BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Jeffrey B. Pierce Waltham, MA, Respondent.	DECISION Complaint No. 2007010902501 Dated: October 1, 2013

Registered representative falsified firm records, concealed seven annuity switches from member firm, and intentionally misrepresented adverse tax consequences of six annuity switches to member firm. Held, findings and sanctions modified.

Appearances

For the Complainant: Stuart P. Feldman, Esq., Michael J. Newman, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Michael B. Cosentino, Esq., Susan D. Novins, Esq., Seegel Lipshutz & Wilchins, LLP

Decision

Pursuant to FINRA Rule 9311, Jeffrey B. Pierce ("Pierce") appeals, and FINRA's Department of Enforcement ("Enforcement") cross appeals, a FINRA Hearing Panel's January 30, 2012 decision fining and suspending Pierce for concealing from his firm annuity switches in customer accounts, providing false documentation to his firm regarding annuity transactions, willfully and fraudulently failing to disclose material facts to annuity customers, and intentionally misrepresenting material information to his member firm. The Hearing Panel held that Pierce's misconduct violated NASD Rules 2110, 2120, and 3110; NASD Interpretive Material ("IM") 2310-2; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange

Act"); and Exchange Act Rule 10b-5.[1] After a thorough review of the record, we affirm the findings that Pierce concealed seven annuity switches from his member firm and, in so doing, falsified firm records in connection with the seven switches. We also affirm findings that Pierce intentionally misrepresented facts regarding the adverse tax consequences suffered by his clients to his member firm during its internal review. We dismiss for insufficiency of evidence the findings of fraudulent omissions and the allegations that Pierce recommended unsuitable transactions.

The Hearing Panel did not apportion the sanctions based upon its various findings. Instead, the Hearing Panel imposed a unitary sanction consisting of a $25,000 fine and one-year suspension. The Hearing Panel also imposed costs of $10,696. We modify these sanctions. For Pierce's concealment from his firm of seven annuity switches and related falsifying of firm records, we impose a $15,000 fine and six-month suspension. For Pierce's intentional misrepresentations to his firm during its internal review of his sales, we fine Pierce an additional $10,000 and suspend Pierce for six months. We order that Pierce's suspensions run concurrently. Thus, in total, Pierce is suspended for six months and fined $25,000. We also affirm the assessed hearing costs of $10,696.[2]

I. Background

Pierce entered the securities industry in January 1999. From October 2000 through May 2008, Pierce was associated with IFMG Securities, Inc. ("IFMG").[3] As of July 2009, Pierce has been associated with another FINRA member firm.

During late 2006 and early 2007, IFMG was a FINRA member firm. At that time, Sovereign Bank contracted with IFMG to provide brokerage services to Sovereign Bank customers on bank premises. IFMG assigned Pierce to provide brokerage services to the customers of approximately 10 Sovereign Bank locations in the vicinity of Boston. Pierce did not independently solicit business. Rather, Sovereign Bank employees identified bank customers with cash positions, maturing certificates of deposit, and annuities with expired surrender periods and referred these customers to Pierce. The Sovereign Bank employees scheduled the customers' meetings with Pierce. During Pierce's tenure at IFMG, he was one of the firm's largest producers. In 2007, he generated gross commissions of between $600,000 and $950,000.

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[1] The conduct rules that apply in this case are those that existed when the conduct at issue occurred in 2006 and 2007.

[2] The Hearing Panel found that Pierce willfully omitted material information from his sales discussions with his clients, which rendered Pierce subject to statutory disqualification. In light of our reversal for insufficiency of evidence of the Hearing Panel's findings of fraud, this decision does not subject Pierce to statutory disqualification.

[3] FINRA member firm LPL Financial LLC ("LPL Financial") acquired IFMG in November 2007. Thus, subsequent to LPL Financial's acquisition of IFMG, Pierce was associated briefly with LPL Financial. References in this decision to IFMG subsequent to its acquisition by LPL Financial will read as "IFMG/LPL Financial."

Pierce met with these customers often without having access to the customers' existing IFMG account information, if any. IFMG maintained client account information in an electronic system that allowed access only to the broker of record and his or her supervisor. Thus, because Pierce previously had not been the broker of record on the vast majority of clients referred to him through Sovereign Bank, he did not have access to the clients' financial history at IFMG.

Pierce's main or "hub" office was Sovereign Bank's Dorchester, Massachusetts branch. IFMG registered representatives maintained their own notes and hard copies of client paperwork in files housed at each registered person's hub office. In addition, IFMG maintained comprehensive customer files in its electronic system.

FINRA examiner JM testified that FINRA issued Rule 8210 requests to IFMG/LPL Financial in which FINRA requested all documents relevant to the seven annuity replacement transactions identified in the complaint. IFMG/LPL Financial produced documents that the firm maintained electronically. At the start of FINRA's investigation, Pierce contended that IFMG/LPL Financial had not produced the documents that he maintained as hard copies in the physical files in his hub office in Dorchester. JM did not specifically request hard copy files that may have been maintained in the Sovereign Bank branch in Dorchester, but stated that IFMG/LPL Financial was required to search diligently for any and all records that responded to FINRA's requests and produce all documents uncovered. Scott Coulter ("Coulter"), regional sales manager with Sovereign Bank and IFMG/LPL Financial, testified that he searched for hard-copy files at the Dorchester branch and that Pierce's hard-copy customer files appeared to have been missing.

II. Procedural History

Enforcement began its investigation when IFMG alerted FINRA to its internal investigation of Pierce related to a customer who is not named in this complaint. Pierce assisted the customer with the surrender of an annuity. When the customer was charged a surrender fee that Pierce had not expected, Pierce sought to reverse the transaction. This prompted IFMG to review all of Pierce's annuity transactions.[4] IFMG ultimately concluded that Pierce had not followed firm procedures in effectuating the customer transactions identified in the complaint. As a result, IFMG placed Pierce on administrative warning, required that he attend new-hire training, ended Pierce's relationship with a sales trainee, reduced Pierce's territory to the Dorchester hub location and two satellite offices, and placed Pierce on heightened supervision. Pierce subsequently submitted paperwork to IFMG to transfer customers from other registered representatives to himself. The firm determined that Pierce failed to follow firm procedures with respect to this paperwork as well, and thereafter reported on Pierce's Uniform Termination

[4] IFMG examined all of Pierce's 152 annuity transactions that occurred between October 2006 and October 2007. Of those transactions, 32 involved annuity replacements. IFMG determined that Pierce had not disclosed to the firm the true nature of the annuity replacement in 11 of those 32 transactions. Enforcement's complaint involves seven of the 11 annuity replacements.

Notice for Securities Industry Registration that it had permitted Pierce to resign "after a review of certain annuity transactions found that he failed to follow firm policy."[5]

In May 2010, Enforcement filed a five-cause complaint. Cause one alleged that, between November 2006 and September 2007, Pierce circumvented IFMG's procedures in connection with seven annuity replacement transactions and concealed the nature of the transactions from IFMG, in violation of NASD Rule 2110. Cause two alleged that Pierce falsified IFMG records by providing IFMG with false information regarding the source of the seven customers' (identified in cause one) funds used to purchase variable annuities, in violation of NASD Rules 3110 and 2110. Cause three alleged that Pierce intentionally or recklessly failed to disclose to four of the seven variable annuity customers identified in cause one that they would incur tax liabilities and surrender charges by replacing their annuities. It also alleged that Pierce fraudulently omitted from sales discussions with the four customers the possibility of exchanging variable annuities by utilizing a "1035 exchange,"[6] in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, NASD Rules 2110 and 2120, and NASD IM-2310-2. Cause four alleged that Pierce made unsuitable recommendations to the same seven customers to exchange the annuities that they held for different variable annuities, in violation of NASD Rules 2310 and 2110, and NASD IM-2310-2. The fifth cause alleged that, in connection with IFMG's 2008 internal review of Pierce's annuity business, Pierce intentionally misrepresented to IFMG information regarding six of the annuity exchanges, in violation of NASD Rule 2110. Pierce generally denied all allegations of wrongdoing.

In a January 30, 2012 decision, the Hearing Panel found that Pierce violated NASD Rules 3110 and 2110, as alleged in causes one, two, and five by concealing seven annuity exchanges from IFMG; falsifying firm records; and intentionally misrepresenting information to the firm regarding six of the customers during the firm's investigation of Pierce's annuity exchanges. As to the allegations of fraud contained in cause three, the Hearing Panel found that Pierce fraudulently and willfully omitted from his interactions with four customers a discussion of the possibility of utilizing 1035 exchanges, but dismissed the remaining allegations that Pierce fraudulently omitted other material information during these conversations. The Hearing Panel declined to reach the allegations under cause four that Pierce recommended unsuitable annuity transactions to seven customers. The Hearing Panel held that the suitability allegations arose from a common course of conduct adequately covered by other allegations in the complaint and concluded that it was unnecessary to reach the issue of whether Pierce's recommendations were unsuitable. The Hearing Panel suspended Pierce from associating with any member firm in any

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[5] Based on IFMG's conclusions during its internal review, the firm reimbursed four of Pierce's customers (LC, VG, AP, and ML) a total of $21,000 that the firm withheld from Pierce's final commission payments.

[6] Section 1035 of Subtitle A, Chapter 1, Subchapter O, Part III of the United States Internal Revenue Code provides that an individual may exchange an existing variable annuity contract for a new annuity contract without paying any tax on the income and investment gains in the current variable annuity account [hereafter "1035 exchange"]. 26 U.S.C. §1035; *see SEC Investor Tips; Variable Annuities: What You Should Know*, at 6 (Apr. 18, 2011), *available at* http://www.sec.gov/investor/pubs/varannty.htm [hereafter "*SEC Investor Tips*"].

capacity for one year and fined him $25,000. Additionally, the Hearing Panel's fraud findings resulted in the statutory disqualification of Pierce.

This appeal followed.[7]

III. Facts

A. Annuities

An annuity is a contract between an investor and an insurance company, whereby the insurance company promises to make periodic payments to the contract owner or beneficiary starting immediately or at some future time. *See FINRA Investor Alert: Should You Exchange Your Variable Annuity*, at 1 (March 2, 2006) *available at* http://www.finra.oeg/Investors/Protect Yourself/InvestorAlerts/AnnuitiesandInsurance/P006045 [hereafter "*FINRA Investor Alert*"]; *Joint SEC and NASD Staff Report on Broker-Dealer Sales of Variable Insurance Products*, at 2 (June 2004), *available at* http://www.sec.gov/news/studies/secnasdvip.pdf [hereafter "*SEC/NASD Report*"]. An investor may purchase an annuity with a single payment or a series of payments. *FINRA Investor Alert*, at 1. Insurance companies offer three types of annuity contracts: fixed, variable, and equity-indexed. *Id*. For fixed annuities, earnings and payouts are guaranteed by the insurance company. *Id*. For variable annuities, earnings and payouts vary with the stock, bond, mutual funds, and money market funds that the investor chooses as investment options for the annuity's subaccounts, which are funded by the investor's premium payments. *Id*. Equity-indexed annuities have characteristics of both fixed and variable annuities. *Id.*

This case involves exchanges of fixed and variable annuities for variable annuities. "Variable annuities offer choices among a number of complex contract features." *SEC/NASD Report*, at 5. Variable annuities also offer optional riders, such as guaranteed minimum income benefits, "stepped-up" death benefits, guaranteed interest rates, long-term care insurance, and others. *Id*. These features carry additional charges and fees that may reduce the account value of the annuity. *See SEC Investor Tips*, at 4-5. Some insurance companies offer bonus credit features with purchases of variable annuity contracts. *Id.* at 7. The bonus credit features add a bonus to the contract value of the annuity based on a specified percentage of purchase payments. *Id*. Variable annuities with bonus features may charge higher expenses. *Id.*

Most variable annuities have two phases – an accumulation phase and a payout phase. *Id.* at 3. During the accumulation phase, the investor may make purchase payments and allocate the payments to different investment options in the annuity's subaccounts. *Id.* In the payout phase, the investor may receive investment income and gains as a lump sum or as a stream of payments. *Id*. Other annuity contracts are structured as immediate annuities, "which means that

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[7] Pierce seeks review of the Hearing Panel's findings of violation and the sanctions imposed. Enforcement cross appeals the Hearing Panel's findings under cause three that Enforcement failed to prove that Pierce fraudulently omitted information regarding surrender charges and tax liabilities from discussions with customers, and the Hearing Panel's decision not to make findings under cause four regarding Pierce's alleged unsuitable recommendations. Enforcement also appeals the sanctions that the Hearing Panel imposed.

there is no accumulation phase" and the investor may start receiving payments right after purchasing the annuity. *Id.* at 4.

Variable annuities typically are invested in mutual funds. *Id.* at 1-2. They differ from mutual funds, however, in that variable annuities allow the investor to receive periodic payments to offer protection against the possibility that, after the investor retires, he will outlive his assets. *Id.* Unlike mutual funds, variable annuities also include a death benefit. *Id.* at 2. Finally, variable annuities are tax deferred, meaning the owner of a variable annuity will pay no taxes on the income and investment gains until he withdraws the money. *Id.* When the owner of a variable annuity withdraws earnings, however, he will be taxed on the earnings (but not principal) at ordinary income tax rates. *Id.* Variable annuities are intended to be long-term, retirement-oriented investment vehicles. *Id*. Any withdrawals before the investor reaches the age of 59 ½ generally are subject to a ten percent penalty under the Internal Revenue Code. *Id.* at 3; *NASD Notice to Members 99-35*, 1999 NASD LEXIS 10, at *3 (May 1999).

Variable annuities may impose a variety of fees, such as surrender charges for withdrawal before a specified period (surrender periods vary by contract but typically are four to eight years), mortality and expense risk charges (which the insurance company charges for the insurance risk that it takes), administrative fees (to cover administrative and record-keeping expenses), underlying fund expenses (which vary depending on the investments in the variable annuity subaccounts), and charges for special features and riders (which vary by contract). *See FINRA Investor Alert*, at 1; *SEC/NASD Report*, at 6-7. As indicated above, the insurance company generally charges additional fees for guaranteed benefits and other protections that may be added by purchasing riders.[8] *See FINRA Investor Alert*, at 1; *SEC/NASD Report*, at 4-6.

Most variable annuity contracts offer a "free look" period of ten or more days. *SEC Investor Tips*, at 9. During this period, the investor can terminate the contract without paying a surrender charge. *Id.*

As indicated, variable annuity earnings are tax-deferred until they are withdrawn by the investor. The Internal Revenue Service generally allows investors to exchange an existing annuity contract for a new annuity contract without paying tax on the income and the investment gains earned on the original contract by using a 1035 exchange. *See FINRA Investor Alert*, at 1. The tax code requires, however, that the old annuity contract must be exchanged for a new contract directly from insurance company to insurance company. *Id.* The annuity investor may not receive a check and apply the proceeds to the purchase of a new annuity. *Id.* Tax-free 1035 exchanges may be useful "if another annuity has features that you prefer, such as a larger death

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[8] Enforcement did not include as exhibits copies of any of the annuity contracts at issue, so it is not possible, based on the record, to compare or determine the fees that the customers paid in the annuities that they surrendered and the annuities that Pierce sold them. Enforcement instead entered into evidence copies of IFMG account documentation and the annuity applications that Pierce completed for the annuity transactions at issue. Pierce entered one annuity contract into evidence. FINRA examiner JM testified that he did not obtain copies of the actual annuity contracts from IFMG and that the only contract that he reviewed was received directly from one of Pierce's customers.

benefit, different annuity payout options, or a wider selection of investment choices." *SEC Investor Tips*, at 6. When 1035 exchanges occur, however, the investor may have to pay surrender charges on the old annuity and a new holding period generally begins with the purchase of the new contract. *Id.* at 6-7. Generally, investors should consult tax professionals to ensure that the exchange is tax free and should not rely on a registered representative to make this determination. *Id.*

B. IFMG Procedures

Sovereign Bank and IFMG/LPL Financial regional sales manager Coulter testified that he was Pierce's direct supervisor and manager during the period at issue. At that time, approximately 17 registered representatives reported to Coulter.

Coulter testified that, in 2006 and 2007, IFMG required registered representatives to complete three or four forms (depending on whether the transaction involved an annuity replacement) to execute annuity transactions. IFMG's procedures required that registered representatives complete the forms at the point of sale. The first form was a confidential data profile, which outlined the customer's assets, risk tolerance and investment objectives, and IFMG principals used this form as the basis for all sales reviews, including suitability. The second form was an annuity reporting sheet, which included client information and indicated the source of the funds that the client used to purchase the annuity. The registered representative provided the customer with a copy of this document at the point of sale. The registered representative also completed a variable annuity disclosure summary, which documented the specifics of the transaction. The firm's procedures required the registered representative to provide a copy of this form to the customer. If these forms indicated that the source of funds was the sale of another annuity, then a replacement/switch disclosure form was also required.[9]

The replacement/switch disclosure form documented that the representative disclosed annuity replacement information to the customer and provided the sales review principal with the information necessary to determine if an annuity replacement was suitable for the customer.[10]

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[9] Thomas Murray ("Murray"), a compliance person from IFMG during the relevant period, also testified. He was one of the principals who reviewed variable annuity transactions to ensure that they were suitable for the customers. He testified that the replacement/switch form allowed the reviewing principal to determine if the transaction was in fact a replacement and the registered representative's basis for recommending a replacement. He testified that the form also alerted customers to the costs associated with the replacement and outlined the positive and negative aspects of the replacement transaction.

[10] Pierce testified that he completed replacement/switch forms for several of the seven customers identified in the complaint. IFMG/LPL Financial could not locate these forms and did not produce them in response to FINRA's Rule 8210 request for documents. Coulter testified that he may have seen replacement/switch forms for some of Pierce's customers, possibly even the seven customers identified in the complaint. Although IFMG representatives testified that the firm required replacement/switch disclosure forms for annuity replacement transactions, IFMG's procedures manual dated December 2005 stated that the replacement/switch disclosure form should not be used for annuity-to-annuity transfers or Section 1035 exchanges. In any

[Footnote continued on next page]

Additionally, all representatives who sold annuities were required to complete an annuity application. Annuity applications also required disclosure of whether the annuity transaction was a replacement. Financial consultants at IFMG were required to maintain hard copies of all of these forms in their hub branch offices. IFMG maintained the firm's copies of these forms electronically.[11] Coulter testified that, subsequent to a variable annuity sale, the firm also sent a letter to the client which enclosed a copy of the variable annuity disclosure form, annuity reporting sheet, and confidential data profile and requested that the client notify the firm if the client disagreed with any of the information contained on the forms.

Coulter testified that, in order for any registered representative to access the firm's electronic files for a particular customer, the representative must be designated as the representative of record for the customer. Coulter acknowledged that IFMG's system was not perfect. It was a regular occurrence at IFMG for a customer, who had had a prior transaction with the firm, to be assigned to a new registered representative before he became the broker of record and therefore the representative would not have access to the firm's electronic file for the customer.

Coulter testified that the sales review process for all customer transactions occurred in IFMG's Purchase, New York office. The supervisors in the firm's Purchase office had access to all historical information for each customer. Other IFMG supervisors and back-office compliance people testified that the replacement/switch forms identified annuity switches so that the firm performed a more detailed suitability review and enhanced oversight of these transactions.

C. Pierce's Customers

The complaint alleged misconduct as to transactions for seven customers, three of whom testified (AP, PB, and ML). One customer (LC) did not speak English and was accompanied during her meetings with Pierce by her English-speaking son. LC did not testify, but her son (FC) did. The customers had relatively modest financial resources and all but one were retired. All of the customers previously had purchased one or more annuities through other registered representatives at IFMG.

For each of Pierce's seven customers, the record included the annuity application that Pierce completed and the customer signed and a variable annuity disclosure summary that the

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event, neither Pierce nor the firm was able to produce a replacement/switch form for any of the seven customers at issue.

[11] Murray also testified that all variable annuity purchasers were required to sign or initial the variable annuity disclosure summary that verified that the customer understood the costs related to the annuity, confirmed that the customer received a prospectus, and ensured that the customer understood all holding periods and surrender charges. Each of the customers at issue in this case signed these forms.

customer also signed. Together, these documents disclosed, among other things, surrender periods, free-look provisions, surrender fees, and the fact that earnings on the annuity would be taxed at ordinary income rates. For each customer, the record also included a confidential data profile that Pierce completed and the customer signed. The confidential data profile indicated the customer's income, net worth, risk tolerance, and number of years of investment experience. Pierce testified that he miscalculated each customer's number of years of investment experience by adding together the years of experience he alleged that the customer had in each different type of investment, such as stocks, bonds, mutual funds, etc., thereby resulting in an inflated number. He admitted that, in doing so, he overstated the customers' years of investment experience. Pierce sold the seven customers variable annuities that included guaranteed return riders. The record indicated that riders of this nature could not have been added to each customer's existing annuity. In order to obtain the riders, all of the customers had to purchase different annuities.

1. Customer CC

In November 2006, CC was 66 years old and retired. On November 6, 2006, she surrendered a Sun Life variable annuity that she had purchased in 2003, and received $78,875. The Sun Life annuity had a seven-year holding period, and CC incurred a surrender charge of $3,532. Upon surrender, CC also realized a taxable gain of between $14,000 and $20,000.[12] Pierce recommended, and CC purchased on November 22, 2006, an ING variable annuity for $94,262.[13] The ING variable annuity carried a four-year holding period, during which CC would incur a 6% surrender charge that declined to 3% over the four-year period.

At the time of CC's purchase, Pierce reported in CC's confidential data profile (that CC signed) and annuity reporting sheet that CC earned a yearly income of $65,000 and was in a 30% tax bracket. He reported her liquid net worth as $150,000 and total net worth as $800,000. He stated that she had a long-term investment time horizon (greater than 10 years), a moderate risk tolerance, and a total of 25 years of investment experience. He ranked her investment objectives in order of importance from more important to less important as: balanced, income, appreciation, and capital preservation. CC also owned a multiple-family home valued between $350,000 and $450,000.

CC did not testify before the Hearing Panel. The account paperwork that IFMG completed for CC in 2003 (to which Pierce did not have access) stated that her annual income was $25,000 or less, her liquid net worth was between $100,000 and $500,000, and she was in a tax bracket of less than 15%. In 2003, CC had a medium investment time horizon.

Pierce testified that he did not recommend that CC surrender her Sun Life variable annuity. Pierce stated in a response to an IFMG/LPL Financial questionnaire in January 2008, however, that he had advised CC to surrender the Sun Life variable annuity. In FINRA investigative testimony and before the Hearing Panel, Pierce stated that his initial response to

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[12] The record is unclear as to the exact amount of her gain.

[13] CC added approximately $13,000 to the proceeds of her surrender for the ING annuity purchase.

IFMG/LPL Financial was incorrect. He testified that CC believed that the Sun Life annuity that she purchased in 2003 (through a different registered representative) included a rider that provided a guaranteed return. Pierce stated that, during his first meeting with CC, he explained to her that the Sun Life variable annuity did not carry such a rider, also known as a living benefit rider, and she thereafter decided to surrender the Sun Life annuity. Pierce testified that he explained to CC that she could execute a tax-free 1035 exchange, but that she declined and wanted to liquidate.[14] Pierce admitted that he assisted CC in completing the paperwork to liquidate her Sun Life annuity.[15]

Pierce testified that, when CC returned to Sovereign Bank to deposit the proceeds of her Sun Life annuity surrender, the bank representative again referred her to Pierce to discuss possible investments. Pierce testified that he recommended at that time that CC purchase an ING variable annuity that offered a guaranteed return rider, which was the type of rider that she mistakenly believed that she had purchased with the Sun Life variable annuity. CC agreed. Pierce completed the paperwork for CC's purchase of an ING variable annuity. He admitted that he incorrectly listed CC's source of funds as a property sale rather than an annuity sale.[16]

The ING variable annuity that Pierce sold CC included a rider that guaranteed an income of five percent for life, regardless of changes in the market. Pierce contended that, if CC had held the Sun Life variable annuity through the market downturn of 2008, she would have lost approximately 40%. Pierce stated that the product that he sold CC earned a guaranteed income

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[14] During FINRA investigative testimony, Pierce testified that he had not in fact talked with his client about the possibility of a 1035 exchange. Pierce answered "no" in January 2008 to a question on an IFMG/LPL Financial questionnaire as to whether CC suffered any adverse tax consequences by surrendering her annuity. Coulter's April 2008 report from IFMG/LPL Financial's internal review stated that Pierce reported to the firm that CC expressed concern about losses in the Sun Life annuity. Pierce told the firm during the internal review that, because CC stated that she had sustained losses, Pierce assumed that the tax-savings aspects of a 1035 exchange were unnecessary. Coulter reported that Pierce admitted that he should have done more due diligence in this regard.

[15] Pierce arranged for the proceeds of CC's annuity surrender to be sent by check to Sovereign Bank for deposit into CC's bank account rather than having the funds credited to CC's IFMG account. CC wrote a check for her November 22, 2006 purchase of an ING variable annuity.

[16] Pierce suggested that the source of funds for CC's initial Sun Life annuity purchase in 2003 was a property sale and that the source of the approximately $13,000 that she added to the Sun Life surrender proceeds to purchase an ING variable annuity also was a property sale. (Documentation related to CC's 2003 Sun Life annuity purchase listed "CD" as her source of funds.) He also suggested that his missing hard-copy file from the Dorchester hub office would help him recall the specifics of his business dealings with CC and provide a more comprehensive explanation of his interactions with CC. Pierce also contended that he completed a replacement switch form for CC, which he argued also would have been in the missing Dorchester branch file.

and was a vast improvement over her Sun Life policy. The record does not include information sufficient to determine or compare the costs and underlying investment options associated with CC's Sun Life and ING annuities.

2. Customer AP

In January 2007, AP was 70 years old and retired. On January 11, 2007, she surrendered a Sun Life variable annuity that she had purchased in 2004, and received $28,367. The Sun Life annuity had a seven-year holding period, and AP incurred a surrender charge of $1,798 (which, Pierce argued, was offset by a $2,200 bonus that she received on her new annuity purchase). Upon surrender, AP realized a taxable gain of $4,367. A Sovereign Bank employee referred AP to Pierce because AP wanted to combine her elderly mother's assets with her own assets. Pierce recommended, and AP purchased on January 26, 2007, a Jackson National variable annuity for $55,032.[17] The Jackson National variable annuity carried a seven-year holding period, during which AP would incur an 8.5% surrender charge that declined to zero in seven years. AP received a four percent bonus of $2,200 with the Jackson National annuity purchase. The Jackson National variable annuity enabled AP to receive a regular income of $240 per month.

At the time of AP's purchase, Pierce reported in AP's confidential data profile (that AP signed) and annuity reporting sheet that AP earned a yearly income of $50,000 and was in a 30% tax bracket. He reported her liquid net worth as $300,000 and total net worth as $600,000. He stated that she had a long-term investment time horizon (greater than 10 years), a moderate risk tolerance, and 30 years of investment experience. He ranked her investment objectives in order of importance from more important to less important as: appreciation, balanced, income, and capital preservation. AP did not own a home, and lived in a rental apartment.

AP testified that her annual income was not $50,000, but rather $28,000 from a combination of Social Security payments and pension payments from her former occupation as a school counselor. She also denied the accuracy of the numbers that Pierce reported for her liquid net worth and total net worth.[18] AP stated that her only assets were her Sun Life annuity worth approximately $28,000 and approximately $14,000 to $16,000 in bank accounts. IFMG's account paperwork for AP's 2004 variable annuity purchase (to which Pierce did not have access) stated that her annual income was $25,000 to $50,000, her liquid net worth was between $0 and $50,000, and she was in a tax bracket of 25-27%. AP testified that she was hurried when she met with Pierce and did not read all of the documents that he presented to her, and she willingly signed, and did not recall Pierce's discussing surrender charges or tax consequences with her. She stated that she did not give the matter "a lot of thought." AP testified that she told

[17] AP used the proceeds of her surrendered Sun Life variable annuity along with other savings that she held in a bank account plus her mother's savings to purchase the Jackson National annuity that Pierce sold her.

[18] AP testified that she told Pierce that she intended to combine the funds from the surrender of her Sun Life variable annuity with funds belonging to her ill mother and invest them together. Pierce testified that, because of this, he included AP's mother's assets and resources in the income, liquid net worth, and total net worth figures that he listed for AP.

Pierce that she intended to combine her funds with her mother's money and that he gave her paperwork for her mother to sign. She did not provide details about this paperwork, and it was not included in the record.

Pierce testified that AP's annuity surrender and subsequent purchase occurred in two separate and unrelated meetings. Pierce testified that, initially, AP sought to add her mother's assets to her Sun Life variable annuity, and AP believed that her Sun Life annuity carried a living benefit and guaranteed returns. When he explained to her that it did not carry these riders, and that she could not add her mother to her existing annuity, she chose to surrender her Sun Life annuity. Pierce testified that AP liquidated her Sun Life annuity also because she was concerned about losses that she had sustained and was worried that they would continue. He denied that he recommended that AP surrender her Sun Life variable annuity.[19]

Pierce completed the paperwork for AP's purchase of a Jackson National variable annuity. He admitted that he incorrectly listed AP's source of funds as a checking account rather than an annuity sale because he considered the two transactions (the surrender and the purchase) to be separate and unrelated and the surrendered annuity was not the only source of funds for AP's purchase of a Jackson National annuity.[20] Pierce also stated that he advised AP that she could incur a tax liability and surrender fee by liquidating her Sun Life variable annuity in 2007, but also noted that the $2,200 bonus that she received when she purchased the Jackson National variable annuity offset those costs.[21] The Jackson National variable annuity that Pierce sold to AP included a rider that locked in gains and paid a guaranteed income, regardless of changes in the market, a feature that, according to Pierce, AP incorrectly understood was included with the Sun life annuity that she surrendered. The record does not include information sufficient to determine or compare the costs and underlying investment options associated with AP's Sun Life and Jackson National annuities.

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[19] Pierce, however, stated in a January 2008 response to an IFMG/LPL Financial questionnaire that he had in fact advised AP to surrender the Sun Life variable annuity. Pierce arranged for the proceeds of AP's annuity surrender to be sent by check to Sovereign Bank for deposit into AP's bank account rather than credited to AP's IFMG account. AP wrote a check for her January 26, 2007 purchase of a Jackson National variable annuity.

[20] Pierce nonetheless claimed that he had completed a replacement/switch form for AP, which was in the hard-copy file that was missing from the Dorchester hub office. Pierce also admitted before the Hearing Panel that he understood that he completed the annuity paperwork incorrectly and that he should have identified AP's purchase as a replacement.

[21] Pierce, however, stated incorrectly in a January 2008 response to an IFMG/LPL Financial questionnaire that AP did not suffer adverse tax consequence from her annuity surrender. Pierce testified before the Hearing Panel that he could not recall if he discussed with AP the possibility of a tax-free 1035 exchange because AP sought to add her mother as an investor. Coulter reported in connection with IFMG/LPL Financial's internal review of Pierce that Pierce stated that, because AP had expressed concern about losses in the Sun Life annuity, Pierce assumed that the tax savings aspects of a 1035 exchange were unnecessary. Coulter reported that Pierce admitted that he should have done more due diligence in this regard.

3. Customer PB

In January 2007, PB was 74 years old and retired. On January 13, 2007, she surrendered a Sun Life fixed annuity that she had purchased for $100,000 in 2002, and received $57,143 (the value of PB's fixed annuity had declined significantly from $100,000 due, in part, to PB's many withdrawals).[22] The Sun Life annuity had a five-year holding period, so PB did not incur a surrender charge. Upon surrender, PB realized a taxable gain of $1,432. Pierce recommended, and PB purchased on February 12, 2007, an ING variable annuity for $50,000. The ING variable annuity carried an eight-year holding period, during which PB would incur an 8% surrender charge that declined to zero in eight years. The ING variable annuity enabled PB to receive a regular income of $250 per month.

At the time of the purchase, Pierce reported in PB's confidential data profile (that PG signed) and annuity reporting sheet that she earned a yearly income of $50,000 and was in a 30% tax bracket. He reported her liquid net worth as $300,000 and total net worth as $600,000. He stated that she had a long-term investment time horizon (greater than 10 years), a moderate risk tolerance, and 25 years of investment experience. PB owned a home unencumbered by a mortgage and valued at approximately $332,500. He ranked her investment objectives in order of importance from more important to less important as: balanced, appreciation, income, and capital preservation. She rented part of her home to tenants.

PB testified that her annual income was not $50,000, but rather $25,000 from a combination of Social Security payments and rental income. She also disputed the numbers that Pierce reported for her liquid net worth, total net worth, and investment experience, but did not provide the correct numbers. PB testified that her intention when she met with Pierce was to withdraw at least $20,000 to pay some of her bills, and she was not interested in risking her money. PB testified that she did not recall Pierce discussing surrender charges or possible tax consequences with her. PB, however, exhibited some confusion as to the facts surrounding her annuity purchases. Uncontroverted evidence indicated that registered representative VD, not Pierce, sold PB a Sun Life fixed annuity in 2002. PB testified, however, that she never met VD and that Pierce sold her the Sun Life fixed annuity, a statement that is contradicted by record evidence. IFMG's account paperwork for PB's 2002 annuity purchase (to which Pierce did not have access) stated that her annual income was $20,000, her net worth was $250,000, and she was in a 15% tax bracket. She testified that she did not know if the 2002 figures were correct, but that $250,000 was probably "close enough." PB also testified that she did not read the documents that Pierce asked her to sign and that she did not know that her Sun Life annuity had been surrendered.

[22] PB testified that she paid income taxes on all of the funds that she withdrew from her Sun Life annuity.

Pierce testified that he had not recommended PB's surrender of the Sun Life fixed annuity, although he admitted that he assisted PB by completing the paperwork.[23] Pierce contended that PB's fixed annuity had passed the surrender period, and PB was anxious to collect the $7,000 interest it had earned. Pierce stated that he explained to PB that the interest would be taxable. He did not, however, suggest a 1035 exchange because PB was determined to withdraw a portion of the funds.[24]

Pierce also testified that he listed "checking account" as the source of funds for PB's ING variable annuity purchase because she deposited the proceeds from the surrender of her Sun Life fixed annuity into her checking account and used the funds to buy the ING variable annuity.[25] He contended that he believed that the ING purchase was not a replacement transaction, but also admitted that he later learned that he was mistaken on that point. Pierce testified that, when PB met with him, she sought a rate of return higher than the three percent that she earned in her fixed annuity and guaranteed income.[26] The ING variable annuity that Pierce sold to PB included a rider that locked in gains and paid a guaranteed income, regardless of changes in the market. The record does not include information sufficient to determine or compare the costs and underlying investment options associated with PB's Sun Life and ING annuities.

4. Customer VG

In March 2007, VG was 63 years old and retired. On February 12, 2007, she surrendered a Sun Life variable annuity that she had purchased in 2003 and received $36,803. The Sun Life annuity had a seven-year holding period, and VG incurred a surrender charge of $2,349. VG did not realize a taxable gain when she surrendered the Sun Life annuity.[27] Pierce recommended, and VG purchased on March 1, 2007, an ING variable annuity for $33,803. The ING variable annuity carried a seven-year holding period, during which VG would incur an 8% surrender charge that declined to zero in seven years. VG received a bonus of $1,690 with her purchase.

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[23] Pierce, however, stated in a January 2008 response to an IFMG/LPL Financial questionnaire that he had advised PB to surrender the Sun Life fixed annuity because it paid a low interest rate and offered no growth potential.

[24] Pierce reported inaccurately in a January 2008 response to IFMG/LPL Financial's questionnaire that PB had not suffered adverse tax consequences related to her surrender of a Sun Life fixed annuity. In fact, she realized a taxable gain of $1,432.

[25] Pierce arranged for the proceeds of PB's annuity surrender to be sent by check to Sovereign Bank for deposit into PB's bank account rather than credited to PB's IFMG account. PB wrote a check for her February 12, 2007 purchase of an ING variable annuity.

[26] Pierce testified that PB's son was present at their meeting. PB concurred. The son did not testify.

[27] VG's Sun Life variable annuity had declined in value from $45,190 to approximately $36,802. VG had lost approximately $9,000 at the time of surrender.

At the time of the purchase, Pierce reported in VG's confidential data profile (that VG signed) and annuity reporting sheet that she earned a yearly income of $50,000 and was in a 28% tax bracket. He reported her liquid net worth as $150,000 and total net worth as $300,000. He stated that she had a long-term investment time horizon (greater than 10 years), a moderate risk tolerance, and 25 years of investment experience. He ranked her investment objectives in order of importance from more important to less important as: appreciation, balanced, income, and capital preservation.

VG's account paperwork from a 2003 variable annuity purchase (to which Pierce did not have access) included confidential data profiles completed by two different representatives. One profile stated that her annual income was $13,500, she was disabled, her net worth was $48,000, and she was in a 0% tax bracket. The profile listed her investment objective as growth and income. The second profile, completed one month after the first, stated that her income was $22,000, did not state that she was disabled, reported a net worth of $46,000, and stated that she was in a 27% tax bracket. This profile listed her investment objective as capital preservation.

Pierce testified that he assisted VG with the liquidation of her Sun Life variable annuity, but denied at the hearing and in a January 2008 response to an IFMG/LPL Financial questionnaire that he recommended that she surrender it.[28] He testified that VG's Sun Life variable annuity did not have the guarantees and benefits that she mistakenly thought it had. Pierce testified that VG sought to liquidate her Sun Life annuity because she was displeased with its performance and noted that it had lost a significant amount of its value. VG was worried that the losses would continue. She also wanted access to some of her money. Pierce testified that VG was not deterred when he advised her that she would incur a surrender charge, and the bonus VG received when she purchased an ING annuity partially offset the surrender charge.[29]

Pierce completed the paperwork for VG's purchase of an ING variable annuity. He admitted that he incorrectly listed VG's source of funds as certificates of deposit rather than an annuity sale. He admitted that he did not identify VG's purchase of an ING variable annuity as a replacement transaction and that, in doing so, he provided the firm with inaccurate information. He testified that, at the time, he believed it to be accurate, but that he subsequently learned that he acted wrongly. Pierce testified that, given VG's losses in the Sun Life annuity and the bonus payment that she received upon purchase of the ING variable annuity, VG benefited from the transaction and received a superior product. The ING variable annuity that Pierce sold to VG included a rider that locked in gains, provided a living benefit, and paid a guaranteed income, regardless of changes in the market, a feature that VG incorrectly understood was included with the Sun life annuity that she previously owned. The record does not include information

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[28] Pierce arranged for the proceeds of VG's annuity surrender to be sent by check to Sovereign Bank for deposit into VG's bank account rather than credited to VG's IFMG account. VG wrote a check for her March 1, 2007 purchase of an ING variable annuity.

[29] Pierce also claimed that he had completed a replacement/switch form for VG, which he alleged was in the hard-copy file that was missing from the Dorchester office. IFMG/LPL Financial never located this form.

sufficient to determine or compare the costs and underlying investment options associated with VG's Sun Life and ING annuities.

5. Customer CY

In March 2007, CY was 69 years old and retired. On March 5, 2007, CY surrendered a Sun Life fixed annuity that he had purchased previously, and he received $12,284.[30] CY did not incur a surrender charge, but realized a taxable gain of $2,291. Pierce thereafter recommended, and CY purchased on March 20, 2007, an ING variable annuity for $10,000. The ING variable annuity possibly carried a four-year holding period,[31] during which CY would incur a 6% surrender charge that declined to zero.

At the time of the purchase, Pierce reported in CY's confidential data profile (that CY signed) and annuity reporting sheet that he earned a yearly income of $40,000 and was in a 30% tax bracket. Pierce reported CY's liquid net worth as $35,000 and total net worth as $500,000. He stated that CY had an intermediate-term investment time horizon (six to 10 years), an aggressive risk tolerance, and 25 years of investment experience. He ranked CY's investment objectives in order of importance from more important to less important as: appreciation, balanced, income, and capital preservation. CY did not testify before the Hearing Panel, and the record did not contain account documentation for CY from prior years.

Pierce denied that he advised CY to surrender his Sun Life fixed annuity.[32] He testified that he advised CY of the possibility of processing his trades as a 1035 exchange, but CY wanted to withdraw his earned interest of $2,284 and reinvest only the original $10,000 premium. He also stated that he advised CY that he could suffer adverse tax consequences from surrender.[33] Pierce reported on CY's annuity paperwork that CY sought growth with an income guarantee. He admitted that he incorrectly listed CY's source of funds as a checking account rather than a fixed annuity sale. He also admitted that he did not identify CY's purchase of an ING variable

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30 The record does not include documentation indicating when CY purchased the Sun Life fixed annuity.

31 The documents in the record related to CY's annuity purchase are illegible in parts. The holding period appears to be four years, but the documents are not clear.

32 Pierce, however, stated in a January 2008 response to an IFMG/LPL Financial questionnaire that he had in fact advised CY to surrender the Sun Life fixed annuity. He stated that CY's Sun Life fixed annuity had matured, and CY did not want to continue to hold it because it paid low interest rates and provided no growth potential. CY was seeking an opportunity for growth. Pierce arranged for the proceeds of CY's annuity surrender to be sent by check to Sovereign Bank for deposit into CY's bank account rather than credited to CY's IFMG account. CY wrote a check for his March 20, 2007 purchase of an ING variable annuity.

33 Pierce, however, answered "no" in January 2008 on an IFMG/LPL Financial questionnaire that asked whether CY suffered any adverse tax consequences from surrendering his Sun Life fixed annuity.

annuity as a replacement transaction and that, in doing so, he provided the firm with inaccurate information. He testified that, at the time, he believed it to be accurate, but that he subsequently learned that he was wrong. The ING variable annuity that Pierce sold to CY included a rider that locked in gains, provided a living benefit, and paid a guaranteed income, regardless of changes in the market. The record does not include information sufficient to determine or compare the costs and underlying investment options associated with CY's Sun Life and ING annuities.

6. Customer LC

In August 2007, LC was 72 years old and retired. On July 12, 2007, she surrendered a Sun Life fixed annuity that she had purchased in 2002 and received $60,423. The Sun Life annuity carried a five-year holding period. LC did not incur a surrender charge. By surrendering the Sun Life fixed annuity, LC realized a taxable gain of approximately $430. Pierce recommended, and LC purchased on August 2, 2007, an ING variable annuity for $50,000.[34] The ING variable annuity possibly carried a four-year holding period,[35] during which LC would incur a 6% surrender charge that declined to zero. The ING variable annuity enabled LC to receive a monthly income. The record does not indicate the amount of her monthly income.

At the time of the purchase, Pierce reported in LC's confidential data profile (that LC signed) and annuity reporting sheet that she earned a yearly income of $30,000 and was in a 30% tax bracket. Pierce reported her liquid net worth as $200,000 and total net worth as $600,000. He stated that she had a long-term investment time horizon (greater than 10 years), a moderate risk tolerance, and 30 years of investment experience. He ranked her investment objectives in order of importance from more important to less important as: appreciation, balanced, income, and capital preservation. LC also owned a home that was unencumbered by a mortgage and was valued at approximately $345,000. LC could not speak, read, or write English.[36] LC's English-speaking son, FC, appeared and testified before the Hearing Panel.

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[34] The record indicates that LC chose to keep $10,000 from the Sun Life proceeds to repair the home that she owned.

[35] The documents contained in the record are not clearly legible. The holding period appears to have been four years, but may have been seven years. We cannot ascertain for certain based on the record.

[36] LC spoke Cape Verdean. One of the Sovereign Bank employees at LC's bank branch also spoke Cape Verdean. The bank employee originally referred LC to Pierce. Pierce testified that the bank employee, who spoke Cape Verdean, accompanied LC and her son to their meetings with Pierce. LC's English-speaking son, FC, denied this. Pierce's supervisor, Coulter, noted that the firm's compliance manual required representatives to notify the firm's compliance department when they sold products to non-English speaking customers accompanied by English-speaking family members. Pierce stated that he failed to notify the compliance department because he was unaware that he was required to do so. He noted that he previously had worked in IFMG's offices in the Chinatown neighborhood in Boston, where the majority of his clients were non-English speaking, and the firm never required such reporting.

LC's son, FC, testified that he accompanied LC to her meetings with Pierce in the summer of 2007.[37] LC had been contacted by a bank employee who told her that her investment had matured and suggested that she come into the bank to meet with Pierce. FC stated that, when he and LC met with Pierce, LC owned a fixed annuity whose surrender period had expired. FC testified that LC's fixed annuity was valued at approximately $60,000 and that he explained to Pierce that LC wanted to surrender the annuity, use $10,000 for home repairs, and reinvest the remainder in an investment that would provide a monthly income and protect her principal from risk of loss.[38] FC denied that Pierce mentioned possible negative tax consequences from the withdrawal.[39] FC denied that Pierce accurately completed his mother's paperwork at IFMG. He stated that Pierce incorrectly listed the source of LC's investment funds as an inheritance, he misrepresented that LC's spouse had died, and that Pierce's income and net worth figures ($30,000 annual income, $100,000 liquid net worth, and 30 years of investment experience) on LC's account documentation were incorrect.[40] FC stated that he did not read the documents that Pierce prepared and his mother signed. He also testified that he and LC did not understand that she had purchased a variable annuity and denied that Pierce provided them with copies of the documentation for their purchase.

LC's account paperwork from a 2002 fixed annuity purchase (to which Pierce did not have access) reported in a confidential data profile that she earned an annual income of $12,000 and was in a 15 percent tax bracket. It listed her net worth (excluding home) at $100,000 and stated that she was separated from her spouse.

Pierce testified that he calculated LC's net worth as including the value of her home, which she owned unencumbered. He admitted that he incorrectly listed LC's source of funds as inheritance rather than an annuity sale. He admitted that he did not identify LC's purchase of an ING variable annuity as a replacement transaction and that, in doing so, he provided the firm with inaccurate information. He testified that, at the time, he believed that the sale was not a replacement because of the time lapse between the surrender and purchase, but that he subsequently learned otherwise.[41] He also stated that he advised LC and her son that she would

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[37] FC testified that his mother could have attended the hearing and testified (with an interpreter), but that she had not been asked to do so.

[38] Pierce arranged for the proceeds of LC's annuity surrender to be sent by check to Sovereign Bank for deposit into LC's bank account rather than credited to LC's IFMG account. LC wrote a check for her August 2, 2007 purchase of an ING variable annuity.

[39] Pierce testified that he had in fact discussed with FC the tax implications of LC's withdrawal of $10,000.

[40] During testimony, however, FC acknowledged that he was not familiar with all of LC's financial holdings. For instance, he was unaware that LC held $117,000 in a savings account.

[41] Pierce nonetheless claimed that he had completed a replacement/switch form for LC, which was in the hard-copy file that was missing from the Dorchester hub office. IFMG/LPL Financial never located the form.

receive a taxable gain as a result of her surrender (she received a taxable gain of $430).[42] Pierce stated that LC had been withdrawing interest from her fixed annuity all along, so she would have had to pay taxes on previous withdrawals and should have been familiar with her tax obligations. Pierce also testified that a 1035 exchange was not a possibility for LC because she went from owning a fixed annuity in one amount to owning a variable annuity in a different amount, and she was intent on withdrawing some of her money to complete home repairs.

The ING variable annuity that Pierce sold to LC included a rider that locked in gains, provided a living benefit, and paid a guaranteed income, regardless of changes in the market, features that LC specifically sought when she surrendered her Sun Life fixed annuity. The record does not include information sufficient to determine or compare the costs and underlying investment options associated with LC's Sun Life and ING annuities.

7. Customer ML

In September 2007, ML was 74 years old and worked part time at a warehouse shopping club. In August 2007, ML surrendered a Sun Life fixed annuity that she had purchased in 2001 and had added to over the years.[43] ML received $21,984 from the surrender and paid a $667 surrender charge. By surrendering the Sun Life fixed annuity, ML also realized a taxable gain of approximately $2,408. Sovereign Bank personnel referred ML to Pierce.[44] Pierce recommended, and ML purchased on September 24, 2007, an ING variable annuity for $21,984. The ING variable annuity carried an approximate holding period of seven years,[45] during which ML would incur a 6% surrender charge that declined to zero at the conclusion of the holding period.

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[42] Pierce, however, answered "no" in a January 2008 response to a firm questionnaire asking whether LC suffered adverse tax consequences.

[43] The record indicated that ML initially invested $7,000 into a Keyport Focus Five fixed annuity. The fixed annuity had a five-year holding period and imposed a 7% surrender fee that declined to zero after five years. ML invested additional funds into the Keyport fixed annuity on four occasions between 2001 and 2007 – $386 in November 2001; $10,350 in September 2002; $1,351 in June 2003; and $1,370 in June 2004. The documentation related to ML's June 2004 investment states, without further explanation, that a Sun Life annuity was substituted for the Keyport annuity. In May 2007, ML surrendered a Sun Life fixed annuity and paid a surrender fee. Based on the terms of her initial purchase of a Keyport fixed annuity, however, the surrender period should have passed. The record does not address this inconsistency. ML testified that she did not recall ever adding additional funds to the fixed annuity, although the record indicated otherwise.

[44] During Pierce's first meeting with ML, Pierce assisted ML with rolling over a Sun Life annuity held in an IRA into an ING annuity. The complaint does not allege that Pierce mishandled this transaction.

[45] The documents contained in the record are not clearly legible. The holding period appears to have been seven years. We, however, cannot ascertain for certain based on the record.

At the time of the purchase, Pierce reported in ML's confidential data profile (that ML signed) and annuity reporting sheet that she earned a yearly income of $60,000 and was in a 30% tax bracket. Pierce reported both her liquid and total net worth as $150,000. Pierce stated that she had a long-term investment time horizon (greater than 10 years), a moderate risk tolerance, and 30 years of investment experience. He ranked her investment objectives in order of importance from more important to less important as: balanced, income, capital preservation, and appreciation. Pierce also entered into the record account documentation that he prepared in May 2007, when he handled the rollover in ML's IRA (valued at $84,619). On the account documentation that Pierce prepared in May 2007, he listed ML's annual income as $30,000 and reported that she was in a 30% tax bracket. He also reported that she had a liquid net worth of $200,000 and total net worth of $600,000. Pierce ranked her investment objectives in order of importance from more important to less important as: balanced, income, appreciation, and capital preservation.

IFMG's 2001 account paperwork for ML (to which Pierce did not have access when he executed the transaction at issue), reported that ML's annual income was $24,000 and that she was in a 15% tax bracket. It also reported that her net worth was $114,000 and that she sought capital preservation, future income, and building of assets.

ML testified that, since 2002, she worked 20 hours per week at Costco. ML owns the condominium in which she lives. She stated that Pierce recommended to her that she sell her Sun Life fixed annuity and that he failed to mention that she would pay a surrender fee or possible tax liability. She could not recall if he asked her about her financial condition. ML denied that her income was $60,000 per year and stated that her annual income never exceeded $24,000. She also denied that she had 30 years of investment experience. ML did not know if the $150,000 net worth figure that Pierce listed was accurate. She was unsure of her liquid net worth in 2007. ML could not recall her May 2007 meeting with Pierce or that she had rolled over an ING variable annuity in her IRA at that time.

Pierce testified that he met with ML on three separate occasions. The first meeting occurred in May 2007. He testified that, at that time, he executed an IRA rollover into an ING variable annuity in the amount of $84,619. The second meeting occurred in August 2007. Pierce recalled that ML did not understand the fixed annuity that she owned. He stated that he did not recommend that she surrender the fixed annuity, but she believed it to be out of the surrender period, and chose to cash in the fixed annuity because she needed access to some of her funds. He assumed that she was correct that the Sun Life fixed annuity was out of the surrender period, so he did not discuss surrender charges with her. He testified that, when ML sought to surrender her Sun Life fixed annuity, he advised her about possible tax consequences.[46]

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[46] Pierce stated incorrectly in a January 2008 response to an IFMG/LPL Financial questionnaire that ML had not actually incurred adverse tax consequences with her surrender. Pierce arranged for the proceeds of ML's annuity surrender to be sent by check to Sovereign Bank for deposit into ML's bank account rather than credited to ML's IFMG account. ML wrote a check for her September 24, 2007 purchase of an ING variable annuity.

Pierce testified that his third meeting with ML occurred in September 2007. At that time, ML sought a guaranteed income and a better return. He recommended that she invest in an ING variable annuity. Pierce admitted that he incorrectly listed ML's source of funds for the ING variable annuity purchase as inheritance rather than an annuity sale. He admitted that he did not identify ML's purchase as a replacement transaction and that, in doing so, he provided the firm with inaccurate information. He testified that, at the time, he believed it to be accurate because of the time lapse between the surrender and purchase, but that he subsequently learned that it was not. The ING variable annuity that Pierce sold to ML included a rider that locked in gains, provided a living benefit, and paid a guaranteed income, regardless of changes in the market, features that ML specifically sought. The record does not include information sufficient to determine or compare the costs and underlying investment options associated with ML's Sun Life and ING annuities.

D. Pierce's Testimony

Pierce described IFMG as a firm in which little training occurred and recordkeeping was not emphasized. He stated that his own training had occurred eight years prior and did not cover many of the details related to variable annuity sales. He contended that he also did not fully understand the circumstances in which 1035 exchanges applied. Pierce also claimed that his main concern in dealing with these, and most of his clients, was to address their fears that they would outlive their incomes. He stated that he addressed this concern by selling ING variable annuities that locked in market gains from the preceding two years and provided a guaranteed benefit. He noted that, in light of post-2008 volatility in the stock market, his recommendations worked well for his clients.

Pierce admitted that he made mistakes and indicated a willingness to accept responsibility for his actions. He stated that, as his business grew, his attention to detail lessened. He admitted to processing errors and mistakes with paperwork, but noted that, in 2007 alone, he processed more than 3,500 transactions without administrative support. He argued that the trades at issue in this complaint accounted for less than one percent of his overall business during the relevant time period.

IV. Discussion

The Hearing Panel found that Pierce concealed the fact of annuity switches from IFMG in seven customer accounts and falsified firm records related to annuity switches in the same seven customer accounts, in violation of NASD Rules 3110 and 2110, as alleged in causes one and two. Under cause three, the Hearing Panel found that Pierce willfully and fraudulently omitted material information regarding 1035 exchanges from sales conversations with four customers, AP, PB, LC, and ML, in violation of Exchange Act Section 10(b), Rule 10b-5 thereunder, and NASD Rules 2120, 2110, and NASD IM-2310-2. The Hearing Panel dismissed the allegations that he also fraudulently omitted discussions of surrender charges and tax liabilities. Under cause four, the Hearing Panel chose not to make any findings on Enforcement's allegations that Pierce executed unsuitable annuity transactions in seven customer accounts. The Hearing Panel found, under cause five, that Pierce violated NASD Rule 2110 by intentionally misrepresenting to IFMG the adverse tax consequences associated with the annuity transactions that he executed in the accounts of six customers, CC, AP, PB, CY, LC, and ML.

We modify these findings as detailed below.

A. Causes One and Two – Concealing Annuity Switches and Falsifying Firm Records

We affirm the Hearing Panel's findings under causes one and two that Pierce violated NASD Rules 2110 and 3110 by concealing annuity switches from IFMG and falsifying firm records.

NASD Rule 2110 (now FINRA Rule 2010) requires that FINRA members and associated persons "observe high standards of commercial honor and just and equitable principles of trade." "A respondent violates the just and equitable principles of NASD Rule 2110 when he engages in unethical conduct." *Dep't of Enforcement v. Skiba*, Complaint No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13 (FINRA NAC Apr. 23, 2010). Without question, the submission of false information on variable annuity applications is a violation of Rule 2110. *Id.*; *Dep't of Enforcement v. Prout*, Complaint No. C01990014, 2000 NASD Discip. LEXIS 18, at *6 (NASD NAC Dec. 18, 2000) ("Submitting false information about customers on variable annuity applications is a violation of the NASD's just and equitable principles of trade rule."). NASD Rule 3110 requires member firms to make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws and rules.[47] FINRA Rule 0140 states that associated persons shall have the same duties and responsibilities under the rules as member firms. These rules required Pierce to complete annuity-related firm records accurately and completely and prohibited him from concealing facts from the firm and inserting inaccurate information in firm records. *See Skiba*, 2010 FINRA Discip. LEXIS 6, at *13-14 (holding that Skiba's failure to submit accurate and complete information on a variable annuity application and to structure transactions as variable annuity replacements as required by firm policy violated NASD Rule 2110); *Dep't of Enforcement v. Cuozzo*, Complaint No. C9B050011, 2007 NASD Discip. LEXIS 12, at *21 (NASD NAC Feb. 27, 2007) (holding that Cuozzo violated NASD Rule 2110 by inserting false information on annuity applications). Pierce failed on all levels.

Pierce failed to follow IFMG procedures and concealed seven annuity switches from IFMG, in part by falsifying firm records, and in part by arranging for the switches to occur as two separate transactions. Pierce structured each customer's surrender in such a way that the proceeds from the surrender went to Sovereign Bank for deposit into the customer's bank account rather than to the customer's brokerage account at IFMG. Pierce admitted that he completed the documentation for all of the customers' annuity surrenders and chose the option of having the surrender proceeds sent to Sovereign Bank. Pierce's only explanation for this was that he believed that the surrenders and subsequent purchases were two separate transactions because of the time lag of two weeks to one month between the various transactions. The time lag, however, resulted at least in part from Pierce's own actions and the manner in which he structured the customers' surrenders and subsequent purchases. Conveniently, the manner in

[47] NASD Rule 3110 was superseded by FINRA Rules 2268, 4511-4515, and 7440, effective December 5, 2011, and FINRA Rule 5310, effective May 31, 2012. *See FINRA Regulatory Notice 12-13*, 2012 FINRA LEXIS 17 (Mar. 2012); *FINRA Regulatory Notice 11-19*, 2011 FINRA LEXIS 31 (Apr. 2011).

which Pierce structured these transactions enabled him to conceal from the firm's enhanced oversight the fact that Pierce was switching these customers from one annuity into another.

Pierce coupled his method of structuring these clients' surrenders with blatant misrepresentations on firm records regarding the sources of funds that the customers used to purchase annuities. Pierce completed an annuity reporting sheet for each of the seven investors in which he did not identify any of the trades as replacements or switches. Additionally, the annuity reporting sheets required that Pierce disclose the sources of the funds that the customers used to purchase the annuities that Pierce sold them. He failed on all seven forms to identify a surrendered annuity as the source of funds, and he uniformly provided IFMG with inaccurate and misleading information about these customers. Instead, he fabricated false sources. Pierce completed the surrender paperwork for all of the customers at issue, so he was fully aware of the true sources of the customers' funds. Yet Pierce misrepresented the source of funds on the annuity reporting sheet for every customer.[48] Pierce similarly misrepresented on accompanying annuity applications for each of the seven customers that the purchased annuity was not a replacement for another annuity, further concealing the true nature of the transactions.

Coulter testified that, had Pierce accurately identified the source of funds for these transactions as surrendered annuities, Pierce also would have had to complete a replacement/switch disclosure form for each customer. Pierce claimed throughout these proceedings that he had in fact completed replacement/switch disclosure forms for four to six of the customers. He claimed that the forms were stored in his file in the hub office. IFMG/LPL Financial searched their files but did not find the forms, and Pierce offered no explanation for why he failed to provide these forms to the firm to be maintained electronically. Coulter testified that he saw some replacement/switch disclosure forms for Pierce's customers, but he could not recall if the forms he saw pertained specifically to the seven customers at issue. The Hearing Panel found Pierce's testimony that he completed replacement/switch disclosure forms for four to six of the customers not credible. We find no basis in the record for disturbing this credibility finding, as it is supported by the fact that the firm's records do not include these documents and is consistent with Pierce's overall conduct, which included efforts to conceal the true nature of these annuity switches from the firm. *See Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *53 (Dec. 10, 2009) (finding that the credibility determination of an initial fact finder is entitled to considerable weight and deference and generally can be overcome only where the record contains substantial evidence for doing so).

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[48] For CC, rather than indicate that the source of funds was a surrendered annuity, Pierce stated that it was the sale of property. For AP, PB, and CY, rather than identify the source of funds as a surrendered annuity, he stated that the funds came from the clients' checking accounts. For VG, Pierce incorrectly listed the source of funds as CDs. For LC, Pierce misrepresented that the source of her funds was an inheritance from her spouse's death rather than from the surrender of another annuity. LC's son, FC, testified that LC had not inherited money and was divorced from her husband, who was still alive. Pierce also misrepresented on an annuity reporting sheet that ML's source of funds for her annuity purchase was a "death claim." ML denied that she had ever inherited money in a "death claim."

Our findings are supported by other facts as well. Pierce's actions demonstrated an overall lack of regard for the veracity of the information that Pierce included on official firm documents. For example, Pierce readily admitted that, on firm records, he grossly overstated the level of investment experience of these customers. This misrepresentation was not included in the complaint as an alleged rule violation, and we therefore are not finding that this misconduct violated a FINRA Rule. We note, however, that Pierce's admissions in this regard illustrate Pierce's lackadaisical attitude with respect to ensuring accuracy in the completion of firm records and his pattern of misrepresenting information on firm documents.[49]

Pierce contends that his misconduct should be excused because IFMG failed to train him adequately to complete the various forms required for annuity transactions. Pierce's claim is not a defense. First, Pierce has significant experience. He had been employed by the firm since 2000 and active in the securities industry since 1999. Additionally, he was a large producer for IFMG, and the record demonstrates that he executed approximately 152 annuity transactions and 32 annuity replacements during the one-year review period. In any event, Pierce's purported inadequate training does not excuse his misconduct. *See Larry Ira Klein*, 52 S.E.C. 1030, 1034 (1996) (finding that respondent was responsible for inaccurate information on firm's currency bond list notwithstanding lack of training and approval of list by supervisors); *Donald T. Sheldon*, 51 S.E.C. 59, 88 n.130 (1992) (finding that the obligations of securities professionals are not excused by the failures of their supervisors).

We find, as alleged in causes one and two, that Pierce falsified firm records and failed to follow firm procedures with respect to seven customers' annuity transactions and that he actively concealed from IFMG seven annuity switches, in violation of NASD Rules 2110 and 3110. *See Fox & Co. Inv., Inc.*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822, at *30-32 (Oct. 28, 2005) (finding that entering incorrect information on firm documents constitutes a violation of NASD Rules 2110 and 3110); *Skiba*, 2010 FINRA Discip. LEXIS 6, at *13-14 (finding that providing inaccurate and misleading information to member firm on variable annuity documents violates NASD Rule 2110).

B. Cause Three – Fraudulent Omissions

Cause three of the complaint alleged that Pierce fraudulently omitted from sales conversations with customers AP, PB, LC, and ML material facts related to three subject areas – the potential tax liabilities associated with an annuity surrender, surrender charges, and the

[49] Additionally, the financial information that Pierce listed in the seven customers' confidential data profiles conflicted with the financial information listed for the same customers in confidential data profiles completed previously by other registered representatives at IFMG. Furthermore, AP, PB, FC (on behalf of LC), and ML each testified that the financial information that Pierce listed in their confidential profiles was inaccurate. The evidence is unclear as to whether Pierce misstated financial information on the confidential data profiles that he completed, and the complaint does not allege that his conduct in this respect violated FINRA rules. We therefore have not considered this with respect to our findings under cause one, except to the extent that it is further evidence of Pierce's attitude with respect to ensuring the accuracy of firm documents.

option of executing a 1035 exchange – in violation of Exchange Act Section 10(b), Rule 10b-5, NASD Rules 2120 and 2110, and NASD IM-2310-2. For the reasons discussed below, we dismiss the fraud allegations in cause three.

Exchange Act Section 10(b) makes it "unlawful for any person . . . to use or employ, in connection with the purchase or sale of any security . . . 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." Exchange Act Rule 10b-5 makes it unlawful, in connection with the purchase or sale of any security, "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[.]" An omission is actionable under the securities laws when a person is under a duty to disclose. *See Basic Inc. v. Levinson*, 485 U.S. 224, 239 n.17 (1988) ("Silence, absent a duty to disclose, is not misleading under Rule 10b-5."). The federal courts, the Commission, and FINRA have held that a registered representative has a duty to disclose material information fully and completely when recommending an investment. *See De Kwiatkowski v. Bear, Stearns & Co.*, 306 F.3d 1293, 1302 (2d Cir. 2002) (a broker "is obliged to give honest and complete information when recommending a purchase or sale"); *Hanly v. SEC*, 415 F.2d 589, 596-97 (2d Cir. 1969); *SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992); *Richard H. Morrow*, 53 S.E.C. 772, 781 (1998); *Dep't of Mkt. Regulation v. Field*, Complaint No. CMS040202, 2008 FINRA Discip. LEXIS 63, at *32-33 (FINRA NAC Sept. 23, 2008). This duty is derived from the broker's "special relationship" to an investor. *Hanly*, 415 F.2d at 597. A broker's duty is to link his recommendation with any additional significant facts necessary for an investor to assess the nature and reliability of that recommendation. *See Morrow*, 53 S.E.C. at 781 (requiring broker who recommends a security to disclose "material adverse facts"); *Field*, 2008 FINRA Discip. LEXIS 63, at *32-33; *Dep't of Enforcement v. Cipriano*, Complaint No. C07050029, 2007 NASD Discip. LEXIS 23, at *27 (NASD NAC July 26, 2007).

To establish that Pierce fraudulently omitted material information, Enforcement must demonstrate by a preponderance of the evidence that: (1) an omission of material information occurred; (2) the omission was made in connection with the purchase or sale of a security and involved any means or instrumentality of interstate commerce; and (3) Pierce acted with scienter.[50] *Dep't of Enforcement v. Apgar*, Complaint No. C9B020046, 2004 NASD Discip. LEXIS 9, at *11 (NASD NAC May 18, 2004) (citing *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450 (2d Cir. 1996)). Whether a fact is material "depends on the significance the reasonable investor would place on the withheld or misrepresented information." *Basic v. Levinson*, 485 U.S. 224, 240 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (holding that information is material if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available").

Scienter refers to a "mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). A showing of recklessness is sufficient

[50] The record amply supports the findings that Pierce's conduct occurred in connection with the purchase or sale of securities and that he used any means or instrumentality of interstate commerce.

to demonstrate that Pierce acted with scienter. *See Tellabs v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 n.3 (2007). "Reckless conduct has been defined as a highly unreasonable misrepresentation or omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Dep't of Enforcement v. Abbondante*, Complaint No. C10020090, 2005 NASD Discip. LEXIS 43, at *28 (NASD NAC Apr. 5, 2005), *aff'd*, Exchange Act Release No. 53066, 2006 SEC LEXIS 23 (Jan. 6, 2006), *aff'd*, 2006 U.S. App. LEXIS 30982 (2d Cir. Dec. 12, 2006).

1. Alleged Omissions of Surrender Charges and Potential Tax Liabilities

The Hearing Panel found that Enforcement failed to prove by a preponderance of the evidence that Pierce failed to disclose surrender charges and potential tax liabilities. The Hearing Panel noted that Pierce testified that he did advise each of the customers about surrender charges and tax liabilities. Although each customer (and, in the case of LC, the customer's son, FC) testified that he or she could not recall Pierce's discussing these issues, the customers and FC also testified that they did not listen carefully to Pierce's presentations and simply followed his advice without paying close attention. We agree with the Hearing Panel's weighing of the evidence and further note that several customers appeared either confused as to aspects of their interactions with Pierce or seemed to have forgotten the events at issue. For example, AP stated that she was in a hurry when she met with Pierce and paid little attention to him. PB appeared confused during her testimony. She testified that Pierce also sold her the Sun Life annuity that she had purchased in in 2002, but the record clearly indicated that the sale was executed by another registered person and that Pierce was not involved. FC demonstrated a lack of understanding of his mother's finances, notwithstanding that he was testifying as to the inaccuracy of the financial information that Pierce included on the confidential data profile, and he admitted that he failed to read any of the documents that Pierce presented to his mother to sign or to understand fully Pierce's recommendations. Similarly, ML could not recall her first meeting with Pierce or that she had added additional funds, on four occasions, to her Sun Life annuity and seemed confused as to what she owned and when she purchased it.

Additionally, the Hearing Panel noted that all of the customers initialed and signed forms acknowledging that they understood that they could incur surrender charges and tax liabilities, and none of the customers complained about the tax liabilities that they incurred. For instance, PB testified that she had withdrawn funds from her annuity in the past and had paid taxes each time.[51] We also note that PB and LC did not actually incur surrender charges, so Pierce cannot be held to have violated FINRA's rules by failing to disclose these charges. For all of these reasons, we affirm the Hearing Panel's determination to dismiss cause three as it relates to

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[51] The Hearing Panel also found that it would be consistent with Pierce's efforts to conceal the true nature of these transactions for Pierce to advise his customers, up front, that they may receive taxable gains. The Hearing Panel reasoned that, had he not disclosed the potential tax liability, the customers may have complained after the fact and alerted the firm to the true nature of the annuity exchanges.

Pierce's alleged failures to disclose potential tax liabilities and surrender charges to customers AP, PB, LC, and ML.

2. Alleged Omissions of Availability of 1035 Exchanges

The Hearing Panel found that Pierce fraudulently failed to disclose to customers AP, PB, LC, and ML that they could effect annuity replacement transactions without incurring tax liability by utilizing 1035 exchanges. The Hearing Panel found that such a disclosure may have affected the four customers' investment decisions. The Hearing Panel found that the omitted information was material. The Hearing Panel also found that Pierce acted with scienter based on Pierce's efforts to conceal the true nature of the annuity exchanges. The Hearing Panel reasoned that, if Pierce had disclosed to each customer the availability of a 1035 exchange, the customers possibly would have executed 1035 exchanges, which would have alerted the firm to the true nature of the trades.

We do not agree with the Hearing Panel that the evidence is sufficient to establish that Pierce omitted information related to 1035 exchanges from his conversations with these customers and that he acted with scienter.[52] When a registered representative recommends that a customer switch one variable annuity for another, the registered representative ordinarily should discuss with the customer the possibility of structuring the transaction as a 1035 exchange. In many such circumstances, the failure to discuss a 1035 exchange would be a material omission. Here, however, the record is less than clear regarding whether Pierce omitted such information and, if so, whether the omission was reckless or intentional.

Pierce's testimony as to what he disclosed to these customers about 1035 exchanges was unclear.[53] The customers' testimony on this point is unhelpful. Customer AP testified that she did not recall Pierce's discussing the possible tax implications of her surrender, but she also stated that she "didn't give this whole thing a lot of thought," and her testimony suggested that she either did not recall or did not listen to what Pierce said. Her recollections about her conversation with Pierce were very general and she gave the impression during her testimony that she was not interested in listening to Pierce. Similarly, PB confused some facts during her testimony and implied that she did not pay much attention to what Pierce stated because she trusted him. PB testified that she did not read the documents that Pierce gave to her and she signed. ML could not recall her first meeting with Pierce in May 2007, even after reviewing

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[52] We agree with the Hearing Panel, however, that Pierce's representations to these customers regarding 1035 exchanges, whatever they were, related to the purchase or sale of securities and that such information generally would be material to a reasonable investor. *See Shaev v. Saper*, 320 F.3d 373, 382 (3d Cir. 2003) (finding material information related to whether a bonus paid to the issuer's president would be tax deductible); *SEC v. Cochran*, 214 F.3d 1261, 1268 (10th Cir. 2000) (finding material information regarding the tax consequences of a bond transaction).

[53] Pierce claimed to have mentioned 1035 exchanges to some customers, although he admitted that he did not fully understand the situations in which a 1035 exchange was available and advisable.

documents that she signed during that meeting. She also could not recall her many additional contributions to the Sun Life annuity that she ultimately surrendered and could not recall Pierce discussing her financial condition with her. She admitted that she did not understand the two annuities that she purchased from Pierce, although she also did not ask questions about them. Furthermore, she could not recall whether her liquid net worth was at or near the amount that Pierce reported for her. Overall, we find that ML's testimony demonstrated that her memory with respect to her dealings with Pierce was unreliable. We also find FC's testimony to be unreliable. FC testified that he did not read any of the documents that Pierce provided and his mother signed, notwithstanding that he served as his mother's interpreter. He also exhibited confusion as to LC's finances overall and the investments to which she agreed.

Furthermore, there is contradictory and, at times, ambiguous evidence in the record regarding the availability and advisability of using 1035 exchanges under the facts of this case. For instance, the record is unclear whether all or some of the customers would have required partial exchanges. Examiner JM testified that Sun Life did not allow partial 1035 exchanges. Additionally, the record indicates that some of these customers had withdrawn or intended to withdraw some or all of their earnings, thereby creating uncertainty as to whether they would have benefitted from 1035 exchanges, having already paid taxes on their earnings. The record demonstrates that PB and LC withdrew earnings, either to pay bills or to complete home repairs. Their reasons for meeting with Pierce in the first instance were to obtain access to some of their funds. Furthermore, Pierce testified that ML originally surrendered her Sun Life annuity (one month before she purchased an ING annuity) because she too needed access to her funds, and did not determine until much later that she did not. ML was not specifically asked during her testimony whether she originally required access to the funds in her annuity. Additionally, even if ML had addressed this issue, ML's testimony suggested that her memory was not reliable. AP testified that she met with Pierce because she wanted to add her mother to her existing Sun Life annuity, but AP's testimony is unclear as to the advice that Pierce gave her in response. Moreover, 1035 exchanges generally apply only when the annuity holder does not change. AP's testimony suggested that she was confused as to which annuities she held and which she purchased and that she could not recall what Pierce advised.

Based on the foregoing, we find that the record here is insufficient to substantiate that Pierce intentionally or recklessly omitted from his discussions with these customers the option of a 1035 exchange. Accordingly, we dismiss in their entirety the allegations of cause three.

C. Cause Four – Unsuitable Recommendations

Cause four of the complaint alleged that Pierce's sales to CC, AP, PB, VG, CY, LC, and ML were unsuitable[54] specifically because the customers incurred surrender charges and realized taxable gains, and Pierce failed to process the transactions as 1035 exchanges.[55] The Hearing

[54] The complaint alleged suitability violations under NASD Rules 2110 and 2310. FINRA's new suitability rule, FINRA Rule 2111, and variable annuity rule, FINRA Rule 2330, were not effective at the time of the alleged misconduct.

[55] Three of the customers (PB, CY, and LC) did not incur surrender charges and one (VG) did not incur a tax liability.

Panel concluded that "the essence of the complaint was that [Pierce] engaged in activity to conceal annuity switching from [IFMG], and thus the suitability charge arises from a common course of conduct adequately covered by the other charges." The Hearing Panel determined that it was "unnecessary to reach the issue of whether [Pierce] made unsuitable recommendations" as alleged in the complaint. We do not agree that it is unnecessary to make findings under cause four. We therefore have considered the allegations of the complaint and the evidence presented. On the basis of the record before us, we conclude that Enforcement has failed to prove by a preponderance of the evidence that Pierce's recommendations were unsuitable. Our ruling, however, should not be construed to suggest that Pierce's recommendations were in fact suitable. We harbor significant concerns about Pierce's recommendations of variable annuities to these customers in light of their ages and their apparent need for access to their funds, as well as the surrender charges and new holding periods to which they were subject. But based on the nature of the evidence in the record, we are unable to conclude that Enforcement has proven the allegations of cause four.

FINRA and the Commission have provided significant guidance on variable annuities in general and switching from one variable annuity to another in particular. FINRA has advised that a registered representative is permitted to recommend an annuity exchange only if it is in the investor's best interest and only after evaluating the investor's personal and financial situation and needs, tolerance for risk, and the financial ability to pay for the proposed contract. As early as 1996, FINRA (then NASD) advised its membership that "the sales and distribution of variable contracts are fully subject to [FINRA's] sales practice rules," including the suitability rule. *NASD Notice to Members 96-86*, 1996 NASD LEXIS 108, at *3-4.

In a 1999 Notice to Members, FINRA (then NASD) reminded members that its suitability requirements applied to sales of variable annuities, and provided guidelines which included, but were not limited to, considering whether the variable annuity as a whole and the investment choices in the underlying subaccounts were suitable. *NASD Notice to Members 99-35*, 1999 NASD LEXIS 10, at *8 (May 1999). FINRA stated that, in order to conduct a suitability assessment, the registered person also should "have a thorough knowledge of the specification of each variable annuity that is recommended, including the death benefit, fees and expenses, subaccount choices, special features, withdrawal privileges, and tax treatment." *Id.* Suitability determinations with respect to variable annuity transactions also must take into account the customer's age, financial and tax status, investment objectives, current need for income and liquidity, investment sophistication, risk tolerance, and previous investment experience. *SEC/NASD Report*, at 9; *NASD Notice to Members 99-35*, 1999 NASD LEXIS 10, at *7-8; *NASD Notice to Members 96-86*, 1996 NASD LEXIS 108, at *4. FINRA advised considering the percentage of net worth used for the investment. *NASD Notice to Members 99-35*, 1999 NASD LEXIS 10, at *10. In addition, a suitability determination also should factor in a consideration of the customer's desire or need for life insurance. *SEC/NASD Report*, at 9. For annuity replacements, moreover, FINRA advised that the suitability analysis should include a determination of whether the customer would incur a surrender charge, be subject to increased fees or charges, lose existing benefits, and benefit from product enhancements. *NASD Notice to Members 99-35*, 1999 NASD LEXIS 10, at *12.

In the current case, Enforcement's allegations of unsuitable recommendations rely heavily on Pierce's failing to execute the transactions as 1035 exchanges and on the surrender charges to which the customers were subject and the taxable gains that they realized. As we

discuss above, there is conflicting and, at times, unclear evidence on whether 1035 exchanges were advisable options for all of these customers. In any event, we believe that there is more to the analysis, and we do not find that this record provides adequate information to prove by a preponderance of the evidence that Pierce's recommendations were unsuitable. For instance, the record is ambiguous regarding the customers' overall financial and tax situations, investment objectives, and desire or need for life insurance. Some of the customers testified that the financial profile that Pierce completed was not accurate, but provided few additional details. Customer ML testified that she was unsure of what her net worth was in 2007 and that Pierce's figure may or may not have been correct. FC testified on behalf of his mother, LC, that Pierce's figures were incorrect, but he demonstrated an overall lack of familiarity with his mother's financial holdings. Some customers did not testify at all. Irrespective of the customers' incomplete testimonies, however, Enforcement simply did not introduce adequate and reliable evidence to provide a complete picture of the seven customers' financial resources and needs. While there is some indication that several of Pierce's customers needed access to funds, evidence of the customers' liquidity needs was not fully developed. The record was incomplete with respect to the accuracy of Pierce's representations on firm documents regarding the customers' investment time lines and risk tolerance. Even the customers who testified did not address these issues, other than to indicate generally that they did not want to take risks or lose money. Six customers' profiles stated that they had moderate risk tolerance and one stated that he had an aggressive risk tolerance. In addition, the customer account documents indicate that six of the customers had long term investment time horizons (greater than 10 years) and one had a medium term investment time horizon (six to 10 years). Enforcement did not offer evidence to counter these time horizons. While we do not believe that the seven customers had significant financial resources or that they were financially sophisticated, we find that the evidence regarding the customers' overall financial situations, risk tolerance, and liquidity needs is insufficient.

We acknowledge that significant time elapsed between the customers' 2006 and 2007 meetings with Pierce and their January 2011 testimony and that their memories of their conversations with Pierce may have faded. As such, additional and more detailed questioning of the witnesses regarding their liquidity, investment needs, and investment time horizons would have aided our consideration of suitability. Other important evidence that would have enhanced our ability to make a suitability determination also is absent from this record. The Sun Life, ING, and Jackson National annuity contracts were not submitted into evidence, so there is no way for us to compare their costs and features. Furthermore, the record contains no information on whether the customers lost existing benefits and no evidence relating to the underlying investment choices that the annuities offered in their subaccounts. Evidence to corroborate the witnesses' testimony and support the allegations is particularly important in cases in which witnesses' recollections are weak.

What evidence we do have provides an incomplete picture. The customers were between the ages of 63 and 74 years, four were charged surrender fees, all were subject to new holding periods, which ranged from 4 to 8 years, and several likely had liquidity needs. These facts call into question the suitability of Pierce's recommendations. Conversely, six of the customers' stated time horizons were greater than 10 years and Pierce's unopposed testimony was that his customers benefited greatly from the guaranteed income riders that were an available feature of the ING and Jackson National annuities but not of the customers' existing Sun Life annuities. We do not know, however, the costs associated with this benefit and there is no evidence to

countervail Pierce's statements regarding this benefit. There is no information in the record regarding the size of the death benefits that the annuity contracts provided or the various payout options available for the surrendered and purchased annuities. Examiner JM testified that he did not review the annuity contracts for the annuities that the customers bought or sold and that he relied heavily in constructing FINRA's suitability case on IFMG/LPL Financial's internal review. IFMG/LPL Financial's internal review reports are not comprehensive enough for us to rely solely on them for these determinations.

Without clearer evidence of the customers' investment profiles and the annuities' features and costs, we are unable to determine, by a preponderance of the evidence, whether the surrender charges and tax consequences that resulted from the customers' surrenders of the Sun Life annuities and the new holding periods of the ING and Jackson National annuities outweighed the benefits of the ING and Jackson National annuities.

We want to state clearly that these were customers of modest means and advanced age, and Pierce was required to make customer-specific assessments of the costs and benefits associated with his recommendations. Furthermore, given the overall picture that emerges of these customers, Pierce should have exercised the utmost caution in recommending securities transactions to them, and we are not convinced that he did. Based on the gaps in the evidence in this record, however, we cannot conclude that Enforcement proved by a preponderance of the evidence that Pierce's recommendations were unsuitable.

Our decision should not be read to suggest that we have concluded that the transactions that Pierce recommended and executed for these customers were in fact suitable. Rather, based on the dearth of evidence in this record, we are unable to find that the recommendations were unsuitable. For this reason, we dismiss the allegations of cause four.

D. Cause Five – Misrepresenting Facts to Member Firm

The Hearing Panel found that Pierce intentionally misrepresented facts regarding six customers to IFMG/LPL Financial during its internal review of his annuity sales, in violation of NASD Rule 2110. We affirm the Hearing Panel's findings.

IFMG/LPL Financial conducted an internal review of Pierce's annuity sales. In connection with the review, Pierce submitted two sets of answers to firm questionnaires. He emailed his first set of answers to the firm on January 3, 2008. He completed one questionnaire for each of the following customers: CC, AP, PB, CY, LC, and ML. In each questionnaire, he answered questions related to the annuity surrenders and purchases at issue in this case. Related to these six customers, Pierce answered "No" to the question: "Did the client incur any adverse tax consequences by surrendering the contract?" In fact, each of these six customers received a taxable gain as a result of his or her annuity surrender.[56] On January 9, 2008, IFMG/LPL

[56] CC received a taxable gain of approximately $14,000 to $20,000; AP received a taxable gain of approximately $4,367; PB received a taxable gain of approximately $1,432; CY received a taxable gain of approximately $2,290; LC received a taxable gain of approximately $430; and ML received a taxable gain of approximately $2,407.

Financial management asked Pierce to provide more detail regarding his statement that there were no tax consequences that resulted from the transactions. Pierce stated:

> In some cases clients had been taking interest from the very beginning so that it was a return of premium which was not taxable, in some cases the market value was below their premium so there were no taxable gains, in some cases the clients requested their interest upon liquidation, in some cases clients have [sic] and in some cases it was an IRA the 60 day rollover rule applies, in some cases clients have [sic]. I've always informed my clients about the possible tax consequences and that they should consult their tax advisor.

Pierce did not correct the misrepresentations in his first set of answers to the firm's questionnaires.

Pierce stated that he was on paternity leave from IFMG/LPL Financial when the firm commenced its internal review, so he answered the firm's questionnaire without access to his own files. He also stated that he did not take the firm's inquiry seriously. He admitted that his answers were incorrect. The Hearing Panel did not find that Pierce's claims in this regard were credible, and the record does not contain substantial evidence to support overturning the Hearing Panel's credibility finding. *See Kirlin Sec., Inc.*, 2009 SEC LEXIS 4168, at *53. If Pierce was uncertain as to the tax consequences for these customers, then he could have answered honestly that he could not recall and sought access to his files before answering. He did not. In any event, Pierce's claims, even if true, would not excuse his misconduct. A registered representative who misleads his firm by providing inaccurate information violates NASD Rule 2110. *See James A. Goetz*, 53 S.E.C. 472, 477 (1998) (finding that respondent's false representation to his firm that he would not personally benefit from the firm's matching gift program violated NASD Rule 2110); *George R. Beall*, 50 S.E.C. 230, 231-32 (1990) (finding that respondent's passing of bad checks to his firm violated just and equitable principles of trade); *Dep't of Enforcement v. Davenport*, Complaint No. C05010017, 2003 NASD Discip. LEXIS 4, at *8-9 (NASD NAC May 7, 2003) (finding that respondent's false representations to his member firm regarding whether he received loans from customers violated NASD Rule 2110).

Although a finding of intentional misconduct is not necessary to find a violation of NASD Rule 2110, we also affirm the Hearing Panel's findings that Pierce acted intentionally when he misled his firm during its investigation. Pierce's actions indicate that Pierce's misconduct was more than mere negligence. Pierce embarked upon a course of conduct designed from the start to conceal the true nature of these transactions from IFMG. The evidence demonstrates that Pierce structured the transactions in a manner that concealed their true nature from IFMG management. He ensured that the customers received the funds from their surrenders at their bank rather than through direct deposit into their accounts at IFMG. He did not identify the transactions as replacement transactions and misrepresented the sources of these customers' funds for their annuity purchases. Finally, when questioned after the fact by firm management, he misrepresented that the customers had not incurred taxes when they had. In all, we find that Pierce engaged in an intentional course of conduct to conceal the true nature of these transactions from IFMG.

We affirm the Hearing Panel's findings that Pierce intentionally misrepresented to IFMG/LPL Financial information regarding the tax consequences of his customers' annuity surrenders, in violation of NASD Rule 2110.

V. Sanctions

The Hearing Panel fined Pierce $25,000, suspended him in all capacities for one year, and assessed costs of $10,696.[57] Our review of the sanctions imposed by the Hearing Panel is de novo, and we must assign our own weight to the relevant, and often countervailing, factors in each case. *Dep't of Enforcement v. Leopold*, Complaint No. 2007011489301, 2012 FINRA Discip. LEXIS 2, at *17 (FINRA NAC Feb. 24, 2012). "The relevancy and characterization of [an aggravating or mitigating] factor depends on the facts and circumstances of a case and the type of violation."[58] Balancing the factors present in this case, we modify these sanctions.

We find Pierce's misconduct under causes one, two and five to be egregious in that it involved an intentional effort by Pierce to conceal the true nature of these transactions from his firm. As a result of Pierce's efforts to conceal information from his firm, these customers were deprived of the heightened level of supervision that is appropriate for variable annuity switches. As discussed in more detail below, we fine Pierce $25,000 and suspend him in all capacities for six months.[59]

We apply FINRA's Sanction Guidelines ("Guidelines") to determine the appropriate sanctions. For Pierce's misconduct under causes one and two, we consulted the Guidelines for forgery and/or falsification of records and recordkeeping violations.[60] The Guidelines for forgery and/or falsification of records recommends a fine of $5,000 to $100,000 and, if mitigating factors exist, a suspension of up to two years.[61] In egregious cases, the Guidelines allow for consideration of a bar.[62] The Guidelines for recordkeeping violations recommend a fine of $1,000 to $10,000 and, in egregious cases, a fine of $10,000 to $100,000.[63] The

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[57] Because the Hearing Panel found that Pierce's omissions under cause three were willful, he would have been subject to statutory disqualification from the securities industry had we affirmed the Hearing Panel's findings.

[58] *FINRA Sanction Guidelines*, at 6 (2011), http://www/finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereafter "*Guidelines*"].

[59] Because we have dismissed the Hearing Panel's findings of fraudulent and willful omissions, Pierce is not subject to statutory disqualification as a result of this decision.

[60] *Guidelines*, at 29, 37.

[61] *Guidelines*, at 37.

[62] *Id.*

[63] *Guidelines*, at 29.

Guidelines also recommend a suspension in any or all capacities for up to 30 business days and, in egregious cases, a lengthier suspension or a bar.[64] For Pierce's misconduct under cause five, we consulted the Guidelines for misrepresentations or material omissions of fact.[65] For intentional misrepresentations, the Guidelines recommend a fine of $10,000 to $100,000 and a suspension of 10 business days to two years or, in egregious cases, consideration of a bar.[66]

The Guidelines for recordkeeping violations and falsification of records recommend that we consider the nature of the documents and materiality of the inaccurate or missing information.[67] Here, Pierce falsified documents related to customers' annuity trades and, by doing so, deprived the customers of the enhanced oversight that is appropriate for variable annuity replacements. We find this consideration to be aggravating. *See Dep't of Enforcement v. Cohen*, Complaint No. EAF0400630001, 2010 FINRA Discip. LEXIS 12, at *64-65 (FINRA NAC Aug. 18, 2010) ("Falsifying documents is dishonest and suggests that [respondents] are willing to bend the rules where regulation is concerned to suit their own needs . . . ."); *Dep't of Enforcement v. Taylor*, Complaint No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22-23 (NASD NAC Feb. 27, 2007) (finding that falsifying documents is an example of misconduct that adversely reflects on a registered person's ability to comply with regulatory requirements). Pierce took numerous steps to conceal the true nature of these transactions from his firm. He arranged for the proceeds of the customers' annuity surrenders to be sent to Sovereign Bank for deposit into the customers' Sovereign Bank accounts rather than allowing for a direct deposit of the proceeds into the customers' IFMG brokerage accounts, thereby making it more difficult for IFMG to detect that these transactions were annuity switches. Furthermore, Pierce knew that each of these customers had in fact surrendered existing annuities when he completed annuity-related paperwork in which he indicated falsely that annuity surrender had not funded the annuity purchase. Indeed, Pierce knew all too well about the surrenders because he completed the paperwork for each surrender, yet he listed falsified sources for the funding of the variable annuities that he sold to these customers. We find it aggravating that Pierce's actions were designed to intentionally deceive IFMG.[68]

We also find it aggravating that Pierce admitted that he did not take the firm's inquiries seriously, so his initial answers during the internal review were not reliable. As a registered person, Pierce was obligated to cooperate with IFMG/LPL Financial's investigation and assist the firm by cooperating and answering truthfully. Pierce should have candidly answered IFMG/LPL Financial's inquiries. By approaching the firm's internal review as if it did not matter, Pierce demonstrated a dismissive attitude towards his firm's compliance efforts that is not consistent with operating as a registered person in the securities industry. Indeed, he

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64 *Id.*

65 *Guidelines*, at 88.

66 *Id.*

67 *Guidelines*, at 29, 37.

68 *Guidelines*, at 6-7 (Principal Considerations, Nos. 10, 13).

misrepresented facts and told half-truths to suit his own needs. Registered individuals must hold themselves to a higher standard than this. *Cf. Guang Lu*, Exchange Act Release No. 51047, 2005 SEC LEXIS 117, at *22 (Jan. 14, 2005) (holding that a registered person is responsible for his actions and cannot shift blame to his supervisors); *Leonard John Ialeggio*, 52 S.E.C. 1085, 1088 (1996) ("[R]egistered persons are expected to adhere to a standard higher than 'what they can get away with.'"); *Dist. Bus. Conduct Comm. v. Pelaez*, Complaint No. C07960003, 1997 NASD Discip. LEXIS 34, at *13-14 (NASD NBCC May 22, 1997) (concluding that providing false information to minimize one's own responsibility for misconduct is aggravating).

IFMG/LPL Financial supervisors testified that the replacement/switch documents that Pierce should have completed were an integral part of the firm's annuity replacement review and approval process. By failing to identify these transactions as annuity replacement transactions, and by misrepresenting the sources of the customers' funds for their annuity purchases, Pierce violated firm procedures. Had he acted properly, the firm could have identified these trades as annuity replacement transactions and properly supervised the trades for the benefit of the customers.[69] He deprived the customers of the benefit of proper supervision.

Pierce exhibited a pattern of concealment, and we find his lack of candor in this matter quite troubling. Given Pierce's concerted efforts at the front end of these transactions to conceal their true nature from the firm and his follow-up misrepresentations to IFMG/LPL Financial during its internal review, we find that Pierce embarked upon a pattern of misconduct in these seven transactions that demonstrated dishonesty and a willingness to bend or ignore IFMG's rules.[70] While we acknowledge that Pierce does not have a disciplinary history that

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[69] Pierce contends that IFMG failed to train him adequately as to the procedures that he should have followed and that this factor should be considered mitigating. We do not agree. While the record reflects that IFMG may not have embraced its compliance responsibilities at the level that we would deem adequate, that is not the issue before us. Pierce effected 152 annuity transactions during the one-year review period, 32 of which were annuity replacements. He presumably executed some of those transactions in compliance with IFMG's requirements. Clearly, when he chose to follow the firm's procedures, he was adequately trained to do so. In any event, it should not require firm training to know that it is wrong to misrepresent facts, such as the source of the customers' funds, on firm records. We reject Pierce's argument in favor of mitigation. *Guidelines*, at 6 (Principal Considerations, No. 6).

[70] *Guidelines*, at 6 (Principal Considerations, No. 8). Pierce argues that irregularities in seven variable annuity transactions, of the 152 that he executed over the one-year review period, do not demonstrate a pattern of misconduct. We disagree. Although our finding that he engaged in a pattern of misconduct focuses more on his pattern of deceit and concealment from the firm, not the number of violative trades he executed, seven or fewer transgressions over the course of one year may be evidence of a pattern of misconduct. *See, e.g.*, *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *75 (Feb. 10, 2012) (finding a pattern in the misuse of funds on seven occasions over a 13-month period); *Dep't of Enforcement v. Liu*, Complaint No. C04970050, 1999 NASD Discip. LEXIS 32, at *11 (NASD NAC Nov. 4, 1999) (finding a pattern in four private securities transactions over a two-year period).

demonstrates an extensive pattern of misconduct,[71] we do find that Pierce's actions have demonstrated a pattern of willfully neglecting firm procedures, often to the detriment of the firm's clients.

Pierce concealed from his firm that he had effected variable annuity switches and deprived the customers of the level of supervision that the firm would have imposed had Pierce been honest as to the nature of the annuity transactions at issue. Additionally, Pierce aggravated his initial misconduct – misrepresenting the nature of the annuity transactions on firm records and willfully falsifying firm records – by falsely answering firm questions during the firm's subsequent internal review.[72]

There are many aggravating factors present in this case, including the intentional nature of Pierce's misconduct and concealing his actions from his firm. We are mindful of the fact that, under cause three, the Hearing Panel found that Pierce fraudulently omitted material information in sales presentations to customers and imposed sanctions for this misconduct. We dismiss the Hearing Panel's findings of violation under cause three and impose no sanctions for the alleged violations. Our sanctions are based solely on the findings of violation under causes one, two, and five that we affirm. We impose a six-month suspension and $25,000 fine apportioned as follows: under causes one and two, for concealing the true nature of these transactions from IFMG and falsifying firm records, we fine Pierce $15,000 and suspend him for six months.

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[71] *Guidelines*, at 6 (Principal Considerations, No. 1); *see also Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006) (holding that, while the existence of a disciplinary history is an aggravating factor when determining sanctions, its absence is not mitigating).

[72] Pierce also claims that he did not engage in the misconduct at issue as a means to obtain commissions on the transactions. Pierce earned approximately $2,500 in commissions on these transactions which was a small portion of his yearly production at that time. Pierce, however, generated sizeable commissions by servicing numerous clients, so he had an interest in ensuring that IFMG approved each sale, regardless of size, without question. In any event, Pierce should not be credited for the fact that he did not generate significant ill-gotten gains through his misconduct. *Guidelines*, at 7 (Principal Considerations, No. 17).

Pierce also argues that he should be credited with the fact that, as a result of his misconduct, he lost his job at IFMG/LPL Financial and commissions because the firm held back commissions to cover settlement payments (totaling approximately $21,000) that it made to the customers. *Guidelines*, at 6 (Principal Considerations, No. 14). We do "not consider mitigating the economic disadvantages [respondent] alleges he suffered because they are a result of his misconduct." *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *27 (Dec. 22, 2008). We have rejected in the past such unsupported claims as not constituting evidence of mitigation. *See Dep't of Enforcement v. Jordan*, Complaint No. 2005001919501, 2009 FINRA Discip. LEXIS 15, at *53-54 (FINRA NAC Aug. 21, 2009) (rejecting as mitigating respondent's claim that her personal and business reputation had been hurt by FINRA's action); *Dep't of Enforcement v. Cipriano*, Complaint No. C07050029, 2007 NASD Discip. LEXIS 23, at *40 (NASD NAC July 26, 2007) (rejecting as mitigating the impact that the disciplinary action had on respondent's career).

Under cause five, for intentionally misrepresenting facts to IFMG during an internal review, we fine Pierce an additional $10,000 and suspend him for six months. The suspensions will run concurrently.

VI. Conclusion

We affirm the Hearing Panel's findings under causes one, two and five that Pierce concealed seven annuity switches from his firm, falsified firm records regarding the annuity switches, and intentionally misrepresented facts to the firm during its subsequent investigation of the circumstances surrounding the annuity switches in an ongoing effort to conceal facts from his firm, in violation of NASD Rules 2110 and 3110. Accordingly, we suspend Pierce in all capacities for six months and fine him $25,000. We also affirm the Hearing Panel's order that Pierce pay hearing costs of $10,696.[73]

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary

[73] Pursuant to FINRA Rule 8320, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.

We have considered and reject without discussion all other arguments advanced by the parties.