FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. FIRST FINANCIAL EQUITY CORPORATION, (CRD No. 16507), and MELISSA A. STROUSE, (CRD No. 3200452). Respondents.	DISCIPLINARY PROCEEDING No. 2013034966701 HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period January 1, 2010 through June 23, 2013, First Financial Equity Corporation ("FFEC" or the "Firm") had numerous supervisory deficiencies. As described below, these deficiencies ranged from failing to establish and maintain an adequate supervisory system, failing to establish written supervisory procedures ("WSPs") to address portions of its business, failing to have adequate WSPs, failing to enforce certain of the WSPs that it did have, and failing to reasonably supervise a registered representative who was charging commission's that the Firm's risk manager deemed excessive.

2. At all relevant times, Melissa A. Strouse ("Strouse") was the Firm's Chief Compliance Officer ("CCO") and was responsible for ensuring that the Firm's compliance and supervision systems operated effectively. In addition to being responsible for FFEC's compliance functions, Strouse had primary supervisory responsibility for the Firm's main office in Scottsdale, Arizona ("Scottsdale OSJ"), where a significant number of the Firm's supervisory failures occurred.

3. FFEC failed to establish and maintain an adequate supervisory system in violation of NASD Rules 3010(a) and 3010(b), FINRA Rule 2360, and FINRA Rule 2010. FFEC failed to establish and maintain procedures regarding the appropriateness of fee-based accounts for Firm customers and had no system in place to address situations where excessive fees may have been charged. FFEC also failed to implement a supervisory system to adequately supervise customer account activity in the Scottsdale OSJ. Moreover, FFEC failed to maintain and enforce a supervisory system, including written procedures, related to the supervision of its options business. In addition to the supervisory deficiencies associated with the Firm's options business, FFEC had a not properly registered individual reviewing option transactions in violation of NASD Rule 1022(f).

4. In addition, FFEC had inadequate WSPs or, in fact, no WSPs for certain aspects of its business. FFEC had inadequate WSPs with respect to the reasonable basis suitability requirements under FINRA Rule 2111 and heightened supervision. The Firm had no WSPs pertaining to the supervision, approval and sale of ETFs. Strouse was responsible for ensuring that the Firm's WSPs were compliant with FINRA Rule 3010. By failing to have adequate WSPs relating to reasonable basis suitability and heightened supervision, and by not having any

WSPs that addressed the Firm's ETF business, FFEC and Strouse violated NASD Rule 3010(b) and FINRA Rule 2010.

5. Similarly, FFEC and Strouse failed to enforce provisions of the Firm's WSPs at the Scottsdale OSJ in violation of NASD Rule 3010(b) and FINRA Rule 2010. WSPs that were not enforced included procedures pertaining to discretionary accounts, excessive trading/ churning reviews, and the requirement that the Firm's WSPs detail its actual processes and procedures.

6. In addition, during the period of July 2012 through April 2013, FFEC failed to reasonably supervise then-registered representative JW, in violation of NASD Rule 3010(a) and FINRA Rule 2010. After FFEC's risk manager identified certain commissions being charged by JW as being excessive, the Firm still failed to take reasonable steps to supervise and address the issue.

7. During the years 2010 and 2011, FFEC's CEO certifications required under FINRA Rule 3130 were inadequate. For the years 2012 and 2013, the Firm did not complete CEO certifications as required. As a result of the foregoing, FFEC violated FINRA Rules 3130 and 2010.

8. Finally, during the period of August 1, 2011 through June 23, 2013, FFEC did not enforce its supervisory control procedures relating to producing managers and, for the years 2010 through 2013, failed to create a report that detailed its system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results as required by NASD Rule 3012 and FFEC's own WSPs. As a result of the foregoing, FFEC violated NASD Rule 3012, NASD Rule 3010(b), and FINRA Rule 2010.

RESPONDENTS AND JURISDICTION

9. FFEC (CRD No. 16507) is a broker-dealer based in Scottsdale, Arizona. It has been a member of FINRA since 1985, and it also is a member of the MSRB. FFEC has approximately 168 registered representatives and maintains approximately fourteen branch offices and fifty-nine non-registered office locations. FFEC conducts a general securities business, including options and ETFs. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over FFEC because: (a) the Firm is currently a FINRA member; and (b) the Complaint charges the Firm with securities-related misconduct committed while it was a FINRA member.

10. Strouse (CRD No. 3200452) has been associated with FFEC since March 1999, where she currently is registered as a general securities representative, a general securities principal, an options principal, and an operations professional. Strouse is FFEC's CCO and has held that position since in or about December 2004. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over Strouse because: (a) she is currently associated with a FINRA member; and (b) the Complaint charges her with securities-related misconduct that took place while she was associated with FFEC.

FIRST CAUSE OF ACTION
Failure to Establish and Maintain an Adequate Supervisory System – FFEC
(Violations of NASD Rules 3010(a), 3010(b), and 1022(f), and FINRA Rules 2360 and 2010)

11. The Department realleges and incorporates by reference paragraphs 1-10 above.

12. NASD Rule 3010(a) requires every FINRA member firm to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD [and FINRA] Rules."

13. NASD Rule 3010(b) requires every member firm to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD [and FINRA]."

Fee-Based Accounts

14. During the period of January 2010 through June 2013, FFEC failed to establish and maintain procedures regarding the appropriateness of fee-based accounts for Firm customers. FFEC failed to have either a system or procedures in place to ensure that advisory products and services were appropriate for customers of the Firm and that charges for such services were reasonable.

15. As a result of the foregoing, FFEC violated NASD Rules 3010(a) and (b), and FINRA Rule 2010.

Customer Account Activity

16. During the period January 2010 through April 2012, the Firm failed to implement a supervisory system to adequately supervise customer account activity in its Scottsdale OSJ, including, monitoring for potential churning and excessive trading, and monitoring discretionary accounts.

17. FFEC failed to implement numerous procedures related to monitoring account activity in the Scottsdale OSJ. Instead, FFEC limited its review to information contained in the following three exception reports: (i) the Mutual Fund A Share Breakpoint and NAV Reinstatement Report; (ii) the Penny Stock Exception Report; and (iii) a Gross Commission over $500 or Principal over $100,000 Exception Report.

18. If a transaction did not appear on one of the three exception reports noted in Complaint Paragraph 17, the underlying account would not be reviewed. The Firm's review of activity in the Scottsdale OSJ did not include, among other items, a review of account statements, trade blotters, order tickets, account performance, or account charges. By conducting only the limited review of activity in the Scottsdale OSJ described above, FFEC's supervisory system was too limited to detect possible violative conduct and, therefore, was inadequate.

19. As a result of the foregoing, FFEC violated NASD rule 3010(a) and FINRA Rule 2010.

<u>Options Accounts</u>

20. FINRA Rule 2360(b)(20)(A) requires each member firm that conducts an options business to ensure that its written supervisory procedures adequately address the member's options business. NASD Rule 1022(f) requires that any person who is engaged in the supervision of options sales practices must be registered as an options principal.

21. During the period of January 2010 through June 2013, FFEC failed to maintain and enforce a supervisory system, including written procedures, related to the supervision of its options business conducted at the Scottsdale OSJ.

22. FFEC, in contravention of its WSPs and FINRA/NASD rules, failed to have a registered options principal and/or senior registered options principal conduct daily reviews of options transactions to ensure that there were no improper activities.

23. Rather, up until in or about April 2012, the only options transactions that were reviewed were those identified in one of the three exceptions reports discussed in Complaint Paragraph Nos. 17-18. This system was inadequate for the reasonable supervision of the Firm's options transactions.

24. During the period April 2012 and continuing through June 2013, FFEC had its risk assessment manager, SS, review and supervise options transactions. At no time relevant to the allegations in the Complaint was SS registered as an options principal.

25. As a result of the foregoing, FFEC violated NASD Rules 3010(a), 3010(b), and 1022(f), and FINRA Rules 2360 and 2010.

SECOND CAUSE OF ACTION
Inaccurate WSPs, Inadequate WSPs and Failure to Establish WSPs – FFEC and Strouse
(Violations of NASD Rule 3010(b) and FINRA Rule 2010)

26. The Department realleges and incorporates by reference paragraphs 1-25 above.

Inaccurate WSPs

27. For the period January 2010 through June 2013, the Firm's WSPs designated Strouse as the person responsible for reviewing FFEC's WSPs to ensure that they covered all required areas. Strouse was further charged with ensuring that the WSPs be amended when the Firm either changed or added to its supervisory procedures.

28. During the period of January 2010 through June 2013, the WSPs did not reflect the Firm's actual processes and procedures with respect to the review and/or supervision of customer accounts. Moreover, during this time period, the WSPs were not amended to reflect the Firm's actual procedures.

Inadequate WSPs

29. During the period of January 2010 through June 2013, FFEC's procedures for conducting heightened supervision of registered representatives were inadequate in that the procedures did not detail how surveillance reviews were to be conducted, the frequency of the reviews, and how the reviews were to be evidenced. As described above in Complaint Paragraph

13, NASD Rule 3010(b) requires a member firm to establish, maintain and enforce written procedures to supervise its securities business.

30. Similarly, during the period of July 9, 2012 through June 2013, FFEC had inadequate procedures with respect to the reasonable basis suitability requirements under FINRA Rule 2111 in that, the Firm had inadequate processes and procedures to ensure that requisite customer information was obtained prior to Firm representatives recommending securities and/or investment strategies involving securities to Firm customers.

Failure to Establish WSPs

31. Finally, for the period of January 2010 through June 2013, although FFEC recommended and sold ETFs (including leveraged and inverse ETFs) to its customers, FFEC did not have any written procedures for the supervision, approval, and sale of ETFs. At all relevant times, the Firm's business included the purchase and sale of ETFs, including, but not limited to inverse and leveraged ETFs.

32. At all relevant times, Strouse was responsible for FFEC's WSPs, including, but not limited to, ensuring the adequacy of the same and compliance with Rule 3010.

33. As a result of the foregoing conduct, FFEC and Strouse violated NASD Rule 3010(b) and FINRA Rule 2010.

THIRD CAUSE OF ACTION
Failure to Enforce WSPs – FFEC and Strouse
(Violations of NASD Rule 3010(b) and FINRA Rule 2010)

34. The Department realleges and incorporates by reference paragraphs 1-33 above.

Discretionary Trading

35. FFEC's WSPs required the designated supervisor to promptly approve, in writing, each order entered for discretionary accounts. The WSPs further required the designated

supervisor to review discretionary accounts frequently to detect and prevent activity which may be excessive in size or frequency.

36. In addition, FFEC's WSPs required the designated supervisor to conduct monthly reviews of discretionary account statements to identify potential areas of concern such as possible churning, excessive trading, suitability issues, or other unusual trading patterns.

37. During the period January 2010 through April 2012, Strouse was the designated supervisor charged with performing the tasks identified in Complaint Paragraphs 35 and 36.

38. During this time period, however, the discretionary account procedures detailed in Complaint Paragraphs 35 and 36 were not enforced. Specifically, for the period January 2010 through April 2012, Strouse did not approve, in writing, each order entered for discretionary accounts and did not review discretionary account statements for the Scottsdale OSJ and, therefore, failed to enforce FFEC's WSPs in this regard. As described above in Complaint Paragraph 13, NASD Rule 3010(b) requires a member firm to establish, maintain and enforce written procedures to supervise its securities business and municipal securities business, respectively.

Reviews for Churning/Excessive Commissions

39. During the period January 2010 through April 2012, Strouse was the designated supervisor for the Scottsdale OSJ responsible for reviewing for churning and excessive trading. The Firm's WSP's required the designated supervisor to review, on at least a monthly basis, the purchase and sales blotter, customer accounts, subscription documents and commission reports, for churning and excessive trading.

40. During the period of January 2010 through April 2012, however, Strouse did not conduct the churning/excessive trading review detailed in Complaint Paragraph 39 for the Scottsdale OSJ.

41. As a result of the foregoing conduct, FFEC and Strouse violated NASD Rule 3010(b) and FINRA Rule 2010.

FOURTH CAUSE OF ACTION
Failure to Reasonably Supervise Registered Representative JW – FFEC
(Violations of NASD Rule 3010(a) and FINRA Rule 2010)

42. The Department realleges and incorporates by reference paragraphs 1-41 above.

43. During the period of July 2012 through April 2013, FFEC failed to reasonably supervise registered representative JW. Specifically, after FFEC's risk manager identified certain commissions being charged by JW as being excessive, the Firm failed to take reasonable steps to supervise and address the same. As discussed in Complaint Paragraph 12, NASD Rule 3010(a) requires every FINRA member firm to "establish and maintain a system to supervise the activities of each registered representative[.]"

44. At all relevant times, JW was the FFEC registered representative assigned to separate accounts held DB and RB, who are husband and wife. During the time period in question, JW had discretionary trading authority over DB's and RB's accounts held at the Firm.

45. In or about April 2012, FFEC's risk manager, SS, identified the commissions being paid by DB and RB as being problematic and excessive when compared to the total amount of assets JW had under management. SS prepared spreadsheets of his findings and presented them to FFEC President, GF, and Strouse in May or June 2012.

46. In June 2012, GF and SS met with JW to discuss DB's and RB's accounts. During this meeting, it was agreed that JW would reduce the commissions charged to these two

customers to \$35 per transaction for the remainder of the year. Notes maintained by SS regarding this meeting provide, in relevant part, that the Firm "will continue to monitor accounts with eye on commissions."

47. JW failed to adhere to the \$35 commission charge in DBs accounts. In July 2012, JW charged commissions in DB's accounts in the amounts of \$50 to \$75 per transaction. In August 2012, JW charged commissions in DB's accounts the amounts of \$35 to \$75 per transaction. Commencing in September 2012 and continuing through April 2013, commissions charged by JW in DB's accounts ranged from approximately \$182.47 to \$911.97 per transaction.

48. JW also failed to adhere to the \$35 commission charge in RB's accounts. During the period of July 19, 2012 through August 23, 2012, JW charged commissions in RB's accounts in the amount of \$75 per transaction. Subsequent to August 23rd, standard commissions were charged. From September 2012 through April 2013, commissions charged in RB's accounts ranged from approximately \$195.55 to \$1,211.65 per transaction.

49. Had JW charged \$35 per transaction from June 2012 through April 2013, commissions on DB's and RB's accounts would have totaled approximately \$5,900. However, because JW charged the higher standard commissions for the majority of this time period, DB and RB paid commissions totaling approximately \$68,000.

50. At all relevant times, FFEC was aware, or should have been aware, of the commission charges in DB's and RB's accounts. FFEC principals and managers, however, never spoke to JW regarding his failure to adhere to the \$35 commission rate until 2013. Moreover, the Firm took no action until the second quarter of 2013 to address the fact that JW continued to charge commissions that the Firm's risk manager found to be excessive when compared to the total amounts of assets that JW had under management.

51. As a result of the foregoing, FFEC violated NASD Rule 3010(a) and FINRA Rule 2010.

FIFTH CAUSE OF ACTION
Failure to Document/Inadequate 3130 Certifications – FFEC
(Violations of FINRA Rules 3130 and 2010)

52. The Department realleges and incorporates by reference paragraphs 1-51 above.

53. FINRA Rule 3130(b) requires that a firm's CEO annually certify that the firm has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD/FINRA rules, MSRB rules and federal securities laws and regulations. Rule 3130(c) sets forth the detail that must be included in the CEO certification.

54. As discussed in the Second and Third Causes of Action of this Complaint, FFEC failed to implement several sections of its WSPs.

55. The Firm's FINRA Rule 3130 Reports for the years 2010 through 2013 contain the following representations

> On an annual basis, the "Compliance Supervisory Procedures Manual" is reviewed
>
> - To ensure that it is current
> - To ensure they appropriately reflect all business activities
> - To ensure they indicate how activities are actually supervised

These representations are incorrect. As noted in the First, Second and Third Causes of Action, the Firm's WSPs were not current and did not properly reflect how certain activities were supervised. Moreover, the WSPs did not reflect all business activities.

56. For the years 2010 and 2011, GF executed CEO certifications based, in part, on the above inaccurate representations contained in the Rule 3130 reports. As such, these certifications were inadequate

57. For the years 2012 and 2013, the Firm did not complete CEO certifications as required.

58. As a result of the foregoing, FFEC violated FINRA Rules 3130 and 2010.

SIXTH CAUSE OF ACTION
Supervisory Controls Deficiencies – FFEC
(Violations of NASD Rules 3012 and 3010, and FINRA Rule 2010)

59. The Department realleges and incorporates by reference paragraphs 1-58 above.

60. NASD Rule 3012(a)(2)(C) requires that firms establish, maintain and enforce supervisory control policies and procedures that are reasonably designed to provide heightened supervision over activities of producing managers who generate 20% or more of the revenue supervised by the producing manager's supervisor.

61. During the period of August 1, 2011 through June 23, 2013, FFEC did not enforce its supervisory control procedures relating to producing managers. In particular, the Firm did not properly calculate the 20% threshold to identify whether any producing managers should be placed on heightened supervision and failed to identify certain individuals as producing managers.

62. Additionally, for the years 2010 through 2013, FFEC failed to create a report "detailing [its] system of supervisory control policies, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results" as required by its WSPs and NASD Rule 3012.

63. As a result of the foregoing, FFEC violated NASD Rules 3012 and 3010, and FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;

B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and

C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

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