STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING whether there has been a violation of the Securities Act of Washington by: Pacific West Securities, Inc.; William Madison Swayne II; Robin Thomas Naylor, Respondents	Order No.: S-09-048-13-CO01 CONSENT ORDER AS TO ROBIN THOMAS NAYLOR

INTRODUCTION

Pursuant to the Securities Act of Washington, chapter 21.20 RCW, the Securities Division of the Department of Financial Institutions ("Securities Division") and the Respondent Robin Thomas Naylor do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondent Robin Thomas Naylor neither admits nor denies the Findings of Fact and Conclusions of Law stated below.

FINDINGS OF FACT

Respondents

1. Pacific West Securities, Inc. ("Pacific West Securities") is a Washington corporation formed in 1972, with a principal place of business in Renton, Washington. Pacific West Securities was registered as a broker-dealer with the Washington State Securities Division from January 1973 until September 2012, when it ceased doing business. Pacific West Securities has a Central Registration Depository ("CRD") number of 6390.

2. William Madison Swayne II ("Swayne") is an individual residing in Seattle, Washington. He was first registered in the securities industry in 1984 and has been employed by several broker-dealers. Swayne was employed by Pacific West Securities from November 1995 until February 2012. From February 2012 until present, Swayne has been employed by Independent Financial Group, LLC as a registered securities salesperson and a registered investment adviser representative. Swayne has a CRD number of 440968. Swayne has been a Washington State licensed insurance agent and/or producer from 2000 to present.

3. Robin Thomas Naylor ("Naylor") is an individual residing in Kent, Washington. Naylor was first employed in the securities industry in 1984 and has been employed by several broker-dealers. Most recently, Naylor was employed by Pacific West Securities from March 1998 until December 2011 and with Centaurus Financial, Inc. from January 2012 until December 2012. Naylor was registered as a securities salesperson with the Washington State Securities Division for most periods between March 1984 and December 2012, and as an investment adviser representative from June 1998 until December 2012. He is not currently registered with the Washington State Securities Division in any capacity. Naylor has a CRD number of 1392433. Naylor has been a Washington State licensed insurance agent and/or producer from 1990 to present.

Introduction

4. Pacific West Securities was a broker-dealer firm that specialized in real estate investments. In approximately 2002, when tenant-in-common ("TIC") investments began to be broadly marketed for the benefit of tax deferral, Pacific West Securities focused its efforts on becoming a leading firm offering these investments. From at least 2002 through 2009, Pacific West Securities offered and sold TIC investments. By 2006, Pacific West Securities had completed more than 1,000 TIC transactions. However, Pacific West Securities failed to establish an adequate supervisory system for the offer and sale

of TIC investments. As a result, when at least two Pacific West Securities registered representatives, Respondents Swayne and Naylor, made unsuitable TIC sales to their customers between 2006 and 2008, the firm approved the transactions.

Background about TIC Investments

5. Tenant-in-common interests are a form of real property ownership. The central characteristic of a tenant-in-common interest is that each investor owns an undivided share of the real property. In March 2002, the Internal Revenue Service issued Revenue Procedure 2002-22 ("Revenue Procedure"). If a tenant-in-common transaction qualified as an interest in real property, the transaction might also qualify for capital gains tax deferral under Section 1031 of the Internal Revenue Code. The Revenue Procedure listed fifteen specific conditions under which the IRS would consider issuing a ruling that a tenant-in-common interest would qualify as an interest in real property. Among the conditions that were listed in the Revenue Procedure were a limit of 35 persons as co-owners; a proportionate sharing of profits and losses; a proportionate sharing of debt; and unanimous approval by the owners to sell or lease the property, to obtain or modify a loan secured by the property, and to hire a property manager.

6. After the Revenue Procedure was issued, a number of TIC offerings were syndicated to investors. One of the main selling points for the TIC investments was to eliminate the need for hands-on property management. Many TIC investors were tired of dealing with what the TIC industry described as the "3 Ts" of real property management: tenants, toilets, and trash. Instead, the investors wanted to purchase a passive real estate investment that was professionally managed. Many TIC investors were also older persons whose investments represented a significant portion of their retirement savings.

7. 1031 exchange TIC investors sought to defer paying long-term capital gains tax and depreciation recapture on the sale of appreciated investment property. To delay paying tax, the investors participated in

complex TIC transactions. The transactions normally had strict closing deadlines and investors were often competing to purchase interests in the same TIC offerings. Each TIC offering had numerous transaction documents with hundreds of pages of detailed provisions that needed to be carefully reviewed.

8. The syndicators, called sponsors, would sell, buy, and operate TIC real estate investments. The sponsors would pool funds from investors who wanted to exchange their real estate holdings to purchase an undivided interest in a particular property. The investors would share in any profits and losses that were generated from the property. The returns on investment were to come primarily from the efforts of the sponsor or its affiliate.

9. For a fee, TIC sponsors would typically structure the TIC offering. Sponsors would negotiate the property purchase and the financing terms and would generally form a special purpose limited liability company to acquire and hold title to the real property. Sponsors would also provide a Tenant-in-Common Agreement that defined the relationship between the TIC owners and the sponsor or its affiliate. Affiliated companies of the sponsor were generally contracted or were available to provide property acquisition, property management, and property disposition services for the TIC investors.

10. A TIC investment was highly speculative and could result in a complete loss of the investment. The investments were illiquid and there was no market for reselling the investments. The investments generally had a five-year or ten-year expected holding period that was based upon the term of the loan that was used to finance the real property purchase. TIC investments also had high up-front transaction fees to pay for the securities issuance costs and the real estate acquisition costs. Transaction fees generally represented 20% to 30% of the total TIC investment, so in some cases, because the individual long-term capital gains tax rate was only 15%, it might have been more advantageous for investors to pay the tax that was due, rather than investing in TIC transactions.

11. TIC investments had the typical risks associated with real estate investments, including competition, changing economic conditions, market fluctuations, vacancy rates, nonpayment of rent, varying income and expenses, possible noncompliance with lease provisions, property maintenance requirements, and the potential need for more operating capital. TIC investments also had third party management risks, conflicts of interest between the property manager and its affiliates, and other tax risks. In addition, TIC investors had to resell or refinance the property within a fixed time period and with the unanimous approval of the investors. For properties that were foreclosed, the investor might have a significant deferred capital gain tax liability. Also, for TIC investments that were financed with nonrecourse debt financing, as most of the investments were, the investor might have a significant additional tax liability upon foreclosure, without having any cash available from the investment for paying the tax.

Guidance for Firms Selling TICs

12. During the time period that TIC investments were being sold, the National Association of Securities Dealers ("NASD"), currently known as the Financial Industry Regulatory Authority ("FINRA"), issued two notices that reminded its member broker-dealers, including Pacific West Securities, of certain obligations when selling TIC investments. First, in November 2003, the NASD issued Notice to Members 03-71 ("NTM 03-71"), which provided guidance to members selling Non-Conventional Investments, including TICs. Second, in March 2005, the NASD issued Notice to Members 05-18 ("NTM 05-18"), which provided guidance to members selling TIC investments. In addition, NTM 05-18 also highlighted the key issues in NTM 03-71 for members.

13. Both notices reminded members of the supervision obligations that must be performed when selling TICs. NTM 03-71 reminded members to implement appropriate supervisory internal controls. NTM 05-18 further stated that members should establish a supervisory system for the offer and sale of TIC

investments, including comprehensive written supervisory procedures reasonably designed to ensure compliance with all applicable rules.

14. Both notices also reminded members of the suitability obligations that must be performed when selling TICs. NTM 03-71 stated that to ensure an investment is suitable, members and their associated persons must consider the customer's financial status, tax status, investment objectives, and any other information reasonably needed in order to make the recommendation. NTM 05-18 further states that members must consider the risks from over-concentration against the benefit of tax deferral and the investment potential of the underlying real estate. The member must also consider whether the fees and expenses associated with the TIC transaction outweigh the potential tax benefit to the customer.

Sale of TIC Investments at Pacific West Securities

15. Respondent Pacific West Securities failed to develop a supervisory system in compliance with NTM 05-18 or NTM 03-71 for the offer and sale of 1031 exchange TIC investments. As described below, Pacific West Securities failed to develop adequate written policies and procedures regarding the suitability of TIC investments, including failing to establish adequate procedures for the firm's suitability review of TIC transactions. As a result, when at least two Pacific West Securities registered representatives, Respondents Swayne and Naylor, made unsuitable TIC recommendations to customers, the firm approved the transactions.

A. Pacific West Securities Suitability Policies & Procedures

16. All editions of the firm's Written Supervisory Policies & Procedures Manual ("WSP Manual") from January 2006 through March 2009 contained suitability factors to be considered for Direct Participation Programs ("DPPs"), which include TIC investments. The suitability factors to be considered

included the customer's investment objective and risk tolerance, any tax aspect and benefit to the customer, the amount of the proposed transaction as a percentage of the customer's net worth, and the amount of the proposed transaction plus all other DPP investments currently held by the customer as a percentage of net worth. The WSP Manual did not explain how the different factors should be weighed.

17. Pacific West Securities also had an internal policy that further elaborated on the suitability factor regarding the concentration of a customer's net worth that should be invested in one or more TICs. This policy, which was communicated to representatives via TIC training materials dated 2004 and 2006, stated that not more than 25% of a customer's net worth should be invested in a single TIC or Non-Conventional Investment, and not more than 40% of a customer's overall net worth should be invested in DPPs or Non-Conventional Investments. If this limit was exceeded, the policy stated that additional steps must be taken, including having the customer acknowledge in writing that they are aware of the high concentration and/or having the firm document in writing the reasons for the high concentration.

18. Although not stated in its written policies, Pacific West Securities had a practice of distinguishing between TICs purchased pursuant to a 1031 exchange and TICs that were not purchased for tax deferral. For 1031 exchange TIC purchases, the above concentration limits were not enforced. Pacific West Securities had a practice of treating a 1031 TIC exchange as if there was no change in a customer's overall concentration level when a customer sold rental real estate and re-invested the funds in a TIC investment.

19. There were a few procedures in place at Pacific West Securities to document the suitability review of TIC investments. As part of TIC sales, there were certain required forms to be completed by the registered representative and a Registered Principal in the Compliance Department that contained suitability factors for review. A "DPP Disclosure Form" and an "Acknowledgement Form" were completed by the representative and/or customer and were forwarded to the firm in order to process the transaction. The Registered Principal in the Compliance Department then completed a "DPP Order

Processing Form." However, as described below, Pacific West Securities did not have sufficient procedures in place to ensure that the forms were fully completed. Pacific West Securities also did not have sufficient procedures in place to ensure the review of several key suitability factors, including liquidity, concentration levels, tax benefit, and the customer's risk tolerance.

B. Suitability Review by the Registered Representative

20. The registered representative has the obligation of recommending a suitable investment for the customer based on the facts disclosed by the customer as to their financial situation and needs. The suitability review by the registered representative was primarily documented in the DPP Disclosure Form. The DPP Disclosure Form asked the representative to list the customer's net worth, equity in primary residence, short-term assets, source of funds invested, and the percentage that the investment represented of the customer's net worth. However, when a transaction was a 1031 exchange TIC purchase, at least two Pacific West Securities representatives, Swayne and Naylor, did not adequately consider all of the suitability factors.

21. Registered representatives at Pacific West Securities did not always adequately review the customer's liquidity needs. As TIC investments were illiquid and not readily resold, the customer needed to have a reasonable reserve of short-term assets. However, at least once, a representative listed the customer's short-term assets incorrectly, and higher than they actually were, on the DPP Disclosure Form. On another occasion, when the customer's short-term assets were listed correctly but were minimal, the representative proceeded with the transaction.

22. Registered representatives at Pacific West Securities did not always consider the total concentration of TICs or TICs and other DPPs held by a customer. The representatives regarded a customer's overall concentration level as unchanged when a customer liquidated rental real estate and re-invested the proceeds in a TIC investment. However, the characteristics of rental real estate and TIC investments are not the

same, especially the liquidity of the holdings. TIC investments are not liquid and may not be readily resold. Generally, the investor could control their own real estate holdings, but for a TIC investment, the sale of the property would require the unanimous approval of the owners. The refinancing of the TIC investment property would require the unanimous approval of the owners. The investor could not compel other investors to make required additional capital contributions for TIC investment properties. The leveraging of the TIC investment property was also generally higher than the leveraging of the investor's rental real estate. For these reasons, a customer's total concentration level should have been considered by the representatives, especially when a representative made repeat TIC sales to the same customer.

23. Registered representatives at Pacific West Securities did not always reasonably analyze the purported tax benefit to the customer. The Acknowledgement Form was the only form created by Pacific West Securities that asked for the representative and/or customer to list the amount of capital gains tax that the customer hoped to defer with the investment. However, this information was often not filled in on the form. Although a customer would generally have a tax professional calculate the amount of tax deferral, this amount was not always communicated to the registered representative. As a result, the representative often did not know the amount, if any, of tax deferral, and did not examine the tax consequences to make sure the transaction was beneficial to the customer.

24. If a customer wanted tax deferral, the registered representative would sometimes recommend a TIC purchase even when the customer's risk tolerance, as stated on the New Account Form, was lower than the speculative risk level of the TIC investment. The registered representative did not always carefully consider whether a speculative TIC investment was suitable for the customer, given their age and financial status.

25. The registered representative proceeded with TIC recommendations to the customer even when the customer had minimal liquid fund reserves, the customer was over-concentrated in DPP investments, the

representative had not reviewed the tax benefit to the customer, and/or when the customer's risk tolerance was inconsistent with the speculative risk level of the TIC investment.

C. Suitability Review by the Compliance Department

26. A Registered Principal in the Pacific West Securities Compliance Department reviewed the proposed TIC investment for suitability before the order was processed. The reviews were assigned to the first available Registered Principal. The suitability review by the firm was primarily documented in the DPP Order Processing Form. The DPP Order Processing Form had the Registered Principal list the customer's net worth, short-term assets, the percentage that the investment represented of the customer's net worth, and the total DPPs held by the customer, including the current transaction, as a percentage of net worth. However, there were not adequate procedures in place to ensure that the Registered Principal adequately reviewed TIC transactions for suitability.

27. The Registered Principal did not always review the customer's liquidity needs adequately. Pacific West Securities regarded 1031 exchange TIC purchases as having no impact on the customer's liquidity, because the customer was liquidating real estate and re-investing the funds in a real estate product. However, the liquidity of a rental property and the liquidity of a TIC investment are not the same, and the customer's liquidity needs should have been carefully reviewed. On occasion, the Registered Principal simply did not fill in the amount of short-term assets on the DPP Order Processing Form.

28. The Registered Principal did not adequately consider the risks of over-concentrating the customer in TICs and/or a combination of TICs and other DPPs. On the DPP Order Processing Form, sometimes the total DPPs held as a percentage of the customer's net worth was simply not calculated. However, even when this amount was calculated, and it constituted a high percentage, the Registered Principal would approve the transaction. As previously explained, the firm did not enforce any concentration guidelines because Pacific West Securities had a practice of treating a 1031 TIC exchange as if there was no change

in a customer's overall concentration level when a customer sold rental real estate and re-invested the funds in a TIC investment. Further, there were no procedures in place instructing the Registered Principal to consider the risks from over-concentration against the benefits of tax deferral and the investment potential of the underlying real estate, as required by NTM 05-18.

29. The Registered Principal also did not adequately review the purported tax benefit to the customer. Although the Registered Principal received the Acknowledgement Form from the representative, the Registered Principal did not require the amount of tax deferral to be completed on the form. As a result, the Registered Principal did not always know the amount, if any, of tax benefit to the customer. Further, there were no procedures in place instructing the Registered Principal to consider whether the tax benefit outweighed the fees and expenses associated with the transaction, as required by NTM 05-18.

30. Finally, if the customer wanted tax deferral, the Registered Principal would approve a TIC purchase even when the customer's risk tolerance as specified in the New Account Form was lower than the speculative risk level of the TIC investment. The Registered Principal did not thoroughly review the tax deferral, as discussed above, or take further measures to confirm that it was appropriate to exceed the customer's risk tolerance.

31. Pacific West Securities did not have adequate procedures to ensure that the Registered Principal sufficiently reviewed TIC transactions for suitability. On several occasions, the Registered Principal approved the TIC sales recommended by at least two registered representatives, Swayne and Naylor, when the customer had minimal liquid fund reserves, the customer was over-concentrated in DPP investments, the Registered Principal had not reviewed the tax benefit to the customer, and/or when the customer's risk tolerance was lower than the speculative risk level of the TIC investment.

Unsuitable Recommendations by Pacific West Securities Representatives

32. TIC investments were attractive options for Pacific West Securities registered representatives to recommend to customers. TIC investments generally paid higher sales commissions than many of the other investment products that were offered and sold by the firm. Most TIC investments had sales commissions of 6% to 8%. In comparison, most stocks and options had 1% to 3% sales commissions and most variable annuities had 4% to 5% sales commissions.

33. Respondents Swayne and Naylor were two Pacific West Securities representatives that sold TIC investments. The sale of TICs comprised a significant portion of their business. However, as discussed below, these representatives made TIC sales to customers that were not suitable.

A. TIC Sales by William Swayne

34. While employed at Pacific West Securities, starting in at least 2003, Respondent Swayne sold TIC investments to his customers. Swayne attracted potential investors by hosting dinners with presentations about TIC investments. Swayne also sent mailings to income property owners and advertised in landlord publications. Swayne was one of Pacific West Securities' largest sellers of TIC investments. As described below, Swayne made unsuitable TIC recommendations to at least two of his customers.

Customer A

35. Customer A is a living trust for a married couple that resided on Mercer Island, Washington. In 2006, when Customer A purchased TIC investments, the husband was 79 years old and the wife was 76 years old. Their primary investment objective was to have income-producing investments for their retirement. Customer A was referred to Respondent Swayne by a real estate firm. After attending several presentations by Swayne, the couple decided to start investing in TICs.

36. In 2003 and 2004, Customer A purchased five TIC investments through Swayne and Pacific West Securities. During 2006, Customer A sold one of their TIC investments for almost twice the original purchase price and used the proceeds to invest in three new TIC investments. To purchase these investments, including the Argus Tri West Plaza TIC investment that is described below, Customer A made cash payments that totaled more than $2,500,000 and assumed debt that totaled approximately $3,000,000.

Argus Tri West Plaza TIC

37. In June 2006, Customer A invested $430,100 in the Argus Tri West Plaza TIC. The source of funds was the liquidation of a prior TIC investment. This was the seventh TIC investment held at that time by Customer A.

38. Respondent Swayne knew that Customer A's primary investment objective was to have income-producing investments. In spite of the fact that Swayne knew that Customer A wanted and needed to have a secure income for their retirement, Swayne and Customer A signed a New Account Form dated June 29, 2006 which indicated that Customer A's investment objective was "Aggressive Growth." The form describes Aggressive Growth as the following: "Designed to achieve above average returns for maximum capital appreciation. No focus on income. This objective has high potential for loss of principal." The Aggressive Growth objective indicated on the New Account Form was not consistent with Customer A's actual investment intent.

39. Customer A completed a Purchaser Questionnaire for this investment, dated April 7, 2006, which included a Personal Financial Statement listing current assets and liabilities. Customer A's Personal Financial Statement listed total assets of $5,759,600, total liabilities of $2,275,000, and a net worth of $3,484,600. The only short-term asset listed was cash of $200,000.

40. To process the transaction, Swayne and Customer A signed a DPP Disclosure Form dated June 23, 2006. The DPP Disclosure Form listed client net worth of $2,834,600 and client equity in primary residence of $650,000, for a total net worth of $3,484,600, which matched the amounts listed on Customer A's Personal Financial Statement. However, the DPP Disclosure Form incorrectly listed short-term assets of $1,000,000, which did not match Customer A's Personal Financial Statement. Swayne did not adequately review the customer's liquidity needs when recommending this investment.

41. When recommending the purchase of the Argus Tri West Plaza TIC investment, Swayne also did not consider the total concentration of TIC investments that would be held by the customer. Swayne had a practice of treating a 1031 TIC exchange as if there was no change in a customer's overall concentration level when a customer sold rental real estate and re-invested the funds in a TIC investment. Swayne did not adequately consider the differences between real estate holdings and TIC investments, especially the illiquidity of the TIC investments and the risk of losing the entire amount of the TIC investment. With the purchase of the Argus Tri West TIC investment, Customer A had a concentration of 93% of their net worth, excluding home equity, invested in TICs. Alternately, including home equity in the net worth calculation, the concentration level would be 76% of their total net worth. This concentration level was excessive for a customer whose primary goal was to have a secure income for their retirement.

42. In addition, Swayne did not adequately review the purported tax benefit to the customer. On the Acknowledgment Form, the amount of tax savings was not filled in. Swayne proceeded with the recommendation even though he did not know the amount, if any, of tax deferral.

43. The transaction was sent to the Pacific West Securities home office for review and approval. The Registered Principal documented their suitability review of this transaction by completing a DPP Order Processing Form. The DPP Order Processing Form listed Short Term Assets of "$1 mil." However, the Registered Principal did not adequately consider the over-concentration of TIC investments in the

customer's account. On the DPP Order Processing Form, the Registered Principal noted that the total of prior 1031 TIC investments for Customer A was $2,630,100. The form shows that the total DPPs purchased by Customer A, including this transaction, were $3,109,600. The customer's net worth was crossed out twice and was calculated in three different amounts on the form. The form showed that the customer's net worth was $2,834,600, which was crossed out and replaced by $3,484,600, with a notation "still 95%." This amount was then crossed out and replaced by $3,109,600. The form shows that the total of this transaction plus prior transactions represented 93% of Customer A's net worth, which was crossed out and replaced by 85%. There is no documentation of any further steps taken by the Registered Principal to evaluate suitability.

44. The Registered Principal also did not adequately review the purported tax benefit to the customer. As the amount of the tax savings was not filled in on the Acknowledgement Form, the Registered Principal could not adequately consider the tax benefit to the customer. In addition, there were no procedures in place for the Registered Principal to consider whether the tax benefits outweighed the fees and expenses associated with the transaction.

45. This transaction was approved by Pacific West Securities. However, it was not suitable for the customer because it over-concentrated the customer in TIC investments as a percentage of net worth. In addition, it was not appropriate to approve a transaction in which the tax benefit to the customer, if any, was unknown.

Customer B

46. Customer B was an LLC whose two members, owning 50% each of the LLC interests, were a retired married couple that lived in Portland, Oregon. In 2006, when Customer B purchased the TIC investments, the husband was 67 years old and the wife was 62 years old.

47. Customer B was interested in participating in a TIC 1031 exchange to relieve the members of the LLC from the responsibility of hands-on real property management and to defer taxes on the sale of a 16-unit apartment building. Customer B had independently investigated TIC 1031 exchange transactions and was referred to Swayne by one of the TIC sponsors. During 2006, the husband, the managing member of Customer B, drove from Oregon to meet with Swayne at his office in Seattle, Washington.

48. Based upon the information provided by Swayne during the initial meeting and over the course of the next few months, Customer B decided to invest in five different TIC offerings through Swayne and Pacific West Securities. Between June 2006 and August 2006, Customer B purchased five TIC investments with cash payments totaling more than $2,100,000 and assumed debt totaling more than $3,000,000.

49. In spite of the fact that Swayne knew that Customer B wanted and needed to have a secure income for their retirement, on the New Account Form signed by Customer B and Swayne on June 29, 2006, an investment objective of Aggressive Growth was selected. The form describes Aggressive Growth as the following: "Designed to achieve above average returns for maximum capital appreciation. No focus on income. This objective has high potential for loss of principal."

TSG Carmax Tennessee TIC

50. In August 2006, Customer B invested $325,382 in the TSG Carmax Tennessee TIC investment. The source of funds was the liquidation of an apartment building. This was the fifth TIC purchase by Customer B.

51. To process the transaction, Customer B and Swayne signed a DPP Disclosure Form dated August 8, 2006. While recommending the purchase of the investment, Swayne did not consider the total concentration of TIC investments that would be held by the customer. Swayne had a practice of treating a 1031 TIC exchange as if there was no change in a customer's overall concentration level when a customer

sold rental real estate and re-invested the funds in a TIC investment. Swayne did not adequately consider the differences between real estate holdings and TIC investments, especially the illiquidity of the TIC investments and the risk of losing the entire amount of the TIC investment. With the purchase of this investment, Customer B had a concentration of 87% of their net worth, excluding home equity, invested in TICs. Alternately, including home equity in the net worth calculation, the concentration level would be 78% of their total net worth. This concentration level was excessive for a customer who needed a secure income for their retirement.

52. In addition, Swayne did not adequately review the purported tax benefit to the customer. On the Acknowledgment Form, the amount of tax savings was not filled in. Respondent Swayne proceeded with the recommendation even though he did not know the amount, if any, of tax deferral.

53. The transaction was sent to the Pacific West Securities home office for review and approval. The Registered Principal documented their suitability review of this transaction by completing a DPP Order Processing Form. However, the Registered Principal also did not adequately consider the over-concentration of TIC investments in the customer's account. On the DPP Order Processing Form, the Registered Principal noted that the total of prior 1031 TIC investments for Customer A was $2,293,132, which was crossed out and replaced by $1,967,950. The form shows that the total of this transaction plus prior transactions represented 95% of Customer A's net worth, which was crossed out and replaced by 82%. The DPP Order Processing Form does not indicate any additional steps that were taken by the Registered Principal to review suitability.

54. The Registered Principal also did not adequately review the purported tax benefit to the customer. As the amount of the tax savings was not filled in on the Acknowledgement Form, the Registered Principal could not adequately consider the tax benefit to the customer. In addition, there were no procedures in

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia WA 98507-9033
360-902-8760

place for the Registered Principal to consider whether the tax benefits outweighed the fees and expenses associated with the transaction.

55. This transaction was approved by Pacific West Securities. However, it was not suitable for the customer because it over-concentrated the customer in TIC investments as a percentage of net worth. In addition, it was not appropriate to approve a transaction in which the tax benefit to the customer, if any, was unknown.

B. TIC Sales by Robin Naylor

56. While employed at Pacific West Securities, Respondent Naylor began selling TIC investments to his customers in approximately 2002. Naylor attracted potential investors by writing articles about TIC investments for landlord publications and by hosting lunch or dinner seminars. The sale of TICs became the largest product group sold by Naylor, comprising approximately 88 to 90 percent of his business. As described below, Naylor made unsuitable TIC recommendations to at least two of his customers.

Customer C

57. Customer C, a married couple, is a resident of Enumclaw, Washington. Customer C learned about Respondent Naylor when reading a trade rental magazine that had an article on TIC investments. Customer C owned rental real estate, and after reading the article, was interested in possibly liquidating a few rental properties and investing the proceeds in TICs. Customer C met with Naylor and Naylor began recommending TIC investments.

58. From approximately January 2002 through August 2007, Customer C invested in five TIC investments and two other DPP investments through Naylor and Pacific West Securities. When they began investing in TICs, Customer C had a relatively high risk tolerance. On their initial New Account Form, completed on January 31, 2002, Customer C selected a risk tolerance of 8 out of 10, with 10 being the

highest risk tolerance. However, Customer C's risk tolerance decreased over the years. On September 6, 2005, Customer C updated their New Account Form. On the updated form, they selected a risk tolerance of "Moderate." This was the most recent New Account Form on file when Customer C invested in the Western America Corporate Centre TIC.

Western America Corporate Centre TIC

59. In April 2007, Customer C invested $220,000 in the Western America Corporate Centre TIC. The source of funds was a liquidation of a rental real estate property. As part of the investment, Customer C also assumed a pro rata share of a nonrecourse loan to finance the purchase of the property. As a result, Customer C assumed approximately $410,764 of debt. This was Customer C's fourth TIC purchase and fifth total DPP purchase through Naylor.

60. When making this recommendation, Naylor did not consider the total concentration of DPPs that would be held by the customer. Naylor had a practice of treating a 1031 TIC exchange as if there was no change in a customer's overall concentration level when a customer sold rental real estate and re-invested the funds in a TIC investment. Thus, even though Respondent Naylor had previously sold Customer C four DPPs, three of which Customer C still held at the time of this investment, he did not take into consideration Customer C's total concentration level of DPPs.

61. In addition, Naylor did not adequately review the purported tax benefit to the customer. On the Acknowledgement Form, the amount of tax savings was not filled in. Respondent Naylor proceeded with the recommendation even though he did not know the amount, if any, of tax deferral.

62. The transaction was sent to the Pacific West Securities home office for review and approval. The Registered Principal documented their suitability review of this transaction by completing a DPP Order Processing Form. However, the Registered Principal also did not adequately consider the over-concentration of DPPs in the customer's account. On the DPP Order Processing Form, the Registered

Principal calculated that all of the DPPs held by the customer, plus the current transaction, as a percentage of the customer's net worth was 80%. Although this was a high concentration, there was no documentation of further steps taken by the Registered Principal in order to make sure that the high concentration was suitable for the customer. In addition, this percentage would have been higher if the Registered Principal had not failed to include one of the TICs still owned by Customer C in the calculation.

63. The Registered Principal also did not adequately review the purported tax benefit to the customer. As the amount of tax savings was not filled in on the Acknowledgement Form, the Registered Principal could not adequately consider the tax benefit to the customer. In addition, there were no procedures in place for the Registered Principal to consider whether the tax benefit outweighed the fees and expenses associated with the transaction.

64. This transaction was approved by Pacific West Securities. However, it was not suitable for the customer because it over-concentrated the customer in DPP investments as a percentage of net worth and the customer's moderate risk tolerance was lower than the speculative risk of the TIC investment. In addition, it was not appropriate to approve a transaction in which the tax benefit to the customer, if any, was unknown.

65. In approximately January or February 2012, the Western America Corporate Centre TIC property was foreclosed.

NNN One Ridgmar Centre LLC TIC

66. Customer C's risk tolerance became even more conservative by the next time they updated their New Account Form. On May 7, 2007, Customer C again updated their New Account Form. On the updated form, Customer C selected a risk tolerance of "Conservative." A few months after updating this form, Customer C invested in a fifth TIC through Respondent Naylor.

67. In August 2007, Customer C invested $273,261 in the NNN One Ridgmar Centre LLC TIC. The funds invested were rolled over from a previous TIC investment. As part of the investment, Customer C also assumed a pro rata share of a nonrecourse loan to finance the purchase of the property. As a result, Customer C assumed approximately $357,430 of debt.

68. The transaction was sent to the Pacific West Securities home office for review and approval. The Registered Principal documented their suitability review of this transaction by completing a DPP Order Processing Form. However, the Registered Principal's review of the transaction was incomplete. Although Customer C at the time held four other DPPs, the Registered Principal did not calculate the total DPPs owned, including the current transaction, as a percentage of the customer's net worth.

69. This transaction was approved by Pacific West Securities. However, it was not suitable because of the customer's conservative risk tolerance. In addition, it was not appropriate to approve a transaction in which the concentration level of DPPs in the customer's account was not reviewed.

Customer D

70. Customer D is a resident of Renton, Washington. Customer D was referred to Naylor by his real estate agent, who saw one of Naylor's TIC articles. Customer D attended one of Naylor's TIC seminars. Subsequently, after discussing TIC investments with Naylor, Customer D was interested in liquidating the rental property he owned and investing the funds in a TIC. According to the New Account Form completed by Customer D, dated June 25, 2008, he had a "Moderate" risk tolerance. At the time, Customer D was 62 years old.

71. Due to Naylor's recommendation that Customer D split his funds between two different TIC investments, Customer D invested in two TICs on the same day. On June 25, 2008, Customer D invested $330,792 in the Argus Onyx Office Plaza TIC and $230,000 in the Core Minneapolis Industrial TIC. As

part of each investment, Customer D assumed a pro rata share of a nonrecourse loan to finance the purchase of the property. As a result, Customer D assumed debt totaling approximately $888,322.

72. When making this recommendation, Naylor did not adequately consider Customer D's liquidity needs. On each DPP Disclosure Form that Naylor and the customer completed, Customer D's short-term assets were listed as $5,000, which was in a checking/savings account. This was an insufficient amount of liquid funds for an aging customer to have available. However, Naylor proceeded with the recommendation.

73. The transactions were sent to the Pacific West Securities home office for review and approval. The Registered Principal documented their suitability review of these transactions by completing a DPP Order Processing Form for each investment. However, the Registered Principal did not adequately consider the customer's lack of short-term funds. On each DPP Order Processing Form, the Registered Principal did not fill in the amount of short-term assets held by the customer. There was no documentation on the DPP Order Processing Form of further steps taken by the Registered Principal in order to make sure that the customer's liquidity needs were being met.

74. The Registered Principal also did not adequately consider whether the transactions would over-concentrate Customer D in TIC investments. On the DPP Order Processing Form, the Registered Principal calculated that the Argus Onyx Office Plaza TIC constituted 43% of the customer's net worth and the Core Minneapolis Industrial TIC constituted 30% of the customer's net worth. However, even though Customer C was investing in both TICs on the same day, the Registered Principal did not complete the section of the form that calculated the total combined DPPs that would be held by the customer as a percentage of net worth. If the Registered Principal had made this calculation according to the formula on the form, which excludes home value, 73% would have been listed on the form.

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia WA 98507-9033
360-902-8760

75. These transactions were approved by Pacific West Securities. However, they were not suitable for the customer due to the customer's insufficient liquid funds and over-concentration in TIC investments as a percentage of the customer's net worth. In addition, these transactions were unsuitable because the customer's moderate risk tolerance was lower than the speculative risk level of the TIC investments.

76. In 2012, the Argus Onyx Office Plaza TIC property was foreclosed. Customer C still holds the Core Minneapolis Industrial TIC, although it has stopped paying distributions.

Based upon the above Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. The offer and sale of the tenant-in-common investments described above constitute the offer and sale of a security, as defined in RCW 21.20.005(14) and RCW 21.20.005(17), in the form of an investment contract.

2. Respondent Pacific West Securities, Inc. recommended the purchase of said securities without reasonable grounds to believe that the recommendations were suitable, in violation of RCW 21.20.702. Such conduct is also a violation of RCW 21.20.110(1)(g) and WAC 460-21B-060(3), and is grounds to deny future broker-dealer registration applications. Such conduct is also grounds to impose a fine pursuant to RCW 21.20.110(1) and RCW 21.20.395 and to recover investigative costs pursuant to RCW 21.20.390.

3. Respondents William Madison Swayne II and Robin Thomas Naylor each recommended the purchase of said securities without reasonable grounds to believe that the recommendations were suitable, in violation of RCW 21.20.702. Such conduct is also a violation of RCW 21.20.110(1)(g) and WAC 460-22B-090(7) and is grounds to deny, suspend, or revoke their securities salesperson registration. Such conduct is also grounds to impose a fine pursuant to RCW 21.20.110(1) and RCW 21.20.395 and to recover investigative costs pursuant to RCW 21.20.390.

4. Respondent Pacific West Securities, Inc. failed to establish, maintain, and enforce an adequate supervisory system for the sale of TICs, including failing to develop adequate policies and procedures regarding the suitability of TIC investments and failing to establish adequate procedures and systems for the review and approval of TIC transactions. Such conduct is a violation of RCW 21.20.110(1)(g) and WAC 460-21B-060(24) for failing to comply with an applicable provision of the NASD Conduct Rules, namely NASD Rule 3010 and FINRA Rule 2010. Such conduct is grounds to deny future broker-dealer registration applications. Such conduct is also grounds to impose a fine pursuant to RCW 21.20.110(1) and RCW 21.20.395 and to recover investigative costs pursuant to RCW 21.20.390.

CONSENT ORDER

Based upon the foregoing and finding it in the public interest:

IT IS AGREED AND ORDERED that the Respondent Robin Thomas Naylor shall cease and desist from violation of RCW 21.20.702, the suitability section of the Securities Act of Washington.

IT IS FURTHER AGREED that the Respondent Robin Thomas Naylor shall be liable for and shall pay the Securities Division the costs and other expenses incurred in the investigation of this matter in the amount of $2,500 on or before the date of entry of this Consent Order.

IT IS FURTHER AGREED that the Respondent Robin Thomas Naylor enters into this Consent Order freely and voluntarily and with full understanding of its terms and significance.

IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this order.

IT IS FURTHER AGREED that in consideration of the foregoing, the Respondent Robin Thomas Naylor waives his right to a hearing in this matter and judicial review of this order.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

SIGNED this _15th_ day of _January____, 20_14_.

Approved for Entry by:

___/s/______________________________________
Christopher Wells, Attorney for the Respondent
Washington State Bar No. 8302

Signed by:

___/s/______________________________________
Robin Thomas Naylor, individually

DATED AND ENTERED this 27th___ day of January_________, 2014__.

By:

William M. Beatty
Securities Administrator

Approved by:

Suzanne Sarason
Chief of Enforcement

Reviewed by:

Robert Kondrat
Financial Legal Examiner Supervisor

Presented by:

Bridgett Fisher

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia WA 98507-9033
360-902-8760

Bridgett Fisher
Enforcement Attorney

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia WA 98507-9033
360-902-8760