

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL CIRO COLLETTI  
(CRD No. 4577898),

Respondent.

Disciplinary Proceeding  
No. 2019061942901

Hearing Officer–BEK

**HEARING PANEL DECISION**

February 28, 2024

**For engaging in unauthorized and excessive trading in a customer’s account, Michael Ciro Colletti is fined \$10,000, ordered to pay restitution in the amount of \$5,417, and suspended from associating with any FINRA member firm in any capacity for eight months. In addition, Colletti is required to requalify as a General Securities Representative before he re-enters the securities industry.**

*Appearances*

For the Complainant: John Luburic, Esq., John Sheehan, Esq., and Richard Cella, Esq.,  
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Michael Ciro Colletti, pro se

**DECISION**

**I. Introduction**

FINRA’s Department of Enforcement filed a Complaint against Respondent Michael Ciro Colletti on February 15, 2023. The Complaint contains two causes of action. For the first cause of action, Enforcement contends that Colletti executed 73 unauthorized trades in Customer RM’s account in violation of FINRA Rule 2010. For the second cause of action, Enforcement alleges that Colletti’s trading with regard to 52 of these trades was also quantitatively unsuitable for the customer, in violation of FINRA Rules 2111 and 2010. In his Answer to the Complaint, Colletti denies the allegations in both causes of action.

After a three-day hearing, the Hearing Panel finds that Enforcement proved both causes of action by the preponderance of the evidence. For Colletti’s violations of FINRA Rules 2111 and 2010 under causes one and two, the Hearing Panel imposes a unitary sanction of an eight-month suspension in all capacities, a \$10,000 fine, restitution of \$5,417, and a requirement that

Colletti requalify as a General Securities Representative (“GSR”) before he re-enters the securities industry.

## **II. Findings of Fact**

### **A. Colletti and Jurisdiction**

Colletti first registered with FINRA in 2002. He was associated with several firms before January 2017, when he registered as a GSR through his association with The Investment Center, Inc. (“ICI”). While with ICI, he also registered as a General Securities Principal (“GSP”) from January 2017 through February 2018 and from October 2018 through January 2020.<sup>1</sup>

Colletti is currently associated with a FINRA member firm, where he is registered with FINRA as a GSR, GSP, and an Investment Banking Representative.<sup>2</sup> He is therefore subject to FINRA’s jurisdiction.

### **B. Origin of Investigation**

FINRA’s investigation arose out of a FINRA analysis of Colletti’s trading activities.<sup>3</sup>

### **C. RM’s Individual Retirement Account**

At the time of the hearing in 2023, RM was 68 years old.<sup>4</sup> He has a Bachelor of Science degree in accounting and previously owned his own business.<sup>5</sup> In 2015, after he sold his business, he began working as the office manager for DSM, a commercial site excavation company.<sup>6</sup>

DSM offered a retirement plan for its employees, which Colletti managed before he became associated with ICI.<sup>7</sup> When RM was 62 years old, he opened an Individual Retirement Account (“IRA”) and funded it with payroll contributions that DSM matched with its own contributions.<sup>8</sup> RM explained that DSM’s matching benefit was the reason he opened the IRA.<sup>9</sup>

---

<sup>1</sup> Joint Stipulations ¶¶ 1-3.

<sup>2</sup> Complainant’s Exhibit (“CX-”) 1, at 4.

<sup>3</sup> Hearing Transcript (“Tr.”) 46-47.

<sup>4</sup> Tr. 194.

<sup>5</sup> Tr. 165, 193.

<sup>6</sup> Tr. 163, 195.

<sup>7</sup> Tr. 168-69, 203-04.

<sup>8</sup> Tr. 194-97.

<sup>9</sup> Tr. 194, 203-04.

His monthly pay deductions and the matching funds from his employer were the only funds RM regularly deposited into this account.<sup>10</sup>

On February 1, 2017, shortly after Colletti became associated with ICI, DSM transferred its employees' IRA accounts to ICI, and Colletti continued to handle the accounts.<sup>11</sup> RM recalled that when his account was transferred, someone at DSM provided him several forms.<sup>12</sup> On one of these forms, he marked his risk tolerance as "moderate" and testified that he did so because (1) the account held only a small amount of money; (2) he was not going to have the account very long; and (3) he thought "moderate" would result in his account growing a little faster.<sup>13</sup> This same form reflects that RM did not give Colletti or any other person discretion to trade in his account—it was a non-discretionary account.<sup>14</sup>

At the time of the transfer, RM's account held \$1,578 in security investments and \$1,151 in cash.<sup>15</sup> His security investments consisted of four different mutual funds, two shares of Gilead Sciences (trading symbol GILD), and five shares of General Electric (trading symbol GE).<sup>16</sup> Between March 2017 and April 2018, Colletti executed 21 more purchases of these same securities.<sup>17</sup> The first 18 of these 21 transactions were fairly equal purchases of the existing mutual funds and one to three shares of the extant stocks.<sup>18</sup> The final three trades (of the initial 21 trades) were purchases totaling 150 shares of GE and 10 shares of GILD.<sup>19</sup> Colletti did not collect commissions for any of the first 21 trades. After that, from May 2018 through February 7, 2019, Colletti executed 50 purchases and sales of various stocks, with multiple buys and sells of the same stock sometimes occurring only days apart.<sup>20</sup> For each of these trades, Colletti collected

---

<sup>10</sup> Tr. 203-04.

<sup>11</sup> Tr. 168-69, 196-97, 281-83.

<sup>12</sup> Tr. 202; CX-7. The forms associated with RM's opening of his IRA account were not introduced into evidence.

<sup>13</sup> Tr. 206-07; CX-7, at 16.

<sup>14</sup> CX-7, at 16; *see also* Tr. 288-90 (Colletti acknowledging RM's account was not a discretionary account). Pursuant to FINRA Rule 3260, a discretionary account is one for which a customer has provided written authorization to a member or registered representative to exercise discretionary power in that customer's account.

<sup>15</sup> CX-14, at 266-67. All dollar amounts are rounded to the nearest dollar.

<sup>16</sup> CX-14, at 266-67.

<sup>17</sup> CX-2, at 1. CX-2 is a composite chart reflecting the trades Colletti executed in RM's account as reflected in the account statements from January 2017 through December 2018 (CX-14) and the account statements from January to April 2019 (CX-15), the notes Colletti produced related to RM (CX-20, at 27-28), and the telephone records for Colletti's cell phone and office phone for the periods May 7, 2018, through April 6, 2019, and May 17, 2018, through April 20, 2019 (respectively, CX-9 and CX-10). Unless a specific reference to CX-9, CX-10, CX 14, CX-15, or CX-20 is warranted for clarity, all references to the trades, notes, and phone records will be to CX-2.

<sup>18</sup> CX-2, at 1.

<sup>19</sup> CX-2, at 1.

<sup>20</sup> CX-2, at 1-4.

commissions, which he set himself and for which he received a 90% payout.<sup>21</sup> Except for three mutual fund trades made in March 2018, all trades were marked as solicited.<sup>22</sup>

On February 7, 2019, RM informed Colletti that he wanted to close the account because he was retiring.<sup>23</sup> Thereafter, Colletti sold the assets in the account,<sup>24</sup> yet he executed another purchase and subsequent sale of 550 shares of Dynavax Technologies (trading symbol DVAX) on February 13 and 20, respectively, and these were marked as solicited trades.<sup>25</sup> RM emailed Colletti asking why Colletti continued to trade in his account after he directed him to close the account. Colletti replied that it was a “trade correction.”<sup>26</sup> RM never received any documentation from ICI about a “trade correction” in his account, and he never received a refund for the commissions or loss associated with these trades, which totaled \$460 and \$292, respectively.<sup>27</sup>

RM received all funds from his IRA account in April 2019.<sup>28</sup> RM’s account never exceeded \$10,000, yet the trading in his account resulted in total losses of \$5,417, while Colletti received \$5,081 in commissions.<sup>29</sup>

#### **D. RM Denied Authorizing Any Trades**

Because RM’s account was non-discretionary, Colletti needed RM’s authorization prior to every trade.<sup>30</sup> But RM testified that he did not authorize any of the trades that Colletti executed in his account and he did not realize that Colletti needed his authorization before trading in his account.<sup>31</sup> He testified that he had never even met Colletti before the hearing, and

---

<sup>21</sup> CX-3, at 3; Tr. 388, 446.

<sup>22</sup> CX-3 (reflecting that Colletti marked all trades from May 2018 through February 2019 as solicited); CX-14, at 119, 189, 233-34, 254-55 (reflecting that Colletti marked all but three of the first 21 trades solicited).

<sup>23</sup> Tr. 214, 217, 226.

<sup>24</sup> Colletti executed five sell trades after RM told him to close the account. CX-2, at 3-4. This activity is not alleged to be either unauthorized or excessive.

<sup>25</sup> CX-2, at 3; CX-3, at 2.

<sup>26</sup> Tr. 221-24; CX-21.

<sup>27</sup> Tr. 224.

<sup>28</sup> CX-15, at 5-6.

<sup>29</sup> CX-3, at 3.

<sup>30</sup> See *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at \*6 (July 1, 2008) (noting that an “associated person is ‘responsible for obtaining his [or her] customer’s consent prior to purchasing a security for the customer’s account’”) (citation omitted); *Justine Susan Fischer*, Exchange Act Release No. 40335, 1998 SEC LEXIS 1763, at \*16 (Aug. 19, 1998) (noting that before executing a trade a registered representative must have “prior approval for each transaction or a written authorization for discretionary trading”).

<sup>31</sup> Tr. 211-15, 223, 227, 235, 241.

he had not spoken to him until he informed Colletti in February 2019 that he wanted to close his account.<sup>32</sup>

RM acknowledged receiving most of his statements.<sup>33</sup> He testified that he saw that trading had occurred in his IRA account and asked others in the office if they had “a lot of trading” in their accounts, with some saying “yes” and some saying “no.”<sup>34</sup> RM testified that he never questioned Colletti about the trades because he was nearing retirement and he was “going to get out, roll it into an IRA, and move on.”<sup>35</sup>

#### **E. RM’s Supervisor Recalls Colletti Meeting with All Employees**

RM’s supervisor (“Supervisor”) at DSM testified that DSM had a retirement plan for its employees and about six employees participated, including RM.<sup>36</sup> With regard to opening the accounts, the Supervisor testified that “[i]t was basically 100 percent [Colletti], each individual would speak to [Colletti] and that was it. It was their personal account.”<sup>37</sup> He also recalled Colletti being at the office on three occasions and meeting with all the employees, although he did not specifically state that RM was present at the meetings.<sup>38</sup>

#### **F. Colletti Testified Inconsistently About Having Authorization to Execute 73 Trades in RM’s IRA Account**

There is no dispute that from March 9, 2017, through February 20, 2019, Colletti executed 73 trades in RM’s account.<sup>39</sup> In contrast to RM’s testimony, Colletti testified that he believed he had authorization to execute the trades in RM’s account.<sup>40</sup> His testimony on authorization, however, was often inconsistent and not supported by his telephone records<sup>41</sup> or

---

<sup>32</sup> Tr. 205, 212-13.

<sup>33</sup> Tr. 234, 243.

<sup>34</sup> Tr. 243.

<sup>35</sup> Tr. 242-43.

<sup>36</sup> Tr. 168, 170.

<sup>37</sup> Tr. 169.

<sup>38</sup> Tr. 181.

<sup>39</sup> *See, e.g.*, Tr. 312 (Colletti admitting that he bought additional shares of stock already in RM’s account), Tr. 380-81 (Colletti admitting he sold shares of Advanced Micro Devices (trading symbol AMD) and bought shares of GE), Tr. 403 (Colletti admitting he sold shares of Twitter (trading symbol TWTR)).

<sup>40</sup> *E.g.*, Tr. 298 (as to not having authorization for the trades on March 9, 2018, Colletti testifying that “I don’t think that is accurate.”), Tr. 343 (as to a trade made on June 28, 2018, Colletti testifying that “I believe” RM called and authorized the trade), Tr. 363 (as to a trade made on September 21, Colletti testifying that “I do believe” RM called and mentioned the stock that was purchased).

<sup>41</sup> Colletti’s phone records before May 2018 (covering the first 21 trades) were not introduced into evidence, but his cell and office phone records from May 2018 through April 2019 were admitted into evidence. CX-2, at 4.

notes he said he recorded of conversations he had with RM.<sup>42</sup> He even testified at times that he was exercising time and price discretion, although at the same time he expressed confusion as to exactly what constituted time and price discretion.<sup>43</sup> Moreover, because RM’s account was not discretionary, Colletti needed RM’s specific authorization before executing each trade, yet he never testified that he had authorization specific to any of the 73 trades—not the first 21 trades he viewed as reinvestments or the 52 trades alleged to be quantitatively unsuitable.

The Hearing Panel addresses below Colletti’s first 21 trades and his inconsistent testimony about those trades, lack of notes regarding these trades, and the fact that he never stated he had specific authorization to execute them. This is followed by a similar discussion about the next 50 trades, including discussion of Colletti’s confusion as to time and price discretion, his inconsistent testimony about the trades, and the lack of supporting notes and phone records. The Hearing Panel then addresses Colletti’s last two trades, which occurred after RM directed Colletti to close his account.

### **1. The First 21 Trades**

Colletti testified that on opening RM’s IRA account, he and RM discussed investing in mutual funds and some equities,<sup>44</sup> and RM’s objectives were the same when the account was opened and when it was transferred to ICI—he wanted growth and income.<sup>45</sup> Colletti initially viewed this as a “buy-and-hold account” and told RM that he would not be charging any commissions.<sup>46</sup>

Colletti referred to the first 21 trades as reinvestments and part of a “reinvestment program” that RM had agreed to when the account was opened.<sup>47</sup> At other times, although each of these trades were purchases paid for with cash from RM’s account, Colletti referred to them as “dividend reinvestments.”<sup>48</sup> As to the first 18 of these initial 21 trades, Colletti never testified that he had specific authorization to execute any of them. Indeed, other than discussing the

---

<sup>42</sup> CX-2.

<sup>43</sup> Tr. 348 (“Is that considered time and price discretion?”), Tr. 360 (“I would guess that is time and price discretion. If that is how it is defined.”), Tr. 367 (“I don’t know what exactly qualifies as time and price discretion.”), Tr. 376 (“If that is the definition of time and price discretion.”). Time and price discretion must be in writing, or it must be exercised by close of business on the day the discretion is authorized. *See* FINRA Rule 3260(d).

<sup>44</sup> Tr. 316.

<sup>45</sup> Tr. 291.

<sup>46</sup> Tr. 428. Enforcement does not contend that Colletti charged any commissions on the first 21 trades. *See* CX-3 and CX-4 (both reflecting commissions related only to the last 52 trades).

<sup>47</sup> Tr. 298-99. *See also* Tr. 428-29 (Colletti referring to initially reinvesting and “buying the same positions” in RM’s account).

<sup>48</sup> Tr. 235 (Colletti asking RM if he recalled authorizing “dividend reinvestment”), Tr. 443-44 (Colletti referring to the “first 20 something trades” as “dividend reinvestments”), Tr. 448 (Colletti stating, “there was dividend reinvestment going on in the account”), Tr. 451 (Colletti noting that he followed the same guidelines for “dividend reinvestment” set up before transferring RM’s account to ICI).

account with RM when it was opened, Colletti never testified that he had any conversations with RM prior to executing any of these trades. He had only two notes for the period covering the first 18 trades and neither note references any of these trades. One note states: “Spoke. Transfer received.” The other note states: “Updated.”<sup>49</sup>

Colletti executed the final three trades (of the first 21) in late March and April 2018.<sup>50</sup> He testified that he believed he met with RM on March 1, 2018, at the DSM office, and RM advised Colletti that he might retire the following year, wanted to be more aggressive, and wanted to buy more stocks for growth to increase the value of his account.<sup>51</sup> He recorded a note dated March 1, 2018, that states: “Spoke. May retire next year wants to be slightly more aggressive to try & increase value. Use stocks for growth.”<sup>52</sup> Colletti also testified that during this conversation he spoke about purchasing more shares of the stocks already held in the account (GE and GILD).<sup>53</sup> His March 1 note, however, does not reflect this part of the conversation and Colletti did not execute any trades on or about the date of this recorded note.<sup>54</sup>

On March 26, Colletti bought 100 shares of GE and ten shares of GILD in RM’s account. He bought another 50 shares of GE on April 20, 2018.<sup>55</sup> Colletti testified that he thought RM had called him on March 26 because there had been no activity in his account after the March 1 conversation.<sup>56</sup> Colletti said that he suggested to RM that he add to the positions already in the account.<sup>57</sup> He recorded a note on March 26, 2018, that states: “Spoke on GILD & GE added both to account.”<sup>58</sup> But Colletti never testified that he received specific authorization on March 26, or any date, to purchase shares of GE and GILD.<sup>59</sup> Similarly, he never testified that he received authorization on April 20 to purchase more shares of GE, and his notes do not indicate that he had any conversation with RM on that date or since the March 26 conversation Colletti believed he had with RM.<sup>60</sup> Colletti wrote a note dated April 25, 2018, that states: “Updated. Add to GE

---

<sup>49</sup> CX-2, at 1. Colletti testified that he tried to keep notes for every conversation he had with his customers and record the note that date, but he was not always successful, Tr. 301, and that the recorded date of his notes was “most likely a date [he] wrote a memorization of what happened,” as opposed to the date of a conversation he had with RM, Tr. 475-76.

<sup>50</sup> CX-2, at 1.

<sup>51</sup> Tr. 313-17.

<sup>52</sup> CX-2, at 1.

<sup>53</sup> Tr. 317-18.

<sup>54</sup> CX-2, at 1.

<sup>55</sup> Tr. 320-21; CX-2, at 1.

<sup>56</sup> Tr. 320-21.

<sup>57</sup> Tr. 320-21.

<sup>58</sup> CX-2, at 1.

<sup>59</sup> Tr. 319-21.

<sup>60</sup> Tr. 321-22; CX-2, at 1.

position ‘OK,’”<sup>61</sup> but other than acknowledging it at the hearing, he provided no further testimony about that note.<sup>62</sup>

## **2. The Next 50 Trades**

Colletti’s next 50 trades in RM’s IRA account were more aggressive and occurred from May 2018 through February 2019. He testified that he executed them in furtherance of RM’s instructions to make money or increase the value of the account,<sup>63</sup> limit losses to less than ten percent,<sup>64</sup> and take profits.<sup>65</sup> His cell phone records for this period, however, do not reflect any calls to or from RM’s phone until RM called Colletti to tell him to close his (RM’s) account.<sup>66</sup> They reflect nine calls made to DSM’s general office phone,<sup>67</sup> but only one of these office calls corresponds directly with the date of a trade in RM’s account, and the time of that call is over 30 minutes after Colletti placed the trade.<sup>68</sup> Colletti’s office phone records for this period reflect no calls to RM’s phone and only one call to DSM’s office phone.<sup>69</sup> He had only 19 notes for this period, and they are cryptic at best and not supported by any telephone records.<sup>70</sup> Colletti never testified at the hearing that he had specific authorization to execute any of these trades. Some specific trades and Colletti’s assertions of authorization, or lack thereof, follow.

### **a. Trades in May 2018**

Colletti recorded a note on May 16, 2018, that states: “Use cash in account to buy Micron [trading symbol MU] for more growth.”<sup>71</sup> There is no mention of GE in his note, yet he sold GE on May 16 to raise the cash necessary to purchase MU, which he did not do until the following day, May 17.<sup>72</sup> He then sold MU on May 30 and repurchased it on May 31, without a recorded note on or near these dates.<sup>73</sup> Colletti never stated he had specific authorization to buy MU on

---

<sup>61</sup> CX-2, at 1.

<sup>62</sup> Tr. 322-23.

<sup>63</sup> Tr. 348, 314-15, 449-50.

<sup>64</sup> Tr. 349, 359, 387, 371.

<sup>65</sup> Tr. 313, 315, 332, 348, 410, 451.

<sup>66</sup> Tr. 212; CX-2.

<sup>67</sup> CX-2.

<sup>68</sup> Tr. 354-56 (comparing the time of an office call (CX-3, at 2) to the sale of Alibaba (trading symbol BABA)).

<sup>69</sup> CX-2.

<sup>70</sup> CX-2.

<sup>71</sup> CX-2, at 1.

<sup>72</sup> CX-2, at 1; Tr. 331.

<sup>73</sup> CX-2, at 1.



May 17, or to execute the trades on May 30 and 31.<sup>74</sup> Rather, he testified that he understood the trades to be in accord with RM's instructions to make money.<sup>75</sup>

#### **b. Trades in June 2018**

On June 28, 2018, Colletti sold all the shares of MU that were in RM's account.<sup>76</sup> The next day he sold all shares of GILD, then bought shares of Caterpillar stock (trading symbol CAT).<sup>77</sup> Colletti's note for June 28 states: "Spoke on Micron [MU]. Sell position & buy some Catepillar [sic] [CAT]."<sup>78</sup> Colletti testified that he believed RM called him on June 28 because MU was down and—per his discussion with RM on March 1, 2018—RM wanted to avoid losses over ten percent.<sup>79</sup> Colletti testified that he [Colletti] then recommended selling MU because it was down about ten percent.<sup>80</sup> But his telephone records do not reflect a call on or near June 28,<sup>81</sup> and Colletti never testified that RM agreed to a sales price or actually authorized the sale of MU.<sup>82</sup> Although Colletti testified that he bought CAT based on the conversation he said he had with RM on June 28,<sup>83</sup> he did not purchase CAT until June 29, and his notes do not reflect, and he did not testify, that RM agreed to a purchase price or number of shares to purchase.<sup>84</sup> As to the sale of GILD stock, there is no corresponding note or phone record; Colletti could not even recall if he discussed the sale of GILD with RM.<sup>85</sup>

#### **c. Trades in August, September, and One in October 2018**

On August 21, 2018, Colletti sold all of RM's CAT shares and bought AMD shares the same day, then sold all of the AMD shares on August 24, 2018.<sup>86</sup> His August 21 note states: "Spoke on AMD. Add to account using available monies."<sup>87</sup> But there is no record of a phone call on or about August 21, and Colletti did not use "available monies" to purchase AMD stock;

---

<sup>74</sup> Tr. 332-39.

<sup>75</sup> Tr. 332.

<sup>76</sup> CX-2, at 1.

<sup>77</sup> CX-2, at 1.

<sup>78</sup> CX-2, at 1.

<sup>79</sup> Tr. 342.

<sup>80</sup> Tr. 342; CX-3, at 2.

<sup>81</sup> CX-2 (showing the first recorded call for the period May 2018 through April 2019 was a call made to the DSM office phone in September 2018).

<sup>82</sup> Tr. 342-43.

<sup>83</sup> Tr. 344-45.

<sup>84</sup> Tr. 346-47; CX-2, at 1.

<sup>85</sup> Tr. 345.

<sup>86</sup> CX-2, at 2.

<sup>87</sup> CX-2, at 2.

he used the proceeds of his sale of CAT stock to fund the purchase of AMD stock.<sup>88</sup> Colletti also never stated that he had RM's authorization to execute these trades. Rather, he testified that on August 21, 2018, RM told him "when we make money, you know, take the money, so ..." at which point Enforcement asked Colletti if he was exercising time and price discretion.<sup>89</sup> Colletti expressed confusion as to the meaning of time and price discretion<sup>90</sup> and testified that he "was simply following what [RM] told me ... if we are able to make a profit, do what is necessary to make the profit."<sup>91</sup>

On September 5, 2018, Colletti recorded a note stating: "Spoke on Alibaba [BABA] Sell Advanced Micro [AMD] & Buy shares."<sup>92</sup> But he did not sell AMD on September 5; indeed, as noted above, Colletti had already sold all AMD shares on August 24, 2018. Colletti bought BABA shares on September 5 and there was a phone call made from Colletti to the DSM office.<sup>93</sup> This call, however, was made more than 30 minutes after Colletti had placed the trade.<sup>94</sup> Other than acknowledging his note, the call, the trade, and the discrepancy, Colletti did not provide further testimony on this trade. He never said RM authorized him to make the trade.

On September 17, 2018, Colletti recorded another note, stating: "Add to Micron [MU] position OK," and he added shares of MU that day.<sup>95</sup> Colletti suggested that RM called him that day, but there is no record of a phone call to or from RM on either Colletti's cell or office phone records.<sup>96</sup> Although his note does not mention BABA, on September 17 he also sold the BABA shares he had purchased on September 5.<sup>97</sup> A few days later, on September 21, Colletti sold the MU shares he bought on September 17. Yet, there is no note or record of a phone call on September 21, and Colletti never said he had specific authorization to sell the MU shares.<sup>98</sup> Rather, he said he was following RM's instruction to make money and avoid losses.<sup>99</sup> In

---

<sup>88</sup> Tr. 346-47.

<sup>89</sup> Tr. 348.

<sup>90</sup> Tr. 348 ("Is that considered time and price discretion?").

<sup>91</sup> Tr. 348-49.

<sup>92</sup> CX-2, at 2.

<sup>93</sup> CX-2, at 2.

<sup>94</sup> *See supra* note 68.

<sup>95</sup> CX-2, at 2. Although the note indicates an "ok" to add to the MU position, there were no MU shares in RM's account on that date. Colletti explained that his note should have read: "add Micron [MU] position." Tr. 357.

<sup>96</sup> Tr. 358-59; CX-2, at 2.

<sup>97</sup> Tr. 357; CX-2, at 2.

<sup>98</sup> CX-2, at 2.

<sup>99</sup> Tr. 360.

response to questioning if he was exercising time and price discretion, he stated: “I would guess that is time and price discretion. If that is how it is defined.”<sup>100</sup>

On September 21, the same day Colletti sold the MU shares in RM’s account, he purchased shares of Transition Corporation (trading symbol RIG), which he later sold on October 17, 2018, another date for which he had no note and for which there is no record of a phone call.<sup>101</sup> He testified that he believed that RM raised the idea of adding RIG to his account, although he did not state when this may have happened.<sup>102</sup> When he was asked why he marked the trade as solicited, he stated that it was probably an oversight and done out of habit because most of his trades are solicited and marked that way.<sup>103</sup> When it was noted that there was no phone call or note on or about October 17, he testified that he sold the RIG shares to try and avoid losses, consistent with the general discussion he had with RM about avoiding losses.<sup>104</sup> He was then asked if he was exercising time and price discretion, to which he replied: “I don’t know what exactly qualifies as time and price discretion.”<sup>105</sup>

#### **d. The Rest of the 50 Trades**

Regarding authorization, Colletti’s testimony about the rest of the 50 trades suffers from the same deficiencies as those addressed above. The telephone records do not support his assertions that he had authorization to place these trades or that he had conversations with RM as reflected in his notes.<sup>106</sup> His notes are vague and not supportive of his having received specific authorization from RM to place these trades.<sup>107</sup> And he never testified that he had specific authorization from RM to execute any of these trades. He repeated his earlier assertions of possibly exercising time and price discretion, which reflects confusion on his part as to the scope of such discretion.<sup>108</sup> Indeed, in response to a question from the Hearing Panel, Colletti testified that he believed he had time and price discretion as long as he spoke to RM about a trade, and that this enabled him to place a trade up to a week later.<sup>109</sup>

---

<sup>100</sup> Tr. 360.

<sup>101</sup> CX-2, at 2.

<sup>102</sup> Tr. 363-64.

<sup>103</sup> Tr. 364.

<sup>104</sup> Tr. 366-67.

<sup>105</sup> Tr. 367.

<sup>106</sup> CX-2.

<sup>107</sup> CX-2.

<sup>108</sup> *See, e.g.*, Tr. 376 (With regard to the sale of Dropbox (trading symbol DBX) on November 14, 2018, and in response to whether he had exercised time and price discretion, Colletti stated: “If that is the definition of time and price discretion.”).

<sup>109</sup> Tr. 462-64.

### 3. The Last Two Trades

Colletti executed the last two trades in RM's IRA account after RM told him to close the account.<sup>110</sup> He purchased 550 shares of DVAX on February 13, 2019, and sold them on February 20, 2019, for a loss of \$292, after charging commissions of \$460.<sup>111</sup> He testified that he executed the purchase in error and the sale was a trade correction,<sup>112</sup> although each trade is marked as solicited.<sup>113</sup> He also did not know if the firm had refunded RM for the commissions and losses associated with these trades, and he did not follow up with ICI or check RM's account to verify if RM received any refunds.<sup>114</sup> He even said he did not know if he received any commissions for these trades.<sup>115</sup>

#### G. Credibility Assessment

The testimony of RM and Colletti is directly conflicting with regard to whether they met or conversed with each other prior to RM telling Colletti to close his account. Although the initial account documents and phone records before May 2018 (covering the first 21 trades) were not introduced into evidence, the Supervisor testified that the IRA accounts were set up by the employees individually with Colletti. The Supervisor also recalled Colletti meeting with all of the employees, although he never specifically stated that RM was at such a meeting or when the meetings occurred. The Hearing Panel finds that RM and Colletti likely crossed paths and had some discussions regarding RM's IRA account.

On the other hand, the Hearing Panel finds that the evidence regarding authorization of the 73 trades weighs in favor of RM never authorizing the trades. RM was firm in his denial of having granted authorization to trade while Colletti thought or believed that he had authorization but never actually stated that he had RM's authorization to execute any of the specific trades. Colletti's testimony about authorization was also inconsistent and confusing, and his assertions of having RM's trading authorization are not supported by his telephone records or his notes. His testimony regarding time and price discretion also reflects serious confusion and misunderstanding on his part as to the proper scope of time and price discretion.<sup>116</sup> With regard to the last two trades, Colletti marked them as solicited and the Hearing Panel finds not credible Colletti's testimony that the purchase was made in error or that the sale was a trade correction. This finding is also supported by the facts that RM was never refunded the commissions he paid,

---

<sup>110</sup> Tr. 422; CX-2, at 3-4.

<sup>111</sup> Tr. 423-24, 445.

<sup>112</sup> CX-3, at 2.

<sup>113</sup> Tr. 423-24, 445; CX-3, at 2.

<sup>114</sup> Tr. 424-25.

<sup>115</sup> Tr. 445.

<sup>116</sup> See *supra* note 43.

and the firm never made him whole from his losses. The Hearing Panel also finds not credible Colletti's testimony that he did not know if he received any commissions related to these trades.

Thus, weighing the totality of the evidence, the Hearing Panel finds that RM was more credible than Colletti on whether any of the 73 trades were authorized and that the preponderance of the evidence is that Colletti never obtained RM's authorization to execute any of the 73 trades.

### **III. Conclusions of Law**

#### **A. Colletti Engaged in Unauthorized Trading as Alleged in Cause One**

The first cause of action alleges that, without obtaining RM's authorization, Colletti executed 73 trades in RM's account between March 2017 and February 2019, in violation of FINRA Rule 2010. FINRA Rule 2010 requires an associated person to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of his or her business. Unauthorized trading is a violation of FINRA Rule 2010.<sup>117</sup>

Colletti needed to obtain RM's specific authorization before executing each trade.<sup>118</sup> As noted above, the Hearing Panel finds that Colletti did not obtain authorization for any of the 73 trades he executed in RM's account. Colletti notes that RM never questioned these unauthorized transactions, but this is not a defense.<sup>119</sup> To the extent Colletti might be implying that the failure to complain constitutes ratification, it is well settled that ratification is not authorization and not a defense to the charge of unauthorized trading.<sup>120</sup> Thus, as to all 73 trades, the Hearing Panel finds that Colletti engaged in unauthorized trading in RM's account in violation of FINRA Rule 2010.

#### **B. Colletti Engaged in Unsuitable Trading as Alleged in Cause Two**

The second cause of action alleges that Colletti engaged in quantitatively unsuitable trading in RM's account by executing 52 trades during the nine-month period from May 2018 through February 2019, in violation of FINRA Rules 2111 and 2010. A violation of FINRA Rule 2111 for unsuitable trading is a violation of FINRA Rule 2010.<sup>121</sup>

---

<sup>117</sup> *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at \*22-23 (July 2, 2013), *aff'd sub nom. Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014).

<sup>118</sup> *Sears*, 2008 SEC LEXIS 1521, at \*6; *Fischer*, 1998 SEC LEXIS 1763, at \*16; *see also* FINRA Rule 3260.

<sup>119</sup> *Fischer*, 1998 SEC LEXIS 1763, at \*16.

<sup>120</sup> *Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 SEC LEXIS 994, at \*58 (Feb. 1, 2010).

<sup>121</sup> *Dep't of Enforcement v. Taddonio*, Nos. 2015044823501 & 2015044823502, 2019 FINRA Discip. LEXIS 3, at \*40 n.24 (NAC Jan. 29, 2019), *aff'd*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980 (Apr. 19, 2023), *petition for review filed*, No. 23-6653 (2d Cir. June 16, 2023).

Quantitative suitability is one of three suitability obligations established in FINRA Rule 2111; the other two are: reasonable-basis suitability and customer-specific suitability.<sup>122</sup> Pursuant to FINRA Rule 2111,

[q]uantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.<sup>123</sup>

The Hearing Panel addresses below the two elements of quantitative suitability: control and excessive trading that is not suitable in light of a customer's—here RM's—profile.

### **1. Colletti Had De Facto Control Over RM's Account**

The first element of quantitatively unsuitable trading is control over an account by a member or associated person.<sup>124</sup> Control over an account “is satisfied if the [member or associated person] has either discretionary authority or de facto control over the account.”<sup>125</sup> De facto control exists when a respondent is not sophisticated in securities trading and he or she relies on the recommendations of the member or authorized representative.<sup>126</sup> Moreover, unauthorized trading is “clear evidence of [de facto] control for purposes of an excessive trading claim.”<sup>127</sup> Here, RM's account was not discretionary, and the Hearing Panel found that Colletti executed all 73 trades without RM's authorization. Thus, the Hearing Panel finds that Colletti had de facto control over RM's account.

### **2. Colletti's Trading Activity in RM's Account was Excessive and Unsuitable**

The second element of quantitatively unsuitable trading “is excessive trading activity inconsistent with the customer's financial circumstances and investment objectives.”<sup>128</sup> “[T]here is no single test for what constitutes excessive activity, [but] factors such as turnover rate, cost-to-equity ratio, and use of ‘in and out’ trading in an account may provide a basis for a finding of

---

<sup>122</sup> FINRA Rule 2111(a); Supplementary Material 2111.05 (Components of Suitability Obligations).

<sup>123</sup> Supplementary Material 2111.05(c).

<sup>124</sup> *Dep't of Enforcement v. Medeck*, No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at \*34 (NAC July 30, 2009); *see also Edward Beyn*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980, at \*7 (Apr. 19, 2023).

<sup>125</sup> *Medeck*, 2009 FINRA Discip. LEXIS 7, at \*34; *see also Beyn*, 2023 SEC LEXIS 980, at \*7 (“Control over an account may be formal or de facto.”).

<sup>126</sup> *Beyn*, 2023 SEC LEXIS 980, at \*12.

<sup>127</sup> *Dep't of Enforcement v. Ul Haq*, No. ELI2004026701, 2009 FINRA Discip. LEXIS 3, at \*22-23 (NAC Apr. 6, 2009) (citing *Olde Disc. Corp.*, Exchange Act Release No. 40423, 1998 SEC LEXIS 1914, at \*52 (Sept. 10, 1998)).

<sup>128</sup> *Medeck*, 2009 FINRA Discip. LEXIS 7, at \*34; *see also Beyn*, 2023 SEC LEXIS 980, at \*7.

excessive trading.”<sup>129</sup> As addressed below, Colletti’s trading in RM’s account meets all three indicia of excessive trading, and his trading activity was inconsistent with RM’s investment profile.

“[T]he turnover rate is the number of times in one year that a portfolio of securities is exchanged for another portfolio”<sup>130</sup> and is calculated “by dividing the aggregate amount of purchases in an account by the average monthly investment.”<sup>131</sup> A turnover rate of six “generally indicates that excessive trading has occurred.”<sup>132</sup> During the nine months at issue, RM’s account had a turnover rate of 10.31, annualized to 12.37.<sup>133</sup>

“The cost-to-equity ratio is the amount an account would have to appreciate annually to break even given the costs of trading”<sup>134</sup> and is obtained “by dividing total expenses by average monthly equity.”<sup>135</sup> A cost-to-equity ratio in excess of 20 percent “generally indicates that excessive trading has occurred.”<sup>136</sup> During the nine months at issue, RM’s account had a cost-to-equity ratio of 72.14 percent, annualized to 86.57 percent.<sup>137</sup>

“In-and-out trading is the sale of all or part of the securities in an account and reinvestment of the sales proceeds in other securities, followed by the sale of the newly acquired securities.”<sup>138</sup> Multiple in-and-out trades effected in a short period of time are also a “hallmark of excessive trading.”<sup>139</sup> Here, the record is replete with instances of in-and-out trading.

For example, on May 17, 2018, Colletti bought 40 shares of MU in RM’s account.<sup>140</sup> He sold those shares less than two weeks later, on May 30, for a profit of \$113.<sup>141</sup> One day later, on May 31, Colletti bought 45 more shares of MU and sold them on June 28, for a loss of \$410.<sup>142</sup>

---

<sup>129</sup> *Medeck*, 2009 FINRA Discip. LEXIS 7, at \*34 (citations omitted); *see also* Supplementary Material 2111.05(c).

<sup>130</sup> *Beyn*, 2023 SEC LEXIS 980, at \*7.

<sup>131</sup> *Medeck*, 2009 FINRA Discip. LEXIS 7, at \*34 n.18 (citation omitted).

<sup>132</sup> *Beyn*, 2023 SEC LEXIS 980, at \*7 (citation omitted).

<sup>133</sup> CX-5.

<sup>134</sup> *Beyn*, 2023 SEC LEXIS 980, at \*7.

<sup>135</sup> *Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at \*18 (May 29, 2015) (citations omitted).

<sup>136</sup> *Beyn*, 2023 SEC LEXIS 980, at \*7.

<sup>137</sup> CX-5.

<sup>138</sup> *Dep’t of Enforcement v. Newport Coast Sec., Inc.*, No. 2012030564701, 2018 FINRA Discip. LEXIS 14, at \*99 n.42 (NAC May 23, 2018), *aff’d*, Exchange Act Release No. 88548, 2020 SEC LEXIS 911 (Apr. 3, 2020) (citation omitted).

<sup>139</sup> *Murphy*, 2013 SEC LEXIS 1933, at \*38 (citation omitted).

<sup>140</sup> Tr. 331; CX-2, at 1.

<sup>141</sup> Tr. 331-32, 334-35; CX-2, at 1; CX-3, at 2.

<sup>142</sup> Tr. 337-38, 340-41; CX-2, at 1; CX-3, at 2.

Colletti's in-and-out trading in RM's account negated the small profit from the first sale and generated total commissions of \$265.<sup>143</sup>

Other examples include the purchase of 45 shares of Square (trading symbol SQ) on November 2, 2018, which Colletti sold five days later.<sup>144</sup> That same day, November 7, Colletti bought 140 shares of DBX and sold them on November 14; and that same day, November 14, he bought 160 shares of AMD, which he sold five days later, on November 19.<sup>145</sup> On that same day, November 19, Colletti also bought 350 shares of GE, only to sell them seven days later, on November 26.<sup>146</sup> These trades resulted in a collective loss of \$1,302 with total commissions of \$831.<sup>147</sup>

The rest of the 52 trades had similar in-and-out trading. Colletti engaged in a pattern in RM's account of holding stock for short periods of time, selling at a loss or small profit, and charging significant commissions.<sup>148</sup> All of which are hallmarks of excessive trading.

Colletti's excessive trading activity was also inconsistent with RM's financial circumstances and investment objectives. RM was in his 60s, nearing retirement, and his account was an IRA account.<sup>149</sup> He had a moderate risk tolerance and investment objectives of income and growth. RM's account never exceeded \$10,000, yet Colletti's excessive trading resulted in relatively significant losses of \$5,417, while Colletti received \$5,081 in commissions.

Thus, the Hearing Panel finds that Colletti's trading in RM's account from May 16, 2018, through February 20, 2019, was quantitatively unsuitable for RM in violation of FINRA Rules 2111 and 2110.

#### **IV. Sanctions**

##### **A. FINRA's Sanction Guidelines**

FINRA's Sanction Guidelines ("Guidelines") state that the "purpose of FINRA's disciplinary process is to protect the investing public, support and improve the overall business standards in the securities industry, . . . decrease the likelihood of recurrence of misconduct by

---

<sup>143</sup> CX-3, at 2 (showing roundtrip commissions of \$128 and \$137).

<sup>144</sup> Tr. 335-36; CX-2, at 1.

<sup>145</sup> Tr. 377-79; CX-2.

<sup>146</sup> Tr. 380-81; CX-2, at 2.

<sup>147</sup> Tr. 375-76, 80, 380-82; CX-3, at 1-2 (reflecting losses of \$8, \$463, \$329, and \$502, for the four trades, with commissions of \$195, \$195, \$206, and \$235).

<sup>148</sup> CX-2; CX-3; CX-4.

<sup>149</sup> *Beyn*, 2023 SEC LEXIS 980, at \*7 (noting that a customer's age and retirement status are factors for consideration in determining whether the level of trading is inconsistent with a customer's objectives and financial situation).



the disciplined respondent[,] . . . and deter others from engaging in similar misconduct.”<sup>150</sup> The Guidelines also instruct that any sanctions be tailored to the misconduct at issue.<sup>151</sup> One of the general principles for consideration in all sanction determinations is the aggregation of similar violations, such that when a violation is attributable to a common underlying cause, a unitary sanction may be proper.<sup>152</sup>

The Guidelines for unauthorized trading recommend a fine of \$5,000 to \$30,000, along with a suspension in any and all capacities of one month to two years. Where aggravating factors predominate, a bar should strongly be considered.<sup>153</sup> The Principal Considerations specific to unauthorized trading include: (1) whether the respondent reasonably misunderstood his authority or the terms of the customer’s orders; (2) the number of customers affected and the magnitude of the customers’ losses; (3) the number and dollar value of unauthorized transactions; (4) whether the respondent attempted to conceal the trading or to evade regulatory investigative efforts; and (5) whether the unauthorized trades were made in furtherance of or in connection with another violation.<sup>154</sup>

The Guidelines for excessive trading recommend a fine of \$5,000 to \$50,000, as well as a suspension in any or all capacities for a period of one month to two years.<sup>155</sup> Where aggravating factors predominate, a suspension of two years or a bar should be considered, with a bar strongly considered where the trading is reckless or intentional amounting to churning.<sup>156</sup> For Principal Considerations specific to excessive trading, the Guidelines reference the Principal Considerations applicable in all cases.<sup>157</sup>

## **B. The Parties’ Arguments About Sanctions**

The Hearing Panel is not bound by the parties’ arguments but finds them relevant to its sanctions assessment. Citing the Guidelines, numerous aggravating factors, and its view of the inconsistencies in Colletti’s testimony, Enforcement argued for a unitary sanction of a 12-month suspension, a \$15,000 fine, and restitution of \$5,417.<sup>158</sup> Colletti argued that a 12-month suspension and \$15,000 fine are too high because (1) he thought he was acting within the scope

---

<sup>150</sup> Guidelines at 2 (Sept. 2022) (General Principle No. 1), <http://www.finra.org/sanctionguidelines>.

<sup>151</sup> *Id.* at 3 (General Principle No. 3).

<sup>152</sup> *Id.* at 4 (General Principle No. 4); *see also Dep’t of Enforcement v. Respondent Firm I*, No. C8A990071, 2001 NASD Discip. LEXIS 6, at \*30-31 (NAC Apr. 19, 2001) (approving a unitary sanction for violations with a common underlying cause).

<sup>153</sup> Guidelines at 122.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 112.

<sup>156</sup> *Id.* Churning is excessive trading committed with scienter, which may be shown by proof that the broker acted recklessly. *Beyn*, 2023 SEC LEXIS 980, at \*7-8.

<sup>157</sup> Guidelines at 112.

<sup>158</sup> Tr. 519-25; *see also* Department of Enforcement’s Pre-Hearing Brief 18-22 (July 24, 2023).

of what RM wanted; (2) he thought the trades were authorized; and (3) he tried to do his best for RM.<sup>159</sup> He recognizes that the costs associated with his trading in RM's account were high in the aggregate and he agrees that restitution is warranted.<sup>160</sup> In his closing remarks at the hearing, Colletti also argued for the first time that his limited financial situation—caused by his wife's medical issues—should be a factor for consideration.<sup>161</sup>

### C. The Hearing Panel's Conclusions

The Hearing Panel finds that Colletti's unauthorized and excessive trading in RM's account are intertwined and resulted from a common underlying cause, i.e., Colletti's significant misunderstanding of securities rules and policies on authorization, dividend reinvestment, and time and price discretion. Indeed, had Colletti not traded without authorization, he likely would not have engaged in excessive and unsuitable trading because RM would not have authorized much of the trading. Thus, the Hearing Panel finds that a unitary sanction is appropriate in this case.

The Hearing Panel finds no mitigating factors but does find several aggravating factors. First, Colletti is a recidivist.<sup>162</sup> In January 2018, Colletti consented to FINRA findings that he had violated NASD Rule 3010 and FINRA Rule 2010 by failing to reasonably supervise cold callers in his branch office. He agreed to sanctions of a \$7,500 fine and a three-month suspension from association with any FINRA member firm in a principal capacity. He completed his suspension on May 19, 2018.<sup>163</sup>

Second, Colletti engaged in unauthorized trading for almost two-years.<sup>164</sup> Third, total losses for all trades, including commissions, were over \$5,000, which is a significant amount for an account valued well under \$10,000.<sup>165</sup> Fourth, although RM was not yet 65 at the time of the unauthorized trading, the trading was in his retirement account, and most of it was unsuitable trading that resulted in losses to RM while providing financial gain to Colletti.<sup>166</sup> Finally, Colletti failed to accept responsibility for his unauthorized or excessive trading.<sup>167</sup>

---

<sup>159</sup> Tr. 534-39.

<sup>160</sup> Tr. 529-30, 534, 537.

<sup>161</sup> Tr. 535-36.

<sup>162</sup> Guidelines at 7 (Principal Consideration No. 1) (disciplinary sanctions should be more severe for recidivists).

<sup>163</sup> Tr. 280; CX-1, at 21-25.

<sup>164</sup> Guidelines at 7 (Principal Consideration No. 9) (whether the respondent engaged in the misconduct over an extended period of time).

<sup>165</sup> *Id.* at 8 (Principal Consideration No. 16) (whether there was potential for monetary gain); (Principal Consideration No. 17) (number, size, and character of the transactions); *id.* at 122 (Specific Consideration No. 3) (number and dollar value of unauthorized transactions).

<sup>166</sup> *Id.* at 8 (Principal Consideration No. 16) (whether there was potential for monetary gain).

<sup>167</sup> *Id.* at 7 (Principal Consideration No. 2) (whether respondent has accepted responsibility).

Although not mitigating, the Hearing Panel notes that the unauthorized and excessive trading is limited to RM.<sup>168</sup> And the first 21 trades were reinvestments in the mutual funds and stocks already in RM's account when it was transferred, for which Colletti did not take any commissions.<sup>169</sup> Although Colletti did not accept responsibility for his excessive trading or admit that he did not have RM's authorization, he expressed surprise when confronted with the total costs associated with the trading in RM's account.<sup>170</sup> He also agreed that restitution of some amount is warranted.<sup>171</sup>

While there are multiple aggravating factors, the Hearing Panel finds that Colletti's continued trading poses a risk to investors largely because of his significant misunderstanding of securities rules and policies on authorization, such as time and price discretion, and suitability. He also fails to appreciate the cumulative costs that excessive trading can have on a customer's account. The Hearing Panel finds that Colletti should have to demonstrate that he is qualified to handle trades for customers before he seeks to do so in the future. Accordingly, the Hearing Panel requires Colletti to requalify as a General Securities Representative before he re-enters the securities industry.<sup>172</sup>

The Hearing Panel also finds that, because Colletti's actions proximately caused RM's losses, restitution is warranted in the full amount of RM's losses—\$5,417.<sup>173</sup> As to Colletti's financial situation, he raised this in the first instance during his closing argument and he never presented any documentation to support his assertions that his wife's medical issues were causing his family financial distress. As such, the Hearing Panel does not find his assertions of financial distress to warrant further consideration.<sup>174</sup>

While restitution will make RM whole again, and requalifying will serve to protect the investing public, the Hearing Panel finds that an eight-month suspension and \$10,000 fine are also appropriate and necessary (1) to give Colletti sufficient time to learn and understand what

---

<sup>168</sup> *Id.* at 122 (Specific Consideration No. 2) (number of customers affected).

<sup>169</sup> *Id.* at 8 (Principal Consideration No. 16) (whether there was potential for monetary gain); (Principal Consideration No. 17) (number, size, and character of the transactions); *Id.* at 122 (Specific Consideration No. 3) (number and dollar value of unauthorized transactions).

<sup>170</sup> Tr. 384, 400-02, 452.

<sup>171</sup> Tr. 528-30, 534, 537. Although Colletti agreed to restitution, he did not do so prior to detection of his excessive trading; thus, it is not a mitigating factor. *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at \*28 (Sept. 3, 2015).

<sup>172</sup> *Id.* at 6 (General Principle No. 8) (stating that “[t]he remedial purpose of disciplinary sanctions may be served by requiring an individual respondent to requalify by examination as a condition of continued employment in the securities industry.”).

<sup>173</sup> *Id.* at 5 (General Principle No. 5) (“Where appropriate to remediate misconduct, Adjudicators should order restitution.”). *See also Dep’t of Enforcement v. Reyes*, No. 2016051493704, 2021 FINRA Discip. LEXIS 29, at \*71 (NAC Oct. 7, 2021) (approving restitution for quantifiable losses).

<sup>174</sup> Guidelines at 6 (General Principle No. 9) (respondent has the burden of presenting evidence of an inability to pay).

constitutes proper authorization to execute a trade; and (2) to decrease the likelihood of misconduct recurrence by Colletti, as well as to deter others from engaging in similar misconduct.

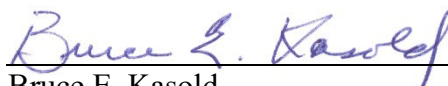
## V. Order

For executing unauthorized trades and trading excessively in Customer RM's account, in violation of FINRA Rules 2111 and 2010, Respondent Michael Ciro Colletti is suspended from associating with any FINRA member firm in any capacity for eight months and fined \$10,000.

Colletti is also ordered to pay RM<sup>175</sup> restitution in the amount of \$5,417 plus interest accrued at the rate set in 26 U.S.C. Section 6621(a)(2) from February 20, 2019, the date Colletti executed the last trade in RM's account, until paid in full.<sup>176</sup> If RM cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the state of the customer's last known address. Satisfactory proof of payment of the restitution shall be provided to Enforcement no later than 60 days after the date this decision becomes final.

Colletti is further ordered to requalify as a General Securities Representative before he re-enters the securities industry. Finally, Colletti is assessed hearing costs in the amount of \$5,902.66, which includes an administrative fee of \$750.

If this decision becomes FINRA's final disciplinary action, Colletti's suspension will begin with the opening of business on April 15, 2024, and end at the close of business on December 16, 2024. The fine and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final action.<sup>177</sup>

  
\_\_\_\_\_  
Bruce E. Kasold  
Hearing Officer  
For the Hearing Panel

Copies to:

Michael Ciro Colletti (via overnight courier, first-class mail, and email)  
John Sheehan, Esq. (via email)  
John Luburic, Esq. (via email)  
Richard Cella, Esq. (via email)  
Jennifer L. Crawford, Esq. (via email)

---

<sup>175</sup> RM is identified in the Addendum to this decision, which is served only on the parties.

<sup>176</sup> The interest rate set in 26 U.S.C. Section 6621(a)(2) is used by the U.S. Internal Revenue Service to determine interest due on underpaid taxes and is adjusted quarterly. *See* Guidelines at 10.

<sup>177</sup> The Hearing Panel has considered and rejects without discussion all other arguments of the parties.