

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHRISTOPHER CACACE
(CRD No. 4308782),

Respondent.

Disciplinary Proceeding
No. 2020065599103

Hearing Officer–MC

HEARING PANEL DECISION

October 30, 2025

Respondent Christopher Cacace is fined \$5,000, suspended in all supervisory capacities for 30 business days, and required to requalify as a General Securities Principal for failing to fulfill his supervisory responsibility to reasonably respond to red flags of excessive trading by four registered representatives, in violation of FINRA Rules 3110 and 2010.

Appearances

For the Complainant: Payne L. Templeton, Esq., John R. Baraniak, Esq., Nicholas Pilgrim, Esq., and Michael Dorfman-Gonzalez, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Thomas J. McCabe, Esq., The McCabe Law Firm

DECISION

I. Introduction

The sole cause of action in this disciplinary proceeding alleges that from May 2017 through November 2019, when Respondent Christopher Cacace was the chief compliance officer (“CCO”) at then-FINRA member firm SW Financial (“SWF”), he failed to reasonably respond to red flags of excessive trading and churning by four of the firm’s registered representatives (“representatives” or “brokers”). Cacace does not deny that the representatives engaged in

excessive trading, but asserts he was not their supervisor because he was never given direct supervisory responsibilities and was powerless to affect their trading.¹

Because there is no question that the four SWF brokers engaged in excessive trading, generating numerous red flags while Cacace was their CCO, there are only two issues to decide: whether Cacace was responsible for supervising the four representatives and whether he failed to reasonably respond to the red flags.

After carefully considering the testimony and exhibits, and guided by relevant precedent, the Hearing Panel concludes that Enforcement met its burden of proof and by a preponderance of the evidence established that as CCO, Cacace had limited, shared supervisory responsibilities. Consequently, he was obligated to take “reasonable and appropriate” steps “to ensure that appropriate action [was] taken to address” the many red flags of broker misconduct he encountered at SWF.² There is evidence that although Cacace initially and occasionally attempted to persuade SWF’s co-owners to address the excessive trading, his efforts were insufficient. When he was thwarted by SWF’s owners, and saw that the firm’s management would not act, he did not take sufficient action to address the problem.³ Instead, in violation of FINRA Rules 3110 and 2010, he remained “a mere bystander to the events” under his watch for two years.⁴

II. Procedural History

A. Complaint

The Complaint alleges that from May 2017 through November 2019 (“Relevant Period”), while Cacace was responsible for supervising the SWF brokers’ trading, four representatives traded excessively in 14 customer accounts.⁵ Enforcement charged Cacace with failing to reasonably supervise the four representatives, thereby violating FINRA Rules 3110 and 2010. Enforcement’s case relies heavily on the designations of responsibility in SWF’s written supervisory procedures (“WSPs”). The WSPs identify Cacace as responsible for the supervision of the firm’s representatives and their retail sales activities, including using monthly active account reports (“MAARs”) received from SWF’s clearing firm, to review the suitability of

¹ Hearing Transcript (“Tr.”) 43 (parties agree four SWF representatives engaged in excessive trading that generated red flags).

² *John H. Gutfreund*, Exchange Act Release No. 34-31554, 1992 SEC LEXIS 2939, at *43 (Dec. 3, 1992).

³ Such steps could include, for example, disclosure to regulatory authorities or resignation from the firm. *Id.* at *44.

⁴ *Id.* at *43.

⁵ Complaint (“Compl.”) ¶¶ 1–3; Complainant’s Exhibit (“CX-__”) 1.

trading in customer accounts.⁶ The Complaint alleges that the MAARs provided Cacace with details of the trading and flagged accounts with indicators of unsuitable and excessive trading.⁷

The Complaint alleges further that Cacace's typical, and inadequate, response to the red flags of excessive and unsuitable trading was limited to sending active trading letters to some customers for them to sign and return, acknowledging that their accounts were actively traded.⁸ Despite the fact that the MAARs flagged the accounts of 14 customers 66 times during the Relevant Period, Cacace failed to restrict or limit the representatives from trading the accounts or reduce their commissions.⁹

B. Answer

In his Answer, Cacace denies the charges. His main assertion is that "with one minor exception" he "never served as a supervisor at SWF," and had no authority to discipline SWF's representatives, or to require compliance with securities laws and regulations.¹⁰ Rather, he argues, the firm's senior management and the firm's branch managers supervised the brokers.¹¹ He claims that he accepted the position as SWF's CCO on the condition that he would not supervise the firm's representatives.¹² Cacace claims that SWF's co-owners agreed to this condition, appointed his predecessor, Donald Pollard, to serve as branch manager with responsibility to supervise brokers, and after Pollard left, appointed others as branch managers.¹³ As CCO, he insists, he "had neither the responsibility nor the obligation to supervise SWF brokers."¹⁴

In addition, Cacace asserts as an affirmative defense the doctrine of laches, claiming that Enforcement inexcusably delayed bringing this action until nearly five years after the alleged misconduct, unfairly prejudicing his ability to obtain critical documents and witness testimony to present his defense.¹⁵

⁶ Compl. ¶ 19.

⁷ *Id.* at ¶¶ 23–24.

⁸ *Id.* at ¶ 25.

⁹ *Id.* at ¶ 32.

¹⁰ Respondent's Answer to the Complaint ("Ans.") 1–2.

¹¹ Ans. 1–2.

¹² *Id.* at 2–3.

¹³ *Id.* at 3.

¹⁴ *Id.* at 1.

¹⁵ *Id.* at Affirmative Defenses ¶ 2.

III. Findings of Fact

A. Respondent's Background and Jurisdiction

Cacace began his career as a securities industry professional on Wall Street in 1985, working at the New York Stock Exchange for more than 20 years, then at the American Stock Exchange.¹⁶ He first registered with FINRA when he associated with a member firm in 2009.¹⁷ From May 2017 through November 2019, he was employed by SWF as its CCO and Options Principal.¹⁸ For the last 6 months of his employment at SWF, beginning April 29, 2019, Cacace also associated with and held the position of CCO with the firm he currently works for.¹⁹ During that period, Cacace testified that he spent little time—just three to four hours a week—working remotely for SWF,²⁰ while employed full time by the other firm.²¹

On January 1, 2017, shortly before Cacace started as the CCO of SWF, FINRA accepted a Letter of Acceptance, Waiver and Consent (“AWC”) in a matter unrelated to this proceeding in which Cacace agreed to a suspension in all principal capacities for 20 business days and a \$5,000 fine.²² The AWC included findings that Cacace failed to ensure that his former member firm reported or made timely reports of customer complaints and timely amendments to the Central Registration Depository records of four representatives concerning three customer complaints and a customer arbitration, in violation of NASD Rule 3010(c), FINRA Rules 4530(d), 1122, and 2010.²³

Because Cacace is currently associated with a FINRA member firm, and because the conduct alleged in the Complaint occurred while he was associated with a FINRA member, he is subject to FINRA’s jurisdiction for the purposes of this disciplinary proceeding.²⁴

B. The Firm

When Cacace was its CCO, SWF was a broker-dealer with its largest office in Melville, Long Island, and two smaller New York branch offices.²⁵ Its co-owners were its chief executive

¹⁶ Tr. 926 (Cacace); Joint Exhibit (“JX-__”) 29, at 14.

¹⁷ JX-29, at 9.

¹⁸ Tr. 945 (Cacace); Compl. ¶ 1; Ans. at ¶ 1.

¹⁹ Tr. 613 (Cacace); JX-29, at 4.

²⁰ Tr. 614 (Cacace).

²¹ Tr. 615, 618 (Cacace).

²² CX-95 at 2–3.

²³ CX-95 at 2.

²⁴ Stipulations (“Stip.”) ¶¶ 1–2; Article V, Section 4 of FINRA’s By-Laws.

²⁵ Tr. 615–16, 496–97, 499–500 (Cacace); CX-120, at 11; CX-48, at 2; CX-49, at 1.

officer (“CEO”) Thomas Diamante and its chief financial officer (“CFO”) Laurence Zelin.²⁶ Cacace, Diamante, and Zelin all had offices in the Melville location.²⁷ The firm’s business consisted primarily of selling securities, mostly equities and some private placements,²⁸ with brokers cold-calling prospective clients.²⁹ According to Cacace, the number of representatives varied from five to 20.³⁰

The Melville office consisted of a large open area that Cacace referred to as a “bullpen” or “board room” with cubicles for the brokers in front of a row of six offices along a wall.³¹ Cacace shared one of the offices with the “operations person” responsible for sending out new account forms, contacting clients for payments due, and processing the checks they sent.³² In his office, Cacace could overhear the brokers’ conversations at times.³³ Diamante had the office next to Cacace, and on the other side was Zelin’s office.³⁴

Cacace testified that Diamante was accessible, his door was almost always open, and he would sometimes walk in to talk to Diamante several times a day without needing to make an appointment.³⁵ It was the same with Zelin.³⁶ Diamante watched the trading on a computer monitor and was aware of all trading; he occasionally would call the operations person to tell him to change commissions as trades occurred.³⁷ Brokers could be observed going in and out of Diamante’s and Zelin’s offices all day long during market hours.³⁸

C. Origins of the Investigation

1. The Investigation and Expulsion of SWF

FINRA opened an investigation into SWF in February 2020, when Enforcement’s Case Manager, Edmond Wybaillie, was assigned to investigate possible excessive trading at SWF.³⁹

²⁶ Tr. 616 (Cacace); CX-46, at 2.

²⁷ Tr. 615–16, 946–47 (Cacace).

²⁸ Tr. 950 (Cacace).

²⁹ Tr. 950 (Cacace).

³⁰ Tr. 952–53 (Cacace).

³¹ Tr. 947–48, 953 (Cacace).

³² Tr. 947 (Cacace).

³³ Tr. 953 (Cacace).

³⁴ Tr. 947 (Cacace).

³⁵ Tr. 948–49 (Cacace).

³⁶ Tr. 951–52 (Cacace).

³⁷ Tr. 957–59 (Cacace).

³⁸ Tr. 1108–09 (Demetri).

³⁹ Tr. 51–52, 87 (Wybaillie).

He issued requests for information pursuant to FINRA Rule 8210 and analyzed records of approximately 35,000 trades.⁴⁰ The investigation concluded in May 2023 when SWF submitted an AWC agreeing to findings that it failed to reasonably supervise five representatives whose trading generated numerous red flags of excessive trading.⁴¹ SWF consented to an expulsion from FINRA membership.⁴²

Among other findings, Wybaillie concluded that more than three years of numerous red flags of excessive trading in the MAARs—alerting SWF to 20 accounts flagged more than 100 times—indicated the firm had failed to properly supervise the trading activity of its brokers.⁴³ The red flags included high cost-to-equity ratios, high turnover rates, significant losses, and high commissions.⁴⁴

2. The Investigation of SWF’s CEO

The investigation of SWF included a review of Diamante’s activities.⁴⁵ That matter concluded with an AWC in which Diamante consented to findings, unrelated to this matter, that he failed to reasonably supervise private placement offerings of pre-initial public offering funds for which he had entered into an agreement with the issuer to receive compensation undisclosed to others.⁴⁶ It did not cite Diamante for failing to reasonably supervise and respond to red flags of excessive trading by the firm’s representatives. On May 12, 2023, Diamante agreed to a \$50,000 fine and a nine-month all-capacities suspension from associating with any FINRA member firm.⁴⁷

3. The Investigation of Excessive Trading by SWF Brokers

The investigation also focused on the trading activity of SWF brokers. Wybaillie analyzed the trading of the five SWF representatives the firm failed to reasonably supervise, four

⁴⁰ Tr. 52–53 (Wybaillie).

⁴¹ Tr. 53–57 (Wybaillie); CX-89, at 4, 11, 12.

⁴² Tr. 60–62 (Wybaillie); CX-89, at 13.

⁴³ Tr. 58–59 (Wybaillie).

⁴⁴ Tr. 59 (Wybaillie). Cost-to-equity ratios are determined by dividing the total costs incurred in an account by the account’s average monthly equity and are used to determine the “break even” point for an account. Tr. 49–50 (Wybaillie), or, stated differently, “the amount an account has to appreciate annually just to cover commissions and other expenses.” *Peter C. Bucchieri*, Exchange Act Release No. 37218, 1996 SEC LEXIS 1331, at *3 (May 14, 1996). Turnover rates are “the number of times in one year that a portfolio of securities is exchanged for another portfolio.” *Donald A. Roche*, Exchange Act Release No. 38742, 1997 SEC LEXIS 1283, at *10 n.6 (Jun. 17, 1997). They are determined by dividing the total purchases over a period by the average monthly equity in the account. Tr. 49 (Wybaillie).

⁴⁵ Tr. 62 (Wybaillie).

⁴⁶ JX-34, at 18.

⁴⁷ JX-34, at 19–20.

of whom were registered at SWF when Cacace was CCO: James Flower, Joseph Lianzo, James Pecoraro, and Stephen Sullivan.⁴⁸

Flower was registered with FINRA and associated with SWF from December 2015 to June 2019.⁴⁹ The analysis of Flower's trading led to his providing on-the-record testimony ("OTR") in February 2019.⁵⁰ Subsequently, he was charged with excessively trading and churning customer accounts.⁵¹ After the Office of Hearing Officers conducted a hearing in May 2021, the hearing panel held him liable and barred Flower in all capacities.⁵²

Lianzo was registered with FINRA and associated with SWF from September 2017 to June 2022.⁵³ He agreed to an AWC in August 2021 and was suspended in all capacities for eight months for excessive and unauthorized trading.⁵⁴

Pecoraro was registered with FINRA and associated with SWF from September 2016 to December 2019.⁵⁵ His case was resolved with an AWC, in August 2022.⁵⁶ Pecoraro accepted a nine-month suspension in all capacities, agreed to pay a \$10,000 fine, and to make restitution of \$68,886 for excessive and unsuitable trading.⁵⁷

Sullivan was registered with FINRA and associated with SWF from May 2018 to December 2019.⁵⁸ His case was also resolved by an AWC in October 2022.⁵⁹ Sullivan consented to a nine-month suspension in all capacities, a \$10,000 fine, and to make \$49,696 in restitution for excessive trading.⁶⁰

⁴⁸ Tr. 57–58, 173 (Wybaillie).

⁴⁹ Tr. 70 (Wybaillie); JX-30, at 5.

⁵⁰ CX-33.

⁵¹ Tr. 66 (Wybaillie).

⁵² Tr. 66 (Wybaillie); CX-90, at 1. The hearing panel also found that Flower engaged in unauthorized trading in a customer's account, and mismarked numerous solicited transactions as unsolicited.

⁵³ Tr. 73–74; JX-31, at 4.

⁵⁴ CX-92, at 2, 5.

⁵⁵ Tr. 79–80 (Wybaillie); JX-32, at 6.

⁵⁶ Tr. 81 (Wybaillie); CX-93.

⁵⁷ Tr. 81–82 (Wybaillie); CX-93, at 4.

⁵⁸ Tr. 83–84 (Wybaillie).

⁵⁹ Tr. 85 (Wybaillie).

⁶⁰ Tr. 85–86 (Wybaillie); CX-94, at 4.

4. The Investigation of Cacace: the OTR

To determine who at SWF was responsible for supervising the representatives whose trading they had examined, in February 2020 Enforcement staff requested SWF to provide its WSPs and to identify the brokers' supervisors during the Relevant Period.⁶¹ SWF informed the staff that the firm's CCO had "always" been responsible for supervising its representatives.⁶² In response to another information request, SWF provided an organization chart showing Cacace as CCO and branch manager during the Relevant Period.⁶³

On May 4, 2021, Enforcement conducted an OTR of Cacace.⁶⁴ In it, Cacace repeatedly stated that he was not responsible for supervising SWF brokers.⁶⁵ He insisted "[n]obody reported" to him.⁶⁶

When asked why he did not assume supervision of representatives when the WSPs assigned him that responsibility, Cacace answered that when he was hired as SWF's CCO, he made it clear to Diamante that the "CCO should not be supervising the brokers," because "supervision and oversight" should be handled separately.⁶⁷ Supervision of the representatives, Cacace said, was the responsibility of branch managers.⁶⁸

At the OTR, Cacace testified that if he wanted to cut a commission he thought was excessive or had a concern about a customer account being traded too frequently, he would report it to Diamante and then Diamante or Zelin would meet to discuss the issue with the broker.⁶⁹ According to Cacace, he was not involved in these discussions.⁷⁰ After Zelin or Diamante spoke with the broker, they would inform Cacace of what they decided to do.⁷¹

During the OTR Cacace also acknowledged he had some responsibilities— e.g. reviewing trades, approving new accounts, recording customer complaints—that the Hearing Panel finds are typically associated with supervision.⁷² And he testified that when he was hired,

⁶¹ Tr. 89–92 (Wybaillie).

⁶² Tr. 98–99 (Wybaillie).

⁶³ Tr. 105–06 (Wybaillie); CX-103, at 9.

⁶⁴ CX-39, at 1.

⁶⁵ CX-39, at 76, 79–80, 86.

⁶⁶ CX-39, at 61, 62–63.

⁶⁷ CX-39, at 85–86.

⁶⁸ CX-39, at 61–62, 76.

⁶⁹ CX-39, at 51–53.

⁷⁰ CX-39, at 52.

⁷¹ CX-39, at 72.

⁷² CX-39, at 38–39.

Zelin and Diamante told him that as CCO, they expected him “to keep the brokers in check and let them [Zelin and Diamante] know if there [were] problems.”⁷³ By “in check,” Cacace said he was to keep their activity “within the rules of FINRA.”⁷⁴ Consistent with that charge, Cacace testified that when a branch manager identified a problem with a broker’s trading, the manager would seek his counsel and together they would develop a solution and inform Diamante and Zelin.⁷⁵

Cacace testified that his responsibilities as CCO included reviewing outside business activities, emails, daily trading, new account applications, customer complaints, and answering regulatory inquiries.⁷⁶ He was also Options Principal and reviewed new options accounts.⁷⁷

One of Cacace’s responsibilities was to send customers active account letters, based on reviewing the MAARs from SWF’s clearing firm.⁷⁸ The purpose of the letters was to inform customers and have them acknowledge they were aware of the trading in their accounts.⁷⁹ The clearing firm set the criteria for including an account in the MAARs, based on the monthly number of trades, commission charges, turnover rates, and losses in an account.⁸⁰ According to Cacace, he notified the customer’s broker before sending an active account letter; he stated he was “almost positive” that he would tell Zelin or Diamante when he sent the letters, but he did not recall if they directed his decisions to send them.⁸¹

Cacace also testified that he, Diamante, Zelin, and a branch manager conducted reviews when they learned negative information about a broker.⁸² Together they examined customer complaints and the broker’s trading activity and disciplinary history to decide whether to put the broker on heightened supervision.⁸³ When asked who was responsible for placing a broker on heightened supervision, Cacace testified initially that as CCO he did not play any role.⁸⁴ Subsequently, when asked again who was responsible, Cacace testified “I guess it would [fall] upon myself.”⁸⁵ He testified, “I would make a decision . . . then I would bring it to [Diamante]”

⁷³ CX-39, at 35.

⁷⁴ CX-39, at 35–36.

⁷⁵ CX-39, at 86–87.

⁷⁶ CX-39, at 38–39.

⁷⁷ CX-39, at 39.

⁷⁸ CX-39, at 39–40.

⁷⁹ CX-39, 42–43.

⁸⁰ CX-39, at 40.

⁸¹ CX-39, at 47–49.

⁸² CX-39, at 89–90.

⁸³ CX-39, at 90.

⁸⁴ CX-39, at 58.

⁸⁵ CX-39, at 89–90.

for guidance.⁸⁶ However, he did not recall ever deciding to put a broker on heightened supervision in this context.⁸⁷

Cacace initially testified that he did not participate in hiring brokers for the firm.⁸⁸ Later in the OTR, he testified that when he had concerns about a broker the firm was considering hiring, he would tell Diamante and Zelin.⁸⁹ He believed that, based on his recommendations, the owners chose not to hire some prospects, but he could not recall if they hired anyone over his objection.⁹⁰

In contrast to his denials of supervising representatives, when Cacace was asked about his role in disciplining brokers, he testified that if he thought a broker charged commissions that were “too much or too often,” “[w]e would cut commissions.”⁹¹ But, he contended, the final decision was Diamante’s to make.⁹² Cacace testified that although it was not his responsibility to review commissions—that was the job of the branch managers—he did so voluntarily because he thought he should.⁹³ And if he thought a broker charged a commission that was too high, he would either reduce it “or make it zero.”⁹⁴

Asked what he did if a broker persisted in overcharging a customer, Cacace testified that he did not recall that happening, but that if it did, he would put the broker on heightened supervision or recommend a reprimand for the broker.⁹⁵ This directly contradicted his earlier assertion that he did not play a role in placing brokers on heightened supervision.⁹⁶

During his OTR, questioned about problematic trading of one of the four brokers at issue, Cacace testified he was not concerned that the broker was churning customer accounts.⁹⁷ He testified that he shared “the same mindset” with Zelin and Diamante and considered SWF’s customers to be “high-net-worth clients, people who want to trade” and who were aware of the

⁸⁶ CX-39, at 90–91.

⁸⁷ CX-39, at 91.

⁸⁸ CX-39, at 79–80.

⁸⁹ CX-39, at 94.

⁹⁰ CX-39, at 94.

⁹¹ CX-39, at 97.

⁹² CX-39, at 97.

⁹³ CX-39, at 102.

⁹⁴ CX-39, at 105–06.

⁹⁵ CX-39, at 106.

⁹⁶ CX-39, at 58.

⁹⁷ CX-39, at 189–90, 192–93, 198, 206.

costs and volume of trading in their accounts, as this was information provided to them in active account letters and their monthly statements.⁹⁸

D. Cacace's Roles at SWF

At the hearing, Cacace testified that when he became SWF's CCO, he had responsibility for the firm's WSPs.⁹⁹ However, he also testified that he was not permitted to update them without Zelin and Diamante's approval,¹⁰⁰ and that when he designated supervisory responsibilities in the WSPs, he wrote what Diamante dictated.¹⁰¹

1. Cacace's Designated Responsibilities in Different Versions of the WSPs

a. The WSPs the Firm Provided to Enforcement

Early in its investigation, in May 2020, Enforcement obtained several versions of SWF's WSPs that contained differing descriptions of who supervised the firm's brokers.¹⁰² A version labeled as having been updated in April 2017, a month before Cacace became CCO, identified Donald Pollard—Cacace's predecessor as SWF's CCO—as the supervisor of the firm's representatives.¹⁰³ Another version, updated in January 2018, identified Cacace as the firm's contact person and CCO and designated him as responsible for supervising the firm's representatives since May 2017.¹⁰⁴

In response to a January 2021 information request, SWF provided a different version of the January 2018 WSPs, also identifying Cacace as the firm's contact person, with the title of CCO.¹⁰⁵ But it did not designate him as supervisor of representatives; instead, it named Pollard as CCO and supervisor of representatives.¹⁰⁶ However, by then Pollard had left the firm.¹⁰⁷

⁹⁸ CX-39, at 272.

⁹⁹ Tr. 896–97 (Cacace).

¹⁰⁰ Tr. 897 (Cacace).

¹⁰¹ Tr. 885, 907–08 (Cacace).

¹⁰² Tr. 112–114 (Wybaillie).

¹⁰³ Tr. 118–19 (Wybaillie); CX-41, at 8, 44.

¹⁰⁴ Tr. 121–24 (Wybaillie); CX-43, at 8, 44–45 (Jan. 2018 WSPs identifying Cacace as CCO and supervisor of representatives).

¹⁰⁵ Tr. 139–41 (Wybaillie); CX-113, at 8.

¹⁰⁶ Tr. 141 (Wybaillie); CX-113, at 44 (Jan. 2018 WSPs identifying Pollard as CCO and supervisor of registered representatives).

¹⁰⁷ Tr. 141, 143–44 (Wybaillie).

Noting the conflicting information in the two 2018 WSPs, Enforcement sent another information request seeking clarification.¹⁰⁸

In May 2021, SWF responded by informing Enforcement that the previous version of the January 2018 WSPs provided by the firm, which named Pollard as supervisor, was “not the completed version,” and submitted what it described as the “final” version.¹⁰⁹ The final version identified Cacace as the supervisor of the firm’s brokers from May 2017 until he left the firm.¹¹⁰

The final version of the 2018 WSP’s listing of Cacace’s responsibilities was extensive; it named him responsible for 25 of SWF’s 29 business activities.¹¹¹ The list includes not just supervision of the firm’s representatives, but the responsibility for hiring brokers, supervising mutual funds, trade reporting, and all “compliance areas not specifically addressed.”¹¹² It also describes Cacace’s registration status, stating that he held eight registrations.¹¹³

Wybaillie testified that in conducting his investigation, he relied primarily on the firm’s WSPs to determine who supervised SWF’s brokers, stating “[i]f the WSPs says that person had supervisory responsibility,” that makes the person a supervisor.¹¹⁴ He assumed that Cacace had the ability to restrict or reduce brokers’ trading activity in customer accounts because he had the title of CCO and the WSPs stated he had those supervisory responsibilities.¹¹⁵ According to Wybaillie, the firm’s WSPs consistently named the firm’s CCO as supervisor of representatives and retail sales.¹¹⁶

b. The WSPs Cacace Provided

In his hearing testimony, Cacace took issue with the accuracy of the January 2018 final version of SWF’s WSPs the firm sent to FINRA and the letter accompanying it. He insisted that even though he was CCO in January 2018, he did not create that version of the WSPs.¹¹⁷ He testified that the letter wrongly identified him as SWF’s Melville, New York office branch

¹⁰⁸ Tr. 143–46 (Wybaillie).

¹⁰⁹ Tr. 154 (Wybaillie); CX-115, at 1.

¹¹⁰ Tr. 161–63 (Wybaillie); CX-120, at 2–3, 11, 47–48 (SWF’s final version of Jan. 2018 WSPs naming Cacace as CCO and supervisor of registered representatives).

¹¹¹ CX-120, at 47–49. The exceptions were designations of CFO Zelin for Financial Reporting and CEO Diamante for Operations, Private Placements, and Underwriting.

¹¹² CX-120, at 38–40. There is no evidence that Cacace was responsible for hiring, supervision of mutual funds, or trade reporting.

¹¹³ CX-120, at 47–49.

¹¹⁴ Tr. 569–70 (Wybaillie).

¹¹⁵ Tr. 548–49 (Wybaillie).

¹¹⁶ Tr. 124–25 (Wybaillie).

¹¹⁷ Tr. 1011 (Cacace).

manager¹¹⁸ and the WSPs incorrectly identified him as supervisor of all the representatives.¹¹⁹ The WSPs also identified Cacace as “Executive Representative,” but Cacace testified that he could not have held that position.¹²⁰ He explained that SWF was registered in all 50 states, but he was registered in only “four or five” so he could not serve as the firm’s executive representative.¹²¹ According to Cacace, Diamante was SWF’s executive representative.¹²²

Cacace claimed that this indicated that the final version of the January 2018 WSPs was altered after he left SWF.¹²³ As further evidence, he pointed to the inclusion of two registrations that the document stated he held as of January 2018, but he did not obtain until later that year: the Series 53, Municipal Securities Principal (“MP”), on February 8, 2018, and the Series 14, Compliance Officer (“CR”), on October 1, 2018.¹²⁴

Although Cacace testified at his OTR that he was not concerned about excessive trading at SWF,¹²⁵ at the hearing he testified differently. There, he stated that he was worried about the many red flags of excessive trading he saw.¹²⁶ Nonetheless, Cacace testified at the hearing, he did as instructed when told not to send active account letters despite the red flags indicating that he should.¹²⁷ He admitted that it was a mistake for him, as CCO, to have followed instructions not to take action, and that he should have resigned instead of continuing to work at SWF.¹²⁸ In fact, Cacace, testified, within six months of being hired as CCO he began looking for another job, but it was difficult to find one.¹²⁹ He finally gave notice to the firm in March 2019.¹³⁰ He testified that he was going to quit, but decided to accept an offer to remain on a part-time basis as Options Principal and CCO in a limited capacity.¹³¹ As noted above, Cacace began working full

¹¹⁸ Tr. 1009 (Cacace).

¹¹⁹ Tr. 1008–10 (Cacace).

¹²⁰ Tr. 1011–12 (Cacace); CX-120, at 47–48. According to Cacace, the executive representative is the person at a firm who serves as the contact for a state regulator when they wish to communicate with the firm and must be registered in the state. Tr. 1011 (Cacace); Tr. 1365 (argument of counsel). Article IV, Section 3 of the FINRA By-Laws describes the executive representative as the principal a member appoints to “represent, vote, and act for the member in all the affairs” of FINRA and serve as the firm’s contact person for FINRA. *See* FINRA Rule 4517.

¹²¹ Tr. 1012 (Cacace).

¹²² Tr. 1012 (Cacace).

¹²³ Tr. 1012 (Cacace).

¹²⁴ Tr. 1013–14 (Cacace); JX-29, at 7.

¹²⁵ CX-39, at 205–06, 217–19, 236–38, 269–70.

¹²⁶ Tr. 750–53, 790–91, 834–35 (Cacace).

¹²⁷ Tr. 753–54, 756–57, 766–67, (Cacace).

¹²⁸ Tr. 789–91 (Cacace).

¹²⁹ Tr. 790–91, 1002 (Cacace) He did not say anything about this in his OTR.

¹³⁰ Tr. 1002–03 (Cacace).

¹³¹ Tr. 929 (Cacace).

time at another firm, while working remotely for SWF, communicating with the firm by email and phone.¹³² He continued to review trade blotters daily and to send active account letters, after obtaining permission from Zelin or Diamante.¹³³ He claimed he did not supervise anyone either before or after becoming a part-time employee.¹³⁴

When Cacace stopped working on site at SWF's Melville office, he took with him a box containing his personal possessions.¹³⁵ He testified that he did not realize that in the bottom of the box there were two printed copies of the firm's WSPs, one dated June 2017 and the other February 2018.¹³⁶ He recalled that he took the box home and put it in a closet.¹³⁷ He testified that he had worked on the two versions while he was at SWF, that the former was in effect in June 2017 and the latter became effective in February 2018, after he passed the Series 53 qualification exam.¹³⁸ He claims both accurately reflect the registrations he held at the time.¹³⁹ Neither of them identifies Cacace as responsible for supervising the firm's representatives.¹⁴⁰ According to Cacace, he was unaware he had these WSPs until after 2021 when he discovered them while cleaning up his home office.¹⁴¹ Cacace sent copies of the two WSPs to Enforcement in January 2023, while Enforcement was investigating him, more than a year before Enforcement filed the Complaint.¹⁴²

Enforcement disputes their authenticity and the credibility of Cacace's testimony about finding them.¹⁴³ Enforcement argues that there is no corroboration of Cacace's story and SWF never produced these two WSPs despite responding to multiple document requests for all versions of the firm's WSPs in effect during the Relevant Period.¹⁴⁴

¹³² Tr. 929–30, 932 (Cacace).

¹³³ Tr. 932–33 (Cacace).

¹³⁴ Tr. 931–32 (Cacace).

¹³⁵ Tr. 746 (Cacace).

¹³⁶ Tr. 744–47 (Cacace).

¹³⁷ Tr. 1056 (Cacace).

¹³⁸ Tr. 1014–15, 1017 (Cacace).

¹³⁹ Tr. 1018–19 (Cacace).

¹⁴⁰ Respondent's Exhibit ("RX-__") 42, at 44 (Cacace's SWF WSPs naming Pollard as branch manager responsible for supervision of SWF's representatives); RX-43, at 44 (Cacace's SWF WSPs naming Geoffrey Harris as responsible for supervision of SWF's representatives).

¹⁴¹ Tr. 820 (Cacace).

¹⁴² Tr. 1014–15 (Cacace); Tr. 449–50 (Wybaillie).

¹⁴³ Department of Enforcement's Post-Hearing Brief ("Enf's Post-Hr'g Br.") 12.

¹⁴⁴ *Id.* at 11.

2. MAARs, Active Account Letters, Branch Reports, Branch Report Amendments, and Customer Complaint Reports

At the hearing, Cacace testified that he reviewed MAARs with Zelin usually monthly,¹⁴⁵ sometimes with Diamante,¹⁴⁶ and, at their direction, sent active account letters to selected customers.¹⁴⁷ He was also responsible for filing branch reports and corresponding amendments to them with FINRA.¹⁴⁸

a. MAARs and Active Account Letters

Cacace testified that the MAARs alerted him to potential red flags of trading activity in customer accounts.¹⁴⁹ When reviewing the MAARs, he made notes on the reports to document what he did in response.¹⁵⁰ He also used them as part of his monitoring for quantitative suitability.¹⁵¹

As he did at his OTR, at the hearing Cacace testified that the clearing firm set the criteria for including an account in the MAARs.¹⁵² The clearing firm would include an account in the MAARs if: (i) in the previous three months the commissions charged amounted to \$2,500 or more, (ii) there were ten or more trades, and (iii) the account suffered total losses of 20 percent or more.¹⁵³

In his OTR, Cacace testified repeatedly that he was the person who decided when to send the letters and to whom, and did not mention being overruled or directed by Zelin in making the decisions.¹⁵⁴ If the customer did not sign and return the letter within ten business days, trading in the customer's account would be restricted to permit only liquidating transactions.¹⁵⁵ He testified that he would send letters to the customers included on the report monthly unless he decided it was not necessary.¹⁵⁶ He gave several reasons why he might choose not to send a letter. If the customer had received a letter the previous month, he would wait and send the customer a letter

¹⁴⁵ Tr. 635 (Cacace).

¹⁴⁶ Tr. 948–49 (Cacace).

¹⁴⁷ Tr. 622–23, 635 (Cacace).

¹⁴⁸ Tr. 680–81 (Cacace).

¹⁴⁹ Tr. 622–24 (Cacace).

¹⁵⁰ Tr. 623–24 (Cacace).

¹⁵¹ Tr. 624, 629–30 (Cacace).

¹⁵² Tr. 641 (Cacace).

¹⁵³ Tr. 640–41 (Cacace).

¹⁵⁴ CX-39, at 39–40, 42–49, 68–69.

¹⁵⁵ CX-39, at 149, 225.

¹⁵⁶ CX-39, at 148.

quarterly.¹⁵⁷ If the activity in the customer's account was self-directed and the customer traded to rebalance the account, he would not send a letter.¹⁵⁸

The MAARs reports in evidence contain Cacace's handwritten notations.¹⁵⁹ They do not support Cacace's OTR testimony that the decision to send a letter was his alone. Instead, they tend to corroborate his hearing testimony, that it was Zelin or Diamante who decided when to send the letters. The notations suggest that Cacace would recommend sending active account letters but did so only if Zelin approved. They indicate that Cacace rarely persuaded Zelin to approve sending a letter after Zelin initially rejected Cacace's recommendation.

For example, on a MAAR that flagged the account of one of Flower's customers, Cacace wrote "Yes" on the entry alerting SWF to the number of trades, losses, and commissions charged in the preceding month.¹⁶⁰ The report shows there was an eight percent decline in equity over the month, with 20 trades, and commission charges of \$13,000, in an account with \$100,826 in equity at the month's start but just \$92,292 at month's end.¹⁶¹ Cacace testified that the word "Yes" in his handwriting indicates that Zelin directed him to send an activity letter.¹⁶²

On the entry for another customer account, this one not Flower's, Cacace noted "Yes," but crossed it out and wrote "no sent Sept. 2017."¹⁶³ Cacace testified that these entries mean he initially was going to send a letter to the customer, but Zelin overruled him because he had sent one the previous month.¹⁶⁴

On another MAAR, for August 2017, next to a description of the activity in an account of a Pecoraro customer, Cacace wrote "no sent last qtr," crossed it out, then wrote "yes."¹⁶⁵ Cacace testified that these notes indicate Zelin initially told him not to send an active account letter, but Cacace disagreed¹⁶⁶ and, insisting on the need for a letter, persuaded Zelin to change his mind.¹⁶⁷

¹⁵⁷ CX-39, at 148–49.

¹⁵⁸ CX-39, at 149.

¹⁵⁹ Tr. 620–24, 748 (Cacace); *See, e.g.*, JX-40, at 2–7.

¹⁶⁰ Tr. 634–35 (Cacace); JX-42, at 13.

¹⁶¹ Tr. 646–47 (Cacace); JX-42, at 13.

¹⁶² Tr. 634–35 (Cacace); JX-42, at 13.

¹⁶³ JX-42, at 13.

¹⁶⁴ Tr. 640 (Cacace).

¹⁶⁵ JX-40, at 13.

¹⁶⁶ Tr. 748–49 (Cacace). Cacace testified he disagreed because of the low equity in the account, the turnover rate, and the high level of commissions charged that month, costing the customer more than \$10,000 in an account that started the month with equity of almost \$72,000 but ended with just under \$67,000. Tr. 749–50 (Cacace).

¹⁶⁷ Tr. 749 (Cacace).

On the February 2019 MAAR, reporting an account of a Sullivan customer, Cacace testified that he originally wrote “Yes,” indicating he wanted to send an activity letter.¹⁶⁸ He crossed it out and wrote what appear to be the words “No Sent for Jan. 19,” also crossed out, but then the same phrase rewritten and not crossed out, indicating, he testified, that at the end of their discussion, Zelin instructed him not to send a letter.¹⁶⁹

b. Branch Reports and Customer Complaint Reports

In branch reports, firms provide FINRA with basic information including branch office locations, names of supervisors, contact information, and types of business conducted.¹⁷⁰ Firms are also required, under FINRA Rule 4530, to file reports with information about customer complaints they receive. Enforcement argues that the branch report and customer complaint report filings Cacace made to FINRA as CCO are further evidence of his supervisory role at SWF.¹⁷¹ Cacace admitted that he created and filed reports and amendments incorrectly designating himself as supervisor of representatives.¹⁷² But being named as supervisor is not, Cacace insisted, proof that he supervised because the person named as supervisor in SWF’s documents “really was not a supervisor.”¹⁷³

Cacace gave varying explanations for submitting the incorrect forms. When questioned about an amendment to the branch report for the Melville office he filed in December 2017, Cacace said he was told by Zelin and Diamante to put his name in temporarily until they named a new supervisor.¹⁷⁴ He acknowledged that he falsely designated himself as supervisor, but testified that he filed it “[u]nder the duress of being fired.”¹⁷⁵ He testified that the designation was incorrect because “to be a supervisor, you have to have control over” the brokers, and he did not.¹⁷⁶ He did not know if the inaccuracy was subsequently corrected.¹⁷⁷ As for a submission in August 2019 identifying himself as supervisor, Cacace claimed it was an error that was corrected later by his successor.¹⁷⁸

¹⁶⁸ Tr. 782 (Cacace); JX-58, at 19.

¹⁶⁹ Tr. 783 (Cacace); JX-58, at 19.

¹⁷⁰ See, e.g., CX-49.

¹⁷¹ Enf’s Post-Hr’g Br. 4.

¹⁷² Tr. 690–91 (Cacace).

¹⁷³ Tr. 1279–80 (Cacace).

¹⁷⁴ Tr. 682–85; (Cacace); CX-47.

¹⁷⁵ Tr. 1285 (Cacace).

¹⁷⁶ Tr. 689–90 (Cacace).

¹⁷⁷ Tr. 686–87 (Cacace)

¹⁷⁸ Tr. 1276–77 (Cacace).

Cacace testified that as CCO he was responsible for filing reports about customer complaints the firm received as FINRA Rule 4530 requires.¹⁷⁹ On the forms he submitted to FINRA, Cacace identified himself as the “Complaint Investigator,” which meant he reviewed the complaint details, possibly contacted the customer, resolved the complaint, and ensured the form was properly filled out.¹⁸⁰

But the reports also identify Cacace as the supervisor of the brokers who were the subjects of the complaints, including Flower, Pecoraro, and Sullivan.¹⁸¹ Cacace testified that he “mischaracterized” himself as the brokers’ supervisor.¹⁸² He claimed that when he filled out the reports, he mistakenly thought that where the form asked for the identity of the broker’s supervisor, it meant the identity of the “supervisor who worked on the customer complaint.”¹⁸³

When asked why—since he claimed Zelin and Diamante were the ones with control over the brokers—he did not name them as supervisors, Cacace testified that they told him they “didn’t want their names on anything.”¹⁸⁴ According to him, they felt if they were named “they would be held responsible.”¹⁸⁵ Cacace testified that Zelin said he would fire Cacace if he did not put his own name in the filings.¹⁸⁶

c. Conclusions

The Hearing Panel finds that Cacace’s notations on the MAARs, and his explanation of what they mean, show that although his role was limited, Cacace participated in determining SWF’s response to the reports’ red flags. He thus shared responsibility for deciding whether to send activity letters to customers whose accounts the MAARs flagged for possible excessive trading. The notations on the reports reflect that in their monthly meetings, Cacace recommended to Zelin the customers he thought he should notify of their account activity. Zelin approved sending some letters, rejected Cacace on others, and—at least on one occasion—Cacace prevailed over Zelin’s initial objections. The fact that Zelin or Diamante made the final decision did not relieve Cacace of his supervisory role in this process.¹⁸⁷

¹⁷⁹ Tr. 701–02 (Cacace).

¹⁸⁰ Tr. 703–06 (Cacace).

¹⁸¹ Tr. 704–07; *see, e.g.*, CX-55, CX-56, CX-60, CX-66.

¹⁸² Tr. 704–05 (Cacace).

¹⁸³ Tr. 706–07 (Cacace).

¹⁸⁴ Tr. 1281–82 (Cacace).

¹⁸⁵ Tr. 1282 (Cacace).

¹⁸⁶ Tr. 1282–83 (Cacace).

¹⁸⁷ *George J. Kolar*, Exchange Act Release No. 46127, 2002 SEC LEXIS 3420, at *16 (June 26, 2002) (Being subject to countermand by a higher-level manager does not relieve a person with shared supervisory duties from responsibility to respond reasonably to red flags of misconduct.).

Regarding the branch reports and their amendments, the Hearing Panel discounts Cacace's assertion that he merely facilitated filing the reports. He filed them, he identified himself as supervisor, and there is nothing that corroborates his claim that he believed he did so only as a temporary measure. We find the evidence supports the conclusion that he knowingly consented to SWF's designation of him as a supervisor responsible for filing the reports.

As for the Rule 4530 complaint reports, the Hearing Panel finds Cacace's claim that he mistakenly mischaracterized himself as the brokers' supervisor unpersuasive. In filing the Rule 4530 reports, Cacace knew he was identifying himself as a supervisor. His assertion that he identified himself as a supervisor thinking it meant he was "supervisor of the complaint" is unsupported. He made two separate entries in the reports. One is for the name of the broker's supervisor. The other is for the "Complaint Investigator." With his more than 40 years of experience in the securities industry,¹⁸⁸ and having been a CCO since 2005,¹⁸⁹ we do not accept that Cacace misunderstood the difference between the two entries. This is especially so considering that, as noted above, in January 2017 Cacace accepted a 20-day suspension for—among other violations—failing to ensure that his former firm timely reported statistical and summary information regarding customer complaints.¹⁹⁰ This is evidence that he was familiar with the reports and understood the information they required him to supply.

3. Other Evidence Relating to Cacace Acting as a Supervisor at SWF

a. Daily Trade Blotter Reviews

Cacace reviewed the daily trade blotters showing all the firm's trading activity,¹⁹¹ and initialed them as he did so.¹⁹² He testified that, at the firm owners' request, he checked for commissions exceeding 2.5 percent, because the owners "wanted to make sure the brokers didn't charge too much on a daily basis."¹⁹³ At the hearing he testified that he could not approve or disapprove a trade.¹⁹⁴ Cacace's hearing testimony about this echoed the description given by his predecessor as SWF's CCO, Pollard, who testified that he reviewed the daily trading by the brokers, but if he had any questions or issues with a trade or commission, he would take them to Zelin or Diamante.¹⁹⁵

¹⁸⁸ Tr. 926 (Cacace).

¹⁸⁹ Tr. 937–38 (Cacace).

¹⁹⁰ CX-95, at 2.

¹⁹¹ Tr. 627 (Cacace).

¹⁹² Tr. 628 (Cacace). The 18 blotters in evidence, CX-67–84, are titled "Rep Workbook." The first page of each has the date and Cacace's initials on the first page. *See, e.g.*, CX-67, at 1.

¹⁹³ Tr. 629 (Cacace).

¹⁹⁴ Tr. 959–60 (Cacace).

¹⁹⁵ Tr. 1161–62 (Pollard).

In contrast to his hearing testimony, at the OTR Cacace testified that he cut commissions he thought were too high, and alerted Diamante and Zelin to his findings, ending his involvement.¹⁹⁶ At the hearing, Cacace's testimony shifted slightly. He testified that when he identified excessive commissions, he would bring them to the attention of Diamante or Zelin, but he had no authority to change commissions.¹⁹⁷

Whether he reduced excessive commissions subject to being overruled by Zelin and Diamante, as he testified in his OTR, or simply informed Zelin and Diamante with no ability to take any action, one of Cacace's responsibilities was to review the daily trade blotters. Doing so, he assisted Zelin and Diamante with the supervision of trading activity.

b. New Account Application Approvals

Cacace testified that he had the authority to approve new accounts and sign new account forms.¹⁹⁸ However, Cacace testified that any principal could sign the form and approve new accounts,¹⁹⁹ and he named six, including Zelin and Diamante, who were able to do so.²⁰⁰ There are six new account forms signed by Cacace in evidence.²⁰¹ There are two signed by others during Cacace's tenure as CCO.²⁰²

Even though he shared this task with other principals, it is some evidence—albeit slight—that Cacace participated in overall firm management and supervision by approving and signing new account forms. However, this does not establish that he was responsible for supervising representatives' trading activity.

c. Background Reviews of Prospective New Hires

Consistent with his OTR testimony, at the hearing Cacace testified that Diamante and Zelin asked him to review the backgrounds of prospective hires, and there were times they accepted his recommendations against hiring someone with a troubled background.²⁰³ Again, here he played a role in advising senior management, despite not having final authority for making hiring decisions.

¹⁹⁶ CX-39, at 51–52.

¹⁹⁷ Tr. 960–61 (Cacace).

¹⁹⁸ Tr. 953–54 (Cacace).

¹⁹⁹ Tr. 912–13, 954 (Cacace).

²⁰⁰ Tr. 954 (Cacace).

²⁰¹ JX-4, at 5; JX-5, at 5; JX-6, at 5; JX-10, at 6; JX-12, at 5; and JX-14, at 5.

²⁰² JX-11, at 6 (signed by David Page); JX-13, at 5.

²⁰³ Tr. 994 (Cacace); CX-39, at 94.

d. Recommendations to Dismiss Brokers

At the hearing Cacace testified that only Zelin and Diamante could fire brokers.²⁰⁴ He testified that he recommended they fire at least four brokers during his tenure as CCO, including Flower and Pecoraro.²⁰⁵ Two of the four, according to Cacace, were abusive towards him in their interactions and he disapproved of their handling of customer accounts.²⁰⁶ Flower, Cacace testified, on one occasion threatened him, and cursed at him and Zelin when they met in Zelin's office to discuss his accounts.²⁰⁷ In addition, Cacace testified, Flower over-traded his accounts.²⁰⁸ Cacace testified that he recommended firing Flower when he returned to the firm after completing a three-month suspension.²⁰⁹ According to Cacace, Zelin refused, saying, Flower was "a producer."²¹⁰

e. Recommendations to Place Representatives on Heightened Supervision

At the hearing, Cacace testified that as CCO he was able to recommend placing representatives on heightened supervision.²¹¹ He testified that he made several such recommendations, including heightened supervision for Pecoraro.²¹² In this, he contradicted his OTR testimony, when he claimed he never considered doing so.²¹³ As discussed below, the evidence corroborates Cacace's hearing testimony and establishes that Cacace participated in a supervisory capacity overseeing SWF's heightened supervision of a handful of representatives.

In May 2017, shortly after Diamante and Zelin hired him, Cacace sent them a memo stating that after reviewing a FINRA notice addressing "High-risk and Recidivist Brokers," he determined the firm's written procedures for placing brokers on heightened supervision were deficient.²¹⁴ He recommended the firm improve its policy by adopting new criteria to trigger reviews by "management and compliance" to determine who should be placed on heightened supervision.²¹⁵ He attached a list of 16 SWF brokers—including Flower and Pecoraro—whom

²⁰⁴ Tr. 962–63 (Cacace).

²⁰⁵ Tr. 963–64 (Cacace).

²⁰⁶ Tr. 963–67 (Cacace).

²⁰⁷ Tr. 967–68 (Cacace).

²⁰⁸ Tr. 967–68 (Cacace).

²⁰⁹ Tr. 967 (Cacace).

²¹⁰ Tr. 964–66 (Cacace). Zelin and Diamante fired none of the four. Tr. 964 (Cacace).

²¹¹ Tr. 868 (Cacace).

²¹² Tr. 868 (Cacace).

²¹³ CX-39, at 279.

²¹⁴ RX-2, at 1.

²¹⁵ Tr. 1035 (Cacace); RX-2, at 1–2.

he said met his recommended criteria.²¹⁶ Diamante and Zelin did not accept his recommendations and did not put any representatives on heightened supervision.²¹⁷

In 2017, Flower was placed on a heightened supervision plan by the state of New Jersey.²¹⁸ In September 2017, Cacace notified the Bureau of Securities at the New Jersey Attorney General's office that he was taking over from Pollard the review and supervision of the agreement.²¹⁹ Cacace wrote that he would "be Mr. Flower's supervisor."²²⁰ At the hearing, Cacace explained that SWF and Flower had been at risk of losing their New Jersey registrations because SWF had not been staying current with the plan's requirements.²²¹ He minimized the significance of this supervisory role because Flower's customer accounts were inactive.²²² According to Cacace, his supervision was limited to sending a monthly report to the New Jersey Bureau of Securities that Flower was complying with the heightened supervision conditions.²²³ The documentary evidence corroborates Cacace's hearing testimony.²²⁴

In October 2016, the state of Missouri placed Pecoraro on heightened supervision requiring pre-approval of any trades he made for Missouri clients.²²⁵ Pollard had handled the responsibility of overseeing Pecoraro's heightened supervision.²²⁶ When Cacace took over, he met with Pecoraro monthly at first, and then quarterly, and filled out the supervision form.²²⁷ They met in person, usually with Zelin present, until Cacace started working remotely in 2019, after which they conferred by phone.²²⁸ Cacace submitted to the state of Missouri monthly or quarterly supervision forms for Pecoraro from July 2017 to July 2019.²²⁹

²¹⁶ Tr. 1036 (Cacace); RX-2, at 3.

²¹⁷ Tr. 1036 (Cacace).

²¹⁸ Tr. 344–46 (Wybaillie).

²¹⁹ Tr. 854–55 (Cacace); CX-87, at 1.

²²⁰ CX-87, at 1.

²²¹ Tr. 968–69 (Cacace).

²²² Tr. 969 (Cacace).

²²³ Tr. 863–65 (Cacace).

²²⁴ CX-87, at 8–26, consists of a series of memoranda dated monthly from October 2017 to April 2019 signed by Cacace stating that for the prior month "I hereby certify that Mr. James Flower is in compliance with the conditions of heightened supervision as listed in the [Heightened Supervision Agreement]."

²²⁵ Tr. 871–72 (Cacace); CX-88, at 4–5.

²²⁶ CX-88, at 2–3.

²²⁷ Tr. 871–72 (Cacace).

²²⁸ Tr. 872–74 (Cacace).

²²⁹ CX-88, at 14–23.

In February 2019, Cacace wrote a memo to Diamante to alert him to the fact that a customer had filed an arbitration against SWF and Pecoraro.²³⁰ Cacace reminded Diamante that Pecoraro was under a heightened supervision plan that required SWF to report the matter to Missouri’s securities commission.²³¹ Cacace asked Diamante to give him written instructions to file an amendment to Pecoraro’s Uniform Application for Securities Industry Registration or Transfer (“Form U4”) and make the report to Missouri.²³² According to Cacace, Diamante refused, saying that he did not want to jeopardize Pecoraro’s registration by reporting yet another complaint against him.²³³

E. Credibility

Cacace’s credibility is problematic, in part because of the contradictions between his OTR and his hearing testimony. At the OTR, as described above, he presented himself as sharing the “mindset” of Zelin and Diamante—unconcerned about the high turnover rates, cost-to-equity ratios, and losses in customer accounts, because, as he characterized them, SWF’s customers were high-income risk takers who wanted to trade frequently.²³⁴ At the OTR he testified he was able to take actions—by reducing or reversing commissions and sending active account letters—to affect the behavior of brokers.²³⁵ Also at the OTR, he said he was responsible for deciding when and to whom to send customers active account letters to alert them to potential excessive trading in their accounts,²³⁶ that he did not know if anyone else at SWF received and reviewed the MAARs,²³⁷ and he did not recall if Zelin or Diamante told him when to send active account letters.²³⁸ At the hearing, he stated his OTR testimony on this was incorrect.²³⁹

Enforcement largely accepts Cacace’s OTR testimony as credible and disparages his hearing testimony, arguing that Cacace testified truthfully at the hearing only “on one key issue,” that his review of the MAARs alerted him to numerous red flags of excessive trading by the four representatives as described in the Complaint.²⁴⁰ On other material issues, Enforcement argues that at the hearing—contradicting his OTR testimony—Cacace falsely testified that: (i) he had concerns about excessive trading at SWF and brought them to the attention of Zelin and

²³⁰ RX-9.

²³¹ RX-9.

²³² RX-9.

²³³ Tr. 1041–42 (Cacace).

²³⁴ CX-39, at 272.

²³⁵ CX-39, at 40, 96–97.

²³⁶ CX-39, at 146–47.

²³⁷ CX-39, at 41.

²³⁸ CX-39, at 48–49.

²³⁹ Tr. 645–46 (Cacace).

²⁴⁰ Enf’s Post-Hr’g Br. 26–31.

Diamante; (ii) he recommended accounts be closed and brokers fired, but was overruled by Zelin and Diamante; (iii) he was so concerned about excessive trading at SWF that six months after he was hired, he started looking for another job; and (iv) when he testified at his OTR, he had forgotten about these concerns, and only recalled them after reviewing documents and preparing for the hearing—a process that he said refreshed his recollection.²⁴¹

The Hearing Panel found some of Cacace’s testimony, both at the OTR and at the hearing, to be credible, and some not. When assessing Cacace’s credibility, the Hearing Panel considered Cacace’s demeanor throughout the hearing, whether his testimony on various points was consistent or inconsistent, and whether it was corroborated by documents or the testimony of others. Unfortunately, there is an absence of documentary evidence that could have assisted the Hearing Panel in making its credibility determinations. For example, while some memoranda and emails Cacace wrote as CCO are in evidence, Cacace claimed there were additional memoranda he placed in customer and employee files at SWF’s Melville office and email exchanges he had with Zelin and Diamante that were not produced in discovery.²⁴²

We note that in November 2020 Enforcement issued a FINRA Rule 8210 request calling for SWF to provide “[a]ll electronic communications sent to/from/cc/bcc Christopher Cacace (CRD No. 4308782) for the period May 1, 2017 through March 31, 2019.”²⁴³ Cacace testified without contradiction that there were email exchanges between him and SWF in this period, when he was a full-time SWF employee but they were not produced.²⁴⁴ He also testified that he had email exchanges with Zelin, Diamante, and the operations manager when he was working remotely and part time during the last months he was CCO, but none were provided in the discovery materials he received.²⁴⁵ There are only five emails from Cacace in evidence.²⁴⁶ Cacace testified that a former SWF employee told him that after the firm was expelled, it stopped paying rent and its offices were locked and records were destroyed.²⁴⁷ The paucity of emails in the record indicates there might well have been others that were not made available to Enforcement when it gathered records in this matter.

The Hearing Panel also considered the credibility of the witnesses who testified on Cacace’s behalf, to weigh whether their testimony corroborated or contradicted Cacace. Finally, the Hearing Panel considered too, what weight to give the statements Enforcement placed in

²⁴¹ *Id.*

²⁴² Tr. 933–35 (Cacace).

²⁴³ RX-49, at 1.

²⁴⁴ Tr. 1028–30 (Cacace).

²⁴⁵ Tr. 932–33 (Cacace).

²⁴⁶ Two are identical emails dated June 12, 2017, from Cacace to SWF customers informing them of commissions to be charged for servicing retirement plans (CX-85 and CX-86). The other three, all sent in 2017, are to state securities regulators regarding Pecoraro’s registration status (CX-131–CX-133).

²⁴⁷ Tr. 936 (Cacace).

evidence from witnesses who did not testify—two former SWF brokers and excerpts from Flower’s OTR transcript.

1. Cacace’s Claim He Was Not Hired to Supervise

On one topic, Cacace has been consistent: at both his OTR and at the hearing, as noted above, he testified that, when SWF hired him, Diamante and Zelin accepted Cacace’s demand that he would be responsible for compliance, not supervision of representatives.

Although Cacace’s consistency on this point would seem to lend him credibility, his claim that he took the job of CCO on the condition of not being a supervisor is not corroborated by any other testimony or any documents in evidence. Presumably, Zelin and Diamante could have shed light on this, but neither party called them to testify, even though both were included on Cacace’s witness list and Diamante was on Enforcement’s. Without any corroboration, the Hearing Panel is unable to give probative weight to Cacace’s claim about the conditions under which SWF hired him.

2. Cacace’s Claim He Had No Supervisory Authority

At the hearing, Cacace repeatedly insisted that he lacked any ability to supervise the SWF brokers, because Zelin and Diamante were the only supervisors at SWF.²⁴⁸ He flatly denied he could cancel or disapprove trades, settle customer complaints, fire or reprimand brokers, cut commissions or affect the trading activities of Lianzo, Pecoraro, Flower, or Sullivan.²⁴⁹ However, as discussed above, at the hearing he testified that he was able to recommend that a representative be placed on heightened supervision and did so on a number of occasions, although his recommendations were not followed.²⁵⁰ And shortly after being hired as CCO, he recommended to Zelin and Diamante that they review 16 representatives for possible heightened supervision,²⁵¹ to no avail.²⁵²

In contrast, at his OTR Cacace testified that he engaged in supervisory activities when he managed and resolved customer complaints,²⁵³ and cut commissions he thought were too high.²⁵⁴ There is evidence corroborating this testimony. In an August 2017 memo, Cacace described

²⁴⁸ Tr. 960–62, 999, 1004, 1021–22 (Cacace).

²⁴⁹ Tr. 960–63, 996–98 (Cacace).

²⁵⁰ Tr. 868–69, 1036 (Cacace).

²⁵¹ *See supra* 21; RX-2.

²⁵² Tr. 1036 (Cacace).

²⁵³ CX-39, at 53–54.

²⁵⁴ CX-39, at 51, 105–06.

receiving and resolving a customer complaint about a commission charged, but it did not involve any of the four problematic representatives.²⁵⁵

Save for Flower's claims at his OTR, which the Hearing Panel does not credit, there is no evidence that Cacace canceled or disapproved any trades, cut commissions, or affected the trading activities of the four representatives. There is a memo to a customer file in November 2018 recording Cacace's approval of another representative's recommendation of a bond switch when a customer's bond investment was about to mature.²⁵⁶ There is also a memo Cacace wrote to Diamante reporting that Cacace told SWF's operations department to suspend sending marketing materials for an investment in a fund until management could evaluate Cacace's recommendation to make regulatory disclosures in the Form U4 of a representative involved in the fund.²⁵⁷ But, again, the representative was not one of the four that the Complaint charges Cacace with failing to supervise.

3. The Competing WSPs

Another major point of contention is Cacace's assertion that SWF altered the final version of January 2018 WSPs it provided to Enforcement to falsely depict him as a designated supervisor, and that he discovered two accurate versions he created while at the firm and inadvertently took when he left SWF.²⁵⁸ Enforcement describes Cacace's testimony about discovering the June 2017 and February 2018 versions as "implausible" and not credible.²⁵⁹

Examining the contents of the WSPs does not resolve the problem. The inaccuracies in the firm's final January 2018 version, describing Cacace as having two licenses he had not yet qualified for, lend credence to Cacace's argument that SWF edited the WSPs incorrectly after he left the firm.²⁶⁰ So does Cacace's un rebutted testimony that the final version erroneously designates him as the firm's Executive Representative, a position he claims he could not have held because he would have had to be registered in all 50 states. The Central Registry Depository records confirm his testimony that he was registered in only a few states.²⁶¹

But Cacace's account of how he found his June 2017 and February 2018 WSP versions is uncorroborated. There is no way to confirm or refute his claim that they were in effect when he was CCO and accurately reflect the firm's designated supervisors. Cacace offered no explanation

²⁵⁵ RX-16.

²⁵⁶ RX-13.

²⁵⁷ RX-10.

²⁵⁸ See *supra* 12–14.

²⁵⁹ Enf's Post-Hr'g Br. 19.

²⁶⁰ He testified that the WSPs state he held Series 14 and Series 53 registrations, but he did not take the Series 53 qualification exam until February 2018, and the Series 14 qualification exam until late October 2018. Tr. 1010 (Cacace).

²⁶¹ JX-29, at 7.

of why, in July 2019 when he was still CCO and responded to an Enforcement request to provide the firm's WSPs in effect from July 2018 through June 2019, he did not submit the February 2018 version, which would have been responsive to the request. Instead, as discussed earlier, he submitted an incorrect version of the January 2018 WSPs, he claimed by mistake, which named Pollard as supervisor of the brokers.²⁶² Unable to determine the authenticity of Cacace's belatedly discovered WSPs, the Hearing Panel can give them no probative weight in our evaluation of the evidence.

4. Other Witness Testimony and Statements

Cacace called four witnesses to testify at the hearing in support of his defense. The first was Pollard, who remained briefly at SWF after Cacace was hired to replace him in May 2017. The second was Keith Bettencourt, a current FINRA employee who was an exam manager at FINRA's Jericho office and met with Pollard in November 2017. The remaining two, Gary Demetri and Praxedes Russi, were representatives at SWF at times that overlapped with Cacace's tenure as CCO. Their testimony about broker supervision at SWF was consistent in some respects, but not all.

a. Donald Pollard and Keith Bettencourt

Pollard worked at SWF from July 18, 2016, to the end of October 2017.²⁶³ He was hired as CCO, despite having no previous experience in the position.²⁶⁴ Pollard testified that Zelin and Diamante made it clear he was to supervise "just in a chief compliance officer role but not like a direct supervisor."²⁶⁵ He described the role of CCO at SWF as "like a figure head."²⁶⁶ During his tenure as SWF's CCO, Pollard testified, he was never responsible for direct supervision of the firm's brokers.²⁶⁷ He testified that he reviewed trades daily but he had no ability to affect brokers' conduct, and when questions arose, he took them to Zelin or Diamante.²⁶⁸ Pollard testified that he was not authorized to change a commission on his own.²⁶⁹ According to Pollard, when he questioned a trade, thought a commission should be reduced, or was concerned that a

²⁶² Tr. 904–06 (Cacace).

²⁶³ Tr. 1156 (Pollard); JX-35, at 13.

²⁶⁴ Tr. 1159–60 (Pollard).

²⁶⁵ Tr. 1171 (Pollard).

²⁶⁶ Tr. 1177–78 (Pollard).

²⁶⁷ Tr. 1216 (Pollard).

²⁶⁸ Tr. 1219 (Pollard).

²⁶⁹ Tr. 1161–62 (Pollard).

broker traded too much, he would report his concerns to Zelin and Diamante.²⁷⁰ Pollard said they overruled his recommendations many times.²⁷¹

As with Cacace, Pollard's CCO responsibilities included reviewing trade logs and commission runs and approving new accounts.²⁷² He, too, reviewed MAARs generated by the clearing firm, informed Zelin and Diamante of customers whose accounts were flagged on them, and recommended sending, and subsequently prepared, active account letters to those customers.²⁷³

One broker was, in Pollard's view, "extremely aggressive;" he argued with Pollard and threatened him.²⁷⁴ Pollard told Zelin and Diamante he would not deal with him after the broker threatened him with violence, and suggested they fire the broker.²⁷⁵ According to Pollard, Zelin laughed.²⁷⁶ Pollard was concerned about another broker who had been barred, but his case was on appeal.²⁷⁷ Pollard told Zelin and Diamante that it "does not look good for the firm" to have a barred broker working for it.²⁷⁸ Diamante's response was that the broker was a "big producer" and it was legal for him to continue to work while his case was on appeal.²⁷⁹ Pollard's recollection is that the broker remained at SWF until his bar became final.²⁸⁰ Pollard did not have the authority to fire brokers and did not consider himself their supervisor.²⁸¹

When Cacace replaced him in May 2017, Pollard recalled coming to the office and being "kind of taken aback" by finding Cacace there; he did not recall being given any explanation.²⁸² He remained at SWF for only a few more months.²⁸³ He testified that he was not aware of being

²⁷⁰ Tr. 1161–62 (Pollard).

²⁷¹ Tr. 1164–65, 1178–79 (Pollard).

²⁷² Tr. 1161 (Pollard).

²⁷³ Tr. 1171–72 (Pollard).

²⁷⁴ Tr. 1166 – 68 (Pollard).

²⁷⁵ Tr. 1168 (Pollard).

²⁷⁶ Tr. 1168 (Pollard).

²⁷⁷ Tr. 1169 (Pollard).

²⁷⁸ Tr. 1169 (Pollard).

²⁷⁹ Tr. 1169–70 (Pollard).

²⁸⁰ Tr. 1170 (Pollard).

²⁸¹ Tr. 1170 (Pollard).

²⁸² Tr. 1182–83 (Pollard).

²⁸³ Tr. 1182–83 (Pollard).

made a supervisor of the brokers; he was not in the office much and was not compensated for supervising.²⁸⁴

In November 2017, Pollard voluntarily contacted and met with FINRA staff at their Jericho, NY, office.²⁸⁵ He was motivated by concern that if there were a FINRA examination of SWF, or customers complained about its trading practices, Zelin and Diamante “would throw anybody” they could “under the bus.”²⁸⁶ Pollard testified that when he questioned commissions and trades, he was overruled.²⁸⁷ He had a “gut feeling” that if “anything ever happened,” Zelin and Diamante would protect themselves by saying Pollard had “complete control” over the activities of the firm.²⁸⁸

Pollard recalled that one of the FINRA staffers at the meeting was Bettencourt, to whom he sent an email attaching copies of the documents he brought to the meeting.²⁸⁹ In November 2017, Bettencourt was an examination manager at FINRA’s Jericho, NY, office.²⁹⁰ He was managing a 2017 cycle exam of SWF when Pollard appeared.²⁹¹ Bettencourt could recall no other instance in which a broker voluntarily came to his office to provide information about the operation of his former employer firm.²⁹² Bettencourt had no memory of what Pollard said independent of a staff memorandum describing the meeting.²⁹³ However, when he read it in preparation for the hearing, he saw nothing to suggest the memo was inaccurate in its description of what Pollard said.²⁹⁴ Bettencourt recalled that Pollard provided handwritten notes and documents.²⁹⁵

The memo confirms that Pollard told the examiners that: (i) he was unaware he was named branch office manager in addition to being CCO; (ii) when he reduced broker commissions he thought were too high, Zelin would reverse the reductions; (iii) Zelin and Diamante “[drove] everything at the firm;” (iv) Diamante or Zelin approved all trades; (v) he had

²⁸⁴ Tr. 1183–84 (Pollard).

²⁸⁵ Tr. 1184 (Pollard); RX-88.

²⁸⁶ Tr. 1220 (Pollard).

²⁸⁷ Tr. 1221–22 (Pollard).

²⁸⁸ Tr. 1185 (Pollard).

²⁸⁹ Tr. 1187 (Pollard).

²⁹⁰ Tr. 1228 (Bettencourt). Bettencourt is currently a Director in FINRA’s Cyber and Analytics unit. Tr. 1227 (Bettencourt).

²⁹¹ Tr. 1229–30 (Bettencourt).

²⁹² Tr. 1234–35 (Bettencourt).

²⁹³ Tr. 1230–33 (Bettencourt).

²⁹⁴ Tr. 1233–34 (Bettencourt).

²⁹⁵ Tr. 1235–37 (Bettencourt).

no “say” as CCO in hiring decisions; and (vi) he told Zelin and Diamante that ratios of commissions to equity in customer accounts were too high and should be reduced.²⁹⁶

Bettencourt testified that the firm’s trading activity was an area of interest in his office’s 2017 cycle exam of SWF.²⁹⁷ But the information Pollard provided had no impact on the outcome of the 2017 cycle exam.²⁹⁸ Bettencourt did not recall whether his office forwarded Pollard’s information to Enforcement but if Enforcement was not involved in the matter, it would not have been normal practice to do so.²⁹⁹ He was unaware that Pollard testified at an OTR in August 2021.³⁰⁰ It was not until late 2024 that Enforcement asked to see the memo and email Pollard sent to Bettencourt.³⁰¹

* * *

In significant respects, Pollard corroborates Cacace’s hearing testimony. Pollard’s description of his experience as SWF’s CCO depicts the firm in terms similar to those that Cacace used. Cacace’s recitation of his responsibilities as CCO mirrors Pollard’s. Both Cacace and Pollard testified that their duties included reviewing the MAARs, meeting with Zelin and Diamante to recommend sending active account letters, and monitoring daily trading activity, with no authority to approve or disapprove trades. Similar to Cacace, Pollard testified that CCO was a “figure head” position at SWF, that he was not responsible for direct supervision of the firm’s brokers, and had no authority to take action on his own.³⁰² Both described abusive behavior by representatives that Zelin and Diamante ignored. Like Cacace, Pollard testified that as CCO, he was not the brokers’ supervisor.

The Hearing Panel found Pollard to be a credible witness. Bettencourt, who was directing a cycle exam at SWF at that time, corroborated Pollard’s account of his visit to the Jericho FINRA office. This confirmed that Pollard voluntarily contacted FINRA to inform the staff of his concerns, including Zelin and Diamante’s management of SWF, with their emphasis on having brokers generate commissions and their disinterest in addressing red flags of excessive trading.

But Pollard testified he was not the branch manager and did not supervise brokers when Cacace replaced him.³⁰³ In this, Enforcement contends Pollard contradicts Cacace’s June 2017

²⁹⁶ RX-88, at 1–2.

²⁹⁷ Tr. 1251 (Bettencourt).

²⁹⁸ Tr. 1250 (Bettencourt).

²⁹⁹ Tr. 1239 (Bettencourt).

³⁰⁰ Tr. 1239 (Bettencourt).

³⁰¹ Tr. 1240–41 (Bettencourt).

³⁰² Tr. 1177–78, 1216, 1218–19 (Pollard).

³⁰³ Tr. 1207 (Pollard).

and February 2018 WSP designations of supervisory responsibilities to Pollard.³⁰⁴ However, Cacace testified that he revised the WSPs as Diamante dictated without speaking to Pollard about how he was supervising representatives and their retail sales.³⁰⁵

Pollard's credible testimony parallels Cacace's description of the limitations on the responsibilities of the CCO at SWF, the tight control Zelin and Diamante exercised over the firm's operation, and their lack of interest in limiting the excessive trading of SWF's brokers. These were issues Pollard found of sufficient concern that he voluntarily undertook to report them to FINRA's examiners, a course which Cacace could have, but did not, pursue.

b. Gary Demetri and Praxedes Russi

Demetri was a broker from June 2018 to September 2020 at SWF's Melville office.³⁰⁶ He used one of the cubicles in the office's large "board room" and went there daily until the Covid pandemic.³⁰⁷ When asked if he reported to anyone at the firm, he answered, "[n]o one in particular," but said his bosses were Zelin and Diamante.³⁰⁸ He met monthly with Zelin to discuss his production and his commissions.³⁰⁹ He was unaware of having a branch manager at Melville; Zelin was his supervisor, and if Zelin was not available when Demetri needed to make a trade, he went to Diamante.³¹⁰ Demetri needed their approval before making a trade.³¹¹ Demetri testified that Zelin and Diamante knew every trade he made for his customers.³¹²

Demetri testified that Zelin monitored his trading and when Zelin noted a trade for a particular client was profitable, he would tell Demetri he should consider selling the stock he had purchased for the customer and "move him into something else to generate commissions."³¹³

According to Demetri, Cacace was "the compliance officer,"³¹⁴ but did not supervise him.³¹⁵ Demetri said that Cacace conducted compliance meetings, reviewing FINRA guidelines on charging commissions, active trading, and rules and regulations to "basically keep brokers out

³⁰⁴ Enf's Post-Hr'g Br. 11–12.

³⁰⁵ Tr. 1065–66, 890 (Cacace).

³⁰⁶ Tr. 1094, 1101 (Demetri).

³⁰⁷ Tr. 1102 (Demetri).

³⁰⁸ Tr. 1102 (Demetri).

³⁰⁹ Tr. 1103–04 (Demetri).

³¹⁰ Tr. 1106 (Demetri).

³¹¹ Tr. 1107 (Demetri).

³¹² Tr. 1107–08 (Demetri).

³¹³ Tr. 1104–05 (Demetri).

³¹⁴ Tr. 1111 (Demetri).

³¹⁵ Tr. 1113 (Demetri).

of trouble.”³¹⁶ Demetri would turn to Cacace when he needed to register in different states,³¹⁷ but if Demetri had an issue about a commission, he would speak with Zelin, not Cacace.³¹⁸

Russi was a representative at SWF from January through December 2017.³¹⁹ He testified that when he started at SWF, Pollard was the CCO.³²⁰ According to Russi, Diamante told him that Pollard was his supervisor and the person to whom Russi should go if he had any questions.³²¹ Contradicting Pollard’s testimony, Russi testified that he reported to Pollard as well as to Zelin and Diamante.³²² Russi’s recollection was that both Pollard and Zelin had the authority to tell him what to do,³²³ but it was Zelin who could change commissions and give direction on how to handle customer accounts.³²⁴

Russi knew Cacace from working with him previously at another firm; in April 2017, he told Cacace that SWF was interested in hiring a new CCO.³²⁵ Cacace acted on the information, was interviewed by Diamante and Zelin, and was offered the position.³²⁶ Russi testified that after Cacace replaced Pollard as CCO in May 2017, his only contact with Cacace was when he attended the compliance meetings Cacace conducted.³²⁷ He continued to report to Pollard, Zelin, and Diamante—not to Cacace.³²⁸ Then in November 2017, when Pollard left SWF, Diamante asked Russi to take Pollard’s place as branch manager.³²⁹ Russi recalled that Diamante told him to take Pollard’s role so he “could actually supervise the reps.”³³⁰ However, his supervisory authority was limited; he was “just to monitor what was said on the floor.”³³¹ He did not have authority to direct a broker to stop trading in an account or to change a commission.³³² Only

³¹⁶ Tr. 1112–13 (Demetri).

³¹⁷ Tr. 1111–12 (Demetri).

³¹⁸ Tr. 1113 (Demetri).

³¹⁹ Tr. 1122 (Russi).

³²⁰ Tr. 1133 (Russi).

³²¹ Tr. 1129 (Russi).

³²² Tr. 1129 (Russi).

³²³ Tr. 1131 (Russi).

³²⁴ Tr. 1130 (Russi).

³²⁵ Tr. 1126–27 (Russi).

³²⁶ Tr. 937–39 (Cacace).

³²⁷ Tr. 1127–28 (Russi).

³²⁸ Tr. 1129, 1133 (Russi).

³²⁹ Tr. 1133–34 (Russi).

³³⁰ Tr. 1140 (Russi).

³³¹ Tr. 1134–35 (Russi).

³³² Tr. 1134 (Russi).

Zelin could do that.³³³ As branch manager, Russi testified, he reported to Zelin.³³⁴ Russi did not have authority to hire or fire, and testified that he had no input on those decisions.³³⁵

According to Russi, at the end of each month, Zelin reviewed the brokers' commissions.³³⁶ Zelin kept abreast of the status of Russi's customer accounts.³³⁷ He recalled that when Zelin noticed an account that had not been traded recently, he told Russi to call the customer and see if he "can raise some money" or "get a trade out of them."³³⁸ Russi testified that Zelin encouraged him to generate commissions.³³⁹

Russi held the branch manager's position briefly. Diamante gave it to him in November 2017, and he resigned in December to take a job at another firm hoping to get more experience in compliance.³⁴⁰

* * *

Russi and Demetri confirmed Cacace's, and Pollard's, description of Zelin and Diamante as the supervisors of SWF's representatives. Both denied that Cacace as CCO supervised them. Demetri confirmed that: (i) Zelin approved every trade; (ii) he reported to Zelin and Diamante; (iii) nobody else supervised him; and (iv) consistent with Cacace's testimony, Cacace did not supervise him.

Like Cacace and Pollard, Russi testified that it was Zelin, not Pollard, who had authority to reduce commissions and direct brokers on how to manage customer accounts. Russi's description of being appointed to replace Pollard as branch manager is consistent with Cacace's testimony that Pollard and Russi were made branch managers. Russi's testimony that even though he was told he was a supervisor, he had no authority to affect a broker's trading or change a commission is similar to the way both Pollard and Cacace described Zelin and Diamante tightly controlling the reins of supervisory authority at SWF.

c. Statements of Former SWF Brokers James Flower, Geoffrey Harris, and Dimitrios Aivaliotis

In support of the Complaint's allegation that Cacace supervised SWF's representatives, Enforcement introduced statements obtained from two former SWF brokers, Harris and

³³³ Tr. 1134–35 (Russi).

³³⁴ Tr. 1138 (Russi).

³³⁵ Tr. 1144 (Russi).

³³⁶ Tr. 1135–36 (Russi).

³³⁷ Tr. 1136–37 (Russi).

³³⁸ Tr. 1137 (Russi).

³³⁹ Tr. 1137–38 (Russi).

³⁴⁰ Tr. 1141 (Russi).

Aivaliotis.³⁴¹ Enforcement also introduced excerpts from a February 2019 OTR conducted with Flower.³⁴² We turn now to consider Flower’s OTR testimony and the witness statements from Harris and Aivaliotis.

i. James Flower’s OTR

During his 2019 OTR testimony, Flower identified Cacace as his supervisor.³⁴³ Flower testified that Cacace met with him “maybe once a month.”³⁴⁴ According to Flower, Cacace went over his customer accounts,³⁴⁵ and would inform Flower when he was sending an active account letter to one of his customers.³⁴⁶ Flower stated that Cacace would tell him what the customer’s turnover rate and cost-to-equity ratio were, and made Flower lower commissions.³⁴⁷ He claimed that Cacace placed him on heightened supervision for his activities in the states of New Jersey and Washington.³⁴⁸ Flower testified that Cacace also tracked the suitability of his stock purchases.³⁴⁹

The Hearing Panel had no opportunity to observe Flower’s demeanor. Had Flower testified, his credibility would certainly have been challenged. In its decision barring Flower, the Hearing Panel repeatedly described Flower’s testimony as “not credible” based on the testimony of customers and other evidence.³⁵⁰

However, there is documentary evidence that Cacace participated in supervising Flower. As noted above, Cacace signed documents acknowledging that he was replacing Pollard as supervisor of Flower’s compliance with New Jersey’s heightened supervision plan and signed monthly memoranda certifying that Flower was complying.³⁵¹

³⁴¹ CX-122, at 2–3; CX-124, at 4–5. According to their Central Registration Depository records, Harris and Aivaliotis are currently registered with FINRA and employed by member firms.

³⁴² Flower, as noted above, has been barred and is no longer subject to FINRA’s jurisdiction. *See supra* 7.

³⁴³ CX-33, at 8–9, 14–15.

³⁴⁴ CX-33, at 10–11.

³⁴⁵ CX-33, at 10–11.

³⁴⁶ CX-33, at 126.

³⁴⁷ CX-33, at 17–18, 131.

³⁴⁸ CX-33, at 14–15. In fact, state regulators imposed the heightened supervision requirements on Flower. Tr. 345 (Wybaillie).

³⁴⁹ CX-33, at 17–18.

³⁵⁰ CX-90, at 54–55 (Hearing Panel Decision (May 27, 2021)).

³⁵¹ Tr. 345–46 (Wybaillie); CX-87, at 1–3, 7–26. In addition to the memoranda, there is a document on Texas State Securities Board letterhead describing an “Undertaking” acknowledging a FINRA AWC in which Flower accepted a 90-day suspension in all capacities. In it, Flower and SWF agree that for three years after the completion of the

Based on the documentary evidence, the Hearing Panel finds that SWF delegated to Cacace, and he accepted, responsibility for supervising Flower's heightened supervision agreement with New Jersey. However, for the reasons stated above, we do not credit Flower's OTR testimony that Cacace actively supervised Flower's daily trading activity at SWF and reduced Flower's commissions.

ii. Geoffrey Harris's Statement

At the hearing, Cacace testified that a draft of the 2018 WSPs, which Cacace said was incomplete and he sent accidentally to FINRA, incorrectly named Pollard as supervisor when it should have named Harris.³⁵² According to Cacace, Diamante had told him that Harris was the branch manager and therefore in charge of supervising the brokers.³⁵³ On February 27, 2023, Harris submitted a statement to Enforcement in response to a FINRA Rule 8210 request; in it, Harris asserted emphatically that he “never had any supervisory role or responsibility” at SWF.³⁵⁴

As to who was responsible for supervising the firm's representatives, Harris was less certain. He wrote that Cacace, and before him Pollard, “as compliance officials, would routinely approach or be approached about activities by the sales force.”³⁵⁵ But he also wrote that he could not “state with certainty who was ‘responsible’ for ‘supervision of representatives’ or ‘who was ‘responsible’ for ‘supervision of retail sales,’” while describing Zelin and Diamante “as management and the ‘bosses.’”³⁵⁶ In these statements, Harris did not assert that Cacace supervised the firm's representatives.

This comports with Cacace's testimony that, even though Diamante told him to name Harris as supervisor of retail sales in January 2018, he did not believe it to be accurate, because Zelin supervised the brokers.³⁵⁷

iii. Aivaliotis's Statement

Aivaliotis's written submission stated that “to the best of [his] knowledge and understanding of the roles at the firm,” his supervisor was Cacace.³⁵⁸ But when asked to explain the basis for his understanding, he wrote that being a compliance officer “by default[] puts an

suspension SWF would send any complaints against Flower to the Texas State Securities Board for review by its legal counsel. Cacace signed it in July 2017.

³⁵² Tr. 902–08 (Cacace).

³⁵³ Tr. 907–08 (Cacace).

³⁵⁴ CX-122, at 2.

³⁵⁵ CX-122, at 2.

³⁵⁶ CX-122, at 2.

³⁵⁷ Tr. 909–10 (Cacace).

³⁵⁸ CX-124, at 4.

individual in a supervisory capacity.”³⁵⁹ Asked to describe in detail his “business-related interaction” with Cacace, all Aivaliotis wrote was that he believed Cacace “signed off” on his new account forms.³⁶⁰

Aivaliotis’s statement is consistent, in the Hearing Panel’s view, with Cacace’s description of his minimal supervisory role at SWF. We disagree with Enforcement’s assertion that Aivaliotis “identified Cacace” as his supervisor.³⁶¹ Aivaliotis’s statement is equivocal at best. His understanding that a CCO was a supervisor “by default,” and that Cacace signed his new account forms, are hardly assertions that Cacace supervised Aivaliotis.

IV. Conclusions of Law

The issues confronting the Hearing Panel are whether the evidence establishes that Cacace was responsible for supervising SWF’s brokers and, if so, whether he failed to reasonably supervise the four SWF brokers who engaged in excessive trading of customer accounts.

Enforcement has the burden of proof in FINRA disciplinary proceedings.³⁶² This includes the burden of producing evidence supporting the allegations in the Complaint, and the burden of persuading the Hearing Panel, the trier of fact.³⁶³ For Enforcement to prevail, the record must support the allegations in the Complaint by a preponderance of the evidence, showing that the allegations are “more likely than not” accurate,³⁶⁴ and supported by “the greater weight of the evidence.”³⁶⁵ We begin with a review of the law that must guide our deliberations in a case involving a compliance officer charged with failure to supervise under FINRA Rule 3110.

A. Liability of Compliance Principals for Failing to Supervise

FINRA Rule 3110 requires a firm to establish and maintain a system that ensures the activities of each representative are supervised in a fashion that is reasonably designed to achieve compliance with FINRA rules and the applicable securities laws and regulations.³⁶⁶ This requires that each registered person in a firm be assigned to an appropriately registered principal

³⁵⁹ CX-124, at 4.

³⁶⁰ CX-124, at 4.

³⁶¹ Enf’s Post-Hr’g Br. 7 n.27.

³⁶² *Dep’t of Enforcement v. Morton*, No. 2016052347901, 2019 FINRA Discip. LEXIS 19, *32 (NAC May 15, 2019).

³⁶³ *Id.* (citing *Dep’t of Enforcement v. Holaday*, No. 2012032519101, 2016 FINRA Discip. LEXIS 64, at *10 (NAC Oct. 3, 2016)).

³⁶⁴ *Id.* (citing *Uthman v. Obama*, 637 F.3d 400, 403 (D.C. Cir. 2011)).

³⁶⁵ *Id.* (citing *Nutraceutical Corp. v. Von Eschenbach*, 459 F.3d 1033, 1040 (10th Cir. 2006)).

³⁶⁶ *Dep’t of Enforcement v. Silver Leaf Partners, LLC*, No. 2014042606902, 2020 FINRA Discip. LEXIS 36, at *53 (NAC June 29, 2020), *aff’d*, 2025 SEC LEXIS 649 (Mar. 7, 2025), *appeal docketed*, No. 25-1171 (2d Cir. May 2, 2025).

responsible for supervising.³⁶⁷ “The duty of supervision includes the responsibility to investigate ‘red flags’ that suggest that misconduct may be occurring,” and to act reasonably on the investigation’s findings.³⁶⁸ A firm is required to implement its supervisory systems and written procedures reasonably under the circumstances.³⁶⁹

In Regulatory Notice 22-10, FINRA addressed the appropriateness of charging a CCO for failure to supervise under Rule 3110.³⁷⁰ Merely holding the title of CCO is not sufficient to expose a person to liability for failure to supervise.³⁷¹ The Notice states explicitly that the “CCO’s role, in and of itself, is advisory, not supervisory” and “compliance and supervision are separate, if related functions.”³⁷² “A firm’s supervisory obligations under Rule 3110 rest with the firm and its president (or equivalent officer or individual, *e.g.*, CEO) and flow down by delegation to the firm’s designated supervisors.”³⁷³

The Notice describes four ways a firm may confer supervisory responsibilities on a CCO: (i) WSPs may assign the CCO responsibility to establish, maintain, and update WSPs generally or in specific areas; (ii) the WSPs may assign specific supervisory responsibilities to the CCO; (iii) the firm’s senior managers may explicitly or implicitly assign specific supervisory duties to the CCO on an ad hoc basis; and (iv) the firm’s senior managers may detail the CCO to assume specific supervisory responsibilities, for example to monitor an associated person’s activity, as the need arises.³⁷⁴

Enforcement relies heavily on SWF documents, particularly its WSPs, designating the firm’s CCO as responsible for supervising representatives and their trading.³⁷⁵ The Securities and Exchange Commission (“SEC”) has held that persons identified by a firm’s WSPs as having particular supervisory duties are responsible for executing them.³⁷⁶ But proof that a designated

³⁶⁷ *Dep’t of Enforcement v. Wilson-Davis & Co.*, No. 2012032731802, 2019 FINRA Discip. LEXIS 54, at *36–37 (NAC Dec. 19, 2019), *aff’d in relevant part*, 2023 SEC LEXIS 3658 (Dec. 28, 2023).

³⁶⁸ *Michael T. Studer*, Exchange Act Release No. 50543A, 2004 SEC LEXIS 3157, at *27 (Nov. 30, 2004), *aff’d*, 148 F. App’x 58 (2d Cir. 2005), *appeal docketed*, No. 3-21933 (SEC May 20, 2024).

³⁶⁹ *Dep’t of Enforcement v. Taddonio*, No. 2015044823501, 2019 FINRA Discip. LEXIS 3, at *65 (NAC Jan. 29, 2019), *aff’d*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980 (Apr. 19, 2023).

³⁷⁰ Regulatory Notice 22-10 (Mar. 17, 2022) 1, <https://www.finra.org/sites/default/files/2022-03/Regulatory-Notice-22-10.pdf>.

³⁷¹ *Id.* at 3.

³⁷² *Id.* at 2.

³⁷³ *Id.* at 2.

³⁷⁴ *Id.* at 3.

³⁷⁵ *Enf’s Post-Hr’g Br.* 10–11.

³⁷⁶ *Kirk Montgomery*, Exchange Act Release No. 45161, 2001 SEC LEXIS 2775, at *12 (Dec. 18, 2001).

person is a supervisor must be supported by evidence that the designee has “the requisite degree of responsibility, ability, or authority to affect” the conduct of those being supervised.³⁷⁷

Considering the supervisory responsibilities of legal and compliance officers, the SEC has cautioned that those “who have legal or compliance responsibilities do not become ‘supervisors’” under the relevant sections of the Securities Exchange Act “solely because they occupy those positions.”³⁷⁸ The facts must establish that the person possesses the “requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.”³⁷⁹ This requires an examination of the facts and circumstances of each case.³⁸⁰

Finally, a designated supervisor need not possess sole supervisory authority so long as the evidence shows that the person shares responsibility to respond to misconduct with appropriate action.³⁸¹ And a person sharing supervisory duties is not relieved of responsibility to take reasonable action in response to red flags of misconduct just because he or she is “subject to countermand” by a manager “at a higher level.”³⁸² If a CCO shares supervisory responsibility and engages in “formulating management’s response” to misconduct, the person must “take affirmative steps to ensure that appropriate action is taken to address the misconduct.”³⁸³ If a CCO then discovers that the firm’s senior managers fail to take action to address the problem, that does not end the CCO’s responsibility. “[H]e or she should consider what additional steps are appropriate to address the matter.”³⁸⁴ Such steps may include resigning or disclosing the problem to regulatory authorities.³⁸⁵ As the SEC has stated, “[i]t is not sufficient for one in such a position to be a mere bystander” to the problematic conduct generating the red flags.³⁸⁶

A relevant and illustrative precedent is a case, *Louis R. Trujillo*, involving an assistant to a firm’s branch manager, with the title of “administrative manager.”³⁸⁷ An administrative law judge censured him for failing to reasonably supervise a representative whose misconduct included defrauding customers and churning their accounts.³⁸⁸ The administrative manager’s

³⁷⁷ *Id.* at *17.

³⁷⁸ *Gutfreund*, 1992 SEC LEXIS 2939, at *42.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.* at *43.

³⁸² *Kolar*, 2002 SEC LEXIS 3420, at *16.

³⁸³ *Gutfreund*, 1992 SEC LEXIS 2939, at *43.

³⁸⁴ *Id.* at *44.

³⁸⁵ *Id.*

³⁸⁶ *Id.* at *43.

³⁸⁷ *Louis R. Trujillo*, Exchange Act Release No. 26635, 1989 SEC LEXIS 480, at *3 (Mar. 30, 1989).

³⁸⁸ *Id.* at *1–3.

responsibilities, which were “tightly controlled” by the branch manager, were primarily administrative, with “several compliance functions.”³⁸⁹ Those responsibilities included reviewing new accounts, investigating customer complaints, and reviewing daily reports of a firm’s customer transactions.³⁹⁰ The SEC found that the administrative manager had “substantial responsibility for detecting” compliance problems but “limited authority to correct them,” and that he performed a “surveillance role” for the branch manager who was the only person with authority to fire, suspend, impose a fine, censure, or restrict a representative’s activities for misconduct.³⁹¹ The administrative manager monitored and reported the misconduct of the representative, but the branch manager did little to prevent further misconduct.³⁹²

On appeal from the administrative law judge’s censure, although the SEC found the administrative manager’s supervision to have been “less than exemplary,” because if he had earlier investigated more thoroughly he could have discovered more instances of the representative’s misconduct, it held that because of the limited scope of his authority, he acted reasonably and diligently to inform the branch manager of the representative’s misconduct.³⁹³ When the branch manager failed to discipline the representative, the administrative manager persisted, continuing to stress the seriousness of the problem at management meetings, and ultimately notified higher-ranking officers at the firm’s headquarters.³⁹⁴ The SEC concluded that, given the constraints on his authority, his “responses as ‘administrative manager’ were not unreasonable” and dismissed the case against him, noting that his actions contributed to the firm eventually firing the representative.³⁹⁵

B. Cacace Had Limited, Shared Supervisory Responsibilities at SWF and Failed to Respond Appropriately When Senior Managers Failed to Reasonably Address Red Flags of Excessive Trading by Brokers

To summarize, the Hearing Panel finds the evidence establishes that Zelin and Diamante held tightly and exclusively their exercise of supervisory authority over the four SWF brokers whose excessive trading is at the core of this case. The testimony makes this clear even though their firm’s procedures and other documents do not reflect this fact.

The Hearing Panel concludes, however, that a preponderance of the evidence establishes that Cacace had shared, limited supervisory responsibilities at SWF. As noted above, he had

³⁸⁹ *Id.* at *3.

³⁹⁰ *Id.* at *4.

³⁹¹ *Id.*

³⁹² *Id.* at *6–7.

³⁹³ *Id.* at *10–11.

³⁹⁴ *Id.* at *11–12.

³⁹⁵ *Id.* at *12–13.

some responsibility for updating the firm’s WSPs, albeit at Diamante’s direction.³⁹⁶ He was “involved in formulating management’s response” to the indications of excessive trading he observed at the firm and made some “appropriate recommendations” for addressing the problems.³⁹⁷

In the exercise of their ultimate authority at SWF, Zelin and Diamante frequently rejected Cacace’s recommendations concerning SWF’s brokers’ trading. They did not accept his recommendation to review 16 representatives—including Flower and Pecoraro—whom Cacace considered to be “high risk” for heightened supervision.³⁹⁸ He testified that they rejected his recommendations to fire four brokers for abusive or rude behavior towards him and because of their trading.³⁹⁹ At times they overruled his recommendations to send active account letters.⁴⁰⁰ But their rejections of his recommendations did not relieve Cacace of his responsibility under Rules 3110 and 2010 to respond reasonably to the red flags of which he was aware.⁴⁰¹

Cacace could have approached the Jericho FINRA office—familiar to him from his interactions with its staff when he was CCO—and, as Pollard did, describe his concerns. He could at least have informed the appropriate authorities when FINRA interviewed him at his OTR. By then, in May 2021, he was no longer employed at SWF. He claimed, however, at the OTR that he did not recall being troubled by the red flags that, at the hearing, he testified caused him concern.⁴⁰² At the hearing, he agreed that it would have been appropriate at the OTR to tell FINRA of the concerns he had about the excessive trading of the four brokers he witnessed during his time at SWF.⁴⁰³

Cacace did not disclose during his OTR that the red flags of excessive trading at SWF motivated him to search for another job. At the hearing, however, he testified that within six months of becoming SWF’s CCO, what he observed concerned him sufficiently that he decided to look for employment elsewhere.⁴⁰⁴ But it was two years before he left SWF. He testified that, with only one year of college, and firms preferring to hire CCOs with college degrees,⁴⁰⁵ it was

³⁹⁶ See *id.* at *11; Tr. 885, 896–97, 907–08 (Cacace).

³⁹⁷ *Gutfreund*, 1992 SEC LEXIS 2939, at *43.

³⁹⁸ Tr. 1035–36 (Cacace); RX-2.

³⁹⁹ Tr. 963–68 (Cacace); RX-7.

⁴⁰⁰ See, e.g., Tr. 640 (Cacace); JX-42, at 13; Tr. 738–742 (Cacace); JX-39, at 12–13; Tr. 753–54 (Cacace); JX-40, at 16; Tr. 757–58 (Cacace); JX-42, at 15; Tr. 763–67 (Cacace); JX-45, at 12–13.

⁴⁰¹ *Kolar*, 2002 SEC LEXIS 3420, at *16.

⁴⁰² Tr. 834–35 (Cacace).

⁴⁰³ Tr. 835–37 (Cacace).

⁴⁰⁴ Tr. 790–91 (Cacace).

⁴⁰⁵ Tr. 1002 (Cacace).

difficult for him to find another job, and he had a family to support.⁴⁰⁶ The first offer he received, he testified, was from the firm he joined in late 2019, where he is currently employed.⁴⁰⁷

* * *

The Hearing Panel finds that under the circumstances, confronting him at SWF, Cacace failed to reasonably respond when he realized that SWF was not appropriately addressing red flags of excessive trading by four SWF representatives, and thus did not reasonably fulfill his supervisory obligations, thereby failing to supervise, in violation of FINRA Rules 3110 and 2010.

C. The Doctrine of Laches Does Not Require Dismissal of the Complaint

The defense of laches requires a respondent to establish that FINRA failed to act diligently in bringing a proceeding and that the failure resulted in prejudice to the respondent by impairing his ability to present an adequate defense.⁴⁰⁸ The SEC and FINRA’s National Adjudicatory Council (“NAC”) have held that a fair assessment of a claim of laches requires a review of the “entirety of the record” and the passage of time during the stages of an investigation leading to the filing of a complaint.⁴⁰⁹

There are four periods to examine in determining whether a disciplinary proceeding has been unfairly delayed, measuring the time that passes from four points in the timeline of a proceeding up to the filing of the complaint. They are when: (i) the misconduct began; (ii) the misconduct ended; (iii) FINRA first became aware of the misconduct; and (iv) FINRA initiated its investigation.⁴¹⁰ There is no precise, mechanical test for determining whether a laches defense is sufficient to require, in fairness to a respondent, the dismissal of a disciplinary proceeding.⁴¹¹

1. The Timelines

The onset of Cacace’s alleged misconduct was in May 2017, when he started working as SWF’s CCO, seven years and three months before the Complaint was filed in August 2024.⁴¹²

⁴⁰⁶ Tr. 743 (Cacace).

⁴⁰⁷ Tr. 1003–04 (Cacace).

⁴⁰⁸ *Dep’t of Enforcement v. Mantei*, No. 2015045257501, 2023 FINRA Discip. LEXIS 10, at *38 (NAC May 30, 2023), *appeal docketed*, No. 3-21516 (SEC June 27, 2023).

⁴⁰⁹ *Id.* at *38–39 (citations omitted).

⁴¹⁰ *Dep’t of Enforcement v. Rooney*, No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *89 (NAC July 23, 2015).

⁴¹¹ *Id.* at *88–89.

⁴¹² *Enf’s Post-Hr’g Br.* 42, n.186.

The alleged misconduct ended when Cacace left SWF in November 2019, approximately four years and nine months before Enforcement filed the Complaint.⁴¹³

It was in February 2020, approximately four years and six months before filing the Complaint, when Enforcement initiated its investigation into SWF's supervision of brokers after investigators noticed a pattern of excessive trading by several brokers.⁴¹⁴ That prompted the staff to request that the firm, pursuant to FINRA Rule 8210, identify the supervisors of those brokers, focusing at first on the period from October 2015 through March 2019.⁴¹⁵ The firm's response, dated April 27, 2020, named Cacace as their supervisor beginning in May 2017.⁴¹⁶ Consequently, Enforcement marks April 27, 2020, as the date on which it first learned of Cacace's alleged misconduct, which is four years and four months before the Complaint was filed.⁴¹⁷

2. Arguments of the Parties

Enforcement argues that these periods of time are "significantly shorter" than the length of delays in key precedents in which the SEC and the NAC dismissed disciplinary proceedings after finding the delays in bringing them violated the respondents' right to fundamental fairness.⁴¹⁸ In the case before the SEC, 14 years passed from the misconduct to the filing of the complaint; five years from the regulator's first notice of the misconduct and the filing of the complaint; and three and a half years between the start of the investigation and the filing of the complaint.⁴¹⁹ In the case before the NAC, there was an eight-year delay from the initial misconduct to the complaint's filing; a seven-year delay between the end of the misconduct and the filing of the complaint; a delay of five years and nine months from FINRA's awareness of the misconduct to the filing, and a delay of four years and nine months from the start of the investigation to the filing.⁴²⁰ Enforcement argues the timeline in this case does not establish a lack of diligence by FINRA.⁴²¹

Cacace disputes Enforcement's characterization of the timelines. He points out that the events alleged in the Complaint occurred between May 2017 and November 2019 and claims that Enforcement is responsible for "unreasonable and inexcusable" delays in filing the

⁴¹³ *Id.*

⁴¹⁴ *Id.* at 41.

⁴¹⁵ CX-99, at 1–2.

⁴¹⁶ CX-99, at 1–2; CX-100, at 2.

⁴¹⁷ Enf's Post-Hr'g Br. 42, n.186.

⁴¹⁸ Enf's Post-Hr'g Br. 42.

⁴¹⁹ *Jeffrey Ainley Hayden*, Exchange Act Release No. 42772, 2000 SEC LEXIS 946, at *3–4 May 11, 2000).

⁴²⁰ *Dep't of Enforcement v. Morgan Stanley DW Inc.*, No. CAF000045, 2002 NASD Discip. LEXIS 11, at *18–19, 38 (NAC July 29, 2002).

⁴²¹ Enf's Post-Hr'g Br. 41.

Complaint, prejudicing his ability to present his defense.⁴²² Cacace rejects the assertion that Enforcement first learned of the alleged misconduct in April 2020. He argues that FINRA learned of the supervision problems at SWF in November 2017 when Pollard met with FINRA examiners and personally informed them of his concerns about excessive commission charges and supervision issues at SWF.⁴²³

By this calculation, six years and nine months passed—from November 2017 to August 2024—from Pollard’s exposure of SWF’s supervision failures to the filing of the Complaint. As a further indication of Enforcement’s laxity, Cacace points out that Enforcement did not obtain the memo FINRA staff prepared of the meeting with Pollard and other documents Pollard gave the examiners until after it filed the Complaint in this matter.⁴²⁴ The record reveals no evidence that FINRA staff took any investigative action based on Pollard’s disclosures.

As noted above, SWF was expelled by FINRA in 2023. This, Cacace contends, rendered its records unavailable.⁴²⁵ The records Cacace claims to have been deprived of include records bearing on Cacace’s conduct as CCO and documents he claims to have given Zelin and Diamante making recommendations they rejected, which he claims would support his defense.⁴²⁶ He argues that Enforcement’s delay in bringing this proceeding has also been prejudicial as witnesses he would have called have died or left the securities industry and are unavailable.⁴²⁷

Enforcement disagrees that Pollard’s revelations to FINRA staff put FINRA on notice of the pattern of excessive trading by SWF brokers sufficient to cause it to initiate an investigation. Pollard did not claim there was a pattern of excessive trading and did not identify any potential misconduct by Cacace.⁴²⁸ And Enforcement argues that Pollard’s visit to FINRA’s offices occurred two years and five months before it first was aware—in April 2020—of Cacace’s alleged misconduct.⁴²⁹

The Hearing Panel is not without sympathy for some of Cacace’s arguments. The passages of time between the occurrences cited by Cacace to the filing of the Complaint are long, but considerably shorter than those in *Hayden*. Still, Pollard’s description of the supervisory malfunctions at SWF presented a missed opportunity for the examiners who met with him to forward the memorandum and documents Pollard provided to Enforcement. From the record in this case, it is unclear whether the staff conducting the cycle exam at that time gave Pollard’s

⁴²² Ans., Affirmative Defenses ¶ 2.

⁴²³ Resp’s Post-Hr’g Br. 27–29.

⁴²⁴ Resp’s Post-Hr’g Br. 28.

⁴²⁵ Tr. 935–36 (Cacace).

⁴²⁶ Tr. 1004–05 (Cacace); Resp’s Post-Hr’g Br. 28.

⁴²⁷ Resp’s Post-Hr’g Br. 29.

⁴²⁸ Enf’s Post-Hr’g Br. 42.

⁴²⁹ *Id.*

information any weight. In retrospect, this is unfortunate. It is unfortunate, too, that when it was investigating SWF, Enforcement was unaware of the staff examiners' memorandum of Pollard's interview. Pollard's description of SWF's deficient supervision and indicia of excessive trading by SWF brokers was similar to the description Cacace gave at the hearing.⁴³⁰

3. Cacace's Laches Defense Fails

The Hearing Panel does not find that these facts support dismissal of this disciplinary proceeding on the basis of laches. This is in large part because, in addition to demonstrating that the proceeding was not diligently initiated, Cacace must show that the passage of time was prejudicial because it caused, for example, relevant witnesses to be unavailable, witness memories to have faded, and exculpatory evidence to be lost.⁴³¹

Cacace complains that—to his prejudice—during the delay in filing the Complaint, one of the brokers he allegedly supervised died.⁴³² But he does not explain how that broker's unavailability prejudiced him, or how his testimony would have aided his defense. Cacace could have called two other former brokers—Pecoraro and Sullivan—who were on Enforcement's witness list, to testify about who supervised them, but he did not.

Furthermore, Cacace was able to call on other former SWF employees— Pollard, Russi, and Demetri—who testified on his behalf. In addition, both Cacace and Enforcement named Diamante on their witness lists. Yet, inexplicably, neither party called him. Cacace also listed Zelin as a witness. Presumably both Diamante and Zelin could have provided relevant testimony. Yet Cacace called neither.

Cacace also did not identify any specific exculpatory records made unavailable by the expulsion of SWF and loss of its records. He has not demonstrated that the passage of time caused his own recollection of relevant events to have faded, to his prejudice. Indeed, to the contrary, at the hearing he claimed that his own recollection of key details was significantly better at the time of the hearing than it had been years earlier when he testified at his OTR because preparing for the hearing refreshed it.⁴³³

For these reasons, the Hearing Panel concludes that the evidence does not establish that Cacace suffered unfair prejudice, or that his ability to defend himself at the hearing was impaired, because of the length of time it took Enforcement to file its Complaint and for this disciplinary proceeding to be heard. We therefore decline to dismiss the Complaint on the basis of Cacace's asserted laches defense.

⁴³⁰ RX-88.

⁴³¹ *Rooney*, 2015 FINRA Discip. LEXIS 19, at *94–96.

⁴³² Resp's Post-Hr'g Br. 28–29.

⁴³³ Tr. 1054–55 (Cacace).

V. Sanctions

FINRA's Sanction Guidelines ("Guidelines") for failure to supervise in violation of FINRA Rules 3110 and 2010 recommend considering a broad span of sanctions including a fine of \$5,000 to \$30,000, suspension in all principal capacities for up to two months or, when aggravating factors predominate, suspension in any or all capacities for up to two years, or a bar.⁴³⁴

Enforcement argues that Cacace's failure to supervise enabled "egregious excessive trading and churning . . . resulting in substantial customer harm" and was accompanied by aggravating factors that justify barring Cacace in any principal capacity and imposing a fine of \$30,000.⁴³⁵ For the reasons given below, the Hearing Panel finds Enforcement's recommendations excessive given the facts and circumstances of this case.

The Principal Considerations specifically applicable to failure to supervise call for adjudicators to consider whether: (i) Cacace ignored red flag warnings of misconduct that ought to have resulted in increased supervisory scrutiny; (ii) the brokers responsible for excessive trading concealed their misconduct from Cacace; (iii) the nature, extent, size, and character of the brokers' misconduct; and (iv) the quality and degree of Cacace's implementation of SWF's supervisory procedures and controls.⁴³⁶

The red flags indicating excessive trading by the four brokers were not concealed. Cacace saw them in his contemporaneous review of the MAARs. He testified at both his OTR and at the hearing that he regularly reviewed the MAARs in the process of determining when to send or not send active account letters to customers whose accounts appeared in the reports.⁴³⁷ Thus he was aware of the brokers and the customer accounts in which there were indicia of potential excessive trading.

The Hearing Panel finds that although he did not take sufficient action, Cacace did not just ignore the red flags. We find credible—based on observing his demeanor as he testified and the notations he made on the MAARs—his hearing testimony that he was aware of red flags. His handwritten notes in the MAARs corroborate his testimony that he reviewed and discussed them with Zelin. Pollard corroborated Cacace's description of Zelin and Diamante's lack of interest in addressing SWF's problematic traders when he brought issues to their attention.⁴³⁸ The notations in the MAARs and Pollard's testimony corroborate Cacace's assertions, discussed above, that it was Zelin and Diamante who decided to send or directed him not to send the letters. This is

⁴³⁴ FINRA Sanction Guidelines at 124 (2024), <https://www.finra.org/sanctionguidelines>.

⁴³⁵ Enf's Post-Hr'g Br. 45–46.

⁴³⁶ Guidelines 124.

⁴³⁷ CX-39, at 135 (OTR); Tr. 624 (Cacace).

⁴³⁸ Tr. 1161–65, 1177–81 (Pollard) (testifying CCO was a "figure head" position and Zelin and Diamante controlled the firm and rejected his recommendations to address excessive trading and high commissions).

despite the language in the firm’s WSPs giving the CCO that responsibility, stating that “the Firm will rely upon the exercise of wise discretion and the sound judgment of the Chief Compliance Officer to decide . . . when and under what circumstances” the letters should be sent, their content, and other details.⁴³⁹ Instead, as noted above, they told him when to send, and when not to send, active account letters, rejecting his recommendations. And, as the evidence shows, except for authorizing Cacace to send active account letters to customers, they did not take, and did not authorize Cacace to take, any other steps to address problem brokers.⁴⁴⁰

As noted in the discussion of the applicable legal principles above, ultimate responsibility for ensuring compliance with regulatory requirements by a firm’s representatives, and for taking appropriate action when informed of misconduct, is reposed in the firm’s president or chief executive officer.⁴⁴¹ The CEO retains responsibility unless he or she “reasonably delegates particular functions to another person in the firm and neither knows nor has reason to know that such person’s performance is deficient”⁴⁴² and is unaware of the resulting misconduct.⁴⁴³

Here, the evidence shows that although multiple firm documents—some generated by Cacace, who claimed he was acting at the direction of Zelin and Diamante, under duress⁴⁴⁴—designated Cacace as the brokers’ supervisor, Zelin and Diamante—not Cacace—possessed, in the SEC’s words, the “ability or authority to affect the conduct” of the errant brokers.⁴⁴⁵ Zelin and Diamante did not delegate that authority to Cacace. Cacace’s testimony, and the testimony of Pollard, Demetri, and Russi, show that Zelin and Diamante closely monitored the daily trading at the firm.⁴⁴⁶ So they were aware of the red flags of excessive trading, did not address them, and did not delegate authority to Cacace to do so.

⁴³⁹ CX-120, at 124–25.

⁴⁴⁰ Tr. 742–43 (Cacace) (testifying he raised issues, including trading by the four representatives, but Zelin and Diamante took no action); Tr. 964–65 (Cacace) (testifying Zelin and Diamante refused to fire a representative who Cacace said was abusive to him and overcharging commissions because the representative was a “big producer”); RX-7 (memo from Cacace to Diamante describing Flower’s abusive behavior); RX-9 (memo from Cacace to Diamante urging him to amend Pecoraro’s Form U4 because a customer arbitration complaint had been filed against Pecoraro and the firm).

⁴⁴¹ *Gutfreund*, 1992 SEC LEXIS 2939, at *37–38.

⁴⁴² *Universal Heritage Inv. Corp.*, Exchange Act Release No. 19308, 1982 SEC LEXIS 210, at *14 (Dec. 8, 1982).

⁴⁴³ *Northwood*, 2015 SEC LEXIS 1867, at *32.

⁴⁴⁴ Tr. 1285 (Cacace) (testifying that he submitted a branch report amendment, CX-47, inaccurately identifying himself as branch manager and supervisor at Melville branch in December 2017 “under duress of being fired”); Tr. 1068–69 (Cacace) (testifying that Diamante told him who to designate as branch manager and supervisor for the Melville office in February 2018 WSPs he provided to FINRA in January 2023).

⁴⁴⁵ *Gutfreund*, 1992 SEC LEXIS 2939, at *42.

⁴⁴⁶ Tr. 1160, 1177 (Pollard) (Zelin and Diamante had “final say,” Zelin was “very hands on,” “everything was driven” by them); Tr. 1107 (Demetri) (Zelin and Diamante knew every trade he made and every commission); Tr. 1134–35 (Russi) (Zelin had the authority to change commissions, was more involved with commissions than Diamante, and would review his accounts regularly).

In hearing testimony that the Hearing Panel finds credible, Cacace told of making recommendations to Zelin and Diamante to discipline broker misconduct that were ignored.⁴⁴⁷ As discussed above, they ignored his recommendation for improving the firm’s criteria for placing representatives on heightened supervision, to be in compliance with FINRA guidelines, and to review 16 representatives for heightened supervision.⁴⁴⁸ Zelin rejected his recommendation that an excessive commission be cut,⁴⁴⁹ and refused to address abusive treatment Cacace received from brokers.⁴⁵⁰ Pollard’s description of his experience as SWF’s CCO—having his recommendations to reduce commissions overruled,⁴⁵¹ his complaints of abusive conduct by brokers ignored,⁴⁵² and other recommendations to address excessive trading rejected⁴⁵³—was strikingly similar and lends credence to Cacace’s description of his experience.

Enforcement argues that Cacace’s inaction enabled the four brokers to engage in excessive trading that resulted in substantial harm to customers.⁴⁵⁴ We find, however, that given the constraints on his authority, because Zelin and Diamante did not enable Cacace to effectively discipline the brokers’ misconduct at SWF, blame for the considerable harm the misconduct caused cannot be fairly attributed solely to him as an aggravating factor in determining his sanctions.

Therefore, the Hearing Panel does not agree with Enforcement that we should increase the severity of Cacace’s sanctions on the basis of other aggravating factors associated with the brokers’ misconduct.⁴⁵⁵ For example, it is true that six of the 14 customers harmed by the excessive trading were age 65 or older, and that is an aggravating factor.⁴⁵⁶ Were Cacace an actual line supervisor approving trades beforehand, knowledge and responsibility for the harm to customers aged 65 or older would justify increasing the severity of his sanctions. Certainly, were we considering sanctions against the four brokers, this would count significantly.⁴⁵⁷ But SWF, through its co-owners, did not support Cacace or allow him to reasonably police SWF’s errant brokers. As in *Trujillo*, discussed above, Cacace had “substantial responsibility for detecting” red

⁴⁴⁷ Tr. 963–66 (Cacace).

⁴⁴⁸ Tr. 1034–36 (Cacace); RX-2.

⁴⁴⁹ Tr. 918–19 (Cacace).

⁴⁵⁰ Tr. 965–68 (Cacace).

⁴⁵¹ Tr. 1163–65 (Pollard).

⁴⁵² Tr. 1166–68 (Pollard).

⁴⁵³ Tr. 1179–81 (Pollard).

⁴⁵⁴ Enf’s Post-Hr’g Br. 45.

⁴⁵⁵ *Id.* at 46.

⁴⁵⁶ Guidelines at 8 (Principal Consideration No. 20).

⁴⁵⁷ *See id.* at 5–7.

flags but “limited authority to correct them.”⁴⁵⁸ We therefore do not find it appropriate to ratchet up Cacace’s sanctions in light of this consideration, as Enforcement argues we should.⁴⁵⁹

Another reason Enforcement gives for increasing the severity of the sanctions is that “Cacace is a recidivist,” citing his 2017 AWC.⁴⁶⁰ The Guidelines direct adjudicators to impose “progressively escalating sanctions on recidivists beyond those outlined” in the Guidelines.⁴⁶¹ But the Guidelines instruct adjudicators to do so when a respondent’s disciplinary history “includes significant past misconduct that is similar to the misconduct at issue” or “shows a pattern of causing investor harm, damaging market integrity, or disregarding regulatory requirements.”⁴⁶² The Hearing Panel does not agree that Cacace’s disciplinary history meets these criteria.

Cacace’s AWC included findings that “he failed to ensure that his member firm” made timely filings of information about written customer complaints, and “timely filed Form U4 or U5 amendments for registered representatives with respect to three customer complaints and a customer arbitration.”⁴⁶³ In our view, that episode did not involve significant misconduct similar to what is before us here. It involved reporting requirements and does not appear to show a pattern of misconduct. The AWC contains no indication that the violations threatened to cause investor harm, damage market integrity, or that it reflected a disregard of regulatory requirements by Cacace.

Enforcement characterizes Cacace as possessing a “brazen mindset,” willing to “turn a blind eye to rule violations to keep his job,” and as someone who prioritized “his own personal and financial interests over complying with FINRA rules or protecting investors.”⁴⁶⁴ Based on our observations of Cacace over the course of the hearing, we do not find that he displayed a “brazen mindset.” For example, Cacace acknowledged that it was inappropriate for him to do what he was told when Zelin instructed him not to send an active account letter when he saw red flags of excessive trading and recommended sending the letter.⁴⁶⁵ He admitted he made a mistake when he did not take action, stating “I should have quit.”⁴⁶⁶

⁴⁵⁸ *Trujillo*, 1989 SEC LEXIS 480, at *4.

⁴⁵⁹ Enf’s Post-Hr’g Br. 46.

⁴⁶⁰ Enf’s Post-Hr’g Br. 3, 46, n.199.

⁴⁶¹ Guidelines at 2.

⁴⁶² *Id.*

⁴⁶³ JX-29, at 25–26; *see supra* 4.

⁴⁶⁴ Enf’s Post-Hr’g Br. 46.

⁴⁶⁵ Tr. 789–90 (Cacace).

⁴⁶⁶ Tr. 790–91 (Cacace).

We also note that there are documents that lend credence to Cacace's testimony that as CCO he "tried to do the right thing" and "get the firm into a culture of compliance."⁴⁶⁷ The memorandum he wrote to Zelin and Diamante in May 2017 proposing new criteria for identifying representatives to consider placing on heightened supervision, to bring the firm "in compliance with FINRA Rule 3110," is an example.⁴⁶⁸ Another is his unchallenged testimony that he worked with SWF's counsel to revise the active account letters to better inform customers of the trading in their accounts flagged by the MAARs.⁴⁶⁹ So, too, is the client suitability profile form Cacace testified he created in May 2017 for representatives to use to document their understanding of new customers' needs and objectives, to comport with FINRA's suitability requirements.⁴⁷⁰ According to Cacace, Zelin and Diamante did not adopt it because it would be "too much work," and "too much information gathering."⁴⁷¹ Another example is Cacace's February 2019 memorandum to Diamante asking to amend Pecoraro's Form U4 when he learned that a customer had filed an arbitration claim against SWF and Pecoraro.⁴⁷² Cacace also wanted to notify the Missouri Securities Commission of the complaint, as required by Pecoraro's heightened supervision agreement.⁴⁷³ According to Cacace, Diamante refused, because he "didn't want to put [Pecoraro's] registration in jeopardy by informing the state that he had another complaint" filed.⁴⁷⁴

Nor did the Hearing Panel discern that Cacace was motivated to engage in misconduct by financial gain. He did testify he was out of work for months before being hired by SWF,⁴⁷⁵ and that the need to support his family constrained him from resigning until he was able to find alternative employment.⁴⁷⁶ This suggests his family's financial needs contributed to his decision not to resign from SWF earlier. But to the Hearing Panel, this is distinguishable from one who engages in misconduct to profit from it. Cacace did not share any of the ill-gotten gains from the excessive trading garnered by the four brokers, which directly benefitted them, SWF, Diamante, and Zelin. Cacace received no commissions and no overrides and was paid a relatively modest

⁴⁶⁷ Tr. 1076–77 (Cacace).

⁴⁶⁸ RX-2.

⁴⁶⁹ Tr. 981–82 (Cacace).

⁴⁷⁰ Tr. 1031–02 (Cacace); RX-1.

⁴⁷¹ Tr. 1033 (Cacace).

⁴⁷² RX-9.

⁴⁷³ Tr. 1041 (Cacace).

⁴⁷⁴ Tr. 1041–02 (Cacace).

⁴⁷⁵ Tr. 927 (Cacace); JX-29, at 12–13 (Cacace's Central Registration Depository record showing he was unemployed for approximately six months from November 2016 to April 2017).

⁴⁷⁶ Tr. 743 (Cacace).

salary of \$100,000 on which to support his family of four and maintain their home in Rockville Centre, NY.⁴⁷⁷

To the Panel, it appears that Cacace accepted the job as SWF's CCO without knowing in advance the conditions under which he would work. According to him, in his job interviews with Diamante and Zelin, Cacace was told that SWF was "uber compliant," did not allow over-trading, and had a clientele of high net worth people.⁴⁷⁸ Like Pollard, Cacace did not think of himself as a direct supervisor of the brokers, and based on the testimony of Pollard, Demetri, and Russi, discussed above, we conclude that others at the firm did not view him as their supervisor. They all described reporting to Zelin and Diamante, who approved every trade.

As discussed above, Cacace, like Pollard before him, monitored broker trading activity but could not affect it, and encountered abusive treatment and threats from some brokers. Both Pollard and Cacace described reporting abusive episodes to Zelin and Diamante, who took no responsive action. We find this to reflect SWF's culture and its senior managers' lack of support for their CCO.

Failure to acknowledge responsibility before misconduct is detected by a firm or regulator is another aggravating factor that the Guidelines instruct adjudicators to consider.⁴⁷⁹ Enforcement faults Cacace for having "never acknowledged or accepted responsibility for his misconduct," dismissing as false Cacace's hearing testimony insisting that he did not supervise the four brokers who traded excessively.⁴⁸⁰

We note that Cacace's denial that he was a supervisor is the central pillar of his defense, which he is entitled to present vigorously.⁴⁸¹ He qualified that denial by acknowledging there is an overlap between his compliance functions and supervision, but that because he had no "control" over the firm's representatives, they did not have to do what he wanted them to—because he "had no power or authority to change anything."⁴⁸² He testified that he "attempted to curtail the behavior" of brokers but was unable to do so.⁴⁸³ As we noted above, at the hearing, when he was asked if he believed it was appropriate for him to follow Zelin's instructions not to take action to address red flags of excessive trading, Cacace testified it was not, and that he should have taken action, stating, "I should have quit."⁴⁸⁴

⁴⁷⁷ Tr. 943–44 (Cacace).

⁴⁷⁸ Tr. 949–51 (Cacace).

⁴⁷⁹ Guidelines at 7 (Principal Consideration No. 2).

⁴⁸⁰ Enf's Post-Hr'g Br. 46.

⁴⁸¹ *Northwood Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *44 (May 8, 2015).

⁴⁸² Tr. 1075–77 (Cacace).

⁴⁸³ Tr. 1079 (Cacace).

⁴⁸⁴ Tr. 789–90 (Cacace).

From observing Cacace throughout the hearing, the Hearing Panel is persuaded that Cacace sincerely believes he tried to move SWF in “a direction of compliance” but was “ignored by management.”⁴⁸⁵ As we have determined, Cacace’s lack of ultimate decision-making power or control over SWF’s brokers is not a defense, and his reliance on it is misguided. But it is not quite the same as a full-throated refusal to accept responsibility. In our view, Cacace cannot bring himself to acknowledge that he had a shared, limited supervisory role at SWF, and that it was insufficient, under the circumstances, for him to remain at SWF as a “bystander” for two years after recognizing that the firm’s management was not going to address the misconduct of the four brokers.

However, the Hearing Panel finds unconvincing Cacace’s assertions that he did not recall seeing his name listed as a supervisor in the firm’s WSPs, and that he was surprised—“overwhelmed,” as he described it—by the numerous firm documents identifying him as a supervisor, even though he authored a number of them.⁴⁸⁶ To that extent, the Hearing Panel faults Cacace for his inability to acknowledge that he responded insufficiently to the circumstances in which he found himself, and this is a factor in our determination of the appropriately remedial sanctions his failure calls for.

* * *

Taking the above into consideration, the Hearing Panel believes an appropriately remedial sanction tailored to the circumstances of this case requires a suspension in all principal capacities for 30 business days and a \$5,000 fine. We also conclude that it is appropriate to require Cacace to requalify as a General Securities Principal (Series 24) before again assuming any supervisory responsibilities. We note that the SEC has endorsed imposing a suspension in a supervisory or principal capacity along with a requirement to requalify, finding “these two sanctions are complementary.”⁴⁸⁷ As the SEC has observed, “[s]uspensions help ensure that violators take their responsibilities more seriously in the future. Requalification helps ensure that they have a full understanding of those responsibilities.”⁴⁸⁸ We believe requalification will help to ensure that Cacace has a fuller understanding of supervisory responsibilities should he assume them in the future.⁴⁸⁹

VI. Order

Respondent Christopher Cacace violated FINRA Rules 3110 and 2010 by failing to fulfill his supervisory responsibility when his firm failed to reasonably respond to red flags of excessive trading by four representatives. For these violations, the Hearing Panel suspends him

⁴⁸⁵ Tr. 1078–79 (Cacace).

⁴⁸⁶ Tr. 1076–77 (Cacace).

⁴⁸⁷ *Wilson-Davis*, 2023 SEC LEXIS 3658, at *48.


⁴⁸⁸ *Id.*

⁴⁸⁹ The Hearing Panel has considered and rejects without discussion all other arguments made by the parties.

in all supervisory capacities for 30 business days, imposes a \$5,000 fine, and orders him to requalify as a General Securities Principal before again assuming any principal responsibilities.

If this decision becomes FINRA's final disciplinary action, the suspension shall become effective with the opening of business on **Monday, December 15, 2025, and end at the close of business on Wednesday, January 28, 2026**. The fines and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action.

Respondent is ordered to pay hearing costs of \$11,759.65, consisting of a \$750 administrative fee and \$11,009.65 for the cost of the transcripts. Payment of the costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final action.



Matthew Campbell
Hearing Officer
For the Hearing Panel

Copies to:

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