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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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<b>SECURITIES AND EXCHANGE</b>		:	
<b>COMMISSION,</b>		:	
	<b>Plaintiff,</b>	:	<b>24 civ. 7274</b>
	<b>v.</b>	:	
<b>BARIS CABALAR,</b>		:	<b>Jury Trial Demanded</b>
	<b>Defendant.</b>	:	<b>ECF Case</b>
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**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendant Baris Cabalar (“Cabalar” or “Defendant”) alleges as follows:

**SUMMARY**

1. From January 2019 through October 2021 (“Relevant Period”), Cabalar was a registered representative at PHX Financial, Inc. (“PHX Financial”), a broker-dealer headquartered in New York, New York, with branch offices in Fort Lauderdale, Florida, and Hauppauge, New York. During the Relevant Period, Cabalar recommended to eight retail customers (“Affected Customers”) in their PHX brokerage accounts (“Accounts”) a short-term,

high volume trading strategy without a reasonable basis that such a strategy would be profitable, and failing to disclose when recommending such trading that the commissions and fees that PHX and Cabalar charged would likely result in customers losing money.

2. Cabalar's recommendations to the Affected Customers that they engage in short-term, high volume trading in their Accounts that he had no reason to believe would be profitable violated Cabalar's obligation to have a reasonable basis for the investment recommendations he made to his customers.

3. Cabalar made at least one explicit misrepresentation to an Affected Customer, telling him that in around one year, he could recoup \$70,000 in losses the Affected Customer had incurred with another broker, without a reasonable basis for saying so, given the trading strategy he recommended.

4. Cabalar consistently solicited customers to trade frequently as part of his short-term, high volume trading strategy. In making recommendations to all of the Affected Customers, Cabalar implicitly represented to them that he had a reasonable basis for his recommendations, without disclosing that the strategy he recommended was likely to cause losses.

5. As a result of these recommendations, Cabalar caused the Affected Customers together to lose over \$1,000,000 in their Accounts during the Relevant Period. During the Relevant Period, through their improper trading strategies, PHX Financial and Cabalar together made over \$400,000 in commissions and fees from the Accounts.

6. Additionally, Regulation Best Interest ("Reg BI") [17 C.F.R. § 240.15l-1], promulgated under the Securities Exchange Act of 1934 ("Exchange Act") went into effect on June 30, 2020. Between October 1, 2020 and October 31, 2021 ("Reg BI Period"), Cabalar

violated Reg BI by, among other things, failing to act in the best interest of the Affected Customers, by placing the financial or other interests of PHX Financial or himself ahead of the interests of the Affected Customers.

### **VIOLATIONS**

7. Through the conduct alleged herein, the Defendant, directly or indirectly, singly or in concert, violated and is 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 Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5 [17 C.F.R. § 240.10b-5], 15l-1(a)(1) [17 C.F.R. § 15l-(1)(a)], and 15l-1(a)(2)(ii) [17 C.F.R. § 240.15l-1(a)(2)(ii)].

8. Unless the Defendant is permanently restrained and enjoined, he 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.

### **NATURE OF PROCEEDINGS AND RELIEF SOUGHT**

9. The Commission brings this action pursuant to the authority conferred upon it by Securities Act Sections 20(b) and 20(d) [15 U.S.C. §§ 77t(a) and 77t(d)] and Exchange Act Section 21(d) [15 U.S.C. § 78u(d)].

10. The Commission seeks a final judgment: (a) permanently enjoining Defendant from violating the federal securities laws and rules this Complaint alleges he has violated; (b) ordering Defendant to disgorge all ill-gotten gains he received as a result of the violations alleged here and to pay prejudgment interest on it, pursuant to Exchange Act Sections 21(d)(3), 21(d)(5), and 21(d)(7) [15 U.S.C. §§ 78u(d)(3), 78u(d)(5), and 78u(d)(7)]; (c) ordering Defendant to pay a civil monetary penalty pursuant to Securities Act Section 20(d) [15 U.S.C.

§ 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)]; and (d) ordering any other relief the Court may deem just and proper.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to Securities Act Section 22(a) [15 U.S.C. § 77v(a)] and Exchange Act Section 27 [15 U.S.C. § 78aa].

12. Defendant, directly or indirectly, has made use of the instrumentalities of interstate commerce or of the mails in connection with transactions, acts, practices, and courses of business alleged herein.

13. Venue lies in this District under Securities Act Section 22(a) [15 U.S.C. § 77v(a)] and Exchange Act Section 27 [15 U.S.C. § 78aa]. Defendant transacted business in the Eastern District of New York during the Relevant Period, and certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within this District, including that Defendant worked out of his employer's office in Hauppauge, New York and communicated with Affected Customers from that location.

### **DEFENDANTS**

14. **Cabalar**, age 42, resides in Wellington, Florida, and has been associated with PHX Financial from 2015 to the present as a registered representative. From 2015 through 2022, Cabalar worked out of PHX Financial's Hauppauge, New York office. Beginning in 2022, Cabalar moved to Florida and has worked out of PHX Financial's Fort Lauderdale, Florida office. He has been registered with FINRA since 2013 and holds FINRA Series 7 and 63 licenses.

## **RELATED ENTITY**

15. **PHX Financial, Inc.**, is a Florida corporation with its main office in New York City and branch offices in Hauppauge, New York, and Fort Lauderdale, Florida. It has been registered with the Commission as a broker-dealer since 2007.

## **FACTS**

### **I. Background**

16. As a registered representative at PHX Financial, Cabalar solicited customers to open PHX brokerage accounts and recommended the purchases and/or sales of securities to them.

17. Cabalar's compensation from PHX Financial was on a commission-only basis.

18. For typical securities such as stocks and bonds that trade on exchanges, such as the New York Stock Exchange, when a customer bought or sold such securities, Cabalar and PHX Financial charged a commission of up to 3.5% of the value of the trade. Additionally, PHX Financial charged a \$49 transaction fee to the customer, which PHX called a "Minimum Firm Commission." PHX split the Minimum Firm Commission with its clearing firm, with PHX retaining \$40 and the clearing firm the remaining \$9.

19. Cabalar received 70% of each commission charged, and PHX Financial received the other 30% of the commission. Cabalar did not receive a share of the Minimum Firm Commissions that PHX charged to customers, but they were another cost he should have considered in recommending his short-term, high volume trading strategy.

20. Defendant did no due diligence before making trade recommendations to determine the total costs over time that his recommendations were imposing on the Affected Customers in their Accounts, including the commissions of up to 3.5% of the transaction that he

split with PHX and the Minimum Firm Commission PHX charged for every transaction.

Defendant maintained no records showing that he ever considered the aggregate costs of the short-term, high volume trading that he recommended to the Affected Customers

21. The cost-to-equity ratio, also referred to as the break-even ratio, measures the amount an account must appreciate annually to cover costs, such as commissions and fees associated with trading in the account.

22. A cost-to equity ratio of 20% or higher is indicative of excessive trading, although lower cost-to-equity ratios can also reflect excessive trading.

23. Annual turnover rate represents the total value of annual purchases made in the account divided by the account's average monthly balance: the number of times per year a customer's securities are replaced by new securities.

24. A turnover rate of six is indicative of excessive trading, although lower turnover rates can also reflect excessive trading.

## **II. Defendant Made a Series of Recommendations to Eight Customers Without a Reasonable Basis And Failed To Disclose That The Commissions and Fees Could Make Them Lose Money**

25. Cabalar, as an associated person of a broker-dealer, is required to have a reasonable basis to believe that the recommendations that he makes are suitable for his retail customers. This means that Cabalar must understand the risks, rewards, and potential consequences (including the imposition of costs such as commissions and fees), of the recommendations that he makes to his customers.

26. The obligation to make recommendations that have a "reasonable basis" and which are "suitable" for customers is well-known in the industry, and Cabalar was aware of

those obligations from his years of work at multiple broker-dealers, and training provided by those broker-dealers.

27. During the Relevant Period, Defendant recommended a short-term, high-volume investment strategy to the eight Affected Customers in their Accounts without a reasonable basis. Cabalar recommended frequent purchases and sales of securities in the customers' Accounts, sometimes including a purchase and sale of the same security in the same day or week.

28. When making the trading recommendations to the Affected Customers for their Accounts, Defendant did not disclose that the commissions and fees he and PHX Financial charged made it likely that these customers would lose money through such trading.

29. The extremely high cost-to-equity ratios in the Accounts of the Affected Customers, shown in the charts below, demonstrate that Cabalar engaged in excessive trading in these Accounts during the Relevant Period.<sup>1</sup> The cost-to-equity ratios for these Accounts during the Relevant Period range from 40.41% – 61.22%. The cost-to-equity ratios for these Accounts during the Reg BI Period range from 40.41% – 51.94%.

30. Similarly, the turnover rates in the accounts of the Affected Customers, shown in the charts below, demonstrate excessive trading during the Relevant Period. The turnover rates during the Relevant Period range from 7.62 – 47.07. The turnover rates for these Accounts during the Reg BI Period range from 7.62 – 53.07.

31. During the Relevant Period, Cabalar's recommendations in the Affected Customer's Accounts resulted in the ratios, commissions and fees (costs), and losses shown below:

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<sup>1</sup> There was no trading in the Accounts of the Affected Customers between July 2020 and September 2020, and as such the Reg BI Period begins in October 2020.

Customer	Trade Period	Turnover Rate	Cost to Equity Ratio	Total Commissions	Total Loss	Total Commissions / Fees
Customer A	Jan 2019 through July 2021	9.05	43.38%	35,734.65	(94,202.95)	37,087.61
Customer B	Oct 2020 through Oct 2021	13.07	43.48%	45,228.08	(90,673.07)	46,380.29
Customer C	Oct 2020 through Sept 2021	10.01	46.37%	28,101.08	(34,974.00)	28,826.18
Customer D	March 2020 through Sept 2021	47.07	61.22%	48,681.08	(36,436.17)	49,433.94
Customer E	Oct 2020 through Sep 2021	7.62	40.41%	25,522.32	(55,084.04)	25,582.32
Customer F	Jan 2019 through May 2021	14.99	45.81%	82,884.34	(442,792.73)	87,136.29
Customer G	April 2020 through July 2021	12.87	53.11%	52,685.92	(209,052.25)	53,178.64
Customer H	Jan 2019 through Oct 2021	11.78	48.64%	85,077.87	(106,683.01)	86,467.19
<b>Totals</b>				<b>403,915.34</b>	<b>(1,069,898.22)</b>	<b>414,092.46</b>

32. During the Reg BI Period, Cabalar's recommendations in the Affected Customer's Accounts resulted in the ratios, commissions and fees (costs), and losses shown below:

Customer	Reg BI Period	Turnover Rate	Cost to Equity Ratio	Total Commissions	Total Loss	Total Commissions / Fees
Customer A	Oct 2020 through July 2021	8.88	42.12%	31,669.65	(78,672.06)	32,967.61
Customer B	Oct 2020 through Oct 2021	13.07	43.48%	45,228.08	(90,673.07)	46,380.29
Customer C	Oct 2020 through Sept 2021	10.01	46.37%	28,101.08	(34,974.00)	28,826.18
Customer D	Oct 2020 through Sept 2021	53.07	49.12%	27,120.08	(42,143.42)	27,598.87



Customer E	Oct 2020 through Sept 2021	7.62	40.41%	25,522.32	(55,084.04)	25,582.32
Customer F	Oct 2020 through - May 2021	13.49	45.59%	64,699.35	(424,141.76)	68,534.52
Customer G	Oct 2020 through July 2021	12.17	51.94%	42,674.92	(200,612.48)	43,027.51
Customer H	Oct 2020 through Oct 2021	12.02	51.78%	76,188.87	(53,010.47)	77,160.89
<b>Totals</b>				<b>341,204.35</b>	<b>(979,311.30)</b>	<b>350,078.19</b>

The trades summarized in Paragraph 32 are a sub-set of the trades summarized in Paragraph 31.

33. In each column of the chart in Paragraphs 31 and 32, almost all of the trades summarized were documented by PHX Financial as “solicited trades,” meaning that Cabalar recommended them to his customers. A few trades in the Total Loss column (approximately 0% to 6% per account) were part of round-trip transactions, and were not documented as solicited trades – *i.e.*, there was an unsolicited buy or sell trade that corresponded to a solicited buy or sell trade.

34. Cabalar failed to consider whether the high trade frequency, high-cost investment strategy he recommended for the Accounts was suitable for his customers, especially in light of the commissions and fees charged to them.

35. Cabalar knew, or recklessly disregarded, that the investment strategy of frequent trading he recommended for the Accounts was almost certain to lose money, and he had no reasonable basis to recommend that frequent trading strategy given the commissions and fees he and PHX Financial charged the Affected Customers.

36. Cabalar knew, or recklessly disregarded, that he had no reasonable basis to believe that the frequency with which he recommended the Affected Customers buy and sell

securities in their Accounts, combined with the per-trade commissions and fees he and PHX Financial charged his customers, would be suitable for any retail investor.

### **III. Regulation Best Interest**

37. As of June 30, 2020, Reg BI imposed an obligation on Cabalar, as an associated person of a broker, when making recommendations to his retail customers, to exercise reasonable diligence, care, and skill to have a reasonable basis to believe that the series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker, dealer, or associated person making the series of recommendations ahead of the interest of the retail customer.

38. Cabalar did not exercise reasonable diligence, care and skill to have a reasonable basis to believe that the investment strategy he recommended to the Affected Customers for their Accounts during the Reg BI Period, which strategy consisted of a series of recommendations to frequently buy and sell securities and incur high costs, was not excessive and did not place his financial interest ahead of those customers' best interest.

39. Before June 30, 2020, Cabalar received training in Reg BI from PHX Financial.

### **IV. Cabalar Made Material Misrepresentations and Omissions to the Affected Customers**

40. Defendant knowingly or recklessly misrepresented his recommended trading strategy as being profitable to at least one customer, when, as shown in the charts in Paragraphs 31 and 32, it was a high-cost strategy that left customers with little chance of generating a profit while generating significant commissions for Defendant.

41. When Customer D opened a brokerage account with PHX Financial in March 2020, he did so in part because he had previously lost \$70,000 he had invested with a different broker. Defendant told Customer D that he could help Customer D recoup those losses in around a year in his Account.

42. Defendant had no reasonable basis to tell Customer D he could recoup \$70,000 in around one year in his Account. Customer D's brokerage account at PHX Financial had approximately \$88,000 in net portfolio value in March 2020, which is when he opened his account. To recoup Customer D's \$70,000 in one year in Customer D's Account, Cabalar would have had to generate a net profit of approximately 79% in one year, not including PHX Financial and Cabalar's commissions and fees.

43. Cabalar's recommended trading strategy with frequent purchases and sales of securities in addition to the costs charged by Cabalar and PHX Financial made it even more unlikely that Cabalar could achieve a 79% return in Customer D's Account.

44. Furthermore, Defendant knowingly or recklessly misrepresented his recommended trading strategy to all of the Affected Customers when he recommended a series of frequent trades to them in their Accounts. By making those recommendations, Defendant implicitly represented to them that he had a reasonable basis for his recommendations.

45. Defendant failed to disclose, however, that the strategy he recommended to all the Affected Customers, with its attendant commissions and fees, was unlikely to be profitable.

### **FIRST CLAIM FOR RELIEF**

#### **Violations of Section 17(a) of the Securities Act**

46. The Commission re-alleges and incorporates by reference herein each and every allegation contained in Paragraphs 1-36, and 40-45.

47. Defendant, 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 the mails, (1) knowingly or recklessly has employed one or more devices, schemes or artifices to defraud, (2) knowingly, recklessly, or negligently has obtained money or property by means of one or more untrue statements of a material fact or omissions of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and/or (3) knowingly, recklessly or negligently have engaged in one or more transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

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

### **SECOND CLAIM FOR RELIEF**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

49. The Commission re-alleges and incorporates by reference here the allegations in Paragraphs 1–36, and 40-45.

50. Defendant, directly or indirectly, singly or in concert, in connection with the purchase or sale of securities and by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly or recklessly have (i) employed one or more devices, schemes, or artifices to defraud, (ii) made one or more untrue statements of a material fact or omitted to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they

were made, not misleading, and/or (iii) engaged in one or more acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

51. By reason of the foregoing, the Defendant, directly or indirectly, singly or in concert, has 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].

### **THIRD CLAIM FOR RELIEF**

#### **Violations of Exchange Act Rule 15l-1 (Regulation Best Interest)**

52. The Commission re-alleges and incorporates by reference here the allegations in Paragraphs 1-24, 29-33, and 37-39.

53. Beginning on October 1, 2020, Defendant, as an associated person of a broker or dealer, when making recommendations of securities transactions or investment strategies involving securities (including account recommendations) to retail customers, failed to act in the best interest of the retail customers at the time the recommendations were made, by placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer.

54. In particular, beginning on October 1, 2020, Defendant, as an associated person of a broker or dealer, in making recommendations, failed to exercise reasonable diligence, care and skill to have a reasonable basis to believe that a series of recommended transactions, even if in his retail customers' best interests when viewed in isolation, were not excessive and were in the retail customers' best interests when taken together in light of the retail customers' investment profile and did not place the financial or other interest of the broker, dealer, or such natural person making the series of recommendations ahead of the interest of the retail customer.

55. By reason of the foregoing, the Defendants, directly or indirectly, singly or in concert, have violated, and unless enjoined, will again violate Exchange Act Rules 15l-(a)(1) [17 C.F.R. § 240.15l-(a)(1)], and 15l-1(a)(2)(ii) [17 C.F.R. § 240.15l-1(a)(2)(ii)].

**PRAYER FOR RELIEF**

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

I.

Permanently enjoining Defendant and his agents, servants, employees and attorneys and all persons in active concert or participation with him from violating, directly or indirectly, Securities Act Section 17(a) [15 U.S.C. § 77q(a)] and Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rules 10b-5 [17 C.F.R. § 240.10b-5], 15l-(a)(1) [17 C.F.R. § 240.15l-(a)(1)], and 15l-1(a)(2)(ii) [17 C.F.R. § 240.15l-1(a)(2)(ii)] thereunder;

II.

Ordering Defendant to disgorge any ill-gotten gains he received directly or indirectly, with pre-judgment interest thereon, as a result of the alleged violations, pursuant to Exchange Act Sections 21(d)(3), 21(d)(5) and 21(d)(7) [15 U.S.C. §§ 78u(d)(3), (d)(5) and (d)(7)];

III.

Ordering Defendant to pay a civil monetary penalty under 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)]; and

IV.

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

**JURY DEMAND**

The Commission demands a trial by jury.

Dated: New York, New York  
October 16, 2024

Respectfully submitted,

SECURITIES AND EXCHANGE  
COMMISSION

*Antonia M. Apps*

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