

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

Department of Enforcement,

Complainant,

v.

Fusion Analytics Securities, LLC
CRD No. 124245,

Respondent.

Disciplinary Proceeding
No. 2018059545604

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From January 2017 to at least August 2019, Respondent Fusion Analytics Securities, LLC, acting through MC, its indirect owner and Managing Partner, and EW, one of its registered representatives, engaged in securities fraud and other violations of FINRA rules in connection with its sale of bonds in two private offerings for NewCo (the “NewCo Bond Offerings”). Promoter 1 and his family owned and controlled NewCo, which was an affiliate of OldCo. Promoter 1 and his family also controlled OldCo. Fusion had helped raise money for OldCo for years prior to the NewCo Bond Offerings.

2. At the time it agreed to sell the NewCo Bond Offerings, Fusion knew that, in 2013, the Securities and Exchange Commission (“SEC”) issued an order finding that OldCo had misled investors, including Fusion’s own customers, about the use of proceeds raised in connection with earlier equity offerings for OldCo (the “SEC Order”). The SEC Order found that

OldCo and Promoter 1 diverted millions of dollars of investor funds from OldCo to Promoter 1 and his family.

3. Undeterred by OldCo and Promoter 1's disciplinary history, Fusion agreed to sell the NewCo Bond Offerings starting in January 2017, purportedly to raise money for the building of a power plant. In selling the NewCo Bond Offerings, however, Fusion intentionally or recklessly made material misrepresentations and omissions and, separately, disseminated documents it knew or was reckless in not knowing contained material misstatements and omissions, to potential investors. Specifically, with respect to the first bond offering, Fusion (a) disseminated false and misleading statements, and made its own misleading statements, that failed to disclose the SEC Order and its findings that Promoter 1 and OldCo misled investors and misdirected investment proceeds, (b) disseminated false and misleading statements, and made its own misstatements, regarding the risks and anticipated revenue of the project being funded by the offerings, and (c) made false and misleading statements regarding the progress of the offering. And, with respect to the second bond offering, Fusion (a) disseminated false and misleading statements that failed to disclose the SEC Order and its findings that Promoter 1 and OldCo misled investors and misdirected investment proceeds, and (b) disseminated materials that failed to disclose that the issuer (a special purpose entity that NewCo created) was in financial distress, was late on interest payments, was in violation of debt covenants, and needed to raise funds to pay interest to prior investors.

4. In total, Fusion raised approximately \$1.8 million from at least 11 customers through the NewCo Bond Offerings, and it generated \$146,000 in commissions.

5. As a result of the foregoing, Fusion (a) willfully violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and it violated

FINRA Rules 2020 and 2010 (**First Cause of Action**); (b) in the alternative to the First Cause of Action, violated FINRA Rule 2010, both independently and by virtue of acting in contravention of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (**Second Cause of Action**); and (c) violated FINRA Rules 2111 and 2010 by recommending the NewCo Bond Offerings without a reasonable basis to believe that the bonds were suitable for at least some customers (**Third Cause of Action**).

6. In addition, Fusion provided false information to FINRA in response to requests for information concerning the second bond offering, in violation of FINRA Rules 8210 and 2010 (**Fourth Cause of Action**), and in violation of FINRA Rule 2010 (**Fifth Cause of Action**).

RESPONDENT AND JURISDICTION

7. Fusion is a Florida-based introducing broker and has been a FINRA member since 2003. The firm currently employs approximately four registered persons. At all relevant times, Fusion engaged in a general securities business, primarily focused on retailing corporate equity, debt, and options securities, as well as selling private placements.

8. On January 12, 2022, Fusion filed a Form BDW requesting the withdrawal of its registration as a FINRA member.

9. FINRA possesses jurisdiction over Fusion because: (a) the firm currently is a FINRA member; and (b) the Complaint charges the firm with misconduct committed while it was a FINRA member.

OTHER RELEVANT PERSONS

10. At all relevant times, MC was an indirect owner of Fusion, the firm's Managing Partner, and was registered through the firm in various capacities, including as a General Securities Representative and General Securities Principal. From April 2018 until October 2021,

MC was the firm's Chief Executive Officer. On October 18, 2021, FINRA issued a Letter of Acceptance, Waiver, and Consent to MC imposing a bar from association with any FINRA member and finding that MC violated FINRA Rules 8210 and 2010 by failing to respond to a request for information issued by FINRA staff in connection with its investigation in this matter.

11. EW was associated with Fusion from 2015 until June 2020 as a General Securities Representative and, after February 2018, as an Investment Banking Representative. Together with MC, EW sold the NewCo Bond Offerings to Fusion's customers. On December 3, 2021, FINRA issued a Letter of Acceptance, Waiver, and Consent to EW imposing a nine-month suspension from associating with a FINRA member and finding that EW violated FINRA Rules 2111 and 2010 in connection with his sale of the NewCo Bond Offerings.

12. LR was the Anti-Money Laundering Compliance Officer and Chief Compliance Officer of Fusion from approximately April 2016 through October 2018. On July 20, 2021, FINRA issued a Letter of Acceptance, Waiver, and Consent to LR imposing a six-month suspension from associating with a FINRA member in a principal capacity and finding, among other things, that LR violated FINRA Rules 3110 and 2010 in connection with the sale of the NewCo Bond Offerings.

FACTS

I. Fusion Sold the NewCo Bond Offerings Through Fraudulent Means.

13. From January 2017 through at least August 2019, Fusion acted as placement agent for the NewCo Bond Offerings.

14. Fusion agreed to sell the NewCo Bond Offerings even though it knew that Promoter 1 and OldCo had been found by the SEC to have made materially misleading disclosures, including to Fusion's own customers, in connection with a prior, private securities offering.

15. Fusion, through MC and EW, sold a total of \$1,810,000 in bonds through the NewCo Bond Offerings to more than 11 customers by disseminating offering materials that contained material misstatements and omissions and by making its own material misstatements and omissions.

16. At all relevant times, Fusion acted by and through MC as well as its registered representatives EW and LR. MC, EW, and LR were acting within the course and scope of their employment when they committed the acts alleged herein.

A. Fusion knew that the SEC found that Promoter 1 and OldCo previously made materially misleading disclosures to investors.

17. MC and his family were long-time business associates of Promoter 1 and his family, who owned OldCo.

18. For most of its existence, OldCo purported to be in the business of developing, patenting, and licensing a “split-cycle engine technology” to automobile companies and other large engine manufacturers. OldCo, however, never generated any revenue from the engine.

19. Starting in 2004, OldCo sold tens of millions of dollars of equity through unregistered private placements.

20. In 2009 or 2010, MC introduced Promoter 1’s family and OldCo to Fusion. From 2010 to 2013, Fusion sold OldCo equity through private placements to its customers.

21. On May 30, 2013, the SEC issued the SEC Order in which it found that OldCo and its president, Promoter 1, misled investors in the equity offering sold by Fusion. The SEC Order stated that OldCo and Promoter 1 “gave investors the misleading impression that the company would use the offering proceeds only for the direct benefit of the company. Instead, at [Promoter 1’s] direction, [OldCo] used a material portion of the proceeds for the direct benefit of [Promoter 1’s] family.”

22. Specifically, the SEC Order found that from 2008 to 2011, OldCo “used \$3.2 million, or 4.3% of the offering proceeds to personally benefit [Promoter 1’s] family over and above the usual compensation that [Promoter 1’s] family employees received.”

23. Fusion, through MC, knew of the SEC Order at or around the time it was issued.

24. Fusion, through MC and EW, also knew that OldCo never generated revenue from its engine technology despite raising tens of millions of dollars from investors in its private offerings.

B. Promoter 1 and OldCo formed NewCo.

25. After the SEC Order, Promoter 1 and his family decided to change OldCo’s business model, shifting away from automobile engines to the production and sale of electricity.

26. OldCo initially pursued the new business model itself. But, in 2015, Promoter 1 and his family announced that they had formed a new entity, NewCo, to do so.

27. By November 25, 2015, a website for NewCo appeared. Until at least November 2018, the website stated that NewCo “was formed in 2015 as a wholly owned subsidiary of [OldCo] in an effort to begin commercializing its high-efficiency engine technology to the power generation industry.”

28. The management team of NewCo were all employees or officers of OldCo, and included both Promoter 1 and his brother, Promoter 2.

C. Fusion sold \$860,000 in bonds for NewCo in the 2017 offering.

29. In January 2017, NewCo started raising capital to fund the construction of a power plant. It did so by creating Issuer 1, a special purpose entity, to issue bonds through a private offering, pursuant to Rule 506(b) of Regulation D. This offering lasted from February 2017 until December 2017 (the “2017 Bond Offering”).

30. As described in the private placement memorandum (“PPM”), the 2017 Bond Offering sought to sell bonds offering an interest rate of 12% per year to raise a maximum of \$6,000,000 on a best-efforts basis to cover the majority of an estimated \$7,750,000 necessary to build the power plant. The 2017 Bond Offering was not conditional on raising sufficient capital to build the power plant. The power plant would be Issuer 1’s only asset, and revenue from the power plant would be the only source of funds to repay the 2017 Bonds.

1. Fusion failed to adequately investigate the 2017 Bond Offering.

31. Fusion and a former FINRA member firm, BD 1, acted as placement agents for the 2017 Bond Offering. Fusion was entitled to a 6% fee for each placement it made and a 1% referral fee for each placement made by BD 1.

32. Despite Fusion’s awareness of red flags, including the SEC Order and OldCo’s and Promoter 1’s failure to generate revenue from its engine despite raising tens of millions of dollars from investors, Fusion failed to take reasonable steps to investigate the 2017 Bond Offering, including Issuer 1’s representations in the PPM and other offering materials.

33. Fusion’s due diligence prior to recommending the bonds consisted of reviewing the offering materials and a small collection of additional documents that Promoter 1 and Promoter 2 selected for inclusion in a data room that BD 1 maintained for investors called “Dealbox.”

34. Fusion, however, took no steps to investigate the veracity of any of the information provided by Promoter 1 and Promoter 2. Fusion failed to investigate the issuer’s business prospects or its representations about its projected revenue. Instead, the firm blindly relied on the representations from Promoter 1 and Promoter 2 and the information in the offering documents without asking questions or requesting any additional information.

35. Fusion also failed to follow its own procedures to supervise due diligence for the 2017 Bond Offering. Fusion's written supervisory procedures designated LR to supervise due diligence for the 2017 Bond Offering. However, almost all contact between Fusion and management of the issuer went through MC, and LR was not included in these communications nor did he otherwise supervise them.

2. Fusion disseminated offering materials for the 2017 Bond Offering that contained material misrepresentations and omissions.

36. To market the 2017 Bond Offering, Fusion disseminated to potential investors various documents prepared by NewCo and Issuer 1, including the PPM, a separate marketing presentation (the "Bond Summary"), and a link to the Dealbox containing various documents related to the 2017 Bond Offering, including the PPM and Bond Summary.

37. Fusion knew, or was reckless in not knowing, that the materials it disseminated contained material misrepresentations and omissions.

38. As alleged above, Fusion, through MC, was aware of the SEC Order and the SEC's findings that OldCo and Promoter 1 had misled investors, including Fusion's own customers, about the use of offering proceeds to benefit Promoter 1's family, rather than OldCo.

39. Despite this knowledge, Fusion disseminated offering materials that failed to disclose these facts to investors.

40. The PPM described Promoters 1 and 2 as part of the "key management" of NewCo that would "run and manage" Issuer 1, and it included an extensive biography of each of them. Similarly, the Bond Summary described Promoter 1 and Promoter 2 as "key personnel," and included an extensive biography of each of them.

41. However, neither the PPM nor the Bond Summary mentioned OldCo or the SEC Order, nor did they otherwise disclose Promoter 1 and OldCo's history of misleading investors.

42. Fusion sent potential investors an email with a link and password to access the Dealbox. However, these emails did not inform customers of the SEC Order, nor did they otherwise disclose Promoter 1's and OldCo's history of misleading investors.

43. Likewise, the documents included in the Dealbox did not include the SEC Order nor did they disclose the findings in the SEC Order.

44. At some point during the 2017 Bond Offering, a memo, prepared by Promoter 1, titled "[OldCo's] 2013 Settlement" was added to the Dealbox along with the *Wells* submission made by Promoter 1 and OldCo. Contrary to the SEC's findings in the SEC Order, the memo falsely stated that Promoter 1 and OldCo did not misuse investor funds, and that the OldCo settlement had "nothing to do with [NewCo]."

45. Fusion knew or was reckless in not knowing that the statements in this memo were false or misleading, yet it disseminated the memo to potential investors and directed investors to the Dealbox.

46. Fusion also disseminated offering materials that contained material misrepresentations regarding the construction of the power plant and the anticipated revenue of the project.

47. The PPM described the power plant project as "a Construction, Performance and Revenue Assured power production plant." The Bond Summary likewise included statements regarding "construction assurance," "performance assurance," and "revenue assurance."

48. The PPM and Bond Summary also described 74.2% of the projected revenue disclosed in the documents as "Confirmed Revenue."

49. These statements were false because neither construction nor any revenue were assured or confirmed.

50. Fusion, through MC and EW, knew, or was reckless in not knowing, that construction was not “assured” as it knew NewCo’s management had no experience building or operating a power plant. And Fusion also knew that construction was dependent on the 2017 Bond Offering raising the necessary capital, which was far from assured.

51. Fusion, through MC and EW, also knew, or was reckless in not knowing, that no revenue was “assured” or “confirmed” as it knew that there was no assurance that the plant would be built much less that it would generate any revenue.

52. In addition, while the PPM and Bond Summary stated that revenue from the sale of alternative energy credits was “confirmed,” that representation was false. Fusion knew, or was reckless in not knowing, that there was no contract in place and no assurance that Issuer 1 would be able to sell any credits much less for any specific price.

53. Similarly, while the PPM and Bond Summary represented that revenue from sales of electricity was “confirmed,” that representation was false. Fusion, through MC and EW, knew, or was reckless in not knowing, that revenue from electricity sales was variable and subject to market conditions, and there was no contract setting a fixed price or a fixed amount of electricity to be sold.

54. The PPM and Bond Summary also stated that the power plant would generate \$3,821,247 in total revenue in 2017.

55. This statement was false as management did not expect the plant to generate any revenue in 2017, much less over \$3.8 million as represented in the PPM and Bond Summary.

56. Fusion knew, or was reckless in not knowing, that the statements regarding 2017 revenue were false. Fusion, through MC and EW, knew that construction had not even begun on

the power plant. Likewise, had Fusion performed any investigation into the representations made by Issuer 1, it would have learned that management expected no revenue in 2017.

3. Fusion made additional material misrepresentations and omissions in its own communications to customers about the 2017 Bond Offering.

57. In addition to disseminating the false and misleading PPM and 2017 Bond Summary to its customers, Fusion also made its own misrepresentations and omissions to potential investors concerning the 2017 Bond Offering.

58. Fusion's owner and Managing Partner MC sent email solicitations to 139 retail investors on March 9, 2017, describing the 2017 Bond Offering as an "exceptional opportunity."

59. The emails represented that the project would have "EBITDA of over 50%." This statement was misleading. Fusion, through MC knew, or was reckless in not knowing, that this figure was an estimate and that EBITDA might not be over 50 percent, but Fusion never disclosed this figure was an estimate. MC was just repeating, without attribution or any investigation, an estimate provided by Promoter 1 and Promoter 2.

60. Fusion also made material misrepresentations and omissions regarding the SEC Order.

61. Fusion, through MC and EW, solicited potential investors but did not inform customers of the SEC Order's findings, nor did Fusion otherwise disclose Promoter 1's and OldCo's history of misleading investors.

62. On March 23, 2017, Customer A, after his own research, discovered information about the SEC Order, and asked Fusion for more information.

63. The next day, MC replied in an email stating that the "SEC related issues" were started by a family member "who wasn't well taking upon himself to try and take over the

company.” The email further falsely stated that “Nothing nefarious was uncovered,” and it was about “some paperwork which they still dispute.”

64. On December 4, 2017, EW forwarded Promoter 1’s misleading memo regarding the SEC Order to Customer H, who had already purchased the 2017 Bonds, and Customer I. EW’s December 4 email made the misleading assertion that “The settlement has nothing to do with [NewCo] (the power generation company) or the . . . Bonds.”

65. Fusion also made misrepresentations regarding the success of the offering. On March 24, 2017, MC emailed Customer A that the 2017 Bonds would be getting CUSIPs shortly “and these rates will drop dramatically.” In response to MC’s email, Customer A asked how much of the \$6 million required for the project had been raised. MC responded by representing that “there is 400k either completed or paperwork is being completed. There is another 300k or so where paperwork was requested Thursday and Friday.”

66. This statement was misleading. MC knew, or was reckless in not knowing, that the issuer had sold only \$150,000 of the 2017 Bonds at that time, but he did not disclose that to Customer A.

67. Customer A wrote with more questions on April 13, 2017, including asking about the expected financial close date and expected start of construction. On April 17, 2017, MC replied by forwarding a response from Promoter 1 stating that funding was expected to be “achieved” and the project started by “early May,” less than a month later. These statements were misleading. MC knew, or was reckless in not knowing, that Issuer 1 had not come close to raising the \$6 million necessary to construct the power plant, but he did not disclose that to Customer A.

68. On May 5, 2017, Customer A sent additional questions to EW, copying MC. MC forwarded the questions to Promoter 1 and Promoter 2 for a response. Promoter 1 sent answers directly to Customer A, copying MC and EW, including the misleading statement that Issuer 1 anticipated “completing the funding by the end of this month.”

69. Similarly, in a follow-up email to Customer A on May 16, 2017, MC made the misleading representation that the bonds “will be competed [sic] shortly.”

70. At the time of these communications to Customer A, Fusion, through MC and EW, knew, or were reckless in not knowing, that Issuer 1 had sold only \$480,000 of the \$6 million offering. Fusion, however, did not disclose this information to Customer A.

71. Customer A signed his subscription agreement for the 2017 Bonds and returned it less than an hour after MC’s May 16, 2017 email.

72. On October 2, 2017, after Customer A inquired about the possibility of adding to his investment, EW emailed Customer A a new subscription agreement, stating, “Was told they have room for \$200k.”

73. This statement was false. As Fusion, through MC and EW, knew, or was reckless in not knowing, at the time of the statement, over \$5.2 million of the 2017 Bonds were still available. A few days later, Customer A invested an additional \$50,000.

* * *

74. In total, Fusion, through MC and EW, sold \$860,000 of the 2017 Bond Offering to ten customers and was paid a \$51,000 commission as the placement agent, as follows:

Trade Date	Customer	Amount	Fusion's Commission
03/23/17	Customers B	\$50,000	\$3,000
03/31/17	Customer C	\$20,000	\$1,200
04/13/17	Customer D	\$150,000	\$9,000
04/18/17	Customer E	\$150,000	\$9,000
05/25/17	Customer A Trust	\$150,000	\$9,000
06/15/17	Customer F	\$60,000	\$3,000
08/18/17	Customer G	\$50,000	\$3,000
10/09/17	Customer A	\$50,000	\$3,000
11/29/17	Customer H	\$150,000	\$9,000
12/07/17	Customer I	\$30,000	\$1,800

75. Fusion also received finder's fees totaling \$2,000 representing 1% on the sale of \$200,000 of bonds sold to four additional investors by BD 1.

D. Fusion sold \$950,000 in bonds for NewCo in the 2018-2019 Bond Offering.

76. Fusion knew that the 2017 Bond Offering failed to raise enough funds to pay for construction of the power plant. Of the \$6 million in bonds that were offered, only \$1.3 million were actually sold.

77. Fusion knew that the power plant had not been constructed and that Issuer 1 had no revenue to cover its obligations to its existing bondholders.

78. In fact, Fusion, through MC, knew that, by fall 2018, Issuer 1 was late on interest payments to holders of the 2017 Bonds.

79. To find additional capital, in 2018, NewCo decided to conduct a second private offering, pursuant to Regulation D, through Issuer 1 (the "2018-2019 Bond Offering"). Through the 2018-2019 Bond Offering, Issuer 1 sought to raise at least \$5 million through five-year bonds paying 9% interest.

80. According to Issuer 1's September 1, 2018, Subscription Package that Fusion disseminated, the proceeds raised through the 2018-2019 Bond Offering would be used to build and operate the power plant, the power plant would be Issuer 1's only asset, and revenue from the power plant would be the only source of funds to repay the 2018-2019 Bonds.

81. Fusion acted as non-exclusive placement agent for the 2018-2019 Bond Offering.

1. Fusion failed to adequately investigate the 2018-2019 Bond Offering.

82. Despite its awareness of red flags, including the SEC Order, the failure of the 2017 Bond Offering, and Issuer 1's financial situation, Fusion failed to take reasonable steps to investigate the 2018-2019 Bond Offering and the representations made by Issuer 1 in the Subscription Package and other offering materials.

83. Fusion's due diligence consisted of MC reviewing the Subscription Package, a separate marketing presentation (the "Pitchbook"), and related documents that Promoter 1 and Promoter 2 provided to Fusion.

84. Fusion failed to investigate the veracity of any of the information provided by Promoter 1 and Promoter 2 or in the Subscription Package and Pitchbook. Instead, the firm blindly relied on the representations from Promoter 1 and Promoter 2 and the information in the offering documents without asking questions or requesting any additional information.

85. Nonetheless, Fusion began recommending the 2018-2019 Bond Offering to its customers in December 2018.

2. Fusion disseminated offering materials for the 2018-2019 Bond Offering that contained material misrepresentations and omissions.

86. To market the 2018-2019 Bond Offering, Fusion, through MC and EW, disseminated to potential investors various documents prepared by NewCo and Issuer 1, including the Subscription Package and Pitchbook.

87. Fusion knew, or was reckless in not knowing, that the materials it disseminated contained material misrepresentations and omissions.

88. First, as alleged above, Fusion was aware of the SEC Order and the SEC's findings that OldCo and Promoter 1 had misled investors, including Fusion's own customers, about the use of offering proceeds to benefit Promoter 1's family, rather than OldCo.

89. Despite this knowledge, Fusion disseminated offering materials that failed to disclose these facts to investors.

90. In the Subscription Package, Issuer 1 stated that its only employees are Promoter 1, described as the co-founder and chief operating officer of Issuer 1, and Promoter 2, described as Issuer 1's co-founder, CEO, and President. The Subscription Package included an extensive biography of each of them, but did not mention the SEC Order, nor did it otherwise disclose Promoter 1 and OldCo's history of misleading investors. Promoter 1's role in management was also highlighted in the Pitchbook to investors without any disclosure of the SEC Order.

91. Second, the Subscription Package and Pitchbook disseminated by Fusion in connection with the 2018-2019 Bond Offering contained material misrepresentations and omissions regarding the financial condition of Issuer 1.

92. Fusion, through MC and EW, knew, or was reckless in not knowing, that, as the 2018-2019 Bond Offering commenced, Issuer 1 was in distressed financial condition, had failed to raise sufficient funds to build the power plant, and was already behind on interest payments owed on bonds sold in the 2017 Bond Offering.

93. Neither the Subscription Package nor the Pitchbook disclosed these facts.

94. Third, the Subscription Package and Pitchbook also represented that proceeds from the offering would be used only to build the power plant, for working capital, and for a financial guarantee on the 2018-2019 Bonds.

95. This representation was false as Issuer 1 intended to use the proceeds from the 2018-2019 Bond Offering to pay interest on the 2017 Bond Offering.

96. Fusion knew, or was reckless in not knowing, that Issuer 1 was going to use the proceeds in this manner. Fusion, through MC and EW, knew, or was reckless in not knowing, that Issuer 1 was late on interest payments and had no other source of funds except the power plant that had not been constructed.

97. Fourth, the Subscription Package and Pitchbook also failed to disclose that Issuer 1 was in continuous breach of debt covenants included in a promissory note provided as part of the 2017 Bond Offering. The covenants required that, on a quarterly basis, the Debt Service Coverage ratio shall always be equal to or less than 2:1 (EBITDA/Total Debt Service) and the Debt/EBITDA (Leverage Multiple) shall always be equal to or less than 3.75:1.

98. Fusion knew, or was reckless in not knowing, that Issuer 1 was in breach of those covenants as Fusion, through MC and EW, knew that the power plant had never been constructed and, thus, Issuer 1 had no earnings to satisfy its debt covenants.

99. As of the date of this Complaint, there is still no operational power plant generating revenue to pay the 2017 Bonds or 2018-2019 Bonds.

* * *

100. In all, Fusion sold \$950,000 of the 2018-2019 Bonds, including a December 2018 sale of \$80,000 in bonds to Customer J. Fusion was paid \$95,000 in commissions for its sale of the 2018-2019 Bonds.

II. Fusion provided false information to FINRA staff during its investigation of the 2018-2019 Bond Offering.

101. In conducting its investigation into this matter, FINRA staff sought to determine Fusion's role in the sale of the 2018-2019 Bond Offering.

102. In particular, FINRA staff sought to identify the customers to whom Fusion solicited and sold the 2018-2019 Bond Offering.

103. On April 17, 2019, pursuant to Rule 8210, FINRA staff issued a request to Fusion for information seeking copies of private placement memoranda, a purchase and sales blotter, subscription agreements, customer profile information, and other information pertaining to the 2018-2019 Bond Offering through March 20, 2019.

104. Fusion responded on May 13, 2019, by providing a sales blotter identifying only one sale of \$80,000 of the 2018-2019 Bond Offering to Customer J.

105. Fusion's response was false. Fusion sold at least \$600,000 of the 2018-2019 Bond Offering before March 20, 2019.

106. On October 18, 2019, FINRA staff issued a request for information via request manager seeking an update of Fusion's response to the April 17, 2019 Rule 8210 request. Fusion responded on November 4, 2019, stating "There is no new information to provide."

107. Fusion's response was false. Fusion sold \$950,000 of the 2018-2019 Bond Offering before it submitted its November 4, 2019 response.

FIRST CAUSE OF ACTION

Fraud in Sale of NewCo Bond Offerings

(Willful Violations of Section 10(b) of the Exchange Act
and Rule 10b-5 thereunder, and Violations of FINRA Rules 2020 and 2010)

108. The Department of Enforcement realleges and incorporates by reference paragraphs 1-107 above.

109. Section 10(b) of the Exchange Act makes it unlawful “to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, . . . 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.”

110. Exchange Act Rule 10b-5 provides that:

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,

(a) To employ any device, scheme, or artifice to defraud,

(b) To 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, or

(c) 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 any security.

111. FINRA Rule 2020 provides that: “No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”

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

113. A violation of Section 10(b) of the Exchange Act and Rule 10b-5 or FINRA Rule 2020 is a violation of FINRA Rule 2010.

114. The 2017 Bonds and 2018-2019 Bonds are securities.

115. As alleged above, Fusion disseminated offering materials that omitted and misrepresented the following material facts in connection with the sale of the NewCo Bond Offerings:

- a) The documents failed to disclose the SEC Order, OldCo and Promoter 1's history of misleading investors, and OldCo's failure to generate revenue in its engine business.
- b) The documents regarding the 2017 Bond Offering falsely described revenue projections and construction of the power plant as "assured" and "confirmed" and falsely projected that Issuer 1 would generate over \$3.8 million in revenue in 2017.
- c) The documents regarding the 2018-2019 Bond Offering failed to disclose the failure of the 2017 Bond Offering and Issuer 1's financial distress, failure to generate revenue, and late interest payments to existing bondholders.
- d) The documents regarding the 2018-2019 Bond Offering falsely stated that proceeds from the offering would be used only to build the power plant, for working capital, and for a financial guarantee on the 2018-2019 Bonds, but failed to disclose that proceeds would be used to pay interest on the 2017 Bond Offering.
- e) The documents regarding the 2018-2019 Bond Offering failed to disclose that Issuer 1 was in violation of financial covenants arising from the 2017 Bonds.

116. The misrepresentations and omissions disseminated by Fusion were material because a reasonable investor would consider them important to the total mix of information available in making investment decisions.

117. Fusion acted with scienter when it disseminated the material misstatements and omissions, because it knew, or was reckless in not knowing, the facts that were misrepresented or omitted.

118. As alleged above, in addition to disseminating offering materials containing material misrepresentations and omissions, Fusion made the following material misrepresentations and omissions on its own in connection with the sale of the NewCo Bond Offerings:

- a) Fusion failed to disclose the SEC Order, and OldCo and Promoter 1's history of misleading investors, and instead falsely represented that "Nothing nefarious was uncovered" by the SEC.

- b) Fusion falsely represented Issuer 1's progress on the 2017 Bond Offering and building the power plant.
- c) With respect to the 2017 Bond Offering, Fusion falsely represented that EBITDA would be over 50%.

119. The misrepresentations and omissions made by Fusion were material because a reasonable investor would consider them important to the total mix of information available in making investment decisions.

120. Fusion acted with scienter when it made the material misstatements and omissions, because it knew, or was reckless in not knowing, the facts that were misrepresented or omitted.

121. Fusion utilized the means or instrumentalities of interstate commerce, or of the mails, in connection with the offer and sale of bonds in the NewCo Bond Offerings, including: (a) telephone calls to customers and prospective customers; and (b) the use of email to send offering materials to customers and prospective customers concerning the security offerings.

122. Accordingly, Fusion willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and it violated FINRA Rules 2020 and 2010.

SECOND CAUSE OF ACTION
Negligent Misrepresentations and Omissions
(Violation of FINRA Rule 2010, independently and
by contravening Sections 17(a)(2) and (a)(3) of the Securities Act)

(Pled in the Alternative to the First Cause of Action)

123. The Department of Enforcement realleges and incorporates by reference paragraphs 1-107 above.

124. Sections 17(a)(2) and 17(a)(3) of the Securities Act provide that:

- (a) It shall be unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly-

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

125. Acts in contravention of Sections 17(a)(2) and 17(a)(3) are a violation of FINRA Rule 2010.

126. In connection with the offer and sale of bonds in the NewCo Bond Offerings by mail and telephone, Fusion, either directly or indirectly: (i) obtained money by means of untrue statements of material facts and omissions to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (ii) engaged in transactions, practices, or courses of business that operated as a fraud or deceit upon investors. The misrepresentations and omissions are alleged in paragraphs 36-73 and 86-99 above.

127. Fusion acted, at a minimum, negligently in obtaining money by means of the misrepresentations and omissions and in engaging in transactions, practices, or courses of business that operated as a fraud or deceit upon investors.

128. Accordingly, Fusion violated FINRA Rule 2010, both independently and by virtue of acting in contravention of Sections 17(a)(2) and (a)(3) of the Securities Act.

THIRD CAUSE OF ACTION
Reasonable Basis Suitability
(Violation of FINRA Rules 2111 and 2010)

129. The Department of Enforcement realleges and incorporates by reference paragraphs 1-107 above.

130. FINRA Rule 2111(a) requires a member 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.” As explained in the Supplementary Material, Rule 2111 contains a reasonable-basis suitability obligation.

131. The “reasonable-basis obligation requires . . . a member . . . to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors.” “A member’s . . . reasonable diligence must provide the member . . . 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.”

132. Fusion did not have a reasonable basis to believe that the NewCo Bond Offerings were suitable for at least some investors because, as alleged above, it failed to conduct a reasonable investigation of the offerings prior to recommending them to investors.

133. Fusion failed to exercise reasonable diligence despite the existence of numerous red flags, including:

- a) The SEC Order, and OldCo and Promoter 1’s history of misleading investors;
- b) OldCo’s failure to generate any revenue with its engines despite raising tens of millions of dollars;
- c) The offering documents and promotional material included unrealistic and unsupported projections for revenue that were inconsistent with management’s actual expectations; and
- d) With respect to the 2018-2019 Bond Offering, Issuer 1 had failed to raise funds to complete the plant, was in breach of financial covenants contained in the first offering, was late in making interest payments, and was dependent on the proceeds of the new offering to pay interest to existing bondholders.

134. Despite these known red flags, Fusion failed to perform reasonable diligence concerning Issuer 1 or the offerings prior to recommending them to investors.

135. Accordingly, Fusion violated FINRA Rules 2111 and 2010.

FOURTH CAUSE OF ACTION
Providing False Information to FINRA
(Violation of FINRA Rules 8210 and 2010)

136. The Department of Enforcement realleges and incorporates by reference paragraphs 1-107 above.

137. FINRA Rule 8210(a) provides that FINRA staff can require a person associated with a member or any other person subject to FINRA's jurisdiction to "provide information orally [or] in writing . . . with respect to any matter involved in the investigation." FINRA Rule 8210(c) provides that "no member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule."

138. Providing false or misleading information to FINRA in response to a request for information made pursuant to FINRA Rule 8210 violates FINRA Rule 8210.

139. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010.

140. On April 17, 2019, FINRA staff issued, pursuant to Rule 8210, a request to Fusion for information seeking copies of private placement memorandums, a purchase and sales blotter, subscription agreements, customer profile information, and other information pertaining to the 2018-2019 Bond Offering through March 20, 2019. Fusion responded by providing a sales blotter identifying only one sale of \$80,000 of the 2018-2019 Bonds to Customer J.

141. This response was false. As of March 20, 2019, Fusion had sold at least \$600,000 of the 2018-2019 Bonds.

142. Accordingly, by providing false information in response to a request issued pursuant to FINRA Rule 8210, Fusion violated FINRA Rules 8210 and 2010.

FIFTH CAUSE OF ACTION
Providing False Information to FINRA
(Violation of FINRA Rule 2010)

143. The Department of Enforcement realleges and incorporates by reference paragraphs 1-107 above.

144. Providing false information to FINRA is a violation of FINRA Rule 2010.

145. On October 18, 2019, FINRA staff issued a request for information via request manager seeking an update of Fusion's April 17, 2019, response regarding the 2018-2019 Bond Offering. Fusion responded by indicating "There is no new information to provide."

146. This response was false. As of October 18, 2019, Fusion had sold at least \$870,000 of the 2018-2019 Bonds in addition to the \$80,000 sold to Customer J and previously disclosed to FINRA.

147. Accordingly, by providing false information in response to a FINRA staff request, Fusion violated FINRA Rule 2010.

RELIEF REQUESTED

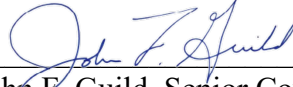
WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- 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 bear 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 willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: March 7, 2022



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