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July 17, 2013

Via FedEx
Lisa Lasher
Case Administrator
FINRA Dispute Resolution
5200 Town Center Circle
Tower 1, Suite 200
Boca Raton, FL 33486

RE: **Jonathan Perlman, Esq. v. TD Ameritrade, Inc., FINRA Case No. 11-01693**

CLAIMANT'S MOTION FOR LEAVE TO FILE SECOND AMENDED STATEMENT OF CLAIM

Dear Ms. Lasher:

This letter shall serve as Claimant's Motion for Leave to file a Second Amended Statement of Claim ("Claimant's Motion"). To that end, enclosed are three additional copies of Claimant's Motion, along with three copies of Claimant's proposed Second Amended Statement of Claim, to be provided to the Panel.

Claimant seeks to recover nearly $5.9 million transferred to and dissipated at TD Ameritrade, Inc. d/b/a thinkorswim ("TD Ameritrade" or "Respondent"). In SEC v. Creative Capital, *et. al*, Case No. 08-18565-CIV-HURLEY/HOPKINS (S.D. Fla.) (the "Receivership Action") the U.S. District Court for the Southern District of Florida appointed Claimant, Mr. Perlman, as Receiver over various entities and property, including specifically as title owner of the account involved in this arbitration matter. The Receivership Action concerns a Ponzi scheme through which Ponzi schemer George Theodule, with the intentional and/or negligent assistance of others, including Respondent, duped hard-working Haitian Americans out of nearly $70 million dollars. The Court ordered the Receiver to institute proceedings in an effort to recover the stolen funds for the ultimate distribution to the victims of the Ponzi scheme.

A number of significant events have occurred since Claimant filed his first Amended Statement of Claim, which make it necessary for Claimant to seek leave to file his Second Amended Statement of Claim. To wit:

a. On October 14, 2012 and again, on January 13, 2013, Respondent produced additional documents to Claimant, including those relating to Respondent's Anti-Money Laundering Program;

b. On January 11, 2013, Respondent Penson Financial Services, Inc. ("Penson") filed for bankruptcy protection in the United States Bankruptcy Court for the District of Delaware – and the claims against Penson now are stayed by virtue of that filing;

c. On January 23, 2013, United States District Court Judge Daniel T.K. Hurley granted the Receiver's Motion for Clarification and Confirmation of Ownership of Certain Personal Property, filed in the Receivership Action – effectively confirming that the Receiver is empowered to bring the claims at issue in this case; and

d. On March 8, 2013, the parties participated in mediation. The mediation terminated without settlement – but it crystalized the parties' respective positions as to certain of the Receiver's claims and Respondent's defenses to those claims.

Each of these events, taken together, has made it necessary for the Receiver to file a Second Amended Statement of Claim.[1]

Claimant seeks leave to file his Second Amended Statement of Claim to: (1) remove references to now-bankrupt and defunct Respondent Penson; (2) to clarify the basis for the Receiver's standing and the legal theories that support the Receiver's claim (which the parties discussed recently during an unsuccessful mediation); as well as to include information learned in discovery.

The Second Amended Statement of Claim will aid the Panel in understanding the case and help streamline the issues to be presented at the final hearing. Claimant's Motion is timely, since FINRA Rule 12503(a) merely requires that such a motion, if in writing, be made 20-days before the final hearing. And here, the final hearing is still four months away. Moreover, Respondent will not suffer any prejudice by virtue of the filing of Claimant's Second Amended Statement of Claim, as the operative facts remain the same and no new discovery would be necessary as a result of the proposed amendment. Accordingly, the Receiver respectfully requests that his motion to allow the Second Amended Statement of Claim be granted and that the attached Second Amended Statement of Claim be deemed the operative filed statement of claim as of the date of the Panel's Order.

Claimant has contacted Respondent on multiple occasions to discuss this proposed amendment and provided Respondent with a copy of the proposed Second Amended Statement of Claim with ample time for Respondent to review and consider them. But Respondent has failed to confirm whether it approves or objects to Claimant's Motion and the filing of the proposed Second Amended Statement of Claim. As such, Claimant is left with no choice but to file the instant motion.

Very truly yours,

Jeffrey B. Kaplan, Esq.

c. Dana Gloor, Esq., counsel for Respondent ***via FedEx***

[1]While a basis for the proposed amendment arose shortly before March 2013 mediation, Claimant forestalled seeking such relief from the Panel so as not to waste party or Panel resources on the amendment issue in the event the case were to settle at mediation, which would render an amendment unnecessary.

FINANCIAL INDUSTRY REGULATORY AUTHORITY
FINRA CASE NO. 11-01693

IN THE MATTER OF ARBITRATION BETWEEN

JONATHAN PERLMAN, ESQ., as court-appointed Receiver of Creative Capital Consortium, LLC and its affiliates, including A Creative Capital Concept$, LLC,

Claimant,

v.

TD AMERITRADE, INC. d/b/a thinkorswim, and PENSON FINANCIAL SERVICES, INC.,

Respondents.

_____/

CLAIMANT'S SECOND AMENDED STATEMENT OF CLAIM

Claimant, Jonathan Perlman, Esq., as court-appointed Receiver ("Claimant" or the "Receiver") over Creative Capital Consortium, LLC and its affiliates, including A Creative Capital Concept$, LLC, hereby files his Second Amended Statement of Claim, and alleges as follows.[1]

INTRODUCTION

Claimant seeks to recover nearly $6 million that was transferred to and then lost at TD Ameritrade, Inc., d/b/a thinkorswim ("TD Ameritrade" or "Respondent") due to Respondent's breach of fundamental duties when opening, supervising, and administering the subject options account (the "Options Account").[2]

[1]Hereinafter, Creative Capital Consortium, LLC and A Creative Capital Concept$, LLC shall be referred to as "CC Consortium" and "CC Concept$," respectively. Affiliated receivership entities over which Jonathan Perlman, Esq. serves as the receiver include: United Investment Club, LLC, Reverse Auto Loan, LLC, Wealth Builders Circle, LLC, The Dream Makers Capital Investment, LLC, G$Trade Financial, Inc., and Unity Entertainment Group, Inc. All of the foregoing entities are referred to collectively as the "Receivership Entities."

[2]Claims against Penson Financial Services, Inc. have been stayed due to Penson's bankruptcy filing. Hereinafter, all references to Respondent refer only to TD Ameritrade, Inc. d/b/a thinkorswim. If the

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I. JURISDICTION, PARTIES, RELATED PERSONS, AND VENUE

1. FINRA has jurisdiction over this matter pursuant to Rule 12200 of the FINRA Code of Arbitration Procedure because this dispute is between a FINRA member and a customer.

2. Claimant, Jonathan Perlman, Esq., is a court-appointed receiver. On December 29, 2008, the United States Securities and Exchange Commission commenced an action (the "Receivership Action") against a Ponzi scheme operator, George Theodule ("Theodule"), and the Receivership Entities styled *SEC v. Creative Capital, et al.*, Case No. 08-18565-CIV-HURLEY/HOPKINS (S.D. Fla.). As part of that Receivership Action, Judge Hurley of the United States District Court for the Southern District of Florida appointed Jonathan Perlman, Esq. as the Receiver over the Receivership Entities. The Court ordered the Receiver to take control over the Receivership Entities and to initiate legal and equitable proceedings on behalf of the Receivership Entities to recover misappropriated assets of the Receivership Entities for the ultimate distribution to the victims/creditors of the Ponzi scheme.[3]

3. The Federal District Court presiding over the Receivership Action found that the Receiver has "*traced investor funds from the Receivership Entities to the [Options Account]*" and that "*the funds invested in the Options Account[] were proceeds of the Receivership Estate.*"[4] As such, the Court ruled that the Court's Order Appointing Receiver transferred title to the Options Account to the Receiver and that the Receiver now has "*title to the Options Accounts by operation of law and stands in the shoes of the account holders.*"[5] Accordingly, the Receiver has brought

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bankruptcy stay is lifted, Claimant will amend his pleading to allege claims related to Penson.

[3] *See* District Court's December 29, 2008 Order Appointing Receiver, attached hereto as Exhibit A.

[4] *See* Order of Clarification, attached hereto as Exhibit B, at p. 3.

[5] *Id.*

claims against Respondent for Respondent's breach of duties owed to the Receivership Entities (and hence owed to the Receiver) related to Respondent's opening, supervising, and administering of the Options Account. Respondent's conduct assisted the furtherance of Theodule's Ponzi scheme.

4. Respondent TD Ameritrade, Inc. d/b/a thinkorswim is a FINRA-member firm.

II. FACTS COMMON TO ALL CLAIMS

A. The Underlying Ponzi Scheme

5. The backdrop for the Receivership Action and for this case involves a Ponzi scheme perpetrated by Theodule, with the intentional or negligent assistance of others, including brokerage firms, who used his Haitian background and his self-proclaimed status as a Christian pastor as points of affinity to dupe the hard-working Haitian-Americans out of approximately $70 million. Theodule portrayed himself as a brilliant investor who could build wealth for his fellow Haitian Americans. Theodule's sales pitch was wildly successful. Thousands of individuals handed over their hard-earned money, and dozens more innocently teamed up with Theodule to solicit others to "invest" with Theodule. Ultimately, Theodule was entrusted with more than $68 million. But unfortunately for the innocent victims, Theodule was a fraud – and virtually all the money was lost.

B. The Beneficiaries of this Proceeding

6. To be clear, Theodule does not stand to benefit from the outcome of this arbitration. The appointment of the Receiver divested Theodule of control of the Receivership Entities. As part of the SEC enforcement action, the SEC has obtained an uncollectible judgment *against* Theodule. The charge of the Receiver, however, does not end there. The Court ordered the Receiver to pursue claims against parties that may be liable to the Receivership Entities for the ultimate distribution of recovered monies to the victims/creditors. If there is any recovery in this case:

a. **Theodule would not benefit at all;**

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b. **Respondent would be required to repay the Receivership Entities for those specific losses sustained when Respondent breached duties to the Receivership Entities or failed to act in good faith as required by a transferee under Florida statute – resulting in the loss of nearly $6 million**; and

c. **The Receiver would distribute any recovery obtained from Respondent to the actual victims of the underlying Ponzi scheme.**[6]

C. Respondent Improperly Accepted and Opened the Options Account

7. Theodule opened the Options Account in June 2007 in the name of a purported general partnership investment club named "Creative Capital Concepts" ("CCC"). There purported to be three general partners of the alleged partnership. The account-opening documents are replete with incomplete, inconsistent, and nonsensical information. Based on the information presented, FINRA Rule 2090 ("Know Your Customer") and Respondent's internal guidelines required Respondent to inquire further before opening the Options Account. In turn, any reasonable inquiry would have caused Respondent to refuse to open the Options Account. But Respondent failed to conduct any further inquiry, failed to "know its customer," and blindly opened its gates for Theodule, leading to catastrophic losses of the Receivership Entities' money (read: the Ponzi victims' money).

8. Using the Options Account, Theodule embezzled nearly $6 million from the Receivership Entities and deposited those funds into the wholly separate Options Account that Theodule had opened . . . *for Theodule.*

1. Respondent Never Sought to Confirm the Existence or Nature of CCC

9. The precise nature of CCC is somewhat muddled. Indeed, Respondent never requested a copy of a partnership agreement in an effort to "*collect information sufficient to determine the corporate or business entity's identity, and the authority of its business representative*

[6]In short, justice would be done.

to act on its behalf," as Respondent's internal rules required, or took any other measures to confirm the existence of CCC. Moreover, a simple search of the Florida Division of Corporations' public database reveals that no general partnership by that name ever has been registered with the State of Florida. To the contrary, CCC actually is registered as a fictitious name or d/b/a owned solely by George Theodule. **In other words, Theodule not only provided false information in the opening of the Options Account, but also opened it as a "fictitious name" account, which is strictly prohibited by Respondent's Written Supervisory Procedures and Compliance Manual.**

10. Similarly, Respondent neither requested nor obtained: (1) any "investment club" operating documents; (2) information reflecting who the "investment club" members were; (3) information as to how many "investment club" members there were; or (4) any information about any of the purported individual "investment club" member's financial wherewithal. In short, Respondent learned nothing about its "investment club" client.

11. Another irregularity with the account-opening documents is that CCC was appointed as "*agent and attorney-in-fact*" for CCC, *i.e.*, for itself. That makes no sense. The purpose of the agreement was to appoint an individual who was authorized to act on behalf of CCC, which was *purported* to be a general partnership. As such, it makes no sense for the purported *entity* to have appointed itself (rather than an individual) to act as its duly authorized representative. The purported "agent and attorney-in-fact" authorization is painfully circular and makes the document and purported authorization a nullity – arguably leaving no one authorized to act for the account holder. **Respondent never even identified, let alone followed up on, this obvious red flag.**

2. <u>CCC Did Not Have Its Own Tax I.D.</u>

12. Yet another irregularity with the account-opening documents concerns the provision of a Tax I.D. for CCC. General partnerships are required to have their own unique Tax I.D.

Respondent was not provided with a valid Tax I.D. for CCC. Instead, Respondent was provided with Theodule's *personal* social security number as CCC's alleged Tax I.D. Remarkably, Respondent never recognized or even questioned this obvious inconsistency, even though three lines later on the same account-opening document shows Theodule's social security number as being identical to CCC's alleged Tax I.D. Respondent had all the necessary information in front of its face to make that determination. **That was another red flag that Respondent just missed and which should have caused Respondent to refuse to open the Options Account.**

3. Respondent Violated its Internal Guidelines When it Accepted and Opened the Options Account

13. Respondent's failure to gather accurate information regarding the Options Account violated its own guidelines. For example Respondent's various guidelines and rules state:

- *Why does TD Ameritrade gather information? . . . [W]e gather information necessary to . . . comply with federal and state laws, including tax laws and anti-money laundering laws.*
- *Our new account opening procedure is modified to collect and use information on the account holder's wealth, net worth, . . . and sources of income to detect and deter possible money laundering . . ..*
- Respondent's AML Program requires that Respondent *collect information sufficient to determine the corporate or business entity's identity, and the authority of its business representative to act on its behalf.*
- Respondent's AML Program states: *Our new account opening procedure is modified to collect and use information on the account holder's wealth, net worth, . . . and sources of income to detect and deter possible money laundering . . ..*
- *Knowledge of information about the customer is one of the key defenses against money laundering. thinkorswim obtains basic customer information through its new account form.*
- *If a potential or existing customer . . . appears to have intentionally provided misleading information, our firm will not open a new account and, . . . consider closing any existing account. In either case, our AML Compliance*

Officer will be notified so that we can determine whether we should report the situation to FinCEN.

14. Respondent's internal guidelines appear to have been prophetic in one regard. If Respondent had met its internal obligations and FINRA Rules, it would have served as a "key defense" against Theodule's Ponzi scheme. Following proper "Know Your Customer" ("KYC") and anti-money laundering ("AML") protocols and paying proper attention to detail at the time Theodule opened the Options Account would have prevented Respondent from opening the account in the first place and would have avoided the embezzlement and loss of $5.9 million of the Receivership Entities' funds. But Respondent failed to comply with its obligations and the Options Account was opened on June 12, 2007.

D. <u>Respondent Improperly Permitted Millions of Dollars of Account Transactions</u>

15. After Respondent improperly allowed Theodule to open the Options Account, Respondent then unlawfully accepted wire transfers into the Options Account, which then were traded into oblivion – losing more than 95% of its value (nearly $6 million) in just over a year.

16. Specifically, the funds that the Ponzi victims entrusted to Theodule were pooled in the Receivership Entities, which were used as "umbrella" or "mother-ship" entities. From the Receivership Entities, money then was misappropriated in a number of different ways. But as concerns this case, Theodule embezzled nearly $6 million from the Receivership Entities and deposited it into the Options Account via wire transfers. Respondent never should have accepted the wire transfers.

17. In short, the name on the Options Account – *i.e.*, "Creative Capital Concepts" – is merely the label that Theodule put on the account into which he deposited nearly $6 million of the funds that he embezzled from the Receivership Entities. The money deposited therein, however,

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always belonged to the Receivership Entities. As such, Respondent owed duties to the Receivership Entities – duties that it breached.

1. Respondent Failed to Follow Its Rules, Policies, and Procedures

18. Respondent's own internal rules, regulations, policies, and procedures highlight the myriad ways in which Respondent was negligent and breached duties owed to Claimant.

19. For example, Respondent places particular emphasis on the "source of funds" deposited with Respondent, in particular, making sure that funds are not deposited in an amount in excess of the known resources of the account holder. To wit:

- Respondent's Written Supervisory Procedures and Compliance Manual states that "*[b]eing familar with a customer's financial resources . . . and source of funds are avenues for knowing the customer. Knowing the customer occurs at the time an account is opened as well as during the operation of a customer's account.*"

- Respondent's AML Program requires Respondent to "*[i]nquire about the source of the customer's assets and income so we can determine if the inflow and outflow of money . . . is consistent with the customer's financial status.*"

- Respondent's AML Program further touts that "*[w]e will look at transactions, including . . . wire transfers . . . to determine if a transaction lacks financial sense.*"

- Respondent's AML Program explicitly declares that it is a red flag if "*[t]he customer's account has inflows of funds . . . well beyond the known income or resources of the customer.*"

- Respondent's Written Supervisory Procedures and Compliance Manual notes that "*[s]uspicious activities include . . . unexplained wire transfers . . . unusually large deposits of funds . . . .*"

- Respondent's Written Supervisory Procedures and Compliance Manual further emphasizes that risk indicators for AML include if "*[t]he information provided by the customer that identifies a legitimate source for funds is false, misleading, or substantially incorrect.*"

20. Even after an account is opened and trading commences, the foregoing KYC and

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AML duties mandate that Respondent continue to monitor the actual trading activity – because irrational trading activity itself could be indicia of money laundering. To that end, Respondent's own rules, regulations, policies, and procedures further state:

- Respondent must "*monitor . . . account activity to permit identification of patterns of unusual size, volume, pattern or type of transactions . . . We will look at transactions . . . to determine if a transaction lacks financial sense or is suspicious because it is an unusual strategy for that customer.*

Respondent's AML Program further notes it is a red flag indicative of money laundering if:

- "*[t]he customer wishes to engage in transactions that lack business sense or apparent investment strategy . . . .*"
- "*[t]he customer exhibits a lack of concern regarding risks . . . .*"
- the customer engages in "*trading that constitutes a substantial portion of all trading for the day in a particular security . . . .*"

2. <u>The Options Account Opening Documentation</u>

21. For purposes of Respondent's supervision and administration of the Options Account, the account-opening documents provided critical information regarding the account holder – *i.e.*, CCC, *purported* to be a Florida general partnership that supposedly was acting as an "investment club." In pertinent part, the form provides the following information regarding financial wherewithal:

- **INCOME:** **$65,000 - $124,999**
- **NET WORTH:** **$125,000 - $249,999**
- **LIQUID NET WORTH:** **$40,000 - $64,999**

22. It is not clear whether that information is a reference to CCC (the *purported* entity), to Theodule (individually), to the combined wealth of CCC's three "partners," or other members of the purported "investment club." There is, however, no other source of wealth reported or otherwise disclosed to Respondent. Thus, any amounts deposited and invested in the Options Account should

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have been in line with the disclosed information. Respondent should not have expected to receive and should not have accepted deposits in amounts facially irreconcilable with disclosed financial information – at least not without inquiring further and obtaining satisfactory answers, which Respondent did not do.

23. Remarkably, the User Profile Submission filled out in conjunction with the account-opening documents states that Theodule's occupation is *"Manager of grocery store,"* and that his employer is *"Thriftway of Pahokee [, Florida]."* No other information is provided regarding any of the other *purported* partners. Under those facts, Respondent should not have permitted that "grocery store manager," purportedly acting on behalf of a general partnership "investment club," to deposit millions of dollars into the Options Account. But in short order, massive deposits, all of which were facially inexplicable based on the information known to Respondent, started flowing into the Options Account – and Respondent did nothing.

3. The Very First Incoming Wire Transfer Was Highly Suspect

24. On June 13, 2007, only one day after the Options Account was opened, Theodule sent the first of **28** suspect wire transfers into the Options Account. While the amount of the wire was only $3,500, even this small wire was suspect. On the heels of the various inconsistencies and red flags in the account-opening documents, this wire transfer should have caused Respondent to take a closer look at Theodule and freeze or close the Options Account. Specifically, Respondent's AML policies identify circumstances where "*[t]he information provided by the customer that identifies a legitimate source for funds is false, misleading, or substantially incorrect*" as a red flag that requires investigation.

25. Remarkably, in reviewing the incoming wire instructions, one of Respondent's compliance officers emailed Respondent's Chief Operating Officer asking Respondent to

"*guarantee*" the wire because the "*fed number*" provided was "*just 3 digits off.*" The compliance officer further stated, "*I cannot ask the client again, he is being extremely unreasonable.*"[7]

26. Combined with myriad account-opening document problems, this was a glaring red flag. That is, the very first wire transfer sent to an account whose documentation was sloppy and rife with inconsistencies was sent using an incorrect federal wire number. Moreover, Respondent would not and did not even reach out to the client to address the issue because the client was "*extremely unreasonable.*" Respondent shockingly agreed to guarantee the wire transfer and accepted the wire, all while failing to recognize or follow up on these glaring red flags.

27. Moreover, the wire was sent from a bank account held in the name of Theodule personally. As such, the source of this first wire was facially suspect because it was from a third party (*i.e.*, an account titled in a name different from that of the thinkorswim account holder), which is not allowed under Respondent's rules, regulations, policies, and procedures. Per prudent business practices and Respondent's own rules, regulations, policies, and procedures, that fact also triggered a duty to investigate the source of the funds. Respondent's never did so – in stark violation of its common-law obligations and its own rules, regulations, policies, and procedures. Respondent failed even to address this facially suspect and unacceptable wire transfer.

28. The next two wires into the Options Account also were sent from bank accounts held in Theodule's personal name. Yet, Respondent improperly accepted the wires, without question.

4. Respondent Improperly Accepted Incoming Wires That Exceeded the Account Holder's Financial Wherewithal

29. From that point forward, over the remaining nine-month life of the Options Account,

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[7]Respondent's e-mails dated June 12, 2007. TDA/CCC Addl. Docs. 001479-001480, attached at Tab E.

the incoming wire transfers ramped up – seemingly inexplicably. Virtually every wire was facially suspect because of the identity of the sender, the amount of the individual deposit, and/or the amount of the cumulative deposits to date. Yet, Respondent blindly accepted each wire transfer and failed to conduct its required inquiry into and reporting of these suspect wire transfers, in stark violation of its common-law obligations and its own rules, regulations, policies, and procedures.

30. In total, during the 13-month life of the account there were 28 total wires into the Options Account totaling **$5,876,557**. Claimant will present detailed evidence at the final hearing regarding each of these wire transfers. But a summary of all of the improperly accepted wire transfers is as follows:

- 16 of the individual wires (ranging from $100,000 to $2 million) exceeded the upper end of the Options Account's stated liquid net worth;
- 7 of the individual wires (ranging from $250,000 to $2 million) exceeded the upper range of the Option Account's stated total net worth;
- The first six wires (from June 11, 2007 through October 31, 2007) cumulatively totaled $67,000, exceeding the Options Account's stated liquid net worth. So, beginning with the sixth incoming wire and for every one of the next 22 incoming wires, cumulative wire transfers accepted into the Options Account (and many individual wires) greatly exceeded the Option Account's stated liquid net worth; and
- The first 11 wires cumulatively (from June 11, 2007 through November 26, 2007) totaled $294,000, the last of which was for $115,000. The amount of these cumulative wires is greater than the Option Account's stated total net worth. So, beginning with the 11th incoming wire and for every one of the next 17 incoming wires, the cumulative incoming wires, *i.e.*, deposits (and a number of the individual deposits) were far greater than the Option Account's stated net worth.

31. The amounts of most of the individual incoming wire transfers and the cumulative incoming wire transfers cannot be reconciled with the stated financial wherewithal on the account-opening documents. Indeed, the mere amount of the cumulative incoming wire transfers (and many

of the individual wires) was facially suspect and screamed of a problem. Yet, Respondent failed even to *identify* the glaring inconsistencies between the stated financial wherewithal and massive dollar deposits into the Options Account.

32. Ultimately, the $5,876,557 that Theodule embezzled from the Receivership Entities and then wired into the Options Account was:

- ***more than ninety (90) times*** the amount stated as the upper range of the liquid net worth of the account holder ($65,000);
- ***more than forty-seven (47) times*** the upper range of the disclosed annual income ($125,000) on the account-opening documents; and
- ***more than twenty-three (23) times*** the upper range of the total net worth ($250,000) disclosed on the account-opening documents.

33. Respondent never took any action or engaged in any *inquiries* – internally, with Theodule, or with anyone else – regarding the patently suspect wire transfers. Respondent took no remedial action to reject any of the deposits, freeze the Options Account, or otherwise take action in response to these red-flag deposits. Rather, Respondent improperly blindly accepted millions of dollars of facially suspect wire transfers, all in violation of its policies, rules, and procedures. If Respondent properly had rejected the wires, millions of dollars of the Receivership Entities' funds would not have been embezzled and then lost in the Options Account.

34. In sum, **the manager of a Thriftway grocery store in Pahokee, Florida, with a stated liquid net worth of less than $65,000, who made less than $125,000 per year, and who had a stated total net worth of less than $250,000, somehow put his hands on nearly $6 million dollars in less than ten months, and Respondent never bothered to investigate the true source of the funds, reject the deposits, or freeze or close the Options Account.**

5. Respondent Improperly Accepted Third-Party Wire Transfers

35. In addition to the unaddressed, but facially suspect, dollar amounts of the wire transfers, every one of the incoming wires also was an impermissible and unacceptable third-party wire transfer pursuant to Respondent's own policies. Specifically, to help avoid any involvement in money laundering and related crimes, Respondent boldly declares that it will not accept wire transfers if the name of the sender of the wire does not match the name on the brokerage account. For example:

- Respondent's own website declares that "*we cannot accept third party wires,*" meaning that "*the name on the wire must match the name on the thinkorswim account.*";
- A separate web page further declares that Respondent will accept wires only from an "*account titled exactly the same as the* [thinkorswim]*account you are funding.*";
- Yet another page from Respondent's website emphatically declares that "*[y]ou may not draw funds from third-party accounts, such as a business account (even if your name appears on the account).*"; and
- Respondent's Written Supervisory Procedures and Compliance Manual echoes that such "*[t]hird party wires*" are an "*[e]xample of unacceptable deposits.*"

36. Below is a summary of third-party wire transfers that Respondent improperly accepted in complete violation its own policies and duties owed to Claimant:

- None of the 28 wires received into the Options Account were sent from an account held in the name of CCC;
- The first 12 wires (totaling $464,000) were sent from an account titled in name of Theodule, individually. The last three (3) wires (totaling $2,165,000) also were sent from an account titled in name of Theodule, individually;
- The next 11 wires (totaling $2,798,556.93) were sent from an account titled in the name of CC Concept$; and

- The next 2 wires (totaling $450,000) were sent from an account titled in the name of CC Consortium.

Respondent never should have accepted **any** of these 28 wire transfers because each came from an account that was titled differently from the Options Account, which Respondent strictly prohibits.

37. Among the improperly accepted wires was a $330,000 wire on December 5, 2007 from an account titled CC Concept$. This was the first of nearly $3 million in cumulative wire transfers from an account held in that name, which obviously was not the same name as that on the Options Account. Importantly, **by no later than December 5, 2007, Respondent was aware of the existence of CC Concept$ – and that it was purporting to deposit meaningful sums of money into the Options Account in seemingly inexplicable fashion.**

38. Similarly, on February 27, 2008, Respondent accepted a wire for $200,000, for the Options Account, this one from an account in the name of CC Consortium. Six weeks later, Respondent accepted another wire from CC Consortium in the amount of $250,000. Thus, **by no later than February 27, 2008, Respondent also was aware of the existence of CC Consortium – and that it was purporting to deposit meaningful sums of money into the Options Account in seemingly inexplicable fashion.** Still, Respondent did nothing.

39. Finally, as yet additional examples of Respondent's blind acceptance of facially suspect incoming wires, four incoming wires (totaling $2,364,000) were sent to the Options Account *"for the benefit of: A Creative Capital Concept,"* *i.e.*, for the benefit of a party *other* than the name of the Options Account holder. Again, Respondent failed even to notice this glaring problem and accepted these wires without asking any questions. That is, **Respondent accepted incoming wires that were designated for a party that was not even the name of the account holder.**

40. Despite the fact that every incoming wire transfer was sent from an account held in

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OFFICES AT GRAND BAY PLAZA. 2665 SOUTH BAYSHORE DRIVE. PENTHOUSE 2B. MIAMI, FL 33133 · TEL. 305.374.1920 FAX. 305.374.1961