BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Kimberly Springsteen-Abbott, Holiday, FL, Respondent.	DECISION Complaint No. 2011025675501r Dated: July 20, 2017

On remand from the Securities and Exchange Commission for further consideration. Held, findings and sanctions modified.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Sean Firley, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Steven M. Felsenstein, Esq., Elaine Greenberg, Esq., Greenberg Traurig, LLP, and Joel E. Davidson, Esq.

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I. Background

This matter is before us on remand from the Securities and Exchange Commission. In a National Adjudicatory Council ("NAC") decision dated August 23, 2016, we found that Kimberly Springsteen-Abbott misused investment fund monies by improperly allocating personal and other non-fund related expenses to the funds and held that Springsteen-Abbott's conduct violated FINRA Rule 2010. *See Dep't of Enforcement v. Springsteen-Abbott*, Complaint No. 2011025675501, 2016 FINRA Discip. LEXIS 39 (FINRA NAC Aug. 23, 2016).

Springsteen-Abbott appealed the NAC's decision to the Commission and the Commission remanded the case to FINRA for further proceedings. *See Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 SEC LEXIS 1068 (Mar. 31, 2017) ("Remand Order"). The Commission found that, in affirming the Extended Hearing Panel's ("Hearing Panel's") finding of violation, the NAC misstated the Hearing Panel's findings. *Id.* at *15. The Commission explained that the NAC's findings of violation against Springsteen-Abbott included that she improperly allocated all 1,840 charges identified in the *Expense Schedule* attached to its decision, whereas the Hearing Panel based its findings of violation against her on the specific expenses discussed in its decision that demonstrated a pattern and practice of misconduct over three years. *Id.* Because of this disparity, the Commission concluded that a remand was "necessary so that the NAC can clarify the basis on which it is upholding liability and explain how its findings of violation inform the sanctions imposed." *Id.* at *16.

After reconsideration of the full record and the issues presented on remand, including the parties' briefs, we affirm the Hearing Panel's finding that Springsteen-Abbott violated FINRA Rule 2010 by misusing investment fund monies to pay for personal and non-fund related business expenses. Our findings of violation, as discussed in detail below, are limited to the specific expenses discussed in the Hearing Panel's decision that exemplified Springsteen-Abbott's pattern and practice of improperly allocating personal and non-fund related business expenses over a three-year period. We affirm the Hearing Panel's sanction barring Springsteen-Abbott from associating with a FINRA member in all capacities, but reduce her fine to $50,000 and order that she disgorge $36,225.85, plus prejudgment interest.

II. Facts

A. The Commonwealth Funds

Springsteen-Abbott was associated with Commonwealth Capital Securities Corp. ("Firm"), a FINRA member firm, as a general securities representative and direct participation programs principal. The Firm is the managing broker-dealer of 13 publicly and privately offered investment funds ("Funds") sponsored by its parent company, Commonwealth Capital Corp. ("CCC" or "Parent"), that, between December 1993 and October 2013, raised more than $240 million through sales to investors.

Since 2005, Springsteen-Abbott has been the owner and top executive of all of the Commonwealth entities. She is the chairperson, chief executive officer, and chief compliance

officer of the Firm and the sole shareholder, chairperson, and chief executive officer of the Parent. In addition, she is the chairperson and chief executive officer of the Funds' management company, Commonwealth Income and Growth Funds, Inc. ("General Partner").

The Funds' primary business is short-term equipment leasing. The Funds have no employees. The General Partner managed all Fund operations, including administering the equipment leases and the Funds' accounting. During the relevant period, many of Springsteen-Abbott's relatives were Commonwealth employees holding various positions, including her husband, son, daughter, son-in-law, brother, sister, brother-in-law, sister-in-law, and cousin.

In accordance with the Fund governing documents, with limited exception, all Fund expenses were to be billed to, and paid for, by the Funds. This was accomplished in part through an expense allocation process by which expenses were allocated to a respective Fund and the General Partner or Parent received a reimbursement.

Expenses allocated to the Funds included any administrative expense that was "necessary to the prudent operation of the [Funds]." "Controlling Person" expenses, however, could not be charged as Fund expenses.[1] These included "salaries, fringe benefits, travel expenses and other administrative items incurred or allocated to any Controlling Person of the Manager." As a Controlling Person, Springsteen-Abbott's expenses could not be paid for by Fund assets, even if they related to Fund operations.

B. Allocation of American Express Charges to the Funds

Springsteen-Abbott had an American Express corporate account for Commonwealth expenses, to which Springsteen-Abbott, her husband, Hank Abbott, and Lynn Franceschina ("Franceschina"), Commonwealth's chief operations officer, principal financial officer, and board member of the Parent, each had a credit card that was linked to the corporate account.[2]

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[1] The Fund governing documents define a "Controlling Person" as any

> person, whatever his or her title, performing functions for the Manager or its Affiliate similar to that of chairman or member of the Board of Directors or executive management (such as president, vice president or senior vice president, corporate secretary or treasurer) . . . or any person holding a five percent or more equity interest in the Manager or its Affiliates or having the power to direct or cause the direction of the Manager or its Affiliates, whether through the ownership of voting securities, by contract, or otherwise.

[2] Hank Abbott, also known as "Henry Abbott," incurred the largest portion of the allocated American Express charges at issue. He was considered a Commonwealth Controlling Person by definition throughout 2011 and was a registered principal of the Firm. Franceschina, also a Controlling Person, was registered with the Firm as a direct participation programs representative and principal and operations professional.

Springsteen-Abbott was responsible for reviewing the American Express account statements on a monthly basis and determining which charges to allocate to a particular Fund or Funds. She testified that she would review the account statements "fiercely" and looked at the statements "line by line" to determine how expenses on the account should be allocated. Springsteen-Abbott further testified that she reviewed and approved the American Express bill before it was paid. She also reviewed and approved all final expense allocations to the Funds before they were made.[3]

Enforcement alleged in its amended complaint that, from December 2008 to February 2012, Springsteen-Abbott "directed the misuse of investor funds to pay for various American Express credit card charges that were not related to legitimate business purposes of the [F]unds." Enforcement claimed that the total of misused investor funds was at least $208,953.75. The amended complaint also included an expense schedule itemizing 1,840 personal items and other expenses that were charged to the American Express corporate account and allegedly improperly allocated to the Funds, in violation of FINRA Rule 2010.

There were two types of improper expenses allocated to the Funds: (1) personal expenses and (2) non-Fund related business expenses, such as the expenses of Controlling Persons and Firm expenses related to continuing education training and Central Registration Depository ("CRD"®) licensing of certain Commonwealth employees. In some cases, an expense was improper for both of these reasons.

C. FINRA's Investigation and Springsteen-Abbott's Reallocation Claims

In 2011, FINRA staff received tips from former Commonwealth employees who claimed that, among other things, Springsteen-Abbott had improperly allocated personal expenses to the Commonwealth Funds. As part of its investigation, FINRA staff requested that Springsteen-Abbott produce the American Express statements, allocation schedules, receipts, and other supporting documentation reflecting the charges that were made. Springsteen-Abbott was directly involved in providing the requested documents, which included a spreadsheet detailing whether the charge was allocated to a particular Fund or Funds, some receipts, and other documents. FINRA staff determined that there was a pattern of personal charges that were impermissibly allocated to the Funds. The staff further requested, and Springsteen-Abbott produced, additional documents and information related to the charges in question.

In August 2012, Enforcement staff issued Springsteen-Abbott a Wells notice, informing her that it intended to recommend that formal charges be brought against her.[4] That same month,

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[3] Franceschina also reviewed the American Express account statements. Once she received Springsteen-Abbott's direction on how to allocate the charges, Franceschina worked with the accounts payable group to record the allocation by journal entry.

[4] A Wells notice is a communication from a regulator or self-regulatory organization, such as FINRA, stating that it intends to recommend bringing an enforcement or disciplinary action

[Footnote continued on next page]

Springsteen-Abbott claimed that she recognized that some of the charges identified by the staff were allocated to the Funds in error and reversed those allocated charges.

Enforcement filed its original complaint in May 2013, claiming that Springsteen-Abbott improperly allocated at least $344,798.79 worth of expenses in violation of FINRA Rule 2010. After Enforcement filed its original complaint, Springsteen-Abbott produced additional documents in July and August 2013 that she claimed substantiated other allocated charges as legitimate business expenses.

Included in Springsteen-Abbott's August 2013 production was an Excel spreadsheet that listed all of the charges alleged in the original complaint with some explanations and handwritten notes. The spreadsheet indicated, by stating "previously adjusted (8/2012)," that Springsteen-Abbott reversed a total of $35,810.59 in charges that were allocated to the Funds in error.

Based on the staff's review of Springsteen-Abbott's productions, Enforcement filed an amended complaint in October 2013 that removed approximately 400 charges that it concluded were properly allocable Fund expenses, but maintained its allegation that Springsteen-Abbott had misused Fund monies for personal and other unrelated business expenses in connection with the 1,840 remaining American Express charges, totaling $208,954.44.[5]

D. Springsteen-Abbott Uses Tick Sheets to Track Fund Allocations

In her answer to the amended complaint, Springsteen-Abbott claimed that she revised the expense allocation process and implemented a new procedure to "better monitor the allocation of expenses by the Funds" by using an allocable expense ticket or "tick sheet," describing the expense and its business purpose "each time a [F]und-allocable expense in excess of $200 is billed to one of the corporate American Express cards."

After Enforcement filed its amended complaint, Springsteen-Abbott submitted two document productions to FINRA staff in January and February 2014, which included the tick sheets, along with other supporting documentation such as receipts, to justify the 1,840 American Express charges as Fund business expenses. The tick sheets were handwritten and backdated in some cases several years to include purported business justifications for the charges at issue.

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against the recipient. *See FINRA Regulatory Notice 09-17*, 2009 FINRA LEXIS 45, at *5-6 (Mar. 2009) (explaining FINRA's Wells process).

[5] Enforcement's pre-hearing and post-hearing briefs, however, recommended restitution against Springsteen-Abbott in the lower amount of $174,321.73, which represented the difference between the alleged improper allocations minus adjustments for approximately $35,000 in expenses that Springsteen-Abbott claimed to have reallocated from the Funds.

III. The Hearing Panel Established Springsteen-Abbott's Pattern of Improperly Allocating Expenses to the Funds

In its decision, the Hearing Panel included several findings of Springsteen-Abbott's impropriety but only with regard to a subset of the 1,840 charges alleged in the amended complaint. To clarify our findings of liability, we summarize the Hearing Panel's decision that detailed the personal, broker-dealer, and Controlling Person expenses it found to be improperly allocated to the Funds.[6]

A. Personal Expenses Improperly Allocated to the Funds

1. 2009 Birthday Cruise to Alaska

At the end of May 2009, Springsteen-Abbott celebrated her fiftieth birthday on a cruise from Vancouver to Alaska with her husband, her best friend, DA, and DA's husband. She booked the reservation for the cruise. Springsteen-Abbott admitted in testimony that the cruise was a personal vacation in celebration of her and DA's birthdays. Yet, she allocated to the Funds 10 charges incurred on this trip, including airfare, food, and rental car expenses. Springsteen-Abbott provided no explanation as to why the charges were allocated to the Funds other than that she was travelling with people who worked at the company.

Springsteen-Abbott conceded during the hearing that two of the birthday cruise expenses were allocated to the Funds in error: a meal charge in the amount of $251.60 at Fiori D'Italia to which Springsteen-Abbott provided in a memo that "[t]his charge should have been a CCC charge" and a meal charge in the amount of $16.61 incurred at the airport in Phoenix where she and her husband had a layover on the way to Vancouver.

The Hearing Panel found that all 10 charges associated with Springsteen-Abbott's birthday cruise were improperly allocated to the Funds.[7] It rejected Springsteen-Abbott's claim that the expenses had a business purpose because she was traveling with people who worked for her company and she was celebrating her best friend's birthday in her capacity as a "manager" at CCC, finding that the evidence did not support her allocation of these vacation expenses to the Funds. The Hearing Panel also found that Springsteen-Abbott knew that it was improper to allocate her vacation expenses to the Funds, as she testified that "I believe that the [Fund] investors should not pay for vacation expenses."

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[6] We summarize the Hearing Panel's findings with respect to only those charges alleged in the amended complaint that were not reversed based on a spreadsheet Springsteen-Abbott provided to FINRA staff that identified reallocated charges.

[7] While the Hearing Panel found that all 10 charges were improperly allocated to the Funds, eight charges were reversed according to Springsteen-Abbott's spreadsheet of reallocated charges. Therefore the two charges that remain subject to our findings of violation are: (1) a merchandise charge at Paradies in the amount of $73.67; and (2) a meal charge in the amount of $16.63 at Quiznos.

The Hearing Panel also found that Enforcement proved by a preponderance of the evidence that Springsteen-Abbott provided false documentation to support the business justification for at least one of the expenses—the $16.61 fast food charge during the layover at the airport.[8] The Hearing Panel found that Springsteen-Abbott had no good explanation for why the false documentation was provided, which undercut her credibility.

2. Cody's Roadhouse Meals With Grandchildren, Family and Friends

a. January 29, 2009

Springsteen-Abbott allocated to the Funds a meal charge in the amount of $86.34 at Cody's Roadhouse, a restaurant in Florida. Springsteen-Abbott herself wrote the business justification on the tick sheet for this meal. She wrote, "Review projects, [JC] and [HC]." JC was her son-in-law at the time and HC is one of Springsteen-Abbott's daughters. At the time, both JC and HC were working at Commonwealth. The receipt for the meal included children's menu items. Springsteen-Abbott testified at the hearing that the allocation of the dinner charge to the Funds had at some point been reversed because of the children's meals.[9]

The Hearing Panel found that Springsteen-Abbott improperly allocated the January 2009 dinner charge at Cody's Roadhouse to the Funds. It further found that there was no evidence to indicate that Springsteen-Abbott had a good faith belief at the time the meal was charged that it was appropriate to allocate the meal to the Funds and that her vague business purpose (i.e., "projects") for the meal was an attempt to disguise a family meal as a Fund expense.

b. April 24, 2010

Springsteen-Abbott allocated to the Funds a meal charge in the amount of $174.96 at Cody's Roadhouse.[10] The tick sheet that she provided stated that the dinner was attended by four

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[8] Springsteen-Abbott provided a tick sheet for the $16.61 charge, indicating that the expense was legitimately allocated to the Funds because Hank Abbott attended a supplier diversity conference in Phoenix, Arizona, from May 26-29, 2009. Yet, Hank Abbott did not attend the supplier diversity conference. On the date of the meal, he was actually en route with Springsteen-Abbott to Vancouver for the birthday cruise. Springsteen-Abbott then included copies of another employee's calendar as supporting documentation that was unrelated to Hank Abbott's attendance or the expense. At the hearing, she admitted: "This was an error," agreeing that the backup documentation had nothing to do with the allocated expense.

[9] Based on Springsteen-Abbott's spreadsheet of reallocated charges, she did not reverse the $86.34 meal charge, contrary to her testimony. The $86.34 charge remains at issue for purposes of the NAC's findings and sanctions determination.

[10] The Hearing Panel decision inadvertently stated that the meal charge was $174.97.

adults: Springsteen-Abbott, her best friend, DA, Hank Abbott, and Springsteen-Abbott's brother. The tick sheet also stated that the expense was a "travel meal" even though Springsteen-Abbott's brother was the only person who was traveling from out of town.

The meal receipt that was provided as supporting documentation of the expense showed that a party of six attended the dinner instead of only four adults, and the receipt indicated that children were present at the dinner. Springsteen-Abbott "vehemently" denied during her testimony that the dinner was a family dinner with children until she was presented with an email that she sent to her daughter making dinner plans for the family.

The Hearing Panel found that the April 24, 2010 dinner at Cody's Roadhouse was improperly allocated to the Funds and the tick sheet that Springsteen-Abbott provided to justify the charge contained false information. It also found that Springsteen-Abbott's testimony regarding the dinner was not credible.

c. August 11, 2010

Springsteen-Abbott allocated to the Funds a meal charge in the amount of $104.23 at Cody's Roadhouse. The entire charge was allocated to the Funds even though the dinner receipt included charges for children's menu items. Springsteen-Abbott provided a tick sheet stating that she and her husband, along with HA, DA, and one other person, attended the dinner. The tick sheet also listed three business topics that were discussed: the review of a cash report, a new candidate for "BDA," and a rent quote for the tech center. When asked at the hearing whether the meal was actually a meal with her family, Springsteen-Abbott flatly denied that, saying, "No." When Enforcement asked about a $2.89 meal order for a "kid's mac & cheese," Springsteen-Abbott stated that she was on a Jenny Craig diet and she was eating appetizers and drinking 2% milk.

It was not until Enforcement confronted Springsteen-Abbott with an email that she had sent to her sister the following day, which stated in part "We had dinner with her and the kids last night," that Springsteen-Abbott recanted her earlier testimony and admitted that the meal at Cody's Roadhouse was a personal family dinner that should not have been allocated to the Funds, stating: "Yes. This is definitely an error."

The Hearing Panel found that the August 11, 2010 dinner at Cody's Roadhouse was improperly allocated to the Funds. It further found that the tick sheet business justification Springsteen-Abbott produced to FINRA staff was false and her testimony with regard to the business nature of the dinner was not credible and inconsistent with other evidence.

The Hearing Panel also found that Springsteen-Abbott's insistence that the dinner was a business meal until she was shown proof that it was not damaged her credibility, along with her assertion that she ate the "kid's mac & cheese" meal as part of a Jenny Craig diet plan. The Panel noted that Springsteen-Abbott would sometimes admit that a children's meal signified that her grandchildren were at the meal and other times she denied that they were present, despite a receipt for children's meals. The Hearing Panel held that Springsteen-Abbott's inconsistency in this regard further damaged her credibility.

d. October 10, 2010

Springsteen-Abbott allocated to the Funds a meal charge in the amount of $89.67 for a dinner at Cody's Roadhouse on October 10, 2010—one day after her daughter's birthday. The tick sheet she later produced stated that the meal was attended by Springsteen-Abbott and her husband, DA, HA, and one of Springsteen-Abbott's daughters. It further stated that the group talked about whether the company could become a transfer agent and a woman who had interviewed for the transfer agent position. Email correspondence showed, however, that the interview of the candidate had taken place about a month earlier, on September 16, 2010, so the topic did not appear particularly current at the time of the meal.

The receipt for the meal showed that a complimentary birthday dessert was provided and several menu items were ordered that appeared to be for children. When asked whether certain dishes were kid's meals, Springsteen-Abbott replied that she did not know. When asked more specifically whether two milks that were ordered were for her two grandchildren, she replied no and claimed that the two milks were ordered for herself.

The Hearing Panel found that the Cody's Roadhouse dinner on October 10, 2010 was a birthday dinner for Springsteen-Abbott's daughter, and the meal charge of $89.67 was improperly allocated to the Funds. It determined that Springsteen-Abbott's tick sheet showing that the meal was attended by five adults appeared "to be a fabrication." The Hearing Panel also found that Springsteen-Abbott's testimony that her grandchildren were not present at the dinner was not credible.[11]

3. Expenses Related to Hair Restoration Trips and Family Visits

a. February 1-2, 2010

JA Alternatives is a hair restoration company located in Paramus, New Jersey, that Hank Abbott visited on numerous occasions during the relevant period. He testified that he regularly visited the hair restoration company every other month, perhaps fifteen to twenty times in total during the period at issue. Hank Abbott agreed in testimony that the hair restoration service was a personal expense.

On February 1, 2010, prior to a board of directors meeting in Hawaii, Hank Abbott traveled from his home in Florida to New Jersey for a hair restoration treatment at JA Alternatives and then returned to Florida in less than twenty-four hours. Several expenses related to this trip were charged to the Funds, including a car rental in New Jersey in the amount

[11] The Hearing Panel also found Springsteen-Abbott's testimony about a meal charge in the amount of $113.96 at Cody's Restaurant on March 13, 2011 was not credible and determined that the charge was improperly allocated to the Funds. The $113.96 charge, however, was reversed based on Springsteen-Abbott's spreadsheet of reallocated charges.

of $137.79.[12] Although Hank Abbott agreed that the expense for his hair restoration appointment was not a business expense, he insisted that the car rental and other expenses still could be properly charged to the Funds, depending on whether he had another appointment while he was in New Jersey.

For the car rental charge in question, Hank Abbott testified that, "I rented that vehicle so that I could take care of whatever purpose I had there, which included that appointment in Paramus, New Jersey [at the hair restoration company]." Because Hank Abbott did not identify any Fund business purpose for his trip and there was no evidence of one, the Hearing Panel found that the entire cost of the New Jersey car rental was improperly allocated to the Funds.[13]

b. April 3-4, 2010

The Saturday of Easter weekend, Hank Abbott, Springsteen-Abbott, one of his daughters, and his daughter's husband, all ate at a restaurant in Jersey City, New Jersey, called Porto Leggero. The total cost of the meal was $432.06 and Springsteen-Abbott allocated the meal as a Fund expense. She later provided two different business justifications for the meal. She first described the meal on her schedule of charges as relating to succession planning. Springsteen-Abbott then provided a tick sheet that stated the meal was for a board of directors' discussion and interview.

On Sunday of the same Easter weekend, Hank Abbott had a meal with his other daughter who lives in Ridgefield, Connecticut, that was also billed to the Funds with the same claimed business purpose—to discuss succession planning.

The Hearing Panel concluded that the Easter weekend expenses were, among other things, for Hank Abbott and Springsteen-Abbott to spend the holiday weekend with their family and friends. The Panel therefore found that all of the alleged improper charges related to Easter weekend in the amended complaint were improperly allocated to the Funds. These expenses included a gasoline charge, a bar bill, and the cost of both meals with Hank Abbott's daughters.[14]

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[12] The Hearing Panel decision referred to Items 749-55 of the expense schedule attached to its decision.

[13] The Hearing Panel also found that at least some portion of a car rental in Florida that Hank Abbott incurred that totaled $1,766.58 was improperly allocated to the Funds, because the car was used, at least in part, for personal purposes. The Hearing Panel did not, however, specify an amount. The Hearing Panel further found that a parking fee in the amount of $33.00 was improperly allocated to the Funds, which in accordance to Springsteen-Abbott's spreadsheet of reallocated charges, this allocation was reversed.

[14] Based on Springsteen-Abbott's spreadsheet of reallocated charges, the charge that remains improperly allocated to the Funds is the Porto Leggero meal.

c. September 24-26, 2010

Hank Abbott went to another hair restoration appointment at JA Alternatives on Saturday, September 25, 2010. The American Express bill paints a picture of Hank Abbott's activity surrounding his appointment. In particular, the sequence of credit card charges show that Hank Abbott flew to Philadelphia at the beginning of the weekend, drove to Paramus, New Jersey, on Saturday for his hair restoration appointment, did some shopping at Century 21 and Best Buy, and then drove back to Philadelphia the same day. On the following day, he and Springsteen-Abbott returned to Florida.

A Century 21 charge in the amount of $24.58 and a Best Buy charge in the amount of $43.86 were allocated to the Funds. The tick sheet Springsteen-Abbott supplied for the Century 21 charge provided no business explanation, but instead simply referred to the Parent. During his testimony, Hank Abbott could not explain the business purpose for the Best Buy charge. Hank Abbott also bought gas from Sunoco in the amount of $41.82 for the drive back to Philadelphia, which was also allocated to the Funds.[15] He admitted at the hearing that the investors in the Funds should not pay for the gasoline, but testified that he did not know whether the charge was allocated.[16]

The Hearing Panel found that the Century 21, Best Buy, and Sunoco gasoline charges were all allocated to the Funds improperly. It further found that Hank Abbott's testimony regarding these charges was evasive and lacked credibility. For example, Hank Abbott suggested that the charges allocated to the Funds in connection with this trip *could* have been justified because he spent a lot of time on business in Northern New Jersey and Connecticut. However, he could not recall any business purpose for anything that he did that weekend in or around Paramus, New Jersey.

d. January 6-9, 2011

Hank Abbott and Springsteen-Abbott stayed in Ridgefield, Connecticut, the weekend of January 6-9, 2011 to attend his daughter's baby shower with family and friends. On his way to Connecticut, on Thursday, January 6, 2011, Hank Abbott went again to JA Alternatives. The next day, Hank Abbott charged a meal at the Asian Kitchen in Ridgefield for $47.59. He also incurred a meal charge of $404.43 at Bernard's, a Ridgefield restaurant where his daughter's baby shower was held. He then incurred a second, smaller charge at Bernard's for $44.04. On Saturday, January 8, 2011, he shopped at Best Buy in Danbury, Connecticut, incurring a charge for $174.86. On Sunday, January 9, 2011, Hank Abbott filled the car with gas at Lukeoil, charging $56.18 on his corporate credit card.

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[15] The Hearing Panel decision inadvertently stated that the charge was $41.28.

[16] Springsteen-Abbott's spreadsheet of reallocated charges reveals that none of the charges associated with Hank Abbott's trip were reversed and therefore remain allocated to the Funds.

Springsteen-Abbott allocated to the Funds the following charges on this trip: $47.59 (Asian Kitchen), $44.04 (Bernard's), $174.86 (Best Buy), and $56.18 (Lukeoil gas). She later reallocated the Best Buy charge.[17]

Springsteen-Abbott provided a business justification for the $44.04 Bernard's charge that did not match the event. Hank Abbott testified that the $44.04 Bernard's charge was for a quick dinner with Springsteen-Abbott and his sister, RF, to discuss a wholesale report. However, Hank Abbott provided no other details to support this claim.

The Hearing Panel concluded that the weekend was for the purpose of Hank Abbott going to a hair restoration appointment, and for him and Springsteen-Abbott to attend his daughter's baby shower. Thus, the Hearing Panel found that Hank Abbott's expenses were personal expenditures that should not have been allocated to the Funds. The Hearing Panel further found that Hank Abbott's testimony was not credible, and that Springsteen-Abbott provided a false business justification for the $44.04 Bernard's charge.

4. Wedding Anniversary Dinners

Springsteen-Abbott and her husband celebrated their third wedding anniversary during a weekend trip to New York City in mid-April 2011. Springsteen-Abbott testified that, although they celebrated their anniversary in New York and went to an event called the Leatherneck Ball that weekend, their New York trip and attendance at the ball were business-related because they were invited by a client. On the trip, they incurred a charge at the Oak Room on Saturday, April 16, 2011, in the total amount of $86.72, which was allocated as a Fund expense.

Springsteen-Abbott's tick sheet stated that the business justification for the expense was for drinks with a leasing contact. The tick sheet also indicated that the expense was designated for reallocation to the Parent in August 2012. Springsteen-Abbott testified that she reallocated the expense to the Parent because it involved alcohol and stated that she personally thought it was inappropriate to charge the Funds for a meeting that just had alcohol.[18]

The Hearing Panel found that the charge was improperly allocated to the Funds and found Springsteen-Abbott's testimony regarding the expense involving alcohol not credible, because on other occasions, she allocated to the Funds expenses for alcohol alone. The Hearing

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[17] Enforcement included the Best Buy charge in its initial complaint, but not the amended complaint. Based on Springsteen-Abbott's spreadsheet of reallocated charges in the record, the charges that remain allocated to the Funds are the Asian Kitchen and Bernard's meal, and the Lukeoil gas.

[18] Based on Springsteen-Abbott's spreadsheet of reallocated charges, the $86.72 Oak Room charge was not reallocated to the Parent as Springsteen-Abbott testified and remains an improper expense allocated to the Funds.

Panel further noted that Springsteen-Abbott's decision to allegedly reallocate the expense would have occurred in August 2012, after she was receiving regulatory scrutiny.

On Tuesday, April 19, 2011, the actual day of their third wedding anniversary, Springsteen-Abbott and her husband incurred a meal cost at the Villa Gallace in Indian Rocks, Florida in the amount of $220.83. This expense was also allocated to the Funds.

Springsteen-Abbott provided a tick sheet with the business justification for the allocation, claiming that five people, including herself and her husband, attended the dinner, and that the purpose of the dinner was for "Minority Alliance Capital dinner, Diversity Bank," rather than an anniversary dinner with her husband. Yet, Enforcement presented an email that Springsteen-Abbott sent to her brother-in-law earlier in the day on April 19, 2011, in which she told him that she and her husband were going out that evening for their anniversary. Even after she was shown the email, she denied that the meal was an anniversary celebration with her husband.

The Hearing Panel found that Springsteen-Abbott improperly allocated the meal expense to the Funds. It also found that Springsteen-Abbott's denial of her anniversary celebration was not credible, and that the email to her brother-in-law was inconsistent with her testimony.

5. Mother's Day Family Meal

Springsteen-Abbott allocated to the Funds a meal charge on Mother's Day, May 9, 2010, at the Terrace Restaurant at Longwood Gardens in the amount of $241.93. The tick sheet she provided stated that due diligence and facilities issues were discussed and at the hearing, Springsteen-Abbott denied that the expense was a Mother's Day meal with her family. Springsteen-Abbott was then shown an email that she sent the next day describing the Longwood Gardens visit as a family outing with her son and his wife and the grandchildren. Nevertheless, she continued to insist that it was not a family meal.

The Hearing Panel found that the Mother's Day meal at Longwood Gardens was improperly allocated to the Funds. The Hearing Panel further found that Springsteen-Abbott provided a false and misleading business justification on the tick sheet, and that her testimony that this was not a family meal was impeached.[19]

6. Walt Disney World—Animal Kingdom Lodge Vacation

In June 2010, Springsteen-Abbott went to Disney World—Animal Kingdom Lodge with her family. Springsteen-Abbott admitted in testimony that her trip to Disney World was a

[19] According to Springsteen-Abbott's spreadsheet of reallocated charges, another Mother's Day meal on May 8, 2011, in the amount of $141.28 at Outback Steakhouse was allocated to the Funds, but later reversed. We therefore exclude from our summary the Hearing Panel's findings with regard to this expense.

"family vacation" and the associated charges that were allocated to, and paid for, by the Funds were "mistake[s]" that "she did not catch."

Springsteen-Abbott allocated to the Funds a car rental charge in the total amount of $653.52 for the car that her husband drove from Tampa to Orlando and dropped off in Orlando at the end of the family vacation. She also allocated to the Funds the cost of water and medicine purchased at the airport the day they left Orlando. Altogether, seven charges on this trip were allocated to the Funds. A summary of charges produced by FINRA staff from Springsteen-Abbott's document productions revealed that a total of $2,679.10 was spent on fast food, hotel accommodations, rental cars, gas, and other merchandise such as kid strollers, "Mickey mitts," and other toys purchased at the Disney store—all of which were reimbursed by the Funds.

With respect to the stroller and similar charges, Springsteen-Abbott provided documentation in her February 2014 production indicating that Franceschina had mistakenly allocated the Disney charges as Fund expenses because she thought they related to a conference in Orlando around the same time. Franceschina did not know that the charges were for a stroller and the like because the specific charges were not separately itemized on the Disney bill. With respect to the car rental, Springsteen-Abbott's counsel asserted that Hank Abbott had provided documentation to FINRA staff showing that he conducted some business during the Disney trip and that he went on a business trip after he dropped the car off at the Orlando airport. Hank Abbott did not provide any testimony regarding what business of the Funds he conducted while on the Disney trip or afterward.

The Hearing Panel found that all of the charges associated with the Animal Kingdom family vacation were improperly allocated to the Funds. The Hearing Panel concluded that the proffered business justification for the expenses, such as the car rental, was too vague and unsubstantiated to overcome the evidence that the expense was for personal purposes.[20]

7. Year-End Holiday Meals

a. December 27, 2009

Springsteen-Abbott allocated to the Funds a meal charge of $826.08 at a restaurant in New York City called Broadway Joe's. The tick sheet Springsteen-Abbott provided indicated that the business justification for allocating the expense to the Funds was a meeting with leasing vendors for year end. At the hearing, however, Springsteen-Abbott admitted that the expense was a dinner with her family and the business justification she drafted for the allocation to the Funds was inaccurate. She also testified that she later changed the allocation of the dinner expense to the Parent, but she was mistaken. According to Springsteen-Abbott's spreadsheet, the

[20] In accordance with Springsteen-Abbott's spreadsheet on reallocated charges, the expenses from the Disney trip that remained allocated to the Funds were the Avis Rent A Car charge in the amount of $653.52; the Exxon Mobil gas charge in the amount of $16.57; the Hudson News charge in the amount of $20.91; and a charge at Qdoba for $11.37.

$826.08 meal charge at Broadway Joe's remains allocated to the Funds and was not subsequently reversed.

The Hearing Panel found that the dinner was improperly allocated to the Funds. The Hearing Panel further found that Springsteen-Abbott provided a false business justification to FINRA staff in a post-complaint production, and stated that "[t]he circumstances of this expense and the false business justification both added to the Hearing Panel's distrust of Springsteen-Abbott."

b. December 30, 2009

Springsteen-Abbott allocated to the Funds a meal that totaled $116.41 that she had with her husband at the Blue Pear Bistro on December 30, 2009. The tick sheet she provided claimed that the business purpose of the dinner was a "wholesaler performance review meeting." According to Springsteen-Abbott, the dinner at the Blue Pear Bistro with her husband was to discuss the wholesaler's compensation. Springsteen-Abbott admitted at the hearing, however, that at least her portion of the dinner was improperly allocated to the Funds, calling it an oversight. She testified that in August 2012 her portion of all the meal expenses that had been allocated to the Funds was "backed out" of the charges to the Funds. The record, however, demonstrates otherwise. According to Springsteen-Abbott's spreadsheet identifying reallocated charges, the Blue Pear Bistro meal in the amount of $116.41 was not reversed.

The Hearing Panel found that the entire meal charge was improperly allocated to the Funds. The circumstances supported the conclusion that it was a personal holiday dinner for Springsteen-Abbott and Hank Abbott and there was no evidence to corroborate Springsteen-Abbott's assertion that it was a business dinner.

c. December 31, 2010

Email correspondence demonstrated that Springsteen-Abbott and her husband took a vacation the last week of December 2010 and Springsteen-Abbott indicated that she and her husband would be seeing family and grandchildren on December 27-31, 2010. Springsteen-Abbott allocated a meal charge at a restaurant in New York City called Bistecca Fiorentina for $247.78. The tick sheet inaccurately stated that the dinner was a meeting at Bice, a different restaurant, with "Bluerock to expand the GP capacity" and the receipt attached to the tick sheet was for Bice, not Bistecca Fiorentina. The receipt also reflected a different amount for a meal that occurred a week later, on January 6, 2011. In fact, a Bice receipt was supplied to FINRA twice, once to support the December 2010 business expense and once again to support the January 6, 2011 business expense. However, the two Bice receipts had different totals. Springsteen-Abbott eventually admitted that the receipt provided to support the Bistecca Fiorentina charge was inaccurate.

The Hearing Panel found that the December 2010 meal was improperly allocated to the Funds and that Springsteen-Abbott provided a false and inaccurate business justification for the charge to FINRA staff.

8. Hank Abbott's Car Rentals

Hank Abbott kept no car at his primary residence in Florida but instead frequently rented cars for weeks at a time, picking them up and dropping them off at the Tampa airport. Enforcement presented 29 separate car rentals during the relevant period that totaled approximately $23,900. All these charges were allocated to the Funds. Hank Abbott testified that he had never rented a car in Florida that was not for business purposes. Generally, the business justifications for these charges related to meetings that lasted only a few days.

The Hearing Panel found that it was not credible that Hank Abbott rented cars frequently near his primary residence, where he had no car, and used it solely for business purposes. While the Panel found that some substantial portion of his car rental was used for personal purposes, it was impossible to determine exactly which of the nearly $24,000 in expenses, if any, might have been appropriately allocated to the Funds. Indeed, any car rental charges Hank Abbott incurred for his own use during 2011 were not permitted to be allocated to the Funds because he was a Controlling Person.

The Hearing Panel provided as an example the inadequate support Springsteen-Abbott provided for allocating Hank Abbott's total car rental cost to the Funds. On October 9, 2009, Hank Abbott rented a car at the Tampa airport for one week. Springsteen-Abbott allocated the entire rental car charge of $566.97 to the Funds. She later provided a tick sheet with a business justification for the charge, which stated that the car rental was for a person who was conducting on-going due diligence.

Other evidence presented at the hearing, including a hotel confirmation, showed that the person conducting the due diligence had been in Tampa, Florida for only one night. Springsteen-Abbott also had admitted that it was not customary for the company to rent a car for such a person, but that the Parent usually required its employees to rent their own cars and seek reimbursement. Springsteen-Abbott had no explanation for how Hank Abbott came to rent a car for the week for someone who was in town for only one night.

The Hearing Panel found that the car rental charge in the amount of $566.97 was improperly allocated to the Funds. The Hearing Panel further observed that Springsteen-Abbott displayed little concern for whether the charge was properly allocable to the Funds or not, and stated that she was focused only on showing that it might have been a legitimate business charge.

9. Purchase of *Pursuit of Honor* Novel

Hank Abbott and Springsteen-Abbott flew from Tampa, Florida, to Philadelphia on November 13, 2009. At the Tampa airport, Hank Abbott purchased a political thriller called *Pursuit of Honor* for $27.97, which was allocated to the Funds.[21]

[21] The full charge that was allocated to the Funds included tax for a total of $29.95.

Initially, Hank Abbott testified that he would not himself have allocated the cost of the novel to the Funds, but he noted that wholesalers for the Funds are permitted to charge one movie a day to alleviate the tedium of travel. After Hank Abbott was shown a business justification for the book expense written in Springsteen-Abbott's handwriting that said "Quotes for presentation at Money Concepts," he then switched his testimony and claimed that he had bought the book to obtain quotes for a business conference.

The Hearing Panel found that Hank Abbott's testimony lacked credibility and that it was improper to allocate the cost of the book to the Funds.

B. Improperly Allocated Broker-Dealer Expenses

Based on Springsteen-Abbott's own identification of expenses that she attributed as continuing education to maintain securities registrations at the Firm, the Hearing Panel found that certain charges it categorized as "broker-dealer expenses" were improperly allocated to the Funds. It specifically found that $24,478.97 in charges, plus an additional $5,624.02 for a continuing education event hosted by the Firm at a restaurant called Alfano's for 57 guests, were improperly allocated to the Funds. The expenses consisted of restaurant, fast food, and gas charges that were often incurred in connection with a continuing education seminar or event. There were also charges for online broker-dealer training courses and study materials. Although Springsteen-Abbott's counsel objected by stating that not all of the items on Enforcement's list were proven to be improper, the Hearing Panel found that it was unnecessary to separately prove that each of the items was improper because broker-dealer registration, training and continuing education were costs not related to conducting the Funds' business. The Funds' governing documents, however, only permitted the Funds to pay for expenses that related to its business operations.

The Hearing Panel found that Springsteen-Abbott's allocation of charges categorized as broker-dealer expenses to the Funds was inconsistent with the terms of the Funds' operating agreement that related to the allocation of expenses and therefore was improper.[22]

C. Improperly Allocated Expenses of Controlling Persons

Another category of charges alleged in the amended complaint that Hearing Panel found were improperly allocated were Controlling Person expenses. Springsteen-Abbott was a Controlling Person per the Funds' operating agreement, throughout the entire three years at

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[22] Moreover, the Hearing Panel found that while there was an expense sharing agreement between the Parent and the Firm, there was no expense sharing agreement between the Funds and the Firm, which constituted further evidence that Springsteen-Abbott's allocation of broker-dealer expenses to the Funds was improper. *See NASD Notice-to-Members 03-63*, 2003 NASD LEXIS 76, at *16 (Oct. 2003) (requiring members to "make, keep current, and preserve a written expense sharing agreement between the broker-dealer and a third party" that clearly identifies which expenses will be paid by the third party and the method of allocation).

issue. Springsteen-Abbott admitted during the hearing that, no salary, benefits, or other expenses attributable to a Controlling Person were permitted to be charged to the Funds. Yet, the record showed that portions of Controlling Persons' meals and other expenses were initially allocated to the Funds. The Hearing Panel noted in its decision that after FINRA staff began its investigation and warned that it intended to commence a disciplinary proceeding, Springsteen-Abbott claimed to have reallocated the portion of such expenses attributable to her in August 2012.[23]

The Hearing Panel found that any allocation of Springsteen-Abbott's expenses as a Controlling Person to the Funds was improper. It also found that while a reallocation of those expenses may have occurred later, it did not alter her initial, improper use of investment funds. The Hearing Panel also found that there was no testimony suggesting that Springsteen-Abbott reversed or reallocated Hank Abbott's portion of expenses after he became a Controlling Person in 2011 and thus, none of his expenses, after 2011, should have been allocated to the Funds.

IV. Discussion

In our original decision, we affirmed the Hearing Panel's findings that Springsteen-Abbott improperly used investment fund monies to pay for personal and other non-Fund related business expenses, in violation of FINRA Rule 2010. But we misstated the Hearing Panel's findings and included all of the 1,840 improperly allocated charges identified in the *Expense Schedule*.

The Commission remanded this proceeding and asked that we clarify whether we: (1) affirm the Hearing Panel's finding that a "specific subset of expenses in the Amended Complaint established a pattern and practice of misconduct in violation of Rule 2010"; (2) find that a pattern or practice of misconduct based on other expenses that, with supporting evidence, demonstrate Springsteen-Abbott's violation; (3) find that all of the 1,840 charges were improperly allocated in violation of FINRA Rule 2010; or (4) make some other finding.

After reviewing the record anew, including the briefs submitted by the parties on remand, we affirm the Hearing Panel's findings that Springsteen-Abbott violated FINRA Rule 2010. Our findings of violation, however, extend only to a specific subset of the 1,840 charges that we find established a pattern and practice of Springsteen-Abbott's misuse, as summarized in Part III of this decision. We further limit our findings to include only those improperly allocated charges that Springsteen-Abbott did not subsequently reverse in August 2012.

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[23] The Hearing Panel's decision did not identify the expenses—or portions thereof—that were improperly allocated to the Funds solely because they were Controlling Person expenses. Further, the identification of Springsteen-Abbott's portion of expenses that she purportedly reallocated because she was a Controlling Person is also indeterminate from the record.

A. Springsteen-Abbott Engaged in a Pattern of Misconduct That Violated FINRA Rule 2010

FINRA Rule 2010 requires members in the conduct of their business to "observe high standards of commercial honor and just and equitable principles of trade."[24] The rule sets forth an ethical standard that focuses on the "professionalization of the securities industry," *Dep't of Enforcement v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11 (NASD NAC June 2, 2000), and broadly encompasses "a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace." *Steven Robert Tomlinson*, Exchange Act Release No. 73825, 2014 SEC LEXIS 4982, at *17 (Dec. 11, 2014) (internal citation omitted), *aff'd*, 637 F. App'x 49 (2d Cir. 2016). Misuse of investor funds is a violation of FINRA Rule 2010. *See Bernard D. Gorniak*, 52 S.E.C. 371, 373 (1995) (finding respondent violated just and equitable principles of trade by misusing customer funds entrusted to him for investment purposes).

The Hearing Panel found, and we affirm, that over a three-year period, Springsteen-Abbott violated FINRA Rule 2010 when, in the course of business, she misused investor funds by causing the Funds to pay for a number of improper expenses related to family vacations, family dinners and holiday meals, car rentals, gasoline, anniversary celebrations, and other personal expenses. None of these expenses were related and "necessary to the prudent operation of the [Funds]," as required by the terms of the Funds' operating agreement. *See Timothy L. Burkes*, 51 S.E.C. 356, 360 (1993) (finding respondent's improper use of funds constituted unethical conduct in violation of just and equitable principles of trade), *aff'd*, 29 F.3d 630 (9th Cir. 1994) (table).

While we agree that Enforcement did not prove that Springsteen-Abbott improperly allocated each of the 1,840 charges alleged in the amended complaint, we affirm the Hearing Panel's conclusion that a preponderance of the evidence sufficiently demonstrated that Springsteen-Abbott "engaged in a purposeful pattern and practice of improperly allocating expenses to the Funds" in violation of FINRA Rule 2010.

Springsteen-Abbott's pattern of misallocating personal and non-Fund related expenses is repeatedly demonstrated in the expense items that remain subject to this decision and discussed in detail in Part III. For some of the charges that Springsteen-Abbott denied were improper, she eventually admitted in testimony that a particular expense did not involve Fund business and thus should not have been allocated. For example, on her fiftieth birthday cruise from Vancouver to Alaska, Springsteen-Abbott admitted that her allocation of two meals incurred during her trip were improper because she was on a personal vacation. Springsteen-Abbott and Hank Abbott also admitted in testimony that other personal charges, such as an entire meal that involved alcohol and a gasoline charge for a trip to a hair restoration appointment, were inappropriate expenses to allocate to the Funds. Yet, Springsteen-Abbott regularly approved the allocation of

[24] Rule 2010 applies to Springsteen-Abbott through FINRA Rule 0140(a), which provides that a person associated with a member shall have the same duties and obligations as a member.

these charges thereby causing the Funds to pay for many personal expenditures that had no relation to the Funds' operations.

For other charges that Springsteen-Abbott defended as legitimate Fund expenses, the evidence in the record unequivocally refutes her claims. For example, Springsteen-Abbott expensed a meal to the Funds totaling $104.23 at Cody's Roadhouse that included children's meals. She vehemently denied at the hearing that children were present at the dinner even after she was presented with evidence showing that multiple children's meals were ordered. Eventually, Springsteen-Abbott admitted that the entire allocation of the meal was improper, but only after she was confronted with an email she wrote stating "We had dinner with her and the kids last night" did Springsteen-Abbott recant her earlier testimony. In instances like this one, the record amply supports the Hearing Panel's findings that the allocated charges were improper.

The record also amply evidences Springsteen-Abbott's practice of improperly allocating expenses categorized as Controlling Person and broker-dealer expenses to the Funds. Springsteen-Abbott admitted at the hearing that, per the Funds' operating agreement, none of her expenses as a Controlling Person were supposed to be allocated as a Fund expense—even if the charged item was related to the business of the Funds, including related travel, salary, benefits, and meals. While we cannot identify which charges alleged in the amended complaint were Controlling Person expenses only, the evidence sufficiently demonstrates that Springsteen-Abbott and Franceschina were undoubtedly Controlling Persons throughout the relevant period and Hank Abbott was a Controlling Person at least throughout 2011. Yet, for three years, Springsteen-Abbott admitted that she neglected to exclude any portion of her, Franceschina's, or Hank Abbott's expenses before a charge was allocated to the Funds. Thus, for any charge categorized as a Controlling Person expense that Springsteen-Abbott did not reverse in August 2012, we affirm the Hearing Panel's findings. Springsteen-Abbott also improperly allocated a total of $30,102.99 in broker-dealer expenses that concerned the Firm's training and continuing education costs to maintain securities registrations at the Firm, including a $5,624.02 bill at Alfano's Restaurant for a continuing education event hosted by the Firm. These were all unrelated costs that the Funds should not have borne.

Springsteen-Abbott's pattern of misuse was unethical in violation of FINRA Rule 2010 because it reflected on her inability "to comply with the regulatory requirements of the securities business and to fulfill [her] fiduciary duties in handling other people's money." *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *15 (Dec. 4, 2015), *aff'd*, 663 F. App'x 353 (5th Cir. 2016). Springsteen-Abbott testified that she reviewed closely the American Express charges and accurately, with few exceptions, allocated them. Her testimony was simply untrue. We uphold the Hearing Panel's findings that she violated FINRA Rule 2010.

B. Springsteen-Abbott's Arguments Raised on Appeal Do Not Override the NAC's Findings

Springsteen-Abbott raised several arguments in her NAC appeal to escape her culpability under FINRA Rule 2010. Notwithstanding our modified findings, we remain unpersuaded by her arguments.

1. Enforcement Met Its Burden of Proof

Springsteen-Abbott argued that Enforcement proffered no evidence for the bulk of the 1,840 charges it alleged were improperly allocated, but instead shifted the burden to her to disprove the allegations. In our original decision, we addressed this argument by stating that the entire itemized list of the 1,840 charges at issue was presented and accepted into evidence and based on the evidence presented, Enforcement established its prima facie case of her alleged violation. We withdraw that statement. The Hearing Panel did not base its finding that Springsteen-Abbott violated Rule 2010 on the requirement that she had the burden to prove that all the charges were proper. It found that the evidence established a pattern of Springsteen-Abbott misusing monies of the Funds.

The evidence in the record abundantly supports the Hearing Panel's findings that Springsteen-Abbott misused Fund monies inconsistent with just and equitable principles of trade by improperly allocating the charges that are discussed in Part III of this decision. The reduced number of charges now subject to our decision continues to support our finding that Springsteen-Abbott violated Rule 2010. Indeed, even a single instance of misappropriation provides ample justification to find that Springsteen-Abbott's conduct was inconsistent with just and equitable principles of trade, no matter the sum involved. *See, e.g.*, *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *20 (Sept. 3, 2015) (finding a Rule 2010 violation for respondent's improper reimbursement of only *two* iPad purchases); *Burkes*, 51 S.E.C. at 360 (finding that the misuse of funds for even a lesser number of transactions would still constitute unethical conduct).

With regard to the charges discussed in Part III of this decision, Enforcement met its burden of proof and established by a preponderance of the evidence that Springsteen-Abbott committed a rule violation. Springsteen-Abbott, on the other hand, failed to successfully discredit or rebut the evidence establishing her misconduct. *See Steadman v. SEC*, 450 U.S. 91, 101 (1981) ("[Where] a party having the burden of proceeding has come forward with a prima facie and substantial case, he will prevail unless his evidence is discredited or rebutted."); *Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *64 n.87 (Dec. 10, 2009). Accordingly, we reaffirm Hearing Panel's findings that Springsteen-Abbott violated FINRA Rule 2010.

2. Springsteen-Abbott Acted Unethically and in Bad Faith

Springsteen-Abbott next argued that she could not have violated FINRA Rule 2010 because she did not act unethically or in bad faith. She asserted that her misconduct constituted either mere errors on her part or a failure to supervise other Commonwealth employees regarding the allocations, but her actions did not give rise to a FINRA Rule 2010 violation. Springsteen-Abbott further contended that she was given no credit for the charges she reversed or her

voluntary $2.4 million contribution to the Funds.[25] She also argued that the nature of the charges at issue were *de minimis*. Her arguments fail.

While the SEC has "long applied a disjunctive bad faith or unethical conduct standard to disciplinary action under . . . J&E rules," *Dep't of Enforcement v. Golonka*, Complaint No. 2009017439601, 2013 FINRA Discip. LEXIS 5, at *23 (FINRA NAC Mar. 4, 2013), we support the Hearing Panel's findings that Springsteen-Abbott acted unethically and in bad faith. Springsteen-Abbott misused investment funds for purposes other than what was intended. *See Dep't of Enforcement v. Patel*, Complaint No. C02990052, 2001 NASD Discip. LEXIS 42 (NASD NAC May 23, 2001) (finding violation under the just and equitable principles of trade rule for improperly using funds for purposes other than to purchase bonds or other investments as directed by the investor). Springsteen-Abbott had the ultimate authority over the expense allocation process and she testified that she reviewed the American Express account statements rigorously to determine how Fund expenses were allocated. Unbeknownst to Fund investors, the Funds paid for her and others' unrelated expenses for several years. Springsteen-Abbott's routine practice of misusing the Funds' monies in this manner was not only unethical and illustrated bad faith, but also constituted a breach of her fiduciary obligation to act in the best interest of the Funds.

Furthermore, the nature of the charges at issue do not support Springsteen-Abbott's "mere error" or *de minimis* argument. First, there is no *de mimimis* exception to misuse of investment funds for one's own benefit. *See e.g., Dep't of Enforcement v. Grey*, Complaint No. 2009016034101, 2014 FINRA Discip. LEXIS 31, at *30 (FINRA NAC Oct. 3, 2014) (finding that the minimal dollar amount of respondent's ill-gotten gains was no defense to his misconduct), *aff'd*, Exchange Act Release No. 75839, 2015 SEC LEXIS 3630 (Sept. 3, 2015). Nevertheless, the evidence overwhelmingly demonstrates that the extent of Springsteen-Abbott's misuse was not *de minimis*. Even with the reduced charges that remain at issue, the record evidences that Springsteen-Abbott improperly allocated several thousand dollars' worth of personal and other non-Fund related expenses that the Funds subsidized over the course of three years.

Moreover, Springsteen-Abbott's improper use of Fund monies did not involve a few meals that she could pass off as "inadvertent" accounting errors. While Franceschina processed the allocation of expenses with the accounting group, Franceschina testified that, outside of

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[25] Specifically, Springsteen-Abbott claims that the Hearing Panel failed to off-set the $208,953.75 in American Express charges with approximately $2.4 million in contributions she made to the Funds throughout the years. The contributions fell within three main categories: (1) a "built-in cushion" to which the Parent voluntarily paid 10 percent of all American Express charges and other operating expenses; (2) a capital contribution in the form of cash and "forgiveness" that waived fees and expenses owed to the General Partner in order to increase cash flow for certain Funds; and (3) the financing of a tech center that was built to bring audit and testing of the leasing equipment in-house, but the expenses of which were not allocated to the Funds.

routine business expenses, she relied on Springsteen-Abbott's direction on which expenses were allocable to the Funds. Indeed, Springsteen-Abbott conceded in her pre-hearing brief that all allocations were subject to her "final approval." Springsteen-Abbott caused the Funds to pay for several personal meals with her grandchildren, family and friends, cars rented for weeks at a time, and other personal expenditures incurred during hair restoration trips, family vacations and family events. She then attempted to defend these allocated charges at the hearing as legitimate Fund expenses, which they were not. The Hearing Panel observed Springsteen-Abbott's testimony in defense of several charges and found that the business explanations on tick sheets that she provided to the FINRA staff contained false information. Springsteen-Abbott's provision of false information in attempts to justify her improper allocations also exhibited her bad faith.

We disagree that Springsteen-Abbott's $2.4 million contribution meant that she could not have acted in bad faith or unethically. The evidence in the record revealed that the majority of the $2.4 million contribution only related to two of the 13 Funds. Those two Funds, however, were not the subject of her misuse of monies.[26] In addition, Springsteen-Abbott testified that the $2.4 million contribution in large part was made in response to significant litigation against key lessees that adversely affected the cash flow of certain Funds. Regardless, demonstrating good faith in certain aspects of the Funds' businesses is not a defense to her misuse violation under Rule 2010. *Thomas W. Heath, III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *25 (Jan. 9, 2009). Springsteen-Abbott's contribution to the Funds, no matter how extensive, did not excuse her from improperly using Fund monies for personal and non-Fund related purposes. *See Olson*, 2015 SEC LEXIS 3629, at *16 (rejecting respondent's attempt to offset converted funds and holding that "securities professionals are not entitled to self-help in this manner"); *Dep't of Enforcement v. Doan*, Complaint No. 2009019637001, 2011 FINRA Discip. LEXIS 56, at *10 (FINRA Hearing Panel Sept. 19, 2011) (finding conversion and rejecting respondent's self-help defense that he was entitled to reimbursement for office furniture); *Dep't of Enforcement v. John M. Saad*, Complaint No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *22 (FINRA NAC Oct. 6, 2009) ("The suggestion that he may have been able to obtain reimbursement for other legitimate expenses if submitted properly does not exonerate or lessen the significance of his unethical conduct."), *aff'd*, Exchange Act Release No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010), *remanded on other grounds*, 718 F.3d 904 (D.C. Cir. 2013).

Lastly, while Springsteen-Abbot claimed she was not given credit for her reallocation of some expenses, as we previously stated, her Rule 2010 violation extends only to the misallocated expenses that were not reversed in August 2012. Regardless of our findings, we note that a

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[26] Because each Fund was a separate legal entity, FINRA staff prepared a summary chart that provided a breakdown by each Fund and per year of the total amount of alleged misallocated charges versus Springsteen-Abbott's purported contributions. A FINRA examination manager testified that the staff concluded that approximately $1.7 million of the contributions solely related to two public Funds, CIGF 3 and CIGF 4. Contributions to those two Funds, however, were inconsequential because no alleged misallocated charges were attributed to those two Funds.

respondent should not be given credit for correcting their misuse of funds in response to FINRA's investigation and impending filing of a complaint. *See Dep't of Enforcement v. Mullins*, Complaint Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *27 (FINRA NAC Feb. 24, 2011) (finding that respondent's repayment of funds after discovery of his misconduct did not alter FINRA's conclusion that he converted and misused foundation funds), *aff'd*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012). Based on our revised list of improper expenses, our finding that Springsteen-Abbott violated Rule 2010 is amply supported by the record.

3. The Hearing Panel Decision Was Not Biased

Springsteen-Abbott argued that the Hearing Panel's findings and sanctions demonstrate bias against her. She contended that the Hearing Panel's decision unfairly drew conclusions that she attempted to conceal her misconduct, lied to FINRA staff and the Hearing Panel, and was unable to comply with the ethical standards of the industry in the future. She claimed that the Hearing Panel found she acted in bad faith because they did not like her and the Panel was biased in accepting Enforcement's view of what charges were not legitimate business expenses. She asserted that the Hearing Panel's decision ignored her contributions to the Funds and other proper expenses that she did not allocate to the Funds and exhibited extreme bias in awarding sanctions of greater proportion than what Enforcement recommended.

Springsteen-Abbott's claim of bias by the Hearing Panel is meritless. A claim of unfair bias requires that Springsteen-Abbott demonstrate that FINRA's disciplinary action was motivated by a discriminatory purpose, such as race, religion, or the "desire to prevent the exercise of a constitutionally protected right." *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *44 (July 27, 2015). Mere conjecture and second-guessing the outcome of the case do not sufficiently support a bias claim. *See Tomlinson*, 2014 SEC LEXIS 4982, at *27-28 (noting that because respondent did not obtain the result he wanted or expected in the case did not in itself support a bias claim). We restate our view that there was neither evidence of bias or discrimination elicited by the Hearing Panel in the decision it rendered, nor did we find that the Hearing Panel personally attacked her.[27]

[27] Springsteen-Abbott's appeal references two cases in support of her bias claim. These cases, however, are distinguishable or inapplicable to this proceeding. In *Blinder, Robinson & Co., Inc. v. SEC*, 837 F.2d 1099 (D.C. Cir. 1988), the court questioned whether the SEC's sanctions were so disproportionately severe that it singled out the respondent as a smaller, newer firm. Unlike *Blinder*, Springsteen-Abbott was not selectively prosecuted, did not receive any disparate treatment by the Hearing Panel, and her decreased sanctions are remedial rather than punitive. Similarly, *Liteky v. U.S.*, 510 U.S. 540 (1994), is inapplicable because it addresses a judge's recusal, and states that, to be disqualified in a proceeding, the alleged prejudice or bias must stem from an extrajudicial source. Springsteen-Abbott, on the other hand, did not move to recuse or disqualify a panelist based on bias or a conflict of interest pursuant to FINRA rules.

We also repeat that we uphold the Hearing Panel's credibility determinations against Springsteen-Abbott. Springsteen-Abbott consistently undercut her own explanations when testifying about the nature of the charges allocated to the Funds. The Hearing Panel's decision abundantly detailed the events and instances in which Springsteen-Abbott's testimony directly conflicted with the evidence Enforcement presented. In addition, the documentation she provided to FINRA in support of her claims of legitimate business expenses were unrelated to the charges at issue and were, at times, demonstrably false.[28] Supplying no evidence or reasonable explanation for her inconsistent testimony, the Hearing Panel appropriately called Springsteen-Abbott's truthfulness into question. *See Kirlin*, 2009 SEC LEXIS 4168, at *53 n.71 (noting that the credibility determination of an initial fact finder is entitled to considerable weight and deference because it is based on hearing the witnesses' testimony and observing their demeanor and that such a determination can only be overcome where the record reflects substantial evidence for doing so).[29] The Hearing Panel did not ignore the $2.4 million contribution as Springsteen-Abbott argues but instead, for the reasons we previously discussed, found that it did not disprove her FINRA Rule 2010 violation.

4. FINRA Rule 2010 Applies to Springsteen-Abbott's Misconduct

Although Springsteen-Abbott admitted that some of the charges were improperly allocated to the Funds, she argued that FINRA Rule 2010 does not apply to her conduct because the allocation process was independent of Firm activities, did not involve "conduct of the

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[28] We find that the tick sheets Springsteen-Abbott produced to justify the charges as business expenses were unreliable evidence for a number of reasons. First, Springsteen-Abbott backdated the tick sheets using the date that the charge was incurred, which in some cases happened several years prior. Second, the tick sheets, which were handwritten, failed to provide sufficient detail regarding the business purpose of the charge. For example, some tick sheets stated that the charge was reallocated back to the Parent company, but lacked detail on how or when the reallocation occurred. Third, many of the tick sheets had supporting documentation attached that had nothing to do with the expense at issue or the business purpose stated on the tick sheet was wrong. For example, in December 2009, Springsteen-Abbott travelled to New York with her family members, including Hank Abbott, her son, her daughter, two other adults, and three children. Springsteen-Abbott testified at the hearing that she had a "family" dinner while in New York. Yet, she drafted the tick sheet, to which the family dinner receipt was attached, stating that the "business purpose" of the meal was to meet with "leasing vendors" for year-end, which she then admitted in testimony was false. As described in Part III of this decision, the meal totaling $826.08 was a personal expense that should not have been allocated to the Funds.

[29] We also reject Springsteen-Abbott's claim that the Hearing Panel's order of disgorgement demonstrates bias. As discussed in Part V of this decision, although we make findings on remand that reduce the amount that Springsteen-Abbott is ordered to disgorge, there is no evidence in the record that the Hearing Panel's order of a higher disgorgement amount was based on prejudicial or discriminatory motives.

member's business" or any "customers" of the Firm, and therefore, FINRA lacked the authority to regulate her conduct. We disagree.

Springsteen-Abbott's jurisdiction argument—previously raised by other respondents in a long line of cases—has been repeatedly rejected. FINRA Rule 2010 governs any business-related conduct that is inconsistent with just and equitable principles of trade, irrespective of whether it involves a security. *See Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) ("[FINRA]'s disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.").

Further, FINRA's disciplinary authority is not confined to the Firm's business or a customer, but covers any unethical business-related conduct. *See, e.g.*, *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *16-17 (Mar. 29, 2016) (finding respondent's conversion of investment fund monies in violation of FINRA Rule 2010 need not bear a close relationship to the associated person's firm or firm customers); *Wiley*, 2015 SEC LEXIS 4952, at *11 (holding respondent's unethical business-related conduct, even while performing only insurance-related activities, falls under FINRA's jurisdiction).

As an associated person, Springsteen-Abbott was required to observe just and equitable principles of trade in all of her business dealings. Although her misconduct occurred at a non-broker-dealer, Springsteen-Abbott's misuse of investment funds was undoubtedly business-related. "An associated person's 'business' includes his business relationship with his employers and his commercial relationship with [investors]." *Tomlinson*, 2014 SEC LEXIS 4982, at *19. As disclosed in CRD, Springsteen-Abbott spent 4.5 hours each business day working as the chief executive officer of the Parent. She was also the de facto manager of the Funds and thus possessed the fiduciary duty to act ethically in safeguarding the Funds' assets in accordance with its operating terms.[30] Instead of conducting her business affairs in an ethical manner, Springsteen-Abbott caused the Funds to pay for personal and non-Fund related expenses over a three-year period to the detriment of the Fund investors. Even while servicing the Funds, Springsteen-Abbott cannot escape her ethical duty under FINRA Rule 2010 to observe high standards of commercial honor and not commit unethical acts and practices. FINRA Rule 2010 applies to Springsteen-Abbott's misconduct.

V. Sanctions

The Hearing Panel barred Springsteen-Abbott from associating with any member firm in all capacities, fined her $100,000, and ordered that she disgorge $208,953.75, plus pre-judgment interest, in addition to hearing costs.

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[30] Section 9.4.1 of the Funds' limited partnership agreement provides: "The General Partner shall manage and control the Partnership, its business and affairs." Section 9.4.3 also provides: "The General Partner shall have the fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership, whether or not in the General Partner's immediate possession or control."

The Commission has asked us to clarify how our findings on remand would affect our previous order of disgorgement. It specifically requests the NAC to explain the relationship between any violations found and any disgorgement ordered and whether such disgorgement is a reasonable approximation of unjust enrichment. Should the NAC uphold a finding that Springsteen-Abbott pay disgorgement, the Commission also requests that the NAC explain the significance of other factors mentioned by the Hearing Panel in its unjust enrichment analysis to justify disgorgement of all 1,840 charges and address Springsteen-Abbott's claim that she reallocated $35,000 in charges.

After reconsideration of the record, including any mitigating and aggravating factors, we reaffirm barring Springsteen-Abbott for her misconduct. We, however, reduce the disgorgement order to $36,225.85 and the fine to $50,000, and impose no appeal costs. For clarification purposes, we attach to this decision a *Revised Expense Schedule*, itemizing only the improperly allocated expenses that we could quantify (i.e., the personal and broker-dealer expenses that are discussed in Part III of this decision).[31]

A. Bar

We have considered the seriousness of Springsteen-Abbott's offense and find that a bar is warranted in this case. "Misappropriation or misuse of customer funds constitutes a serious violation of the securities laws, involving a betrayal of the most basic and fundamental trust owed to a customer." *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *33-34 (Jan. 9, 2015), *aff'd*, 641 F. App'x 27 (2d Cir. 2016). For this reason, FINRA's Sanction Guidelines ("Guidelines") provide that a bar is the applicable sanction for the improper use of funds.[32] A lesser sanction, however, may be imposed where the improper use resulted from the respondent's misunderstanding of the customer's intended use of the funds or if some other mitigation exists.[33] In the present case, none of Springsteen-Abbott's arguments for mitigation have merit.

Conversely, there are several aggravating factors that support barring her from the securities industry. The evidentiary record shows a pattern of misconduct. Springsteen-Abbott routinely approved the expensing of improper credit card charges that the Funds subsidized for

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[31] We affirm the Hearing Panel's findings that Springsteen-Abbott improperly allocated Controlling Person expenses to the Funds. However, because the exact amounts of Controlling Person expenses is indeterminate from the record, these expenses are not part of Springsteen-Abbott's disgorgement sanction.

[32] *See FINRA Sanction Guidelines*, 36 (2015), http://www.finra.org/sites/default/files/2015_Sanction_Guidelines.pdf [hereinafter *Guidelines*].

[33] *Id.*

an extended period of time.[34] Her misuse impacted the accounts of multiple Funds at a substantial dollar amount and size.[35] She certainly benefitted financially by attributing to the Funds personal expenses for which she otherwise would have had to pay out of pocket.[36] Her actions were deliberate and intentional and would have continued if not for whistleblowers who alerted FINRA of her misconduct.[37] She attempted to conceal her misconduct by supplying FINRA staff with business justifications on tick sheets and other documentation that were either inconsistent with the charges at issue or blatantly false.[38] Equally aggravating was Springsteen-Abbott's attempt to blame others for her regulatory obligations.[39]

None of Springsteen-Abbott's arguments against barring her that she raised on appeal to the NAC are mitigating. Springsteen-Abbott claimed that she inherited the antiquated expense allocation system. But adopting wrongful practices and continuing to commit them are not mitigating. Springsteen-Abbott also argued that FINRA investigators, independent auditors, and her own reviews failed to detect the errors and that virtually all of the misallocations were done by Franceschina, upon whom she relied. We reject this claim. Springsteen-Abbott was aware of the misallocations and they were not just accounting mistakes. The American Express corporate account was in her name and thus her credit was at stake. She testified that she received and reviewed the American Express account statements "fiercely" each and every month and had sole discretion in determining whether to allocate an expense. Even after Springsteen-Abbott determined which expenses to allocate to the Funds, she approved the allocations to the Funds before they were processed by Franceschina through accounts payable. Her claim that she had no knowledge of the improperly allocated expenses is therefore contrary to the evidence. We

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[34] *Id.* at 6 (Principal Considerations in Determining Sanctions, Nos. 8 and 9).

[35] *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 18).

[36] *Id.* (Principal Considerations in Determining Sanctions, No. 17).

[37] *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).

[38] *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 10). While not alleged in the amended complaint, we note that providing false information to FINRA is in itself a violation of FINRA Rule 2010. *See Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23-24 (Aug. 22, 2008), *citing Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006).

[39] *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 2). We note that Enforcement referred to the Commission's cease-and-desist order against Springsteen-Abbott as relevant disciplinary history and argued before the Hearing Panel that Springsteen-Abbott was a recidivist to justify increased sanctions. *See In re Commonwealth Income & Growth Fund, Inc.*, Exchange Act Release No. 70547, 2013 SEC LEXIS 3058, at *2-4; 10-14 (Sept. 27, 2013) (order instituting cease-and-desist proceedings pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act). We agree with the Hearing Panel and do not treat Springsteen-Abbott as a recidivist for purposes of sanctions.

also reject Springsteen-Abbott's suggestion that she should not be sanctioned because no one previously detected her wrongdoing. Indeed, "registered persons are expected to adhere to a standard higher than what they can get away with." *Leonard John Ialeggio*, 52 S.E.C. 1085, 1088 (1996) (internal quotation marks omitted). Nevertheless, there is no evidence in the record that Springsteen-Abbott deployed an audit or examination of her informal process of allocating personal and non-Fund related expenses to the Funds.

Springsteen-Abbott next argued that a bar is "grossly unfair and excessive," stating that permanent bars require proof by clear and convincing evidence, and that the Hearing Panel improperly relied on the Guidelines for misuse of "customer" funds even though no customer funds were involved in the case. Springsteen-Abbott is mistaken that "clear and convincing" evidence is the appropriate standard for FINRA disciplinary proceedings.[40] Furthermore, whether or not her misconduct involved a customer of the broker-dealer has no bearing on the determination to bar her. *See Grivas*, 2016 SEC LEXIS 1173, at *17 (clarifying that a misuse of funds violation need not relate to the associated person's customers or a securities transaction in order to be covered under FINRA Rule 2010). Moreover, the improper use of funds is a "serious offense which undermines the integrity of the securities industry." *Dist. Bus. Conduct Comm. v. Westberry*, Complaint No. C07940021, 1995 NASD Discip. LEXIS 225, at *24 (NASD NBCC Aug. 11, 1995). Springsteen-Abbott harmed the Funds and Fund investors when she failed to protect the Funds' assets entrusted to her from misuse. *See Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *39 (Sept. 20, 2016) (barring respondent for converting investors' funds entrusted to him, which demonstrated a "fundamental unfitness for association in the securities industry"). We find that barring Springsteen-Abbott is consistent with the Guidelines for her misconduct and is neither excessive nor oppressive.

B. Disgorgement

The Hearing Panel ordered disgorgement in the amount of $208,953.75 plus pre-judgment interest paid to FINRA. The disgorgement amount represented the full amount of 1,840 charges contained in the *Expense Schedule*. The Hearing Panel decision, however, did not find that Springsteen-Abbott violated Rule 2010 by improperly allocating all 1,840 American Express charges. Accordingly, while we find that Springsteen-Abbott was unjustly enriched by her misconduct, we reduce her disgorgement to $36,225.85, plus pre-judgment interest, which more reasonably approximates her unlawful gains and represents the more limited number of quantifiable expenses that we found were improperly allocated, as set forth in the *Revised Expense Schedule*.

"Disgorgement serves to remedy securities law violations by depriving violators of their fruits of their illegal conduct." *SEC v. Spongetech Delivery Sys., Inc.*, 2015 U.S. Dist. LEXIS 134233, at *7 (E.D.N.Y. Aug. 3, 2015). It forces "wrongdoers to give up the amount by which

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[40] *See Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *16 (June 2, 2016) (applying a preponderance of the evidence standard in FINRA disciplinary proceedings); *Dist. Bus. Conduct Comm. v. Bruno, Jr.*, Complaint No. C10970007, 1998 NASD Discip. LEXIS 51, at *8 (NASD NAC July 8, 1998) (same).

they were unjustly enriched." *Michael David Sweeney*, 50 S.E.C. 761, 768 (1991). The disgorgement amount need not be precise, but must represent a reasonable approximation of a respondent's unlawful profits, not to exceed the amount obtained through the wrongdoing. *See The Dratel Group, Inc.*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035, at *73 (Mar. 17, 2016); *Dep't of Enforcement v. Evans*, Complaint No. 2006005977901, 2011 FINRA Discip. LEXIS 36, at *40 n.42 (FINRA NAC Oct. 3, 2011); *Laurie Jones Canady*, 54 S.E.C. 65, 84 (1999) (noting that "courts have held that the amount of disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation") (internal quotation marks omitted), *aff'd*, 230 F.3d 362 (D.C. Cir. 2000).

Springsteen-Abbott argued on appeal to the NAC that the Hearing Panel had punished her when it ordered disgorgement in excess of what Enforcement had recommended. In ordering disgorgement in the full amount of $208,953.75, the Hearing Panel reasoned that it was fair and reasonable to view all 1,840 of the alleged improper charges as unjust enrichment based on (1) the improper expense allocations and categories of expenses individually proven, (2) her pattern of misuse, and (3) "other circumstances indicating Springsteen-Abbott's lack of candor and fundamental failure to comply with her ethical obligations." None of these reasons, however, support the Hearing Panel's disgorgement amount.[41] Accordingly, we modify the Hearing Panel's order.

An order of disgorgement must be limited to a reasonable approximation of ill-gotten gains or unjust enrichment. And such gain or financial benefit must be causally connected to the violation. *See SEC v. Randall Kent Hanson*, 2017 U.S. Dist. LEXIS 50392, at *22 (S.D.N.Y. Mar. 31, 2017) (explaining that in calculating the disgorgement amount, adjudicators must focus on the extent to which the respondent has profited from the misconduct). We therefore reduce Springsteen-Abbott's disgorgement to $36,225.85, which represents a reasonable approximation of Springsteen-Abbott's unjust enrichment caused by her wrongful conduct and reflects the personal and broker-dealer expenses that remained improperly allocated to the Funds.[42]

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[41] The Hearing Panel provided additional reasons for choosing the higher disgorgement amount, including that there was "reason to distrust" Springsteen-Abbott's explanations provided to FINRA staff that led Enforcement to drop 400 charges from its original complaint and there were other circumstances indicating Springsteen-Abbott's lack of candor, untrustworthiness, and failure to comply with her ethical obligations. But we find these reasons are irrelevant to fixing the amount of disgorgement. The 400 charges were not the subject of the Hearing Panel's rulings and therefore have no material effect on Springsteen-Abbott's sanction. Likewise, while Springsteen-Abbott's lack of candor and failure to comply with her ethical obligations are factors weighed in determining her rule violation, these factors are immaterial in imposing a higher disgorgement amount.

[42] While the record neither substantiated Springsteen-Abbott's claim of reallocating approximately $35,000 in charges or assertions that she later reversed Controlling Person expenses, we nevertheless do not include these amounts in our order of disgorgement.

Springsteen-Abbott's other arguments against an order of disgorgement fail. For the reasons we previously stated, we reject Springsteen-Abbott's contention that the Hearing Panel ignored her $2.4 million voluntary contribution. We also reject her claim that Enforcement presented no evidence that she was unjustly enriched. To the contrary, Springsteen-Abbott either directly or indirectly—by virtue of her controlling all of the Commonwealth businesses—benefitted financially from having the investment funds pay for her personal and non-Fund related expenses. Disgorgement is the appropriate sanction to remedy this injustice. *See Akindemowo*, 2016 SEC LEXIS 3769, at *40 (finding that disgorgement of respondent's ill-gotten gains was the appropriate remedy for misconduct that resulted in his direct or indirect financial benefit); *Gordon Brent Pierce*, Exchange Act Release No. 71664, 2014 SEC LEXIS 4544, at *89 (Mar. 7, 2014) ("For purposes of disgorgement there is no meaningful distinction between receiving funds outright and having funds paid into an account one controls."). We accordingly order that Springsteen-Abbott disgorge $36,225.85 of her ill-gotten gains, plus pre-judgment interest paid to FINRA.

C. Fine

The Hearing Panel ordered that Springsteen-Abbott pay a fine of $100,000. On remand, we continue to find that Springsteen-Abbott's violation was egregious, but we reduce her fine to $50,000.[43]

The reduced fine of $50,000 falls squarely within the Guidelines and serves the remedial effect of deterring any future mishandling of investor money by Springsteen-Abbott or other associated persons of FINRA firms. Springsteen-Abbott's misconduct was significant and widespread, even with the reduction of charges that remain subject to her violation.[44] Her misuse also caused financial harm to both the Funds and Fund investors. For the protection of the investing public, we therefore affirm the Hearing Panel's imposition of a fine, but at the reduced amount in view of our lighter scale of findings.

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[43] For improper use of funds, the Guidelines recommend a fine ranging from $2,500 to $73,000. *See Guidelines*, at 36.

[44] *See id.*, at 10 (providing that adjudicators should consider imposing a fine, in addition to disgorgement, even if the respondent is barred, when there is widespread, significant and identifiable customer harm, or where the respondent had retained substantial ill-gotten gains).

VI. Conclusion

Springsteen-Abbott improperly allocated personal and other non-Fund related business expenses to be paid by the Funds, in violation of FINRA Rule 2010. For her misconduct, Springsteen-Abbott is barred from associating with any member firm in any capacity. She is also fined $50,000, and ordered to disgorge $36,225.85 to FINRA, plus prejudgment interest calculated from February 12, 2012. Additionally, we affirm the Hearing Panel's imposition of $11,037.14 in hearing costs. The bar imposed in this decision will become effective immediately upon issuance of this decision.

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary