

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NAVEEN K. BHAGWANI
(CRD No. 5423037),

Respondent.

Disciplinary Proceeding
No. 2011027667402

Hearing Officer - DRS

**ORDER ACCEPTING OFFER OF
SETTLEMENT FROM
RESPONDENT NAVEEN K. BHAGWANI**

Date: January 20, 2015

INTRODUCTION

Disciplinary Proceeding No. 2011027667402 was filed on February 28, 2014, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") ("Complainant"). Respondent Naveen K. Bhagwani submitted an Offer of Settlement ("Offer") to Complainant dated January 14, 2015. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, as amended by the Offer of Settlement, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, as amended by the Offer of Settlement, and to the imposition of the sanctions set

forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Bhagwani entered the securities industry in September 2007 when he joined former FINRA member NSM Securities, Inc. He subsequently acquired Series 62 and 63 licenses. Bhagwani was associated with NSM from September 17, 2007 through October 4, 2011 and was registered with FINRA, through NSM, as a Corporate Securities Limited Representative from October 9, 2007 through October 4, 2011. On October 4, 2011, NSM filed a Form U5 for Bhagwani, terminating his association with it as of the prior day.

On April 12, 2012, NSM filed two amended Form U5s for Bhagwani, wherein the firm, for the first time, disclosed that he was the subject of a written complaint and civil lawsuit by customer NG, alleging margin-related suitability violations, and of a written complaint by customer RS, alleging that he traded on margin in his account without a margin agreement. On January 3, 2013, NSM filed another amended Form U5 for Bhagwani, wherein the firm, for the first time, disclosed that he was the subject of a written complaint and FINRA arbitration by customer MV, alleging suitability violations.

Bhagwani currently is not registered with FINRA or associated with a FINRA member. In July 2012, FINRA suspended Bhagwani from associating with any member for failing to comply with an arbitration award. The suspension remains in effect.

On October 28, 2013, the Arkansas Securities Commissioner issued a Cease and Desist Order to Bhagwani, wherein the Commissioner ordered him to cease and desist from transacting business as an agent of a broker-dealer in Arkansas without being registered as an agent in Arkansas, in violation of Ark. Code Ann. § 23-42-301(a).

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

1. From March 2007 through September 2012 (the “relevant period”), NSM Securities, Inc., acting through and at the direction of its founder, owner, President, and CEO, Niyukt R. Bhasin, derived most of its revenue from actively and aggressively trading stocks in the commission-based accounts of its retail customers. Prioritizing his firm’s profits over the duties owed to its customers, Bhasin chose not to establish a supervisory system tailored to NSM’s business. Instead, he fostered a culture of non-compliance that resulted in widespread sales practice violations, numerous customer complaints, related reporting violations, and cold-calling abuses.
2. During the relevant period, NSM, through Bhasin, failed to establish, maintain, and enforce a system, including written supervisory procedures (“WSPs”), reasonably designed to supervise the core activity in which its brokers engaged—active and aggressive trading. Specifically, NSM, through Bhasin, failed to reasonably monitor for, detect, and prevent churning, excessive trading, related violations of Regulation T, and unsuitable investment recommendations. NSM, through Bhasin, also failed to adequately review electronic correspondence, adequately handle customer complaints, and place certain brokers who were the subjects of multiple customer complaints and arbitrations on heightened supervision. As a result of the foregoing, NSM and Bhasin violated NASD Rules 3010(a) and (b) and 2110 and FINRA Rule 2010.
3. NSM’s culture of non-compliance fostered by Bhasin harmed his firm’s customers, as NSM’s lax to non-existent oversight of its brokers resulted in significant sales

practice abuses. Specifically, NSM, acting through its brokers Naveen K. Bhagwani and Shondeep S. Balchandani, engaged in unauthorized trading in seven accounts, churned and excessively traded five accounts, and recommended qualitatively unsuitable investments to two customers. As a result of the foregoing, NSM, Bhagwani, and Balchandani willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and also violated NASD Rules 2310 and 2110, IM-2310-2, and FINRA Rules 2020 and 2010.

4. In addition, Bhagwani misrepresented material facts to two customers, in willful violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and in violation of NASD Rules 2120 and 2110 and FINRA Rules 2020 and 2010. In part to cover up his fraudulent practices, Bhagwani also created, and forged his customers' signatures, on a letter that authorized the transfer of their funds, in violation of FINRA Rule 2010.

RESPONDENT, FORMER RESPONDENTS, AND JURISDICTION

NSM Securities, Inc.

5. NSM is a FINRA member and has been such since August 2005.

6. On January 22, 2014, NSM filed Form BDW, wherein the firm requested that its FINRA membership be terminated.

7. Bhasin founded NSM and has owned the company from its inception through the present. Since its inception, Bhasin has served as the President and CEO of NSM. Since approximately August 1, 2011, he also has served as its CCO.

8. Prior to filing Form BDW, NSM was an introducing broker-dealer that generated most of its revenue from commissions charged to its retail accounts.

9. NSM maintained its principal place of business in West Palm Beach, Florida and also had another branch office in New York, New York.

10. During the relevant period, approximately 20 to 35 registered persons were associated with NSM at any one point in time.

11. Under Article IV of FINRA's By-Laws, FINRA possesses jurisdiction over NSM because: (a) the Complaint charges the firm with misconduct committed while it was a FINRA member; and (b) the Complaint was filed within two years of the firm's requested termination of its FINRA membership.

Niyukt R. Bhasin

12. Bhasin entered the securities industry in 1992. He first became registered with FINRA in January 1993 as a General Securities Representative ("GSR") (Series 7 license). He subsequently acquired Series 24 and 63 licenses. Since 1992, Bhasin has been associated with five FINRA members.

13. From February 10, 2005 through January 22, 2014, Bhasin was associated with NSM and registered with FINRA through the firm as a GSR, General Securities Principal, and Operations Professional.

14. At all relevant times, Bhasin was the President, CEO, and majority owner of NSM. He controlled NSM.

15. Bhasin currently is not associated with a FINRA member.

16. Although Bhasin 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 Bhasin's registration with NSM, namely, January 22, 2014; and (b) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member firm.

Naveen K. Bhagwani

17. Bhagwani entered the securities industry when he joined NSM in September 2007. He first became registered with FINRA in October 2007 as a Corporate Securities Limited Representative (“CSLR”) (Series 62 license). He subsequently obtained a Series 63 license.

18. On September 17, 2007, NSM filed a Form U4 for Bhagwani, commencing his association with it as of that day. On October 4, 2011, NSM filed a Form U5 for Bhagwani, terminating his association with it as of the prior day. Bhagwani was registered with FINRA, through NSM, as a CSLR from October 9, 2007 through October 4, 2011.

19. On April 12, 2012, NSM filed two amended Form U5s for Bhagwani, wherein the firm, for the first time, disclosed that he was the subject of a written complaint and civil lawsuit by customer NG, alleging margin-related suitability violations, and of a written complaint by customer RS, alleging that he traded on margin in his account without a margin agreement.

20. On January 3, 2013, NSM filed another amended Form U5 for Bhagwani, wherein the firm, for the first time, disclosed that he was the subject of a written complaint and FINRA arbitration by customer MV, alleging suitability violations.

21. Bhagwani currently is not associated with a FINRA member.

22. Although Bhagwani 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 date when NSM filed an amended Form U5 for him disclosing, for the first time, the written complaint and arbitration of customer MV, namely, January 3, 2013, and that amended Form U5 was filed within two years after the effective date of termination of his registration with NSM,

namely, October 4, 2011; and (b) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS COMMON TO MOST CAUSES OF ACTION

Bhasin's Business Model

23. Bhasin, who is of Indian descent, founded NSM to, among other things, establish a broker-dealer where brokers of Indian descent would predominantly obtain and service customers of Indian descent. During the relevant period, NSM operated accordingly.

24. The homepage of NSM's website provides that it seeks to "take advantage of unique opportunities created in today's rapidly changing investment climate." Bhasin's trading strategy, however, was little more than aggressive short-term trading in the commission-based accounts of the firm's retail customers.

25. Bhasin's active and aggressive trading strategy—which was widely employed by his firm's brokers—is to concentrate a commission-based account in a few securities, predominantly stocks or other equities, liquidate the positions shortly after acquiring them, and then repeat the process. Bhasin also encouraged his brokers to use leverage or margin, which magnified the considerable risks associated with his aggressive strategy. As designed, Bhasin's short-term trading strategy resulted in high turnover rates and cost-to-equity ratios in, and generated relatively large commissions from, customer accounts.

26. Bhasin incentivized his brokers to actively trade accounts by basing their payout on a sliding scale; NSM paid its brokers between 60 and 80 percent of their monthly gross commissions depending on their production level (*i.e.*, the higher the production, the higher the payout).

27. Bhasin was keenly aware of the commissions generated from his firm's customers—whom he referred to as “rental income.”

28. In order to procure a steady stream of revenue from his “rental income” during the relevant period, Bhasin directed his brokers to cold call prospects. In these calls, NSM brokers, at Bhasin's direction, often solicited prospects by enticing them with the possibility of 15 percent returns over the course of one to three months.

29. Bhasin's aggressive short-term trading strategy, coupled with his laissez-faire attitude towards compliance, led to widespread sales practice abuses and numerous customer complaints.

Bhasin's Control over NSM

30. During the relevant period, NSM acted by and through Bhasin, as well as its brokers. Bhasin was the President, CEO, and majority owner of NSM and acted within the scope of his employment when he and his firm committed the violations charged herein.

31. During the relevant period, Bhasin was responsible for making and made all major decisions for his firm. He controlled the operations of NSM and its brokers, including the hiring and firing of brokers. He possessed the ultimate power to direct the policies, procedures, and personnel of NSM.

32. In order to implement his suspect strategy, Bhasin predominantly hired persons who had no prior experience in the securities industry.

33. Bhasin hired a large number of NSM brokers who were not only new to the securities industry, but who also were new to the United States, working on H-1B visas sponsored by Bhasin, through NSM.

34. Bhasin directed his firm's brokers to employ his aggressive short-term trading strategy. At times, he pressured them to actively trade customer accounts, with little regard for the customers' investment objectives and risk tolerances. He even instructed his brokers on which specific stocks to buy and sell.

35. Bhasin also set sales targets for his brokers. On occasion, he exerted control over them by threatening to cut their commissions or take away accounts if they failed to meet his sales targets.

36. In addition, Bhasin instructed his fledgling brokers on cold-calling, prospecting for customers, opening accounts, and recommending stocks. At times, he listened in on phone calls between his brokers and new or prospective customers to coach them on what to say.

37. As the President and CEO of NSM, Bhasin was responsible for ensuring that his firm established, maintained, and enforced a system to supervise the activities of its registered and associated persons in a manner reasonably designed to achieve compliance with applicable securities laws and regulations and NASD/FINRA Rules.

38. In that capacity, Bhasin also was responsible for ensuring that the supervisory duties or functions that he delegated were being appropriately exercised or handled.

39. In addition, the WSPs designated specific areas of supervisory responsibilities to Bhasin, including: Customer Complaint Filing Requirements, Compliance Interviews and Meetings, Review of Equity Transactions, Cold Calling and Telemarketing, Margin, and Regulation T.

Supervision—Failure to Supervise and Deficient WSPs
(NASD Rules 3010 and 2110 and FINRA Rule 2010)

40. NASD Rule 3010(a) requires each member to establish and maintain a system to supervise the activities of its registered and associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and NASD/FINRA Rules.

41. NASD Rule 3010(b) requires each member to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages” and supervise the activities of its registered and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and NASD/FINRA Rules.

42. FINRA Rule 2010 (f/k/a NASD Rule 2110) requires members and associated persons, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.”

43. During the relevant period, NSM’s WSPs were both deficient and inadequately implemented.

44. NSM’s WSPs were deficient in several key areas relative to its business. They failed to define excessive trading; they failed to provide guidance on how the firm would monitor for excessive trading and churning; they failed to define which customers would receive letters regarding the activity in their accounts and when and why such letters would be sent to customers; and they also failed to provide guidance on monitoring for unsuitable recommendations.

45. Both the 2008 and 2009 versions of the WSPs provided that NSM would use “exception reports” to monitor for excessive trading and churning. Despite the fact that its clearing firm had made such exception reports available to it since at least November 2006, NSM did not begin obtaining the reports to monitor for excessive trading and churning until July 2010.

46. Prior to June 2009, NSM took no discernible steps to monitor for excessive trading or churning, other than to review trades in isolation on a daily basis through order tickets and its trade blotter.

47. On June 19, 2009, Bhasin instructed all NSM brokers to begin calculating the turnover rates and cost-to-equity ratios on each trade ticket prior to entering a trade so that the CCO at the time, Irving Burstein, could monitor trades for excessive trading and churning.

48. Bhasin, however, failed to ensure that this system was adequately implemented or enforced. The brokers only occasionally calculated and reported the turnover rates and cost-to-equity ratios for their trades. Further, NSM did nothing to ensure that the brokers' calculations were correct.

49. As noted, beginning in July 2010, NSM finally began obtaining exception reports from its clearing firm to monitor for excessive trading and churning. These Monthly Active Account Reports (the "Exception Reports") identified accounts that triggered one of the following criteria on a monthly basis: (a) commissions in excess of \$10,000; (b) more than 10 trades; (c) cost-to-equity ratio in excess of 50 percent; or (d) losses greater than 15 percent.

50. The Exception Reports made clear that numerous accounts were being aggressively traded and needed to be further investigated for possible excessive trading and churning.

51. Although Bhasin designated responsibility to Burstein to review accounts for excessive trading and churning, Bhasin chose not to provide him with the Exception Reports.

52. In any given month from July 2010 through September 2012, one-third to one-half of NSM's brokers had accounts that appeared on the Exception Reports. NSM and Bhasin,

however, did not take adequate steps or implement reasonable supervisory measures to prevent excessive trading and churning.

53. The firm's 2008 and 2009 WSPs also provided that "comfort letters" would be sent to certain customers, but they failed to define what the term "comfort letter" meant or specify the circumstances when such letters would be sent to customers.

54. In July 2010, NSM began sending letters to customers whose names appeared on the Exception Reports. These "Active Account Review" letters ("Active Account Letters") simply stated that the firm's compliance department "routinely reviews active accounts to verify suitability and investment objectives," indicated whether or not the customer's account was a margin account, and displayed the customer's investment objective(s) and risk tolerance.

55. The Active Account Letters did not define what "active accounts" were, nor did they explain why the customer was receiving the letter. NSM did not require customers to sign and return, or even acknowledge receipt of, Active Account Letters.

56. From July 2010 until his departure in July 2011, Burstein sent the Active Account Letters to customers.

57. In July 2011, Bhasin began sending more detailed Active Account Letters. Although the new Active Account Letters explained that the customer was receiving the letter due to the amount of activity in his or her account, Bhasin did not ensure that the letters were correct. Between May and September 2012, NSM sent out 18 Active Account Letters with misplaced decimal points on certain figures that made them misleading. For example, NSM sent an Active Account Letter to customer SA dated September 11, 2012, wherein the firm represented that her account had a monthly turnover rate of 0.751 for activity in August 2012,

when, in fact, the actual monthly turnover rate for that month, as reflected in the Exception Report, was 7.51.

58. In addition, NSM did not implement an adequate or reasonable supervisory system to review trades for unsuitable recommendations. According to the firm's WSPs, it only monitored for unsuitable recommendations through a review of the daily trade blotter. A stand-alone review of the daily trade blotter, however, was a grossly inadequate means of reviewing trades for possible unsuitable recommendations, especially in light of the firm's active and aggressive trading strategy.

59. NSM's WSPs also failed to specify how trades would be reviewed to monitor for possible unsuitable recommendations. In other words, the WSPs failed to set forth the criteria to determine suitability.

60. NSM also failed to place brokers on heightened supervision in accordance with its WSPs. The WSPs required the firm to put a broker on heightened supervision when he or she had a "history of customer complaints, disciplinary actions, and/or arbitrations."

61. During the relevant period, based on the foregoing criteria, NSM failed to put Balchandani, Bhagwani, and brokers NB, HJ, RK, IA, and RD on heightened supervision.

62. Numerous customers complained either to or about the foregoing NSM brokers. During the relevant period, 11 customers complained about Bhagwani; 12 customers complained about Balchandani; 9 customers complained about NB; 15 customers complained about HJ; 5 customers complained about RK; 3 customers complained about RD; and 3 customers complained about IA. The complaints generally echoed the same themes: excessive trading, unauthorized trading, and unsuitable recommendations—critical sales practice areas for NSM's business model for which its supervisory systems were grossly deficient.

63. As set forth below in greater detail, NSM and Bhasin also failed to report numerous customer complaints to FINRA.

64. In September 2005, Bhasin hired Burstein to serve as a compliance officer. Bhasin subsequently appointed Burstein to serve as the firm's CCO from June 14, 2007 to July 31, 2011.

65. Burstein, however, failed to perform his assigned duties under NSM's WSPs.

66. As Bhasin knew, Burstein's daily activities were limited to reviewing trade tickets and the trade blotter at the end of the day and listening to the brokers' cold calls.

67. During the relevant period, the firm's WSPs designated specific duties to Burstein, including the review of customer accounts to detect and monitor for: (a) unsuitable transactions; (b) excessive trading activity; (c) unauthorized trading; (d) excessive losses; (e) excessive securities concentrations; and (f) large debit balances.

68. Burstein failed to reasonably review customer accounts and transactions for any of these things.

69. His review of customer account activity was limited to a quarterly review of the documents in the customer files, which were selected on a random basis. Bhasin knew that Burstein was not adequately reviewing customer accounts and transactions for the foregoing activity. Yet, Bhasin did nothing about it.

70. The WSPs also designated responsibility to Burstein for: reviewing (but not reporting) customer complaints; reviewing incoming and outgoing correspondence, including email; handling registration and licensing matters; and implementing and enforcing heightened supervision programs for brokers, when required or necessary. Burstein also failed to adequately perform these responsibilities.

71. Bhasin knew that Burstein was not adequately performing these responsibilities. In fact, Bhasin stripped Burstein of many of the tools and the authority that Burstein needed to perform his responsibilities.

72. Even though Bhasin designated Burstein as the supervisor responsible for reviewing email, Bhasin did not provide Burstein with a computer to review email.

73. Burstein was designated to review correspondence, but Bhasin controlled access to correspondence and often failed to provide Burstein with customer complaints.

74. Burstein also recommended placing certain brokers who had been the subjects of multiple customer complaints on heightened supervision, but Bhasin refused to follow Burstein's recommendations.

75. Finally, once NSM began obtaining the Exception Reports in July 2010, Bhasin refused to provide them to Burstein, even though the firm's WSPs designated Burstein as the supervisor responsible for reviewing customer account activity for excessive trading and suitability violations.

76. As a result of the grossly inadequate supervisory system established by Bhasin, NSM brokers made unsuitable recommendations to their customers, engaged in unauthorized trading, and excessively traded and churned accounts. This misconduct, in turn, resulted in many NSM customers suffering significant losses during the relevant period.

77. In connection with its active and aggressive trading strategy, and as detailed below, NSM violated Regulation T and the related NASD/FINRA Rules governing the extension of credit during the relevant period. Specifically, NSM made a practice of allowing customers to: (a) buy securities in cash accounts where the cost to buy the securities was met by the sale of the same securities (a/k/a free-riding); and (b) buy securities in customers' margin accounts

resulting in margin calls and then impermissibly meet those calls through the liquidation of the same securities or other securities in the accounts.

78. Bhasin was aware of these violative practices from emails and reports from NSM's clearing firm, and yet, he took no steps to prevent them.

79. NSM and Bhasin failed to establish and maintain a system to supervise the activities detailed above that was reasonably designed to achieve compliance with applicable securities laws and regulations and NASD/FINRA Rules. As detailed above, they also failed to monitor for, detect and investigate "red flags" suggestive of misconduct by the firm's brokers.

80. In addition, and as detailed above, NSM and Bhasin failed to establish, maintain, and enforce WSPs to supervise its business, including its active and aggressive investment strategy, and supervise its registered and associated persons, that were reasonably designed to achieve compliance applicable securities laws and regulations and NASD/FINRA Rules.

81. As a result of the foregoing, NSM and Bhasin violated NASD Rules 3010(a) and (b) and 2110 (for misconduct prior to December 15, 2008) and FINRA Rule 2010 (for misconduct on or after December 15, 2008).

FACTS RELATING TO BHAGWANI'S MISCONDUCT

Customers CP and JP

82. In a March 2007 cold call, Balchandani convinced CP and JP to open a joint account at NSM. CP and JP own and operate a small hotel in Lexington, Kentucky. Prior to opening their account at NSM, CP and JP held a joint account at another broker-dealer, which was primarily invested in blue chip stocks and mutual funds recommended by their broker. CP funded the non-discretionary NSM account with \$3,694, which, on Balchandani's recommendation, was used to purchase shares of Tata Motors (an Indian company) stock.

83. After the initial purchase, on Balchandani's recommendations, CP and JP deposited additional funds into the account and over time transferred securities from their joint brokerage account into their NSM account. Eventually, CP and JP placed almost all of the retirement savings in their NSM joint account.

84. Following Bhasin's strategy, Balchandani actively and aggressively traded CP and JP's account.

85. Balchandani, NSM broker RD, and later Bhagwani had frequent telephone conversations with CP. During these calls, Bhagwani told CP that he held other securities, such as shares of stock in Visa, Citigroup, NFX Oil and Apple, worth hundreds of thousands of dollars and explained that these holdings were not reflected on the NSM account statements he received, but were held separately at NSM.

86. In March and June 2008, the three NSM brokers convinced CP to deposit an additional \$200,000 into his NSM joint account by promising that the new funds would generate profits.

87. In July 2008, despite having deposited and/or transferred more than \$500,000 in cash and securities into the joint account, CP and JP's net account value was \$165,120, with a margin debit balance of (\$568,436).

88. On August 13, 2008, CP and JP received a letter from NSM's clearing firm to confirm their margin debit balance of (\$568,436). CP called the clearing firm to inquire about the holdings that did not appear on his statements, but he was directed by the clearing firm to contact his NSM brokers.

89. In September 2008, Bhagwani became the broker of record on CP and JP's account. On September 11, 2008, Bhagwani falsely told CP that by the end of December 2008,

the shares of stock in Apple, Visa, Citigroup and NFX Oil allegedly held by NSM and not reflected on CP and JP's account statements would be worth almost \$1 million. This statement was false, as there were no other securities separately held by NSM or its clearing firm for CP and JP.

90. On September 19, 2008, CP and JP received a second notice from the clearing firm requesting that they confirm the debit balance in their account of (\$568,436). CP and JP did not sign and return the letter as requested. Instead, CP called Bhagwani who told him not to worry about the letter and that his investments were generating nice profits.

91. On September 30, 2008, CP spoke with Bhagwani who told him that he had sent CP documents to reflect his ownership of 5,000 shares of Visa stock and provided CP with a FedEx tracking number. CP never received a FedEx delivery from Bhagwani.

92. Between September and October 2008, Bhagwani liquidated virtually all of the holdings in CP and JP's account to meet several large margin calls. CP and JP's account suffered realized losses of approximately \$368,014, while the three NSM brokers generated fees and commissions of \$142,526 for themselves and the firm.

93. In March 2011, CP and JP initiated an arbitration proceeding against NSM, Balchandani, Bhagwani, RD, Burstein, and NSM's clearing firm.

Customer DB

94. On November 10, 2010, DB opened a non-discretionary account at NSM with NB as his broker of record. At the time, DB owned and operated a hotel in Dodge City, Kansas.

95. Although the new account form reflected that DB was an experienced investor who had an investment objective of "speculative" and a risk tolerance of "aggressive," this

information was false. DB was not an experienced investor and did not have a speculative or aggressive profile.

96. In November and December 2010, DB made deposits totaling \$74,820 into his account. On December 28, 2010, without DB's authorization or consent, NB purchased 1,000 shares of Baidu stock for a total cost of \$102,321, resulting in a commission of \$3,451.

97. DB learned of the transaction when there was a margin call on his account in early January 2011. At that time, Bhagwani became the broker of record on the account, and he told DB to deposit more cash into the account to cover the margin call.

98. Because DB did not have any additional available funds to deposit in his NSM account, he borrowed money from another source to cover the purchase of Baidu stock.

99. Between January 2011 and October 2011, when Bhagwani was the broker on DB's account, he effected 29 unauthorized transactions in the account, and the account suffered realized losses of \$99,426 and generated \$39,892 in commissions for Bhagwani and NSM. (See Schedule A.5 attached to the Complaint for a table of the unauthorized transactions.)

100. Consonant with Bhasin's strategy, Bhagwani actively and aggressively traded the account to generate commissions. For the period when Bhagwani was the broker of record on the account, the annualized turnover rate was 17.62, and the annualized cost-to-equity ratio was 34.64 percent.

Customer RS

101. RS opened a non-discretionary account with NSM in January 2010 after receiving several cold calls from another NSM broker. Shortly after opening the account, RS became dissatisfied with the broker's handling of his account—the volume of trades, the failure to explain fees, and the pressure to invest more money in the account.

102. In autumn of 2010, RS submitted paperwork to transfer his account to another firm. Bhagwani then called RS and convinced him to maintain his account at NSM. Bhagwani falsely claimed to be a supervisor at NSM and promised that he would provide a better level of service to RS by removing the margin debit and by providing RS with free transactions until the account increased in value. At the time, RS's account held cash and securities worth \$243,082, with a margin debit of (\$97,998) and a net value of \$145,086.

103. After Bhagwani became the broker of record for RS's account, rather than removing the margin debit balance, as he had promised, Bhagwani continued trading on margin in the account. The margin debit in RS's account ballooned over the first half of 2011, reaching a high of (\$253,877) by the end of July 2011. This represented approximately 73 percent of the total account value of \$347,832.

104. Consonant with Bhasin's strategy, Bhagwani actively and aggressively traded the account to generate commissions. To that end, Bhagwani made 18 unauthorized transactions in RS's account. (See Schedule A.6 attached to the Complaint for a table of the unauthorized transactions.)

105. In August 2011, Bhagwani sold securities in RS's account to cover margin calls. This resulted in significant realized losses. By the end of September 2011, due to the August margin calls and other losses, the account had a net value of only \$12,574.

106. In total, RS suffered realized losses of \$143,223, while Bhagwani and NSM generated \$9,954 in commissions and fees.

Customer AM

107. After an October 2008 cold call from Bhagwani, customer AM opened a non-discretionary account at NSM with Bhagwani.

108. Between May 2009 and September 2011, Bhagwani effected 225 unauthorized transactions in AM's account. (See Schedule A.7 attached to the Complaint for a table of the unauthorized transactions.) Through his unauthorized trading, Bhagwani effected control over AM's account.

109. Even when Bhagwani communicated with AM, he often misled AM.

110. In addition, Bhagwani excessively traded AM's account. Beginning in July 2010, AM's account regularly appeared on the firm's Exception Reports. In the July 2010 Report, the annualized turnover rate for the account was 12.81 and the annualized cost-to-equity ratio was 33.51. The account appeared on ten of the next twelve Exception Reports, with generally increasing turnover rates. In the July 2011 Report, the annualized turnover rate for the account was 36.56 and the annualized cost-to-equity ratio was 19.25.

111. Bhagwani's excessive trading ultimately had a damaging effect on AM's account. While Bhagwani was the broker on AM's account, he generated approximately \$201,752 in commissions and fees for himself and the firm from it, while the account suffered \$34,453 in losses.

112. During the period when Bhagwani was broker of record on AM's account, the annualized turnover rate for the account was 27.35, and the annualized cost-to-equity ratio for the account was 50 percent.

Customers NG and PG

113. In August 2009, after numerous cold calls to NG's office, NG and his wife, PG, opened a non-discretionary joint account with Bhagwani at NSM.

114. From August 2009 to October 2011, the life of the account, NG and PG contributed approximately \$1,743,300 to the account. During that same time period, the account

purchased \$39,679,438 worth of securities, and Bhagwani generated \$452,518 in commissions and fees from actively trading the joint account.

115. NG and PG's joint account also appeared on the firm's Exception Reports every month in 2010 and for seven months in 2011. The annualized turnover rates for the account in the Exception Reports ranged from 7.68 to 24.15, and the annualized cost-to-equity ratios for the account in the Exception Reports ranged from 15.43 to 26.65.

116. Bhagwani also made frequent misrepresentations to NG. Whenever NG and PG asked Bhagwani about losses that appeared on their account statements, Bhagwani falsely told NG and PG that the account was growing and the account statements were incorrect.

117. Bhagwani also misled NG and PG about the use of margin in their joint account. Although they had signed a margin agreement, NG and PG instructed Bhagwani not to use margin in their joint account. Bhagwani, however, did use margin in the account, without their authorization. When NG and PG asked Bhagwani about the debit balance in their account, Bhagwani falsely told them that there was none and that their account statements reflecting a margin balance were wrong.

118. On September 20, 2010, NG and PG received a letter from NSM's clearing firm informing them that the joint account had a margin debit balance of (\$2,185,944). NG and PG faxed this letter to Bhagwani and asked him about the margin debit balance. Bhagwani faxed the letter back to NG, with the notation, "Zero (0) debit balance as of 10/12/10."

119. Bhagwani also sent a separate letter to NG and PG on October 12, 2010, falsely stating that there was no debit balance in their joint account. However, the October 2010 account statement shows that there was a margin debit balance each day of the month of October 2010, which ranged from a low of (\$641,239) to a high of (\$1,095,100).

120. One month later, Bhagwani sent another letter to NG and PG dated November 12, 2010. In that letter, Bhagwani again falsely stated that NG and PG's joint account had no debit balance. Once again, NG and PG's account statement for November 2010 showed that the account carried a margin debit balance each day of November 2010, ranging from a low of (\$135,287) to a high of (\$1,144,552).

121. In September 2011, in an attempt to avoid a margin call in NG and PG's account, Bhagwani submitted a letter that purported to be from NG and PG to NSM's clearing firm requesting a transfer of \$150,000 from NG's Defined Benefit Pension Plan account to NG and PG's joint NSM account ("Letter of Instruction").

122. Bhagwani created the Letter of Instruction and forged NG's and PG's signatures. NG and PG did not know about the Letter of Instruction or the transfer of their funds requested therein. Therefore, they did not authorize Bhagwani to sign their names to it.

123. The clearing firm sent NG a letter to confirm the accuracy of the Letter of Instruction, and NG immediately informed the clearing firm that he had not sent the letter or requested the transfer.

124. In October 2011, margin calls led to selloffs in NG and PG's joint account. As a result, the account suffered nearly \$1 million in losses.

Unauthorized Transactions (FINRA Rule 2010)

125. As set forth above and detailed in Schedules A.5, A.6, and A.7, Bhagwani effected: 29 unauthorized trades in DB's non-discretionary account between January and October 2011; 18 unauthorized trades in RS's non-discretionary account between January and August 2011; and 225 unauthorized trades in AM's non-discretionary account between May 2009 and July 2011. Bhagwani executed the foregoing trades, without the knowledge,

authorization, or consent of the customers or any persons with trading authority over the accounts.

126. NSM is liable for the unauthorized trading of Bhagwani under the doctrine of *respondeat superior* and as a control person under Section 20(a) of the Exchange Act.

127. As a result of the foregoing, NSM and Bhagwani violated FINRA Rule 2010.

Churning
(Willful Violations of Section 10(b) of the Exchange Act, Rule 10b-5 and
Violations of FINRA Rules 2020 and 2010)

128. Section 10(b) of the Exchange Act prohibits the use of any “manipulative or deceptive device or contrivance” in connection with the purchase or sale of a security.

129. Rule 10b-5, promulgated under the Exchange Act, provides that:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To 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 the light of the circumstances under which they were made, not misleading, or

(c) To engage in 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.

130. FINRA Rule 2020 (f/k/a NASD Rule 2120) prohibits the same misconduct.

131. Bhagwani churned AM’s and DB’s accounts.

132. Bhagwani controlled the activity in AM’s and DB’s accounts by executing unauthorized transactions in their accounts.

133. The excessive trading activity in AM's and DB's accounts, as evidenced by the high annualized turnover rates and high annualized cost-to-equity ratios in the accounts, was inconsistent with their financial circumstances and/or investment objectives.

134. Bhagwani acted with scienter. He intentionally or at least recklessly handled the accounts of customers AM and DB in a manner in which he placed his interests above his customers' interests. Specifically, Bhagwani handled AM's and DB's accounts with the intention and for the purpose of generating commissions for himself and NSM, and without the intention of serving AM's or DB's interests.

135. In the course of conduct described above, Bhagwani, in connection with the purchases and sales of securities, 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 at least recklessly: employed devices, schemes or artifices to defraud; engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; and effected transactions in securities by means of any manipulative, deceptive, or other fraudulent scheme, device, or contrivance.

136. In connection with his misconduct, Bhagwani employed the means of interstate commerce, the mails, and the facility of a national exchange by causing confirmation and account statements reflecting the subject trades to be sent to AM and DB and by executing the subject trades through national securities exchanges.

137. NSM is liable for the foregoing fraudulent misconduct of Bhagwani under the doctrine of *respondeat superior* and as a control person under Section 20(a) of the Exchange Act.

138. By churning the aforementioned accounts, NSM and Bhagwani willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and also violated FINRA Rules 2020 and 2010.

Fraudulent Misrepresentations
(Willful Violations of Section 10(b) of the Exchange Act and
Rule 10b-5 and Violations of NASD Rules 2120 and 2110 and FINRA Rules 2020 and 2010)
Misrepresentations to CP and JP

139. In connection with the purchases and sales of securities, NSM, acting through Bhagwani, intentionally or, at the least, recklessly made the following untrue statements of material facts to CP and JP: (a) that CP and JP owned shares of other securities that did not appear on their account statements; and (b) that the letter from NSM's clearing firm concerning the margin debit balance in CP and JP's account should be ignored.

140. Bhagwani employed the means of transportation or communication in interstate commerce, including phone calls to CP and JP, in connection with his misrepresentations regarding the securities purchased by CP and JP in their NSM account.

141. By engaging in the foregoing misconduct, Bhagwani willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 and also violated NASD Rules 2120 and 2110 and FINRA Rules 2020 and 2010.

Fraudulent Misrepresentations
(Willful Violations of Section 10(b) of the Exchange Act
and Rule 10b-5 and Violations of FINRA Rules 2020 and 2010)
Misrepresentations to NG and PG

142. In connection with the purchases and sales of securities, Bhagwani intentionally or, at the least, recklessly made untrue statements of material facts to NG and PG. Specifically, and as detailed above, Bhagwani misrepresented that: (a) NG and PG's account statements were incorrect and should be ignored, when, in fact, the statements were correct; (b) their account was

generating profits, when, in fact, it was declining in value; and (c) their account did not have a debit balance, when, in fact, it did have a debit balance.

143. Bhagwani employed the means of transportation or communication in interstate commerce, including phone calls, the mail and faxes to NG and PG, in connection with his purchases and sales of securities in their account.

144. By engaging in the foregoing misconduct, Bhagwani willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 and also violated FINRA Rules 2020 and 2010.

Excessive Trading/Quantitative Suitability Violations
(Violations of NASD Rule 2310, IM-2310-2, and FINRA Rule 2010)

145. Before it was superseded by FINRA Rule 2311, IM-2310-2(b)(2) specifically prohibited excessive trading.

146. Bhagwani excessively traded AM's and DB's accounts.

147. Bhagwani controlled the activity in AM's and DB's accounts by executing unauthorized transactions in their accounts.

148. The excessive trading activity in AM's and DB's respective accounts as evidenced by the high annualized turnover rates and high annualized cost-to-equity ratios in the accounts, was inconsistent with their respective financial circumstances and/or investment objectives.

149. NSM is liable for the excessive trading of, and quantitatively unsuitable investment recommendations made by, Bhagwani under the doctrine of *respondeat superior* and as a control person under Section 20(a) of the Exchange Act.

150. As a result of the foregoing, NSM and Bhagwani violated NASD Conduct Rule 2310, IM-2310-2, and FINRA Rule 2010.

Forgery/Falsification of a Document
(FINRA Rule 2010)

151. By creating the Letter of Instruction and by signing the names of NG and PG to it, without their authority or consent, Bhagwani falsified a document and committed forgery. As a result of the foregoing, Bhagwani violated FINRA Rule 2010.

152. By submitting falsified and forged Letter of Instruction to NSM's clearing firm, Bhagwani also violated FINRA Rule 2010.

Based on the foregoing, Respondent willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and also violated NASD Rules 2120, 2310, and 2110, IM-2310-2, and FINRA Rules 2020 and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

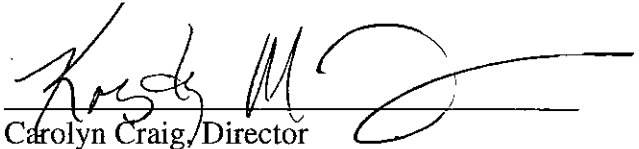
It is ordered that Respondent be barred from association with any FINRA member in all capacities.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read 'Carolyn Craig', is written over a horizontal line.

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