

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NATHALO MENENDEZ
(CRD No. 4882003),

and

ANTHONY SPAGNOLO, III
(CRD No. 4726651),

Respondents.

Disciplinary Proceeding
No. 2009016159110

Hearing Officer—LOM

**DEFAULT DECISION AS TO
MENENDEZ**

May 4, 2015

Respondent is barred from associating with any FINRA registered firm in any capacity for the following misconduct in the aggregate: (i) opening accounts and trading in them without authorization (in violation of NASD Rule 2110 and FINRA Rule 2010); (ii) falsifying new account records to facilitate that unauthorized trading (in violation of NASD Rules 3110 and 2110 and FINRA Rule 2110); and (iii) excessive trading (in violation of NASD Rules 2310 and 2110 and FINRA Rule 2010).

Appearances

Jonathan Golomb, Esq., and Edwin T. Aradi, Esq., Rockville, Maryland, representing the Department of Enforcement.

No appearance by or for Nathalo Menendez.

DECISION

I. INTRODUCTION

FINRA's Department of Enforcement ("Enforcement") initiated this disciplinary proceeding against Nathalo Menendez ("Menendez" or "Respondent"), a former registered representative with FINRA member firm iTRADEdirect.com ("iTrade" or the "Firm") by filing a Complaint on December 30, 2013. Enforcement charged Menendez with unauthorized account

opening and unauthorized trading for three customers (First Cause of Action), the creation of false and inaccurate new account documentation for one customer (Second Cause of Action), and excessive trading in the accounts of two customers (Third Cause of Action).

The Complaint also included charges against DP¹ and Anthony Spagnolo, III, who were registered representatives of the Firm, and Brian Sanders, the Firm's Chief Compliance Officer. All three of them filed Answers.

Although Menendez was twice validly served with the Complaint, he never filed an Answer, and he did not participate in any pre-hearing conference. Thus, on August 4, 2014, the Hearing Officer issued an Order removing Menendez from the service list in order to save the remaining parties time and expense in the service of pre-hearing motions and exhibits. That Order was served on Menendez to provide him an opportunity to object if he chose to do so. Menendez neither filed any document in response nor contacted the Office of Hearing Officers.

A hearing on the charges against Spagnolo and Sanders occurred in October 2014.² ~~Spagnolo participated fully in the hearing, but Sanders walked out of the hearing after he made an opening statement. Sanders later returned to give testimony on behalf of Spagnolo but presented no evidence in his own defense. After that, Sanders was provided an additional opportunity to present documentary evidence, and the charges against him were severed. Sanders chose not to provide additional evidence.~~³

After the hearing, on December 17, 2014, Enforcement filed a motion for entry of a default decision on the charges against Menendez ("Motion").⁴ The Motion was accompanied by a declaration of an Enforcement attorney, Jonathan Golomb,⁵ and five exhibits (cited here as "CX-1" through "CX-5"). Although the Motion was validly served on Menendez, he did not respond.

For the reasons set forth below and pursuant to authority granted by FINRA Rule 9269(a), the Hearing Officer finds Menendez in default, grants Enforcement's Motion, and deems the allegations against Menendez admitted. On that basis, the Hearing Officer also finds

¹ DP died in the course of the proceeding, and the charges against him were dismissed.

² Disciplinary Proceeding No. 2009016159110.

³ Disciplinary Proceeding No. 2009016159111.

⁴ The full title of the Motion is "Motion For Entry Of Default Decision And Memorandum Of Law In Support Of Motion For Entry Of Default Decision." It contains Enforcement's discussion of the facts and legal arguments.

⁵ The full title of the Declaration is "Declaration In Support Of Motion For Entry Of Default Decision Against Nathalo Menendez." It is referred to here as "Golomb Decl." The Declaration is made under penalty of perjury. It contains statements of fact to support the grant of a default decision against Menendez.

that Menendez committed the violations alleged in the Complaint against him and imposes sanctions.⁶

II. FINDINGS AND CONCLUSIONS

A. Background

This proceeding against Menendez has its genesis in the 2008 and 2009 cycle examinations of iTrade. The examination staff identified a high number of cancelled trades and a high number of exception reports indicative of possible excessive trading. The exception reports found many accounts with extremely high turnover factors and cost-to-equity ratios. The staff identified accounts opened or serviced by Menendez that appeared to involve unauthorized and excessive trading.⁷

B. Jurisdiction

Menendez was registered with iTrade at the time of the alleged misconduct. He was most recently registered with another FINRA member firm, Laidlaw & Company (UK) Ltd. However, he voluntarily terminated his employment with that firm, and his registration through the firm ended on May 2, 2013. Menendez is not currently registered with FINRA or associated with a FINRA member firm.⁸

FINRA has jurisdiction over Menendez pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint on December 30, 2013, which was within two years after the effective date of termination of his FINRA registration in May of the same year, and the Complaint charges him with misconduct while he was subject to FINRA's jurisdiction. The Complaint alleges misconduct during the period from November 2008 through August 2009. Menendez was registered with iTrade from September 16, 2008, through May 4, 2010.⁹

C. Menendez Defaulted By Failing To Answer The Complaint

Enforcement twice served Menendez with the Complaint and a Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Each time, Enforcement addressed the documents to Menendez at his address, as recorded in the Central Registration Depository ("CRD"). Each time, Enforcement sent the documents both by certified mail and by regular first-class mail.¹⁰ This was sufficient under the Rules to constitute constructive notice of the

⁶ Hearing Panel decisions resolving the charges against Spagnolo and Sanders are issued simultaneously with this decision.

⁷ Golomb Decl. ¶ 2.

⁸ Golomb Decl. ¶ 3; CX-1, at 3-4.

⁹ Golomb Decl. ¶¶ 3-4 and n.1; CX-1, at 7.

¹⁰ Golomb Decl. ¶¶ 5, 7, 9.

Complaint and provide a basis for holding Menendez in default if he did not respond or file an Answer.¹¹

Moreover, each of the certified mailings was signed for on the return receipt card by “N. Menendez.” The first-class mailings were not returned.¹² These circumstances support the conclusion that Menendez received actual notice.

At no time during the investigation or litigation of the matter did Enforcement learn that the CRD address for Menendez was out of date.¹³

Menendez did not respond at any time to either the first or the second mailing of the Complaint and Notice of Complaint.¹⁴

Service here was valid under FINRA Rule 9134. Pursuant to FINRA Rules 9215(f) and 9269(a), and based on Menendez’s failure to file and serve an Answer or otherwise respond to the Complaint against him, the Hearing Officer grants Enforcement’s Motion, finds Menendez in default, and deems the allegations against Menendez in the attached Complaint admitted.

D. Menendez Engaged In The Alleged Misconduct

Because the allegations of fact in the Complaint are deemed to be true, Menendez is found to have engaged in the following misconduct.

Unauthorized account opening and trading; false and inaccurate documentation. Menendez opened accounts without authorization and made initial trades in them without authorization. Three customers were involved, JM, SY, and RY. In so doing, Menendez caused false and inaccurate information to be entered into the Firm’s books with respect to JM.

Menendez cold called JM, urged him to open an account with iTrade, and recommended that JM buy a ProShares fund. JM told Menendez it was a bad time for him to invest because he had just gone through a divorce. But JM did allow Menendez to send him some information. Menendez called JM numerous times over the next several days, but JM never agreed to open an account at iTrade or to buy stock from Menendez. Nevertheless, Menendez opened an account in JM’s name and purchased 100 shares of ProShares Ultra Basic Materials Fund for JM. In doing so, Menendez created a new account form that contained information that falsely indicated

¹¹ See, e.g., *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 and n.21 (NAC June 3, 2014), *appeal docketed*, SEC Admin. Proc. No. 3-15964 (July 3, 2014).

¹² Golomb Decl. ¶¶ 5-7, 9; CX-3 and CX-4.

¹³ Golomb Decl. ¶ 6.

¹⁴ Golomb Decl. ¶¶ 8, 10.

that JM had extensive experience trading stocks, bonds, and funds and a little experience with options.¹⁵

Menendez cold called SY, urging him to invest in ProShares. SY declined but said he would follow the security. Menendez continued calling SY. He recommended another stock, Valero. SY told him that he would need to discuss it with his wife and allowed Menendez to send him some information. Menendez suggested that SY make a \$2,000 investment and told SY he would have five days to review the information and decide whether to do business with him. SY never agreed to open an account or make a trade, but Menendez opened an account in his name and placed an order to purchase 100 shares of Valero. When SY learned of this, because he received a bill for the stock purchase, he called Menendez and left a message informing Menendez that he was not interested in doing business with him or with iTrade.¹⁶

Menendez cold called RY, who told Menendez he was a retired injured police officer without a lot of money. When Menendez continued to pressure RY to open an account, RY told Menendez to send him some information for him to consider. RY never agreed to open an account or purchase stock, but Menendez opened an account in RY's name and placed an order to purchase ProShares Ultra Basic Materials Fund on RY's behalf. When RY received the new account paperwork and an invoice for the purchase, he disregarded it. Menendez called him and he then told Menendez he would not pay for the trade and he was not interested in doing business with Menendez.¹⁷

Excessive trading. Menendez also engaged in excessive trading in two accounts, one held by RC, the other held by BH.

Menendez caused 34 trades to be made in RC's account during a ten-month period. The trading generated gross commissions of approximately \$21,828. During that ten-month period, the account had a turnover rate of 39 (annualized rate of approximately 47), based on \$600,486 in purchases and average monthly equity of \$15,481. The cost-to-equity ratio was approximately 161%. Menendez did not discuss all the trades with RC before placing the order, and even as to trades he did discuss with RC, he did not provide enough information for RC to understand what was happening in his account.¹⁸

Menendez caused 12 trades to be made in BH's account during a three-month period, generating gross commissions of approximately \$18,070. During that three-month period, the account had a turnover rate of approximately 20.5 (annualized rate of 81), based on \$423,811 in purchases and average monthly equity of \$20,659. The cost-to-equity ratio was approximately

¹⁵ Compl. ¶¶ 11-12, 14-15.

¹⁶ Compl. ¶¶ 16-20.

¹⁷ Compl. ¶¶ 21-24.

¹⁸ Compl. ¶¶ 81-82.

93%. BH had told Menendez that he had an investment objective of growth and a moderate-to-high risk tolerance.¹⁹

Conclusions. The Hearing Officer concludes that Menendez violated NASD Rule 2110 and FINRA Rule 2010, as alleged in the First Cause of Action, because Menendez failed to observe the required high standards of commercial honor and just and equitable principles of trade. FINRA Rule 2010 (like its identical predecessor, NASD Rule 2110) “states a broad ethical principle” and is violated when a respondent engages in unethical conduct.²⁰

The Hearing Officer further concludes that Menendez violated NASD Rules 3110 and 2110 and FINRA Rule 2010, as alleged in the Second Cause of Action because Menendez created false and inaccurate new account documentation for JM.

Finally, the Hearing Officer concludes that Menendez violated NASD Rules 2310 and 2110 and FINRA Rule 2010, as alleged in the Third Cause of Action, by engaging in excessive trading in the accounts of RC and BH. Excessive trading is by definition unsuitable and violates the suitability requirements of NASD Rule 2310. The conduct also is unethical. Menendez advanced his own interests ahead of his customers’ interests, and obtained monetary gains in the form of commissions at the expense of his customers.

III. SANCTIONS

FINRA’s Sanction Guidelines (“Guidelines”) provide adjudicators with direction to ensure that disciplinary sanctions are applied consistently and fairly, and to encourage adjudicators to craft sanctions appropriate to the facts and circumstances that serve the regulatory mission of FINRA.²¹

The Guidelines permit the aggregation or “batching” of violations for purposes of sanctions.²² The Hearing Officer has determined to treat all of Menendez’s misconduct together because it stems from a systematic improper way of doing business.

Menendez’s pattern of doing business was to deceive potential and actual customers and to engage in trading that could only benefit him at their expense. Although the separate violations themselves might be egregious, as Enforcement argues, each one separately could be an isolated instance of misconduct. However, taken as a whole, the misconduct was undoubtedly egregious. The misconduct in the aggregate signifies that Menendez had no regard for his

¹⁹ Compl. ¶¶ 85-86.

²⁰ *Heath v. SEC*, 586 F.3d 122 (2d Cir. 2009), *aff’d*, *Thomas W. Heath, III*, SEC Release No. 59223, 94 S.E.C. Docket 3466, 2009 WL 56755 (SEC Jan. 9, 2009) (citing *Benjamin Werner*, 44 S.E.C. 622 (1971)). See *Dep’t of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22 (NAC Feb. 27, 2007); *Dep’t of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 (NAC May 7, 2003).

²¹ FINRA Sanction Guidelines at 1 (2013), www.finra.org/Industry/Sanction-Guidelines.

²² Guidelines at 4 (General Principle 4).

customers' interests or instructions. He has demonstrated that he is unfit to be in the industry, and, for the protection of investors and to strengthen market integrity, he should be barred from associating with any FINRA member firm in any capacity.

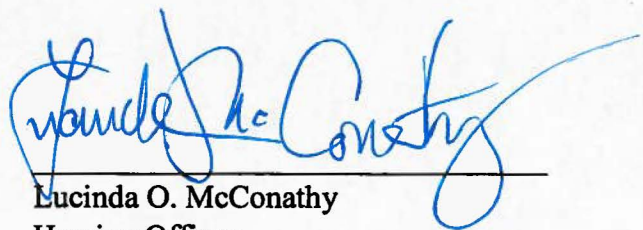
The aggregation of the charges for purposes of sanctions also is supported by the specific guideline for unauthorized trading. The guideline indicates that unauthorized trading may be considered egregious—which might warrant a bar—if viewed in combination with aggravating factors.²³

There are two cited considerations. The first is whether the respondent misunderstood his authority. Here Menendez had no basis for believing that he had authority to open accounts and trade for JM, SY, and RY. There was no misunderstanding. The second consideration is whether the conduct was egregious. Unauthorized trading can be egregious in different ways, quantitatively, qualitatively, and in combination with other aggravating factors.²⁴

This case involves aggravating factors. A pattern of unauthorized trading in the face of contrary instructions is an egregious violation of business ethics. The fabrication of false and inaccurate new account documentation compounds the violation. The excessive trading in other accounts betrays a consistent attitude of disregard for the customers' interests. A bar is warranted.²⁵

IV. ORDER

Nathalo Menendez is barred from associating with any FINRA member firm in any capacity for the following misconduct in the aggregate: (i) opening accounts and trading in them without authorization (in violation of NASD Rule 2110 and FINRA Rule 2010); (ii) falsifying new account records to facilitate the unauthorized trading (in violation of NASD Rules 3110 and 2110 and FINRA Rule 2010); and (iii) excessive trading (in violation of NASD Rules 2310 and 2110 and FINRA Rule 2010). The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Lucinda O. McConathy
Hearing Officer

²³ The specific guideline for unauthorized trading suggests a suspension of ten business days to one year and a fine of \$5,000 to \$75,000. In egregious cases, the guideline suggests a suspension of up to two years or a bar. Guidelines at 98.

²⁴ *Id.*

²⁵ See *Dep't of Enforcement v. Hardy*, No. 2005001502703, 2009 FINRA Discip. LEXIS 35 (OHO July 21, 2009); *Dep't of Enforcement v. Shevlin*, No. C10020075, 2003 NASD Discip. LEXIS 46 (OHO Oct. 2, 2003).

Copies to:

Nathalo Menendez (via overnight courier and first-class mail)

Stephen B. Wexler, Esq. (via email and first-class mail)

Brian Boxler, Esq. (via email)

Jonathan Golomb, Esq. (via email and first-class mail)

Edwin T. Aradi, Esq. (via email)

Jeffrey D. Pariser, Esq. (via email)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

NATHALO MENENDEZ (CRD 4882003),

████████████████████

BRIAN SANDERS (CRD 2743309),

AND

ANTHONY SPAGNOLO (4726651),

RESPONDENTS.

**DISCIPLINARY PROCEEDING
No. 2009016159110**

HEARING OFFICER—

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period 2007 through 2010, while employed as registered representatives at iTRADEdirect.com ("iTrade"), Respondents Nathalo Menendez, ██████████ ██████████ and Anthony Spagnolo engaged in unauthorized trading and opened accounts without authorization and created false books and records in connection with inaccurate customer information they put on the new account documents. Through this conduct, Menendez violated FINRA Rule 2010 and NASD Rule 3110, and ██████████ and Spagnolo violated FINRA Rule 2010 and NASD Rules 2110 and 3110. In addition, Menendez engaged in excessive trading in customer accounts, thereby violating NASD Rules 2110 and 2310 and FINRA Rule 2010.

2. During the same period, Respondent Brian Sanders failed to supervise numerous registered representatives—including Menendez, ██████████ and Spagnolo—who engaged in excessive trading, unauthorized trading, and unauthorized account opening. Sanders also failed to enforce iTrade's policies for heightened supervision of 13 registered representatives who fell within criteria for heightened supervision identified in iTrade's policies, and failed to report 26 complaints and three settlements. Through this conduct, Sanders violated NASD Rules 2110, 3010(a) & (b), and 3070 and FINRA Rule 2010.

RESPONDENTS AND JURISDICTION

3. ~~Menendez was registered with nine firms between 2004 and April 26, 2013. He was registered with iTrade from September 16, 2008 through April 26, 2010, and has since worked at four other firms. Menendez left the securities industry on April 26, 2013. He had been registered as a General Securities Representative.~~

4. Although Menendez is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of his last registration with a FINRA member on April 26, 2013, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

5. ██████████ has been registered with five firms since 1999. He was registered with iTrade from June 2005 until April 2010, and has since worked at two other firms. He is currently registered with a member firm, and has been registered as a General Securities Representative and General Securities Principal during his time in the securities industry.

6. Sanders was the Chief Compliance Officer of iTrade, and managed the Selden, New York office (which was the only active office of the firm) during the time period addressed in this Complaint. He had been registered with five firms between May 1996 and October 12, 2012. Sanders was registered with iTrade from June 2005 until May 2010. He had been registered as a General Securities Representative, General Securities Principal, and Registered Options Principal, but is no longer in the securities industry.

7. Sanders was fined \$17,500 and suspended for 10 days in a principal capacity by FINRA in March 2007 for failing to supervise, and was suspended for 10 days in a principal capacity and fined \$10,000 by FINRA in November 2007 for failing to conduct adequate due diligence in connection with iTrade's parent company's private placement.

8. Although Sanders is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of his last registration with a FINRA member on October 12, 2012, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

9. Spagnolo has been employed by six firms since 2003, and was registered with iTrade from June 2005 until April 2010. He has been registered with three other firms since leaving iTrade, and is currently registered with a member firm. During his time in the securities industry, Spagnolo has been registered as a General Securities Representative.

FACTS UNDERLYING THE FIRST, SECOND, AND THIRD CAUSES OF ACTION

10. iTrade's business model relied in large part on having representatives cold call prospective investors using commercially purchased lead cards. When a potential customer agreed to open an account and place an initial trade, the representative who solicited the customer would cause new account documents to be generated and sent to the new customer by overnight delivery, along with a firm-generated document reflecting the initial trade.

Unauthorized Trading and Related Misconduct by Menendez

Customer J.M.

11. Menendez cold-called J.M.¹ in early January 2009. Menendez attempted to get J.M. to open an account with iTrade and recommended that he buy a ProShares fund. J.M. told Menendez that it was a bad time for him to invest because he had just gone through a divorce, but agreed to allow Menendez to send some information.

12. Menendez called J.M. numerous times over the next several days, but J.M. continued to refuse to buy stock from Menendez. J.M. never agreed to do so or to open an account with iTrade.

13. J.M. never discussed his personal financial information, investment objectives, risk tolerance or investment experience with Menendez.

14. On January 7, 2009, Menendez caused iTrade to open an account in J.M.'s name and placed an order to purchase 100 shares of ProShares Ultra Basic Materials Fund in the account at a cost of approximately \$1,653 without J.M.'s authorization to open the account or to purchase the security.

¹ The initials refer to customers and to individuals the respondents solicited to open accounts. They will be identified in separate filings by the Department of Enforcement following the receipt of each respondent's answer.

15. In order to open the account, Menendez created a new account information sheet in which he represented that J.M. had extensive experience trading stocks, bonds, and funds and had little options experience. In reality, J.M. had no investment experience in bonds, funds, and options, and very little experience with stocks.

Customer S.Y.

16. Menendez cold called S.Y. in late 2008 or early 2009, recommending that he invest in ProShares. S.Y. told Menendez that he did not want to purchase anything right away, but would follow the security.

17. Menendez called S.Y. again on May 18, 2009, telling S.Y. that he had another hot stock, Valero, that he knew was going to go up. S.Y. told him that before he agreed to purchase any stock with Menendez he needed to discuss it with his wife, and S.Y. agreed to allow Menendez to send some information about the stock and about iTrade. Menendez told S.Y. he would have five days to review the information and decide whether to do business with him. Menendez suggested that S.Y. make a \$2,000 investment, and S.Y. agreed to consider doing so, but again told Menendez that he needed to look at the information and discuss it with his wife.

18. S.Y. never agreed to open an account or make a trade.

19. On May 18, 2009, Menendez caused iTrade to open an account in S.Y.'s name and placed an order to purchase 100 shares of Valero in the account at a cost of approximately \$2,112 without S.Y.'s authorization to open the account or to purchase the security.

20. S.Y. received a Federal Express package from Menendez the following day which included, among other things, a letter titled "Notification of Transaction and New Account Application." It included a bill for the purchase of 100 shares of Valero. S.Y. called Menendez

and left a message informing Menendez that he was not interested in doing any business with him or with iTrade.

Customer R.Y.

21. Menendez cold called R.Y. in August 2009, trying to get him open an account and recommending that he buy an exchange traded fund involving basic materials. R.Y. told Menendez he was a retired injured police officer without a lot of money and that his annual income was less than \$70,000.

22. Menendez continued to pressure R.Y. to open an account, and R.Y. told Menendez to just send some information and that he might consider doing a little business with him. R.Y. never agreed to open an account or purchase any stock with Menendez or anyone at iTrade.

23. On August 14, 2009, Menendez caused iTrade to open an account in R.Y.'s name and placed an order to purchase 100 shares of ProShares Ultra Basic Materials Fund in the account at a cost of approximately \$2,450 without R.Y.'s authorization either to open the account or to purchase the security.

24. A few days later, R.Y. received a package with new account paperwork and an invoice for the purchase of the ProShares fund. R.Y. disregarded it, but soon received another telephone call from Menendez. R.Y. told Menendez he would not pay for the trade and that he was not interested in doing business with Menendez.

Unauthorized Trading and Related Misconduct by ██████████

Customer J.G.

25. ██████████ cold called J.G. in November 2008, trying to get him to open an account with iTrade and recommended that he buy shares of KBR, Inc. for approximately \$3,400.

26. J.G. told ██████ he wanted information about iTrade and the stock before he would agree to open up an account or make a trade with him. J.G. also told ██████ that he wanted to do his own independent research.

27. On November 4, 2008, ██████ caused iTrade to open an account in J.G.'s name and placed an order to purchase 200 shares of KBR stock in the account for approximately \$3,156 without J.G.'s authorization to open the account or to purchase the security.

28. When ██████ called J.G. to try to get him to pay for the purchase, J.G. told ██████ that he never authorized him to buy any stock.

Customer J.N.

29. ██████ began cold calling J.N. in early 2009. ██████ called multiple times over the course of several months and recommended that J.N. look at various stocks on every call. J.N. always told ██████ that he was not interested.

30. In September 2009, ██████ called J.N. and recommended that he purchase shares of Sinovac Biotech. J.N. told ██████ that he could send him something about the stock and that he would take it to his current stockbroker to look into. J.N. did not agree to open an account with iTrade or buy the stock.

31. ██████ never asked J.N. about his investment objectives, risk tolerance, or financial condition.

32. On September 10, 2009, ██████ caused iTrade to open an account in J.N.'s name and placed an order to purchase 200 shares of Sinovac Biotech in the account for approximately \$1,988 without J.N.'s authorization to open the account or to purchase the security.

33. ██████ created a new account information sheet that represented J.N. to have a high risk tolerance, growth and trading/speculation as his investment objective, annual income of \$400,000, and a net worth of \$1,500,000—all of which were not accurate.

34. When J.N. received a bill for the purchase of Sinovac, he promptly called ██████ told him that that he never authorized the trade, and demanded that it be cancelled immediately.

Customer Z.S.

35. ██████ cold called Z.S. in late 2009, trying to induce him to buy shares of Rino International Corp. through iTrade. He called Z.S. three times over one or two weeks. Z.S. asked ██████ to send him some paperwork to look at, but Z.S. never agreed to open an account with iTrade or buy the stock.

36. ██████ never asked Z.S. about his investment objectives or risk tolerance.

37. On January 5, 2010, ██████ caused iTrade to open an account in Z.S.'s name and placed an order to purchase 100 shares of Rino International in the account at a cost of approximately \$3,065 without Z.S.'s authorization either to open the account or to purchase the security.

Unauthorized Trading and Related Misconduct by Spagnolo

Customer M.B.

38. Spagnolo cold called M.B. in April 2008. Spagnolo tried to convince M.B. to open an account and recommended that he buy shares of ProShares Ultra Basic Materials Fund. M.B. told Spagnolo that he did not want to invest, but Spagnolo continued to pressure M.B. M.B. agreed to allow Spagnolo to send him information, but he did not want the information and

did not intend to purchase any stock. He never agreed to open an account or purchase any security through Spagnolo.

39. On April 17, 2008, Spagnolo caused iTrade to open an account in M.B.'s name and placed an order to purchase 200 shares of ProShares Ultra Basic Materials Fund in the account at a cost of approximately \$1,575 without M.B.'s authorization to open the account or to purchase the security.

40. When M.B. received a package from iTrade and a trade confirmation for the purchase of ProShares Ultra Basic Materials Fund, he disregarded it, but Spagnolo continued to call him to try to get him to pay for the trade.

Customer R.E.

41. Spagnolo cold called R.E. in November 2008, trying to induce him to open an account at iTrade, and recommending that he invest in OptionsXpress Holding Co. R.E. told Spagnolo he was not interested in opening an account, but he agreed that Spagnolo could send him information. R.E. never agreed to open an account at iTrade or purchase any security through Spagnolo.

42. On November 20, 2008, Spagnolo caused iTrade to open an account in R.E.'s name and placed an order to purchased 200 shares of OptionsXpress Holding Co. in the account at a cost of approximately \$1,276 without R.E.'s authorization to open the account or to purchase the security.

43. R.E.'s daughter promptly notified iTrade that R.E. had specifically refused to do business with iTrade.

44. Spagnolo caused iTrade to create new account documents for R.E. which inaccurately reported that R.E. had income of \$500,000-999,999 and liquid net worth of

\$2,500,000; in reality, R.E.'s income was approximately \$350,000, and his liquid net worth approximately \$200,000. In addition, the new account documents reflected R.E.'s investment objective as speculation and his risk tolerance as aggressive, whereas he actually considered himself a conservative investor. Spagnolo also misrepresented R.E. as having extensive experience investing in stocks, bonds, and options, and limited experience in mutual funds, UITs, and annuities; in reality, R.E. had never invested in securities or had a brokerage account.

Customer E.S.

45. Spagnolo cold called E.S. in December 2008, trying to convince him to open an account at iTrade, and recommending that he invest in ProShares Ultra Basic Materials Fund. E.S. did not agree to open an account or buy any security, but asked Spagnolo to send information.

46. E.S. never discussed his financial condition, investment objectives, or investment experience with Spagnolo or anyone else at iTrade.

47. On December 15, 2008, Spagnolo caused iTrade to open an account in E.S.'s name and placed an order to purchase 200 shares of ProShares Ultra Basic Materials Fund in the account at a cost of \$3,086 without E.S.'s authorization either to open the account or to purchase the security.

48. Spagnolo caused iTrade to create new account documents for E.S. which misstated his financial and investment information. Specifically, the new account application represented E.S. as having a net worth of \$1,000,00-2,500,000 and a liquid net worth of \$200,000-500,000. In reality, his net worth was approximately \$500,000 and his liquid net worth approximately \$50,000-100,000. The new account application also represented his investment objective as speculative and his risk tolerance as aggressive, when E.S. was actually a

conservative investor seeking a balanced portfolio. In addition, the application indicated that E.S. had extensive experience in stocks and options, and limited experience in mutual funds, annuities, UITs, and commodities. In reality, E.S. had only opened his first brokerage account in October 2008, and had never invested in options, annuities, UITs, or commodities.

Customer R.M.

49. Spagnolo began repeatedly cold calling R.M. in July 2009, trying to induce him to open an account at iTrade. In September 2009, Spagnolo recommended that he invest in a security referred to as CBI. R.M. refused to open an account with iTrade or to purchase any security from Spagnolo.

50. R.M. never discussed his investment objectives or risk tolerance with Spagnolo or anyone else at iTrade.

51. On September 3, 2009, Spagnolo caused iTrade to open an account in R.M.'s name and placed an order to purchase 100 shares of Chicago Bridge and Iron stock in the account at a cost of approximately \$1,583 without R.M.'s authorization to open the account or to purchase the security.

52. The information Spagnolo caused to be put on R.M.'s new account documents as to income, net worth, and investment experience on the new account documents was inaccurate.

Customer J.S.

53. Spagnolo cold called J.S. in late May 2009. J.S. agreed to open an account with iTrade, but he did not agree to purchase any securities at the time despite Spagnolo's recommendation that he purchase 500 shares of Excel Maritime Carriers. J.S. told Spagnolo that he did not want to buy any stock at the time.

54. On May 28, 2009, Spagnolo placed an order for the purchase of 500 shares of Excel Maritime Carriers in J.S.'s account at a cost of approximately \$5,060 without J.S.'s authorization to do so.

55. Spagnolo caused iTrade to create a new account application that misrepresented J.S.'s income as \$500,000-999,999, when it was in fact substantially below that.

Customer H.W.

56. Spagnolo began cold calling H.W. in mid-July 2009, and called him repeatedly in order to try to induce him to open an account at iTrade. H.W. did not agree to open an account, but told Spagnolo to send him information.

57. On July 13 2009, Spagnolo caused iTrade to open an account in H.W.'s name and placed an order to purchase 100 shares of ProShares Ultra Basic Materials Fund in the account at a cost of approximately \$1,574 without H.W.'s authorization to open the account or to purchase the security.

58. H.W. never looked at the paperwork iTrade sent him, and iTrade cancelled the purchase.

59. In early January 2010, Spagnolo again contacted H.W., recommending that H.W. invest in Chicago Bridge & Iron Co. H.W. again agreed to allow Spagnolo to send him information, but never agreed to purchase any securities through Spagnolo.

60. On January 5, 2010, Spagnolo entered an order to purchase 100 shares of Chicago Bridge & Iron Co. in H.W.'s account at a cost of approximately \$2,122 without H.W.'s authorization to do so.

Customer B.L.

61. Spagnolo cold called B.L. repeatedly in December 2009, trying to induce him to open an account at iTrade and recommending that he purchase a security through him. B.L. eventually agreed to have Spagnolo send some information, and told Spagnolo he would look into iTrade and the stock Spagnolo was recommending, do his own research, and then make a decision. B.L. never agreed to open an account with iTrade or buy any securities through Spagnolo.

62. Spagnolo did not discuss B.L.'s financial condition with him.

63. On December 9, 2009, Spagnolo caused iTrade to open an account in B.L.'s name and placed an order to purchase 200 shares of Excel Maritime Carriers in the account at a cost of approximately \$1,322 without authorization to open the account or to purchase the security.

Customer C.H.

64. Spagnolo cold called C.H. in December 2009, trying to induce him to open an account at iTrade and recommending that he invest in Excel Maritime Carriers. C.H. repeatedly told Spagnolo that it was not a good time for him to invest, and never agreed to open an account with iTrade or buy any securities through Spagnolo.

65. On December 17, 2009, Spagnolo caused iTrade to open an account in C.H.'s name and placed an order to purchase 300 shares of Excel Maritime Carriers in the account at a cost of approximately \$1,982 without C.H.'s authorization to open the account or to purchase the security.

FIRST CAUSE OF ACTION

**Unauthorized Trading and Unauthorized Opening of
Accounts by Menendez, ██████████ and Spagnolo
(NASD Conduct Rule 2110 and FINRA Conduct Rule 2010)**

66. Paragraphs 1 through 65 are repeated and realleged herein.
67. All of the purchases placed by Menendez, ██████████ and Spagnolo described above were unauthorized. None of those customers agreed to purchase securities.
68. Menendez opened accounts in the names of J.M., S.Y., and R.Y without their authorization.
69. ██████████ opened accounts in the names of J.G., J.N., and Z.S. without their authorization.
70. Spagnolo opened accounts in the names of M.B., R.E., E.S., R.M., H.W., B.L., and C.H. without their authorization.
71. By repeatedly engaging in unauthorized trading and unauthorized opening of customer accounts, Menendez, ██████████ and Spagnolo failed to observe high standards of commercial honor and just and equitable principles of trade. Menendez thereby violated FINRA Rule 2010, and ██████████ and Spagnolo violated NASD Rule 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

SECOND CAUSE OF ACTION

**False Books and Records by Menendez,
██████████ and Spagnolo
(NASD Conduct Rules 3110 and 2110 and FINRA Conduct Rule 2010)**

72. Paragraphs 1 through 71 are repeated and realleged herein.
73. Exchange Act Rule 17a-3(a)(17)(i)(A) requires that firms maintain a record of certain information for each customer who is a natural person. This information includes, among

other things, the customer's annual income, net worth, and investment experience. NASD Rule 3110(a) required members to make and preserve accurate records in accordance with Rule 17a-3.

74. Menendez created new account documentation for customer J.M. which contained false, inaccurate, and/or baseless information as to J.M.'s investment experience.

75. ████████ created false new account documentation for customers J.N., and J.S. which contained false, inaccurate, and/or baseless information as to their risk tolerances, investment objectives, investment experience, and/or financial situations.

76. Spagnolo created false new account documentation for customers R.E., E.S., R.M., and J.S. which contained false, inaccurate, and/or baseless information as to their risk tolerances, investment objectives, investment experience, and/or financial situations.

77. By creating and maintaining false records of these items, Menendez, ████████ and Spagnolo violated NASD Rule 3110(a). By so doing, Menendez also violated FINRA Rule 2010, and ████████ and Spagnolo violated NASD Rule 2010 (for conduct before December 15, 2008) and FINRA Rule 2110 (for conduct on or December 15, 2008).

78. In addition, Menendez, ████████ and Spagnolo caused iTrade to violate Section 17(a) of the Exchange Act and Rule 17a-(3)(17(i)(A)). By so doing, Menendez also violated FINRA Rule 2010, and ████████ and Spagnolo violated NASD Rule 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

THIRD CAUSE OF ACTION

Excessive Trading by Menendez (NASD Conduct Rules 2310 and 2110 and FINRA Rule 2010)

79. Paragraphs 1 through 78 are repeated and realleged herein.

Excessive trading by Menendez

Customer R.C.

80. R.C. opened an account at iTrade with Menendez in mid-October 2008.

81. Menendez caused 34 trades to be made in R.C.'s account during the 10-month period from November 2008 through August 2009, generating gross commissions of approximately \$21,828. During that period, the account had a turnover rate of 39 (annualized rate of approximately 47), based on \$600,486 in purchases and average monthly equity of \$15,481. The cost-to-equity ratio was approximately 161%. Thus, Menendez excessively traded R.C.'s account.

82. Menendez did not discuss all trades with R.C. before placing them, and he did not provide enough information about other trades for R.C. to understand what was taking place in his account.

Customer B.H.

83. B.H. opened an account with iTrade in late August 2008.

84. Menendez took over the responsibility for B.H.'s account in December 2008.

85. B.H. told Menendez that he had an investment objective of growth and a moderate-to-high risk tolerance.

86. Menendez caused 12 trades to be made in B.H.'s account during the three month period from December 2008 through mid-February 2009, generating gross commissions of approximately \$18,070. During that period, the account had a turnover rate of approximately 20.5 for the three months at issue (annualized rate of 81), based on \$423,811 in purchases and average monthly equity of \$20,659. The cost-to-equity ratio was approximately 93%. Thus, Menendez excessively traded B.H.'s account.

87. Menendez did not provide B.H. with adequate information to assess the trades, including whether trades were going to be on margin or how much margin would be used with B.H.

88. Excessive trading is inherently unsuitable.

89. By engaging in the foregoing conduct, Menendez violated NASD Rule 2310. By violating NASD Rule 2310, Menendez also violated NASD Conduct Rule 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

FOURTH CAUSE OF ACTION

Failure to Supervise by Sanders (NASD Rules 3010(a), 3010 & (b), and 2110 and FINRA Rule 2010)

90. Paragraphs 1 through 89 are repeated and realleged herein.

91. Sanders was the Chief Compliance Officer and manager of the Selden branch of iTrade. At all times relevant to this Complaint, Sanders had supervisory responsibility over all business conducted by the firm's representatives, exception reports, customer correspondence, and customer complaints.

Failure to Respond to Indicia of Excessive Trading or Churning

92. During the period March 2007 through April 2009, iTrade's clearing firm generated reports titled "Monthly Active Account Reports" which were available to, and sometimes received by, Sanders. This report identified accounts that met pre-determined criteria, included turnover rates, cost-to-equity and commission-to-equity ratios, commissions, and losses.

93. The Monthly Active Account Reports raised significant "red flags" indicative of possible excessive trading or churning by numerous iTrade registered representatives.

94. For instance, from March, 1, 2007 to April 30, 2008, the Monthly Active Account Reports disclosed 36 accounts where the account turnover rates ranged from 6.64 to 327.73 and the cost-to-equity ratios ranged from 20.83% to 310.85%.

95. Sanders was unaware of the existence of the Monthly Active Account Reports until 2008, when FINRA staff discussed them with him.

96. Even after he learned of the existence of these reports and began to review them, Sanders failed to adequately monitor them and respond to the continuing indicia of excessive trading. Between June 2008 and April 2009, there were 349 accounts appearing on Monthly Active Account Reports generated by the clearing firm. At least 19 accounts, and up to 55 accounts, were designated as "active" each month using the clearing firm's criteria.

97. Certain registered representatives' accounts appeared on the Monthly Active Account Reports frequently. Between June 2008 and April 2009, at least 11 representatives (including Menendez) appeared on the reports with multiple active accounts more than 5 times.

98. Sanders was never concerned that any of the representatives were engaged in excessive trading, never questioned a broker about the level of activity in his accounts, and almost never, if ever, contacted a customer to inquire into the level of trading. Instead, Sanders assumed that iTrade's clients were interested in active trading.

Failure to Respond to Indicia of Unauthorized Trading and Opening of Accounts

99. iTrade had an extremely high level of cancelled trades, many of which were designated by iTrade as customer reneges. Between the second quarter of 2008 and the end of 2009, there were 588 such trades.

100. Many of these suspicious cancellations involved the same representatives. Fifteen representatives were party to 20 or more cancelled, non-rebilled trades during that time period, and seven were identified on 40 or more such trades.

101. Sanders failed to conduct any meaningful inquiry into these cancelled transactions and account openings. He was not concerned that the cancellations were potentially indicative of unauthorized activity, instead assuming that customers were renegeing on trades. He only contacted customers in what he described as a few instances.

Failure to Enforce iTrade's Heightened Supervision Requirements

102. iTrade's supervisory procedures established certain conditions for placing representatives on heightened supervision. Among those criteria were registered representatives having three or more customer complaints alleging sales practice abuse within the past two years (including written complaints, arbitrations, civil actions) and registered representatives who had been employed by three or more broker/dealers within the previous five years.

103. Sanders was responsible for implementing and enforcing the heightened supervision procedures.

104. Two representatives (including ██████████) were the subject of at least three sales practice complaints but were not placed on heightened supervision. ██████████ was the subject of eight complaints within two years, including allegations of unauthorized trading, failure to follow instructions, excessive fees or commission, and suitability. The other was the subject of five complaints, including unauthorized trading and improper sales practices.

105. During 2008 and 2009, iTrade employed twelve representatives (including Menendez) who had been employed by at least three broker/dealers within the five years before joining iTrade, but were not placed on heightened supervision. This group included one

representative who had been registered with 14 firms in the five years before joining iTrade, one who had been registered with nine firms, one who had been registered with seven firms, four who had been registered with four firms, and five who had been registered with three firms.

106. Sanders failed to place any of these representatives on heightened supervision.²

107. By virtue of the conduct set forth in paragraphs 102 through 118, Sanders failed to supervise the business of iTrade and its employees reasonably, and failed to enforce the firm's written supervisory procedures, thereby violating NASD Rules 3010(a) & (b). By so doing, Sanders also violated NASD Rule 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

FIFTH CAUSE OF ACTION

Failure to Report Complaints by Sanders (NASD Rules 3070 and 2110 and FINRA Rule 2010)

108. Paragraphs 1 through 107 are repeated and realleged herein.

109. NASD Rule 3070(c), in effect at the time of the violations at issue,³ required that firms report statistical information about every customer complaint on a quarterly basis.

110. As Chief Compliance Officer of iTrade, Sanders was responsible under the firm's written procedures for maintaining complaint files and complying with the reporting requirements for complaints.

111. Between May 1, 2008 and December 31, 2009, Sanders failed to report at least 26 customer complaints that were not reported as required under NASD Rule 3070(c). These included, among other things, ten complaints of unauthorized trading, nine of poor performance, and five of failure to follow instructions.

² Sanders OTR, 281-398.

³ NASD Rule 3070(c) has been superseded by FINRA Rule 4530 as of July 11, 2011.

112. In addition, iTrade entered into settlements of customer complaints of "certain improprieties" on July 8, 2008, February 3, 2009, and March 27, 2009. Sanders also failed to report these settlements under Rule 3070(c).

113. By virtue of this conduct, Sanders violated NASD Rule 3070, and thereby also violated NASD Rule 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

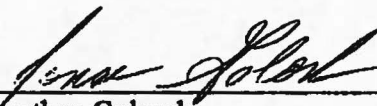
PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) of the FINRA Code of Procedure be imposed; and
- B. order that each respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330 of the FINRA Code of Procedure.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 30, 2013


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