

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9359 / September 10, 2012**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 67810 / September 10, 2012**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3461 / September 10, 2012**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 30197 / September 10, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15015**

**In the Matter of**

**MICHAEL BRESNER;**  
**RALPH CALABRO;**  
**JASON KONNER; and**  
**DIMITRIOS KOUTSOUBOS**

**Respondents.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, SECTIONS 15(b) AND 21C OF  
THE SECURITIES EXCHANGE ACT OF  
1934, SECTION 203(f) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
AND SECTION 9(b) OF THE  
INVESTMENT COMPANY ACT OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Ralph Calabro (“Calabro”), Jason Konner (“Konner”) and Dimitrios Koutsoubos (“Koutsoubos”) and pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Michael Bresner (“Bresner”) (collectively, the “Respondents”).

## II.

After an investigation, the Division of Enforcement alleges that:

### A. RESPONDENTS

1. *Bresner*, age 67, resides in Atlanta, Georgia. Bresner has been employed as Executive Vice President (“EVP”) and Head of Supervision of JP Turner & Company, LLC (“JP Turner”) since 2005. He has also been an associated person with JP Turner & Company Capital Management, LLC (“JP Turner Capital”), an Atlanta, Georgia based limited liability company that been registered with the Commission as an investment adviser since 2007.

2. *Calabro*, age 37, resides in Matawan, New Jersey. Calabro served as a registered representative of the Parlin, New Jersey branch office of JP Turner from March 2004 until January 2011. He is currently a registered representative at National Securities Corporation.

3. *Konner*, age 37, resides in Brooklyn, New York. Konner was a registered representative at JP Turner from September 2006 to December 2011. He is currently a registered representative at DPEC Capital, Inc.

4. *Koutsoubos*, age 35, resides in Brooklyn, New York. Koutsoubos was a registered representative at JP Turner from July 2000 until August 2009. He is currently a registered representative at Caldwell International Securities.

### B. OTHER RELEVANT ENTITY

5. *JP Turner* is an Atlanta, Georgia-based limited liability company that has been registered with the Commission as a broker-dealer since 1997. JP Turner has approximately 513 independent contractor registered representatives working out of over 203 branch offices that are located throughout the United States. These branch offices include 54 offices of supervisory jurisdiction. Although JP Turner is not registered with the Commission as an investment adviser, certain members of the firm serve in senior positions with JP Turner Capital.

### C. CHURNING OF JP TURNER CUSTOMER ACCOUNTS BY CALABRO, KONNER AND KOUTSOUBOS

6. Between January 1, 2008 and December 31, 2009 (the “relevant period”), Calabro, Konner, and Koutsoubos collectively “churned” the accounts of seven customers (collectively, the “defrauded customers”) by engaging in excessive trading for their own gains in disregard of the customers’ conservative investment objectives and low or moderate risk tolerances for the purpose of generating commission business. Their misconduct generated commissions, fees and margin interest totaling approximately \$845,000 while the defrauded customers suffered aggregate losses of approximately \$2,700,000.

7. During the relevant period, Calabro engaged in churning the accounts of three customers (“Calabro’s customers”). Calabro exercised *de facto* control over the accounts of the three customers.

The annualized turnover ratios<sup>1</sup> in the accounts ranged from 8 to 13, and the annualized break-even rates of return ranged from 22.9 percent to 31.8 percent. The trading in these accounts was excessive in light of Calabro's customers' investment objectives and experiences, ages and financial needs.

8. Calabro knowingly or recklessly engaged in the conduct described above. Calabro retained a portion of the commissions and fees earned by JP Turner for the trades. Calabro's customers suffered approximate losses of \$2,300,000. Calabro knowingly or recklessly disregarded his customers' investment objectives, financial situations and interests for his own financial gain.

9. During the relevant period, Konner engaged in churning the accounts of two customers ("Konner's customers"). Konner exercised *de facto* control over the accounts of the two customers. The annualized turnover ratios in the accounts were 17 and 18, and the annualized break-even rates of return were 34.4 percent and 28.2 percent respectively. The trading in these accounts was excessive in light of Konner's customers' investment objectives and experiences, ages and financial needs.

10. Konner knowingly or recklessly engaged in the conduct described above. Konner retained a portion of the commissions and fees earned by JP Turner for the trades. Konner's customers suffered approximate losses of \$134,000. Konner knowingly or recklessly disregarded his customers' investment objectives, financial situations and interests for his own financial gain.

11. During the relevant period, Koutsoubos engaged in churning the accounts of two customers ("Koutsoubos' customers"). Koutsoubos exercised *de facto* control over the accounts of the two customers. The annualized turnover ratios in the accounts ranged from 28 to 56, and the annualized break-even rates of return ranged from 41.4 percent to 73.3 percent. The trading in these accounts was excessive in light of Koutsoubos' customers' investment objectives and experiences, ages and financial needs.

12. Koutsoubos knowingly or recklessly engaged in the conduct described above. Koutsoubos retained a portion of the commissions and fees earned by JP Turner for the trades. Koutsoubos's customers suffered approximate losses of \$193,000. Koutsoubos knowingly or recklessly disregarded his customers' investment objectives, financial situations and interests for his own financial gain.

13. All of the defrauded customers relied almost exclusively on their registered representative to make the investment decisions in their accounts. Each of the defrauded customers also (1) had conservative investment objectives and low or moderate risk tolerance; (2) signed blank or pre-

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<sup>1</sup> An annualized turnover ratio is the number of times per year a customer's securities are replaced by new securities. It is calculated by determining the aggregate amount of purchases in an account over a given period, calculating the ratio of those aggregate purchases to the account's average net equity during that period, and then annualizing that ratio. A turnover rate that exceeds six is presumptive of excessive trading. See *Mihara v. Dean Witter & Co. Inc.*, 619 F.2d 814, 821 (9th Cir. 1980).

filled account documents that identified inaccurate investment objectives, risk tolerance, and/or investment experience levels; and (3) was generally unsophisticated in securities trading.

#### D. JP TURNER'S SUPERVISORY STRUCTURE

14. For JP Turner's offices of supervisory jurisdiction ("OSJ"), the registered representatives were directly supervised by branch managers, who in turn reported to, and were supervised by one of four area vice presidents ("AVPs"). For smaller, non-OSJ offices, registered representatives were supervised directly by an AVP, who in turn was supervised by Bresner, the Head of Supervision. For his part, Bresner reported to JP Turner's Chief Operating Officer, who in turn reported to two individuals, William Mello, the firm's President, and the firm's CEO.

#### E. THE ACTIVE ACCOUNT REVIEW SYSTEM AT JP TURNER

15. During the relevant period, JP Turner had in place what was referred to internally as the Active Account Review System (the "AARS"). As implemented, on a quarterly basis the AARS identified accounts with specific commission levels (Levels 1 through 4), and required that certain supervisory actions be taken at each level. Specifically, for each customer account, the system calculated return-on-investment ("ROI") as the total commissions and fees as a percentage of the average equity in the account over the trailing twelve-month period. The AARS flagged actively traded accounts that fell into four levels, requiring different supervisory actions at each level.

16. For each account tagged at Level 1 (ROI between 10 and 15 percent), the system sent an e-mail to first-line supervisors<sup>2</sup> requiring that they conduct a review of the account. Supervisors were required to access the AARS and click a box on a summary account screen that identified the ROI level.

17. At Level 2 (ROI between 15 and 20 percent), the system sent an e-mail to first-line supervisors requiring that they conduct the same unspecified review of the account, with the additional requirement that they take one of four suggested actions: (1) compute a profit and loss analysis, (2) discuss the account with the broker, (3) call the customer, or (4) restrict commissions.

18. Additionally, for all accounts initially tagged at Level 2 or at a higher level, the compliance department sent the customer a form cover letter with an attached Active Account Suitability Supplement ("suitability supplement") and Active Account Suitability Questionnaire ("suitability questionnaire"). The letter requested that customers complete, sign, and return the suitability questionnaire identifying their investment objectives and risk tolerance, as well as the "frequency of trades" associated with the account.

19. At Level 3 (ROI between 20 and 25 percent), AVPs were notified via e-mail, and

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<sup>2</sup> First line supervisors included: (i) OSJ branch managers supervising the office's registered representatives, (ii) AVPs supervising registered representatives associated with non-OSJ branch offices, and (iii) AVPs supervising the trading of OSJ branch managers.

were required to perform a review of the account and to conduct at a minimum a profit and loss analysis.

20. At Level 4 (ROI greater than 25 percent), Bresner as EVP was notified via e-mail and required to perform a review of the account and take appropriate action.

F. BRESNER'S FAILURE TO SUPERVISE REASONABLY  
KONNER AND KOUTSOUBOS

21. During the relevant period, Konner and Koutsoubos both worked as registered representatives in the Brooklyn, New York branch. Once Konner and Koutsoubos had an account reaching Level 4, under the firm's procedures, Bresner was directly responsible for supervising them as it related to review of the account activity and taking any appropriate actions.

22. Konner churned the accounts of two defrauded customers from January 2009 to December 2009, including one customer account from January 2009 to December 2009. That account appeared on the AARS at Level 4 three times during the period Konner churned the account.

23. Koutsoubos churned the accounts of two defrauded customers from January 2008 to July 2009. He churned one customer's account from January 2008 to December 2008. During this period, that account appeared on the AARS four consecutive times, all at Level 4. Koutsoubos also churned another customer account from December 2008 to July 2009. That account appeared on the AARS once at Level 4 during the period the account was churned.

24. As supervisor of Konner, with respect to one of the defrauded customer's account, and Koutsoubos, with respect to two of the defrauded customers' accounts, Bresner failed to take appropriate action in response to the trading in these accounts despite the following red flags: (1) these Level 4 accounts had ROI greater than 25 percent and an annualized turnover rate greater than six, which presumptively indicated excessive trading, (2) two of these accounts repeatedly appeared at Level 4, even after commission restrictions were placed on the accounts, (3) Konner and Koutsoubos each engaged in trading activity that far exceeded the "frequency of trades" identified in the suitability questionnaire signed by two of their defrauded customers, and (4) one of Koutsoubos's defrauded customers had no suitability questionnaire on file, even though the customer's account repeatedly appeared on Level 4.

25. The most restrictive supervisory action Bresner took was to impose commission restrictions on the accounts managed by Konner and Koutsoubos. If Bresner had taken any meaningful follow-up action in supervising Konner and Koutsoubos with respect to the defrauded customers' accounts, such as closely reviewing the files and/or following up with the customers, particularly when the AARS repeatedly identified the same churned accounts at Level 4 over a period of many months, it is likely that he could have prevented or detected the churning by these registered representatives.

## G. VIOLATIONS

26. As a result of the conduct described above, Calabro, Konner and Koutsoubos willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

27. As a result of the conduct described above, Bresner failed reasonably to supervise Konner and Koutsoubos, persons subject to his supervision, with a view to preventing and detecting violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by Konner and Koutsoubos.

28. Section 15(b) of the Exchange Act provides for the imposition of sanctions against a person associated with a broker or dealer who has failed reasonably to supervise, with a view to preventing and detecting violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision. Similarly, under Section 203(f) of the Advisers Act, which incorporates by reference Section 203(e)(6), the Commission may also seek sanctions where an associated person has failed reasonably to supervise, with a view to preventing violations of the federal securities laws and rules thereunder, another person subject to the investment adviser's or associated person's supervision who commits such violations.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act, including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent Bresner pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents Calabro, Konner and Koutsoubos pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

E. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents Calabro, Konner and Koutsoubos should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities

Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and whether Respondents Calabro, Konner and Koutsoubos should be ordered to pay disgorgement and interest pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file Answers to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary