

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KISHAN PARIKH  
(CRD No. 5506554),

Respondent.

Disciplinary Proceeding  
No. 2021070337401

Hearing Officer–DDM

**DEFAULT DECISION**

July 7, 2021

**Respondent Kishan Parikh engaged in excessive trading and unauthorized trading. For the excessive trading, he is suspended for 18 months in all capacities and fined \$5,000. For the unauthorized trading, he is suspended for six months in all capacities and fined \$5,000. Parikh is ordered to serve the suspensions consecutively. He is also ordered to pay restitution to two customers in the total amount of \$40,919, plus interest.**

*Appearances*

For the Complainant: Joseph E. Strauss, Esq., Tiffany A. Buxton, Esq., and Payne L. Templeton, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

**DECISION**

**I. Introduction**

The Department of Enforcement filed a Complaint against Respondent Kishan Parikh alleging that he made unsuitable recommendations and excessively traded the accounts of five customers (“Customers A – E” or “the Customers”)<sup>1</sup> from August 2014 through November 2016. During that time, the Complaint alleges, Parikh executed 442 trades in those Customers’ accounts, with a total principal value around \$31.1 million. According to the Complaint, this trading caused the Customers losses of more than \$33,000, while it generated gross sales credits and commissions of \$179,112, of which Parikh received at least \$89,000. The Complaint also

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<sup>1</sup> The Customers are identified in the Appendix to this Decision, served only on the parties.

alleges that between April 2016 through February 2017, Parikh executed 53 trades with a total principal value around \$4.2 million in the accounts of Customers C & D without their prior authorization or consent.

Enforcement twice served the Complaint on Parikh. Both times he failed to answer or otherwise respond. Enforcement filed a motion for the entry of a default decision (“Default Motion”), supported by the declaration of Enforcement counsel Joseph Strauss, and accompanying exhibits. Parikh did not respond to the Default Motion. For the reasons below, I find Parikh in default, deem the allegations in the Complaint admitted, and grant Enforcement’s Default Motion.

## **II. Findings of Fact and Conclusions of Law**

### **A. Respondent’s Background**

Parikh began working in the securities industry in 2007 and was first registered with FINRA in April 2008.<sup>2</sup> From May 2012 through April 2019, Parikh was registered with FINRA through his association with FINRA member Aegis Capital Corp. (“Aegis”).<sup>3</sup> Aegis reported Parikh’s voluntary termination on April 3, 2019.<sup>4</sup> Since then, he has not registered or associated with a FINRA member firm.<sup>5</sup>

### **B. FINRA’s Jurisdiction**

FINRA retains jurisdiction over Parikh under Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed the Complaint on March 17, 2021, within two years of April 3, 2019, when Aegis terminated Parikh’s FINRA registration, and the Complaint charges him with misconduct committed while he was associated with Aegis.

### **C. Origin of the Investigation**

This disciplinary proceeding resulted from a FINRA investigation started in Fall 2016 into whether Parikh engaged in unsuitable and unauthorized trading in customer accounts.<sup>6</sup>

### **D. Parikh’s Default**

On March 17, 2021, Enforcement served Parikh with the Complaint and Notice of Complaint and sent them by first-class certified and first-class mail to his residential address, as

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<sup>2</sup> Complaint (“Compl.”) ¶ 3; Declaration of Joseph E. Strauss, Esq. in Support of Enforcement’s Motion for Entry of Default (“Decl.”) ¶ 9; Exhibits to Decl. (“Exh.”) 1, at 6.

<sup>3</sup> Compl. ¶ 3; Decl. ¶ 9; Exh. 1, at 5.

<sup>4</sup> Compl. ¶ 3; Decl. ¶ 10; Exh. 2.

<sup>5</sup> Compl. ¶ 3; Decl. ¶ 10; Exh. 1.

<sup>6</sup> Decl. ¶ 5.

reflected in the Central Registration Depository (“CRD Address”). Enforcement found another potential address in the Lexis Nexis database (“the Lexis Nexis address”), and mailed the Notice of Complaint and Complaint to that address, too.<sup>7</sup> The Notice of Complaint stated that Parikh needed to answer the Complaint by April 19, 2021.<sup>8</sup>

When Parikh failed to respond, Enforcement served Parikh with a Second Notice of Complaint and the Complaint on April 20, 2021. Again, Enforcement served Parikh’s CRD Address and the Lexis Nexis Address by first-class certified and first-class mail.<sup>9</sup> The Second Notice of Complaint required Parikh to file an answer by May 7, 2021.<sup>10</sup> It also advised him that, under FINRA Rule 9215, his failure to submit an answer to the Complaint by that date would allow the Hearing Officer to: (1) treat the Complaint’s allegations as admitted; and (2) enter a default decision against him under FINRA Rule 9269.<sup>11</sup> The Second Notice of Complaint also informed Parikh that he could be sanctioned without further notice.<sup>12</sup>

Parikh never answered or otherwise responded to the Complaint.<sup>13</sup> So I issued an Order Governing Motion for Entry of Default Decision, which directed Enforcement to file a Default Motion on or before June 9, 2021. As with the Notice of Complaint and Second Notice of Complaint, Parikh did not respond to the Default Motion.

In serving the Complaint, Notice of Complaint, and Second Notice of Complaint, Enforcement complied with FINRA Rules 9131(b) and 9134(b), which govern the service of complaints. Because Parikh did not answer the Complaint, I find that he defaulted<sup>14</sup> and consider the allegations in the Complaint admitted.<sup>15</sup>

#### **E. Parikh’s Trading in Customer Accounts**

Parikh recommended active short-term trading to the Customers with the use of margin.<sup>16</sup> None of the Customers’ accounts were discretionary accounts, according to Aegis’s records.<sup>17</sup> Yet Parikh decided which stocks to buy and sell in the accounts, as well as when and how

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<sup>7</sup> Decl. ¶¶ 14-15; Exh. 3.

<sup>8</sup> Decl. ¶ 19.

<sup>9</sup> Decl. ¶¶ 19-20.

<sup>10</sup> Decl. ¶ 25.

<sup>11</sup> Decl. ¶ 26.

<sup>12</sup> Decl. ¶ 26.

<sup>13</sup> Decl. ¶¶ 20, 27.

<sup>14</sup> See FINRA Rules 9215(f) and 9269(a)(1).

<sup>15</sup> See FINRA Rule 9269(a)(2). Parikh may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

<sup>16</sup> Compl. ¶ 6.

<sup>17</sup> Compl. ¶ 6.

much.<sup>18</sup> In making these decisions, Parikh did not consider the cumulative trading costs incurred by the Customers.<sup>19</sup> Nor did he consider the interest costs associated with the use of margin, which permitted him to trade more often, but also increased the costs incurred by the Customers.<sup>20</sup> When Parikh contacted the Customers before placing trades in their accounts, the Customers relied on and followed his trading recommendations.<sup>21</sup>

## 1. Customer A

Customer A is a 64-year-old insurance and real estate agent.<sup>22</sup> He opened two brokerage accounts at Aegis – an individual brokerage account and an IRA account – in December 2012 after receiving a cold call from Parikh.<sup>23</sup> Aegis recorded Customer A’s annual income as \$30,000, his liquid net worth as \$10,000, and his total net worth as \$100,000.<sup>24</sup> According to Aegis’s records, Customer A’s investment objective was “growth” and his risk tolerance was “low.”<sup>25</sup> Customer A funded his Aegis accounts with \$115,000 in cash from his savings.<sup>26</sup>

In November 2014, the value of Customer A’s account was \$21,273.<sup>27</sup> From November 2014 through September 2015, Parikh executed 127 trades of securities in Customer A’s account, totaling around \$15.8 million, sometimes exercising time and price discretion.<sup>28</sup> This trading generated \$22,938 in costs and caused losses of \$61,260.<sup>29</sup> Although Customer A deposited an additional \$69,100 in his account during this period, his account had a value of only \$35,841 by the end of September 2015.<sup>30</sup>

## 2. Customer B

Customer B is a 55-year-old engineering contractor.<sup>31</sup> Customer B first became a customer of Parikh when Parikh was employed at a prior broker-dealer, and then followed Parikh

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<sup>18</sup> Compl. ¶ 6.

<sup>19</sup> Compl. ¶ 7.

<sup>20</sup> Compl. ¶ 7.

<sup>21</sup> Compl. ¶ 8.

<sup>22</sup> Compl. ¶ 11.

<sup>23</sup> Compl. ¶ 11.

<sup>24</sup> Compl. ¶ 12.

<sup>25</sup> Compl. ¶ 12.

<sup>26</sup> Compl. ¶ 12.

<sup>27</sup> Compl. ¶ 13.

<sup>28</sup> Compl. ¶ 13.

<sup>29</sup> Compl. ¶ 14.

<sup>30</sup> Compl. ¶ 13.

<sup>31</sup> Compl. ¶ 15.

to Aegis in 2012.<sup>32</sup> In August 2014, Parikh updated Customer B’s account form to record Customer B’s annual income as between \$500,000 and \$749,000, his liquid net worth as between \$250,000 to \$499,999, and his total net worth as between \$1 and \$3 million.<sup>33</sup> Parikh also recorded Customer B’s investment objective as “speculation” and his risk tolerance was “maximum risk.”<sup>34</sup> But this was incorrect; Customer B was neither a speculative investor nor was his risk tolerance high.<sup>35</sup>

In August 2014, Customer B’s account value was \$19,034.<sup>36</sup> From August 2014 through September 2015, Parikh executed 71 trades in Customer B’s account, totaling about \$4.2 million.<sup>37</sup> Parikh also engaged in in-and-out trading in Customer B’s account, which generated minimal or no profit because of the trading costs and commissions.<sup>38</sup> By the end of September 2015, Customer B’s account value was \$30,392, with a significant negative cash balance.<sup>39</sup> Parikh’s excessive trading in Customer B’s account generated trading costs of \$19,722 and caused losses of \$34,578.<sup>40</sup>

### 3. Customers C and D

Customer C is a 67-year-old president of a software sales and development company and his wife, Customer D, is a 64-year-old marketing officer.<sup>41</sup> They opened a joint account with Parikh at Aegis in 2012, with their investment objective recorded as “speculation” and their risk tolerance as “high.”<sup>42</sup> Customer C also opened an IRA account with Parikh at Aegis in February 2013.<sup>43</sup> For the IRA account, his investment objective was listed as “growth” and his risk tolerance as “moderate.”<sup>44</sup> Their annual income was recorded as between \$100,000 and \$199,999, their liquid net worth as \$100,000 to \$249,000, and their total net worth as \$500,000 to \$999,999.<sup>45</sup>

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<sup>32</sup> Compl. ¶ 15.

<sup>33</sup> Compl. ¶ 15.

<sup>34</sup> Compl. ¶ 15.

<sup>35</sup> Compl. ¶ 15.

<sup>36</sup> Compl. ¶ 16.

<sup>37</sup> Compl. ¶ 16.

<sup>38</sup> Compl. ¶ 17.

<sup>39</sup> Compl. ¶ 16.

<sup>40</sup> Compl. ¶¶ 16, 18, 22.

<sup>41</sup> Compl. ¶ 19.

<sup>42</sup> Compl. ¶ 20.

<sup>43</sup> Compl. ¶ 21.

<sup>44</sup> Compl. ¶ 21.

<sup>45</sup> Compl. ¶ 21.

In August 2014, the total value of the joint account was \$50,635.<sup>46</sup> From August 2014 through November 2016, Parikh made 85 securities trades in the joint account, totaling around \$1.9 million.<sup>47</sup> As with Customer B, Parikh engaged in in-and-out trading in Customer C and D's joint account that generated little or no profit.<sup>48</sup> Parikh also executed 24 transactions in their joint account between April 2016 and February 2017, with a total principal value around \$640,000, without Customer C and D's prior knowledge or authorization.<sup>49</sup> By the end of November 2016, the joint account value was \$17,660, with a significant negative cash balance.<sup>50</sup> In total, Parikh's trading in the joint account generated trading costs of \$38,106 and caused losses of \$14,863.<sup>51</sup>

The IRA account value was \$127,502 in August 2014.<sup>52</sup> From August 2014 through November 2016, Parikh executed 108 purchases and sales of securities totaling about \$7.9 million in the IRA account.<sup>53</sup> As with his trading in the joint account, Parikh used in-and-out trading in the IRA account, with minimal or no profit.<sup>54</sup> From May 2016 through November 2016, Parikh executed 29 transactions, with a principal value around \$3.6 million, in the IRA account without his prior knowledge or authorization.<sup>55</sup> This trading in the IRA account generated total trading costs of \$99,935,<sup>56</sup> and by the end of November 2016, the account value was \$187,379, with most of that value tied to one stock.<sup>57</sup>

#### **4. Customer E**

Customer E is a 66-year-old self-employed farmer with limited investment experience.<sup>58</sup> Customer E first opened an account with Parikh at Aegis in February 2013.<sup>59</sup> Although Customer E's investment objective was growth with a moderate risk level, Parikh recorded his investment objective as "speculation" and his risk tolerance as "high" on Customer E's new

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<sup>46</sup> Compl. ¶ 22.

<sup>47</sup> Compl. ¶ 22.

<sup>48</sup> Compl. ¶ 24.

<sup>49</sup> Compl. ¶ 23; Exhibit A to Compl.; Decl. ¶ 34.

<sup>50</sup> Compl. ¶ 22.

<sup>51</sup> Compl. ¶¶ 22, 25.

<sup>52</sup> Compl. ¶ 26.

<sup>53</sup> Compl. ¶ 26.

<sup>54</sup> Compl. ¶ 28.

<sup>55</sup> Compl. ¶ 27; Exhibit A to Compl.; Decl. ¶ 34.

<sup>56</sup> Compl. ¶ 29.

<sup>57</sup> Compl. ¶ 26.

<sup>58</sup> Compl. ¶ 30.

<sup>59</sup> Compl. ¶ 30.

account form.<sup>60</sup> As of August 2014, Customer E’s estimated annual income was between \$200,000 and \$299,999, his liquid net worth was \$100,000 to \$249,000, and his total net worth was \$500,000 to \$999,999.<sup>61</sup>

In August 2014, Customer E’s account value was \$37,192.<sup>62</sup> From August 2014 through July 2015, Parikh executed 51 securities transactions totaling about \$1.3 million in Customer E’s account.<sup>63</sup> This trading generated total trading costs of \$31,131.<sup>64</sup> By the end of July 2015, the value of Customer E’s account was \$47,124, with a significant negative cash balance.<sup>65</sup>

#### **F. Parikh Violated FINRA Rules 2111 and 2010 by Engaging in Unsuitable and Excessive Trading**

In the first cause of action of the Complaint, Enforcement alleges that Parikh violated FINRA Rules 2111 and 2010. FINRA Rule 2111 is known as the suitability rule. It consists of “three main obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.”<sup>66</sup> Enforcement alleges that Parikh violated that third obligation – quantitative suitability.

A quantitative suitability claim has two elements. First, the registered representative must have “actual or de facto control” over a customer account.<sup>67</sup> De facto control is when “the client routinely follows the broker’s advice ‘because the customer is unable to evaluate the broker’s recommendations and to exercise independent judgment.’”<sup>68</sup> Further, “a representative exercises de facto control if the customers ‘were not consulted, nor typically even made aware of, the particular trades executed in their account until well after the fact.’”<sup>69</sup>

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<sup>60</sup> Compl. ¶ 31.

<sup>61</sup> Compl. ¶ 31.

<sup>62</sup> Compl. ¶ 32.

<sup>63</sup> Compl. ¶ 32.

<sup>64</sup> Compl. ¶ 33.

<sup>65</sup> Compl. ¶ 32.

<sup>66</sup> FINRA Rule 2111, former Supplementary Material .05 (in effect from July 2012 to June 2020).

<sup>67</sup> FINRA Rule 2111, Supplementary Material .05(c) (in effect from July 2012 to June 2020). This was amended effective June 30, 2020, to eliminate the “actual or de facto” control element from FINRA Rule 2111’s quantitative suitability obligation. Because Parikh’s trading occurred between 2014 and 2016, however, control is an element of Enforcement’s first cause of action.

<sup>68</sup> *Dep’t of Enforcement v. Medeck*, No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at \*34 (NAC July 30, 2009).

<sup>69</sup> *Dep’t of Enforcement v. Newport Sec., Inc.*, No. 2012030564701, 2018 FINRA Discip. LEXIS 14, at \*88 (NAC May 23, 2018) (quoting *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, \*81 (May 27, 2011)), *aff’d*, Exchange Act Release No. 88548, 2020 SEC LEXIS 911 (Apr. 3, 2020).

The second element is trading that is “inconsistent with the customers’ financial circumstances and investment objectives.”<sup>70</sup> While there is no single test for excessive trading, “factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer’s account may provide a basis”<sup>71</sup> to find that a registered representative has engaged in quantitatively unsuitable trading. Put more simply, “trading is excessive when ‘a trading strategy results in costs so high as to make the generation of any profit unlikely.’”<sup>72</sup> A registered representative who violates FINRA Rule 2111 by engaging in quantitatively unsuitable trading also violates FINRA Rule 2100.

### **1. Parikh Exercised De Facto Control Over Customer Accounts**

The Complaint’s allegations show that Parikh exercised de facto control over the Customers’ accounts. Aegis did not list any of the accounts as discretionary.<sup>73</sup> But for each account, Parikh decided which stocks to buy and determined the trading frequency and volume.<sup>74</sup> He often exercised time and price discretion when trading in the account of Customer A, and engaged in unauthorized trading in the accounts of Customers C and D.<sup>75</sup> When he did contact the Customers before placing trades, the Customers relied on and followed his recommendation.<sup>76</sup> Taken together, these facts show that Parikh controlled the Customers’ accounts.<sup>77</sup>

### **2. Parikh Engaged in Excessive Trading**

Parikh’s trading in the Customers’ accounts was excessive. Two measurements are important for this conclusion. The first is the cost-to-equity ratio, which “measures the amount an account has to appreciate annually just to cover commissions and other expenses.”<sup>78</sup> This ratio is calculated by “dividing total expenses by average monthly equity.”<sup>79</sup> The second

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<sup>70</sup> *Id.* at \*98.

<sup>71</sup> FINRA Rule 2111, Supplementary Material .05(c) (July 2012 to June 2020).

<sup>72</sup> *Newport Coast Sec., Inc.*, 2018 FINRA Discip. LEXIS 14, at \*103 (quoting *Clyde J. Bruff*, Exchange Act Release No. 40583, 1998 SEC LEXIS 2266, at \*11 (Oct. 21, 1998), *aff’d*, No. 98-71512, 1999 U.S. App. LEXIS 27405 (9th Cir. Oct. 25, 1999)).

<sup>73</sup> Compl. ¶ 6.

<sup>74</sup> Compl. ¶ 6.

<sup>75</sup> Compl. ¶ 9.

<sup>76</sup> Compl. ¶ 8.

<sup>77</sup> *See, e.g., Newport Coast Sec., Inc.*, 2018 FINRA Discip. LEXIS 14, at \*94-98 (finding de facto control when representative chose stocks he traded, controlled the volume and frequency of trading, and executed trades without prior authorization from customers).

<sup>78</sup> *Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at \*32 (May 19, 2015) (quoting *Peter C. Bucchieri*, Exchange Act Release No. 37218, 1996 SEC LEXIS 1331, at \*1-2 (May 14, 1996)).

<sup>79</sup> *Id.*



measurement is the turnover rate, which represents “the number of times in one year that a portfolio of securities is exchanged for another portfolio of securities.”<sup>80</sup> The turnover rate is measured by dividing the total account purchases by the average account equity, and annualizing the quotient.<sup>81</sup> While there is no fixed threshold, a cost-to-equity ratio in excess of 20 percent or a turnover rate of six “generally indicates that excessive trading has occurred.”<sup>82</sup>

Parikh’s turnover rates and annualized cost-to-equity ratios exceeded these benchmarks in each of the Customer accounts, often by substantial amounts: 199.8 and 57.6 percent for Customer A’s account;<sup>83</sup> 38.4 and 35.3 percent for Customer B’s account;<sup>84</sup> 12.1 and 48.4 percent in Customer C and D’s joint account;<sup>85</sup> 10.9 and 27.5 percent in Customer C’s IRA account;<sup>86</sup> and 13.2 and 59.7 percent in Customer E’s account.<sup>87</sup> Parikh also engaged in frequent in-and-out trading in the accounts for Customers B, C, and D.<sup>88</sup> Such trading is “‘extremely difficult for a broker to justify’ and can, by itself, provide a basis for finding excessive trading.”<sup>89</sup> As reflected in the chart below,<sup>90</sup> the turnover rate, annualized cost-to-equity ratio, and frequent in-and-out trading in the Customer accounts show that Parikh’s trading was excessive.

Customer	Trading Period	No. of Trades	Realized Gains/Losses	Gross Commissions Paid to Aegis	Annualized Cost-to-Equity Ratio	Annualized Turnover Rate
A	11/2014-9/2015	127	(\$61,260)	\$16,367	57.6%	199.8
B	8/2014-9/2015	71	(\$34,578)	\$14,296	35.3%	38.4
C/D (Joint)	8/2014-11/2016	85	(\$14,863)	\$27,743	48.4%	12.1
C (IRA)	8/2014-11/2016	108	\$60,251	\$96,155	27.5%	10.9
E	8/2014-7/2015	51	\$16,809	\$24,552	59.7%	13.2
<b>Totals</b>		<b>442</b>	<b>(\$33,641)</b>	<b>\$179,112</b>		

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Compl. ¶ 13.

<sup>84</sup> Compl. ¶ 16.

<sup>85</sup> Compl. ¶ 22.

<sup>86</sup> Compl. ¶ 26.

<sup>87</sup> Compl. ¶ 32.

<sup>88</sup> Compl. ¶¶ 17, 24, 28.

<sup>89</sup> *Rafael Pinchas*, Exchange Act Release No. 41816, 1999 SEC LEXIS 1754, at \*15 (Sept. 1, 1999) (quoting *Costello v. Oppenheimer & Co., Inc.*, 711 F.2d 1361, 1369 n.9 (7th Cir. 1983)).

<sup>90</sup> See Decl. ¶ 31; Compl. ¶¶ 40-41.

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Parikh controlled the Customer accounts and his trading in those accounts was excessive. His trading was quantitatively unsuitable. Parikh violated FINRA Rules 2111 and 2010.

### **G. Parikh Violated FINRA Rule 2010 by Engaging in Unauthorized Trading**

A registered representative engages in unauthorized trading by effecting trades in a customer's account without first obtaining the customer's authorization or consent.<sup>91</sup> Unauthorized trading is a "serious breach of the duty"<sup>92</sup> imposed on registered representatives by FINRA Rule 2010 to "observe high standards of commercial honor and just and equitable principles of trade." Indeed, such misconduct "goes to the heart of the trustworthiness of a securities professional, and is a fundamental betrayal of the duty owed by a sales[person] to his [or her] customer."<sup>93</sup>

Between August 2014 and November 2016, Parikh executed 53 unauthorized trades, with a total principal value around \$4.2 million, in the accounts of Customers C and D.<sup>94</sup> Aegis telephone records show that Parikh did not call Customers C and D on the dates of those trades.<sup>95</sup> Customer C told Enforcement that he spoke with Parikh only once or twice a month, and that he did not know about or authorize the 53 trades before Parikh made them.<sup>96</sup> By engaging in these unauthorized trades, Parikh violated FINRA Rule 2010.

## **III. Sanctions**

### **A. FINRA Rules 2111 and 2010 (Unsuitable and Excessive Trading)**

For excessive trading, FINRA's Sanction Guidelines ("Guidelines") recommend a fine of \$5,000 to \$116,000 and a suspension in any and all capacities of one month to two years.<sup>97</sup> When aggravating factors predominate, adjudicators should consider a longer suspension, of up to two years, or a bar.<sup>98</sup> The Guidelines for excessive trading refer to the Principal Considerations in Determining Sanctions ("Principal Considerations") for all violations.<sup>99</sup>

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<sup>91</sup> *Dep't of Enforcement v. Sahai*, No. C9B020032, 2004 NASD Discip. LEXIS 14, at \*17 (NAC Aug. 12, 2004).

<sup>92</sup> *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at \*31 (July 2, 2013), *aff'd sub nom.*, *Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014).

<sup>93</sup> *Id.* at \*31-32 (quoting sources).

<sup>94</sup> Compl. ¶¶ 2, 23, 27, 47; Decl. ¶ 34.

<sup>95</sup> Decl. ¶ 34.

<sup>96</sup> Decl. ¶ 34.

<sup>97</sup> Guidelines at 78 (2020), <http://www.finra.org/sanctionguidelines>.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

Several of the Principal Considerations are relevant here. Parikh's excessive trading consisted of hundreds of trades over two years.<sup>100</sup> His short-term trading strategy was reckless, at a minimum.<sup>101</sup> His trading resulted directly in his monetary gain<sup>102</sup> at the expense of the Customers, who paid excessive commissions from his trading.<sup>103</sup> The Customers were unsophisticated, and relied on Parikh to trade in their accounts.<sup>104</sup> Two of the Customers were over 65 years old.<sup>105</sup> Finally, Parikh has a significant arbitration history,<sup>106</sup> in that Aegis settled a customer claim that alleged unsuitable recommendations and excessive trading by Parikh for about \$500,000.<sup>107</sup>

Given these aggravating factors, I find that an 18-month suspension in all capacities and a \$5,000 fine are appropriately remedial sanctions for Parikh's violation of FINRA Rules 2111 and 2010.

## **B. FINRA Rule 2010 (Unauthorized Trading)**

For unauthorized trading, the Guidelines recommend a fine of \$5,000 to \$116,000 and a suspension in all capacities for one month to two years.<sup>108</sup> There are six Principal Considerations specific to an unauthorized trading violation. The first two relate to intent – whether the respondent reasonably misunderstood his or her authority or the terms of the customers' orders, and whether the respondent acted in bad faith.<sup>109</sup> The next two relate to the number and size of the unauthorized transactions, and their effect on the customers.<sup>110</sup> And the last two Principal Considerations pertain to whether the respondent tried to conceal the unauthorized trading, or whether the respondent used the unauthorized trading to commit another violation.<sup>111</sup>

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<sup>100</sup> See Principal Consideration No. 8 (“Whether the respondent engaged in numerous acts and/or a pattern of misconduct.”); No. 9 (“Whether the respondent engaged in the misconduct over an extended period of time.”); Principal Consideration No. 17 (“The number, size, and character of the transactions at issue.”).

<sup>101</sup> See Principal Consideration No. 13 (“Whether the respondent’s misconduct was the result of an intentional act, recklessness, or negligence.”).

<sup>102</sup> See Principal Consideration No. 16 (“Whether the respondent’s misconduct resulted in the potential for the respondent’s monetary or other gain.”).

<sup>103</sup> See Principal Consideration No. 10 (“Whether the respondent’s misconduct resulted directly or indirectly in injury” to investors, and “the nature and extent of the injury.”).

<sup>104</sup> Principal Consideration No. 18 (“The level of sophistication of the injured or affected customer.”).

<sup>105</sup> Principal Consideration No. 20 (“Whether the customer is age 65 or older.”).

<sup>106</sup> See Principal Consideration No. 1 (“An individual respondent’s Disciplinary and Arbitration History . . .”).

<sup>107</sup> Decl. ¶ 1; Exh. 1, at 11-12.

<sup>108</sup> Guidelines at 99.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

Parikh made 53 unauthorized trades for Customers C and D, with a total principal value of \$4.2 million. The sheer number and size of those unauthorized trades make it implausible that Parikh simply misunderstood his authority or otherwise acted in good faith. Parikh's unauthorized trades were also to further another violation, his excessive trading. Given these aggravating factors, a six-month suspension and \$5,000 fine are appropriately remedial for this violation. Parikh should serve the two suspensions consecutively "because the violations involve different types of misconduct and raise separate public interest concerns."<sup>112</sup>

### C. Restitution

Under the Guidelines, an adjudicator may order restitution to remediate misconduct when a customer "has suffered a quantifiable loss proximately caused by a respondent's misconduct."<sup>113</sup> Any order of restitution should be "based on the actual amount of the loss sustained by a person, . . . as demonstrated by the evidence."<sup>114</sup> According to Enforcement, Customers B, C, and D "will receive restitution through other means."<sup>115</sup>

Customers A and E suffered actual losses caused by Parikh's misconduct, however, and there is no indication that they will receive restitution elsewhere. So together with the suspensions and fines, I order Parikh to pay Customers A and E restitution in the total amount of \$40,919 plus prejudgment interest calculated from the date of the last violative transaction for each Customer.<sup>116</sup> Customer A paid \$16,367 in commissions that resulted directly from excessive trading between November 2014 and September 2015,<sup>117</sup> and is entitled to restitution in that amount, plus interest. Customer E paid \$24,552 in commissions that resulted directly from excessive trading between August 2014 and July 2015. Parikh is ordered to pay Customer E restitution in that amount, plus interest.

### IV. Order

Parikh engaged in unsuitable and excessive trading, in violation of FINRA Rules 2111 and 2010. For this violation, he is suspended for 18 months in all capacities and fined \$5,000. Parikh also engaged in unauthorized trading, in violation of FINRA Rule 2010. For this violation, he is suspended for six months in all capacities and fined \$5,000. Parikh must serve

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<sup>112</sup> *Mitchell H. Fillet*, Exchange Act Release No. 79108, 2016 SEC LEXIS 3773, at \*21 n.18 (Sept. 30, 2016).

<sup>113</sup> Guidelines at 4; see also *Dep't of Enforcement v. Smith*, No. 2015043646501, 2020 FINRA Discip. LEXIS 43, at \*71 (NAC Sept. 18, 2020) (finding restitution appropriate when identifiable party has suffered quantifiable loss as a result of respondent's misconduct).

<sup>114</sup> Guidelines at 4.

<sup>115</sup> Decl. ¶ 36 n.30.

<sup>116</sup> Interest "runs from the dates of the violative conduct and should be calculated at the rate established for the underpayment of federal income tax in Section 6621 of the Internal Revenue Code, 26 U.S.C. Section 6621(a)(2)." Guidelines at 11. For Customer A, interest runs from September 30, 2015. For Customer E, interest runs from July 31, 2015.


<sup>117</sup> Decl. ¶ 38.

these suspensions consecutively. In total, then, Parikh is suspended for a total of two years and fined \$10,000.

If this decision becomes FINRA's final disciplinary action, the suspensions shall become effective with the opening of business on August 16, 2021. The fines shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

Parikh is ordered to pay \$16,367 in restitution to Customer A, plus interest at the rate set in 26 U.S.C. Section 6621(a)(2) from September 30, 2015, until paid in full. Parikh is ordered to pay \$24,552 in restitution to Customer E, plus interest at the rate set in 26 U.S.C. Section 6621(a)(2) from July 31, 2015, until paid in full. If this decision becomes FINRA's final disciplinary action, payment of restitution shall be due within 60 days of the date of this Decision.

If Customer A or Customer E cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the state of their last known address.



Daniel D. McClain  
Hearing Officer

Copies to:

Kishan Parikh (via overnight courier and first-class mail)  
Joseph E. Strauss, Esq. (via email)  
Payne L. Templeton, Esq. (via email)  
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Jennifer L. Crawford, Esq. (via email)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KISHAN PARIKH  
(CRD No. 5506554),

Respondent.

Disciplinary Proceeding  
No. 2021070337401

Hearing Officer–DDM

**APPENDIX TO DEFAULT DECISION  
Identity of Customers**

<b>Customer</b>	<b>Name</b>
Customer A	Tod Jeffrey Bonifant
Customer B	David Kesler
Customer C	Randy K. Royer
Customer D	Eva W. Wu
Customer E	Greg K. Poole