

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH  
SECURITIES DIVISION  
ONE ASHBURTON PLACE, ROOM 1701  
BOSTON, MASSACHUSETTS 02108**

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IN THE MATTER OF: )  
 )

STOCKCROSS FINANCIAL SERVICES, INC. & )  
PETER EDWARD CUNNINGHAM, )

RESPONDENTS. )  
\_\_\_\_\_ )

) Docket No. E-2017-0104  
)  
)

**ADMINISTRATIVE COMPLAINT**

**I. PRELIMINARY STATEMENT**

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “Enforcement Section” and the “Division,” respectively) files this Administrative Complaint (the “Complaint”) to commence an adjudicatory proceeding against StockCross Financial Services, Inc. and Peter Edward Cunningham (collectively, “Respondents”) for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and the regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the “Regulations”). The Enforcement Section alleges that Respondents engaged in acts and practices in violation of Sections 101 and 204 of the Act and the Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations; 4) censuring Respondents; 5) revoking Respondent Cunningham’s

registration as a broker-dealer agent in the Commonwealth; 6) requiring Respondent StockCross to engage an independent compliance consultant to review and establish written policies and procedures related to the following: a) StockCross's supervisory structure; b) StockCross's supervision of StockCross representatives; c) StockCross's short-term trade monitoring system; d) StockCross's written supervisory procedures regarding short-term UIT trading; and e) StockCross's training of StockCross representatives on UIT product sales and recommendations; 7) requiring Respondents to provide a verified accounting for all proceeds which were received as a result of the alleged wrongdoing; 8) requiring Respondents to pay restitution to fairly compensate investors for all losses attributable to the alleged wrongdoing; 9) requiring Respondents to disgorge all profits and direct or indirect compensation and remuneration received by Respondents in connection with the alleged wrongdoing; 10) imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 11) taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

## **II. SUMMARY**

Respondent Peter Edward Cunningham ("Cunningham") is a registered broker-dealer agent and investment adviser representative with Respondent StockCross Financial Services, Inc. ("StockCross"). StockCross is a registered broker-dealer and investment adviser founded in Boston, Massachusetts and currently based in Beverley Hills, California. For years, Cunningham, under the pretense of supervision by StockCross, has engaged in improper trading practices to the detriment of Massachusetts investors.

Professionally, between 2000 and 2012, Cunningham was the subject of at least six customer complaints, resulting in \$40,000.00 in compensatory damages and a total of at least \$330,139.00 in settlement payments. The four customer complaints between 2000 and 2011 caused Cunningham's termination from his previous employer in December 2011—one month before StockCross hired him.

Personally, between 2010 and 2011, the California Superior Court issued default judgments against Cunningham in two separate civil actions, resulting in orders levying his bank accounts and garnishing his wages to satisfy judgments totaling more than \$106,211.80. Between 2011 and 2012, Cunningham's mortgagee issued at least two notices of intent to foreclose on his residence.

StockCross had knowledge of Cunningham's professional and personal issues, yet left Cunningham to act unchecked, even as the firm promoted him to Managing Director of Investments. StockCross hired and promoted Cunningham in spite of the firm's knowledge of his past disciplinary issues, a decision that ultimately resulted in improper buys and sells of an investment known as a unit investment trust ("UIT") throughout Cunningham's Massachusetts client accounts.

A UIT is a security, comparable to a mutual fund or a closed-end fund, which contains a portfolio typically of stocks or bonds. The trust offers "units" of the portfolio to investors, giving investors the right to distributions of the portfolio. UITs terminate on a specified maturity date predetermined by the sponsor, typically after 15 to 24 months. On the maturity date, the portfolio is sold and proceeds of the sale are distributed to current unit holders.

Because the purchase of a UIT position typically requires payment of a sales charge between 3-5%, frequent purchases generate high commissions for broker-dealers and their agents. In a practice known as “short-term UIT trading,” an agent recommends the sale of UIT units before the maturity date and uses the proceeds of the sale to buy units in another UIT. This practice is injurious to investors because it negates the possibility of receiving both distributions during the life of the UIT and proceeds from the sale of the underlying securities at maturity. Moreover, short-term UIT trading causes investors to incur additional, unnecessary sales charges, thereby subsidizing commissions to the broker-dealer and the agent.

Since 2012, Cunningham has engaged in short-term UIT trading in the accounts of his Massachusetts clients. Of Cunningham’s approximate 180 clients, nearly 60, or approximately 30%, are Massachusetts residents. Statements from Cunningham’s Massachusetts client accounts reflect sales of UITs as soon as 26 days after purchase and sometimes years before the UIT is predetermined to reach its maturity date. Cunningham often used proceeds of the sales to buy other UITs. Concurrently, StockCross maintained its status quo of vague written supervisory procedures and a supervisory structure inadequate to prevent Cunningham’s short-term UIT trading. As a result, Respondents have reaped at least \$753,000.00 in commissions from UIT purchases by Massachusetts residents.

For example, in 2013, Cunningham recommended that a client buy 9,980 units of a UIT, generating a commission of \$2,223.00. Cunningham then recommended the client to sell those units 43 days later, using the proceeds to buy units in two other UITs. In 2014, Cunningham recommended a client to buy 6,173 units of a UIT, generating a

commission of \$1,859.92. Cunningham then recommended the client sell those units 34 days later, using the proceeds to buy units of other UITs.

To induce further UIT purchases, Cunningham misrepresented the status of at least one client's portfolio. In 2013, Cunningham represented that a client held an investment with "\$25,000.00 profit in it." This representation was false. Cunningham made this fraudulent representation to mislead the client to use cash assets to buy a UIT despite the client's liquidity needs. Cunningham generated a commission of \$540.37 in connection with this recommendation to buy a UIT.

Despite the lawsuits, default judgments, and copious customer complaints, StockCross delayed placing Cunningham on heightened supervision until June 20, 2017, when he was placed on heightened supervision for failure to report a non-financial conviction. However, Cunningham continued his practice of short-term UIT trading during this period, unrestrained by StockCross's "supervision" even as all of Cunningham's orders were required to be reviewed.

For example, in August 2017, Cunningham recommended that a client sell 2,310 units of a UIT 86 days after it was bought and 588 days before the specified maturity date. There is no indication that StockCross ever reviewed this transaction, much less gave it "special attention," a requirement of Cunningham's heightened supervision.

StockCross's failures related to short-term UIT trading permeate StockCross's supervisory structure and are not limited to Cunningham. StockCross uses no UIT-specific documentation in the sale of UITs. StockCross has no written supervisory procedure that specifically discusses short-term UIT trading. StockCross has no



procedure to review UIT transactions for short-term UIT trading. Cunningham received no StockCross training regarding UITs as StockCross offers no such training.

Respondents StockCross and Cunningham have acted to line their own pockets with \$753,000 in commissions from Massachusetts residents, manufactured by dishonest short-term UIT trading and at least one fraudulent misrepresentation.

With this action, the Enforcement Section of the Division seeks to stop Respondents from harming Massachusetts investors by engaging in conduct that violates Massachusetts securities laws.

### **III. JURISDICTION AND AUTHORITY**

1. The Division has jurisdiction over matters relating to securities, as provided for by the Act. In part, the Act authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals offering and/or selling securities; and 3) those individuals transacting business as investment advisers within the Commonwealth.
2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act.
3. This proceeding is brought in accordance with Sections 101 and 204 of the Act.
4. The Enforcement Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

#### **IV. RELEVANT TIME PERIOD**

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2012 to the present (the “Relevant Time Period”).

#### **V. RESPONDENTS**

6. StockCross Financial Services, Inc. (“StockCross”) is a California-based registered broker-dealer and investment adviser with an office in Boston, Massachusetts. StockCross has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 6670. StockCross has been registered as a broker-dealer in Massachusetts since 1981.

7. Peter Edward Cunningham (“Cunningham”) is a registered broker-dealer agent and investment adviser representative with StockCross. Cunningham is a resident of Los Angeles, California. Cunningham has a FINRA CRD number of 2400211. Cunningham has been registered as a broker-dealer agent in Massachusetts since 2002.

#### **VI. RELATED PARTY**

8. Ronald James Roberts (“Roberts”) is a registered broker-dealer agent and investment adviser representative with StockCross. Roberts is the individual primarily responsible for supervising Cunningham since hire. Roberts has been registered as a broker-dealer agent in Massachusetts since 2004.

## **VII. STATEMENT OF FACTS**

### **A. The Security**

#### **i. Unit Investment Trusts: A Fixed-Term Security**

7. A unit investment trust (“UIT”) is a security characterized as a pooled investment vehicle with a fixed term and fixed portfolio. The fixed term of a UIT is typically 15 to 24 months. The underlying portfolio typically does not change.

8. The UIT sponsor selects the underlying portfolio of a UIT, typically stocks and bonds, and investors purchase the units of the UIT. Investors are eligible to receive distributions generated by returns on the underlying portfolio.

9. Units of UITs are long-term investments designed to be held for the life of trust. On the specified maturity date determined by the UIT sponsor, the portfolio terminates, it is sold, and profits are distributed among investors, who then may choose to reinvest the proceeds in units of another UIT.

#### **ii. Unit Investment Trusts: A Security in Need of Supervision**

10. The purchase cost of UITs typically includes a sales charge and a creation and development fee. UIT sales charges, typically paid upon purchase of a UIT position, are usually between 3-5% of the total investment, depending on the UIT sponsor. The agent who recommended the investor to purchase the UIT receives a portion of that sales charge. Typically, when the UIT matures, unit holders who elect to reinvest the proceeds in another UIT can do so with reduced charges and fees.

11. An agent who disregards the long-term design of a UIT, recommends the sale of a UIT before the maturity date, and uses the proceeds of the sale to purchase another UIT, harms investors. This practice negates future UIT distributions and prevents the investor



from collecting the proceeds of the sale of the underlying portfolio. Moreover, this practice causes the investor to incur additional sales charges, leading to additional commissions for the broker-dealer and its agent.

12. This practice, referred to as “short-term UIT trading,” was the subject of a targeted exam by FINRA. FINRA has since required that firms adequately supervise representatives’ sales of UITs and provide sufficient training to prevent potentially unsuitable short-term UIT trading.

**B. The Respondents**

**i. Peter Cunningham**

13. Cunningham is a 47-year-old resident of Los Angeles, California. Cunningham graduated from Brookdale Community College with an associate’s degree in business administration. Cunningham testified before the Enforcement Section in connection with this matter on February 13, 2018.

14. Cunningham is currently the Managing Director of Investments for StockCross, working out of the StockCross office in Beverly Hills, California. Cunningham has been registered with StockCross since January 2002.

15. Despite multiple personal debt obligations between 2010 and 2012, StockCross did not place Cunningham on heightened supervision until 2017 for a non-disclosure violation.

*a. Cunningham's Multiple Debt Obligations*

16. During his testimony before the Enforcement Section, Cunningham was asked whether he has been a party to a civil lawsuit. Cunningham indicated that he had been, but only named a small claims matter and another civil matter.

17. Cunningham has been a party to at least two other civil lawsuits.

18. On November 11, 2010, Cunningham was named as a defendant in a civil suit brought by a private day and boarding school in Los Angeles (the "School Action"). In this suit, the school sought damages based on Cunningham's alleged breach of contract when he failed to make payments on three enrollment contracts. Cunningham failed to answer the complaint and the California Superior Court entered a default judgment on December 29, 2010. Following the default, the California Superior Court levied Cunningham's bank accounts and safe deposit boxes to satisfy the \$45,529.52 judgment.

19. On October 17, 2011, Cunningham was named as a defendant in a civil suit brought by a California attorney (the "Attorney Action"). In this suit, the attorney sought damages based on Cunningham's alleged breach of contract when he failed to make payments following services rendered in a domestic matter. Cunningham failed to answer the complaint and the California Superior Court entered a default judgment on December 22, 2011. Following the default, the California Superior Court garnished Cunningham's StockCross wages to satisfy the \$60,682.28 judgment.

20. Following these two civil suits, Cunningham's mortgagee issued at least two notices of intent to foreclose on his residence: one on May 18, 2011 and one on December 31, 2012. To avoid risk of foreclosure or eviction, Cunningham applied and was approved for three separate 401(k) hardship withdrawal applications, totaling approximately \$51,000.00.

21. StockCross had knowledge of the School Action. StockCross had knowledge of the Attorney Action. StockCross had knowledge of Cunningham's risk of foreclosure and his 401(k) hardship withdrawal applications.

b. *Cunningham's History of Discipline*

22. Cunningham is the subject of six disclosed customer complaints: one in 2000; two in 2001; one in 2005; and two in 2012. The 2000 complaint was resolved by a payment of \$40,000.00 in compensatory damages. The 2001 complaints were resolved through settlement payments of \$11,621.00 and \$13,415.00, respectively. The 2005 complaint was resolved through a settlement payment of \$65,103.00. The 2012 complaints were resolved through settlement payments of \$90,000.00 and \$150,000.00.

23. As a result of the three customer complaints between 2000 and 2001, Cunningham's previous employer terminated him in December 2001. Cunningham was hired by StockCross in January 2002.

24. StockCross placed Cunningham on heightened supervision in 2017, triggered by a "failure to report a non-financial conviction."

25. In accordance with his heightened supervision, all of Cunningham's orders were reviewed and "**special attention** [was] paid to any transaction or series of transactions that my [sic] reasonably be construed as not benefiting the customer, such as excessive mark-ups and or activity that generates gross commissions without a viable economic rationale" (emphasis added).

ii. **StockCross Financial Services, Inc.**

26. StockCross was founded in Boston, Massachusetts, and is currently based in Beverly Hills, California.

27. StockCross representatives recommend UITs to their clients.

28. In an internal email from 2012, Roberts represented StockCross's continued recommendation of UITs to be an allocation of "significant volume dollars" in UITs.

29. Despite the significant investment in UITs, StockCross has no written supervisory procedures that directly address short-term UIT trading. Furthermore, StockCross's deficient supervisory structure has no procedure to review potentially improper UIT transactions or prevent short-term UIT trading.

*a. StockCross's Lack of Supervisory Procedures*

30. StockCross uses no UIT-specific documentation in the sales of UITs. StockCross has identified two written supervisory procedures, which generally relate to the sale of fixed-term securities, including UITs.

31. The first written supervisory procedure, from StockCross's Associated Persons Compliance Manual, is titled "Solicited Fixed Income Sales."

32. The second written supervisory procedure, section 9.3 of StockCross's Written Supervisory Procedures, is titled "Suitability of Recommendations," which requires the National Sales Manager to "[r]eview FT daily blotter of all UIT transactions."

33. Neither written supervisory procedure, which only tangentially reference UITs, addresses short-term UIT trading.

*b. StockCross's Deficient Supervisory Structure*

34. When a StockCross agent initiates a transaction, every order is submitted to a service desk. The service desk then approves or denies the trade.

35. StockCross maintains one service desk for all of its agents. The service desk reviews all of Cunningham's transactions, including those relating to UITs.

36. Two individuals staff the service desk. Of those two individuals, only one is a registered individual.

37. During his testimony before the Enforcement Section, Cunningham was unable to state any reason, other than a clerical error, which would trigger a denial by the service desk. In addition, Cunningham was unaware of any compliance review by StockCross following the entry of a UIT sell order.

38. Roberts has supervisory responsibility over Cunningham and the service desk. Roberts primarily works in Las Vegas, Nevada.

**C. The Violative Conduct**

**i. Cunningham's Fraudulent and Dishonest Short-Term UIT Trading**

39. Cunningham has engaged in short-term UIT trading since as early as 2012.

40. Cunningham has approximately 180 clients, nearly 60, or approximately 30%, of which are Massachusetts residents.

41. First Trust Portfolios, L.P. ("First Trust") is Illinois-based provider of investment products, including unit investment trusts.

42. Cunningham has recommended purchases of UITs, a large majority of which are sponsored by First Trust, to several of his clients. Cunningham estimated that commissions from purchases of UITs by clients represented 30% of his total collected commissions.

43. StockCross receives 2.25% of the total investment for every First Trust UIT purchased by a StockCross client. StockCross and its agent then divide that sum. For UIT purchases recommended by Cunningham, StockCross and Cunningham equally share in the commissions.

44. Purchases of UITs by Massachusetts residents alone have generated more than \$753,000.00 in UIT commissions for Cunningham and StockCross since 2012.



45. Between 2015 and 2017, purchases of UITs have generated more than \$160,000.00 in commissions for Cunningham and StockCross.

46. Between 2012 and 2014, purchases of UITs have generated more than \$593,000.00 in commissions for Cunningham and StockCross.

47. Disregarding the stated maturity date of UITs, Cunningham often recommended the sale of various UITs weeks or months after the initial purchase. The recommended sales have also often come months or years before the UIT's date of maturity. The proceeds of the sale were often used to fund purchases of other UITs.

48. Cunningham's short-term UIT trading eliminated investors' ability to collect or reinvest the proceeds of the sale of the underlying securities of the UIT at maturity and forced investors to bear the cost of additional sales charges and commissions.

49. Upon information and belief, Cunningham engaged in short-term UIT trading multiple times in the accounts of more than three Massachusetts residents.

a. *Investor One*

50. Investor One, a 54-year old Massachusetts resident, is a StockCross client of Cunningham. Investor One became a client in approximately 2008.

51. Since 2012, Cunningham consistently recommended that Investor One buy UITs. Nearly all the UITs recommended to Investor One were sponsored by First Trust.

52. On October 17, 2013, Cunningham recommended that Investor One buy 9,980 units of Market Strength Allocation Select Portfolio Series 10, a UIT sponsored by First Trust. The commission associated with Cunningham's recommendation of this UIT was \$2,223.00.

53. On November 29, 2013, Cunningham recommended that Investor One sell 9,880 units of Market Strength Allocation Select Portfolio Series 10. This UIT's date of maturity was July 27, 2015.

54. Based on Cunningham's recommendation, Investor One held the units of Market Strength Allocation Select Portfolio Series 10 for a total of 43 days. Based on Cunningham's recommendation, Investor One sold units of this UIT 605 days before the date of maturity.

55. On November 29, 2013, funds credited to Investor One's account from the sale of Market Strength Allocation Select Portfolio Series 10 were used to buy two different UITs.

56. On September 30, 2014, Cunningham recommended that Investor One buy 6,173 units of Core Holdings Growth Trust 2014 Fall Series, a UIT sponsored by First Trust. The commission associated with Cunningham's recommendation of this UIT was \$1,859.92.

57. On November 3, 2014, Cunningham recommended the sale of 6,173 units of Core Holdings Growth Trust 2014 Fall Series. This UIT's date of maturity is August 26, 2019.

58. Based on Cunningham's recommendation, Investor One held the units of Core Holdings Growth Trust 2014 Trust Series for a total of 34 days. Based on Cunningham's recommendation, the units of this UIT were sold 1,757 days before the date of maturity.

59. Between November 17, 2014 and November 28, 2014, funds credited to Investor One's account from the sale of Core Holdings Growth Trust 2014 Fall Series and other UITs were used to buy five different UITs.

60. During his testimony before the Enforcement Section, Cunningham stated that Core Holdings Growth Trust 2014 Fall Series was sold in exchange for a high-yield note. However, the only non-UIT investment bought by Investor One in November 2014 occurred on November 28, 2014, a purchase following 11 separate UIT transactions.

61. Although Investor One was aware of her ability to purchase a high-yield note on September 30, 2014, Cunningham was unable to articulate any reason as to why he did not recommend purchasing the note using cash held in Investor One's account.

b. *Investor Two*

62. Investor Two, a 70-year old Massachusetts resident, is a StockCross client of Cunningham. Cunningham stated Investor Two became a client in 2008. Investor Two's account application is dated 1993.

63. Since 2012, Cunningham consistently recommended that Investor Two buy UITs. Nearly all the UITs recommended to Investor Two were sponsored by First Trust.

64. On May 15, 2015, Cunningham recommended that Investor Two buy 1,400 units of Core Holdings Growth Trust 2015 Spring Series, a UIT sponsored by First Trust. The commission associated with this purchase was \$499.94.

65. On June 24, 2015, Cunningham recommended that Investor Two sell 1,200 units of Core Holdings Growth Trust 2015 Spring Series. One day later, Cunningham recommended the sale of the remaining 200 units of Core Holdings Growth Trust 2015 Spring Series. This UIT's date of maturity is February 18, 2020.

66. Based on Cunningham's recommendation, Investor Two held units of Core Holdings Growth Trust 2015 Spring Series for 40 days. Based on Cunningham's

recommendation, Investor Two sold units of this UIT approximately 1,700 days before the date of maturity.

67. Cunningham was unable to articulate any economic benefit to Investor Two following the sale of Core Holdings Growth Trust 2015 Spring Series other than a four cent decrease in the unit price of the Core Holdings Growth Trust 2015 Spring Series.

*c. Investor Three*

68. To further induce his clients to purchase UITs, Cunningham has, on at least one occasion, materially misrepresented the portfolio holdings of a client.

69. Investor Three, an 81-year old Massachusetts resident, is a former StockCross client of Cunningham. Investor Three became a client by inheriting her deceased husband's account in approximately 2008. When Investor Three first gained control of the account, the portfolio was 96.72% equities and options and 0% UITs.

70. Cunningham recommended that Investor Three buy UITs. Nearly all the UITs recommended to Investor Three were sponsored by First Trust.

71. During a phone call on October 17, 2013, Cunningham referenced a \$23,000.00 cash account held in Investor Three's portfolio. Cunningham specifically asked Investor Three whether Investor Three would "need that cash still."

72. Investor Three responded in the affirmative, stating "not yet, but I probably will." Cunningham then stated that Investor Three held "something that has a \$25,000.00 profit in it" that could be eventually sold when a need for liquidity arose.

73. Notwithstanding Investor Three's stated need for liquidity, Cunningham recommended using \$15,000.00 of the cash account to buy a "dividend growth portfolio."

74. During his testimony before the Enforcement Section, Cunningham was directed to review Investor Three's five holdings as indicated in Investor Three's third quarter 2013 account statement. The third quarter ended 17 days before Cunningham recommended the \$15,000.00 "dividend growth portfolio."

75. Between June 30, 2013, and September 30, 2013, Investor Three held positions in a DoubleLine Fund and four UITs. During this period, the portfolio was 61.87% UITs. On September 30, 2013, only one UIT was reported to have an unrealized gain. The unrealized gain of that UIT was \$903.89.

76. There are no purchases reported in Investor Three's account between September 30, 2013 and October 17, 2013.

77. Other than the UIT reported to have a \$903.89 unrealized gain, there is no evidence that any of Investor Three's individual portfolio holdings experienced \$25,000.00 in gains, an appreciation of roughly 2,760%, in the 17 intervening days.

78. On October 22, 2013, Investor Three used cash to buy 1,468 units of Dividend Growth Portfolio Series 2, a UIT sponsored by First Trust, resulting in a debit of \$15,009.71 to the account. The commission associated with the purchase of this UIT was \$540.37.

**ii. StockCross's Failure to Provide Adequate Supervision**

79. There are few substantive reviews of any of Cunningham's trading activity by Roberts or any other individual at StockCross. There are no exception reports generated in connection with Cunningham's short-term UIT trading activity.

80. StockCross was in possession of wage garnishment and bank levy orders by the California Superior Court and had knowledge of Cunningham's 401(k) hardship



withdrawals. However, StockCross did not place Cunningham on heightened supervision until June 2017.

81. StockCross placed Cunningham on “Q 2 Heightened Supervision” for a non-disclosure issue on June 20, 2017. The terms of Cunningham’s supervision included a retroactive review of Cunningham’s trading activity during the second fiscal quarter of 2017, between April 1, 2017, and June 30, 2017, and an ongoing review until August 31, 2017, when Cunningham’s heightened supervision ended.

82. In a document dated July 12, 2017, the branch manager of the Beverley Hills office reported that there was none of Cunningham’s trading “my [sic] be reasonably construed as not benefiting the customer” in the second quarter of 2017. The manager concluded that the results of the review of Cunningham’s transactions “have been satisfactory for the second quarter of 2017.”

83. Despite the terms of Cunningham’s heightened supervision, StockCross’s supervisory structure failed to prevent Cunningham’s short-term UIT trading during a period when all trading activity was to ostensibly be given “special attention.”

84. Between April 28, 2017, and May 30, 2017, Cunningham recommended that Investor One buy 7,310 total units of Disciplined Trust Series 2017-2 Ubiquitous, a UIT sponsored by Advisors Asset Management, Inc. The commission associated with this series of purchases totaled \$2,325.12.

85. On August 24, 2017, Cunningham recommended the sale of 2,310 units of Disciplined Trust Series 2017-2 Ubiquitous to Investor One. This UIT’s date of maturity is April 4, 2019,

86. Based on Cunningham's recommendation, Investor One sold units of Disciplined Trust Series 2017-2 Ubiquitous 86 days after the last purchase. Based on Cunningham's recommendation, Investor One sold units of Disciplined Trust Series 2017-2 Ubiquitous 588 days before the date of maturity. This sale resulted in a credit of \$24,081.88 in Investor One's account.

87. On August 31, 2017, Investor One's account statement reflects a purchase of a JPMorgan Chase note valued at \$25,000.00.

88. There is no documentation that indicates that this short-term UIT trade was ever given "special attention" by Roberts or any other individual at StockCross charged with oversight of Cunningham during the period of Cunningham's heightened supervision.

89. Between November 30, 2016, and December 5, 2016, 14 of Cunningham's Massachusetts client accounts reported buying units in Election Portfolio 2016, a UIT sponsored by First Trust. The total commission associated with these purchases was \$9,232.02.

90. Between January 31, 2017 and February 17, 2017, 13 of Cunningham's Massachusetts client accounts reported a sale of Election Portfolio 2016. This UIT's date of maturity is November 14, 2018.

91. Between February 15, 2017 and March 28, 2017, 17 of Cunningham's Massachusetts client accounts reported buying units in Election Portfolio 2016 Series 2. The total commission associated with these purchases was \$5,926.86.

92. While Cunningham was on heightened supervision, between July 24, 2017, and September 11, 2017, 15 of Cunningham's accounts held by Massachusetts residents

reported a sale of Election Portfolio 2016 Series 2. This UIT's date of maturity is January 18, 2019.

93. Sales of Election Portfolio 2016 occurred at least 635 days before the date of maturity. Sales of Election Portfolio 2016 Series 2 occurred at least 494 days before the date of maturity.

94. There is no documentation indicating that the sales of Election Portfolio 2016 or Election Portfolio 2016, Series 2 were ever given "special attention" by Roberts or any other individual at StockCross charged with oversight of Cunningham during the period of Cunningham's heightened supervision.

95. Since at least 2010, StockCross generated zero exception reports in conjunction with Roberts's review of UIT trading by Cunningham.

96. Cunningham obtained no StockCross training regarding UITs. Cunningham obtained no StockCross written policies or procedures regarding UITs.

## **VIII. VIOLATIONS OF LAW**

### **Count I – Cunningham's Violation of MASS. GEN. LAWS ch. 110A, § 101**

97. Section 101 of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

MASS. GEN. LAWS ch. 110A, § 101.

98. Section 12.204 of the Regulations provides:

(2) Fraudulent Practices of Broker-Dealer and Agents. 950 CMR 12.204(2) identifies practices in the securities business that are associated with schemes to deceive or manipulate. A broker-dealer or agent who engages in one or more of the following practices shall have engaged in an “act, practice or course of business which operates or would operate as a fraud or deceit” as used in M.G.L. c. 110A, § 101. 950 CMR 12.204(2) is not inclusive, and thus, acts or practices not enumerated may also be found fraudulent.

[...]

(g) Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance[.]

950 MASS. CODE REGS. § 12.204(2)(g).

99. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VII above.

100. The conduct of Respondent Peter Edward Cunningham, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

**Count II – Cunningham’s Violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)**

101. Section 204 of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

[...]

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business [.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

102. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VII above.

103. The conduct of Respondent Peter Edward Cunningham, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

**Count III – StockCross’s Violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)**

104. Section 204 of the Act provides:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant

[...]

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter

[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

105. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VII above.

106. The conduct of Respondent StockCross Financial Services, Inc., as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

**Count IV – Respondents’ Violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(B)**

107. Section 204 of the Act provides:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant

[...]

(B) has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor chapter or any rule or order under this chapter or a predecessor chapter[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(B).

108. Section 12.204 of the Regulations provides:

(1) Dishonest and Unethical Practices in the Securities Business. (a) Broker-dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the



following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action:

[...]

3. Inducing trading in a customer's account which is excessive in size and frequency in view of the financial resources and character of the account.

[...]

28. Failing to comply with any applicable provision of FINRA member conduct rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

950 MASS. CODE REGS. § 12.204.

109. Section 12.204 of the Regulations provides:

(b) Agents. Each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of his or her business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices in the securities industry and are thereby grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration or such other action as is appropriate:

[...]

8. Engaging in conduct specified in 950 CMR 12.204(1)(a)1., 2., 3., 4., 5., 6., 10., 11., 12., 13., 18., 19., 22., 23., 27. or 28.

950 MASS. CODE REGS. § 12.204(1)(b)(8).

110. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VII above.

111. The conduct of Respondents StockCross Financial Services, Inc. and Peter Edward Cunningham, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(B).

## **IX. STATUTORY BASIS FOR RELIEF**

Section 407A of the Act provides, in pertinent part:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or

order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

#### **X. PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

#### **XI. RELIEF REQUESTED**

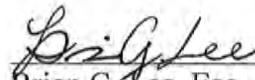
The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact the allegations set forth in paragraphs 1 through 96, inclusive of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations;
- D. Censuring Respondents;
- E. Revoking Respondent Cunningham’s registration as a broker-dealer agent in the Commonwealth;
- F. Requiring Respondent StockCross to engage an independent compliance consultant to review and establish written policies and procedures related to the following: a) StockCross’s supervisory structure; b) StockCross’s supervision of

- StockCross representatives; c) StockCross's short-term trade monitoring system; d) StockCross's written supervisory procedures regarding short-term UIT trading; and e) StockCross's training of StockCross representatives on UIT product sales and recommendations;
- G. Requiring Respondents to provide a verified accounting for all proceeds which were received as a result of the alleged wrongdoing;
- H. Requiring Respondents to pay restitution to fairly compensate investors for all losses attributable to the alleged wrongdoing;
- I. Requiring Respondents to disgorge all profits and direct or indirect compensation and remuneration received by Respondents in connection with the alleged wrongdoing;
- J. Imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
- K. Taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION  
ENFORCEMENT SECTION**

By and through its attorneys,



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Dated: August 14, 2018