

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Hank M. Werner (CRD No. 1615495),

Michael Stanton (CRD No. 1448072),

and

Legend Securities, Inc. (BD No. 44952),

Respondents.

DISCIPLINARY PROCEEDING
No. 2015048048801

Hearing Officer - DRS

AMENDED COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Hank M. Werner enriched himself at the expense of DC, an elderly, blind, and physically disabled customer, by engaging in a manipulative, deceptive and fraudulent scheme pursuant to which he churned each of the three accounts DC had with Werner.
2. DC is currently 80 years old and a widow. She has been blind since she was a child. She was married to TC, her husband of 40 years, until he passed away in 2012. TC also was blind. Werner first met DC and TC in 1995 and became their broker in that same year.
3. By the time TC died in 2012, DC was in such poor health that she required continuous in-home care, which is something Werner knew.

4. After TC's death, Werner continued as DC's broker, servicing each of her accounts. Werner recommended all of the transactions in DC's accounts and exercised control of DC's accounts. Because of her disabilities, DC relied completely on Werner for account recommendations and information on account activity.
5. Between October 1, 2012 and December 31, 2015, while working at member firms Liberty Partners Financial Services, LLC ("Liberty Partners") and then later at Respondent Legend Securities Inc. ("Legend" or the "Firm"), Werner churned and excessively traded each of DC's three accounts, charging more than \$243,000 in commissions and fees, and causing DC net losses of nearly \$184,000, within just over three years. During this same period, the annualized cost-to-equity ratios for DC's accounts ranged from 64.40 percent to 97.73 percent.
6. As a result of churning DC's accounts, Werner willfully violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), Rule 10b-5 promulgated thereunder, and FINRA Rules 2020 and 2010, as alleged in the First Cause of Action. Because of his excessive and unsuitable trading in the customer's accounts, Werner also violated FINRA Rules 2111 and 2010, as alleged in the Second Cause of Action.
7. In addition, in July 2015, while working at Legend, Werner recommended an unsuitable variable annuity exchange to DC, without having a reasonable basis to believe that the transaction was suitable. Werner earned a commission of \$10,030.00 on the sale. As a result of this conduct, Werner violated FINRA Rules 2330(b), 2111 and 2010, as alleged in the Third Cause of Action.

8. Separately, Respondent Legend and Respondent Michael Stanton, (Legend's Director of Capital markets and the branch office manager of the Firm's main branch office), committed supervisory violations directly involving Werner.
9. Specifically, during the period December 12, 2012 through December 15, 2015, Legend failed to establish, maintain and enforce a reasonable supervisory system by failing to enforce the Firm's written supervisory procedures ("WSPs") for heightened supervision of Werner. Werner was not placed on heightened supervision despite meeting the Firm's criteria for heightened supervision. As a result of this conduct, Legend violated NASD Conduct Rules 3010(a),(b) and FINRA Rules 3110(a),(b) and 2010, as alleged in the Fourth Cause of Action.
10. In addition, during the period February 2013 through December 2015, Legend and Stanton failed to establish, maintain and enforce a reasonable supervisory system, and failed to enforce the Firm's WSPs, to prevent Werner from churning and excessively trading customer DC's brokerage accounts. As a result of this conduct, Legend and Stanton violated NASD Conduct Rules 3010(a),(b) and FINRA Rules 3110(a),(b) and 2010, as alleged in the Fifth Cause of Action

RESPONDENT AND JURISDICTION

Werner

11. Werner first became registered with FINRA as a General Securities Representative ("GS") through a member firm in April 1994. He was registered with seven different member firms between April 1994 and his registration with Liberty Partners, where Werner was registered as a GS and a General Securities Principal ("GP") from July 12, 2012 through December 11, 2012. Werner became registered through Legend as a GS

and GP from December 11, 2012 through March 9, 2016. During the time he was at Liberty Partners and Legend, Werner worked from an office in Northport, New York.

12. On March 9, 2016, Legend filed a Uniform Termination Notice for Securities Industry Registration stating that Werner was terminated as of March 9, 2016.
13. This case emanated from an examination commenced by FINRA's Department of Member Regulation triggered by red flags in Werner's trading at Legend.
14. Although Werner is no longer registered with FINRA or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Werner's registration with Legend, namely, March 9, 2016; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

Stanton

15. Stanton first became registered with FINRA as a GS through a former member firm in 1988. From May 1989 to February 2013, Stanton worked at 12 different FINRA member firms. Since February 25, 2013, Stanton has been registered with FINRA through Legend as a GS, a GP, and a Registered Options Principal. During that time, Stanton has been Legend's Director of Capital markets and the branch office manager of the Firm's main branch office.
16. Stanton is currently associated with a member firm and registered with FINRA. He is therefore subject to FINRA's jurisdiction pursuant to Article V, Section 2 of the FINRA By-Laws.

Legend

17. Legend has been a FINRA member firm since November 1998. Its principal place of business is New York, New York. As of November 2015, Legend employed 51 registered representatives and operated from 9 branch offices.
18. Legend is currently a FINRA member and is therefore subject to FINRA's jurisdiction pursuant to Article IV, Section 1 of the FINRA By-Laws.

**FIRST CAUSE OF ACTION
(Respondent Werner)
Churning – Securities Fraud
Violations of Section 10(b) of the Exchange Act,
Rule 10b-5, and FINRA Rules 2020 and 2010**

19. The Department realleges and incorporates by reference paragraphs 1-18 above.
20. Section 10(b) of the Exchange Act prohibits the use of any “manipulative or deceptive device or contrivance” in connection with the purchase or sale of a security.
21. Rule 10b-5, promulgated thereunder, provides that:
 - a. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
 - b. To employ any device, scheme, or artifice to defraud,
 - c. To make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or

- d. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of a security.
22. FINRA Rule 2020 prohibits the same misconduct as Section 10(b) of the Exchange Act and Rule 10b-5.
23. As set forth below, Werner engaged in a manipulative, deceptive and fraudulent scheme by churning DC's accounts. He acted with intent to defraud and/or with reckless disregard of DC's interests by seeking to maximize his own remuneration at the expense of his client's interests.

Customer DC

24. Customer DC was born in [REDACTED]. Since the age of five, she has been totally blind.
25. In 1971, DC married her husband, TC, who was also totally blind. They had no children. TC died after a long illness in September 2012.
26. Together, DC and TC operated a newsstand for many years, first in the Manhattan Municipal Building and then at the Internal Revenue Service building in Holtsville, New York.
27. DC has acute scoliosis and requires a wheelchair. She also is totally deaf in one ear and partially deaf in the other. She takes several medications and is in general poor health.
28. Since her husband's death in September 2012, DC has required extensive in-home care, including multiple full and part time aides, and her monthly living expenses have increased substantially.

Werner Becomes DC and TC's Broker

29. Werner became DC's and TC's broker in 1995 while Werner was working at a FINRA member firm. Werner took over their accounts from another broker.
30. Over the years, Werner visited occasionally and, after TC's death, Werner visited DC and assisted her with various issues, in addition to acting as her broker. DC and TC considered Werner to be a friend and trusted advisor.
31. Werner spent time with DC and knew not only of the death of DC's husband, but also of DC's poor health, her need for in-home care, and her extraordinary living expenses.
32. For 20 years, DC and, while he was alive, TC, trusted Werner to handle their accounts in a manner that would be in their best interests. They relied on his recommendations to buy and sell securities and relied on him to accurately portray to them the activity and holdings in their accounts.
33. Even though DC received account statements, she was completely blind and had to rely on Werner to let her know about account performance. He recommended all of the transactions in DC's accounts and DC followed all of Werner's recommendations.

Werner Moves to Liberty Partners and DC and TC Follow Him

34. When Werner moved to Liberty Partners in July 2012, DC and TC transferred their accounts to Werner at that firm. At the time Werner joined Liberty Partners, DC and TC each had an IRA account.
35. When DC's IRA account ("IRA Account No. 1") was transferred to Liberty Partners in February 2013, the opening balance was \$158,753.28, and the new account form listed "Growth" as her investment objective and "moderate risk" as her risk tolerance.

36. At the time of her husband's death in September 2012, DC's liquid net worth was approximately \$1.2 million, including fixed annuities, variable annuities, equity securities and certificates of deposits.
37. In late September 2012, DC opened a second IRA account at Liberty Partners ("IRA Account No. 2") into which she transferred the balance from her husband's IRA account, which was \$34,287.28.
38. DC's new account form for IRA Account No. 2 listed "balanced growth" as her investment objective and "moderate risk" as her risk tolerance.

Werner Begins Excessively Trading and Churning DC's IRA Accounts at Liberty Partners

39. Within a few weeks after TC died in September 2012, Werner began trading DC's two IRA Accounts aggressively and without making a reasonable assessment of the suitability of his recommended aggressive trading strategy.
40. In conducting these trades, Werner charged DC either a principal markup or agency commission on every purchase *and* sale.

DC's IRA Account No. 1

41. As of October 1, 2012, the opening balance of DC's IRA Account No. 1 at Liberty Partners was \$156,694.61. Between October 1, 2012 and December 11, 2012, the date on which Werner left Liberty Partners, Werner placed 25 trades in DC's IRA Account No. 1, generating \$7,795.64 in commissions and fees. By December 11, 2012, the account had sustained net losses of approximately \$12,000.00. The activity in IRA Account No. 1 at Liberty Partners is summarized in **Schedule A** to the complaint.

DC's IRA Account No. 2

42. DC's IRA Account No. 2 at Liberty Partners was opened on October 1, 2012 with a deposit of \$34,287.28. Between October 1, 2012 and December 11, 2012, Werner placed 21 trades in DC's IRA Account No. 2, generating \$4,087.73 in commissions and fees. By December 11, 2012, the account had sustained net losses of approximately \$4,000. The activity in IRA Account No. 2 at Liberty Partners is summarized in **Schedule B** to the complaint.

Werner Moves to Legend Where He Continues to Churn and Excessively Trade DC's Accounts

43. On December 11, 2012, Werner became associated with Legend. DC agreed to follow Werner, and her two IRA Accounts were transferred to Legend in February 2013.
44. As soon as DC's accounts were opened at Legend, Werner resumed trading her accounts aggressively and without making a reasonable assessment of the suitability of his recommended aggressive trading strategy. Werner also continued to charge DC either a principal markup or agency commission on every purchase and sale. While at Liberty Partners Werner generally charged DC a markup or commission between 2.50 and 3.00% of the principal amount of the transaction. After Werner joined Legend, he raised his markups and commissions on DC's trades to between 3.75 and 5.00% of the principal amount of the transaction, an increase of over 40 percent.
45. Between February 1, 2013 and December 2015, Werner placed 675 trades in DC's accounts at Legend, generating \$231,546.83 in commissions and fees, and \$177,890.42 in total net losses for DC. The activity in the accounts is described below.
46. Based on the level of trading and commissions charged, there was little to no possibility that DC would break even, let alone profit from such a trading strategy.

DC's IRA Account No. 1

47. As of February 2013, the opening account value of DC's IRA Account No. 1 at Legend was \$149,809.39. Between February 2013 and December 2015, Werner placed 333 trades in IRA Account No. 1, generating \$126,282.07 in commissions and fees. The annualized cost-to-equity ratio was 78.86%, and the annualized turnover rate was 9.55. Between February 2013 and December 2015, the account sustained net losses of \$87,391.27. The activity in IRA Account No. 1 at Legend is also summarized in **Schedule A** to the complaint.

DC's IRA Account No. 2.

48. As of February 2013, the opening account value of DC's IRA Account No. 2 at Legend was \$34,151.74. In September 2014, upon Werner's recommendation, DC liquidated an IRA annuity and deposited the proceeds – \$59,297.75 – in IRA Account No. 2. DC incurred a surrender charge of \$2,013.14 in connection with the liquidation.
49. Between February 2013 and December 2015, Werner placed 284 trades in IRA Account No. 2, generating \$85,498.89 in commissions and fees. The annualized cost-to-equity ratio was 105.07%, and the annualized turnover rate was 12.73. Between February 2013 and December 2015, the account sustained net losses of \$66,785.50. The activity in IRA Account No. 2 at Legend is also summarized in **Schedule B** to the complaint.

DC's Investment Account

50. In July 2015, upon Werner's recommendation, DC opened a third account with Werner at Legend. That account was a non-qualified investment account ("Investment Account") funded with a \$45,000 withdrawal from one of DC's annuities.

51. During the six month period of July 2015 through December 2015, Werner placed 56 transactions in the Investment Account, generating \$19,765.87 in commissions and fees. The cost-to-equity ratio was 80.81% and the turnover rate was 10.34. By December 31, 2015, the Investment Account has sustained losses of \$23,713.65. The activity in the Investment Account at Legend is summarized in **Schedule C** to the complaint.

Werner's Control and Churning of DC's Accounts

52. Throughout the period October 2012 through December 2015, Werner exercised control over each of DC's accounts at Liberty Partners and at Legend. Werner chose all of the stocks that were purchased in DC's accounts and recommended their purchase, including the quantities of shares and the timing of the purchase. Werner also recommended when and how much of the stock owned in DC's accounts would be sold.
53. DC completely relied upon Werner to handle her accounts and trusted Werner to act in her best interests and in accordance with her investment objectives and risk tolerance.
54. Although she was sent statements and trade confirmations, DC, who was totally blind and severely debilitated, was not aware of the nature of the trading in her accounts, which amounted to over 700 trades in more than 200 different securities. The vast majority of the securities were held for less than a month.
55. DC also was not aware of the trading losses in her accounts or the high level of commissions and fees that Werner was charging for these transactions.
56. At all times, DC believed that Werner was managing her accounts in line with her investment objectives, risk tolerance, and best interests.
57. Instead, Werner acted in contravention of DC's investment objectives, risk tolerance, and best interests by excessively and fraudulently trading DC's accounts at Liberty Partners

and at Legend, including by aggressively trading her account and by charging her commissions higher than what he normally charged.

58. Werner aggressively traded DC's accounts with fraudulent intent. He intentionally and/or recklessly turned over the accounts quickly to generate outsized commissions and fees for himself and his firms at the expense of DC and her best interests.
59. The acts and transactions at issue were accomplished by the use of the means of the instrumentalities of interstate commerce, including telephone calls, and through the mail and involved securities transactions on a national securities exchange.
60. As a result of the foregoing conduct, Werner willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

**SECOND CAUSE OF ACTION
(Respondent Werner)
Excessive Trading (Quantitative Suitability)
Violations of FINRA Rules 2111 and 2010**

61. The Department re-alleges and incorporates by reference paragraphs 1 through 60 above.
62. FINRA Rule 2111, which became effective on July 9, 2012, requires that "an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer" in light of the customer's investment objective and financial situation. Furthermore, an associated person who has actual or *de facto* control over a customer account is required to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.

63. FINRA Rule 2010 provides that an associated person, “in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.”
64. Werner exercised control over each of the accounts held by DC at Liberty Partners and at Legend. Werner chose all of the stocks that were purchased in DC’s accounts and recommended their purchase, including the quantities of shares and the timing of the purchase. Werner also recommended when and how much of the stock owned in DC’s accounts would be sold.
65. The trading in DC’s accounts at Liberty Partners and at Legend was excessive, as evidenced by the high turnover rates and cost-to-equity ratios, and it was inconsistent with DC’s investment objectives, risk tolerance, and financial situation.
66. Werner did not have reasonable grounds or a reasonable basis to believe that the recommended transactions were suitable for DC in light of her investment objectives, risk tolerance, and financial situation.
67. As a result of the foregoing conduct, Werner violated FINRA Rules 2111 and 2010.

**THIRD CAUSE OF ACTION
(Respondent Werner)
Unsuitable Recommendations (Qualitative Suitability)
Violations of FINRA Rules 2330(b), 2111 and 2010**

68. The Department re-alleges and incorporates by reference paragraphs 1 through 67 above.
69. FINRA Rule 2330(b) prohibits a representative from recommending the purchase or exchange of a deferred variable annuity (“VA”), unless the representative has a reasonable basis to believe that the purchase or exchange meets the suitability requirements of FINRA Rule 2111 and there is a reasonable basis to believe that the

purchase or exchange is consistent with the suitability determination required by Rule 2330(b)(1)(A).

70. With respect to an exchange of a VA, Rule 2330(b)(1)(B) also requires the representative to take into consideration whether (i) the customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements); and (ii) the customer would benefit from product enhancements and improvements.
71. In December 2007, DC purchased a non-qualified VA sold by Hartford known as “Director M” (the “Hartford VA”), through FINRA member firm A, investing a total of \$157,724.87. DC also purchased “The Hartford’s Lifetime Income Builder II” rider which provided guaranteed lifetime benefit payments. The total mortality and expense charge for the Hartford VA was 1.15% annually, and the fee for the rider was .75% annually. In addition, the Hartford VA had a surrender period of seven years, which would expire in January 2015.
72. In July 2015, while at Legend, Werner recommended to DC that she exchange the Hartford VA for a VA sold by Nationwide called “Nationwide Destination B 2.0.” (the “Nationwide VA”). In August 2015, Werner effected the exchange of the Hartford VA for the Nationwide VA, for an investment of \$166,578, which was the total value of the Hartford VA minus a termination fee. DC also purchased the “Lifetime Income Rider,” which provided guaranteed lifetime benefit payments.

73. The total mortality and expense charge for the Nationwide VA was 1.30% annually, and the fee for the rider was 1.20% annually. In addition, the VA had a surrender period of seven years, during which DC would be charged a surrender charge on annual withdrawals in excess of 10% of the total purchase payments.
74. Legend and Werner received a commission of \$11,799.81 on the sale, of which \$10,030 was paid to Werner.
75. The features of the Hartford VA and the Nationwide VA did not materially differ.
76. Werner's replacement of DC's Hartford VA was unsuitable because the Nationwide VA did not provide any benefit to DC that outweighed the increased fees and expenses and the new surrender periods she incurred as a result of the exchange.
77. Moreover, on the Disclosure Statement concerning the exchange, Werner stated that the primary reason for recommending the exchange was "low returns." No other reason is stated. However, the historical one-year, three year and five year returns on DC's mutual fund portfolio under the Hartford VA were higher than the historical returns for the same periods concerning the proposed mutual fund portfolio under the Nationwide VA recommended by Werner.
78. As set forth above, Werner recommended an unsuitable variable annuity exchange to DC without having a reasonable basis to believe that the transaction was suitable.
79. As a result of this conduct, Werner violated FINRA Rules 2111, 2330(b) and 2010.

FOURTH CAUSE OF ACTION
(Respondent Legend)
Failure to Enforce Heightened Supervisory Procedures for Werner
Violations of NASD Conduct Rules 3010(a),(b)
and FINRA Rules 3110(a),(b) and 2010

80. The Department realleges and incorporates by reference paragraphs 1-79 above.

81. NASD Conduct Rule 3010(a) and FINRA Rule 3110(a), which superseded NASD Conduct Rule 3010(a) on December 1, 2014, require member firms to establish and maintain a system to supervise associated persons reasonably designed to achieve compliance with applicable securities laws and FINRA Rules. NASD Conduct Rule 3010(b) and FINRA Rule 3110(b), which superseded NASD Conduct Rule 3010(b) on December 1, 2014, require each member firm to establish, maintain, and enforce WSPs appropriate to its specific business and that are reasonably designed to achieve compliance with the applicable securities laws and FINRA's rules.
82. Final responsibility for proper supervision of the activities of its registered persons rests with the member firm. A violation of NASD Conduct Rule 3010 and FINRA Rule 3010 is also a violation of FINRA Rule 2010.
83. NASD Notice to Members 97-19, entitled "NASD Regulation and New York Stock Exchange Memorandum Discusses Sweep Report and Provides Guidance on Heightened Supervision Recommendations," states, in relevant part:

this memorandum discusses the profile of registered representatives that should be considered for heightened supervision based on their histories, and contains examples of the types of specifically designed supervisory procedures that firms may want to consider in order to provide a heightened level of scrutiny of their activities.

* * *

A firm that employs persons in the following categories and does not have a standard supervisory policy that addresses such persons should determine whether existing procedures are adequate to provide reasonable supervision or whether heightened supervision is warranted:

- registered representatives with a history of customer complaints, disciplinary actions, or arbitrations;

* * *

- registered representatives terminated from prior employment for what appears to be a significant sales practice or regulatory violation; or

- registered representatives who have had a frequent change of employers within the industry.

84. In addition, NASD Notice to Members 97-19 states that after an individual has been identified as requiring special supervision because of such a history “firms should consider developing and implementing special supervisory procedures structured to address sales practice concerns that are raised by that history.”
85. Legend’s WSPs established that a review must be conducted to determine whether a representative should be placed on heightened supervision if that representative had a history of having been terminated for cause or permitted to resign from a former employer where the termination appears to involve a significant sales practice or regulatory violation, or employment with three or more broker-dealers in the past five years. Specifically, Legend’s WSPs required either: (i) preparation of a written plan of heightened supervision; or (ii) for instances when it was determined not to place the representative on heightened supervision, preparation of a memorandum addressing why existing supervision of the registered representative was adequate.
86. When Werner joined Legend in December 2012, he had been (i) discharged by Firm A in 2009 for failing to timely disclose three tax liens; (ii) discharged by Firm B in 1994 for taking client orders while not registered; and (iii) employed with four different firms between December 2007 and December 2012. Moreover, at the time Legend hired Werner in December 2012, he had five tax liens outstanding against him, totaling \$600,000.
87. In December 2012, Legend identified Werner as a broker who should be subject to heightened supervision. Nevertheless, Legend failed to prepare a plan of heightened supervision, and it failed to place Werner on heightened supervision at any time during his

association with the Firm. The Firm did not prepare any memorandum explaining why the current supervisory system was adequate to supervise someone like Werner.

88. As a result of the foregoing, Legend violated NASD Conduct Rules 3010(a) and (b) (for conduct before December 1, 2014), FINRA Rule 3110(a) and (b) (for conduct on or after December 1, 2014), and FINRA Rule 2010.

**FIFTH CAUSE OF ACTION
(Respondents Legend and Stanton)
Failure to Supervise Werner
Violations of NASD Conduct Rules 3010(a),(b)
and FINRA Rules 3110(a),(b) and 2010**

89. The Department realleges and incorporates by reference paragraphs 1-88 above.
90. Although Werner joined Legend in December 2012, DC's accounts at Liberty Partners were not transferred to Legend until February 2013. In February 2013, IRA Account No. 1 was transferred from Liberty Partners to Legend with a deposit of \$149,809.39 in cash and securities, and IRA Account No. 2 was transferred with a deposit of \$34,151.74 in cash and securities.
91. Legend's new account form for both of DC's IRA Accounts listed "Growth" as DC's account objective and "Moderate" as her risk tolerance. In addition, Legend's new account forms stated that DC was 77 years old and blind.
92. In or around February 2013, Stanton became Werner's supervisor.
93. Legend's WSPs contained a number of procedures that supervisors of registered representatives were required to perform to supervise a broker's activities concerning customer accounts to ensure that the account activity was suitable for customers, including for senior customers such as DC.

94. Specifically (i) Section 10.10, Accounts for Senior Investors, contained procedures for supervising accounts for seniors; (ii) Section 10.15.3, Individual Retirement Accounts (IRAs), contained procedures for supervising IRAs; (iii) Section 10.20, Active Accounts, contained procedures for supervising active accounts; (iv) Section 11.4, Suitability of Recommendations, contained procedures for supervising investments for suitability on an on-going basis; and (v) Section 11.17.4, Review of Account Activity by Designated Supervisors, contained procedures for supervising investments for suitability on a semi-annual basis.
95. Between February 2013 and December 2015, Legend and Stanton failed to adequately implement these procedures in connection with their supervision of Werner's activities concerning DC's accounts.
96. Stanton failed to consider the information set forth in Section 10.10, Accounts for Senior Investors, including DC's income needs to meet future expenses and her health insurance and future requirements to fund her health costs.
97. Stanton also failed to review DC's new account forms and review the transactions in those accounts for consistency with investment objectives, as required by Section 10.15.3, Individual Retirement Accounts (IRAs).
98. Similarly, Stanton failed to review or request to be provided with active account reports to identify accounts for further review, including DC's accounts, failed to consult with Werner regarding account activity, and failed to contact DC, as required by WSP Section 10.20, Active Accounts.
99. Finally, Stanton failed to supervise DC's investments for suitability by reviewing monthly transaction records, conferring with Werner regarding suitability questions,

conferring with compliance, or contacting DC to confirm her understanding of and agreement with transactions in her account, as required by Section 11.4, Suitability of Recommendations, and Section 11.17.4, Review of Account Activity by Designated Supervisors.

100. Legend and Stanton also failed to adequately investigate the red flags described below demonstrating that Werner was churning DC's IRA Accounts and Investment Account.
101. Throughout the time DC's accounts were at Legend, Legend and Stanton failed to adequately investigate, or simply ignored, that Werner engaged in aggressive, "in-and-out" trading, repeatedly purchasing securities and then selling them after relatively short holding periods to purchase other securities, for no apparent reason. Such in-and-out trading is a hallmark of excessive trading and churning. Werner's in-and-out trading was also patently inconsistent with DC's investment objective of "Growth" and "Moderate" risk tolerance.
102. Furthermore, Legend and Stanton ignored that Werner consistently charged commissions of 3.5% - 5%, on both purchases and sales. Commission rates at this level, coupled with a high volume of trading, resulted in high overall commissions being paid to Werner and made it highly unlikely that DC's accounts would be profitable.
103. By no later than May 2013, Legend and Stanton were aware that Werner's trading in DC's accounts was excessive. Specifically, on May 2, 2013, Legend's compliance department sent Stanton a memo concerning DC's IRA Account No. 1 that showed that since February 2013, Werner had generated \$22,050 in commissions from trading in the account, while DC had suffered \$11,331 in losses. Legend and Stanton failed to investigate whether Werner's trading in DC's IRA Account No. 1 was suitable for DC.

104. The May 2013 memo was followed by additional instances where Stanton and Legend became aware that Werner was engaged in active trading in DC's accounts that was not consistent with her investment objectives or risk tolerance and might be excessive. On October 4, 2013, Stanton received a report showing that for September 2013, DC's IRA Account Nos. 1 and 2 each had a *monthly* turnover rate of 1.78, and a monthly commission to equity ratio of 6.5% to 7.0%.
105. On October 18, 2013, Stanton received a memo that showed that over the seven month history of DC's IRA Account No. 1, Werner had generated \$54,762.60 in commissions while DC had suffered \$30,622.26 in losses. The October 18th memo also showed that for the same seven month period, the account's turnover rate was 10.62 and commission-to-equity ratio was 47%.
106. Despite having this information in October 2013, Legend and Stanton failed to investigate whether Werner's trading in DC's accounts was suitable for DC or even to speak with Werner about the activity in DC's account.
107. In addition, on March 4, 2014, Stanton received a report showing that for February 2014, Werner placed a total of 29 trades in DC's IRA Accounts and that Werner charged between 4% and 5% on each purchase and sale. It also showed that six of the trades that month involved purchases and sales of the same securities with Werner generating \$2,020 in commissions for himself.
108. Furthermore, on April 21, 2014, Stanton received a report showing that for March 2014, DC's IRA Account Nos. 1 and 2 had *monthly* turnover rates of 2.19 and 2.59, and *monthly* commission to equity ratios of 7.5% and 7.7%, respectively.

109. Despite the information in the March and April 2014 reports, Legend and Stanton again failed to investigate whether Werner's trading in DC's accounts was unsuitable for DC.
110. Instead, between May 2014 and December 2015, Stanton's supervision of Werner's activity concerning DC's accounts consisted solely of reviewing daily trade blotters, which was insufficient to identify patterns of trading activity that would have shown just how excessively Werner was trading DC's accounts.
111. As a result of Legend's and Stanton's failures to establish and maintain a system to supervise Werner's activities concerning DC's accounts, and to implement Legend's WSPs with respect to the supervision of Werner's activities, Werner churned and excessively traded DC's accounts, as alleged in paragraphs 43 – 67 above and Schedules A – C to the Complaint.
112. As a result of the foregoing, Legend and Stanton violated NASD Conduct Rules 3010(a) and 3010(b), and FINRA Rules 3110(a), 3110(b) and 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) be imposed, including that Respondents be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and

D. make specific findings that Respondent Henry Mark Werner willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, that Werner was subject to Stanton and Legend's supervision, and that Legend and Stanton failed reasonably to supervise Werner with a view towards preventing Werner's violations of the federal securities laws and the rules promulgated thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: November 30, 2016



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SCHEDULE A

Trading Activity DC IRA Account No. 1 – Liberty Partners

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
October 2012	\$156,694.61	\$83,507.28	\$4,750.03
November 2012	\$147,940.51	\$51,021.71	\$3,045.61
December 2012	\$137,770.27	\$2,741.46 ¹	\$0.00
January 2013	\$143,750.10	\$0.00	\$0.00
		Total Purchases	Total Commissions and Fees
		\$134,528.99	\$7,795.64

Trading Activity DC IRA Account No. 1 – Legend

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
February 2013	\$147,373.80	\$145,305.59	\$7,671.81
March 2013	\$139,203.90	\$92,690.31	\$7,666.23
April 2013	\$139,585.16	\$47,477.33	\$4,435.33
May 2013	\$132,617.51	\$129,253.95	\$9,989.93
June 2013	\$128,788.79	\$54,692.31	\$5,336.29
July 2013	\$115,078.28	\$86,932.42	\$6,798.91
August 2013	\$114,534.95	\$74,008.07	\$7,538.69
September 2013	\$105,056.82	\$78,230.07	\$7,184.46
October 2013	\$99,356.05	\$62,801.93	\$5,294.14
November 2013	\$98,707.89	\$39,298.74	\$4,070.06

¹ Comprised of automatic dividend reinvestment.

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
December 2013	\$94,553.59	\$73,546.89	\$5,996.15
January 2014	\$85,313.27	\$45,974.87	\$4,295.19
February 2014	\$79,243.90	\$70,867.75	\$6,449.81
March 2014	\$78,806.92	\$79,555.43	\$6,536.13
April 2014	\$68,988.15	\$43,325.91	\$4,218.98
May 2014	\$59,863.91	\$43,367.13	\$3,226.89
June 2014	\$54,745.00	\$66,573.01	\$5,008.50
July 2014	\$52,140.15	\$39,794.98	\$2,886.96
August 2014	\$46,159.26	\$48,332.91	\$4,036.93
September 2014	\$41,700.05	\$44,667.82	\$4,328.19
October 2014	\$34,542.34	\$47,634.38	\$3,478.62
November 2014	\$29,755.26	\$23,712.31	\$2,058.08
December 2014	\$24,226.32	\$13,833.81	\$1,396.21
January 2014	\$20,381.74	\$16,162.81	\$1,167.75
February 2015	\$17,230.40	\$7,511.34	\$765.37
March 2015	\$13,961.44	\$9,041.68	\$998.35
April 2015	\$11,436.38	\$8,961.02	\$965.17
May 2015	\$9,048.81	\$9,509.88	\$943.45
June 2015	\$6,467.22	\$8,805.53	\$817.95
July 2015	\$3,943.98	\$10,921.28	\$0.00
August 2015	\$3,539.70	\$0.00	\$147.09
September 2015	\$3,057.12	\$2,792.11	\$130.09
October 2015	\$2,741.04	\$2,802.65	\$259.18
November 2015	\$2,881.89	\$0.00	\$40.00
December 2015	\$1,932.08	\$1,150.00	\$145.18
		Total Purchases	Total Commissions and Fees
		\$1,529,536.22	\$126,282.07

SCHEDULE B

Trading Activity DC IRA Account No. 2 – Liberty Partners

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
October 2012	\$34,287.28 (deposit)	\$57,766.06	\$2,973.58
November 2012	\$29,210.88	\$18,873.33	\$1,114.15
December 2012	\$29,706.26	\$0.00	\$0.00
January 2013	\$31,142.15	\$0.00	\$0.00
		Total Purchases	Total Commissions and Fees
		\$76,639.39	\$4,087.73

Trading Activity DC IRA Account No. 2 – Legend

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
February 2013	\$33,529.05	\$32,654.94	\$2,526.50
March 2013	\$31,839.74	\$14,556.45	\$1,314.41
April 2013	\$31,098.58	\$15,805.49	\$1,795.09
May 2013	\$30,434.08	\$21,639.30	\$2,131.44
June 2013	\$28,212.95	\$20,045.25	\$1,647.35
July 2013	\$25,138.31	\$24,703.53	\$1,959.34
August 2013	\$25,402.15	\$19,344.72	\$1,947.13
September 2013	\$23,070.84	\$16,947.24	\$1,556.07
October 2013	\$22,664.27	\$21,132.98	\$1,735.33
November 2013	\$22,187.41	\$15,722.45	\$1,437.02
December 2013	\$21,757.12	\$13,799.22	\$1,192.70
January 2014	\$19,988.85	\$11,082.31	\$1,164.98

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
February 2014	\$18,982.38	\$7,617.94	\$509.73
March 2014	\$19,234.55	\$17,569.87	\$1,592.32
April 2014	\$17,776.65	\$17,103.53	\$1,931.14
May 2014	\$16,452.46	\$21,993.46	\$1,576.60
June 2014	\$15,029.76	\$20,950.90	\$1,698.60
July 2014	\$14,058.30	\$13,078.25	\$976.83
August 2014	\$13,516.60	\$17,683.33	\$1,490.58
September 2014	\$12,616.37	\$11,127.03	\$960.47
October 2014	\$11,624.16	\$75,538.95	\$3,934.80
November 2014	\$67,977.40	\$89,487.76	\$8,248.41
December 2014	\$61,924.67	\$95,428.20	\$8,160.62
January 2014	\$54,574.30	\$59,988.39	\$5,733.08
February 2015	\$45,414.39	\$62,972.05	\$4,864.46
March 2015	\$43,452.74	\$48,323.44	\$4,404.19
April 2015	\$38,893.79	\$37,151.13	\$4,279.05
May 2015	\$35,230.18	\$58,767.75	\$4,316.59
June 2015	\$33,265.79	\$29,330.94	\$2,049.68
July 2015	\$34,467.11	\$31,847.10	\$2,059.63
August 2015	\$31,744.08	\$0.00	\$0.00
September 2015	\$28,908.64	\$25,622.87	\$1,109.14
October 2015	\$24,428.99	\$32,342.75	\$2,503.77
November 2015	\$21,983.07	\$28,007.95	\$1,863.52
December 2015	\$18,200.03	\$6,120.25	\$828.32
		Total Purchases	Total Commissions and Fees
		\$1,035,487.72	\$85,498.89

SCHEDULE C

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
July 2015	\$45,000 (deposit)	\$78,101.57	\$4,939.42
August 2015	\$39,248.45	\$68,380.85	\$6,163.34
September 2015	\$31,843.98	\$22,517.30	\$2,021.44
October 2015	\$27,310.54	\$36,021.68	\$2,995.72
November 2015	\$25,574.80	\$29,228.95	\$2,130.58
December 2015	\$22,784.45	\$18,618.80	\$1,515.37
		Total Purchases	Total Commissions and Fees
		\$252,869.15	\$19,765.87