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**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

In the Matter of)	CSI Case Number: SEC-2016-106
)	
ALEXANDER CAPITAL, L.P., a)	SECOND AMENDED NOTICE OF
Montana licensed broker-dealer;)	PROPOSED AGENCY ACTION AND
WILLIAM GENNITY;)	OPPORTUNITY FOR HEARING
JOSEPH CONNOLLY;)	
FRANCINE LANAIA;)	
BARRY EISENBERG;)	
TIMOTHY STACK;)	
ROCCO GUIDICIPIETRO; and)	
RYAN MURNANE,)	

Respondents.

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PLEASE TAKE NOTICE:

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), hereby amends its Amended Notice of Proposed Agency Action and Opportunity for Hearing dated November 23, 2016. The Amended Notice of Proposed Agency Action and Opportunity for Hearing amended the initial notice dated August 2, 2016.

Pursuant to the authority of the Securities Act of Montana (Mont. Code Ann. § 30-10-101 et seq.), the CSI continues to take action against Alexander Capital, L.P. (Respondent AC), William Gennity (Respondent Gennity), Joseph Connolly (Respondent Connolly), Francine Lanaia (Respondent Lanaia), Barry Eisenberg (Respondent Eisenberg), Timothy Stack (Respondent Stack), and Rocco Guidici Pietro (Respondent

Guidici Pietro). The CSI hereby adds Ryan Murnane (Respondent Murnane) to this action. The CSI is seeking an order from the Commissioner imposing any and all appropriate legal action, including but not limited to, revocation of any Montana licenses or registrations held by any respondent, imposition of fines, and an order requiring restitution.

JURISDICTION

The Commissioner has authority to take this action under the provisions of Mont. Code Ann. §§ 30-10-102, -107, -201, -301, -304, -305, -309 and -310.

RELEVANT FACTS

Investigation has revealed the following relevant facts:

1. Respondent Alexander Capital, L.P. (CRD # 40077) (Respondent AC), became registered in Montana as a broker-dealer of securities in January 2010, and is currently registered in that capacity.

2. Respondent Gennity (CRD # 4913490) was registered in Montana as a securities salesperson from April 2012 until October 2014. He was acting as a salesperson when dealing with Charles Graveley (Graveley) and Tri-G Corporation during the relevant dates and times of this action. The Financial Industry Regulatory Authority's (FINRA) Central Registration Depository (CRD) maintains registration filings for all broker-dealer firms and individuals associated with the firms; there are disclosure requirements for customer complaints, regulatory actions, and judgments or liens against securities broker/dealers. A complaint by an investor against Respondent Gennity was reported to the CRD in August 2014. The complaint included allegations of churning (i.e. excessive trading) and unsuitable investment practices by Respondent Gennity while he was working

at Respondent AC. It was resolved by agreement, including that Respondent Gennity pay the complainant. Two more complaints against Respondent Gennity have been reported to the CRD, including one by Graveley.

3. Respondent Connolly (CRD # 5896793) was registered in Montana as a securities salesperson from April 2013 until May 2014. He was acting as a salesperson when dealing with Graveley and Tri-G Corporation from April 2013 until he terminated employment in May 2014. In August 2014, the previously referenced complaint against Respondent Gennity was also reported to the CRD as against Respondent Connolly. Graveley's complaint has been reported, but because Respondent Connolly is not currently working as a salesperson or investment advisor representative, reporting requirements to the CRD do not apply.

4. Respondent Lanaia (CRD # 1415689) is not registered in Montana in a securities-related capacity and was not during the relevant time periods. According to Respondent AC, she was the supervisor for Respondents Gennity and Connolly from the time they began dealing with Charles Graveley through December 31, 2013. Additionally, according to Respondent AC's Form BD amendments on the CRD, Respondent Lanaia served as Chief Compliance Officer from the inception of Graveley's personal account until approximately October 2013. She left the firm at the end of December 2013. Since May 2004, two complaints have been reported to the CRD against Respondent Lanaia involving failure to supervise by her at two different investment firms. Additionally, she was the subject of a regulatory action by FINRA in July 2009 for her failure to supervise. A current complaint regarding her practices while at Respondent AC includes allegations of unsuitable

investment practices, failure to supervise, and churning.

5. Respondent Eisenberg (CRD # 2313107) was registered in Montana as a securities salesperson in May 2013 and is currently registered in that capacity. He is identified on Respondent AC's Form BD as its Branch Manager Supervisor of the firm's State Street location, where Gennity, Connolly, and Murnane worked. Respondent Eisenberg was the supervisor for Respondents Gennity and Connolly from January through August 2014. Eisenberg was the supervisor for Respondent Murnane during the period relevant to this action.

6. Respondent Stack (CRD # 1426363) is not registered in Montana in a securities-related capacity and was not during the relevant time periods. According to Respondent AC's Form BD amendments, Respondent Stack became Chief Compliance Officer effective approximately October 2013, and retained that position during the subsequent periods relevant to this action.

7. Respondent Guidici Pietro (CRD # 2489732) is not registered in Montana in a securities-related capacity and was not during the relevant time periods. According to Respondent AC's Form BD amendments, during the period relevant to this action Respondent Guidici Pietro was Branch Supervisor of the firm's State Street location. Additionally, Respondent Guidici Pietro is identified on the Form BD amendments as Branch Manager until approximately September 2013. Since approximately 2006, five investor complaints and one FINRA adjudication regarding Respondent Guidici Pietro have been reported on the CRD. The allegations included failure to supervise, churning, unsuitable trades, unauthorized trades, breach of fiduciary duty, breach of contract, and fraud.

8. Respondent Murnane (CRD # 4784140) is not registered in Montana in a securities-related capacity. The CRD reflects a number of complaints, settlements, and unpaid liens involving Respondent Murnane. The settlements relate to four complaints dating from May 2012 through September 2013, with claims of unauthorized security transactions, fraud, churning, unsuitable trades, breach of contract, breach of fiduciary duty, and negligence. The four pending complaints (including one related to the claims made herein) were lodged in the year 2017.

9. Respondent Murnane was a securities salesperson at Rockwell Securities from October 2010 until his resignation in November 2013. He was then a salesperson for Respondent AC from November 25, 2013 through July 17, 2015. As noted below, he was not registered in Montana until December 19, 2013, and his registration was subject to the heightened supervision agreement required by the CSI described below. In July 2015, Respondent Murnane became affiliated with Woodstock Financial Group. He was terminated by Woodstock Financial Group on January 10, 2017, and he returned to Respondent AC. He was terminated by Respondent AC on April 3, 2017.

10. In April 2013, Charles Graveley, a Montana resident, opened a personal account with Respondent AC. At that time he transferred \$318,697 into his account; and from April 8, 2013, through August 6, 2014, 213 securities trades were made by Respondent AC and its salespersons Respondents Gennity and Connolly. Forty (40) different securities were purchased and sold in Graveley's account. Respondents charged Graveley approximately \$289,944.75 in commissions on the 213 trades during this time period.

11. Graveley closed the account in August 2014. At that time, a position valued at

\$63,000 and funds of \$4,925.31 were transferred into the Tri-G Corporation account described below. Investigation by the CSI revealed that the Looper turnover rate in Graveley's account was 57.9 based on purchases, and 57.1 based on sales.¹ Such high turnover rates are evidence of Respondents engaging in churning.

12. In February 2014, Graveley opened an account with AC in the name of Tri-G Corporation. Graveley invested \$46,000 and transferred in a stock position of \$4,925 from his personal AC account, for a total investment in the Tri-G Corporation account of \$113,925.31. From April 2014 through August 2014, 12 securities trades were made by Respondent AC and its salespersons Respondents Gennity and Connolly. Three securities were purchased and sold, and the account experienced a net loss on investment of \$45,113. Respondents charged Tri-G Corporation approximately \$4,265.94 in commissions on 12 trades during this time period.

13. Graveley closed the Tri-G Corporation account in November 2014. Investigation by the CSI revealed that between April and August (the period of active trading) the Looper turnover rate in Tri G's account was 3.5 based on purchases and 2.16 based on sales. Such high turnover rates are evidence that Respondents engaged in churning.

14. By letter dated February 3, 2016, Graveley notified the CSI of his experiences with the Respondents. The complaint included allegations of churning to produce excessive

¹ The Looper turnover rate generally calculates the total dollar amount of purchases during a time period divided by the average account equity and then annualized. *See generally* 38 S.E.C. 294 (1958). The rule of thumb concerning turnover is often referred to as the "2-4-6 Rule." The guidelines view annual turnover rates as follows:

- Twice a year turnover is "suggestive" of excessive trading;
- Four times a year turnover is "indicative" of excessive trading; and
- Six times a year turnover is "conclusive" of excessive trading.

commissions and unauthorized trading. In February 2016, the CSI requested relevant information, documents, communications, and recordings regarding Graveley's and Tri G Corporation's account, and the relationship between Graveley and all Respondents. In response, some documentation was produced, but Respondents claimed financial hurdles to producing telephone records.

15. With regard to recordings, Respondents first stated that none existed, then produced a recording of a telephone call on September 3, 2014, from Respondent Feinman to Graveley; Respondent Stack was also present for the call. During the telephone call, Graveley stated that there were many problems with what the Respondents had done with his money, and that his directions were ignored. He stated that his authorization was not sought or received for transactions executed by the salespersons (including transactions on margin) and complained generally about the firm's practices, as well as the outcomes requiring large sums of money from him. In response to Graveley's complaint about unauthorized trading, Feinman implied it was Graveley's obligation to remedy the salespersons' unauthorized trading, rather than the salespersons' obligation to consistently obtain authorization: "[Y]ou could have told [the AC salespersons], 'No, I didn't want that trade, cancel the trade, I don't want it.'"

16. None of the Respondents notified the CSI of the Graveley call or its contents prior to the CSI initiating its investigation in 2016.

17. On February 8, 2016, the CSI sent to Respondent AC's then-Chief Compliance Officer, Luis Restrepo, a letter notifying Respondent AC that the CSI had received a written complaint against the firm, Respondent Gennity, and Respondent Connolly; and that the

complaint alleged “unsuitable and excessive trading, as well as excessive commissions.”

The CSI provided the firm a copy of the complaint within the following week. Respondents AC, Gennity, and Connolly did not amend Gennity’s and Connolly’s U4s (filed with the CRD) to report the complaint until April 15, 2016.

18. Respondent AC disclosed three margin-related documents to the CSI on Graveley’s personal account. One RBC Credit Account Agreement was signed by Graveley on April 10, 2013, the same day he completed his initial new account form. On both documents Graveley wrote, “This is not a margin account,” and initialed the statement. A second RBC Credit Account Agreement was signed June 6, 2013. In a handwritten note on the form, Graveley stated the agreement was limited to a single purchase of SPWR stock that had occurred on May 28, 2013. A third RBC Credit Account Agreement was signed June 17, 2013. In a cover letter, Graveley noted the agreement was to be used specifically to purchase additional SPWR shares.

19. Respondent AC and its salespersons Respondents Gennity and Connolly actively traded on margin without authorization to do so. Graveley’s personal account had a margin balance nearly the entire time it was open. Nearly every security in Graveley’s personal account was purchased on margin, when Graveley had authorized two margin trades. Respondent AC charged Graveley a total of \$16,976.69 in margin loan interest on his personal account.

20. The trade confirmations sent for both the Graveley and Tri-G Corporation accounts did not accurately reflect the true extent of compensation Respondents received on those trades. Nearly every confirmation showed a \$49.00 commission/handling cost.

However, Respondents received the bulk of compensation through share price markups or markdowns on the same transactions. For the 213 transactions on Graveley's personal account, \$10,437 in commissions was reported directly on the face of the trade confirmation document. Using the terms of "markdown" or "markup," Respondents charged an additional \$279,507.75, for total commissions of \$289,944.75.

21. During the relevant time period, 89 exception reports were issued for Graveley's personal account, and 4 reports were issued for the Tri-G Corporation account. The reports identified a total of 100 exceptional trades.

22. When Respondent Murnane was employed at Rockwell Securities, he solicited Alan Skari, a Montana resident, as an investor. When Respondent Murnane left Rockwell Securities in November 2013, he convinced Skari to move his account to Respondent AC. By March 4, 2014, Skari had deposited \$549,039 in cash and securities into the Alexander Capital account. Thirty four (34) different securities were purchased and sold in Skari's account from November 2013 through July 2015. The trade confirmation documents sent to Skari reflected commissions and service fees of approximately \$6,700. Using the terms of "markdown" or "markup," Respondents charged an additional \$91,600, for total commissions charged Skari for the trading in excess of \$98,000. Furthermore, one trade, a purchase of 2,600 shares of YY, Inc. yielded to a \$1,497.37 commission charge, as well as a \$2,418 markup cost.

23. Skari closed the account in August 2015. Investigation by the CSI revealed that the Looper turnover rate in Skari's account in the year 2014 was 9.6 based on purchases, and 10.76 based on sales. In the year 2015, the Looper turnover rate in Skari's account was

20.12 based on purchases, and 22.50 based on sales. Such high turnover rates are evidence that Respondents engaged in churning.

24. The net trading loss experienced by Skari with regard to his account held at Respondent AC and handled by Respondent Murnane was almost \$330,000. Respondent Murnane's name appears on the monthly statements of Respondent AC December 2013 through June 2015.

25. During the relevant time period, 21 pages of exception reports were issued for Skari's account. The reports identified a total of at least 16 exceptional trades. The firm's exception reports relating to Skari's account were reviewed and approved by Respondent Eisenberg.

26. By letter dated February 8, 2016, the CSI requested the following from Respondent AC: "copies of the new account forms and amendments for all other Montana client of Alexander Capital, L.P." While Respondent AC responded on February 16, 2016, with other information requested by the CSI, Respondent AC provided no documentation regarding Alan Skari, a Montana client.

27. The CSI received a complaint on January 11, 2017, from Skari regarding Respondent Murnane's actions associated with his securities account at Woodstock Financial Group. Investigation led to the revelation that Murnane had been working for Respondent AC and handling Skari's account as stated above.

28. Skari was interviewed on February 27, 2017, by CSI Deputy Securities Commissioner, investigator, and analyst Lynne Egan. Skari reported that he learned of Respondent Murnane as a securities salesperson when he answered an unsolicited telephone

call. Skari transferred his account to Alexander Capital when Respondent Murnane began working at Respondent AC in November 2013. Skari described Respondent Murnane as a "hard pressure" salesperson who would talk continually during their telephone calls and "wouldn't take no for an answer." Skari hung up on Respondent Murnane on more than one occasion. The calls would not come before each trade by Respondent Murnane and the trades were not Skari's idea, rather decided on and done by Respondent Murnane. Respondent Murnane claimed that the purchases were such great deals, Respondent Murnane was not charging Skari commissions.

29. The CSI reviewed Respondent AC's written policies and procedures. This review revealed that, with respect to the conduct identified herein, Respondent AC and its staff failed to follow Respondent AC's procedures on the following topics: supervisory review and monitoring of registered representatives, maintenance of complete and accurate client documentation (including new account forms and margin agreements), suitability of transactions, churning, margin account practices, and appropriateness of commissions charged.

30. Based upon its investigation, the CSI could not identify significant efforts on the parts of Respondents AC, Lanaia, Stack, Guidici Pietro, or Eisenberg to ensure Respondents Gennity, Connolly, or Murnane followed the firm's written policies and procedures, or to otherwise ensure those parties' compliance with Montana securities laws.

31. The CSI received on November 25, 2013, an application sent by Respondent AC for registration of Respondent Murnane as a salesperson in Montana. On that same day, the CSI responded in a letter, noting that Murnane's individual CRD record showed that he

has been the subject of customer complaints alleging dishonest or unethical practices in the securities industry. The letter continues:

[T]he [CSI] proposes that your firm implement special supervisory procedures with respect to your firm's review of this individual's activities with residents of Montana. The [CSI] believes that such measures may be advisable in order to protect the interests of your firm, your registered representative, and Montana residents. Therefore, the [CSI] suggests the following additional procedures regarding supervision of the individual:

1. Every 60 days, a principal of the firm shall contact each Montana customer for whom a transaction was effected by this individual, and verify that transactions were approved by, and suitable for, the customer. During such contacts, the firm shall also review the representations made by this representative in connection with the transaction, and determine whether representations made by him or her were in accordance with the firm's policies and the requirements of the Montana Securities Act and rules promulgated there under.
2. The firm shall notify the [CSI] within one(1) business day of the receipt of any complaint against this individual or notification by any state, federal or self-regulatory organization of an investigation of this individual. Similarly, such notification shall be required upon the firm's determination, based upon the required customer contacts that this individual did not abide by the firm's policies and procedures or with Montana law.

In a letter to CSI Licensing Examiner Michelle Huftel dated December 17, 2013, Respondent Stack stated: "Alexander Capital & Mr. Murnane Agree to abide by the Heightened Supervision procedures described in your letter Dated November 25, 2013. Mr. Barry Eisenberg will be the Branch Manager Responsible for Mr. Murnane's adherence to the Heightened Supervision Procedures."

32. Prior to any agreement between the CSI, Respondent AC, and Respondent Murnane regarding heightened supervision, Respondent Murnane was not registered as a

securities salesperson in Montana. Respondents Murnane and AC conducted four trades for Skari, resulting in \$219,257.56 in sales and \$121,898.50 in purchases of securities, prior to any registration of Respondent Murnane as a salesperson. While the trade confirmation documents on the four trades list Christopher DeLuca, a Montana-registered salesperson at Respondent AC, Skari told the CSI he does not know this individual, never spoke with this individual. Telephone records indicate Respondent Murnane called Skari nineteen times prior to his December 19, 2013, registration in Montana.

33. In response to a request letter dated March 22, 2017, the CSI received from Respondent AC information regarding Skari's account. The information includes a recording of a telephone call from Respondent Eisenberg to Skari on August 26, 2015. The short conversation does not include communication on issues required by the heightened supervision agreement, e.g., approval of transactions, suitability of transactions, representations by Respondent Murnane to Skari prior to transactions. Respondent Eisenberg merely identified himself, stated he "just wanted to check in with you to make sure you're getting all of your statements and, um, your confirmations on your trades." When Respondent Eisenberg asked Skari "[E]verything's alright, no problems with [Respondent Murnane]?" Skari answered "Well, he seems to be recovering. He hasn't been too good so far this year but we're starting to come back some." By that time, Skari's account had suffered substantial losses in value.

34. No telephone calls of the nature required by the heightened supervision plan accepted by Respondent AC as a precedent to allowing Respondent Murnane to act in Montana as a securities salesperson were made by Respondent Eisenberg or any other

Respondent. Therefore, the agreement was violated and Respondent AC's, Respondent Eisenberg's, Respondent Stack's, and Respondent Murnane's failure to comply with the conditions imposed by the Securities Commissioner.

APPLICABLE LAW

1. Montana law provides that the Commissioner is to administer the Securities Act of Montana (Mont. Code Ann. §§ 30-10-101 et seq.) to protect investors, persons engaged in securities transactions, and the public interest. Mont. Code Ann. §§ 30-10-102, -107. Any person transacting business in Montana as a securities salesperson in Montana must be registered as such with the CSI. Similarly, it is unlawful for a broker-dealer to employ a salesperson to represent it in Montana unless the salesperson is registered with the CSI. Mont. Code Ann. §§ 30-10-103(24), 30-10-201. None of the exemptions from the registration requirement apply to Respondent Murnane or to Respondent AC in this regard. Mont. Code Ann. § 30-10-105.

2. Montana law provides:

Registration and notice filing requirements of broker-dealers, salespersons, investment advisers, and investment adviser representatives.

(1) It is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the broker-dealer or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered under parts 1 through 3 of this chapter.

(7) The application must contain whatever information the commissioner requires. A registration application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may

not be withdrawn before the commissioner approves or denies the registration, without the express written consent of the commissioner.

. . . .

(13) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

. . . .

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

. . . .

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

. . . .; or

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

. . . .; or

(k) has failed to reasonably supervise the person's salespersons or employees or investment adviser representatives or employees to ensure their compliance with this act.

. . . .

(18) The commissioner may, after suspending or revoking registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative, impose a fine not to exceed \$5,000 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesperson, investment

adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the broker-dealer, salesperson, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesperson, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter. . . .

Mont. Code Ann. § 30-10-201.

3. Montana law provides:

Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

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

Mont. Code Ann. § 30-10-301.

4. Montana law provides that it is "unlawful for any person to knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under parts 1 through 3 of this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect." Mont.

Code Ann. § 30-10-302. It also provides:

Investigations and subpoenas. (1) The commissioner may:

- (a) make public or private investigations or examinations within or outside this state as the commissioner considers necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order under this chapter or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms under this chapter;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; . . .

Mont. Code Ann. § 30-10-304.

5. Montana law provides:

Reporting requirements. (1) A broker-dealer, investment adviser, investment adviser representative, or other person who has reason to believe fraud has occurred shall report the suspected fraud to the commissioner within 60 days of discovery of the occurrence.

Mont. Code Ann. § 30-10-310.

6. Montana law provides:

FRAUDULENT AND UNETHICAL PRACTICES PROHIBITED BY
BROKER-DEALERS AND SALESMEN

(1) For purposes of 30-10-201 and 30-10-301, MCA, fraudulent and unethical practices means, but is not limited to:

(b) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(c) recommending to a customer the purchase, sale, or exchange of a security without grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(d) executing a transaction on behalf of a customer without authorization to do so;

(e) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders or to both time and price for the execution of orders;

(f) executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(k) charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest; exchange or transfer of securities;

appraisals, safekeeping, or custody of securities; and other services related to its securities business; . . . or

(u) engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices.

Admin. R. Mont. 6.10.401

7. Montana law provides:

REGISTRATION AND EXAMINATION - SECURITIES
SALESPERSON, INVESTMENT ADVISER REPRESENTATIVES,
BROKER-DEALERS, AND INVESTMENT ADVISERS

(2) Each application for registration in this state must be made on the most current revised uniform application form as adopted by the North American Securities Administrators Association (NASAA), unless the commissioner, by order, designates another form. Broker-dealers shall use FINRA form BD, investment adviser representatives shall use FINRA form ADV, and securities salespersons and investment adviser representatives shall use FINRA form U-4.

(5) Each change in the information included in an application for registration or termination must be set forth in an amendment to the application and filed with the commissioner within 30 days after the change occurs.

Admin. R. Mont. 6.10.501.

ALLEGATIONS AND RELIEF REQUESTED BY CSI

I. Respondents Lanaia, Stack, Guidici Pietro, Eisenberg, and AC

Based on the foregoing, the CSI alleges that Respondents Lanaia, Stack, Guidici Pietro, Eisenberg, and AC failed to reasonably supervise Respondents Gennity, Connolly, and other employees who assisted the securities transactions described above

to ensure their compliance with the Securities Act of Montana (Mont. Code Ann. §§ 30-10-101 et seq.). Mont. Code Ann. § 30-10-201.

The CSI seeks the following:

1. That the Commissioner fine Respondents in an amount not to exceed \$5,000 for each identifiable violation, pursuant to Mont. Code Ann. § 30-10-305(3);
2. That the Commissioner revoke the registration of Respondent AC in Montana pursuant to Mont. Code Ann. § 30-10-201(13);
3. That the Commissioner revoke the registration of Respondent Eisenberg in Montana pursuant to Mont. Code Ann. § 30-10-201(13); and
4. That the Commissioner order other such relief as the Commissioner deems appropriate.

II. Respondents Lanaia, Stack, Guidicipietro, Eisenberg, Gennity, Connolly, and AC

Based on the foregoing, the CSI alleges that Respondents Lanaia, Stack, Guidicipietro, Eisenberg, Gennity, Connolly, and AC failed to report to the CSI suspected fraudulent activities with regard to the Graveley and Tri-G Corporation accounts within 60 days of discovery of the occurrences. Mont. Code Ann. § 30-10-310.

The CSI seeks the following:

1. That the Commissioner fine Respondents in an amount not to exceed \$5,000 for each identifiable violation, pursuant to Mont. Code Ann. § 30-10-305(3);
2. That the Commissioner revoke the registration of Respondent AC in Montana pursuant to Mont. Code Ann. § 30-10-201(13);

3. That the Commissioner revoke the registration of Respondent Eisenberg in Montana pursuant to Mont. Code Ann. § 30-10-201(13); and

4. That the Commissioner order other such relief as the Commissioner deems appropriate.

III. Respondents Gennity, Connolly, and AC

A. Based on the foregoing, the CSI alleges that the practices of buying, trading, and selling securities by Respondents AC, Gennity, and Connolly using Graveley's and Tri-G Corporation's money from April 2013 through August 2014 involved the fraudulent and unethical practices of:

1. Inducing trading Graveley's and/or Tri-G Corporation's account(s) which was excessive in size or frequency in view of the financial resources and character of the account (churning);

2. Engaging in the purchase, sale, or exchange of a security without grounds to believe that the transaction was suitable for Graveley and/or Tri-G Corporation based upon relevant information known by the broker-dealer;

3. Executing a transaction on behalf of Graveley or Tri-G Corporation without authorization to do so;

4. Exercising discretionary authority on the accounts of Graveley and/or Tri-G Corporation without first obtaining in writing such discretionary authority;

5. Executing a transaction in a margin account without securing from Graveley or Tri-G Corporation a properly-executed written margin agreement promptly after the initial transaction in the account;

6. Charging unreasonable and inequitable fees for services performed related to its securities business; and

7. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices. Specifically, Respondents' activities included churning; recommendation and execution of unsuitable trades; unauthorized trading; improper margin activity; assessment of unreasonable fees; and a failure to disclose these activities, their impacts upon the accounts, and their illegality to Graveley and/or Tri-G Corporation.

These practices and acts are disallowed by Montana Code Annotated Section 30-10-301 and Admin. R. Mont. 6.10.401(1).

Additionally, the CSI alleges that Respondents Gennity, Connolly, and AC failed to timely amend Gennity's and Connolly's U4s as required under Montana law and by FINRA when they received notice of Gennity's written complaint to the CSI in February 2016.

Admin. R. Mont. 501.

The CSI seeks the following:

1. That the Commissioner fine Respondents in an amount not to exceed \$5,000 for each identifiable violation, pursuant to Mont. Code Ann. § 30-10-305(3);

2. That the Commissioner order Respondents to pay restitution pursuant to Mont. Code Ann. § 30-10-309;

3. That the Commissioner revoke the registration of Respondent AC in Montana pursuant to Mont. Code Ann. § 30-10-201(13); and

4. That the Commissioner order other such relief as the Commissioner deems appropriate.

IV. Respondent AC

Based on the foregoing, the CSI alleges that Respondent AC, during an investigation by the CSI, failed to report the existence of another Montana client in its response to the CSI of February 16, 2016. The lack of identification of the Montana client Skari was a violation of Mont. Code Ann. §§ 30-10-302 and -304.

The CSI seeks the following:

1. That the Commissioner fine Respondent AC in an amount not to exceed \$5,000 for each identifiable violation, pursuant to Mont. Code Ann. § 30-10-305(3);
2. That the Commissioner revoke the registration of Respondent AC in Montana pursuant to Mont. Code Ann. § 30-10-201(13); and
3. That the Commissioner order other such relief as the Commissioner deems appropriate.

V. Respondents AC, Eisenberg, and Stack

Based on the foregoing, the CSI alleges that Respondents AC, Eisenberg, and Stack failed to reasonably supervise Respondent Murnane, and other employees who assisted the securities transactions described above to ensure their compliance with the Securities Act of Montana (Mont. Code Ann. §§ 30-10-101 et seq.). Mont. Code Ann. § 30-10-201. The failure to supervise includes, but is not limited to, the failure to ensure the Respondent Murnane was registered in Montana prior to engaging in securities transactions.

VI. Respondents Murnane and AC

A. Based on the foregoing, the CSI alleges that the practices of buying, trading, and selling securities by Respondent AC and Respondent Murnane using Skari's money from November 2013 through August 2015 involved the fraudulent and unethical practices of:

1. Inducing trading in Skari's account(s) which was excessive in size or frequency in view of the financial resources and character of the account (churning);
2. Engaging in the purchase, sale, or exchange of a security without grounds to believe that the transaction was suitable for Skari based upon relevant information known by the broker-dealer;
3. Executing a transaction or transactions on behalf of Skari without authorization to do so;
4. Charging unreasonable and inequitable fees for services performed related to its securities business; and
5. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices. Specifically, Respondents' activities included churning; recommendation and execution of unsuitable trades; unauthorized trading; assessment of unreasonable fees; and a failure to disclose these activities, their impacts upon the accounts, and their illegality to Skari.

These practices and acts are disallowed by Montana Code Annotated Section 30-10-301 and Admin. R. Mont. 6.10.401(1).

The CSI seeks the following:

1. That the Commissioner fine Respondents in an amount not to exceed \$5,000 for each identifiable violation, pursuant to Mont. Code Ann. § 30-10-305(3);

2. That the Commissioner order Respondents to pay restitution pursuant to Mont. Code Ann. § 30-10-309;

3. That the Commissioner revoke the registration of Respondent AC in Montana pursuant to Mont. Code Ann. § 30-10-201(13); and

4. That the Commissioner order other such relief as the Commissioner deems appropriate.

VII. Respondent Murnane

Based on the foregoing, the CSI alleges that Respondent Murnane transacted securities business in the state of Montana as a salesperson without being registered as required by Mont. Code Ann. Section 30-10-201.

The CSI seeks the following:

1. That the Commissioner fine Respondents in an amount not to exceed \$5,000 for each identifiable violation, pursuant to Mont. Code Ann. § 30-10-305(3); and

2. That the Commissioner order other such relief as the Commissioner deems appropriate.

VIII. Respondents Stack, Eisenberg, Murnane, and AC

Based on the foregoing, the CSI alleges that Respondents Stack, Eisenberg, Murnane, and AC, failed to comply with the heightened supervision agreement reached with the CSI in December 2013, as a condition of Respondent Murnane acting as a securities salesperson in Montana. Mont. Code Ann. Section 30-10-201(13)(i).

The CSI seeks the following:

1. That the Commissioner fine Respondents in an amount not to exceed \$5,000 for each identifiable violation, pursuant to Mont. Code Ann. § 30-10-305(3);
2. That the Commissioner revoke the registration of Respondent AC in Montana pursuant to Mont. Code Ann. § 30-10-201(13);
3. That the Commissioner revoke the registration of Respondent Eisenberg in Montana pursuant to Mont. Code Ann. § 30-10-201(13); and
4. That the Commissioner order other such relief as the Commissioner deems appropriate.

STATEMENT OF RIGHTS OF AND NOTICE TO RESPONDENTS

The following notice is provided to those Respondents not named in the CSI's initial Notice of Proposed Agency Action and Opportunity for Hearing.

1. You are entitled to a hearing to respond to this Notice, present evidence, and present arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act, § 2-4-601 et seq., **if you notify Barbara C. Harris**, attorney for the CSI, as set out below.

2. **You must provide a written demand for a formal hearing to:** Barbara C. Harris, Attorney, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, MT 59601. As stated in Montana Code Annotated

Section 33-1-701, "A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing."

3. **Your written demand for a formal hearing must be received by Barbara C. Harris on or before June 19, 2017. Failure to make written demand for a formal hearing will result in the entry of a default order by the Commissioner ordering the actions requested above. THIS WILL HAPPEN WITHOUT ANY ADDITIONAL NOTICE TO YOU IF YOU DO NOT MAKE WRITTEN DEMAND AS SET OUT ABOVE.** Administrative Rule of Montana 1.3.214.

4. You have the right to be represented by an attorney at any and all stages of this proceeding. Any such attorney must be admitted to practice law in Montana pursuant to the applicable rules of the State Bar of Montana and the Montana Supreme Court.

DATED this 26th day of May, 2017.

BARBARA C. HARRIS
NICK MAZANEC
Attorneys for CSI

By Barbara C. Harris

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of May, 2017, a true and correct copy of the foregoing Second Amended Notice of Proposed Agency Action and Opportunity for Hearing was sent to:

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