

Brett O'Neil  
840 Helena Avenue  
Helena, MT 59601  
406-444-2040

Attorney for the CSI

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE,  
HELENA, MONTANA

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IN THE MATTER OF:	)	CASE NO.	SEC-2013-58
	)		
CHELSEA FINANCIAL SERVICES	)	CONSENT AGREEMENT AND FINAL	
242 Main Street	)	ORDER	
Staten Island, NY, 10307	)		
A Broker-Dealer firm,	)		
	)		
	)		
	)		
Respondent.	)		
	)		

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This Consent Agreement and Final Order (Agreement) is entered into by the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), acting pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (Act), and Chelsea Financial Services Respondent.

**RECITALS**

WHEREAS, the CSI received four investor complaints alleging that their CFS accounts sustained losses due to excessive trading and high commissions;

WHEREAS, the CSI determined CFS is a Montana licensed broker-dealer;

WHEREAS, the CSI conducted an investigation of all CFS accounts in Montana;

WHEREAS, the CSI's investigation revealed excessive trading and excessive commissions in certain Montana CFS accounts;

WHEREAS, the CSI determined Respondent's salesperson Joseph Biondolillo (Biondolillo) acted as the salesperson on 22 of 26 Montana CFS accounts. A review of those accounts demonstrated:

- a. Thirteen accounts had less than five trades or were never funded by the clients;
- b. Five accounts were tied to the 4 Montana complainants;
- c. One account was tied to a FINRA complainant;
- d. Three more accounts had questionable transactions.

WHEREAS, the CSI investigated the nine accounts with more than five trades;

WHEREAS, during the course of the CSI's investigation, it was alleged that certain investor portfolio information memorialized by Biondolillo included inaccurate annual income statements, inaccurate net worth statements, inaccurate investment experience statements, and inaccurate investment objectives (which are identical on all Biondolillo accounts);

WHEREAS, the CSI determined investor K.F.'s CFS account lost \$19,232.36, detailed as follows:

- a. K.F. invested a total of \$23,638.63 with Respondent.
- b. During that same 12-month period, there were \$188,311.84 in purchases and \$177,970.64 in sales on the account, with Looper turnover rates<sup>1</sup> of 13.12 and 11.4, respectively.

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<sup>1</sup> 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. There are a number of approaches used by regulators in computing turnover, but the most common technique is the Looper Formula, so named after an SEC case involving a brokerage firm of the same name. The rule of thumb concerning turnover is often referred to as the "2-4-6 Rule." The guideline views 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 a "rebuttable presumption" of excessive trading.

CFS uses Looper turnover rates in its supervision manual.

- c. The average hold period for each individual security during this 12-month period was 27.42 days.

WHEREAS, the CSI determined investor V.H.'s CFS account lost \$57,869.38, detailed as follows:

- a. V.H. invested a total of \$57,896.36 with Respondent.
- b. During that same 36-month period, there were \$645,242.08 in purchases and \$631,708.26 in sales in the account, with Looper turnover rates of 65.89 and 64.51, respectively.
- c. The average hold period for a security position in the 36-month period was 23.39 days.

WHEREAS, the CSI determined investor D.H.'s Respondent account lost \$66,822.52, detailed as follows:

- a. D.H. invested a total of \$84,802.48 with Respondent.
- b. During that same 13-month period, there were \$803,398.00 in purchases and \$793,474.00 in sales in the account, with Looper turnover rates of 33.00 and 32.59, respectively.
- c. The average hold period for a security position in D.H.'s account during the 13-month period was 18.09 days.

WHEREAS, the CSI determined investors E.C. and S.C. (hereinafter E.C.) CFS account lost \$30,499.85, detailed as follows:

- a. E.C. invested a total of \$34,200.00 with Respondent.

- b. During that same 27-month period, there were \$205,174.80 in purchases and \$179,006.30 in sales in the account, with Looper turnover rates of 33.09 and 28.87, respectively.
- c. The average hold period for a security position in the 27-month period was 83.37 days.

WHEREAS, the CSI determined investor M.O.'s CFS account lost \$14,059.27, detailed as follows:

- a. M.O. invested a total of \$30,499.85 with Respondent.
- b. During that same 10-month period, there were \$204,589.59 in purchases and \$198,985.08 in sales in the account, with Looper turnover rates of 8.75 and 8.51, respectively.
- c. The average hold period for a security position in the 10-month period was 32.87 days.

WHEREAS, the CSI determined investor J.C.'s CFS account lost \$22,068.95, detailed as follows:

- a. J.C. invested a total of \$27,150.00 with Respondent.
- b. During that same 17-month period, there were \$297,053.48 in purchases and \$261,116.14 in sales in the account, with Looper turnover rates of 30.59 and 26.89, respectively.
- c. The average hold period for a security position in the 17-month period was 39.09 days.

WHEREAS the CSI determined investor R.J.'s CFS account lost \$5,190.08, detailed as follows:

- a. R.J. invested a total of \$10,681.43 with Respondent.
- b. During that same 14-month period, there were \$146,587.97 in purchases and \$138,412.83 in sales in the account, with Looper turnover rates of 32.44 and 30.63, respectively.
- c. The average hold period for a security position in the 14-month period was 30.63 days.

WHEREAS, the CSI determined investor L.R.'s CFS account lost \$3,838.97, detailed as follows:

- a. L.R. invested a total of \$5,722.78 with Respondent.
- b. During that same 24-month period, there were \$22,999.48 in purchases and \$18,901.45 in sales in the account, with Looper turnover rates of 11.64 and 9.56, respectively.
- c. The average hold period for a security position in the 24-month period was 56.85 days;

WHEREAS, the CSI determined Respondent had agreed to place Biondolillo under heightened supervision as a condition to Biondolillo's registration in Montana;

WHEREAS, the CSI determined Respondent was to supervise Biondolillo; and

WHEREAS, the CSI determined that conditions to that heightened supervision agreement and Respondent's own internal policies were not complied with, as demonstrated by the following:

- a. Eleven different securities were traded 221 times;
- b. There was discretionary trading in two accounts by Biondolillo, although Respondent's procedures forbade such trading;

- c. Designated supervisors were not evidencing, in writing, their review of commissions charged;
- d. Commissions charged these Montana customers totaled \$148,629.43 out of their aggregate \$274,099.13 investment;
- e. The client objectives memorialized by Biondolillo were identical on all 20 new Montana accounts;
- f. The Looper turnover rates on all investigated accounts were above the presumption for excessive trading;

WHEREAS, the CSI alleged that Respondent violated Mont. Code Ann. § 30-10-201(13)(k) by failing to supervise Biondolillo;

WHEREAS, the CSI alleged that Respondent violated § 30-10-201(13)(g) when Respondent collected unreasonable fees for services performed;

NOW, THEREFORE, in consideration of the following mutual undertakings, the CSI and Respondent enter into the following:

#### **STIPULATIONS AND CONSENTS**

1. Without admitting or denying any of the CSI's allegations, Respondents stipulate and agree to the following:
  - A. Within ten business days from the execution of this Agreement, Respondent CFS shall pay a fine of \$40,000.00. A failure to pay the fine will result in revocation of Respondent CFS' license. The fine must be made payable to the State of Montana and sent to the Office of the Commissioner of Securities and Insurance, Montana State Auditor, c/o Lisa Monroe, Legal Assistant, 840 Helena Avenue, Helena, MT 59601.

- B. Within ten business days from the execution of this Agreement, Respondent CFS shall pay \$10,153.91 in investigative costs to the CSI. The costs must be made payable to the State of Montana and sent to the Office of the Commissioner of Securities and Insurance, Montana State Auditor, c/o Lisa Monroe, Legal Assistant, 840 Helena Avenue, Helena, MT 59601.
  - C. Respondent has paid restitution in the amount of \$262,371.46 to Montana investors prior to signing this Agreement and as specified in Schedule A.
2. All parties to this Agreement stipulate and agree as follows:
- A. Respondent acknowledges that it and/or its authorized representative have read and understand each term of this Agreement and that they enter into this Agreement voluntarily and without reservation.
  - B. Respondent and the CSI agree that this Agreement resolves the alleged violations set forth in the Recitals.
  - C. The CSI warrants and represents that it does not now have any intent to bring any further action against Respondent based upon the conduct alleged in the Recitals.
  - D. With respect to the Recitals, Respondent specifically and affirmatively waives a contested case hearing and their right to appeal under the Montana Administrative Procedures Act, including Title 2, chapter 4, part 7, and elect to resolve this matter on the terms and conditions set forth therein.
  - E. Respondent fully and forever releases and discharges the CSI from any and all actions, claims, causes of action, demands, or expenses for damages or

injuries, whether asserted or not asserted , known or unknown, foreseen or unforeseen, arising out of the Recitals.

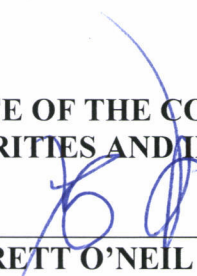
- F. This Agreement is entered without adjudication of any issue, law or fact. It is entered solely for the purpose of resolving the CSI's investigation and allegations, and is not intended to be used for any other purpose.
- G. This Agreement constitutes the entire agreement between the parties and no other promises or agreements, either express or implied, have been made by the CSI or by any member, officer, agent, or representative of the CSI to induce Respondent to enter into this Agreement.
- H. This Agreement may not be modified orally, and any subsequent modifications to this Agreement must be mutually agreed upon in writing to be effective.
- I. This Agreement shall be incorporated into and made part of the attached Final Order issued by the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner) herein.
- J. Upon the signing of the Final Order by the Commissioner or her representative, this Agreement and Final Order will be an order of the CSI. The CSI has jurisdiction over the enforcement of the Final Order, and failure to comply with it may constitute separate violations of the Act, as provided in Mont. Code Ann. § 30-10-305, and may result in subsequent legal action by the CSI.
- K. This Agreement shall be effective upon signing of the Final Order.



L. This Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.


DATED this 3<sup>rd</sup> day of May, 2013

**OFFICE OF THE COMMISSIONER OF  
SECURITIES AND INSURANCE**

By:   
**BRETT O'NEIL**  
Attorney

DATED this 2nd day of May, 2013

**CHELSEA FINANCIAL SERVICES**

By:   
Title: President