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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	**17-CV-_________ ( )**
-against-	**Jury Trial Demanded**
GREGORY T. DEAN and DONALD J. FOWLER,	
Defendants.	

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission"), for its complaint against defendants Gregory T. Dean ("Dean") and Donald J. Fowler ("Fowler," and, together with Dean, "Defendants"), alleges as follows:

SUMMARY

1. This action concerns the conduct of two registered representatives, Dean and Fowler, who recommended to customers a high-cost trading strategy consisting of the excessive buying and selling of stocks. This strategy benefitted Dean and Fowler because the frequency of the trading generated substantial commissions and other fees. The customers who trusted Dean

and Fowler and relied on their supposed stock-picking expertise, however, ended up with enormous losses.

2. The uniform trading strategy followed by Dean and Fowler in 27 customer accounts at J.D. Nicholas & Associates, Inc. ("J.D. Nicholas"), a now-defunct broker-dealer based in Syosset, NY, is summarized in the Attachment. As the Attachment shows, the high-cost, excessive trading generated ill-gotten gains for Dean and Fowler while their customers' account balances dwindled away.

3. Dean's and Fowler's conduct violated the antifraud provisions of the federal securities laws in two respects. First, Dean and Fowler recommended a trading strategy to 27 customers without any reasonable basis to believe that the strategy was suitable for anyone. They knew or should have known that, in view of the excessive in-and-out trading and the cost structure, their strategy was bound to lose money in each of the 27 customer accounts. Second, Dean and Fowler engaged in churning with regard to at least 3 of the 27 customer accounts.

VIOLATIONS

4. By virtue of the conduct alleged herein, the Defendants, directly or indirectly, singly or in concert, violated and are otherwise liable for violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

5. Unless the Defendants, who continue to be employed as registered representatives, are permanently restrained and enjoined, they will again engage in the acts, practices, transactions, and courses of business set forth in this complaint and in acts, practices, transactions, and courses of business of similar type and object.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], seeking a final judgment: (1) restraining and permanently enjoining each of the Defendants from engaging in the acts, practices and courses of business alleged against them herein; (b) ordering each of the Defendants to disgorge all ill-gotten gains and to pay prejudgment interest on those amounts; and (c) imposing civil money penalties on each of the Defendants pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. The Defendants, either directly or indirectly, have made use of the means or instrumentalities of interstate commerce, of the mails, of the facilities of national securities exchanges, and/or the means or instruments of transportation or communication in interstate commerce in connection with the acts, practices, and courses of business alleged herein.

8. Venue lies in the Southern District of New York pursuant to 28 U.S.C. §1391(b)(2), Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this complaint occurred within the Southern District of New York, including trades on exchanges based in the Southern District of New York, and were effected, directly or indirectly, by making use of means or instrumentalities of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange.

DEFENDANTS

9. **Dean**, age 35, is a resident of Seaford, NY.

10. **Fowler**, age 30, is a resident of Massapequa, NY.

11. Dean and Fowler were employed by J.D. Nicholas from January 2007 through November 2014. Dean and Fowler hold Series 7, 24 and 63 licenses. Dean also holds a Series 6 license.

12. Both Dean and Fowler have disciplinary histories. Nine of Dean's customers filed Financial Industry Regulatory Authority (FINRA) arbitrations or complaints against him. Five arbitrations are pending; one customer claim was denied; and three claims were settled through payments to the customers.

13. Ten of Fowler's customers filed FINRA arbitrations or complaints against him. Except for two arbitrations, which are pending, the arbitrations and complaints were settled through payments to the customers.

RELATED ENTITY

14. **J.D. Nicholas** – known until January 2011 as A&F Financial Securities Inc. – was incorporated under Florida law in 1997, and maintained its offices in Syosset, NY. It was registered with the Commission as a broker-dealer from December 1997 through July 2015.

15. In 2010, 2011 and 2015, J.D. Nicholas entered into three Letters of Acceptance, Waiver and Consent (AWC) with FINRA. In the 2010 AWC, FINRA found, among other things, that J.D. Nicholas failed to implement its supervisory procedures regarding excessive trading and churning. The 2011 AWC found that J.D. Nicholas "improperly and inaccurately" described a per-transaction $65 customer charge as a "handling fee" when this fee "was effectively the same as a commission to the firm." And the 2015 AWC made findings critical of

J.D. Nicholas's telemarketing activities. FINRA also imposed fines of $27,500 (2010), $125,500 (2011), and $35,000 (2015), and censures.

16. J.D. Nicholas entered into consent orders with state regulators in Connecticut (2011), Arkansas (2013) and New Hampshire (2013 and 2015). Similar to the FINRA AWCs, these consent orders made findings critical of J.D. Nicholas's imposition of a "per transaction fee" and its telemarketing practices, and imposed fines of $20,000 (CT), $17,500 (AK), $40,000 and $10,000 (NH).

FACTS

17. Dean and Fowler used the same basic strategy in the 27 customer accounts: the purchase of a stock followed by the sale of that stock within a week or two. The quick sales occurred regardless of price movements. This pattern of buys followed by sales repeated itself over and over in the accounts of their customers.

18. Dean and Fowler had a duty to have a reasonable basis for their investment strategy. This meant that, at a minimum, they needed to acquire an understanding of their strategy's risks and rewards. Dean and Fowler, however, did almost no due diligence. As a result, they had no basis to believe that the strategy was suitable for any customer. They pursued their strategy with a primary intent of generating income for themselves.

Finding Customers and Opening New Accounts

19. Dean and Fowler reached out to prospective customers through nationwide cold calls using telemarketing databases generated by marketing companies.

20. In their cold calls, Dean and Fowler told prospective customers that they had a sound strategy; that they were experienced and savvy stock pickers; and that their strategy would outperform the market. Little or no mention was made of fees and costs, and customers believed

that any risk arising from Dean's and Fowler's strategy was more than offset by the possibility of a significant profit.

21. Persons who agreed to open an account were sent new account forms pre-filled by J.D. Nicholas personnel to show that the customer's investment goal was "speculation."

22. Dean and Fowler also made sure that their customers signed margin agreements, which allowed Dean and Fowler to make stock purchases with borrowed money. In addition to increasing the purchasing power, the use of margin also increased the risk to the customers because of the increased leverage.

23. After an account was opened, Dean and Fowler placed only a few trades in the first weeks or months. After this initial period, they began rapid buying and selling, which continued in each account until the customer closed the account, usually within two years.

24. The 27 customer accounts were non-discretionary; as a result, Dean and Fowler were required to obtain authorization from the customer before any purchase or sale. Many trades, however, were made without customer authorization.

The Significant Cost Structure of the Strategy

25. The primary customer expense was a per-trade fee of up to 3½% of the amount of the purchase or sale, as determined by Dean or Fowler. These fees, which were charged on both purchases and sales, are considered "commissions" when the firm acts as agent on the trade and "markups" or "markdowns" when the firm acts as a principal.

26. Customers were also charged a mandatory "firm commission" of $65 per trade (before November 1, 2011) or $49.95 per trade (after November 1, 2011).

27. Another cost to the customer was margin interest which accrued for purchases made on margin.

Dean and Fowler Had No Reasonable Basis for their Strategy

28. Dean and Fowler pursued their high-cost, in-and-out trading strategy without having a reasonable basis for believing that this strategy was suitable for anyone. Since the customers incurred costs with every transaction, making a profit depended upon the price of the security increasing during the brief period the security was held in the customer accounts. The increase in price had to exceed the combined purchase/sale costs for even a minimal profit to be realized.

29. The impact of the costs that arose from the excessive trading doomed any possibility of even a minimal profit. Dean and Fowler knew, or were reckless in not knowing, that repeated short-term buying and selling of securities was not in the best interests of their customers and that the transaction costs would almost certainly outstrip any potential gains in the accounts.

30. Prior to recommending their strategy, Dean and Fowler did no analysis to determine whether this high-cost strategy had any reasonable basis. Instead, they purportedly relied on general interest news publications, investment periodicals, and the internet. These resources, however, provided information on issuers and market conditions and not on the impact of their high-cost structure on an in-and-out trading strategy.

31. The real risk to Dean's and Fowler's customers arose not from market conditions but instead from the strategy imposed by Dean and Fowler. Dean and Fowler did almost nothing to determine whether their own strategy, with its substantial cost component, could ever realize even a minimal profit.

The Trading Was Excessive and the Costs Were Enormous

32. Turnover and cost-to-equity ratios are used to evaluate activity in brokerage

accounts. Turnover is the number of times per year a customer's securities are replaced by new securities. The cost-to-equity ratio, also referred to as the break-even ratio, measures the amount an account has to appreciate annually just to cover commissions and other expenses.

33. A turnover of 6, or a cost-to-equity ratio in excess of 20%, is considered to be indicative of excessive trading.

34. The Attachment lists the turnover, cost-to-equity ratios, and other data regarding the 27 customer accounts. The turnover numbers are extremely high, ranging from 20.73 to 451.92, with rates for 9 accounts exceeding 100. The average turnover for the 27 customer accounts was 105.00.

35. Many of the accounts had cost-to-equity ratios in excess of 100%, with a couple over 200% and one at 463.65%. The average annualized cost-to-equity ratio for these accounts was 110.90%, meaning that the customers, on average, had to realize 110.90% in profits just to break even.

36. Dean and Fowler, on average, held each investment for only 9 days.

37. The customers paid high amounts in commissions and fees – an average of $37,039 in commissions and fees, which exceeded the average equity of $26,289. Despite the low average equity, Dean and Fowler made an average of $3.5 million in purchases in each account. The total costs exceeded the total average equity for the 27 customer accounts.

38. All 27 accounts ended up with substantial losses totaling $1,374,202.

39. Dean and Fowler considered themselves partners and, although they had separate customers, they split all revenue 50/50. In addition, J.D. Nicholas was entitled to 20% of the revenue generated by brokers. As a result, of the $1,000,044 in revenue generated by the 27 customer accounts (representing the total costs to customers), Dean and Fowler received

approximately $800,000.

40. Dean and Fowler knowingly, recklessly, or negligently engaged in the conduct described above.

Dean and Fowled Also Churned Three Customers' Accounts

41. Dean churned the account of Customer 10, age 60, a resident of North Carolina, who retired from the Army in 1995 after 21 years of service. Fowler churned the accounts of two customers: Customer 5, age 74, a retiree in Pennsylvania, and Customer 24, age 70, who lives in Texas, and is retired from his career as an aerospace engineer when he became disabled nearly 30 years ago.

42. Dean and Fowler churned the accounts of Customers 5, 10, and 24 by engaging in excessive trading in disregard of their customers' conservative investment objectives and risk tolerance for the purpose of generating commissions. Dean and Fowler received a total of approximately $67,000 in ill-gotten gains in connection with these 3 customer accounts. Customers 5, 10, and 24 suffered aggregate losses of $105,400, largely depleting their accounts.

43. Dean made the decisions concerning the investments and the strategy and exercised *de facto* control over Customer 10's account. Customer 10 relied on Dean to make investment recommendations, never researching or rejecting any of Dean's recommendations. Customer 10 was an inexperienced investor. He had two accounts with other full-service brokerage firms at the time. Both accounts had small balances and minimal trading in equity and fixed income securities, as well as money market funds. Neither account used an in-and-out trading strategy. Dean also executed trades in Customer 10's account without prior approval.

44. Fowler made the decisions concerning the investments and strategy and exercised *de facto* control over the accounts of Customers 5 and 24. Customers 5 and 24 relied on Fowler

to make investment recommendations, never making any of their own. Customers 5 and 24 did not ask Fowler to explain any of his recommendations or to furnish any of his research or analysis. The majority of Customer 5's savings was invested conservatively in mutual funds selected for him by a financial advisor. Customer 24 also relied on brokers to make investment decisions for his other brokerage accounts.

45. The turnover in Customer 10's account was 52.89, and the cost-to-equity ratio was 150.48%. Although the average equity in Customer 10's account was only $11,361, Dean made a total of $701,323 in purchases, and each investment was held for an average of 10.8 days.

46. The turnover ratio in Customer 5's account was 20.73, and the cost-to-equity ratio was 67.51%. Although the average equity in Customer 5's account was only $34,452, Fowler made a total of $833,646 in purchases, and each investment was held for an average of 25.6 days.

47. The turnover ratio in Customer 24's account was 43.50, and the cost-to-equity ratio was 90.88%. The average equity in Customer 24's account was only $54,739, but Fowler made a total of $1,709,242 in purchases, and each investment was held for an average of 10.9 days.

48. Dean and Fowler knowingly or recklessly engaged in the conduct described above.

FIRST CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act
(Both Defendants)

49. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 48, as if fully set forth herein.

50. The Defendants, directly or indirectly, singly or in concert, in the offer or sale of securities and by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, have: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact or omissions of a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities and upon other persons.

51. By reason of the foregoing, the Defendants, directly or indirectly, singly or in concert, have violated, and unless enjoined, will again violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF
Violation of Section 10(b) of the Exchange Act and Rule 10b-5
(Both Defendants)

52. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 48, as if fully set forth herein.

53. The Defendants, directly or indirectly, singly or in concert, in connection with the purchase or sale of securities and by the use of the means or instrumentalities of interstate commerce or of the mails, or of the facilities of a national securities exchange, have: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

54. By reason of the foregoing, the Defendants, directly or indirectly, singly or in concert, have violated, and unless enjoined, will again violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently enjoining each of the Defendants from committing, aiding and abetting or otherwise engaging in conduct that would make them liable for the violations of the federal securities laws alleged in this complaint.

II.

Ordering each of the Defendants to disgorge any ill-gotten gains and to pay prejudgment interest on those amounts, jointly and severally.

III.

Ordering each of the Defendants to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

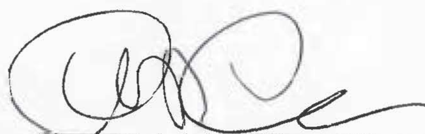
Granting such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

Dated: New York, New York
January 9, 2017

Respectfully submitted,

By: 

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Attachment to Complaint filed January 9, 2017
***SEC v. Gregory T. Dean and Donald J. Fowler* (S.D.N.Y.)**

Customer	Annualized Cost-to-Equity Ratio	Annualized Turnover	Average Equity[1]	Total Purchases	Total Costs to Customer[2]	Total Loss	Weighted Days Held[3]	Account Period
1	463.65%	354.98	$4,927	$1,303,355	$17,023	($32,994)	2.0	6/1/14 - 2/28/15
2	98.55%	156.41	$256,407	$39,995,011	$252,003	($474,958)	3.7	5/1/12 - 4/30/13
3	105.20%	65.73	$21,366	$2,924,378	$46,800	($28,840)	12.3	8/1/12 - 8/31/14
4	158.85%	79.54	$5,866	$578,743	$11,565	($18,516)	4.7	2/1/13 - 4/30/14
5	67.51%	20.73	$34,452	$833,646	$27,147	($38,745)	25.6	9/1/11 - 10/31/12
6	137.60%	92.35	$14,817	$1,925,589	$28,710	($22,835)	6.9	2/1/13 - 6/30/14
7	173.08%	451.92	$17,798	$8,698,471	$33,338	($60,573)	1.0	1/1/14 - 1/31/15
8	125.30%	80.85	$24,040	$2,751,243	$42,665	($70,420)	7.6	5/1/12 - 9/30/13
9	184.54%	131.71	$14,932	$1,476,392	$20,685	($15,222)	5.2	3/1/13 - 11/30/13
10	150.48%	52.89	$11,361	$701,323	$19,954	($41,115)	10.8	3/1/11 - 4/30/12
11	147.11%	145.99	$49,352	$11,401,829	$114,970	($40,498)	5.0	5/1/13 - 11/30/14
12	125.05%	46.66	$14,882	$462,297	$12,389	($36,243)	14.7	12/1/11 - 7/31/12
13	147.48%	176.25	$16,368	$1,446,372	$12,103	($22,709)	4.6	7/1/13 - 12/31/13
14	252.15%	192.20	$20,240	$4,206,924	$55,229	($84,320)	2.9	10/1/12 - 10/31/13
15	159.94%	68.10	$11,674	$1,056,375	$24,810	($69,708)	7.5	1/1/12 - 4/30/13
16	163.91%	83.93	$8,667	$1,452,902	$28,373	($5,039)	6.8	3/1/12 - 2/28/14
17	103.81%	33.43	$13,353	$482,767	$15,001	($5,777)	17.6	1/1/13 - 1/31/14
18	71.01%	38.35	$25,722	$1,397,053	$25,871	($51,641)	18.6	5/1/12 - 9/30/13

[1] "Average Equity" is an average of the net portfolio value amounts listed in the monthly account statements received by the customers.
[2] "Total Costs" includes commissions, markups, markdowns, margin interest, the firm commission, and other account fees.
[3] Weighted for investment size.

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***SEC v. Gregory T. Dean and Donald J. Fowler* (S.D.N.Y.)**

Customer	Annualized Cost-to-Equity Ratio	Annualized Turnover	Average Equity[1]	Total Purchases	Total Costs to Customer[2]	Total Loss	Weighted Days Held[3]	Account Period
19	220.56%	134.47	$7,830	$963,474	$15,803	($18,881)	2.7	10/1/12 - 8/31/13
20	155.14%	82.80	$15,628	$754,836	$16,142	($49,192)	8.5	10/1/11 - 5/31/12
21	114.77%	131.20	$12,448	$2,170,174	$18,984	($19,396)	3.4	12/1/12 - 3/31/14
22	100.97%	24.27	$6,115	$272,627	$11,351	($8,641)	17.3	3/1/11 - 12/31/12
23	100.46%	39.09	$13,958	$727,955	$18,708	($8,148)	17.6	10/1/12 - 1/31/14
24	90.88%	43.50	$54,739	$1,709,242	$37,479	($25,541)	10.9	5/1/11 - 1/31/12
25	193.51%	98.97	$12,115	$1,800,143	$35,197	($49,608)	7.5	3/1/12 - 8/31/13
26	176.83%	58.13	$3,664	$408,131	$12,425	($1,637)	10.1	12/1/11 - 10/31/13
27	113.71%	69.93	$17,094	$2,786,866	$45,320	($73,005)	7.5	9/1/12 - 12/31/14
Totals:			**$709,815**	**$94,688,119**	**$1,000,044**	**($1,374,202)**		
Averages:	**110.90%**	**105.00**	**$26,289**	**$3,506,967**	**$37,039**	**($50,896)**	**9.0**	