KESTRA
FINANCIAL

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006
VIA EMAIL: pubcom@finra.org

Re: Regulatory Notice 26-06

Dear Ms. Mitchell:

Kestra Investment Services, LLC ("Kestra")[1] appreciates the opportunity to provide comments on its view of the issues presented in Regulatory Notice 26-06. Kestra commends FINRA's continued efforts to evaluate whether its arbitration framework promotes fairness, efficiency, and transparency.

While the Notice addresses a range of issues, two warrant focus as we believe they materially affect the fairness and integrity of the forum: (1) potential case manipulation through joinder and arbitrator selection; and (2) deficiencies in the reviews and decisioning on motions and the application of Rule 12206 (the "Six-Year Rule" or "Eligibility Rule"). As discussed below, we believe that in practice, the current joinder and ranking framework permit unfair manipulation of the proceeding format and panel composition, while the Six-Year Rule is applied inconsistently, inaccurately, and lacks clear guidance.

EXECUTIVE SUMMARY

FINRA's current arbitration framework permits, and in practice incentivizes, the aggregation of inherently individualized claims in a manner that distorts both posture and outcome. The result has been undue harm to claimants and respondents alike. On multiple occasions, Kestra has been named in a single arbitration – only to find that the case consists of more than ten separate claimants, each with different facts, different advisors, and different investments. Before the case even begins, the procedural posture is already unstable. Enterprising claimants' attorneys join at least one claimant who is eligible for expedited proceedings in order to fast-track *the entire case*. The result is that expedited claims take *longer* to resolve (because they are tethered with non-qualifying claims), while non-expedited claims exist solely to bring pressure to settle. This harms certain claimants, as much as it harms the broker-dealers. In fact, the sole beneficiary of this is claimants' attorneys, who appear to be using this actuality as a procedural "sword" in the apparent strategy to add preparation and handling pressure, and presumably with the hope to extract a settlement from these non-substantive pressures.

[1] Kestra is a leading independent broker-dealer with a network of over 1800 independent registered representatives. Together with its affiliates, Kestra offers private wealth management, advisory, and institutional services. Kestra administered a combined $169 billion in assets under advisement and reported $977 million in combined revenue as of December 31, 2024.

From there, the process continues to be manipulated. Claimants insist they are a set of two distinct groups represented by separate counsel (though joint solicitation and engagement letters suggest otherwise) so that they may manipulate their way into the ability to control the arbitrator ranking process, with double the strikes and unevenly weighted rankings. Claimants' attorneys use this tactic to ensure that the panel ultimately tasked with deciding threshold issues, including joinder and dispositive motions, potentially lack the background and experience necessary to reasonably and/or effectively manage the complexity before it by systematically striking all attorneys and industry arbitrators, to name a few significant concerns from our direct observations and experiences.

The problems only expands from that point. Claimants often purposely omit the names of the investments at issue, attempting to "reserve the right to amend," which leaves the scope of the case undefined. This is strategic. They are hoping to qualify under the joinder rules by asserting claims with "commonality." Later, they add in dozens of unrelated products and claims with no commonality whatsoever. Kestra is left to reconstruct the case with best guesses, undertaking broad, resource-intensive analyses across numerous products simply to determine which claims *might* be asserted. Discovery compounds the problem. What should be individualized review becomes large-scale document analysis across multiple claimants, multiple accounts, and multiple factual scenarios – all on compressed timelines driven by the inclusion of expedited claimants. At the same time, Kestra must litigate threshold issues such as severance, while simultaneously defending the merits. By the hearing stage, the proceeding can potentially lose any coherent structure. Evidence relating to one claimant will be presented alongside evidence relating to others, creating a cumulative narrative that risks being evaluated in the aggregate rather than on an individualized basis. For example, as we know, issues such as suitability and misrepresentations made as to an investment recommendation are very individualized and not typically aggregate-appropriate matters. The panel must parse distinct claims within a consolidated presentation, increasing the likelihood that outcomes are influenced by volume rather than proof.

By design, the pressure to settle meritless claims intensifies throughout the proceeding. Faced with defending numerous claims simultaneously, each with different exposure and varying merit, Kestra confronts collective settlement pressure that does not reflect the strength or weakness of any individual claim. At the same time, claimants with stronger claims are *diluted* by those with weaker ones, distorting outcomes on both sides. The consequences extend beyond the arbitration itself. Consolidated pleadings trigger CRD disclosure obligations that do not account for individualized conduct, requiring broker dealers to report global settlements that include unrelated claims. These disclosures carry reputational consequences untethered to any single claimant's actions, which are later amplified through publicly-available channels such as Brokercheck.

This is not a series of isolated inefficiencies. It is a continuous chain of procedural distortions that Kestra routinely encounters, beginning at filing and persisting through resolution. FINRA's current framework permits aggregation without providing the structure necessary to manage it and to assure that both Claimants and defending Respondent firms are able to reasonably prepare for and arbitrate matters with the appropriate commonality and nexus of facts and circumstances, thus creating a current situation that is both concerning and untenable. The result

is not efficiency or fairness, but systemic imbalance and prejudice against respondents. FINRA should amend its rules to restore fairness, clarity, and proportionality to the arbitration process.

I. FINRA Should Amend its Rules to Preclude Case Manipulation Through Joinder and Arbitrator Selection.

A. Joinder: An End-Run Around FINRA's Class Action Prohibition

FINRA's joinder framework should be substantially narrowed, as it permits aggregation of inherently individualized claims. In keeping with FINRA's goal of promoting a simplified forum, Rule 12204 prohibits class actions. Rule 12312, however, permits joinder based on common questions or transactions – a standard that may be satisfied by nothing more than a shared product (*even if that product is one of dozens of non-shared products*). The result is a distorted process that operates as a functional end-run around FINRA's prohibition on class actions.

This issue is most pronounced in "product-based" customer arbitrations, where multi-claimant actions are routinely joined notwithstanding the presence of customer-specific claims, often coupled with allegations related to additional products not common to all claimants. The result is a proceeding that satisfies neither the goal of efficiency for expedited claimants, nor the requirement of claimant-specific adjudication. This prejudice is compounded where claims eligible for expedited proceedings are joined with ineligible ones. This results in extreme challenges and unfairness, with eligible claimants sacrificing their right to a timely resolution, and respondents being stripped of their right to a full and fair defense, as they are confronted with dozens of claims simultaneously (often based on different underlying investments sold by different, and unrelated, registered representatives), and on a compressed schedule.[2]

Practical complications in these mega-matters manifest at the outset. In the initial stages, respondents must effectively prepare multiple defenses in parallel – analyzing distinct factual scenarios, different advisors, separate recommendations, multiple products, dozens of accounts, and numerous state laws. At the same time, respondents must preserve and advance severance arguments, requiring litigation of the threshold issue of the propriety of joinder concurrently. Respondents are forced to argue issues such as eligibility and joinder before what has become a claimant-leaning Panel given the manipulated rankings, where each named counsel in these combined actions have been permitted to have separate rankings, despite voluntarily agreeing to be present and arbitrating in one comprehensive set of claims asserted. Compounding the problem, arbitrators are asked to determine whether a case will expand in size and duration *while presiding over that case.* This creates an inherent conflict that undermines confidence in the neutrality and consistency of the process.

[2] Kestra has been forced to defend matters involving suitability claims by up to 21 claimants joined in the same proceeding.

The problems are amplified during discovery, as the claims necessitate large-scale document review, responses, and production on a compressed "expedited" schedule,[3] increasing the risk of error, disputes, and prejudice. Motion practice is also unnecessarily complicated, as discovery disputes in these proceedings are rarely uniform, arising from claimant-specific facts, documents, and communications. Yet, consolidation forces respondents to address these disputes collectively-- at the risk of confusing the Panel.

The prejudice and inefficiencies are most pronounced at the hearing stage, where the proceeding will necessarily devolve into a series of mini-trials, each with its own witnesses, facts, and legal standards. Claimants who are entitled to expedited proceedings must wait through weeks of testimony to have their claims heard. Other witnesses are required to travel – often to an inconvenient forum given the national scope of the class action – and wait to provide testimony that is often only relevant solely to a single claimant. Claimants' attorneys argue that this will save on experts specific to the named product. However, they do not intend to litigate the one product featured in their complaint. Instead, they insert a footnote purporting to reserve the right to amend the specific investments at issue.[4] Later, after the threat of the panel severing their claims has passed, these claimants assert that there are dozens more products at issue.

This dynamic creates substantial and improper settlement pressure throughout the proceeding. Faced with defending multiple claims in a single proceeding – each with varying degrees of merit – respondents must contend with the cumulative risk created by claim aggregation. This often forces respondents to consider global settlements that reflect procedural risk rather than claim-specific factual and legal merit. At the same time, claimants with stronger claims are disadvantaged, as their claims are effectively used as leverage to resolve meritless ones. Further, stronger claims also can potentially receive less in settlement, as the matters are settled "globally." Thus, joinder can effectively distort outcomes for all parties – not just respondents.

The registered representatives whose conduct is implicated in the claims are also unfairly prejudiced by joinder. FINRA's disclosure regime does not account for consolidated proceedings and may require brokers to report a global settlement regardless of whether their conduct formed the basis of liability. This is because Rule 4530 requires brokers to report the existence of any arbitration wherein their conduct is the subject of any claim for damages and the arbitration has

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[3] Again, claimant attorneys routinely join cases eligible for expedited proceedings together with ineligible claims so that they can expedite the entire quasi-class action and increase settlement pressure. If this were not already obvious, it became abundantly clear in an action where Kestra moved for severance and the panel asked claimants 'counsel which case should be retained if severance were granted. For all their "concern" about eligible claimants receiving expedited treatment, claimants' counsel suggested that the panel retain a *non-expedited* matter for the case already underway. Claimants did so with an eye toward refiling the remaining claims to include an expedited matter in hopes of fast-tracking yet another class action.

[4] *See* for example, Statement of Claim attached hereto as **Exhibit A** at 2 ("While the claims focus on the Atlas Growth Partners, L.P. investment, Claimants reserve the right to amend the specific securities/investments and the amount of damages at issue.")

been settled for an amount exceeding $15,000.[5] Because these disclosures are publicly available, such reporting undermines the accuracy of the disclosure framework, affects client relationships, obscures regulatory oversight, and impedes future employment opportunities. These prejudices are then routinely magnified by attorney advertising, which seeks new clients based on BrokerCheck disclosures.[6]

As discussed above, joinder does not promote efficiency in practice. The only practical economy created by joinder appears to lie with claimants' counsel, as it allows them to reduce filing costs and leverage economies of scale in what is effectively class action-based litigation. FINRA should remain a forum for resolving discrete disputes – not a vehicle for aggregating claims to increase leverage or reduce claimant-side costs. The solution is straightforward: FINRA should eliminate joinder of claims in customer arbitrations except in the limited circumstance where **claimants are related in the familial sense**. This approach would preserve the individualized adjudication that FINRA arbitration is designed to provide, while still allowing for consolidation where it is logically and procedurally appropriate.

B. Double Strikes: Manipulating Arbitrator Selection

Rule 12403 permits separately represented parties to submit separate rankings. This has been lamented as unfair by investors and members alike.[7] Moreover, the Rule presupposes genuinely independent representation– it becomes all the more problematic when ambitious counsel deliberately (and manipulatively) structure representation to exploit FINRA's ranking rules.

Kestra has been repeatedly prejudiced in cases where multiple claimants, whose only commonality is the purchase of a certain product (even if just one of many other products at issue by other claimants in this combined action), are allowed to join their claims in a quasi-class-action where they function as a unified litigation group in all areas except arbitrator rankings. This dynamic is driven by claimant attorneys' large-scale joint advertising campaigns,[8] through which

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[5] *See,* for example, the Brokercheck disclosure attached hereto as **Exhibit B** (brokers' name redacted to preserve privacy). Here, Kestra was required to report an entire $375,000 settlement, though the broker at issue only had one of the eleven sets of claimants as clients, and despite that those claimants only even invested $50,000 in the product.

[6] *See*, for example, various advertisements based on BrokerCheck disclosures, attached hereto as cumulative **Exhibit C** (brokers' names redacted to protect privacy).

[7] *See* **Exhibit D,** Kestra's Objection to Director (party names redacted to preserve privacy). *See also* Letter from Andrew M. Greenidge, Epperson & Greenidge, P.A., to FINRA, dated May 8, 2025: https://www.finra.org/rules-guidance/notices/comment/andrew-m-greenidge-esq-comment-regulatory-notice-25-07 (arguing that the Rule prejudices investors where brokerage firms and financial advisors are represented by different law firms; noting that investors often need to sue multiple brokerage firms or a brokerage firm and financial advisor; and suggesting that the process should be no different than in criminal court, where all defendants must share strikes for jury selection).

[8] *See*, for example, Solicitation Letters attached hereto as **Exhibit E**.

they solicit clients and ultimately undertake **joint representation**.[9] These firms then duplicitously appear as **"separate counsel,"** rather than the joint counsel they are actually retained as, for two purposefully divided groups of claimants, ensuring that each "side" has at least one expedited-qualifying claimant so they can force an expedited schedule for the entire matter. They then use this supposedly "distinct" representation to manipulate the rankings. In practice, after they have achieved the desired rankings, **there is no separate or distinct representation**. They coordinate filings; submit combined pleadings, motions, discovery responses, and letters; and speak for each other's "clients" throughout the case, including at hearings before the panel. The only functional distinction asserted between them arises at the arbitrator selection stage, where they seek to double their arbitrator rankings and strikes.

The concern is particularly acute because the potential manipulation is systemic. Kestra has been forced to litigate multiple high stakes class-action-like matters involving this same tactic. First, numerous ineligible claims are joined with an expedited claim so that claimants can take advantage of the fast track. Then, claimants' counsel manipulates the rules of the forum by claiming that they are separately representing two distinct sets of clients so that they may double their strikes. Counsel then coordinate their strikes, with the seeming strategy of eliminating anyone with legal or financial experience. In opposition to any motion to sever, claimants' counsel asserts that there is *really only one product at issue*, only to later retract this position and assert multiple more investments (sometimes dozens of others, making the theory that the case had commonality non-sensical). For the remainder of the case, the attorneys proceed with representing the claimants interchangeably. This evades the due process rights of Kestra to participate meaningfully in the arbitrator selection process and to put forth a full and fair defense. It forces eligible claimants to wait months, if not *years* longer, to be heard rather than receiving expedited proceedings, and exploits stronger cases to leverage meritless ones. With both parties on the losing end of this tactic, the only benefit is to PIABA lawyers. This clearly cannot be what FINRA Dispute Resolution intended as drafted and implemented or in its practical application.

Kestra has been left in an untenable position: either accept an undesirable panel selected through a distorted process, or proceed under significant concern and disagreement.[10] Neither outcome comports with the principles of fairness and neutrality that should underlie FINRA arbitration. To ensure forum integrity, FINRA should amend its rules to provide that all claimants, collectively, and all respondents, collectively, share the same number of strikes during arbitrator selection. This can also largely be resolved by narrowing joinder to appropriate cases.

II. FINRA Should Amend its Rules and Guidance to Specify that Rule 12206 is a Statute of Repose.

For point-of-sale claims, such as suitability, misrepresentation/omission, due diligence, breach of contract, or negligence, the relevant conduct occurs at or before purchase. FINRA should

[9] *See* Joint Engagement Letter, attached hereto as **Exhibit F**, confirming that clients "have retained Gana Weinstein LLP ***and*** Kurta Law to represent [them] in connection with [their] FINRA Arbitration" (emphasis added).

[10] Kestra's complaints to the Director regarding this unfortunate practice have gone unremedied.

clarify that Rule 12206 is a statute of repose (at least for the above-listed claims), barring claims based on transactions occurring more than six years prior to filing. This interpretation is consistent with the text and purpose of Rule 12206 and aligns with the broader regulatory framework, including broker-dealer record-keeping requirements that extend six years.[11] Allowing for expansion beyond this period forces members to defend stale claims without access to the documents necessary to do so fully and fairly for what can be decades and beyond, without documents, information or practical recall by the important parties to such investments. The securities laws of nearly every state recognize this issue and impose a statute of repose. While FINRA claims to be a fair forum, it must be fair to both sides – not just claimants.

The current iteration of the Rule asks when the "occurrence or event" giving rise to the claim occurred. This is largely interpreted by Panels as whenever a claimant later concluded the investment performed poorly, discovered alleged damages, *or retained counsel*. If the product was unsuitable, misrepresented, or inadequately investigated, it was so when recommended and sold. Allowing claimants to restart Rule 12206 based on later disappointment, later losses, or generalized references to "fraud" permits exceptions that swallow the Rule. Indeed, Kestra has been required to defend against numerous claims where claimants have had specific claims for purchases ten, fifteen, and even twenty years ago. Claimants are allowed to skirt the eligibility requirement by simply pleading ignorance and absence of awareness. In practice, the Rule has been rendered meaningless and rarely, if ever, applicable, to any set of facts and circumstances.

FINRA's clarification is necessary because the current iteration invites subjectivity and inconsistent application. Claimants increasingly attempt to plead around Rule 12206 by recasting stale point-of-sale claims as delayed-discovery or fraud-based claims. This requires no proof whatsoever, so each and every stale pleading comes with a unsupported claim of "late discovery" or "fraud." Claimants also increasingly rely on unsupported readings of *Howsam*, and its progeny, to suggest that arbitrators may apply equitable principals without restraint. However, *Howsam* only held that arbitrators decide eligibility; it did not convert Rule 12206 into a tollable statute of limitations or adopt a discovery rule.[12] Absent clear guidance, panels are asked to resolve eligibility with significant discretion, creating an inherent conflict where arbitrators decide whether a case proceeds, without clear guidelines or guideposts with respect to what can be clear disregard for this rule.

In the alternative to clarifying that the Eligibility Rule is a bright-line rule of repose, FINRA should amend the Six-Year Rule and related guidance to require heightened pleading and proof where a claimant contends that post-sale fraud supplies a later "occurrence or event." Each claimant should be required to allege with specificity the conduct at issue, including the act, speaker, timing, and how the conduct prevented earlier discovery. It should not be enough to sprinkle in the word "fraud" or make conclusory allegations. If a claimant cannot meet these

[11] *See* FINRA Rule 4511.

[12] *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 85 (2002). Courts interpreting the rule have repeatedly recognized that eligibility is not subject to equitable tolling. *See, e.g., Edward D. Jones & Co. v. Sorrells*, 957 F.2d 509 (7th Cir. 1992); *Salomon Smith Barney Inc. v. Harvey*, 260 F.3d 1302, 1307–08 (11th Cir. 2001), vacated on unrelated grounds; *Dean Witter Reynolds, Inc. v. McCoy*, 853 F. Supp. 1023, 1030–31 (E.D. Tenn. 1994), *aff'd*, 70 F.3d 1271 (6th Cir. 1995).

standards, then the aged, stale claim should be dismissed. Otherwise, stale claims survive by buzzword, and Rule 12206 loses its function as an eligibility restraint, once again putting pressure on broker dealers to settle claims that often lack merit. If FINRA truly sees the forum as one to promote fairness, its rules cannot be meaningless and designed only to allow claims to proceed that should be time barred and precluded based on the clear timing of the investment and the facts presented. Rather, this rule and its applicability must weigh fairness to both sides—a practice that is at the very heart of FINRA Dispute Resolution's Code of Arbitration Procedure and its practical effectiveness of its arbitration program and the fair and appropriate adjudication of claims as asserted.

Conclusion

Kestra appreciates the opportunity to provide further information or respond to any questions FINRA may have regarding its comments.

Sincerely,

Amanda Hawley

Amanda Hawley, Esq.
Counsel for Kestra Investment Services, LLC

Exhibit
A

BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY

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In the matter of the arbitration between,

MARY NAGLE, ROBERT HAHN, MARKELL BRIDGES, ALICIA THOMAS, THERESA KONIECZNY, PETER FLAHERTY, GARY KRAVERSKY, MARINA KRAVERSKY, RHADA EYDELMAN, DIVYA REDDY, PIERRE HERARD, TRACEY DEAKIN and JUDITH MENICHELLO as trustees for the DEAKIN & MENICHELLO TRUST DTD 9/6/00, MARK MAPPA, AND RACHEL MAPPA

Claimants,

v.

NFP ADVISORY SERVICES, LLC (n/k/a KESTRA INVESTMENT SERVICES, LLC)

Respondent.

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FINRA No.:

STATEMENT OF CLAIM

Claimants, Mary Nagle, Robert Hahn, Markell Bridges, Alicia Thomas, Theresa Konieczny, Peter Flaherty, Gary Kraversky, Marina Kraversky, Rhada Eydelman, Divya Reddy, Pierre Herard, Tracey Deakin and Judith Menichello as trustees for the Deakin & Menichello Trust Dtd 9/6/00, and Mark Mappa ("Claimants")[1] bring this claim pursuant to the Financial Industry Regulatory Authority ("FINRA") Code of Arbitration Procedure by and through their attorneys, Gana Weinstein LLP and Kurta Law, against NFP Advisor Services LLC (n/k/a Kestra Investment Services, LLC) ("NFP" or "Respondent").

[1] All individual Claimants are also bringing claims on behalf of their respective Trusts or Investment Retirement Accounts to the extent such accounts exist and hold relevant securities.

Claimants bring this arbitration proceeding before FINRA pursuant to the agreement entered by the parties and under FINRA Rule 12200, which requires a member or an associated person of a member to arbitrate disputes arising out of the associated person or member's investment related business activities. Claimants request a hearing via Zoom or, alternatively, in Illinois based on residency. Claimants request that this matter be expedited pursuant to FINRA's Expedited Proceedings for Elderly or Seriously Ill Parties.[2]

Claimants seek damages in an unspecified amount, including damages consisting of what a well-managed account would have performed in an amount presently unknown[3], together with interest, punitive damages, attorneys' fees, and all forum fees. Accordingly, Claimants allege, upon information and belief, as follows:

PARTIES

A. Claimants

1. Robert Hahn

Claimant Robert Hahn resides at 11404 Terwilligers Valley Lane, Cincinnati, Ohio 45249, and did so at times relevant to the dispute.

2. Markell Bridges

Claimant Markell Bridges resides at 347 E. 44th Street, Chicago, Illinois 60653, and did so at times relevant to the dispute.

[2] Claimant Mary Nagle is 68 years old.

[3] While the claims focus on the Atlas Growth Partners, L.P. investment, Claimants reserve the right to amend the specific securities/investments and the amount of damages at issue.

3. Peter Flaherty

Claimant Peter Flaherty resides at 841 Moseley Road, Highland Park, Illinois 60035, and did so at times relevant to the dispute.

4. Mary Nagle

Claimant Mary Nagle resides at 21 Bryce Court, South Barrington, Illinois 60010, and did so at times relevant to the dispute.

5. Alicia Thomas

Claimant Alicia Thomas resides at 6709 S. Langley Avenue, Chicago, Illinois 60637, and did so at times relevant to the dispute.

6. Theresa Konieczny

Claimant Theresa Konieczny resides at 465 North Ridgeland Avenue, Elmhurst, Illinois 60126, and did so at times relevant to the dispute.

7. Gary and Marina Kraversky

Claimants Gary and Marina Kraversky reside at 425 Thistly Lane, Lake Zurich, Illinois 60047, and did so at times relevant to the dispute.

8. Divya Reddy

Claimant Divya Reddy resides at 487 Cromwell Ct., Lake Zurich, Illinois 60047, and did so at times relevant to the dispute.

9. Pierre Herard

Claimant Pierre Herard resides at 624 W. Oriole Lane, Mt. Prospect, Illinois 60056, and did so at times relevant to the dispute.

10. Tracey Deakin and Judith Menichello

Claimants Tracey Deakin and Judith Menichello reside at 5755 Balm Ridge Way, San Luis Obispo, California 93401 and did so at times relevant to the dispute.

11. Rhada Eydelman

Claimant Rhada Eydelman resides at 3851 Mission Hills, Northbrook, Illinois 60062, and did so at times relevant to the dispute.

12. Mark Mappa & Rachel Mappa

Claimant Mark Mappa resides at 808 Spruce Street, Deerfield, Illinois 60015, and did so at times relevant to the dispute. Mr. Mappa is a former associated person of Respondent NFP, and served as the financial advisor for the majority of the Claimants during the relevant time period.

B. <u>Respondent</u>

1. NFP Advisor Services, LLC (n/k/a Kestra Investment Services)

Respondent NFP's main address is 5707 Southwest Parkway, Austin, Texas, 78735, United States. NFP is a securities broker and dealer licensed with the U.S. Securities Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA"), among others, with CRD#: 42046 and SEC# 8-49672. Consequently, NFP required to follow the rules and regulations promulgated by FINRA, the SEC, and federal and state securities laws as well as the firm's own internal compliance policies and procedures.

INTRODUCTION

NFP abused Claimants' trust by recommending an investment in Atlas Growth Partners, L.P. ("AGP") - a speculative oil & gas private placement – without conducting proper due diligence or properly training its registered representatives about it. NFP failed to properly conduct the required due diligence into AGP, and accordingly failed to properly train its brokers, including Claimant Mappa, about the investment.

As shown below, NFP's due diligence was unreasonable and beneath industry standards with respect to these investments, especially AGP. AGP was a doomed offering that never acquired oil assets of any value. Meanwhile, AGP made numerous false and misleading statements to investors concerning the company's prospects that should have caused immediate red flags, which precluded NFP from selling AGP. Instead, NFP echoed AGP's talking points, failed to investigate the merits of the claims being made, and fraudulently induced Claimants to delay taking action by concealing that the investment was nearly worthless for several years.

The AGP investment was a complete loss. In sum, Claimants have been deprived of the ability to generate the reasonable returns they were entitled to had they been invested in a well-managed and diversified portfolio of equities, bonds and mutual funds during the time period.

FACTUAL BACKGROUND

A. NFP Background

Respondent NFP has as history of failing to properly train its registered representatives. In fact, during the relevant time period, Respondent was under investigation by FINRA's Department of Enforcement for failing to train and supervise its registered representatives related to the sale of variable annuities, which are complex, high commission investment products, just like Atlas. In 2016, the investigation ended with a finding that:

> **[The firm's] WSPs and training materials failed to provide registered representatives and principals guidance or suitability considerations** for sales of different VA share classes... ***Because of the lack of training and guidance*, registered representatives did not have the tools** to present potential purchasers with a side-by-side comparison of the fees and surrender charges or other information detailing the potential impact of the increased fee if the L-share contract was held by the customer for a long term. **In addition, the firm failed to establish, maintain, and enforce WSPs or provide sufficient guidance or training** to their registered representatives and their principals on the sale of long term income riders with multi-share class VAs, Particularly the combination of l-share contracts with long term income riders.

FINRA Letter of Acceptance, Waiver, and Consent No. 2014039418401 (November 2, 2016). As a result, Respondent paid a $475,000 fine to FINRA.

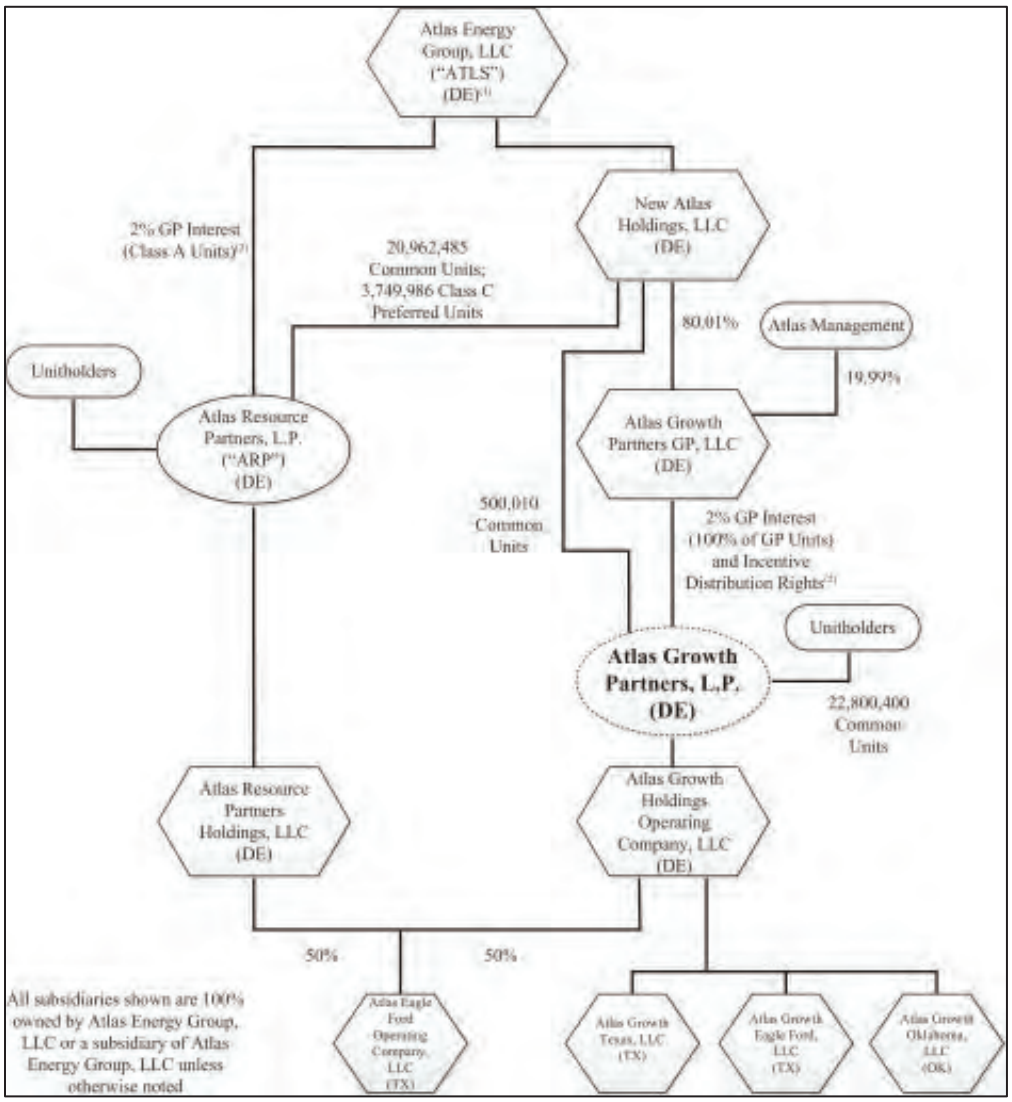
That Respondent failed to adequately train its representatives with respect to AGP, while under active FINRA investigation for nearly identical misconduct is as equally astonishing as it is unacceptable. It also plainly demonstrates the systemic supervisory failures at Respondent during this time.

B. The Atlas Growth Partners, L.P. Offering

Atlas Growth Partners, L.P. was formed in February 2013 for the purpose of acquiring undeveloped oil and gas acreage to drill developmental wells on the properties. AGP was sold as a Regulation D private placement offering under SEC Rule 506(b) and available only to accredited investors. Atlas Energy Group, LLC ("Atlas") was AGPs general partner and functionally controlled AGP.

AGP had no significant operating history, was wholly dependent on Atlas for decision-making, and AGP was subject to all of the business risks and uncertainties of any brand-new business venture. Furthermore, AGP did not have employees or facilities. Instead, AGP relied

exclusively on Atlas to provide facilities, personnel, and to conduct its operations. The tangled web of AGP sponsors, affiliates, operating entities, and managers is illustrated in the following graphic:



AGP suffered from many conflicts of interest. For example:

- Atlas set the compensation for its affiliates without any oversight;
- Atlas had multiple oil and gas partnerships that were in competition with AGP;
- AGP acquired projects from Atlas and those projects constituted a substantial portion of its total projects; and

- AGP's due diligence was not independent in any regard.

AGP also permitted distributions to be paid from sources that would mislead investors into believing the project was successful. AGP used proceeds from debt and new capital to pay distributions to investors. These distributions negatively impacted AGP because it reduced the amount of cash available for investments.

Basic due diligence would have revealed Atlas' troubled pattern of poor performance regarding its drilling partnerships. For example, AGP's offering materials disclosed that of the **over $2.7 billion of investor capital raised by Atlas in prior programs, the total cash distributions back to investors were just $1.0 billion – meaning investors received just approximately 38% of their investment back overall**. For over 12 years from 2003 through December 2015, all of Atlas' programs were unsuccessful. Moreover, 19 of the 21 Atlas sponsored programs during that period returned less than half of the investors' principal. As of December 2015, the "average" cash return of Atlas sponsored programs from 2000 through 2015 was just 53.25%. Further, an analysis of 27 completed programs shows that on average one of Atlas' programs took nearly 20 years to complete.

These poor operating results are in part explained by the exorbitant costs of Atlas' programs in the form of commissions, management fees, and other fees (sometimes hidden) charged in these programs. As reported in Reuters[4], when it analyzed the offerings by Atlas, only 65-70% of investor capital was used for the actual oil and gas projects. In addition, brokerage firms, like Respondent, received up to 8.25% of the investment amount in the form of commissions. Reuters also confirmed in their investigatory report how poorly these programs

[4] https://www.reuters.com/article/us-usa-privateplacements-oilandgas-speci/special-report-for-these-oil-and-gas-bets-the-odds-favor-the-house-idUSKCN0IV1H620141111

performed over many years of analysis. Reuters found that in slightly more than half of 43 private placements Atlas issued, investors lost money or broke even and in 67% of Atlas oil and gas programs, Atlas' fees exceed its investors' returns. While investors lost in more than half of the deals in 29 or 67% of those deals, **Atlas actually out-performed their own investors**. Reuters entitled its article "the odds favor the house" in recognition of Atlas' casino like operation. *Id.*

Respondent failed to adequately investigate or disclose these risks, the high costs, the conflicts of interests, or the poor past performance of Atlas' oil and gas private placement when selling this investment to Claimants.

1. AGP Is a Complete Business Failure

AGP never had a successful year of operation. In 2014, AGP raised $81.6 million, but had revenues of just $5.7 million resulting in a loss of over $17.1 million – a near 21% loss of investor funds in a single year. Yet, AGP paid investors over $1.5 million in distributions in order to create the perception of success. The reasons for the $17.1 million loss included almost $12 million in nebulous "administrative expenses" and nearly $6.9 million in "asset impairment." The asset impairment charges would be a reoccurring annual occurrence and is a write off recognizing that AGP's acquired oil assets were deemed worthless.

By the end of 2015, AGP had raised over $111 million in investor funds and returned only $11 million in distributions. 100% of these distributions were a return of principal to investors from new investor funds. In 2015, AGP generated less than $13 million in revenue, had $31.2 million in expenses, and $18.5 million in investor losses. By the end of 2015, AGP had lost 32% of investor capital and was not profitable.

In 2016, AGP's affiliated companies ran into multiple issues that ultimately impacted AGP's performance. First, Atlas' publicly traded stock plummeted.[5] It was reported that Atlas was struggling "with debt, underperforming assets…" In March 2016, AGP's stock was delisted from the New York Stock Exchange after stockholder equity had fallen below $50 million. In July 2016, Atlas declared bankruptcy. Atlas filed plans with the bankruptcy court seeking to extinguish $900 million in debt. Atlas emerged from bankruptcy on September 1, 2016, and renamed itself as Titan.

In the midst of Atlas' bankruptcy, in September 2016, the SEC alleged that a large Atlas shareholder and a hedge fund manager engaged in insider trading in July 2010.[6] The hedge fund manager, Leon Cooperman, called Atlas a "shitty business" that he wanted to get out of. But when Mr. Cooperman obtained confidential non-public information from Atlas executives about an upcoming asset sale, he decided to purchase more shares and made illicit gains. Mr. Cooperman later settled with the SEC.

AGP's 2016 operations were negatively impacted by the events impacting its affiliates. AGP announced on November 2, 2016, that the company was suspending its primary offering efforts which appear to have constructively ended in the summer of 2016. AGP claimed that the reason was "in light of new regulations and the challenging fund raising environment until such time as market participants have had an opportunity to ascertain the impact of such issues."[7] However, there is no evidence of regulatory or other issues impacting AGP. Instead, the reason for the suspension is mostly likely due to the poor performance of AGP, Atlas' bankruptcy, and legal

[5] Cocklin, Jamison, *Atlas Energy Group Faces NYSE Delisting as Value Plummets, Natural Gas Intelligence* (Dec. 31, 2015) (available at: https://www.naturalgasintel.com/atlas-energy-group-faces-nyse-delisting-as-value-plummets/)
[6] *SEC Charges Hedge Fund Manager Leon Cooperman With Insider Trading* (Sept. 21, 2016) (available at: https://www.sec.gov/news/pressrelease/2016-189.html)
[7] Atlas Growth Partners L.P., 10K, pg. 50 (2016) (available at: https://www.sec.gov/Archives/edgar/data/1572702/000156459017006606/agp-10k_20161231.htm)

risks in continuing the unsuccessful offering. In addition, AGP announced that all distributions to investors were suspended in order to preserve existing capital. The suspension of the distributions at the same time as the suspension of the offering is no coincidence. AGP's distributions were being financed by the ongoing offering and could not be continued without new investor funds.

By June 2016, AGP had only raised $233 million of the $1 billion planned. AGP disclosed that the prematurely aborted offering caused investor damages of $5.4 million in a cryptic disclosure that did not explain the nature of the charge. For 2016, AGP had revenue of only $11 million. The worst part of the report was AGP's $42 million in asset impairment charges "related to our proved and unproved oil and gas properties..."[8] These impairment charges were on top of $14.2 million in asset impairment charges in 2013 and 2014. In total, by 2016, over $56 million or 24% of all of AGP's fundraising had been declared worthless. Combined with other costs and expenses, AGP recognized $74.6 million in costs and a $63.6 million loss in 2016 alone. Most importantly, AGP disclosed for the first time in its SEC filings that the company's "decisions ***raise substantial doubt about our ability to continue as a going concern***."[9] (emphasis added). This language is used when a company is under distress and may resort to bankruptcy.

Over the next two years, AGP would continue to lose more of its estimated oil reserves than it ever brought forth from the ground. In 2018, AGP "recognized $41.8 million of impairment related to our proved oil and gas properties in the Eagle Ford operating area…"[10] In 2018 AGP's

[8] Atlas Growth Partners L.P., 10K, pg. 61 (2016) (available at: https://www.sec.gov/Archives/edgar/data/1572702/000156459017006606/agp-10k_20161231.htm)
[9] Atlas Growth Partners L.P., 10K, pg. 64 (2016) (available at: https://www.sec.gov/Archives/edgar/data/1572702/000156459017006606/agp-10k_20161231.htm)
[10] Atlas Growth Partners L.P., 10K, pg. 59 (2018) (available at: https://www.sec.gov/Archives/edgar/data/1572702/000156459019011728/agp-10k_20181231.htm)

assets dwindled to under $29 million and the company continued to suffer massive operating losses.[11]

ATLAS GROWTH PARTNERS, L.P.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per unit data)

	Years Ended December 31,		
	2018	2017	2016
Revenues:			
Natural gas revenue	$ 225	$ 322	358
Oil revenue	9,708	7,117	11,121
NGLs revenue	508	402	372
Gain (loss) on mark-to-market derivatives	(381)	310	(780)
Total revenues	10,060	8,151	11,071
Costs and expenses:			
Gas and oil production	3,486	2,528	2,660
General and administrative	655	813	571
General and administrative – affiliate	3,291	4,131	9,347
Depreciation, depletion and amortization	5,874	3,576	14,868
Asset impairment	41,762	—	41,879
Total costs and expenses	55,068	11,048	69,325
Operating loss	(45,008)	(2,897)	(58,254)
Other loss	—	—	(5,383)
Net loss	$ (45,008)	$ (2,897)	$ (63,637)

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Simply put, AGP never acquired oil assets of any significant value. All of the representations concerning the wells, their productivity, and proven reserves turned out to be completely unfounded and were simply written off over time. By the end of 2020, almost $113 million in investor assets had been written off as worthless – there was never any oil.

On July 12, 2021, AGP announced that Atlas would be dissolved and terminated. The partnership was formally terminated in December 2021. Unsuspecting investors were shocked to learn that they had suffered a nearly complete loss of their investment.

[11] Atlas Growth Partners L.P., 10K, pg. 50 (2018) (available at: https://www.sec.gov/Archives/edgar/data/1572702/000156459019011728/agp-10k_20181231.htm)
[12] Atlas Growth Partners L.P., 10K, pg. 51 (2018) (available at: https://www.sec.gov/Archives/edgar/data/1572702/000156459019011728/agp-10k_20181231.htm)

As shown below, investors were shocked by the loss because AGP, and the brokers that sold the product, continuously misled investors concerning AGP's performance.

2. AGP and Respondent Misleads Investors On Performance

AGP's failures were masked by a staggering disinformation campaign by AGP that was echoed and often disseminated by Respondent. The goal of the misleading information was to prevent investors from taking earlier legal action against either Respondent or AGP. The communications, both verbal and in writing, painted a rosy picture of AGP and its progress. Incredibly, there were no disclaimers or other warnings concerning the information to balance against the misrepresentations. The information was presented to investors as the truth of AGP's operations when in fact the statements were highly misleading.

- December 2014 - AGP in its annual letter to shareholders stated that "it turned out to be quite a year!" and that "volatility and dislocation creates an even larger opportunity…" AGP claimed that it was "uniquely positioned in the energy sector with no debt…" AGP also claimed that its oil reserves were worth $99 million or $9.27 per unit (offering price of AGP was $10 per share). In summary AGP claimed to be "extremely excited about the prospects for the company."
    - In 2014 AGP suffered a $17.1 million (21% on raised capital) loss while AGP hailed the performance as a win. AGP's balance sheet showed over $122 million in liabilities including $16.5 million in affiliate advances and $12.5 million in accrued well drilling and completion costs to be paid while claiming no debt.
- In February 5, 2015 the company stated "Your company remains in a very strong position…" AGP claimed that they had 61 remaining well locations to develop representing "***over $500 million of drilling investment opportunity***." (emphasis added). $500 million in oil would translate roughly into a per share value of $21.45 – or over a 100% investor return. Thus, AGP was implying that investors could expect multiples on a return of their investment.
- On August 11, 2015, AGP claimed "***it has been a successful period for Atlas Growth Partners…***" (emphasis added).

- AGP only generated less than $13 million in revenue, had $31.2 million in expenses and $18.5 million in investor losses. By the end of 2015 AGP had lost 32% of investor capital on a book basis and was not profitable. This was not a successful period nor was there any basis to claim $500 million in oil had been found.

- On November 15, 2016 AGP claimed that "drilling costs have reduced and operating costs have lowered, ***making AGP's developed and undeveloped properties profitable***." (emphasis added). The suspension of the offering and distributions were hailed as positive developments. Ending the offering "reduce[d] general and administrative costs as well as marketing expenses." In addition, "the distribution suspension is in the best interest of the company and does not change the fact that investors remain in a preferred position on proceeds." Further, "***These steps are being made from a position of strength.***" (emphasis added). AGP claimed that the "***Eagle Ford Shale has been and remains a world-class oil and gas play*** and one of the most active areas…" (emphasis added)

    - AGP's statements to investors conflicted with the massive losses suffered in 2016. The ending of the offering and suspension of dividends were not positive developments as claimed. Revenue was only $11 million while AGP reported almost $42 million in asset impairment charges related to the Eagle Ford shale. AGP's calling the Eagle Ford shale a "world-class oil and gas play" was false and misleading given the massive waste of investor money caused by that specific investment. Most importantly, AGP disclosed in its SEC filings that the company's "decisions raise substantial doubt about our ability to continue as a going concern."[13] All the while claiming to investors that AGP was in "a position of strength."

- On February 2017, AGP told investors that "***AGP remains in a solid position both operationally and financially…"*** (emphasis added)

- In June 2017, AGP told investors "***we remain optimistic your company is poised to succeed.***" (emphasis added). That the investments were "supported by a strong and clean balance sheet with no debt" and a "strong base for long-term growth." AGP also told investors that it was "working towards providing investors with a liquidity event within a five-year period from our June 2015 closing."

- On March 2018, AGP told investors "***2017 was a year of stability and preservation of value for AGP.***" (emphasis added). The company also claimed that "In 2018, AGP management is excited about its business."

    - None of these statements were true. AGP had very little remaining assets and was never operationally profitable or in a solid position to reward shareholders.

[13] Atlas Growth Partners L.P., 10K, pg. 64 (2016) (available at: https://www.sec.gov/Archives/edgar/data/1572702/000156459017006606/agp-10k_20161231.htm)

Investors not only received these letters, but were also invited to listen to investor presentations online from AGP executives and Respondent. These presentations mirrored the type of misrepresentations that were being made in the written materials.

In addition, AGP sent out false and misleading tax information to investors further delaying the truth from being known. Below is the 2020 K-1 received by an investor who made a $35,000 investment in AGP. As can be seen, AGP valued the investment at over $34,000 at the end of 2020 when in fact, AGP's SEC filings showed the company held only negligible assets and had never been profitable in any year since 2014.

Schedule K-1 (Form 1065) — **2020**

Department of the Treasury
Internal Revenue Service

For calendar year 2020, or tax year beginning _____ ending _____

Partner's Share of Income, Deductions, Credits, etc. ▶ See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number [redacted]

B Partnership's name, address, city, state, and ZIP code

ATLAS GROWTH PARTNERS, L.P.
2400 MARKET STREET, SUITE 230
PHILADELPHIA, PA 19103

L Partner's Capital Account Analysis

SEE STATEMENT

Beginning capital account	$	35,156.
Capital contributed during the year	$	
Current year net income (loss)	$	-1,143.
Other increase (decrease) (attach explanation)	$	
Withdrawals & distributions	$(	)
Ending capital account	$	34,013.

AGP and brokers continuously misrepresented AGP as a successful offering that was making great progress on its goals and contained valuable oil resources. In reality, AGP was a

failed offering. In 2021, investors were astonished to learn that not only had AGP not been successful, but that the investment was a complete and total bust.

LEGAL CLAIMS[14]

POINT I.

BREACH OF FIDUCIARY DUTY

Numerous courts around the country have recognized the fiduciary duty that brokerage firms owe to their clients.[15] In addition, FINRA has stated on numerous occasions that the suitability rule and the concept that a brokerage firm's "recommendation must be consistent with the customer's best interests are inextricably intertwined." NTM 12-25, Suitability, pg. 3 (Jul. 9, 2012). This means that a brokerage firm "make only those recommendations that are consistent

[14] The legal claims listed herein are not meant to be an exhaustive list of claims but merely illustrative of the types of claims being made in accordance with FINRA requirements to provide a description. Here, Claimants reserve the right to add or amend the legal claims and theories made herein and provide further detail in Claimants' pre-hearing brief.

[15] *See Mansbach v. Prescott, Ball & Turben,* 598F.2d1017 (6th Cir. 1979) (a securities broker dealer is a fiduciary who owes its customer a high degree of care in transacting business); *Byrley v. Nationwide Life Insurance Co.*, 94 Ohio App. 3d 1 (Erie County 1994) ("broker and a client are in a fiduciary relationship."); *United States v. Wolfson,* 2008 WL 1969730, at *2 (S.D.N.Y. May 5, 2008) ("The essence of the argument is that there is no fiduciary relation between a broker and a customer unless the broker is handling a discretionary account. That is simply not true."); *E.F. Hutton & Co. Inc.*, Exchange Act Release No. 25,887, 41 SEC Docket 413, 418 (July 6, 1988) ("The concept of just and equitable principles of trade embodies basic fiduciary responsibilities…"); *Lipkien v. Krinski,* 182 N.Y.S. 454, 192 A.D. 257, 263 (N.Y. App. Div. 1920) (holding that transferring cash to broker gives rise to fiduciary duty regardless of defendants' claim that they were only clearing broker); *Rolf y. Blyth. Eastman Dillon & Co.,* 570 F.2d 38 (2nd Cir. 1978) (registered representative; as broker for investor, owed investor a fiduciary duty); *Moholt v. Dean Witter Reynolds, Inc.,* 478 F. Supp. 451(D.D.C.1979) (stockbrokers are quasi-fiduciaries and are held to high degree of trustworthiness and fair dealing); *Pachter y. Merrill Lynch. Pierce, Fenner & Johnston. Inc.,* 444 F.Supp. 417 (E.D.N.Y. 1978) (brokerage firm and the account executive assigned to service plaintiff's account were bound, as plaintiff's agents, to exercise "the utmost good faith" toward him); *Thropp v. Bache Halsey Stuart Shields, Inc.,* 650 F.2d 817 (6th Cir. 1981) (as fiduciary, stockbroker stands in special relationship to client and owes him duty to use reasonable care and to act in good faith); *Leboce. S.A. v. Merrill Lynch. Pierce. Fenner & Johnston, Inc.,* 709 F.2d 605 (9th Cir. 1983) (California law imposes fiduciary obligations on broker where broker, for all practical purposes, controls the account); *Jaksich y. Thomson McKinnon Securities, Inc.,* 582 F. Supp. 485 (S.D.N.Y. 1984) (under New York law, securities brokers maintain fiduciary duties to their customers, and relationship between the two parties is one of principal and agent); *Utah State University of Agriculture and Applied Science y. Sutro & Co.,* 646 P.2d 715 (Utah 1982) (stock brokers have an especially high degree of care to ascertain the authority of a trnstee dealing with public funds); *E.F. Hutton & Co. y. Weeks,* 166 Ga.App. 443, 304 S.E.2d 420 (Ga. 1983) (broker's duty to account to its customer is fiduciary in nature, resulting in obligation to exercise the utmost good faith); *Wilder v. Meyer,* 779 F. Supp. 164, 168-69 (S.D. Fla. 1991).

with the customer's best interests prohibits a broker from placing [their] interests ahead of the customer's interests." *Id; see also Raghavan Sathianathan,* Exchange Act Rel. No. 54722, 2006 SEC LEXIS 2572, at *21 (Nov. 8, 2006); *Scott Epstein,* Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217, at *40 n.24 (Jan. 30, 2009) ("In interpreting the suitability rule, we have stated that a [brokerage firm's] 'recommendations must be consistent with his customer's best interests.'"); *Dane S. Faber,* 57 S.E.C. 297, 310, 2004 SEC LEXIS 277, at *23-24 (2004) (stating that investment "recommendations must be consistent with his customer's best interests" and are "not suitable merely because the customer acquiesces in [them]"); *Wendell D. Belden,* 56 S.E.C. 496, 503, 2003 SEC LEXIS 1154, at *11 (2003) ("As we have frequently pointed out, a broker's recommendations must be consistent with his customer's best interests.").

Respondent violated its fiduciary duties owed to Claimants in multiple ways by: (1) recommending an unsuitable investment; (2) omitting material information and providing false and misleading information to Claimants; (3) breach of duty of loyalty through conflicts of interests and placing personal gain above the interests of the Claimants; and (4) failing to conduct due diligence on the investments recommended.

These prongs will be discussed in the following sections.

POINT II.

SUITABILITY

Financial advisers must always make suitable recommendations to their clients and must abide by the suitability rules imposed by FINRA. The scope of these duties is defined in FINRA Rule 2111,[16] also known as the "Suitability Rule," which provides:

[16] Formerly FINRA Rule 2310.

> (a) A member or 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, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

See FINRA Rule 2111 SUITABILITY (emphasis added); *see also* NYSE Rule 405; *In re Larry Ira Klein,* Exchange Act Release. No. 37835 (Oct. 17, 1996) (a brokerage firm may make "only such recommendations as would be consistent with [his customers] financial situations and needs."); *In re James Chase,* Exchange Act Rel. No. 47476 (Mar. 10, 2003), 79 SEC Docket 2892, 2897 ("The SEC concluded that the mere disclosure of risks did not satisfy the suitability duty...[n]ot only must the customer be sufficiently sophisticated to fully understand the risks involved with the investment, the customer also must be able to bear those risks.").

In addition, under FINRA 2090 "Every member shall use reasonable diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer."

Respondent violated its suitability obligations to Claimants by: (i) failing to conduct a reasonable basis analysis of the investment strategy recommended, (ii) failing to make customer-specific suitable recommendations, and (iii) over-concentrating Claimants' accounts in alternative investments and private placement investments. Each aspect of the suitability rule is discussed below.

A. Reasonable Basis and/or Investment Strategy

FINRA has long held that Rule 2310 "include[s] having a reasonable basis for recommending a particular security or strategy." *See Notice to Members 96-32,* 1996 NASD LEXIS 51, 2 (May 1996); *see also F.J. Kaufman and Co.,* 50 S.E.C. 164, 168 (1989). First, a broker-dealer must determine whether the product or strategy is suitable for any customer, regardless of that customer's wealth, willingness to accept risk, age, education, or other individual characteristics. *See In re F.J. Kaufman and Company of Virginia*, 50 S.E.C. 164 ("A broker-dealer must have an 'adequate and reasonable basis' for any recommendation that he makes.").

Respondent failed to conduct reasonable due diligence on AGP, an oil & gas private placement investment, that it recommended. Oil & gas investments come with very high costs, fees, and commissions and have historically underperformed safe investments such as treasuries.

FINRA specifically reminded firms in NTM 03-71 that:

> Given the complex nature of NCIs [Alternative Investments] and the potential for customer harm or confusion, members are cautioned to ensure that their sales conduct procedures fully and accurately address any of the special circumstances presented by the sale of NCIs. Additionally, NASD is concerned that investors, particularly retail investors, may not fully understand the risks associated with these products.

FINRA reminded members offering NCI's, such as AGP, alternatives of their obligations to: (1) conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risks, and suitability of these products.

In NTM 12-03: Heightened Supervision of Complex Products, FINRA noted it had previously issued multiple notice such as NTM 03-71, NTM 05-26, and NTM 10-22 with a "consistent theme in these Notices is that the complexity of a product often necessitates more scrutiny and supervision by a firm." *Id.*

FINRA has provided an in-depth notice on how to conduct due diligence. FINRA firms have an "obligation to conduct a reasonable investigation of the issuer and the securities they recommend in offerings…" Notice to Members ("NTM") 10-22: Regulation D Offerings, at 1; *see also See Hanly v. SEC*, 415 F.2d 589, 595-96 (2d. Cir. 1969); *SEC v. Great Lake Equities Co.*, 1990 U.S. Dist. LEXIS 19819 at *16-17 (E.D. Mich. 1990); *SEC v. North American Research and Development Corp.*, 424 F.2d 63,84 (2d Cir. 1970); *SEC v. Current Financial Services, Inc.*, 100 F. Supp. 2d 1, 14-15 (D.D.C. 2000); *District Business Conduct Committee for District No. 4 v. Everest Securities, Inc.*, 1994 NASD Discip. Lexis 188 (Sept. 2, 1994), *aff'd*, 52 S.E.C.958, 962-63 (Aug. 26, 1996), *aff'd*, 116 F. 3d 1235 (8th Cir. 1997) (stating that firms are required to exercise a "high degree of care" in investigating and independently verifying an issuer's representations and claims); Securities Act Release No. 4445, 27 Fed. Reg. 1415 (Feb. 2, 1962).

FINRA has stated that a brokerage firm has a "special relationship" with a customer "from the fact that in recommending the security, the BD represents to the customer 'that a reasonable investigation has been made and that [its] recommendation rests on the conclusions based on such investigation.'" *Id.* at 3 (*citing Hanly*, 415 F.2d at 597). A brokerage firm "may not rely blindly upon the issuer for information concerning a company," in lieu of conducting its own reasonable investigation. *Id.*at 4 (*citing Everest Securities, Inc. v. US*, 116 F. 3d at 1239 ("reliance on others does not excuse [the respondent's] own lack of investigation").

Indeed, when an issuer seeks to finance a new speculative venture, brokerage firms "must be particularly careful in verifying the issuer's obviously self-serving statements." *Id.* (*citing Everest Securities, Inc.*, 116 F. 3d at 963). In addition, the SEC and courts recognize that a more thorough investigation is required for "securities issued by smaller companies of recent origin." *Id.* at 3 (*citing Hanly*, 415 F.2d at 597). "The fact that a BD's customers may be sophisticated and knowledgeable does not obviate the duty to investigate." *Id.* at 4.

FINRA has defined the following parameters as the *bare minimum* a brokerage firm must document in conducting a reasonable investigation for a Regulation D offering and any subsequent offering for the same issuer:

- the issuer and its management[17];
- the business prospects[18] of the issuer;
- the assets[19] held by or to be acquired by the issuer;
- the claims being made; and
- the intended use of proceeds of the offering
- whether the investor's money is likely to be applied according to the stated use of proceeds
- whether the stated use of proceeds is reasonable in light of the issuer's business purpose and prospects

[17] FINRA provides a 13-point list of items a reasonable brokerage firm would review with issuer and its management. *Id.* at 8-9.
[18] FINRA provides a 5-point list of items a reasonable brokerage firm would review to determine the company's business prospects. *Id.* at 9-10.
[19] FINRA provides a 3-point list of items a reasonable brokerage firm would review to determine the quality of the company's business assets. *Id.* at 9-10.

Id. at 5; *see also In Re Brian Prendergast,* 2001 SEC LEXIS 1533 (Aug. 1, 2001); *Legend Merchant Group, Inc.,* NASD No. C10030058 (July 2004); *Shelman Securities, Inc.,* NASD No. C06030013 (Feb. 2004) (private placement memoranda contained material misrepresentations and omissions about use of proceeds in a previous offering). In order to demonstrate the brokerage firm has performed a reasonable investigation, the firm should retain records documenting both the process and results of its investigation. *Id.* at 7. The records should include descriptions of the meetings held of the investigation, tasks performed, documents and other information reviewed, results of the reviews, and the individuals who attended the meetings or conducted the reviews. *Id.*

In May 2013 the SEC put out an alert concerning oil & gas programs. The SEC noted that "[t]he number of fraud cases related to private securities offerings for oil and gas ventures has increased…"[20] In addition, "[a]nalyzing an oil and gas investment may involve highly technical matters, such as geological findings and new drilling technologies, making it difficult for many individual investors to fully understand." *Id.*

The SEC noted that "***Most importantly, working with a registered broker or investment adviser affords you certain legal protections.***" (emphasis in original). The SEC also stated that even registered brokers sell bad oil and gas deals stating that ***"[e]ven if you are working with a registered broker or adviser, it is not a seal of approval. Oil and gas offerings present many investment risks, and working with a registered individual is not a guarantee that the offering is a sound investment.***" (emphasis in original).

The SEC advises clients to:

> ***Ask for the "due diligence report."*** A registered broker that recommends a private oil and gas offering must independently

[20] SEC Investor Alert: Private Oil and Gas Offerings (May 2, 2013) (available at: https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/investor-45)

> review the investment. The broker may not just rely on the oil and gas promoter for information. Instead, the broker must check the statements and claims about the investment. To know what due diligence your broker performed, ask for a copy of his "due diligence report." This report should outline how the broker evaluated the venture's prospects and claims.

Accordingly, Respondent had a legal obligation to vet and independently investigate AGP and should have been able to provide a due diligence report prior to recommending AGP. Respondent also had an obligation to investigate "any prior history of selling oil and gas offerings and if those offerings failed…" As discussed *supra*, Atlas had a track record of failure that was not only reported in offering documents but also independently investigated by Reuters.

The SEC also pointed out common oil & gas scams relevant to this case including claims that "offerings that claimed they were about to strike oil or gas and they just needed some investment to pay for drilling and completion." The SEC states that what investors aren't told is that the sponsor "owns the drilling company or plans to hire a driller at far less than what he's told you the drilling costs will be while pocketing the difference. ***The promoter makes money from you even if the well comes up dry."*** (emphasis in original). Exactly what happened in the case of AGP.

Another common theme is:

> Overinflated or misrepresented prospects and claims. One common thread among all fraudulent schemes, including those related to oil and gas, are claims that they are about to strike it rich, or that it is likely or even guaranteed that the returns will be too good to pass up. ***When you hear this sales pitch, you should be very skeptical about high returns with little risk that are just around the corner. Higher returns typically mean higher risks of loss.***

One way oil & gas companies defraud investors is by claiming to have proven reserves. The SEC has stated that investors should be skeptical of these claims and ask "Who determined these reserve

estimates? Were they audited or reviewed by an independent third party? Can you review the audit?" In addition "use of terms such as 'reserves' makes it sound like a sure thing." The SEC has stated that "Proved reserves are relatively certain. Probable and possible reserves can mean, in short, a 50% to 10% chance of extracting the estimated amount."

AGP claimed to have massive reserves – including $500 million worth of oil in one letter to investors. As shown below, over 50% AGP's "proved reserves" disappeared in a single year after the offering period closed. This raises the question of how Respondent verified AGP's proved reserves information.

	December 31,	
	2016	2015
Proved reserves:		
Natural gas reserves (MMcf):		
Proved developed reserves	652	802
Proved undeveloped reserves	780	2,306
Total proved reserves of natural gas	1,432	3,108
Oil reserves (MBbl):		
Proved developed reserves	925	1,645
Proved undeveloped reserves	2,462	6,134
Total proved reserves of oil	3,387	7,779
NGL reserves (MBbl):		
Proved developed reserves	100	154
Proved undeveloped reserves	167	472
Total proved reserves of NGL	267	626
Total proved reserves (MMcfe)	23,356	53,539
Standardized measure of discounted future cash flows (in thousands)	$ 17,381	$ 72,462

[21]

One way to evaluate the reserve claims of the sponsor is to get an independent engineering report. The SEC recommends that investors obtain engineering reports. "Did you get a third-party engineering report for the site?...Some operators may employ the expertise of independent third-party engineers and geologists to decide whether it makes sense to drill in an area." The SEC also

[21] Atlas Growth Partners L.P., 10K, pg. 40 (2016) (available at: https://www.sec.gov/Archives/edgar/data/1572702/000156459017006606/agp-10k_20161231.htm)

warns that "[y]ou should also consider whether the engineer or geologist is truly independent. Promoters sometimes use reports prepared by the same engineers that sold them the project or by engineers they employ or use repeatedly."

It is doubtful that Respondent ever conducted a meaningful investigation into AGP or the Atlas sponsoring entities. In sum, Respondent failed to conduct a reasonable investigation into the qualities and performance of the investments recommended and could not form a reasonable basis for their recommendations and the investment strategy implemented in Claimants' accounts.

B. Customer Specific Suitability

The second dimension of FINRA Rule 2310 requires the brokerage firm to have a reasonable basis to believe that the recommendation is suitable for the particular customer based on the customer's investment profile. The investment profile includes items such as: financial situation, tax status, investment objectives, risk tolerance, age, and investment experience. *See* FINRA Rule 2310, Recommendations to Customers (Suitability); *see also In re Larry Ira Klein*, Exchange Act Release. No. 37835 (Oct. 17, 1996) (Brokers may make only such recommendations as would be consistent with the customer's financial situation and needs).

FINRA has also warned that "[a]s investors age, their investment time horizons, goals, risk tolerance and tax status may change…[and] seniors and retirees may have less tolerance for certain types of risk than other investors." NTM 07-43: Senior Investors, pg. 2 (Sept. 2007). FINRA also stated that it would scrutinize "recommendations to seniors…that involve…[p]roducts that have withdrawal penalties or otherwise lack liquidity, such as deferred variable annuities…real estate investments and limited partnerships" *Id.* at 4.

Many brokerage firms claim that if an investor's net worth is sufficient to invest in security that such a fact equates to suitability of high risk investments. In NTM 03-71 FINRA issued a clear warning for firms that qualification does not equate to suitability:

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

NTM 03-71; *In re Arthur Joseph Lewis*, SEC Rel. No. 34-297941991 WL 294317 (Oct. 8, 1991) (The fact that a customer, such as Mrs. McGowan, may be wealthy does not provide a basis for recommending risky investments."); *In re Patrick G. Keel*, SEC Rel. No. 34-31716, 1993 WL 12348 (Jan. 11, 1993) (holding same).

Here, Respondent's failure to properly investigate AGP and train its representatives and supervisors on the features of AGP deprived their representatives of critical information necessary to perform the appropriate suitability analysis.

POINT III.

RESPONDENT EITHER FRAUDULENTLY OR NEGLIGENTLY MADE MATERIAL MISREPRESENTATIONS AND OMITTED MATERIAL INFORMATION IN THE SALE OF THE INVESTMENTS TO CLAIMANTS

A. Federal Securities Law

Section 10(b) of the Securities Exchange Act of 1934 makes it 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 to use or employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Securities and Exchange Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. See 15 U.S.C.S. §78j. The SEC, pursuant to 15 U.S.C.S. §78j, promulgated S.E.C. Rule 10b-5 (codified at 17 C.F.R. § 240.10b-5). In a typical § 78j(b) private action, a plaintiff must prove: (1) a material misrepresentation or omission; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.

B. <u>State Securities Law, Common Law Fraud, and Common Law Negligence</u>

Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, and FINRA Rule 2020, contain anti-fraud provisions that proscribe making material misstatements and omissions in connection with the sales of securities. Rule 10b-5 prohibits making "any untrue statement of a material fact" as well as failing "to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b-5. Respondent and its agents also violated state-specific Blue Sky provisions.

To find Respondent liable for violating the anti-fraud rules, the evidence must establish that: (1) the brokerage firm made misrepresentations or omissions in connection with the purchase or sale of a security; (2) the misrepresentations or omissions were material; and (3) the misrepresentations or omissions were made with scienter, which has been described as the "mental state embracing intent to deceive, manipulate, or defraud." *Dep't of Enforcement v. Abbondante*,

No. C10020090, 2005 NASD Discip. LEXIS 43, at *27 (N.A.C. April 5, 2005), aff'd, Exchange Act Rel. No. 53066, 2006 SEC LEXIS 23 (Jan. 6, 2006) (quoting, *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976)); see *Dane S. Faber*, Exchange Act Rel. No. 49216, 2004 SEC LEXIS 277, at *13-14 & n.11 (Feb. 10, 2004); *SEC v. First Jersey Sec., Inc*., 101 F.3d 1450, 1467 (2d Cir. 1967).

In the absence of fraudulent intent, the element of scienter may be established by proof of reckless conduct. *Dep't of Enforcement v. Gebhart*, No. C02020057, 2005 NASD Discip. LEXIS 40, at *42-43 (N.A.C. May 24, 2005), aff'd, Exchange Act Rel. No. 53136, 2006 SEC LEXIS 93 (Jan. 18, 2006) (citing, *Dep't of Enforcement v. Apgar*, No. C9B020046, 2004 NASD Discip. LEXIS 9, at *16 (N.A.C. May 18, 2004)); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976); Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990). "Reckless conduct has been defined as a highly unreasonable misrepresentation or omission, 'involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care… [presenting] a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'" *Abbondante*, 2005 NASD Discip. LEXIS 43, at *28 (quoting, *Hollinger v. Titan Capital Corp*., 914 F.2d 1564, 1569-71 (9th Cir. 1990)). Further, "the danger of misleading buyers must be actually known or so obvious that any reasonable man would be legally bound as knowing." *Id.*

Here, NFP made numerous material misrepresentations and omissions with respect to the recommended Atlas investments. They made these representations recklessly in an effort to induce Claimants to purchase some of the highest risk, highest cost, and highest commission securities available.

C. <u>Violation of FINRA Rule 2210</u>

The FINRA Rules require firms to provide only accurate and balanced communications, forecasting, marketing, and demonstrative information to clients. NTM 08-81 reminds members that:

> Sales materials and oral presentations must present a fair and balanced picture regarding both the risks and benefits of investing in these products. FINRA reminds firms that NASD Rule 2210 and IM-2210-1 require firms to ensure that statements are not misleading within the context in which they are made, and that firms must consider the nature of the audience to which the communication is directed…

In addition, FINRA Rule 2210(d)(1) provides:

> (A) All member communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.
>
> (D) Communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment or investment strategy.

Further, NTM 03-71 provides guidance concerning non-conventional investments stating:

> [M]embers should provide investors with any prospectus and other disclosure material provided by the issuer or the sponsor. NASD reminds members, however, that simply providing a prospectus or offering memoranda does not cure unfair or unbalanced sales or promotional materials, whether prepared by the member, sponsor, or issuer.

See NTM 03-71. In addition NTM 10-22 provides that:

> If a private placement memorandum or other offering document presents information that is not fair and balanced or that is

> misleading, then the BD that assisted in its preparation may be deemed to have violated NASD Rule 2210. Moreover, sales literature concerning a private placement that a BD distributes will generally be deemed to constitute a communication by that BD with the public, whether or not the BD assisted in its preparation.

NTM 10-22 at 5.

D. <u>Respondent's Fraudulent Misrepresentations and Omissions</u>

As alleged, Respondent provided false and misleading information to their clients in the sale of securities, management of accounts, and financial planning. As shown above, the representations made to Claimants in various marketing materials and orally were knowingly or recklessly false and misleading and omitted material information. Respondent misrepresented the risks of alternative investments, including AGP and qualities of the investments being made.

Respondent concealed known losses on Claimants' investments and otherwise attempted to cover losses. Respondent's representations concerning the performance and returns for these investments and the ongoing investment strategy were not balanced and presented to Claimants fairly.

In addition, it is anticipated that Respondent will defend themselves by asserting the "prospectus" defense. This defense asserts that Respondent is allowed to make false statements and misrepresentations to investors so long as a prospectus is provided. This defense has no merit and seeks to undermine the very purpose of the securities laws. According to the SEC, a person who makes oral misrepresentations to sell a security cannot wash away his liability by handing his victim a prospectus:

> At the expense of restating the obvious, we emphasize that compliance with these requirements for delivery of a prospectus or offering circular does not, however, license broker-dealers or their salesmen to indulge in false or fanciful oral representations to their customers. The anti-fraud provisions of the Securities Act and the

> Securities Exchange Act apply to all representations whether made orally or in writing, during or after the distribution. We have repeatedly held that the making of representations in the sale of securities unsupported by a reasonable basis is contrary to the obligation of fair dealing imposed on broker-dealers and their salesmen by the securities laws. **This obligation is not diminished because a prospectus or offering circular containing information specified by the Act and our rules has been or is to be delivered. Such information furnishes the background against which the salesman's representations may be tested. Those who sell securities by means of representations inconsistent with it do so at their peril.**

In the Matter of Ross Secs., Inc., SEC Release No. 7069, 41 SEC Docket 509 (Apr. 30, 1963); (emphasis added); *see also In the Matter of the Application of Larry Ira Klein,* SEC Release No. 37835, 63 SEC Docket 52 (Oct. 17, 1996) ("Klein's delivery of a prospectus to Towster does not excuse his failure to inform fully the risks of the investment package he proposed").

This point has been made over and over again by FINRA:

> Members are also advised that, although the prospectus and sales material of a fund include disclosures on many matters, **oral representations by sales personnel that contradict the disclosures in the prospectus or sales literature may nullify the effect of the written disclosures and they make the member liable for rule violation and civil damages** to the customers that result from such oral representations.

NASD Notice to Members 03-71 (emphasis added); NTM 13-18: Guidance on Communications With the Public Concerning Unlisted Real Estate Investment Programs, pg. 2 (May 2013) ("Descriptions of real estate programs in communications need to be consistent with the representations in the program's current prospectus."); NTM 04-30 ("However, NASD reminds firms that simply providing a prospectus does not cure unfair or unbalanced sales or promotional materials, whether prepared by the firm or the issuer."); NTM 05-59 ("Members are further reminded that providing risk disclosures in a prospectus supplement does not cure otherwise

deficient disclosure in sales material, even if such sales material is accompanied or preceded by the prospectus supplement.").

POINT IV.

RESPONDENT VIOLATED FINRA RULES 2010, IM-2310-2, AND 2020

FINRA Rule 2010 requires members to "observe high standards of commercial honor and just and equitable principles of trade" in conducting their business. FINRA Rule 2020 also prohibits members from effecting "any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance." IM-2310-2 - "Fair Dealing with Customers" is cross-referenced by both of the aforementioned provisions and provides a non-exhaustive list of activities that would be inconsistent with the foregoing principals. *See* IM-2310-2: FAIR DEALING WITH CUSTOMERS. The first section of IM-2310-2 outlines member and associated persons obligations in dealing with customers as follows:

> (a)(1) Implicit in all member and registered representative relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of the Association's Rules, with particular emphasis on the requirement to deal fairly with the public.

Respondent egregiously and intentionally violated many of the subsections of IM-2310-2, as discussed *infra*.

POINT V.

FAILURE TO SUPERVISE

Respondent also unreasonably failed to supervise and train its registered representatives. A broker-dealer owes a duty to all of its customers under FINRA Rule 3010 to properly monitor, supervise, and train its employees.

A. Supervision Standard

Respondent failed to supervise and train its brokers. A broker-dealer owes a duty to all of its customers under FINRA Rule 3010 to properly monitor, supervise, and train its employees. FINRA Rule 3010 states:

> Each member shall 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 Rules. Final responsibility for proper supervision shall rest with the member…

FINRA Rule 3010: SUPERVISION.

The duty to supervise is a critical component of the securities regulatory scheme. *In re Quest Capital Strategies Inc.*, 1999 WL 202487 (SEC Release No. ID-141). Those who have a duty to supervise have an affirmative responsibility to uphold their duty. *Id.* Regulatory authorities such as the SEC, FINRA and the NYSE have steadily heightened the supervisory obligations of brokerage firms in recent years. Utilizing language employed by the SEC, "effective supervision by a broker/dealer is a critical element in the regulatory scheme and its importance has increased as firms have grown...broker dealers must provide effective staffing, efficient resources and a system of follow-up and review to determine that any responsibility to supervise…is being diligently exercised." *In Re Mabon Nugen & Co.*, 44 SEC Docket 1116, Release No. 27301 (September 27, 1989).

B. "Control Person" Liability

Respondent are also liable to Claimants for misconduct under the theory of "control person" liability. Both federal and state securities acts impose "control person" liability on all persons who have the power, direct or indirect, exercised or not, to control another's sale of securities. *See, e.g.*, 15 U.S.C.A. § 78t (2011) (stating "every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable…").

As used in all such securities acts, "the term 'control' . . . means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise." *G.A. Thompson & Co. v. Partridge*, 636 F.2d 945, 957 (5th Cir. 1981).

Respondent were the "control persons" of their brokers at all times relevant to this dispute. Therefore, Respondent is liable for its brokers' misconduct.

C. Respondeat Superior

Respondent is liable to Claimants for all of its brokers misconduct under the theory of respondeat superior. Courts have held that respondeat superior liability is created by the "special duties that certain employers assume under the federal securities laws when their conduct is likely to exert strong influence on important investment decisions." *Sharp v. Coopers & Lybrand,* 649 F.2d 175, 181 (3d Cir. 1981). Similarly, the sixth circuit has emphasized that the broker-dealer has "an affirmative obligation to prevent use of the prestige of its firm to defraud the investing public." *Holloway v. Howerdd,* 536 F.2d 690, 696 (6th Cir. 1976); *As You Sow v. AIG Fin. Advisors, Inc.,* 584 F. Supp. 2d 1034, 1047 (M.D. Tenn. 2008) (*citing See Henricksen v. Henricksen,* 640 F.2d 880, 887 (7th Cir. 1981), *cert denied,* 454 U.S. 1097, 102 S.Ct. 669, 70

L.Ed.2d 637 (1981); *Alvarado v. Morgan Stanley Dean Witter. Inc.*, 448 F.Supp.2d 333 (D.P.R. 2006).

Accordingly, Respondent is responsible for all of the investment related activities taking place under its watch.

POINT VI.

FRAUDULENT INDUCEMENT TO HOLD THE INVESTMENT

Claimants claim that Respondent's wrongful or fraudulent conduct induced Claimants to maintain a position and not to change such position, resulting ultimately in a loss. Respondent committed fraud on an ongoing basis, by inducing Claimants to hold onto the unsuitable investment, AGP. Respondent was the provider of investment advice to Claimants, including ongoing advice as to retention of AGP. Respondent owed duties to Claimants as previously described, including the duty not to make misrepresentations of material facts and not to omit to disclose material facts from any communications or reports (oral or in writing) conveyed or delivered to Claimants, on an ongoing basis, not just on the front end.

Claims for falsely inducing investors not to act to their detriment are based upon the following principles:

> Restatement of Torts (Second), sec 525: "One who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation."
>
> Restatement of Torts (Second), sec 531: "One who makes a fraudulent misrepresentation is subject to liability to the persons or class of persons whom he intends or has reason to expect to act or to refrain from action in reliance upon the misrepresentation, for pecuniary loss suffered by them through their justifiable reliance in

> the type of transaction in which he intends or has reason to expect their conduct to be influenced."
>
> Restatement of Torts (Second), sec 551(1): "One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose .... "

As a proximate cause of such false and continuing inducements to retain the unsuitable investment and unsuitable asset allocation in Claimants' portfolios, the Claimants were made to suffer a loss.

POINT VII.

BREACH OF CONTRACT

Claimants and Respondent entered into customer agreements in which Respondent agreed, among other things, to comply with all state and federal securities laws as well as FINRA's own regulations. Claimants complied with the terms of the contract between the parties, as memorialized by the parties, and performed or tendered performance thereunder. Claimants performed all conditions precedent and obligations incident to all of the above-referenced contractual obligations or agreements. Respondent breached the customer agreement with the Claimants by violating FINRA and SEC rules. Respondent also violated its own internal written procedures. Respondent is also a party to various "selling agreements" concerning many of these investments. In addition to Respondent's legal obligation to conduct due diligence, the selling agreements also contractually obligated Respondent to conduct due diligence on the offerings. Claimants are third-party beneficiary to those selling agreements. Respondent failed to undertake reasonable due diligence into the offerings, breaching the selling agreement to the detriment of

Claimants. As a direct and proximate consequence of Respondent's wrongful conduct, Claimants suffered damages.

POINT VIII.
DAMAGES

As a cause and consequence of the Respondent's misconduct in the handling of Claimants' investment funds, Claimants seek damages consisting in an unspecified amount, including what a well-managed account would have performed in an amount presently unknown.

In addition, Arbitrators have the power to award exemplary, or in other words, punitive damages. As the United States Supreme Court held in *Mastrobuono v. Shearson Lehman Hutton. Inc*., 514 U.S. 52 (1995), the Federal Arbitration Act, 9 U.S.C. § 1 *et seq*., grants arbitrators plenary authority to consider and make an award of punitive damages notwithstanding any provision of state law to the contrary.

Here, punitive damages should be assessed against Respondent and are wholly warranted due to the firm's intentional and willful failure to oversee its agents' activities. The callousness to the consequences which Respondent has shown, cry out for a remedy that will not only make Claimants whole, but prevent a repetition of these events which have become all too common place in the industry. Every year millions of investors' funds are squandered or placed in in risky high-commission generating strategies that are of no benefit to the investor. Moreover, brokerage firms continually ask for and advertise to induce the public's trust and confidence, then those same brokerage firms attempt to run away when the wrongful acts of those they employ are discovered.

The perils that investors face when trusting the brokerage industry are fostered through a policy of scant compensation for victims that profits the industry even when brokerage firms fail in their most basic duties.

FINRA firms continue to behave in a way that suggests that a lack of supervision, and the relatively small amounts of damages that result, are merely a cost of doing business to be borne rather than problem to be corrected. An award that falls short of assessing punitive damages will not take the necessary step of impressing upon Respondent the indisputable need to supervise and manage its employees in accordance with the rules of law and the business ethics of fair trade.

Accordingly, the panel should award punitive damages, interest at the legal rate per annum, as well as attorneys' fees, and costs.

CONCLUSION

As a result of the conduct set forth above, Claimants request a final hearing in this matter and that this Panel award damages from Respondent, as follows:

1. Compensatory damages;
2. Statutory damages;
3. Interest at the statutory rate;
4. Attorneys' fees;
5. Expert fees;
6. Forum fees;
7. Punitive damages; and
8. Any and all other relief available to Claimants, in law or equity or otherwise, which may be granted to them by this Arbitration Panel.

Dated: September 23, 2022
New York, NY

Respectfully Submitted,

KURTA LAW

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GANA WEINSTEIN LLP

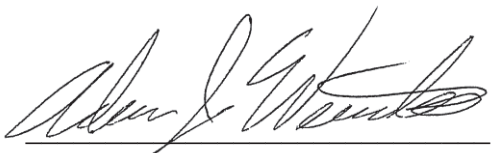
By: 

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Exhibit
B

Allegations

Claimants allege Kestra breached it's fiduciary duty, made unsuitable recommendations, and misrepresented the investment product. Additionally it is alleged that Kestra failed to properly supervise and provide training to representatives.

Damage Amount Requested

$5,000.00

Settlement Amount

$375,000.00

Broker Comment

I was not named as a party in this arbitration. The clients were sophisticated and wanted to get into the oil and gas markets at a time when oil was at an all-time high. I provided them with disclosures and a detailed analysis of the offering, and we had many discussions before they committed to the investment. They signed multiple acknowledgements related to the risks of the investment. The investment represented only 1.7% of their investable assets.

4/2/2003	Customer Dispute

Exhibit
C

[redacted] aces Allegation of Unsuitable Investment Recommendation

[redacted] / By Investment Fraud Lawyers

In a recent development, a serious allegation has been made against [redacted] The allegation, which is currently pending resolution, involves a customer dispute claiming that [redacted] made an unsuitable recommendation for the purchase of a security. This case, filed on [redacted] has the potential to significantly impact investors who have entrusted their financial well-being to [redacted] and [redacted].

The gravity of this allegation cannot be overstated, as it calls into question the judgment and integrity of the accused broker. Investors rely on the expertise and guidance of their financial advisors to make informed decisions about their investments. When a broker allegedly fails to uphold their fiduciary duty by recommending unsuitable securities, it can lead to substantial financial losses for the affected investors. According to a Bloomberg article, investment fraud and bad advice from financial advisors can have devastating consequences for investors, often resulting in the loss of hard-earned savings and retirement funds.

Understanding the Allegation

Table of Contents

In simple terms, the allegation [redacted] suggests that he recommended a security that was not appropriate for the customer's investment objectives, risk tolerance, or financial situation. The Financial Industry Regulatory Authority (FINRA) Rule 2111, known as the "Suitability Rule," requires brokers to have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer, based on the customer's investment profile. Investors can view [redacted] CRD (Central Registration Depository) record on FINRA's BrokerCheck to learn more about his professional background and any previous disputes or regulatory actions.

This rule is designed to protect investors from being steered towards investments that may not align with their best interests. When a broker violates this rule, it can result in significant financial harm to the investor, as unsuitable investments may carry higher risks or fail to meet the investor's financial goals.

The Impact on Investors

The potential ramifications of this allegation are far-reaching, as they extend beyond the individual customer who filed the dispute. If the allegation is proven true, it raises concerns about the practices employed [redacted] and the oversight provided by [redacted]. Investors who have worked with [redacted] or are currently

invested in securities recommended by him may need to reassess their portfolios and consider the potential risks associated with these investments.

Moreover, this case underscores the importance of thoroughly researching and vetting financial advisors before entrusting them with one's investments. Investors should be vigilant in monitoring their accounts and questioning any recommendations that seem inconsistent with their investment goals or risk tolerance. Investment fraud lawyers can provide valuable guidance and representation for investors who suspect they have been victims of financial advisor misconduct.

Red Flags and Recourse for Investors

Investors should be aware of red flags that may indicate financial advisor malpractice, such as:

- Recommending investments that are inconsistent with the investor's risk tolerance or financial objectives
- Failing to provide clear explanations of the risks associated with recommended investments
- Engaging in excessive trading or unauthorized transactions

If an investor suspects that they have been the victim of unsuitable investment recommendations or other forms of financial advisor malpractice, they may be able to recover their losses through FINRA arbitration. **Haselkorn & Thibaut**, a national investment fraud law firm with offices in Florida, New York, North Carolina, Arizona, and Texas, is currently investigatin and in relation to this allegation.

With over 50 years of combined experience and a 98% success rate, **Haselkorn & Thibaut** has a proven track record of helping investors recover losses stemming from financial advisor misconduct. The firm operates on a "No Recovery, No Fee" basis, meaning that clients only pay if a recovery is successfully obtained on their behalf. Investors who believe they may have been affected by the alleged misconduct of **n** or other financial advisors at are encouraged to contact **Haselkorn & Thibaut** for a free consultation by calling 1-888-614-9356.

As the case against [redacted] unfolds, it serves as a stark reminder of the importance of investor vigilance and the need for strong legal advocacy when financial misconduct occurs. By staying informed and taking prompt action when necessary, investors can protect their rights and seek the justice they deserve.

Disclaimer: The information contained in any post on this website is derived from publicly available sources and is not guaranteed as to accuracy and often involves allegations which may or may not be proven at some point in the future. All posts are believed to be accurate as of the time of original posting, but the accuracy and details are subject to and expected to change over time and which may contain opinions of the author at the time posted.

About The Author

Investment Fraud Lawyers

Haselkorn and Thibaut, InvestmentFraudLawyers.com, specialize in fighting for investors nationwide and have offices in Florida, New York, North Carolina, Arizona, and Texas. We have over 50 years of experience and a 98% success rate. Call us now for a free consultation at 1-888-614-9356 or email us at case@htattorneys.com No Recovery, no fee.

National Investment Fraud Lawyers - No Recovery, No Fee - Call Us 1-888-614-9356

Rex Securities Law Investment Fraud Attorney Investigates a broker with

Last Updated: *(Wilton, CT)*

Investigation Summary

Here's what you need to know about :

- Name:
- Current Employer:
-
- Previous Firms: ,
- Function: Stock Broker/ Financial Advisor/ Registered Investment Advisor
- Aliases:
- Primary
- *CRD* *1*
- Can be sued in FINRA arbitration: Yes

- Sanctioned by FINRA: No
- Discharged by a prior employer: Yes
- Pending Customer Dispute Seeks Unspecified Amount of Damages

Discuss your case [https://rexsecuritieslaw.com/contact-us/] with experienced investment fraud lawyer Bob Rex [https://rexsecuritieslaw.com/about-us/] at (877) 224-3199 [tel:8772243199] for a free consultation.

Did You Lose Money With As Your Stockbroker?

In 2 a customer of filed a FINRA arbitration alleging that recommended unsuitable investments in limited partnerships and other direct investments. A specific damage amount has not yet been specified in this pending case.

[LEARN MORE]: See this for more information on REITs and Other Alternative Investments [https://rexsecuritieslaw.com/reits/]

In was discharged by . The company makes the following allegation on FINRA record: ***"During a routine branch review, firm determined that registered representative maintained pre-signed client documents and a document with a photocopied signature."***

Allegations of Broker Misconduct Against

Customers of have alleged the following wrongdoing in connection with the handling of customer accounts:

- Unsuitable Recommendations to invest in alternative investments.

Alternative Investments: [https://rexsecuritieslaw.com/?s=alternative+investments] These are assets that are not stocks, bonds or cash. Alternative investments generally fall within five categories: hedge funds, private capital, natural resources (oil and gas, energy), real estate (REITs) and infrastructure. They are typically less liquid that conventional investments, less regulated with higher fees and generally higher risk.

The Financial Industry Regulatory Authority [https://www.finra.org/about] (FINRA) is the agency that licenses and regulates stockbrokers and brokerage firms. FINRA requires brokers and brokerage firms to report customer complaints and disputes as well as regulatory sanctions. In addition brokers are required to disclose certain financial matters such as personal bankruptcies, judgments and liens.

Recover Your Investment Losses Now With Rex Securities Law

[LEARN MORE]: Investigation of Kestra Investment Services and Kestra brokers-Lawsuits, Arbitrations & Customer Disputes [https://rexsecuritieslaw.com[redacted]

If you have suffered investment losses in an account handled by [redacted], contact us [https://rexsecuritieslaw.com/contact-us/] for a complimentary consultation with an experienced securities lawyer to learn how you may be able to recover damages through FINRA arbitration [https://rexsecuritieslaw.com/finra-arbitration/] .

With offices in Boca Raton, FL and Austin, TX, stockbroker fraud attorney Bob Rex provides representation to investors ***nationwide*** who are seeking recovery of investment losses due to the negligence or fraud of stockbrokers, financial advisors and broker dealers.

If you have questions about how your account has been handled, **call (877) 224-3199 [tel:8772243199] to speak with an experienced**

Deciphering the Accusations of Investment Misconduct Against [redacted]

Investment Misconduct Allegations Against [redacted] Rock the Finance World

On [redacted] the calm facade of the investment community was shattered by serious allegations aimed at [redacted] a notable financial advisor associated with [redacted]. As Managing Partner o[redacted] s now under scrutiny for claims touching on unsuitable investment recommendations, revealing a deeper issue of investment misconduct that could have significant ramifications for both his professional career and his clients.

The Allegations Unpacked

According to regulatory records, the specific accusations against [redacted] nvolve recommending investment strategies that were allegedly unsuitable for his clients, based on their investment profiles and risk tolerance. The gravity of such claims points towards a potential breach of fiduciary duty, a serious offense in the financial advisory sector. When advisors act as fiduciaries, they are required by law to put their clients' interests above their own, making recommendations that best fit the clients' goals and financial situations.

The allegedly unsuitable investments have not only led to financial losses for [redacted] ents but also raised questions about the oversight and ethical practices at [redacted] The situation is detailed further on financialadvisorcomplaints.com, shedding light on the intricacies of the allegations and the potential impacts on stakeholders.

What This Means for Investors

For investors caught in the crossfire of this unsettling development, the stakes are notably high. Losing trust in a financial advisor not only impacts one's financial health but also undermines the confidence in the broader financial advisory system. If you suspect that your investments have been mismanaged or find yourself facing similar financial discrepancies, it's crucial to take definitive action.

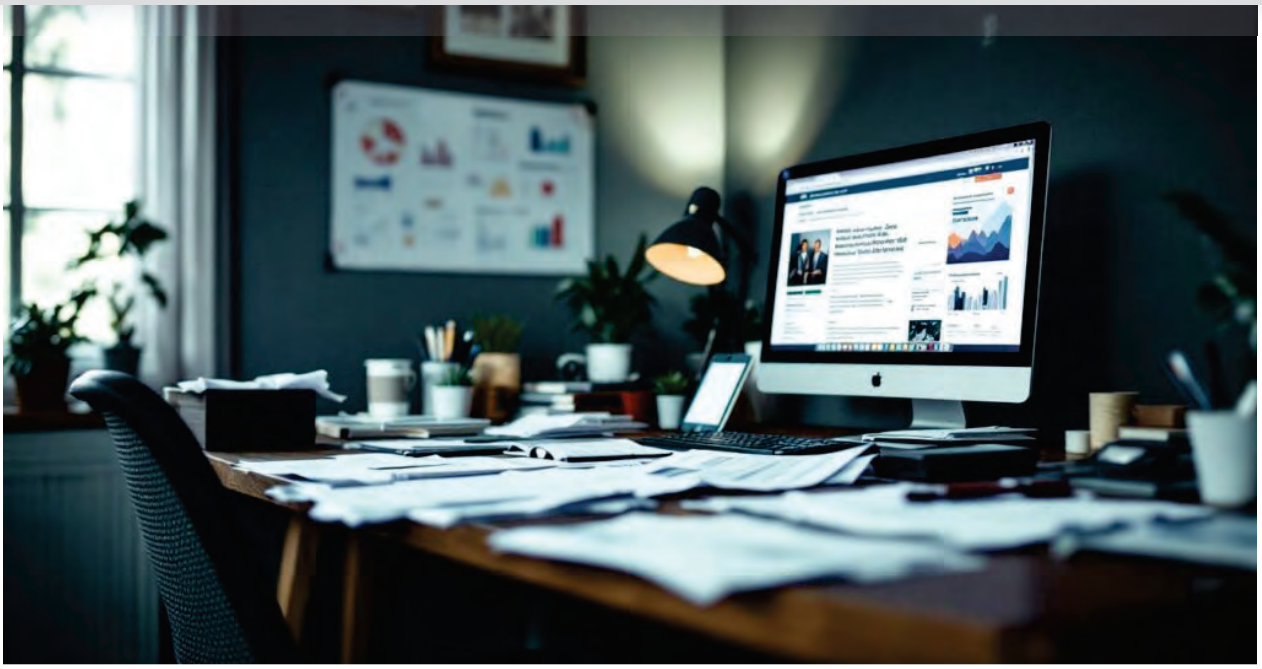
How Haselkorn & Thibaut, P.A. Can Help

In situations where investments sour due to advisor misconduct, having adept legal representation is essential. Haselkorn & Thibaut, P.A. is a national law firm that prides itself on championing the rights of investors. Specializing exclusively in handling cases on behalf of investors, the firm boasts a formidable 95% success rate.

If you are grappling with investment losses and suspect foul play, let Haselkorn & Thibaut be your advocate. With no fees required unless they recover your investment losses, reaching out to them is a step towards safeguarding your investments. Contact them today at **1 (888) 784-3315** or visit their website at InvestmentFraudLawyers.com to schedule a free consultation. Their experienced team can offer insights and possible recovery solutions, giving you the support needed to navigate through these challenging times.

Conclusion

The allegations against [redacted] are a stark reminder of the importance of diligence and vigilance in financial investments. While the legal processes take their course, for affected investors, the priority should be proactive engagement in understanding and remedying their financial situations. With expert help from Haselkorn & Thibaut, P.A., investors can embark on a path to recovery and possibly reclaim their financial stability.



Understanding The I Misconduct Allegations Against [redacted]

Financial Advisor Complaints / By Emily / [redacted]

Recent allegations against financial advisor [redacted] have raised serious concerns in the investment community. On [redacted] regulatory records revealed claims of **unsuitable investment recommendations**, including direct investments, DPP, and LP interests.

[redacted] Faces Serious Investment Misconduct Allegations, as documented in his CRD file. These claims suggest a **potential breach of fiduciary duty**, where investments failed to match clients' goals and risk tolerance levels.

Investment fraud costs Americans billions each year, with elderly investors facing the highest risk of financial harm. **FINRA Rule 2111** requires all financial advisors to align their recommendations with client profiles, making these allegations particularly significant.

Law firm Haselkorn & Thibaut has stepped forward to investigate these claims [redacted] The firm brings over 50 years of combined experience and

investors need to stay alert and monitor their investments closely. This article explores the full scope of these allegations and what they mean for investors.

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Key Takeaways

- [redacted]r faced serious **investment misconduct allegations** on [redacted], while serving as [redacted]s. The claims involve **unsuitable investment recommendations**, **elder financial abuse**, and questionable practices with direct investments, DPP interests, and LP interests.
- Multiple clients reported concerns about **breaches of fiduciary duty** and **ethical violations**. [redacted] actions triggered a **FINRA investigation**. His case highlights how advisors must follow **FINRA Rule 2111** for suitable investment recommendations.
- Investors can protect themselves by checking advisor backgrounds through FINRA's BrokerCheck system. Regular portfolio reviews help spot problems early. Watching for **red flags** like high-pressure sales tactics and unclear fees remains crucial.
- The law firm Haselkorn & Thibaut offers help to affected investors through FINRA arbitration. They maintain a 98% success rate in **securities cases**. Investors can reach them at 1-888-902-6872 for free consultations about recovering losses.

Allegations Against [redacted]

KESTRA INVESTMENT SERVICES (FORMERLY NFP)

Rex Securities Law Investment Fraud Attorney Investigates a broker with Kestra Investment Services

Last Updated: May 2024 (Wilton, CT)

Investigation Summary

Here's what you need to know about **Wilton, CT, stockbroker** :

- Name:
- Current Employer: Kestra Investment Services, Kestra Advisory Services (RIA)
- DBA:
- Previous Firms: , NFP (now known as Kestra Investment Services), Morgan Stanley, Chase Investment Services
- Function: Stock Broker/ Financial Advisor/ Registered Investment Advisor
- Aliases:
- Primary Location: Wilton, CT
- *CRD*
- Can be sued in FINRA arbitration: Yes

- Sanctioned by FINRA: No
- Discharged by a prior employer: Yes
- Pending Customer Dispute Seeks Unspecified Amount of Damages

Discuss your case [https://rexsecuritieslaw.com/contact-us/] with experienced investment fraud lawyer Bob Rex [https://rexsecuritieslaw.com/about-us/] at (877) 224-3199 [tel:8772243199] for a free consultation.

Did You Lose Money With As Your Stockbroker?

In 2/2024 a customer of Kestra Investment Services filed a FINRA arbitration alleging that recommended unsuitable investments in limited partnerships and other direct investments. A specific damage amount has not yet been specified in this pending case.

[LEARN MORE]: See this for more information on REITs and Other Alternative Investments [https://rexsecuritieslaw.com/reits/]

In 2011 was discharged by Chase Investment Service Corp. The company makes the following allegation on FINRA record: ***"During a routine branch review, firm determined that registered representative maintained pre-signed client documents and a document with a photocopied signature."***

Allegations of Broker Misconduct Against

Customers of have alleged the following wrongdoing in connection with the handling of customer accounts:

- Unsuitable Recommendations to invest in alternative investments.

Alternative Investments: [https://rexsecuritieslaw.com/?s=alternative+investments] These are assets that are not stocks, bonds or cash. Alternative investments generally fall within five categories: hedge funds, private capital, natural resources (oil and gas, energy), real estate (REITs) and infrastructure. They are typically less liquid that conventional investments, less regulated with higher fees and generally higher risk.

The Financial Industry Regulatory Authority [https://www.finra.org/about] (FINRA) is the agency that licenses and regulates stockbrokers and brokerage firms. FINRA requires brokers and brokerage firms to report customer complaints and disputes as well as regulatory sanctions. In addition brokers are required to disclose certain financial matters such as personal bankruptcies, judgments and liens.

Recover Your Investment Losses Now With Rex Securities Law

[LEARN MORE]: Investigation of Kestra Investment Services and Kestra brokers-Lawsuits, Arbitrations & Customer Disputes [https://rexsecuritieslaw.com/kestra-financial/]

If you have suffered investment losses in an account handled by [redacted], contact us [https://rexsecuritieslaw.com/contact-us/] for a complimentary consultation with an experienced securities lawyer to learn how you may be able to recover damages through FINRA arbitration [https://rexsecuritieslaw.com/finra-arbitration/] .

With offices in Boca Raton, FL and Austin, TX, stockbroker fraud attorney Bob Rex provides representation to investors ***nationwide*** who are seeking recovery of investment losses due to the negligence or fraud of stockbrokers, financial advisors and broker dealers.

If you have questions about how your account has been handled, **call (877) 224-3199 [tel:8772243199] to speak with an experienced**

securities attorney at no cost to you.

Most cases are handled on a contingent fee basis meaning that you do not pay legal fees unless we are successful.

Recommended Reading:

1. **Rex Securities Law Investment Fraud Attorney Investigates [redacted] a broker with Kestra Investment Services**
2. **Rex Securities Law Investment Fraud Attorney Investigates [redacted] a broker with Kestra Investment Services**
3. **Rex Securities Law Investment Fraud Attorney Investigates [redacted] a broker with Kestra Investment Services**
4. **Rex Securities Law Investment Fraud Attorney Investigates [redacted] a broker with Kestra Investment Services**

Exhibit
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D'AMURA & ZAIDMAN PLLC

lzaidman@dz-pllc.com

January 30, 2023

VIA FINRA PORTAL

EMERGENCY REQUEST

Attn: Richard W. Berry, Director
cc: Khoi Dang-Vu
FINRA Dispute Resolution Services
55 W. Monroe, Suite 2600
Chicago, IL 60603
Richard.Berry@finra.org

Re: Mary Nagle, et al. vs. Kestra Investments Services, LLC
FINRA Case No. 22-02180

Dear Mr. Berry:

Respondent, Kestra Investment Services, LLC (f/k/a NFP Advisory Services, LLC), move on an EMERGENCY basis for you to (1) exercise discretionary authority under FINRA Rule 12408 to intervene in the selection of the arbitration Panel in this matter, and (2) under FINRA Rule 12312 to hear and decide Respondent's Motion to Sever, or in the Alternative, to Dismiss (the "Motion"). **See** Attached Motion. As discussed more fully below, Claimants have engaged in wrongful litigation tactics by improperly joining the claims, which has resulted in a manipulation to their advantage (at the expense of Respondent) of the arbitrator ranking process. While a single statement of claim has been filed, Claimants claim to be represented by two different counsel. As a result, FINRA has permitted them to file two sets of rankings. This gamesmanship has resulted in manifest unfairness to Respondent.

FINRA Rule 12312(b) provides, in pertinent part: "After all responsive pleadings have been served, claims joined together . . . may be separated into two or more arbitrations by the Director before a panel is appointed." Responsive pleadings have been served in this matter, and the Panel has not yet been selected. Accordingly, the Motion is ripe for review by the Director rather than the Panel-to-be-appointed.

The Parties' short lists ranking arbitrators is due January 30, 2023. Respondent was unaware that Claimants submitted two sets of strikes until Friday, the 27th. Respondents will submit the short list rankings today, as it has no other choice. However, Respondents will not accept the Panel composition as it stands.

As Respondent argues in its Motion, Claimants have improperly joined claims of multiple claimants together in a quasi-class action arbitration in violation of FINRA Rule 12204(a).[1] Among other things, this allows Claimants, who are represented by two attorneys, to strike more arbitrators from the ranking list than if their claims not been improperly joined into one arbitration. *See* FINRA Rule 12403(c)(2) (allowing each separately represented party to strike up to four arbitrators from the chairperson list and up to six arbitrators from the public arbitrator list).

The appropriate remedy for improper joinder is to file a motion to sever, as Respondent has done. However, because of the improper joining, the arbitrator Panel is set to be decided in a biased manner. Respondent cannot accept such a Panel composition under the current unduly prejudicial circumstances. Likewise, it would be improper for such a Panel to decide Respondent's Motion. If the Panel is decided in its current manner, the process of this arbitration is in danger of being tainted from day one. Therefore, under the circumstances, Respondent respectfully requests that you instead hear and decide the Motion.

Respondent additionally requests that you intervene in the selection of the arbitration Panel in this matter, only insofar as to stay FINRA's decision on the Panel's composition pending the outcome of Respondent's Motion. FINRA Rule 12408 provides that "[t]he Director may exercise discretionary authority and make any decision that is consistent with the purposes of the Code to facilitate the appointment of arbitrators and the resolution of arbitrations." As mentioned, the Panel-to-be-appointed deciding the Motion raises significant due process concerns, which Respondent believes may be avoided with such intervention.

If you have any questions, please feel free to contact me at (718) 791-5493 or by email to lzaidman@dz-pllc.com.

Sincerely,

/s/ Lydia R. Zaidman

Lydia R. Zaidman
D'Amura & Zaidman, PLLC

cc: Counsel of Record
Richard W. Berry, Director via email
Khoi Dang-Vu, FINRA Dispute Resolution Services
Via FINRA Portal

[1] "Class action claims may not be arbitrated under the Code [of Arbitration Procedure for Customer Disputes]." FINRA Rule 12204(a).

Exhibit
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GW GANA WEINSTEIN LLP

KURTA LAW
NATIONAL SECURITIES LAW FIRM

March 13, 2023

Re: Atlas Growth Partners L.P.

To Whom It May Concern:

We are writing about your investment Atlas Growth Partners LP ("AGP"), which we understand has resulted in substantial financial losses due to allegedly fraudulent activity.

We want to help you recover your investment losses. Our law firms exclusively handle securities arbitration matters involving financial fraud and investment disputes. We have successfully represented hundreds of AGP investors throughout the United States.

We believe that you may have a valid claim against the broker-dealer for the sale of AGP, which led to your financial losses. We are prepared to help you pursue legal action to recover your investment and hold those responsible accountable for their actions.

We encourage you to contact us at your earliest convenience to discuss your legal options and how we may be able to assist you in recovering your investment. Our legal team will work tirelessly to ensure that your interests are protected and that you receive the compensation you are entitled to.

Please note the time is of the essence in these matters, and there may be deadlines that could affect your ability to pursue legal action. We urge you to contact us as soon as possible to discuss your case.

Please feel free to contact us at **(800) 844-6400** or by email at **Atlas@kurtalawfirm.com** for more information. Please note, you will be asked for the name of your financial advisor and the amount of your investment in AGP when you call.

Thank you,

GANA WEINSTEIN LLP
Attorneys-at-Law

KURTA LAW FIRM
Attorneys-at-Law

ATTORNEY ADVERTISING
PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME

GW GANA WEINSTEIN

KURTA LAW
NATIONAL SECURITIES LAW FIRM

January 11, 2024

Re: Atlas Growth Partners L.P. Recovery Opportunity

Dear Atlas Investor:

Our law firms have represented over 220 Atlas Growth Partners ("AGP") investors and have recovered nearly $20 million for them. Based upon our records, we believe you were at Atlas investor and are one of the few investors that have not filed a claim.

We have limited time to file your claims. We would like to potentially represent you in action to recover your AGP losses. Please call our offices as soon as possible to discuss your options. There is no fee associated with this call. If you decide to retain our services, we work strictly on a contingency basis, meaning our firms only receive a portion of the money we recover on your behalf.

Please contact us at **(800) 844-6400** or by email at **Atlas@kurtalawfirm.com** for more information. Please note, you will be asked for the name of your financial advisor and the amount of your investment in AGP when you call.

Sincerely,

GANA WEINSTEIN LLP
Attorneys-at-Law

KURTA LAW FIRM
Attorneys-at-Law

295 Madison Avenue | Suite 705 | New York, New York 10017
Main Line: 800-844-6400 | Fax: 212-603-0790

GW GANA WEINSTEIN LLP

KURTA LAW
NATIONAL SECURITIES LAW FIRM

July 10, 2024

Re: Atlas Growth Partners L.P. Recovery Opportunity

Dear Atlas Investor:

We have sent you a couple of letters over the last two years. This will likely be our last letter. Over the course of the last couple of years, our law firms have represented over 220 Atlas Growth Partners ("AGP") investors and have recovered over $20 million for our clients. We believe you invested in AGP and have not retained our law firms to help you recoup your losses. You are one of the last investors who has yet to file a claim.

We have limited time to file your claims. We would like you to call our offices as soon as possible to discuss your options. There is no fee associated with this call. If you decide to retain our services, we work strictly on a contingency basis, meaning our firms only receive a portion of the money we recover on your behalf.

Please contact us at **(800) 844-6400** or by email at **Atlas@kurtalawfirm.com** for more information. Please note, you will be asked for the name of your financial advisor and the amount of your investment in AGP when you call.

Sincerely,

GANA WEINSTEIN LLP
Attorneys-at-Law

KURTA LAW FIRM
Attorneys-at-Law

295 Madison Avenue | Suite 705 | New York, New York 10017
Main Line: 800-844-6400 | Fax: 212-603-0790

GW GANA WEINSTEIN LLP

KURTA LAW
NATIONAL SECURITIES LAW FIRM

April 2025

Re: Oil and Gas Investments Loss Recovery Opportunity

Dear Patrick J & Eileen T:

It is important that you contact us as soon as possible.

Our law firms have represented hundreds of clients that invested in various oil and gas investments, including Atlas Growth Partners ("AGP"). These clients lost millions of dollars in AGP while brokerage firms earned substantial commissions for selling these investments. From documents produced in a related case, we understand that you invested in AGP and suffered losses.

Be advised that these cases have a short timeline and often reach a settlement in less than one year. Please let us know if you would like to be included in the claim by **no later than May 15, 2025.**

If you decide to retain our services, we represent clients strictly on a contingency basis, meaning our firms only receive a portion of the money we recover on your behalf.

Please contact us at **(800) 844-6400** or by email at **Atlas@kurtalawfirm.com** for more information. Please note, you will be asked for the name of your financial advisor and the amount of your investment in AGP when you call.

Sincerely,

GANA WEINSTEIN LLP
Attorneys-at-Law

KURTA LAW FIRM
Attorneys-at-Law

295 Madison Avenue | Suite 705 | New York, New York 10017
Main Line: 800-844-6400 | Fax: 212-603-0790

GW GANA WEINSTEIN LLP

KURTA LAW
NATIONAL SECURITIES LAW FIRM

March 13, 2026

Re: Time Sensitive: Recovery of Atlas Growth Partners L.P. Losses

Dear Atlas Investor:

We urge you to contact our office as soon as possible regarding potential claims related to losses in Atlas Growth Partners (AGP).

Over the past three years, we have sent several notices because our law firms have successfully recovered more than $50 million for investors who lost money in Atlas Growth Partners. According to our records, you may be among the limited number of remaining investors who have not yet received compensation for their losses.

You should be aware that all claims are subject to time limits, so your opportunity to pursue recovery may be nearing its end. We encourage you to contact our office promptly to discuss your options. There is no cost or obligation for this initial call. Should you choose to retain our firms, we work exclusively on a contingency-fee basis, meaning we are only paid if we recover funds on your behalf.

To speak with us, please call **(800) 844-6400** or email **Atlas@kurtalawfirm.com**.

We look forward to speaking with you and helping you obtain the recovery to which you may be entitled.

Sincerely,

GANA WEINSTEIN LLP
Attorneys-at-Law

KURTA LAW FIRM
Attorneys-at-Law

295 Madison Avenue | Suite 705 | New York, New York 10017
Main Line: 800-844-6400 | Fax: 212-603-0790

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Dear Client:

This letter will confirm that you have retained Gana Weinstein LLP and Kurta Law (the "Law Firms") to represent you in connection with your FINRA Arbitration. This engagement letter sets forth the terms of our agreement.

We will render such ordinary and necessary legal services as may be required of us in connection with this matter. This shall include investigating your claim, and, if we deem it appropriate, commencing an arbitration before FINRA or in any other appropriate forum. We will keep you informed of the status and progress of our efforts and will respond promptly to your inquiries.

In consideration for the legal services to be rendered on your behalf, you agree to pay the Law Firms a contingency fee of thirty-five (35%) percent of all recovery received from the responsible party in your FINRA Arbitration. The "gross recovery" shall be the actual recovery received prior deducting expenses and disbursements. The Law Firms shall be reimbursed independently for all disbursements advanced on your behalf, if, and only if there is monetary recovery by you. **In no event will the Firm be entitled to payment of attorneys' fees or costs if the Firm's efforts do not ultimately result in monetary recovery by you**.

The Law Firms shall split the contingency fee evenly between themselves.

Upon signing this letter, you are retaining the Law Firms to serve as counsel with respect to your FINRA Arbitration only and does not extend beyond the arbitration.

This Agreement shall be governed by the laws of the State of New York and venue for any action hereunder shall be in New York County, New York. In the event there is a fee dispute, you may be entitled to have the dispute resolved through arbitration, pursuant to Part 137 of the Rules of the Chief Administrator of the Courts of the State of New York.

If our representation of you, on the terms described above, is acceptable, please execute a copy of this letter in the space provided below and return to me the executed copy to the undersigned. If you have any questions, please do not hesitate to contact me. I look forward to working with you on this matter.

Sincerely,

Adam Gana

AGREED AND CONSENTED TO:

Name:

_____

Signature:

_____

Telephone Number:

_____

Email:

_____

Address:

_____

_____