

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

Department of Enforcement,

Complainant,

v.

Eugene H. Kim
CRD No. 2264940,

Respondent.

Disciplinary Proceeding
No. 2019064508802

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between December 2017 and June 2019 (the “relevant period”), while associated with National Securities Corporation (NSC) (CRD No. 7569), Eugene Kim engaged in unethical conduct, acted in bad faith, and misused customer funds in connection with a private offering sold by NSC. In December 2017, Kim proposed to NSC’s commitment committee that NSC initiate a private placement offering through an NSC-affiliated fund for shares in a private company (“Company A”) at a maximum price-per-share of \$9.75. At the time he submitted the offering for approval, Kim had not confirmed a source of shares for the offering at any price. NSC approved the offering, and sales representatives solicited investors and distributed offering documents stating the sole purpose of the offering was to invest in Company A shares at a maximum price of \$9.75 share. Ultimately, 48 customers invested a total of \$4.055 million in the offering.

2. Prior to closing on escrow, Kim did not source Company A shares for the offering at any price, let alone a maximum share price of \$9.75. Instead of refunding investors, however, Kim initiated the closing of escrow for the offering and received a \$16,220 commission. During the following months, Kim actively misled NSC principals, representatives, and, indirectly, customers, into believing that the fund had purchased Company A shares at the \$9.75 price.

3. Ten months after the offering's closing, Kim purchased a limited number of Company A shares at an average price of \$20.22 — more than double the \$9.75 maximum price-per-share identified in the offering documents. Even then, over \$1 million in investor capital remained in cash, as Kim was unable to find enough shares to purchase with the customers' investments. Ultimately, NSC uncovered Kim's misconduct and notified investors that they had not, in fact, purchased shares of Company A at a maximum share price of \$9.75 per share. Instead, investors owned Company A shares at a higher price and some of their funds had not been used to purchase Company A shares at all. As a result of this conduct, Kim violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

4. Kim entered the securities industry in 1996. From 1996 to 1998 Kim was registered with FINRA as a General Securities Representative and associated with three member firms. Kim was not associated with another FINRA member firm until 2015, when he became associated with NSC and registered with FINRA as a General Securities Representative and an Investment Banking Representative. Kim became registered as a General Securities Principal in March 2016 and as an Investment Banking Principal in October 2018. Kim voluntarily terminated his association with NSC as of July 22, 2022.

5. Kim became associated with another FINRA member firm on August 1, 2022, and is currently registered with FINRA in various capacities. Because Kim is currently registered with FINRA, he is subject to FINRA's jurisdiction.

FACTS

I. NSC sold pre-IPO private placement offerings.

6. During the relevant period, NSC's affiliated investment adviser, National Asset Management (NAM), created and managed private placement offerings, which NSC sold to investors. Through these offerings, investors could purchase interests in private companies that purportedly intended to conduct an initial public offering (IPO) at some point in the future. Such investments are commonly called pre-IPO offerings.

7. NSC and NAM structured private placement offerings through two series of funds: Innovation X funds, which were sold to Qualified Purchasers (individuals with at least \$5 million in investments), and Special Situations funds, which were sold to Qualified Clients (individuals with a net worth of at least \$2.1 million).

8. NSC followed a regular practice when initiating a private placement offering. NSC's selling representatives would solicit potential investors, who would receive an email from NSC attaching the limited liability agreement for the relevant fund, a private placement memorandum describing the specific offering, and subscription booklet of documents to execute for the investment. Those who chose to invest would purchase membership interests in the applicable offering, and their capital would be deposited into an escrow account. Once NSC and NAM were ready to conduct a "closing" of the offering, the investor capital would be released from escrow and transferred to the bank account for the offering, and NSC would receive a placement fee.

The offering would then use the investor capital to purchase shares in the private company.

These shares were the offering's sole asset.

9. Also upon closing, the administrator of the fund would receive a list of the offering's investors. The administrator would then establish the books and records for the fund and send out "welcome letters" to investors. The welcome letters would inform investors that a closing had occurred, the total amount of their capital contribution, and the number of "units" in the offering they owned as a result.

10. If the private company that was the subject of an offering ultimately conducted an IPO, NAM—the offering's manager—would do one of two things: (a) it would either sell the offering's shares in the now-public company and distribute the proceeds to investors in proportion to the number of "units" in the offering they owned; or (b) it would distribute the shares to the investors, who could then decide whether to hold or sell them.

II. Kim was the head of NSC's pre-IPO business and received a portion of the firm's revenue from that business.

11. During the relevant period, Kim served as the Head of the SPV/Private Shares/Special Situations Group (HSPV) for NSC. In this capacity, Kim managed NSC and NAM's offerings of pre-IPO securities and administered and operated the Innovation X and Special Situations funds on NAM's behalf. However, Kim did not have the authority to execute documents for the pre-IPO funds on behalf of NSC or NAM, so any contracts or money transfers (including releases from escrow) had to be signed by NSC's chief executive officer, Executive A, and chief financial officer, Executive B.

12. Specifically, according to NSC's WSPs, the HSPV (Kim) "shall oversee SPV/Private Shares/Special Situations Transactions, and shall be responsible for compliance with actions required by these procedures." Under the procedures, Kim was "responsible for directing,

supervising and confirming that appropriate due diligence is undertaken, and [that] documentation of due diligence is maintained in the SPV/Private Shares/Special Situations Group files.” This due diligence included a mandatory inquiry into “[t]he origin and authenticity of assets held by or to be acquired by the SPV.”

13. NSC’s WSPs also required Kim to review “any private placement memorandum to determine that it is fair and balanced, highlights all relevant risk factors and conflicts of interest, and is not misleading.”

14. Once Kim completed this mandatory review, he would propose the offering to NSC’s Commitment Committee. The WSPs required the firm’s Commitment Committee to approve all pre-IPO offerings before NSC or its registered representatives could present the offering to potential investors. Further, the HSPV (Kim) was required to notify each member of the Commitment Committee in writing of the relevant terms of any proposed pre-IPO transaction before initiating it.

15. Under the WSPs, if the Commitment Committee approved the offering, the HSPV (Kim) was responsible for serving as the chief source of information about pre-IPO offerings for NSC’s selling representatives. The WSPs stated that any:

Questions or requests for additional information must be referred to the HSPV or designee. In no situation should the RR answer specific questions. If a RR learns of material information about the SPV Investment or the offering that is not disclosed in the PPM, they must contact either the HSPV or designee immediately.

16. Although NSC and NAM jointly employed Kim, Kim received his compensation from NSC. Until December 2017, Kim received a salary. As of December 2017, Kim received only a portion of the fees and commissions NSC received from its pre-IPO business in lieu of a salary.

III. Kim established a Special Situations fund offering of Company A without a confirmed source for shares.

17. Registered Representative A, a senior broker at NSC, frequently sourced pre-IPO shares for both the Innovation X fund and the Special Situations fund and co-managed the Innovation X fund with NAM.

18. In November 2017, Registered Representative A identified a possible seller of shares in Company A. The potential seller indicated a willingness to sell approximately \$10 million in Company A shares at a price of \$9.75 per share.

19. On November 7, 2017, Registered Representative A introduced Kim to the seller's representative. Registered Representative A told Kim that the proposed purchase of Company A shares would be for the Innovation X fund. Following this meeting, Kim began conducting due diligence on the potential purchase of Company A shares for the Innovation X fund. As part of due diligence, Kim requested various documents about the seller and the seller's ownership of Company A's shares.

20. On December 11, 2017, Kim provided NSC and NAM's commitment committee with a memorandum he had authored proposing to establish not one, but two separate offerings for Company A. The first proposed offering was the Innovation X offering that Kim had discussed with Registered Representative A and the seller's representative, and for which Kim had conducted at least some due diligence. The second proposed offering was a separate Special Situations fund offering of Company A shares (the "SSF offering"), which Kim had not discussed with Registered Representative A or the seller's representative and for which he had conducted no due diligence. In the memorandum, Kim represented that both funds would acquire Company A shares at a maximum price of \$9.75 per share—the agreed-upon maximum price for the Innovation X fund offering.

21. Along with the memorandum, Kim forwarded proposed offering documents to the Commitment Committee. The private placement memorandum for the SSF offering stated that the SSF offering was established to purchase, directly or indirectly, Series D Preferred Stock of Company A at a maximum price of \$9.75 per share.

22. At the time Kim submitted the memorandum and offering documents for approval, he had not confirmed a source of Company A shares for the SSF offering, nor had he initiated any due diligence for this offering.

23. On December 15, 2017, NSC's Commitment Committee approved the Innovation X and SSF offerings.

24. Following approval of the offerings, Kim sent offering materials for both offerings to NSC's sales syndicate for dissemination to NSC's sales representatives. Those documents included a limited liability company agreement, a private placement memorandum, and a subscription booklet (collectively, "offering materials"). The offering materials represented to investors that the applicable fund would use their capital to purchase shares of Company A at a price not to exceed \$9.75 per share.

25. NSC representatives began recommending both offerings to customers and sent offering materials to potential investors via email. By December 19, 2017, NSC had raised \$9.975 million for the Innovation X offering. Kim initiated the close of escrow for the Innovation X offering and facilitated the purchase of all available shares of Company A from the seller Registered Representative A had identified.

26. Although the Innovation X fund had purchased all available shares of Company A, NSC's selling representatives continued to recommend and sell the SSF offering to customers.

IV. Kim obtained permission to close escrow for the SSF offering in December 2017 and again in January 2018, despite his failure to confirm a seller of Company A shares.

27. On December 26, 2017, Kim obtained permission from NSC to close escrow for the SSF offering and release \$3.45 million from 38 investors. At the time, Kim had not confirmed a source of Company A shares for the SSF offering, nor had he begun due diligence on any potential purchase of Company A shares for that offering. In requesting approval to close escrow, Kim did not disclose to NSC that he had not confirmed a seller of any Company A shares for the SSF offering at any price.

28. When escrow closed, NSC received a placement fee of \$345,000, Kim received a \$13,800 commission, and NAM sent “welcome letters” to investors notifying them that SSF had closed on their investments and that they now possessed an ownership interest in the SSF offering.

29. NSC continued to sell interests in the SSF offering in January 2018. On January 31, 2018, Kim again obtained approval to close escrow and release an additional \$605,000 from 11 investors, again without informing NSC that he had failed to identify a source of Company A shares at any price. As a result, NSC received an additional placement fee of \$60,500, Kim received a \$2,420 commission, and NAM sent additional “welcome letters” to the 11 investors.

30. The welcome letters sent in December 2017 and January 2018 did not disclose that NAM, NSC, and Kim had failed to identify any potential seller of Company A’s shares for the SSF offering.

31. Executives A and B signed the forms for the release of funds from escrow in both December 2017 and January 2018. Kim sent these forms to Executives A and B without informing them that there was no pending purchase of Company A shares or that Kim had not

started any due diligence to find a potential seller of Company A shares. Executives A and B would not have signed off on releasing funds from escrow had Kim informed them there was no pending purchase of Company A shares.

32. In total, NSC paid Kim \$16,220 in connection with the two closings of the SSF offering. As NSC had recently eliminated his salary, Kim was dependent on the commissions from these pre-IPO transactions for his income.

V. Following close of escrow, Kim searched for shares of Company A, without disclosing to investors or NSC personnel that shares were not purchased.

33. At no point after the closing of escrow did Kim inform investors or NSC that shares of Company A had not been purchased and were not available for purchase by the SSF offering. Instead, Kim began to search surreptitiously for shares of Company A.

34. On January 5, 2018, an NSC selling representative, Registered Representative B, emailed Kim asking about the “valuation paid for [Company A] in the last close? Also, what was the price per share?” Registered Representative B asked this question because one of his customers who invested in the SSF offering wished to know what the offering actually paid for Company A shares. Kim responded “9.75/share for a 5.3bn valuation.” This was a false statement. In fact, Kim knew at the time that the fund had not purchased any Company A shares, and that all the SSF offering investor capital remained in cash.

35. Based on Kim’s response, Registered Representative B falsely informed his customer that the SSF had purchased Company A shares at \$9.75 per share.

VI. Kim negotiated and initiated SSF’s purchase of shares in Company A in November and December of 2018 at a price significantly above the maximum share price stated in offering documents.

36. Kim ultimately identified potential sellers of Company A shares in October and November 2018.

37. On November 15, 2018, Kim forwarded two contracts to purchase Company A shares to Executive A's assistant for his signature. One contract was for 75,000 shares of Company A at \$22 per share, for a total purchase price of \$1.65 million. The other contract was for 45,000 shares of Company A at \$17.25 per share, for a total purchase price of \$776,250. The price per share in both contracts substantially exceeded the maximum price of \$9.75 identified in the SSF offering documents.

38. Kim did not seek approval from NSC's Commitment Committee before initiating these purchases of Company A shares at prices materially different than the price the Committee had previously approved.

39. Kim did not disclose to Executive A or to his assistant that the purchase contracts were for the SSF offering or that they represented a material change to the SSF offering.

40. The cover email forwarding the contracts stated only that "Either [Executive A] or [Executive B] is fine" and included a third unrelated contract for execution.

41. The purchases were finalized on November 30, 2018, and on December 27, 2018. After these transactions, \$1,144,122.50 of investor funds remained as cash in the bank account for the offering.

42. The SSF offering made no further purchases of Company A shares.

43. Therefore, as of December 31, 2018, the average price of Company A shares purchased for the SSF offering was \$20.22 per share, more than double the \$9.75 maximum price stated in the offering documents. Moreover, over \$1.1 million of investors' money remained as cash in the SSF offering bank account. Kim did not disclose either of these facts to NSC or to the SSF offering's investors.

VII. Kim continued to hide the true status of the SSF offering and search for shares.

44. Following these purchases of Company A shares, Kim had multiple opportunities to disclose the true status of the SSF offering to NSC personnel, but instead failed to do so. For example, on January 30, 2019, and on February 8, 2019, Kim provided Executive B with summaries of all “private share investments” sold by NSC, including the cost associated with each position. Kim’s summaries included all private share purchases (including the Innovation X fund’s purchase of Company A shares) – with the sole exception of the purchases of Company A shares for the SSF offering in November and December 2018, which were absent from the summaries.

45. Meanwhile, Kim continued to covertly search for additional Company A shares for the SSF offering. At an NSC sales conference in 2019, Kim told Registered Representative B that NSC was considering a third offering for Company A shares and that he was looking for shares. Kim did not tell Registered Representative B that he was actually still looking for shares for the SSF offering that Registered Representative B had sold to his customers approximately one year earlier, or that the SSF offering had purchased Company A shares at a price more than double the maximum share price identified in the offering materials.

46. On February 5, 2019, Registered Representative B emailed Kim asking him if a new Company A offering was still moving forward, and Kim responded, “Still moving forward.” Registered Representative B then referred Kim to a potential source of shares for a new Company A offering. No additional shares of Company A were purchased from this potential seller.

47. Similarly, Kim told Registered Representative C, another NSC representative who sold the SSF offering, that the firm was considering another offering of Company A shares. As

with Registered Representative B, Kim did not inform Registered Representative C that, in reality, he was still looking to purchase more shares for the SSF offering.

VIII. NSC discovered the true status of the SSF offering in May 2019 and informed investors in June 2019 of a material change in their investment.

48. On April 26, 2019, Company A filed a Form S-1 registration statement with the Securities and Exchange Commission, formally initiating the process that would lead to an IPO.

49. On May 10, 2019, Registered Representative B reviewed a statement NAM had sent to an investor in the SSF offering. He was concerned that the statement did not accurately reflect the amount of Company A shares the investor had acquired through the SSF offering and requested that Kim clarify whether the NAM statement was accurate. On May 13, 2019, Kim informed Registered Representative B that the statement was accurate and that he would call him to give a detailed explanation of the offering's status.

50. On May 13, 2019, Registered Representative B sent an email to principals at NSC, voicing concerns about the SSF offering.

51. NSC then initiated an internal investigation to determine the current status of the SSF offering.

52. On June 6, 2019, NAM sent investors in the SSF offering a letter informing them of a "change in material investment terms," including that shares of Company A were purchased at an average price of \$20.22 per share rather than at a maximum price of \$9.75 per share, and that approximately 40 percent of the investors' capital contributions had not been invested at all but instead remained in cash. Investors were given until June 14, 2019, to decide whether to withdraw from the investment or to accept the change in material terms.

53. Two investors in the SSF offering opted for refunds of their investments, which refunds were completed on June 18, 2019.

54. When Company A went public, the investors in the SSF offering received an approximate 40 percent profit on their investments. By contrast, Innovation X fund investors, who held shares purchased at the promised maximum price of \$9.75 per share, received a profit in excess of 200 percent.

CAUSE OF ACTION
Unethical Conduct / Bad Faith / Misuse of Customer Funds
(FINRA Rule 2010)

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

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

57. FINRA Rule 2010 establishes a broad ethical mandate for persons engaged in the securities industry. Even in the absence of a violation of another FINRA rule or securities laws, a person violates Rule 2010 if he or she acts unethically or in bad faith.

58. Misuse or causing the misuse of investor or customer funds is unethical conduct that violates FINRA Rule 2010.

59. Similarly, making material misrepresentations and omissions also violates FINRA Rule 2010.

60. As alleged in paragraphs 1-54 above, Kim acted in bad faith and engaged in a course of unethical conduct after investors deposited funds for the SSF offering.

61. Kim twice initiated the closing of escrow and the release of a total of \$4.055 million from 48 investors when he knew that the Innovation X fund offering had already purchased all known available shares of Company A and he had not confirmed a seller of

available shares of Company A or conducted any due diligence for an additional purchase of Company A shares. Kim also knew that, upon the closing of escrow, he would receive a share of NSC's commissions.

62. Kim also misused or caused the misuse of SSF offering investor funds. Under the terms of the private placement memorandum and other offering documents, NSC represented to investors that it would purchase Company A shares at a maximum price of \$9.75. Kim, however, intentionally used investor funds or caused others to use the investor funds to purchase Company A shares at a price that was more than double the maximum share price listed in the private placement memorandum and other offering documents. Kim facilitated the release of investor funds to purchase Company A shares above the maximum share price, without discussing the matter with NSC's Commitment Committee, NSC principals, or seeking consent from investors.

63. Moreover, through omissions and misrepresentations, Kim repeatedly hid the status of the SSF offering from NSC representatives and principals, knowingly causing one NSC representative to falsely inform at least one SSF offering investor that Company A shares had been acquired at \$9.75 per share. Despite his responsibility as HSPV to serve as the chief source of information about the SSF offering, Kim did not inform anyone as to the true status of the offering until confronted in May 2019, shortly before Company A was to conduct its IPO.

64. As a result of the foregoing, Kim 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; and
- C. order that Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

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