

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

Department of Enforcement,

Complainant,

v.

Steven Douglas Schisler
CRD No. 2367961,

Respondent.

Disciplinary Proceeding
No. 2018058718601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From April 2009 to October 2020, Steven D. Schisler committed nine separate violations of FINRA and NASD rules as a result of his dealings with two sets of retired customers and his member firm. Specifically, he (1) made an unsuitable recommendation to two elderly, married customers; (2) participated, without the approval of his firm, in a private securities transaction with those customers; (3) willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose a civil complaint and arbitration filed by one of the elderly customers, as well as other reportable events; (4) entered into a settlement agreement with the customer that contained a prohibited condition — namely, that she would support his request for expungement; (5) lied under oath at the expungement hearing; (6) lied during on-the-record testimony to FINRA’s Department of Enforcement; (7) engaged in a long pattern of unethical business conduct towards another retired customer from whom Schisler solicited a personal loan that he failed to repay for over six and a

half years after maturity; (8) made a false statement on a firm compliance questionnaire; and (9) caused his firm to fail to preserve books and records by using outside, unmonitored email accounts to conduct securities business.

2. In September 2014, Schisler persuaded Customer H and Customer E, an elderly, retired, married couple, to invest \$300,000 in a promissory note to finance a commercial property. That recommendation was unsuitable. The \$300,000 was a substantial portion of their retirement savings, and they were depending upon those funds to pay down considerable debt. They also had few alternative sources of income in retirement. The recommended investment was a security and, by its own terms, was limited to accredited investors, which Customers H and E were not. Moreover, Schisler did not perform the diligence necessary to provide him with a reasonable basis to recommend the investment to his customers. Had he conducted even a cursory internet search he would have learned that one of the two partners issuing the note had been barred from the securities industry for defrauding investors. By recommending an unsuitable investment, Schisler violated FINRA Rules 2111 and 2010.

3. Schisler facilitated Customers H's and E's investment in the note by, among other things, recommending the investment to them, arranging and participating in a meeting in his own office between them and the issuer, and receiving a \$9,500 finder's fee from the issuer in connection with the transaction. Schisler participated despite repeated and explicit instruction from his firm that he could not do so. By participating in a private securities transaction without approval from his member firm, Schisler violated NASD Rule 3040 and FINRA Rule 2010.

4. When the \$300,000 note became due in September of 2016, the issuer defaulted. Customer H had died a few months earlier, and Customer E brought a civil lawsuit against Schisler and others involved in the investment and, subsequently, a FINRA arbitration against

Schisler. Schisler willfully failed to timely amend his Form U4 to report either the civil lawsuit or the arbitration, despite repeated instructions from his member firm to do so. Schisler also willfully failed to timely amend his Form U4 to disclose the subsequent resolutions of the civil lawsuit and arbitration as well as his receipt of a Wells Notice advising him that he was the subject of a FINRA investigation. By these willful disclosure failures, Schisler violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

5. In January 2019, Schisler executed a settlement agreement with Customer E to resolve both her civil lawsuit and FINRA arbitration. Under the terms of the settlement, Schisler improperly required her to execute a declaration to support his request for expungement. By entering into a settlement with this prohibited condition, Schisler violated FINRA Rules 2081 and 2010.

6. During the FINRA arbitration panel's April 29, 2019 hearing on Schisler's request for expungement, Schisler lied to the panel about his involvement in the promissory note, falsely testifying that he did "not personally" introduce the customers to the issuer and otherwise mischaracterizing the nature of his involvement with the note. In so doing, Schisler violated FINRA Rule 2010.

7. On February 19, 2020, Schisler similarly provided false testimony to FINRA's Department of Enforcement. During on-the-record testimony taken pursuant to FINRA Rule 8210, Schisler repeatedly and falsely testified that the \$9,500 finder's fee he received in connection with the promissory note investment was a "personal loan" and that he was unaware at the time that Customers H and E had made the investment. By lying during his testimony taken pursuant to FINRA Rule 8210, Schisler violated FINRA Rules 8210 and 2010.

8. Schisler's unethical misconduct extended to another elderly, retired customer, Customer P. On April 9, 2009, Schisler solicited Customer P to lend him \$50,000 in the form of a promissory note that was secured by mortgaged property on the verge of default. Schisler defaulted on the mortgage a few days after he issued the note to Customer P and he subsequently lost the property through foreclosure. Schisler failed to disclose both the default and subsequent foreclosure to Customer P and then failed to repay her the \$50,000 principal and the accrued interest for more than six years after the note matured. Schisler unilaterally extended the maturity date and repeatedly assured Customer P that payment would be forthcoming, only to renege on his promises without justification. After years of unjustified delays, and still owing most of the original principal, Schisler finally repaid Customer P in October 2020. By engaging in this unethical business conduct towards a customer, Schisler violated FINRA 2010.

9. When Schisler joined a new firm in May 2012, he brought Customer P with him. At that time, Schisler falsely responded "no" to a question on the firm's questionnaire asking whether he had borrowed money from any current or former customers. In fact, Schisler had borrowed money from two customers, including Customer P. In so doing, Schisler violated FINRA Rule 2010.

10. Finally, on 44 occasions, Schisler used non-firm email accounts not copied, captured, or supervised by his firm to communicate with customers regarding securities-related business. By causing his firm to fail to preserve required books and records, Schisler violated FINRA Rules 4511 and 2010.

RESPONDENT AND JURISDICTION

11. Schisler entered the securities industry in July 1992.

12. After associations with seven member firms, two of which discharged him for a failure to follow firm procedures, Schisler became associated with IFS Securities, Inc. in May 2012. Shortly thereafter, in June 2012, Schisler became registered with FINRA through IFS as an Investment Company and Variable Contracts Products Representative and Investment Company Products/Variable Contracts Principal.

13. According to the Uniform Termination Notice for Securities Industry Registration (Form U5) filed by IFS, Schisler voluntarily terminated his association with IFS on September 9, 2019.

14. Although Schisler is no longer registered 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 the Complaint (i) was filed within two years after September 9, 2019, which was the effective date of termination of his registration with IFS, and (ii) charges him with misconduct committed while he was registered or associated with a FINRA member and with providing false testimony during on-the-record testimony during the two-year period after the date on which he ceased to be registered or associated with a FINRA member.

FACTS

I. Schisler Participates in a \$300,000 Private Securities Transaction with Two Elderly Customers that is Unsuitable

A. Schisler Recommends that Customers H and E Invest in the Murchison Building

15. In April 2013, Customer H and Customer E, a retired married couple living in California, became Schisler's customers at IFS.

16. Customers H and E were 83 and 73 years old, respectively, in April 2013. By 2013, Customer H was legally blind and deaf in one ear.

17. In 2013, Customers H and E had an annual gross income of less than \$100,000 and a liquid net worth of less than \$500,000.

18. In 2014, Customers H and E sold their interest in a cherry orchard, which comprised a substantial portion of their assets, and sought Schisler's advice on how to invest the proceeds. Schisler suggested that Customers H and E consider investing in real estate and, in particular, recommended they invest in the Murchison Building, a commercial property in Wilmington, North Carolina, with DM and MM.

19. Schisler had previously met DM at a dinner party. As a result of that meeting, he and DM developed a personal friendship.

20. In 2013, DM had introduced Schisler to his business partner, MM, at a networking event. Schisler understood DM and MM to be real estate investors and business partners who together owned the Murchison Building for which they were seeking investors.

21. Schisler did not conduct any due diligence of DM, MM, or the Murchison Building before recommending that Customers H and E invest.

22. The Securities and Exchange Commission (SEC) permanently barred MM from the securities industry in 2003 for defrauding investors. The Opinion of the Commission affirming that sanction, which was published on the SEC's public website in July 2003, stated that MM had engaged in "deliberate deception coupled with the deliberate misuse of investor funds" and had exhibited a "disturbing disregard for the standards that govern the securities industry." The Opinion was available to Schisler through an internet search of MM's name.

23. In addition, MM's disciplinary history with the SEC was also publicly available on FINRA BrokerCheck®. Schisler was aware of BrokerCheck® and knew that MM previously

owned a broker-dealer and had been registered with FINRA. Nonetheless, he failed to research MM on BrokerCheck® before recommending the investment to Customers H and E.

24. Schisler failed to conduct even a cursory review of MM before recommending that Customers H and E invest with MM.

25. In 2014, Schisler repeatedly recommended that Customers H and E invest the money they received from the sale of their cherry orchard in the Murchison Building. Schisler spoke favorably of his friend, DM, to Customers H and E. He provided them with DM's contact information. He represented to Customers H and E that he was considering his own investment in the building. He described the building and investment opportunity in positive terms. Over the course of several months, Schisler met with Customers H and E multiple times and, each time, proposed the investment opportunity to them.

26. Customers H and E were initially reluctant to invest. Prior to its sale in 2014, the profits from the cherry orchard were an important source of retirement income for Customers H and E. The sale of the orchard netted them \$300,000, after taxes. That \$300,000 was a substantial portion of their retirement savings.

27. After selling their cherry orchard, Customers H and E still owed approximately \$327,000 in principal on a 30-year home loan, accruing four percent annual interest. Customer E informed Schisler that she planned to use the \$300,000 to pay down that mortgage, which had 28 years remaining on its term. Schisler nonetheless continued to recommend that Customers H and E invest the \$300,000 with DM and MM.

B. IFS Repeatedly Warns Schisler to Not Solicit his Customers to Invest with DM and MM

28. Schisler never received permission from IFS to participate in any private securities transaction involving Customer H, Customer E, DM or MM.

29. From August 26 to September 3, 2014, while recommending the investment to Customers H and E, Schisler contacted IFS three times by email to discuss his plan to solicit “retired clients” to invest with DM and MM, whom he described in an email to IFS’s Chief Executive Officer (CEO) as “very successful friends I will be working with as a partner in the future.” In each instance, IFS’s CEO or Chief Compliance Officer (CCO) promptly informed Schisler by email that he could not involve his customers in a real estate investment with DM and MM absent IFS’s approval.

30. For example, in a September 3, 2014 email, IFS’s CCO warned Schisler that the investment opportunity with DM and MM “would be treated like a security by the Firm and FINRA” and that “IFS clients would not be allowed to invest.” Schisler’s email in response assured IFS’s CEO and CCO that none of his clients were “currently involved.”

31. The next day, in a September 4, 2014 email, the CCO further warned Schisler that, if he were to nonetheless invest his customers’ assets with DM and MM, “FINRA would have your head on a stake.”

32. Despite these warnings from IFS senior management, Schisler continued his efforts to convince Customers H and E to invest in the commercial building owned by DM and MM.

33. Schisler also continued efforts in October and November 2014 to solicit two additional IFS customers to invest in the Murchison Building with DM and MM. Schisler used his personal email account to communicate with one of those customers and with DM about those efforts, which were ultimately unsuccessful.

C. Schisler Arranges and Participates in a Meeting between DM and Customers H and E, Who Subsequently Execute the Note

34. In early September 2014, Schisler arranged a meeting between Customers H and E and DM to discuss the investment opportunity. The meeting, which took place in Schisler's office, was the first time Customers H and E met or spoke with DM. Schisler attended the meeting and actively participated in the discussion. By the end of the meeting, and pursuant to Schisler's advice, Customers H and E agreed to invest \$300,000.

35. On September 8, 2014, Customer E emailed Schisler, for his review, a copy of an unexecuted promissory note along with related documents that she had received that day from an associate of DM.

36. Two days later, on September 10, 2014, Customers H and E, through a family trust, executed a secured convertible promissory note for \$300,000 with MAG LLC.

37. According to its operating agreement, MAG LLC was an indirect owner of the commercial building in North Carolina. MAG LLC was jointly managed by an entity owned by DM and another entity owned by MM, each of which held 50 percent of MAG LLC's Class A membership units. MAG LLC offered Class B membership units to new members.

38. Under the terms of the promissory note, MAG LLC agreed to repay the principal sum of \$300,000 to Customers H and E after two years with eight percent annual interest, payable quarterly. The promissory note gave Customers H and E the option, prior to maturity, of converting the outstanding principal into Class B membership units in MAG LLC. As security for the loan, MAG LLC pledged an interest in its Class B membership units.

39. The promissory note also required Customers H and E to represent that they were accredited investors under Regulation D promulgated under the Securities Act of 1933.

40. Customers H and E, however, were not accredited investors, as their joint annual income and joint net worth were both less than that required under Regulation D.

41. Schisler knew, or should have known, that Customers H and E did not qualify as accredited investors yet nevertheless encouraged them to enter into the promissory note.

D. Schisler Receives a \$9,500 Finder's Fee for Soliciting Customers H and E to Invest

42. On September 11, 2014, the day after Customers H and E executed the promissory note, Schisler emailed DM the wiring instructions for his son's bank account.

43. Schisler sent the wiring instructions from his personal email account, which was not monitored, reviewed, retained or otherwise captured by IFS.

44. On September 16, 2014, an entity associated with DM wired \$9,500 into the bank account of Schisler's son.

45. That \$9,500 was a finder's fee paid by DM to Schisler in connection with the \$300,000 promissory note executed by Customers H and E on September 10, 2014.

E. MAG LLC Fails to Repay the \$300,000 Principal

46. MAG LLC consistently failed to make the required quarterly interest payments to Customer H and E when due, including the first such payment.

47. In order to receive their interest payments, Customer E would contact Schisler, who would then contact DM to request payment.

48. The promissory note matured on September 10, 2016. MAG LLC, however, did not pay Customer E the principal sum of \$300,000 or the accrued, unpaid interest of \$4,602.74, as required under the terms of the note.

II. Schisler Fails to Timely Amend His Form U4 to Disclose Customer E's Civil Lawsuit and Arbitration Against Him

49. On March 17, 2017, Customer E filed a civil lawsuit in California state court against Schisler, DM, MM, and related entities in connection with the promissory note. Customer E's causes of action against Schisler included financial elder abuse, breach of fiduciary duty, professional negligence, and unlawful business practices.

50. Schisler successfully moved in the civil lawsuit to compel arbitration of the claims against him, and the civil lawsuit was stayed in December 2017.

51. Customer E then commenced a FINRA arbitration against Schisler on April 16, 2018 with claims against him similar to those in her civil lawsuit.

52. In both her civil lawsuit and arbitration, Customer E clearly alleged sales practice violations, and Schisler was required to report on his Form U4 both the filing of Customer E's civil complaint and the filing of her arbitration.

53. Schisler, however, failed to timely amend his Form U4 to report the civil lawsuit despite repeated, written direction from IFS in April and May 2017 to do so.

54. Schisler did not amend his Form U4 to report the civil lawsuit until May 11, 2018, shortly after Customer E commenced her separate arbitration and more than one year after he was required to do so.

55. Schisler never amended his Form U4 to report Customer E's FINRA arbitration against him, despite repeated written direction from IFS in July 2018 to do so.

56. On January 15, 2019, Schisler and Customer E executed a settlement agreement to resolve the civil lawsuit and FINRA arbitration.

57. Schisler never amended his Form U4 to report the resolution of the civil lawsuit or FINRA arbitration.

III. Schisler Executes a Settlement Agreement with Customer E that is Impermissibly Conditioned upon Customer E Supporting His Expungement Request

58. Schisler sought to expunge any reference to the customer dispute from the Central Registration Depository (CRD), even though he had never disclosed Customer E's arbitration on his Form U4.

59. The settlement agreement between Customer E and Schisler, executed in January 2019, required Customer E to execute a declaration to support Schisler's request for expungement as follows:

2. [Customer E] understands that SCHISLER will file a Petition for Expungement of SCHISLER'S FINRA CRD record, which will be filed with FINRA. Upon FINRA ordering expungement, SCHISLER will file a Petition and Order for Expungement in Nevada County Superior Court combining FINRA's Order. A dismissal of SCHISLER with prejudice will be filed with the Court upon the completion of the Petition and Order for Expungement.

3. [Customer E] will execute a Declaration under oath and understands that it is to be submitted to the arbitration panel so that it can make a finding in conformity with FINRA Rule 2080(b)(1)(B). Attached hereto as Exhibit "A" is a true and correct copy of the executed Declaration of [Customer E].

4. After the conclusion of the matters set forth in paragraph 2, [Customer E] agrees to dismiss with prejudice its claims against SCHISLER in the FINRA Arbitration Proceeding, Case No. 18-[XXXXX], each party to bear its or his own costs and attorneys' fees.

60. The declaration, executed by Customer E on January 10, 2019 and attached to the settlement agreement, tracks the ground for expungement set forth in FINRA Rule 2080(b)(1)(B).

61. On January 16, 2019, Schisler filed a petition for expungement in the FINRA arbitration and submitted Customer E's declaration to the panel in support of his request.

IV. Schisler Falsely Testifies at the Expungement Hearing

62. On April 29, 2019, a hearing on Schisler's request for expungement was held before a FINRA arbitration panel.

63. Schisler was the sole witness to testify at the expungement hearing. Customer E did not attend the hearing.

64. Schisler provided the following testimony, under oath, at the April 29, 2019 expungement hearing:

Panelist: Who is [DM]?

Schisler: [DM] is that, I guess, real estate investor who conjured up this North Carolina investment.

Panelist: Did you introduce [Customers H and E] to [DM]?

Schisler: Not personally.

Panelist: Can you further define "not personally"?

Schisler: [Customer H] and I were actually getting to be pretty good friends. He invited us, we were at their home for Christmas, they were at our home for Easter. Outside of our business relationship, we probably, when I say "we," my son and I. We probably lived two miles from them. We were probably invited over six or eight times at a rate of a couple years for breakfast on the way to work by [Customer H]. We had a great relationship. It was about that time, it looks like they were running low on funds, liquid funds, and he was considering selling this property, their cherry orchard in Washington State. He asked me over many breakfast meetings what I would do, if I had any suggestions. [DM] is one of maybe half a dozen referrals I had given him over breakfast.

65. The testimony provided by Schisler to the FINRA arbitration panel, under oath, was false and misleading because Schisler was, in fact, personally involved in introducing Customers H and E to DM, including having arranged and participated in an in-person meeting between the parties at his own office to discuss the investment.

66. The testimony further gave a false impression of Schisler's level of involvement. He omitted, among other material facts, his repeated recommendations and advice to Customers H and E that they invest in the Murchison Building, his arrangement and participation in the in-person meeting at his office, and his receipt of the \$9,500 finder's fee from DM in connection with Customer H's and Customer E's investment.

V. Schisler Fails to Disclose FINRA's Wells Notice

67. On June 13, 2019, FINRA sent Schisler a Wells Notice informing him that it had made a preliminary determination that he violated FINRA Rules in connection with his settlement agreement with Customer E and the false testimony he provided at the expungement hearing.

68. Two months later, on August 23, 2019, Schisler withdrew his petition for expungement pending before the FINRA arbitration panel.

69. Schisler was required to disclose his receipt of the Wells Notice on his Form U4 within 30 days.

70. As of the filing of this Complaint, Schisler has not amended his Form U4 to disclose the Wells Notice.

VI. Schisler Provides False Testimony During FINRA's Investigation

71. On February 19 and 20, 2020, Schisler provided on-the-record testimony to FINRA's Department of Enforcement pursuant to FINRA Rule 8210.

72. During his testimony on February 19, 2020, Schisler repeatedly testified that the \$9,500 wired to his son's bank account in September 2014 was not a finder's fee but, rather, a "personal loan" from DM to him.

73. For example, Schisler testified: “I didn’t consider a personal loan at the time from what I thought was a friend as a finder’s fee. Again, I had no idea [Customers H and E] had funded.”

74. Schisler also testified as follows:

Q: Now, [Customers H and E] executed the promissory note with [DM] on September 10, 2014. . . . Were you aware of, on September 11, 2014, that [Customers H and E] had executed the promissory note?

A: I was not.

Q: And so . . . why did you send . . . to [DM] wiring instructions in connection with the \$9,500 payment on September 11, 2014? What prompted —

A: As I stated earlier, my son’s medical condition had caused me to be in a perilous financial position. [DM] was befriending me heavily during this period of time, offering me a loan over that period of time. This is when I accepted it.

Q: . . . Was there a particular event on or around [September 11, 2014] that prompted you to send [DM] the wiring instructions?

A: As I stated, it was my financial condition that caused me to accept that loan finally.

Q: So it’s just a coincidence that you sent [DM] the wiring instructions for the \$9,500 the day after [Customers H and E] executed the promissory note?

A: Yes.

75. After further questioning on February 20, 2020, including by his own counsel, Schisler conceded that the \$9,500 was “[c]learly . . . a finders fee.”

76. Schisler’s testimony to FINRA on February 19, 2020 that the \$9,500 from DM was a personal loan, not a finder’s fee, and that he was unaware at the time that Customers H and E had invested, was false.

VII. Schisler Engages in a Lengthy Pattern of Unethical Business Conduct in Connection with a \$50,000 Loan from Customer P

A. Schisler Solicits Customer P, an Unsophisticated Investor with Limited Means, to Invest in his Securities Business's Office Building

77. In February 2006, Schisler formed the entity Synergy RE Partners LLC (Synergy RE) to purchase and hold an office building in Grass Valley, California. At all relevant times, Schisler was the 100-percent owner and sole managing member of Synergy RE.

78. After Synergy RE acquired the property in 2006, Schisler used it as the office for his securities business.

79. On April 9, 2009, Schisler, as the managing member of Synergy RE, entered into a promissory note with Customer P, who was a customer of Schisler's member firm at the time.

80. Schisler's securities business was struggling financially at the time and he needed a source of funds to avoid losing the property owned by Synergy RE, so he solicited Customer P (as well as another customer a few months earlier) to loan him money to use for expenses related to the property.

81. Schisler lied to Customer P about his financial situation, claiming his businesses were doing well.

82. Under the terms of the promissory note, Customer P agreed to loan \$50,000 to Synergy RE, and Schisler promised to repay the \$50,000 in five years with six percent annual interest, payable at maturity.

83. Schisler induced Customer P to loan Synergy RE the money, claiming that the note would provide her with a better interest rate than a bank.

84. Customer P, who previously worked as a nurse, had recently retired in 2008. Her husband, who had previously worked as a groundskeeper, had retired several years earlier.

85. Customer P had little investment experience, and their annual joint income for the year in which Customer P entered into the note was \$21,230.

B. Schisler Loses the Office Building to Foreclosure

86. The note was secured by the office building in Grass Valley then-owned by Synergy RE.

87. On April 17, 2009, just eight days after Schisler entered into the promissory note with Customer P, Synergy RE failed to make the interest payment on its mortgage for the property.

88. When soliciting Customer P to lend \$50,000 to Synergy RE, Schisler did not inform her of any financial difficulties facing him or Synergy RE, nor did he inform her that Synergy RE was about to default on its mortgage for the property serving as the note's security interest. To the contrary, he falsely told her that his businesses were doing well.

89. Synergy RE continued to fail to make its interest payments on the mortgage and, in December 2009, Schisler received a notice of default informing him that the property owned by Synergy RE was in foreclosure.

90. Schisler did not inform Customer P of the foreclosure notice adversely affecting the security interest protecting her note.

91. By 2011, the property had been foreclosed upon and Synergy RE had lost ownership.

92. Schisler did not inform Customer P that Synergy RE no longer owned the property securing her \$50,000 investment until October 2016.

C. Schisler Fails to Pay When Customer P's Note Comes Due, and Then Makes Intermittent Partial Payments Over the Next Several Years

93. On April 9, 2014, Schisler's promissory note with Customer P reached maturity.

94. Upon maturity, Customer P requested that Schisler pay her the principal sum of \$50,000 and accrued interest of \$15,000, in accordance with the terms of the note.

95. Schisler refused to do so. Instead, he told Customer P that he would only repay her in quarterly installments.

96. Six months after the loan matured, in October 2014, Schisler made his first partial payment of \$6,911.30 to Customer P.

97. Schisler failed to make any further payment to Customer P until October 2016, when he made a second partial payment of \$7,416. His next partial payment was not made until 2018.

98. In around January 2018, Schisler drafted a proposed extension to the April 9, 2009 promissory note that he signed and sent to Customer P, requesting her countersignature.

99. Customer P, however, refused to sign an agreement extending the note.

100. In 2018 and the first half of 2019, Schisler intermittently made partial payments of the principal and accrued interest to Customer P.

101. Schisler's largest such payment was in early April 2019, when he sent Customer P two checks totaling \$12,000. The funds used to make this payment came from the commission that Schisler received from a transaction that he recommended to Customer P. Specifically, Schisler received a commission of \$14,000 in connection with Customer P's sale of a fixed annuity and purchase of a different fixed annuity in March 2019. In May 2019, Customer P canceled the newly-issued annuity contract due to her discomfort with Schisler's use of the commission to pay her back on the note.

D. Schisler Fails to Fully Repay Customer P Until Shortly Before the Filing of this Complaint, Six-and-a-Half Years After Maturity

102. By May 2019, Customer P, then 68 years old, had been diagnosed with advanced liver disease.

103. Facing increased medical expenses, including the prospect of an organ transplant, she informed Schisler of her medical situation and asked him to immediately pay the outstanding amount due under the note.

104. On May 21, 2019, Schisler sent Customer P a letter along with a check for \$8,000 as partial payment on the note.

105. After acknowledging her poor health and desire to resolve her financial affairs so as to not leave any issues for her heirs, Schisler assured Customer P in the letter that he would use the proceeds from the pending sale of his fiancée's home to pay her the remaining balance on the note.

106. Schisler's fiancée subsequently sold her home but Schisler did not use any of the proceeds to pay Customer P.

107. Customer P ended her client relationship with Schisler in May 2019.

108. Schisler did not make any further payment to Customer P until March 2020, shortly after FINRA took his testimony in the investigation leading to this proceeding, when he made a partial payment of \$1,000.

109. Schisler's final payment under the note was not until October 2020, when he paid \$32,000 to Customer P, more than six-and-a-half years after the note matured.

110. Schisler fully paid Customer P only after FINRA sent him a Wells Notice in May 2020, informing him that it had made a preliminary determination that he violated FINRA Rule 2010 in connection with the note.

VIII. Schisler Lied about the Loan from Customer P on a Firm Questionnaire

111. Schisler began his association with IFS in May 2012 and brought Customer P to IFS with him as a customer.

112. In connection with his new association with IFS, Schisler completed a new-hire questionnaire on May 17, 2012. That questionnaire asked: “Have you borrowed or loaned any money to any current or former customer, excluding immediate family?” Schisler responded “No.”

113. Schisler’s response was false given that he had borrowed \$50,000 from Customer P.

114. Schisler’s response was also false because he had borrowed \$40,000 from a former customer, Customer D, in January 2009 that he had not yet repaid.

FIRST CAUSE OF ACTION Unsuitable Recommendation (Violation of FINRA Rules 2111(a) and 2101)

115. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

116. FINRA Rule 2111(a) requires an associated person to:

have a reasonable basis to believe that a recommended transaction . . . involving a security . . . is suitable for the customer, based on information obtained through reasonable diligence of the . . . associated person to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

117. As explained in supplementary material .05, Rule 2111 contains both a reasonable-basis suitability obligation and a customer-specific suitability obligation.

118. In accordance with supplementary material .05(a), the “reasonable-basis obligation requires . . . [an] associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors.” (Emphasis in original.) An “associated person’s reasonable diligence must provide the . . . associated person with an understanding of the potential risks and rewards associated with the recommended security. . . . The lack of such an understanding when recommending a security . . . violates the suitability rule.”

119. In accordance with supplementary material .05(b), the “customer-specific obligation requires that . . . [an] associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based that customer’s investment profile.”

120. FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

121. Schisler recommended that Customers H and E invest with DM and MM in the form of the \$300,000 promissory note dated September 10, 2014.

122. The promissory note was a security.

123. Prior to making this recommendation, Schisler did not perform the reasonable diligence necessary to provide him with a reasonable basis to recommend the investment to any investor.

124. Schisler failed to conduct any diligence of MM, one of the two partners issuing the investment.

125. Had Schisler conducted even a cursory internet search, he would have learned that MM had been barred from the securities industry by the SEC in 2003 for defrauding his investors.

126. That information clearly bears on the potential risks associated with the investment.

127. In addition to failing to understand the risks of the promissory note investment, Schisler recommended that Customers H and E concentrate a substantial portion of their retirement savings in the promissory note even though Customers H and E were dependent upon the \$300,000 invested in the note to pay down their relatively large mortgage debt and even though they had limited alternative sources of income in retirement.

128. By its own terms, the note was unsuitable for Customers H and E. The note required Customers H and E be accredited investors under Regulation D, which they were not.

129. By virtue of the foregoing, Schisler violated FINRA Rule 2111, both as it concerns the reasonable-basis suitability obligation and, separately, the customer-specific suitability obligation.

130. Moreover, by violating FINRA Rule 2111, Schisler violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Private Securities Transaction
(Violation of NASD Rule 3040 and FINRA Rule 2010)

131. NASD Rule 3040, which was superseded by FINRA Rule 3280 effective September 21, 2015, prohibits an associated person from “participat[ing] in any manner in a private securities transaction” unless, “[p]rior to participating,” the associated person provides “written notice to the member with which he is associated describing in detail the proposed transaction and the person’s proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction.”

132. In the case of a transaction in which an associated person has received or may receive selling compensation, NASD Rule 3040 requires the member firm to advise the associated person in writing whether it approves or disapproves of the person’s participation in

the proposed transaction. If the member firm disapproves, the associated person “shall not participate in the transactions in any manner, directly or indirectly.”

133. A “private securities transaction” is defined by NASD Rule 3040 as “any securities transaction outside the regular course or scope of an associated person’s employment with a member.”

134. “Selling compensation” is defined by NASD Rule 3040 as “any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, but not limited to . . . finder’s fees.”

135. The \$300,000 promissory note dated September 10, 2014 and executed by Customers H and E through a family trust was a security.

136. Schisler participated in that securities transaction without providing the required written notice to IFS or receiving the required written approval from IFS.

137. Among other things, Schisler participated by (1) recommending the transaction to Customers H and E, (2) providing them with the issuer’s contact information, (3) expressing to them a favorable opinion of the issuer and the investment, (4) indicating to them a personal desire to invest, (5) providing them with advice regarding the investment, (6) arranging and participating in a meeting between them and the issuer, (7) receiving a \$9,500 finder’s fee from the issuer in connection with the transaction, and (8) otherwise facilitating the investment, both before and after the note was executed, by serving as an intermediary between Customers H and E and the issuer.

138. By virtue of the foregoing, Schisler violated NASD Rule 3040 and FINRA Rule 2010.

THIRD CAUSE OF ACTION
Willful Form U4 Disclosure Failures
(Violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010)

139. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

140. Article V, Section 2(c) of FINRA's By-Laws requires associated persons who have applied for registration with FINRA to keep such applications "current at all times by supplementary amendments . . . filed . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

141. FINRA Rule 1122 provides that no associated person "shall file with FINRA information 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."

142. An associated person who fails to report required information on his Form U4 or to timely amend his Form U4 violates Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 1122.

A. Customer E's Civil Litigation and Arbitration

143. At all relevant times, Question 14I(1) of Form U4 required registered persons to report if they have been named as a respondent or defendant in a pending investment-related, consumer-initiated arbitration or civil litigation that alleges they were involved in one or more sales practice violations.

144. Customer E's civil litigation against Schisler, filed on March 17, 2017, and her FINRA arbitration against Schisler, filed on April 16, 2018, were both investment-related, consumer-initiated disputes that named Schisler as a respondent/defendant and alleged his involvement in one or more sales practice violations.

145. Schisler was obligated to amend his Form U4 to report both the civil litigation and the arbitration within thirty days of learning of each event.

146. Schisler learned of Customer E's civil lawsuit by at least April 3, 2017, but he failed to amend his Form U4 to report the lawsuit until May 11, 2018.

147. Schisler learned of Customer E's FINRA arbitration in April 2018, but he has never amended his Form U4 to report the arbitration.

148. At all relevant times, the Disclosure Reporting Page (DRP) for Question 14I(1) required registered persons to also report information regarding the disposition of any arbitration or civil litigation responsive to Question 14I(1), including disposition through settlement.

149. Schisler was obligated to amend his Form U4 to report the resolution of Customer E's civil litigation and arbitration within thirty days of learning of the disposition of each through settlement.

150. Schisler entered into the settlement agreement with Customer E on January 15, 2019, but he has never amended his Form U4 to report the resolution of the civil litigation and the arbitration through settlement.

151. Customer E's civil lawsuit and arbitration are material information that is important to investors, regulators, and potential employers.

B. The Wells Notice from FINRA

152. At all relevant times, Question 14G of Form U4 required registered persons to report if they have been notified, in writing, that they are the subject of an investigation by FINRA that could result in a finding that they were involved in a violation of FINRA Rules.

153. Schisler was obligated to amend his Form U4 to report the Wells Notice from FINRA dated June 13, 2014, informing him that FINRA had made a preliminary determination that he violated certain FINRA Rules.

154. Schisler learned of the Wells Notice on June 13, 2014, but he has never amended his Form U4 to report the Wells Notice in response to Question 14G.

155. The Wells Notice is material information that is important to investors, regulators, and potential employers.

C. Schisler's Willful Disclosure Failures

156. Schisler's failures to timely amend his Form U4 to disclose Customer E's civil lawsuit, her arbitration, and FINRA's Wells Notice were willful.

157. IFS repeatedly instructed Schisler to amend his Form U4 to report the civil lawsuit shortly after it was filed, but he failed to do so for over a year.

158. IFS repeatedly instructed Schisler to amend his Form U4 to report Customer E's arbitration, but he never did so.

159. The Wells Notice explicitly informed Schisler that it triggered a Form U4 reporting obligation, but he never amended his Form U4 to report the Notice.

160. By virtue of the foregoing, Schisler violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

**FOURTH CAUSE OF ACTION
Settlement with Prohibited Condition
(Violation of FINRA Rules 2081 and 2010)**

161. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

162. FINRA Rule 2081 provides:

No member or associated person shall condition or seek to condition settlement of a dispute with a customer on, or to otherwise compensate the customer for, the customer's agreement to consent to, or not to oppose, the member's or associated person's request to expunge such customer dispute information from the CRD system.

163. Schisler entered into a settlement agreement with Customer E, a customer, in January 2019 to resolve her civil lawsuit and FINRA arbitration.

164. As a condition of the settlement, Schisler required Customer E to execute a declaration in support a forthcoming request for expungement that Schisler informed Customer E he would be filing, which Customer E did on January 10, 2019.

165. By virtue of the foregoing, Schisler violated FINRA Rules 2081 and 2010.

**FIFTH CAUSE OF ACTION
False and Misleading Testimony to FINRA Arbitration Panel
(Violation of FINRA Rule 2010)**

166. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

167. An associated person who provides false or misleading testimony under oath at a FINRA arbitration hearing violates FINRA Rule 2010.

168. At his April 29, 2019 expungement hearing, Schisler testified, under oath, that he did "not personally" introduce Customers H and E to DM, but rather simply suggested DM to Customers H and E as "one of maybe half a dozen referrals . . . given . . . over breakfast."

169. That testimony was false and misleading.

170. Schisler was, in fact, personally involved in introducing Customers H and E to DM, including having arranged and participated in an in-person meeting between the parties at his own office to discuss the investment.

171. The testimony also gave a false impression of his involvement by omitting, among other material facts, his repeated recommendations and advice to Customers H and E that they invest in the building, his arrangement and participation in the in-person meeting at his office, and his receipt of the \$9,500 finder's fee from DM in connection with the transaction.

172. By virtue of the foregoing, Schisler violated FINRA Rule 2010.

SIXTH CAUSE OF ACTION
False and Misleading Testimony to FINRA Department of Enforcement
(Violation of FINRA Rules 8210 and 2010)

173. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

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

175. FINRA Rule 8210 further provides that "[n]o member or person shall fail to provide information or testimony . . . pursuant to this Rule." Implicit in the obligation to testify is the requirement that such testimony be truthful.

176. A person subject to FINRA's jurisdiction who provides false or misleading testimony to FINRA during the course of an investigation violates FINRA Rule 8210.

177. Schisler, while subject to FINRA's jurisdiction, provided false and misleading testimony pursuant to FINRA Rule 8210 regarding the \$9,500 wired to his son's bank account in September 2014.

178. During his on-the-record testimony on February 19, 2020, Schisler repeatedly testified that the \$9,500 was a “personal loan” from DM to him, not a finder’s fee, and that he was unaware at the time that Customers H and E had entered into the promissory note with DM.

179. That testimony was false.

180. As Schisler later admitted during his second day of on-the-record testimony on February 20, 2020, the \$9,500 was a finder’s fee that DM paid to Schisler in connection with the promissory note.

181. By virtue of the foregoing, Schisler violated FINRA Rules 8210 and 2010.

**SEVENTH CAUSE OF ACTION
Unethical Business Conduct
(Violation of FINRA Rule 2010)**

182. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

183. An associated person who engages in unethical business conduct towards a customer fails to “observe high standards of commercial honor and just and equitable principles of trade” as required by FINRA Rule 2010.

184. Schisler engaged in a long pattern of unethical business conduct towards Customer P, starting with his solicitation of the note in April 2009 up until October 2020, when he finally complied with his obligations to Customer P under the note.

185. Schisler solicited Customer P, a retired customer with limited investment experience and resources, to lend him \$50,000 in April 2009 through a promissory note secured by a property he purchased with a mortgage in 2006.

186. Schisler defaulted on that mortgage only days after the note was issued and lost the property securing her note through foreclosure.

187. Schisler did not apprise Customer P of any financial difficulties when soliciting the loan from her, including that he was on the verge of defaulting on the mortgage for the property securing her note. Nor did he inform her of the subsequent mortgage default and foreclosure adversely affecting the security interest protecting the note.

188. Schisler failed to pay Customer P under the terms of the note when it matured on April 9, 2014 and, for over six-and-a-half years, repeatedly assured Customer P that payment would be forthcoming, only to renege on those promises. He unilaterally extended the note without Customer P's approval on at least one occasion.

189. Schisler did not pay back Customer P in full until October 2020.

190. By engaging in unethical business conduct towards a customer, Schisler violated FINRA Rule 2010.

**EIGHTH CAUSE OF ACTION
False Statement to Member Firm on Questionnaire
(Violation of FINRA Rule 2010)**

191. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

192. An associated person who submits a false statement on a firm questionnaire violates FINRA Rule 2010.

193. In May 2012, Schisler submitted a questionnaire to IFS in which he falsely attested "no" to the question of whether he had borrowed or loaned any money to any current or former customer.

194. That attestation was false because, at that time, Schisler had borrowed, and not yet repaid, \$50,000 from a current customer, Customer P, and \$40,000 from a former customer, Customer D.

195. By virtue of the foregoing, Schisler violated FINRA Rule 2010.

NINTH CAUSE OF ACTION
Causing Firm to Fail to Preserve Books and Records
(Violation of FINRA Rules 4511 and 2010)

196. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

197. FINRA Rule 4511 requires members to make and preserve books and records as required under FINRA Rules, the Exchange Act and applicable Exchange Act rules.

198. Exchange Act Rule 17a-4(b)(4) requires that every broker-dealer preserve for a period of not less than three years “[o]riginals of all communications received and copies of all communications sent . . . by the member, broker or dealer . . . relating to its business as such.”

199. On 44 occasions, while associated with IFS, Schisler used non-firm email accounts not copied, captured, or supervised by IFS to communicate with customers regarding securities-related business.

200. Schisler communicated using his personal email account with DM regarding the investment by Customers H and E as well as potential investments by other IFS customers in the Murchison Building.

201. Schisler did not otherwise provide copies of these communications to IFS.

202. Schisler therefore caused IFS to violate Exchange Act Rule 17a-4 and FINRA Rules 4511 and 2010 by failing to preserve securities-related communications.

203. By virtue of the foregoing, Schisler violated FINRA Rules 4511 and 2010.

RELIEF REQUESTED

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

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent's conduct, as alleged in the Third Cause of Action, was willful; that the omitted information was material; and that the omission to state material facts was on a Form U4.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 13, 2021



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