

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Mark Christopher Hotton
(CRD No. 2346843),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009017408101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From at least July 24, 2006, former registered representative Mark Christopher Hotton engaged in numerous, varied, and interrelated schemes to steal at least \$5,932,000 from his brokerage customers. Hotton converted funds from his customers by using his control over the bank accounts of various corporate entities to divert funds that his customers believed were being invested in legitimate businesses. In some instances, Hotton converted funds by persuading his customers to “invest” in securities that simply did not exist. At other times, he persuaded customers to invest in what appeared to be legitimate businesses, but then used the customers’ funds to pay back prior “investors” or to line his own pocket. He also forged signatures on letters of authorization, lied on third-party wire request forms, and created fictitious investments. As his fraudulent schemes began to unravel, Hotton went so far as to wire funds directly from customers’ brokerage accounts to the accounts of other investors who were

demanding to be repaid. Hotton's wide-ranging and varied frauds to convert his customers' funds violated NASD Rules 2330 and 2110 and FINRA Rule 2010.

2. In order to accomplish his schemes, it was necessary for Hotton to hide his ownership and/or control over the entities to which he was directing his customers' funds. In many instances, Hotton was able to obtain funds from his customers by convincing them to "invest" in outside business activities that he willfully failed to disclose to his member firm, NASD, and FINRA,¹ in violation of Article V, Section 2(c) of the NASD and FINRA By-Laws of the Corporation, NASD Rules 3030, 2110 and IM-1000-1, and FINRA Rule 2010.

3. In addition to the \$5,932,000 misappropriated by Hotton that is the primary subject of this Complaint, Hotton also caused at least an additional \$2,584,078 to be wired from the brokerage accounts of his customers at Oppenheimer, Inc. to his outside business activities and other entities and individuals with whom Hotton was affiliated.

4. Hotton also caused millions of dollars in customer losses by engaging in brokerage fraud—churning and excessively trading his clients' accounts, exercising discretion without authorization, trading without authorization, and recommending patently unsuitable transactions—in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, NASD Rules 2120, 2310, 2510, IM-2310-2, and 2110, and FINRA Rules 2020 and 2010.

5. Hotton's schemes involved numerous forged, fabricated, and false documents, fictitious transactions, fictitious securities, false statements, and false and misleading account summaries. To obscure his misconduct, Hotton provided this false information to his customers and to his member firm, in violation of NASD Rule 2110 and FINRA Rules 2010.

¹ 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).

6. In one instance, Hotton made an unauthorized loan to a customer, in violation of NASD Rules 2370 and 2110, in order to prevent his scheme from unraveling.

7. To further obscure his misconduct from the public, Hotton willfully failed to disclose and/or misleadingly described a customer arbitration, settlements, and civil actions on his Uniform Application for Securities Industry Registration or Transfer (Form U4) in violation of Article V, Section 2(c) of the NASD and FINRA By-Laws of the Corporation, NASD Rules 2110 and IM-1000-1, and FINRA Rules 1122 and 2010.

8. During NASD's and FINRA's investigations, Hotton provided NASD and FINRA with false information. He repeatedly lied under oath during on-the-record testimony, provided false written responses to FINRA's requests for information, and provided FINRA with forged and fabricated documents. Hotton's lies to NASD and FINRA violated NASD Rules 8210 and 2110 and FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

9. **Mark Christopher Hotton** (CRD No. 2346843) entered the securities industry in 1993 when he passed his Series 7 licensing exam. He later passed his Series 24 licensing exam in 1996. He was associated with two FINRA members prior to joining Oppenheimer, Inc. in November 2005. Hotton registered with Oppenheimer both as a General Securities Representative and General Securities Principal. While at Oppenheimer, Hotton was a full service broker focused on clients with average net worths of between \$1,000,000 and \$20,000,000. Hotton left Oppenheimer in February 2009. After leaving Oppenheimer, Hotton was associated with American Capital Partners, LLC (from February 2009 to July 2010), Alexander Capital, L.P. (from September 2010 to February 2012), and Obsidian Financial Group, LLC (from February 2012 to May 2012). Obsidian terminated Hotton's registrations on May 31, 2012. Hotton is currently not associated with any FINRA member firm.

10. Although Hotton is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws of the Corporation, because (1) this Complaint was filed within two years after the effective date of termination of Hotton's registration with Obsidian Financial Group, LLC, namely, May 31, 2012 and (2) this Complaint charges Hotton with misconduct committed while he was registered or associated with a FINRA member.

STATEMENT OF FACTS

A. Hotton's Misconduct

1. In 2006, Hotton is Sued for Fraud, Misappropriation, and Fraudulent Securities Transactions, but Fails to Disclose the Lawsuits or Resulting Settlement on His Form U4.

11. On February 10, 2006, WQN, Inc. and Park Avenue Associates, LLC (a Delaware LLC) filed a complaint in the Supreme Court of New York (the "WQN Action") against Hotton and several entities allegedly controlled by Hotton. WQN was the majority owner of Park Avenue Associates, LLC, a real estate development company in which WQN had invested \$4,000,000. Mark Hotton had been appointed the CEO of Park Avenue Associates, LLC. The WQN Action alleged that Hotton had induced WQN to invest in three purported real estate transactions by touting his experience and success as a real estate investor, and then stolen approximately \$4,000,000 from WQN that was supposed to be invested in these transactions. The lawsuit alleged that Hotton was able to do so by preparing forged contracts and mortgages, fabricating account statements, and by directing WQN's funds to an entity he had registered, Park Avenue (NJ), which had essentially the same name as the entity that was supposed to invest in the real estate transactions, Park Avenue Associates, LLC (DE).

12. On March 15, 2006, Denton Jones and Cross Country Capital Partners filed an interpleader and third-party complaint against Hotton and others in the United States District

Court for the Eastern District of New York (the “Cross Country Capital Partners Action”). The Cross Country Capital Partners Action alleged that Hotton had defrauded Cross Country Capital Partners in a fictitious securities transaction. In particular, the Cross Country Capital Partners Action alleged that Hotton had: (i) defrauded Cross Country Capital Partners in connection with a \$5,676,300 purchase of the stock of Websense, Inc. in a putative PIPE transaction that Hotton had later admitted never occurred and (ii) fabricated escrow statements on Oppenheimer letterhead that falsely stated that \$5,676,300 was being maintained in an escrow account for Cross Country Capital Partner’s benefit. The Cross Country Capital Partners Action further alleged that Cross Country had received multiple, contradictory claims from WQN and others to \$1,000,000 that was on deposit in Cross Country’s brokerage account at Oppenheimer. The Cross Country Capital Partners Action further alleged that Hotton had told Cross Country that the \$1,000,000 on deposit at Oppenheimer in Cross Country’s account was part of the return of the \$5,676,300 due to Cross Country.

13. On May 16, 2006, Justice Judith J. Gische issued an Order allowing the plaintiffs in the WQN Action to attach up to \$4,000,000 of Hotton’s assets. In her Order, Justice Gische noted the following facts, which she characterized as undisputed by both Hotton and the other parties: (i) that WQN had embarked in a joint venture with Hotton and other investors affiliated with Hotton to invest in real estate; (ii) that Hotton received no less than \$3,577,000 from WQN; and (iii) that the money was never used for the identified real estate deals, but was instead transferred into bank accounts owned and/or controlled by Hotton.

14. In a global settlement dated May 17, 2006—one day after Justice Gische’s order—between the parties to both the WQN Action and the Cross Country Capital Partners Action, Hotton agreed to pay WQN \$2,000,000 over a period of 18 months, and to assign his

interest in various corporate entities, properties, boats, and automobiles (including a Bentley) as security for the repayment. In order to settle the claims separately asserted by Denton Jones and Cross Country Capital Partners, Hotton agreed buy out an interest in an entity called Atlantic Equities LLC for \$673,534 and assume responsibility for repaying principal and interest on \$400,000 in promissory notes issued to five individuals by another entity. Several of the individuals Hotton was obligated to repay pursuant to the May 17, 2006 settlement agreement were brokerage customers of Hotton with accounts at Oppenheimer—including Cross Country Capital Partners, who was also one of the signatories to the settlement agreement. None of the parties to the settlement agreement other than Hotton were obligated to compensate any of the other parties.

15. Hotton never disclosed the WQN Action, the Cross Country Capital Partners Action, or his obligation to pay more than \$3,000,000 to settle those actions on his Form U4.

2. During a 2006 Investigation by the NASD, Hotton Lies to the NASD About the Scope of His Outside Business Activities, then Continues to Willfully Fail to Disclose His Outside Business Activities and Civil Lawsuits on His Form U4.

16. On May 1, 2006, the NASD sent a request pursuant to NASD Rule 8210 asking Hotton for, among other things, the name and addresses of all businesses he owned and/or operated and/or controlled during the period January 2004 to present and a brief description of each business operation. On September 26, 2006, the NASD sent another request pursuant to NASD Rule 8210 asking Hotton for, among other things, a signed statement “detailing all business ventures between you and . . . Park Avenue” as well as Hotton’s “personal and financial interest in Cross Country Partners, L.P.” and asking him to “describe in detail the nature of each venture [and] your involvement in each venture . . .”

17. In a letter dated June 1, 2006, Hotton responded to the NASD that he was an “investor” in the following “real estate businesses with an address at 714 North Main Street, Manahawkin, New Jersey”: Two Trees Partners, Coastal Atlantic Equities, Park Ave. Assoc. LLC (NJ), Atlantic Senior Associates LLC, Coastal Partners Associates LLC, and 154th Street Corp as well as “North Country BBQ Ventures, Inc.,” a “restaurant business” located at “517 Central Avenue, Suite 106, New Providence, New Jersey.”

18. In a letter dated October 12, 2009, Hotton responded to the NASD that Park Avenue “was to be owned by me,” and “was to conduct real estate transactions,” but that “no business venture was ever actually initiated” and that the “proposed venture was abandoned.” Hotton also stated that he had “never had a financial interest” in Cross Country Partners, LP and that his “involvement with Cross Country Capital, LP was limited to servicing that entity’s brokerage account.”

19. On December 4, 2006, the NASD sent a request pursuant to NASD Rule 8210 asking Hotton for a detailed statement explaining why he did not report his association with the entities listed in paragraph 17 of this Complaint to the NASD on his Form U4. In a letter dated December 11, 2006, Hotton responded as follows:

- That he had disclosed two outside business activities— Coastal Atlantic Equities and Park Ave. Assoc. LLC—to Oppenheimer. With respect to Coastal Atlantic Equities, Hotton stated that he was “actively involved with Coastal Atlantic Equities to a small degree (approximately two hours per month).”
- Hotton stated that “Park Ave. Assoc. LLC is no longer an active LLC.”
- With respect to the remaining entities, Hotton stated that these entities were not reported because of the “extremely limited and passive nature of my involvement in those

entities.” Hotton also stated that (i) his investments in Coastal Partners Associates LLC and North Country BBQ Ventures, Inc. were “passive;” (ii) that Atlantic Senior Associates LLC had “never engaged in any business activities” and that he “did not have any active role with respect to this entity;” and (iii) that 154th Street Corp. “no longer has any active business operations” and that he “never had any active involvement with this entity’s operations.”

- Hotton stated that Atlantic Senior Associates “has never engaged in any business activities. It has been formed to be used in connection with an investment in certain property located in Sayville, New York, but that investment was never actually made.”

20. On March 1, 2007, the NASD sent Hotton a Letter of Caution stating that Hotton had violated Article V, Sec. 2(c) of the NASD By Laws of the Corporation by (i) failing to amend his Form U4 to disclose the civil actions filed against him by Denton Jones and WQN, as well as the settlement of those actions, and (ii) failing to disclose his business associations with Two Trees Partners, Park Ave. Assoc. LLC., Atlantic Senior Associates LLC, Coastal Partners Associates LLC., 154th Street Corp., and North Country BBQ Ventures, Inc.

21. On March 14, 2007, Hotton responded to the NASD’s Letter of Caution, telling the NASD that “[p]resently, there are no reportable matters which require an amendment to my Form U4 which have not already been disclosed” and that he would “review the disclosures which already have been made concerning my outside business associations to ensure that all such outside business associations (including those listed in your letter) are disclosed. In the event that any of my outside business associations are not disclosed, or if any further outside business associations are established, I will promptly notify my firm’s compliance department and make sure that such outside business activities are properly disclosed.”

22. Until September 2, 2009—after Hotton left Oppenheimer—Hotton did not disclose any outside business activities on his Form U4 except for Coastal Atlantic Equities.

23. Although Oppenheimer's Chief Compliance Officer was copied on the NASD's Letter of Caution, Hotton only formally disclosed two outside business activities to Oppenheimer: Coastal Atlantic Equities, LLC and Park Avenue Associates, LLC.

24. Hotton's statements to the NASD (i) describing his outside business activities, (ii) that he did not presently have reportable matters which require an amendment to his Form U4, and (iii) that he intended to make proper U4 disclosures in the future were willfully false and misleading.

25. Indeed, a mere 12 days after telling the NASD that he had no outside business activities requiring disclosure, and after telling the NASD that Atlantic Senior Associates, LLC "had never engaged in any business activities," Hotton funneled money from customers JP and SP to Atlantic Senior Associates, LLC and converted the funds for his personal use.

26. Hotton did not timely disclose on his Form U4, or to Oppenheimer, at least the following additional outside business activities to which he directed funds solicited from his brokerage customers: Coastal Partners Associates, LLC; Coastal Partners Storage, LLC; Pioneer Ventures, LLC; Trinity Management Consulting Corp.; LAN Utilities Electric, Inc.; and Canyon Brothers Construction LLC.

27. In addition to the \$5,932,000 misappropriated by Hotton as described below, Hotton caused at least an additional \$2,584,078 to be wired from the brokerage accounts of his Oppenheimer customers to his outside business activities and other entities and individuals with whom Hotton was affiliated. This additional \$2,584,978 is currently unaccounted for.

28. Although Oppenheimer's Chief Compliance Officer was copied on Hotton's correspondence with the NASD, including the NASD's Letter of Caution informing Hotton that he had failed to properly disclose his outside business activities, the Oppenheimer manager who reviewed the outgoing third-party wires from the accounts of Hotton's customers was unaware that the NASD had concluded that Hotton had failed to properly disclose his business activities or litigation brought against him. Even after the Letter of Caution was issued, Hotton was able to wire funds from his clients' accounts to various entities without Oppenheimer detecting that Hotton was funneling his client's money to entities associated with Hotton.

29. As set forth in detail below, Hotton has gone to great lengths to attempt to conceal his fraudulent conduct. Accordingly, the total amount of funds misappropriated by Hotton is likely larger than the amounts that can be specifically alleged in this Complaint.

B. The Frauds on Customers JP and SP

1. Fictitious Investments, Conversion, and Forged Letters of Authorization

30. Between July 24, 2006 and January 20, 2009, Hotton repeatedly defrauded Oppenheimer customers JP and SP, who are husband and wife. Hotton did so by recommending that they invest at least \$760,000 in fictitious bonds and make other "investments" in entities over which Hotton exercised legal or de facto control. Hotton then converted JP and SP's funds for his personal use.

31. Hotton also forged signatures on Letters of Authorization in order to steal an additional \$63,000 directly from JP and SP's brokerage accounts at Oppenheimer.

32. Of the at least \$823,000 taken by Hotton from JP and SP, \$288,000 was diverted to Hotton's personal bank accounts or credit cards, \$300,000 went to pay other Hotton "investors" who were also Oppenheimer customers, \$28,000 was diverted to other Hotton-

related companies, and \$10,000 was paid to Hotton's attorney. The remaining \$197,000 is currently unaccounted for.

33. Hotton did not disclose to JP or SP that their money would be diverted to his personal accounts, other businesses, or be used to pay back other "investors."

34. Hotton falsely represented to JP and SP that the investments he was recommending were safe and secure.

35. Hotton was able to defraud JP and SP over a period of several years by paying them purported "interest" on some of their "investments." To further assuage any concerns they might have had, Hotton sent JP and SP periodic statements that he prepared purporting to show the value of their "investments" with him and the "interest" they had and would receive.

36. Deducting the "interest" paid to JP and SP, Hotton stole at least \$700,000 from JP and SP between July 24, 2006 and January 20, 2009.

a. The Pioneer Ventures and John Hancock Fraud

37. On or about July 24, 2006, Hotton recommended that JP and SP invest \$500,000 in an entity called Pioneer Ventures that Hotton claimed would pay 10.3% interest and would return their principal in 60 days.

38. Pioneer Ventures was one of the defendants in the WQN Action, and its business address, 714 North Main Street in Manahawkin NJ, is the address listed on corporate documents of several other Hotton-affiliated entities as well as the heating and plumbing businesses of Hotton's father-in-law.

39. To mislead JP and SP about the safety of the purported "investment," Hotton provided JP and SP with a subscription document dated July 21, 2006 that appeared to show that Hotton had himself invested \$500,000 in Pioneer Ventures and that his principal would be returned within 60 days "plus a 10.3% coupon." In fact, Hotton never made this investment.

40. JP and SP provided Hotton with a check for \$500,000, which stated “note investment” in the memo line, to invest in the purported 10.3%, 60-day Pioneer Ventures note. The original source of these funds was JP’s IRA at Oppenheimer.

41. JP and SP’s check for \$500,000 was originally deposited into the account of Pioneer Ventures, a Hotton-affiliated entity.

42. Within one day of being deposited to the bank account of Pioneer Ventures, at least \$230,000 of the \$500,000 that JP and SP “invested” was diverted to Hotton’s personal bank accounts and \$100,000 was diverted to pay back another “investor.”

43. When JP and SP asked for their money back from the Pioneer Ventures investment, Hotton made up a series of excuses for why they had not received their money and presented JP and SP with fictitious documents to explain why their money had not been returned.

44. On September 25, 2006, Hotton loaned JP \$250,000 so that he could re-fund his Oppenheimer IRA and avoid tax penalties. JP later paid Hotton back for this loan. Hotton did not disclose the loan to Oppenheimer.

45. Eventually, Hotton told JP and SP that their money was being held in an account at John Hancock and fabricated John Hancock account statements so that he could continue to perpetuate his frauds on JP and SP and unlawfully retain their money. In fact, JP and SP never had any accounts at John Hancock, and the purported John Hancock account statements were forgeries prepared by Hotton.

b. The Atlantic Senior Associates / GE Fraud

46. On or about March 26, 2007, Hotton recommended that JP and SP invest \$50,000 in what Hotton described as “Atlantic S. Associates” “GE 8.7587% Term Bond.” Hotton represented that the investment was “safe” and “secure,” and that it would pay interest at the rate of 8.7587%.

47. In fact, there was no such bond, and “Atlantic S. Associates” had no affiliation with GE.

48. On the 2007 Federal Tax returns for Atlantic Senior Associates, Hotton was identified as the sole “General Partner of LLC member-manager,” and his wife Sherri Hotton is identified as a “Limited partner or other LLC member.” Mark Hotton was also listed on Atlantic Senior Associates’ bank account. The filing to register Atlantic Senior Associates with the State of New York lists Mark Hotton’s home address as the address for service of process.

49. JP and SP’s check for \$50,000 was deposited by Hotton into a bank account in the name of Atlantic Senior Associates.

50. Of the \$50,000 that JP and SP “invested” in Atlantic Senior Associates / GE, at least \$16,000 was used to pay off Hotton’s American Express card, and \$28,000 was diverted to another Hotton-affiliated entity.

51. Approximately three months before he solicited JP and SP’s investment in Atlantic Senior Associates /GE, Hotton had represented to the NASD that Atlantic Senior Associates “has never engaged in any business activities. It has been formed to be used in connection with an investment in certain property located in Sayville, New York, but that investment was never actually made.” He also stated that “I did not have any active role with respect to this entity.”

52. On March 14, 2007—twelve days before he solicited JP and SP’s investment in Atlantic Senior Associates / GE and deposited the funds to the account of Atlantic Senior Associates—Hotton told the NASD that “[p]resently, there are no reportable matters which require an amendment to my Form U4 which have not already been disclosed” and that he would “review the disclosures which already have been made concerning my outside business

associations to ensure that all such outside business associations (including those listed in your letter) are disclosed. In the event that any of my outside business associations are not disclosed, or if any further outside business associations are established, I will promptly notify my firm's compliance department and make sure that such outside business activities are properly disclosed."

53. Hotton's representations to the NASD regarding his lack of involvement in Atlantic Senior Associates were willfully false and misleading.

c. The Trinity Management Consulting Corp. / GE Fraud

54. On or about October 23, 2008, Hotton recommended that JP and SP invest in an "installment note" issued by "Trinity Management Consulting Corp. / GE" that was "safe and secure" and that purportedly paid 8 5/8 % per year.

55. At Hotton's recommendation, JP and SP wired an additional \$210,000 from their personal checking account to an escrow account maintained by Hotton's attorney to invest in the purported "installment note."

56. Hotton failed to disclose to JP and SP that Trinity Management Consulting Corp. was a shell company established by Hotton, that Hotton was an officer and director of Trinity, and that the entities' registered business address was the Hotton's home address.

57. On the very same day that \$210,000 was wired by JP and SP to Hotton's attorney's escrow account to "invest" in the Trinity Investments Consulting Corp / GE installment note, \$200,000 was wired out of that account to pay back another Hotton "investor" and \$10,000 was retained by Hotton's attorney.

d. The Forged Letters of Authorization

58. On December 18, 2008, Hotton stole \$51,000 from JP and SP by forging their signatures on a Letter of Authorization for a third-party wire. Hotton presented the forged Letter

of Authorization to Oppenheimer. As a result, \$51,000 was wired from JP and SP's brokerage account to Canyon Brothers Development, an entity affiliated with Hotton.

59. On January 20, 2009, Hotton stole an additional \$12,000 from JP and SP by forging their signatures on a second Letter of Authorization. Hotton presented the second forged Letter of Authorization to Oppenheimer, causing \$12,000 to be wired from JP and SP's brokerage account to LAN Utilities Electric, an entity affiliated with Hotton.

60. The signatures of JP and SP on the December 18, 2008 and January 20, 2009 Letters of Authorization were forgeries. The signatures were cut from other documents JP and SP had previously signed and pasted onto the Letters of Authorization.

61. JP and SP did not authorize—and were not aware of—the December 18, 2008 and January 20, 2009 wires.

62. Of the at least \$63,000 stolen from JP and SP through forged Letters of Authorization, Hotton subsequently transferred at least \$42,000 to his personal bank accounts.

2. Churning, Excessive Trading, Unsuitable Trades, Exercise of Discretion without Appropriate Authorization, and Falsification of Customer Account Forms

63. Hotton also churned and excessively traded JP and SP's brokerage accounts at Oppenheimer in order to generate commissions, exercised discretion without authorization, and recommended unsuitable trades.

64. Although JP told Hotton that he was not interested in risky or speculative trading and that he would be happy making a 5% return per year, Hotton repeatedly bought and sold risky securities in JP's and SP's accounts, including penny stocks and foreign leveraged and inverse exchange traded funds. In JP's IRA Rollover account, Hotton entered 497 buys and sells orders from December 23, 2005 through December 15, 2008. Between December 15, 2005 and February 28, 2009, Hotton executed 724 trades in four separate accounts held by JP and/or

SP. As a result of Hotton's abusive trading practices, JP and SP realized losses of approximately \$478,000, exclusive of commissions.

65. Although JP and SP's accounts were not discretionary, Hotton traded the accounts without receiving authorization from JP or SP prior to each trade.

66. Hotton also falsified net worth and investment objective information on JP and SP's New Account Forms in order to facilitate his excessive trading of the account. In 2006 and 2007, Hotton submitted updated Customers Account Forms for JP and SP to Oppenheimer that substantially and falsely increased JP and SP's net worth and mischaracterized their investment objective as "Speculation." When JP confronted Hotton about the changes, Hotton told him not to worry about it.

C. The Frauds on Customers LP and DP

67. Between April 15, 2008 and December 10, 2008, Hotton defrauded LP and DP, who are husband and wife, out of \$4,950,000, converting for his own use money LP and DP intended for investments. Hotton pursued LP and DP's business after a meeting in February 2008.

68. After Hotton persuaded LP and DP to open securities accounts at Oppenheimer in April 2008, Hotton convinced LP and DP to give him \$350,000 for a fictitious "warrant" and then \$1,000,000 for the purchase of a fictitious note. Hotton later convinced LP and DP to "invest" an additional \$3,600,000 in an entity he controlled. He converted those funds to his own use, funneling money to himself, other businesses, and to other "investors."

69. Hotton did not disclose to LP or DP that their money would be diverted to his personal accounts, other businesses, or be used to pay back other "investors."

70. Hotton falsely represented to LP and DP that the investments he was recommending were safe and secure.

1. The \$350,000 Warrant

71. On or about April 15, 2008, Hotton recommend that LP and DP purchase a \$350,000 warrant. Hotton had LP make out a cashier's check to the escrow account of Hotton's attorney, which Hotton falsely stated was a "clearing firm."

72. If fact, there was no "warrant," and the purported investment was merely a mechanism for Hotton to steal from LP and DP.

73. One day after LP and DP's \$350,000 check was deposited to the escrow account of Hotton's Attorney, \$250,000 was wired to another Hotton "investor" and \$100,000 was wired to Trinity Management Consulting Corp. Thereafter, \$66,125 of the \$100,000 directed to Trinity was transferred to Hotton's personal bank accounts and credit cards.

2. The \$1,000,000 Fictitious Bon-Ton Note

74. In July 2008, Hotton recommend that LP and DP purchase a \$1,000,000 note supposedly issued by Bon-Ton Department Stores and underwritten by Trinity Management Consulting Corp. In connection with this recommendation, Hotton represented that the Bon-Ton note was secured and was to pay quarterly interest of 10.25% with full repayment of principal in one year.

75. LP and DP delivered to Hotton a check dated July 29, 2008, for \$1,000,000 made payable to "Trinity Management Consulting Corp." for the purchase of the Bon-Ton note recommended by Hotton.

76. Hotton gave LP and DP a letter dated July 29, 2008, stating "[w]e are in receipt of your \$1,000,000.00 investment in the 10.25% Secured Note Underwritten by Trinity Management Consulting Corp. and issued by 'The Bon-Ton Department Stores.'" This letter also represented that the "Secured and Insured Note" was redeemable "at any time" and described the schedule for interest payments.

77. The Bon-Ton note Hotton sold to LP and DP did not exist.

78. Hotton's verbal and written representations about the supposed Bon-Ton note—*i.e.*, that it was underwritten by Trinity Management Consulting Corp., that it bore 10.25% interest, that it would make quarterly interest payments, and that it would return principal in one year—were all false. Moreover, Hotton failed to disclose Trinity, the supposed underwriter of the fictitious note, was a shell company established by the Hotton family (as described above).

79. Rather than invest LP and DP's \$1,000,000 in a Bon-Ton note as he represented, Hotton converted the funds to his own use.

80. Hotton diverted \$246,621 of the \$1,000,000 LP and DP invested in the fictitious Bon-Ton note to his personal bank accounts and credit cards. The remainder was transferred to other Hotton investors and companies affiliated with Hotton.

3. \$3,600,000 in "Investments" in Hotton-Controlled Trinity Management Consulting Corp.

81. In the months that followed his sale of the fictitious Bon-Ton note to LP and DP, Hotton solicited more money from LP and DP for numerous additional, fraudulent investments.

82. In seeking additional money from LP and DP, Hotton represented to LP and DP that Trinity Management Consulting Corp. was a multi-billion dollar international company and that the investment had been vetted by Hotton's firm, Oppenheimer. Hotton also told LP that he had invested \$7,000,000 of his own money in Trinity, and that Trinity was a safe and secure investment and that LP and DP's principal was guaranteed.

83. Hotton told LP that Trinity Management Consulting Corp. was the underwriter for the Bon-Ton Department stores 10.25% Secured Note.

84. Based on Hotton's representations and recommendations, LP and DP made the following payments for "investments" in Trinity Management Consulting Corp:

- a. \$1,000,000 by check dated September 11, 2008;
- b. \$1,000,000 by check dated October 7, 2008;
- c. \$100,000 by wire from LP's Oppenheimer account to Hotton's attorney on November 10, 2008; and
- d. \$1,500,000 by check dated December 9, 2008.

Thus, between September 2008 and December 2008, LP and DP gave Hotton \$3,600,000 to invest in Trinity.

85. Hotton gave LP and DP multiple letters purporting to confirm their investments in secured notes issued by Trinity Management Consulting Corp., detailing payment schedules, accrual of interest, total value, and describing the terms of the Trinity notes.

86. Hotton's verbal and written representations to LP and DP in connection with their \$3,600,000 "investments" in Trinity Management Consulting Corp. were false and misleading. Trinity was not a multi-billion international company; rather, it was a shell company established by the Hotton family (as described above). And Hotton did not invest LP and DP's \$3,600,000 in Trinity notes. Instead, he converted the funds to his own use.

87. Of the \$3,600,000 "invested" in Trinity Management Consulting Corp., \$1,716,184 was directed to the Hotton's personal financial accounts and almost all of the remaining funds were directed to Hotton investors or companies affiliated with Hotton.

88. In an attempt to avoid responsibility for defrauding LP and DP, Hotton prepared forged and fabricated documents that mischaracterized the nature of LP and DP's "investments" with Hotton. Hotton prepared documents purportedly signed by LP, and memos and faxes purportedly sent to Oppenheimer personnel, which indicated that LP knew he was investing in Hotton family businesses, and that Oppenheimer was also aware of this. These documents were

fabricated, and were neither signed by LP nor provided to Oppenheimer personnel on the dates indicated on the documents.

4. Hotton's Inadequate Form U4 Disclosures

89. On or about December 18, 2009, LP and DP commenced an arbitration proceeding against Hotton and Oppenheimer, Inc. by filing a Statement of Claim and Demand for Arbitration with FINRA. That Statement of Claim in *LP and DP v. Mark C. Hotton and Oppenheimer & Co. Inc.*, FINRA Arbitration No. 09-07047, alleged “conversion of” \$5,100,000 from LP and DP by Hotton as well as losses of \$283,000 due to Hotton’s “unauthorized trading and churning” of LP and DP’s accounts. The Statement of Claim alleges that “[t]he undisputed evidence reflects that [Hotton] made a conscious decision to intentionally defraud [LP and DP] in connection with entrusting [Hotton and Oppenheimer] with [LP and DP’s] life savings of \$5.1 million dollars.”

90. In the time since LP and DP commenced their FINRA arbitration against him, Hotton has filed numerous amendments to his Form U4. None of these updates disclosed the existence of the LP and DP arbitration.

91. On or about December 22, 2009, LP and DP filed a “Motion for TRO and Preliminary Injunction Restraining Certain Assets of Defendants and Application for Expedited Discovery and Accounting” in the United States District Court for the Eastern District of New York. That action, which sought an order “freezing certain assets of Defendants” and other relief, was captioned *LP and DP v. Mark C. Hotton, Sherri Hotton, and Trinity Management Consulting Corp.*, Case No. 2:09-cv-05599,. The Court granted a temporary restraining order on December 23, 2009. On January 6, 2010, LP and DP filed a Complaint in their federal action, alleging “conversion of \$5.1 million dollars entrusted to defendants in connection with purported investments in defendant Trinity Management Consulting Corp. . . . and the Bon-Ton

Department Stores” and asserting claims of securities fraud, conversion, common law fraud, and unjust enrichment.

92. In December 2010, almost one year after the commencement of LP and DP’s federal action, Hotton finally disclosed the federal action—but not the arbitration—on an amended Form U4. Hotton’s description of the federal action stated, in total: “BUSINESS DISPUTE BETWEEN BUSINESS PARTNERS SURROUNDING LOAN MONIES. A COMPLAINT AND APPLICATION FOR INJUNCTIVE RELIEF 12/09. INJUNCTIVE RELIEF APPLICATION WAS VOLUNTARILY DISMISSED.”

93. Hotton’s description of the LP and DP federal action, which he never changed in any of the numerous Form U4 amendments he filed after December 2010, was materially misleading. As described above, the LP and DP arbitration and federal action alleged conversion in connection with fraudulent investments—far more serious alleged misconduct than a “business dispute between business partners.”

D. The Fraud on Customer RB

94. In May of 2009, Hotton converted \$159,000 from customer RB in order to pay back customer LP.

95. On or about May 6, 2009, Hotton recommended that customer RB invest \$159,000 in a Reverse Convertible Note issued by the Royal Bank of Canada. The short-term note was scheduled to mature on July 22, 2009.

96. Hotton had RB complete a Letter of Authorization requesting that \$159,000 be wired from his American Capital brokerage account to purchase the note.

97. Instead of purchasing the note as RB had instructed, Hotton converted RB’s funds to pay LP. Hotton wired \$159,000 from RB’s brokerage account directly to LP and DP’s checking account at JP Morgan Chase Bank.

98. After the purported Reverse Convertible Note matured on July 22, 2009, RB repeatedly demanded that Hotton return his principal.

99. On November 19, 2009, Hotton finally wired \$161,209.76 to RB's bank account.

100. Hotton falsely misrepresented to RB that this transfer represented the return of his principal and interest from his investment in the Reverse Convertible Note. In fact, the funds were transferred from the account of Trinity Management Consulting Corp., a company RB had never invested in.

E. The Frauds on Customer NP

1. The Churning, Excessive Trading, and Unsuitable Recommendations in Customer NP's Account

101. Customer NP maintained a joint account at Oppenheimer in his name and the name of his two sons. Hotton took over as the broker on the account in November 2007 from a broker who had left Oppenheimer.

102. When Hotton took over as the broker on the NP account, it was diversified and invested primarily in municipal bonds, index funds, and other mutual funds. For several months after Hotton took over the account in November 2007, the trading in the account was relatively benign. In July 2008, Hotton recommended that NP sell off many of the municipal bonds.

103. On September 30, 2008, the total value of the assets in the NP account was \$8,135,331. By January 31, 2009, the account value had declined to \$1,887,794.

104. In the fall of 2008, Hotton recommended a change in strategy and trading in NP's account that included day-trading on margin, and Hotton began to churn the account to enrich himself. The securities Hotton used to churn the account included, among others, the ProShares UltraShort FTSE China 25 (FXP) and ProShares UltraShort Real Estate (SRS) ETFs.

105. The objective of FXP was to seek “daily investment results, before fees and expenses, which corresponded to twice (200%) the inverse (opposite) of the daily performance of the FTSE/Xinhua China 25 Index.” The objective of SRS was to “seek daily investment results, before fees and expenses, that corresponded to twice (200%) the inverse (opposite) of the daily performance of the Dow Jones U.S. Real Estate Index.”

106. Leveraged ETFs seek to deliver multiples of the performance of the index or benchmark they track. Inverse ETFs (also called “short” funds) seek to deliver the opposite of the performance of the index or benchmark they track. Leveraged inverse ETFs like SRS and FXP (also known as “ultra short” funds) seek to achieve a return that is a multiple of the inverse performance of the underlying index. An inverse ETF that tracks a particular index, for example, seeks to deliver the inverse of the performance of that index, while a 2x (two times) leveraged inverse ETF seeks to deliver double the opposite of that index’s performance. To accomplish their objectives, leveraged and inverse ETFs pursue a range of investment strategies through the use of swaps, futures contracts, and other derivative instruments.

107. Leveraged inverse ETFs like SRS and FXP “reset” daily, meaning that they are designed to achieve their stated objectives on a daily basis. Their performance over longer periods of time—over weeks or months or years—can differ significantly from the performance (or inverse of the performance) of their underlying index or benchmark during the same period of time. This effect can be magnified in volatile markets.

108. Hotton was not authorized to act with discretion in the NP account. Hotton nevertheless exercised de facto control over when and whether to purchase securities for NP’s account.

109. Beginning in October 2008, Hotton executed hundreds of trades per month in NP's account including purchases and sales of SRS and FXP. Hotton also purchased call options on those securities, betting that the price of FXP and SRS would increase.

110. Although NP's account was not discretionary, Hotton traded the account without receiving authorization from NP prior to each trade.

111. From the purchases and sales of SRS and FXP alone, Hotton generated \$133,920 in commissions within a 3-month period.

112. Hotton did not follow any strategy for day-trading in NP's account.

113. As with his schemes to steal money from his customers, Hotton's purpose in executing hundreds of trades per month in SRS, FXP, and other securities in NP's account was to enrich himself.

114. In addition to churning and excessively trading the NP account in order to generate commissions, Hotton also recommended and accumulated substantial long positions in SRS and FXP that were maintained for weeks or months. These recommendations were unsuitable for any customer in light of the characteristics of these ETFs.

115. In on-the-record testimony, Hotton claimed that he originally discussed SRS and FXP with NP because of NP's view that there would be a widespread decline in asset prices in the medium term. Hotton further claimed that NP told him that he did not want to hold these securities for long periods of time. If Hotton's statements about NP's statements to him are true, then the long positions that Hotton accumulated in SRS and FXP were contrary to NP's instructions to Hotton regarding the account.

116. When he first recommended SRS and FXP to NP, Hotton did not understand the features of leveraged and inverse ETFs. In particular, Hotton did not understand that the longer-term return of a leveraged or inverse ETF could deviate from the underlying index.

117. Hotton testified that he “did not recall” if he had read the prospectuses for SRS and FXP before trading those securities.

118. Despite the risks associated with holding leveraged and inverse ETFs for longer periods, Hotton accumulated substantial long positions in NP’s account that was held for longer than one day. In conjunction with the excessive trading, these positions risked entirely wiping out NP’s account.

119. Hotton’s recommendations, excessive trading, and accumulation of long positions in SRS and FXP caused several millions of dollars in losses in NP’s account. By the end of October 2008, Hotton had caused unrealized losses of approximately \$1,300,000 in the NP account. By the end of November 2008, Hotton had caused unrealized losses of approximately \$4,000,000 and realized losses of over \$3,000,000. The realized losses Hotton ultimately accumulated trading just two securities—SRS and FXP—eventually totaled more than \$4,700,000.

2. Hotton Provides NP with Misleading Account Summaries and Emails that Inflated the Actual Value of the Account.

120. In order to obscure the actual losses in the account from NP account and avoid being called to account for his abusive trading practices, Hotton fabricated and provided to NP a series of misleading summaries of the value of his account and of the profit or loss earned on particular trades. The summaries Hotton provided to NP overstated the actual value of the account by several million dollars and included several supposed put option trades in SRS and FXP that had supposedly hedged NP’s exposure. The account summaries were false.

3. After He Leaves Oppenheimer, Hotton Falsely Claims to Have Entered Two Put Option Orders and Fabricates Records to Support His False Claim.

121. After he left Oppenheimer, Hotton falsely told NP, Oppenheimer, and later FINRA that he had attempted to execute two extremely large put option contracts in NP's account in October 2008: 400 FXP 125 puts on October 22, 2008 and 250 SRS April 130 puts on October 21, 2008. Hotton did so in order to attempt to obscure his responsibility for the losses in NP's account.

122. NP never authorized the two purported put option trades, and Hotton never attempted to execute them.

123. The effect of these put contracts, if actually entered, would have been to hedge the positions that Hotton had taken in SRS and FXP and eliminate or substantially reduce the multi-million dollar loss in the NP account.

124. To further support his story regarding the fictitious put options trades, Hotton fabricated order tickets for the supposed October 21 and 22 put option orders. The dates and quantities of the purported put option trades reflected on the fabricated order tickets are different than the dates and quantities of certain other fictitious put option trades reflected on account summaries that Hotton provided to NP. These purported put option trades are complete fabrications.

125. Hotton also fabricated several "memos" to employees of the Jericho branch of Oppenheimer that purported to complain about the branch not entering the put option orders. Hotton applied a timestamp to these documents in order to give them an air of legitimacy. In fact, these documents were fabrications and were never provided to anyone in the Jericho branch of Oppenheimer on the dates indicated on the documents.

126. After he left Oppenheimer, Hotton provided the fictitious memos, account summaries, and order tickets to NP, Oppenheimer, and FINRA.

4. Hotton Again Lies to FINRA and Provides FINRA with the Fictitious Records.

127. On September 28, 2009, FINRA sent Hotton a request pursuant to FINRA Rule 8210 asking for a signed statement in response to the allegations related to the purported put option trades in SRS and FXP.

128. On October 12, 2009, Hotton falsely responded to FINRA that he had submitted the purported put option trades to Oppenheimer, and Hotton attached copies of the fabricated option order tickets and memos to employees of the Jericho branch of Oppenheimer.

129. Hotton's on-the-record testimony was taken pursuant to FINRA Rule 8210 on October 6, 2011, January 31, 2012, and February 1, 2012.

130. During his on-the-record testimony with FINRA, Hotton repeated his false claims to have entered the two large put October option trades in SRS and FXP, and also falsely claimed that he had sent the fictitious memos to others in the Jericho branch of Oppenheimer.

**FIRST CAUSE OF ACTION
Conversion of Customer Funds
(NASD Rules 2330 and 2110 and FINRA Rule 2010)**

131. Enforcement realleges and incorporates by reference paragraphs 1–130 above.

132. NASD Rule 2330(a) provided that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.” In addition, NASD Rule 2110 and FINRA Rule 2010, which replaced NASD Rule 2110 effective December 15, 2008, require all FINRA associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in conducting their business. Conversion of customer funds violates NASD Rule 2330(a), and it independently violates NASD Rule 2110 FINRA Rule 2010.

133. As detailed above, during the period July 2006 through May 2009, Hotton improperly used and converted millions of dollars of customer funds, without the customers' knowledge or consent, for his own use and benefit.

134. In July 2006, Hotton improperly used and converted \$500,000 belonging to JP and SP for his own use and benefit.

135. In March 2007, Hotton improperly used and converted \$50,000 belonging to JP and SP for his own use and benefit.

136. In October 2008, Hotton improperly used and converted \$210,000 belonging to JP and SP for his own use and benefit.

137. In December 2008, Hotton improperly used and converted \$51,000 belonging to JP and SP for his own use and benefit.

138. In January 2009, Hotton improperly used and converted \$12,000 belonging to JP and SP for his own use and benefit.

139. In April of 2008, Hotton improperly used and converted \$350,000 belonging to LP and DP for his own use and benefit.

140. In July 2008, Hotton improperly used and converted \$1,000,000 belonging to LP and DP for his own use and benefit.

141. In September 2008, Hotton improperly used and converted \$1,000,000 belonging to LP and DP for his own use and benefit.

142. In October 2008, Hotton improperly used and converted \$1,000,000 belonging to LP and DP for his own use and benefit.

143. In November 2008, Hotton improperly used and converted \$100,000 belonging to LP and DP for his own use and benefit.

144. In December 2008, Hotton improperly used and converted \$1,500,000 belonging to LP and DP for his own use and benefit.

145. In May 2009, Hotton improperly used and converted \$159,000 belonging to RB for his own use and benefit.

146. The foregoing conduct constituted a failure to observe high standards of commercial honor and just and equitable principles of trade.

147. As a result of the foregoing conduct, Hotton violated NASD Rule 2330(a). Hotton also violated NASD Rule 2110 and FINRA Rule 2010 by virtue of the NASD Rule 2330(a) violation and, separately and distinctly, as a result of the foregoing conduct.

SECOND CAUSE OF ACTION
Failing to Disclose Outside Business Activities to His Member Firms
(NASD Rules 3030 and 2110)

148. Enforcement realleges and incorporates by reference paragraphs 1–147 above.

149. NASD Rule 3030, until it was replaced by FINRA Rule 3270 effective December 15, 2010, prohibited persons associated with a member firm in a registered capacity from being employed by, or accepting compensation from, any other person as a result of business activities outside the scope of the employment relationship with the member firm unless prompt written notice is provided to the member firm.

150. Between November 2005 and February 2009, Hotton was associated in a registered capacity with FINRA member firm Oppenheimer

151. While employed at Oppenheimer, Hotton was either employed by (as that term is used in NASD Rule 3030) or accepted compensation from the following business entities: Atlantic Senior Associates, LLC; Coastal Partners Associates, LLC; Coastal Partners Storage,

LLC; Pioneer Venture(s), LLC; Trinity Management Consulting Corp.; LAN Utilities Electric, Inc.; and Canyon Brothers Construction LLC.

152. Hotton's involvement with these entities was outside the scope of his employment relationship with Oppenheimer.

153. Hotton did not provide prompt written notice to Oppenheimer of these outside businesses.

154. As a result of the foregoing conduct, Hotton violated NASD Rule 3030. By virtue of his violations of NASD Rule 3030, Hotton also violated of NASD Rule 2110 and FINRA Rule 2010.

THIRD CAUSE OF ACTION
Willfully Failing to Amend Form U4 to Disclose Outside Business Activities
(Article V, Section 2(c) of the NASD and FINRA By-Laws of the
Corporation, NASD IM-1000-1 and Rule 2110 and FINRA Rule 2010)

155. Enforcement realleges and incorporates by reference paragraphs 1–154 above.

156. Article V, Section 2(c) of the NASD and, as of July 30, 2007, the FINRA By-Laws of the Corporation require that associated persons keep their Forms U4 “current at all times by supplementary amendments . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment.” Pursuant to NASD IM-1000-1, the filing by a registered representative of a Form U4 that “is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.” Failing to file prompt, accurate amendments to a Form U4 thus violates Article V, Section 2(c) of the NASD and FINRA By-Laws of the Corporation as well as NASD Rule 2110 and IM-1000-1 and FINRA Rule 2010.

157. At all times relevant to this Complaint, Question 13 on Form U4 asked “Are you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent, or otherwise? (Please exclude non *investment-related* activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax-exempt.)”

158. If a registered representative affirmatively answered Question 13 on Form U4, he or she would then be required to answer several detailed questions about the nature of the business(es) and his or her involvement with the business(es).

159. Between November 2005 and February 2009, Hotton was associated in a registered capacity with FINRA member firm Oppenheimer

160. While registered with Oppenheimer, Hotton was engaged in numerous other businesses within the meaning of Question 13 of the Form U4, including Atlantic Senior Associates, LLC; Coastal Partners Associates, LLC; Coastal Partners Storage, LLC; Pioneer Venture(s), LLC; Trinity Management Consulting Corp.; LAN Utilities Electric, Inc.; and Canyon Brothers Construction LLC.

161. While registered with Oppenheimer, Hotton submitted, or caused to be submitted, numerous amended Forms U4.

162. Hotton willfully failed to disclose the material fact of his engagement in the businesses identified above in paragraph 161 in any of his numerous Form U4 amendments filed while he was employed by Oppenheimer.

163. As a result of the foregoing conduct, Hotton violated Article V, Section 2(c) of the NASD and FINRA By-Laws of the Corporation. In addition, Hotton also violated (i) NASD IM-1000-1 and Rule 2110 and FINRA Rule 2010. By virtue of his violations of Article V,

Section 2(c) of the NASD and FINRA By-Laws of the Corporation, Hotton also violated NASD Rule 2110 and FINRA Rule 2010.

FOURTH CAUSE OF ACTION
Forgery and Falsification of Documents and Making False Statements to
Customers and His Member Firm
(NASD Rule 2110 and FINRA Rule 2010)

164. Enforcement realleges and incorporates by reference paragraphs 1–163 above.

165. As alleged above, NASD Rule 2110 and FINRA Rule 2010 require all FINRA associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business. Falsifying documents is a prime example of misconduct that adversely reflects on a person’s ability to comply with regulatory requirements and has been held to be a practice inconsistent with just and equitable principles of trade. Forgery and falsification of documents thus constitutes a violation of NASD Rule 2110 and FINRA Rule 2010. In addition, misrepresentations by an associated person—even those not related to the sale of a security—violate NASD Rule 2110 and FINRA Rule 2010.

166. As detailed above, between 2006 and 2009, Hotton forged and falsified numerous documents and made numerous misrepresentations to his customers and others in order to further his fraudulent schemes and conversion of customer funds.

167. During the period July 2006 through October 2008, Hotton made numerous verbal and written misrepresentations to JP and SP in connection with his improper use and conversion of their supposed “investments” in Pioneer Ventures and Atlantic Senior Associates/GE, including providing JP and SP with fabricated statements for a nonexistent account at John Hancock.

168. In December 2008 and January 2009, Hotton forged JP’s and SP’s signatures on letters of authorization causing the transfer of funds, which he converted.

169. In 2006 and 2007, Hotton falsified net worth and investment objective information on JP and SP's Customer Account Forms, falsely increasing their net worth and mischaracterizing their investment objective as "Speculation."

170. During the period July 2008 through December 2008, Hotton made numerous verbal and written misrepresentations to LP and DP in connection with his improper use and conversion of their supposed "investments" in Bon-Ton Department Stores and Trinity Management Consulting Corp.

171. During the period May 2009 through November 2009, Hotton made verbal and written misrepresentations to RB regarding Hotton's recommendation to "invest" in a Reverse Convertible Note that did not exist and regarding the source of funds for money that was returned to RB.

172. During the period October 2008 through February 2009, Hotton fabricated order tickets for put option trades that were never placed and several "memos" to employees of the Jericho branch of Oppenheimer relating to the fictitious put option orders, which he later gave to Oppenheimer and NP and, eventually, FINRA.

173. The foregoing conduct constituted a failure to observe high standards of commercial honor and just and equitable principles of trade.

174. As a result of the foregoing conduct, Hotton violated NASD Rule 2110 and FINRA Rule 2010.

FIFTH CAUSE OF ACTION
False and Misleading Account Summaries and Conveying False and
Exaggerated Account Values
(NASD Rule 2110 and FINRA Rule 2010)

175. Enforcement realleges and incorporates by reference paragraphs 1–174 above.

176. The creation of false accounts statements and summaries is the antithesis of an associated person's duty to uphold high standards of commercial honor and violates NASD Rule 2110 and FINRA Rule 2010. Similarly, providing a customer with a document that misrepresents the value of his or her account violates NASD Rule 2110 and FINRA Rule 2010.

177. During the period 2005 through 2009, Hotton provided JP and SP with fabricated statements for a nonexistent account at John Hancock and false written statements about the value of their "investments" with him.

178. During the period July 2008 through December 2008, Hotton provided LP and DP with letters that falsely and misleadingly described the principal balance, timing and amount of interest payments, and accrued interest for LP and DP's purported "investments" in the non-existent Bon-Ton Department Store and Trinity Consulting Management Corp. notes

179. During the period October 2008 through February 2009, Hotton fabricated and provided to NP a series of misleading summaries that overstated the value of NP's account by several million dollars, misstated profit or loss on particular trades, and included several fictitious put option trades.

180. The foregoing conduct constituted a failure to observe high standards of commercial honor and just and equitable principles of trade.

181. As a result of the foregoing conduct, Hotton violated NASD Rule 2110 and FINRA Rule 2010.

**SIXTH CAUSE OF ACTION
Securities Fraud—Churning
(Willful Violation of Section 10(b) of the Securities Exchange Act of 1934 and
Rule 10b-5 thereunder; NASD IM-2310-2 and Rules 2120 and 2110; and
FINRA Rules 2020 and 2010)**

182. Enforcement realleges and incorporates by reference paragraphs 1–181 above.

183. “Churning” occurs when trading in an account is excessive in light of the client’s investment objectives, the broker exercises control over the account, and the broker acts with the intent to defraud or with reckless disregard for the client’s interests. Churning violates NASD Rule 2120, FINRA Rule 2020, and Section 10(b) of the Exchange Act of 1934—which prohibit the use of “any manipulative or deceptive act or practice” in connection with the purchase or sale of a security. Churning also violates SEC Rule 10b-5, which likewise prohibits “any device, scheme, or artifice to defraud” and “any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

184. During the period December 2005 through February 2009, Hotton exercised control over customer JP’s brokerage accounts at Oppenheimer, recommended and/or executed the transactions described above in paragraphs 63-66 of this Complaint that were excessive and unsuitable in light of JP’s investment objectives, risk tolerance, and financial situation, and acted with the intent to defraud or with reckless disregard for JP’s interests and for the purpose of generating commissions.

185. During the period October 2008 through February 2009, Hotton also exercised control over customer NP’s brokerage accounts at Oppenheimer, recommended and/or executed the transactions described above in paragraphs 101-119 of this Complaint that were excessive and unsuitable in light of NP’s investment objectives, risk tolerance, and financial situation, and

acted with the intent to defraud or with reckless disregard for NP's interests and for the purpose of generating commissions.

186. In connection with those purchases or sales of securities in the JP account and the NP account, Hotton directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly: employed devices, schemes or artifices to defraud; made untrue statements of material facts 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; engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

187. As a result of the foregoing conduct, Hotton willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Hotton also violated NASD Rule 2120 and IM-2310-2 as a result of the foregoing conduct. By violating Section 10(b), Rule 10b-5, and NASD Rule 2120 and IM-2310-2, Hotton also violated NASD Rule 2110 and FINRA Rule 2010.

**SEVENTH CAUSE OF ACTION
Excessive Trading
(NASD Rules 2310 and 2110 and IM-2310-2 and FINRA Rule 2010)**

188. Enforcement realleges and incorporates by reference paragraphs 1–187 above.

189. An “excessive trading” violation occurs when a registered representative has control over trading in an account and the level of activity in that account is inconsistent with the customer’s objectives and financial situation. Excessive trading is a violation of FINRA’s suitability rule, NASD Rule 2310 at the times relevant to the Complaint, as well as NASD IM-

2310-2(b)(2), which specifically prohibited registered representatives from excessively trading customer accounts.

190. During the period December 2005 through February 2009, Hotton exercised control over customer JP's brokerage accounts at Oppenheimer, recommended and/or executed the transactions described above in paragraphs 63-66 of this Complaint that were excessive and unsuitable in light of JP's investment objectives, risk tolerance, and financial situation.

191. During the period October 2008 through February 2009, Hotton exercised control over customer NP's brokerage accounts at Oppenheimer, recommended and/or executed the transactions described above in paragraphs 101-119 of this Complaint that were excessive and unsuitable in light of NP's investment objectives, risk tolerance, and financial situation.

192. As a result of the foregoing conduct, Hotton violated NASD Rule 2310 and IM-2310-2. By violating NASD Rule 2310 and IM-2310-2, Hotton also violated NASD Rule 2110 and FINRA Rule 2010.

**EIGHTH CAUSE OF ACTION
Providing False On-the-Record Testimony
(FINRA Rule 8210 and 2010)**

193. Enforcement realleges and incorporates by reference paragraphs 1–192 above.

194. FINRA Rule 8210 gives FINRA the right to require member firms and associated persons to provide information with respect to any matter involved in an investigation.

Providing false on-the-record testimony to FINRA in connection with an investigation is a violation of FINRA Rule 8210 and is also an independent violation of FINRA Rule 2010.

195. Hotton's testimony was taken pursuant to FINRA Rule 8210 on October 6, 2011, January 31, 2012, and February 1, 2012.

196. During his on-the-record testimony and in response to questions posed by FINRA staff, Hotton falsely testified on numerous topics.

197. During his on-the-record testimony with FINRA, Hotton falsely claimed to have entered the two large put October option trades in SRS and FXP, and also falsely claimed that he had sent several memos to others in the Jericho branch of Oppenheimer.

198. The foregoing conduct constituted a failure to observe high standards of commercial honor and just and equitable principles of trade.

199. As a result of the foregoing conduct, Hotton violated FINRA Rule 8210. Hotton also violated FINRA Rule 2010 by virtue of the Rule 8210 violation and, separately and distinctly, as a result of the foregoing conduct.

NINTH CAUSE OF ACTION

Providing False Information and Documents to NASD and FINRA Staff (NASD Rules 8210 and 2110 and FINRA Rules 8210 and 2010)

200. Enforcement realleges and incorporates by reference paragraphs 1–199 above.

201. NASD Rule 8210 and FINRA Rule 8210, which replaced NASD Rule 8210 effective December 15, 2008, gave NASD and gives FINRA the right to require member firms and associated persons to provide information with respect to any matter involved in an investigation. An associated person who provides false or misleading information and/or document to the NASD or FINRA in the course of an investigation violates NASD Rule 8210 and FINRA Rule 8210. Providing false information to FINRA also is an independent violation of NASD Rule 2110 and FINRA Rule 2010.

202. As detailed above, on May 1, 2006, and September 26, 2006, NASD staff sent Hotton letters requesting, pursuant to NASD Rule 8210, information relating to all businesses he

owned, operated, and/or controlled. Information Hotton provided regarding the scope of his outside business activities in response to these NASD Rule 8210 requests was false.

203. As detailed above, on December 4, 2006, NASD staff sent Hotton letters requesting, pursuant to NASD Rule 8210, an explanation as to why he had not disclosed his association with certain businesses on his Form U4. Information Hotton provided regarding the scope and status of his outside business activities in response to these NASD Rule 8210 requests was false. Hotton falsely denied his involvement in several business entities, and mischaracterized the nature of his involvement as “passive,” when in fact he was using business entities and their bank accounts to solicit funds from his brokerage customers.

204. As detailed above, on March 1, 2007, NASD staff sent Hotton a Letter of Caution regarding his failure to disclose certain matters on his Form U4 and his failure to disclose his business associations with certain business entities. Hotton responded by letter dated March 14, 2007, stating that “[p]resently, there are no reportable matters which require an amendment to my Form U-4 which have not already been disclosed.” This statement was false.

205. On or about September 28, 2009, FINRA staff sent Hotton letter(s) requesting, pursuant to FINRA Rule 8210, that Hotton produce, among other things, documents and information relating to the purported option orders described above (in paragraphs 121-126 of this Complaint). In response the staff’s requests for documents and information pursuant to FINRA Rule 8210, Hotton falsely claimed that he had entered the two option orders and provided the fabricated option order tickets and memos to FINRA—attempting to pass them off as legitimate records and falsely claiming that they had been submitted and/or sent on the dates indicated on the documents.

206. The foregoing conduct constituted a failure to observe high standards of commercial honor and just and equitable principles of trade.

207. As a result of the foregoing conduct, Hotton violated NASD Rule 8210 and FINRA Rule 8210. Hotton also violated NASD Rule 2110 and FINRA Rule 2010 by virtue of the NASD Rule 8210 and FINRA Rule 8210 violations and, separately and distinctly, as a result of the foregoing conduct.

TENTH CAUSE OF ACTION
Willfully Failing to File Required Form U4 Amendments and Filing Form U4
Amendments that Misleadingly Described Civil Litigation
(Article V, Section 2(c) of the NASD and FINRA By-Laws of the
Corporation, NASD IM-1000-1 and Rule 2110 and FINRA Rules 1122 and
2010).

208. Enforcement realleges and incorporates by reference paragraphs 1–207 above.

209. As described above, failing to file prompt, accurate amendments to a Form U4 violates Article V, Section 2(c) of the NASD and FINRA By-Laws of the Corporation as well as NASD Rule 2110 and IM-1000-1 and FINRA Rule 2010. In addition, FINRA Rule 1122, which replaced NASD IM-1000-1 effective August 17, 2009, states that “[n]o person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.”

210. At all times relevant to this Complaint, Question 14(I) on Form U4 asked “Have you ever been named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which” was (a) still pending; or, (b) resulted in an arbitration award or civil judgment against you, regardless of amount. Prior to May 18, 2009, a registered representative was also required to disclose any matter otherwise responsive to question 14(I) that was settled

for \$10,000 or more. After May 18, 2009, the threshold for reporting settlements was changed to \$15,000.

211. If a registered representative affirmatively answered Question 14(I), they were obligated to provide, among other things the “Allegations(s) and a brief summary of event related to the allegation(s) including dates when activities leading to the allegation(s) occurred” as well as the amount of any settlement or monetary compensation paid.

212. At all times relevant to this Complaint, Question 14(H)(1)(a) on Form U4 asked whether any domestic court had ever “*enjoined* you in connection with any *investment-related* activity?” Pursuant to Question 14(H)(2), registered representatives were also required to disclose any pending *investment-related* civil action that could, in the future, result in a “yes” answer to question 14(H)(1).

213. If a registered representative provided an affirmative answer to Questions 14(H), they were required to describe the allegations related to the action and the disposition of the action.

214. Hotton willfully failed to make any disclosure on his Form U4 of the WQN Action or Cross Country Capital Partners Action, or the settlement of those actions. He continued to fail to disclose that information even after he was instructed to do so by the NASD.

215. Hotton willfully failed to disclose the filing of the arbitration commenced against him by LP and DP in December 2009.

216. Hotton willfully failed to timely amend his Form U4 to disclose the commencement of federal action and him by LP and DP, or the temporary restraining order granted in that action. LP and DP commenced that action in January 2010, and Hotton willfully failed to disclose it until December 2010.

217. When Hotton finally amended his Form U4 to disclose the existence of the LP and DP federal action, he falsely described the action as a “business dispute between business partners.”

218. By virtue of the foregoing conduct, Hotton violated Article V, Section 2(c) of the NASD and FINRA By-Laws of the Corporation. In addition, Hotton violated (i) NASD IM-1000-1, NASD Rule 2110, and FINRA Rule 2010 (prior to August 17, 2009) and (ii) FINRA Rule 1122 (on and after August 17, 2009). By virtue of his violations of Article V, Section 2(c) of the NASD and FINRA By-Laws of the Corporation and FINRA Rule 1122, Hotton also violated NASD Rule 2110 and FINRA Rule 2010.

ELEVENTH CAUSE OF ACTION
Unauthorized Lending of Money to a Customer
(NASD Rules 2370 and 2110)

219. Enforcement realleges and incorporates by reference paragraphs 1–218 above.

220. NASD Rule 2370 prohibited registered persons from lending money to any customer unless the employing member firm had written procedures allowing lending to customers. If a firm’s written procedures permitted lending to a customer, NASD Rule 2370 further required that at least one of five other conditions be met, and that the firm must pre-approve the borrowing arrangement in writing.

221. As detailed above, Hotton loaned \$250,000 to Oppenheimer customers JP and SP on September 25, 2006.

222. Oppenheimer’s written supervisory procedures prohibited loaning money to customers except to immediate family members. Hotton never sought Oppenheimer’s permission to loan money to JP and SP, and Oppenheimer did not pre-approve in writing the loan to JP and SP.

223. JP and SP were not members of Hotton's immediate family, were not a financial institution regularly engaged in the business of providing credit or loans, or were registered persons at Oppenheimer. Moreover, the loan to JP and SP was not based solely on a personal relationship between Hotton and the customers and was not based on a business relationship between Hotton and the customer outside of the broker-customer relationship.

224. By virtue of the foregoing conduct, Hotton violated NASD Rule 2370. By violating Rule 2370, Hotton also violated NASD Rule 2110.

**TWELFTH CAUSE OF ACTION
Unauthorized Trading
(NASD Rule 2110 and IM-2310-2 and FINRA Rule 2010)**

225. Enforcement realleges and incorporates by reference paragraphs 1–224 above.

226. NASD Rule 2110 and FINRA Rule 2010, which replaced NASD Rule effective December 15, 2008, require associated persons to “observe high standards of commercial honor and just and equitable principles of trade,” and it well-settled that unauthorized trading in a customer's account represents unethical conduct and violates NASD Rule 2110 and FINRA Rule 2010. Moreover, NASD IM-2310-2(b)(4)(iii) provides, in relevant part, that it is a violation of a registered representative's responsibility for fair dealing to cause “the execution of transactions which are unauthorized by customers.”

227. As detailed above, from December 2005 to February 2009, Hotton executed numerous unauthorized trades in JP and SP's accounts. These transactions placed by Hotton were executed without the knowledge, consent, or authorization of JP.

228. As detailed above, from October 2008 through February 2009, Hotton executed hundreds of unauthorized trades in the NP account. These transactions placed by Hotton in the account of NP were executed without the knowledge, consent or authorization of NP.

229. The foregoing conduct constituted a failure to observe high standards of commercial honor and just and equitable principles of trade.

230. As a result of the foregoing conduct, Hotton violated NASD Rule 2110 and IM-2310-2 and FINRA Rule 2010.

THIRTEENTH CAUSE OF ACTION
Exercise of Discretion without Authorization
(NASD Rules 2510 and 2110 and FINRA Rule 2010)

231. Enforcement realleges and incorporates by reference paragraphs 1–230 above.

232. NASD Conduct Rule 2510(b) provides that “[n]o member or registered representative shall exercise any discretionary power in a customer’s account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member. Rule 2510(d)(1) provides a limited exception for time and price discretion, but such discretion is valid “only until the end of the business day on which the customer grants such discretion, absent a specific, written contrary indication signed and dated by the customer.”

233. JP and SP never gave prior written authorization to Hotton to exercise discretionary power in JP and SP’s accounts. Nor did JP or SP ever give Hotton verbal time and price discretionary power. Hotton nevertheless executed transactions in JP’s and SP’s accounts as described above without the JP or SP’s prior knowledge, consent, or authorization during the period December 2005 to February 2009.

234. NP never gave prior written authorization to Hotton to exercise discretionary power in NP’s account. Nor did NP ever give Hotton verbal time and price discretionary power in NP’s account. Hotton nevertheless executed transactions in NP’s account as described above

without the NP's prior knowledge, consent, or authorization during the period October 2008 through February 2009.

235. By virtue of the foregoing conduct, Hotton violated NASD Rule 2510. By violating NASD Rule 2510, Hotton also violated NASD Rule 2110 and FINRA Rule 2010.

**FOURTEENTH CAUSE OF ACTION
Unsuitable Recommendations
(NASD Rules 2310 and 2110 and FINRA Rule 2010)**

236. Enforcement realleges and incorporates by reference paragraphs 1–235 above.

237. FINRA's suitability rule, NASD Rule 2310 at the times relevant to the Complaint, required, among other things, that a registered representative have reasonable grounds to believe that a recommendation could be suitable for at least some customers. To make a suitable recommendation, a registered representative must first have an understanding of the potential risks and rewards inherent in that recommendation, and a registered representative violated the suitability rule if he or she had no reasonable basis to make the recommendation to any customer, regardless of the customer's wealth, willingness to bear risk, age, or other individual characteristics.

238. As described in FINRA Regulatory Notice 09-31, with respect to leveraged and ETFs, the reasonable basis suitability requirement means that the registered representative must understand the terms and features of the funds, including how they are designed to perform, how they achieve that objective, and the impact that market volatility, the ETF's use of leverage, and the customer's intended holding period will have on their performance.

239. Compliance with the suitability rule also required a registered representative to make a customer-specific determination of suitability and tailor his recommendations to the

customer's financial profile and investment objectives. A broker's suitability obligation also included ensuring that a customer understood the risks involved in the investment.

240. As described above, at the outset of their relationship, JP told Hotton that he was not interested in risky or speculative trading but rather wanted a more conservative strategy. Contrary to JP's stated investment objectives and inconsistent with JP and SP's financial condition, Hotton recommended risky and speculative investments in violation of his customer-specific suitability obligation.

241. As described above, when Hotton first recommended SRS and FXP to NP, Hotton did not understand the features of leveraged and inverse ETFs. In particular, Hotton did not understand that the longer-term return of a leveraged or inverse ETF could deviate from the underlying index. Thus, Hotton failed to satisfy the reasonable basis suitability requirement in connection with his recommendations of SRS and FXP.

242. As a result of the foregoing conduct, Hotton violated NASD Rule 2310. By violating NASD Rule, Hotton also violated NASD Rule 2110 and FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent Mark Christopher Hotton committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.

- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;
- D. make specific findings that Respondent's conduct, as alleged in the Third and Tenth Causes of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application;
- E. make specific findings that Respondent Mark Christopher Hotton willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: November 5, 2012



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