BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATOY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Titan Securities Addison, TX, Brad C. Brooks Addison, TX, and Richard Wayne Demetriou Dunwoody, GA, Respondents.	DECISION Complaint No. 2013035345701 Dated: June 2, 2021

Registered representative made material, false and misleading statements to customers, engaged in undisclosed, unapproved outside business activities, violated advertising and communications with the public rules, and used unapproved personal email accounts for securities business. Registered principal and firm failed to supervise outside business activities, violated record-keeping rules, and violated rules in connection with a contingency offering. Held, findings and sanctions modified.

Appearances

For the Complainant: Megan Davis, Esq., John F. Guild, Esq., Penelope Blackwell, Esq., Brody W. Weichbrodt, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondents Titan Securities and Brooks: J. Randle Henderson, Esq., Jason L. Dillingham, Esq.

For Respondent Demetriou: Daniel R. Kirshbaum, Esq.

Decision

The Department of Enforcement ("Enforcement") appeals, and respondent Richard Demetriou appeals and cross-appeals, pursuant to FINRA Rule 9311, a March 5, 2019 Extended Hearing Panel Decision (the "Decision").

Much of the alleged misconduct involves Demetriou's involvement with a private placement of preferred units in a limited partnership, RBCP Preferred, LLC ("RBCP"). RBCP was organized by the owner of Demetriou's previous member firm, who employed Demetriou to solicit investments from Demetriou's customers. The customers had suffered significant losses in partnerships sponsored by Demetriou's previous firm and Demetriou represented that RBCP was offered to them as a means of recouping those losses. Demetriou recommended RBCP, made misrepresentations concerning the supposed collateral securing the investments, and told customers that an investment of 10 percent of their previous losses would result in recovery of their lost investments, plus a profit—alleged returns of more than 1,000 percent. Rather than recoup their investments, however, the customers lost an additional $337,700 when RBCP failed and the alleged collateral was not foreclosed.

The record supports that Demetriou engaged in an undisclosed, unapproved outside business activity with respect to RBCP. In addition to making material misrepresentations to customers about RBCP, Demetriou violated FINRA rules by communicating with customers using personal email accounts. Demetriou also violated FINRA rules by sending emails concerning RBCP and consolidated financial statements that he created (which included RBCP and other investments) to customers which violated FINRA's advertising and communications with the public standards.

During a supervisory email review, Brad Brooks, Titan's principal and Demetriou's supervisor, became aware of Demetriou's involvement with RBCP. Despite learning of numerous red flags—including that RBCP promised returns of more than 1,000 percent, that the customers' investments would be repaid in a few months and were secured by rare coins, and that Demetriou was facilitating contact between RBCP and investors—Brooks failed to conduct a reasonable inquiry and, as a result, Brooks and Titan failed to supervise Demetriou's RBCP outside business activity. Titan's and Brooks's failures resulted in significant losses to investors. Brooks and Titan were also aware that Demetriou and other Titan registered representatives were using personal email to conduct securities business with customers but allowed this to continue for years.

Separately, Titan and Brooks engaged in misconduct related to a contingency offering. Titan released investments in the offering from escrow before the minimum offering amount was met. Additionally, Titan and Brooks misrepresented in the offering private placement memorandum ("PPM") that purchases by the issuer's general partner would not count towards the minimum offering amount. In fact, Brooks, who controlled the general partner, caused the general partner to take loans to purchase units in the offering and used those purchases as a basis for claiming that the minimum offering amount had been met. Brooks acted intentionally in contravention of the terms of the PPM so that the issuer could capture a business opportunity.

The Hearing Panel found that Demetriou made material misrepresentations to investors—his former and current customers—about RBCP in violation of FINRA Rule 2010. The Hearing Panel dismissed, however, allegations that Demetriou's RBCP involvement constituted an unapproved, undisclosed outside business activity. As a result of this finding, the Hearing Panel also dismissed allegations that Titan and Brooks failed to supervise Demetriou's involvement with RBCP as an outside business activity.

The Hearing Panel also found that Demetriou violated FINRA's advertising and communications with the public rules by sending emails and certain consolidated financial statements to investors. The Hearing Panel further found that Demetriou violated FINRA rules by using two unauthorized personal email accounts to conduct securities business with customers. Moreover, in connection with Demetriou's and other Titan registered representatives' use of personal email accounts, the Hearing Panel found that Titan and Brooks violated FINRA rules by failing to establish, maintain, and enforce adequate supervisory systems for the capture, review, and retention of Titan's securities-related emails and violated Securities Exchange Act of 1934 ("Exchange Act") rules requiring the preservation of emails. The Hearing Panel found, however, that Titan's and Brooks's Exchange Act violations concerning email were not willful.

Finally, in connection with the contingency offering, the Hearing Panel found that Titan released investor funds from escrow before the minimum offering amount was raised, in violation of Exchange Act Section 15(c), Exchange Act Rule 15c2-4, and FINRA Rule 2010. However, the Hearing Panel found that Titan's violations were not willful. The Hearing Panel further found that Enforcement failed to prove that Titan and Brooks violated Exchange Act Section 10(b), Exchange Act Rule 10b-9, and FINRA Rule 2010 by making prohibited representations in connection with the contingency offering. Specifically, the Hearing Panel found that Enforcement failed to prove that Titan and Brooks made misrepresentations with the requisite scienter.

After an independent review of the record and oral arguments, we modify the Hearing Panel's findings of violations and the sanctions that it imposed. We also reject the procedural argument that the Hearing Officer acted improperly in requesting post-hearing briefs.

I. Background

A. Titan Securities

Titan has been a FINRA member since 2004 and has its main office in Addison, Texas. From 2009 through 2012, when the relevant conduct occurred, Titan grew from eight to 25 registered representatives. Titan's primary line of business was private placement securities offerings, from which it derived approximately 80 percent of its gross revenue.

B. Brad Brooks

Brooks joined the securities industry in 1986 and associated with Titan in 2005. Brooks is Titan's sole owner, chief executive officer ("CEO"), and president. For most of the relevant

period, Brooks was Titan's chief compliance officer ("CCO") and, during the relevant period, also was Demetriou's direct supervisor.[1]

C. Richard Demetriou

Demetriou joined the securities industry in 1976. During his 40-year career, Demetriou has been associated with several member firms. Demetriou associated with Titan in April 2009. During his time with Titan, Demetriou worked from his home in Georgia.

II. Facts

A. Demetriou's Former and Current Customers Invest in RBCP

1. Demetriou Sells Poorly Performing Real Estate Limited Partnerships at PCG

Prior to joining Titan, Demetriou was associated with Private Consulting Group, Inc. ("PCG"), from November 2001 through March 2009. While associated with PCG, Demetriou sold to his customers interests in real estate limited partnerships sponsored by PCG. After the 2008 real estate market crash, these illiquid partnerships failed, and investors lost the entirety of their investments. In March 2009, PCG went out of business. Demetriou testified that he had no notice the firm was closing. Demetriou joined Titan one month later. Demetriou continued serving his PCG customers as a financial advisor and updated them about the status of their PCG limited partnership investments. Four of these customers became Titan customers.

2. Demetriou Tells His Customers About RBCP

In mid-2010, PCG's owner and former CEO, Robert Keys, brought RBCP to Demetriou's attention. RBCP was organized by Keys and his business partner, BP, to raise funds and pay the startup costs for RBC Acquisitions, LLC ("RBC Acquisitions"), an affiliated limited liability company. Keys and BP were the principal owners of RBC Acquisitions. RBC Acquisitions planned to obtain a multi-million-dollar bank loan to finance the construction of a real estate development in Tunica, Mississippi called "Riverbend." Riverbend had been the principal asset of one of the prior PCG-sponsored limited partnerships but had failed when that partnership could not secure financing for it. Riverbend was to be a mixed-use residential, commercial, and entertainment development. When completed, the development would accommodate 20,000 residents and numerous businesses. RBC Acquisitions intended to sell the development for a profit once it was completed.

[1] Titan hired a full-time CCO in September 2012. Brooks remained CCO through December 2012 because the newly hired CCO had not yet passed her registration examinations.

Demetriou testified that RBCP planned to raise capital though a private placement. The funds raised would provide short-term capital to RBC Acquisitions to pay attorneys' fees, property taxes, and other "upfront fees" until RBC Acquisitions could secure a bank loan.

Keys and BP asked Demetriou to help sell preferred shares in RBCP. Keys and BP wanted to offer preferred shares[2] in RBCP to Demetriou's customers who had lost money in prior PCG-sponsored real estate limited partnerships. Keys asked Demetriou for contact information for these customers. Keys also asked Demetriou to be the managing member for RBCP.[3] Demetriou testified that, after "checking around," he concluded that RBCP had a chance of making money and decided to tell his current and former customers about it. He also agreed to be the managing member for the offering.

3. Demetriou Sends the July 6 Email to 36 Former and Current Customers

On July 6, 2010, Demetriou sent an email to 36 former and current customers who had previously invested in certain PCG-sponsored real estate limited partnerships (the "July 6 Email").[4] Demetriou sent the email in advance of a conference call for the customers with Keys and BP scheduled for two days later. Demetriou testified that the information in the email came from Keys and that he also attached a letter from Keys to the email.

In his email, Demetriou provided what he described as his "Cliff Notes" version of the RBCP proposal. Demetriou explained that Keys had filed for bankruptcy and, accordingly, would not be liable to them for their losses in the PCG-sponsored investments in any lawsuit brought by the investors. Demetriou continued that, notwithstanding his bankruptcy filing, Keys felt, "from an ethical standpoint," that he had an obligation not to "abandon" the investors. Accordingly, Demetriou explained, Keys had "set aside" a $25,000,0000 investment in RBC Acquisitions for these customers. With regard to Keys's motives, Demetriou wrote in the email that, "[t]he only thing I can determine is that he feels a personal obligation to the investor and to me."

Demetriou went on in his email to describe the terms of the offering. Demetriou explained that customers would have to invest an amount equal to 1.5 to 4.5 percent of the loss each investor had suffered in their prior PCG-sponsored investments for an equivalent investment in RBC Acquisitions. Demetriou explained, "in other words, $1500 buys $100,000 in the RBC Acquisitions." Demetriou also explained that the preferred RBCP shares would pay

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[2] This investment is referred to by the parties and Hearing Panel as preferred stock, but investors really would be purchasing preferred membership units in a limited liability company. We, like the Hearing Panel, refer to these as "shares" in this decision.

[3] Demetriou testified that Keys did not have contact information for these customers.

[4] Four of the customers who received this email had opened accounts with Demetriou at Titan. The remaining 32 were Demetriou's former customers at PCG, with whom Demetriou remained in contact to keep them updated on the status of their limited partnership investments.

a four percent annual cumulative preferred dividend, and that the principal would be repaid at 20 percent per year over five years. As an example of the "[p]rofit [p]otential," Demetriou wrote, "a $4500 investment will return $300,000 principal" and "a first-year principal return of $60,000 that is built into the numbers."

In a section titled "Good money after bad?," Demetriou wrote he was "somewhat taken back [sic] by the request for my clients to put 1.5% cash into something that has failed to meet its promises,"[5] but he noted that (1) the first construction draw would be used to repay the cash investment, which would "occur within 90 days," and (2) he was "told that there are $2 [million] in numismatic coins set aside as collateral for the 1.5% investments," for which the potential investors "of course, need convincing confirmation." Demetriou further represented that the customers did not have to participate in the investment, and if they chose not to, "the preferred shares that my [Demetriou's] investors do not want are already spoken for."

Demetriou closed his email by writing that the investment offered "a great return, especially if the $1500 will be returned in 90 days." Demetriou further wrote that he "desperately" wanted his customers to recoup the amounts they had lost in the PCG-sponsored investments, and that while several items in the proposal needed to be confirmed, "RBC Acquisitions seems to be the best route to return your investments." Demetriou noted he would be on the upcoming conference call and would be available to talk to customers before or after the call.

On July 8, 2010, Demetriou was on the conference call during which Keys and BP solicited customers to invest in RBCP. Demetriou had organized the conference call.[6] After the call, Demetriou sent emails to certain customers summarizing the presentation. Demetriou also sent certain customers individualized illustrations of how the RBCP investment would work for them. Demetriou testified that, in preparing these individual illustrations, he discovered a mathematical error in the proposal which resulted in an increase in the minimum amount customers needed to invest to participate.

4. Demetriou Sends the July 21 Email to 36 Former and Current Customers

On July 21, 2010, Demetriou sent a second email to the same 36 former and current customers to whom he had sent the July 6 Email (the "July 21 Email"). Demetriou explained that while he was preparing illustrations of how the investment would work for individual customers, he "discovered a math error in the offer." As a result, he continued, the "offer had to be restructured," and the minimum percentage of the original investment that a customer had to invest had increased from 1.5 percent to five percent of the loss each investor had suffered in

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[5] Demetriou appears to have been referring to the fact that Riverbend had been the development in a PCG-sponsored partnership that had previously failed when the partnership was unable to secure financing.

[6] There is no recording or transcript of this call in the record.

their prior PCG-sponsored investment.[7] Demetriou told customers that the five percent investment was "still secured by rare coins on deposit at San Diego Artworks." Demetriou also claimed that: (1) the developer would repay the five percent "deposit" from the first construction draw in approximately 120 days (which was longer than the 90 days initially promised); (2) the investment was "still guaranteed by a $3,000,000 Safe Keeping Receipt," i.e., the rare coins, which purportedly had been appraised for $3,000,000; (3) investors' returns would be 20 times their five percent "deposit"; (4) outside investors (investors other than Demetriou's customers) could purchase shares of RBCP for a higher "10% cash deposit"; (5) shares would be redeemed at 20 percent per year over five years, plus a four percent preferred cumulative dividend on the unpaid balance; and (6) no distributions would be made to the owners of RBC Acquisitions (Keys and BP) until all of Demetriou's customers' shares were redeemed, up to a maximum of $25,000,000.

Demetriou attached to this email a copy of the "safekeeping receipt," which purported to show that there were coins appraised at more than $3,000,000 on deposit at San Diego Artworks. The safekeeping receipt identified the depositor as RBCP and noted that "the coins are subject to various restrictions of transfer pursuant to [an] agreement" between RBCP and RBC Acquisitions. The restrictions were not described in the safekeeping receipt. Demetriou testified that he did not review the referenced agreement between RBCP and RBC Acquisitions. Indeed, he testified that he did not recall ever seeing the agreement.

In his email, Demetriou reassured customers that "[a]s managing member of the LLC [RBCP], I will be able to call the collateral on your part if it appears that Riverbend construction will not go forward." He concluded by writing, "I am trying very hard to assure that all investor money is returned."

5. Demetriou Resigns as RBCP Managing Member and the RBCP PPM Is Issued

Demetriou testified that in August 2010, he received a draft copy of the RBCP offering private placement memorandum ("PPM") and was surprised to see his name "all over it."[8] Demetriou testified that, when he saw the draft PPM, he felt that Keys had "tricked" him into accepting the managing member position.

After Demetriou reviewed the draft PPM, he had concerns about the purported collateral, which he memorialized in a note dated August 16, 2010. Demetriou captioned his note

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[7] RBCP later raised the minimum investment to 10 percent of the loss each investor had suffered in their PCG-sponsored investment but provided the option of meeting half of the 10 percent amount with a promissory note in favor of RBCP. One customer who invested was permitted to provide a promissory note for the entire 10 percent amount.

[8] This draft PPM is not in evidence and Demetriou testified that he could not remember what he did with his copy.

"Demetriou PPM Questions," and wrote "when would [EL, the person who posted the coins as collateral] ever give me permission to remove the coins?," "this does not seem like collateral of any kind," and "no direct line to the coins?" Demetriou testified that based on these concerns, he resigned as managing member and sought to "distance" himself from RBCP. At the time he resigned, Demetriou had been the managing member of RBCP for approximately four weeks.

Shortly after Demetriou resigned as managing member, RBCP issued the final offering PPM on August 24, 2010.[9] The PPM stated that RBC Acquisitions had the right, but not the obligation, to redeem the preferred partnership interests for an aggregate price of $25,000,000. It also stated that RBC Acquisitions was prohibited from making other distributions until all the preferred interests were paid in full. An exhibit to the PPM set out the anticipated use of the funds raised in the offering, including a $500,000 payment to an entity, "ICF." ICF's principal, EL, had posted the coins as collateral.

6. Demetriou Sends Customers the September 9 Email and Facilitates a Second Conference Call

Despite his concerns about the collateral, and after resigning as the managing member for RBCP's offering, Demetriou continued to communicate with customers about RBCP.

On September 9, 2010, Demetriou sent another email to his 36 current and former customers (the "September 9 Email"),[10] which included access information for a conference call scheduled for the next day with Keys and BP. Demetriou began his email by noting that most of the customers had received the PPM for the RBCP offering, and that they would receive copies of the "Subscription Document" by mail. Demetriou wrote that he was "not offering this as a securities representative," and that the offering paid "no commissions." Demetriou wrote that his "efforts over the last two months have been to understand the collateral offered for this relative [sic] small upfront cost and the probability of getting the upfront cost returned by February 1, 2011 as described by the documents." He wrote that he had "asked" Keys and BP to explain during the upcoming conference call "the offering and the progress that has been made so far in securing the underlying financing" for Riverbend. Demetriou then listed "the bullet points that will be discussed."

Under a section titled "Priority Return," Demetriou wrote that the "first $25,000,000 of profit in RBC Acquisitions plus a 4% per year preferred and cumulative dividend will be paid to you, the RBC Preferred Investors before any owner of RBC Acquisitions receives any proceeds." Demetriou wrote, "[f]rom what I have seen in the securities business, this is unprecedented in a good way." Under the heading "Priority Return Amount," Demetriou wrote that, "[f]or each

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[9] The record includes a copy of the PPM which is missing 25 pages. The parties represented that they did not have a complete copy of the PPM.

[10] The July 6 Email, the July 21 Email, and the September 9 Email are referred to collectively as the "Three Emails."

$5,000 initial deposit (deposit returned to you before 2-1-11), you will receive $50,000 of the $25,000,000 . . . plus the 4%/yr [sic] dividend."

In a section titled "Return of your cash deposit," Demetriou wrote that the RBCP "documents" defined "February 1, 2011 as the latest date that your cash deposit can be returned to you." Demetriou continued, "[i]f it is not returned, there are over $5,000,000 in rare coins that have been deposited as collateral to back up the February 1, 2011 promise." Demetriou continued, "I have personally talked to the appraiser of these coins, and the valuations seem to be solid. In practice, the coins would have to be sold slowly to achieve the full value of their appraisal."[11]

Demetriou explained that half of a customer's ten percent investment could be "in the form of a promissory note to be repaid 2-1-11 when the repayment of your initial deposit is due," and that "[t]his investor land" would be purchased at the time "the major funding is in place," which was expected to be "sometime this fall," at which time the investors would be paid "approximately 15% of the original investment." Demetriou also included a link to the "[f]ull [d]ocuments online," including the username and password to access them. Despite his references to the "documents" throughout the September 9 Email, Demetriou testified that he never reviewed the offering documents, including the final PPM.

Demetriou closed his email to the customers by writing, "[w]hile I cannot present this [RBCP] as an investment, I can search, dig, and scratch to find out if it may be a good offer to you." Demetriou concluded, "[i]t honestly seems like the best chance of returning your money plus a profit." Demetriou noted that he would be on the conference call the next day and would attempt to record it for customers who could not attend.

On September 10, 2010, Demetriou participated in the conference call he had organized during which Keys and BP made a presentation and solicited customers' investments in RBCP.[12] Demetriou introduced Keys and BP and stated that he had asked them to join the call to explain the RBCP offering. Demetriou also said he was "not offering [RBCP] as an investment as a securities representative." Demetriou asked questions throughout the call.

BP told the customers on the call that Demetriou's email accurately described the terms of the offering. BP described the development, said that the Riverbend project and zoning had been approved, and said that he expected to execute a letter of intent with a major entertainment company to open a "entertainment retail center," which would be "an anchor for the project."

Keys then summarized the terms of the offering. Keys stated that an unnamed "individual" had supplied the coins as collateral. Keys also claimed that brokers were working

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[11] Demetriou did not explain in his email why the value of the coins had increased from $3,000,000 to $5,000,000.

[12] The record contains a transcript of this conference call.

to secure financing for the Riverbend project, and that "two people" had "said yes, they want to loan us the 70 million [dollars]." When Keys finished, he asked Demetriou, "[a]nything in the PPM I left out, Rick?" Demetriou responded that he could not think of anything, but clarified a point about a property in the development. Towards the end of the call, a customer asked what would happen in a "worst case scenario" if RBC Acquisitions was unable to secure funding for the project. Keys responded, "[i]f the monies didn't come in in [sic] the loan by February 1st [2011], then we would liquidate the $5 million of coins to give the million, five [the total amount invested—i.e., the so-called "deposits"] back to you."

7. Brooks Learns About RBCP and Determines that Demetriou Is Not Engaged in an Outside Business Activity

In October 2010, during a supervisory review of Demetriou's emails, Brooks identified red flags suggesting that Demetriou might be involved in undisclosed outside business activities ("OBAs") relating to RBCP. Brooks testified that he saw several emails about RBCP that he "did not understand." Brooks asked Demetriou to provide a written explanation of his activities with RBCP.

On October 13, 2010, Demetriou sent Brooks an email purportedly explaining his involvement. Demetriou wrote that RBCP was being offered by BP, and that the purpose of the offering was to "[r]aise a relatively small amount of cash to pay attorney fees and land option fees" on the land to complete the Riverbend project, and provide a "very high return to PCG investors who have lost money in troubled investments sponsored by PCG." Demetriou wrote that the first $25,000,000 of profits in Riverbend would go to PCG investors with a rate of return of $50,000 for every $5,000 invested, plus the four percent cumulative dividend. Demetriou also wrote that the cash investment would be repaid by February 1, 2011, and that $5,000,000 in rare coins had been pledged as collateral, which could be foreclosed and sold if the investments were not repaid by that date. Finally, Demetriou wrote:

> Rick Demetriou is not presenting this investment as an offering. There are no commissions being paid for the [RBCP] investment. Rick Demetriou is merely trying to understand the investment and be able to discuss it with his clients. In all conversations, it is made clear that [BP] is the individual who is making the offer.

Demetriou testified that he spoke to Brooks about RBCP and told him that he did not have enough information to determine whether RBCP would be a good or bad investment. When Brooks asked to see a copy of the PPM, Demetriou told him he did not have one. Demetriou did not tell Brooks that: (1) he had been the managing member of the offering for a period; (2) he had reviewed a draft PPM and had questions about the accessibility of the collateral; (3) he had arranged two conference calls on which BP and Keys had solicited his current and former customers; and (4) he had sent the Three Emails to customers describing the offering, and that in one of those emails he had stated that RBCP was the best way for investors to recover their losses from the PCG-sponsored partnerships.

Brooks knew that Keys was involved in RBCP because Demetriou told him. Brooks subsequently testified that he wanted nothing to do with Keys because Keys had been involved in prior bad deals.[13] Notwithstanding his negative opinion of Keys, Brooks testified that he believed it was acceptable for Demetriou to facilitate contact between his customers and Keys with respect to RBCP. Brooks said he did not ask Demetriou how many customers were involved with RBCP and did not know the number until three years later, when he received a letter from the SEC in February 2012 asking about Titan's involvement with RBCP.

Brooks testified that after speaking with Demetriou and reviewing his written explanation, he determined that Demetriou's activities related to RBCP were not OBAs. Brooks said he understood that Demetriou was facilitating contact between the customers and RBCP, but because Demetriou was not employed by RBCP, was not receiving compensation from RBCP, and did not hold a position with RBCP, his involvement did not constitute an OBA. On October 13, 2010, the same day Demetriou sent Brooks his written explanation, Brooks replied to Demetriou by email, telling him to "just be sure to let them [the customers] know that Titan is not involved." Because he determined that RBCP was not an OBA, Brooks did not require Demetriou to submit an OBA form and did not thereafter take any steps to supervise Demetriou's activities related to RBCP.

8. Demetriou Becomes a Consultant for ICF

On October 26, 2010, Demetriou entered into a consulting agreement with ICF. ICF was the entity that was to receive $500,000 of the amount raised in the RBCP offering, and its principal, EL, was the individual who pledged the rare coins as collateral for the RBCP investment. Under the consulting agreement, Demetriou agreed to broker a loan that ICF would make for business or real estate purposes.[14] The consulting agreement provided that ICF would pay Demetriou $10,000 per month for November and December 2010. ICF paid Demetriou $10,000 on October 29, 2010. Demetriou received the second $10,000 payment on January 11, 2011. Demetriou testified that these payments were unrelated to RBCP.

On October 27, 2010, Demetriou executed a "loan fee agreement" with MRA, an entity that was seeking to borrow money to finance real estate. Demetriou testified that he had a 15-year relationship with MRA. The agreement provided that Demetriou would introduce MRA to prospective lenders, and MRA would pay Demetriou a fee if a loan closed after Demetriou's introduction. Demetriou testified that he tried to facilitate a loan from ICF to MRA, but the

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[13] In 2011, Keys was permanently barred by FINRA. Demetriou and Brooks represented in a letter to the SEC that they had learned of Keys's bar in February 2012. Demetriou also testified that he learned in January 2013 that Keys had been arrested for alleged misappropriation of funds.

[14] Demetriou disclosed his work with ICF to Titan as an outside business activity, and Brooks approved it on October 26, 2010.

parties were unable to reach an agreement. Demetriou testified that he did not receive any payment from MRA.

9. The RBCP Private Placement Closes

The RBCP offering closed on October 28, 2010. The offering sold 500 preferred partnership units for $5,000 per unit, raising a total of $2,500,000. Of Demetriou's 36 current and former customers, 28 purchased the new RBCP preferred units. Keys emailed Demetriou confirmations when Demetriou's customers completed an investment in RBCP.

10. RBC Acquisitions Fails to Secure Financing and RBCP Defaults

RBC Acquisitions failed to secure a multi-million-dollar loan to develop Riverbend, and then failed to repay the RBCP investors on February 1, 2011.

On February 8, 2011, Demetriou facilitated a call between his customers and BP and Keys.[15] During the call, BP and Keys summarized their continuing efforts to secure a loan for the project. They also stated that they had started the "90-day cure process" that was part of the foreclosure process for the coins. Demetriou testified that, before this call, he did not know there was a cure process that had to be completed before foreclosure.

After RBCP's default, Demetriou continued to facilitate conference calls for BP and Keys to update customers.[16] The last such conference call was held in September 2012. Demetriou also continued to send emails to the customers updating them about RBCP. Demetriou sent the last such email in January 2013. Demetriou's emails regularly included statements about the efforts to secure a loan for the Riverbend development and assurances that the coins would be sold to repay the RBCP investors.

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[15] The record contains a February 9, 2011 email written by Demetriou summarizing his notes from the call.

[16] For example, on March 11, 2011, Demetriou emailed his customers about a conference call with BP and Keys scheduled for March 21, 2011. Demetriou also forwarded an email Demetriou had sent on March 6, 2011, providing an update. In the update, Demetriou stated that the "big loan" had not closed, but that Keys was "still working on all the loans," and that the process for foreclosing on the coins had begun. The record reflects that Demetriou facilitated additional conference calls during the period from April 2011 through September 2012.

On December 24, 2011, Demetriou sent customers another email in which he stated, in part, that a loan commitment letter "seems promising," and advising his clients that "it seems that the best course may be to hold your [RBCP] shares as they are and do nothing else." Demetriou sent this email recommending that the customers hold their RBCP investment after Keys asked if any investors wanted their RBCP investments back.

Demetriou testified that RBCP's attorney told him that a notice of default and demand for possession of the coins had been sent to ICF. The coins, however, were never sold. Demetriou testified that he was told that a fee necessary to secure possession of the coins had not been paid. Ultimately, Demetriou's 28 customers lost the entirety of their investments in the RBCP offering, a total of $337,700.

B. Demetriou Sends Unapproved "Investment Summaries" to Former and Current Customers

From October 2010 through July 2013, Demetriou created and sent approximately 70 documents titled "Investment Summaries" to his customers, some of whom were Titan customers and many of whom had invested in RBCP.[17] The investment summaries were consolidated financial statements that purported to show the customers' investments and their values. Many of the investments in the summaries were the PCG-sponsored real estate limited partnerships that he had recommended and in which customers had suffered losses. The investment summaries did not disclose the sources of the values Demetriou included and Demetriou did not obtain approval from Titan before sending these documents to customers or at any time thereafter.

The investment summaries included a column that Demetriou titled "reported value," which listed a dollar amount for each investment. The meaning of "reported value" was not defined anywhere on the investment summary. The dollar value listed was frequently the amount the customer had originally invested. Two customers who testified at the hearing said they understood "reported value" to reflect the actual value of the investment. Demetriou testified, however, that this was not necessarily the case, and that he continued to list the amount of the original investment even when the investment was worthless in the market. Demetriou testified that "reported value" was a "misnomer," and he probably should have titled this column "discussion value."

In addition to "reported value," some investment summaries included a dollar value under a column titled "probable value." The investment summaries did not include a definition of "probable value," and did not explain how "probable value" differed from "reported value." Some investment summaries also included a value in a column titled "possible value," but again the meaning of "possible value" was not defined anywhere in the summary. In some investment summaries, the amount listed for "possible value" was the original amount the customer invested, with no regard to the actual current value of the investment. Demetriou testified that he included the original investment amount in these cases because "[e]fforts were still going forward . . . to give the entire amount back."

Several investment summaries also included a value for "annual cash created." This term was also not defined. Two customers testified that they understood this column to represent the

[17] The record contains copies of these investment summaries that Demetriou prepared for 34 customers.

amount of income the investment was generating annually. In fact, in many cases, this amount was only the return promised in the offering documents with no regard to whether the investment was, in fact, paying the promised amount.

Some of Demetriou's customers held their PCG-sponsored partnership interests in IRAs with a third-party custodian, LT. In October 2010, LT reduced the value of the PCG-sponsored partnerships to 1/100 of the original investment amount.[18] Notwithstanding LT's reduction of the partnerships' value, in many investment summaries, Demetriou continued to list their value as the original amount invested. In some cases, Demetriou reduced the amount in the "reported value" column to 1/100 of the original amount invested, and listed the original amount invested as the "probable value."

For investments in RBCP, Demetriou listed as the "reported value" the amount the customers had been promised if RBC Acquisitions secured a loan to finance Riverbend, i.e., 20 times the amount invested. Demetriou testified that he had no support for this value other than what Keys had promised. Demetriou continued to include this value in the investment summaries even after RBC Acquisitions had failed to secure a loan and RBCP had defaulted.[19] Demetriou also listed amounts for "annual cash created" by RBCP, even though the investment never paid a return.[20]

C. Demetriou and Other Titan Registered Representatives Use Unapproved Personal Emails for Business

The parties stipulated that during the relevant period, Titan's written supervisory procedures ("WSPs") prohibited the use of personal email accounts for securities-related business unless approved in writing by a registered principal. Moreover, the parties stipulated that the WSPs provided that, "[t]o the extent a personal email account is permitted, all emails must be copied to the associated person's [Titan] email address and will be subject to the review standards of all other electronic communications." Until December 2012, Brooks was responsible for reviewing Titan registered representatives' email.

From July 2010 through July 2013, six Titan registered representatives, including Demetriou, used personal email accounts for securities-related business without obtaining approval from the firm. Demetriou used two personal email accounts to conduct securities

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[18] Later, LT returned the partnership interests to the customers with zero value.

[19] Demetriou continued to include the promised return as the "reported value" even after the developer, BP, died in 2013.

[20] For example, in a 2011 investment summary for a customer, more than a year after RBCP defaulted, Demetriou listed the reported value of RBCP as $200,000. In another from August 2011, Demetriou listed the reported value of RBCP as $275,000 and in the comments noted "moving toward big loan."

business with Titan customers. Demetriou also used his personal email accounts to send certain emails related to RBCP. Because Titan had not approved these accounts, emails sent to or from these accounts were not captured, reviewed, or maintained by Titan.

During a two-year period, Brooks received more than 100 emails from Demetriou's and the other registered representatives' unapproved personal email accounts. Brooks testified that when he noticed a registered representative was using an outside account for securities business, he would direct the representative to stop doing it. Brooks also testified that by late 2012, he knew that registered representatives were using unapproved personal email accounts and that Titan took steps to address the problem, including hiring a new full-time CCO who was responsible for stopping the practice. Nonetheless, the use of unapproved personal email accounts by five registered representatives continued until April 2013 and by Demetriou until July 2013.

D. Titan Participates in the Evolution II Private Placement[21]

Beginning in early October 2012, Titan, acting through Brooks, participated in a contingency offering conducted by a limited partnership, Evolution Partners II, LTD ("Evolution").[22] Evolution had been formed to acquire interests in another limited partnership, MR Parker Center, LP, which, in turn, had been formed to purchase a business center property. Evolution's general partner was Evolution GP II, LLC ("Evolution GP"). Brooks owned 56 percent of Evolution GP and was its managing member.[23]

The PPM stated that the offering sought to raise a minimum of $1,000,000 and a maximum of $3,000,000. The PPM stated that investor funds raised during the offering would be placed in an escrow account until the offering had raised $1,000,000, and that investor funds would be refunded if the minimum offering amount was not met by December 31, 2012.[24] The PPM further stated that "[a]ny Units purchased by [Evolution GP] or its affiliates will not be counted in calculating the minimum offering."

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21 This conduct does not relate to Demetriou.

22 A contingency offering, also known as a "minimum-maximum" or an "all-or-none" offering, is one in which the issuer is required to sell, and receive payment for, a certain number of shares by a certain date. If the designated number of shares is not sold, or payment not received, by the specified date (and the offering is not properly extended), the existing investors receive a refund of their investment.

23 Evolution's PPM stated that Evolution GP's "management includes certain officers and associates" of Titan.

24 The PPM provided Evolution GP could extend the minimum offering period until March 31, 2013.

In October 2012, however, Brooks broke escrow after raising only $300,000 from five bona fide investors. On October 25, 2012, Evolution GP secured two loans totaling $1.6 million. Evolution GP used the loan proceeds to purchase 40 units in the Evolution offering for $40,000 per unit. In breaking escrow on October 26, Titan and Brooks relied on the purchases by Evolution GP to satisfy the minimum offering amount.

As additional partnership units were sold to investors, the units purchased by Evolution GP with the loan proceeds were canceled. All of the units purchased with loans were cancelled by February 13, 2012, after a total of 74.34 units had been sold to bona fide investors for a total of $2,973,600. The Evolution offering closed on March 27, 2013.

Brooks testified he believed he could count the units purchased by Evolution GP toward the minimum offering amount based on discussions he had with the attorney who drafted Evolution's PPM and Evolution GP's partnership agreement. Brooks claimed there was a discrepancy between the Evolution PPM and Evolution GP's limited partnership agreement on this issue.[25] Brooks testified the attorney advised him that Evolution GP was permitted to borrow money to purchase partnership units in the Evolution offering. Brooks further testified that the attorney drafted the loan documents for Evolution GP (at Brooks's request), and this reinforced his belief that the units purchased by Evolution GP could be counted towards the minimum.

The record contains a memorandum written by the same attorney approximately a year after the offering closed.[26] The memo states:

> Section 3.1 of the Agreement of Limited Partnership grants [Evolution GP] the power to borrow money and to engage in transactions with the Partnership . . . . [Evolution GP] arranged for funds to be advanced . . . to facilitate the closing. The authority for [Evolution GP] to acquire and dispose of Units in the Partnership is found in Section 4.1 of the Partnership Agreement.
>
> The steps were taken because it allowed the Partnership's investors to participate in the transaction. The timetable for the closing of the purchase of the real property could not be extended. The escrow disbursements were necessary to allow the Partnership to capture the opportunity.

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[25] Brooks testified that Evolution's limited partnership agreement was sent to prospective investors. The record does not contain a copy of the limited partnership agreement.

[26] It appears this memorandum was written to address questions FINRA raised about the offering during its 2013 cycle examination of Titan.

> [Evolution GP] had strong reason to believe that additional subscriptions were forthcoming.

III. Procedural History

A. The Complaint

On October 17, 2016, Enforcement filed a seven-cause complaint against Titan, Brooks, and Demetriou.

- Cause one alleges that, from July 2010 to October 2010, Demetriou violated FINRA Rule 2010 by making misrepresentations to prospective investors in connection with his promotion of RBCP, including in the Three Emails and in individual investment illustrations he sent to seven prospective customers.

- Cause two alleges that, from July 2010 to October 2010, Demetriou engaged in an undisclosed, unapproved OBA by serving as RBCP's managing member and facilitating investments in RBCP, in violation of NASD Rule 3030 and FINRA Rule 2010.

- Cause three alleges that, during the period from October 2010 through April 2013, Titan and Brooks violated NASD Rule 3010 and FINRA Rules 3270 and 2010 by failing to adequately supervise Demetriou's RBCP OBA.

- Cause four alleges that, during the period from July 2010 through July 2013, Demetriou drafted and disseminated to Titan customers consolidated financial statements—i.e., Demetriou's "investment summaries"—and sales literature (the Three Emails) that violated FINRA's advertising and communications with the public rules.

- Cause five alleges that, from April 2011 through April 2013, Titan failed to establish and maintain a reasonable supervisory system to detect and prevent the use of personal email accounts for securities business, in willful violation of Exchange Act Section 17(a) and Rule 17a-4 thereunder. Cause five also alleges that, during the same period, Titan and Brooks violated NASD Rules 3110 and 3010 and FINRA Rules 4511 and 2010.

- Cause six alleges that Demetriou violated FINRA Rule 2010 by using unapproved personal email accounts to conduct securities business.

- Cause seven alleges that Titan willfully violated Exchange Act Section 15(c) and Exchange Act Rule 15c2-4 by releasing investor funds from the Evolution offering's escrow account before the minimum amount had been raised from bona fide investors. Cause seven further alleges that Titan and Brooks willfully violated Exchange Act Section 10(b), Exchange Act Rule 10b-9, and FINRA Rule 2010 by making material misrepresentations related to Evolution.

B. The Extended Hearing Panel Decision

In April 2018, the Hearing Panel held a seven-day hearing at which nine witnesses testified and more than 130 exhibits were admitted into evidence. The Hearing Panel issued its Decision on March 5, 2019. Under cause one, the Hearing Panel found that Demetriou violated FINRA Rule 2010 by making material, false and misleading misrepresentations about RBCP in the Three Emails. For this violation, the Hearing Panel fined Demetriou $10,000 and suspended him from associating with any FINRA member in any capacity for six months. The Hearing Panel unanimously agreed that ordering Demetriou to pay restitution was appropriate but disagreed on the amount of restitution. A majority of the Hearing Panel ordered Demetriou to pay customers restitution equal to 25 percent of their losses in RBCP, an amount which equals $84,425. The Hearing Officer dissented, stating that a restitution award equal to the full amount of the customers' losses—$337,700—is warranted.

Under cause two, a majority of the Hearing Panel found that Enforcement failed to meet its burden of proof that Demetriou violated the OBA rules because the majority found that Demetriou was not employed or compensated by RBCP. The Hearing Officer dissented from this finding.

Under cause three, a majority of the Hearing Panel found that Enforcement failed to meet its burden of proof that Titan and Brooks failed to supervise Demetriou's involvement with RBCP as an OBA. This finding was based on the Hearing Panel majority's finding that RBCP was not an OBA in which Demetriou was engaged. The Hearing Officer dissented from this finding.

Under cause four, the Hearing Panel unanimously found that Demetriou violated NASD Rule 2210 and FINRA Rules 2210 and 2010 by sending the Three Emails and the investment summaries that contained inaccurate information and failed to provide a sound basis for evaluating the facts therein, and by sending the Three Emails without obtaining approval from an appropriately qualified Titan registered principal. For these violations, the Hearing Panel fined Demetriou $20,000 and imposed a one-year suspension in all capacities, to run consecutively with his suspension under cause one.

Under cause five, the Hearing Panel found that Titan and Brooks violated NASD Rules 3010 and 3110 and FINRA Rules 4511 and 2010 by failing to establish, maintain, and enforce adequate supervisory procedures for the capture, review, and retention of Titan's securities-related emails. The Hearing Panel also found that Titan failed to preserve emails in violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-4. A majority of the Hearing Panel found that Titan's violation of the Exchange Act was not willful. The Hearing Officer dissented from this finding concerning willfulness. For these violations, the Hearing Panel fined Brooks and Titan $50,000, jointly and severally, and imposed on Brooks a two-month suspension in any principal or supervisory capacity.

Under cause six, the Hearing Panel unanimously found that Demetriou violated FINRA Rule 2010 by using two unauthorized personal email accounts to conduct securities business with Titan customers. For this violation, the Hearing Panel fined Demetriou $10,000 and imposed a three-month suspension in all capacities, to run consecutively with his other suspensions.

Finally, under cause seven, a majority of the Hearing Panel found that Titan violated Exchange Act Section 15(c), Exchange Act Rule 15c2-4, and FINRA Rule 2010 by releasing investor funds from escrow before the Evolution offering's minimum offering amount was met. One of the Hearing Panelists dissented from this finding. A majority of the Hearing Panel further found that Enforcement failed to prove that this violation was willful. The Hearing Officer dissented from this finding because he believed the willfulness standard was met. A majority of the Hearing Panel also found that Enforcement failed to prove that Brooks and Titan violated Exchange Act Section 10(b), Exchange Act Rule 10b-9, and FINRA Rule 2010 because, the majority found, there was insufficient evidence that Brooks and Titan made material misrepresentations about the Evolution offering with scienter. The Hearing Officer dissented from this finding. For these violations, the Hearing Panel fined Titan $15,000.

C. The Appeal and Cross-Appeal

Enforcement appealed several of the Hearing Panel's findings. Enforcement appealed: (1) the Hearing Panel's dismissal of cause two based on its finding that Demetriou's involvement with RBCP was not an OBA; (2) the Hearing Panel's dismissal of cause three alleging that Titan and Brooks failed to supervise Demetriou's OBA; (3) the Hearing Panel's finding that Enforcement failed to prove that Titan's violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-4 was willful; (5) the Hearing Panel's dismissal of the allegation that Titan and Brooks violated Exchange Act Section 10(b) and Exchange Act Rule 10b-9; (6) the Hearing Panel's finding that Enforcement failed to prove that Titan's violation of Exchange Act Section 15(c) and Exchange Act Rule 15c2-4 was willful; (7) the Hearing Panel's order that Demetriou pay only a portion of the customers' losses in restitution rather than the full amount; and (8) the Hearing Panel's finding that Titan and Brooks were not jointly and severally liable with Demetriou for restitution.

Demetriou cross-appealed several of the Hearing Panel's findings. Demetriou appealed: (1) the Hearing Panel's finding that he violated FINRA Rule 2010 by making misrepresentations in the Three Emails as alleged in cause one; (2) the Hearing Panel's finding that he violated FINRA's advertising and communications with the public rules alleged in cause four; (3) the Hearing Panel's finding that he violated FINRA Rule 2010 by using unapproved, personal email accounts for Titan securities business as alleged in cause six; and (4) the sanctions imposed on him. Demetriou also argues that the entire Decision "must be overturned" because of the Hearing Panel's failure to follow FINRA rules with respect to post-hearing briefs. Specifically, Demetriou contends the "Hearing Officer improperly called for post hearing [sic] briefs after the deadline for doing so and without justification for doing so."

IV. Discussion

A. The Hearing Officer Did Not Abuse His Discretion by Ordering the Parties to Submit Post-Hearing Briefs

We first consider Demetriou's procedural argument that the Hearing Officer improperly ordered the parties to submit post-hearing briefs. Demetriou maintains the order was improper because the Hearing Officer previously had indicated that post-hearing briefs would not be necessary. Demetriou contends the Decision therefore is "based on the invalid post-hearing briefs and must accordingly be overturned." We disagree.

On April 24, 2018, the last day of the hearing, the Hearing Officer raised the issue of whether post-hearing briefs would be submitted. The Hearing Officer conferred with the parties, and they agreed that post-hearing briefs were unnecessary. The Hearing Officer then stated that he would not order post-hearing briefs. On July 18, 2018, however, the Hearing Officer entered an order directing the parties to submit post-hearing briefs. The Hearing Officer's order indicated that "[a]fter due consideration, the Hearing Officer has determined it will be helpful to the Hearing Panel for the parties to submit post-hearing briefs." The order set forth a list of matters for the parties to address in their post-hearing briefs and set deadlines for submission. The order allowed Enforcement 30 days to file its initial brief, 30 days for Respondents to file their response briefs, and 14 days for Enforcement to file a reply.

On July 19, 2018, Enforcement filed a motion requesting an extension of time to file post-hearing briefs. Enforcement represented that it had conferred with Respondents' counsel, and counsel did not oppose its motion. On July 20, 2018, the Hearing Officer granted Enforcement's motion and extended all deadlines by approximately a month.

On September 9, 2018, Demetriou filed a motion to vacate the order on the grounds that post-hearing briefs were unnecessary, unduly costly, and in violation of FINRA Rule 9266. On September 11, 2018, the Hearing Officer denied Demetriou's motion to vacate. The Hearing Officer cited FINRA Rule 9266(a), which provides that post-hearing briefs may be ordered at the Hearing Officer's discretion and his determination that "post-hearing briefs would be helpful to the Hearing Panel's consideration of the issues."

FINRA Rule 9235 grants the Hearing Officer broad discretion "to do all things necessary and appropriate to discharge his or her duties." *See, e.g.*, *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *74 n.88 (Feb. 13, 2015). FINRA Rule 9266 governs post-hearing briefs. Rule 9266(a) provides that "[a]t the discretion of the Hearing Officer, the Parties may be ordered to file proposed findings of facts and conclusions of law, or post-hearing briefs, or both." Rule 9266(c) further provides:

> [i]n any case in which the Hearing Officer ordered . . . post-hearing briefs, the Hearing Officer shall, after consultation with the Parties, prescribe the period within which . . . post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing

> submissions shall not exceed 60 days after the conclusion of the hearing unless the Hearing Officer, for good cause shown, permits a different period and sets forth in an order the reasons why a longer period is necessary.

The Hearing Officer did not abuse his discretion in ordering the parties to file post-hearing briefs. *See Dep't of Enf't v. Mullins*, Complaint Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *54-55 (FINRA NAC Feb. 24, 2011) (applying an abuse of discretion standard to the Hearing Officer's decision denying respondents' request to submit post-hearing briefs). FINRA Rule 9266(a) specifically grants the Hearing Officer discretion about whether post-hearing briefs must be filed. While Rule 9266(c) sets time limits for the filing of post-hearing briefs, it also allows the Hearing Officer to permit a different period for good cause. Here, the Hearing Officer stated in his order that "[i]n light of the length and complexity of this case, the Hearing Officer finds good cause to permit briefing beyond the 60-day limit in FINRA Rule 9266." Demetriou has not articulated any argument of how he was harmed or prejudiced by having an additional opportunity to make his arguments in writing. Indeed, Demetriou did not oppose Enforcement's request to extend the time to file post-hearing briefs for an additional month, and on October 24, 2018, Demetriou filed a post-hearing brief and incorporated by reference a 35-page brief filed by Titan and Brooks.[27]

The Hearing Officer did not abuse his discretion by requiring the parties to file post-hearing briefs, and we therefore deny Demetriou's request to reverse the Hearing Panel's decision on that basis.[28]

B. Demetriou Made Material, False and Misleading Misrepresentations About RBCP in the Three Emails (Cause 1)

The Hearing Panel found that Demetriou made false and misleading misrepresentations of material fact about RBCP in the Three Emails in violation of FINRA Rule 2010. We affirm the Hearing Panel's finding.

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[27] Notwithstanding his arguments about the propriety of post-hearing briefs, in his brief in support of his appeal and cross-appeal, Demetriou states that he "adopts and incorporates by reference" in his brief in this appeal the post-hearing brief he filed, as well as the post-hearing brief filed by Titan and Brooks. As Enforcement notes in its brief, by doing so Demetriou effectively circumvented the page limits applicable to briefs on appeal. We have nonetheless considered the entire record, including the parties' post-hearing briefs, on appeal.

[28] Titan and Brooks also argue that the Hearing Officer was biased, as evidenced by his dissents and what they view as "antagonistic and unsound conclusions of fact and law." We find no evidence in the record to support Titan's and Brooks's claims. To the contrary, we have found that the Hearing Officer's dissents are largely supported by the record and his application of legal standards are correct.

FINRA Rule 2010 provides that FINRA members and associated persons "in the conduct of [their] business, shall observe high standards of commercial honor and just and equitable principles of trade." A violation of Rule 2010 requires a finding of unethical conduct or bad faith. *See Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013). We have previously held that an associated person acts unethically in violation of Rule 2010 when he or she makes material misrepresentations of fact to a customer. *See Dep't of Enf't v. Rooney*, Complaint No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *80 (FINRA NAC July 23, 2015). Moreover, when a registered representative recommends an investment, he has a duty to investigate and cannot make a recommendation based primarily on the statements of others. *See Dep't of Enf't v. Gomez*, Complaint No. 2011030293503, 2018 FINRA Discip. LEXIS 10, at *54 (FINRA NAC Mar. 28, 2018). A registered representative cannot recommend a security unless he has an adequate and reasonable basis for doing so. *Id.* at *46 (*quoting Hanly v. SEC*, 415 F.2d 589, 595-96 (2d Cir. 1969)). In the context of private placement offerings, a registered representative has an obligation to conduct a reasonable investigation, cannot blindly rely on statements by the issuer, and "cannot deliberately ignore facts [about] which he has a duty to know and recklessly state facts about matters of which he is ignorant." *Dep't of Enf't v. Luo*, Complaint No. 201102634206, 2017 FINRA Discip. LEXIS 4, at*19-20, 22-23 (FINRA NAC Jan. 13, 2017) (*quoting Dep't of Enf't v. Cipriano*, Complaint No. C07050029, 2007 NASD Discip. LEXIS 23, at *34 (NASD NAC July 26, 2007)).

Demetriou argues the Hearing Panel erred because, he contends: (1) FINRA Rule 2010 applies only to members and not associated persons, and the rule is overly broad, vague, and ambiguous; and (2) Demetriou was only a "messenger" who was "merely presenting information prepared and provided by Keys . . . without comment or recommendation," and thus any misrepresentation in the Three Emails are not attributable to Demetriou. Neither argument has merit.

Rule 2010 applies to all associated persons. FINRA Rule 140(a) provides that FINRA's rules, including Rule 2010, "shall apply to all members and persons associated with a member," and "[p]ersons associated with a member shall have the same duties and obligations as a member under the [r]ules." Federal courts and the Commission repeatedly have held that Rule 2010 is not overly broad, vague, or ambiguous. *See, e.g.*, *Sorrell v. SEC*, 679 F.2d 1323, 1326 (9th Cir. 1982) (rejecting respondent's vagueness challenge to NASD Rule 2110). The rule applies to conduct that a respondent knows or should know is unethical. Rule 2010 regularly has been applied to a variety of misconduct by associated persons in numerous cases, including in the case of an associated person making material misrepresentations to customers. *See, e.g.*, *Rooney*, 2015 FINRA Discip. LEXIS 19, at *80. We therefore reject Demetriou's argument that Rule 2010 does not apply to the conduct at issue.

We also reject Demetriou's assertion that he was simply a "messenger" and therefore he is not responsible for the content of the Three Emails he sent to his customers. Demetriou drafted and sent the Three Emails. The Three Emails, which were written in the first-person, represent that the views expressed were Demetriou's. For example, in the July 9 Email, Demetriou wrote that he believed Keys was offering RBCP to customers who had lost money in PCG-sponsored investments because Keys felt an obligation not to abandon them. In the July 9 Email, Demetriou also wrote the he was "taken back" [sic] by the request for an additional

investment from the customer who had lost money in the PCG-sponsored investments and that he "desperately" wanted his customers to recover their lost investments. In the July 21 Email, Demetriou wrote that he was the person who discovered the "math error" that resulted in a larger minimum investment in RBCP. He also represented to customers that, as the managing member, he would be able to call the collateral on their behalf if Riverbend did not secure financing, writing "I am trying very hard to assure that all investor money is returned." In the September 9 Email, Demetriou referred to his own efforts during the preceding months to understand the collateral, and assured customers that he personally spoke to the person who appraised the coins, and that the "valuations seem to be solid" to him.

Demetriou also made first-person statements recommending RBCP. In the July 9 Email, he wrote that RBCP offered a "great return," and that RBCP was the "best route" for the customers to recover their lost investments. In the September 9 Email, Demetriou wrote that "[f]rom what I have seen in the securities business, this is unprecedented in a good way." Also in that email, Demetriou wrote, "I can search, dig, and scratch to find out if [RBCP] may be a good offer for you," and that RBCP "honestly seems to be the best chance of returning your money plus a profit." Despite Demetriou's claims that he told customers he was not "offering" RBCP, the language used in the Three Emails leaves no doubt that Demetriou was personally responsible for the statements in the Three Emails.[29]

The Three Emails contained numerous misrepresentations about the offering. We agree with the Hearing Panel that the "most pronounced falsehood" in the Three Emails concerned the claim that customers' investments in RBCP were "guaranteed" or "secured" by the numismatic coins, which would be foreclosed and liquidated to return their investments if RBC Acquisitions was unable to secure a loan. A registered representative makes misleading misrepresentations in violation of FINRA Rule 2010 when he states to his customers that an investment is secured by collateral when, in fact, the investment is not secured. *See Ramiro Jose Sugranes*, 52 S.E.C. 156, 156-57 (1995) (finding that a registered representative violated NASD Rule 2110 when he falsely stated to customers that an investment was backed by a letter of credit).

In the July 21 Email, Demetriou wrote that "[t]he 5% deposit is still *secured* by rare coins on deposit at San Diego Artworks." [Emphasis added.] Demetriou continued in the July 21 Email:

> [t]he 5% cash deposit on your part is still *guaranteed* by a $3,000,000 Safe Keeping Receipt (SKR) from the San Diego Artworks. The actual assets are rare coins that have been

[29] Demetriou also cites the Supreme Court's decision in *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011), and argues that he was not the "maker" of the statements in the Three Emails. *Janus*, however, applies in the context of claims under Exchange Act Rule 10b-5; not violations of the ethical requirements of FINRA Rule 2010. In any event, as discussed above, we find that Demetriou did make the statements in the Three Emails.

> appraised for $3,000,000. As managing member of [RBCP], I will be able to call the collateral on your part if it appears that the Riverbend construction will not go forward. I have the SKR issued in the name of [RBCP]. [Emphasis added.]

In the September 9 Email, Demetriou wrote that the RBCP "documents"

> define[] February 1, 2011 as the latest date that your cash deposit [RBCP investment] can be returned to you. If it is not returned, there are over $5,000,000 in rare coins that have been deposited as collateral to *back up* the February 1, 2011 promise. (The Safe Keeping Receipt is part of the documents[.]) I have personally talked with the appraiser of these coins, and the valuations seem to be solid. In practice, the coins would have to be sold slowly to achieve the full value of their appraisal. [Emphasis added.]

Contrary to Demetriou's statements in the July 21 Email and September 9 Email, the coins did not "guarantee," "secure," or "back up" the customers' investments. Indeed, the safekeeping receipt did not state that the coins "secured" or "guaranteed" the customers' RBCP investments; rather, it stated only that it was "prepared for the purposes of the agreement between [RBC Acquisitions] and [RBCP] for monetization and investment purposes." The safekeeping receipt further stated that "the coins are subject to various restrictions of transfer pursuant to that agreement" between RBC Acquisitions and RBCP. Demetriou acknowledged in his testimony that he never read the agreement between RBC Acquisitions and RBCP and did not know what these restrictions were. Moreover, as Demetriou's August 16, 2010 notes reflect, Demetriou had doubts about whether the coins could be accessed and, therefore, whether they were actually "collateral of any kind." Demetriou did not share these concerns with his customers or stop recommending RBCP. Demetriou testified that the coins were not liquidated when RBC Acquisitions failed to secure the loan and the customers lost their entire RBCP investment.

In the Three Emails, Demetriou also made various statements about the value of RBCP, the returns on the investment, and the likelihood of the customers receiving various payments. We agree with the Hearing Panel that Demetriou made these statements with no factual basis for doing so. For example, in the July 6 Email, Demetriou wrote that "$1500 buys $100,000 in the RBC Acquisitions, LLC [and] [t]hese preferred shares pay a 4%/yr [sic] cumulative preferred dividend." Demetriou also stated in the July 6 Email that "[i]f a comfort level on the Riverbend project can be reached, a $4,500 investment will return $300,000 principal. That is a first year principal return of $60,000 that is built into the numbers." Demetriou also stated in the July 6 Email that "$1500 to buy a $100,000 investment is a great return, especially if the $1500 will be returned in 90 days." Demetriou had no factual basis for stating how much the RBCP investment would be worth and no factual basis for postulating such a high investment return. Demetriou also wrote, without any factual basis, that "[t]he first construction draw for the

development will be used to repay this 1.5% to you. This is designed to occur within 90 days."[30] We agree with the Hearing Panel that Demetriou's statements made the promised returns and payments appear likely and even inevitable.

Demetriou's misleading claims about the value and returns from RBCP continued in the July 21 Email. Demetriou wrote that "[t]he return of your original investment represents 20 times the 5% deposit you supply to [RBCP] until the first draw"—a return of 2,000 percent at the time of the first construction draw alone. Demetriou also stated that "[y]our [RBCP] shares will be redeemed at 20% per year over five years plus a 4% preferred cumulative dividend on the unpaid balance." Demetriou made these statements without disclosing the significant risk that RBC Acquisitions would not secure a loan and the customers would lose their entire investments—as they ultimately did. Again, Demetriou's statements in the July 21 Email misleadingly represented that these payments and returns were likely to occur.

Demetriou reiterated his claims about the returns customers would receive in his September 9 Email. Demetriou wrote that "[t]he first $25,000,000 of profit in RBC Acquisitions plus a 4% per year preferred and cumulative dividend will be paid to you, the RBC Preferred Investors before any owner of RBC Acquisitions receives any proceeds." He continued that "[f]or each $5,000 initial deposit (deposit returned to you before 2-1-11), you will receive $50,000 of the $25,000,000 above plus the 4%/yr [sic] dividend." Demetriou's statements created the misleading impression that customers who invested in RBCP definitely would receive substantial returns on their investment, plus dividends, without discussing the significant risk that they would lose their investments and receive nothing.

Demetriou's misrepresentations in the Three Emails were material.[31] "[M]ateriality depends on the significance the reasonable investor would place on the withheld or misrepresented information." *Basic, Inc. v. Levinson*, 485 U.S. 224, 240 (1988). A misrepresentation 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" to the investor. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). A reasonable investor would consider it important that the coins did not secure or guarantee the investment, and that Demetriou's representations about the value and returns of RBCP were made without an adequate factual basis.

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[30] Demetriou also wrote in his July 6 Email that "Bob [Keys] has set aside $25,000,000 in the investment RBC Acquisitions, LLC to go to the investors," creating the false impression that an actual $25,000,000 had been "set aside" when, in fact, RBC Acquisitions did not have significant funds and would not have the funds unless it was able to get a multi-million-dollar loan.

[31] There is no scienter requirement for violations of FINRA Rule 2010, but rather only that the misconduct is unethical or in bad faith. *See Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020).

We find that Demetriou made material misrepresentations in the Three Emails in violation of FINRA Rule 2010.

C. Demetriou Engaged in Undisclosed Outside Business Activities (Cause 2)

Enforcement alleged that from July 2010 through October 2010, Demetriou engaged in an undisclosed OBA with RBCP, in violation of NASD Rule 3030 and FINRA Rule 2010.[32] A majority of the Hearing Panel found that Enforcement failed to prove that Demetriou engaged in an undisclosed OBA because he was not employed by and did not accept compensation from RBCP. The Hearing Panel majority concluded that Demetriou was not employed by RBCP because he never signed any documents and RBCP was incorporated without his knowledge.[33] We disagree with the Hearing Panel and find that Demetriou engaged in an undisclosed OBA.

NASD Rule 3030 provides that a registered person may not "be employed by, or accept compensation from, any other person as a result of any business activity . . . outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member."[34] The purpose of the rule is to provide member firms with "prompt notification of all outside business activities of their associated persons so that the member's objections, if any, to such activities could be raised at a meaningful time and so that appropriate supervision could be exercised as necessary under applicable law." *Dep't of Enf't v. Houston*, Complaint No. 2006005318801, 2013 FINRA Discip. LEXIS 3, at *32 (FINRA NAC Feb. 22, 2013) (internal quotations omitted), *aff'd*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614 (Feb. 20, 2014) (*quoting NASD Notice to Members 88-86*, 1988 NASD LEXIS 207 (Nov. 1988)). An associated person is required to disclose any outside business activity "at the time when steps are taken to commence a business activity unrelated to his relationship with his firm." *See Dep't of Enf't v. Schneider*, Complaint No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (NASD NAC Dec. 7, 2005). An associated person must disclose an OBA regardless of whether he is compensated for it. *See id*., at *15 (relying on the text of the rule which uses the disjunctive "or" to find that compensation is not necessary for Rule 3030 to apply).[35]

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[32] Conduct that violates other Commission or FINRA rules is inconsistent with the high standards of commercial honor and just and equitable principles of trade and therefore also violates FINRA Rule 2010. *See Dep't of Enf't v. Fillet*, Complaint No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *15 n.6 (FINRA NAC Oct. 2, 2013).

[33] The Hearing Officer dissented from this finding.

[34] NASD Rule 3030 was superseded by FINRA Rule 3270, effective December 15, 2010. *See FINRA Regulatory Notice 10-49*, 2010 FINRA LEXIS 96, at *2 (Oct. 2010). Because Demetriou's misconduct occurred before this date, we apply NASD Rule 3030.

[35] Titan and Brooks argue that *Schneider* is distinguishable from this case because "*Schneider* dealt with the expectation of commissions." We are unpersuaded by this argument. In *Schneider*, the NAC determined that Schneider's activities were sufficient to establish that he was "employed" in an OBA and the fact that he had received no compensation for his OBA

[Footnote continued on next page]

Demetriou was employed by RBCP.[36] Demetriou admits that he served as RBCP's managing member for approximately four weeks. Indeed, Demetriou held himself out to his former and current customers (and potential RBCP investors) as RBCP's managing member. In the July 21 Email, Demetriou wrote that "[a]s the managing member of the LLC [RBCP], I will be able to call the collateral on your part." In this same email, Demetriou represented that he had directed the safekeeping receipt for the coins to be issued in RBCP's name, writing "I have had the [safekeeping receipt] issued in the name of [RBCP]." During the time he served as managing member, Demetriou also sent the July 6 Email and the July 21 Email describing RBCP, and arranged and participated in the July 8, 2010 conference call during which Keys and BP solicited the customers to invest in RBCP. Additionally, Demetriou sent the September 9 Email and arranged and participated in the September 10, 2010 conference call with Keys, BP, and the customers. In the September 9 Email, Demetriou told customers that he had "personally talked with the appraiser" of the coins. Demetriou also created and sent customers individualized illustrations of the RBCP investment. As his customers made investments in RBCP, Keys' assistant emailed confirmations to Demetriou.

In October 2010, Brooks asked Demetriou about his activities related to RBCP and Demetriou submitted a written response. Demetriou's response to Brooks omitted many important facts, which we find supports the conclusion that Demetriou knew he was engaged in an OBA. Demetriou did not tell Brooks that: (1) he had been the managing member for RBCP for a period and represented himself as such to his customers; (2) he had sent the Three Emails and arranged and participated in two conference calls for Keys, BP, and the customers; (3) he had spoken to the appraiser of the coins and directed that the safekeeping receipt be issued in

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[cont'd]

activities "did not relieve Schneider of his obligation to inform his firm promptly and in writing of his outside business activities." 2005 NASD Discip. LEXIS 6, at *15-16. In so finding, the NAC relied on the text of the rule, which prohibits an associated person from being "employed by, *or* accep[ting] compensation" from an OBA without notice to the firm. *Id*. at *12 (emphasis added).

[36] Enforcement alleged that the $20,000 consulting agreement fee ICF paid Demetriou was compensation for Demetriou's RBCP activities. The Hearing Panel majority found that Enforcement failed to prove that this was compensation for RBCP, stating "Enforcement provided no explanation for why this neutral third party would join in an alleged plan to compensate Demetriou for RBCP" and only the timing of the payment linked the payments to RBCP. The record, however, does not support that ICF was a "neutral third party." ICF was listed as a party that was to receive a $500,000 payment from the funds raised by RBCP and ICF's principal, EL, was the individual who provided the coins that were to be collateral for RBCP. Moreover, ICF paid Demetriou the first $10,000 the day after the RBCP offering closed. In any event, we need not reach this issue as we find that there is more than sufficient evidence that Demetriou was employed by RBCP.

RBCP's name; and (4) he had prepared individualized illustrations for customers who invested in RBCP and received confirmations of those investments. Finally, Demetriou did not tell Brooks that he had written to customers that RBCP was "unprecedented in a good way," "the best chance of returning your money plus a profit," and he was "trying very hard to assure that all investor money is returned."[37] These omissions from Demetriou's response to Brooks support that Demetriou knew he was involved in an unapproved OBA with RBCP.

We find that Demetriou was employed by RBCP from July through October 2010 and failed to disclose his employment to Titan and, accordingly, engaged in undisclosed business activities, in violation of NASD Rule 3030 and FINRA Rule 2010.

D. Titan and Brooks Failed to Supervise Demetriou's RBCP Outside Business Activities (Cause 3)

Enforcement alleged that, from July 2010 through April 2013, Titan and Brooks failed to supervise Demetriou's RBCP activities as an OBA, in violation of NASD Rule 3010 and FINRA Rules 3270 and 2010.[38] A majority of the Hearing Panel found that Brooks and Titan did not fail to supervise as alleged.[39] The Hearing Panel majority's determination was based on its finding that Demetriou's RBCP activities were not an OBA—a finding we reverse (*see supra* Part IV.C). We reverse the Hearing Panel majority's finding with respect to cause three and we conclude that Titan and Brooks violated NASD Rule 3010 and FINRA Rules 3270 and 2010 by failing to supervise Demetriou's RBCP OBA.

NASD Rule 3010 requires that each FINRA member establish and maintain a supervisory system, including written supervisory procedures, to supervise the activities of the persons that are associated with it that is "reasonably designed to achieve compliance" with the federal securities laws and FINRA rules. *See* NASD Rule 3010(a)(1), (b)(1). A member must implement and enforce its supervisory system and written procedures reasonably in light of the circumstances presented. *See Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at *33 (Dec. 19, 2008). In addition to an adequate supervisory system, "[t]he duty of supervision includes the responsibility to investigate 'red flags' that suggest that misconduct may be occurring and to act upon the results of such investigation." *Michael T. Studer*, 57 S.E.C. 1011, 1023-24 (2004).

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[37] In their appellate brief, Titan and Brooks claim that Demetriou disclosed his role in RBCP. The record does not support this contention.

[38] NASD Rule 3010 was replaced by FINRA Rule 3110 effective December 1, 2014. *See FINRA Regulatory Notice 14-10*, 2014 FINRA LEXIS 17 (Mar. 2014). Because the alleged misconduct occurred prior to December 1, 2014, we apply NASD Rule 3010.

[39] The Hearing Officer dissented from this finding.

Effective December 2010, FINRA Rule 3270 replaced NASD Rule 3030. Supplementary material for FINRA Rule 3270 provides that, when a member receives notice of an OBA, it must consider whether the activity will interfere or compromise the registered person's responsibilities to the member or its customers, or be viewed by customers or the public as part of member's business based on the nature of the activity and the manner in which it will be offered. In connection with the implementation of FINRA Rule 3270, FINRA released Notice to Members 10-49, which imposed a look-back requirement for OBA activities. Notice to Members 10-49 required that "for registered persons who are actively engaged in an outside business activity prior to December 15, 2010, firms have until June 15, 2011, to review such pre-existing activities under the standards set forth in FINRA Rule 3270, including the requirement that firms keep a record of their compliance with such standards." *FINRA Regulatory Notice 10-49*, 2010 FINRA LEXIS 96, at *2 (Oct. 2010).

We find that Brooks failed to conduct a reasonable inquiry into Demetriou's RBCP activities. After Brooks learned about RBCP through a routine email review, he asked Demetriou to provide a written explanation of his involvement with RBCP. Demetriou's written response raised a number of red flags that required further inquiry by Brooks, including that:

- Keys, a person Brooks admittedly viewed negatively because of past "bad deals," was involved in RBCP.

- Demetriou told Brooks he was facilitating contact between RBCP and the customers and that Demetriou would be discussing RBCP with customers.

- Demetriou told Brooks he did not have enough information to determine whether RBCP was a good or bad investment.

- Demetriou told Brooks he did not have a copy of the RBCP PPM.

- $25,000,000 was supposedly "set aside" for former PCG investors.

- RBCP promised returns of 1,000 percent, plus a four percent cumulative dividend.

- RBCP was purportedly secured by rare coins and would be repaid within a few months.

In response to Demetriou's written disclosure, Brooks responded, on the same day, with a direction only that Demetriou "be sure to let them [the customers] know that Titan is not involved." Brooks did not press Demetriou to obtain a copy of the RBCP PPM, did not ask Demetriou how many investors were involved, or whether any Titan customers were involved. Brooks did not learn until a year and a half later, when the SEC requested information about Demetriou's involvement with RBCP, that four Titan customers were solicited to invest in RBCP. Finally, there is no evidence that Brooks asked Demetriou in any detail about his specific activities with RBCP, including whether he had held any positions with RBCP, whether he had sent or received written communications with customers about RBCP, and whether he had participated in meetings or conference calls concerning RBCP. Even when the Commission raised concerns that Demetriou was engaged in outside busines activities in RBCP, Brooks did

nothing to further investigate, but rather simply quoted Demetriou's denials in his response to the Commission. We find that Brooks did not conduct a reasonable investigation of Demetriou's RBCP activities in light of the red flags of which he was aware.

Nor did Brooks conduct the "look-back" review of Demetriou's RBCP activities when FINRA Rule 3270 was adopted. Brooks knew that Demetriou was involved in at least facilitating communication between RBCP and customers and that he was communicating with customers about RBCP. Rule 3270 required Brooks to reconsider whether Demetriou's activities interfered with his responsibilities to Titan or could be viewed by customers or the public as part of Titan's business. Brooks did not do this.

Accordingly, we find that Brooks and Titan failed to supervise Demetriou's RBCP OBA, in violation of NASD 3010 and FINRA Rules 3270 and 2010.

E. Demetriou Violated FINRA's Advertising and Communications with the Public Rules (Cause 4)

The Hearing Panel found that Demetriou violated NASD Rule 2210 and FINRA Rules 2210 and 2010 because the investment summaries he sent to customers contained inaccurate information and failed to provide a sound basis for evaluating the facts therein. The Hearing Panel also found that Demetriou violated NASD Rule 2210 and FINRA Rule 2010 because the Three Emails constituted sales literature requiring principal approval, which Demetriou did not obtain, and because the Three Emails contained inaccurate information and failed to provide a sound basis for evaluating the facts therein. We affirm these findings.[40]

1. The Three Emails Violated NASD Rule 2210 and FINRA Rule 2010

NASD Rule 2210 governs communications with the public. The rule defines "communications" to include "sales literature," and defines "sales literature" to include any written or electronic communication that is generally distributed or made generally available to customers or the public.[41] *See, e.g.*, *Brian Prendergast*, 55 S.E.C. 289, 305 (Aug. 1, 2001)

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[40] In his Notice of Appeal and Cross-Appeal, Demetriou appealed the Hearing Panel's findings under cause four. In his Brief in Support of Appeal and Cross-Appeal, however, Demetriou only challenges the Hearing Panel's findings on the grounds that FINRA 2010, which he calls the "primary basis for a violation alleged in Cause Four," does not apply to associated persons and is vague, ambiguous, and overly broad. Demetriou is mistaken. NASD Rule 2210 and FINRA Rule 2210 are the primary basis for the violations under cause four. In any event, as explained above (*see supra* Part IV.B), Demetriou's arguments about FINRA Rule 2010 have no merit.

[41] Excepted from the definition are advertisements, independently prepared reprints, institutional sales materials, and correspondence. None of those exceptions applies to the Three Emails.

(finding that letters distributed to all investors in a hedge fund were sales literature). The Three Emails were generally distributed to Demetriou's current and former customers and therefore are governed by NASD Rule 2210.

NASD Rule 2210(b)(1) requires that a registered principal approve any item of sales literature before its use. Demetriou did not obtain prior approval from a qualified Titan principal before sending the Three Emails.

NASD Rule 2210(d)(1)(A) provides that all communications with the public must "be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts" and may not "omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading." Additionally, NASD Rule 2210(d)(1)(B) provides that communications with the public may not contain "false, exaggerated, unwarranted, promissory, or misleading statement or claim."

The Three Emails contained inaccurate information, failed to provide a sound basis for evaluating the facts therein, and omitted information that resulted in them being misleading. First, the Three Emails contained various inaccurate statements about the coins securing the customers' investments in RBCP. In the July 21 Email, Demetriou wrote that the customers' investments would be "secured by rare coins on deposit at San Diego Artworks," and "guaranteed by a $3,000,000 Safe Keeping Receipt representing the rare coins." Demetriou continued that, "[a]s managing member of the LLC, I will be able to call the collateral on your part if it appears that Riverbend construction will not go forward. I have had the [safekeeping receipt] issued in the name of RBC Preferred, LLC." In the September 9 Email, Demetriou wrote to customers that "there are over $5,000,000 in rare coins that have been deposited as collateral to back up the February 1, 2011 promise" to repay the customers' RBCP investment. In fact, the coins were not collateral that "secured," "guaranteed," or "back[ed] up" the customers' RBCP investments. The safekeeping receipt reflected that there were restrictions on the transfer of the coins (in an agreement which Demetriou never read), and Demetriou's notes reflected his own doubts about whether the coins were "collateral of any kind."

The Three Emails also contained inaccurate information about repayment of the investment from the first construction draw and the timing of that payment. In the July 6 Email, Demetriou wrote that "[t]he first construction draw for the development will be used to repay this 1.5% [investment] to you. This is designed to occur within 90 days." In the July 21 Email, Demetriou told customers "the developer, continues to agree to repay the 5% deposit on the first construction draw. That date will be approximately 120 days from now." These statements inaccurately implied that the first construction draw would definitely occur, in different statements, within 90 or 120 days.

The Three Emails also contained statements about the substantial returns an investor could expect from an investment in RBCP without any sound basis for projecting such returns. For example, in the July 6 Email, Demetriou told customers that a "$1500 [investment] buys $100,000 in the RBC Acquisitions," and that "[i]f a comfort level on the Riverbend project can be reached, a $4500 investment will return $300,000 principal. That is a first year principal

return of $60,000 that is built into the numbers." In other words, Demetriou said investors could expect a return of 6,666 percent. Demetriou did not have a sound basis for this projection.

Finally, Demetriou made a number of other statements that were inaccurate or without a sound basis. For example, in the July 6 Email, Demetriou wrote that RBCP offered a "great return," and that RBCP "seems to be the best route to return your investments," but Demetriou did not discuss any of the risks of RBCP. *See Dep't of Enf't v. Beloyan*, Complaint No. 2005001988201, 2011 FINRA Discip. LEXIS 44, at *21-23 (FINRA NAC Dec. 20, 2011) (finding that a communication violated NASD Rule 2210 where it stated that an investment was a "great buy" without discussing the risks of the investment or providing a basis for the recommendation). In the September 9 Email, Demetriou told customers "[t]he first $25,000,000 of profit in RBC Acquisitions plus a 4% per year preferred and cumulative dividend will be paid to you, the RBC Preferred investors[,] before any owner of RBC Acquisitions receives any proceeds. From what I have seen in the securities business, this is unprecedented in a good way." He also told customers, "[w]hile I cannot present this RBC Preferred, LLC as an investment, I can search, dig, and scratch to find out if it may be a good offer to you. It honestly seems like the best chance of returning your money plus a profit." These statements inaccurately implied the $25 million definitely would be paid and that the promised returns were likely. Demetriou's statements also gave the impression that he had fully investigated RBCP when he testified that he had not even read the PPM and relied only on Keys' statements about RBCP. Demetriou made these statements without disclosing the significant risks that the multi-million-dollar loan would never be obtained and customers would lose their whole investments. Indeed, Riverbend had been the subject of a previous PCG-sponsored partnership that failed when financing for Riverbend could not be obtained. Nor did Demetriou disclose, despite his claims about his efforts to "understand" the collateral, the risk that RBCP might not be able to liquidate the coins that he claimed secured the customers' investments.

2. The Investment Summaries Violated NASD Rule 2210 and FINRA Rules 2210 and 2210

FINRA Rule 2210 replaced NASD Rule 2210 effective February 4, 2013.[42] Accordingly, both NASD Rule 2210 and FINRA Rule 2210 apply to the investment summaries which were sent throughout the relevant period from July 2010 through July 2013.

The investment summaries constitute correspondence under both NASD Rule 2210 and FINRA Rule 2210. NASD Rule 2210 (d)(1)(A) and FINRA Rule 2210(d)(1)(A) provide that all communications must "be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts" and that communications may not "omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading." NASD Rule 2210(d)(1)(B) and FINRA Rule 2210(d)(1)(B) further provide that communications with the public may not make any false, exaggerated, unwarranted or misleading statement or claim in any communication.

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42 *See generally FINRA Regulatory Notice 12-29*, 2012 FINRA LEXIS 36 (June 2012).

In addition to NASD Rule 2210 and FINRA Rule 2210, FINRA Regulatory Notice 10-19 applies to Demetriou's investment summaries. 2010 FINRA LEXIS 32 (Apr. 2010). Regulatory Notice 10-19 reminded FINRA members that consolidated financial reports—documents that combine information regarding most or all of a customer's financial holdings, like Demetriou's investment summaries here—are communications with the public that must comply with applicable FINRA rules. *Id.*, at *1. Regulatory Notice 10-19 further explained that consolidated reports must be "clear, accurate and not misleading" and ensure that the customer is not "confused or misled as to the nature of the information presented." *Id.*, at *6-7. Regulatory Notice 10-19 also requires that consolidated reports disclose if they contain information that is unverified, and information not reported on the member firm's books and records. *Id.*, at *7, 14.

Demetriou's investment summaries contained inaccurate information and failed to provide a sound basis for evaluating the facts. In a column titled "Reported Value," the amount listed was often the amount originally invested and not the actual value of the investment. Demetriou did not define "Reported Value" on the investment summaries, did not explain the source of this value, and in many cases, Demetriou listed the original amount of the investment even when the actual investment was worth little or nothing on the open market. *See Dep't of Enf't v. Brookstone Sec., Inc.*, Complaint No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *89 (FINRA NAC Apr. 16, 2015) (finding that communications to customers were misleading where terms such as "current price" and "value at par" were not defined that the source of the information not explained). For example, Demetriou continued listing the original amount invested as "Reported Value" even after LT reduced the value of certain investments to 1/100th of the original investment amount, and later, after LT returned the investments to Demetriou's customers with a value of zero. For the RBCP investments, Demetriou's investment summaries listed the amount Keys promised if RBC Acquisitions was able to secure financing for Riverbend, with no regard for the actual value of the investment. On some investment summaries, Demetriou also included values for "Possible Value" or "Probable Value," which also were not defined, and for which Demetriou sometimes listed the original amount of the investment, with no regard for the current value of the investment.

Demetriou also included in the investment summaries a column called "Annual Cash Created." Again, Demetriou did not define this term, did not indicate the source of this amount, and often listed returns that had been promised; not returns actually generated by the investment. In the case of RBCP, Demetriou listed a value for "Annual Cash Created" even though RBCP never paid a return. Demetriou's investment summaries were misleading, inaccurate and did not provide a sound basis for evaluating the facts therein. The investment summaries did not disclose that the information in them was unverified and not disclosed on Titan's books and records. In short, the investment summaries were highly likely to mislead investors and likely to lull them into a false sense of security about the value and performance of their investments.

In summary, we find that Demetriou violated NASD Rule 2210 and FINRA Rule 2010 because the Three Emails did not comply with the content standards of these rules and because he did not obtain approval from a qualified Titan principal prior to sending them. Demetriou further violated NASD Rule 2210 and FINRA Rules 2210 and 2010 because the investment summaries did not comply with the content standards of those rules.

F. Titan Willfully Failed to Preserve Emails (Cause 5)

Under Cause 5, the Hearing Panel found that from April 2011 through April 2013, Titan and Brooks failed to maintain and enforce adequate written supervisory procedures for the capture, review, and retention of Titan's securities-related emails, in violation of NASD Rules 3010 and 3110 and FINRA Rules 4511 and 2010, and that Titan failed to preserve emails in violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-4.

The Hearing Panel further found that Titan's violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-4 was not willful, which is the only finding on appeal before us. In its Decision, the Hearing Panel found that the "evidence does not show that Titan intentionally failed to preserve the firm's emails." The Hearing Panel majority cited Brooks's testimony that it was never Titan's policy to allow the use of email accounts that were not captured by Titan's third-party email provider, and that when he noticed a registered representative using an outside account he directed him to stop. The Hearing Panel majority also cited Brooks's testimony that in late 2012 Titan hired a full-time CCO, who was responsible for ensuring registered representatives did not use personal email accounts. The Hearing Panel stated that it "accept[ed]" Brooks's testimony.

We find that the Hearing Panel misunderstood the standard for deciding willfulness and we reverse this finding. Willfulness means that the respondent subjectively intended to commit the act which constitutes the violation. *See Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at *37-39 (July 31, 2019). Extreme recklessness may constitute a lesser form of intent that meets the willfulness standard. *Id.* at *38-39. FINRA need not find that Titan violated Exchange Act Rule 17a-4 intentionally; but rather only that it intentionally failed to preserve emails. *See Dep't of Enf't v. Neaton*, Complaint No. 2007009082902, 2011 FINRA Discip. LEXIS 13, at *18-19 (FINRA NAC Jan. 7, 2011) (stating that the NAC "need not find that [the respondent] intended also to violate FINRA rules to find that he acted willfully").

The record establishes that Titan, acting though Brooks, intentionally committed the act underlying the violation here—i.e., Titan, through Brooks, failed to preserve emails concerning its securities business that were sent to and from the personal email accounts of Demetriou and five other Titan registered representatives. The record established that over the course of two years, Brooks received more than 100 emails from the personal email accounts of these registered representatives. Indeed, Brooks testified that by the end of 2012, he knew certain registered representatives were using personal email accounts to conduct firm business. Nonetheless, Titan's failure to preserve these emails continued for months. Moreover, by the end of 2012, Brooks had been receiving emails from registered representatives' personal email accounts for more than a year and a half.

We find that Titan's violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-4 was willful. Accordingly, Titan is subject to statutory disqualification.

G. Demetriou Violated FINRA Rule 2010 by Using Two Unauthorized Personal Email Accounts for Titan Securities Business (Cause 6)

The Hearing Panel found that Demetriou violated FINRA Rule 2010 by using unapproved personal email accounts to conduct securities business with Titan customers from July 2010 through July 2013. Demetriou stipulated to the facts underlying this violation. Specifically, Demetriou stipulated that (1) during the relevant period, he "utilized two different unapproved, personal email accounts to conduct securities-related business with Titan customers," and (2) the "email communications from these email addresses were not captured, reviewed, or maintained by Titan."

We agree with the Hearing Panel that Demetriou's unapproved use of personal email accounts was inconsistent with the high standards of commercial honor and just and equitable principles of trade required of associated persons under FINRA Rule 2010. *See Dep't of Enf't v. Zaragoza*, Complaint No. E8A2002109804, 2008 FINRA Discip. LEXIS 28, at *26-27 (FINRA NAC Aug. 20, 2008) (finding that respondent violated the predecessor to FINRA Rule 2010 where he did not obtain approval for emails from his personal email account and his firm did not review or approve the emails). An associated person violates FINRA Rule 2010 when he acts unethically or in bad faith. *Edward S. Brokaw*, 2013 SEC LEXIS 3583, at *33. Unethical conduct is conduct which does not conform to standards of professional conduct and bad faith is defined as "dishonesty of belief or purpose." *Id.*

Titan's WSPs prohibited the use of personal email accounts for securities-related business unless the use was approved by a Titan principal and emails from the personal accounts were copied to a firm email account. Demetriou's use of personal email accounts violated Titan's policies. Moreover, Demetriou's use of personal email was unethical because it thwarted Titan's ability to supervise his securities business and caused the firm to violate recordkeeping rules.

On appeal, Demetriou argues that the "evidence reflected that all such usage [of personal email by Demetriou] was in connection with RBCP and that most if not all of the recipients were not Titan customers." Demetriou's violation is not negated by an assertion that only a few Titan customers were involved or that he only used personal email in connection with his undisclosed, unapproved outside business activities. Demetriou's undisputed use of personal email accounts violated FINRA Rule 2010.[43]

[43] Demetriou also refers to same argument about the application of FINRA 2010 to associated persons, which we address above (*see supra* Part IV.B).

I. Brooks and Titan Made Material Misrepresentations About Evolution in Willful Violation of Exchange Act Section 10(b), Rule 10b-9 Thereunder, and FINRA Rule 2010 (Cause 7)

Enforcement alleged that Brooks and Titan willfully violated Exchange Act Section 10(b), Exchange Act Rule 10b-9, and FINRA Rule 2010 by making false and misleading statements in the Evolution PPM. Specifically, Brooks and Titan represented that any limited partnership units purchased in the offering by the general partner or its affiliates would not be counted towards determining whether the minimum offering amount was met. The Hearing Panel found that Enforcement failed to meet its burden of proving that Titan and Brooks acted with the requisite scienter.[44] In making this finding, the Hearing Panel "accepted" Brooks's testimony that he believed units purchased by the general partner could be counted towards the minimum offering amount. Accordingly, the Hearing Panel concluded that Titan and Brooks did not know that Evolution had failed to raise the minimum offering amount. We disagree.

Exchange Act Rule 10b-9 applies to contingency offerings like Evolution.[45] Exchange Act Rule 10b-9 "prohibits any person from making a representation that a security is being offered on an 'all-or-nothing' basis unless the amount due from the investor is to be refunded if all the securities being offered are not sold or the seller does not receive the total amount due by a specified date." *Dep't of Enf't v. Gerace*, Complaint No. C02990022, 2001 NASD Discip. LEXIS 5, at *12-13 (NASD NAC May 16, 2001).

It is well established that a minimum number of shares must be sold to "the public" before a contingency offering can be closed. *See Svalberg v. SEC*, 876 F.2d 181, 183 (D.C. Cir. 1989). "A minimum contingency offering may not be considered sold for purposes of the representation unless the securities are sold in bona fide transactions and the purchase prices are fully paid." *Gerace*, 2001 NASD Discip. LEXIS 5, at *13 (*citing Requirements of Rules 10b-9 and 15c2-4 Under the Securities Exchange Act of 1934 Relating to Issuers, Underwriters and Broker-Dealers Engaged in an "All or None" Offering*, Exchange Act Release No. 11532, 1975 SEC LEXIS 1229 (July 11, 1975)). Sales to the issuer or its affiliates are not bona-fide sales for purposes of Exchange Act Rule 10b-9. *See Gerace*, 2001 NASD Discip. LEXIS 5, at *14 (finding that sales to an affiliate of the issuer were not bona fide sales for purposes of meeting the minimum offering amount). The requirements that the minimum in a contingency offering be met through bona fide sales serves an important purpose. Contingency offerings "were developed in order to provide buyers with somewhat greater security in the purchase of risky offerings." *Svalberg*, 876 F.2d at 183. The fact that the offering minimum was not met through sales to bona fide investors is important to investors because "the inability of the underwriter to sell the specified minimum to bona fide investors may well indicate that the market judges the offering price too be too high." *A. J. White & Co. v. SEC*, 556 F.2d 619, 623 (1st Cir. 1977).

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44 The Hearing Officer dissented from the majority's finding on this issue.

45 Titan and Brooks do not dispute that the Evolution offering was a contingency offering subject to the requirements of Exchange Act Rule 10b-9.

It is undisputed that Evolution's minimum offering amount was met through purchases by Evolution GP and that the offering was closed based on these non-bona fide purchases. The issue on appeal is whether Brooks and Titan had the requisite scienter.

Scienter is required to prove a violation of Exchange Act Rule 10b-9. *See Robert Tretiak*, 56 S.E.C. 209, 226 (Mar. 19, 2003). In the context of Exchange Act Rule 10b-9, scienter is established by showing that the respondent knew the minimum investment amount and that the funds were retained even though the minimum was not raised. *See SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998). We find that Brooks and Titan acted with scienter.

In finding that Enforcement failed to prove scienter, the Hearing Panel relied on Brooks's testimony that there was a discrepancy between the Evolution PPM and the partnership agreement for Evolution GP. The Evolution PPM stated that "[a]ny Units purchased by [Evolution GP] or its affiliates will not be counted in calculating the minimum offering." In another section, the PPM stated that "[t]he General Partner reserves the right to acquire unsold Units and offer them to investors at a later date." Brooks testified that a provision in the Evolution GP partnership agreement allowed Evolution GP to borrow funds to purchase units in Evolution. Brooks testified that he consulted with the attorney who drafted the offering documents, who told him, in Brooks's words, that the partnership agreement "is the overruling document in that packet that the client gets, and so, yes, you can make the loan" to purchase partnership units. Approximately a year after Evolution broke escrow, and after FINRA raised questions about whether the Evolution minimum had properly been met, the attorney Brooks consulted provided a memorandum on which the Hearing Panel relied in finding that Enforcement had not proven scienter.

This evidence and testimony lead us to the opposite conclusion. First, the plain language of the PPM belies Brooks's claim that the PPM contained an internal discrepancy. The PPM is clear that units purchased by Evolution would not be counted towards the minimum investment amount. That the PPM also allowed Evolution GP to purchase Evolution units and later sell them to investors has no bearing on whether those units could also be counted towards to the minimum offering amount. The same is true of the Evolution GP partnership agreement. As the attorney described it in his October 13, 2013 memorandum, the Evolution GP agreement "grant[ed] [Evolution GP] the power to borrow money and to engage in transactions with the Partnership." The partnership agreement said nothing about whether any such units purchased by Evolution GP would count towards the minimum offering amount. In short, there was no "discrepancy" either within the Evolution PPM or between the PPM and the Evolution GP partnership agreement.

Moreover, Brooks does not claim that he consulted with the attorney to determine whether counting the units purchased by Evolution GP would violate Exchange Act Rule 10b-9. To the contrary, he acknowledged that he only sought advice on whether Evolution GP had the authority to purchase partnership units and to borrow funds to do so.

Indeed, the attorney's carefully worded, after-the-fact memorandum reveals the real reason why Brooks and Titan borrowed funds on behalf of Evolution GP to purchase Evolution units sufficient to meet the minimum offering amount. The Evolution PPM allowed Evolution GP to extend the minimum offering period until March 31, 2013 in order to meet the minimum offering amount from bona fide investors. As the attorney's memorandum indicates, Brooks chose not to take this route because "[t]he timetable for the closing of the purchase of the real property could not be extended. The escrow disbursements were necessary to allow the Partnership to capture the opportunity." Thus, Evolution would have lost the underlying business center property if the funds had not been released from escrow when they were.

Substantial evidence in the record contradicts Brooks's claims about his understanding of the documents and establishes that Brooks knew that the PPM provided that units purchased by Evolution GP would not be counted towards the minimum offering amount. Brooks nonetheless arranged for Evolution GP to purchase units and then counted those units in deciding to break escrow. We find that Brooks, and Titan through Brooks, acted with the requisite scienter and, accordingly, violated Exchange Act Section 10(b) and Exchange Act Rule 10(b)-9.

We also find that Brooks's and Titan's violation was willful. *See Gopi Krishna Vungarala*, Exchange Act Release No. 90476, 2020 SEC LEXIS 4938, at *28 n.36 (Nov. 20, 2020) (explaining that a finding of scienter demonstrates that a violation is willful). Brooks knew the Evolution PPM provided that units purchased by Evolution GP would not be counted towards the minimum offering amount and that escrow was broken in reliance on purchases by Evolution GP. Brooks and Titan are thus subject to statutory disqualification.

J. Titan Willfully Violated Exchange Act Section 15(c), Rule 15c2-4 Thereunder, and FINRA Rule 2010 by Releasing Evolution Investor Funds From Escrow Prior to Raising the Minimum Offering Amount from Bona Fide Investors (Cause 7)

The Hearing Panel found that Titan violated Exchange Act Section 15(c), Exchange Act Rule 15c2-4, and FINRA Rule 2010 by releasing investor funds from escrow in the Evolution offering before the minimum offering amount was raised from bona fide investors. The Hearing Panel also found that Enforcement failed to meet its burden of proof with respect to whether Titan's violation was willful, explaining that "the Hearing Panel majority finds there was insufficient evidence that Titan knew the [Evolution] offering had failed to raise the $1 million minimum offering amount when the firm released the investment funds from escrow."[46] The Hearing Panel majority based this finding on its determination that "there was insufficient evidence that Titan knew the Evolution II offering had failed to raise the $1 million minimum offering amount when the firm released the investment funds from escrow." Enforcement appealed the Hearing Panel's finding on willfulness.[47]

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[46] The Hearing Officer dissented from the majority's finding on this issue.

[47] In their appellate brief, Titan and Brooks argue that they complied with Exchange Act Rule 15c2-4. Neither Titan nor Brooks, however, appealed this finding. In any event, we have reviewed the record and find that Titan and Brooks released funds from escrow in the Evolution

[Footnote continued on next page]

We find that Titan's violation of Exchange Act Section 15(c), Exchange Act Rule 15c2-4 was willful. As discussed above (*see supra* Part IV.F), willfulness simply means that the respondent intentionally committed the act that constitutes the violation—here, intentionally releasing the funds from escrow before the offering minimum was met by purchases from bona fide investors. Accordingly, Titan is subject to statutory disqualification for this violation.

V. Sanctions

In determining appropriate sanctions, we consider FINRA's Sanction Guidelines ("Guidelines"), including the General Principles Applicable to All Sanction Determinations (the "General Principles") and the Principal Considerations in Determining Sanctions (the Principal Considerations).[48]

A. Demetriou's Misrepresentations in the Three Emails (Cause 1)

The Guidelines for fraud, misrepresentations or omissions of material fact recommend a fine of $2,500 to $73,000 for negligent misconduct and $10,000 to $146,000 for intentional or reckless misconduct.[49] The Guidelines also recommend a suspension in any or all capacities for 31 calendar days to two years for negligent misconduct.[50] In the case of intentional or reckless misconduct, the Guidelines urge us to strongly consider a bar or, where mitigating factors predominate, to consider a suspension in any or all capacities of six months to two years.[51] The Guidelines direct us to consider the Principal Considerations in determining the duration of a suspension or whether to impose a bar.[52] The Hearing Panel found that Demetriou's misconduct was "grossly negligent." We disagree and find that Demetriou's conduct was at least reckless and that a bar in all capacities is the appropriate remedial sanction for Demetriou's egregious misconduct.

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offering before the minimum offering amount was raised from bona fide investors, in violation of Exchange Act Rule 15c2-4.

48 *See FINRA Sanction Guidelines* (2018), https://www.finra.org/sites/default/files/2018_Sanctions_Guidelines.pdf [hereinafter "Guidelines"]. In this case, we apply the Guidelines applied by the Hearing Panel.

49 *Guidelines*, at 89.

50 *Id.*

51 *Id.*

52 *Id.*

Reckless conduct includes misrepresentations that are "highly unreasonable" and "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 and sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Dep't of Enf't v. Faber*, Complaint No. CAF010009, 2003 NASD Discip. LEXIS 3, at *25-26 (NASD NAC May 7, 2003) (*quoting Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569 (9th Cir. 1990)). As Demetriou's August 16, 2010 notes demonstrate, Demetriou had serious questions about the accessibility of the coins and thus their value as collateral for RBCP, yet he continued to tell customers that their investments were secured by the coins and never communicated any concerns about the accessibility of the coins. Additionally, Demetriou repeatedly represented that RBCP would provide returns of 2,000 to 6,666 percent, plus yearly dividends, which would be paid on certain dates. Demetriou made these misrepresentations based solely on what Keys told him. Rather than sharing his concerns about the collateral with customers and warning them of the risks of the investment, Demetriou resigned as managing member and sought to "distance" himself from the offering. Demetriou continued, however, to recommend RBCP to customers, make misrepresentations to them about the investment, and facilitating Keys's solicitation of their investments. Demetriou's misconduct was highly unreasonable, an extreme departure from standards of ordinary care for a registered representative, and Demetriou must have known that his Three Emails presented a danger of misleading the investors.

We also find that several aggravating factors, and no mitigating factors, apply to Demetriou's misconduct. Demetriou concealed his misconduct by omitting important information when Brooks asked about his involvement with RBCP and he has not taken any responsibility for his misconduct.[53] Demetriou's misconduct resulted in substantial customer losses of $337,700—losses that were suffered by investors who had already suffered losses in investments Demetriou had recommended and were susceptible to promises of recovering their lost funds.[54] Demetriou made numerous misstatements in three emails over a period of two months.[55]

We agree with the Hearing Panel that it is aggravating that Demetriou attempted to lull his customers into inactivity, delay FINRA's investigation, and conceal information from FINRA.[56] In January 2013, Demetriou sent an email to his customers about FINRA's investigation into his RBCP activities after FINRA sent a letter to a customer in connection with its investigation. Demetriou told customers that they were not required to communicate with FINRA and then tried to influence what the customers might say to FINRA, including by "confirm[ing]" that (1) he had received no compensation from RBCP; (2) his only efforts were to

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53 *Id.* at 7 (Principal Considerations Nos. 2, 10).

54 *Id.* at 7 (Principal Considerations No. 11).

55 *Id.* at 7 (Principal Considerations Nos. 8, 9).

56 *Id.* at 7 (Principal Considerations No. 10).

organize calls so that Keys could present the offer; and (3) that "[t]he easiest thing for me to do concerning the failed investments with PCG and Bob Keys would have been to walk away and abandon my clients." Demetriou also told customers that "This FINRA letter [to customers] is, to me, an example of 'No good deed goes unpunished.'"

Finally, we agree with the Hearing Panel's finding that an order of restitution is appropriate here, but we disagree with the Hearing Panel's decision to apportion restitution between Demetriou and Keys. The Guidelines' General Principles direct us to consider ordering restitution where appropriate to remediate misconduct.[57] The Guidelines explain that "[r]estitution is a traditional remedy used to restore the status quo ante where a victim otherwise would unjustly suffer loss."[58] We may order restitution where "an identifiable person . . . has suffered a quantifiable loss proximately caused by a respondent's misconduct."[59] We have ordered restitution in cases where, as here, a registered representative's material misrepresentations resulted in customer losses. *Dep't of Enf't v. Kapara*, NASD Complaint No. C10030110, 2005 NASD Discip LEXIS 41, at *35-36 (NASD NAC May 25, 2005) (ordering a representative to pay restitution to two customers to whom he sold securities through material misrepresentations); *Dep't of Enf't v. Abbondante*, Complaint No. C10020090, 2005 NASD Discip. LEXIS 43, at *38 (NASD NAC Apr. 5, 2005) (ordering a representative to pay restitution to three customers for sales of limited partnership interests using material misrepresentations and omissions), *aff'd*, Exchange Act Release No. 53066, 2006 SEC LEXIS 23 (Jan. 6, 2006).

Demetriou's misrepresentations were a substantial factor in causing his customers' losses in RBCP, and those losses were foreseeable given the speculative nature of the investment and Demetriou's concerns about the collateral. *See Brookstone*, 2015 FINRA Discip. LEXIS 3, at *147-51. We therefore find that restitution in the full amount of the losses may be ordered against Demetriou. *See McGee v. SEC*, 733 F. App'x 571, 576 (2d Cir. 2018) (finding that an award of restitution against a registered representative where another individual was "responsible for additional, distinct fraudulent conduct" which also caused the losses was not excessive or oppressive.)

The evidence shows that Demetriou's customers suffered losses of $337,700. We accordingly order Demetriou to pay restitution in this amount to the customers in accordance with the schedule attached to the Decision, with prejudgment interest running from the date the RBCP offering closed, October 28, 2010, until the date restitution is paid.[60]

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57 *Id.* at 4 (General Principles No. 5).

58 *Id.*

59 *Id.*

60 Prejudgment interest is to be paid at the rate established in Section 6621(a) of the Internal Revenue Code. 26 U.S.C. § 6621(a).

We find that Demetriou's misrepresentations to investors in connection with RBCP were egregious and demonstrate a serious disregard of the conduct expected of individuals in the securities industry when dealing with customers. Accordingly, we find that a bar is necessary to protect the investing public, and we therefore bar Demetriou in all capacities.

B. Demetriou's Undisclosed Outside Business Activities (Cause 2)

The Guidelines for failing to disclose an OBA recommend a fine of $2,500 to $73,000.[61] The Guidelines also recommend that we consider suspending a respondent in any or all capacities for 10 business days to three months.[62] Where the OBA activities involve aggravating factors, the Guidelines recommend that we consider a longer suspension of up to one year, and where aggravating factors predominate, a longer suspension of up to two years or a bar.[63]

Several aggravating factors apply to Demetriou's misconduct. First, Demetriou's activities involved four Titan customers and resulted in losses of $337,700 to Demetriou's former and current customers.[64] Demetriou's OBA involved multiple activities over four months and 34 investors.[65] Demetriou misled Brooks and Titan by not disclosing the extent of his activities when Brooks asked him about RBCP and thereby concealed his involvement with RBCP.[66] Demetriou's role in RBCP was important because it enabled Keys and BP to reach Demetriou's former and current customers, and Demetriou's emails included statements that encouraged them to participate in the offering.[67] Finally, Demetriou has not taken any responsibility for his misconduct or his customers' losses; instead, he has continuously tried to minimize his role in RBCP.[68]

Accordingly, we find that aggravating factors predominate and we fine Demetriou $73,000 and suspend him for two years in any and all capacities for his violations of NASD Rule 3030 and FINRA Rule 2010. However, considering the bar imposed on Demetriou under cause one, we assess but do not impose these sanctions.

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61 *Guidelines*, at 13.

62 *Id.*

63 *Id.*

64 *Id.* at 7, 13 (Principal Considerations Nos. 8, 11).

65 *Id.* at 7, 13 (Principal Considerations Nos. 8, 9).

66 *Id.* at 7, 13 (Principal Considerations No. 10).

67 *Id.* at 13.

68 *Id.* at 7 (Principal Consideration No. 2).

C. Titan's and Brooks' Failure to Supervise Demetriou's Outside Business Activity (Cause 3)

We consider the Guidelines for failure to supervise in assessing sanctions against Brooks and Titan. For failure to supervise, the Guidelines recommend a fine of $5,000 to $73,000 and direct us to consider independent, rather than joint and several, monetary sanctions for the firm and the responsible individual.[69] The Guidelines also direct us to consider suspending the responsible individual in all supervisory capacities for up to 30 business days.[70] In egregious cases, the Guidelines also direct us to consider a longer suspension of up to two years or a bar for the responsible individual.[71] The specific consideration applicable to failures to supervise include: (1) whether the respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny;[72] (2) the nature, extent, size and character of the underlying misconduct; and (3) the quality and degree of supervisor's implementation of the firm's supervisory procedures and controls.[73]

We find that Brooks's failures to supervise were egregious and several aggravating factors apply to his misconduct. Brooks ignored numerous red flags and did not conduct a reasonable investigation into Demetriou's RBCP activities.[74] Brooks was aware that Demetriou was facilitating contact between RBCP and his customers and that the offering promised extraordinary returns and was sponsored by an individual Brooks viewed negatively. Yet Brooks did not ask to see the RBCP PPM, did not ask if Titan customers were among those being solicited, and did not ask questions concerning the extent of Demetriou's involvement. Brooks's failure to supervise resulted in customer losses of $337,700.[75] In assessing sanctions, we also consider that Demetriou concealed the extent of his RBCP activities from Brooks, but give limited weight to this consideration in light of Brooks's failure to reasonably investigate the red flags and ask Demetriou appropriate questions about his activities.[76] Accordingly, we fine Brooks and Titan $50,000, jointly and severally, and suspend Brooks in all principal and supervisory capacities for one year.

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69 *Id.* at 104.

70 *Id.*

71 *Id.*

72 In connection with this consideration, we are directed to consider whether the individual responsible for underlying misconduct attempted to conceal misconduct from respondent. *Id.*

73 Guidelines at 104.

74 *Id.*

75 *Id.* at 7 (Principal Considerations No. 11).

76 *Id.* at 104.

D. Demetriou's Advertising and Communications with the Public Violations (Cause 4)

For Demetriou's violations of NASD Rule 2210 and FINRA Rules 2210 and 2010, the Hearing Panel imposed a unitary sanction of a $20,000 fine and a suspension in all capacities for one year. Given the seriousness of Demetriou's misconduct, we modify the sanctions to an $80,000 fine and two-year suspension in all capacities.

The Guidelines for misleading communications with the public recommend a fine of $10,000 to $146,000 for the intentional or reckless use of misleading communications.[77] For intentional or reckless use of misleading communications, the Guidelines recommend that we consider suspending the responsible person in any and all capacities for up to two years.[78] In the case of numerous acts of intentional or reckless misconduct over an extended period of time, the Guidelines further direct us to consider suspending a responsible person in any or all capacities for up to two years or barring the responsible individual.[79] When assessing sanctions for misleading communications with the public, the Guidelines direct us to consider whether the violative communications with the public were circulated widely.[80]

Several aggravating factors, and no mitigating factors, apply to Demetriou's intentional misconduct. First, the Three Emails were circulated widely to Demetriou's former and current customers.[81] Demetriou sent 73 investment summaries to 34 customers over a period of three years.[82] Demetriou has not accepted responsibility for his misconduct and it resulted in losses to customers.[83]

We find that the investment summaries were misleading and inaccurate, and were highly likely to mislead investors, lulling them into a false sense of security about the value and performance of their investments, including with respect to RBCP. Under these circumstances, we find that a fine of $80,000 and a two-year suspension in all capacities (to be served consecutively with Demetriou's other suspensions) is an appropriately remedial sanction for

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77 *Id.* at 80-81.

78 *Id.* at 81.

79 *Id.*

80 *Id.* at 80.

81 *Id.*

82 *Id.* at 7 (Principal Considerations Nos. 8, 9).

83 *Id.* at 7 (Principal Considerations Nos. 2, 11).

Demetriou's misconduct. Considering the bar imposed under cause one, however, we do not impose these sanctions.

E. Demetriou's Use of Unauthorized Personal Email Accounts for Titan Securities Business (Cause 6)

For Demetriou's use of personal email accounts to conduct securities-related business with Titan customers in violation of FINRA Rule 2010, the Hearing Panel fined Demetriou $10,000 and suspended him from associating with any FINRA member in any capacity for three months. We find that these sanctions are appropriately remedial for Demetriou's misconduct and therefore we affirm them.

There is no specific Guideline applicable to the unapproved use of personal email accounts to conduct securities business. We agree with the Hearing Panel, however, that the closest analogous Guideline is that for recordkeeping violations, and we apply it here.

The Guidelines for recordkeeping violations recommend a fine of $1,000 to $15,000 and, where aggravating factors predominate, a fine of $10,000 to $146,000, or higher where "significant" factors predominate.[84] The Guidelines also direct us to consider suspending a responsible individual in any or all capacities for 10 business days to three months.[85] Where aggravating factors predominate, the Guidelines direct us to consider a longer suspension of up to two years or a bar.[86] The considerations specifically applicable to recordkeeping violations include: (1) the nature and materiality of inaccurate or missing information; (2) the nature, proportion, and size of the firm records (e.g., emails) at issue; (3) whether inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence; (4) whether the violations occurred during two or more examination or review periods or over an extended period of time, or involved a pattern or patterns of misconduct; and (5) whether the violations allowed other misconduct to occur or to escape detection.[87]

We find that aggravating factors predominate and there are no applicable mitigating factors. Demetriou used two personal email accounts for three years to conduct securities business with Titan customers. We agree with the Hearing Panel that Demetriou's use of personal email accounts was at least reckless and allowed other misconduct to escape detection because Demetriou sent the investment summaries and certain emails about RBCP through his personal accounts. We also agree with the Hearing Panel that it is not clear from the record how many emails Demetriou sent to Titan customers from his personal accounts and the content of

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84 *Id.* at 29.

85 *Id.*

86 *Id.*

87 *Id.*

those emails. We find that a $10,000 fine and three-month suspension in all capacities is an appropriately remedial sanction for Demetriou's admitted misconduct. However, in light of the bar imposed under cause one, we assess, but do not impose, these sanctions.

F. Titan's and Brooks' Violations Related to the Evolution Offering (Cause 7)

For violations of Exchange Act Rule 15c2-4, the Guidelines recommend a fine of $1,000 to $15,000.[88] In egregious cases, the Guidelines recommend that we consider suspending the firm with respect to any or all activities or functions and/or the responsible individual in any or all capacities for up to 30 business days.[89]

For violations of Exchange Act Rule 10b-9, the Guidelines recommend a fine of $5,000 to $73,000.[90] In egregious cases, the Guidelines also recommend that we consider suspending the firm with respect to any or all activities or functions and/or the responsible individual in any or all capacities for up to two years.[91]

We find that Titan's and Brooks's violation of Exchange Act Rule 10b-9 was egregious. First, Titan and Brooks previously settled similar allegations of violations in connection with another contingency offering. In 2009, Brooks consented to a Letter of Acceptance, Waiver and Consent ("AWC") settling allegations that Brooks failed to deposit funds raised in the offering in an escrow account and released funds to the issuer prior to the minimum offering amount being met. Brooks was censured and fined $12,500 under the AWC.[92] Titan was censured and fined $7,000. Brooks's recidivism is aggravating and further supports the intentional nature of his violations related to Evolution.[93]

Substantial evidence in the record demonstrates that Brooks's claims about supposed confusion in the Evolution offering documents are not credible. Indeed, Brooks himself never actually claims that he asked his attorney for advice about whether units purchased by Evolution GP would count towards the contingency offering minimum. Rather, he only claims to have asked whether Evolution GP could borrow funds to purchase units in the offering. We find that Brooks intentionally counted the units purchased by Evolution GP in contradiction of the clear

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88 *Id.* at 22.

89 *Id.*

90 *Id.*

91 *Id.*

92 The details of the AWC are available at https://brokercheck.finra.org/individual/summary/1584633#disclosuresSection.

93 *Id.* at 2, 7 (General Principle No. 2; Principal Considerations No. 1).

terms of the Evolution PPM so that the partnership would not lose the opportunity to acquire a property.[94] Funds were released from escrow before the minimum contingency was met, and the shortfall amounted to 70% of the minimum offering amount.[95] Brooks used non-bona fide sales to Evolution GP to give the impression that the contingency had been met.[96] Brooks owned Titan and a majority of Evolution GP, and thus Brooks and Titan were affiliated with Evolution.[97] Brooks and Titan retained commissions from the Evolution offering.[98] Given the numerous applicable aggravating factors, we fine Titan and Brooks $50,000, jointly and severally, suspend Brooks for one year in all principal and supervisory capacities (to run consecutively with his other principal suspension), and order that Brooks requalify as a principal by examination.

VI. Conclusion

Demetriou made material misrepresentation to customers, in violation of FINRA Rule 2010. For this violation, Demetriou is barred and ordered to pay restitution of $337,700, in accordance with the schedule attached to the Extended Hearing Panel Decision. Demetriou engaged in undisclosed, unapproved outside business activities, in violation of NASD Rule 3030 and FINRA Rule 2010. For these violations, we assess, but considering the bar do not impose, a $73,000 fine and a two-year suspension in all capacities on Demetriou. Demetriou sent emails and consolidated financial statements to customers which violated NASD Rule 2210 and FINRA Rules 2210 and 2010. For these violations, we assess, but do not impose, a $80,000 fine and a two-year suspension in all capacities (to run consecutively with the other suspension assessed against Demetriou). Demetriou used personal email accounts for securities business, in violation of FINRA Rule 2010. For this violation, we assess, but do not impose, a $10,000 fine and a three-month suspension in all capacities (to run consecutively with Demetriou's other assessed suspensions).

Titan and Brooks failed to supervise Demetriou's outside business activities, in violation of NASD Rule 3010 and FINRA Rules 3270 and 2010. For these violations, Titan and Brooks are fined $50,000, jointly and severally, and Brooks is suspended in all principal and supervisory capacities for one year. Titan willfully violated Exchange Act Section 17 and Exchange Act Rule 17a-4, and Titan and Brooks violated NASD Rules 3110 and 3010 and FINRA Rules 4511

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94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.*

98 *Id.*

and 2010. As a result, Titan is subject to statutory disqualification.[99] Finally, in connection with a contingency offering, Titan willfully violated Exchange Act Section 15(c), Exchange Act Rule 15c2-4, and FINRA Rule 2010. Additionally, Titan and Brooks willfully violated Exchange Act Section 10(b), Exchange Act Rule 10b-9, and FINRA Rule 2010. For these violations, Titan and Brooks are fined $50,000, jointly and severally, Brooks is suspended for one year in all principal and supervisory capacities (to run consecutively with his other principal suspension), and we order that Brooks requalify as a principal by examination. Titan and Brooks are also subject to statutory disqualification as a result of these willful violations.

On Behalf of the National Adjudicatory Council,

_____

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

[99] For these violations, the Extended Hearing Panel fined Brooks and Titan $50,000, jointly and severally, and imposed on Brooks a two-month suspension in any principal or supervisory capacity.