

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

MERCATOR ASSOCIATES, LLC
(BD No.112903),

FABRIZIO DAVID LENTINI
(CRD No. 2392695), AND

GURTERATH MANNI SINGH BUTTAR
(CRD No. 4511978)

RESPONDENTS.

DISCIPLINARY PROCEEDING
No. 2011025438601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From January 2010 through at least January 2012 ("the Relevant Period"), Mercator Associates, LLC ("Mercator" or the "Firm"), acting through its President and Chief Compliance Officer ("CCO") Fabrizio D. Lentini ("Lentini") and its Financial and Operations Principal ("FINOP") Gurterath Manni Singh Buttar ("Buttar"), maintained an account with a Sri Lankan broker-dealer and a bank account in Sri Lanka in the name of Mercator ("the Sri Lankan Accounts"), but containing the assets of at least five other entities, OAM, OIT, NMI, CAL and ADC ("the Five Entities"). The Five Entities were unrelated to Mercator, but were each affiliated with LH, Mercator's largest customer. As

a result of the establishment of, and failure to properly monitor the activity conducted in, the Sri Lankan accounts, the Respondents committed numerous violations.

2. The brokerage and bank account applications submitted by the Respondents to open the Sri Lankan accounts in or about January 2010 were materially false and misleading in that they failed to disclose the true underlying beneficial ownership of the assets held in Mercator's Sri Lankan brokerage and bank accounts. Mercator's, Lentini's and Buttar's conduct violated FINRA Rule 2010.
3. During the Relevant Period, Mercator, acting through its Anti-Money Laundering Compliance Officer ("AMLCO"), Lentini, also failed to implement its anti-money laundering ("AML") procedures. The Firm and Lentini failed to detect and investigate red flags indicative of potentially suspicious activity concerning the Sri Lankan accounts. Mercator's and Lentini's conduct violated FINRA Rules 3310(a) and 2010.
4. During the Relevant Period, Mercator, acting through its FINOP, Buttar, also violated various financial and books and records rules as a result of the Sri Lankan activity. Mercator and Buttar failed to prepare reserve formula computations for all customer cash and securities held in the Sri Lankan accounts, failed to submit Mercator's reserve formula computations as part of the Firm's FOCUS Report filings and failed to file an application and/or letter for control location status with the Securities and Exchange Commission ("SEC") requesting approval to designate the Sri Lankan accounts as a satisfactory control location. Mercator also failed to create certain required books and records related to the activities in the Sri Lankan accounts. Mercator's conduct constituted willful violations of Securities Exchange Act of 1934 ("Exchange Act") Rules

15c3-3(c)(4), 15c3-3(e), 17a-3 and 17a-5 and violated NASD Conduct Rule 3110(a) and FINRA Rules 4511 and 2010. Buttar's conduct violated FINRA Rule 2010.

RESPONDENTS AND JURISDICTION

5. Respondent Mercator is, and at all times relevant to this Complaint was, a registered broker-dealer and FINRA member firm with its principal place of business in Toronto, Ontario, Canada. Mercator has been a FINRA member firm since on or about October 10, 2001. Mercator is currently a FINRA-registered firm subject to FINRA's disciplinary jurisdiction.
6. Respondent Lentini is, and during all times relevant to this Complaint was, Mercator's Head Trader. Lentini has also been Mercator's President, CCO and AML Compliance Officer since January 1, 2010. Lentini first became registered with FINRA through a member firm in October 1993. Lentini has been registered with FINRA through Mercator as a General Securities Principal, General Securities Representative, Registered Equities Trader and Options Principal since on or about November 7, 2007.
7. Respondent Buttar has been Mercator's Chief Financial Officer since joining the Firm in July 2008. Buttar first became registered with FINRA through a member firm in May 2002. Buttar has been registered with FINRA through Mercator as a FINOP since on or about July 21, 2008.
8. Since December 31, 2009, Lentini and Buttar have each owned 50% of Mercator.

ALLEGATIONS APPLICABLE TO MULTIPLE COUNTS

THE RESPONDENTS ARE APPROACHED TO OPEN A BROKERAGE ACCOUNT IN SRI LANKA

9. The Department realleges and incorporates by reference paragraphs 1 through 8 above.
10. During all times relevant to this Complaint, LH was Mercator's largest client. During the Relevant Period, the LH group of companies was comprised largely of a series of investment advisers to the LH group of hedge funds.
11. In or about late December 2009, Lentini and Buttar were invited by GM, a sub-advisor to LH and a long-time client of Lentini's, to attend a presentation hosted by LH related to doing business on Sri Lanka's stock market, the Colombo Stock Exchange ("CSE"). The presentation was given by SN, Director of DFL, a Sri Lanka-based broker-dealer authorized to trade on the CSE.
12. SN was also a Director of two Sri Lankan companies traded on the CSE, Environmental Resources Investment, PLC ("ERI") and Ceylon Leather Products, PLC ("CLP"). During the Relevant Period, LH owned at least 74% of the common stock of ERI. From June 2010 through the end of the Relevant Period, ERI owned at least 71% of CLP common stock. During the Relevant Period, DFL was a wholly owned subsidiary of ERI.
13. Also attending the presentation with GM, Lentini and Buttar were TD, LH's President, MS, a Senior Analyst at LH and KE, a financial professional who worked for LH on various occasions. No representatives from FINRA member firms other than Mercator attended the presentation.
14. After the presentation, SN asked Lentini and Buttar if they were interested in conducting business on the CSE. Approximately one week later, Lentini and Buttar informed SN that they were interested in having Mercator conduct business in Sri Lanka.

MERCATOR OPENS BROKERAGE AND BANK ACCOUNTS IN SRI LANKA

15. SN referred Lentini and Buttar to SK, DFL's General Manager, to open a brokerage account in Sri Lanka through DFL. SK provided Buttar with an application to open an account with the Central Depository Systems (Pvt.), Ltd. ("CDS").
16. CDS is the depository for all listed securities in Sri Lanka and provides clearing, settlement, and custody services for securities traded on the CSE. All brokerage accounts in Sri Lanka are held at CDS through one of several Sri Lankan Securities and Exchange Commission ("Sri Lankan SEC") and CSE approved broker-dealers, including DFL. Both the CSE and CDS are self-regulatory organizations ("SRO") regulated by the Sri Lankan SEC.
17. Foreign companies such as Mercator seeking to open a brokerage account in Sri Lanka are required to complete the CDS 2 Form ("Application for Opening of Securities Account" (for Companies)) and the CDS 2(A) Form ("Declaration Form").
18. Both the CDS 2 and 2(A) Forms were signed by Lentini and Buttar on behalf of Mercator and dated January 8, 2010. These documents were provided to SK by Buttar via email on January 25, 2010.
19. The first portion of the CDS 2(A) Form requires the applicant to, among other things, disclose the owner(s) of the securities to be purchased in the account. Specifically, after an introductory section that requires the applicant to state its name, place of incorporation and address, the relevant language of the form reads:

In consideration of the Central Depository Systems (Pvt.) Ltd. (CDS) agreeing to open a Securities Account in our name, hereby declare as follows:

One option listed was:

2. The securities to be purchased through the Securities Account to be opened by us is for the benefit of _____ and _____ in our capacity as Custodian/Trustee/Fund Manager/Unit Trust Manager/foreign Broker/foreign Dealer.

On Mercator's CDS Form 2(A), Lentini and Buttar filled in the blank and made the following declaration regarding the beneficial ownership of securities to be held in the CDS account the Firm was seeking to open through DFL:

2. The securities to be purchased through the Securities Account to be opened by us is for the benefit of Mercator Associates in our capacity as Custodian/Trustee/Fund Manager/Unit Trust Manager/foreign Broker/foreign Dealer.

20. In addition to a CDS account, foreign companies such as Mercator seeking to transact securities trades on the CSE must also open a corresponding Share Investment External Rupee Account ("SIERA") with a bank approved by the CDS.
21. At or around the same time SK provided Lentini and Buttar with the CDS account forms, he also provided them with an application for a SIERA account with Deutsche Bank ("DB") in Colombo, Sri Lanka.
22. As with the CDS account application, the DB application also required the applicant to disclose whether or not the "Customer" is acting for its own account or for other parties.

Lentini and Buttar completed the relevant portion of the application as follows:

INFORMATION PURSUANT TO GERMAN MONEY LAUNDERING ACT – Please indicate "yes" or "No" in the box:

- [x] The Customer is acting for its/their own account.
[] The Customer is acting for other party(ies), details of which will be separately furnished to the Bank.

23. On January 28, 2010, SK informed Buttar via email that the DB account denominated in United States dollars ("DB USD Account") in the name of Mercator had been opened.

At or around the same time the DB USD Account was opened, DB opened a corresponding account for Mercator denominated in Sri Lankan Rupees ("LKR"). Later that day, SK emailed Buttar to inform him that a CDS account in Mercator's name had been opened with CDS through DFL (the "CDS Account").

LH'S RELATIONSHIP TO THE FIVE ENTITIES AND THE SRI LANKAN TRADING

24. During the Relevant Period, the Five Entities traded on the CSE through the CDS Account. Four of the Five Entities were incorporated and domiciled in the Cayman Islands: OAM, NMI, ADC and CAL. The remaining entity, OIT, was incorporated and domiciled in the British Virgin Islands.
25. Each of the Five Entities and/or their control persons was affiliated with LH. For example, during the Relevant Period, GM and SD were authorized to place trades on behalf of OAM. GM, who was assigned an LH email address, worked for LH as a Fund Advisor throughout this period. SD was a former employee of LH.
26. DB was authorized to place trades with Mercator in the CDS account on behalf of NMI, CAL and OIT. During the Relevant Period, DB was a Director at LHA, a member of the LH group of companies. DB is also a former Director of LHI, another member of the LH group of companies.
27. GC, BM and KD were authorized to place trades with Mercator in the CDS Account on behalf of ADC. BM was employed by LH until mid-2011, when he and KD purchased a Cayman Islands-based group of financial services companies. During the Relevant Period, KD was also listed as a Director of BHI and as a Trustee of OIT.
28. In addition to these connections to the Five Entities, LH managers TD and MS were intimately involved in numerous communications that took place during early 2010

concerning the structuring of the Sri Lankan trading, including the establishment of the CDS Account and the manner in which trading in that account would be carried out.

These communications also involved Lentini, Buttar, SN, KD and KE.

FUNDS ARE WIRED INTO MERCATOR'S CDS ACCOUNT AND TRADING BEGINS

29. On March 12, 2010, \$99,865.00 was wired into the DB USD Account. During the remainder of the Relevant Period, an additional four wire transfers were made into the DB USD Account. The total of these five wire transfers was \$5,032,865.
30. During the Relevant Period, funds were wired out of the DB USD Account on five occasions totaling \$2,536,154.71. The five wires were sent from the DB USD Account to one of Mercator's accounts at TD Bank in Canada. Mercator then wired the funds, typically the next day, to bank accounts in the Cayman Islands for the benefit of one of the Five Entities.
31. Trading in the CDS Account also began in March 2010. During the remainder of the Relevant Period, the following securities were purchased and/or sold in the CDS Account:

SECURITY	BUY VOLUME	SELL VOLUME
ERI Common Stock (symbol: GREG.N)	628,600	5,300,600
ERI Warrants (symbol: GREG.W)	1,408,200	66,600
ERI Rights (symbol: GREG.R)	0	1,500
CLP Common Stock (symbol: CLPL.N)	360,000	535,600
CLP Warrants (symbol: CLPL.W)	120,800	616,300
CLP Rights (symbol: CLPL.R)	106,000	15,000
Brown & Company PLC Common Stock (symbol: BRWN.N)	100,000	100,000

32. Using a conversion rate of 1 USD to 125 LKR, the total dollar amount of sell transactions in the CDS Account during the Relevant Period was \$3,430,538.31. The total dollar amount of buy transactions in the CDS Account during this period was \$2,894,354.70.

33. Trades in the CDS Account were typically placed via instructions sent by Lentini to SK at DFL via email.
34. At the end of each day in which transactions were placed in the CDS Account, SK or an associate at DFL sent Mercator confirmations detailing the trades placed in the CDS Account. The DFL confirmations listed Mercator as the customer and did not reference any of the Five Entities.
35. After receiving the DFL confirmations, Lentini forwarded them via email to TD's brother JD and/or others at EDDA, the company that tracked the Sri Lankan securities transactions and cash positions of the various Entities.
36. Along with the DFL confirmations, Lentini also forwarded a separate Mercator confirmation he created, which provided a summary of the trades listed on the DFL confirmations and a designation of the Entity for whose benefit each trade had been placed. On the Mercator confirmation, the "A.E." (Account Executive) is listed as DFL and the "A/C Name" is listed as "Mercator 1" for OAM, "Mercator 2" for CAL and "Mercator 3" for NMI.

FIRST CAUSE OF ACTION

SUBMISSION OF A MATERIALLY FALSE AND INACCURATE BROKERAGE ACCOUNT APPLICATION RESPONDENTS MERCATOR, LENTINI AND BUTTAR (FINRA Rule 2010)

37. The Department realleges and incorporates by reference paragraphs 1 through 36 above.
38. The declaration made on Mercator's CDS 2(A) form by Lentini and Buttar regarding the beneficial ownership of securities to be held in the CDS account was materially false. Lentini and Buttar knew at the time Buttar sent the executed CDS 2(A) form to SK for further transmission to CDS that the Sri Lankan brokerage account was not being opened

for Mercator's benefit, but instead was intended as an "omnibus account" for the benefit of other entities, at least one of which, OAM, was known to Lentini and Buttar at or around the time of SN's presentation.

39. Accordingly, by knowingly submitting a materially false account application to CDS through DFL, Mercator, Lentini and Buttar violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

SUBMISSION OF A MATERIALLY FALSE AND INACCURATE BANK ACCOUNT APPLICATION RESPONDENTS MERCATOR, LENTINI AND BUTTAR (FINRA Rule 2010)

40. The Department realleges and incorporates by reference paragraphs 1 through 39 above.
41. The DB SIERA account application completed by Lentini and Buttar was materially false. Lentini and Buttar knew that the DB accounts were intended as "omnibus accounts" for the benefit of other entities, at least one of which, OAM, was known to Lentini and Buttar at or around the time of SN's presentation. Both Lentini and Buttar signed the DB application, which was dated January 8, 2010, and then provided it to SK for submission to DB.
42. By submitting a materially false bank account application to DB through DFL, Mercator, Lentini and Buttar violated FINRA Rule 2010.

THIRD CAUSE OF ACTION

FAILURE TO IMPLEMENT AND ENFORCE AML PROCEDURES RESPONDENTS MERCATOR AND LENTINI (FINRA Rules 3310 and 2010)

43. The Department realleges and incorporates by reference paragraphs 1 through 42 above.
44. FINRA Rule 3310(a) (formerly NASD Conduct Rule 3011(a)), which became effective January 1, 2010, requires firms to establish and implement policies, procedures, and

internal controls that can be reasonably expected to detect and cause the reporting of transactions required by the Bank Secrecy Act and the implementing regulations thereunder.

45. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") and its implementing regulations require, *inter alia*, all United States broker-dealers to file with the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the U.S. Treasury Department, a Suspicious Activity Report ("SAR") for certain suspicious transactions.
46. Specifically, a broker-dealer must file a SAR to report to FinCEN transactions that are either conducted or attempted to be conducted involving assets or funds of an aggregate value of at least \$5,000, if the broker-dealer knows or has reason to suspect that the transaction, among other things:
- a. Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade any Federal law or regulation;
 - b. Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
 - c. Involves the use of the broker-dealer to facilitate the criminal activity.
- 31 C.F.R. § 1023.320(a)(2)(i), (iii), and (iv).

47. Broker-dealers are required to file SARs no later than 30 calendar days after they initially detect facts that may constitute a basis for such a filing. 31 C.F.R. § 1023.320(b)(3).
48. As part of their obligations, and as explained in Special NASD Notice to Members (NTM) 02-21, broker-dealers must develop and implement a written AML compliance program to monitor accounts for suspicious activity that includes identifying and investigating any “red flags” associated with customer account activity.
49. The presence of red flags such as those discussed in NTM 02-21 should prompt broker-dealers to conduct additional due diligence as part of their obligation to monitor and detect instances of suspicious activity occurring in customer accounts.
50. During the Relevant Period, Mercator’s written AML policies and procedures required the Firm to monitor for potentially suspicious activity and red flags, to investigate potentially suspicious activity, and to report suspicious activity by filing a SAR, as appropriate. Although the Firm listed specific red flags in its AML procedures, it failed to have an adequate system to monitor for potentially suspicious activity and also failed to adequately detect and investigate those red flags when they were present.
51. During the Relevant Period, Mercator, acting through Lentini, failed to enforce its written AML program to ensure compliance with the Bank Secrecy Act. The Firm did not identify and investigate potentially suspicious activity to determine whether it was necessary to file a SAR, even though Mercator and its principals were aware of numerous red flags as set forth below. These red flags suggested that LH and the Five Entities were using Mercator to conceal their affiliation with certain issuers.

RED FLAGS RAISED BY THE SRI LANKAN ACTIVITY

52. The broker-dealer Mercator conducted business with in Sri Lanka, DFL, maintained the exact same Board of Directors as that of the two companies whose securities were primarily traded through Mercator's DFL account, ERI and CLPL. Both Lentini and Buttar were aware that SN and KH were Directors of both DFL and ERI during their initial due diligence in late 2009/early 2010. They were also aware that DFL was a wholly-owned subsidiary of ERI and that ERI in turn was majority owned and controlled by LH.
53. The person who instructed Lentini and Buttar on conducting business in Sri Lanka was SN, who as Director of both DFL and ERI was not an objective source of information. Moreover, SN first addressed conducting business in Sri Lanka with Lentini and Buttar in a luncheon in LH's offices, where all the other attendees were either employees or close associates of LH. No broker-dealers other than Mercator were represented at the luncheon.
54. Mercator, Lentini and Buttar conducted due diligence on the Five Entities and created and maintained a file for each. The corporate organization documents obtained during the Respondents' due diligence showed that four of the Five Entities were established just weeks before they began trading through Mercator's Sri Lankan account.
55. On July 26, 2010, GM sent an email to Lentini instructing him not to send anything to SK and DFL that "identifies clients under Mercator." This email was sent after Lentini mentioned OAM to SK in an email the previous day.

56. The trading in GREG.N through the CDS Account also should have raised questions or concerns to a trader such as Lentini. On several days during the period, the GREG.N trades placed through the CDS Account amounted to almost 50% of the market volume for that day. The pattern of trading was also suspicious; on August 27, 2010, having sold over one million GREG.N shares approximately one month earlier, the entities purchased 73,000 shares of the stock, which amounted to 48% of the daily market volume. The timing of this and other similar trades was also suspicious in that it came at the end of the month, when funds typically seek to stabilize the prices of stocks in their portfolios for valuation purposes.
57. Mercator and Lentini were actually put on notice about potentially suspicious trading in GREG.N on the CSE at the outset of the Relevant Period. Specifically, on March 19, 2010, just days after Lentini placed the first trade in the CDS Account, SK sent an email to Lentini and Buttar regarding the ERI common stock's "extraordinary price movements in the Colombo bourse" which SK claimed was being caused by the "unprecedented raising of capital through rights issues." SK stated that because of these price movements, the Sri Lankan SEC "has deemed fit to query these unusual price fluctuations to ensure market transparency and ethical practices." He went on to say that if Lentini and Buttar were contacted by the SEC, DFL preferred that Lentini and Buttar request that the SEC "officially write" so that DFL's legal counsel could provide a draft response to provide to the SEC.
58. In almost all cases, the wire transfers both into and out of the DB USD Account were made in large, round number increments.

59. In certain instances, Mercator became aware through emails that funds which were ostensibly the assets of one of the Five Entities were being sent to a third party that was closely affiliated with ERI, LH and/or various insiders. For example, in an email chain dated April 27-28, 2011 with the subject “Mercator Associates”, Lentini and Buttar were instructed to wire \$300,000 from Mercator’s USD operating account to CAL and \$200,000 from this account to NMI. Lentini and Buttar also saw, as part of the same email chain, that KH instructed KD to wire the \$200,000 that had been sent to NMI on to a bank account in London in the name of OPL. KH also instructed KD to wire \$150,000 of the \$300,000 sent to CAL on to a bank account at DB in Colombo in the name of YPL. Buttar and Lentini were aware that OPL was another subsidiary of ERI. Buttar and Lentini were also aware that SN had described YPL to them as SN’s “entity.” Buttar was also aware that YPL is located in Richmond, Virginia and that KH was also affiliated with the company.
60. Despite the Firm’s procedures requiring additional due diligence regarding red flags, the Firm and Lentini took no action to investigate the potentially suspicious activity related to the Sri Lankan accounts to determine whether it was necessary to file a SAR. As a result, Mercator, acting through Lentini, failed to implement and enforce the Firm’s AML program.
61. By virtue of this conduct, Mercator and Lentini violated FINRA Rules 3310(a) and 2010.

FOURTH CAUSE OF ACTION

FAILURE TO FILE AN APPLICATION FOR CONTROL LOCATION STATUS RESPONDENTS MERCATOR AND BUTTAR (Exchange Act Rule 15c3-3(c)(4) and FINRA Rule 2010)

62. The Department realleges and incorporates by reference paragraphs 1 through 61 above.

63. Exchange Rule 15c3-3(c)(4) requires broker-dealers to maintain a control location for securities that are in the custody of a foreign depository, foreign clearing agency or foreign custodian bank. In most cases, such a control location must be deemed satisfactory by the SEC, a registered national securities exchange, or a registered national securities association.
64. Mercator, acting through its FINOP, Buttar, failed to submit to any of these regulatory bodies an application requesting approval to designate the CDS Account as a satisfactory control location.
65. By virtue of this conduct, Mercator willfully violated Exchange Act Rule 15c3-3(c)(4) and violated FINRA Rule 2010 and Buttar violated FINRA Rule 2010.

FIFTH CAUSE OF ACTION

FAILURE TO PREPARE RESERVE FORMULA COMPUTATIONS RESPONDENTS MERCATOR AND BUTTAR (Exchange Act Rule 15c3-3(e) and FINRA Rule 2010)

66. The Department realleges and incorporates by reference paragraphs 1 through 65 above.
67. Mercator acted on behalf of the Five Entities in order to facilitate their trading instructions in various stocks listed on the CSE. Therefore, the Five Entities were customers of the Firm based on the definition in Exchange Act Rule 15c3-3(a)(1), which defines a customer as “any person from whom or on whose behalf a broker or dealer has received or acquired or holds funds or securities for the account of that person.” In addition, the cash and securities held in the CDS and DB Accounts were customer funds that were carried by Mercator.

68. The Firm and Buttar failed to conduct and record a reserve computation for the assets in the CDS and DB Accounts. Pursuant to Exchange Act Rule 15c3-3, these funds should have been included as part of the Firm's reserve requirement.

69. By failing to conduct a reserve computation or include this computation in the Firm's reserve requirement, Mercator willfully violated Exchange Act Rule 15c3-3 and violated FINRA Rule 2010 and Buttar violated FINRA Rule 2010.

SIXTH CAUSE OF ACTION

INACCURATE FOCUS FILINGS RESPONDENTS MERCATOR AND BUTTAR (Exchange Act Rule 17a-5 and FINRA Rule 2010)

70. The Department realleges and incorporates by reference paragraphs 1 through 69 above.

71. Exchange Act Rule 17a-5(a) requires a broker-dealer to, among other things, file accurate FOCUS Reports.

72. As Mercator and Buttar failed to conduct a reserve computation or include this computation in the Firm's reserve requirement, Mercator's FOCUS filings from March 2010 through January 2012 were inaccurate due to inaccurate reserve computations.

73. By filing inaccurate FOCUS filings, Mercator willfully violated Exchange Act Rule 17a-5(a) and violated FINRA Rule 2010 and Buttar violated FINRA Rule 2010.

SEVENTH CAUSE OF ACTION

FAILURE TO CREATE REQUIRED BOOKS AND RECORDS RESPONDENT MERCATOR (Exchange Act Rule 17a-3, NASD Conduct Rule 3110 and FINRA Rules 4511 and 2010)

74. The Department realleges and incorporates by reference paragraphs 1 through 73 above.

74. Exchange Act Rule 17a-3(a)(3) requires that firms create "[l]edger accounts (or other records) itemizing separately as to each cash and margin account of every customer ... all

purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account.”

75. Mercator processed all customer trades through the omnibus CDS Account and maintained position balances in certain common/ordinary shares and warrants. The Firm did not, however, make the required books and records related to the Five Entities’ account activities. Specifically, the Firm did not make a stock record that identified the owners of the shares and/or warrants held in the account.

76. By failing to create required books and records, Mercator willfully violated Exchange Act Rule 17a-3 and violated NASD Conduct Rule 3110(a) (for conduct before December 5, 2011) and FINRA Rules 4511 (for conduct after December 4, 2011) and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that the Respondents 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;
- C. order that the Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent Mercator willfully violated Rules 15c3-3, 15c3-3(c)(4), 17a-3 and 17a-5 of the Exchange Act.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 3/20/2015



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