

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

DEPARTMENT OF MARKET
REGULATION,

Complainant,

v.

WILLIAM NORRIS JORDAN, JR.
(CRD No. 1385105),

Respondent.

Disciplinary Proceeding
No. 20120317482-03

Hearing Officer – RES

**AMENDED HEARING PANEL
DECISION¹**

September 26, 2017

Respondent willfully executed inter-positioning trades in seven municipal bond transactions. This conduct constituted a fraudulent act, device, and scheme, and Respondent committed omissions of material fact when he did not disclose the inter-positioning trades to the ultimate purchasers of the bonds. The inter-positioning trades also were a deceptive, dishonest, and unfair practice. Because of the trades, Respondent reported fraudulent and fictitious transactions to the trade-reporting systems of the Municipal Securities Rulemaking Board. Respondent provided false information to FINRA in representing to the Department of Market Regulation that he engaged in the trades to reward a broker at another brokerage firm for her hard work on Respondent's behalf. For each of these violations, Respondent is suspended from associating with any FINRA member firm in any and all capacities for one year, with the suspensions running concurrently, and fined \$7,000. Respondent is also ordered to pay disgorgement in the amount of \$25,657, plus prejudgment interest.

Market Regulation failed to meet its burden of proving that markups in the seven municipal bond transactions were unfair and unreasonable.

Appearances

For the Complainant: Gary E. Jackson, Esq., Kevin M. McGee, Esq., James J. Nixon, Esq.,
Department of Market Regulation, Financial Industry Regulatory Authority.

¹ This Decision is amended to clarify the monetary sanctions. The start date of the suspension is adjusted as a result of the issuance of this amended Decision.

For the Respondent: Richard A. Levan, Esq., Bala Cynwyd, Pennsylvania, and Jon-Jorge Aras, Esq., Spadea Lignana, LLC, Philadelphia, Pennsylvania.

DECISION

I. Introduction

The Hearing Panel conducted a hearing in this disciplinary proceeding in Philadelphia, Pennsylvania on March 28-30, 2017.² The evidence shows that Respondent William Norris Jordan, a FINRA registered person, violated: (1) Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and SEC Rule 10b-5 by executing “inter-positioning” trades in seven municipal bond transactions and failing to disclose the trades to the ultimate purchasers of the bonds; (2) Rule G-14 of the Rules of the Municipal Securities Rulemaking Board (“MSRB”) by reporting his inter-positioning trades to the MSRB reporting system even though he knew the trades were fictitious; (3) MSRB Rule G-17 by executing trades that constituted a deceptive, dishonest, and unfair practice; and (4) FINRA Rules 8210 and 2010 by providing false information to FINRA about his reason for making the trades.

The Department of Market Regulation failed to meet its burden of proving that the prices Jordan charged the ultimate purchasers of the municipal bonds were unfair and unreasonable in violation of MSRB Rule G-30.³ For the reasons stated below, we suspend Jordan from associating with any FINRA member firm in any and all capacities for one year and order him to pay a fine of \$7,000. Jordan is also ordered to pay disgorgement of \$25,657, plus prejudgment interest.

II. The Complaint

Market Regulation filed the Complaint against Jordan on July 13, 2016. The first cause of action of the Complaint alleged that Jordan engaged in inter-positioning or “round-tripping” trades of municipal bonds in violation of the antifraud provisions of the federal securities laws. The second cause of action alleged that Jordan’s inter-positioning trades constituted a deceptive, dishonest, and unfair practice. The third cause of action alleged that Jordan charged unfair and unreasonable prices for the bonds he sold in the transactions. The fourth cause of action charged that Jordan reported fictitious trades to the MSRB. The fifth cause of action alleged that Jordan provided false information to FINRA about his reason for executing the trades. Jordan answered the Complaint, denied the allegations of wrongdoing, and requested a hearing.

III. Jurisdiction

Jordan entered the securities industry in April 1986 and is the Chief Executive Officer, President, and Chief Compliance Officer of WNJ Capital, Inc. (“WNJ Capital”), a FINRA

² The hearing transcript is cited as “Tr.” Complainant’s exhibits are cited as “CX.” Respondent’s exhibits are cited as “RX.” The Stipulations are cited as “Stip.”

³ The Hearing Panel applied the preponderance of the evidence as the standard of proof.

member firm.⁴ Jordan has stipulated that, according to Article V of FINRA’s By-Laws, FINRA has jurisdiction over him in this proceeding.⁵ Jordan executed the municipal bond trades at issue while he was associated with Kildare Capital, Inc., another FINRA member.

IV. Findings of Fact

A. Background

Jordan has worked in the municipal bond business for 32 years.⁶ He was an independent contractor with Kildare.⁷ He managed Kildare’s Philadelphia office.⁸ He traded and sold municipal bonds to institutional investors.⁹ He left Kildare in December 2013 to form WNJ Capital.¹⁰

B. Jordan Discussed his Municipal Bond Markups With his Largest Customer

Jordan’s course of business was to purchase municipal bonds in the market as principal and sell the bonds to his customers and other dealers at a markup. One of Jordan’s customers was National Penn Investors Trust Company in Wyomissing, Pennsylvania (“National Penn”).¹¹ “JK” was the portfolio manager of National Penn.¹² JK first became Jordan’s customer in 1991. Jordan considers JK a personal friend.¹³ JK was Jordan’s largest customer.¹⁴

In late 2008 and early 2009, JK had multiple conversations with Jordan about the markups that Jordan charged National Penn for municipal bonds.¹⁵ JK testified that the fixed income team at National Penn “started having more and more discussions about mark-ups across all fixed income securities, but including municipal bonds.”¹⁶ The fixed income team tried to implement a system in which “every firm we used charged the same rate to make sure it was a level playing field, we weren’t favoring one or more firm[s], the client was treated

⁴ Stip. ¶ 1; CX-2, at 2; CX-3, at 3; CX-4, at 2; Tr. 45-47. The “WNJ” of WNJ Capital stands for William Norris Jordan. Tr. 493.

⁵ Stip. ¶ 1.

⁶ Tr. 112.

⁷ Tr. 629.

⁸ Tr. 46.

⁹ Tr. 112.

¹⁰ Tr. 617.

¹¹ Tr. 113-14.

¹² Tr. 114.

¹³ Tr. 114-15.

¹⁴ Tr. 644.

¹⁵ Tr. 243-44.

¹⁶ Tr. 244.

fairly.”¹⁷ A trading specialist JK hired “used MSRB reports of transactions to try to establish what the actual mark-ups and so forth would be from various firms we use.”¹⁸

JK testified that, on a number of occasions over several months, he and Jordan discussed Jordan’s markups for sales of municipal bonds.¹⁹ According to Jordan, JK told him that his markups were a little bit higher than those of other firms that sold to National Penn.²⁰ JK testified about how he and Jordan agreed on the price:

Most often he would call me with an idea for a bond that he thought I would be interested in. And our conversation would be about what—if I bought that bond at a given price, what that yield to my client would be and we would compare it to the new issue market to see what the current available yields were in the new issue market.²¹

C. Jordan Executed Municipal Bond Trades With Chapdelaine

Jordan executed 20 to 25 percent of his municipal bond trades through FINRA member Chapdelaine & Co. acting as agent.²² Chapdelaine was a “broker’s broker” or “inter-dealer broker,” meaning the firm acted as an intermediary between municipal bond dealers to facilitate inter-dealer trades.²³ The broker from Chapdelaine with whom Jordan interacted and through whom he executed bond trades was “PD.” Jordan has known PD for more than twenty years.²⁴

In seven sets of municipal bond transactions in the time period from November 2009 through August 2011, Jordan simultaneously sold bonds to Chapdelaine at prices he determined and purchased the same bonds back from Chapdelaine at prices ranging from \$0.25 to \$0.50 higher, which he also determined. This Decision will refer to these seven sets of transactions as the “seven transaction sets.” In six of the transaction sets, the trades with Chapdelaine moved the inter-dealer prices upward, and Jordan profited from these price movements when he sold

¹⁷ Tr. 245.

¹⁸ Tr. 247.

¹⁹ Tr. 248.

²⁰ Tr. 164.

²¹ Tr. 293-94.

²² Tr. 506-07; 645.

²³ Tr. 115. Describing the role of a broker’s broker, one of the registered persons at Chapdelaine testified that “[w]e act as agent between two dealers. One wants to sell, one wants to buy, we try to get in the middle and work for our 75 cents.” Tr. 344.

²⁴ Tr. 115.

the bonds to the ultimate purchasers.²⁵ National Penn was the ultimate purchaser in four of the transaction sets.²⁶

Jordan executed the seven municipal bond trades with Chapdelaine after speaking with PD and obtaining her agreement to participate in the trades. When asked why he executed these trades, Jordan testified that he did so to reward PD for all of her hard work on his behalf: “[O]n all seven trades, I cross bonds between [PD], to [PD] and back to me to thank her for her continual hard work every single day, helping me, working harder than any other broker-dealer on the street.”²⁷ PD did all this work for Jordan because he “forged a great relationship with [PD].”²⁸ Further discussion of Jordan’s interaction with PD and Chapdelaine appears in Section IV.E *infra*.

D. The Seven Transaction Sets

The seven transaction sets were the following:²⁹

Transaction Set No. 1: South Dakota Housing Development Authority

Date	Time	Purchaser	Price ³⁰	Volume	Markup ³¹
11/04/09	13:48:56	Kildare	\$103.66	1,890,000	
11/04/09	14:07:02	Chapdelaine	\$104.03	1,890,000	
11/04/09	14:07:02	Kildare	\$104.06	1,890,000	
11/04/09	N.A.	Purchaser	\$104.36	1,890,000	\$0.70 (0.7%)

Narrative: On November 4, 2009, Kildare purchased 1,890,000 bonds issued by the South Dakota Housing Development Authority at a price of \$103.66.³² On the same day, Kildare sold the bonds to Chapdelaine at a price of \$104.03 and immediately bought the bonds

²⁵ CX-19; Tr. 68, 70.

²⁶ Stip. ¶ 8.

²⁷ Tr. 119-20; *see* Tr. 145.

²⁸ Tr. 505. Jordan was introduced to PD when she replaced a registered person at Chapdelaine to whom Jordan referred as “a real big bond daddy, everybody knew him on Wall Street.” Tr. 632. The registered person retired from the municipal bond business.

²⁹ CX-19; CX-22; RX-14.

³⁰ The prices are rounded to the nearest penny.

³¹ The dollar markup is the difference between the price at which Kildare ultimately sold the bonds and the firm’s cost basis. For the reasons stated in Section V.E *infra*, and for the purpose of determining the amounts of the markups, the Hearing Panel finds that Kildare’s cost basis is the market value of the bonds sold in the seven transaction sets. The percentage markup is calculated by dividing the monetary amount of the markup by the cost basis. The percentage markup is rounded to the nearest one-tenth of one percent.

³² Tr. 117-18.

back from Chapdelaine at \$104.06.³³ Kildare then sold the bonds to the ultimate purchaser at \$104.36.³⁴ The time between Kildare’s initial purchase and its sale to the ultimate purchaser was twenty minutes.³⁵ The parties did not bring to the Hearing Panel’s attention any inter-dealer trade that occurred between Kildare’s purchase on November 4 and Kildare’s sale to the ultimate purchaser twenty minutes later.³⁶ For the reasons discussed in Section V.E *infra*, the absence of an inter-dealer trade means that Kildare’s cost basis in first purchasing the bond is the market value of the bond for the purpose of determining the amount of the markup.

Transaction Set No. 2: Alaska State Housing Financial Corporation

Date	Time	Purchaser	Price	Volume	Markup
11/23/09	16:53:41	Kildare	\$103.75	980,000	
11/24/09	13:03:02	Chapdelaine	\$104.50	775,000	
11/24/09	13:03:02	Kildare	\$104.53	775,000	
11/24/09	13:10:00	Purchaser 1	\$104.90	775,000	\$1.15 (1.1%)
12/01/09	16:20:00	Purchaser 2	\$104.90	205,000	\$1.15 (1.1%)

Narrative: At 4:53 p.m. on November 23, 2009, Kildare purchased 980,000 bonds issued by the Alaska State Housing Financial Corporation at \$103.75.³⁷ The next day, Kildare sold 775,000 of the bonds to Chapdelaine at \$104.50 and immediately bought the bonds back from Chapdelaine at \$104.53.³⁸ Seven minutes later, Kildare sold the 775,000 bonds to the ultimate purchaser at \$104.90.³⁹ Kildare sold the 205,000 bonds remaining from the original purchase a week later, on December 1, at the same price of \$104.90.⁴⁰ With regard to his trade with Chapdelaine, Jordan testified that “when I would catch an order and I had money, profit built into it, I would be more than happy to pay [PD] for all of her hard work.”⁴¹ The ultimate purchaser was National Penn. With regard to Kildare’s sale of 205,000 bonds on December 1, Jordan testified that “I have a feeling it’s the same customer who bought it [the first 775,000 bonds]. He liked his price from six days earlier and he said if you have anymore of those, I now have more money.”⁴² The parties did not bring to the Hearing Panel’s attention any inter-dealer

³³ Tr. 118.

³⁴ Tr. 119.

³⁵ Tr. 710.

³⁶ An inter-dealer trade is a trade between two municipal bond dealers.

³⁷ Tr. 124.

³⁸ Tr. 124.

³⁹ Tr. 125.

⁴⁰ Tr. 127.

⁴¹ Tr. 126.

⁴² Tr. 128.

trades between Kildare’s purchase on November 23 and Kildare’s sales to the ultimate purchaser on November 24 and December 1.

Transaction Set No. 3: New York State Thruway Authority

Date	Time	Purchaser	Price	Volume	Markup ⁴³
11/30/09	14:24:00	Kildare	\$109.06	500,000	
11/30/09	14:55:00	Kildare	\$109.06	500,000	
01/05/10	09:59:02	Chapdelaine	\$111.07	1,000,000	
01/05/10	09:59:02	Kildare	\$111.09	1,000,000	
01/25/10	16:55:00	Purchaser 1	\$108.71	200,000	-\$0.35 (-0.3%)
01/25/10	16:55:00	Purchaser 2	\$108.71	260,000	-\$0.35 (-0.3%)
01/25/10	16:55:00	Kildare	\$108.71	115,000	-\$0.35 (-0.3%)
01/25/10	17:20:00	Purchaser 3	\$108.71	55,000	-\$0.35 (-0.3%)
01/25/10	17:21:00	Purchaser 4	\$108.71	325,000	-\$0.35 (-0.3%)
01/25/10	17:22:00	Purchaser 5	\$108.71	45,000	-\$0.35 (-0.3%)

Narrative: On November 30, 2009, Kildare purchased 1,000,000 bonds issued by the New York State Thruway Authority at \$109.06.⁴⁴ More than a month later, Kildare sold the bonds to Chapdelaine at \$111.07 and immediately bought the bonds back from Chapdelaine at \$111.09.⁴⁵ There were three inter-dealer trades between Kildare’s purchases on November 30 and Kildare’s sales to the ultimate purchasers on January 25, 2010, but these trades occurred at prices less than Kildare’s \$109.06 cost basis.⁴⁶ Jordan did not suggest these intervening inter-dealer prices be used to calculate the amount of Kildare’s markup. Thus, for the reasons discussed in Section V.E *infra*, and for the purpose of determining the markup, the Hearing Panel finds that Kildare’s cost basis is the market value of the bond.

Transaction Set No. 4: Latrobe, Pennsylvania Industrial Development Authority, St. Vincent College

Date	Time	Purchaser	Price	Volume	Markup
03/12/10	09:30:00	Kildare	\$100.45	1,395,000	
03/16/10	16:06:02	Chapdelaine	\$101.35	1,395,000	
03/16/10	16:06:02	Kildare	\$101.40	1,395,000	
03/17/10	14:45:00	Purchaser 1	\$102.78	50,000	\$2.33 (2.3%)
03/19/10	10:26:00	Purchaser 2	\$101.59	1,345,000	\$1.14 (1.1%)

⁴³ The markup is negative because Kildare incurred a loss in the transaction.

⁴⁴ Tr. 131.

⁴⁵ Tr. 132.

⁴⁶ RX-14.

Narrative: On March 12, 2010, Kildare purchased 1,395,000 bonds issued by the Latrobe, Pennsylvania Industrial Development Authority, St. Vincent College, at \$100.45.⁴⁷ Four days later, Kildare sold the bonds to Chapdelaine at \$101.35 and immediately bought the bonds back from Chapdelaine at \$101.40.⁴⁸ The next day, March 17, Kildare sold 50,000 of the bonds to a purchaser at \$102.78. Two days later, March 19, Kildare sold 1,345,000 bonds at \$101.59.⁴⁹ The parties did not bring to the Hearing Panel’s attention any inter-dealer trade that occurred between Kildare’s purchase on March 12 and Kildare’s sales to the ultimate purchasers on March 17 and 19.

Transaction Set No. 5: Coatesville, Pennsylvania Area School District

Date	Time	Purchaser	Price	Volume	Markup
05/21/10	11:32:27	Kildare	\$107.48	1,120,000	
05/24/10	10:35:56	Chapdelaine	\$108.26	1,120,000	
05/24/10	10:35:56	Kildare	\$108.28	1,120,000	
05/25/10	N.A.	Purchaser	\$108.84	1,120,000	\$1.36 (1.3%)

Narrative: On May 21, 2010, Kildare purchased 1,120,000 bonds issued by the Coatesville, Pennsylvania Area School District at \$107.48. Jordan testified that a dealer “called me with an offering.”⁵⁰ Jordan bought the bonds at a favorably low price because the bonds had not been rated by Bloomberg due to an oversight on the part of the issuer.⁵¹ The bond was rated shortly thereafter, and the market price increased. Jordan negotiated to sell his bonds to JK of National Penn. Jordan testified that, having negotiated the ultimate sale price with JK, “I crossed the bonds through [PD] and [JK] knew everything about the bonds.”⁵² With regard to the trade with Chapdelaine, Jordan testified that “I am guessing that I had an order on a bond. I had money built into it. And I was more than happy to pay [PD] a small percentage of my profit. That simple.”⁵³ When counsel for Market Regulation pointed out that National Penn was not the ultimate purchaser of these bonds, Jordan responded that the transaction occurred just as

⁴⁷ Tr. 133-34. Jordan testified that “[t]he terminology is 1,395,000 bonds, it’s not a thousand.” Tr. 133. By way of example, this terminology means 13,950 bonds at a face value of \$100 per bond, or 13,950 bonds with a total face value of \$1,395,000.

⁴⁸ Tr. 134.

⁴⁹ Tr. 135.

⁵⁰ Tr. 137.

⁵¹ Tr. 138-39. Contrary to Jordan’s testimony, the audit trail for this bond shows it was not unrated, but rated AAA by S&P and AA2 or AA3 by Moody’s. CX-10, at 22. When presented with this evidence, Jordan testified that “[t]his was either put backward or whatever. I’d love to be able to call Bloomberg and prove this to you, get the letter that they wrote.” Tr. 195. Jordan also pointed out that the rating for the bond went down from AAA to AA+ a few days later, but this does not quite support his original contention that the bond was unrated. Tr. 199.

⁵² Tr. 141.

⁵³ Tr. 209.

he testified, except the purchaser with whom he spoke and traded was someone other than JK.⁵⁴ The parties did not bring to the Hearing Panel’s attention any inter-dealer trade that occurred between Kildare’s purchase on May 21 and Kildare’s sale to the ultimate purchaser on May 25.

Transaction Set No. 6: Ohio State Building Authority, Adult Correctional Center

Date	Time	Purchaser	Price	Volume	Markup
07/19/11	13:02:11	Kildare	\$109.26	2,000,000	
07/21/11	10:00:11	Chapdelaine	\$109.67	2,000,000	
07/21/11	10:00:11	Kildare	\$109.70	2,000,000	
07/25/11	09:49:00	Purchaser 1	\$109.76	1,460,000	\$0.50 (0.5%)
08/05/11	12:48:53	Purchaser 2	\$109.93	250,000	\$0.67 (0.6%)
08/05/11	13:10:26	Purchaser 3	\$109.93	290,000	\$0.67 (0.6%)

Narrative: On July 19, 2011, Kildare purchased 2,000,000 bonds issued by the Ohio State Building Authority at \$109.26. Two days later, Kildare sold the bonds to Chapdelaine at \$109.67 and immediately bought the bonds back from Chapdelaine at \$109.70. On July 25, Kildare sold 1,460,000 of the bonds to an ultimate purchaser at \$109.76. More than ten days later, on August 5, Kildare sold the remaining 540,000 bonds to two ultimate purchasers at \$109.93. There were five inter-dealer trades between Kildare’s purchase on July 19 and Kildare’s last two sales to ultimate purchasers on August 5, but these inter-dealer trades were in odd-lot quantities of 25,000 to 100,000 bonds.⁵⁵

Transaction Set No. 7: Delaware Valley, Pennsylvania Regional Finance Authority

Date	Time	Purchaser	Price	Volume	Markup
08/23/11	11:12:48	Kildare	\$105.86	675,000	
08/23/11	15:09:44	Kildare	\$102.50	35,000	
08/23/11	15:11:57	Chapdelaine	\$106.11	710,000	
08/23/11	15:11:57	Kildare	\$106.14	710,000	
08/23/11	15:52:00	Purchaser	\$106.44	710,000	\$0.58 (0.5%) \$3.94 (3.8%)

Narrative: On August 23, 2011, Kildare purchased a total of 710,000 bonds, issued by the Delaware Valley, Pennsylvania Regional Finance Authority. The first purchase, of 675,000 bonds, was at \$105.86.⁵⁶ The second purchase, of 35,000 bonds, was at \$102.50. The same day, Kildare sold the bonds to Chapdelaine at \$106.11 and immediately bought the bonds back from Chapdelaine at \$106.14.⁵⁷ Before the market closed that day, Kildare sold the bonds to the

⁵⁴ Tr. 141-42.

⁵⁵ RX-14.

⁵⁶ Tr. 146.

⁵⁷ Tr. 147.

ultimate purchaser at \$106.44. The parties did not bring to the Hearing Panel’s attention any inter-dealer trade that occurred between Kildare’s purchases on August 23 and Kildare’s sale to the ultimate purchaser on the same day.

E. Jordan’s Trades With Chapdelaine Were Inter-Positioning Trades

Jordan has stipulated that the municipal bonds in the seven transaction sets are securities.⁵⁸ The offers, purchases, and sales of the bonds were executed by the use of the means and instruments of interstate commerce, or of the mails.⁵⁹ Jordan was the individual who executed the purchases and sales on behalf of Kildare, and the transactions were reported to the MSRB’s Real-Time Reporting System and disseminated to public investors by the Electronic Municipal Market Access System (“EMMA”).⁶⁰ Jordan knew the prices would be reported to the MSRB systems.⁶¹ He was responsible for setting the prices for Kildare’s side of the transactions, including the trades with Chapdelaine.⁶² With the exception of Transaction Set No. 3, Kildare purchased the bonds from the market, sold the bonds to Chapdelaine at slightly higher prices, bought the bonds back from Chapdelaine at slightly higher prices, and sold the bonds to the ultimate purchasers at still higher prices.⁶³ Jordan’s markups ranged from 0.5 percent to 3.8 percent.

When Jordan sold the bonds to Chapdelaine, he knew they would be coming back to him.⁶⁴ The trades with Chapdelaine moved the inter-dealer prices upward, and Jordan profited from this price movement when he sold the bonds to the ultimate purchasers.⁶⁵ National Penn was the ultimate purchaser in Transaction Sets Nos. 1, 2, 6, and 7.⁶⁶ Jordan did not disclose to the ultimate purchasers that he had engaged in the trades with Chapdelaine. For example, JK testified that he did not recall Jordan mentioning that he had traded the bonds first with

⁵⁸ Stip. ¶ 2.

⁵⁹ Stip. ¶ 3.

⁶⁰ Stip. ¶ 4. The Real-Time Reporting System is a trade reporting facility that the MSRB uses to collect transaction data sent to it by municipal bond firms. Stip. ¶ 5; Tr. 53. EMMA is a website that publishes timing, pricing, and other information for municipal bond dealers and public investors. Stip. ¶ 6; see Tr. 379-80 (testimony of Market Regulation expert witness Stanley Fortgang). EMMA went online in 2009. Tr. 428. According to Fortgang, “[a]ll trades have to be reported” to the MSRB and appear on EMMA. Tr. 411. According to Jordan’s expert witness, Elliott Server, bond traders “go to Bloomberg which gets an EMMA feed on trade and they can feed everything from that.” Tr. 740.

⁶¹ Tr. 168.

⁶² Stip. ¶ 7.

⁶³ Tr. 136.

⁶⁴ Tr. 147.

⁶⁵ CX-19; Tr. 68, 70.

⁶⁶ Stip. ¶ 8. In 2011, JK left his job as portfolio manager to become president of National Penn.

Chapdelaine.⁶⁷ JK testified that he would have wanted to know about Jordan's trades with Chapdelaine in transactions in which Jordan was not at risk:

[O]ur conversations with Norris Jordan was about mark-ups on account of positions he was not at risk at. So if this was one of those positions that we identified I wanted to buy them and then this occurred, I would want to know it.⁶⁸

Jordan, in turn, testified that he executed the trades with Chapdelaine in transactions in which he had a profit built in: "But when I catch an order and I had money, profit built into it, I would be more than happy to pay [PD] for all of her hard work."⁶⁹

Jordan initiated the purchases and sales with Chapdelaine.⁷⁰ He testified that he informed PD he wanted to engage in the seven trades as a way to generate a profit for Chapdelaine and reward PD. In the beginning, "I had the conversation with [PD]. I asked her, can I do this? ... She said let me find out. Let me call you back. She called back, said yes we can do this."⁷¹ Jordan and PD "would talk about the price, what was fair and reasonable, what was in line with other trades."⁷² "The prices were always prices that I picked, but we both agreed were fair for that moment."⁷³ Generally, Chapdelaine received a \$0.25 markup on the firm's sales of the bonds back to Kildare.⁷⁴ In selecting the bond to trade with Chapdelaine, Jordan testified that "it didn't matter what bond it was, it was whatever bond was in front of me."⁷⁵ Thus, Jordan did not necessarily reward PD for work she had done on the bond being traded between Kildare and Chapdelaine. Jordan testified that for every trade PD expressed her appreciation.⁷⁶

⁶⁷ Tr. 254; *accord* Tr. 258, 262, 264.

⁶⁸ Tr. 256.

⁶⁹ Tr. 126.

⁷⁰ Tr. 120-21, 145. Jordan testified that "it was me. I did it. I called [PD] up ... I just want to pay her for her hard work." Tr. 529.

⁷¹ Tr. 530; *accord* Tr. 642.

⁷² Tr. 121.

⁷³ Tr. 121.

⁷⁴ Tr. 709.

⁷⁵ Tr. 180. Jordan testified that, in selecting the bonds to trade with Chapdelaine, "[t]here was no rhyme or reason. It was either the bond that was right in front of me. It was the bond that I was talking about." Tr. 542.

⁷⁶ Tr. 214; *accord* Tr. 587.

PD directly contradicted Jordan. When asked what role she had in researching municipal bonds for clients, PD testified: “Not much.”⁷⁷ Kildare was only a second-tier client at Chapdelaine—in a client base that consisted of 25 to 30 institutional investors.⁷⁸ PD did not provide Jordan with any special services that were not available to her other clients.⁷⁹ In reference to the trades with Kildare, PD testified that “my understanding of the purpose of the transactions was that [Jordan] was moving [bonds] from one account to another.”⁸⁰

PD testified that Jordan set the prices in the trades.⁸¹ Jordan never informed her that he wanted to execute the trades to compensate her for her hard work.⁸² If Jordan had told PD that, she never would have done the trades, because “[t]here is no reason to do that. We don’t do that.”⁸³ None of PD’s clients ever executed a trade for the sole purpose of generating a commission for her.⁸⁴

The Hearing Panel finds PD’s testimony to be more credible than Jordan’s, for several reasons. First, it is not plausible that Jordan would execute the trades with Chapdelaine solely to reward PD. Jordan admits he did not execute trades to reward a registered person with any other broker’s broker.⁸⁵ Second, Jordan’s hearing testimony about his closeness with PD was exaggerated and implausible. He testified that PD was his “confidant.”⁸⁶ He described his relationship with PD as “Fantastic”⁸⁷ and stressed that PD was important to his business.⁸⁸ In the hearing, PD noticeably did not share Jordan’s assessment of their relationship. Third, if Jordan wanted to execute the trades to reward PD for her hard work, he could have done so at his cost basis, with no increase in price. But, in every one of the seven transaction sets, Jordan’s trade with Chapdelaine was at a higher price than his purchase price. Fourth, another broker at Chapdelaine testified that another trader from Kildare had requested that Chapdelaine engage in similar trades, but the asserted reason for the trades was that the bonds were “going from

⁷⁷ Tr. 308. Similarly, Market Regulation’s expert witness, Stanley Fortgang, testified that “[b]rokers are not doing any special work for any client. They are arm’s length people, they act ... simply as a match making service between a number of buyers, a number of sellers.” Tr. 395.

⁷⁸ Tr. 309-10.

⁷⁹ Tr. 312.

⁸⁰ Tr. 314. Jordan denies that he ever told PD this was the purpose of the trades. Tr. 201-02, 204.

⁸¹ Tr. 317-18, 333.

⁸² Tr. 319-20.

⁸³ Tr. 320.

⁸⁴ Tr. 321.

⁸⁵ Tr. 205-06. Jordan testified that broker’s brokers “are the hardest working group of people in our industry, they make the least. They are always on attack.” Tr. 553.

⁸⁶ Tr. 207.

⁸⁷ Tr. 507.

⁸⁸ Tr. 510.

customer to customer and [Kildare] needed a conduit in the middle.”⁸⁹ The Chapdelaine broker testified that no client had ever executed a trade solely to compensate him, and that he would not have executed such a trade because “[t]hat would be illegal.”⁹⁰ This contradicts Jordan’s testimony that he told PD the reason for the inter-positioning trades was to reward her for her hard work.

The credibility determination in favor of PD leads the Hearing Panel to find that Jordan did not execute the trades with Chapdelaine as a way to reward PD for her hard work. PD operated under the false understanding that the purpose of the trades was to transfer bonds from one Kildare account to another. Although PD does not remember her conversations with Jordan, a reasonable inference is that she acquired this false understanding as a result of one or more conversations with him.

The Hearing Panel finds that Jordan’s trades with Chapdelaine were inter-positioning trades. In *Dep’t of Enforcement v. Gonchar*, a hearing panel found that “[i]nterpositioning occurs when a member or person associated with a member interjects a third party between a customer and the member in a securities transaction.”⁹¹ Jordan interjected Chapdelaine between his purchases of the seven municipal bonds and his sales of the bonds to the ultimate purchasers.

F. Jordan Provided False Information to FINRA

In one of its electronic surveillance sweeps, Market Regulation became aware of apparent inter-positioning trades between Kildare and Chapdelaine.⁹² On March 11, 2013, Market Regulation sent Kildare an inquiry letter under FINRA Rule 8210 asking for a statement from the trader explaining how he priced each of the seven trades with Chapdelaine and others and for the economic rationale for the trades.⁹³ Jordan provided a written statement that the economic rationale for the trades was to reward PD for her hard work:

⁸⁹ Tr. 347. Another Chapdelaine witness, the firm’s Compliance Officer, corroborated the trader’s account, testifying that he asked her advice, saying “I have a customer who wants to buy and sell a security and would like us to execute it, can we do that?” Tr. 366.

⁹⁰ Tr. 353. Similarly, the Compliance Officer testified that she probably would not have approved Chapdelaine’s participation in a trade in which there was no change in ownership of the bonds “[b]ecause I would have thought it was some sort of wash sale which is prohibited otherwise.” Tr. 368.

⁹¹ *Dep’t of Enforcement v. Gonchar*, No. CAF040058, 2006 NASD Discip. LEXIS 46, at *39 (OHO Oct. 26, 2006); see NASD Rule 2320(a)(2) (“[i]n any transaction for or with a customer or a customer of another broker-dealer, no member or person associated with a member shall interject a third party between the member and the best market for the subject security”); FINRA Rule 5310(a)(2) (same). Although it is difficult to imagine a valid reason for a member or associated person to interject a third party into a securities transaction, under the NASD and FINRA Rules “the resultant price to the customer” still must be “as favorable as possible under prevailing market conditions.” NASD Rule 2320(a)(1); FINRA Rule 5310(a)(1).

⁹² Tr. 37.

⁹³ CX-7, at 2; Tr. 41-42.

[PD] has an exceptional track record of showing me offerings, working swaps for me and marketing bonds in general on my behalf ... As such, whenever there has been a prolonged period of time during which I have not conducted a trade with her, I will sell her a bond and immediately buy it back at a price that results in Chapdelaine earning a few hundred dollars on the trade.⁹⁴

Market Regulation conducted two on-the-record interviews with Jordan under FINRA Rule 8210.⁹⁵ In these interviews, Jordan reiterated under oath that the purpose of the trades with Chapdelaine was to reward PD for her hard work.⁹⁶ According to Jordan, PD knew “[a] hundred percent” that the purpose of the trades was to reward her,⁹⁷ and PD told Jordan “I can’t thank you enough” in each of the trades.⁹⁸ Jordan testified that he never indicated to PD that the purpose of the trades was to transfer municipal bonds from one internal customer account at Kildare to another.⁹⁹

As discussed above, the Hearing Panel found PD to be more credible than Jordan. Therefore, we find Jordan’s written statement and on-the-record testimony to Market Regulation—to the effect that the purpose of his inter-positioning trades was to reward PD for her hard work—were false, and Jordan provided false information to FINRA in the investigation.

V. Conclusions of Law

Considering the hearing testimony and the exhibits, the Hearing Panel concludes that: (1) Jordan’s inter-positioning trades with Chapdelaine constituted a fraudulent act, device, and scheme, and Jordan committed omissions of material fact when he failed to disclose the trades to the ultimate purchasers of the municipal bonds, in violation of the antifraud provisions of the federal securities laws; (2) Jordan engaged in deceptive, dishonest, and unfair practices in violation of MSRB Rules; (3) Jordan reported fictitious transactions in violation of MSRB Rules; and (4) Jordan provided false information to FINRA in violation of FINRA Rules. Market Regulation failed to meet its burden of proving that Jordan charged unfair and unreasonable prices in violation of MSRB Rules. The legal bases for these conclusions are as follows.

⁹⁴ CX-9, at 1-2; *see* Tr. 177.

⁹⁵ Tr. 49.

⁹⁶ CX-15, at 25-26, 30, 52-53.

⁹⁷ CX-15, at 27.

⁹⁸ CX-15, at 27.

⁹⁹ CX-15, at 48-49, 61, 65-66, 70, 75-76.

A. Jordan Committed one or more Fraudulent Acts, Devices, and a Scheme, and Omitted one or more Material Facts, in Violation of Section 10(b) of the Exchange Act and Rule 10b-5

Section 10(b) of the Exchange Act provides:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(b) To use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.¹⁰⁰

The Securities and Exchange Commission prescribed Rule 10b-5 as a catch-all antifraud provision. That Rule prohibits persons from employing devices or schemes to defraud, making untrue statements of material fact or material omissions, or engaging in acts or practices that operate as a fraud or deceit:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.¹⁰¹

1. Jordan Committed one or more Fraudulent Acts, Devices, and a Scheme

A person can be liable under paragraphs (a) and (c) of Rule 10b-5 by operation of the theory of scheme liability. Scheme liability occurs when a defendant employs a device, scheme, or artifice to defraud, or commits an act, practice, or course of business that operates as a fraud

¹⁰⁰ 15 U.S.C. § 78j(b).

¹⁰¹ 17 C.F.R. § 240.10b-5.

or deceit on any person.¹⁰² To be liable under this theory, it is not necessary for a person to make a fraudulent misstatement of fact or a material omission. In *SEC v. Penn*, the United States District Court for the Southern District of New York stated the elements of scheme liability:

To make out a claim under sections (a) and (c) of Rule 10b-5, the SEC must prove that the defendant, in connection with the purchase or sale of a security, (1) engaged in a manipulative or deceptive act, (2) in furtherance of an alleged scheme to defraud, and (3) acted with scienter.¹⁰³

With respect to the first element, proof of an inherently deceptive act is required.¹⁰⁴ In the case of *Anthony A. Grey*, the SEC found that inter-positioning is widely recognized as a form of securities fraud in violation of Section 10(b).¹⁰⁵ Inter-positioning is inherently deceptive because it creates fictitious transactions that are publicly reported.

With regard to the second element, the Hearing Panel finds that Jordan executed his inter-positioning trades in furtherance of a fraudulent scheme to increase the prices of his municipal bonds on certain select transactions while giving the false appearance that his markups were competitive. Before the inter-positioning trades began, Jordan's largest customer had discussions with Jordan about the fact that his markups were higher than those of his competitors. In six of the seven transaction sets, the inter-positioning trades moved the inter-dealer prices upward.

The third element, scienter, requires proof that Jordan acted with "a mental state embracing intent to deceive, manipulate, or defraud."¹⁰⁶ This element is satisfied if a respondent

¹⁰² *IBEW Local 595 Pension & Money Purchase Pension Plans v. The ADT Corp.*, 660 Fed. Appx. 850, 858, 2016 U.S. App. LEXIS 16454, at *18-19 (11th Cir. Sept. 7, 2016).

¹⁰³ *SEC v. Penn*, Case No. 14-cv-0581 (VEC), 2016 U.S. Dist. LEXIS 177409, at *12 (S.D.N.Y. Dec. 21, 2016); accord *SEC v. Sullivan*, 68 F. Supp. 3d 1367, 1377 (D. Colo. 2014) ("the SEC must show by a preponderance of the evidence that Mr. Sullivan (1) committed a manipulative or deceptive act, (2) in furtherance of the scheme to defraud, (3) with scienter").

¹⁰⁴ *SEC v. Kelly*, 817 F. Supp. 2d 340, 344 (S.D.N.Y. 2011); accord *Penn*, 2016 U.S. Dist. LEXIS 177409, at *14 (diverting \$9.3 million from investors was "sufficient to establish the first element of liability under Rule 10b-5(a) and (c)"); *Sullivan*, 68 F. Supp. 3d at 1377 ("For conduct to be a 'manipulative or deceptive act,' it must be 'inherently deceptive when performed.'") (quoting *SEC v. St. Anselm Exploration Co.*, 936 F. Supp. 2d 1281, 1298 (D. Colo. 2013)).

¹⁰⁵ *Anthony A. Grey*, Exchange Act Release No. 75839, 2015 SEC LEXIS 3630, at *42 (Sept. 3, 2015) ("interpositioning is widely recognized as a form of securities fraud in violation of Section 10(b)"); accord *Dep't of Enforcement v. Grey*, No. 2009016034101, 2014 FINRA Discip. LEXIS 31, at *27 (NAC Oct. 3, 2014) ("The SEC has long held that interpositioning can result in fraud where it is done with scienter and results in the charging of excessive and undisclosed mark-ups."). Jordan's inter-positioning trades violated Kildare's written supervisory procedures. The firm regarded inter-positioning "as improper and will be met with appropriate disciplinary action." CX-13, at 6; see Tr. 172-73.

¹⁰⁶ *Dep't of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *33 (NAC Dec. 29, 2015) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976)); accord *Dep't of Enforcement v.*

acted recklessly.¹⁰⁷ Conduct is reckless if it is such an extreme departure from the standard of ordinary care that the respondent knew or must have known of the danger of misleading investors.¹⁰⁸ It is close to knowing misconduct.¹⁰⁹ The trier of fact may infer the respondent's state of mind from circumstantial evidence.¹¹⁰ In *Grey*, the SEC found scienter because the respondent's "interpositioning served no purpose other than to enrich himself and deceive ... [his] customers ... and other market participants."¹¹¹

Scienter is different from motive. In *Dep't of Market Regulation v. Golden*, an aiding and abetting case, a nonparty bond trader named Schlesinger orchestrated more than two hundred pre-arranged trades at increasing prices in a municipal bond referred to as "Connectors."¹¹² The hearing panel found that Schlesinger's motive for doing so was unclear, but held:

Schlesinger's motives, however, are irrelevant. His actions had the effect of distorting the market for the Connectors. And it is not significant that the Connectors were never sold into the general market at a manipulated price. Schlesinger's manipulation undermined the integrity of the marketplace—precisely the type of misconduct that Section 10(b) and Rule 10b-5 are intended to address.¹¹³

Similar to the *Golden* case, Jordan undermined the integrity of the municipal bond market with his inter-positioning trades. Although proof of motive is not necessary, the inter-positioning trades increased the prices Jordan received from his customers. At a minimum, Jordan acted in reckless disregard of whether the trades resulted in increased prices. The third element, scienter, is satisfied.

Jordan violated Rule 10b-5 even if his inter-positioning trades did not result in unfair and unreasonable municipal bond prices being charged in violation of MSRB Rule G-30.¹¹⁴ As articulated in *SEC v. Penn*, the elements of scheme liability do not include a requirement that

Ortiz, No. 2014041319201, 2017 FINRA Discip. LEXIS 5, at *25 (NAC Jan. 4, 2017) (same); *Dep't of Enforcement v. Ahmed*, No. 2012034211301, 2015 FINRA Discip. LEXIS 45, at *77 (NAC Sept. 25, 2015) (same).

¹⁰⁷ *Akindemowo*, 2015 FINRA Discip. LEXIS 58, at *33; *accord Dep't of Market Regulation v. Singh*, No. 20100226911-02, 2016 FINRA Discip. LEXIS 48, at *72 (OHO Aug. 24, 2016) (same); *Gonchar*, 2006 NASD Discip. LEXIS 46, at *39 ("Reckless conduct can satisfy the scienter element under Rule 10b-5.").

¹⁰⁸ *Singh*, 2016 FINRA Discip. LEXIS 48, at *73-74; *Ahmed*, 2015 FINRA Discip. LEXIS 45, at *77 n.78; *Dep't of Enforcement v. Geary*, No. 2011026788801, 2015 FINRA Discip. LEXIS 5, at *40 (OHO Mar. 10, 2015).

¹⁰⁹ *Singh*, 2016 FINRA Discip. LEXIS 48, at *75 (recklessness is "a state of mind closely approaching knowing misconduct").

¹¹⁰ *Geary*, 2015 FINRA Discip. LEXIS 5, at *40.

¹¹¹ *Grey*, 2015 SEC LEXIS 3630, at *43.

¹¹² No. 2005000323905, 2008 FINRA Discip. LEXIS 25, at *6-7 (OHO May 29, 2008).

¹¹³ *Id.* at *38-39.

¹¹⁴ See Section V.E *infra* for a discussion of whether the bond prices Jordan charged were unfair and unreasonable.

the fraudulent scheme increase the price of the security by a particular amount. In *Grey*, the SEC noted that inter-positioning is widely recognized as a form of securities fraud.¹¹⁵ The practice has a pernicious effect on the market and its participants, creating fictitious transactions and artificial prices. If allowed to continue, it would provide unscrupulous traders with an easy opportunity to disguise their real markups and cheat public investors. The Hearing Panel finds that Jordan's inter-positioning trades constituted a fraudulent act, device, and scheme in violation of Rule 10b-5(a) and (c).¹¹⁶

2. Jordan Omitted one or more Material Facts

To be liable under paragraph (b) of Rule 10b-5, a person must be found to have made one or more materially untrue statements of fact or omitted one or more material facts. The elements of a misstatements or omissions case are: (1) a material misrepresentation or omission; (2) made with scienter; and (3) a connection with the purchase or sale of a security.¹¹⁷ A person can be liable for material omissions of fact if he is under a duty to disclose based on a relationship of trust and confidence between him and another party.¹¹⁸ When recommending an investment, a broker or dealer owes his clients a duty to disclose material information fully and completely.¹¹⁹ A failure to disclose that a market price was artificially influenced by manipulative activity is a material omission and thus a fraud on the purchasers.¹²⁰

A violation requires a material misstatement or omission. Whether information is material depends on the significance the information would have for a hypothetical reasonable investor,¹²¹ who must view the information as significantly altering the total mix of information

¹¹⁵ *Grey*, 2015 SEC LEXIS 3630, at *42.

¹¹⁶ Because Jordan violated Rule 10b-5, he also violated MSRB Rule G-17. *See* Section V.B *infra*.

¹¹⁷ *Brophy v. Jiangbo Pharmaceuticals, Inc.*, 781 F.3d 1296, 1301-02 (11th Cir. 2015); *accord Dep't of Enforcement v. Casas*, No. 2013036799501, 2017 FINRA Discip. LEXIS 1, at *24-25 (NAC Jan. 13, 2017) (holding that the elements are "(1) a false statement or a misleading omission; (2) of a material fact; (3) made with the requisite state of mind; (4) using the jurisdictional means; (5) in connection with the purchase or sale of a security"); *Ortiz*, 2017 FINRA Discip. LEXIS 5, at *21 ("To establish a violation under ... Rule 10b-5, a preponderance of the evidence must demonstrate that Ortiz misrepresented a material fact, with scienter, in connection with the purchase or sale of securities."); *Ahmed*, 2015 FINRA Discip. LEXIS 45, at *55-56 (same).

¹¹⁸ *Chiarella v. United States*, 445 U.S. 222, 230 (1980); *accord WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1048 (9th Cir. 2011) ("Under Rule 10b-5(b), a defendant can be liable for the omission of material information if he or she has a duty to disclose that information.").

¹¹⁹ *Ahmed*, 2015 FINRA Discip. LEXIS 45, at *53; *accord Dep't of Market Regulation v. Field*, No. CMS040202, 2008 FINRA Discip. LEXIS 63, at *32 (NAC Sept. 23, 2008) ("Field had a duty to give full and complete disclosure to his customers in connection with the bonds he recommended").

¹²⁰ *Edward J. Mawod & Co.*, 46 S.E.C. 865, 871 n.28 (1977) ("The failure to disclose that the market had been artificially influenced was an omission to state a material fact and hence a fraud on the purchasers.").

¹²¹ *Casas*, 2017 FINRA Discip. LEXIS 1, at *27 ("Whether information is material depends on the significance the reasonable investor would place on the information") (quoting *Akindemowo*, 2015 FINRA Discip. LEXIS 58, at *32); *accord Basic Inc. v. Levinson*, 485 U.S. 224, 240 (1988); *see Field*, 2008 FINRA Discip. LEXIS 63, at *27 ("Whether a fact is material 'depends on the significance the reasonable investor would place on the withheld or misrepresented information'") (quoting *Basic Inc.*, 485 U.S. at 240).

made available.¹²² The Hearing Panel has already found that Jordan’s inter-positioning trades were a fraudulent act, device, and scheme, and the trades had the effect of moving upward the inter-dealer prices for the municipal bonds. Jordan did not disclose to the ultimate purchasers that the prices for the bonds were artificially influenced by manipulative activity in the form of his inter-positioning trades. This omission was material because a reasonable investor would consider it important to its investment decision whether the seller had engaged in a fraudulent act, device, or scheme with respect to the bond before selling the bond to the investor.¹²³ For example, JK of National Penn testified that he would have wanted to know about the inter-positioning trades.¹²⁴ Also, Jordan acted with scienter, and his omission was in connection with the purchase or sale of a security. His failure to disclose the inter-positioning trades to the ultimate purchasers was a material omission in violation of Rule 10b-5(b).

3. Jordan is Subject to Statutory Disqualification

Jordan acted willfully when he intentionally executed his inter-positioning trades and did not disclose them to the ultimate purchasers of the municipal bonds. A finding of willfulness does not require intent to violate the law, but only intent to do the act that constitutes the violation.¹²⁵ It is not necessary that the individual know of the rule he violates or that he act with a culpable state of mind.¹²⁶ Because Jordan intended to execute the inter-positioning trades, he willfully violated Rule 10b-5, and he is subject to statutory disqualification.¹²⁷

¹²² *Basic Inc.*, 485 U.S. at 232; *accord Ortiz*, 2017 FINRA Discip. 5, at *23 (same); *Ahmed*, 2015 FINRA Discip. LEXIS 45, at *75 (same).

¹²³ *Dep’t of Enforcement v. The Dratel Group, Inc.*, No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *63 (NAC May 2, 2014) (in a fraudulent “cherry-picking” case, a registered person was liable for material omissions because “[a] reasonable investor surely would find material [the registered person’s] subordination of discretionary customers’ interests to his personal interests”); *Dep’t of Enforcement v. Nicolas*, No. CAF040052, 2008 FINRA Discip. LEXIS 9, at *36 (NAC Mar. 12, 2008) (in a fraudulent “trading ahead” case, the respondents were liable for material omissions because the firm’s “failure to disclose the fact that it was earning risk-free profits through executing [the customer’s] orders ... was another material omission”); *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1305 (S.D. Fla. 2007) (in a fraudulent “cherry-picking” case, “reasonable investors would have certainly considered this practice and the subrogation of their interests when deciding whether to place their money with and trust in Ken Brown and the Advisors”).

¹²⁴ Tr. 256.

¹²⁵ *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965) (“It has been uniformly held that ‘willfully’ ... means intentionally committing the act which constitutes the violation.”); *Dep’t of Enforcement v. The Dratel Group, Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *14-15 (NAC May 6, 2015) (“our finding that [the respondents] acted willfully is predicated on respondents’ intent to commit the act that constitutes the violation”); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *41 (Nov. 9, 2012) (“A willful violation under the federal securities laws simply means ‘that the person charged with the duty knows what he is doing.’”) (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000)).

¹²⁶ *Dep’t of Enforcement v. McGuire*, No. 20110273503, 2015 FINRA Discip. LEXIS 53, at *48 (NAC Dec. 17, 2015) (“We need not find that McGuire ‘was aware of the rule he violated or that he acted with a culpable state of mind.’”) (quoting *Robert D. Tucker*, 2012 SEC LEXIS 3496, at *41).

¹²⁷ See Section 3(a)(39)(F) of the Exchange Act, 15 U.S.C. § 78c(a)(39)(F) (incorporating Section 15(b)(4)(D) of the Exchange Act, which together provide that a person is subject to statutory disqualification if he willfully

B. Jordan Failed to Deal Fairly With all Persons and Engaged in a Deceptive, Dishonest, and Unfair Practice in Violation of MSRB Rule G-17

MSRB Rule G-17 provides that “[i]n the conduct of municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.” Implicit in Rule G-17 are: (1) the same proscription against fraud as found in the federal securities laws; and (2) the general duty of dealers in municipal securities to treat their customers fairly, even in the absence of fraud.¹²⁸ A violation of this Rule turns on whether the dealer’s conduct reflects on his ability to comply with the regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public.¹²⁹

Inter-positioning is a violation of Rule G-17.¹³⁰ In *Grey*, the SEC found violations of the Rule because the respondent “interposed accounts controlled and maintained by him between his retail customer and the intermarket seller of the bonds without disclosing his personal involvement to the customers.”¹³¹ According to the SEC, “Grey neither disclosed to the customers that his personal accounts were involved, nor that the customers were paying a much higher price than he had paid one to five trading days earlier.”¹³²

Similar to the *Grey* case, Jordan’s inter-positioning trades were in violation of Rule G-17. First, by their very nature, the trades were deceptive, dishonest, and unfair. There was no change in beneficial ownership. The trades were in violation of Rule G-17 even if the ultimate purchaser did not pay “a much higher price,” as the purchasers did in *Grey*.¹³³ Second, Rule G-17 is recognized as the analogue to FINRA Rule 2010, which requires that member firms and associated persons observe high standards of commercial honor and just and equitable principles of trade. Executing fictitious inter-positioning trades at artificial prices is not consistent with such standards and principles. Third, a violation of Rule 10b-5 is inherently deceptive, dishonest, and unfair, and thus a violation of Rule G-17.

violated any provision of the Exchange Act and its rules and regulations); FINRA By-Laws, Art. III, § 4 (providing that a person is subject to statutory disqualification if he is disqualified under Section 3(a)(39)).

¹²⁸ *Grey*, 2014 FINRA Discip. LEXIS 31, at *11.

¹²⁹ *Dep’t of Enforcement v. Mullins*, No. 20070094345, 2011 FINRA Discip. LEXIS 61, at *30 (NAC Feb. 24, 2011) (a violation turns on whether the dealer’s conduct reflects on his “ability to comply with [the] regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public”), *aff’d*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012).

¹³⁰ *Grey*, 2015 SEC LEXIS 3630, at *11.

¹³¹ *Id.*

¹³² *Id.* at *12-13.

¹³³ *Id.*

C. Jordan Published Reports of Fictitious Transactions in Violation of MSRB Rule G-14

MSRB Rule G-14 prohibits municipal bond dealers from reporting to the MSRB any transaction that is fictitious. The Rule provides:

No broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any report of a purchase or sale of municipal securities, unless such broker, dealer or municipal securities dealer or associated person knows or has reason to believe that the purchase or sale was actually effected and has no reason to believe that the reported transaction is fictitious or in furtherance of any fraudulent, deceptive, or manipulative purpose.¹³⁴

Jordan reported his fictitious inter-positioning trades in violation of MSRB Rule G-14. The trades were fictitious because there was no change in beneficial ownership. They were no different from wash sales, which also involve no change in beneficial ownership, and which are fraudulent.¹³⁵

D. Jordan Provided False Information to FINRA in Violation of FINRA Rules 8210 and 2010

FINRA Rule 8210 requires “a member, person associated with a member, or person subject to FINRA’s jurisdiction to provide information ... with respect to any matter involved in [a FINRA] investigation.”¹³⁶ An associated person must respond fully, completely, and truthfully to a request for information.¹³⁷ The requirements of the Rule are unequivocal and unqualified, and compliance is mandatory.¹³⁸ An associated person violates the Rule if he provides false or misleading information to FINRA in an investigation.¹³⁹

The Hearing Panel has already found that Jordan provided false information to FINRA.¹⁴⁰ Principally, this consisted of Jordan’s explanation that he executed the inter-positioning trades to reward PD for her hard work. He provided this false explanation in his pre-

¹³⁴ MSRB Rule G-14(a).

¹³⁵ Jordan’s expert witness, Elliott Server, admitted that the inter-positioning trades violated Rule G-14. Tr. 668.

¹³⁶ FINRA Rule 8210(a).

¹³⁷ *Dep’t of Enforcement v. Taboada*, No. 2012034719701, 2016 FINRA Discip. LEXIS 7, at *66-67 (OHO Mar. 18, 2016).

¹³⁸ *Dep’t of Enforcement v. Lundgren*, No. FPI150009, 2016 FINRA Discip. LEXIS 2, at *12 (NAC Feb. 18, 2016); *accord Dep’t of Enforcement v. N. Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *19 (NAC July 21, 2014) (same), *aff’d*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015).

¹³⁹ *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23 (Aug. 22, 2008).

¹⁴⁰ *See* Section IV.F *supra*.

hearing on-the-record interview. Specifically, his testimony was false on pages 25-27, 30, 42, 45, 49, 52, 60, 64, and 68 of CX-15.

Similarly, in his written statement to FINRA, Jordan represented that, because of PD's "exceptional track record ... I will sell her a bond and immediately buy it back at a price that results in Chapdelaine earning a few hundred dollars on the trade."¹⁴¹ This statement was false. Jordan violated FINRA Rule 8210 in both his written statement and his on-the-record interview. He violated FINRA Rule 2010 because a violation of Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of FINRA Rule 2010.¹⁴²

E. Market Regulation Failed to Meet its Burden of Proving That Jordan Charged Unfair and Unreasonable Prices in Violation of MSRB Rule G-30

MSRB Rule G-30 prohibits municipal bond dealers from charging unfair and unreasonable prices:

No broker, dealer or municipal securities dealer shall purchase municipal securities for its own account from a customer, or sell municipal securities for its own account to a customer, except at an aggregate price (including any mark-up or mark-down) that is fair and reasonable.¹⁴³

To reach a finding whether a municipal bond dealer violated Rule G-30, the adjudicators engage in a two-step process.¹⁴⁴ First, the adjudicators determine the market value of the bonds and, based on that market value, calculate the amounts of the markups. Second, they decide whether the markups are fair and reasonable.¹⁴⁵

¹⁴¹ CX-9, at 1-2. A more complete excerpt of Jordan's written statement appears in Section IV.F *supra*.

¹⁴² *Dep't of Enforcement v. Jarkas*, No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at *36 (NAC Oct. 5, 2015). And "providing false information to FINRA is an independent violation of FINRA Rule 2010." *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *16 (NAC Mar. 9, 2015).

¹⁴³ MSRB Rule G-30(a); *accord Dep't of Enforcement v. McLaughlin, Piven, Vogel Securities, Inc.*, No. C02980073, 1999 NASD Discip. LEXIS 51, at *22 (OHO Dec. 1, 1999); *DBCC v. International Trading Group, Inc.*, No. C07950058, 1998 NASD Discip. LEXIS 83, at *3-4 (NAC July 2, 1998).

¹⁴⁴ *Grey*, 2015 SEC LEXIS 3630, at *17.

¹⁴⁵ *Grey*, 2014 FINRA Discip. LEXIS 31, at *12 ("First, the price must be reasonably related to the market value of the municipal securities in the transaction. Second, the mark-up or mark-down for a transaction must not exceed a fair and reasonable amount."); *accord Mark David Anderson*, Exchange Act Release No. 48352, 2003 SEC LEXIS 3285, at *23 (Aug. 15, 2003) (holding that a dealer charges excessive markups when his prices to retail customers are not reasonably related to prevailing market prices); MSRB Supplementary Material G-30.01(c) ("A 'fair and reasonable' price bears a reasonable relationship to the prevailing market price of the security.").

Turning to the first step, the best measure of the market value of a municipal bond is the dealer's contemporaneous cost in an inter-dealer trade.¹⁴⁶ To determine contemporaneous cost, the SEC generally looks to a dealer's inter-dealer purchases within five business days of the retail sale at issue.¹⁴⁷ But where appropriate, the SEC goes beyond this five-day window.¹⁴⁸ Once Market Regulation presents evidence of a dealer's contemporaneous cost, the burden shifts to the dealer to prove that contemporaneous cost does *not* represent the prevailing market value.¹⁴⁹

Jordan's contemporaneous cost in Transaction Set No. 1 was \$103.66; in Transaction Set No. 2, \$103.75; in Transaction Set No. 3, \$109.06; in Transaction Set No. 4, \$100.45; in Transaction Set No. 5, \$107.48; in Transaction Set No. 6, \$109.26; in the first purchase in Transaction Set No. 7, \$105.86; and in the second purchase in Transaction Set No. 7, \$102.50.¹⁵⁰ Jordan did not proffer alternative inter-dealer prices indicative of the prevailing market value. There were inter-dealer trades between Jordan's purchases and sales to the ultimate purchasers in Transaction Sets Nos. 3 and 6, but Jordan does not rely on them. In Transaction Set No. 3, the inter-dealer trades occurred at prices less than Jordan's contemporaneous cost (and therefore are not helpful to him), and in Transaction Set No. 6 the inter-dealer trades are not relevant because they were in odd-lot quantities of 25,000 to 120,000 bonds. The Hearing Panel finds that Jordan's contemporaneous cost is the market value for the purpose of determining his markups.

¹⁴⁶ *Grey*, 2015 SEC LEXIS 3630, at *17; *accord Dep't of Enforcement v. J.W. Korth & Co.*, No. 2012030738501, 2017 FINRA Discip. LEXIS 6, at *15 (OHO Jan. 26, 2017) ("J.W. Korth's contemporaneous purchases, most of which occurred one to two days prior to its sales to customers, reflect the best evidence of the prevailing market for all but three trades"); *Singh*, 2016 FINRA Discip. LEXIS 48, at *65-66 (under NASD rules, "a markup or markdown 'must' be based on the prevailing market price, and the prevailing market price, in turn, is presumptively established by reference to the dealer's contemporaneous cost or contemporaneous proceeds"); *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *25-26 (Feb. 13, 2015) ("Absent countervailing evidence, the best indicator of the current market price is a member firm's contemporaneous cost of acquiring the security, and the firm's contemporaneous cost is the price upon which member firms should calculate their markup amounts."); *Dep't of Enforcement v. David Lerner Associates, Inc.*, No. 20050007427, 2012 FINRA Discip. LEXIS 44, at *60 (OHO Apr. 4, 2012) (holding that, in the absence of countervailing evidence, a dealer's contemporaneous cost in acquiring the security is the best evidence of the prevailing market price); *Dep't of Enforcement v. SFI Investments, Inc.*, No. C10970176, 2000 NASD Discip. LEXIS 52, at *43 (OHO Mar. 28, 2000) (stressing reliability of contemporaneous cost as an indication of the prevailing market price).

¹⁴⁷ *Grey*, 2015 SEC LEXIS 3630, at *19. "A transaction is considered 'contemporaneous' if it occurs close enough in time to a later transaction that it would reasonably be expected to reflect the current market prices for the security." *McLaughlin, Piven, Vogel Securities, Inc.*, 1999 NASD Discip. LEXIS 51, at *26.

¹⁴⁸ *First Honolulu Securities, Inc.*, 51 S.E.C. 695, 699 (1993).

¹⁴⁹ *J.W. Korth & Co.*, 2017 FINRA Discip. LEXIS 6, at *17; *accord Singh*, 2016 FINRA Discip. LEXIS 48, at *67 (the NASD rule on markups required "an analysis that proceeds in specific steps, starting with consideration of prices in any contemporaneous inter-dealer transactions"); *Grey*, 2015 SEC LEXIS 3630, at *17 ("We assume the dealer's contemporaneous cost is the best measure of prevailing market price, and it is the dealer's burden to overcome that presumption.").

¹⁵⁰ CX-22.

In the second step of the fair and reasonable price analysis, the Hearing Panel determines whether the markups, as calculated based on prevailing market value, were fair and reasonable.¹⁵¹ The Hearing Panel is supposed to take into consideration all relevant factors, including:¹⁵²

- the nature of the dealer’s business;
- the availability of the security involved in the transaction;
- the expense involved in effecting the transaction;
- the value of the services rendered and the expertise provided by the dealer;
- that the dealer is entitled to a reasonable profit;
- the total dollar amount of the transaction;¹⁵³
- the best judgment of the dealer as to fair market value at the time of the transaction;¹⁵⁴
- the resulting price or yield after the subtraction of the markup compared to the prices or yields on other securities of comparable quality, maturity, and availability;
- the maturity of the security;
- the rating and call features of the security; and

¹⁵¹ *Grey*, 2015 SEC LEXIS 3630, at *18.

¹⁵² MSRB Rule G-30; MSRB Supplementary Material G-30.02(a) and (b); *Grey*, 2015 SEC LEXIS 3630, at *18; *Lane*, 2015 SEC LEXIS 558, at *27; *David Lerner Associates, Inc.*, 2012 FINRA Discip. LEXIS 44, at *58; MSRB Regulatory Notice 2014-11 (May 12, 2014), <http://www.msrb.org/media/Files/Regulatory-Notices/Announcements/2014-11.ashx?n=1>; MSRB Regulatory Notice 2004-03 (Jan. 26, 2004), <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2004/2004-03.aspx?n=1>; *MSRB Interpretation of Rule G-30, Pricing and Commissions* (Dec. 19, 2001), <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-30.aspx?tab=2>.

¹⁵³ The percentage markup on a small-dollar-value transaction tends to be higher than on a large-dollar-value transaction. Tr. 95 (testimony of James Haas, Director of Market Regulation’s Fixed Income Investigations Group).

¹⁵⁴ The reasonableness of the dealer’s judgment of fair market value can be evaluated by reference to contemporaneous market transactions in that particular bond. Tr. 101. Reviewing contemporaneous market transactions, “[a]n institutional trader would likely place more weight on the price of a large transaction.” Tr. 97.

- the availability of material information about the security through established industry sources.¹⁵⁵

Neither party showed that there was anything distinctive about: Jordan's expense in executing the seven transaction sets; the value of the expertise and services he rendered; the maturity of the municipal bonds; the available material information about the bonds, etc. Two notable (but still not very unusual) factors were that the bonds apparently were not readily available in the market in large volumes, and the total dollar amounts of Jordan's trades were somewhat high because his business was focused on trading with other dealers and institutional investors.

The resulting yield is the most important factor.¹⁵⁶ The yield was the benchmark that JK of National Penn used to determine whether the municipal bond prices he paid to Jordan were fair and reasonable.¹⁵⁷ However, the parties did not present evidence comparing the yields in Transaction Sets Nos. 1-7 with yields in other municipal bond transactions.¹⁵⁸ Yield is thus of limited value in determining whether Jordan's prices were fair and reasonable. The most that can be said is that, with the exception of a small odd-lot trade of 50,000 bonds, the yields in the seven transaction sets were not abnormally low compared to the yields in third-party sales of the same bonds in the same period.¹⁵⁹

Because there was little evidence on yield or the relevant factors, the Hearing Panel turns to the analysis of markups found to be unfair and unreasonable in case precedents. In *Grey*, the SEC held that markups on municipal bonds should fall below five percent absent exceptional circumstances and noted that the parties and expert testimony agreed that markups of more than three percent are generally excessive.¹⁶⁰ In another case, the SEC stated that

¹⁵⁵ Municipal bond dealers have access to daily market benchmarks, like the MMD sheet published by Thompson Reuters. Tr. 89. A significant factor in the pricing of a bond is "the movement of the underlying benchmark or any news on the bond." Tr. 91.

¹⁵⁶ MSRB Interpretations of Rule G-30, "Report on Pricing," (Sept. 26, 1980), MSRB Manual (CCH) P 3646, at 5160 ("[o]f the many possible relevant factors, resulting yield to a customer is the most important one."). The importance of yield can be seen in the case of *DBCC v. Covey & Co.*, No. C3A910058, 1992 NASD Discip. LEXIS 22 (June 30, 1992), in which the National Business Conduct Committee of the NASD found that a markup of 7.55 percent was not unfair and unreasonable because "the record should have included evidence regarding the competitiveness of the yield to maturity offered on the Revenue Bonds." *Id.* at *38.

¹⁵⁷ Tr. 275.

¹⁵⁸ RX-14 shows that the yield in the sale to the ultimate purchaser in Transaction Set No. 1 was 4.43 percent; in Transaction Set No. 2, 4.24 percent; in Transaction Set No. 3, 3.08 percent; in Transaction Set No. 4, 3.91 percent and 4.99 percent; in Transaction Set No. 5, 3.92 percent; in Transaction Set No. 6, 2.22 percent and 2.15 percent; and in Transaction Set No. 7, 4.93 percent. *Accord* CX-22, at 1, 2, 3, 5, 6, 7.

¹⁵⁹ See RX-14.

¹⁶⁰ *Grey*, 2015 SEC LEXIS 3630, at *31 n.38, *34-35. "We also note that it has long been recognized that debt securities mark-ups normally are lower than those for equities." *DBCC v. Miller, Johnson, & Kuehn, Inc.*, No. C04920061, 1994 NASD Discip. LEXIS 51, at *28-29 (NAC Feb. 28, 1994).

markups of under five percent are not automatically fair and reasonable, and that markups in frequently traded bonds often are only one or two percent.¹⁶¹

Jordan’s percentage markups were as follows:

Transaction Set	Percentage Markup
Transaction Set No. 1	0.7 percent
Transaction Set No. 2	1.1 percent
Transaction Set No. 3	-0.3 percent
Transaction Set No. 4	1.1 percent, 2.3 percent
Transaction Set No. 5	1.3 percent
Transaction Set No. 6	0.5 percent, 0.6 percent
Transaction Set No. 7	0.5 percent, 3.8 percent

Jordan’s highest markup—3.8 percent in Transaction Set No. 7—falls within the ranges of unfair and unreasonable markups in the earlier cases. But this 3.8 percent markup presents a unique situation. It arose from the fact that Jordan purchased the bond at an abnormally low contemporaneous cost in a small odd-lot trade of 35,000 bonds. On the same day, he bought 675,000 of the same bond at a price more than \$3.00 higher. Using the higher price as Jordan’s contemporaneous cost, his markup was 0.5 percent, not 3.8 percent. Similarly, in one sale in Transaction Set No. 4, Jordan charged a markup of 2.3 percent. But that was for the sale of a small odd lot of 50,000 bonds. Considering Jordan’s much larger sale (1,345,000 bonds) of the same bond two days later, Jordan charged a markup of 1.1 percent, not 2.3 percent.¹⁶² Disregarding these exceptional trades, the Hearing Panel finds that Jordan’s markups were not unfair and unreasonable. We were unable to locate an earlier case in which a court, FINRA, or the SEC held that markups below 3 percent were in violation of MSRB Rule G-30.

Market Regulation’s expert witness, Stanley Fortgang, testified that it is the custom and practice in the municipal bond market to charge markups in the range of \$0.25 to \$0.50. For bonds trading at a \$100 face value, this means percentage markups of 0.25 percent to 0.5 percent.¹⁶³ But there is a major difference between being at variance with industry custom and practice on seven trades and being found, in a FINRA disciplinary proceeding, to have charged unfair and unreasonable prices in violation of an MSRB Rule. Market Regulation failed to meet its burden of proving that Jordan’s prices were in violation of MSRB Rule G-30. We therefore dismiss the third cause of action.

¹⁶¹ *Staten Securities Corp.*, 47 S.E.C. 766, 768 n.9 (Apr. 9, 1982).

¹⁶² On Transaction Set No. 3, in which Jordan lost money, Market Regulation seeks a finding of unfair and unreasonable pricing on the theory that the price to the ultimate purchasers would have been lower if it had not been for Jordan’s inter-positioning trade. However, Market Regulation did not present evidence or case precedent that a negative markup can be found unfair or unreasonable, or suggest what a fair and reasonable price would have been.

¹⁶³ Tr. 404.

VI. Sanctions

The Complaint has five causes of action: (1) committing federal securities fraud in Jordan's inter-positioning trades with Chapdelaine and his failure to disclose such trades to the ultimate purchasers of the municipal bonds; (2) engaging in unfair dealing and deceptive, dishonest, or unfair practices; (3) charging unfair and unreasonable bond prices; (4) reporting fraudulent, deceptive, and manipulative transactions; and (5) providing false information and false on-the-record testimony to FINRA. In determining the sanction for the four causes of action for which Jordan is found liable, the Hearing Panel considers the Principal Considerations of the Sanction Guidelines, which are applicable to all sanction formulations.

A. The Principal Considerations

Several of the Principal Considerations provide aggravating factors that weigh against Jordan. The first is whether the respondent accepted responsibility for or acknowledged the misconduct prior to detection.¹⁶⁴ Jordan did not accept responsibility for the inter-positioning trades. The closest he came was to testify that "now I know that we're not supposed to do these trades" and he would not do it again.¹⁶⁵ He still does not appear to appreciate the serious nature of inter-positioning as a form of securities fraud. Nor did he accept responsibility prior to detection.

The second relevant Principal Consideration is whether the misconduct resulted in injury to the investing public and other market participants.¹⁶⁶ Although Jordan's inter-positioning trades did not result in unfair and unreasonable prices, they still caused injury to the investing public. The trades undermined the integrity of the municipal bond market because Jordan reported fictitious transactions at prices he unilaterally determined.

The third relevant Principal Consideration is whether the respondent provided inaccurate and misleading testimony and documentary information to FINRA.¹⁶⁷ The Hearing Panel has found that Jordan provided FINRA false information about why he executed the inter-positioning trades. The fourth relevant Principal Consideration is whether the misconduct was the result of an intentional act, recklessness, or negligence.¹⁶⁸ Jordan intentionally executed the

¹⁶⁴ FINRA Sanction Guidelines ("Guidelines") at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility and acknowledged the misconduct to his or her employer prior to detection and intervention by the firm) (2017), <http://www.finra.org/industry/sanction-guidelines>.

¹⁶⁵ Tr. 532-33.

¹⁶⁶ Guidelines at 7 (Principal Consideration No. 11: With respect to other parties, including the investing public and other market participants, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury).

¹⁶⁷ *Id.* at 8 (Principal Consideration No. 12: Whether the respondent attempted to provide inaccurate or misleading testimony or documentary information to FINRA).

¹⁶⁸ *Id.* (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence).

inter-positioning trades and recklessly disregarded the impact they would have on the integrity of the municipal bond market.

Although these considerations are very troubling, for several reasons the Hearing Panel finds that imposing a lifetime bar on Jordan would not serve a remedial purpose, but a punitive one. First, this case involves seven illegal trades Jordan executed out of thousands of legal, unchallenged trades in the same period.¹⁶⁹ The seven trades could be considered aberrational and isolated. Second, the trades did not result in unfair and unreasonable prices in violation of MSRB Rule G-30. Third, Jordan executed the seven trades over a period of 21 months, from November 2009 through August 2011. This works out to an average of one illegal trade every three months. The fraudulent scheme was episodic and sporadic at most. Fourth, Jordan stopped executing inter-positioning trades six years ago. Fifth, he stopped executing the trades on his own volition, without being prompted by a FINRA investigation. Sixth, eighteen months passed between his last inter-positioning trade in August 2011 and his being notified of the investigation in March 2013.¹⁷⁰

B. Specific Sanction Guidelines

With the above aggravating and mitigating factors in mind, the sanction for each of Jordan's violations is addressed separately below.

Rule 10b-5 (First Cause of Action). Jordan's inter-positioning trades constituted fraudulent acts, devices, and a scheme, and he committed material omissions of fact in not disclosing the trades to the ultimate purchasers of the municipal bonds, in violation of Section 10(b) of the Exchange Act and Rule 10b-5. Conduct that contravenes the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions.¹⁷¹ The Sanction Guideline for Fraud, Misrepresentations or Material Omissions of Fact recommends that adjudicators strongly consider imposing a bar for intentional or reckless fraud.¹⁷² Where mitigating factors predominate, the Guideline recommends suspending an individual in any or all capacities for a period of six months to two years.¹⁷³ Based on the above mitigating factors, Jordan shall be suspended from associating with any FINRA member firm in any and all capacities for a period of one year and fined \$7,000 for his inter-positioning trades in violation

¹⁶⁹ Jordan testified that "I did these seven trades with [PD] out of thousands of trades." Tr. 213-14. In answer to a question from a Hearing Panelist, Jordan testified that he executed hundreds of trades each month in the relevant period. Tr. 620. He later said "[w]e could do 50-75 transactions a day." Tr. 635.

¹⁷⁰ Although Market Regulation conducted an earlier investigation of inter-positioning trades between Kildare and Chapdelaine, that investigation focused on trades executed by a Kildare dealer other than Jordan. The first communication from Market Regulation to Kildare pertaining to the seven trades at issue was an inquiry letter dated March 11, 2013. CX-7; *see* Tr. 41-42.

¹⁷¹ *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *36 (Mar. 31, 2016) (an associated person's violations of the antifraud provisions of the securities laws are "especially serious and subject to the severest of sanctions"); *accord Ortiz*, 2017 FINRA Discip. LEXIS 5, at *31 (same).

¹⁷² Guidelines at 89.

¹⁷³ *Id.*

of the antifraud provisions of the federal securities laws. The Hearing Panel also orders disgorgement in connection with the First Cause of Action as discussed below.

MSRB Rule G-17 (Second Cause of Action). No Sanction Guideline applies to unfair, deceptive, or dishonest conduct in violation of MSRB Rule G-17. For Jordan's violations of this Rule, the Hearing Panel considers the Sanction Guidelines' Principal Considerations as discussed above. Based on the above mitigating factors, Jordan shall be suspended from associating with any FINRA member in any and all capacities for a period of one year for his unfair, deceptive, and dishonest conduct in violation of Rule G-17. This suspension shall run concurrently with the suspension imposed in the First Cause of Action. Under the circumstances of this case, the Hearing Panel does not impose a fine in light of the fine imposed in the First Cause of Action.

MSRB Rule G-14 (Fourth Cause of Action). No Sanction Guideline applies to reporting fictitious transactions and artificial prices in violation of MSRB Rule G-14. The closest analogy is the Guideline for Trade Reporting and Compliance Engine—Late Reporting; Failing to Report; False, Inaccurate or Incomplete Reporting.¹⁷⁴ This Guideline recommends that adjudicators consider suspending the respondent in any or all capacities for up to thirty business days. In egregious cases, the adjudicators should consider a lengthier suspension of up to two years or a bar.¹⁷⁵ Of the four considerations specific to the Guideline, two are relevant here. The first is the extent to which the misconduct affected market transparency, the dissemination of trade information, or the regulatory audit trail. The second is whether the respondent violated rule requirements in an extended period of days.¹⁷⁶ Here, the reporting of Jordan's inter-positioning trades affected market transparency. Yet Jordan did not violate rule requirements in a continuous extended period, but sporadically on seven days over 21 months. Based on the above mitigating factors, Jordan shall be suspended from associating with any FINRA member firm in any and all capacities for a period of one year for reporting fictitious transactions and artificial prices in violation of MSRB Rule G-14. This suspension shall run concurrently with the suspension imposed in the First Cause of Action. Under the circumstances of this case, the Hearing Panel does not impose a fine in light of the fine imposed in the First Cause of Action.

FINRA Rules 8210 and 2010 (Fifth Cause of Action). The Guideline for Failure to Respond Truthfully to Requests Made Pursuant to FINRA Rule 8210 recommends adjudicators consider a fine of \$25,000 to \$73,000.¹⁷⁷ There is one consideration specific to this Guideline: the importance of the information requested as viewed from FINRA's perspective.¹⁷⁸ Here, the information was important because the reason why Jordan executed the trades with Chapdelaine was central to the determination whether he violated the antifraud provisions of the federal securities laws and MSRB Rules. But, based on the above mitigating factors, Jordan shall be

¹⁷⁴ Guidelines at 66.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 33.

¹⁷⁸ *Id.*

suspended from associating with any FINRA member firm in any and all capacities for a period of one year for failing to respond truthfully to Market Regulation's requests in violation of FINRA Rule 8210. This suspension shall run concurrently with the suspension imposed in the First Cause of Action. Under the circumstances of this case, the Hearing Panel does not impose a fine in light of the fine imposed in the First Cause of Action.

C. Restitution and Disgorgement

The Hearing Panel orders Jordan to pay disgorgement of his ill-gotten gains.

The Sanction Guidelines instruct adjudicators to order restitution when it is appropriate to remediate misconduct and necessary to "restore the status quo ante where a victim otherwise would unjustly suffer loss."¹⁷⁹ Adjudicators may order restitution "when an identifiable person ... has suffered a quantifiable loss proximately caused by a respondent's misconduct."¹⁸⁰ The Guidelines provide that adjudicators may require disgorgement when a respondent obtained a financial benefit from his or her misconduct.¹⁸¹

Market Regulation has the burden of proving that Jordan should be required to pay restitution or disgorgement. Also, with regard to disgorgement, that remedy should be limited to the portion of a respondent's gain that is ill-gotten. Here, the amount of Jordan's reasonable profit cannot be calculated under the guidance of markup cases because he interpositioned several trades between his original purchase and the ultimate sale. In effect, there were three markups in each of the seven transaction sets for the municipal bonds: the first in the sale of the bonds to Chapdelaine, the second in the sale back to Kildare, and the third in the sale to the ultimate purchaser. Jordan should be allowed to keep one markup, but not three. Therefore, the amount of ill-gotten gain is the price of the bond sold to the ultimate purchaser, minus the price paid by Chapdelaine, multiplied by the number of bonds:

¹⁷⁹ *Id.* at 4 (General Principle No. 5: "Where appropriate to remediate misconduct, Adjudicators should order restitution and/or rescission"); *accord Casas*, 2017 FINRA Discip. LEXIS 1, at *47 (ordering respondent to pay \$50,000 restitution for invested funds he had converted for his personal use); *McLaughlin, Piven, Vogel Securities, Inc.*, 1999 NASD Discip. LEXIS 51, at *49 ("The Hearing Panel also believes that, in addition to the imposition of a monetary fine, it is appropriate to require [respondent] to pay restitution to the customers who were overcharged.").

¹⁸⁰ Guidelines at 4; *accord Ahmed*, 2015 FINRA Discip. LEXIS 45, at *137 (same).

¹⁸¹ *Id.* at 5 (General Principle No. 6: "To remediate misconduct, Adjudicators should consider a respondent's ill-gotten gain when determining an appropriate remedy").

Transaction Set	Price Paid by Chapdeleaine	Price Paid by Purchaser	Difference	Volume	Profit
1	\$104.03	\$104.36	\$0.33	1,890,000	\$6,237
2	\$104.50	\$104.90	\$0.40	980,000	\$3,920
4.1 ¹⁸²	\$101.35	\$102.78	\$1.43	50,000	\$715
4.2	\$101.35	\$101.59	\$0.24	1,345,000	\$3,228
5	\$108.26	\$108.84	\$0.58	1,120,000	\$6,496
6.1	\$109.67	\$109.76	\$0.09	1,460,000	\$1,314
6.2	\$109.67	\$109.93	\$0.26	540,000	\$1,404
7	\$106.11	\$106.44	\$0.33	710,000	\$2,343
Total Profit					\$25,657

The Hearing Panel exercises its discretion under the Sanction Guidelines to add prejudgment interest onto the disgorgement amount. Where a respondent enjoyed access to funds over time as a result of his wrongdoing, to require him to pay prejudgment interest is consistent with the equitable purpose of disgorgement.¹⁸³ Prejudgment interest deters violations because disgorgement alone does not reflect the time value of money and, in effect, gives the respondent an interest free loan of the disgorgement amount.¹⁸⁴

Yet this case has continued until it is now more than five years after the date of Jordan's most recent inter-positioning trade and more than seven years after the date of his first inter-positioning trade. It would be unduly punitive to require Jordan to pay prejudgment interest accruing for such a long period. Market Regulation knew of Jordan's trades by March 11, 2013, when it sent an inquiry letter to Kildare.¹⁸⁵ If we give another year as a rough estimate of the time it would take Market Regulation to investigate the trades and bring a disciplinary proceeding, a fair result would be to order Jordan to pay prejudgment interest beginning on the dates of his sales of the municipal bonds to the ultimate purchasers and ending on March 11, 2014. The interest rate to be paid by Jordan shall be that for the underpayment of income taxes

¹⁸² The calculation of ill-gotten gain does not include Transaction Set No. 3 because Jordan incurred an out-of-pocket loss. Transaction Sets Nos. 4 and 6 each included two different sales to different purchasers at different prices; therefore, the analysis of ill-gotten gain requires separate calculations.

¹⁸³ *SEC v. Hughes Capital Corp.*, 917 F. Supp. 1080, 1089-90 (D.N.J. 1996), *aff'd*, 124 F.3d 449 (3d Cir. 1997); *Dep't of Enforcement v. Escarcega*, No. 2012034936005, 2016 FINRA Discip. LEXIS 5, at *83 n.227 (OHO Feb. 29, 2016).

¹⁸⁴ *Dep't of Enforcement v. Davidofsky*, No. 200815934801, 2013 FINRA Discip. LEXIS 7, at *42 (NAC Apr. 26, 2013); *accord Akindemowo*, 2015 FINRA Discip. LEXIS 58, at *51 n.35.

¹⁸⁵ CX-7.

in Section 6621(a) of the Internal Revenue Code, the same rate that is used for calculating interest on FINRA restitution awards.¹⁸⁶

VII. Order

Respondent William Norris Jordan executed inter-positioning trades of municipal bonds and omitted material facts in violation of Section 10(b) of the Exchange Act, Rule 10b-5, and MSRB Rules G-14 and G-17. He violated FINRA Rules 8210 and 2010 by giving false information to FINRA in the investigation leading up to this disciplinary proceeding. Market Regulation failed to meet its burden of proving that Jordan charged unfair and unreasonable prices in violation of MSRB Rule G-30. The third cause of action of the Complaint is dismissed. For his violations, Jordan is suspended from associating with any FINRA member firm in any and all capacities for one year and fined \$7,000. Jordan shall pay disgorgement in the amount of \$25,657, plus prejudgment interest running from the dates of the sales to the ultimate purchasers up to and including March 11, 2014. Jordan is also ordered to pay the costs of the hearing in the amount of \$6,611.13, consisting of an administrative fee of \$750 and the cost of the transcript.¹⁸⁷

If this Decision becomes FINRA's final disciplinary action, Jordan's one-year suspension shall become effective at the opening of business on November 20, 2017. The fine, disgorgement, prejudgment interest, and costs shall be due on a date set by FINRA, but not less than thirty days after this Decision becomes FINRA's final action.

For The Hearing Panel



Richard E. Simpson
Hearing Officer

Copies to:

William N. Jordan (via overnight courier and first-class mail)
Richard A. Levan, Esq. (via email and first-class mail)
Jon-Jorge Aras, Esq. (via email)
Gary E. Jackson, Esq. (via email and first-class mail)
Kevin M. McGee, Esq. (via email)
James J. Nixon, Esq. (via email)

¹⁸⁶ *Dep't of Enforcement v. Springsteen-Abbott*, No. 2011025675501, 2016 FINRA Discip. LEXIS 39, at *43 n.30 (NAC Aug. 23, 2016).

¹⁸⁷ The Hearing Panel considered all arguments of the parties. The arguments are rejected or sustained to the extent they are inconsistent or in accord with the views expressed in this Decision.