

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

AUSTIN R. DUTTON, JR.
(CRD No. 2739167),

Respondent.

Disciplinary Proceeding
No. 2018059178401

Hearing Officer–RES

DEFAULT DECISION

May 29, 2024

Respondent is barred from associating with any FINRA member firm in any capacity for making unsuitable recommendations of alternative investments; falsifying books and records of a FINRA member firm; and failing to respond, or failing to respond in a timely manner, to FINRA Rule 8210 requests for information and documents. In connection with making unsuitable recommendations, Respondent is ordered to pay disgorgement of \$65,509 in commissions, plus prejudgment interest.

Appearances

For Complainant: Michael Dorfman-Gonzalez, Esq., Kay Lackey, Esq., Adam Balin, Esq., Alyssa Braver, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: No appearance

DECISION

I. Introduction

FINRA's Department of Enforcement filed a Complaint against Respondent Austin R. Dutton, Jr., formerly a registered representative. In the first cause of action, Enforcement alleges that Respondent made unsuitable recommendations to ten customers to purchase \$1.2 million in alternative investments.¹ The second and third causes of action allege that Respondent inflated the net worth, risk tolerance, and investment objective of eight of these customers, thereby falsifying his employer firm's books and records.² The fourth and fifth causes of action allege

¹ Complaint ("Compl.") ¶ 1.

² Compl. ¶¶ 7-8.

that Respondent failed to respond, or failed to respond in a timely manner, to FINRA Rule 8210 requests.³ According to the Complaint, Respondent violated FINRA Rules 2010, 2111, 4511, and 8210.⁴

After Enforcement served Respondent with the Complaint and the First and Second Notices of Complaint, Respondent failed to file an Answer. At my direction, Enforcement filed a motion for entry of default decision (“Default Motion”). Enforcement’s Default Motion is supported by the declarations of counsel Michael Dorfman-Gonzalez, Esq. (“Dorfman-Gonzalez Decl.”) and 18 supporting exhibits (CX-1 through CX-18). Respondent did not file an opposition or otherwise respond to this Default Motion. For the reasons stated below, I find Respondent in default, deem admitted all allegations in the Complaint, grant the Default Motion, and issue this Default Decision.

II. Findings of Fact and Conclusions of Law

A. Background

According to the Central Registration Depository (“CRD”), Respondent first entered the securities industry in 1996 as a General Securities Representative (“GSR”).⁵ For ten years, Respondent was registered as a GSR through his association with Newbridge Securities Corporation (“Newbridge”).⁶ Newbridge filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on August 10, 2017, stating that Respondent had voluntarily resigned during an investigation by the State of Pennsylvania.⁷

Beginning in May 2020, Respondent was registered as a GSR through his association with American Trust Investment Services, Inc. (“American Trust”).⁸ American Trust filed a Form U5 in January 2022 disclosing that Respondent had voluntarily terminated his registration through this firm.⁹ On December 13, 2023, American Trust filed a Form U5 amendment disclosing a customer complaint against Respondent.¹⁰ The amendment disclosed an arbitration two of Respondent’s customers had filed alleging that Respondent committed sales practice

³ Compl. ¶¶ 10-11, 13-15.

⁴ Compl. ¶¶ 6, 9, 14, 16.

⁵ Complainant’s Exhibit (“CX-__”) 1, at 13.

⁶ Dorfman-Gonzalez Decl. ¶ 9.

⁷ CX-1, at 9; Dorfman-Gonzalez Decl. ¶ 10.

⁸ Dorfman-Gonzalez Decl. ¶ 12.

⁹ CX-1, at 6.

¹⁰ CX-1, at 20.

violations related to his recommendations that they purchase alternative investments.¹¹ Respondent is not registered with FINRA or associated with a FINRA member firm.¹²

Respondent has relevant disciplinary history. In 2017, Respondent entered into a Consent Agreement and Order with the State of Pennsylvania's Department of Banking and Securities for violating the Pennsylvania Securities Act of 1972.¹³ He was suspended for two months from associating with any FINRA member firm under FINRA Rule 9552 because he had failed to provide information and documents called for by two FINRA Rule 8210 requests.¹⁴ Last year, Respondent was suspended from associating with any FINRA member firm for failure to pay an arbitration award.¹⁵

B. Jurisdiction

Respondent remains subject to FINRA jurisdiction under Article V, Section 4 of FINRA's By-Laws for the purpose of this proceeding because the Complaint (1) was filed within two years after the effective date of an amendment to Respondent's Form U5, (2) charges Respondent with misconduct committed while he was registered or associated with a FINRA member firm, and (3) charges Respondent with failure to respond to FINRA requests for information in the two-year period after the filing of an amendment to his Form U5.¹⁶

C. Origin of the Investigation

The Complaint arises from two investigations. In 2017, FINRA received a regulatory tip about the investigation by the State of Pennsylvania ("First Investigation"). Following this tip, FINRA Staff learned of several FINRA arbitration statements of claim that customers had filed against Respondent and Newbridge. These statements of claim alleged that Respondent made unsuitable recommendations of alternative investments. As a result of the regulatory tip and the arbitration statements of claim, FINRA investigated Respondent. This investigation included a review of his securities recommendations to customers.¹⁷

The second investigation concerned the issue whether Respondent had engaged in private securities transactions ("Second Investigation"). This investigation originated from a FINRA cycle examination. As part of this cycle examination, Respondent completed a personal activity

¹¹ Dorfman-Gonzalez Decl. ¶ 13.

¹² CX-1, at 5; Dorfman-Gonzalez Decl. ¶ 14.

¹³ Compl. ¶ 19; Dorfman-Gonzalez Decl. ¶ 10.

¹⁴ Compl. ¶ 24.

¹⁵ Compl. ¶ 25.

¹⁶ Compl. ¶ 25; FINRA By-Laws, Art. V, § 4.

¹⁷ Dorfman-Gonzalez Decl. ¶ 4.

questionnaire in which he disclosed he owned an investment account at a third-party entity that he identified only by its initials, “PFCO.”

D. Respondent’s Default

Enforcement properly served Respondent with the Complaint and the First and Second Notices of Complaint by mailing them to Respondent’s last known residential address as reflected in CRD, in accordance with FINRA Rule 9134.¹⁸ Respondent failed to answer or otherwise respond to the Complaint by February 22, 2024, the deadline in the Second Notice of Complaint, or at any other time.¹⁹ Based on these facts, I find Respondent in default for his failure to answer the Complaint.

FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who fails to answer the complaint within the time afforded by FINRA Rule 9215.²⁰ Respondent had the opportunity to file an Answer but did not. I find a default decision warranted.²¹ Once I find Respondent in default, I am authorized by FINRA Rules 9215 and 9269 to treat the allegations of the Complaint as admitted.²² As described below, I find Respondent committed the violations charged in the Complaint.

E. Respondent Made Unsuitable Recommendations of Alternative Investments, in Violation of FINRA Rules 2111 and 2010 (First Cause of Action)

1. Governing Law

Enforcement charges Respondent with violating FINRA Rules 2111 and 2010 because he made unsuitable recommendations of alternative investments.²³ In the period covered by the Complaint, FINRA Rule 2111 required an associated person to have a reasonable basis to believe a recommended transaction or investment strategy involving a security was suitable for the customer:

A member or associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to,

¹⁸ Dorfman-Gonzalez Decl. ¶¶ 22-23, 28, 30; *accord* FINRA Rule 9134(a)(2) and (b)(1).

¹⁹ Dorfman-Gonzalez Decl. ¶ 34.

²⁰ FINRA Rule 9269(a)(1).

²¹ Respondent is notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

²² FINRA Rules 9215(f) and 9269(a)(2).

²³ Compl. ¶¶ 1-6, 197-205.

the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.²⁴

According to former FINRA Supplementary Material 2111, the "customer-specific obligation requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a)."²⁵

FINRA Rule 2111 imposes on persons associated with FINRA member firms both "reasonable-basis" and "customer-specific" suitability obligations.²⁶ First, the associated person must have a reasonable basis to believe a securities recommendation is suitable based on information obtained through reasonable diligence about the customer's investment profile.²⁷ Second, customer-specific suitability requires that the recommendation be consistent with the customer's best interests and financial situation, and the associated person must disclose the risks associated with the investment to ensure the customer is willing to take such risks.²⁸ Violating FINRA's suitability rule breaches an important duty that is fundamental to the relationship between associated persons and their customers.²⁹ Making unsuitable recommendations violates both FINRA Rules 2111 and 2101.³⁰

2. Facts Showing a Violation

Respondent recommended to customers the purchase of illiquid alternative investments without having a reasonable basis to believe such investments were suitable for the customers.³¹ Respondent's recommendations included these alternative investments:³²

²⁴ FINRA Rule 2111(a) (May 2014-June 2020 version); *accord Dep't of Enforcement v. Reyes*, No. 2016051493704, 2021 FINRA Discip. LEXIS 29, at *29-30 (NAC Oct. 7, 2021).

²⁵ FINRA Rule 2111, Supplementary Material 2111.05(b).

²⁶ *Dep't of Enforcement v. Patatian*, No. 2018057235801, 2023 FINRA Discip. LEXIS 13, at *35 (NAC Sept. 27, 2023), *appeal dismissed*, Exchange Act Release No. 99619, 2024 SEC LEXIS 475 (Feb. 28, 2024).

²⁷ *Dep't of Enforcement v. Reyes*, 2021 FINRA Discip. LEXIS 29, at *29-30.

²⁸ *Dep't of Enforcement v. Patatian*, 2023 FINRA Discip. LEXIS 13, at *41-42; *Edward Beyn*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980, at *14-15 (Apr. 19, 2023).

²⁹ *Dep't of Enforcement v. Escarcega*, No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *66 (NAC July 20, 2017).

³⁰ *Dep't of Enforcement v. Patatian*, 2023 FINRA Discip. LEXIS 13, at *44-45.

³¹ Compl. ¶ 201.

³² Alternative investments are not standard stocks and bonds, but instead have complex terms and conditions that are not easily understood by retail investors. *See* Regulatory Notice 03-71, <https://www.finra.org/orders-guidance/notices/03-71>.

a. Non-Traded REITs

A REIT (“Real Estate Investment Trust”) is a corporation, trust, or association that owns or manages income-producing real estate.³³ The risks of investing in REITs that are not traded on a national securities exchange include illiquidity, restrictive early redemption of shares, and high front-end costs.³⁴

Respondent recommended that his customers invest in these non-traded REITs:

- American Realty Capital Healthcare Trust II, Inc. (“ARC HCT II”)
- American Realty Capital Realty Finance Trust, Inc. (“ARC RFT”)
- American Realty Capital—Retail Centers of America, Inc. (“ARC Retail”)
- Preferred Apartment Communities, Inc. (“PAC”) Preferred Stock
- American Realty Capital Hospitality Trust, Inc. (“ARC Hospitality”)
- Cottonwood Residential, Inc. (“Cottonwood Residential”)
- Cottonwood Residential O.P., L.P. (“Cottonwood Residential O.P.”)
- Cottonwood Communities, Inc. (“Cottonwood Communities”)
- Carter Validus Mission Critical REIT II (“Carter Validus”)
- Bluerock Residential Growth REIT, Inc. (“Blue Rock”) Preferred Stock
- Mackenzie Realty Capital, Inc. (“Mackenzie Realty”)³⁵

Cottonwood Residential limited its offering to “accredited investors.” An accredited investor is a natural person (1) whose net worth exceeds \$1 million (excluding the value of their primary residence), or (2) who has an annual income in excess of \$200,000 in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year.³⁶

³³ Compl. ¶ 31.

³⁴ Compl. ¶ 32.

³⁵ Compl. ¶ 33.

³⁶ Compl. ¶ 34.

b. Non-Traded BDCs

A BDC (“Business Development Corporation”) is a closed-end investment company that invests in small and medium-sized enterprises that cannot raise capital easily. Non-traded BDCs expose investors to credit risk, leverage risk, and lack of liquidity.³⁷ The non-traded BDCs that Respondent recommended to his customers were Sierra Income Corporation (“Sierra Income”) and Terra Income Fund 6, Inc. (“Terra Income”).³⁸

c. Structured Products

Structured products are securities derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance, or a foreign currency. Structured products usually have two components—a note and a derivative. The note pays interest to the investor at a specified rate and interval.³⁹ “Steepener notes” are structured products that usually offer a higher “teaser” coupon rate for the first year, after which they offer variable rates determined by the steepness of a yield curve.⁴⁰ According to FINRA Regulatory Notice 12-03, a complex product like a steepener note “presents an additional risk to retail investors because its complexity adds a further dimension to the investment decision process beyond the fundamentals of market forces.”⁴¹ The steepener notes that Respondent recommended to his customers were: Citigroup Inc. Callable Leveraged CMS Spread Notes (“Citigroup Notes”); Societe Generale 12% Trigger Notes (“Societe Generale Notes”); Morgan Stanley Leveraged CMS Curve and S&P Index Linked Notes (“Morgan Stanley Notes”); and JPMorgan Chase & Co. Callable Range Accrual Notes (“JPM Notes”).⁴²

d. Other Alternative Products

The other structured products that Respondent recommended to his customers were: GWG Holdings, Inc. Redeemable Preferred Stock (“GWG Holdings”); Multi Strategy Growth & Income Fund (“MSGI Fund”); Griffin Institutional Access Credit Fund (“Griffin International”); and GPB Automotive Portfolio, LP (“GPB Automotive Portfolio”).⁴³

e. Respondent’s Customers

Respondent usually found customers by advertising his services to first responders, including police officers, firefighters, other members of the Fraternal Order of Police (“FOP”),

³⁷ Compl. ¶ 35.

³⁸ Compl. ¶ 36.

³⁹ Compl. ¶ 37.

⁴⁰ Compl. ¶ 38.

⁴¹ FINRA Regulatory Notice 12-03, at 3 (Jan. 2012), <https://finra.org/rules-guidance/notices/12-03>.

⁴² Compl. ¶ 39.

⁴³ Compl. ¶ 40.

and their spouses.⁴⁴ Respondent's customers were usually retired or approaching retirement.⁴⁵ All the customers described in this Default Decision were first responders or were married to a first responder.⁴⁶

f. Respondent Made Unsuitable Recommendations to Ten Customers

Respondent made unsuitable recommendations that his customers purchase \$1.2 million in alternative investments.⁴⁷ Respondent's unsuitable recommendations generated \$72,789 in commissions for himself and his employer firm.⁴⁸ I describe Respondent's recommendations below.

i. Customer A

Customer A opened two retirement accounts in June 2014 after attending a presentation Respondent made for FOP members. Customer A was a 57-year-old retired police officer living in Montrose, Pennsylvania.⁴⁹ According to Newbridge's new account documents, his annual income was \$100,001-\$200,000, his liquid assets were \$100,001-\$200,000, and his net worth was \$500,001-\$1,000,000. Customer A's investment objective was marked as "Growth & Income," his risk tolerance was moderate, and his investment knowledge was limited.⁵⁰ He had no experience investing in alternative investments.⁵¹ Customer A had \$652,631 in investable assets and net worth.⁵²

Respondent recommended that Customer A use a significant portion of his investable assets to purchase alternative investments.⁵³ These investable assets included retirement savings. From 2014 through 2017, Customer A bought on Respondent's recommendation alternative investments totaling \$341,748.⁵⁴ When Respondent recommended that Customer A purchase \$20,000 in MSGI Fund and \$20,000 in a Societe Generale Note in November 2014, Customer A already had significant alternative investment holdings based on Respondent's earlier

⁴⁴ Compl. ¶ 41.

⁴⁵ Compl. ¶ 42.

⁴⁶ Compl. ¶ 43.

⁴⁷ Compl. ¶ 62.

⁴⁸ Compl. ¶ 63.

⁴⁹ Compl. ¶ 64.

⁵⁰ Compl. ¶ 65. All net worth amounts in this Default Decision exclude the customer's primary residence, unless otherwise indicated.

⁵¹ Compl. ¶ 66.

⁵² Compl. ¶ 67.

⁵³ Compl. ¶ 68.

⁵⁴ Compl. ¶ 69.

recommendations. The additional purchases caused Customer A to have 27 percent of his net worth and investable assets concentrated in alternative investments.⁵⁵

In the end, Customer A had 48 percent of his net worth and investable assets concentrated in alternative investments.⁵⁶

Respondent's recommendations that Customer A invest in alternative investments were unsuitable based on his overall investor profile. This investor profile included Customer A's retirement status, risk tolerance, investment objective, net worth, and investable assets. Respondent's recommendations were unsuitable also because they led to over-concentration of Customer A's net worth and investable assets in alternative investments.⁵⁷ Respondent's recommendation that Customer A purchase Cottonwood Residential was not suitable because he was not an accredited investor.⁵⁸

ii. Customers B and C

Customer B opened an individual retirement account in March 2010 after FOP members referred him to Respondent. Customer B was a 54-year-old retired police officer with a part-time job. His wife, Customer C, was a 55-year-old retiree with a part-time job.⁵⁹ Customers B and C opened a joint retirement account, and Customer C opened an individual retirement account. Customers B and C had no experience in alternative investments.⁶⁰

According to Newbridge's new account documents, Customers B's and C's annual income was \$50,001-\$100,000, their liquid assets were \$100,001-\$200,000, and their net worth was \$100,001-\$500,000. Their investment objective was marked as "Growth & Income," their risk tolerance was moderate, and their investment knowledge was limited.⁶¹ Customers B and C had \$887,865 in investable assets, and their net worth was \$1.2 million.⁶²

Respondent recommended that Customers B and C use a significant portion of their investable assets to purchase alternative investments.⁶³ These investable assets included

⁵⁵ Compl. ¶ 70.

⁵⁶ Compl. ¶ 75.

⁵⁷ Compl. ¶ 76.

⁵⁸ Compl. ¶ 77.

⁵⁹ Compl. ¶ 78.

⁶⁰ Compl. ¶ 79.

⁶¹ Compl. ¶ 80.

⁶² Compl. ¶ 81.

⁶³ Compl. ¶ 82.

retirement savings. In 2014 and 2015, Customers B and C purchased on Respondent's recommendation alternative investments totaling \$222,357.⁶⁴

In the end, Customers B and C had 40 percent of their net worth and 55 percent of their investable assets concentrated in alternative investments.⁶⁵

Respondent's recommendations that Customers B and C purchase alternative investments were unsuitable based on their overall investor profile. This investor profile included Customers B's and C's retirement status, risk tolerance, investment objective, net worth, and investable assets. Respondent's recommendations were unsuitable because they resulted in over-concentration of Customers B's and C's net worth and investable assets in alternative investments.⁶⁶

iii. Customer D

Customer D opened an account in January 2015 after FOP members referred him to Respondent. Customer D was a 58-year-old police officer approaching retirement who lived in Philadelphia, Pennsylvania.⁶⁷ As Respondent knew, Customer D had recently suffered a stroke and experienced serious health issues.⁶⁸ According to Newbridge's new account documents, Customer D's annual income was \$50,001-\$100,000, his liquid assets were under \$25,000, and his net worth was \$100,001-\$500,000. Customer D's investment objective was marked as "Growth & Income," his risk tolerance was incorrectly marked as aggressive, and his investment knowledge was limited.⁶⁹ Customer D informed Respondent that he was a conservative or moderate investor given his upcoming retirement and health concerns. Customer D did not have experience in alternative investments.⁷⁰

Respondent recommended that Customer D use a significant portion of his investable assets to invest in alternative investments. These investable assets included retirement savings.⁷¹ Respondent told Customer D the alternative investments he recommended were liquid, and that Customer D could not lose his principal investment.⁷² This was not accurate. From 2015 through

⁶⁴ Compl. ¶ 83.

⁶⁵ Compl. ¶ 89.

⁶⁶ Compl. ¶ 90.

⁶⁷ Compl. ¶ 91.

⁶⁸ Compl. ¶ 91.

⁶⁹ Compl. ¶ 92.

⁷⁰ Compl. ¶ 93.

⁷¹ Compl. ¶ 95.

⁷² Compl. ¶ 96.

2017, Customer D bought on Respondent's recommendation alternative investments totaling \$204,000.⁷³

In the end, Customer D had 36 percent of his net worth and 77 percent of his investable assets concentrated in alternative investments.⁷⁴

Respondent's recommendations that Customer D purchase alternative investments were unsuitable based on his overall investor profile. This investor profile included Customer D's retirement status, risk tolerance, investment objective, net worth, and investable assets. Respondent's recommendations to Customer D were unsuitable because they resulted in over-concentration of his net worth and investable assets in alternative investments.⁷⁵ Customer D passed away in 2021.⁷⁶

iv. Customer E

Customer E opened an account in October 2015 after being referred to Respondent by FOP members whom she knew through her husband, a retired police officer. At the time, Customer E was a 57-year-old nurse living in Philadelphia, Pennsylvania.⁷⁷ According to Newbridge's new account documents, Customer E's annual income was \$100,001-\$200,000, her liquid assets were \$100,001-\$200,000, and her net worth was \$500,001-\$1,000,000. Customer E's investment objective was marked as "Growth & Income," her risk tolerance was incorrectly marked as aggressive, and her investment knowledge was limited.⁷⁸ Customer E had \$346,522 in investable assets, and her net worth was \$500,000.⁷⁹ Customer E told Respondent she was not an aggressive investor. Customer E had no experience in alternative investments.⁸⁰

Respondent recommended that Customer E use a significant portion of her investable assets to purchase alternative investments.⁸¹ These investable assets included retirement savings. From 2015 through 2017, Customer E bought on Respondent's recommendation alternative investments totaling \$154,000.⁸²

⁷³ Compl. ¶ 97.

⁷⁴ Compl. ¶ 100.

⁷⁵ Compl. ¶ 101.

⁷⁶ Compl. ¶ 102.

⁷⁷ Compl. ¶ 103.

⁷⁸ Compl. ¶ 104.

⁷⁹ Compl. ¶ 105.

⁸⁰ Compl. ¶ 106.

⁸¹ Compl. ¶ 108.

⁸² Compl. ¶ 109.

Respondent's recommendations that Customer E purchase alternative investments were unsuitable based on her overall investor profile. This investor profile included Customer E's risk tolerance, investment objective, net worth, and investable assets. Respondent's recommendations to Customer E resulted in over-concentration of her net worth and investable assets in alternative investments.⁸³

v. Customers F and G

Customers F and G opened a joint retirement account with Respondent in September 2007. Customers F and G were a married couple living in Philadelphia, Pennsylvania. Customer F was a 56-year-old retired data entry clerk, and Customer G was a 56-year-old firefighter approaching retirement.⁸⁴ According to Newbridge's new account documents for the joint account, Customers F's and G's annual income was \$50,001-\$100,000, their liquid assets were \$50,000-\$100,000, and their net worth was \$100,001-\$500,000. Customer F's and G's primary investment objective was marked as "Capital Appreciation," their risk tolerance was aggressive, and their investment knowledge was limited.⁸⁵ Respondent submitted an updated new account document for the joint account, changing Customers F's and G's liquid net worth to \$100,001-\$200,000, their net worth to \$500,0001-\$1,000,000, their risk tolerance to moderate, and their investment objective to "Growth & Income."⁸⁶

Customer G opened an individual retirement account with Respondent in November 2015.⁸⁷ Customers F and G had \$720,701 in investable assets, and their net worth was \$950,980.⁸⁸ Respondent recommended that Customers F and G use a significant portion of their investable assets to purchase alternative investments.⁸⁹ From 2014 through 2017, Customers F and G bought on Respondent's recommendation alternative investments totaling \$224,000.⁹⁰

In the end, Customers F and G had 24 percent of their net worth and 32 percent of their investable assets concentrated in alternative investments.⁹¹

Respondent's recommendations that Customers F and G purchase additional alternative investments were unsuitable based on their overall investor profile. This investor profile included Customers F's and G's age, retirement status, risk tolerance, net worth, and investable assets.

⁸³ Compl. ¶ 116.

⁸⁴ Compl. ¶ 117.

⁸⁵ Compl. ¶ 118.

⁸⁶ Compl. ¶ 119.

⁸⁷ Compl. ¶ 120.

⁸⁸ Compl. ¶ 121.

⁸⁹ Compl. ¶ 122.

⁹⁰ Compl. ¶ 123.

⁹¹ Compl. ¶ 126.

Respondent's recommendations to Customers F and G led to over-concentration of their net worth and investable assets in alternative investments.⁹²

Customer G passed away in 2019, and Customer F inherited their joint account and Customer G's individual retirement account.⁹³ When Customer G was alive, Customer F rarely discussed her husband's and her brokerage accounts with Respondent.⁹⁴ Respondent recommended that Customer F use her remaining investable assets to purchase alternative investments.⁹⁵ Respondent made this recommendation even though a substantial portion of Customer F's retirement portfolio was already concentrated in alternative investments. Customer F told Respondent she wanted access to her savings.⁹⁶ Respondent knew Customer F had completed a financial statement that calculated her liquid net worth as \$460,877, her total net worth as \$695,377, and her holdings in alternative investments as \$118,000.⁹⁷ Still, Customer F bought on Respondent's recommendation an additional \$180,000 in alternative investments.⁹⁸

In the end, Respondent's recommendations caused Customer F to have 43 percent of her net worth of \$695,377 concentrated in alternative investments.⁹⁹

Respondent's recommendations that Customer F purchase alternative investments were unsuitable based on her overall investor profile. This investor profile included her age, retirement status, risk tolerance, net worth, and investable assets. Respondent's recommendations to Customer F resulted in over-concentration of her net worth and investable assets in alternative investments.¹⁰⁰

vi. Customer H

Customer H opened an individual brokerage account and an individual retirement account with Respondent in September and October 2015. Customer H was a 67-year-old security guard and retired firefighter living in Hazelton, Pennsylvania.¹⁰¹ He was a conservative investor with no experience in alternative investments. Customer H's annual income ranged from

⁹² Compl. ¶ 127.

⁹³ Compl. ¶ 128.

⁹⁴ Compl. ¶ 129.

⁹⁵ Compl. ¶ 134.

⁹⁶ Compl. ¶ 134.

⁹⁷ Compl. ¶ 135.

⁹⁸ Compl. ¶ 136.

⁹⁹ Compl. ¶ 137.

¹⁰⁰ Compl. ¶ 139.

¹⁰¹ Compl. ¶ 140.

\$50,000 to \$100,000, and he had \$474,470 in investable assets.¹⁰² Customer H's net worth was \$1 million, but it later decreased to \$500,000.¹⁰³ Newbridge's new account documents for Customer H showed his annual income was \$50,001-\$100,000, his liquid assets were \$100,001-\$200,000, and his net worth was \$500,001-\$1,000,000.¹⁰⁴

Respondent recommended that Customer H use a significant portion of his investable assets to purchase alternative investments.¹⁰⁵ These investable assets included retirement savings. In 2015 and 2016, Customer H bought on Respondent's recommendation alternative investments totaling \$297,200.¹⁰⁶

Respondent's recommendations that Customer H purchase alternative investments were unsuitable based on his overall investor profile. This investor profile included Customer H's age, retirement status, risk tolerance, investment objective, net worth, and investable assets. Respondent's recommendations led to over-concentration of Customer H's net worth and investable assets in alternative investments.¹⁰⁷

vii. Customers I and J

Customers I and J were a married couple who opened a joint account with Respondent in July 2015. Customers I and J did so after attending a retirement seminar for the FOP in which Respondent's contact information was distributed. Customer I was a 58-year-old police officer approaching retirement who lived in Philadelphia, Pennsylvania. Customer J was a 56-year-old donation coordinator for a nonprofit organization.¹⁰⁸ Customers I and J were moderate-risk investors with no experience in alternative investments. Customers I and J had \$806,520 in investable assets, and their net worth was \$1 million.¹⁰⁹

Newbridge's new account document for Customer I's and J's joint account stated their annual income was \$100,001-\$200,000, their liquid assets were \$200,001-\$500,000, and their net worth was \$1,000,001-\$3,000,000.¹¹⁰ Customer I later opened an individual retirement

¹⁰² Compl. ¶ 141.

¹⁰³ Compl. ¶ 142.

¹⁰⁴ Compl. ¶ 143.

¹⁰⁵ Compl. ¶ 146.

¹⁰⁶ Compl. ¶ 147.

¹⁰⁷ Compl. ¶ 151.

¹⁰⁸ Compl. ¶ 152.

¹⁰⁹ Compl. ¶ 153.

¹¹⁰ Compl. ¶ 154.

account with Respondent. Customer I's investment objective was marked as "Growth & Income," his risk tolerance was aggressive, and his investment knowledge was limited.¹¹¹

Respondent recommended that Customers I and J use a significant portion of their investable assets to invest in alternative investments.¹¹² These investable assets included retirement savings. Customers I and J bought on Respondent's recommendation alternative investments totaling \$252,800.¹¹³

When Respondent recommended that Customers I and J purchase \$50,000 in GWG Holdings, they had already purchased \$200,000 in alternative investments based on Respondent's earlier recommendations. This purchase of GWG Holdings caused Customers I and J to have 24 percent of their net worth and 30 percent of their investable assets concentrated in alternative investments.¹¹⁴

In the end, Customers I and J had 25 percent of their net worth and 31 percent of their investable assets concentrated in alternative investments.¹¹⁵

Respondent's recommendations that Customers I and J purchase alternative investments were unsuitable based on their overall investor profile. This investor profile included their retirement status, risk tolerance, investment objective, net worth, and investable assets. Respondent's recommendations to Customers I and J resulted in over-concentration of their net worth and investable assets in alternative investments.¹¹⁶

g. Summary of Respondent's Unsuitable Recommendations

Respondent's recommendations of alternative investments to Customers A through J were unsuitable based on the customers' investment profile, including their net worth, investable assets, annual income, investment objective, and risk tolerance. Respondent's recommendations of alternative investments were unsuitable to retired customers based on their retirement status, and unsuitable for senior customers based on their ages.¹¹⁷ I conclude that Respondent violated FINRA Rules 2111 and 2010 when he made unsuitable recommendations to Customers A through J to purchase \$1.2 million in alternative investments.¹¹⁸

¹¹¹ Compl. ¶ 155.

¹¹² Compl. ¶ 157.

¹¹³ Compl. ¶ 158.

¹¹⁴ Compl. ¶ 159.

¹¹⁵ Compl. ¶ 161.

¹¹⁶ Compl. ¶ 162.

¹¹⁷ Compl. ¶ 202.

¹¹⁸ The version of this Default Decision to be served on the parties will include an addendum, not included in the public version of the Decision, that identifies Customers A through J.

F. Respondent Falsified Books and Records of a FINRA Member Firm and Caused These Books and Records to be Inaccurate, in Violation of FINRA Rules 4511 and 2010 (Second and Third Causes of Action)

1. Governing Law

In the second cause of action, Enforcement charges Respondent with violating FINRA Rules 4511 and 2010 because he falsified books and records of a FINRA member firm and made them inaccurate.¹¹⁹ FINRA Rule 4511 provides, “Members shall make and preserve books and records as required under the FINRA rules, the [Securities] Exchange Act [of 1934] and the applicable Exchange Act rules.”¹²⁰ Exchange Act Rule 17a-3 requires broker-dealers to keep and preserve

[a]n account record including the customer’s or owner’s name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and the account’s investment objective.¹²¹

Exchange Act Rule 17a-3 requires broker-dealers to make and keep current “[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security . . . whether executed or unexecuted.”¹²² The duty to make broker-dealer records and keep them current includes the duty to cause such records to be true and correct.¹²³ An associated person violates FINRA Rule 4511 when he changes or omits information to cause his customer’s net worth to be overstated.¹²⁴ Scienter is not required to prove a books and records violation.¹²⁵

In the third cause of action, Enforcement charges that Respondent’s falsification of Newbridge’s books and records was an independent violation of FINRA Rule 2010.¹²⁶ FINRA Rule 2010 provides, “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” FINRA Rule 2010 serves as an

¹¹⁹ Compl. ¶¶ 7-9, 207-16.

¹²⁰ FINRA Rule 4511(a); *accord*, *Bruce Zipper*, Exchange Act Release No. 90737, 2020 SEC LEXIS 5226, at *30 (Dec. 21, 2020).

¹²¹ 17 C.F.R. § 240.17a-3(a)(17)(A).

¹²² 17 C.F.R. § 240.17a-3(a)(6).

¹²³ *Dep’t of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *23-24 (NAC May 26, 2021), *appeal docketed*, No. 3-20380 (SEC July 1, 2021).

¹²⁴ *Dep’t of Enforcement v. Patatian*, 2023 FINRA Discip. LEXIS 13, at *58.

¹²⁵ *Dep’t of Enforcement v. Milberger*, No. 2015047303901, 2020 FINRA Discip. LEXIS 24, at *16 (NAC Mar. 27, 2020).

¹²⁶ Compl. ¶¶ 7-9, 218-20.

industry backstop for the representation inherent in the relationship between a securities professional and a customer that the customer will be dealt with fairly and in accordance with the standards of the profession.¹²⁷ Unethical conduct under FINRA Rule 2010 is that which is not in conformity with moral norms or standards of professional conduct.¹²⁸ Falsifying a document conflicts with just and equitable principles of trade and violates FINRA Rule 2010.¹²⁹

2. Facts Showing a Violation

Newbridge's Written Supervisory Procedures ("WSPs") set forth books and records requirements for an alternative investment, defined as "an investment product other than traditional investments such as stocks, bonds or cash."¹³⁰ Newbridge's WSPs prohibited its registered representatives from concentrating more than 20 percent of a customer's net worth in alternative investments.¹³¹

The WSPs identified factors that its registered representatives and supervisory principals had to consider in recommending the purchase of alternative investments. These factors included the customer's age, financial information, risk tolerance, and liquidity needs.¹³² Newbridge required its registered representatives to complete an Alternative Investment Submission Form ("Suitability Form") that included suitability information and the customer's concentration percentage relative to net worth.¹³³ The Suitability Form required Newbridge's registered representatives to calculate the percentage of the customer's net worth that would be concentrated in (1) each alternative investment, and (2) all the customer's alternative investments put together.¹³⁴

Newbridge required its registered representatives to have their customers sign an updated new customer account information form, titled "Direct Business Profile and Agreement," that listed the customer's annual income, net worth, liquid net worth, investment objective, date of birth, and liquidity needs.¹³⁵ For investments that could be bought only by accredited investors, Newbridge required its registered representatives to submit an Alternative Investment Accredited Investor Suitability Form ("Accredited Investor Form") that listed the customer's net worth, liquid net worth, total years of investment experience, knowledge of alternative investments, and

¹²⁷ *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *23 (June 2, 2016).

¹²⁸ *Dep't of Enforcement v. Mantei*, No. 2015045257501, 2023 FINRA Discip. LEXIS 10, at *25 (NAC May 30, 2023), *appeal docketed*, No. 3-21516 (SEC June 27, 2023).

¹²⁹ *Dep't of Enforcement v. Milberger*, 2020 FINRA Discip. LEXIS 24, at *13.

¹³⁰ Compl. ¶ 47.

¹³¹ Compl. ¶ 48.

¹³² Compl. ¶ 49.

¹³³ Compl. ¶ 50.

¹³⁴ Compl. ¶ 51.

¹³⁵ Compl. ¶ 52.

accredited investor status.¹³⁶ Newbridge required the registered representative to submit the Suitability Form, the Direct Business Profile and Agreement, the Accredited Investor Form, and an alternative investment subscription agreement.¹³⁷ These documents were required for purchases of non-traded REITs, non-traded BDCs, and GPB Automotive Portfolio.¹³⁸ A Newbridge principal reviewed the documents to determine compliance with the firm's 20 percent concentration policy and to review for suitability, given the customer's age, financials, time horizon, risk tolerance, investment objective, and liquidity needs.¹³⁹ Respondent knew Newbridge's procedures, requirements, and limitations on alternative investments.¹⁴⁰

Respondent falsified Newbridge's books and records.¹⁴¹ These falsifications caused Newbridge's books and records to contain inaccurate information about Respondent's customers' net worth, risk tolerance, investment objective, and concentration percentage in alternative investments.¹⁴² Respondent falsified 32 documents, including new account documents, Suitability Forms, Direct Business Profile and Agreements, and Accredited Investor Forms. These documents misrepresented eight customers' investor profile and suitability information, including their net worth, risk tolerance, investment objective, and concentration percentage in alternative investments.¹⁴³

I describe below some of Respondent's falsifications.

To create the appearance that Customer A met Newbridge's 20 percent concentration policy, Respondent falsely represented that Customer A's net worth was \$1,000,001-\$3,000,000 on two new account documents.¹⁴⁴ To create the appearance that Customer A was an accredited investor, Respondent falsified an Accredited Investor Form to state falsely that Customer A's net worth exceeded \$1 million.¹⁴⁵

Respondent falsified four documents he submitted to Newbridge in connection with Customer A's purchases of ARC Hospitality and Cottonwood Residential. First, Respondent stated falsely on two Suitability Forms that Customer A's concentration in alternative investments relative to net worth was 18.6 percent when, in fact, it was 34 percent. Second,

¹³⁶ Compl. ¶ 53.

¹³⁷ Compl. ¶ 54.

¹³⁸ Compl. ¶ 55.

¹³⁹ Compl. ¶ 56.

¹⁴⁰ Compl. ¶ 57.

¹⁴¹ Compl. ¶ 215.

¹⁴² Compl. ¶ 215.

¹⁴³ Compl. ¶ 60.

¹⁴⁴ Compl. ¶ 72.

¹⁴⁵ Compl. ¶ 73.

Respondent falsified two Direct Business Profile and Agreements to misstate Customer A's investment objective as "aggressive/long term growth & income" and his net worth as \$1,000,000-\$2,499,999.¹⁴⁶

Respondent falsified a Suitability Form in connection with the purchase of Carter Validus for the account of Customers B and C.¹⁴⁷

In connection with Respondent's recommendation that Customers B and C purchase \$100,000 in ARC RFT, Respondent falsified three new account documents to state falsely that Customers B's and C's risk tolerances were aggressive.¹⁴⁸

Respondent falsified two Suitability Forms related to purchases of ARC RFT that misstated Customers B's and C's concentration in alternative investments relative to net worth as 15.4 percent, when their concentration was 30 percent. Respondent falsified two Direct Business Profile and Agreements related to purchases of ARC RFT that misstated Customers B's and C's investment objective as "aggressive/long term growth & income."¹⁴⁹

Respondent falsified Customer D's new account document to state falsely that Customer D was an aggressive investor, when Customer D was a conservative or moderate-risk investor.¹⁵⁰ In connection with Customer D's purchase of Sierra Income and ARC RFT, Respondent submitted two Direct Business Profile and Agreements to Newbridge falsely stating that Customer D's investment objective was "aggressive/long term growth & income."¹⁵¹

Respondent falsified Customer E's risk tolerance on her Newbridge new account document to state falsely that Customer E was an aggressive investor.¹⁵² In connection with Customer E's purchases of ARC Hospitality and ARC RFT, Respondent submitted Suitability Forms falsely stating that Customer E's concentration in alternative investments relative to net worth was 13.3 percent, when it was 20 percent.¹⁵³ Respondent also falsified two Direct Business Profile and Agreements related to Customer E's purchases of ARC Hospitality and ARC RFT. These records misstated Customer E's investment objective as "aggressive/long term growth & income" and her net worth as \$700,000-\$899,999.¹⁵⁴

¹⁴⁶ Compl. ¶ 74.

¹⁴⁷ Compl. ¶ 85.

¹⁴⁸ Compl. ¶ 87.

¹⁴⁹ Compl. ¶ 88.

¹⁵⁰ Compl. ¶ 94.

¹⁵¹ Compl. ¶ 99.

¹⁵² Compl. ¶ 107.

¹⁵³ Compl. ¶ 111.

¹⁵⁴ Compl. ¶ 112.

Respondent falsified Customer H's new account documents to state falsely that Customer H was an aggressive investor, when he was a conservative investor.¹⁵⁵ Respondent falsified Customer H's net worth to state it was \$750,000, when it was no greater than \$500,000.¹⁵⁶ Respondent falsified two Direct Business Profile and Agreements relating to Customer H's purchases of ARC Hospitality and ARC RFT that misstated Customer H's investment objective as "aggressive/long term growth & income."¹⁵⁷

Respondent falsified Customers I's and J's new account documents to state falsely that they were aggressive investors, when they were moderate-risk investors.¹⁵⁸ Respondent falsified two Direct Business Profile and Agreements related to Customers I's and J's purchases of ARC Hospitality and GPB Automotive Portfolio.¹⁵⁹ These records misstated Customer I's and J's investment objective as "aggressive/long term growth & income."¹⁶⁰

By causing Newbridge to create and maintain inaccurate books and records required to be maintained under Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3(a)(6) and (17) thereunder, Respondent violated FINRA Rules 4511 and 2010.¹⁶¹

G. Respondent Failed to Respond or to Respond Timely to FINRA Rule 8210 Requests, in Violation of FINRA Rules 8210 and 2010 (Fourth and Fifth Causes of Action)

1. Governing Law

In the fourth and fifth causes of action, Enforcement charges Respondent with violating FINRA Rules 8210 and 2010 because he failed to respond to FINRA Rule 8210 requests timely or at all.¹⁶² FINRA Rule 8210 requires an associated person to respond to FINRA requests for information and documents:

For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to . . . require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information . . . in writing . . . and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any

¹⁵⁵ Compl. ¶ 145.

¹⁵⁶ Compl. ¶ 145.

¹⁵⁷ Compl. ¶ 150.

¹⁵⁸ Compl. ¶ 156.

¹⁵⁹ Compl. ¶ 160.

¹⁶⁰ Compl. ¶ 160.

¹⁶¹ Compl. ¶ 216.

¹⁶² Compl. ¶¶ 10-16.

matter involved in the investigation, complaint, examination, or proceeding . . . No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.¹⁶³

FINRA's examination authority under FINRA Rule 8210 is unequivocal and unqualified.¹⁶⁴ Because FINRA does not have subpoena power, FINRA Rule 8210 provides FINRA the means to obtain information necessary to conduct investigations.¹⁶⁵ Delay and neglect in responding to FINRA Rule 8210 requests undermine the ability of FINRA to conduct investigations and protect the investing public.¹⁶⁶ A violation of the Rule occurs when an associated person fails to provide full and prompt cooperation to FINRA in response to a request for information.¹⁶⁷ A violation of FINRA Rule 8210 also violates FINRA Rule 2010.¹⁶⁸

2. Facts Showing a Violation

a. First Investigation

FINRA sent Respondent a FINRA Rule 8210 request on April 14, 2022, for information and documents related to his sale of alternative investments ("First Request"). FINRA sent this First Request to Respondent's residential address as reflected in CRD ("CRD Address").¹⁶⁹ But in violation of FINRA Rule 8210, Respondent failed to respond to the First Request.¹⁷⁰ So FINRA sent Respondent another FINRA Rule 8210 request for the same information and documents ("Second Request").¹⁷¹ This Second Request stated that failure to respond could

¹⁶³ FINRA Rule 8210(a)(1) and (c).

¹⁶⁴ *Robert Juan Escobio*, Exchange Act Release No. 97701, 2023 SEC LEXIS 1532, at *16 (June 12, 2023); *Dep't of Enforcement v. DreamFunded Marketplace, LLC*, No. 2017053428201, 2021 FINRA Discip. LEXIS 24, at *64 (NAC Sept. 27, 2021), *appeal docketed*, No. 3-20639 (SEC Oct. 27, 2021).

¹⁶⁵ *Dep't of Enforcement v. Felix*, 2021 FINRA Discip. LEXIS 7, at *13-14.

¹⁶⁶ *Dep't of Enforcement v. Jarkas*, No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at *46-47 (NAC Oct. 5, 2015), *aff'd*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285 (Apr. 1, 2016).

¹⁶⁷ *Dep't of Enforcement v. DiPaola*, No. 2018057274302, 2023 FINRA Discip. LEXIS 4, at *34-35 (NAC Mar. 23, 2023), *appeal docketed*, No. 3-21402 (SEC May 1, 2023).

¹⁶⁸ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *2 n.2 (Nov. 14, 2008) ("A violation of another NASD rule, such as Rule 8210, constitutes a violation of Conduct Rule 2110."), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009); *Dep't of Enforcement v. Meyers Assoc., L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1, at *13 n.13 (NAC Jan. 4, 2018) ("A violation of any FINRA rule constitutes also a violation of FINRA Rule 2010."), *aff'd*, Exchange Act Release No. 86497, 2019 SEC LEXIS 1869 (July 26, 2019).

¹⁶⁹ Compl. ¶ 163.

¹⁷⁰ Compl. ¶ 165.

¹⁷¹ Compl. ¶ 166.

result in disciplinary action, including a bar from associating with any FINRA member firm. Yet Respondent failed to respond to the Second Request.¹⁷²

FINRA sent a notice to Respondent informing him that he would be suspended from associating with any FINRA member firm under FINRA Rule 9552 if he failed to respond to the First and Second Requests.¹⁷³ When Respondent failed to respond, FINRA suspended him from associating with any FINRA member firm.¹⁷⁴ To remove the suspension, Respondent provided information and documents in response to the First and Second Requests in September 2022.¹⁷⁵ Respondent did not give FINRA Staff any reason for his five-month delay in responding.¹⁷⁶

FINRA sent Respondent another FINRA Rule 8210 request for information and documents related to his sale of alternative investments (“Third Request”).¹⁷⁷ Respondent orally requested an extension of time to respond to this Third Request.¹⁷⁸ Yet Respondent failed to respond to the Third Request.¹⁷⁹ FINRA sent Respondent another request for information and documents (“Fourth Request”).¹⁸⁰ Respondent failed to respond to this Fourth Request.¹⁸¹

I conclude that Respondent received the First, Second, Third, and Fourth Requests because they were delivered to his CRD Address.¹⁸² Respondent never provided the information and documents called for by the Third and Fourth Requests, despite being on notice of these Requests. Respondent provided the information and documents called for by the First and Second Requests only after being suspended from associating with any FINRA member firm for failing to respond.

b. Second Investigation

FINRA sent Respondent a FINRA Rule 8210 request on September 26, 2023, for information related to an outside investment account he had at a third-party entity (“Fifth Request”).¹⁸³ Two weeks later, Respondent stated in a phone call with FINRA Staff that he

¹⁷² Compl. ¶ 168.

¹⁷³ Compl. ¶ 169.

¹⁷⁴ Compl. ¶ 171.

¹⁷⁵ Compl. ¶ 172.

¹⁷⁶ Compl. ¶ 173.

¹⁷⁷ Compl. ¶ 174.

¹⁷⁸ Compl. ¶ 176.

¹⁷⁹ Compl. ¶ 177.

¹⁸⁰ Compl. ¶ 178.

¹⁸¹ Compl. ¶ 181.

¹⁸² Compl. ¶¶ 163, 167, 175, 180. FINRA Staff also sent Respondent the Fourth Request by email. Compl. ¶ 179.

¹⁸³ Compl. ¶ 184.

would consider responding to this Fifth Request. Yet Respondent did not request an extension of time to respond.¹⁸⁴ After this conversation, Respondent failed to respond to the Fifth Request as required by FINRA Rule 8210.¹⁸⁵

Accordingly, FINRA sent Respondent another FINRA Rule 8210 request for the same information (“Sixth Request”).¹⁸⁶ This Sixth Request stated that Respondent’s failure to respond could result in disciplinary action, including a bar from associating with any FINRA member firm.¹⁸⁷ Respondent left a voicemail with FINRA Staff on October 25, 2023 about the Fifth and Sixth Requests.¹⁸⁸ Yet Respondent failed to respond to the Sixth Request.¹⁸⁹

I conclude that Respondent received the Fifth and Sixth Requests because they were delivered to his CRD Address.¹⁹⁰ Respondent never provided the information and documents called for by the Fifth and Sixth Requests, despite being on notice of these Requests.

c. Summary of Respondent’s Violation of FINRA Rule 8210

Respondent failed to respond to FINRA Rule 8210 requests for information and documents issued in connection with the First and Second Investigations.¹⁹¹ In the First Investigation, Respondent did not respond to the First and Second Requests until after the initiation and near-completion of an expedited FINRA Rule 9552 proceeding. This proceeding would have led to Respondent’s bar from associating with any FINRA member firm if he failed to comply.¹⁹²

The information and documents requested of Respondent under FINRA Rule 8210 were material to the First and Second Investigations.¹⁹³ Respondent’s failure to respond to the Fifth and Sixth Requests was material to the inquiry whether he had failed to disclose his participation in a private securities transaction in violation of FINRA Rules.¹⁹⁴ Respondent’s failure to

¹⁸⁴ Compl. ¶ 187.

¹⁸⁵ Compl. ¶ 188.

¹⁸⁶ Compl. ¶ 189.

¹⁸⁷ Compl. ¶ 189.

¹⁸⁸ Compl. ¶ 192.

¹⁸⁹ Compl. ¶ 193.

¹⁹⁰ Compl. ¶¶ 184, 189. FINRA Staff also sent Respondent the Fifth and Sixth Requests by email. Compl. ¶¶ 185, 190.

¹⁹¹ Compl. ¶¶ 227, 229, 234.

¹⁹² Compl. ¶ 234.

¹⁹³ Compl. ¶¶ 226, 233.

¹⁹⁴ Compl. ¶ 230.

respond had a material impact on FINRA's ability to complete the First and Second Investigations.¹⁹⁵

Based on the foregoing, Respondent violated FINRA Rules 8210 and 2010.¹⁹⁶

III. Sanctions

FINRA's Sanction Guidelines provide that the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.¹⁹⁷ The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

In the sections below, I consider the sanctions appropriate to Respondent's unsuitable recommendations, his falsification of his employer firm's books and records, and his failure to provide information and documents in response to FINRA Rule 8210 requests.

A. Unsuitable Recommendations, in Violation of FINRA Rules 2111 and 2010 (First Cause of Action)

The Sanction Guideline for Unsuitable Recommendations recommends a fine of \$2,500 to \$40,000.¹⁹⁸ As for a suspension, bar, or other sanction, an adjudicator should suspend the respondent for a period of 10 business days to two years.¹⁹⁹ Where aggravating factors predominate, the adjudicator should strongly consider a bar.²⁰⁰

I find that aggravating factors predominate as to Respondent's unsuitable recommendations. Respondent has relevant disciplinary history.²⁰¹ Respondent entered into a Consent Agreement and Order in 2017 with the State of Pennsylvania's Department of Banking and Securities for violating the Pennsylvania Securities Act of 1972.²⁰² In 2022, Respondent was suspended for two months from associating with any FINRA member firm under FINRA Rule 9552 because he had failed to provide information and documents called for by the First and

¹⁹⁵ Compl. ¶¶ 228, 235.

¹⁹⁶ Compl. ¶¶ 231, 236.

¹⁹⁷ FINRA Sanction Guidelines ("Guidelines") at 2 (2024) (General Principle No. 1), <https://www.finra.org/industry/sanction-guidelines>.

¹⁹⁸ Guidelines at 121.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Guidelines at 7 (Principal Consideration No. 1: A respondent's relevant disciplinary and arbitration history).

²⁰² Compl. ¶ 19; Dorfman-Gonzalez Decl. ¶ 10.

Second Requests.²⁰³ Respondent failed to accept responsibility and acknowledge his misconduct prior to detection and intervention by FINRA.²⁰⁴

Respondent engaged in the misconduct for six years.²⁰⁵ Respondent's unsuitable recommendations resulted in monetary injury to his customers, and the injury was extensive.²⁰⁶ Respondent's unsuitable recommendations were intentional.²⁰⁷ Respondent's misconduct led to the potential for his monetary gain.²⁰⁸ The transactions at issue were numerous and large.²⁰⁹ The injured and affected customers were not sophisticated.²¹⁰ There are no mitigating factors.

In connection with the first cause of action, Enforcement requests that Respondent be ordered to pay disgorgement of \$65,509 in commissions he allegedly received from his unsuitable recommendations. Disgorgement is appropriate in all sales practice cases in which the respondent retains substantial ill-gotten gain, even if he is also barred.²¹¹ The amount of disgorgement must be a reasonable approximation of ill-gotten gain connected to the violation.²¹² Enforcement contends that Respondent's unsuitable recommendations to Customers A through J generated \$72,789 in gross commissions and \$65,509 in net commissions.²¹³

In a Declaration in further support of Enforcement's Default Motion, Enforcement counsel states under penalty of perjury that \$65,509 is a reasonable approximation of the financial benefit Respondent received from his misconduct at Newbridge.²¹⁴ Enforcement Staff prepared a series of charts, marked as Complainant's Exhibit 14, showing calculations for

²⁰³ Compl. ¶ 24.

²⁰⁴ Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct before detection and intervention by the employer firm or regulator).

²⁰⁵ *Id.* (Principal Consideration No. 9: Whether the respondent engaged in the misconduct for a long time).

²⁰⁶ *Id.* (Principal Consideration No. 11: With respect to other parties, including the investing public, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury).

²⁰⁷ Guidelines at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence).

²⁰⁸ *Id.* (Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

²⁰⁹ *Id.* (Principal Consideration No. 17: The number, size, and character of the transactions at issue).

²¹⁰ *Id.* (Principal Consideration No. 18: The level of sophistication of the injured or affected customer).

²¹¹ *Dep't of Enforcement v. Mehringer*, No. 2014041868001, 2020 FINRA Discp. LEXIS 27, at *42 (NAC June 15, 2020).

²¹² *Kimberley Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *40 (Feb. 7, 2020), *petition for review dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. 2021).

²¹³ CX-14, at 1-7.

²¹⁴ Declaration of Michael Dorfman-Gonzalez in Further Support of Department of Enforcement's Motion for Entry of Default Decision and Request for the Imposition of Sanctions ("Second Dorfman-Gonzalez Decl.") ¶ 5.

Respondent's commissions from Customers A through J.²¹⁵ Enforcement counsel avers that the requested disgorgement amount of \$65,509 is a reasonable approximation of the ill-gotten net commissions Respondent received from his unsuitable recommendations to Customers A through J. This amount equals the financial benefit Respondent received from his misconduct.²¹⁶ Based on this evidence, for Respondent's violations of FINRA Rules 2111 and 2010 as alleged in the first cause of action, I order Respondent to disgorge to FINRA \$65,509 in net commissions because of his unsuitable recommendations. I also order that Respondent pay interest on the \$65,509 disgorgement amount, accruing from August 10, 2017 (the date Newbridge filed a Form U5 stating that Respondent had voluntarily resigned from the firm), until paid in full. This prejudgment interest shall be calculated at the rate in Section 6621(a)(2) of the Internal Revenue Code.²¹⁷

For the above reasons, for Respondent's violation of FINRA Rules 2111 and 2010 by making unsuitable recommendations, I bar Respondent from associating in any capacity with any FINRA member firm. I do not impose a fine.²¹⁸ Respondent is ordered to pay to FINRA disgorgement of \$65,509 in commissions from unsuitable recommendations, plus prejudgment interest.

B. Falsification of Books and Records, in Violation of FINRA Rules 4511 and 2010 (Second and Third Causes of Action)

The second and third causes of action charge Respondent with falsifying his employer firm's books and records. These causes of action are closely related. The imposition of a unitary sanction may be appropriate where the respondent's violations stem from related misconduct.²¹⁹ I conclude that the second and third causes of action stem from related misconduct and that a unitary sanction is appropriate.

The Sanction Guideline for Recordkeeping Violations recommends a fine of \$2,500 to \$40,000.²²⁰ As for a suspension, bar, or other sanction, the adjudicator should consider suspending the respondent for 10 business days to three months.²²¹ Where aggravating factors predominate, the adjudicator should consider a suspension of up to two years or a bar.²²²

²¹⁵ Second Dorfman-Gonzalez Decl. ¶ 6; CX-14.

²¹⁶ Second Dorfman-Gonzalez Decl. ¶ 20.

²¹⁷ 26 U.S.C. § 6621(a)(2).

²¹⁸ See Guidelines at 9 ("Adjudicators may exercise their discretion in applying FINRA's policy on the imposition and collection of monetary sanctions as necessary to achieve FINRA's regulatory purposes.").

²¹⁹ *Dep't of Enforcement v. Silver Leaf Partners, LLC*, No. 2014042606902, 2020 FINRA Discip. LEXIS 36, at *72 (NAC June 29, 2020), *appeal docketed*, No. 3-19896 (SEC July 28, 2020).

²²⁰ Guidelines at 91.

²²¹ *Id.*

²²² *Id.*

The considerations specific to this Guideline are:

- The nature and materiality of the inaccurate or missing information.
- The type and number of records at issue.
- Whether the inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence.
- Whether the violations occurred over an extended period of time or involved a pattern or patterns of misconduct.
- Whether the violations allowed other misconduct to occur or to escape detection.²²³

I find that aggravating factors predominate as to Respondent's falsification of his employer firm's books and records. The falsified information was material and important.²²⁴ Information about a customer's investor profile (including net worth) goes to the heart of whether an investment recommendation is suitable for the customer. The falsified books and records consisted of 32 documents affecting eight customers.²²⁵ Respondent's falsifications of records were intentional.²²⁶ The falsifications occurred for six years and involved a pattern of misconduct.²²⁷ The falsifications allowed Respondent's unsuitable recommendations to occur and escape detection.²²⁸

Respondent's disciplinary history is aggravating for the purpose of determining the sanction for his recordkeeping violations.²²⁹ Respondent did not accept responsibility and acknowledge his misconduct before detection and intervention.²³⁰ He engaged in many acts and a pattern of recordkeeping violations.²³¹ Respondent engaged in the misconduct for a long time.²³² There are no mitigating factors.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Guidelines at 7 (Principal Consideration No. 1).

²³⁰ *Id.* (Principal Consideration No. 2).

²³¹ *Id.* (Principal Consideration No. 8: Whether the respondent engaged in many acts or a pattern of misconduct).

²³² *Id.* (Principal Consideration No. 9).

For the above reasons, for Respondent's violation of FINRA Rules 4511 and 2010 by falsifying his employer firm's books and records, I bar Respondent from associating in any capacity with any FINRA member firm. I do not impose a fine.

C. Failure to Provide Information and Documents, in Violation of FINRA Rules 8210 and 2010 (Fourth and Fifth Causes of Action)

It is appropriate to impose a unitary sanction for Respondent's violations of FINRA Rule 8210, as alleged in the fourth and fifth causes of action. Because Respondent provided information and documents in response to the First and Second Requests, I apply the Sanction Guideline for Providing a Partial but Incomplete Response. This Guideline recommends a fine of \$5,000 to \$20,000.²³³ As for a suspension, bar, or other sanction, a bar is standard unless the respondent can show the information provided substantially complied with all aspects of the request.²³⁴ When mitigation exists, the adjudicator should suspend the respondent for up to two years.²³⁵ The considerations specific to this Guideline are:

- The importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request.
- The number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.
- The reasons offered by the respondent to justify the partial but incomplete response.²³⁶

Because failure to respond to a FINRA Rule 8210 request subverts FINRA's ability to execute its regulatory function, it is a serious violation justifying a stringent sanction.²³⁷ Failure to respond to a FINRA Rule 8210 request frustrates FINRA's ability to detect misconduct and thus threatens investors.²³⁸ An associated person who provides a partial but incomplete response

²³³ Guidelines at 93.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *49-52 (Sept. 24, 2015).

²³⁸ *Dep't of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *41 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015).

to a FINRA Rule 8210 request can be barred.²³⁹ It is aggravating that a respondent ignored many FINRA Rule 8210 requests for information and documents for several months.²⁴⁰

The requested information that Respondent failed to provide was important as viewed from FINRA's perspective. After Respondent provided information and documents as called for by the First and Second Requests, FINRA discovered additional customers who might have been injured and issued the Third and Fourth Requests, seeking information and documents about these customers. As for the First and Second Requests, it took an inordinate degree of regulatory pressure to obtain a response.²⁴¹ FINRA had to suspend Respondent under FINRA Rule 9552, and he was nearly barred before he complied. Respondent did not offer any reasons for his delay in responding to the First and Second Requests, or for his complete failure to respond to the Third and Fourth Requests.

In the Second Investigation, it was important for FINRA to learn the nature of Respondent's outside investment account because nothing was known about it. Only Respondent could provide critical information about this account. Respondent did not offer any reasons for his failure to respond to the Fifth and Sixth Requests.

Respondent's disciplinary history is aggravating for the purpose of determining the sanction for his failure to provide complete responses to the FINRA Rule 8210 requests.²⁴² Respondent failed to accept responsibility for his failure to respond.²⁴³ Respondent did not respond to many FINRA Rule 8210 requests.²⁴⁴ He tried to delay FINRA's investigation and to conceal information.²⁴⁵ His misconduct was intentional.²⁴⁶ There are no mitigating factors.

For the above reasons, for Respondent's failure to provide information and documents in violation of FINRA Rules 8210 and 2010, I bar Respondent from associating in any capacity with any FINRA member firm. I do not impose a fine.

²³⁹ *Dep't of Enforcement v. Reifler*, No. 2016050924601r, 2023 FINRA Discip. LEXIS 1, at *10 (NAC Jan. 17, 2023).

²⁴⁰ *Dep't of Enforcement v. Escobio*, No. 2018059545201, 2021 FINRA Discip. LEXIS 3, at *25 (NAC Mar. 10, 2021), *aff'd*, Exchange Act Release No. 97701, 2023 SEC LEXIS 1532 (June 12, 2023).

²⁴¹ Guidelines at 93.

²⁴² Guidelines at 7 (Principal Consideration No. 1).

²⁴³ *Id.* (Principal Consideration No. 2).

²⁴⁴ Guidelines at 8 (Principal Consideration No. 8).


²⁴⁵ *Id.* (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA's investigation or to conceal information from FINRA).

²⁴⁶ *Id.* (Principal Consideration No. 13: Whether the respondent's misconduct resulted from an intentional act, recklessness, or negligence).

IV. Order

Respondent Austin R. Dutton, Jr. is barred from associating with any FINRA member firm in any capacity for making unsuitable recommendations in violation of FINRA Rules 2111 and 2010, falsifying his employer firm's books and records in violation of FINRA Rules 4511 and 2010, and failing to provide information and documents called for by FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010. In connection with Respondent's unsuitable recommendations as alleged in the first cause of action, Respondent is ordered to pay FINRA \$65,509 in disgorgement, plus prejudgment interest on the unpaid balance from August 10, 2017, until paid in full.

The bars shall be effective immediately if this Default Decision becomes FINRA's final disciplinary action. The disgorgement and interest shall be due on a date set by FINRA, but not more than 30 days after this Decision becomes FINRA's final disciplinary action.


Richard E. Simpson
Hearing Officer

Copies to:

Austin R. Dutton, Jr. (via email, first-class mail, and overnight courier)
Michael Dorfman-Gonzalez, Esq. (via email)
Kay Lackey, Esq. (via email)
Adam Balin, Esq. (via email)
Alyssa Braver, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)