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12 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
13 OF THE STATE OF CALIFORNIA

14 In the Matter of the: ) CRD NOS.: 6670 and 2400211  
15 )  
16 THE COMMISSIONER OF FINANCIAL ) CONSENT ORDER  
17 PROTECTION AND INNOVATION, )  
18 )  
19 Complainant, )  
20 )  
21 v. )  
22 )  
23 STOCKCROSS FINANCIAL SERVICES, )  
24 INC. and PETER EDWARD CUNNINGHAM,) )  
25 )  
26 Respondents. )  
27 )  
28 )

29 This Consent Order (the Consent Order) is entered into by the Commissioner of Financial  
30 Protection and Innovation (Commissioner) and StockCross Financial Services, Inc. (StockCross)  
31 and Peter Edward Cunningham (Cunningham) (collectively, Respondents), and is made with respect  
32 to the following facts.

33 **I.**

34 **Recitals**

35 1. The Commissioner is authorized to administer and enforce the provisions of

1 the Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.) (CSL) and the regulations at  
2 title 10 of the California Code of Regulations (Cal. Code Regs., tit. 10, § 260.000 et seq.) (CCR).

3 2. The Commissioner has jurisdiction over the licensing and regulation of persons  
4 engaged in the business of a broker or dealer and their agents under the CSL.

5 3. The Commissioner has jurisdiction over the licensing and regulation of investment  
6 advisers and their representatives under the CSL.

7 4. At all times relevant herein, respondent StockCross was a corporation organized  
8 under the laws of Massachusetts and authorized to transact business in California with its principal  
9 place of business located at 9464 Wilshire Boulevard, Beverly Hills, California.

10 5. StockCross is a member of the Financial Industry Regulatory Authority (FINRA),  
11 Central Registration Depository (CRD) number 6670.

12 6. At all times relevant herein, StockCross held a broker-dealer certificate issued by the  
13 Commissioner. StockCross has been registered with the Commissioner as a broker-dealer since  
14 November 8, 1985.

15 7. At all times relevant herein, StockCross held an investment adviser certificate issued  
16 by the Commissioner. StockCross has been registered with the Commissioner as an investment  
17 adviser since September 2, 2009. StockCross requested that the Commissioner terminate the firm's  
18 investment adviser registration on June 4, 2018. The Commissioner has not yet approved the  
19 termination of StockCross' investment adviser registration.

20 8. In or about January 2020, StockCross merged into broker-dealer Muriel Siebert &  
21 Co., Inc. (Muriel Siebert), CRD number 5376. Muriel Siebert is a Delaware corporation, authorized  
22 to conduct business in this state with its principal place of business in California located at 9464  
23 Wilshire Boulevard, Beverly Hills. Muriel Siebert has been registered with the Commissioner as a  
24 broker-dealer since November 1, 2019.

25 9. Andrew Reich is Muriel Siebert's chief executive officer and is authorized to enter  
26 into the Consent Order on behalf of StockCross.

27 10. At all times relevant herein, Cunningham was a registered broker-dealer agent and  
28 investment adviser representative of StockCross, CRD number 2400211.

1 11. Cunningham has been registered as a broker-dealer agent in California since January  
2 29, 2002, and a registered investment adviser representative since December 13, 2012.

3 12. On or about December 31, 2019, Cunningham terminated his registration with  
4 StockCross as an investment adviser representative and registered agent.

5 13. In or about January 2020, Cunningham registered as an investment adviser  
6 representative of Siebert AdvisorNXT, Inc.<sup>1</sup> (CRD number 288572) and a registered agent of Muriel  
7 Siebert.

8 14. At all relevant times herein, Cunningham was the Managing Director of Investments  
9 for StockCross, working out of the firm's home office in Beverly Hills, California. Cunningham was  
10 registered with StockCross from January 2002 through to about December 31, 2019.

11 15. While registered as a StockCross investment adviser representative and agent,  
12 Cunningham had approximately 388 clients, of whom approximately 123 were California residents.

13 ***2018 Regulatory Exam***

14 16. On October 29, 2018, the Commissioner commenced a regulatory examination at  
15 StockCross' Beverly Hills home office. The examination covered the period January 2012 to October  
16 2018, and disclosed the following.

17 ***Unit Investment Trusts***

18 17. StockCross representatives, including Cunningham, recommended Unit Investment  
19 Trusts (UITs) to their clients. Between January 2012 and October 2018, Cunningham transacted  
20 approximately 1,071 full UIT trades (where a buy is matched to a sell order, and one purchase with  
21 two sell batches is considered one trade). Based on the Commissioner's examiner's review, the  
22 Commissioner concluded that approximately 65 percent of Cunningham's UIT trades were sold  
23 within six months, as compared to 16 percent for the other agents employed by StockCross.

24 18. A UIT is an investment company with a fixed term and fixed portfolio. The fixed term  
25 of a UIT is usually about 15 to 24 months, but sometimes longer. The portfolio underlying the UIT  
26 does not typically change.

27 \_\_\_\_\_  
28 <sup>1</sup> Siebert AdvisorNXT, Inc. is the investment adviser affiliate of Muriel Siebert. Siebert AdvisorNXT, Inc. has held an investment adviser certificate with the Commissioner since March 17, 2020.

1           19.     The UIT sponsor selects the underlying portfolio of a UIT, typically stocks and bonds,  
2 and investors purchase the units of the UIT. Investors are eligible to receive periodic interest or  
3 dividend distributions generated by returns on the underlying portfolio.

4           20.     Units of UITs are securities designed to be held for the life of the trust. On the  
5 specified maturity date determined by the UIT sponsor, the portfolio terminates, its holdings are sold,  
6 and profits or losses are allocated and distributed among investors, who then may choose to reinvest  
7 the proceeds in units of another UIT.

8           21.     The purchase cost of UIT units typically includes a sales charge and a creation and  
9 development fee charged by the UIT sponsor. UIT sales charges, typically paid upon purchase of a  
10 UIT position, are usually between two and four percent of the total investment, depending on the UIT  
11 sponsor. The agent who recommended the investor to purchase the UIT receives a portion of that  
12 sales charge from the UIT sponsor. Typically, when the UIT matures, unit holders who elect to  
13 reinvest the proceeds in another UIT can do so with reduced charges and fees.

#### 14 ***Short-term UIT Trading***

15           22.     “Early Rollovers” or “Short-term UIT trading” (hereinafter short-term UIT trading) is  
16 a practice by which registered representatives advise customers to sell their UIT investments prior to  
17 maturity and, in some instances, use the proceeds to purchase into another UIT. The representative  
18 earns a part of the fee for the subsequent UIT purchase. Disregarding the UIT maturity date negates  
19 future UIT distributions and causes the investor to incur additional sales charges.

20           23.     Beginning in 2016, short-term UIT trading was the subject of a targeted exam by  
21 FINRA. FINRA identified in its December 6, 2017 exam report that short-term UIT trading causes  
22 investors to incur additional sales charges, including both creation and development fees and deferred  
23 sales charges. FINRA has since required that firms adequately supervise representatives’ sales of  
24 UITs and provide sufficient training to prevent unsuitable short-term UIT trading.

#### 25 ***Cunningham’s Period of Heightened Supervision***

26           24.     StockCross placed Cunningham on heightened supervision in 2017, when  
27 Cunningham failed “to report a non-financial conviction.”

28           25.     In accordance with the written terms of his heightened supervision, all of

1 Cunningham's orders were reviewed and "special attention [was] paid to any transaction or services  
2 of transactions that [may] reasonably be construed as not benefiting the customer, such as excessive  
3 mark-ups and or activity that generates gross commissions without visible economic rationale."

4 ***The Massachusetts Consent Order***

5 26. Respondents entered into a consent order with Massachusetts securities regulators on  
6 September 3, 2019. The consent order concerned Massachusetts' investigation into Cunningham's  
7 short-term UIT trading activity and StockCross' failure to supervise Cunningham's short-term UIT  
8 trading activity.

9 ***StockCross' Written Supervisory Procedures Concerning UITs***

10 27. During the 2018 examination, the Commissioner reviewed StockCross' 2015 Written  
11 Supervisory Procedures manual and Supervisory Procedures of September 2018 (WSP), which  
12 contained procedures for the review of structured products (including UITs), customer transactions,  
13 and suitability. StockCross' written supervisory procedures manuals had no specific written  
14 supervisory procedures that directly addressed short-term UIT Trading.

15 28. During the period under review, January 2012 to October 2018, StockCross did not  
16 use UIT-specific documentation other than that received from the UIT sponsor in the sales of UITs.  
17 StockCross identified two written supervisory procedures, which generally related to the sale of  
18 fixed-term securities, including UITs.

19 29. The first written supervisory procedure, contained in the 2015 Written Supervisory  
20 Procedures manual was entitled "Solicited Fixed Income Sales."

21 30. The second written supervisory procedure, at section 9.3 of the WSP, was entitled  
22 "Suitability of Recommendations," which required the National Sales Manager to "Review daily  
23 blotter of all UIT transactions."

24 31. Neither written supervisory procedure specifically addressed short-term UIT trading.

25 ***Cunningham's Short-Term UIT Trading***

26 32. At times, and as early as 2012, the Commissioner determined Cunningham had  
27 engaged in short-term UIT trading.

28 33. First Trust Portfolios, L.P. (First Trust) is an Illinois-based provider of investment

1 products, including UITs.

2 34. Cunningham recommended to several of his clients purchases of UITs, a majority of  
3 which were sponsored by First Trust. A review of the trade blotters disclosed the commissions from  
4 purchases of UITs, by clients during the five months sampled in 2017, represented 26 percent of all  
5 commissions Cunningham received during the period sampled.

6 35. StockCross received between 2.45 and 3.5 percent of the total investment for every  
7 First Trust UIT purchased by a StockCross client. StockCross and its agent then divided that sum. For  
8 UIT purchases recommended by Cunningham, StockCross and Cunningham shared in the  
9 commissions on a 60/40 split.

10 36. Purchases of UITs by California residents generated \$1,465,824.00 in commissions for  
11 StockCross and Cunningham. Sales of UITs to one of Cunningham's California clients alone  
12 generated \$904,062.00 in commissions for StockCross and Cunningham during the period January  
13 2012 to September 2018.

14 37. Cunningham effected sales of various UITs weeks or months after the initial purchase.  
15 The recommended sales also often came months or years before the UIT's date of maturity. The  
16 proceeds of the sale were sometimes used to fund purchases of other UITs or embedded commission  
17 products, like structured notes.

18 38. While certain UIT transactions Cunningham recommended to customers resulted in  
19 capturing profits, Cunningham's short-term UIT trading eliminated the investors' ability to collect  
20 and reinvest the proceeds of the sale of the underlying securities of the UIT at maturity.

21 39. At times, customers were required to bear the costs of additional sales charges.

22 40. The Commissioner concluded that Cunningham had engaged in short-term UIT  
23 trading multiple times in the accounts of California residents as follows.

24 ***Investor One (SR)***

25 41. Investor One is an 87-year-old California resident and client of Cunningham. Investor  
26 One became Cunningham's client in December 2005.

27 42. Beginning in 2012, Cunningham consistently recommended that Investor One buy  
28 UITs. Nearly all, or approximately 94 percent, of the UITs Investor One purchased were sponsored

1 by First Trust.

2 43. Between November 14 and November 25, 2016, Cunningham recommended Investor  
3 One purchase 22,117 units of the Election Portfolio Series 1 UIT (Election Portfolio UIT), sponsored  
4 by First Trust. The average purchase date of the units was November 20.

5 44. The commission associated with Cunningham's recommendation of this UIT was  
6 \$5,481.00.

7 45. On December 27, Cunningham recommended Investor One sell 5,064 units of  
8 Election Portfolio UIT, and the remaining 17,053 units were sold on January 30, 2017, with an  
9 average sale date of January 13, 2017. The Election Portfolio UIT's date of maturity was November  
10 14, 2018. Based on Cunningham's recommendation, this UIT was held by Investor One for an  
11 average of 54 days. Based on Cunningham's recommendation, Investor One sold units of this UIT  
12 670 days before the date of maturity.

13 46. Proceeds from the sale of Investor One's units of the Election Portfolio UIT  
14 contributed to the purchase of a Morgan Stanley note valued at \$150,000.00 (associated with the sale  
15 of the first batch of units of the Election Portfolio UIT on December 27). StockCross earned  
16 commissions of \$3,750.00 from Investor One's purchase of the Morgan Stanley note.

17 47. The proceeds from the sale of the second batch of units of the Election Portfolio UIT  
18 on January 30 contributed to the purchase of the following: a BNP Paribas 9.25 percent note valued  
19 at \$100,000.00, which earned the StockCross a commission of \$3,250.00; two Barclays 6.25 percent  
20 notes valued at \$65,000.00 and \$50,000.00, earning StockCross commissions of \$1,950.00 and  
21 \$1,500.00, respectively; the purchase of \$100,000.00 worth of units of the First Trust Senior Loan  
22 Series 72 UIT, which earned StockCross a commission of \$2,650.00; and a Natixis 9.25 percent note  
23 valued at \$100,000.00, which earned StockCross a commission of \$3,250.00.

24 48. Investor One continues to be Cunningham's client.

25 ***Investor Two (SHR)***

26 49. Investor Two is an 83-year-old California resident and client of Cunningham. Investor  
27 Two became Cunningham's client in December 2005.

28 50. Beginning in 2012, Cunningham consistently recommended that Investor Two buy

1 UITs. Nearly all, or approximately 90 percent, of the UITs Investor Two purchased were sponsored  
2 by First Trust.

3 51. Between November 14 and November 25, 2016, Cunningham recommended Investor  
4 Two purchase 22,117 units of the Election Portfolio UIT, sponsored by First Trust. The average  
5 purchase date of the units was November 20.

6 52. The commission associated with Cunningham's recommendation of this UIT was  
7 \$5,481.00.

8 53. On December 27, Cunningham recommended Investor Two sell 5,064 units of the  
9 Election Portfolio UIT, and the remaining 17,053 units were sold on January 30, 2017, with an  
10 average sale date of January 13. The Election Portfolio UIT had a maturity date of November 14,  
11 2018. Based on Cunningham's recommendation, this UIT was held by Investor Two for an average  
12 of 54 days. Based on Cunningham's recommendation, Investor Two sold units of this UIT 670 days  
13 before the date of maturity.

14 54. Proceeds from the sale of Investor Two's units of the Election Portfolio UIT  
15 contributed to the purchase of a Morgan Stanley note valued at \$150,000.00 (associated with the sale  
16 of the first batch of the Election Portfolio UIT on December 27). StockCross earned a commission of  
17 \$3,750.00 from Investor Two's purchase of the Morgan Stanley note.

18 55. The proceeds from the sale of the second batch of units of the Election Portfolio UIT  
19 on January 30 contributed to the purchase of the following: a BNP Paribas 9.25 percent note valued  
20 at \$100,000.00, which earned StockCross a commission of \$3,250.00; a Barclays 6.25 percent note  
21 valued at \$50,000.00, which earned StockCross a commission of \$1,500.00; the purchase of  
22 \$50,000.00 worth of units of the First Trust Senior Loan Series 72 UIT, which earned StockCross a  
23 commission of \$1,325.00; and a Natixis 9.25 percent note valued at \$100,000.00, which earned  
24 StockCross a commission of \$3,250.00.

25 56. Investor Two continues to be Cunningham's client.

26 ***Investor Three (MK)***

27 57. Investor Three is an 83-year-old California resident and client of Cunningham.  
28 Investor Three became Cunningham's client in September 2008.



1           58.     Beginning in 2012, Cunningham has consistently recommended that Investor Three  
2 buy UITs. Nearly all, or approximately 90 percent, of the UITs Investor Three purchased were  
3 sponsored by First Trust.

4           59.     On November 18, 2016, in each of Investor Three's two accounts, Cunningham  
5 recommended Investor Three purchase 2,525 units of the Election Portfolio UIT sponsored by First  
6 Trust.

7           60.     The commission associated with Cunningham's recommendation of this UIT was  
8 \$1,449.86.

9           61.     On February 10, 2017, Cunningham recommended that Investor Three sell 2,525 units  
10 of the Election Portfolio UIT from both of the investor's two accounts. The Election Portfolio UIT  
11 had a November 14, 2018 maturity date. Based on Cunningham's recommendation, this UIT was  
12 held by Investor Three for 84 days. Based on Cunningham's recommendation, Investor Three sold  
13 units of this UIT 642 days prior to the UIT's maturity date.

14           62.     Proceeds from the sale of Investor Three's units of the Election Portfolio UIT  
15 contributed to the purchase of 2,488 units of the First Trust Election 2016 Series 2 UIT in both of the  
16 investor's accounts for a total of \$50,010.00. StockCross earned commissions from Investor Three's  
17 purchase of units of the First Trust Election 2016 Series 2 totaling \$1,076.00. Additionally, the First  
18 Trust Election Series 2 UIT had a maturity date of January 18, 2019. Investor Three held the UIT for  
19 147 days and the units were sold 555 days prior to maturity.

20           63.     Investor Three continues to be Cunningham's client.

21 ***Investor Four (IK)***

22           64.     Investor Four is a California resident and client of Cunningham. Investor Four became  
23 Cunningham's client in September 2008.

24           65.     Beginning in 2012, Cunningham has consistently recommended that Investor Four  
25 buy UITs. Nearly all, or approximately 90 percent, of the UITs Investor Four purchased were  
26 sponsored by First Trust.

27           66.     On May 24, 2017, Cunningham recommended Investor Four purchase 2,515 units of  
28 the Content Leaders Series 5 UIT (Content Leaders UIT) sponsored by First Trust.

1           67.     The commission associated with Cunningham’s recommendation of this UIT was  
2 \$500.23.

3           68.     On October 6, 2017, Cunningham recommended that Investor Four sell 2,515 units of  
4 the Content Leaders UIT. The Content Leaders UIT had a maturity date of August 6, 2018. Based on  
5 Cunningham’s recommendation, this UIT was held by Investor Four for 135 days. Based on  
6 Cunningham’s recommendation, Investor Four sold units of this UIT 304 days prior to the UIT’s  
7 maturity date.

8           69.     Proceeds from the sale of Investor Four’s units of the Content Leaders UIT  
9 contributed to the purchase of 2,500 units of the AI & Robotics Opportunity Series 1 UIT (AI &  
10 Robotics UIT) in the amount of \$25,105.50. StockCross earned \$313.75 in commissions from  
11 Investor Four’s purchase of units of the AI & Robotics UIT. Additionally, the AI & Robotics UIT  
12 had a maturity date of January 11, 2019. Investor Four held the UIT for 140 days and the units were  
13 sold 312 days prior to maturity.

14           70.     Investor Four continues to be Cunningham’s client.

15 ***Investor Five (RG)***

16           71.     Investor Five is a 59-year-old California resident and client of Cunningham. Investor  
17 Five became Cunningham’s client in 2003.

18           72.     Beginning in 2012, Cunningham consistently recommended Investor Five buy UITs.  
19 Nearly all, or approximately 90 percent, of the UITs Investor Five purchased were sponsored by First  
20 Trust.

21           73.     On November 25, 2016, Cunningham recommended Investor Five purchase 2,493  
22 units of the Election Portfolio UIT for both of Investor Five’s two accounts held with StockCross.  
23 The Election Portfolio was sponsored by First Trust. The specific purchase date of the units of the  
24 Election Portfolio UIT was November 25.

25           74.     The commission associated with Cunningham’s recommendation of this UIT was  
26 \$1,449.92.

27           75.     On January 30 and February 14, 2017, Cunningham recommended Investor Five sell  
28 2,493 units of the Election Portfolio UIT from the two accounts held with StockCross, with an

1 average sale date of February 6. The Election Portfolio UIT had a maturity date of November 14,  
2 2018. Based on Cunningham's recommendation, the Election Portfolio UIT was held by Investor  
3 Five in both accounts for an average of 74 days. Based on Cunningham's recommendation, Investor  
4 Five sold units of this UIT 646 days before the date of maturity.

5 76. Proceeds from the sale of units of Investor Five's Election Portfolio UIT contributed  
6 to the purchase of 3,947 and 1,786 units of the First Election 2016 Series 2 UIT in the amounts of  
7 \$40,142.00 and \$18,159.00 in both of Investor Five's two accounts. The combined average purchase  
8 date for the First Trust Election 2016 Series 2 was February 18, 2017. StockCross earned  
9 commissions from Investor Five's purchase of units of the First Trust Election 2016 Series 2 UIT for  
10 a combined total of \$1,253.48. Additionally, the First Trust Election 2016 Series 2 UIT had a  
11 maturity date of January 18, 2019, and was held for an average of 205 days and sold 494 days prior to  
12 maturity.

13 77. Investor Five continues to be Cunningham's client.

14 ***Investor Six (JW)***

15 78. Investor Six is an 90-year-old California resident and client of Cunningham. Investor  
16 Six became Cunningham's client in September 2003.

17 79. Beginning in 2012, Cunningham has consistently recommended that Investor Six buy  
18 UITs. Nearly all, or approximately 90 percent, of the UITs Investor Six purchased were sponsored by  
19 First Trust.

20 80. On November 25, 2016, Cunningham recommended Investor Six purchase 1,995 units  
21 of the Election Portfolio UIT sponsored by First Trust.

22 81. The commission associated with Cunningham's recommendation of this UIT was  
23 \$580.15.

24 82. On February 10, 2017, Cunningham recommended that Investor Six sell 1,995 units of  
25 the Election Portfolio UIT. The Election Portfolio UIT had a November 14, 2018 maturity date.  
26 Based on Cunningham's recommendation, this UIT was held by Investor Six for 77 days. Based on  
27 Cunningham's recommendation, Investor Six sold units of this UIT 642 days prior to the UIT's  
28 maturity date.

1           83.     Proceeds from the sale of Investor Six’s units of the Election Portfolio UIT  
2 contributed to the purchase of 1,991 units of the First Trust Election 2016 Series 2 UIT in the amount  
3 of \$20,010.00. StockCross earned commissions from Investor Six’s purchase of units of the First  
4 Trust Election 2016 Series 2 UIT totaling \$430.26. Additionally, the First Trust Election Series 2 UIT  
5 had a maturity date of January 18, 2019. Investor Six held the UIT for 173 days and the units were  
6 sold 529 days prior to maturity.

7           84.     Investor Six continues to be Cunningham’s client.

8 ***StockCross’ Failure to Provide Adequate Supervision***

9           85.     The examination failed to disclose any exception reports generated by the firm in  
10 connection with Cunningham’s short-term trading activity.

11           86.     StockCross placed Cunningham on “Q 2 Heightened Supervision” for a non-  
12 disclosure issue on June 20, 2017. The terms of Cunningham’s supervision included a retroactive  
13 review of Cunningham’s trading activity during the second fiscal quarter of 2017, between April 1,  
14 2017, and June 30, 2017, and an ongoing review until August 31, 2017, when Cunningham’s period  
15 of heightened supervision ended.

16           87.     Cunningham’s branch manager wrote, in a document dated July 12, 2017, that “As a  
17 condition of [Cunningham’s] heightened supervision, special attention is paid to any transaction or  
18 series of transactions that [may] reasonably be construed as not benefiting the customer, such as . . .  
19 activity that generates gross commissions without a viable rationale.” Based upon the branch  
20 manager’s review of Cunningham’s transaction activity for the second fiscal quarter of 2017, the  
21 branch manager concluded that “no such activity has transpired in Q2 [and that Cunningham’s  
22 transactions] have been satisfactory[.]”

23           88.     But despite the terms of Cunningham’s heightened supervision, StockCross’  
24 supervisory structure failed to properly supervise Cunningham’s short-term UIT trading during the  
25 second fiscal quarter of 2017.

26           89.     For example, between April 25, 2017 and May 12, 2017, Cunningham recommended  
27 Investor One purchase the Ubiquitous Strategy Portfolio, Series 2017-2 (Ubiquitous), a UIT  
28 sponsored by Advisors Asset Management, Inc. Based on Cunningham’s recommendation, Investor

1 One purchased 4,889 units of Ubiquitous in two batches, with an average purchase date of May 3,  
2 2017. The commission associated with the purchase was \$1,400.00.

3 90. On August 29, 2017, Cunningham recommended Investor One sell 4,889 units of  
4 Ubiquitous. The date of maturity of the Ubiquitous UIT was April 4, 2019. Based on Cunningham's  
5 recommendation, the UIT was held for an average of 118 days and was sold 580 days prior to  
6 maturity. The sale resulted in a credit of \$51,526.90 in Investor One's account.

7 91. On August 31, 2017, Investor One's statement reflected a purchase of a JPMorgan  
8 Chase note valued at \$50,000.00.

9 92. But a review of StockCross' records fails to show that the short-term UIT trades were  
10 ever given "special attention" by any supervisor at StockCross charged with overseeing  
11 Cunningham's trading activity during the period of Cunningham's heightened supervision.

12 93. Between February 13, 2017 and March 16, 2017, six of Cunningham's California  
13 client accounts reported buying units in Election Portfolio 2016 Series 2 UIT in 12 accounts. The  
14 total sales charge associated with these purchases was \$5,950.00.

15 94. Between July 7 and August 31, 2017, nine of the 12 accounts reported selling the  
16 Election Portfolio 2016 Series 2 UIT with an average sale date of July 24, 2017, with the remaining  
17 three accounts selling on September 13, 2017. The Election Portfolio 2016 Series 2 UIT's date of  
18 maturity was January 18, 2019.

19 95. Sales of the Election Portfolio 2016 Series 2 UIT in the nine accounts occurred 542  
20 days before maturity on average. Sales from the remaining three accounts occurred 492 days before  
21 maturity.

22 96. The exam findings showed that none of the trades were given "special attention" by a  
23 StockCross supervisor charged with oversight of Cunningham during the period of Cunningham's  
24 heightened supervision.

25 97. During the examination of the business, StockCross provided a listing of its exception  
26 reports and none were found by the examiner to directly reference UITs.

27 98. During Massachusetts' investigation, Cunningham testified before the state's  
28 regulators that he had not received StockCross training regarding short-term UIT transactions.

1 Cunningham further testified that he had never obtained StockCross’ written policies or procedures  
2 regarding UITs.

3 ***Violations of the CSL***

4 99. Corporations Code section 25218 provides:

5 No broker-dealer licensed under this chapter shall effect any  
6 transaction in, or induce or attempt to induce the purchase or sale of,  
7 any security in this state in contravention of such rules as the  
8 commissioner may prescribe designed to promote just and equitable  
9 principles of trade, to provide safeguards against unreasonable profits  
10 or unreasonable rates of commissions or other charges, and in general  
11 to protect investors and the public interest, and to remove impediments  
12 to and perfect the mechanism of a free and open market.

10 100. CCR section 260.218 provides that “Each broker-dealer and each agent employed by  
11 such a broker-dealer shall observe high standards of commercial honor and just and equitable  
12 principles of trade in the conduct of such person’s business.”

13 101. CCR section 260.218.4 provides in pertinent part:

14 (a) Every broker-dealer shall exercise diligent supervision over the  
15 securities activities of all of its agents.

16 . . . .  
17 (c) As part of the responsibility under this rule, every broker-dealer  
18 shall establish, maintain and enforce written procedures, a copy of  
19 which shall be kept in each business office, which shall set forth the  
20 procedures adopted by the broker-dealer to comply with the following  
21 duties imposed by this section, and shall state at which business office  
22 or offices the broker-dealer keeps and maintains the records required by  
23 Section 260.218.5 of these rules.

23 (1) The review and written approval by the designated supervisor of the  
24 opening of each new customer account;

25 (2) The frequent examination of all customer accounts to detect and  
26 prevent irregularities or abuses;

27 (3) The prompt review and written approval by the designated  
28 supervisor of all securities transactions by agents and all  
correspondence pertaining to the solicitation or execution of all  
securities transactions by agents;

1 (4) The review and written approval by the designated supervisor of the  
2 delegation by any customer of discretionary authority with respect to  
3 the account to the broker-dealer or to a stated agent or agents of the  
4 broker-  
5 dealer and the prompt written approval of each discretionary  
6 order entered on behalf of that account; and

7 (5) The prompt review and written approval of the handling of all  
8 customer complaints[.]

9 102. Cunningham’s conduct, as described above at paragraphs 32. through 84., constitutes  
10 violations of CCR section 260.218.

11 103. StockCross’ conduct, as described above at paragraphs 85. through 98., constitutes  
12 violations of Corporations Code section 25218 and CCR sections 260.218 and 260.218.4,  
13 subdivisions (a) and (c).

14 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set  
15 forth herein, the parties agree as follows.

16 **II.**

17 **Terms**

18 A. Purpose. The Consent Order resolves the issues before the Commissioner described  
19 above in the Recitals in a manner that avoids the expense of a hearing and other possible court  
20 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and  
21 provisions of the CSL.

22 B. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is ready,  
23 willing, and able to proceed with the filing of an administrative enforcement action on the matters  
24 described in the Recitals above. Respondents hereby waive their right to any hearings, and to any  
25 reconsideration, appeal, or other right to review which may be afforded pursuant to the CSL, the  
26 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of  
27 law. Respondents further expressly waive any requirement for the filing of an accusation under  
28 Government Code section 11415.60, subdivision (b), the APA, the CCP, or any other provision of  
law. By waiving such rights, Respondents effectively consent to this Consent Order becoming final.

C. Final Desist and Refrain Order. Under Corporations Code section 25532, subdivision

1 (d), Respondents are hereby ordered to discontinue from violating CCR section 260.218. Further, as  
2 to StockCross only, StockCross is ordered to discontinue from violating Corporations Code section  
3 25218 and CCR section 260.218.4, subdivisions (a) and (c).

4 D. Administrative Costs. Respondents shall pay to the Commissioner an administrative  
5 payment of \$100,000.00 (the Fee). The Fee is due within 30 days of the effective date of the  
6 Consent Order, and should be made payable to the Commissioner in the form of a cashier's check  
7 or Automated Clearing House deposit and transmitted to the attention of Accounting – Enforcement  
8 Division, Department of Financial Protection & Innovation, 2101 Arena Boulevard, Sacramento,  
9 California 95834. Notice of such payment shall be sent to the attention of Blaine A. Noblett, Senior  
10 Counsel, at blaine.noblett@dfpi.ca.gov.

11 E. Restitution. Under Corporations Code section 25254, subdivision (a), Respondents  
12 shall provide a written offer of restitution to Investors One, Two, Three, Four, Five, and Six, as  
13 identified by the Commissioner (collectively, the Named Investors), subject to the following terms.

14 1. Respondents shall make a written offer of restitution to the Named Investors in  
15 the following amounts:

- 16 (a) Investor One (SR) – \$133,107.64
- 17 (b) Investor Two (SHR) – \$127,389.65
- 18 (c) Investor Three (MK) – \$26,638.76
- 19 (d) Investor Four (IK) – \$5,729.88
- 20 (e) Investor Five (RG) – \$17,490.61
- 21 (f) Investor Six (JW) – \$5,017.83

22 2. The written offer of restitution to the Named Investors shall not be  
23 unacceptable to the Commissioner, provided that Respondents submit a draft of the proposed  
24 written offer of restitution to the Commissioner within 30 days from the effective date.

25 3. The written offer of restitution shall remain open to the Named Investors for  
26 at least 90 days.

27 4. If any of the Named Investors accepts the written offer of restitution,  
28 Respondents shall provide the Commissioner with a written notice and proof of any payment made



1 under this section within 15 days following the date that Respondents make a restitution payment to  
2 each Named Investor. If any Named Investor declines to accept the written offer, which was  
3 deemed not unacceptable to the Commissioner, the Named Investor's decision to decline the written  
4 offer is without prejudice to the Commissioner's full settlement of this matter with Respondents and  
5 does not affect entry of the signed Consent Order resolving this matter.

6 F. Remedy for Breach. Respondents acknowledge and agree that their failure to pay the  
7 Fee as required under paragraph D., above, or their failure to satisfy the restitution requirements  
8 under paragraph E., above, shall be deemed a breach and cause for the Commissioner to  
9 immediately revoke any certificates or licenses held by or deny any pending application(s) of  
10 Respondents. Respondents hereby waive any notice and hearing rights to contest such revocation or  
11 denial(s) which may be afforded them under the CSL, APA, CCP, or any other provision of law in  
12 connection with this matter. Respondents further expressly waive any requirement for the filing of  
13 an accusation or statement of issues under Government Code section 11415.60, subdivision (b), in  
14 connection with the Commissioner's revocation of their certificates or licenses under this paragraph.

15 G. Full and Final Settlement. The parties hereby acknowledge and agree that the  
16 Consent Order is intended to constitute a full, final, and complete resolution of the Commissioner's  
17 findings as identified herein. No further proceedings or actions will be brought by the  
18 Commissioner in connection with this matter, or any other provision of law, excepting any  
19 proceeding to enforce compliance with the terms of the Consent Order.

20 H. Information Willfully Withheld. The Consent Order may be revoked, and the  
21 Commissioner may pursue any and all remedies under the CSL against Respondents if the  
22 Commissioner discovers that Respondents knowingly or willfully withheld information used for and  
23 relied upon by the Commissioner in the Consent Order.

24 I. Assisting Other Agencies. The parties further acknowledge and agree that nothing in  
25 the Consent Order shall limit the Commissioner's ability to assist any other agency (city, county,  
26 state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such  
27 agency against Respondents or any other person based upon any of the activities alleged in this  
28 matter or otherwise.

1 J. Binding. The Consent Order is binding on all heirs, assigns, or successors in interest.

2 K. Independent Legal Advice. Each of the parties represents, warrants, and agrees that  
3 he, she, or it has received independent advice from its attorney(s) or representative(s) with respect  
4 to the advisability of executing the Consent Order.

5 L. Counterparts. The parties agree that the Consent Order may be executed in one or  
6 more separate counterparts, each of which shall be deemed an original when so executed. Such  
7 counterparts shall together constitute and be one and the same instrument.

8 M. Waiver, Modification, and Qualified Integration. The waiver of any provision of the  
9 Consent Order shall not operate to waive any other provision set forth herein. No waiver,  
10 amendment, or modification of the Consent Order shall be valid or binding to any extent unless it is  
11 in writing and signed by all the parties affected by it.

12 N. Headings and Governing Law. The headings to the paragraphs of the Consent Order  
13 are inserted for convenience only and will not be deemed a part hereof or affect the construction or  
14 interpretation of the provisions hereof. The Consent Order shall be construed and enforced in  
15 accordance with and governed by California law.

16 O. Full Integration. Each of the parties represents, warrants, and agrees that in executing  
17 the Consent Order he, she, or it has relied solely on the statements set forth herein and the advice of  
18 its own counsel. Each of the parties further represents, warrants, and agrees that in executing the  
19 Consent Order he, she, or it has placed no reliance on any statement, representation, or promise of  
20 any other party, or any other person or entity not expressly set forth herein, or upon the failure of  
21 any party or any other person or entity to make any statement, representation, or disclosure of  
22 anything whatsoever. The parties have included this clause (1) to preclude any claim that any party  
23 was in any way fraudulently induced to execute the Consent Order and (2) to preclude the  
24 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of the Consent  
25 Order.

26 P. Presumption from Drafting. In that the parties have had the opportunity to draft,  
27 review, and edit the language of the Consent Order, no presumption for or against any party arising  
28 out of drafting all or any part of the Consent Order will be applied in any action relating to,

1 connected to, or involving the Consent Order. Accordingly, the parties waive the benefit of Civil  
2 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,  
3 language of a contract should be interpreted most strongly against the party that caused the  
4 uncertainty to exist.

5 Q. Voluntary Agreement. Respondents enter into the Consent Order voluntarily and  
6 without coercion and acknowledge that no promises, threats, or assurances have been made by the  
7 Commissioner, or any officer or agent thereof, about the Consent Order.

8 R. Effective Date. The Consent Order shall become final and effective when signed by  
9 all parties and delivered by the Commissioner's agent via e-mail to Respondents at mth@msk.com.

10 S. Notice. Any notice required under the Consent Order shall be provided to each party at  
11 the following addresses:

12 If to Respondents to: Daniel P. Logue  
13 Chief Compliance Officer  
14 Muriel Siebert & Co., Inc.  
15 15 Exchange Place, Suite 1120  
16 Jersey City, New Jersey 07302

17 With copy to: Mark T. Hiraide, Esq.  
18 Mitchell Silberberg & Knupp, LLP  
19 2049 Century Park East, 18th Floor  
20 Los Angeles, California 90067

21 If to the Commissioner to: Blaine A. Noblett, Senior Counsel  
22 Department of Financial Protection & Innovation  
23 320 W. 4th Street, Suite 750  
24 Los Angeles, California 90013-2344

25 T. Authority to Execute. Each signatory hereto covenants that he/she possesses all  
26 necessary capacity and authority to sign and enter into the Consent Order.

27 [Signatures to follow.]  
28

1 IN WITNESS WHEREOF, the parties hereto have approved and executed the Consent Order  
2 on the dates set forth opposite their respective signatures.

3 CHRISTOPHER S. SHULTZ  
4 Acting Commissioner of Financial Protection &  
5 Innovation

6 Dated: July 9, 2021

7 By \_\_\_\_\_  
8 MARY ANN SMITH  
9 Deputy Commissioner  
10 Enforcement Division

11 STOCKCROSS FINANCIAL SERVICES,  
12 INC., Respondent

13 Dated: July 9, 2021

14 By \_\_\_\_\_  
15 ANDREW REICH, Chief Executive Officer, MURIEL  
16 SIEBERT & CO., INC. on behalf of STOCKCROSS  
17 FINANCIAL SERVICES, INC.

18 PETER EDWARD CUNNINGHAM,  
19 Respondent

20 Dated: July 9, 2021

21 By \_\_\_\_\_  
22 PETER EDWARD CUNNINGHAM

23 APPROVED AS TO FORM:

24 By \_\_\_\_\_  
25 MARK T. HIRAIDE, ESQ.  
26 Mitchell Silberberg & Knupp, LLP,  
27 Attorneys for Respondents  
28