BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Mark Sam Kolta Miami, FL, Respondent.	DECISION Complaint No. 2018057297102 Dated: March 13, 2026

Former registered representative recommended unsuitable purchases of a non-traded real estate investment trust, caused his customers' account forms and REIT investment documents to overstate financial information and investment objectives, caused his former firm to maintain inaccurate books and records, and distributed unbalanced and misleading communications to the public. Held, findings and sanctions modified.

Appearances

For the Complainant: Loyd Gattis, Esq., Payne L. Templeton, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Steven A. Lucia, Esq., Pheterson Spatorico LLP

Decision

Mark Sam Kolta appeals an Extended Hearing Panel decision issued on August 15, 2024. The Extended Hearing Panel found that Kolta violated: (1) FINRA Rules 2111 and 2010 by making unsuitable recommendations to 16 customers who invested more than $4.8 million in a non-traded real estate investment trust or "REIT;" (2) FINRA Rules 4511 and 2010 by causing his former employer firm to maintain inaccurate books and records; and (3) FINRA Rule 2010 by falsifying his customers' financial information and investment profiles. For this misconduct, the Extended Hearing Panel barred Kolta from association with any FINRA member firm in all capacities and ordered that he disgorge to FINRA $297,823, plus prejudgment interest.

The Extended Hearing Panel additionally found that Kolta violated FINRA Rules 2210 and 2010 by disseminating unbalanced and misleading communications to the public and failing to obtain prior approval of those communications by a qualified firm principal. For this

misconduct, the Extended Hearing Panel assessed, but did not impose given the bar it imposed for Kolta's other misconduct, a two-year suspension from association with any FINRA member firm in all capacities and a $40,000 fine.

The Extended Hearing Panel found, as the complaint alleged, that Kolta violated FINRA's rules with respect to 16 customers who purchased the non-traded REIT shares. But not all 16 customers provided sworn testimony at the hearing, or during FINRA's investigation, regarding the allegations charged against Kolta in this proceeding.[1] On appeal, Kolta does not challenge the Extended Hearing Panel's findings that he violated FINRA rules or the sanctions that it imposed for his misconduct. Instead, Kolta requests that we vacate the Extended Hearing Panel's decision based on procedural objections.

After an independent review of the record, we agree that Kolta violated FINRA's rules as alleged in the complaint. We, however, modify the Extended Hearing Panel's findings of violation, and the sanctions it imposed. We limit our findings to the four customers who testified under oath at the hearing and dismiss the order that Kolta disgorge $297,823, plus prejudgment interest, to FINRA.

I. Background and Facts

A. Respondent Mark Sam Kolta

Kolta entered the securities industry in 2007. He was a general securities representative at Chase Investment Services Corp. ("Chase") from April 2008 to November 2011, and thereafter at Cetera Advisors LLC ("Cetera") (also known as Multi-Financial Securities Corporation) from November 2011 to August 2013.

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[1] The Extended Hearing Panel heard testimony from seven of Enforcement's witnesses, which included four of Kolta's customers. Neither Kolta nor his counsel participated in the hearing. In addition to the four customers who testified at the hearing, the complaint identified 12 other customers to whom Kolta allegedly made unsuitable recommendations to purchase the ARC New York REIT and caused their account records to contain falsified and inaccurate information. None of these 12 customers attended the hearing or testified under oath. Of these, FINRA staff interviewed eight customers and prepared bulleted notes or memoranda summarizing the interviews that were admitted into evidence at the hearing. Enforcement has the burden to prove that Kolta committed the violations alleged under a preponderance of the evidence standard, which requires that the facts meet a minimum level of reliability. *See Dep't of Enf't v. Spiro*, Complaint No. 2016052347901, 2019 FINRA Discip. LEXIS 19, at *41-42 (FINRA NAC May 15, 2019) (citing *Singletary v. D.C.*, 766 F.3d 66, 73 (D.C. Cir. 2014) ("Courts have found that the preponderance standard itself incorporates a requirement that evidence must meet a minimum threshold of reliability.") (internal quotation marks omitted). Given the record, we have determined to base our findings of liability on the most probative evidence, which was provided by the four testifying customers, that demonstrates Kolta's misconduct and the appropriateness of a bar. We do not reach the reliability or probative value of the evidence concerning the other 12 customers.

From September 2013 to May 2017, the period relevant to the conduct at issue here, Kolta was associated with a former FINRA member firm, National Securities Corporation ("National" or "Firm"), as a general securities representative.[2] Several of the customers identified in the complaint, including the four customers who testified at the hearing, first met Kolta when he was associated with Chase. The customers thereafter followed Kolta as their registered representative to Cetera and, later, National. On May 11, 2017, National permitted Kolta to resign during the Firm's internal review of "previously reportable matters."

After leaving National, Kolta associated with two FINRA member firms. From June 2017 to February 2018, he was a general securities, and an investment adviser, representative at Aegis Capital Corp. From March 2018 to October 2021, Kolta was associated with Worden Capital Management as a general securities representative. Kolta has not been associated with a FINRA member since October 2021.

B. Non-traded REITs Generally

A REIT, established by Congress in 1960, is a company that owns or finances income-producing real estate or related assets.[3] As an investment vehicle, a REIT pools the capital of investors to buy a portfolio of properties, which can include office or apartment buildings, hotels, and shopping centers, that an investor has an interest in without having to directly buy the property.[4] While shares in publicly listed REITs trade on a national securities exchange, the REIT that Kolta recommended that his customers purchase was a "non-traded" REIT, i.e., a public reporting company registered with the Securities and Exchange Commission ("SEC") that, at the time, did not trade on an exchange.[5]

Non-traded REITs pose notable risks, especially for retail investors. Non-traded REITs are "illiquid investments" that cannot be readily sold in the open market.[6] While some portion of

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[2] While at National, Kolta was dually employed at National Asset Management, Inc., as a registered investment adviser representative from June 2014 to December 2015, and again from April 2016 to May 2017. National ceased conducting business and filed a Form BDW (Uniform Request Withdrawal from Broker-Dealer Registration) in 2022.

[3] *See FINRA Real Estate Investment Trusts: Alternatives to Ownership*, https://www.finra.org/investors/insights/reits-alternatives-to-ownership (Aug. 2, 2022) [hereinafter *FINRA Investor Insights on REITs*]; *see also SEC Office of Investor Education and Advocacy Investor Bulletin: Real Estate Investment Trusts (REITs)*, https://www.sec.gov/files/reits.pdf [hereinafter *SEC Investor Bulletin on REITs*].

[4] *See FINRA Investor Insights on REITs* and *SEC Investor Bulletin on REITs*, *supra* note 3.

[5] *See FINRA Investor Insights on REITs* and *SEC Investor Bulletin on REITs*, *supra* note 3.

[6] *See FINRA Investor Insights on REITs* and *SEC Investor Bulletin on REITs*, *supra* note 3; *see also FINRA Alternative and Emerging Products*,

[Footnote continued on next page]

the total outstanding shares of a non-traded REIT may be redeemable each year, offers to redeem shares might be below the purchase price or discontinued at the company's discretion.[7] Non-traded REITs generally have high front-end fees and costs that significantly lower the investment's value.[8] There is a limited secondary market for the sale of non-traded REIT shares. And because there is no public market price available, share valuation can be difficult to determine.[9] Moreover, non-traded REITs often pay distributions in excess of operating income by returning investor capital or borrowing funds; these distributions are not guaranteed and may undermine capital appreciation.[10]

C. American Realty Capital New York City REIT, Inc.

The American Realty Capital New York City REIT, Inc. ("ARC New York REIT"), was a non-traded REIT formed in 2013 to primarily invest assets in office properties in New York. In April 2014, the ARC New York REIT offered common stock at $25.00 per share seeking to raise up to $750 million.[11] To purchase shares in the ARC New York REIT, the REIT required retail investors to meet minimum income and net worth thresholds. The REIT's offering prospectus specifically provided that investors had to have either "a net worth of at least $250,000," or "an annual gross income of at least $70,000 and a minimum net worth of at least $70,000."

The REIT's offering prospectus warned that an investment in the ARC New York REIT involved a "significant" and "high degree of" risk and that it was suitable only for investors who had "adequate financial means," would "not need immediate liquidity from their investment[,]" and could bear a complete loss of their investment. The offering prospectus further provided that the ARC New York REIT had not acquired any properties or made other investments at the time of the offering and had no operating history; that the REIT's initial offering price of $25 per share was "arbitrary" and thus the actual value of one's investment could be "substantially less than what [was paid];" and that the prior performance of any affiliated REIT should not be used to predict future results.

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https://www.finra.org/investors/investing/investment-products/alternative-and-emerging-products.

7 *See SEC Investor Bulletin on REITs*, *supra* note 3.

8 *See SEC Investor Bulletin on REITs*, *supra* note 3.

9 *See SEC Investor Bulletin on REITs*, *supra* note 3.

10 *See SEC Investor Bulletin on REITs*, *supra* note 3.

11 According to the offering prospectus, the ARC New York REIT paid selling commissions of seven percent of gross proceeds in the primary offering. Selling commissions could, however, be "reduced in connection with," among other things, "sales of [a] certain minimum number of shares."

The ARC New York REIT, in addition to its minimum income and net worth thresholds, also limited who could invest based on investment suitability standards established in certain states. For the state of California, where one customer in this proceeding resided, the maximum permitted investment in the ARC New York REIT was 10 percent of the investor's net worth (exclusive of home, furnishings, and automobiles).

The ARC New York REIT shares were non-traded for approximately six years. In August 2020, the REIT's Class A common stock, representing approximately 25 percent of its outstanding common shares, was listed and commenced trading on the New York Stock Exchange ("NYSE"). Soon after trading began on the NYSE, the REIT's stock price dramatically declined. For example, on August 18, 2020, the first trading day, the REIT opened at $30.00 per share and closed at $17.60 per share. The REIT's remaining Class A common stock was listed for trading on the NYSE incrementally until August 2021. By September 1, 2021, the ARC New York REIT's Class A common stock closed at only $9.47 per share.

D. National's Policies for Alternative Investment Products

During the relevant period, National had written policies and procedures for customers who invested in alternative products, like the ARC New York REIT. National's customers were required to complete account records, including a new account form that provided, among other things, the customer's date of birth, annual income, net worth (that excluded the value of a primary residence), investable or liquid assets, assets held at other financial institutions, investment objectives, and risk tolerance.

National required that a packet of documents be completed, including the "Direct Business Application" and the "Direct Business Transmittal Form," before the Firm approved the purchase of a non-traded REIT ("REIT investment documents"). The REIT investment documents likewise requested information about a customer's finances and investment profile to help ensure that the non-traded REIT was a suitable investment, including the customer's age, annual income, net worth, investable or liquid assets (referred to variously in the investment documents as "investable assets," "liquid assets," or "investable/liquid net worth"), investment objectives, and risk tolerances. All REIT investment documents had to be completed in full and signed by the customer and the registered representative for submission to National's alternative investments division for review, processing, and final approval. If any information about a customer changed, National required that the designated registered representative update the account records.

National also established "10/20/30 Guidelines"—a concentration policy for alternative investment products that applied to each customer's purchase of shares in an illiquid, non-traded REIT. The 10/20/30 Guidelines, which were in effect when Kolta recommended that his four customers invest in the ARC New York REIT, were formally incorporated into the Firm's written supervisory procedures in December 2015.

At the hearing, Jonathan Tortorici, an operations specialist at National who managed the review and processing of customer REIT investment documents, testified about the 10/20/30 Guidelines that existed when Kolta recommended the ARC New York REIT to his customers.

According to Tortorici, National prohibited Firm registered representatives from recommending any alternative investment that caused: (1) more than 10 percent of a customer's investable or liquid assets to be invested in a single non-traded REIT (or other alternative investment); (2) more than 20 percent of a customer's investable or liquid assets to be invested in a single asset class of the alternative investment product (i.e., real estate, oil and gas, equipment leasing); or (3) 30 percent or more of a customer's investable or liquid assets to be invested in alternative investment products generally.

E. National's Review of Alternative Investment Transactions, Including the ARC New York REIT

It was National's policy to review the REIT investment documents that a registered representative submitted on behalf of a customer to determine whether the investment complied with: (1) its 10/20/30 Guidelines; (2) any state laws regulating the purchase of non-traded REITs; and (3) FINRA's suitability rule.

Tortorici testified that he reviewed each customer's annual income, net worth, liquid net worth, age, and the amount of money the customer already had invested in other alternative investment products to determine whether the product and investment amount was suitable.[12] If a customer was over 60 years old, Tortorici stated that a Firm principal would perform an additional review to determine whether enhanced suitability requirements were needed, such as obtaining additional information from the customer or reducing the concentration percentages under the Firm's 10/20/30 Guidelines, before approving the purchase.

According to Tortorici, National did not permit registered representatives to have a customer sign blank or partially blank account forms or REIT investment documents that excluded their financial information, such as investable assets, net worth, or annual income. Tortorici explained that, if a customer's REIT investment documents were "not in good order" or the customer's investment amount exceeded the 10/20/30 Guidelines, he would inform the registered representative of the reason why the paperwork could not be processed for final review and approval by a Firm principal. According to Tortorici, National did not permit registered representatives to independently change a customer's account information in Streetscape or FBSI without submitting to the Firm an updated new account form that the customer signed and dated.

The record evidence showed that Kolta was aware of National's policies and concentration limitations for customer purchases of alternative investment products. For example, in February 2015, Tortorici (or a colleague on his behalf) alerted Kolta that a recommendation he made to a customer to invest in the ARC New York REIT was unsuitable for that customer because the customer failed to meet the 10/20/30 Guidelines. In another case, in June 2014, Kolta acknowledged the Firm's policy via email by apologizing for the "error"

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[12] According to Tortorici, he verified the customer's information provided in the REIT investment documents against the client's account data provided in National's Streetscape and FBSI electronic systems.

reflected in his customer's account profile and stating that he would "be more careful" after Tortorici alerted him that the customer exceeded "the 20 percent rule" based on their existing investable assets in real estate.

F. Kolta Falsifies Customer Account Records and REIT Investment Documents

All four of the customers who testified at the hearing followed Kolta from his prior employing firms to National. For each of these customers, Kolta caused false information to be reported on their account records before the customer purchased shares of the ARC New York REIT. For two of them, Kolta also caused the account records to contain false information regarding the purchases of non-traded REITs other than the ARC New York REIT—specifically, the American Realty Capital Global Trust, Inc. ("ARC Global REIT"), and the American Realty Capital New York Recovery REIT, Inc. ("ARC Recovery REIT").

When National rejected the customer's purchase of a REIT, either because the supporting paperwork was inconsistent or incomplete or because the recommended purchase violated suitability requirements, Kolta or his sales assistant, working at his direction, would revise or update the customer's account forms or the REIT investment documents, or both, by simply increasing the amount of the customer's income, net worth, and investable liquid assets reflected on the documents without any evidence or documentation supporting the customers' updated information.

Jennifer Stoehrer was a sales assistant at National who supported seven to 10 Firm representatives, including Kolta. Stoehrer handled new account applications and other paperwork, including completing REIT investment documents for Kolta. At the hearing, Stoehrer testified that, at Kolta's direction, she would routinely fill out the suitability and investment profile sections of customer records, including the customer's new account forms and REIT investment documents to reflect an inflated financial condition. Stoehrer explained that Kolta routinely had his customers sign the forms and documents blank. Kolta then would instruct her to fill in the figures that he provided after he met with the customer. Stoehrer also testified that Kolta directed her to update the forms and documents as necessary when a customer's REIT purchase was denied for inconsistencies or incompleteness in the supporting paperwork.

G. Kolta Recommends the ARC New York REIT to Four Testifying Customers

The same four customers also testified that, on Kolta's recommendation, they purchased a total of $1,389,201 in shares of the ARC New York REIT from June 2014 to August 2015.

1. Customer PV

PV met Kolta while he was a registered representative in the investments division at Chase. PV's former employer invited Chase representatives to explain the various products that Chase offered, and after speaking with Kolta, PV moved her investments to Chase with Kolta as her representative. PV followed Kolta when he left Chase and became employed at Cetera in 2011. PV testified that when she opened her account at Cetera, although she was uncomfortable

doing so, Kolta had her sign the account form blank, telling her "not to worry," and that she "could trust him." When shown a copy of the completed new account form at the hearing, PV testified that, outside of her signature, none of the handwriting on the form was hers. According to PV, she signed the forms blank as Kolta directed because she trusted him.

PV testified that the new account form for Cetera incorrectly reflected that her annual income in 2012 was between $100,000 and $149,999; her net worth (excluding her primary residence) was between $1 million and $2,999,999; and her liquid net worth was between $500,000 and $999,999. According to PV, that year, her annual income was approximately $75,000, and her net worth (excluding her primary residence) was around $500,000, but "never a million." The new account form also misstated PV's level of investment knowledge. According to PV, the account profile section of the form incorrectly reported that she had 25 years of experience investing in stocks, bonds, and mutual funds. PV also testified that she did not know what a REIT was and denied that she had 10 years of experience investing in REITs, as the form reflected.

In 2013, PV followed Kolta when he left Cetera and became employed at National. She was 66 years old when she opened a brokerage account and an IRA at National. PV was an administrative assistant at a law firm in New York. But sometime in 2014, she had a serious accident at work, suffered a brain injury, and never returned to work. PV testified that she told Kolta about her injury. When Kolta moved to National, he had PV sign new account forms. Like at Cetera, Kolta had PV sign National's Brokerage Account Application and Premiere Select IRA Application forms blank with each having a sticker attached stating "sign here" to indicate where she should sign. PV testified that she told Kolta she did not like signing blank forms because she did not know what was going to be filled in, to which Kolta responded that she "had to trust him. It was just nothing. . . [t]hey're just forms." PV stated that she trusted Kolta and, at his direction, signed the blank forms.

Kolta caused the new account forms at National to state that PV's annual income was "$100,000+," her net worth was $2 million, and her investable assets were $1 million. PV testified that she did not handwrite the figures reflected on the forms and claimed that they were false. PV also testified that her principal investment objective at the time was "capital preservation," explaining that she wanted to be "conservative" with her investments given her age.

In March 2014, Kolta submitted REIT investment documents for PV to purchase $31,250 worth of shares in the ARC Global REIT. At that time, Tortorici emailed Kolta to inform him that the $2 million amount stated as investable assets in the REIT investment documents he submitted did not match the Firm's customer account records. Kolta then directed Stoehrer to change PV's account records to represent that she had investable assets of $2 million. PV testified that this amount was false; she never wrote nor reflected the inflated figure on any form that she signed. In June 2014, the REIT investment documents falsely reflected PV's inflated annual income (which Kolta falsely increased to $250,000), her net worth at $2 million, and her

investable assets at $2 million.[13] At these levels, she was eligible to purchase $116,000, and separately, $73,000, worth of shares in the ARC New York REIT on Kolta's recommendation.

In December 2014, PV received a letter from National asking her to confirm the financial information it had on file. The letter reflected that her annual income was $250,000, her estimated net worth had increased to $4.5 million, and her investable assets had increased to $4.1 million. PV emailed Kolta about National's letter stating, "Unless you made me some incredible investment ... what are these $? Can I buy my penthouse condo in Florida?" Kolta responded, "Lol will go over all your assets with you call me tomorrow or tonight..." PV testified that Kolta never followed up with her to discuss National's letter or the inflated figures. Instead, Kolta told her, "Don't worry about it. I'll take care of it. It's something—[but] it must be a mistake." Kolta never amended PV's financial information in National's records to reflect the accurate figures.

In February 2015, Kolta altered PV's account records again. This time, he caused the records to reflect that, while her annual income remained at $250,000, her net worth increased to $7.5 million, and her investable/liquid assets increased to $7 million. PV testified that these figures were "totally false." According to PV's 2015 federal income tax return, her employment income was only $12,353, and her total income was less than $90,000, after including social security benefits and distributions from a pension or annuity.

Between June 2014 and March 2015, based on Kolta's recommendations, PV made three investments totaling $316,750 in the ARC New York REIT. PV testified that Kolta never discussed the risks of investing in a REIT and she "didn't know what a REIT was to discuss the risks with him." PV testified that Kolta's "only explanation for the investment was that it was a good investment, and I would make a lot of money." Kolta also told PV that he invested in the ARC New York REIT himself and so did his mother.

In May 2015, three months after making her last investment in the ARC New York REIT, PV emailed Kolta informing him that she was concerned about it. In that email, PV reminded Kolta that she had been out of work for nearly a year. Kolta responded, among other things, that "[s]kittish [persons] never do well," and "[I] know more of what is going on. And if it does not feel comfortable for you to follow the leader which you have never failed with, you need to work with one you do feel that way with."

After purchasing $316,750 in shares of the ARC New York REIT, PV had over 60 percent of her net worth (of approximately $500,000) concentrated in an illiquid, non-traded REIT.

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[13] During this same month, Kolta also caused PV's updated Brokerage Account Application to reflect these inaccurate figures. According to PV's testimony, the updated account forms and REIT investment documents also falsely stated that her investment objectives were—in order of importance—"speculation" and "capital appreciation," rather than her true investment objective of "capital preservation," which was previously indicated.

2. Customer SS

SS has a graduate degree in international banking and economics. She worked for the New York City Transit Authority for more than 20 years before retiring in 2010. Like customer PV, SS met Kolta when he was employed at Chase. She followed Kolta after he joined Cetera in 2011. At Cetera, SS first invested in a REIT based on Kolta's recommendation.

In 2013, SS followed Kolta again and transferred her accounts to National. She was 62 years old and retired. At the hearing, SS was presented a copy of her Premiere Select IRA Application form. SS testified that Kolta routinely had her sign forms, like that one, blank and told her "not to worry [about] the rest of it," that his sales assistant would complete the forms. Kolta caused SS's new account forms to reflect that her annual income was $250,000; her net worth was $2 million; and her assets held at other brokerage firms were $1 million. SS testified that all those figures were incorrect. She also confirmed that the written entries on the forms, besides her dated signature, were not in her handwriting. SS's actual annual income was approximately $100,000, and her net worth was about $500,000.

In June 2014, SS purchased $83,120 worth of shares in the ARC New York REIT based on Kolta's recommendation. SS testified that Kolta did not warn her of the risks of investing in a REIT. According to SS, he instead told her that the ARC New York REIT was "a very good investment and it pays good interest until you sell it." Kolta also told SS the REIT would provide her returns of seven percent. In connection with his recommended purchase of the ARC New York REIT, Kolta caused SS's updated account records and REIT investment documents to falsely state that her annual income was $250,000 and net worth was $2 million. Kolta also inflated the value of her investable assets and assets held away at other financial institutions besides National, from $1 million to $2 million. SS testified, however, that she never has had a net worth of $2 million. Kolta also caused the REIT investment documents to falsely indicate that her primary investment objective was "speculation" followed by "capital appreciation," rather than "capital appreciation" only, as SS testified, and her risk tolerance was "moderately aggressive," rather than "moderate," according to her testimony.

Later that month, National sent SS a letter entitled, "Notice of Change(s) to Your Account," stating that the Firm received a request to update information in her account and asking her to confirm the changes to her financial information it had on file. In response, SS marked up National's letter with handwritten notations reflecting her true financial condition and sent it back to National with a note stating: "Please be advised that [the] changes to my account [are] not accurate. I took the liberty to make the correction[s] directly on the acc. info. sent to me. Please make these changes to my acct. & provide me with a corrected copy."

SS corrected the figures on National's letter to reflect that her actual annual income was $100,000, and not $250,000. She decreased her stated estimated net worth amount from $2 million to $1 million. She crossed out the stated $2 million investable and liquid assets entry and wrote the actual amount, $200,000. SS revised the investment purpose description that falsely stated, "market speculation" and "speculation" to state solely "capital appreciation." Regarding her level of her investment knowledge, SS slashed the term "Good" and wrote "No exp" (or no experience) next to the various investment products listed, including options, variable contracts,

futures, alternative investments, and margin trading because, as she testified at the hearing, she had "no idea what they were." In July 2014, National responded to SS with a letter confirming that her account information had been revised as she had requested. Notwithstanding the changes SS made to her account information, two months later, Kolta again altered SS's IRA account forms. In September 2014, National sent SS another letter notifying her of the changes to her financial profile. Once again, Kolta had caused her account documentation to falsely state that her net worth was $2 million, and her liquid assets were $1.8 million.

SS's $83,120 investment in the ARC New York REIT concentrated more than 40 percent of her actual investable assets in one non-traded REIT. In addition, SS already held shares of another non-traded REIT, which were then valued at $20,000. The two REIT investments resulted in SS having more than 50 percent of her investable assets in shares of non-traded REITs.

3. Customer TS

A Chase bank manager introduced TS to Kolta when TS needed the assistance of a financial advisor. TS followed Kolta when he left Chase and became associated with Cetera, and again when Kolta joined National in 2013. At that time, TS was a 43-year-old technical sales engineer for a technology company and a California resident.

In 2013, TS signed new account forms in connection with opening a brokerage account at National. At that time, TS transferred his previous investment of $173,643 worth of shares in ARC Recovery REIT. At the hearing, TS confirmed that his new account forms correctly stated that his annual income was about $250,000, his net worth was approximately $1 million, and his investable assets were about $500,000. Kolta, however, caused the new account forms to incorrectly state that TS's investment purpose was "market speculation," which TS testified was a "bit too aggressive." According to TS, he wanted to accumulate wealth and to preserve wealth. TS also testified that his primary investment objective was "capital appreciation" instead of "speculation," as the forms incorrectly provided. Kolta also caused the account forms to inaccurately state that TS had "extensive" experience in all the investment products listed and would engage in over 15 transactions per year in each product. TS testified that he had some investing experience by participating in his employer's stock purchase plan, and investing in mutual funds and 10 equities, but the depiction on the form that his investment knowledge was extensive was "not accurate."

In April 2014, TS requested that Kolta liquidate $50,000 of his ARC Recovery REIT investment because, as he testified, he "needed the funds," to which Kolta responded that it would not be possible. Two months later, in June 2014, Kolta sent TS blank REIT investment documents for him to sign to purchase the ARC New York REIT. TS testified that Kolta commonly sent him forms that were blank with instructions as to where to sign, explaining later that he had built "some sort of a trust based on [his] a preexisting relationship with [Kolta]."

In July 2014, Kolta recommended that TS purchase $102,600 worth of shares in the ARC New York REIT. TS testified that Kolta recommended he purchase the ARC New York REIT because the affiliated ARC Recovery REIT "went public" and his investment in that REIT had

performed well, but Kolta did not discuss with TS any risks associated with the ARC New York REIT investment. In connection with the July 2014 purchase, Kolta changed the account forms and REIT investment documents causing them to falsely state that TS's annual income was $1 million, and his net worth (excluding his residence) and investable assets each were $5 million. When shown the documents at the hearing, TS testified that none of the handwriting, other than his signature, was his, and the reported financial figures were incorrect. In truth, his annual income remained at $250,000, his net worth dropped to $500,000 "at the most," and his investable assets amounted to about $150,000, because he just purchased a home in California a few months prior, which Kolta knew about. Kolta also caused the REIT investment documents to misrepresent that his investment objective and investment purpose was "speculation."

In July 2015, Kolta recommended that TS make a second investment in the ARC New York REIT for $104,131 worth of shares. One month prior to the purchase, Kolta again emailed TS blank REIT investment documents for his signature. After TS signed the documents, Kolta caused the REIT investment documents to falsely represent that TS's income was $1 million, and his net worth and investable liquid assets each were $5 million.

TS made two investments in the ARC New York REIT totaling $206,731. Based on these investments, TS had approximately 40 percent of his actual net worth concentrated in the REIT. Based on the investment suitability standards in the offering prospectus, and as a California resident, TS's maximum investment in the ARC New York REIT should have been no more than 10 percent of his net worth (exclusive of home, furnishings, and automobiles).

4. Customer JK

JK met Kolta in 2008 when a Chase bank representative recommended him as her financial adviser. Before meeting Kolta, JK had a business and a personal banking account, but she never worked with an investment professional. JK followed Kolta when he left Chase and became employed at Cetera. At Cetera, JK invested in two non-traded REITs based on Kolta's recommendation. She thereafter followed Kolta to National.

In 2013, JK opened an individual brokerage account and an IRA at National. At that time, JK was 54 years old and married. She owned a small business designing and importing textiles from Latin America. For both accounts, Kolta presented JK with the Brokerage Account Application and Premiere Select IRA Application blank with sticky notes and "sign here" arrows attached. At the hearing, JK explained that, in her experience, she would be chatting with Kolta in his office as he flipped through the pages of various documents and directed her where to sign. According to JK, she signed the forms blank because she "trusted him."

Kolta caused the new account forms at National to falsely reflect that JK's annual income was $1 million, her investable assets were $3 million, her assets held away at another financial institution were $3 million, her primary investment objectives were "speculation" followed by "capital appreciation," and her risk tolerance was "moderately aggressive." JK testified that these figures and representations were false. According to JK, for fiscal years 2013 to 2015, her annual income was approximately $250,000. She had never earned $1 million in annual income. JK also testified that she had approximately $250,000 in liquid assets. She stated that she did not

have investable assets of $3 million and most of her money was "tied up with . . . Kolta." In addition, JK disputed that "speculation" was her investment objective and testified that, had she completed the forms herself, she would have marked "preservation of capital" first, followed by "income." JK described her risk tolerance as "moderate" or "moderately conservative," and not "moderately aggressive" as stated on the forms. Kolta also caused the forms to exaggerate her knowledge of several investment products, including alternative investments, options, futures, and margin, as being "good," when that was untrue.

Kolta continued to cause JK's account records to reflect false information after she opened her accounts. In 2014, Kolta recommended that JK invest in the ARC Global REIT. The REIT investment documents for the two investments JK made in the ARC Global REIT inflated her annual income from $250,000 to $1 million, and her net worth and investable assets increased from an already incorrect $500,000 and $3 million, respectively, to $18 million each. When shown the exaggerated figures on the account forms and REIT investment documents at the hearing, JK testified that all the reported financial information—which Kolta had not shown her previously—was incorrect.

Between June 2014 and August 2015, based on Kolta's recommendations, in six transactions, JK purchased shares of the ARC New York REIT totaling $776,600. Kolta caused the REIT investment documents for each of these six purchases to falsely state that JK had a net worth and investable assets of $18 million. According to JK, Kolta never discussed any risks of investing in non-traded REITs. In fact, JK told Kolta that she was not a risk taker, did not "need huge gains," and "definitely" did not want to lose her savings. According to JK, Kolta described her REIT investments as being "safe." Kolta's recommendations to invest $776,600 in the ARC New York REIT caused JK to concentrate more than 60 percent of her actual investable assets in a single non-traded REIT. Additionally, because JK held shares of another non-traded REIT (the ARC Global REIT), Kolta's recommendations to invest in the ARC New York REIT caused her to have more than 75 percent of her actual investable assets concentrated in non-traded REITs.

H. Kolta Sends Unapproved Email Communications to Retail Investors Promoting the ARC New York REIT

Between June 2014 and May 2015, Kolta sent four emails to hundreds of individuals, including PV, SS, TS, and JK, that promoted the purchase of ARC New York REIT shares based on, among other things, the purported investment growth of its affiliated REIT—the ARC Recovery REIT. Before sending each email, Kolta did not obtain the required approval from a qualified registered principal at National.

1. The June 4, 2014 Email

On June 4, 2014, Kolta sent an email to more than 25 individuals with the subject line, "Approaching Sell Out and Exchange." In this email, Kolta touted the purported success of ARC Recovery REIT (referred to by its then ticker symbol "NYRT") and urged his customers to sell their ARC Recovery REIT shares and use the proceeds to invest in the ARC New York REIT (which he referred to below as the "second new york holding," the "second" investment, or the "second half"). Kolta's email stated in relevant part:

> Yesterday we closed on NYRT at 11.30 per share. This means we have all collectively done 13% in capital gain and an additional 6% in dividend interest for an investment we held about a year at 10$ start point. In the pre-market we are at 11.50. I would like to begin removing some of our exposure at 20% gains and above, slowly and systematically. If you have not already done so on an individual basis, please contact me to review short/long term capital gain situations for our pending exchanges into the second new york holding. I am expecting another significant boost to portfolios in a similar magnitude to this holding on the second. This will be my final weighting to real estate in portfolios, so if you did not take advantage in round one, let's please further our surge upward in the second half of this. . . . Congrats to everyone ccd in here who is now this much wealthier. We will repeat this performance again, and then pause to re-evaluate economic conditions after having cushioned these balances significantly yet again.

2. The November 7, 2014 Email

On November 7, 2014, Kolta sent an email to hundreds of individuals with the subject line, "Fwd: New York REIT, Inc. Added to the MSCI US REIT Index (RMZ)." In this email, Kolta highlighted the purported market success of the ARC Recovery REIT as an exchange-listed security (referred to as the "first" investment in the email) and how investing in the ARC New York REIT (as the "second" investment in the email) would garner similar investment growth. Kolta's email, in relevant part, stated:

> To educate on our process. This is how/why we use the public markets. The private to public listing process of bringing an ipo to market generates in the following fashion. The advantages are seen when buying low initially, and then waiting for listing and inclusion into the indexes as you see below. All we are doing is utilizing the markets in this process to generate the dividends and premiums in share price. The advantages should be clear now via your current portfolios. For those who missed the first, the second should be similar in nature. Congrats to those involved in the first and second. We have boosted portfolio values by using these methods.
>
> Track symbol: NYRT
> Existing clientele has entered at 10 and exited above while capturing a 6% dividend. This nets an aggregate above 10%.

3. The January 15, 2015 Email

On January 15, 2015, Kolta sent an email to hundreds of individuals with the subject line, "The rule of 72 (Conservative Investing)." In this email, Kolta attaches a copy of a screenshot from what appears to be an investopedia.com search that stated, "What is the 'Rule of 72'?" and described the answer as, among other things, "a simplified way to determine how long an investment will take to double, given a fixed annual rate of interest," to promote, among other things, the benefits of investing in REITs. Kolta wrote:

> The rule attached below portrays how you double your money. I am glad that the principles I have been teaching and guiding you through markets with, again prevail. Large conservative asset purchases remain shining in returns as the market is in disarray. Anyone who has been over leveraged or too aggressive during this stimulus period has been lucky as of thus far. . . . Stay the course in assets that pay large dividends (6% like our new york property holdings), and you will double your money according to the rule stated below. The reit index is now at a 52 week high and positive eight of nine trading days this year, while the market is down. My current clientele should congratulate themselves upon staying the course while others were greedy. This is how you truly grow[] net worth. Anyone else should phone me after incurring losses. It is very easy to double, and it only takes one thing to do this when you are invested in large stable assets. TIME.

4. The May 30, 2015 Email

On May 30, 2015, Kolta sent an email to hundreds of individuals with the subject line, "Closed." In his email, Kolta addressed the closing of the ARC New York REIT (referred to in the email by its then trading symbol "NYCR"), while spotlighting the REIT's purported success in, among other things, paying existing investors a six percent dividend. Kolta's email stated:

> As previously communicated, the American Realty Capital New York City REIT ("NYCR") offering closes on May 31, 2015.
>
> So as to allow for the associated processing times, NYCR subscription documents signed on or before May 31, 2015 will be accepted by the NYCR transfer agent until August 31, 2015. Sales after May 31, 2015 are not authorized and subscription documents dated after May 31, 2015 will not be accepted.
>
> To those participating, congratulations. You own corporate New York City properties, rented, paying you a six percent dividend; and awaiting a tender offer/public offering proceeds. Moving forward, real estate as an asset class struggles in rising rate

> environments. For current holdings we are fine as rates, if rising, will be done slowly.

II. Procedural History

The primary issue that Kolta raises on appeal before the NAC concerns the procedural rulings the Hearing Officer made in the weeks prior to the hearing of this matter. Thus, a more detailed description of the procedural history is summarized herein.

A. FINRA Investigates Kolta's Alleged Misconduct and Enforcement Files a Complaint

This disciplinary proceeding stems from an investigation that commenced in 2017 after one of Kolta's customers submitted a complaint to the FINRA Securities Helpline for Seniors. On December 29, 2022, FINRA's Department of Enforcement ("Enforcement") filed a four-cause complaint against Kolta. Cause one alleged that, from June 2014 to August 2015, Kolta, while he was associated with National, recommended that 16 customers purchase the ARC New York REIT without having a reasonable basis to believe that the purchases were suitable for each customer, in violation of FINRA Rules 2111 and 2010.

Cause two alleged that Kolta caused National's books and records, including customer account records, updates to the customer account records, and REIT investment documents to contain falsified and inaccurate investment profile information about his customers and their purchases of non-traded REIT shares, in violation of FINRA Rules 4511 and 2010. Cause three alleged that, because Kolta caused his Firm's books and records to be falsified and inaccurate, as alleged under cause two, he independently violated FINRA Rule 2010.

Lastly, cause four alleged that Kolta disseminated to retail investors four emails about the ARC New York REIT that were not fair and balanced and contained misleading, unwarranted, and promissory statements and failed to obtain approval from a qualified registered principal at National before disseminating his communications to the public, in violation of FINRA Rules 2210 and 2010.

In February 2023, Kolta, through his counsel, answered the complaint and, except for him being subject to FINRA's jurisdiction in this proceeding, denied the allegations against him. Kolta also asserted numerous affirmative defenses, including that the claims alleged in the complaint were barred based on Enforcement's bad faith prosecution and a violation of his due process rights.

B. The Hearing Officer Continues the Original Hearing Dates

Enforcement's complaint proposed that Kolta's disciplinary hearing be held in New York. Kolta stated in his answer to the complaint that Miami, Florida, was the appropriate location for the hearing because that was where he had been residing for several years, and he had medical

concerns[14] and limited resources to travel to New York for a multi-day hearing. The Hearing Officer instructed the parties to confer and file a joint proposed pre-hearing schedule with preferred dates for the hearing to take place in August 2023. The parties, however, could not agree on the hearing dates or venue.

At the pre-hearing conference in March 2023, the Hearing Officer heard argument about proposed hearing dates and venue. Kolta, through his counsel, argued that a hearing in late 2025 or 2026 was appropriate given the volume of evidence that FINRA's investigation generated. Kolta maintained that the hearing should be held in Florida where he then resided. Enforcement countered that the hearing should be held in New York because that was where Kolta's misconduct occurred and where most of the customers who would be called as witnesses were located. The Hearing Officer determined that the hearing would take place in New York for the reasons Enforcement articulated and scheduled the three-week hearing to commence on October 2, 2023.

Shortly thereafter, Kolta's counsel moved to postpone the scheduled hearing until October 2025. At the pre-hearing conference held on March 14, 2023, the Hearing Officer declined to postpone the hearing two years as Kolta had proposed. But after considering the amount of discovery generated by the investigation, the Hearing Officer rescheduled the hearing to commence on February 5, 2024.

C. The Hearing Officer Moves the Hearing Venue to Kolta's State of Residence

To maximize in-person testimony from witnesses at the hearing, the Hearing Officer, during a pre-hearing conference in September 2023, suggested that the hearing partly be held in New York to accommodate in-person testimony from customer witnesses located in the area, and that the rest of the hearing be held in Florida where Kolta and one other witness resided. The Hearing Officer instructed the parties to meet and provide a proposed hearing schedule with this objective in mind.

In early October 2023, Kolta's counsel explained that the parties were unable to reach an agreement to split the hearing between New York and Florida and moved to have the entire hearing in Florida. Enforcement filed an opposition reiterating its view that the entire hearing should be held in New York, but if not held there, then the entire hearing should be held in Florida. The Hearing Officer determined that, given that only a limited number of the customers identified in the complaint and potentially two other witnesses would appear in person in New York City, it was more appropriate—and thus ordered—that the hearing venue be moved to Florida.

At the last pre-hearing conference held on January 26, 2024, the Hearing Officer reiterated that the hearing would commence on February 5, 2024, in Florida.

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[14] The record neither states what Kolta's medical concerns were at this time nor includes any evidence substantiating them.

D. Kolta Claims to be in a Car Accident Three Days Before the Hearing

On February 4, 2024, the evening before the scheduled hearing date, Kolta emailed FINRA's Office of Hearing Officers ("OHO") and Enforcement staff, stating that he recently had been in an automobile accident—specifically, that he was rear-ended by another vehicle while stopped at a traffic light and was taken to the hospital. Kolta also stated that he was "not in the condition to handle [the hearing] at this time." He attached photos of the purported car accident and a hospital bracelet bearing his name, date of birth, and admittance date of February 3, 2024. Lastly, Kolta stated that "effective immediately, counsel is terminated for this case."

In a separate email sent the same night, Kolta, among other things, stated that his counsel was "excused" and would not be appearing at the hearing, that he needed time to find new counsel, and that, "[r]est is needed." Kolta's email included a photograph of a Miami-Dade County Police Department contact note reflecting that the accident occurred around 11:58 p.m. on February 2, 2024.

On February 4, Kolta's counsel also filed with OHO a Motion for Respondent's Counsel to Withdraw, stating among other things, that "[i]n preparation for the hearing, Respondent and Respondent's counsel had a difference of opinion in how to present the case. It became an impasse, and it culminated in *Respondent*[] terminating his relationship with Respondent's counsel." [Emphasis added.]

The next day, on February 5, 2024, which was the scheduled hearing date, the Hearing Officer granted counsel's motion to withdraw his appearance. That same day, the Hearing Officer held a status conference in Florida where the hearing panelists and Enforcement staff already had convened for the hearing. Kolta, appearing by videoconference from home, briefly described the automobile accident and his physical condition. Based on Kolta's representations, including the photographs he submitted, the Hearing Officer determined to continue the hearing to a date to be determined.

Regarding Kolta retaining new counsel, the Hearing Officer informed Kolta at the status conference that, because he discharged his attorney "at the 11th hour," he would give Kolta a couple of weeks or a month to find new counsel. The Hearing Officer emphasized that Kolta was not going to get a "do-over with a new attorney who is going to spend a year or whatever to learn the case." The Hearing Officer stated that Kolta's new attorney would "have to be able to hit the ground running and defend you in this proceeding, based on the materials that have been filed by Enforcement to date." And Kolta would "have to get an attorney pretty quickly, because . . . we were set for a hearing." The Hearing Officer restated that Kolta discharged his counsel "late in the day," and thus he would have to act quickly to retain new counsel.

E. Kolta Travels to Texas Within Days of His Purported Car Accident to Attend a Financial Industry Conference

On February 9, 2024, Kolta emailed OHO stating that he was still "tending to medical needs," which were "worse than expected," and that he needed time to retain new counsel.

On February 13, 2024, the Hearing Officer rescheduled the hearing to begin on April 22, 2024 ("Rescheduling Order"). The next day, Enforcement moved that the Hearing Officer reconsider the dates set in the Rescheduling Order because, among other things, Enforcement staff recently discovered that from around February 7 through February 9—within one week of his purported car accident—Kolta traveled from his home in Florida to Dallas, Texas, to attend a financial industry conference. Enforcement attached to its motion a sworn declaration from a staff investigator along with a video and photographs taken at the conference that Kolta had posted on his publicly available Instagram account. In the video and photographs, Kolta was either sitting or standing upright and appeared to be healthy. Because of this and scheduling conflicts, Enforcement asked that the hearing be moved up to an earlier date in mid-March or early April 2024.

On February 14, 2024, the Hearing Officer ordered that Kolta respond to Enforcement's motion with evidence to support his previous assertions that he was not medically fit to attend the hearing. Kolta promptly responded via email, stating that Enforcement questioning his medical condition was "inappropriate" and that he had requested "time to allow [himself] the mental clarity to handle [the accident]." Kolta also stated that he was unavailable and could not retain new counsel before the scheduled hearing date. Kolta did not provide evidence of his physical unfitness as the Hearing Officer requested.

During a status conference held on February 15, 2024, Kolta acknowledged that he took a flight to and from Texas just days after his car accident to attend the conference. After considering Kolta's admission that he flew out of state within days of his automobile accident, the Hearing Officer granted Enforcement's motion in part and rescheduled the hearing to commence on April 8, 2024, at FINRA's Regional Office in Boca Raton, Florida.

F. Kolta Makes Several Attempts to Delay the Rescheduled Hearing

1. Kolta Wrongly Claims He Must Attend a Civil Trial on the Hearing Date

On March 6, 2024, Kolta emailed OHO, claiming that he had a conflict with the rescheduled hearing date because he was the plaintiff in a civil action pending in Miami-Dade County Circuit Court scheduled to begin on the same day. A few days later, Kolta emailed OHO a screenshot of the first page and part of the second page of an undated court scheduling order notifying the parties in Kolta's civil action that they should be prepared for trial for a three-week period beginning on April 8, 2024.

Enforcement, however, responded producing full copies of the court's scheduling order and a copy of the court's order, dated March 2, 2024, stating that the trial date was continued to September 2024. Thus, Kolta knew or should have known when he emailed OHO that he had no actual scheduling conflict.

2. Kolta Refuses to Reschedule Jury Duty Scheduled on the Hearing Date

On March 14, 2024, Kolta emailed OHO claiming another purported conflict with the April 8 hearing date. He submitted a screenshot of a summons from the clerk of the Miami-Dade

County Circuit Court for jury duty beginning on April 8, 2024. The summons also instructed Kolta to contact the court "to request a postponement, excusal or exemption" from jury duty.

During a pre-hearing conference on March 15, 2024, the Hearing Officer informed Kolta that the jury summons did not constitute good cause to postpone the hearing. The summons explained that the court would grant potential jurors, like Kolta, one courtesy postponement. The Hearing Officer instructed Kolta to reschedule jury duty because he was the respondent in a FINRA disciplinary proceeding and thus required to attend FINRA's hearing.[15] Kolta responded, "[i]t is not going to happen," and ended his participation in the conference call.

Kolta did not request a postponement from his jury duty. Instead, he emailed OHO shortly after the conclusion of the March 15 pre-hearing conference, stating that he had already "registered" for jury duty "and that is where [he] will be [on April 8]."

3. Kolta Requests a Hearing Continuance Based on a Medical Accommodation and an Inability to Find New Counsel

On March 19, 2024, Kolta emailed OHO attaching a "Medical Document," and claiming that "accommodations are needed up to and including zoom with breaks" and he needed to continue the hearing because the counsel he interviewed were unavailable on the hearing date. The Medical Document was a note from a chiropractor, dated March 18, who stated that "[d]ue to the severity of the patient's symptoms" from his automobile accident, it was his recommendation that Kolta "minimize[] activities that involve being seated for extended periods of time such as long days of travel."

The chiropractor provided no details about Kolta's possible injuries or medical condition. The chiropractor did not state that Kolta could not participate in a hearing on April 8, 2024. Nor did he recommend that Kolta not attend the hearing in person. For these reasons, on March 28, 2024, the Hearing Officer denied Kolta's request for a continuance of the rescheduled hearing. The Hearing Officer stated that Kolta would be permitted to stand and move around the hearing room to avoid any prolonged sitting. The Hearing Officer also stated that Kolta's "vague and unsupported" request for additional time to find new counsel provided no basis for a continuance because the hearing already had been postponed several times, Kolta independently made the choice to terminate his former attorney on the eve of his scheduled hearing date, and he was given approximately two months to retain new counsel.

On March 28, 2024, just hours after the March 28 order was issued, Kolta emailed OHO a copy of another note from the same chiropractor. In it, the chiropractor repeated what was stated in the first note, adding that an accommodation "such as virtual access to meetings through platforms like Zoom" be made to "alleviate the need for extensive travel and prolonged sitting, [thereby] reducing the risk of aggravating [Kolta's] injuries."

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[15] The Hearing Officer followed up by issuing an order that instructed Kolta to do the same.

On April 1, 2024, the Hearing Officer held a final pre-hearing conference with the parties. The Hearing Officer informed Kolta that the chiropractor's notes did not support a postponement of the hearing. The Hearing Officer again verbally assured Kolta that there would be accommodations at the hearing location, which was a short drive from Kolta's home, including his ability to take frequent breaks, stand at a lectern, and move around the hearing room as needed.

4. Kolta Claims to Have Surgery Scheduled for April 8, 2024

Immediately after the April 1 pre-hearing conference, Kolta emailed OHO a copy of a note, dated April 1, 2024, from a "surgical coordinator" of a multi-specialty surgical practice, stating that Kolta was scheduled to have surgery on April 8. To ascertain whether Kolta needed surgery and whether surgery had to take place on April 8, the Hearing Officer ordered Kolta to submit a letter signed by his surgeon confirming the date of the surgery and the reason why the surgery had to occur on April 8. The Hearing Officer also ordered that, should Kolta produce the surgeon's written confirmation, he propose four alternate dates for a hearing after his recovery period.

Kolta neither produced a letter from his surgeon nor provided alternate hearing dates as the Hearing Officer had ordered. He instead emailed OHO copies of three MRI reports. The MRI reports made no mention of Kolta's need for surgery, the medical condition that required surgery, or that the surgery needed to take place on April 8. On April 5, 2024, the Hearing Officer, after reviewing Kolta's submission, ordered that the hearing proceed as scheduled on April 8, 2024.

G. Kolta Retains New Counsel and Fails to Appear at the Hearing

On April 5, Kolta's new counsel filed his notice of appearance and emailed OHO that he was unavailable on April 8 because he would be "traveling on a longstanding matter." OHO promptly notified the parties via email that the hearing would proceed on April 8, as scheduled.

The hearing was held April 8 through 10, 2024, at FINRA's Regional Offices in Boca Raton, Florida. The Extended Hearing Panel heard Enforcement's presentation of evidence supporting the allegations in the complaint, including testimony from four of Kolta's customers and several additional witnesses. Kolta did not testify at or attend the hearing, and his counsel was not present. Thus, Kolta presented no defense at the hearing, called no witnesses, and offered no exhibits into evidence.

H. The Extended Hearing Panel Issues Its Decision

On August 15, 2024, the Extended Hearing Panel issued its decision, finding that Kolta engaged in the misconduct alleged in the complaint and imposing sanctions. This appeal

followed.[16] Because Kolta requested, and thereafter withdrew his request, for oral argument, we base our decision on the written record and the parties' briefs.

III. Discussion

A. Kolta Made Unsuitable Recommendations to His Customers (Cause One)

With respect to the complaint's first cause of action, the Extended Hearing Panel found that Kolta violated FINRA Rules 2111 and 2010 by making unsuitable recommendations to 16 customers to invest in the risky and illiquid ARC New York REIT while failing to meet his customer-specific suitability obligations. We agree with the Extended Hearing Panel that Kolta failed to meet his customer-specific suitability obligations as required by FINRA rules. We limit our findings of violation, however, to the unsuitable recommendations Kolta made to PV, SS, TS, and JK: the four customers who testified at the hearing.

FINRA Rule 2111 comprises three main suitability obligations: (1) reasonable-basis suitability; (2) customer-specific suitability; and (3) quantitative suitability. *See* FINRA Rule 2111, Supplemental Material .05. The rule's customer-specific suitability obligation, which is at issue in this proceeding, requires that "[a] member or associated person [] have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile." FINRA Rule 2111(a).

A recommendation must be consistent with the customer's best interests and financial situation, and the representative must disclose the risks associated with the investment and be satisfied that the customer is willing to take those risks. *Dep't of Enf't v. Reyes*, Complaint No. 2016051493704, 2021 FINRA Discip. LEXIS 29, at *30-31 (FINRA NAC Oct. 7, 2021). When determining whether a recommended transaction is suitable, FINRA Rule 2111 directs members and associated persons to consider the customer's investment profile, including but not limited to, "the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation."

We agree with the Extended Hearing Panel's finding that Kolta recommended risky and illiquid securities to four customers that were unsuitable based upon the customers' financial situations, investment objectives, liquidity needs, and risk tolerances. As we noted above, non-

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[16] On October 7, 2024, a Hearing Officer issued an order under FINRA Rule 9285 that imposed interim conditions and restrictions on Kolta during the pendency of his appeal to FINRA's National Adjudicatory Council ("NAC"). *See Order Granting Enforcement's Motion for Interim Conditions and Restrictions on Respondent Pursuant to FINRA Rule 9285*, OHO Order 24-26 (2018057297102) (Oct. 7, 2024). Pursuant to FINRA Rule 9285(d), the conditions and restrictions will remain in place until FINRA's final decision in this proceeding takes effect.

traded REITs in general are risky investments, especially for retail investors, because of their illiquidity. The prospectus described the ARC New York REIT as a speculative, high-risk investment suitable only for persons who would not need immediate liquidity and could afford a complete loss of their investment.

During the relevant period, Kolta recommended that customers PV, SS, TS, and JK collectively purchase $1,389,201 of the ARC New York REIT shares. PV suffered a workplace injury in 2014, which Kolta knew about, that resulted in her annual income dropping to only $12,353 (excluding social security benefits and pension or annuity distributions). Despite PV's grave reduction in income, that same year, Kolta recommended that she invest more than $316,000 in the ARC New York REIT. SS had been retired for approximately four years before she invested $83,120 (or more than 40 percent of her investable assets) in the ARC New York REIT based on Kolta's recommendation. TS asked Kolta to liquidate $50,000 worth of his ARC Recovery REIT shares because he needed the funds to purchase a new home. Ignoring his need for liquidity, Kolta instead, just a couple of months later, liquidated TS's ARC Recovery REIT holdings and invested more than $100,000 in another illiquid securities product: the ARC New York REIT. And Kolta persuaded JK, a small business owner, to invest six times purchasing a total of $776,600 worth of shares in the ARC New York REIT notwithstanding the other two REIT investments she already had made based on Kolta's recommendation.

Each of the customers additionally testified that they had conservative and modest investment objectives and risk tolerances, rather than "speculation" as an investment objective and "moderately aggressive" or "aggressive" risk tolerances as Kolta falsely reported on their account records and REIT investment documents.[17] For example, PV stated that her investment objective at the time she opened an account at National was "capital preservation." SS wrote on National's letter confirming changes to her account that her investment purpose was capital appreciation and testified that her risk tolerance was moderate. TS testified that his investment purpose was to accumulate wealth rather than the "market speculation" that Kolta indicated, which was a "bit too aggressive." And Kolta wrongly depicted JK's account records to state that her primary investment objective was "speculation" and risk tolerance was "moderately aggressive," even though JK told Kolta she was not a risk taker and wanted to preserve her savings and testified that her risk tolerance was moderate.

In addition, Kolta never discussed with any of the customers the risks of investing in a non-traded REIT, including the illiquidity of the REIT. And, by failing to appear at the hearing, Kolta chose not to produce any evidence that any of his customers could bear the financial risk

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[17] In its analysis of the suitability allegations, the Extended Hearing Panel stated that Kolta falsified the customer account records and REIT investment documents "so that the ARC New York REIT appeared to be a suitable investment." We do not reach that finding in our analysis of the suitability allegations. *Jack H. Stein*, 56 S.E.C. 108, 119 (2003) ("Scienter is not an element for finding a violation of [FINRA's] suitability rule.").

of losing their entire investments in the ARC New York REIT.[18] *Newport Coast Secs. Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 911, at *18 (Apr. 3, 2020) ("A broker cannot be satisfied that a recommendation is suitable without disclosing the risks of the security to the customer because the broker must be satisfied that the customer is willing to take those risks.").

Kolta also failed to consider his customers' actual levels of investment knowledge or experience with certain securities products upon recommending the ARC New York REIT. The customers were not particularly sophisticated investors and had limited understanding of non-traded REITs. PV disputed the reported 25 years of investment experience and 10 years of investing in REITs on her account forms, testifying that she did not know what a REIT was. SS slashed the term "Good" on National's letter confirming changes to her account about her investment knowledge and instead wrote that she had no experience next to many of the listed product names because, as she testified, she had "no idea what they were." TS had some investment knowledge but, as he testified, certainly not "extensive" knowledge or experience in all the investment products listed on the new account form, as Kolta falsely stated. And JK had experience with only mutual funds before investing in the REITs Kolta recommended. Kolta, on the other hand, documented wrongly on her account forms that, upon recommending the REITs, her experience and knowledge was "good" for several investment products. *See William J. Murphy, et al.*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *32 (July 2, 2013) (finding recommendations unsuitable based on, among other things, the customer's lack of investment knowledge and inexperience with high risk options transactions), *petition denied sub nom. Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014).

Moreover, the evidence presented at the hearing unequivocally showed that all four customers were overconcentrated in their ARC New York REIT investments, which ranged from 40 to 60 percent of their net worth or investable assets. Kolta's recommendations at these concentration levels contravened the Firm's 10/20/30 Guidelines, of which he was aware. We recognize that a violation of a Firm policy does not necessarily mean that a registered representative has also violated FINRA rules. Nevertheless, in determining whether Kolta, in recommending the ARC New York REIT investments to PV, SS, TS, and JK, complied with FINRA's suitability rule, we, like the Extended Hearing Panel, have considered National's policy that limited a customer's investment in a single alternative investment product, such as a REIT, to 10 percent of the customer's liquid assets, 20 percent of liquid assets in any alternative investment product asset class, or 30 percent of liquid assets in alternative products generally. The customers' ARC New York REIT investments far exceeded these levels. *See, e.g.*, *Thomas W. Heath, III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *17 (Jan. 9, 2009)

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[18] Two of Kolta's customers, PV and SS, were aged 60 and older. Given that PV was 66 years old when she opened a brokerage account at National, for example, and her new account form indicated her desire to be "conservative" with her investments given her age, we find no evidence in the record that Kolta adhered to National's enhanced suitability review requirements. To the contrary, the evidence shows that Kolta failed to meet his customer-specific suitability obligation under FINRA's rules when he recommended that PV invest multiple times in the ARC New York REIT.

(finding it appropriate to consider "internal firm compliance policies to inform our determination of whether applicants' conduct. . . violated [FINRA rules]."), *aff'd*, 586 F.3d 122 (2d Cir. 2009). By ignoring National's policies, Kolta circumvented the important function they served to ensure that Firm representatives made suitable recommendations of alternative investments and safeguarded investor funds. *Dane S. Faber*, 57 S.E.C. 297, 311 (2004) (finding that "high concentration of investments in one or a limited number of speculative securities is not suitable for investors seeking limited risk").

As disclosed in the offering prospectus, the state of California limits investments in the ARC New York REIT for its residents to no more than 10 percent of one's liquid net worth. TS, a California resident during the relevant period, well exceeded California's requirements when he had approximately 40 percent of his net worth concentrated in the REIT based on Kolta's recommendations. Although violating a state's concentration or suitability requirements is not per se a violation of FINRA Rule 2111, like the Extended Hearing Panel, we consider the reasonableness of Kolta's recommendations to TS given these standards. *See Dep't of Enf't v. Patatian*, Complaint No. 2018057235801, 2023 FINRA Discip. LEXIS 13, at *55 (FINRA NAC Sept. 27, 2023) (finding respondent's recommendations to customers unsuitable when the REIT purchases exceeded California's concentration limits); *Dep't of Enf't v. Escarcega*, Complaint No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *57 n.33 (FINRA NAC July 20, 2017) (finding that respondent's recommendations that his 12 customers invest in a debenture resulting in concentrations exceeding Arizona's 10 percent limitation on alternative investment were unsuitable). The REIT concentration levels of PV, SS, TS, and JK far exceeded what was reasonable for Kolta to satisfy FINRA's suitability rule requirements.

"Before recommending a transaction, a registered representative must have reasonable grounds for believing, on the basis of information furnished by the customer, and after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, that the recommended transaction is not unsuitable for the customer." *Stein*, 56 S.E.C. at 112-13. Based on his customers' actual investment needs and investment profiles, we find that Kolta recommended unsuitable investments in violation of FINRA Rules 2111 and 2010.[19]

B. Kolta Caused His Firm to Create and Maintain Inaccurate Books and Records (Cause Two)

Regarding the complaint's second cause of action, we affirm the Extended Hearing Panel's finding that Kolta violated FINRA Rules 4511 and 2010 by causing National to create and maintain inaccurate books and records required to be maintained under Section 17(a) of the

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[19] FINRA Rule 2010 requires members in the conduct of their business to "observe high standards of commercial honor and just and equitable principles of trade." FINRA Rule 0140(a) requires that all FINRA Rules, including FINRA Rule 2010 and the other applicable rules in this proceeding, apply to both members and persons associated with a member. "A violation of FINRA rules constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of FINRA Rule 2010." *David Kristen Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *7 n.10 (July 27, 2015).

Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78q, and Exchange Act Rules 17a-3(a)(6) and 17a-3(a)(17) thereunder. 17 CFR § 240.17a-3(a)(6), 17 CFR § 240.17a-3(a)(17). Specifically, Kolta caused National's books and records to contain falsified information about his four customers' net worth, investable or liquid assets (or investable/liquid net worth), annual income, assets held away from National, investment objectives, and risk tolerance.

FINRA Rule 4511(a) requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Section 17(a) of Exchange Act requires that member firms maintain records related to customer financial information and customer investment transactions. 15 U.S.C. § 78q. Exchange Act Rule 17a-3(a)(17) requires that member firms keep and maintain a record identifying information about a customer that includes, among other things, the customer's "annual income, net worth (excluding the value of the primary residence), and … investment objectives." 17 CFR § 240.17a-3(a)(17).

FINRA Rule 4511 also incorporates Exchange Act Rule 17a-3(a)(6), 17 CFR § 240.17a-3(a)(6), which requires member firms to "make and keep … [a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security … whether executed or unexecuted." A violation of FINRA Rule 4511 also constitutes a violation of FINRA Rule 2010. *Dep't of Enf't v. Jones*, Complaint No. 2015044782401, 2020 FINRA Discip. LEXIS 45, at *23 (FINRA NAC Dec. 20, 2020), *aff'd*, Exchange Act Release No. 104273, 2025 SEC LEXIS 3023 (Nov. 28, 2025).

The record amply supports our finding that Kolta caused false and inaccurate information to be recorded on new account forms, updates to those forms, and REIT investment documents that National retained as books and records for PV, SS, TS, and JK. Kolta repeatedly filled out, or had Stoehrer fill out, false information on Firm records related to his customers' annual income, net worth, and investable assets. He also caused the customer records to falsely state his customers' investment experience across all types of investment products, their investment objectives, and risk tolerances. *See Patatian*, 2023 FINRA Discip. LEXIS 13, at *53-54 (finding respondent violated FINRA Rules 4511 and 2010 when he recorded false financial information on Firm client forms and documents related to customers' REIT purchases).

The SEC has long held that the duty to maintain records requires that such records be true and correct. *See, e.g., Cost Containment Services, Inc., et al.*, 52 S.E.C. 266 (1995). Kolta caused National to create and maintain inaccurate books and records concerning customers PV, SS, TS, and JK, as required by Section 17(a) of the Exchange Act and Rules 17a-3(a)(6) and 17a-3(a)(17) thereunder, and by so doing, he violated FINRA Rules 4511 and 2010. *See Dep't of Enf't v. Mellon*, Complaint No. 2017052760001, 2022 FINRA Discip. LEXIS 11, at *19 (Oct. 18, 2022) (finding that respondent violated FINRA Rules 4511 and 2010 by causing the firm to maintain false books and records).

C. Kolta Violated FINRA Rule 2010 When He Caused the Falsification of Customer Records (Cause Three)

Under the third cause of action, the Extended Hearing Panel found that Kolta independently violated FINRA Rule 2010 by falsifying customer account records and REIT

investment documents about the customers' net worth, investable or liquid assets, annual income, assets held away from National, investment objectives, and risk tolerance. With regard to customers PV, SS, TS, and JK, we affirm the Extended Hearing Panel's findings.

FINRA Rule 2010 requires that members and associated persons, "in the conduct of [their] business, [] observe high standards of commercial honor and just and equitable principles of trade." To determine whether a respondent's conduct violates FINRA Rule 2010 independent of another FINRA rule violation, adjudicators "must determine whether the respondent has acted unethically or in bad faith." *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020). "Unethical conduct is that which is 'not in conformity with moral norms or standards of professional conduct,' while bad faith means 'dishonesty of belief or purpose.'" *Id.*

We agree with the Extended Hearing Panel that, by causing the falsification of his customers' account records and REIT investment documents, Kolta acted unethically and in bad faith. A preponderance of the evidence demonstrates that, in contravention of the Firm's policy, Kolta routinely had his four customers sign the new account forms, updates to those forms, and REIT investment documents blank so that he or Stoehrer, at his direction, could fill in inaccurate and overstated information about the customer's financial status and investment objectives. *See Mellon*, 2022 FINRA Discip. LEXIS 11, at *19 (finding that respondent violated FINRA Rule 2010 by directing her assistant to submit false expense reports to her employing firm). Kolta was aware of PV's trepidation in investing in the risky and illiquid ARC New York REIT after she suffered a workplace injury that dramatically reduced her living wages. Nevertheless, Kolta continued to cause PV's account forms to grossly overstate her annual income, net worth, and investable assets. Moreover, Kolta deliberately caused the false inflation of SS's net worth and liquid assets on her account forms *even after* SS informed National that the represented figures were inaccurate. *Dep't of Enf't v. Hunt*, Complaint No. 2009018068701, 2012 FINRA Discip. LEXIS 62, at *11 (FINRA NAC Dec. 18, 2012) (finding that the intentional falsification of documents is a violation of just and equitable principles of trade).

Kolta's falsifications of customers' records also undermined his, and his Firm's, obligation to comply with essential regulatory recordkeeping requirements. *Mellon*, 2022 FINRA Discip. LEXIS 11, at *19 ("It is well settled that submitting false [information] to a firm is unethical conduct that violates FINRA Rule 2010."). His deceptive practices allowed him to conceal his misconduct from National's oversight for well over a year. Kolta's improper actions involved business-related conduct that failed to satisfy high standards of commercial honor and just and equitable principles of trade. Accordingly, we find that Kolta violated FINRA Rule 2010.

D. Kolta Made Misleading, Unwarranted, and Promissory Statements in His Unapproved Communications with the Public (Cause Four)

The Extended Hearing Panel found that Kolta violated FINRA Rules 2210 and 2010 by sending four retail communications about the ARC New York REIT that were unfair and unbalanced and contained unwarranted, promissory, and misleading statements. The Extended

Hearing Panel also found that Kolta failed to obtain prior approval for the retail communications from a qualified registered principal. We affirm these findings.

FINRA Rule 2210 imposes standards on the use and content of public communications made by member firms and associated persons. The rule defines "communications" broadly to include "correspondence, retail communications and institutional communications." FINRA Rule 2210(a)(1). A "[r]etail communication" is defined as "any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period." FINRA Rule 2210(a)(5). The rule further defines a "[r]etail investor" to include "any person other than an institutional investor, regardless of whether the person has an account with a member." *See* FINRA Rule 2210(a)(6). We determine that the four emails that Kolta sent were retail communications, and thus covered by the rule, because the evidence plainly shows that each email was sent to more than 25 natural persons, including PV, SS, TS, and JK, who are not classified anywhere in the record as institutional investors.

In accordance with FINRA Rule 2210(d)(1)(A), all communications with the public must "be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service." Such communications may not "omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading."

FINRA Rule 2210(d)(1)(B) further requires that no member "make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication." FINRA Rule 2210(d)(1)(B) further states that "[n]o member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading." In addition, pursuant to FINRA Rule 2210(b)(1)(A), "[a]n appropriately qualified registered principal of the member must approve each retail communication before … its use."

As we discuss more fully below, we find that the four emails Kolta sent to retail investors were not fair and balanced, and thus he violated FINRA Rules 2210(d)(1)(A) and 2010. Kolta's four emails also "contained misleading, unwarranted, and promissory statements and claims" in violation of FINRA Rules 2210(d)(1)(B) and 2010. Lastly, Kolta failed to obtain the requisite approval from a qualified registered principal at his Firm, in violation of FINRA Rules 2210(b)(1) and 2010.

Kolta's June 4, 2014 email failed to provide a fair and balanced representation of investing in the ARC New York REIT. Kolta's email was misleading in that he promoted the upside of investing in the ARC Recovery, and follow-on ARC New York, REITs while never mentioning the inherent risks of investing in these illiquid securities. *See generally* FINRA Rule 2210(d)(1)(D) (requiring that a member's communication that discusses the benefits of an investment also include a discussion of its risks); *Capwest Secs., Inc.*, Exchange Act Release No. 71340, 2014 SEC LEXIS 4604, at *17 (Jan. 17, 2014) (finding that "the risk inherent in illiquid investments," at a minimum, must be disclosed "to balance statements about the investment's rewards"). His email also contained promissory and unwarranted projections of future

performance. For example, Kolta wrote that he was "expecting another significant boost to portfolios in a similar magnitude to this holding [the ARC Recovery REIT] on the second [the ARC New York REIT]." He also wrote, "if you did not take advantage in round one, let's please further our surge upward in the second half of this." Kolta continued, assuring investors, "[w]e will repeat this performance again," which were promissory statements and unwarranted projections of future performance.[20]

Kolta's November 7, 2014 email also did not provide a fair and balanced presentation that included any discussion of the risks in investing in a REIT. In his email, Kolta touted the profitability of the ARC Recovery REIT based on it going from private to publicly listed. But Kolta's email failed to warn his readers that there was no certainty the ARC New York REIT (or "second" investment he promised would be "similar in nature") would ever become liquid or profitable for investors. In his email, Kolta also made promissory, unwarranted, and misleading statements. Kolta's touting of the "private to public listing process" for the ARC Recovery REIT that purportedly "generate[d] the dividends and premiums in share price" was misleading and promissory because there are no guarantees that a non-traded REIT will ever become publicly listed or that the ARC New York REIT, in particular, would generate "dividends and premiums" or any profits for its investors. *See, e.g.*, FINRA Rule 2210(d)(1)(D) (explaining that "[c]ommunications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments"). Kolta's promotional statements ("For those who missed the first, the second should be similar in nature. Congrats to those involved in the first and second. We have boosted portfolio values by using these methods") were promissory, unwarranted, and misleading because the "second," i.e., ARC New York REIT, was illiquid at the time he sent the email and implied that investors would profit from their ARC New York REIT investments.

Kolta's January 15, 2015 email told his readers to "[s]tay the course in assets that pay large dividends (6% like our new york property holdings), and you will double your money." When describing the REIT index being at a one-year high while the markets generally were down, Kolta stated that "[i]t is very easy to double, and it only takes one thing to do this when you are invested in large stable assets. TIME." Kolta's email was not fair and balanced because, like the others, he failed to mention any risks associated with investing in a REIT. Kolta's statements were also misleading and unwarranted because he neglected to acknowledge that there were no assurances the ARC New York REIT, or any REIT, would be profitable. In addition, Kolta's references to "conservative asset purchases" and "stable assets" were misleading because REITs are in fact not conservative but high-risk, speculative investments.

Kolta's May 30, 2015 email also was not fair and balanced because he discussed no risks associated with a REIT investment. Kolta highlighted only the upside of investing in the ARC New York REIT, telling his readers that "[y]ou own corporate New York City properties, rented, paying you a six percent dividend; and awaiting [] tender offer/public offering proceeds." This

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[20] *See also* FINRA Rule 2210(d)(1)(F) (prohibiting any communication that predicts or projects performance, implies that past performance will recur, or makes any exaggerated or unwarranted claim, opinion, or forecast with limited exceptions not applicable here).

statement was misleading and unwarranted because, at the time he sent the email, there was no certainty that the ARC New York REIT would go public; the ARC New York REIT investors in fact were not direct owners of real estate properties;[21] and there was no guarantee that the REIT would pay dividends of six percent.

Moreover, the record establishes that Kolta sent each of the four retail communications to investors while failing to obtain prior approval from a qualified registered principal at his Firm as required by FINRA Rule 2210(b)(1). *See Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, at *37 (Feb. 20, 2007) (finding that respondents violated former NASD Rule 2210(b)(1) by failing to get a registered principal's approval of "each" advertisement or sales literature).

We find that Kolta disseminated retail communications to the investing public that failed to make fair and balanced disclosures and contained unwarranted, promissory, and misleading statements and claims about investing in the ARC New York REIT. We further find that Kolta failed to obtain the requisite approval from a qualified Firm principal before sending each of his four emails. Kolta thereby violated FINRA Rules 2210 and 2010.[22]

E. Kolta Received a Fair Proceeding

Kolta primarily argues on appeal that the Hearing Officer declined his request to postpone the hearing notwithstanding his purported medical condition and the scheduling conflicts of his new counsel, and thus he was deprived of a meaningful opportunity to present evidence and confront the witnesses who testified at the hearing. We disagree.

Regarding his medical condition, the day before the February 5, 2024 scheduled hearing date, Kolta informed OHO that, due to the injuries he sustained from the car accident, he was unable to participate in the hearing. Kolta claims he provided to OHO credible evidence of "his injuries and impaired physical condition as a result of his motor vehicle accident[,]" including copies of his MRI films, medical records, and notes from "various medical providers" substantiating his injuries.

Kolta failed to demonstrate the Hearing Officer abused his discretion in refusing to grant a further postponement due to his purported medical condition. "In [FINRA] proceedings, the trier of fact has broad discretion in determining whether to grant a request for a continuance." *Richard Allen Riemer, Jr.*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *20 (Oct. 31, 2018). The Hearing Officer had postponed the hearing twice before the February 5

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[21] *See FINRA Regulatory Notice 13-18*, 2013 FINRA LEXIS 23 at *4 (May 2013) ("Since an investor's participation in a real estate program is an investment in the program and not a direct investment in real estate or any other assets owned by the program, communications that imply that they are direct investments also would be inconsistent with Rule 2210's requirements.").

[22] *See supra* note 19.

hearing date—both times to afford Kolta with enough preparation time to defend himself at the hearing given the volume of the evidence. The Hearing Officer then continued the hearing a *third* time per Kolta's request to give him an opportunity to "rest" after his automobile accident and obtain new counsel.

Just after continuing the hearing, however, the Hearing Officer discovered that Kolta—within days of his accident—traversed a long distance from his residence in Florida to attend a financial industry conference in Texas. While at the conference, Kolta posted photographs and videos that showed him appearing well and good spirits, sitting upright with a leg crossed conducting an interview, and standing upright taking selfie snapshots at the venue. Enforcement learned of his attendance from Kolta's publicly available social media posts. After viewing this evidence and having received no medical evidence of Kolta's physical incapacitation despite his request, on February 15, 2024, the Hearing Officer appropriately rescheduled the hearing to take place on April 8, 2024, over seven weeks later. Kolta claims that he provided the Hearing Officer with medical records and doctor's notes warranting further postponement of the hearing. But he failed to submit the requested evidence that he was medically incapacitated and thus needed to postpone the hearing beyond April 8. Kolta's undocumented health condition was not good cause to postpone the hearing again.

Regarding his new counsel's scheduling conflicts, Kolta argues that postponement of the hearing was warranted when his new counsel, who entered his appearance on April 5, informed OHO that he would be engaged in a longstanding matter on April 8 and thus could not attend the hearing. According to Kolta, the hearing improperly proceeded without him or the presence of his counsel.

"[I]t is well established" that "[a]lthough FINRA's rules permit the participation of counsel . . . there is no right to counsel in [its] disciplinary proceedings." *Robert D. Tucker*, Exchange Act Release No. 14613, 2012 SEC LEXIS 3496, at *29 (Nov. 9, 2012). Based on the record, we find that Kolta failed to demonstrate good cause to further postpone the hearing. In status conferences after Kolta's accident, the Hearing Officer continued the hearing for a later date and afforded Kolta several weeks to find new counsel. And, during those status conferences, the Hearing Officer explicitly warned that, because Kolta fired his attorney right before the February 5 scheduled hearing date, he would have to find new counsel quickly who could "hit the ground running." *Cf. Falcon Trading Grp.*, 52 S.E.C. 554, 560-61 (1995) (finding no abuse of discretion in denying requests for continuance due to unavailability of counsel and inadequate preparation time when respondent had at least four weeks' advance notice of the hearing date).

But rather than doing so quickly, Kolta delayed his search and ultimately retained new counsel who was unable to attend the hearing. When Kolta retained his new counsel, he knew the scheduled hearing date and thus could have retained counsel who would be available to represent him on that date. Instead, both Kolta and his new counsel chose not to appear at the hearing. Kolta's independent choices, however, did not demonstrate good cause for further postponement of the hearing. *Cf. Edward Beyn, et al.*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980, at *43 (Apr. 19, 2023) (finding no error in the Hearing Officer's denial of

request for more time to "get up to speed" after respondent's counsel withdrew his appearance because respondent waited until 19 days before the hearing to request a postponement).

Kolta argues that the Extended Hearing Panel decision evidenced the Panel's bias and prejudice towards him. His claim, however, is meritless. A successful bias claim requires demonstration that the purported bias stemmed from "an extrajudicial source and result[ed] in a decision on the merits based on matters other than those gleaned from participation in a case." *Mission Secs. Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at *42 (Dec. 7, 2010) (citation omitted). Adverse evidentiary rulings, by themselves, do not establish improper bias. *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *44 (Jan. 30, 2009). None of the necessary factors to establish a claim of bias or prejudice is present in this case.

On the contrary, the record establishes that Kolta received a fair proceeding. A formal investigation commenced after FINRA discovered from the Senior Helpline that Kolta had potentially recommended unsuitable investments to his customers. Kolta's alleged misconduct was plainly articulated in the complaint, and he was afforded a fair opportunity to present evidence, witnesses, and arguments in defense against these claims, and Kolta retained the counsel of his choosing to advocate in his defense. While FINRA Rule 9222(b) states that a postponement of a hearing shall not exceed 28 days, the Hearing Officer went above and beyond that provision in this proceeding when he postponed the hearing no less than three times for more than 28 days each time. Despite the many protections afforded to ensure a fair hearing, Kolta has no right to delay the hearing indefinitely. *Gary L. Jackson*, 48 S.E.C. 435, 441 (1986) ("[T]he law does not require endless postponements of judicial proceedings."). Kolta received a fair proceeding, had ample notice of the hearing, and his lack of participation rests squarely with his tactical litigation decisions. *Dep't of Enf't v. Epstein*, Complaint No. C9B040098, 2007 FINRA Discip. LEXIS 18, at *98 (FINRA NAC Dec. 20, 2007) (rejecting respondent's argument that he was not afforded a fair disciplinary hearing because he "was given every opportunity to present his relevant defenses in accordance with NASD procedure"), *aff'd*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217 (Jan. 30, 2009).

IV. Sanctions

The Extended Hearing Panel imposed a unitary sanction and barred Kolta in all capacities for causes one, two, and three, which related to his unsuitable recommendations, recordkeeping violations, and falsification of customer records, and ordered that he disgorge $297,823, plus prejudgment interest, to be paid to FINRA. The Extended Hearing Panel additionally assessed a $40,000 fine and two-year suspension in all capacities for his advertising rule violations as alleged in cause four but declined to impose these sanctions given the bar. As provided below, we modify the Extended Hearing Panel's sanctions.

A. Unsuitable Recommendations, Recordkeeping Violations, and Falsification of Customer Records

In determining appropriate sanctions for Kolta's misconduct, we consult FINRA's Sanction Guidelines ("Guidelines").[23] In examining relevant Guidelines, we aggregate Kolta's misconduct related to his unsuitable recommendations to his customers given their financial and investment profiles and causing the falsification of those customers' records, which then caused his Firm to create and maintain inaccurate books and records.[24]

For unsuitable recommendations, the Guidelines instruct us to consider a fine of $2,500 to $40,000, and a suspension in any or all capacities for a period up to two years.[25] Where aggravating factors predominate, however, the Guidelines recommend that we "strongly consider a bar."[26]

For recordkeeping violations, the Guidelines instruct us to consider a fine of $2,500 to $40,000, and a suspension in any or all capacities for a period up to three months.[27] Where aggravating factors predominate, the Guidelines recommend a longer suspension up to two years or a bar.[28] The relevant principal considerations in determining sanctions specific to recordkeeping violations include the nature and materiality of the inaccurate or missing information; the type and number of records at issue; whether the inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence; whether the violations occurred over an extended period or involved a pattern or patterns of

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23 *See FINRA Sanction Guidelines* (2024), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*]. We applied the relevant Guidelines in effect at the time of Kolta's appeal to the NAC and considered the Guidelines applicable to the violation, the General Principles Applicable to All Sanction Determinations, and the Principal Considerations in Determining Sanctions.

24 *See Dep't of Enf't v. Milberger*, Complaint No. 2015047303901, 2020 FINRA Discip. LEXIS 24, at *19 (FINRA NAC Mar. 27, 2020) (finding a unitary sanction appropriate for violations that were part of the same course of conduct). The Hearing Panel's decision disclosed that Kolta had been the subject of 24 customer-initiated arbitration claims that named National or one of his former firms but not him as a respondent. We do not consider the claims for purposes of determining sanctions here because at the time of the Panel's decision the claims were pending and "[p]ending arbitrations are not arbitration history." *Guidelines*, at 2.

25 *See Guidelines*, at 121.

26 *Id.*

27 *Id.* at 91.

28 *Id.*

misconduct; and whether the violations allowed other misconduct to occur or to escape detection.[29]

For the falsification of records, the Guidelines direct us to consider a fine of $5,000 to $40,000, a suspension in all capacities up to six months where mitigating factors predominate, a suspension for a period of two months to two years where some aggravating factors exist, and a suspension of up to two years or a bar where aggravating factors predominate, particularly in cases resulting in customer harm.[30] We agree with the Extended Hearing Panel that the most relevant violation-specific principal consideration is the nature of the documents falsified.[31]

Although our findings of violation are limited to the four customers who testified at the hearing, we nevertheless find that several aggravating factors remain that weigh heavily towards a higher sanction. We agree with the Extended Hearing Panel that Kolta engaged in serious misconduct. His deceptive misconduct spanned more than 14 months and involved four of his long-standing customers who followed him from his previous member firms.[32] Customers PV, SS, TS, and JK purchased $1,389,201 in shares of the ARC New York REIT based on Kolta's unsuitable recommendations.[33]

In addition, Kolta acted intentionally and his misconduct was not an isolated incident.[34] He routinely engaged in a deceptive pattern of having his customers sign account and other Firm records blank so that he or his assistant could fill in false or exaggerated financial status and investment profile information thereby giving the misimpression that their ARC New York REIT purchases were suitable for them when they were not.[35] In doing so, he attempted to conceal his suitability violations from National and escape detection.[36] Customers PV, SS, TS, and JK were not especially sophisticated or experienced investors.[37] In fact, PV and SS testified at the hearing that they did not even know what a REIT or an alternative investment was. But each

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29 *Id.* at 91 (Specific Consideration Nos. 1-5).

30 *Id.* at 97.

31 *See Guidelines*, at 97 (Specific Consideration No. 1).

32 *Id.* at 7 (Principal Consideration Nos. 9, 10).

33 *Id.* at 8 (Principal Consideration No. 17).

34 *Id.* at 8 (Principal Consideration No. 13) and 91 (Specific Consideration No. 3).

35 *Id.* at 7 (Principal Consideration No. 8) and 91 (Specific Consideration Nos. 1, 2, 4).

36 *Id.* at 7 (Principal Consideration No. 10) and 91 (Specific Consideration No. 5).

37 *See Guidelines*, at 8 (Principal Consideration No. 18).

customer entrusted their monies to Kolta solely relying on the fact that, as their registered representative, he would act in their best interest and recommend suitable investments.

Kolta engaged in unethical conduct that exploited his customers' trust in him. *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *29 (Aug. 22, 2008) ("The public interest demands honesty from associated persons of [FINRA]; anything less is unacceptable."). Rather than adhering to the Firm's applicable guidelines and FINRA rules, Kolta continually and knowingly falsified material information related to his customers' net worth, investable assets, assets held away, investment objectives, and risk tolerances. The record further establishes that PV was over 65 years old.[38] The customers' ARC New York REIT investments resulted in large losses before they were able to recoup some of those losses from National by settling their arbitration claims.[39]

Kolta argues that the sanctions the Extended Hearing Panel imposed, including a bar from the securities industry, would cause a deprivation of his livelihood. "But any collateral consequence that [Kolta] may have suffered as a result of his misconduct or from the disciplinary proceeding that followed, such as the impact on his reputation, career, or finances, is not a mitigating factor." *Kent M. Houston*, Exchange Act Release No. 71589A, 2014 SEC LEXIS 863, at *35-36 (Feb. 20, 2014). Kolta's misconduct makes him unfit to serve in an industry that heavily relies on the transparency and integrity of its registered professionals. Given that aggravating factors predominate, and no mitigating circumstances exist, we find that a bar is the appropriate remedial sanction for Kolta's misconduct.

In its decision, the Extended Hearing Panel ordered that Kolta disgorge $297,823, plus pre-judgment interest, representing the commissions Enforcement claimed that he earned from his sales of shares of the ARC New York REIT to all 16 customers. The Panel further ordered that he disgorge this amount, with interest calculated from the dates that he received the commissions until the date disgorgement is paid, to FINRA. The Guidelines instruct us to consider a respondent's ill-gotten gains when determining an appropriate remedy, including "ordering disgorgement of some or all of the financial benefit [the respondent] derived, directly or indirectly" from their misconduct. *Guidelines*, at 5 (General Principle No. 6). The Guidelines further provide that, for sales practice violations, disgorgement is appropriate even when a respondent is barred if they "ha[ve] retained substantial ill-gotten gains." *Guidelines*, at 9. "The amount to be ordered disgorged must be a 'reasonable approximation' of the profits casually connected to the violation." *Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *40 (Feb. 7, 2020).

As a general matter, we agree with the Extended Hearing Panel that disgorgement—in addition to a bar—would be an appropriate sanction given the nature of Kolta's misconduct if the evidence in the record supported it. After careful consideration of the evidence in the record, however, we find that Enforcement failed to present a reasonable approximation of the sales

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38 *See Guidelines*, at 8 (Principal Consideration No. 20).

39 *Id.* at 7 (Principal Consideration No. 11).

commissions Kolta derived from his misconduct involving the sales of the ARC New York REIT to the four testifying customers. Enforcement produced a chart that represented its calculations of what Kolta would have received in commissions from his unsuitable sales based on language in the REIT's offering prospectus, which stated that selling agents would receive "selling commissions" of seven percent of aggregate gross proceeds, and language in the "Rep Payout" column of Kolta's monthly commission statements, which reflected an 88 percent rep payout to Kolta. Although Kolta's monthly commission statements reflected an 88 percent payout to Kolta for some transactions, they reflected net payout amounts of zero to Kolta for the specific transactions at issue. Based on this evidentiary record, we are unable to conclude that Enforcement has demonstrated a reasonable approximation of Kolta's unjust enrichment. *Gopi Krishna Vungarala*, Exchange Act Release No. 90476, 2020 SEC LEXIS 4938, at *38 (Nov. 20, 2020) ("[D]isgorgement is limited to Vungarala's net profits from his wrongdoing."); *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *40 (affirming the exclusion of some ill-gotten gains from the disgorgement amount); *Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 SEC LEXIS 1068, at *19 (Mar. 31, 2017) (finding that, while the disgorgement calculation need not be exact, Enforcement must satisfy its burden of approximating unjust enrichment from the specific misconduct proven). We therefore modify this portion of the Extended Hearing Panel's sanctions to eliminate the disgorgement order.

B. Kolta's Advertising Rule Violations

We next turn to the Guidelines for the failure to comply with the content standards under FINRA's advertising rule. That guideline recommends a fine of between $5,000 and $40,000.[40] For respondents, like Kolta, who have acted intentionally or recklessly, the Guidelines also recommend that we consider a suspension for up to 18 months.[41] And, when aggravating factors predominate, the Guidelines recommend a longer suspension of up to two years or a bar. In addition, the Guidelines instruct us to consider three violation-specific considerations: (1) the nature and significance of the false, misleading, or omitted information; (2) whether the violative communications with the public were circulated widely; and (3) whether the misconduct was the result of an intentional act, recklessness, or negligence.[42]

For a respondent's failure to comply with approval requirements for communications with the public, the Guidelines separately recommend a fine of $5,000 and $20,000; and, where aggravating factors predominate, a suspension in any or all capacities for up to two months. Two of the violation-specific principal considerations are relevant here: (1) the nature and extent of the failure to approve communications; and (2) whether such failure resulted in the distribution of false or misleading communications.[43]

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40 *See Guidelines*, at 114.

41 *Id.*

42 *Id.* at 114 (Specific Consideration Nos. 1-3).

43 *Id.* at 113.

In applying the relevant Guidelines, we find it aggravating that Kolta's misconduct was significant and widespread. He deliberately distributed multiple emails throughout the course of approximately one year to hundreds of retail investors that contained misleading statements and claims.[44] The content of the four emails evidenced Kolta's efforts to persuade both existing and prospective investors that the ARC New York REIT would generate positive returns without disclosing any of the downsides of investing in a highly risky, speculative, and illiquid REIT. Kolta's misleading retail communications were not isolated incidents, but part of an overall campaign of recommending the purchases of a non-traded REIT that was not suitable for his customers.[45] Moreover, Kolta perpetuated his misconduct by failing to obtain the requisite Firm approval before sending the emails. Had Kolta obtained the requisite content approval from a qualified registered principal before he sent the emails, as FINRA rules required, National could have deterred him from widely disseminating the unbalanced and misleading communications.[46]

Based on the full record, we affirm assessing the $40,000 fine and a two-year suspension from associating with any FINRA member firm in any capacity for Kolta's advertising rule violations. Given the bar we impose under causes one, two, and three, however, we do not impose these sanctions.

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44 *Id.* at 7 (Principal Consideration No. 9) and 114 (Specific Consideration Nos. 1, 2).

45 *Id.* at 114 (Specific Consideration No. 1).

46 *See Guidelines*, at 113 (Specific Consideration No. 2). In its decision, the Extended Hearing Panel also referenced the Guideline that directs adjudicators to consider sanctions previously imposed by other regulators or previous corrective action taken by a firm based on the same conduct. *See id.*, at 5 (General Principle No. 7). We, however, do not consider the letter of caution that National issued to Kolta in November 2016 because it related to an email Kolta sent well after the emails subject to this disciplinary proceeding.

V. Conclusion

For making unsuitable recommendations, causing the falsification of customer records, and causing his member firm to have falsified and inaccurate books and records, Kolta is barred from associating with any FINRA member in any capacity. For his advertising rule violations, we fine Kolta $40,000, and suspend him from associating with any FINRA member firm in any capacity for two years, but do not impose these assessed sanctions given the bar imposed. We also affirm the Extended Hearing Panel's order that Kolta pay $6,041.61 in hearing costs. The bar will become effective immediately upon service of this decision.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Senior Vice President and Deputy Corporate Secretary