UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(Trenton Vicinage)

BELL ROCK CAPITAL and MARGUERITE C. TOROIAN, *Plaintiffs,* *v.* **STARK and STARK**, *Defendant.*	Civil No. Jury Trial Demanded

COMPLAINT

Plaintiffs complain against the Defendant as follows:

Introduction

1. This action against Stark and Stark ("Stark") brings claims for professional malpractice, negligence, and intentional interference with prospective business relations on behalf of Plaintiffs Bell Rock Capital ("BRC") and Marguerite C. Toroian ("Ms. Toroian") (collectively "Plaintiffs").

2. Due to Stark's malfeasance, nonfeasance and/or breach of its professional, contractual, and common law duties, Plaintiffs were forced to pay almost $1.3 million in disgorgement, prejudgment interest and penalties in order to end a four year odyssey that included a civil action brought by the SEC, titled Securities and Exchange Commission v. Marguerite Cassandra Toroian, et, al. Case No. 2:22-cv-715 ("SEC Action"). Furthermore, Plaintiffs have suffered harm above and beyond the almost $1.3 million in the form of the settlement with the SEC, which includes the legal fees paid to Stark leading up to the SEC action, the decrease in the value of BRC and the adverse effect on Ms. Toroian's ability to earn

a living in the future. If Stark had properly fulfilled its duties and obligations owed to Plaintiffs, the monetary and reputational damages suffered by Plaintiffs would have been avoided or significantly mitigated.

3. BRC was founded by Ms. Toroian in 2006 and was certified as a Registered Investment Advisor ("RIA"). BRC engaged Schwab & Co. Inc. ("Schwab") to act as its custodian for client accounts because it was a brand name with a strong balance sheet and seemingly strong support for its RIA customers. This support for RIA customers included not only back-office support but also allowed the trading of equities through their own Schwab trading desk, thus allowing BRC to invest for its clients without having to do more costly step out trades through other desks.

4. Early in 2011, Ms. Toroian was invited to an event Schwab sponsored for its RIA clients concerning the latest trends in compliance for RIAs. The speaker at the Schwab hosted event was Thomas Giachetti ("Giachetti"), who was the head of Defendant Stark's SEC compliance and regulatory practice. After hearing Giachetti speak, Ms. Toroian believed he and Stark to have knowledge, skill and expertise concerning regulatory and compliance issues related to RIAs as those were the representations made by Giachetti. Due to the growth BRC was experiencing and the growth Ms. Toroian had planned for the business, she believed it was important to have a skilled and knowledgeable SEC regulatory lawyer to advise her as BRC's business grew. Stark and Giachetti represented themselves to be skilled and knowledgeable SEC regulatory lawyers.

5. Ms. Toroian was also expecting a regulatory audit at any time because it had been five years since BRC was founded, and BRC had not yet been audited by the SEC. Typically, SEC regulated RIAs receive regulatory audits within their first five years in

business, and within every five years thereafter. In fact, Ms. Toroian, whose background was in investing and portfolio management, not compliance, was very aware of these audits, and therefore, over the years engaged third party independent regulatory mock audits to take place on an almost annual basis to ensure Plaintiffs not only were documenting properly all of BRC's compliance program, but also to identify areas of weakness in order to enhance the compliance program. Shortly after meeting Giachetti, BRC retained Stark, which held itself out as an expert in the field of SEC and securities compliance matters. A copy of the Engagement Letter is attached as Exhibit A. Plaintiffs understood that they were hiring a highly acclaimed law firm in the securities regulatory field, not only to review manuals and procedures, and update their annual filings, but also to make sure BRC was in full compliance with all the pertinent rules, regulations, and guidance of the SEC applicable to RIAs. Thus, Plaintiffs retained Stark, because it held itself out as an expert in the field of SEC and securities compliance matters.

6. In 2018, after an SEC investigation, Schwab entered into a consent order concerning its mishandling of its duty to report to regulators certain issues related to other RIA customers (that on information and belief did not include BRC). During that investigation and settlement, Schwab provided information to the SEC regarding many small firms, including the Plaintiffs, in cases where it had some question regarding trading practices at those firms, but had never reported to the SEC previously. Some of those trading practices included a concept called "*cherry picking*" as described below, which supposedly benefited Plaintiffs to the detriment of their customers profits.

7. Based on the information gathered and provided by Schwab, the SEC initiated an investigation of Plaintiffs. This investigation resulted in the SEC Action filed against Plaintiffs in 2022.

8. In response to the SEC investigation, which started in 2019, and the filing of the SEC Action in 2022, Ms. Toroian and BRC entered into a Consent Order and Final Judgment resolving and settling the SEC Action in October of 2023. The Final Judgment imposed almost $1.3 million in disgorgement, pre-judgment interest and penalties against the Plaintiffs. The resolution also, unfortunately, barred Ms. Toroian from the securities industry for life, thereby adversely affecting Ms. Toroian's ability to continue to make a living in the career and industry she has been a part of since the mid-1990s. A copy of the Consent Order and Final Judgment are attached as Exhibits B and C.

9. The harm suffered by BRC and Ms. Toroian is the direct result of Stark's failures over the years to do what Plaintiffs paid it to do, namely, conduct reasonable and thorough reviews of the BRC's policies, procedures, practices, and activities, and properly counsel and advise BRC and Ms. Toroian regarding applicable requirements, legal interpretations and relevant potential regulatory and enforcement threats to protect Plaintiffs from SEC enforcement actions.

10. Had Stark performed consistent with its own representations as to its professional competence and expertise in the investment advisory world, it would have advised and provided the policies and procedures the Plaintiffs needed to run their business with the utmost compliance program. This would have occurred years before 2016 and saved Plaintiffs from the subsequent investigations, the attendant legal costs, the decrease in value of BRC, the monetary disgorgement, interest and penalties imposed by the SEC, and the damage to the reputation of Ms. Toroian, a woman with a 25 year career in the industry, Plaintiffs hired Stark to protect themselves from just this type of nightmare—costly regulatory investigations and civil actions by the government based on claims they were not in full compliance with the

securities laws, rules, and regulations. At the end of the day, Stark cost BRC and Ms. Toroian years of time and money, but just as importantly, did not explicitly advise Plaintiffs with detailed policies and procedures related to the importance of documentation of trade allocations, as well as detailed procedures related to block trading and firm employee personal trades. It was by happenstance that Ms. Toroian learned of some of the rules regarding allocations using the block trading account in mid-2016 from BRC's new custodian, who had instantaneous procedures on their trading desk to identify allocation issues, as per FINRA regulations. Ms. Toroian was not FINRA registered, and these rules, therefore, were not such she would be able to learn them from reading any of the SEC regulations. Stark, however, works with FINRA and SEC firms, and as legal compliance experts, would have or should have known these rules and had the duty to inform Ms. Toroian and BRC about such rules, which affected their business procedures since they used these trading desks. Once she was properly advised and educated about the proper use of the block account, she was not only surprised that in 10 years neither Schwab or her Stark counsel told her of these rules, but also, she ceased using BRC's block trading account altogether And the SEC did not and could not point to a single questionable allocation issue from that point in 2016 through the present.

11. In fact, towards the end of 2015, she asked one of her employees, who had an extensive compliance background to do a cursory review of policies and procedures, just to make even further sure the firm operations were operating in tandem to what was written in their policies and procedures. Out of that review, it was suggested by her employee to get a more detailed policy and procedure related to block trading. That request was provided to Stark, acknowledged by Giachetti, but never performed. After several weeks, BRC employees again requested it and were told when he came for his mock audit in the Spring of 2016 it

would be discussed. At that time, no language change was provided to BRC for any of their trading policies or procedures.

12. On April 2, 2019, two government agents appeared on Ms. Toroian's doorstep and accused her and BRC of violations of the securities law based on the allegations provided by Schwab. The visit and the accusations devastated BRC and Ms. Toroian.

13. Stark, however, knew since at least 2012 of the SEC's new focus in its enforcement efforts on allegations of "cherry-picking" in allocating trades in block accounts. Unbeknownst to the Plaintiffs at the time, Stark also represented Schwab simultaneously throughout its representation of Plaintiffs, including while Schwab was under investigation by the SEC. Stark ignored that investigation involving RIAs for whom Schwab acted as custodian, knowing some of them were possibly their clients, and never brought to Plaintiffs' attention any concerns, offers of reviewing trade data history for potential issues and needs for enhancement, education or language updates regarding block trade procedures in the block account(s) they maintained with Schwab.

14. Schwab became the subject of an undisclosed SEC investigation in 2015 or earlier relating to its dealings with over 80 RIAs Schwab terminated in 2012-2013 (not including BRC), arising out of Schwab's failure to file Suspicious Activity Reports ("SARs") with the federal government based on, among other things, the RIA's allocations of trades in block accounts. The SEC investigation led to the filing of a complaint and entry of a consent order made public in 2018 that imposed fines of only $2.5 million on Schwab for its conduct.

15. Schwab cancelled its customer agreement with BRC in the beginning of 2016—while Schwab itself was under SEC investigation—but never informed BRC of particularly why it was ending their relationship. Plaintiffs only learned of Schwab's investigation after

conducting its own research, after learning from two government agents that spoke with Ms. Toroian and revealed to her that Schwab had provided to the government some of BRC's trading data.

16. Stark concealed from Plaintiffs its simultaneous representation of Schwab.

17. Stark not only had a conflict of interest in its dual representation of Plaintiffs and Schwab, but it failed entirely to protect Plaintiffs from even the mere optics of failing to comply with securities laws, rules and regulations, something Giachetti and his team knew was very important to Toroian and BRC from the various advice requests over the years.

18. Stark also failed even to advise Plaintiffs of the existence of the SEC's complaint and consent order against Schwab in 2018. Plaintiffs retained Stark for among other reasons to keep them informed of the latest regulatory developments and Stark knew Schwab—which it also represented simultaneously—had a previous history with BRC until early 2016 when Schwab cancelled BRC for inexplicable reasons ostensibly relating to its use of block trading. Plaintiffs were puzzled by Schwab's letter and consulted Stark about it in February 2016. Giachetti minimized Schwab's action towards Plaintiffs and told Ms. Toroian that Schwab was a Stark client, and he should not be telling her, but that he knew this activity was related to an effort by Schwab to weed out smaller RIA customers that were not profitable relationships for Schwab. Ms. Toroian took his word for that, knowing that certainly could be the case with BRC.

19. Stark never mentioned the SEC case against Schwab in early 2016 when Ms. Toroian spoke with them about the termination from Schwab. And Stark never mentioned in 2018 or beyond the complaint and consent order or the fine levied on Schwab based on the very activity that led Schwab to disengage from BRC. Nor did Stark advise or reexamine the

policies and procedures on block trading or communicate in any way regarding BRC's practices that may need updating—even at that time—on actions Plaintiffs could and should have taken to avoid the potential for even the optics of feasibility of cherry-picking violations.

20. From 2011 till their disengagement by BRC in 2019, Stark repeatedly failed to comply with its professional responsibilities to protect and properly advise Plaintiffs on regulatory compliance issues and exposed Plaintiffs to subsequent government investigations and eventually the SEC Action. Stark left Plaintiffs ill-advised and unprepared to avoid any number of potential compliance issues and to have in place properly documented policies and procedures surrounding the subject of trading procedures to allow Plaintiffs to comply with all pertinent and applicable SEC rules and regulations. The extent to which Stark left BRC vulnerable was only evidence upon BRC's engagement in May 2019 of a reputable compliance advisor from Colorado, which was not a law firm, but rather a group of compliance professionals that had decades of RIA compliance knowledge from working in the industry. The fact that even the mock audit request list of items from this new consultant was pages long, versus the short list requested by Stark, was the first sign to BRC employees perhaps Stark's audits and review of documents had not been as thorough as they had expected and for which they were paid. Through that four day on site audit, versus Giachetti's one-day on site audit, BRC was informed of several mistakes made by Stark regarding documents that had contradictory language, whereby a Stark lawyer changed language in one document but did not follow through with that language change to all other related documents. This resulted in BRC erring on the side of caution and sending back more than $25,000 in fees to clients because of Stark's error. This is just one example of a costly error at the hands of Stark.

21. Stark, by its professional malpractice and/or breach of its duties and obligations owed to Plaintiffs, has caused them significant monetary damages, a significant loss of business, a significant diminution in the value of BRC, damaged their reputation, and interfered with their prospective business relations.

22. Had Stark performed consistent with its own marketing materials and representations as to its professional competence and expertise in the securities world and the standards of care and diligence required, it would have updated and provided detailed language for their policies and procedures to Plaintiffs before 2016, since it was being paid for years to review all manuals and documents. This would have saved Plaintiffs from the subsequent investigations and SEC Action, the significant attendant legal costs, fines and the SEC action that led to Plaintiffs being forced to sell the very profitable business it still had despite the pending SEC Action. The very reason the Plaintiffs retained Stark was to protect from just this type of nightmare—costly damaging investigations by the government based on claims that should easily have been avoided or been able to be explained away had Stark given them the appropriate level of legal advice for which they were paid.

23. Stark, however, knew since at least 2012 of the SEC's new focus in its enforcement efforts on allegations of "cherry picking" in allocating trades from firm level-block accounts, such as those BRC maintained with Schwab. Unbeknownst to Plaintiffs, Stark also represented Schwab simultaneously throughout its representation of Plaintiffs, including while Schwab was under investigation by the SEC. Stark knew the issues raised in that investigation related to failure to send all SARS reports to the SEC involving RIAs for whom Schwab acted as custodian. But, because Schwab was its client, Stark knew it could not tell its other RIA clients of this situation, and never brought to Plaintiffs' attention any concerns that it

could possibly have been in that list merely because of its smaller size. In short, Stark breached its duties to Plaintiffs and caused significant harm to the Plaintiffs.

Parties

24. BRC is a Delaware corporation headquartered in Delaware and was an SEC registered investment adviser until August of 2023.

25. Ms. Toroian is an individual and citizen of Florida and was the founder and chief investment officer of BRC.

26. Defendant Stark is a New Jersey professional corporation headquartered in New Jersey, which at all relevant times provided legal services to BRC in connection with, *inter alia,* SEC compliance and regulatory issues.

Jurisdiction and Venue

27. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because it is between citizens of different states and the amount at issue exceeds $75,000 exclusive of interest.

28. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial portion of the events at issue in this action occurred in New Jersey.

Factual Background

29. Ms. Toroian founded BRC and began doing business with Schwab in or about January 2006. She was BRC's chief investment officer ("CIO") from then until BRC was sold to Bryn Mawr Capital Management in July of 2023.

30. BRC was an RIA under the Securities Act of 1934 and 1940, provided investment advice, conducted discretionary trading for clients, and traded for its own accounts.

BRC's services were fee based, and it did not earn commissions on trades or any other financial products. At no point was BRC FINRA regulated.

31. In January 2006, BRC retained Schwab to function as its Custodian, which included executing trades and preparing the confirmations and statements sent to BRC clients. Schwab encouraged its RIA clients, including BRC, to use its block trading account initially to save on trading fees for clients, versus buying multiple times during the day to get an average price in the shares being purchased, to avoid paying multiple trade charges, and ensure any clients involved in the trade were all getting the same price.

32. Ms. Toroian made numerous personal trades—and larger trades for BRC customers—in the BRC block trading account. While Schwab knew of the trades, it did not require and typically did not receive any notice of the accounts to which the trades would be allocated until the end of the day, which is all within regulatory guidelines for SEC firms. Ms. Toroian kept her notebook of the allocations and would later inform the custodian of how the trades in the block trading account were to be allocated.

33. Besides trades for multiple accounts, Ms. Toroian also made trades in the block trading account that were *single allocations*, either for her own trading account or for a single BRC client. Unbeknownst to her, this sort of block trade,under FINRA rules, was not allowed to be used for this purpose of a single account.

34. As custodian, Schwab had the duty to ensure its trading desks followed all SEC and the Financial Industry Regulatory Authority ("FINRA") trading rules but upon information and belief, did so during the entire relevant period in a manner not up to the standards of the other trading desks in the industry. These rules governed the proper allocation of trades, which

included the time any allocation of trades was due, as well as the number of accounts that must be included in a trade allocation in order to even use the block account.

35. As alleged above, Ms. Toroian met Giachetti in early 2011, at a Schwab event concerning compliance topics. Giachetti represented that he and Stark represented many other RIAs and touted Stark as the law firm of choice for RIAs all over the country. Ms. Toroian introduced herself and told him she and BRC were looking for a regulatory and compliance attorney. Giachetti gave Ms. Toroian his card and he followed up with an email.

36. In February 2011, BRC and Ms. Toroian retained Stark and Giachetti to represent them. According to Stark's website, Giachetti:

> "is Chair of the Investment Management & Securities Practice Group. A former investment banker and NASD registered representative, Mr. Giachetti's legal practice is devoted to investment-related matters, including the representation of investment advisers, financial planners, broker-dealers, public and private investment companies (e.g., mutual funds, hedge funds, etc.), CPA firms and registered representatives throughout the United States. He also advises claimants and respondents in securities regulatory, arbitration and litigation matters."

37. Stark specifically held itself out to RIAs as a source of expertise in current regulatory and compliance-related issues, with a wealth of knowledge and practical strategies to help RIAs navigate the complex regulatory and legal landscape. A copy of Stark's solicitation to RIAs to sign up for its continuing education seminar is attached as Exhibit ___.

38. BRC retained Stark to provide general advice and assistance with compliance obligations under the securities laws and regulations imposed on RIAs such as BRC as well as to answer questions regarding regulations and assist with annual regulatory filings for BRC and its employees. Giachetti and Stark held themselves out to Plaintiffs, and in general, as industry experts in the compliance industry for RIAs and Plaintiffs wanted to be advised by such experts and continue to enhance their regulatory compliance program. It was known to Stark that

BRC's compliance program was always at the forefront of Ms. Toroian's business decisions so that as the firm grew, it did so prudently, with full integrity, and in full compliance with all applicable laws, rules, and regulations.

39. During their entire relationship, Plaintiffs made all their business records available to Stark including those related to trading and the allocation of those trades. Stark conducted mock audits of BRC, since BRC had never been audited by its regulators. In fact, from its inception in 2006 through its sale in 2023, BRC never received an on-site audit from its regulators. Therefore, Ms. Toroian believed, and Stark knew these mock audits and the review of all documents and manuals by Stark were even more important. None of these reviews by Stark revealed any issues or problems related to block trading or cherry-picking. Furthermore, Ms. Toroian was aware an audit was overdue and wanted to make sure their compliance program was continuously being reviewed to ensure compliance with all SEC laws, rules, and regulations. Stark provided continuing oversight representation of the Plaintiffs until the Spring of 2019, but never once provided any warnings, qualifications, or advice suggesting Plaintiffs' practices in connection to the procedures and use of the block trading account. It took multiple communications with lawyers at Stark in the late spring of 2019 to finally get a detailed, granular procedure for block trading. It was then evident if Stark was the expert it claimed to be, that simple request should have been handled correctly the first time it was made. Furthering Stark was not the expert it claimed was the fact that its own attorney employee informed BRC the issues and investigation it was undergoing with the SEC was like at least two other Stark clients, who also had just come forward after being similarly accused of cherry-picking.

40. At all relevant times, Ms. Toroian and BRC relied on Stark to provide mock audits, advice and guidance, and updated language to manuals, policies, and procedures to ensure their full compliance with the applicable federal securities laws, rules and regulations, particularly as they applied to RIAs. At all relevant times, BRC and Ms. Toroian made available to Stark all books, records, and information it requested in reviewing their compliance program, including without limitation the way in which trading was being allocated within BRC. At no time did Stark notify BRC or Ms. Toroian of any problems or issues with the way in which allocations of the trades were being made. At no time did Stark suggest any adjustments or additions to BRC's policies and procedures as it related to trade allocations and use of its block trade account.

41. For the first 5 years of Stark's representation of BRC, Stark concealed from Plaintiffs that it also represented Schwab. Stark never disclosed its representation of Schwab to BRC or Ms. Toroian until after Schwab cancelled BRC as a customer in February of 2016. Given its representation of Schwab and other RIA's that used it as their custodian, Stark was, or ought to have been, familiar with Schwab's internal rules and procedures as Custodian for allocating trades in customer's accounts. Regardless, holding itself out as a securities compliance expert, Stark should have been knowledgeable on the policies and procedures necessary to avoid the appearance of impropriety or any activities that might come to the attention of the SEC regulators and to provide advice and guidance that ensured BRC was not only acting in compliance with all applicable SEC laws, rules and regulations, but that it's policies and procedures reflected that as well.

42. Unbeknownst to BRC and Ms. Toroian, beginning at least sometime in 2012, the SEC began to focus its enforcement efforts on violations relating to the daily allocations of

trades by brokers and RIAs. Stark knew or should have known of the SEC's focus on violations relating to the daily allocations of trades by brokers and RIAs.

43. On August 22, 2012, the SEC instituted a cease and desist proceeding against Middlecove Capital, LLC, an RIA, and its principal alleging improper and unfair allocation of trades. The SEC reported its action, *inter alia*, publicly in Release No. 34-67709 issued that same day. A copy of that SEC Order is attached as Exhibit D. Schwab was the custodian for Middlecove and it flagged the accounts through an internal program it maintained. The SEC also included notice of the action against Middlecove for "cherry-picking" violations on page 2 of its January 6, 2013, SEC News Digest. A copy of the relevant pages of that publication is attached as Exhibit E.

44. In a June 29, 2015, a press release the SEC announced the Enforcement Division "has engaged in a data-driven initiative to identify potentially fraudulent trade allocations known as 'cherry-picking.'" The release went on to note the SEC was working to investigate and analyze large volumes of RIAs' trade allocation data and identify instances where it appears an RIA is disproportionately allocating profitable trades to favored accounts. A copy of that press release is attached as Exhibit F.

45. The SEC thereafter began bringing administrative cease and desist and other enforcement actions against, *inter alia*, single owner RIAs like BRC alleging they engaged in improper cherry picking. Neither BRC nor Ms. Toroian were aware of the SEC's enhanced enforcement efforts, or the rules at issue in those efforts, but Stark knew about them and should have brought them to the attention of BRC and Ms. Toroian and counseled and advised Planitfs on how to avoid any possible compliance issues or any appearance thereof.

46. Ms. Toroian and other members of the BRC staff made trades in BRC's block account to the Custodian in the same manner from 2006 through January 2016. Stark knew or should have known of such trades and the manner in which they were allocated because Stark had access to Plaintiffs' records, were charged with advising and counseling Plaintiffs on compliance matters and conducted mock audits on BRC. Certainly, they knew the tools existed for them to use in order to conduct detailed mock audits. However, at no time did Stark ever request to review the details of any trade activity, trade blotters, etc. or raise any potential problems or issues with the way Plaintiffs made the trade allocations. Never once did anyone at Stark advise BRC or Ms. Toroian of any problems with the procedures BRC and Ms. Toroian followed in block trading activities.

47. Stark should have advised BRC and Ms. Toroian of the increased scrutiny and reviewed BRC's trading allocations from the block account to insure BRC and Ms. Toroian were in compliance with the rules and regulations by ensuring they had in place the best possible policies and procedures concerning block trading. Stark failed to do so.

48. If there were any potential problems, Stark should have notified BRC and Ms. Toroian, accordingly, especially considering the SEC's enhanced focus on the matter to protect Plaintiffs from potential compliance violations.

49. The SEC commenced an investigation into Schwab sometime during 2015 focused on transactions by Schwab's RIA customers that Schwab knew, suspected, or had reason to suspect were suspicious and required the filing of a Suspicious Activity Report, ("SAR"). The investigation led to an SEC complaint and consent order against Schwab that was not made public until July 2018. Stark, as counsel for Schwab, knew or should have known of this investigation and should have taken steps to protect BRC and Ms. Toroian, as well as its

other RIA clients, by advising them to alter and enhance their policies and procedures or terminate using the block trade account that could expose them to potential allegations of SAR violations, by either Schwab or the SEC.

50. The transactions the SEC reviewed in its investigation of Schwab included at least alleged improper allocation of trades by Schwab RIA customers.

51. Schwab, a client of Stark, nonetheless provided information to the SEC on or around 2018 suggesting that BRC and Ms. Toroian potentially engaged in improper trading procedures.

52. BRC and Ms. Toroian, as customers of Stark, were exposed to the same sort of potential risk management issues as the RIAs who were also customers of Schwab, that the SEC was examining in its investigation of Schwab. Stark failed in its duty to BRC and could and should have advised and counseled Plaintiffs of Schwab's SARS investigation, what came out publicly in 2018 related to that investigation, since it was alleged Schwab's cherry picking of SARs violations to send to the SEC involved smaller firms.

53. On or about February 16, 2016, Schwab cancelled its custodian agreement with BRC, giving it until May to move off of the custodian platform. Schwab gave no reason for the abrupt termination except for a cryptic reference to "trading activity" by BRC in the termination letter and its immediate suspension of BRC's block trading account. A copy of the termination letter is attached as Exhibit G.

54. Immediately upon receiving this communication from Schwab, Ms. Toroian contacted Giachetti to advise him of Schwab's actions. Giachetti revealed for the first time in all the years he advised BRC, that Schwab was also a client of Stark, and that he could not say too much or discuss the matter with her because of the dual representation, except to inform her

that he knew Schwab was "getting rid of" smaller RIAs it viewed to be unprofitable custody clients. This made sense to Ms. Toroian, who had to push a cancelled option trade back onto the Schwab trading desk only months earlier, costing Schwab many thousands of dollars because it was their desk's mistake.

55. BRC and Ms. Toroian sought advice from Stark as to how best to respond to Schwab's cancellation of the custodian agreement. Stark failed to raise any concern about it and suggested they not rock the boat and just move on to another high-quality custodian with better technology and that they would make introductions to them, Stark did not want to provide any incentive for Plaintiffs to provide adverse evidence against and disturb its larger client, Schwab. Nor did it make any recommendations that BRC and Ms. Toroian alter the way they had been conducting the block trades or any other part of its business. Giachetti referred BRC to a new custodian, TD Ameritrade ("TD"), but Stark did not raise any red flags or sound any alarms to BRC or Ms. Toroian regarding any risk that could lead to possible allegations of improper allocation of trades in the block account that should be reviewed and/or addressed in BRC's compliance program.

56. Reasonably relying on Stark to advise it since 2011, BRC had made no changes to its practices, was not on notice of any possible improprieties in its trade allocation policies and procedures and continued to allocate trades as it had done for the previous many years prior to Schwab's firing of BRC in 2016. All this while waiting for Giachetti to provide the updated procedures and policy BRC had asked him to provide in the early days of 2016 and never received, even after the mock audit in the spring of 2016.

57. By the end of February 2016, Plaintiffs retained TD as its Custodian. Plaintiffs continued to allocate trades in the block trading account as they had previously with Schwab.

However, the very first time using the block trade account and then allocating those shares to a single account, TD advised them both via phone call and email within only a few minutes, that such an allocation violated FINRA Rule 4515.01 prohibiting single account allocations from the block trading account. Neither Schwab nor Stark had ever advised BRC and Ms. Toroian that the way BRC was allocating trades violated FINRA rules and regulations. BRC was not a FINRA regulated firm, and therefore would not have known of rule 4515.01. Ms. Toroian was very surprised, knowing that for the past ten years, she had been doing those same single allocation trades, and not once had Schwab, as the firm's custodian nor Stark, BRC's regulatory attorney, made her aware of this rule. Upon being properly advised by TD, both verbally and via email with a copy of the FINRA rules within minutes, Ms. Toroian ceased attempting to do these sorts of trades, let her staff also know what she had just learned, and decided for herself personally, to simply stop using the block trading account since TD's trading technology was far superior to Schwab's making it just as easy to do all the trades necessary for clients in their separate accounts. Going forward, all staff at BRC only used the block trading account for multiple customer trades related to fixed income as was entirely proper and in compliance with SEC laws, rules and regulations.

58. In July of 2017, Ms. Toroian sold 9.9% of BRC to a community bank based on a total valuation of the company at $11 million. She also gave the bank a right of first refusal to purchase the remaining stock of BRC at its fair market value in the future.

59. In July 2018, the SEC's complaint against and consent order with Schwab were publicly disclosed. Schwab agreed to a permanent injunction and paid a $2.8 million fine. A copy of the press release and complaint are attached collectively as Exhibit H.

60. The complaint focused on 83 RIAs Schwab terminated in 2012 and 2013 for engaging in activity Schwab determined violated its internal policies and presented risk to Schwab or its customers. BRC was not among the RIA's referenced in the complaint. But at least forty-seven (47) of the terminated small advisers engaged in transactions through Schwab were those that Schwab knew, suspected, or had reason to suspect, were suspicious and required the filing of a SAR. Schwab failed to file SARs on the suspicious transactions of thirty-seven (37) of these terminated larger firm advisers where it suspected or had reason to suspect that the terminated adviser had engaged in a range of suspicious transactions not involving the outright misappropriation or misuse of client funds. Schwab is alleged to have known these 37 RIAs potentially defrauded their clients by improperly allocating trades. But the only example cited was one where Schwab twice counseled a particular larger, profitable RIA about suspicious trading activity but did not file a SAR.

61. Plaintiffs did not learn of the consent order between the SEC and Schwab until starting to do their own research in May and June of 2019. Stark, though, necessarily knew of the publicly disclosed complaint and consent order since it was an expert in SEC compliance matters, and at the very least kept apprised of industry news, also represented Schwab, and this matter was directly pertinent to advice or lack thereof, it was giving to Plaintiff and other RIAs. After the consent order became public, Stark made no recommendations and provided no advice to BRC or Ms. Toroian regarding language updates to its Compliance Manual, or policies and procedures regarding block trades, or otherwise advised them of any credible SEC compliance issues.

62. By the spring of 2019, BRC's business was doing very well, and it had built a solid reputation as a performance-oriented firm investing through separately managed accounts

for high-net-worth clients and other investors. On information and belief, the fair market value of BRC at that time was at least $15 million. In fact, because her goal was always to build the company and sell it to a larger company, Ms. Toroian had already taken that first step by bringing in a community bank as a strategic investor in 2017 for 9.9% ownership. By the fall of 2018, Ms. Toroian was already contemplating a timeline for selling the remainder of the business, knowing at that valuation she could afford to retire and spend precious time with her elderly parents and spouse. In early 2019, Ms. Toroian began more seriously contemplating selling her remaining 90% in BRC to her strategic partner community bank.

63. Until April 2, 2019, the potential sale of her remaining ownership in BRC was entirely viable given the increase in mergers and acquisition activity at the time.

64. On April 2, 2019, Ms. Toroian learned she and BRC were the subject of government investigations when two government agents appeared unannounced at her home and confronted her with accusations they identified as originating from Schwab in connection with the prior investigation of and settlement with Schwab by the SEC.

65. All the trades on Schwab's list of questionable trades were at the time of their visit, between 7 years and 12 years old and preceded Ms. Toroian's first learning in 2016—from TD, not her counsel or her then custodian, Schwab, of any issues with how the allocations had been made.

66. The accusations of intentional violations of the securities laws and regulations not only took Ms. Toroian entirely by surprise but caused her severe emotional distress. In one instant they threw into question Ms. Toroian's reputation, integrity, identity, self-esteem, and long-term future not only as the owner of BRC with long term clients she cares for very deeply, but as a woman with a long-standing impressive career in the investment industry.

67. Stark's incompetent representation of Plaintiffs exposed and failed to protect them. In particular Stark failed to provide full, complete, competent and timely advice needed for Ms. Toroian and BRC to protect themselves and comply with SEC laws, rules and regulations. Instead, because it did not wish to offend its client Schwab—a much larger and more financially important client than Plaintiffs—it failed to properly advise and protect them.

68. Despite the conflict of interest existing in representing both Schwab and Plaintiffs, Stark continued to represent Plaintiffs in violation of the Rules of Professional Conduct.

69. The government also began contacting BRC's clients informing them of its investigation of the Plaintiffs and asking them questions. While such contacts produced no witnesses to support the claims of wrongdoing, the questions did cause BRC a loss of at least one large client relationship.

70. In addition, BRC could not convince the SEC of its integrity and that this misunderstanding was caused by Stark's incompetence and breach of duties owed to Plaintiffs. This is what led to the SEC filing its complaint against BRC and Ms. Toroian in February 2022. Once this information was public, not only did BRC clients become aware, and remain very supportive of the firm and Ms. Toroian, but BRC's newest custodian, Pershing LLC, also became aware of the lawsuit. Ms. Toroian's longstanding plans to sell the remaining 90% of her interest in BRC, which had been part of her plan for several years, was made extremely difficult because of this SEC allegation, despite the fact that the RIA industry merger and acquisition trades have been at record levels since 2020, with valuations even now, at the highest levels on record.

71. Ms. Toroian and BRC had to retain counsel to defend themselves in the government investigations and spent over $2 million in counsel fees because the experts at Stark failed to properly and competently advise Plaintiffs and to protect BRC.

72. Ms. Toroian, in order to try to protect her reputation and career, spent more than $150,000 hiring online reputation experts to attempt to offset the negative effects any posts from the SEC would have in perpetuity on her, personally.

73. Since February 2022, BRC and Ms. Toroian had vigorously fought the claims made by the SEC. Despite the expert reports in its possession, its own witnesses, and the ability to fund a trial and prove themselves falsely accused, it was clear to Plaintiffs, the pressures by its then custodian platform were simply too stressful to operate the business on a daily basis in the best manner for its clients. Ms. Toroian, who had hired investment banks in January 2022, and not had much success in getting a real offer from a buyer because of this legal issue hanging over her and BRC, out of respect and its fiduciary duty for the entire BRC client base and staff, Toroian knew despite her ability and willingness to fight this through court and win, the pressures on her and her staff led to the decision it must find an appropriate buyer. This decision was made in December 2022, after it was announced publicly that BRC's minority shareholder, a community bank, was itself sold to a larger institution, removing it as the most likely potential buyer, since it had the first right of refusal on the deal.

74. After a very stressful deal process and several failed negotiations, BRC finally reached a purchase agreement in July 2023 that would fulfill the desire for the best fit for its clients and employees. Of course, Ms. Toroian was told by the investment bankers in the beginning, she would never be able to be included in a purchase deal and remain on, because of her now tarnished reputation, despite her highly respected background and career. The terms of

the purchase of BRC put the valuation price at approximately 50% of market rates for an RIA of BRC's size and profitability, and with a deal structure that was far less favorable to BRC than what is most commonplace in this M&A market.

75. BRC and Ms. Toroian decided in tandem with the sale of the company, to enter into a settlement deal with the SEC. After four years of time, money and stress, the cost of a trial going forward would have been the same as paying the fines, and without the ability to fund the lawsuit using the profits from BRC (as had been done from 2019 to the present), the decision became one based purely on the economics. BRC is no longer an SEC registered company. Ms. Toroian had to agree to a multi-year non-compete with the buyer of BRC. The final terms of the Consent Order include a $250,000 fine paid by BRC, and Ms. Toroian was required to pay disgorgement, prejudgment interest and penalties in the amount of approximately $1.1 million. Furthermore, Ms. Toroian, in order to finalize the settlement, had no choice but to agree to an RIA industry ban for life. She can never return to the career she established over the last 25 years or easily replace her salary and earn a comparable living.

76. Plaintiffs incurred significant defense costs and attorney's fees to defend the SEC action, currently at almost $2 million in costs and fees.

COUNT I- Professional Malpractice
By BRC and Ms. Toroian Against Stark

77. BRC and Ms. Toroian incorporate all the allegations made in the paragraphs above as if set forth in full.

78. BRC and Ms. Toroian retained Stark as attorneys with specialized expertise in advising RIAs about SEC compliance issues including without limitation matters relating to the proper allocations of trade in the block trading account.

79. Over the course of the almost nine-year attorney-client relationship, BRC and Ms. Toroian paid Stark tens of thousands of dollars for advice and guidance to keep them in compliance with applicable SEC regulations to avoid investigations and enforcements actions should BRC ever be audited.

80. As attorney for both BRC and Ms. Toroian, Stark had a fiduciary duty and owed a duty of loyalty to them. It could not properly put the interest of Schwab or any other clients over the interests of the Plaintiffs.

81. Once the SEC began its investigation of Schwab Stark, had a conflict of interest between Schwab and the RIAs it represented, including the Plaintiffs.

82. Stark placed the interest of its larger and more valuable client, Schwab, before the interests of BRC and Ms. Toroian.

83. Stark had a duty to exercise that degree of reasonable knowledge, skill, and ability employed by members of the legal profession similarly situated, in connection with the discharge of its responsibilities to BRC and Ms. Toroian.

84. Stark breached its obligations and was negligent in the performance of its duties in the following ways, among others set forth above:

a. It failed to review all the procedures BRC and Ms. Toroian maintained or did not have regarding trade allocations from the block trading account to Ms. Toroian's own account and those of her customers.

b. It failed to advise and warn BRC and Ms. Toroian of the enhanced enforcement focus of the SEC concerning allegations of cherry-picking beginning in 2012 and how to avoid being prejudiced by it.

c. It failed to investigate and advise BRC and Ms. Toroian in response to Schwab's termination of its relationship with them in February 2016, instead downplaying and minimizing Schwab's actions.

d. It had a conflict of interest because of its concurrent representation of Schwab.

85. BRC and Ms. Toroian retained Stark because of its expertise in the field of SEC compliance work related to RIAs and to protect themselves from adverse actions by the SEC. While BRC and Ms. Toroian are experienced investors, they are not experts in SEC compliance matters and relied at all relevant times on Stark for that detailed sophisticated expertise. BRC and Ms. Toroian never waived the conflict of interest with Schwab, but it was not a waivable conflict in any event.

86. By failing to properly advise BRC and Ms. Toroian, it exposed them to the accusations of improper "cherry-picking" in their allocation of gains and losses in their accounts. But for Stark's wrongdoing, breach of duty, negligence, and conflict of interest, there would have been no basis for the SEC Action.

87. Stark's breaches of duty, professional negligence, and conflict of interest were the direct and proximate causes of the damages that Plaintiffs have suffered and continue to suffer, including without limitation the costs incurred in defense of the government investigations and the SEC Action, lost business, a loss in value of BRC, diminution of their reputations in the community. Plaintiffs are also entitled to recover the fees they paid to Stark.

88. But for Stark's breach of and negligent failures to comply with its obligations and its conflict of interest with Schwab, Ms. Toroian would not have suffered the damages as alleged above, which continues through the present.

89. BRC and Ms. Toroian also request an award of reasonable attorney's fees and costs of suit, pursuant to the fee-shifting principle that operates in legal malpractice actions under controlling law.

90. Stark's breach of and negligent failures to comply with its obligations and its conflict of interest were intentional, malicious, wanton, willful and so beyond the bounds of reasonable conduct as to entitle BRC and Ms. Toroian to punitive damages.

COUNT II-Negligence
By BRC and Ms. Toroian Against Stark

91. Plaintiffs incorporate all the allegations made in the paragraphs above as if set forth in full.

92. Stark had a duty to plaintiffs to advise them fully and properly concerning their compliance obligations under the securities laws. Indeed, that is the very purpose for which plaintiffs retained Stark for nine years.

93. Stark breached that duty as alleged in detail above.

94. Stark's breach of its duty exposed Plaintiffs to the charges that led to investigations by the government.

95. But for Stark's actions and inactions, Plaintiffs would have been compliant with the securities laws, rules and regulations and there would have been no investigations or SEC Actions.

96. Plaintiffs were injured by Stark's negligent actions and inactions as alleged above.

97. Stark's actions and inactions were intentional, malicious, wanton, willful and so beyond the bounds of reasonable conduct as to entitle BRC and Ms. Toroian to punitive damages.

COUNT III- Intentional Interference with Prospective Business Relationship By BRC and Ms. Toroian Against Stark

98. Plaintiffs incorporate all the allegations made in the paragraphs above as if set forth in full.

99. BRC had a reasonable probability of increasing its business opportunities both with its existing customers and with new customers to whom it was actively marketing its services.

100. Ms. Toroian had a reasonable probability of selling her remaining interest in BRC prior to April 2019 at a price of between $12 million and $15 million.

101. Stark intentionally interfered with the prospective business relationships of both Plaintiffs by its professional malpractice and negligence, which exposed Plaintiffs to the charges that led to the investigation and SEC Action that involved contacts and communications by the government with customers of BRC.

102. But for Stark's actions and inactions, Plaintiffs' business opportunities would not have been adversely affected and plaintiffs would not have been damaged.

103. BRC was damaged by the loss of customers and business it suffered.

104. Ms. Toroian was damaged by the loss in value of her ownership of BRC.

105. Stark's actions and inactions were intentional, malicious, wanton, willful and so beyond the bounds of reasonable conduct as to entitle BRC and Ms. Toroian to punitive damages.

WHEREFORE, the Court should enter judgment as follows:

On Counts I, II and III in favor of both Plaintiffs against Defendant Stark in an amount in excess of $75,000 as determined at trial, plus attorney's fees incurred in this action, plus punitive damages in an appropriate amount.

The Court should also award plaintiffs the costs of this action, including attorneys' fees, and award such further relief as may be appropriate.

Plaintiffs demand a jury trial.

RESPECTFULLY SUBMITTED,

Gallucci & Profy LLC

January 16 , 2024

By: */s/Richard D. Gallucci*

Richard D. Gallucci Esquire
Joseph M. Profy, Esquire
Gallucci & Profy LLC
1020 Laurel Oak Road Suite 301
Voorhees NJ 08043
rgallucci@galluccianddprofy.com
jprofy@galluccianddprofy.com
Attorneys for Plaintiffs

STARK&STARK
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

OFFICE: 993 LENOX DRIVE LAWRENCEVILLE, NJ 08648-2389
MAILING: PO BOX 5315 PRINCETON, NJ 08543-5315
609-896-9060 (PHONE) 609-896-0629 (FAX)
WWW.STARK-STARK.COM

February 2, 2011

Via Electronic Mail and U.S. Mail

Cassandra Toroian, President
Bell Rock Capital, LLC
19606 Coastal Highway, Suite 101
Rehoboth, Delaware 19971

RE: Legal Consulting Services (Bell Rock Capital, LLC)

Dear Ms. Toroian:

This shall confirm our agreement to provide legal consulting services to Bell Rock Capital, LLC (the "Company"), relative to those specific matters upon which the Company chooses to consult us, from time to time, on an "as needed" basis.

Unless otherwise agreed upon, we will render services on an hourly basis. The hourly rates for the attorneys in our office range between $210.00 per hour and $725.00 per hour. Legal Assistants and Law Clerks are billed at $150.00 per hour. My calendar year 2011 hourly rate is $725.00. The 2011 hourly rates for my colleagues, Brian Carlis, Paul Lieberman, Saul Roffe, Stephen Galletto, and Nikita Mehta are $550.00, $450.00, $400.00, $275.00, and $210.00 respectively. I will extend a ten percent (10%) discount against our 2011 hourly rates, and to any new hourly rates established subsequent to calendar year 2011. Work will be performed by the attorney, legal assistant or law clerk who, in our judgment, can provide the best service in terms of legal and economic needs.

All bills for services and disbursements shall be due in accordance with the terms and conditions of the enclosed Fee Policy and Billing Practices Statement. A copy of Stark & Stark's Privacy Policy and Practices is also enclosed.

Together with this executed fee letter, please forward an initial Retainer in the amount of $1,000.00 to confirm our engagement.

Please be assured that Stark & Stark strives to provide the highest quality legal services in the most cost-effective manner possible. We believe it is essential to provide good value for a fair and reasonable cost. To that end, we encourage you to feel free to communicate with us on the subject of our services or fees at any time.

Any disputes concerning this agreement or matters relating to the representation by Stark & Stark shall be governed by the law of the State of New Jersey. All parties consent to the jurisdiction of the New Jersey courts.

EXHIBIT A

STARK&STARK
A PROFESSIONAL CORPORATION

Please call me directly at (609) 895-7255 if you have any questions. I look forward to a long and successful relationship.

Sincerely,

STARK & STARK
A Professional Corporation

By: _____
Thomas D. Ciachetti

TDG/acm
enclosures

When representing a business entity it is our policy to ask the principals involved in the entity to personally guaranty the obligation of the business entity. By signing below, both the business entity and the individuals noted will be responsible for all fees.

The undersigned agrees to and accepts the terms and conditions of Stark & Stark's Fee Policy and Billing Practices.

I hereby consent to your firm's representation on the terms and conditions set forth in this letter.

BELL ROCK CAPITAL, LLC

Date: 2/8/2011

By: _____, managing member

Date: _____

By: _____

REMEMBER: COMPLIANCE IS AN ONGOING PROCESS. Please remember that compliance is an ongoing and constantly evolving process. Laws and rules applicable to your practice and representatives are subject to change. Agreements and disclosure statements may require review and update due to regulatory or state law changes and/or changes in your business operations. Existing restrictive covenant agreements may no longer reflect state law changes. Please do not become complacent with respect to compliance matters. The scope of SEC examination issues continues to grow and becomes more complex. Policies and Procedures must also be reviewed and revised as required by regulatory changes and/or changes in your business operations. A ripe area for SEC deficiencies is either failure to have Policies and Procedures that appropriately reflect your business operations and/or the failure to follow them. As always, we will continue to remain available to assist with these matters.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **MARGUERITE CASSANDRA TOROIAN, *et al.*,** **Defendants.**	**Case No. 2:22-cv-715**

CONSENT OF DEFENDANT MARGUERITE CASSANDRA TOROIAN

1. Defendant Marguerite Cassandra Toroian ("Defendant") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 12 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

a. permanently restrains and enjoins Defendant from violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1)-(2)], and from aiding and abetting an investment adviser's violations of Section 206(4) of

EXHIBIT B

the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 thereunder [17 C.F.R. § 275.206(4)-7];

b. orders Defendant to pay disgorgement in the amount of $883,597, plus prejudgment interest thereon in the amount of $185,451;

c. orders Defendant to pay a civil penalty in the amount of $220,000 under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]; and

d. orders that within 10 days after being served with a copy of the Final Judgment, Dilworth Paxson LLP ("Dilworth Paxson") shall transfer $130,000, plus any accrued interest, to the Commission. Dilworth Paxson may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Dilworth Paxson also may transfer these funds by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; and specifying that payment is made pursuant to this Final Judgment.

3. Defendant acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant agrees that she shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that she is entitled to, nor shall she further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant agrees that she shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

4. Defendant agrees that she shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that she shall not claim, assert, or apply for a tax deduction or tax credit with regard to

any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or

representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that she shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement

to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendant agrees that the Commission may present the Final Judgment to the

Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 11/1/2023

Marguerite Cassandra Toroian

On NOV. 1st, 2023, Marguerite Cassandra Toroian, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires: FEB 13 2024

Approved as to form:

Linda Dale Hoffa, Esquire
DILWORTH PAXSON LLP
1500 Market Street – Suite 3500E
Philadelphia, PA 19102
Phone: 215-575-7000
Fax: 215-754-4603
Email: lhoffa@dilworthlaw.com

John A. Reiner
Notary Public
State of Delaware
My Commission Expires Feb 13, 2024
Commission No. 20220118000001

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **MARGUERITE CASSANDRA TOROIAN, *et al.*,** **Defendants.**	**Case No. 2:22-cv-715**

FINAL JUDGMENT AS TO DEFENDANT MARGUERITE CASSANDRA TOROIAN

The Securities and Exchange Commission having filed a Complaint and Defendant Marguerite Cassandra Toroian having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph IX); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

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

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

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

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)] by the use of mails or any means or instrumentalities of interstate commerce:

(a) to employ any device, scheme, or artifice to defraud any client or prospective client; or

(b) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from aiding and abetting an investment adviser's violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 thereunder [17

C.F.R. § 275.206(4)-7] by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser registered or required to be registered with the Commission, to provide investment advice to clients without adopting and implementing written policies and procedures reasonably designed to prevent violation, by Defendant or Defendant's supervised persons, of the Advisers Act and the rules the Commission has adopted under the Adviser Act.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $883,597, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $185,451, and a civil penalty in the amount of $220,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]. Defendant shall satisfy this obligation by paying $1,289,048 to the Securities and Exchange Commission pursuant to the terms of the payment schedule set forth in paragraph VI below after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at

http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Marguerite Cassandra Toroian as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment.

The Commission may enforce the Court's judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.,* and moving for civil contempt for the violation of any Court orders issued in this action. Defendant shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's

approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that she is entitled to, nor shall she further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VI.

Marguerite Cassandra Toroian shall pay the total of disgorgement, prejudgment interest, and penalty due of $1,289,048 in three installments to the Commission according to the following schedule: (1) $130,000 (inclusive of the amounts paid pursuant to Paragraph VII),

within 30 days of entry of this Final Judgment; (2) $100,000, within 180 days of entry of this Final Judgment; and (3) $1,059,048, within 360 days of entry of this Final Judgment. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after 30 days of the entry of Final Judgment. Prior to making the final payment set forth herein, Marguerite Cassandra Toroian shall contact the staff of the Commission for the amount due for the final payment.

If Marguerite Cassandra Toroian fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Court.

VII.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that within 10 days after being served with a copy of this Final Judgment, Dilworth Paxson LLP ("Dilworth Paxson") shall transfer $130,000, plus any accrued interest, to the Commission. Dilworth Paxson may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Dilworth Paxson also may transfer these funds by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; and specifying that payment is made pursuant to this Final Judgment.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: _____, 2023

BY THE COURT:

_____

MITCHELL S. GOLDBERG, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **MARGUERITE CASSANDRA TOROIAN, *et al.*,** **Defendants.**	**Case No. 2:22-cv-715**

FINAL JUDGMENT AS TO DEFENDANT MARGUERITE CASSANDRA TOROIAN

The Securities and Exchange Commission having filed a Complaint and Defendant Marguerite Cassandra Toroian having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph IX); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

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

EXHIBIT C

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

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

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)] by the use of mails or any means or instrumentalities of interstate commerce:

(a) to employ any device, scheme, or artifice to defraud any client or prospective client; or

(b) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from aiding and abetting an investment adviser's violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 thereunder [17

C.F.R. § 275.206(4)-7] by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser registered or required to be registered with the Commission, to provide investment advice to clients without adopting and implementing written policies and procedures reasonably designed to prevent violation, by Defendant or Defendant's supervised persons, of the Advisers Act and the rules the Commission has adopted under the Adviser Act.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $883,597, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $185,451, and a civil penalty in the amount of $220,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]. Defendant shall satisfy this obligation by paying $1,289,048 to the Securities and Exchange Commission pursuant to the terms of the payment schedule set forth in paragraph VI below after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at

http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Marguerite Cassandra Toroian as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment.

The Commission may enforce the Court's judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.,* and moving for civil contempt for the violation of any Court orders issued in this action. Defendant shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's

approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that she is entitled to, nor shall she further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VI.

Marguerite Cassandra Toroian shall pay the total of disgorgement, prejudgment interest, and penalty due of $1,289,048 in three installments to the Commission according to the following schedule: (1) $130,000 (inclusive of the amounts paid pursuant to Paragraph VII),

within 30 days of entry of this Final Judgment; (2) $100,000, within 180 days of entry of this Final Judgment; and (3) $1,059,048, within 360 days of entry of this Final Judgment. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after 30 days of the entry of Final Judgment. Prior to making the final payment set forth herein, Marguerite Cassandra Toroian shall contact the staff of the Commission for the amount due for the final payment.

If Marguerite Cassandra Toroian fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Court.

VII.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that within 10 days after being served with a copy of this Final Judgment, Dilworth Paxson LLP ("Dilworth Paxson") shall transfer $130,000, plus any accrued interest, to the Commission. Dilworth Paxson may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Dilworth Paxson also may transfer these funds by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; and specifying that payment is made pursuant to this Final Judgment.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: November 16, 2023

BY THE COURT:

/s/ Mitchell S. Goldberg
MITCHELL S. GOLDBERG, J.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67709 / August 22, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3448 / August 22, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30179 / August 22, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14993

In the Matter of **MIDDLECOVE CAPITAL, LLC, AND NOAH L. MYERS,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940**

I.

The United States Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against MiddleCove Capital, LLC ("MiddleCove") and Noah L. Myers ("Myers") (collectively, "the Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. From approximately October 2008 to February 2011 (the "relevant period"), Noah L. Myers, the sole owner of MiddleCove Capital, LLC, engaged in fraudulent trade allocation – "cherry-picking" – at MiddleCove. During the relevant period, MiddleCove was a registered investment adviser. Myers executed his cherry-picking scheme by unfairly allocating trades that had appreciated in value during the course of the day to his personal and business accounts and allocating trades that had depreciated in value during the day to the accounts of his

EXHIBIT D

advisory clients. He did this by purchasing securities in an omnibus account and delaying allocation of the purchases until later in the day (and sometimes the next day), after he saw whether the securities appreciated in value. When a security appreciated in value on the day of purchase, Myers would often sell the security and disproportionately allocate the purchase and the realized day-trading profit to his own accounts or accounts benefiting himself or his family members. In contrast, for securities that did not appreciate on the day of purchase, Myers would disproportionately allocate these purchases to his clients' accounts and his clients would hold the position for more than one day. Myers carried out his cherry-picking scheme with regard to several securities, but was most active with an inverse and leveraged exchange traded fund (ETF). Myers finally ceased these practices in February 2011 when one of his employees threatened to contact the Commission. As a result of his fraud, Myers realized ill-gotten gains of approximately $460,000. Myers's cherry-picking scheme also resulted in more than $2 million in client losses from his trading in the inverse and leveraged ETF. Neither MiddleCove nor Myers disclosed to clients that they were engaged in cherry-picking and that they would favor Myers's accounts in the allocation of appreciated securities. In addition, Myers and MiddleCove failed to follow the policies stated in MiddleCove's ADV concerning trade allocation.

2. By virtue of their conduct, the Respondents willfully violated Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §§240.10b-5] promulgated thereunder, and Sections 206(1) [15 U.S.C. §80b-6(1)], 206(2) [15 U.S.C. §80b-6(2)] and 207 [15 U.S.C. §80b-7] of the Advisers Act.

B. RESPONDENTS

3. **MiddleCove Capital, LLC** (SEC File No. 801-68677), is a Connecticut limited liability company with its principal place of business in Centerbrook, Connecticut. It has been registered with the Commission as an investment adviser since 2008 when Myers formed MiddleCove. At its peak in 2011, when MiddleCove had two portfolio managers including Myers, MiddleCove managed approximately $129 million in client assets. MiddleCove is wholly owned and controlled by Myers. In mid-2011, one of MiddleCove's portfolio managers left the firm after being there for approximately one year. As a result of his departure, MiddleCove's assets under management declined by approximately one-half. MiddleCove currently has no employees other than Myers. As of September 31, 2011, MiddleCove managed approximately 350 client accounts and had approximately $53,000,000 under management. MiddleCove's clients are individuals and families.

4. **Noah L. Myers**, age 40, resides in Old Lyme, Connecticut. Myers is the principal, chief investment officer, and sole owner of MiddleCove. Myers formed MiddleCove in early 2008 after an eleven-year career at Citigroup Global Markets Inc. ("Citigroup"). During the relevant time period, Myers was also a registered representative of Purshe Kaplan Sterling Investments, Inc. ("Purshe Kaplan"), a registered broker-dealer located in Albany, New York. Myers asserted his privilege against self-incrimination when he testified in the investigation.

C. OTHER RELEVANT ENTITY

5. **Purshe Kaplan Sterling Investments, Inc.** (SEC File No. 8-46844), is a New York corporation with its principal place of business in Albany, New York. Purshe Kaplan has been registered with the Commission as a broker-dealer since 1994. Myers was a registered representative of Purshe Kaplan during the relevant time period.

D. RESPONDENTS' CONDUCT

The cherry-picking scheme.

6. Myers formed MiddleCove in February 2008, and, in April 2008, Myers began using an omnibus account ("master account") at Charles Schwab & Co., Inc. ("Charles Schwab"), the custodian for all of MiddleCove's accounts, to place orders for his personal and client transactions. When he used the master account to purchase securities, Myers would place a block trade in the master account and then allocate the shares to his personal and client accounts.

7. Prior to October 2008, Myers was relatively inactive in his own accounts as compared to his client accounts. However, Myers began day-trading his own accounts in October 2008 and actively traded his own accounts over the next two years. From October 2008 to February 2011, Myers allocated approximately $60 million in securities purchased in the master account to his personal and business accounts, compared to approximately $200 million in securities purchased in the master account and allocated to MiddleCove's clients. Myers's personal trading activity, including his day-trading, slowed considerably after a MiddleCove employee confronted Myers in late 2010 about his cherry-picking scheme.

8. From October 2008 to February 2011, Myers engaged in a cherry-picking scheme to misappropriate profitable transactions to his personal and business accounts. Myers made block purchases of securities in the master account sometime during the trading day before the 4 P.M. close of the U.S. stock market. After making a purchase, Myers delayed allocating it until he knew whether there was a gain or loss on the trade on the day of purchase. During the relevant time period, approximately 65% of the purchases that Myers allocated to his clients were not allocated until after 4 P.M. on the day of the purchase. On some occasions, Myers would even wait until the next day to allocate a purchase and then mark the allocated trade "As Of" the day it was purchased in the market. This timing difference made it possible for Myers to selectively allocate profitable trades to his own accounts. If the security increased in price on the day of purchase, Myers would often sell the security on the same day he purchased it (a "day trade") and disproportionately allocate the day-trade profit to his personal and business accounts. However, if the security's price did not increase on the day of purchase, Myers disproportionately allocated the purchase to his clients' accounts.

9. Myers's scheme often involved purchasing a security in the master account for consecutive days over several weeks, or even months, and then allocating the security depending on its performance. If it increased in value on the day of purchase, he disproportionately allocated the security to his own accounts. If the security decreased in value on the day of purchase, Myers disproportionately allocated it to his clients' accounts. Thus, the securities on

which Myers was disproportionately making money were the same securities on which his clients were disproportionately losing money. In fact, during the relevant time period, when Myers allocated a trade to his own accounts, he had almost always allocated the same security to his clients' accounts on a different trading day within one month of the allocation to his own accounts. The only consistent difference in whether Myers allocated a security to his own accounts or his clients' accounts was whether the security appreciated in value on the day it was purchased.

The scheme is identified.

10. Charles Schwab had an internal program that flagged Myers's accounts as potentially receiving favorable allocation of profitable day trades. A MiddleCove employee investigated Myers's trading patterns after he received a call from an employee of Charles Schwab in November 2010. The Schwab employee indicated that Schwab had flagged the allocation of MiddleCove's block trades as potentially giving profitable trades to an account that benefited Myers. As a result of the call, the MiddleCove employee analyzed Myers's trade allocation for a stock (Research in Motion or RIMM) and a leveraged ETF (ProShares UltraShort Financials or SKF). From his analysis of Myers's trade allocation of these two securities, the employee suspected that Myers was cherry-picking trades in favor of his own account at the expense of his clients. Specifically, the employee believed, based on his review of Myers's trade allocation, that Myers was allocating trades that lost money at the end of the day to clients instead of himself and that the performance for Myers's accounts was much more profitable than his clients' accounts.

11. Following the MiddleCove employee's analysis of Myers's cherry-picking scheme, all four of MiddleCove's employees confronted Myers about his trade allocation in mid-December 2010. As a result of the confrontation, Myers agreed to use a trading method that required Myers to place all of his client trades through a certain Charles Schwab trade application, and to use a different method for his own trades.

12. On February 18, 2011, the same MiddleCove employee who had analyzed Myers's trading in November noticed Myers had allocated a day trade profit to himself using the Charles Schwab trade application that Myers had agreed to only use for clients' trades. The employee confronted Myers and threatened to report Myers to the Commission if he did not re-allocate the trade. Myers agreed to re-allocate the trade to a client. After this confrontation, Myers stopped cherry-picking and did relatively little trading in his own accounts.

13. Commission examination staff interviewed Myers in November 2011 about his own securities trading. Myers admitted that he had a day-trading strategy in one of his personal accounts that was profitable about 95% of the time, but he did not offer a plausible explanation for his stellar day-trading performance.

Myers profited at his clients' expense.

14. During the relevant time period, trades that Myers made in his own accounts increased in value by an average of approximately 67 basis points (or .67 of one-percent) on the day that Myers purchased the security. This 67 basis-point increase resulted in approximately

$408,000 in first-day profits for Myers's own accounts. In contrast, during the relevant time period, trades that Myers allocated to his clients' accounts *decreased* by approximately 32 basis points on the day that Myers purchased the security. This difference in return is highly statistically significant – the likelihood of Myers experiencing his first-day return (approximately 67 basis points) compared to the average first-day return for all of his and his clients' purchases (approximately negative 32 basis points) from a "lucky" allocation of trades is less than one in ten million. Similarly, approximately 74% of Myers's trades had a profit on the first day compared to approximately 52% of his clients' trades – the likelihood of observing a difference in profitably this large by chance is less than one in one trillion.

15. Myers realized approximately $138,000 in profits on his trades of SKF (the leveraged and inverse ETF discussed above) while his clients realized a net loss of approximately $2.2 million on their SKF trades. These losses were spread out among approximately 120 clients.

16. Myers's cherry-picking scheme also resulted in significant investment losses for MiddleCove clients to whom Myers allocated shares of SKF. Many of the clients did not know what SKF was or that they had invested in a leveraged ETF, even when their investment in SKF was a significant part of their account value and they experienced significant losses because of it. Many of these clients were retired and/or were using their MiddleCove account as their source of funds for retirement and had limited willingness or ability to accept significant investment risk.

17. Leveraged and inverse ETFs like SKF are generally not designed to be held for more than one day. In June 2009, FINRA issued Notice to Members 09-31 reminding firms of their sales practice obligations relating to leveraged and inverse ETFs. SKF is a leveraged and inverse ETF designed to achieve daily investment results corresponding to twice the inverse (opposite) of the daily performance of the Dow Jones U.S. Financials Index. The FINRA notice described how leveraged and inverse ETFs are designed to achieve their stated objectives on a daily basis, and, "[d]ue to the effect of compounding, their performance over longer periods of time can differ significantly from the performance (or inverse of the performance) of the underlying index or benchmark during the same period of time. . . This effect can be magnified in volatile markets." With an inverse or a leveraged ETF, if the relevant benchmark moves 100 points in one direction on day one and returns to the original level on day two, an investment in the ETF held for both days will be negative even though the benchmark is flat. (If, on the other hand, the benchmark moved in the same direction on both days, an investor in the ETF would have even better performance than shorting the index or investing in the index on margin.) If the ETF is an inverse and leveraged ETF, as is the case with SKF, the loss would be more significant. For these and other reasons, the FINRA notice concluded that "While the customer-specific suitability analysis depends on the investor's particular circumstances, inverse and leveraged ETFs typically are not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

18. During the period of his cherry-picking scheme, approximately one-third of Myers's one-day profits were from SKF trades. These profits came at the expense of approximately $2 million in client losses because Myers exposed his clients to the downside of this volatile security so that he could reap the rewards when SKF rose in value on the day of purchase. This scheme meant that Myers held SKF for more than one day in the accounts of

several clients for whom such an investment was inappropriate. Moreover, at times, SKF was a considerable proportion of the holdings of his clients, further magnifying their investment risk. For example, Myers's decision to use SKF as his tool for his cherry-picking scheme extended to:

- Investor A, age 84 and retired, invested all of her savings with MiddleCove. She described herself as conservative investor. Nonetheless, in September 2009, Myers established an $89,727.74 SKF position for this investor, which was 34.3% of her month-end account balance. The investor lost a net of $14,543 on SKF, and she had no idea what this security was.

- Investor B, age 77 and retired, had his retirement savings completely with MiddleCove. He viewed himself as "moderate risk" investor. In September 2009, Myers established a $251,196.95 SKF position for this investor in his only account, representing about 28% of the account. The investor lost a net of $59,483 on SKF.

- Investor C, age 70 and retired, was a client who described himself as unsophisticated. In September 2009, Investor C had approximately $239,288.89 of SKF, or approximately 87.7% of the account's month end value. The investor had no knowledge of what SKF was, and he lost a net of $83,264 on SKF.

The scheme was contrary to MiddleCove's Form ADV.

19. During the relevant time period, MiddleCove filed its Form ADV, Part II on April 29, 2009, and March 29, 2010. Items 12A, 12B, and 13A of the Form ADV, Part II stated, in pertinent part:

> Transactions for each client generally will be effected independently, unless the Adviser decides to purchase or sell the same securities for several clients at approximately the same time. The Adviser may (but is not obligated to) combine or "batch" such orders to obtain best execution, to negotiate more favorable commission rates, or to allocate equitably among the Adviser's clients differences in prices and commissions or other transaction costs that might have been obtained had such orders been placed independently. Under this procedure, transactions will generally be averaged as to price and allocated among the Adviser's clients pro rata to the purchase and sale orders placed for each client on any given day. To the extent that the Adviser determines to aggregate client orders for the purchase or sale of securities, including securities in which the Adviser's Advisory Affiliate(s) may invest, the Adviser shall generally do so in accordance with applicable rules promulgated under the Advisers Act and no-action guidance provided by the staff of the U.S. Securities and Exchange Commission. The Adviser shall not receive any additional compensation or remuneration as a result of the aggregation.

The same items in the ADV went on to list specific circumstances in which allocations may not be *pro rata* among accounts. These statements, taken as a whole, were misleading because the statements conveyed the impression that batched trades would be allocated fairly and not unduly favor Myers or MiddleCove, and, when trades included securities in which the "Adviser's

Advisory Affiliate(s) may invest," there would be extra layer of protection provided by a regulatory framework.

E. VIOLATIONS

20. By knowingly or recklessly allocating profitable trades to Myers's personal and business accounts at the expense of advisory clients, Myers and MiddleCove willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities. In addition, through this cherry-picking scheme and by failing to disclose the scheme, Myers and MiddleCove willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser with respect to advisory clients or prospective clients.

21. During the relevant period, MiddleCove filed misleading Forms ADV that willfully made material misstatements concerning MiddleCove's trade allocation policies and procedures. Therefore, MiddleCove willfully violated Section 207 of the Advisers Act. By signing and causing to be filed on behalf of MiddleCove these misleading Forms ADV, Myers also willfully violated Section 207 of the Advisers Act.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate and in the public interest that administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Sections 203(e) and 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act; and

E. Whether, pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1), 206(2), and 207 of the Advisers Act, whether Respondents should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act and Section 203(i) of the Advisers Act, and whether Respondents should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act and Section 203 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall each file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If either of the Respondents fail to file the directed answer, or fails to appear at a hearing after being duly notified, that Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Press Release

SEC Announces Cherry-Picking Charges Against Investment Manager

Case Arises From Enforcement Initiative Analyzing Large Volumes of Investment Advisers' Trade Allocation Data

FOR IMMEDIATE RELEASE
2015-132

Washington D.C., June 29, 2015 — The Securities and Exchange Commission today announced fraud charges against a Wisconsin-based investment advisory firm and its owner accused of improperly allocating to his personal and business accounts certain options trades that appreciated in value during the course of a trading day while allocating to his clients other trades that depreciated in value.

The SEC Enforcement Division has engaged in a data-driven initiative to identify potentially fraudulent trade allocations known as "cherry-picking," and this enforcement action is the first arising from that effort. Working with economists in the agency's Division of Economic and Risk Analysis, enforcement investigators analyze large volumes of investment advisers' trade allocation data and identify instances where it appears an adviser is disproportionately allocating profitable trades to favored accounts.

The SEC Enforcement Division alleges that Mark P. Welhouse purchased options in an omnibus or master account for Welhouse & Associates Inc. and delayed allocation of the purchases to either his or his clients' accounts until later in the day after he saw whether or not the securities appreciated in value. Welhouse allegedly reaped $442,319 in ill-gotten gains by unfairly allocating options trades in an S&P 500 exchange-traded fund named SPY. His personal trades in these options had an average first-day positive return of 6.28 percent while his clients' trades in these options had an average first-day loss of 5.05 percent.

As described in the SEC order instituting administrative proceedings against Welhouse and his firm, SEC staff conducted a statistical analysis to determine whether Welhouse's profitability in these accounts could have resulted from a coincidental or lucky combination of trades. After running a simulation test one million times, the staff concluded it could not.

"Cherry-picking schemes can be extremely difficult to detect without an investor astutely noticing that something may be amiss and coming to us with a complaint about the adviser," said Julie M. Riewe, Co-Chief of the SEC Enforcement Division's Asset Management Unit. "We devised this initiative to identify specific custodians providing services to investment advisers and their clients and leverage their trading records and other data to efficiently target preferential trade allocations occurring outside the detection of even the most observant client."

The SEC Enforcement Division alleges that Welhouse and his firm violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, Section 17(a) of the Securities Act of 1933, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The matter will be scheduled for a public hearing before an administrative law judge for proceedings to adjudicate the Enforcement Division's allegations and determine what, if any, remedial actions are appropriate.

EXHIBIT E

The SEC's data-driven enforcement initiative to combat cherry-picking has been led by the Asset Management Unit and the regional offices in Boston and Los Angeles. The investigation into Welhouse and his firm has been conducted by Robert Baker of the Asset Management Unit and Rachel Hershfang of the Boston Regional Office. The Enforcement Division's litigation will be led by Ms. Hershfang, Mr. Baker, and Cynthia Baran of the Asset Management Unit.

###

Related Materials

- SEC order

Charles Schwab & Co., Inc.

SEC Charges Charles Schwab with Failing to Report Suspicious Transactions

Litigation Release No. 24189 / July 9, 2018

Securities and Exchange Commission v. Charles Schwab & Co., Inc, Civil Action No. 18-cv-3942 (U.S. District Court for the Northern District of California July 2, 2018)

The Securities and Exchange Commission announced that Charles Schwab & Co., Inc., a registered broker-dealer, agreed to settle charges that it failed to file Suspicious Activity Reports (SARs) on the suspicious transactions of independent investment advisers that it terminated from using Schwab to custody their client accounts.

To help detect potential violations of the securities laws, the Bank Secrecy Act (BSA) requires broker-dealers to report suspicious transactions that occur through their firms. The SEC's complaint alleges that in 2012 and 2013, Schwab terminated 83 independent investment advisers for engaging in activity that Schwab determined violated its internal policies and presented risk to Schwab or its customers. The complaint further alleges that at least 47 of the terminated advisers engaged in transactions through Schwab that it knew, suspected, or had reason to suspect were suspicious and required the filing of a SAR. Schwab failed to file SARs on the suspicious transactions of 37 of these terminated advisers. Schwab failed to file SARs where it suspected or had reason to suspect that the terminated adviser had engaged in a range of suspicious transactions not involving the outright misappropriation or misuse of client funds, including: (1) transactions involving possible undisclosed self-dealing or conflicts of interest; (2) charging client accounts excessive advisory fees; (3) potentially fraudulent transactions in client accounts; (4) posing as a client to effect or confirms transactions in the client account; and (5) executing client trades and/or collecting advisory fees without being properly registered as an adviser. Moreover, Schwab failed to file SARs where it suspected or had reason to suspect that the terminated adviser had misused client funds but the client had not complained.

The SEC's complaint charges Schwab with violating Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-8 thereunder. Schwab has agreed to settle the action by consenting, without admitting or denying the allegations of the complaint, to the entry of a permanent injunction and the payment of a $2.8 million civil penalty.

- SEC Complaint

EXHIBIT F

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS Bell Rock Capital and Marguerite C. Toroian County of Residence of First Listed Plaintiff Broward County Florida; Sussez Ciunty DE

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
STARK AND STARK

County of Residence of First Listed Defendant MERCER
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Richard D. Gallucci, Jr.
Gallucci & Profy LLC 1020 Laurel Oak Road Suite 310
856 702 2505

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		INTELLECTUAL PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	☐ 880 Defend Trade Secrets Act of 2016	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	SOCIAL SECURITY	☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 190 Other Contract	☒ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 861 HIA (1395ff)	☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 196 Franchise				☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
			IMMIGRATION	☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 462 Naturalization Application	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:	☐ 465 Other Immigration Actions		☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee		FEDERAL TAX SUITS	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General		☐ 871 IRS—Third Party 26 USC 7609	☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:

Brief description of cause: Legal Malpractice Action

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ IN EXCESS OF $100,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 1/16/24

SIGNATURE OF ATTORNEY OF RECORD
/S/ Richard D. Gallucci Jr., Esquire

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.