

# Disciplinary and Other FINRA Actions

## Firm Expelled, Individual Sanctioned

Red River Securities, LLC ([CRD® #149860](#), Plano, Texas) and Brian Keith Hardwick ([CRD #4522460](#), Plano, Texas). The firm was expelled from FINRA® membership and ordered to pay, jointly and severally with Hardwick, the total amount of \$24,615,849.21, plus interest, in restitution to customers. Hardwick was also barred from association with any FINRA member in any capacity. The sanctions were based on findings that the firm and Hardwick made material misrepresentations and omissions related to joint venture offerings that were organized as general partnerships for the purpose of engaging in oil and gas drilling. The findings stated that the firm and Hardwick omitted from offerings the authorizations for expenditures (AFE)s—the expected costs to complete the proposed projects—although Hardwick had prepared or relied on the AFEs for those offerings in pricing them. In addition, the firm and Hardwick misrepresented to investors the amount of income investors in prior wells had received by wildly inflating those prior income distributions, and failed to disclose conflicts of interest to investors in offerings.

The firm and Hardwick also failed to disclose to investors that they were investing in a “wildcat” well, an exploratory well drilled in a formation that did not have a concrete historic production record, which was subject to additional specific development risks than those disclosed in the offerings for well drilling in general. The firm and Hardwick failed to disclose to the investors that the purportedly independent geologist report in the offering documents had actually been written by Hardwick himself and, for two customers, the firm approved the sales of unsuitable investments. As a result of their conduct, the firm and Hardwick willfully violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and violated FINRA Rule 2020.

The findings also stated that the firm and Hardwick failed to maintain and enforce a supervisory system and written supervisory procedures (WSPs) to address conflicts of interests created by their participation in the offerings. The firm’s supervisory system was weak and flawed, and the firm and Hardwick exercised little oversight over the sales force. Hardwick ignored many “red flags” and responded to other red flags with anemic corrective measures.

The Hearing Panel dismissed the allegations of selling unregistered securities and an allegation of misrepresentation, dismissed allegations against Hardwick of suitability violations, dismissed in part and upheld in part allegations that the firm allowed sales personnel to recommend and sell unsuitable securities, and dismissed allegations that the firm and Hardwick failed to supervise with respect to the sales of unregistered securities. ([FINRA Case #2013035344201](#))

## Reported for May 2017

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).

## Firms Fined

**Aegis Capital Corp. (CRD #15007, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent (AWC) in which the firm was censured; fined \$52,000; ordered to pay \$615.87, plus interest, in restitution to investors; and required to revise its WSPs. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that its order memoranda failed to document the correct information regarding orders. The findings stated that these tickets improperly indicated that the orders were “held” orders. These inaccurate order tickets also resulted in the firm improperly reporting these orders to the Order Audit Trail System (OATS™) and the FINRA Trade Reporting Facility® (TRF®). The findings also stated that in transactions for or with a customer, the firm failed to execute a customer order fully and promptly. In some of these instances, the firm also 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 firm submitted reportable order events (ROEs) to OATS after the 8 a.m. deadline; submitted new order reports and related subsequent reports to OATS with inaccurate timestamps; submitted route or combined order/route reports to OATS that OATS was unable to link to the related order in the indicated market center due to inaccurate, incomplete or improperly formatted data; submitted route or combined order route reports to OATS that OATS was unable to match to the receiving firm’s related new order report; and failed to submit new order reports. Specifically, the firm was named as the “sent-to firm” for route or combined order route reports that were reported to OATS but OATS was unable to match the route reports because the firm failed to submit the related new order reports. The findings also included that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations and FINRA rules concerning OATS supervision by failing to develop procedures for a comprehensive review of the OATS website to ensure the firm’s OATS submissions are timely, accurate and complete. ([FINRA Case #2014039874901](#))

**The Benchmark Company, LLC (CRD #22982, New York, New York)** submitted an AWC in which the firm was censured, fined \$20,000 and ordered to pay \$2,694.38, plus interest, in restitution to customers. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it accepted and held customer orders, traded for its own account at prices that would have satisfied the customer orders, and failed to execute or immediately execute the customer orders in over-the-counter (OTC) equity securities up to the size and at the same price at which it traded for its own account or at a better price, contrary to FINRA Rule 5320. The findings stated that in some of the above instances, the firm also failed to make every effort to cross a marketable customer order with another order it received on the opposite side of the market, and on some occasions cited above as involving a trading-ahead violation, the firm failed to execute a marketable customer order fully and promptly. The findings also stated that the firm failed to show the correct execution time on brokerage order memoranda and failed to evidence that it performed the supervisory reviews set forth in its WSPs concerning compliance with Rule 5320. ([FINRA Case #2013036707701](#))

**CapFi Partners LLC** ([CRD #113795](#), McLean, Virginia) submitted an AWC in which the firm was censured and fined \$12,500. A lower fine was imposed after considering, among other things, the firm's revenue and financial resources. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to document its review of two registered representatives' requests to engage in outside business activities and private securities transactions. The findings stated that the firm orally conveyed to the representatives its approval or disapproval of their requests. However, contrary to its WSPs, the firm failed to document its review and disposition of their requests to engage in these activities. The findings also stated that the firm failed to enforce its WSPs relating to email review by failing to review a representative's electronic communications. ([FINRA Case #2015043383901](#))

**Citizens Securities, Inc.** ([CRD #39550](#), Dedham, Massachusetts) submitted an AWC in which the firm was censured, fined \$50,000 and required to provide FINRA with a plan to remediate eligible customers who qualified for, but did not receive, the applicable mutual fund sales-charge waiver. As part of this settlement, the firm agrees to pay restitution to eligible customers, which is estimated to total \$64,023 (the amount eligible customers were overcharged, inclusive of interest). The firm will also ensure that retirement and charitable waivers are appropriately applied to all future transactions.

Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it disadvantaged certain retirement plan and charitable organization customers that were eligible to purchase Class A shares in certain mutual funds without a front-end sales charge. The findings stated that some of the mutual funds available on the firm's retail platform offered such waivers and disclosed those waivers in their prospectuses. Notwithstanding the availability of the waivers, the firm failed to apply the waivers to mutual fund purchases made by eligible customers and instead sold them Class A shares with a front-end sales charge or Class B or C shares with back-end sales charges and higher ongoing fees and expenses. These sales disadvantaged eligible customers by causing those customers to pay higher fees than they were actually required to pay. The findings also stated that the firm failed to reasonably supervise the application of sales charge waivers to eligible mutual fund sales. The firm relied on its financial advisors to determine the applicability of sales charge waivers, but failed to maintain adequate written policies or procedures to assist financial advisors in making this determination. The firm failed to establish and maintain written procedures to identify applicable sales charge waivers in fund prospectuses for eligible customers. In addition, the firm failed to adequately notify and train its financial advisors regarding the availability of mutual fund sales charge waivers for eligible customers. The firm also failed to adopt adequate controls to detect instances in which they did not provide sales charge waivers to eligible customers in connection with their mutual fund purchases. As a result of the firm's failure to apply available sales charge waivers, the firm estimates that eligible customers were overcharged by approximately \$59,627 for mutual fund purchases made since January 1, 2011. ([FINRA Case #2016049977401](#))

**Curian Clearing, LLC** ([CRD #132938](#), Denver, Colorado) submitted an AWC in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to deliver prospectuses for customer investments in a money market mutual fund. The findings stated that certain firm customers purchased shares of the fund through a program known as the Dollar Cost Averaging Program. The firm was required to provide a prospectus to each of its customers who purchased shares of the fund. However, the firm failed to deliver fund prospectuses to approximately 4,274 customer accounts for approximately 9,032 transactions in the fund. The findings also stated that the firm had written procedures that required the delivery of prospectuses to mutual fund purchasers and provided for a supervisory review to ensure that prospectuses were delivered. However, the firm did not enforce those procedures for purchases of this fund by its customers. The firm was under the mistaken belief that prospectuses were not required to be delivered for money market mutual fund transactions in the fund. The firm reported this matter to FINRA. ([FINRA Case #2015046154001](#))

**Delaney Equity Group LLC** ([CRD #142285](#), Palm Beach Gardens, Florida) submitted an AWC in which the firm was censured, fined \$40,000 and required to revise its WSPs. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that on 177 occasions, the firm effected a short sale in an equity security for its own account without borrowing the security, or entering into a *bona fide* arrangement to borrow the security; having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and documenting compliance with Rule 203(b)(1) of Regulation SHO. The findings stated that the firm failed to enforce its WSPs, which specified that a supervisory principal would perform a daily review of short sale order tickets to ensure compliance with Rule 203(b)(1) of Regulation SHO, and initial the order tickets to evidence the review. The findings also stated that the firm failed to show the terms and conditions on brokerage order memoranda. Specifically, the firm failed to record the Not-Held term and condition on each of these orders. ([FINRA Case #2013039552901](#))

**Dundee Securities Inc.** ([CRD #39759](#), Toronto, Canada) submitted an AWC in which the firm was censured and fined \$32,500. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to establish and maintain a reasonable supervisory system for the review of electronic communications. The findings stated that the firm reviewed a random sampling of electronic communications as well as communications containing default keywords provided by a third-party vendor of the email review and retention system the firm utilized. The messages flagged for review were not based on risks related to the firm's business. Moreover, the firm failed to review all of the flagged emails in some manner. The findings also stated that the firm's registered representatives regularly sent and received internal electronic communications in French, but the firm failed to utilize French keywords to review electronic communications. The firm also failed to perform any review of French-language messages sent and received through any domain firm personnel utilized for business purposes. The firm's WSPs for the

review of electronic communications were inadequate because they failed to articulate the steps the firm takes to address flagged emails. Additionally, the WSPs did not contain the processes for reviewing electronic communications in French.

The findings also included that the firm failed to retain business-related instant messages (IMs) for AOL instant messaging accounts six registered representatives utilized to conduct securities-related business. The firm was unable to estimate the number of AOL IMs it failed to retain because the messages were only intermittently captured. Additionally, the representatives who used AOL instant messenger are either no longer associated with the firm or have no access (or very limited access) to their AOL accounts. As such, those users are unable to access their historical IMs. ([FINRA Case #2015043279401](#))

**First Dallas Securities Incorporated** ([CRD #24549](#), Dallas, Texas) submitted an AWC in which the firm was censured and fined \$45,000. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it improperly charged ticket charges in at least 449 transactions involving 129 accounts for clients of its affiliated Registered Investment Advisor (RIA). The findings stated that trades on behalf of the RIA's clients are placed through the firm's trade processing platform, which incurs transaction and handling fees that are assessed by the firm's clearing firm. Some or all of these fees are passed on by the firm to the RIA's clients in the form of a ticket charge. Because the firm permits its representatives (who are all dually registered with the RIA) to determine the amount of the ticket charge (if any) that will be assessed to their clients, these charges are not uniform. Indeed, the firm's representatives utilized at least 12 different ticket charge structures in connection with trade processing, including varying flat fees, per-share fees and hybrid fees. These fees were disclosed in the customers' advisory agreements with the RIA. The total amount of overcharged ticket charges was \$42,530, which the firm has voluntarily repaid to the affected customers. The findings also stated that the firm failed to have a supervisory system in place to ensure that each customer was charged only the fee that was disclosed in that customer's advisory agreement. As a result, the firm often assessed a ticket charge that was different than the disclosed amount, and in many cases, this fee resulted in the customer being charged a fee that exceeded the agreed amount. These improper charges also were assessed in connection with the processing of block trades, which generally resulted in the assessment of a higher processing fee for brokerage transactions. ([FINRA Case #2014039095801](#))

**FMSbonds, Inc.** ([CRD #7793](#), Boca Raton, Florida) submitted an AWC in which the firm was censured, fined \$210,000 and must offer rescission to customers who purchased securities listed at either the original purchase price or the current fair market value, whichever is higher. The firm began the process of offering rescission to affected customers before the date of this AWC. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it effected customer transactions in a municipal security in an amount lower than the minimum denomination of the issue that were not subject to an exception under the rule. The findings stated that the firm failed to disclose

all material facts concerning municipal securities transactions at or prior to the time of trade. Specifically, the firm failed to inform its customer that the municipal securities transaction was in an amount below the minimum denomination of the issue, or that the municipal securities contained a resale restriction that could affect the liquidity of the customer's position. ([FINRA Case #2015043950501](#))

**Further Lane Securities, L.P. (CRD #38162, New York, New York)** was fined \$126,673.78. The sanction was based on findings that the firm charged excessive markups on bond transactions over a period of five months. The findings stated that customer losses from the excessive markups in these transactions was \$46,673.78. All of the excessive markups involved one registered representative. The findings also stated that the firm failed to establish, maintain and enforce a supervisory system, including WSPs, reasonably designed to supervise the firm's sales of corporate bonds to customers. The firm's supervisory system and procedures did not set forth steps to provide reasonable assurance that the firm's markups were fair. The supervisory system and procedures did not require that the responsible supervisor conduct a reasonable review of the markups charged to customers that included consideration of the type of security involved in each transaction, the security's availability in the market, the security's price, the amount of money involved in the transaction, whether the markup was disclosed, the pattern of markups, and the nature of the firm's business. In addition, the firm's procedures did not address the practice in a branch office of charging a markup between the trader and the registered representative and a second markup from the registered representative to the customer. In addition, the firm did not establish any exception reports or automated surveillance programs to monitor for excessive markups. ([FINRA Case #2012034242501](#))

**Ladenburg Thalmann & Co. Inc. (CRD #505, New York, New York)** submitted an AWC in which the firm was censured, fined \$17,500 and required to revise its WSPs. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings stated that specifically, the reports contained inaccurate destination codes. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations and FINRA rules concerning OATS reporting. The firm's WSPs failed to provide for one of the minimum requirements for adequate WSPs in that the supervisory steps and reviews failed to provide for a sample size of OATS reports to be reviewed on a regular basis by the firm's supervisors to ensure that the firm's OATS reporting was accurate. ([FINRA Case #2015048249701](#))

**L.J. Hart and Company (CRD #28867, St. Louis, Missouri)** submitted an Offer of Settlement in which the firm was censured and fined \$9,500. Without admitting or denying the allegations, the firm consented to the sanctions and to the entry of findings that it hired and permitted an employee to act on its behalf as a municipal-securities representative, despite knowing that the employee was neither qualified nor licensed in accordance with

MSRB rules to act in that capacity. The findings stated that the firm's primary business was municipal-bond underwriting, usually for public school districts in Missouri. On a much less-frequent basis, the firm also offered financial advisory services to municipal-bond issuers. The firm also effected transactions in municipal securities and induced or attempted to induce the purchase or sale of municipal securities. The employee marketed the firm's school financing services to school districts in Missouri and assisted the firm in its attempts to acquire new clients. The employee's efforts in these regards included arranging meetings between the firm and school districts that had never previously been clients of the firm, and entertaining the firm's clients at sporting events and golf outings paid for by the firm. Two of the school districts with which the employee arranged these meetings later became clients of the firm, and both attempted, with the firm's assistance, to pass school financing ballot measures. ([FINRA Case #2014039173301](#))

**Puma Capital, LLC** ([CRD #146744](#), Purchase, New York) submitted an AWC in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to publish immediately a bid or offer that reflected the price and full size of customer limit orders for OTC equity securities held by the firm that would have improved the firm's bid or offer in such securities. ([FINRA Case #2015045529901](#))

**Raymond James & Associates, Inc.** ([CRD #705](#), St. Petersburg, Florida) submitted an AWC in which the firm was censured, fined \$180,000 and required to revise its WSPs and address training of associated persons. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it lacked a reasonable supervisory system, including WSPs, by not, among other things, including ongoing reviews of daily trade blotters of its convertible bonds desk for a specific trading pattern, as well as compliance with applicable securities laws and regulations, including Section 206(3) of the Investments Advisers Act of 1940. The findings stated that the firm's convertible bonds desk sold bonds to another broker-dealer in a principal capacity and concurrently (within a few minutes or less) either purchased the same amount of bonds from the broker-dealer in an agency capacity for a firm advisory client or clients, or purchased the same amount of bonds from the broker-dealer in a principal capacity for an advisory client or advisory clients of the firm's affiliate. Since the firm's convertible bonds were offered on a conditional basis, its convertible bonds desk needed to manually accept any attempt by a third party to lift its offer off the alternative trading system used. Accordingly, the convertible bonds desk knew that there was an attempt to lift the firm's inventory for the exact same quantity of the same convertible bond that the firm was concurrently looking to buy such bonds for an advisory client. While the firm's WSPs pertaining to managed accounts generally prohibited principal trades with advisory clients (absent an exception) and established trading system functionality limitations to preclude principal fills directly for advisory clients, the firm's supervisory oversight over its convertible bonds trading did not include, among other things, ongoing reviews of daily trade blotters that might detect potentially violative conduct such as the specific trading pattern at issue. ([FINRA Case #2011030345701](#))

**Santander Securities LLC** ([CRD #41791](#), **Dorchester, Massachusetts**) submitted an AWC in which the firm was censured, fined \$175,000 and ordered to pay \$62,807.48, plus interest, in restitution to customers. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it sold municipal securities for its own account to a customer at an aggregate price (including any mark-up) that was not fair and reasonable, taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction; the expense involved in effecting the transaction; the fact that the broker, dealer or municipal securities dealer is entitled to a profit; and the total dollar amount of the transaction. ([FINRA Case #2013038868601](#))

**Sterne Agee Financial Services, Inc.** ([CRD #18456](#), **Birmingham, Alabama**) submitted an AWC in which the firm was censured and fined \$122,500. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to establish, maintain, and enforce a supervisory system and WSPs reasonably designed to ensure that the firm made timely and accurate amendments to registered representatives' Uniform Applications for Securities Industry Registration or Transfer (Forms U4) to disclose liens, judgments and outside business activities. The findings stated that the firm failed to effectively monitor or independently verify a registered representative's liens, judgments and outside business activity disclosures. While the firm ran a credit check and reviewed the registered representative's Central Registration Depository (CRD) record upon hire, it relied almost entirely on the registered representative being forthcoming. The firm also did not require registered representatives to submit an attestation concerning liens, judgments or outside business activities at the time of hire. Additionally, the firm did not conduct any ongoing independent due diligence on their registered representatives to ensure the continued accuracy of their Forms U4. Further, when the firm did become aware that some of its registered representatives had undisclosed tax liens and undisclosed outside business activities, the firm failed to timely amend their Forms U4 to make the appropriate disclosures.

The findings also stated that the firm failed to establish and maintain an adequate system and failed to establish, maintain and enforce adequate WSPs reasonably designed to identify possible inappropriate rates of variable annuity (VA) exchanges. While the firm manually reviewed for exchanges as part of its overall suitability review of VAs, the WSPs failed to document this process, which was also not adequate because it did not track any trend analysis that would have identified high rates of exchanges. Instead, the firm relied on its principals reviewing VA transactions to identify significant trends in terms of annuity exchange transactions, without providing any guidance or tools such as exception reports or trend analysis to assist the reviewers in evaluating whether exchange rates were excessive. As a result, the firm failed to establish and maintain an adequate surveillance system to determine if any of its registered representatives had rates of exchanges that raised for review whether such exchanges were inappropriate.

The findings also included that the firm failed to establish and maintain an adequate supervisory system and establish, maintain and enforce adequate WSPs reasonably designed to ensure suitable concentration levels of customer VA positions. While the firm manually reviewed for concentration as part of its overall suitability review of VAs, the WSPs failed to document this process and the firm failed to adequately evidence such review. The firm also failed to develop and document specific training policies and programs regarding suitable concentration levels of VA positions in customer accounts. Specifically, the firm failed to provide training to its representatives and principal reviewers concerning suitability or sales practice issues that can arise when a customer is overly concentrated in VAs. ([FINRA Case #2014039419601](#))

TD Ameritrade, Inc. ([CRD #7870](#), Omaha, Nebraska) submitted an AWC in which the firm was censured, fined \$30,000 and required to revise its WSPs. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that on at least 23 occasions, the firm inaccurately provided written notification to its customers that transactions executed as a single price execution were executed at an average price; and in seven instances, the firm failed to report accurate information to OATS. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or FINRA rules. The firm's WSPs failed to provide for one or more of the minimum requirements for adequate WSPs regarding OATS. Additionally, the firm failed to establish, maintain, and enforce a supervisory system that was reasonably designed to achieve compliance with Securities and Exchange Commission (SEC) Rule 10b-10. Specifically, the firm's supervisory system did not include WSPs providing for a sufficient statement of the supervisory steps to be taken to review for the accuracy of customer confirmations. ([FINRA Case #2015044129801](#))

TGP Securities, Inc. ([CRD #159008](#), Summit, New Jersey) submitted an AWC in which the firm was censured and fined \$10,000. A lower fine was imposed after considering, among other things, the firm's revenue and financial resources. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to adequately supervise two registered representatives' private securities transactions. The findings stated that one firm representative executed transactions on behalf of his investment advisory customers through another brokerage firm. Separately, another firm representative solicited investments in private securities offerings through his own investment advisory firm. Both representatives received compensation for these activities. The findings also stated that both representatives disclosed these outside activities to the firm. Nevertheless, contrary to its procedures, the firm did not record the transactions on its books and records, and it did not supervise the representatives' participation in the transactions as if the transactions were executed on the firm's behalf. ([FINRA Case #2015043159502](#))

**Ultralat Capital Markets, Inc. (CRD #136791, Miami, Florida)** submitted an AWC in which the firm was censured; fined \$140,000; required to pay disgorgement of excessive markups in the amount of \$48,055.84, plus interest; and required to, within 30 days of the issuance of the AWC, submit a written certification indicating that the firm has reviewed and revised its WSPs regarding non-market foreign exchange (FX) rates and markups to achieve compliance with FINRA rules. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that the firm, acting through various individuals including but not limited to its former president and head trader, used non-market FX rates in certain bond swap transactions for retail customers, most of whom were referred to the firm by its owner, a member of the Colombia Stock Exchange, without disclosing to those customers that the trades were executed with FX rates away from the current market rate. The findings stated that referred customers engaged in bond swap transactions involving foreign currency denominated bonds, particularly bonds denominated in the Brazilian Real (BRL). However, for certain of these bond swap transactions, after the referred customers placed the orders with the firm's owner, the firm's former president and head trader and others, in consultation with employees of the firm's owner, adjusted the FX rate for each buy and sell in the bond swap by manually inputting into the firm's trade execution system a FX rate for the transactions that was a non-market rate away from the current spot rate. As a result, the firm typically overpaid the customers in these transactions for the bonds they sold, reducing any realized losses in their accounts. On the purchase side of the bond swap, the firm offset the overpayment by using a non-market FX rate to sell the bonds to the customers.

The findings also stated that the firm did not disclose to the referred customers involved in these transactions that it used non-market FX rates away from the spot rate to value customer bond transactions or disclose its impact on the valuation of the transactions to the referred customers. The findings also included that in three instances, the net effect of the bond swap transactions resulted in the referred customers being charged excessive markups on the bonds they purchased, which generated excessive charges totaling \$48,055.84.

FINRA found that the firm failed to establish, maintain, and enforce a supervisory system and WSPs that were reasonably designed to achieve compliance with all applicable securities laws and regulations, including supervision of FX rates used on transactions in foreign currency denominated bonds and of markups, and were reasonably designed to identify and prevent the use of non-market FX rates and excessive markups. The firm's supervisory systems did not verify that the FX rates used on customer transactions were reasonable in relation to the prevailing spot market rate. As a result, the firm's supervisory system did not detect its former president and head trader's and others' use of FX rates that were away from the market. The firm's supervisory systems also showed a markup for foreign currency denominated bonds based on the bond price in U.S. dollars, and not the total proceeds of the trade when factoring in the FX rate. As a result, the firm's system did not reflect the full markup charged to the customers in the bond swap transactions. The firm's supervisory system therefore was not able to fully detect whether its trading desk

executed customer transactions in foreign currency denominated bonds with a fair and reasonable markup. ([FINRA Case #2013035313903](#))

**Voya Financial Advisors, Inc.** ([CRD #2882](#), Des Moines, Iowa) submitted an AWC in which the firm was censured and fined \$7,500. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to report transactions in Trade Reporting and Compliance Engine (TRACE®)-eligible securitized products to TRACE® within the time permitted by FINRA Rule 6730. ([FINRA Case #2016048792701](#))

**Wedbush Securities Inc.** ([CRD #877](#), Los Angeles, California) submitted an AWC in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to report information regarding purchase and sale transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS) in the manner prescribed by Municipal Securities Rulemaking Board (MSRB) Rule G-14 RTRS Procedures and the RTRS Users Manual. The findings stated that the firm failed to report information about such transactions within 15 minutes of Time of Trade to an RTRS Portal. The findings also stated that the firm failed to enforce its WSPs concerning trade reporting in municipal securities. Specifically, the firm did not conduct a “daily to weekly” review of the firm’s order management system (OMS) cancel and late trade reports as stated in its WSPs. ([FINRA Case #2015046456601](#))

**World Equity Group, Inc.** ([CRD #29087](#), Arlington Heights, Illinois) submitted an AWC in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible corporate debt securities to TRACE within the timeframe required by FINRA Rule 6730. ([FINRA Case #2016048836601](#))

## Individuals Barred or Suspended

**Robert William Berry** ([CRD #849285](#), Akron, Ohio) submitted an AWC in which he was fined \$2,500 and suspended from association with any FINRA member in any capacity for 10 business days. In determining this sanction, FINRA considered the fact that Berry’s member firm separately suspended him from acting in any principal, supervisory or managerial capacity, resulting in a financial penalty for the same misconduct. Without admitting or denying the findings, Berry consented to the sanctions and to the entry of findings that he exercised discretion while effecting transactions, pursuant to a stop-loss strategy, by modifying existing good-to-cancel orders in the securities accounts of multiple firm customers, without obtaining the customers’ prior written authorization or the firm’s prior written approval. The findings stated that all of the customers had orally authorized Berry to exercise discretion in their securities accounts. The firm prohibited the use of discretion, except in circumstances that were not applicable to the accounts in which Berry exercised discretion.

The suspension was in effect from April 3, 2017, through April 17, 2017. ([FINRA Case #2015046243901](#))

**Derek Wayne Border** ([CRD #5175361](#), Huntington, Pennsylvania) submitted an AWC 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, Border consented to the sanctions and to the entry of findings that he altered or caused to be altered customer documents, including account distribution forms, by copying and pasting customer signatures and/or altering dates and other information. The findings stated that the customers verbally authorized the underlying transactions.

The suspension is in effect from April 17, 2017, through July 16, 2017. ([FINRA Case #2016050071102](#))

**Darrach Michael Bourke** ([CRD #5255413](#), Corte Madera, California) submitted an AWC in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 20 business days. Without admitting or denying the findings, Bourke consented to the sanctions and to the entry of findings that he exercised discretion without written authorization in the accounts of two customers. The findings stated that although Bourke discussed investment strategies with these customers, he exercised discretion and executed transactions without first speaking with the customers about the specific transactions. Bourke had not obtained the customers' prior written authorization to exercise discretion in their accounts and his member firm had not approved either account for discretionary trading.

The suspension was in effect from April 3, 2017, through May 1, 2017. ([FINRA Case #2015044341201](#))

**James Michael Carrazza** ([CRD #1315804](#), Boonton, New Jersey) submitted an AWC in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Carrazza consented to the sanction and to the entry of findings that he failed to provide FINRA with documents in connection with its investigation into whether he timely amended his Form U4. ([FINRA Case #2014041419701](#))

**Jeffrey Scott Cederberg** ([CRD #4557771](#), Gold Canyon, Arizona) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for four months. Without admitting or denying the allegations, Cederberg consented to the sanctions and to the entry of findings that he failed to timely amend his Form U4 to disclose a federal tax lien and state tax liens totaling approximately \$70,000 that were filed against him.

The suspension is in effect from April 17, 2017, through August 16, 2017. ([FINRA Case #2014040815101](#))

**Patrick Dennis Combs** ([CRD #2720909](#), Southlake, Texas) submitted an AWC in which he was assessed a deferred fine of \$7,500 and suspended from association with any FINRA member in any capacity for seven months. Without admitting or denying the findings, Combs consented to the sanctions and to the entry of findings that he participated in

a private securities transaction without providing prior written notice to his member firm. The findings stated that Combs arranged and participated in an in-person meeting between a customer, who was a professional athlete, and a professional acquaintance who was performing consulting work for a privately held sports-drink company. The customer eventually invested \$500,000 in the company and received a convertible promissory note. The customer also received a warrant entitling him to purchase equity at a reduced cost. Shortly thereafter, the customer also entered into a spokesperson agreement with the company. The findings also stated that Combs submitted false answers concerning the private securities transaction in annual compliance questionnaires.

The suspension is in effect from March 6, 2017, through October 5, 2017. ([FINRA Case #2016048688001](#))

**Dalila Costa-Leroy** ([CRD #2544837](#), Brooklyn, New York) submitted an AWC in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the findings, Costa-Leroy consented to the sanctions and to the entry of findings that she failed to timely disclose a civil judgment of \$570,183.91 on her Form U4. The findings stated that Costa-Leroy entered into a settlement agreement with her former member firm that obligated her to repay \$576,529, which she received from the firm through promissory notes executed with it. Costa-Leroy failed to meet her obligations under the settlement agreement and the firm obtained a civil judgment in the amount of \$570,183.91 against her from the Supreme Court of New York.

The suspension is in effect from April 17, 2017, through July 16, 2017. ([FINRA Case #2016049864401](#))

**George Lemuel Divel III** ([CRD #3102446](#), Clarksville, Maryland) submitted an AWC in which he was assessed a deferred fine of \$5,000 and suspended from association with any FINRA member in any capacity for four months. Without admitting or denying the findings, Divel consented to the sanctions and to the entry of findings that he submitted to his member firm as original documents, photocopied forms previously signed by his customers, which included altered signature dates and account numbers. The findings stated that the falsified forms included Automated Clearing House (ACH) authorization agreements and joint transfer-on-death account agreements. Divel created and submitted these falsified documents for the convenience of the customers, who authorized the underlying transactions and consented to his re-use of their signatures.

The suspension is in effect from April 3, 2017, through August 2, 2017. ([FINRA Case #2016049785701](#))

**Danny Patrick Divver** ([CRD #1229669](#), Laurel, Maryland) submitted an AWC in which he was assessed a deferred fine of \$10,000 and suspended from association with any FINRA member in any capacity for nine months. Without admitting or denying the findings, Divver consented to the sanctions and to the entry of findings that he engaged in outside business

activities, including holding a power of attorney over a customer of his member firm and being named the executor of the customer's will, without providing prior written notice to the firm. The findings stated that the firm's WSPs regarding outside business activities prohibited its registered representatives from accepting or acting in the capacity of a power of attorney, or acting as an executor, for any person who was not an immediate family member. The customer was not a member of Divver's immediate family.

The findings also stated that Divver was appointed as the beneficiary on the customer's annuity policy, became a joint owner with rights of survivorship on the customer's bank accounts, and was named beneficiary of the customer's will. Divver received a letter from the annuity issuer informing him that he was the primary beneficiary of the customer's variable annuity. At that time, Divver also learned that his wife and children were the contingent beneficiaries. Later, Diver accompanied the customer to her bank, where she added him to her two bank accounts as a joint owner with rights of survivorship. After the customer passed away, Divver learned that he was the primary beneficiary of her estate. Divver did not notify the firm of his status as beneficiary on the customer's variable annuity, as joint owner of her two bank accounts, or as beneficiary of her estate at any time.

The suspension is in effect from April 3, 2017, through January 2, 2018. ([FINRA Case #2015044994801](#))

**Luis Enrique Echeverria** ([CRD #3174942](#), Santiago, Chile) submitted an AWC in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 45 days. Without admitting or denying the findings, Echeverria consented to the sanctions and to the entry of findings that he engaged in undisclosed outside business activities without providing prior written notice to and obtaining prior approval from his member firm. The findings stated that Echeverria referred clients to an accounting firm and received compensation after his firm expressly prohibited his participation in such activities. Echeverria received and deposited referral fees from the accounting firm in the amount of approximately \$4,634.

The suspension is in effect from April 3, 2017, through May 17, 2017. ([FINRA Case #2016050607001](#))

**Tammy Sue Eckstein** ([CRD #2723706](#), Batesville, Indiana) submitted an AWC in which she was assessed a deferred fine of \$2,500 and suspended from association with any FINRA member in any capacity for two months. Without admitting or denying the findings, Eckstein consented to the sanctions and to the entry of findings that she failed to amend her Form U4 to report state tax liens.

The suspension was in effect from March 6, 2017, through May 5, 2017. ([FINRA Case #2015045596001](#))

**Norman Kirby Farra Jr. (CRD #2131930, West Grove, Pennsylvania)** submitted an AWC in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Farra consented to the sanction and to the entry of findings that he failed to respond to FINRA requests that he produce various documents and information in connection with an investigation regarding potential undisclosed outside business activities and private securities transactions involving Farra. ([FINRA Case #2017053368201](#))

**Evans Mbah Fomunyoh (CRD #5664521, Madison, Wisconsin)** submitted an AWC in which he was assessed a deferred fine of \$5,000 and suspended from association with any FINRA member in any capacity for two months. Without admitting or denying the findings, Fomunyoh consented to the sanctions and to the entry of findings that he engaged in an outside business activity without giving prior written notice of his engagement in such activities to his member firm. The findings stated that Fomunyoh affirmatively and falsely attested to the firm on an associate annual attestation that he did not have any outside business activities except for those previously disclosed to, and approved by the firm, which did not include his activities with the outside business.

The suspension is in effect from April 3, 2017, through June 2, 2017. ([FINRA Case #2015045888001](#))

**Betty Frier (CRD #5479805, Plant City, Florida)** submitted an AWC in which she was suspended from association with any FINRA member in any capacity for six months. In light of Frier's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Frier consented to the sanction and to the entry of findings that she willfully failed to amend her Form U4 to report a bankruptcy filing. The findings stated that Frier did not update her Form U4 to reflect the filing of the bankruptcy petition until after FINRA began its investigation.

The suspension is in effect from March 20, 2017, through September 19, 2017. ([FINRA Case #2016050238701](#))

**David Frederick Guensch (CRD #1769051, Fogelsville, Pennsylvania)** submitted an AWC in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two months. Without admitting or denying the findings, Guensch consented to the sanctions and to the entry of findings that he falsified an annuity withdrawal request form submitted to an insurance company on a customer's behalf. The findings stated that the customer had not signed the form. Instead, Guensch photocopied the customer's signature from a prior form and pasted the photocopied signature onto the form. The customer did not authorize Guensch to photocopy and reuse his signature.

The suspension is in effect from April 17, 2017, through June 16, 2017. ([FINRA Case #2016050830901](#))

**Phillip Russell Hinze** ([CRD #4494915](#), Mendota Heights, Minnesota) submitted an AWC in which he was assessed a deferred fine of \$5,000 and suspended from association with any FINRA member in any capacity for one month. Without admitting or denying the findings, Hinze consented to the sanctions and to the entry of findings that he placed four orders over a one-week period to buy securities for a customer without her authorization. The findings stated that the customer promptly complained to Hinze's member firm, which cancelled the trades and terminated Hinze's employment.

The suspension was in effect from March 20, 2017, through April 19, 2017. ([FINRA Case #2016051594901](#))

**Frank William Hoover** ([CRD #249767](#), Wichita, Kansas) submitted an AWC in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Hoover's former member firm issued a disciplinary warning against Hoover, which was a factor in the determination of his sanctions. Without admitting or denying the findings, Hoover consented to the sanctions and to the entry of findings that he effected an unauthorized transaction in a customer account. The findings stated that after Hoover received notice that the customer had insufficient funds in her account to make a \$350 distribution, he sold \$2,500 worth of shares in one of her mutual funds to generate cash for her current and future monthly distributions. Hoover did not contact the customer prior to selling the position or receive implied or express authorization from the customer to sell the position.

The suspension was in effect from March 6, 2017, through March 17, 2017. ([FINRA Case #2016050619701](#))

**Patrick Brian Horsman** ([CRD #4694883](#), Bar Harbor Islands, Florida) submitted an AWC in which he was fined \$20,000, suspended from association with any FINRA member in any capacity for 10 business days and ordered to disgorge \$10,537.34, plus interest. Without admitting or denying the findings, Horsman consented to the sanctions and to the entry of findings that while registered with a member firm, he purchased shares in 11 initial public offerings (IPOs) in three personal brokerage accounts held at three member firms. The findings stated that a person associated with a member is prohibited from purchasing a new issue in any account in which such person associated with a member has a beneficial interest. The findings also stated that Horsman orally disclosed four outside brokerage accounts to his firm, but failed to promptly notify it of the accounts in writing.

The suspension is in effect from July 3, 2017, through July 17, 2017. ([FINRA Case #2016048854001](#))

**Diego Jimenez** ([CRD #4557717](#), Arlington, Texas) submitted an AWC in which he was assessed a deferred fine of \$5,000 and suspended from association with any FINRA member in any capacity for two months. Without admitting or denying the findings, Jimenez consented to the sanctions and to the entry of findings that he engaged in securities

activities without being registered with FINRA. The findings stated that Jimenez voluntarily terminated his registration with a member firm but remained associated with the firm and participated in various securities activities that supported his father's securities business at the firm. As part of this work, while he was not registered, Jimenez solicited prospective mutual fund customers, made mutual fund presentations, discussed mutual fund investments with prospective customers, and recommended the purchase of mutual funds resulting in total sales of more than \$800,000 in 35 mutual fund accounts. Jimenez also assisted customers with the completion of documents necessary to purchase mutual funds and entered customer and trade information electronically into the firm's computer system. These activities required registration.

The suspension is in effect from March 20, 2017, through May 19, 2017. ([FINRA Case #2015044792802](#))

**Jose Enrique Jimenez (CRD #2235330, Inglewood, California)** submitted an AWC in which he was assessed a deferred fine of \$10,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the findings, Jimenez consented to the sanctions and to the entry of findings that he allowed his son, an unregistered person, to participate in various securities activities that supported Jimenez's securities business. The findings stated that Jimenez was the registered principal and branch manager for a branch office of his member firm and was responsible for ensuring associated persons were registered before engaging in any securities activities. Jimenez allowed his son to solicit prospective customers, make mutual fund presentations, discuss mutual fund investments with prospective customers, and recommend the purchase of mutual funds resulting in total sales of more than \$800,000 in approximately 35 mutual fund accounts. Jimenez also allowed his son to assist customers with the completion of documents necessary to purchase mutual funds and enter client and trade information electronically into the firm's computer system using his credentials. These activities required registration. The findings also stated that Jimenez completed the firm's compliance questionnaires and falsely answered that he had not allowed persons who are not securities licensed to participate in any of his securities sales presentations or solicitations.

The suspension is in effect from March 20, 2017, through June 19, 2017. ([FINRA Case #2015044792801](#))

**Deborah Dickson Kelley (CRD #1179082, Piedmont, California)** submitted an AWC in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Kelley consented to the sanction and to the entry of findings that she refused to appear for FINRA on-the-record testimony in connection with allegations that she improperly provided gifts and entertainment to a portfolio manager of a public pension fund and misrepresented the nature of the expenses submitted for reimbursement. ([FINRA Case #2015046919201](#))

**Richard Alan Kern** ([CRD #1705828](#), Dayton, Ohio) submitted an AWC in which he was assessed a deferred fine of \$7,500 and suspended from association with any FINRA member in any capacity for two months. Without admitting or denying the findings, Kern consented to the sanctions and to the entry of findings that he effected discretionary transactions in a customer account without the customer's prior written authorization and without having his member firm's approval of the account as discretionary. The findings stated that Kern provided false responses on four annual compliance questionnaires inaccurately indicating that he had not exercised discretion in any customer account.

The suspension is in effect from March 20, 2017, through May 19, 2017. ([FINRA Case #2016050205801](#))

**David Ladin** ([CRD #3220407](#), Fort Lauderdale, Florida) submitted an AWC in which he was assessed a deferred fine of \$10,000 and suspended from association with any FINRA member in any capacity for four months. Without admitting or denying the findings, Ladin consented to the sanctions and to the entry of findings that Ladin borrowed \$12,000 from a customer and failed to notify his member firm of the loan or obtain its approval. The findings stated that Ladin's customer was neither an immediate family member nor a person who regularly engaged in the business of providing credit. The loan was documented by a handwritten promissory note, which required Ladin to repay the loan within one year in equal \$1,000 monthly payments. The firm's WSPs prohibited its representatives from borrowing funds from customers unless previously authorized in writing by the firm. Ladin completed three firm annual compliance questionnaires in which he indicated that he had neither solicited nor accepted a loan from a customer. Ladin made some payments on the loan but did not repay the loan in full. The customer filed an arbitration claim seeking, among other things, repayment of the loan. Ladin's firm settled the customer's claims. The findings also stated that Ladin engaged in an outside business activity, without providing prior written notice to or receiving written acknowledgement from the firm regarding his role in the outside business activity, his planned participation or his expected compensation. Further, Ladin completed three firm annual compliance questionnaires in which he indicated that he was not involved in any outside business activities.

The suspension is in effect from April 3, 2017, through August 2, 2017. ([FINRA Case #2015046432001](#))

**Jarred M. Lawson** ([CRD #6093454](#), Jacksonville, Florida) submitted an AWC in which he was assessed a deferred fine of \$10,000 and suspended from association with any FINRA member in any capacity for one year. Without admitting or denying the findings, Lawson consented to the sanctions and to the entry of findings that he made negligent misrepresentations or omissions regarding the sale of primarily Class A and C mutual funds during telephone conversations with customers at his member firm. The findings stated that Lawson failed to discuss all share classes, fees associated with Class A and

C shares, and breakpoint fees with the customers. In addition, Lawson made negligent misrepresentations regarding the fees associated with a managed account. By providing inaccurate and incomplete information, Lawson prevented his customers from fully evaluating the investments that he recommended.

The findings also stated that Lawson made misstatements in his firm's internal system regarding what was discussed during the phone calls. Lawson misstated that he had discussed all share classes and the fees associated with the share classes, when he had not. Lawson also misrepresented the fees associated with a managed account and represented that he had discussed breakpoints or the availability of either investment, when he had not. Lawson's inaccurate entries in his firm's internal tracking system prevented the firm from properly supervising Lawson's transactions. As a result, Lawson impeded the supervision of the transactions and caused his firm to have inaccurate books and records.

The suspension is in effect from April 3, 2017, through April 2, 2018. ([FINRA Case #2016048923201](#))

**Robert Edward Loftus** ([CRD #1357423](#), New York, New York) submitted an Offer of Settlement 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 allegations, Loftus consented to the sanctions and to the entry of findings that he engaged in check-kiting by depositing checks that were drawn on his personal checking account into the brokerage account that he held with his member firm on three occasions when he knew or should have known that he lacked sufficient funds to cover the checks. The findings stated that Loftus deposited the worthless personal checks in order to benefit temporarily from the "float" on the checks (i.e., to derive the use and benefit of the funds from the time they were credited to his account until other funds were deposited into the account), and, more specifically, to artificially inflate the balance in his firm account and prevent four checks that he had written against it from bouncing. The firm paid the four checks in reliance upon the artificially inflated balance in Loftus' firm account.

The suspension is in effect from April 17, 2017, through July 16, 2017. ([FINRA Case #2013037575801](#))

**Basil Matthew Marchi** ([CRD #2938828](#), Raleigh, North Carolina) submitted an AWC in which he was assessed a deferred fine of \$10,000 and suspended from association with any FINRA member in any capacity for six months. Without admitting or denying the findings, Marchi consented to the sanctions and to the entry of findings that he willfully failed to amend his Form U4 to report multiple tax liens totaling more than \$900,000 filed against him. The findings stated that Marchi was aware of the liens but willfully failed to timely amend his Form U4 to reflect them, only doing so after they came to FINRA's attention. The findings also stated that Marchi's member firm's annual compliance questionnaire asked, "In the past 12 months, have any judgments or liens been entered against you or have any changes to previously reported judgments or liens been made (i.e., releases, discharges, satisfactions, or settlements, etc.)?", and each year Marchi answered no.

The suspension is in effect from April 3, 2017, through October 2, 2017. ([FINRA Case #2016050989601](#))

**Michael Earl McCune** ([CRD #1640241](#), Overland Park, Kansas) was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The U.S. Court of Appeals for the Tenth Circuit affirmed the sanctions following an appeal of an SEC decision. The sanctions were based on findings that McCune willfully failed to timely amend his Form U4 to disclose a bankruptcy, federal tax liens and a state tax lien filed against him. The findings stated that despite receiving notice of these reportable events, McCune failed to inform his member firm and to make timely amendments to his Form U4.

The suspension is in effect from March 6, 2017, through September 5, 2017. ([FINRA Case #2011027993301](#))

**Eric Joseph Miller** ([CRD #1844951](#), Scottsdale, Arizona) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Miller failed to appear and provide FINRA with requested testimony at a disciplinary hearing. ([FINRA Case #2014041724602](#))

**Bernardo Misseri** ([CRD #2713297](#), Staten Island, New York) submitted an Offer of Settlement in which he was assessed a deferred fine of \$5,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the allegations, Misseri consented to the sanctions and to the entry of findings that he willfully failed to timely disclose unsatisfied federal tax liens, unsatisfied state tax warrants and a compromise with a creditor, which totaled over \$335,000, on his Form U4.

The suspension is in effect from March 6, 2017, through June 5, 2017. ([FINRA Case #2015046005901](#))

**William L. Olsen** ([CRD #5748983](#), Newbury Park, California) submitted an AWC in which he was assessed a deferred fine of \$10,000 and suspended from association with any FINRA member in any capacity for six months. Without admitting or denying the findings, Olsen consented to the sanctions and to the entry of findings that he provided false information to an affiliate of his member firm during the course of an internal investigation concerning his claim that certain charges on his credit card were fraudulent. The findings stated that Olsen contacted the issuer of one of his credit cards, an affiliate of his firm, and claimed that several recent charges were fraudulent because he had lost his wallet during the timeframe when the charges were incurred. Olsen claimed he had never been at the location where the charges were incurred. After Olsen was informed that the signatures on the credit card receipts at issue matched that of his bank signature card, he claimed that someone must have forged his signature. Olsen's firm's parent company subsequently initiated an internal investigation into the possibility that Olsen's fraud claims were false. When Olsen was interviewed as part of that investigation, Olsen abandoned his stolen-wallet and forged claims. Instead, Olsen claimed that someone must have drugged him

before the disputed charges were incurred, because he did not have any memory of the 15-hour period during which the charges were incurred. Therefore, Olsen claimed, he could neither confirm nor deny that he made any of the disputed charges. Olsen did not have a plausible basis for claiming that someone had drugged him. Moreover, Olsen knew that he had been at the location where the charges were incurred and that he, in fact, had authorized the charges at issue. The firm and its bank affiliate terminated Olsen after concluding that both his initial fraud claim and his subsequent alternative explanations during the internal investigation of his business conduct were false.

The suspension is in effect from March 20, 2017, through September 19, 2017. ([FINRA Case #2015048316801](#))

**Mark Stewart Pfeiffer** ([CRD #4089566](#), New York, New York) submitted an AWC in which he was fined \$20,000 and suspended from association with any FINRA member in any capacity for 31 days. Without admitting or denying the findings, Pfeiffer consented to the sanctions and to the entry of findings that he manually advertised trade volume in 88 instances in Bloomberg and/or Thomson Reuters that substantially exceeded his member firm's executed trade volume. The findings stated that in 78 instances, the firm traded no volume but Pfeiffer advertised anywhere from 10,000 to 700,000 shares; and in the other 10 instances, Pfeiffer over-advertised the firm's executed traded volume by between 10,000 and 500,000 shares. The number of shares Pfeiffer manually advertised did not have any relationship to the number of shares traded. Part of Pfeiffer's duties and responsibilities was the advertising of trade volume whether traded by him or by other firm employees. As such, Pfeiffer was responsible for ensuring that volume advertised by the firm in those instances was accurate. Most of the firm's trade volume was advertised automatically. Trades entered into the firm's OMS were automatically transmitted to outside vendors such as Bloomberg and Thomson Reuters for advertising. However, traders could, and did, manually advertise trade volume directly into Bloomberg and/or Reuters as well. Pfeiffer manually advertised trade volume that exceeded the firm's executed trade volume in order to enhance the profile of the firm. An enhanced profile on Bloomberg and/or Thomson Reuters could have resulted in an increase of order flow to the firm.

The suspension is in effect from April 17, 2017, through May 17, 2017. ([FINRA Case #2013039424201](#))

**Harold Stephen Pomeranz** ([CRD #365461](#), Plainview, New York) submitted an AWC in which he was assessed a deferred fine of \$5,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the findings, Pomeranz consented to the sanctions and to the entry of findings that he recommended a number of unsuitable short-term unit investment trust (UIT) transactions in an elderly customer's account. The findings stated that the UITs Pomeranz recommended to the customer had maturity dates of 24 months, and carried initial sales charges ranging from approximately 2.5 percent to 3.95 percent. Yet the average holding period for the UITs

Pomeranz recommended was less than 14 months. Moreover, on numerous occasions, Pomeranz recommended that the customer use the proceeds from the short-term sale of a UIT to purchase another UIT with similar or even identical investment objectives. Pomeranz's recommendations to purchase and sell UITs on a short-term basis caused the customer to incur unnecessary sales charges and were unsuitable in view of the frequency, size and cost of the transactions.

The suspension is in effect from March 6, 2017, through June 5, 2017. ([FINRA Case #2016049938201](#))

**Frederick Martin Quinn Jr.** ([CRD #1199551](#), Toledo, Ohio) submitted an AWC in which he was assessed a deferred fine of \$10,000 and suspended from association with any FINRA member in any capacity for nine months. Without admitting or denying the findings, Quinn consented to the sanctions and to the entry of findings that he willfully failed to timely update his Form U4 to disclose liens the Internal Revenue Service and State of Ohio had filed against him. The findings stated that the total amount of those liens was \$235,018, and they remain unsatisfied. Quinn did not file an amended Form U4 disclosing these liens until after FINRA notified his member firm of them. The findings also stated that Quinn signed two customers' names on a letter of instruction related to an annuity exchange. The customers did not authorize Quinn to sign their names to that letter.

The suspension is in effect from March 6, 2017, through December 5, 2017. ([FINRA Case #2016049590101](#))

**Iain Patrick Reilly** ([CRD #2197881](#), Chula Vista, California) submitted an AWC in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 business days. Without admitting or denying the findings, Reilly consented to the sanctions and to the entry of findings that on four occasions, he telephoned an insurance company's annuity service department and impersonated two clients who held equity-indexed annuities with the company. The findings stated that the calls were variously intended to obtain current information in preparation for client meetings, obtain documents that would facilitate a mortgage refinance, and to update a contract holder's address of record.

The suspension is in effect from April 17, 2017, through May 26, 2017. ([FINRA Case #2016051009401](#))

**Pedro Rodolfo Santa Maria** ([CRD #3174187](#), Santiago, Chile) submitted an AWC in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 45 days. Without admitting or denying the findings, Santa Maria consented to the sanctions and to the entry of findings that he engaged in undisclosed outside business activities by referring clients to an accounting firm and receiving compensation without providing prior written notice to and obtaining prior approval from his member firm. The findings stated that the firm had expressly prohibited Santa Maria's participation in such activities. Santa Maria received and deposited referral fees from the accounting firm in the amount of approximately \$19,621.

The suspension is in effect from April 3, 2017, through May 17, 2017. ([FINRA Case #2016050606301](#))

**Mark Schklar** ([CRD #1952816](#), Eagleville, Tennessee) submitted an AWC in which he was assessed a deferred fine of \$10,000 and suspended from association with any FINRA member in any capacity for eight months. Without admitting or denying the findings, Schklar consented to the sanctions and to the entry of findings that he participated in private securities transactions by recommending and facilitating the sale of shares in a company that manufactured equipment used to grow marijuana without providing prior written notice to or obtaining prior written approval from his member firm. The findings stated that Schklar ultimately facilitated the sale of 8 million shares of the company to four investors for total proceeds of \$285,250. The findings also stated that Schklar loaned \$80,000 to a customer without notifying the firm or obtaining its approval. The firm's policies and procedures prohibited registered representatives from lending money to firm customers except under narrow circumstances not present here. In addition, when Schklar completed an annual compliance questionnaire for the firm, he answered "no" to the question asking whether he had borrowed or lent money to a customer.

The suspension is in effect from March 20, 2017, through November 19, 2017. ([FINRA Case #2015044509301](#))

**Adam Curry Smith** ([CRD #4542903](#), Rogers, Arkansas) submitted an AWC in which he was assessed a deferred fine of \$10,000 and suspended from association with any FINRA member in any capacity for one year. Without admitting or denying the findings, Smith consented to the sanctions and to the entry of findings that he accepted gifts totaling \$105,000 from two customers in contravention of his member firm's prohibition against accepting such gifts. The findings stated that Smith denied having received any gifts from clients in response to an inquiry from the firm.

The suspension is in effect from March 20, 2017, through March 19, 2018. ([FINRA Case #2016048922301](#))

**Paul Douglas Stanley** ([CRD #3134889](#), Edmond, Oklahoma) submitted an AWC in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Stanley consented to the sanction and to the entry of findings that he refused to appear for FINRA-requested on-the-record testimony. ([FINRA Case #2016048649101](#))

**Melissa Ann Strouse** ([CRD #3200452](#), Cave Creek, Arizona) submitted an Offer of Settlement in which she was fined \$10,000 and suspended from association with any FINRA member in any principal capacity for 10 days. Without admitting or denying the allegations, Strouse consented to the sanctions and to the entry of findings that she failed to have adequate WSPs relating to reasonable-basis suitability and heightened supervision, and failed to have any WSPs that addressed her member firm's exchange-traded fund business. The findings stated that Strouse was the firm's chief compliance officer and was

responsible for ensuring that the firm's compliance and supervision systems operated effectively. Strouse had primary supervisory responsibility for the firm's main office, where a significant number of the firm's supervisory failures occurred. The firm's WSPs did not reflect its actual processes and procedures with respect to the review and/or supervision of customer accounts. The findings also stated that Strouse failed to enforce provisions of the firm's WSPs at the main office. WSPs that Strouse did not enforce included not approving, in writing, each order entered for discretionary accounts and not reviewing discretionary account statements for the main office; not reviewing, on at least a monthly basis, the purchase and sales blotter, customer accounts, subscription documents and commission reports, for churning and excessive trading; and the requirement that the firm's WSPs detail its actual processes and procedures.

The suspension was in effect from April 24, 2017, through May 3, 2017. ([FINRA Case #2013034966701](#))

**David Lester Thomas Jr. (CRD #1250208, Lancaster, Pennsylvania)** submitted an AWC in which he was suspended from association with any FINRA member in any capacity for one year. In light of Thomas' financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Thomas consented to the sanction and to the entry of findings that he willfully failed to timely amend his Form U4 to disclose federal and state tax liens. The findings stated that Thomas submitted inaccurate annual compliance questionnaires regarding his unsatisfied tax liens.

The suspension is in effect from April 3, 2017, through April 2, 2018. ([FINRA Case #2015046756901](#))

**Lawrence Evan Zirkel (CRD #2257064, New York, New York)** submitted an AWC in which he was assessed a deferred fine of \$20,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the findings, Zirkel consented to the sanctions and to the entry of findings that he intentionally over-advertised the executed trade volume of his member firm and instructed two traders who reported to him to engage in the same conduct in order to attract order flow to the firm. The findings stated that Zirkel manually advertised trade volume in private service providers Bloomberg and/or Thomson Reuters that substantially exceeded his firm's executed trade volume. The number of shares Zirkel manually advertised in certain instances had no relationship to the number of shares traded. In certain instances, Zirkel also caused two firm traders to advertise trade volume in Bloomberg and/or Thomson Reuters that substantially exceeded the firm's executed trade volume by directing them to do so.

The suspension is in effect from March 20, 2017, through June 19, 2017. ([FINRA Case #2011030206801](#))

## Decision Issued

The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of March 31, 2017. 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 Disciplinary and Other Actions*.

Southeast Investments, N.C., Inc. ([CRD #43035](#), Charlotte, North Carolina) and Frank Harmon Black ([CRD #22451](#), Rock Hill, South Carolina). The firm was fined a total of \$243,000, of which \$170,000 is joint and several with Black. Black was also barred from association with any FINRA member in any capacity. The sanctions were based on findings that the firm and Black provided false testimony during a FINRA on-the-record interview and knowingly gave FINRA fabricated documents relating to the firm's branch office inspections. The findings stated that Black and the firm, acting through Black, provided false testimony and fabricated documents to support Black's claims that he had conducted branch office inspections. The findings also stated that the firm and Black failed to ensure that the firm retained business-related emails. Registered representatives were permitted to conduct securities business using any email provider they wished. The firm's procedures adopted an "honor system" under which registered representatives were required to send a copy of their emails to a designated principal (Black) so that the emails could be stored electronically or printed for review. Persons associated with the firm could easily evade the honor system by simply not forwarding copies of emails to Black. The firm and Black were unable to directly access brokers' email accounts. Only emails that brokers sent to the firm were preserved. The firm did not preserve emails that brokers deleted or did not send to the firm. As a result, the firm willfully violated of Section 17(a) of the Exchange Act and Rule 17a-4. The findings also included that the firm and Black failed to establish and maintain a supervisory system and failed to establish, maintain and enforce WSPs reasonably designed to achieve compliance with applicable securities laws, regulations, and rules to ensure that the firm conducted branch office inspections and retained business-related emails. The firm's honor system regarding email communications was entirely inadequate. The firm and Black did not have any means to ensure that its employees complied with the honor system on all communications. Nor did the firm and Black ensure that emails from customers were copied to the firm. Given the firm's independent broker model, the honor system of copying the firm on emails was particularly inappropriate. The firm and Black repeatedly ignored regulators' instructions to adopt an adequate email retention system until June 2015, when it retained a vendor to install a firmwide email system.

This matter has been appealed to the NAC and the sanctions are not in effect pending review. ([FINRA Case #2014039285401](#))

## 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 the allegations in the complaint.

**Michael Banjany** ([CRD #5917243](#), Jackson, New Jersey) was named a respondent in a FINRA complaint alleging that he failed to provide FINRA with full and complete responses to requests for information and documents during the course of an investigation into the circumstances of his termination from his member firm, and failed to appear and provide on-the-record testimony. The complaint alleges that the firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Banjany deposited checks from an outside financial institution to his personal account without sufficient funds available. ([FINRA Case #2015048317802](#))

**Berthel, Fisher & Company Financial Services, Inc.** ([CRD #13609](#), Cedar Rapids, Iowa) and **Jeffrey Paul Dragon** ([CRD #1874038](#), Swampscott, Massachusetts) were named respondents in a FINRA complaint alleging that Dragon generated more than \$421,000 in concessions for himself and the firm, at the expense of his customers, by recommending and effecting a pattern of unsuitable short-term trading of UITs. The complaint alleges that the firm is liable for Dragon's unsuitable investment recommendations under the doctrine of *respondeat superior* because he was an agent of the firm acting within the scope of his duties when he engaged in this misconduct. The short-term trading patterns were inconsistent with the design of the securities at issue and required the customers to pay substantial sales charges, most of which came back to the firm and the representative in the form of dealer concessions. Dragon recommended to the customers—many of whom were seniors, unsophisticated investors, or both—that they liquidate UIT positions that they had held for only a few months, and which they had purchased on Dragon's recommendations, and then use the proceeds to purchase other UITs. Because each UIT purchased carried a new sales load, and because UITs are designed not to be actively traded, Dragon's recommendations were excessive and unsuitable. Dragon made the recommendations to the customers that they buy and sell UITs without having reasonable grounds for believing that the consistent pattern of short-term UIT trading he recommended was suitable for any of the customers, given their age, personal and financial situations and needs, the nature of the recommended UIT transactions, including the sales charges and other costs associated with them, and the availability of less costly alternatives. Dragon also routinely structured the UIT purchases he recommended to the customers in order to prevent the customers from qualifying for sales-charge discounts, which would have reduced the dealer concessions paid to him and the firm. Dragon made the structured recommendations to the customers without having a reasonable basis

to believe that those recommendations, which prevented the customers from receiving available discounts to which they were entitled, were suitable for those customers or for any customer.

The complaint also alleges that the firm allowed this activity to occur, and in fact, profited from it, as a direct result of its inadequate system for supervising UIT trading. The firm failed to establish and maintain a supervisory system that was reasonably designed to ensure compliance with its and its representatives' suitability obligations under the federal securities laws and FINRA and NASD® rules in connection with sales of UITs, and to ensure that customers received sales-charge discounts to which they were entitled on UIT purchases. The firm's supervisory system was also inadequate because it was not reasonably designed to prevent short-term and potentially excessive trading in mutual funds. As with UITs, the firm's supervisory system lacked any methods, reports, or other tools to identify mutual-fund switching or trading patterns indicative of other misconduct. The firm's supervisory system was not reasonably designed to ensure that the firm's UIT and mutual fund customers received all sales-charge discounts to which they were entitled. Instead, the firm relied on its registered representatives and its clearing firm to determine whether UIT and mutual fund purchases should receive sales-charge discounts, and did not conduct any review or supervision to determine if those discounts were applied correctly. This not only allowed Dragon's breakpoint manipulation scheme to go unchecked, it also resulted in further injury to firm customers. From 2010 through 2014, the firm failed to detect that more than 2,700 of its customers' UIT purchases did not receive applicable sales-charge discounts. As a result, firm customers paid excessive sales charges of approximately \$667,000, nearly all of which was paid to the firm and its registered representatives as dealer concessions. ([FINRA Case #2014039169601](#))

**Electronic Transaction Clearing, Inc. ([CRD #146122](#), Los Angeles, California)** was named a respondent in a FINRA complaint alleging that it failed to implement anti-money laundering policies, procedures, and internal controls reasonably expected to detect and cause the reporting of suspicious transactions and reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of the Treasury. The complaint alleges that the firm identified approximately 30 situations in which traders given direct market access by the firm participated in activity it deemed sufficiently suspicious so as to cause it to restrict or prohibit the trader's trading activity, including potential prearranged trading and transactions without an apparent economic purpose. This was the type of activity that required investigation for purposes of determining whether it should be reported on a Suspicious Activity Report (SAR). The firm, however, failed to take additional steps to assess whether this activity warranted the filing of an SAR.

The complaint also alleges that despite being advised by both FINRA and the SEC that previous customers may have been foreign financial institutions (FFI), the firm failed to establish and implement an appropriate due diligence program for FFIs and did not

have any written procedures relating to any due diligence for correspondent accounts of FFIs. The firm failed to identify a customer based in Bulgaria as an FFI or make the initial determination of whether the customer was an FFI under the terms of corresponding rules, and then failed to perform the required due diligence.

The complaint further alleges that the firm calculated its customer reserve mid-month utilizing projected pass-through fees chargeable to clients instead of actual amounts not known until month-end. That practice resulted in a recurring deficiency in the customer reserve formula in willful violation of Rule 15c3-3 of the Exchange Act. In addition, the complaint alleges that the firm failed to maintain sufficient net capital and customer reserves as a result of flawed or erroneous computations and characterizations of funds held during the relevant period. These resulted from the movement of funds between accounts the firm had with the U.S. broker-dealer affiliate of a Canadian entity and a related Canadian bank, where funds were held, how they were used and how they were reflected in net capital and reserve computations. As a result, the firm willfully violated Rules 15c3-1, 15c3-3 and 15c3-3(d)(4) of the Exchange Act.

Moreover, the complaint alleges that the firm failed to adequately supervise its position data processing and customer reserve calculations, resulting in inaccurate segregation instructions being provided to the U.S. broker-dealer affiliate of a Chinese entity. As a result, the Chinese affiliate broker-dealer delivered out customer securities that should have been locked up and failed to properly segregate shares. In addition, the firm's calculations for the sufficiency of positions held at the Chinese affiliate broker-dealer were inaccurate, its excess margin calculation process produced inaccurate segregation requirements, and the firm provided incorrect trade information to the Chinese affiliate broker-dealer for transactions to be cleared by the Chinese affiliate broker-dealer.

Furthermore, the complaint alleges that the firm's WSPs for monitoring customer margin were inadequate in 2013. While the firm had certain procedures in place, it failed to adequately document all relevant procedures. The firm's WSPs for monitoring customer margin did not discuss the systems it used to monitor customer accounts, the margin required for different types of securities was not clear, the WSPs did not address "house requirements," and the firm failed to memorialize a process to regularly review its margin customers to determine if they required additional margin. The complaint also alleges that the firm failed to properly implement its procedures regarding third-party wires. As a result, funds were wired to third parties without the firm having proper documentation or conducting adequate review to support the transfer of funds. In addition, the firm failed to properly implement its new account procedures, failing to detect and adequately investigate negative information about certain individuals given authority over accounts.

The complaint further alleges that the firm failed to adequately document payments made to its parent company and the reasons or basis for those payments. The firm also failed to record customer pass-through fees in customer accounts in a timely fashion. By virtue

of this activity, the firm willfully violated Rules 17a-3 and 17a-4 of the Exchange Act. In addition, the complaint alleges that the firm willfully violated Rule 200 of Regulation SHO by failing to net all positions for accounts that were related or under common control in order to determine whether sales were long or short and subject to the Short Sale Rule requirements, as required by Regulation SHO. ([FINRA Case #2013037709301](#))

**Kris Lynn Lewis** ([CRD #4505097](#), Park City, Kansas) was named a respondent in a FINRA complaint alleging that she willfully failed to timely amend her Form U4 to disclose a reportable event. The complaint alleges that Lewis knowingly provided false attestations on her member firm's annual compliance questionnaire by denying a reportable event. In addition, Lewis knowingly provided false information to FINRA on an examination-related personal activity questionnaire by denying a reportable event. ([FINRA Case #2015047154001](#))

**Corinne Renae Mittag** ([CRD #2754498](#), Omaha, Nebraska) was named a respondent in a FINRA complaint alleging that she made unauthorized trades in a customer's account at her member firm by submitting six sales of corporate bond positions and the sale of one mutual fund position without discussing such sales with the customer or getting authorization from the customer to make the sales. The complaint alleges that an imposter posing as the customer sent emails to Mittag requesting that she sell securities to generate cash in the account to fund a wire request to a third party in the United Kingdom. Despite the firm's policies that prohibited trade requests received through email, traditional mail or voicemail from being accepted, and required wire requests sent to third parties in foreign jurisdictions to be confirmed by telephone, Mittag never communicated by telephone about the sales with the customer or the imposter, and never obtained the customer's authorization for the sales. Mittag did not have the customer's written authorization to exercise discretion in his account and Mittag's firm does not permit discretionary accounts and had not accepted the customer's account as discretionary.

The complaint also alleges that Mittag falsely represented to two firm supervisors that she had spoken to the customer regarding the request to sell securities and a request to wire transfer the resulting funds to a third party in a foreign jurisdiction. Based on Mittag's false representations, the supervisors granted exceptions to the firm's policies requiring a customer's identity to be verified and requiring disclosures to be read to the customer over the telephone. The complaint further alleges that based on Mittag's false representations, the firm signed an attestation form that inaccurately stated that it had verbally confirmed the wire transfer, thereby causing it to create and preserve false and inaccurate books and records. ([FINRA Case #2015044594201](#))

**Matthew Russell Nemer** ([CRD #2813102](#), Ross, California) was named a respondent in a FINRA complaint alleging that he did not disclose to his member firm, or in research reports concerning a company, that he was engaged in employment discussions with and, eventually, had accepted an employment offer from that company. The complaint alleges

that Nemer, then a senior equity research analyst at his firm, published five research reports concerning the company. At the time Nemer published the first four of these reports, he was actively engaged in employment discussions with the company. At the time Nemer published the fifth report, he had negotiated and accepted a formal employment offer from the company that included, among other benefits and compensation, the grant of future interests in the company's securities.

The complaint also alleges that Nemer failed to disclose that he had a financial interest in the company's securities as a result of his acceptance of the employment offer. Nemer did not disclose his employment discussions and offer, in part, to preserve his ability to receive his annual bonus from the firm. As planned, Nemer resigned from the firm, after receiving a substantial monetary bonus from it, with the intent to join the company. The complaint further alleges that Nemer caused each report to be misleading by failing to disclose in each of the five reports at issue that he was engaged in employment discussions with and, eventually, had accepted an employer offer from the company, and by failing to disclose his financial interest in the company in the fifth report. ([FINRA Case #2016051925301](#))

**Cecil Ernest Nivens (CRD #2110613, Gastonia, North Carolina)** was named a respondent in a FINRA complaint alleging that he circumvented his member firm's WSPs by failing to process as replacement trades variable universal life (VUL) purchase transactions, totaling approximately \$439,805 in first-year premiums, even though Nivens recommended that each purchase be funded by withdrawals from an existing variable annuity. The complaint alleges that from 2010 to Nivens' departure from the firm, he was subject to heightened supervision that included a review of the number of replacement transactions processed by Nivens and the suitability of those transactions on a quarterly basis. Nivens was aware of the heightened supervision plan and avoidance of this additional supervision provided motivation for Nivens to conceal that the transactions for his customers were replacements. The complaint also alleges that Nivens' actions in circumventing firm procedures and concealing replacements allowed him to continue his pattern of frequently recommending exchanges to reap the benefit of a new commission without being subject to the firm's heightened level of supervisory review associated with such transactions. Each of the VULs was reviewed by a firm supervisor who was unaware that the purchase transaction was part of a replacement. As a result of Nivens' concealment, the firm supervisor reviewing the transaction did not know to perform the heightened review required for replacements. As a result of the transactions at issue, Nivens received \$185,737 in commissions on the VULs. These commissions were in addition to commissions he had already received on the purchases of the variable annuities that he sold to the same customers.

The complaint further alleges that to avoid detection by the firm of the source of the annual premiums for the VULs, Nivens did not process the withdrawals from the variable annuities used to fund the VULs as 1035 exchanges. If Nivens had properly characterized the exchanges, the customers could have avoided significant tax consequences. In addition,

the complaint alleges that Nivens further concealed the variable annuity replacements from the firm's supervisory review by directing the customers to write a personal check to fund the annual premium and to fund the check by withdrawing funds from the variable annuity either before or after issuance of the check. Nivens' failure to characterize the transactions as replacements also made the warnings accompanying VUL applications appear irrelevant to the customers. Each variable annuity application contained a required two-page document that included warnings, explanations and important factors to consider in an exchange, including a situation in which the customer kept both policies. However, because Nivens certified on page one of the documents that the transactions did not involve replacements, he made it appear that the considerations on this two-page disclosure did not apply to the VUL purchases. Additionally, eight of the customers unnecessarily incurred surrender charges on the variable annuity withdrawals in the total amount of \$4,258.19. Nivens' former firm has paid \$558,848 in settlement of customer complaints associated with Nivens sales of VULs.

Moreover, the complaint alleges that in connection with these transactions, Nivens submitted to the firm annuity documents containing misrepresentations and false information that further disguised the fact that these transactions were replacements and prevented the firm from performing its heightened supervisory review. Nivens prepared and signed the documents in question prior to submission to the firm. Nivens failed to disclose that an annuity was a source of the funds for purchase of the VULs. Although all of the customers funded their purchases of the VULs with withdrawals from a variable annuity, Nivens chose other sources of funding, rather than "annuity," on certain documents. Furthermore, the complaint alleges that each VUL application was also accompanied by a replacement form required to be submitted with each VUL application. For each form at issue, Nivens completed the form himself, and presented the completed form to the customer for the customer to sign. In each instance, Nivens signed the form certifying that it was accurate, when it was not. ([FINRA Case #2014040873501](#))

**William Fitzgerald White** ([CRD #2168943](#), San Diego, California) was named a respondent in a FINRA complaint alleging that he willfully failed to timely amend his Form U4 to disclose a bankruptcy petition, tax liens, FINRA arbitrations and a civil litigation. The complaint alleges that White failed to timely provide FINRA with documents and information during the course of an investigation into whether he disclosed certain reportable events on his Form U4. The complaint also alleges that White opened and traded in an outside securities account without giving prior written notice to his member firm and the executing firm. ([FINRA Case #2015048104602](#))

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

**First American Securities, Inc. (CRD #35841)**  
 Orrville, Ohio  
 (March 3, 2017)  
 FINRA Case #2015046056405

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

**CA Funds Group, Inc. (CRD #151193)**  
 Glen Ellyn, Illinois  
 (March 20, 2017)

**Coventry Capital, Inc. (CRD #14890)**  
 Saint Louis, Missouri  
 (March 24, 2017)

**First Illinois Securities, Inc. (CRD #19067)**  
 Bourbonnais, Illinois  
 (March 22, 2017)

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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.)

**Sun's Brothers Securities Inc. (CRD #123531)**  
 Honolulu, Hawaii  
 (January 9, 2017 – March 13, 2017)

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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.)

**Alejandro Falla (CRD #5064828)**  
 Miami, Florida  
 (March 18, 2017)  
 FINRA Case #2016050092301

**Ronald Leslie Geffner (CRD #840191)**  
 Oceanside, New York  
 (March 18, 2017)  
 FINRA Case #2013039639101

**Jeffrey Alan Hill (CRD #2204945)**  
 Bemidji, Minnesota  
 (March 18, 2017)  
 FINRA Case #2015047008703

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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.)

**Philip Bagalanon (CRD #3201089)**  
 Carol Stream, Illinois  
 (March 22, 2017)  
 FINRA Case #2016049396201

**Terry Dean Bahgat (CRD #1569518)**  
 Williamsville, New York  
 (March 23, 2017)  
 FINRA Case #2016051730001

**Patrick Hugh Dowd (CRD #1995736)**  
 Ponte Vedra Beach, Florida  
 (March 27, 2017)  
 FINRA Case #2016050861701

**John Scott Elliott (CRD #5981598)**

Kansas City, Missouri  
(March 6, 2017)  
FINRA Case #2016051253201

**Joseph Adam Giardina (CRD #4240605)**

Waccabuc, New York  
(March 30, 2017)  
FINRA Case #2016049254401

**Ryley Grosso (CRD #6319368)**

Shelby Township, Michigan  
(March 20, 2017)  
FINRA Case #2016051988101

**Larry Anthony Ham (CRD #4932411)**

Reynoldsburg, Ohio  
(March 23, 2017)  
FINRA Case #2015048137801

**Lystra C. Moore-Besson (CRD #2861381)**

Brooklyn, New York  
(March 30, 2017)  
FINRA Case #2016050153501

**Ryan Edward O'Neal Jr. (CRD #6613960)**

Philadelphia, Pennsylvania  
(March 6, 2017)  
FINRA Case #2016051446801

**Karrie Renee Parrett (CRD #3207689)**

Tipp, Ohio  
(March 30, 2017)  
FINRA Case #2016050957101

**Brian Thomas Perry (CRD #2874937)**

Orange Park, Florida  
(March 9, 2017)  
FINRA Case #2016049217101

**Meaghan Mary Rumsey (CRD #3067639)**

Poughkeepsie, New York  
(March 3, 2017)  
FINRA Case #2016048726701

**Joshua James Shelby (CRD #6054198)**

Katy, Texas  
(March 10, 2017)  
FINRA Case #2016050643101

**Donald Lee Watson Jr. (CRD #1833707)**

Bradenton, Florida  
(March 13, 2017)  
FINRA Case #2016049321701

**Mark Nicholas Wesley (CRD #2511569)**

Cleveland, Ohio  
(March 10, 2017)  
FINRA Case #2016049911801

**Terrance Jerome Wilkerson  
(CRD #4002576)**

Desoto, Texas  
(March 23, 2017)  
FINRA Case #2016050935101

**Gregory Allen Zale (CRD #2579218)**

Gilbert, Arizona  
(March 17, 2017)  
FINRA Case #2016050228801

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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.)

**Dimitris Alifragis (CRD #5774330)**

Keyport, New Jersey  
(March 27, 2017)  
FINRA Case #2016051316501

**Ricardo Alonzo Jr. (CRD #6294694)**

El Paso, Texas  
(March 6, 2017)  
FINRA Case #2016051908601

**David William Beutler (CRD #2245901)**  
Frankfort, Illinois  
(March 6, 2017)  
FINRA Case #2016051308601

**J. Gordon Cloutier Jr. (CRD #2817022)**  
Allen, Texas  
(March 6, 2017 – April 14, 2017)  
FINRA Case #2016051652701

**Donald Joseph Coleman (CRD #5238158)**  
New York, New York  
(December 16, 2016 – March 7, 2017)  
FINRA Case #2016049441101

**Charles Maxwell Cox (CRD #4916171)**  
Daniels, West Virginia  
(March 6, 2017)  
FINRA Case #2016051213501

**Laura Johnson Craven (CRD #5484886)**  
St. Rose, Louisiana  
(March 27, 2017)  
FINRA Case #2016051532301

**Thomas A. Davis (CRD #6121035)**  
Midway, Georgia  
(December 30, 2016 – March 23, 2017)  
FINRA Case #2016050741701

**Megan Eilers (CRD #5258593)**  
Granite City, Illinois  
(March 27, 2017)  
FINRA Case #2016051817001

**Dagmawit Metty Fisseha (CRD #5958415)**  
New York, New York  
(March 13, 2017)  
FINRA Case #2016051656701

**Ayrton Pierce Haddad (CRD #6125741)**  
Naples, Florida  
(March 6, 2017)  
FINRA Case #2016051413301

**Scott William Hartman (CRD #6023625)**  
Dallas, Texas  
(March 24, 2017)  
FINRA Case #2016049225001

**Stephen Johnathan Hoshimi (CRD #1977772)**  
Newport Beach, California  
(February 27, 2017 – March 23, 2017)  
FINRA Case #2016050828901

**Israel Jurkevicz (CRD #6443388)**  
Round Rock, Texas  
(March 27, 2017)  
FINRA Case #2016051501101

**Shawn Brett Larkin (CRD #6458875)**  
Kaysville, Utah  
(March 6, 2017)  
FINRA Case #2016051164301

**Richard Muzquiz Jr. (CRD #5798714)**  
San Antonio, Texas  
(March 3, 2017)  
FINRA Case #2016050624401

**Sharon Theresa Noonan (CRD #2306867)**  
New Milford, New Jersey  
(March 13, 2017)  
FINRA Case #2016050354801

**Olateju Samson Oyeniyi (CRD #6241625)**  
Far Rockaway, New York  
(March 27, 2017)  
FINRA Case #2016051241401

**Michael Jason Ripper (CRD #6059694)**  
Memphis, Tennessee  
(March 2, 2017)  
FINRA Case #2015048052801

**Christopher Peter Rose (CRD #4794738)**  
Mokena, Illinois  
(March 24, 2017)  
FINRA Case #2016051896001

**Teresita Santos Santos (CRD #3039781)**  
 Buena Park, California  
 (March 13, 2017)  
 FINRA Case #2016051967801

**Bimal Kishore Shah (CRD #2685812)**  
 Boca Raton, Florida  
 (March 3, 2017)  
 FINRA Case #2015046882401

**Bryan Michael Snyder (CRD #5182049)**  
 Traverse City, Michigan  
 (December 9, 2016 – March 23, 2017)  
 FINRA Case #2016049825201

**Cory Ward Taylor (CRD #4397111)**  
 Nelsonville, Ohio  
 (March 6, 2017)  
 FINRA Case #2016051588301

**Xin Wang (CRD #6572215)**  
 Oxnard, California  
 (March 6, 2017)  
 FINRA Case #2016051728301

**Matthew Edward Witkowski (CRD #6012093)**  
 Scottsdale, Arizona  
 (March 24, 2017)  
 FINRA Case #2016051751201

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**Individuals Suspended for Failure to Pay Arbitration Fees Pursuant to FINRA Rule 9553**

**Robert Joseph Burke III (CRD #4673092)**  
 St. Petersburg, Florida  
 (March 6, 2017)

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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.)

**Fred Ronald Brown (CRD #1175385)**  
 Montgomery, Alabama  
 (March 8, 2017 – April 10, 2017)  
 FINRA Arbitration Case #14-01963

**Robert Joseph Burke III (CRD #4673092)**  
 St. Petersburg, Florida  
 (March 28, 2017)  
 FINRA Arbitration Case #14-02493

**Joseph Christopher Delaura (CRD #2980458)**  
 Toms River, New Jersey  
 (June 30, 2009 – March 2, 2017)  
 FINRA Arbitration Case #08-00123

**Michael Dennis Hampton (CRD #4349202)**  
 Citrus Heights, California  
 (March 21, 2017)  
 FINRA Arbitration Case #15-02041/  
 ARB170003)

**Raul Enrique Jacobs (CRD #6004416)**  
 Mokena, Illinois  
 (March 28, 2017)  
 FINRA Arbitration Case #16-01636

**David Ladin (CRD #3220407)**  
 Fort Lauderdale, Florida  
 (March 31, 2017)  
 FINRA Arbitration Case #15-01705

**Gregory Marcel Martino (CRD #703338)**  
Harrison, New York  
(November 2, 2016 – March 10, 2017)  
FINRA Arbitration Case #15-00607

**J-Thaddeus Peter McGaffey  
(CRD #3263062)**  
Pinckney, Michigan  
(March 16, 2017)  
FINRA Case #20160516277/ARB160047

**Richard James Murphy (CRD #1016183)**  
New York, New York  
(December 14, 2016 – March 16, 2017)  
FINRA Arbitration Case #14-01155

**Joseph Dominick Quinzi (CRD #5590651)**  
Staten Island, New York  
(March 31, 2017)  
FINRA Arbitration Case #16-00673

**Englebert Sarmiento (CRD #4506010)**  
Lynbrook, New York  
(March 10, 2017)  
FINRA Arbitration Case #16-00139

**Laurence Michael Torres (CRD #2821373)**  
West Mifflin, Pennsylvania  
(March 31, 2017)  
FINRA Arbitration Case #16-00673

**Larry Michael Underwood Jr.  
(CRD #3235182)**  
Miami, Florida  
(March 28, 2017)  
FINRA Arbitration Case #16-02250

**Troy William West (CRD #5471935)**  
Montrose, Colorado  
(March 16, 2017)  
FINRA Arbitration Case #15-02946

## **FINRA Bars Registered Representative for Unauthorized and Unsuitable Trading in Elderly Customer's Retirement Account**

FINRA barred former K.C. Ward Financial registered representative Craig David Dima for making unauthorized and unsuitable trades totaling approximately \$15 million in a 73-year-old retiree's account, and for misrepresenting the reasons for the trades to the customer.

Susan Schroeder, FINRA Acting Head of Enforcement, said, "There is no place in this industry for brokers who take advantage of elderly customers. Protecting senior investors from predatory behavior such as unsuitable and unauthorized trading is part of our core mission and will always be a priority for FINRA."

FINRA found that on 11 occasions, Dima sold virtually all of the customer's Colgate-Palmolive stock, accumulated over 28 years of employment at the company, without the customer's permission. In fact, Dima sold the customer's shares even after the customer told Dima not to sell the stock, which she considered a valuable long-term investment and reliable source of dividends. When confronted by the customer about the sales, Dima misrepresented to her that they were caused by a "computer glitch" or a technical error. In connection with Dima's unauthorized sales and subsequent repurchases of Colgate stock, Dima charged the customer more than \$375,000 in mark-ups, mark-downs and fees and deprived the customer of substantial dividends had she held the Colgate shares as intended.

FINRA also found that Dima's trading of the customer's Colgate shares was unsuitable and violated FINRA rules prohibiting excessive mark-ups and mark-downs.

In settling this matter, Dima neither admitted or denied the charges, but consented to the entry of FINRA's findings.

## **FINRA and Exchanges Charge Lek Securities and CEO Samuel F. Lek With Aiding and Abetting Securities Fraud**

### **Charges Also Include Market Access Rule, Supervisory and Other Violations**

FINRA, along with the New York Stock Exchange; NYSE Arca; NYSE MKT; the four Bats Exchanges, Bats BZX, Bats BYX, Bats EDGA, and Bats EDGX; Nasdaq; Nasdaq BX; and the International Securities Exchange, commenced disciplinary proceedings against Lek Securities Corporation and its Chief Executive Officer, Samuel F. Lek, for aiding and abetting manipulative trading by one of its customers. Together, the complaints allege that Lek Securities and Lek aided and abetted extensive manipulative trading in a customer account known as "Avalon" from October 2010 through June 2015, which impacted both equities and options markets. Lek Securities is also charged with aiding and abetting Avalon's operation of an unregistered broker-dealer.

Avalon's manipulative trading activities involved practices known as "layering," "spoofing" and "cross-product manipulation." Layering can involve a pattern in which multiple, non-*bona fide* limit orders are entered on one side of the market at various price levels to create the appearance of a change in the supply and demand of the security so that the manipulator can obtain better-priced executions on orders entered on the opposite side of the market; the non-*bona fide* orders are then cancelled. Spoofing is a form of manipulation that can involve entering non-*bona fide* orders with the intention of cancelling those orders once they trigger some type of market movement or response from other market participants from which the manipulator can profit. The complaints allege that Avalon also engaged in cross-product manipulation by engaging in the manipulation of option prices through trading in the underlying equity securities.

Lek Securities is also charged with failing to comply with the SEC's "Market Access" rule—SEC Rule 15c3-5—by failing to have adequate risk-management controls and supervision over Avalon (its direct market access client), and Samuel Lek is charged with causing the violations. In addition, the firm is charged with violating "know-your-customer" rules, and rules regarding the preservation and supervision of electronic communications, the maintenance of CRD information, supervision of employee outside business activities, payments to individuals not associated with a broker-dealer, and failing to fully and timely comply with information requests from FINRA in connection with the investigation.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA 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. Under FINRA and Exchange rules, a firm or individual named in a complaint can file a response and request a hearing before a disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations and payment of restitution.