

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAOSHIANG LUO
(CRD No. 2143876),

Respondent.

Disciplinary Proceeding
No. 2011026346206

Hearing Officer—LOM

HEARING PANEL DECISION

October 28, 2014

Respondent knowingly or, at a minimum, recklessly sold promissory notes issued by the parent company of his broker-dealer firm on the basis of false statements of material fact and misleading omissions of material fact, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5, FINRA Rules 2020 and 2010 (First Cause of Action). For this misconduct, Respondent is barred from associating with any member firm in any capacity.

In the alternative, Respondent made negligent misrepresentations in violation of FINRA Rule 2010 when he sold the notes (Second Cause of Action). For this misconduct, Respondent would be suspended from associating with any member firm in any capacity for thirty business days and fined \$50,000. However, in light of the bars imposed for other violations, this sanction is not imposed.

Respondent sold the notes without a reasonable basis for believing that the notes were suitable for any investor, in violation of NASD Rule 2310 and FINRA Rule 2010 (Third Cause of Action). Even if the notes had been suitable for some investors, Respondent sold the notes to two customers without reasonable grounds to believe that his recommendation was suitable for the particular customers, in violation of NASD Rule 2310 and FINRA Rule 2010 (Fourth Cause of Action). These violations were egregious. Because the Third and Fourth Causes are based on the same misconduct, Respondent is sanctioned for both violations in the aggregate and is barred from associating with any FINRA member firm in any capacity.

Respondent is also ordered to pay costs.

Appearances

Thomas S. Kimbrell and Christopher Perrin, Rockville, Maryland, representing the Department of Enforcement.

Jaoshiang Luo, representing himself.

I. INTRODUCTION

Respondent, Jaoshiang "Rudy" Luo ("Luo" or "Respondent"), committed securities fraud. In 2009, he sold risky, short-term, high-interest promissory notes issued by the parent company of his FINRA member broker-dealer firm in a private placement offering to GD, a woman who purchased the notes in separate transactions for herself and for her sister in Hong Kong. GD was concerned about safety of her funds. Luo falsely represented to GD that the notes were safer than stocks and misleadingly characterized the notes as a good investment when they were not. He failed to disclose other material facts he knew that contradicted those descriptions of the investment. Most significantly, he failed to disclose that the parent company issuing the notes had already stopped making payments due on other securities that he had sold, or that he had asked multiple times about the overdue payments only to be met with an evasive response. Furthermore, although Luo considered private placement offerings high risk investments, he failed to disclose the risks associated with the notes because he did not want to "scare" GD.

Enforcement pled in the alternative that Luo made negligent misrepresentations in violation of his ethical duties. Even if Luo did not act knowingly or recklessly when he made false and misleading statements to GD, he did act negligently. His negligent conduct fell far short of the professional standards expected in the industry and was unfair to his customers. It was unethical.

Respondent also violated FINRA's suitability rule in two different ways.

First, Respondent failed to conduct the due diligence required to determine whether the 2009 notes were suitable for any investor. He knew that every other private placement that he had

sold involved a disclosure document called a private placement memorandum (“PPM”), but there was no PPM for the 2009 offering and he saw no financial statements of the parent company (material facts he also misleadingly failed to disclose to GD). Respondent primarily relied on assurances by the very same person who had evaded his questions about overdue payments on previously issued securities. That person had assured Luo that the 2009 notes were a good investment, and Luo simply relayed that message to his customer.

Second, even if the 2009 notes had been suitable for some investors, Respondent’s recommendation of the 2009 notes for purchase by two sisters was unsuitable for those particular customers. The notes did not meet GD’s concern with safety, and neither sister had the financial assets or financial sophistication to make such an investment.

Respondent laid out two main lines of defense. The first raises factual issues; the second argues that responsibility lies elsewhere. The Hearing Panel rejects both defenses.

First, Respondent asserted that the customers were unconcerned with safety and were qualified to invest in the 2009 notes. However, the preponderance of the evidence indicates that GD was concerned with safety and that her sister, CWC, also had reason to be conservative with her investment. Respondent’s testimony was confused, inconsistent, and evasive. Without corroboration, his testimony was insufficient to establish any fact. Indeed, some of his testimony actually supports the conclusion that the customers were concerned with safety and that he purposely misled them as to the safety of the 2009 notes.

Second, Respondent asserted that any fault lay with the principal who had promoted the sale of the 2009 notes and with his broker-dealer firm’s management. A registered representative has duties, however, that cannot be shifted to others. These include a duty to make truthful and complete disclosures when selling securities, so as to avoid misleading customers, and a duty to

conduct appropriate due diligence on the suitability of the securities.

The Hearing Panel imposes a bar from association with any FINRA member for the fraud violation. The Hearing Panel separately imposes a bar for the two suitability violations in the aggregate. Stringent sanctions are necessary because the Hearing Panel believes that Respondent cannot be trusted to comply with the applicable law and regulations in the future. Among other things, he displayed a flagrant disregard for the truth and accuracy of the account forms used to qualify the investors to invest in the 2009 notes, and he engaged in unethical conduct akin to witness tampering.¹

II. FINDINGS OF FACT

A. Proceeding

The Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA")² brought this disciplinary proceeding against Luo. FINRA has jurisdiction to bring such a proceeding against him.³ A hearing was held on December 10 and 11, 2013.⁴ This is

¹ The lesser sanctions that the Hearing Panel would impose for the alternative, stand-alone violation of FINRA Rule 2010 are not imposed in light of the bars imposed for the other violations.

² FINRA is a self-regulatory organization that is responsible for regulatory oversight of securities firms and associated persons who do business with the public. Members and their associated persons agree to comply with FINRA's Rules, as well as the securities laws and other applicable regulations, and with FINRA's rulings, orders, directions, and decisions. By-Laws, Art. IV, Sec. 1(a)(1); Art. V, Sec. 2(a)(1); and FINRA Rule 140. FINRA's Rules are available at www.finra.org/Rules.

³ As noted below, Luo was registered with a FINRA member firm at the time of the alleged misconduct and he is currently registered with another FINRA member firm. Registered persons are subject to FINRA's jurisdiction and remain so for two years after termination of their registration. By-Laws, Art. IV, Sec. 1(a)(1); Art. V, Sec. 2(a)(1); and FINRA Rule 140.

⁴ The Complaint charged three individuals with violations, but the other two respondents settled the claims against them. Only the first four of the six Causes of Action are against Luo.

The hearing in this matter took place before a three-person Hearing Panel consisting of the Hearing Officer and two industry members. The following witnesses testified: Mary Flattery ("Flattery"); a FINRA examination officer; James Okun ("Okun"); a FINRA senior examiner; Don Hunter ("Hunter"); the former Chief Operating Officer and President of Westrock Advisors, who supervised Luo; Kelsey Goodman ("Goodman"); an Enforcement senior case manager with FINRA; and Respondent Luo. Documentary evidence was admitted into the record. "CX-__" refers to Enforcement's exhibits; "RX-__" refers to Respondent's exhibits. The Parties also entered into joint stipulations, which are cited here as "Jt. Stip. __." Reference is made to the hearing record by "Hearing Tr." and the last name of the person testifying. For example, Luo's testimony is cited as follows: "Hearing Tr. (Luo) __."

the Hearing Panel's decision containing its reasons and conclusions, based on the evidence presented at the hearing.

B. Context In Which Proceeding Arose

This proceeding arose out of a cycle examination of Westrock Advisors, the Respondent's broker-dealer employer at the time (the "Firm"). In conducting the cycle examination, FINRA staff became concerned about sales practices relating to a private placement offering of notes in 2009. The private placement was a "self-offering" in 2009 by Westrock Group, Inc., the parent company ("Parent Company" or "Issuer") of the Respondent's broker-dealer Firm.⁵

The staff was concerned that there were no written disclosures for the offering. The staff noted that generally in connection with a private placement a PPM or subscription document would be used in which very structured and detailed information would be provided to investors. The staff viewed the lack of documented disclosures as highly unusual.⁶ Upon further investigation, the staff learned that no customer had been provided with financial statements.⁷ The lack of information made it impossible, in the staff's view, for the brokers selling the notes to acquire a reasonable basis for making a suitable recommendation to customers.⁸ The lack of information about the Issuer's financial condition and the lack of a PPM or other risk disclosure document also were red flags that concerned the staff in light of the fact that the Issuer was in default on interest payments it already owed.⁹

The Hearing Panel finds that the lack of written disclosures and the absence of any financial statements of the Issuer made it impossible for Luo to conduct the due diligence required to

⁵ Hearing Tr. (Flattery) 46-48.

⁶ Hearing Tr. (Flattery) 48-52.

⁷ Hearing Tr. (Flattery) 51-53.

⁸ Hearing Tr. (Flattery) 57.

⁹ Hearing Tr. (Flattery) 48-53; Hearing Tr. (Hunter) 126-27.

determine that the notes were a suitable investment for any investor. Furthermore, as discussed below, Luo was aware that the lack of written disclosures and financial statements was highly unusual and rendered it impossible for him to conduct the analysis he ordinarily did when selling securities in a private placement offering. The absence of the usual disclosure documents for a private offering was a red flag of potential fraud, which, as discussed below, Luo ignored.

C. Respondent

Luo received his Masters of Business Administration in 1991. That same year, he obtained Series 7 and Series 3 licenses and entered the securities industry. He has been employed by nine different firms since then. The events in issue occurred in 2009. Luo was registered with Westrock Advisors at that time and through October 2010. Luo has been registered with three other FINRA member firms since leaving the Firm and is still currently registered.¹⁰

D. The Firm And The Parent Company Issuer

Luo's Firm was based in New York, New York. Along with FINRA member firm Monarch Financial Corporation of America, it was one of two wholly owned subsidiaries of the Parent Company.¹¹ The two broker-dealer subsidiaries were the only sources of income for the Parent Company.¹² Both of the broker-dealer subsidiaries have ceased doing business, and the Parent Company is in bankruptcy.¹³ The Parent Company went out of business in 2010.¹⁴

Luo's Firm was a retail brokerage firm employing approximately 50-60 brokers. Its brokers were engaged in cold calling and were heavily into equities.¹⁵

¹⁰ Hearing Tr. (Luo) 181-85; CX-2 at 8-9; Jt. Stip. 24.

¹¹ Jt. Stip. 12-13.

¹² Hearing Tr. (Goodman) 339-40.

¹³ Hearing Tr. (Hunter) 162; Jt. Stip. 27.

¹⁴ Hearing Tr. (Luo) 306.

¹⁵ Hearing Tr. (Flattery) 46-48.

In 2007, the Firm began to do more private placement offerings of debt securities, including offerings of notes issued by its Parent Company. From 2007 until early 2009, the Firm sold four private placement offerings of notes issued by the Parent Company.¹⁶ By February 2009, just before commencing the 2009 note offering, the Parent Company had more than \$5 million in principal debt outstanding.¹⁷

The Parent Company periodically failed to make interest payments on its notes. It also failed to make payments to holders of its preferred stock.¹⁸ The staff discovered in its investigation that the Parent Company had stopped making interest payments to most note holders by November 2008.¹⁹ Don Hunter, the Firm's president, Chief Compliance Officer, and main principal testified that the Parent Company stopped paying any interest at all to its investors in early 2009.²⁰ The Parent Company was losing money.²¹

E. 2009 20% Note Offering

Between March 2009 and December 2009, the Firm's brokers sold \$3.5 million of Parent Company notes to more than 50 retail investors.²² The notes carried a 20% interest rate to be paid semi-annually.²³ The principal was due to be repaid two years after the date on which a note was

¹⁶ Hearing Tr. (Flattery) 47-48; Hearing Tr. (Hunter) 153-54.

¹⁷ Jt. Stip. 17. These debts consisted of the following: (i) \$550,000 of 10% promissory notes issued in 2007 and 2008; (ii) \$2,771,000 in 12% promissory notes issued in 2007; and (iii) \$1,750,000 in 15% and 14.5% promissory notes issued on January 7, 2009, and February 1, 2009. *Id.*

¹⁸ Jt. Stip. 19, 23.

¹⁹ Hearing Tr. (Flattery) 54-57; CX-47, CX-48.

²⁰ Hearing Tr. (Hunter) 110.

²¹ Jt. Stip. 20. The Parent Company's substantial debt and other expenses were not recorded on the books of the two subsidiaries. So any review of the financial statements of Luo's broker-dealer Firm would not have revealed the financial condition of the Issuer of the 2009 notes. *Id.*

²² Jt. Stip. 1.

²³ Jt. Stip. 2; Hearing Tr. (Flattery) 48.

issued.²⁴ As Luo understood, the 2009 notes could only be offered to high net worth accredited investors.²⁵

Hunter, who also was Luo's supervisor, was the only source of information about the 2009 notes.²⁶ Hunter gathered the Firm's brokers together for a meeting in the Firm's board room to announce the offering. At the meeting, Hunter told the brokers that the Firm was about to be acquired by a Native American Indian tribe²⁷ and that as a result the Firm would no longer have to pay taxes. He also said that the Firm would be entitled to preferences in syndications because it would be minority owned. He claimed that the Firm would be able to manage tax-deferred money that was not in an IRA. He said that the Firm was expanding and that the 2009 notes "would be a good investment."²⁸

F. Respondent's Basis For Recommending The 2009 Notes

Luo conducted no due diligence and had no reasonable basis for believing the 2009 notes were suitable for any investor. He mainly relied on Hunter's grandiose vision of the Firm's prospects after the tribe acquired it. Luo recalled the meeting in the board room, which left him

²⁴ Jt. Stip. 2.

²⁵ Hearing Tr. (Luo) 198.

²⁶ Hearing Tr. (Hunter) 105-06. Hunter testified, "I would have conveyed all the information to the brokers." *Id.* at 106. Hunter explained that he was central to the offering, "I was the one speaking directly with the Indians, I was the one speaking with the attorneys and I was the one who was behind the promissory notes." *Id.* Hunter testified that he was the person brokers would have asked questions about the offering. *Id.* Hunter entered into an acceptance, waiver and consent ("AWC") with FINRA in connection with his participation in the sale of the Parent Company notes. He consented to a bar. Tr. (Hunter) 103.

²⁷ The acquisition was made by a holding company owned by the tribe, but witnesses sometimes spoke of the tribe and holding company as the same entity. Hearing Tr. (Hunter) 107-09. The acquirer will be referred to here as the tribe.

Hunter also did not distinguish between the broker-dealer Firm and the Parent Company in his testimony. Nor did Luo. Both spoke of the broker-dealer and the Parent Company as though they were one entity. Hearing Tr. (Hunter) 128-29.

²⁸ Hearing Tr. (Hunter) 128-29. Hunter claimed that, if an investor had asked, he would have provided financial statements of the Parent Company's broker-dealer subsidiaries. Hearing Tr. (Hunter) 127. However, he acknowledged that the financial statements of the broker-dealers did not show the debt or expenses of the Parent Company. Hearing Tr. (Hunter) 130-31. The only financial statements that Luo saw prior to selling the 2009 notes were financial statements of the subsidiaries, not the Issuer. Jt. Stip. 7.

with the impression that the Firm intended to become involved in "very, very big businesses."²⁹ He said that he was "excited" by the possibilities opened up by the planned acquisition by the Indian tribe.³⁰ Hunter told Luo that a PPM was unnecessary and reassured him that the offering was "legal" and "attorney approved."³¹ Hunter also told him that the notes were a good investment.³² Luo testified that he relied on his Firm and its compliance people.³³

To some extent, Luo also relied on his personal observations, but those observations were too highly generalized and subjective to be a reasonable basis for recommending the notes. Luo testified that he believed that the Parent Company had a good future, having seen how it had already expanded. He noted that the Firm had opened nice offices and hired people who "looked like, you know, the big shots."³⁴ He also was impressed that people had been hired who were "dressing always very good, like very serious people."³⁵ He summed up, "I work in that company, I saw the company and with all expansion, new office, new CFO, everybody, I have to believe the company, I mean, we have a party and we have a press release from Bloomberg and we even hire a PR firm."³⁶

²⁹ Hearing Tr. (Luo) 196-97.

³⁰ Hearing Tr. (Luo) 375, 431-32. Luo emphasized in his defense that the notes had been "company-approved." Hearing Tr. (Luo) 374.

³¹ Hearing Tr. (Luo) 426-28.

³² Hearing Tr. (Hunter) 111.

³³ Hearing Tr. (Luo) 374 ("[W]hy I recommend Westrock is because at that time I have no reason to believe the company would go under. I didn't have the crystal ball. I was given, I thought it was approved by the compliance officer....I thought it was a company-approved product....").

Luo confirmed that he was provided no written materials in connection with the 2009 notes other than the notes themselves. Hearing Tr. (Luo) 206-07. Luo confirmed that he would have liked to have seen financial statements for the Issuer, but he could not recall asking for them. *Id.* at 207.

³⁴ Hearing Tr. (Luo) 405-06, 430-31.

³⁵ Hearing Tr. (Luo) 431.

³⁶ Hearing Tr. (Luo) 272.

G. Respondent's Knowledge Of Information Undermining And Contradicting His Recommendation Of The 2009 Notes

Hunter's assertion that the notes were a good investment was false, and Luo had good reason to know it. Indeed, Luo conceded that he had his doubts about the 2009 note offering from the outset. He acknowledged that he thought at the time that the rosy picture Hunter painted sounded a little too good to be true.³⁷

Luo was aware of red flags signifying fraud. He knew that the lack of financial statements for the Issuer and the lack of a PPM or other disclosure document were highly unusual in a private placement offering. Luo acknowledged that he had sold five to ten other private placements prior to selling the 2009 notes, and that he had received a PPM in connection with all of those prior deals.³⁸ He would read through the PPM before he sold the securities, and he would look at the company's historical financial statements. He confirmed that he would typically rely on the financial statements, and that he would find the numbers in the financial statements to be very important in understanding the securities.³⁹

Luo also knew that the Issuer had existing debt and was not paying at least some of the interest that was owed on that debt.⁴⁰ He was aware that some of his own clients were not receiving

³⁷ Hearing Tr. (Luo) 213. Because of those doubts, Luo consulted a lawyer friend for whom he had high regard about the plan for the Indian tribe to acquire the Firm and enable the Firm to assert special privileges. The friend said the plan was "possible" but "a little tricky." He may even have called the plan "weird." Hearing Tr. (Luo) 214-15.

To the extent that Luo might argue that his discussion with his friend constituted due diligence, he would be in error. Consulting a friend for his informal opinion rather than demanding to see the Issuer's financial statements does not constitute reasonable due diligence.

³⁸ Hearing Tr. (Luo) 424-26.

³⁹ Hearing Tr. (Luo) 193-95, 206. Luo confirmed that he considered himself a "numbers guy." Hearing Tr. (Luo) 183-84.

⁴⁰ Hearing Tr. (Luo) 198-205. As in much of his testimony, Luo was evasive on this point. He was quick to point out that some interest payments were made, and, at first, he denied that he was aware that the Parent Company had failed to make some of the payments owed on its securities. Eventually, however, he conceded that he knew at the time of the board room meeting that some interest owed by the Parent Company was not being paid. *Id.* at 200-01.

interest on Parent Company notes that Luo had previously sold them.⁴¹ Luo testified that he asked Hunter many times about overdue payments to Luo's customers who had previously bought Parent Company securities. According to Luo, Hunter was evasive and kept postponing payments.⁴² Luo thought that he and his clients were a "last priority,"⁴³ and that Hunter was discriminating against him and his clients when Luo's clients failed to receive payments owed to them.⁴⁴ Hunter confirmed that the Firm stopped making payments to prior note investors except where someone "was calling really begging to get a payment."⁴⁵

Luo knew that he also sometimes had trouble getting paid by the broker-dealer subsidiary of the Issuer. He sometimes had to "bug" the Firm for his money.⁴⁶ This was another troubling sign of financial difficulties.

H. GD's Concern With Safety

The Hearing Panel finds that GD was concerned with the safety of her investment because of prior stock market losses. Luo admitted that he could not sell her any stock because of her reaction to her prior stock market losses, but he denied that she had any concern with safety. His denial is not credible and is inconsistent with the evidence.

⁴¹ Hearing Tr. (Luo) 465-66.

⁴² Hearing Tr. (Luo) 201-02. In the investigation, FINRA staff noted that Luo had sold other offerings of Parent Company securities, and the staff thought that he should have been suspicious when interest payments were not being made on those investments. Hearing Tr. (Flattery) 59-60.

⁴³ Hearing Tr. (Luo) 200, 278-79.

⁴⁴ Hearing Tr. (Luo) 466. Even though some of his clients were not receiving payments owed to them, Luo testified that it raised no concern for him at the time he sold the 2009 notes. Hearing Tr. (Luo) 466-68. Then he backtracked. He testified that he may have thought about it but then ignored it. He said that he "may have" or "may not have" disclosed to his customers that the Parent Company was not making timely and complete interest payments to other note holders. Hearing Tr. (Luo) 468-70. This testimony is an example of Luo's evasiveness.

⁴⁵ Hearing Tr. (Hunter) 145. There was testimony concerning one of Luo's customers who pleaded for the return of money she had invested in an earlier issuance of Parent Company notes. That customer complained that she needed the money because she was a single mother who had used the proceeds of a home equity loan to purchase the notes. Eventually, the Parent Company paid her back \$30,000 of her \$50,000 investment. Hearing Tr. 113-25.

⁴⁶ Hearing Tr. (Luo) 209-11.

GD had been Luo's customer since at least May of 2008, when she purchased a prior issuance of Parent Company notes carrying a 12% interest rate.⁴⁷ GD lives in Texas.⁴⁸ Her first language is Chinese.⁴⁹ Luo is Taiwanese. Because he speaks Chinese, GD told FINRA staff, she was comfortable working with him.⁵⁰ Although Luo is located in New York, he dealt with GD and other out-of-state customers using the telephone and email.⁵¹

Luo testified that GD had previously lost money in the stock market while working with another broker. He said he never had an opportunity to buy stock for her.⁵²

Consistent with Luo's testimony, during the investigation, GD told FINRA staff that she had previously lost money in the stock market and did not want to buy stock.⁵³ GD also told the staff that she was looking for a safe investment.⁵⁴ Her focus on safety appeared to be a reaction to her stock market losses.

GD first expressed concern about safety in an initial telephone interview with FINRA's investigative staff. The staff used an outline that it had developed for use in all their customer contact calls. They asked her to describe how she learned about the investment in Parent Company notes and whether the risks of the investment were explained to her. In the initial call GD was clear

⁴⁷ Hearing Tr. (Luo) 238-40, 243-48; CX-69. In May 2008, GD's account at the Firm contained a total of \$33,000 in securities, consisting of approximately \$30,000 in Parent Company notes that Luo had previously sold GD and a single stock that Luo also had previously sold to her. The stock investment had dropped in value after her purchase. In May 2008 her account showed an unrealized loss of close to \$8,000 on an investment with a cost base of \$9,174. CX-69.

⁴⁸ CX-37.

⁴⁹ Hearing Tr. (Flattery) 79. While English is not GD's first language, the FINRA examiner testified that she believed GD understood the questions the staff asked and the information sought from her. Hearing Tr. (Flattery) 77-79.

⁵⁰ Hearing Tr. (Flattery) 67.

⁵¹ Jt. Stip. 6.

⁵² Hearing Tr. (Luo) 239.

⁵³ Hearing Tr. (Flattery) 66-70.

⁵⁴ Hearing Tr. (Flattery) 67-70; Hearing Tr. (Okun) 87-91, 98. The staff had multiple telephone calls with GD. She consistently said that Luo had led her to believe the notes were a safe investment. Hearing Tr. (Goodman) 341-44, 349-53.

that Luo had described the investment in the 2009 20% notes as safe on at least three occasions. She explained that she wanted to protect her principal. She was unable to describe any of the risks inherent in the note investment. From this interview, the staff concluded that she was a conservative investor who had limited investment knowledge.⁵⁵

Contemporaneous notes taken by a FINRA staff member during that first telephone call with GD confirm that she emphasized safety. The notes reflect that GD said, "We wanted to make sure we didn't lose money, Rudy [Luo] said there is a bond available and its 20% and it's the best int[erest]....She asked if that is safety and Rudy said yes bc Hunter is an honest person so its safe." The notes of the same telephone call continue, "Rudy told her that WR [the Parent Company] is safe and not to worry about it and it's the safest investment."⁵⁶

GD reached out to an examiner with the investigative staff via email a few months later to provide additional information. There is no indication that she changed her story when she did this or that she felt pressured by the staff.⁵⁷

After the investigative staff referred the matter to Enforcement, Enforcement staff had conversations with GD both before and after the filing of the Complaint. GD's conversations with Enforcement consistently indicated that she had been concerned about the safety of the investment. She expressed willingness to testify in the disciplinary proceeding.⁵⁸ The level of cooperation she offered was "quite high."⁵⁹ She answered questions, responded to telephone calls, made herself available, and was open to appearing to give testimony.⁶⁰

⁵⁵ Hearing Tr. (Flattery) 66-69.

⁵⁶ CX-71; Hearing Tr. (Okun) 88-94, 98.

⁵⁷ Hearing Tr. (Flattery) 69.

⁵⁸ Hearing Tr. (Goodman) 341-43.

⁵⁹ Hearing Tr. (Goodman) 342.

⁶⁰ Hearing Tr. (Goodman) 342-43.

Although Luo claims that GD sought only a high interest rate,⁶¹ he acknowledges that he may have told GD that debt instruments are generally “safer” than stock. According to Luo, there is a distinction between “safe” and “safer” in Chinese that caused confusion when FINRA staff talked to GD.

Luo testified,

You know here’s the translation comes in. In English if she say safe and when she described to me in Chinese safe, is anything a little safer, it doesn’t say safe. He say in Chinese – she say in Chinese, I’m Chinese, that means a little safer than stocks.

... She never told me about safe, she probably say in Chinese safer, any safer investment compared to stocks, I would say.

... Oh, I probably tried to explain fixed income is safer than equity, that means stocks. If you have a liquidation the income is priority then equity holders. I probably explained to her that income is safer than equity. That’s what probably I did.⁶²

Luo said that he did not compare the specific notes to stock but, rather, spoke generally comparing fixed income to stocks. “You know, I wouldn’t say the [Parent Company] note[s] are safer than stocks. I say fixed income are safer than stocks.”⁶³

Thus, Luo’s own testimony shows that GD discussed safety with him when he solicited her to buy Parent Company notes and that he compared the relative safety of debt instruments to stocks. That comparison misleadingly implied that the Parent Company notes he was selling were “safe” or “safer” than stocks. The Hearing Panel believes that Luo made the comparison because GD was concerned about safety. The Hearing Panel also believes that he made the comparison to create the

⁶¹ Hearing Tr. (Luo) 257-58, 373-74. Luo initially acknowledged that GD wanted something safer than an equity investment, but then backtracked and said that she wanted a high interest rate. He was asked, “So in October of 2009 you understood that [GD] wanted something safer than an equity investment; is that right?” He responded, “That’s what – I think that’s what she ask, yes.” Then he changed his answer, saying, “Well, I wouldn’t say she wanted something safer, she said she wanted something higher interest rate.” *Id.* at 257-58.

⁶² Hearing Tr. (Luo) 240.

⁶³ Hearing Tr. (Luo) 256.

misimpression that the notes were less risky than stocks. It would be natural for GD to be concerned about safety if she previously lost money in the stock market, and, given her limited investment knowledge, she would be vulnerable to such misdirection. There is no reliable evidence corroborating Luo's claim that GD was unconcerned about safety or that she was only concerned about a high interest rate.⁶⁴

Accordingly, the Hearing Panel finds that GD was concerned with the safety of her investments when Luo solicited her to buy Parent Company notes. The Hearing Panel further finds that Luo discussed safety issues in a way that misled GD into thinking that Parent Company notes were safer investments than they were. The Hearing Panel also finds that Luo knew that Parent Company notes were a risky investment, because he testified that he thinks that private placement offerings are risky.⁶⁵ In light of that knowledge, the Hearing Panel believes that Luo knew that he was misrepresenting the safety of the investment to GD, and that Luo knew that the notes were not

⁶⁴ Luo obtained an affidavit from GD to support his claim that she was not concerned with the safety of her investment. RX-72. As explained below, however, that affidavit was essentially dictated to GD by Luo and designed to exonerate him. It contradicted GD's earlier statements to the staff and leads the Hearing Panel to conclude it is not reliable.

⁶⁵ Hearing Tr. (Luo) 438. At the same time, Luo took the contradictory position that the 20% notes were not more speculative than stocks generally. Hearing Tr. (Luo) 437.

an investment consistent with GD's main investment objective – safety. The Hearing Panel further finds that GD was not a financially sophisticated person and was vulnerable to being misled because she trusted Luo.⁶⁶

I. Respondent's Sales Of 2009 Parent Company Notes To GD And CWC

(1) CWC's \$100,000 Purchase of 2009 20% Notes

In May 2009, after discussing the investment with GD, Luo sold \$100,000 of the 2009 20% notes to GD's sister, CWC. He earned a \$10,000 commission.⁶⁷

In selling the notes to CWC, Luo spoke to GD by telephone. He never spoke to CWC. CWC lived in Hong Kong, and her sister, GD, had discretionary power over her U.S. bank account.⁶⁸

Luo told GD that since around 2000 when he joined the Firm, it had expanded. He told her that the Firm, combined with Monarch, had gone from fewer than 15 people to somewhere between 50 and 100 people. He told GD about the plan to be acquired by an Indian tribe in order to do Native American preference business. He claimed that he explained "everything."⁶⁹

⁶⁶ Luo testified regarding another transaction with GD in 2008 that was not charged in the Complaint. Luo's testimony regarding that transaction reveals that GD was not a financially sophisticated investor and that he had previously led her to invest in a security that was far riskier than she wanted.

In the 2008 transaction, he sold GD other Parent Company notes carrying a 12% interest rate. Luo testified that he discussed all kinds of debt instruments in an effort to educate her. He said, "I try to educate her a little bit regarding the category. If you have a treasuries that's like a low risk, you know, and you have a high rate corporate bond, A, AAA, I try to educate. Those below BB, the single B and under would be junk bonds and that's paying 8, 12[%]....so I may have said oh, it's similar to junk bonds but I cannot say for sure I did." Luo testified that when he sold the 12% notes to GD junk bonds were trading at 8%-10%, with some as high as 16%-17%. Although Luo first testified that he might have disclosed to GD that the 12% notes were in the category of junk bonds, he eventually conceded that he had no specific recollection of doing so. Hearing Tr. (Luo) 477-82. The 12% notes that Luo sold to GD in 2008 were sold with a PPM. The PPM specified that the securities were "speculative" and involved a "high degree of risk." Luo conceded, however, that GD did not want a speculative, high-risk investment. Hearing Tr. (Luo) 241-43; CX-26.

⁶⁷ Hearing Tr. (Luo) 220.

⁶⁸ Hearing Tr. (Luo) 220-21, 229-33.

⁶⁹ Hearing Tr. (Luo) 223-25.

With respect to the Parent Company's financial condition, Luo testified that he told customers that either it was breaking even or experiencing a little bit of a loss. Even if his testimony is credited, he discussed only vague generalities without disclosing anything specific about the Issuer's financial condition. Furthermore, he relied upon information that was stale. He testified that he based his comments about financial condition on what he recalled about circumstances in 2005-2007. With respect to the Parent Company's financial condition in 2009, when Luo was selling the notes, Luo was evasive as to what he said. He was asked whether he told customers that the Parent Company's revenues were going down because of the financial crisis. He responded, "I cannot recall what I would have told, yeah, maybe, maybe not. I'm not sure. I may have. It's very normal if I said, you know, if a financial crisis hit maybe, you know, revenue is dropping. I may have said that."⁷⁰

Luo did not ensure that CWC was qualified as an accredited investor who could buy the 2009 notes. He said that he believed at the time that he sold the notes to CWC that CWC was a wealthy retired person.⁷¹ The new account form filled out for CWC, however, reflected a different picture. The form indicated that CWC was retired with an annual income of \$10,000.⁷² Luo admitted that the \$100,000 investment in the 2009 notes was not a suitable investment for someone with an income of only \$10,000, but he said that the number on the new account form was wrong.⁷³

Luo asserted that this and other forms filled out by GD were not accurate and that he knew

⁷⁰ Hearing Tr. (Luo) 216-19.

⁷¹ Hearing Tr. (Luo) 233. On November 8, 2013, Luo filed an affidavit dated November 7, 2013, as a pleading (which is further discussed below). In it, he said, "I was under the impression that her sister [CWC] is retired comfortably and was wealthy. Hong Kong boasts one [of] the world's economic miracle and its residents had very good income and relatively very low tax." It is apparent from the affidavit that Luo made no effort to investigate the particulars of his customer's financial situation. Rather, he relied on the broadest generalities – the fact that CWC lived in Hong Kong and he thought that people in Hong Kong were wealthy.

⁷² Hearing Tr. (Luo) 233-35; CX-34 at 4.

⁷³ Hearing Tr. (Luo) 256. The new account form contained contradictory information. While it specified an annual income of \$10,000, it also showed that speculation was the primary investment objective and that the level of risk tolerance was "aggressive." CX-34 at 4. The form was dated April 3, 2006. CX-34 at 5.

the truth, regardless of what was on the form. He explained that Chinese people under-report information on their financial documents because they think "it's none of your business."⁷⁴ Luo was shown account documentation for some of his non-Chinese customers who purchased notes issued by the Parent Company. That documentation indicated they also were not qualified as accredited investors, although they were required to be accredited investors to purchase the notes. Luo then suggested that non-Chinese people also would under-report their assets and net worth.⁷⁵ He testified, "[S]ome of the new account form is not what it appears to be."⁷⁶

(2) GD's \$100,000 Purchase of 2009 20% Notes

In October 2009, Luo again talked to GD about the 2009 20% Parent Company notes. She made a \$100,000 purchase. He earned a commission of 8%-10%.⁷⁷

In discussing the investment, Luo again said that he told GD "everything."⁷⁸ However, he plainly did not tell her "everything."

Luo's own testimony demonstrates that he failed to disclose material facts. Luo conceded that he did not tell GD that the Indian tribe had paid no money to acquire the Parent Company, or that he thought Don Hunter's story was a little too good to be true, or that the Parent Company was not making interest payments on some of its outstanding securities, or that he had seen no

⁷⁴ Hearing Tr. (Luo) 228-29. Luo agreed that the new account form filled out for CWC was filled out in part by someone other than CWC or GD. Some boxes were marked with an "X" and others were marked by check marks. It is unclear who made the marks indicating that CWC had a speculative investment objective and aggressive risk tolerance. Luo denies that his handwriting appears on the form, but he suggested that some of the writing might be that of an assistant at the Firm. Hearing Tr. (Luo) 449-55.

⁷⁵ Hearing Tr. (Luo) 408-10.

⁷⁶ Hearing Tr. (Luo) 410.

⁷⁷ Hearing Tr. (Luo) 236-37, 252-56.

⁷⁸ Hearing Tr. (Luo) 253.

documentation relating to the Parent Company's financial condition or any financial statements.⁷⁹

Luo also conceded that he did not tell GD the total amount of debt carried by the Parent Company.⁸⁰ Luo further conceded that he did not tell GD that the 2009 notes were speculative and high risk.⁸¹ He did not want to frighten her. Luo testified, "Certainly I would not say oh, [GD], you will lose possibly lose all you[r] investment to scare her...."⁸² When asked whether he had provided GD with any documentation other than the note reflecting the investment, Luo reluctantly responded, "Probably not."⁸³

As discussed above, the lack of Issuer financial statements and the lack of any PPM or other disclosure document made it impossible for Luo to conduct any analysis of the general suitability of the notes for any investor. The circumstances of the sale to GD also show that Luo did not concern himself with whether the notes were suitable for the particular customer.

A March 2, 2009 new account application for GD showed that she had limited investment knowledge and a "conservative" risk tolerance. The form showed that GD had an estimated net worth of \$80,000, annual income of \$100,000, and investable liquid assets of \$200,000. Luo conceded at the hearing that the 2009 20% notes were not a suitable investment for an investor with this investment and financial profile.⁸⁴ Luo knew at the time that he sold the 2009 20% notes that

⁷⁹ Hearing Tr. (Luo) 253-55. By the time GD purchased the 2009 notes, the Indian tribe had completed the acquisition of the Parent Company. However, the tribe had paid no money for the acquisition, so there was no infusion of additional capital. Hearing Tr. (Luo) 252-53.

⁸⁰ Hearing Tr. (Luo) 253.

⁸¹ Hearing Tr. (Luo) 259. Luo claimed not to recall whether GD said anything about the safety that she desired in her investment. Hearing Tr. (Luo) 258. The Hearing Panel finds this testimony is not credible, given that Luo admits that GD had suffered losses in the stock market and was focused on a different kind of investment. A person concerned about prior stock market losses is likely to raise safety as an issue.

⁸² Hearing Tr. (Luo) 376.

⁸³ Hearing Tr. (Luo) 254-56. Luo attempted to shift responsibility for the disclosures. He asserted that the Firm had a good compliance function and that he had relied on the compliance people, who may have sent her something else relating to the investment. *Id.*

⁸⁴ CX-36 at 8; Hearing Tr. (Luo) 259-61.

they could only be sold to high net worth individuals whose risk tolerance was high and whose investment objective was aggressive.⁸⁵

On July 15, 2009, only four months after the March application, a revised new account form was created for GD. Her annual income was changed to \$200,000, and her net worth was changed to \$1 million. On the July form, GD's risk tolerance also was changed from "conservative" to "aggressive."⁸⁶ Luo testified that the revision was correct. He offered no explanation why the earlier form had been completed incorrectly or why the revision was made so soon after the original.

Luo was vague about the basis for the revision. Luo understood that GD owned a business and the building where the business was located.⁸⁷ Luo did not identify the nature of the business he thought GD owned or the location of the building. He did not know what kind of building it was. He did not know whether the building was owned jointly with anyone else or whether there was a mortgage on it.⁸⁸

The record contains no evidence to corroborate Luo's assertions regarding GD's real estate holdings. As noted above in connection with the new account form for CWC, Luo had little concern for the accuracy of the information in the forms used to qualify investors as accredited investors.

GD told FINRA staff in their initial call with her that she did not make the changes to the form and that the original information regarding her \$100,000 in annual income was correct, not the

⁸⁵ Hearing Tr. (Luo) 215.

⁸⁶ CX-36 at 3-8. The earlier account form listed GD as an office manager for Honeywell Distribution, Inc. The later account form described her as a "Manager" of Honeywell, suggesting a more elevated position. *Id.* The subscription agreement for the 2009 20% notes described GD as a sales manager. It reflected that GD's highest educational degree was a high school diploma. CX-37; Hearing Tr. (Luo) 476-77.

⁸⁷ Hearing Tr. (Luo) 263-66; CX-36 at 2-5.

⁸⁸ Hearing Tr. (Luo) 263-66.

information in the revised form asserting she had \$200,000 in annual income.⁸⁹

Given the lack of corroboration for Luo's assertions regarding GD's net worth and risk tolerance, and the countervailing evidence showing that GD was too risk averse to invest in the stock market, the Hearing Panel finds that GD's risk tolerance was conservative and that the revised form inaccurately qualified her as an accredited investor. Moreover, regardless of whether either form accurately reflected her net worth, the second form was false in at least one important respect – her risk tolerance was not aggressive. For this reason alone, the 2009 notes were not a suitable investment for GD.

J. Respondent's Denial Of Responsibility

Luo asserts that, in any event, he is not responsible for his customers' losses on Parent Company notes. He blames others in charge of his Firm. He testified, "I was never in management and, uh, I mean I don't know. It's not my responsibility for her loss."⁹⁰ Throughout the hearing he claimed that he did not know, and could not have known, that the broker-dealer and Parent Company would go out of business. He testified, "I didn't have the crystal ball."⁹¹ In his closing argument, he summarized his position as follows:

Westrock is a tragic accident and I shouldn't be responsible for it. I was never in management and I sold company legal counsel approved product. I didn't collude with any person at Westrock. I was under a surveillance of branch manager, compliance officer and CEO. I didn't commit any fraud. I have no motivation to, nor I was a beneficiary.

...

I didn't have a crystal ball, I did not.⁹²

⁸⁹ CX-71; Hearing Tr. (Luo) 458-62.

⁹⁰ Hearing Tr. (Luo) 309-10.

⁹¹ Hearing Tr. (Luo) 374. At another point, Luo testified that he may have recommended the Parent Company notes to GD even if he had seen its financial statements "unless I really have a crystal ball." Hearing Tr. (Luo) 271-72.

⁹² Hearing Tr. (Luo) 533, 535. Similarly, Luo testified that he was cheated by Don Hunter and that Hunter had cheated everybody. Hearing Tr. (Luo) 406-07.

Luo also expressed doubt about his responsibility for inaccurate information on account forms he signed. He was asked, "Do you believe you have an obligation to ensure that the documentation that you are using as a matter of record to show that that client is accredited [to buy a private offering], is that an obligation you have as a registered representative?" He responded, "You mean the account form's correctness is my obligation? ... I'm not sure."⁹³

K. Respondent's Lack Of Credibility

(1) Luo's Testimony

The Hearing Panel finds that Luo's testimony was evasive, vague, and contradictory, as illustrated by some of the examples discussed above. For that reason, the Hearing Panel declines to rely on his statements where there is no reliable corroborating evidence.

(2) Revised Form To Qualify GD To Buy The 2009 Notes

The Hearing Panel finds that Respondent had a cavalier attitude toward the truth and the accuracy of disclosures in the forms designed to ensure that only accredited investors purchase securities in a private placement offering. As discussed above, Luo purported to know the truth,

⁹³ Hearing Tr. (Luo) 444-45. At the same time, he acknowledged that it is not reasonable in a highly regulated industry such as the securities industry to treat documentation as though it did not matter. Hearing Tr. (Luo) 447-48.

regardless of the entries on the forms. There was evidence that Luo had little regard for the accuracy of the information on the accredited investor forms, not only in connection with the transactions with GD and CWC, but also in connection with other transactions.⁹⁴

The Hearing Panel further finds Respondent's assertions as to the accuracy or inaccuracy of the particular disclosure forms for GD are not reliable. Luo claimed that the revised form reflected reality and the earlier form did not.⁹⁵ However, as discussed above, GD's revised form was falsified in at least one regard, the description of her risk tolerance as "aggressive." Furthermore, there are additional reasons to doubt the reliability of the revised form. Luo did not provide any explanation for why GD's form was revised or "updated" only four months after the initial form

⁹⁴ One example involved ML, a single mother who took out home equity and credit card loans to fund the \$50,000 purchase of Parent Company preferred stock. Hearing Tr. (Hunter) 112-25. ML had indicated on the subscription agreement for the investment that she had an income below the level required for the investment. She also appeared to have first indicated a net worth of less than \$1 million, but that mark was scratched out and an X mark placed to signify a net worth in excess of \$1 million. CX-25 at 13-14. Luo testified, however, that he thought ML was a "very rich lady" because she was referred to him by a social friend who told him so. He was under the impression that she had real estate in the Carolinas and that she had a net worth of \$1 million. He noted, "She has a new car and she doesn't live in luxury mansion but she doesn't – she doesn't seem to be [in] any panic." He treated her as an accredited investor. Hearing Tr. (Luo) 274-82, 369-70.

A second example involved FCC, a woman to whom Luo sold Parent Company notes in 2007. The subscription agreement stated that the securities were to be sold only to accredited investors. FCC's account application form reflected that she had investable liquid assets of less than \$50,000 and a moderate risk tolerance. Luo conceded that the securities were not suitable for someone with that financial profile, but he claimed that the information on the form was incorrect. He testified that she did not want to put the correct information on the form. Hearing Tr. (Luo) 284-94.

A third example involved SB, a man who bought \$10,000 of Parent Company preferred stock from Luo in 2007. SB's account application form indicated that he had an annual income between \$50,000 and \$100,000, a net worth between \$100,000 and \$500,000, and liquid assets between \$50,000 and \$100,000. His risk tolerance was "moderate." Luo agreed that this information did not establish that SB was an accredited investor, but he said that the investment might still be appropriate because it was "not a significant amount." Luo claimed that SB had three aircraft and two aviation-related businesses. He also disputed that SB's investment knowledge was limited, saying that SB had purchased stock before. Hearing Tr. (Luo) 294-302. SB's account application form, however, did not reflect those assets or any basis for concluding that SB's risk tolerance was anything other than "moderate," as recorded on the form.

Similarly, in connection with a fourth example, Luo denied that an investment in Parent Company preferred stock by DL was unsuitable, even though DL had told Luo that his risk tolerance was moderate and his investment objective was capital appreciation. Luo asserted that the investment was suitable because it did not involve a lot of money and DL allegedly had a net worth over \$1 million. Hearing Tr. (Luo) 303-05. There is no evidence in the record to corroborate Luo's assertions.

⁹⁵ Hearing Tr. (Luo) 537-38.

was created.⁹⁶ Luo also claimed that he was unaware of the circumstances in which the changes were made. He agreed that the form appeared to be filled out by two different people, but he was uncertain who had made the marks or when.⁹⁷

(3) GD Affidavit Revised At Luo's Direction

On October 1, 2013, Enforcement sent GD a draft affidavit based on what GD had discussed with FINRA staff in the investigation during the preceding couple of years. In a cover letter accompanying the affidavit, Enforcement asked GD to review the document and to sign it if it was accurate. Enforcement specifically told her that if anything in the affidavit was inaccurate she should call to discuss "the necessary changes."⁹⁸

On October 4, 2013, GD executed the affidavit. On October 7, 2013, the document was notarized. GD swore to the truth of the affidavit concerning the investments she and her sister made in Parent Company notes.⁹⁹ In this affidavit GD made no mention of a higher interest rate as a factor in her investment decision. As she had consistently told the staff in multiple conversations, GD expressed concern in the affidavit with the safety of her investment. She described the reassurances she received from Luo in connection with her purchase of Parent Company notes. She declared that she had invested in Parent Company notes to help fund her retirement. She said that she told Luo at the time of her October 2009 purchase that she was funding her purchase of the notes from money she had received from a maturing CD (certificate of deposit).¹⁰⁰ Once GD made the purchase in October 2009, she had no other investments in her account. She put all of her funds

⁹⁶ Hearing Tr. (Luo) 470-72.

⁹⁷ Hearing Tr. (Luo) 450-56.

⁹⁸ CX-20 at p. 25.

⁹⁹ CX-17.

¹⁰⁰ Luo admitted at the hearing that GD "probably" told him that she was funding her investment in the 2009 Parent Company notes from a maturing CD. Hearing Tr. (Luo) 441-42.

in the Parent Company notes because she thought that they were safer than investing in the stock market.¹⁰¹

The October affidavit also said that GD's sister, CWC, was concerned with safety. GD told Luo that her sister was "looking for a safe investment." GD told Luo that her sister's son was attending college in the United States and CWC wanted to put some money aside to pay for his tuition.¹⁰²

Luo became aware of GD's October 2013 affidavit when it was included in Enforcement's pre-hearing submissions.¹⁰³ Luo then spoke to GD by telephone about her October 2013 affidavit. Luo told GD that her October 2013 affidavit was wrong.¹⁰⁴

By his own testimony, Luo then prodded GD to change her sworn statement and helped her craft a new affidavit designed to exonerate him. Luo testified that he told her over the telephone how to change her October 2013 affidavit. He said, "I told her to change whatever she said earlier because after our discussion we agreed that was not the story....I just told her...the real story and then she agreed then she you know, put in another affidavit."¹⁰⁵ Luo admitted that he went through the October 2013 affidavit paragraph by paragraph, talking about what each paragraph said and

¹⁰¹ CX-17. From 2010 to October 2013, GD consistently emphasized to FINRA staff her concern with the safety of her investment. Hearing Tr. (introduction of documents by Enforcement) 389-99; CX-71 (contemporaneous FINRA staff notes of telephone call with GD in 2010); CX-70 (declaration under penalty of perjury by GD dated August 18, 2010); CX-20 (collection of correspondence between Enforcement and GD leading up to her signing of the October 2013 affidavit); CX-17 (GD signed affidavit notarized on October 7, 2013).

¹⁰² CX-17. Luo acknowledged that CWC wanted to support a son attending school in the United States, but, in an attempt to diminish the significance of that support, he claimed that the son was 37 years old, not a young collegian. Hearing Tr. (Luo) 488-89. Regardless of the son's age, Luo admitted that CWC was concerned about having money to assist her son.

¹⁰³ Hearing Tr. (Luo) 411.

¹⁰⁴ Hearing Tr. (Luo) 414. Luo claimed that "she admitted she lied." Hearing Tr. (Luo) 382. However, the lie that he specified in his testimony has no bearing on whether he committed fraud or suitability violations. He specifically claimed that she had lied about her sister's telephone number in Hong Kong. Hearing Tr. (Luo) 382-84.

¹⁰⁵ Hearing Tr. (Luo) 463-64.

suggesting language for the revised affidavit.¹⁰⁶ He claimed that the October affidavit contained “a lot of errors” and that he wanted “to try to clarify all points.”¹⁰⁷

On November 1, 2013, GD executed, and swore and subscribed to, a short statement trying to “retract” her October 2013 affidavit. In the statement, GD said she was “tricked” in her earlier interactions with FINRA staff. She claimed that she was “bombarded” with calls, “pressured,” and “confused.” She said that as a result she had made “errors” in her prior statements although she did not identify what those errors might be. She also did not set forth any facts to explain how she might have been “tricked” or “confused.”¹⁰⁸ At the hearing, Luo admitted that he had supplied GD with the word “tricked.”¹⁰⁹

On November 7, 2013, GD swore to a separate, revised affidavit contradicting much of what she had been telling FINRA staff for several years. The November 2013 affidavit eliminated any reference to safety and changed GD’s concern to an interest in obtaining a high interest rate.¹¹⁰ Luo admitted that specific language in the revised affidavit came from him. For example, the revised affidavit did not say, as did the original, that the purpose of the investment was to fund GD’s retirement. Instead, the revised affidavit called the note purchase a “side investment.” Luo was the one who suggested that language.¹¹¹

Much of the language in the affidavit that Luo drafted for himself bears a striking identity to the language of the affidavit that he assisted GD to draft, indicating that, in effect, he put words in

¹⁰⁶ Hearing Tr. (Luo) 486.

¹⁰⁷ Hearing Tr. (Luo) 488-89.

¹⁰⁸ CX-68.

¹⁰⁹ Hearing Tr. (Luo) 458-60.

¹¹⁰ RX-72.

¹¹¹ Hearing Tr. (Luo) 483-86; RX-72. In both her 2010 declaration and October 2013 affidavit, GD had sworn that her purpose was to help fund her retirement. *Id.* at 483-34; CX-17; CX-70.

her mouth.¹¹² For example, in his affidavit, Luo said that he “explained to her clearly that theoretically fixed income are safer than equity, but some fixed incomes investments have high interest rates and carry higher risks, the so-called junk bonds, and it may or may not default.” In GD’s affidavit every word but one is the same – the word “traditionally” appears in place of the word “theoretically.” GD’s revised affidavit says that Luo “explained it clearly that traditionally fixed income are safer than equity...”¹¹³ Both affidavits also say in identical language, that Luo explained to GD “clearly that native tribe Indian acquisition had taken place.”¹¹⁴ In identical language the two affidavits state that Luo told GD that Westrock “was not making money, possibly breakeven or losing a little money but investing and expanding for the future.”¹¹⁵

Luo testified at the hearing that GD would have given testimony if he had asked her to do so. But he never asked her to testify.¹¹⁶ Instead, he offered to explain her retraction of her earlier affidavit in the following way, “[S]he probably was confus[ed] from the start and later on she tried to correct it. That’s my think, I don’t know, you know, you know, because she’s not here.”¹¹⁷

The Hearing Panel finds no evidence that GD was “tricked” into signing the original affidavit. Enforcement expressly stated that she should sign it only if it was accurate and that changes would be made if she found anything in it to be inaccurate.

The Hearing Panel further finds that Luo acted to impede the disciplinary process by proposing to GD that she was “tricked” by Enforcement and having her sign a new, contradictory

¹¹² Compare RX-72 to Luo affidavit, filed November 8, 2014.

¹¹³ Compare RX-72 at ¶ 3 to Luo affidavit, filed November 8, 2014, at ¶ 3.

¹¹⁴ Compare RX-72 at ¶ 8 to Luo affidavit, filed November 8, 2014, at ¶ 8.

¹¹⁵ Compare RX-72 at ¶ 12 to Luo affidavit, filed November 8, 2014, at ¶ 11.

¹¹⁶ Hearing Tr. (Luo) 411-13; Hearing Tr. (Goodman) 344-46.

¹¹⁷ Hearing Tr. (Luo) 384.

affidavit that he dictated. Accordingly, the Hearing Panel finds that the affidavit by GD dated November 7, 2013, is not reliable and gives it no weight as evidence.¹¹⁸

The Hearing Panel instead credits GD's affidavit dated October 7, 2013, because it is consistent with a declaration GD made in 2010 and with the contemporaneous notes of FINRA staff of their conversations with GD. The October 2013 affidavit also is consistent with Luo's own testimony in many respects, such as his testimony that GD resisted any suggestion that she buy stock because of her experience losing money on stock. The October 2013 affidavit furthermore contains statements that are credible in the circumstances, such as the statement that GD was concerned about safety after suffering stock market losses.

The Hearing Panel further finds that this series of events, wherein Luo persuaded his customer to change her story to exonerate him, is evidence of GD's lack of financial acumen and independent judgment. It demonstrates how Luo could easily mislead her as to material facts concerning her investment in Parent Company notes.

In addition, the Hearing Panel finds that Luo's conduct in persuading GD to retract her earlier affidavit, and assisting GD to provide a contradictory affidavit favorable to him, undermines his own credibility. This is particularly true because he claimed that she would testify if he asked her. Thus, he claimed to have available corroborating evidence but declined to present it. The Hearing Panel infers that Luo was actually uncertain whether GD's testimony would support his version of events, and he preferred her not to be available to be cross-examined by Enforcement.

¹¹⁸ RX-72.

III. CONCLUSIONS OF LAW

A. Securities Fraud

The First Cause of Action alleges that Luo committed securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010. The Hearing Panel concludes that Luo committed the violations alleged in this Cause of Action.

(1) Applicable Law

Section 10(b) of the Exchange Act broadly proscribes securities fraud in violation of rules promulgated by the SEC, including Rule 10b-5. Section 10(b) provides: “It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails ... [t]o use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”¹¹⁹

Rule 10b-5 makes it unlawful “[t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.”¹²⁰

FINRA Rule 2020 proscribes fraud in language similar to Section 10(b), stating: “No member shall effect any transaction in, or induce the purchase or sale of, any security by means of

¹¹⁹ 15 U.S.C. § 78j.

¹²⁰ 17 C.F.R. § 240.15c3-1.

any manipulative, deceptive or other fraudulent device or contrivance.” A violation of Section 10(b) is also a violation of FINRA Rule 2020, which proscribes even broader misconduct.¹²¹

FINRA Rule 2010 requires that business conduct be consistent with “high standards of commercial honor and just and equitable principles of trade.” It is an ethical rule that applies whenever another violation of law or rule is found. Thus, if Luo committed securities fraud, he also violated FINRA Rule 2010.¹²²

(2) Enforcement Proved That Respondent Committed Securities Fraud

Enforcement established the elements of securities fraud under Section 10(b) of the Exchange Act and Rule 10b-5. An enforcement action for Rule 10b-5 securities fraud requires proof of the following: (i) a false statement or a misleading omission; (ii) of a material fact; (iii) made with the requisite scienter or state of mind; (iv) using the jurisdictional means; (v) in connection with the purchase or sale of a security.¹²³

First, Luo made at least two types of false statements when he sold Parent Company notes to GD and CWC, and he omitted a number of other facts necessary to disclose in order to make what he said not misleading.

The Hearing Panel concludes that he falsely represented the safety of the notes. The preponderance of the evidence shows that he misrepresented that the notes were safe or safer than stocks in order to allay GD’s concerns about safety in light of her previous stock market losses.

¹²¹ See *Dep’t of Enforcement v. Fillet*, No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *37-40 (NAC Oct. 2, 2013); *Dep’t of Enforcement v. Thomas Weisel Partners, LLC*, No. 2008014621701, 2013 FINRA Discip. LEXIS 1, at *15 (NAC Feb. 15, 2013).

¹²² Securities fraud and other violations of law and FINRA Rules have long been held inconsistent with the high standards of ethical conduct required by FINRA Rule 2010 (and its identical predecessor, NASD Rule 2110). *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178, 182 (2d Cir.), *cert. denied*, 385 U.S. 817 (1966). FINRA Rule 2010 is a broad ethical proscription that requires members of the securities industry to conduct themselves with integrity, fairness, and honesty. See, e.g., *Heath v. SEC*, 586 F.3d 122, 131-39 (2d Cir. 2009).

¹²³ *SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1244 (11th Cir. 2012); *SEC v. PIMCO Advisors Fund Mgmt. LLC*, 341 F. Supp. 2d 454, 463-64 (S.D.N.Y. 2004).

Even setting aside that conclusion, however, it is clear that Luo made misleading statements regarding safety, omitting information that would have clarified the truly risky nature of the investment. He testified that he discussed the relative safety of debt instruments compared to stocks. The comparison was misleading. It created the impression that the 2009 notes fell into a category of securities that were generally safer than stocks. Luo failed to disclose to GD that private placement offerings such as the 2009 note offering are high-risk investments or that the 2009 notes carried an interest rate that made them more like junk bonds than treasury notes and other more conservative debt instruments.

The Hearing Panel also concludes that Luo falsely described the notes as a good investment. That was untrue in light of the Parent Company's history of not paying the interest it owed on other notes it had previously issued. The absence of any financial statements or any PPM also significantly undercuts the statement. Luo's failure to disclose any of this information casting doubt on the Parent Company's ability or commitment to honor its payment obligations on the 2009 notes was misleading.

Second, the facts misrepresented or omitted were material.

The question of materiality is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor.¹²⁴ Materiality is satisfied when there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor

¹²⁴ Materiality is an "objective" inquiry involving the significance of an omitted or misrepresented fact to a reasonable investor. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976). See also *Amgen, Inc. v. Conn. Ret. Plans & Tr. Funds*, 133 S. Ct. 1184, 1195-96 (Feb. 27, 2013); *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 1318 (2011).

Materiality can be evaluated under this objective standard, considering how a reasonable investor would view the false statement or misleading omission, without testimony from any particular customer. *Dep't of Enforcement v. Scholander*, No. 2009019108901, 2013 FINRA Discip. LEXIS 37, at *64-65 and n.122 (OHO Aug. 16, 2013) *appeal docketed* (Aug. 30, 2013), (citing *RichMark Capital Corp.*, Exchange Act Rel. No. 48758, 2003 SEC LEXIS 2650, at *15 (Nov. 7, 2003)), *aff'd*, 86 F. App'x 744 (5th Cir. 2004).

as having significantly altered the ‘total mix’ of information made available.”¹²⁵

The Hearing Panel concludes that GD was concerned about the safety of her investment and the false and misleading statements were material to her. However, that conclusion is unnecessary to establish materiality. The false and misleading statements concerning safety and the quality of the investment would be material to any reasonable investor. The Issuer’s failure to honor its obligations to earlier investors in other notes and the absence of financial statements or any PPM were critical pieces of information to any potential investor in the 2009 notes. Luo failed to disclose these material items of information.

Third, Luo made the false and misleading statements with knowledge of facts that undermined or contradicted what he told GD. This constitutes scienter.

Luo knew that the Parent Company was not paying interest that it owed to investors in earlier note offerings. He knew that no financial statements or PPM was available for review in connection with the 2009 note offering when every other private placement he had sold did include them. He also knew that analysis of the financial statements and PPMs in those other offerings had been important to him. He knew that he had no real basis for describing the 2009 notes as a good investment, because he was merely relaying what he had been told by the Firm’s main principal, the same person who had evaded Luo’s questions about overdue payments on previously issued securities.

Finally, Luo testified that he considered private placement offerings to be high-risk investments, but he did not disclose that because he did not want to “scare” GD. This statement is revealing. It shows that Luo intentionally withheld information from GD that was material to her

¹²⁵ *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

because it could affect her decision regarding the investment.¹²⁶

Fourth, Luo used the jurisdictional means when he used the telephone and email to conduct his business.

Fifth, there is no dispute that his conduct occurred in connection with the sale of a security, the 2009 notes.

B. Alternative Finding Of Negligent Misrepresentation

FINRA Rule 2010 covers unethical conduct regardless of whether another violation is found. It represents an “industry backstop for the representation, inherent in the relationship between a securities professional and a customer, that the customer will be dealt with fairly and in accordance with the standards of the profession.” FINRA Rule 2010 requires members of the securities industry not merely to conform to legal requirements but to conduct themselves with integrity, fairness, and honesty. Thus, in the alternative, even without proof of the scienter required for fraud, the evidence could show a violation of FINRA Rule 2010 (as alleged in the Second Cause of Action).

Luo violated FINRA Rule 2010 by the false and misleading statements described above, regardless of whether he acted knowingly or recklessly. The false and misleading statements constituted, at a minimum, negligent misrepresentations. Luo’s conduct fell so far short of the standards of the profession and the fair treatment of customers as to be an ethical violation.

¹²⁶ The Hearing Panel believes that Luo knew he was making false and misleading statements to GD. But even if he did not know it, he was certainly reckless, which also satisfies scienter. See *SEC v. U.S. Envtl., Inc.*, 155 F.3d 107, 111 (2d Cir. 1998) (collecting cases). Recklessness has been defined as conduct that is highly unreasonable and that represents an extreme departure from the standards of ordinary care. See *SEC v. McNulty*, 137 F.3d 732, 741 (2d Cir. 1998). The classic definition has been recently reiterated in *Small Business Capital Corp.*, 2013 U.S. Dist. LEXIS 116607, at *31 (N.D. Cal. 2013): “Reckless conduct is conduct that consists of a highly unreasonable act, or omission, that is an ‘extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.’” (quoting from *SEC v. Dain Rauscher*, 254 F.3d 852, 1569 (9th Cir. 2001) and *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569 (9th Cir. 1990)).

C. Suitability Violations

The Third and Fourth Causes of Action allege that Luo violated NASD Rule 2310 and FINRA Rule 2010. The Third Cause alleges that he sold the 2009 notes without a reasonable basis for believing that the notes were suitable for any investor. The Fourth Cause alleges that he sold the notes to his two customers without reasonable grounds to believe the recommendation was suitable for the particular customers. The Hearing Panel concludes that he committed the violations alleged in these Causes of Action.

(1) Applicable Law

NASD Rule 2310 requires that a registered representative who makes a recommendation for a securities transaction have “reasonable grounds” for believing that the recommendation is suitable for the customer.¹²⁷ There are two types of analysis under Rule 2310.

As a threshold matter, a registered representative must reasonably investigate the recommended security. One can only determine whether a particular investment would be appropriate in light of the investor’s circumstances and objectives if one also has an adequate understanding of the investment he or she is recommending. This reasonable diligence as to the recommended security is sometimes referred to as “reasonable-basis” suitability.¹²⁸

The second step in the analysis of suitability is to determine whether the security is a suitable investment for the particular customer to whom it is sold. A registered representative must make reasonable efforts to obtain information concerning the customer’s financial status, tax status, investment objectives, and any other information bearing on whether it is appropriate to recommend

¹²⁷ NASD Rule 2310 applied at the time Respondent recommended the notes to GD and CWC. It has been superseded by FINRA Rule 2111, but NASD Rule 2310 is available on FINRA’s website under “Retired NASD Rules.”

¹²⁸ *Richard G. Cody*, Exchange Act Rel. No. 64565, 2011 SEC LEXIS 1862, *26-32 and nn. 8-16 (May 27, 2011), *aff’d*, 693 F.3d 251 (1st Cir. Sept. 7, 2012). *See also Hanly v. SEC*, 415 F.2d 589, 595-96 (2d Cir. 1969); *Dep’t of Enforcement v. Siegel*, No. C05020055, 2007 NASD Discip. LEXIS 20, at *38 (NAC May 11, 2007).

the security to a particular customer.¹²⁹ This “customer-specific” suitability turns on the particular facts and circumstances of the customer’s situation.¹³⁰ Only with knowledge of the particular customer’s situation can the registered representative determine, as the suitability rule requires, that the recommendation is in the customer’s best interests.¹³¹

(2) Enforcement Proved The Suitability Violations Alleged In The Third And Fourth Causes Of Action

Luo had no basis for thinking the Parent Company notes were a suitable investment for any investor. He sold the notes largely on the basis of his supervisor’s oral representations that the notes were a good investment and his own vague perception that the Firm had plans for “big business.” However, Luo knew facts strongly suggesting that the notes were not a good investment – the Issuer already had failed to make good on payments to prior investors in its other securities and he was having trouble getting paid himself. There was no PPM. There were no financial statements of the Issuer. Luo acknowledged that he thought Hunter’s introductory presentation of the offering to the Firm’s brokers was too good to be true, but he obtained no other information to support his recommendation and sale of the notes. This conduct violated NASD Rule 2310, as alleged in the Third Cause of Action.

Leaving aside the general unsuitability of the Parent Company notes as an investment, Luo’s recommendation of the notes to GD and CWC was unsuitable as to them in particular. As Luo

¹²⁹ NASD Rule 2310 provides that the “reasonable grounds” be developed “upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.”

¹³⁰ See, e.g., *Dep’t of Enforcement v. Bendtsen*, No. C01020025, 2004 NASD Discip. LEXIS 13, at *12 (NAC Aug. 9, 2004) (a recommendation should “serve [the] client’s best interests” and be “consistent with the client’s financial situation and needs”).

¹³¹ *Scott Epstein*, Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217, at *40 n.24 (Jan. 30, 2009) (“In interpreting the suitability rule, we have stated that a [broker’s] ‘recommendations must be consistent with his customer’s best interests.’”); *Raghavan Sathianathan*, Exchange Act Rel. No. 54722, 2006 SEC LEXIS 2572, at *21 (Nov. 8, 2006) (“[A] broker’s recommendations must be consistent with his customers’ best interests.”).

testified, he thought that private placement offerings are generally risky investments and he understood that the 2009 notes should only be offered to accredited investors. GD, who was making the decision on behalf of both herself and her sister, was concerned about safety after her prior stock market losses. The evidence demonstrated that she was not a financially sophisticated investor, and the account forms intended to develop a record of the sisters' accredited investor status were not reliable. Luo maintained that he knew their financial status regardless of what was on the forms, an unverifiable and self-serving assertion. The Hearing Panel concludes that the 2009 notes were not suitable for GD and her sister and that Luo violated NASD Rule 2310, as alleged in the Fourth Cause of Action.

IV. SANCTIONS

In considering the appropriate sanction for a violation, adjudicators in FINRA disciplinary proceedings look to FINRA's Sanction Guidelines. The Sanction Guidelines contain a range of sanctions for particular violations, depending on the circumstances. They also contain General Principles, applicable in all cases, and overarching Principal Considerations. The Sanction Guidelines are not absolutes. They are intended to be applied with attention to the regulatory mission of FINRA – to protect investors and strengthen market integrity.¹³²

In this case, overarching concerns support the imposition of the most stringent sanctions. The Hearing Panel has no confidence that Luo could or would conform his conduct in the future to the regulatory and legal requirements designed to protect the investing public. Luo's testimony at the hearing was evasive and not credible. Furthermore, in persuading GD to withdraw her first affidavit and submit a second affidavit intended to exonerate Luo, he manipulated the customer

¹³² FINRA Sanction Guidelines (2011) ("Sanction Guidelines"), available at www.finra.org/sanctionguidelines. See Sanction Guidelines, Overview, 1.

whom he defrauded so as to impede the disciplinary process.¹³³ Luo engaged in a pattern of misconduct, including not only the charged misconduct but repeated instances of selling Parent Company notes to persons not qualified to purchase them.¹³⁴ Luo's misconduct was the result of intentional and reckless acts¹³⁵ that substantially injured customers¹³⁶ who were unsophisticated.¹³⁷ Luo benefited from his fraud by the commissions he received.¹³⁸ Luo accepted no responsibility for his misconduct.¹³⁹

The Hearing Panel finds no mitigating factors.

A. Securities Fraud (First Cause of Action)

In committing securities fraud, Luo's misconduct was intentional. The Hearing Panel also finds that it was egregious. Luo knew facts that made it plain that the Parent Company was exceedingly unlikely to make good on the 2009 notes.

For intentional or reckless misrepresentations and omissions of material fact, the Sanction Guidelines provide that the individual may be suspended in any or all capacities for a period of 10 business days to two years. A fine also may be imposed. It could range from \$10,000 to \$100,000. In egregious cases the respondent may be barred.¹⁴⁰

¹³³ Sanction Guidelines, General Principle 1, at 2 (sanctions should discourage future misconduct by respondent), Principal Consideration 10, at 6 (consider whether respondent attempted to conceal his misconduct from customer or regulatory authorities), Principal Consideration 12, at 7 (consider whether respondent attempted to provide inaccurate or misleading testimony or evidence to FINRA).

¹³⁴ Sanction Guidelines, Principal Consideration 8, at 6.

¹³⁵ Sanction Guidelines, Principal Consideration 13, at 7.

¹³⁶ Sanction Guidelines, Principal Consideration 11, at 6.

¹³⁷ Sanction Guidelines, Principal Consideration 19, at 7.

¹³⁸ Sanction Guidelines, Principal Consideration 17, at 7.

¹³⁹ Sanction Guidelines, Principal Consideration 2, at 6.

¹⁴⁰ Sanction Guidelines, 88.

For the reasons discussed above, the Hearing Panel believes it is necessary for the protection of the investing public that Luo be barred from associating with any FINRA member firm in any capacity.

B. Alternative Claim: Negligent Misrepresentation (Second Cause of Action)

In the alternative, if Luo's misconduct is viewed as negligent, rather than intentional and reckless, the Sanction Guidelines suggest lesser sanctions. They provide that an individual respondent could be suspended for up to thirty business days and fined from \$2,500 to \$50,000. It would be appropriate to impose the maximum sanction in this case, a 30 business-day suspension and a \$50,000 fine.¹⁴¹ However, in light of the bars imposed for the other violations, this sanction need not be imposed.

C. Suitability (Third and Fourth Causes of Action)

The Sanction Guidelines for unsuitable recommendations of all types (including both reasonable-basis suitability and customer-specific suitability) provide that an individual respondent may be suspended in all capacities for a period ranging from 10 business days to one year, and may be fined from \$2,500 to \$75,000. In egregious cases, a longer suspension of up to two years or a bar may be appropriate.¹⁴² Because the Third and Fourth Causes of Action involve much the same conduct, they are aggregated for purposes of sanctions, as authorized by the Sanction Guidelines.¹⁴³

This is an egregious case. The 2009 notes were clearly unsuitable investments for anyone, and Luo had no solid facts to indicate that the Issuer could or would repay investors what it owed them. In addition, even if the notes had been suitable for some investors, GD and CWC were not among them. The initial account forms indicated that they were not qualified to buy such notes,

¹⁴¹ Sanction Guideline, 88.

¹⁴² Sanction Guidelines, 94.

¹⁴³ Sanction Guidelines, General Principle 4, at 4.

and GD was an unsophisticated investor who was afraid of losing her money in the stock market. A bar is appropriate.

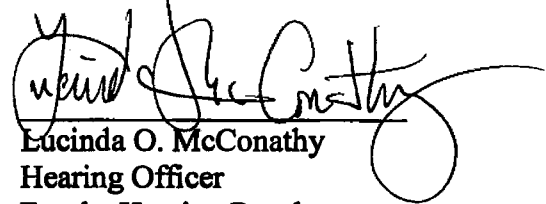
V. ORDER

For the violations found as charged in the First Cause of Action (securities fraud in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and FINRA Rules 2020 and 2010), Respondent Jaoshiang Luo is barred from association with any FINRA member firm in any capacity.

For the violations found as charged in the Third and Fourth Causes of Action (suitability for any investor and suitability for particular customers in violation of NASD Rule 2310 and FINRA Rule 2010), treated in aggregate, Respondent Jaoshiang Luo is barred from association with any FINRA member firm in any capacity.

If this decision becomes FINRA's final disciplinary action, the bars will take effect immediately.

In addition, Respondent is ordered to pay the costs of the hearing in the amount of \$4703.15, which includes a \$750 administrative fee and the cost of the transcript.¹⁴⁴ The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.


Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

Copies to:

Jaoshiang Luo (via first-class, electronic mail and overnight courier)
Thomas S. Kimbrell, Esq. (via first-class and electronic mail)
Christopher Perrin, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)

¹⁴⁴ The Hearing Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.