FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. WINDSOR STREET CAPITAL, L.P. (f/k/a MEYERS ASSOCIATES, L.P.) (BD No. 34171), Respondent.	Disciplinary Proceeding No. 2015046971701 Hearing Officer–LOM **HEARING PANEL DECISION** October 30, 2018

Respondent firm failed to establish and maintain a reasonable supervisory system and failed to reasonably supervise two registered representatives who engaged in unsuitable trading. For this misconduct in the aggregate, the firm is fined $500,000 and censured. It is also ordered to pay costs.

Appearances

For the Complainant: Frank M. Weber, Esq., Jackie A. Wells, Esq., David Monachino, Esq., Andrew T. Beirne, Esq., and Lara Thyagarajan, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance[1]

I. INTRODUCTION

FINRA's Department of Enforcement ("Enforcement") charged the Respondent firm, Windsor Street Capital, L.P. (the "Firm"),[2] with two separate supervisory violations: (i) failure to establish and maintain a reasonable supervisory system; and (ii) failure to reasonably supervise two registered representatives who engaged in unsuitable trading. We find that the Firm committed the violations alleged and impose sanctions consistent with the egregious nature of the violations, the numerous aggravating factors, and the Firm's status as a recidivist.

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[1] Respondent was represented by counsel throughout the proceeding until June 26, 2018, when the Hearing Officer granted counsel's motion to withdraw.

[2] The Firm was known as Meyers Associates, L.P. until December 12, 2016. For ease of reference, we refer to it as the Firm regardless of the time period.

II. SUMMARY DESCRIPTION OF VIOLATIONS

The violations occurred in connection with trading in an account owned (through a trust) by an elderly couple well into their 80s. Two of the Firm's registered representatives engaged in unsuitable trading in the account. Almost every month from September 2014, when the account was opened, through June 2015, around the time when the customers complained, the representatives repeatedly traded in and out of a single stock—in a "round trip"—selling the entire position and then using the proceeds to buy it back not long afterward with no regard for whether the customers lost money. The representatives charged as much as a 3.5% commission on a trade, and the total charges for both halves of a round-trip trade generally ranged from 5% to 7%. Monthly commissions typically ran from $5,000 to $16,000.

In May 2015, the representative then on the account also started trading on margin, thereby incurring additional fees. That representative also improperly exercised discretion in the account without written authority, effecting 18 out of 26 transactions without talking to his customers in advance.

The value of the account steadily declined. By the time the account was closed in early December 2015, the couple had lost over $94,000, nearly half the original value of the account. In the same period, the trading generated over $100,000 in commissions. The commissions were excessive; the trading and use of margin were inconsistent with the couple's investment profile; and, in fact, the trading lacked any economic rationale.

The Firm had no effective procedures to monitor for, investigate, or remediate such improper sales practices. Its written supervisory procedures ("WSPs") were generic and did not reflect what actually went on at the Firm. The Firm relied on supervisors to review daily blotters for improper trading practices, but did not have in place any particular requirements for how that review should be conducted, documented, or followed up. The daily blotters contained information regarding individual trades, such as the price and the commission on a particular trade, but did not contain historical information—such as the accumulated losses or total commissions charged—from which supervisors could easily discern patterns of improper trading. Even if a supervisor had identified suspicious trading, the Firm did not require any particular action to be taken by anyone. There was simply no accountability.

In light of the lack of a reasonably designed supervisory system, it is not surprising that the Firm did not reasonably supervise the two representatives who handled the elderly couple's account. The Firm ignored red flags that required investigation. The trading blotters, despite their lack of trading history, raised two red flags: the unusually large size of the trades and the repetition of the unusually large trades each month. Monthly exception reports from the Firm's clearing firms contained historical information and raised more red flags by clearly revealing the pattern in the elderly customers' account of accumulating losses, high commissions, and high turnover.

Despite the red flags, the Firm never identified the trading in the couple's account as potentially problematic. It did not discuss concerns about the trading with the registered representatives or contact the customers to inquire whether they authorized and understood the trading in their account. Moreover, when the customers eventually became aware of the trading and contacted the Firm to stop it, the Firm was unresponsive, failing to take any action to remediate the problem. Approximately four months after the customers first complained, the Firm finally closed the account—charging a substantial commission on the last transaction—and returned the customers' remaining, greatly diminished principal.

III. FINDINGS

A. Proceeding

Enforcement filed the Complaint in this matter on August 15, 2017, against three Respondents: the Firm and two of its registered representatives, Nas Adel Allan ("Allan") and Gregory J. Anastos ("Anastos"). The last Answer (the Firm's) was filed on October 2, 2017, and an initial pre-hearing conference was held on October 24, 2017. The parties were unable to agree on hearing dates. They subsequently filed competing proposals. The Hearing Officer rejected proposed dates in September and October of 2018, and initially set the hearing for late March 2018. The parties raised scheduling conflicts, and motion practice regarding hearing dates continued until January 25, 2018, when the Hearing Officer issued an Order setting the hearing for May 15-18, 2018.

On May 9, 2018, FINRA accepted Allan's offer of settlement. On May 11, 2018, FINRA also accepted an offer of settlement by Anastos.[3] On May 14, 2018, the only remaining Respondent, the Firm, withdrew its request for a hearing, and the Hearing Officer removed the hearing from the calendar. Enforcement and the Firm agreed that the case could be decided on the written record.

On May 21, 2018, the Hearing Officer issued an Order governing the proceeding going forward. In that Order, pursuant to FINRA Rule 9267, the Hearing Officer determined that the Hearing Panel would decide this case on the written record. To complete the record, the Hearing Officer admitted stipulations and proposed exhibits and allowed the parties to file briefs and offer additional exhibits for admission. By an Order dated August 3, 2018, admitting certain exhibits, the last evidence was entered into the record.[4] After a Hearing Panelist withdrew, a replacement Panelist was appointed on September 6, 2018.

[3] Allan consented to the entry of certain findings of fact and violations consistent with the allegations of the Complaint (as amended by his Offer of Settlement), without admitting or denying those findings. Anastos did the same in connection with his Offer of Settlement. This decision makes factual findings based on the record in this case, which was completed after Allan and Anastos entered into their settlements.

[4] The stipulations are referred to here by the abbreviation "Stip." with paragraph number ("Stip. ¶ 12"). Exhibits are referred to here by the prefix "CX" and a unique identifying number ("CX-1"). Sometimes additional identifying

Upon careful consideration of the record, and for the reasons set forth below, the Hearing Panel concludes that Enforcement proved the charges against the Firm and that stringent sanctions should be imposed.

B. Respondent

The Firm became a FINRA member on June 16, 1994.[5] As of the filing of the Complaint in 2017, it operated from four branch offices and employed 51 registered representatives.[6] The Firm has an extensive disciplinary history,[7] and many of the regulatory actions against it have involved supervisory failures.[8] Since 2000, the Firm has been the subject of at least 16 final disciplinary actions.[9] In connection with another matter, FINRA expelled the Firm, and that decision became effective May 29, 2018, after the Securities and Exchange Commission ("SEC") denied the Firm's motion to stay the decision of FINRA's National Adjudicatory

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information may be provided. Although the Firm filed a pre-hearing brief, it submitted no proposed exhibits of its own.

Although there was no hearing, the record contains some testimonial evidence and affidavits: a transcript (CX-145) and a video recording (CX-146) of a *de bene esse* deposition of the surviving customer, IR ("IR Dep."); excerpts from on-the-record interviews ("OTRs") of Allan (CX-151) ("Allan OTR") and Anastos (CX-152) ("Anastos OTR"); excerpts from the OTRs of two persons who supervised Allan and Anastos, John David Telfer (CX-112) ("Telfer OTR") (also the Firm's Chief Executive Officer ("CEO") and Chief Compliance Officer ("CCO") at the time of the OTR), and Zubair Ekhtear (CX-113) ("Ekhtear OTR"); two affidavits by FINRA staff, Geary Seeley ("Seeley Aff.") and Maureen Brogan ("Brogan Aff."), and an affidavit by a financial services provider who assisted IR in dealing with the Firm and its registered representatives, EL ("EL Aff."). EL was registered as a general securities representative from 1998 through 2010 and now works as an independent insurance agent. EL Aff. ¶ 1.

[5] Compl. ¶¶ 15; Stip. ¶ 3; Firm Answer ¶¶ 15.

[6] Stip. ¶ 3; Compl. ¶ 17; Firm Answer.

[7] CX-122 (compilation of some of the disciplinary actions against the Firm). *See Continued Ass'n of Bruce Meyers*, Decision SD-2069, slip op. at 29 (NAC May 9, 2016) ("Eight of the Firm's regulatory actions involved supervisory failures…."), *aff'd*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096 (Sept. 29, 2017).

[8] *See* CX-122, at 18 (AWC No. 20140438591-01 between Meyers Associates and FINRA (June 2016)), at 57-58 (Order Accepting Offer of Settlement Issued by FINRA against Meyers Associates (Dec. 2011)), and at 75 (Order Accepting Offer of Settlement Issued by FINRA against Meyers Associates and Bruce Meyers (Nov. 2011)); CX-123, at 8-9 (*Dep't of Enforcement v. Meyers Assoc. L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1 (NAC Jan. 4, 2018)); CX-124 (*Dep't of Enforcement v. Meyers Assoc., L.P.*, No. 2013035533701, 2017 FINRA Discip. LEXIS 47 (NAC Dec. 22, 2017)).

[9] Stip. ¶ 3; CX-123, at 12 (*Dep't of Enforcement v. Meyers Assoc. L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1 (NAC Jan. 4, 2018)). *See also* CX-150, at 2 n.3 (May 29, 2018) (SEC decision stating that the Firm has been the subject of at least 19 final regulatory and disciplinary actions since 2000 and that the Firm was at that point subject to seven pending regulatory and disciplinary actions).

Council (the "NAC").[10] The Firm is currently pursuing appeals of two additional disciplinary decisions by the NAC.[11]

C. Jurisdiction

FINRA retains jurisdiction to bring this case against the Firm. The Complaint was filed while the Firm was a FINRA member and it concerns alleged misconduct that occurred while it was a FINRA member. FINRA retains jurisdiction for two years after a firm resigns or FINRA revokes or cancels its membership.[12]

D. The Customers

At the time of the events at issue, September 2014 through December 2015, IR and his wife, DR, were an elderly couple in their 80s living in Morgantown, West Virginia. She has since passed away. IR is a retired pharmacist; his wife was a homemaker.[13] The couple had an annual income of approximately $70,000 to $90,000 from a trust established by IR's former employer. Otherwise, they mainly relied on income from Social Security.[14]

In 2010, the couple established the trust involved in this case (the "Trust").[15] The main objective of the Trust was to benefit IR and DR during their lifetimes, with any assets remaining after the death of the last surviving spouse to be distributed to their descendants.[16]

In 2014, the Trust held 19,868 shares of Huntington Bancshares, Incorporated ("HBAN"), a widely traded public company.[17] HBAN was the successor entity to a local West Virginia bank that was located across the street from the pharmacy where IR worked. In 1978, IR inherited 174 shares of the local bank, and he continued to hold those shares and reinvest his

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[10] *See generally* CX-149 (May 14, 2018) (NAC decision denying the Firm's application to continue its FINRA membership notwithstanding a statutory disqualification); CX-150 (May 29, 2018) (SEC decision denying the Firm's motion to stay the NAC decision).

[11] CX-123 (*Dep't of Enforcement v. Meyers Assoc., L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1 (NAC Jan. 4, 2018)); CX-124 (*Dep't of Enforcement v. Meyers Assoc., L.P.*, No. 2013035533701, 2017 FINRA Discip. LEXIS 47 (NAC Dec. 22, 2017)).

[12] FINRA By-Laws, Art. IV, Sec. 6.

[13] CX-145, at 7-8 (IR Dep.); Seeley Aff. ¶ 7; EL Aff. ¶ 2; CX-112, at 93-94 (IR was 87 when he signed a new account form for the Trust).

[14] CX-145, at 9-10 (IR Dep.); CX-104 (Seeley notes); Seeley Aff. ¶ 11 (the couple had an adjusted gross income in 2015 of $98,000).

[15] CX-145, at 13 (IR Dep.); EL Aff. ¶¶ 2-3; *see generally* CX-139 (Trust Agreement).

[16] *See* CX-139, at 9, 31-32 (Trust Agreement).

[17] CX-5, at 5-6 (account statements); CX-77, at 4 (J.P. Morgan Securities account statement showing transfer of HBAN shares to Trust's account). The couple had held the same number of shares for nearly 15 years. Seeley Aff. ¶ 14.

dividends after it became HBAN.[18] The cost basis of the shares for tax purposes was $10,068,[19] but by September 2014 the Trust's holdings of HBAN were valued at nearly $200,000.[20] Between 1978 and September 2014, the couple simply held their HBAN stock—they never sold a share.[21]

IR made investment decisions based on the recommendations of others, not his own research. He did not read business or financial news and did not pay close attention to financial account statements as he received them. He waited to review such mailings until he met with EL, a friend who reviewed the couple's financial situation with IR several times per year. IR was someone who generally relied on advice from investment professionals rather than making his own unsolicited investment decisions, and he tended to trust people without asking questions.[22]

E. The Trading in HBAN Shares

1. Allan Solicited IR for Business

IR had a small account with the Firm prior to the events at issue. The Firm's brokers had effected four small trades (each less than $2,000 in principal) in that account, for which IR was charged total commissions of $35.[23] From at least November 2013 through much of 2014, one of the Firm's registered representatives, Respondent Allan, tried to persuade IR to transfer the HBAN shares to an account with the Firm. Allan made at least a dozen telephone calls to IR and flew once to Morgantown to urge IR to do more business with the Firm.[24] IR viewed Allan as aggressively soliciting his business.[25] IR described Allan as "forceful," saying that he "insisted" that IR transfer the HBAN stock to the Firm.[26] Allan told IR he was going to double IR's money.[27]

IR asked EL, the person who assisted him with financial matters, to speak to Allan, and EL did so by telephone in August or early September 2014. In the conversation, EL told Allan that IR had owned the HBAN stock for many years, that the cost basis in the HBAN stock was very low, and that selling the stock could result in a significant capital gains tax liability for the

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[18] CX-145, at 10-11 (IR Dep.); Seeley Aff. ¶¶ 12-13.

[19] CX-66, at 2 (cost basis analysis); Seeley Aff. ¶ 12.

[20] CX-5, at 5-6 (account statements).

[21] CX-145, at 10-11 (IR Dep.); Seeley Aff. ¶¶ 12-13.

[22] CX-145, at 11-12 (IR Dep.); EL Aff. ¶¶ 2-5.

[23] Stip. ¶ 6.

[24] CX-95; CX-96, at 13-14.

[25] *See*, *e.g*., CX-145, at 14-16, 24-27 (IR Dep.).

[26] CX-45, at 26 (IR Dep.).

[27] CX-145, at 26 (IR Dep.).

couple. Allan responded that he did not plan to sell the HBAN shares, but instead would write covered call options on them to generate income.[28]

2. Allan's Trading

On September 10, 2014, IR transferred the Trust's 19,868 HBAN shares, valued at $197,289 to the Firm, along with $11,252.84 in cash. Allan opened the Trust's account (the "Trust Account") with the Firm.[29] The Trust Account opening documents described the investment profile for the account as "moderate." An account form for options trading listed the primary account objectives as "dividend and premium income" and "hedging." "Trading profits" and "speculation" were listed as the least important priorities.[30]

Contrary to what Allan had told EL about not selling the HBAN shares, almost immediately, on September 16, 2014, Allan sold the entire HBAN position. Allan charged a 3.80% commission,[31] or $7,550, on the trade. The customers netted less than the value of the position when they transferred the shares to the Firm less than a week before. They received $191,101.[32] As EL had told Allan would happen, the customers also incurred a tax liability on the sale.[33] Given that the customers lost money on the transaction, and nothing in the record suggests any reason for the customers to sell the shares they had held for decades, there was no rationale for the transaction.

Less than ten days after selling the entire HBAN position, on September 24, 2014, Allan repurchased 20,000 HBAN shares for the Trust Account. With costs factored in, the customers paid more to reestablish the position than they had received in the earlier sale—they paid $200,025. Allan charged a 1.32% commission of $2,600.[34] Allan thus charged a total of 5.12% on the round trip. The total commissions charged on the initial sale and repurchase of the HBAN

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[28] EL Aff. ¶¶ 7-8.

[29] Stip. ¶ 7; CX-4, at 1 (account opening documents); Brogan Aff. ¶ 21.

[30] Stip. ¶¶ 7-8; CX-4, at 50.

[31] The term "commission" is used here to refer to commissions, markups, and markdowns. The Firm acted as a principal in connection with this and most other HBAN trades, and usually when a broker-dealer acts as a principal, it charges a markup or markdown from the price at which it bought from or sold to the customer. Commissions are typically charged when a broker-dealer buys or sells a security in a transaction with a third party on behalf of its customer, so-called agency trades. *See* https://www.sec.gov/investor/alerts/ib_confirmations.pdf. The Firm and its registered representatives, however, used the term commissions in connection with all the transactions at issue, and certain summary exhibits in this case define commissions to include markups and markdowns. Brogan Aff. ¶¶ 7, 13, 16.

[32] Stip. ¶ 9; CX-13 ([IR] Trust Transaction Analysis for the period September 2014 – December 2015).

[33] CX-145, at 16-17 (IR Dep.). The initial sale of the entire position, as soon as the Trust Account was opened, generated a $15,000 capital gains tax liability for 2014. CX-66, at 2 (cost basis analysis); CX-67, at 2 (capital gains tax worksheet); Seeley Aff. ¶ 15.

[34] Stip. ¶10; CX-13 ([IR] Trust Transaction Analysis for the period September 2014 – December 2015); CX-135 ([IR] Trust Account Commission/Markup/Markdown Analysis).

shares, 5.12%, exceeded the Firm's 5% limit on markups/markdowns in "proceeds transactions." The Firm defined a proceeds trade as one where the "customer sells a security and uses the proceeds to buy another security at or about the same time."[35]

The next month, Allan engaged the Trust Account in another round trip in HBAN shares. On October 16, 2014, the Trust sold all of its HBAN shares, netting $177,971—for a $22,054 loss. Allan charged a 3.26% commission of $6,000 on the transaction. Then, less than two weeks later, on October 28, 2014, the Trust repurchased 18,068 shares of HBAN in a transaction that cost the Trust a total of $180,705, more than it had received in the prior sale. Allan charged a 3.63% commission of $6,324. The total commission charge for the two trades was 6.89%.[36] The 6.89% in commissions on the October round-trip trades greatly exceeded the Firm's 5% limit for markups and markdowns in proceeds transactions.

Allan's HBAN trades and commissions in the Trust Account are summarized in the table that follows:[37]

Allan's HBAN Stock Transactions and Commissions

Transaction Date	Action	Quantity of Shares Acquired or [Sold]	Net Cash Amount Received or [Paid]	Profit or (Loss)	Commission on Individual Trade: Amount/Percent	Commission on Round-Trip Trade: Amount/Percent
09/10/2014	*n/a	19,868*	*n/a	*n/a	*n/a	*n/a
09/16/2014	Sell	[19,868]	$191,101	**($6,188)	$7,550/3.80%	$10,150/5.12%
09/24/2014	Buy	20,000	[$200,025]		$2,600/1.32%	
10/16/2014	Sell	[20,000]	$177,971	($22, 054)	$6,000/3.26%	$12,324/6.89%
10/28/2014	Buy	18,068	[$180,705]		$6,324/3.63%	
				Net Transaction (Loss) Under Allan:[38] ($28,242)	**Total Commissions Charged Under Allan: $22,474[39]**	

*Initial transfer into account. The initial value of the HBAN shares was $197,289.
** Difference between the initial value of the HBAN shares and the net amount received from their sale.

During the period that Allan handled the Trust Account and the Trust engaged in these four transactions, the account suffered a net transaction loss of $28,242. Allan charged

[35] Stip. ¶ 42; CX-112, at 13 (Telfer OTR).

[36] Stip. ¶¶ 11-12; CX-13 ([IR] Trust Transaction Analysis for the period September 2014 – December 2015).

[37] Information extracted from CX-13 ([IR] Trust Transaction Analysis for the period September 2014 – December 2015).

[38] This is the total net transaction loss, factoring in transaction costs. The figure does not include the effect of other fees or dividends on the value of the Trust Account. Brogan Aff. ¶ 7. On September 15, 2014, the day before Allan sold the HBAN shares, the Trust Account was paid a dividend of $994. CX-13.

[39] Total commissions as reflected in CX-15 (Allan trade analysis); Brogan Aff. ¶¶ 10, 23-24.

commissions totaling $22,474.[40] He did not tell IR the amount of commissions he charged on the transactions.[41] Given that the commissions on the HBAN trades were thousands of dollars more than the $35 the Firm had charged IR for previous transactions in his other account, the HBAN commissions would likely have shocked IR—had they been disclosed.

The commissions on the HBAN trades were important to Allan because they represented the vast majority of his gross commissions in the months when the Trust traded HBAN shares, 85% in September and 79% in October 2014.[42]

The HBAN trades were Allan's idea—IR did not initiate any of the trades.[43] Allan marked all the HBAN trades as solicited,[44] which, under the Firm's policies, meant that he recommended the transaction and the customer entered into it as a result of that recommendation.[45]

The average monthly equity in the Trust Account during the period Allan handled it was $186,610.[46] The annualized turnover rate was 8.16 and the annualized commission-to-equity and cost-to-equity ratios were both 48.17%.[47]

Allan left the Firm effective November 20, 2014.[48]

3. Anastos's Trading

After Allan left the Firm, the Trust Account was assigned to Respondent Anastos.[49] It did not take him long to resume the pattern of in-and-out trading of HBAN stock.

On December 18, 2014, Anastos sold all of the Trust's HBAN stock, 18,068 shares. The Trust netted $181,193, which gave the Trust a small profit of $488. Anastos and the Firm,

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[40] CX-13 ([IR] Trust Transaction Analysis for the period September 2014 – December 2015). The Trust had a net realized loss of $25,285 while Allan handled the account. That calculation included total deposits such as interest and dividends and net transfers and withdrawals. CX-15 (Allan trade analysis); Brogan Aff. ¶¶ 10, 23.

The Firm retained 10% of the commissions, markups, and markdowns charged. *See* CX-46, at 3 (Firm's Rule 8210 response disclosing 90% payout to representatives).

[41] CX-145, at 17-18 (IR Dep.).

[42] CX-20, at 1 (commissions summary); Brogan Aff. ¶¶ 16, 24.

[43] CX-145, at 16 (IR Dep.).

[44] Stip. ¶ 13; CX-137, at 1 (compilation of Allan's and Anastos's top 100 trades by amount of commissions during relevant period).

[45] Stip. ¶ 14.

[46] CX-15 (Allan trading analysis); Brogan Aff. ¶¶ 10, 23.

[47] CX-15 (Allan trading analysis); Brogan Aff. ¶¶ 10, 23.

[48] Stip. ¶ 15.

[49] Stip. ¶ 15.

however, made far more on the sale—a 3.46% commission of $6,504. Less than a week later, on December 24, 2014, the Trust repurchased 16,600 HBAN shares for $181,330. The repurchase cost the Trust Account slightly more than it had netted in the recent stock sale.[50] Anastos charged a 3.51% commission of $6,142 on the repurchase transaction.[51] The commissions on the two December trades thus totaled 6.97%, which greatly exceeded the Firm's 5% limit on proceeds trades.

The December trades had no legitimate rationale. In less than a week, Anastos had the customers zero out their HBAN position and then reestablish it. The value of the position did not change, but it cost the customers more than $12,000 in commissions to accomplish that result.

From January through June 2015, Anastos conducted at least one round-trip sale and repurchase of HBAN shares each month, generating commissions for himself and the Firm, but creating steady losses for his customers and accelerating the downward spiral in the account's value.[52] For example, on January 21, 2015, the Trust Account sold the 16,600 HBAN shares that it had purchased in December 2014, netting $156,177, for a loss of $25,153. Anastos charged a 3.59% commission of $5,810. Then, a few days later, on January 26, 2015, the Trust purchased HBAN shares again. It paid slightly more than it had received from the previous sale, $157,299, but, because the share price had gone up, it was only able to acquire 14,950 shares, fewer than it had recently sold. Anastos charged a 3.54% commission of $5,382. In total, the customers paid 7.13% in commissions for the two January transactions, again exceeding the Firm's 5% limit on proceeds transactions.[53]

Within a week, on February 2, 2015, the Trust sold its HBAN shares, taking another loss. Then two days later, on February 4, 2015, the Trust repurchased 14,050 HBAN shares for $147,666 net of charges. The pattern of round-trip transactions continued in March and April.[54]

In May 2015, Anastos bought and sold HBAN shares again, and he began to use margin, which generated margin fees and permitted him to buy more HBAN shares than he otherwise would have been able to buy, which, in turn, generated still more in commissions.[55] The Firm required prior approval to trade on margin in an account held by a Trust.[56] But there was no

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[50] Stip. ¶¶ 16-17; CX-11 (excerpt from Sterne Agee trade blotter for Trust Account).

[51] Stip. ¶¶ 16-17.

[52] CX-13 ([IR] Trust Transaction Analysis for the Period September 2014 – December 2015); CX-11 (excerpt from Sterne Agee trade blotter for Trust Account); CX-12 (excerpt from COR Clearing trade blotter for Trust Account).

[53] CX-13 ([IR] Trust Transaction Analysis for the Period September 2014 – December 2015).

[54] CX-13 ([IR] Trust Transaction Analysis for the Period September 2014 – December 2015).

[55] CX-13 ([IR] Trust Transaction Analysis for the Period September 2014 – December 2015); CX-21 ([IR] Trust Account Margin Summary); Stip. ¶ 36. He also effected transactions in HBAN call options (CX-13) and engaged in one round trip in the shares of another company. Stip. ¶ 36.

[56] CX-148, at 211 (WSPs).

evidence that Anastos applied for approval to use margin in the Trust Account or that any approval was granted.

Once more, in June 2015, Anastos bought and sold HBAN shares. In spring and summer 2015, the Trust sustained losses on all but one of the HBAN stock transactions in the Trust Account.[57] By June 30, 2015, the Trust Account value had decreased from a high of $208,542 (the HBAN shares and cash originally transferred to the Firm) to $112,301.[58]

From December 2014 through December 2015, while Anastos ran the account, the Trust had a net transaction loss of $70,349 (including HBAN stock transactions, HBAN options transactions, and a pair of trades in the stock of another company). During the same period, Anastos charged commissions totaling $78,158.[59]

The trading and commissions in the Trust Account while Anastos ran the account are summarized in the two tables that follow:[60]

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[57] CX-13 ([IR] Trust Transaction Analysis for the Period September 2014 – December 2015).

[58] Stip. ¶ 37.

[59] CX-13 ([IR] Trust Transaction Analysis for the Period September 2014 – December 2015). When interest and dividends and margin fees were taken into account, the Trust's net realized loss for all the activity in the account during the period Anastos handled the Trust Account was $69,623. CX-16 ([IR] Trust Account Trading Analysis for the period December 2014 – December 2015, Trades Effected by Anastos).

[60] Information extracted from CX-13 ([IR] Trust Transaction Analysis for the period September 2014 – December 2015). Note that the two charts here do not reflect other monthly margin and miscellaneous fees charged to the Trust Account (totaling $1,492) or various interest and dividends paid to the Trust Account: $1,084 (12/17/2014); $843 (3/16/2015); $244 (6/9/2015); $930 (6/15/2015); and $1,080 (9/15/2015). CX-13.

Anastos's HBAN Stock Trading and Commissions

Transaction Date	Action	Quantity of Shares Acquired or [Sold]	Net Cash Amount Received or [Paid]	Profit or (Loss)	Commission on Individual Trade: Amount/Percent	Commission on Round-Trip Trade: Amount/Percent
12/18/2014	Sell	[18,068]	$181,193	*$488	$6,504/3.46%	$12,646/6.97%
12/24/2014	Buy	16,600	[$181,330]		$6,142/3.51%	
01/21/2015	Sell	[16,600]	$156,177	($25,153)	$5,810/3.59%	$11,192/7.13%
01/26/2015	Buy	14,950	[$157,299]		$5,382/3.54%	
02/02/2015	Sell	[14,950]	$147,827	($9,472)	$2,542/1.69%	$5,071/3.43%
02/04/2015	Buy	14,050	[$147,666]		$2,529/1.74%	
03/16/2015	Sell	[14,050]	$150,754	$3,088	$5,058/3.25%	$5,058/3.25%
03/18/2015	Buy	13,500	[$150,782]		$0	
04/15/2015	Sell	[13,500]	$146,488	($4,293)	$5,265/3.47%	$10,277/6.96%
04/20/2015	Buy	12,850	[$148,545]		$5,012/3.49%	
04/25/2015	Sell	[65]	$699		$0	
05/20/2015	Sell	[12,785]	$140,249	($7,597)	$5,114/3.52%	$11,159/10.48%
05/26/2015	Buy	12,100	[$139,816]		$4,719/3.49%	
05/29/2015[61]	Buy	3,400	[$39,542]		$1,326/3.47%	
06/23/2015	Sell	[15,500]	$174,217	($5,141)	$6,200/3.44%	$12,183/10.39%
06/26/2015	Buy	13,300	[$158,270]		$5,320/3.48%	
06/29/2015	Buy	1,700	[$19,754][62]		$663/3.47%	
08/27/2015	Buy	3,000	[$33,567][63]		$1,110/3.42%	
11/25/2015	Sell	[18,000]	$204,469[64]	($7,122)[65]	$5,202/2.48%	

* Represents the difference between this transaction effected by Anastos and the 10/28/2014 buy transaction effected by Allan.

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[61] By the end of May 2015, the Trust Account had its first margin balance of $29,442.19. CX-21 ([IR] Trust Account Margin Summary).

[62] By the end of June 2015, the Trust Account had a margin balance of $89,826.69. CX-21 ([IR] Trust Account Margin Summary).

[63] By the end of August 2015, the Trust Account had a margin balance of $77,625.07. CX-21, ([IR] Trust Account Margin Summary).

[64] The amount received is prior to clearing the margin debit in the Trust Account. At the end of October 2015, the Trust Account had a margin balance of $77,163, which was reduced to zero by December 2015. CX-21, ([IR] Trust Account Margin Summary).

[65] This amount represents the difference between the total cost of the June 26, June 29, and August 27 purchases, and the amount received from the November 25 sale.

Anastos's Other Trading and Commissions

Transaction Date	Action	Security	Quantity Acquired or [Sold]	Net Cash Amount Received or [Paid]	Profit or (Loss)	Commission on Individual Trade: Amount/Percent
05/29/2015	Sell Options	C HBAN Jan 2017 $12	[120]	$10,100		$100/0.99%
06/02/2015	Sell Options	C HBAN Jan 2017 $12	[35]	$2,350		$100/4.26%
06/22/2015	Buy Options	C HBAN Jan 2017 $12	155	[19,875]	($7,425)	$500/2.52%
06/26/2015	Sell Options	C HBAN Jan 2017 $12	[133]	$11,039		$0
06/04/2015	Buy	PHK	2,000	[$24,077]		$800/3.44%
06/17/2015	Sell	PHK	[2,000]	$18,640	($5,437)	$2,760/12.90%
11/24/2015	Buy Options	C HBAN Jan 2017 $12	133	[$13,325]	($2,286)	$0
					Net Transaction (Loss) Under Anastos: ($70,350)[66]	**Total Commissions Charged Under Anastos:**[67] **$78,158**

The commissions on the HBAN transactions were important to Anastos. From December 2014 through June 2015, the commissions he earned on those transactions ranged from 23% to 74% of his gross commissions, and, when he finally liquidated the account in November 2015, his commission on the final HBAN sale was 19% of his gross commissions for that month.[68]

Anastos marked all the HBAN equity transactions as solicited (with the exception of the final liquidating transaction).[69] Anastos communicated with IR exclusively by telephone.[70] However, telephone records reveal that Anastos bought and sold HBAN shares in the Trust Account on a number of days when he did not speak with IR. The records show no calls before 18 of the 26 transactions that Anastos effected in the Trust Account (which included some

[66] CX-13 ([IR] Trust Transaction Analysis for the period September 2014 – December 2015). This is the total figure for all the trading under Anastos, including the HBAN trading, the HBAN options, and the two transactions in the stock of a different company. The total figure in CX-13 was $70,349, rather than $70,350. We believe the difference may be due to rounding.

[67] Total commissions as reflected in CX-16 (Anastos trading analysis); Brogan Aff. ¶¶ 11, 25.

[68] CX-20, at 2 (Gross Commissions Charged by Anastos).

[69] Stip. ¶ 35; CX-13 ([IR] Trust Transaction Analysis for the Period September 2014 – December 2015).

[70] *See* CX-32, at 1 (Anastos Rule 8210 response).

HBAN options trades). Sometimes he engaged in trading when it had been weeks since he last spoke with the customer.[71] Anastos had no written discretionary authority.[72]

During the period that Anastos handled the Trust Account, the average monthly equity was $121,090, the annualized turnover rate was 9.41, the annualized commission-to-equity ratio was 59.58%, and the annualized cost-to-equity ratio was 60.72%.[73]

Anastos remained employed at the Firm after the Trust Account was closed.[74]

4. The Customers' Efforts to Stop the Trading in HBAN and the Firm's Response

In July 2015, IR met with EL, the person who periodically reviewed IR's financial situation with him, and EL learned for the first time that IR had transferred the HBAN stock to an account at the Firm. EL saw from the account statements that there was frequent in-and-out trading of HBAN and that the account had a margin balance. He was shocked at the nature and volume of trading in the Trust account, which did not appear appropriate for the couple, given their ages and circumstances. EL did not believe that the couple knew or understood that the account had purchased securities on margin. He called FINRA's Senior Helpline in July 2015 to bring his concerns to FINRA's attention, which led to the initiation of an investigation.[75]

Both together and singly, EL and IR tried to talk with Anastos, but he routinely avoided their calls. EL then sought help from the Firm's compliance department, and the CCO has notes indicating he returned such a call on July 2, 2015. But EL and IR became frustrated at the Firm's response, and EL started taking contemporaneous notes of calls. On November 12, 2015, Anastos told EL and IR that he had sold the positions in the Trust Account for $194,651. EL believed that the Firm would close the account and send a check to IR and DR. But, after nearly two weeks, the couple had received no check. EL and IR attempted to contact the Firm's CCO, and on November 24, 2015, they had a conversation with the CCO and Anastos in which Anastos said he had not sold the position because of a "technical problem or glitch." More than a week after that, IR and DR still had not received the proceeds from their account at the Firm. On December 2, 2015, IR talked to Anastos, who said he had sold the HBAN shares. But Anastos refused to tell IR the amount of proceeds from the transaction. IR and EL left multiple telephone messages with the CCO, who eventually spoke with EL and told him that the HBAN shares had been sold for $204,000. What the CCO did not say was that the margin debit in the Trust

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[71] CX-18, at 1-3 ([IR] Trust Account Analysis of Trades vs. Calls for the Period 9/10/14 – 12/7/15); Brogan Aff. ¶ 28.

[72] Brogan Aff. ¶ 29.

[73] CX-16 ([IR] Trust Account Trading Analysis for the period December 2014 – December 2015, Trades Effected by Anastos); Brogan Aff. ¶¶ 11, 25.

[74] CX-112, at 127-28 (Telfer OTR).

[75] EL Aff. ¶¶ 9-12; Seeley Aff. ¶ 6.

Account had to be cleared, which would reduce the amount the couple would receive. IR and his wife received a check for less than the CCO had led IR and EL to expect, a check for only $113,624.[76]

Anastos liquidated the HBAN shares on November 25, 2015, the day after IR and EL complained to Anastos and the CCO that they had been waiting for nearly two weeks for the account to be liquidated. The Firm allowed Anastos to charge $5,202 in commissions on the last transaction,[77] and there is no evidence that the Firm did not take its standard share of the commissions on the transaction. Thus, rather than seeking to remediate the damage done to the account, the Firm continued to profit, even on the liquidation of the Trust Account, and it did nothing to address the harm to its customers.[78]

Anastos remained with the Firm. Despite his serious misconduct, the Firm did not talk to him about the trading in the Trust Account or place him on heightened supervision or do anything to make future misconduct less likely.[79]

5. Absence of Rationale for Trading

From the customers' perspective, the in-and-out trading in HBAN was pointless. As discussed above, and as shown in the tables summarizing the trading in HBAN shares by Allan and Anastos, in all but two transactions the customers suffered losses. And in the two cases where there was a profit, the profit was not large and was quickly followed by additional trading that generated more losses. The customers had never previously sold their HBAN stock, and there is no evidence in the record that their circumstances changed in some way that caused them to want to sell the stock. They did not solicit the transactions.

The Firm's CCO testified in his OTR that the registered representatives told him that IR had agreed to sell the HBAN shares at a higher price and buy them back at a lower price.[80] But a history of the transactions shows that the representatives often sold the shares at a lower reported

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[76] EL Aff. ¶¶ 13-23; CX-114, at 2-4 (EL's contemporaneous notes on telephone calls). The check was issued on or about December 3, 2015. Stip. ¶ 38. Contemporaneous notes kept by the CCO indicate that he returned a call from EL and IR about the trading in the Trust Account on July 2, 2015. The CCO's notes show that EL and IR were still trying to sell the stock and close the account in late November 2015. CX-57, at 1-2 (Telfer's response to a Rule 8210 request).

[77] CX-13; Stip. 35.

[78] As noted previously, the Firm generally received at least 10% of the commissions charged. CX-46, at 3.

[79] CX-112, at 127-28 (Telfer OTR); CX-46, at 4 (the Firm's response to a Rule 8210 request). The Firm's CCO testified in his OTR that he only spoke to Anastos about his trading in the Trust Account after receiving a Rule 8210 request from FINRA staff. CX-112, at 83 (Telfer OTR).

[80] CX-112, at 159-60 (Telfer OTR). The CCO provided the same explanation in response to a Rule 8210 request. CX-55, at 1. Ekhtear, Allan's supervisor, similarly said that some investors prefer to buy and sell for short term profits rather than holding for a long period of time. CX-113, at 106-08 (Ekhtear OTR). Anastos said that IR wanted "to take advantage of market fluctuation." CX-32, at 1 (Anastos response to Rule 8210 request).

trade price and bought them back at a higher reported trade price, a losing proposition even before factoring in the costs of doing so.[81] The purported trading strategy was a pretext for trading to earn commissions.

In their pre-hearing brief, the Firm and Anastos argued that the strategy of "timing" the market was suitable, even if unsuccessful.[82] The HBAN shares were not volatile, however, so a strategy of short-term trading was not viable.[83]

Allan also suggested that the strategy was intended to decrease the couple's cost basis in the HBAN shares.[84] The supervisor for Allan's initial trading in the Trust Account echoed the same explanation, saying that the strategy was to "mov[e] [the customers'] initial cost average down."[85] That excuse for the trading, however, was false. As EL had already told Allan, the customers had an extraordinarily low cost basis on the shares because they had held the shares for so long and had simply reinvested the dividends.[86]

The CCO testified that Anastos had told him that IR "enjoyed" trading HBAN shares and "liked playing the market."[87] However, the CCO never verified that statement by speaking with IR. Given that the customers almost always lost money on the transactions, the CCO should have viewed the statement with skepticism. He acknowledged that "if you are constantly losing money" the trading would not be suitable.[88]

Allan provided an additional, even more far-fetched, explanation for the trading in response to a Rule 8210 request. Allan claimed that IR was concerned about monthly monetary policy statements by the Federal Reserve Bank, and the volatility that those statements had

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[81] See CX-135. For example, the sale on October 16, 2014, occurred at a reported trade price of $9.20, while the repurchase on October 28, 2014, occurred at a higher reported trade price—$9.65. With costs factored in, the actual trade price of the sale was even lower than the actual trade price of the repurchase—$8.90 versus $10.

Even when the reported trade price appeared to be higher for a sale than for the subsequent repurchase, the customers lost money once costs were factored in. For example, the first sale on September 16, 2014, was for a reported trade price of $10 per share. The repurchase occurred on September 24, 2014, at a reported trade price of $9.87 per share. Because the sale was at a higher price than the repurchase, the trades might appear to make sense—if nothing else were considered. However, commissions of 3.8% and 1.32% were charged on the transactions, respectively. With costs factored in, the sale occurred at a lower price than the repurchase. The sale was made at an actual trade price of $9.62 per share, and the repurchase was made at an actual trade price of $10 per share. The customers lost money.

[82] Respondents Windsor Street Capital, L.P. and Gregory J. Anastos's Joint Pre-Hearing Brief at 4.

[83] Seeley Aff. ¶ 10.

[84] CX-23, at 6 (Allan's Rule 8210 response).

[85] CX-60 (Ekhtear response to Rule 8210 request).

[86] CX-66, at 2 (cost basis analysis); Seeley Aff. ¶ 12.

[87] CX-112, at 136 (Telfer OTR).

[88] CX-112, at 124, 126-27, 136-37 (Telfer OTR).

injected into the financial sector. Allan claimed that IR wanted "to trade around the F[ederal] O[pen] M[arket] C[ommittee] announcements."[89] This explanation is contradicted by IR's past history of holding the HBAN stock for decades and IR's habit of paying no attention to his monthly statements until EL came to visit and review the couple's financial affairs.

As for whether the trading was authorized each time it occurred, the CCO testified in his OTR that he understood from Anastos—in a conversation after the events at issue—that he had talked with the customer and that IR was always aware of the trading in the Trust Account. The CCO's understanding was not based on any discussions with the customer or any review of telephone records of calls between Anastos and the customer.[90]

We are compelled to conclude that the trading served no purpose but to generate commissions for the two representatives and the Firm. The Firm's CCO conceded that the investment strategy of in-and-out trading was not suitable for a customer like IR with a "moderate" investment profile, and he acknowledged that he knew no reasonable rationale for the trading.[91] Allan and Anastos benefited from the trades, however, and the Firm shared in that benefit. From September 2014 through December 2015, 14 of the top 15 trades the two representatives executed, as measured by the amount of commissions, were effected in the Trust Account.[92]

6. Effect on Trust Account

From September 2014 to December 2015, the entire period that the Trust Account was open at the Firm, the Trust Account had an average monthly equity of $133,375 and incurred a net loss of $94,908, taking into consideration total margin fees and dividend income, as well as the net transaction loss. Total costs were $102,124, consisting not only of commissions, but also margin and other fees. Commissions were the bulk of the costs, however—they totaled $100,632. The annualized turnover rate was 9.08; the annualized commission-to-equity ratio was 56.59%; and the annualized cost-to-equity ratio was 57.43%.[93]

Based on the level of trading and the commissions and other charges, there was little to no possibility that the Trust Account would break even, let alone make a profit. Each month the registered representatives traded virtually the entire value of the account, and usually lost some

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[89] CX-23, at 6.

[90] CX-112, at 80-84 (Telfer OTR).

[91] CX-112, at 121-27, 133-39 (Telfer OTR). The CCO testified that his understanding of the term "moderate" was that it was "basically a step up from conservative, buying stocks which have some type of dividend. Not a lot of trading, limited amount to generate some income back into the account." CX-112, at 96 (Telfer OTR).

[92] Brogan Aff. ¶ 30; CX-137.

[93] CX-14; Brogan Aff. ¶ 22. In April 2017, IR filed a Statement of Claim with FINRA's Office of Dispute Resolution alleging excessive trading, churning, and qualitative unsuitability against the Firm, Anastos, and the person who owned the branch office where Anastos worked. IR also claimed that the Firm had failed to supervise the registered representatives. *See generally* CX-108 (Statement of Claim).

amount on the trades. The effect on the account is starkly revealed by the relentless decline in the equity value of the account. Although the equity value ranged up and down for a few months before the Trust Account was closed, it never recovered its original value. See the table below.[94]

Trust Account Activity and Monthly Equity Sept. 2014-Dec. 2015

Month/ Year	Monthly Purchases	Monthly Commissions	Total Monthly Fees	Month-End Equity
Sept. 2014	$200,025	$10,150	$10,150	$196,929
Oct. 2014	$180,705	$12,324	$12,324	$179,643
Nov. 2014*	$0	$0	$0	$183,257
Dec. 2014	$181,330	$12,646	$12,646	$175,084
Jan. 2015	$157,299	$11,192	$11,192	$150,214
Feb. 2015	$147,666	$5,071	$5,071	$154,284
Mar. 2015	$150,782	$5,058	$5,058	$149,724
Apr. 2015	$148,545	$10,277	$10,277	$138,880
May 2015	$179,358	$11,259	$11,259	$133,341
June 2015	$221,976	$16,343	$16,485	$112,301
July 2015**	$0	$0	$191	$119,349
Aug. 2015	$33,567	$1,110	$1,304	$110,775
Sept. 2015	$0	$0	$314	$104,881
Oct. 2015	$0	$0	$304	$111,652
Nov. 2015	$13,325	$5,202	$5,501	$113,682
Dec. 2015***	$0	$0	$48	$0
TOTAL	**$1,614,578**	**$100,632**	**$102,124**	

* Month when Allan left the Firm.
** Month when IR and EL began to complain about the trading in the account.
*** Month the Firm wrote a check closing the account.

F. The Firm's Supervisory System

1. The Firm's WSPs

In 2014 and 2015, the Firm's WSPs were a generic book purchased from an outside vendor[95] that did not actually reflect what people at the Firm were doing day to day.[96] The WSPs provided little specificity or guidance. They restated FINRA's suitability rule,[97] and then

[94] The information on the table is extracted from CX-14.

[95] CX-112, at 60 (Telfer OTR).

[96] Telfer, the CCO, testified that in September 2016 the Firm was working on editing the WSPs to specifically focus on how the Firm actually conducted its business. CX-112, at 60 (Telfer OTR).

[97] CX-148, at 225 (WSPs). The WSPs recited that its representatives were required to have a reasonable basis for believing that a recommended transaction or investment strategy was suitable for a customer. Stip. ¶ 39.

contained several sections discussing review for improper trading and potential corrective action. In reality, they created no systematic process for identifying and investigating suspicious trading.

a. Guidance on Monitoring for Improper Trading and Sales Practices

In general terms, the WSPs required review of order records and daily reports for improper trading. Section 10.17.1 of the WSPs was titled *Review of Daily Transactions*. It required the CEO or a Designee to review "order records" and a "daily transaction report" for, among other issues, "suitability of transactions" and "excessive commissions."[98] Similarly, Section 10.17.3 of the WSPs, titled *Review of Transactions for Excessive Commissions*, required the CEO or a Designee to review daily reports of commissions and markups/markdowns to determine the "fairness of charges," considering among other things, the security's type and availability, transaction amount, and pattern of markups or markdowns.[99] Section 10.17.5, titled *Prohibited Transactions and Practices*, also required the CEO or a Designee to review order records and daily transaction reports for various prohibited activities, including excessive trading.[100]

The WSPs did not identify any particular designee to conduct the review or the particular daily transaction report that should be reviewed, although the WSPs did list supervisors for the various branches of the Firm and a sales manager. The WSPs also did not include specific steps or procedures to detect and deter improper trading. There were no requirements for how the review should be conducted, or how often it should be conducted, or how it should be documented, or what should be done if suspect trading were identified.[101] The Firm did not fill in the gap with training. When Ekhtear, who supervised Allan and Anastos from April 1, 2013, to October 16, 2014,[102] first became manager of the branch where Allan and Anastos worked, he received no formal training, even though he had had no experience as a branch manager. He learned on the job, asking his manager, whose office was in a different building, to "help him out" as questions arose.[103]

The trade blotters were the only daily transaction report available to supervisors,[104] and the Firm relied on sales managers' reviews of the order tickets and trade blotters to supervise trading practices. One sales manager reviewed the tickets in real time on a screen, without any process for documenting his review, and the other two sales managers reviewed the trade blotters

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[98] CX-148, at 225 (WSPs); Stip. ¶ 39.

[99] Stip. ¶ 44; CX-148, at 247 (WSPs).

[100] Stip. ¶ 47.

[101] *See* CX-148, at 246-48 (WSPs).

[102] Stip. ¶ 49.

[103] CX-113, at 22-24, 32-33 (Ekhtear OTR).

[104] Stip. ¶ 41; CX-112, at 35-39 (Telfer OTR).

the following day. There was no requirement that the review be conducted in any particular way.[105]

Although they contained some useful information, the trade blotters were not well designed to detect improper sales practices. They did not provide information that would enable a reviewer to easily identify patterns of excessive charges or unsuitable trades. For any given transaction, the blotters listed the account number, whether the transaction was a buy or sell, the quantity, the symbol of the security that was either bought or sold, the total amount, and the commission. The blotters did not show the total percentage of the markup or markdown on a proceeds transaction or the charges accumulating in an account. They also did not show the trading history in an account, so that the number, size, and frequency of transactions would be clear.[106] The blotters also lacked information about a customer's investment profile or the balance in the customer's account.[107]

The WSPs did purport to require the CEO or a Designee to review some cumulative information that could have revealed problematic trading, but the WSPs were so unspecific as to be meaningless. Section 10.17.4 of the WSPs, titled *Review of Account Activity by CEO or Designees*, provided that the CEO or Designee should review "customer account activity periodically" by "reviewing the monthly statements, posting records, and/or other cumulative transaction information of selected RR on a rotating basis."[108] The WSPs did not identify more specifically who was responsible for such review, and they provided no guidance as to the nature of the review to be conducted. They also did not suggest how frequently this review should be conducted, or how the registered representatives should be selected for review, or what the rotation cycle should be.

Similarly, Section 10.17.5, titled *Review of Account Activity by Compliance*, directed that the Firm's Compliance Department should conduct periodic reviews of account activity based on criteria "established by Compliance." But there was nothing in the WSPs detailing the criteria for selecting accounts to be reviewed or the frequency or nature of the review. The WSPs did not require documentation of any such review.[109]

b. Guidance on Addressing Suspect Trading and Sales Practices

The Firm's WSPs purported to contain guidance on how to address trading in active accounts. Section 10.49, titled *Prohibited Transactions and Practices*, referred the reader to a separate section called "Active Accounts" "for guidance regarding action on actively traded accounts" that may indicate "potential excessive trading."[110] However, the WSPs did not have an "Active Accounts" section, and the WSPs did not otherwise explain what would constitute

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[105] CX-112, at 14-15, 23-26, 35 (Telfer OTR).

[106] CX-112, at 29, 75-76 (Telfer OTR).

[107] CX-112, at 29 (Telfer OTR).

[108] Stip. ¶ 45; CX-148, at 247 (WSPs).

[109] Stip. ¶ 46; CX-148, at 248 (WSPs).

[110] CX-148, at 291-92 (WSPs); Seeley Aff. ¶ 19.

excessive trading or churning in an account or how to look for such activity.[111] The absence of guidance relating to review of actively traded accounts is problematic because actively traded accounts are an indication of potential sales practice violations.[112]

With respect to the unauthorized exercise of discretion in an account, Section 10.49.2 of the WSPs, titled *Unauthorized Trading*, prohibited employees from "enter[ing] a transaction before contacting the owner of the account (or the authorized agent for the owner) unless the employee ha[d] specific written authorization to act on the customer's behalf." But the WSPs did not provide any procedures to ensure that the Firm's employees adhered to the policy.[113] They did not include, for instance, contacting the customer to verify that atypical or high volume trading was appropriate and authorized.

Furthermore, even if, despite the inadequate procedures for detecting improper trading, a potential problem was identified, the Firm had no consistent, systematic way of investigating and addressing it. Section 10.17.1 laid out actions that could be taken if an order was contrary to the Firm's policies or rules. It suggested that a supervisor could confer with the registered representative to "clarify the transaction, if necessary" or reach out to compliance "regarding additional education for the RR and/or disciplinary action."[114] The suggested corrective actions were not mandatory. Supervisors had discretion as to what steps they might take to ensure that trading was authorized and suitable.[115] Nor were the suggested actions particularly effective. They mostly involved internal discussions within the Firm. They did not involve contacting customers to verify their investment profile and authorization of the trading.[116]

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[111] Stip. ¶ 45; Seeley Aff. ¶ 20; CX-86, at 85 (WSPs excerpt). In the investigation, the Firm admitted that it had no written procedures for contacting customers. Seeley Aff. ¶ 23. The WSPs contained no procedures setting forth the steps the Firm should take if it identified an actively traded account. It had no procedures requiring or providing for contacting customers whose accounts were actively traded, or for obtaining explanations from the registered representatives responsible for actively traded accounts. Seeley Aff. ¶ 24. No section of the WSPs specified the level of activity in an account that would constitute churning or excessive trading. No section explained or identified mathematical tests for churning or excessive trading, such as turnover or cost-to-equity ratios. Seeley Aff. ¶ 25.

[112] Seeley Aff. ¶ 21.

[113] Stip. ¶ 48; CX-148, at 292 (WSPs).

[114] CX-148, at 246.

[115] Stip. ¶ 40; Seeley Aff. ¶¶ 22-25; CX-46, at 3-4 (Firm response to Rule 8210 request) ("[The Firm] did not have written procedures in place to contact customers as a result of the level of trading or trading activity; commissions incurred by the customer and/or trading losses. To contact a client regarding these parameters was at the discretion of the supervisor.").

[116] When asked what steps he would take if he identified a large transaction on the blotter, the CCO said that he would ask the broker if the client was aware of the size of the transaction. He spoke of possibly "pursu[ing] it deeper." CX-112, at 32 (Telfer OTR). But, when pressed to explain what that would involve, he said he would speak to the broker. He did not say he would verify the broker's representations by contacting the client. CX-112, at 31-35 (Telfer OTR).

2. The Firm's Actual Practices

In practice, the Firm employed no benchmarks or specific measures to flag suspect trading. The CCO, who supervised the branch where Anastos worked for part of the relevant period, said that the size of a transaction might raise a red flag. But he had no set dollar amount that would do so. He thought that trades of $50,000 to $100,000 would trigger special attention. He said that he might consider the age of the customer, along with other factors, in deciding whether to investigate trading. But he was vague about when and how age would be a concern. The CCO claimed that the Firm had a policy of limiting commissions to 15% ROA, meaning return on assets, and commissions over that would be a red flag. But that 15% ROA policy was not written in the Firm's WSPs. The CCO believed that it was in various policy memos and had been discussed at numerous management meetings.[117]

Furthermore, in practice, the Firm had no procedures for documenting review of the trade blotters and other reports.[118] It also had no procedures for following up on a red flag other than talking to the broker involved.[119] The CCO said that the Firm reviewed monthly active account reports from its clearing firms and that a supervisor would start to telephone customers whose accounts showed up in those reports—"maybe."[120] The Firm did not have written procedures for contacting customers in connection with the level of trading activity, the commissions incurred by the customer, or trading losses. It was at the discretion of the supervisor whether to contact the customer.[121]

There was no formal checklist for reviewing the steps taken to address problematic issues.[122] To the extent that a manager might call a customer, there was no standard questionnaire to be used to gather information and there was no standard for what and how the discussion was documented.[123] According to the CCO, "Every manager did it differently."[124]

The Firm did not require that its response to a particular account appearing on a monthly active account report be documented.[125] Although the CCO claimed to have discussed the monthly reports with the sales managers, no record was kept of those discussions.[126] When asked whether he followed up on a regular basis to see what the branch managers were doing about

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[117] CX-112, at 29-38, 42 (Telfer OTR).

[118] CX-112, at 77-78 (Telfer OTR).

[119] CX-112, at 31-35 (Telfer OTR).

[120] CX-112, at 41 (Telfer OTR).

[121] CX-112, at 87-88 (Telfer OTR).

[122] CX-112, at 47-48 (Telfer OTR).

[123] CX-112, at 49 (Telfer OTR).

[124] CX-112, at 49 (Telfer OTR).

[125] CX-112, at 43-45 (Telfer OTR).

[126] CX-112, at 45-46 (Telfer OTR).

brokers whose customer accounts appeared in the monthly activity reports, the CCO said, "I would discuss it with them and their response was always suitable. I guess they were doing their jobs."[127]

G. The Firm's Supervision of Allan and Anastos

Despite the lack of appropriate systems for review of trading practice violations, the Firm actually had abundant, obvious signs of improper trading by Allan and Anastos. Yet the Firm did nothing. And even when its customers complained and sought to close the account, the Firm conducted no investigation and did not do anything to prevent future improper trading. The failure to respond to red flags of potential improper trading was not attributable merely to a single supervisor. Rather, the failure persisted through a whole series of supervisors, including the Firm's CCO.[128]

1. Blotters Raised Red Flags

Although the daily blotter was a crude tool for detecting improper sales practices, the daily blotters showing trading in the Trust Account raised two red flags that could not reasonably be ignored—the size of the trades and the repetition of those large trades month after month. There were only a few transactions on a blotter, and most of those trades were below $30,000.[129] The HBAN transactions were large, ranging from $150,000 to $200,000, and would have stood out for that reason.[130] Moreover, between September 2014 and the end of June 2015, these large transactions occurred every month but one. The trading dwindled to smaller transactions only when IR and EL became aware of the trading in July 2015 and started trying to contact Anastos about it.[131]

Even though the CCO testified at his OTR that trades as large as $100,000 would attract attention and oversight,[132] he had only the vaguest recollection of the trading in the Trust Account. He said that the HBAN trades, which ranged from $150,000 to $200,000, "probably"

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[127] CX-112, at 46-47 (Telfer OTR).

[128] In the investigation, the Firm identified the persons who approved trades effected by Allan and Anastos: Zubair Ecktear (sic) a/k/a Omar Bair) (from April 2013 to October 16, 2014); Ronald Ramkissoon (from October 16, 2014, to May 11, 2015), and the Firm's CCO, Telfer (from May 12, 2015 until November 2015). In November and December 2015, Nella Zelensky supervised Anastos. Seeley Aff. ¶ 17.

[129] CX-113, at 98 (Ekhtear OTR).

[130] CX-112, at 30-31 (Telfer OTR). The Firm, however, had no set dollar amount that would trigger follow-up questions. CX-112, at 30 (Telfer OTR). This further demonstrates its failure to have a supervisory system reasonably designed to achieve compliance.

[131] CX-13 ([IR] Trust Transaction Analysis for the Period September 2014 – December 2015); EL Aff. ¶¶ 9-23.

[132] CX-112, at 30-31 (Telfer OTR). Ekhtear, who supervised Allan's trading, testified that trades typically ranged from $10,000 to $30,000, and that the blotter for a given day typically contained ten transactions. Some days the blotter would have as few as two or three transactions. CX-113, at 97-101 (Ekhtear OTR). In these circumstances, the trading in the Trust Account would have been unusual and noticeable.

raised a red flag for him and that he "probably" would have called the broker about it. He could not say "100%" that he actually did call.[133]

2. Monthly Active Account Reports Raised Red Flags

Other red flags appeared in the monthly active account reports the Firm received from its clearing firms, Sterne Agee & Leach, Inc. ("Sterne Agee") and COR Clearing LLC ("COR").[134] For each account designated as an actively traded account, each monthly report showed both what happened in the preceding month and a 12-month history of trading, commissions, and losses in an account. In addition, these reports calculated ratios such as the amount of commissions compared to the average equity in an account and the turnover ratio. The Trust Account appeared in the Sterne Agee report until Sterne Agee terminated its relationship with the Firm at the end of January 2015. Starting on February 15, 2015, the Firm began using COR exclusively as its clearing firm, and the Trust Account began appearing in COR's reports in March.[135]

a. Sterne Agee Report

The Sterne Agee report flagged accounts with one or more of the following characteristics: (i) commissions of more than $10,000 for the month; (ii) more than 15 trades in either the previous month or in the last three months; (iii) commissions of more than 50% of account equity; or (iv) losses greater than 15% in the previous month or the last three months.[136]

In September 2014, the first month that Allan opened the Trust Account, the trades generated more than $10,000 in commissions, and for that reason the Trust Account was flagged on the report.[137] In October 2014, the Account was flagged again because the trades generated

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[133] CX-112, 138-39 (Telfer OTR).

[134] The clearing firms, Sterne Agee and COR, posted monthly active account reports at a location on their platforms where certain Firm personnel could access them. Seeley Aff. ¶ 29. The CCO, Telfer, testified that during 2014-2015, the Firm's operations department received the reports, and that it, in turn, would distribute them to the sales managers by email. Branch managers and the CCO also received them electronically.

During the relevant period, however, there was no requirement to document review of the report, and branch managers were not required to send a report on how they might have dealt with the exception report. The CCO would discuss the reports with the sales managers, but there was no record kept of those discussions. CX-112, at 39-46 (Telfer OTR). At that time, the CCO had no formal process for ensuring that managers were taking appropriate action with respect to the monthly active account reports. CX-112, at 47 (Telfer OTR). This careless manner of dealing with the monthly active account reports further demonstrates the lack of a reasonably designed supervisory system.

[135] The Firm used both clearing firms until February of 2015. Sterne Agee changed management in late 2014 and advised the Firm that it was terminating the relationship because it was going to be "more conservative." CX-112, at 19-20 (Telfer OTR).

[136] Seeley Aff. ¶ 28; *see generally* CX-87 (Sterne Agee Monthly Active Account Reports).

[137] CX-87, at 7; CX-92R; Seeley Aff. ¶¶ 31-32.

more than $10,000 in commissions.[138] In December 2014 and January 2015, the Trust Account was flagged in the report because of the high commissions.[139] By January 2015, the Trust Account was flagged both for high commissions and for having a four-month cumulative loss of more than 15%.[140]

The January 31, 2015 monthly report from Sterne Agee showed that over the most recent five months the Trust Account had engaged in only eight trades, but it had paid an extraordinary amount of commissions for the privilege of engaging in those few trades—$46,312. The commission to equity ratio at that point was 26.16%. In the same five-month period, the Trust Account lost 16% of its value.[141] The monthly active account reports made it clear that the trading had benefited only the two registered representatives and the Firm—not the customers. The trading in the Trust Account required immediate investigation.

b. COR Report

COR had different criteria than Sterne Agee for flagging an account in its monthly active account report. COR flagged activity in accounts with one or more of the following characteristics: (i) commissions in the previous month of $5,000 or more; (ii) more than 50 trades; (iii) total commissions greater than 5% of account equity (the commission-to-equity ratio); or (iv) losses greater than 20%.[142]

COR flagged the Trust Account in its March 31, 2015 report for commissions in excess of $5,000.[143] In its April 30 and May 31, 2015 reports, COR flagged the Trust Account for excessive commissions and for a commission-to-equity ratio of more than 5%.[144] The June 30, 2015 report showed a four-month loss of 55% in the account, commissions since February 2015 of $43,465, and a commissions-to-equity ratio since February of 33.25%.[145] The clearing firm flagged the account because in one month alone the commissions were $14,343, exceeding the $5,000 threshold, and the commission-to-equity ratio was 21%, exceeding the 5% threshold.[146]

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[138] CX-87, at 53; Seeley Aff. ¶ 32.

[139] CX-87, at 119, 153; Seeley Aff. ¶ 32.

[140] CX-87, at 153; Seeley Aff. ¶ 32.

[141] CX-87, at 153.

[142] Seeley Aff. ¶ 28; *see generally* CX-89 (COR Clearing Monthly Active Account Reports).

[143] CX-89, at 31; Seeley Aff. ¶ 32.

[144] CX-89, at 60, 90; Seeley Aff. ¶ 32.

[145] CX-89, at 122. COR treated the accounts transferred from Sterne Agee as new accounts, without any history and without the information previously reported by Sterne Agee. As a result, the COR reports underreported the cumulative commissions paid by the Trust and the cumulative losses sustained in the Trust Account. CX-89, at 31.

[146] Seeley Aff. ¶ 32.

These figures, like the figures in the Sterne Agee reports, showed that the representative and the Firm benefited from the trading, but not the customer. Action was required.

3. The Firm Failed to Investigate Red Flags

No action was taken. No supervisor at the Firm ever contacted Allan about activity in the Trust Account.[147] Anastos did not remember any supervisor asking him questions about the HBAN trading,[148] although the CCO claimed to have discussed the trading in the account with Anastos. The CCO had the impression from his discussion with Anastos that IR "was always aware of the trading and its frequency in his account."[149] The CCO based his impression entirely on conversations he had with Anastos.[150] The CCO testified in his OTR that he never spoke with IR.[151] There is no evidence in the record that anyone at the Firm reacted to the red flags raised by the trading in the Trust Account.[152]

Nor did the Firm take any action after the customers closed their account to address Anastos' misconduct, although Anastos remained employed with the Firm. The CCO could not recall discussing the handling of the Trust Account with Anastos. The Firm took no action against him with respect to his conduct in connection with the Trust Account.[153] It neither investigated the conduct nor restricted his business activities nor placed him under heightened supervision.[154]

4. The Firm Benefited from Ignoring the Red Flags

Given that the HBAN sales and purchases were very large transactions for the Firm, and given that they occurred on a regular basis every month, it is almost impossible to believe that the Firm's supervisory personnel did not know about the trading. And yet, the Firm did nothing about it. It abdicated its supervisory responsibilities, and, instead, enjoyed the benefit of its share of the commissions that steadily drained the value of the account. Despite the evident

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[147] CX-151, at 2-3 (Allan OTR) (Allan was never "red flagged" for commissions, and no one ever contacted him about the trading in the Trust Account).

[148] CX-152, at 2 (Anastos OTR).

[149] CX-112, at 80-81 (Telfer OTR). The CCO's discussions with Anastos may have taken place after the events in issue, as part of the CCO's preparations to respond to a FINRA staff Rule 8210 request in May 2016. CX-112, at 81-83, 137-38, 160-61.

[150] CX-112, at 81 (Telfer OTR).

[151] CX-112, at 95, 127 (Telfer OTR).

[152] Seeley Aff. ¶¶ 33-35. In the investigation, the staff asked the Firm whether the trading by Allan and Anastos (as well as another registered representative) had raised concerns or was seen as red flags. The Firm responded that it "never had any concerns or saw red flags that Allan, Anastos [or the other representative] utilized an unsuitable strategy or excessively traded accounts." Seeley Aff. ¶ 35.

[153] CX-112, at 127-30 (Telfer OTR).

[154] CX-112, at 127-28 (Telfer OTR).

mishandling of the Trust Account, the Firm even charged a commission of over $5,000 on the last transaction, the sale of stock to close the account.

IV. CONCLUSIONS

In violation of NASD Rule 3010 and FINRA Rules 3110 and 2010, the Firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance. In violation of the same Rules, the Firm also failed to reasonably supervise Allan and Anastos and their trading in the Trust Account.

A. The Firm Failed to Establish and Maintain a Reasonably Designed Supervisory System

1. Supervisory Requirements

NASD Rule 3010(a) and FINRA Rule 3110(a) require that a member firm "shall establish and maintain" a supervisory system "that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules." As part of an appropriate supervisory system, a member firm "shall establish, maintain and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons." Such WSPs must be "reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."[155]

It is well recognized that "[a]ssuring proper supervision is a critical component of broker-dealer operations."[156] "Proper supervision is the touchstone to ensuring that broker-dealer operations comply with the securities laws and [FINRA] rules."[157] A Firm must monitor for potential misconduct and respond appropriately to signs of misconduct by investigating and, if necessary, disciplining errant employees.

"The duty of supervision includes the responsibility to investigate 'red flags' that suggest that misconduct may be occurring and to act upon the results of such investigation."[158] "[R]ed flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review. When indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the securities laws."[159] The regulatory system to

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[155] FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

[156] *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *27 (June 29, 2007).

[157] *Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 SEC LEXIS 3225, at *35 (Sept. 16, 2011).

[158] *Dep't of Enforcement v. Newport Coast Sec., Inc.*, No. 2012030564701, 2018 FINRA Discip. LEXIS 14, at *167 (NAC May 23, 2018) (quoting *Michael T. Studer*, 57 S.E.C. 1011, 1023-24 (2004)), *appeal docketed*, No. 3-18555 (SEC June 22, 2018).

[159] *Midas Sec., LLC*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199, at *46-47 (Jan. 20, 2012).

protect investors from malfeasance depends on member firms performing their supervisory responsibilities with diligence and care.

"Reasonably designed WSPs serve as a 'frontline' defense to protect investors from fraudulent trading practices and help to ensure that members are complying with rules designed to promote the transparency and integrity of the market."[160] FINRA has provided guidance as to the kinds of procedures a firm's WSPs should contain. General reference materials are not sufficient.[161] The WSPs should be tailored to the Firm's business and circumstances.[162] They should state *specific steps* supervisors should take when looking at "order records" and "daily transaction reports" and should provide *specific* guidance as to the hallmarks of unsuitable trading, such as turnover rates and cost-to-equity ratios, to aid detection of such trading.[163] They also must require *specific* steps to resolve issues once detected.[164]

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[160] *Dep't of Enforcement v. North Woodward Fin. Corp*., No. 2011028502101, 2014 FINRA Discip. LEXIS 11, at *42 & n.95 (OHO May 16, 2014), *aff'd in relevant part,* 2016 FINRA Discip. LEXIS 35 (NAC July 19, 2016).

[161] *Dep't of Enforcement v. Howell*, No. 20080138685, 2011 FINRA Discip. LEXIS 65, at *33 & n.34 (OHO Nov. 22, 2011).

[162] *E.g*., *Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *36-41 (NAC May 26, 2017) (the adoption of FINRA's small firm template with virtually no tailoring to a firm's business did not satisfy the firm's AML compliance obligations) *appeal docketed* No. 3-18045 (SEC June 26, 2017); *Dep't of Enforcement v. Lek Sec. Corp.*, No. 2009020941801, 2016 FINRA Discip. LEXIS 63, at *36 (NAC Oct. 11, 2016) (boilerplate AML manual was not sufficiently tailored to the firm's business) *aff'd,* Exchange Act Release No. 82981, 2018 SEC LEXIS 830 (Apr. 2, 2018); *Dep't of Enforcement v. North Woodward Fin. Corp.*, No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *27-28 (NAC July 19, 2016) (A firm's supervisory system must be "*tailored specifically to the member's business* and must address the activities of all its registered representatives and associated persons." (quoting NASD Notice to Members 99-45, 1999 NASD LEXIS 20, at *5 (June 1999)) (emphasis in original).

[163] *See* FINRA Regulatory Notice 12-25, at A23 (May 2012) (noting that such indicators "provide a basis for finding that the activity at issue was excessive"); *Rafael Pinchas*, 54 S.E.C. 331, 338-40 (1999) ("A turnover rate of 6 generally indicates excessive trading" and "a cost-to-equity ratio in excess of 20% indicates excessive trading."); *Newport Coast Sec*., 2018 FINRA Discip. LEXIS 14, at *98-100 (same). Notably, the annualized turnover rate when Allan was responsible for the Trust Account was 8.16, and the cost-to-equity ratio was 48.17% (CX-15). When Anastos was responsible the annualized turnover rate was 9.41 and the cost-to-equity ratio was 60.72% (CX-16, at 1). These figures are well beyond the indicators that usually signify excessive trading.

See generally Dep't of Enforcement v. Wilson-Davis & Co., No. 2012032731802, 2018 FINRA Discip. LEXIS 7, at *61 (OHO Feb. 27, 2018) (among other supervisory failures, the firm failed to train employees on "specific steps to be taken in order to monitor for or detect any potentially suspicious trading activity.") *appeal docketed, (NAC Mar. 1, 2018)*; *Dep't of Enforcement v. Christ*, No. C10000029, 2001 NASD Discip. LEXIS 62, at *25-26 (OHO July 23, 2001) (written supervisory procedures were not reasonably designed to achieve compliance because they did not spell out the specific steps to be taken to adequately monitor, detect, and prevent the substantive violations).

[164] *See Merrimac*, 2017 FINRA Discip. LEXIS 16, at *35 (written supervisory procedures deficient in part because they provided "no specific guidance for what to do if red flags were identified.").

2. The Firm's Supervisory System

In this case, the Firm's WSPs were not reasonably designed to achieve compliance. They were vague and unspecific, requiring no one to do anything in particular. There was no systematic process for monitoring, detecting, investigating, or addressing improper sales practices and unsuitable trading—or for documenting what was done. The WSPs purported to have procedures for addressing actively traded accounts like the Trust Account, but they referred to a section of the WSPs that did not exist.

The Firm relied on supervisors to review the daily blotters for improper trading practices, but the blotters were an inadequate basis for the task, since they lacked the kinds of historical information that would make it possible to see patterns of trading, commissions, and accumulated losses. The Firm also did not train supervisors on what constitutes unsuitable trading or how to identify it.

Moreover, even if a potential problem were uncovered, the Firm granted supervisors discretion in how to address it and suggested actions that only involved internal discussions. The Firm's WSPs did not even suggest that supervisors exercise their discretion to independently verify information, such as by contacting the customer.

In short, the Firm did not have a supervisory system in place that was reasonably designed to achieve compliance. As charged, the Firm violated FINRA Rules 3110 and 2010.[165]

B. The Firm's Supervision of the Two Representatives

The failure to have a reasonable supervisory system in place led ineluctably to the failure to reasonably supervise the unsuitable trading Allan and Anastos conducted in the Trust

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[165] Enforcement also charged the Firm with violating FINRA Rule 2010, which requires FINRA members and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. This Rule requires members of the securities industry not merely to conform to legal and regulatory requirements, but to conduct themselves with integrity, fairness, and honesty. *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *22 n.20 (Feb. 13, 2015) (discussing NASD predecessor to FINRA Rule 2010: "[T]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. [FINRA Rule 2010] protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation.") (internal quotations omitted).

Having found that the Firm violated FINRA Rule 3110, however, it is unnecessary to separately discuss FINRA Rule 2010. A failure to supervise violation also violates FINRA Rule 2010. *Dep't of Enforcement v. Midas Sec., LLC*, No. 2005000075703, 2011 FINRA Discip. LEXIS 62, at *21-23 (NAC Mar. 3, 2011) *aff'd*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199 (Jan. 20, 2012). That is consistent with the well-established principle that a violation of another FINRA Rule is also a violation of Rule 2010. *See Merrimac Corp. Sec., Inc.*, 2017 FINRA Discip. LEXIS 16, at *11 n.7 (violation of Rule 8210 violates Rule 2010). *See also Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999) (violation of an SEC or [FINRA] rule, including [FINRA] rule against selling away, violates [FINRA Rule 2010]).

Account. The Firm never recognized the many red flags raised by the trading and took no action to investigate, remediate, or prevent similar misconduct in the future.

Red flags suggesting that the trading might be improper appeared in the daily blotters:

- The trades were abnormally large, at least three to four times the size of other trades typically executed by the Firm;[166] and

- The abnormally large trades repeated in the same account every month.[167]

These red flags would have been obvious to any supervisor who looked at a daily blotter reporting on a trade in the Trust Account, because there were only a few trades on any given blotter. The trading in the Trust Account would have stood out even without historical information.

Additional glaring red flags appeared in the monthly active account reports the Firm received from its clearing firm, which contained historical information on the trading and information about accumulating commissions and losses:

- Almost every month from September 2014 through June 2015, the Trust Account appeared in the clearing firms' exception reports for active trading accounts, even though the customers' investor profile was marked as "moderate," and an account form for options trading listed the primary account objectives as "dividend and premium income" and "hedging."[168]

- The Trust Account was flagged in the active trading reports each month for high commissions;[169]

- By January 31, 2015, the monthly report from Sterne Agee also flagged the Trust Account for having a four-month cumulative loss of more than 15%;[170]

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[166] CX-112, at 29-38, 42 (Telfer OTR) (trades of $50,000 to $100,000 might trigger special attention); CX-113, at 97 (Ekhtear OTR) ($200,000 was a large transaction at the Firm).

[167] CX-13 ([IR] Trust Transaction Analysis for the period September 2014 – December 2015).

[168] CX-87 (Sterne Agee Monthly Active Account Reports); CX-89 (COR Clearing Monthly Active Account Reports); Stip. ¶¶ 7-8; Seeley Aff. ¶¶ 28, 32. From September 2014 through December 2015, the Trust Account appeared ten times in the Firm's monthly active account reports. CX-147 (summary chart of frequency that Trust Account and others appeared on Firm's monthly active account reports).

[169] CX-87, at 7, 53, 119, and 153 (Sterne Agee Monthly Active Account Reports); CX-89, at 31, 60, 90, and 122 (COR Clearing Monthly Active Account Reports); Seeley Aff. ¶¶ 31-32.

[170] CX-87, at 153 (Sterne Agee Monthly Active Account Reports); Seeley Aff. ¶ 32.

- The January 31, 2015 report showed that the Trust Account had paid an exorbitant amount of commissions up to that point, $46,312 for only eight trades;[171]

- The January report also showed that during the preceding five months the Trust Account lost 16% of its value;[172]

- In the January report, the commission-to-equity ratio was high, 26.16%. The SEC has held that a cost-to-equity ratio in excess of 20% generally indicates that excessive trading has occurred, although lesser ratios may also signal excessive trading;[173]

- By the June 30, 2015 report, the Trust Account was flagged not only for excessive commissions but for an even higher commission-to-equity ratio of 33.25%;[174] and

- The June 30, 2015 report showed that the account had suffered a four-month loss of 55%.[175]

When a registered representative's customer accounts appear on an active account exception report numerous times, that is a glaring red flag. A firm is required to take steps to stop or reduce the trading in such accounts.[176]

Aside from the red flags in the daily blotters and monthly active account reports, it should have been obvious to the Firm's supervisors that the trading should be investigated. The investment profile for the account was labeled "moderate," and the primary account objectives for the options trading were "dividend and premium income" and "hedging."[177] Nothing in the customer information held by the Firm suggested that it would be appropriate to turn the account over every month. Yet, during Allan's tenure, the annualized turnover rate in the Trust Account was 8.16,[178] and during Anastos's tenure, the annualized turnover rate was 9.41.[179] The SEC has held that a turnover rate of 6 generally indicates excessive trading. Moreover, the costs of the trading became so large that they could not be missed. By the time the Trust Account was liquidated, the annualized cost-to-equity ratio from September 2014 through December 2015 was

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[171] CX-87, at 153 (Sterne Agee Monthly Active Account Reports).

[172] CX-87, at 153 (Sterne Agee Monthly Active Account Reports).

[173] CX-87, at 153 (Sterne Agee Monthly Active Account Reports); *Newport Coast*, 2018 FINRA Discip. LEXIS 14, at *99 (*citing Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at *32 (May 29, 2015)).

[174] CX-89, at 122 (COR Clearing Monthly Active Account Reports).

[175] CX-89, at 122 (COR Clearing Monthly Active Account Reports).

[176] *Newport Coast*, 2018 FINRA Discip. LEXIS 14, at *161-71.

[177] Stip. ¶¶ 7-8.

[178] CX-15, at 1.

[179] CX-16, at 1.

57.43%.[180] It was virtually impossible that the Trust Account could recoup those costs and become profitable.

In the face of all these red flags signaling the high likelihood of improper trading in the Trust Account, the Firm did nothing. Neither registered representative could remember any supervisor expressing concern or questioning the trading in the Trust Account. No one from the Firm contacted the customers to verify that the trading was authorized and that the customers understood what was happening in their account.

Even worse, when IR and the person who was helping him manage his financial affairs realized what was happening in the account and tried to do something about it, the Firm's CCO did not question Anastos about the trading, even though he was still at the Firm, and he did not attempt to remediate the damage done to the Trust Account. He did not even prod Anastos to liquidate the Trust Account promptly. Instead, he permitted the resolution of the customers' complaint to languish, and then allowed the representative who had depleted the account by the in-and-out trading—by exercising discretion in the account without written authority—to charge more than $5,000 in commissions on the sale to liquidate the Account. In the circumstances here, allowing the representative to charge such a commission—to the benefit of the representative and the Firm—was unconscionable.

The Firm failed to supervise the two registered representatives and their handling of the Trust Account in violation of FINRA Rules 3110 and 2110. This misconduct was egregious.

V. SANCTIONS

A. Enforcement's Request

In this case, Enforcement seeks a unitary sanction for both violations. It argues that a fine of $500,000 and a censure are appropriate. It does not seek restitution because IR has agreed to settle his claims in arbitration against the Firm, Anastos, and a principal of the Firm in exchange for a monetary payment.[181]

B. Sanction Guidelines

In considering the appropriate sanction for a violation, adjudicators in FINRA disciplinary proceedings look to FINRA's Sanction Guidelines ("Guidelines"). The Guidelines contain recommendations for sanctions for many specific violations, depending on the circumstances. They also contain overarching Principal Considerations and General Principles, which are applicable in all cases, and which are used to analyze aggravating and mitigating

[180] CX-89, at 122 (COR Clearing Monthly Active Account Reports); CX-13; CX-14, at 1.

[181] Enforcement's Brief Regarding Liability and Sanctions, at 17-18.

factors.[182] The Guidelines are intended to be applied with attention to the regulatory mission of FINRA—to protect investors and strengthen market integrity.[183]

Recommended ranges in the guidelines are not absolute. They suggest, but do not mandate, a range of sanctions to be applied. Adjudicators have discretion to decide on the basis of the facts and circumstances of the case to impose a sanction above or below the recommended range, or even no sanction at all.[184]

The Guidelines recommend different fines for different kinds of supervisory failures. For a firm that has engaged in a systemic supervisory failure, the Guidelines recommend a fine of $10,000 to $292,000. Where aggravating factors predominate, adjudicators should consider an even higher fine. The Guidelines further suggest that adjudicators consider suspending a firm for ten business days to two years, or even expelling the firm.[185] For a failure to supervise that is not systemic, the Guidelines recommend a fine of $5,000 to $73,000. This fine is primarily geared to individual supervisors, and branch offices and departments, who fail to supervise appropriately, rather than to a firm.[186]

Deficient WSPs carry their own sanctions. The Guidelines recommend a fine of $1,000 to $37,000. A firm may also be suspended for up to 30 business days with respect to any or all relevant activities or functions. That suspension may be extended until the WSPs are amended to conform to the rule requirements.[187]

With respect to a censure, the Guidelines recommend imposing a censure where extraordinary circumstances exist, referring to a November 1999 Notice to Members that announced a new policy.[188] That policy said that "censures should be imposed when disciplining members for violations that particularly warrant [FINRA's] official disapproval of a respondent's conduct."[189] The Notice to Members explained that a censure would not be imposed where a fine of $5,000 or less is imposed or where certain itemized technical violations are found because a censure should only be imposed to signify disapproval of a respondent's conduct. The Notice further explained that a censure would not be imposed where a respondent is suspended or barred because those sanctions sufficiently demonstrate disapproval of the conduct. The Notice

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[182] FINRA Sanction Guidelines (2018), http://www.finra.org/industry/sanction-guidelines.

[183] Guidelines at 1, Overview.

[184] Guidelines at 3-4, General Principle 3 (applicable to all sanction determinations).

[185] Guidelines at 105. Adjudicators may also consider ordering restitution or disgorgement in appropriate cases, but, because of the settlement between IR and the Firm in the arbitration proceeding, we order neither here.

[186] Guidelines at 104.

[187] Guidelines at 107.

[188] Guidelines at 9, Technical Matters, Censures, and n.1.

[189] NASD Notice to Members 99-91, at 699 (Nov. 1999).

specifically excluded deficient WSPs from a censure.[190] Other types of supervisory violations, however, can still result in a censure.

The Guidelines permit an adjudicator to aggregate or "batch" multiple similar violations for purposes of sanctions if the various violations resulted from a single systemic problem or cause.[191] "Where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve [FINRA's] remedial goals."[192]

The Guidelines identify systemic supervisory failures as those where the supervisory failure is significant and widespread, or occurs over an extended time. A systemic supervisory failure may involve supervisory systems that have been ineffectively designed and/or supervisory procedures that are not properly implemented.[193]

C. Sanctions in This Case

1. Unitary Sanction

We have determined to aggregate the two supervisory violations here for purposes of sanctions because the Firm's failure to reasonably supervise the registered representatives in connection with their handling of the Trust Account arises from the Firm's failure to establish and maintain a reasonable supervisory system. The two violations are part of a single systemic problem.

Furthermore, the supervisory failure was significant and extended over 16 months. It did not involve the misconduct of only one registered representative, but also the misconduct of a second, who seamlessly stepped into the shoes of the first and continued the same unsuitable trading. That the second registered representative almost immediately began trading in the same improper and unsuitable way as the first, suggests that the practice was not aberrant at the Firm. Similarly, a series of at least three supervisors failed to react to the red flags raised by the trading, which indicates that the supervisory failure was not limited to a single person. Rather, the supervisory failure was widespread, and even included the CCO. That the Firm did not identify the trading as problematic when it was occurring almost every month from September 2014 through June 2015, demonstrates that the Firm's supervisory systems were deficient. Then,

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[190] *Id.* at 700.

[191] Guidelines at 4, General Principle 4 (applicable to all sanction determinations).

[192] *Dep't of Enforcement v. CMG Inst'l Trading, LLC*, 2010 FINRA Discip. LEXIS 7, at *30-31 (NAC May 3, 2010).

[193] *Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *97 (NAC May 1, 2012); *Dep't of Enforcement v. Meyers Assoc., LP.*, No. 2013035533701, 2017 FINRA Discip. LEXIS 47, at *40-41 (NAC Dec. 22, 2017) (imposing unitary sanction for supervisory violations and inadequate AML policies and procedures), *appeal docketed* Exchange Act Release No. 3-1850, 2018 SEC LEXIS 598 (Feb. 26, 2018); *North Woodward Fin. Corp.*, 2016 FINRA Discip. LEXIS 35, at *48 n.43 (appropriate to impose unitary sanction where violation "resulted from broad and systemic failure at the Firm").

even when the customer complained and the Firm had an undeniable obligation to investigate the trading and discipline Anastos, who remained at the Firm, the Firm did nothing to remediate the past problem or to prevent such misconduct in the future. Instead, the Firm permitted the registered representative to charge a substantial commission on the last transaction to close the account, to the benefit of both the Firm and the registered representative.

2. Aggravating Factors

We further find that aggravating factors predominate. All of the considerations specific to a systemic supervisory failure are aggravating, and many other factors that are generally applicable to all disciplinary cases are also aggravating.

The Firm did not appropriately allocate its resources to prevent or detect the supervisory failure. It never tailored its WSPs to include precise instructions for reviewing blotters and monthly reports on active trading accounts and never instituted procedures that held anyone accountable.[194]

The Firm did nothing in the face of multiple red flags that it had to have seen and could not reasonably ignore.[195] The Firm's inaction, particularly after the customers complained, amounted to intentionally turning a blind eye to the misconduct. At best, the Firm was reckless.[196] Misconduct that is the result of intentional or reckless actions may warrant sanctions that exceed the range of the guidelines.[197]

The deficiencies in the Firm's supervisory system allowed violative conduct to occur in the Trust Account in a repeated pattern,[198] for over a year,[199] resulting in multiple unsuitable trades and a customer loss of $94,908, which was nearly half the Trust Account's initial value.[200] The Firm benefited by sharing in the excessive commissions.[201]

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[194] Guidelines at 105, Principal Consideration 3 (systemic supervisory failures); Guidelines at 7, Principal Consideration 5 – 6 (in all cases).

[195] Guidelines at 105, Principal Consideration 2 (systemic supervisory failures).

[196] *Newport Coast*, 2018 FINRA Discip. LEXIS 14, at *202-205 (firm was reckless where it was aware of frequent in-and-out trading, but allowed violative conduct to occur).

[197] Guidelines at 2, General Principle 1 (applicable to all sanction determinations).

[198] Guidelines at 7, Principal Considerations 8-9 (in all cases); Guidelines at 8, Principal Consideration 17 (in all cases).

[199] Guidelines at 105, Principal Consideration 1 (systemic supervisory failures).

[200] Guidelines at 105, Principal Consideration 5 (systemic supervisory failures); Guidelines at 7, Principal Consideration 11 (in all cases).

[201] CX-46, at 3 (Firm's Rule 8210 response disclosing 90% payout to representatives). Guidelines at 105, Principal Consideration 3 (systemic supervisory failures); Guidelines at 7, Principal Consideration 4 (in all cases); Guidelines at 5, General Principle 6 (applicable to all sanction determinations); Guidelines at 8, Principal Consideration 16 (in all cases).

The affected customers were among the most vulnerable. They were retired senior customers living on a fixed income, and they depended upon the advice they received from professionals. They did not follow financial news or make investment decisions on their own. They were not financially sophisticated.[202]

The Firm did not attempt to remediate the damage when the customers complained about the unsuitable trading; it did not offer to compensate them. The Firm also did not attempt to prevent such improper trading in the future. It did not speak to Anastos about the trading, put him under heightened supervision, or otherwise act to prevent him from engaging in improper trading in the future.[203] Nor did the Firm revise its procedures to prevent a recurrence of misconduct by anyone else at the Firm.[204] The Firm has never recognized, or accepted responsibility for, its supervisory failures.[205]

Importantly, the Firm is a recidivist with a long history of more than a dozen disciplinary actions, including proceedings for supervisory failures. Although the Firm incurred a number of monetary sanctions over the years, it continued to flout the applicable rules and demonstrated a manifest disregard for its responsibilities as a FINRA registered entity. In such circumstances, it is appropriate to escalate the sanctions to emphasize the need for corrective action and greater attention to supervisory duties, and to deter others from engaging in similar misconduct.[206]

3. Mitigating Factors

The Hearing Panel is unaware of any mitigating factors.

4. Sanctions

In sum, because the misconduct was egregious, aggravating factors predominate, and the Firm is a recidivist, and because the Guidelines permit adjudicators to impose sanctions above the recommended range where the particular facts and circumstances warrant the increase, we grant Enforcement's request to fine the Firm $500,000. We also impose a censure to signify disapproval of the Respondent's conduct.

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[202] Guidelines at 105, Principal Consideration 4 (systemic supervisory failures); Guidelines at 8, Principal Consideration 18 (in all cases).

[203] Guidelines at 105, Principal Consideration 2 (systemic supervisory failures).

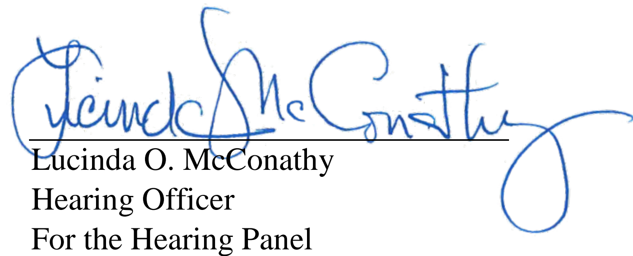
[204] Guidelines at 7, Principal Consideration 3 (in all cases). The Firm's former CCO claimed in his OTR that some revisions were in the works at that time, but his testimony was quite vague on that point. CX-112, at 37, 47-48, 79 (Telfer OTR).

[205] Guidelines at 7, Principal Consideration 2 (in all cases); Guidelines at 8, Principal Consideration 13 (in all cases).

[206] Guidelines at 2, General Principle 2 (applicable to all sanction determinations).

VI. CONCLUSION

The Firm, Windsor Street Capital, L.P. f/k/a Meyers Associates, L.P., violated NASD Rule 3010(a) and FINRA Rules 3110(a) and 2010 in two separate ways, first by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable law and regulatory requirements, and second by failing to reasonably supervise trading by two registered representatives. Accordingly, the Firm is ORDERED to pay a fine of $500,000 as a unitary sanction and is censured for the misconduct. The Firm is also ORDERED to pay costs in the amount of $750.00, which is an administrative fee for this disciplinary proceeding. If this decision becomes FINRA's final disciplinary action, the fine and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after the decision becomes FINRA's final disciplinary action in this proceeding.



Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

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