

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH  
SECURITIES DIVISION  
ONE ASHBURTON PLACE, ROOM 1701  
BOSTON, MASSACHUSETTS 02108**

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IN THE MATTER OF: ) )  
 ) )  
JANNEY MONTGOMERY SCOTT LLC ) )  
 ) )  
RESPONDENT. ) Docket No. E-2019-0050

**ADMINISTRATIVE COMPLAINT**

**I. PRELIMINARY STATEMENT**

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “Enforcement Section” and the “Division,” respectively) files this Administrative Complaint (the “Complaint”) to commence an adjudicatory proceeding against Janney Montgomery Scott LLC (“Janney”) (“Respondent”) for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and 950 MASS. CODE REGS. 10.00 - 14.413 (the “Regulations”). The Enforcement Section alleges that Respondent Janney engaged in acts and practices in violation of Section 204 of the Act and Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all of the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondent to permanently cease and desist from further conduct in violation of the Act and Regulations; 4) censuring Respondent; 5) requiring Respondent to engage an independent compliance consultant to review and establish written policies and procedures related to

the short-term trading of Class A shares of mutual funds; 6) requiring Respondent to provide a verified accounting of all proceeds which were received as a result of the alleged wrongdoing; 7) requiring Respondent to conduct a review of all customer accounts serviced by its agent Stephen Querzoli during the relevant time period; 8) requiring Respondent to review its supervisory procedures to ensure compliance with applicable state and federal laws; 9) requiring Respondent to pay restitution to fairly compensate investors for all losses attributable to the alleged wrongdoing; 10) requiring Respondent to disgorge all profits and direct or indirect compensation and remuneration received by Respondent in connection with the alleged wrongdoing; 11) imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 12) taking any such further actions which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

## **II. SUMMARY**

The Enforcement Section brings this action against Janney Montgomery Scott LLC (“Janney”) for violations of the Act in connection with the purchase and sale of mutual funds. Janney is a registered broker-dealer and investment adviser headquartered in Philadelphia, Pennsylvania, with branch offices located in Massachusetts. Stephen Querzoli (“Querzoli”) is a former broker-dealer agent employed by Janney in Massachusetts. Acting in his capacity as a broker-dealer agent, Querzoli regularly purchased Class A shares of mutual funds (“Class A shares”) for his customers. Between 2012 and 2018, Querzoli generated approximately \$192,055.21 in commissions and fees in connection with the purchases and sales of Class A shares. Janney paid Querzoli

approximately \$78,776.61 in commission during that time period for trading Class A shares in the accounts of four customers.

Mutual funds are pooled investments that invest in stocks, bonds, and other financial assets. Shares of mutual funds are sold to investors in multiple share classes with different types and sizes of fees. Class A shares of mutual funds typically have front-loaded fees, but lower annual expenses compared to other share classes. Some mutual funds also reduce the front-loaded fees as the investment amount increases beyond certain benchmarks known as “breakpoints.” Class A shares are therefore often more costly in the short term, but become more cost-effective than Class C shares of mutual funds (“Class C shares”) after they are held for longer periods of time, generally 3 to 5 years or more. Class C shares generally do not have front-loaded fees, but come with relatively higher annual expenses than Class A shares. Class C shares are therefore often more appropriate for customers who wish to hold mutual funds for shorter holding periods.

The purchase of Class A shares typically results in a front-loaded sales charge of up to 5.75%, and frequent purchases can generate high commissions for broker-dealers and their agents. Since 2012, Querzoli has engaged in the short-term trading of Class A shares of mutual funds. Statements from Querzoli’s customer accounts reflect sales of Class A shares as soon as five months after their purchase, over two and a half years before the mutual fund reached even the minimum range of the typical holding period for long-term mutual fund investments.

For example, on August 27, 2012, and September 17, 2012, Querzoli purchased 2548.42 and 3604.53 Class A shares, respectively, for a Massachusetts customer at a total

cost of \$60,000. Querzoli generated \$2,312.50 in front-loaded fees from the trades, \$1,029.06 of which he received as commissions. On May 20, 2013, and July 25, 2013, Querzoli sold those Class A shares for \$55,712.85, a loss of \$4,287.15 to the customer. The customer had held the shares for less than a year.

Switching is the process of selling one mutual fund with a sales charge to purchase another mutual fund with a sales charge. Querzoli often used proceeds from the sales of Class A shares to purchase other Class A shares. For example, on November 22, 2013, Querzoli sold a customer's 978.75 Class A shares for \$29,528.74. The same day, Querzoli used the proceeds from that sale to purchase 301.66 and 1076.1 Class A shares for \$29,300 from two different mutual funds. This resulted in new front-loaded fees of \$1,133.75 to the customer and additional commissions for Querzoli and Janney.

Additionally, Querzoli traded with discretion in at least one Massachusetts customer's accounts without written authorization to do so. The customer had no investment experience and relied completely on Querzoli for investment advice. Querzoli kept in touch with the customer every few months to update her on the value of her investments, but they did not discuss specific trades and she was never asked to approve any trades. Further, the customer did not reach out to Querzoli to facilitate any unsolicited trades, despite Querzoli's reports to Janney that 26 trades in that customer's account were unsolicited.

Janney had knowledge of Querzoli's improper trading practices, yet left Querzoli to act unchecked even after discovering his short-term Class A share trading activity through their own inquiry. Janney flagged Querzoli for internal review in 2015 due to his consistently high switch activity relative to other registered representatives at the firm,

his failure to achieve breakpoints for Class A shares, and his short hold periods for Class A shares. Janney's compliance found that Querzoli had a pattern of short hold periods for Class A shares during 2014 and 2015. Janney examined a rolling 12-month period in which Querzoli sold, or recommended the sale of, Class A shares for three customers that were all held on average for less than 12 ½ months. For another customer, every Class A share sold in 2015 had been held for 18 months or less.

In November 2015, Janney's branch manager spoke to Querzoli about considering Class C shares of mutual funds for his customers rather than Class A shares. An employee overseeing the review of Querzoli's trading activity stated that she would check to see whether Querzoli was beginning to purchase Class C shares for shorter-term trading. Without taking further action, Janney closed the investigation six months later. However, Querzoli continued his practice of purchasing Class A shares for at least four customers during the time he was under review and for several years thereafter until his termination from Janney in November 2018. In fact, Querzoli made only three purchases of Class C shares during his time at Janney across all four of these customer's accounts.

With this action, the Enforcement Section of the Division seeks to stop Respondent from engaging in conduct which violates Massachusetts securities laws.

### **III. JURISDICTION AND AUTHORITY**

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.
2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to

conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations.

3. This proceeding is brought in accordance with Sections 204 of the Act and its Regulations.

4. The Enforcement Section reserves the right to amend this Complaint and bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

#### **IV. RELEVANT TIME PERIOD**

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of June 28, 2012 to November 30, 2018 (the “Relevant Time Period”).

#### **V. RESPONDENT**

6. Janney Montgomery Scott LLC (“Janney”) is a limited liability company with headquarters in Pennsylvania. Janney has been registered as a broker-dealer in Massachusetts since July 31, 1981. Janney has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 463.

#### **VI. RELATED INDIVIDUAL**

7. Stephen Querzoli (“Querzoli”) is a resident of Massachusetts. Querzoli has a FINRA CRD number of 1327734. Querzoli was registered with multiple firms as a broker-dealer agent in Massachusetts from 1999 to 2018. Most recently, Querzoli was a registered agent with Janney in Massachusetts from June 28, 2012 to November 30, 2018.

## VII. STATEMENT OF FACTS

### A. The Security

#### i. Mutual Funds

8. A mutual fund is a pooled investment of funds from many investors that invests in stocks, bonds, and other assets.<sup>1</sup> Mutual funds are sold by the fund itself, or through a broker for the fund, and are not sold on a secondary market. The price that investors pay for mutual fund shares is the fund's approximate net asset value per share plus any fees that the fund charges at purchase, known as a sales load. Mutual funds are sold to investors as shares of different classes with varying sizes and types of fees.

9. Class A shares of mutual funds are generally long-term investments designed to be held for at least three to five years or more because of their significant front-loaded fees. The front-loaded fees are typically between 2-5.75% of the total investment and are paid to the selling brokers. The agent who recommends the customer purchase the Class A shares receives a portion of the sales load.

10. As higher volumes of Class A shares of mutual funds are purchased, the front-loaded fees are typically reduced at intervals known as "breakpoints." The first breakpoint is typically reached by investing over \$50,000, but the existence and size of the breakpoints depend on the fund.

11. Class C shares of mutual funds typically do not have front-loaded fees, but generally also have higher annual fees than Class A shares that cannot exceed .75% of a fund's net asset value per year. As a result, Class C shares are generally more suitable than Class A shares for holding periods less than 3 years. Some Class C shares may also

<sup>1</sup> See United States Securities and Exchange Commission, Mutual Funds and Exchange-Traded Funds (ETFs) – A Guide for Investors, <https://www.sec.gov/reportspubs/investor-publications/investorpubsinwsmfhtm.html#MF3> (last visited on May 7, 2019).

charge fees up to 1% as a contingent deferred sales charge for shares sold within one year of purchase.

12. Switching is the selling or redemption of a mutual fund with a sales charge to purchase another mutual fund with a sales charge. Customers may incur multiple sales charges by changing from one mutual fund to another. Switches may also incur tax consequences for customers.

13. An agent who recommends the sale of Class A shares before they could be considered long-term purchases and uses the proceeds of the sale to purchase another front-loaded Class A investment harms investors. These practices prevent customers from benefitting from the comparatively low annual fees of Class A shares, inhibit customers' investments from recovering from the original purchase's front-loaded sales charge, and cause the customer to incur additional front-loaded sales charges, leading to additional commissions for the broker-dealer and its agent.

**B. Janney Montgomery Scott LLC**

14. Janney maintains branch offices throughout Massachusetts. Janney is registered with Massachusetts as a broker-dealer and is notice-filed as an investment adviser in Massachusetts.

15. Janney hired Querzoli as a broker-dealer agent<sup>2</sup> in June 28, 2012.

16. Querzoli was terminated from employment at Janney in November 2018 for failing to return from an approved leave of absence.

17. Querzoli consistently appeared among Janney's quarterly reports of the 20 Financial Advisers with the highest switch activity in 2014 and 2015.

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<sup>2</sup> Janney refers to its registered representatives as "Financial Advisers" regardless of their registration as broker-dealer agents or investment adviser representatives. Querzoli is registered solely as a broker-dealer agent.



### **C. The Violative Conduct**

#### **i. Querzoli's Improper Short-Term Trading of Class A shares of Mutual Funds**

18. Querzoli has engaged in short-term trading of Class A shares of mutual funds since as early as 2012. Querzoli has recommended purchases of Class A shares to at least four of his customers.

19. Janney and Querzoli split the front-loaded commissions generated by Querzoli's purchases of Class A shares in his customers' accounts. Janney kept approximately 60% of the commissions from purchases of Class A shares and paid Querzoli approximately 40% of the commissions.

20. Despite the recommended longer-term holding periods for Class A shares, Querzoli often recommended the sale of, and ultimately sold, Class A shares only months after the initial purchases. These sales have occurred as soon as five months after the purchase of the Class A shares.

21. Querzoli often used the proceeds of Class A sales to fund purchases of other Class A shares with new front-loaded sales charges.

22. Querzoli's short-term trading of Class A shares prevented customers' investments from recovering from the front-loaded fees associated with their purchases and forced customers to bear the costs of additional front-loaded fees for subsequent switches.

23. Querzoli engaged in short-term trading of Class A shares multiple times in the accounts of four customers, three of whom were from Massachusetts.

##### *a. Customer One*

24. Customer One, a 73-year-old Massachusetts resident, was a Janney customer of Querzoli during the Relevant Time Period. Customer One maintains a trust account and a

retirement account with Janney. Customer One was a customer of Querzoli prior to the start of his employment with Janney in 2012 and through his termination from Janney in 2018.

25. Customer One's accounts both indicate a time horizon of greater than five years and investment objectives of "Growth & Income - Moderate."

26. Customer One's time horizon and objectives were consistent throughout the relevant time period.

27. Since 2012, Querzoli repeatedly recommended that Customer One buy Class A shares of mutual funds. All of the shares of mutual funds that Querzoli purchased for Customer One were Class A shares.

28. Customer One was inexperienced with investments and relied entirely on Querzoli for advice regarding investment decisions.

29. Querzoli executed 31 purchases and 39 sales of Class A shares in Customer One's accounts during the relevant time period.

30. The following trades are examples of Querzoli's short-term trading of Class A shares in Customer One's accounts.

31. On August 27, 2012, and September 17, 2012, Querzoli purchased 2548.42 and 3604.53 Class A shares, respectively, for Customer One at a total cost of \$60,000. Querzoli earned \$2,312.50 in front-loaded fees for Janney from the trades, \$1,029.06 of which he received as commissions. On May 20, 2013, and July 25, 2013, Querzoli sold the Class A shares for \$55,712.85, a loss of \$4,287.15 to the customer. Customer One had held the shares for less than a year.

32. On July 25, 2014, Querzoli sold 1,091.95 Class A shares in Customer One's accounts after holding them for 16 months. Janney earned approximately \$505 from a front-loaded sales charge for the original purchase.

33. On May 15, 2015, Querzoli sold 906.6 Class A shares in Customer One's accounts after holding them for 13 months. Janney earned \$800 from a front-loaded sales charge for the original purchase.

34. On May 18, 2015, Querzoli sold 844.10 Class A shares in Customer One's accounts after holding them for 15 months. Janney earned \$760 from a front-loaded sales charge for the original purchase.

35. On July 15, 2015, Querzoli sold 2100.10 Class A shares in Customer One's accounts after holding approximately 1,050 shares for 11 months and approximately 1,050 shares for 17 months. Janney earned \$2,250 from a front-loaded sales charge for the original purchase.

36. On September 5, 2017, Querzoli sold 154.53 Class A shares in Customer One's accounts after holding them for only 11 months. Janney earned \$1,125 from a front-loaded sales charge for the original purchase.

b. *Customer Two*

37. Customer Two, a 78-year-old Massachusetts resident, was a Janney customer of Querzoli during the relevant time period. Customer two maintains three accounts with Janney: a trust account, a retirement account, and a single account.

38. Customer Two's accounts had time horizons of more than five years and an investment objective of "Growth & Income - Aggressive."

39. Querzoli executed 56 purchases and 50 sales of Class A shares in Customer Two's accounts during the relevant time period.

40. The following trades are examples of Querzoli's short-term trading of Class A shares in Customer Two's accounts.

41. On October 28, 2014, Querzoli sold 982 Class A shares in Customer Two's accounts after holding them for only nine months. Janney earned \$1,785 from a front-loaded sales charge for the original purchase.

42. On November 13, 2015, Querzoli sold 1,355 Class A shares in Customer Two's accounts after holding them for only 11 months. Querzoli originally purchased 6,643.05 Class A shares, earning Janney a commission of \$3,000 from the front-loaded sales charge. Querzoli sold the remaining approximately 4,800 Class A shares by September 27, 2016, after holding them for less than 21 months.

43. On October 28, 2013, Querzoli sold 1,511.49 Class A shares in Customer Two's accounts after holding them for only seven months. Janney earned a commission of \$937.5 from the front-loaded sales charge for the original purchase.

c. Customer Three

44. Customer Three, a 61-year-old Massachusetts resident, was a Janney customer of Querzoli during the relevant time period. Customer Three maintains two accounts with Janney: a retirement account and a single account.

45. Customer Three's accounts had time horizons of more than five years and investment objectives of "Growth & Income – Moderate."

46. Querzoli executed 45 purchases and 51 sales of Class A shares in Customer Three's accounts during the relevant time period.

47. The following trades are examples of Querzoli's short-term trading of Class A shares in Customer Three's accounts.

48. On November 22, 2013, Querzoli sold 978.75 Class A shares in Customer Three's accounts for \$29,528.74. The same day, Querzoli used the proceeds from that sale to purchase 301.66 and 1076.1 Class A shares for \$29,300 from two different mutual funds. This resulted in new front-loaded sales charges of \$1,133.75 to the customer.

49. On November 21, 2014, Querzoli sold 7,048.87 Class A in Customer Three's accounts after holding them for only seven months. Janney earned \$2,100 from the front-loaded sales charge for the original purchase.

50. On February 14, 2017, Querzoli sold 2,672.61 Class A shares in Customer Three's accounts after holding them for only five months. Janney earned \$1,440 from the front-loaded sales charge for the original purchase.

51. On April 18, 2018, Querzoli sold 1,929.75 Class A shares in Customer Three's accounts after holding them for only 11 months. Janney earned \$1,425 from the front-loaded sales charge for the original purchase.

52. On April 23, 2018, Querzoli purchased 1,662.05 Class A shares for Customer Three. Janney earned \$2,400 from the front-loaded sales charge for the original purchase.

d. *Customer Four*

53. Customer Four, a 72-year-old resident of New Jersey, was a Janney customer of Querzoli during the relevant time period. Customer Four maintains three accounts with Janney: two retirement accounts and a single account.

54. All three of Customer Four's accounts have an investment objective of "Growth & Income – Moderate." One of Customer Four's retirement accounts had a time horizon

of greater than five years and his other two accounts had time horizons of within five years.

55. Querzoli executed 39 purchases and 66 sales of Class A shares in Customer Four's accounts between October 26, 2012, and January 7, 2017.

56. The following trades are examples of Querzoli's short-term trading of Class A shares in Customer Four's accounts.

57. On September 26, 2017, Querzoli sold 746.08 Class A shares in Customer Four's accounts after holding them for two years. Janney earned \$1357.50 in commission from the front-loaded sales charge for the original purchase.

58. On August 30, 2016, Querzoli sold 2,492.05 Class A shares after holding the shares in Customer Four's accounts for seven months. Janney earned \$940 in commission from the front-loaded sales charge for the original purchase.

59. On December 19, 2016, Querzoli sold 3,602.31 Class A shares after holding the shares in Customer Four's accounts for less than two years. Janney earned \$2,000 in commission from the front-loaded sales charge for the original purchase.

**ii. Querzoli's Improper Discretionary Trading**

60. Querzoli was not registered with Massachusetts as an investment adviser during the relevant time period.

61. Querzoli called Customer One every few months to update her on her account's value.

62. Customer One did not maintain a fee-based investment account with Querzoli.

63. Querzoli operated Customer One's accounts through his own discretion, but did not acquire written authorization from Customer One to do so.

64. Querzoli did not discuss individual trades with Customer One and Customer One did not approve individual trades. Customer One also did not reach out to Querzoli to direct him to perform any trades.

65. Trade blotters for Customer One's accounts show 26 trades of Class A shares that are marked as unsolicited.

**iii. Janney's Failure to Provide Adequate Supervision**

*a. Janney's Monitoring of Querzoli's Short-term Trading of Class A Shares of Mutual Funds*

66. Janney opened an internal investigation into Querzoli's short-term trading practices on August 5, 2015.

67. On August 5, 2015, a Janney employee wrote in a risk pipeline e-mail that "[Querzoli] has consistently appeared in the top 20 [financial advisers] on the quarterly [mutual fund] suitability reports for switch activity. While he has a high number of switch activity relative to other [financial advisers] in the firm (168 in 2014, 3 through 7/31/15), the prominent issue is the short hold periods of A share mutual funds."

68. She also stated that Querzoli's purchases were "typically achieving first level breakpoints or no breakpoint at all. Hold periods are two years or less, often times within a year. C shares may be more suitable for these clients. BOM [Branch Office Manager] should comment on the strategy behind this activity and the suitability of short hold A shares."

69. The Janney employee identified the accounts of Customer One, Customer Three, and Customer Four as having problematic Class A share hold periods for the rolling twelve month period. Customer One's accounts had nine sales for an average hold period of 10.6 months, Customer Three's accounts had seven sales for an average hold period of

9.4 months, and Customer Four's accounts had seven sales for an average hold period of 12.5 months.

70. Customer Two's accounts were added to Querzoli's inquiry on November 12, 2015 "due to short hold periods of A shares. All [mutual fund] shares were held 18 months or less."

71. On November 23, 2015, Querzoli's branch manager wrote that Querzoli "monitors fund positions and when there is a downgrade or under performance he will reallocate monies. He will consider C shares or funds with lower annual expenses." Querzoli's branch manager instructed Querzoli to start using Class C shares of mutual funds.

72. In a December 7, 2015, note related to Customer Two's accounts, Querzoli's manager wrote:

I told [the customer] I would consider the fee option based on her past activity. i[sic]explained she did 30 trades and if she were on fee she could have saved 13k in commissions. I told her I would talk to [Querzoli]. [...] I called [Querzoli] and spoke to him I told him I spoke to thr [sic] client. I told him to follow up with [the client] on the fee account. If client doesn't want fee program he should consider C shares as that would have been cheaper for her.

73. A Janney employee overseeing Querzoli's inquiry indicated she would "check mid-January to see whether [Querzoli] is beginning to use C shares for this type of activity" and recommended closing the inquiry into Querzoli.

74. While Janney monitored Querzoli's trading activity, Querzoli executed: three more purchases of Class A shares in Customer One's accounts; five more purchases of Class A shares in Customer Two's accounts; three more purchases of Class A shares in



Customer Three's accounts; and five more purchases of Class A shares in Customer Four's accounts.

75. Querzoli executed no trades of Class C shares while Janney was monitoring his trading activity.

76. On June 24, 2016, a different Janney employee wrote that "[t]his situation should be monitored. Switch activity appears to have decreased."

77. Despite Querzoli's continued purchasing and selling Class A shares in these four customers' accounts, Janney stopped monitoring Querzoli and closed the internal investigation on June 24, 2016.

78. From the time of his discussion with his branch manager on or around November 23, 2015, through his termination in November 2018, Querzoli executed 193 more trades involving Class A shares in four customers' accounts. During that same time period, he executed only three purchases of Class C shares in the four customers' accounts combined.

*b. Janney Failed to Meaningfully Enforce its Written Policies and Procedures*

79. In Janney's Written Policies and Procedures, the section titled "Policy on Class C Shares Purchases" describes its brokers' suitability obligation to the customer as:

the requirement to minimize sales charges paid for mutual fund shares when consistent with the client's investment objectives. Class C shares are generally appropriate for short term investments of 1 to 3 years. **As the time horizon of the investment increases toward 5 years, Class A shares are generally more appropriate than Class C** shares due to the lower annual expenses and the fact that Class C shares generally do not convert to Class A shares

[Emphasis added].

80. In Janney’s Written Policies and Procedures, the section on “Investment Company Products; Supervision” states:

**Investment Company Products (i.e. Mutual Funds, UITs, Closed End Funds and Variable Annuities) generally are suitable only as long-term investments, and cannot be regarded as a proper vehicle for short-term trading.** Suitability requires not only that the product’s investment objective match the client’s investment objective, but also that the fees and sales charges of the investment company product are appropriate for, and in the best interest of, the client.

[Emphasis added].

81. Section F-1 of Janney’s policies and procedures, titled “Suitability Guideline on Mutual Fund Switch”<sup>3</sup>, states:

Short-Term Trading Presumptively Unsuitable

Trading mutual fund shares on a short-term basis on its face raises the question of a violation of the responsibility of fair dealing with clients. While “short term” has not been explicitly defined, the SEC decision[s] have focused on periods of less than one year as short term, and have noted switches with holding periods of less than one year. [. . .] Three years may now be considered a long holding period. Any particular holding period for mutual funds is not per se suitable or unsuitable for a particular client. Having held a fund for some time does not constitute a sufficient reason for its sale.

Pattern of Switches Presumptively Unsuitable

A pattern of switches (including the frequency at which switches are made, and the extent to which switches are general) in client accounts, where there is no indication of a change in the investment objectives of the clients and where new sales loads are incurred, raises the presumption of unsuitability.

82. Janney’s policies and procedures also state that:

[i]n recommending a class of a mutual fund, each [Financial Adviser] shall consider – [t]he nature of the account (e.g. ERISA, Charitable 501c(3), Non-profit;<sup>4</sup> [h]ow long the client plans to hold the fund; [t]he size of the client’s investment; [t]he expenses the client will be paying for each class; and [w]hether the client qualifies for any sales charge discounts.

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<sup>3</sup> Janney’s written policies and procedures were amended to add this section in 2014.

<sup>4</sup> Janney’s written policies and procedures were amended in 2015 to require the broker to consider the nature of the account.

83. Despite the foregoing written policies and procedures, Querzoli consistently engaged in the short-term trading of Class A shares during his employment as a registered representative at Janney, as discussed above.

84. Janney's policies and procedures additionally require that a totality of the circumstances test be applied when reviewing the suitability of a switch between mutual fund investments. The test involves evaluating the pattern and frequency of switches between fund families, characteristics of the mutual funds, amount of the loads and costs to the customer, economic feasibility of the customer making a profit, the net investment advantage of the switch to the customer, and whether the transaction fees would undermine the financial gain or investment objective to be achieved by the switch.

85. Querzoli's rationale for his short-term trading of Class A shares of mutual funds often pointed to stagnant or decreasing share prices or sales to lock in profits. Janney's policies and procedures, however, indicate that "[w]hile a drastic drop in the price of a fund may be a reasonable ground to switch out of the fund, mutual funds are meant to be long term investment[s] and are not proper investment vehicles for ready adjustment to changing markets."

86. Janney's policies and procedures indicate that the branch manager is responsible for post-trade review for suitability and that "[f]or any switch between mutual funds of different families, the [branch manager] will promptly review the transaction for suitability.

87. No records show that Querzoli's branch manager questioned Querzoli's trading activity involving Class A shares.

88. Despite its knowledge of Querzoli's practices, Janney allowed Querzoli to continue purchasing Class A shares for short-term trading in his customers' accounts for years rather than ensuring that he purchase the more appropriate Class C shares.

89. Further, Querzoli's short-term trading often involved such short holding periods that his trades would often not have been suitable even for Class C shares, which Janney's policies and procedures indicate should typically be held for at least one year despite generally being considered more suitable for shorter investment periods than Class A shares.

### **VIII. VIOLATIONS OF LAW**

#### **Count I – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)**

90. Section 204 of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

[...]

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

91. Section 12.204 of the Regulations provides:

(1) Dishonest and Unethical Practices in the Securities Business. (a) Broker-dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or other such appropriate action[.]

950 MASS CODE REGS. § 12.204.

92. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in Section VII above.

93. The conduct of Respondent Janney, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

**Count II – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)**

94. Section 204 of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

[...]

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

95. Section 12.204 of the Regulations provides:

(1) Dishonest and Unethical Practices in the Securities Business. (a) Broker-dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or other such appropriate action:

[...]

3. Inducing trading in a customer's account which is excessive in size and frequency in view of the financial resources and character of the account.

950 MASS CODE REGS. § 12.204.

96. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in Section VII above.

97. The conduct of Respondent Janney, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

**Count III – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)**

98. Section 204 of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

[...]

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

99. Section 12.204 of the Regulations provides:

(1) Dishonest and Unethical Practices in the Securities Business. (a) Broker-dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or other such appropriate action:

[...]

4. Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

950 MASS CODE REGS. § 12.204.

100. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in Section VII above.

101. The conduct of Respondent Janney, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

**Count IV – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)**

102. Section 204 of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

[...]

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

103. Section 12.204 of the Regulations provides:

(1) Dishonest and Unethical Practices in the Securities Business. (a) Broker-dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or other such appropriate action:

[...]

5. Executing a transaction on behalf of a customer without authorization to do so.

950 MASS CODE REGS. § 12.204.

104. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in Section VII above.

105. The conduct of Respondent Janney, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

**Count V – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)**

106. Section 204 of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

[...]

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

107. Section 12.204 of the Regulations provides:

(1) Dishonest and Unethical Practices in the Securities Business. (a) Broker-dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or other such appropriate action:

[...]

6. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of the order.

950 MASS CODE REGS. § 12.204.

108. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in Section VII above.

109. The conduct of Respondent Janney, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

**Count VI – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)**

110. Section 204 of the Act provides:



The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

[...]

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

111. Section 12.204 of the Regulations provides:

(1) Dishonest and Unethical Practices in the Securities Business. (a) Broker-dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or other such appropriate action:

[...]

23. Marking any order ticket or confirmation as unsolicited when in fact the transaction was solicited.

950 MASS CODE REGS. § 12.204.

112. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in Section VII above.

113. The conduct of Respondent Janney, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

**Count VII – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)**

114. Section 204 of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar

status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

[...]

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

115. The Enforcement Section re-alleges and restates the allegations of fact set forth in Section VII above.

116. The conduct of Respondent Janney, as described above, constitutes a violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

#### **IX. STATUTORY BASIS FOR RELIEF**

Section 407A of the Act provides, in pertinent part:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

#### **X. PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

## **XI. RELIEF REQUESTED**

The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact all allegations set forth in paragraphs 1 through 89, inclusive of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondent to permanently cease and desist from further conduct in violation of the Act and Regulations;
- D. Censuring Respondent;
- E. Requiring Respondent to engage an independent compliance consultant to review and establish written policies and procedures related to the short-term trading of Class A shares of mutual funds;
- F. Requiring Respondent to provide a verified accounting of all proceeds which were received as a result of the alleged wrongdoing;
- G. Requiring Respondent to conduct a review of all customer accounts serviced by its agent Stephen Querzoli during the relevant time period;
- H. Requiring Respondent to review its supervisory procedures to ensure compliance with applicable state and federal laws;
- I. Requiring Respondent to pay restitution to fairly compensate investors for all losses attributable to the alleged wrongdoing;
- J. Requiring Respondent to disgorge all profits and direct or indirect compensation and remuneration received in connection with the alleged wrongdoing;

Imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and

- L. Taking any such further actions which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION  
ENFORCEMENT SECTION**

By and through its attorneys,

  
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Dated: May 7, 2019