

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

Department of Enforcement,

Complainant,

v.

David C. Cannata (CRD No. 2408845),

Respondent.

DISCIPLINARY PROCEEDING
No. 20130378570-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From March 2012 through April 2014, while associated with Craig Scott Capital, LLC ("CSC" or the "Firm"), Respondent David C. Cannata ("Cannata" or "Respondent") excessively traded and churned three customers' accounts. Therefore, Cannata willfully violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), Rule 10b-5 promulgated thereunder, NASD Conduct Rule 2310, and FINRA Rules 2111, 2020 and 2010.
2. In addition, from January 2015 through June 2015, Cannata failed to appear for on-the-record interviews noticed pursuant to FINRA Rule 8210. Therefore, Cannata violated FINRA Rules 8210 and 2010.
3. Finally, while associated with CSC, Cannata willfully failed to amend and timely disclose on his Uniform Application for Securities Industry Registration and Transfer ("Form U4") two tax liens totaling \$189,449. As a result, Cannata violated Article V, Section 2(c) of the FINRA By-Laws, and FINRA Rules 1122 and 2010.

RESPONDENT AND JURISDICTION

4. Cannata first became registered with FINRA as a General Securities Representative (“GSR”) through a member firm in February 1995. Cannata joined CSC as a GSR in January 2012.

5. On September 24, 2014, CSC filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) reporting Cannata’s termination as of September 9, 2014.

6. Cannata has not been registered with FINRA or associated with a FINRA member firm since CSC filed the Form U5 reporting his termination.

7. On April 10, 2015, CSC filed an amendment to Cannata’s Form U5, reporting for the first time a customer arbitration claim against Cannata.

8. Although Cannata is no longer registered with FINRA or associated with a FINRA member, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because (i) the Complaint was filed within two years of an amendment to Cannata’s Form U5 reporting a customer arbitration claim against Cannata, namely, April 10, 2015, and (ii) the Complaint charges Cannata with misconduct committed while he was registered or associated with a FINRA member and with failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member firm or the filing of the Form U5.

STATEMENT OF FACTS

A. OVERVIEW OF CANNATA’S BUSINESS MODEL.

9. As a means to turn over the accounts quickly and generate outside commissions for himself and the Firm, Cannata used an aggressive short-term trading strategy in his customers’

accounts that relied heavily on buying and selling equities of companies releasing their earnings reports.

10. Cannata often solicited, or entered on his own, buy transactions shortly before the earnings' announcements and then sold the positions shortly after the earnings reports were released to the public to either lock in a profit or avoid further loss. Cannata used this approach repeatedly, placing hundreds of trades for customers in their accounts.

11. Based on the level of trading and commissions charged, there was little to no possibility that customers would profit from such trading. More specifically, the level of trading was quantitatively unsuitable for certain of Cannata's customers.

12. Cannata excessively traded and churned the accounts of customers JB, DB, and TD (collectively, the "Customers").

13. In line with Cannata's high volume of trading, the Customers' accounts had high annualized turnover rates during the relevant time periods ranging from approximately 172 to 262.

14. At the same time, Cannata's high volume of trading resulted in the Customers' accounts recording annualized cost-to-equity ratios of approximately 169% to 618% during the relevant time periods.

15. Because Cannata used a combination of agency trading and riskless principal transactions, the true cost of the active trading was concealed from the Customers. Cannata never explained to his Customers what riskless principal trading was. They had never heard of riskless principal trading and never heard of markups or markdowns. As a result, and because this information was not readily apparent on the confirmations, the Customers did not know how to determine what they actually paid in commissions on the riskless principal trades.

16. Cannata also used margin in the Customers' accounts in order to accelerate the level of trading.

17. Cannata exercised control over the Customers' accounts. Indeed, he entered most of the trades in the Customers' accounts without first seeking their authorization to do so. He did not discuss with them the specific trades that he had in mind and never fully explained his trading in the accounts.

18. Cannata controlled the timing of the trades and solely determined the amount and number of shares that were going to be purchased or sold in their accounts. According to his own markings of the trade confirmations, the overwhelming majority of the trades in his Customers' accounts were marked solicited.

19. Cannata's Customers did not question his trading or investment strategies and were not fully aware of the nature of the trading in their accounts. Instead, they relied on Cannata and believed that he had their best interests at heart and that he was providing them with sound investment advice and managed their accounts in line with their investment objectives. Cannata abused their trust by excessively and fraudulently trading in their accounts.

20. As a result of the high volume of trading and the exorbitant commissions and fees it generated, the Customers' accounts suffered significant losses during the relevant time periods, ranging from approximately \$114,171 to \$1,263,527.

B. EXCESSIVE TRADING AND CHURNING IN THE CUSTOMERS' ACCOUNTS.

1. Customer JB

21. JB was born in October 1923. He was 89 years old and a retiree at the time he opened his CSC account in March 2012.

22. JB's account was marked with an investment objective of "growth." JB was willing to accept average investment risks and wanted to make some money to supplement his retirement income.

23. During the active trading period from March 2012 through July 2012, Cannata generated approximately \$91,680 in commissions for himself and the firm and approximately another \$3,300 in margin interest and other fees on average monthly account equity of approximately \$69,649. His excessive trading and churning of the account resulted in an annualized cost-to-equity of approximately 327% and the annualized turnover rate of approximately 262.

24. Cannata used margin in the account in order to perpetuate active trading.

25. In order to mask the true costs of the trading that he conducted in JB's account, Cannata also executed a significant number of trades on riskless principal basis.

26. Cannata controlled JB's account. In fact, according to the Firm's own internal document, namely the *Investment Representative Active Account Worksheet* that was completed jointly by Cannata and the Chief Compliance Officer, JB relied 100% of the time for investment strategies and advice on Cannata and 100% of the transactions were solicited or originated from Cannata.

27. Cannata himself marked an overwhelming majority of the trades (approximately 95%) executed during the relevant time period as solicited trades. In fact, JB never rejected Cannata's advice and Cannata did not discuss specific stocks or trades with him nor asked for his approval to buy or sell stocks in the account.

28. In the end, while Cannata's trading in the account during the relevant time period incurred total costs of approximately \$95,045, including approximately \$91,680 in commissions and fees for himself and the Firm, JB's account sustained an approximate \$188,598 loss.

29. Cannata's trading in JB's account demonstrated a reckless disregard for JB's investment objectives and was quantitatively unsuitable for JB's account.

2. Customer DB

30. DB was born in January 1958 and was 55 years old when he opened his account with Cannata at CSC in June 2013.

31. The pre-populated new account form showed that DB's purported investment objective for the account was "Speculation." However, Cannata never explained, and DB never understood or expected, that an investment objective of "speculation" would allow Cannata to engage in high volume and short-term trading in his account. In fact, one of DB's goals for the account was to generate investment income. Cannata even boasted to DB that, given that the anticipated size of the account was over \$1 million, he was going to be able to easily generate \$150,000 in investment income annually for the account. In short, Cannata knew that while DB wanted to grow his portfolio, at the same time, he also wanted his portfolio to have substantial income generating component.

32. In fact, in November 2013, Cannata completed an *Account Executive Active Account Worksheet* form, confirming on the form that DB's account has "a new conservative approach" and, in a section of the form titled Brief Description of Client's Investment Profile and Trading Strategy, additionally explaining that "we are positioned now along the lines of a buy and hold approach."

33. However, during the active trading period from July 2013 through April 2014, Cannata generated approximately \$629,478 in commissions for himself and the firm and approximately another \$61,325 in margin interest and other fees on average monthly account equity of approximately \$487,775. His excessive trading and churning of the account resulted in an

annualized cost-to-equity of approximately 169% and the annualized turnover rate of approximately 210.

34. While Cannata traded on margin in DB's account in order to perpetuate his active trading of the account, he never explained to DB the risks associated with trading on margin or what margin was. Instead, Cannata deceptively described margin as account's "buying power." Therefore, DB was not aware that Cannata was aggressively leveraging his account.

35. Cannata also concealed the true cost of trading by executing the majority of the trades on riskless principal basis even though he did not discuss or explain to DB what riskless principal trading was and how the cost of riskless principal trades was reflected on the trade conformations. DB did not know what riskless principal trading was and never heard of markups or markdowns.

36. Cannata controlled DB's account. Cannata determined when and what securities to buy in the account and entered the trades in the account without first consulting DB.

37. For example, even though Cannata was unable to communicate (save for one brief conversation) with DB during a time period of two to three weeks in July 2013 or August 2013, while DB was away on vacation in a remote area of North Carolina, he still executed hundreds of trades in the account during that time period without consulting DB.

38. Moreover, according to Cannata's own markings of the trades, the overwhelming majority of the trades (approximately 85%) executed in the account during the relevant time period were marked as solicited trades. And, the hundreds of the trades that he marked as unsolicited were, in fact, his ideas and should have been marked as solicited trades.

39. DB did not question Cannata's trading ideas or investment strategies. DB also did not have the requisite knowledge, ability or time to review the hundreds of Cannata's trades

executed in his account. While they talked once a week or so, they generally did not discuss any individual trades or positions in the account and tended to discuss matters that were personal in nature, having nothing to do with the account.

40. In fact, DB's relationship with Cannata was nothing like an arms-length business relationship. Rather, their relationship was, in large part, personal in nature, arising from Cannata's very personal family-related health struggles that he shared with DB. Because DB's daughter went through the identical health-related issues herself, DB developed a deep and personal connection to Cannata. He believed that Cannata was his friend and not merely his broker. He trusted that Cannata, as a professional and his friend, managed his account in line with his investment objectives, seeking growth and investment income. Instead, Cannata took advantage and exploited DB's trust in him by excessively trading and churning his account.

41. In the end, while Cannata's trading in the account during the relevant time period incurred total costs of approximately \$690,803, including approximately \$629,478 in commissions and fees for himself and the Firm, DB's account sustained an approximate \$1,263,527 loss.

42. Cannata's trading in DB's account demonstrated a reckless disregard for DB's investment objectives and was quantitatively unsuitable for DB's account.

3. Customer TD

43. TD was 56 years old at the time he opened his account with Cannata at CSC in February 2012. Prior to meeting Cannata, TD did not have any investment accounts.

44. According to the pre-populated new account form, TD's investment objective for the account was "Speculation." However, TD was a conservative buy-and-hold investor.

45. TD's predecessor account at another member firm was an investment account with conservative investment objectives and with little to no trading taking place in the account. That account was also handled by Cannata. However, as TD wanted to invest in the Facebook IPO, Cannata required him to change the account's conservative investment objectives to speculation in order for his investment to be approved by that member firm. TD agreed to do so for the sole purpose of acquiring the Facebook IPO shares.

46. Subsequently, when TD opened his CSC account, Cannata prepopulated the new account form for his CSC account by copying the information from the new account form for the predecessor account, including the investment objective of speculation. At the time, TD was still waiting for his Facebook IPO shares. When TD opened his CSC account, however, Cannata knew that TD had conservative investment objectives for the account and that he did not want speculative trading in his CSC account. Initially and through December 2012, and in line with TD's conservative investment objectives, there was minimal trading or investment activity in the account.

47. In January 2013, TD received his Facebook IPO shares and promptly deposited them in his CSC account. This increased the value of the account substantially (by approximately \$200,000). Then, during the active period from February 2013 through April 2013, or in just three months, Cannata generated approximately \$127,668 in commissions for himself and the firm and approximately another \$3,621 in margin interest and other fees on average monthly account equity of approximately \$84,927. His excessive trading and churning of the account resulted in an annualized cost-to-equity of approximately 618% and the annualized turnover rate of approximately 172.

48. Cannata used margin in TD's account in order to accomplish his rapid trading in the account.

49. In addition, in order to disguise the true costs of his trading, Cannata executed an overwhelming majority (approximately 95%) of the buy transactions on riskless principal basis. Meanwhile, TD did not know the difference between agency and riskless principal trades and Cannata never discussed with him how he was going to be executing trades in the account. TD did not know what markups or markdowns were and; therefore, would not know how to figure out what commissions he was charged.

50. Cannata controlled TD's account. In fact, TD did not authorize, and did not find out, about the trading activity in the account until his account suffered significant losses. When he realized that there might have been unauthorized trading going on in the account, TD called Cannata several times but his calls went unanswered and his messages unreturned. When Cannata finally returned his call, TD's account was already looted from most of its assets and Cannata told TD that he was "sorry" and that he was "going to make him whole."

51. Moreover, according to Cannata's own markings of the trade confirmations, all of the trades that were executed in the account were marked as solicited trades.

52. In the end, while Cannata's trading in the account during the relevant time period incurred total costs of approximately \$131,290, including approximately \$127,668 in commissions and fees for himself and the Firm, TD's account sustained an approximate \$114,171 loss.

53. Cannata's trading in TD's account demonstrated a reckless disregard for TD's investment objectives and was quantitatively unsuitable for TD's account.

C. CANNATA'S FAILURE TO COOPERATE WITH FINRA'S INVESTIGATION

54. In July 2013, the staff of FINRA's Member Regulation Department (the "Staff") began an investigation of Cannata, including the allegations that Cannata excessively traded and churned his customers' accounts and failed to timely disclose tax liens on his Form U4 (the "Investigation").

55. On April 9, 2014, as part of the Investigation, the Staff sent a letter to Cannata, requesting that he appear for an on-the-record interview ("OTR") at FINRA's office located at Two Jericho Plaza, Jericho, NY 11753, on April 23, 2014. However, Cannata's counsel requested that the OTR be rescheduled to accommodate his and Cannata's calendars. Accordingly, the Staff rescheduled Cannata's OTR to May 15, 2014.

56. Cannata, accompanied by his counsel, appeared and provided his testimony at his first scheduled OTR on May 15, 2014.

57. On December 5, 2014, the Staff sent another letter to Cannata, requesting that, in connection with the Investigation, he appear for an OTR on December 16, 2014. However, after receiving the request, Cannata's counsel requested a postponement and the Staff agreed to reschedule Cannata's OTR.

58. Following his first OTR appearance and the first agreed-upon postponement, over a period of nearly six months between January 2015 and end of May 2015, the Staff sent six additional requests for testimony to Cannata. Despite these numerous requests and the Staff's efforts to accommodate Cannata's and his counsel's schedules, Cannata failed to appear at any of his additionally scheduled OTRs and refused to provide the requested testimony.

1. FIRST FAILURE TO APPEAR FOR ADDITIONAL TESTIMONY – JANUARY 8, 2015

59. On January 8, 2015, the Staff sent a second letter to Cannata requesting that, in connection with the Investigation, he appear for an OTR at two Jericho Plaza, 2nd Floor, Jericho, NY 11753, on January 19, 2015 (the “January 8 Request”).

60. Pursuant to FINRA Rule 8210, the January 8 Request was via certified mail, return receipt requested, and first class mail to Cannata’s counsel at the New York Address.

61. According to the U.S. Postal Service Tracking and Information System, the Second Request for Additional Testimony sent via certified mail, return receipt requested, was delivered to Cannata’s counsel at the New York Address on January 9, 2015. In addition, the Domestic Return Receipt card for the certified mailing was not returned by the U.S. Postal Service.

62. The January 8 Request sent via first class mail to Cannata’s counsel at the New York Address was not returned by the U.S. Postal Service.

63. By email dated January 14, 2015, Cannata’s counsel acknowledged the receipt of the January 8 Request and requested that the OTR be postponed yet again to accommodate his schedule and proposed, among other dates, February 25, 2015 as a replacement date.

64. However, the staff of FINRA’s Department of Enforcement (the “Enforcement Staff”), informed Cannata’s counsel that it would agree to postpone Cannata’s OTR on the condition that Cannata’s counsel also confirmed his client’s availability on the proposed postponement date of February 25, 2015.

65. By email dated January 19, 2015, Cannata’s counsel informed the Enforcement Staff that he has “not heard back from Mr. Cannata yet” and thus was unable to confirm Cannata’s availability.

66. Consequently, Cannata's appearance at his OTR scheduled on January 19, 2015 was not postponed and Cannata was required to appear at his OTR as scheduled.

67. Cannata did not appear at his OTR on January 19, 2015.

2. SECOND FAILURE TO APPEAR FOR ADDITIONAL TESTIMONY – JANUARY 30, 2015

68. On January 30, 2015, the staff sent a third letter to Cannata requesting that, in connection with the Investigation, he appear for an OTR at FINRA's office located Two Jericho Plaza, 2nd Floor, Jericho, NY 11753 on February 25, 2015 (the "January 30 Request").

69. Pursuant to FINRA Rule 8210, the January 30 Request was sent via certified mail, return receipt requested, and first class mail to Cannata's counsel at the New York Address.

70. The January 30 Request was also sent via email to Cannata's counsel on January 30, 2015.

71. According to the U.S. Postal Service Tracking and Information System, the January 30 Request sent via certified mail, return receipt requested, was delivered to Cannata's counsel at the New York Address on February 5, 2015. In addition, the Domestic Return Receipt card for the certified mailing was returned by the U.S. Postal Service with an illegible signature, indicating that it was received on "2/5/15."

72. The January 30 Request sent via first class mail to Cannata's counsel at the New York Address was not returned by the U.S. Postal Service.

73. By email dated February 5, 2015, Cannata's counsel acknowledged the receipt of the January 30 Request and confirmed that "Mr. Cannata has advised us that he intends to appear for his OTR."

74. However, by email dated February 24, 2015, Cannata's counsel informed the Enforcement Staff that "Cannata just sent me a note that he (and some of his family) are ill and that he will not be able to attend his otr tomorrow."

75. Cannata did not appear at his OTR on February 25, 2015.

3. THIRD FAILURE TO APPEAR FOR ADDITIONAL TESTIMONY – FEBRUARY 26, 2015

76. On February 26, 2015, the staff sent a fourth letter to Cannata requesting that, in connection with the Investigation, he appear for an OTR at FINRA's office located Two Jericho Plaza, 2nd Floor, Jericho, NY 11753 on March 16, 2015 (the "February 26 Request").

77. Pursuant to FINRA Rule 8210, the February 26 Request was sent via certified mail, return receipt requested, and first class mail to Cannata's counsel at the New York Address.

78. The February 26 Request was also sent to Cannata's counsel via email on February 26, 2015.

79. According to the U.S. Postal Service Tracking and Information System, the February 26 Request sent via certified mail, return receipt requested, was delivered to Cannata's counsel at the New York Address on March 11, 2015. In addition, the Domestic Return Receipt card for the certified mailing was returned by the U.S. Postal Service with an illegible signature, indicating that it was received on "3/11/15."

80. The February 26 Request sent via first class mail to Cannata's counsel at the New York Address was not returned by the U.S. Postal Service.

81. By email dated February 26, 2015, Cannata's counsel confirmed Cannata's availability for the March 16, 2015 OTR.

82. However, by email dated March 15, 2015, Cannata's counsel informed the Enforcement Staff that he has "received word that Mr. Cannata does not attend [sic] to appear at the OTR

scheduled for tomorrow. I do not know the exact reason for the cancellation but I shall advise you as soon as I have the information.”

83. Cannata did not appear at his OTR on March 16, 2015. Cannata’s counsel never provided any explanation or reason for Cannata’s failure to appear at his OTR on March 16, 2015.

4. FOURTH FAILURE TO APPEAR FOR ADDITIONAL TESTIMONY – MARCH 20, 2015

84. On March 20, 2015, the staff sent a fifth letter to Cannata requesting that, in connection with the Investigation, he appear for an OTR at FINRA’s office located Two Jericho Plaza, 2nd Floor, Jericho, NY 11753 on March 30, 2015 (the “March 20 Request”).

85. Pursuant to FINRA Rule 8210, the March 20 Request was sent via certified mail, return receipt requested, and first class mail to Cannata’s counsel at the New York Address.

86. The March 20 Request was also sent to Cannata’s counsel via email on March 20, 2015.

87. According to the U.S. Postal Service Tracking and Information System, the March 20 Request sent via certified mail, return receipt requested, was delivered to Cannata’s counsel at the New York Address on March 24, 2015. In addition, the Domestic Return Receipt card for the certified mailing was returned by the U.S. Postal Service with an illegible signature but with no date of delivery noted.

88. The March 20 Request sent via first class mail to Cannata’s counsel at the New York Address was not returned by the U.S. Postal Service.

89. By email dated March 20, 2015, Cannata’s counsel informed the staff that “Mr. Cannata and I are both in a FINRA arbitration proceeding the week of the 30th in Providence, Rhode Island.” However, other than inquiring about the Enforcement Staff’s availability in May 2015,

Cannata's counsel did not propose any replacement dates that would accommodate his and Cannata's schedules.

90. Consequently, in response to his email, the Enforcement Staff informed Cannata's counsel that due to repeated history of delays and Cannata's failure to provide any explanation for his failure to appear at his OTR on March 16, 2015, the Enforcement Staff could not agree to postpone Cannata's OTR to May 2015.

91. Cannata did not appear at his OTR on March 30, 2015.

5. FIFTH FAILURE TO APPEAR FOR ADDITIONAL TESTIMONY – MAY 6, 2015

92. By email dated May 6, 2015, Cannata's counsel informed the Enforcement Staff that Cannata would appear for an OTR but that "the only days that Mr. Cannata can take off from work are Friday, May 22nd and Friday, May 29th."

93. As a result, on May 6, 2015, the Staff sent a sixth letter to Cannata requesting that, in connection with the Investigation, he appear for an OTR at FINRA's office located Two Jericho Plaza, 2nd Floor, Jericho, NY 11753 on May 22 and 29, 2015 (the "May 6 Request").

94. Pursuant to FINRA Rule 8210, the May 6 Request was sent via certified mail, return receipt requested, and first class mail to Cannata's counsel at the New York Address.

95. The May 6 Request was also sent to Cannata's counsel via email on May 6, 2015.

96. According to the U.S. Postal Service Tracking and Information System, the May 6 Request sent via certified mail, return receipt requested, was delivered to Cannata's counsel at the New York Address on May 8, 2015. In addition, the Domestic Return Receipt card for the certified mailing was returned by the U.S. Postal Service with an illegible signature, indicating that it was received on "3/8/15."

97. The May 6 Request sent via first class mail to Cannata's counsel at the New York Address was not returned by the U.S. Postal Service.

98. By email dated May 11, 20015, Cannata's counsel confirmed Cannata's availability for an OTR scheduled on May 29, 2015, noting that Cannata "is definitely available on the 29th." In the same communication, however, Cannata's counsel also noted that Cannata "is not available on the 22nd" and provided alternatives dates to replace the original May 22, 2015 date, including May 20, 25, 27 and 28, 2015.

99. By email dated May 11, 2015, the Enforcement Staff informed Cannata's counsel that these alternative dates were unacceptable because one of them fell on Memorial Day Holiday and the other dates conflicted with the already scheduled OTRs for the Firm's principals, CT and BP. The Enforcement Staff requested additional alternative dates in the first week of June 2015.

100. However, by email dated May 19, 2015, the Enforcement Staff was informed by Cannata's counsel that he and his law firm was withdrawing from its representation of Cannata.

101. On May 19, 2015, Cannata informed Enforcement Staff that he was not going to attend his OTR scheduled for May 22, 2015 because he was going to travel with his son to a hockey tournament.

102. Cannata did not appear at his OTR on May 22, 2015.

103. On May 22, 2015, the Enforcement Staff called Cannata to remind him that he was also scheduled for an OTR on May 29, 2015 and to inquire about his availability in order to reschedule the May 22, 2015 OTR. Cannata, however, indicated that he was not likely to appear for any OTRs, including the one already scheduled for May 29, 2015.

104. Cannata did not appear at his OTR on May 29, 2015.

6. SIXTH FAILURE TO APPEAR FOR ADDITIONAL TESTIMONY – MAY 26, 2015

105. On May 26, 2015, the Staff sent a seventh letter to Cannata requesting that, in connection with the Investigation, he appear for an OTR at FINRA's office located Two Jericho Plaza, 2nd Floor, Jericho, NY 11753 on June 10 and 11, 2015 (the "May 26 Request").

106. Pursuant to FINRA Rule 8210, the May 26 Request was sent via certified mail, return receipt requested, and first class mail to Cannata's CRD address at 21 Yellow Top Ln., Smithtown, NY 11787 (the "CRD Address").

107. The May 26 Request sent via certified mail, return receipt requested and the Domestic Return Receipt card for the certified mailing was returned to the Staff by the U.S. Postal Service.

108. The May 26 Request sent to Cannata's CRD address was not returned by the U.S. Postal Service.

109. Cannata did not appear for his OTR on June 10 and 11, 2015.

D. CANNATA'S WILLFUL FAILURE TO DISCLOSE TAX LIENS

110. On March 15, 2013, the Department of Taxation of the State of New York filed a tax warrant against Cannata in the total amount of \$35,953 (the "NY Tax Lien").

111. On May 22, 2013, the Internal Revenue Service filed a tax lien against Cannata in the total amount of \$153,496 (the "IRS Tax Lien").

112. On April 25, 2014, the Firm's Chief Compliance Officer, ran a LexisNexis judgment/lien report on Cannata. The results of the search showed the existence of the NY Tax Lien and the IRS Lien.

113. On April 29, 2014, in response to a request from the Firm's CCO, Cannata prepared and signed statement, explaining that he learned of the liens on or about January 15, 2014

114. On April 29, 2014, following the CCO's inquiry, an amendment to Cannata's Form U4 was filed, disclosing for the first time the existence of the IRS Lien and the NY Tax Lien.

115. Cannata learned of the liens at least as early as January 2014, yet still did not amend his Form U4 filing within the time frame required by FINRA By-Laws.

FIRST CAUSE OF ACTION

EXCESSIVE TRADING

VIOLATIONS OF NASD CONDUCT RULE 2310, FINRA RULES 2111 AND 2010

116. The Department re-alleges and incorporates by reference paragraphs 1 through 115 above.

117. NASD Conduct Rule 2310 requires that, "[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer" in light of the customer's financial needs and objectives. IM2310-2 further prohibits "excessive activity" and "overtrading" that is not "related to the objectives and the financial situation of the customer involved."

118. FINRA Rule 2111 also requires that "an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer" in light of the customer's investment objective and financial situation. Furthermore, an associated person who has actual or de facto control over a customer account is required to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.

119. FINRA Rule 2010 provides that an associated person, "in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade."

120. While exercising control over the Customers' accounts, Cannata recommended and effected the volume of transactions that was quantitatively unsuitable for the Customers in light of their investment objectives and financial situation.

121. As a result of the foregoing conduct, Cannata violated NASD Conduct Rule 2310, IM-2310-2 and FINRA Rule 2010 (for transactions before occurring on or before July 8, 2012) and FINRA Rules 2111 and 2010 (for transactions occurring on or after July 9, 2012).

SECOND CAUSE OF ACTION

CHURNING

VIOLATION OF SECTION 10(b) OF THE SECURITIES AND EXCHANGE ACT OF 1934, EXCHANGE ACT RULE 10b-5, FINRA RULES 2020 AND 2010

122. The Department re-alleges and incorporates by reference paragraphs 1 through 121 above.

123. Section 10(b) of the Exchange act prohibits the use of any "manipulative or deceptive device or contrivance" in connection with the purchase or sale of a security.

124. Rule 10b-5, promulgated thereunder, provides that:

- a. 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 or of any facility of any national securities exchange,
- b. To employ any device, scheme, or artifice to defraud,
- c. To make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or

- d. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of a security.

125. FINRA Rule 2020 prohibits the same misconduct as Section 10(b) of the Exchange Act and Rule 10b-5.

126. Cannata, with scienter, engaged in a manipulative, deceptive and fraudulent scheme by churning the accounts of JB, DB and TD and acted knowingly or with reckless disregard of the Customers' interests by seeking to maximize his own remuneration.

127. The acts and transactions at issue were accomplished by the use of the means of the instrumentalities of interstate commerce and through the mail and involved securities transactions on a national securities exchange.

128. As a result of the foregoing conduct, Cannata willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and FINRA Rules 2020 and 2010.

THIRD CAUSE OF ACTION

FAILURE TO COOPERATE WITH A FINRA INVESTIGATION

VIOLATION OF FINRA RULES 8210 AND 2010

129. The Department re-alleges and incorporates by reference paragraphs 1 through 128 above.

130. FINRA Rule 8210 requires a person subject to FINRA's jurisdiction "to testify at a location specified by FINRA staff under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding."

131. In connection with its investigation of Cannata and his handling of customer accounts, the Staff sent multiple requests to Cannata, requesting his appearance at on-the-record interviews.

132. Cannata, through his counsel and individually, acknowledge the receipt of these requests but refused to appear and give testimony as requested.

133. As a result of the foregoing conduct, Cannata violated FINRA Rule 8210 and FINRA Rule 2010.

FOURTH CAUSE OF ACTION
WILLFUL FAILURE TO TIMELY DISCLOSE TWO TAX LIENS
VIOLATION OF ARTICLE V, SECTION 2(C) OF THE FINRA BY-LAWS,
FINRA RULES 1122 AND 2010

134. The Department re-alleges and incorporates by reference paragraphs 1 through 133 above.

135. Article V, Section 2(c) of the FINRA By-Laws requires associated persons to keep their Form U4 "current at all times," and that amendments to a Form U4 be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

136. FINRA Rule 1122 provides that no associated persons "shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

137. Cannata learned that he had two outstanding tax liens and knew that he was required to disclose them on his Form U4 not later than 30 days after learning of the facts or circumstances giving rise to the amendment. However, Cannata did not disclose the IRS Tax Lien and the NY Tax Lien on his Form U4 in a timely manner as required.

138. As a result of the foregoing conduct, Cannata willfully failed to timely amend his Form U4 in violation of Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010.

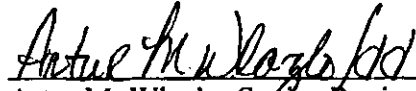
RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Cannata committed the violations charged and alleged herein;
- B. make specific findings that Cannata's conduct, as alleged in the Fourth Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application;
- C. make specific findings that Cannata willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
- D. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- E. order that Cannata bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 22, 2015


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