

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Equinox Securities, Inc.
(CRD No. 145790)

Stephen Michael Oliveira
(CRD No. 1880054),

and

Chris Blaine Palkowitsh
(CRD No. 3090435)

Respondents.

DISCIPLINARY PROCEEDING
No. 2012031496501

COMPLAINT

The Department of Enforcement (“Department”) alleges:

I. SUMMARY

1. From November 2008 through June 2012, Equinox Securities, Inc. (“Equinox” or “Firm”) representative Chris B. Palkowitsh (“Palkowitsh”) excessively traded and churned six customers’ accounts (a total of eight accounts). Palkowitsh typically charged a \$75 commission for each transaction, and he repeatedly executed transactions that had minimal principal amounts of between \$100 and \$300. The result was hundreds—and sometimes, thousands—of transactions in each account, huge aggregate amounts of commissions, annualized cost-to-equity ratios that exceeded 100 percent, and collective losses that exceeded \$800,000. The effect was particularly

pernicious because six of the eight accounts were Individual Retirement Accounts (“IRA” or “IRAs”) that constituted the bulk of the customers’ retirement savings.

2. After the customers sustained substantial losses, Palkowitsh placed their remaining equity at risk by concentrating each account in a low-priced security.

3. Equinox’s President, Chief Compliance Officer and Designated Supervisor, Stephen M. Oliveira (“Oliveira”), reviewed each transaction and was aware of the misconduct, but rejected any responsibility to intercede and stop the harm.

4. While associated with Equinox, Palkowitsh became subject to three federal tax liens, representing more than \$300,000 in unpaid taxes. Although Oliveira was apprised of the liens and knew Palkowitsh’s tax payments were delinquent, none of the liens were ever disclosed on Palkowitsh’s Form U4. Shortly after the Internal Revenue Service (“IRS”) recorded the first of its three liens, Equinox, through Oliveira, entered into an agreement whereby Palkowitsh charged personal expenses on Firm credit cards, which the Firm paid, in lieu of paying Palkowitsh his commissions in cash.

5. This Complaint charges: (i) Palkowitsh and Equinox with excessively trading and churning customer accounts in violation of NASD Rules 2310 and 2110, IM-2310-2, and FINRA Rule 2010 (excessive trading) and the Securities Exchange Act of 1934 (“Exchange Act”) Section 10b, Exchange Act Rule 10b-5, FINRA Rules 2020 and 2010, and NASD Rules 2120 and 2110 (churning) (First and Second Causes of Action); (ii) Palkowitsh and Equinox with making qualitatively unsuitable recommendations by concentrating the customers’ accounts in a single security in violation of NASD Rule 2310 and FINRA Rule 2010 (Third Cause of Action); (iii) Oliveira and Equinox with failing to adequately supervise Palkowitsh in violation of NASD Rules 3010 and 2110, and FINRA Rule 2010 (Fourth Cause of Action); (iv) Palkowitsh with

failing to update his Form U4 to disclose his tax liens in violation of Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010 (Fifth Cause of Action); and (v) Oliveira and Equinox with failing to establish an adequate supervisory system and procedures to (a) detect and prevent unsuitable recommendations and (b) ensure that Form U4 amendments are current, in violation of NASD Rules 3010 and 2110, and FINRA Rule 2010 (Sixth Cause of Action).

II. RESPONDENTS AND JURISDICTION

6. Equinox is a California corporation and has been a FINRA member since April 22, 2008. The Firm is a wholly owned subsidiary of Equinox Capital Holdings, Inc., a holding company owned by Oliveira and his wife. Equinox is based in Redlands, California, has two branch offices and approximately 27 registered individuals, and is authorized to conduct a general securities business.

7. At all times relevant to this Complaint, Equinox acted through its associated persons including Palkowitsh. Equinox was also a controlling person under Exchange Act Section 20(a) with respect to Palkowitsh.

8. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over Equinox because: (1) the Firm currently is a FINRA member, and (2) the Complaint charges the Firm with securities-related misconduct while it was a FINRA member.

9. Oliveira entered the securities industry in 1988. Since then, he was associated with at least nine firms before becoming associated with Equinox and registering with FINRA, through Equinox, on April 22, 2008, as a General Securities Representative (Series 7), General Securities Principal (Series 24), Municipal Securities Principal (Series 53), Registered Options Principal (Series 4), and as an Introducing Broker-Dealer Financial and Operations Principal

(Series 28). He remains registered with FINRA through Equinox in each of those capacities and is also registered as an Investment Banking Representative (Series 79) and Operations Professional (Series 99).

10. Oliveira has served as Equinox's President and Chief Compliance Officer since the Firm's inception. He is also currently associated with two other FINRA member firms.

11. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over Oliveira because: (1) he is currently associated with a FINRA member and registered with FINRA; and (2) the Complaint charges him with securities-related misconduct committed while he was associated with a FINRA member and registered with FINRA.

12. Palkowitsh entered the securities industry in 1998. Since then, he has been associated with at least nine firms before joining Equinox in May 2008. From May 10, 2008 through August 1, 2013, Palkowitsh was associated with Equinox and registered with FINRA through Equinox as a General Securities Representative (Series 7). Although he is no longer registered or associated with a FINRA member, Palkowitsh remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws because (1) the Complaint was filed within two years after the date of termination of his registration with Equinox, namely August 2, 2013, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

III. FACTS

A. Overview of the Account Activity

13. Palkowitsh's relationship with Oliveira dates back to November 2002, when Oliveira recruited him to join a member firm where Oliveira worked. Palkowitsh did so, but left that firm in June 2004. He later reunited with Oliveira in September 2005 at a member firm that

Oliveira owned at the time. Palkowitsh joined Equinox on May 9, 2008, less than three weeks after Equinox became a FINRA member.

14. At Equinox, Palkowitsh worked from his home office (initially in Ponte Vedra, Florida, and later in Cumming, Georgia). He was supervised by Oliveira who worked from the Firm's Home Office, which was then located in Ontario, California.

15. Although Palkowitsh typically had no more than eight or nine customers who held 20 to 30 accounts, he was the largest producer among the Firm's commissioned retail brokers during the time period relevant to this Complaint (November 2008 through June 2012).

16. Palkowitsh's "averaging" strategy, which did not vary between customers or accounts, involved establishing positions in multiple individual equities. He repeatedly purchased, often on a daily basis, small numbers of shares in each security. Each purchase generally had a principal value of between \$100 and \$300, and also included an \$81 charge (a \$75 commission and a \$6 "handling" fee). After approximately 10 (or more) purchases of a particular security, the position was typically sold and the pattern was repeated with the same security. The result was large numbers of transactions (often over 200 per month in some of the accounts at issue), elevated aggregate amounts of commissions, and large losses.

17. The only significant deviation from the foregoing strategy involved transactions in Sirius XM Radio, Inc. (ticker symbol "SIRI"). After his customers' accounts sharply diminished as a result of the strategy described above, Palkowitsh concluded that holding SIRI shares would enable his customers to recover their losses. By mid-2011, Palkowitsh concentrated nearly all of his customers' accounts in SIRI.

18. None of Palkowitsh's customers were sophisticated investors; their experience, if any, was typically limited to mutual funds. Palkowitsh, however, sent each customer a pre-

populated account application that exaggerated the customer's experience, knowledge and financial condition, and mischaracterized the customer's investment objective. Regardless of the customer's age, experience and financial situation, the pre-populated account application always described the customer's investment objective as "Speculation" and desired risk exposure as "Speculative."

19. After receipt of a signed application, but before account activity commenced, Oliveira required Palkowitsh to send the Firm's boilerplate "Active Trading Risk Disclosure" ("Disclosure") to each prospective customer. Although the form warned that, "you should not fund an actively traded account with retirement savings . . . ," Palkowitsh routinely sent the Disclosure to customers who opened IRAs and then executed hundreds of transactions in those IRAs.

20. None of the customers initially grasped what occurred in their accounts, how much they paid, or why they lost most of what they had invested. Indeed, the losses only stopped when Palkowitsh ceased trading.

B. The Customers

1. CUSTOMER LP

21. LP, 51 years old, is a former software engineer who resides with her husband and three of her children in Tyngsborough, Massachusetts. She was introduced to Palkowitsh in late 2010 by a former colleague, who suggested that Palkowitsh could help her newly-formed consulting business through his network of acquaintances. Palkowitsh, however, insisted that LP open an Equinox account before he would share any of his contacts.

22. At the time, LP's investing experience was limited to the mutual funds that she held in her former employer's 401(k) account. She told Palkowitsh that she was risk averse and

wanted her account invested conservatively. She did not have other brokerage accounts, and her 401(k) contained nearly all of her retirement savings. Moreover, her newly-formed business generated minimal revenue. Palkowitsh represented that he would invest only 20 percent of her account in the equities market and the remaining 80 percent would be held in cash.

23. In October 2010, Palkowitsh sent LP, via Federal Express, a pre-populated Equinox Retirement Account Application that LP signed without careful scrutiny. She did not notice that the form exaggerated her income and net worth, mischaracterized her “Investment Knowledge” as “Excellent,” and misstated her “Investment Objective” and “Risk Exposure” as “Speculation” and “Speculative.” Nor did she notice that the form falsely reported her “Investment Experience” to include variable products, options, bonds and stocks.

24. In mid-January 2011, LP funded her Equinox account by rolling over the proceeds from her former employer’s 401k account, which held mutual funds worth approximately \$115,000, and 56 shares of her former employer’s stock.

25. Palkowitsh immediately began executing transactions in LP’s account. Beginning in January 2011, he executed multiple purchases, on a daily basis, with a principal amount typically between \$100 and \$300. The pace and volume of trading in LP’s account increased through July 2011, when, in that month alone, Palkowitsh executed 248 transactions.

26. Palkowitsh controlled LP’s account. He determined what to buy and sell, the quantities, and when the transactions would occur. LP had never heard of many of the stocks that Palkowitsh purchased in her account, and Palkowitsh never discussed the rationale for any transactions with LP. Indeed, Palkowitsh executed more than 100 transactions during a three-week period in August 2011, when LP was unreachable while visiting family in a remote area.

27. In October 2011, when LP finally focused on her account, she saw that its net worth was less than \$28,000 and that nearly two-thirds of her account was invested in SIRI.

28. From January 2011 through October 2011, Palkowitsh executed 1,126 transactions in LP's account. The costs totaled approximately \$86,000. The annualized cost-to-equity ratio for that period was 136%.

29. By October 31, 2011, LP had sustained a loss of approximately \$85,000.

2. CUSTOMER MB

30. MB, 61 years old, resides in Jacksonville, Florida. He was formerly an architecture and construction contractor who, since April 2013, has been employed as a Building Inspection Manager.

31. MB met Palkowitsh about four years ago through their participation in the same local Civil Air Patrol squadron. Shortly after they met, Palkowitsh suggested that MB open a brokerage account at Equinox.

32. At the time, MB's investment experience was primarily limited to the mutual funds that he held in a retirement account. He had not previously worked with a broker or financial advisor.

33. In September 2011, Palkowitsh sent MB, via Federal Express, a pre-populated Equinox Retirement Account Application. MB did not carefully review the document. He simply handwrote his business address and telephone numbers, and signed the forms. MB did not focus on the fact that the document exaggerated his Net Worth, Liquid Net Worth and Tax Bracket, falsely stated that his "Investment Experience" included options, bonds and variable products, and mischaracterized his "Investment Objective" and "Risk Exposure" as "Speculation" and "Speculative."

34. In October 2011, MB funded his Equinox account by transferring \$80,000 from his IRA, which, in total, was worth approximately \$120,000 before the transfer. MB did not have any other retirement accounts. He told Palkowitsh that his goal was to achieve annual growth of about five to ten percent without significant risk to his account principal.

35. Palkowitsh, however, immediately began executing transactions in MB's account, executing multiple purchases on a daily basis. In October 2011, Palkowitsh executed 183 transactions and generated costs of approximately \$14,800.

36. Palkowitsh controlled MB's account. He determined what to buy and sell, the quantities, and when the transactions would occur. Palkowitsh did not speak with, or seek permission from, MB for any particular transaction. MB had never heard of many of the stocks that Palkowitsh purchased, and Palkowitsh never explained the rationale for any of the hundreds of transactions in MB's account.

37. Although MB's account held 20 securities on December 31, 2011, by April 2012, Palkowitsh had concentrated the account in SIRI. The SIRI position, worth about \$15,334, constituted 60% of the \$25,322.21 account value on April 30, 2012.

38. From October 2011 through June 2012, Palkowitsh executed 697 transactions in MB's account. The costs totaled approximately \$54,500. The annualized cost-to-equity ratio was 182%.

39. By June 30, 2012, MB sustained a loss of approximately \$58,000.

3. CUSTOMERS JD AND GD

40. JD is 71 years old and resides in Denville, New Jersey with his wife, GD, who is 72 years old. JD earns about \$55,000 per year working in sales for a company that manufactures

and distributes commercial turf and lawn care products, primarily for use on golf courses. GD is a retired nurse who works, on a part-time basis, in a doctor's office.

41. In 2008, JD was a principal in a company that was formed by JD and others to become involved in golf course construction. Although the company has not generated any income, at the time, JD and his colleagues were attempting to become involved in the construction of a golf course on the island of Haiti. In a conference call, Palkowitsh was introduced as a broker who could facilitate financing for the project and also help with their individual finances.

42. Thereafter, Palkowitsh repeatedly telephoned JD and encouraged him to open a brokerage account at Equinox. JD told Palkowitsh that neither he nor his wife was willing to take on significant risk; they simply wanted to grow their account and have funds available for their retirement. Palkowitsh responded by representing that he would use a "70-30" split, *i.e.*, 70% of the account would be held in cash, the remaining 30% would be invested in the equities market. Although Palkowitsh told JD that each purchase would include a \$75 commission, he assured JD that the account growth would cover the costs.

43. At the time, JD's investing experience was primarily limited to mutual funds. GD had virtually no investing experience.

44. In September 2008, Palkowitsh sent JD and GD a number of pre-populated forms including an Equinox Investment Account Application for a joint account and Equinox Retirement Account Applications for their prospective IRA Rollover accounts.

45. The applications referenced in the paragraph, above, exaggerated JD's and GD's annual income and net worth, mischaracterized their "Investment Objective" and "Risk Exposure" as "Speculation" and "Speculative," misstated their investment experience to include

nine years of experience in options, variable products, bonds and stocks, and misleadingly described their “Investment Knowledge” as “Excellent.” When JD inquired about the inaccuracies, Palkowitsh told him not to worry and remarked, “it doesn’t mean anything.”

46. In October 2008, JD and GD opened a joint investment account and individual IRAs. They funded the joint account with the proceeds of a brokerage account that JD had inherited, totaling approximately \$245,000. JD funded his IRA with proceeds of approximately \$149,000, which he rolled over from his existing IRA. GD funded her IRA by rolling over the approximately \$28,500 in proceeds from her existing IRA and the proceeds of an annuity worth approximately \$111,600.

47. In late November 2008 (for JD’s IRA) and December 2008 (for the joint account and GD’s IRA), Palkowitsh began purchasing, on a daily basis, multiple securities in each of the accounts.

48. Palkowitsh controlled JD’s and GD’s accounts. He determined what to buy and sell, the quantities, and when the transactions would occur. Palkowitsh rarely spoke to GD. Although Palkowitsh and JD spoke intermittently, Palkowitsh executed transactions regardless of whether he spoke with JD on any particular day. Indeed, JD had never heard of many of the companies whose stock Palkowitsh was purchasing for his and his wife’s accounts. He simply trusted Palkowitsh and relied on his judgment.

i. JD’s and GD’s Joint Investment Account

49. The account activity in JD’s and GD’s joint account peaked in the summer of 2010 when, in August alone, Palkowitsh executed 263 transactions, generating costs of more than \$21,000.

50. Although JD's and GD's joint account held 63 securities on January 31, 2010, by mid-2011, Palkowitsh had concentrated their account in SIRI. The SIRI position, worth about \$23,660, represented approximately 70% of the account value on December 31, 2011.

51. From December 2008 through December 2011, Palkowitsh executed 4,346 transactions in JD's and GD's joint account. The costs totaled approximately \$337,000. The annualized cost-to-equity ratio was 63%.

52. By December 31, 2011, JD and GD had sustained a loss of approximately \$166,000 in their joint account.

ii. JD's Retirement Account

53. JD's retirement account activity peaked in December 2010, when Palkowitsh executed 189 transactions in his IRA. From mid-2010 through July 31, 2011, JD's IRA steadily and sharply declined. The account, worth \$150,128 on April 30, 2010, diminished to \$24,316 on July 31, 2011.

54. Although JD's account held 43 individual securities on November 30, 2009, by July 31, 2011, Palkowitsh concentrated his account in SIRI. The SIRI position, worth \$21,100, constituted 87% of JD's IRA on July 31, 2011.

55. From November 2008 through July 2011, Palkowitsh executed 2,390 transactions in JD's account. The costs totaled approximately \$183,000. The annualized cost-to-equity ratio was 66%.

56. By July 31, 2011, JD sustained a loss of approximately \$124,000 in his IRA.

iii. GD's Retirement Account

57. GD's retirement account activity peaked in March 2010, when Palkowitsh executed 276 transactions in her IRA. Her account, worth \$110,177.24 on March 31, 2010, was worth only \$19,712.20 on July 31, 2011.

58. Although GD's account held 57 individual securities on April 30, 2010, by July 31, 2011, Palkowitsh concentrated her account in SIRI. The SIRI position, worth \$19,201, constituted 97% of GD's account on July 31, 2011.

59. From December 2008 through July 2011, Palkowitsh executed 1,659 trades in GD's IRA. The costs totaled approximately \$126,000. The annualized cost-to-equity ratio was 136%.

60. By July 31, 2011, GD sustained a loss of approximately \$117,000 in her IRA.

4. CUSTOMERS DF AND LF

61. DF, 61 years old, is a principal of a company that manufactures and services irrigation equipment, primarily for golf courses. DF and his wife, LF, reside in East Windsor, Connecticut.

62. DF, like his friend and acquaintance, JD, was a principal of the company that was formed to engage in golf course construction, and he participated in the conference call in which Palkowitsh was introduced (*see* paragraph 41 above). Thereafter, Palkowitsh repeatedly called DF and encouraged him to open Equinox accounts.

63. DF told Palkowitsh that he wanted to invest conservatively. He and Palkowitsh agreed that Palkowitsh would invest his funds in an "80-20" plan, *i.e.*, 80% would remain in cash and 20% would be invested in equities.

64. DF's and LF's investing experience was limited to their individual IRAs and a joint account, all of which were invested in mutual funds. Neither DF nor LF had experience with individual stocks, bonds, options or variable products

65. In September 2008, Palkowitsh sent DF and LF pre-populated forms, including an Equinox Investment Account Application for a joint account, and Retirement Account Applications for their prospective Equinox IRAs, Option Account Agreements and Margin Agreements.

66. The applications and agreements referenced in the preceding paragraph exaggerated DF's and LF's investment experience to include nine years of experience with stocks, bonds, variable products and options, and they mischaracterized their "Investment Objectives" and "Risk Exposures" as "Speculation" and "Speculative. "

67. In October 2008, DF and LF opened a joint investment account and individual IRAs at Equinox. They funded their joint account with approximately \$183,000 that came from the proceeds of an account they had inherited from LF's mother. Their IRAs were funded from the proceeds of existing IRAs. DF deposited approximately \$71,000 into his Equinox IRA, and LF deposited approximately \$70,000 into her Equinox IRA. DF and LF did not have any other retirement accounts.

68. In late December 2008, Palkowitsh began executing multiple transactions, on a daily basis, in all of their accounts.

69. Palkowitsh controlled DF's and LF's accounts. He determined what to buy and sell, the quantities, and when the transactions would occur. Although Palkowitsh and DF initially spoke regularly, Palkowitsh often purchased stocks that had never been discussed.

Indeed, DF had never heard of many of the stocks that were purchased in DF's and LF's accounts. Palkowitsh almost never spoke to LF.

70. In late 2011, Palkowitsh told DF that he intended on moving to the Atlanta, Georgia area and then stopped communicating with DF.

71. Shortly thereafter, DF contacted Oliveira to gain electronic access to their accounts and was flabbergasted when he saw the volume of activity and extent of the losses.

i. DF's and LF's Joint Investment Account

72. The activity in DF's and LF's joint account peaked in July 2010, when Palkowitsh executed 254 transactions and generated costs of more than \$19,000 in a single month.

73. Although DF's and LF's joint account held 49 securities on January 31, 2010, by late 2011, Palkowitsh had concentrated the account in SIRI. The SIRI position, worth \$27,300.00, constituted 87% of the account value on December 31, 2011.

74. From December 2008 through December 2011, Palkowitsh executed 3,395 transactions in DF's and LF's joint account. The costs totaled approximately \$256,000. The annualized cost-to-equity ratio was 54%.

75. By December 31, 2011, DF and LF had sustained a loss of approximately \$149,000 in their joint account.

ii. DF's Retirement Account

76. DF's retirement account activity peaked in August 2010, when Palkowitsh executed 72 transactions in DF's IRA. From April 30, 2010 through March 31, 2011, DF's account diminished from \$56,920.05 to \$18,461.79.

77. Although DF's IRA held 32 securities on April 30, 2012, by mid-2011, Palkowitsh had concentrated the account in SIRI. The SIRI position, worth \$16,500, constituted 89% of the account value on March 31, 2011.

78. From December 2008 through March 2011, Palkowitsh executed 868 transactions in DF's account. The costs totaled approximately \$65,000. The annualized cost-to-equity ratio was 62%.

79. By March 31, 2011, DF sustained a loss of approximately \$53,000 in his IRA.

iii. LF's Retirement Account

80. LF's retirement account activity peaked in November 2010, when Palkowitsh executed 122 transactions in her IRA. From September 30, 2009 to September 30, 2011, LF's account diminished from \$82,349.11 to \$16,035.86.

81. Although LF's IRA held 34 securities on May 31, 2010, by mid-2011, Palkowitsh had concentrated the account in SIRI. The SIRI position, worth about \$18,258, constituted about 98% of the account value on October 31, 2011.

82. From December 2008 through October 2011, Palkowitsh executed 1,271 transactions in LF's account. The costs totaled approximately \$95,000. The annualized cost-to-equity ratio was 61%.

83. By October 31, 2011, LF sustained a loss of approximately \$52,000 in her IRA.

C. Palkowitsh's Liens and the Revised Compensation Arrangement

84. Palkowitsh became subject to three federal tax liens while associated with Equinox:

- A \$307,487.72 lien, recorded on September 16, 2009, covering tax periods ending December 31, 2002 and December 31, 2003;

- A \$93,556.58 lien, recorded on May 11, 2010, covering tax periods ending December 31, 2004 through December 31, 2008; and
- A \$301,609.38 lien, recorded on June 4, 2012, covering tax periods ending December 31, 2003 through December 31, 2010.

85. Palkowitsh received notices and was aware that he was subject to federal tax liens.

86. In June 2008, Palkowitsh signed an agreement that defined his employment relationship with Equinox (the “Agreement”). Although the “Commission Schedule” in the Agreement was blank, Palkowitsh and Oliveira orally agreed that Palkowitsh’s commission payout would be between 85% and 95%.

87. On October 26, 2009, slightly more than a month after the IRS recorded the \$307,487.72 lien, Palkowitsh and Equinox (acting through Oliveira) amended the Agreement to alter Palkowitsh’s compensation arrangement with the Firm. The revised structure provided that: (i) the Firm would furnish certain credit cards to Palkowitsh for payment of his personal charges and also directly pay personal monthly expenses at Palkowitsh’s direction; and (ii) Palkowitsh would waive any claim to commission payouts.

88. In 2010, the Firm made direct payments on Palkowitsh’s behalf (payments to third parties and cash payments to Palkowitsh) totaling approximately \$187,000 and paid Palkowitsh’s credit card charges amounting to approximately \$218,000. Equinox reported on Form 1099 that Palkowitsh received compensation of \$187,322.32.

89. In 2011, the Firm made direct payments on Palkowitsh’s behalf (payments to third parties and cash payments to Palkowitsh) totaling approximately \$126,000 and paid Palkowitsh’s credit card charges amounting to approximately \$100,000. Equinox reported on Form 1099 that Palkowitsh received compensation of \$126,367.25.

90. In 2012, the Firm made direct payments on Palkowitsh's behalf and paid Palkowitsh's credit card charges which, together, amounted to approximately \$19,900. Equinox reported on Form 1099 that Palkowitsh received compensation of \$18,630.91.

D. The Firm's Supervisory System

1. EXCESSIVE TRADING AND CHURNING

91. The Firm's written supervisory procedures ("WSPs") assigned all of the Firm's management and supervisory responsibilities to Oliveira. The WSPs identified him as (i) the Firm's President, Chief Compliance Officer, Chief Financial Manager, Municipal Securities Principal and Options Principal; (ii) Branch Manager of the Main Office; and (iii) the Designated Supervisor for all of the Firm's representatives.

92. The WSPs obligated Oliveira, as Chief Compliance Officer, to conduct a daily review of the blotter and a quarterly review of account statements to examine for suitability, including excessively concentrated positions and excessive trading and churning.

93. However, the WSPs did not describe how the foregoing reviews would be conducted. In particular, there was no description of the controls and procedures that Equinox and Oliveira would use to detect and deter excessive trading and churning.

94. In practice, even though Oliveira approved each new account and was aware of each of the transactions in Palkowitsh's accounts, Oliveira conducted no meaningful review for excessive trading or churning. Notwithstanding the trading volume in Palkowitsh's customers' accounts (often exceeding 100 transactions per month in retirement accounts), the aggregate charges in each account, the cost-to-equity ratios that frequently exceeded 100%, and the losses, Oliveira took no action to curtail Palkowitsh's excessive trading and churning. To the contrary, he rejected any obligation or responsibility for limiting the transactions and charges. His only

“supervision” consisted of verifying that: (i) the customer signed an account application that identified a purported desire to “speculate;” and (ii) the Firm issued the boilerplate “Active Trading Disclosure.”

95. Moreover, while Equinox received multiple exception reports, it did not have or receive any report that specifically targeted excessive trading, nor did it receive reports that identified turnover rates or commission-to-equity or cost-to-equity ratios.

2. FORM U4 AMENDMENTS

96. Although Equinox had procedures relating to the initial Form U4 filing, aside from attributing responsibility to the Chief Compliance Officer for ensuring Form U4s were updated upon receipt of customer complaints, the Firm had no system or procedure that addressed amending and updating Form U4s to ensure they were current. In particular, the Firm had no system or procedure applicable to the timing, responsibility and process for updating a Form U4 to disclose bankruptcies, unsatisfied judgments and liens.

FIRST CAUSE OF ACTION **Excessive Trading (Quantitative Suitability)** **(Violations of NASD Rules 2310 and 2110, FINRA Rule 2010, and NASD IM-2310-2** **by Respondents Palkowitsh and Equinox)**

97. The Department realleges and incorporates by reference Paragraphs 1 through 96, above.

98. NASD Rule 2310(a) provides that “[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.” Among the obligations under the suitability rule is “quantitative suitability,” which focuses on whether the number of transactions within a given timeframe is suitable in light of the

customer's financial circumstances and investment objectives. A broker must have reasonable grounds to believe that the number of recommended transactions within a particular period is not excessive. Excessive trading occurs when a registered representative has control over trading in an account and the level of activity in that account is inconsistent with the customer's objectives and financial situation.

99. Palkowitsh and Equinox, acting through Palkowitsh, exercised control over the accounts at Equinox held by LP, MB, JD, GD, DF and LF. Palkowitsh made all of the investment decisions, including what to buy and sell, the quantities, and when each transaction would occur. Moreover, he seldom advised them of particular transactions in their accounts. LP, MB, JD, GD, DF and LF had no short-term trading experience, minimal experience, if any, trading individual stocks, and no familiarity with many of the companies whose stock Palkowitsh purchased for their accounts. Moreover, the customers did not understand, and failed to review, confirmation statements and account statement.

100. The trading in the accounts of customers LP, MB, JD, GD, DF and LF was, as evidenced by the high annualized cost-to-equity ratios and number of transactions, excessive in light of and inconsistent with the customers' investment objectives and financial situations. None of the customers acquiesced or consented to the heavy level of trading in the accounts.

101. As a result of the excessive trading in the accounts, each of the customers suffered extensive losses and paid exorbitant fees and commissions to Palkowitsh and Equinox.

102. Equinox is liable for the excessive trading of, and quantitatively unsuitable recommendations by, Palkowitsh under the doctrine of *respondeat superior*.

103. As a result of the foregoing conduct, Respondents Palkowitsh and Equinox violated NASD Rules 2310 and 2110, and NASD IM-2310-2 (for transactions occurring before

December 15, 2008), and NASD Rule 2310, NASD IM-2310-2 and FINRA Rule 2010 (for transactions occurring on or after December 15, 2008).

SECOND CAUSE OF ACTION

Churning

(Violations of Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, FINRA Rules 2020 and 2010, and NASD Rules 2120 and 2110 by Respondents Palkowitsh and Equinox)

104. The Department realleges and incorporates by reference Paragraphs 1 through 103, above.

105. By engaging in unsuitable excess trading with scienter, Palkowitsh and Equinox engaged in a manipulative, deceptive and fraudulent scheme by churning the accounts of LP, MB, JD, GD, DF, and LF. Palkowitsh and Equinox acted with intent to defraud and/or reckless disregard of their customers' interests by seeking to maximize their own remuneration in disregard of the interests of their customers. Among other things, they: (i) executed an extraordinary number of transactions in the customers' Equinox accounts that, in turn, generated exorbitant amounts of commissions and high cost-to-equity ratios; (ii) exaggerated the customers' "Net Worth" and "Liquid Net Worth" and mischaracterized their "Investment Objectives" and "Risk Tolerance" on Equinox Investment Account Applications; and (iii) executed an exorbitant number of transactions in customers' retirement accounts notwithstanding the Firm's Active Trading Disclosure letter that warned "you should not fund an actively traded account with retirement savings . . ."

106. These acts and transactions at issue were accomplished by the use or means of the instrumentalities of interstate commerce and through the mail and involved securities transactions on a national securities exchange.

107. As a result of the churning in the accounts, each of the customers suffered extensive losses and paid exorbitant fees and commissions to Palkowitsh and Equinox.

108. Equinox is liable for the foregoing fraudulent misconduct of Palkowitsh under the doctrine of *respondeat superior* and as a control person under Section 20(a) of the Exchange Act.

109. As a result of the foregoing conduct, Respondents Palkowitsh and Equinox willfully violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, NASD Rules 2120 and 2110 (for transactions occurring before December 15, 2008), and FINRA Rules 2020 and 2010 (for transactions occurring on or after December 15, 2008).

THIRD CAUSE OF ACTION
Unsuitable Recommendations (Qualitative Suitability)
(Violation of NASD Rule 2310 and FINRA Rule 2010
by Respondents Palkowitsh and Equinox)

110. The Department realleges and incorporates by reference Paragraphs 1 through 109, above.

111. NASD Rule 2310 requires that a registered representative have reasonable grounds for believing that a recommendation is suitable for a customer based upon the customer's disclosed securities holdings, financial situation and needs. The rule also requires a broker to educate clients about the risks associated with any recommendation. Before a registered representative recommends a risky or speculative investment, he must be satisfied that it is appropriate for the particular customer and that the customer fully understands the risks and is not only able, but willing, to take those risks.

112. Palkowitsh recommended transactions to each of his customers that resulted in concentrating the accounts of LP, MB, JD, GD, DF, and LF in one security, SIRI. After the customers sustained substantial losses from the excessive trading and churning of their accounts,

Palkowitsh placed their remaining equity at risk by concentrating from 60 to 98% of their accounts in SIRI.

113. Palkowitsh lacked reasonable grounds for believing that the customers LP, MB, JD, GD, DF, and LF understood and were willing and able to assume the risk particular to having their accounts heavily concentrated in one security.

114. There was no reasonable basis for recommending that each of the customers become so heavily concentrated in a single, low-priced security where a significant loss would effectively wipe out the customer's entire principal in these accounts, many of which were the sole retirement accounts for the customers.

115. Equinox is liable for Palkowitsh's unsuitable recommendations under the doctrine of *respondeat superior*.

116. As a result of the foregoing conduct, Respondents Palkowitsh and Equinox violated NASD Rules 2310 and 2110 (for transactions occurring before December 15, 2008), and NASD Rule 2310 and FINRA Rule 2010 (for transactions occurring on or after December 15, 2008).

FOURTH CAUSE OF ACTION

Failure to Supervise (Violations of NASD Rules 3010 and 2110, and FINRA Rule 2010 by Respondents Oliveira and Equinox)

117. The Department realleges and incorporates by reference Paragraphs 1 through 116, above.

118. NASD Rule 3010(a) establishes a duty of supervision that requires a member to "establish and maintain" a supervisory system that is reasonably designed to achieve compliance with applicable securities laws, regulations and rules. The duty of supervision includes the obligation and responsibility to investigate red flags that suggest that misconduct may be

occurring and to act upon the results of any such investigation. Once indications of irregularity arise, supervisors must respond appropriately and decisively.

119. There were multiple red flags suggesting that Palkowitsh was excessively trading, churning, and generally making quantitatively and qualitatively unsuitable recommendations in violation of the Exchange Act and its rules as well as applicable FINRA and NASD rules:

- the accounts – six of which were retirement accounts – exhibited a significant trading volume, often involving multiple transactions per day and occasionally involving more than 200 transactions per month;
- there were scores of transactions in particular securities in each customer account;
- the \$81 charge for each purchase transaction was exorbitant relative to the minimal principal amount of each purchase;
- the aggregate amount of commissions charged on individual accounts was exorbitant;
- cost-to-equity ratios were high and, in some instances, exceeded 100%;
- by 2011, nearly all of the accounts were heavily concentrated in a single security, SIRI;
- all of the account applications listed “Speculation” as the “Investment Objective” regardless of the customer’s intentions, financial condition, age and occupation and irrespective of whether the account was an investment account or a retirement account; and
- all of the accounts sustained substantial losses.

120. These red flags were known to but not addressed by Oliveira, who was the Firm’s CEO, CCO and Palkowitsh’s supervisor, or, through Oliveira, by Equinox. Oliveira had supervisory authority over Palkowitsh and the responsibility and authority to affect his conduct.

121. Oliveira and Equinox failed to adequately investigate and act upon the misconduct committed by Palkowitsh over a lengthy period of time. They also failed to ensure that Palkowitsh acted in a manner that was compliant with applicable laws, regulations and rules.

122. The failure to supervise Palkowitsh's misconduct was not reasonable under the circumstances.

123. By failing to adequately supervise Palkowitsh, Oliveira and Equinox violated NASD Rules 3010 and 2110 (for conduct occurring before December 15, 2008), and NASD Rule 3010 and FINRA Rule 2010 (for conduct occurring on or after December 15, 2008).

FIFTH CAUSE OF ACTION

Failure to Disclose Liens

**(Violations of Article V, Section 2(c) of the FINRA By-Laws, and
FINRA Rules 1122 and 2010 by Respondent Palkowitsh)**

124. The Department realleges and incorporates by reference Paragraphs 1 through 123, above.

125. Article V, Section 2(a)(2) of the FINRA By-Laws provides that any application for registration with FINRA shall contain such reasonable information with respect to the applicant as FINRA may require. FINRA Rules 2010 and 1122 require associated person to disclose accurately and fully information required in the Form U4 and to observe high standards of commercial honor and just and equitable principles of trade.

126. Article V, Section 2(c) of the FINRA By-Laws provides that every application for registration filed with FINRA shall be kept current at all times by supplementary amendments. These amendments must be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment. FINRA Rule 1122 provides, "No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

127. On or about May 9, 2008, Palkowitsh completed a Form U4 to become associated with Equinox.

128. On that Form U4, Palkowitsh answered “No” in response to Question No. 14M which asked: “Do you have any unsatisfied judgments or liens against you?”

129. Thereafter, at least three federal tax liens were filed against him while he was associated with the Firm including: a \$307,487.72 lien recorded on September 16, 2009; a \$93,556.58 lien recorded on May 11, 2010; and a \$301,609.38 lien recorded on June 4, 2012.

130. Palkowitsh had notice of the liens but did not timely amend his Form U4 to disclose them.

131. By failing to cause his Form U4 to be amended to disclose those liens, Palkowitsh violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010.

SIXTH CAUSE OF ACTION
Inadequate Supervisory Systems and Procedures
(Violation of NASD Rules 3010 and 2110, and FINRA Rule 2010
by Respondents Oliveira and Equinox)

132. The Department realleges and incorporates by reference Paragraphs 1 through 131, above.

133. Conduct Rule 3010(a) obligates FINRA members to “establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD [and FINRA] Rules.” A Firm’s supervisory system must be tailored specifically to its business and address the activities of its registered representatives and associated person.

134. The Firm’s supervisory system must in turn, be memorialized in writing and the Firm must implement and enforce the written procedures. Conduct Rule 3010(b) requires a member to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives,

registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD [and FINRA].”

135. Oliveira, Equinox’s President and Chief Compliance Officer, was responsible for establishing and maintaining the Firm’s supervisory systems and procedures. Oliveira failed to discharge those responsibilities adequately because the Firm’s supervisory system and procedures were not reasonably designed to achieve compliance with applicable securities laws, regulations and rules.

Inadequate System and Procedures for Ensuring Suitability of Recommendations

136. Although the Firm’s procedures required Oliveira, the Chief Compliance Officer, to review the blotter on a daily basis and account statements on a quarterly basis, for purposes of reviewing the suitability of recommendations, including “excessive size or frequency of trades (i.e. churning),” the WSPs provided no guidance about how this review was to be accomplished. There was no description of the controls, procedures, reports, and criteria that the Firm would use to detect and deter unsuitable recommendations, including excessive trading and/or churning, and undue concentration. Nor was there any description of how that process and review would be documented.

137. In practice, the Firm had no viable system to prevent and detect unsuitable recommendations including excessive trading and/or churning and undue concentration of accounts.

138. As described above, Oliveira failed to conduct any meaningful review and take any meaningful action to detect and prevent unsuitable recommendations.

Inadequate System and Procedures for Ensuring Form U4s are Current

139. Oliveira was responsible for establishing an adequate system and procedures to ensure that Form U4s of the Firm's representatives included all required disclosures and were updated in a timely manner. Although Equinox's procedures attributed responsibility to Oliveira, as Chief Compliance Officer, for ensuring Form U4s were appropriately updated upon receipt of customer complaints, there were no other written procedures related to ensuring Form U4s were properly updated and current.

140. There were no written procedures describing: (i) how a representative was to notify the Firm that his Form U4 required amendment; (ii) to whom the disclosure would be made; (iii) the timing of any such disclosure; and (iv) how such disclosure would be documented. Indeed, the Firm had no system to ensure that its representatives' Form U4s were updated to make the required disclosures.

141. In practice, the Firm had no system to ensure that Form U4s were properly updated. After a representative's initial Form U4 was filed, Oliveira never inquired about a representative's bankruptcies, judgments, or liens and, in particular, never inquired about whether a representative's Form U4s was current and accurate. For example, although Oliveira knew and/or had ample basis to believe that Palkowitsh was subject to tax liens, he took no action to ensure that Palkowitsh's Form U4 was updated to make the appropriate disclosures.

142. By failing to establish, maintain, and enforce a supervisory system and written supervisory procedures that were reasonably designed to achieve compliance with applicable securities laws and regulations, Oliveira and Equinox violated NASD Rules 3010 and 2110 (for conduct occurring before December 15, 2008), and NASD Rule 3010 and FINRA Rule 2010 (for conduct occurring on or after December 15, 2008).

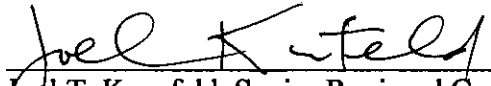
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

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

FINRA DEPARTMENT OF ENFORCEMENT

Date: July 28, 2015


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