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SUPERIOR COURT BERGEN COUNTY  
FILED

FEB 20 2013

Attorneys for Plaintiffs,  
Robert R. Ammarell, individually, and  
in his capacity as Trustee of the M.G.  
Bowman Trust U/W, and  
Ammarell Revocable Living Trust;  
Barbara Ammarell, in her capacity as  
Trustee of the Laura B. Caltagirone Trust;  
Michael T. Cadematori; and Lisa Cadematori,  
individually, and in her capacity as Trustee  
of the Ammarell 96 CRUT, Charles Kenneth White,  
and White Capital Group, LLC

  
DEPUTY CLERK

ROBERT R. AMMARELL, INDIVIDUALLY,  
AND IN HIS CAPACITY AS TRUSTEE OF  
THE M.G. BOWMAN TRUST U/W, AND  
AMMARELL REVOCABLE LIVING TRUST;  
BARBARA AMMARELL, IN HER  
CAPACITY AS TRUSTEE OF THE LAURA  
B. CALTAGIRONE TRUST; MICHAEL T.  
CADEMATORI; LISA CADEMATORI,  
INDIVIDUALLY, AND IN HER CAPACITY  
AS TRUSTEE OF THE AMMARELL 96  
CRUT; CHARLES KENNETH WHITE; AND  
WHITE CAPITAL GROUP, LLC,

Plaintiffs,

v.

THEORY CAPITAL GROUP, LLC; THE  
ESTATE OF GEORGE L. SWAN; KATHY  
SWAN, INDIVIDUALLY AND IN HER  
CAPACITY AS ADMINISTRATRIX OF THE  
ESTATE OF GEORGE L. SWAN; THEORY  
HOLDING GROUP, LLC; GLOBAL  
TRADING SOLUTIONS, LLC; THEORY  
CAPITAL GROUP NV, LLC; NARINE  
PERSAUD; OLIVER GUBENKO; PATRICK  
MCDONALD; HARRY PERSAUD A/K/A  
HARRICHAND PERSAUD; GARNET  
ADVISORS LLC; JOHN DOE 1-100; AND  
XYZ CORP. 1-100,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-579-13

CIVIL ACTION

SECOND AMENDED COMPLAINT

Plaintiffs Robert R. Ammarell, individually, and in his capacity as trustee of the M.G. Bowman Trust U/W and Ammarell Revocable Living Trust; Barbara Ammarell, in her capacity as trustee of the Laura B. Caltagirone Trust; Michael T. Cadematori; and Lisa Cadematori, individually, and in her capacity as trustee of the Ammarell 96 CRUT (collectively, “Ammarell Plaintiffs”), Charles Kenneth White and White Capital Group, LLC (collectively, “White Plaintiffs”) (White Plaintiffs and Ammarell Plaintiffs shall hereinafter collectively be referred to as “Plaintiffs”), for their Second Amended Complaint against Defendants Theory Capital Group, LLC; The Estate of George L. Swan; Kathy Swan, individually and in her capacity as Administratrix of the Estate of George L. Swan; Theory Holding Group, LLC; Global Trading Solutions, LLC; Theory Capital Group NV, LLC; Narine Persaud; Oliver Gubenko; Patrick McDonald; Harry Persaud a/k/a Harrichand Persaud; Garnet Advisors LLC; John Doe 1-100; and XYZ Corp. 1-100 (collectively, “Defendants”), hereby state as follows:

### **THE NATURE OF THE ACTION**

1. Plaintiffs, by and through their undersigned counsel, bring this action against all parties involved in this massive fraudulent hedge fund investment.
2. Ammarell Plaintiffs, either individually, or in their capacity as trustees of certain trusts, purchased interests in one of two hedge funds. Defendants purportedly created two hedge funds – Short Term Opportunity Fund and Short Term Equity Fund (collectively, “the Fund” or “Theory Fund”).
3. White Plaintiffs purchased interests in the Theory Fund and were advised that their investments would be placed in separate subaccounts identified as Theory I, Theory II, and Theory III.

4. Upon information and belief, these two funds were combined into a single fund and this complex fraudulent enterprise was headed by the now deceased, George Swan.

5. This fraudulent enterprise has carefully and systematically created this sham Fund, deceived over thirty investors and diverted over \$6,000,000.

6. Ammarell Plaintiffs invested nearly \$1,200,000 in the sham Fund and represent the largest outside investor.

7. White Plaintiffs invested \$1,000,000 in the sham Fund and represent the second largest outside investor at this time.

8. Plaintiffs bring this action against the Fund, its manager, managing members, and other entities and individuals involved in this massive fraudulent undertaking.

9. Plaintiffs sue Defendants for, among other things, breaching their contractual and fiduciary duties by making deceptive and misleading statements in the course of soliciting investments in the Fund and communicating with the Ammarell Plaintiffs and White Plaintiffs as well as diverting millions of dollars in investments from the Fund.

10. Defendants failed to provide Plaintiffs with any offering materials prior to soliciting their investment and Plaintiffs actually investing in the Fund.

11. Plaintiffs primarily relied upon misrepresentations and other statements made by Defendants to induce them into initially investing in the Fund and then providing additional capital investments in the Fund.

12. During the time period of Plaintiffs' investment in the Fund, Defendants hired an individual by the name of Alex "The Russian" to day trade in an effort to increase the return to the investors.

13. Significantly, at the time of solicitation, George Swan intentionally omitted his prior ban from interacting with any individual or entity who was a member of the National Association of Securities Dealers, Inc. (“NASD”) which has been succeeded by the Financial Industry Regulatory Authority, Inc. (“FINRA”).

14. Upon information and belief, Alex “The Russian” improperly received compensation from the assets of the Fund to the detriment of Plaintiffs and other investors in the Fund.

15. Since George Swan’s suspicious death on November 25, 2012, after repeated requests for information, Plaintiffs have been unable to obtain any information relating to the assets of the Fund, confirmation of assets in the Fund, or information relating to disbursement of assets in the Fund.

16. Finally, in response to Plaintiffs’ Order to Show Cause, it was discovered that Plaintiffs’ investment cannot be located.

#### **PARTIES**

17. Plaintiffs Robert R. Ammarell and Barbara Ammarell are individuals and citizens of the State of Florida who reside at 3884 Outlook Ct., Jupiter, FL 33477.

18. Plaintiff Barbara Ammarell is the trustee of the Laura B. Caltagirone Trust, which was invested in the Theory Fund.

19. Plaintiff Robert R. Ammarell is the trustee of the M.G. Bowman Trust U/W, and Ammarell Revocable Living Trust. These two trusts invested assets in the Theory Fund.

20. Plaintiff Robert R. Ammarell (“Ammarell”) also invested his individual IRA account in the Theory Fund.

21. Plaintiffs Michael T. Cadematori and Lisa Cadematori are individuals and citizens of the State of New Jersey who reside at 12 Chestnut Drive, Wayne, New Jersey 07470. Plaintiffs Michael T. Cadematori and Lisa Cadematori together held the brokerage account “Lisa Cadematori and Michael Cadematori JTWR0S,” which they used to invest in the Theory Fund.

22. Plaintiff Lisa Cadematori is also the trustee of the Ammarell 96 charitable remainder unitrust also known as “CRUT” (hereinafter referred to as “Ammarell 96 CRUT”). This trust invested assets in the Theory Fund as well.

23. Plaintiff Charles Kenneth White (“White”) is an individual and citizen of the State of Georgia. Charles Kenneth White invested his personal assets in the Theory Fund as well as the assets of White Capital Group, LLC.

24. Plaintiff White Capital Group, LLC is a limited liability company organized and existing under the laws of the State of Georgia with its principal place of business in Dalton, Georgia and White is its manager.

25. Upon information and belief, Defendant Theory Capital Group, LLC is a limited liability company organized and existing under the laws of the State of New Jersey with its principal place of business at 61 South Paramus Road, Box 17, Paramus, New Jersey 07652.

26. Upon information and belief, Defendant George Swan, deceased, was the Chief Executive Officer and Defendant Kathy Swan is the managing member of Defendant Theory Capital Group, LLC, and in that capacity, they operate and control Defendant Theory Capital Group, LLC. Defendant Kathy Swan is the Administratrix of the Estate of George L. Swan.

27. Upon information and belief, Defendant Theory Holding Group, LLC is a limited liability company organized and existing under the laws of the State of Nevada with its principal place of business at 93 Topsy Lane #306-316, Carson City, Nevada 89705.

28. Upon information and belief, Defendant Global Trading Solutions, LLC is a limited liability company organized and existing under the laws of the State of Nevada with its principal place of business at 963 Topsy Lane #306-316, Carson City, Nevada 89705. Defendant Global Trading Solutions, LLC is the managing member of Defendant Theory Holding Group, LLC.

29. Upon information and belief, Defendant Patrick McDonald is the managing member of Global Trading Solutions, LLC, and in that capacity, operates and controls Defendant Global Trading Solutions, LLC.

30. Upon information and belief, Defendant Theory Capital Group NV, LLC is a limited liability company organized and existing under the laws of the State of Nevada with its principal place of business at 50 Tice Blvd, Suite 365, Woodcliff Lake, New Jersey 07677.

31. Upon information and belief, Defendants George Swan and Kathy Swan residing at 329 Cantrell Road, Ridgewood, New Jersey are the managing members of Defendant Theory Capital Group NV, LLC, and in that capacity, operate and control Defendant Theory Capital Group NV, LLC.

32. Upon information and belief, Defendant Garnet Advisors, LLC is a limited liability company organized and existing under the laws of the State of New Jersey with its principal place of business at 264 Airmont Avenue, Mahwah, New Jersey.

33. Upon information and belief, Defendant Harry Persaud a/k/a Harrichand Persaud is an individual and citizen of the State of New Jersey who resides at 264 Airmont Avenue, Mahwah, New Jersey. Upon information and belief, Defendant Harry Persaud a/k/a Harrichand Persaud (hereinafter referred to as "Harry Persaud") is the president and/or managing member of Garnet Advisors, LLC, and operates and controls Defendant Garnet Advisors, LLC.

34. Defendants Theory Capital Group NV, LLC, Global Trading Solutions, LLC, Theory Capital Group, LLC, Garnet Advisors, LLC, and Theory Holding Group, LLC shall collectively be referred to herein as the “Theory Defendants.”

35. Upon information and belief, Theory Defendants utilize the different entities interchangeably for purposes of owning and managing the Fund. These entities are alter egos of one another and are alter egos of the individual defendants in this action.

36. Upon information and belief, Defendant Narine Persaud is an individual and citizen of the State of New Jersey who resides at 110 Cherokee Lane, Mahwah, New Jersey 07430 which is located in Bergen County.

37. Upon information and belief, Defendant Oliver Gubenko is an individual and citizen of the State of New Jersey who resides at 62 Keats Way, Morristown, New Jersey 07960.

38. Defendants, John Doe 1-100 and XYZ Corp. 1-100, are fictitious names, and represent persons, entities, or parties, the names and identity of which are presently unknown.

39. Upon information and belief, Defendants Narine Persaud, Oliver Gubenko, Kathy Swan, George Swan, Patrick McDonald, Harry Persaud, John Doe 1-100 and XYZ Corp. 1-100 are officers, owners, directors, agents and/or employees of Theory Defendants, and in that capacity, operate and control Theory Defendants.

#### **JURISDICTION AND VENUE**

40. This action arises under the securities laws of the United States, specifically, the Securities Act of 1933 (“Securities Act”), the Securities Exchange Act of 1934 (“Exchange Act”), under the securities laws of New Jersey, specifically, the New Jersey Uniform Securities Law (1997), N.J. STAT. ANN. §§ 49:3-47 to -76 (“USL”), and under New Jersey state common law governing, *inter alia*, negligence, fraud, and breach of contract.

41. This Court has personal jurisdiction over Defendants by virtue of, among other things, the actions giving rise to the claims asserted herein occurred in New Jersey or were directed at New Jersey, and/or Defendants reside or continuously conduct business in New Jersey.

42. Venue is proper because the causes of action arose in Bergen County, several defendants reside in Bergen County and several entity defendants conduct business in Bergen County and/or are located in Bergen County.

**ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

**A. George Swan**

43. George Swan passed away in a suspicious automobile accident on November 25, 2012. Upon information and belief, the circumstances surrounding his death are under investigation by the insurance companies holding his life insurance policies.

44. Since George Swan is deceased, this action has been asserted against his Estate.

45. Upon information and belief, Swan had a comprehensive background in the finance industry.

46. Between 1984 and 1994, Swan passed several examinations including the Series 24 (General Securities Principal Examination), Series 3 (National Commodity Futures Examination), Series 7 (General Securities Representative Examination), and Series 63 (Uniform Securities State Law Examination) which enabled him to trade and/or sell certain securities. (A copy of the FINRA BrokerCheck Report for George Swan is attached hereto as Exhibit A.)

47. Swan was registered as a broker with Shearson Lehman Hutton Inc. located in New York, New York from August 1984 through September 1989, and Cygnet Securities, Inc. located in Waldwick, New Jersey from April 1994 through June 1997. *Id.*



**B. First Regulatory Action Against Swan**

48. On or about September 24, 1997, the New Hampshire Bureau of Securities Regulation (the "Bureau") filed a regulatory action against George Swan alleging that he failed to provide the Bureau with audited financial statements, failed to pay the assessment penalty for failure to provide financial statements, and failed to provide the Bureau with information upon written request in violation of provisions of RSA 421-B (New Hampshire Uniform Securities Act) and regulations thereunder. *Id.*

49. Based upon this regulatory action, Swan received sanctions which included, among other things, a fine in the amount of \$11,400. *Id.*

**C. Second Regulatory Action Against Swan**

50. On or about July 31, 1997, the NASD filed a regulatory action against George Swan. *Id.*

51. NASD filed this action against Swan because he executed or caused to be executed securities transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers that involved transfers of stock from his personal and corporate accounts to the customers' accounts so that he might avoid margin calls in his personal and corporate accounts. *Id.*

52. Swan further failed to respond to NASD's request to appear for an on-the-record interview made pursuant to NASD Rule 8210. *Id.*

53. Swan also failed to apprise his member firm of certain liabilities incurred by the firm, thereby causing the firm to fail to maintain its minimum net capital. *Id.*

54. NASD censured Swan, assessed a fine against Swan in the amount of \$170,000 and barred him from association with any NASD member in any capacity. *Id.*

55. Upon information and belief, Swan consented to these claims and sanctions. *Id.*

56. Upon information and belief, FINRA is the successor to NASD and was created through the consolidation of NASD and the member regulation, enforcement and arbitration operations of the New York Stock Exchange.

57. Upon information and belief, in accordance with the FINRA guidelines, a bar is defined as permanent expulsion of an individual from associating with a firm in any or all capacities.

**D. Defendants' Hedge Funds**

58. Upon information and belief, on March 18, 2008, Swan formed Defendant Theory Capital Group LLC (“Theory Capital Group”), a New Jersey limited liability company, and appointed his wife, Defendant Kathy Swan, as managing member. In 2010, Swan reported his role in the company as Chief Executive Officer.

59. Upon information and belief, Swan formed Defendant Theory Holding Group, LLC, a Nevada limited liability company, which was a subsidiary of Theory Capital Group, to hold his two unregistered hedge funds – Short Term Equity Fund and Short Term Opportunity Fund.

60. Upon information and belief, Defendant Patrick McDonald formed Defendant Global Trading Solutions, LLC, which is the managing member of Defendant Theory Holding Group, LLC.

61. Upon information and belief, initially, Theory Capital Group was appointed as the manager of the Fund.

62. Upon information and belief, the Fund’s investment objective was to maximum total return through the purchase and short sale of exchange-listed or over-the-counter quoted

securities.

**E. Defendant Narine Persaud**

63. Upon information and belief, Defendant Narine Persaud was closely involved with Swan and was complicit in this fraudulent hedge fund enterprise.

64. Swan represented to Ammarell that Defendant Narine Persaud was the Fund's accountant, but Narine Persaud did not function as an accountant.

65. Upon information and belief, Defendant Narine Persaud provided Ammarell with the monthly sham account statements and had full access to the brokerage accounts.

66. Defendant Narine Persaud falsely advised Ammarell that no disbursements from the Fund could be made without Defendant Narine Persaud's signature.

67. Defendant Narine Persaud further falsely reassured Ammarell that Defendant Narine Persaud reviewed the brokerage accounts and spoke with Swan at the end of each day.

68. In or about December 2011, Defendant Narine Persaud met with Ammarell and improperly solicited additional contributions for the sham Fund.

69. Upon information and belief, Defendant Narine Persaud was an officer, owner, director, agent, and/or employee of Theory Defendants and aided in the commission of this fraudulent activity.

**F. Defendant Harry Persaud**

70. Upon information and belief, Defendant Harry Persaud was closely involved with Swan and was complicit in this fraudulent hedge fund enterprise.

71. At times, Harry Persaud represented that his involvement in the Theory Fund was through his company, Garnet Advisors, LLC.

72. White understood Defendant Harry Persaud to be one of Swan's partners in

connection with the Theory Fund.

73. Defendant Harry Persaud never advised White that he had previously been investigated by the NASD in 2005 in connection with violations of certain securities regulations by coordinating prices of trades for commissions.

74. Defendant Harry Persaud omitted the fact that he consented to a two month suspension from any association with any NASD member firm and a fine in the amount of \$50,000.

75. Defendant Harry Persaud provided White with updates and monthly statements with respect to his investment in the sham Fund.

76. Defendant Harry Persaud spoke with White on a number of occasions to discuss investment strategy and White's investment in the sham Fund.

77. Defendant Harry Persaud improperly solicited additional contributions for the sham Fund from White.

78. Upon information and belief, Defendant Harry Persaud was an officer, owner, director, agent, and/or employee of Theory Defendants and aided in the commission of this fraudulent activity.

**G. Defendant Oliver Gubenko**

79. Upon information and belief, Defendant Oliver Gubenko was closely involved with Swan and was complicit in this fraudulent hedge fund enterprise.

80. Defendant Gubenko contacted Ammarell on several occasions with respect to the Fund.

81. Defendant Gubenko sent five investment agreements to Ammarell in connection with the Fund.

82. Upon information and belief, Defendant Gubenko was an officer, owner, director, agent, and/or employee of Theory Defendants and aided in the commission of this fraudulent activity.

**H. Ammarell Invests with Swan**

83. Plaintiff Robert Ammarell met George Swan in 2010 to discuss investment strategies and possible investment in Swan's Fund.

84. Swan fraudulently induced Ammarell to invest in his Fund.

85. Swan intentionally omitted his censure, fine, and ban by the NASD.

86. On October 9, 2010, Ammarell executed the investment agreement to begin investing his IRA in Swan's Fund.

87. Ammarell provided Swan with an initial contribution of \$200,000 from his IRA account transferred to Millennium Trust Company for use by Theory Capital Group for investment in the Fund.

88. At the time of executing the investment agreement, Swan failed to provide Ammarell with any offering memorandum.

89. At this time, Swan identified himself as Managing Director of the Theory Capital Group's Short Term Equity Fund.

**I. Ammarell's Additional Investments with Swan**

90. In or about March of 2011, Defendants fraudulently induced Ammarell to invest additional monies in the Fund.

91. Ammarell provided Defendants with an additional \$100,000 investment from his IRA account. Ammarell also invested monies from several other family accounts as follows:

a. On or about February 28, 2011, Lisa Cadematori, as trustee for the

Ammarell 96 CRUT, executed the investment agreement for the Short Term Opportunity Fund and provided Swan with a \$100,000 investment in the Fund. (A copy of this investment agreement is attached hereto as Exhibit B. Each investment agreement is substantially similar.)

- b. On or about March 27, 2011, Ammarell, as trustee for the Ammarell Revocable Living Trust, executed the investment agreement for the Short Term Opportunity Fund and provided Swan with a \$100,000 investment in the Fund.
- c. On or about February 28, 2011, Michael Cadematori executed the investment agreement for the Short Term Opportunity Fund on behalf of his brokerage account that he shared with his wife - Michael and Lisa Cadematori JTWROS (the "Cadematori Account"). Michael Cadematori provided Swan with a \$100,000 investment in the Fund.
- d. On or about March 27, 2011, Ammarell, as trustee for the M.G. Bowman Trust U/W, executed the investment agreement for the Short Term Opportunity Fund and provided Swan with a \$100,000 investment in the Fund.

92. In or about December 2011, Ammarell provided Swan with one additional investment account and made additional contributions as follows:

- a. At this time, Barbara B. Ammarell, as trustee for the Laura B. Caltagirone Trust, executed the investment agreement for the Short Term Opportunity Fund and provided Swan with a \$150,000 investment in the Fund.
- b. At this time, there were also \$100,000 investments in the Fund which were

made on behalf of the following: M.G. Bowman Trust U/W, Ammarell Revocable Living Trust, and Michael and Lisa Cadematori JTWROS.

93. The Ammarell Family's total investment in Swan's sham Fund was in the amount of nearly \$1.2 million dollars.

**J. Swan's Compensation with Ammarell**

94. Each investment agreement provided for Defendants to receive an incentive fee of 20% of all new profits if the annual return received from the Fund was greater than 15%.

95. This incentive fee was reduced to 10% of new profits generated in the calendar year if the annual return from the Fund was less than 15%.

96. Defendants charged Ammarell an incentive fee of \$1,987.78 which was at the 20% rate in light of the purported gross profit of his investment from his IRA account in the amount of \$9,938.92.

97. In or about January 2012, Defendants charged the Ammarell Family accounts incentive fees as follows:

- a. Robert Ammarell IRA Account – Defendants charged an incentive fee of \$4,031, which represented 10% of \$40,310.02, the purported gross profit earned by this account in 2011.
- b. Ammarell 96 CRUT Account – Defendants charged an incentive fee of \$1,104.61, which represented 10% of \$11,046.13, the purported gross profit earned by this account in 2011.
- c. Robert Ammarell TTEE M.G. Bowman Trust U/W Account – Defendants charged an incentive fee of \$1,104.61, which represented 10% of \$11,046.13, the purported gross profit earned by this account in 2011.

- d. Ammarell Revocable Living Trust Account – Defendants charged an incentive fee of \$1,104.61, which represented 10% of \$11,046.13, the purported gross profit earned by this account in 2011.
- e. Cadematori Account – Defendants charged an incentive fee of \$1,104.61, which represented 10% of \$11,046.13, the purported gross profit earned by this account in 2011.

**K. White and White Capital Group, LLC's Investment with Swan**

98. On June 22, 2011, White executed an investment agreement to invest \$500,000 in the Theory Short Term Opportunity Fund on behalf of White Capital Group, LLC.

99. White was advised that this investment would be placed in a separate subaccount named "Theory I" and would not be commingled with Swan's other hedge funds. Swan guaranteed a monthly return of 1.5% and White's principal was purportedly guaranteed against loss.

100. On March 15, 2012, Swan sent White an email explaining another investment idea which would require an initial deposit of \$300,000. Swan explained that this deposit would be put in a separate subaccount to explore an investment method involving the trading of stocks the day their secondary offering is priced.

101. Swan proposed that this investment would be for a three month trial wherein he provided White with a guarantee that White would receive a 2.5% return per month and all profits would be paid out monthly.

102. Based upon these representations, White invested another \$300,000 with Swan to explore this new trading strategy.

103. On March 30, 2012, White executed an addendum to the original investment



agreement and invested another \$300,000 in the Theory Short Term Opportunity Fund. As proposed, this addendum confirmed that White would receive a monthly rate of return of 2.5% for this investment.

104. White was advised that this investment would be put in a separate subaccount named "Theory II," and would not be commingled with the other Theory hedge funds.

105. On July 25, 2012, White executed another addendum and invested another \$200,000 in the investment fund named "Theory Capital Group, NV, LLC – Theory III." This last investment raised White's total investment with Swan and his partners to \$1,000,000. Similar to the other agreements, Swan provided White with a guaranteed rate of return of 2.5% per month which effectively guaranteed White's principal against loss.

106. On November 12, 2012, Swan sent White an email enclosing a spreadsheet confirming the details of his investment with the Theory Defendants and confirming the \$1,000,000 total investment made by White.

**L. Defendants' Improper Use of FINRA Registered Firms**

107. Although Swan was barred from association with any NASD member – now FINRA member – in any capacity since 1997, he proceeded to improperly associate himself with several FINRA members through the Theory entities in connection with the Fund.

108. Upon information and belief, Defendants represented that they held the assets of the Fund in several brokerage accounts.

109. Upon information and belief, one of these brokerage accounts was held by the brokerage firm Trading Block Holdings, Inc. as introducing broker-dealer and utilizing the clearing firm Penson Financial Services, Inc. ("PFSI") and/or Apex Clearing Corporation.

110. Upon information and belief, Trading Block Holdings, Inc., PFSI and Apex

Clearing Corporation are all members of FINRA.

111. Upon information and belief, another brokerage account was held by the brokerage firm Lightspeed Institutional, LLC and/or Greenmoor Financial Group, LLC n/k/a Potamus Trading, LLC as introducing broker-dealer and utilizing the clearing firm Merrill Lynch Professional Clearing Corporation.

112. Upon information and belief, Greenmoor Financial Group, LLC was acquired by Lightspeed Financial, Inc.

113. Upon information and belief, Lightspeed Institutional, LLC is a wholly-owned subsidiary of Lightspeed Financial, Inc.

114. Upon information and belief, Lightspeed Institutional, LLC is a division of Lightspeed Trading, LLC which is a member of FINRA.

115. Upon information and belief, Greenmoor Financial Group, LLC n/k/a Potamus Trading, LLC and Merrill Lynch Professional Clearing Corporation were also members of FINRA.

**M. Account Statements**

116. Defendants failed to timely provide Plaintiffs with account statements setting forth the prior month's gains and/or losses.

117. All account statements and invoices were sent to the Ammarell Family and White by a different Theory entity – Defendant Theory Capital Group NV, LLC.

118. Upon information and belief, Plaintiffs were partners in Defendant Theory Capital Group NV, LLC in connection with their investment in the Fund.

119. The account statements did not provide any specific information relating to the amount of total assets in the Fund or confirmation that there were actual assets in the Fund.

120. The final account statements received by Ammarell Plaintiffs were dated October 2012 and contained the following purported balances:

- a. Investor # 116 - Robert Ammarell IRA October 2012 Account Balance: \$358,296.74;
- b. Investor # 119 - Robert R. Ammarell TTEE M.G. Bowman Trust U/W October 2012 Account Balance: \$215,957.08;
- c. Investor # 120 - Ammarell 96 CRUT October 2012 Account Balance: \$83,551.85;
- d. Investor # 121 - Ammarell Revocable Living Trust October 2012 Account Balance: \$215,957.08;
- e. Investor # 122 - Lisa Cadematori and Michael Cadematori JTWROS October 2012 Account Balance: \$215,957.08; and
- f. Investor # 129 - Barbara B Ammarell TTEE FBO Laura B. Caltagirone Trust October 2012 Account Balance: \$153,490.43.

121. The total amount of monies from the Ammarell Family accounts held in the Fund as of October 2012 was purportedly \$1,243,210.26.

122. As discussed above, White received a spreadsheet from Swan in November of 2012 confirming his investment in the Fund in the amount of \$1,000,000.00.

123. Upon information and belief, these account statements were manufactured by Defendants, reflected sham balances, and did not reflect the true equity in each account.

N. **Interaction with Estate / Kathy Swan's Involvement**

124. On or about November 30, 2012, counsel for the Estate of George L. Swan, Nicole E. Russak, Esq. of Wells, Jaworski & Liebman, LLP, was provided with a list of the investors and most recent capital account balances as of October 31, 2012, in the Theory Short Term Equity Fund. This list was prepared by Narine Persaud.

125. Interestingly, the investor list indicates that George L. Swan received incentive fees in the amount of \$86,135.97 and Swan also held \$1,582,890.68 of his own monies in the fund. (A true copy of the account statement identifying the purported capital accounts of the plaintiffs as well as Swan is attached hereto as Exhibit C.)

126. Further, this investor list did not identify White as an investor in the Fund.

127. Upon information and belief, on December 6, 2012, Kathy Swan, the wife of the late George L. Swan, was appointed as the duly authorized Administratrix of his Estate pursuant to the Administration of Letters issued by the Bergen County Surrogate's Court in New Jersey. (A true copy of the Letters of Administration issued to Kathy Swan is attached as Exhibit D.)

128. According to the Affidavit of Value of Estate prepared by Kathy Swan, she swore under oath that the value of the Estate of her late husband did not exceed \$25,000. (A true copy of the Affidavit of Value of Estate is attached hereto as Exhibit E.)

129. In her Application for Administration, Kathy Swan affirmed for a second time that the value of George Swan's entire estate will not exceed \$25,000. (A true copy of Kathy Swan's Application for Administration is attached hereto as Exhibit F.)

130. Furthermore, in light of her representation that George Swan's entire estate would not exceed \$25,000, Surrogate Michael R. Dressler issued her the Letters of Administration

without requiring her to post a bond. (A true copy of the Judgment Granting Administration is attached hereto as Exhibit G.)

131. On December 7, 2012, counsel for the Estate, Nicole Russak, Esq., sent Robert Ammarell a letter indicating that she was “in the process of reviewing Mr. Swan’s business records, of foremost including the Theory Short Term Equity Fund.” (A copy of correspondence dated December 7, 2012 is attached hereto as Exhibit H.)

132. Russak’s letter also indicated that the Theory Short Term Equity Fund was “a small business, run solely by the decedent[.]” *Id.*

133. Russak further indicated that if she was not available, Robert Ammarell should contact another attorney at her firm, Thomas M. Wells, Esq. *Id.*

134. Although Kathy Swan is claiming not to have any involvement or knowledge of the Fund, she has been identified as the managing member of Theory Capital Group, LLC – the entity that was purportedly managing the Fund. (A copy of the New Jersey Business Gateway Printout is attached hereto as Exhibit I.)

135. Furthermore, while Kathy Swan is claiming lack of involvement or knowledge in connection with the Fund, she was also identified as managing member of Theory Capital Group NV, LLC on the company’s Articles of Organization filed on December 6, 2010. (A copy of the Articles of Organization is attached hereto as Exhibit J.)

136. Kathy Swan was identified on the initial list of managers for Theory Capital Group NV, LLC, which was filed with the Nevada Secretary of State on January 7, 2011. (A copy of the Initial List dated January 7, 2011 is attached hereto as Exhibit K.)

137. In addition, Kathy Swan was identified on the annual list of managers for Theory Capital Group NV, LLC, which was filed with the Nevada Secretary of State on March 12, 2012. (A copy of the Annual List is attached dated March 12, 2012 is attached hereto as Exhibit L.)

138. Upon information and belief, George and Kathy Swan created Theory Capital Group NV, LLC in connection with the Fund.

139. Upon information and belief, the Swans issued all of their account statements and invoices for the Fund under the company name - Theory Capital Group NV, LLC.

140. Upon information and belief, Plaintiffs were partners in Theory Capital Group NV, LLC in connection with their investment in the Fund.

141. On January 3, 2013, Russak sent correspondence to another purported investor in the Fund – Defendant Harry Persaud. (A copy of correspondence dated January 3, 2013 is attached hereto as Exhibit M.)

142. This correspondence made significant representations with respect to Mr. Swan’s business records – the Fund. *Id.* Russak represented that a corporate due diligence company has already spent hundreds of hours to handle the “voluminous” records for Swan’s business. *Id.*

143. Russak also represented that she has retained a forensic accountant to help recreate records. *Id.*

144. These representations question Kathy Swan’s initial affirmation that her husband’s estate did not exceed \$25,000.

145. Furthermore, the account statement for the Fund indicating Swan’s interest to be in excess of \$1,500,000 also questions Kathy Swan’s representation under oath to the Surrogate’s Court.

146. Upon information and belief, George Swan obtained several life insurance policies for the benefit of Kathy Swan and Kathy Swan is expected to receive proceeds in excess of \$13,000,000.00.

147. Since George Swan's death, Ammarell and White have attempted to contact Kathy Swan, the Estate's attorney, and representatives from the brokerage firms that the Fund purportedly held accounts with to determine the status of the investments in the Theory Fund. On or about January 14, 2013, Ammarell sent counsel for the Estate of George L. Swan, Nicole E. Russak, Esq. of Wells, Jaworski & Liebman, LLP, a letter requesting confirmation and reassurance that the investments in the Fund were available and were not susceptible to any market risk and provided them with a deadline of Thursday, January 17, 2013 to respond. (A copy of this correspondence dated January 14, 2013 is attached hereto as Exhibit N). To date, Ammarell and White have not been able to ascertain the location or availability of their families' significant assets.

148. Upon information and belief, the Theory Defendants no longer have any significant assets, and the investments made by Ammarell and White in excess of \$2,000,000.00 have been diverted.

**FIRST CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Breach of Contract)**

149. Plaintiffs repeat and make a part hereof each and every allegation set forth in Paragraphs 1 through 148 of the Second Amended Complaint.

150. As set forth above, Plaintiffs each entered into a separate investment agreements with Defendants whereby Plaintiffs and Defendants agreed to certain obligations.

151. Each investment agreement is a valid and enforceable contract.

152. Plaintiffs have performed all conditions, covenants, and promises required on their part to be performed in accordance with the terms and conditions of the investment agreements.

153. Defendants have breached the investment agreements by, *inter alia*, failing to provide Plaintiffs with timely monthly account statements, failing to invest Plaintiffs' contributions in the Fund, failing to invest in the Short-Term Opportunity Fund, improperly charging incentive fees and failing to distribute Plaintiffs' monies upon request.

154. As a result of Defendants' breach of the investment agreements, Plaintiffs have been damaged in the amount of at least \$2,243,210.28, with additional damages in an amount to be proven at trial based on the facts alleged herein.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**SECOND CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

155. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 154 of the Second Amended Complaint.

156. Plaintiffs each entered into a separate investment agreement with Defendants whereby Plaintiffs and Defendants agreed to certain obligations.

157. During the course of the investment relationship, Defendants diverted Plaintiffs monies and failed to properly invest these monies in the Fund.

158. As set forth above, Defendants breached the terms of the investment agreements in bad faith by, *inter alia*, engaging in the fraudulent enterprise and creating the sham Fund.



159. Defendants breached the covenant of good faith and fair dealing contained in each agreement.

160. Plaintiffs suffered damages proximately caused by Defendants' breach in the amount of at least \$2,243,210.28, with additional damages in an amount to be proven at trial based on the facts alleged herein.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**THIRD CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Negligence)**

161. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 160 of the Second Amended Complaint.

162. Defendants owed Plaintiffs a duty of care in connection with their investment in the Fund.

163. Defendants breached their duty of care by, *inter alia*, diverting funds, and misrepresenting the status of the Fund.

164. Defendants' conduct fell below the applicable standard of care.

165. As a direct and proximate result of Defendants' negligence, Plaintiffs have been damaged in a sum to be proven at trial, but not less than \$2,243,210.28.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**FOURTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Gross Negligence)**

166. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 165 of the Second Amended Complaint.

167. Defendants owed Plaintiffs duties of ordinary and reasonable care that arose from their relationships in connection with Plaintiffs' investment in the Fund.

168. Defendants breached their duties of care by, *inter alia*, diverting funds, misrepresenting the status of the Fund, and fraudulently inducing Plaintiffs to invest in the Fund.

169. Defendants made numerous false and misleading misrepresentations about the Fund, the status of the Fund, assets contained in the Fund, George Swan's status with NASD/FINRA, the gains in the Fund, and the availability of the assets in the Fund.

170. Defendants' conduct fell below the applicable standard of care.

171. Defendants were grossly negligent in the breach of their duties to exercise reasonable care.

172. Defendants' conduct was an extreme departure from the ordinary standard of care and more than ordinary inadvertence or inattention.

173. Defendants' conduct rose to the level of willful and was in reckless disregard of the rights of the Plaintiffs.

174. As a direct and proximate result of Defendants' gross negligence, Plaintiffs have been damaged in a sum to be proven at trial, but not less than \$2,243,210.28 and should be awarded punitive damages as well.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and

such other relief as the Court deems just and equitable.

**FIFTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Civil Conspiracy)**

175. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 174 of the Second Amended Complaint.

176. Defendants entered into agreements to deceive and perpetrate fraud upon Plaintiffs.

177. Defendants diverted Plaintiffs' funds and misrepresented the status of the Fund and Plaintiffs' investment in the Fund in furtherance of Defendants unlawful tortious activities.

178. Plaintiffs suffered damages as a direct result of Defendants' tortious conduct.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**SIXTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Conversion)**

179. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 178 of the Second Amended Complaint.

180. Plaintiffs provided Defendants with several contributions to invest in the sham Fund.

181. Defendants failed to properly invest Plaintiffs' monies.

182. Instead, Defendants wrongfully diverted Plaintiffs' monies without authorization.

183. Defendants' actions willfully and negligently deprived Plaintiffs of these funds.

184. As a result, Plaintiffs have sustained damages exceeding \$2,243,210.28.

185. Plaintiffs are rightfully entitled to these funds.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**SEVENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Breach of Fiduciary Duty)**

186. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 185 of the Second Amended Complaint.

187. Defendants owed a fiduciary duty to Plaintiffs as a result of their role in the Fund.

188. Defendants owed Plaintiffs fiduciary duties of loyalty and care as a result of taking custody of Plaintiffs' funds and purportedly undertaking to invest the money on their behalf.

189. Plaintiffs placed trust and confidence in Defendants in connection with their investment in the Fund.

190. Defendants breached their fiduciary duty by making numerous false and misleading representations in addition to their failure to properly invest Plaintiffs' monies, failed to invest Plaintiffs' monies, failed to return Plaintiffs' monies, and diverted Plaintiffs' monies.

191. Defendants further breached their duties by failing to preserve Fund property and failing to adhere to the standard of care owed by a fiduciary to investors.

192. As a result, Plaintiffs have sustained damages in excess of \$2,243,210.28.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and

such other relief as the Court deems just and equitable.

**EIGHTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Fraudulent Concealment)**

193. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 192 of the Second Amended Complaint.

194. Defendants owed a fiduciary duty to Plaintiffs as a result of their role in the Fund.

195. Plaintiffs placed trust and confidence in Defendants in connection with their investment in the Fund.

196. Defendants intentionally failed to disclose the regulatory actions against Swan prior to Plaintiffs' investing substantial monies in the Fund.

197. The regulatory actions filed against Swan were material facts with respect to the investment agreements and investment in the Fund.

198. Plaintiffs relied upon Defendants' representations to their detriment.

199. As a result, Plaintiffs have sustained damages in excess of \$2,243,210.28.

200. In light of these actions, Plaintiffs also seek the appointment of a receiver for Defendants Theory Capital Group LLC, Theory Holding Group, LLC, and Theory Capital Group NV, LLC.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**NINTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Negligent Misrepresentation)**

201. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 200 of the Second Amended Complaint.

202. Defendants negligently provided Plaintiffs with false information with respect to the Fund, inducing Plaintiffs to execute the investment agreements, falsely representing the status of the Fund, the location of Plaintiffs' assets, and the actions taken by the Fund.

203. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiffs have been damaged in a sum to be proven at trial, but not less than \$2,243,210.28.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**TENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Equitable Fraud)**

204. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 203 of the Second Amended Complaint.

205. Defendants fraudulently induced Plaintiffs to invest in the Fund by falsely representing the status of the Fund, the investments in the Fund, the trades in the Fund, omitting the regulatory actions filed against Swan, the amount invested in the Fund and the returns earned by the Fund.

206. Plaintiffs relied upon Defendants' false material representations and entered into the investment agreements.

207. Defendants intended Plaintiffs to rely upon these misrepresentations.

208. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs have been damaged in a sum to be proven at trial, but not less than \$2,243,210.28.

209. In light of these actions, Plaintiffs also seek the appointment of a receiver for Defendants Theory Capital Group LLC, Theory Holding Group, LLC, and Theory Capital Group NV, LLC.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**ELEVENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Fraudulent Misrepresentation and Omission)**

210. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 209 of the Second Amended Complaint.

211. Defendants made numerous false and misleading representations of the status of the Fund, the trades in the Fund, the proper name of the Fund, the investments in the Fund, the returns earned by the Fund and the amount invested in the Fund.

212. Defendants further intentionally omitted the fact that Swan had been fined and barred by NASD/FINRA.

213. Defendants' false representations, omissions and silence induced Plaintiffs to initially invest in the Fund and/or provide additional investments in the Fund and/or forbear from redeeming their investments in the Fund.

214. Defendants made false and misleading representations to Plaintiffs with reckless indifference to the truth, or with knowledge or belief that the representations were false.

Defendants also concealed material facts and were silent in the face of a duty to provide disclosure to Plaintiffs.

215. Defendants made such statements with the intent that Plaintiffs rely upon them.

216. Plaintiffs justifiably relied upon Defendants' false representations, omissions and/or silence.

217. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs have been damaged in a sum to be proven at trial, but not less than \$2,243,210.28.

218. In light of these actions, Plaintiffs also seek the appointment of a receiver for Defendants Theory Capital Group LLC, Theory Holding Group, LLC and Theory Capital Group NV, LLC.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**TWELFTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violations of N.J. STAT. ANN. § 2C:41-1 *et seq.* – N.J. Civil RICO)**

219. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 218 of the Second Amended Complaint.

220. The enterprise, within the meaning of N.J. STAT. ANN. § 2C:41-1c, is Defendant Theory Capital Group, LLC, a New Jersey limited liability company engaged in the business of purportedly managing the Fund.

221. At all relevant times, the Theory Capital Group enterprise was engaged in trade or commerce or in activities affecting trade or commerce in connection with the solicitation, sale, and investment of unregistered securities and diversion of Plaintiffs' monies



222. Defendants Theory Capital Group NV, LLC, Theory Holding Group, LLC, the Estate of George Swan, Kathy Swan, Oliver Gubenko, Narine Persaud, Garnet Advisors, LLC, Harry Persaud, Global Trading Solutions, LLC, John Doe 1-100 and XYZ Corp. 1-100 are all “persons” within the meaning of N.J. STAT. ANN. § 2C:41-2(b).

223. Defendants were all either employed by or associated with the Theory Capital Group enterprise, and conducted or participated, directly or indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity in violation of N.J. STAT. ANN. § 2C:41-2c by engaging in crimes under Chapter 20 of Title 2C of the New Jersey Statutes, and fraudulent acts and practices under Chapter 21 of Title 2C of the New Jersey Statutes.

224. The criminal conduct includes (1) theft by deception in violation of N.J. STAT. ANN. § 2C:20-4; and (2) deceptive business practices in violation of N.J. STAT. ANN. § 2C:21-7i (“Makes a false or misleading written statement for the purpose of promoting the sale of securities”).

225. Defendants’ racketeering activities included, but is not limited to: (1) failing to invest the funds provided by Plaintiffs; (2) fraudulently offering and/or selling securities; and (3) diverting the funds provided by Plaintiffs.

226. The acts undertaken by Defendants in furtherance of the pattern of racketeering activity included, among other things: (1) fraudulently inducing Plaintiffs to invest in the Fund; (2) intentionally omitting Swan’s status with FINRA; (3) misrepresenting the Fund; (4) misrepresenting the amount of assets held in the Fund; (5) misrepresenting the trades of the Fund; (6) failing to provide Plaintiffs with an offering memorandum; (7) charging incentive fees on unrealized gains; (8) fraudulently inflating capital gains in the Fund; and (9) diverting monies from the Fund.

227. Defendants received income and/or proceeds directly from the pattern of racketeering activity.

228. Defendants have conspired with and amongst themselves and others to violate the provisions of New Jersey RICO, in violation of N.J. STAT. ANN. § 2C:41-2d.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, treble damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**THIRTEENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violations of 18 U.S.C. § 1962, *et seq.* – Federal Civil RICO)**

229. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 228 of the Second Amended Complaint.

230. The enterprise, within the meaning of 18 U.S.C. § 1962(4), is Defendant Theory Capital Group, LLC, a New Jersey limited liability company engaged in the business of purportedly managing the Fund.

231. At all relevant times, the Theory Capital Group enterprise was engaged in trade or commerce or in activities affecting trade or commerce in connection with the solicitation, sale and investment of unregistered securities and diversion of Plaintiffs' monies.

232. Defendants have, among other things, engaged in a pattern of racketeering activities, including criminal conduct that has either been the same or similar purposes, results, participants or victims or methods of commissions or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

233. Defendants Theory Capital Group NV, LLC, Theory Holding Group, LLC, the Estate of George Swan, Kathy Swan, Oliver Gubenko, Narine Persaud, Harry Persaud, Garnet

Advisors, LLC, Global Trading Solutions, LLC, John Doe 1-100 and XYZ Corp. 1-100 are all “persons” within the meaning of 18 U.S.C. § 1962(4).

234. Defendants were all either employed by or associated with the Theory Capital Group enterprise, and conducted or participated, directly or indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962 by engaging in numerous predicates in violation of 18 U.S.C. § 1961(1)(D) (fraud in the sale of securities) continuously throughout the entire investment relationship between Plaintiffs and Defendants.

235. Defendants racketeering activities included, but is not limited to: (1) making false representations, omissions, and silence in connection with the sale of securities which induced Plaintiffs to initially invest in the Fund and/or provide additional investments in the Fund and/or forbear from redeeming their investments in the Fund. Defendants further fraudulent actions include failing to invest the funds provided by Plaintiffs; (2) fraudulently offering and/or selling securities; and (3) diverting the funds provided by Plaintiffs.

236. The acts undertaken by Defendants in furtherance of the pattern of racketeering activity included, among other things: (1) fraudulently inducing Plaintiffs to invest in the Fund; (2) intentionally omitting Swan’s status with FINRA; (3) misrepresenting the Fund; (4) misrepresenting the amount of the Fund; (5) misrepresenting the trades of the Fund; (6) failing to provide Plaintiffs with an offering memorandum; (7) charging incentive fees on unrealized gains; (8) fraudulently inflating capital gains in the Fund; and (9) diverting monies from the Fund.

237. Defendants received income and/or proceeds directly from the pattern of racketeering activity.

238. Defendants have conspired with and amongst themselves and others to violate the provisions of RICO, in violation of 18 U.S.C. § 1962(d).

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, treble damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**FOURTEENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violation of N.J. Uniform Securities Law (“USL”) – N.J. STAT. ANN. § 49:3-71(a)(2))**

239. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 238 of the Second Amended Complaint.

240. Defendants fraudulently induced Plaintiffs to invest in the Fund by making numerous false and misleading representations of the status of the Fund, the trades in the Fund, the proper name of the Fund, the investments in the Fund, the returns earned by the Fund and the amount invested in the Fund.

241. Defendants’ false representations, omissions, and silence induced Plaintiffs to initially invest in the Fund and/or provide additional investments in the Fund and/or forbear from redeeming their investments in the Fund.

242. Defendants further intentionally omitted the fact that Swan had been fined and barred by the NASD/FINRA.

243. Plaintiffs justifiably relied upon these misrepresentations with respect to their investment in the Fund.

244. Plaintiffs have suffered damages as a result of the misrepresentations and their justifiable reliance.

245. Each materially false or misleading statement or omission made by Defendants in a violation of N.J. STAT. ANN. § 49:3-71(a)(2) and is cause for the imposition of damages pursuant to N.J. STAT. ANN. § 49:3-71(c).

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys’ fees, costs of suit, and such other relief as the Court deems just and equitable.

**FIFTEENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violation of N.J. Uniform Securities Law (“USL”) – N.J. STAT. ANN. § 49:3-71(a)(3))**

246. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 245 of the Second Amended Complaint.

247. Defendants, by engaging in conduct described in this Second Amended Complaint, employed devices, schemes, and artifices which operated as a fraud upon Plaintiffs in violation of N.J. Stat. Ann. § 49:3-71(a)(3).

248. Defendants fraudulently induced Plaintiffs to invest in the Fund by making numerous false and misleading representations of the status of the Fund, the trades in the Fund, the proper name of the Fund, the investments in the Fund, the returns earned by the Fund, and the amount invested in the Fund.

249. Defendants’ false representations, omissions, and silence induced Plaintiffs to initially invest in the Fund and/or provide additional investments in the Fund and/or forbear from redeeming their investments in the Fund.

250. Defendants intentionally omitted the fact that Swan had been fined and barred by the NASD/FINRA.

251. Plaintiffs justifiably relied upon these misrepresentations with respect to their investment in the Fund.

252. Plaintiffs have suffered damages as a result of the misrepresentations and their justifiable reliance.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys’ fees, costs of suit, and such other relief as the Court deems just and equitable.

**SIXTEENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violation of N.J. Uniform Securities Law (“USL”) – N.J. STAT. ANN. § 49:3-71(a)(4))**

253. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 252 of the Second Amended Complaint.

254. Defendants, by engaging in conduct described in this Second Amended Complaint, offered and/or sold securities by engaging in acts, practices or a course of business which operated as a fraud upon Plaintiffs in violation of N.J. STAT. ANN. § 49:3-71(a)(4).

255. Defendants fraudulently induced Plaintiffs to invest in the Fund by making numerous false and misleading representations of the status of the Fund, the trades in the Fund, the proper name of the Fund, the investments in the Fund, the returns earned by the Fund and the amount invested in the Fund.

256. Defendants’ false representations, omissions and silence induced Plaintiffs to initially invest in the Fund and/or provide additional investments in the Fund and/or forbear from redeeming their investments in the Fund.

257. Defendants intentionally omitted the fact that Swan had been fined and barred by the NASD/FINRA.

258. Plaintiffs justifiably relied upon these misrepresentations with respect to their investment in the Fund.

259. Plaintiffs have suffered damages as a result of the misrepresentations and their justifiable reliance.

260. Each act, practice, or course of business which operated or would operate as a fraud upon any person is a separate violation of N.J. Stat. Ann. § 49:3-71(a)(4) and is cause for the imposition of damages pursuant to N.J. Stat. Ann. § 49:3-71(c).

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**SEVENTEENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violation of N.J. Uniform Securities Law ("USL") – N.J. STAT. ANN. § 49:3-71(d))**

261. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 260 of the Second Amended Complaint.

262. At all relevant times, Defendants materially aided in the sale and offering of securities and directly or indirectly controlled the offering and sale of securities.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**EIGHTEENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violation of Federal Securities Act – Section 12(a)(2))**

263. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 262 of the Second Amended Complaint.

264. Defendants offered and/or sold and/or solicited to sell unregistered securities to Plaintiffs.

265. Defendants fraudulently induced Plaintiffs to purchase securities by making numerous false and misleading representations of the status of the Fund, the trades in the Fund, the proper name of the Fund, the investments in the Fund, the returns earned by the Fund, and the amount invested in the Fund.



266. Defendants' false representations, omissions and silence induced Plaintiffs to initially invest in the Fund and/or provide additional investments in the Fund and/or forbear from redeeming their investments in the Fund.

267. Defendants intentionally omitted the fact that Swan had been fined and barred by the NASD/FINRA.

268. Plaintiffs justifiably relied upon these misrepresentations with respect to their investment in the Fund and purchase of securities.

269. Defendants' fraudulent actions were motivated by their desire to serve their own financial interests.

270. Plaintiffs have suffered damages as a result of the misrepresentations and their justifiable reliance.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**NINETEENTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violation of Federal Securities Act – Section 15)**

271. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 270 of the Second Amended Complaint.

272. Defendants are liable for violations of Section 12 of the Securities Act.

273. In the alternative, any Defendants not found liable under Section 12 of the Securities Act are controlling persons as defined by Section 15(a) of the Securities Act and shall be held jointly and severally liable for violations under Section 12 of the Securities Act.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**TWENTIETH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violation of Section 10(b) of the Exchange Act and  
Rule 10b-5(b) Promulgated Thereunder)**

274. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 273 of the Second Amended Complaint.

275. At all relevant times, Defendants, individually and in concert, directly and/or indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, made untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

276. Defendants' misrepresentations and omissions operated as a fraud and deceit upon the purchasers of the securities – the Plaintiffs – in an effort to solicit additional investors and additional monies for the Fund in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

277. Defendants' misrepresentations and omissions caused Plaintiffs to purchase securities in violation of federal securities laws.

278. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

279. Each of the individual defendants' primary liability, and controlling person liability, arises from misrepresentations of the status of the Fund, the trades in the Fund, the

proper name of the Fund, the investments contained in the Fund, the returns earned by the Fund, and the amount invested in the Fund.

280. Defendants' false representations, omissions and silence induced Plaintiffs to initially invest in the Fund and/or provide additional investments in the Fund and/or forbear from redeeming their investments in the Fund.

281. Defendants further intentionally omitted the fact that Swan had been fined and barred by the NASD/FINRA.

282. Each of the individual defendants, by virtue of their responsibilities and activities as officers and/or directors and/or managers of Theory Defendants, was privy to and participated in the creation of this fraudulent enterprise.

283. Defendants were aware of the misrepresentations and omissions and knew and/or recklessly disregarded that the statements were materially false and misleading.

284. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing the Fund's true business results and/or assets, and supporting the fraudulent enterprise. If Defendants did not have actual knowledge of the misrepresentations and/or omissions alleged, they were at the very least reckless in failing to obtain such knowledge by, among other things, deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

285. As a result of the dissemination of information set forth above that was either materially false and/or misleading by virtue of Defendants' misrepresentations and/or omissions, the actual purpose of the Fund was concealed and could not be discovered by Plaintiffs.

286. At the time of the misrepresentations and/or omissions, Plaintiffs were ignorant of their falsity, and believed them to be true. Had Plaintiffs known the truth of the purpose of the Fund and actual assets of the Fund, which were not disclosed by Defendants, Plaintiffs would not have purchased and/or entered into the investment agreements and/or provided additional capital investments in the Fund.

287. Plaintiffs have suffered damages as a result of Defendants' misrepresentations and the investments in the Fund.

288. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder.

289. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs suffered damages in connection with their respective purchases of the securities.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**TWENTY-FIRST CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Violation of Section 20(a) of the Exchange Act)**

290. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 289 of the Second Amended Complaint.

291. Defendants are liable for violations of under Section 10(b) and Rule 10b-5(b) of the Exchange Act.

292. In the alternative, any Defendants not liable under Section 10(b) and Rule 10b-5(b) of the Exchange Act are controlling persons as defined by Section 20(a) of the Exchange Act and shall be held jointly and severally liable for violations under Section 10(b) and Rule 10b-5(b) of the Exchange Act.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**TWENTY-SECOND CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Appointment of Receiver or Fiduciary)**

293. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 292 of the Second Amended Complaint.

294. Based upon Defendants' misrepresentations, fraudulent conduct, and gross mismanagement of the Theory entities as alleged herein, a receiver should be appointed to safeguard and competently run and manage the Theory entities.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, interest, attorneys' fees, costs of

suit, an appointment of a receiver or other fiduciary for Theory Capital Group, LLC, Theory Capital Group NV, LLC, and Theory Holding Group, LLC, and such other relief as the Court deems just and equitable.

**TWENTY-THIRD CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Demand For Accounting)**

295. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 294 of the Second Amended Complaint.

296. Based upon the foregoing, Plaintiffs are informed and believe that Defendants have diverted and/or misappropriated investment funds rightfully belonging to Plaintiffs.

297. However, Plaintiffs are unable to ascertain the full extent of Defendants' misappropriation and/or diversion without an accounting.

298. In light of Defendants' misrepresentations, fraudulent conduct, and gross mismanagement of the Theory entities as alleged herein, Plaintiffs' investment may have been transferred to one of the Theory entity defendants, to the Estate of George Swan, and/or directly to Kathy Swan.

299. Plaintiffs have demanded confirmation of the location and value of their investment and Defendants have refused to provide this information.

300. Defendants have the knowledge of where the Plaintiffs' investment is located.

301. Plaintiffs are unable to ascertain the full value and location of their investment in the Fund.

302. Defendants should be compelled to provide an accounting to Plaintiffs.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, an accounting, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**TWENTY-FOURTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Creation of Constructive Trust)**

303. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 302 of the Second Amended Complaint.

304. A constructive trust is or should be created when it is necessary to do so in the interest of justice.

305. To allow Defendants to continue to hold Plaintiffs' substantial investment would create an injustice since the funds belong to Plaintiffs.

306. A constructive trust should be created as to Plaintiffs' investment in the Fund.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, the creation of a constructive trust, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**TWENTY-FIFTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Unjust Enrichment)**

307. Plaintiffs repeat and make a part hereof each and every allegation contained in Paragraphs 1 through 306 of the Second Amended Complaint.

308. During the course of their relationship with Defendants, Plaintiffs made several investments in the Fund.

309. Since the death of George Swan, Plaintiffs have requested the return of their investments.

310. Defendants have refused to return Plaintiffs' investments.

311. Plaintiffs conferred a benefit upon Defendants by way of their investments in the Fund.

312. Defendants' failure to return Plaintiffs' funds constitutes unjust enrichment and has damaged Plaintiffs in an amount to be determined at trial but of not less than \$2,243,210.28.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, rescission, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

**TWENTY-SIXTH CLAIM FOR RELIEF  
AGAINST DEFENDANTS**

**(Restraint of Alienation of All Assets)**

313. Plaintiffs repeat and make a part hereof each and every allegation set forth in Paragraphs 1 through 312 of the Second Amended Complaint.

314. As set forth above, Plaintiffs each entered into a separate investment agreement with Defendants whereby Plaintiffs and Defendants agreed to certain obligations.



315. Plaintiffs have performed all conditions, covenants, and promises required on their part to be performed in accordance with the terms and conditions of the investment agreements.

316. Defendants have breached the investment agreements by, *inter alia*, failing to provide Plaintiffs with timely monthly account statements, failing to invest Plaintiffs' contributions in the Fund, failing to invest in the Short-Term Opportunity Fund, improperly charging incentive fees, failing to confirm the location of Plaintiffs' assets, and failing to distribute Plaintiffs' monies upon request.

317. As a result of Defendants' breach of the investment agreements, Plaintiffs have been damaged in the amount of at least \$2,243,210.28, with additional damages in an amount to be proven at trial based on the facts alleged herein.

318. Kathy Swan, as Administratrix of the Estate of George L. Swan, swore under oath that the value of her late husband's estate did not exceed \$25,000, contrary to the most recent capital account balances as of October 31, 2012, available in the Theory Short Term Equity Fund, which indicates that George Swan received incentive fees in the amount of \$86,135.97 and Swan also held \$1,582,890.68 of his own monies in the fund.

319. Since George Swan's death, Ammarell has been unable to confirm, after numerous attempts to contact Defendant Kathy Swan, the Estate's attorney, and representatives from the brokerage firms, the status of his family's investments in the Theory Fund. Ammarell has not been successful in confirming that the assets still exist and/or are still invested in a most volatile investment vehicle such as a hedge fund and/or day trading fund.

320. Plaintiffs will continue to suffer immediate and irreparable harm if Defendants are permitted to continue to control the assets of the Fund.

321. All assets of the Estate and Kathy Swan, individually, must be frozen pending the confirmation that Plaintiffs assets are safeguarded and ascertainable.

**WHEREFORE**, Plaintiffs demand judgment against Defendants for compensatory damages, consequential damages, temporary restraints, preliminary injunction, punitive damages, interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and equitable.

Dated: February 19, 2013

GORDON & REES LLP  
*Attorneys for Plaintiffs*

By: James Valvano, II  
James Valvano, II

**DESIGNATION OF TRIAL COUNSEL**

Plaintiffs hereby designate James Valvano, II as trial counsel in this matter.

Dated: February 19, 2013

GORDON & REES LLP  
*Attorneys for Plaintiffs*

By: James Valvano, II  
James Valvano, II

**AMENDED CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)**

It is hereby certified that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. It is also my understanding and belief that no other action or proceeding is contemplated. At this time, I know of no other parties that should be joined in the above action. I recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: February 19, 2013

GORDON & REES LLP  
*Attorneys for Plaintiffs*

By: James Valvano, II  
James Valvano, II

# **EXHIBIT A**



**BrokerCheck Report**  
**GEORGE LORENZO SWAN**  
CRD# 1292381

Report #83560-26113, data current as of Tuesday, January 15, 2013.

<u>Section Title</u>	<u>Page(s)</u>
Report Summary	1
Broker Qualifications	2 - 3
Registration and Employment History	4
Disclosure Events	5



## About BrokerCheck®

BrokerCheck offers information on all current-and many former-FINRA-registered securities brokers, and all current and former FINRA-registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

- **What is included in a BrokerCheck report?**  
BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above. Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.
- **Where did this information come from?**  
The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:
  - information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
  - information that regulators report regarding disciplinary actions or allegations against firms or brokers.
- **How current is this information?**  
Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.
- **What if I want to check the background of an investment adviser firm or investment adviser representative?**

To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at <http://www.adviserinfo.sec.gov>. In the alternative, you may search the IAPD website directly or contact your state securities regulator at <http://www.nasaa.org>.

- **Are there other resources I can use to check the background of investment professionals?**  
FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.

Thank you for using FINRA BrokerCheck.



Using this site/information means that you accept the FINRA BrokerCheck Terms and Conditions. A complete list of Terms and Conditions can be found at [brokercheck.finra.org](http://brokercheck.finra.org)



For additional information about the contents of this report, please refer to the User Guidance or [www.finra.org/brokercheck](http://www.finra.org/brokercheck). It provides a glossary of terms and a list of frequently asked questions, as well as additional resources. For more information about FINRA, visit [www.finra.org](http://www.finra.org).



## Report Summary for this Broker

**GEORGE L. SWAN**

**CRD# 1292381**

This report summary provides an overview of the broker's professional background and conduct. Additional information can be found in the detailed report.

This broker is not currently registered with FINRA.

### Broker Qualifications

This broker is not currently registered with FINRA.

### Disclosure Events

This broker has been involved in one or more disclosure events involving certain final criminal matters, regulatory actions, civil judicial proceedings, or arbitrations or civil litigations.

This broker has passed:

- 1 Principal/Supervisory Exam
- 2 General Industry/Product Exams
- 1 State Securities Law Exam

Are there events disclosed about this broker? **Yes**

The following types of disclosures were reported:

Regulatory Event

### Registration History

This broker was previously registered with FINRA at the following brokerage firms:

**CYGNET SECURITIES, INC.**

CRD# 28686

WALDWICK, NJ

04/1994 - 06/1997

**SHEARSON LEHMAN HUTTON INC.**

CRD# 7506

NEW YORK, NY

08/1984 - 09/1989

## Broker Qualifications



### Registrations

This section provides the self-regulatory organizations (SROs), states and U.S. territories the broker is currently registered and licensed with, the category of each registration, and the date on which the registration became effective. This section also provides, for each firm with which the broker is currently employed, the address of each branch where the broker works.

This broker is not currently registered with FINRA.





## Broker Qualifications

### Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below.

**This individual has passed 1 principal/supervisory exam, 2 general industry/product exams, and 1 state securities law exam.**

#### Principal/Supervisory Exams

Exam	Category	Date
General Securities Principal Examination	Series 24	06/23/1994

#### General Industry/Product Exams

Exam	Category	Date
National Commodity Futures Examination	Series 3	10/01/1984
General Securities Representative Examination	Series 7	04/12/1994

#### State Securities Law Exams

Exam	Category	Date
Uniform Securities Agent State Law Examination	Series 63	09/15/1994

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at [www.finra.org/brokerqualifications/registeredrep/](http://www.finra.org/brokerqualifications/registeredrep/).

## Registration and Employment History



### Registration History

This broker previously was registered with FINRA at the following firms:

Registration Dates	Firm Name	CRD#	Branch Location
04/1994 - 06/1997	CYGNET SECURITIES, INC.	28686	WALDWICK, NJ
08/1984 - 09/1989	SHEARSON LEHMAN HUTTON INC.	7506	NEW YORK, NY

### Employment History

Below is the broker's employment history for up to the last 10 years.

Please note that the broker is required to provide this information only while registered with FINRA and the information is not updated after the broker ceases to be registered. Therefore, an employment end date of "Present" may not reflect the broker's current employment status.

Employment Dates	Employer Name	Employer Location
07/1989 - Present	GEORGE SWAN CTA FIRM NFA# 022-4784	RIDGEWOOD, NJ

## Disclosure Events



### What you should know about reported disclosure events:

1. **Disclosure events in BrokerCheck reports come from different sources:**
  - As mentioned at the beginning of this report, information contained in BrokerCheck comes from brokers, their employing firms, and regulators. When more than one source reports information for the same disclosure event, all versions of the event will appear in the BrokerCheck report. The different versions are separated by a solid line with the reporting source labeled.

**For your convenience, below is a matrix of the number and status of regulatory disclosure events involving this broker. Further information regarding these disclosure events can be found in the subsequent pages of this report. You also may wish to contact the broker to obtain further information regarding the regulatory disclosure events.**

Regulatory Event	Final	On Appeal
	2	0



## Disclosure Event Details

This report provides the information exactly as it was reported to CRD and therefore some of the specific data fields contained in the report may be blank if the information was not provided to CRD.

### Regulatory - Final

This type of disclosure event involves a final, formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulator such as the Securities and Exchange Commission, foreign financial regulatory body) for a violation of investment-related rules or regulations.

#### Disclosure 1 of 2

**Reporting Source:** Regulator  
**Regulatory Action Initiated By:** NEW HAMPSHIRE BSR

**Sanction(s) Sought:**

**Other Sanction(s) Sought:**

**Date Initiated:** 09/24/1997

**Docket/Case Number:** INV97-027

**Employing firm when activity occurred which led to the regulatory action:**

**Product Type:**

**Other Product Type(s):**

**Allegations:**

RESPONDENTS CYGNET SECURITIES AND GEORGE L. SWAN FAILED TO PROVIDE THE BUREAU WITH AUDITED FINANCIAL STATEMENT, FAILED TO PAY THE ASSESSMENT PENALTY FOR FAILURE TO PROVIDE FINANCIAL STATEMENT AND FAILED TO PROVIDE THE BUREAU WITH INFORMATION UPON WRITTEN REQUEST IN VIOLATION OF PROVISIONS OF RSA 421-B AND REGULATIONS THEREUNDER.

**Current Status:**

Final

**Resolution:**

Order

**Resolution Date:**

09/24/1997

**Sanctions Ordered:**

Monetary/Fine \$11,400.00  
 Revocation/Expulsion/Denial

**Other Sanctions Ordered:**



**Sanction Details:**

REVOCAION OF CYGNET SECURITIES LICENSE ENTERED BY DEFAULT ORDER. RESPONDENTS ASSESSED AN ADMINISTRATIVE PENALTY OF \$8,900, TO BE HELD JOINTLY AND SEVERALLY LIABLE. RESPONDENT SWANN ASSESSED AN ADMINISTRATIVE FINE IN THE AMOUNT OF \$2,500.

**Summary:**

REVOCAION ORDER AND FINES/PENALTIES ASSESSED AGAINST RESPONDENTS. RESPONDENT CYGNET NOR GEORGE SWANN HAVE TENDERED PAYMENT FOR SUCH FINES/PENALTIES AS OF THE DATE OF ENTRY OF THIS ORDER. CONTACT: ENFORCEMENT (603) 271-1463

**Disclosure 2 of 2**

**Reporting Source:**

Regulator  
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

**Regulatory Action Initiated By:**

**Sanction(s) Sought:**

**Other Sanction(s) Sought:**

**Date Initiated:**

07/31/1997

**Docket/Case Number:**

C10970112

Employing firm when activity occurred which led to the regulatory action:

**Product Type:**

**Other Product Type(s):**

**Allegations:**

**Current Status:**

Final

**Resolution:**

Acceptance, Waiver & Consent(AWC)

**Resolution Date:**

07/31/1997

**Sanctions Ordered:**

Bar  
Censure  
Monetary/Fine \$170,000.00

**Other Sanctions Ordered:**

**Sanction Details:**



**Summary:**

ON JULY 31, 1997, DISTRICT NO. 10 NOTIFIED RESPONDENT GEORGE LORENZO SWAN THAT THE LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. C10970112 WAS ACCEPTED; THEREFORE, HE IS CENSURED, FINED \$170,000, AND BARRED FROM ASSOCIATION WITH ANY NASD MEMBER IN ANY CAPACITY. THE FINE COLLECTION EFFORTS WILL BE SUSPENDED UNTIL RESPONDENT SWAN SEEKS RE-ENTRY TO THE SECURITIES INDUSTRY. PAYMENT OF THE FINE SHALL BE A PREREQUISITE FOR ANY APPLICATION FOR ASSOCIATION WITH A MEMBER FIRM. - (NASD RULES 2110, 2120 AND IM-2310-2(b)(4)(iii)) - RESPONDENT SWAN EXECUTED, OR CAUSED TO BE EXECUTED, SECURITIES TRANSACTIONS IN THE ACCOUNTS OF PUBLIC CUSTOMERS WITHOUT THE PRIOR KNOWLEDGE, AUTHORIZATION, OR CONSENT OF THE CUSTOMERS THAT INVOLVED TRANSFERS OF STOCK FROM HIS PERSONAL AND CORPORATE ACCOUNTS TO THE CUSTOMERS ACCOUNTS SO THAT HE MIGHT AVOID MARGIN CALLS IN HIS PERSONAL AND CORPORATE ACCOUNTS; FAILED TO RESPOND TO NASDR REQUEST TO APPEAR FOR AN ON-THE-RECORD INTERVIEW MADE PURSUANT TO NASD RULE 8210; AND, FAILED TO APPRISE HIS MEMBER FIRM'S FINOP OF CERTAIN LIABILITIES INCURRED BY THE FIRM, THEREBY CAUSING THE FIRM TO FAIL TO MAINTAIN ITS MINIMUM REQUIRED NET CAPITAL).



**End of Report**

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# **EXHIBIT B**



Lisa  
C. M. W.



THEORY CAPITAL GROUP, LLC

INVESTMENT AGREEMENT  
SHORT TERM OPPORTUNITY FUND

ACCOMPANING RIDER # RA-1

This Short Term Opportunity Fund (the "Fund")  
is managed by Theory Capital Group, LLC  
31 South Farmington Road, Box 117  
Farmington, NJ 07832

The offering of this Short Term Opportunity Fund (the "Fund") is made in reliance upon the information contained in the offering memorandum of the Fund and any changes or supplements thereto. By submitting this agreement, the Investor acknowledges having received and read the Offering Memorandum and that the Manager is relying on the representations and warranties set out below.

**General**

Terms defined herein with capital letters and not otherwise defined have the meanings given in the Offering Memorandum. The Investor hereby certifies that, in full and complete reliance upon the information contained in the offering memorandum and any changes or supplements thereto, it is making payment to the Manager of contributions of wire instructions or other evidence of payment. The Investor acknowledges that this agreement is subject to the acceptance of the Manager and to certain other conditions set forth in the Offering Memorandum. The acceptance of this agreement shall be effective upon the deposit of the Investor's contribution into any of the Fund's accounts. This agreement and the monies shall be retained with all interest or deduction to the Investor at the Fund's option and without any obligation to the Investor.

**General Representations and Warranties**

The Investor represents, warrants, acknowledges and covenants to and in favor of the Fund and the Manager as follows:

This document is confidential.  
Short Term Opportunity Fund

- (1) The Investor has such knowledge and experience in financial and business affairs as to be capable of evaluating the merits and risks of an investment in the Fund and is able to bear the economic risk of loss of such investment.
- (2) The Investor is relying on the Manager to ensure that an investment in the Fund by the Investor is suitable for the Investor and that, based on the information in the offering memorandum and/or based on the advice of the Investor's own advisers, the Investor has made that determination.
- (3) The Investor has the legal capacity and competence to execute this agreement and to take all actions required pursuant hereto.
- (4) If an individual, the Investor has good right, full power and authority and any necessary approvals have been given to execute this agreement.
- (5) This agreement, when executed, will constitute a legal, valid, binding and enforceable contract of the Investor, enforceable against the Investor or its estate with its terms.
- (6) The Investor is investing as trustee or agent (collectively, for greater certainty, a "principal") in the Fund. In such capacity, the Investor is duly authorized to execute and deliver this investment agreement and all other necessary documents in connection with such investment on behalf of such principal, to agree to the terms and conditions contained herein and therein and to make the representations, warranties, acknowledgments and covenants made herein and therein, and this investment agreement has been duly authorized, executed and delivered by or on behalf of, and constitutes a legal, valid and binding agreement enforceable against, such principal.
- (7) The terms and terms of this investment and the transactions contemplated hereby will not result in the violation of any laws or provisions of any law applicable to, or the conduct of, the Investor or of any agreement, written or oral, to which the Investor may be a party or by which he, she or it is or may be bound.
- (8) The Investor is a resident of, or is otherwise subject to the securities laws of, the jurisdiction set out under "Name and Address of Investor" herein and is not receiving for the subscription of units of any class of any subscription other than such jurisdiction.
- (9) The Investor has no knowledge of a "material fact" or "material change" in the securities or securities of applicable securities legislation in the jurisdiction of the Fund that has not been previously disclosed to the public.
- (10) The Investor is aware that there are securities and tax laws applicable to the holding of the Fund and has been given the opportunity to seek advice in respect of such laws and is not relying solely upon information from the Fund, the Manager, or its sales agents, financial advisors, or other employees or agents.
- (11) The Investor acknowledges that all investments in the Fund will be made in compliance with the provisions of the Securities Act of 1933 and the Securities Act of 1934, and that the Investor is not receiving information that would otherwise be required to be disclosed.

Investment Agreement  
 Share Issuance Agreement

- (c) the Fund is released from certain obligations that would otherwise apply under certain applicable securities legislation if not sold via private placement in pursuant to the Securities Act of 1933;
- (12) the Investor has received, reviewed and fully understands the Offering Memorandum and has had the opportunity to ask and have answered any and all questions which the Investor wished with respect to the business and affairs of the Fund, and the agreement hereby made;
- (13) specifically, the Investor is aware of the characteristics of the Fund, of the nature and extent of personal liability and of the risks associated with an investment in the Fund;
- (14) the Investor understands that (i) there is no right to demand any distributions from the Fund, other than by withdrawal of investment and any realized capital gains pursuant to the terms and procedures and subject to the restrictions described in the Offering Memorandum;
- (15) the Investor shall not knowingly transfer his, her or interest in the Fund in whole or in part to a person without the approval of the Manager and will do so only in accordance with applicable securities laws;
- (16) the investment portfolio and trading procedures of the Fund are proprietary to the Fund and all information relating to such investment portfolio and trading procedures shall be kept confidential by the Investor and will not be disclosed to third parties (including the Investor's professional advisers) without the written consent of the Manager;
- (17) the representations, warranties, covenants and acknowledgments of the Investor contained in this investment agreement shall survive the completion of the investment in the fund and the Investor undertakes to notify immediately the Fund at the address set forth above of any change in any representation, warranty or other information relating to the Investor set forth in this investment agreement.

The Investor acknowledges and agrees that these representations, warranties, acknowledgments and covenants given by the Investor to and in favor of the Fund and the Manager shall be deemed to be repeated and reaffirmed as at the date of any subsequent investments made by the Investor unless a new investment agreement is executed.

**Prevention of crime (Money Laundering)**

In order to comply with any state or federal requirements or wishes of the fund aimed at the prevention of money laundering, the Manager may require additional information concerning investors. If, as a result of any information or other matter which comes to the Manager's attention, any director, officer or employee of the Manager, or its professional advisors, lawyers or accountants that an investor is engaged in money laundering, such person is required to report such information or other matter to the Securities and Exchange Commission and such report shall not be treated as a breach of any restriction upon the disclosure of information imposed by law or otherwise.

**Privacy Policy**

Attached as Schedule "G" hereto is a copy of the Fund's Privacy Policy. By signing this investment agreement, the Investor consents to the collection, use and disclosure of his or her personal information in accordance with such policy.

**Indemnity**

The Investor agrees to indemnify the Fund and the Manager against all losses, claims, costs, expenses and damages or liabilities which may in fact occur or arise, from the reliance on the representations, certifications and covenants of the Investor by the Fund or the Manager.

*Investment Agreement  
Short Term Opportunity Fund*

The investor represents and certifies that the investor (acting for his, her or its own account and is acting as principal) or is deemed to be acting as principal(s) for investment purposes and meets the definition of "accredited investor" and has completed the Certificate of Accredited Investor attached as schedule "T".

This Investment Agreement is not saleable.

Name and Address of Investor:	
Ammarelli, 96 CRUT	Telephone: 561-310-4363
3884 Outlook Ct.	
Jupiter FL 33477	E-mail: BRAOUTLOOK@aol.com

If Investor is not an Individual:	
Special Entity: Trust	Investment Number
Lisa D. Cadedmatori	Trust Number: 22-6702441
Trustee	Date of Incorporation: 10/29/96
	Telephone: 561-310-4363

<u>Lisa D. Cadedmatori</u> Investor's Signature	Dated this <u>29</u> day of <u>Feb</u> , 2011
<u>Trustee</u>	
By what name are you commonly known: <u>Lisa D. Cadedmatori</u>	If Investor is an individual, his or her signature must be accompanied by a person who is neither a relative nor a partner or child of the investor.
Date of Birth: <u>10/29/1966</u>	Witness: <u>Robert R. Ammarelli</u>
SSN: <u>123-45-6789</u>	Signature: <u>Robert R. Ammarelli</u>
Employer's Name and Address: <u>N/A</u>	Print Name: <u>Robert R. Ammarelli</u>

Investment Agreement  
Schedule T (Investor's Certificate)







THEORY CAPITAL GROUP, LLC

**RIDER TO INVESTMENT AGREEMENT  
SHORT TERM EQUITY FUND**

**RIDER # RA-1**  
(If applicable)

The undersigned (the "Investor") enters into the Investment Agreement with the covenants found below. These covenants are prepared for this investor and should be considered confidential.

**No Management Fee.**

**Incentive Fee is 20% of all new profits if annual return is greater than 15%.**

**If the annual return is less than 15%, the incentive fee is reduced to 10% of new profits generated in the calendar year.**

Printed name of the investor

Frank D. Cabriot Dated this 23 day of Feb 2011  
Investor Signature (day) (month) (year)

\_\_\_\_\_  
Manager Signature (day) (month) (year)

\_\_\_\_\_  
Witness (day) (month) (year)

Offering Memorandum  
Short Term Equity Fund

# **EXHIBIT C**



October '12  
Partner Name  
George Swan - Incentive

Investor # Ending Capital  
101 86,135.97

REDACTED

George Swan

REDACTED

Robert R Ammarell IRA  
George Swan - Other  
Robert R Ammarell TTEE  
Robert R Ammarell CRUT  
Ammarell Revocable Living Trust  
Lisa Cadematori

REDACTED

Barbara Ammarell TTEE

REDACTED

Investor #	Ending Capital
101	86,135.97
102	-
103	-
104	-
105	-
106	-
107	25,232.86
108	1,582,890.68
110	67,905.83
111	130,261.20
112	44,699.21
113	249,904.88
114	124,582.10
115	779,382.60
116	358,296.75
118	(0.00)
119	215,957.08
120	83,551.86
121	215,957.08
122	215,957.08
123	313,779.05
124	21,761.77
126	10,675.42
127	162,049.60
128	253,821.20
129	153,490.43
130	17,888.74
131	14,255.52
132	6,096.53
133	11,858.08
134	25,032.39
135	10,108.90
136	15,147.31

5,196,680.12

# **EXHIBIT D**

State of New Jersey  
Bergen County Surrogate's Court

In the matter of the Estate of:  
George L. Swan, Deceased

}

LETTERS OF  
ADMINISTRATION

I, **Michael R. Dressler**, Surrogate of the County of Bergen, State of New Jersey, do hereby certify that on this December 6, 2012, Administration of the goods and chattels, rights and credits, which were of **George L. Swan**, deceased, late of the County of Bergen and State of New Jersey, who died intestate, was granted to **Kathy Swan**, who is duly authorized to administer the same agreeably to law.

DO NOT ACCEPT WITHOUT RAISED SEAL

WITNESS my hand and seal of office on:  
December 6, 2012



*Michael R. Dressler*  
\_\_\_\_\_  
Michael R. Dressler, Surrogate

BERGEN COUNTY SURROGATE  
MICROFILMED

---

**EXHIBIT E**

State of New Jersey  
Bergen County Surrogate's Court

In the matter of the Estate of:  
George L. Swan, Deceased

}

AFFIDAVIT OF VALUE  
OF ESTATE

Kathy Swan, of 329 Cantrell Rd., Ridgewood, NJ 07450, being duly sworn, according to law, on their oath say(s): that they are the person(s) applying for Administration on the estate of George L. Swan, who died intestate; that the deponent(s) has/have made diligent search for the goods and chattels, rights and credits and effects of said decedent, and that the total value thereof, to the best of deponent(s) knowledge, does not exceed the sum of \$25,000.00.

IN WITNESS WHEREOF, I (we) have hereunto set my (our) hand(s) and seal(s) this 12/6/2012

Kathy Swan  
Kathy Swan

Subscribed and sworn to before me  
this 6<sup>th</sup> day of December, 2012

Sharon G. Boye  
Deputy Surrogate

BERGEN COUNTY SURROGATE  
MICROFILMED

---

# **EXHIBIT F**

M# 259518  
ML

State of New Jersey  
Bergen County Surrogate's Court

In the matter of the Estate of:  
George L. Swan, Deceased

}

APPLICATION  
ADMINISTRATION

Applicant(s) **Kathy Swan**, at 329 Cantrell Rd., Ridgewood, NJ 07450, Say(s):

- 1. Decedent died intestate, resident of 329 Cantrell Rd., Ridgewood in the County of Bergen and State of New Jersey on November 25, 2012.
- 2. Decedent left surviving spouse, heirs-at-law and next-of-kin, the following persons:

Name	Relationship	Residence	Age of all Minors
Kathy Swan	Spouse	329 Cantrell Rd., Ridgewood, NJ 07450	
Shauna Swan	Daughter	329 Cantrell Rd., Ridgewood, NJ 07450	
Kacey Swan	Daughter	329 Cantrell Rd., Ridgewood, NJ 07450	
Brennan Swan	Son	329 Cantrell Rd., Ridgewood, NJ 07450	
Tanner Swan	Son	329 Cantrell Rd., Ridgewood, NJ 07450	

3. There are no other next-of-kin and all the foregoing are of full age except as indicated above.

Wherefore, the applicant(s) demand judgment granting Letters of Administration to Applicants(s)

BERGEN COUNTY SURROGATE  
MICROFILMED

STATE OF NEW JERSEY }  
COUNTY OF BERGEN } ss.

Applicant(s) being duly sworn according to law, did upon their oath say that the matters and things set forth in the within application are true to the best of their knowledge and belief, that to the best of their knowledge the decedent died without a valid Will, and that the value of the entire estate, for the administration of which this application is made, will not exceed the sum of Twenty Five Thousand and 00/100 dollar(s) (\$25,000.00).

Subscribed and sworn before me on this:

6<sup>th</sup> day of December 2012

Sheron G. Brya  
Deputy Surrogate

Kathy Swan  
Kathy Swan

Attorney of Record:

BERGEN COUNTY SURROGATE  
MICROFILMED



---

# **EXHIBIT G**

State of New Jersey  
Bergen County Surrogate's Court

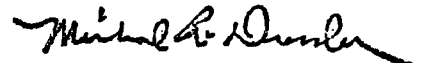
In the matter of the Estate of:  
George L. Swan, Deceased

}

JUDGMENT GRANTING  
ADMINISTRATION

It appearing by the application of **Kathy Swan** that the deceased, late of the County of Bergen and State of New Jersey, died November 25, 2012 intestate, and entire estate having the value of Twenty Five Thousand and 00/100 dollar(s) (\$25,000.00) and it further appearing that all of the competent adult heir(s) and other persons having a right to administration upon the said estate prior or equal to that of the said applicant(s) have duly renounced their right of administration and requested that Letters of Administration be granted to applicant(s) **Kathy Swan**

It is thereupon on this December 6, 2012 **adjudged** that Letters of Administration upon the estate of said decedent be granted to the said applicant(s) without bond.



Michael R. Dressler, Surrogate

BERGEN COUNTY SURROGATE  
MICROFILMED

---

# **EXHIBIT H**

**WELLS, JAWORSKI & LIEBMAN, LLP**  
**ATTORNEYS AT LAW**

Thomas M. Wells (NJ, VT & OH)  
James E. Jaworski (NJ & NY)  
Stuart D. Liebman (NJ)  
James J. Delia (NJ)  
Kenneth A. Porro (NJ)  
AnnMarie Palermo-Smits (NJ & NY)  
Darrell M. Felsenstein (NJ)

Lisa R. Aljian (NJ & NY)  
Cheryl Morrissey (NJ & NY)  
*Of Counsel*

Jill F. Rosenfeld (NJ & NY)  
Andrew S. Kohut (NJ & NY)  
Nicole E. Russak (NJ & NY)  
Sylvia Hall (NJ & NY)  
Spencer J. Rothwell (NJ & NY)

12 Route 17 North, P.O. Box 1827  
Paramus, New Jersey 07653-1827

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Telefax (201) 587-8845  
Telefax (201) 587-0074

[www.wellslaw.com](http://www.wellslaw.com)

Writer's Email Address:  
[nrussak@wellslaw.com](mailto:nrussak@wellslaw.com)

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(973) 285-3360

10 Stuyvesant Avenue  
Lyndhurst, New Jersey 07071  
(201) 531-8989

149 E. Main Street  
Tuckerton, New Jersey 08087  
(609) 296-6666

25 D Main Street  
Bristol, Vermont 05443  
(802) 453-5765

December 7, 2012

**Via Electronic Mail Only**

Mr. Robert Ammarell

**RE: THE ESTATE OF GEORGE SWAN**

Dear Mr. Ammarell:

As you are aware, George Swan passed away on November 25, 2012. Yesterday, Mrs. Swan qualified as Administratrix of her husband's estate, and she has retained our office to represent her that capacity. We are in the process of reviewing Mr. Swan's business records, of foremost including the Theory Short Term Equity Fund. As this was a small business, run solely by the decedent, please bear with us as we begin to sort through Mr. Swan's records. Please direct all further communication to me, or, in my absence, Thomas M. Wells, Esq.

We anticipate being back in contact shortly.

Sincerely,

/s/ Nicole Russak

NICOLE E. RUSSAK

NER/me

Cc: Mrs. Kathy Swan  
Thomas M. Wells, Esq.

---

# **EXHIBIT I**

New Jersey Business Gateway  
Business Entity Information and Records Service  
Business Id : 0400222434

Status Report For: THEORY CAPITAL GROUP LLC  
Report Date: 1/11/2013  
Confirmation Number: 3011218977

IDENTIFICATION NUMBER, ENTITY TYPE AND STATUS INFORMATION

Business ID Number: 0400222434  
Business Type: DOMESTIC LIMITED LIABILITY COMPANY  
Status: REVOKED FOR NOT FILING ANNUAL REPORT FOR 2  
CONSECUTIVE YEARS  
Original Filing Date: 03/18/2008  
Stock Amount: N/A  
Home Jurisdiction: NJ  
Status Change Date: NOT APPLICABLE

REVOCATION/SUSPENSION INFORMATION

DOR Suspension Start Date: 10-16-2012  
DOR Suspension End Date: N/A  
Tax Suspension Start Date: N/A  
Tax Suspension End Date: N/A

ANNUAL REPORT INFORMATION

Annual Report Month: MARCH  
Last Annual Report Filed: 09/21/2010  
Year: 2010

AGENT/SERVICE OF PROCESS (SOP) INFORMATION

Agent: GEORGE SWAN  
Agent/SOP Address: 61 SOUTH PARAMUS RD BOX 11, PARAMUS  
NJ, NJ, 07652  
Address Status: DELIVERABLE  
Main Business Address: 61 SOUTH PARAMUS RAODBOX 17, PARAMUS, NJ, 07652  
Principal Business Address: N/A

ASSOCIATED NAMES

New Jersey Business Gateway  
Business Entity Information and Records Service  
Business Id : 0400222434

Associated Name: N/A  
Type: N/A

PRINCIPALS

Following are the most recently reported officers/directors (corporations), managers/members/managing members (LLCs), general partners (LPs), trustees/officers (non-profits).

Title: CHIEF EXEC. OFFICER (CEO)  
Name: SWAN, GEORGE  
Address: 329 CANTRELL RD , RIDGEWOOD, NJ 07450  
Title: MANAGING MEMBER  
Name: SWAN, KATHY  
Address: 329 CANTRELL RD , RIDGEWOOD, NJ 07450

FILING HISTORY -- CORPORATIONS, LIMITED LIABILITY COMPANIES, LIMITED PARTNERSHIPS AND LIMITED LIABILITY PARTNERSHIPS

To order copies of any of the filings below, return to the service page, <https://www.njportal.com/DOR/businessrecords/Default.aspx> and follow the instructions for obtaining copies. Please note that trade names are filed initially with the County Clerk(s) and are not available through this service. Contact the Division for instructions on how to order Trade Mark documents.

Charter Documents for Corporations, LLCs, LPs and LLPs

Original Filing 2008  
(Certificate)Date:

Changes and Amendments to the Original Certificate:

Filing Type	Year Filed
CHANGE OF AGENT AND OFFICE	2010
REVOKED FOR FAILURE TO PAY ANNUAL REPORTS	2012

Note:

Copies of some of the charter documents above, particularly those filed before August

---

New Jersey Business Gateway  
Business Entity Information and Records Service  
Business Id : 0400222434

1988 and recently filed documents (filed less than 20 work days from the current date), may not be available for online download.

- For older filings, contact the Division for instructions on how to order.
- For recent filings, allow 20 work days from the estimated filing date, revisit the service center at <https://www.njportal.com/DOR/businessrecords/Default.aspx> periodically, search for the business again and build a current list of its filings. Repeat this procedure until the document shows on the list of documents available for download.

The Division cannot provide information on filing requests that are in process. Only officially filed documents are available for download.



---

# **EXHIBIT J**



ROSS MILLER  
 Secretary of State  
 204 North Carson Street, Suite 4  
 Carson City, Nevada 89701-4520  
 (775) 684 6708  
 Website: www.nvsos.gov



\*050101\*

**Articles of Organization  
 Limited-Liability Company**  
 (PURSUANT TO NRS CHAPTER 86)

Filed in the office of  Ross Miller Secretary of State State of Nevada	Document Number <b>20100904793-75</b>
	Filing Date and Time <b>12/06/2010 8:30 AM</b>
	Entity Number <b>E0577772010-3</b>

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

<b>1. Name of Limited-Liability Company:</b> (must contain approved limited-liability company wording; see instructions)	THEORY CAPITAL GROUP NV, LLC	Check box if a Series Limited-Liability Company <input type="checkbox"/>
<b>2. Registered Agent for Service of Process:</b> (check only one box)	<input checked="" type="checkbox"/> Commercial Registered Agent: CSC Services of Nevada, Inc. Name <input type="checkbox"/> Noncommercial Registered Agent (name and address below) <b>OR</b> <input type="checkbox"/> Office or Position with Entity (name and address below) Name of Noncommercial Registered Agent <b>OR</b> Name of Title of Office or Other Position with Entity Street Address City Nevada Zip Code Mailing Address (if different from street address) City Nevada Zip Code	
<b>3. Dissolution Date:</b> (optional)	Latest date upon which the company is to dissolve (if existence is not perpetual):	
<b>4. Management:</b> (required)	Company shall be managed by: <input type="checkbox"/> Manager(s) <b>OR</b> <input checked="" type="checkbox"/> Member(s) (check only one box)	
<b>5. Name and Address of each Manager or Managing Member:</b> (attach additional page if more than 3)	1) GEORGE SWAN Name 329 CANTRELL RD RIDGEWOOD NJ 07450 Street Address City State Zip Code	
	2) KATHY SWAN Name 329 CANTRELL RD RIDGEWOOD NJ 07450 Street Address City State Zip Code	
	3) _____ Name Street Address City State Zip Code	
<b>6. Name, Address and Signature of Organizer:</b> (attach additional page if more than 1 organizer)	DEB REEVES Name Organizer Signature 2711 CENTERVILLE ROAD WILMINGTON DE 19808 Address City State Zip Code	
<b>7. Certificate of Acceptance of Appointment of Registered Agent:</b>	I hereby accept appointment as Registered Agent for the above named Entity. CSC Services of Nevada, Inc. <input checked="" type="checkbox"/> By: Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity Date 12/06/2010	

This form must be accompanied by appropriate fees.

---

**EXHIBIT K**

**INITIAL LIST OF MANAGERS OR MANAGING MEMBERS AND REGISTERED AGENT AND STATE BUSINESS LICENSE APPLICATION OF:**

THEORY CAPITAL GROUP NV, LLC

FILE NUMBER

E057772010-3

NAME OF LIMITED-LIABILITY COMPANY

FOR THE FILING PERIOD OF 12/2010 TO 12/2011

**\*\*YOU MAY FILE THIS FORM ONLINE AT [www.nvsos.gov](http://www.nvsos.gov)\*\***



The entity's duly appointed registered agent in the State of Nevada upon whom process can be served is:

CSC SERVICES OF NEVADA, INC. (Commercial Registered Agent)  
2215-B RENAISSANCE DR  
LAS VEGAS, NV 89119 USA

A FORM TO CHANGE REGISTERED AGENT INFORMATION IS FOUND AT: [www.nvsos.gov](http://www.nvsos.gov)

Filed in the office of  Ross Miller Secretary of State State of Nevada	Document Number
	20110012311-62
	Filing Date and Time
	01/07/2011 2:11 PM
Entity Number	
E057772010-3	

(This document was filed electronically.)  
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Return one file stamped copy. (If filing not accompanied by order instructions, file stamped copy will be sent to registered agent.)

**IMPORTANT:** Read instructions before completing and returning this form.

- Print or type names and addresses, either residence or business, for all manager or managing members. A Manager, or if none, a Managing Member of the LLC must sign the form. **FORM WILL BE RETURNED IF UNSIGNED.**
- If there are additional managers or managing members, attach a list of them to this form.
- Initial list fee is \$125.00. A \$75.00 penalty must be added for failure to file this form by the last day of the first month following organization date.
- State business license fee is \$200.00. Effective 2/1/2010, \$100 must be added for failure to file form by deadline.
- Make your check payable to the Secretary of State.
- Ordering Copies:** If requested above, one file stamped copy will be returned at no additional charge. To receive a certified copy, enclose an additional \$30.00 per certification. A copy fee of \$2.00 per page is required for each additional copy generated when ordering 2 or more file stamped or certified copies. Appropriate instructions must accompany your order.
- Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, Nevada 89701-4201, (775) 684-5708.
- Form must be in the possession of the Secretary of State on or before the last day of the first month following the initial registration date. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties. Failure to include initial list and business license fees will result in rejection of filing.

INITIAL LIST FILING FEE \$125.00 LATE PENALTY \$75.00 BUSINESS LICENSE FEE \$200.00 LATE PENALTY \$100.00

Complete only if applicable <input type="checkbox"/> Pursuant to NRS, this corporation is exempt from the business license fee. Exemption code: _____ <input type="checkbox"/> Month and year your State Business License expires: _____ 20____	<b>Section 7(2) Exemption Codes</b> 001 - Governmental Entity 002 - 501(c) Nonprofit Entity 003 - Home-based Business 004 - Natural Person with 4 or less rental dwelling units 005 - Motion Picture Company 006 - NRS 680B.020 Insurance Co.
NAME: GEORGE SWAN ADDRESS: 329 CANTRELL ROAD CITY: RIDGEWOOD STATE: NJ ZIP CODE: 07450 (DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) <input type="checkbox"/> MANAGER <input checked="" type="checkbox"/> MANAGING MEMBER	
NAME: KATHY SWAN ADDRESS: 329 CANTRELL ROAD CITY: RIDGEWOOD STATE: NJ ZIP CODE: 07450 (DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) <input type="checkbox"/> MANAGER <input checked="" type="checkbox"/> MANAGING MEMBER	
NAME: _____ ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ (DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) <input type="checkbox"/> MANAGER <input type="checkbox"/> MANAGING MEMBER	
NAME: _____ ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ (DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) <input type="checkbox"/> MANAGER <input type="checkbox"/> MANAGING MEMBER	

I declare, to the best of my knowledge under penalty of perjury, that the above mentioned entity has complied with the provisions of sections 6 to 15 of AB 146 of the 2009 session of the Nevada Legislature and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

**X** GEORGE SWAN  
Signature of Manager or Managing Member

Title: MEMBER Date: 1/7/2011 2:09:39 PM

---

**EXHIBIT L**

**ANNUAL LIST OF MANAGERS OR MANAGING MEMBERS AND REGISTERED AGENT AND STATE BUSINESS LICENSE APPLICATION OF:**

THEORY CAPITAL GROUP NV, LLC

FILE NUMBER

E057772010-3

NAME OF LIMITED-LIABILITY COMPANY

FOR THE FILING PERIOD OF 12/2011 TO 12/2012

**\*\*YOU MAY FILE THIS FORM ONLINE AT [www.nvsos.gov](http://www.nvsos.gov)\*\***



\*110401\*

The entity's duly appointed registered agent in the State of Nevada upon whom process can be served is:

CSC SERVICES OF NEVADA, INC. (Commercial Registered Agent)  
2215-B RENAISSANCE DR  
LAS VEGAS, NV 89119 USA

A FORM TO CHANGE REGISTERED AGENT INFORMATION IS FOUND AT: [www.nvsos.gov](http://www.nvsos.gov)

Filed in the office of  Ross Miller Secretary of State State of Nevada	Document Number <b>20120175078-83</b>
	Filing Date and Time <b>03/12/2012 9:02 PM</b>
	Entity Number <b>E0577772010-3</b>

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**IMPORTANT:** Read instructions before completing and returning this form.

- Print or type names and addresses, either residence or business, for all manager or managing members. A Manager, or if none, a Managing Member of the LLC must sign the form. **FORM WILL BE RETURNED IF UNSIGNED.**
- If there are additional managers or managing members, attach a list of them to this form.
- Annual list fee is \$125.00. A \$75.00 penalty must be added for failure to file this form by the deadline. An annual list received more than 90 days before its due date shall be deemed an amended list for the previous year.
- State business license fee is \$200.00. Effective 2/1/2010, \$100.00 must be added for failure to file form by deadline.
- Make your check payable to the Secretary of State.
- Ordering Copies:** If requested above, one file stamped copy will be returned at no additional charge. To receive a certified copy, enclose an additional \$30.00 per certification. A copy fee of \$2.00 per page is required for each additional copy generated when ordering 2 or more file stamped or certified copies. Appropriate instructions must accompany your order.
- Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, Nevada 89701-4201, (775) 684-5708.
- Form must be in the possession of the Secretary of State on or before the last day of the month in which it is due. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties. Failure to include annual list and business license fees will result in rejection of filing.

ANNUAL LIST FILING FEE: \$125.00    LATE PENALTY: \$75.00    BUSINESS LICENSE FEE: \$200.00    LATE PENALTY: \$100.00

Complete only if applicable	Section 7(2) Exemption Codes
<input type="checkbox"/> Pursuant to NRS, this corporation is exempt from the business license fee. Exemption code: _____	001 - Governmental Entity 002 - 501(c) Nonprofit Entity 003 - Home-based Business 004 - Natural Person with 4 or less rental dwelling units 005 - Motion Picture Company 006 - NRS 680B.020 Insurance Co.
<input type="checkbox"/> Month and year your State Business License expires: _____ 20____	
NAME: GEORGE SWAN ADDRESS: 329 CANTRELL ROAD CITY: RIDGEWOOD    STATE: NJ    ZIP CODE: 07450 (DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) <input type="checkbox"/> MANAGER <input checked="" type="checkbox"/> MANAGING MEMBER	
NAME: KATHY SWAN ADDRESS: 329 CANTRELL ROAD CITY: RIDGEWOOD    STATE: NJ    ZIP CODE: 07450 (DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) <input type="checkbox"/> MANAGER <input checked="" type="checkbox"/> MANAGING MEMBER	
NAME: _____ ADDRESS: _____ CITY: _____    STATE: _____    ZIP CODE: _____ (DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) <input type="checkbox"/> MANAGER <input type="checkbox"/> MANAGING MEMBER	
NAME: _____ ADDRESS: _____ CITY: _____    STATE: _____    ZIP CODE: _____ (DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) <input type="checkbox"/> MANAGER <input type="checkbox"/> MANAGING MEMBER	

I declare, to the best of my knowledge under penalty of perjury, that the above mentioned entity has complied with the provisions of sections 6 to 15 of AB 146 of the 2009 session of the Nevada Legislature and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

X KATHY SWAN

Title: MANAGING MEMBER    Date: 3/12/2012 8:59:25 PM

Signature of Manager or Managing Member

---

**EXHIBIT M**

**WELLS, JAWORSKI & LIEBMAN, LLP**  
**ATTORNEYS AT LAW**

Thomas M. Wells (NJ, VT & OH)  
James E. Jaworski (NJ & NY)  
Stuart D. Liebman (NJ)  
James J. Delia (NJ)  
Kenneth A. Porro (NJ)  
AnnMarie Palermo-Smits (NJ & NY)  
Darrell M. Felsenstein (NJ)

Lisa R. Aljian (NJ & NY)  
Cheryl Morrissey (NJ & NY)  
*Of Counsel*

Jill F. Rosenfeld (NJ & NY)  
Andrew S. Kohut (NJ & NY)  
Nicole E. Russak (NJ & NY)  
Sylvia Hall (NJ & NY)  
Spencer J. Rothwell (NJ & NY)

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Paramus, New Jersey 07653-1827

(201) 587-0888  
Telefax (201) 587-8845  
Telefax (201) 587-0074

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Writer's Email Address:  
[nrussak@wellslaw.com](mailto:nrussak@wellslaw.com)

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Lyndhurst, New Jersey 07071  
(201) 531-8989

149 E. Main Street  
Tuckerton, New Jersey 08087  
(609) 296-6666

25 D Main Street  
Bristol, Vermont 05443  
(802) 453-5765

January 3, 2013

**Via Electronic Mail Only**

Mr. Harry Persaud

**RE: THE ESTATE OF GEORGE SWAN**

Dear Mr. Persaud:

As you are aware, our office represents Kathy Swan as Administratrix of her husband's estate. I am in receipt of your email of January 2, 2013. To date, we have yet to receive your promissory notes, guaranties or investment term sheets substantiating the loans and investment; however, we are continuing in our review and analysis of Mr. Swan's business records. We apologize for the delay, but in addition to being voluminous, the records are much more complex than we had originally thought. As such, this task has taken more time than we anticipated, and the holidays only exacerbated the delays. In addition to the hundreds of hours of work by the corporate due diligence company, we have now retained a forensic accountant to help recreate records and to ultimately assist on tax reporting matters. Please know this matter is a priority to us and we should have an update in the near future.

We hope to have more information in the near future.

Sincerely,

/s/ Nicole Russak

NICOLE E. RUSSAK

NER/me

Cc: Mrs. Kathy Swan  
Thomas M. Wells, Esq.  
641942



---

**EXHIBIT N**

January 14, 2013

**Via Electronic Mail and Federal Express**

Nicole E. Russak  
Wells, Jaworski & Liebman, LLP  
12 Route 17 North, P.O. Box 1827  
Paramus, New Jersey 07653

**Re: The Estate of George Swan – Theory Short Term Equity Fund**

Dear Ms. Russak:

I understand you represent Mrs. Kathy Swan as Administratrix of George Swan's estate. Mr. Swan passed away on November 25, 2012 and Mrs. Swan qualified as Administratrix of her husband's estate on December 11, 2012. As you are aware, Mr. Swan was the Chief Executive Officer of Theory Capital Group, LLC which was the manager of the Theory Short Term Equity Fund. I held several accounts with Mr. Swan on behalf of myself and other family members. The investment accounts are as follows:

1. Investor # 116 – Millennium Trust Co. LLC FBO Robert R. Ammarell IRA
2. Investor # 119 – Robert R. Ammarell TTEE M.G. Bowman Trust U/W
3. Investor # 120 – Ammarell 96 CRUT
4. Investor # 121 – Ammarell Revocable Living Trust
5. Investor # 122 – Lisa Cadematori and Michael Cadematori JTWROS
6. Investor # 129 – Barbara B. Ammarell TTEE FBO Laura B. Caltagirone

In light of Mr. Swan's unfortunate death, I have been advised that you are in the process of winding down the fund and making distributions to its investors. It has been nearly two months since Mr. Swan has passed away and over a month since Mrs. Swan qualified as Administratrix of her husband's estate. I have repeatedly requested that you provide me with confirmation as to the availability of the funds contained in the above accounts and that these funds are no longer susceptible to any market risk. I am concerned that there were some issues with respect to Mr. Swan's activities. Please provide me with this reassurance by Thursday, January 17, 2013. Also, in light of Mr. Swan's unfortunate death, please allow this letter to serve as my formal request for withdrawal of all monies contained in Mr. Swan's fund with respect to the above accounts.

Please let me know if you need any additional information. Thank you.

Regards,

/s/ Robert Ammarell

Robert Ammarell

cc: Kathy Swan – managing member (via email)