FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. SUCCESS TRADE SECURITIES, INC. (CRD No. 46027), and FUAD AHMED (CRD No. 2404244), Respondents.	Disciplinary Proceeding No. 2012034211301 Hearing Officer—LOM **HEARING PANEL DECISION** June 25, 2014

Respondents, Success Trade Securities, Inc., a broker-dealer, and Fuad Ahmed, its president, committed securities fraud in willful violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5, and FINRA Rules 2020 and 2010. In offering and selling promissory notes of Success Trade's parent company, Respondents made affirmative false statements of material fact and omitted to disclose material facts such that what they did say was misleading. For this misconduct, Success Trade is expelled from FINRA membership and Ahmed is barred from association with any FINRA member firm in any capacity. They are further jointly and severally ordered to pay restitution to the defrauded investors in an amount totaling $13,706,288.28 (to be distributed to each defrauded investor in accord with the evidence of each investor's loss), and they are ordered to pay costs.

Respondents sold unregistered securities that were not exempt from registration, in contravention of Section 5 of the Securities Act of 1933 and in violation of FINRA Rule 2010. This misconduct warrants a one-year suspension of Success Trade, a one-year suspension of Ahmed, and payment of restitution. However, those sanctions are not imposed in light of the sanctions ordered in connection with the fraud violation.

Appearances

Jennifer L. Crawford, Samuel L. Israel, and Jeffrey D. Pariser, Rockville, Maryland, and Michael A. Gross, of Boca Raton, Florida, for the Department of Enforcement.

William C. Saacke, of Los Alamitos, California, for Respondents.

HEARING PANEL DECISION

I. INTRODUCTION

This is a Hearing Panel decision in a disciplinary proceeding of the Financial Industry Regulatory Authority ("FINRA").[1] FINRA's Department of Enforcement ("Enforcement") brought the proceeding against two Respondents, Fuad Ahmed ("Ahmed") and FINRA member firm Success Trade Securities, Inc. ("Success Trade"). Ahmed founded and controls Success Trade. He is the only officer and the only director. He also founded, controls, and is the only officer and director of Success Trade's parent company, Success Trade, Inc. (most often referred to here as the "Parent Company" or "Issuer," but referred to in exhibits and testimony as "STI"). The Complaint alleges that Respondents willfully committed securities fraud and improperly sold unregistered securities that were not exempt from registration. The securities at issue are promissory notes issued by the Parent Company. As discussed more fully below, the Hearing Panel finds that the Respondents engaged in the misconduct charged in the Complaint and imposes sanctions.

A. Fraudulent Note Offering

Over the course of four years, from February 2009 through March 2013, Ahmed and Success Trade offered and sold Parent Company notes for $19.4 million to 65 investors.[2] Most of the investors were financially unsophisticated. A large number of them were recent college graduates who had just begun playing professional sports or who were waiting to be drafted to play professional sports. They also lacked the assets and income history to qualify as accredited

[11] FINRA is a self-regulatory organization that is responsible for regulatory oversight of securities firms and associated persons who do business with the public. Members and their associated persons agree to comply with FINRA's Rules, as well as the securities laws and other applicable regulations, and with FINRA's rulings, orders, directions and decisions. By-Laws, Art. IV, Sec. 1(a)(1); Art. V, Sec. 2(a)(1); and FINRA Rule 140. FINRA's Rules are available at www.finra.org/Rules.

[2] Six of the investors were fully repaid; 59 lost a total of approximately $13.7 million.

investors permitted to buy such notes. Respondents nevertheless consistently – and falsely – represented in the offering documents throughout the four years of the offering that the notes were offered and sold to accredited investors only. Success Trade registered representatives who sold the notes created inaccurate documentation to support the investors' status as sophisticated and accredited investors.

Success Trade registered representatives sold the notes using offering documents that Ahmed authorized. The primary offering documents were private placement memoranda ("PPMs").

The PPMs falsely told note purchasers that the proceeds of the note offering would be used for advertising, technology, and other expenditures to promote and build the Parent Company's businesses. Instead, Ahmed used the proceeds from later investors to pay interest to earlier investors, thereby creating a Ponzi scheme that enabled the fraud to continue.

The PPMs also falsely told note purchasers that the proceeds would not be used to compensate officers and directors of the Parent Company for their efforts in selling the notes. Ahmed, the only officer and director of the Parent Company, in fact took undisclosed, undocumented, no-interest, so-called "officer loans" from the proceeds to pay his personal expenses, including food, clothing, and monthly credit card bills. Ahmed made no payments on those so-called "officer loans" during the four years of the offering.

Ahmed also used the proceeds to pay the loan debt of one of the persons who offered and sold the notes to the investors, a Success Trade registered representative named Jinesh Brahmbhatt, and to cover the payroll of Brahmbhatt's own business enterprise, a registered investment adviser called Jade Private Wealth Management LLC ("Jade"). These payments were in exchange for the efforts of Brahmbhatt and Jade employees who registered with Success

Trade to sell the notes to their clients. Ahmed made these payments contrary to disclosures in the PPMs, which told investors that the persons selling the notes were not compensated for their efforts.

In addition, Respondents omitted material facts from the offering documents. The omitted facts would have revealed that the Parent Company was in such dire financial condition that it was a virtual impossibility that it could ever repay the money it owed on the promissory notes. No reasonable investor would have purchased the notes if the investor had known the truth about the Parent Company's financial situation.

The PPMs used to sell most of the notes did not disclose that the Parent Company had had only one profitable year in its 14 years of existence, or that in the year just preceding the offering, Success Trade, upon which the Parent Company depended for its income, had suffered a major setback. Nor did the PPMs disclose that Success Trade had twice been sanctioned during the time of the offering for operating a securities business without having the required $5,000 minimum net capital. Equally significant, the offering documents did not disclose that the Parent Company issuing the notes was already subject to a staggering debt load, having borrowed roughly $800,000 at an interest rate of 50%-53% per annum. Respondents also misrepresented the size of the offering, making it appear that the Issuer was taking on a debt of only $5 million, rather than a debt close to $20 million. This misrepresentation contributed to the false impression of the Parent Company's financial condition and hid that the proceeds from new investors were being used to pay interest to old investors. It also contributed to the false appearance that the notes were exempt from registration with the Securities and Exchange Commission ("SEC"), as discussed below.

After selling notes to 40 to 50 investors pursuant to four false and misleading PPMs, Respondents created a Supplement to the PPMs designed to make it appear, in case the true facts were revealed, that investors had been fully informed. For example, the Supplement did not disclose that the proceeds of the offering had already been applied differently than specified in the PPMs, but it did suggest that the Parent Company might in the future use the proceeds for different purposes. Similarly, the Supplement was used even after the Parent Company exceeded the specified maximum for the offering, but it was not revised to disclose the actual size of the offering. Instead, the Supplement indicated that the Company had discretion in the future to exceed the maximum size of the offering and would not give notice if it did. In addition, instead of disclosing that Success Trade had already twice been sanctioned for net capital deficiencies, the Supplement disclosed that if the Parent Company's broker-dealer subsidiary were found in violation of its net capital requirement serious consequences could ensue, including the liquidation of the Parent Company. Most significantly, prior disclosure documents did not mention and did not provide Parent Company financial statements, but the Supplement created the false impression that Parent Company financial statements were provided as part of a business plan that had been mentioned by the earlier offering documents.

As notes issued in 2009 and 2010 began to mature three years later, Ahmed sought to persuade note investors to convert their notes to equity or to extend the term of the notes, because the Parent Company could not repay its obligations to those early investors. Ahmed made false and misleading statements in connection with these efforts. He falsely represented that the Parent Company was about to list its shares on a European exchange at a value more than three times that at which investors could convert their notes to equity. That misrepresentation created the false impression that note holders could make more money by

turning their right to repayment of their principal into an equity investment in the Parent Company. He also falsely represented that the Parent Company was about to purchase an Australian company. This misrepresentation contributed to the false impression that the Parent Company was thriving and worthy of further investment.

Accordingly, the Hearing Panel concludes that Respondents offered and sold the Issuer's promissory notes on the basis of affirmative false statements of material fact and omissions of material fact such that what Respondents said about the investments was misleading. The Hearing Panel further concludes that Respondents did so intentionally and willfully, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and SEC Rule 10b-5, promulgated thereunder, along with FINRA Rules 2020 and 2010 (First Cause of Action).

B. Sale Of Unregistered Non-Exempt Securities

The Hearing Panel further finds that Respondents sold unregistered securities by falsely asserting that a "safe harbor" exemption from registration applied. In the early months of the offering, Respondents filed a notice with the SEC indicating that the offering was covered by SEC Rule 505, a "safe harbor" permitting the offer and sale of unregistered securities to both accredited investors and unsophisticated investors in offerings that do not exceed $5 million over the course of twelve months. The exemption limits the absolute number of investors (both accredited and unsophisticated) to 35. It is apparent, and Respondents conceded in post-hearing briefing, that SEC Rule 505 does not apply. The offering size exceeded $5 million; the offering continued longer than twelve months; and more than 35 investors purchased notes in the offering.

The PPMs, unlike the Rule 505 notice filed with the SEC, claimed that the notes were exempt from registration under a different "safe harbor," SEC Rule 506. Respondents also

claimed in their post-hearing briefing that SEC Rule 506 applied to the offering. That "safe harbor," unlike the one claimed in the Rule 505 notice, does not limit the size or duration of the offering, or the absolute number of investors. However, SEC Rule 506 does impose stricter limits on the kind of investor permitted to invest in the exempt securities. SEC Rule 506 allows the sale of unregistered securities to an unlimited number of investors – if accredited – along with a limited number of investors (35) – if sophisticated. The evidence established that many of the 65 note purchasers in Respondents' offering were neither accredited nor sophisticated investors. Accordingly, the "safe harbor" exemption under SEC Rule 506 was unavailable. In any event, the SEC Rule 506 "safe harbor" was unavailable for the additional reason that Respondents did not provide the non-accredited investors with the financial statements that the Rule requires.

The Hearing Panel concludes that Respondents violated FINRA Rule 2010, which requires compliance with high standards of commercial honor and just and equitable principles of trade, as alleged, by virtue of contravening Section 5 of the Securities Act of 1933 ("Securities Act") (Second Cause of Action).

C. Sanctions

For the fraud violations (First Cause of Action), Success Trade is expelled from FINRA membership, and Ahmed is barred from associating with any FINRA member firm in any capacity. Respondents are further jointly and severally ordered to pay restitution in a total amount of $13,706,288.28, (to be distributed to each defrauded investor in accord with the evidence of the investor's loss).

For selling unregistered securities that were not exempt from registration (Second Cause of Action), it would be appropriate to suspend Ahmed from association with any FINRA

member firm in any capacity for one year and suspend Success Trade from FINRA membership for one year. It would also be appropriate to order Respondents jointly and severally to pay restitution. However, those sanctions are not imposed in light of the sanctions ordered in connection with the fraud violation.[3]

II. FINDINGS OF FACT

A. Jurisdiction

Success Trade was a FINRA member firm at the time of the alleged misconduct and continues to be a FINRA member firm. Ahmed has been registered with Success Trade from the time of the events in issue to the present. Both have agreed to comply with the federal securities laws and FINRA's rules, orders, and directions. They are subject to FINRA's jurisdiction.[4]

B. Procedural History

The investigation that led to this proceeding began with two tips. One tip was from an attorney who said that a registered representative named Jinesh Brahmbhatt and Success Trade

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[3] This decision constitutes the findings and conclusions of the Hearing Panel after a five-day hearing held from August 26, 2013, through August 30, 2013, in Washington, DC. The scheduled post-hearing briefing was completed on October 5, 2013. Enforcement later filed a Notice To Clarify Requested Relief on November 5, 2013, and Respondents filed a Response on November 6, 2013.

The post-hearing briefs bear the following titles, which are abbreviated here as shown in parentheses: (i) Department of Enforcement's Post-Hearing Brief ("Enf. PH Br."); (ii) Respondent Success Trade Securities, Inc.'s and Fuad Ahmed's Post-Hearing Brief ("Resp. PH Br."); (iii) Department of Enforcement's Notice To Clarify Requested Relief ("Enf. Clarify Notice."); and (iv) Respondent Success Trade Securities, Inc.'s and Fuad Ahmed's Response To DOE's Notice To Clarify Requested Relief ("Resp. Opposition To Clarify Notice").

The following witnesses testified at the hearing: Robert Morris (FINRA lead investigator); Fuad Ahmed (Respondent); Amandeep Basi (a Jade employee who was also registered with Success Trade); Felix Danciu (a consultant hired by Ahmed); Riaz Khokhar (a lender to the Parent Company); Nainesh ("Nash") Brahmbhatt (Jinesh Brahmbhatt's cousin, and a Jade employee who was also associated with Success Trade); and Derrick Leak (a Jade employee for three months in 2013).

The Parties read excerpts of testimony given in on-the-record interviews ("OTRs") for two persons who were unavailable to appear at the hearing: Jinesh ("Haj" or "Hodge") Brahmbhatt (founder and majority owner of Jade) and Ramnik ("Rams" or "Ramz") Aulakh (Jade's Chief Operating Officer and minority owner).

[4] Hearing Tr. (Morris) 75; CX-24, CX-33. *See* FINRA By-Laws Art. IV, Sections 1, 6; By-Laws Art. V, Sections 2, 4.

were selling extremely speculative and high-yield promissory notes to professional athletes. The other tip was from a firm that had terminated a registered representative named MDR.[5] The firm had reviewed MDR's computer and emails and learned that he was engaged in outside business activity with Success Trade and that the activity involved notes sold to professional athletes at high rates of interest.[6]

FINRA's staff was concerned about indicia of fraud.[7] The staff also was concerned that there might be ongoing conduct that could cause investor harm in the future.[8] For those reasons, the investigation proceeded on an expedited basis.[9]

The Complaint in the pending matter was filed on April 10, 2013, along with a request for a temporary cease and desist order ("TCDO"). Respondents consented to the request, and the TCDO was approved and issued on April 11, 2013, about two months after the investigation started.

The TCDO ordered Respondents to cease offering any more of the notes and to cease efforts to convert the notes to equity or to extend their terms.[10] The TCDO has continued in place from the date of its issuance to the present. Enforcement has not alleged at any time since its issuance that Respondents have violated the TCDO.

[5] MDR's identity is protected because he did not testify at the hearing and no previous testimony from him was received or read into the record.

[6] Hearing Tr. (Morris) 63-64.

[7] Hearing Tr. (Morris) 65.

[8] Hearing Tr. (Morris) 66.

[9] Hearing Tr. (Morris) 66, 70-71.

[10] Hearing Tr. (Morris) 70; CX-313.

C. Respondents, Ahmed And Success Trade

After graduating from college with a degree in business and finance in 1992, Ahmed began his career in the securities industry.[11] Until he founded Success Trade, he was a registered representative at several firms, including, in 1994, Stratton Oakmont.[12] At Stratton Oakmont Ahmed met Jinesh Brahmbhatt[13] and MDR,[14] two persons active in the events that are the subject of this proceeding.

After Stratton Oakmont, Ahmed worked at Smith Barney until August 1998. He left Smith Barney to open his own securities broker-dealer and founded Success Trade. His initial focus was on developing software applications to support online trading.[15] Ahmed founded the Parent Company at roughly the same time, and Success Trade became its subsidiary.[16] In 2000, Ahmed acquired BP Trade, Inc. ("BP"), a software company that became the Parent Company's second subsidiary.[17]

From the Parent Company's inception to the present, Ahmed has been its largest shareholder.[18] Ahmed is the sole director, president, and CEO of both the Parent Company and

[11] Hearing Tr. (Ahmed) 1064; CX-24.

[12] Hearing Tr. (Ahmed) 501-02, 1064.

[13] Hearing Tr. (Ahmed) 509-10; Hearing Tr. (Morris) 90, 115-16.

[14] Hearing Tr. (Ahmed) 506.

[15] Hearing Tr. (Ahmed) 501-02, 1064-65.

[16] Hearing Tr. (Ahmed) 503. Ahmed testified that he started the parent company in 1997. *Id.* CX-33, at 6-7.

[17] Hearing Tr. (Ahmed) 1066, 1080-81, Hearing Tr. (Morris) 83-84.

[18] Hearing Tr. (Morris) 73, Hearing Tr. (Ahmed) 504.

Success Trade.[19] As he admits, he has controlled the two entities from 2009 to the present.[20] Similarly, Ahmed is president and CEO of BP and controls that entity.[21]

Success Trade is a deep discount online securities broker-dealer.[22] Its principal place of business is in Washington, DC, and it is a Washington, DC corporation subject to the authority of the District of Columbia Department of Insurance, Securities and Banking ("D.C. Securities Regulator"). From June 2009 to April 2013, it also had a registered branch office in Virginia and was subject to the authority of the Commonwealth of Virginia State Corporation Commission ("Virginia Securities Regulator").[23] BP provides the software and trading platform for Success Trade, which is its only client.[24] BP is located in Canada.[25]

D. Jinesh Brahmbhatt And Jade

After meeting Ahmed at Stratton Oakmont in 1994, Jinesh Brahmbhatt was a registered representative with Merrill Lynch for roughly fourteen years. Brahmbhatt left Merrill Lynch in 2007 to become a registered representative with LPL Financial. However, he left LPL in 2008,

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[19] Hearing Tr. (Morris) 71-74. Ahmed is also the sole signatory on the Parent Company's bank accounts. Hearing Tr. (Ahmed) 507.

[20] Hearing Tr. (Morris) 72-73, Hearing Tr. (Ahmed) 504.

[21] Hearing Tr. (Morris) 72, Hearing Tr. (Ahmed) 508. Ahmed testified that he is president and CEO of the Parent Company and both of its subsidiaries, Success Trade and BP. Hearing Tr. (Ahmed) 1063.

[22] Hearing Tr. (Morris) 74, Hearing Tr. (Ahmed) 508, 518-22, 1415-16; CX-268, CX-334.

[23] Hearing Tr. (Ahmed) 508-09; CX-33.

Ahmed was the designated supervisor of Success Trade's Virginia branch office. CX-333, at 3. Until April 2010, Ahmed was chief compliance officer, the AML compliance officer, and the FINOP of Success Trade. Hearing Tr. (Morris) 74. In April 2010, however, Ahmed hired another person to be responsible for both general compliance and AML at Success Trade. Hearing Tr. (Morris) 97-98.

[24] Hearing Tr. (Morris) 84, Hearing Tr. (Ahmed) 574-575. Ahmed testified at the hearing that he had licensed BP software until sometime in 2005-2007, when he had stopped licensing the software to others in order to focus on his own company. Hearing Tr. (Ahmed) 1336-38.

[25] Hearing Tr. (Ahmed) 508.

slightly less than one year after he started. He became a registered representative with Success Trade in spring of 2009.[26]

After leaving Merrill Lynch, Jinesh Brahmbhatt formed Jade. He is Jade's president and chief compliance officer ("CCO"). He owns 75% or more of the firm. Ramnik Aulakh is a minority owner and ran the day-to-day operations of the office.[27]

Jade is a registered investment adviser. Its clients are primarily professional athletes. Jade provides them a host of concierge-type services, including buying and selling securities through Success Trade, travel arrangements, real estate relocation, car services, bill paying, and budgeting.[28] As of March 2013, Jade reported that it had 26-100 clients and slightly more than $62 million in assets under management.[29]

Jade also conducted a securities business on behalf of Success Trade. One witness who had worked at Jade, Derrick Leak, described Jade as a "hybrid" entity.[30] The brochure that Jade gave its clients contained a footer on each page that read, "Securities products offered through Success Trade Securities, Inc., member FINRA/SIPC."[31] As of March 2013, Jade had

[26] CX-27.

[27] Hearing Tr. (Morris) 89, 91-92, Hearing Tr. (Jinesh Brahmbhatt OTR) 950; CX-34.

[28] Hearing Tr. (Morris) 85, 137-38; CX-34, CX-207.

[29] Hearing Tr. (Morris) 88.

[30] Hearing Tr. (Leak) 996-97, 1043-44.

[31] Hearing Tr. (Morris) 136-38; CX-207.

approximately five employees, four of whom were also registered representatives with Success Trade.[32] In April 2009, about the time the note offering began and the first investor invested in the Parent Company's notes, Jinesh Brahmbhatt and Ramnik Aulakh became registered representatives of Success Trade.[33] Jade operated a branch office for Success Trade out of its Virginia office.[34] Jade said in its investment advisor registration on Form ADV filed with the SEC that it kept its broker-dealer records for advisory client transactions at the Washington, DC, office of Success Trade, not in Jade's office in Virginia.[35] This is some of the evidence that Jade was not acting as a separate, third-party intermediary from Success Trade in offering and selling the Parent Company notes.

E. MDR

MDR was involved with Ahmed and his enterprises beginning in the early 2000s.[36] During 2009 and 2010, MDR was the second largest shareholder in the Parent Company.[37] His share (8.8%), however, was substantially less than Ahmed's (37.6%).[38]

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[32] Hearing Tr. (Morris) 87-88, 90-94, Hearing Tr. (Ahmed) 509-10; CX-34. The following four Jade employees were registered representatives of Success Trade: Jinesh Brahmbhatt, Rahmnik Aulakh, Nainesh ("Nash") Brahmbhatt, Amandeep Basi. Hearing Tr. (Morris) 87-88, 90-95; CX-25 – CX-28.

Although Respondents argue that Jade was an independent intermediary between them and investors, and Jade alone was responsible for disclosures to investors, Ahmed testified that he does not dispute that Jade's employees were registered representatives of Success Trade. Hearing Tr. (Ahmed) 1155.

[33] Hearing Tr. (Morris) 90-92; CX-25, CX-27.

[34] Hearing Tr. (Morris) 84-86; CX-34.

[35] Hearing Tr. (Morris) 87; CX-34.

[36] Hearing Tr. (Ahmed) 506-07. MDR was a member of the Parent Company's board of directors in the early 2000s. *Id.*

[37] Hearing Tr. (Ahmed) 505-06. For some period prior to 2009, a venture capital company held stock in the Parent Company. Hearing Tr. (Ahmed) 506.

[38] CX-43, at 9, CX-46, at 12.

Prior to and during the period of the note offering, MDR was included on email correspondence with Ahmed and Jade personnel. Sometimes MDR sent and received emails in which he acted on behalf of Ahmed and his businesses in dealing with Aulakh and Jinesh Brahmbhatt. Jade employees understood that MDR was acting in some kind of consulting capacity for Ahmed.[39] Prior to the investigation that led to the commencement of this proceeding, MDR was terminated from his broker-dealer firm because it suspected he was engaged in outside business activities involving Success Trade and the note offering at issue here.[40]

F. Respondents' Financial Difficulties Prior To The Note Offering

Prior to the note offering, Ahmed's companies were experiencing severe financial difficulties. As Ahmed admitted, the Parent Company lost money in every one of its 14 years of existence except one – 2007.[41] While it achieved a net positive income of just over $200,000 in 2007, it slipped back into a net loss in 2008. That 2008 net loss was substantial, amounting to just over $661,000. The 2008 net loss was largely attributable to an increase in expenses, which nearly tripled to over $1.4 million, and which far outweighed the $42,000 increase in revenues that year.[42]

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[39] Hearing Tr. (Morris) 421-27; CX-219, CX-221 – CX-223. The examiner admitted on cross-examination that he had seen no evidence that Jade personnel knew of any payment to MDR as a consultant. But that admission does not detract from the substance of the email correspondence, which shows that MDR sometimes spoke for Ahmed in the discussions between Ahmed and Jade personnel regarding the note offering and the flow of money from Ahmed to Jade and Jade personnel. Hearing Tr. (Morris) 160-61, 163-64, 212; CX-218, CX-221 – CX-229.

[40] Hearing Tr. (Morris) 64, 101-02.

[41] Hearing Tr. (Ahmed) 534, Hearing Tr. (Morris) 104; CX-7.

[42] Hearing Tr. (Morris) 104; CX-7, CX-114 – CX-115. The FINRA investigator created CX-7 from the Parent Company's unaudited profit and loss statements. The exhibit summarizes by year the assets, liabilities, revenues and expenses of the Company. It also summarizes the net income or loss for each year. Hearing Tr. (Morris) 102-03.

At the time the note offering began in spring of 2009, prospects for the Parent Company to stem its losses were dim. The Parent Company owed a large amount of money to Riaz Khokhar, a businessman located in New York. On behalf of the Parent Company, Ahmed had previously signed two ten-year promissory notes, one dated July 15, 2008, for $550,000 plus 53% interest per annum[43] and the other dated October 1, 2008, for $250,000 plus 50% interest per annum. Under these notes, the principal owed to Khokhar totaled $800,000.[44] The principal owed to Khokhar exceeded the Parent Company's total revenue in any of the five years leading up to the note offering, from 2004 through 2008.[45] Furthermore, the interest rates on the Khokhar loans were, on their face, excessive and created a heavy debt burden.[46] Khokhar testified that he had demanded the high interest rates because he saw that Ahmed badly needed the money, saying, "I'm a businessman. I mean, I see that the guy needs money…."[47]

The interest rate on the Khokhar loans exerted an immense pressure on Success Trade. To illustrate, Khokhar calculated that by the time of the hearing Ahmed's company owed him $1.6 million – principal of $800,000, plus an equal amount of accumulated interest.[48]

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[43] Hearing Tr. (Morris) 106-09; CX-199.

[44] Hearing Tr. (Morris) 106-11; CX-201. There is some confusion whether the loans documented by the July 15, 2008, and October 1, 2008, promissory notes were entirely new infusions of money or whether one of the loans might have been a consolidation of earlier loans from Khokhar. In his hearing testimony Khokhar testified that he and his wife had previously loaned the Parent Company around $300,000 with an interest rate of 43.2% in 2007 and then made the $550,000 loan. Hearing Tr. (Khokhar) 810-20; CX-16, CX-196 – CX-197.

[45] Hearing Tr. (Morris) 111-12. Indeed, the Parent Company owed Khokhar more money than it had ever netted, in total, in its entire existence. Under the two Khokhar notes, the Company owed Khokhar $800,000, but in the only year it ever made a profit its net income was only one-quarter that amount, around $200,000.

[46] The extraordinary nature of the 50%-53% interest rate is apparent from the much lower interest rates on concurrent loans. Jinesh Brahmbhatt borrowed from the Parent Company at an interest rate of only 6%. The Parent Company borrowed from note investors at a rate of interest that was typically 12.5%.

[47] Hearing Tr. (Khokhar) 822.

[48] Hearing Tr. (Khokhar) 810-11.

The Khokhar notes also imposed a personal financial strain on Ahmed, because Ahmed signed a personal guarantee in connection with each of the loans.[49] That pressure never disappeared, even though a regulatory audit later led to a restructuring of the Khokhar loans.[50]

From at least 2009 forward, the Parent Company depended on Success Trade for nearly all of its income. That income came in the form of management fees to the Parent Company.[51]

Success Trade was also struggling. It had a positive net income most years immediately prior to the note offering, but that positive net income each year was small ($5,757 in 2004; $114 in 2005; $25,300 in 2006; and $30,489 in 2007). In 2008, Success Trade actually experienced a net loss of $20,724.[52] That year its revenue decreased by approximately $200,000.[53]

There was another indication that Success Trade was suffering financial difficulties. The securities firm was twice sanctioned for conducting a business while failing to maintain its minimum net capital requirement of $5,000. The first time Success Trade was sanctioned for failing to have enough net capital was in June 2009, in the early months of the note offering.

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[49] Hearing Tr. (Morris) 108-11, Hearing Tr. (Khokhar) 814-15; CX-199, CX-201; Khokhar testified that he wanted to secure his money as much as possible because Success Trade was a start-up, so he demanded the personal guarantee. Hearing Tr. (Khokhar) 814.

[50] A regulatory audit uncovered the high interest rate on the Khokhar notes, and the SEC and FINRA took "exception" to the interest rate. Hearing Tr. (Ahmed) 1110-13. As a result, Ahmed and Khokhar discussed restructuring the two notes and agreed on a new interest rate of 15%. However, Khokhar continued to insist on an additional payment to make up for what he was losing in the reduction of the interest rate. He and Ahmed continued to negotiate on that additional payment. Hearing Tr. (Ahmed) 1110-13, Hearing Tr. (Khokhar) 824-31. They eventually agreed that the 15% interest rate would be paid until the debt matured on December 20, 2012. Then an additional balloon payment of $1,520,000 was due. Hearing Tr. (Khokhar) 824-27. It later became apparent that Ahmed would be unable to meet his obligation in December 2012, and he and Khokhar began to discuss extending the debt another year. Hearing Tr. (Khokhar) 827-30.

[51] Hearing Tr. (Ahmed) 534.

[52] Hearing Tr. (Morris) 114-15; CX-6, CX-124. FINRA's investigator created the summary chart identified as CX-6 from Success Trade's balance sheets and profit and loss statements. Hearing Tr. (Morris) 113-14; CX-120 – CX-128. Ahmed agreed that the numbers in the summary exhibit accurately reflected Success Trade's balance sheets and profit and loss statements. Hearing Tr. (Ahmed) 1081.

[53] Hearing Tr. (Morris) 114.

The specified period of deficiency extended from July 16, 2007, through May 16, 2008, roughly ten months. The second time Success Trade was sanctioned for a net capital deficiency was at the end of January 2012, while the note offering was continuing. The second specified period of deficiency extended from March 31, 2009, through June 5, 2009, just when the note offering started.[54]

Throughout the hearing, Ahmed maintained that his companies had great possibilities, and he spoke passionately about his vision for them. However, his description of Success Trade's situation in 2008, leading up to the note offering, only confirms that the Firm was in dire financial condition.

In 2007, Ahmed launched a very deep discount program that he believed would make Success Trade the lowest cost online broker in the United States. In 2008, the clearing firm he was using for that program was shut down by regulators, and customer assets were frozen. He lost his clearing deposit and approximately four months of commissions. His firm also lost

[54] Hearing Tr. (Morris) 77-81, Hearing Tr. (Ahmed) 1405; CX-37.

The net capital deficiency charges were settled by agreement, known as an Acceptance Waiver and Consent ("AWC"). Ahmed agreed to a relatively small fine of $5,000 in connection with the first disciplinary matter. In connection with the second such matter, however, the sanctions were more substantial. Success Trade was censured and fined $100,000; Ahmed was fined $10,000, suspended as a principal for 60 days, and ordered to complete 16 hours of continuing education. Hearing Tr. (Morris) 77-82; CX-36 – CX-37.

While the charges in these matters were not proven at a hearing, it is significant that such charges were brought and that Respondents preferred to add to their debt burden rather than defend against the charges. Net capital charges are technical charges that turn on information that regulators find in a broker-dealer's books. Either a broker-dealer's books show that it had sufficient net capital or they show that it did not. That there was even a question whether Success Trade had the minimum $5,000 net capital that it was required to have signifies that it was not in good financial shape.

customer accounts. Ahmed believed that this was a one-off event and that his business could thrive again[55] – but these events put Success Trade in a financial bind.

Ahmed testified that the second Khokhar loan in October 2008 was critical to support Success Trade after the clearing firm shut down.[56] He described the situation in stark terms, saying, "I mean, the fact that your operating capital just disappears overnight is a shock for any business….You have to make sure that you have capital available … so we had to make sure that we come up with capital."[57] At another point in the hearing, Ahmed referred to what happened as "where your capital just evaporates overnight within a situation like [that with the clearing firm]."[58] It is plain from this description of the situation that Ahmed desperately needed money to keep himself and his enterprises afloat.[59]

As discussed below, Ahmed and his companies resolved their financial difficulties by working with Jade to offer and sell the Parent Company's promissory notes to investors. Ahmed used the proceeds to present the false appearance of success and fuel further interest in investment in his companies, as well as for his own personal expenses and other items.

[55] Hearing Tr. (Ahmed) 1083-95. Ahmed attributed the 2007 profitable year for the Parent Company to Success Trade's launch of the low-cost trading program, which he called "Just2Trade." He said that the program attracted new accounts, and he was proud of what he had built and enthusiastic about its future. *Id.* Ahmed testified that the first loan from Khokhar in 2007 had been used to assist in launching the deep discount program. Hearing Tr. (Ahmed) 1103-06.

[56] Hearing Tr. (Ahmed) 1103-06.

[57] *Id.* at 1106.

[58] Hearing Tr. (Ahmed) 1120.

[59] Ahmed introduced evidence for the purpose of showing that a venture capital firm had paid him roughly $900,000 for a 2% interest when he acquired BP in 2000, which would equate to a $50 million value for Ahmed's combined enterprises. Hearing Tr. (Ahmed) 1066-1081. The Hearing Panel finds that this information regarding the possible value of Ahmed's enterprises nearly a decade before the events in issue is irrelevant, and so does not address whether the evidence is reliable and sufficient to prove the value of Ahmed's companies in 2000.

G. Financial Difficulties Of Brahmbhatt And Jade Prior To The Note Offering

Prior to the note offering, Jinesh Brahmbhatt and his firm, Jade, also were in financial distress. Brahmbhatt had developed the idea of soliciting professional athletes after realizing that they had no concept of budgeting and needed help even to understand how much they were spending. After leaving LPL, he spent time talking with professional athletes, but he did not "land" the first client until spring of 2009, about a year after he started Jade.[60] His cousin, Nainesh Brahmbhatt, who joined him in the business in April 2009, testified, "When we first started, it was pretty much – I guess when we first started we didn't have any clients…."[61] In spring of 2009, Jade could not cover its payroll without outside help, which it sought from Ahmed.[62] As discussed more fully below, Ahmed, through the Parent Company, regularly provided money to cover Jade's payroll from the proceeds of the note offering.[63]

Jinesh Brahmbhatt personally had a need for money, too. He had received a $275,000 loan when he began at LPL, which he failed to repay when he left that firm. LPL brought a claim against him in arbitration that was ultimately resolved by settlement in the fall of 2009. In the October 22, 2009 settlement agreement, Brahmbhatt agreed to pay $180,000.[64] According to Ahmed, Brahmbhatt did not have the money to pay LPL and looked to Ahmed to assist him.[65]

[60] Hearing Tr. (Jinesh Brahmbhatt OTR) 951-56.

[61] Hearing Tr. (Nainesh Brahmbhatt) 874.

[62] CX-218 – CX-219, CX-221.

[63] Hearing Tr. (Morris) 117-36. Jade also depended on funding from Ahmed to pay for services critical to its business. CX-220.

[64] Hearing Tr. (Morris) 116-20; CX-208.

[65] Hearing Tr. (Ahmed) 547-48.

Ahmed, through the Parent Company, provided the funds for Brahmbhatt to pay LPL from the proceeds of the note offering.[66]

H. Arrangement Between Ahmed And Jade To Resolve Their Difficulties By Sharing Proceeds Of Note Sales

Respondents assert that there is no proof of a *quid pro quo* between Ahmed and Jinesh Brahmbhatt and their respective enterprises, Success Trade and Jade. While there is no contract expressly setting out the arrangement between Ahmed and Success Trade, on the one hand, and Brahmbhatt and Jade, on the other, there is an overwhelming amount of evidence in the form of email correspondence that establishes their expectations of each other and how they in fact operated. That evidence establishes that Ahmed supported Brahmbhatt and Jade in return for their efforts to raise money from their clients for Ahmed and his businesses.[67]

Jinesh Brahmbhatt began recommending Parent Company notes to potential investors in February 2009.[68] The first investor purchased on March 2, 2009,[69] and the second investor purchased on March 16, 2009.[70] Aulahk became a registered representative of Success Trade on March 30, 2009.[71] Jinesh Brahmbhatt became a registered representative of Success Trade on

[66] Hearing Tr. (Morris) 120-21, Hearing Tr. (Ahmed) 547-48. Jinesh Brahmbhatt needed money both to pay back LPL and to start and grow his business with Jade. Hearing Tr. (Morris) 136. Ahmed testified that he made an arrangement with Jinesh Brahmbhatt around January 2010 and started making payments on Brahmbhatt's LPL loan. Hearing Tr. (Ahmed) 1130-31.

[67] Hearing Tr. (Ahmed) 1131-33. Ahmed admitted that the email correspondence would suggest a *quid pro quo*, but he asserted that he told Brahmbhatt and Aulakh "I just can't do that." *Id.* at 1133. There is no evidence corroborating Ahmed's testimony that he refused to participate in the scheme reflected in the email correspondence. Instead, as detailed below, the email records demonstrate that Ahmed funded Brahmbhatt and Jade based on their efforts to sell Parent Company notes.

[68] RX-5011 – RX-5012.

[69] CX-1.

[70] *Id.*

[71] CX-25.

April 4, 2009.[72] Ahmed began funding Brahmbhatt and Jade in April 2009, about the time that Brahmbhatt became registered with Success Trade.[73]

Brahmbhatt and Jade promised to raise the money that Ahmed needed from their athlete clients in return for Ahmed funding Brahmbhatt and Jade. One item evidencing this arrangement was an email that Jinesh Brahmbhatt wrote to Ahmed with a copy to MDR on April 9, 2009. In that email, Brahmbhatt said, "I appreciate the help you are giving me and my team, I might not say it but I'm very thankful. First let me say I can raise you $7M." Further along in that email, Brahmbhatt made plain the financial difficulty his business was in and how he hoped, eventually, to repay Ahmed for his help by raising money for him from Jade's athlete clients. Brahmbhatt said,

> [W]hat that means for you is that for every client I bring I want them to invest in Success. But non[e] of these new clients will have assets till Sept. So till then to weather the storm I have been trying to piece meal clients for you. Fuad I need time to raise u all your capital….But if you give me time. Every client I have will be an investor. I will have net new assets of 20 million by End of Sept. Also, from now till the draft, june 26th I need a little help here and there….I have to find someone that can help me. I'm at a point now of no return. But all my resources…are spent. I need you and MDR to consider a short term budget. And as for a raise I will make sure to raise u 500k within the next month.[74]

Jade personnel registered with Success Trade continued to sell the notes for approximately four years, generating funds for Ahmed and his businesses. In return, Ahmed (through the Parent Company) made payments to Jinesh Brahmbhatt and Jade.[75]

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[72] CX-27.

[73] Hearing Tr. (Morris) 142-43, Hearing Tr. (Ahmed) 545-46; CX-218.

[74] CX-218.

[75] Hearing Tr. (Morris) 138-62; CX-246, CX-250, CX-252 – CX-254, CX-256 – CX-258, CX-262 – CX-265, CX-267, CX-273 – CX-275, CX-278 – CX-279, CX-281.

That Jade expected Ahmed to cover Jade's vendor costs and payroll is clear, but the precise amount to be paid was subject to negotiation.[76] In one email communication, for example, Aulakh wrote,

> Going forward, we need to come up with an agreement for every $ amount that we raise there should be a set# of payrolls that will be covered and committed by Success Trade, every $50-$100K covers two payroll periods, I'm throwing a figure out there as an example but I will be glad to discuss in more detail.[77]

Other emails clearly link payments to Jade to the amount of money raised from the sale of the notes. In an email dated May 2010, Aulahk calculated what Ahmed owed Jade as a result of Jade's sales efforts over the last three months. Aulakh wrote to Jinesh and Nash Brahmbhatt that from February 15 to May 15, 2010, "[W]e have raised a total of $492,500 for Success Trade, so that equates to $164,166.67 per month. So technically, that meets the 150 to 200K per month range they want." The email continued, "So to answer your question, the last three months we have lived up to our part of the bargain." Then the email listed the clients who had invested in the offering in the last three months.[78] Aulakh wrote to Ahmed and MDR that Jinesh Brahmbhatt was focused on selling the notes at the same time that he discussed anticipated Jade

[76] CX-219 – CX-234, CX-237 – CX-241.

[77] Hearing Tr. (Morris) 148; CX-221.

Jade personnel knew that both they and Ahmed desperately needed to sell notes to generate the funds they needed. Aulakh sent an email to Jinesh Brahmbhatt on June 3, 2009, expressing concern whether Ahmed, through Success Trade, was going to be able to make the monthly interest payments to the early investors and any future investors. He noted, "Our payroll is no longer being covered for the time being, asides not having payroll covered, my other concern is Success going to be able to make the monthly interest payments to [the first two investors] and any future investors?" Hearing Tr. (Morris) 144-46; CX-219.

Aulakh sent another email to Jinesh Brahmbhatt and Ahmed on June 16, 2009, seeking payment on a vendor account that he considered urgent to pay. He said that the vendor would "cancel completely if it is not paid." He noted that the vendor's program was heavily relied upon by their clients "and cancellation would be detrimental to our business." Hearing Tr. (Morris) 146-47; CX-220.

[78] Hearing Tr. (Morris) 156-57; CX-226.

expenses.[79] MDR corresponded with Jinesh Brahmbhatt, saying, "We need to keep funding at 250 to 300K per month to keep you at 20K per month."[80] Ahmed admitted that the Parent Company covered Jade's payroll in 2009 and at least some of 2010.[81]

I. Note Purchasers Were Not Sophisticated And Did Not Have A Substantial Income History

Jade's clients were unsophisticated. Indeed, Jinesh Brahmbhatt's business plan and marketing focused on that fact. He explained in his OTR that other firms working with professional athletes did not keep in touch during the athletes' busy season. In contrast, Jinesh Brahmbhatt "came up with the idea that we'll give them their budgets every Friday. So every Friday we send – we have the accounting firm that they deal with send them an e-mail of what they are spending on their cash and their credit cards, their debit cards, and then they would see." Brahmbhatt would show each athlete his set budget and how much he was spending on what was covered by the budget ("mom and dad support, grandma support, whatever it might be child support, their rent, their car payments").[82] Brahmbhatt would also show them what they were spending on things outside the budget ("you know, guys would spend a hundred thousand a month on their American Express cards going out, taking friends….they're eventually going to see man, I really am spending a lot of money, because every single month we show them a slide and it … says your set budget was $10,000 a month and then the red underneath is what you went over; so this is the disparity.").[83]

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[79] Hearing Tr. (Morris) 154-55; CX-225.

[80] Hearing Tr. (Morris) 151-52; CX-223.

[81] Hearing Tr. (Ahmed) 547.

[82] Hearing Tr. (Jinesh Brahmbhatt OTR) 954-55.

[83] Hearing Tr. (Jinesh Brahmbhatt OTR) 955-56.

When asked if his clients were sophisticated, Brahmbhatt said they were. However, his description of the type of "education" that he was giving them belies the word. He described "teaching" them first to fill up a bucket with their savings and then let the savings create the funds for spending each month. He said "[O]ne of the biggest things that happens with them is that they don't realize that the more they save, the more cash flow they will have; and that is what I was saying with the bucket."[84] He noted, "[T]he kids are going to make mistakes in their rooky seasons because they just do it. You can't stop them from buying $200,000 worth of jewelry, even though you say, hey, can we negotiate and just buy 40,000 worth of jewelry.… [T]hat's the type of conversation we are having with them."[85]

Jinesh Brahmbhatt interpreted what he meant by sophistication in referring to his clients – he meant that they had a basic understanding of what a budget is. He testified at his OTR, "I say that they had sophistication, that they understood okay, this is how much money I have and this is what I should be putting money towards, this much towards savings, this much towards my lifestyle and expenditures."[86]

Many of Jade's clients were just starting their careers. They had potential to make a high income, but little income history. Nainesh Brahmbhatt testified that Jade recruited most of its clients as they came out of college and were entering the draft to join a professional sports team. He said, "[M]ost of the clients that we recruited were coming in from college to the draft."[87] He described the initial pitch as focusing on how Jade would "go above and beyond as far as helping

[84] Hearing Tr. (Jinesh Brahmbhatt OTR) 959-60.

[85] Hearing Tr. (Jinesh Brahmbhatt OTR) 957.

[86] Hearing Tr. (Jinesh Brahmbhatt OTR) 962.

[87] Hearing Tr. (Ninesh Brahmbhatt) 878.

them with all the day-to-day things."[88] He noted that insurance was important because "right now they're not making any money, but they have a potential to make a lot of money…."[89]

As further discussed below, a person must have at least two years of income history at $200,000 or above to qualify as an accredited investor. Many of Jade's clients did not have that income history. A Jade employee, Amandeep Basi, who also was a registered representative through Success Trade, filled out most of the accredited investor questionnaires for Jade clients who purchased Parent Company notes. This amounted to between 20 and 50 of the note purchasers.[90] He testified that typically the client would sign the paperwork in the office but the paperwork would not be filled out. He would fill in demographic information to the extent he could from the account application. As for the accredited investor information, he would refer to the athlete's contract for information on income, and he would ask Aulakh or Jinesh Brahmbhatt for instructions. Aulakh told him to check the box indicating that the accredited investor had income over $200,000. Aulakh and Jinesh Brahmbhatt might check the completed paperwork before it was forwarded to Success Trade's office in Washington, DC.[91] Basi explained that Aulakh and Brahmbhatt had a theory that the box specifying the client's income for the past two years could be filled out based on the contract guarantee the athlete had for future income.[92] Jinesh Brahmbhatt's testimony at his OTR confirmed that he operated on that theory. At his OTR, he maintained that all the clients who invested in Parent Company notes were accredited

[88] *Id.*

[89] *Id.*

[90] Hearing Tr. (Basi) 653-54, 686.

[91] Hearing Tr. (Basi) 659-62. Basi reviewed examples where he admitted that he had filled in information. Hearing Tr. (Basi) 663-64.

[92] Hearing Tr. (Basi) 684-89. Basi detailed the process by which forms like the accredited investor form were completed. Hearing Tr. (Basi) 659-64, 677-81; CX-46, CX-65, CX-70.

investors.[93] However, he based that contention on the future salary guarantees in their contracts and no other factor.[94]

J. Overview Of Note Offering

The Parent Company issued a total of $19.4 million worth of promissory notes from March 2009 through February 2013.[95] In June 2009, the Parent Company filed a notice with the SEC claiming that the notes were exempt from registration under SEC Rule 505.[96]

Ahmed admitted that it was his decision to issue all of the promissory notes.[97] He signed all but eight of the promissory notes issued to investors,[98] and he approved the terms of each and every note, including the interest rates.[99] Ahmed personally guaranteed at least one of the notes,[100] but most notes were unsecured.[101]

Sixty-five investors bought 152 notes. Many investors were professional athletes, current and former NFL and NBA players. They invested in varying amounts, ranging from as little as

[93] Hearing Tr. (Jinesh Brahmbhatt OTR) 970-72.

[94] Hearing Tr. (Jinesh Brahmbhatt OTR) 958-59. Brahmbhatt testified that the determination whether a client was accredited was made on the basis of "the amount of money they're scheduled to make." *Id.* at 972. He said, "So like if year one they have a million dollar signing bonus, and year two, three and four, they've got another two million and there's like escalators in there, but those are all guaranteed numbers, comes out to five and a half, six or seven million dollars more than – more that they will make. We manage the portfolio based on that number. We don't manage it based on what they have today." *Id.* at 958-59.

[95] Hearing Tr. (Ahmed) 514; CX-1.

[96] RX-5087.

[97] Hearing Tr. (Ahmed) 514.

[98] Hearing Tr. (Ahmed) 514-15.

[99] Hearing Tr. (Ahmed) 515-16.

[100] An example of a note personally guaranteed by Ahmed is contained in CX-47.

[101] See the investor files containing the notes. Examples are contained in CX-56, CX-60, CX-66, CX-69.

$6,500 to as much as $1 million.[102] Investors bought from persons registered with Success Trade, although they were paid as Jade employees.[103]

Typically, the annualized interest rate for investor notes was 12.5% and the term was 36 months. The notes usually had a right to convert to stock equity in the Parent Company. In 2012 and 2013, as notes issued in 2009 and 2010 came due, Respondents sought to have investors convert to stock ownership or to extend the term of their loans. As time went by, some existing investors extended their notes, and then, in at least some instances, the interest rate was reset to a higher figure. Some investors also agreed to invest in the notes for a short term at a much higher interest rate.[104]

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[102] Hearing Tr. (Morris) 63-69, 189-92, 346-49, 383-86, 403, 478-80, Hearing Tr. (Jinesh Brahmbhatt OTR) 951-52; CX-1, CX-17. Enforcement identified 18 investors who had an annual income of less than $200,000. Many of them were in their early 20s. Most of the 18 investors had a net worth between $300,000 and $1 million. Some had a net worth of less than $300,000. CX-1, CX-17.

[103] Ahmed admitted that Jade's employees were registered representatives of Success Trade. Hearing Tr. (Ahmed) 1155.

[104] Hearing Tr. (Morris) 80, 186-87; CX-1. The first investor in the Parent Company notes set the general pattern. CJ, a former professional football player, invested $100,000 on March 2, 2009, at an annualized interest rate of 12.5% for a period of 36 months. He received a PPM dated January 1, 2009. Hearing Tr. (Morris) 189-90; CX-1. Another former football player, DM, invested $50,000 on July 1, 2009, at an annualized interest rate of 12.5% for a period of 36 months. Hearing Tr. (Morris) 190; CX-1.

Later investors began receiving a higher interest rate. CP, a former professional football player, invested $1 million on November 3, 2010, for a six-month term. The annualized interest rate was 20.4%. TJ, another professional football player, invested $200,000 on April 5, 2012, for six months at an annualized interest rate of 200%. Hearing Tr. (Morris) 190-01; CX-1.

FE, a professional football player, invested $50,000 on August 31, 2012, for a term of only two weeks. The interest he was promised, $5,000, equated to an annualized interest rate of 240%. Hearing Tr. (Morris) 191-92; CX-1. After the term of two weeks, FE received $5,000, which was denominated as interest, and the $50,000 principal was rolled over into a new investment. Hearing Tr. (Morris) 192; CX-1.

Nearly all the notes were convertible into common stock of the Parent Company. Hearing Tr. (Ahmed) 516. As further discussed below, as the notes sold in 2009 and 2010 came due, Ahmed and his businesses did not have the money to pay what they owed to the investors. So Ahmed tried to persuade investors to convert to common stock by telling them, falsely, that the company was about to go public and that would make the equity more valuable than the notes. A number of the investors agreed to extend their notes, which are now in default. CX-10.

Informal email communications describing Ahmed's businesses in glowing terms were used to sell some of the Parent Company promissory notes,[105] but a majority of the notes (approximately 70%) were issued on the basis of a PPM. There were six PPMs bearing four dates, with the earliest dated January 1, 2009, and the latest dated November 30, 2009.[106]

There were three different versions of the November 30, 2009, PPM. The three versions of the November 30, 2009 PPM did not vary in any significant way except for the specified expiration date for the offering. The original expiration date in the November 30, 2009 PPM was February 19, 2010. The second version changed the expiration date to December 31, 2010, and a third version changed the expiration date to June 30, 2011. A version of the November 30, 2009 PPM was provided to investors through spring of 2013. Most of the investors who received a PPM received a version of the November 30, 2009 PPM.[107]

In addition, the Parent Company issued a Supplement dated June 30, 2010, that Success Trade also used in soliciting investors. The Supplement stated that it was intended to accompany, and be read in the context of, the PPM dated November 30, 2009. The Supplement did not distinguish between the three different versions of that PPM.[108]

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[105] In February 2009, Ahmed and MDR sent an email touting the bright prospects for Success Trade as an online broker. That email was circulated to Jinesh Brahmbhatt and Aulakh. Among other things, it said that Ahmed's and MDR's company was doing an offering of notes paying 12.5% which could be converted into stock after one or two years. Ahmed and MDR said that they would use the money for advertising and expected that they could increase their business by more than 500% in the next eighteen months. They represented that the company had been making money and had reinvested it. They identified as competitors Etrade, Ameritrade, Fidelity, and Schwab. They noted that another competitor, Think or Swim, had been bought out for $606 million only three weeks before. RX-5008.

In subsequent emails, Ahmed expanded on the theme that his firm already had infrastructure that others were interested in buying. RX-5010. Brahmbhatt and some of his associates began forwarding the email from Ahmed and MDR along with a recommendation that clients consider making an investment. RX-5011 – RX-5012.

[106] Hearing Tr. (Morris) 188-89, Hearing Tr. (Ahmed) 516, 522-26; CX-1. Enforcement prepared a chart listing the various PPMs and Supplement. *See* CX-3.

[107] Hearing Tr. (Morris) 188-89, Hearing Tr. (Ahmed) 522-26; CX-1, CX-3.

[108] CX-44, CX-46.

Notes issued with a PPM were accompanied by a subscription agreement, and Ahmed signed each subscription agreement.[109] Ahmed understood that by signing a subscription agreement he was accepting and agreeing to the sale of the notes.[110]

Success Trade kept a separate investor file for each purchaser of Parent Company notes. Typically an investor file contained a copy of the executed note (or notes) signed by the investor and Ahmed, on behalf of the Parent Company. If the note was offered and sold on the basis of a PPM, then the file would also contain the PPM and a subscription agreement. Some files also contained a copy of the Supplement and other documents such as emails.[111]

In addition, the investor file would contain a form to support the accredited investor status of the investor. That form was entitled "Success Trade, Inc. Acc[r]edited Investor Questionnaire." Typically, the investor would sign the Accredited Investor Questionnaire but leave questions unanswered. As discussed above, an employee of Jade who was also registered with Success Trade, Basi, would often fill in the missing information.[112]

K. Material False Statements And Misleading Omissions In PPMs And Supplement

The PPMs and Supplement used to offer and sell the notes made many affirmatively false statements of material fact and omitted other material facts so as to make what was said misleading. While later PPMs and the Supplement appeared to make more disclosures, they did

[109] Hearing Tr. (Ahmed) 516-17.

[110] Hearing Tr. (Ahmed) 517.

[111] CX-45 – CX-108.

[112] Hearing Tr. (Basi) 660-62.

not correct numerous false and misleading statements. Rather, they added to the misleading nature of the documents used to solicit investors.[113]

(1) All PPMs

Some (but not all) of the materially false and misleading statements in the PPMs are briefly identified here:

First, the PPMs misrepresented that the bulk of the proceeds of the offering would be used to support and build the Issuer's businesses. Each PPM included the same chart showing the expected use of the proceeds. The chart purported to show how 100% of the offering would be applied. The types of expenses included the following: offering expenses, commissions, advertising, website development, data center infrastructure, software programming, equipment, share buyback and debt retirement, legal and accounting expenses, and working capital. Advertising was the largest listed expense, at 40%. Share buyback and debt retirement was the next largest expense, at 33.3%. The other items were 10% or less.[114]

The chart misrepresented the actual use of the proceeds. As summarized below, Ahmed admitted that the proceeds from later investors were used to pay interest to early investors, to pay Ahmed so-called "officer loans" to cover his personal expenses and credit card bills, to trade

[113] The September 2009 PPM was longer than the first two PPMs and purported to contain additional disclosures. The three versions of the November 30, 2009 PPM were similar to the September 2009 PPM. However, all six PPMs contained a number of common false and misleading statements.

[114] CX-38, at 6, CX-39, at 6, CX-40, at 17, CX-41, at 17, CX-42, at 17, CX-43, at 17.

securities, and to pay Jade's payroll and assist Jinesh Brahbhatt to pay his loan debt to his prior employer. Ahmed also admitted that the chart used in the PPMs did not disclose these uses.[115]

Second, the way the proceeds were used also directly contradicted other representations in the PPMs. The PPMs all represented that that no officer or director of the Parent Company would receive compensation for his efforts selling the notes.[116] This provision could only refer to Ahmed, as the sole officer and director of the Parent Company. The undocumented "officer loans" to Ahmed, however, were such compensation. He took money from the proceeds as needed to pay his monthly expenses and made no payments on the "officer loans" during the four years of the note offering. He entered no agreement to repay until the hearing.[117]

The PPMs also represented that neither Success Trade nor anyone associated with it would receive any compensation in connection with the sale of the notes.[118] The so-called "loans" to Jade and Jinesh Brahmbhatt, who were the registered representatives of Success Trade who solicited investors, constituted such compensation. The payments to Jade and Brahmbhatt were tied to the amount of notes they were able to sell, and Ahmed did not demand payment on the "loans."[119]

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[115] CX-38. The chart was also used in the Supplement but it was expanded. The original disclosure in the PPMs regarding the use of proceeds appeared under the heading "Planned Use of Proceeds." Other figures purported to show the actual use of proceeds to date, under the heading "Use of Proceeds to Date." Ahmed admitted, however, that the expanded chart disclosed nothing about using new investors' money to pay interest to existing investors or that he and Brahmbhatt were using the proceeds in other ways not disclosed to investors. Hearing Tr. (Ahmed) 540-54.

[116] CX-38, at 6 n.2, CX-39, at 6 n.2, CX-40, at 17-18, CX-41, at 17 n.2, CX-42, at 17 n.2, CX-43, at 17 n.2.

[117] CX-38; Hearing Tr. (Morris) 254-62, Hearing Tr. (Ahmed) 542-45, 1225-32. FINRA staff found a small amount of credits to Ahmed totaling less than $14,000. Hearing Tr. (Morris) 258.

[118] Hearing Tr. (Morris) 215-16; CX-38, at 6 n.2, CX-39, at 6 n.2, CX-40, at 17 n.2, 18, CX-41, at 17 n.2, CX-42, at 17 n.2, CX-43, at 17 n.2, CX-43.

[119] Hearing Tr. (Morris) 119-36, Hearing Tr. (Ahmed) 545-48, 1129-31, 1134-42; CX-38.

Third, the PPMs failed to disclose the true financial condition of the Parent Company issuing the notes. No PPM contained or discussed the Parent Company's financial statements. The PPMs failed to disclose that the Parent Company was in financial distress and had a large and increasing debt load. The PPMs also failed to disclose that Success Trade, the broker-dealer subsidiary on which the Parent Company depended, had been sanctioned for net capital deficiencies and was struggling financially, contributing to the Parent Company's financial difficulty.[120]

Fourth, all the PPMs falsely represented that the offering was exempt from registration and that the notes would be sold only to persons who qualified as accredited investors. The PPMs cited SEC Rule 506 as the "safe harbor" exemption from registration.[121] As discussed above, the investors were neither sophisticated nor accredited, and the note offering was not exempt from registration under SEC Rule 506.

Fifth, the PPMs falsely represented that the minimum sales unit was $100,000.[122] In fact, Respondents sold smaller amounts of the notes, including a sale of only $6,500.[123] The false representation regarding the size of sales units facilitated the impression that the offering was being made only to accredited investors who had the resources to make investments in $100,000 units.

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[120] As further discussed below, the business plans that accompanied the PPMs did not disclose the true financial condition of the Parent Company. In fact, the business plans themselves were misleading. They primarily contained projections, and to the extent they might have contained some historical financial information it was far too vague and undetailed to fully and accurately inform an investor of the financial condition of the Issuer.

[121] CX-38, at 3, 10-11, CX-39, at 3, 10-11, CX-40, at 2, 18-20, CX-41, at 1-2, 18-20, CX-42, at 1-2, 18-20, CX-43, at 1-2, 18-20.

[122] CX-38, at 1, 5, CX-39, at 1, 5, CX-40, at 1, 16, CX-41, at 1, 16, CX-42, at 1, 16, CX-43, at 1, 16.

[123] CX-1.

Sixth, the PPMs falsely represented the size of the note offering, concealing how much the Parent Company was borrowing and the increasing size of its debt load. The first PPM represented that the offering would be for a minimum of $5 million and a maximum of $7.5 million. The rest of the PPMs described the offering as a $5 million offering. The disclosure did not change even as the note offering approached $20 million in size.[124]

(2) Later PPMs

The September 2009 PPM and the three November 2009 PPMs disclosed some – but not all – of the terms of the Khokhar financing after he and Ahmed restructured the two earlier notes due to the concern of the regulators. These later PPMs described the financing from Khokhar as a note dated September 15, 2009, for $800,000 in principal at an annual interest rate of 15% for a term of five years. The PPMs stated that interest on the note was payable monthly. The PPMs said nothing about the $1.5 million balloon payment that Ahmed and Khokhar had negotiated to make up for the drop in the interest rate to 15% from its former 50% to 53%.[125] This disclosure failed to inform investors accurately as to the debt owed by the Parent Company to Khokhar. The balloon payment amounted to almost twice the principal owed, and yet it was not disclosed to investors.

In addition, the September 2009 PPM and the three November 2009 PPMs expanded the disclosures relating to the Parent Company's business operations. In so doing, the PPMs noted that the SEC and FINRA have stringent rules relating to maintaining a specified level of net capital. The PPMs disclosed that Success Trade was subject to those requirements and could be suspended or expelled from FINRA membership if it failed to maintain sufficient net capital.

[124] CX-38, at 1, 5, CX-39, at 1, 6, CX-40, at 1, 17, CX-41, at 1, 17, CX-42, at 1, 17, CX-43, at 1, 17.

[125] CX-40, at 11, CX-41, at 11, CX-42, at 11, CX-43, at 11.

The PPMs warned that if that happened it could lead to the Parent Company's liquidation. The PPMs did not mention the sanctions actually imposed in the two settled proceedings brought by FINRA for Success Trade's failure to maintain sufficient net capital in the past.[126] This disclosure in the later PPMs was inaccurate because it represented that an event ***might*** happen that would be seriously detrimental to the Parent Company, when in fact that event had already happened twice. The inaccurate disclosure contributed to the false and misleading impression that Ahmed's businesses were doing well, when, in fact, they were not.

With respect to the proceeds of the offering, the September 2009 and the three November 2009 PPMs stated that the Parent Company reserved the right to use the proceeds for other purposes "not presently contemplated." The Parent Company's discretion was to be guided by what it deemed to be in the "best interest of the Company, its shareholders and its Note holders in order to address changed circumstances or opportunities." The Parent Company warned that investors would be entrusting their funds to the Parent Company's management and would be depending on management's judgment and discretion. What the PPM failed to disclose was that the proceeds from the note offering were already being used for purposes different than the stated purposes.[127] Again, the later PPMs represented that an event was a future possibility when that event had already occurred – the proceeds of the offering had already been used for purposes other than the purposes disclosed in the PPMs. The application of the proceeds to other uses was material, because the proceeds were not being used to promote the Parent Company's businesses. This made it less likely that the Parent Company could honor its obligations to investors.

[126] CX-40, at 14, CX-41, at 14, CX-42, at 14, CX-43, at 14.

[127] CX-40, at 16, CX-41, at 16, CX-42, at 16, CX-43, at 16.

(3) June 30, 2010 Supplement

The Supplement dated June 30, 2010, stated that it was intended to accompany, and be read in the context of, the PPM dated November 30, 2009.[128]

For the first time, an offering document contained disclosures relating to Jade. The Supplement disclosed that Jade provided securities brokerage services through Success Trade and that the Parent Company had made business loans to Jade. The Supplement stated that the current principal amount of those loans was $590,000, comprised of a $300,000 revolving line of credit due by November 5, 2012, and four promissory notes maturing November 11, 2011. According to the Supplement, Success Trade was entitled to retain 11% of the management fees generated by Jade in connection with its clients' purchases of the notes, but Success Trade was not retaining those fees. The Supplement said that Success Trade would resume retaining those fees upon making certain unspecified filings with FINRA. According to the Supplement, the Parent Company was not compensating Jade or any of its employees with respect to Jade's recommendation of the offering to Jade's clients. However, the Parent Company said that it planned to reimburse Jade for expenses incurred in connection with introducing clients to the Parent Company.[129]

The disclosures relating to Jade did not give an accurate description of the relationship with Jade. They did not reveal that payments to Jade were linked to the amount of capital Jade raised for Ahmed's business, or that Ahmed had not sought repayment of the purported loans from Jade. The Supplement also did not disclose the entire amount of money that had been

[128] CX-44, at 1, CX-46, at 46.

[129] CX-44, at 1, CX-46, at 1.

channeled to Jade and Jinesh Brahmbhatt, which Ahmed admitted at the hearing amounted to roughly $1.25 million.[130]

The Supplement stated that the Parent Company had discretion to exceed the $5 million maximum size of the offering and would determine whether to do so when it reached the maximum. According to the Supplement, the Parent Company had received approximately $3,445,000 thus far.[131]

Although the Supplement was used from summer of 2010 through spring of 2013, by which time the offering had gone well over the $5 million mark, there is no evidence that the $3,445,000 figure was ever updated. Ahmed admitted that he knew at least by the end of 2010 that over $5 million had been raised, and yet he never changed any of the PPMs or the Supplement to inform prospective investors that more than $5 million had already been raised. He instructed Jade personnel throughout 2011, 2012, and 2013 to use the existing PPMs and Supplement.[132] The disclosure regarding the size of the note offering concealed how much debt the Parent Company was incurring.

With respect to use of the proceeds, the Supplement represented that the Parent Company had applied the proceeds "generally in conformity with its initial proposed use of proceeds." However, the Supplement disclosed that "in certain instances [the Company has] modified its use of proceeds as the Company's business has demanded." The Supplement included a table that showed that more of the proceeds had been used for share buyback and debt retirement than for advertising, which received the next largest amount of the proceeds. The text stated that the

[130] Hearing Tr. (Ahmed) 647.

[131] CX-44, at 1-2, CX-46, at 1-2.

[132] Hearing Tr. (Ahmed) 530-31.

Parent Company had applied more of the proceeds than originally planned to data center infrastructure and website development. It justified those technology-related expenditures saying that a "build out of its fully integrated and comprehensive online account application platform held such benefit in terms of customer experience and compliance efficiency, that a modification of the proposed use of proceeds was fully warranted."[133]

This disclosure falsely presented the appearance of great care to be accurate and up-to-date with disclosures to investors. It misleadingly suggested that additional sums were being invested in business infrastructure, when, in reality, the proceeds had been used to fund Ahmed's personal expenses and to pay Jade for selling more notes.

For the first time, a disclosure document mentioned financial statements. The Supplement declared that the Parent Company's "unaudited financial statements for the year ended December 31, 2009 appear on the following pages." The heading for this paragraph specified that these were "Financial Statements (as presented in the Company's Business Plan)."[134]

As discussed below, the December 2009 business plan contained only fragmentary historical financial information. It was not a complete and accurate disclosure of the Parent Company's financial condition. The suggestion in the Supplement that financial statements were being provided was false and misleading.

L. Respondents, Ahmed and Success Trade, Offered And Sold The Notes

Respondents, Ahmed and Success Trade, attempt to deflect responsibility for any false or misleading statements made in the offer and sale of Parent Company notes to Jade. They

[133] CX-44, at 2-3, CX-46, at 2-3.

[134] CX-44, at 3, CX-46, at 3.

maintain that Jade, in its role as investment adviser, was responsible for conducting due diligence and ensuring the accuracy of what was said to Jade's clients – not Ahmed, the person in control of the Issuer's disclosures, or Success Trade, the broker-dealer responsible for the offer and sale. Respondents portray Jade as an independent intermediary between them and the investors. They say that Jade had financial statements that permitted them to make full and accurate disclosures, and it is not Respondents' fault if Jade failed to disclose those financial statements.[135]

The facts are otherwise. First, Ahmed was responsible for the false and misleading statements made to prospective investors in the offering documents. Second, Ahmed was personally involved in offering and selling the promissory notes. Third, Success Trade was the securities broker-dealer that offered and sold the notes. The persons who offered and sold the notes may have been employed by Jade, but they also were registered with Success Trade and sold securities as representatives of Success Trade. Fourth, even if Jade had been solely responsible for evaluating and passing along information provided by Ahmed, there is no evidence corroborating Ahmed's assertion that financial statements were made available to Jade for use in soliciting investors that were sufficient to evaluate an investment in the Parent Company notes. In light of the absence of any financial statements in investor files or attached to any PPM or the Supplement (as well as other circumstances casting doubt on Ahmed's credibility, as further described below), the Hearing Panel finds that Parent Company financial statements sufficient to evaluate the investment were not disclosed to investors.

(1) Ahmed Controlled What Was Disclosed To Investors

Ahmed controlled all aspects of the offering. He was the only officer, the only director, and the person in control of the Parent Company. In that role, he was the person who authorized

[135] Hearing Tr. (Ahmed) 517-18, 570, 1155-58 (notes were sold through Jade). Even when Ahmed was shown his own email correspondence soliciting an investor for the Parent Company notes, he asserted that Jade personnel were ultimately responsible, insisting that the investor was solicited "through Jade." Hearing Tr. (Ahmed) 606-07.

the disclosures that would be made concerning the Parent Company. He admitted that he reviewed, authorized, and approved the use of each PPM.[136] Ahmed also reviewed and authorized the use of the Supplement.[137]

Ahmed also was the only officer, only director, and the person in control of Success Trade, the broker-dealer firm that offered and sold the notes. In that role, Ahmed was the person in charge of how the offering would be conducted. Ahmed directed how the disclosure documents would be distributed. As each new version of the PPM was created, Ahmed instructed that it be provided to prospective investors.[138] Ahmed personally provided the Supplement to Jinesh Brahmbhatt and Ramik Aulakh on July 30, 2010, for distribution (along with a version of the November 2009 PPM) to prospective investors.[139]

The PPMs confirmed Ahmed's authority. They explained that the officers and directors of the Parent Company were offering and selling the notes.[140] Thus, Ahmed, who was the only officer and director of the Parent Company, was the only person identified as offering and selling the notes.[141]

The PPMs also clearly identified Ahmed as the primary source of information regarding the offering. In fact, the PPMs stated that only Ahmed should be asked questions about the

[136] Hearing Tr. (Ahmed) 522-23; CX-3. In particular, with respect to the November 2009 PPM that was used most often, Ahmed testified that he reviewed the document before using it in the "money raise." He freely admitted to his own counsel's questions that he approved the statements in the document. Hearing Tr. (Ahmed) 1143-45.

[137] Hearing Tr. (Ahmed) 526.

[138] Hearing Tr. (Ahmed) 525.

[139] Hearing Tr. (Ahmed) 526-29.

[140] CX-38, at 6 n.2, CX-39, at 6 n.2, CX-40, at 17 n.2, 18, CX-41, at 17 n.2, CX-42, at 17 n.2, CX-43, at 17 n.2.

[141] CX-38, at 6 n.2, CX-39, at 6 n.2, CX-40, at 17 n.2, 18, CX-41, at 17 n.2, CX-42, at 17 n.2, CX-43 at 17 n.2.

offering. The first PPM, like all the others, instructed, "Any and all questions regarding this offering must be directed solely to Fuad Ahmed." There was no mention of Jade in any PPM.[142]

(2) Ahmed Personally Offered And Sold The Notes

Ahmed admitted that he personally sold some notes himself.[143] Indeed, email correspondence reflects that Ahmed had numerous contacts with potential note investors and sought to persuade them to invest or to increase their investment in the Parent Company.[144]

Nainesh Brahmbhatt, a Jade employee registered with Success Trade, confirmed that Ahmed was intimately involved in the sales effort. He testified that Ahmed met with many of the prospective note investors personally to explain his business, as part of the solicitation process.[145] Basi, another Jade employee registered with Success Trade, similarly testified that he had attended between five and ten meetings with Ahmed and potential note investors. He testified that Ahmed generally described the online brokerage business and that Ahmed did not discuss the financial condition of his companies other than to say that they were doing well and growing.[146] Contemporaneous email correspondence establishes that Ahmed regularly met with prospective investors to promote sales of the notes.[147]

In addition to his involvement with soliciting the athletes who were Jade's clients, Ahmed solicited other potential investors. He testified regarding an email to one of these other

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[142] Hearing Tr. (Morris) 210; CX-38, at 4, 12, CX-39, at 4, 12, CX-40, at 2, 6, CX-41, at 2, 6, 20, CX-42, at 2, 6, 20, CX-43, at 2, 6, 20. The other PPMs contained similar instructions. CX-38 – CX-43.

[143] Hearing Tr. (Ahmed) 517, 1162-63.

[144] CX-244, CX-246, CX-250, CX-252 – CX-254, CX-256 – CX-258.

[145] Hearing Tr. (Nainesh Brahmbhatt) 889-94. Brahmbhatt spoke generally about what Ahmed would say in meetings with clients and also listed seven particular clients he remembered meeting with Ahmed.

[146] Hearing Tr. (Basi) 665-69.

[147] CX-249 (saying to "Fuad" directly that a client was coming to the office and "please make sure you meet with him like you have been doing for the rest of the investors.").

investors. In an open letter from Ahmed attached to that email, Ahmed made statements clearly designed to make it appear that the Parent Company was doing well, concealing that it had lost roughly $1 million in 2009. For example, he wrote, "Clearly 2009 was a very tough year for almost every company except ours."[148]

The record also contains email correspondence between Ahmed and investors in which he encouraged investors to make additional note purchases or to extend existing note terms or to convert existing notes to shares of stock. In these emails, Ahmed consistently represented his companies as successful and growing.[149] He did not disclose that in 2012 Success Trade suffered its largest net loss ever.[150] He did not disclose the Parent Company's expenses.[151]

(3) Success Trade Offered And Sold The Notes

Success Trade was responsible for the sales process, not Jade. Jade employees who offered and sold the promissory notes were registered with Success Trade.[152] Jade identified itself to investors in their account statements as a division of Success Trade.[153] All of Jade's clients were customers of Success Trade.[154] Jade opened accounts at Success Trade for its customers and the customers held their notes at Success Trade.[155] Notably, correspondence with

[148] Hearing Tr. (Ahmed) 558-61; CX-246, at 44.

[149] CX-244, CX-246, CX-250, CX-252 – CX-254, CX-256 – CX-258.

[150] Hearing Tr. (Ahmed) 599-600.

[151] Hearing Tr. (Ahmed) 602.

[152] Hearing Tr. (Ahmed) 509-10, 517-18; CX-2, CX-24, CX-27, CX-28.

[153] Hearing Tr. (Morris) 200; CX-109.

[154] Hearing Tr. (Ahmed) 514.

[155] Hearing Tr. (Morris) 201. As Ahmed admitted, note holders generally held their notes in brokerage accounts at Success Trade's clearing firm, and they received their monthly interest payment through those accounts. Hearing Tr. (Ahmed) 517.

investors regarding the offering was sent under the name of Success Trade, not Jade.[156] Success Trade sent correspondence to two state regulators representing that the notes were sold through Success Trade.[157]

(4) Respondents Failed To Provide Issuer Financial Statements That Would Inform Investors Of The Issuer's True Financial Condition

Even if it had been Jade's responsibility to conduct due diligence and inform investors of facts material to their investment decisions, Ahmed did not (as he claims) give Jade "all the financial information necessary to evaluate the investment."[158] In fact, the evidence supports the contrary conclusion that Ahmed took steps to hide financial information from investors.

December 31, 2008 business plan. Respondents point to a business plan dated December 31, 2008, which they contend gave the Jade/Success Trade salespeople all the financial information necessary to evaluate the investment.[159] They are wrong. The 2008 business plan did not contain any historical financial information. Instead, the 2008 business plan contained financial projections for the years ending September 2009 through 2013 – all in the future. Some of the financial projections were clearly labeled "projections," while others were not. But, regardless of the label, all the financial information concerned projections for the future. This

[156] A package with the Supplement was sent to a note investor but then returned. The return address was to Success Trade at its main office in Washington, DC – not to Jade, at its office in Virginia. Hearing Tr. (Morris) 226-27.

[157] Hearing Tr. (Ahmed) 1415. In February 2013, Success Trade sent a letter to both the D.C. and Virginia Securities Regulators expressly representing that the notes were sold through Success Trade, not Jade. *Id.*; CX-334, at 1, 11-12.

[158] Resp. PH Br. 1, 4.

[159] *Id*.

was insufficient to inform the Jade/Success Trade salespeople or the investors of the Parent Company's current financial condition.[160]

In fact, in hearing testimony, Ahmed described the financial information at the end of the December 2008 business plan as projections that he thought were reasonable estimates of what Success Trade could achieve. He said, "This was our business plan that we – what my vision was for the company and how we planned on moving forward … it envisions my thought process of what the company can do, what it would be capable of…." When asked about the financial information at the end, he agreed that the information constituted "projections" and said that the projections were "based on what the company can do, what the capabilities of the company are."[161]

To the extent that a projection in the 2008 business plan was not labeled a projection and it was used in succeeding years in selling the notes, it was misleading. Thus, if a 2009 financial projection without the label "projection" was used in 2010 sales materials, it would have misleadingly appeared as though it were a historical financial report.

October 29, 2009 business plan. Respondents also point to another business plan dated October 29, 2009. It contained a Parent Company income statement for the six months ending June 30, 2009 (showing a net loss of approximately $257,000), and a Parent Company balance sheet for June 30, 2009. The balance sheet was not very detailed. It showed a little over $3,000 in a checking/savings account and $945,406.57 in "Other Current Assets," which were not otherwise identified. The only other assets reflected on the balance sheet were the investments in

[160] RX-5000. The financial projections include profit and loss statements for the year ending September 2009, and forward through the year ending September 2013. Similarly, the financial projections include balance sheets for the year ending September 2009, and forward through the year ending September 2013. The profit and loss statements and balance sheets do not bear headings that indicate they are projections, but it is obvious in the context of a business plan dated December 2008.

[161] Hearing Tr. (Ahmed) 1096-97.

Success Trade and BP, which totaled $31 million. Total liabilities were roughly $2.5 million. The liabilities were only broken down as current and long-term.[162]

This business plan did not reveal the heavy debt burden borne by the Parent Company, or the struggles its subsidiary, Success Trade, was undergoing. The business plan was insufficient to inform investors regarding the Parent Company's true financial condition even as of the date of the document, much less as the offering continued over the course of four years and the financial information regarding the first half of 2009 became stale.

2009 Issuer balance sheet and profit/loss statement. Ahmed testified that he personally gave Jinesh Brahmbhatt a Parent Company balance sheet and a profit/loss statement for 2009 in November or December 2009 to use with the Supplement in soliciting investors. According to his testimony, he mailed the Supplement to Jade without these documents and then separately hand-delivered the financial documents and instructed Brahmbhatt to attach the financial documents to the Supplement. The balance sheet listed officer loans as assets of the company. It also included the $800,000 Khokhar loan in a list of long-term liabilities (without disclosing the interest rate on the principal owed). The profit/loss statement showed a realized loss of $22,651.31. It also showed a "restructuring" fee of $15,000 but did not explain or identify what had been restructured.[163]

[162] RX-5016. Ahmed testified that he personally handed the October 2009 business plan to Jinesh Brahmbhatt and Aulakh in November or December 2009 for them to give investors. He was uncertain whether he ever provided a copy electronically. Hearing Tr. (Ahmed) 1167-72, 1260-63. There is no record evidence corroborating Ahmed's testimony.

In October 2009 Jinesh Brahmbhatt requested financial information on a monthly basis from Ahmed and MDR. RX-5015. Aulakh also requested quarterly "financials" to review and show to clients. RX-5020. The information requested and provided related to the broker-dealer firm, Success Trade, and not the Parent Company that issued the notes. RX-5019; Hearing Tr. (Ahmed) 1292-93.

[163] Hearing Tr. (Ahmed) 1260-63; CX-116.

There is no evidence to corroborate Ahmed's testimony that he instructed Jade to convey these financial documents to investors. As noted above, financial documents did not appear in any investor file. Derrick Leak, a Jade employee who reviewed investor files when he joined Jade in January 2013,[164] testified that he never saw any Parent Company financial statements.[165] Morris, the FINRA examiner, also testified that there were no financial statements in any of the files for note investors.[166] Because Ahmed claims to have personally delivered these particular financial documents, there is no cover letter or email reflecting the purported instruction. Ahmed did not explain why he did not attach the financial documents to the Supplement if he wanted them included with it.[167]

In any event, although these documents revealed more information than the PPMs about the Issuer's assets and liabilities, they still did not provide a full, accurate picture of the Issuer's financial condition. They also became stale as the offering continued long past December 2009 into the spring of 2013.

Other financial information. Ahmed testified that he gave Jade personnel records and statements prepared by his accountant, sometimes monthly, sometimes quarterly. According to Ahmed, those statements listed each investor and the amount the investor had invested in the Parent Company. They also might show the amount Jade had raised through the note offering

[164] Hearing Tr. (Morris) 96-98; CX-31.

[165] Hearing Tr. (Leak) 1015, 1048.

[166] Hearing Tr. (Morris) 199.

[167] There is further reason to doubt Ahmed's testimony that he delivered these documents to Jade in November or December 2009. The documents bear a July 2010 date in the upper left-hand corner. That date appears to mark the date on which the documents were printed. The documents themselves purport to be statements "as of" December 31, 2009.

and the amount it owed to Ahmed's company. Ahmed testified that this information was different from the financial information in the business plan.[168]

The record provides little basis to evaluate how complete Ahmed's disclosures were in the periodic meetings with Jade. To the extent the December 31, 2009 financial statements discussed above are examples of the kind of information Ahmed shared with Jade personnel, it is evident that the information was not sufficient to convey an understanding of the Issuer's true financial condition.[169] To the extent that the information showed, as Ahmed testified, who the investors were and how much Jade had raised in the note offering, the information was geared more with an eye to determining the compensation to be paid to Jade than to conveying information regarding the Issuer's financial condition.

Ahmed's active efforts to conceal financial information. In fact, there was evidence that Ahmed purposely concealed financial information from investors.

For example, when an investor actually requested financial information, Ahmed pretended that the offering was closed and avoided providing the information. The investor requested by email a "complete 5 yr annual report of the companies numbers" prior to making an additional note investment.[170] Ahmed wrote back that he would have to consult his corporate attorneys before making such information available because the company was exploring the

[168] Hearing Tr. (Ahmed) 1127-29, 1441-44.

[169] Ahmed also testified that even before the offering began he shared financial information with Brahmbhatt. He testified that he met with Brahmbhatt in January and showed Brahmbhatt Parent Company balance sheets from QuickBooks, a financial software program Ahmed used in his businesses, for 2005-2008. CX-110 – CX-115. At that time he also showed Brahmbhatt audited financial statements of Success Trade for 2004-2007. Hearing Tr. (Ahmed) 1113-24; CX-120 – CX-123. At some point he also gave Brahmbhatt audited financial statements of Success Trade for 2008. Hearing Tr. (Ahmed) 1119-21; CX-124. However, much of this material was too old to have much significance for the current financial condition of the Parent Company, even at the beginning of the offering, much less in the later years of the offering. Even aside from that, the documents had many of the same deficiencies as those discussed above in connection with the business plans.

[170] CX-257.

possibility of "going public." Ahmed claimed that he could not take an additional investment from the person making the inquiry because "this round is closed."[171] However, Ahmed admitted that other investors were permitted to buy notes, even after he told this investor that the additional note investment was "closed."[172]

Similarly, when another investor requested current financial information regarding the Parent Company, Ahmed instead provided the investor with a valuation report for the software subsidiary of the Parent Company. As discussed further below, that report did not address the financial condition of the Parent Company and, furthermore, was based on speculation regarding potential growth in the software licensing business. Ahmed claimed in testimony that he had discussed "financials" in a telephone conversation with the investor, but then admitted that he never told the investor that the Parent Company was having difficulty with making its interest payments or that it might not be able to make the principal payments on the notes. Ahmed used the valuation report to misdirect the investor's attention.[173]

M. Respondents Encouraged Investors To Extend Or Convert Maturing Notes

By the fall of 2012, the Parent Company's largest expense had become the interest payments on the notes. It owed approximately $191,000 per month on the notes. At that point, principal repayments on the three-year notes that had been issued in 2009 began to come due. Ahmed admitted that the Parent Company that had issued the notes did not have the ability to

[171] *Id*.

[172] Hearing Tr. (Ahmed) 603-07.

[173] Hearing Tr. (Ahmed) 593-98; CX-258.

pay both the principal and the interest due on the notes. He admitted that in the 2011-2012 timeframe he knew that the Parent Company needed to restructure its debt.[174]

Although Ahmed strenuously denied that he "incentivized" note holders to convert their notes to stock shares, the facts reveal that he was desperate to encourage note holders to extend the term of their notes (so that repayment of principal would be delayed) or to convert their notes to equity (so that the Parent Company could cease making interest payments and never be obliged to repay the principal). In order to encourage investors to extend or convert maturing notes, he authorized higher interest rates on many notes that were extended, and he authorized others to convert their notes to stock at a lower price than the $2.00 per share specified in the investor notes.[175]

Ahmed, along with Jinesh and Nash Brahmbhatt and Aulakh, solicited note holders to extend and convert their notes.[176]

(1) Ahmed Made Deceptive Use Of Projections In BP Valuation Report

One of the items Ahmed used to encourage note holders to convert their notes to shares of stock was a valuation report for BP, the software subsidiary of the Parent Company.[177] On September 17, 2012, Ahmed asked a consultant, Felix Danciu, to prepare the report. Ahmed told Danciu the report was for the purpose of determining whether to invest more money in BP. Six

[174] Hearing Tr. (Ahmed) 564-66.

[175] Hearing Tr. (Ahmed) 568-72.

[176] Hearing Tr. (Ahmed) 573.

[177] CX-263.

days later, Danciu delivered the report to Ahmed.[178] The report valued BP at $47.1 million.[179] It projected that BP's trade revenues would more than double from 2013 to 2014 and it would have a profit of 32%.[180]

The day after receiving the report, Ahmed emailed it to the business manager for two of the athlete note holders. In the email, Ahmed expressly represented to the business manager that his company had been valued at $47.1 million.[181] Ahmed did not distinguish in the email between the software company, BP, and the Issuer of the notes, which was the Parent Company. Ahmed did not disclose that the valuation did not consider the financial condition of the Parent Company that had issued the notes.[182]

Nor did Ahmed explain in the email the circumstances and speculative basis for the valuation figure in the report. Ahmed had told Danciu that BP had been purchased for $11.5 million in 2001. Ahmed's company had paid for BP mostly with its own stock, however, so even the $11.5 million figure was based on an estimated value for Ahmed's company.[183] Ahmed had also told Danciu to consider the value of BP on the assumption that it would sell 25 licenses in 2013, even though BP's only customer in the fall of 2012 was Success Trade.[184] As Ahmed admitted he knew at the time he received the valuation report, it was based on a projection of

[178] Hearing Tr. (Ahmed) 573-74, 1332-33, Hearing Tr. (Danciu) 711.

[179] Hearing Tr. (Ahmed) 585-86.

[180] Hearing Tr. (Danciu) 712-13.

[181] Hearing Tr. (Ahmed) 585-88; CX-252.

[182] Hearing Tr. (Ahmed) 588-89.

[183] Hearing Tr. (Ahmed) 582-83.

[184] Hearing Tr. (Ahmed) 576-80. Ahmed claimed already to have two such agreements with independent third parties. Hearing Tr. (Ahmed) 1336-43. However, he admitted on cross-examination that he had only entered those agreements during the second day of the hearing. Hearing Tr. (Ahmed) 1405-07; RX-5118 – RX-5119.

future cash flow of BP.[185] It assumed that by the end of 2017, BP would have as many as 135 software licensing customers.[186]

Ahmed followed up with an October 3, 2012 email to the same business manager offering the two athletes a special deal, different from what was offered through the PPMs. He offered a note under which they would be paid 25% for the first six months (double the interest rate in the PPMs) and 20% thereafter.[187] He similarly used the BP valuation report with other investors, and similarly offered them better terms than were offered in the PPMs.[188]

Danciu testified that the report was never intended to be used for securities transactions or to be shown to anyone outside Ahmed's company. Danciu further testified that he did no work at all with respect to the Parent Company and its historical financial information. He was never given historical financial information even with respect to BP, the company he was valuing.[189] Danciu testified that the BP report was not an independent report because it was based on numbers given to him by Ahmed.[190] The report expressly stated that it was not to be used for any purpose other than internal use, and Danciu testified that he never authorized

[185] Hearing Tr. (Ahmed) 578.

[186] Hearing Tr. (Ahmed) 579, Hearing Tr. (Danciu) 709-10.

[187] Hearing Tr. (Ahmed) 589-90.

[188] Hearing Tr. (Ahmed) 592-98. Ahmed obtained a $225,000 investment in a five-month note at 30% in October 2012 after discussing the $47.1 million valuation report in an email. Hearing Tr. (Ahmed) 592-93; CX-254. Ahmed responded to another investor's request for current financial information of the Parent Company by email, attaching the BP valuation report. That investor made an additional purchase of a note for $50,000 and converted all of his existing notes to stock at a price of $1.50, better than the $2.00 price authorized under the PPMs. Hearing Tr. (Ahmed) 593-98; CX-258. Although Ahmed vaguely claimed that he had had a telephone call with the investor where he discussed the Parent Company's "financials," he could not recall details, such as whether he told the investor that the Parent Company might not be able to make principal payments on its outstanding notes. Hearing Tr. (Ahmed) 596-97.

[189] Hearing Tr. (Danciu) 699-704.

[190] Hearing Tr. (Danciu) 704-05.

Ahmed to give the report to anyone outside of Ahmed's company.[191] Danciu never independently verified any of the assumptions used in the valuation report.[192]

(2) Ahmed Gave False Impression That Listing On A European Exchange Was Imminent

To encourage note holders to convert their notes to shares of stock, Ahmed created the false impression that he was about to list his company on a European stock exchange. He told Jade personnel and note investors that the company would be listed at a share price more than triple the price at which note investors were permitted to pay to convert to shares. Ahmed presented the conversion from note to equity as a fleeting opportunity to make a great profit. If a note holder had a $100,000 note, under the PPM the note holder could receive 50,000 shares. If those shares were about to be listed at $6.50 per share, as Ahmed said they were, then the note holder would hold stock worth $325,000, instead of a note paying interest on $100,000 of principal. However, interest payments would cease upon conversion.[193]

One of Jade's employees, Leak, testified about the way in which Ahmed and Danciu described the status of the listing effort. On January 25, 2013, Leak attended a lunch meeting that included Ahmed, Danciu, Jinesh Brahmbhatt, and Aulakh.[194] Leak testified, "[T]he way it was pitched to us is it could be potentially very lucrative, you know, especially because, if [Jade's clients are] getting it at $2 a share and they're listing it at five Euros or $6.50, it's a pretty wide spread; so it could potentially be pretty lucrative for the guys if they decided to convert."[195]

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[191] Hearing Tr. (Danciu) 706-07.

[192] Hearing Tr. (Danciu) 708-09.

[193] Hearing Tr. (Leak) 1003-04, 1011.

[194] Hearing Tr. (Leak) 1001-15.

[195] Hearing Tr. (Leak) 1004.

Ahmed told Jade personnel that he might need additional capital to conclude the European listing. Ahmed "mentioned that he might need another $500,000 in capital between now and the IPO."[196] This was explained as capital needed to meet with lawyers and market makers and to promote the listing.[197] Ahmed told them that he planned to list the company on a German exchange in March or April of 2013.[198]

Ahmed and Danciu conveyed a sense that the listing process "was moving pretty fast" and that sales personnel needed to "get out in front of the clients and explain what was happening with Success Trade and what the options were, to either convert or to keep the notes as is."[199] It came across as a "now-or-never type scenario."[200]

At the January lunch meeting, Ahmed provided the BP valuation report. Neither Ahmed nor Danciu explained how the valuation was prepared. Neither suggested that it would be inappropriate to share the valuation report with any of Jade's clients. During this meeting, Ahmed never revealed the Issuer's increasing difficulty in paying off its maturing debt.[201]

In fact, at the time of the January lunch, listing by March or April of 2013 was virtually impossible. Ahmed's plan was to list a foreign holding company's stock on the exchange, but even as of March 20, 2013, he had not decided where he was going to form that holding company and he had not submitted any applications to any exchanges, foreign or domestic, to list

[196] CX-265.

[197] Hearing Tr. (Leak) 1005.

[198] Hearing Tr. (Leak) 1003-06.

[199] Hearing Tr. (Leak) 1016.

[200] Hearing Tr. (Leak) 1017.

[201] Hearing Tr. (Leak) 1005-13.

the stock. He also needed money that he had not yet raised in order to follow through on the plan.[202]

Ahmed promoted the idea of conversion with numerous investors by giving them a wholly unrealistic idea of the speed and likelihood of a public listing. He testified, for example, that he met with a couple of investors who had notes maturing in late December 2012 and told them that the Parent Company was going to publicly list its stock in the April to June 2013 timeframe at a price of four to five Euros. He did not tell them that the Parent Company needed to raise more money to pay interest on their notes.[203] Similarly, when he had dinner with another investor in March 2013, Ahmed told him that he expected to list Parent Company stock in the April to June 2013 timeframe. Ahmed did not reveal that the Parent Company would be unable to make interest payments to the investor if the investor did not convert his notes to equity. That investor had roughly $2 million in notes. After the conversation, he did agree to convert his notes.[204]

(3) Ahmed Gave False Impression That Acquisition Of Australian Company Was Imminent

One of the other ways Ahmed encouraged note holders to convert – and explained the delay in getting listed on a European exchange – was to lead them to believe that he was about to purchase an Australian company that would enhance the value of his companies. He told Jinesh Brahmbhatt and Aulakh that the Australian company was undervalued and had the potential of

[202] Hearing Tr. (Ahmed) 616-19.

[203] Hearing Tr. (Ahmed) 619-23.

[204] Hearing Tr. (Ahmed) 624-27. Ahmed testified as to other such conversations in which he tried to persuade investors to convert to equity and gave them the impression that listing on a foreign exchange was imminent. Hearing Tr. (Ahmed) 627-34.

trading at four times its current price. He told them he would rather wait to become listed until accomplishing the acquisition.[205]

On February 7, 2013, Ahmed made a proposal to purchase the Australian company for approximately $15 million. In the proposal, Ahmed represented that the Parent Company had sufficient "facilities in place" to finance the acquisition. Ahmed proposed that a first installment of $3 million be made on March 28, 2013.[206] As of March 20, 2013, however, Ahmed did not have the $3 million required to make the first installment payment.[207]

Ahmed admitted that as of April 4, 2013, the financials of the Parent Company "didn't look too good." However, he believed that he could finance the purchase of the Australian company on the basis of the Australian company's own cash flow, without relying on the Parent Company.[208]

Ahmed engaged in discussions with an Australian bank called Westpac about financing the acquisition of the Australian company. On March 14, 2013, the bank sent Ahmed a letter as an expression of interest regarding your financial requirements to complete the purchase of the Australian company. However, as of the beginning of April 2013 they were only at the beginning stages of due diligence and setting up the legal structure for the transaction. In an April 4, 2013 email, Westpac set out a critical path of things to be done in the next week. The things to be done included a bank "mandate fee" of $20,000 to be paid by Ahmed, setting up an Australian holding company, and getting financial and legal due diligence "under way."

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[205] Hearing Tr. (Ahmed) 638-40, 1360-63.

[206] CX-336.

[207] The testimony was that there was almost a one-to-one correspondence between the Australian dollar and the U.S. dollar. For purposes of this decision, the Australian dollars specified in the letter of intent are treated as the equivalent of U.S. dollars. Hearing Tr. (Ahmed) 638-39.

[208] Hearing Tr. (Ahmed) 1373-75.

Westpac awaited the payment of the fee, as reflected in email correspondence on April 7-8, 2013. On April 8 or 9, 2013, Ahmed withdrew from the transaction.[209]

The Hearing Panel finds that Ahmed never had the resources to complete a $15 million acquisition and he knew it. The Panel finds that when Ahmed was required to make a $20,000 payment in order to pursue bank financing for the acquisition, he withdrew.

N. Note Payments Stop In March 2013

In March 2013, the Parent Company ceased making payments on the principal and interest it owed to note holders. At that time, it also stopped making payments to Khokhar. In his testimony, Ahmed initially tried to blame FINRA, at least in part, for the inability of the Parent Company to meet its payment obligations, but grudgingly admitted that the Parent Company had to restructure because it did not have the money to make the principal payments coming due.[210]

III. Respondents' Refusal To Comply With D.C. Securities Regulator's Instruction To Stop Offering Parent Company Notes

The D.C. Securities Regulator, in cooperation with the Virginia Securities Regulator, conducted an on-site examination of Success Trade in June 2012. By letter dated October 9, 2012, the D.C. Securities Regulator identified areas of concern arising from the examination and gave clear instructions to Success Trade to stop offering Parent Company notes.[211]

[209] RX-5061. The email traffic reflecting that Ahmed withdrew in a conversation he had with the Australian company's senior executive bears confusing date stamps. One of the emails is date-stamped 09/04/2013, which might appear to a U.S. person as September 4, 2013, but might mean April 9, 2013, to a European. The email string continues after that email with the latest date of April 8, 2013. Crossing the international dateline adds to the confusion. What is plain, however, is that Ahmed withdrew from the transaction in early April 2013.

[210] Hearing Tr. (Ahmed) 566-68, 572-73, 1424-25.

[211] CX-268. *See also* Success Trade's response to the Virginia Securities Regulator's similar concerns. CX-334.

In numbered paragraph 1 of the letter, the D.C. Securities Regulator expressed concern that Success Trade had made unsuitable recommendations in making the offering. The letter sought documentation that each investor was an accredited investor.[212]

In numbered paragraph 8, the letter expressed concern that Success Trade had offered and sold unregistered securities without an exemption. Among other things, the D.C. Securities Regulator wrote, "Immediately cease offering and selling [Parent Company] securities until such securities are registered." In addition, the letter instructed that repayment be offered to each note investor by November 7, 2012.

In numbered paragraph 9, the letter voiced a concern that the notes had been sold pursuant to material misstatements or omissions because the PPMs claimed an exemption under Rule 506 when the SEC filing had claimed an exemption under Rule 505.

Numbered paragraph 9 separately repeated the directive to immediately cease offering and selling the Parent Company notes until the concerns about misstatements and exemption from registration were addressed.[213]

In response to these concerns, Respondents asserted in a letter sent to both the D.C. Securities Regulator and the Virginia Securities Regulator that the SEC filing pursuant to Rule 505 was an immaterial mistake that would be corrected by refiling under Rule 506. Ahmed testified at the hearing that he was very familiar with the letter, which was signed by Success Trade's compliance officer. The letter told the state regulators, "The solicitation of and offering of the Success Trade Inc. PPM was not done through Jade. Rather it was through the parent

[212] CX-268.

[213] CX-268.

company[’s] (Success Trade, Inc.) broker-dealer arm, Success Trade Securities, Inc. and its registered agent of the STS McLean, Virginia branch office.”[214]

Respondents did not cease offering and selling Parent Company notes. Ahmed testified that he disputed the regulatory findings and thought that, in any event, the regulatory concerns could be addressed without stopping the offering.[215]

IV. Admissions Regarding Use Of Proceeds

Ahmed admitted that a portion of the note offering proceeds was used to pay interest to existing investors. He expressly admitted that this happened throughout the offering from 2009 through 2013. He admitted that more than $4 million of the proceeds were used in this way.[216] Ahmed admitted that the chart purporting to show the use of note proceeds, which was used in soliciting investors, did not reveal that he had used note proceeds to pay interest to earlier investors.[217]

Ahmed admitted that throughout the offering period he personally took another portion of the note offering proceeds in the form of so-called “officer loans.” Although Enforcement calculated roughly $800,000 in “officer loans,” Ahmed estimated that “officer loans” involved a few hundred thousand dollars.[218] These loans were undocumented and interest free. Ahmed used the money to pay for food and clothes. He also had the Parent Company pay all his personal credit card bills each month from the proceeds. Sometimes the proceeds paid for his

[214] Hearing Tr. (Ahmed) 1150-54, 1415; CX-334, at 3-5, 11-13. The letter responded to myriad other concerns raised by the state regulators as well, but it is unnecessary to address those here.

[215] Hearing Tr. (Ahmed) 1150-54.

[216] Hearing Tr. (Ahmed) 540-41, 646-47.

[217] Hearing Tr. (Ahmed) 552.

[218] Hearing Tr. (Ahmed) 647-48.

personal travel. Ahmed used the proceeds to make monthly payments on his vehicle lease, a Range Rover that he used for both personal and business purposes. He also gave his brother money from the purported "officer loans."[219] Ahmed admitted that the "officer loans" were not disclosed in the PPMs or Supplement.[220] He also admitted that the "officer loans" were not disclosed on the chart purporting to disclose the use of the proceeds.[221]

Ahmed admitted that some of the note proceeds were deposited into a Parent Company brokerage account and that he traded securities with that money. He admitted that this use of the proceeds also was not disclosed on the chart.[222]

Ahmed admitted that the Parent Company gave about $1.25 million of the proceeds to Jade.[223] He characterized the transactions as "loans" (a promissory note and a revolving line of credit). The total amount of proceeds given to Jade, however, exceeded any documented transactions between the Issuer and Jade. Ahmed admitted that Jade has not repaid any of these "loans" and that he has done nothing to collect on the "loans," beyond some uncorroborated, vague, discussions with Jinesh Brahmbhatt about the subject of repayment. Ahmed admitted that the proceeds were used for Jade's payroll and to assist Jinesh Brahmbhatt to pay back the money

[219] Hearing Tr. (Ahmed) 541-45, 549, 1225-31; RX-5121. A couple of days before the hearing, Ahmed prepared and executed a promissory note to the Parent Company. The promissory note specified an amount borrowed and provided for interest. According to Ahmed, he took approximately $471,000 in "officer loans," which is reflected in the note he signed. Enforcement estimated that he took more than $800,000 in "officer loans." Ahmed explained the difference, saying that he had charged business expenses on his personal credit card. Hearing Tr. (Ahmed) 1226-28.

[220] Hearing Tr. (Ahmed) 1232. Ahmed claimed he thought it was unnecessary to disclose the "officer loans" in the PPMs and Supplement because they were disclosed in his "financials." *Id.* As discussed above, investor files contained no financial statements.

On August 26, 2013, Ahmed signed a promissory note agreeing to pay principal and interest to the Parent Company for the $400,000 he admitted he had previously taken in the form of undocumented "officer loans." RX-5121.

[221] Hearing Tr. (Ahmed) 548, 552-53.

[222] Hearing Tr. (Ahmed) 550, 553.

[223] Hearing Tr. (Ahmed) 647.

he owed to LPL when he left that firm. Ahmed acknowledged that Brahmbhatt asked him to pay the loan because he could not afford it. Ahmed also acknowledged that Brahmbhatt needed the "loans" from the Parent Company for his business to survive.[224] Ahmed admitted that the chart purporting to show how the note proceeds were used did not disclose that some of the money had been "loaned" to Jade.[225]

V. Sales Of Unregistered Securities

The PPMs told investors that the securities were exempt from registration under SEC Rule 506 of Regulation D.[226] The Parent Company filed a notice with the SEC claiming a different exemption, however, under SEC Rule 505 of Regulation D.[227] Ahmed testified that the filing with the SEC was in error and that the exemption under SEC Rule 506 applied to the offering.[228] As discussed above, Respondents took the same position in their February 2013 letters to the state securities regulators.[229]

VI. Investor Losses

Enforcement introduced into evidence a list of investors who had lost money. The document also specifies the amount each investor lost. The total, including pre-judgment interest, is $13,706,288.28.[230] The exhibit contains additional charts showing the basis for the

[224] Hearing Tr. (Ahmed) 545-48, 1140-42.

[225] Hearing Tr. (Ahmed) 553.

[226] Hearing Tr. (Ahmed) 209-10, Hearing Tr. (Morris) 342-43, 345; CX-43.

[227] RX-5087.

[228] Hearing Tr. (Ahmed) 1147-52.

[229] CX-334.

[230] CX-2.

calculation, and other parts of the record contain the underlying documents from which the calculations were derived.[231]

VII. Ahmed's Testimony Lacked Credibility

The Hearing Panel finds that Ahmed's testimony lacked credibility. Where his testimony is not corroborated by independent evidence, the Hearing Panel does not find his testimony sufficiently reliable by itself to establish the facts.

First, on its face, much of Ahmed's testimony was contradicted by the evidence. Even when his testimony was not directly contradicted by the evidence, however, the absence of any corroborating evidence in circumstances where one would expect corroborating evidence to exist often strongly suggested that Ahmed's testimony was not true.

For example, Ahmed testified that he gave Brahmbhatt and Jade personnel all the financial information necessary to evaluate the investment in Parent Company notes in order for them to provide the information to investors. Ahmed pointed to two business plans for the Parent Company that appeared in some investor files. Those documents do not support the claim. One of the business plans actually contained only projections; the other contained only fragments of historical information relating to the first few months of the offering. They were far from providing all that was necessary to evaluate the investment, particularly in the later years of the offering when even the fragments of historical information became stale.

Ahmed also pointed to the December 31, 2009, balance sheet and profit and loss statement that he claimed he hand-delivered in November or December 2009 to Jinesh Brahmbhatt for use with the Supplement. The record contains no adequate explanation for why

[231] CX-2. Six of the 65 investors were fully paid what was owed to them, and Enforcement sought no restitution for those six. A Restitution Addendum is attached to this decision showing calculations for only the 59 investors who lost money.

he did not provide the statements along with the Supplement but instead separately hand-delivered them so that there is no record of his purported instruction to use them with the Supplement. In any event, those documents also did not disclose all the facts necessary to understand the Issuer's financial condition and were misleading.

The fact that no financial statements were found in the investigation leading to this proceeding strongly suggests that Ahmed never instructed that financial statements be given to investors. Others who attended meetings Ahmed had with investors testified that he did not provide financial documents or specific financial numbers. Rather, Ahmed spoke generally about how well his companies were doing.[232]

Similarly, Ahmed maintained that he had refused a *quid pro quo* arrangement with Brahmbhatt and Jade, but the email correspondence proves that there was one, even if informal and implicit. Ahmed's uncorroborated statement that he told Brahmbhatt and Jade he would not pay them for raising capital for him cannot overcome the evidence that he did in fact pay Brahmbhatt for selling the notes for him.

The evidence also contradicts Ahmed's assertion that the purported "officer loans" were fully disclosed. As he admitted, no PPM disclosed the "officer loans." Moreover, the evidence suggests that the purported "officer loans" were never really "loans" at all, since no terms were documented at the time, and Ahmed never made any payments on them. He only signed a loan document committing to repay a portion of the money while the hearing was ongoing.[233]

Second, on critical points, Ahmed's testimony was vague and misleading. For example, Ahmed repeatedly claimed that he had given Brahmbhatt and Jade "financials" for use with

[232] Hearing Tr. (Basi) 665-69, 670-74.

[233] RX-5121.

investors and that those financials were sufficient to evaluate the investment. He asserted that he gave Jade personnel both unaudited and "audited" financials. He later admitted that he had used the term "audited" to refer to information put together by an accountant instead of by his own staff. He did not use the term "audited" to refer to information that had been independently tested or verified. He also admitted that he used the term "audited" to refer to financial information provided annually to the SEC by Success Trade, the brokerage firm. That financial information did not disclose the financial condition of the Parent Company that had issued the notes, and thus could never have been sufficient disclosure to note investors. Ahmed admitted that the Parent Company that issued the notes had never had audited financial statements.[234]

The Hearing Panel finds that Ahmed's confusing use of the term "audited" was a purposeful attempt to mislead investors. He used the term to make it appear that the financial information he provided in connection with the offering was more complete and reliable than it actually was. It is not credible that a college graduate with a business degree who has been in the securities industry for over twenty years could misunderstand and accidentally misuse the term "audited" in the way that Ahmed claimed.

Third, Ahmed sometimes testified that he was uncertain or confused when it was plain that he was only desperate to deny what the evidence showed. For example, Ahmed expressed uncertainty as to the capacity in which Jade personnel were acting when they sold Parent Company notes. He asserted at the hearing that they may have been acting as registered investment advisers and not as registered representatives of Success Trade. He testified that he did not know in which capacity they were acting when they sold the notes.[235] This testimony

[234] Hearing Tr. (Ahmed) 531-34.

[235] Hearing Tr. (Ahmed) 517-18, 1415-16.

was not credible, given that Jinesh Brahmbhatt, Aulakh, and other Jade personnel had registered with Success Trade and the files for note investors were kept at Success Trade's headquarters. Moreover, Ahmed's purported uncertainty was impeached at the hearing with the February 2013 letter sent to the state securities regulators, which expressly represented that Success Trade, not Jade, offered and sold the notes.[236]

Fourth, there was evidence that Success Trade and Jade personnel made efforts to hide their activities in connection with the Parent Company notes from FINRA regulatory oversight. A set of emails between Success Trade and Jade personnel implemented a plan to use personal emails rather than business emails in the future.[237] One email of a Success Trade employee said that she would be using her personal email address "to send PPMs and other confidential information pertaining to Jade client investments."[238] Another email between Success Trade and Jade personnel specifically instructed that any future emails to Ahmed be sent to his personal email because "[w]e need to keep these out of the eyes of FINRA."[239] One of the emails attributed the plan to start using personal email to Ahmed and Aulakh.[240]

Ahmed was not listed as a sender or recipient of the email initiating the plan to conceal information from regulatory oversight. However, when viewed in conjunction with other email correspondence implementing the plan to conceal information relating to the offering, and in light of the small number of people employed by Jade and Ahmed, we do not believe that these actions were undertaken without Ahmed's knowledge. That belief is bolstered by the reasonable

[236] Hearing Tr. (Ahmed) 518-22; CX-334.

[237] Hearing Tr. (Morris) 164-67; CX-285 – CX-287.

[238] Hearing Tr. (Morris) 167; CX-287.

[239] Hearing Tr. (Morris) 164; CX-286.

[240] Hearing Tr. (Morris) 165-66; CX-285.

inference that Jade personnel would not want to do anything relating to the note offering without Ahmed's approval because that could threaten the lifeline he provided Jade by funding its payroll. Moreover, no plan to route future communications about the note offering through backdoor communications outside regulatory oversight would work if Ahmed did not know about.

VIII. CONCLUSIONS OF LAW

A. Securities Fraud: First Cause Of Action

(1) Applicable Law

Section 10(b) of the Exchange Act broadly proscribes securities fraud in violation of rules promulgated by the SEC, including Rule 10b-5. Section 10(b) provides, "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails … [t]o use or employ, in connection with the purchase of sale of any security … any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."[241]

Rule 10b-5 makes it unlawful "To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."[242] The First Cause Of Action also alleges violations of FINRA Rules 2020 and 2010, but, since the Hearing Panel finds that

[241] 15 U.S.C. § 78j.

[242] 17 C.F.R. § 240.15c3-1.

Respondents committed Rule 10b-5 fraud, those other Rules were also violated and need not be separately discussed here.[243]

An enforcement action for Rule 10b-5 securities fraud requires proof of the following: (i) a false statement or a misleading omission; (ii) of a material fact; (iii) made with the requisite scienter or state of mind; (iv) using the jurisdictional means; (v) in connection with the purchase or sale of a security.[244]

(2) Enforcement Proved That Respondents Committed Securities Fraud

Enforcement established the elements of securities fraud under Rule 10b-5.

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[243] FINRA Rule 2020 proscribes fraud in language similar to Section 10(b), stating: "No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance." A violation of Section 10(b) is also a violation of FINRA Rule 2020. *See Dep't of Enforcement v. Thomas Weisel Partners, LLC*, No. 2008014621701, 2013 FINRA Discip. LEXIS 1, at *15 (NAC Feb. 15, 2013).

NASD Conduct Rule 2110 requires member firms and their associated persons to observe "high standards of commercial honor and just and equitable principles of trade." This Rule applies to all business-related conduct. *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. Lexis 6, at *11-18 (NAC June 2, 2000); *Dep't of Enforcement v. Trende*, No. 2007008935010, 2011 FINRA Discip. LEXIS 54, *11 and nn.12 & 13 (OHO Oct. 4, 2011). It requires members of the securities industry not merely to conform to legal requirements but to conduct themselves with integrity, fairness, and honesty. *See, e.g., Heath v. SEC*, 586 F.3d 122, 131-139 (2d Cir. Nov. 2009).

The NAC quoted the SEC in describing NASD Rule 2110 "as an industry backstop for the representation, inherent in the relationship between a securities professional and a customer, that the customer will be dealt with fairly and in accordance with the standards of the profession." *Dep't of Enforcement v. Golonka*, No. 2009017439601, 2013 FINRA Discip. LEXIS 5, at *22 (NAC Mar. 4, 2013) (quoting *Dante J. DiFrancesco*, Exchange Act Rel. No. 66113, 2012 SEC LEXIS 54, at *17 (Jan. 6, 2012)).

It should be obvious that committing fraud and other violations of law and FINRA Rules is inconsistent with the high standards of ethical conduct required by Rule 2110. *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178, 182 (2d Cir.), *cert. denied*, 385 U.S. 817 (1966).

[244] *Gebhart v. SEC*, 595 F.3d 1034, 1040 and n.8 (9th Cir. 2010) (affirmed SEC decision in NASD (now FINRA) disciplinary case charging Rule 10b-5 fraud and distinguished enforcement action from private securities fraud action). *See also* cases discussing elements of a Rule 10b-5 SEC enforcement action: *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996) (SEC must prove misrepresentation or omission, that was material, made with scienter, in connection with purchase or sale of securities, and involving interstate commerce); *SEC v. Familant*, 910 F.Supp. 2d 83, *92 (Dec. 19, 2012) (unlike a plaintiff in a private damages action, the SEC does not have to show in a civil enforcement suit that actual harm resulted); *SEC v. Woolf*, 835 F. Supp. 2d 111, 118 (E.D. Va. 2011) (in civil enforcement action SEC must prove false statement or omission of material fact with scienter in connection with purchase or sale of securities); *SEC v. PIMCO*, 341 F. Supp. 2d 454, 463-64 (S.D.N.Y. 2004) (same) (citing *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999)).

First, as discussed at length above, Respondents made many false and misleading statements in offering and selling the Parent Company notes.

One of the most significant was the misrepresentation in the PPMs and Supplement that the bulk of the offering proceeds would be used for advertising and building the technical infrastructure to support and build the Issuer's businesses. Ahmed admitted that millions of dollars of the proceeds were used in other ways that were never disclosed in the offering documents. Money from new investors was used to pay interest to old investors. The proceeds also were used for the so-called "officer loans" to cover Ahmed's personal credit card bills and the like, and the payments to Jade for selling the notes. These other uses in fact directly contradicted representations in the offering documents that no officer and director – meaning Ahmed – would be compensated for his selling efforts, and that no one offering and selling the notes – meaning the sales persons employed by Jade but registered with Success Trade – would be compensated in connection with the sale of the notes.[245]

The offering documents also failed to disclose the true financial condition of the Parent Company issuing the notes. They revealed nothing about the Parent Company's money-losing history or current financial distress and increasing debt load. They did not disclose that Success Trade, the broker-dealer on which the Parent Company relied, had in recent times twice been sanctioned for net capital deficiencies, even though its minimum net capital was only $5,000. The omission of this information enabled Ahmed to solicit investors based on his vision of the future, in which his business would be worth hundreds of millions of dollars, rather than the reality, in which his businesses were on the brink of failure.

[245] *See SEC v. Small Business Capital Corp.*, 2013 U.S. Dist. LEXIS 116607, at *14-24 (N.D. Cal. Aug. 16, 2013) (summary judgment awarded to SEC on securities fraud claim, where defendant used funds for himself instead of disclosed purpose).

Furthermore, the PPMs falsely represented that the note offering was exempt from registration, that the notes were only being sold to accredited investors, and that the notes were being sold in $100,000 increments. In fact, the notes were sold to anyone who could be persuaded to buy them in any amount they were willing to invest, and the documentation to establish their accredited status was falsified by Jade personnel. The offering was not exempt from registration.

Even the size of the offering was misrepresented as limited to $5 to $7.5 million, when, in fact, Respondents sold close to $20 million in Parent Company notes. This enabled Respondents to conceal the Issuer's growing debt load and how millions of dollars were being channeled elsewhere than in building the Parent Company's businesses.[246]

The evidence also showed numerous examples of Ahmed's own false and misleading statements to investors, even apart from the PPMs and Supplement. In his efforts to persuade early investors to extend the terms of their notes or to convert to equity, he made false and misleading use of the BP valuation report, created the false impression that the Parent Company's stock was about to be listed on a European exchange, and gave the false impression that the Parent Company was about to buy an Australian company.[247]

[246] The disclosure in the Supplement that the Parent Company had discretion to exceed the $5 million limit without disclosure to investors did not reveal to investors that, in fact, the Parent Company had sold nearly four times that amount of notes, almost $20 million. The disclosure of discretion to take an action does not disclose that the action has actually been taken. Indeed, it implies that the action has not been taken but might be in the future.

[247] To the extent that Respondents argue that certain disclosures in the Supplement corrected any false or misleading statement in the PPMs, they are wrong. The disclosure that management had "discretion" to increase the size of the offering was not sufficient to disclose that the offering ballooned to four times the size that the PPMs said it was. The disclosure that the proceeds might be used for other purposes was not sufficient to inform investors that Ahmed was already using investor proceeds to pay his personal credit card bills. *See Deng v. 278 Gramercy Park Group, LLC*, 2014 U.S. Dist. LEXIS 74156, (S.D.N.Y. May 30, 2014) (disclosure in PPM for real estate project that manager had "complete discretion" on how to apply the net proceeds of an offering did not reveal that proceeds were used for non-project purposes).

Second, Respondents' false and misleading statements were material. The U.S. Supreme Court has established the standard for materiality. Materiality is an "objective" inquiry involving the significance of an omitted or misrepresented fact to a reasonable investor.[248] "[T]o fulfill the materiality requirement there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[249] Lower courts have put the same test in other words, "Information is material if there is a 'substantial likelihood that a reasonable person would consider it important in deciding whether to buy or sell shares.'"[250]

Under this standard, Respondents' misrepresentations and misleading omissions were material. The offering documents represented that the proceeds of the offering were going to be used to build a business, thereby enabling the business to repay investors in the notes. It would have significantly altered the "total mix" of information if investors had been informed that large amounts of the funds were being used instead for other purposes, such as paying Ahmed's credit card bills.[251] Certainly, it would have been significant to investors if they had known that Respondents were operating as a Ponzi scheme, with money from new investors being used to pay the interest owed to earlier note purchasers. If they had known that, they would have

[248] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976).

[249] *Basic v. Levinson*, 485 U.S. 224, 231-32 (1988) (quoting *TSC Indus., Inc.*, 426 U.S. at 449). Materiality can be evaluated under this objective standard, considering how a reasonable investor would view the false statement or misleading omission, without testimony from any particular customer. *Dep't of Enforcement v. Scholander*, No. 2009019108901, 2013 FINRA Disicip. LEXIS 37, at *64-65 and n.122 (OHO Aug. 16, 2013) *appeal docketed* (Aug. 30, 2013) (citing *RichMark Capital Corp.*, Exchange Act Rel. No. 48758, 2003 SEC LEXIS 2650, at *15 (Nov. 7, 2003)), *aff'd*, 86 F. App'x 744 (5th Cir. 2004).

[250] *SEC v. Stratocomm Corp.*, 2014 U.S. Dist. LEXIS 20855, at *32 (N.D.N.Y. Feb. 19, 2014) (quoting *Azrielli v. Cohen Law Offices*, 21 F.3d 512, 518 (2d Cir. 1994)).

[251] *See, generally, SEC v. Bravata*, 2014 U.S. Dist. LEXIS 28496, at *7-19, 47-50 (E.D. Mich. Mar. 6, 2014) (defendants falsely represented that proceeds would be used to acquire real estate, when in fact a large amount of funds was used for personal purchases and "loans" that were not repaid).

realized that the money was not being used to build a business and that it was unlikely that they would be fully repaid.

Similarly, a reasonable investor would want to know the financial condition of the issuer in order to evaluate the likelihood the issuer will be able to perform its obligations under the notes being sold. Respondents failed to give the note investors important facts relating to the Parent Company's money-losing history, its current financial distress, and its increasing debt load. They also failed to disclose the net capital deficiencies of Success Trade, the subsidiary on which the Parent Company depended. The omitted facts allowed Ahmed continually to misrepresent the Parent Company's business prospects in a falsely glowing and positive light. Investors would have had an entirely different picture of the investment if they had known the omitted information.

Respondents' false and misleading statements regarding the exemption from registration, the size of the offering, and the accredited status of the investors also were material. They contributed to the overall false impression that the Parent Company was thriving and worthy of investment, and they hid the Parent Company's large and continually growing debt burden.

Ahmed was the person in control of Success Trade, the disclosures in the offering materials, and the manner in which potential investors were solicited to buy Parent Company notes. He was a "maker" of materially false and misleading statements contained in the PPMs and Supplement.[252] Ahmed also personally made false and misleading statements regarding the BP valuation report, the potential listing of Parent Company stock on a European exchange, and the purchase of an Australian company, which were all designed to hide the downward spiral of

[252] *Stratocomm Corp.*, 2014 U.S. Dist. LEXIS 20855, at *33-35 (person who drafted, authorized, and disseminated press releases was the "maker" of the false and misleading statements contained in them).

his businesses. Success Trade, through Ahmed and its other registered representatives, made false and misleading statements.

The cumulative effect of Respondents' false and misleading statements was to persuade investors to invest more, extend the term of their notes, and to convert to equity. Respondents created a completely false picture of the investment. If investors had known the truth, they would have evaluated the investment differently.

Third, the Hearing Panel concludes that Respondents had the required scienter. The Hearing Panel believes that Ahmed acted knowingly and intentionally when he misrepresented how the proceeds of the note offering were being used, the financial condition of the Parent Company, the size of the offering, the accredited status of the investors, and the units of notes for sale. The Hearing Panel also believes Ahmed acted knowingly when he misleadingly used the BP evaluation in his efforts to persuade note investors to convert to equity, falsely represented that he was close to listing Parent Company stock on a foreign exchange, and falsely represented that he was about to purchase the Australian company.[253]

Ahmed deliberately employed half-truths and ambiguities in the later PPMs and Supplement. The disclosures in the Supplement, for example, told investors that the Parent Company owed money to Khokhar, but it disclosed only the principal amount and the later

[253] Recklessness also satisfies scienter for Rule 10b-5 securities fraud. *See SEC v. U.S. Envtl., Inc.*, 155 F.3d 107, 111 (2d Cir. 1998) (collecting cases). Recklessness has been defined as conduct that is highly unreasonable and that represents an extreme departure from the standards of ordinary care. *See SEC v. McNulty*, 137 F.3d 732, 741 (2d Cir. 1998). The classic definition has been recently reiterated in *Small Business Capital Corp.*, 2013 U.S. Dist. LEXIS 116607, at *31 (N.D. Cal. 2013): "Reckless conduct is conduct that consists of a highly unreasonable act, or omission, that is an 'extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'" (quoting from *SEC v. Dain Rauscher*, 254 F.3d 852, 1569 (9th Cir. 2001) and *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569 (9th Cir. 1990)).

Even if Respondents did not act knowingly and intentionally, they acted recklessly. Accordingly, the Hearing Panel finds that Respondents had scienter on that alternative basis as well.

renegotiated interest rate of 15%. Half-truths can be just as fraudulent as outright falsehoods.[254] Ahmed's scienter is attributable to Success Trade.[255]

Fourth, Respondents used the requisite jurisdictional means by mailing materials to investors in connection with the offer and communicating by email with investors.

Fifth, Respondents' activities occurred in connection with the purchase and sale of securities. There is no dispute that the notes were securities.

The Hearing Panel concludes that the misconduct was an egregious violation. It involves multiple intentional false and misleading statements over an extended period of four years. Ahmed offers no colorable innocent explanation for the multiple deceptions Respondents practiced on the note investors.

B. Unregistered Securities: Second Cause Of Action

(1) Applicable Law

Section 5(a) of the Securities Act prohibits the sale of any securities, in interstate commerce, unless a registration statement is in effect or there is an applicable exemption from the registration requirements.[256] Section 5(c) of the Securities Act prohibits the offer of any securities, unless a registration statement has been filed as to such securities or an exemption is available.[257] "The registration requirements are the heart of" the Securities Act.[258] Their purpose is to "protect investors by promoting full disclosure of information thought necessary to

[254] *Stratocomm Corp.*, 2014 U.S. Dist LEXIS 20855, at *41 (N.D. N.Y. Feb. 19, 2014).

[255] *Stratocomm Corp.*, 2014 U.S. Dist LEXIS 20855, at *38 (N.D. N.Y. Feb. 19, 2014) (scienter of company officer attributed to company where officer acting within apparent authority) (citing *Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1106-07 (10th Cir. 2003)).

[256] 15 U.S.C. § 77e (a).

[257] 15 U.S.C. § 77e (c).

[258] *Pinter v. Dahl*, 486 U.S. 622, 638 and n.14 (1988).

informed investment decisions."[259] Section 5 imposes strict liability on those who sell unregistered securities, regardless of any degree of fault, negligence, or intent on the seller's part.[260]

A *prima facie* case for violation of Securities Act Section 5 is established upon a showing that (1) no registration statement was in effect or filed as to the securities; (2) a person, directly or indirectly, sold or offered to sell the securities; and (3) the sale or offer to sell was made through the use of interstate facilities or mails. Scienter—*i.e.*, an intent to deceive—is not a requirement.[261]

Exemptions from the registration requirements are affirmative defenses that must be established by the person claiming the exemption.[262] Registration exemptions "are construed strictly to promote full disclosure of information for the protection of the investing public."[263] Evidence in support of an exemption must be explicit, exact, and not built on conclusory

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[259] *Midas Securities, LLC*, Exchange Act Rel. No. 66200, 2012 SEC LEXIS 199 (Jan. 20, 2012 (citing *SEC v. Ralston Purina*, 346 U.S. 119, 124 (1953) and *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963)) "Registration is the central mechanism the framers of the securities acts chose for the protection of investors." *Woolf v. S.D. Cohn & Co.*, 515 F.2d 591, 605 and n.6 (5th Cir. 1975) (Wisdom, J.), *vacated and remanded on other grounds*, 426 U.S. 944 (1976).

[260] *SEC v. Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004); *SEC v. Cavanagh*, 445 F.3d 105, 115 (2d Cir. 2006); *Stratocomm Corp.*, 2014 U.S. Dist LEXIS 20855, at *51 (N.D. N.Y. Feb. 19, 2014).

[261] *Midas Sec.*, 2012 SEC LEXIS 199, *27 and n.34.

[262] *See, e.g., Ralston Purina Co.*, 346 U.S. at 126 ("Keeping in mind the broadly remedial purposes of federal securities legislation, imposition of the burden of proof on an issuer who would plead the exemption seems to us fair and reasonable."); *Zacharias v. SEC*, 569 F.3d 458, 464 (D.C. Cir. 2009) (citing *Ralston Purina*, 346 U.S. at 126), *aff'g in relevant part, John A. Carley*, Exchange Act Rel. No. 57246 (2008), 92 SEC Docket 1693; *Swenson v. Engelstad*, 626 F.2d 421, 425 (5th Cir. 1980); *Rodney R. Schoemann*, Securities Act Rel. No. 9076, 2009 SEC LEXIS 3939 (2009), *aff'd*, 398 F. App'x 603 (D.C. Cir. 2010) (unpublished).

The SEC has made plain that once Enforcement has established a *prima facie* case of selling unregistered securities, the burden shifts to the respondent in a disciplinary proceeding to establish that an exemption applied. *See ACAP Financial, Inc.*, Exchange Act Rel. No. 70046, 2013 SEC LEXIS 2156 (July 26, 2013).

[263] *Cavanagh*, 445 F.3d at 115; *see also SEC v. Murphy*, 626 F.2d 633, 641 (9th Cir. 1980) (same).

statements.[264] The SEC has stated that a broker "ha[s] a responsibility to be aware of the requirements necessary to establish an exemption from the registration requirements of the Securities Act and should be reasonably certain such an exemption is available."[265]

The offer and sale of unregistered securities without an exemption is inconsistent with the "high standards of commercial honor and just and equitable principles of trade" required by FINRA Rule 2010.[266]

(2) Respondents Sold Unregistered Securities That Were Not Entitled To An Exemption

Enforcement proved the elements of a registration violation.

First, no registration was in effect. Respondents intended the offering to be a private placement and created the PPMs to facilitate a private placement. They did not seek to register the securities. Instead, they filed with the SEC a document claiming the securities were exempt from registration under SEC Rule 505 of Regulation D.

Second, Respondents, Ahmed and the broker-dealer Firm, Success Trade, offered and sold the unregistered securities. The Hearing Panel has found that Ahmed was in control of what was disclosed in the offering and was personally involved in soliciting investors. The Panel also has found that representatives registered with Success Trade, the broker-dealer, solicited investors. Furthermore, investor records for the note purchasers were maintained by the broker-dealer Firm.

Third, the requisite jurisdictional means were used. Respondents sent emails to prospective investors and mailed materials to them as well.

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[264] *Ronald G. Sorrell*, 1981 SEC LEXIS 1467, at *5 n.8 (1981) (quoting *Lively v. Hirschfeld*, 440 F.2d 631, 633 (10th Cir. 1971)), *aff'd*, 679 F.2d 1323 (9th Cir. 1982).

[265] *Midas Sec.*, 2012 SEC LEXIS 199, at *33 and n.43.

[266] *Midas Sec.*, 2012 SEC LEXIS 199, at 46 n.63; *Sorrell*, 679 F.2d at 1326.

There is no dispute that the Rule 505 exemption is inapplicable. Respondents concede that it did not apply.[267] That exemption applies only if the offering has no more than 35 investors, does not exceed $5 million, and extends for no more than twelve months. Respondents' note offering had more than 35 investors, exceeded $5 million, and continued longer than 12 months.

Respondents claim, however, that SEC Rule 506 applies. They are wrong. SEC Rule 506 permits the sale of unregistered securities to an unlimited number of "accredited investors." In addition, it permits sale to a limited number of "sophisticated" investors. Respondents sold notes to persons who were neither "accredited investors" nor "sophisticated" investors.

The term "accredited investor" is defined in SEC Rule 501(a). As relevant here, an "accredited investor" includes a person who has had income in excess of $200,000 in each of the two most recent years and who expects to have at least that much income in the current year. It also includes a person whose current net worth (either individually or jointly with a spouse) is at least $1 million. As discussed above, registered representatives with Success Trade entered false information about many of the investors' net worth and recent income history in order to make it appear that they qualified as "accredited investors." The registered representatives did so on the theory that anticipated future income could be taken into consideration. Nothing in the definition of "accredited investor" supports that theory.

Nor does the record support the conclusion that the investors were "sophisticated." SEC Rule 501(e) states that in calculating the number of purchasers under the exemption contained in SEC Rule 506 a purchaser who is not an "accredited investor" should have sufficient knowledge and experience in financial and business matters to make him or her capable of evaluating the

[267] Resp. PH Br. 19-20.

merits and risks of the prospective investment. Such persons qualify as "sophisticated." In this case, however, many of the young athletes were not able to evaluate the merits and risks of the Parent Company notes and were not "sophisticated" for purposes of applying the exemption.

Consequently, Respondents sold the Parent Company notes to numerous persons who were neither "accredited investors" nor financially "sophisticated." The securities were not exempt from registration under SEC Rule 506.[268]

The Hearing Panel concludes that Respondents' sale of non-exempt unregistered securities was an egregious violation of FINRA Rule 2010. Such conduct was unethical and inconsistent with the high standard of commercial honor required by the Rule.[269]

IX. SANCTIONS

In considering the appropriate sanction for a violation, adjudicators in FINRA disciplinary proceedings look to FINRA's Sanction Guidelines. The Sanction Guidelines contain a range of sanctions for particular violations, depending on the circumstances. They also contain General Principles, applicable in all cases, and overarching Principal Considerations.[270]

In this case, all factors weigh in favor of the most stringent sanctions. Consequently, the Hearing Panel concludes that expulsion of Success Trade and an order barring Ahmed from

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[268] SEC Rules 505 and 506 are "safe harbor" exemptions under Regulation D. SEC Rule 502 of Regulation D establishes an overarching requirement that any non-accredited investors in an exempt offering shall receive financial information similar to the financial information they would receive in connection with a registered public offering. As discussed above, in this case many investors were non-accredited. Therefore, they were entitled to the mandatory financial information. Respondents failed to provide such financial information. For this reason also, the offering was in violation of the requirements relating to registration and exemptions.

[269] *See Midas Sec.*, 2012 SEC LEXIS 199, at *46 n.63 ("A violation of Securities Act Section 5 also violates NASD Rule 2110." (citing *Sorrell v. SEC*, 679 F.2d 1323, 1326 (9th Cir. 1982))); *Kunz v. SEC*, 64 F. App'x 659, 663-64, 668 (10th Cir. 2003) (noting SEC conclusion that respondent violated Conduct Rule 2110 by failing to comply with Securities Act registration requirements and affirming that determination).

[270] FINRA Sanction Guidelines (2011) ("Sanction Guidelines"), available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

association with any FINRA member firm in any capacity best serve the remedial purposes of disciplinary oversight. The Hearing Panel further concludes that restitution is appropriate to prevent unjust enrichment, and orders that it be used to compensate investors, to the extent possible.

A. General Considerations

The regulatory mission of FINRA is to protect investors and strengthen market integrity. To that end, FINRA imposes sanctions that are remedial in nature. Those sanctions are designed to deter future misconduct – not only by the particular respondents but also by others – and to improve overall business standards in the securities industry. All of this is for the protection of investors and to encourage public confidence in the financial markets.[271]

(1) Likelihood Of Compliance In The Future

With FINRA's regulatory mission in mind, in crafting the appropriate sanctions the Hearing Panel considers Respondents' likely conduct in the future. There are multiple reasons that the Hearing Panel believes that these Respondents cannot be relied upon in the future to conform their conduct to the securities laws and FINRA Rules.

First, Respondents have a disciplinary history, and the Sanction Guidelines expressly instruct adjudicators to consider recidivism and disciplinary history when considering appropriate sanctions. In particular, the Sanction Guidelines advise adjudicators to consider imposing more severe sanctions when a respondent's disciplinary history includes past misconduct that evidences disregard for regulatory requirements, investor protection, or

[271] Sanction Guidelines at 1, Overview; Sanction Guidelines at p. 2, General Principle 1.

commercial integrity. The Guidelines also advise that repeated acts of misconduct warrant increasingly severe sanctions.[272]

In this case, Respondents' disciplinary history evidences disregard for regulatory requirements, investor protection, and commercial integrity. The two earlier proceedings both involved charges of a net capital deficiency, with deficiencies covering an extended period of time (roughly ten months in the first proceeding and three months in the second proceeding). The repetition of the same kind of violation signifies that the initial disciplinary sanctions, which were modest, were insufficient to deter a repetition of the misconduct. Furthermore, the second proceeding involved additional charges, indicating a general laxity in compliance. Among other things, the second proceeding charged failure to report customer complaints, failure to file an application for change of ownership or control, and failure to establish, maintain, and enforce an adequate supervisory system.[273]

Second, there was evidence that Ahmed delayed producing documents requested by FINRA staff pursuant to FINRA Rule 8210 until after the Complaint was filed, the TCDO was issued, and pre-hearing activities were underway. In addition, he still made only a partial production of personal emails. Enforcement did not charge the delay or the partial production as a violation of FINRA Rule 8210, but the evidence relating to this recalcitrance bears on the sanctions and the likelihood Respondents would conform their conduct in the future to the applicable law and regulatory requirements.[274] The Hearing Panel believes that this conduct displays disregard for compliance responsibilities, and the Sanction Guidelines indicate that an

[272] Sanction Guidelines, at p. 2, General Principle 2; Sanction Guidelines, at p. 6, Principal Consideration 1.

[273] Hearing Tr. (Morris) 76-83; CX-33, CX-36 – CX-37.

[274] Hearing Tr. (Morris) 168-79; CX-293 – CX-303. Respondent produced some of the requested material in response to the staff's multiple requests. Hearing Tr. (discussion by counsel) 180-82, Hearing Tr. (Morris) 322-27. However, he produced no more than a handful of his personal emails, and they were not produced until the hearing.

attempt to hinder a FINRA investigation by concealing information may be an aggravating factor when considering sanctions.[275]

Third, Respondents disregarded a clear, express instruction by the D.C. Securities Regulator to cease and desist offering the securities. Ahmed excused this action by saying he disputed the appropriateness of the instruction. In other words, Respondents took the position that they would not obey a regulatory instruction if they disagreed with it. There could be no more clear demonstration of disregard for regulatory authority. Respondents continued to engage in the misconduct of selling unregistered securities without an appropriate exemption even after having been told by another regulator to stop. The Sanction Guidelines indicate that such a failure to comply with another regulator's instruction may be an aggravating factor for purposes of sanctions.[276]

Fourth, the Hearing Panel has found that Ahmed's testimony in this proceeding was not credible. That a regulated person would make statements in a disciplinary proceeding under oath that appear to be distortions of the facts, if not pure fabrications, destroys any confidence one might have that he could conform his conduct in the future to the applicable laws and regulations.

(2) Aggravating Factors

In determining the sanctions appropriate here, the Hearing Panel also considers aggravating factors relating to the violations. Those aggravating factors weigh in favor of stringent sanctions. Respondents engaged in numerous acts of misconduct over an extended

[275] Sanction Guidelines at p. 7, Principal Consideration 12.

[276] Sanction Guidelines at p. 7, Principal Consideration 15.

period of time, four years.[277] They attempted to deceive investors,[278] and those investors were not sophisticated.[279] Investors were injured by the misconduct to a substantial degree, suffering losses of more than $13 million.[280] Respondents engaged in the misconduct intentionally and willfully.[281] Respondents' potential gain from the misconduct here was large and was absolutely necessary for the survival of Ahmed's businesses.[282]

B. Specific Considerations

The specific recommendations in the Sanctions Guidelines for securities fraud and sales of unregistered securities confirm that expulsion and a bar are appropriate sanctions here.

(1) Securities Fraud Violation

The Sanction Guidelines set forth a range of sanctions for misconduct involving misrepresentations or omissions of material fact. If the misconduct is intentional or reckless, as it is here, an individual may be suspended in any or all capacities, and a firm may be suspended with respect to any or all activities or functions, for anywhere between ten business days and two years. In egregious cases, it may be appropriate to bar an individual and expel a firm.[283]

The Hearing Panel has found that this is an egregious case. Accordingly, it is appropriate to bar Ahmed and expel his Firm.

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[277] Sanction Guidelines at p. 6, Principal Considerations 8 and 9.

[278] Sanction Guidelines at p. 6, Principal Consideration 10.

[279] Sanction Guidelines at p. 7, Principal Consideration 19.

[280] Sanction Guidelines at p. 6, Principal Consideration 11.

[281] Sanction Guidelines at p. 7, Principal Consideration 13.

[282] Sanction Guidelines at p. 7, Principal Consideration 17.

[283] Sanction Guidelines at p. 88.

(2) Unregistered Securities Violation

The Sanction Guidelines relating to sales of unregistered securities provide for stringent sanctions in egregious cases like this one. An individual may be suspended in any or all capacities for up to two years or barred completely. A firm may be suspended with respect to any or all activities or functions for up to thirty business days or until procedural deficiencies are remedied. Adjudicators may impose a fine of $2,500 to $50,000 or require disgorgement.[284]

Where a respondent attempted to comply with an exemption from the registration requirement, it may be mitigating.[285] Respondents here may believe that this mitigating factor applies to them because they filed with the SEC a form asserting that the "safe harbor" under SEC Rule 505 applied to them. In light of the repeated assertion in the offering documents that another, different exemption applied to the offering of Parent Company notes, and in light of the clear inapplicability of either exemption, the Hearing Panel declines to consider the SEC filing as a mitigating factor. Rather, the Hearing Panel concludes that Respondents misled investors regarding the exempt status of the offering – and did so recklessly (at a minimum) or (more likely) knowingly.

C. Restitution

The Sanction Guidelines authorize adjudicators to order restitution when an identifiable person has suffered a quantifiable loss proximately caused by a respondent's misconduct. The Sanction Guidelines direct adjudicators to calculate orders of restitution based on the actual amount of the loss sustained by a person, as demonstrated by the evidence.[286]

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[284] Sanction Guidelines at p. 24 and n.1.

[285] Sanctions Guidelines at p. 24.

[286] Sanction Guidelines at p. 4, General Principle 5.

In this case, Enforcement calculated the total amount of restitution due to each defrauded investor. It introduced into evidence a summary chart reflecting the calculation for each investor, along with backup documentation for the calculations. If a single investor made multiple investments, then each investment was shown in the backup documentation separately. The total amount of restitution, including pre-judgment interest, is $13,706,288.28.[287] The Hearing Panel concludes that this entire loss was proximately caused by Respondents' misconduct.

X. ORDER

For the violations found as charged in the First Cause of Action (securities fraud in willful violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and FINRA Rules 2020 and 2010), Respondent Success Trade is expelled from FINRA and Respondent Ahmed is barred from association with any FINRA member firm in any capacity. They are also jointly and severally ordered to pay restitution in a total amount of $13,706,288.28, to be distributed to investors in accordance with the attached Restitution Addendum.

For the violations found as charged in the Second Cause of Action (selling unregistered securities that were not exempt from registration in contravention of Section 5 of the Securities Act in violation of FINRA Rule 2010), it would be appropriate to suspend Respondent Success Trade from FINRA membership for one year, suspend Respondent Ahmed from association with

[287] CX-2; Hearing Tr. (Morris) 396-401, 494-96. The calculations were made on the basis of the principal invested by each investor, minus any principal and interest payments that the investor received on the investment. Prejudgment interest was figured from the initial date of the investment, with the interest rate changing as the applicable IRS rate changed during the period. Prejudgment interest is included in the amount of restitution calculated for each investor. CX-2.

A Restitution Addendum is attached to this Decision, based on the record evidence of investor losses. The Restitution Addendum lists each individual investor, identified by initials to protect the investor's privacy. For each investor, the Restitution Addendum shows the total amount of restitution to be paid to that investor. The investors are fully identified in a confidential Restitution Addendum, which is served only on the parties.

any FINRA member firm in any capacity for one year, and order Respondents to pay restitution and costs. However, these sanctions are not imposed in light of the sanctions ordered in connection with the First Cause of Action.

If this decision becomes FINRA's final disciplinary action, the expulsion and bar will take effect immediately, and the restitution shall be due in full on September 11, 2014.[288]

In addition, Respondent is ordered to pay the costs of the hearing in the amount of $12,221.52, which includes a $750 administrative fee and the cost of the transcript.[289] The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

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Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

Copies to:

Success Trade Securities, Inc. (via first-class mail and overnight courier)
Fuad Ahmed (via first-class mail and electronic mail)
William C. Saacke, Esq. (via first-class and electronic mail)
Jennifer L. Crawford, Esq. (via first-class and electronic mail)
Samuel L. Israel, Esq. (via electronic mail)
Michael A. Gross, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)

[288] Ahmed shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. If an investor cannot be located, unpaid restitution owed to such investor shall be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the state of the investor's last known address. Such proof shall be submitted by email to EnforcementNotice@FINRA.org. This proof shall be provided to FINRA no later than October 31, 2014.

[289] The Hearing Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.