

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

DEPARTMENT OF ENFORCEMENT, Complainant, v. ASCENDIANT CAPITAL MARKETS, LLC (CRD No. 152912) Respondent.	DISCIPLINARY PROCEEDING No. 2014038989201 Hearing Officer - MC <u>ORDER ACCEPTING OFFER OF SETTLEMENT</u> Date: March 15, 2018
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INTRODUCTION

Disciplinary Proceeding No. 2014038989201 was filed on December 19, 2017, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Ascendant Capital Markets, LLC (ACM or Respondent) submitted an Offer of Settlement (Offer) to Complainant dated March 9, 2018. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

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

the Complaint (as amended by the Offer of Settlement), and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

ACM has been a FINRA-registered broker-dealer since 2011 and has its headquarters and home office in Irvine, California. ACM conducts a general securities business with approximately 24 registered individuals operating in the firm headquarters and two other branch offices. By virtue of its current registration and its status as a member of FINRA, ACM is subject to FINRA's jurisdiction pursuant to Article IV of FINRA's By-Laws.

FINDINGS AND CONCLUSIONS

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

SUMMARY

ACM's Excessive and Fraudulent Markups

Respondent ACM charged unfair and unreasonable prices with fraudulently excessive and undisclosed markups in principal basis stock sales made by ACM to its corporate customer NOA from April 30, 2012, to September 11, 2012.

In these eleven stock sales from ACM proprietary accounts, ACM charged its customer excessive prices that included undisclosed markups that were substantially above the then-prevailing prices for the stocks sold to the customer and, in particular, were well above the long-established 5% markup guideline for principal basis stock sales. For the two largest stock sales, ACM charged markups of 105.9% and 123.9% over the then-prevailing prices for the stock shares. In all eleven sales at issue, ACM's markups averaged 59%. This was 5.9 times higher than the 10% markup level above which markups on stocks long have been held to be presumptively fraudulent.

If ACM had charged fair and reasonable prices for the stocks sold to its customer, with permissible markups of 5% over then-prevailing prices for the stocks, the markups for all eleven trades would have totaled about \$13,000. By sharp contrast, the excessive and undisclosed markups that ACM charged to its customer on these principal basis trades totaled \$153,000. Thus, ACM overcharged its customer \$140,000 for these stock purchases.

The over-the-counter stocks sold by ACM to its customer with unfair and unreasonable prices and excessive and undisclosed markups were shares of Digital Development Group Corp. (ticker symbol: DIDG), a “pre-exploration phase” mineral rights company with no revenues and no ongoing business operations, and Assured Pharmacy, Inc. (ticker symbol: APHY), a pharmacy company that specialized in supplying pain medication prescriptions and that had experienced many consecutive years of losses.

ACM was a market maker for both DIDG and APHY in 2012. As a result, ACM was well aware of the prevailing prices of these stocks. Moreover, ACM knew that the prices it charged its customer for these stocks were excessive, unreasonable and unfair. As alleged below, ACM also knew that, for nine of the eleven sales, the prices ACM charged to its customer were not only excessive, but also fraudulent, with fraudulently excessive and undisclosed markups.

By selling shares of DIDG and APHY at fraudulently excessive prices and with fraudulently excessive markups in nine separate sales, ACM willfully violated Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 and also violated FINRA Rules 2010 and 2020, as charged in the First Cause of Action. The nine trades with fraudulently excessive prices and markups included ACM’s sales to NOA of (a) DIDG shares on May 21, 2012, and August 20, 2012, and (b) APHY shares on May 30, 2012, June 21, 2012, September 6, 2012, and September 11, 2012 (with two separate sales on September 6 and three sales on September 11).

By selling shares of DIDG and APHY to its customer at unfair and unreasonable prices in all eleven trades at issue—including the nine sales described above and two additional sales of APHY shares on April 30, 2012, and July 19, 2012—ACM also violated NASD Rule 2440, NASD IM 2440-1 and FINRA Rule 2010, as charged in the Second Cause of Action.

By failing to adequately supervise ACM registered representative SS (the representative for the NOA account) in connection with the stock prices and markups that ACM charged to its customer NOA, ACM violated NASD Rule 3010 and FINRA Rule 2010, as charged in the Third Cause of Action. (The supervision provisions of NASD Rule 3010 were replaced by FINRA Rule 3110 and 3170, effective December 1, 2014. All of the supervision-related charges in this Complaint took place when the governing supervision rule was NASD Rule 3010.)

By failing to have adequate supervisory systems and procedures to supervise the prices and markups that ACM customers were charged on principal basis trades and to ensure compliance with NASD Rule 2440 and NASD IM-2440-1 on such trades, ACM violated NASD Rule 3010 and FINRA Rule 2010, as charged in the Fourth Cause of Action.

ACM's Research-Related Violations

In addition, between August 2013 and December 2014, ACM failed to reasonably supervise its Research Department to limit information flow between its Research Department and the rest of its employees, including trading department personnel, in violation of NASD Rule 3010 and FINRA Rules 5280(b) and 2010, as charged in the Fifth Cause of Action.

RESPONDENT AND JURISDICTION

ACM, CRD No. 152912, has been a member of FINRA since 2011.

ACM operates a general securities business and maintains its headquarters and main office in Irvine, California.

ACM currently has two branch offices and employs approximately 24 registered individuals.

ACM's FINRA registration is presently in effect. Accordingly, ACM is subject to FINRA's ongoing jurisdiction.

FACTS

ACM's Excessive Prices and Markups in Sales of DIDG and APHY Shares to Customer NOA

A. The NOA Brokerage Account and ACM Registered Representative SS

Commencing in December 2011 and continuing through late 2012, ACM's customer, NOA, a corporation, maintained a brokerage account with ACM.

The President of NOA and the customer contact for the NOA account at ACM was JI, a successful business executive. JI and JI's father (TI), another successful executive, also owned and managed two other corporations that maintained brokerage accounts at ACM.

NOA had first opened its account at ACM in order to sell stock shares and stock certificates that NOA earlier had acquired. These were sold in the NOA account at ACM in early 2012. On April 1, 2012, prior to the first excessive markup trade in the NOA account at issue here, the NOA account at ACM had a cash balance of more than \$1.77 million. From April 2012 forward to late 2012, a number of stock purchases and sales were made in the NOA account at ACM, including the eleven trades in DIDG and APHY shares at issue here.

SS—a registered representative who was associated with ACM from May 2011 through July 2014—served as the broker for the NOA account at ACM.

SS also was head trader for ACM. As head trader for ACM, SS was responsible for ACM's market making activities and proprietary trading activities.

In May 2014, Enforcement brought a disciplinary action against SS for his misconduct at a firm with which he was associated prior to his association with ACM. As a result of the Order

Accepting Offer of Settlement in that matter, SS was permanently barred from associating with any FINRA member, effective January 13, 2015.

SS died in December 2015.

B. The 5% Markup Guideline and the Governing Criteria for Determining the Prevailing Price of Non-NASDAQ Over-the-Counter Stocks

In selling shares of stocks to its customer NOA on a principal basis, ACM was required to follow NASD Rule 2440 and NASD IM-2440-1. These rules required that, in principal basis stock sales from firm proprietary accounts to customers, FINRA member firms must charge their customers only fair and reasonable prices. In particular, for principal basis stock sales, markups over and above the prevailing price for the stocks sold to the customer were required to be reasonable and not excessive.

Both NASD Rule 2440 and NASD IM-2440-1 were in effect throughout the relevant time period of April 2012 through September 2012 for the trades at issue in this Complaint. (NASD Rule 2440 and NASD IM-2440-1 were superseded by current FINRA Rule 2121, effective in May 2014.)

In a principal basis stock sale from a firm to a customer, the markup on the sale is the difference (usually expressed on a percentage basis) between (i) the price charged by the firm to the customer and (ii) the then-prevailing price for the stock at the time of the trade. Thus, if a stock has a prevailing price of \$50.00 per share at the time of a trade, and the firm sells 100 shares of the stock to its customer in a principal basis sale for \$51.00 per share, the markup on that trade is \$1.00 per share per share (with a total \$100 markup on the 100 shares sold). Expressed as a percentage of the prevailing price of \$50.00 per share, the markup of \$1.00 per share is 2%.

The long-established guideline for the maximum level of markups to be charged in typical principal basis stock sales by FINRA member firms is 5% over the prevailing price of the stock. The 5% guideline for markups—as reflected in NASD-IM 2440-1 and NASD Notice to Members 92-16, as well as in current FINRA Rule 2121—provides that the 5% markup level is a guideline and not a rule. Accordingly, depending on the particular facts regarding the stock at issue and other circumstances concerning the trade, a markup of 5% (or even less than 5%) on a principal basis stock trade may be excessive and may violate NASD Rule 2440 and NASD IM-2440-1 (or current FINRA Rule 2121). On the other hand, depending on the facts regarding a trade, a markup of more than 5% occasionally may be permissible in appropriate circumstances. The firm charging such a markup has the burden to demonstrate the unique circumstances that warrant a markup of more than 5%.

As NTM 92-16 states: markups “exceeding 5 percent of the prevailing market price are generally viewed as excessive ... unless the member can show the markup/markdown charged to be fair under the unique circumstances of the trade.” NASD NTM 92-16 further directs that, “if a member seeks to charge its customers more than a 5 percent markup or markdown, it must be fully prepared to justify its reasons for the higher markup or markdown with adequate documentation.”

All of ACM’s eleven sales of DIDG and APHY shares to NOA were at prices well above the then-prevailing prices for these shares, with excessive (and undisclosed) markups substantially exceeding 5%. None of these trades presented any unique circumstances that provided any basis for ACM to charge the stock prices it charged to NOA for these trades, and ACM had no grounds at all to charge markups on these trades in excess of 5%.

ACM did not have any documentation in its records purporting to support either (i) the prices that ACM charged to NOA in these eleven principal basis stock sales or (ii) ACM's markups (all of which far exceeded 5%) in these principal basis stock sales.

Before considering what markups and what stock prices a FINRA member firm reasonably and fairly could charge its customers on principal basis stock sales, as consistent with the provisions of NASD Rule 2440 and NASD IM-2440-1 and the anti-fraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5, a member firm must first determine the prevailing price of the stock in question. For purposes of analyzing markups on principal basis stock sales, the factors relevant to determining prevailing prices of stocks are set forth in NASD NTM 92-16 and controlling case law.

For non-NASDAQ over-the-counter (NNOTC) stocks such as DIDG and APHY, one key factor in assessing a stock's prevailing price is whether the stock in question traded in an "active and competitive market" with a number of different market makers for the stock (as was the case for the DIDG shares) or, instead, traded in a "dominated and controlled market" (as was the case for the APHY shares, where ACM was the dominant trader on the relevant trade dates and for the relevant trade period of April 30, 2012, through September 11, 2012). Under NTM 92-16 and controlling case law, there are different criteria for determining the prevailing prices for these two different categories of stocks, and these different criteria are discussed below.

1. The Criteria for Determining the Prevailing Price of NNOTC Stocks that Trade in an Active and Competitive Market

DIDG was a NNOTC stock that traded in a reasonably active and competitive market, with a number of different market makers (in addition to ACM) making a market in the shares. Based on these facts, NASD NTM 92-16 and controlling case law provide that the prevailing price for shares of DIDG sold by ACM to NOA should be determined using the following factors

(with highest priority given to the earliest-listed factors): (1) ACM’s “contemporaneous” sales price in any sales of DIDG shares by ACM to other broker-dealers; (2) the contemporaneous DIDG shares’ “lowest ask quotation if validated by a comparison with interdealer transactions” (and with “the use of quotations ...secondary to reliance on actual inter-dealer transactions”); (3) “contemporaneous purchases [of DIDG shares by ACM] from other broker/dealers (*i.e.*, cost)”; and (4) “contemporaneous purchases [of DIDG shares by ACM] from customers adjusted for appropriate imputed markdowns.”

NTM 92-16 provides that “[f]ocusing on prices of executed transactions, rather than quotations, for determining prevailing market price should be particularly emphasized where the security is an NNOTC issue.” Here, DIDG was a NNOTC stock. Accordingly, while the lowest inside ask quotations are relevant under factor (2) in the prior paragraph, the key focus in analyzing prevailing price should be on the prices at which executed transactions actually took place during the relevant trading periods.

NTM 92-16 further provides that “contemporaneous transactions” in determining the prevailing market price “are defined in SEC cases as transactions being ‘closely related in time.’” NTM 92-16 states that “same day” transactions are “most preferable,” though in appropriate cases, trades that occurred up to five trading days before the trade in question may be considered, if there were no other relevant trades closer in date to the relevant trade.

2. The Criteria for Determining the Prevailing Price of Stocks that Trade in a Dominated and Controlled Market

Unlike the DIDG shares, the APHY shares did not trade in an active and competitive market with numerous different market makers. Instead, from April 30, 2012, through September 11, 2012—the time period in which ACM sold the APHY shares to NOA with excessive

markups—the APHY shares traded in a dominated and controlled market in which ACM was the dominant and controlling market maker.

ACM's trading volume in APHY represented between 80% and 100% of the total reported trading volume in APHY on each of the trading dates in 2012 for the nine APHY sales from ACM to NOA with excessive markups. These trade dates were April 30, 2012, May 30, 2012, June 21, 2012, July 19, 2012, September 6, 2012 (with two separate sales of APHY to NOA that day) and September 11, 2012 (with three separate sales that day).

For the entire period from April 30, 2012, through September 11, 2012, ACM was a dominant market maker in APHY. ACM's total trading volume in APHY was, on average, the highest of any market maker's trading volume in the stock, and ACM's trading volume consistently representing a high percentage of the total reported trading volume for APHY share trading throughout this period.

Under NTM 92-16 and controlling case law, the criteria for assessing the prevailing price of stocks (such as APHY) that are traded in a dominated and controlled market, as listed in order of priority, are: (1) the market maker's "contemporaneous purchases from other broker dealers (*i.e.*, cost)" and (2) the market maker's "contemporaneous purchases from customers adjusted for appropriate imputed markdown" (with purchase prices from customers adjusted downward for a 5% imputed markdown on these prices).

C. ACM's Sales of DIDG Shares to NOA With Fraudulently Excessive Prices and Fraudulently Excessive (and Undisclosed) Markups

1. ACM's Fraudulently Excessive Price and Fraudulently Excessive Markup of 105.9% in the Sale of 115,000 Shares of DIDG on May 21, 2012

On May 21, 2012, at 9:42 a.m., ACM sold to its customer NOA 115,000 shares of DIDG for \$1.0709 per share in a principal basis sale made from an ACM proprietary account. (All trade

execution times in this Complaint are reported in Eastern Time, just as ACM's contemporaneous trade execution records listed these trade execution times.)

For the reasons discussed in detail below, the prevailing price for DIDG at 9:42 a.m. on May 21, 2012, was \$.52 per share. Accordingly, ACM's markup on the trade from the prevailing price of \$.52 per share to \$1.0709 per share was 105.9%.

Under NTM 92-16 and controlling case law, where a market maker (such as ACM) is selling a NNOTC stock that trades in an active and competitive market (such DIDG), the first factor to consider in the prevailing price analysis is the price at which the market maker contemporaneously sold shares of that stock to other broker-dealers. ACM, however, did not make any sales of DIDG to other broker-dealers within five trading days prior to May 21, 2012.

Accordingly, under NTM 92-16 and controlling case law, the next criterion to be considered for determining the prevailing price of DIDG on May 21, 2012, is the "lowest ask quotation if validated by a comparison with interdealer transactions."

On the morning of May 21, 2012, the lowest inside ask price quotation for DIDG shares was \$.52 per share. There also were multiple inside ask price quotations at \$.53 per share, including a quote for \$.53 that was open at the time of the 9:42 a.m. sale of DIDG shares to NOA.

The low inside ask quotation of \$.52 per share was in full accord with (and validated by) the actual prices of reported trades on the morning of May 21, 2012. Prior to ACM's sale to NOA at 9:42 a.m. at the fraudulently marked-up price of \$1.0709 per share, the most recent trades in DIDG from 9:30 a.m. through 9:39 a.m. on May 21, 2012, were all priced at \$.51 and \$.52 per share. These DIDG trades included an inter-dealer trade at \$.52 per share, several principal purchases by market-making broker dealers at \$.51 per share (in which the contra

broker-dealer was selling on an agency basis), and agency and riskless principal trades at \$.52 per share. Similarly, less than two hours after the ACM sale to NOA, there was an inter-dealer trade of DIDG shares at \$.515 per share at 10:25 a.m. As yet further evidence of ACM's fraud, ACM itself purchased for its own proprietary account DIDG shares for \$.53 per share—less than half the price that ACM charged NOA at \$1.0709—at 11:36 a.m. on May 21, 2012.

The \$.52 prevailing price for DIDG at 9:42 a.m. on May 21, 2012, also was well within the publicly reported range for trading in DIDG shares that day, which ranged from a low of \$.51 per share to a high and closing price of \$.56 per share. Indeed, the \$.52 prevailing price at 9:42 a.m. was only four cents below the high and closing price of \$.56 per share. (As alleged below, ACM failed to report its fraudulently excessive \$1.0709 per share sale price for the 115,000 DIDG shares sold to NOA on May 21, 2012, so that this fraudulently excessive price was not even reflected in the reported trading prices for the stock that day.)

In sum, with \$.52 per share for DIDG the low inside ask quotation of the day, and with several executed DIDG trades at \$.52 per share executed immediately before ACM's sale of DIDG shares to NOA at 9:42 a.m. on May 21, 2012, the prevailing price of DIDG under the factors set forth in NTM 92-16 and controlling law was \$.52 per share.

The fact that ACM sold the DIDG shares at a fraudulently excessive price of \$1.0709 (as compared to the far lower then-prevailing price of these shares) was fully known to ACM, as alleged in the scienter allegations below. In addition, ACM had in its records a supervisory report (in Excel spreadsheet format) that plainly showed that, on May 21, 2012, ACM had sold 115,000 shares of DIDG to NOA for \$1.0709 per share, when the same report showed, on the same Excel row in the report, that ACM itself had listed a bid quote on DIDG for \$.51 per share on that same day, while another market maker had listed an ask quote for DIDG for \$.53 per

share (one cent above the low inside ask of \$.52 per share and far below the \$1.0709 per share price that ACM fraudulently charged to NOA).

Under NTM 92-16, the only other potentially relevant factor for determining the prevailing price of DIDG (apart from the \$.52 per share low inside ask quotation and prevailing trading prices of DIDG immediately before the sale to NOA on May 21, 2012) was ACM's most recent purchase price for DIDG shares prior to the sale to NOA. ACM paid \$.59 per share to purchase 2,500 DIDG shares on May 18, 2012, which was ACM's last purchase of DIDG shares before ACM's sale of the 115,000 DIDG shares to NOA on May 21, 2012. Yet under the prevailing price priority factors set forth in NTM 92-16, the fact that \$.52 per share was the low inside ask quotation for May 21, 2012 (and also was the executed inter-dealer sales price for DIDG minutes before the NOA sale), this \$.52 per share price minutes before the sale to NOA on May 21, 2012, takes priority over ACM's purchase of DIDG shares at \$.59 per share on the previous trading day of May 18, 2012.

In any case, based on the fact that ACM sold the DIDG shares to NOA at the fraudulent, unfair and unreasonable price of \$1.0709 per share on May 21, 2012, the selection of either \$.52 or \$.59 per share as the prevailing price for DIDG on May 21, 2012, makes no difference at all in terms of any finding that ACM's markup on the DIDG sale to NOA was excessive and fraudulent. Indeed, the only difference would be that, with the accurate prevailing price of \$.52 per share selected, ACM's markup to \$1.0709 per share reflects a fraudulent markup of 105.9%, while with the alternative price of \$.59 per share (based on ACM's most recent purchase of DIDG shares) still would reflect a fraudulently excessive markup of 81.5%.

Based on the prevailing price of \$.52 per share for DIDG shares, ACM's markup on the principal basis sale of 115,000 shares of DIDG on May 21, 2012, was \$63,354. If ACM instead

had charged only the permissible 5% markup on this trade, then ACM's markup would have been only \$2,990. In short, ACM's excessive markup (over the 5% markup level) on the May 21, 2012 sale of DIDG was \$60,364. The price ACM charged to NOA for this trade was fraudulently excessive and included a fraudulently excessive (and undisclosed) markup.

By selling its customer NOA the 115,000 shares of DIDG on May 21, 2012, at a fraudulently excessive price with a fraudulently excessive markup, ACM willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 and FINRA Rules 2010 and 2020 (as charged in the First Cause of Action) and also violated NASD Rule 2440, NASD IM-2440-1 and FINRA Rule 2010 (as charged in the Second Cause of Action).

2. ACM's Fraudulently Excessive Price and Fraudulently Excessive Markup of 123.9% in the Sale of 59,000 Shares of DIDG on August 20, 2012

In the second sale of DIDG shares at issue here, ACM sold to its customer NOA 59,000 shares of DIDG for \$.918 per share in a trade executed at 9:50 a.m. on August 20, 2012. This principal basis sale was made from an ACM proprietary account.

ACM did not have 59,000 shares of ACM in that proprietary account on that date and, accordingly, ACM's sale (from ACM's perspective) was a short sale.

The prevailing price for DIDG at the time of the August 20, 2012 trade was \$.41 per share. Accordingly, the price charged to NOA of \$.918 per share for the DIDG shares on August 20, 2012, included a 123.9% markup.

In terms of the first factor for determining the prevailing price of DIDG under NTM 92-16 and controlling law—namely, whether there any contemporaneous inter-dealer sales of DIDG by ACM prior to the sale to NOA—there were no sales of DIDG by ACM to other broker-dealers within the five trading days before August 20, 2012. However, on August 10, 2012, six trading days before the sale to NOA, there was one short sale of 5,000 shares of DIDG by ACM

at \$.41 per share and two short sales of 7,000 shares and 6,000 shares of DIDG by ACM at \$.40 per share. These trades came just outside the five-day trading period prior to August 20, 2012, that, under NTM 92-16 and the controlling case law, is considered “contemporaneous.”

Although these short sales are slightly outside the five-day trading period range (and, hence, are not decisive in determining the prevailing price of DIDG on August 20, 2012), these short sale prices at \$.41 and \$.40 per share closely mirrored the prices and inside ask quotes in DIDG immediately before the sale to NOA on August 20, 2012, as discussed below, and, hence, provide additional support that \$.41 per share was the prevailing price of DIDG at the time of ACM’s sale to NOA.

With no sales of DIDG by ACM in the five trading days before August 20, 2012, the most important criterion for assessing the prevailing price on August 20, 2012, under NTM 92-16 is the low inside quote for the stock on the morning of August 20, 2012, as validated by actual trade transactions that day.

The lowest inside ask price quotation for DIDG for the morning August 20, 2012, was \$.41 per share, and there also were several additional slightly higher inside ask price quotations at \$.44 per share that morning, including one \$.44 quote that was open at the time of the sale to NOA at 9:50 a.m. The low inside ask quotation of \$.41 per share was in full accord with (and validated by) the actual prices of reported trades on the morning of August 20, 2012. Indeed, an executed inter-dealer trade in DIDG shares at 9:44 a.m. on August 20, 2012, six minutes prior to the NOA transaction, was executed at \$.40 per share.

The \$.41 prevailing price for DIDG on August 20, 2012, also was well within the publicly reported range for trading in DIDG shares that day, which ranged from a low of \$.29 per share to a high of \$.44 per share, with a closing price of \$.36 per share. (ACM notably failed to

report its \$.918 per share sale price for the 59,000 shares ACM sold on August 20, 2012, so that this fraudulently excessive price was not even reflected in the reported trading prices for the stock that day.)

In addition, and as yet further evidence of ACM's fraud, about 30 minutes after the sale to NOA at the fraudulently excessive price of \$.918 per share on August 20, 2012, ACM sold short to another broker-dealer 5,000 shares of DIDG at \$.38 per share in an inter-dealer trade at 10:21 a.m. on August 20, 2012.

In sum, based on all of the above-discussed factors, the prevailing price for DIDG at the time of the NOA account purchase at 9:50 a.m. on August 20, 2012, was \$.41 per share.

The fact that ACM sold the DIDG shares at a fraudulently excessive price of \$.918 per share (as compared to the far lower then-prevailing price of these shares) was fully known to ACM, as alleged in the scienter allegations below. In addition, ACM had in its records a supervisory report (in Excel spreadsheet format) that plainly showed that, on August 20, 2012, ACM had sold 59,000 shares of DIDG to NOA for \$.918 per share, when the same report showed, on the same Excel row in the report, that other market makers had listed bid quotes for DIDG for \$.38 and \$.39 per share on that same day, while another market maker had listed an ask quote for DIDG for \$.45 per share (which was four cents over the low inside ask of \$.41 per share and far below the \$.918 per share price that ACM fraudulently charged to NOA).

Based on the prevailing price of DIDG shares of \$.41 per share at the time of ACM's sale of DIDG shares to NOA on August 20, 2012, ACM's total markup on this principal basis sale of 59,000 shares of DIDG at \$.918 per share to NOA on August 20, 2012, was \$29,973. If ACM instead had charged the permitted 5% markup on this trade, the markup would have been only \$1,210. ACM's excessive markup (over the 5% markup level) was \$28,763. The price ACM

charged to NOA for this trade was fraudulently excessive and included a fraudulently excessive (and undisclosed) markup.

By selling its customer NOA the 59,000 shares of DIDG on August 20, 2012, at a fraudulently excessive price of \$.918 with a fraudulently excessive markup, ACM willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 and FINRA Rules 2010 and 2020 (as charged in the First Cause of Action) and also violated NASD Rule 2440, NASD IM-2440-1 and FINRA Rule 2010 (as charged in the Second Cause of Action).

3. ACM Failed to Disclose Its Fraudulently Excessive Markups on the DIDG Share Sales to NOA

ACM never disclosed to its customer NOA that ACM had charged fraudulently excessive markups in ACM's sales of DIDG shares to NOA.

The only trade-related charges that ACM disclosed on the trade confirmations for these DIDG trades were ACM's commissions and confirmation fees, which were far lower than ACM's entirely undisclosed and excessive markups on these trades.

As reflected on the trade confirmation for the May 21, 2012 purchase of 115,000 shares of DIDG, the total cost of the transaction was \$124,388.50. This included a principal cost of \$123,153.50 (for 115,000 shares of DIDG purchased for \$1.0709 per share), a commission of \$1,230, and a confirmation fee of \$5.

Nothing in this trade confirmation or any other contemporaneous communication from ACM to NOA disclosed ACM's fraudulently excessive markup on the May 21, 2012 trade nor any other facts regarding the fraudulent pricing of the trade at \$1.0709 per share.

As reflected on the trade confirmation for the August 20, 2012 purchase of 59,000 shares of DIDG, the cost of this transaction was \$54,708. This included a principal cost of \$54,162

(59,000 shares purchased for \$.918 per share), a commission of \$541, and a confirmation fee of \$5.

Nothing in this trade confirmation or any other contemporaneous communication from ACM to NOA disclosed ACM's fraudulently excessive markup on the August 20, 2012 trade nor any other facts regarding the fraudulent pricing of the trade at \$.918 per share.

In sum, for the two DIDG trades on May 21, 2012, and August 20, 2012, ACM disclosed a total of \$1,771 in commission charges and \$10 in confirmation fee charges, for total disclosed trading-related charges of \$1,781. At the same time, ACM failed to disclose to its customer that ACM had charged \$93,326 in entirely undisclosed markups on these same trades.

Because ACM's markups of \$93,326 were fraudulently excessive, ACM had an obligation to disclose the material facts about these markups to its customer NOA and nonetheless failed to do so, in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

4. ACM's Scienter in Selling the DIDG Shares to NOA at Fraudulently Excessive Prices and Markups

ACM acted with scienter in selling the DIDG shares to NOA with fraudulently excessive markups of 105.9% and 123.9% on May 21, 2012, and August 20, 2012. These markups were more than 10 times higher than the 10% markup limit that long has been held to be presumptive of fraudulently excessive markups. ACM knew, or was reckless in not knowing, that these trades included fraudulent markups. The key facts bearing on ACM's scienter in the sale of DIDG shares to NOA at fraudulently excessive markups include the following:

ACM's markups on the DIDG trades were 105.9% and 123.9%. ACM was a market maker for DIDG and was well aware of the prices of DIDG shares at all relevant times. ACM was aware (as was ACM's registered representative SS) that the prices charged for the DIDG share sales to NOA on May 21, 2012, and August 20, 2012, were more than twice the prevailing

prices for DIDG shares on those trading dates. The May 21, 2012, sale at \$1.0709 per share was 105.9% above the then prevailing price for DIDG of \$.52 per share, while the August 20, 2012 sale \$.918 per share was 123.9% above the then prevailing price of \$.41 per share. ACM knew, or was reckless in not knowing, that the prices it charged NOA for the DIDG shares were fraudulently excessive and included fraudulently excessive markups.

ACM sold the 115,000 DIDG shares for a fraudulently excessive price on May 21, 2012, in order to avoid a substantial loss on ACM's proprietary holdings in DIDG. As yet another demonstration of ACM's scienter, and as discussed in detail below, ACM fraudulently marked up its price on the May 21, 2012, sale of 115,000 shares of DIDG to NOA in order to avoid a substantial loss on ACM's own large proprietary holdings in DIDG shares.

ACM failed to report to the OTC Reporting Facility the fraudulently priced DIDG share prices for the sales to NOA. As another indicator of ACM's scienter, ACM hid from regulatory authorities and the public the fraudulently excessive sales prices that ACM charged to NOA for the DIDG share sales on May 21, 2012, and August 20, 2012. ACM failed to report either of these two trades to the OTC Reporting Facility trade reporting system, as ACM was required to do under FINRA Rules 6622, 7230A and 7330. ACM's failure to report these two trades is all the more notable given that these two trades with NOA (with sales of 115,000 shares and 59,000 shares) were, by far, the largest trades in DIDG on May 21, 2012, and August 20, 2012. ACM chose not to report to the OTC Reporting Facility the DIDG trades with NOA, based on the fact the prices that ACM charged its customer for these trades were plainly fraudulent and, indeed, were more than double the prevailing price of DIDG on those trading dates. Rather than report trades that went off at prices more than double the prevailing price of DIDG, ACM failed to report the sales of DIDG shares from ACM to NOA at all.

ACM violated its own WSPs by charging both a commission and an undisclosed markup on the DIDG sales. As another indicator of ACM's scienter, ACM (through its registered representative SS) charged both a markup and a commission on both of the DIDG trades, even though this practice was in direct violation of ACM's own written supervisory procedures (WSPs). ACM's WSPs expressly provided that an ACM registered representative "may not charge a mark-up or mark-down in addition to a commission on any transaction." ACM knew that ACM (through its registered representative SS) had charged ACM customer NOA both a disclosed commission and a hidden and fraudulently excessive markup on the May 21, 2012 and August 20, 2012 DIDG trades. Yet despite this violation of ACM's own WSPs, ACM took no action to reverse or otherwise correct the fraudulently excessive price and markup on the DIDG trades.

The order tickets and trade confirmations falsely described the DIDG trades as riskless principal trades. The DIDG order tickets and confirmations for the May 21, 2012 and August 20, 2012 trades falsely listed both DIDG trades as riskless principal trades. In fact, neither trade was a riskless principal trade and, instead, both trades were straightforward principal basis trades. In a riskless principal purchase of, for example, 1,000 shares of a specific stock, the broker (with the customer's order for the purchase having already been made) would purchase the 1,000 shares in the open market for a firm account and then soon thereafter sell those same 1,000 shares to the customer. From the perspective of the firm, a riskless principal trade is the economic equivalent of an agency trade, with the only difference being that the firm may charge a reasonable markup on a riskless principal trade, while the firm would charge a commission on an agency trade. For the May 21, 2012 DIDG trade, ACM had not made any corresponding 115,000 share purchase of DIDG in the over-the-counter market on either May

21, 2012, or the prior trading day of Friday, May 18, 2012, as would have been required for any riskless principal transaction. Similarly, for the August 20, 2012 trade, ACM had not made any corresponding 59,000 share purchase of DIDG in the over-the-counter market on either August 20, 2012 or the prior trading day of August 17, 2012. The fact that the DIDG trades were falsely described as riskless principal trades on both the order tickets and confirmations is yet further evidence of ACM's scienter. ACM was aware (as was its registered representative SS) that these trades were not riskless principal trades, and yet no one at ACM took any action to look further into these falsely described trades or their fraudulently excessive pricing and fraudulently excessive markups. The false description of the trades as riskless principal trades on the order tickets and trade confirmations should have been a red flag that, had ACM not been acting with scienter, should have caused ACM to undertake a thorough examination of these trades and their fraudulently excessive markups.

In sum, ACM acted with scienter in selling the DIDG shares to NOA with fraudulently excessive markups of 105.9% and 123.9% on May 21, 2012, and August 20, 2012.

5. ACM Sold 155,000 Shares of DIDG on May 21, 2012 at a Fraudulently Excessive Price in Order to Avoid ACM's Own Loss on these Shares

In spring 2012, ACM did not merely engage in short-term market making trading with respect to the purchase and sale of DIDG shares. Instead, ACM also accumulated hundreds of thousands of shares of DIDG shares in longer-term holdings in ACM's own proprietary accounts over several weeks in late April and May 2012.

As of the opening of trading on May 21, 2012, ACM had held a substantial long position of more than 300,000 DIDG shares in its proprietary accounts (with the substantial majority of these shares held in proprietary accounts controlled by ACM head trader SS), with ACM having acquired these shares over several weeks.

The weighted average acquisition price of these more than 300,000 DIDG shares held by DIDG in its proprietary accounts on May 21, 2012 was more than \$.90 per share, so that a sale of any substantial portion of the shares at the prevailing price of \$.52 per share on the morning of May 21, 2012 would have produced a significant loss for ACM.

On May 21, 2012, at 9:42 a.m., ACM sold 115,000 shares of DIDG to NOA at the fraudulently excessive price of \$1.0709 in order to avoid a loss by ACM on its own proprietary holdings in DIDG—a loss that would have arisen from the sale of these shares at any price close to the prevailing price of \$.52 per share.

In selling 115,000 shares of DIDG to NOA on May 21, 2012, from ACM's proprietary accounts at a fraudulently excessive markup of \$1.0709—which was a 105.9% markup from the prevailing price of \$.52 per share—ACM turned what otherwise would have been a substantial loss to ACM on the sale of the 115,000 shares (if those shares had sold at or near the then-prevailing price of \$.52 per share) to a trading gain.

D. ACM's Unfair and Unreasonable Prices and Excessive Markups in the Nine Separate Sales of APHY Shares to NOA (With Fraudulently Excessive Prices and Markups in Seven of The Nine APHY Trades)

From April 30, 2012, through September 11, 2012, ACM executed a series of nine trades in which ACM sold to NOA—on a principal basis from ACM's proprietary accounts—shares of Assured Pharmacy, Inc. (ticker APHY) at unfair and unreasonable prices.

In seven of the APHY share sales—including ACM's sales of APHY shares on May 30, 2012, June 21, 2012, two separate sales on September 6, 2012, and three separate sales transactions on September 11, 2012—ACM charged fraudulently excessive prices with fraudulently excessive (and undisclosed) markups that were substantially in excess of the 10% markup level that long has been held to be presumptive of fraudulently excessive markups. In making these seven sales of APHY shares to NOA, ACM violated Section 10(b) of the Exchange

Act, Rule 10b-5 and FINRA Rules 2010 and 2020 (as charged in the First Cause of Action) and violated NASD Rule 2440, NASD IM-2440-1 and FINRA Rule 2010 (as charged in the Second Cause of Action).

In ACM's two other sales of APHY shares to its customer NOA on April 30, 2012, and July 19, 2012, ACM charged markups of 10.8% and 10.1%. Because these markups are twice as high as the 5% markup guideline, but only slightly above the 10% markup level that is the presumptive level for fraudulently excessive markups, for these two trades in APHY on April 30, 2012, and July 19, 2012, Enforcement is charging ACM only for violations of NASD Rule 2440, NASD IM 2440-1 and FINRA Rule 2010 (as charged in the Second Cause of Action) and not for securities fraud violations on these two sales.

1. ACM's April 30, 2012 Sale of 40,000 APHY Shares to NOA

On April 30, 2012, at 12:46 p.m., ACM sold to NOA 40,000 shares of APHY at \$.82 per share for the principal amount of \$32,800, with the principal basis sale made to NOA from an ACM proprietary account. The trade included a disclosed commission of \$350 and a disclosed confirmation fee of \$5, for a total purchase cost of \$33,155, with no disclosure made of the markup charged by ACM.

Based on NTM 92-16 and controlling law, the prevailing price for APHY at the time of the sale to NOA on April 30, 2012, was \$.74 per share, which was ACM's most recent price for its interdealer purchase of 2,500 APHY shares at 11:29 a.m. that day, about 76 minutes before the NOA trade.

Based on the prevailing price of APHY of \$.74 per share, ACM's markup for the April 30, 2012 sale of APHY shares to NOA at \$.82 per share was 10.8% and was excessive.

ACM's total markup on the April 30, 2012 trade was \$3,200, and ACM's excessive markup (in excess of a 5% markup) was \$1,720.

In making this April 30, 2012 sale of 40,000 APHY shares to NOA, ACM charged an unfair and unreasonable price for the shares in violation of NASD Rule 2440, NASD IM 2440-1 and FINRA Rule 2010.

2. ACM's May 30, 2012 Sale of 20,000 APHY Shares to NOA

On May 30, 2012, at 3:51 p.m., ACM sold to NOA 20,000 shares of APHY at \$.60 per share for a principal amount of \$12,000.

The trade also included a disclosed commission of \$120 and a disclosed confirmation fee of \$5, for a total purchase cost of \$12,125, with no disclosure made of the markup charged by ACM.

Under NTM 92-16 and controlling law, the prevailing price for APHY at the time of the sale to NOA on May 30, 2012, was \$.52 per share, which was the cost of ACM's prior purchases of APHY shares in two inter-dealer purchases (of 7,112 shares and 244 shares) one day earlier on May 29, 2012.

Based on the prevailing price of APHY of \$.52 per share, ACM's markup for the May 30, 2012 sale of APHY shares to NOA at \$.60 per share was 15.4%.

ACM's total markup on the May 30, 2012 trade was \$1,600, and ACM's markup in excess of a 5% markup was \$1,080. The price ACM charged to NOA for this trade was fraudulently excessive and included a fraudulently excessive (and undisclosed) markup.

By selling its customer NOA the 20,000 shares of APHY on May 30, 2012, at a fraudulently excessive price with a fraudulently excessive markup, ACM willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 and FINRA Rules 2010 and 2020 (as charged in the First Cause of Action) and also violated NASD Rule 2440, NASD IM-2440-1 and FINRA Rule 2010 (as charged in the Second Cause of Action).

3. ACM's June 21, 2012 Sale of 25,000 APHY Shares to NOA

On June 21, 2012, at 9:41 a.m., ACM sold to NOA 25,000 shares of APHY at \$.59 per share for a principal amount of \$14,750. The trade also included a disclosed commission of \$100 and a disclosed confirmation fee of \$5, for a total purchase cost of \$14,855, with no disclosure made of the markup charged by ACM.

Just as with the two DIDG trades, the APHY trade confirmation for the June 21, 2012 purchase of 25,000 shares of APHY falsely stated that the trade was a riskless principal trade, when in fact the trade was not a riskless principal trade and, instead, was a standard principal basis trade from an ACM proprietary account to NOA.

Under NTM 92-16 and controlling law, the prevailing price for APHY at the time of the sale to NOA on June 21, 2012, was \$.51 per share, which was the cost of ACM's prior purchase of 5,400 APHY shares in an inter-dealer purchase at 1:35 p.m. on the prior trading day, June 20, 2012. Similarly, in the next most recent prior trades by ACM in APHY, on June 15, 2012, ACM had made three other purchases of APHY (for a total of 7,500 shares) at exactly the same \$.51 per share price.

In a demonstration of ACM's fraud and scienter, ACM, after purchasing 5,400 shares of APHY at 1:35 p.m. on June 20, 2012, at \$.51 per share, next made a very small purchase of 500 shares of APHY(also at 1:35 p.m. that date) at \$.59 per share. Apart from fraudulently setting a new and higher market price for APHY in anticipation of the sale to NOA, there was no reason at for ACM to make a 500 share purchase of APHY at \$.59 at the same time as ACM had made a 5,400 share purchase of APHY at \$.51. Anticipating ACM's sale to NOA on the next day at \$.59, the sole (and fraudulent) purpose of this trade at \$.59 in APHY was to have a recorded price at \$.59 for the close of trading in APHY on June 20, 2012, which ACM then would use at

the price for the sale to NOA on the morning of June 21, 2012. Accordingly, the prevailing price of APHY on June 21, 2012 was \$.51 per share.

Based on the prevailing price of APHY of \$.51 per share, ACM's markup for the June 21, 2012 sale of APHY shares to NOA at \$.59 per share was 15.7% and was fraudulently excessive.

ACM's total markup on the June 21, 2012 trade was \$2,000, and ACM's markup in excess of a 5% markup was \$1,363. The price ACM charged to NOA for this trade was fraudulently excessive and included a fraudulently excessive (and undisclosed) markup.

By selling its customer NOA the 25,000 shares of APHY on June 21, 2012, at a fraudulently excessive price with a fraudulently excessive markup, ACM willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 and FINRA Rules 2010 and 2020 (as charged in the First Cause of Action) and also violated NASD Rule 2440, NASD IM-2440-1 and FINRA Rule 2010 (as charged in the Second Cause of Action).

4. ACM's July 19, 2012 Sale of 50,000 APHY shares to NOA

On July 19, 2012, at 13:57 p.m., ACM sold to NOA 50,000 shares of APHY at \$.60 per share for a principal amount of \$30,000. The trade also included a disclosed commission of \$500 and a disclosed confirmation fee of \$5, for a total purchase cost of \$30,505, with no disclosure made of the markup charged by ACM.

Under NTM 92-16 and controlling law, the prevailing price for APHY at the time of the sale to NOA on July 19, 2012, was .545 per share, which was the price ACM paid in an interdealer purchase of 1,000 shares of APHY, in a trade that ACM made 27 minutes before the NOA trade on the same day.

Based on the prevailing price of APHY of \$.545 per share, ACM's markup for the July 19, 2012 sale of APHY shares to NOA for \$.60 was 10.1% and was excessive.

ACM's total markup on the July 19, 2012 trade was \$2,750, and ACM's markup in excess of a 5% markup was \$1,388.

In making this July 19, 2012 sale of APHY shares to NOA, ACM charged an unfair and unreasonable price for the shares in violation of NASD Rule 2440, NASD IM-2440-1 and FINRA Rule 2010.

5. ACM's September 6, 2012 Sales of 100,000 APHY shares to NOA

On September 6, 2012, at 10:44 a.m., ACM sold to NOA 50,000 shares of APHY at \$.81 per share for a principal amount of \$40,500. The trade also included a disclosed commission of \$250 and a disclosed confirmation fee of \$5, for a total purchase cost of \$40,755, with no disclosure made of the markup charged by ACM.

Next, on September 6, 2012, at 11:51 a.m., ACM sold to NOA 30,000 shares of APHY at \$.80 per share for a principal amount of \$24,000. The trade also included a disclosed commission of \$150 for a total purchase cost of \$24,150, with no disclosure made of the markup charged by ACM.

Under NTM 92-16 and controlling law, the prevailing price for APHY at the time of the two sales to NOA on September 6, 2012, was \$.51 per share, based on a purchase of 37,000 shares of APHY at \$.51 per share that ACM had made from a customer two days earlier at 11:53 a.m. on September 4, 2012.

There were no other purchases of more than 100 shares by ACM in the next two days after this 37,000 share purchase at \$.51 on September 4, 2012. ACM, however, made a 100 share purchase of APHY at \$.65 per share from a broker-dealer a few hours after the 37,000 share purchase at \$.51 on September, 4, 2012. This small 100 share purchase at \$.65 should not be used to set the prevailing price for APHY when a 37,000 share purchase was made by ACM just a few hours earlier; in any case for comparison purposes, if \$.65 had been the prevailing price for

APHY on September 6, 2012 (and it was not), then ACM's sales at \$.81 and \$.80 on September 6, 2012, still would have had fraudulently excessive markups of 25% and 23%.

On September 5, 2012— in anticipation of the September 6, 2012 sales to NOA of 80,000 shares of APHY—ACM fraudulently set a higher closing price for APHY by purchasing just 100 shares of APHY for \$.90 per share. For many weeks prior to September 5, 2012, APHY had traded at prices only of \$.65, \$.61 and, later, \$.51 per share, with no trade remotely close to the price of \$.90 per share. With ACM the dominant market maker for APHY, there was no reason at all (other than fraud in anticipation of the sale to NOA) for ACM to purchase 100 shares of APHY for \$.90 per share. Accordingly, the fact that APHY (as the dominant market maker for APHY in this time period) suddenly made a purchase at \$.90 per share on September 5, 2012, illustrates ACM's fraud and scienter here, demonstrating that ACM attempted to use this 100 share trade to set a higher closing high for APHY shares, all in anticipation of the September 6, 2012 sale of 80,000 shares of APHY to NOA. The 100 share trade of APHY at \$.90 per share on September 5, 2012, accordingly, cannot be used to determine the prevailing price of APHY on September 6, 2012.

Under NTM 92-16 and controlling law, the prevailing price for APHY at the time of the two sales of APHY shares to NOA on September 6, 2012 was \$.51 per share.

Based on the prevailing price of APHY of \$.51 per share, ACM's markups in selling the APHY shares to NOA at \$.80 and \$.81 per share were 58.8% and 56.9% for the two trades and were fraudulently excessive.

ACM's markups on the two September 6, 2012 sales to NOA totaled \$23,700, and ACM's markups in excess of the 5% markup level were \$21,660. The prices ACM charged to

NOA for these trades were fraudulently excessive and included fraudulently excessive (and undisclosed) markups.

By selling its customer NOA the 50,000 shares and 30,000 shares of APHY on September 6, 2012, at fraudulently excessive prices with fraudulently excessive markups, ACM willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 and FINRA Rules 2010 and 2020 (as charged in the First Cause of Action) and also violated NASD Rule 2440, NASD IM-2440-1 and FINRA Rule 2010 (as charged in the Second Cause of Action).

6. ACM's September 11, 2012 Sales of 100,000 APHY shares to NOA

On September 11, 2012, at 9:59 a.m., ACM sold to NOA 55,000 shares of APHY at \$.80 per share for a principal amount of \$44,000. The trade also included a disclosed commission of \$440, for a total purchase cost of \$44,440, with no disclosure made of the markup charged by ACM.

Just seven minutes later, on September 11, 2012, at 10:06 a.m., ACM sold to NOA 5,000 shares of APHY at \$.80 per share for a principal amount of \$4,000. The trade also included a disclosed commission of \$40, for a total purchase cost of \$4,040, with no disclosure made of the markup charged by ACM.

ACM had not made any purchases from either brokers or ACM customers since the September 6, 2012 trades, and the prevailing price for APHY on the morning of September 11, 2012 remained \$.51 per share. In particular, pursuant to NTM 92-16 and governing case law, the prevailing price for the two trades in APHY on the morning of September 11, 2012, was \$.51 per share based on the 37,000 APHY share purchase by ACM from its customer for \$.51 on September 4, 2012 (within five trading days of September 11, 2012). Just as alleged in the preceding section, ACM's fraudulent purchase of 100 shares of APHY at \$.90 should be ignored in determining the prevailing price for APHY, which was instead \$.51 per share, not \$.90.

Based on the prevailing price of APHY of \$.51 per share, ACM's markups in selling the APHY shares to NOA at \$.80 per share in both trades on the morning of September 11, 2012 were 56.9% and were fraudulently excessive.

ACM's total markups for these two trades in APHY on the morning of September 11, 2012, were \$17,400, and ACM's excessive markups (over the 5% markup) for these two trades were \$15,879.

Next, during the afternoon of September 11, 2012, at 1:37 p.m., ACM sold to NOA 40,000 shares of APHY at \$.80 per share for a principal amount of \$32,000. The trade also included a disclosed commission of \$320 and a confirmation fee of \$5, for a total purchase cost of \$32,325, with no disclosure made of the markup charged by ACM.

After the September 11, 2012 morning sales of APHY to ACM customer NOA and before the 1:37 p.m. 40,000 share sale to NOA, ACM had purchased APHY shares in interdealer trades as follows: (1) ACM purchased 2,500 shares of APHY at \$.61 at 12:18 p.m.; (2) ACM next purchased 2,500 shares of APHY at \$.56 at 12:35 p.m.; and (3) ACM then purchased 993 shares of APHY at \$.51 at 12:36 p.m., about one hour before the ACM sale to NOA of 40,000 shares of APHY at \$.80.

Under NTM 92-16 and controlling law, the prevailing price for APHY at the time of the two sales to NOA on September 6, 2012, was either \$.51 per share (ACM's most recent purchase price for 993 shares of APHY at 12:36 p.m., 61 minutes before the sale to NOA at 1:37 p.m.) or \$.56 (the price ACM paid for the larger 2,500 share position of APHY made at 12:35 p.m., just one minute before the \$.51 purchase). The simple fact is that a prevailing price of either \$.51 or \$.56 per share is so far below ACM's price to its customer of \$.80 on September 11, 2012, that choosing between \$.51 and \$.56 as the prevailing price is not material, as either prevailing price

would demonstrate that the markup to \$.80 per share was fraudulently excessive. Enforcement in its allegations will rely on the higher \$.56 per share prevailing price figure.

Based on the prevailing price of APHY of \$.56 per share on the afternoon of September 11, 2012, ACM's markup in selling the 40,000 shares of APHY to NOA at \$.80 per share was 42.9% for this trade and, hence, was fraudulently excessive.

ACM's markup on the September 11, 2012, afternoon 40,000 share trade was \$9,600, and ACM's excessive markup (over 5%) was \$8,480.

ACM's markups for all three September 11, 2012 trades totaled \$27,000, and ACM's excessive markups on these trades (in excess of the 5% markup level) were \$24,350. The prices ACM charged to NOA for these trades were fraudulently excessive and included fraudulently excessive (and undisclosed) markups.

By selling its customer NOA the 100,000 shares of APHY in three separate transactions on September 11, 2012, at fraudulently excessive prices with fraudulently excessive markups, ACM willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 and FINRA Rules 2010 and 2020 (as charged in the First Cause of Action) and also violated NASD Rule 2440, NASD IM-2440-1 and FINRA Rule 2010 (as charged in the Second Cause of Action).

7. ACM's Scienter in Selling the APHY shares to NOA

ACM acted with scienter in selling the APHY shares to its customer at fraudulently excessive prices on May 30, 2012, June 21, 2012, in two separate sales on September 6, 2012, and in three separate sales on September 11, 2012. The key facts bearing on ACM's scienter in the sale of APHY shares to NOA at fraudulently excessive markups include the following:

ACM knew that its seven separate sales of APHY shares to NOA on May 30, 2012, June 21, 2012, September 6, 2012, and September 11, 2012, were at fraudulently excessive prices far above APHY's then prevailing prices. ACM was the dominant market maker for

trading in APHY between April 30, 2012, and September 11, 2012. ACM (and its registered representative SS) knew the prevailing prices for APHY shares and knew that the prices ACM charged to NOA for the seven fraudulently excessive trades in APHY were far above the prevailing price for APHY, with markups on these seven trades ranging from 15% to 59%. ACM knew, or was reckless in not knowing, that these seven sales of APHY shares were made at fraudulently excessive prices and with fraudulently excessive (and undisclosed) markups.

ACM violated its own WSPs by charging both a commission and an undisclosed markup on the DIDG sales. As another indicator of ACM's scienter in the seven APHY sales with fraudulently excessive markups, ACM (through its registered representative SS) charged both a disclosed commission and an undisclosed (and fraudulently excessive) markup on all seven trades in APHY with fraudulently excessive prices and markups. This was in direct violation of ACM's own WSPs, which provided that an ACM registered representative "may not charge a mark-up or mark-down in addition to a commission on any transaction." ACM knew that ACM had charged its customer NOA both a disclosed commission and a hidden, undisclosed and fraudulently excessive markup on the seven APHY trades with fraudulently excessive markups. Yet despite this violation of ACM's own WSPs, ACM took no action to reverse or otherwise correct the fraudulently excessive price and markup on the fraudulently excessive APHY trades.

In sum, ACM acted with scienter in selling the APHY shares to NOA with fraudulently excessive markups on prices on May 30, 2012, June 21, 2012, in two separate sales on September 6, 2012, and in three separate sales transactions on September 11, 2012.

E. ACM's Failure to Supervise SS and ACM's Inadequate Supervisory System and Procedures

ACM failed to supervise ACM registered representative SS for his role in connection with ACM's principal basis sales of DIDG and APHY shares to NOA with excessive markups. No one at ACM effectively supervised SS (the head trader of SS) in the principal basis sale of these stock shares to NOA in terms of the fairness (or unfairness) of the prices charged to NOA and the level of markups on these trades from prevailing prices.

As a market maker for shares of DIDG and APHY in 2012, at the time of each sale of DIDG and APHY shares to NOA, ACM was well aware of (i) the then-prevailing prices of the DIDG and APHY shares, (ii) ACM's own most recent trade prices for these shares, and (iii) the prevailing bid and ask quotes for these shares. ACM also was well aware that the sales of DIDG and APHY to NOA in 2012 were at unfair and unreasonable prices, far above the prevailing prices for these shares. ACM also was aware of the red flags regarding the DIDG and APHY share prices and trades from the scienter-related facts alleged above.

For the DIDG principal basis sales to NOA, among the key red flags ignored by Ascendant included the following facts: (i) the prices charged by Ascendant for the DIDG shares sold to NOA were more than double the prevailing prices of DIDG at the time of those sales (prevailing prices for which Ascendant, as a market maker for DIDG, was well aware); (ii) Ascendant had failed to report the DIDG sales prices for the NOA sales to the OTC Reporting Facility; (iii) the DIDG sale prices were falsely reported to be riskless principal transactions on the order tickets and confirmations, even these trades were not riskless principal trades; (iv) there was a highly suspicious and unexplained several week gap in time between the date on each DIDG order ticket and the date of the trades; (v) the fraudulent markup charged to NOA on the May 21, 2012 DIDG trade allowed Ascendant to avoid a large loss on the DIDG

shares sold to NOA in this trade at a fraudulently excessive price; and (vi) contrary to Ascendant's stated policies (which prohibited charging both a commission and a markup on the same trade), Ascendant charged both a fraudulently excessive (and undisclosed) markup on the DIDG trades and a much smaller (and disclosed) commission on these trades.

For the APHY principal basis sales to NOA—and, of key importance here, for which Ascendant was the dominant and controlling market maker for the APHY trading in 2012—among the red flags ignored by Ascendant were the following facts: (i) the prices charged to NOA by Ascendant for the APHY shares sold to NOA were substantially above the prevailing prices of APHY at the time of those sales, as reflected in Ascendant's own recent purchase prices for APHY shares in the firm's own proprietary accounts; (ii) contrary to Ascendant's stated policies (which prohibited charging both a commission and a markup on the same trade), Ascendant charged both an excessive (and undisclosed) markup on the APHY trades and a much smaller (and disclosed) commission on these trades, and in most of these sales the markup was fraudulently excessive; and (iii) for several APHY sales, as alleged above, Ascendant had made fraudulent small purchases of APHY at unexplainably high prices just before the sales to NOA. Because Ascendant was the dominant and controlling market maker in APHY, Ascendant should have been particularly focused on any red flags indicating excessive prices and markups in principal basis sales of APHY; yet in fact Ascendant entirely failed to supervise the excessive prices and markups charged to NOA in any of the nine APHY trades at issue here.

In addition to failing to supervise SS in connection with the markups charged to NOA (as alleged in the Third Cause of Action), ACM also had no effective supervisory systems and procedures in place to supervise the prices and markups that ACM customers were charged in principal basis sales, including principal basis sales made from ACM proprietary accounts to

ACM customers. As alleged in the Fourth Cause of Action, ACM had entirely inadequate supervisory systems and procedures (including inadequate WSPs) for ensuring compliance with NASD Rule 2440 and NASD IM-2440-1 in terms of the prices that customers were charged for stock sales made to them by ACM on a principal basis.

ACM did not have a system in place to monitor the markups charged to customers in principal basis sales to the customers. ACM had no system in place to supervise such trades to ensure that only reasonable and fair prices and markups were being charged in such principal basis trades in accordance with the requirements of NASD Rule 2440 and NASD IM-2440-1.

KT, the ACM supervisor nominally designated by ACM in its WSPs to supervise the fairness of prices charged to customers and to supervise the markups and markdowns charged on principal basis trades with customers, failed to supervise or to review in any fashion the fairness or reasonableness of the prices and markups on any of the trades in DIDG and APHY shares in NOA's account. Moreover, no other supervisor at ACM supervised or reviewed the DIDG and APHY trades in NOA's account for the fairness (or unfairness) of the prices and markups charged to NOA. SS's supervisor (KT) did not systematically review the fairness of prices and markups charged to ACM customers on principal basis trades. It was only SS (not KT or any other designated ACM supervisor) who purportedly reviewed whether the prices ACM charged to customers on principal basis trades were fair and reasonable on principal basis trades—including on trades for which SS was the broker, so that SS was purportedly reviewing and supervising his own trades. To have SS purportedly review ACM's principal basis trades (as made by SS with his own customer NOA) for the purported fairness and reasonableness of the prices and markups charged to the customer was a complete failure to supervise and a clear violation of NASD Rule 3010.

In sum, in addition to ACM being directly liable for its sale of the DIDG and APHY shares to ACM customer NOA at unfair and unreasonable prices with excessive markups (including fraudulently excessive markups in nine of the eleven trades at issue here), ACM took no effective action to supervise SS in connection with the unfair and unreasonable pricing of the DIDG and APHY sales to ACM customer NOA, as charged in the Third Cause of Action. ACM also had inadequate supervisory systems and procedures to supervise compliance with NASD Rule 2440 and NASD IM-2440-1 and to ensure that customers were charged fair prices in principal basis stock sales from ACM to its customers, as charged in the Fourth Cause of Action.

F. Arbitration, Litigation and Collection Actions Between NOA, ACM and ACM's Corporate Parent ACP (concluding in July 2017)

At various different times from December 2012 through July 2017, ACM customer NOA, ACM and ACM's corporate owner Ascendant Capital Partners, LLC (ACP) had been engaged in a FINRA Dispute Resolution customer arbitration matter, post-arbitration litigation matters, a settlement, and subsequent post-settlement collection efforts (including attempts by NOA in 2017 to collect on a stipulated judgment relating to the parties' earlier settlement). These different matters originally arose from (a) an arbitration that NOA filed against ACM and SS in 2012 and (b) a subsequent June 2014 settlement agreement between NOA, on the one hand, and ACM, ACP and SS, on the other hand. SS also was involved in these various arbitration, litigation and settlement matters from late 2012 until his death in December 2015.

The first of these proceedings was a FINRA Dispute Resolution customer arbitration brought by NOA against ACM and SS in late 2012. In the FINRA Dispute Resolution arbitration claim against ACM and SS, NOA alleged, *inter alia*, that the DIDG and APHY stock purchases in the NOA account as discussed above (as well as certain other stock purchases in the NOA account not at issue in this Complaint) were unauthorized purchases and that these unauthorized

trades led to losses in NOA's account of more than \$400,000. While the order tickets and trade confirmations for the DIDG and APHY purchases at issue here stated that these trades were purportedly all "unsolicited" orders made by NOA, NOA successfully argued in the arbitration that, far from being unsolicited, these trades in DIDG and APHY (as well as other trades not at issue here) were entirely unauthorized by NOA.

In the arbitration claim, NOA had asserted causes of action against ACM and SS for breach of fiduciary duty, violation of FINRA's conduct rules, negligent supervision, among other claims. NOA prevailed in the arbitration against ACM and SS. The February 2014 arbitration award included a compensatory damages award of \$437,603.25 against ACM and SS, who were found jointly and severally liable, and also included a punitive damages and sanctions award of \$10,000 (with this punitive damages award made on joint and several basis against ACM and SS).

Following the February 2014 arbitration award, the parties engaged in post-arbitration litigation matters in California state courts seeking variously to either vacate or confirm that arbitration award.

These lawsuits eventually resulted in a June 2014 settlement reached amongst NOA, SS, ACM and ACM's corporate parent ACP. The terms of that settlement were publicly revealed a few months ago in publicly-filed court documents filed in 2017 in a litigation action in San Diego Superior Court involving NOA, ACM and ACP, in a court filing made by NOA as part of an effort to collect in full what was owed NOA under the settlement. Under the terms of the June 2014 settlement agreement, only ACP and SS (and not ACM) were obligated to pay the agreed-upon settlement amount owed to NOA, and only ACP and SS were the judgment debtors on an agreed-upon stipulated judgment in connection with that settlement. In addition, as part of the

settlement agreement, the parties stipulated to an order entirely vacating the February 2014 arbitration award against ACM and SS. The settlement agreement also included releases of various claims.

ACP and, before his death in December 2015, SS made substantial payments toward the total settlement amount owed to NOA. Those settlement payments from SS and ACP both stopped in 2016, following SS's death in December 2015. Based on recent public court filings made in 2017 in the San Diego Superior Court action involving NOA, ACM and ACP, NOA stated in several filings in February 2017 through May 2017 that NOA was still owed approximately \$100,000 under the parties' settlement agreement. Then, on July 31, 2017, NOA filed a notice with the court entitled Acknowledgement of Satisfaction of Judgment, stating that NOA as judgment creditor "has accepted payment or performance other than that specified in the judgment in full satisfaction of the judgment."

Based upon the post-arbitration settlement agreement among NOA, ACM, SS and ACP, Enforcement does not here request (and will not request at the hearing) any restitution or disgorgement sanction to be made in favor of NOA as part of any of the sanctions to be entered in this matter against ACM. Moreover, while the evidence at the arbitration supported NOA's allegations of unauthorized trading in the shares of various stocks that ACM sold to NOA on principal basis in 2012, Enforcement is not asserting here any unauthorized trading charges against ACM. Rather, with respect to the NOA-account related excessive markup charges in this disciplinary action against ACM, Enforcement instead is charging ACM with excessive and fraudulent markups in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, FINRA Rules 2010 and 2020 (as charged in the First Cause of Action), violations of NASD Rule 2440, NASD IM-2440-1 and FINRA Rule 2010 (as charged in the Second Cause of Action) and related

supervisory violations under NASD Rule 3010 and FINRA Rule 2010 (as charged in the Third and Fourth Causes of Action).

ACM Failed to Supervise its Research Department to Prevent Individuals from Sharing Research Prior to Publication

Between August 2013 and December 2014, the Research Department of ACM consisted of approximately nine research analysts who were supervised by the Director of Research.

During this seventeen month period, five different individuals served as the Director of Research.

The Director of Research was supervised by the EVP of Equity Capital Markets, who was ultimately supervised by ACM's managing partner.

ACM's WSPs in effect between August 2013 and December 2014 stated that "no employee of the investment banking department or any other employee of the firm who is not directly responsible for investment research...may review or approve a research report before its publication."

However, ACM's WSPs did not state how it would ensure that of the trading department personnel did not review a research report before its publication, nor did the WSPs state whether it was permissible to share research with individuals outside of the firm prior to publication.

Between August 2013 and December 2014, the Director of Research was responsible for identifying information barrier breaches; however, the Director of Research did not have the ability to review emails of the other members of the Research Department.

Rather, only ACM's managing partner and ACM's CCO reviewed emails in connection with the Firm's research activity.

Neither the managing partner nor the CCO reviewed emails for information barrier violations.

As a result, no one at ACM identified any of the instances in August and November 2013 and in which a research report was provided to individuals other than the firm's research personnel prior to the research report's official publication.

On August 28, 2013, at 8:08 AM EST, CD emailed a research report on Apricus Biosciences, Inc. to the email address research@ascendant.com, and blind copied the email address All_Associates@ascendant.com, which caused the email to go to every individual associated with ACM.

After sending the research report on Apricus Biosciences, Inc. to all ACM personnel, ACM then published it to the Blue Matrix system at 8:09 AM EST on August 28, 2013.

On November 17, 2013 at 3:55 PM EST, the email address research@ascendant.com emailed a research report on GameStop Corp. to the email addresses All_Associates@ascendant.com and an ACM client and blind copied the email address of one of ACM's proprietary traders.

After sending the research report on GameStop Corp. to all ACM personnel, a client, and an ACM proprietary trader, ACM published the research report to the Blue Matrix system the next day, November 18, 2013, at 10:29 AM EST.

On November 21, 2013, at 8:07 PM EST, the email address research@ascendant.com e-mailed a research report on DXP Enterprises, Inc. to the email addresses All_Associates@ascendant.com and to an ACM client and blind copied the email address of one of ACM's proprietary traders.

After sending the research report on DXP Enterprises, Inc. to all ACM personnel, a client, and an ACM proprietary trader, ACM published the research report to the Blue Matrix system the next day, November 22, 2013, at 8:31 AM EST.

FIRST CAUSE OF ACTION
SECURITIES FRAUD (EXCESSIVE AND FRAUDULENT PRICES AND MARKUPS)
(Willful Violations of Section 10(b) of the Exchange Act and SEC Rule 10b-5, and Violations of FINRA Rules 2010 and 2020)

Section 10(b) of the Exchange Act prohibits “any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national security exchange . . . to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance.”

Rule 10b-5, promulgated under the Exchange Act, prohibits any person, “directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (a) to employ any device, scheme or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

The common stock shares of DIDG and APHY that ACM sold to NOA were securities under the Exchange Act.

ACM sold these shares of DIDG and APHY to NOA using the means and instrumentalities of interstate commerce.

In its two principal basis sales of DIDG shares to NOA on May 21, 2012, and August 20, 2012, and in its seven principal basis sales of APHY shares to NOA on May 30, 2012, June 21, 2012, September 6, 2016 (with two sales to NOA on this date) and September 11, 2012 (with three sales to NOA on this date), and with all nine of these sales made at fraudulently excessive prices and with fraudulently excessive markups, ACM, acting with scienter, willfully violated

Section 10(b) of the Exchange Act, Rule 10b-5. These nine sales had fraudulently excessive prices, with fraudulently excessive (and undisclosed) markups ranging from a high of 123.9% to a low of 15.4%.

The facts regarding the fraudulently excessive prices and fraudulently excessive markups on these nine principal basis sales of DIDG and APHY shares were material facts that ACM was required to disclose to its customer NOA.

ACM, however, failed to disclose the facts regarding the fraudulently excessive prices and fraudulently excessive markups to NOA.

ACM acted with scienter in selling to NOA the DIDG and APHY shares in these nine principal transactions with fraudulently excessive prices and markups and in failing to disclose the fraudulently excessive markups to ACM customer NOA.

ACM has direct and primary liability for its willfully fraudulent conduct in the principal basis sales of shares of DIDG and APHY to ACM customer NOA.

In addition, ACM was a control person of ACM registered representative SS under Section 20(a) of the Exchange Act in connection with the sale of DIDG and APHY shares to NOA, in that ACM had control over its head trader SS. Just as ACM acted with scienter, SS acted with scienter in connection with the sales of the DIDG and APHY shares to NOA, for SS, as head trader of ACM, was aware of all of the scienter-related facts of which ACM also was aware, as alleged in detail above. Accordingly, in addition to ACM's direct and primary liability for violations of Section 10(b) and Rule 10b-5, ACM also is liable for violations of Section 10(b) and Rule 10b-5 under the control person provisions of Section 20(a) of the Exchange Act.

In addition, ACM also is liable for securities fraud under the doctrine of *respondeat superior*.

FINRA Rule 2020 provides that “[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.” FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” By violating SEC Rule 10b-5 and Exchange Act Section 10(b), ACM also violated FINRA Rules 2010 and 2020.

By reasons of the foregoing, ACM, in connection with the purchase or sale of equity securities, by the use of the means and instrumentalities of interstate commerce, or of the mails, intentionally or recklessly employed manipulative or deceptive devices, schemes or artifice to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices or a course of business which operated or would operate as a fraud or deceit upon any person, in willful violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and in violation of FINRA Rules 2010 and 2020.

**SECOND CAUSE OF ACTION
UNFAIR AND UNREASONABLE PRICES AND EXCESSIVE MARKUPS]**

(Violations of NASD Rule 2440, NASD IM 2440-1 and FINRA Rule 2010)

NASD Rule 2440 and NASD IM-2440-1 required brokerage firms to only sell securities on a principal basis to their customers at fair and reasonable prices. As NASD IM-2450-1 provided, it was a violation of NASD Rule 2440 “to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security.”

NASD Rule 2440 and NASD IM-2440-1 were both in effect throughout 2012, the time period of ACM’s sales of DIDG and APHY shares to NOA.

In violation of NASD Rule 2440 and NASD IM-2440-1, ACM charged unfair and unreasonable prices (with such unfair and unreasonable prices reflecting undisclosed and excessive markups) in connection with the sale to NOA of (a) DIDG shares on May 21, 2012, and August 20, 2012, and (ii) APHY shares on April 30, 2012, May 30, 2012, June 21, 2012, July 19, 2012, two separate sales of APHY shares on September 6, 2016 and three separate sales of APHY shares on September 11, 2012.

In violation of NASD Rule 2440 and NASD IM-2440-1, ACM sold these shares of DIDG and APHY to ACM customer NOA in these eleven principal basis sales at prices that were excessive, unreasonable and unfair (and had excessive markups), taking into consideration all relevant circumstances, including market conditions with respect to such securities at the time of the transaction, and the factors set forth in NASD IM-2440-1.

A violation of NASD Rule 2440 and NASD IM-2440-1 by a FINRA member is also a violation of FINRA Rule 2010.

By reason of the forgoing, ACM violated NASD Rule, NASD IM-2440-1 and FINRA Rule 2010.

**THIRD CAUSE OF ACTION
FAILURE TO SUPERVISE (EXCESSIVE AND FRAUDULENT PRICES AND
MARKUPS)**

(Violations of NASD Rule 3010 and FINRA Rule 2010)

NASD Rule 3010(a) required FINRA members to establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. (NASD Rule 3010 was in effect at all relevant times here, but was superseded by FINRA Rules 3110 and 3170 on December 1, 2014.)

ACM failed to reasonably supervise the activities of ACM registered representative SS (the registered representative for the NOA account) so as to achieve compliance with the federal securities laws and regulations and the rules of FINRA, including (i) the rules requiring that FINRA member firms charge customers fair and reasonable prices for securities, with only reasonable, and not excessive, markups charged on principal basis stock sales and (ii) the securities laws prohibiting securities fraud, including the prohibition on securities fraud in connection with charging customers fraudulently excessive prices with fraudulently excessive and undisclosed markups on principal basis stock sales.

ACM had the responsibility, authority and ability to supervise SS's activities at ACM, including transactions in which SS acted as a registered representative for ACM in the principal basis sale of stocks by ACM to customers, and ACM had the responsibility to ensure that SS, as a registered representative of ACM, not permit ACM to charge ACM customers unfair and unreasonable prices or excessive markups, or violate the federal securities laws in the principal basis sale of stocks by ACM to its customers.

ACM failed to take reasonable steps in the supervision of SS in connection with the principal basis sales by ACM of stocks to ACM customers and failed to take reasonable steps to prevent ACM customer NOA from being charged unfair and unreasonable prices and excessive markups in such principal basis sales and (b) to prevent securities fraud in the sale of stocks to ACM customer NOA at fraudulently excessive prices with fraudulently excessive and undisclosed markups.

A violation of NASD Rule 3010 also is a violation of FINRA Rule 2010.

By reason of the foregoing, ACM failed to supervise SS and violated NASD Rule 3010 and FINRA Rule 2010.

**FOURTH CAUSE OF ACTION
INADEQUATE SUPERVISORY SYSTEMS AND PROCEDURES
FOR SUPERVISION OF PRICES AND MARKUPS CHARGED TO CUSTOMERS ON
PRINCIPAL BASIS STOCK SALES**

(Violations of NASD Rule 3010 and FINRA Rule 2010)

NASD Rule 3010(a) required FINRA members to establish and maintain a reasonable supervisory system, and NASD Rule 3010(b) required FINRA members to establish, maintain and enforce written procedures to supervise the activities of registered representatives, registered principals and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations.

During the period of April 2012 through September 2012, ACM sold stocks to customers (including NOA) on a principal basis, with markups charged on these trades.

Despite the fact that ACM as part of its regular business operations sold stocks on a principal basis with markups to its customers, ACM had no adequate systems or procedures in place (and no adequate WSPs) to address the supervision of the prices that customers were charged for these principal basis stock sales, and whether these prices (and associated markups on principal basis stock sales) were in compliance with, or in violation of, NASD Rule 2440 and NASD IM-2440-1.

ACM did not have a system in place to monitor the prices and markups charged to customers in principal basis sales to customers. ACM had no system in place to supervise such trades to ensure that only reasonable and fair prices and markups were being charged in such principal basis trades in accordance with the requirements of NASD Rule 2440 and NASD IM-2440-1.

A violation of NASD Rule 3010 also is a violation of FINRA Rule 2010.

By failing to have adequate systems and procedures in place to review the prices and markups charged by ACM to customers in principal basis sales (including systems and procedures to assess whether such prices and markups were in compliance with NASD Rule 2440 and NASD IM-2440-1, ACM violated NASD Rule 3010 and FINRA Rule 2010.

**FIFTH CAUSE OF ACTION
FAILURE TO LIMIT INFORMATION FLOW
BETWEEN THE RESEARCH AND TRADING DEPARTMENTS**

(Violations of NASD Rule 3010 and FINRA Rules 5280 and 2010)

FINRA Rule 5280(b) requires members to “establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel... and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report.” A violation of FINRA Rule 5280 is also a violation of FINRA Rule 2010.

NASD Rule 3010(a) required FINRA members to establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. NASD Rule 3010(b) required each member to establish, maintain, and enforce written procedures to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD. A violation of NASD Rule 3010 also is a violation of FINRA Rule 2010.

Between August 2013 and December 2014, ACM did not have policies and procedures reasonably designed to restrict or limit the information flow between Research Department personnel and other personnel at ACM, including trading department personnel.

In addition, between August 2013 and December 2014 ACM failed to reasonably supervise its Research Department to ensure that the Research Department did not share information regarding the issuance or content of a research report prior to publication with trading department personnel.

As discussed above, on at least three occasions between August 2013 and December 2014, ACM provided a copy of a research report to all personnel at ACM, including trading department personnel, prior to the research report's publication.

By reason of the foregoing, Respondent ACM violated NASD Rule 3010(b) and FINRA Rules 5280(b) and 2010.

Based on the foregoing, Respondent ACM willfully violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder; ACM also violated (i) FINRA Rules 2010 and 2020; (ii) NASD Rule 2440, NASD IM 2440-1 and FINRA Rule 2010; (iii) NASD Rule 3010 and FINRA Rule 2010; and (iv) NASD Rule 3010 and FINRA Rules 5280(b) and 2010.

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

SANCTIONS

It is ordered that Respondent be:

1. Censured;
2. Fined in the amount of \$60,000;¹ and
3. Prohibited from engaging in principal basis stock and equity trades with ACM customers and customer accounts for 12 months (provided, however, that this limitation will not apply to principal basis stock and equity trades in customer accounts that are owned by employees and associated persons of the Firm; this limitation also does not limit the ability of the Firm to engage in riskless principal stock and equity trades and commission-based agency trades with Firm customers).

Respondent agrees to pay the monetary sanction upon notice that this Offer has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which the Firm proposes to pay the fine imposed.

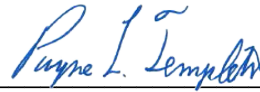
¹ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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



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