

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

Department of Enforcement,

Complainant,

v.

Newport Coast Securities, Inc.,
CRD No. 16944;

Douglas A. Leone,
CRD No. 2453784;

Marc A. Arena,
CRD No. 2754309;

Roman Tyler Luckey,
CRD No. 2977054;

Andre V. LaBarbera,
CRD No. 2072370;

David M. Levy,
CRD No. 2255938;

Antonio Costanzo,
CRD No. 2580765; and

Donald A. Bartelt,
CRD No. 1377935

Respondents.

DISCIPLINARY PROCEEDING
No. 2012030564701

COMPLAINT

The Department of Enforcement alleges:

I. SUMMARY

1. From September 2008 through May 2013, Newport Coast Securities, Inc. (“Newport Coast” or the “Firm”) and five of its registered representatives (Douglas Leone,

Andre LaBarbera, David Levy, Antonio Costanzo, and Donald Bartelt) excessively traded and churned 24 customers' accounts. The misconduct should have quickly drawn scrutiny – and been stopped – because: (i) cost-to-equity ratios were often over 100%; (ii) turnover rates were often over 100; (iii) there were extraordinary amounts of in-and-out trading; (iv) customer accounts were highly margined and often concentrated in one security; (v) there were large numbers of transactions in which the total commission/markup per trade exceeded 3% and, in many instances, exceeded 4%; (vi) there was a deceptive mix of riskless principal and agency trading in numerous accounts, namely, higher cost trades in which markups almost always exceeded 3% (and generally exceeded \$1,000 per trade) were executed on a riskless principal basis whereas lower cost trades, typically involving sales of the same securities, were executed on an agency basis; (vii) inverse and/or leveraged Exchange Traded Funds (“ETFs”) and Exchange Traded Notes (“ETNs”) remained in accounts for multiple trading sessions; (viii) solicited trades were inaccurately characterized as unsolicited; and (ix) nearly all of the customer accounts at issue exhibited large losses.

2. The representatives' direct supervisors (including Marc Arena and Roman Tyler Luckey (“Tyler Luckey” or “Luckey”)), and the Firm's Compliance Department managers saw what was transpiring, but no one took any meaningful steps to curtail the misconduct. To the contrary, managers, a supervisor and the Firm's former President profited through overrides on these churned accounts.

3. After Enforcement issued Wells Notices, Respondents Levy and Costanzo attempted to dissuade certain customers from cooperating with FINRA's investigation and any ensuing disciplinary proceeding. Costanzo offered to compensate a customer for his losses but conditioned his offer on the customer's signing a letter stating that he would not testify at a

hearing. Levy travelled to Logan, Iowa, told a customer that he would not receive any restitution if he (Levy) was barred, promised the customer that he would assist in the preparation of a claim against Newport Coast, and then asked the customer to sign a letter informing FINRA that he (customer) would not participate in a disciplinary hearing.

4. This Complaint charges: (i) Newport Coast and former representatives Leone, LaBarbera, Levy, Costanzo, and Bartelt with excessively trading and churning customer accounts [First and Second Causes of Action]; (ii) Newport Coast, LaBarbera, Levy and Costanzo with making unsuitable recommendations involving inverse and/or leveraged ETFs and ETNs (collectively, “Exchange Traded Products” or “ETPs”) to customers who were elderly and/or retired, and who had limited investment experience, risk tolerance, income, and net worth [Third Cause of Action]; (iii) LaBarbera with causing inaccuracies in his Firm’s books and records by mischaracterizing solicited trades as “unsolicited” [Fourth Cause of Action]; (iv) Leone with conveying false and exaggerated account balances to a customer [Fifth Cause of Action]; (v) Newport Coast, Arena, and Luckey with failing to supervise Leone, LaBarbera, Levy, Costanzo and Bartelt [Sixth Cause of Action]; (vi) Arena with failing to disclose liens when he was associated with Newport Coast and, thereafter, failing to update his Form U4 to disclose additional liens that he acquired after associating with the Firm [Seventh Cause of Action]; and (viii) Costanzo and Levy with obstruction of the FINRA disciplinary process by conditioning assistance and restitution on customers’ refusal to cooperate with FINRA’s investigation [Eighth Cause of Action].

5. This Complaint further charges Newport Coast with failing to establish an adequate system and procedures to supervise its sales of structured products [Ninth Cause of Action]. From March 2009 through July 2012, the Firm offered and sold structured and

inverse/leveraged ETPs, but the Firm (i) had no system or procedures in place to supervise the sale of these securities and (ii) neither offered nor provided any training to its representatives relative to these complex products.

II. RESPONDENTS AND JURISDICTION

6. Newport Coast, formerly known as Grant Bettingen, Inc., is a California corporation and has been a NASD/FINRA member since March 1986. Newport Coast is a wholly owned subsidiary of Rubicon Financial, Inc. (“Rubicon”), and until March 2013, was based in Irvine, California. The Firm is currently based in New York, New York and has approximately 45 branch offices and 122 registered representatives. Newport Coast is approved to conduct a general securities business. At all times relevant to this Complaint, Newport Coast acted through its associated persons, including Respondents Douglas Leone, Andre LaBarbera, David Levy, Antonio Costanzo, and Donald Bartelt. Newport Coast was also a controlling person under Exchange Act Section 20(a) with respect to Respondents Leone, LaBarbera, Levy, Costanzo, and Bartelt.

7. Douglas A. Leone entered the securities industry in 1993. He associated with a dozen different firms before joining Newport Coast in October 2008. From October 24, 2008 through March 18, 2013, Leone was associated with Newport Coast and registered as a General Securities Representative (Series 7). Although he worked from his home office, Leone was part of a Long Island, New York branch of Newport Coast. Leone is currently associated with another member firm.

8. Marc A. Arena entered the securities industry in 1996. From October 28, 2008 to March 15, 2013, Arena was associated with Newport Coast where he was registered as a General Securities Representative (Series 7), General Securities Principal (Series 24) and as of

April 30, 2010, an Investment Banking Representative (Series 79). From March 2009 until he terminated his association with the Firm, Arena was the Branch Office Manager of a Long Island office. From March 2009 through at least April 2012, Arena was also Leone's direct supervisor. Arena is currently associated with another member firm.

9. Andre V. LaBarbera entered the securities industry in 1990, when he associated with Stratton Oakmont, Inc. LaBarbera was associated with Newport Coast from July 22, 2008 through July 20, 2012 and registered as a General Securities Representative (Series 7). While associated with the Firm, LaBarbera worked from his home in Dix Hills, New York. He is currently associated with another member firm.

10. David M. Levy entered the securities industry in 1992, when he associated with Stratton Oakmont. Levy was associated with Newport Coast from July 22, 2008 through July 20, 2012 and registered as a General Securities (Series 7) Representative and General Securities Principal (Series 24). Levy worked from a branch office in West Palm Beach, Florida. He is currently associated with another member firm.

11. Antonio Costanzo entered the securities industry in 1995, when he associated with Monroe Parker Securities. Costanzo was associated with Newport Coast from July 22, 2008 through July 20, 2012 and registered as a General Securities Representative (Series 7). While associated with the Firm, Costanzo worked from his home in Chesapeake, Virginia. He is currently associated with another member firm.

12. Roman Tyler Luckey entered the securities industry in 1997, when he associated with Brookstreet Securities Corp. ("Brookstreet Securities"). Luckey was associated with Newport Coast from July 1, 2008 through October 15, 2012 and registered as a General Securities Representative (Series 7), General Securities Principal (Series 24), Equity Trader—

Limited Representative (Series 55), Registered Options Principal (Series 4), and Investment Banking Representative (Series 79). Although Luckey 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 (1) the Complaint was filed within two years after the effective date of termination of Luckey's registration with Newport Coast, namely, October 15, 2012, and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member.

13. Donald A. Bartelt entered the securities industry in 1985. From May 13, 2010 to the present, Bartelt has been associated with Newport Coast, where he is registered as a General Securities Representative (Series 7) and General Securities Principal (Series 24). Bartelt works from his home in Cave Creek, Arizona. His home office is a Newport Coast Office of Supervisory Jurisdiction.

III. OTHER INDIVIDUALS

14. KM entered the securities industry in 1986 and was registered with former NASD member firm Brookstreet Securities from January 1996 through June 2007, where she had multiple management responsibilities. In September 2007, KM became a consultant to Newport Coast's parent company, Rubicon. In November 2009, she became the Firm's President and CEO and served in those capacities until March 2013. She has not associated with another FINRA member since her Newport Coast association was terminated in November 2013.

15. KK has been associated with Newport Coast from August 2007. He is a Rubicon shareholder and has been the Firm's Chief Operating Officer since June 2008. He has had a

variety of management responsibilities that have included compliance duties, serving on the hiring committee, and directly supervising various representatives.

IV. FACTS

A. The Firm

16. On June 2, 2008, Newport Coast's pending Continuing Membership Application ("CMA") was approved and the Firm, then known as "Grant Bettingen, Inc.," became a wholly-owned subsidiary of Rubicon. At that time, the Firm had 51 registered representatives and 14 offices.

17. Rubicon is a publicly traded financial services holding company, operating through Newport Coast. Rubicon's Irvine, California based executive office was located in the same building that housed Newport Coast's main office before the Firm relocated to New York in 2013.

18. Rubicon hired KM as a consultant in August 2007 to assist in the Grant Bettingen acquisition. KM's tasks included making employment recommendations to facilitate approval of the pending CMA. Her recommendations resulted in the partial reconstitution of the failed Brookstreet Securities, the firm she had been associated with for more than 11 years. By June 2008, the Firm's management, including its President and Chief Compliance Officer, its Chief Operations Officer, Trading Director (Respondent Tyler Luckey), Registrations and Licensing Principal, and IT Manager were all Brookstreet Securities alumni.

19. Although the Firm had some traditional branch offices supervised by a resident Branch Office Manager, the Firm also had a large number of geographically scattered one-

person branch offices with a “Designated Supervisor” typically located in the Irvine, California home office. By June 2011, the Firm had 166 registered representatives and 66 branch offices.

20. Newport Coast, in theory, maintained at least two layers of supervisory review. First, Designated Supervisors and Branch Office Managers were responsible for reviewing all trading and ensuring that transactions were suitable. Second, the Compliance Department was responsible for reviewing the same transactions for suitability and received a variety of exception reports to facilitate that review. Certain transactions, including riskless principal transactions, required a third level of review by former Trading Director Tyler Luckey.

21. The accounts at issue should have attracted scrutiny because: (i) cost-to-equity ratios were high – often over 100%; (ii) there was an extraordinary amount of in-and-out trading; (iii) turnover rates were frequently over 100; (iv) accounts were frequently highly margined and concentrated in one security; (v) there were a large number of transactions in which the total commission per trade exceeded 3% and, in many instances, exceeded 4%; (vi) there was riskless principal and agency trading in the same account – higher cost trades were executed on a riskless principal basis and included markups that exceeded 3% of the principal whereas lower cost trades, typically involving sales of the same securities, were executed on an agency basis and included lesser commissions; (vii) inverse and/or leveraged ETFs and ETNs remained in accounts for multiple trading sessions; and (viii) nearly all of the accounts exhibited large losses. Many of the accounts frequently appeared on exception reports.

22. Although Designated Supervisors and Compliance personnel saw what was transpiring, the Firm did nothing to curtail the misconduct until April 2012, when, as a result of a FINRA examination, some of the representatives were placed on heightened supervision.

B. The Westbury Branch

1. THE WESTBURY OVERVIEW

23. Leone was 25 years old when he associated with Kensington Wells in September 1993. By the time he associated with Newport Coast in October 2008, he had been associated with twelve firms (two of which reported his involuntary termination/separation) and had been the subject of at least seven customer complaints and a proceeding by the Ohio Department of Commerce to revoke his Securities Salesperson license.

24. At Newport Coast, Leone was part of a ten-person branch office located in Long Island, New York and, as of 2009, was supervised by Branch Officer Manager Marc Arena. Leone worked from his home office (initially in East Northport, New York, and later in Sandy Hook, Connecticut). He seldom appeared in the Long Island office, and Newport Coast managers rarely appeared at Leone's home.

25. Although Newport Coast paid Leone about 84% of his gross commissions, Leone was financially stressed, and Newport Coast was aware of this fact. In 2010, he sought advances from the Firm because he could not pay his bills (July 2010), could not afford to pay his state registration fees (October 2010) and could not afford to pay his taxes (November 2010).

26. Leone acquired customers through cold calls. When a lead agreed to open an account, Leone immediately caused a New Account Approval Form, which was fully completed except for signatures, to be sent to the prospective customer by Federal Express. Initial trades often were executed before documents were signed and accounts were funded.

27. Leone exploited his customers soon after their checks arrived. Their accounts exhibited hundreds of transactions (often involving multiple transactions per day), in-and-out

trading, extensive use of margin, concentration in single securities, annualized turnover rates ranging from 43 to 173, annualized cost-to-equity ratios ranging from 89% to 280% and large losses.

28. Marc Arena, Leone's direct supervisor, knew that Leone was concentrating accounts, trading them on a daily basis, and charging excessive amounts. But Arena took no effective steps to curtail Leone's conduct.

29. The Firm's Compliance Department was also aware of the misconduct. It received a variety of exception reports including: (i) a monthly report that identified accounts in which there had been more than ten trades and in which commissions exceeded \$2,000 ("PFS603");¹ (ii) a daily report which displayed accounts in which the largest position constituted at least 75% of the account equity and which carried a debit balance greater than \$25,000 ("PFS048"); and (iii) a daily report showing commissions on individual transactions that exceeded 3% of the principal amount. Leone's customers appeared on these reports on many occasions. Yet Newport Coast's Compliance Department also failed to act.

2. LEONE CUSTOMER ACCOUNTS

a. Customer DG.

30. DG resides with his wife and children in Los Alamitos, California and is the president of his family owned sheet metal company. In May 2008, Leone cold called and persuaded him to open an account at Basic Investors. At the time, DG's investment experience was limited to the mutual funds that he held in his retirement account.

31. In October 2008, after he moved to Newport Coast, Leone directed DG to transfer his account, and faxed him a handwritten New Account Approval Form.

¹ The PFS603 report also displayed the number of trades and the amount of commissions for that month and year to date.

32. The New Account Approval Form was replete with inaccuracies and exaggerations, some of which DG noticed. It incorrectly listed his liquid net worth to be “\$250,000 - \$499,000.” DG crossed out the check mark in front of the “\$250,000 - \$499,999” box and noted the correct estimation to be “\$65,000 – \$124,999.” The New Account Approval Form inaccurately stated that DG had “2” dependents. He crossed that out and indicated that he had “5” dependents. He did not observe that the New Account Approval Form incorrectly listed his net worth exclusive of his primary residence to be “\$1,000,000 – Over,” nor did he notice that the New Account Approval Form incorrectly listed his “Investment Experience” in stocks as “20 yrs.” In fact, his net worth exclusive of his residence was about \$600,000, and he had virtually no experience buying individual stocks or using margin.

33. In November and December 2008, DG funded his Newport Coast account by transferring securities worth \$67,000 (from his Basic Investors account) and depositing cash totaling \$92,113.15. Leone immediately began trading DG’s account rapidly.

34. In November 2008, Leone executed 55 settled transactions (25 purchases with a principal value of \$688,856.30, thirty (30) sales with a principal value of \$659,604.71, and total commissions and charges amounting to \$11,775.15). In December 2008, there were 42 settled transactions (20 purchases with a principal value of \$1,066,677.50, twenty two (22) sales with a principal value of \$1,108,493.58, and total commissions and charges amounting to \$10,332.19). More than half of Leone’s December 2008 payout was based on DG’s account.

35. Leone controlled DG’s account. He chose the stocks that were purchased, the quantities of each purchase, and determined when the stocks would be sold. DG was unfamiliar with many of the securities that were purchased and sold. Indeed, he and Leone rarely

discussed the transactions. Although Leone traded frequently, often many times in a given day, he seldom spoke with DG.

36. By February 2009, DG's account value had dropped to only \$7,394.88. In March 2010, Leone faxed an "Active Trading Authorization" form to DG. The middle of the form contained a pre-printed "Investor Statement" that read:

I am a sophisticated investor with substantial personal experience in trading stocks. While my investment decisions may be based upon the recommendations of my Newport Coast Securities Inc. Account Executive, I will closely monitor my portfolio to ensure that my active trading strategy remains appropriate. As to my trading strategy, my primary investment objectives: Speculation/ growth / capital appreciation/ high risk / please circle all that apply I understand and am financially able to handle the risk of my actively traded account.

I have read the above statement and I agree to inform you in writing if this information or my objectives changes.

Beneath that statement, Leone circled "high risk," handwrote DG's name (which he misspelled) and account number, and faxed the unsigned document to DG with a handwritten note that said "please sign."

37. DG took umbrage at the "sophisticated investor with substantial personal experience in trading stocks" description and refused to sign the inaccurate form. Instead, he drew a large "X" through the document and returned the unsigned form to Leone. Newport Coast later produced to the staff an Active Trading Authorization in which the "X" was carefully "whited out" and DG's signature was forged.

38. Leone purchased, sold, and then repurchased the same securities on multiple occasions in DG's account. There were often multiple purchases and sales of the same security on the same day, with each transaction including a commission as well as a \$22.50 "Additional Fees" charge. Moreover, Leone often split transactions so that a single order would result in multiple commissions.

39. From February 9, 2009 through June 24, 2009, Leone executed 111 transactions in Bank of America (BAC) (generating commissions of more than \$11,000); from November 4, 2008 through November 19, 2008, Leone executed 41 transactions in Dry Ships Inc. (DRYS) (generating commissions of more than \$4,300); and from September 15, 2009 through November 20, 2009, Leone executed 40 transactions in Cel-Sci Corporation (CVM) (generating commissions of more than \$3,700).

40. From January 31, 2009 through April 8, 2010, Leone executed 654 trades in DG's account. The commissions amounted to \$62,655.59, and the total charges and fees were \$76,309.07.

41. The turnover rate for DG's account (annualized from November 2008 through March 2010) was 137.56; the annualized cost-to-equity ratio was 169.75%.

42. DG had sustained an \$114,447.86 loss by the time he closed his account in April 2010.

b. Customer BS.

43. BS resides in Roswell, Georgia and works at an accounting firm, where he specializes in audits of businesses that utilize tax credits.

44. In late February or early March 2011, Leone cold called BS and persuaded him to open a Newport Coast account. BS had recently received a \$77,500 distribution from his firm and agreed to fund his account with the proceeds, but he told Leone that he could not afford to lose more than \$5,000 because he would owe taxes on the distribution in the near future.

45. Shortly thereafter, BS received, by Federal Express, a pre-completed New Account Approval Form. BS signed the New Account Approval Form but did not notice that it

mischaracterized his objective as “Short term growth with high risk,” exaggerated his investment experience to include 100 stock purchases per year with an average size of \$25,000, and reported that the account was “Day Trading Approved” and “Margin Approved,” even though Leone had never discussed day trading” or margin.

46. BS deposited \$7,600 into his account on March 28, 2011 and an additional \$70,100 in early April 2011. Leone traded his account rapidly immediately thereafter.

47. Leone executed 61 transactions in BS’s account in April 2011 (30 purchases with a principal value of \$681,789.24 and 31 sales with a principal value of \$574,549.38); 63 transactions in May 2011 (35 purchases with a principal value of \$873,326.30 and 28 sales with a principal value of \$874,869.23); and 34 transactions in June 2011 (14 purchases with a principal value of \$407,125.11 and 20 sales with a principal value of \$433,542.45).

48. The payout generated from BS’s account transactions represented, for a short period (May and June 2011), more than half of Leone’s compensation. Within three months, *i.e.*, by the end of June 2011, BS’s account value had diminished by about two-thirds to \$23,731.21.

49. Leone controlled BS’s account; he did not consult with BS before making account transactions. He chose the stocks that were purchased, the quantities, and determined when the stocks would be sold. BS did not scrutinize his trade confirmations because it was tax season, a particularly busy time for him. Moreover, he did not have online account access.

50. In late May 2011, Newport Coast mailed BS an Active Trading Authorization purportedly to ensure that account transactions were consistent with his objectives. After BS received the Form, Leone asked him to indicate that “Speculation” was his primary investment objective and to return the document to Newport Coast. BS ignored Leone’s request to

mischaracterize his objectives, and instead circled what he intended, namely “growth” and “capital appreciation,” and returned the Form to Newport Coast.

51. In early June 2011, Newport Coast returned BS’s executed Active Trading Authorization with Leone’s business card and an attached “post-it” that stated “Please Call When you Recieve [sic] Thanks.” In an ensuing conversation, Leone again asked BS to return the Form with “Speculation” circled. BS never returned the Form.

52. BS did not receive an account statement until late June 2011. He was stunned when he saw the volume of trading, the use of margin, and the losses. He promptly called the Firm and demanded that the trading stop.

53. From April through June 2011, Leone executed 158 trades in BS’s account. During that three month period, the commissions amounted to \$9,282.25, and the total charges and fees were \$13,948.18.

54. The turnover rate (annualized from April 2011 through June 2011) was 172.84; the annualized cost-to-equity ratio was 120.12%.

55. BS sustained a \$53,968.79 loss as of June 2011.

c. Customer JB.

56. Customer JB resides in Brandon, Mississippi. For the past 16 years, he has been a sales representative for a wholesale shoe company.

57. In early 2010, JB was telephonically introduced to Leone through a neighbor, RR, who was a Leone client. JB told Leone that his objective was “growth.” He never consented to, or even discussed, margin transactions.

58. Immediately after JB agreed to open an account, Leone sent a New Account Approval Form, by Federal Express. JB signed and returned the New Account Approval Form

but failed to notice that it incorrectly listed his investment objective as “Short term growth with high risk (Appreciation with acceptance of high risk)” and exaggerated his “Investment Experience” to, among other things, include 100 equity purchases per year with an average size of \$10,000. In fact, for the past 25 years, JB’s investment experience has been limited to mutual funds.

59. JB deposited \$45,000 on March 9, 2010 and an additional \$20,000 on April 7, 2010. Leone traded JB’s account rapidly immediately after it was funded. He executed 52 transactions in March 2010 (30 purchases with a principal value of \$590,957.01 and 22 sales with a principal value of \$555,049.58); 50 transactions in April 2010 (32 purchases with a principal value of \$320,242.88 and 18 sales with a principal value \$276,669.82); and 57 transactions in May 2010 (32 purchases with a principal value of \$765,836.77 and 25 sales with a principal value of \$841,024.09). Leone’s payout from JB’s account activity represented more than half of his total compensation in May and June 2010.

60. Leone controlled JB’s account. He chose the stocks that were purchased, the quantities, and determined when the stocks would be sold. He did not consult with JB before account transactions. Indeed, JB and Leone rarely spoke. Moreover, JB did not have online access to his account and, for several months after he opened the account, did not receive account statements.

61. JB’s communications with Leone were limited to emails inquiring about his account balance. On at least five occasions, Leone responded by overstating, in amounts ranging from \$1,165 to \$5,222, JB’s account value.

62. JB was unaware of the extent of the trading until April 2011, when the accountant who was preparing his tax return informed him that there had been millions of dollars of transactions.

63. In April and May 2011, JB directed Leone, on three occasions, to close his account. On May 3, 2011, Newport Coast finally sent him his remaining \$1,441.62 balance.

64. Leone purchased, sold, and then repurchased the same securities on multiple occasions in JB's account. For example, from May 9, 2010 through September 30, 2010, Leone executed 75 transactions in YRC Worldwide, Inc. (YRCW); from September 16, 2010 through April 26, 2011, Leone executed 65 transactions in BSD Medical Corp. (BSDM); and from March 16, 2010 through April 25, 2011, Leone executed 54 transactions in Star Scientific (CIGX).

65. JB's account was often concentrated in one or two securities and highly margined. Moreover, Leone often split transactions and charged multiple commissions for a single order.

66. From March 2010 through April 2011, Leone executed 411 transactions in JB's account. The commissions and markups amounted to \$39,152.91, and the total charges and fees amounted to \$49,113.46.

67. The turnover rate (annualized from March 2010 through April 2011) was 144; the annualized cost-to-equity ratio was 171.50%.

68. JB sustained a \$63,558.38 loss as of April 30, 2011.

d. Customer PH.

69. PH resides in Brandon, Mississippi with her husband RR. She has operated a dry cleaning business since 2003.

70. RR had been a Leone customer for four months, when, in September 2009, he introduced PH to Leone. At the time, PH's investment experience was limited to blue chip stocks and municipal bonds.

71. After a telephone call, Leone sent PH, by Federal Express, a New Account Approval Form. PH signed and returned the New Account Approval Form but failed to notice that it mischaracterized her investment objective as "Short term growth with high risk." In fact, PH was unwilling to take "high risk" and never sought "short term" growth. Although the New Account Approval Form stated that she was margin approved, PH had never previously used margin and never agreed to its use in her account.

72. In early October 2009, PH deposited \$20,000 to fund her account. Leone, in turn, rapidly traded her account. From September 2009 through June 2010, Leone executed more than 200 transactions.

73. Leone controlled PH's account. He chose the stocks that were purchased, the quantities, and determined when the stocks would be sold. PH had never heard of many of the stocks that Leone was buying and selling and never discussed the transactions before they were executed. Indeed, PH almost never spoke with Leone after she opened her account.

74. Leone used large quantities of margin in PH's account. At the end of November 2009, the margin balance (\$21,576.45) exceeded the total account value (\$19,023.57).

75. Leone also purchased, sold, and then repurchased the same securities on numerous occasions. For example, from October 2009 through June 2010, Leone executed 31 transactions in YRC Worldwide (YRCW), 26 transactions in Cel-Sci Corp. (CVM) and 22 transactions in Vivus, Inc. (VVUS).

76. Leone also frequently split transactions so that a single order would result in multiple commissions.

77. From September 30, 2009 through June 18, 2010, Leone executed 212 trades in PH's account. The commissions amounted to \$9,270, and the total charges and fees were \$14,340.25.

78. The turnover rate (annualized from October 2009 through June 2010) was 114.87; the annualized cost-to-equity ratio was 154.74%.

79. PH sustained a \$14,692.44 loss by the time she closed her account in June 2010.

e. Customer RR.

80. RR resides with his wife, PH, in Brandon, Mississippi. He has operated a furniture upholstery business since 1982.

81. In early 2009, Leone cold called RR and represented that he could make him "tons of money" and "double his investment." After repeated calls, RR agreed to open a Newport Coast account. Leone promptly sent him a New Account Approval Form that was fully executed except for RR's signature.

82. Although RR told Leone that he was a conservative investor, when he signed the New Account Approval Form, he failed to notice that it mischaracterized his investment objective as "Short term growth with high risk (Appreciation with acceptance of high risk)." And although RR's investment experience was limited to mutual funds, the New Account Approval Form mischaracterized his experience to include "10 yrs" of stock experience.

83. RR funded his Newport Coast account with a total of \$40,505, beginning with deposits totaling \$26,285 in June 2009.

84. Leone executed transactions in RR's account at a frenzied pace. In August 2009, Leone executed 109 transactions (58 purchases with a principal value of \$791,746.89, and 51 sales with a principal value of \$787,061.65); in September 2009, Leone executed 118 transactions (58 purchases with a principal value of \$935,626.71, and 60 sales with a principal value of \$1,137,712.07); in October 2009, Leone executed 124 transactions (64 purchases with a principal value of \$814,410.44, and 60 sales with a principal value of \$794,450.91); and in November 2009, Leone executed 99 transactions (55 purchases with a principal value of \$1,395,264.92, and 44 sales with a principal value of \$1,264,094.99).

85. Leone's payouts from these August through November 2009 transactions represented 40% to 50% of his total monthly compensation.

86. Leone controlled RR's account. He chose the stocks that were purchased, the quantities, and determined when they would be sold. Indeed, RR had never heard of the stocks that Leone was trading. Moreover, he rarely spoke to Leone before a trade was executed.

87. Despite the trading volume, for a brief period, RR's account was profitable. RR told his wife, PH, his neighbor, JB, and his work acquaintance, CP, about that initial profitability and gave their telephone numbers to Leone.

88. After August 2009, RR's account steadily declined. His account, worth \$132,318.32 on August 31, 2009, had diminished to \$32,707.97 by April 30, 2010.

89. Leone frequently purchased, sold and then repurchased the same securities. For example, from September 11, 2009 through June 15, 2010, Leone executed 108 transactions in YRC Worldwide, Inc. (YRCW); from July 30, 2009 through November 11, 2009, Leone executed 97 transactions in Cel-Sci Corp. (CVM); and from July 22, 2009, through November 17, 2009, Leone executed 90 transactions in Novovax, Inc. (NVAX).

90. RR's account was often highly margined and concentrated in single securities. In November 2009, the margin balance (\$84,664.09) exceeded the total account value (\$77,736.97).

91. Leone often split transactions in RR's account so that a single order would result in multiple commissions.

92. From May 2009 through June 2010, Leone executed 940 transactions in RR's account. The commissions, through May 2010, amounted to \$74,378.10, and the total charges and fees totaled \$96,920.41.08.

93. The turnover rate (annualized from June 2009 through May 2010) was 125.40; the annualized cost-to-equity ratio for the same period was 150.43%.

f. Customer CP (OFC of L).

94. CP resides in Port Allen, Louisiana with her 18-year-old daughter and 87-year-old mother. Since 2007, CP has been an independent representative for commercial furniture companies. She conducts business through her corporation, OFC of L and is the company's sole owner and employee.

95. In September 2009, CP was introduced to Leone by her friend, RR. Her investing experience was limited to a \$200,000 retirement account that she had inherited from her deceased husband and that was managed by a broker whose recommendations she always followed.

96. CP told Leone that she was a single parent who could not afford to lose what she was investing. Her goal was simply to receive a better rate of return than she had been receiving on her bank savings account.

97. Leone sent CP a New Account Approval Form that was wholly inaccurate. Although her income was about \$50,000 per year and her net worth was about \$250,000, the New Account Approval Form reported that her annual income was “\$125,000 - \$249,999” and her net worth was “\$1,000,000 – Over.” Although she had no significant investment experience, the New Account Approval Form reported that she had “Over 10 Years” of stock investing experience including 100 purchases per year with an average size of \$10,000. And although she told Leone that she could ill afford any losses, the New Account Approval Form described her objective as “Short term growth with high risk (Appreciation with acceptance of high risk).”

98. CP did not focus on those inaccuracies but noticed that the New Account Approval Form indicated her account was “Margins [sic] Approved.” CP scratched out the “yes” under “Margins [sic] Approved” and wrote “no.” On her Customer Signature Card she wrote, *“I do not want to participate in any margin acts or short selling.”*

99. After trading CP’s account in October 2009, Leone instructed CP to transfer the \$17,362.13 balance to a joint account that CP opened with her daughter in November 2009. No trades were executed in this joint account.

100. In December 2009, Leone told CP that her account was required to be held under her business name, “OFC of L” and sent her another a New Account Approval Form that contained the same mischaracterizations of her income, net worth, experience and objective.

101. CP initially agreed to put \$10,000 into the OFC of L account, but Leone persuaded her to deposit a larger amount. On January 29, 2010, CP funded the account with a \$15,000 deposit.

102. Leone rapidly traded CP's OFC account. By the end of April 2010, the account was worth about \$8,600.

103. Despite the minimal funding, Leone purchased, sold and repurchased the same securities. For example, from February 24, 2010 through June 5, 2010, there were 18 transactions in YRC Worldwide Inc. (YRCW); from March 23, 2010 through July 7, 2010, there were 15 transactions in Star Scientific (CIGX); and from February 17, 2010 through June 8, 2010, there were 11 transactions in Ambac Inc. (ABK).

104. Leone controlled CP's account and made all of the account decisions; he decided what to buy and sell, the amounts, and when the transactions would occur. On the few occasions that they spoke, Leone always assured CP that everything was going well. When CP questioned the activity and told him to stop trading, Leone told her that she was profiting more than she was paying in commissions and continued executing trades.

105. In July 2010, CP withdrew the remaining \$6,103.03 balance and closed her account.

106. From February 2010 through July 2010, Leone executed 87 trades in CP's OFC account. The commissions amounted to \$2,745, and the total charges and fees were \$4,757.09.

107. The turnover rate (annualized from February 2010 through July 2010) was 96.68; the annualized cost-to-equity ratio was 118.46%

108. CP's OFC of L account sustained an \$8,896.97 loss by the time she closed it in July 2010.

g. Customers LC and MC.

109. LC is a former combat helicopter pilot who resides with his wife, MC, in Oxnard, California. After his army discharge, he operated a franchise business that provided

computer education for children and was also involved in government contracting work assisting small companies with their computer operations. LC is partially disabled and has been retired since 2006.

110. Leone cold called LC in mid-2010, touted BSD Medical Corp., and claimed that he had a personal contact at the company. In October 2010, after several more calls, LC agreed to open a Newport Coast account.

111. Within about a day, LC received, by Federal Express, a pre-completed New Account Approval Form to open a joint account with his wife. At the time, LC's investment experience was limited to mutual funds and a small discount brokerage account that was invested in blue chip stocks. He had no experience with margin and Leone never broached the subject.

112. LC signed the New Account Approval Form, but failed to notice that it exaggerated his experience, objective and net worth. It reported that he had "over 10 years" of experience with stocks and averaged 100 purchases per year with an average size of \$10,000. In fact, LC was a conservative investor because he was unable to work and relied on disability payments and his wife's public school teacher salary. But the New Account Approval Form mischaracterized his investment objective as "Short term growth with high risk." Moreover, LC's and MC's net worth was not, as the New Account Approval Form stated, "1,000,000 – Over." Their net worth, including their home, was less than \$700,000.

113. In late October and early November 2010, LC funded his account with two deposits totaling \$54,107.50. Leone started trading immediately. In November 2010, there were 55 settled transactions (28 purchases and 27 sales); in December there were 140 settled trades (70 purchases totaling \$1,747,748.47, and 70 sales totaling \$1,642,302.02); in January

2011 there were 66 settled transactions (29 purchases totaling \$896,283, and 37 sales totaling \$1,014,966.53).

114. Leone also purchased, sold and then repurchased the same securities, particularly BSD Medical Corp. (BSDM) on multiple occasions. Leone executed 42 BSDM transactions in November 2010 and another 52 BSDM transactions in December 2010.

115. Leone controlled LC's and MC's account and made all of the decisions; he chose the securities, the quantities, and the timing of the transactions. He did not call LC to discuss or approve transactions and he almost never spoke with MC.

116. Although LC had repeatedly asked Leone for a fee schedule, none was provided. But Leone represented to LC, albeit falsely, that he would only be charged for profitable trades. Leone never told him what a transaction would cost, nor did he describe his practice of splitting transactions so that a single order would result in multiple commissions, often inordinately high.

117. Leone charged LC \$5,000 commissions on November 9, 2010 (broken up into five transactions) and again on November 11, 2010 (broken up into six transactions) on sales of BSDM. On January 11, 2011, Leone charged LC total commissions of \$7,270.25 on a BSDM sale broken up into 11 separate transactions.

118. Despite the trading frequency, for a short period of time, LC's and MC's account was profitable. Leone reminded LC of the unrealized profit and hounded him for more money and the names of others whom he could solicit.

119. On January 12, 2011, Leone emailed LC stating,

I hate to keep bring it up but any word on your friend [?] if he is not interested I understand but if I knew someone with the type of returns your [sic] seeing I would mortgage the farm Doug

120. On January 13, 2011, Leone emailed:

Don't forget the more bullets I have I feel we will do even better.

121. In mid-January 2011, LC acquiesced and deposited an additional \$28,000.

122. In February 2011, Leone executed 82 trades in LC's account (including 33 BSDM transactions). That month, LC lost about two-thirds of his account equity. His account, worth \$128,225.83 at the end of January 2011, was worth only \$49,380.61 on February 28, 2011.

123. LC attempted to reach Leone by telephone on multiple occasions, but Leone rarely returned the calls. When LC left messages at the Firm's main office, no one responded.

124. In April 2011, LC finally closed his account by directing that the remaining account holdings, worth about \$27,000, be transferred to another firm.

125. From October 2010 through April 2011, Leone executed 432 trades in LC's and MC's account (including 204 transactions in BSDM). The commissions amounted to \$55,518.82, and the total charges and fees were \$67,149.01.

126. The turnover rate (annualized from October 2010 through April 2011) was 137.49; the annualized cost-to-equity ratio was 184.92%.

127. LC and MC sustained a \$54,568.02 loss by the time they closed their account in late April 2011.

h. Customer MJ.

128. MJ resides with his wife and children in Hagerstown, Maryland. Since 2003, he has been the owner and principal of a commercial refrigeration company.

129. In early 2010, Leone called MJ and urged him to open a Newport Coast account. MJ did not initially agree but Leone persisted and, for the next six months, repeatedly called. In

September 2010, MJ relented and agreed to open an account and deposit \$5,000. At the time, he had minimal investing experience, no experience with margin, and almost no experience purchasing individual stocks.

130. Shortly thereafter, MJ received by Federal Express, a New Account Approval Form and Margin Agreement with an “X” in the places that required his signature. MJ signed but did not notice that the New Account Approval Form overstated his investment experience to include “10” years of equity investing and misidentified his investment objective as “Short term growth with high risk (Appreciation with acceptance of high risk).” MJ had told Leone that he desired long term growth but also required liquidity in the event he needed to use account equity to fund his business.

131. On September 23, 2010, Leone executed an initial transaction (a purchase of 1,400 BSDM shares) two weeks before MJ made the \$5,000 deposit. He began executing additional trades immediately after the account funded and also prevailed upon MJ to deposit additional funds.

132. On November 4, 2010, MJ deposited \$4,227.50 and, on December 7, 2010, made a final deposit of \$13,057.42. Leone’s trading accelerated with each deposit.

133. In October 2010, Leone executed seven transactions (5 purchases with a principal value of \$17,416.58, and two sales with a principal value of \$24,165.65); in November 2010, Leone executed 15 transactions (11 purchases with a principal value of \$151,464.95, and four sales with a principal value of \$107,978.72); and in December 2010, Leone executed 33 transactions (19 purchases with a principal value of \$308,920.02, and 14 sales with a principal value of \$316,113.56).

134. MJ was unfamiliar with the stocks that Leone was buying and selling. Leone controlled MJ's account and decided what to buy and sell, the quantities, and the timing of each transaction. He did not discuss the account activity with MJ. In fact, Leone never called after MJ agreed to deposit additional funds.

135. By the end of November 2010, MJ had a margin loan balance that exceeded \$36,000. MJ, however, was unaware that he was purchasing securities on margin and incurring margin interest charges until February 2011, when his accountant inquired about the trading that had transpired and charges that he had incurred. After that inquiry, MJ repeatedly attempted to contact Leone but his telephone calls were never returned. Leone continued executing transactions through September 2011.

136. Leone purchased, sold, and then repurchased the same securities on multiple occasions in MJ's account. For example, from September 23, 2010 through September 21, 2011, Leone executed 66 transactions in BSD Medical Corp. (BSDM); from December 15, 2010 through May 31, 2012, Leone executed 15 transactions in Vermillion, Inc. (VRML); and from January 12, 2011 through January 27, 2011, Leone executed 10 transactions in Aastrom Biosciences, Inc. (ASTM).

137. From September 23, 2010 through September 21, 2011, Leone executed 139 trades in MJ's account. The commissions totaled \$12,463.09, and the total charges and fees were \$16,159.76.

138. The turnover rate (annualized from September 2010 through September 2011) was 151.91; the annualized cost-to-equity ratio was 280%.

139. MJ sustained a \$21,606.20 loss as of September 30, 2011.

3. BRANCH MANAGER MARC ARENA FAILS TO SUPERVISE LEONE

140. Marc Arena entered the securities industry in 1996 as a cold caller at Duke & Co., Inc. During the succeeding fourteen years, he associated with half a dozen firms before joining Newport Coast in October 2008.

141. Arena became the Branch Office Manager of the Hicksville (later moved to Westbury), Long Island Branch Office about five months after he associated with the Firm. At the time, the Branch had about ten representatives. Although Arena had been registered as a General Securities Principal since 1998, he had no supervisory experience. Moreover, Arena was financially distressed; he was subject to federal and state tax liens.

142. Newport Coast provided Arena with significant remuneration for becoming the Branch Office Manager. His payout (previously at 78% of his gross production) rose to 90%. He also received an override on each representative's production that amounted to the difference between 90% and the representative's payout. Thus, for example, Arena received a 6% override on Leone's 84% payout.

143. In his Branch Officer Manager capacity, Arena was responsible for reviewing transactions, monitoring for excessive trading and ensuring transactions were suitable. Arena approved new accounts and reviewed transactions, but he did not provide any meaningful oversight.

144. He knew that Leone was concentrating and heavily margining accounts, was aware that Leone's customers were losing money, and knew that Leone was overcharging and excessively trading accounts. Yet his supervision was limited to reviewing what Leone charged on individual transactions. Arena never asked Leone to cease breaking up transactions into multiple orders, each of which included a separate commission, nor were there any

consequences when Leone ignored his few and scattered emails addressing isolated transactions.

145. Arena never verified a customer's investment objective, never performed a profit and loss analysis or change of equity calculation, never calculated a turnover rate or cost-to-equity ratio, never inquired about why trades were broken up into multiple orders resulting in multiple commissions, never initiated a call to a customer (aside from his own accounts), never looked at customer account statements or examined account activity over time and, above all else, never spoke to a customer about his or her account.

146. Arena ceased being Leone's supervisor as of May 3, 2012, when the Firm placed Leone on heightened supervision.

4. THE COMPLIANCE DEPARTMENT FAILED TO STOP LEONE'S MISCONDUCT

147. Newport Coast attributed dual and overlapping supervisory responsibilities to its Compliance Department. The Firm's Compliance Department received exception reports to facilitate its suitability review. Indeed, some of the reports were specifically referenced in the Firm's procedures. For accounts that cleared through Penson, the Procedures referenced (i) a "Concentrated Positions" Report that identified accounts with margin debits greater than \$25,000 *and* a position that exceeded 75% of the account equity (denominated PFS048); and (ii) a "Maintenance Report" that identified accounts where one position represented 40% equity or more in the account (denominated PFS076). Compliance also received a "Customer Account Surveillance" Report that identified, on a monthly basis, accounts with more than 10 trades *and* commissions that exceeded \$2,000 (denominated PFS603), and a daily report that identified commissions between 3% and 5%.

148. Leone's customer accounts, including accounts held by DG, RR, PH, CP, JB, LC and MC, MJ and BS, repeatedly appeared on the foregoing exception reports.

149. Until October 2010, Newport Coast also received an exception report entitled "Monthly Account Supervision" (denominated PFS259). That report was particularly germane to excessive trading/churning. It identified by representative and account: current and previous period account values; the amount of commissions in the current month, the past three months, and over the past 12 months; annualized turnover rates for the current month, the past three months, and over the past 12 months; profit and loss during the current month, the past three months, and over the past 12 months; and the percentage that the account's commissions represented in comparison to the representative's total commissions.

150. For example, the PFS259 report dated October 1, 2010 showed that customer JB had been charged commissions of \$2,425 in the current month and \$27,575 over the preceding year; his account had an annualized turnover rate of 218 in the current month and 144 over the past year; there had been 38 transactions in the current month and 308 in the past year; the account generated 21.95% of Leone's commissions over the preceding three months; and the account had sustained a \$27,732.86 loss in the preceding three months.

151. Despite the many times that accounts appeared on the exception reports received by the Firm's Compliance Department, there was no meaningful supervision. Leone was never asked to explain his trading; there was no periodic review of active accounts; there was no documented reason for account concentrations; no client was interviewed; and there was no trading limitation. The "supervision" was limited to a smattering of emails – most of which were ignored – requesting that Arena and Leone obtain Active Trading Letters showing that the customer's objectives were "speculation" and "high risk."

C. Marc Arena Fails to Disclose Liens on Form U4

152. When Arena associated with Newport Coast, he was subject to three tax liens totaling nearly \$60,000: an Internal Revenue Service lien filed May 16, 2007 in the amount of \$27,479; an Internal Revenue Service lien filed July 9, 2008 in the amount of \$1,042; and an Internal Revenue Service lien filed July 11, 2008 in the amount of \$31,519.

153. Arena failed to disclose any of those liens on the Form U4 that he completed on October 28, 2008 to associate with Newport Coast. Moreover, while he was associated with the Firm, he never updated his Form U4 to disclose those liens.

154. Arena acquired three additional liens while he was associated with the Firm: a New York State lien filed November 20, 2008 in the amount of \$782; a New York State lien filed September 30, 2009 in the amount of \$5,885; and a New York State lien dated June 29, 2010 in the amount of \$7,874.

155. While associated with Newport Coast, Arena failed to update his Form U4 to disclose any of the three New York State liens.

D. The East End Partners

1. OVERVIEW

156. Former Newport Coast representatives David M. Levy, Antonio Costanzo and Andre V. LaBarbera were equal shareholders in East End Partners, Ltd (“EEP”), an entity through which they shared commissions.

157. Levy entered the securities industry in 1992, after he responded to a newspaper advertisement and associated with Stratton Oakmont. He associated with nine firms, three of which (Stratton Oakmont, Monroe Parker Securities, and Biltmore Securities) were expelled from NASD membership, before joining Newport Coast in July 2008.

158. Costanzo became a securities industry professional in 1995, when Levy, his childhood friend, recruited him to join Monroe Parker as a trainee.

159. LaBarbera entered the securities industry when he associated with Stratton Oakmont in 1990. He met Levy and Costanzo in 1998 at State Street Securities. Later that year, they formed EEP.

160. Levy, Costanzo and LaBarbera were recruited to join Newport Coast by KM, KK, and Tyler Luckey. While associated with Newport Coast, Levy worked from a non-OSJ branch office in West Palm Beach, Florida, Costanzo worked from his home in Chesapeake, Virginia, and LaBarbera worked from his home in Dix Hills, New York. But despite their geographical separation, they shared commissions and expenses. Their Designated Supervisor, Luckey, was the Firm's Managing Director of Trading, who worked at the Firm's Irvine, California home office.

161. Levy, Costanzo and LaBarbera received an 80 to 85% payout based on their monthly gross production. KM, the Firm's CEO as of November 2009, received a 1% override on their transactions.

162. Levy, Costanzo and LaBarbera acquired customers through cold calling. When a lead agreed to open an account, they sent, by Federal Express, pre-completed new account documents and margin agreements with a highlighted "X" or a "Sign Here" sticker for the customer's signature. Federal Express envelopes were enclosed to facilitate the customers' return of the documents and the accompanying checks. Trading often began, however, before documents were signed and accounts were funded.

163. Levy, Costanzo and LaBarbera created and included in the new account documents an "Active Trading Authorization" which masqueraded as a "welcome letter." The

letter “welcomed” the customers and then stated, “[a]s per our conversations and previous transactions, we have been executing a strategy designed around short term trading” and purported to authorize aggressive short term trading. But there were typically not any previous transactions, and the minimal discussion or discussions did not address “aggressive short term trading.”

164. Even more deceptive was Levy’s, Costanzo’s and LaBarbera’s use of riskless principal and agency transactions. A riskless principal trade is a principal transaction where a member, after having received an order to buy, purchases the security as principal to satisfy the order to buy or, after having received an order to sell, sells the security as principal to satisfy the order to sell. It generally involves two orders but is the economic equivalent of an agency trade. The member firm is compensated through a markup or markdown over its cost. Levy, Costanzo and LaBarbera typically used riskless principal trades on purchases and charged markups that exceeded 3% of the principal (and in many cases were over \$1,000 per transaction). Lower cost trades, typically involving sales of the same securities that had been purchased on a riskless principal basis, were executed as agency trades, and usually included \$100 commissions.

165. Levy’s, Costanzo’s and LaBarbera’s customers had never heard of “riskless principal” trading, never heard of “markups” or “markdowns,” and did not realize that they were being charged exorbitant amounts. Their accounts incurred annualized cost-to-equity ratios that ranged from 52% to 142%, annualized turnover rates from 12 to 40, and, inevitably, sizable losses.

166. In some instances, customer losses were exacerbated by inverse and/or leveraged ETPs, often purchased on margin and held in concentrated positions, often for many sessions.

The customers – some of whom were elderly and inexperienced – knew nothing about these speculative and volatile products.

167. Luckey, Newport Coast's Manager of Trading, was Levy's, LaBarbera's and Costanzo's designated supervisor and responsible for reviewing their transactions and ensuring they were suitable. But Luckey never focused on his supervisory responsibilities. He never contacted a customer, nor did he consider cumulative charges or the profitability of any customer account. His "supervision" was limited to reviewing individual transactions and ensuring that the commission or markup on an individual transaction did not exceed 5% while ignoring the unreasonably high commissions and markups that were, in fact, being inappropriately charged to Levy's, Costanzo's and LaBarbera's customers.

168. The Firm's Compliance Department was also responsible for supervision and aware of the misconduct, but it failed to act. Luckey and the Firm's Compliance Department received daily reports identifying commissions over 3%. Levy's, Costanzo's and LaBarbera's accounts appeared on these reports with regularity.

169. The Firm's managers received a monthly exception report that displayed accounts with monthly activity that had 10 trades or commissions totaling \$2,000, a commission-to-equity ratio of 5, or a 10% loss of equity. The report also captured accounts with activity that met the following three-month criteria: 20 trades or commissions totaling \$5,000.00, a commission to equity ratio of 10, or a 10% loss of equity. From 2008 through 2012, Levy's, Costanzo's and LaBarbera's accounts appeared on this report on more than 100 occasions.

2. COSTANZO'S CUSTOMER ACCOUNTS

a. *Customer MZ.*

(i) *Pre-Wells Notice Activity*

170. Customer MZ is a retired high school teacher who resides in Erie, Pennsylvania. In January 2010, Costanzo called MZ and persuaded him to open a Newport Coast account. At that time, MZ, who was 75 years old, advised Costanzo that he was retired and had limited financial resources. He wanted to preserve his principal and did not want to assume any significant risk.

171. Shortly after that initial telephone call, Costanzo sent pre-completed new account forms by Federal Express. MZ saw some of the inaccuracies before he signed the various documents next to the circled "X." For example, he corrected the Account Information Form and handwrote "35K" to accurately reflect his \$35,000 yearly income. But he did not notice that the Form misidentified his investment objective as "Aggressive Growth." Nor did he see that the Form exaggerated his "Net Worth" exclusive of his residence as "500K." His total net worth *inclusive* of his home was about \$300,000.

172. Costanzo and MZ never discussed the EEP Active Trading letter that accompanied the new account documents. It was simply included with all of the other documents that were sent by Federal Express.

173. MZ funded his account from January through August 2010 with a total of \$21,634.17 drawn from cash in his checking account and transferred shares from a mutual fund and a unit investment trust.

174. Costanzo controlled MZ's account. He chose the stocks that were purchased, the quantities, and determined when they would be sold. MZ was unable to follow and understand the many trade confirmations that were arriving by mail.

175. From January 2010 through August 2011, Costanzo bought and sold \$864,144.77 worth of securities, utilized large amounts of margin, frequently concentrated the account in one security, and depleted MZ's account. By August 31, 2011, MZ's account was worth \$2,248.20.

176. Costanzo executed 23 riskless principal transactions in MZ's account, always on purchases. Nearly all of those transactions involved markups greater than 3.5% and frequently involved markups greater than 4%. On three occasions, the markups were \$1,000 or more. Costanzo always executed sales on an agency basis and charged commissions that ranged between \$25 and \$200. He never told MZ what a trade would cost and never explained "riskless principal" trading.

177. MZ also had no familiarity with inverse and/or leveraged ETPs, and Costanzo never discussed them. Yet from March through September 2010, he executed multiple transactions in MZ's account involving inverse and/or leveraged ETPs, often purchased those securities on margin, and held them in MZ's account for many trading sessions.

178. In February 2011, MZ suffered a stroke and was hospitalized for about two weeks. After his hospital discharge, he rented a room several miles from his home because he was unable to navigate the stairs. MZ's telephone calls were not forwarded to his rented room.

179. From March through August 2011, while MZ was recovering from his stroke in the rented room, Costanzo executed 17 trades and charged \$5,322.50 in commissions and

markups. In November 2012, when MZ had recovered sufficiently to return home, his account value was only \$2,248.20.

180. From January 2010 through August 2011, Costanzo executed 55 trades in MZ's account (27 purchases with a principal value of \$436,847.01 and 28 sales with a principal value of \$427,297.76). The commissions and markups amounted to \$18,652.50, and the total charges and fees amounted to \$19,629.09.

181. The turnover rate (annualized from January 2010 through August 2011) was 26.90; the annualized cost-to-equity ratio was 120.71%.

182. MZ sustained a \$19,385.97 loss as of August 31, 2011.

(ii) Post-Wells Notice Activity

183. On January 23, 2014, Enforcement staff issued a Wells Notice informing Costanzo that a preliminary decision had been made to charge him with sales practice violations in MZ's account.

184. Three weeks later, on February 13, 2013, Costanzo telephoned MZ and offered to pay him (in an amount between \$12,000 and \$15,000) but conditioned that offer upon MZ's refusal to cooperate with the FINRA staff. To that end, Costanzo orally dictated a letter for MZ to sign and provide to FINRA, which read as follows:

I will not be providing any testimony for any trials regarding this matter in the future. From this point forward[,] please do not contact me as I believe the process was misleading.

185. Costanzo further pressured MZ to sign by telling him that four other customers had signed similar letters and only he had not yet signed.

186. Costanzo telephoned MZ two days later to inquire whether he had signed. MZ, in turn, referred Costanzo to a local financial advisor who was assisting him.

b. *Customer AB.*

187. AB resides in Federal Way, Washington with his wife and a disabled adult son. He retired from a full time engineer position in 2003 but continued to work on a contract basis until 2011.

188. Costanzo initially cold called AB in 2010 and, over the succeeding few months, repeatedly called with equity investment recommendations. In January 2011, Costanzo called and recommended Take-Two Interactive, Inc. (TTWO). AB finally agreed to open an account and invest a small amount.

189. Costanzo said that he would buy and hold positions for at least six months to a year, which was consistent with AB's moderate risk tolerance. But Costanzo told him that his recommendations required that the account be characterized as "aggressive growth" and his risk tolerance as "speculation."

190. Immediately after AB agreed to open an account, Costanzo sent, by Federal Express, an EEP Active Trading Authorization and a pre-completed Account Information Form that stated AB's net worth exclusive of his primary residence was "500K." In fact, his net worth was about \$450,000 *inclusive* of the equity in his residence.

191. In January 2011, AB deposited \$2,473.50 to purchase 200 shares of TTWO. Costanzo said that he would not charge for purchases in AB's account and urged AB to invest an additional \$25,000 to purchase Savient Pharmaceuticals, Inc. (SVNT), a company that Costanzo claimed would "take off."

192. From January through March 2011, AB obtained credit union loans and made additional deposits. By March 2011, he had invested a total of \$28,209 in his Newport Coast account.

193. Costanzo controlled AB's account. He chose the stocks that were purchased, the quantities, and determined when stocks would be sold. AB, in turn, abandoned trying to follow the trade confirmations and to understand what was transpiring in his account.

194. In April 2011, Costanzo began executing transactions on a riskless principal basis. AB was unfamiliar with "markups" and "markdowns" and Costanzo never explained the concept or discussed principal trading.

195. In November 2011, Costanzo orally asked AB for permission to trade without contacting him and thereafter stopped calling. That month, without AB's knowledge, Costanzo also began executing short sales in AB's account.

196. From January 2011 through March 2012, Costanzo executed 39 transactions (20 purchases with a principal value of \$603,464.95 and 19 sales with a principal value of \$587,909.50); 17 were on a riskless principal basis, in which the markups/markdowns ranged between 2.25% and 3.87% (and often exceeded \$1,000); 23 were on an agency basis with commissions ranging between \$0.00 and \$200.

197. In or around February 2012, without AB's knowledge, Costanzo also began executing transactions in an Exchange Traded Note, the Barclays Bank PLC IPATH S&P 500 VIX Short Term Futures ETN (VXX).

198. Costanzo also heavily margined and concentrated AB's account. By March 31, 2012, AB's account value dropped to \$8,350.44.

199. When AB saw the losses, he tried to contact Costanzo, but Costanzo never returned the telephone calls. AB ultimately called the Firm's main office and closed his account. But no one ever contacted him to inquire about the activity or the reasons for the closure.

200. From January 2011 through March 2012, Costanzo executed 39 transactions in AB's account. The commissions and markups/markdowns amounted to \$22,254.50, and the total charges and fees were \$24,451.39.

201. The turnover rate (annualized from January 2011 through March 2012) was 24.66; the annualized cost-to-equity ratio was 99.65%.

202. AB sustained a \$19,852.39 loss as of March 2012.

c. Customer DS's Oil Company (DS)

203. DS resides in Modoc, Indiana with his wife and children. Since 1990, he has owned and operated an oil and gas storage and delivery company. His company supplies gas and oil to stations and industrial sites within a 100 mile radius. Because his business involved purchasing truckloads of fuel for delivery, he often required access to significant amounts of cash and used a credit line for that purpose.

204. In February 2011, Costanzo cold called DS and recommended that he purchase shares of Take-Two Interactive, Inc. (TTWO). Shortly after that telephone call, DS received, by Federal Express, an EEP Active Trading Authorization and a pre-completed Account Information Form to open a Newport Coast account under his company name. DS didn't scrutinize the Account Information Form and failed to notice that it exaggerated his "Net Worth (Excluding Primary Residence)" as "2 Million+" and his risk tolerance as "Speculation." In fact, his net worth, exclusive of his home, was about \$500,000; and he had told Costanzo that he could not afford to lose more than 10% of his investment because he required the money to operate his business and to pay for his children's college tuition.

205. Although DS had minimal investing experience, Costanzo nonetheless urged him to open a margin account and enclosed a margin agreement with the account opening documents.

206. From February through July 2011, DS deposited \$254,524 into his Newport Coast account. In April 2011, he withdrew \$150,000 to purchase fuel for delivery.

207. Costanzo controlled DS's account and made all of the investment decisions. DS did not have online access to his account and had difficulty understanding what was transpiring. Indeed, he was unfamiliar with most of the companies whose stock Costanzo was buying and selling.

208. Costanzo began executing transactions on margin immediately after DS funded his account. From February through November 2011, Costanzo highly margined and concentrated DS's account while he bought and sold \$3.1 million of securities, even though DS's average account balance was only \$63,285.17. From July 2011 through September 2011, DS's account value dropped about 60% from \$99,362.95 to \$40,891.22. No one from Newport Coast contacted DS to discuss his diminishing account.

209. Although DS was unfamiliar with "markups" and "markdowns," Costanzo typically charged large markups on purchases (at least \$1,000 and up to \$4,500) and typically sold the same security on an agency basis with a much lesser commission, typically \$100, days later. On two occasions (October 27, 2011 and November 1, 2011), without DS's knowledge, Costanzo executed short sales, charging large markups and mischaracterizing the later transaction as "unsolicited."

210. From February through November 2011, Costanzo executed 53 transactions in DS's account (28 purchases with a principal value of \$1,585,985.16, and 25 sales with a

principal value of \$1,549,998.77); 27 were on a riskless principal basis in which markups/markdowns were almost always over 3% and almost always over \$1,000 per transaction. The commissions and markups/markdowns amounted to \$56,441.43; the total charges and fees were \$60,591.81.

211. The turnover rate (annualized from February 2011 through November 2011) was 30.10; the annualized cost-to-equity ratio was 114.89%.

212. DS sustained a \$43,083.46 loss as of November 30, 2011.

d. Customer JM.

213. JM resides in Columbus, Indiana. For the past 20 years, he has been employed at a used car dealership and currently serves as its Assistant Manager.

214. In January 2010, Costanzo cold called JM and represented that he could dramatically increase his wealth. At the time, JM was 65 years old and had retirement accounts that were worth only about \$250,000. He wanted to increase his retirement nest egg and agreed to open an account.

215. After that initial telephone conversation, Costanzo sent JM pre-completed new account paperwork, including an EEP Active Trading Authorization, via Federal Express. JM was unwilling to assume more than moderate risk. He did not notice that the Costanzo had mischaracterized his objective as “Aggressive Growth” and his risk tolerance as “Speculation.”

216. JM funded his account with a series of small deposits, totaling \$25,040, from January 2010 through December 2010.

217. Costanzo began actively trading JM’s account in April 2010. He frequently concentrated JM’s account in one security and used large amounts of margin. The margin balance was often greater than the total account value.

218. Costanzo controlled JM's account and made all of the investment decisions. He chose the stocks that were purchased, the quantities, and determined when the stocks would be sold.

219. JM was often unaware of transactions until after they occurred. In the fall of 2011, he realized he had a margin account and saw that his account value had dropped precipitously. By December 2011, his account balance was \$2,637.39.

220. JM was unfamiliar with markups and markdowns and, in general, was unaware of the charges that he was incurring and the amount he was paying. Costanzo never discussed charges and, in particular, never mentioned markups or markdowns.

221. From January 2010 through December 2011, Costanzo executed 56 trades in JM's account (30 purchases with a principal value of \$585,055.84, and 26 sales with a principal value of \$571,701.54); 26 were executed on a riskless principal basis, in which the markup/markdown was often over \$1,000, almost always exceeded 3%, and occasionally exceeded 4%. The commissions on the 30 agency trades (almost always sales) ranged from \$50 to \$450 per trade. The commissions and markups/markdowns amounted to \$25,441; the total charges and fees were \$29,018.32.

222. The turnover rate (annualized from January 2010 through December 2011) was 20.25; the annualized cost-to-equity ratio was 100.12%.

223. JM sustained a \$20,366.61 loss as of December 2011.

e. Customer RS.

224. RS resides with his wife in Ronkonkoma, New York. RS owned and operated a dental laboratory for more than 40 years. He sold his business in 2010 because of medical issues and physical limitations that made it increasingly difficult to work on a full-time basis.

225. In March 2011, Costanzo cold called RS and recommended that he purchase Savient Pharmaceuticals, Inc. (SVNT), a company that Costanzo claimed was growing and poised to profit.

226. Immediately after that call, Costanzo sent to RS, by Federal Express, a pre-completed Account Information Form, Margin Agreement and the standard EEP Active Trading Authorization. RS did not focus on the portion of the Account Information Form which incorrectly identified his Risk Tolerance as “Speculation” and his Investment Objective as “Aggressive Growth.” In fact, RS’s goal was to obtain growth in the four to six percent range. He was uninterested in investing aggressively because he was approaching retirement and had ongoing health issues.

227. RS funded his account with two deposits in March 2011, totaling about \$12,467, and an additional deposit of \$2,791.75 in April 2011. Despite the minimal funding, Costanzo bought and sold \$410,505.24 in securities in less than a year.

228. Costanzo controlled RS’s account and made all of the investment decisions. Indeed, Costanzo and RS rarely spoke; their last conversation was in April 2011.

229. RS was unavailable during the late spring and early summer of 2011. He was initially on vacation in upstate New York and, thereafter visiting a son who lived abroad. Costanzo however, was actively trading his account. He executed four transactions in May 2011, five transactions in June 2011, and another four transactions in July 2011.

230. When RS returned, he tried to contact Costanzo at his toll free (800) number and later by calling Newport Coast’s main office. Neither Costanzo nor anyone else ever returned his calls.

231. Costanzo heavily margined and concentrated RS's account. From March 2011 through February 2012, there were 29 transactions (14 purchases with a principal value of \$210,963.87 and 15 sales with a principal value of \$199,541.37). His account value declined to \$662.02.

232. Costanzo never discussed what the charges would be and, in particular, never mentioned markups or markdowns. RS, in turn, never knew what he was being charged and never realized he was paying markups. However, 11 of the 29 trades were executed on a riskless principal basis with markups that always exceeded 3%. Costanzo always executed sales on an agency basis and charged commissions of \$50 to \$225.

233. From March 2011 through February 2012, Costanzo executed 29 transactions in RS's account. The commissions and markups amounted to \$8,564.00. The total charges and fees were \$10,078.23.

234. The turnover rate (annualized from March 2011 through February 2012) was 23.18; the annualized cost-to-equity ratio was 110%.

235. RS sustained a \$14,596.73 loss as of February 2012.

3. LABARBERA'S CUSTOMER ACCOUNTS

a. Customer DR.

236. DR resides in New Hampton, Iowa with his wife and three children. He has been a farmer since he graduated from high school in 1978. He raises cattle and hogs and grows corn and soybeans as livestock feed. DR has almost no liquid assets because he uses his available cash and draws on a line of credit to pay farming-related expenses.

237. In September 2008, LaBarbera cold called DR and convinced him to open a Newport Coast (then known as Grant Bettingen) account. Within about a day, DR received, by

Federal Express, a pre-completed Account Information Form and a Margin Account Agreement.

238. The Account Information Form exaggerated DR's experience to include 15 years of equities and margin trading experience, and mischaracterized his Risk Tolerance and Investment Objective as "Speculation," and "Aggressive Growth." In fact, DR had no investing experience, was unwilling to assume any significant risk, and wanted to preserve his capital. He told LaBarbera that he was investing to diversify his assets and to provide for his retirement.

239. DR funded his account with money borrowed from his bank credit line. He deposited \$2,926.55 in October 2008, \$40,097.50 in March 2009, and \$79,000 in April 2009.

240. LaBarbera controlled DR's account and made all of the investment decisions. Indeed, he rarely spoke to DR after his account was funded.

241. From March through September 2009, LaBarbera executed transactions totaling more than \$2 million and charged commissions and markups/markdowns of nearly \$34,000. Many of the account trades involved inverse and/or leveraged ETFs including (i) Direxion Trust Energy Bull 3x Shares (ERX), (ii) Direxion Trust Financial Bull 3x Shares (FAS), (iii) Direxion Trust Financial Bear 3x Shares (FAZ), (iv) ProShares Trust Powershares UltraShort Financials (SKF), (v) ProShares Trust Powershares UltraShort Real Estate (SRS), (vi) Direxion Daily Small Cap Bear 3x Shares (TZA), and (vii) ProShares Ultra Dow Jones UBS Crude Oil (UCO). LaBarbera often left these inverse and/or leveraged ETFs in DR's account for many trading sessions. DR had no understanding of or familiarity with these securities.

242. LaBarbera also used large quantities of margin and concentrated DR's account in inverse and/or leveraged ETFs. From September 2008 through December 2011, LaBarbera executed 114 equity transactions (57 purchases with a principal value of \$1,525,003.90, and 57

sales with a principal value of \$1,412,754.27); fifty one (51) of the transactions involved inverse and/or leveraged ETFs.

243. Although LaBarbera never told DR what he would charge and, in particular, never discussed markups and markdowns, he nonetheless executed 48 trades on a riskless principal basis. Purchases were executed on a riskless principal basis and included large markups (often more than \$1,000 and greater than 3%). LaBarbera executed the ensuing sales on an agency basis and typically charged \$100 commissions.

244. From September 2008 through December 2011, LaBarbera executed 115 transactions in DR's account. The commissions and markups/markdowns amounted to \$47,245.66, and the total charges and fees were \$51,233.15.

245. The turnover rate (annualized from September 2008 through December 2011) was 20.39; the annualized cost-to-equity ratio was 68.40%.

246. DR sustained an \$119,605.91 loss as of December 2011.

b. Customer DB.

247. DB resides with his wife in Hays, Kansas. He has three adult children, two of whom he financially supports. His wife cleans homes on a part-time basis and cares for their grandchild.

248. Since 1978, DB has owned and operated an auto shop specializing in radiator repair. His business is currently limited to one location. He has no employees.

249. In July 2011, LaBarbera cold called DB and claimed he had "inside information" on Savient Pharmaceutical (SVNT) and Chelsea Therapeutics (CHTP). When DB responded that he lacked funds to invest, LaBarbera told him that no funds were required immediately and that he would be able to keep the profit if the stock value rose.

250. Shortly after the call, DB received pre-completed new account documents with a circled “X” for his signature. Although LaBarbera never discussed margin or active trading, the packet of documents that arrived by Federal Express included a Margin Agreement and the standard EEP Active Trading Authorization.

251. Among other things, the Account Information Form inaccurately reported that DB’s annual income was \$75,000 and his investment objective was “Speculation.” In fact, DB’s annual income was under \$35,000, his objective was “steady growth” and he was willing to accept only moderate risk. He did not want to speculate.

252. DB deposited \$63,303 (\$7,867.50 in July 2011, and \$55,445.50 in August 2011) to fund the account.

253. LaBarbera controlled DB’s account and made all of the investment decisions. Notwithstanding the frequent trading, DB and LaBarbera rarely communicated.

254. LaBarbera did not charge DB for the initial four transactions executed in July and August 2011. But in October 2011, LaBarbera executed 13 transactions, including four uncovered short sales, and bought and sold nearly \$800,000 of securities. That month, LaBarbera caused DB to incur over \$15,000 in charges and fees, primarily markups.

255. When DB attempted to contact LaBarbera in December 2011, he received a recorded message stating that LaBarbera’s office was closed for a month and would reopen in January 2012. LaBarbera nonetheless executed nine transactions in DB’s account that month and charged \$8,000 in markups and commissions.

256. The frequent trading continued through March 2012. By the end of March 2012, DB saw he had lost about \$27,000 of his account equity. When he conveyed his alarm,

LaBarbera told him the losses were due to unforeseen market events. LaBarbera never discussed costs or fees. DB, in turn, was unaware what LaBarbera had charged.

257. In April 2012, LaBarbera told DB to sign another New Account Agreement so that his account could clear through Penson rather than Wedbush. The April 2012 New Account Agreement among other things, exaggerated DB's income as "\$200,001 - \$300,000" and again mischaracterized his investment objective as "Speculation."

258. LaBarbera's association with Newport Coast ended on July 20, 2012. By the end of July 2012, DB's account value was \$24,684.72, his margin debit balance was about \$22,000, and he held an open position in VXX, a volatile ETN.

259. LaBarbera margined and concentrated DB's account. He also executed purchases on a riskless principal basis and charged large markups, and then executed sales on an agency basis and charged much lesser commissions.

260. From July 2011 through July 2012, LaBarbera executed 60 trades in DB's account (31 purchases with a principal value of \$1,391,062.95, and 29 sales with a principal value of \$1,311,272.59); 28 trades were executed on a riskless principal and involved markups/markdowns that were nearly always more than 3% and nearly always more than \$1,000. The commissions and markups/markdowns amounted to \$45,863; the total charges and fees were \$49,712.13.

261. The turnover rate (annualized from July 2011 through May 2012) was 39.98; the annualized cost-to-equity ratio was 142%.

262. DB sustained a \$38,595.30 loss as of July 31, 2012.

c. Customer CA.

263. CA resides with his wife and children in Denver, Colorado. He is the President of a building supply company that he opened in June 2008.

264. In late 2009 or early 2010, LaBarbera cold called CA. CA did not initially want to open an account, but LaBarbera persisted and, in June 2010, CA agreed. Shortly thereafter, CA received, by Federal Express, pre-completed new account documents and the standard EEP letter. LaBarbera telephoned and pressured him to return the documents immediately because he had already purchased stocks for his account.

265. LaBarbera exaggerated CA's net worth as "\$2 million" and his investment experience to include 15 years of equities investing. In reality, CA's net worth was under \$300,000, and he had very limited investing experience. Although the Account Information Form identified his investment objective as "Aggressive Growth" and his risk tolerance as "Speculation," CA told LaBarbera that he was unwilling to lose more than 10% of his investment.

266. On June 24, 2010, CA funded his account with a deposit of \$2,029.50 to cover the 200 shares of Take-Two Interactive, Inc. (TTWO) (and the Reg-T fee) that LaBarbera had purchased more than a week earlier.

267. LaBarbera repeatedly urged CA to deposit additional funds. From September 2010 through April 2011, CA made additional deposits totaling \$55,060.95 using the prepaid, self-addressed Federal Express envelopes that LaBarbera provided.

268. From September 2010 through May 2011, LaBarbera purchased and sold \$747,637.49 worth of securities and charged markups/markdowns and commissions totaling \$15,216.00.

269. In June 2011, CA told LaBarbera that he was unable to deposit additional funds and was reluctant when LaBarbera recommended that he trade on margin. In fact, LaBarbera had already margined CA's account; on May 31, 2011, CA had a \$33,842 debit balance.

270. LaBarbera controlled CA's account and made all of the investment decisions. CA never chose a stock nor did he decide when to buy or sell. Although CA tried to track his portfolio, he did not scrutinize the confirmations or statements. He simply relied on LaBarbera to make appropriate recommendations.

271. LaBarbera, in turn, concentrated CA's account and used large quantities of margin. LaBarbera never told CA what he would be charged and never mentioned markups or markdowns. LaBarbera, however, executed opening transactions on a riskless principal basis and charged large markups, and then executed closing transactions on an agency basis and charged lesser commissions.

272. In September and October 2011, without CA's knowledge, LaBarbera shorted Deutsche Bank (DB), which resulted in large losses. By October 31, 2011, CA's account equity had diminished to \$10,922.53.

273. CA attempted to contact LaBarbera by telephone to discuss the losses but was unable to reach him. In the succeeding months, CA attempted to contact LaBarbera by telephone to close his account, but LaBarbera never returned the calls. In April 2012, CA finally reached Newport Coast's home office and, in May 2012, received a check for his \$3,267.08 account balance.

274. LaBarbera executed 58 trades in CA's account from June 2010 through October 2011 (32 purchases with a principal value of \$721,008.64, and 26 sales with a principal value of \$667,420.32); 30 trades were executed on a riskless principal basis. The principal trades nearly

always involved markups/markdowns of more than 3% and occasionally over 4%. The commissions and markups/markdowns amounted to \$25,766, and the total charges and fees were \$29,110.59.

275. The turnover rate (annualized from June 2010 through October 2011) was 16.69; the annualized cost-to-equity ratio was 67%.

276. CA sustained a \$53,823.37 loss as of May 31, 2012.

d. Customer RG.

277. RG is a veterinarian who resides with his wife and children in Elizabeth, Colorado.

278. In January 2011, LaBarbera cold called RG and recommended that he invest in Take Two Interactive, Inc. (TTWO) and International Coal Group, Inc. (former ticker symbol ICO). Shortly thereafter, RG received a pre-completed Account Information Form, which he signed in the highlighted areas.

279. The Account Information Form exaggerated his experience to include “25” years of equity investing and inaccurately reported his investment object as “Aggressive Growth” and his Risk Tolerance as “Speculation.” In fact, his investment experience was limited to mutual funds. LaBarbera never inquired about his objectives; but RG told LaBarbera that he could not afford to lose more than five to six thousand dollars.

280. In January 2011, RG deposited \$2,551.50 to cover the initial purchase of TTWO. During the succeeding months, LaBarbera urged RG to add to his account. RG deposited an additional \$10,030.00 in February 2011 and \$4,269.47 in April 2011.

281. LaBarbera controlled RG’s account and made all of the investment decisions. RG was unfamiliar with the stocks that LaBarbera purchased. And, although LaBarbera told

him he would only charge if a trade was profitable, LaBarbera did not contact RG before he sold securities. LaBarbera also failed to explain that he made purchases on a riskless principal basis, charging markups.

282. In August 2011, LaBarbera recommended that RG purchase Patriot Coal (PCX) on margin. RG reminded LaBarbera that he was unable to deposit additional funds and could not afford to lose the \$16,000 or so that he had invested. But when RG received his August 2011 Account Statement, he saw that his account had a \$36,825 position in Patriot Coal (purchased on August 31, 2011) and a margin debit balance of \$18,432.00.

283. The following month, Patriot Coal's price dropped by more than 40%. By the end of September 2011, RG's account was worth \$3,658.03.

284. LaBarbera never spoke to RG after the August 31, 2011 Patriot Coal transaction. But on six occasions from September 2011 through May 2012, LaBarbera sold his Patriot Coal shares. By May 31, 2012, RG's account was worth \$977.38.

285. From January 2011 through May 2012, LaBarbera executed 20 transactions in RG's account (eight purchases with a principal value of \$173,658.08, and 12 sales with a principal value of \$160,222.31). Purchases were typically executed on a riskless principal basis and involved markups, usually greater than 3%, and ranging from \$630 to \$1,450. Sales were executed on an agency basis and involved lesser commissions. The commissions and markups amounted to \$6,630.08, and the total charges and fees were \$7,959.32.

286. The turnover rate (annualized from January 2011 through May 2012) was 14.51; the annualized cost-to-equity ratio was 66.33%.

287. As of May 31, 2012, RG sustained a \$15,869.09 loss.

4. LEVY'S CUSTOMER ACCOUNTS

a. *Customer NK.*

(i) Pre-Wells Notice Activity

288. NK resides in Logan, Iowa. Since 1981, he has been an independent representative involved in selling water softening systems and products.

289. In January 2010, Levy cold called NK, urged him to open a Newport Coast account, and promised that he could profit with minimal risk and would only be charged for "successful trades." NK wanted to use the profits to expand his business and agreed to open an account.

290. Shortly after the telephone call, NK received, by Federal Express, a pre-completed Account Information Form, a Margin Agreement, and the standard EEP Active Trading Authorization. The Account Information Form inaccurately described NK as possessing "25" years of equity investment experience. In fact, he had virtually no experience. The Account Information Form also mischaracterized his investment objective as "Aggressive Growth" and his risk tolerance as "Speculation." Although NK wanted to use the profits to expand his business, he explained to Levy he did not want to lose the money he was investing. NK had recently inherited farmland and about \$100,000. He had never before had any significant liquid net worth or money to invest.

291. NK funded his account with \$500 in January 2010 and deposited an additional \$1,200 the following month. Levy, in turn, purchased Citigroup shares in January 2010, without any commission charge and sold the shares two months later.

292. There was minimal activity in NK's account until after he used the cash that he had inherited to make additional deposits totaling about \$60,000, from July through September

2010. From September 2010 through March 2012, Levy actively traded NK's account, purchasing and selling about \$1.7 million of securities, even though NK's average equity was only about \$32,338.78.

293. Levy controlled NK's account. He chose the stocks that were purchased, the quantities, and determined when they would be sold. NK was unfamiliar with the securities that were being purchased and sold in his account.

294. Levy typically used large quantities of margin and concentrated the account in few securities. NK was unfamiliar with margin and unaware he was incurring interest charges.

295. Although Levy never explained "riskless principal" trades, and although NK had never heard of markups, Levy executed purchases on a riskless principal basis, charging markups of up to \$2,000 per transaction, and then executed sales on an agency basis and typically charged \$100 or less.

296. By the fall of 2011, NK's account equity had sharply diminished. NK repeatedly attempted to contact Levy, but his calls were rarely returned.

297. On February 29, 2012, Levy purchased on margin and concentrated NK account in the Barclays Bank iPath Exchange Traded Note (VXX). NK incurred a \$13,811.14 loss when Levy sold the position 26 days later on March 26, 2012.

298. From July 2010 through June 2012, Levy executed 67 transactions in NK's account (35 purchases with a principal value of \$893,860.22, and 32 sales with a principal value of \$859,962.48). The commissions and markups amounted to \$31,584.00; the total charges and fees amounted to \$36,751.45.

299. The turnover rate (annualized from July 2010 through June 2012) was 16.15; the annualized cost-to-equity ratio was 66%.

300. NK sustained a \$36,965.52 loss as of June 30, 2012.

(ii) Post-Wells Notice Activity

301. On January 22, 2014, Enforcement staff issued a Wells Notice informing Levy that a preliminary decision had been made to bring a formal disciplinary action that charged him with churning and excessively trading NK's account.

302. Three weeks later, though they had not spoken for more than a year, Levy telephoned NK and asked to meet.

303. On February 18, 2014, Levy met NK at his home in Logan, Iowa. There, Levy told NK that he would not receive any restitution if he (Levy) was barred. Levy also asked NK to sign a letter stating that he would not participate in a FINRA disciplinary hearing. Levy promised NK that he would assist him with a claim against Newport Coast if NK signed the letter that Levy had presented. When NK refused to sign, Levy retrieved the letter and departed.

b. Customer JS.

304. JS is a retired stagehand who resides with his wife in Burleson, Texas.

305. He was 65 years old when, in March 2010, Levy cold called and urged him to open a Newport Coast account. Shortly thereafter, JS received, by Federal Express, a pre-completed Account Information Form, a Margin Agreement, and the standard EEP Active Trading Authorization.

306. Although the Account Information Form reported that JS's annual income was from "salary/wages," his income was derived from social security and pension payments. And, although the Account Information Form characterized his investment objective as "Aggressive Growth" and his risk tolerance as "Speculation," JS had told Levy that he did not want to gamble and sought only a 3% to 4% annual return.

307. About five months after JS opened his account, Levy sent him an Option Agreement and told him that it needed to be signed immediately. That Option Agreement inaccurately reported that JS had “20” years of options experience, averaged “15” options trades per year, and “30” years of stock trading experience averaging “30” trades per year. In reality, JS had no options experience and his minimal securities experience was limited to mutual funds and an annuity.

308. From March through May 2010, JS deposited \$75,643.50 into his Newport Coast account. Levy controlled JS’s account and made all of the investment decisions. In April 2010, Levy began actively trading, typically concentrating the account and using large amounts of margin.

309. Levy controlled JS’s account and made all of the investment decisions. He never told JS what he would be charged for transactions and never discussed “riskless principal” trading. In fact, Levy charged large markups on purchases and opening short sale positions (typically amounting to over \$1,000) and charged lesser commissions on sales and covering short positions (typically \$100).

310. From June 21, 2010 through August 3, 2010, Levy never explained to JS that he had concentrated his account in a leveraged ETF. Levy also failed to explain that, from November 2011 through May 2012, he held large short positions in JS’s account.

311. From March 2010 through May 2012, Levy executed 87 transactions in JS’s account (46 purchases with a principal value of \$1,345,148.51, and 41 sales with a principal value of \$1,319,407.17). Forty eight of the 87 trades were executed on a riskless principal basis. Thirty one of the riskless principal trades had markups/markdowns that exceeded 3%;

eight markups exceeded 4%. The commissions and markups/markdowns amounted to \$50,657.50, and the total charges and fees amounted to \$57, 827.04.

312. The turnover rate (annualized from March 2010 through May 2012) was 12.16; the annualized cost-to-equity ratio was 52%.

313. JS sustained a \$36,748.88 loss as of May 31, 2012.

c. Customer RH.

314. RH resides with his wife in Quarrysville, Pennsylvania. Since 2005, RH has owned and operated a building equipment supply company that sells and leases excavating equipment. In April 2010, RH's son, BH, referred him to Levy. BH had opened a Newport Coast account five months earlier and had not yet suffered the large losses that he later sustained.

315. Shortly after speaking with Levy and agreeing to open an account, RH received, via Federal Express, a pre-completed Account Information Form, a Margin Agreement, and the standard EEP Active Trading Authorization. The forms were, for the most part, pre-completed except for RH's signature. They inaccurately stated that RH had "30" years of equities investing experience but omitted designating the experience, if any, that RH had with "Mutual funds" and "Insurance/Annuities." Shortly after the forms were delivered, Levy called and instructed RH to write "30" next to "Mutual Funds" and "10" next to "Insurance/Annuities." In fact, RH's securities experience was limited to the bank stocks that his wife had inherited.

316. RH funded his account with two deposits totaling \$39,893 in April and May 2010. In January 2011, after Levy requested more funds, RH deposited an additional \$19,822.75. Levy also told RH that he needed to use margin to take advantage of a "fast moving" market. But despite RH's inexperience, he never discussed the risks or costs.

317. Levy controlled RH's account and made all of the investment decisions. He determined what securities would be bought and sold as well as the quantity and timing of each transaction. He failed to tell RH what transactions would cost and, in particular, never discussed riskless principal trading. RH, on the other hand, was unfamiliar with markups or markdowns.

318. Beginning in September 2010, Levy actively traded RH's account, often concentrating the account and using large amounts of margin. From September 2010 through February 2012, Levy bought and sold nearly \$1.9 million of securities. By January 31, 2012, RH's account equity had been reduced to \$25,520.70.

319. In February 2012, Levy concentrated RH's account in the Barclays Bank PLC iPath S&P VIX short term futures ETN (VXX). RH was unaware that that Levy had purchased an ETN and was unfamiliar with the security and the associated risks. That margined position remained in RH's account through July 2012 and generated a loss of more than \$12,600.

320. Levy executed 65 trades in RH's account from September 2010 through July 2012 (30 purchases with a principal value of \$954,451.15, and 35 sales with a principal value of \$939,594.63). Thirty-three of the 65 trades were executed on a riskless principal basis; 29 of the riskless principal trades had markups that exceeded 3%. The remaining agency trades typically had \$100 commissions. The commissions and markups/markdowns amounted to \$40,161.00. The total charges and fees were \$45,518.29.

321. The turnover rate (annualized from September 2010 through July 2012) was 14.23; the annualized cost-to-equity ratio was 68%.

322. RH sustained a \$56,554.25 loss as of July 31, 2012.

d. Customer BNS.

323. BNS resides with his wife in Highland Park, Illinois and is part of a Chicago-based medical practice.

324. In January 2010, Levy cold called BNS, recommended purchasing Citigroup stock and represented that he would not charge a commission for the transaction. BNS told Levy that he would deposit funds into a Newport Coast account but would need to withdraw the money in the fall of 2010 to pay for college tuition and a wedding. Levy sent a pre-completed Account Information Form, Margin Agreement, and the EEP Active Trading Authorization by Federal Express.

325. BNS noticed that the Account Information Form incorrectly indicated that his risk tolerance was "Speculation," and drew a line through the word "Speculation" and indicated that his risk tolerance was "Aggressive" before signing and returning the Form. BNS informed Levy that he was only willing to be aggressive with a small portion of these funds and was unwilling to risk more than 10% to 20% of his principal.

326. BNS did not notice that the Account Information Form exaggerated his liquid net worth as "500K+" and his net worth, exclusive of his residence, as "3 million+." In reality, BNS's total net worth was between \$1 million and \$1.2 million, which included equity in his home, his \$40,000 liquid net worth, and his pension and individual retirement accounts.

327. BNS's prior investment experience was much less than the "30" years of equity trading identified on the Account Information Form. It was limited to his pension and retirement accounts that were invested in mutual funds.

328. From February through April 2010, BNS deposited three checks totaling \$33,348.00 to fund his Newport Coast account.

329. On July 31, 2010, BNS's account equity had diminished to \$21,944.16. That day, he told Levy to liquidate his account within the next three weeks because he needed the money to pay tuition bills. Levy, however, persuaded BNS not to liquidate his account. BNS, in turn, borrowed from his credit line to finance his son's tuition and a wedding.

330. The last time Levy spoke to BNS was in September 2010. Yet, from October 2010 through March 2012, Levy executed 48 transactions (23 purchases with a principal value of \$ 504,685.36, and 25 sales with a principal value of \$527,505.34). By March 31, 2012, BNS's account equity had diminished to \$8,075.66.

331. Levy controlled BNS's account and made all of the investment decisions. He determined what securities would be bought and sold, as well as the quantity and timing of each transaction.

332. On April 12, 2012 BNS, by email, directed Levy to liquidate his account. He wrote:

David,

I left the investing to you over the last 1½ years and seem to have suffered something like 75% losses, I assume much of which went toward payment of your trading fees.

Please liquidate my account and send me the proceeds.

[BNS]

333. On April 18, 2012, Newport Coast sent BNS a check for his remaining \$5,879.97 account balance.

334. Levy actively traded BNS's account, using large quantities of margin and frequently concentrating the account in one or two securities. From January 2010 through April 2012, Levy executed 65 trades in BNS's account (32 purchases with a principal value of

\$647,328.82, and 33 sales with a principal value of \$627,090.78). Thirty-one of the 65 trades were executed on a riskless principal basis. Nearly all of the markups and markdowns (28 of 31) exceeded 3%. The remaining agency trades typically had \$100 commissions. The commissions and markups/markdowns amounted to \$26,880.67, and the total charges and fees were \$30,969.99.

335. The turnover rate (annualized from January 2010 through April 2012) was 14.58; the annualized cost-to-equity ratio was 70%.

336. BNS sustained a \$27,468.03 loss as of April 30, 2012.

E. Donald Bartelt

1. INTRODUCTION AND OVERVIEW

337. Donald Bartelt entered the securities industry in June 1985, one month after he received a Bachelor's degree in finance. In the succeeding 25 years, he worked for a variety of firms that had offices in the greater Phoenix area. In May 2010, after contacting KK, Bartelt associated with Newport Coast and his home became an Office of Supervisory Jurisdiction.

338. Bartelt's agreement with Newport Coast called for him to receive an 80% payout on equity transactions. KM and KK each received 1% overrides.

339. Notwithstanding the \$15,000 advance that he received upon joining the Firm, Bartelt was financially distressed and awash in debt.

340. He owed income tax to the State of Arizona dating back to 2005; he owed income taxes to the Internal Revenue Service for 2008; and he owed a multiplicity of credit card issuers. His financial status further deteriorated while he was at Newport Coast and culminated with his Chapter 13 Bankruptcy Petition, filed on May 23, 2013.

341. Despite his precarious financial situation, Bartelt attracted minimal supervisory attention. It was limited to telephone conversations with his Designated Supervisor, who, from time to time, asked Bartelt to send Active Trading Letters to various customers. No one inquired about his trading or questioned what he was charging, even though he was churning at least three customers' accounts, one of whom (MG) was over 80 years old.

2. BARTELT'S CUSTOMER ACCOUNTS

a. *Customer LAC.*

342. LAC resides in Cave Creek, Arizona and, for more than two decades, has been an engineer employed at a large aerospace company.

343. LAC has known Bartelt for more than 20 years. Bartelt has managed LAC's IRA and his individual brokerage account since 2006.

344. Bartelt continued to manage LAC's accounts as he moved from firm to firm. On June 8, 2010, Bartelt met LAC at a local watering hole to sign documents to open an individual account and an IRA at Newport Coast.

345. The New Account Agreements incorrectly characterized LAC's experience to include "over 10 years" of stocks and bonds. In fact, prior to opening accounts with Bartelt, LAC's experience was limited to mutual funds and his employer's stock. The New Account Agreements also mischaracterized LAC's investment objective as "long term growth with greater risk—Aggressive Growth (trade volatile securities that have wide change in price)." LAC was saving for retirement and did not want volatility. He has a moderate risk tolerance and his investment objective has always been income and long term growth.

(i) LAC's IRA

346. In June 2010, LAC transferred his IRA, containing cash and securities worth about \$42,644, to Newport Coast.

347. Shortly after the transfer, Bartelt recommended several engineering and mining stocks. But after those initial recommendations, Bartelt never consulted with LAC or discussed any transactions. LAC relied on Bartelt to manage his account and only glanced at the confirmations and statements that he received in the mail. Bartelt controlled the account and made all of the investment decisions; he chose the stocks that were purchased, the quantities, and determined when the stocks would be sold.

348. Bartelt purchased, sold and then repurchased the same securities on multiple occasions in LAC's account. From August 12, 2011 through January 22, 2013, Bartelt executed 47 transactions in Flotek Industries, Inc. (FTK); from November 11, 2010 through August 27, 2012, Bartelt executed 18 transactions in Marvell Technology Group Ltd (MRVL); from June 22, 2010 through March 28, 2012, Bartelt executed 15 transactions in Jabil Circuit (JBL); and from October 13, 2010 through July 26, 2012, Bartelt executed 18 transactions in Uranerz Energy Corp. (URZ).

349. In May 2013, LAC closed his IRA. Its value (excluding a non-traded REIT that was listed as an asset but not valued when Bartelt opened the IRA) was only \$3,269.28.

350. From June 2010 through May 2013, Bartelt executed 490 trades in LAC's IRA (239 purchases with a principal value of \$2,138,913.11, and 251 sales with a principal value of \$2,163,851.10). Bartelt charged commissions totaling \$42,091.26 for these transactions in 119 different stocks. The total charges and fees amounted to \$45,914.87.

351. The turnover rate (annualized from June 2010 through May 2013) was 28.59; the annualized cost to equity ratio was 60.56%.

352. LAC sustained a \$39,386.24 loss in his IRA as of May 30, 2013.

(ii) LAC's Individual Account

353. In June 2010, LAC transferred cash and securities totaling about \$8,074.75 to an individual account at Newport Coast. Bartelt did not execute any trades in this account until May 2011. On April 30, 2011, the account equity was \$11,340.31.

354. Bartelt controlled LAC's individual account and made all of the investment decisions in LAC's Individual Account. He chose the stocks that were purchased, the quantities, and determined when the stocks would be sold. He did not speak with LAC about any of the transactions, nor did he tell him that he was using margin in his account.

355. From May through December 2011, Bartelt executed 87 trades in LAC's Individual Account (45 purchases with a principal value of \$202,787.29, and 42 sales with a principal value of \$207,221.64) and charged commissions totaling \$4,881.00. The total charges and fees amounted to \$5,719.96. By the end of December 2011, LAC's account was worth only \$972.69.

356. The turnover rate (annualized from May 2011 through December 2011) was 72; the annualized cost-to-equity ratio was 200%.

357. LAC sustained a \$7,102.06 loss as of December 31, 2011.

(b) Customer MG.

358. MG is an 85-year-old widow who resides in Glendale, Arizona. She worked as an executive secretary for 23 years before she retired in 1990. Her late husband, GG, handled all of their financial affairs until shortly before his death in April 2009.

359. GG met Bartelt about 30 years ago. They developed a very close relationship and spoke daily. By the mid-1980's, Bartelt managed MG's and GG's accounts. After GG died, MG reminded Bartelt that he was managing all of the money that she and GG had saved. She told him that she could not tolerate big risks and relied on him to select investments that would provide for her and her family.

360. In May 2010, MG opened three accounts at Newport Coast (an IRA, a Trust Account and an Individual Account) and funded them by transferring the cash and securities (totaling \$129,955.78) that she held in her brokerage accounts that Bartelt had managed at his former firm.

361. MG's New Account Agreements accurately characterized her net worth as "\$250,000 - \$499,000," but overstated her annual income as "\$65,000 - \$124,999." In fact, her annual income was less than \$50,000, and included social security payments, pension benefits and mandatory IRA distributions.

362. All three new account forms exaggerated MG's sophistication. Although MG had almost no investment experience, the IRA and individual forms reported "Over 10 Years" experience in stock and bond investing; the New Account Approval Form for the Trust reported "30" years of stock and bond experience. The New Account Agreement for her IRA mischaracterized her investment objective as "Long term growth with greater risk – Aggressive Growth (trade volatile securities that have wide change in price)," and the New Account Agreement for her Trust mischaracterized her purported investment objective as "Short term growth with high risk (Appreciation with acceptance of high risk)."

363. Beginning in the summer of 2010, MG began to receive daily mail from Newport Coast. Although she tried to review the statements and trade confirmations, she did not understand what was transpiring in her accounts.

364. Bartelt controlled MG's accounts. He did not call her before executing trades in her accounts. Although he occasionally visited at her home, he neither discussed account transactions nor reviewed the status of her accounts. Rather, he often told her to throw away all documents she was receiving because he purportedly maintained copies of her account documents.

365. In January 2013, after speaking with her accountant about the charges and commissions in her accounts, MG told Bartelt to stop trading. In March 2013, she closed her accounts.

366. MG lost \$108,618.57 of the \$129,955.78 that she transferred to Newport Coast. Bartelt's commissions totaled \$126,623.50.

(i) MG's IRA

367. MG transferred cash and securities totaling \$60,306.04 to fund her Newport Coast IRA in June 2010. It was worth \$9,336.14 when Bartelt stopped trading her account in November 2012.

368. From June 2010 through November 2012, Bartelt repeatedly bought and sold certain stocks. For example, from September 26, 2011 through November 19, 2012, Bartelt executed 56 transactions involving Flotek Industries Inc. (FTK); from July 6, 2010 through August 27, 2012, Bartelt executed 26 transactions involving Marvell Technology Group Ltd (MRVL); from March 29, 2011 through June 15, 2012, Bartelt executed 18 transactions in

Manitowoc Company, Inc. (MTW); and from December 27, 2011 through July 18, 2012, Bartelt executed 16 transactions in Micron Technology, Inc. (MU).

369. On March 13, 2013, Newport Coast issued MG a check in the amount of \$9,336.35 to close her IRA.

370. From June 2010 through November 2012, Bartelt executed 581 trades in 128 stocks (283 purchases with a principal value of \$2,993,258.44, and 298 sales with a principal value of \$3,062,560.94). Bartelt's commissions totaled \$58,438, and the total charges and fees amounted to \$63,116.13.

371. The turnover rate (annualized from June 2010 through November 2012) was 27.60; the annualized cost-to-equity ratio was 57%.

372. MG sustained a \$44,769.90 loss in her IRA as of November 30, 2012.

(ii) MG's Trust Account

373. MG's Trust Account had cash and securities totaling \$46,714.77 when she transferred the account to Newport Coast in June 2010. The Trust Account equity was \$4,761.90 when Bartelt stopped trading in November 2012.

374. From June 2010 through November 2012, Bartelt repeatedly bought and sold certain stocks. For example, from September 22, 2011 through November 9, 2012, Bartelt executed 62 transactions involving Flotek Industries Inc. (FTK); from February 28, 2012 through October 24, 2012, Bartelt executed 17 transactions involving Spectrum Pharmaceutical, Inc. (SPPI); and from June 21, 2011 through September 27, 2012, Bartelt executed 17 transactions involving Jabil Circuit (JBL).

375. Bartelt stopped trading MG's Trust Account in November 2012. On March 8, 2013, Newport Coast sent her a check in the amount of \$4,750.08 to close her Trust Account.

376. From June 2010 through November 2012, Bartelt executed 536 trades (260 purchases with a principal value of \$2,890,246.62, and 276 sales with a principal value of \$2,951,565.61, using an average equity of \$37,807.05) in 126 different stocks. Bartelt's commissions totaled \$59,229.50, and the total charges and fees amounted to \$63,568.98.

377. The turnover rate (annualized from June 2010 through November 2012) was 31; the annualized cost-to-equity ratio was 67%.

378. MG sustained a \$41,946.18 loss in her Trust Account as of November 30, 2012.

(iii) MG's Individual Account

379. MG's Individual Account had cash and securities totaling \$22,934.97 when she transferred the account to Newport Coast in June 2010. It was worth \$538.75 when Bartelt stopped trading in December 2012.

380. From June through December 2012, Bartelt repeatedly bought and sold certain stocks. For example, from September 16, 2011 through July 10, 2012, Bartelt executed 17 transactions involving Flotek Industries Inc. (FTK); from January 31, 2011 through July 26, 2012, Bartelt executed 16 transactions involving Uranerz Energy Corp (URZ); and from June 2, 2011 through December 2, 2011, Bartelt executed 8 transactions involving Manitowoc Company, Inc. (MTW).

381. Bartelt stopped trading MG's Individual Account in December 2012. On March 15, 2013, Newport Coast sent MG a check in the amount of \$493.73 to close her Individual Account.

382. From June 2010 through December 2012, Bartelt executed 180 trades (87 purchases with a principal value of \$436,757.23, and 93 sales with a principal value of

\$445,411.45, using an average equity of \$8,058.48) in 57 different stocks. Bartelt's commissions totaled \$8,956.00, and the total charges and fees amounted to \$10,314.51.

383. The turnover rate (annualized from June 2010 through December 2012) was 22.74; and the annualized cost-to-equity ratio was 53%.

384. MG sustained a \$21,902.49 loss in her Individual Account as of December 31, 2012.

(c) Customer LW.

385. LW resides with her husband in Glendale, Arizona, within a block of her mother, customer MG. LW was a bookkeeper for a variety of small companies but stopped working in 1999 to raise her daughter. LW relies on her husband's income from his job with the Bureau of Land Management.

386. LW was acquainted with Bartelt because of his involvement with her parents. She knew that Bartelt had a close relationship with her father and that he had assisted her mother when her father became ill.

387. Bartelt began managing LW's investment accounts in or about 2005. In late May 2010, Bartelt asked LW to transfer her accounts to Newport Coast. On May 26, 2010, she signed a pre-completed New Account Agreement to open an IRA.

388. The pre-completed New Account Agreement identified LW's employment status as "unemployed," but nonetheless listed her annual income as "\$65,000 - 124,999." It also mischaracterized her investment objective as "Long term growth with greater risk – Aggressive Growth (trade volatile securities that have wide change in price)." In fact, LW advised Bartelt that she was a conservative investor because she and her husband lived on a paycheck-to-

paycheck basis. Her objective was to preserve her assets and to augment whatever her husband might receive upon his retirement.

389. LW transferred cash and securities totaling \$9,629.44 to her Newport Coast IRA in June 2010. Bartelt started trading on June 18, 2010. When he stopped trading in January 2013, the account value (exclusive of a non-traded REIT that was not priced when she opened her Newport Coast account) was \$1,002.69.

390. LW had almost no investment experience and relied on Bartelt to make all the investment decisions and control her account. Her contact with him was limited to the few occasions that she saw him at her mother's home. He never called or discussed any of the transactions in her IRA. He chose the stocks that were purchased, the quantities, and determined when the stocks would be sold.

391. In late 2012, after she learned that her mother had concerns about her accounts, LW tried to ascertain the status of her IRA, but Bartelt failed to explain what had transpired. She was stunned when she learned the extent of her losses and realized that most of her IRA had been dissipated.

392. Bartelt stopped trading LW's IRA in January 2013. In May 2013, LW transferred her remaining cash and securities to another financial advisor.

393. Between June 2010 and January 2013, Bartelt repeatedly bought and sold certain stocks. For example, from August 10, 2011 through November 23, 2012, Bartelt executed 32 transactions involving Flotek Industries Inc. (FTK); and from December 21, 2010 through December 3, 2012, Bartelt executed 13 transactions involving Uranerz Energy Corp (URZ).

394. From June 2010 through January 2013, Bartelt executed 202 trades (99 purchases with a principal value of \$356,992.27, and 103 sales with a principal value of

\$368,428.42, using an average equity of only \$7,206.48) in 57 different stocks. His commissions totaled \$10,079.00, and the total charges and fees amounted to \$11,696.21.

395. The turnover rate (annualized from June 2010 through January 2013) was 19; and the annualized cost-to-equity ratio was 61%.

396. LW sustained an \$8,626.75 loss in her IRA as of January 2013.

FIRST CAUSE OF ACTION

Excessive Trading (Quantitative Suitability)

(Violations of NASD Rules 2310 and 2110, FINRA Rules 2111 and 2010, and NASD IM-2310-2 by Respondents Newport Coast, Leone, LaBarbera, Levy, Costanzo, and Bartelt)

397. The Department realleges and incorporates by reference paragraphs 1- 396 above.

398. Leone and Newport Coast acting through Leone exercised control over the accounts held by customers DG, BS, JB, PH, RR, CP/OFC of L, and LC and MC, and MJ.

399. Costanzo and Newport Coast acting through Costanzo exercised control over accounts held by customers MZ, AB, DS/S's Oil Co., JM, and RS.

400. LaBarbera and Newport Coast acting through LaBarbera exercised control over the accounts held by customers DR, DB, CA, and RG.

401. Levy and Newport Coast acting through Levy exercised control over the accounts held by customers NK, JS, RH, and BNS.

402. Bartelt and Newport Coast acting through Bartelt exercised control over the accounts held by customers LAC, MG, and LW.

403. The trading in the accounts of customers DG, BS, JB, PH, RR, CP/OFC of L, LC and MC, MJ, MZ, AB, DS/S's Oil Co., JM, RS, DR, DB, CA, RG, NK, JS, RH, BNS, LAC, MG and LW was, as evidenced by the high annualized turnover rates and high annualized cost-

to-equity ratios, excessive in light of and inconsistent with the customers' investment objectives and financial situation.

404. Newport Coast is liable for the excessive trading of, and quantitatively unsuitable recommendations by Leone, Levy, LaBarbera, Costanzo and Bartelt under the doctrine of *respondeat superior*.

405. As a result of the foregoing conduct, Respondents Newport Coast, Leone, LaBarbera, Costanzo, Levy and Bartelt violated FINRA Rules 2111 and 2010 (for transactions occurring on or after July 9, 2012), NASD Rule 2310, NASD IM-2310-2 and FINRA Rule 2010 (for transactions occurring from December 15, 2008 through July 8, 2012), and NASD Rules 2310 and 2110, and NASD IM-2310-2 (for transactions occurring before December 15, 2008).

SECOND CAUSE OF ACTION

Churning

(Violations of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, FINRA Rules 2020 and 2010, and NASD Rules 2120 and 2110 by Respondents Newport Coast, Leone, LaBarbera, Levy, Costanzo, and Bartelt)

406. The Department realleges and incorporates by reference paragraphs 1- 405 above.

407. Leone, Costanzo, LaBarbera, Levy, Bartelt and Newport Coast, with scienter, engaged in a manipulative, deceptive and fraudulent scheme by churning the accounts of DG, BS, JB, PH, RR, CP/OFC of L, LC and MC, MJ, MZ, AB, DS/S's Oil Co., JM, RS, DR, DB, CA, RG, NK, JS, RH, BNS, LAC, MG and LW. They acted with intent to defraud and/or with reckless disregard of their customers' interests by seeking to maximize their own remuneration in disregard of the interests of their customers.

408. The acts and transactions at issue were accomplished by the use or means of the instrumentalities of interstate commerce and through the mail and involved securities transactions on a national securities exchange.

409. Newport Coast is liable for the foregoing fraudulent misconduct of Leone, LaBarbera, Levy, Costanzo, and Bartelt under the doctrine of *respondeat superior* and as a control person under Section 20(a) of the Exchange Act.

410. As a result of the foregoing conduct, Respondents Newport Coast, Leone, LaBarbera, Costanzo, Levy and Bartelt willfully violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, FINRA Rules 2020 and 2010 (for transactions occurring on or after December 15, 2008), and NASD Rules 2120 and 2110 (for transactions occurring before December 15, 2008).

THIRD CAUSE OF ACTION

Unsuitable Recommendations (Qualitative Unsuitability) (Violations of NASD Rules 2310 and 2110 and FINRA Rule 2010 by Respondents Newport Coast, Costanzo, Levy and LaBarbera)

411. The Department realleges and incorporates by reference paragraphs 1- 410 above.

412. NASD Rule 2310 requires that a registered representative have “reasonable grounds” for believing that a recommendation is suitable for a customer based upon the customer’s disclosed security holdings and financial situation and needs. The rule also requires a broker to educate clients about the risks associated with any recommendations. Before a broker recommends a risky or speculative investment, he must not only be satisfied that the investments are appropriate for the particular customer, but he must also be satisfied that the customer understands and is willing to assume those risks.

413. Costanzo, Levy and LaBarbera recommended transactions involving leveraged and/or inverse ETPs to customer MZ (Costanzo), AB (Costanzo), NK (Levy), DR (LaBarbera), and DB (LaBarbera).

414. Costanzo, Levy and LaBarbera lacked reasonable grounds for believing that: (i) these risky and speculative securities were suitable for customers MZ, AB, NK, DR and DB, and (ii) these customers understood and were willing to assume the risks particular to these securities.

415. Newport Coast is liable for these unsuitable investment recommendations made by Costanzo, Levy and LaBarbera under the doctrine of *respondeat superior*.

416. As a result of the foregoing conduct, Respondents Newport Coast, LaBarbera, Costanzo, and Levy violated NASD Rule 2310 and FINRA Rule 2010 (for transactions occurring on or after December 15, 2008) and NASD Rules 2310 and 2110 (for transactions occurring before December 15, 2008).

FOURTH CAUSE OF ACTION

Causing the Firm's Records to be Inaccurate (Violations of NASD 3110 and 2110 and FINRA Rule 2010 by Respondent LaBarbera)

417. The Department realleges and incorporates by reference paragraphs 1- 416 above.

418. As described above, LaBarbera solicited at least 115 trades in DR's account from September 2008 through December 2011. On at least 22 occasions, from October 2008 through August 2010, LaBarbera mischaracterized solicited trades as "unsolicited," thereby causing the Firm's books and records to be inaccurate.

419. As a result of the foregoing conduct, LaBarbera violated NASD Rule 3110 and FINRA Rule 2010 (for trades mischaracterized on or after December 15, 2008), and NASD Rules 3110 and 2110 (for trades mischaracterized before December 15, 2008).

FIFTH CAUSE OF ACTION
Conveying False and Exaggerated Values
(Violations of FINRA Rule 2010 and NASD IM-2310-2 by Respondent Leone)

420. The Department realleges and incorporates by reference paragraphs 1- 419 above.

421. JB did not have online access to his account. On May 13, 2010, June 1, 2010, November 16, 2010, February 4, 2011, and April 6, 2011, JB sent emails to Leone inquiring about his account balance.

422. On each occasion, Leone responded by email that falsely overstated the true value of JB's account by amounts ranging between approximately \$1,165 and \$5,222.

423. By reason of the foregoing, Leone violated FINRA Rule 2010 and NASD IM-2310-2.

SIXTH CAUSE OF ACTION
Failure to Supervise
(Violations of NASD Rule 3010 and FINRA Rule 2010 and NASD Rule 2110 by Respondents Arena, Luckey, and Newport Coast)

424. The Department realleges and incorporates by reference paragraphs 1- 423 above.

425. There were multiple red flags suggesting that Leone, Costanzo, Levy, LaBarbera, and Bartelt were excessively trading, churning, and generally making unsuitable recommendations:

- The accounts exhibited a large trading volume, often involving multiple transactions per day;
- Accounts were concentrated in single securities and highly margined;
- There was in-and-out trading in multiple accounts;
- Transactions were broken up into multiple orders, executed within minutes, each involving separate commissions and activity fees;

- The total commissions charged on individual accounts was exorbitant relative to the total account value;
- Cost-to-equity ratios were often greater than 100%;
- The turnover rate was often greater than 100;
- The customers' accounts appeared on exception reports dozens of times;
- Customer accounts frequently exhibited large losses; and
- There was riskless principal trading and agency trading in the same accounts. Higher cost trades, *i.e.*, trades in which fees exceeded 3% of the principal (and often more than \$1,000 per transaction) were executed on a riskless principal basis, whereas lower cost trades, typically involving sales of the same securities that had been purchased on a riskless principal basis, were executed on an agency basis.

426. These red flags were not addressed by Arena, Luckey, or Newport Coast. They failed to take any meaningful measure to address the misconduct and to ensure that the Firm's representatives acted in a manner that was compliant with applicable laws, regulations and rules.

427. By failing to adequately supervise Leone, Arena violated NASD Rule 3010 and FINRA Rule 2010.

428. By failing to adequately supervise Levy, Costanzo, and LaBarbera, Luckey violated NASD Rule 3010 and FINRA Rule 2010.

429. By failing to adequately supervise Leone, Levy, Costanzo, LaBarbera, and Bartelt, Newport Coast violated NASD Rule 3010 and FINRA Rule 2010 (for transactions occurring on or after December 15, 2008), and NASD Rules 3010 and 2110 (for transactions occurring before December 15, 2008).

SEVENTH CAUSE OF ACTION

Failure to Disclose Liens

(Violations of NASD Rule 2110, NASD IM-1000-1, FINRA Rules 2010 and 1122, and Article V, Section 2(c) of the FINRA By-Laws by Respondent Arena)

430. The Department realleges and incorporates by reference paragraphs 1- 429 above.

431. On or about October 28, 2008, Arena completed a Form U4 to become associated with Newport Coast.

432. On that Form U4, Arena answered “Yes” in response to Question 14 M which asked: “Do you have any unsatisfied judgments or liens against you?”

433. On the Judgment Lien DRP, Arena disclosed (i) a purported Department of Treasury/Internal Revenue Service lien filed July 30, 2008 in the amount of \$40,265.55; and (ii) a New York State Department of Taxation and Finance lien in the amount of \$2,005.88.

434. Yet on the October 28, 2008 Form U4, Arena failed to disclose an Internal Revenue Service lien filed May 16, 2007 in the amount of \$27,479; an Internal Revenue Service lien filed July 9, 2008 in the amount of \$1,042; and an Internal Revenue Service lien filed July 11, 2008 in the amount of \$31,519.

435. Leone acquired at least three additional liens while he was associated with the Firm including: a New York State lien filed November 20, 2008 in the amount \$782; a New York State lien filed September 30, 2009 in the amount of \$5,885; and a New York State lien dated June 29, 2010 in the amount of \$7,874.

436. By failing to disclose the May 16, 2007, July 9, 2008 and July 11, 2008 Internal Revenue Service liens, Arena violated NASD Rule 2110 and NASD IM-1000-1.

437. By failing to update his Form U4 to disclose the November 20, 2008 New York State lien, Arena violated NASD Rule 2110, NASD IM-1000-1, and Article V, Section 2(c) of the NASD By-Laws.

438. By failing to update his Form U4 to disclose the September 30, 2009 and June 29, 2010 New York State liens, Arena violated FINRA Rules 1122 and 2010 and Article V Section 2(c) of the FINRA By-Laws.

EIGHTH CAUSE OF ACTION
Obstruction of the Disciplinary Process
(Violations of FINRA Rule 2010 by Respondents Levy and Costanzo)

439. The Department realleges and incorporates by reference paragraphs 1- 438 above.

440. FINRA Rule 2010 requires members and their associated person to “observe high standards of commercial honor and just and equitable principles of trade.” This requirement applies to all business-related misconduct. A principal consideration is whether the misconduct reflects on an associated person’s ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public.

441. By conditioning restitution offers upon customers’ refusal to cooperate with a FINRA investigation and by attempting to dissuade customers from testifying in an anticipated disciplinary hearing, Respondents Levy and Costanzo violated their obligation to conduct their activities in accordance with ethical standards.

442. By reasons of the foregoing, Levy and Costanzo violated FINRA Rule 2010.

NINTH CAUSE OF ACTION
Inadequate Supervisory System and Procedures Addressing ETPs
(Violations of NASD Rule 3010 and FINRA Rule 2010 by Respondent Newport Coast)

443. The Department realleges and incorporates by reference paragraphs 1- 442 above.

444. From at least March 2009 through July 2012, Newport Coast offered and sold structured products and inverse/leveraged ETPs. Yet, Newport Coast neither offered nor provided any training on these complex products to its registered representatives.

445. Newport Coast also lacked procedures and policies to address the supervision of the sales of ETPs. In particular, the Firm had no system or procedure to flag, for supervisory review, customer accounts that were potentially unsuitably concentrated in structured products or inverse/leveraged ETPs.

446. By failing to have an adequate supervisory system and procedure in place to address the sale of ETPs, Newport Coast violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

RELIEF REQUESTED

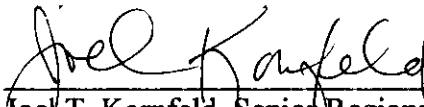
WHEREFORE, the Department respectfully requests that the Panel:

- 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) be imposed, including monetary sanctions and that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;
- D. make specific findings that Respondents Newport Coast, Leone, Levy, LaBarbera, Costanzo and Bartelt willfully violated Exchange Act Section 10(b) and Exchange Act Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: July 28, 2014



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