

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600 FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

LEGEND SECURITIES, INC., CRD#44952

Respondent.

NOTICE OF AGENCY ACTION

Docket No. SD-16-0010

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (“Division”). Pursuant to Utah Admin. Code Rule R164-18-6(C) and Utah Code Ann. § 63G-4-202(3), the Division Director finds that it is in the public interest and does not unfairly prejudice the rights of any party to convert this adjudicative matter from an informal to formal proceeding, which will be conducted according to statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through -209; see also Utah Admin. Code R151-4-101, *et seq.* The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-6. The facts on which this action is based are set forth in the accompanying Petition. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-4-110.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding,

your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Petition, including a detailed explanation for any response other than an unqualified admission. Allegations in the Petition not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Petition, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
Utah Division of Securities
160 E 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

Jennifer Korb
Assistant Attorney General
160 E. 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing in this matter has been set for April 12, 2016 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City Utah, at 9:30 a.m. The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

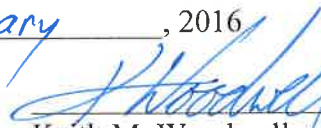
If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice.

Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-4-710(2). After issuing the default order, the presiding officer may grant the relief sought against you in the Petition, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be Greg Soderberg, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6706. This adjudicative proceeding will be heard by Mr. Soderberg and the Utah Securities Commission. At any hearings, the Division will be represented by the Attorney General's Office. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause should be directed to Jennifer Korb, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0320.

Dated this 19th day of February, 2016



Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 19th day of February, 2016, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

Legend Securities Inc.
Attn: Salvatore Caruso
45 Broadway, 32nd Floor
New York, NY 10006

David W. Brown
Attorney at Law
Blake Professional Plaza, Suite F
2880 West 4700 South
Salt Lake City, UT 84129

Certified Mail # 70150640000659468193



Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**PETITION TO CENSURE LICENSEE
AND IMPOSE A FINE**

**LEGEND SECURITIES, INC.,
CRD#44952**

Docket No. SD-16-0010

Respondent

Pursuant to the authority of the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-6, the Utah Division of Securities (“Division”) hereby petitions the Utah Securities Commission (“Commission”) to enter an Order censuring Respondent Legend Securities, Inc. (“Legend”) and imposing a fine. In support of this petition, the Division alleges:

STATEMENT OF FACTS

The Parties

1. Legend is a New York corporation that has been licensed as a broker-dealer in Utah since 2006. Legend does not maintain an office in Utah.
2. Joseph L. Jacoby (“Jacoby”), CRD#2619787, is an individual who resided in Las Vegas, Nevada, during the period relevant to this action. From January 2002 until his resignation in May 2011 Jacoby was a broker-dealer agent of Legend. Prior to associating with Legend, Jacoby was an agent of ten different broker-dealer firms between 1995 and 2001.

3. Jacoby has taken and passed the FINRA Series 7, General Securities Representative Examination, and Series 63, Uniform Securities Agent State Law Examination.
4. Jacoby conducted his securities business from a Las Vegas, Nevada branch office of Legend where he was the sole agent. Jacoby was licensed in Utah from August 2007 until he terminated his Utah license in November 2010.
5. Jacoby is not currently licensed in the securities industry in any capacity. Records contained in the Central Registration Depository¹ (“CRD”) indicate that his securities license was revoked by the State of Nevada in December 2011, following the suspension of his securities license by FINRA for exercising discretion in the account of a Utah client, K.P., without prior written authorization by the customer or Legend.
6. Jacoby is named as a respondent in an Order to Show Cause filed by the Division contemporaneously with this action.
7. Salvatore C. Caruso (“Caruso”), CRD#2363696, is a New York resident. Caruso is Legend’s President and Chief Financial Officer, and an owner and securities principal of Legend. During the period relevant to this action, Caruso was Legend’s Chief Compliance Officer and direct supervisor of Jacoby. Caruso was licensed in Utah from May 2006 until June 2011, when he terminated his Utah license.
8. CRD records indicate that in May 2011, Caruso was sanctioned by the United States Securities & Exchange Commission (“SEC”) after instructing a Legend agent to back-date books and records requested by the SEC that had not been completed or maintained

¹CRD is a computerized database maintained by the Financial Industry Regulatory Authority (“FINRA”). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

as required. Caruso was fined \$25,000 and Legend was fined \$50,000.²

Division Investigation

Investor K.P.

9. On August 4, 2010, Utah resident K.P. filed a written complaint with the Division, alleging Jacoby mismanaged his securities account, causing significant losses. K.P. alleged Jacoby made unsuitable investments, conducted unauthorized transactions and excessively traded the account to generate commissions. The Division's investigation into the complaint revealed the following:
10. Jacoby began calling K.P. by telephone sometime in 2006 to solicit K.P. to invest money with Jacoby and Legend. Jacoby represented himself as a very successful broker who could make substantial profits for K.P.
11. In August 2007, K.P. agreed to open an account. At Jacoby's direction, K.P. fully liquidated two rollover IRA annuities, paying surrender fees to do so. K.P. transferred a total of \$550,970.90 to Legend. Immediately prior to the transfer, the monies were invested in less-aggressive annuity products at Great American Life Insurance Company (\$387,689.32) and Sun Life Financial (\$163,281.58).
12. Jacoby aggressively traded K.P.'s Legend account for approximately 26 months, making a total of 233 purchases and sales from August 2007 through October 2009. During that period of time, the account sustained grievous losses, falling from its initial value of

²For more information, see:
<http://www.sec.gov/litigation/admin/2011/34-64502.pdf>

\$550,970 to \$147,430 as of October 31, 2009.³

13. Commissions and fees paid to Jacoby/Legend through markups and markdowns during that period, however, totaled at least \$180,288.⁴ After complaints by K.P. to Legend, another Legend agent was assigned to the account, which was eventually closed by K.P. and transferred elsewhere.
14. In 2010, K.P. filed a FINRA arbitration action, alleging claims against Jacoby, Legend, Caruso, and Legend principal Anthony Fusco, arising from the losses in his account. That action was later settled with the respondents' payment to K.P. of \$117,000.
15. K.P. suffered from numerous health problems and passed away in 2012.

Unsuitable Investments and Trading

16. Jacoby's securities recommendations and his trading activities in K.P.'s account were unsuitable for K.P.
17. According to trade tickets provided by Legend,⁵ 69% of the transactions in K.P.'s account were marked as solicited, or recommended, by Jacoby.
18. At the time K.P. opened the account with Jacoby he was 55 years old. He had retired early due to disability caused by numerous health problems and was receiving early social security benefits due to the disability. K.P. had suffered a stroke at age 48 and never fully

³K.P. took distributions totaling approximately \$54,000 during this period. Considering distributions, the account value as of October 31, 2009 would be \$201,430 – a loss in account value of \$349,540 or 63%.

⁴This figure is based upon K.P.'s trade confirmations. Legend commission reports, however, indicate Jacoby earned \$179,982.

⁵As discussed in greater detail below, Legend failed to produce trade tickets for nearly half of the 233 transactions in K.P.'s account.

recovered. He had ongoing heart and kidney problems requiring periodic hospital care and had also suffered a heart attack. Jacoby and Legend knew K.P.'s health history, disabled status and ongoing medical problems.

19. Among other things, K.P.'s Legend new account application clearly indicated his age and retired status, that he was divorced, that the account was a retirement account to be funded with IRA monies, and that he had been introduced to Jacoby/Legend by telephone call.
20. In addition, the new account application had boxes checked for two investment objectives: "Long term growth with safety (long term capital appreciation with relative safety of principal)" and "Long term growth with greater risk - Aggressive Growth (trade volatile securities that have wide changes in price)."⁶
21. The new account application reported K.P.'s income as \$25,000-39,999, net and liquid net worth as \$500,000-999,999 and tax bracket as 28%. His investment experience was reported as 20 years trading options and stocks, with average options trades in the amount of \$5,000 with an average of 10 trades per year, and average stock trade amounts as \$20,000 with an average of 50 trades per year. One question, "Is this a Discretionary account?" was left unanswered.
22. Jacoby communicated with K.P. exclusively by telephone. The two never met in person.

⁶Where there is more than one investment objective, the new account instructions request a ranking from 1 to 8 among eight included objectives. Although no ranking was completed on K.P.'s new account application, two objectives which more closely fit Jacoby's trading activity in K.P.'s account, "Short term growth with high risk (Appreciation with acceptance of high risk)" and "Speculative (want increase in value of investments - High Risk)" were not checked or ranked.

23. Soon after the account was opened, it was apparent that K.P.'s stated investment objectives of long-term growth – with either safety or greater risk – were ignored by Jacoby. Many of the securities in K.P.'s account were purchased, sold, and in some cases, repurchased again within a matter of days or weeks.
24. Jacoby and Legend knew that K.P. needed access to the monies in the account for one-time purchases and to supplement his limited monthly income. Soon after establishing his account at Legend, in October 2007 K.P. took a \$7,000 distribution from the account. Subsequently, he took additional single withdrawals in December 2007 (\$3,000), March 2008 (\$20,000 to purchase a vehicle), and July 2008 (\$1,500). In August 2008, K.P. scheduled monthly withdrawals in the amount of \$1,500.
25. In a handwritten May 1, 2008 broker note, Jacoby acknowledged the prior withdrawals from the account and recorded K.P.'s need for future withdrawals in the near future. The notes state K.P. told Jacoby he was planning on using “the majority” of monies from the account to purchase a home “in about a year”.⁷ Despite knowing K.P.'s need for safety of principal and liquidity to buy a home, Jacoby continued to take short-term and risky positions in the account.
26. Most of the trades in K.P.'s accounts were in equity securities and non-traditional exchange traded funds (“ETFs”). There was no diversification among asset classes and no positions were taken for preservation of capital. No mutual funds were purchased, and there were minimal cash or money market positions maintained for liquidity purposes to

⁷When Jacoby began soliciting K.P. in 2006, K.P. was living with his son in Las Vegas, Nevada. K.P. later moved to Utah, where he rented an apartment during the period relevant to this action.

facilitate K.P.'s withdrawals.⁸

Leveraged, Inverse ETF Trades

27. K.P. had no knowledge of leveraged, inverse ETFs, commonly referred to as non-traditional ETFs, prior to opening his Legend account.
28. Non-traditional ETFs are highly complex products which have risk factors that differ from traditional ETFs and may include leveraging, daily reset, and time decay, all of which effect investment return. Investors holding non-traditional ETFs for more than one trading session can expect their performance to greatly differ from the underlying index or benchmark, particularly in volatile market conditions.
29. The investments recommended by Jacoby included inverse ETFs, which utilize derivatives for the purpose of profiting from the decline in the value of a benchmark, as well as double and triple-leveraged ETFs, meaning that a 1% move in the underlying index or benchmark would produce a 2% or 3% rise (or fall if inverse) of the investment's value. Some of the ETFs Jacoby purchased were both inverse and leveraged.⁹
30. Non-traditional ETFs are designed to be used by sophisticated investors and held in an account for a single trading day, given their volatility and significant risks. They are

⁸According to other entries in Jacoby's broker notes, he and Caruso allegedly recommended K.P. purchase a new variable annuity prior to the first stock transaction taking place in August 2007. If true, the recommendations to liquidate two annuities for which K.P. paid surrender fees in order to simply purchase a new variable annuity from Jacoby/Legend would have been dubious. The notes further state Jacoby recommended the annuity to K.P. on three other occasions, all of which were after Jacoby knew K.P. needed current income and that his investment horizon was one year in order to purchase a home with monies from the account.

⁹Trading symbols for the ETFs purchased in K.P.'s account included DIG, DUG, DXD, EEV, FXP, QID, SKF, SRS, and UYG.

completely unsuitable for non-speculative investors with long-term investment objectives.

31. Jacoby placed 62 transactions in leveraged and inverse ETFs, which were particularly ill-suited to K.P.'s needs, as, among other things, K.P. was not seeking market speculation or implementing a sophisticated daily trading strategy.
32. Jacoby's broker notes made no reference to discussing with K.P. the risks and costs of investing in leveraged and inverse ETFs, why they would be suitable for K.P., or of mailing any information about them to K.P. prior to investing. In an interview with the Division, K.P. indicated he received no such disclosures.
33. The average holding period for the ETF investments was over 13.7 days, with the longest holding period being 63 days. Net losses in K.P.'s account from ETF transactions were approximately \$146,823.

Churning/Excessive Trading

34. The 233 trades placed by Jacoby in K.P.'s account benefitted Jacoby and Legend to the significant financial detriment of K.P.
35. Jacoby had *de facto* control of K.P.'s account. Of the trade tickets provided by Legend, 69% of the transactions in the account were marked as solicited, or recommended, by Jacoby.
36. Commissions paid to Jacoby from K.P.'s account alone comprised 41% of Jacoby's total compensation from Legend during the time he traded the account.
37. During the 12-month period from September 2007 to August 2008, K.P.'s portfolio was turned over an average of 6.68 times monthly. From September 2008 to August 2009,

K.P.'s portfolio was turned over an average of 7.40 times monthly.

38. In the aggregate, for the 26 months Jacoby managed K.P.'s account, Jacoby turned over the account approximately 14.93 times.
39. Based on records provided by Legend, K.P. paid approximately \$104,372 in commissions from August 2007 through August 2008, which was 26.65% of the average monthly account value. From September 2008 to August 2009, K.P. paid approximately \$69,481 in commissions, which was 31.74% of the average monthly account value.
40. The portfolio turnover and amount of commissions paid far exceed acceptable industry standards. Given the commissions paid, the account would have had to earn 28% annually to merely break even.
41. The trades recommended and placed by Jacoby were unsuitable and excessive in size and frequency in view of the financial resources and character of K.P.'s account.

Unauthorized Exercise of Discretion

42. While Legend permitted discretionary trading accounts, K.P.'s account was never established as a discretionary account.
43. Jacoby often called K.P. with a trade recommendation, which was then consented to by K.P. However, Jacoby would then place additional trades in the account that were not discussed or authorized, and would call K.P. to report the trades after the fact.
44. Pursuant to a FINRA investigation of Jacoby, Jacoby provided a written narrative, dated April 14, 2010, of his activities in K.P.'s account, which included the following:

Sometime during the first quarter of 2009, [K.P.] informed me that he would be going through medical procedures that required him to be in and out of the hospital and doctors offices for approximately 2 months. He gave me instructions to sell any stock in his account if it was going down substantially and I was unable to reach him prior to the sale.

I agreed to accommodate him in order to protect his account and quite frankly, I was afraid to not follow his instructions. Once [K.P.] finished his procedures I only conducted buys and sells after I first spoke to him on the phone.

45. On April 15, 2011, FINRA took regulatory action against Jacoby for the unauthorized exercise of discretion in K.P.'s account from approximately January through March 2009. FINRA found that Jacoby effected at least six (6) transactions during that period "without obtaining prior written authorization from the customer to exercise such discretion or prior written acceptance of the discretionary account by [Legend]."¹⁰
46. Nowhere in Jacoby's broker notes, for the period of January 1, 2009 to March 12, 2009, where the notes abruptly end, is there any mention of placing trades without K.P.'s approval. In fact, on at least 11 occasions the notes purportedly document speaking to K.P. during that time. The entries are inconsistent with Jacoby's written representations to FINRA as described above.
47. Moreover, despite written representations to FINRA that K.P. was "self-directing" his account, to the contrary, Jacoby's broker notes indicate that Jacoby, and not K.P., was directing the trading in the account. With few exceptions, the broker note language states Jacoby recommended particular transactions, and K.P. "agreed" to them.

Trade Ticket Irregularities

48. Notwithstanding Jacoby's notes, Jacoby marked approximately 31% of the trade tickets for K.P.'s account as "unsolicited", suggesting that K.P. brought such trades to Jacoby.

¹⁰As a disciplinary sanction, FINRA suspended Jacoby's securities license for five business days and fined him \$2,500. See April 15, 2010 FINRA Letter of Acceptance, Waiver and Consent, Case No. 2010021688401:
<http://disciplinaryactions.finra.org/Search/ViewDocument/14956>

The accuracy of those tickets, however, is questionable, and appears to be intended to overstate K.P.'s involvement in trading the account.

49. For example, Jacoby's trading logs show that he placed "unsolicited" trades in the exact same stock or ETF in K.P.'s account as well as in other Jacoby-managed investor accounts on the same trading day. Of ten such instances, seven of the trades were also marked "unsolicited" in the other investor account. For that to happen, absent the trade tickets being incorrectly marked, completely unrelated investors would need to have had the exact same trading idea as K.P. on the exact same day with Jacoby purchasing shares in the securities just minutes from each other.
50. In addition, although Legend had a form entitled "Acknowledgment of Non-Solicitation" designed to document that particular transactions were not solicited by a Legend agent, no such forms were ever provided to or executed by K.P. with respect to the trades marked "unsolicited" in his account.

"Happiness" Statements

51. Despite disastrous results in K.P.'s account, Jacoby's broker notes continually included self-serving "happiness statements" – statements often used to "confirm" knowledge and approval of questionable trading patterns in an account which may not mirror the account's investment objectives. For example:
 - a. March 23, 2008: "He was very thankful for all my help and isn't worried about recent market pull backs"

(As of March 30, 2008, year-to-date losses were approximately \$86,000);
 - b. June 24, 2008: "[K.P.] told me I was doing a good job and thanked me for

calling”

(As of June 30, 2008, year-to-date losses were approximately \$150,000, or 30%);

c. October 30, 2008: “he was happy and thanked me.”

(As of October 31, 2008, year-to-date losses were approximately \$249,000 or 50%)

52. K.P. told the Division that those representations were fabricated and that his reaction to the mounting losses in the account was great dissatisfaction and concern.

53. The accuracy of the entries is further questionable because even though Jacoby continued to communicate with K.P. and to trade the account through October 2009, there is not a single note entered after March 12, 2009 despite Jacoby placing more than 50 trades in that period.¹¹

Legend Books and Records Violations

54. By letter to Caruso dated August 19, 2010, the Division requested information concerning Jacoby’s activities in K.P.’s account, including “all trade tickets for transactions in [K.P.’s account] since account establishment” in August 2007.¹²

55. Caruso’s response dated September 10, 2010 represented that “[a]ll trade tickets” were contained in a CD-ROM enclosed with the letter. However, the CD only included 91

¹¹According to Legend’s Written Supervisory Policies and Procedures, agents are required to maintain “logbooks” which are to be reviewed for accuracy on a monthly basis by supervisors.

¹²SEC Rule 17a-3 of the 1934 Securities Exchange Act, incorporated by reference to the Act through Utah Admin. Code Rule R164-5-1(C)(1), requires a broker-dealer to maintain records commonly referred to as trade tickets that detail certain information about each order for the purchase or sale of securities. Failure to do so is a violation of Section 61-1-5(1) of the Act.

trade tickets out of 233 trades.

56. By letter dated February 17, 2011, the Division again requested all trade tickets, noting it was the second request for information that should already be in K.P.'s account file.
57. Caruso's response dated March 2, 2011 indicated he had sent on an enclosed CD "all available trade tickets that I was able to locate in my office" and stated while there may be duplicates of the tickets initially sent, there would be "many additional tickets." Caruso stated that Legend moved into new office space in May 2010 and "stored many of the files that were older than 2 years. I need to go through those files."
58. While the CD included additional trade tickets, approximately 129 trade tickets were still missing.
59. By email dated May 18, 2011, the Division requested that Caruso provide an update on the status of "retrieving the trade/order tickets not provided to the Division" previously.
60. In a May 31, 2011 response, Caruso provided by e-mail a zip file of additional trade tickets. Those tickets included trades for another customer, duplicate trades to those previously provided, and 15 additional trade tickets for K.P.'s account. Trade tickets for approximately 114 transactions were still missing.
61. The Division made several additional requests for other documents, and advised Legend that the failure to produce the requested documents could be a violation of record keeping requirements of the Act.
62. After a total of three written requests and two e-mail requests over a period of ten months, Legend failed to provide trade tickets for approximately 114 transactions – nearly half of the trades– in K.P.'s account. Approximately 50 of the missing tickets pertained

to transactions that took place fewer than two years¹³ before the Division's initial August 2010 request.

63. Legend's Written Supervisory Policies and Procedures ("WSPs") in effect at the time¹⁴ required that Legend keep copies of trade tickets for a period of six years:

"All books, records and accounts concerning all securities transactions undertaken by this firm must be maintained in clear, full detail, and must accurately reflect all transactions", which agents are required to maintain all records for a period of six years. Those records include trade tickets, correspondence, research files, account forms, and "any other material that may be required to justify or clarify actions taken on behalf of a client."

64. Trade tickets are required to disclose the terms and conditions of the order or instructions, any modifications, time of entry, price at which executed, whether solicited or discretionary, and must be reviewed by a principal of the firm.

65. It also is the responsibility of supervisors to see that the proper records are being kept:

Our designated supervising principals are responsible for ensuring that the individuals under their direct supervision are aware of what books and records they must maintain and for sufficiently monitoring and reviewing to ascertain whether they are being adequately maintained.

66. The WSPs state that supervisory reviews and procedures for proper books and records maintenance require that:

no material paper document, regardless of how seemingly insignificant, is to be

¹³SEC Rule 17a-4 of the 1934 Securities Exchange Act requires that a broker-dealer record keep trade tickets for at least three years, with the first two years in an easily accessible place.

¹⁴References are to Legend's WSPs dated January 30, 2007.

discarded; all notes, correspondence, etc. is to be filed in client file.

All registered representatives will have their logbooks reviewed on a monthly basis for accuracy and legibility. This review will include sampling of three (3) entries from the journals, verifying them by file contents and randomly sampling three (3) investments from three (3) separate files and verifying their entry into the log journals.

Any discrepancies found during such reviews will be written up and disciplinary action as found appropriate will be implemented.

Any reviews undertaken in this area will be documented in writing and maintained in the Compliance Department's files.

67. The WSPs further state it is Caruso's responsibility to ensure that all required books and records are maintained in an appropriate manner, for the appropriate length of time, and that they are adequately safeguarded.

Legend Failed to Reasonably Supervise Jacoby

68. Although Legend's WSPs set forth requirements to ensure compliance with securities laws and regulations, Legend failed to implement, follow, or enforce those procedures with a view to preventing securities violations by Jacoby.
69. When Legend hired Jacoby, he had worked for ten previous firms in a six-year period. He had three customer complaints that resulted in lawsuits, involving allegations including deceptive trade practices, unauthorized trading and unsuitable investments. Two of the cases settled with payments to claimants, and the third resulted in an arbitration award against Jacoby.¹⁵
70. Jacoby conducted business from a remote office located in Las Vegas, Nevada, but was

¹⁵In addition, a current FINRA arbitration proceeding, FINRA Case No. 11-03076, is pending against Jacoby for conduct arising after K.P.'s matter was settled, alleging unauthorized and aggressive trading that resulted in significant customer losses.

supervised by Caruso from New York. Jacoby was the sole agent in the Las Vegas branch office.

71. Based on his employment and complaint history and geographic distance from Caruso alone, Jacoby should have been subject to heightened supervision, or at a minimum, heightened scrutiny of his business.

Supervisory Review Requirements

72. With regard to the opening of new accounts, Legend's WSPs state:

Legend Securities, Inc. has the responsibility to use due diligence and learn as many essential facts as possible concerning our customers. We must obtain minimal information about a customer's financial situation and investment objectives, prior to or promptly after, completion of an initial transaction.

All New Accounts must be signed by the customer, the registered representative and a principal of the firm. SALVATORE C. CARUSO will review new accounts on an on-going basis to determine that all suitability requirements are being met. Information must be obtained and maintained with the New Account forms concerning any special circumstances appropriate to any unusual transactions.

73. Legend's WSPs delegated many supervisory responsibilities to then-Chief Compliance Officer Caruso, including the monitoring and review of "all daily securities activities and related records" such as new account forms, trade tickets, adherence to specific compliance policies and procedures, the solicitation of orders, and exception reports. Further, "[a]ll accounts will be reviewed, on an on-going periodic basis. On a monthly basis, all accounts with activity during the particular month will be reviewed." In addition, random accounts will be selected and reviewed, with a more in-depth review of those accounts with increased activity or heavy concentration.
74. Daily reviews include an evaluation of transactions conducted the previous day and "the nature of the trades. The investments will be looked at with regard to its suitability for

the particular investor, the trade will be evaluated with regard to excessive concentration of net worth in one particular investment (taking into account past investment activities and previous investment experience).”

75. Weekly reviews include comparing a printout of each week’s logged transactions with submitted transactions cover sheets as well as a run of exception reports, with review of “all items appearing on such reports... to determine if any further action or more in-depth reviews are warranted in any instance.”

76. Monthly reviews consist of sample client monitoring calls being made, review of all customer account statements, preparation and review of a monthly summary of client transactions and review of all accounts with high activity levels.

77. Quarterly and annual compliance reviews are also required. For annual reviews, a “complete log of all securities transactions in each client’s account will be printed. Random files will be pulled and the contents of the file will be compared to the transactions journal, looking for any discrepancies.”

78. Legend’s WSPs further provide that:

Written documentation of all reviews undertaken will be maintained, indicating:

- a) the scope of the review undertaken
- b) the individual(s) undertaking the review
- c) any pertinent findings during the review
- d) any remedial actions taken, if necessary
- e) other relevant information relating to the specific review

These reviews will be maintained by the Compliance Department.

79. Legend’s WSPs also provide that Caruso is responsible for ensuring that Legend receives from its clearing firm “all available assistance in monitoring its activities and ensuring

compliance” and, in that regard:

NASD Rule #3020 requires us to receive from our clearing firm a list of all exception reports which it issues, or which it is able to issue.

SALVATORE C. CARUSO will maintain copies of all requests made by us (to the clearing firm) indicating our desire for certain reports, and must ensure that these reports are being received on a regular basis, and being utilized as compliance tools...

All correspondence between the clearing firm and [Legend] relating to exception reports and both firms’ responsibilities under NASD Rule #3020 are maintained by SALVATORE C. CARUSO.

80. Despite the numerous questionable activities in K.P.’s account, Legend produced no exception or other surveillance reports generated at any time pertaining to Jacoby or his activities in K.P.’s account, and no documentation showing that the other required supervisory reviews described above took place.

Non-Conventional Investments and New Products

81. As alternative investments to conventional equity and fixed income investments, the ETFs purchased and sold in K.P.’s account meet the definition of what Legend’s WSPs refer to as “non-conventional investments” or “NCIs”.

82. Under the heading “Recommending NCIs” Legend’s WSPs state:

Our Chief Compliance Officer and all supervising principals are responsible for ensuring that appropriate care is taken to be certain that all registered persons understand the features of any product we are offering so as to be in a position to perform the required suitability analysis before executing a transaction. In addition, our Chief Compliance Officer is responsible for seeing that we meet the obligation that all marketing materials provide an accurate and balanced description of the risks and rewards of any NCIs being offered.

Given the complex nature of NCIs and the potential for customer harm of [sic] confusion, our Chief Compliance Officer is responsible for reviewing all NCI transactions to ensure that the following:

Appropriate due diligence with respect to the product has been undertaken

A reasonable-basis suitability analysis has been performed

Customer-specific suitability analysis for recommended transactions has been undertaken

All promotional material being utilized are fair, accurate and balanced

Appropriate internal controls have been implemented

Adequate training has been given to all registered personnel engaged in the sale of these products

83. The Legend WSPs emphasize due diligence efforts required to be undertaken by Legend agents regarding NCIs and that:

Our Chief Compliance Officer is responsible for ensuring that all individuals responsible for undertaking these due diligence efforts have received appropriate training and have the skill necessary to evaluate the terms of the investment as well as the potential risks and benefits. Our Chief Compliance Officer will maintain a list of individuals so trained, as well as all training materials utilized.¹⁶

84. Specific customer suitability analysis is required:

We cannot rely too heavily on a customer's financial status as the basis for recommending NCIs, as net worth alone is not necessarily determinative of whether a particular product is suitable for a particular investor. NASD Notice to Member 03-71 states, *'given the unique nature of NCIs, these products may present challenges when it comes to a member's duty to dispense its suitability obligation; however, the difficulty in meeting such challenges cannot be considered as a mitigating factor in determining whether members have met their suitability obligations. NCIs with particular risks may be suitable for recommendation to only a very narrow band of investors capable of evaluating and being financially able to bear those risks.'*

85. In addition, "[a]ll recommended NCI transactions must be pre-approved by the rep's supervising principal, and all such transactions will be reviewed by Compliance or Operations. Such review will consist of ensuring that appropriate due diligence and suitability measures were taken. The reviews will be documented by initialing transaction documents and by indicating any follow-up measures which were taken."

¹⁶Legend produced no information as to what, if any, training Jacoby received on the leveraged and inverse ETFs sold to K.P.

86. Finally, the ETFs purchased in K.P.'s account were also subject to comprehensive firm review as "new products" that Caruso was responsible to analyze, applying a number of factors described in the WSPs, prior to offering such products to clients.
87. Significantly, in February 2010, "due to the inherent risks and nature of leveraged" ETFs, Legend restricted their sale to retail customers, and imposed an advance-review and approval process for any customer seeking to purchase such products, even on an unsolicited basis.

Questionable Activities

88. Under the heading "Questionable Activities" Legend's WSPs indicate that "[a]ll account/securities activity reviews (which will be documented and maintained) will specifically be looking for evidence of improper or fraudulent trading practices, including but not limited to...
- a. Evidence of Excessive Trading Activity: "The monthly print out of all trading activities for each registered representative will be reviewed for excessive concentration of trading activities for any given client. Should any account appear to show a high concentration of any security, the account will be pulled and thoroughly reviewed. If documentation is not found in the client files justifying such trading activity, the representative will be called upon to give an explanation and, if necessary, the client will be contacted."
 - b. "In and Out" Trading Patterns: "It is the philosophy of Legend Securities, Inc. that the client is best served through a long-term investment perspective. Therefore, rapid in-and-out trading is highly disregarded and any such trading pattern will be looked upon with extreme skepticism. On a monthly basis, all transactions, by registered representative and by client, will be reviewed, looking specifically for such trading patterns. Should any patterns appear to exist, the registered representative involved will be called upon to explain exactly why each transaction was made, along with disclosing all written materials concerning such transactions in his/her file."
 - c. Heavy Concentrations/Unusually Large Orders: transactions of more than \$100,000 are subject to heightened review and scrutiny. "Furthermore, the client

will be personally contacted by one of the principals of this firm to verify that the transaction is indeed, an appropriate investment.”¹⁷

- d. Unsuitable Recommendations: “In addition to the financial suitability issue, there must also be an effort to determine whether or not the recommendation is appropriate to the previous investment experience, risk tolerance, and lifestyle of the client. If there are any suspicions or doubts concerning a transaction, a supervising principal will contact the client directly by phone for a discussion to aid the principal in determining whether or not the transaction was indeed an appropriate recommendation.”
- e. Churning: “Churning a client’s account (executing transactions solely for the purpose of generating commissions) is STRICTLY PROHIBITED. Uncovered churning activities will result in, minimally, suspension of trading activities for a specified period of time, and in severe or repeat instances, termination.

Registered representatives are required to bring to the attention of their Supervising Principal any account that initiates its own trades on an extremely active basis or any account that dramatically changes its trading techniques.

Monthly active account reports will be reviewed by a Supervising Principal to identify potential churning situations. Any situations identified as possibly involving churning will be looked into in detail.

REVIEW FOR CHURNING WILL CONSIST OF: Reports will be generated on a weekly, monthly, quarterly and annual basis, by client, showing all transactions in that client’s accounts for the time frame reported. These transactions will include all buys and sells. If it is determined in any of these reports that there seems to be an excessive amount of client activity (an indication of possible churning), all the client’s accounts will be reviewed with careful scrutiny. Any accounts seeming to generate a disproportionately high amount of commissions relative to the size of the investment will be singled out for review.

Turnover is a mathematical ratio which measures how frequently a customer’s funds are reinvested from one security to another. There is no pre-determined turnover ratio that identifies churning because customer investment objectives and investment history must be considered on a case-by-case basis. Churning is generally characterized by short-term holding periods and high turnover ratios.

¹⁷Jacoby placed eight trades in amounts greater than \$100,000. Legend provided no evidence to show any heightened supervisory review or scrutiny or contact with K.P. to verify that such transactions were appropriate.

Churning generally occurs when a representative has direct or indirect control over a customer's account. Direct control exists in discretionary accounts. Indirect control exists in situations where customers have a high degree of reliance on a representative, generally allowing the representative to transact whatever business s/he feels most appropriate. Such customers are generally unsophisticated and, not understanding the securities market in any depth, rely heavily on their representative's expertise.

If it is suspected or believed that churning is occurring, the account executive will be called in for a face-to-face meeting and given a chance to explain the particular activity in question. If the activity cannot be justified, the client will be contacted and the account executive severely reprimanded, ranging from temporary suspension of conduct any securities activities to termination.

Suitability of Investment Recommendations

89. Legend's WSPs require that all recommendations to a client are suitable, based on information disclosed upon opening of the account, and new account forms are to be reviewed for completeness and updated as required. In addition, the WSPs acknowledge:

Rule 405 of the New York Stock Exchange is known as the "Know Your Customer" or "Due Diligence" Rule. Even non-Exchange member broker/dealers must observe the spirit of Rule 405. To "know your customer" firms and their representatives must learn all essential facts relative to every order, every customer and every account opened or serviced.

The client's investment objectives, risk tolerance, financial resources and level of sophistication and knowledge about financial matters and securities markets must be clearly understood by the registered representative servicing the account. Income, age, employment status, occupation and dependents should all be considered and discussed with the client when determining investment objectives.

If at any time a customer wishes to undertake a transaction that a registered representative feels to be unsuitable, the representative should discuss the trade with his/her Supervising Principal PRIOR TO EXECUTING THE TRADE.

Seemingly unsuitable trades will be questioned and the representative will be called in to discuss the trade and defend why it seemed appropriate and/or suitable. If the individual is unable to show why the trade was suitable, disciplinary action will be warranted.

We have a strong fiduciary responsibility to learn the essential facts concerning every customer, every transaction and every account. In other words, we must "KNOW OUR

CUSTOMERS.” Information must be available before a determination can be made as to the suitability of a specific transaction. Our policy on approval of new accounts is that they are to be approved by an appropriate principal prior to completion of initial transaction.

Routine reviews will determine if information maintained in client files has been made current as necessary. Any special circumstances must be noted concerning suitability determinations on any unusual transactions.

(emphasis added).

90. According to an attestation provided by Caruso to FINRA pertaining to monitoring and supervision, which was also provided to the Division during its investigation, compliance reviews at Legend involve trade blotter review for accuracy, commissions, markup/markdowns, suitability based on the customer’s stated objectives and other information from the new account form, and frequency of trades. In emphasizing the importance of daily reviews, Caruso further stated:

It is my opinion that a week or longer to conduct a compliance review is too long of a time period. If a problem exists, I want to find it and rectify it immediately before it can potentially escalate. Our WSP’s will be completely updated within the next 2 to 3 months so that they reflect our current business procedures and activities.

If any exception of any kind or suspicious activity is observed, it will be investigated to determine if the exception or suspicious activity warrants action. In addition, the report viewed will be printed and notes will be made on the report if an exception does exist. The reviews are conducted by 2, sometime 3 individuals every day.

Another factor taken into consideration before determining whether or not a customer’s activity is deemed suspicious is that I make it a point to KNOW MY CUSTOMER. I review the new account application, discuss the type of activities the customer may conduct, such as, is it a day trading customer?, what types of securities does he/she transact?, how long have you known the customer? Etc... I then monitor the activity in the account to get a good understanding of the type of business the customer conducts. This allows me to identify any deviations that may occur in the future.

There have not been any notable exceptions or suspicious activity during the review period.

91. Despite Caruso's attestation, the myriad requirements of Legend's WSPs, and Jacoby's activities that should have triggered supervisory reviews on numerous grounds, information produced to the Division provides no indication or documentation of any review of Jacoby's activities, the activities in K.P.'s account, or any indication that the policies and procedures described above were implemented or otherwise followed.¹⁸ By letter to the Division dated March 2, 2011, Caruso represented that "[t]here is no other material information. All information has been supplied."
92. Had Caruso or other Legend principals undertaken supervisory reviews as required by the WSPs, Jacoby's numerous violations would have been easily discovered. As described above, the WSPs required frequent supervisory review of accounts, particularly those with high trading activity and the use of NCIs and "new product" investments of questionable suitability for a retired, disabled investor.
93. Legend and Caruso knew K.P. had retired early due to health disabilities and that he had ongoing health problems; that he had limited income; that the source of monies in his account were rollover IRA retirement funds; that K.P. had most recently been invested in less-aggressive annuity products with fixed returns; that he was relying on Jacoby's recommendations; that he needed liquidity for the monies in the Legend account; and that his time frame for needing the monies in the account was short.

¹⁸Based upon information provided by Legend, the only documentation of compliance with supervisory duties set forth in the WSPs consists of 1) trade tickets for just over half of the transactions in K.P.'s account and 2) two check lists relating to inspections of Jacoby's branch office, neither of which identified any compliance issues based on K.P.'s account or otherwise.

94. Moreover, Caruso purportedly knew enough about K.P. that at the time the account was established, Caruso recommended the purchase of an annuity as a suitable investment.
95. Legend failed to reasonably supervise its agents Jacoby and Caruso, by, among other things:
- a. failing to adopt, implement and follow adequate supervisory and compliance procedures when presented with indications that Jacoby was engaging in highly questionable activities in K.P.'s account;
 - b. failing to maintain books and records required by industry rules and its WSPs;
 - c. failing to maintain books and records sufficient to demonstrate that adequate efforts were made to supervise Jacoby;
 - d. failing to ensure that supervisory persons such as chief compliance officer Caruso reasonably and diligently exercised their supervisory and compliance responsibilities; and
 - e. failing to follow its own WSPs and document the analysis, review, and any follow-up actions taken pertaining to Jacoby's activities and the activities in K.P.'s account.
96. The activity in K.P.'s account raised numerous red flags for Jacoby's violative conduct, including but not limited to the following:
- a. aggressive trading activity in volatile securities in the account of a retired, disabled investor;
 - b. the account was funded with retirement monies from conservative positions in annuities but then entirely traded in equities and non-traditional inverse and

- leveraged ETFs;
 - c. investor need for liquidity based on income needs;
 - d. Jacoby's remote office location;
 - e. Jacoby operating a one-person branch;
 - f. trading activities were inconsistent with stated investment objectives of long-term growth;
 - g. that the investment objectives were never changed or updated to be short-term or speculative;
 - h. high commissions and lack of any discount for unsolicited trades;
 - i. significant losses in the account;
 - j. use of high-risk, speculative, inverse and leveraged ETF investments during periods of extreme market volatility;
 - k. Jacoby's broker notes abruptly ending in March 2009 but Jacoby continuing to trade the account for six more months, after which more than 50 trades took place;
 - l. 41% of Jacoby's compensation came from a single client account; and
 - m. activities in the account were wholly contrary to initial recommendations that an annuity would be suitable for K.P.
97. Legend was unable to produce trade tickets which were required to be maintained during the relevant period, in violation of securities industry regulations, the Act, and Legend's own policies and procedures, which required that such records be kept for six years.
98. The above findings evidence that Legend and its principals failed to reasonably supervise Legend agents, and as a result Jacoby was able to engage in fraudulent acts in excessively

trading and making unsuitable recommendations in K.P.'s account, enriching himself and Legend to the detriment of the client, to whom, by the terms of Legend's own WSP, it owed a fiduciary duty.¹⁹

FIRST CAUSE OF ACTION

Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G) (Churning/Excessive Trading)

99. The Division incorporates the allegations of paragraphs 1 through 98 as if fully set forth herein.
100. Legend, through its agent Jacoby, induced trading in K.P.'s account which was excessive in size and frequency in view of the financial resources and character of the account, to generate commissions for Legend and Jacoby, which conduct constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(C)(2), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.
101. Legend and Jacoby's conduct also violates FINRA Rules 2010, 2310/2111, made applicable to broker-dealers through R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

SECOND CAUSE OF ACTION

Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G) (Unsuitable Investments)

102. The Division incorporates the allegations of paragraphs 1 through 101 as if fully set forth herein.
103. The recommendations and trading activity in K.P.'s account by Legend, through its agent Jacoby, were unsuitable given K.P.'s disabled and retired status, objectives, financial

¹⁹See para. 89, *supra*.

situation, and needs, which conduct constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(C)(3), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

104. Legend and Jacoby's conduct also violates FINRA Rules 2010, 2090, 2310/2111, made applicable to broker-dealers through R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

THIRD CAUSE OF ACTION

Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G) (Unauthorized Exercise of Discretion)

105. The Division incorporates the allegations of paragraphs 1 through 104 as if fully set forth herein.
106. Legend, through its agent Jacoby, exercised unauthorized discretion in K.P.'s account without first obtaining written discretionary authority from K.P., which conduct constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(C)(5), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.
107. Legend and Jacoby's conduct also violates FINRA Rule 2510, made applicable to broker-dealers through R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

FOURTH CAUSE OF ACTION

Securities Fraud Under § 61-1-1(3) of the Act

108. The Division incorporates the allegations of paragraphs 1 through 107 as if fully set forth herein.
109. Legend, in connection with the offer, sale, or purchase of securities, through its agent Jacoby, engaged in acts, practices, and a course of business which operated as a fraud or

deceit on K.P. in order to generate significant commissions for Legend and Jacoby. The violative conduct includes but is not limited to churning or excessively trading K.P.'s account, making unsuitable investments, exercising unauthorized discretion in K.P.'s account, and violating industry rules and standards, as well as Legend's policies and procedures.

FIFTH CAUSE OF ACTION

Failure to Reasonably Supervise Under § 61-1-6(2)(a)(ii)(J)

110. The Division incorporates the allegations of paragraphs 1 through 109 as if fully set forth herein.
111. Jacoby engaged in numerous violations of the Act as set forth above. Jacoby was subject to the supervision of Caruso, specifically, and Legend.
112. Although as described above, Legend's WSPs set forth requirements to ensure compliance with securities laws and regulations, Legend failed to implement, follow, or enforce those procedures with a view to preventing numerous securities violations by Jacoby.
113. Legend failed to reasonably supervise Jacoby and Caruso, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act.
114. Legend's failure to supervise further violates FINRA Rule 3010, made applicable to broker-dealers under Utah Admin. Code Rule R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

SIXTH CAUSE OF ACTION

Failure to Maintain Books and Records Under § 61-1-5 of the Act

115. The Division incorporates the allegations of paragraphs 1 through 114 as if fully set forth

herein.

116. SEC Rules 17a-3 and 17a-4 set forth the requirements for broker-dealers to maintain trade records, as well as the period of time such records must be maintained. Section 61-1-5 of the Act requires that a broker-dealer maintain books and records “as the division by rule prescribes...” Rule R164-5-1(C)(1) of the Utah Administrative Code in turn requires that a broker-dealer shall make, maintain, and preserve books and records in compliance with SEC rules 17a-3 and 17a-4.
117. Legend failed to produce trade tickets for nearly half of the trades that took place in K.P.’s account, during a period in which such records were required to be made, maintained and preserved. Legend failed to maintain those books and records as set forth herein, as is required under Section 61-1-5(1) of the Act, and failed to respond to a reasonable request from the Division for those records under Section 61-1-5(5), warranting sanctions under Section 61-1-6(2)(a)(ii)(B) of the Act.

REQUEST FOR RELIEF


The Division requests that, based upon Respondent’s willful violations of the Act, pursuant to § 61-1-6 of the Act, the Commission enter an order censuring it and imposing a fine in the amount of \$125,000.00.

Dated this 18 day of February, 2016



Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:



Jennifer Korb
Assistant Attorney General