsuitably risky for the customers given what Buswell knew or should have known about the financial circumstances and investment objectives of the customers.

Customer JS

51. On his new account form for his individual brokerage account, JS stated a moderate investment style with a primary objective of growth and a secondary objective of preservation of capital. He was 55 years old and owned a company that installed garage doors.
52. Buswell, acting on behalf of Brookstone, recommended a strategy of frequent trading in JS's account. From September 25, 2008 to March 31, 2009, JS's individual brokerage account with Brookstone incurred a turnover ratio of 10.82 (18.56% annualized), a commission-to-equity ratio of 27.52% (47.18% annualized), a cost-to-equity ratio of 30.82% (52.83% annualized) and a trading loss of \$1,473,560.03 (or 94.21% of the value of the account). Buswell effected 280 transactions in the account, generating approximately \$123,344.65 in commissions. The frequent trading was unsuitable given JS's investment objectives for the account.
53. In addition, Buswell, acting on behalf of Brookstone, recommended that JS make use of margin in the account. Although JS initially told Buswell that he did not want to use margin, JS reluctantly agreed to sign a margin agreement based upon Buswell's urging. From December 2008 to February 2009, Buswell traded more than 50% of the account

on margin. Due to the margin balances, JS's account incurred \$14,738.01 in margin interest by March 31, 2009. In addition, the significant margin balances coupled with market losses resulted in margin calls in January 2009 that required JS to deposit \$525,000 into the account in order to avoid completely depleting the account. The amount of margin used was unsuitable given JS's moderate investment style and objectives of growth and preservation of capital.

54. Prior to investing with Buswell, JS had a portfolio diversified among numerous stocks and mutual funds and diversified among sectors. Buswell, however, recommended that JS concentrate his account in three financial stocks: (1) Barclays ADR (\$411,600); (2) ING Group ADR (\$368,520); and (3) Royal Bank of Scotland ADR (\$356,495). Together these stocks comprised 79% of the value of the account and 47.35% of JS's liquid net worth. Concentration of JS's trading account in three stocks in the same sector exposed JS to a level of risk incompatible with JS's moderate risk tolerance and investment objectives.
55. Buswell exercised *de facto* control over the account of JS because he used discretion without prior written authorization from JS and because JS relied on Buswell to such an extent that he did not independently evaluate Buswell's recommendations.

Customer GY

56. On her new account form, GY states that she is a conservative investor, listing growth as her primary investment objective and preservation of capital as her secondary objective. She was employed as a health inspector.
57. Buswell, acting on behalf of Brookstone, recommended a frequent trading strategy for GY's account. From October 15, 2008 to January 30, 2009, GY's individual brokerage

account with Brookstone incurred a turnover ratio of 4.22 (12.67% annualized), a commission-to-equity ratio of 21.62% (64.86% annualized); a cost-to-equity ratio of 23.39% (70.16% annualized) and a trading loss of \$158,502.85 (or 99.59% of the value of the account). Buswell effected 118 transactions in the account, generating approximately \$17,000.29 in commissions. The frequency of trading was unsuitable given GY's conservative investment style and investment objectives.

58. In addition, Buswell, acting on behalf of Brookstone, recommended that GY make use of margin in the account. GY had not previously used margin and did not initially agree to use margin in the account. Buswell, however, received the positions from GY's prior investment firm on October 15, 2008 and immediately began to trade on margin. Not until a month later, on November 15, 2008, did GY sign a margin agreement. In December 2008, more than 50% of the account was on margin. Due to the large margin balances, the account had incurred \$1,388.98 in margin interest as of March 31, 2009. The significant margin balances combined with market losses resulted in large margin calls in the account. The margin calls depleted the account, because GY could not provide additional funds to cover the margin calls. The use of margin was unsuitable given GY's conservative risk tolerance and investment objectives.
59. Prior to investing with Buswell, GY had a brokerage account that consisted of six stocks and one mutual fund and a managed account consisting of cash and 65 separate stocks. These positions were all transferred to GY's individual brokerage account with Buswell. Despite her prior diversification, Buswell recommended that GY concentrate her account in two financial stocks; (1) ING Group ADR (\$88,800) and (2) Royal Bank of Scotland ADR (\$121, 360). These stocks collectively totaled 82% of the value of the

account and 25% of GY and JY's liquid net worth. Concentration of GY's trading account in two stocks in the same sector exposed GY to a level of risk incompatible with GY's conservative risk tolerance and investment objectives.

60. Buswell exercised *de facto* control over the account of GY because he used discretion without prior written authorization from GY and because GY relied on Buswell to such an extent that she did not independently evaluate Buswell's recommendations.

Customer CG

61. On her new account form for her individual brokerage account, CG states a moderate investment style with a primary investment objective of growth and a secondary investment objective of income. She lists preservation of capital as her third investment objective and chose aggressive and speculation as her least important investment objectives.
62. Buswell, acting on behalf of Brookstone, recommended a strategy of frequent trading in her account. From December 12, 2008 to April 9, 2009, CG's individual brokerage account with Brookstone incurred a turnover ratio of 16.25% (48.75% annualized), a commission-to-equity ratio of 11.08% (33.25% annualized); a cost-to-equity ratio of 12.80% (38.39% annualized) and a trading loss of \$123,378.09 (or 42.74% of the value of the account). Buswell effected 223 transactions in the account, generating approximately \$26,012.01 in commissions. The frequency of trading was unsuitable given CG's risk tolerance and investment objectives.
63. In addition, Buswell, acting on behalf of Brookstone, recommended that CG make use of margin in the account. Although CG told Buswell that she did not want to trade on margin, Buswell recommended that CG use margin and had her sign a margin

agreement on the day the account was opened (December 4, 2008). Buswell immediately began trading on margin in CG's account. For the months February 2009 and March 2009, he traded more than 50% of the account on margin. Due to the large margin balances, the account incurred \$4,022.12 in margin interest by March 31, 2009. The significant margin balances and market losses caused very large margin calls in CG's account in March 2009. The margin calls required CG to fund the account with \$44,350 in order to avoid completely depleting the account. The use of margin in the account was unsuitable given CG's stated risk tolerance and investment objectives.

64. Prior to investing with Buswell, CG had a portfolio diversified among cash, municipal bonds, stocks, and exchange traded funds. Buswell, however, concentrated 100% of CG's individual brokerage account in three financial stocks: (1) Barclays ADR (\$205,600); (2) ING ADR (\$180,400); and (3) Wells Fargo (\$363,000). These stocks collectively totaled 100% of the value of the account and 29.96% of JG and CG's liquid net worth. Concentration of CG's trading account in three stocks in the same sector exposed CG to a level of risk incompatible with CG's moderate risk tolerance and investment objectives.
65. Buswell exercised *de facto* control over the account of CG because he used discretion without prior written authorization from CG and because CG relied on Buswell to such an extent that she did not independently evaluate Buswell's recommendations.

Customer JG

66. On his new account form for his individual brokerage account, JG states a moderate investment style with a primary investment objective of growth and a secondary investment objective of income. Like CG, he lists preservation of capital as his third

investment objective and chose aggressive and speculation as his least important investment objectives.

67. Buswell, acting on behalf of Brookstone, recommended a strategy of frequent trading in his account. From January 8, 2009 to April 9, 2009, JG's individual brokerage account with Brookstone incurred a turnover ratio of 16.51% (66.05% annualized), a commission-to-equity ratio of 1.47% (5.87% annualized); a cost-to-equity ratio of 3.39% (13.55% annualized) and a trading loss of \$822,696.79 (or 61.69% of the value of the account). Buswell effected 306 transactions in the account, generating commissions of approximately \$9,118.94.
68. In addition, Buswell, acting on behalf of Brookstone, recommended that JG make use of margin in the account. JG told Buswell that he did not want to trade on margin. Buswell, however, recommended that JG sign a margin agreement on January 27, 2009, one week after JG opened the account. Buswell immediately began trading on margin in JG's account. For the months February 2009 and March 2009, he traded more than 50% of the account on margin. Due to the large margin balances, the account incurred \$11,938.58 in margin interest by March 31, 2009. The large margin balances and market losses caused very large margin calls in JG's account in March 2009. The margin calls required JG to fund the account with \$182,000 in order to avoid completely depleting the account. The use of margin in the account was unsuitable given JG's stated risk tolerance and investment objectives.
69. Prior to investing with Buswell, JG had a managed account diversified among cash eight municipal bonds and 54 stocks. Buswell concentrated 100% of CG's individual brokerage account in three financial stocks: (1) Barclays ADR (\$771,000); (2) ING

ADR (\$676,500); and (3) Wells Fargo (\$1,089,000). These stocks collectively totaled 100% of the value of the account and, due to the use of margin, over 100% of JG and CG's liquid net worth. Concentration of JG's trading account in three stocks in the same sector exposed JG to a level of risk incompatible with JG's moderate risk tolerance and investment objectives.

70. Buswell exercised control over the account of JG because he used discretion without prior written authorization from JG.
71. The conduct described in paragraphs 50 through 70 constitutes violations by Brookstone and Buswell of NASD Conduct Rules 2310 and 2110, and FINRA Rule 2010.

FIFTH CAUSE OF ACTION

NASD Conduct Rules 2510 and 2110, and FINRA Rule 2010 – Use of Discretion,
Against Buswell and Brookstone Securities, Inc.

72. The Department realleges and incorporates by reference paragraphs 1-71 above.
73. During the period from on or about September 30, 2008, through on or about March 25, 2009, Brookstone, acting through Buswell, exercised discretion without prior written authorization in the accounts of customers JS, GY, JY, JG and CG.
74. From October 8, 2008 to March 11, 2009, Buswell effected 214 trades in the account of JS without first discussing the trades with JS. Though required by the firm, Buswell did not have a prior written agreement with JS allowing him to use discretion, nor was the account accepted as discretionary by the firm.
75. From November 14, 2008 to February 10, 2009, he effected 30 trades in the account of JY and GY without first discussing the trades with them. Though required by the firm,

Buswell did not have a prior written agreement with JY and GY allowing him to use discretion, nor was the account accepted as discretionary by the firm.

76. From December 10, 2008 to February 6, 2009, he effected 291 trades in the accounts of JG and CG without first discussing the trades with them. Though required by the firm, Buswell did not have a prior written agreement with JG and CG allowing him to use discretion, nor was the account accepted as discretionary by the firm.
77. The conduct described in paragraphs 73 through 76 constitutes violations of NASD Conduct Rules 2510 and 2110, and FINRA Rule 2010, by Buswell and Brookstone Securities, Inc.

SIXTH CAUSE OF ACTION

NASD Conduct Rules 3010 (a) and (b) and 2110, and FINRA Rule 2010 –
Failure to Supervise Buswell,
Against Brookstone Securities, Turbeville, and Locy

78. The Department realleges and incorporates by reference paragraphs 1-77 above.
79. During the period from on or about June 13, 2008 to on or about March 25, 2009, Brookstone Securities, acting through Turbeville and Locy, failed to reasonably supervise registered representative Buswell.
80. Turbeville was the 75% owner and Chief Executive Officer of Brookstone.
81. Locy was the Chief Operating Officer and President of Brookstone during the entire time period.
82. Both Turbeville and Locy were aware of red flags that required reasonable investigation by them. Neither Turbeville nor Locy reasonably followed up on the red flags.

83. Turbeville and Locy were aware of the following red flags that should have alerted them to the need to investigate Buswell's sales practices and determine whether trading restrictions, heightened supervision, or discipline were warranted:
- (i) Both Turbeville and Locy were aware by October 15, 2008, of a complaint filed by a customer against Buswell asserting claims of excessive trading, unsuitable use of margin, and misrepresentation. Based only upon Buswell's explanation, the firm dismissed the matter as a personal vendetta by the customer. The firm never contacted the customer or imposed any additional supervision on Buswell.
 - (ii) In addition, both Locy and Turbeville were aware in November of 2008 that Buswell had charged excessive commissions in the account of JS. During the first month that JS's account was opened, the account received a transfer of approximately \$1.6 million in equities. Buswell liquidated these assets, charging a commission of \$148,000 or 9%. The compliance department determined that the firm should reimburse \$70,000 to JS. Despite the excessive commissions, the firm never contacted the customer and did not impose any additional supervision on Buswell.
 - (iii) By November 2008, Brookstone's Chief Compliance Officer had recommended to Locy and to Turbeville that Buswell be placed on heightened supervision. His recommendation was rejected.
 - (iv) Both Locy and Turbeville were aware that Buswell was financially unstable. From the beginning of his employment with Brookstone, Buswell made weekly requests for advances on commissions. At one time, Brookstone had outstanding advances

to Buswell of as much as \$100,000. Despite this red flag, the firm took no steps to scrutinize Buswell's sales practices.

- (v) Beginning in July 2008, Buswell began appearing on the firm's active trading report. Between July 18, 2008 and January 31, 2009, the report noted 709 active trading exceptions for Buswell. Locy was aware of Buswell's frequent appearance on the report, because he reviewed the report on a monthly basis and was responsible for addressing the exceptions on the report. Locy took no steps to contact Buswell's customers, place Buswell on heightened supervision, or restrict his trading. He simply reviewed the exceptions and initialed the report, noting that the exceptions had been cleared.
- (vi) On or about January 7, 2008, Locy and Turbeville received an information request from FINRA regarding an investigation of Buswell. A customer had stated that Buswell had engaged in private securities transactions by attempting to sell interests in Buswell's branch office. Despite receipt of the letter, the firm took no steps to investigate Buswell's activities.
- (vii) By mid-January 2009, several of Buswell's customers were subject to large margin calls in their accounts. For instance, JS was required to deposit \$525,000 to avoid depleting the account. In addition, GY's account was depleted due to her inability to cover the large margin calls. Locy and Turbeville were aware of the margin calls, and took no steps other than limiting margin on any one account to \$100,000 and requiring initial equity of 70% with maintenance equity.
- (viii) In early February, EH, a customer of Buswell, contacted the firm to complain about activity in her account. The firm determined that unauthorized trading had

taken place in the account, and reimbursed her \$50,000. But the firm did not impose heightened supervision on Buswell at this time. Locy and Turbeville were aware of the reimbursement to EH.

84. Despite these numerous red flags, Brookstone took no steps to contact customers or place Buswell on heightened supervision. Not until January 26, 2009, did the firm place any limits on trading, and those limits were narrowly limited to Buswell's use of margin. It was only after another series of very large margin calls in Buswell's accounts in March 2009 that the firm took action. The firm finally suspended Buswell's trading authority on March 26, 2009.
85. In addition, Turbeville and Locy knew that Buswell had never sold private placements before becoming a registered representative with Brookstone. Although Turbeville made a firm-wide web presentation to encourage all Brookstone brokers to sell Advanced Blast Protection, Turbeville and Locy were aware that the Advanced Blast investments were sold almost exclusively by Buswell to his Lafayette, Louisiana clientele. Turbeville and Locy also knew that the Advanced Blast Protection investments and Brookstone Securities private placement were suitable only for accredited investors with a high level of risk tolerance. Despite Buswell's lack of experience and the high risk nature of the investments, Turbeville and Locy did nothing to ensure that Buswell was making the accurate representations and disclosures in the sales presentations and that Buswell was making suitable recommendations.
86. The conduct described in paragraphs 14-39 and 79-85 constitute willful violations of NASD Conduct Rules 3010 (a) and (b) and 2110, and FINRA Rule 2010 by Respondents Brookstone Securities, Turbeville, and Locy.

SEVENTH CAUSE OF ACTION

NASD Conduct Rules 3010 (a) and (b) and 2110, and FINRA Rule 2010 – Failure to Institute, Maintain, and Enforce Reasonable System of Supervision, Against Brookstone Securities, Turbeville, Locy, and Mercier

87. The Department realleges and incorporates by reference paragraphs 1-86 above.
88. Turbeville and Locy delegated responsibility to Mercier to conduct due diligence on Advanced Blast. Both Turbeville and Locy were aware, however, of red flags indicating problems with the Advanced Blast offering and indicating a lack of due diligence. Neither Turbeville nor Locy took steps to investigate those red flags.
89. During the period from on or about July 9, 2008 through on or about January 14, 2009, Brookstone Securities, Inc., acting through Turbeville, Locy, and Mercier, failed to establish, maintain, and enforce supervisory procedures reasonably designed to prevent violations of NASD Conduct Rule 2310 regarding suitability.
90. Brookstone Securities, Inc. had written supervisory procedures in place during the time period, requiring due diligence to be conducted by the firm prior to its selling private placements. The firm was required under its procedures to review corporate documentation regarding subsidiaries, review a schedule of stock ownership, a description of material contracts, audited financials for the prior three years, tax returns for the prior three years, litigation for the prior three years, a schedule of contingent liabilities, and a schedule of corporate debts, among other matters.
91. Under the written supervisory procedures, Mercier as the Chief Compliance Officer was responsible for ensuring that the offering complied with the due diligence requirements set forth in the procedures.

92. Mercier performed only a superficial review of the offering, and failed to complete the steps required by the written supervisory procedures.
93. Locy never evaluated the financial situation of Advanced Blast and was unsure whether the financials had been audited by a certified public accountant.
94. No one visited the Advanced Blast facility before approval of the offering.
95. Despite the requirements of the firm's own written supervisory procedures, neither Turbeville nor Locy took any steps to ensure that the due diligence process had been completed by Mercier.
96. In June 2009, Advanced Blast filed a bankruptcy petition under Chapter 11 in the Southern District of Florida Fort Lauderdale Division.
97. The conduct described in paragraphs 88 through 96 constitute violations of NASD Conduct Rules 3010(a) and (b) and 2110, and FINRA Rule 2010 by Brookstone, Turbeville, Locy, and Mercier.

EIGHTH CAUSE OF ACTION

**NASD Conduct Rules 3010 (a) and (b) and 2110, and FINRA Rule 2010 -
Failure to Institute, Maintain, and Enforce Reasonable System of Supervision,
Against Brookstone Securities, Turbeville, and Locy**

98. The Department realleges and incorporates by reference paragraphs 1-97 above.
99. Turbeville and Locy created Brookstone's deficient supervisory system in place during the period from on or about July 9, 2008 through on or about January 14, 2009. Brookstone's procedures were also inadequate to prevent and detect unsuitable

recommendations resulting from excessive trading, excessive use of margin, and over-concentration.

100. Although the written supervisory procedures assigned a principal to supervise each of its 163 registered representatives, in practice, the principal assigned to an individual was to be available to answer questions only. The principals did not review trades or correspondence.
101. In fact, the assignments were so devoid of real meaning that Buswell's supervisor did not learn of his supervisory status until nine months after Buswell had been hired.
102. Turbeville and Locy were aware of the lack of supervisory controls, because together they had created this supervisory structure.
103. Furthermore, the firm's new account application process was flawed.
104. For each new product purchased by a client, the broker completed a separate new account form.
105. For instance, a different new account form would be completed for each private placement or other product purchased in a particular customer's account. No general client profile would be linked to the account.
106. Each new account application was completed in a fashion tailored to the product purchased.
107. Thus, the reviewing principal was unable to obtain an accurate picture of the customer's financial status, investment objectives, and investment history when reviewing a transaction for suitability.

108. The firm's written supervisory procedures required the Compliance Department to conduct the following reviews and to take the following actions concerning client accounts:

- Review all items on exception reports and determine if any further action is warranted;
- Rigorous scrutiny and regular review of all margin accounts;
- Review a monthly printout of all trading activities for each registered representative for excessive trading for any given client;
- Review a monthly printout for high concentration of any security in an account;
- Review on a daily basis of all transactions for suitability; and
- Review of monthly active account reports to identify potential churning.

109. The firm's procedures were unreasonable, because they failed to identify the specific reports that the Compliance Department was to review and provided no guidance on the actions or analysis that should occur in response to the reports. In addition, although the procedures listed sample client monitoring calls as part of the monthly reviews, the procedures qualified this requirement by stating "as deemed appropriate." The procedures do not state the circumstances that would make client contact appropriate and do not identify who should make the contact.

110. In practice, the Compliance Department conducted a daily review of trade blotters from their clearing firm. The only other document used by Compliance was a surveillance report that identified all trades in an account in excess of 15 during a 30-day rolling period (the "Active Trading Report").

111. For instance, as previously discussed in the Sixth Cause of Complaint, between July 18, 2008 and January 31, 2009, the Active Trading Report noted 709 active trading exceptions for Buswell. Locy was aware of Buswell's frequent appearance on the report, because he reviewed the report on a monthly basis and was responsible for addressing the exceptions on the report. Locy took no steps to contact Buswell's customers, place Buswell on heightened supervision, or restrict his trading. He simply reviewed the exceptions and initialed the report, noting that the exceptions had been cleared.
112. Turbeville and Locy knew or should have known of the limited reviews conducted by the compliance department and neither took steps to address the inadequate system.
113. Turbeville and Locy were aware or should have been aware that the system for gathering and analyzing new account information was inadequate, because the Chief Compliance Officer began making attempts to change the system immediately upon his hire in March 2008.
114. The conduct described in paragraphs 99 through 113 constitutes a violation of NASD Conduct Rules 3010 (a) and (b) and 2110, and FINRA Rule 2010 by Respondents Brookstone Securities, Turbeville, and Locy.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

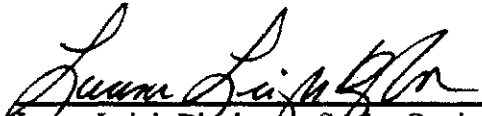
- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including monetary sanctions and requiring that Respondents disgorge

fully any and all ill-gotten gains and/or make full and complete restitution,
together with interest;

- B. order that the Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- C. make specific findings that Respondents Buswell, Fouke, and Brookstone Securities, Inc. willfully violated Section 10(b) of the Exchange Act.

FINRA DEPARTMENT OF ENFORCEMENT

Date: June 28, 2010



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