

# Disciplinary and Other FINRA Actions

## Firms Fined, Individuals Sanctioned

Finance 500, Inc. (CRD® #12981, Irvine, California), Paul John Savage (CRD #1722830, Registered Principal, Coto De Caza, California) and Thomas John Harm (CRD #2093335, Registered Representative, Ladera Ranch, California), submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Savage was fined \$10,000 and suspended from association with any FINRA® member in any principal capacity for 10 business days. Harm was fined \$10,000 and suspended from association with any FINRA member in any capacity for one month.

Without admitting or denying the findings, the firm, Savage and Harm consented to the described sanctions and to the entry of findings that the firm, through Harm, sold roughly 8.5 billion shares of unregistered securities, on a customer's behalf, that were neither registered with the Securities and Exchange Commission (SEC) nor exempt from registration; the firm and Harm, therefore, participated in unregistered distributions of securities. Approximately one month after opening an account, the customer began bringing to the firm large blocks of stock of little known companies whose shares traded over the counter (OTC™) and were quoted on Pink OTC Markets' electronic quotation and trading system. All of the companies had recently issued shares in private offerings pursuant to Rule 504 of Regulation D. The customer immediately sold the shares after they had been deposited. Thereafter, the customer typically deposited another block of shares from the same issuer and the shares would again be immediately sold. During the succeeding 15 months, this pattern was repeated multiple times with the shares of several companies. The net liquidation proceeds amounted to approximately \$1.2 million.

The findings stated that the firm failed to have an adequate supervisory system and procedures designed to detect and prevent participation in an unregistered distribution of securities. In particular, it did not have any written procedures addressing the acceptance of securities in either certificate or electronic form and the corresponding sales of those securities. In practice, the firm relied primarily on its clearing firm and transfer agents to determine whether the securities were free-trading. Upon receipt of a large block of an unregistered low price stock, the firm's due diligence was essentially limited to assembling documents that its clearing firm required to process the transaction. To the extent that any additional investigation was undertaken, none was documented. The findings also stated that among other things, the firm failed

## Reported for February 2012

FINRA has taken disciplinary actions against the following firms and individuals for violations of FINRA rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB).

to inquire about the length of time the securities had been held; how, when, and under what circumstances the securities had been acquired; the relationship, if any, between the customer and the issuer; and/or how much stock was owned by or under the customer's control. The findings also included that because Harm believed that his firm's clearing firm required legal opinions to process transactions involving certificates that represented shares worth more than \$100,000 or more than one million shares, the company, at Harm's request, provided opinion letters addressing most of its certificated deposits; neither Harm nor anyone else at the firm questioned why the unrelated and geographically disparate issuers had the same counsel. FINRA found that Savage, Harm's direct supervisor who was responsible for approving his new accounts and reviewing his trades, never questioned or investigated any of the customer's transactions. Certain "red flags" should have prompted him to investigate a possible illegal distribution of unregistered securities and/or a plan or scheme to evade the registration provisions of the Securities Act.

Savage's suspension was in effect from January 17, 2012, through January 30, 2012. Harm's suspension was in effect from January 3, 2012, through February 2, 2012.

[\(FINRA Case #2008013079801\)](#)

**Syndicated Capital, Inc. (CRD #29037, Santa Monica, California), Faith Li Lee (CRD #2715226, Registered Principal, Diamond Bar, California) and Joseph Lloyd McAdams Jr. (CRD #2173886, Registered Principal, Pacific Palisades, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000, jointly and severally with Lee and McAdams. Lee and McAdams were each suspended from association with any FINRA member in any principal capacity for 10 business days. Without admitting or denying the findings, the firm, Lee and McAdams consented to the described sanctions and to the entry of findings that McAdams, on the firm's behalf, entered into a stock purchase agreement with a business entity, which a registered representative associated with the firm owned, for the sale of 100 percent of the firm's stock. In connection with this agreement, the registered representative informed McAdams and Lee, in writing and orally, that the representative needed to raise funds to operate the firm's branch office where the representative was working, and in order to finance the purchase of the firm. The findings stated that after the execution of the agreement, Lee and McAdams, acting on the firm's behalf, approved the representative's participation in private securities transactions to raise money through the representative's business entity through the issuance of promissory notes. The representative raised \$980,000 from the sale of promissory notes the business entity issued to some individuals. The findings also stated that the firm, Lee and McAdams failed to supervise the representative's participation in the private securities transactions as if they were transactions of the firm or in a manner reasonably designed to achieve compliance with the laws, rules and regulations that applied to private securities sales away from the firm. The findings also included that the firm, Lee and McAdams, failed to ensure that the representative's private securities transactions were recorded on the firm's books.

Lee's suspension was in effect from January 17, 2012, through January 30, 2012. McAdams' suspension is in effect from February 6, 2012, through February 17, 2012. ([FINRA Case #2009018524501](#))

**Synergy Investment Group, LLC (CRD #46035, Charlotte, North Carolina), Thurman Ray Crawford (CRD #56786, Registered Principal, Beaumont, Texas), and Jeffrey Dean Jones (CRD #4188324, Registered Principal, Concord, North Carolina)** submitted an Offer of Settlement in which the firm was censured and fined \$20,000. Crawford was fined \$10,000 and suspended from association with any FINRA member in any capacity for 60 days. Jones was fined \$10,000 and suspended from association with any FINRA member in any principal capacity for three months. The level of sanctions takes into account \$148,750 in restitution payments the firm and Crawford each made to the customers. The firm and Crawford have provided proof of restitution to FINRA.

Without admitting or denying the allegations, the firm, Crawford and Jones consented to the described sanctions and to the entry of findings that the firm, through Jones, its director of compliance, failed to conduct reasonable due diligence regarding securities an entity issued. The findings stated that in order to obtain the firm's approval for his intended sales of an offering, Crawford made negligent misrepresentations and/or omissions of material fact in connection with the sale of private placements to customers. The findings also stated that contemporaneously with the firm's attempt to complete due diligence of a private placement as a new product, Crawford was negotiating with the firm for employment and omitted to disclose to anyone at the firm about the private placement delays in payment. The findings also included that Crawford knew, or should have known, that his firm had requested the private placement memorandum (PPM) for the offering in order to determine whether to approve his employment by the firm and his sale of the offering.

FINRA found that Crawford knew, or should have known, that the PPM for the offering made the misrepresentation that the issuer's affiliates never defaulted in the payment of their obligations on debt securities, and all payments on the securities were made when due and omitted to disclose the private placement's late payments to the firm. Neither Crawford nor the firm took any steps to correct the misrepresentation. Crawford did not initiate post-sale conversations with customers to inform them of the defaults and late payments. FINRA also found that as an investor in an offering, Crawford knew, or should have known, of the offering default, because he held un-matured notes of that offering. In addition, FINRA determined that Crawford's former firm notified him of its receipt of a letter stating that the issuer was experiencing temporary liquidity issues with some of its clients and asked whether he would like the letter forwarded to his customers who had invested in the private placement. Crawford declined the firm's offer to inform the customers of the issuer's late payments, stating that he would rather speak with the customers himself; but he did not initiate any discussions with the customers regarding the late payment, and documentation indicating he did does not exist. Moreover, FINRA

found that Crawford emphasized to customers that the private placement had an even higher interest rate than a previous private placement and reminded them of the reliability of the payments they had received on the previous private placement, but failed to disclose his knowledge that the issuer had defaulted on previous placements, and further, declined to personally invest in the latest private placement. Furthermore, FINRA found that the firm earned sales concessions from the issuer on the sale of the private placements of approximately \$38,250; Crawford earned net commissions of approximately \$26,252.50 on the sales he made of the private placement.

The findings also stated that the firm's written supervisory procedures (WSPs) regarding due diligence for private placements were inadequate because they limited the firm's review of a new product to information the issuer provided, did not require the firm to obtain information from sources other than the issuer, the procedures failed to ensure that a reasonable inquiry of the issuer and its management team was conducted, and the procedures did not ensure that the offerings would be properly supervised after approved for sale. Consequently, the firm failed to establish WSPs reasonably designed to prevent fraud and unsuitable recommendations in the sale of private placements. The findings also included that although the WSPs were inadequate, the firm and Jones did not even follow the procedures that existed. The procedures for approval of a new product required that a checklist be completed and that the approved checklist be retained in the new product file. The new product review also required that the firm determine if the product was beneficial to customers, which customers would be targeted, documentation of the features and risks of the new product, and determination of whether written disclosures or educational information should be provided to potential customers. The procedures required that all of these steps be completed prior to the offering of the new product to customers.

FINRA found that the firm, through Jones, failed to follow the written procedures with regards to the approval of the private placement. In an effort to expedite Crawford's hiring, Jones approved the selling agreement 34 minutes after reading the PPM despite the fact that the issuer had not provided the requested due diligence checklist. FINRA also found that if the firm had established, implemented and enforced reasonable supervisory procedures for due diligence on private placements, it would have discovered that the issuer had missed payments on other offerings and that a state had charged the issuer's chief executive officer (CEO) with fraud and barred him from the insurance industry. In addition, FINRA determined that reasonable due diligence after approval of the selling agreement would have apprised the firm of defaults on other offerings and the significant red flags contained in third-party due diligence reports. The firm failed to establish, maintain, and enforce a supervisory system and WSPs reasonably designed to achieve compliance with all applicable regulatory requirements with respect to the private placements.

Crawford's suspension is in effect from January 3, 2012, through March 2, 2012.  
Jones' suspension is in effect from January 3, 2012, through April 2, 2012. ([FINRA Case #2009018817101](#))

**World Equity Group, Inc. (CRD #29087, Arlington Heights, Illinois), Richard Steven Babjak Jr. (CRD #2074968, Registered Principal, Libertyville, Illinois) and Kristy Lyn Hopkins (CRD #2508499, Registered Principal, Skokie, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and Babjak were censured and fined \$50,000, jointly and severally. Hopkins was fined \$5,000, suspended from association with any FINRA member in any supervisory or principal capacity for 10 business days, and required to complete 10 hours of training on NASD Rule 2210. The training shall be completed within one year of the issuance of the AWC and prior to Hopkins acting again in a principal or supervisory capacity with respect to approval of communications with the public.

Without admitting or denying the findings, the firm, Babjak and Hopkins consented to the described sanctions and to the entry of findings that the firm permitted one of its registered representatives to publish advertisements that failed to provide a sound basis for a reader to evaluate the products and services being offered; contained exaggerated, unwarranted and misleading statements; and failed to disclose the firm's name. The findings stated that the representative's advertisements promoted his securities and non-securities investment-related business activities and were published in regional newspapers as well as community fund-raising and dining program guides, church bulletins and phonebook business listings. Babjak, the firm's president, reviewed some of the advertisements the representative published, and Hopkins, the chief compliance officer (CCO), reviewed and approved them with Babjak's knowledge.

The findings also stated that in a Comment Letter to the firm from FINRA's Advertising Regulation Department, the firm, Babjak and Hopkins were alerted that statements, claims and omissions in some of the representative's published advertisements violated NASD Rule 2210. The Comment Letter informed the firm that certain of the representative's advertisements failed to provide sufficient information for a reader to have a sound basis for evaluating the facts regarding the products and services advertised, and failed to provide a balanced treatment of the risks and potential benefits of the representative's strategy. The findings also included that the Comment Letter further informed the firm that the advertisements omitted any explanation of the bases of the statements made, failed to identify the products that could be used to implement the strategy being promoted by the advertisement, lacked a balanced discussion of the potential benefits of the representative's strategy with any of the risks or limitations to those benefits, and used exaggerated, unwarranted or misleading claims regarding performance and returns. As detailed in the Comment Letter, the advertisements omitted any explanation of the bases for calculating the claimed returns, did not indicate that the cited performance returns consisted largely of a return of principal, and did not indicate that the performance results stated in the advertisements represented returns very few clients experienced, and that each individual's circumstances would vary. After the firm received the Comment Letter, the firm allowed the representative to use advertisements that contained the same or similar violations to those identified in the Comment Letter and violated NASD's Advertising Rule in other respects.

FINRA found that the firm, Babjak and Hopkins failed to provide adequate supervision of the representative's communications with the public. FINRA also found that the firm's written procedures regarding advertising and sales literature did not require that the dates of first and last usage of each advertisement be documented and retained, and neither the firm nor Hopkins created or retained such records, and Babjak did not mandate the same. In addition, FINRA determined that the firm's written procedures delegated responsibility to the CCO, or his designate, for, among other things, filing and updating Securities Industry Registration forms for individuals and the firm via CRD. For two years, the firm delegated these responsibilities to an outside consultant whom neither the CCO nor any other firm principal supervised. As a result, errors and omissions in the firm's Securities Industry Registration and Transfer (Form U4) filings for associated persons and Uniform Branch Office Registration (Form BR) filings for the representative's branch office were not detected.

Hopkins' suspension was in effect from January 3, 2012, through January 17, 2012. ([FINRA Case #2008012099101](#))

## Firms Fined

**Banc of America Securities LLC nka Merrill Lynch, Pierce Fenner & Smith Inc. (CRD #26091, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,000 and ordered to pay \$6,058.42, plus interest, in restitution to customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. ([FINRA Case #2008014736201](#))

**Bulltick Securities, LLC (CRD #132092, Miami, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$125,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it made transaction-based payments to a non-registered foreign asset manager (foreign finder) whose activities required registration. The findings stated that the firm's sole business entailed executing securities transactions on behalf of Latin American customers foreign finders referred to the firm. The foreign finders were not registered with FINRA. In making referral payments, the firm relied on NASD Rule 1060, which allows member firms to pay transaction-based compensation to non-registered foreign finders (without requiring those entities/individuals to register) based upon the business of customers they direct to the firm provided that certain specified conditions are satisfied. The findings also stated that a non-registered foreign finder referred customer accounts to the firm that generated gross commissions of approximately \$600,000 through the unsolicited, short-term trading of collateralized mortgage obligations (CMOs). The firm

paid the non-registered foreign finder approximately \$400,000 in net commissions from this amount. The findings also included that the firm's relationship with the non-registered foreign finder failed to satisfy the requirement of NASD Rule 1060. After the non-registered foreign finder referred the foreign customers to the firm, the securities trades in those accounts were managed by a non-registered affiliate of the foreign finder who was not a foreign asset manager.

FINRA found that the affiliate's office manager or president would provide the firm with the daily trading instructions for the non-registered foreign finder's referred account but never obtained evidence confirming that the affiliate was authorized to effect securities transactions in the referred accounts. Additionally, the firm paid the non-registered foreign finder approximately \$82,000 for transactions in a United States citizen's account. FINRA also found that the firm did not evaluate whether the affiliate's role in the transactions required the affiliate or the non-registered foreign finder to register in the United States as a broker-dealer. The firm's confirmations for transactions in the referred accounts failed to state that it was paying a referral or finder's fee. The CMO trading decision and strategy in the referred accounts were directed in part by the customer, who was purportedly a consultant with the affiliate. In addition, FINRA determined that the customer opened an account in his name with the firm and shortly after he had voluntarily resigned from a FINRA member firm. The firm maintained the customer's account along with the non-registered foreign finder's referred accounts of foreign customers (sharing the same account number prefix). The customer had a disciplinary history at the time he opened his firm account. Moreover, FINRA found that the firm was aware of this and, in opening the customer's account, the firm tasked a registered principal with providing heightened supervision over the customer's account. Although the firm implemented monthly principal reviews by the principal of the activity in the customer's account, this procedure was insufficient. The firm learned about the SEC action against the customer shortly after it was filed. Nevertheless, the customer's account remained open and continued to trade. Furthermore, FINRA found that the customer routinely engaged in cross-trades of CMOs with other non-registered foreign finder's referred accounts. In many instances, the customer would purchase the CMOs for his account from another broker-dealer and re-sell the positions at substantially higher prices to other of the non-registered foreign finder customers. As a result of the differences in the prices of the cross-trades, the customer profited on the majority of the CMO transactions in the referred accounts. The customer's account made a profit of approximately \$1.83 million. The findings also stated that the firm did not reject any trades in the customer's account until it cancelled an order to sell a CMO position from the customer's accounts to other non-registered foreign finder's referred accounts because the execution prices for the purchases were different. The firm later terminated its relationship with the non-registered foreign finder but never conducted a review of the CMO transactions in the referred accounts to determine if there were other transactions with discrepancies.

The findings also included that the firm had a written anti-money laundering (AML) compliance program (AMLCP) that covered, among other things, monitoring for, detecting and reporting of suspicious activities. The firm's procedures specified that its designated principal (its AML compliance officer (AMLCO)) and others would determine whether a particular account or transaction must be reported based upon a lengthy list of red flags of possible misconduct. FINRA found that the firm failed to monitor for, detect and appropriately investigate suspicious transactions the customer conducted and, if appropriate, file a suspicious activity report (SAR), despite multiple red flags related to these transactions. The red flags, each of which corresponded to a red flag identified in the firm's procedures, included, among other things the short-term trading activity of CMO securities conducted through the customer's account, which was generally inconsistent with the long-term investment horizon associated with such investments; the customer's disciplinary history with the SEC; the volume of cross-trades involving the customer and the non-registered foreign finder's referred accounts, which appeared to have no business purpose other than to enrich the customer; the fact that the pricing of the customer's cross-trades differed from the prices the firm received from its clearing firm for the same securities; the differences in prices on the cross-trades involving the customer's account and the profits the customer obtained; and transactions involving disparate pricing in the customer's cross-trade involving other of the non-registered foreign finder-referred accounts, which occurred over the course of one month. FINRA also found that the firm failed to develop and implement a reasonably designed AMLCP because its procedures did not address the AML risks presented by certain aspects of its foreign finder business and CMO trading. In addition, FINRA determined that the firm failed to establish and maintain a supervisory system, and establish, maintain and enforce WSPs, reasonably designed to achieve compliance with applicable rules and regulations relating to its foreign finder business and the CMO transactions and trading activity in the referred accounts. The firm principal responsible for supervising the securities activity in the non-registered foreign finder's referred accounts did not have any experience prior to joining the firm regarding CMOs, which rendered his monthly review of the customer's account and implementation of heightened supervision inadequate. Moreover, FINRA found that the firm failed to establish WSPs pertaining to CMOs. The firm's WSPs did not address how it would obtain, monitor and conduct due diligence on pricing for these securities. Furthermore, FINRA found that the firm failed to establish a system or WSPs that addressed the payment of transaction-based compensation to foreign finders made pursuant to NASD Rule 1060 and related registration issues, and failed to ensure that its relationships with the foreign finders satisfied the criteria of NASD Rule 1060 for payment of transaction-based compensation to those entities. The findings also stated that the firm failed to enforce its WSPs requiring it to obtain trading authorization for third-party transactions. ([FINRA Case #2009015969501](#))

**The Carson Medlin Company (CRD #28567, Tampa, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. FINRA imposed a lower fine after it considered, among other things, the firm's revenues and



financial resources. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to retain all business-related electronic communications and failed to establish, maintain and enforce a supervisory system and WSPs reasonably designed to ensure that all electronic communications relating to its business were retained. The findings stated that the storage of the firm's emails was handled pursuant to a third-party contract with a consulting firm, which handled all of its technological functions. The firm did not provide notification to FINRA regarding its use of electronic storage media for its emails as required, and the emails were not maintained in a non-erasable format. There were large gaps in some of the email accounts of the firm's representatives. Each associated person had the ability to permanently delete emails from the firm's electronic storage server; backup tapes were reused after a short period of time so that emails associated persons deleted were retained only until the backup tapes were reused. As a result of the firm's back-up process, FINRA was unable to review certain of the emails of former associated persons who had recently been terminated, and who had deleted their emails prior to leaving the firm, which impeded FINRA's examination.

The findings also stated that the firm failed to establish, maintain and enforce a supervisory system and WSPs reasonably designed to supervise the types of businesses in which it engages, and the activities of its registered and associated persons, in that it failed to establish WSPs addressing certain aspects of its private placement business and the gathering of customer information and identification material. With respect to the firm's private-placement business, it did not maintain certain of the required books and records, such as subscription agreements and order memoranda, or confirmations reflecting investments in private placements. The firm failed to create and maintain records of customer account information, subscription agreements, investor questionnaires and evidence of principal approval for transactions the firm facilitated. The findings also included that although the firm received compensation for its services as a placement agent and was involved with soliciting and selling the offerings, it did not maintain copies of certain of the sales documents, obtain customer information or supervise the sales for suitability.

FINRA found that the firm's WSPs were inadequate regarding private placements in that they did not address the documentation of customer account information, documentation of customer suitability information, maintenance of documents required for private placements, review and approval of customer accounts and transactions involving the sale of private placements. FINRA also found that the firm's AMLCP was not adequately designed to fit the needs of its business. In spite of the fact that it acted as a finder or placement agent in connection with private placements and private financing transactions, its Customer Identification Program (CIP) was nonexistent. The firm's CIP did not recognize private-placement investors as being customers of the firm because the investors did not have accounts at the firm. Consequently, the firm failed to obtain required information from investors who purchased private placements and therefore, failed to implement an

adequate CIP in connection with private placements as the Bank Secrecy Act required. In addition, FINRA determined that the firm conducted tests of its AML compliance program but did not review its transactions in private offerings. ([FINRA Case #2010021128601](#))

**Cheevers & Company Inc. (CRD #31312, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its WSPs regarding best execution (execution of customer orders as agent, three-quote rule), anti-intimidation/coordination, trade reporting (trades reported through a Trade Reporting Facility<sup>®</sup> (TRF<sup>™</sup>), trade modifiers), trades reported on a member's behalf, sales transactions (determining and marking sales as long or short), prompt delivery of sale transactions (short sale orders under Reg SHO Rule 204T, naked short selling anti-fraud rule, reporting accurate short sale indicators), Order Audit Trail System (OATS<sup>™</sup>) (clock synchronization, accurate and timeliness submission, routed order IDs), and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to report each of the transactions to the FINRA Trade Reporting Facility (FNTRF) as short. The findings stated that the firm transmitted reports to OATS that contained inaccurate handling code information. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing best execution (execution of customer orders as agent, three-quote rule), anti-intimidation/coordination, trade reporting (trades reported through a TRF, trade modifiers), trades reported on a member's behalf, sales transactions (determining and marking sales as long or short), prompt delivery of sale transactions (short sale orders under Reg SHO Rule 204T, naked short selling antifraud rule, reporting accurate short sale indicators), OATS (clock synchronization, accurate and timeliness submission, routed order IDs) and books and records. The findings also included that the firm failed to provide documentary evidence that on the trade date(s) reviewed, it performed the supervisory reviews set forth in its WSPs concerning trading halts. ([FINRA Case #2009016707501](#))

**Citigroup Global Markets Inc. (CRD #7059, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$750,000. Because the firm self-reported the email issues and undertook an internal review of its supervisory policies, procedures and systems relating to these issues, the sanctions reflect the credit that the firm has been given for self-reporting these issues and providing information obtained as a result of its internal investigation to FINRA. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to retain millions of emails, including emails that potentially impacted the firm's ability to respond to email requests in FINRA investigations and other matters. The findings stated that the firm, through its holding company, began to implement an upgrade of its email archiving system from a backup tape-based system to a new journaling-based system. The journaling system was designed to function through the use of three component servers: a mail server, a hub transport server and a journaling

server. Three of the mail servers did not function as expected and failed to properly transmit emails to the archive for any of the individuals assigned to those mail servers; on one of the affected servers, the firm, through the holding company, failed to re-activate the journaling function after populating the mail server with live email users so that emails from this affected server were not sent to the hub transport and journaling servers, and as a result, never reached the archive. On the other two affected servers, the firm, through the holding company, failed to populate the distribution lists that the hub transport servers used to send emails to the journaling server with any mailbox addresses so that emails from these two affected servers were never sent to any destination for archiving. The findings also stated that as a result of the problems associated with these affected servers, the firm failed to retain emails sent or received by approximately 2,800 associated persons that resided on the three affected servers. The findings also included that the firm ultimately retained certain of the emails the affected associated persons sent or received because the emails themselves may have included other email users that were not on one of the three affected servers. Emails the firm was required to retain were not archived if they were exclusively between an affected associated person and other affected associated persons, other holding company employees within North America who also resided on an affected server, other holding company employees on email servers outside North America whose emails were not being archived, and/or individuals external to the holding company. FINRA found that it was not possible to determine with certainty the number of emails the firm did not retain because emails from the three affected servers may have been copied to unaffected servers and were thereby archived. A review of information the firm provided reflecting email usage rates of the affected associated persons for a three-month sample period indicated that the firm failed to retain millions of emails.

FINRA also found that the firm, through the holding company, failed to perform sufficient quality assurance (QA) tests prior to migrating live users onto its upgraded email archiving system. During the initial stages of the email archiving upgrade process, the QA testing was a manual process that was insufficiently designed in that it failed to detect the unpopulated distribution lists on the hub servers and the fact that the journaling function was never turned back on. In addition, FINRA determined that though an automated QA process was subsequently developed that would have discovered these email archiving problems, the firm, through the holding company, failed to apply this automated QA process to each of its mail servers, including the three affected servers. After the firm, through the holding company, had completed the entire email archiving upgrade process for all the servers, the monitoring software that was used to check whether the journaling process was functioning properly was not sufficiently designed to flag reasonably foreseeable errors. Moreover FINRA found that it was not until customized configuration management software that effectively communicated with a central holding company directory was developed, that the firm, through the holding company, was able to flag that the three affected servers were problematic. The firm's email retention deficiencies potentially impacted at least five FINRA investigations for which email of an

affected associated person was requested. The firm's email retention deficiencies may have impacted its ability to produce emails fully responsive to requests in other matters. Furthermore, FINRA found that the firm's supervisory systems and procedures relating to the retention of electronic communications were deficient in that they failed to timely detect the email retention failures, and as a result, did not ensure that emails were being adequately retained. ([FINRA Case #2010021823101](#))

**Crowell, Weedon & Co. (CRD #193, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$52,500 and required to revise its WSPs regarding Trade Reporting and Compliance Engine™ (TRACE™) reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report information regarding transactions effected in municipal securities to the Real-Time Transactions Reporting System (RTRS) within 15 minutes of trade time to an RTRS Portal. The findings stated that the firm failed to report to TRACE transactions in TRACE-eligible securities within 15 minutes of the execution time. The findings also stated that the firm's supervisory system in effect did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning TRACE reporting. ([FINRA Case #2008015858901](#))

**D.E. Shaw Securities, L.L.C. (CRD #24332, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions for which it failed to include the short sale modifier in the report of each of these transactions to the FNTRF or the OTC Reporting Facility (OTCRF). The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning trade reporting. ([FINRA Case #2009018862701](#))

**Detwiler Fenton & Co. (CRD #1794, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain a supervisory system, and establish, maintain and enforce WSPs, reasonably designed to achieve compliance with rules relating to fair pricing and commissions in retail transactions, the use of discretion in retail customer accounts and excessive trading. The findings stated that the firm's WSPs required weekly and monthly active trade reviews by the firm's retail supervisor and CCO, respectively. The WSPs and supervisory system did not provide for appropriate follow up and review of potential concerns or issues the trade reviews identified. As a result, a firm registered representative, who the firm has since terminated, was permitted to excessively trade retail customers' accounts during two years, notwithstanding the fact that the CCO's monthly trade reviews identified high levels of trading being placed by the

registered representative in these accounts on multiple occasions. The findings also stated that the supervisory system and WSPs that the firm established to monitor fair pricing and commissions charged to its retail clients were also deficient in several respects. The systems and reports the firm used to review retail commissions were difficult to utilize effectively, thereby making the detection of excessive commissions less likely. Firm principals also failed to routinely utilize exception reports provided by its clearing firm that provided information such as when a broker had manually overridden the firm's commission schedule. The firm's retail commission schedules for both equities and options set the base commission and applicable surcharges for many low notional value transactions at above 5 percent. As a result of this and the firm's deficient system and procedures for reviewing commissions, the firm charged commissions over 5 percent in certain low notional value equity and options retail transactions.

The findings also included that the firm informed its registered personnel that the firm would no longer utilize fee-based discretionary retail broker accounts. At or about that time, the firm informed its registered representatives that any broker who wanted to use discretion in a retail customer account would be required to transfer the account to the firm's affiliated investment adviser. The accounts remaining at the firm would be handled on a commission basis and no use of discretion by the firm's brokers would be permitted.

FINRA found that the firm failed to establish a supervisory system and WSPs reasonably designed to detect its brokers' use of discretion in retail accounts retained at the broker-dealer. As a result, a registered representative continued to exercise discretion in brokerage accounts without written authority. FINRA also found that the firm failed to implement its AMLCP. The firm failed to obtain information its CIP required, such as a passport or driver's license for individuals and articles of incorporation or a trust agreement for entities, verifying customers' identities; some of those customers were located outside of the United States. The firm also failed to implement its AMLCP in that it failed to verify the identity of some foreign persons with an interest in stock held in a firm customer account. ([FINRA Case #2009016300601](#))

**E.H. Smith Jacobs & Co., Inc. (CRD #3429, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit numerous reportable order events (ROEs) to OATS for over a year. ([FINRA Case #2008015016101](#))

**Fox River Execution Technology, LLC (CRD #133549, Geneva, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$47,500 and required to revise its WSPs regarding sales transactions (order marking, short sale reporting, and locate and borrowing requirements), OATS (accuracy of submissions, OATS vs. TRF reporting, inter-firm routing), trade reporting (trades reported on a member's behalf) and books and records. Without admitting or denying the findings, the firm consented to the

described sanctions and to the entry of findings that it effected transactions in securities while a trading halt was in effect with respect to each of the securities. The findings stated that the firm transmitted Execution or Combined Order/Execution Reports that contained inaccurate, incomplete or improperly formatted data to OATS so that OATS was unable to link the execution reports to the related trade reports in an NASD<sup>®</sup> trade reporting system. The findings also stated that the firm transmitted reports to OATS that contained the incorrect buy/sell code, failed to report to the FNTRF the correct symbol indicating the capacity in which it executed transactions in reportable securities, and executed short sale transactions in reportable securities and failed to report each of the transactions to the FNTRF with the correct symbol indicating whether the transaction was a buy, sell, sell short, or cross. The findings also included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with certain applicable requirements for adequate WSPs in sales transactions (order marking, short sale reporting, and locate and borrowing requirements), OATS (accuracy of submissions, OATS vs. TRF reporting, inter-firm routing), trade reporting (trades reported on a member's behalf) locate requirements, and books and records. FINRA found that the firm incorrectly submitted a Combined Order-Execution Report and incorrectly submitted each with a reporting exception code of "A." FINRA also found that the firm transmitted Combined Order-Route Reports and related subsequent reports to OATS where the timestamp for the related subsequent report occurred prior to the timestamp for the Combined Order-Route Report, and OATS was unable to create an accurate time-sequenced record from the receipt of the order through its resolution. ([FINRA Case #2007011934501](#))

**Hold Brothers On-Line Investment Services L.L.C. (CRD #36816, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted ROEs to OATS that OATS rejected for context or syntax errors and were repairable, but the firm failed to repair many of the rejected ROEs so that it failed to transmit them to OATS during the review period. ([FINRA Case #2010022373201](#))

**Interactive Brokers LLC (CRD #36418, Greenwich, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$57,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it had fail-to-deliver positions at a registered clearing agency in threshold securities for 13 consecutive settlement days, and failed to immediately thereafter close out the fail-to-deliver positions by purchasing securities of like kind and quantity. The findings stated that the firm transmitted reports to OATS that contained an inaccurate account type code, inaccurate special handling codes and/or incorrectly marked an order as long. ([FINRA Case #2007010465601](#))

**Israel A. Englander & Co., LLC (CRD #33725, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS; transmitted Execution or Combined Order/Execution Reports to OATS that contained inaccurate, incomplete or improperly formatted data, which prevented OATS from linking the execution reports to the related trade reports in an NASD or FINRA trade reporting system; and transmitted Route or Combined Order/Route Reports to OATS that OATS was unable to link to the corresponding new order the destination member transmitted due to inaccurate, incomplete or improperly formatted data. The findings stated that the firm was named as the "Sent To" firm on Route or Combined Order/Route Reports that OATS was unable to link to a related new order report the firm submitted. The findings also stated that the firm failed to enforce its WSPs, which specified that it must view and download unmatched Route and Execution Reports on a daily basis and repair Execution Reports as necessary and, for Route Reports, determine that routed order identification numbers are consistent with those received from the sending member. The findings also included that the firm failed to transmit ROEs to OATS on numerous business days. FINRA found that the firm transmitted Execution or Combined Order/Execution Reports on which the firm failed to append the reporting exception code of "M," and transmitted Route or Combined Order/Route Reports to OATS that contained an incorrect destination code of "XQ" (NASDAQ) for orders routed to a member firm. ([FINRA Case #2008014870301](#))

**Itau USA Securities Inc. nka Itau BBA USA Securities, Inc. (CRD #118817, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of the execution time, and failed to report the correct time of trade execution for transactions in TRACE-eligible securities to TRACE. ([FINRA Case #2009020685001](#))

**Janney Montgomery Scott LLC (CRD #463, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to revise its WSPs regarding trade reporting for transactions reported by way of a give-up agreement. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it reported to the OTCRF numerous last sale reports of transactions in OTC equity securities it was not required to report because the transactions were executed on and had been reported to a foreign securities exchange. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning trade reporting for transactions reported by way of a give-up agreement. ([FINRA Case #2008014170001](#))

**Jefferies & Company, Inc. (CRD #2347, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it had fail-to-deliver positions at a registered clearing agency in threshold securities for 13 consecutive settlement days and failed to immediately thereafter close out the fail-to-deliver positions by purchasing securities of like kind and quantity. The findings stated that the firm had fail-to-deliver positions at a registered clearing agency in threshold securities for 13 consecutive settlement days and, without closing out the fail-to-deliver positions by purchasing securities of like kind and quantity, it failed to borrow the security or enter into a *bona fide* arrangement to borrow the security before executing proprietary short sales. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to Rule 203(a) of Regulation SHO and failed to provide documentary evidence that it performed the supervisory reviews related to Rule 203(b)(3) of Regulation SHO set forth in its WSPs. ([FINRA Case #2007010465801](#))

**J. P. Morgan Securities LLC (CRD #79, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it published a research report downgrading a company from neutral to underweight. The findings stated that one of the principal-stated reasons for the downgrade was that the company had released into income \$1.1 billion in reserves based on the expectation that it would win certain lawsuits in which the company was the plaintiff. The firm's analyst criticized that decision, pointing out that any potential recovery was uncertain and at least three years in the future. The report discussed lawsuits against the company without disclosing that the firm's banking affiliate was a plaintiff in one of the lawsuits against the company. The findings also stated that after publication of the report, the company complained to the firm about the research report, including the firm's failure to disclose its affiliate's role in one of the pending lawsuits. In response to this complaint, the firm agreed to voluntarily re-post a revised report containing an additional disclosure. The findings also included that the firm issued a revised report that added information about the firm's affiliate pending litigation, but it did not remove the original report, which continued to be available on its website for over a year, and did not redistribute the revised report to the approximately 900 people who received the original report so that the original research report was not fair and balanced, and did not provide a sound basis for readers to properly evaluate all relevant facts.

FINRA found that the firm permitted a manager to supervise equity research analysts without being properly licensed as a Research Principal (RP); during that time, the manager had not passed the Series 87 examination and never sought to be registered as a Series 16. The firm permitted the manager to supervise research analysts for nine months without being properly qualified. The manager ceased supervising these research analysts when the firm transferred all supervisory responsibilities away from the manager. FINRA also



found that the firm knew that the manager needed to obtain a Series 87 around the time the manager was promoted, but failed to ensure compliance with the registration rules. The manager's Series 87 test window was not opened until eight months after the promotion, and the manager was permitted to supervise analysts for an additional month. In addition, FINRA determined that the firm's WSPs were not timely amended to reflect the RP requirement, and its Equity Research Policies and Procedures Manual did not require research management to have either the Series 16 or 87, and were not revised to reflect the Series 16 or 87 license until more than a year after the RP licensing requirement became effective. ([FINRA Case #2009019359201](#))

**KMS Financial Services Inc. (CRD #3866, Seattle, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and implement a CIP, as part of its AMLCP, reasonably designed to ensure compliance with the CIP Regulation adopted jointly by the Department of Treasury and the SEC under the Bank Secrecy Act. The findings stated that FINRA pointed out deficiencies in the firm's CIP and the firm subsequently revised the form registered representatives used to verify customer identity (Form D-7), revised a Tipsheet which provided guidance regarding that form, and issued compliance alerts to its registered representatives regarding the changes, but did not make corresponding changes to its AML WSPs, so they were inconsistent with the other documents used in the firm's CIP. The findings also stated that the Tipsheet stated that while documentary evidence was the preferred means of verifying customer identity, it suggested non-documentary evidence, including the registered representative's personal knowledge of the customer, be used when documentary evidence was not available. The Tipsheet did not comply with the CIP Regulation because personal knowledge does not constitute non-documentary evidence of identity. The findings also included that the firm's AML WSPs did not indicate that documentary evidence should be used to verify an individual customer's identity whenever it was available and did not require the submission of Form D-7 for all new accounts.

FINRA found that the AML WSPs stated that a registered representative could verify identity based on personal knowledge of facts and circumstances that allowed him or her to form a reasonable belief that he knew the customer's true identity or by viewing an unexpired government-issued identification bearing a photograph or similar safeguard, or the representative could submit a completed Form D-7 for a firm principal's review. The AML WSPs did not comply with the CIP Regulation because personal knowledge does not constitute non-documentary evidence of identity. FINRA also found that the firm opened accounts for new customers without using an appropriate method to verify the customers' identities; Forms D-7 were submitted citing solely the registered representatives' personal knowledge of the customer as the basis for verifying identity, thereby failing to implement the provisions of the firm's CIP, which required registered representatives to obtain documentary evidence of identity whenever possible. ([FINRA Case #2010021288001](#))

**McManus & Miles Incorporated (CRD #25543, New York, New York)** submitted an Offer of Settlement in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to preserve, for a period of not less than three years, the first two years in an easily accessible place, all email correspondence relating to the firm's securities business. The findings stated that the firm elected to use electronic storage media to store email records required to be maintained and preserved pursuant to SEC Rule 17a-4. The firm used an on-site computer server and magnetic storage tapes to store email communications that were required to be retained. The electronic storage media the firm used failed to preserve email records exclusively in a non-rewriteable, non-erasable format. The magnetic storage tapes used to back-up the firm's emails on the firm's on-site computer server were rotated, reused and overwritten after a five-week period. The findings also stated that individual email users had the ability to delete emails relating to the firm's securities business on the day they were sent or received, in which event, the emails were not preserved. The storage media the firm utilized did not automatically verify the quality and accuracy of the storage media recording process. The firm did not organize and index all email information maintained and did not have an index available for examination. The findings also included that the firm did not have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved, and audit results were not available for examination. The firm failed to engage at least one third party who has access to, and the ability to, download information from the firm's electronic storage media to another acceptable medium to allow FINRA access to information contained on the firm's storage system.

FINRA found that the firm's computer server malfunctioned repeatedly, disrupting the back-up storage process of which the firm was aware. The firm's problematic computer server experienced a critical malfunction, interrupting the firm's access to emails. When the firm tried to recover data from its back-up tapes, it found that various back-up tapes contained no data or corrupted data and that many emails were altered or not preserved. FINRA also found that in connection with FINRA's review of the firm's securities activities, the firm reported that emails for some associated persons for various periods were lost or not readily recoverable. The firm's inability to produce all emails as FINRA staff requested hampered the staff's examination of the firm's activities and practices. In addition, FINRA determined that the firm failed to establish, maintain and enforce a supervisory system and WSPs reasonably designed to ensure that email communications relating to the firm's broker-dealer business were preserved, as required by SEC Rule 17a-4(b)(4), and that the firm complied with applicable requirements under SEC Rule 17a-4(f) when it used electronic storage media to store emails. Moreover, FINRA found that the firm's written procedures were deficient. The procedures provided, in pertinent part, that email communications should be forwarded to a registered principal and then forwarded to an electronic retention file for storage by transaction and retained for not fewer than three years, the first two on the premises of the firm. Furthermore, FINRA found that the firm

did not have a supervisory system or procedures to, among other things, ensure that emails were preserved exclusively in a non-rewriteable, non-erasable format; ensure that employees did not delete email communications relating to its broker-dealer business; test the firm's storage recording process; and designate a third party with access to, and the ability to, download information from the firm's storage media to another acceptable medium. ([FINRA Case #2009016343701](#))

**Mercantil Commercebank Investments Services (CRD #117284, Coral Gables, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to report to TRACE the transactions that were not previously reported. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities to TRACE that it was required to report. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning TRACE reporting. ([FINRA Case #2011027361001](#))

**Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD #7691, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$500,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and enforce effective WSPs and to supervise its total return swaps business. The findings stated that to support the legitimacy of its yield enhancement payment, the firm had to be able to substantiate that the client surrendered beneficial ownership of the underlying security during the life of the swap, and that the reacquisition of the underlying security was independent of the swap. Whether the client was subject to market risk in these transactions is a key factor in determining the propriety of the yield enhancement payment. The findings also stated that because of the firm's supervisory failures, it was unable to demonstrate that the swaps were properly structured and supervised with particular regard to yield enhancement payments. The firm failed to establish and maintain WSPs reasonably designed to ensure compliance with applicable laws and regulations. The findings also included that the firm's procedures were inadequate in some respects, and in other respects the firm did not appropriately enforce them. Areas in which the firm exhibited such supervisory deficiencies involved initial absence of written procedures; failure to document and review early terminations, as the procedures required; short-term transactions; and market-on-close pricing.

FINRA found that the firm initially lacked any written procedures regarding its total return swap program, and failed to institute such procedures until a later date. Once written and distributed to firm staff, the firm's procedures generally provided that swaps on which the underlying security was a single stock were to be held open for a year. The procedures provided that swaps must be open for 15 days, and further provided that if a swap was initiated with shares "crossed in" from the client to the firm, then the swap must be

held open for at least 25 days. FINRA also found that the firm's procedures did allow for swaps to be unwound early, provided that such early terminations were recorded in an exceptions log for subsequent compliance review. In practice, no such exceptions logs were kept, there was no after-the-fact supervisory review of early swap terminations, and any requisite approval was not documented. In addition, FINRA determined that despite the general limitations in the procedures, swaps were often terminated early. Allowing clients to engage in short-term swap transactions that bracketed the dividend record date enabled clients to re-establish their original securities position while limiting their market risk. A substantial portion of this trading was done by a few individual counterparties who repeatedly opened and closed swaps on a short-term basis. Such trading patterns warranted a level of supervision that the firm failed to provide. Moreover, FINRA found that certain firm sales material advised that, after a swap ended, the counterparty could continue exposure to the security by purchasing it (or by entering into a second swap). The firm did not monitor counterparties, after swaps were unwound, to determine whether the counterparties were buying stock to reconstitute their original positions. Furthermore, FINRA found that the firm's procedures for swaps forbade crossing in and then exiting at a market-on-close (MOC) price, or entering and exiting at an MOC price. The firm allowed clients to open swaps on a volume weighted average price (VWAP) basis and close on an MOC basis. In practice, using the MOC price of the underlying equity to calculate the termination payment due under the swap allowed clients to re-establish their securities positions at minimal market risk. Clients who engaged in such practice knew they could unwind the swap and purchase the same amount of the underlying securities at the same, or virtually the same, price. The findings also stated that because the firm did not initially have WSPs, and because the firm failed to provide the supervisory review that its procedures subsequently required, swaps could be opened and closed in a few days' time, at prices that allowed market risk to be minimized. Because of these supervisory deficiencies, the firm lacked the ability to substantiate that its clients had parted with beneficial ownership of their original securities position and faced market risk in re-establishing a position at the close of the swap. As such, the firm was unable to substantiate the propriety of its yield enhancement payments. ([FINRA Case #2008015717401](#))

**Merriman Capital, Inc. (CRD #18296, San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it entered into an agreement with an unregistered individual to pay the individual 50 percent of gross fees it received in connection with sales of an issuer's preferred stock. The firm paid the individual \$1.5 million pursuant to the agreement, which constituted payment of a commission or fee to a non-member broker or dealer on terms and conditions the firm did not accord to the general public. The findings stated that the firm conducted deficient testing of its supervisory procedures because it did not include testing of its procedures pertaining to municipal securities, underwriting

or market making, each of which constituted significant portions of the firm's business, and did not test its procedures pertaining to changes of customer investment objectives or the supervision of producing managers. The findings also stated that with respect to each of the tests, the test identified a total failure in its procedures pertaining to branch office inspections but failed to make appropriate amendments in response to identified deficiencies in its supervisory procedures. The findings also included that the firm failed to ensure that a producing manager was appropriately supervised because it allowed its CEO's customer account activity to be supervised by an individual who was not senior to or otherwise independent of him, and the firm never notified FINRA that it intended to rely on the Limited Size and Resources exception of NASD Rule 3012. FINRA found that the firm failed to timely update a registered representative's Form U4 regarding an arbitration or settlement. FINRA also found that the firm received written complaints from customers and failed to timely report the customers' complaints to FINRA. ([FINRA Case #2009016162801](#))

**Meyers Associates, L.P. (CRD #34171, New York, New York)** submitted an Offer of Settlement in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit ROEs to OATS and failed to report, within 90 seconds of execution, last sale reports of transactions in designated securities executed during normal market hours to the FNTRF. The findings stated that the firm incorrectly designated as late to the FNTRF last sale reports of transactions in designated securities that were reported to the FNTRF within 90 seconds of execution, and failed to designate as late to the FNTRF last sale reports of transactions in designated securities that had not been transmitted to the FNTRF within 90 seconds after execution. The findings also stated that the firm erroneously reported to the FNTRF for publication purposes last sale reports that reflected the offsetting, riskless portion of each transaction. FINRA also found that the firm failed to report, within 90 seconds of execution, to the FNTRF last sale reports of transactions in designated securities during normal market hours. In addition, FINRA determined that the firm failed to establish, maintain and enforce written procedures to supervise the types of businesses in which it was engaged that were reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules regarding OATS and trade reporting. ([FINRA Case #2007009930701](#))

**Morgan Stanley & Co. LLC (CRD #8209, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$65,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm prepared inaccurate reserve formula computations and did not have adequate systems and procedures in place reasonably designed to result in the preparation of accurate customer reserve formula computations. The findings stated that the firm's internal audit group concluded, based on testing of the firm's May and September 2008 reporting, that the data sourcing and data quality processes supporting the firm's determination of its reserve formula computations to ensure accurate reporting were weak. The findings also stated that FINRA's Risk Oversight

and Operational Regulation Department (ROOR) commenced an examination of the firm, which included a review of the firm's reserve formula computation. ROOR referred certain of its findings to FINRA's Department of Enforcement. ROOR examiners' review of various firm spreadsheets used to prepare the computation disclosed control weaknesses and other deficiencies. The findings included that the errors in the weekly and month-end computations did not result in a Reserve Bank Account hindsight deficiency. FINRA found that in the quarter prior to the firm's internal audit conclusion, the firm commenced a project to automate the reserve formula computation process which replaced the existing manual spreadsheet-based process. Until that change occurred, including during the reserve formula computation period, the firm was required to have systems and procedures in place reasonably designed, in light of the existing manual spreadsheet-based process, to result in an accurate reserve formula computation. ([FINRA Case #2010023125701](#))

**Morgan Wilshire Securities, Inc. (CRD #44807, Garden City, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to enforce its WSPs regarding review of patterns of opening trade renegees and/or sellouts. The findings stated that the firm had opening trade renegees and subsequent sellouts at the firm; of those renegees and sellouts, five registered representatives accounted for 75 percent of the total. The firm's WSPs stated that a pattern of sellouts may indicate problems with customers or potential unauthorized transactions. The WSPs further stated that customers should be contacted where there is a pattern of sellouts to determine the cause of the sellout and whether the customer authorized the transaction. The findings also stated that the firm was unable to evidence or otherwise demonstrate that sellouts were reviewed or otherwise investigated, and was unable to evidence or otherwise document that any of the customers involved in the sellouts were contacted in an effort to determine the cause of the sellout or whether the customer authorized the transactions in question. The findings also included that the firm was not in compliance with certain recordkeeping requirements and failed to establish adequate written procedures in connection with electronic communications by failing to provide FINRA with notification of its use of electronic storage media, within 90 days prior to the firm's usage; provide FINRA with a letter from a third party describing the third party's undertakings regarding the firm's electronic storage media; preserve emails in non-rewritable, non-erasable format; and establish adequate procedures related to email retention.

FINRA found that the firm did not establish adequate supervisory policies and procedures that addressed a designated principal annual report to senior management on the firm's supervisory controls procedures and results; the supervision of producing managers' customer account activity; the identification of producing managers and assigning qualified supervisors; the use of the Limited Size and Resources Exception for branch manager supervision, including documenting the factors used in determining the exception is necessary; and the identification of producing managers for heightened supervision.

FINRA also found that the firm did not adequately supervise and/or document reviews of its producing managers' customer account activity due to the fact that it failed to properly identify and designate two individuals as producing managers, both of whom act in a supervisory capacity and service customer accounts. The individuals and the registered representatives they supervise generated 100 percent of the firm's revenue for a period of time. As a result, both individuals, in their capacity as producing managers, should have been subject to heightened supervision, but were not. In addition, FINRA determined that the firm did not establish adequate supervisory control policies and procedures that addressed procedures for identifying gaps with respect to the firm's business activities and rules governing those business activities as well as procedures for how the firm would conduct independent verification and testing; given the lack of procedures outlining the firm's process for conducting independent verification and testing, the reports failed to indicate the records demonstrating the dates verification and testing were completed as well as the nature of the verification and testing that was conducted; the identity of persons or departments responsible for conducting the required verification and testing; and the processes and steps taken to rectify and correct the weaknesses identified through the verification and testing efforts. Moreover, FINRA found that the firm's supervisory reports were inadequate in that they failed to include the firm's processes for testing or modifying compliance policies, the manner and frequency in which the processes were administered, and the identification of officers and supervisors who had responsibility for administering the processes. Despite the foregoing, the firm certified, through its CEO certification, that adequate processes and procedures were in place; the firm's CEO certifications for three years were inadequate. Furthermore, FINRA found that for more than two years, the firm did not report approximately 15 customer complaints. ([FINRA Case #2010021209601](#))

**National Securities Corporation (CRD #7569, Seattle, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$82,500 and ordered to pay \$1,640.15, plus interest, in restitution to customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted ROEs to OATS that OATS rejected for context or syntax errors and were repairable, but the firm failed to repair any of the rejected ROEs so they were not submitted to OATS. The findings stated the firm failed to execute orders fully and promptly, and that in transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. The findings also stated that in reportable securities transactions, the firm failed to report to the FNTRF the correct symbol indicating its capacity. The findings also included that the firm failed to report to the FNTRF the correct symbol indicating whether the transaction was a sell or sell short in last sale reports of transactions in designated securities, failed to report odd lot transactions as tape-eligible to the FNTRF, and incorrectly reported principal transactions as agent to the OTCRF.

FINRA found that the firm transmitted reports to OATS in which it unnecessarily submitted “RT” reports for orders executed on a riskless principal basis; and in one instance, the firm failed to append the “AON” special handling code on the OATS report. FINRA also found that the firm failed to disclose to its customers the availability upon request of written copies of order routing reports which disclose the identity of the venue to which the customer orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders. In addition, FINRA determined that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing the One-Percent Rule, trade reporting (third party trade reporting), sales transactions (locate requirements, SEC Rule 204T, naked short selling-SEC Rule 10b-21), trading halts, clearly erroneous trade filings, and books and records. Moreover, FINRA found that the firm failed to report information regarding transactions effected in municipal securities to the RTRS within 15 minutes of trade time to an RTRS Portal. Furthermore, FINRA found that the firm failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of execution time. The findings also stated that the firm failed to make publicly available a report on its routing of non-directed orders in covered securities during a calendar quarter within one month after the end of the quarter addressed in the report. ([FINRA Case #2007009981401](#))

**OTA LLC (CRD #25816, Purchase, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate destination codes. ([FINRA Case #2009020472701](#))

**Primevest Financial Services, Inc. (CRD #15340, St. Cloud, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of the execution time. The findings stated that the firm failed to report accurate trade information for transactions in TRACE-eligible securities, in that the firm failed to accurately report the execution time and the settlement identifier, failed to report a settlement date modifier even though each transaction was executed with a settlement date other than T+1. The findings also stated that during a calendar quarter, the firm failed to report the accurate market identifier for transactions in TRACE-eligible securities. ([FINRA Case #2010024886201](#))

**The PrinceRidge Group LLC (CRD #149758, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$11,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to TRACE the correct time of trade execution for transactions in TRACE-eligible securities, and failed to report the transactions



within 15 minutes of execution time; these transactions constituted more than half of the inter-dealer transactions in TRACE-eligible securities the firm reported to TRACE during that review period. The findings stated that the firm failed to show the correct execution time on the memorandum of these transactions in TRACE-eligible securities for the account the firm executed with another broker or dealer. ([FINRA Case #2010024498101](#))

**Revere Securities Corp. (CRD #14178, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its WSPs regarding OATS reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit numerous ROEs to OATS on numerous business days; these ROEs represented more than half of all ROEs that the firm was required to transmit during that period. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning OATS reporting. ([FINRA Case #2010021513501](#))

**Royal Alliance Associates, Inc. (CRD #23131, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$175,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted two former representatives to be associated with the firm while they were statutorily disqualified as a result of state regulatory actions brought against them. The firm reviewed certain filings made in connection with these actions but allowed them to continue to be associated with the firm until several months later. The findings stated that the firm failed to timely and accurately file required Form U4 updates for the individuals reflecting these state actions and failed to timely make the required NASD Rule 3070 filings with respect to the state regulatory actions. The findings also included that the firm failed to reasonably supervise the individuals to ensure that they made required disclosures regarding their outside business activities. The firm failed to determine whether any additional disclosures were necessary despite numerous indications that these individuals were engaged in the activities at their outside business. FINRA found that the firm failed to reasonably supervise these individuals to ensure they made appropriate disclosures regarding the state regulatory actions. One of the individuals had discussions with various individuals at the firm, including his supervisors, concerning certain state regulatory actions. Despite knowledge of those state regulatory actions, the firm failed to determine whether these actions required disclosure by these individuals and failed to require any disclosures. ([FINRA Case #2009017644201](#))

**SagePoint Financial, Inc. (CRD #133763, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$300,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that employees of a California County Office of Education (CCOE) were enrolled in the CCOE's Deferred Compensation Program's (DCP), a 403(b)/457(b) plan, with the firm. The findings stated that the firm informed registered representatives

servicing the Plan that they could provide detailed asset allocation advice as part of the process for enrolling new participants including recommending specific financial products specifically tailored to the participant's needs, thereby going beyond general educational information about the mutual funds offered, but the registered representatives did not complete a client account application or any other document which recorded information about the participant's financial situation and needs, as required by FINRA and SEC rules and as contained in the client account application the firm usually used. The findings also stated that the only business records maintained by the firm in connection with the enrollment of the CCOE employees into the Plan were the CCOE enrollment form and a salary reduction agreement denoting the payments made to fund the investments. The documents did not contain the participants' tax identification number, employment status, annual income, net worth and the account's investment objectives. The firm did not record or maintain the information in any other documents, which caused the firm to fail to keep the customer account information current. The findings also included that the firm failed to implement adequate WSPs because they did not require that registered representatives record customers' investor profile information or information about a customer's financial situation and needs on any firm document or record when enrolling participants into the plan.

FINRA found that because the registered representatives servicing the Plan provided specific investment recommendations to the participants when they enrolled them in the Plan, the registered representatives were making investment recommendations to which the suitability requirements of NASD Rule 2310 applied. Because the firm did not maintain investor profile information or information regarding the participants' financial situation and needs, supervisors and others at the firm were unable to review the registered representatives' recommendations to determine whether they complied with the suitability requirements. FINRA also found that the firm's supervisory system was not reasonably designed to ensure that the recommendations of the registered representatives as to the DCP Plan were made in accordance with the suitability requirements. The firm's procedures did not require that it establish and maintain customer investment and other information, when recommending investments in the Plan. In addition, FINRA determined that the firm approved a representative's outside business activity without assessing whether it conflicted with the firm's securities business, despite the fact that the outside business activity questionnaire (OBAQ), submitted to the firm, explicitly stated that outside business activity as manager of the DCP required him to work full-time. The firm placed additional supervisory responsibilities upon him without fully assessing whether his full-time job as manager of the DCP might impede his ability to properly manage the securities accounts of his clients or effectively undertake the additional supervisory responsibilities assigned to him. Moreover, FINRA found that the firm ignored red flags, including complaints from the representative, that his full-time job at the agency interfered with his ability to effectively supervise the firm's registered representatives. The representative's OBAQ was flagged for review for a possible conflict of interest, but the firm continued to approve his

outside business, without additional review. Furthermore, FINRA found that the firm failed to conduct any type of meaningful review to analyze the representative's position at the DCP to determine whether it was a conflict of interest for him to accept compensation for enrolling participants into the Plan and what types of disclosures, if any, should be made to participants regarding his dual roles. The firm made the registered representative the Representative of Record for the Plan's securities accounts and, in that role, the firm paid him a commissions check representing all of the commissions earned by brokers for enrolling participants into the Plan, including those he enrolled. The firm never instructed the representative that he could not accept commission emanating from the DCP's Plan and never implemented any supervisory procedures to ensure that he was not receiving compensation as a result of the firm's 403(b)/457(b) plan business. The findings also stated that the firm failed to implement an adequate supervisory system reasonably designed to address, analyze or review any conflicts of interest posed by the representative's dual roles as manager of the DCP and registered representative and supervisor at the firm. The findings also included that the firm's WSPs mandated principal review of all registered representatives' incoming and outgoing securities-related email communications. Until the firm's automated email system was implemented, the firm relied upon its representatives to forward their own incoming and outgoing emails to a designated principal for review but did not have an adequate system in place to determine if registered representatives were in fact forwarding their emails as required, but relied upon annual branch audits and sporadic spot-checks of registered representatives' computers to enforce compliance with the email-forwarding requirement. In the event that an email-forwarding deficiency was identified through a branch audit, the firm's WSPs did not require a search or review of archived emails to determine if the offending registered representative had failed to forward additional emails.

FINRA found that the firm permitted, but did not require, supervisors to conduct spot-checks of the registered representatives' computers as a means to monitor if emails were being forwarded as required. Because of the deficiencies, the firm's email-review system did not provide an effective means to identify emails that may have contained evidence of customer complaints, registered representatives' misconduct or other issues of supervisory importance. The firm was aware of the representative's use of his outside business address to conduct securities-related business but failed to prevent him, so the firm failed to maintain or retain records of electronic communications. ([FINRA Case #2007010991902](#))

**Scottrade, Inc. (CRD #8206, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted ROEs to OATS that OATS rejected for context or syntax errors and were repairable, but the firm failed to repair many of the rejected ROEs so they were not transmitted to OATS during the review period. The findings stated that the firm transmitted ROEs to OATS late, transmitted New Order Reports with inaccurate timestamps, transmitted Route or Combined Order Route Reports to OATS that OATS was

unable to link to the related order in the NASDAQ Market Center, and transmitted Route or Combined Order Route Reports to OATS that OATS was unable to match to the receiving firm's related New Order Report. ([FINRA Case #2010023301301](#))

**Seattle-Northwest Securities Corporation (CRD #10639, Seattle, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct contra-parties identifier for transactions in TRACE-eligible securities to TRACE, and also over-reported transactions in TRACE-eligible securities to TRACE. The findings stated that the firm failed to enforce its WSPs, which specified that a designated supervisor review the TRACE Quality of Markets Report Card and TRACE-eligible transactions on a monthly basis, and initial and save the review. ([FINRA Case #2010022566101](#))

**Source Capital Group, Inc. (CRD #36719, Westport, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to record the correct trade execution time for transactions in TRACE-eligible securities which resulted in the firm's failure to report transactions in TRACE-eligible securities to TRACE within 15 minutes of the execution time, the firm's failure to report the correct time of trade execution for transactions in TRACE-eligible securities to TRACE, and its failure to show the correct execution time on the memorandum of brokerage orders. ([FINRA Case #2010024504301](#))

**Stephens Inc. dba Stephens (CRD #3496, Little Rock, Arkansas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it incorrectly submitted to OATS both New Order and Combined Order Route Reports for orders, incorrectly submitted one or more New Order Reports instead of Combined Order Routes for orders, submitted incorrect information on Route or Combined Order Route Reports for orders (including incorrect destination codes and incorrect or omitted information on Sent To fields), failed to submit Route Reports for orders, submitted duplicate New Order Reports for orders and submitted unnecessary Route Reports for orders. The findings stated that the firm failed to provide written notification disclosing to its customer that the transaction was executed at an average price, and failed on some occasions to disclose its correct capacity in the transaction. The findings also stated that the firm provided written notification to its customer that contained an incorrect disclosure about its remuneration in transactions by referring to its remuneration as a commission instead of a commission equivalent or markup/markdown where the firm acted in a principal or riskless-principal capacity. The findings also included that the firm provided written notification to its customer by disclosing transactions as average price executions when its usage did not apply. ([FINRA Case #2010021562701](#))

**Taglich Brothers, Inc. (CRD #29102, Huntington, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it issued research reports that failed to comply with various provisions of NASD Rule 2711. The findings stated that the firm sent draft research reports to subject companies before publication; one contained the analyst's summary, rating and price target, and another contained projected revenues and other financial projections. Some reports contained strategy sections that interspersed analysts' opinions with facts, others contained outlook sections that interspersed analysts' opinions with facts, and some interspersed analysts' opinions elsewhere in the report. The findings also stated that the firm permitted the director of its research department to execute a trade in a covered security during a period beginning 30 calendar days before and ending five calendar days after publishing a research report concerning the subject company. The firm published a research report by its analyst covering the company, which downgraded the firm's rating of that security. The findings also included that research reports the company issued failed to label certain disclosures as important or required, and to print the disclosures on the first page of the reports in a clearly larger font size. Two of those reports failed to state that the firm or its affiliates owned 1 percent or more of the securities of the subject company. FINRA found that the firm failed to implement and enforce WSPs reasonably designed to ensure that the firm and its employees complied with the provisions of NASD Rule 2711. The firm failed to implement and enforce its WSPs with respect to trading ahead of research reports insofar as it permitted the transaction. In addition, the firm failed to implement and enforce its WSPs with respect to disclosure requirements regarding research reports the firm issued insofar as it permitted the conduct. ([FINRA Case #2009016317501](#))

**TD Ameritrade, Inc. (CRD #7870, Bellevue, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to disclose to its customers negative ratings changes related to municipal bonds at or before the time of purchase. ([FINRA Case #2009019594803](#))

**TD Ameritrade, Inc. (CRD #7870, Bellevue, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely file amendments to Forms U4 and Uniform Termination Notices for Securities Industry Registration (Forms U5). The findings stated that customer complaints triggered all of these late filings. ([FINRA Case #2009020348701](#))

**TD Securities (USA) LLC (CRD #18476, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted short interest position reports to NASD/FINRA

that included short interest positions for certain securities which the firm should not have reported because the firm's clearing organizations reported such short-interest positions on the firm's behalf. ([FINRA Case #2008012091501](#))

**TradeStation Securities, Inc. (CRD #39473, Plantation, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$200,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to implement policies and procedures reasonably designed to detect and cause the reporting of suspicious activity in customer accounts as required by 31 U.S.C. 5318(g) and the implementing regulations thereunder. In particular, the firm failed to tailor its AMLCP to its business, which is to provide direct market access to equities, futures and foreign exchange market (forex) customers using a proprietary online trading platform. The findings also stated that the firm's written AML procedures did not contain adequate provisions for the monitoring of trades to detect suspicious activity. In practice, the firm's automated surveillance of trades was limited to two daily exception reports, a wash sales report and an odd/partial round lot report. Apart from these two exception reports, the firm did not utilize other automated surveillance modules to monitor trades for suspicious activity so that the firm may have failed to detect and report red flags concerning irregular patterns of trading activity, including evidence of market manipulation and other suspicious transactions. The findings also included that for monitoring flow of funds, the firm relied on a manual, transaction-by-transaction approach, conducted by the firm's cashiers; each cashier was assigned a specific type of money movement to monitor (e.g., one would review outgoing wires and another would review incoming wires). The cashiers were instructed to notify the firm's AMLCO by email when the flow of funds in an account looked suspicious. Additionally, the AMLCO selected one day a month at random and reviewed all wires for that particular day. The AMLCO recorded this information on a log, but did not begin recording this information until recently. The firm's approach to monitoring flow of funds made it difficult to detect patterns of suspicious activity over time.

FINRA found that the firm failed to provide for adequate independent testing of its AML program. The firm's independent consultants limited their tests to a review of the firm's AML procedures and interviews of individuals responsible for AML compliance, an approach which lead to superficial findings presented in boilerplate language. Neither of the independent consultants noticed that the firm did not conduct automated trade surveillance and neither of the audit reports prepared by the independent consultants mentioned trade surveillance. In addition, FINRA determined that the firm failed to provide adequate AML training to personnel entrusted with implementing its AMLCP. The firm's AML training consisted primarily of a 45-minute annual compliance seminar, only a segment of which was devoted to AML. ([FINRA Case #2010023934201](#))

**Tradition Asiel Securities Inc. (CRD #28269, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct trade time to the RTRS in municipal securities transaction reports and failed to report information regarding transactions effected in municipal securities to the RTRS within 15 minutes of trade time to an RTRS Portal and failed to document the correct execution time on the trade memorandum for these transactions. The findings stated that the firm improperly reported transactions effected in municipal securities to the RTRS that were not inter-dealer transactions and thus were not reportable. ([FINRA Case #2010021784401](#))

**Trinity Securities, Inc. (CRD #44857, San Antonio, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it offered and sold a contingency offering that broke escrow prior to satisfying the minimum contingencies the PPM required. The findings stated that the firm was under the impression that industry participants were participating in the private-placement offering, and had satisfied the minimum contingency requirement; however, these transactions were never completed. The offering was fully subscribed and closed on a later date. The findings also stated that the firm received an investor's check, during the contingent period, payable to an entity other than the escrow account as required in the PPM, and deposited the check into related escrow accounts. ([FINRA Case #2010020850801](#))

**Wedbush Securities Inc. (CRD #877, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to obtain and maintain possession or control over its customers' securities promptly. The findings stated that an operations employee at one of the firm's branch offices erroneously tendered par value \$7,305,000 in corporate bonds held in customer accounts at the firm. The tender was erroneous in that none of the customers had requested that their bonds be tendered. After several unsuccessful attempts by the firm to rescind the tender, the firm created a short position in the error account of the branch office where the tender had occurred, which offset the long positions in the customer accounts, and the firm determined that it was not obligated to promptly obtain and maintain possession or control over the customers' bonds. Consequently, the firm did not buy sufficient bonds to cover its short position until over a year later. The findings also stated that the firm determined that it was required to neither buy nor borrow its customers' bonds positions based on a longstanding interpretation of Securities Exchange Act Rule 15c3-3, which relieves broker-dealers of their normal possession and control obligations under certain circumstances. In this case, the firm was not entitled to the benefit of the interpretation because the interpretation only applies to firm short positions that result from actual short sales to customers. The findings also included that in order to monitor the positions of customers whose bonds had been erroneously tendered, the

firm created a new security identification number for those bonds in its internal securities tracking system. Consequences of this action were that a restricted flag was attached to the new security identification number, and the Committee on Uniform Securities Identification Procedures (CUSIP) number of the pre-tender bonds was no longer associated with the positions representing the tendered bonds. Two of the accounts from which the bonds were erroneously tendered were held by the same beneficial owner. In total, the two accounts held par value \$6,105,000 of the bonds.

FINRA found that the customer requested that both of his accounts be transferred in their entirety to another broker-dealer via the automated customer account transfer service (ACATS). To that end, the receiving broker-dealer sent the firm a transfer initiation form (TIF) for each of the accounts. FINRA also found that in light of the restricted flag associated with the customer's bond positions and the lack of a valid CUSIP number, the firm's ACATS department did not transfer any of the customer's bonds. The firm's ACATS department validated the TIF for one of the accounts but deleted the bond position from the transfer. As to the second account, the firm's ACATS department rejected the TIF altogether, as the only securities in the account were the bonds. ([FINRA Case #2009018521301](#))

**Wells Fargo Investments, LLC (CRD #10582, San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report short interest positions to NASD on certain settlement dates for approximately four months, totaling more than 200,000 shares. The findings stated that for settlement dates for almost two years, the firm failed to accurately report its short interest data to NASD. ([FINRA Case #2006007115101](#))

## Individuals Barred or Suspended

**Gregory Allen Baldwin (CRD #1856003, Registered Principal, Hendersonville, North Carolina)** was barred from association with any FINRA member in any capacity and ordered to pay \$273,656.29, plus interest, in restitution to a customer. The sanctions were based on findings that Baldwin engaged in private securities transactions without providing his member firm prior written notice, that he made improper use of a customer's securities and funds, and that he failed to respond to FINRA requests for information and testimony.

The findings stated that Baldwin formed a limited partnership for which his adviser firm was the general partner and sold limited partnership interests to investors. The PPM for the fund and the subscription agreements reflected that Baldwin raised \$2,940,000 through several private securities transactions for which he received selling compensation. Baldwin and his adviser firm were reimbursed for various expenses, and he received management fees in his capacity as general partner of the limited partnership. The fund completed wire transfers to Baldwin's personal bank account totaling \$156,925.53. Baldwin received wire transfers, totaling \$6,100, to another account in his name. The fund also



wired \$75,000 to Baldwin's personal investment account at his firm, and money from the fund's bank account was used to pay Baldwin's personal credit card expenditures of \$48,231.32. The findings also stated that Baldwin's firm did not give him oral or written permission to engage in any business activity relating to the fund. In fact, Baldwin signed annual attestations acknowledging the requirement to notify the firm prior to engaging in any private securities transaction away from the firm and provide details of the offering or placement, yet he failed to do so. The findings also included that Baldwin misused customers' securities and funds, when contrary to the customer's specific instructions, he caused the customer's shares of stock to be transferred into his fund accounts at his firm, without the customer's knowledge or authorization. Baldwin's customer had instructed him to liquidate all of his shares of stock for an entity and to send him a check for the proceeds of the sale, which he agreed to do.

FINRA found that Baldwin subsequently informed the customer that he received \$366,000 for the liquidation of his securities. When the customer requested the sale proceeds, Baldwin informed him that his monies had been invested in the fund; therefore, Baldwin could not disperse the funds because they were commingled with other investors' monies. Baldwin sent him \$50,000 after he expressed his dissatisfaction with the sale and his need for immediate funds. FINRA also found that when Baldwin caused the sale of the entity's shares from his fund account, he retained the proceeds, which totaled \$323,656.29, and failed to remit any additional monies to the customer. In addition, FINRA determined that Baldwin failed to respond to FINRA requests for information and documents and to appear for on-the-record testimony. ([FINRA Case #2009019632401](#))

**Kevin Seth Baltimore (CRD #1863517, Registered Principal, Charleston, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Baltimore consented to the described sanction and to the entry of findings that he made fraudulent and unsuitable recommendations to customers, inducing them to invest in a commercial paper note which was a fraudulent private placement purportedly for accredited investors pursuant to Regulation D under the Securities Act of 1933; customers invested a total of \$138,000 in the note. The findings stated that Baltimore also recommended the note investment to another client of one of his member firms. The findings also stated that Baltimore did not have reasonable grounds for believing the customers' purchase of the note was suitable given their financial condition and that they were not accredited investors as defined in Rule 501 of Regulation D. The findings also included that Baltimore made materially misleading statements and omissions of fact when recommending the investment, including misrepresenting the type of business in which the issuer was engaged and misrepresenting the use of proceeds to be raised by the note, and failing to disclose that the issuer was a shell company with no significant business. FINRA found that Baltimore intentionally withheld from his firms that he was engaged in outside securities transactions and recommended the

purchase of the note without the firms' approval or knowledge, and participated in private securities transactions without providing written notice describing in detail the proposed transactions, his role therein and stating whether he had received, or would receive, selling compensation in connection with the transactions. ([FINRA Case #2010023526301](#))

**Bobby Wayne Barnett Jr. (CRD #1611141, Registered Principal, Perryton, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Barnett consented to the described sanctions and to the entry of findings that he recommended that customers liquidate certain of their fixed annuity investments and invest the proceeds in variable annuities. The findings stated that after implementing Barnett's recommendations, the customers complained to him about the surrender fees that they had incurred in connection with the fixed annuity liquidations. Barnett wrote the customers a \$5,955.99 check to reimburse the surrender fees and settle their complaints, without advising his member firm about the customers' complaint, or the payment made to them to resolve their complaints.

The suspension was in effect from January 3, 2012, through January 17, 2012. ([FINRA Case #2010022667101](#))

**Alonzo Levi Bethea (CRD #2184794, Registered Representative, Silver Spring, Maryland)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Bethea consented to the described sanction and to the entry of findings that he sold securities in the form of limited liability company membership interests totaling \$534,644 in a company he formed, and failed to provide written notice to, or obtain approval from, any of his member firms before engaging in the private securities transactions involving his company. The findings stated that Bethea directed customers to partially liquidate variable annuities he had previously sold them so they could make investments in his company; after the liquidations, the proceeds were sent to a third-party individual retirement account (IRA) custodian for alternative, nontraditional investments. The findings also stated that Bethea failed to provide written notice to his firms of his operation of an investment club he formed outside the scope of his relationship with his firms. The purpose of the club was to pool investor funds to make securities investments for which the members would receive returns in proportion to the amount of their original investment. The findings also included that Bethea opened a bank account for the investment club over which he had signatory authority and controlled the account. The address for the investment club and for its bank account was Bethea's home address. Bethea also opened an account for the investment club at his firm and was the assigned representative. Bethea recommended and purchased mutual funds totaling approximately \$4,500 for the club through the account for which he received commissions.

FINRA found that Bethea transferred approximately \$477,460 from his company and from the investment club bank accounts to his personal bank accounts, where customer funds were commingled with his personal funds, without their authorization or consent. After customers' funds were deposited in Bethea's personal accounts, he converted at least \$93,950 to his own use, making payments on his own credit card account and paying other personal debts. Bethea also misused company and investment club funds by making payments on loans secured by mortgages on a relative's property and on loans persons who were not members of the company or the investment club owed. FINRA also found that one of Bethea's customers sought to open an account at a third-party IRA custodian for the purpose of holding her investment in the company. Without the customer's authorization or consent, Bethea signed her name to the new account form the custodian required. In addition, FINRA determined that Bethea supplied false information to his firms on annual compliance questionnaires, in an email and on an Outside Business Activity Details form regarding whether he was engaged in private securities transactions involving the company, his activities involving the company, whether he had signatory authority on any investment or checking accounts for the company, and if he had commingled his funds with a client's, other than an immediate family member. ([FINRA Case #2009020491401](#))

**Earnest Evan Bridges Sr. (CRD #5643149, Registered Representative, Cheltenham, Maryland)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Bridges consented to the described sanction and to the entry of findings that he learned of an investment that would purportedly provide a 100 percent return on a \$70,000 investment after a month. To facilitate the investment, the funds were to be wired to an escrow account and a third party would withdraw the funds from the account. Bridges recommended to at least a couple of individuals, including a member firm customer, that they invest through him. The findings stated that Bridges promised the individuals a 50 percent return and failed to inform them that he intended to keep the other 50 percent for himself. The findings also stated that without conducting any due diligence, Bridges told the firm customer that the investment was insured and risk-free, which were material misstatements. The findings also included that the investment opportunity was a fraud, and the customers lost all of their money.

FINRA found that despite Bridges' assurances to the contrary, the firm customer paid in excess of \$10,000 in surrender charges and tax penalties as the result of liquidating her annuity and taking a withdrawal from her IRA. FINRA also found that the firm prohibited its registered representatives from participating in any manner in the sale of any security, registered or unregistered, that was not processed through the firm, without prior written approval. Without seeking prior written approval from his firm, Bridges entered into a promissory note with a customer. In addition, FINRA determined that the customer sent a written complaint to Bridges, demanding payment of the promissory note which he did not report to his firm. ([FINRA Case #2010023213901](#))

**Dawn Mechael Buchanan (CRD #5631319, Registered Representative, Avon, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any FINRA member in any capacity for five business days. In light of Buchanan's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Buchanan consented to the described sanction and to the entry of findings that she opened a new account at her member firm's affiliate bank for a customer, who at the time was dating Buchanan's relative, and signed his name on a bank account signature card. The findings stated that Buchanan then enrolled the customer in online banking, personally funded the account and created bill payments to her relatives in order to reimburse herself. All of Buchanan's actions were done with the customer's knowledge and approval. The findings also stated that the customer at issue was not a customer of her firm.

The suspension was in effect from January 17, 2012, through January 23, 2012. ([FINRA Case #2011027737801](#))

**Daniel Bull (CRD #5495145, Registered Representative, Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Bull consented to the described sanction and to the entry of findings that he improperly used and converted over \$491,000 from member firm customers and additional investors by making fraudulent misrepresentations to induce them to invest funds in a company that he and others established. The findings stated that Bull touted the success of his new company and provided potential investors with brochures, making numerous false statements and misrepresentations to gain the confidence of investors. Bull told investors that he was independently wealthy after selling several start-up companies for millions of dollars and had invented a strategy of buying and selling short-term municipal bonds to generate large returns. The findings also stated that Bull told the investors they were purchasing mutual funds and tax-free municipal bonds, but converted the funds for his own use, including repaying earlier investors. To conceal the conversion and fraud, Bull provided investors with fictitious account statements showing a return on their investments. ([FINRA Case #2010022548401](#))

**Maureen Ann Burke (CRD #1323987, Registered Representative, Chelsea, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Burke consented to the described sanction and to the entry of findings that as a senior claims analyst at her member firm's affiliate, she was responsible for, among other things, processing surrenders, loans, and dividend withdrawals on non-variable life insurance policies. The findings stated that Burke processed numerous unauthorized surrenders, loans and dividend withdrawals on life insurance policies, totaling approximately \$18,208, without the knowledge or permission of her firm's affiliate. Her firm's affiliate owned the policies because the original policy owners abandoned

the policies and Burke then caused the funds from the unauthorized transactions to be wire transferred to a bank account over which she had access and control, without the knowledge or permission of her firm's affiliate. The findings also stated that Burke processed a \$240 unauthorized disbursement in a customer's life insurance policy without the customer's knowledge or permission, and caused the funds to be wire-transferred to the bank account, which Burke's relative owned, and to which she had access and control, without the customer's knowledge or permission. ([FINRA Case #2010024265301](#))

**Kristopher William Bush (CRD #4626069, Registered Representative, San Diego, California)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 20 business days. Without admitting or denying the allegations, Bush consented to the described sanctions and to the entry of findings that he and his partner created a model fund portfolio that included mutual funds from his member firm-approved funds that illustrated their recommended strategy of a diversified portfolio, and they created a spreadsheet to track the hypothetical portfolio's performance and included updated S&P 500 performance numbers for comparison purposes. The findings stated that Bush and his partner mailed or emailed the model portfolio to prospective clients but did not include adequate risk disclosures, failed to disclose to potential investors that they were created with the benefit of back-testing and hindsight, did not identify the source of performance numbers and failed to display in a prominent fashion that Bush and his partner were associated with their firm. The findings also stated that the spreadsheets failed to make any reference to the firm. The findings also included that in some communications with prospective customers, Bush and his partner misrepresented that it was a portfolio that they managed and the stated returns were their returns. FINRA found that Bush and his partner failed to receive a registered principal's approval prior to use of the model fund portfolio as required by the firm's policies and procedures and failed to provide FINRA's Advertising Department with a copy of the spreadsheet within 10 business days after they first disseminated the material. FINRA also found that Bush was aware that his partner made similar misrepresentations to customers since he was copied on and received many of the communications containing similar misrepresentations that his partner sent to prospective customers.

The suspension was in effect from January 3, 2012, through January 31, 2012. ([FINRA Case #2009018219102](#))

**Michael Sungkyu Cho (CRD #5658633, Registered Representative, Grosse Pointe, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Cho's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Cho consented to the described sanctions and to the entry of findings that he wrote checks totaling \$1,800, drawn against an account at a bank where he had been

previously employed and knew they were drawn on insufficient funds. Cho deposited these checks into his checking account at another bank and then, using an automated teller machine (ATM), immediately withdrew funds from the account for the exact dollar amount that he deposited which resulted in numerous overdrafts and returned checks for non-sufficient funds. The findings stated that Cho wrote checks totaling \$3,400 against his checking account and when he issued each of these checks, he knew that the account held insufficient funds to cover payment on the checks. Cho cashed two checks at the bank where he had been previously employed, deposited the other checks into the accounts of relatives who had accounts at that bank, and then withdrew funds from these accounts. The findings also stated that prior to his leaving his member firm, Cho deposited sufficient funds into his checking accounts to cover payment on the returned checks.

The suspension is in effect from December 19, 2011, through March 18, 2012. ([FINRA Case #2011026869401](#))

**Robert John Clark (CRD #47828, Registered Representative, Vista, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Clark's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Clark consented to the described sanctions and to the entry of findings that he recommended and sold an entity's private placement offering to some customers for a total of \$350,000. The findings stated that Clark became aware of the missed interest payments in the entity's earlier offerings, and also saw the default notice from a bank, the trustee for one of the earlier offerings, but continued to sell the offering. The findings also stated that Clark did not view the offering as a speculative product due to favorable past performance of the company and the fact that it was paying a 9 percent return and believed that the offering was a low-risk, income-producing product. Clark did not conduct any analysis before selling the offering because he had sold earlier offerings of the entity and did not review the PPM because he was familiar with the earlier offering documents and assumed that this one was identical. The findings also included that unlike the earlier offerings, there were serious red flags as to the viability of the offering because the issuer was having trouble making both principal and interest payments to its investors in the earlier affiliated offerings. Clark became aware of the negative information concerning liquidity problems, delinquencies and defaults of earlier affiliated offerings that should have alerted him to the fact that the offering was also susceptible to delinquencies or default and therefore not suitable for his customers. FINRA found that Clark failed to conduct adequate due diligence and failed to have reasonable grounds to believe that the private placement offered by the entity pursuant to Regulation D was suitable for any customer in light of the fact that he was aware of the delinquencies and defaults of the entity's earlier affiliated offerings.

The suspension is in effect from December 19, 2011, through June 18, 2012. ([FINRA Case #2010022304701](#))

**Kyle Joseph Cooper (CRD #5312810, Registered Representative, Hernando, Mississippi)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Cooper's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Cooper consented to the described sanctions and to the entry of findings that he participated in a private securities transaction by facilitating his customer's \$20,000 investment in a graphic design business. The findings stated that Cooper told the customer about the investment, received \$20,000 in cash from the customer, and delivered the money to the graphic design business's owner. The findings also stated that Cooper failed to provide his firm with prior written notice of this transaction. The findings also included that Cooper incorrectly indicated on the firm's compliance questionnaire that he did not take part in a private securities transaction, or help a client, member of the public or any business raise capital while being registered at the firm.

The suspension is in effect from December 19, 2011, through March 18, 2012. ([FINRA Case #2010025343001](#))

**Joseph Scott Coy (CRD #1811091, Registered Representative, West Des Moines, Iowa)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any FINRA member in any capacity for two years and ordered to pay \$20,000, plus interest, in restitution to customers. The fine and restitution must be paid either immediately upon Coy's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Coy shall provide proof of payment of restitution or of reasonable and documented efforts undertaken to effect the restitution to FINRA at that time. Without admitting or denying the findings, Coy consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing adequate written notice to his member firm and without obtaining the firm's prior written approval. The findings stated that Coy was involved in a disclosed outside business activity through an entity, in which Coy became part owner, was involved in the management, made substantial personal investments, and received salary and other payments for his overall efforts on the company's behalf. The findings also stated that Coy disclosed his personal investment to his firm and in the disclosure document he signed and submitted, he acknowledged that his firm would not permit him to solicit or recommend an investment in the entity to any other investors. The findings also included that Coy actively solicited loans on the entity's behalf; several of his firm's customers loaned a total of \$700,000 to the entity in several transactions, which issued promissory notes to the borrowers memorializing the loan's terms. The findings also included that Coy completed compliance questionnaires for his firm in which he denied having solicited or accepted a loan from a client for any reason within the previous year.

FINRA found that Coy sold the promissory notes without providing written notice to his firm of these sales and without receiving written approval or acknowledgement from the firm for these sales. FINRA also found that Coy accepted a \$20,000 loan from his firm's customers, transferred the loaned funds from his business account to the account of another outside business activity for which he had received approval, without the firm's prior approval of the loan, and in contravention of the firm's procedures. The customers were not member of Coy's immediate family and were not in the business of lending money.

The suspension is in effect from January 3, 2012, through January 2, 2014. ([FINRA Case #2010024253901](#))

**Harold David Criswell (CRD #1503161, Registered Supervisor, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any principal capacity for 30 days. Without admitting or denying the findings, Criswell consented to the described sanctions and to the entry of findings that he failed to report to his member firm's AML Officer, as its AML program required, red flags and suspicious activity in the accounts of an individual who was later determined to have been operating a Ponzi scheme. The findings stated that the individual was a client of the firm's registered representative and when the registered representative was unavailable, Criswell interacted directly with the individual, who was a very frequent trader. Criswell learned of suspicious activity and became aware of red flags in the individual's accounts, including that his accounts at the firm had been subpoenaed by a state's securities division, he was under investigation by a grand jury, he had been named as a defendant in a civil complaint alleging that he had converted funds from his deceased relative and placed those funds into his firm account, he repeatedly questioned Criswell about the possibility of investing on behalf of others using his firm account, he had deposited many third-party stock certificates to his account, and he told Criswell that he had admitted to a state securities agency that he had committed fraud and expected to go to prison. The findings also stated that Criswell failed to report any of these facts to the firm's AML Officer, or to anyone else at his firm who could assess them in connection with his firm's AML responsibilities. Criswell learned some of the facts through his direct interactions with the individual and, accordingly, were known to Criswell but not by others at his firm.

The suspension was in effect from January 3, 2012, through February 1, 2012. ([FINRA Case #2009018985201](#))

**Timothy Edward Dixon (CRD #2387274, Registered Representative, Hamilton, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and suspended from association with any FINRA member in any capacity for four months. The fine must be paid either immediately upon Dixon's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the



findings, Dixon consented to the described sanctions and to the entry of findings that he failed to report, as required by his member firm's AML Program, red flags and suspicious activity in the accounts of an individual, who was later determined to have been operating a Ponzi scheme. The findings stated that Dixon's client was a very frequent trader who moved large sums of money in and out of his firm accounts. In one 10-and-a-half-month period, the individual deposited approximately \$3.8 million in cash equivalents to his brokerage account and then wrote more than a thousand checks from a linked money market account. The findings also stated that the firm's AML Officers emailed Dixon on several occasions, asking him to explain the substantial flows of funds in and out of the individual's accounts. The AML Officers also asked Dixon to explain why the individual frequently wrote checks in round dollar amounts. In response to these inquiries, Dixon failed to ask the individual for an explanation of the account activity but relied on the general explanation the individual had provided when the individual first opened the account several years earlier and anecdotal comments made during the course of their business relationship. Based on what the individual previously told him, Dixon wrote that the frequent deposits, withdrawals and checks were the result of the individual's extensive dealings in real estate, motor vehicles and a successful insurance business. In his responses to the AML Officers, Dixon did not address why the individual frequently wrote checks in round-dollar amounts. The findings also included that Dixon later learned of additional red flags indicating possible suspicious activity in the individual's accounts. Although Dixon discussed these red flags with others at his firm, he did not report them to his firm's AML Officer, and had not been informed that they had been so reported. These additional red flags included the fact that the individual had been named as a defendant in a civil complaint alleging conversion of funds from his deceased relative and placed those funds into his firm account, his accounts at the firm had been subpoenaed by a state securities division, he was under investigation by a grand jury, he had invested on behalf of others using his firm account, he was moving money out of his account to repay those investors, and he admitted he had committed fraud and expected to go to prison. FINRA also found that the firm's AML Officer sent Dixon an email requesting that he explain why a large amount of money had left the individual's accounts in the previous two weeks. In Dixon's emailed response, he failed to disclose the red flags, or that the individual has invested on behalf of others, using his firm account and that the individual expected to go to prison. Instead, Dixon wrote that the account would continue to dwindle down because the individual was going to go in a different direction with the funds. FINRA also found that the firm's AML Program provided that any employee of the firm who became aware of any red flag or other activity that may be suspicious was to notify the AML Officer. The firm's compliance manual also instructed firm employees to communicate any unexplained red flags to the AML Officer and report immediately any activity deemed to be suspicious in nature.

The suspension is in effect from December 19, 2011, through April 18, 2012. ([FINRA Case #2009018985202](#))

**Charles Michael Dobbins (CRD #2202019, Registered Representative, Columbia, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Dobbins' reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Dobbins consented to the described sanctions and to the entry of findings that he accepted loans totaling \$195,000 from customers made to a company he partially owned and operated. The findings stated that Dobbins serviced securities accounts for these customers at his member firm although the firm had policies and procedures that generally prohibited lending arrangements between the firm's representatives and customers with certain exceptions which did not apply to these loans from the customers. The findings also stated that the firm required that a representative receive pre-approval for any lending arrangement between a representative and a firm customer. Dobbins did not notify the firm of the loans from the customers and did not obtain approval to receive these loans. The findings also included that Dobbins repaid the loans from one of the customers, plus interest, and is current and up-to-date in his repayment of the loan from the other customer.

The suspension was in effect from January 3, 2012, through January 17, 2012. ([FINRA Case #2010022997701](#))

**Michael H. Doherty (CRD #5120633, Registered Representative, Floral Park, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 60 days. The fine must be paid either immediately upon Doherty's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Doherty consented to the described sanctions and to the entry of findings that he was advised by his firm's margin clerk that he needed to provide several forms including a customer's new account form for a firm broker to enter a securities transaction for the customer account. The findings stated that Doherty retrieved the new account form, which the customer had previously signed but the broker or the branch office manager had not approved in writing. Because the broker and the branch office manager had left for the day, Doherty proceeded to copy their signatures from another new account form without their authorization, knowledge or consent, and affixed the signatures to the customer's new account form and faxed the form to the firm's margin clerk.

The suspension is in effect from December 19, 2011, through February 16, 2012. ([FINRA Case #2010023100501](#))

**Lawrence Alexander Donnell (CRD #2355434, Registered Principal, Monument, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000 and suspended from association with any FINRA member in any capacity for 18 months. The

fine must be paid either immediately upon Donnell's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Donnell consented to the described sanctions and to the entry of findings that he told his supervisor that he and his partner were planning on purchasing a franchise in a company that provides commercial office space, conference rooms and administrative support on an ad hoc, a la carte basis. Donnell represented to his supervisor that he and his partner would not solicit any past, current or future clients to invest their dollars in this venture. The supervisor responded to Donnell that, as presented in the email, he did not see any problems with the business but cautioned Donnell that the firm would not approve the business if it was organized as a limited partnership. The findings stated that Donnell and his partner filed Articles of Organization with a state for a limited liability company, the kind of company Donnell's supervisor had indicated that the firm would not approve. Other than his email exchange with his supervisor, Donnell neither sought nor received approval from his firm for this outside business activity. The findings also stated that Donnell sold a firm customer unauthorized promissory notes totaling \$200,000 through his undisclosed outside business activity, who paid for the loans with funds she withdrew from her firm account. When interest was owed on the customer's notes, Donnell and his partner told the customer that they did not have the money to either repay the principal or the interest due on the notes. Donnell, his partner and his company declared bankruptcy, from which Donnell was later discharged. The findings also included that Donnell personally entered into an unauthorized promissory note for \$70,000 with his relative, who was not a firm customer, to invest in his undisclosed outside business activity, which Donnell promised to pay back with interest by a certain date; Donnell was unable to pay on the note and Donnell's relative took possession of Donnell's interest in the family farm. FINRA found that each year, Donnell signed a firm attestation indicating he did not engage in any undisclosed outside business activities, he did not participate in an undisclosed private securities transaction, and he had not taken any loans from firm customers.

The suspension is in effect from December 19, 2011, through June 18, 2013. ([FINRA Case #2010022295201](#))

**Jeffrey Scott Donner (CRD #2631248, Registered Principal, Weston, Florida)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Donner executed several unauthorized transactions in customers' accounts at his member firm without their knowledge and consent. The findings stated that Donner exercised discretion in a customer's account without written authorization; Donner neither sought nor obtained the customer's or his member firm's authorization. The findings also stated that Donner used his personal email account to send business-related emails to customers and admitted to FINRA that he used an unapproved, personal email account to send emails to and receive emails from his customers. The findings also included that his firm's WSPs required that the firm review email communication between registered representatives and customers, but Donner did not forward any of these emails to the firm

for review. FINRA found that Donner's use of his personal email account prevented his firm from accessing these customer communications and complying with its obligations to review correspondence between registered representatives and their customers, and from complying with its recordkeeping requirements. ([FINRA Case #2009020228501](#))

**Leonard Peter Farber (CRD #2437625, Registered Principal, Dix Hills, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Farber consented to the described sanction and to the entry of findings that he failed to appear for a FINRA on-the-record interview. The findings stated that Farber informed FINRA that he refused to appear and would not appear, at any time, for an on-the-record interview. ([FINRA Case #2011027760601](#))

**Richard Allan Finger Jr. (CRD #4432634, Registered Representative, Bellevue, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Finger consented to the described sanction and to the entry of findings that as a result of his trading activity in his customers' accounts, some of his customers incurred approximately \$1,594,947 in losses in accounts at his employer firm, and that the customers were charged approximately \$1,842,031 in commissions in those accounts. The findings stated that Finger concealed the losses incurred in those accounts by sending fabricated account statements to the customers via email. The fabricated statements overstated the net asset values by amounts ranging from approximately \$6,742 to approximately \$1,540,719. Some of those statements also understated the amounts of commissions that had been charged in those accounts by amounts ranging from approximately \$2,417 to \$430,000. ([FINRA Case #2011029005802](#))

**Olaf F. Gamlen (CRD #5292529, Registered Representative, Palm Beach Gardens, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Gamlen's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Gamlen consented to the described sanctions and to the entry of findings that he exercised discretion in a customer's nondiscretionary advisory accounts. The findings stated that although the customer had given Gamlen oral authorization to use discretion in his accounts to effect securities transactions, Gamlen did not obtain the customer's prior written authorization. The findings also stated that at no time did Gamlen's member firm permit discretion to be utilized in the types of advisory accounts the customer held.

The suspension was in effect from December 19, 2011, through January 3, 2012. ([FINRA Case #2010024494001](#))

**Nimish Gandhi (CRD #2666422, Registered Principal, Peoria, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000 and barred from association with any FINRA member in any principal capacity. The fine must be paid either immediately upon Gandhi's reassociation with a FINRA member firm, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Gandhi consented to the described sanctions and to the entry of findings that, acting on his firm's behalf, he failed to prepare and provide to all customers who opened a new account a written statement disclosing the firm's Business Continuity Plan in the event of a future significant business disruption. The findings stated that Gandhi, acting on his firm's behalf, failed to evidence that a registered securities principal reviewed all securities related to incoming and outgoing correspondence. The findings also stated that despite the requirement that his firm monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder, Gandhi, acting on his firm's behalf, failed to conduct and evidence an annual independent test of its AML program for approximately four years; and during this time, failed to maintain and enforce adequate supervisory procedures identifying an independent party to conduct the firm's annual AML testing. At the time in question, the firm's procedures identified the firm's compliance officer as the person responsible for conducting the annual AML testing, but the firm's compliance officer was not an independent party. The findings also included that for approximately four years, Gandhi, acting on his firm's behalf, failed to evidence that the firm's privacy policies and practices notice was sent out to its customers when their accounts were established and on an annual basis thereafter. Gandhi caused his firm to violate Regulation S-P by failing to evidence that the firm sent the notice to its customers when they established an account and on an annual basis thereafter.

FINRA found that Gandhi, acting on his firm's behalf, failed to prepare adequate supervisory control policies and procedures, in that the firm's policies and procedures failed to address that a designated principal annual report be sent to senior management on its supervisory controls procedures and results; producing managers' supervision of customer account activity; the identification of producing managers and assigning qualified supervisors; the means or method of customer confirmation, notification or follow-up that can be documented; and the identification of producing managers for heightened supervision. FINRA also found that for almost a year, Gandhi, acting on his firm's behalf, failed to implement the proper procedures to supervise a producing manager subject to heightened supervision because the supervisor generated 20 percent or more of the revenue of the business units that he supervised. ([FINRA Case #2009016337001](#))

**Shaun Paul Golden (CRD #2629946, Registered Representative, East Quogue, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Golden consented to the described sanction and to the entry of findings that he failed to provide FINRA with requested information and documents in connection with a FINRA examination. ([FINRA Case #2010025157701](#))

**Hugh John Graham (CRD #1542345, Registered Principal, San Antonio, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Graham consented to the described sanction and to the entry of findings that he failed to respond, and continues to fail to respond, to FINRA's requests for testimony in connection with his sale of oil and gas private placements despite partially complying with previous requests. ([FINRA Case #2011027863301](#))

**Cameron Wade Grizzle (CRD #2501024, Registered Principal, Carrollton, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Grizzle consented to the described sanction and to the entry of findings that he received \$35,000 from a customer to invest in an entity; the funds were wired into the account that Grizzle used to operate his member firm's branch office. The findings stated that Grizzle executed a promissory note requiring that the account repay the customer the principal and simple interest at eight percent per annum by or before the maturity date. The findings also stated that the customer believed the funds were being held in a qualified money market account awaiting the next available offering in the entity. The findings also included that instead of investing the funds, Grizzle used the funds to pay his office monthly operational expenses, including the payment of employees' salaries and other business expenses, to ensure business continuity; Grizzle personally received at least \$13,000. FINRA found that Grizzle misused the customer's funds without the customer's knowledge, approval or consent; Grizzle has repaid approximately \$11,000 of the converted funds. FINRA also found that Grizzle failed to completely respond to FINRA's requests for information and documents, and failed to appear for an on-the-record interview. ([FINRA Case #2010022893901](#))

**Roger Gerard Haigney Jr. (CRD #3079492, Registered Representative, Myrtle Beach, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Haigney consented to the described sanction and to the entry of findings that he misappropriated at least \$104,000 from the brokerage accounts of customers of his member firm. The findings stated that Haigney misappropriated these funds by effecting unauthorized wire transfers to an individual outside of the firm and to the account of one of his relatives at the firm. The findings also stated that Haigney attempted to conceal some of the misappropriations by making an unauthorized wire transfer from one customer's account to another customer's account. ([FINRA Case #2011029603301](#))

**Jennifer Lynn Hastings (CRD #5147474, Registered Representative, West Monroe, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 days. Without admitting or denying the findings, Hastings consented to the described sanctions and to the entry of findings that she improperly allowed the operations manager to complete her Firm Element Continuing Education (CE) proficiency tests.

The findings stated that Hastings joined her member firm as a registered representative and was required to participate in the Firm Element CE program on an annual basis. The Firm Element CE program consisted of a series of Web-based courses and accompanying proficiency tests; certain courses were pre-assigned to registered individuals based upon the registrations that they held at the time of assignment, and the courses were then completed via the internal firm computer system.

The suspension was in effect from January 3, 2012, through February 1, 2012. ([FINRA Case #2009019276106](#))

**Todd Spencer Horlbeck (CRD #2028567, Registered Supervisor, Hayward, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Horlbeck consented to the described sanction and to the entry of findings that he created a hedge fund, which accepted only accredited investors who were required to make a \$250,000 initial investment and complete a subscription agreement before transferring funds to the hedge fund account at Horlbeck's member firm. The findings stated that the hedge fund produced quarterly account statements for each investor that reported the Net Asset Value (NAV) of the fund as well as the valuation of each individual's investment in the hedge fund; Horlbeck prepared and distributed these statements. The findings also stated that the hedge fund's value decreased as the value of the investments held dropped and during this period, Horlbeck misstated the NAV of the holdings and the value of each investor's holdings. The findings also included that Horlbeck understated the fund's losses on approximately four quarterly account statements sent to investors. FINRA found that the hedge fund investors were restricted to one withdrawal per year; when some investors took distributions, Horlbeck approved distributions based on the incorrect value of the fund. FINRA also found that Horlbeck has paid and/or has made arrangements to pay those remaining investors who did not take distributions to make them whole. ([FINRA Case #2009019346601](#))

**Rodney Magic Jennings (CRD #3274877, Registered Principal, Portsmouth, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Jennings' reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Jennings consented to the described sanctions and to the entry of findings that he improperly borrowed a total of \$36,000 from one of his customers at his firm. The findings stated that the firm's procedures specifically prohibited registered representatives from borrowing money from customers, and Jennings did not inform the firm of the loans. Jennings repaid approximately \$12,000, but the loans were not fully repaid until the firm learned of the loans, and the firm paid the outstanding balance to the customer. The findings also stated that for a period of three years, Jennings falsely represented on firm annual compliance questionnaires that he had not borrowed money from one of his customers.

The suspension is in effect from December 19, 2011, through June 18, 2012. ([FINRA Case #2011027076801](#))

**Ronald John Kambic (CRD #1920540, Registered Representative, Evergreen, Colorado)** was barred from association with any FINRA member in any capacity and ordered to pay a total of \$9,282.40, plus interest, in restitution to customers. The sanctions were based on findings that Kambic converted retirement contributions from employees of an entity he owned. The findings stated that the employees had funds withheld from their paychecks to serve as contributions to a tax-deferred retirement account. The entity maintained the retirement accounts at Kambic's member firm and Kambic was assigned to service their accounts. It was Kambic's responsibility to deposit the employees' contributions into their retirement accounts at the firm. The findings also stated that Kambic failed to deposit a total of \$9,282.40 into the retirement accounts and used the funds to finance his entity's business operations without the employees' knowledge or consent. Kambic admitted to converting the employees' retirement funds and to date has not reimbursed them. The findings also included that Kambic failed to respond to FINRA requests for information and documents. ([FINRA Case #2009016564601](#))

**Ricardo Carlos Kaufmann (CRD #4913451, Registered Principal, Sao Paulo, Brazil)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any FINRA member in any principal capacity for three months. Without admitting or denying the findings, Kaufmann consented to the described sanctions and to the entry of findings that Kaufmann's member firm was aware of the SEC enforcement action against a customer, and, in opening his account, tasked Kaufmann with providing heightened supervision over the account. Kaufmann failed to perform such heightened supervision in a reasonable manner. The findings stated that Kaufmann's supervision over the securities activity in the account was primarily limited to transaction reviews (*e.g.*, trade blotters) that the firm required from its supervisors. Although Kaufmann reviewed the customer's monthly account statements, he lacked the necessary experience to understand the CMO trades in the customer's account. The findings also stated that there were numerous red flags concerning suspicious transactions conducted by the customer that Kaufmann failed to detect and respond to, including the short-term trading activity of CMO securities conducted through the customer's account, which was generally inconsistent with the long-term investment horizon associated with such investments; an SEC enforcement action charging the customer with the sale of \$1.2 million of unregistered securities; an SEC enforcement action charging the customer with securities fraud in connection with CMO securities at his former member firm; the volume of cross-trades involving the customer and a non-registered foreign finder's referred accounts, which appeared to have no business purpose other than to enrich the customer; the fact that the pricing of the customer's cross-trades differed greatly from the prices the firm received from its clearing firm for the same securities; and the difference in prices on cross trades (ranging from 6 percent to 85 percent) involving the customer's account and the profits obtained. Notwithstanding this activity, Kaufmann never questioned or rejected any of



the trades in the customer's account. The findings also included that Kaufmann knew that a firm registered representative was accepting trading instructions from employees of a non-registered affiliate of the non-registered foreign finder without the necessary written authorization from the non-registered foreign finder who referred customers to the firm, or approval by the firm. Nevertheless, Kaufmann never took supervisory measures to address the registered representative's use of third-party discretion in the foreign finder's accounts and allowed this practice to continue.

The suspension is in effect from January 3, 2012, through April 2, 2012. ([FINRA Case #2009015969502](#))

**Dan Evan Landau (CRD #2401574, Registered Principal, Coto de Casa, California)** was fined \$28,116 and suspended from association with any FINRA member in any capacity for two years. The fine shall be due and payable if and when Landau re-enters the securities industry. The sanctions were based on findings that Landau participated in the unregistered sale of securities in violation of Section 5 of the Securities Act of 1933. The findings stated that Landau was involved in the sale of securities that were distributed to employees and consultants of related companies, pursuant to employee benefit plans. Both companies were microcap companies with their stocks traded on the OTC Bulletin Board (OTCBB); the companies had limited operational histories, generated little revenue, were losing money, were short of funds and their auditors had recently expressed doubt about the companies' ability to continue as going concerns. The findings also stated that pursuant to a Form S-8 registration, the companies issued options to employees or consultants of the companies and held brokerage accounts at Landau's member firm. The recipients exercised their options, and Landau quickly sold the shares in unsolicited sales to the public. The exercise price was 85 percent of the price of the shares in the public market.

FINRA found that Landau sold a total of approximately 149,162,500 shares of the companies' stocks. The total proceeds of the sales were \$847,606. About 90 percent of the proceeds of the sales for each company went back to the respective company. The total commissions on the sales were \$46,232. The vast majority of the proceeds were used to pay the issuers for the shares received pursuant to the exercise of the options. FINRA also found that while making the sales, Landau encountered red flags that should have alerted him to the fact that the sales were unregistered offerings. These red flags included that the sales involved a large number of shares of little known, microcap securities; the option price was set at a percentage of the market price at the date of grant; the shares were sold to the public, and the vast majority of the proceeds were journaled back to the issuers; a relatively small amount of the proceeds were received by the Form S-8 recipients; and the Form S-8 recipients were related to the issuers. In addition, FINRA determined that the companies' stock was sold using instrumentalities of transportation or communication in interstate commerce or of the mails. The transactions violated the SEC's specific limitations on the use of the Form S-8 and because the Form S-8 registrations were ineffective, all of Landau's sales of the companies' stock were unregistered.

The suspension is in effect from January 16, 2012, through January 16, 2014. ([FINRA Case #2008013868501](#))

**Paul Cragg Larsen (CRD #1066833, Registered Representative, Naples, Florida) and Quentin Marius Silic (CRD #4222363, Registered Representative, Naples, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which they were each barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Larsen and Silic consented to the described sanctions and to the entry of findings that they failed to respond to FINRA requests for information and documentation regarding possible undisclosed outside business activities and/or private securities transactions. The findings stated that through counsel, Larsen and Silic advised FINRA that they would not provide the requested information and documentation. ([FINRA Case #2010024179001](#))

**Phi Van Le (CRD #5069866, Registered Representative, Altadena, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 18 months. The fine must be paid either immediately upon Le's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Le consented to the described sanctions and to the entry of findings that, on eight occasions, he deposited empty envelopes in bank ATMs, resulting in temporary erroneous credits to his financial management account (FMA) totaling \$7,150. The findings stated that adjusting entries were typically made the following day and all of the erroneous credits were debited from Le's FMA. The findings also stated that Le failed to timely respond to FINRA requests for information.

The suspension is in effect from December 19, 2011, through June 18, 2013. ([FINRA Case #2010025356702](#))

**Andrew Michael Lesnak (CRD #1985755, Registered Representative, Franklin Lakes, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Lesnak's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Lesnak consented to the described sanctions and to the entry of findings that he failed to completely and timely respond to FINRA requests for information and documents. The findings stated that Lesnak failed to disclose outside business activities that were unrelated to his member firm. Lesnak did not provide prompt written notice to his firm concerning the outside businesses, and his firm did not approve of Lesnak's employment with, or compensation by, the entities. Lesnak never disclosed any of these outside businesses to his firm even though he completed annual forms for five years in which he indicated that his only outside business activity was his ownership in

a financial services company. The findings also stated that Lesnak falsified documents in connection with a variable annuity purchase. The funds were derived from the surrender of a variable annuity. Lesnak incorrectly answered “no” when asked if the contract would replace or exchange any existing life insurance or annuity from this or any other company. Lesnak sent forms to the annuity company to facilitate the transaction and when asked if he was considering using funds from the existing policy or contracts to pay premiums due on the new policy or contract, he incorrectly answered “no” when he should have answered “yes” in response to both questions. The findings also included that Lesnak willfully failed to disclose a material fact on his Form U4.

The suspension is in effect from December 19, 2011, through December 18, 2013. ([FINRA Case #2010025445301](#))

**Jordan Alan Linn (CRD #2664439, Registered Representative, Hallandale, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any FINRA member in any capacity for 30 days. The fine must be paid either immediately upon Linn’s reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Linn consented to the described sanctions and to the entry of findings that he failed to amend his Form U4 to disclose a material fact.

The suspension is in effect from January 17, 2012, through February 15, 2012. ([FINRA Case #2010024718601](#))

**Charles Rainsford Marks Jr. (CRD #4727907, Registered Representative, South Jacksonville, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Marks’ reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Marks consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of customers who had authorized him to use discretion, but without their written authorization and without his member firm’s acceptance, in writing or otherwise, of the accounts as being discretionary. The findings stated that Marks exercised discretion in a customer’s accounts without written authorization by executing a number of trades without first contacting the customer and without his firm’s prior approval. The findings also stated that Marks exercised discretion in another customer’s accounts by selling shares in several mutual funds valued at approximately \$10,000 and reinvesting the proceeds in various stocks, without the customer’s written authorization and without his firm’s prior approval.

The suspension was in effect from December 19, 2011, through January 3, 2012. ([FINRA Case #2010021318501](#))

**Christopher Bernard Martin (CRD #1266829, Registered Representative, Hingham, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Martin's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Martin consented to the described sanctions and to the entry of findings that he improperly borrowed a total of \$44,500 from a customer of his member firm. The findings stated that the firm's procedures specifically prohibited registered representatives from borrowing money from customers. Martin did not notify the firm of these loans and has not fully repaid the loans. The findings also stated that the customer filed a lawsuit against Martin to try to recover the remaining principal and they entered into a settlement agreement.

The suspension is in effect from December 19, 2011, through December 18, 2013. ([FINRA Case #2010025330701](#))

**John Edward McGunigle (CRD #1826970, Registered Representative, Suffield, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the findings, McGunigle consented to the described sanctions and to the entry of findings that he failed to disclose, and failed to timely disclose, material information on his Form U4.

The suspension is in effect from January 17, 2012, through April 16, 2012. ([FINRA Case #2009020284501](#))

**Sung Hyun Min (CRD #4203513, Registered Representative, Valencia, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Min's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Min consented to the described sanctions and to the entry of findings that he negligently permitted a non-registered person to service his customer accounts, while he was out of the country. The findings stated that Min was aware that the non-registered person was accepting and processing unsolicited customer orders. Unbeknownst to Min, the individual executed numerous unauthorized transactions in an account in which Min was the broker of record, which caused losses of approximately \$60,000. The findings also stated that by permitting the individual to represent and act on the firm's behalf in servicing customer accounts, Min negligently permitted the individual to function as a registered representative without the benefit of registration.

The suspension was in effect from December 19, 2011, through February 1, 2012. ([FINRA Case #2009018463301](#))

**Thomas Eugene Miszczak (CRD #1060481, Registered Representative, Sterling Heights, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Miszczak consented to the described sanction and to the entry of findings that he formed an outside business entity, a real estate development and construction company for the purpose of building homes, and eventually disclosed this outside business activity to his firm but claimed that he would not be selling or recommending any investments in the entity to firm customers. Miszczak solicited and sold a combined total of \$165,000 worth of the entity's common stock to the firm's customers. The findings also stated that Miszczak did not inform his firm that he had sold investments in the entity until a series of letters had been exchanged between Miszczak and a firm customer. The customer complained about his stock purchase and demanded to know the status of the investment. After receiving an inadequate response, the customer stated that he planned to contact the firm's compliance department directly, as well as FINRA. The findings also included that Miszczak then fully disclosed to his firm that he had sold entity investments to firm customers and admitted that for two years he had made false statements in the outside business activity disclosure forms regarding his sale of entity investments. ([FINRA Case #2010022686301](#))

**Jon Nathan Mitchell (CRD #3087277, Registered Representative, West Jordan, Utah)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Mitchell's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Mitchell consented to the described sanctions and to the entry of findings that while registered with his member firm and acting on his outside business activity's behalf, he entered into a promissory note in the amount of \$395,000 with his firm client, contrary to the firm's policies prohibiting registered representatives from engaging in private securities transactions, regardless of whether they received compensation for effecting the transaction; prohibiting participation in any outside business activity involving the sale of promissory notes; and prohibiting representatives from accepting loans from clients.

The suspension is in effect from December 19, 2011, through March 18, 2012. ([FINRA Case #2010021649801](#))

**Michael Dennis Montgomery (CRD #2029289, Registered Principal, Tacoma, Washington)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Montgomery failed to respond to FINRA requests for information and documents, and failed to appear for FINRA on-the-record testimony. ([FINRA Case #2009019054401](#))

**Kim Nazarek (CRD #1225824, Registered Representative, Santa Rosa, California)** was fined \$25,000 and suspended from association with any FINRA member in any capacity for one year. The fine shall be due and payable if and when Nazarek re-enters the securities industry. The sanctions were based on findings that Nazarek conducted retirement seminars promoted through invitations distributed to the general public that constituted sales literature, without obtaining a registered firm principal's required prior approval. During the retirement seminars, Nazarek used and distributed presentations and documents that constituted sales literature without obtaining a registered firm principal's required prior approval. Nazarek authored a book that he distributed to some firm customers which also constituted sales literature, but he distributed it without obtaining a registered firm principal's required prior approval. The findings also stated that while associated with another member firm, Nazarek changed the content of his retirement seminar and used and distributed a new presentation at a seminar; at the time of the presentation, he had submitted the presentation for approval, and the firm had requested revisions that Nazarek had not yet provided to the firm. The firm was not aware that he was already using the presentation at the seminar. Nazarek later submitted a revised presentation to the firm, which a firm principal approved. Because the firm was not aware that Nazarek had already used the presentation, it did not file the presentation with FINRA's Advertising Regulation Department within 10 business days of first use. The findings also included that Nazarek similarly used one of his previous presentations on multiple occasions without filing the material, or causing it to be filed, with FINRA's Advertising Regulation Department.

FINRA found that Nazarek falsely presented himself to the public and his customers at these seminars as a certified expert on retirement planning and used sales literature that identified him as a Certified Senior Advisor, although he no longer had that designation at the time he presented and distributed the sales literature. FINRA also found that Nazarek's book contained the false statement that an entity was a registered investment advisor and registered broker-dealer and member of NASD and SIPC, when, in fact, the entity has never been a registered broker-dealer with NASD or FINRA. In addition, FINRA determined that Nazarek failed to properly disclose his firm's name in sales literature that he distributed. Moreover, FINRA found that Nazarek's presentations failed to include information that was sufficient to provide a sound basis to evaluate the facts stated about the products and services he promoted. Furthermore, FINRA found that, while discussing registered investment company products in his book, Nazarek failed to advise the investor to consider the investment objectives, risks and charges/expenses of the investment company carefully before investing; explain that the prospectus and, if available, the summary prospectus contain this and other information about the investment company; identify a source from which the investor may obtain a prospectus and, if available, a summary prospectus; and state that the prospectus and, if available, the summary prospectus should be read carefully before investing. Nazarek's failure to provide information necessary to a balanced understanding of the potential risks contravened SEC Rule 482(b)(1), promulgated under the Securities Act of 1933.

The suspension is in effect from December 19, 2011, through December 18, 2012. ([FINRA Case #2008013818701](#))

**Thomas Richard O'Brien (CRD #2359897, Registered Representative, Ridge, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, O'Brien consented to the described sanction and to the entry of findings that he made misrepresentations to individuals to induce them to invest in a purported investment vehicle. The findings stated that O'Brien promised these individuals that they would realize a guaranteed return on their investments. Instead, O'Brien obtained monies from his customers and invested the money in the open market, conducting this activity away from his member firm and without his firm's knowledge or approval. The findings also stated that as part of O'Brien's scheme, he created fictitious account opening documents and account statements that purported to accurately reflect the investors' investments and profits. O'Brien's scheme ended when he sent letters to the investors that stated that all interest and distribution checks had been suspended and there had been a total loss of all assets. The findings also included that O'Brien pled guilty to a felony criminal charge related to this fraudulent scheme in the Supreme Court of the State of New York. O'Brien's criminal conduct occurred while he was registered with FINRA and involved his intent to defraud person(s) of property by false and fraudulent pretenses or misrepresentations concerning a purported securities investment. O'Brien obtained customer monies for his fraudulent scheme and did so while acting in his role as a broker. FINRA found that O'Brien failed to respond to FINRA requests for information. ([FINRA Case #2009020978601](#))

**Hansueli Overturf (CRD #4138916, Registered Principal, Hallau, Switzerland)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for one year. The fine must be paid either immediately upon Overturf's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the allegations, Overturf consented to the described sanctions and to the entry of findings that he engaged in real estate-related outside business activities without prompt written notice to his firm and contrary to his firm's instructions that he was not permitted to provide real estate services to firm customers. The findings stated that the firm later granted Overturf's request to engage in a real estate partnership with a firm customer and to be a mortgage broker as an outside business activity. The findings also stated that the firm approved Overturf's request to sell an energy drink with the proviso that he not sell it to any firm customer or solicit any firm customer to sell the drink, but Overturf solicited firm customers to purchase and sell the energy drink. The findings also included that Overturf borrowed funds totaling \$140,000 from firm customers contrary to his firm's procedures prohibiting employees from borrowing from firm customers; to prevent his firm from learning of the loans, Overturf instructed the customers to wire the funds from their IRAs at the firm to their credit union account and then to Overturf's relative. Overturf has repaid approximately \$110,000.

The suspension is in effect from December 19, 2011, through December 18, 2012. ([FINRA Case #2009016832501](#))

**Natverlal M. Patel (CRD #2003236, Registered Representative, Redondo Beach, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Patel consented to the described sanction and to the entry of findings that he refused to provide information and documents to FINRA relating to any outside business activities in which he may have participated while he was associated with his member firm. The findings stated that Patel's counsel informed FINRA in writing that Patel would not provide the requested information and documents. ([FINRA Case #2010025751701](#))

**Martin Perlman (CRD #1503998, Registered Principal, Las Vegas, Nevada)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for one month. The fine must be paid either immediately upon Perlman's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Perlman consented to the described sanctions and to the entry of findings that he failed to obtain the necessary signatures on new account and contribution forms. The findings stated that, instead, Perlman made a photocopy of his customers' signatures from documents they had signed earlier and used those signatures to submit the forms to the firm for his clients' convenience.

The suspension was in effect from December 19, 2011, through January 18, 2012. ([FINRA Case #2010023565301](#))

**La'Dell O. Peton (CRD #5161516, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Peton consented to the described sanction and to the entry of findings that he signed a corporate credit card application whereby he agreed that the corporate credit card would be used for authorized business travel and entertainment expenses and that its use for anything other than authorized business expenses is strictly prohibited. Peton also agreed to promptly reimburse his firm for any charges incurred through personal use, where permitted or improper use. Peton's submission of the signed application resulted in the issuance of his corporate credit card. The findings stated that Peton charged approximately \$62,412 in personal expenses to his corporate credit card; approximately \$28,085 was incurred within the two-and-a-half week period prior to the termination of Peton's employment with his firm, when he was not reporting to work. The findings also stated that Peton did not have the firm's authorization to incur these personal expenses and did not settle any of the charges through the firm's expense reporting system. After the firm paid the credit card company for his personal expenses, Peton never reimbursed the firm for these expenses. Peton thus misappropriated firm funds. ([FINRA Case #2010023140901](#))



**Francisco Rodriguez (CRD #2784002, Registered Principal, Zion, Illinois)** was barred from association with any FINRA member in any capacity. FINRA did not seek restitution because Rodriguez' former member firm credited the customer with all the converted funds. The sanction was based on findings that Rodriguez' customer withdrew \$10,000 from his brokerage account at the firm and gave the money to Rodriguez to invest in, or loan to, a construction business Rodriguez' relative operated. Rodriguez told the customer that he would receive an 8 percent annual return on the \$10,000. The findings stated that Rodriguez converted \$5,000 of the customer's funds for his own use, rather than investing or loaning the entire \$10,000 as the customer intended. ([FINRA Case #2011027345701](#))

**Amie Theresa Rogers (CRD #4804364, Associated Person, Spring Hill, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Rogers consented to the described sanction and to the entry of findings that she converted more than \$140,000 from a registered representative and a company he owned that was an unregistered branch of a member firm. The findings stated that Rogers was employed as an administrative assistant and was provided with check-writing authorization for the unregistered branch's account and the use of a corporate credit card in Rogers' name. Rogers was authorized to write checks and use the credit card for business-related expenses. The findings stated that Rogers wrote checks from the unregistered branch's account, which were not associated with business-related expenses, and converted more than \$60,000 from its checking account. Rogers charged more than \$80,000 of personal expenses to her corporate credit card. The findings also stated that in a settlement with the registered representative and the unregistered branch, Rogers paid restitution of approximately \$100,000. The findings also included that Rogers informed FINRA staff that she would not be responding to FINRA requests for information and documents. ([FINRA Case #2011026847501](#))

**Allyson Marta Saldana (CRD #2548714, Registered Representative, Belmont, California)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$4,000 and suspended from association with any FINRA member in any capacity for 30 days. The fine must be paid either immediately upon Saldana's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Saldana consented to the described sanctions and to the entry of findings that she opened a variable annuity contract for customers with a company; the initial premium paid was \$169,236. The findings stated that the customers received their statement from the company, erroneously showing an increase of approximately \$57,000 in the account value since its opening. One of the customers contacted Saldana and Saldana contacted the company representatives to report the error and seek a resolution. The findings also stated that the company wholesaler suggested that Saldana could attempt to surrender the contract and liquidate the account, thereby allowing her customers to capture the overstated account value. The wholesaler informed Saldana that it was possible that the

account would be adjusted to reflect the actual value of the account at any time prior to the submission of the surrender. The findings also included that Saldana notified the customers and contacted her supervisor to inform her of her discussion with the wholesaler. The customers returned the surrender documents and Saldana submitted the executed surrender documents to the company. The company informed Saldana that it was in the process of updating the customers' account to show the correct account value.

FINRA found that Saldana and her supervisor participated in a call with the company wholesaler and his supervisor; the company supervisor informed Saldana that, because the increase to the account was the result of an error, her customers could not receive the erroneous account value reflected on their statement if they liquidated the contract. FINRA also found that despite knowing that the account value was overstated, Saldana insisted that her customers should receive the entire amount, including the amount erroneously credited to the account because her customers had already made financial decisions based on their understanding that they would be receiving this amount. Ultimately, the company refused to provide Saldana's customers with the erroneous account value, and Saldana withdrew the surrender of the contract.

The suspension was in effect from December 19, 2011, through January 17, 2012. ([FINRA Case #2009021036601](#))

**Matthew John Sandvig aka Matthew John Sandurs (CRD #3167928, Registered Representative, Thousand Oaks, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000, suspended from association with any FINRA member in any capacity for nine months, ordered to disgorge \$13,857 in commissions, payable as partial restitution to investors, and to cooperate with FINRA Department of Enforcement staff in its prosecution of any other disciplinary action related to these events by, among other things, meeting with and being interviewed by the Department of Enforcement without the need of staff to resort to FINRA Rule 8210, and testifying truthfully at any related hearing that may take place. The fine must be paid either immediately upon Sandvig's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Sandvig consented to the described sanctions and to the entry of findings that he participated in private securities transactions by referring, directly or indirectly, investors to a company, with the expectation and actual receipt of commissions based on their investments, without providing prior written notice to, and receiving approval from, his firm for these transactions. The findings stated that Sandvig participated in the solicitation and sale to investors of life settlement investments offered by a company, which purchased life insurance policies from policy holders at a discount in exchange for the receipt of the death benefit payable upon passing of the insured, and resold these policies to investors promising an annual return on the investment. The company further represented that the investments were reinsured, or bonded, thus providing the investor with a guarantee

and secure return. The findings also stated that the investors invested a total of \$361,570 in the bonded life settlements and Sandvig received commissions totaling approximately \$13,857. Unbeknownst to Sandvig, the principals of the company misappropriated investor monies for personal expenses, resulting in the investors losing their entire investment. None of the investors were customers of Sandvig's firm. The findings also included that Sandvig lacked a reasonable basis to recommend the purchase of the bonded life settlements to his customers, given his failure to perform a reasonable investigation and appropriate due diligence on the product. Sandvig failed to identify, or make himself aware of, the identity of the company principals; failed to conduct independent checks on the background of the principals; took representations of the principals at face value without undertaking adequate independent steps to verify them; and failed to obtain adequate information regarding the company's financial status. Sandvig also did not make any effort to ascertain or understand the subscription documents the referred investors would be required to execute, the rights and obligations of the parties set forth in the subscription documents, or the risks and rewards an investment in the bonded life settlements would present to the referred investors. FINRA found that Sandvig failed to adequately inquire about the third-party reinsurer from whom the company obtained reinsurance bonds.

The suspension is in effect from January 3, 2012, through October 2, 2012. ([FINRA Case #2010022407001](#))

**Brandon Garrett Searcy (CRD #4406555, Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Searcy's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Searcy consented to the described sanctions and to the entry of findings that he wrote checks totaling \$400 from his firm checking account for deposit into his firm savings account. The same day that Searcy deposited the checks into his savings account, he withdrew the amount of each check from his savings account via his debit card at an ATM. The findings stated that in each instance, Searcy deposited the check knowing that there were insufficient funds in the checking account to cover the amount of the check and that there were insufficient funds in the savings account to cover the amount that he immediately withdrew. The findings also stated that Searcy's conduct was contrary to firm policy regarding personal accounts.

The suspension is in effect from December 19, 2011, through March 18, 2012. ([FINRA Case #2011026299401](#))

**Robert Joseph Shapiro (CRD #2389034, Registered Principal, Oakton, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any principal capacity for 30 days. The fine

must be paid either immediately upon Shapiro's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Shapiro consented to the described sanctions and to the entry of findings that as his firm's CCO, he failed to establish and maintain a supervisory system and establish, maintain and enforce WSPs for the firm that were reasonably designed to achieve compliance with the laws, rules and regulations concerning Section 5 of the Securities Act of 1933. The findings stated that an entity opened an account at Shapiro's firm into which it deposited large quantities of common stock of issuers, which securities traded on the OTCBB. The findings also stated that the firm used the means and instruments of interstate commerce to effect for the customer, as agent, sales of the issuers' common stock. No registration statement was in effect for any of the securities under Section 5 of the Securities Act, and the securities and transactions were not otherwise exempt from registration.

The suspension was in effect from January 3, 2012, through February 1, 2012. ([FINRA Case #2010021079601](#))

**Brian Edward Shea (CRD #2570872, Registered Principal, Niskayuna, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500, suspended from association with any FINRA member in a Financial and Operations Principal (FINOP) capacity for 15 business days, and ordered to requalify by examination as a FINOP prior to reassociation with any member firm in that capacity. The fine must be paid either immediately upon Shea's reassociation with a FINRA member firm, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Shea consented to the described sanctions and to the entry of findings that a member firm, acting through Shea, as FINOP, conducted a securities business while failing to maintain its minimum net capital requirement of \$100,000. The findings stated that the net capital deficiencies resulted from the firm's failure, acting through Shea, to accrue as liabilities the legal expenses it incurred in defending arbitrations and other legal proceedings.

The suspension was in effect from December 19, 2011, through January 10, 2012. ([FINRA Case #2010023512201](#))

**Neal Seth Smalbach (CRD #1459854, Registered Principal, Palm Harbor, Florida)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Smalbach consented to the described sanction and to the entry of findings that he fraudulently misrepresented the risks and omitted material facts, for the sale of an oil and gas private placement investment to retired, senior citizen customers. The findings stated that Smalbach claimed to have conducted his own due diligence, which included reviewing the PPM, subscription agreement, promotional material and speaking with employees of the issuer and firm

due diligence personnel. The findings also stated that Smalbach told investors that the investment was safe and high-yielding, which was false and misleading, and Smalbach virtually guaranteed his customers a yearly dividend and the return of their principal after three years but omitted telling them that the company had no significant assets, no current cash flow, and no prior operating history which was disclosed in the subscription agreement and PPM. In addition, FINRA determined that Smalbach's recommendations were unsuitable to unaccredited customers in light of the customers' age, limited investment experience, conservative risk tolerance and need for the preservation of principal and also unsuitable for accredited investors because of his misrepresentations and omissions of material fact.

The findings also included that Smalbach's member firm required customers to complete a client information new account form that asked for customers' contact information, investment experience, risk tolerance, investment objectives, net worth, annual income, liquid net worth, retirement horizon and other background information, and to complete subscription agreements the firm kept and maintained, but Smalbach asked customers to sign blank information forms and subscription agreements and initial risk and financial disclosures on the subscription agreement without giving some of the customers the opportunity to read what they were signing. FINRA found that Smalbach had an administrative assistant complete the forms with false information Smalbach provided, which enabled him to shroud unsuitable transactions from the firm's supervisory review. Moreover, FINRA found that Smalbach falsified client information new account forms and subscription agreements that the firm kept and maintained caused its books and records to be inaccurate.

FINRA also found that as a result of these fraudulent misrepresentations, omissions and acts, Smalbach caused customers to sustain approximately \$840,116 in net out-of-pocket losses on the \$925,000 investment they purchased, and Smalbach received \$74,000 in gross commissions from his activities. Furthermore, FINRA found that Smalbach failed to adequately respond to FINRA requests for information and documents. ([FINRA Case #2010021972801](#))

**Kurt Eric Sutton (CRD #4816384, Associated Person, Bloomington, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 days. The fine must be paid either immediately upon Sutton's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Sutton consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Forms U4.

The suspension was in effect from January 3, 2012, through February 1, 2012. ([FINRA Case #2010022927401](#))

**Lucas Evan Suydam (CRD #5349276, Registered Representative, Moorestown, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Suydam's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Suydam consented to the described sanctions and to the entry of findings that he falsely indicated on customers' disability income insurance applications that he had witnessed each of their signatures. The findings stated that Suydam met with other customers to review life insurance policies and they agreed to apply for new policies. Suydam signed the customers' names on the insurance policy illustrations without their authorization or consent.

The suspension is in effect from January 17, 2012, through April 16, 2012. ([FINRA Case #2011026905001](#))

**Eric Ross Taitz (CRD #1157988, Registered Representative, Blue Point, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 15 business days. Without admitting or denying the findings, Taitz consented to the described sanctions and to the entry of findings that he effected numerous discretionary transactions in the securities account of a member firm customer, without the customer's written authorization and without the firm's written acceptance of the account as discretionary.

The suspension was in effect from January 17, 2012, through February 6, 2012 ([FINRA Case #2010023475101](#))

**Joseph Rudolph Techar (CRD #443671, Registered Principal, Plymouth, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any principal capacity for six months. The fine must be paid either immediately upon Techar's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Techar consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative who converted approximately \$1.1 million of customer funds through a scheme in which she sold a fictitious investment fund to customers. The findings stated that Techar was responsible for supervising the representative, which included ensuring that she was not engaged in unapproved outside business activities or private securities transactions. The findings also stated that as part of Techar's supervisory duties, he reviewed the representative's emails on a regular basis and reviewed many of the representative's emails in which she discussed the fictitious investment fund with her customers. These emails made it apparent that the representative owned and controlled the fund and that she was

soliciting her customers to invest in this fund, but she never disclosed her entity's activities to the firm and Techar never questioned her about the investment fund. The findings included that Techar's failure to follow up on these emails, which were red flags of the representative's questionable activities involving the investment fund, allowed her misconduct to continue for at least nine months after it should have been detected and addressed. FINRA found that the firm provided restitution to the investors who lost money through the representative's scheme; Techar contributed his own funds to pay for part of this restitution to the investors.

The suspension is in effect from December 19, 2011, through June 18, 2012. ([FINRA Case #2010022376101](#))

**Ian Perkins Tracy (CRD #5412080, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 90 days. Without admitting or denying the findings, Tracy consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on Forms U4 and willfully failed to amend his Form U4 to disclose the material information.

The suspension is in effect from January 17, 2012, through April 15, 2012. ([FINRA Case #2009019040801](#))

**Donald Paul Waage (CRD #1509320, Registered Principal, Minot, North Dakota)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any principal capacity for 10 business days. Without admitting or denying the findings, Waage consented to the described sanctions and to the entry of findings that he was the registered principal at his member firm responsible for reviewing and approving transactions effected by a registered representative who made unsuitable investment recommendations to a customer, a then-60-year-old widow. The findings stated that Waage approved these recommendations without considering the customer's Risk Tolerance Questionnaire, which was on file at the firm and indicated that she was seeking a conservative investment strategy, and without determining the customer's liquidity needs. The findings also stated that as a result, the representative's recommendation to invest nearly half of the customer's available funds in high-risk investments was unsuitable; and Waage, who approved the transactions, failed to exercise reasonable supervision over the representative.

The suspension was in effect from January 17, 2012, through January 30, 2012. ([FINRA Case #2009020417502](#))

**James Michael Wessel (CRD #3273979, Registered Principal, Fishers, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$30,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Wessel's reassociation with a FINRA member firm following

his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Wessel consented to the described sanctions and to the entry of findings that he borrowed a total of approximately \$106,500 from firm customers, without his firm's knowledge, notification or approval; the customers were not Wessel's relatives and the loans were, therefore, prohibited under the firm's written procedures. The findings stated that Wessel borrowed a total of \$99,000 from a firm customer; a day after the customer complained to the firm about the funds he gave to Wessel, Wessel deposited a personal check in the amount of \$117,500 into the customer's bank account as repayment for the loans, which was returned for insufficient funds. The findings also stated that Wessel borrowed \$3,500 from a customer and prior to the firm becoming aware that Wessel had borrowed money from the customer. Wessel repaid the loan from the customer in full.

The suspension is in effect from December 19, 2011, through June 18, 2012. ([FINRA Case #2011026294601](#))

**Stephen John Wirsch (CRD #5501623, Registered Principal, Acworth, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Wirsch consented to the described sanction and to the entry of findings that he failed to appear for a FINRA on-the-record interview in connection with an investigation of Wirsch's member firm involving, among other things, consulting and selling agreements between the firm and certain private offerings, bonuses and salaries paid the firm's officers and employees due diligence the firm conducted and disclosures it made on certain private offerings, updates the firm made to Forms U4 and retention of the firm's electronic communications. ([FINRA Case #2011025653801](#))

**Brian Joseph Wisniewski (CRD #2434942, Registered Representative, Pleasanton, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Wisniewski consented to the described sanction and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm. The findings stated that Wisniewski informed his member firm, in writing, that he had made a passive monetary investment in an outside business, which the firm approved only as a passive investment. The findings stated that Wisniewski's involvement with the outside business was more than just a passive investment. In fact, Wisniewski was the outside business' CEO, was either a board member or chairman of the board, and spent a significant amount of time involved with the outside business. The findings also stated that Wisniewski failed to respond to FINRA requests for documents and information. ([FINRA Case #2011025998101](#))



**Francesca Tsapora Wolfsohn (CRD #1274323, Registered Principal, Port Washington, New York)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Wolfsohn consented to the described sanction and to the entry of findings that she participated in private securities transactions without providing prior written notice to, or receiving prior approval from, her member firm. The findings stated that Wolfsohn sold investment interests totaling approximately \$350,000 in an entity to investors who were the firm's customers. The findings also stated that in connection with the investigation of Wolfsohn's sales of investment interests, she refused to provide FINRA requested documents and information and refused to appear for an on-the-record interview. ([FINRA Case #2011030249501](#))

### Individual Fined

**David James Lownik (CRD #2039938, Registered Representative, Hales Corners, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. Without admitting or denying the findings, Lownik consented to the described sanctions and to the entry of findings that he negligently represented in writing to a customer in a variable annuity replacement disclosure form that the death benefits in a new policy would be higher than those contained in the replaced policy; given that the death benefits were essentially the same, Lownik's representation was untrue. The findings stated that Lownik negligently represented again in writing to the same customer in a variable annuity replacement disclosure form that the death benefits in a new policy would be higher than those contained in the replaced policy and also represented that there were no surrender charges in connection with the exchange; given that the death benefits in the earlier policy were higher than those in the later policy and that there was a \$2,900 surrender charge, both representations were untrue. The findings also stated that Lownik's negligent misrepresentations were material. ([FINRA Case #2009018275501](#))

### Decisions Issued

The Office of Hearing Officers (OHO) issued the following decisions, which have been appealed to or called for review by the NAC as of December 31, 2011. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decision. Initial decisions where the time for appeal has not yet expired will be reported in future FINRA Notices.

**Joseph Stanley Amundsen (CRD #4728125, Registered Principal, Easton, Pennsylvania)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Amundsen willfully failed to disclose material information on his Forms U4.

Amundsen appealed the decision to the NAC and the sanction is not in effect pending the appeal. ([FINRA Case #2010021916601](#))

**Thomas Weisel Partners LLC (CRD #46237, San Francisco, California) and Stephen Henry Brinck Jr. (CRD #2674123, Registered Supervisor, San Rafael, California).** The firm was fined \$200,000. The findings stated that the firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities and laws for governing principal transactions the firm effected, including transactions between its parent company account and customer accounts over which the firm exercised discretion. The findings also stated that the firm failed to provide for any meaningful review of potential conflicts of interest within such transactions. The findings also included that the firm's failure to establish and maintain adequate procedures and its inadequate supervision of the fixed income desk allowed these fraudulent transactions to occur. The allegations that the firm and Brinck made fraudulent sales of auction rate securities to customers, that the firm provided false and misleading information to firm customers to obtain their retroactive consent for cross trades, and that the firm provided false information to FINRA were dismissed.

FINRA's Department of Enforcement appealed the decision to the NAC and the sanction is not in effect pending the appeal. ([FINRA Case #2008014621701](#))

## Complaints Filed

FINRA issued the following complaints. Issuance of a disciplinary complaint represents FINRA's initiation of a formal proceeding in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding these allegations in the complaint.

**Basis Financial, LLC (CRD #43694, North Miami Beach, Florida), Armen Karapetyan (CRD #2634993, Registered Principal, Sunny Isles Beach, Florida) and Gabriel Gennady Goldfine (CRD #1971502, Registered Representative, Brooklyn, New York)** were named as respondents in a FINRA complaint alleging that they knowingly or recklessly made a series of material misrepresentations and omissions, and engaged in fraudulent misconduct, in connection with the sale of private placement offerings to investors using the mails or other means or instrumentalities of interstate commerce. The complaint alleges that the firm and Karapetyan failed to conduct a reasonable investigation prior to recommending that its customers purchase the offerings and relied almost entirely on unsubstantiated statements and although the firm and Karapetyan requested audited financial data from the issuer, they never received audited information. The complaint also alleges that the firm and Karapetyan asked repeatedly for the identity of the shareholder selling the large block of shares the firm was offering to its customers, but were never given this information. The selling shareholder was the company's founder, who continued to provide consulting services to the company, but who had been convicted of securities fraud in both

the United States and France and had been banned from working in the securities industry. Karapetyan was aware of the founder's criminal history prior to offering the security to customers. The complaint further alleges that even the very limited due diligence actually conducted by Karapetyan and Goldfine raised significant red flags which should have prompted additional investigation. The fact that the issuer did not provide the audited financial information requested by the firm was itself a significant red flag. The business plan Karapetyan and Goldfine reviewed contained unaudited financials indicating that the company generated almost no revenues. In addition, the complaint alleges that the firm and Karapetyan failed to comply with the requirements of Section 5 of the Securities Act of 1933 by participating in the sale of unregistered shares of a corporation; notwithstanding obvious red flags, the firm and Karapetyan failed to undertake any investigation to determine the circumstances under which a customer who opened accounts for entities obtained the shares, including when the shares were obtained, how the shares were obtained and whether the shares were paid for. No registration statement was in effect for the shares at the time of the sales and there was no applicable exemption from registration requirements. Moreover, the complaint alleges that as the firm's AMLCO, Karapetyan was responsible for creating and maintaining the firm's AML procedures, reviewing trading activity at the firm in order to detect and, when appropriate, report transactions as required by the Bank Secrecy Act, and ensure that the firm complied with AML testing and training requirements. The firm and Karapetyan failed to conduct an AML test one year, failed to conduct an independent AML test one year, and failed to conduct AML training during another year. Furthermore, the complaint alleges that the firm and Karapetyan failed to establish and implement policies and procedures that could be reasonably expected to detect and cause the reporting of suspicious activity and failed to investigate and file SARs relating to a corporation's stock. The complaint also alleges that the firm failed to identify Karapetyan as a producing manager generating more than 20 percent of the firm's revenue subject to heightened supervision, and failed to designate any individual at the firm as responsible for his supervision so that Karapetyan reviewed his own trades and his customer account activity was not supervised by any other individual at the firm. The complaint further alleges that the firm did not store or back up any emails from Karapetyan's personal email account and failed to collect and retain the emails in an organized manner or systematic practice and Karapetyan, as the CEO and CCO of the firm, was responsible for making sure that the firm complied with rules regarding capturing and preserving business email communications sent through personal, web-based email accounts. While an outside business email account was empty of emails when FINRA staff reviewed them, they found business emails had been exchanged with this account upon reviewing Karapetyan's personal email account. In addition, the complaint alleges that neither the firm nor Karapetyan reported customer complaints to FINRA in a timely manner. Moreover, the complaint alleges that the firm and Karapetyan, in his capacity as CEO, CCO and AMLCO, failed to establish and maintain a supervisory system, and failed to establish, maintain and enforce WSPs reasonably designed to achieve compliance with applicable laws, rules and regulations with respect to the firm's business. The firm

and Karapetyan failed to establish and maintain written procedures for the handling of deposits and liquidations of large blocks of low-priced securities to ensure that the firm did not participate in or permit an unregistered distribution of securities. Furthermore, the complaint alleges that the firm's WSPs did not address how the firm would determine whether securities deposited and sold at the firm were registered or exempt from registration; as a result, the unregistered distribution of a corporation's stock proceeded without the firm's appropriate review. The complaint also alleges that the firm and Karapetyan had inadequate systems and procedures relating to the reporting of customer complaints and failed to establish and maintain written procedures to ensure that business email correspondence from personal Web-based email accounts would be captured and preserved. The complaint further alleges that the firm and Karapetyan failed to establish and maintain a reasonable supervisory system, and failed to establish and maintain written procedures regarding the firm's private placement business. The firm's WSPs did not contain any procedures with respect to the review and approval of the content of PPM or any other offering materials the firm used in the sale of private placement offerings. There was no requirement that Karapetyan, or any other principal of the firm, review offering materials for accuracy or to determine whether material facts were disclosed so that numerous material facts were omitted in connection with private placements. In addition, the complaint alleges that the firm and Karapetyan failed to adequately supervise the registered representatives who participated in the sale of private placement offerings the firm sold. ([FINRA Case #2009016158001](#))

**Charles Eugene Bishop Jr. (CRD #1621380, Registered Principal, Pompano Beach, Florida)** was named as a respondent in a FINRA complaint alleging that he wrongfully attempted to misappropriate and use for his own benefit, funds from a member firm customer in the amount of approximately \$3 million. The complaint alleges that Bishop deceived the customer into believing that the money in her account would be transferred after her death to a company that she created to care for her prized show dogs. Bishop created a company whose business entity name was virtually identical to a company that the customer owned, but which Bishop had recently created and owned entirely. A few days prior to the customer's death, Bishop created paperwork by which the deceased customer's assets would be transferred to the entity that he owned by changing the beneficiary's tax identification number on the firm document the customer signed several days earlier. The complaint also alleges that after the customer's death, Bishop retained an attorney to appear in probate court on his behalf to claim the proceeds of the customer's securities account for the company Bishop owned in its entirety. Bishop's scheme was foiled when a probate court refused to permit the transfer. ([FINRA Case #2009017699201](#))

**Eric Anthony Foster (CRD #3267556, Registered Representative, Suffern, New York)** was named as a respondent in a FINRA complaint alleging that he effected unauthorized transactions in the account of a deceased customer at his member firm. The complaint alleges that Foster had no authorization for the transactions from either the customer or from the customer's estate representative. The complaint also alleges, as an alternative

pleading, that Foster did not have the customer's prior written authorization prior to his death to exercise discretion in the customer's account, and the firm had not accepted the account as discretionary. ([FINRA Case #2008015382001](#))

**Gardnyr Michael Capital, Inc. (CRD #30520, Mobile, Alabama) and Anthony Arthur Grey (CRD #709788, Registered Principal, Winter Park, Florida)** were named as respondents in a FINRA complaint alleging that the firm, through Grey, intentionally or recklessly charged unfair, unreasonable, excessive and fraudulently excessive markups on municipal bond transactions with retail customers and knew, or should have known, that they charged unfair, unreasonable, excessive and fraudulently excessive markups on the trades. The complaint alleges that the firm and Grey did not disclose to their customers that an account Grey maintained and controlled was interposed or otherwise involved in the transactions or that the charges were unfair, unreasonable, excessive and fraudulently excessive. The complaint also alleges that the firm, through a principal, failed to reasonably supervise Grey's handling of these municipal bond transactions and allowed him to interpose an account he maintained and controlled between the firm and the fair market for certain municipal bonds, and to charge excessive and fraudulently excessive markups on the transactions. The complaint further alleges that the firm, through its principal, failed to implement or enforce its WSPs, including its prohibition against interpositioning, its policies regarding excessive markup on municipal securities transactions, and its procedure that required the principal to document his review of municipal bonds transactions. In addition, the complaint alleges that the firm, through its CCO, impermissibly permitted the individual to function as a municipal securities principal while not registered or qualified to do so. Lastly, the complaint alleges that the firm acted as an underwriter in primary offerings of municipal securities and filed the final official statements and completed Forms G-36 (Official Statement (OS)) with the MSRB late. ([FINRA Case #2009016034101](#))

**Ronald Lenard Gilbert (CRD #2994005, Associated Person, Chicago, Illinois)** was named as a respondent in a FINRA complaint alleging that his member firm's chief executive office instructed him to close out all inactive accounts and to send the customers checks for the remaining balances or to send the balances to the government if the customer could not be located. The complaint alleges that Gilbert, instead, converted the funds by wiring the funds from the inactive accounts to his personal securities account without principal approval to effect the wire transfers; Gilbert circumvented this procedure by using a former firm principal's identification number that had not been deactivated. The complaint also alleges that Gilbert forged customer signatures on IRA distribution forms to transfer funds into his personal securities account; Gilbert transferred \$5,764.82 from customer accounts to his personal account and then transferred the funds to his personal bank account without the customers' authorization and without the intention of returning the funds to them. The complaint further alleges that Gilbert failed to respond to FINRA requests to appear for on-the-record testimony regarding conversion of customer funds. ([FINRA Case #2011028237501](#))

**Brett David Henderson (CRD #2420629, Registered Representative, North Salt Lake, Utah)** was named as a respondent in a FINRA complaint alleging that he engaged in a pattern of unsuitable variable annuity switch transactions, which he executed without regard to the substantial surrender charges imposed or the extension of the surrender period for his customers. Customers who bought the variable annuity had the opportunity to receive up to a 6 percent cash bonus. Henderson claimed to his customers that the bonus could be used to offset any surrender fees incurred by the sale of variable annuities although the variable annuity prospectus warned customers that expenses associated with the bonus might be higher than the expenses associated for a variable annuity contract without the bonus. The complaint also alleges that the variable annuity offered customers six living benefit riders that the customers could choose for an annual fee. Henderson only solicited and bought for his customers one particular rider, which was a living benefit rider that allowed customers to invest their account value in the stock market while guaranteeing minimum fixed annuity payments regardless of market performance. Henderson recommended that his customers purchase the same variable annuity, rider and investment portfolio because he employed a “one-size-fits-all” investment strategy for his diverse customer base without determining whether the variable annuity switch was suitable for each customer. In addition, the complaint alleges that for these switches, Henderson’s customers paid approximately \$82,505 in surrender fees that were charged for the annuities that were switched by Henderson; and as a result of the unsuitable variable annuity switches, Henderson received approximately \$84,296 in commissions. Moreover, the complaint alleges that Henderson failed to know and understand the variable annuity product that he recommended to his customers and did not adequately investigate other investment options and available riders. Henderson did not have a reasonable basis to believe that the variable annuity switch transactions that he recommended and effected for the customers were suitable. Despite the fact that the existing annuities being replaced with the variable annuities were, in large part, originally sold by Henderson during the preceding five years, he concluded that the new variable annuity was the best product for his customer. Furthermore, the complaint alleges that Henderson did not conduct independent research or analysis into the variable annuity’s salient and diverse features, or the new product’s different aspects and risks before recommending the variable annuity. The complaint also alleges that Henderson, before ever meeting with or discussing the variable annuity with any of his customers and without taking into account the diversity in his customer base or the particulars of his customers’ individual financial conditions, had already predetermined that the specific rider was the only rider he wanted to sell. Henderson did little to no research and analysis into the differences among the different rider options. ([FINRA Case #2009019513902](#))

**Vladimir Khosid (CRD #5603183, Registered Representative, San Francisco, California)** was named as a respondent in a FINRA complaint alleging that while an assistant branch manager at a banking affiliate of his member firm, Khosid, without permission or authority, wrongfully processed bank wire transfers where funds totaling \$98,847 were transferred

from a deceased bank customer's account to Khosid's co-conspirator's account. The complaint alleges that Khosid's co-conspirator compensated him \$25,000 for his role in the wrongful conversion of the customer's funds. The complaint also alleges that during an interview with the bank's investigator, Khosid admitted to participating in the wrongful conversion of the customer's funds. Subsequently, Khosid admitted to FINRA his role in the wrongful conversion and accepted a wire transfer the co-conspirator submitted to him, which he knew was fraudulent. ([FINRA Case #2010023570001](#))

**Jason Matthew Pennington (CRD #2522216, Registered Representative, Bel Aire, Kansas)** was named as a respondent in a FINRA complaint alleging that he served as the successor trustee for a trust for which the trustee purchased a life insurance policy from Pennington to increase the amount to \$1,325,000, and paid a total of \$741,215.03 in premiums for the policy. The complaint alleges that Pennington told the beneficiaries of the estate after the trustee died that the bulk of the estate was to be donated to charities but refused to disclose the names of the charities and the amounts to be donated. The complaint also alleges that after the beneficiaries made numerous demands for a copy of the trust agreement, Pennington provided them with a false trust agreement indicating two charities and the amounts each was to receive; the attorney who prepared the trust documents informed the beneficiaries that the false trust agreement was not a legal document. The complaint further alleges that Pennington gave the beneficiaries another false trust agreement. In addition, the complaint alleges that after the attorney for the beneficiaries received an authentic copy of the trust agreement and compared it to the false agreements, substantial material deletions and modifications were revealed and Pennington resigned as trustee. Moreover, the complaint alleges that after becoming trustee, a beneficiary compared bank statements from the financial institution which held the trust's checking account with the one Pennington provided and discovered discrepancies, including a check for over \$1 million deposited in the account was not reflected on the accounting and bank statement Pennington provided; checks purportedly written to two charities were never received by the charities; and a \$25,000 check was written to a charitable beneficiary. Furthermore, the complaint alleges that Pennington wrote checks totaling \$67,000 out of the trust checking account to a personal account he controlled; none of the checks were reflected in the accounting or bank statements. The complaint also alleges that the deceased trustee purportedly submitted a request to an insurance company to make a \$278,250 partial withdrawal from her life insurance policy; the check was cashed and deposited into bank accounts, most of which belonged to Pennington or his insurance agency, and Pennington used the funds to pay off car loans and falsely claimed that the deceased's television sets had been given to a family she befriended but were actually given to himself and a relative. The deceased's car purportedly was given to a single mother but was given to Pennington's relative. The complaint further alleges that Pennington's false documents hid the fact that he had converted funds for his own use. In addition, the complaint alleges that Pennington failed to respond to FINRA requests for information and documents. ([FINRA Case #2010023483501](#))

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**Firms Expelled for Failure to Pay Fines and/or Costs Pursuant to FINRA Rule 8320**

**Alternative Wealth Strategies, Inc.**  
(CRD #130933)  
Cherry Hill, New Jersey  
(December 29, 2011)  
FINRA Case #2010021058401

**Global United Securities Ltd. (CRD #16556)**  
Brooklyn, New York  
(December 15, 2011)  
FINRA Case #2010020939401

**Intermountain Financial Services, Inc.**  
(CRD #15386)  
Heber City, Utah  
(December 30, 2011)  
FINRA Cases #FPI100022 / EQS100001

**Lone Star Securities, Inc. (CRD #20452)**  
Addison, Texas  
(December 6, 2011)  
FINRA Case #2009016271001

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**Individuals Revoked for Failure to Pay Fines and/or Costs Pursuant to FINRA Rule 8320**

(If the revocation has been rescinded, the date follows the revocation date.)

**Carl Max Birkelbach (CRD #1177843)**  
Chicago, Illinois  
(December 29, 2011)  
FINRA Case #2009016354101

**Stephen Read Hanmer III (CRD #1086605)**  
Matthews, North Carolina  
(March 19, 1990 – December 30, 2011)  
FINRA Case #WA-545

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**Firms Suspended for Failure to Supply Financial Information Pursuant to FINRA Rule 9552**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Black Diamond Securities LLC**  
(CRD #151228)  
Kirkland, Washington  
(December 1, 2011)

**Oleet Securities, LLC (CRD #146895)**  
Burlington, Vermont  
(December 1, 2011)

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**Individuals Suspended for Failure to Provide Information or Keep Information Current Pursuant to FINRA Rule 9552(d)**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Kevin Shawn Andrews (CRD #1992069)**  
Norristown, Pennsylvania  
(December 27, 2011)  
FINRA Case #2011027391901

**Sharde Ralmicshalyn Carrington**  
(CRD #4971784)  
Lakewood, California  
(December 12, 2011)  
FINRA Case #2011029007501

**John Melton Hackbarth (CRD #2920705)**  
Birmingham, Alabama  
(December 2, 2011 – December 22, 2011)  
FINRA Case #2011028083101



**Lucia Hernandez (CRD #4627513)**

Perth Amboy, New Jersey  
(December 29, 2011)  
FINRA Case #2011029109101

**David William Hilton (CRD #5474301)**

Cincinnati, Ohio  
(December 8, 2011)  
FINRA Case #2011028981601

**John Hagler Hopkins (CRD #4758571)**

Lexington, Kentucky  
(December 12, 2011)  
FINRA Case #2011027741101

**Martin Derrick Jenkins (CRD #2623743)**

Jupiter, Florida  
(December 8, 2011)  
FINRA Case #2011028767901

**Juan Joshua Justiniano (CRD #4884101)**

Providence, Rhode Island  
(December 5, 2011)  
FINRA Case #2010024929101

**Julius L. Smith III (CRD #5720130)**

Fayetteville, Georgia  
(December 8, 2011)  
FINRA Case #2011029075801

**Daniel Victor Tumminia (CRD #1132883)**

Woodbridge, New Jersey  
(December 22, 2011)  
FINRA Case #2010022537501

**Chad Michael Witter (CRD #5006665)**

Bettendorf, Iowa  
(December 27, 2011)  
FINRA Case #2011026497001

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**Firm Expelled for Failure to Provide Information or Keep Information Current Pursuant to FINRA Rule 9552(h)**
**Black Diamond Securities LLC**

(CRD #151228)  
Kirkland, Washington  
(December 2, 2011)  
FINRA Case #2011029005801

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**Individuals Barred for Failure to Provide Information or Keep Information Current Pursuant to FINRA Rule 9552(h)**

(If the bar has been vacated, the date follows the bar date.)

**Shaunna L. Burroughs (CRD #5431092)**

Flint, Michigan  
(December 16, 2011)  
FINRA Case #2010024301601

**Herbert J. Coats (CRD #5889150)**

Fort Wayne, Indiana  
(December 22, 2011)  
FINRA Case #2011027760301

**David Alan Hayden (CRD #711302)**

Spring, Texas  
(December 15, 2011)  
FINRA Case #2010023977301

**Keith David Nash (CRD #1676906)**

Johnstown, Pennsylvania  
(December 22, 2011)  
FINRA Case #2011027349101

**Hamza Shaikh (CRD #4237482)**

Rego Park, New York  
(December 30, 2011)  
FINRA Case #2011027899901

**Michael Thomas Taylor (CRD #3114597)**  
Wappingers Falls, New York  
(December 23, 2011)  
FINRA Case #2011027571201

**Francisco Javier Tineo (CRD #3221630)**  
Astoria, New York  
(December 22, 2011)  
FINRA Case #2010023786901

**Keath Allen Ward (CRD #2785440)**  
Lake St. Louis, Missouri  
(October 3, 2011 – December 14, 2011)  
FINRA Case #2010025270801

**Steve Thomas Zielinski (CRD #5456832)**  
Schererville, Indiana  
(December 23, 2011)  
FINRA Case #2011026088201

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**Firm Cancelled for Failure to Pay  
Outstanding Fees Pursuant to FINRA  
Rule 9553**

**Avalon Partners, Inc. (CRD #41357)**  
New York, New York  
(December 27, 2011)

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**Firm Suspended for Failure to Pay Annual  
Assessment Fees Pursuant to FINRA Rule  
9553**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Blue Moon Financial, LLC (CRD #123224)**  
Denver, Colorado  
(December 2, 2011)  
FINRA Arbitration Case #11-02400

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**Individuals Suspended for Failure to  
Comply with an Arbitration Award or  
Settlement Agreement Pursuant to  
FINRA Rule 9554**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Jennifer Sybil Adorjan (CRD #2330927)**  
Highland Park, Illinois  
(December 12, 2011)  
FINRA Arbitration Case #10-05156

**Thomas Wayne Akins (CRD #2622526)**  
Greer, South Carolina  
(December 12, 2011)  
FINRA Arbitration Case #10-04555

**Gary Kevin Akiyama (CRD #2708317)**  
Camas, Washington  
(December 19, 2011 – December 23, 2011)  
FINRA Arbitration Case #10-02729

**Victor Bailey (CRD #4158462)**  
Rancho Viejo, Texas  
(December 12, 2011)  
FINRA Arbitration Case #10-00872

**Justin Roberts Barch (CRD #4613957)**  
Kensington, Maryland  
(December 12, 2011)  
FINRA Arbitration Case #10-04689

**Larry Ivan Behrends (CRD #16971)**  
Greeley, Colorado  
(December 12, 2011)  
FINRA Arbitration Case #10-02838

**Christopher Matthew Cunningham (CRD #2390800)**  
Alexandria, Virginia  
(August 18, 2011 – December 13, 2011)  
FINRA Arbitration Case #10-01398

**Harry Friedman (CRD #2548017)**  
Woodmere, New York  
(December 12, 2011)  
FINRA Arbitration Case #11-00610

**Glenn Edward Holbert (CRD #1821760)**  
Vacaville, California  
(November 30, 2011 – January 12, 2012)  
FINRA Arbitration Case #10-04186

**William James McGuane (CRD #4223597)**  
Aurora, Illinois  
(December 12, 2011 – January 26, 2012)  
FINRA Arbitration Case #11-01508

**Luis Emilio Morales Jr. (CRD #3262932)**  
San Francisco, California  
(May 18, 2011 – December 20, 2011)  
FINRA Arbitration Case #10-04089

**Arthur Leo Ogbogu (CRD #2169567)**  
New York, New York  
(December 3, 2008 – December 20, 2011)  
FINRA Arbitration Case #07-01135

**Marc Perkins (CRD #2795109)**  
Charlotte, North Carolina  
(December 12, 2011)  
FINRA Arbitration Case #09-06999

**James Andrew Rathgeber (CRD #1658229)**  
Melville, New York  
(December 19, 2011)  
FINRA Arbitration Case #10-04805

**Michael Joseph Shaw Sr. (CRD #2685431)**  
Frisco, Texas  
(December 12, 2011)  
FINRA Arbitration Case #10-02108

**Jeffery Scott Spicer (CRD #2511031)**  
Canton, Ohio  
(July 8, 2011 – December 22, 2011)  
FINRA Arbitration Case #10-01124

**Kirk John Westermann (CRD #4536840)**  
Lake Wylie, South Carolina  
(December 12, 2011)  
FINRA Arbitration Case #09-04741

### **FINRA Fines Barclays Capital \$3 Million for Misrepresentations Related to Subprime Securitizations**

The Financial Industry Regulatory Authority (FINRA) announced that it has fined Barclays Capital Inc. \$3 million for misrepresenting delinquency data and inadequate supervision in connection with the issuance of residential subprime mortgage securitizations (RMBS).

Issuers of subprime RMBS are required to disclose historical performance information for past securitizations that contain mortgage loans similar to those in the RMBS being offered to investors. Historical delinquency rates are material to investors in assessing the value of RMBS and in determining whether future returns may be disrupted by mortgage holders' failures to make loan payments.

FINRA found that from March 2007 through December 2010, Barclays misrepresented the historical delinquency rates for three subprime RMBS it underwrote and sold. The inaccurate delinquency data posted on Barclays' website was referenced as historical information in five subsequent RMBS investments and contained errors significant enough to affect an investor's assessment of subsequent securitizations. Additionally, Barclays failed to establish an adequate system to supervise the maintenance and updating of relevant disclosure on its website.

Brad Bennett, FINRA Executive Vice President and Chief of Enforcement, said, "Barclays did not have a system in place to ensure that delinquency data posted on its website was accurate; therefore, investors were supplied inaccurate information to assess future performance of RMBS investments."

In settling this matter, Barclays neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

## **FINRA Fines Credit Suisse Securities \$1.75 Million for Regulation SHO Violations and Supervisory Failures**

The Financial Industry Regulatory Authority (FINRA) announced that it has fined Credit Suisse Securities (USA) LLC \$1.75 million for violating Regulation SHO (Reg SHO) and failing to properly supervise short sales of securities and marking of sale orders. As a result of these violations, Credit Suisse entered millions of short sale orders without reasonable grounds to believe that the securities could be borrowed and delivered and mismarked thousands of sales orders.

In a short sale, the seller sells a security it does not own. When it is time to deliver the security, the short seller either purchases or borrows the security in order to make the delivery. Reg SHO requires a broker or dealer to have reasonable grounds to believe that the security could be borrowed and available for delivery before accepting or effecting a short sale order. Requiring firms to obtain and document this “locate” information before the short sale is entered reduces the number of potential failures to deliver in equity securities. In addition, Reg SHO requires a broker or dealer to mark sales of equity securities as long or short.

Brad Bennett, FINRA Executive Vice President and Chief of Enforcement, said, “Credit Suisse’s Reg SHO supervisory and compliance monitoring system was seriously flawed. Millions of short sale orders were being entered in its systems without locates for over four years because the firm did not have adequate Reg SHO technology and procedures in place.”

FINRA found that from June 2006 through December 2010, Credit Suisse’s Reg SHO supervisory system regarding locates and the marking of sale orders was flawed and resulted in a systemic supervisory failure that contributed to significant Reg SHO failures across its equities trading business. During the time period, Credit Suisse released millions of short sale orders to the market without locates, including threshold and hard to borrow securities. The locate violations extended to numerous trading systems, aggregation units and strategies. In addition, Credit Suisse mismarked tens of thousands of sale orders in its trading systems. The mismarked orders included short sales that were mismarked as “long,” resulting in additional violations of Reg SHO’s locate requirement.

As a result of its supervisory failures, many of Credit Suisse’s violations were not detected or corrected by the firm until after FINRA’s investigation caused Credit Suisse to conduct a substantive review of its systems and monitoring procedures for Reg SHO compliance. FINRA found that Credit Suisse’s supervisory framework over its equities trading business was not reasonably designed to achieve compliance with the requirements of Reg SHO and other securities laws, rules and regulations throughout the period at least June 2006 through at least December 2010.

In concluding this settlement, Credit Suisse neither admitted nor denied the charges, but consented to the entry of FINRA’s findings.