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**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:

TIMOTHY CHARLES CROSS,

Respondent.

Order No.: S-10-170-11-SC01

STATEMENT OF CHARGES AND NOTICE OF  
INTENT TO ENTER ORDER TO SUSPEND  
REGISTRATIONS, IMPOSE A FINE, AND RECOVER  
COSTS

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**THE STATE OF WASHINGTON TO:**

Timothy Charles Cross (CRD 1452750)

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**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that the Respondent Timothy Charles Cross failed to supervise reasonably a registered securities salesperson and investment adviser representative subject to his supervision, and that this conduct justifies the entry of an order of the Securities Administrator to suspend his securities salesperson and investment adviser representative registrations pursuant to RCW 21.20.110(1)(j), and to impose a fine and recover costs. The Securities Administrator finds as follows:

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**TENTATIVE FINDINGS OF FACT**

Respondent

1. Timothy Charles Cross (“Cross”) is an individual residing in Washougal, Washington. Cross was first employed in the securities industry in 1987 and has been employed by several broker-dealers. Most recently, Cross has been employed with ING Financial Partners, Inc. (“ING Financial Partners”) from April 2001 to present. Cross has been registered with the Washington State Securities Division as a securities salesperson for most periods between August 1987 and present, and as an investment adviser representative from August 2001 to present. Cross has also been a Washington

1 State licensed insurance agent from 2001 to present. Cross has a Central Registration Depository  
2 (“CRD”) number of 1452750.

3 Other Related Person

4 2. Rhonda Lee Breard (“Breard”) was a Washington resident. Breard was first employed in  
5 the securities industry in 1981 and has been employed by several broker-dealers. Most recently,  
6 Breard was employed with ING Financial Partners from February 2002 until her termination on  
7 February 10, 2010. While employed with ING Financial Partners, Breard conducted her business  
8 under the name Breard & Associates Financial Services until approximately 2005 when she established  
9 Breard and Associates Wealth Management, LLC (“Breard and Associates Wealth Management”).  
10 Breard and Associates Wealth Management was located in Kirkland, Washington. Breard was the  
11 President of Breard and Associates Wealth Management, through which she operated her securities  
12 and insurance business. Breard and Associates Wealth Management has never been registered in  
13 Washington or elsewhere as a broker-dealer or investment adviser. Breard was registered as a  
14 securities salesperson with the Washington State Securities Division for several periods between May  
15 1984 and February 2010. Breard was also registered as an investment adviser representative with the  
16 Washington State Securities Division from May 2003 to February 2010. Breard was a Washington  
17 State licensed insurance agent from August 1991 to April 2010. Breard has a CRD number of  
18 1231763.  
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20 Nature of the Conduct

21 *Background*

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23 3. From approximately 2001 to June 2010, Respondent Cross was employed as an Office of  
24 Supervisory Jurisdiction (“OSJ”) Manager for ING Financial Partners. As an OSJ Manager,  
25 Respondent Cross was directly responsible for supervising designated registered representatives. The

1 registered representatives that Respondent Cross supervised were located in Washington, Oregon,  
2 Idaho, California, Montana, Arizona, New Mexico and Colorado. Although the number of individuals  
3 supervised by Respondent Cross fluctuated over time, as of April 31, 2010, he supervised 51 registered  
4 representatives. Four of these registered representatives were "Sub-OSJ" managers, who in turn were  
5 responsible for supervising a total of 36 registered representatives. While an OSJ Manager,  
6 Respondent Cross himself had few securities or insurance clients.

7 4. Respondent Cross was the designated supervisor for registered representative Breard  
8 from 2004 until February 2010. While Respondent Cross was the supervisor for Breard, she engaged  
9 in a scheme to defraud many of her customers. From at least July 2003 to February 2010, Breard  
10 converted at least \$12 million from 42 of her customers for her personal use. She told these customers  
11 that their money would be placed in a variety of financial and insurance products. However, instead  
12 she deposited the funds into her personal bank account, and mailed many of her victims phony account  
13 statements to maintain the illusion that she had re-invested their money. Her scheme was uncovered in  
14 February 2010.

15 5. On April 6, 2010, the Washington State Securities Division issued a Statement of  
16 Charges and Notice of Intent to Enter Order to Cease and Desist, Deny Future Registrations, Impose  
17 Fines and Recover Costs ("Statement of Charges") against Breard. The Securities Division alleged in  
18 the Statement of Charges that by operating a scheme to defraud her customers out of millions of  
19 dollars, Breard engaged in dishonest and unethical practices in the securities business and violated the  
20 anti-fraud provision of the Securities Act of Washington. The Securities Division entered into a  
21 Consent Order with Breard in the matter on July 20, 2010. In the Consent Order, it was agreed and  
22 ordered that Breard be permanently barred from being licensed as a securities professional in the State  
23 of Washington. In August 2010, Breard was sentenced in U.S. District Court in Seattle for mail fraud  
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1 and was sentenced to serve 80 months in prison. She is currently incarcerated at the Federal  
2 Correctional Institute in Dublin, California.

3 *Respondent Cross's Supervisory Duties*

4 6. As an OSJ Manager, Respondent Cross was responsible for ensuring that the registered  
5 representatives under his direct supervision complied with the policies and procedures established by  
6 ING Financial Partners. Respondent Cross's supervisory duties included conducting annual branch  
7 office inspections, reviewing the electronic and paper correspondence of the individuals under his  
8 supervision, and performing preliminary reviews of advertising and sales literature. ING Financial  
9 Partners allowed OSJ Managers to delegate certain supervisory tasks to OSJ delegate Principals,  
10 registered representatives who held the appropriate FINRA registrations to supervise securities  
11 activities. From 2008 through June 2010, Respondent Cross had up to three OSJ delegate Principals  
12 who assisted him with certain supervisory duties, such as correspondence review and review of  
13 seminars conducted by registered representatives. The majority of annual branch office inspections,  
14 however, were still conducted by Respondent Cross.

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16 7. When conducting annual branch office inspections, Respondent Cross was required to  
17 conduct an on-site interview of the registered representative and complete an *Inspection Checklist*  
18 form. The *Inspection Checklist* form instructed him to review specific items at the registered  
19 representative's office, including correspondence, advertising and sales literature, the securities blotter,  
20 and checking account documents. The *Inspection Checklist* form then asked detailed questions about  
21 the items reviewed.

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23 8. ING Financial Partners provided guidance to Respondent Cross on completing the annual  
24 branch office inspections. OSJ Managers are given *Inspection Checklist Procedures*, which provide  
25 detailed guidance on conducting annual branch office inspections, including guidance on completing

1 the *Inspection Checklist* form. ING Financial Partners also has established written supervisory  
2 procedures for completing the annual inspections in its Designated Supervisor Manual. ING Financial  
3 Partners further required OSJ Managers to attend annual trainings and monthly webcasts which  
4 covered inspection checklist policies and procedures, including training on how to properly conduct  
5 checking account reviews.

6 *Breard Office Inspections*

7 9. From 2004 through 2009, Respondent Cross conducted annual branch office inspections  
8 of Breard's office. He was not assisted by an OSJ delegate Principal or anyone else. As required,  
9 Respondent Cross conducted an on-site interview of Breard and completed an *Inspection Checklist*  
10 form. Every year, the *Inspection Checklist* form and *Inspection Checklist Procedures* instructed him to  
11 complete a review of Breard's checking account statements and answer specific questions about the  
12 accounts he reviewed. The instructions for completing the checking account review and the questions  
13 regarding the accounts reviewed varied from year to year.

14 10. The 2006, 2007, and 2008 *Inspection Checklist Procedures* instructed Respondent Cross  
15 to review business checking accounts including doing business as ("DBA") accounts. The 2008  
16 *Inspection Checklist Procedures* added that personal checking accounts should be reviewed if there are  
17 no business or DBA accounts. The 2009 *Inspection Checklist* form instructed Respondent Cross to  
18 complete a checking account review of each DBA account and outside business activity account  
19 owned or controlled by Breard as well as any other accounts where commissions are deposited. Based  
20 on these instructions, Respondent Cross should have reviewed the Breard and Associates Wealth  
21 Management business checking account held at Bank of America during his 2006 to 2009 audits. This  
22 account, which was opened in February 2005, was in the name of "Breard & Associates Wealth MG."  
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1 11. Each year, the *Inspection Checklist* form asked Respondent Cross to list identifying  
2 information of the bank accounts he reviewed. The *Inspection Checklist* form for 2006, 2007 and 2008  
3 requested the name of the bank, the name of the account, and the account use. For those years,  
4 Respondent Cross identified the bank account he reviewed as a Bank of America account in the name  
5 of “Breard and Associates Wealth Management.” The 2009 *Inspection Checklist* form requested the  
6 name of the bank, the account registration, the account purpose, and the last four digits of the account  
7 number. In 2009, Respondent Cross failed to list the last four digits of the bank account he reviewed,  
8 although he did identify it as a Bank of America business account registered to “Breard Wealth  
9 Management.”

10 12. While conducting the annual branch office inspections of Breard’s office, Respondent  
11 Cross never noted any deficiencies regarding her bank account activity. Respondent Cross did not find  
12 any deficiencies during the 2006 and 2007 audits of Breard’s office. In 2008, Respondent Cross noted  
13 as a deficiency that all index annuity purchases made using the proceeds from the liquidation of  
14 securities needed to be reviewed. In 2009, he noted as a deficiency that Breard did not complete all the  
15 columns of her securities blotter. Respondent Cross noted no other deficiencies during these audits.

16 13. As discussed below, Respondent Cross failed to adequately review Breard’s business  
17 checking account statements when conducting the 2006 to 2009 audits of her office. He failed to  
18 question the source of numerous large deposits into the business checking account, many of which  
19 were in even amounts. Additionally, Respondent Cross failed to question how Breard was paying the  
20 business expenses that were drawn on the account, which consistently exceeded the amount of  
21 commissions directly deposited into the account. As a result of Respondent Cross’s failure to  
22 reasonably question Breard’s bank account activity, she was able to continue to convert funds from her  
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1 customers for an extended period of time. From February 2009 to February 2010 alone, Breard  
2 converted over \$3 million of her customers' funds for her personal use.

3 *Failure to Question Source of Large Deposits*

4 14. Each year, the *Inspection Checklist Procedures* instructed Respondent Cross to review  
5 Breard's business checking account statements since the date of the last inspection. Following those  
6 instructions, during the 2006 to 2009 audits of Breard's office, Respondent Cross would have  
7 gradually reviewed every checking account statement from approximately February 2005 through  
8 January 2009. These statements show a pattern of frequent large dollar amount deposits into the  
9 account, many in even dollar amounts. The source of funds for most of the deposits are not  
10 identifiable on the statements. Only the source of the commissions deposited into the account directly  
11 from ING Financial Partners and ReliaStar Life Insurance Company are apparent from reviewing the  
12 statements ("identifiable deposits"). There were also occasional transfers into this account from other  
13 bank accounts. For each transfer, the statement identified the account number of the bank account that  
14 the funds were transferred from.

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16 15. The *Inspection Checklist Procedures* for 2006, 2007 and 2008 instructed Respondent  
17 Cross to review the business checking account statements for "large deposits and withdrawals for even  
18 amounts." According to the *Inspection Checklist Procedures* for these years, if a serious problem is  
19 discovered, such as conversion of customer funds or securities, the Compliance Department should  
20 immediately be contacted. During these audits, Respondent Cross did not contact the Compliance  
21 Department to report evidence of any serious problems. However, as early as February 2005, there  
22 was a pattern of large, even dollar amount deposits into the business checking account, from  
23 unidentified sources. For example, the February 2005 statement lists a deposit of \$6,000, the March  
24 2005 statement lists a deposit of \$11,650, the April 2005 statement lists a deposit of \$16,300, and the  
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1 June 2005 statement lists deposits of \$12,500 and \$8,000. The business checking account statements  
 2 that Respondent Cross should have reviewed during the 2006 through 2008 audits show over 100 large  
 3 deposits and transfers into the business checking account from unidentified sources, totaling over \$1  
 4 million.

5 16. This pattern of frequent large dollar amount deposits and transfers continued through at  
 6 least January 2009. The 2009 *Inspection Checklist* form and *Inspection Checklist Procedures*  
 7 instructed Respondent Cross to “review for a pattern of payments for large dollar amounts” and  
 8 “frequent deposits or withdrawals that are non-business related,” and specifically asked if there are any  
 9 unusual deposits or withdrawals. Respondent Cross could either select “yes” or “no.” When  
 10 answering this question, Respondent Cross selected “no,” indicating that there were no unusual  
 11 deposits or withdrawals. However, a review of the business checking account statements Respondent  
 12 Cross indicated he reviewed during the February 2009 audit show the following large deposits and  
 13 transfers made into the account, from unidentified sources, totaling \$519,378.98:  
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<u>Statement Date</u>	<u>Date of Deposit/ Transfer</u>	<u>Amount of Deposit/ Transfer</u>
February 2008	2/15/2008	\$ 15,000.00
March 2008	3/4/2008	\$ 9,000.00
	3/17/2008	\$ 9,000.00
	3/19/2008	\$ 5,000.00
April 2008	4/1/2008	\$ 24,000.00
	4/15/2008	\$ 19,365.00
May 2008	5/6/2008	\$ 20,334.11
	5/23/2008	\$ 10,372.84
June 2008	6/10/2008	\$ 23,290.00
	6/23/2008	\$ 6,000.00
July 2008	7/2/2008	\$ 10,000.00
	7/3/2008	\$ 30,000.00
	7/10/2008	\$ 5,513.51
	7/16/2008	\$ 6,000.00
	7/21/2008	\$ 14,038.75
	7/23/2008	\$ 11,606.36
	7/23/2008	\$ 16,500.00



	7/30/2008	\$ 5,000.00
August 2008	8/19/2008	\$ 7,024.50
	8/22/2008	\$ 10,000.00
September 2008	9/2/2008	\$ 11,000.00
	9/9/2008	\$ 10,000.00
	9/12/2008	\$ 10,000.00
	9/15/2008	\$ 20,000.00
	9/17/2008	\$ 34,000.00
October 2008	10/6/2008	\$ 32,500.00
	10/23/2008	\$ 7,000.00
November 2008	11/3/2008	\$ 15,000.00
	11/12/2008	\$ 25,410.00
December 2008	12/8/2008	\$ 47,000.00
January 2009	1/08/2009	\$ 36,423.91
	1/21/2009	\$ 14,000.00
<b>TOTAL</b>		<b>\$ 519,378.98</b>

17. Although a probe into the source of funds would have revealed that some of the large deposits into the account were commission checks Breard deposited from selling life insurance, from at least February 2005, many of the deposits were also checks that Breard wrote from her personal Bank of America account payable to the business checking account. For example, the \$6,000 deposit in February 2005, \$11,650 deposit in March 2005, \$16,300 deposit in April 2005, and \$12,500 and \$8,000 deposits in June 2005 were all checks from Breard's personal bank account. Also, many of the transfers into the business checking account were directly from her personal bank account. This should have led to a probe of Breard's personal bank account, and an inquiry into how she was obtaining the surplus of funds in that account.

18. A thorough probe into Breard's personal bank account would have revealed that from at least February 2005 through January 2009, Breard deposited personal checks from her clients, written payable to "Breard and Associates" or some variation thereof. Breard instructed her clients to make their checks payable in this manner, telling them she was going to be putting the funds into an

1 investment for them. Instead of forwarding the funds to a broker-dealer or insurance company, Breard  
2 deposited the funds into her personal bank account. Some of these converted funds were later  
3 transferred to the business checking account to help pay for business expenses.

4 19. Respondent Cross should have noticed the pattern of large deposits and transfers into the  
5 business checking account, from unidentified sources, and questioned the source of the funds. As early  
6 as the 2006 audit, he should have contacted the Compliance Department to report that there were  
7 unexplained deposits in Breard's business bank account. During at least the 2009 audit, Respondent  
8 Cross should have noticed the unusual deposits and withdrawals, and selected "yes" on the *Inspection*  
9 *Checklist* form when answering this question. If he had selected "yes," the form would have prompted  
10 him to list the date of deposit, amount of deposit, and source of funds. This should have led him to  
11 probe into Breard's personal bank account, where she was still depositing the funds converted from her  
12 customers.

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14 *Failure to Question Source of Payment for Business Expenses*

15 20. A review of the February 2005 through January 2009 business checking account  
16 statements show that over the course of almost four years, approximately \$1.9 million was withdrawn  
17 from the business checking account, presumably all to pay for business expenses. A review of the  
18 business checking account statements Respondent Cross should have reviewed during each audit from  
19 2006 to 2009 show the following identifiable deposits into the account, consisting of commissions, and  
20 the following withdrawals:

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<u>Inspection Date</u>	<u>Bank Statements Reviewed</u>	<u>Identifiable deposits</u>	<u>Withdrawals</u>
June 2006	February 2005 – May 2006	\$ 95,196.01	\$ 451,180.16
July 2007	June 2006 – June 2007	\$ 95,900.40	\$ 537,064.81
May 2008	July 2007 – January 2008	\$ 73,997.92	\$ 246,621.12

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February 2009	February 2008 – January 2009	\$ 107,894.73	\$ 635,388.05
<b>TOTAL</b>		<b>\$ 372,989.06</b>	<b>\$ 1,870,254.14</b>

21. For each period of checking account statements reviewed, the withdrawals on the account always substantially exceeded the amount of identifiable deposits into the account. For example, from February 2008 through January 2009, the amount withdrawn from the account was almost six times greater than the amount of identifiable deposits into the account. The \$635,388.05 that was withdrawn includes business expenses of \$247,000 for payroll, \$59,000 for advertising and \$65,000 for office rent. The \$107,894.73 in identifiable deposits during these months, consisting of commissions directly deposited from ING Financial Partners and ReliaStar Life Insurance Company, was not even enough to cover the amount Breard spent on payroll alone.

22. It can be concluded after reviewing the business checking account statements that the business expenses must have been paid in part from another source besides for commissions deposited directly into the account from ING Financial Partners and ReliaStar Life Insurance Company. Further review of the bank statements show that for each time period, the following total sums were deposited or transferred into the account: \$359,525.93 between February 2005 and May 2006, \$446,869.53 between June 2006 and June 2007, \$170,621.15 between July 2007 and January 2008, and \$536,193.24 between February 2008 and January 2009. These funds, the source of which cannot be identified by merely looking at the statements, were being used to help cover the business expenses.

23. Respondent Cross failed to observe that the identifiable deposits into the account were insufficient to support Breard's business expenses. When reviewing the deposits and withdrawals on the account statements, he should have noticed the pattern of business expenses that exceeded the identifiable deposits into the account, and questioned the source of the funds that were being used to

1 help pay the business expenses. As early as the 2006 audit, Respondent Cross should have contacted  
2 the Compliance Department to report that there was evidence of unexplained deposits in Breard's  
3 business bank account. As previously discussed, this should have ultimately led Respondent Cross to  
4 probe into Breard's personal bank account, where she was depositing the funds converted from her  
5 customers.

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

8 **CONCLUSIONS OF LAW**

9 Respondent Timothy Charles Cross failed to supervise reasonably Rhonda Lee Breard, a  
10 securities salesperson and investment adviser representative subject to his supervision who committed  
11 a violation of the Securities Act of Washington, by failing to adequately review her business checking  
12 account records. Respondent Cross failed to question the source of numerous large deposits into the  
13 account, and he also failed to question how Breard was paying the business expenses drawn on the  
14 account, which exceeded the commissions directly deposited into the account. Such conduct is  
15 grounds to suspend his securities salesperson and investment adviser registrations and to impose a fine  
16 pursuant to RCW 21.20.110(1)(j) and RCW 21.20.110(1)(g), WAC 460-22B-090(19), and NASD  
17 Conduct Rule 3010.  
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19 **NOTICE OF INTENT TO SUSPEND REGISTRATIONS**

20 Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and  
21 Conclusions of Law, the Securities Administrator intends to order that the securities salesperson and  
22 investment adviser registrations of Respondent Timothy Charles Cross be suspended.  
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**NOTICE OF INTENT TO IMPOSE A FINE**

Pursuant to RCW 21.20.110, and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that the Respondent Timothy Charles Cross shall be liable for and shall pay a fine of \$25,000.

**NOTICE OF INTENT TO CHARGE COSTS**

Pursuant to RCW 21.20.110, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that the Respondent Timothy Charles Cross shall be liable for and shall pay investigative costs of not less than \$10,000.

**AUTHORITY AND PROCEDURE**

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. The Respondent Timothy Charles Cross may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order. If the Respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final, suspend securities registrations, and impose any fines and costs sought against the Respondent.

Signed and Entered this 27th day of May 2011.



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William M. Beatty  
Securities Administrator

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Approved by:



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Suzanne Sarason  
Chief of Enforcement

Presented by:



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Bridgett Fisher  
Enforcement Attorney

Presented by:



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Jiyoung Kwon  
Enforcement Attorney