

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Hank M. Werner (CRD No. 1615495),

Respondent.

DISCIPLINARY PROCEEDING
No. 2015048048801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

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

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

RESPONDENT AND JURISDICTION

8. Respondent Werner first became registered with FINRA as a General Securities Representative (“GS”) through a member firm in April 1994. He was registered with seven different member firms between April 1994 and his registration with Liberty Partners, where Werner was registered as a GS and a General Securities Principal (“GP”) from July 12, 2012 through December 11, 2012. Werner became registered through Legend as a GS and GP from December 11, 2012 through March 9, 2016. During the time he was at Liberty Partners and Legend, Werner worked from an office in Northport, New York.
9. On March 9, 2016, Legend filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) stating that Werner was terminated as of March 9, 2016.
10. This case emanated from an examination commenced by FINRA's Department of Member Regulation triggered by red flags in Werner's trading at Legend.
11. Although Respondent is no longer registered with FINRA or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with Legend, namely, March 9, 2016; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

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

12. The Department realleges and incorporates by reference paragraphs 1-11 above.
13. Section 10(b) of the Exchange Act prohibits the use of any “manipulative or deceptive device or contrivance” in connection with the purchase or sale of a security.
14. Rule 10b-5, promulgated thereunder, provides that:
 - a. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
 - b. To employ any device, scheme, or artifice to defraud,
 - c. To make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or
 - d. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of a security.
15. FINRA Rule 2020 prohibits the same misconduct as Section 10(b) of the Exchange Act and Rule 10b-5.
16. As set forth below, Werner engaged in a manipulative, deceptive and fraudulent scheme by churning DC’s accounts. He acted with intent to defraud and/or with reckless disregard of DC’s interests by seeking to maximize his own remuneration at the expense of his client’s interests.

Customer DC

17. Customer DC was born in September 1935. Since the age of five, she has been totally blind.
18. In 1971, DC married her husband, TC, who was also totally blind. They had no children. TC died after a long illness in September 2012.
19. Together, DC and TC operated a newsstand for many years, first in the Manhattan Municipal Building and then at the Internal Revenue Service building in Holtsville, New York.
20. DC has acute scoliosis and requires a wheelchair. She also is totally deaf in one ear and partially deaf in the other. She takes several medications and is in general poor health.
21. Since her husband's death in September 2012, DC has required extensive in-home care, including multiple full and part time aides, and her monthly living expenses have increased substantially.

Werner Becomes DC and TC's Broker

22. Werner became DC's and TC's broker in 1995 while Werner was working at a FINRA member firm. Werner took over their accounts from another broker.
23. Over the years, Werner visited occasionally and, after TC's death, Werner visited DC and assisted her with various issues, in addition to acting as her broker. DC and TC considered Werner to be a friend and trusted advisor.
24. Werner spent time with DC and knew not only of the death of DC's husband, but also of DC's poor health, her need for in-home care, and her extraordinary living expenses.

25. For 20 years, DC and, while he was alive, TC, trusted Werner to handle their accounts in a manner that would be in their best interests. They relied on his recommendations to buy and sell securities and relied on him to accurately portray to them the activity and holdings in their accounts.
26. Even though DC received account statements, she was completely blind and had to rely on Werner to let her know about account performance. He recommended all of the transactions in DC's accounts and DC followed all of Werner's recommendations.

Werner Moves to Liberty Partners and DC and TC Follow Him

27. When Werner moved to Liberty Partners in July 2012, DC and TC transferred their accounts to Werner at that firm. At the time Werner joined Liberty Partners, DC and TC each had an IRA account.
28. When DC's IRA account ("IRA Account No. 1") was transferred to Liberty Partners in February 2013, the opening balance was \$158,753.28, and the new account form listed "Growth" as her investment objective and "moderate risk" as her risk tolerance.
29. At the time of her husband's death in September 2012, DC's liquid net worth was approximately \$1.2 million, including fixed annuities, variable annuities, equity securities and certificates of deposits.
30. In late September 2012, DC opened a second IRA account at Liberty Partners ("IRA Account No. 2") into which she transferred the balance from her husband's IRA account, which was \$34,287.28.
31. DC's new account form for IRA Account No. 2 listed "balanced growth" as her investment objective and "moderate risk" as her risk tolerance.

Werner Begins Excessively Trading and Churning DC's IRA Accounts

32. Within a few weeks after TC died in September 2012, Werner began trading DC's two IRA accounts aggressively and without making a reasonable assessment of the suitability of his recommended aggressive trading strategy.
33. In conducting these trades, Werner charged DC either a principal markup or agency commission on every purchase *and* sale.
34. At Liberty Partners, Werner generally charged DC a markup or commission between 2.50 and 3.00% of the principal amount of the transaction.
35. When Werner moved to Legend, DC followed him to that firm. As discussed in more detail below, in July 2015, DC opened a third account with Werner, who was then at his next firm, Legend. That account was a non-qualified investment account ("Investment Account") funded with a \$45,000 withdrawal from one of DC's annuities.
36. After Werner joined Legend, he raised his markups and commissions on DC's trades to between 3.75 and 4.25% of the principal amount of the transaction, an increase of over 40 percent.
37. Between October 2012 and December 2015, Werner placed over 700 trades in DC's accounts, generating approximately \$243,430.20 in commissions and fees, and approximately \$183,734.33 in total net losses for DC. The activity in the accounts is described below.
38. Based on the level of trading and commissions charged, there was little to no possibility that DC would break even, let alone profit from such a trading strategy.

DC's IRA Account No. 1.

39. As of October 1, 2012, the beginning account value of DC's IRA Account No. 1 was \$156,694.61. Between October 2012 and December 2015, Werner placed 362 trades in DC's IRA Account No. 1, generating approximately \$134,077.71 in commissions and fees. The annualized cost-to-equity ratio was approximately 64.40%, and the annualized turnover rate was approximately 8.01. By December 31, 2015, the account had sustained net losses of approximately \$92,212.31. The activity in IRA Account No. 1 is summarized in **Schedule A** to the complaint.

DC's IRA Account No. 2.

40. In October 2012, DC's IRA Account No. 2 was opened with a deposit of \$34,287.28. In September 2014, upon Werner's recommendation, DC liquidated an IRA annuity and deposited the proceeds – \$59,297.75 – in IRA Account No. 2. DC incurred a surrender charge of \$2,013.14 in connection with the liquidation.

41. Between October 2012 and December 2015, Werner placed 303 transactions in DC's IRA Account No. 2, generating approximately \$89,586.62 in commissions and fees. The annualized cost-to-equity ratio was approximately 97.73%, and the annualized turnover rate was approximately 12.13. By December 31, 2015, the account had sustained net losses of approximately \$67,808.37. The activity in IRA Account No. 2 is summarized in **Schedule B** to the complaint.

DC's Investment Account

42. In July 2015, upon Werner's recommendation, DC opened a third account with Werner, who was then at his next firm, Legend. That account was a non-qualified

investment account (“Investment Account”) funded with a \$45,000 withdrawal from one of DC’s annuities.

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

Werner’s Control and Churning of DC’s Accounts

44. Throughout the period October 2012 through December 2015, Werner exercised control over each of DC’s accounts. Werner chose all of the stocks that were purchased in DC’s accounts and recommended their purchase, including the quantities of shares and the timing of the purchase. Werner also recommended when and how much of the stock owned in DC’s accounts would be sold.
45. DC completely relied upon Werner to handle her accounts and trusted Werner to act in her best interests and in accordance with her investment objectives and risk tolerance.
46. Although she was sent statements and trade confirmations, DC, who was totally blind and severely debilitated, was not aware of the nature of the trading in her accounts, which amounted to over 700 trades in more than 200 different securities. The vast majority of the securities were held for less than a month.
47. DC also was not aware of the trading losses in her accounts or the high level of commissions and fees that Werner was charging for these transactions.

48. At all times, DC believed that Werner was managing her accounts in line with her investment objectives, risk tolerance, and best interests.
49. Instead, Werner acted in contravention of DC's investment objectives, risk tolerance, and best interests by excessively and fraudulently trading DC's accounts, including by aggressively trading her account and by charging her commissions higher than what he normally charged.
50. Werner aggressively traded DC's accounts with fraudulent intent. He intentionally and/or recklessly turned over the accounts quickly to generate outsized commissions and fees for himself and his firms at the expense of DC and her best interests.
51. The acts and transactions at issue were accomplished by the use of the means of the instrumentalities of interstate commerce, including telephone calls, and through the mail and involved securities transactions on a national securities exchange.
52. As a result of the foregoing conduct, Respondent Werner willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

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

53. The Department re-alleges and incorporates by reference paragraphs 1 through 52 above.
54. FINRA Rule 2111, which became effective on July 9, 2012, requires that "an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer" in light of the customer's investment objective and financial situation.

Furthermore, an associated person who has actual or *de facto* control over a customer account is required to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.

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

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

60. The Department re-alleges and incorporates by reference paragraphs 1 through 59 above.
61. FINRA Rule 2330(b) prohibits a representative from recommending the purchase or exchange of a deferred variable annuity (“VA”), unless the representative has a reasonable basis to believe that the purchase or exchange meets the suitability requirements of FINRA Rule 2111 and there is a reasonable basis to believe that the purchase or exchange is consistent with the suitability determination required by Rule 2330(b)(1)(A).
62. With respect to an exchange of a VA, Rule 2330(b)(1)(B) also requires the representative to take into consideration whether (i) the customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements); and (ii) the customer would benefit from product enhancements and improvements.
63. In December 2007, DC purchased a non-qualified VA sold by Hartford known as “Director M” (the “Hartford VA”), through FINRA member firm A, investing a total of \$157,724.87. DC also purchased “The Hartford’s Lifetime Income Builder II” rider which provided guaranteed lifetime benefit payments. The total mortality and expense charge for the Hartford VA was 1.15% annually, and the fee for the rider was

.75% annually. In addition, the Hartford VA had a surrender period of seven years, which would expire in January 2015.

64. In July 2015, Werner recommended to DC that she exchange the Hartford VA for a VA sold by Nationwide called “Nationwide Destination B 2.0.” (the “Nationwide VA”). In August 2015, Werner effected the exchange of the Hartford VA for the Nationwide VA, for an investment of \$166,578, which was the total value of the Hartford VA minus a termination fee. DC also purchased the “Lifetime Income Rider,” which provided guaranteed lifetime benefit payments.

65. The total mortality and expense charge for the Nationwide VA was 1.30% annually, and the fee for the rider was 1.20% annually. In addition, the VA had a surrender period of seven years, during which DC would be charged a surrender charge on annual withdrawals in excess of 10% of the total purchase payments.

66. Legend and Werner received a commission of \$11,799.81 on the sale, of which approximately \$10,030 was paid to Werner.

67. The features of the Hartford VA and the Nationwide VA did not materially differ.

68. Werner’s replacement of DC’s Hartford VA was unsuitable because the Nationwide VA did not provide any benefit to DC that outweighed the increased fees and expenses and the new surrender periods she incurred as a result of the exchange.

69. Moreover, on the Disclosure Statement concerning the exchange, Werner stated that the primary reason for recommending the exchange was “low returns.” No other reason is stated. However, the historical one-year, three year and five year returns on DC’s mutual fund portfolio under the Hartford VA were higher than the historical

returns for the same periods concerning the proposed mutual fund portfolio under the Nationwide VA recommended by Werner.

70. As set forth above, Werner recommended an unsuitable variable annuity exchange to DC without having a reasonable basis to believe that the transaction was suitable.

71. As a result of this conduct, Werner violated FINRA Rules 2111, 2330(b) and 2010.

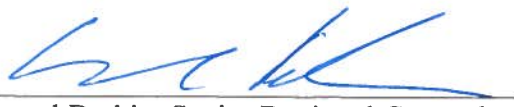
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent Henry Mark Werner willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 1, 2016


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SCHEDULE A

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
October 2012	\$156,694.61	\$83,507.28	\$4,750.03
November 2012	\$147,940.51	\$51,021.71	\$3,045.61
December 2012	\$137,770.27	\$2,741.46	\$0.00
January 2013	\$143,750.10	\$0.00	\$0.00
February 2013	\$147,373.80	\$145,305.59	\$7,671.81
March 2013	\$139,203.90	\$92,690.31	\$7,666.23
April 2013	\$139,585.16	\$47,477.33	\$4,435.33
May 2013	\$132,617.51	\$129,253.95	\$9,989.93
June 2013	\$128,788.79	\$54,692.31	\$5,336.29
July 2013	\$115,078.28	\$86,932.42	\$6,798.91
August 2013	\$114,534.95	\$74,008.07	\$7,538.69
September 2013	\$105,056.82	\$78,230.07	\$7,184.46
October 2013	\$99,356.05	\$62,801.93	\$5,294.14
November 2013	\$98,707.89	\$39,298.74	\$4,070.06
December 2013	\$94,553.59	\$73,546.89	\$5,996.15
January 2014	\$85,313.27	\$45,974.87	\$4,295.19
February 2014	\$79,243.90	\$70,867.75	\$6,449.81
March 2014	\$78,806.92	\$79,555.43	\$6,536.13
April 2014	\$68,988.15	\$43,325.91	\$4,218.98
May 2014	\$59,863.91	\$43,367.13	\$3,226.89
June 2014	\$54,745.00	\$66,573.01	\$5,008.50
July 2014	\$52,140.15	\$39,794.98	\$2,886.96
August 2014	\$46,159.26	\$48,332.91	\$4,036.93
September 2014	\$41,700.05	\$44,667.82	\$4,328.19
October 2014	\$34,542.34	\$47,634.38	\$3,478.62

SCHEDULE A

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
November 2014	\$29,755.26	\$23,712.31	\$2,058.08
December 2014	\$24,226.32	\$13,833.81	\$1,396.21
January 2014	\$20,381.74	\$16,162.81	\$1,167.75
February 2015	\$17,230.40	\$7,511.34	\$765.37
March 2015	\$13,961.44	\$9,041.68	\$998.35
April 2015	\$11,436.38	\$8,961.02	\$965.17
May 2015	\$9,048.81	\$9,509.88	\$943.45
June 2015	\$6,467.22	\$8,805.53	\$817.95
July 2015	\$3,943.98	\$10,921.28	\$0.00
August 2015	\$3,539.70	\$0.00	\$147.09
September 2015	\$3,057.12	\$2,792.11	\$130.09
October 2015	\$2,741.04	\$2,802.65	\$259.18
November 2015	\$2,881.89	\$0.00	\$40.00
December 2015	\$1,932.08	\$1,150.00	\$145.18
		Total Purchases	Total Commissions and Fees
		\$1,666,806.67	\$134,077.71

SCHEDULE B

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
October 2012	\$34,287.28 (deposit)	\$57,766.06	\$2,973.58
November 2012	\$29,210.88	\$18,873.33	\$1,114.15
December 2012	\$29,706.26	\$0.00	\$0.00
January 2013	\$31,142.15	\$0.00	\$0.00
February 2013	\$33,529.05	\$32,654.94	\$2,526.50
March 2013	\$31,839.74	\$14,556.45	\$1,314.41
April 2013	\$31,098.58	\$15,805.49	\$1,795.09
May 2013	\$30,434.08	\$21,639.30	\$2,131.44
June 2013	\$28,212.95	\$20,045.25	\$1,647.35
July 2013	\$25,138.31	\$24,703.53	\$1,959.34
August 2013	\$25,402.15	\$19,344.72	\$1,947.13
September 2013	\$23,070.84	\$16,947.24	\$1,556.07
October 2013	\$22,664.27	\$21,132.98	\$1,735.33
November 2013	\$22,187.41	\$15,722.45	\$1,437.02
December 2013	\$21,757.12	\$13,799.22	\$1,192.70
January 2014	\$19,988.85	\$11,082.31	\$1,164.98
February 2014	\$18,982.38	\$7,617.94	\$509.73
March 2014	\$19,234.55	\$17,569.87	\$1,592.32
April 2014	\$17,776.65	\$17,103.53	\$1,931.14
May 2014	\$16,452.46	\$21,993.46	\$1,576.60
June 2014	\$15,029.76	\$20,950.90	\$1,698.60
July 2014	\$14,058.30	\$13,078.25	\$976.83
August 2014	\$13,516.60	\$17,683.33	\$1,490.58
September 2014	\$12,616.37	\$11,127.03	\$960.47
October 2014	\$11,624.16	\$75,538.95	\$3,934.80

SCHEDULE B

Month/Year	Beginning Monthly Net Equity	Total Monthly Purchases	Total Monthly Commissions and Fees
November 2014	\$67,977.40	\$89,487.76	\$8,248.41
December 2014	\$61,924.67	\$95,428.20	\$8,160.62
January 2014	\$54,574.30	\$59,988.39	\$5,733.08
February 2015	\$45,414.39	\$62,972.05	\$4,864.46
March 2015	\$43,452.74	\$48,323.44	\$4,404.19
April 2015	\$38,893.79	\$37,151.13	\$4,279.05
May 2015	\$35,230.18	\$58,767.75	\$4,316.59
June 2015	\$33,265.79	\$29,330.94	\$2,049.68
July 2015	\$34,467.11	\$31,847.10	\$2,059.63
August 2015	\$31,744.08	\$0.00	\$0.00
September 2015	\$28,908.64	\$25,622.87	\$1,109.14
October 2015	\$24,428.99	\$32,342.75	\$2,503.77
November 2015	\$21,983.07	\$28,007.95	\$1,863.52
December 2015	\$18,200.03	\$6,120.25	\$828.32
		Total Purchases	Total Commissions and Fees
		\$1,112,127.11	\$89,586.62

SCHEDULE C

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