

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL VENTURINO
(CRD No. 5872439),

Respondent.

Disciplinary Proceeding
No. 2021070337501

Hearing Officer–MC

**EXTENDED HEARING
PANEL DECISION**

March 21, 2024

Respondent Michael Venturino is barred from associating with any FINRA member firm in any capacity for engaging in unsuitable excessive trading and churning in six customer accounts, in willful violation of federal securities laws and FINRA rules. He is additionally barred for entering unauthorized trades in the accounts. Respondent is ordered to disgorge \$171,419, plus interest to FINRA, and to pay hearing costs.

Appearances

For the Complainant: Payne Templeton, Esq., Robert Kennedy, Esq., and John Luburic, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Liam O'Brien, Esq.

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DECISION

I. Introduction

The Complaint in this matter focuses on Respondent Michael Venturino's conduct while he was associated with FINRA member firm Aegis Capital Corp. ("Aegis") from July 2014 to June 2017 ("relevant period"). In connection with twelve accounts of eleven customers, the Complaint charges him with:

- (i) Executing numerous unauthorized trades, in violation of FINRA Rule 2010.
- (ii) Engaging in unsuitable excessive trading in the customers' accounts, in violation of FINRA Rules 2111 and 2010.
- (iii) Churning, in violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010.

Venturino denies the charges. He claims that he followed his "standard practice" with every customer which included: (i) consulting with each customer and obtaining the customer's authorization in advance of each trade; (ii) fully informing each customer of the costs and risks associated with the active trading strategy he employed; and (iii) ensuring that the trades he executed were suitable and consistent with the customers' investment profiles.

At the hearing, only five customers testified, all by videoconference. The Extended Hearing Panel ("Hearing Panel" or "Panel") concludes that Venturino traded excessively, churned, and traded without authorization in six accounts held by four testifying customers, but the evidence is insufficient to sustain the allegations related to the account of the other testifying customer and the accounts of the six customers who did not testify.

For the violations proven, the Hearing Panel bars Venturino from associating with any FINRA member firm in any capacity and requires him to disgorge his ill-gotten gains to FINRA.

II. Findings of Fact

A. Origin of the Proceeding

The origin of this disciplinary proceeding dates back to the fall of 2016 when FINRA's Member Supervision Department conducted an examination of Aegis. FINRA's examiners identified customer accounts with a high level of trading and referred them to Enforcement for further investigation. The examiners focused on Aegis representatives who had multiple

customer accounts with indications of excessive trading. Venturino was one of six representatives whose names Enforcement flagged for investigation.¹

In the summer of 2017, Enforcement began to conduct on-the-record interviews (“OTRs”) of registered representatives and to speak with customers.² Enforcement conducted OTRs of Venturino on June 15, 2017,³ and June 5, 2020.⁴ In 2021, Enforcement separated the Venturino case from the original investigation.⁵ Enforcement filed the Complaint in August 2022.

B. The Respondent

1. Venturino’s Background and Jurisdiction

Venturino graduated from high school in New York City in 2004 and immediately found employment at a bank.⁶ During his time at the bank he completed about two years of study at Suffolk Community College.⁷ In December 2010, he began his career in the securities industry as a broker, registering with FINRA through his association with a FINRA member firm.⁸

From June 13, 2014, to June 30, 2017, Venturino was registered as a General Securities Representative through Aegis, and worked at its Melville, NY branch office.⁹ While there, he claims he had between 250 and 300 customer accounts with total assets between \$5 million and \$6 million.¹⁰ He cold called people across the country to acquire new clients. He did not meet with his clients personally; he communicated with them primarily by telephone.¹¹ Venturino estimated that he made at least 100 cold calls daily, sometimes more.¹²

After leaving Aegis, Venturino was registered at another FINRA member firm from June 30, 2017, to March 2018, when he was permitted to resign. He testified that he and his firm “agreed to part ways” after he informed the firm he might be sued by a company that represents

¹ Hearing Transcript (“Tr.”) 1291–93, 1464–65 (Enforcement’s Case Manager (“Case Manager”).

² Tr. 1298 (Case Manager).

³ Tr. 1466 (Case Manager); Complainant’s Exhibit (“CX-__”) 24a.

⁴ Respondent’s Exhibit (“RX-__”) 116.

⁵ Tr. 1297 (Case Manager).

⁶ Joint Exhibit (“JX-__”) 1, at 11.

⁷ Tr. 765 (Venturino).

⁸ JX-1, at 12.

⁹ JX-1, at 6.

¹⁰ Tr. 779 (Venturino).

¹¹ Tr. 780–81 (Venturino).

¹² Tr. 780–81 (Venturino).

customers in arbitration matters.¹³ He immediately associated with another FINRA member firm until January 13, 2023, when he left voluntarily.¹⁴ He has not been registered with FINRA since then.¹⁵ Because he was associated with a FINRA member firm when the Complaint was filed in August 2022, FINRA's jurisdiction over him in this disciplinary proceeding is undisputed.¹⁶

2. Venturino's Financial Situation in the Relevant Period

From 2011 through 2016, Venturino accumulated a total of \$350,000 in unpaid federal tax obligations. From 2011 through 2015, he failed to pay \$70,000 for taxes owed to the state of New York.¹⁷ Consequently, at times during the relevant period, Venturino participated in repayment plans to reduce his tax arrearages. The plan with New York required him to pay \$1,200 monthly.¹⁸ A separate payment plan with the Internal Revenue Service called for a \$2,500 monthly payment.¹⁹ In early 2019, he filed a Chapter 7 federal bankruptcy petition.²⁰

During his career as a registered representative, the firms employing Venturino settled 12 customer-initiated arbitrations involving him for a total exceeding \$1 million.²¹

3. Venturino's Compensation at Aegis

Venturino estimated that, while at Aegis, he derived 70 to 80 percent of his compensation from buying and selling stocks.²² His compensation consisted entirely of payouts on commissions, markups, markdowns, and other sales credits. At Aegis, in 2015 and 2016, he estimated that his annual income was \$200,000 to \$250,000.²³ In 2017, it dropped to approximately \$99,000.²⁴ Venturino received no salary or bonuses.²⁵

¹³ Tr. 772–73 (Venturino).

¹⁴ JX-1, at 4–5.

¹⁵ Tr. 776–77 (Venturino).

¹⁶ Stipulations (“Stip.”) ¶¶ 8–9; JX-1, at 4–5.

¹⁷ Tr. 1282–84 (Venturino).

¹⁸ Tr. 1275–76 (Venturino).

¹⁹ Tr. 1277–79 (Venturino).

²⁰ Tr. 1280 (Venturino); CX-21.

²¹ Tr. 773–74 (Venturino).

²² Tr. 801–02 (Venturino).

²³ Tr. 1273–74 (Venturino).

²⁴ Tr. 1284 (Venturino).

²⁵ Tr. 1274 (Venturino).

For accounts on which he was the sole representative he received a payout of 75 percent of his gross commissions, markups, and markdowns, or other sales credits.²⁶ For an account on which he shared a joint representation, he split the gross with the other broker and received a payout credit of 37.5 percent of the gross.²⁷

Aegis gave Venturino discretion to decide what to charge his clients for trading in their accounts.²⁸ Venturino testified that it was his practice to make stock purchases for customers on a riskless principal basis and charge markups, but to sell on an agency basis and charge commissions; when asked why, he testified, “I don’t know . . . that is just how I was taught how to do it, so I did it.”²⁹ He contended that his practice benefitted his customers by making it “easier to [sic] for them to read their all in cost . . . with the markup, markdown cost than it is for them to do the math in an agency trade.”³⁰ The amount of the markups varied from two to three percent; the commissions were under one percent, usually \$99.³¹ He claimed that high charges for particular stock purchases were justified by the time, effort, and research he put into the trades.³²

C. Telephone Calls and Phone Records Relating to Venturino’s Trading

Because the trades at issue in this case occurred between six and nine years ago, Venturino and the witnesses could provide few details about their conversations regarding particular investment recommendations. With little testimony to establish whether Venturino conferred with a customer before a trade, Enforcement relied heavily on records of calls with customers made to and from Venturino’s assigned telephone extension at the Aegis branch office where he worked. Venturino disputed the admissibility and reliability of this evidence. Determining the probative value of the phone call records was a major issue confronting the Hearing Panel.

²⁶ Tr. 805 (Venturino).

²⁷ Tr. 803–06 (Venturino).

²⁸ Tr. 933–34 (Venturino).

²⁹ Tr. 817–19 (Venturino). A broker executing a riskless principal transaction initiates a customer order for his firm’s proprietary account that the firm sends to an exchange or other marketplace for execution. A markup on a purchase is a higher per share price charged to the customer than the firm paid; a markdown is a lower per share price paid to a customer than a firm received for a sell. A broker executing an agency transaction sends a customer order directly to an exchange or other marketplace for execution. *Edward Beyn*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980, at *5, n.11 (Apr. 19, 2023), *petition for review filed*, No. 23-6653 (2d Cir. June 16, 2023).

³⁰ Tr. 821 (Venturino).

³¹ CX-1.

³² Tr. 837–843 (Venturino).

Below the Hearing Panel reviews Enforcement's investigative steps in connection with Venturino's telephone usage to contact customers, his challenges to the phone records, and the Panel's conclusions as to their probative value.

1. The Initial Investigative Inquiries and Venturino's Responses

During Venturino's June 2017 OTR, Enforcement asked him how he communicated with his customers to make investment recommendations to them when he worked at Aegis's Melville office. The significant interchange for this case occurred in the following colloquy:

Q. Do you have a desk or do you have a cubicle or office at Melville?

A. Cubicle.

Q. Do you have a phone there at your cube?

A. Yes.

Q. Is that the phone you use to conduct your Aegis related business?

A. Yes.

Q. Do you also use your cell phone for Aegis related business?

A. I try not to but from time to time I do. I usually don't take orders.

Q. You don't take orders on your cell phone?

A. Correct.

Q. What is the phone number at your cube?

A. My extension?

Q. Yes.

A. 336.³³

In the same OTR, Enforcement inquired further, asking: "As far as either soliciting or taking customer orders for securities transactions, are all of those done on your Aegis phone at your cube?" Venturino answered: "for the most part, yes." He then said: "Sometimes clients call

³³ CX-24a.

me on my cell phone . . . I try to limit it but sometimes that is the case.”³⁴ Enforcement then asked: “So were all the orders you have solicited or taken at Aegis be [sic] at your desk phone or cell phone?” and he answered: “I would assume so, yes.”³⁵

On September 29, 2017, Enforcement followed up the OTR with a letter issued pursuant to FINRA Rule 8210 requiring Venturino to provide further information about how he solicited and accepted securities orders from January 2015 through September 2016. The Rule 8210 request letter contained four specific queries directing Venturino to:

1. Identify any and all phone numbers that was [sic] not issued or controlled by Aegis Capital Corp. from which you solicited or accepted securities orders during the relevant period. If there are no such numbers, please indicate.
2. For the phone numbers identified in response to Item 1, produce billing or other records identifying all calls made from or received by each phone number during the relevant period.
3. Indicate whether you used text messages to solicit or accept securities orders during the relevant period.
4. If you used text messages to solicit or accept securities orders during the relevant period, produce those text messages.³⁶

The Rule 8210 letter also required Venturino to update his response if he later discovered any inaccuracies in the original response:

Under FINRA Rule 8210, you are obligated to respond to this request fully, promptly, and without qualification. *You are also obligated to supplement or correct any response that is later learned to have been incomplete or inaccurate.* If any responsive document or information is withheld, specifically identify what is being withheld and state the basis for doing so. Any failure to satisfy these obligations could expose you to sanctions, including a permanent bar or expulsion from the securities industry.³⁷

2. Venturino’s Initial Responses to Rule 8210 Questions About Phone Use

Through his attorney, Venturino responded to the September 29 Rule 8210 request in writing on October 27, 2017. He identified no non-Aegis phone numbers he used to solicit or accept securities orders. To the first two queries, his response was a single sentence: “Mr.

³⁴ Tr. 789–90 (Venturino).

³⁵ Tr. 790 (Venturino).

³⁶ CX-39.

³⁷ CX-39, at 1 (emphasis supplied).

Venturino’s general practice with respect to soliciting or accepting securities orders was to use the phone number issued/controlled by Aegis Capital Corp. and he does not recall any specific instance otherwise during the relevant time period.”³⁸

To the third and fourth queries, asking if he “used text messages to solicit or accept securities orders,” Venturino’s response through the lawyer was:

Not to Mr. Venturino’s recollection. As described, Mr. Venturino’s general practice with respect to soliciting or accepting securities orders was to use the phone number issued/controlled by Aegis Capital Corp. and he does not recall any specific instance otherwise during the relevant period.³⁹

Venturino testified that he consulted with the lawyer and approved these responses.⁴⁰

At no time did Venturino file additional information to correct or modify his response to the September 29 Rule 8210 request letter.

3. Enforcement’s Summary Exhibit of Dialed Phone Numbers

On September 29, 2017, Enforcement also sent a Rule 8210 request to Aegis requiring it to provide “All firm-phone records for the Melville branch office” for the period from “January 1, 2015, through the present.”⁴¹ Aegis responded on October 31, 2017, with a cover letter accompanying the production of what it identified as “All firm-phone records for the Melville branch office.”⁴² This later proved to be incorrect.

a. Enforcement’s Proffer

The document Aegis produced is titled “Dialed Number Details Report,” in evidence as CX-41. It is dated October 3, 2017.⁴³ An Enforcement investigator (“Investigator”) assigned to the case testified that she understood CX-41 to be a complete record of all the telephone extensions at Aegis’s Melville branch office from January 1, 2015, through October 3, 2017.⁴⁴

CX-41 consists of 1,788 pages. It provides the phone extensions assigned to six Aegis brokers, including Venturino, with the dates and times of incoming and outgoing calls, and phone

³⁸ CX-40, at 1.

³⁹ CX-40, at 2.

⁴⁰ Tr. 793–94 (Venturino).

⁴¹ CX-37, at 1.

⁴² CX-38, at 1.

⁴³ CX-41, at 1.

⁴⁴ Tr. 182–83, 231–32 (Investigator).

numbers dialed from the extensions.⁴⁵ It contains 850 pages of calls to and from Venturino's extension.⁴⁶

From CX-41, the Investigator extracted the calls to and from Venturino's extension to prepare demonstrative exhibit CX-19. She incorporated data from trade blotters, information identifying the phone numbers of the customers, and margin call notices sent to customers. Then she listed all trades in the 12 customer accounts at issue here and identified those for which the phone records showed a call to or from Venturino's extension on the day before or the day of each trade. When there was such a call, the Investigator assumed the trades on those dates were authorized. She identified—and Enforcement alleged—as unauthorized those trades for which there was no call on the day of the trade or the day before.⁴⁷

The Investigator testified that if there was a sale of stock in an account on the same day a margin call was due, she assumed it was not unauthorized, but was a sale to meet the margin call.⁴⁸ In other instances, such as the first trade in an account, reasoning that it would not have occurred without the customer making a deposit, the Investigator assumed it was authorized.⁴⁹

Using this approach, the Investigator concluded that Venturino made 227 unauthorized trades in the customers' accounts.⁵⁰

The Investigator testified that before reaching her conclusions, she searched “the entirety of the phone records” for the Melville branch office, not just the pages with calls to or from Venturino's extension. She did so, she testified, “[j]ust in case there was an instance where Mr. Venturino may have used another phone in the branch to contact one of his customers.”⁵¹

b. Venturino's Challenge to Enforcement's Proffer

On cross examination, however, Venturino's counsel established that CX-41 did not contain phone records for at least nine brokers whom he had confirmed were employed by Aegis and working at its Melville branch office from January 1, 2015, through October 3, 2017.⁵²

Enforcement's characterization of CX-41, and the Investigator's description, were inaccurate. CX-41 is not a complete record of calls to and from phone extensions assigned to all the brokers working at Aegis's Melville branch during the period covered by the dialed number

⁴⁵ CX-41.

⁴⁶ CX-41. Venturino's call records start at page 898 and end at page 1748.

⁴⁷ Tr. 198–204 (Investigator).

⁴⁸ Tr. 204 (Investigator).

⁴⁹ Tr. 204–05 (Investigator).

⁵⁰ Tr. 206 (Investigator).

⁵¹ Tr. 215–16 (Investigator).

⁵² Tr. 233–39 (Investigator).

report. Consequently, Enforcement’s characterization of CX-19, too, was incorrect. It provides a record of calls on Venturino’s extension between him and the customers in this case but is not derived from a search of the “entirety of the phone records for the Melville, New York branch,” as the Investigator testified it was.⁵³

In response to Venturino’s challenge to the completeness of CX-41, the Case Manager checked further into data on the number of associated persons working from the Melville branch of Aegis in the relevant period. He found that there were 162 registered representatives or associated persons located there. He was unable to determine how many had Aegis-assigned phone extensions.⁵⁴ The Melville branch thus had many more brokers than were included in the phone records of the six brokers’ phone extensions provided by Aegis.

The Case Manager reviewed the case file searching for emails to determine exactly what Enforcement had requested from Aegis.⁵⁵ He discovered an email dated October 2, 2017, from Enforcement to Aegis’s attorneys that summarizes a telephone call that morning in which Enforcement agreed to revise its original September 29 document request.⁵⁶ It states, “The request for all phone records of the Melville branch for the relevant period is removed.” Enforcement replaced the original request with one much narrower in scope. The new request was for phone records of only six listed registered representatives at the Melville branch, including Venturino.⁵⁷

With his memory refreshed by finding the email chain, the Case Manager explained that upon receiving the original request for all phone records, Aegis’s attorneys contacted him to protest the “extremely large,” and “very voluminous” phone records Enforcement originally asked Aegis to produce.⁵⁸ The Case Manager conveyed the attorneys’ concerns to Enforcement’s lawyers. That led to the phone call when Enforcement narrowed the scope of its request.⁵⁹

Unfortunately, when Aegis responded to the revised request, its cover letter on October 31, 2017, did not mention the revised request. Instead, it incorrectly described its document production as comprising all phone calls to and from the Melville branch of Aegis in the relevant period, as Enforcement originally requested.⁶⁰

⁵³ Tr. 215–16 (Investigator).

⁵⁴ Tr. 1350–52 (Case Manager).

⁵⁵ Tr. 1331 (Case Manager).

⁵⁶ Tr. 1331–32 (Case Manager).

⁵⁷ CX-47.

⁵⁸ Tr. 1336–37 (Case Manager).

⁵⁹ Tr. 1336–37 (Case Manager).

⁶⁰ Tr. 1346 (Case Manager).

Thus, it is now clear that the Investigator's proffer at the hearing that CX-41 contained all phone calls to and from Aegis's Melville brokers was incorrect. The Investigator relied on Aegis's cover letter stating that the "Dialed Number Details Report" contained "All firm-phone records for the Melville branch office."⁶¹ It did not.

c. Venturino's Objections

At the hearing, Venturino moved to strike CX-41 "and all of the exhibits that . . . rely in any way on [CX-41] or an analysis of [CX-41] because they are clearly incomplete phone records."⁶² Venturino objected that Enforcement failed to provide a sufficient evidentiary foundation for CX-41. In fact, he argued, it does not include records for at least 16 Aegis brokers who worked there during the relevant period.⁶³ Venturino also objected that Enforcement produced no testimony from Aegis about how it collected the records, who collected them, and what the firm actually looked for and produced.⁶⁴

Venturino challenges the "legitimacy and reliability of the phone records," suggesting that by introducing "incomplete and unauthenticated phone records" Enforcement is deliberately trying to "pursue claims" that Venturino made unauthorized trades which could not be sustained "if they had obtained a complete set of the relevant phone records."⁶⁵ Venturino argues that a "cursory review" shows that the records "are obviously an incomplete record." He claims that they do not show the "average of 150 calls a day" he testified he made in the relevant period, and they do not show phone calls preceding the opening of the customers' accounts.⁶⁶ He argues that the Investigator "falsely testified" that CX-41 is a complete record of all phone calls to and from the telephone extensions of all brokers working at Aegis's Melville branch during the relevant period.⁶⁷

Venturino emphasizes the importance of the phone records to resolving the issues in this case. Enforcement, he argues, "depends in large measure upon the accuracy and completeness of the phone records" both to prove the unauthorized trading charged in the Complaint's third cause of action, as well as to support Enforcement's contention that Venturino exercised de facto control over the customer accounts.⁶⁸

⁶¹ CX-28, at 1.

⁶² Tr. 244–45 (Respondent's counsel).

⁶³ Tr. 245 (Respondent's counsel).

⁶⁴ Respondent's Post-Hearing Brief ("Resp. Br.") 42; Tr. 242–43 (Investigator, admitting she did not know who collected the records, whether Aegis's system could track customer phone numbers, or whether the recording system had outages in the relevant period).

⁶⁵ Resp. Br. 45–46.

⁶⁶ Resp. Br. 40–41.

⁶⁷ Resp. Br. 42.

⁶⁸ Resp. Br. 39.

d. Venturino's Evolving Testimony

On June 5, 2020—long after Aegis produced the phone records—Enforcement conducted another OTR of Venturino. Once again, the question of his phone calls came up, this time in an inquiry about what phone he used to contact a specific customer. Venturino testified that he would call that customer, and other people, at night when he stayed late at the office. He testified that when he stayed late, he would move from his cubicle and go to a section of the office to be next to whoever was “sitting there late.”⁶⁹ On those occasions, he testified, he would go to various unoccupied desks and use whatever phone extension was there.⁷⁰

At the hearing, Venturino attempted to significantly expand the universe of phone extensions he may have used to call customers. He testified, “In the mornings I would usually call from my cubicle . . . I would start off the morning at my desk, my personal extension and everything.”⁷¹ But “when people started coming in, I would move around from cubicle to cubicle.” He continued, “I would go to where ever my junior brokers were . . . I would call around them, so they would hear me and I could work with them.”⁷² Asked what time he would leave his own cubicle and use other brokers’ extensions, he answered, “Could be any time randomly but very often at night”⁷³

Enforcement confronted Venturino with the testimony he gave at his first OTR, when he was asked if he solicited and received all orders at Aegis using either his cell phone or his Aegis assigned extension in his cube. Venturino’s answer then was “I would assume so, yes.”⁷⁴ Enforcement pointed out that he made no mention of using any other extension than the one assigned to him. Venturino offered this excuse: “[Enforcement] didn’t ask me if I used any other phones. If they did, I would have responded the same way” he did at the hearing.⁷⁵ He then said, “I could have also assumed that . . . [Enforcement] meant any desk phone that I was using at the time.”⁷⁶

4. Conclusions Concerning Aegis Telephone Records (CX-41)

The Hearing Panel has carefully reviewed the record and considered Venturino’s arguments in support of his motion to strike CX-41 as well as his objections to the exhibits relating to the phone records. True, Enforcement initially mischaracterized CX-41 as a complete

⁶⁹ RX-116, at 5.

⁷⁰ RX-116, at 3–4.

⁷¹ Tr. 783 (Venturino).

⁷² Tr. 783 (Venturino).

⁷³ Tr. 784 (Venturino).

⁷⁴ Tr. 789–90 (Venturino).

⁷⁵ Tr. 788–91 (Venturino).

⁷⁶ Tr. 791 (Venturino).

record of phone calls to and from the extensions assigned to brokers at Aegis's Melville branch. The Hearing Panel finds, however, that the Investigator's testimony was not knowingly false. Rather, it was mistaken.

It was mistaken because she based it on the original Rule 8210 request Enforcement issued and the response submitted by Aegis's attorneys. The Investigator was not informed, and was therefore unaware, of the telephone conversation, confirmed by email, between Enforcement and Aegis's counsel substantially narrowing the scope of the request. This was an unfortunate lapse on Enforcement's part.

As set forth above, contrary to his initial OTR testimony, Venturino claimed at the hearing that he moved around the branch office and used other brokers' extensions to solicit and take orders on calls that are not included in CX-41. The incompleteness of the "Dialed Number Details Report" is the primary basis for Venturino's motion to strike and his argument that it and the exhibits based on it, are inadmissible.

The Hearing Panel disagrees. The Hearing Panel recognizes that CX-41 is more limited than originally represented. And it is true, as Venturino points out, that there is no evidence describing the process by which the records were gathered. But Enforcement issued the request for the records properly under Rule 8210. The rule required Aegis to provide a complete response. The scope of the original request was revised, and there is no evidence that Aegis failed to provide what the revised request required.

The Hearing Panel is satisfied, therefore, that CX-41 is what Enforcement now represents it to be. It contains Aegis's record of calls between the telephone extension Aegis assigned to Venturino at the Melville branch and the customers relevant to this case. The Panel is also satisfied, based upon the Investigator's testimony, that it shows no calls to or from Venturino's customers indicating he used any of the extensions of the five other brokers whose records of dialed calls were included in the phone records Aegis produced.

The Hearing Panel does not credit Venturino's hearing testimony that he routinely used other brokers' assigned extensions. Rather, the Panel finds the testimony he gave in his first OTR, and written responses to the follow-up questions in the Rule 8210 request, credible and accurate. The Hearing Panel concludes that, at the hearing, Venturino attempted to cast doubt on his OTR testimony that he routinely transacted his business with customers on his assigned Aegis phone extension. At the OTR Venturino gave clear and credible responses to clear questions and affirmed them in his written responses.

To summarize, the Hearing Panel finds Venturino's hearing testimony about his phone usage at the Aegis branch office not credible.

D. Venturino's Customers and Trading in Their Accounts

Often in cases involving allegations of churning and excessive trading, the affected customers are inexperienced, unsophisticated investors whose investment profiles reflect modest

investment objectives and low risk tolerances.⁷⁷ In this case, as set forth below, the customers' investor profiles all identify speculation as their objective and characterize their risk tolerance as "high" or "maximum." Their account documents describe them as successful businesspeople with high incomes and substantial net worth.

Because of the passage of time, witnesses could provide few details about their conversations with Venturino regarding particular investment recommendations. Nonetheless, the nature of the charges requires the Hearing Panel to determine whether Venturino conferred with his customers before trading in their accounts, and whether they were able to knowledgeably evaluate and make informed decisions to accept or reject his recommendations. The Hearing Panel must consider each customer's background, education, occupation, investment sophistication, and experience, and assess the credibility of the customers and Venturino when their testimony conflicted.

After careful consideration, the Hearing Panel finds that Venturino traded excessively, churned, and made unauthorized trades in the accounts of four testifying customers. They are identified as customers JF, CB, DF, and JO (and JB as a joint account holder with JO).⁷⁸ The Hearing Panel concludes that the evidence was insufficient to prove the trading violations charged in connection with one testifying customer, RL, and customers CA, TF, EF, WP, and RC, who did not testify.⁷⁹ Below, the Hearing Panel analyzes the trading in the customers' accounts.

1. Customer JF

a. JF's Background

Customer JF was born in 1959. He has a high school education and resides in Findley, Ohio, where he has operated a family-owned company for 29 years. He is president and co-owner of the company, which has 14 employees.⁸⁰ JF manages the employees' schedules,

⁷⁷ See, e.g., *Beyn*, 2023 SEC LEXIS 980, at *8–9 (four testifying customers, ranging in age from 60 to 79 years old, all had limited investing experience); *Dep't of Enforcement v. Newport Coast Sec., Inc.*, No. 2012030564701, 2018 FINRA Discip. LEXIS 14, at *100 (NAC May 23, 2018), *aff'd*, Exchange Act Release No. 88548, 2020 SEC LEXIS 911 (Apr. 3, 2020) ("The record reflects that the highlighted customers generally sought to invest with a minimal amount of risk and had limited prior investment experience. None . . . sought to invest in high-risk investments, to speculate, to use margin, or to engage in the quantity and pace of Leone's trading in their accounts"); *Dep't of Enforcement v. Flower*, No. 2017052701101, 2021 FINRA Discip. LEXIS 11, at *1, *19 (OHO May 27, 2021) (finding the five customers ranging in age from mid-fifties to late seventies "were unsophisticated investors who were easily manipulated).

⁷⁸ JO had three accounts, one held jointly with his spouse, JB, who did not testify. Throughout this decision, references to JO's accounts will include his joint account with JB.

⁷⁹ The customers are identified by full name in a non-public appendix to this decision served only on the parties.

⁸⁰ Tr. 263–65, 327 (JF).

maintains the company's facilities, and keeps its vehicles operating. His partner and the company's bookkeeper are responsible for maintaining the business's accounts and ledgers.⁸¹

Before opening his Aegis account, JF never had a brokerage account. His only previous experience with investing was with a company retirement fund.⁸² He has maintained that account, with a "moderate category" of risk tolerance designation, for 28 years. He relies on the recommendations of a representative of the fund whom he consults twice a year as he does not "study the market."⁸³

b. JF's Aegis Account

JF first encountered Venturino when he received a cold call from him in early 2015.⁸⁴ JF testified that Venturino told him that he was "going to make lots of money."⁸⁵ JF said he wished to start small and when Venturino asked about his investment objective, JF agreed that he would invest aggressively.⁸⁶ He opened his Aegis account in April 2015.⁸⁷ JF testified that Venturino did not discuss investment strategies or disclose how JF would be charged for trades.⁸⁸

JF testified that he reviewed his Aegis account application before signing it.⁸⁹ It shows his income to be in the range of \$100,000 and \$199,000, his liquid net worth to be in the range of \$100,000 and \$249,000, and his total net worth to be between \$1,000,000 and \$2,999,999.⁹⁰ He agreed that its depiction of his investor profile is accurate and that it accurately describes his investment objective as speculation and his risk tolerance as "maximum."⁹¹

JF testified that he signed a margin agreement form without reading it because Venturino told him that it was needed to be able to "proceed doing business."⁹² But he had no experience with margin and did not understand how it would be used in his account.⁹³ He recalled receiving

⁸¹ Tr. 327–28 (JF).

⁸² Tr. 266–67 (JF).

⁸³ Tr. 329–30 (JF).

⁸⁴ Tr. 266 (JF).

⁸⁵ Tr. 267 (JF).

⁸⁶ Tr. 266–69 (JF).

⁸⁷ JX-28, at 3.

⁸⁸ Tr. 271–72 (JF).

⁸⁹ Tr. 275 (JF).

⁹⁰ JX-28, at 1.

⁹¹ Tr. 276–78 (JF).

⁹² Tr. 281 (JF). With a margin agreement, a firm lends the customer cash to purchase stock, using account assets as collateral, <https://www.finra.org/investors/insights/margin-calls>.

⁹³ Tr. 279, 283 (JF).

margin call letters and remembered reading one telling him that he had to deposit \$12,504 to not “lose on the investment;” he felt it sounded “a little threatening” so he deposited the money to “salvage” his investment.⁹⁴

He did not understand that the margin account agreement and application he signed meant that he would be charged interest monthly. Similarly, he did not recall reviewing the document’s margin account disclosures.⁹⁵ JF acknowledged signing the Aegis active trading letter stating he understood the costs and risks associated with frequent trading.⁹⁶ He understood there would be costs, but not how much, and he understood he could lose money. But he accepted Venturino’s repeated representations that “we are going to make a lot of money.”⁹⁷

c. Venturino’s Trading in JF’s Aegis Account

At the end of the 12 months Venturino traded in JF’s account, he had executed 31 trades. The account lost \$22,723, with trading costs of \$10,146, including \$8,393 that Venturino charged JF in commissions and markups.⁹⁸

Venturino’s initial recommendation was an investment in Chrysler Corporation. JF remembers this because of the company name, and although he did not think Chrysler was doing very well, he deferred to Venturino, reasoning that “maybe he knows something more than I do.”⁹⁹

According to JF, Venturino called him a “couple times a month,” usually on Friday afternoons.¹⁰⁰ Those are consistently busy times for him when he closes his business for the weekend. This is why, he explained, he could not recall the content of each conversation, and “chances are” he just told Venturino to “go ahead, act in my best interest.”¹⁰¹ According to JF, Venturino never discussed the costs of trades.¹⁰² JF testified that he relied “100 percent” on Venturino’s recommendations about what to buy and sell. He left it to Venturino’s discretion to

⁹⁴ Tr. 286 (JF). A firm sends a margin call letter to inform a customer to deposit funds to cover the difference between the buying power in an account and purchase of securities, for which the firm loaned the account funds to make the purchase. If funds are not deposited, the firm may liquidate securities in the account to recover the amount loaned. *See, e.g.*, JX-26, at 1.

⁹⁵ Tr. 340 (JF); JX-27.

⁹⁶ Aegis’s active trading letters served “as the client’s acknowledgment of his/her understanding regarding the costs and risks associated with frequent trading” and that “an actively traded account . . . will result in higher fees.” *See, e.g.*, RX-15.

⁹⁷ Tr. 345 (JF).

⁹⁸ CX-1.

⁹⁹ Tr. 269 (JF).

¹⁰⁰ Tr. 292 (JF).

¹⁰¹ Tr. 331–32 (JF).

¹⁰² Tr. 294 (JF).

decide when to trade, and in what volume. JF admitted he is ignorant about the stock market.¹⁰³ Thus, he did no independent research, and never rejected a recommendation from Venturino.¹⁰⁴ JF testified that he did not, however, authorize Venturino to trade without first consulting him.¹⁰⁵

Venturino made a \$24,990 purchase of a stock issued by a company named Intrexon on October 23, 2015, charging JF a markup of \$712.¹⁰⁶ JF testified that he did not recall whether Venturino spoke with him before making the buy.¹⁰⁷ There is a record of a phone call to JF on Venturino's extension preceding the purchase.¹⁰⁸ However, JF testified that Venturino did not ask for his approval to sell the stock four days later at a loss of \$837.¹⁰⁹ If Venturino had, JF testified, he would have rejected the recommendation.¹¹⁰ There is no record of a phone call to JF on Venturino's extension on the day preceding or the day of the sale.¹¹¹

JF testified that he thought he would remember if Venturino told him about a \$24,290 purchase of 750 shares of Twitter stock on October 27, 2015, charging a markup of \$825, because the company name is familiar.¹¹² JF testified that he did not recall Venturino recommending selling the position eight days later for a loss of \$1,937 and that he thought he would recall if Venturino spoke to him about it.¹¹³

JF testified that, at the time of the Twitter and Intrexon trades, he did not understand the trading in his account and had no idea what he was paying in commissions and markup charges. He was surprised when he learned that he paid more than \$1,500 in commissions, markups, and fees for the four transactions in Twitter and Intrexon stock.¹¹⁴

On November 24, 2015, Venturino purchased 2,500 shares of the stock of a company called TrueCar Inc. for \$24,419 in two transactions. The confirmations Aegis provided JF showed a single service charge of \$50 and no commission, but a markup of 0.35 per share, and a

¹⁰³ Tr. 292–93 (JF).

¹⁰⁴ Tr. 293–94 (JF).

¹⁰⁵ Tr. 295–96 (JF).

¹⁰⁶ CX-6, at 1, rows 22–23. Here and throughout the Decision the dollar amounts of purchases and sales are rounded to the nearest dollar, except when the discussion concerns the price per share paid or received.

¹⁰⁷ Tr. 301 (JF).

¹⁰⁸ CX-19, at 16, rows 630–31.

¹⁰⁹ Tr. 302–03 (JF); JX-24, at 23.

¹¹⁰ Tr. 303 (JF).

¹¹¹ CX-19, at 16, row 632.

¹¹² Tr. 304 (JF); JX-24, at 22; CX-6, at 1, row 25.

¹¹³ Tr. 305 (JF); JX-24, at 29.

¹¹⁴ Tr. 309–10 (JF).

“sales charge rate” of “0.000%.”¹¹⁵ JF expressed surprise that Venturino charged a markup of \$875 for the two purchases.¹¹⁶

JF did not close his Aegis account. As he put it, “My account ran out of money and evaporated.” He thought he still owed Aegis money.¹¹⁷ Someone from Aegis called to say that there was no money in the account, and he needed to pay \$13 to bring it to a zero balance. JF said he “was not going to do that.”¹¹⁸

On cross examination, JF testified that he did not review his monthly account statements and confirmations closely, and did not recall noticing any specific trades Venturino made without authorization.¹¹⁹ JF also conceded that he understood his investment objective of speculation meant exposure to higher risk.¹²⁰ He understood that a “maximum” risk tolerance meant he could possibly lose his entire investment, but he felt the odds of that happening were negligible because the chances that the companies he invested in would go bankrupt were “fairly low.”¹²¹

2. Customer CB

a. CB’s Background

CB was in his late sixties when he established his Aegis account with Venturino. After graduating from a business college, CB’s first job was assisting a real estate developer as a supervisor of the construction of an apartment project. After its completion, he worked as an administrative assistant to the developer, obtained a real estate broker’s license and helped market homes in a subdivision in Greenville, North Carolina.¹²² He is now a residential realtor and commercial property manager for the real estate brokerage firm he has owned for 32 years.¹²³

CB described his investment experience before opening his Aegis account as “pretty limited.”¹²⁴ On cross examination, he testified that early in his career, at least 25 years ago, he took the required examinations and registered as a securities broker. He did this to make a single

¹¹⁵ JX-25, at 23–24.

¹¹⁶ Tr. 317–18 (JF).

¹¹⁷ Tr. 320–21 (JF).

¹¹⁸ Tr. 321 (JF).

¹¹⁹ Tr. 333–34 (JF).

¹²⁰ Tr. 336 (JF).

¹²¹ Tr. 337 (JF).

¹²² Tr. 372–73 (CB).

¹²³ Tr. 371–72 (CB).

¹²⁴ Tr. 374 (CB).

sale of a Real Estate Investment Trust and held the license for only a year.¹²⁵ He testified that he has had three brokerage accounts and has invested in securities since he was 35.¹²⁶

CB testified that a friend is his financial advisor and manages his retirement account.¹²⁷ He also testified that he owns some securities and life insurance.¹²⁸ He and his advisor occasionally transferred funds from his retirement account to an investment account.¹²⁹ Although he receives and reads “a couple of newsletters” and discusses information from them with his advisor, in the past he “didn’t do much research” on his own.¹³⁰ He usually seeks long-term returns from his investments.¹³¹

CB is one of ten customers, along with several identified in the Complaint, who filed an arbitration claim against Aegis based on Venturino’s management of their accounts.¹³² He received approximately \$70,000 from the settlement of the claim.¹³³

b. CB’s Aegis Account

In 2014, Venturino cold called CB and they spoke more than once before CB opened his account.¹³⁴ Venturino said he was with a successful New York firm and wanted to talk about some “good things,” so CB listened.¹³⁵

CB signed his Aegis new account application on August 27, 2014.¹³⁶ CB testified that the information in the investor profile section of the account application is accurate.¹³⁷ It describes his income at the time as being in the range of \$100,000 to \$199,000; his liquid net worth in the range of \$500,000 to \$1 million; his total net worth between \$1 million and \$3 million; and his risk tolerance as “High Risk,” with an investment objective of “Aggressive Growth/Aggressive Income.”¹³⁸ CB explained that he understood this objective to mean he sought “a good

¹²⁵ Tr. 416–17 (CB).

¹²⁶ Tr. 418 (CB).

¹²⁷ Tr. 374–75, 418 (CB).

¹²⁸ Tr. 375 (CB).

¹²⁹ Tr. 375 (CB).

¹³⁰ Tr. 375 (CB).

¹³¹ Tr. 375 (CB).

¹³² RX-3.

¹³³ Tr. 407–08 (CB).

¹³⁴ Tr. 373 (CB).

¹³⁵ Tr. 373–74 (CB).

¹³⁶ JX-12, at 3.

¹³⁷ Tr. 379–81 (CB).

¹³⁸ JX-12, at 1.

dividend.”¹³⁹ He testified that Venturino told him that to qualify for some of the investments he would recommend, CB needed to check the “high risk” box on his account application form, so he did.¹⁴⁰ CB testified that he considers his risk tolerance as moderate and in retrospect, he wishes he had checked the “moderate risk” box as well.¹⁴¹

CB testified that Venturino also told him that he needed to open a margin account.¹⁴² He did not think he “fully understood what a margin account was,” but he was aware that he opened one.¹⁴³ He understood there was “some risk” with a margin account.¹⁴⁴ He did not plan to use margin often, but because Venturino explained it would be to his advantage to have a margin account, he agreed.¹⁴⁵

CB recalled receiving some margin call letters and sending a check to Venturino to cover a deficit. Aegis sent him 21 margin call letters.¹⁴⁶ CB did not remember getting that many.¹⁴⁷ He recalled discussing margin call letters with Venturino and telling him that he did not mind taking a loss in an investment, but he preferred not to “go into margins.”¹⁴⁸

CB recalled receiving account statements that he would review briefly and then put in a file.¹⁴⁹ He also recollected receiving confirmation notices but did not remember receiving many; however, there are 271 spanning the 34-month life of the account.¹⁵⁰ He just “stuck them in the file,” without opening all of them.¹⁵¹ CB recalled receiving a few active trading letters that he returned to Aegis; he testified he signed some, but not others.¹⁵²

¹³⁹ Tr. 380 (CB).

¹⁴⁰ Tr. 382–83 (CB).

¹⁴¹ Tr. 383–84 (CB).

¹⁴² Tr. 384–86 (CB).

¹⁴³ Tr. 385 (CB).

¹⁴⁴ Tr. 422 (CB).

¹⁴⁵ Tr. 422 (CB).

¹⁴⁶ Tr. 386–87 (CB); JX-11.

¹⁴⁷ Tr. 387 (CB).

¹⁴⁸ Tr. 387 (CB).

¹⁴⁹ Tr. 389–90 (CB).

¹⁵⁰ Tr. 390–91 (CB); JX-10.

¹⁵¹ Tr. 429 (CB).

¹⁵² Tr. 397 (CB). Aegis’s active trading letters briefly summarized the number of trades in an account for the prior year, the account objective and risk exposure, and called for the customer to sign to acknowledge understanding “the costs and risks associated with frequent trading.” *See, e.g.*, RX-15.

CB testified that he and Venturino did not talk “that much.”¹⁵³ On average, CB said, Venturino called about twice a month, but sometimes CB did not hear from him for four or five weeks.¹⁵⁴ On rare occasions, CB had a question after reviewing a statement, prompting him to call Venturino.¹⁵⁵ But most of the time Venturino initiated their calls.¹⁵⁶

CB testified that he did not give Venturino authority to trade without first consulting with him.¹⁵⁷ He kept a file with “quick notes” of his “short conversations” with Venturino.¹⁵⁸ But when he reviewed the account as he was closing it, he saw “some things that [he] had never heard of” and did not see in his notes or file.¹⁵⁹

c. Venturino’s Trading in CB’s Account

Venturino traded in CB’s account for 34 months. In that time, Venturino executed 195 trades and charged CB \$72,419 in commissions and markups, while the account lost \$144,103, including \$85,060 that CB paid in trading costs and \$4,174 in margin interest.¹⁶⁰

According to CB, Venturino never disclosed the costs he incurred for the trading in his account.¹⁶¹ Venturino did not mention entering some transactions as riskless principal trades with markups, and others on an agency basis.¹⁶² CB simply assumed that on occasion Venturino would charge a commission on a purchase.¹⁶³

CB testified that when making a recommendation, Venturino would give a “description of the company profile, operation profile” and why he thought there would be a quick gain or why he considered it a “long, a growth stock.”¹⁶⁴ CB testified, “I got all of my information from him”

¹⁵³ Tr. 392–93 (CB).

¹⁵⁴ Tr. 392 (CB).

¹⁵⁵ Tr. 389–90 (CB).

¹⁵⁶ Tr. 390 (CB).

¹⁵⁷ Tr. 397–98 (CB).

¹⁵⁸ Tr. 399 (CB).

¹⁵⁹ Tr. 399 (CB).

¹⁶⁰ CX-1.

¹⁶¹ Tr. 376 (CB).

¹⁶² Tr. 376–77 (CB).

¹⁶³ Tr. 402 (CB).

¹⁶⁴ Tr. 395 (CB).

and relied “heavily” on Venturino’s recommendations, “95 to 100 percent.”¹⁶⁵ Venturino would recommend what stock to buy and in what quantity, often sounding “very confident.”¹⁶⁶

CB recalled that he had heard of “[a]lmost none” of the stocks Venturino recommended.¹⁶⁷ For his part, CB rarely suggested stock purchases to Venturino but recalled that he gave him the names of “two, maybe three” companies.¹⁶⁸ CB explained that one he proposed investing in was Bojangles, Inc., because he knew someone with a Bojangles franchise and had heard some positive information about it. Another he thought he suggested was a company called GoPro.¹⁶⁹

There are trade records that corroborate CB’s testimony. They show a purchase of Bojangles stock on May 8 and a sell on May 22, 2015.¹⁷⁰ There are two purchases of GoPro stock, on January 27 and March 20, 2015,¹⁷¹ followed by sales of the entire position on April 29 and 30, 2015.¹⁷² On the day of or before each of these transactions, there appears to have been a call between CB and Venturino’s Aegis extension at the Melville Aegis branch.¹⁷³

CB was able to provide some information about the allegedly unauthorized trades in his account. When asked about several specific transactions, he testified why he thought he would recall if Venturino had discussed them before trading. For example, on January 28, 2015, Venturino purchased 1,000 shares of Proofpoint, Inc., for a total of \$53,284 charging a markup of \$1,550.¹⁷⁴ Several days later, on February 3, 2015, Venturino sold the shares for a loss of \$3,165.¹⁷⁵ When asked about it, CB testified he did not recall discussing the sale.¹⁷⁶ There is a record of a call between CB’s phone and Venturino’s extension preceding the purchase, but not the sale.¹⁷⁷ CB testified that he thought he would remember if he had spoken with Venturino and agreed to a sale so soon after the purchase.¹⁷⁸

¹⁶⁵ Tr. 395 (CB).

¹⁶⁶ Tr. 396 (CB).

¹⁶⁷ Tr. 394–95 (CB).

¹⁶⁸ Tr. 394 (CB).

¹⁶⁹ Tr. 393–94 (CB).

¹⁷⁰ CX-3, at 5, rows 145, 150. Both are marked unsolicited.

¹⁷¹ CX-3, at 1, row 31; CX-3, at 4, row 119. The first purchase is marked unsolicited; the second, solicited.

¹⁷² CX-3, at 5, rows 138, 141. Both are marked solicited.

¹⁷³ CX-19, at 5, rows 118, 131, 138, 142, 144; CX-19, at 3, row 36.

¹⁷⁴ CX-3, at 1–2, rows 32–35.

¹⁷⁵ CX-3, at 2, row 40.

¹⁷⁶ Tr. 400–01 (CB).

¹⁷⁷ CX-19, at 3, rows 38–42.

¹⁷⁸ Tr. 400–01 (CB).

On June 4, 2015, Venturino purchased 5,000 shares of stock in Oxford Lane Capital for more than \$78,000.¹⁷⁹ CB testified that he had never heard of the company, would not have authorized investing that much money in a single purchase, and did not remember Venturino ever asking for authority to make a purchase for such a large sum.¹⁸⁰ When asked if Venturino spoke to him about selling the position on June 19, 2015, for a loss of \$4,387, CB testified that he did not “recall it at all.”¹⁸¹

CB testified that he had no recollection of speaking with Venturino before purchasing 5,000 shares of the costlier preferred Oxford Lane Capital stock on June 18, 2015, for \$122,000.¹⁸² CB testified that he “would not have put that much money in one security, one account, one play or you know, one investment.”¹⁸³ Similarly, CB testified that he did not recall discussing a purchase of 3,100 shares of stock of GasLog Partners LP for \$74,090 on June 23, 2015.¹⁸⁴ He testified that he believed he would remember an investment of more than \$25,000 or \$30,000.¹⁸⁵

CB was pressed on cross examination to explain how, since he could not recall every conversation with Venturino years ago, he could claim that Venturino did not discuss trades before making them. CB insisted that he remembered seeing trades he did not have any notes about and calling Venturino to ask about them. Venturino “would try to explain,” but CB was adamant that he and Venturino “didn’t communicate on some of those transactions that he made.”¹⁸⁶ CB testified that he and Venturino did not talk frequently. In fact, there were “long gaps” between calls from Venturino, and looking at the number of trades, he knew they had not had that many conversations.¹⁸⁷

Venturino effected 195 transactions in CB’s account over 34 months.¹⁸⁸ Based on the phone call record, Enforcement identified 76 unauthorized trades in CB’s account.¹⁸⁹ Venturino began trading in CB’s Aegis account on August 22, 2014,¹⁹⁰ but there were few trades until

¹⁷⁹ CX-3, at 5, row 158.

¹⁸⁰ Tr. 404–05 (CB).

¹⁸¹ Tr. 405–06 (CB).

¹⁸² Tr. 406 (CB). Venturino bought the Oxford Lane Capital preferred shares for \$24.17 per share; he paid \$15.65 per share for the Oxford Lane Capital non-preferred shares he purchased on June 4, 2015. CX-3, at 5, rows 158, 163.

¹⁸³ Tr. 406 (CB); JX-9, at 81.

¹⁸⁴ Tr. 406–07 (CB); CX-3, at 6, row 164.

¹⁸⁵ Tr. 406–07 (CB).

¹⁸⁶ Tr. 428 (CB).

¹⁸⁷ Tr. 428 (CB).

¹⁸⁸ CX-1, at 2.

¹⁸⁹ CX-19, at 1.

¹⁹⁰ CX-3, at 1, row 1.

January 2015, followed by numerous transactions through the spring of 2015.¹⁹¹ From January 20, 2015, to May 29, 2015, most trades Venturino placed for CB were preceded by phone calls.¹⁹² But after that, there were periods with sets of trades over several weeks with no record of preceding phone calls, consistent with CB's recollection. For example, from June 4 through June 25, 2015, there were ten transactions for which there is no record of phone calls;¹⁹³ from September 25 through October 14, 2015, there were six;¹⁹⁴ from November 2 through December 3, 2015, there were seven more;¹⁹⁵ from February 26 through October 20, 2016, there were five.¹⁹⁶ And after a trade on November 7, 2016, for which there is a record of a preceding phone call, there is no record of any call preceding 12 trades occurring during the six months between November 16, 2016, and May 24, 2017,¹⁹⁷ the date of the last trade Venturino placed for CB in his Aegis account.¹⁹⁸

3. Customer DF

a. DF's Background

Born in 1949, DF resides in Minot, North Dakota. After graduating from high school, he worked for Pepsi Cola for 14 years. For the past 32 years, he has owned and operated a business selling equipment to restaurants.¹⁹⁹

DF initially testified that he had “a little bit of knowledge” of stocks, but “[n]ot very much” prior experience investing, saying he “[p]robably tried it once or twice” and “probably” had opened two accounts before encountering Venturino.²⁰⁰ He testified that he could not remember them or accounts he opened after he closed his Aegis account with Venturino.²⁰¹ His memory of his investment history as reflected in his testimony was faulty and incomplete.

In fact, from 2012 to 2019, DF opened at least eleven brokerage accounts in addition to his Aegis account with Venturino. When shown documents related to the accounts, he testified

¹⁹¹ CX-3, at 1–5.

¹⁹² CX-19, at 3–6, rows 29–153.

¹⁹³ CX-19, at 6, rows 154–63.

¹⁹⁴ CX-19, at 6–7, rows 197–203.

¹⁹⁵ CX-19, at 7, rows 206–12.

¹⁹⁶ CX-19, at 7, rows 238–42.

¹⁹⁷ CX-19, at 7–8, rows 246–57.

¹⁹⁸ CX-3, at 10.

¹⁹⁹ Tr. 463–65 (DF).

²⁰⁰ Tr. 467–68 (DF).

²⁰¹ Tr. 535–36 (DF).

that he remembered little about them.²⁰² On cross examination, DF was unable to recall opening another Aegis account in 2016 and signing a Sterne Agee & Leach account document in 2012.²⁰³ He could not recall the names of brokers he worked with but remembered working with some of the firms whose account documents he was shown.²⁰⁴

b. DF's Aegis Account

Venturino introduced himself to DF with a cold call and opened his account in July 2014.²⁰⁵ At first, Venturino and another Aegis broker were joint representatives but Venturino was the only one DF spoke with.²⁰⁶ DF acknowledged that his Aegis account application accurately reflects his annual income as being between \$100,000 and \$199,999.²⁰⁷ DF testified initially that he did not agree with the \$3 million estimate of his total net worth and the description of his investment objective as speculation, with maximum risk tolerance.²⁰⁸ But he acknowledged that he spoke with Venturino about his investment objective and risk tolerance.²⁰⁹ And the investment objective and risk tolerance selected are consistent with those on other account application forms DF signed in the same time frame.²¹⁰ DF testified that his objective for his Aegis account was to achieve returns between 10 and 20 percent.²¹¹

According to DF, Venturino called him on his cell phone two or three times a week while his Aegis account was active.²¹² DF recalled that “it would not surprise” him if nearly half of the

²⁰² Tr. 544 (DF) (reflecting Aegis account opened November 2016, RX-63, at 3); Tr. 548–49 (DF) (reflecting Aegis account opened December 2016, RX-64, at 3); Tr. 551–53 (DF) (reflecting Aegis account opened August 2019, RX-65, at 3); Tr. 554–55 (DF) (reflecting 2012 Sterne Agee Account opened April 2012, RX-54, at 1–2); Tr. 556 (DF) (reflecting Wells Fargo account opened May 2013, RX-66, at 1–2); Tr. 557–58 (DF) (reflecting 2014 Commerce One account statement, RX-55, at 1); Tr. 560–61 (DF) (reflecting Rockwell Global account opened April 2015, RX-58, at 4); Tr. 563–64 (DF) (reflecting 2016 American Capital Partners account statement, RX-57); Tr. 564 (DF) (reflecting Spartan Capital Securities (“Spartan”) account opened January 2016, RX-60, at 4); Tr. 565–66 (DF) (reflecting Spartan account opened July 2018, RX-61, at 5); Tr. 568 (DF) (reflecting RBC Capital Markets, LLC account opened September 2019, RX-62, at 5).

²⁰³ Tr. 554–55 (DF); RX-54.

²⁰⁴ *E.g.*, Tr. 554–58, 560–61, 562–70 (DF).

²⁰⁵ Tr. 465–66 (DF).

²⁰⁶ Tr. 488 (DF); JX-14, at 1.

²⁰⁷ Tr. 475–76 (DF); JX-18, at 1.

²⁰⁸ Tr. 476–78 (DF).

²⁰⁹ Tr. 479 (DF).

²¹⁰ *See, e.g.*, RX-58, at 2, 4 (April 2015 account application marked aggressive growth objective and high risk tolerance); RX-60, at 2, 4 (January 2016 account application marked speculation and maximum risk tolerance); RX-61, at 2–3, 5 (July 2018 account application marked speculation and maximum risk); RX-63, at 1, 3 (November 2016 account application marked speculation and maximum risk).

²¹¹ Tr. 478 (DF).

²¹² Tr. 496 (DF).

conversations were unrelated to the account.²¹³ DF described Venturino as “very . . . friendly,” that he “probably called m[e] on weekends” for talks “that had nothing to do with investment,” and that he “[s]eemed to be interested in helping me make money.”²¹⁴ DF described their conversations as “very upbeat” and testified that he developed confidence in Venturino as they “talked about personal things,” like DF’s upcoming weekend plans and his children’s soccer games.²¹⁵ Through the calls, DF came to trust Venturino.²¹⁶

DF testified that he and Venturino never discussed the costs of activity in his account.²¹⁷ Venturino never said anything about agency or riskless principal trades.²¹⁸ DF did not know what markups or markdowns were and stated that Venturino never mentioned them.²¹⁹ DF testified, as did other customers, that he did not understand if or how his account was charged for trading activity.²²⁰

DF testified that it was Venturino’s idea that he apply for a margin account.²²¹ He was unsure he knew at the time how margin worked.²²² DF testified that Venturino did not discuss the costs associated with a margin account.²²³

DF acknowledged receiving account statements but testified that he did not review them very closely—he just “breezed through” the descriptions of trading activity, and reviewed trade confirmations, although not carefully.²²⁴ He did not track the trading in his account; he left that to Venturino.²²⁵ He did not independently calculate the costs Venturino charged.²²⁶ DF testified he did not give Venturino authority to trade without first speaking with him.²²⁷ When asked if, to

²¹³ Tr. 497–98 (DF).

²¹⁴ Tr. 467 (DF).

²¹⁵ Tr. 466–67 (DF).

²¹⁶ Tr. 469 (DF).

²¹⁷ Tr. 469, 513–14 (DF).

²¹⁸ Tr. 470–71 (DF).

²¹⁹ Tr. 470 (DF).

²²⁰ Tr. 471 (DF).

²²¹ Tr. 485 (DF).

²²² Tr. 484–85 (DF).

²²³ Tr. 486 (DF).

²²⁴ Tr. 493–96 (DF).

²²⁵ Tr. 500 (DF).

²²⁶ Tr. 501 (DF).

²²⁷ Tr. 501 (DF).

his knowledge, Venturino contacted him by phone before every trade, he answered that he did “for most of them, I wouldn’t say for all of them.”²²⁸

DF testified that he closed his Aegis account when he was contacted by someone from a law firm who asked if he understood what was occurring in his account. He was “shocked” to learn how much money he spent in costs.²²⁹

c. Venturino’s Trading in DF’s Account

In the 19 months between July 2014 and January 2016, Venturino executed 113 trades in DF’s account. DF’s losses came to \$91,968, including trading costs of \$62,210. These included Venturino’s markups and commissions, totaling \$55,095, and \$1,977 in margin costs.²³⁰

Venturino effected 10 transactions in DF’s account in April 2015. When asked about them, DF testified that he was not surprised at the number of transactions but was surprised that the trading costs came to almost \$9,000.²³¹

DF was asked about a purchase of 1,000 shares of Delta Air Lines stock on April 13, 2015.²³² DF testified that “possibly” Venturino spoke with him about the purchase.²³³ When asked about the April 15 sale of the stock, DF testified that he would not have wanted to sell the shares two days after buying, for a loss of \$1,049 and approximately \$1,500 in transaction costs.²³⁴ There is no record of a phone call between DF and Venturino for these trades, or seven others entered between April 1 and April 15, 2015.²³⁵

Venturino engaged in in-and-out trading in DF’s account, making purchases of securities, selling them, and using the proceeds to buy other securities shortly thereafter.²³⁶ For example, on May 13, 2015, Venturino bought 400 shares of Jack in the Box, Inc. stock in several transactions for \$37,663, charging \$1,000 in markups.²³⁷ The next day, he sold the position for \$34,670, a

²²⁸ Tr. 501 (DF).

²²⁹ Tr. 514–15 (DF).

²³⁰ CX-1.

²³¹ Tr. 513 (DF); CX-7, at 4.

²³² JX-14, at 61.

²³³ Tr. 510 (DF).

²³⁴ Tr. 511–12 (DF).

²³⁵ CX-19, at 18, rows 736–743.

²³⁶ Tr. 122–23 (Investigator). “‘In-and-out trading’ is the sale of all or part of the securities in an account and reinvestment of the sales proceeds in other securities, followed by the sale of the newly acquired securities.” *Dep’t of Enforcement v. Davidofsky*, No. 2008015934801, 2013 FINRA Discip. LEXIS 7, at *9, n.10 (NAC Apr. 26, 2013).

²³⁷ CX-15, at 2, rows 58–60.

loss of \$2,993, and charged a commission of \$99.²³⁸ On May 18, 2015, Venturino purchased 250 shares of Home Depot stock only to sell the position the next day for more than \$2 a share less.²³⁹ He charged DF a markup of \$687 on the purchase, and a \$99 commission on the sale.²⁴⁰ Again on May 19, Venturino purchased 2,500 shares of stock of Atlas Resource Partners LP and sold them the same day.²⁴¹ Although Venturino charged a commission of just \$29, DF lost \$830 on the transactions.²⁴²

From November 24, 2015, to January 4, 2016, Venturino engaged in more in-and-out trading—often purchasing shares at a higher price per share than he received when selling them—while charging significant markups. On November 24, 2015, Venturino purchased 6,200 shares of CorMedix Inc. at \$2.26 per share, charging a markup of \$496.²⁴³ He then sold 6,100 shares on December 2, for \$2.19 per share, a loss.²⁴⁴ On the following day Venturino purchased 4,100 shares, at \$2.21 per share, charging a \$199 commission.²⁴⁵ On December 10, he sold 5,200 shares at \$2.05 per share; then on December 14, he bought 3,200 shares at \$2.07 per share, charging no commission, markup, or markdown.²⁴⁶ On December 21, he sold 3,400 shares at \$1.98 per share.²⁴⁷ He followed this with another sale of 2,600 shares at \$1.91 per share, on January 4, 2016, charging a commission of \$99.²⁴⁸ Also on January 4, 2016, Venturino purchased 2,500 shares of SunEdison Inc. stock at \$5.92 per share, charging a markup of \$475; three days later he sold 2,000 shares of the stock at \$3.71 per share, a loss of \$2.21 per share.²⁴⁹

These trades constitute in-and-out purchases and sales—often at a loss—with significant markups and commissions to Venturino.

d. The Arbitration Claim

In January 2021, DF joined with customer CB and eight others as a claimant in the arbitration claim against Aegis.²⁵⁰ DF testified initially that he did not recall whether he spoke

²³⁸ CX-15, at 3, row 61.

²³⁹ CX-15, at 3, rows 62, 65.

²⁴⁰ CX-15, at 3, row 65.

²⁴¹ CX-15, at 3, rows 63–64.

²⁴² CX-15, at 3, rows 63–64.

²⁴³ CX-19, at 19, row 782; CX-15, at 3, row 68.

²⁴⁴ CX-15, at 3, row 69.

²⁴⁵ CX-15, at 3, rows 69–70.

²⁴⁶ CX-15, at 3, rows 71–72.

²⁴⁷ CX-15, at 3, row 73.

²⁴⁸ CX-15, at 3, row 74.

²⁴⁹ CX-15, at 3, rows 75–77.

²⁵⁰ RX-3.

with FINRA staff investigating Aegis before the claim was filed.²⁵¹ In fact, FINRA staff spoke with DF as early as October 26, 2018, more than two years before the arbitration claim was filed.²⁵² DF subsequently testified on cross examination that speaking with Enforcement influenced his decision to join the arbitration suit.²⁵³ DF testified that he felt it was “just not right” when he found out that Venturino, someone he trusted, had taken advantage of him.²⁵⁴

e. The “Statement of DF”

In June 2021, five months after the arbitration claim was filed, Venturino sent DF a document titled Statement of [DF] (“Statement”).²⁵⁵ It purports to have been, but was not, written by DF.²⁵⁶ It contains a paragraph asserting that DF swears it to be “accurate and true.”²⁵⁷ DF testified that because Venturino explained that he was in “some trouble” and “needed some support,”²⁵⁸ he signed the Statement.²⁵⁹

If true, the Statement would exonerate Venturino of any wrongdoing in managing DF’s account. The Statement describes DF as an experienced investor who “had countless brokerage accounts and trades penny stocks and crypto currencies.”²⁶⁰ It states that DF did “not feel” Venturino traded excessively. It asserts that DF “had ultimate control over the transactions” in his Aegis account, and that he “sometimes” rejected Venturino’s recommendations.²⁶¹ It claims that DF “spoke regularly” with Venturino about the account, that they discussed “risk and costs,” and Venturino “routinely” advised him “regarding all the costs in the account including commissions, markups, markdowns, interest etc.”²⁶² It asserts that Venturino “discussed each transaction” with him “in advance” and that DF “authorized every transaction.”²⁶³ It states that DF had “no complaint” against Venturino, and that he did “not believe that [Venturino] should be disciplined or otherwise be held liable for the activity” in the account.²⁶⁴

²⁵¹ Tr. 575 (DF).

²⁵² Tr. 580 (DF).

²⁵³ Tr. 581–82 (DF).

²⁵⁴ Tr. 591 (DF).

²⁵⁵ Tr. 518 (DF).

²⁵⁶ Tr. 518 (DF).

²⁵⁷ RX-67, at 1.

²⁵⁸ Tr. 518 (DF).

²⁵⁹ Tr. 517 (DF).

²⁶⁰ RX-67, at 1, ¶ 5.

²⁶¹ RX-67, at 1, ¶ 6.

²⁶² RX-67, at 2, ¶ 7.

²⁶³ RX-67, at 2, ¶ 8.

²⁶⁴ RX-67, at 2, ¶ 10.

DF's testimony about the Statement was inconsistent and contradictory. DF testified that when he signed the Statement, he was not yet aware of how much money he had lost in his account, and he still trusted Venturino.²⁶⁵ But, DF admitted on cross examination, he signed the Statement three years after Enforcement had first contacted him, and five months after the arbitration claim had been filed—well after he had reasons to be concerned about how Venturino handled his Aegis account.²⁶⁶

On direct examination, DF testified that the Statement's assertions that he controlled his account, that Venturino kept him fully informed of risks and costs, and that he authorized all trades in advance, were false.²⁶⁷ He testified that he did not understand that Venturino's high level of trading would result in higher costs.²⁶⁸ Similarly, he testified he had never invested in penny stocks and crypto currencies.²⁶⁹ He testified that he "just cannot think" he authorized the number of trades Venturino effected; if he did, he testified, it was in reliance on Venturino's recommendations.²⁷⁰ DF said that he would not sign the Statement today.²⁷¹

At the end of his testimony, confronted with the contradictions in his testimony, DF was asked why he signed the Statement. He said it was because he liked Venturino and thought he "seemed like a good man."²⁷² When he found out how much money he lost and how much Venturino profited from his account, DF had been "disappointed and kind of shocked."²⁷³ DF stated that Venturino "pretty much came right out and said that his hand was in a vice and he needed help on—he needed help with investors saying that he had not done the things he had done." DF explained, "you may agree or disagree with what I'm going to say. I have been brought up to forgive people. So maybe that is what was going through my mind that day" when he signed the Statement.²⁷⁴ DF said he signed because "[Venturino] asked me."²⁷⁵

²⁶⁵ Tr. 518, 527, 581 (DF).

²⁶⁶ Tr. 581–83 (DF).

²⁶⁷ Tr. 520, 525–26 (DF).

²⁶⁸ Tr. 522–23 (DF).

²⁶⁹ Tr. 523–24 (DF).

²⁷⁰ Tr. 525 (DF).

²⁷¹ Tr. 527 (DF).

²⁷² Tr. 594–95 (DF).

²⁷³ Tr. 595–96 (DF).

²⁷⁴ Tr. 596–97 (DF).

²⁷⁵ Tr. 596–97 (DF).

4. Customer JO

a. JO's Background

JO, born in 1968, has residences in both Florida and Texas.²⁷⁶ He graduated from the U.S. Military Academy at West Point in 1990 and served for 15 years.²⁷⁷ At West Point, he received a degree in Latin American studies, with a minor in engineering.²⁷⁸

JO was the vice president of operations for a European company that manufactured products for hospitals.²⁷⁹ There were about 1,400 employees under his area of responsibility.²⁸⁰ He had an office in Mexico but traveled often to the sites of his company's facilities located in Brazil, Colombia, and Venezuela between 2015 and 2017.²⁸¹

Before opening his first Aegis account with Venturino, JO had what he describes as an "above average" background in investing.²⁸² He estimated that he had "dabbled in stocks" for five to ten years.²⁸³ JO testified that he invested "with reputable firms" and let them manage his accounts except for a self-directed E*Trade account.²⁸⁴ He described himself as a "busy guy" who does not have the time to "babysit" his investment accounts.²⁸⁵

b. JO's Aegis Accounts

Unlike other testifying customers who first encountered Venturino when he cold called them, JO was introduced to Venturino through a colleague, his company's finance director.²⁸⁶ Shortly after he spoke with Venturino by phone, JO signed the application for his individual Aegis account on October 26, 2015.²⁸⁷

JO agreed that the Aegis account application accurately describes his investor profile. It states that his annual income was in the range of \$300,000 to \$399,000, his liquid net worth was in the range of \$1 million to \$2.99 million, and his total net worth was between \$3 million and

²⁷⁶ Tr. 605 (JO).

²⁷⁷ Tr. 607–08 (JO).

²⁷⁸ Tr. 681 (JO).

²⁷⁹ Tr. 683–84 (JO).

²⁸⁰ Tr. 681–82 (JO).

²⁸¹ Tr. 682–83 (JO).

²⁸² Tr. 609 (JO).

²⁸³ Tr. 609–10 (JO).

²⁸⁴ Tr. 610 (JO).

²⁸⁵ Tr. 609 (JO).

²⁸⁶ Tr. 608–09 (JO).

²⁸⁷ Tr. 610–12 (JO); JX-42, at 3.

\$4 million. Like the other testifying customers, JO agreed that his stated investment objective was speculation and his risk tolerance “maximum.”²⁸⁸ JO testified that this is how he described his investment objective and risk tolerance for all his brokerage accounts.²⁸⁹

JO opened two other accounts with Venturino at Aegis. One, opened in December 2015, was a retirement account.²⁹⁰ He transferred into it funds from his 401(k) account.²⁹¹ The other, opened in February 2016, JO held jointly with his wife, JB.²⁹² JO explained, however, that JB deferred to him on any decisions about it; she just signed the account documents to make it joint.²⁹³ All three account application forms described JO’s investment profile in the same terms, with the same investment objectives and risk tolerances.²⁹⁴

c. Venturino’s Trading in JO’s Accounts

Venturino executed 74 trades over 18 months in JO’s individual account. The account lost \$108,561. Trading costs came to \$45,419, including Venturino’s commissions and markups totaling \$38,955, and \$3,333 in margin interest.²⁹⁵ In JO’s retirement account, Venturino executed 37 trades over slightly more than 9 months. This account lost \$8,923. The account was charged \$28,697 in costs, including Venturino’s markups and commissions totaling \$26,935.²⁹⁶ In JO’s joint account, Venturino executed 28 trades in 14 months of activity, during which the joint account lost \$36,497. The costs of trading came to \$20,734 and Venturino charged markups and commissions totaling \$17,742, and \$1,822 in margin interest.²⁹⁷

JO testified that when he had his accounts with Aegis, he did not research investments. His company’s finance director occasionally conducted research for himself and for JO. JO did not recall Venturino providing research other than information discussed in their phone calls.²⁹⁸ When shown an email he sent asking Venturino to look into a stock, resulting in Venturino sending a prospectus to him, JO testified that his finance director had originally recommended considering the investment and JO sent the email to Venturino to ask for his input. On another occasion, he sent Venturino an example of research related to a college savings account for his

²⁸⁸ Tr. 615–16 (JO).

²⁸⁹ Tr. 738, 742 (JO).

²⁹⁰ JX-31, at 1, 3.

²⁹¹ Tr. 617–18 (JO).

²⁹² Tr. 624–25 (JO); JX-35

²⁹³ Tr. 624 (JO).

²⁹⁴ Tr. 624 (JO).

²⁹⁵ CX-1.

²⁹⁶ CX-1.

²⁹⁷ CX-1.

²⁹⁸ Tr. 692 (JO).

children.²⁹⁹ JO testified that he was asking for Venturino’s opinion, not directing Venturino to invest. If JO acted on the research, it would have been through his E*Trade account, not through Aegis.³⁰⁰

JO and Venturino spoke “at least once, maybe twice” weekly. The number of calls was “pretty consistent” over time, according to JO, although they increased when Venturino was touting a new investment. The calls came to JO’s cell or office phone.³⁰¹

JO said he relied “100 percent” on Venturino’s recommendations.³⁰² JO explained that in all three accounts, Venturino recommended the stocks bought and sold. But JO occasionally rejected a recommendation after obtaining advice from his company’s financial director—who was more knowledgeable than he—when Venturino recommended stocks JO had never heard of.³⁰³

When asked who decided the size of trades Venturino recommended, JO testified, “I guess it was mutual.” Venturino would make the recommendations, but JO wanted to use the funds already available in his accounts rather than invest additional funds, and that limited the size of the purchases.³⁰⁴ When Venturino gave JO recommendations, JO said that the decision of whether to proceed “ultimately” was his.³⁰⁵ But the selection of particular stocks was made by Venturino. Whether to use margin in the two accounts with margin agreements was a mutual decision. However, JO had no role in deciding whether a trade would be entered on a riskless principal or agency basis; JO had no idea what those terms meant.³⁰⁶

JO testified that in addition to the weekly phone calls, he and Venturino “[p]robably” communicated every other day via the instant messaging service, WhatsApp.³⁰⁷ Those communications mainly concerned other investment opportunities—not his Aegis accounts—and also JO’s responses to margin call letters.³⁰⁸ JO recalled taking a picture of one letter and sending

²⁹⁹ Tr. 754–56 (JO).

³⁰⁰ Tr. 757 (JO).

³⁰¹ Tr. 654–55 (JO).

³⁰² Tr. 655 (JO).

³⁰³ Tr. 655–56 (JO).

³⁰⁴ Tr. 758 (JO).

³⁰⁵ Tr. 760 (JO).

³⁰⁶ Tr. 759 (JO).

³⁰⁷ Tr. 632 (JO).

³⁰⁸ Tr. 632–33 (JO).

it to Venturino via WhatsApp “cursing him out.” JO stated he thought Venturino was doing a “sub par” job of “taking care of my money and making it grow.”³⁰⁹

JO did not recall receiving letters from Aegis about activity in his accounts.³¹⁰ To the extent he followed his accounts, it was by referring to the summaries in the month-end statements.³¹¹ The statements did not inform him of what he was charged for trading in the account.³¹² He understood he would be charged commissions on transactions for “whatever the fee was to buy and sell,” but never attempted to calculate the trading costs associated with the three Aegis accounts.³¹³

Because of the frequency of his work-related travel, he did not review all letters and account statements from Aegis thoroughly, but when he saw poor returns, he would call “to find out what was going on.”³¹⁴ JO testified similarly about receiving trade confirmations; he received “a ton of them,” too many to review because he was traveling for work.³¹⁵

JO did not authorize Venturino to trade without consulting with him first.³¹⁶ JO did not recall if he identified any unauthorized trades while Venturino was trading in the accounts.³¹⁷ It was only “after the fact” that he became aware that Venturino traded without authorization.³¹⁸ When he became concerned about losses, JO called Aegis and spoke to a compliance officer. That is when he discovered that most of the losses were attributable to the fees Venturino charged him. Aegis then assigned another broker to take over JO’s accounts.³¹⁹ That broker referred to Venturino in disparaging terms. This prompted JO to dig further. He found that “there was too much buying and selling,” more than what he and Venturino had discussed. This was when he decided to take his money out of Aegis and he and his wife filed an arbitration claim against Aegis.³²⁰

³⁰⁹ Tr. 632–33 (JO).

³¹⁰ Tr. 657 (JO).

³¹¹ Tr. 658 (JO).

³¹² Tr. 658–59 (JO).

³¹³ Tr. 658–59 (JO).

³¹⁴ Tr. 639–41, 643–45 (JO).

³¹⁵ Tr. 647–49 (JO).

³¹⁶ Tr. 659–60 (JO).

³¹⁷ Tr. 736 (JO).

³¹⁸ Tr. 660 (JO).

³¹⁹ Tr. 660 (JO).

³²⁰ Tr. 662–63, 678 (JO).

In April 2016, Venturino sold 206 shares of Apple stock from JO's individual account for a loss of \$4,041.³²¹ The confirmation notice sent to JO informed him only that the markdown per share for the 206 shares was "-3.000," and that he was charged a service fee of \$50. The confirmation did not disclose the dollar cost to JO of the trade.³²² When Enforcement told him the sales charges and fees were more than \$668, he called the expense "ridiculous."³²³

With regard to his retirement account, JO did not remember if Venturino called before selling a position in Amazon stock in May 2016. The same day, half an hour after selling the Amazon shares, Venturino used the proceeds to purchase shares of Tiffany & Company for \$24,989.³²⁴ JO testified that he did not recall Venturino speaking with him about the sale of Amazon and purchase of Tiffany stock. However, he testified that he would not have approved the sale of Amazon stock, "a much better company," to buy Tiffany.³²⁵ There is no record of phone calls between JO and Venturino's Aegis phone extension for these trades.³²⁶

The following day, Venturino sold the Tiffany stock at \$4 per share less than he had just paid for it.³²⁷ There is no record of a phone call before this sale.³²⁸ JO testified that he doubted Venturino called before making the sale, as he "absolutely" would not have wanted to do it.³²⁹

When Enforcement asked if he knew what the transaction costs were for the purchase and sale of the Tiffany stock, he responded that he did not.³³⁰ The purchase confirmation sent to him shows a \$50 transaction fee and no commission. There is an entry of "1.90" under a column for "markup/down per share."³³¹ JO testified that he had no idea what that meant.³³² The purchase confirmation has no indication of how many dollars that came to.³³³ The confirmation notice of

³²¹ JX-38, at 45.

³²² JX-39, at 85.

³²³ Tr. 675–77 (JO).

³²⁴ CX-19, at 29, rows 1088–89.

³²⁵ Tr. 669–70 (JO).

³²⁶ CX-19, at 29, rows 1088–89.

³²⁷ JX-29, at 40, 45–46; CX-19, at 29, rows 1089–90; Tr. 670 (JO).

³²⁸ CX-19, at 29, row 1090.

³²⁹ Tr. 670 (JO).

³³⁰ Tr. 670–71 (JO).

³³¹ JX-30, at 50.

³³² Tr. 672 (JO).

³³³ JX-30, at 50.

the sale reflects only a \$50 service charge.³³⁴ JO testified that he did not know at the time that Venturino charged him \$812 for the purchase and sale.³³⁵

After JO transferred his accounts out of Aegis, he and his wife filed an arbitration claim against Aegis. He recalled the claim was settled for a payment of approximately \$175,000. JO was surprised when he learned at the hearing that Venturino charged a total of nearly \$95,000 for the 74 trades he executed in 18 months in JO's individual account, 28 trades in 14 months in JO and his wife JB's joint account, and 37 trades in 10 months in JO's retirement account.³³⁶

III. Conclusions of Law

The Hearing Panel carefully considered the testimony of each witness, Venturino's testimony, and the exhibits introduced into evidence. The Panel also examined the evidence available to assess the customers' professional and educational backgrounds, investment experience, and relationship with Venturino.³³⁷

The Hearing Panel, as explained below, concludes that Venturino engaged in unauthorized trading, excessive trading, and churning in the accounts of testifying customers JF, CB, DF, and JO, and the joint account of JO and JB, as alleged in the three counts of the Complaint.

However, with regard to the allegations relating to the accounts of customers RL, CA, TF, EF, WP, and RC, for the reasons set forth below, the Hearing Panel concludes that the evidence is insufficient to establish that Venturino exercised de facto control over trading in them, an essential requirement to sustain the allegations of unsuitably excessive trading and churning. For other reasons, the Panel finds that the evidence is also insufficient to prove that Venturino traded without authorization in their accounts. Therefore, the Hearing Panel dismisses the allegations relating to the accounts of customer RL, who testified, and customers CA, TF, EF, WP, and RC, who did not.

³³⁴ JX-30, at 57.

³³⁵ Tr. 672–74 (JO).

³³⁶ Tr. 678–79 (JO).

³³⁷ *Dep't of Enforcement v. Zaragoza*, No. E8A2002109804, 2008 FINRA Discip. LEXIS 28, at *16 (NAC Aug. 20, 2008).

A. Venturino Traded Without Authorization, Traded Excessively, and Churned the Accounts of Testifying Customers JF, CB, DF, and JO

1. Venturino Engaged in Unauthorized Trading, in Violation of FINRA Rule 2010 (Third Cause of Action)

It is well-established that obtaining a customer’s agreement before making a purchase or sale of securities in the customer’s account is a fundamental responsibility of a broker.³³⁸ Trading in a customer’s account without the prior approval of the customer—that is, unauthorized trading—is inconsistent with just and equitable principles of trade, and therefore a “serious breach” of FINRA Rule 2010.³³⁹ It is a “fundamental betrayal of the duty” owed by a broker to a customer.³⁴⁰

The Hearing Panel finds that Enforcement proved by a preponderance of the evidence that Venturino engaged in unauthorized trading in the accounts of customers JF, CB, DF, and JO. The compilation of dialed numbers showing calls to and from Venturino’s assigned phone extension and these customers, compared to the trade blotters showing the trades Venturino entered in each customer’s account, reveal numerous trades that were not preceded by a phone call between the customers and Venturino’s assigned extension.

The Hearing Panel also considered the testimony of the customers describing credibly their surprise when they became aware of the number of trades Venturino entered in their accounts. The Panel finds credible their testimony that there were trades they know they would not have approved for a variety of reasons. In contrast, the Hearing Panel does not find credible Venturino’s evasive and inconsistent testimony about his use of Aegis phone extensions. His uncorroborated, rotely repeated claim that he always called each customer to obtain authorization before each trade was unconvincing.

a. Venturino Traded Without Authorization in JF’s Account

There is no record of phone calls to or from Venturino’s Aegis extension for eight of the 31 trades executed by Venturino in JF’s account.³⁴¹ This evidence of unauthorized transactions is corroborated by JF’s testimony that he did not recall Venturino speaking to him about some of these trades. He did not remember, for example, Venturino speaking with him about buying and then selling Twitter stock at a loss. As noted above, he thought he would remember these trades

³³⁸ *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2008) (quoting *Carlton Wade Fleming, Jr.*, Exchange Act Release No. 36215, 1995 SEC LEXIS 2326, at *9 (Sept. 11, 1995)).

³³⁹ *Bradley Kanode*, Exchange Act Release No. 26792, 1989 SEC LEXIS 825, at *3, (May 8, 1989).

³⁴⁰ *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *23 (July 2, 2013).

³⁴¹ CX-19, at 1, 15–16, rows 632–38 (six transactions from October 27 to November 24, 2015), 646–47 (two transactions on February 12, 2016).

because Twitter, unlike the names of most other stocks Venturino recommended, was familiar to him.³⁴²

Based on the presence of these factors, the Hearing Panel concludes that Venturino engaged in eight unauthorized trades in JF's account.

b. Venturino Traded Without Authorization in CB's Account

The phone call records and CB's testimony about transactions he testified he would have remembered lead the Hearing Panel to conclude that Venturino did not contact CB and obtain approval prior to executing the 76 trades for which there is no record of a preceding phone call between CB's phone and Venturino's Aegis extension.³⁴³

The phone records reveal most transactions in CB's account were preceded by a phone call. Most of the trades in CB's account occurred during market hours, from mid-morning to mid-afternoon, when Venturino presumably was working from his desk using his assigned phone extension.³⁴⁴ The number of trades for which there were preceding phone calls suggests that Venturino usually used his assigned phone extension to speak with CB. The absence of a record of phone calls preceding 76 trades in CB's account, particularly trades CB testified he would have remembered if Venturino had called him, indicates that Venturino did not contact CB for authorization. Based on this evidence, the Hearing Panel concludes that Venturino made 76 trades without authorization in CB's account, as alleged.

c. Venturino Traded Without Authorization in DF's Account

DF testified he did not give Venturino authorization to trade in his account without consulting with him first.³⁴⁵ Venturino does not say otherwise.

³⁴² Tr. 304–05 (JF).

³⁴³ CX-19, at 1; at 3, rows 42–45 (three transactions on February 3–5, 2015); at 4, rows 56–58 (two transactions on February 17, 2015), 84–90 (four transactions from February 25–26, 2015), 92–95 (two transactions on March 2, 2015); at 5, rows 112–15 (three transactions from March 16–17, 2015), 120–22 (two transactions, one on March 26, the other on April 13, 2015); at 6, rows 154–63 (ten transactions from June 4 to June 25, 2015), 176–77 (two transactions on August 19, 2015), 185–91 (six transactions from September 9-10, 2015), 197–200 (two transactions on September 25 and one on October 2, 2015); at 7, rows 201–03 (one transaction on October 2, two on October 14, 2015), 206–12 (seven transactions from November 2 to December 3, 2015), 214–19 (six transactions from December 8–18, 2015), 221 (one transaction on December 18, 2015), 223 (one transaction on January 5, 2016), 231 (one transaction on January 26, 2016), 233–36 (one transaction on February 12, two on February 17, 2016), 238–42 (five transactions from February 26 to October 20, 2016), 246–50 (four transactions on November 16, one on November 17, 2016); and at 8, rows 251–57 (seven transactions from November 30, 2016 to May 24, 2017).

³⁴⁴ CX-19, at 3–8.

³⁴⁵ Tr. 501 (DF).

Forty of the 113 trades Venturino made in DF's account were not preceded by phone calls to or from Venturino's extension, as reflected in the Aegis records.³⁴⁶ However, the issue of unauthorized trades in DF's account is muddled by DF's inconsistent testimony and inability to recall details. For example, when asked if Venturino spoke with him in advance about selling 4,900 shares of CorMedix Inc. stock on April 1, 2015, DF testified "I am sure he did . . . for whatever reason, CorMedix rings a bell."³⁴⁷ But there is no record of a phone call between DF and Venturino preceding the sell.³⁴⁸ DF's memory of discussing this transaction with Venturino was tentative, qualified by his saying "not specifically."³⁴⁹ His statement that the name of the company "rings a bell"³⁵⁰ suggests to the Hearing Panel that DF remembered the name of the company rather than a conversation about that specific sale. As DF testified, his memory at the time of the hearing was "not near as sharp" as it was "ten years ago or five years ago."³⁵¹

A review of the record of calls on the day before or the day of trades in DF's account reveals that there was a call prior to most trades. The trades preceded by calls all occurred during normal business hours, most before noon—so do the trades for which there is not a record of preceding calls.³⁵² Many of the trades for which there is a record of calls occurred in a pattern corroborative of DF's recollection that Venturino called him several times a week. For example, there were trades with preceding calls on January 21, 22, 23, 26, and 27, 2015 and February 10, 11, 12, 13, 18, 19, and 20, 2015.³⁵³ The Hearing Panel finds this pattern corroborates DF's testimony about the frequency with which Venturino called him. Conversely, this evidence supports the inference that Venturino did not call DF to obtain authorization for the 40 trades for which there is no record of a preceding call.³⁵⁴

The Hearing Panel is keenly aware of the Statement DF signed which purports to present a defense to every element charged against Venturino in the Complaint. But, after weighing the evidence in its entirety, the Panel is satisfied that, as DF said, his sympathy for Venturino led him

³⁴⁶ CX-19, at 1, 16–19.

³⁴⁷ Tr. 506 (DF).

³⁴⁸ CX-19, at 18, rows 736–37.

³⁴⁹ Tr. 506 (DF).

³⁵⁰ Tr. 506 (DF).

³⁵¹ Tr. 594 (DF).

³⁵² CX-19, at 16–19.

³⁵³ CX-19, at 16–17.

³⁵⁴ CX-19, at 1; at 17, rows 677–79 (two transactions on February 23, 2015), 696–99 (three transactions on February 17, 2015), 708 (one transaction on March 2, 2015); at 18, rows 709–17 (six transactions from March 2 to 5, 2015), 725–31 (one transaction on March 12 and two on March 13, 2015), 736–43 (six transactions from April 1 to April 15, 2015), 755–58 (one transaction on May 18, three on May 19, 2015); at 19, rows 759–63 (one transaction on May 26, three on May 28, and one on May 29, 2015), 767–70 (four transactions from June 18 to June 23, 2015); 780–82 (two transactions on November 20 and one on November 24, 2015), 784 (one transaction on December 3, 2015), 786 (one transaction on December 14, 2015), 791 (one transaction on January 7, 2016).

to sign it, despite its falsity, because Venturino urged him to, and because he was “brought up to forgive people.”³⁵⁵

Therefore, the Hearing Panel concludes that Venturino executed 40 trades in DF’s account without authorization.

d. Venturino Traded Without Authorization in JO’s Accounts

After careful consideration of the evidence, the Hearing Panel concludes that Venturino engaged in unauthorized trading in all three of JO’s Aegis accounts.

The phone records show no evidence of phone calls between Venturino’s extension and JO on the day before or day of 50 trades across the three accounts.³⁵⁶ And JO testified credibly that, after he was prompted to look more closely at the trading, he realized he had been unaware that Venturino “was doing that many purchases and sales because the amount of phone calls and discussions that we had would only lead to a handful of stocks, not that many.”³⁵⁷ JO’s testimony is consistent with that of JF, CB, and DF, who all testified that they had been unaware of much of the trading Venturino did in their accounts.

Consequently, the Hearing Panel concludes that Venturino executed 50 trades in JO’s accounts without his authorization.³⁵⁸

³⁵⁵ Tr. 596 (DF).

³⁵⁶ CX-19, at 1, 22–32.

³⁵⁷ Tr. 761 (JO).

³⁵⁸ CX-19, at 1. There were 50 unauthorized trades in JO’s accounts. For the 25 unauthorized trades in JO’s individual account, *see* CX-19 at 23, rows 953 (one transaction on February 1, 2016), 963–64 (two transactions on March 7, 2016); at 24, rows 978–90 (six transactions from March 28 to April 6, 2016); at 25, rows 993–1013 (six transactions from April 14 to April 25, 2016); at 26, rows 1014–19 two transactions on April 26, 2016); at 27, row 1020–21 (one transaction on April 27, 2016), rows 1024–25 (one transaction on July 20 and another on July 21, 2016), 1027–29 (two transactions on July 27, 2016), 1036–40 (one transaction on November 30, 2016, another on January 26, 2017, and a third on March 29, 2017).

For the 13 unauthorized trades in JO’s retirement account, *see* CX-19 at 28, row 1051 (one transaction on February 1, 2016), rows 1065–66 (two transactions on March 7, 2016); at 29, row 1077 (one transaction on April 26, 2016), rows 1080–91 (six transactions from May 16 to May 25, 2016); at 30, rows 1092–96 (one transaction on May 25, 2016), 1103–04 (two transactions on September 27, 2016).

For the 12 unauthorized trades in JO’s joint account, *see* CX-19 at 30, rows 1113–16 (one trade on February 17, 2016); at 31, rows 1117–21 (one trade on February 23, 2016), 1124–27 (two trades on March 7 and one on March 8, 2016); 1134–35 (two trades on March 31, 2016), 1138–41 (four trades from May 6 to May 13, 2016); at 32, row 1147 (one trade on January 26, 2017).

2. Venturino Engaged in Unsuitably Excessive Trading, in Violation of FINRA Rules 2111 and 2010 (Second Cause of Action)

FINRA Rule 2111—FINRA’s suitability rule—requires that “an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security . . . is suitable for the customer, based on the information obtained” through “reasonable diligence . . . to ascertain the customer’s investment profile.” The relevant investment profile information includes “the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose.”

During the relevant period, a provision of Rule 2111(a)’s Supplementary Material at paragraph .05(c) was in effect.³⁵⁹ It stated that Rule 2111 imposes three suitability obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.³⁶⁰ Cause two of the Complaint alleges that Venturino’s trading in his customers’ accounts was quantitatively unsuitable. Rule 2111(a)’s Supplementary Material at paragraph .05(c) prescribed the elements of the quantitative suitability obligations of a broker as follows:

Quantitative suitability requires a member or associated person *who has actual or de facto control over a customer* account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer’s investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-to-equity ratio, and the use of in-and-out trading in a customer’s account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation. (Emphasis supplied).

Thus, the two essential elements required to prove that a broker has engaged in quantitatively unsuitable trading are that: (i) the broker, not the customer, controlled trading in the customer’s account; and (ii) the broker engaged in trading at a level unsuitable for the customer.

a. De Facto Control

A broker’s control over an account may be formal or de facto.³⁶¹ Formal control occurs when an account is discretionary because the customer grants the broker authority to trade on the

³⁵⁹ Rule 2111(a)’s Supplementary Material at paragraph .05(c) was in effect from May 1, 2014, through June 29, 2020, when the current revised version of Rule 2111 became effective.

³⁶⁰ Supplementary Material 2111.05(c).

³⁶¹ *Beyn*, 2023 SEC LEXIS 980, at *7 (citing *Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917, at *8 (Apr. 3, 2020)).

customer's behalf without obtaining the customer's approval before executing each trade.³⁶² De facto control, in non-discretionary accounts like the Aegis accounts at issue in this case, occurs when a broker controls the trading without a grant of discretionary authority.³⁶³

There are several indicators long recognized as evidence that a broker exercises de facto control over a customer account. One is routine customer reliance on the broker's recommendations. De facto control may be proven when a customer "routinely follows a registered representative's recommendations," relying on the broker to the extent that it is the broker who "controls the volume and frequency of transactions."³⁶⁴ Another is the relative predominance of solicited trades, initiated by the broker, compared to unsolicited trades, suggested by the customer. The Securities and Exchange Commission ("SEC") recently found that a broker exercised de facto control when "[h]e solicited nearly all trades in the accounts, and the customers acquiesced routinely to his recommendations."³⁶⁵

A third indicator is a broker's concealment of trading costs from a customer. If a broker does not disclose the costs the customer is being charged, the broker inhibits the customer's "ability to evaluate the potential profitability" of the broker's strategy and recommendations, impeding the customer's ability to make investment decisions and control the management of the account.³⁶⁶

Finally, evidence of unauthorized trading is a significant indicator of a broker's exercise of de facto control over a customer's account. As the SEC has observed, when "a broker engages in unauthorized transactions, he operates as though he has been delegated discretionary authority (and thus formal control) by the client, although he has not been."³⁶⁷

As noted above, Venturino engaged in unauthorized trading in the accounts of JF, CB, DF, and JO. As described below, there is also other substantial evidence of Venturino's exercise of de facto control over their accounts.

³⁶² *Dep't of Enforcement v. Medeck*, No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at *34 (NAC July 30, 2009) (citing *Peter C. Bucchieri*, Exchange Act Release No. 37218, 1996 SEC LEXIS 1331, at *11 n.11 (May 14, 1996) ("If a broker is formally given discretionary authority to buy and sell for the account of his customer, he clearly controls it.")).

³⁶³ *Beyn*, 2023 SEC LEXIS 980, at *7–8 (citing *Newport Coast Sec.*, 2020 SEC LEXIS 917, at *8).

³⁶⁴ *Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at *12–13 (May 29, 2015) (quoting *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *29 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012)).

³⁶⁵ *Beyn*, 2023 SEC LEXIS 980, at *12.

³⁶⁶ *Id.* at *12 & n.28 (citing *Cody*, 2011 SEC LEXIS 1862, at *38–39) (finding that misleading account summaries frustrated customers' efforts to understand the trading in and values of their accounts).

³⁶⁷ *Calabro*, 2015 SEC LEXIS 2175, at *13 ("[W]e have also recognized that a broker's unauthorized transactions support a finding of control") & n.20 (citations omitted).

i. Venturino Exercised De Facto Control Over JF's Account

Venturino insists that JF controlled the trading in his Aegis account. For evidence, he cites JF's indication on his Aegis new account form that when he made investment decisions, he relied not just on Venturino, but turned to "other sources of financial information" and other parties. Venturino argues that JF's signature on an Aegis active trading letter "demolished any claim" that Venturino controlled the account.³⁶⁸ To support this contention, Venturino points to the standard account documents in JF's account: a margin account application explaining the risks of using margin; trade confirmations; and monthly account statements.³⁶⁹

The Hearing Panel is not persuaded by Venturino's assertions. JF was not a sophisticated investor. The manager of JF's retirement account was the only person other than Venturino with whom JF talked about investments. And with both accounts, JF explained that he left it to his advisors to decide what to buy, what to sell, when to trade, and the size of trades because he had no knowledge of the market and no input to provide. That is why he never rejected a Venturino recommendation to buy or sell stocks.³⁷⁰ This is consistent with his statement that he relied "100 percent" on Venturino's recommendations, based on his assumption that Venturino knew about the stocks he touted.³⁷¹

JF testified that Venturino never discussed trading costs with him.³⁷² This testimony is consistent with that of CB, DF, and JO.³⁷³ As a result, it was difficult for JF to assess the profitability of his account. The Aegis confirmations and monthly account statements were not helpful to him; they did not inform customers of the actual amount of their costs. They disclosed commissions Venturino charged and showed the standard \$50 transaction fees Aegis assessed. But they did not explain the markups Venturino routinely charged on stock purchases. For example, confirmation notices Aegis sent to JF for purchases of TrueCar Inc. stock do not disclose the dollar amount he was charged. They have a column for "Mark up/down per share," showing "0.3500."³⁷⁴ JF testified, "I don't know what that means . . . I do not know if that is 35 percent, 35 cents. I don't know if it is up or if it is down."³⁷⁵ He was surprised to learn that the markup for these transactions, 35 cents per share for 1,900 shares, came to \$665.³⁷⁶ JF's surprise at the amount of the markup on this pair of stock purchases appeared genuine. He had no idea

³⁶⁸ Resp. Br. 15.

³⁶⁹ *Id.*

³⁷⁰ Tr. 292–94 (JF).

³⁷¹ Tr. 292–93 (JF).

³⁷² Tr. 294 (JF).

³⁷³ Tr. 401–02, 409 (CB); 469, 486 (DF); 611, 628, 678 (JO).

³⁷⁴ JX-25, at 23–24.

³⁷⁵ Tr. 314 (JF).

³⁷⁶ Tr. 314–15 (JF).

how to compute the actual charge represented by the markup.³⁷⁷ The Hearing Panel finds this testimony credible.

The Hearing Panel finds that Venturino exercised de facto control over JF's account.

ii. Venturino Exercised De Facto Control Over CB's Account

Contesting the allegation that he exercised de facto control over CB's Aegis account, Venturino argues that CB was an experienced investor. Venturino points out that CB identified his investment objective as speculation with high risk tolerance and described his investment knowledge as "excellent" on documents for prior brokerage accounts he opened in 2012. Venturino complains that CB's actual investor profile conflicts with the Complaint's description of his having just a "moderate tolerance for risk."³⁷⁸ Venturino notes that CB testified he had investments for 35 years, held accounts with three broker-dealers, and "even reviewed other investment research and sent it to Mr. Venturino."³⁷⁹ Venturino attacks CB's memory, and his credibility, because CB does not remember receiving as many Aegis trade confirmations as the record shows were sent to him.³⁸⁰ More pointedly, Venturino argues that "any claim that there were unauthorized trades" in his account "was belied" by CB's having "continued to send in funds" to the account until 2017.³⁸¹

Venturino argues that because CB signed a day trading authorization and active trading letter, "[t]here is simply no way that [he] could have been ignorant of the type of activity he was engaging in and the risks he was assuming."³⁸² Venturino further attacks CB's credibility by asserting that the cross examination of CB established "a fair basis for believing that he is currently acting as [an] unregistered broker dealer."³⁸³

Venturino challenges CB's credibility because the statement of claim filed in January 2021 in the arbitration case—in which CB was a claimant—made some allegations CB acknowledges do not apply to him. For example, it states that Venturino instructed the claimants to sign documents relying on his representations that they "were mere boilerplate forms that did not need to get read."³⁸⁴ When asked if Venturino ever told CB the Aegis documents he signed

³⁷⁷ Tr. 314–15 (JF).

³⁷⁸ Resp. Br. 17 (citing RX-14, at 2 and Complaint ("Compl.") ¶ 36).

³⁷⁹ Resp. Br. 16 (referring to RX-10–RX-12, three emails that CB received and forwarded to Venturino). RX-10 and RX-11 contain articles on the economy from an investment research newsletter. In RX-11, CB asks if Venturino considered the "general market indicators" discussed in the article. RX-12 refers to a specific company that CB asked Venturino to look at.

³⁸⁰ Resp. Br. 16.

³⁸¹ Resp. Br. 17 (citing RX-13, at 15 (a check from CB for a margin payment for his Aegis account)).

³⁸² Resp. Br. 18.

³⁸³ Resp. Br. 16.

³⁸⁴ JX-3, at 4, § 23.

were “boilerplate” and CB “didn’t have to read them,” CB said, “I don’t think he told me that, no.”³⁸⁵

The Hearing Panel disagrees with Venturino’s assessment of CB’s credibility. As for the forms CB signed, he explained credibly that Venturino told him that they were “standard forms that he had to have in the file and not anything that we needed to discuss, and I didn’t need to be concerned about it.”³⁸⁶ The Panel notes that other testifying customers gave similar testimony about what Venturino told them—for example, that it was necessary for them to sign margin account applications to enable him to engage in the type of trading he would recommend.³⁸⁷

The Hearing Panel finds Venturino’s arguments based on the arbitration statement of claim to be unpersuasive. The arbitration claim was drafted by a lawyer representing ten claimants. It summarizes the lawyer’s view of the case in anticipation of litigation. It does not purport to quote CB specifically.

The Hearing Panel finds CB was a credible witness. The record reveals no evidence of a motive for him to testify falsely, and no basis for concluding that he is an “unregistered broker dealer,”³⁸⁸ as Venturino contends. The Panel does not think CB’s lack of recollection of receiving as many as 21 active trading notices affects the credibility of his testimony that he relied on Venturino’s recommendations and that Venturino determined the nature, timing, and volume of the stocks purchased in CB’s account.

Venturino marked all but three of the securities purchases in CB’s account as solicited, an indicator of Venturino’s exercise of de facto control.³⁸⁹ In addition, the high percentage of trades with no evidence of a preceding phone call—76 out of 195 trades, or almost 40 percent—is evidence that Venturino effected almost half of the trades in CB’s account without contacting him first.³⁹⁰ Consistent with this record, CB testified that, despite the passage of time, he believed he would remember if he had authorized certain trades because of the amount of money involved. For example, CB testified that he would not have approved of two purchases of Oxford Lane Capital stock—one for more than \$78,000 and the other for \$122,000—on margin, because one was for an amount slightly under the total value of his account, and the other exceeded the value of his account.³⁹¹

³⁸⁵ Tr. 430 (CB).

³⁸⁶ Tr. 454 (CB).

³⁸⁷ See, e.g., Tr. 282–83 (JF) (JF signed margin agreement form because Venturino said he needed to do so to proceed); Tr. 484–85 (DF) (DF applied for margin account at Venturino’s suggestion, though he was unsure he understood how it worked).

³⁸⁸ Tr. 1756 (Respondent’s counsel); Resp. Br. 16.

³⁸⁹ CX-3.

³⁹⁰ CX-19, at 3–8.

³⁹¹ Tr. 404–06 (CB); CX-3, at 5.

The Hearing Panel also finds credible CB's testimony that he almost always followed Venturino's recommendations. The evidence establishes that CB relied on Venturino's recommendations routinely, to such a degree that Venturino, not CB, determined what securities to purchase and sell, when, and at what price and volume. His testimony that it was his practice to rely on Venturino is consistent with his testimony about how he relied on his longtime financial advisor to make the decisions concerning investments in his retirement account. Contrary to Venturino's assertion, the three emails CB sent Venturino are not evidence that CB conducted his own research before accepting Venturino's trading recommendations.

And the evidence supports the conclusion that CB had no idea of what Venturino was charging him. Venturino never explained the costs or his practice of alternating riskless principal trades for purchases (for which he charged large markups) with agency trades for sales of securities (for which he charged smaller amounts as commissions). The dollar amount of commissions charged appear on the statements and confirmations Aegis sends to customers, but the dollar amount of markups is not shown, making it difficult for customers to track the costs of the trading. Consequently, CB was unable to accurately assess his prospects for realizing a profit. The Hearing Panel is satisfied that Venturino exercised de facto control over CB's account.

iii. Venturino Exercised De Facto Control Over DF's Account

As evidence that DF controlled trading in his account, Venturino stresses DF's investment experience—the extent of which DF did not at first disclose in his direct examination—and a box he checked on his first Aegis new account application indicating that when making investment decisions, he consulted “other sources of financial information”³⁹² Venturino also cites the number of investment accounts DF has held—including DF's three other Aegis accounts, two opened in late 2016³⁹³ and one in August 2019³⁹⁴—and other accounts with various broker-dealers opened from 2015 to 2019. As Venturino argues, the account documents describe DF's risk tolerance and investment objectives in the same terms used in his Aegis account with Venturino.³⁹⁵ These accounts, Venturino argues, belie DF's testimony that he did not understand the active trading in his account and prove that DF, not Venturino, controlled the account's activity.³⁹⁶

³⁹² Resp. Br. 19–21 (referring to JX-18, at 2). Venturino mistakenly refers to it as RX-51, a document not in evidence.

³⁹³ RX-63; RX-64.

³⁹⁴ RX-65.

³⁹⁵ Resp. Br. 20–21; *see* RX-58, at 2; RX-60, at 2; RX-63, at 1; RX-64, at 1.

³⁹⁶ Resp. Br. 21.

Venturino also points out that DF knew what Venturino was doing because he received confirmations and monthly statements that listed “every trade, the cost of the transaction and even . . . how much margin he was using.”³⁹⁷

Finally, Venturino places great emphasis on DF’s Statement, arguing that it “utterly demolishes every claim that FINRA alleges against Mr. Venturino.”³⁹⁸ DF, according to Venturino, is an example of his belief that “Customers often lie.”³⁹⁹ He argues that “a moment of truthful testimony” from DF came when he testified that Venturino “asked him for the statement because [he] had been accused of doing things he didn’t do.” He claims that this not only shows DF knew “Venturino had been falsely accused,” but that DF was partly responsible for the false accusations.⁴⁰⁰ Venturino contends that chief among DF’s lies was his testimony that he signed the Statement before he knew Venturino had engaged in wrongful activity in the account.⁴⁰¹

The Hearing Panel recognizes the inconsistencies in DF’s testimony and the answers on direct examination that he retracted on cross examination. His memory was unreliable. DF admitted that as he has aged, his memory has become less reliable or, as he put it, “I am not near as sharp today as I was before I got 73.”⁴⁰² Therefore, the Panel does not accept his testimony as wholly credible.

But despite the inconsistencies, the Hearing Panel finds DF credible on significant points. One is DF’s explanation for signing the Statement despite its falsehoods. The Hearing Panel finds that DF was sincere in saying he had considered Venturino a friend and was sympathetic when Venturino said “his hand was in a vice,” and he needed help from “investors saying that he had not done the things he had done.”⁴⁰³ So, DF agreed to help him, and signed the Statement even though it was untrue.

DF acknowledged that the Hearing Panel might “agree or disagree” with his decision, but having been “brought up to forgive people,” he decided to forgive Venturino for taking advantage of him and signed the Statement to help him.⁴⁰⁴ The Hearing Panel sees a similarity between Venturino’s use of the Statement and the tactic of a broker described in a recent SEC decision who told customers “he needed [a] document signed as a favor to avoid trouble . . . ‘in

³⁹⁷ *Id.* at 20.

³⁹⁸ *Id.* at 18.

³⁹⁹ *Id.* at 19.

⁴⁰⁰ Resp. Br. 18.

⁴⁰¹ *Id.*

⁴⁰² Tr. 594 (DF).

⁴⁰³ Tr. 596–97 (DF).

⁴⁰⁴ Tr. 595–97 (DF).

order to keep trading.”⁴⁰⁵ Here, the Panel finds that Venturino preyed on the sympathy of a customer whose trust and friendship he had cultivated while taking advantage of him.

The Hearing Panel finds other parts of DF’s testimony also creditworthy. DF was credible when he testified that: (i) Venturino did not discuss the costs he charged DF for his trading; (ii) DF was unaware of Venturino’s markups; (iii) he did not understand markups or the distinction between agency and riskless principal trades; and (iv) Venturino did not mention or explain them.⁴⁰⁶ On these points, DF’s testimony parallels that of other testifying customers—all of whom testified Venturino never explained trading costs, or the markups he was charging, and that they had no idea what markups were.⁴⁰⁷

Further, contrary to Venturino’s arguments, the trade confirmations and account statements Aegis sent its customers did not make the costs clear. Even if they had, it is well-established that after-the-fact notice of trades sent to customers in statements and confirmations is not evidence that the customers approved transactions before they were completed.⁴⁰⁸ Therefore, the Hearing Panel rejects Venturino’s claim that because Aegis sent DF account statements and confirmation notices, he must have been aware of the costs Venturino charged for the trades in the account. As noted above, Aegis account statements nowhere accurately disclosed total actual transaction costs.⁴⁰⁹ The same is true of Aegis confirmation notices. The confirmations showed a standard “service charge,” usually \$50, “0.000%” for “sales charge rate,” and showed commissions when charged.⁴¹⁰ But for markups, the confirmation notices did not show a dollar figure.⁴¹¹

When asked what percentage of the time he relied on Venturino’s recommendations, DF answered, without hesitation, “100.” Asked why, DF answered, “I trusted him that is why.”⁴¹² DF testified that he conducted no investment research on his own, offered no ideas about investments to Venturino, and only declined to follow a few recommendations when he did not have the funds necessary to make a recommended purchase.⁴¹³ DF also testified that Venturino

⁴⁰⁵ *Beyn*, 2023 SEC LEXIS 980, at *14.

⁴⁰⁶ Tr. 469–71, 513 (DF).

⁴⁰⁷ *See, e.g.*, Tr. 272, 294–95 (JF) (Venturino did not mention markups, did not explain riskless principal/agency trading, did not discuss costs with JF); Tr. 376–77 (CB) (Venturino did not disclose what he charged for trading, did not mention markups, did not discuss riskless principal/agency trading with CB); Tr. 611, 759 (JO) (Venturino did not discuss costs, explain markups, or riskless/agency trading with JO).

⁴⁰⁸ *Calabro*, 2015 SEC LEXIS 2175, at *16.

⁴⁰⁹ *See, e.g.*, JX-14, at 95–99.

⁴¹⁰ *See, e.g.*, JX-15, at 1, showing \$0 commission and “0.000%” in the column marked “Sales Charge Rate,” and JX-15, at 6, showing a \$199 commission, and “0.000%” sales charge rate.

⁴¹¹ *See, e.g.*, JX-15, at 138.

⁴¹² Tr. 498–99 (DF).

⁴¹³ Tr. 499 (DF).

made the decisions to purchase and sell securities, and that he did not keep track of how his account was doing, had no idea what the costs of trading were, and did not try to calculate the costs on his own.⁴¹⁴ This is consistent with DF's unchallenged testimony that in his other brokerage accounts he relied on the recommendations of his brokers.⁴¹⁵

An important indicator of a customer's reliance on a broker's recommendations is the number of trades solicited by the broker compared to the number of unsolicited trades.⁴¹⁶ Here, Venturino marked 111 of the 113 trades in DF's account during 19 months of activity as solicited⁴¹⁷—a strong indication that Venturino controlled the trading.

For these reasons, the Hearing Panel finds that Enforcement established by a preponderance of the evidence that Venturino exercised de facto control over DF's Aegis account.

iv. Venturino Exercised De Facto Control Over JO's Accounts

To support his contention that JO controlled trading in his Aegis accounts, Venturino argues that JO was wealthy, consistently identified speculation as his investment objective, described his risk exposure as maximum in all three of his Aegis accounts, and testified that he reviewed his account statements and confirmations. Venturino points out that JO marked the box in account application forms indicating that he consulted with "other sources of financial information."⁴¹⁸ In addition to JO's investment and business experience, Venturino emphasizes that JO acknowledged receiving account statements, trade confirmations, and other Aegis account documents informing him about the activity in his accounts.⁴¹⁹

Venturino challenges JO's credibility and argues that JO did not rely on Venturino's recommendations. Venturino contends that JO lied when he testified that Venturino did not provide him with research on his recommendations, pointing to the emails they exchanged about stocks. Venturino also argues that JO "did his own research and consulted extensively" with his

⁴¹⁴ Tr. 500–501 (DF).

⁴¹⁵ Tr. 468 (DF).

⁴¹⁶ See *Beyn*, 2023 SEC LEXIS 980, at *12 (holding that solicitation of most trades and routine customer acquiescence to broker's recommendations are probative of de facto control) (citing *Calabro*, 2015 SEC LEXIS 2175, at *13–15 (finding broker exercised de facto control when customer relied on broker's recommendations, determining frequency and volume of trades and strategy; broker traded without authorization; customer only learned of trades after-the-fact from receipt of confirmations; and despite customer's investment sophistication, customer did not suggest or reject trades)).

⁴¹⁷ CX-7.

⁴¹⁸ Resp. Br. 21–22.

⁴¹⁹ *Id.*

company's financial director.⁴²⁰ Venturino also challenges JO's testimony that Venturino made unauthorized trades, arguing that JO's "testimony was confusing and contradictory."⁴²¹

The Hearing Panel recognizes that JO was not a neophyte investor, but he never presented himself as such. The Panel concludes that he was a forthright, credible witness. JO is well-educated and an accomplished businessman. Like other testifying customers, JO stated credibly that he did not carefully review the account documents Aegis sent him. JO testified without challenge that during the relevant period his business responsibilities took him on the road "50, 60 percent of my time,"⁴²² while confirmation notices and other mailings from Aegis piled up. Given his demanding business travels, he reviewed them occasionally, but not thoroughly. As he put it, he was too busy to "babysit" his accounts.⁴²³ He relied on his broker to do that.

The Hearing Panel finds that JO—albeit experienced—was not a sophisticated investor. He did not know what a private placement was, was unfamiliar with markups and markdowns, and had no idea of what riskless principal and agency trades were.⁴²⁴

The Hearing Panel also finds that JO relied on Venturino's recommendations. Venturino marked an overwhelming majority of the trades in all three of JO's accounts solicited: 68 of the 74 transactions in JO's individual account; 33 of 37 in his retirement account; and 27 of 28 in his joint account.⁴²⁵ This is evidence of JO's reliance on Venturino's recommendations and indicative of Venturino's de facto control over his customer's account.⁴²⁶

Venturino often recommended trades of stocks unfamiliar to JO. Although, as noted above, JO occasionally consulted with his company's finance director about unfamiliar recommendations, and occasionally rejected a recommendation, the evidence does not support Venturino's claim that JO "consulted extensively" with his colleague or anyone else. The evidence persuades the Hearing Panel that JO routinely accepted Venturino's recommendations. The Panel finds credible JO's testimony that his infrequent rejections were not based on an evaluation of the securities involved, but because he did not want to place additional funds in his accounts.

The Hearing Panel finds that Venturino did not inform JO of the costs he charged, contrary to Venturino's claim to have discussed every trade's cost with every customer. As a

⁴²⁰ *Id.* at 23.

⁴²¹ *Id.* at 23–24.

⁴²² Tr. 649 (JO).

⁴²³ Tr. 609 (JO).

⁴²⁴ Tr. 609–11, 692–93 (JO).

⁴²⁵ CX-10, CX-11, and CX-12 (trade schedules for JO's individual, retirement, and joint accounts).

⁴²⁶ *Beyn*, 2023 SEC LEXIS 980, at *12.

result, JO was unable to assess the profitability of the trading in his accounts, a significant impediment to his ability to exercise judgment and control the trading.⁴²⁷ For these reasons, the Panel concludes that Venturino exercised de facto control over JO's accounts.

b. Excessive Trading

Once it has been determined that a broker exercises de facto control over the activity in a customer account, excessive trading is established when the “level of that trading is inconsistent with the customer’s objectives and financial situation.”⁴²⁸ The SEC has found excessive trading when a broker’s “trading strategy results in costs so high as to make the generation of any profit unlikely.”⁴²⁹

Cost-to-equity ratios, turnover rates, and in-and-out trading are recognized indicators of excessive trading. The SEC and FINRA have stated that although there is no specific cost-to-equity ratio or turnover rate conclusively establishing excessive trading, these, along with the presence of in-and-out trading, are factors that may provide a basis for a finding of excessive trading.⁴³⁰

The cost-to-equity ratio is the amount an account would have to appreciate annually to break even given the costs of trading.⁴³¹ It is calculated by dividing the total cost of the trading expenses in an account by the account’s average monthly equity.⁴³² The SEC has held that a cost-to-equity ratio exceeding 20 percent “generally indicates that excessive trading has occurred.”⁴³³

The turnover rate is the number of times in one year that a portfolio of securities is exchanged for another portfolio.⁴³⁴ The turnover rate is determined by dividing the purchases in

⁴²⁷ *Id.* at *10–12 (finding broker exercised de facto control when not disclosing costs of trades which customers discovered after the fact and were unable to evaluate potential profitability of broker’s recommendations).

⁴²⁸ *Id.* at *7 (citing *Cody*, 2011 SEC LEXIS 1862, at *29).

⁴²⁹ *Clyde J. Bruff*, Exchange Act Release No. 40583, 1998 SEC LEXIS 2266, at *11 n.13 (Oct. 21, 1998), *aff’d*, 198 F.3d 253, (9th Cir. 1999) (citing *Donald A. Roche*, Exchange Act Release No. 38742, 1997 SEC LEXIS 1283 at *14 (June 17, 1997)).

⁴³⁰ FINRA Rule 2111(a), Supplementary Material 2111.05(c); *Beyn*, 2023 SEC LEXIS 980, at *7.

⁴³¹ *Beyn*, 2023 SEC LEXIS 980, at *7 (citing *Calabro*, 2015 SEC LEXIS 2175, at *18–19).

⁴³² *Calabro*, 2015 SEC LEXIS 2175, at *18. For example, a cost-to-equity ratio of 8.7 percent means that an account would need to produce gains of 8.7 percent to break even, before it can generate a profit; *Cody*, 2011 SEC LEXIS 1862, at *13–14 & n.5.

⁴³³ *Beyn*, 2023 SEC LEXIS 980, at *7 n.18 (citing *Calabro*, 2015 SEC LEXIS 2175, at *18–19).

⁴³⁴ *Id.* at *7 (citing *Calabro*, 2015 SEC LEXIS 2175, at *18).

an account by the average equity and annualizing the result.⁴³⁵ The SEC has held that an annualized turnover rate of six indicates that excessive trading may have occurred.⁴³⁶

In-and-out trading is the sale of all or a portion of the securities in an account followed by reinvestment of the sales proceeds in other securities, and then the sale of the newly acquired securities.⁴³⁷ It, too, may indicate excessive trading.⁴³⁸

For the reasons stated in our analysis of the accounts of JF, CB, DF, and JO below, the Hearing Panel finds that Venturino engaged in quantitatively unsuitable or excessive trading in the accounts of these customers, in violation of FINRA Rules 2111 and 2010.

i. Venturino Traded Excessively in JF's Account

JF's account was open for one year.⁴³⁹ The average month-end equity value of the account was just \$6,760, but the 31 trades that Venturino entered in the account had a total principal value of \$492,746.⁴⁴⁰ The annualized cost-to-equity ratio in JF's account was 150 percent and the annualized turnover rate was 38.13,⁴⁴¹ well above the standard accepted thresholds—a cost-to-equity ratio of 20 percent⁴⁴² and turnover rate of six⁴⁴³—indicative of excessive trading.

The volume of trading, and the presence of in-and-out trading in JF's account, are also indicative of excessive trading. For example, in the roughly five weeks between October 16 and November 24, 2015, Venturino made eight purchases and sales of seven securities for JF. He held one position for three days, another for two, and two more for just one day.⁴⁴⁴ Based on these facts, the Hearing Panel finds that Venturino's trading in JF's account was unsuitably excessive.

⁴³⁵ *Calabro*, 2015 SEC LEXIS 2175, at *18. For example, a turnover rate of 3.4 means that an account's investments were sold and replaced more than three times in a year. *Cody*, 2011 SEC LEXIS 1862, at *13–14 & n.5.

⁴³⁶ *Beyn*, 2023 SEC LEXIS 980, at *7 n.18 (citing *Calabro*, 2015 SEC LEXIS 2175, at *19).

⁴³⁷ *Newport Coast Sec., Inc.*, 2018 FINRA Discip. LEXIS 14, at *99 n.42 (citation omitted).

⁴³⁸ *Id.* at *99.

⁴³⁹ CX-1, at 1.

⁴⁴⁰ CX-1, at 2; CX-6.

⁴⁴¹ CX-1, at 1.

⁴⁴² *Beyn*, 2023 SEC LEXIS 980, at *7, n.18 (citing *Calabro*, 2015 SEC LEXIS 2175, at *19).

⁴⁴³ *Calabro*, 2015 SEC LEXIS 2175, at *19; *see also Beyn*, 2023 SEC LEXIS 980, at *7; *Newport Coast Sec.*, 2018 FINRA Discip. LEXIS 14, at *99.

⁴⁴⁴ CX-15, at 2, rows 38–56. The exhibit shows a purchase of Hasbro, Inc. on October 16, 2015, sold on October 19; a purchase of Manhattan Associates Inc. on October 19, sold on October 21; a purchase of Proofpoint Inc. on October 21, sold on October 22; and a purchase of LogMeIn, Inc. on October 22, sold on October 23.

ii. Venturino Traded Excessively in CB's Account

Venturino traded in CB's Aegis account for almost three years, from August 22, 2014, through May 24, 2017. Over those 34 months of trading activity, Venturino placed 195 trades, an average of about five per month.⁴⁴⁵ The total principal value of the trading came to \$7,083,116, but the average month-end equity in the account was only \$31,485.⁴⁴⁶ Venturino's trading in the account resulted in an annualized cost-to-equity ratio of 95.35 percent and an annualized turnover rate of 40.56.⁴⁴⁷ Over the life of the account, CB lost \$144,103, over half of which included costs of \$85,060.⁴⁴⁸ Most of those costs—\$72,419—were Venturino's markups and commissions.⁴⁴⁹

In one three-week period, from November 5 to November 26, 2014, Venturino's trading in two stocks fit the pattern of in-and-out trading in CB's account. On November 5, he bought 500 shares of Skyworks, sold the position for a loss of \$539 on November 17, and bought 500 shares again on November 18.⁴⁵⁰ He then again sold the position on November 26 for a gain of \$1,264.⁴⁵¹ These four transactions, resulting in a net gain of \$725, cost CB a total of \$1,774, including markups and commissions of \$1,573.⁴⁵² On November 17, Venturino purchased 600 shares of Home Depot stock in three transactions, then sold the entire position the next day for about \$4 per share less than he had paid, for a loss of \$2,690.⁴⁵³ In addition, Venturino charged CB \$1,740 in markups on the purchases and a \$99 commission on the sale.⁴⁵⁴ Venturino charged \$1,940 for the Home Depot transactions, including Aegis's fees; combined with the loss from the last sale of the position, CB's account lost \$4,630.⁴⁵⁵

The volume of Venturino's trading in CB's account, the high turnover rate, and cost-to-equity ratio—at 95.35 percent,⁴⁵⁶ nearly five times greater than the generally accepted threshold indicative of excessive trading—lead the Hearing Panel to conclude that Venturino traded CB's account excessively. The flurry of in-and-out trading in November 2014 also supports this

⁴⁴⁵ CX-1.

⁴⁴⁶ CX-1, at 2.

⁴⁴⁷ CX-1, at 1.

⁴⁴⁸ CX-1, at 1.

⁴⁴⁹ CX-1, at 2.

⁴⁵⁰ CX-15, at 1, rows 5–6, 11–12.

⁴⁵¹ CX-15, at 1, row 13.

⁴⁵² CX-15, at 1, rows 5–6, 11–13.

⁴⁵³ CX-15, at 1, rows 7–10.

⁴⁵⁴ CX-15, at 1, rows 7–10.

⁴⁵⁵ CX-15, at 1, rows 5–13.

⁴⁵⁶ CX-1, at 1.

conclusion. Venturino’s management of CB’s account made it virtually impossible for CB to realize a profit and, in fact, ensured that he would suffer losses.

Based on these facts, the Hearing Panel determines that Venturino’s trading in CB’s account was unsuitably excessive.

iii. Venturino Traded Excessively in DF’s Account

Undisputed facts about Venturino’s trading in DF’s account lead the Hearing Panel to conclude that Venturino engaged in excessive trading. Venturino made 113 trades over 19 months, averaging six trades per month, more than one each week.⁴⁵⁷ The total principal value of those trades came to about \$4 million, while the account’s average month-end equity was only \$23,849.⁴⁵⁸ The annualized cost-to-equity ratio of 164.75 percent—eight times the recognized threshold—is compelling evidence of excessive trading and indicates that despite DF’s speculative objective and high-risk tolerance, Venturino’s trading made it virtually impossible for DF’s account to break even, much less earn a profit. The annualized turnover rate of 54.85, nine times the generally recognized threshold of six, further supports a finding of excessive trading.⁴⁵⁹

Taken together, the Hearing Panel finds these facts to be compelling evidence that Venturino engaged in excessive trading in DF’s account.

iv. Venturino Traded Excessively in JO’s Accounts

(a) JO’s Individual Account

JO opened his individual account in October 2015. Venturino traded actively in the account for approximately 18 months, with his last trade on March 29, 2017.⁴⁶⁰ The average month-end equity value in the account was \$30,880, but Venturino’s 74 transactions had a total principal value of \$3,074,783.⁴⁶¹ The total costs Venturino charged came to \$45,419. The annualized cost-to-equity ratio was 98.06 percent, and the annualized turnover rate was 33.7,⁴⁶² both well above the accepted standard thresholds that generally indicate excessive trading. The cost-to-equity ratio of 98.06 percent means that JO’s account would have needed to appreciate by almost 100 percent per year to break even, because of the costs Venturino charged.⁴⁶³

⁴⁵⁷ CX-1.

⁴⁵⁸ CX-1, at 2.

⁴⁵⁹ CX-1, at 1.

⁴⁶⁰ CX-1, at 1.

⁴⁶¹ CX-1, at 2.

⁴⁶² CX-1, at 1.

⁴⁶³ *Beyn*, 2023 SEC LEXIS 980, at *7.

(b) JO's Retirement Account

Venturino traded in JO's retirement account for a little more than nine months, from December 17, 2015, to September 27, 2016.⁴⁶⁴ The average month-end equity value of the account was \$99,333, but Venturino's 37 transactions had a total principal value of \$1,268,339—more than ten times the average month-end equity value of the account.⁴⁶⁵ The costs assessed for the trading totaled \$28,697. Venturino's trading resulted in an annualized cost-to-equity ratio of 34.67 percent and an annualized turnover rate of 8.39—both exceeding the accepted standard thresholds and therefore indicative of excessive trading. The account lost \$8,923.⁴⁶⁶

(c) JO's Joint Account

During the 14 months—February 4, 2016, to March 28, 2017⁴⁶⁷—that Venturino actively traded in JO and JB's joint account, the account's average month-end equity was only \$18,370, but the total principal dollar value of the account resulting from Venturino's 28 trades was \$1,072,349—more than 50 times the average month-end equity value.⁴⁶⁸ The account lost \$36,497. The resulting annualized cost-to-equity ratio was 96.7—nearly as high as the ratio in JO's personal account—because of the costs Venturino charged, totaling \$20,724. The annualized turnover rate was 27.3, which far exceeds the generally acceptable threshold of six.⁴⁶⁹

These facts, taken together, persuade the Hearing Panel that Venturino's trading in JO's accounts was unsuitably excessive.

3. Venturino Churned Customer Accounts in Violation of Exchange Act Section 10(b), Exchange Act Rule 10b-5, FINRA Rules 2020 and 2010 (First Cause of Action)

Churning, as the SEC recently stated, “is excessive trading committed with scienter. Scienter may be shown by proof that the broker acted recklessly.”⁴⁷⁰ It exists when a broker “manages a [customer's] account for the purpose of generating commissions and in disregard of his [customer's] interests,”⁴⁷¹ and “abuses his customer's confidence for personal gain (e.g. to create commissions) by inducing transactions in the customer's account which are

⁴⁶⁴ CX-1, at 1.

⁴⁶⁵ CX-1, at 2.

⁴⁶⁶ CX-1.

⁴⁶⁷ CX-1, at 1.

⁴⁶⁸ CX-1, at 2.

⁴⁶⁹ CX-1, at 1.

⁴⁷⁰ *Beyn*, 2023 SEC LEXIS 980, at *7–8.

⁴⁷¹ *Dep't of Enforcement v. Taddonio*, No. 2015044823501, 2019 FINRA Discip. LEXIS 3, at *52 (NAC Jan. 29, 2019), *Beyn*, 2023 SEC LEXIS 980, at *13.

disproportionate to the size and character of the account.”⁴⁷² When a customer’s account is charged a “very high level of commissions” creating a high cost-to-equity ratio, the SEC has found that a “broker’s ‘overriding goal was generating commissions’ and therefore the broker must have known he was acting in reckless disregard” of the customer’s interests.⁴⁷³ Such conduct, as the Complaint charges here, violates the antifraud provisions of Exchange Act Section 10(b), and Exchange Act Rule 10b-5, as well as FINRA Rule 2020, FINRA’s anti-fraud rule.⁴⁷⁴ Both excessive trading and churning violate the ethical obligation of associated persons to comply with just and equitable principles of trade required by FINRA Rule 2010.⁴⁷⁵

Venturino traded excessively in the accounts of JF, CB, DF, and JO with scienter—that is, intentionally or in reckless disregard of the interests of the customers. Evidence of Venturino’s scienter is inferable from the markups and commissions he charged his customers. The costs Venturino charged and the resulting payout credits he received support the conclusion that Venturino pursued profit for himself, not his customers, by churning each of these customer accounts. It is also evident from his practice of alternating riskless principal trades for purchases—for which he usually assessed large markups—and agency trades for sales—for which he usually charged smaller amounts as commissions, which effectively hid the actual costs of the trading from his customers. When asked why he routinely did so, his answer—“I don’t know. I just, that is just how I was taught how to do it,”⁴⁷⁶—failed to justify or provide a reasonable explanation consistent with his customers’ interests. And the testimony of the customers, that Venturino never discussed or explained the trading costs they incurred, further reflects an intentional disregard of their interests, and concealment of trading costs. The trading costs Venturino charged in the accounts of CB, JF, DF, and JO, combined, totaled \$252,256.⁴⁷⁷ From this total, Venturino earned \$171,419 in payout credits from these accounts.⁴⁷⁸

Venturino’s unauthorized trading in these accounts is also evidence of the intentionality of his mismanagement of these six accounts.⁴⁷⁹

Finally, the financial pressure of Venturino’s repayment plans requiring him to pay federal tax arrearages of \$350,000 and an unpaid state tax debt of \$70,000 provided an incentive

⁴⁷² *Newburger, Loeb & Co. v. Gross*, 563 F.2d 1057, 1069 (2d Cir. 1977).

⁴⁷³ *Beyn*, 2023 SEC LEXIS 980, at *8 (quoting *Newport Coast Sec.*, 2020 SEC LEXIS 917, at *13).

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

⁴⁷⁶ Tr. 818–19 (Venturino).

⁴⁷⁷ CX-1, at 1.

⁴⁷⁸ CX-16.

⁴⁷⁹ *Calabro*, 2015 SEC LEXIS 2175, at *32.

for him to maximize his profits by trading as frequently as he could, maximizing markups and commissions, while keeping the customers unaware of the costs of the trading.⁴⁸⁰

Accordingly, the Hearing Panel finds that Venturino acted intentionally or, at a minimum, recklessly.

a. Venturino Churned JF's Account

At the start of October 2015, JF's account had a value of about \$13,000; by month's end, after a series of in-and-out trades, it was about \$8,000.⁴⁸¹ Venturino made purchases exceeding \$182,000.⁴⁸² The costs he charged to JF amounted to more than \$7,086 for the month of October.⁴⁸³ Venturino testified that he did not recall "the exact situation," but "would have spoken" to JF "after seeing these trades at the end of the month" and would have suggested that "this is not working out. We should go less aggressively, less activity."⁴⁸⁴ But, Venturino added, he could not "make [JF] do anything."⁴⁸⁵ He claimed that he would have recommended a change of strategy to one with "a little less trading because of the cost incurred from the active trading."⁴⁸⁶ Enforcement asked if so, why did the in-and-out trading continue? Venturino's reply was, "how do you know I didn't say stop?"⁴⁸⁷

Venturino's failure to disclose transaction costs and his practice of charging markups on purchases and commissions on sales left JF, as it did the other testifying customers, unaware of what he paid for trades. In the year Venturino was JF's broker, the account lost \$22,723, including costs totaling \$10,146⁴⁸⁸ for executing 31 transactions.⁴⁸⁹ The markups Venturino charged JF came to \$7,498, and the commissions he charged amounted to \$895, for a total of \$8,393.⁴⁹⁰ Venturino's payout and sales credits from JF's account totaled \$6,332.⁴⁹¹ The

⁴⁸⁰ Tr. 1282–83 (Venturino).

⁴⁸¹ Tr. 911–12 (Venturino); CX-6, at 1, rows 9 and 27.

⁴⁸² Tr. 913–14 (Venturino); JX-24, at 22.

⁴⁸³ Tr. 935 (Venturino); CX-6, at 1, row 27.

⁴⁸⁴ Tr. 917 (Venturino).

⁴⁸⁵ Tr. 945 (Venturino).

⁴⁸⁶ Tr. 942–43 (Venturino).

⁴⁸⁷ Tr. 943–44 (Venturino).

⁴⁸⁸ CX-1, at 1.

⁴⁸⁹ CX-1, at 2.

⁴⁹⁰ CX-1, at 2.

⁴⁹¹ CX-16. \$150 from Venturino's 50 percent payout for the four months he was a joint representative plus \$6,182 for the remainder of the time when Venturino was JF's sole representative.

egregiousness of this is underscored by the fact that the average month-end equity of JF's account was just \$6,760.⁴⁹²

These facts undercut Venturino's contention that he pursued a "strategy" designed to make a profit and minimize losses for JF. Instead, the data, documents, and testimony show Venturino's strategy was to pursue personal gain, in reckless disregard of JF's interests. Thus, the Hearing Panel concludes that Enforcement established by a preponderance of the evidence that Venturino churned JF's account.

b. Venturino Churned CB's Account

CB's losses were significant—\$144,103, almost \$50,000 per year for the time Venturino was CB's broker.⁴⁹³ Venturino charged customer CB \$85,060 for executing 195 trades including \$72,419 in markups, markdowns, and commissions.⁴⁹⁴ For these trades, Venturino received \$54,314 in payout credits.⁴⁹⁵ The total dollar value of Venturino's trades was \$3,716,985 while the average month-end equity on the account was only \$31,485.⁴⁹⁶ Taken together, these facts support the Hearing Panel's finding that Venturino churned CB's account—intentionally or in reckless disregard of CB's financial interests—to maximize his own gain.

c. Venturino Churned DF's Account

It is undisputed that in the 19 months Venturino traded in DF's account, DF lost \$91,968.⁴⁹⁷ Venturino charged DF \$62,210 in costs for executing 113 trades. Of those costs, \$48,429 were markups and \$6,666 were commissions.⁴⁹⁸ Venturino's payout credits from trading DF's account as a joint representative for 13 months was \$26,913; for the remaining six months, as sole representative, \$21,137, for a total of \$48,050.⁴⁹⁹ This is more than twice the account's average month-end equity of \$23,849.⁵⁰⁰ Such large markups resulted in an annualized cost-to-equity ratio of 164.75 percent.⁵⁰¹

⁴⁹² CX-1, at 2.

⁴⁹³ CX-1, at 1.

⁴⁹⁴ CX-1.

⁴⁹⁵ CX-16.

⁴⁹⁶ CX-1, at 2.

⁴⁹⁷ CX-1, at 1–2.

⁴⁹⁸ CX-1, at 1–2.

⁴⁹⁹ CX-16. \$1,269 for the 13 months Venturino was a joint broker on the account and \$21,137 for the five months Venturino was the sole broker.

⁵⁰⁰ CX-1, at 2.

⁵⁰¹ CX-1, at 1.

Based on these facts, including the evidence of excessive and unauthorized trading, the Hearing Panel concludes that a preponderance of the evidence establishes that Venturino intentionally or recklessly churned DF's account by engaging in excessive trading.

d. Venturino Churned JO's Accounts

Venturino charged JO a total of \$45,419 in costs for the 74 trades he executed in JO's individual account.⁵⁰² Of that sum, Venturino's markups and commissions came to \$38,955, while the account lost \$108,561.⁵⁰³ Venturino's payout credits were \$29,216,⁵⁰⁴ almost equal to the account's average month-end equity of \$30,880, while the total principal value of the trading came to more than \$3 million.⁵⁰⁵

In JO's retirement account, Venturino charged \$28,697 for the 37 trades he executed.⁵⁰⁶ Venturino's commissions, markups, and markdowns came to \$26,935, while the account lost \$8,923 for the 10 months Venturino traded in it.⁵⁰⁷ Venturino's payout credits for his trading on this account were \$20,201.⁵⁰⁸ The total value of the trading was \$1,268,339 although the average month-end equity was \$99,333.⁵⁰⁹

JO's joint account accrued costs totaling \$20,724 for the 28 trades Venturino executed in the 14 months it was active.⁵¹⁰ Venturino's commissions and markups came to \$17,742, while the account lost \$36,497.⁵¹¹ The payout credits Venturino earned from this account totaled \$13,306,⁵¹² the average month-end equity was only \$18,370, and the total principal traded was more than \$1 million.⁵¹³

⁵⁰² CX-1, at 1.

⁵⁰³ CX-1.

⁵⁰⁴ CX-16.

⁵⁰⁵ CX-1, at 2.

⁵⁰⁶ CX-1.

⁵⁰⁷ CX-1.

⁵⁰⁸ CX-16. In this account, the average month-end equity, \$99,333, was more than in JO's other accounts. CX-1, at 2.

⁵⁰⁹ CX-1, at 2.

⁵¹⁰ CX-1.

⁵¹¹ CX-1.

⁵¹² CX-16.

⁵¹³ CX-1, at 2.

In total, Venturino received payout credits of \$62,723 from his management of JO's three accounts.⁵¹⁴

The Hearing Panel concludes that Venturino churned JO's accounts. The Hearing Panel finds that JO was a credible witness, and credit him rather than Venturino where their testimony conflicts. Venturino traded excessively, made unauthorized trades, and charged unreasonably high commissions and markups. Taken together, these facts persuade the Panel that Venturino churned the accounts—intentionally or in reckless disregard of JO's financial interests—in the pursuit of his own profit.

These facts compel the Hearing Panel to conclude that Venturino traded excessively and managed these customer accounts for the purpose of generating commissions and in disregard of the customers' interests. The Hearing Panel finds that Venturino acted intentionally to benefit himself or, at a minimum, acted recklessly in disregard of his customers' interests. This conduct constitutes churning, recognized as a manipulative and deceptive device that violates Exchange Act Section 10(b), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.⁵¹⁵

B. The Evidence Does Not Establish That Venturino Traded Excessively, Churned, or Traded Without Authorization in the Account of Testifying Customer RL

As explained below, the pattern of Venturino's trading in RL's account was similar to his trading in the accounts of the other testifying customers. After carefully considering the record, however, the Hearing Panel finds the evidence insufficient to establish that Venturino exercised de facto control over the trading in RL's account. Consequently, it is also insufficient to support the allegations that Venturino traded excessively and churned RL's account. For different reasons, the Hearing Panel also finds the evidence insufficient to establish that Venturino traded without authority in RL's account.

The Hearing Panel first assesses the evidence relating to the allegation that Venturino traded in the account without authorization. Then the Panel examines the evidence relevant to the allegations of excessive trading and churning by reviewing RL's background, including his investment experience, and Venturino's trading in RL's Aegis account.

⁵¹⁴ CX-16, at 1.

⁵¹⁵ *Calabro*, 2015 SEC LEXIS 2175, at *2–3. Because it is conduct inconsistent with “high standards of commercial honor and just and equitable principles of trade,” churning violates FINRA Rule 2010. *Beyn*, 2023 SEC LEXIS 980, at *8.

1. RL's Background

At age 44 RL is the youngest of the testifying customers. He lives in Virginia.⁵¹⁶ He has a bachelor's degree in electrical engineering with a minor in business.⁵¹⁷ After college, he worked for a construction company as an electrical engineer before he and two partners formed a residential mortgage company they have owned for 20 years.⁵¹⁸ By 2015, the company was worth approximately \$15 million and employed between 150 and 200 people.⁵¹⁹

a. RL's Investment Experience

RL's testimony about his investment experience prior to opening his Aegis account was unreliable.

RL characterized the level of his previous experience as an investor as "just above beginner, intermediate," and acknowledged, "I knew my way around."⁵²⁰ He claimed that his experience was limited to an Ameritrade account he funded with a gift of \$5,000 from his grandparents when he was in college.⁵²¹ It was a self-directed account, which meant he made the trading decisions. He conducted his own research online, looking at "prior history, forecasts, recommendations, what is hot in the market" to inform himself.⁵²² He was familiar with margin and used it.⁵²³

RL repeatedly testified that the Ameritrade account was his only prior investment experience before Aegis⁵²⁴ and that it was the only time that he "might have" engaged in active short-term trading⁵²⁵ and speculative investing.⁵²⁶ However, on cross examination RL was presented with an application he signed in April 2012, three years before opening his Aegis account, for an account with Craig Scott Capital ("Craig Scott") that identified his investment

⁵¹⁶ Tr. 1498 (RL).

⁵¹⁷ Tr. 1499 (RL).

⁵¹⁸ Tr. 1498–1500 (RL).

⁵¹⁹ Tr. 1524–25 (RL).

⁵²⁰ Tr. 1526 (RL).

⁵²¹ Tr. 1503 (RL).

⁵²² Tr. 1526 (RL).

⁵²³ Tr. 1527 (RL).

⁵²⁴ Tr. 1503, 1533 (RL).

⁵²⁵ Tr. 1529–30 (RL).

⁵²⁶ Tr. 1533 (RL).

objective as speculation “involving a higher degree of risk.”⁵²⁷ RL testified that he did not recall the account, although he might have considered investing funds in it for his company.⁵²⁸

RL also did not recall the margin agreement he signed for the account and did not recognize a form reflecting a transfer of assets from Brookstone Securities to his Craig Scott account. He testified that the amount transferred could not have been great because he did not have access to much money at the time.⁵²⁹ A copy of a Brookstone account statement attached to the Craig Scott asset transfer form shows he had \$9,648 in his Brookstone account.⁵³⁰ When asked about another new account application he signed in December 2014 that appears to have been faxed from a firm named Wilmington Capital, also identifying speculation as his objective, and ranking his risk tolerance as high, RL testified that he thinks this was an account he had with a broker who transferred to Aegis and was his initial broker for the Aegis account.⁵³¹

Clearly, RL had more previous investment experience than just the Ameritrade account he had while in college, and the Hearing Panel finds him not to have testified credibly about that experience.

b. RL’s Aegis Account

RL opened his Aegis account on August 7, 2015.⁵³² At the time he had no savings, no retirement account, and wanted to “catch up” using the extra cash his business was starting to generate.⁵³³ Brokers were cold calling him. He decided to give a small sum to an Aegis broker—not Venturino—“to see what he would do.”⁵³⁴ Ultimately, he had three Aegis brokers: an initial one; Venturino, when Aegis “handed off” the account to him; and a third, before he closed the account.⁵³⁵

RL testified that his Aegis account application form correctly describes his investment profile at the time. It indicates he had ten years or more of experience in investing, his annual income was between \$500,000 and \$749,999, and his net worth was more than \$3 million.⁵³⁶ It accurately describes his investment objective as speculation, and his risk tolerance as

⁵²⁷ RX-86, at 2.

⁵²⁸ Tr. 1533–36 (RL).

⁵²⁹ Tr. 1536–38 (RL).

⁵³⁰ RX-86, at 6–8.

⁵³¹ Tr. 1538–40 (RL); RX-81, at 2.

⁵³² Tr. 1502 (RL).

⁵³³ Tr. 1501 (RL).

⁵³⁴ Tr. 1502 (RL).

⁵³⁵ Tr. 1501 (RL).

⁵³⁶ Tr. 1531–32 (RL); JX-48.

maximum.⁵³⁷ RL understood margin accounts and signed a margin agreement for his Aegis account “just in case something came along” that he “wanted to take advantage of.”⁵³⁸ Unlike the other customers who testified that they opened margin accounts at Venturino’s direction, RL opened his margin account on his own initiative.⁵³⁹

2. The Evidence of Unauthorized Trading in RL’s Account

RL testified that he never gave Venturino authorization to trade in his account without consulting with him first.⁵⁴⁰ According to RL, there were “really only four stocks” that he and Venturino discussed, but on his account statements he saw names of companies that he did not recognize.⁵⁴¹ The Complaint alleges that 11 of the 57 trades Venturino executed in RL’s account were unauthorized. The phone records indicate there were no phone calls with RL to or from Venturino’s assigned extension at Aegis preceding those trades.⁵⁴²

When asked if he ever discussed concerns he had about Venturino’s trading in his account, RL testified that he had “[m]ultiple” discussions with Venturino about problems in his account.⁵⁴³ In those conversations, RL testified, Venturino “would deflect . . . and sort of push it off.”⁵⁴⁴ When asked if he directly asked Venturino about unauthorized trades, RL did not directly answer the question, but just stated that Venturino would tell him there were “errors” attributable to Aegis.⁵⁴⁵

Intrexon

Of the 57 trades Venturino executed in RL’s account, 14 of them were purchases or sales of Intrexon stock, two of them allegedly unauthorized.⁵⁴⁶ The other 12 were presumably authorized, because there are records of calls between RL and Venturino on or before the dates of each.⁵⁴⁷

⁵³⁷ JX-48, at 1.

⁵³⁸ Tr. 1527–28 (RL).

⁵³⁹ See, e.g., *supra* at 15 and n.92 (Venturino told customer JF he needed margin to do business); *supra* at 20 and n.142 (Venturino told customer CB he needed margin to purchase stocks Venturino would recommend); *supra* at 26 and n.221 (Venturino suggested customer DF open a margin account).

⁵⁴⁰ Tr. 1509–10 (RL).

⁵⁴¹ Tr. 1513 (RL).

⁵⁴² CX-19, at 1, 20–22.

⁵⁴³ Tr. 1512 (RL).

⁵⁴⁴ Tr. 1512 (RL).

⁵⁴⁵ Tr. 1512 (RL).

⁵⁴⁶ CX-19, at 21–22, rows 862–69, 872–76, 896–97, 912, 914–15, 920–23.

⁵⁴⁷ CX-19, at 21–22, rows 862–69, 872–76, 897–97, 912, 914–15, 920–23.

The first Intrexon transaction, apparently authorized, was a purchase of 1,250 shares for almost \$49,000 on November 25, 2016.⁵⁴⁸ When Enforcement asked RL about it, he testified that he did not recall buying the stock and that he had “no idea what [Intrexon] is,”⁵⁴⁹ implying the purchase was unauthorized. However, the purchase occurred along with other transactions on the same day, shortly after 1:00 p.m., for which there was a record of a phone call either that day or the day before.⁵⁵⁰

The first allegedly unauthorized Intrexon transaction was a purchase, on November 25, 2016, of 1,500 shares also for almost \$49,000. It was followed four days later by a presumably authorized sale of 500 shares.⁵⁵¹ The second allegedly unauthorized transaction in Intrexon stock was a sale of 150 shares on April 5, 2017. But it was followed on the next day by a second, apparently authorized, sale of another 150 shares.⁵⁵²

Given RL’s testimony that Venturino called him “multiple times a week,”⁵⁵³ the Hearing Panel finds, first, that the 12 authorized trades of Intrexon cast doubt on and undermine the credibility of RL’s testimony that he was completely unaware of the company. Second, Venturino’s allegedly unauthorized \$48,933 purchase of Intrexon on November 25, 2016, was followed by three smaller authorized sells starting on December 29. Similarly, an allegedly unauthorized sale of Intrexon on April 5 was followed by a presumably authorized sale the next day. Because of the temporal proximity of the allegedly unauthorized and authorized Intrexon transactions, and our disbelief in RL’s claim he was “unaware” of the company, the Hearing Panel cannot confidently conclude that Venturino’s purchase of Intrexon on November 25, 2016, and sale of Intrexon on April 5, 2017, were unauthorized, as alleged.⁵⁵⁴

Southwest Airlines

On July 26, 2016, Venturino made an allegedly unauthorized purchase of 2,000 shares of Southwest Airlines stock. He sold it for a loss of approximately \$6,000 on August 1, in an apparently authorized transaction.⁵⁵⁵ To the Hearing Panel, this presumably authorized sale, even at a loss—so soon after the purchase and preceded by a phone call—makes questionable the allegation that the purchase was unauthorized.

⁵⁴⁸ CX-19, at 22, row 914.

⁵⁴⁹ Tr. 1507–08 (RL).

⁵⁵⁰ CX-19, at 20–21, rows 857–64.

⁵⁵¹ CX-19, at 22, rows 914–15.

⁵⁵² CX-19, at 22, rows 922–23.

⁵⁵³ Tr. 1527 (RL).

⁵⁵⁴ CX-19, at 22, rows 914–15, 920–23.

⁵⁵⁵ CX-19, at 21, row 889; JX-44, at 49 (Southwest Airlines stock is listed as “LUV”).

Delta Airlines

Venturino executed an allegedly unauthorized purchase of 1,000 shares of Delta Airlines stock for more than \$40,000 on the afternoon of July 13, 2016. Early the next morning, he sold the position in a presumably authorized transaction, preceded by a phone call.⁵⁵⁶ To the Hearing Panel, that authorized sale of Delta Airlines stock undermines the probability that the purchase, less than 24 hours earlier, was unauthorized.

Urstadt Biddle Properties

Another allegedly unauthorized transaction, a purchase of the stock of Urstadt Biddle Properties Inc. for almost \$60,000, listed “as of” July 20, 2016, at 12:00 a.m., was followed by a sale of the position on July 21 that was preceded by a phone call, and presumably authorized; Venturino charged no markup for the buy and no commission for the sell.⁵⁵⁷ Therefore, the Hearing Panel finds the evidence does not establish that the Urstadt Biddle purchase was unauthorized.

MobilEye

On August 9, 2016, Venturino sold 50 shares of MobilEye stock for \$2,293, allegedly an unauthorized trade. Venturino charged no commission and no markdown.⁵⁵⁸ This is one of the three stocks RL held when Venturino first took over his account.⁵⁵⁹ There are no other transactions in this security in Enforcement’s record of unauthorized transactions by Venturino in RL’s account. Absent testimony about this trade, with no indication that it benefitted Venturino, the Hearing Panel is unable to conclude that this sale was unauthorized.

Ziopharm

On October 26, 2017, Venturino made purchases and sales of 10,000 shares of Ziopharm, Inc., stock that are listed as authorized. On October 27, Venturino purchased 9,000 shares, also listed as authorized. On October 31, he sold the position, charging no commission or markdown, in a transaction Enforcement represents as unauthorized.⁵⁶⁰ Without any testimony to give context, the Hearing Panel is unable to agree with Enforcement that the sell was unauthorized, given that it occurred so close in time to authorized purchases of the position, and Venturino did not generate a profit for himself.

⁵⁵⁶ CX-19, at 21, rows 877–78.

⁵⁵⁷ CX-19, at 21, rows 882, 884; JX-44, at 48–49.

⁵⁵⁸ CX-19, at 21, row 893.

⁵⁵⁹ JX-44, at 27.

⁵⁶⁰ CX-19, at 21, rows 902–05.

Skyworks Solutions

On July 21, 2016, Venturino purchased shares of Skyworks Solutions stock for more than \$43,000, apparently authorized, and charged a markup of \$1,260.⁵⁶¹ On July 25, Venturino sold the position in an allegedly unauthorized transaction, but charged no commission or markdown.⁵⁶² RL testified that Venturino “never mentioned” a purchase or sale of Skyworks Solutions stock.⁵⁶³ Given the presumptively authorized and sizable purchase just four days before the allegedly unauthorized sale, for which Venturino gained no profit, the Hearing Panel does not find sufficient evidence to hold Venturino liable for the allegedly unauthorized sale.

Centene

On July 25, 2016, Venturino purchased a position in Centene Corp stock for almost \$40,000, charging a markup of \$1,100, and there is no record of a preceding phone call.⁵⁶⁴ Several days later, on August 1, in a transaction for which there is a record of a preceding phone call, Venturino sold the position at a loss of almost \$4,000, charging no markdown or commission.⁵⁶⁵ When asked about this pair of transactions, Venturino denied that they were unauthorized; why, he asked, would he call RL on or before August 1 to “tell him I’m selling a stock that we haven’t spoke about buying?”⁵⁶⁶ On this record, the Hearing Panel concludes there is insufficient evidence to find the purchase of Centene was unauthorized.

Customers Bancorp

There are two other transactions Enforcement asserts are unauthorized: a purchase at 12:00 a.m. and a sale at 10:27 a.m. on November 4, 2016, of 2,500 shares of Customers Bancorp Inc. stock. Venturino charged no commission, markup, or markdown for these transactions, indicating he did not profit from them.⁵⁶⁷ Enforcement presented no testimony about these transactions. But Venturino provided an explanation for 12:00 a.m. purchases of securities sold

⁵⁶¹ CX-19, at 21, rows 885–86.

⁵⁶² CX-19, at 21, row 887

⁵⁶³ Tr. 1516–17 (RL).

⁵⁶⁴ CX-19, at 21, row 888.

⁵⁶⁵ CX-19, at 21, row 890.

⁵⁶⁶ Tr. 1132-33 (Venturino).

⁵⁶⁷ CX-19, at 21, rows 907–08.

later the same day with no commission or markdown: it was “probably a syndicate deal that we had and we get it that day and get it out that same day.”⁵⁶⁸

Again, without more, the Hearing Panel finds there is insufficient evidence that this pair of trades was unauthorized.

Margin Trading

As noted above, RL understood the use of margin in an account and opened a margin account with Aegis “just in case something came along” that he wanted to use it for. Yet he claimed that he “had no intention to use it or have it be used.” He also claimed that he did not notice margin used in his Aegis account without his permission “until it was too late,” in “2016-ish.”⁵⁶⁹

Despite this claim, RL acknowledged receiving 18 margin call notice letters. And he testified that he asked Venturino about them.⁵⁷⁰ According to RL, Venturino told him not to worry, it was a “computer glitch.”⁵⁷¹ RL testified that he believed Venturino because he did not have to send Aegis any money.⁵⁷² RL also testified that when he questioned Venturino about the use of margin in his account, Venturino told him “it is messed up” and “he was going to fix it.”⁵⁷³ To the Hearing Panel, RL’s testimony indicates that he was aware of the use of margin in his account, queried Venturino about it, and was satisfied with the answers he received.

RL gave inconsistent responses when asked why, given these troubling experiences with Venturino, he did not take any action. First, he said he did not have to send Aegis money, so he thought Venturino “was pretty convincing.” Next, RL claimed Venturino “got aggressive,” so he “started backing away.”⁵⁷⁴

RL also gave inconsistent answers when asked why he did not close the account after having these problems. He said that his company had begun generating sufficient revenue so that he had “excess money” that he wanted to invest in “big stocks,” the ones he said he and Venturino discussed. Then RL testified it was because Venturino “persuaded” and “tricked” him into believing the problem was “just a screw up.”⁵⁷⁵ The Hearing Panel is not persuaded that RL

⁵⁶⁸ Tr. 1158 (Venturino). Venturino testified that such trades come through the firm’s syndicate department, on which he earned no commission but could receive a portion of an underwriter’s discount. Tr. 1218–19 (Venturino).

⁵⁶⁹ Tr. 1528 (RL).

⁵⁷⁰ Tr. 1552 (RL); JX-46.

⁵⁷¹ Tr. 1550, 1552 (RL).

⁵⁷² Tr. 1550–51 (RL).

⁵⁷³ Tr. 1528–29 (RL).

⁵⁷⁴ Tr. 1553 (RL).

⁵⁷⁵ Tr. 1553–54 (RL).

was tricked and finds these contradictory explanations not to be credible, further undermining the allegation that Venturino engaged in unauthorized trading in RL's account.

Based on this record, with RL's inconsistent, non-credible testimony, and a lack of evidence to provide context for the transactions, the Hearing Panel finds that the evidence is insufficient to establish that Venturino engaged in unauthorized trading in RL's account.

3. The Evidence of Unsuitably Excessive Trading and Churning in RL's Account

a. Venturino's Trading in RL's Aegis Account

Venturino traded in RL's account for 13 months during which he executed 57 trades. The account lost \$56,636, with trading costs totaling \$38,549. Venturino charged the account a total of \$33,210 in markups and commissions, and margin interest totaled \$2,618.⁵⁷⁶

RL testified that when he opened his account, he invested "a small amount," \$27,307.⁵⁷⁷ Venturino entered the first trade for RL in April 2016.⁵⁷⁸ RL testified that he preferred to invest in companies familiar to him, with "big names" like Under Armour.⁵⁷⁹ His account statement for April 2016 shows that he owned shares of stock of three companies: Under Armour, Taser International Inc., and Mobileye NV.⁵⁸⁰

Enforcement questioned Venturino in detail about the investments he recommended to RL in July 2016. Venturino acknowledged that at the start of the month, the account value was \$29,851.⁵⁸¹ In that month, Venturino also acknowledged, the costs of trading and margin interest came to \$11,300 and the account lost almost \$17,000.⁵⁸² RL deposited \$20,000 into it; the account value at the end of July was \$32,879.⁵⁸³ Asked if it was suitable to recommend the series of trades that left the account at that level, at such a cost to RL, Venturino responded that based on discussions with RL and his investment objectives, and after going over "active trading," he and RL "employed a strategy."⁵⁸⁴

The results of Venturino's trading strategy in RL's account are similar to the results in the accounts of other testifying customers. The account's annualized turnover rate was 36.19,

⁵⁷⁶ CX-1.

⁵⁷⁷ Tr. 1506 (RL).

⁵⁷⁸ CX-1, at 1.

⁵⁷⁹ Tr. 1504 (RL).

⁵⁸⁰ JX-44, at 27.

⁵⁸¹ Tr. 1139 (Venturino).

⁵⁸² Tr. 1139-40 (Venturino).

⁵⁸³ Tr. 1139-41 (Venturino); JX-44, at 44.

⁵⁸⁴ Tr. 1142 (Venturino).

roughly six times the turnover rate that is generally accepted as indicative of excessive trading. The cost-to-equity ratio in RL's account was 128.4 percent, again more than six times the ratio that is generally accepted as indicative of excessive trading.⁵⁸⁵

There are also indicators of churning. For example, during July 2016, when the account value was \$29,851 at the beginning of the month, Venturino solicited 14 trades for which RL paid \$11,299 in costs, and the account lost almost \$17,000.⁵⁸⁶ Over the course of the year, the average month-end equity of RL's account was only \$27,697, but the total principal value of Venturino's purchases and sales of securities came to \$2,107,045.⁵⁸⁷ The 57 trades Venturino executed in 13 months cost RL \$38,549. Of that figure, Venturino's markups, markdowns, and commissions totaled \$33,210.⁵⁸⁸ As Venturino acknowledged, his net payout credits from the trading in RL's account came to \$24,907.⁵⁸⁹ In contrast to Venturino's profit, RL's realized losses totaled \$56,636.⁵⁹⁰

b. Evidence of Venturino's Control Over RL's Account

If the evidence established that Venturino exercised de facto control over RL's account, the turnover rate, cost-to-equity ratio, and Venturino's pattern of trading would support the allegations of excessive trading and churning. But the evidence is insufficient to establish that Venturino exercised de facto control over the account. As set forth below, without this essential element, the charges of excessive trading and churning in RL's account cannot be sustained.

i. RL Did Not Routinely Rely on Venturino's Recommendations

Under FINRA's suitability rule during the relevant period, to support a finding that a broker engaged in excessive or quantitatively unsuitable trading, there must be sufficient evidence in the record that the broker exercised actual or de facto control of a customer's account. Here, without evidence of actual control, the issue is de facto control. The extent to which a customer relies on a broker's recommendations is a key factor in establishing a broker's de facto control.⁵⁹¹

Enforcement argues that "[RL] relied on Venturino" and that Venturino marked all but three of RL's 57 trades as solicited. Enforcement cites RL's statement that he relied on Venturino for "big name" stock purchase recommendations, and that he conducted only "a little bit" of

⁵⁸⁵ CX-1, at 1; *Beyn*, 2023 SEC LEXIS 980, at *7 & n.18 (citing *Calabro*, 2015 SEC LEXIS 2175, at *18-19).

⁵⁸⁶ CX-9, at 1-2, rows 24-37; JX-44, at 44.

⁵⁸⁷ CX-1, at 2.

⁵⁸⁸ CX-1.

⁵⁸⁹ CX-16.

⁵⁹⁰ Tr. 1141-43 (Venturino); CX-1, at 1.

⁵⁹¹ *Calabro*, 2015 SEC LEXIS 2175, at *12-13 n.17 (quoting *Cody*, 2011 SEC LEXIS 1862, at *29).

research into unfamiliar company recommendations.⁵⁹² Enforcement also emphasizes that RL testified that he did not recognize many stocks Venturino traded in his account, and there were 11 unauthorized transactions not preceded by phone calls between RL and Venturino’s extension.⁵⁹³

RL indeed testified that he relied on Venturino’s recommendations to purchase the stock of companies with “big names” that RL was familiar with and preferred to own, such as Amazon and Under Armour.⁵⁹⁴ And, the Hearing Panel notes that two of the three unsolicited transactions in RL’s account involved these “big names,” reflecting his preference for them.⁵⁹⁵

However, the context for RL’s comment about doing “a little bit” of research, which Enforcement relies on, was a longer statement suggesting that he regularly conducted his own research. What he said was that if Venturino recommended “companies I didn’t know about, and I didn’t have research because I always research a little bit about a company before, if I didn’t know about it, so that determined yes or no.”⁵⁹⁶ Although awkwardly put, implicit in what RL said is that he “always” researched unfamiliar companies, if only “a little bit,” before investing, and that what he learned from his research determined whether he approved or rejected Venturino’s recommendations.⁵⁹⁷

More important, RL testified that he—unlike other testifying customers—rejected many of Venturino’s recommendations. RL testified that he and Venturino had “multiple” weekly conversations when Venturino would recommend purchases, “bring in newspapers,” and make market predictions “mainly about bigger companies.” In those conversations, RL stated clearly that the “amount of times I talked to Venturino *not to trade versus yes it was like 99 percent.*”⁵⁹⁸ Asked to clarify if Venturino recommended trades in those conversations, RL answered “Yes,” and testified that Venturino “would try to get me to go beyond my means but I - - I would say no. I couldn’t do it. That is why all my trades were sort of smaller.”⁵⁹⁹ RL was clear: he would not agree with recommendations to make what he considered “big buys.” And when asked, “Did you say yes to smaller trades?” RL answered, “No.”⁶⁰⁰

RL also volunteered that, “We might have traded Under Armour a couple of times in one day because the earnings report was coming out.”⁶⁰¹ Summary exhibit CX-19 shows two sales of

⁵⁹² Tr. 1509 (RL).

⁵⁹³ Enf. Br. 16–17; CX-19, at 20–22.

⁵⁹⁴ Tr. 1509 (RL).

⁵⁹⁵ CX-9, at 3, rows 64, 72–74.

⁵⁹⁶ Tr. 1509 (RL).

⁵⁹⁷ Tr. 1509 (RL).

⁵⁹⁸ Tr. 1557 (RL) (emphasis added).

⁵⁹⁹ Tr. 1558 (RL).

⁶⁰⁰ Tr. 1558 (RL).

⁶⁰¹ Tr. 1558 (RL).

Under Armour stock on May 18, 2016, the first at 1:06 p.m. and the second at 1:07 p.m.,⁶⁰² both marked solicited,⁶⁰³ that Enforcement does not consider unauthorized.⁶⁰⁴ RL’s testimony and the record of these trades suggest that on that date Venturino discussed—and RL agreed to—the transactions. RL referred to “we” making this decision to trade in anticipation of expected earnings reports.⁶⁰⁵ In this instance, RL apparently considered a Venturino recommendation and decided to accept it—evidence that he maintained control over the account.⁶⁰⁶

RL’s testimony—that he “always” conducted his own research on unfamiliar stocks, he talked frequently with Venturino and told him “not to trade versus yes” 99 percent of the time, and he said “no” to recommendations to make both “big buys” and smaller trades—does not support the conclusion that RL acquiesced routinely to Venturino’s recommendations.

ii. Venturino Did Not Exercise De Facto Control Over RL’s Account

Based on this testimony, the Hearing Panel finds there is insufficient evidence to establish that Venturino exercised de facto control over RL’s Aegis account. RL was clear about rejecting most of Venturino’s recommendations to approve smaller trades and refusing to approve “big buys.”⁶⁰⁷ This compels the Panel to find that RL did not routinely follow Venturino’s recommendations about “selecting securities and determining when and in what quantities to trade them,” and that he was not a customer who “felt he could not object” to Venturino’s recommendations “because of his lack of knowledge and expertise.”⁶⁰⁸

For these reasons, the Hearing Panel concludes that the evidence is insufficient to support finding that Venturino exercised de facto control over trading in RL’s account. Absent evidence of Venturino’s exercise of de facto control over RL’s account, the Hearing Panel cannot find that Venturino engaged in excessive trading and churned the account.

⁶⁰² CX-19, at 21, rows 860–61.

⁶⁰³ CX-9, at 1, rows 9–10.

⁶⁰⁴ CX-19, at 21, rows 860–61. The symbol for the first sell is UA; for the second, UAC. UA was the symbol for Under Armour’s Class A, and UAC for its Class C, common stock.

⁶⁰⁵ Tr. 1558 (RL).

⁶⁰⁶ See, e.g., *Harry Gliksman*, Exchange Release No. 42255, 1999 SEC LEXIS 2685, at *7 (Dec. 20, 1999).

⁶⁰⁷ Tr. 1558 (RL).

⁶⁰⁸ *Calabro*, 2015 SEC LEXIS 2175, at *14. See also, e.g., *Beyn*, 2023 SEC LEXIS 980, at *12 (de facto control is established when customers acquiesce routinely to broker’s recommendations); *Al Rizek*, Exchange Release No. 41725, 1999 SEC LEXIS 1585, at *19 (Aug. 11, 1999), *aff’d*, 215 F.3d 157 (1st Cir. 2000) (finding de facto control when customers relied on broker’s expertise “and almost invariably followed his recommendations”).

C. The Evidence Is Insufficient to Establish That Venturino Traded Excessively, Churned, and Traded Without Authorization in the Accounts of Non-Testifying Customers CA, TF, EF, WP, and RC

In addition to the customers described above, the Complaint identifies five other customers whose accounts Venturino allegedly churned, traded excessively, and traded without authorization. None of these five customers testified. Enforcement interviewed four and its Case Manager prepared memoranda summarizing the interviews. Two are deceased. The remaining three, according to Enforcement, “have chosen not to provide testimony at this hearing.”⁶⁰⁹ Enforcement relies heavily on the memoranda of the four customers interviewed to prove the allegations relating to them.

Prior to the hearing, Venturino filed a Motion in Limine seeking, in part, to preclude Enforcement from presenting any evidence relating to customers who would not appear and testify, arguing that the allegations against him pertaining to those customers “cannot be established” without their testimony.⁶¹⁰ For a number of reasons, the motion was denied.⁶¹¹ Venturino supplemented his objection at the outset of the hearing, arguing that the memoranda are hearsay “notes that purport to be summaries of interviews” of persons not present at the hearing, not subject to cross examination, and therefore objectionable because they are “incomplete and unreliable evidence against Mr. Venturino.”⁶¹²

It is well-established that hearsay evidence is admissible in FINRA disciplinary proceedings and may be the basis for factual findings, but the determination of how much reliance to give such evidence depends upon an adjudicator’s evaluation of “its probative value and reliability, and the fairness of its use.”⁶¹³ Factors recognized as relevant to making the evaluation include whether the witness is available, whether the hearsay statements are signed and sworn to, whether the hearsay statements are supported or contradicted by direct testimony, and whether they are corroborated.⁶¹⁴

Here, the memoranda summarizing the four witness interviews are brief and narrow in scope. Importantly, they are not sworn statements. All but one contains a disclaimer that it is not “a substantially verbatim recital of an oral statement” of the witness.⁶¹⁵

⁶⁰⁹ Tr. 26–27. (Respondent’s counsel).

⁶¹⁰ Respondent’s Motion in Limine, at 1.

⁶¹¹ See Order Denying Respondent’s Motion in Limine.

⁶¹² Tr. 50–51 (Respondent’s counsel).

⁶¹³ *Charles D. Tom*, Exchange Act Release No. 31081, 1992 SEC LEXIS 2000, at *7 (Aug 24, 1992).

⁶¹⁴ *Id.*

⁶¹⁵ CX-33; CX-34; CX-35. The summary of the interview with TF, CX-32, is the only one without the disclaimer.

In his testimony, the Case Manager acknowledged that he wrote the summaries sometimes more than a week after the interviews.⁶¹⁶ The Hearing Panel accepted the memoranda in evidence over Venturino's objections. However, their brevity, the limited availability of corroboration of the assertions attributed to the customers, and the Hearing Panel's inability to ask customers clarifying questions substantially diminish their probative value.

The available evidence about the five non-testifying witnesses is sparse. Consequently, the record lacks essential information concerning their background, education, financial situation and needs, investment experience, and sophistication—all important to determine their ability to evaluate Venturino's recommendations. The Hearing Panel was unable to assess the accuracy of their investment profiles as depicted in account documents. The Hearing Panel obviously had no opportunity to gauge their credibility or the accuracy of their descriptions of communications with Venturino. The Panel could not determine the extent to which they discussed, understood, and relied on Venturino's recommendations, participated in investment decisions, and authorized the trades at issue—all relevant to the critical issue of Venturino's exercise of de facto control over trading in their accounts.

Therefore, despite the troublingly high cost-to-equity ratios, turnover rates, and other indicia of excessive trading in the non-testifying customers' accounts, as the Hearing Panel explains below, the Hearing Panel concludes that the evidence, particularly the evidence relating to Venturino's de facto control over the trading in the accounts, is insufficient to sustain the charges relating to them.

1. Customer CA

Enforcement's telephone interview of CA occurred on June 22, 2021. An Enforcement attorney was present on the call, as was an attorney representing CA.

The Case Manager prepared a five-paragraph memorandum eight days after the interview.⁶¹⁷ He testified that it is an accurate summary of the interview.⁶¹⁸ In the memorandum, the Case Manager wrote that CA "advised that he had no prior investment experience prior to opening his account at Aegis."⁶¹⁹ When questioned, the Case Manager acknowledged that he does not remember CA's exact words.⁶²⁰ The memorandum makes no mention of CA's participation in the arbitration filed against Aegis in which CA is one of the claimants.⁶²¹ It also

⁶¹⁶ Tr. 1392–93, 1406–07, 1420–21 (Case Manager).

⁶¹⁷ CX-35.

⁶¹⁸ Tr. 1317 (Case Manager).

⁶¹⁹ CX-35, at 1.

⁶²⁰ Tr. 1318–19 (Case Manager).

⁶²¹ RX-3.

does not mention that the account was a joint account that CA held with another family member.⁶²²

The Case Manager was unaware that CA had opened an account at Aegis with a different broker in September 2014.⁶²³ The memorandum does not say whether CA rejected any of Venturino's recommendations or the extent to which he relied on Venturino's recommendations. Although the Case Manager quotes CA as saying he was "somewhat skeptical" of Venturino, the memorandum does not explain what prompted him to say this, why he was "skeptical," what he was skeptical about, or what he meant.⁶²⁴

Enforcement argues that even though CA told the Case Manager that he did not see any unauthorized trades in the account, the arbitration claim in which he was a joint claimant specifically alleges that Venturino "often exercised discretion in Claimants' accounts, purchasing substantial positions on margin without ever consulting Claimants."⁶²⁵ However, there is no evidence attributing that allegation specifically to CA.

The available evidence, in the Hearing Panel's estimation, reveals too little to draw conclusions about what Venturino communicated to CA in his recommendations, what CA and Venturino discussed regarding the trading in the account, and whether CA rejected recommendations or evaluated them by conducting his own research.

Based on this record, the Hearing Panel is unable to conclude, based solely on the Aegis phone records, that CA did not authorize Venturino to make the five trades that Enforcement alleges were unauthorized.⁶²⁶ With so sparse a record, the Panel also finds the evidence insufficient to conclude that CA routinely relied on Venturino's recommendations to the extent that Venturino, not CA, controlled the volume and frequency of the trading in the account. Lacking that element, the Panel is unable to find that Venturino churned or traded excessively in CA's account.

2. Customer TF

Enforcement interviewed TF on October 26, 2018, but the memorandum is undated. The Case Manager did not remember how long the interview lasted or how long after the interview

⁶²² See JX-3, at 1.

⁶²³ Tr. 1426 (Case Manager); RX-5, at 3.

⁶²⁴ CX-35.

⁶²⁵ RX-3, at 4.

⁶²⁶ CX-19, at 1.

he wrote the memorandum.⁶²⁷ The Case Manager testified repeatedly that he does not “recall specifically this interview.”⁶²⁸ Sometime after the interview, TF died.⁶²⁹

The memorandum does not describe TF’s educational background. It states that TF told the Case Manager that he had surgery approximately five years before the 2018 interview and for months afterward had a series of hospitalizations.⁶³⁰ TF opened his account in October 2014 and the monthly account statements are dated from then to July 2017; therefore, the hospitalizations may have occurred early in or just before the relevant period.⁶³¹ The Case Manager did not remember if he asked TF if the surgery and hospitalizations affected his memory, or if he asked TF if he was on any medications that might affect his memory at the time of the interview, even though that is a standard question asked of witnesses testifying at OTRs.⁶³²

The Case Manager wrote that TF “didn’t maintain any other brokerage accounts, aside from the account with Venturino.”⁶³³ The memorandum states that TF said that his new account application form inaccurately stated his income and that he was “unsure about whether he identified his investment objective as speculation.”⁶³⁴

The evidence reveals that TF’s statement to the Case Manager that he had no investment accounts other than the Aegis account and the prior account with Venturino as broker was inaccurate. The memorandum does not refer to four other accounts TF opened between 2011 and 2013.⁶³⁵

The memorandum does not mention that TF signed an “Active Trading Letter,” in August 2015 in connection with his Aegis account—also signed by Venturino—attesting to his desire to “engage in more frequent trading,” and asserting that he had “full control” over his account, and rejected his broker’s recommendations “on a case by case basis.”⁶³⁶ Perhaps TF signed this at Venturino’s urging and was told that it was needed to enable him to accept the type of recommendations Venturino planned to make. But without further evidence, the Hearing Panel has no way of knowing.

⁶²⁷ Tr. 1370 (Case Manager).

⁶²⁸ Tr. 1370–72 (Case Manager).

⁶²⁹ Tr. 1299 (Case Manager).

⁶³⁰ CX-32, at 2.

⁶³¹ JX-54 (TF’s monthly account statements); JX-58 (TF’s Aegis account application).

⁶³² Tr. 1374–75 (Case Manager).

⁶³³ CX-32, at 1.

⁶³⁴ CX-32, at 2.

⁶³⁵ RX-40; RX-41; RX-42; RX-46.

⁶³⁶ RX-47.

Finally, to sustain the suitability charges relating to Venturino's trading in TF's account requires finding by a preponderance of evidence that Venturino exercised de facto control over TF's account. To do so requires the Hearing Panel to accept as dispositive TF's statement, as summarized by the Case Manager, that TF "relied on Venturino's recommendations for investments in his account and generally accepted his recommendations."⁶³⁷ However, the Panel has no idea if those were TF's actual words and, if so, what "generally accepted his recommendations" meant to TF. The Hearing Panel must determine whether TF routinely followed Venturino's recommendations to the extent that Venturino controlled the volume and frequency of trades, and whether TF "had 'sufficient understanding to make an independent evaluation' of the broker's recommendations."⁶³⁸ The Hearing Panel has no way of knowing how much TF participated in making investment decisions and whether he was able to independently evaluate Venturino's recommendations.

Based on the limitations of the evidence, the Hearing Panel finds that it is unable to conclude, by a preponderance of the evidence, that Venturino executed unauthorized trades in TF's account. The Panel also concludes that the evidence is insufficient to establish that Venturino exercised de facto control over the account. We therefore cannot find that he churned and traded excessively in it.

3. Customer EF

Enforcement interviewed EF by telephone on May 10, 2022. The Case Manager's memorandum of the interview is dated May 16. EF's attorney was present on the call.⁶³⁹

EF was in his fifties when he opened his Aegis account in November 2014. EF said that he did not complete twelfth grade. According to the memorandum, in 2015 EF liquidated an account he had prior to his Aegis account because he wanted to minimize his losses and did not trust brokers or the markets and "didn't want to continue active trading." The memorandum states that he liquidated his Aegis account in January 2016 because "he didn't trust Venturino and had bad experiences with two stockbrokers."⁶⁴⁰

EF told the Case Manager that he was not a speculative investor, and, according to the Case Manager, had a "much more conservative approach."⁶⁴¹ According to the memorandum, EF's Aegis new account application had sections that were filled out before he received it and inaccurately describe his investment objective as speculation and his risk tolerance as

⁶³⁷ CX-32, at 1.

⁶³⁸ *Calabro*, 2015 SEC LEXIS 2175, at *13 (quoting *Eugene J. Erdos*, Exchange Act Release No. 20376, 1983 SEC LEXIS 332, at *12 (Nov. 16, 1983)), *aff'd*, 742 F.2d 507 (9th Cir. 1984).

⁶³⁹ CX-34, at 1.

⁶⁴⁰ CX-34, at 1–2.

⁶⁴¹ Tr. 1314–15 (Case Manager).

maximum.⁶⁴² The Case Manager did not ask EF why, if his investor profile was inaccurate, he signed the application.⁶⁴³ He also did not ask EF what his previous account application's investment profile indicated about his investment objective and risk tolerance.⁶⁴⁴

The interview memorandum does not mention that EF signed an application for a new account at Spartan Capital Securities ("Spartan") in July 2016, identifying his investment objective as speculation to generate "maximum possible returns," and his risk tolerance as high.⁶⁴⁵ EF also signed a margin account agreement in June 2017, the same time Venturino left Aegis for Trident Partners Ltd., that appears to have been initialed by Venturino.⁶⁴⁶ Then, in November 2022, EF opened a new Aegis account; it described his investor profile in terms aligned with his other brokerage account application forms. It states his annual income was \$500,000, his liquid net worth was \$3 million, and his total net worth was \$6.5 million. It describes his investment objective as "aggressive growth/income," and his risk tolerance as high, and states that his investment experience included stocks, bonds, mutual funds, and alternative investments.⁶⁴⁷

These documents cast doubt on EF's statements to the Case Manager that his Aegis account application's characterization of his investment objective and risk tolerance were inaccurate, and that he was, as the Case Manager put it, not a speculative investor but took a "much more conservative approach."⁶⁴⁸

Enforcement was also unaware that in 2017 Venturino sent emails to EF with links to articles about various companies and financial news, apparently at EF's request.⁶⁴⁹ The emails are evidence of ongoing conversations between EF and Venturino while Venturino was still associated with Aegis and after EF's last trade with Venturino in January 2016. This was also after EF, according to his interview, told Enforcement that he "chose to liquidate his holdings at Aegis because he didn't trust Venturino."⁶⁵⁰

Taken together, these facts cause the Hearing Panel to find that it cannot accept the statements attributed to EF in the interview memorandum at face value, and does not grant them the probative value argued by Enforcement. EF's opening of a margin account at Trident in

⁶⁴² CX-34, at 2.

⁶⁴³ Tr. 1409 (Case Manager).

⁶⁴⁴ Tr. 1408–09 (Case Manager).

⁶⁴⁵ RX-79, at 2, 4.

⁶⁴⁶ RX-77, at 1. It appears to have been initialed by Venturino as Financial Advisor. The initial appears to be the same as Venturino's initial as Registered Rep on EF's 2014 Aegis account application. JX-23, at 3.

⁶⁴⁷ RX-80, at 1–3.

⁶⁴⁸ Tr. 1314–15 (Case Manager).

⁶⁴⁹ RX-70; RX-71; RX-72.

⁶⁵⁰ CX-34, at 2.

August 2017, apparently with Venturino as his broker, undermines the assertion in the memorandum that he closed his Aegis account in January 2016 because he no longer trusted Venturino.⁶⁵¹ And the 2017 emails Venturino sent EF with investment research suggest that EF continued to accept Venturino's advice well after January 2016.⁶⁵²

Venturino executed 45 trades in the 18 months EF's Aegis account was active.⁶⁵³ Enforcement relies on the Aegis phone call records, indicating that 12 transactions were not preceded by a phone call, to establish that these were unauthorized trades.⁶⁵⁴ The Hearing Panel finds that the phone call records alone do not prove by a preponderance of the evidence that Venturino made trades in EF's account without authority.

For these reasons, the Hearing Panel also finds the evidence insufficient to establish that Venturino exercised de facto control in EF's account. We therefore cannot conclude that he churned and traded excessively in it.

4. Customer WP

Enforcement interviewed customer WP by telephone on May 13, 2021. WP's attorney, who represented customer CA as well, was on the call. The Case Manager's memorandum summarizing the interview was not prepared until more than a month later, on June 30.⁶⁵⁵ The memorandum does not mention how WP first became acquainted with Venturino and decided to open an Aegis account. According to the memorandum, once he opened the account, WP said that Venturino called him at least weekly. The Case Manager wrote that WP said he was "more of a moderate investor . . . not speculative" as indicated in his profile.⁶⁵⁶ The memorandum of the interview does not state if WP said he reviewed the account application before signing it.⁶⁵⁷ The Case Manager did not ask WP why he signed the form if it inaccurately described his investment profile.⁶⁵⁸

As with the other non-testifying customers, Enforcement relies heavily on the interview memorandum to support the allegations concerning Venturino's trading in WP's account. Enforcement cites the statements attributed to WP that he noticed and spoke to Venturino about unauthorized trades; his claim that he was not, as his Aegis account describes him, a speculative investor; that he was not informed of the costs Venturino was charging him; and that Venturino

⁶⁵¹ RX-77.

⁶⁵² RX-70; RX-71; RX-72.

⁶⁵³ CX-1.

⁶⁵⁴ Enf. Br. 19; CX-19, at 20, rows 823–26, 828–29, 831–35, 840–42.

⁶⁵⁵ CX-33, at 1; *see* CX-35, at 1.

⁶⁵⁶ CX-33, at 1–2.

⁶⁵⁷ CX-33.

⁶⁵⁸ Tr. 1409 (Case Manager).

made all of the recommendations for the trades in his account.⁶⁵⁹ Enforcement also argues that the high dollar value of Venturino's payout credits resulting from the charges he assessed WP, his "deceptive mix of riskless principal and agency trading," and unauthorized trades establish a basis for finding that Venturino acted with scienter, for his own profit, in reckless disregard of his customer's interests.⁶⁶⁰

The Hearing Panel is unable to evaluate the memorandum's statement that WP claimed to be "more of a moderate investor . . . not speculative" as his Aegis account application investor profile indicated.⁶⁶¹

The Hearing Panel knows WP opened another brokerage account almost a year before opening his Aegis account.⁶⁶² Because there is no evidence showing whether WP actively traded in that account, the Hearing Panel is unable to assess the credibility of his claim of having no experience trading stocks for the previous 20 years.⁶⁶³

The Hearing Panel notes that, according to Enforcement's interview memorandum, WP became aware of unauthorized trading by Venturino and spoke twice to him about it. Yet WP continued to maintain his account at Aegis with Venturino as his broker.⁶⁶⁴ This raises questions directly relevant to the assertion in the memorandum that WP did not authorize Venturino to enter trades without first speaking with him. Consequently, the Hearing Panel finds that, without more, the evidence is insufficient to support the conclusion that Venturino traded without authorization in WP's account.

Without WP's testimony, the Hearing Panel cannot evaluate the claim in the interview memorandum that he made no suggestions for investments in his account, implying that he relied solely on Venturino's recommendations.⁶⁶⁵ As with the other non-testifying customers, the Hearing Panel is confronted with a lack of evidence. For example, according to the interview memorandum, WP said Venturino called him "multiple" times before "he decided to purchase" Taser stock as his initial investment with Venturino.⁶⁶⁶ This suggests that he participated in that investment decision.

The schedule of trades in his account shows that Venturino marked 21 of the 69 trades as unsolicited. The 21 unsolicited trades include both purchases and sales of stocks, some of which

⁶⁵⁹ Enf. Br. 20–21.

⁶⁶⁰ Tr. 1702–05 (Enforcement's counsel).

⁶⁶¹ CX-33, at 1.

⁶⁶² RX-113.

⁶⁶³ CX-33, at 1.

⁶⁶⁴ CX-33, at 2–3.

⁶⁶⁵ CX-33, at 2.

⁶⁶⁶ CX-33, at 2.

appear to be in-and-out trades suggested to Venturino by WP. This suggests that WP did not rely solely on Venturino's recommendations, and that he may have played a role in deciding what to buy and sell, when, and in what quantities.⁶⁶⁷ Without hearing from WP, the Hearing Panel is significantly limited in its ability to determine, as Enforcement alleges, that Venturino exercised de facto control over WP's account and churned and traded excessively in it.

It is for these reasons that the Hearing Panel concludes, despite the high annualized cost-to-equity ratio, high turnover rate, and other indicators of excessive trading in the account, that there is insufficient evidence to support a finding that Venturino exercised de facto control over WP's Aegis account. Therefore, the Panel cannot conclude that Venturino excessively traded in and churned it.

5. Customer RC

Born in 1935,⁶⁶⁸ RC was the oldest of Venturino's Aegis customers involved in this case and has since passed away.⁶⁶⁹ He is the only non-testifying customer Enforcement did not interview.⁶⁷⁰ As with all Venturino's customers in this case, RC's Aegis account investor profile categorizes his objective as speculation and his risk tolerance as maximum.⁶⁷¹

Venturino traded in RC's Aegis account from February 2015 until August 2016.⁶⁷² RC had other accounts with similar investor profiles at the same time. He had a Morgan Stanley account with objectives of capital appreciation, speculation, income, and aggressive risk tolerance.⁶⁷³ In a 2016 application with another firm, he included a handwritten note stating, "This is to confirm that I, [RC], have been trading stocks on the various U.S. exchanges for 60 years and that during that time I have had a margin account and have used it on needed occasions. In transferring this account it is my full intention to continue to use the margin account."⁶⁷⁴

RC had other accounts with speculative investment objectives and acceptance of high risks. These include an account that he wanted to use for speculative options trading in 2008.⁶⁷⁵

⁶⁶⁷ CX-13, at 1, rows 11–18, 22, 27; CX-13, at 2, rows 29, 37, 41–42, 46–47, 51–52, 54, 57.

⁶⁶⁸ JX-53, at 1.

⁶⁶⁹ Tr. 1183 (Venturino).

⁶⁷⁰ Tr. 27.

⁶⁷¹ JX-53, at 1.

⁶⁷² CX-1, at 1.

⁶⁷³ RX-23, at 3.

⁶⁷⁴ RX-22, at 15.

⁶⁷⁵ RX-27, at 1. It appears that the firm declined his request as his initials are crossed out and "No" was handwritten next to it.

Also in 2008, he signed an account document identifying his primary objective as speculation.⁶⁷⁶ In 2009, the firm where he had this speculative account notified him that the account, with a value of \$579,581, had a margin debit balance of \$423,998.⁶⁷⁷ In 2010, the account had a value of more than \$2 million and a margin debit balance of more than \$1 million.⁶⁷⁸ In January 2011, he acknowledged he was “fully aware of the risks” of investments in an account with an objective of high growth and a high risk tolerance.⁶⁷⁹ In 2012 he signed a certification of eligibility to participate in IPOs in another account, with speculation listed as his primary investment objective.⁶⁸⁰

This evidence indicates that RC did not fit the Complaint’s description of Venturino’s customers as “not sophisticated investors.”⁶⁸¹ To the contrary, RC was an experienced investor and possibly a sophisticated one, as well.

The Hearing Panel does not know whether RC had conversations with Venturino in which he authorized the allegedly unauthorized transactions in his account. Emails Venturino sent to RC in January and February 2016 suggest that he and RC discussed events affecting the market, and that RC was interested in being informed about them. The emails indicate that RC may have engaged in discussions with Venturino about his recommendations, and that RC may have participated in selecting investments.⁶⁸² There is insufficient evidence available for the Hearing Panel to ascertain the degree to which RC may have relied on Venturino’s recommendations, and whether Venturino exercised de facto control over the account.

For these reasons, the Hearing Panel finds the evidence insufficient to prove that Venturino traded without authorization in RC’s account or churned and traded excessively in it.

IV. Sanctions

A. Overview: General Principles Applicable to All Sanction Determinations

In the introductory section of FINRA’s Sanction Guidelines (“Guidelines”), General Principle No. 1 of the General Principles Applicable to All Sanction Determinations sets forth the overriding purpose of FINRA disciplinary proceedings: “to protect the investing public, support and improve the overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.”⁶⁸³ General Principle No. 2 directs

⁶⁷⁶ RX-24, at 23.

⁶⁷⁷ RX-28.

⁶⁷⁸ RX-29.

⁶⁷⁹ RX-30.

⁶⁸⁰ RX-24, at 27.

⁶⁸¹ Compl. ¶ 14.

⁶⁸² RX-17; RX-18.

⁶⁸³ FINRA Sanction Guidelines (“Guidelines”) at 2 (Sept. 2022), <http://www.finra.org/sanctionguidelines>.

adjudicators to consider a respondent’s arbitration history—including awards and settlements—when a respondent has been the subject of claims brought against the respondent’s employer firms.⁶⁸⁴

Venturino’s arbitration history, as reflected in FINRA’s Central Registration Depository (“CRD”) is significant. From 2014 to 2023, there were 12 settlements—totaling \$2,118,168—of customer-initiated arbitration complaints filed against Venturino’s employer firms by his customers who alleged, among other things, that he engaged in unauthorized trading, churning, excessive trading, and unsuitable recommendations.⁶⁸⁵ General Principle No. 2 directs adjudicators to evaluate whether a respondent’s arbitration history indicates the presence of a pattern.⁶⁸⁶ Here, the number of settlements of customer claims against Venturino; the high amount of the awards; the span of years the claims covered; and the repeated allegations of churning, unsuitable recommendations, and unauthorized trading, all demonstrate a pattern amounting to an aggravating factor in determining the sanctions in this case.

B. Principal Considerations in Determining Sanctions: Aggravating Factors

1. Failure to Accept Responsibility

Principal Consideration No. 2 states that adjudicators should consider whether a respondent accepted responsibility for misconduct before it was discovered.⁶⁸⁷ Venturino has not accepted responsibility at any time for his misconduct. He has not even acknowledged the financial harm to customers resulting from his recommendations and actions. Indeed, in his testimony Venturino gave no hint that he could have been responsible for any of the sizable losses his customers suffered because of his trading. He insisted in rote responses to questions throughout the hearing that he consulted with each client before making each purchase or sale

⁶⁸⁴ *Id.*

⁶⁸⁵ JX-1, at 19–20 (March 2014, \$76,500 settlement of customer claims of unauthorized trading, churning, unsuitable investments); JX-1, at 21–22 (June 2017, \$142,000 settlement of customer claims of excessive and unauthorized trading); JX-1, at 27–28 (November 2017, \$16,500 settlement of customer claims of unauthorized trading); JX-1, at 31–33 (May 2019, \$300,668 settlement of six customers’ claims of unsuitable recommendations and unauthorized trading); JX-1, at 48 (January 2021, \$62,500 settlement of customer claims of unsuitable investments and high-pressure trading); JX-1, at 49, 52 (August 2021, \$65,000 settlement with estate of customer TF’s claim of unsuitability); JX-1, at 53–57 (September 2021, \$235,000 settlement with Aegis, followed by \$350,000 settlement with another former Venturino employer firm of customer claims including unsuitable investments and churning); JX-1, at 59–62 (June 2021, \$175,000 settlement of customers JO and BO’s claim of unauthorized trading); JX-1, at 63–65 (March 2021, \$39,000 settlement of customer RL’s claim of unsuitable strategy); JX-1, at 67–68 (September 2022, \$600,000 settlement of customers DF, CB, WP, CA and four other customers’ claims including unsuitable investments); JX-1, at 73 (April 2022, \$40,000 settlement of customer EF and another customer’s claims including unauthorized trading, churning); JX-1, at 79–80 (March 2023, \$16,000 settlement of customer claims including suitability, churning, unauthorized trading).

⁶⁸⁶ Guidelines at 2.

⁶⁸⁷ Guidelines at 7.

and fully explained the costs.⁶⁸⁸ His testimony conflicted with testimony from each testifying witness. For example, when questioned about the high costs he charged customer CB, Venturino essentially blamed his customer. He claimed that he did not “recall [CB] specifically,” but if he had seen the costs in the account, he would have recommended a change in strategy. He then added, “[b]ut I cannot force clients to do a different strategy.”⁶⁸⁹ Yet CB testified credibly and without contradiction—as did the other testifying customers—that he relied “heavily” on Venturino’s recommendations, “95 to 100 percent.”⁶⁹⁰

When asked to justify a series of solicited trades that cost customer JF \$7,000 in one month, in an account with an equity value of only \$13,000, Venturino said he “would have had numerous conversations” with JF “trying to make him switch out the strategy,”⁶⁹¹ but he could not “make [JF] do anything.”⁶⁹² So, in both instances, Venturino claimed with no corroboration, that he would have recommended cost-saving changes to his clients, but that he was unable to persuade them to follow his advice.

2. Numerous Acts, Pattern of Misconduct Over Extended Period

Principal Considerations Nos. 8 and 9 address the scope of a respondent’s misconduct, directing adjudicators to consider whether it consisted of “numerous acts or a pattern” and persisted “over an extended period.”⁶⁹³ Consideration No. 17 has adjudicators focus on “the number, size, and character of the transactions at issue.”⁶⁹⁴

For Venturino, each of these factors weigh heavily as aggravating. As shown above, the individual purchases were large, often for tens of thousands of dollars each. There were many transactions over a significant span of time. Venturino effected 31 trades while managing JF’s account for 12 months; 195 trades while managing CB’s account for 34 months; 113 trades while managing DF’s account for 19 months; 74 trades while managing JO’s individual account for 18 months; 37 trades while managing JO’s retirement account for 10 months; and 28 trades while managing JO’s joint account for 14 months.⁶⁹⁵ Given the frequency of in-and-out trades, high-cost trades that resulted consistently in losses to the accounts, Venturino’s churning and excessively unsuitable trades were numerous and followed a pattern repeated over many months.

⁶⁸⁸ Tr. 844 (Venturino).

⁶⁸⁹ Tr. 876 (Venturino).

⁶⁹⁰ Tr. 395 (CB).

⁶⁹¹ Tr. 938 (Venturino).

⁶⁹² Tr. 945 (Venturino).

⁶⁹³ Guidelines at 7.

⁶⁹⁴ *Id.* at 8.

⁶⁹⁵ CX-1.

Furthermore, his misconduct in this case parallels the misconduct demonstrated in the arbitration awards.

3. Attempt to Conceal Misconduct, Mislead Customers

Principal Consideration No. 10 tells adjudicators to consider whether a respondent attempted to conceal misconduct from customers or regulatory authorities.⁶⁹⁶ The evidence showed that Venturino routinely charged markups on purchases of stock without explaining them to his customers. JF, CB, DF, and JO testified credibly that they did not understand what Venturino charged them for trades, did not know what markups are, and did not understand how to calculate them from the sparse information in Aegis's statements or confirmations. The customers were credible in their expressions of surprise at the high markups and the actual total costs they paid for trades. Venturino's practice of charging markups on stock purchases without explaining what he charged the customers impeded their ability to keep track of the costs of Venturino's recommendations and to determine the extent of their losses.

In addition, Venturino's disavowal at the hearing of his initial OTR testimony that he used his assigned phone extension to make recommendations and take orders was not credible. It was designed to mislead the Hearing Panel into concluding that the dialed number report's record of trades that were not preceded by phone calls cannot be relied upon as evidence that he did not speak to customers before executing trades in their accounts.

In these ways, Venturino attempted to conceal his wrongdoing from customers while he traded excessively and churned their accounts, and from FINRA during this disciplinary proceeding. These attempts constitute another aggravating factor to consider in determining sanctions.

4. Injury to Customers

Principal Consideration No. 11 focuses on whether a respondent's actions injured members of the investing public, and if so, to what extent.⁶⁹⁷ Clearly, Venturino's misconduct caused his customers substantial financial injury in trading losses and in the excessive costs he charged. JF's realized losses came to \$22,723, of which \$10,146 consisted of the costs Venturino charged. CB's realized losses totaled \$144,103, including \$85,060 in costs. DF's realized losses were \$91,968, with \$62,210 in costs. For JO's three accounts, the losses were \$153,981, with total costs of \$94,840.⁶⁹⁸ These customers' combined losses total \$412,775.

Taken together, these financial injuries constitute a significant aggravating factor for the purpose of determining the appropriate sanctions.

⁶⁹⁶ Guidelines at 7.

⁶⁹⁷ *Id.*

⁶⁹⁸ CX-1, at 1.

5. Intentional/Reckless Acts for Monetary Gain

Principal Considerations Nos. 13 and 16 direct adjudicators to weigh the evidence that a respondent acted intentionally, recklessly, or negligently, and whether the misconduct provided the respondent with potential monetary gain.⁶⁹⁹

As explained in the discussion of the evidence of Venturino's churning, the Hearing Panel has concluded that Venturino acted intentionally, or at least in reckless disregard of his customers' interests. And as the evidence shows, Venturino had an incentive to do so: he was under considerable financial pressure from his failure to pay federal and state income taxes amounting to more than \$300,000.

The evidence also confirms that Venturino not only sought to profit from his misconduct but succeeded in doing so: his payout credits for churning and excessively trading JF's account came to \$6,332; for CB's account, \$54,314; for DF's, \$48,050; for JO's three accounts, \$62,723. From his misconduct in these six accounts, Venturino's payouts totaled \$171,419.⁷⁰⁰

C. The Guideline for Unauthorized Trading

The Guideline for Unauthorized Transactions, in violation of FINRA Rule 2010, recommends that adjudicators consider suspending a respondent for one month to two years, but to strongly consider a bar when aggravating factors predominate. The Principal Considerations specific to unauthorized trading include whether a respondent might reasonably have misunderstood the scope of authority granted by a customer; the number of customers and magnitude of their losses; the number and dollar value of the trades; attempts by the respondent to conceal the unauthorized trades; and whether the transactions were effected in furtherance of another violation, such as churning.⁷⁰¹ It has been observed that unauthorized trading "is a fundamental betrayal of the duty owed" by a broker to a customer,⁷⁰² and "a clear betrayal of . . . customers' trust."⁷⁰³

There is no evidence suggesting Venturino may have misunderstood the scope of authority given him by his customers; he has made no claim to that effect. As the discussion above shows, the number of customers, their substantial losses, the number and dollar value of the trades, and the clear evidence that Venturino traded to churn for his personal profit, are all aggravating factors.

⁶⁹⁹ Guidelines at 8.

⁷⁰⁰ CX-16.

⁷⁰¹ Guidelines at 122.

⁷⁰² *Sears*, 2008 SEC LEXIS 1521, at *6.

⁷⁰³ *Dep't of Enforcement v. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22, at *23 (NAC June 15, 1999).

D. The Guideline for Churning and Excessive Trading

A single brief Guideline addresses excessive trading, in violation of FINRA Rules 2111 and 2010, together with churning, in violation of FINRA Rules 2020 and 2010, as well as Exchange Act Section 10(b) and Rule 10b-5 thereunder. When aggravating factors predominate, the Guideline recommends considering a suspension of two years or a bar. When the conduct reflects reckless or intentional misconduct, as churning does, the Guideline recommends that adjudicators “[s]trongly consider a bar.”⁷⁰⁴ These recommendations are consistent with the well-established recognition of the seriousness of churning and excessive trading, meriting strong sanctions.⁷⁰⁵

E. Conclusions Relating to Sanctions

There are no mitigating factors here. The aggravating factors in the Principal Considerations apply to each of the three violations Venturino committed in his management of the accounts of JF, CB, DF, JO, and JB—excessive trading, churning, and unauthorized trading. Venturino caused significant financial harm to his customers in all six accounts. His violations were numerous and protracted. He caused the five customers to lose a total of \$412,775. In addition, Venturino refuses to take any responsibility for recommending and engaging in the high volume of trading that was so costly and unprofitable for his customers, and denies effecting any unauthorized trades, despite the phone record evidence and the believable testimony of the customers that they were unaware of many of the trades until after the fact.

The number of Venturino’s unauthorized transactions in these accounts is also high, totaling eight in JF’s account, 76 in CB’s account, 40 in DF’s account, 25 in JO’s individual account, 13 in JO’s retirement account, and 12 in JO and JB’s joint account.⁷⁰⁶ There is no question that Venturino clearly understood that he lacked authority to trade without consulting these customers. They were credible in their unanimous assertions that they did not grant Venturino discretion, and Venturino does not claim that they did.

Because of the gravity of Venturino’s churning and excessive trading, the predominance of aggravating factors, and the absence of mitigation, the Hearing Panel concludes that, to protect the investing public, to reduce the likelihood of a recurrence of such misconduct by Venturino, and to discourage others from engaging in similar wrongdoing, it is appropriate to impose a bar from associating with any member firm in any capacity for Venturino’s excessive trading and churning as charged in the first two causes of action pertaining to the accounts of JF, CB, DF, and JO.

⁷⁰⁴ Guidelines at 112.

⁷⁰⁵ *Newport Coast Sec.*, 2018 FINRA Discip. LEXIS 14, at *192 n.89 (“Excessively trading and churning just one customer’s account is serious misconduct warranting the most severe sanctions.”).

⁷⁰⁶ CX-19, at 1.

As the evidence shows, the charges in the Complaint’s first two causes of action are closely interrelated. The churning violations consist of excessive trading with the additional element of scienter—the intentional or reckless disregard of the customers’ interests in Venturino’s pursuit of personal gain.⁷⁰⁷ Therefore, the Hearing Panel concludes that a single bar is appropriate to impose for these violations.⁷⁰⁸ The Hearing Panel finds that Venturino’s repeated fraudulent violations reflect a “serious disregard of the conduct expected of individuals in the securities industry when dealing with customers.”⁷⁰⁹ For him to participate in the securities industry “poses a serious risk to the investing public.”⁷¹⁰

Venturino’s unauthorized trades were also intentional and by themselves constitute egregious misconduct. Therefore, the Hearing Panel concludes it is appropriate to impose an additional bar for Venturino’s unauthorized trades in the accounts of customers JF, CB, DF, and JO, as charged in the third cause of action.

Enforcement has not requested that the Hearing Panel impose a fine and explicitly stated that it is not seeking restitution for the customers, most of whom have received awards resulting from arbitration claims they filed.⁷¹¹ The Hearing Panel accepts Enforcement’s assessment that a fine and an order of restitution are not appropriate in this case because of the arbitration awards and because of the difficulty of quantifying the amounts appropriate in each instance. For these reasons, the Hearing Panel declines to order Venturino, in addition to the above penalties, to pay a fine and restitution.

That said, Venturino was unjustly enriched as a direct result of the personal profit he reaped from excessively trading and churning the accounts of testifying customers JF, CB, DF, and JO, as alleged in the Complaint’s first and second causes of action. In such cases, it is appropriately remedial to require disgorgement of ill-gotten gains causally connected to violative misconduct, and consistent with the purpose of FINRA’s disciplinary process to protect investors and the integrity of the markets by making violations unprofitable.⁷¹² The Panel notes that

⁷⁰⁷ Because Venturino churned in violation of both FINRA Rules and Exchange Act Section 10(b), and Exchange Act Rule 10b-5 by trading excessively, engaging in in-and-out trading, and charging high markups and markdowns pursuing personal gain, he knew what he was doing. His misconduct was not inadvertent. Therefore, it was willful. *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *15 (Mar. 15, 2016), *aff’d*, 672 F. App’x 865 (10th Cir. 2016). Pursuant to Sections 3(a)(39)(F) and 15(b)(4)(D) of the Exchange Act, associated persons are subject to disqualification from the securities industry for willful violations of the federal securities laws. Accordingly, as a result of this decision, Venturino is subject to statutory disqualification from the securities industry.

⁷⁰⁸ *Newport Coast Sec.*, 2018 FINRA Discip. LEXIS 14, at *177.

⁷⁰⁹ *Dep’t of Enforcement v. Titan Sec.*, No. 2013035345701, 2021 FINRA Discip. LEXIS 5, at *83 (NAC June 2, 2021), *appeal docketed*, No. 3-20387 (SEC June 29, 2021).

⁷¹⁰ *Dep’t of Enforcement v. Reyes*, No. 201651493704, 2021 FINRA Discip. LEXIS 29, at *65 (NAC Oct. 7, 2021).

⁷¹¹ Tr. 1823–24; Enf. Br. 31.

⁷¹² *Gopi Krishna Vungarala*, Exchange Act Release No. 90476, 2020 SEC LEXIS 4938, at *36–38 (Nov. 20, 2020).

FINRA's routine practice is to contribute funds collected pursuant to a disgorgement order to FINRA's Investor Education Foundation.⁷¹³

The Hearing Panel's calculation of Venturino's ill-gotten gains is based on the testimony of the Investigator and the summary exhibit of payouts for each customer's account.⁷¹⁴ In addition, the Panel relied on Venturino's hearing testimony, which confirmed that when he was a joint representative on an account, he received payout credits of half of the commissions, markups, and markdowns, and when he was the sole representative, he received a payout of 75 percent of the commissions, markups, and sales credits.⁷¹⁵ The Hearing Panel therefore finds it appropriate to divest Venturino of the profit derived from his misconduct and order him to disgorge \$171,419, the total ill-gotten gains he obtained from his violative conduct.

V. Order

Respondent Michael Venturino churned six accounts belonging to five customers in willful violation of Exchange Act Section 10(b), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010, as charged in the Complaint's first cause of action, and engaged in excessive trading in the same accounts in violation of FINRA Rules 2111(a) and 2010, as charged in the second cause of action. For these violations, Respondent is barred from associating with any FINRA member firm in any capacity. He is additionally barred for engaging in unauthorized trading in these accounts in violation of FINRA Rule 2010, as charged in the third cause of action. If this decision becomes FINRA's final disciplinary action, the bars shall become effective immediately.

In connection with the first and second causes of action, Respondent is also ordered to disgorge to FINRA his ill-gotten gains totaling \$171,419 plus interest, apportioned as follows, running from the date of the issuance of this decision, until paid in full:

- a. for customer JF's account, \$6,332, plus interest from March 1, 2016;
- b. for customer CB's account, \$54,314, plus interest from March 24, 2017;
- c. for customer DF's account, \$48,050, plus interest from January 7, 2016;
- d. for customer JO's individual account, \$29,216, plus interest from March 29, 2017;
- e. for customer JO's retirement account, \$20,201, plus interest from September 27, 2016; and

⁷¹³ Guidelines at 5 ¶ 6.

⁷¹⁴ Tr. 137–38 (Investigator); CX-16.

⁷¹⁵ Tr. 803–06 (Venturino).

f. for customers JO and JB's joint account, \$13,306, plus interest from March 28, 2017.

Interest shall accrue at the rate set in 26 U.S.C. Section 6621(a)(2).⁷¹⁶

Finally, Respondent is ordered to pay hearing costs of \$14,578, consisting of a \$750 administrative fee and \$13,828 for the cost of the transcript. Payment of disgorgement and costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final action.⁷¹⁷



Matthew Campbell
Hearing Officer
For the Extended Hearing Panel

Copies to:

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⁷¹⁶ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

⁷¹⁷ The Extended Hearing Panel has considered and rejects without discussion all other arguments made by the parties.