FINANCIAL INDUSTRY REGULATORY AUTHORITY
FINRA CASE NO. 12-01304

IN THE MATTER OF ARBITRATION BETWEEN

JONATHAN PERLMAN, ESQ., as court-appointed Receiver of A Creative Capital Concept$, LLC, *et. al.*, and as assignee of Gabrielle Alexis, Detra Pasby and Edwidge Benoit,

Claimant,

v.

OPTIONSXPRESS, INC.,

Respondent.
_____/

AMENDED STATEMENT OF CLAIM

Claimant, JONATHAN PERLMAN, ESQ., as court-appointed Receiver of A Creative Capital Concept$, LLC, Creative Capital Consortium, LLC, United Investment Club, LLC, Reverse Auto Loan, LLC, Sancal Investment and Financial Services, Inc., Wealth Builders Circle, LLC, The Dream Makers Capital Investment, LLC, G$ Trade Financial, Inc., and Unity Entertainment Group, Inc. and as assignee, ("Mr. Perlman" or "Receiver"), hereby files this Amended Statement of Claim against OPTIONSXPRESS, INC., and alleges as follows.

I. INTRODUCTION

Claimant brings these claims to recover approximately $15 million that was lost as a result of Respondent's failure to adhere to its basic duties when opening, administering, and supervising Claimant's options accounts. Respondent's failures permitted the improper opening and negligent administration of the accounts as well as the wrongful allowance of a wildly speculative and reckless options strategy in the accounts, all of which led to Claimant's massive losses.

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Claimant, Jonathan Perlman, Esq., is a Court Appointed Receiver (the "Receiver") *via* an order entered in a Securities and Exchange Commission ("SEC") enforcement action pending in the Southern District of Florida (the "Receivership Order").[1] The Receiver is the proper Claimant for two reasons. First, the Receiver, by virtue of the above-referenced Receivership Order is the owner of all property, including rights of action owned by Creative Capital and its principals as they relate to any account holding funds of the Receivership estate, or accounts that hold funds that were obtained or transferred into such accounts from the Receivership estate.[2] Specifically, the Receivership Order provides that the Receiver:

- Take immediate possession of all property, assets and estates of every kind of Creative Capital, whatsoever and wheresoever located belonging to or in possession of Creative Capital, including, but not limited to all offices maintained by Creative Capital, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Creative Capital wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court.[3]

- Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of Creative Capital and, upon, order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;[4]

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[1] *SEC v. Creative Capital, et. al,* Case No. 08-18565-CIV-HURLEY/HOPKINS (S.D. Fla.).

[2] *See* Receivership Order, dated December 30, 2008 at ¶¶1, 7 and 16, a true and correct copy of which is attached hereto as Exhibit A.

[3] *See* Receivership Order, Exhibit A, at ¶1.

[4] *See* Receivership Order, Exhibit A, at ¶7.

and further states that:

- Creative Capital and all of its directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of Creative Capital shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms, or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of Creative Capital.[5]

- All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, Creative Capital shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver.[6]

- Title to all property, real or personal, all contracts, rights of action and books and records of Creative Capital and its principals, wherever located within or without this state, is vested by operation of law in the Receiver.[7]

Indeed, in furtherance of the powers provided to him by the Receivership Order, the Receiver has traced all of the funds at issue in this arbitration claim as having come from the Receivership estate.[8] The Receiver also has received assignments of claims held by some of Mr. Theodule's joint account holders who are co-owners of some of the accounts at issue in this Amended Statement of Claim.[9]

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[5]*See* Receivership Order, Exhibit A, at ¶10.

[6]*See* Receivership Order, Exhibit A, at ¶11.

[7]*See* Receivership Order, Exhibit A, at ¶16.

[8]Throughout this Statement of Claim the accounts at issue are collectively referred to as the "optionsXpress Receivership Accounts."

[9]A true and correct copy the assignments for each Assignor (Ms. Alexis, Ms. Pasby and Mr. Benoit) are

The enforcement action itself concerns a multi-state Ponzi scheme through which George Theodule ("Theodule"), along with others, stole nearly $70 million dollars from hard-working Haitian-Americans. The named owners of the optionsXpress Receivership Accounts conspired to perpetrate the Ponzi scheme, and some of the funds raised by the Ponzi scheme were placed in these optionsXpress Receivership Accounts. As such, the Court has appointed the Receiver to pursue and recover any and all funds owed to the Receivership entities (including those funds lost in the optionsXpress Receivership Accounts) for the ultimate distribution of those funds to victims of the Ponzi scheme.[10]

Ultimately, approximately $15 million dollars was lost in the OptionsXpress Receivership Accounts. Those funds belonged to hardworking members of the Haitian-American community, many of whom turned over their life savings to Theodule (facts Respondent either knew or should have known).

Had Respondent met its "Know Your Customer" responsibilities, the optionsXpress Receivership Accounts would not have been opened, and millions of dollars of innocent victims' money would not have been lost.[11] Similarly, had Respondent met its responsibilities regarding the opening and ongoing administration and monitoring of the optionsXpress Receivership Accounts, millions of dollars would not have been lost. And finally, had Respondent properly met its

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attached hereto as Exhibit B.

[10]The Court has twice entered orders expanding the Receivership to include additional entities which were part of the Theodule's Ponzi Scheme and which by virtue of those orders also now are Receivership entities. True and correct copies of those Orders are attached hereto as Composite Exhibit C.

[11]*See* FINRA incorporated NYSE Rule 405(1).

obligations as a broker-dealer when supervising an options account, millions of dollars would not have been lost.

The bottom line is that Respondent's failure to discharge its common-law and regulatory duties and obligations directly led to the loss of millions of dollars in the optionsXpress Receivership Accounts. Accordingly, Respondent now stands liable for those losses.

II. JURISDICTION, PARTIES AND 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 an SEC Receiver, appointed by a Federal Court judge *via* the entry of an SEC receivership order. In his capacity as Receiver, Mr. Perlman has ownership of each of the optionsXpress Receivership Accounts by virtue of the Receivership Order which vests ownership of each of the subject accounts in Mr. Perlman. This case is brought by the Receiver in his capacities as Receiver and assignee and he seeks recovery for the benefit of the victims of the Theodule Ponzi scheme.

3. Respondent, OPTIONSXPRESS, INC., is a FINRA-member firm. Respondent is both primarily liable for its own misconduct and vicariously liable for the acts and omissions of its employees and agents by well-established legal principles, such as *respondeat superior* and actual or apparent authority.

III. FACTS COMMON TO ALL CLAIMS

A. <u>The Theodule Ponzi Scheme</u>

4. Holding himself out as a Christian pastor, Theodule ingratiated himself with working-

class Haitian-Americans by claiming he was offering his investment expertise to help build wealth within the Haitian community. In fact, he was stealing the money of those Haitian-Americans through a Ponzi scheme that he operated through entities now subject to the pending receivership (the "Receivership Entities).

5. Theodule encouraged the Haitian-Americans (read: "victims") to form investment clubs, through which they would pool their money and then send it to the Receivership Entities, purportedly so Theodule could invest and grow their money.

6. In reality, the investment clubs served exclusively as a mechanism to funnel funds to the Receivership Entities, and then to Theodule himself, his wife, Dorothy Delisfort, and to his friends and family.

7. In classic Ponzi-scheme fashion, Theodule used new investor funds to pay "profits" and "return of principal" to earlier investors. Theodule ultimately misappropriated nearly $70 million from his victims, approximately $15 million of which was transferred to the OptionsXpress Receivership Accounts.

B. <u>The Respondent Improperly Opens Joint "Theodule" Accounts</u>

8. Against that backdrop, beginning as early as January 2005, the OptionsXpress Receivership Accounts were opened with Respondent for the purpose of investing other peoples' money.

9. In total, there are twenty-one (21) OptionsXpress Receivership Accounts that were opened with Respondent for the purpose of trading options.[12] The following chart summarizes the

[12]A copy of the Account Opening documents are attached hereto as part of composite Exhibit D.

accounts and the dates they were opened:

	Account Holder(s)	**Date Opened**
1.	George L. Theodule	July 17, 2007
2.	E. Theodule / Theodule	January 31, 2005
3.	D. Pasby / Theodule	January 31, 2007
4.	F. Nivose / Theodule	April 16, 2008
5.	D. Woods / Theodule	May 2, 2008
6.	Y. Fabre / Theodule	June 17, 2008
7.	G. Alexis / Theodule	July 3, 2008
8.	Wow We Made Double	March 18, 2008
9.	Dorothy Delisfort	March 24, 2008
10.	D. Delisfort / Benoit	April 30, 2008
11.	Georgette Delisfort	May 23, 2008
12.	Wanda C. Corminas	June 5, 2008
13.	Midwest Marketing & Associates	June 20, 2008
14.	M. Victor / M. Dominique	June 20, 2008
15.	Roger Terma	September 5, 2008
16.	Fabianne Theodule	September 30, 2008
17.	Change Life Concepts, LLC	December 31, 2007
18.	Enise Merisier	May 5, 2008
19.	Mario Theodule	August 30, 2007
20.	Michel Beaubrun	April 3, 2008
21.	Edwidge Benoit	Unknown

10. Of the 21 above-listed optionsXpress Receivership Accounts, six (6) were opened with Theodule as a joint account holder, one (1) was opened with Theodule as the sole account

holder, and 14 were opened by third parties. And, all of the 21 optionsXpress Receivership Accounts were funded with monies that the Receiver has traced as coming from the Receivership Estate. All of the optionsXpress Receivership Accounts were opened for the purpose of allowing Theodule to deposit funds from the Receivership entities so that he could trade options with the Ponzi victims' money, all without possessing the requisite securities licenses. As such, each of the OptionsXpress Receivership Accounts is subject to the Receivership Order.

11. As a FINRA-registered broker-dealer, when opening any of the optionsXpress Receivership Accounts Respondent was required to discharge its "Know Your Customer" obligations.

12. Those obligations included learning essential facts about Theodule and each Account Holder, such as: each Account Holder's other securities holdings, financial situation and needs, income, net worth, tax status, investment objectives and the source of funds wired and/or deposited into each optionsXpress Receivership Account.

13. Respondent failed miserably at meeting these obligations, which was a critical factor in Claimant's losses.

14. For example, the account opening documents for each of the optionsXpress Receivership Accounts reveal a treasure trove of information presenting a host of "red flags," which, at a minimum, should have led Respondent to ask more questions.

15. First, George Theodule was a joint owner of at least six of the optionsXpress Receivership Accounts.[13] The fact that he opened so many joint accounts with individuals with

[13]Another account at issue was a joint account owned by Mr. Benoit and Dorothy Delisfort. Ms. Delisfort was Mr. Theodule's wife, who also had two accounts with Respondent.

whom he had no apparent relationship, was, in and of itself, a "red flag" that something was amiss. Moreover, he had written trading authority over yet another of the optionsXpress Receivership Accounts titled in the name of Change Life Concepts, LLC, in which he had no ownership interest or any other apparent affiliation, raising another red flag.

16. The account opening documents themselves also were confusing and filled with irregularities and inconsistencies.

17. For example, the account opened by Ms. Pasby and Mr. Theodule listed each as having the same job ("manager" of the "Thriftway of Pahokee") and the same address, while stating that Ms. Pasby was "single" and Mr. Theodule was "married." Each listed the same income ("50K-100K"), net worth ("25K-50K"), and liquid net worth ("25K-50K").

18. In contrast, when Mr. Theodule opened the joint account with Ms. Alexis, his job, income, net worth, and marital status were all listed differently. In fact, Mr. Theodule listed various and conflicting occupations, income, net worth, and martial status on each of the account opening documents. Such inconsistencies are found throughout the various account opening forms. To wit:

Joint Account Holder	Theodule's Stated Marital Status	Theodule's Stated Employment	Theodule's Stated Income	Theodule's Stated Net Worth	Theodule's Stated Liquid Net Worth
Gabrielle Alexis	single	Business Development (Creative Capital)	250K	250K	250K
Detra Pasby	married	Manager (Thriftway)	50K-100K	25K-50K	25K-50K
Derek Woods	single	Manager (Creative Capital)	250K	250K	250K
Elza Theodule	none	Project Manager (Komtech)	50-100K	50K-100K	50K-100K
Fritz Nivoise	widowed	retired	50K-100K	250K	250K
Yollete Fabre	widowed	CEO (CCC)	250K	250K	250K
George Theodule (individual account)	widowed	Manager (Thriftway)	50K-100K	250K	100K-250K

19. Thus, Theodule alternatively told Respondent that he was: (a) a "CEO," "Business Developer," "Project Manager," "Manager" of a Thriftway, and "Retired;" (b) single, widowed, and married; and (c) earning anywhere from a modest $50,000 per year up to $250,000 per year.

20. Theodule's personal information reflected on the new account forms was inconsistent across accounts with no discernible reason. Yet, Respondent failed to question or inquire about these inconsistencies or otherwise attempt to reconcile the inconsistencies. At bottom, Respondent did not "know its customer."

21. Thus, Respondent opened these multiple optionsXpress Receivership Accounts in the face of glaring "red flags," and failed to meet its "Know Your Customer" obligations in each instance.

22. Had Respondent fulfilled its "Know Your Customer" obligations and investigated and followed-up on the obvious "red flags," it would have learned, among other things, that: (a) Theodule had been providing inconsistent and untrue information about himself and (b) Theodule was not registered as an investment advisor and did not otherwise possess the necessary licensing to invest money on behalf of others. Respondent also would have learned that the options trading that ultimately ensued was unsuitably risky for the working-class Haitian-Americans whose money was deposited in the optionsXpress Receivership Accounts.

C. The Delisfort-Benoit Account is Similarly Suspect

23. The account opening documents for the joint account opened by Mr. Benoit and Dorothy Delisfort (Theodule's wife) also was replete with "red flags."

24. For example, the documents indicate that the account was being opened by two unemployed individuals with limited income, net worth, and liquid net worth. As detailed more fully below, these "red flags" and others became more apparent as a result of the activity in the account.

D. Respondent Fails to Detect Suspect Wire Activity

25. Once the optionsXpress Receivership Accounts were opened, Respondent continued to fail either to investigate or detect obviously suspect activity. This was especially true regarding clearly suspect wire activity.

26. For example, Respondent made absolutely no inquiries with either Ms. Alexis or

Theodule when that account repeatedly received wires into a personal, jointly held account from Ms. Alexis' attorney trust (IOLTA) account. In total, nearly $6.5 million in funds were received into the account from Ms. Alexis' attorney trust account. Receipt and acceptance of such wire transfers from third-parties was a red flag which Respondent appears to have made no effort to investigate properly or to take appropriate action.

27. The Pasby/Theodule account also had suspect wire activity in that $2 million was wired into the account *on a single day*. Considering that the account-opening documents state that Ms. Pasby and Theodule each had income of "50k-100k" and liquid net worth of less than "50k," the $2 million wire from Mr. Theodule's personal bank account was suspicious to say the least.[14]

28. The Benoit/Delisfort joint account also had multiple, large incoming wire transfers despite the fact that both Ms. Delisfort and Mr. Benoit each had represented in their account opening documents that each was "unemployed," had limited income, and virtually no liquid assets.

29. Given the pattern of questionable wire activity permitted, it is believed that such questionable wire activity occurred in a number of the OptionsXpress Receivership Accounts.

30. Remarkably, when faced with this suspect wire activity Respondent failed to conduct adequate inquiries. If it had done so, Respondent would have learned that the wired funds did not belong to Theodule, Delisfort, or the joint account holders. As such, Respondent would have discovered that each of these accounts never should have been opened and should be shut down immediately because the information that Respondent had concerning its customers was inconsistent with the activity in the accounts. Respondent also would have learned that the accounts were being

[14]The account also received single-day wire transfers of $300,000 and $160,000 – both of which were many multiples of the liquid assets either account holder had represented they had available to them.

used for an improper purpose and that unlicensed individuals were trading money for others.

31. In short, Respondent failed to do virtually everything Respondent should have done when opening and then administering the optionsXpress Receivership Accounts.

E. Respondent Fails to Properly Supervise Claimant's Options Accounts

32. Immediately after the optionsXpress Receivership Accounts were opened, options were traded at increasingly large rates and with no rational strategy.

33. From early-2007 and into 2008, and on a monthly basis, there was irrational options trading in the optionsXpress Receivership Accounts, such that the trades occurring almost always resulted in losses. Moreover, the reckless options trading in each account was done so in extremely large sums.

34. To wit, the optionsXpress Receivership Accounts suffered the following losses:

Account	Loss
George L. Theodule (Account No. 0484-9246)	2,750,285.61
E.Theodule / Theodule (Account No. 0186-0048)	26,300.00
D. Pasby/ Theodule (Account No. 0319-5377)	2,442,200.00
F. Nivose/ Theodule (Account No. 0537-8807)	100,000.00
D. Woods/ Theodule (Account No. 0540-3852	25,000.00
Y. Fabre / Thedoule (Account No. 0548-0553)	275,000.00
G. Alexis / Theodule (Account No. 0549-6260	6,417,000.00
Wow We Made Double (Account No. 0533-5898)	93,675.00
Dorothy Delisfort (Account No. 0535-2869)	1,025,000.00
D. Delisfort / E. Benoit (Account No. 0540-0635)	205,000.00

Georgette Delisfort (Account No. 0544-3569)	10,000.00
Wanda C. Corminas (Account No. 0545-8336)	645,700.00
Midwest Marketing & Assoc. (Account No. 0548-0561)	90,000.00
M. Victor / M. Dominque (Account No. 0547-7708)	320,000.00
Roger Terma (Account No. 0557-1492)	30,000.00
Fabianne Theodule (Account No. 0561-0621)	5,000.00
Change of Life Concepts, LLC (Account No. 0519-3024)	300,000.00
Enise Merisier (Account No. 0540-9099)	148,000.00
Mario Theodule (Account No. 0491-4917)	28,500.00
Michel Beaubrun (Account No. 0535-8189)	78,341.81
Edwidge Benoit (Account No. 0538-1041)	15,090.82

35. Despite the large amounts being invested and lost, Respondent made no effort to ensure that the options transactions were suitable for the Account Holders (or the ultimate investors, read: the Ponzi victims) – as required by FINRA Rule 2360(20)(c)(I). Indeed, in light of the fact that the money actually belonged to numerous individual victims of Theodule's Ponzi scheme, which Respondent should have known, there should have been active supervisory and compliance inquiries as the losses mounted, and the accounts should have been shut down. But Respondent failed to take any action as these accounts racked-up nearly $15 million in losses.

IV. RESPONDENT VIOLATED DUTIES OWED TO CLAIMANTS

36. By virtue of the conduct alleged herein, Respondent violated FINRA rules and common law duties it owed to Claimant.

Negligence

37. FINRA rules and regulations were established to protect securities investors, such as

Respondent's customers. Pursuant to those rules and regulations – as well as applicable common law – Respondent owed a multitude of duties to Claimant, including the duties to:

a. learn the essential facts relative to every customer;[15]

b. learn the essential facts relative to every order placed in each customer's accounts;[16]

c. monitor all activities within the customer's account, including wire and deposit activity;

d. follow-up on red flags and suspicious activity in a customer account;

e. learn the essential facts regarding every cash or margin account accepted or carried by such organization;[17]

f. obtain information regarding the customer's investment objectives, a component of which is the customer's risk tolerance, prior to approving a customer account for options trading;[18]

g. have reasonable grounds – based on information furnished by the customer after reasonable inquiry by Respondent concerning the customer's investment objectives, financial situation, and risk tolerance – to believe that an options transaction is not unsuitable for the customer and that the customer can bear the risks;[19] and

h. properly supervise an options account and to ensure the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved.

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[15] *See* FINRA Incorporated NYSE Rule 405(1).

[16] *See* id.

[17] *See* id.

[18] *See* FINRA Rule 2360(b)(16).

[19] *See* FINRA Rule 2360(19).

38. Respondent also owed a duty to properly supervise each options account opened, and to inform the Account Holders of the risks of their wildly speculative options trading strategy. But Respondent breached its duty of care by failing meet these duties.[20] Respondent knew, or through the exercise of reasonable care should have known, that its failures would place its customers within a foreseeable zone of harm.

39. Respondent breached its duties to the Account Holders, including its "Know Your Customer" duty and its duty concerning the administration and oversight of incoming wire transfers. Respondent either failed to gather all the essential facts regarding the Account Holders or failed to follow-up on obvious red flags presented by the facts it did gather. Indeed, Respondent failed even to investigate and resolve the inconsistencies among the investor profiles that Theodule provided to Respondent across the accounts at issue. And Respondent never resolved those inconsistencies.

40. Rather than comply with its duties, Respondent watched silently as questionable wire transfers deposited money into the accounts and each account was decimated by ridiculously speculative options trading, all the while pocketing the revenues generated by that very trading.

41. As a direct result of Respondent's negligence described above, Claimant, as the Assignee of the Account Holders, has suffered financial devastation.

Fraudulent Transfer

42. The funds received in each of the optionsXpress Receivership Accounts were transferred by or through one or more of the Receivership entities to Respondent, with the intent to hinder, delay, or defraud creditors of the Receivership Estate and without receiving reasonably

[20] *See Palmer v. Shearson Lehman Hutton, Inc.*, 622 So.2d 1085 (Fla. 1st DCA 1993); *Twiss v. Kury.*, 25 F.3d 1551 (11th Cir. 1994); *see also SII Investments, Inc. v. Jenks*, 2006 U.S. Dist. LEXIS 51753 (M.D. Fla. 2006).

equivalent value in exchange for the transferred funds. Specifically, Respondent, as the transferee, received and took control of funds transferred to it by or through the Receivership entities, and Respondent accepted such funds as transferee in the face of the suspect activity outlined herein. As such, Respondent is required to return the transferred funds to the Receivership estate, pursuant to Fla. Stat. §726.108.

Breach of Contract

43. The self-regulatory organizations of which Respondent is a member, including FINRA, set forth rules and regulations that Respondent has agreed to comply with for the benefit of its customers, including the Account Holders. There is an implied, if not actual, agreement between Respondent and the Account Holders that Respondent will abide by FINRA rules, as well as SEC and other regulatory rules and regulations, and all state and federal laws. Respondent breached the agreement materially by failing to abide by the rules designed to protect the Account Holders, as described above. As a result, Claimant, as the Assignee of the Account Holders, suffered damages in the amounts described herein.

Breach of Fiduciary Duty

44. Respondent was required to deal with its clients in good faith and owed the Account Holders a fiduciary duty of loyalty and care. Respondent owed specific duties to the Account Holders, including:

a. to inform Account Holders of the risks involved with regard to *each* transaction entered in their accounts;

b. to inform Account Holders of the risks of any trading strategy being utilized in their accounts;

c. to ensure the suitability of *each* transaction entered in the Account Holder's accounts; and

d. to monitor suspicious activities, including suspicious wire transfers.

45. Respondent breached its fiduciary duties owed to each Account Holder (and those owed to the individuals whose money actually was held in each of the accounts at issue) by the conduct described above.

46. Respondent failed to resolve the inconsistencies among Theodule's various investor profiles and failed to learn the essential facts about the individuals whose money was actually invested in each account, *i.e.*, the hard-working Haitian-American victims of the Ponzi scheme. All of this occurred despite Respondent being on notice of red flags related to incoming wire transfers, which also should have signified irregularities in each account.

47. Moreover, Respondent knew that each Account Holder was engaging in an unsupportable and risky options strategy that made little or no sense, especially for the working-class Haitian-Americans whose money was being invested.

48. As a direct and proximate result of Respondent's multiple breaches of its fiduciary duties, Claimant, as Assignee of the Account Holders, lost approximately $15 million dollars.

V. DAMAGES

49. Respondent's wholesale failure to comply with its obligations resulted in massive losses. Specifically, Claimant, as Receiver and Assignee, has lost approximately $15 million, and should be fully compensated for these losses, including costs and pre- and post-judgment interest.

VI. CLAIMS

50. Respondent negligently violated the high standards of commercial honor and just and

equitable principles of trade to which it is subject. The violations that occurred as a result of Respondent's actions and inaction described herein include the following:

a. failure to treat Claimant in a just and equitable manner;
b. breach of fiduciary duty;
c. negligence;[21] gross negligence; and
d. fraudulent transfers pursuant to Fla. Stat. §726.108; and
e. breach of contract.

VII. RELIEF SOUGHT

51. As a result of the conduct set forth above, **Claimant requests an all-public Panel**, that a decision be rendered against Respondent, and that the Panel grant the following relief:

(a) damages based on fairness and equity;[22]

(b) compensatory damages of approximately $15 million, as applicable, plus prejudgment interest at the statutory rate;[23] and

(c) punitive damages and such other and additional relief as this Panel may deem appropriate.

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[21]The standards of the profession are set forth in the rules of the FINRA (including its Notices to Members), the NYSE, and the SEC; federal and state statutes, the Securities and Exchange Act; firm compliance manuals and procedures and relevant case law. Respondent was obligated to provide competent, professional securities services in accordance with those industry rules, regulations, customs and practices. Even though those standards may not be deemed to constitute separate causes of action, they are properly asserted as standards of care against which Respondent's conduct must be measured in determining its liability. *See, e.g., Lange v. Hentz*, 418 F. Supp. 1376, 1383 (N.D. Tex. 1976) (FINRA Rules are evidence of the present standard of care that the FINRA member should achieve). Respondent failed to abide by many of those FINRA and NYSE rules as demonstrated above.

[22]Arbitrators may do justice as they see fit by applying their own sense of equity to the facts and by making an award reflecting the spirit of the agreement between the parties. *See Silverman v. Benmor Coats, Inc.*, 461 N.E.2d 1261 (N.Y. App. Div. 1984).

[23]A precise compensatory damage figure will be presented at the final hearing.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that Claimant's **AMENDED STATEMENT OF CLAIM** was served by U.S. Mail and e-mail on this 2nd day of July, 2012 on: **Lisa D. Lasher**, lisa.lasher@finra.org, Boca Center Tower 1, 5200 Town Center Circle, Suite 200, Boca Raton, FL 33486-1015; and **Evelyn Bukchin, Esq.**, BukchinE@gtlaw.com, Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166.

By: _____
Jeffrey B. Kaplan