

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Jonah Engler (CRD No. 4216259),

Brett Ian Friedberg (CRD No. 5012184),

Jonathan Michael Sheklow (CRD No.  
4906207),

Joshua William Turney (CRD No. 4510219),

Hector Perez, a/k/a Bruce Johnson (CRD No.  
5431109),

and

Joseph Scott Schaffer (CRD No. 5114065),

Respondents.

DISCIPLINARY PROCEEDING  
No. 2010024522103

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Between December 2009 and February 2011, respondents Jonah Engler, Brett Ian Friedberg, Jonathan Michael Sheklow, Joshua William Turney, Hector Perez and Joseph Scott Schaffer (collectively, "Respondents") fraudulently sold a total of nearly \$3 million worth of Senior Secured Zero Coupon Notes (the "Notes" or the "MMM Notes") issued by Metals, Milling and Mining LLC ("MMM") in a private placement

offering to 59 customers. Specifically, Respondents misrepresented material facts about the offering, which promised to pay an astronomical return of 100 percent in one year by purportedly extracting precious metals from materials left over from mining operations (known as “ore concentrate”). The investors lost all of the money that they invested in the MMM Notes, with the exception of three investors who were repaid in a Ponzi-like manner with funds from new investors.

2. Respondents recklessly failed to conduct a reasonable investigation of the viability and legitimacy of MMM in the face of numerous “red flags” that MMM was a fraud.
3. In connection with their sales of MMM Notes, Respondents recklessly misrepresented that: (a) the MMM Notes were collateralized by certain barrels of ore concentrate; and (b) the ore concentrate that supposedly served as the collateral was of sufficient value to secure an investment in the MMM Notes. In fact, there was no collateral for the MMM Notes, because MMM did not own any ore concentrate, despite a misrepresentation in the MMM Notes that ownership of ore concentrate had been transferred to investors. Further, the ore concentrate that was supposed to serve as the collateral was nearly worthless. Respondents, having failed to confirm that the collateral existed and that the supposed collateral had any value, recklessly misrepresented to prospective purchasers that their investments would be adequately secured by collateral.
4. Respondents recklessly misrepresented material facts regarding the MMM Notes to their customers, in willful violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and in violation of FINRA Rules 2020 and 2010.

Alternatively, they negligently misrepresented material facts, in contravention of Sections 17(a)(2) of the Securities Act of 1933 and in violation of FINRA Rule 2010.

5. Further, Respondents failed to obtain basic information about MMM that was necessary to the due diligence process in order to understand an investment in the company. Without such information, they lacked a reasonable basis to recommend the MMM Notes to investors, in violation of NASD Conduct Rule 2310 and FINRA Rule 2010.

## **RESPONDENTS AND JURISDICTION**

### ***Jonah Engler***

6. Engler first became registered with FINRA as a General Securities Representative (“GSR”) through a former member firm on July 3, 2000.
7. From July 2000 through March 2009, Engler was registered as a GSR through several FINRA member and former member firms.
8. From February 26, 2009 through October 17, 2013, Engler was registered with FINRA through HFP as a GSR.
9. Since October 30, 2013, Engler has been registered through another FINRA member firm.
10. Under Article V of FINRA’s By-Laws, FINRA possesses jurisdiction over Engler for purposes of this proceeding because: (a) he is registered with FINRA and associated with a member firm; and (b) the Complaint charges him with misconduct committed while he was registered with FINRA and associated with a member firm.

***Brett Ian Friedberg***

11. Friedberg first became registered with FINRA as a GSR through a member firm on August 15, 2005.
12. From August 2005 until March 2009, Friedberg was registered as a GSR through several FINRA member firms.
13. Beginning February 26, 2009, Friedberg became registered as a GSR through HFP. Beginning August 10, 2009, Friedberg became registered as a General Securities Principal (“GSP”) through HFP. Friedberg’s registration as a principal was terminated on April 23, 2013. Friedberg’s registration as a GSR was terminated on October 17, 2013.
14. Friedberg is not currently registered or associated with a FINRA member firm.
15. Although Friedberg 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, because: (a) the Complaint was filed within two years after the effective date of termination of his registration with HFP, namely, October 17, 2013; and (b) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

***Jonathan Michael Sheklow***

16. Sheklow was first registered with FINRA as a GSR through a member firm on February 7, 2005. Sheklow was registered through that firm until May 5, 2008. Sheklow was next registered through a different member firm from May 1, 2008 until March 23, 2009.

17. Beginning February 26, 2009 Sheklow became registered as a GSR through HFP.

Beginning October 5, 2009, Sheklow became registered as a GSP through HFP.

Sheklow's registrations through HFP were terminated on October 18, 2013.

18. Since October 30, 2013, Sheklow has been registered as a GSR through another FINRA member firm.

19. Under Article V of FINRA's By-Laws, FINRA possesses jurisdiction over Sheklow for purposes of this proceeding because: (a) he is registered with FINRA and associated with a member firm; and (b) the Complaint charges him with misconduct committed while he was registered with FINRA and associated with a member firm.

***Joshua Turney***

20. Turney first became registered as a GSR through a member firm on March 14, 2002.

From March 14, 2002 to March 24, 2009, Turney was registered through several different member and former member firms.

21. From February 26, 2009 to October 18, 2013, Turney was registered as a GSR through HFP.

22. Since October 30, 2013, Turney has been registered through another member firm.

23. Under Article V of FINRA's By-Laws, FINRA possesses jurisdiction over Turney for purposes of this proceeding because: (a) he is registered with FINRA and associated with a member firm; and (b) the Complaint charges him with misconduct committed while he was registered with FINRA and associated with a member firm.

***Hector Perez (a/k/a Bruce Johnson)***

24. Perez first became registered as a GSR through a member firm on October 12, 2007.

Perez was registered through that firm until May 5, 2008. Perez was then registered through a different member firm from May 1, 2008 through March 23, 2009.

25. From February 26, 2009 through October 21, 2013, Perez was registered as a GSR through HFP.

26. Since October 30, 2013, Perez has been registered through a different member firm.

27. Under Article V of FINRA's By-Laws, FINRA possesses jurisdiction over Perez for purposes of this proceeding because: (a) he is registered with FINRA and associated with a member firm; and (b) the Complaint charges him with misconduct committed while he was registered with FINRA and associated with a member firm.

28. In his dealings with customers, Perez utilizes the alias "Bruce Johnson."

***Joseph Schaffer***

29. Schaffer first became registered as a GSR through a member firm on May 15, 2006.

Schaffer was registered through that firm until November 25, 2008. From December 1, 2008 until September 9, 2009, Schaffer was registered through a different member firm.

30. From September 8, 2009 until October 17, 2013, Schaffer was registered as a GSR through HFP.

31. Since October 29, 2013, Schaffer has been registered through a different member firm.

32. Under Article V of FINRA's By-Laws, FINRA possesses jurisdiction over Schaffer for purposes of this proceeding because: (a) he is registered with FINRA and associated with a member firm; and (b) the Complaint charges him with misconduct committed while he was registered with FINRA and associated with a member firm.

## **FACTS**

### ***The Formation of MMM***

33. Respondents' employing firm HFP became involved in the MMM transaction, in or about October 2009, after HFP's Managing Partner VP was introduced to RG, an individual who held himself out as having expertise in mining and precious metals. RG met with VP and certain HFP investment bankers. The Respondents, however, did not meet RG.
34. RG purported to own hundreds of barrels of ore concentrate from which he claimed precious and valuable metals could be extracted through a "plasmafication" process. RG stated, however, that he needed funding in order to undertake this process.
35. To that end, on November 30, 2009, MMM was established as a Delaware limited liability company. RG owned 75 percent and was the "Managing Member" of MMM. MMM Metals Partners LLC ("MMM Partners"), an entity owned by VP, owned 20 percent of MMM. A third entity, TI, owned the remaining five percent.
36. RG gave VP and HFP investment bankers what purported to be laboratory tests known as assays, which are compositional tests of metal or ore to determine its ingredients and quality. These assays showed that barrels of ore purportedly owned

by RG contained quantities of various precious metals. However, as detailed below, these assays were false.

37. MMM was to use the proceeds from the offering to pay third party contractors to employ a “plasmafication” process to extract precious and valuable metals from the ore and/or to build a machine to enable MMM to extract the ore. But as detailed below, HFP concluded after performing an internal investigation in or about late 2011, MMM’s plans to process ore to extract salable quantities of precious metals were not viable.

38. When MMM was established, RG was the subject of numerous liens and judgments regarding unpaid obligations, including an unsatisfied 2007 federal tax lien in the amount of \$57,118.

### *The Structure of the MMM Notes Offering*

39. The debt security for the MMM offering was reflected in two different documents: a Note and an accompanying Repurchase Agreement.

40. Pursuant to the terms of the Note, investors who loaned money to MMM would receive repayment of principal owed upon the Note’s maturity in one year from the date of their purchase of the Note. The Notes did not contain any provision for interest payments to investors. The Notes, however, provided that MMM agreed to grant to the Noteholders, “complete and clear title to five (5) barrels or approximately five thousand (5,000) pounds of ore concentrates.” Thus, the Notes provided that five barrels of ore would serve as collateral for the planned offering up to \$2 million and that the Noteholders were entitled to a pro-rata share of ownership of the collateral.

In April 2010, after HFP increased the offering amount from \$2 million to \$3 million, the Notes provided that eight barrels of ore would serve as collateral for the Notes. The Notes are securities.

41. Pursuant to the terms of the Repurchase Agreements between MMM and the holders of the Notes, MMM agreed to repurchase from the Noteholders the five barrels of ore concentrate for \$2 million. The ore was to be repurchased one year from the date of the Repurchase Agreement. Thus, the Notes provided for the return of investors' principal in one year, and MMM's "repurchase" of the collateral provided for the 100 percent profit to investors in the MMM Notes.
42. For example, if an investor invested \$25,000 in an MMM Note, at the time of his/her investment, that investor was supposed to receive a pro rata share of ownership with other investors in the barrels of ore designated as collateral. Pursuant to the terms of the Note, the investor was then to receive a return of his \$25,000 principal investment within one year from the date of the Note. Pursuant to the terms of the Repurchase Agreement, within one year, MMM agreed to repurchase the collateral owned by the investor and the investor would receive an additional \$25,000. Thus, the investor was to receive a total of \$50,000 as a one year return for his/her investment in the \$25,000 MMM Note.
43. However, there was no basis for the determination that five barrels of leftover mining materials were adequate collateral for the initial \$2 million offering (or likewise that eight barrels were adequate collateral for the \$3 million offering).
44. In addition, ownership of the barrels of ore was never transferred to investors as provided for in the MMM Notes.

45. There was no private placement memorandum, offering circular or term sheet for the sale of the MMM Notes. Rather, in addition to the Note and Repurchase Agreement, the only other offering documents were a Subscription Agreement and Purchaser Questionnaire (collectively, the “Transaction Documents”). At least one MMM investor also received a “Business Overview” document that contained a brief summary of MMM and the MMM Notes.
46. The written risk disclosures for prospective investors concerning the MMM Notes offering were contained in a four paragraph section of the Subscription Agreement titled “Risk Factors.” That section, however, provided only a generalized description of MMM and, as discussed below, an incomplete disclosure of the risks that might be associated with investing in the MMM Notes.
47. The Subscription Agreement stated that MMM was a new business organized in November 2009 with no revenues to date. The owners and senior management of MMM were not identified by name and the Subscription Agreement did not contain any information about their background. The Subscription Agreement did not provide any information that might enable a potential investor to evaluate whether the owners and operators of MMM had the necessary background and experience to succeed in the venture of processing ore. These facts are material to a reasonable investor.
48. In particular, the Subscription Agreement did not disclose that RG was the subject of numerous liens and judgments regarding unpaid obligations, including an unsatisfied 2007 federal tax lien in the amount of \$57,118. These facts raised questions

regarding RG's fitness for the business venture, especially since RG was the primary individual behind MMM upon whose success the entire venture relied.

49. The Subscription Agreement also did not disclose that VP, a principal of HFP, indirectly owned a 20 percent stake in MMM through his ownership of MMM Partners, a Delaware limited liability company that was established on November 30, 2009 (the same date that MMM itself was founded). This fact is material to potential investors in MMM because VP's ownership stake represented a conflict of interest with HFP's role in selling the MMM Notes as it presented a motivation for VP to put his own interests ahead of HFP's customers.
50. Further, the Subscription Agreement did not disclose that RG intended to take a loan from the offering proceeds. In fact, RG was paid \$272,000 from the proceeds. This payment was apparently a loan from MMM to RG as reflected in a December 10, 2009 promissory note. This loan presented an obvious conflict of interest and a "red flag" where offering proceeds were being used for RG's own purposes rather than furthering MMM's purported business plan.
51. The Subscription Agreement also did not explain how the ore was to be processed, how it was determined that any such process was viable or how the offering proceeds were to be used. In short, the Subscription Agreement failed to set forth facts upon which a potential investor could evaluate MMM's ability to succeed in the intended venture.
52. None of the other Transaction Documents contained any of the omitted information discussed above. Apart from identifying the name of a third party vendor, the "Business Overview" did not contain any of the omitted information either.

***The Respondents Failed to Investigate MMM Prior to Recommending  
MMM Notes to Customers***

53. Respondents were first introduced to MMM in or about November 2009, when they attended a meeting with HFP's then-Chief Executive Officer VP and an HFP investment banker, TM. VP and TM encouraged Respondents to sell the MMM Notes to their customers.
54. In that meeting and in additional meetings with VP and TM, Respondents received certain basic information concerning the MMM Notes from VP and TM. Specifically, VP and TM told the Respondents that:
- a. MMM was raising capital so that it could process certain barrels of "ore concentrate" that MMM claimed to own. The process was known as plasmafication. Plasmafication was allegedly designed to extract salable quantities of precious metals from the ore;
  - b. the initial capital raise was for \$2 million through the MMM Notes (which was later raised to \$3 million);
  - c. the Notes were purportedly "asset backed" by certain barrels of ore concentrate that were to serve as adequate collateral for the Notes; and
  - d. the Notes were structured so as to provide a 100 percent return to investors in 12 months.
55. VP and TM spoke to Respondents about the MMM Notes and provided them with the Transaction Documents. There was no private placement memorandum, no term sheet and no offering circular.

56. Neither VP, TM, nor anyone else at HFP or MMM informed Respondents, either orally or in the written offering materials, of numerous basic, material facts about the deal, and the Respondents proceeded with selling the MMM Notes without obtaining this fundamental information from the firm, MMM, or any other source about:
- a. how the Firm determined that five (and later eight) barrels of ore concentrate was adequate collateral for the MMM Notes;
  - b. how MMM's plan to extract precious metals from ore concentrate, through plasmafication or any other means, was technologically viable and potentially profitable;
  - c. details as to the identity and background of the owners and management of MMM; and
  - d. details as to how the offering proceeds were to be used.
57. Respondents should have conducted an investigation into the MMM Notes in light of the following red flags that raised substantial questions about the propriety of the MMM Notes offering:
- a. The alchemy-like premise of extracting precious metals from ore concentrate is highly suspicious on its face;
  - b. There was no private placement memo and only limited written disclosures concerning MMM and the risks of the offering;
  - c. Respondents had obtained only limited verbal information concerning MMM and had not obtained many essential facts about the offering, as detailed above;
  - d. The investment promised an unusually high rate of return—100 percent in a year;

- e. MMM was a newly formed entity; and
  - f. The structure of the security as a Senior Secured Zero Coupon Note (*i.e.*, a note paying no interest to the holder) with the promised return provided for by the repurchase of collateral in a separate Repurchase Agreement was unusual.
58. Despite these red flags, Respondents failed to learn essential facts about the MMM Notes and to determine whether MMM was a viable entity and whether the Notes should be offered to any of their customers.
59. Respondents recklessly failed to take steps to understand the purported science and technology behind MMM's plans to process ore and whether such plans were feasible. Respondents did not have any understanding as to how MMM's proposed method compared with any other methods of processing ore, and Respondents did not obtain facts that would reasonably enable them to reach the conclusion that MMM's plan was potentially profitable.
60. Respondents did not obtain any written information showing that any reputable experts in metallurgy or any other related and applicable fields had ascertained the viability of, and potential profitability from, MMM's undefined business plan to process ore.
61. Respondents did not independently investigate or obtain adequate information as to whether the ore for the MMM project either existed or contained quantities of precious metals that could be extracted. Respondents also did not obtain information about the third parties who were engaged to process the ore for MMM and whether those parties were either reputable or possessed the capability to process the ore.

62. Respondents' efforts to perform independent research about MMM was limited to searching the Internet using several basic terms, such as general terms relating to mining.
63. In the face of the aforementioned red flags surrounding the offering, Respondents recklessly failed to obtain basic information and material facts about the offering prior to recommending and selling the MMM Notes to their customers.
64. Because Respondents recklessly failed to conduct a reasonable investigation into the MMM offering, they did not have a reasonable basis to recommend the Notes to their customers.
65. Despite the failures to conduct a reasonable investigation into MMM, and despite not knowing basic material information about MMM's management, not understanding the company's process for purportedly extracting precious metals from waste ore, and not addressing multiple red flags, Respondents began to recommend the MMM Notes to customers beginning in December 2009.

***Respondents' Sales of MMM***

66. From December 2009 to February 2011, Respondents sold a total of \$2.98 million worth of MMM Notes to 59 different investors in 78 separate transactions. Annexed as Exhibit A, and incorporated herein by reference, is a spreadsheet detailing the 78 sales of MMM Notes solicited by Respondents.
67. After the sales to customers, in the summer of 2011, RG told HFP's then Chief Executive GB that the assays that he provided to HFP were false and not an actual reflection of the contents of RG's ore. RG also told GB that the ore was virtually

worthless. As a result of these facts, and after internal investigation that included meeting with third parties who were contracted to process ore, HFP ultimately concluded that efforts to process ore were not viable. In sum, the offering was a fraud.

***Respondents' Misrepresentations about MMM Collateral***

68. Respondents represented to their customers that the MMM Notes were collateralized by barrels of ore.
69. However, prior to making these representations, Respondents failed to adequately investigate the existence of the purported collateral.
70. Respondents never obtained documents – and in fact there were no such documents – evidencing either that MMM had obtained ownership of barrels of ore concentrate or that such barrels were transferred to Respondents as provided for in the MMM Notes.
71. Respondents further failed to conduct any investigation, other than relying on the verbal representations of VP and TM, to confirm whether or not ore had any value. Respondents did not obtain any written reports from an independent source confirming that the ore had value.
72. In fact, the ore was virtually worthless and ownership of the ore was never transferred to holders of MMM Notes. Indeed, there is no evidence that MMM ever owned any collateral. As a result, the MMM Notes were not collateralized.
73. The misrepresentation that the Notes were collateralized is material because it suggested to customers that even if MMM was not successful in processing ore, the risks in investing in MMM were mitigated by the purported value of the collateral.

74. As a result, Respondents recklessly made material misrepresentations that: (a) five barrels of ore were adequate to collateralize \$2 million in MMM Notes (and later, that eight barrels of ore were adequate to collateralize \$3 million in MMM Notes); and (b) that ownership of the ore had been transferred to investors, as provided for in the MMM Notes. These representations were false.

***Schaeffer and Friedberg Use New Investment Monies to  
Pay Back Existing Customers on Defaulted Notes***

75. Between May 2010 to December 2010, at least three sets of investors (LB, MS and his wife SS, and AS) complained about their investments to HFP. These customers were repaid with funds obtained from new investors. These replacement transactions are set forth on Exhibit A.

76. In particular, two of Respondent Joseph Schaffer's customers, MS and SS complained in December 2010 because the \$25,000 MMM Note that they had purchased in December 2009 was past due, and thus in default. A year had passed and they had not been repaid either their principal or the promised 100 percent return.

77. Their complaint was resolved and the customers' principal was repaid after Schaffer obtained new funds from a different investor in a Ponzi-like manner. More specifically, in February 2011, Schaffer solicited customer MB (who had previously invested in MMM) to invest another \$25,000 in MMM Notes. Rather than putting MB's new investment toward MMM, that money was used to repay customers MS and SS.

78. Also, in December 2010, AS, Respondent Friedberg's customer, complained that his \$25,000 MMM investment had not been repaid. In February 2011, Friedberg

solicited a new \$25,000 investment from customer JG. JG's funds were used to repay customer AS. JG had not previously invested in MMM and he became the 59<sup>th</sup> and final investor in MMM.

79. Schaffer and Friedberg made material misrepresentations in connection with selling the MMM Notes to MB and JG as they did in connection with their previous sales of the Notes. In addition, Respondents Schaffer and Friedberg solicited MB and JG to invest in the MMM Notes despite the presence of significant red flags about the transaction, including the fact that MMM was in default, that customers had complained and that proceeds from new investors were to be used to repay the complaining investors in a Ponzi-like manner.

**FIRST CAUSE OF ACTION**  
**Misrepresentations of Material Facts**  
**(Willful Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and**  
**Violations of FINRA Rules 2020 and 2010)**

80. The Department realleges and incorporates by reference paragraphs 1 through 79 above.

81. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make it unlawful for any person, by the use of any means or instrumentality of interstate commerce, or of the mails, to, among other things, make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in connection with the purchase or sale of a security.

82. FINRA Rule 2020 provides that “[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”
83. From December 2009 to February 2011, Respondents violated these rules by recklessly making the following misrepresentations of facts in connection with their sales of securities, as detailed in Exhibit A:
- a. the MMM Notes were collateralized by barrels of concentrated ore (when that was not the case); and
  - b. the alleged collateral was of sufficient value to secure an investment in the MMM Notes (when the alleged collateral was, in fact, nearly worthless).
84. The above misrepresentations were material.
85. In the course of marketing and selling the MMM offering, Respondents made use of means or instrumentalities of interstate commerce and of the mails. Specifically, Respondents made use of, among other things, the telephone, email and fax to contact customers who were located in various states, sent subscription documents to the customers using the mails and caused customers to wire funds to invest in the offering.
86. Respondents acted recklessly in making the misrepresentations to investors in the MMM Notes.
87. By reason of the foregoing, Respondents willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and also violated FINRA Rules 2020 and 2010.

**SECOND CAUSE OF ACTION**  
**(In the Alternative to the First Cause of Action)**  
**Misrepresentations of Material Facts in Contravention of Section 17(a) of the Securities**  
**Act of 1933**  
**(Violations of FINRA Rule 2010)**

88. The Department realleges and incorporates by reference paragraphs 1 through 87 above.
89. Sections 17(a) of the Securities Act of 1933 addresses misconduct “in the offer or sale of any securities” by the use of interstate commerce. Under Section 17(a)(2) of the Securities Act, it is unlawful “to obtain money or property by means of any” material misstatements or omissions.
90. During the course of the conduct described in paragraphs 1 through 79 above, Respondents, in connection with the offer or sale of securities, by the use of the means of instruments of transportation or communication in interstate commerce or by use of the mails: (a) made material misrepresentations and omitted to disclose material information, all to obtain money or property; and (b) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon the purchaser.
91. By reason of the foregoing, Respondents acted in contravention of Section 17(a) of the Securities Act of 1933, thereby violating FINRA Rule 2010, and independently violating FINRA Rule 2010.

**THIRD CAUSE OF ACTION**  
**Reasonable Basis Suitability**  
**(Violations of NASD Conduct Rule 2310 and FINRA Rule 2010)**

92. The Department realleges and incorporates by reference paragraphs 1 through 91 above.
93. NASD Rule 2310 (which was in effect at all times relevant to this case) required that when a member recommends to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts disclosed by such customer as to his financial situation and needs. Under NASD Rule 2310, a broker-dealer and its registered representatives must satisfy a “reasonable basis” suitability requirement, pursuant to which they must understand the recommended security or strategy and the risks involved and determine whether the recommendation is suitable for at least some investors.
94. Respondents did not satisfy their reasonable basis suitability obligations with respect to the MMM Notes. Nonetheless, they recommended the securities to their customers.
95. Respondents each lacked a reasonable basis to recommend MMM Notes to their customers in light of: (a) their obtaining only limited information about the MMM Notes and their lack of investigation into MMM; and (b) the multiple “red flags” surrounding the offering, as described above.
96. Respondents Friedberg and Schaffer further lacked a reasonable basis to recommend the MMM Notes to customers MB and JG in connection with the February 2011

replacement transactions described herein. Friedberg and Schaffer recommended the MMM Notes to customers at a time when MMM had defaulted on Notes and proceeds from new investments had been used to repay complaining investors.

97. In addition to the failures by Respondents to investigate and understand the MMM Notes, in light of the “red flags” surrounding the MMM Notes as described herein, the MMM Notes were simply not a suitable investment for any investor.

98. By reason of the foregoing, Respondents violated NASD Conduct Rule 2310 and FINRA Rule 2010.

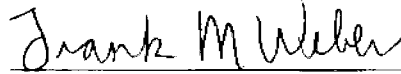
### **RELIEF REQUESTED**

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including that Respondents be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**FINRA DEPARTMENT OF ENFORCEMENT**

Date: June 4, 2014



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Authorized House Counsel  
Member of Ohio Bar Only

# EXHIBIT A

## HFP SALES OF METALS MILLING AND MINING LLC NOTES

| No. | NAME OF INVESTOR                    | DATE OF TRANSACTION     | AMOUNT OF INVESTMENT | PERCENTAGE OWNED BY INVESTOR | REPRESENTATIVE(S) RESPONSIBLE FOR TRANSACTION |
|-----|-------------------------------------|-------------------------|----------------------|------------------------------|-----------------------------------------------|
| 1   | ML                                  | 12/10/2009              | \$25,000             | FLJ                          | Joseph Schaffer                               |
| 2   | VVV                                 | 12/10/2009              | \$50,000             | FK3                          | Joshua Turney/Jonah Engler                    |
| 3   | EB                                  | 12/10/2009              | \$25,000             | FK2                          | Jonah Engler                                  |
| 4   | RS                                  | 12/9/2009               | \$50,000             | FKB                          | Jonah Engler                                  |
| 5   | DQN Irrevocable Trust               | 12/9/2009               | \$50,000             | FKA                          | Brett Friedberg                               |
| 6   | LB                                  | 12/7/2009               | \$25,000             | FK4                          | Jonathan Sheklow                              |
| 7   | JB                                  | 12/7/2009               | \$50,000             | FK2                          | Jonah Engler/<br>Jonathan Sheklow             |
| 8   | SA and MA                           | 12/7/2009               | \$25,000             | FKC                          | Jonathan Sheklow                              |
| 9   | FS                                  | 12/7/2009               | \$40,000             | FK4                          | Hector Perez                                  |
| 10  | AS                                  | 12/8/2009               | \$25,000             | FKB                          | Brett Friedberg                               |
| 11  | CH and PH                           | 12/7/2009               | \$25,000             | FKB                          | Jonah Engler                                  |
| 12  | JFB                                 | 12/7/2009               | \$25,000             | FKD                          | Brett Friedberg                               |
| 13  | JL                                  | 12/7/2009<br>12/17/2009 | \$50,000<br>\$50,000 | FK3                          | Joshua Turney                                 |
| 14  | LG                                  | 12/7/2009               | \$50,000             | FK3                          | Joshua Turney                                 |
| 15  | BE                                  | 12/9/2009               | \$25,000             | FKD                          | Brett Friedberg                               |
| 16  | MS and SS                           | 12/10/2009              | \$25,000             | FLH                          | Joseph Schaffer                               |
| 17  | P&P Attorneys at Law<br>PSP & Trust | 12/10/2009              | \$25,000             | FKB                          | Jonah Engler                                  |
| 18  | DB                                  | 12/10/2009              | \$20,000             | FK2                          | Jonathan Sheklow                              |
| 19  | PT                                  | 12/10/2009              | \$25,000             | FK2                          | Jonathan Sheklow                              |
| 20  | JBy                                 | 12/17/2009              | \$20,000             | FK2                          | Hector Perez                                  |
| 21  | MB                                  | 12/18/2009              | \$25,000             | FLJ                          | Joseph Schaffer                               |
| 22  | RH and WCC                          | 12/14/2009              | \$25,000             | FLJ                          | Joseph Schaffer                               |
| 23  | FP and CP                           | 12/18/2009              | \$25,000             | FKB                          | Brett Friedberg                               |

| NO | NAME OF INVESTOR | DATE OF TRANSACTIONS | AMOUNT OF INVESTMENT | FIR REGIS HERE REPRESENTATIVE TO BE ASSIGNED TO TRANSACTIONS | REGIS HERE REPRESENTATIVE(S) RESPONSIBLE FOR TRANSACTIONS |
|----|------------------|----------------------|----------------------|--------------------------------------------------------------|-----------------------------------------------------------|
| 24 | JW               | 12/16/2009           | \$25,000             | FKB                                                          | Brett Friedberg                                           |
| 25 | FL               | 12/18/2009           | \$25,000             | FK4                                                          | Hector Perez                                              |
| 26 | JHP              | 12/15/2009           | \$20,000             | FK2                                                          | Hector Perez                                              |
| 27 | JY and JY        | 12/14/2009           | \$50,000             | FK3                                                          | Joshua Turney                                             |
| 28 | JL               | 1/28/2010            | \$50,000             | FK3                                                          | Joshua Turney                                             |
| 29 | WW               | 1/28/10              | \$50,000             | FK3                                                          | Joshua Turney/ Jonah Engler                               |
| 30 | HS and RS        | 3/2/2010             | \$50,000             | FKC                                                          | Jonathan Sheklow                                          |
| 31 | GB               | 3/12/2010            | \$25,000             | FK2                                                          | Hector Perez                                              |
| 32 | LG               | 3/15/2010            | \$50,000             | FK3                                                          | Joshua Turney                                             |
| 33 | JFB              | 3/15/2010            | \$25,000             | FKD                                                          | Brett Friedberg                                           |
| 34 | DM and PB        | 3/15/2010            | \$20,000             | FK2                                                          | Hector Perez                                              |
| 35 | FM               | 3/15/2010            | \$50,000             | FK3                                                          | Joshua Turney                                             |
| 36 | DB               | 3/16/2010            | \$50,000             | FK2                                                          | Jonathan Sheklow                                          |
| 37 | JHP              | 3/16/2010            | \$25,000             | FK2                                                          | Hector Perez                                              |
| 38 | RS and JS        | 3/17/2010            | \$30,000             | FK2                                                          | Hector Perez                                              |
| 39 | DL               | 3/16/2010            | \$50,000             | FKD                                                          | Brett Friedberg                                           |
| 40 | SP and RP        | 3/18/2010            | \$30,000             | FK2                                                          | Hector Perez                                              |
| 41 | WS               | 3/19/2010            | \$25,000             | FKD                                                          | Brett Friedberg                                           |
| 42 | CM               | 3/25/2010            | \$50,000             | FK3                                                          | Joshua Turney                                             |
| 43 | LB               | 12/7/2009            | \$50,000             | FK4                                                          | Jonathan Sheklow                                          |
| 44 | TBE              | 3/31/2010            | \$25,000             | FKD                                                          | Brett Friedberg                                           |
| 45 | JSh              | 3/31/2010            | \$25,000             | FK2                                                          | Jonathan Sheklow                                          |
| 46 | AR and KR        | 3/19/2010            | \$25,000             | FKB                                                          | Jonah Engler                                              |
| 47 | JW               | 3/31/2010            | \$25,000             | FK4                                                          | Jonathan Sheklow                                          |
| 48 | MS               | 3/17/2010            | \$25,000             | FK2                                                          | Hector Perez                                              |
| 49 | GP               | 3/18/2010            | \$25,000             | FK2                                                          | Jonathan Sheklow                                          |
| 50 | PM               | 4/8/2010             | \$25,000             | FLJ                                                          | Joseph Schaffer                                           |
| 51 | RH               | 4/8/2010             | \$50,000             | FK2                                                          | Jonah Engler                                              |
| 52 | EA               | 4/8/2010             | \$25,000             | FKB                                                          | Brett Friedberg                                           |
| 53 | MB               | 4/20/2010            | \$25,000             | FLJ                                                          | Joseph Schaffer                                           |
| 54 | UHP              | 4/20/2010            | \$50,000             | FLH                                                          | Joseph Schaffer                                           |
| 55 | FM               | 4/28/2010            | \$100,000            | FK3                                                          | Joshua Turney                                             |

| NO | NAME OF INVESTOR            | DATE OF TRANSACTION | AMOUNT OF INVESTMENT | THE REGISTERED REPRESENTATIVE WHO IS ASSIGNED TO TRANSACTION | REGISTERED REPRESENTATIVE(S) RESPONSIBLE FOR TRANSACTION |
|----|-----------------------------|---------------------|----------------------|--------------------------------------------------------------|----------------------------------------------------------|
| 56 | PG and EG JTWROS            | 4/26/2010           | \$40,000             | FK2                                                          | Jonah Engler                                             |
| 57 | SE                          | 4/27/2010           | \$25,000             | FK2                                                          | Jonah Engler                                             |
| 58 | ER and RR                   | 4/27/2010           | \$50,000             | FKD                                                          | Brett Friedberg                                          |
| 59 | JOJ Trust                   | 4/27/2010           | \$35,000             | FK4                                                          | Hector Perez                                             |
| 60 | P and P Attorneys PSP Trust | 4/21/2010           | \$50,000             | FKB                                                          | Jonah Engler                                             |
| 61 | EB                          | 4/26/2010           | \$25,000             | FK2                                                          | Jonah Engler                                             |
| 62 | WWi and DWi                 | 4/7/2010            | \$25,000             | FK3                                                          | Joshua Turney                                            |
| 63 | FS                          | 5/14/2010           | \$100,000            | FK4                                                          | Hector Perez                                             |
| 64 | WWe                         | 5/11/2010           | \$25,000             | FK2                                                          | Hector Perez                                             |
| 65 | FW                          | 5/12/2010           | \$25,000             | FK2                                                          | Hector Perez                                             |
| 66 | GB                          | 5/17/2010           | \$25,000             | FK2                                                          | Hector Perez                                             |
| 67 | CY                          | 5/20/2010           | \$25,000             | FKB                                                          | Brett Friedberg                                          |
| 68 | DO                          | 6/2/2010            | \$25,000             | FKD                                                          | Brett Friedberg                                          |
| 69 | FP and CP                   | 6/3/2010            | \$25,000             | FKB                                                          | Brett Friedberg                                          |
| 70 | GLH                         | 6/5/2010            | \$50,000             | FKB                                                          | Brett Friedberg                                          |
| 71 | JLe                         | 6/7/2010            | \$25,000             | FKB                                                          | Brett Friedberg                                          |
| 72 | EBr and GBr                 | 7/13/2010           | \$100,000            | FK2                                                          | Jonah Engler/Jonathan Sheklow                            |
| 73 | RK                          | 11/4/2010           | \$250,000            | FKD                                                          | Brett Friedberg                                          |
| 74 | RSt                         | 11/3/2010           | \$50,000             | FK2                                                          | Hector Perez                                             |
| 75 | DO                          | 11/23/2010          | \$50,000             | FKD                                                          | Brett Friedberg                                          |

**PURCHASERS OF METALS MILLING AND MINING LLC NOTES IN "REPLACEMENT TRANSACTIONS"**

|    |    |          |          |  |                  |
|----|----|----------|----------|--|------------------|
| 76 | RS | 7/3/10   | \$75,000 |  | Jonathan Sheklow |
| 77 | MB | 2/1/2011 | \$25,000 |  | Joseph Schaffer  |
| 78 | JG | 2/3/2011 | \$25,000 |  | Brett Friedberg  |