

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KENNETH BROWNLEE
(CRD No. 4534181),

Respondent.

Disciplinary Proceeding
No. 2013036217601

Hearing Officer–CC

HEARING PANEL DECISION

August 6, 2015

Respondent violated FINRA Rules 2010 and 8210 and NASD Rules 2310 and 3040 by recommending unsuitable investments to four customers, engaging in private securities transactions for compensation without notice to and approval from his member firm, providing false information to his firm, falsely answering FINRA requests for information, and failing to appear twice for on-the-record testimony. For this misconduct, Respondent is barred.

Appearances

Jonathan Golomb, Esq., and Edwin Aradi, Esq., Rockville, Maryland, representing FINRA’s Department of Enforcement.

B. Thassanee Gutter-Parker, Esq., Grayson, Georgia, representing Kenneth Brownlee.

I. Introduction

Between October 2009 and June 2010, Respondent Kenneth Brownlee (“Brownlee”) recommended that four of his Allstate Financial Services, LLC (“Allstate Financial”) customers invest in Capital City Corporation (“CCC”). Brownlee did not fully understand the CCC investments and had no reasonable basis to determine that these securities were suitable for customers. The investments were not approved by Allstate Financial, and Brownlee did not receive the firm’s advance approval to sell the investments. Unbeknownst to Brownlee, CCC was a fraudulent Ponzi scheme, and his customers lost their money.

Brownlee engaged in other misconduct at Allstate Financial. He inaccurately completed Allstate Financial’s annual compliance questionnaires by falsely denying that he had engaged in

private securities transactions for compensation. He also falsely denied that he had used a private email account for securities-related correspondence and failed to disclose that he had obtained a power of attorney from two Allstate Financial customers. Additionally, Brownlee provided false responses to FINRA Rule 8210 requests related to his involvement in sales of CCC investments and his receipt of referral fees related to the sales, and he failed twice to appear for FINRA Rule 8210 on-the-record testimony.

FINRA's Department of Enforcement ("Enforcement") filed the Complaint on October 30, 2014. On March 9, 2015, Enforcement filed an Amended Complaint alleging that Brownlee's misconduct violated FINRA Rules 2010 and 8210 and NASD Rules 2310 and 3040.¹ Brownlee filed an Answer on December 22, 2014, generally denying that he engaged in misconduct.² Brownlee is not currently associated with a FINRA member firm.³

II. Findings of Fact

A. Brownlee's Career at Allstate Financial

In May 2002, Brownlee was associated with Allstate Financial.⁴ Allstate Financial terminated Brownlee's association on March 7, 2013.⁵ Allstate Financial reported in Brownlee's Form U5 Uniform Termination Notice for Securities Industry Registration ("Form U5") that the firm discharged Brownlee because of allegations that he had sold unauthorized investment products and had engaged in undisclosed outside business activity.⁶ Thereafter, Enforcement commenced an investigation that led to the filing of the Complaint.

Brownlee testified that, as an Exclusive Financial Specialist at Allstate Financial, he partnered with Allstate agency owners to provide their insurance clients with financial services and products.⁷ Brownlee described himself as a top producer at Allstate Financial.⁸ He stated that he achieved significant recognition, and Allstate Financial awarded him several top prizes.⁹

¹ In the Amended Complaint, Enforcement revised the allegations in cause three related to Brownlee's false answers on Allstate Financial's compliance questionnaires.

² Brownlee did not amend the Answer after Enforcement amended the Complaint.

³ Transcript of April 14-15, 2015 hearing ("Tr.") 359-360.

⁴ Complainant's Exhibit ("CX")-1 at 4. While associated with Allstate Financial, Brownlee was registered as an investment company and variable contracts products representative. CX-1 at 3.

⁵ Amended Complaint ("Compl.") ¶ 18; Answer ("Ans.") ¶ 18.

⁶ CX-1 at 3.

⁷ Tr. 257-258.

⁸ Tr. 259.

⁹ Tr. 260-261.

B. CCC and Its Affiliated Entities

CCC identified itself as a socially-conscious, minority-owned professional management and holding company.¹⁰ CCC claimed in its public filings that it invested in a variety of areas including technology, biofuels, commercial laundry and retail services, and that it was committed to creating economic opportunities for underserved populations. In a public filing, CCC described its mission.

[CCC] is committed to creating positive change and self-sufficiency through “Socially-Conscious Investing That Empowers Communities.” These initiatives range from development and production of biofuels, to affordable homes for working-class families, to funding and acquisition of local businesses that support community jobs.¹¹

Ephren Taylor, II (“Taylor”) was CCC’s chief executive officer.¹² Taylor and CCC’s chief financial officer, Wendy Connor (“W. Connor”), operated CCC as a Ponzi scheme, using investor funds to pay their own personal expenses and earnings to earlier investors.¹³ Unbeknownst to investors, by 2010, only a small portion of funds that CCC received were used to fund new investments.¹⁴ As part of the Ponzi scheme, Taylor, W. Connor, and other CCC employees touted two types of investments—promissory notes and sweepstakes machines.¹⁵ The promissory notes bore interest rates of 12% to 20%, and investors were told that their funds would be used to purchase and support small businesses and low-income housing.¹⁶

The sweepstakes machines were computers located in Internet cafes and loaded with games that allowed players to win cash prizes.¹⁷ W. Connor and her husband, Dwayne Connor (“D. Connor”), ran the sweepstakes program at CCC.¹⁸ D. Connor also owned and operated SweepsVend, LLC (“SweepsVend”), an affiliate of CCC that managed the sweepstakes machines.¹⁹

For each investor in the sweepstakes program, CCC created a limited liability company or “LLC” named “Infinite Acquisitions” plus a number, such as “Infinite Acquisitions 107,

¹⁰ CX-2 at 47-48; CX-3 at 52.

¹¹ CX-2 at 47; CX-3 at 52.

¹² March 13, 2015 Stipulations (“Stip.”) ¶ 1.

¹³ Stip. ¶ 2; CX-4; CX-5; CX-6; CX-7.

¹⁴ Stip. ¶ 2.

¹⁵ Tr. 38-39; CX-4 at 3.

¹⁶ Tr. 38-39; CX-4 at 3.

¹⁷ Tr. 38-39; CX-4 at 3.

¹⁸ Tr. 38-39.

¹⁹ Tr. 39-40.

LLC.”²⁰ Each investor’s Infinite Acquisitions LLC purchased a set number of sweepstakes machines. Each LLC executed an operating agreement and a management agreement. The agreements stated that the sweepstakes machines would be managed and operated solely by SweepsVend.²¹ The individual investor’s role was passive. Each Infinite Acquisitions LLC granted SweepsVend the authority to take all necessary and proper action to run the sweepstakes machine business.²² All LLC profits and losses, which were generated from operation of the sweepstakes machines, were to be allocated to LLC members according to their ownership percentage.²³ As compensation, SweepsVend received 10% of each LLC’s profits plus a \$2,500 fixed fee.²⁴ Brownlee’s sales pitch to his Allstate Financial customers described the investments as promissory notes, not interests in Infinite Acquisitions LLCs. The customers, however, actually purchased Infinite Acquisitions LLC interests.

At the time of Brownlee’s sales of CCC to Allstate Financial’s customers, CCC’s two most recent public filings with the Securities and Exchange Commission (“SEC”) reported significant financial problems. On September 17, 2009, CCC filed a Quarterly Report on Form 10Q (“Form 10Q”) for the quarter ending March 31, 2009.²⁵ CCC reported a negative \$2.8 million net worth and significant debt.²⁶ CCC also reported a net loss of \$1.1 million.²⁷ CCC’s March 31, 2009 Form 10Q stated that the company would continue to be dependent on its ability to obtain additional debt or equity financing to accomplish its business strategy and to ultimately achieve profitable operations, and that substantial doubt existed as to the company’s ability to continue as a going concern.²⁸

On March 24, 2010, CCC filed a Form 10Q with the SEC for the quarter ending September 30, 2009.²⁹ CCC’s net worth had declined to negative \$5.4 million.³⁰ CCC reported that it had incurred close to \$2 million of additional debt.³¹ CCC also reported a net loss of \$2.1 million for the three months ending September 30, 2009, and \$4.6 million for the nine months ending September 30, 2009.³² CCC’s September 30, 2009 Form 10Q stated that the company

²⁰ Tr. 40, 217-218.

²¹ Tr. 39-40, 217-218; CX-17 at 2-3, 6-10; CX-20 at 2-3, 6-10; CX-23 at 2-3, 6-10.

²² Tr. 39-40; CX-17 at 2; CX-20 at 2; CX-23 at 2.

²³ CX-17 at 3; CX-20 at 3; CX-23 at 3.

²⁴ Tr. 39-40; CX-17 at 7; CX-20 at 7; CX-23 at 7.

²⁵ CX-2 at 1-2. CCC filed its March 31, 2009 Form 10Q six months late. Tr. 42.

²⁶ Tr. 42-43; CX-2 at 5. CCC reported total assets of \$3.8 million and total liabilities of \$6.5 million. CX-2 at 5.

²⁷ Tr. 43; CX-2 at 9.

²⁸ Tr. 43-44; CX-2 at 26.

²⁹ CX-3 at 1-2. CCC filed its September 30, 2009 Form 10Q six months late. Tr. 44. Enforcement case manager WV testified that she obtained CCC’s quarterly filings from the SEC’s publicly available website. Tr. 44.

³⁰ Tr. 44-45; CX-3 at 5. CCC reported total assets of \$3 million and total liabilities of \$8.5 million. CX-3 at 5.

³¹ Tr. 45; CX-3 at 5.

³² Tr. 45; CX-3 at 7.

would continue to be dependent on its ability to obtain additional debt or equity financing to accomplish its business strategy and to ultimately achieve profitable operations, and that substantial doubt existed as to the company's ability to continue as a going concern.³³

In April 2012, the SEC filed an injunctive action against CCC, Taylor, and W. Connor, alleging fraud and other misconduct related to CCC investments.³⁴ Taylor and W. Connor entered into agreed partial judgments, and the court entered a final judgment by default as to CCC, ordering CCC to pay \$12 million as disgorgement.³⁵ In June 2014, the U.S. Attorney for the Northern District of Georgia obtained an indictment against Taylor and W. Connor for conspiracy to commit fraud, mail fraud, wire fraud, and money laundering in connection with the CCC sweepstakes program.³⁶ Taylor pled guilty to conspiracy to commit fraud, and W. Connor pled guilty to interstate transportation of money taken by fraud.³⁷ Taylor was sentenced to 19 years in prison, and W. Connor was sentenced to five years in prison.³⁸

C. Brownlee's Investigation into CCC

Brownlee met Taylor in early 2009 when Taylor made a presentation to approximately 800 people at Brownlee's church.³⁹ Brownlee was not present when Taylor addressed the congregation, but Brownlee's former wife was present, and she suggested that Brownlee meet Taylor.⁴⁰ Brownlee's pastor invited Brownlee, Brownlee's then wife, and others to have dinner with Taylor, D. Connor, W. Connor, and other individuals affiliated with CCC.⁴¹ Several months later, Taylor attended a book signing at Brownlee's church and pitched CCC to the congregation.⁴² Brownlee also heard Taylor speak at a convention in North Carolina.⁴³ Brownlee had a 20-minute meeting with Taylor and other individuals from CCC sometime around July 2009.⁴⁴ At that meeting, they discussed the possibility of Brownlee's referring some

³³ Tr. 45; CX-3 at 23.

³⁴ CX-8.

³⁵ Tr. 50-51; Stip. ¶ 8; CX-9; CX-10; CX-11.

³⁶ Stip. ¶ 9; CX-4.

³⁷ Stip. ¶ 9; CX-5; CX-6.

³⁸ Tr. 51.

³⁹ Tr. 283; Stip. ¶ 3.

⁴⁰ Tr. 283.

⁴¹ Stip. ¶ 3.

⁴² Stip. ¶ 4. Taylor wrote two books on how to succeed in business and appeared on news and talk shows to discuss his success. Respondent's Exhibit ("RX")-3; RX-4; RX-5; RX-7. He portrayed himself as a self-made multi-millionaire and the country's youngest African-American Chief Executive Officer ("CEO") of a publicly-traded company. *Id.* He also claimed to have been the son of a preacher, and often appealed to church congregations to invest in his community-minded, Christian-based company. *Id.*

⁴³ Stip. ¶ 4.

⁴⁴ Stip. ¶ 4.

of his high-asset clients to CCC as potential investors.⁴⁵ Thereafter, D. Connor became Brownlee's main contact at CCC.⁴⁶

Brownlee testified that he conducted his own investigation of CCC. He checked the SEC's website for complaints against CCC, checked with the North Carolina Better Business Bureau and the North Carolina Secretary of State, read at least one of Taylor's books, talked with ministers at congregations where Taylor had spoken, researched articles about Taylor and CCC on the Internet, and talked with colleagues.⁴⁷ Brownlee did not research CCC's origins or corporate history.⁴⁸ Brownlee found articles on the Internet that spoke highly of Taylor as an individual and stated that he made many important contributions to the African-American community.⁴⁹ Brownlee believed that the complimentary articles were written by independent and highly regarded news sources, and therefore relied on their contents.⁵⁰

D. Connor provided forms for Brownlee and his clients to complete to facilitate the clients' investments in CCC.⁵¹ D. Connor instructed Brownlee to list himself as the sales representative responsible for the CCC sales.⁵² D. Connor also advised Brownlee that CCC had a business relationship with American Pension Service ("APS"), a custodian for self-directed Individual Retirement Accounts ("IRAs").⁵³ Brownlee completed APS forms for some of his customers to ensure that they invested in CCC through a self-directed IRA held at APS.⁵⁴

Brownlee testified that he never spoke with D. Connor or Taylor about receiving compensation for referring clients to CCC.⁵⁵ Brownlee stated that he was interested in CCC because it was a minority-owned business with a community spirit, and he wanted to support

⁴⁵ Tr. 294.

⁴⁶ Tr. 220.

⁴⁷ Tr. 287-292; Stip. ¶ 4.

⁴⁸ Tr. 295, 298. For example, one of the articles that Brownlee read on the Internet states that CCC was founded in 1984. RX-12. Based on representations in other articles that Brownlee purportedly reviewed, Taylor's age in 1984 would have been less than one year old. Tr. 299; RX-12; RX-13. Brownlee did not investigate this discrepancy.

⁴⁹ Tr. 302-304; RX-12 through RX-20.

⁵⁰ Tr. 297-299, 302-307. The articles touted Taylor as a history-maker, the youngest African-American CEO of a public company, a multi-millionaire, and an individual who launched his first successful company at the age of 12. RX-12 through RX-20. Brownlee, however, did not understand that the sources for some of the articles were CCC's own investor relations department. For example, Brownlee testified that it did not occur to him that a "Market Wire" article on CNN.com, in which the contact information for the article was CCC's investor relation's department, may have been based on CCC's own press release. Tr. 297-299. Rather, he believed that a CNN journalist researched and wrote the article. Tr. 297-299.

⁵¹ Tr. 220.

⁵² Tr. 220.

⁵³ Tr. 219-220.

⁵⁴ Tr. 41, 219-222.

⁵⁵ Tr. 286.

CCC's goal of improving underserved communities.⁵⁶ It also was important to Brownlee that CCC was Christian-based, and he noted that, like Taylor, he too was a preacher's son.⁵⁷ Brownlee received five referral fee checks from CCC or its related entity, Clean Sweeps Holding Group, LLC ("Clean Sweeps").⁵⁸ Brownlee received referral fee checks totaling \$12,692 from CCC and Clean Sweeps.⁵⁹ Brownlee identified these funds as referral fees that he received from D. Connor, although Taylor appears to have signed at least four of the checks.⁶⁰ Four of the payments are directly tied to Brownlee's Allstate Financial customers' investments.⁶¹

D. Brownlee's Four Customers who Purchased CCC Securities

Customer AD opened her account with Brownlee at Allstate Financial in November 2006.⁶² At the time, she was approximately 30 years old and employed as a software engineer.⁶³ Her estimated annual income was between \$50,000 and \$100,000, her estimated net worth was between \$100,000 and \$500,000, and her estimated liquid net worth was \$85,000.⁶⁴ She identified her investment time horizon as long-term (more than ten years) and her risk tolerance as moderate.⁶⁵ She had less than five years' experience investing in mutual funds and stocks, and her main goal was wealth accumulation.⁶⁶ Her secondary goals were to save for retirement, major purchases, and emergencies.⁶⁷ Her two primary objectives were speculation and growth.⁶⁸ AD originally invested approximately \$42,000 in two mutual funds.⁶⁹

⁵⁶ Tr. 286-287.

⁵⁷ Tr. 287.

⁵⁸ CX-36. Brownlee did not know, when he recommended CCC to his customers, that Clean Sweeps was a CCC-affiliated entity. Tr. 216-217. He first learned of the existence of Clean Sweeps from information that CCC gave to one of his clients in the summer of 2010. Tr. 217. Brownlee acknowledged that he received and deposited a referral fee check from Clean Sweeps as early as April 2010, but stated that he did not notice the name on the check. Tr. 217; CX-36.

⁵⁹ CX-36. Brownlee admitted that he received the checks and endorsed or deposited them into his bank account. Tr. 239-240.

⁶⁰ Tr. 239.

⁶¹ Tr. 82.

⁶² Tr. 243; CX-12 at 4.

⁶³ CX-12 at 1.

⁶⁴ CX-12 at 2.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ CX-12 at 4.

Customer ZH opened her account with Brownlee at Allstate Financial in April 2006.⁷⁰ At the time, she was approximately 62 years old and retired.⁷¹ Her estimated annual income was between \$25,000 and \$50,000, her estimated net worth was between \$100,000 and \$500,000, and her estimated liquid net worth was \$195,000.⁷² She identified her investment time horizon as long-term (more than ten years) and her risk tolerance as moderately aggressive.⁷³ She had investment experience only with bonds and mutual funds, and her main goal was to generate funds to cover her health care.⁷⁴ Her secondary goals were to save for her retirement, provide for her heirs, accumulate tax-deferred wealth, and save for emergencies.⁷⁵ Her two primary objectives were preservation of capital and speculation.⁷⁶ At Brownlee's suggestion, ZH transferred funds from a thrift savings plan into a variable annuity, two brokerage accounts, and 529 plans for her grandchildren.⁷⁷ Initially, she invested approximately \$26,000.⁷⁸

Customer MJ opened her account with Brownlee at Allstate Financial in February 2004.⁷⁹ At the time, she was approximately 64 years old and retired.⁸⁰ Her estimated annual income was between \$25,000 and \$50,000, her estimated net worth was between \$100,000 and \$500,000, and her estimated liquid net worth was \$60,000.⁸¹ She identified her investment time horizon as intermediate (six to ten years) and her risk tolerance as moderate.⁸² She had investment experience with mutual funds and stocks, and her main goal was to earn money for her retirement.⁸³ Her secondary goals were to cover her health care costs and provide for her heirs.⁸⁴ Her primary objectives were income, capital appreciation, and tax advantage.⁸⁵ Brownlee testified that he placed two-thirds of her money in a fixed annuity and one-third in a variable annuity.⁸⁶

⁷⁰ Tr. 269; CX-15 at 4.

⁷¹ CX-15 at 1.

⁷² CX-15 at 2.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Tr. 270-271.

⁷⁸ CX-15 at 2.

⁷⁹ CX-18 at 3.

⁸⁰ CX-18 at 1.

⁸¹ CX-18 at 2.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Tr. 265.

Customer JP opened her account with Brownlee at Allstate Financial in October 2005.⁸⁷ At the time, she was approximately 40 years old and employed as a planning consultant.⁸⁸ Her estimated annual income was between \$50,000 and \$100,000, her estimated net worth was between \$100,000 and \$500,000, and her estimated liquid net worth was \$30,000.⁸⁹ She identified her investment time horizon as long-term (more than ten years) and her risk tolerance as moderately conservative.⁹⁰ She had no investment experience other than mutual funds and her main goal was retirement.⁹¹ Her secondary goals were to accumulate tax-deferred wealth and save for emergencies.⁹² Her two primary objectives were capital appreciation and preservation of capital.⁹³ Brownlee testified that JP had an IRA funded by a fixed annuity.⁹⁴ When she became his client, he moved her money into a variable annuity.⁹⁵

E. The Customers' CCC-Related Investments

Brownlee understood and told customers AD, ZH, MJ, and JP that, by investing in CCC, each customer's funds would be invested in real estate and would help fund Christian-based, socially-conscious business ventures in minority communities.⁹⁶ Brownlee believed and told his customers that CCC's community-related investments included housing, gas stations, dry cleaners, laundromats, and other small businesses.⁹⁷ Brownlee represented that the customers' funds would be pooled with other investors' funds and invested in multiple business and real estate ventures that would be selected and managed by CCC or its affiliated entities.⁹⁸ Based on Brownlee's recommendations, AD, ZH, MJ, and JP invested in CCC.⁹⁹ Although the customers believed that Brownlee accurately explained their CCC investments, in truth, each invested in sweepstakes machines through separate Infinite Acquisitions LLCs.¹⁰⁰

⁸⁷ Tr. 267; CX-21 at 4.

⁸⁸ CX-21 at 1.

⁸⁹ CX-21 at 2.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Tr. 267.

⁹⁵ Tr. 267.

⁹⁶ Stip. ¶ 5.

⁹⁷ Stip. ¶ 5.

⁹⁸ Stip. ¶ 6.

⁹⁹ Stip. ¶ 1; Tr. 210-213, 228, 262-263, 265-269, 271-273.

¹⁰⁰ CX-14; CX-16; CX-17; CX-19; CX-20; CX-22; CX-23.

Brownlee testified that he recommended AD's CCC investment because she anticipated a change in employment status in 2009, and he suggested that she diversify her investments.¹⁰¹ AD invested \$45,000 with CCC in October 2009.¹⁰² On October 26, 2009, AD wrote a check for \$45,000 from her brokerage account to CCC.¹⁰³ Brownlee took custody of AD's check and forwarded it to CCC.¹⁰⁴ CCC held AD's money until May 2010, when it formed Infinite Acquisitions 116 LLC and invested AD's money.¹⁰⁵ Brownlee completed much of the paperwork to facilitate AD's investment in Infinite Acquisitions 116 LLC, including parts of a December 17, 2009 CCC client investor pre-application form.¹⁰⁶ The form stated that AD's annual income was \$70,000, and listed her estimated liquid assets as \$25,000 in savings accounts, \$20,000 in a checking account, and \$90,000 in a 401K.¹⁰⁷ It listed her investment "preferences" as cash flow and wealth accumulation.¹⁰⁸ Brownlee testified that he "assumes" that AD lost her entire investment and that he has talked with her about the loss.¹⁰⁹

Brownlee testified that ZH's variable annuity was not performing as she had hoped.¹¹⁰ As a result, he recommended that she place her funds in a self-directed IRA with APS and ultimately invest in CCC.¹¹¹ ZH invested \$101,000 with CCC in March 2010.¹¹² Brownlee completed much of the paperwork to facilitate ZH's investment, including parts of a February 2010 CCC client investor pre-application form.¹¹³ The form stated that ZH was retired, and listed her estimated liquid assets as \$3,500 in a savings account, \$3,500 in a checking account, and \$99,741 in an IRA.¹¹⁴ In February 2010, Brownlee helped ZH complete an APS IRA

¹⁰¹ Tr. 262-263.

¹⁰² Tr. 51-52.

¹⁰³ CX-14.

¹⁰⁴ Tr. 225.

¹⁰⁵ Tr. 58; CX-14 at 2-3.

¹⁰⁶ Tr. 223-224; CX-47 at 117-118.

¹⁰⁷ CX-13. Brownlee testified that he believed that AD had an additional \$25,000 not accounted for on the form, bringing her approximate liquid asset total to \$150,000. Tr. 224.

¹⁰⁸ CX-13.

¹⁰⁹ Tr. 225-226; CX-47 at 122. AD did not testify. Enforcement case manager WV testified that she spoke with AD and that AD did not believe that her investment was lost. Tr. 59. WV's testimony in this regard is hearsay. While hearsay is admissible in FINRA's proceedings, we have not relied on this testimony to support our findings in this case.

¹¹⁰ Tr. 271-273.

¹¹¹ Tr. 273.

¹¹² Tr. 51-52.

¹¹³ Tr. 226-231; CX-47 at 82-84.

¹¹⁴ CX-16 at 11. Brownlee is listed as ZH's sales representative on this form. CX-16 at 11. Brownlee testified that ZH told him that she had additional cash on hand and two other brokerage accounts worth approximately \$10,000 each. Tr. 227-228, 280-281.

adoption agreement to open a self-directed IRA.¹¹⁵ ZH funded her APS account from the liquidation of a Lincoln Benefit Life annuity.¹¹⁶ Brownlee testified that D. Connor told him that ZH had to grant a limited power of attorney (“POA”) to APS so it could transfer her funds to CCC.¹¹⁷ Brownlee completed portions of the paperwork for the limited POA.¹¹⁸ Brownlee also helped ZH complete a buy direction letter that instructed APS to buy an interest in Infinite Acquisitions 107 LLC on behalf of ZH.¹¹⁹ ZH lost her entire CCC investment.¹²⁰

ZH submitted a written complaint to APS, the North Carolina Department of Insurance, the North Carolina Banking Commission, the U.S. Attorney’s Office in North Carolina, Allstate Financial, and the SEC.¹²¹ Allstate Financial conducted an investigation of ZH’s allegations and asked Brownlee if he had recommended CCC to any other Allstate Financial customers.¹²² This led Allstate Financial to investigate Brownlee’s sales to AD, MJ, and JP. In November 2013, Allstate Financial entered into a settlement agreement with ZH whereby Allstate Financial established an annuity for ZH equal to the approximate amount of her losses.¹²³

Brownlee testified that, in early 2010, MJ held two-thirds of her money in a fixed annuity and one-third in a variable annuity.¹²⁴ At the time, she lived with her daughter, who developed medical problems.¹²⁵ MJ began withdrawing money from her variable annuity to help fund her daughter’s medical treatment, and MJ’s annuity withdrawals resulted in penalties, fees and taxes.¹²⁶ Brownlee recommended that, rather than keeping her money in a variable annuity and incurring penalties, she invest with CCC through a self-directed IRA.¹²⁷ MJ invested \$115,500 with CCC in April 2010.¹²⁸ Brownlee completed much of the paperwork to facilitate MJ’s investment, including parts of a February 2010 CCC client investor pre-application form.¹²⁹ The

¹¹⁵ Tr. 228; CX-16 at 1-7; CX-47 at 73-75. Brownlee listed his personal email address as the customer’s email address. CX-16 at 1.

¹¹⁶ Tr. 64-65; CX-16 at 4-6. ZH incurred a \$6,300 surrender fee. Tr. 65.

¹¹⁷ Tr. 231.

¹¹⁸ Tr. 228; CX-16 at 7; CX-47 at 95-96.

¹¹⁹ CX-16 at 8; CX-47 at 78-79. ZH’s Infinite Acquisitions 107 LLC’s operating agreement identified approximately 27 sweepstakes machines in which ZH supposedly invested. CX-17 at 5.

¹²⁰ Tr. 231.

¹²¹ Tr. 125-127; CX-24. ZH also verbally complained to Allstate Financial. Tr. 120.

¹²² Tr. 132-136; CX-27.

¹²³ Tr. 133; CX-28.

¹²⁴ Tr. 265.

¹²⁵ Tr. 265.

¹²⁶ Tr. 265.

¹²⁷ Tr. 266-267.

¹²⁸ Tr. 51-52.

¹²⁹ Tr. 232-233; CX-47 at 103-105.

form stated that MJ was retired, and listed her estimated liquid assets as \$1,000 in a savings account, \$1,500 in a checking account, and \$122,651 in an IRA.¹³⁰ In February 2010, Brownlee helped MJ complete an APS IRA adoption agreement to open a self-directed IRA.¹³¹ MJ funded her APS account from the liquidation of two Lincoln Benefit Life annuities.¹³² Brownlee helped MJ complete the forms necessary to transfer MJ's funds to the APS account.¹³³ Brownlee also helped MJ complete a buy direction letter that instructed APS to buy an interest in Infinite Acquisitions 108 LLC for MJ.¹³⁴ MJ lost her entire CCC investment.¹³⁵

Allstate Financial conducted an investigation of Brownlee's CCC-related sales to MJ.¹³⁶ In July 2013, Allstate Financial entered into a settlement agreement with MJ whereby Allstate Financial established an annuity for MJ equal to the approximate amount of her losses.¹³⁷

Brownlee testified that in late 2009 and early 2010, he and JP met to discuss her underperforming variable annuity.¹³⁸ Brownlee suggested that she diversify her portfolio and ultimately recommended that she invest in CCC through a self-directed IRA.¹³⁹ JP invested \$28,000 with CCC in June 2010.¹⁴⁰ Brownlee completed much of the paperwork to facilitate JP's investment, including parts of an April 2010 CCC client investor pre-application form.¹⁴¹ The form stated that JP earned an annual salary of \$80,000, and it listed her estimated liquid assets as \$6,000 in a savings account, \$2,000 in a checking account, and \$30,000 in an IRA.¹⁴² In April 2010, Brownlee helped JP complete APS documents to open a self-directed IRA.¹⁴³ JP funded her APS account from the liquidation of a Lincoln Benefit Life policy.¹⁴⁴ Brownlee also

¹³⁰ CX-19 at 1. Brownlee is listed as MJ's representative on this form. CX-19 at 1. Brownlee testified that MJ told him that she had additional cash on hand, but he did not know how much. Tr. 232.

¹³¹ Tr. 228; CX-19 at 5-10; CX-47 at 108-109. Brownlee listed his personal email address as the customer's email address. CX-19 at 5.

¹³² Tr. 73-74; CX-19 at 4, 8, 11.

¹³³ CX-47 at 105-106, 109-110.

¹³⁴ Tr. 72-74; CX-19 at 2-3; CX-47 at 105-107. The buy direction letter that MJ signed listed Brownlee's personal email address as the account holder's email address. CX-19 at 2. MJ's Infinite Acquisitions 108 LLC's operating agreement identified approximately 31 sweepstakes machines in which MJ supposedly invested. CX-20 at 5.

¹³⁵ Tr. 234.

¹³⁶ Tr. 131, 133-134.

¹³⁷ Tr. 133-134; CX-29.

¹³⁸ Tr. 268.

¹³⁹ Tr. 268-269.

¹⁴⁰ Tr. 51-52.

¹⁴¹ Tr. 232-233; CX-47 at 52-55.

¹⁴² CX-22 at 1. Brownlee is listed as JP's representative on this form. CX-22 at 1.

¹⁴³ Tr. 228, 234-235; CX-22 at 5-9; CX-47 at 54-67.

¹⁴⁴ Tr. 78; CX-22 at 6-8; CX-47 at 64-66.

helped JP complete a buy direction letter that instructed APS to buy an interest in Infinite Acquisitions 120 LLC for JP.¹⁴⁵ JP lost her entire CCC investment.¹⁴⁶

Allstate Financial conducted an investigation of Brownlee's sales of CCC-related investments to JP.¹⁴⁷ In August 2013, Allstate Financial entered into a settlement agreement with JP whereby Allstate Financial established an annuity for JP equal to the approximate amount of her losses.¹⁴⁸

Late in 2010, Brownlee learned that AD's, ZH's, MJ's, and JP's investments with CCC involved ownership interests in sweepstakes machines operated by Clean Sweeps, not real estate and community-based investments, as he had originally told his customers.¹⁴⁹ When Brownlee learned that CCC was a Ponzi scheme and that his customers possibly had lost their investments, he attempted to help his clients obtain information from APS and CCC. In September 2010, he obtained a limited POA from MJ.¹⁵⁰ In November 2010, he obtained a limited POA from ZH.¹⁵¹ Brownlee testified that he did not ordinarily obtain POAs from clients.¹⁵² He stated that he did so under these circumstances because APS refused to provide him with information about ZH's and MJ's account losses without POAs.¹⁵³

III. Conclusions of Law

A. FINRA Properly Exercised Jurisdiction Over Brownlee

Brownlee was first associated with Allstate Financial in May 2002.¹⁵⁴ He remained associated with Allstate Financial and was registered as an Investment Companies and Variable Contracts Representative until March 1, 2013, when Allstate Financial discharged Brownlee for cause.¹⁵⁵ Brownlee is no longer registered or associated with a FINRA member firm.¹⁵⁶ He remains subject to FINRA's jurisdiction because Enforcement filed the Complaint on October

¹⁴⁵ Tr. 234-235; CX-22 at 2-3; CX-47 at 57-60. The buy direction letter that JP signed lists Brownlee's personal email as the account holder's email address. CX-22 at 2. JP's Infinite Acquisitions 120 LLC's operating agreement identified approximately five sweepstakes machines in which JP supposedly invested. CX-23 at 5.

¹⁴⁶ Tr. 235.

¹⁴⁷ Tr. 135.

¹⁴⁸ Tr. 134-135; CX-30.

¹⁴⁹ Stip. ¶ 7.

¹⁵⁰ CX-40 at 2.

¹⁵¹ CX-40 at 1.

¹⁵² Tr. 323-324.

¹⁵³ Tr. 323-324.

¹⁵⁴ CX-1 at 4.

¹⁵⁵ CX-1 at 3.

¹⁵⁶ Ans. ¶ 19.

30, 2014, which is within two years of the effective date of the termination of Brownlee's registration on March 7, 2013. The Complaint and Amended Complaint allege that Brownlee engaged in misconduct while he was registered with FINRA and associated with FINRA member firm Allstate Financial. The Complaint and Amended Complaint also allege that Brownlee provided false information in response to a FINRA information request and failed to appear for on-the-record testimony during the two-year period following the termination of his registration.¹⁵⁷

B. The Infinite Acquisitions LLC Interests Were Securities

The Infinite Acquisitions LLC interests that AD, ZH, MJ, and JP purchased are securities under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). The LLC interests are investment contracts under the seminal Supreme Court case, *SEC v. Howey Co.*, 328 U.S. 293 (1946). In *Howey*, the Supreme Court defined investment contract to mean a transaction or scheme whereby a person invests money in a common enterprise and is led to expect profits solely from the efforts of others.¹⁵⁸ Relying upon *Howey*, FINRA's National Adjudicatory Council ("NAC") has held that there is an investment contract and, consequently a security, where there is (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits, (4) to come solely from the efforts of others.¹⁵⁹ Applying these factors, we conclude that the Infinite Acquisitions LLC interests were securities.

AD, ZH, MJ, and JP invested money, either by writing a personal check, as AD did, or by withdrawing funds from Lincoln Benefit Life annuities or an insurance policy, as ZH, JP, and MJ did.¹⁶⁰ They also invested in a common enterprise with the expectation of earning profits solely from the efforts of others. Brownlee represented to AD, ZH, MJ, and JP that their funds would be pooled with the funds of other CCC-related investors and invested by CCC or its affiliates in business ventures selected and managed by or under the auspices of CCC.¹⁶¹ Brownlee and his customers intended for the customers to be passive investors and to play no active role in running the business ventures into which their funds were invested.¹⁶² He and his investors also expected that the investments would generate returns greater than the returns generated by their current

¹⁵⁷ See Art. V, Sec. 4 of FINRA's By-Laws (stating that a person whose association with a member firm has terminated shall continue to be subject to the filing of a complaint based on conduct that occurred prior to the termination or upon the person's failure, while subject to FINRA's jurisdiction, to provide information requested pursuant to FINRA's Rules if the complaint is filed within two years after the effective date of termination of registration or the date upon which the person ceased to be associated with a member firm).

¹⁵⁸ *Howey*, 328 U.S. at 298-299.

¹⁵⁹ *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *15 (NAC July 18, 2014), *SEC appeal docketed*, No. 316022 (Aug. 19, 2014); *Dep't of Enforcement v. M. Paul DeVietien*, No. 2006007544401, 2010 FINRA Discip. LEXIS 45, at *16 (NAC Dec. 28, 2010).

¹⁶⁰ CX-14; CX-16; CX-19; CX-22.

¹⁶¹ Tr. 214; Stip. ¶ 6.

¹⁶² Tr. 214-215; Stip. ¶ 6.

investments.¹⁶³ Indeed, Brownlee testified that his reason for recommending that the four investors move their money into CCC-related investments was to attempt to increase their returns and improve their financial situations.¹⁶⁴

The documents that CCC gave to the customers also support our finding that the Infinite Acquisition LLC interests were securities. The LLC paperwork clearly delegates to SweepsVend all management authority including, but not limited to, controlling financial accounts and conducting the LLC's business.¹⁶⁵ Furthermore, the LLC operating agreement indicates that investors will be allocated profits and losses according to their percentage interests in the LLC and will share the profits with SweepsVend.¹⁶⁶ The LLC's management agreement states that SweepsVend will earn 10 percent of the LLC's net operating income and the investor or investors will receive the remaining 90 percent.¹⁶⁷

We find, based both on Brownlee's representations to his customers about their investments and the paperwork documenting the investments, that the products Brownlee sold were securities.¹⁶⁸ "Furthermore, if the investment is marketed by a securities broker, as was the case here, it is more likely to fall under the securities laws."¹⁶⁹

C. Cause One—Brownlee Recommended Securities to Four Customers without Having a Reasonable Basis to Support the Recommendation

NASD Rule 2310, the "Suitability Rule," stated that an associated person must have a reasonable basis to believe that a recommended transaction or strategy involving a security or securities is suitable for the customer based on the facts, if any, disclosed by the customer as to

¹⁶³ Tr. 214-216.

¹⁶⁴ Tr. 262-263, 271-273, 265-269; see *M. Paul DeVietien*, 2010 FINRA Discip. LEXIS 45, at *18-19 (holding that the pooling of investor funds together with a pro rata distribution of returns from the performance of an LLC satisfied horizontal commonality test); *Dep't of Enforcement v. Vastano*, No. C3A020013, 2003 NASD Discip. LEXIS 41, at *12-13 (NAC Dec. 5, 2003) (finding horizontal commonality where investor funds were pooled together to work towards generating a profit).

¹⁶⁵ Tr. 214-215; CX-17 at 2-3, 6-10; CX-20 at 2-3, 6-10; CX-23 at 2-3, 6-10.

¹⁶⁶ Tr. 214-215; CX-17 at 7; CX-20 at 7; CX-23 at 7.

¹⁶⁷ Tr. 214-215; CX-17 at 7; CX-20 at 7; CX-23 at 7.

¹⁶⁸ See *U.S. v. Leonard*, 529 F.3d 83, 89-90 (2d Cir. June 11, 2008) (upholding lower court determination that LLC units were securities based on the passive nature of investors' involvement, their lack of control over operations and management, and the investors' lack of opportunity to negotiate terms of the LLC agreements); *SEC v. Parkersburg Wireless LLC*, 991 F. Supp. 6, 7-9 (D.D.C. Dec. 10, 1997) (finding that LLC interest was a security where investors' success was linked to the success or failure of the corporation and the profits were derived from an entity other than the investors); *Frank Leonesio*, 48 S.E.C. 544, 547 (1986) (finding that an investment was a security where the fortunes of the investor were interwoven with and dependent upon the efforts and success of the promoter); *M. Paul DeVietien*, 2010 FINRA Discip. LEXIS 45, at *14-26 (applying investment contract test and determining that nonvoting membership interests in an LLC were securities).

¹⁶⁹ *Dist. Business Conduct Comm. v. Kunz*, No. C3A960029, 1999 NASD Discip. LEXIS 20, at *24 n.8 (July 7, 1999).

his other security holdings and financial situation and needs.¹⁷⁰ Interpretive Material 2310-02 stated that fair dealing is a fundamental responsibility for and implicit in all associated person relationships with customers. Thus, recommendations violate the Suitability Rule if (1) the representative's understanding of the investment is insufficient to establish a reasonable basis for making a recommendation; (2) the representative inadequately assesses whether the recommendation is suitable for the specific investor; or (3) the level of trading recommended by the representative is excessive.¹⁷¹

Here, Brownlee recommended the CCC-related investments to AD, ZH, MJ, and JP. He recommended CCC as a vehicle for investing in real estate and Christian-based, socially conscious business ventures in minority communities.¹⁷² He specifically referred AD, ZH, MJ, and JP to D. Connor as potential investors.¹⁷³ Brownlee introduced these customers to CCC and, based on his representations and with his assistance, they invested in Infinite Acquisitions LLCs.¹⁷⁴

“[I]t is self-evident that a broker cannot determine whether a recommendation is suitable for a specific customer unless the broker understands the potential risks and rewards inherent in that recommendation.”¹⁷⁵ Brownlee contends that he conducted his own form of “due diligence” before recommending CCC. He checked the SEC’s website for complaints against CCC, checked with the North Carolina Better Business Bureau and the North Carolina Secretary of State, reviewed on the Internet previously broadcast and nationally televised interviews of Taylor, read at least one of Taylor’s books, read related articles posted on the Internet, talked

¹⁷⁰ The misconduct alleged in cause one occurred between October 2009 and June 2010. Effective July 8, 2012, FINRA Rule 2111 superseded NASD Rule 2310. See FINRA Regulatory Notice 11-02 (Jan. 2011), <http://www.finra.org/sites/default/files/NoticeDocument/p122778.pdf>.

¹⁷¹ *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *26 (May 27, 2011) (holding that FINRA’s Suitability Rule requires that a representative ensure that he or she has an “adequate and reasonable” understanding of an investment before recommending it to customers), *aff’d*, 693 F.3d 251 (1st Cir. Sept. 7, 2012); *Michael Frederick Siegel*, Exchange Act Release No. 58737, 2008 SEC LEXIS 2459, at *28 (Oct. 6, 2008) (“The suitability rule thus requires that, before making a customer-specific suitability determination, a registered representative must first have an ‘adequate and reasonable basis’ for believing that the recommendation could be suitable for at least some customers.”) (citing *Terry Wayne White*, 50 S.E.C. 211, 212 & n.4 (1990)), *aff’d as to liability and sanctions, remanded as to restitution*, 592 F.3d 147 (D.C. Cir. Jan. 12, 2010).

¹⁷² Stip. ¶¶ 1, 4, 5.

¹⁷³ Tr. 262-263, 265-269, 271-273; Stip. ¶ 4.

¹⁷⁴ Tr. 211-213. See *Michael Frederick Siegel*, 2008 SEC LEXIS 2459, at *25 (finding that registered person made a recommendation where customer was aware of investment only because representative brought it to his attention and spoke enthusiastically about it, provided the customer with information about it, and assisted the customer in making the investment); *Gordon Scott Venters* 51 S.E.C. 292, 294 (1993) (finding that registered person made a recommendation where he whetted the customer’s interest by presenting an optimistic promotional campaign); *F.J. Kaufman and Co.*, 50 S.E.C. 164, 172 (1989) (finding that registered person made a recommendation where customers had no prior experience or understanding of options investing before registered person’s participation in formulating their investment strategies).

¹⁷⁵ *F.J. Kaufman and Co.*, 50 S.E.C. 164, 168.

with ministers at congregations where Taylor had spoken, and spoke to colleagues.¹⁷⁶ Brownlee's methods, however, fell far short of what was necessary for him to understand the potential risks and rewards associated with investing in CCC.

First and foremost, Brownlee failed to ascertain CCC's financial condition by reviewing publicly available financial reports. Brownlee testified that he knew that CCC was a publicly traded company, but indicated that it never occurred to him to review CCC's public filings on the SEC's website before recommending CCC to his customers.¹⁷⁷

Second, the Internet articles that Brownlee reviewed hardly provided him with reliable information. Several of the articles were dated after the period when Brownlee sold CCC-related investments to AD, ZH, MJ, and JP.¹⁷⁸ One appears to be a promotional piece produced by CCC's investor relations department.¹⁷⁹ Others are advertisements of Taylor's scheduled speaking engagements and the promotion of him as a speaker.¹⁸⁰ Another article dated February 1, 2010, identifies "the next generation of African-American history makers," and includes Taylor as the youngest ever African-American CEO of a publicly-traded company.¹⁸¹ Although this article includes Taylor among a list of distinguished individuals, it provides no information about CCC or its subsidiaries. Similarly, a 2007 entry into the website Encyclopedia.com predominantly provides information about Taylor's upbringing and background.¹⁸² This article discusses some of CCC's more successful ventures, but it lacks sufficient information to make an informed suitability decision.¹⁸³ Brownlee also relied on a March 2009 article that appeared on Forbes' website.¹⁸⁴ Here too, the article primarily discusses Taylor's background and experience, not information that would enable an individual to assess CCC's or Infinite Acquisitions LLCs' suitability as investments.¹⁸⁵ In fact, the little information

¹⁷⁶ Tr. 287-292; Stip. ¶ 4.

¹⁷⁷ Tr. 212-213. CCC's two most recent public filings reported increasing levels of debt, net operating losses in the millions, and substantial doubt as to CCC's ability to continue as a going concern. CX-2; CX-3.

¹⁷⁸ See, e.g., RX-12 (dated October 5, 2010); RX-14 (dated June 18, 2010); RX-15 (dated July 2010); and RX-18 (announcing Taylor's appearance at a September 2010 Expo). Brownlee offered these exhibits as evidence of his due diligence. At the hearing, however, when questioned as to whether these articles post-dated AD's, ZH's, MJ's, and JP's investments, Brownlee stated that, rather than show his due diligence, these articles demonstrate that he continued to monitor CCC and Taylor on his clients' behalf even after they had invested. Tr. 307, 314-320.

¹⁷⁹ See, e.g., RX-12.

¹⁸⁰ See, e.g., RX-14; RX-16; RX-18.

¹⁸¹ RX-13.

¹⁸² RX-19.

¹⁸³ RX-19.

¹⁸⁴ Tr. 304-306; RX-17.

¹⁸⁵ RX-17.

in the article that directly pertained to CCC was negative information about CCC's dire financial filings.¹⁸⁶

The television broadcasts upon which Brownlee relied were equally unavailing as a source of reliable information about CCC. They provided little more than human interest pieces on Taylor's childhood accomplishments and young adulthood experiences.¹⁸⁷ They did not provide any in-depth or financial analysis of CCC-related investments or Infinite Acquisitions LLCs.

Additionally, before recommending CCC to customers, Brownlee did not investigate the specific businesses in which CCC claimed to invest, and he did not determine who made the investment decisions for CCC or think to talk to this person.¹⁸⁸ Brownlee claims to have discussed CCC with colleagues, but he did not discuss it with compliance personnel at Allstate Financial, even though they were readily available to him.¹⁸⁹ Brownlee accepted Taylor's promises at face value and did little, if any, investigation into the true nature of CCC's offerings. As such, he had no reasonable basis to determine the suitability of the CCC-related investments for AD, ZH, MJ, and JP.

The Hearing Panel finds that Brownlee violated FINRA Rule 2010 and NASD Rule 2310, as alleged in cause one of the Amended Complaint.¹⁹⁰

D. Causes Two and Three—Brownlee Engaged in Undisclosed Private Securities Transactions for Compensation and Provided False Information to Allstate Financial

NASD Rule 3040 states that an associated person shall not participate in any manner in a private securities transaction unless the associated person has provided prior written notice to the firm, describing in detail the proposed transaction and the person's proposed role in the transaction, and stating whether he will receive selling compensation. Brownlee admits that he never provided Allstate Financial with written notice disclosing his role in selling CCC-related investments and of his expected receipt of compensation for the sales.¹⁹¹ He also admits that CCC was not an approved investment offered through Allstate Financial.¹⁹² Brownlee

¹⁸⁶ RX-17 at 2.

¹⁸⁷ See RX-3; RX-4; RX-5; RX-7.

¹⁸⁸ Tr. 216.

¹⁸⁹ Tr. 215-216.

¹⁹⁰ "A violation of Rule 2310 constitutes a violation of Rule 2110 (now FINRA Rule 2010), which requires registered representatives to 'observe high standards of commercial honor and just and equitable principles of trade.'" *Cody*, 2011 SEC LEXIS 1862, at *26.

¹⁹¹ Compl. ¶¶ 7, 9; Ans. ¶¶ 7, 9.

¹⁹² Compl. ¶ 6; Ans. ¶ 6.

nonetheless introduced Allstate Financial customers to CCC-related investments and recommended that they invest.

“Conduct Rule 3040 is broad in scope and is not limited merely to solicitation of an investment.”¹⁹³ Participation in any manner is sufficient to trigger a Rule 3040 violation.¹⁹⁴ Here, there is ample evidence to support our determination that Brownlee engaged in private securities transactions.

Brownlee’s participation was significant. Brownlee recommended that AD, ZH, MJ, and JP replace their existing investments to try to generate greater returns.¹⁹⁵ Brownlee assisted the customers in opening self-directed IRAs through which they invested in CCC-related LLCs. He partially completed the necessary paperwork, he placed his own email address on some of the forms, and he facilitated the transfers of their funds to CCC.¹⁹⁶ “[T]he reach of [Rule 3040] is very broad, encompassing the activities of ‘an associated person who not only makes a sale but who participates in any manner in the transaction.’”¹⁹⁷ Brownlee participated in – and was largely responsible for – AD’s, ZH’s, MJ’s and JP’s Infinite Acquisitions LLC purchases.

Additionally, Brownlee received a fee for referring customers to CCC.¹⁹⁸ Brownlee argues that the funds he received from CCC were referral fees, not “selling compensation,” as referenced in Rule 3040, or “compensation,” as referenced in Allstate Financial’s disclosure forms.¹⁹⁹ We disagree. Rule 3040(e)(2) defines selling compensation to mean any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, though not limited to, commissions, finder’s fees, securities or rights to acquire securities, rights of participation in proceeds, or expense reimbursements. Rule 3040 broadly defines the term “selling compensation,” and adjudicators

¹⁹³ *Joseph Abbondante*, 58 S.E.C. 1082, 1098-1099 (2006), *aff’d*, 209 Fed. Appx. 6, 2006 U.S. App. LEXIS 30982 (2d Cir. Dec. 12, 2006).

¹⁹⁴ *See Mark H. Love*, 57 S.E.C. 315, 321 (2004) (finding that culpability under Rule 3040 may arise when a registered person refers a customer to an investment and facilitates the mechanics of the transaction).

¹⁹⁵ Tr. 211-213, 262-263, 265-269, 271-273.

¹⁹⁶ Tr. 223-235; CX-47 at 52-67, 78-79, 103-110. In AD’s case, he actually took possession of her personal check and gave it to CCC. Tr. 225. For ZH, MJ, and JP, Brownlee completed paperwork to accomplish a transfer of their funds to CCC. Tr. 228, 234-235; CX-47 at 54-67, 78-79, 95-96, 105-106, 109-110.

¹⁹⁷ *Stephen J. Gluckman*, 54 S.E.C. 175, 183 (1999).

¹⁹⁸ Tr. 239-240; CX-36. The checks to Brownlee related directly to three of the customers’ purchases. An April 2, 2010 check to Brownlee is approximately five percent of the amount that customer ZH invested with CCC two weeks earlier. CX-36 at 4; CX-16. An April 16, 2010 check to Brownlee is approximately 4.7 percent of the amount that customer MJ invested with CCC one week prior. CX-36 at 3; CX-19. Two checks to Brownlee dated June 16 and June 24, 2010, are approximately five percent of the amount that customer JP invested with CCC two weeks earlier. CX-36 at 1-2; CX-22. On two occasions, D. Connor received a check from Clean Sweeps for the same amount and on the same day as Brownlee, suggesting that Brownlee and D. Connor may have split a ten percent referral fee. CX-37.

¹⁹⁹ Tr. 239.

have interpreted it consistently to include referral fees.²⁰⁰ Under Rule 3040(c), because Brownlee received compensation, he should not have proceeded without written approval from the firm and Allstate Financial should have recorded the transactions on its books and records and supervised Brownlee's actions. None of this occurred.

Brownlee also misled Allstate Financial by affirmatively concealing his selling away. Brownlee answered falsely in an August 2010 Allstate Financial compliance questionnaire. Notwithstanding Brownlee's receipt of four checks from CCC shortly after three customers invested, on August 28, 2010, Brownlee completed an Allstate Financial annual compliance questionnaire in which he falsely represented that he had not received unapproved outside compensation.²⁰¹ He also falsely stated on the questionnaire that he had not engaged in outside securities transactions.²⁰²

Brownlee misrepresented other information to Allstate Financial as well. In February 2010, Brownlee used his personal email to provide JP with a CCC client investor pre-application form and information regarding self-directed IRAs.²⁰³ When Brownlee completed the August 2010 Allstate Financial compliance questionnaire, he falsely represented that he had forwarded all securities-related correspondence to Allstate Financial, even though he had not given Allstate Financial his personal email to JP.²⁰⁴ On August 9, 2011, Brownlee completed another Allstate Financial compliance questionnaire in which he falsely denied that he had provided fiduciary services when, in fact, he had obtained a POA from ZH in November 2010 and one from MJ in September 2010.²⁰⁵

It is a securities professional's basic duty to respond truthfully and accurately to a firm's requests for information.²⁰⁶ The failure to do so is inconsistent with just and equitable principles of trade, particularly where, as here, the purpose of the information request is to ensure

²⁰⁰ See *Abbondante*, 58 S.E.C. 1082, 1100 (finding that applicant's receipt of a "referral check" constituted receipt of selling compensation); *John P. Goldsworthy*, 55 S.E.C. 818, 834 (2002) (stating that NASD, now FINRA, has defined "selling compensation" broadly, intending for it to include any item of value); *Gluckman*, 54 S.E.C. 175, 183 (holding that the definition of selling compensation under Rule 3040 includes finder's fees and referral fees); *Gilbert M. Hair*, 51 S.E.C. 374, 378 (1993) (finding that a self-described "finder" who received a referral fee violated Art. III, Section 40 (precursor to Rule 3040) by not disclosing activity to member firm).

²⁰¹ Tr. 140, 147; CX-35 at 5.

²⁰² Tr. 140, 147; CX-35 at 2.

²⁰³ Tr. 235-237; CX-38.

²⁰⁴ Tr. 235-237; CX-35 at 4.

²⁰⁵ Tr. 238-239; CX-39 at 5-6; CX-40.

²⁰⁶ See *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *22 (Aug. 22, 2008) (finding that applicant who submitted falsified applications to authorize increased fees to member firm violated NASD Rule 2110 (now FINRA Rule 2010)); *James A. Goetz*, 53 S.E.C. 472, 477-478 (1998) (holding that registered representative who provided his firm with falsified information regarding charitable giving violated Article III, Section 1 of NASD Rules (now FINRA Rule 2010)).

compliance with Rule 3040 or another FINRA rule.²⁰⁷ The Hearing Panel finds that Brownlee violated FINRA Rule 2010 and NASD Rule 3040, as alleged in cause two of the Amended Complaint,²⁰⁸ and FINRA Rule 2010 as alleged in cause three of the Amended Complaint.

E. Cause Four—Brownlee Falsely Responded to FINRA Rule 8210 Requests for Information

On March 27, 2013, FINRA Office of Fraud Detection and Market Intelligence sent Brownlee a Rule 8210 request for information and documents that asked Brownlee if he sold unregistered investment products held by CCC to any Allstate Financial customers, whether he sought Allstate Financial’s approval of the sales, and whether he received compensation for the sales.²⁰⁹ By letter dated April 9, 2013, Brownlee stated in response that he “did not sell the investment product” and “was not compensated for recommending the product.”²¹⁰

On January 22, 2014, Enforcement sent Brownlee a second FINRA Rule 8210 request for information and documents asking for, among other items, a description of “any monies [Brownlee] received” from CCC or a list of its affiliated entities, including Clean Sweeps.²¹¹ In a response dated February 5, 2014, Brownlee stated that he did not receive “any monies” from any of the entities listed in FINRA’s request.²¹² Brownlee’s answer was false in that he received, endorsed, and deposited four checks from Clean Sweeps and deposited one check from CCC between February 2010 and June 2010.²¹³ Brownlee contends that FINRA asked about the money he received four years after his actual receipt of the money and that he “had forgotten” that he had received referral fees.²¹⁴

FINRA Rule 8210 requires associated persons to provide documents and information to FINRA in connection with a FINRA investigation. “Because FINRA does not have subpoena power, it ‘must rely on [FINRA] Rule 8210 to obtain information . . . necessary to carry out its

²⁰⁷ See *Dep’t of Enforcement v. Xagoraris*, Nos. 20080127674 & 20080133768, 2014 FINRA Discip. LEXIS 34, at *25 (NAC Aug. 1, 2014); *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *45 (Feb. 10, 2012) (“We have stated that it is a basic duty of all securities professionals to respond truthfully and accurately to their firm’s requests for information and that the failure to do so can be inconsistent with just and equitable principles of trade, especially when the purpose of the information request is to help ensure that the associated person is in compliance with applicable laws, rules, and policies.”).

²⁰⁸ See *Abbondante*, 58 S.E.C. 1082, 1103 (holding that it is well settled that a violation of Rule 3040 constitutes a violation of NASD Rule 2110 (now FINRA Rule 2010)).

²⁰⁹ Tr. 97; CX-31.

²¹⁰ Tr. 98-99; CX-32 at 2-4.

²¹¹ Tr. 99-100; CX-33 at 2.

²¹² Tr. 99-100, 356; CX-34 at 1.

²¹³ Tr. 239-240; CX-36.

²¹⁴ Tr. 356, 375-376.

investigations and fulfill its regulatory mandate.”²¹⁵ Given the role Rule 8210 plays in FINRA’s investigatory process, non-compliance by providing false or misleading information in response to a Rule 8210 request violates Rule 8210.²¹⁶ The Hearing Panel finds that Brownlee violated FINRA Rules 8210 and 2010, as alleged in cause four of the Amended Complaint.²¹⁷

F. The Hearing Panel Granted Partial Summary Judgment as to Cause Five—Brownlee Failed Twice to Appear for On-the-Record Testimony

By Order dated April 2, 2015, the Hearing Panel granted Enforcement’s motion for summary disposition as to the allegations in cause five of the Amended Complaint that Brownlee twice failed to appear and provide on-the-record testimony. The Hearing Panel found that Brownlee admitted that he had received the requests that he appear and testify on two different dates and that he had failed to appear in both instances. The Hearing Panel held that Brownlee’s only defense, that Enforcement should not be allowed to reschedule on-the-record testimony and should it do so, a registered person can then choose not to appear, is not supported by the myriad decisions involving Rule 8210.²¹⁸ The Hearing Panel found that there were no genuine disputed issues with regard to any material facts and that Enforcement was entitled to summary disposition as a matter of law. The Hearing Panel accordingly granted Enforcement’s motion for summary disposition as to cause five.

IV. Sanctions

A. Cause One—Unsuitable Recommendations

FINRA’s Sanction Guidelines for unsuitable recommendations recommend a fine of \$2,500 to \$110,000.²¹⁹ The Sanction Guidelines further recommend suspending an individual respondent for a period of 10 business days to two years or, where aggravating factors

²¹⁵ *Dep’t of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *15 (NAC Mar. 9, 2015), citing *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009).

²¹⁶ See *Harari*, 2015 FINRA LEXIS 2, at *15 (holding that it is well settled that it is a violation of Rule 8210 to provide false or misleading information in response to a Rule 8210 request for information; *Geoffrey Ortiz*, 2008 SEC LEXIS 2401, at *23 (“An associated person who provides false or misleading information to NASD in the course of an investigation violates NASD Rule 8210.”)).

²¹⁷ “An associated person violates FINRA Rule 2010 when he or she violates any other FINRA rule, including FINRA Rule 8210.” *Harari*, 2015 FINRA Discip. LEXIS 2, at *16.

²¹⁸ See *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *13 (Nov. 8, 2007) (finding that Rule 8210 does not require FINRA to explain its reasons for making an information request or justify the relevance of any particular request); *Ashton Noshir Gowadia*, 53 S.E.C. 786, 790 (1998) (finding that, once respondent knew that FINRA was seeking information from him, he had a responsibility to provide the information, even if he believed he already had answered sufficiently).

²¹⁹ *FINRA Sanction Guidelines* at 94 (2015), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

predominate, barring the individual.²²⁰ Here, many factors aggravate Brownlee's violations. Thus, the Hearing Panel bars Brownlee for the suitability violations.

The Sanction Guidelines for unsuitable recommendations do not include violation-specific principal considerations. We have, however, considered the principal considerations applicable to all sanctions determinations.²²¹ Brownlee's misconduct is aggravated by his efforts to conceal his recommendations of CCC-related investments from Allstate Financial.²²² CCC and its related investments, such as Infinite Acquisitions LLCs, were not investments approved by Allstate Financial. Brownlee not only failed to disclose his participation in these investments, he affirmatively misled his firm on an annual compliance questionnaire as to his participation in outside securities sales and his receipt of compensation for those sales. By doing so, he deprived his customers of the benefit of supervision and oversight by Allstate Financial's compliance department. Furthermore, these individuals had been Brownlee's customers for four to six years, and each had limited investment experience. They were not sophisticated investors, and he led them astray by recommending investments that even he did not understand. We consider these factors aggravating.²²³

Furthermore, we find aggravating the fact that Brownlee's misconduct resulted in his own financial gain.²²⁴ Brownlee earned a total of \$12,692 as compensation for his referrals to CCC. Brownlee's actions also directly resulted in significant financial losses to his customers.²²⁵ He acknowledged that ZH, MJ, and JP lost their entire investments. And, although the record is unclear as to AD, Brownlee testified that he believed that she lost her entire investment as well.²²⁶ The customers' significant losses aggravate Brownlee's misconduct.

The Hearing Panel finds that Brownlee's suitability violations were reckless.²²⁷ This is aggravating. Brownlee relied on Taylor's self-promotion and talk-show presentations rather than

²²⁰ *Guidelines* at 94.

²²¹ *See Guidelines* at 6-7.

²²² *Id.* at 6 (Principal Consideration No. 10).

²²³ *Id.* at 7 (Principal Consideration No. 19).

²²⁴ *Id.* at 7 (Principal Consideration No. 17).

²²⁵ *Id.* at 6 (Principal Consideration No. 11).

²²⁶ Enforcement sought an award of restitution to customer AD, the one customer with whom Allstate Financial did not enter into a settlement agreement to recompense her losses. FINRA's Sanction Guidelines provide that restitution may be ordered to remediate misconduct when an "identifiable person . . . has suffered a quantifiable loss proximately caused by a respondent's misconduct." *Guidelines* at 4. The benchmark for measuring restitution is thus the amount of actual harm or injury a wrongdoer has caused to his victim. *Id.*, see also *Michael Frederick Siegel*, 2008 SEC LEXIS 2459, at *49-50. Both Enforcement case manager WV and an Allstate Financial investigator testified that they spoke with AD as part of their investigations, and that AD stated that she had not lost her investment. Tr. 59, 185. Unlike the other customers, AD did not file a complaint or claim with Allstate Financial. Tr. 185. Brownlee testified that he assumed that AD lost her investment, but the record is otherwise devoid of specific evidence to support this claim. Tr. 226. In light of the conflicting evidence regarding the nature and extent of AD's losses, the Hearing Panel declines to order restitution.

²²⁷ *Guidelines* at 7 (Principal Consideration No. 13).

concrete facts (such as publicly available financial filings) to assess investments that he recommended to unsophisticated investors. Brownlee did little investigation before recommending that customers invest significant portions of their savings into CCC. And that which he did perform was inadequate. The CCC investments that he described to his customers were not remotely what the customers ultimately purchased. Instead, he led them to invest in sweepstakes machines about which the customers knew nothing and which Brownlee did not understand.

In light of the aggravating factors that predominate in this case, we bar Brownlee from associating with any firm in any capacity for his violations under cause one.

B. Causes Two and Three—Private Securities Transactions and Providing False Information to Allstate Financial

FINRA's Sanction Guidelines for private securities transactions recommend a fine of \$5,000 to \$73,000 plus disgorgement of ill-gotten gains.²²⁸ The Sanction Guidelines also recommend, based on the dollar amount of the private securities transactions, suspensions of varying lengths.²²⁹ Here, Brownlee's customers' investments totaled approximately \$289,500. The Sanction Guidelines therefore recommend as a starting point a suspension of three to six months.²³⁰ The Sanction Guidelines state that the presence of aggravating or mitigating factors may increase or decrease the sanctions.²³¹

The Sanction Guidelines do not specifically address the violation of providing false information to a member firm. Given that these violations stem in part from Brownlee's failure to provide Allstate Financial with notice of his selling away activities, we impose a unitary sanction for Brownlee's violations under causes two and three.²³²

We find numerous aggravating factors and no mitigating factors present with respect to causes two and three. We conclude that a fine, an order to disgorge profits, and an 18-month suspension in all capacities would be appropriate. In light of the bars that we have imposed for Brownlee's other misconduct, however, we do not impose a fine or order disgorgement.²³³ Thus, for Brownlee's violations under causes two and three, we suspend Brownlee from association with any member firm in any capacity for 18 months.

²²⁸ *Guidelines* at 14-15.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² See *Dep't of Enforcement v. Xagoraris*, 2014 FINRA Discip. LEXIS 34, at *32 (imposing unitary sanction for respondent's outside business activities and misrepresentations to member firm).

²³³ See *Guidelines* at 10 (stating that an adjudicator may choose not to impose monetary sanctions in cases in which a bar is imposed).

The Sanction Guidelines for private securities transactions provide several principal considerations, two of which aggravate Brownlee's misconduct in this matter. First, the dollar value of Brownlee's sales is significant at \$289,500, particularly when viewed against the amount of liquid assets of the individuals to whom he sold CCC investments.²³⁴ Second, Brownlee testified that he discussed CCC with customers other than the four who purchased the investments, but only the four were interested.²³⁵ We conclude that Brownlee would have been willing to sell to those additional customers if they had been willing to invest.²³⁶ Thus, we reject as mitigating that Brownlee sold only to four individuals.

Next, we consider the ongoing nature of Brownlee's misconduct aggravating.²³⁷ The selling away occurred over a period of approximately eight months. It was not a one-time occurrence, and Brownlee was forced to stop because news of Taylor's fraud became common knowledge. Also aggravating is the fact that CCC, Taylor, and Infinite Acquisitions LLCs ultimately were exposed as fraudulent, and Brownlee's customers lost their investments.²³⁸

It is also aggravating that Brownlee sold to customers of Allstate Financial.²³⁹ The customers knew him as their Allstate Financial representative, and may have believed that the CCC investments were supported by Allstate Financial. Brownlee's affirmative misrepresentations to Allstate Financial as alleged in cause three also aggravate his selling away violation. By concealing his actions, he deprived customers AD, ZH, MJ, and JP of important firm oversight that may have prevented their losses.²⁴⁰ We also find aggravating that Brownlee's efforts to conceal went further. By including his own personal email address on CCC-related documentation, instead of the customers' personal email addresses, he was able to monitor the investments and temper any negative information that the customers may have received.²⁴¹

In all, we find numerous aggravating and no mitigating factors. We find that the appropriate sanctions for Brownlee's misconduct under causes two and three are an 18-month suspension, a fine, and an order to disgorge \$12,692, the total amount of Brownlee's referral

²³⁴ *Id.* at 14 (Principal Consideration No. 1). AD's CCC client investor pre-application listed liquid assets of approximately \$135,000. CX-13 at 1. ZH's CCC client investor pre-application listed liquid assets of approximately \$107,000. CX-16 at 11. MJ's CCC client investor pre-application listed liquid assets of approximately \$125,000. CX-19 at 1. JP's CCC client investor pre-application listed liquid assets of approximately \$38,000. CX-22 at 1.

²³⁵ Tr. 212.

²³⁶ *Guidelines* at 14 (Principal Consideration No. 2).

²³⁷ *Id.* at 14 (Principal Consideration No. 3).

²³⁸ *Id.* at 14-15 (Principal Consideration Nos. 4, 7).

²³⁹ *Id.* at 14-15 (Principal Consideration Nos. 6, 8).

²⁴⁰ *Id.* at 15 (Principal Consideration No. 13).

²⁴¹ *Id.* at 6 (Principal Consideration No. 10). We do not find credible Brownlee's claim that each customer requested that he list his personal email address as the customer's email address.

fees. In light of the bars that we have imposed for Brownlee's other misconduct, however, we do not impose the fine and disgorgement order.

C. Causes Four and Five—False Rule 8210 Responses and Failure to Appear Twice for On-the-Record Interviews

For each of Brownlee's Rule 8210 violations, we independently bar Brownlee. Thus, we bar Brownlee for falsely responding to Rule 8210 requests under cause four and separately bar him for his failure twice to appear for on-the-record testimony under cause five.

FINRA's Sanction Guidelines for failing to respond or failing to respond truthfully state that a bar should be standard for a failure to respond.²⁴² The Sanction Guidelines specifically state that, "when a respondent does not respond until after FINRA files a complaint, Adjudicators should apply the presumption that the failure constitutes a complete failure to respond."²⁴³ In this matter, Brownlee appeared to provide on-the-record testimony only after Enforcement filed the Complaint and the Hearing Officer compelled him to do so. Brownlee never changed his false written responses to FINRA's Rule 8210 requests.

Numerous aggravating factors exist. The importance of the information that Enforcement sought, both during on-the-record testimony and in written Rule 8210 requests cannot be overstated. Enforcement case manager WV testified that the most important information Enforcement obtained in the course of its investigation was Brownlee's side of the story from his Rule 8210 responses and testimony.²⁴⁴ Brownlee concealed this information from Enforcement first by falsely answering written Rule 8210 requests for information and second by refusing to appear to provide on-the-record testimony until after Enforcement filed the Complaint and the Hearing Officer compelled his appearance.²⁴⁵ We find Brownlee's actions in this regard aggravating.²⁴⁶

Brownlee's failure to respond truthfully to FINRA's Rule 8210 requests and his unwillingness to appear for two scheduled on-the-record sessions frustrated FINRA's investigation and curtailed FINRA's ability to hear his explanations, verify his claims, and timely complete its investigation.²⁴⁷ Brownlee claims that he should be given credit for his

²⁴² *Guidelines* at 33.

²⁴³ *Id.* at 33, n. 1.

²⁴⁴ Tr. 108-109.

²⁴⁵ Brownlee testified that he falsely denied receiving compensation related to his CCC sales because he "simply forgot" about the money. Tr. 356, 375-376. The Hearing Panel did not find Brownlee's claim credible and notes that Brownlee demonstrated a consistent pattern of concealing the CCC sales. He answered falsely on Allstate Financial's compliance questionnaire and responded falsely to two FINRA Rule 8210 requests for information and documents.

²⁴⁶ *Guidelines* at 33 (Principal Consideration No. 1, Failure to Respond or to Respond Truthfully), 6 (Principal Consideration No. 10).

²⁴⁷ See *Elliott M. Hershberg*, 58 S.E.C. 1184, 1190 (2006) ("Failure to comply is a serious violation justifying stringent sanctions because it subverts NASD's ability to execute its regulatory functions."); *Michael David Borth*,

appearance at FINRA's offices and willingness to provide testimony on January 15, 2014.²⁴⁸ We disagree. As indicated in the Hearing Panel's April 2, 2015 Summary Disposition Order, Enforcement staff had already advised Brownlee and his counsel that Enforcement was unable to proceed on that day. Brownlee's appearance when he knew that Enforcement would not proceed does not excuse or mitigate his subsequent refusals to appear.²⁴⁹

Accordingly, we impose a bar under cause four for Brownlee's false responses to FINRA Rule 8210 requests for information and a second bar under cause five for Brownlee's failure twice to appear for on-the-record testimony.

V. Order

Respondent Kenneth Brownlee is barred from associating with any member firm in any capacity for recommending securities investments without having reasonable grounds for believing that the investments were suitable, as alleged in cause one of the Amended Complaint. Brownlee is barred for responding falsely to FINRA Rule 8210 requests for information and documents, as alleged in cause four of the Amended Complaint. Brownlee is barred for failing twice to appear for Rule 8210 requests for on-the-record testimony, as alleged in cause five of the Amended Complaint. Brownlee is suspended in all capacities for 18 months for participating in outside securities transactions and providing false information to his member firm, as alleged in causes two and three of the Amended Complaint. The Hearing Panel finds these violations to be egregious and deserving of a fine and disgorgement order as well. In light of the bars imposed, however, we have not imposed these additional sanctions. The bars shall become effective immediately if this decision becomes FINRA's final action in this disciplinary proceeding.²⁵⁰

Brownlee is ordered to pay the costs of the hearing in the amount of \$4229.27, which includes a \$750 administrative fee and the cost of the hearing transcript. The costs shall be

51 S.E.C. 178, 181(1992) (stating that failure to provide information fully and promptly undermines FINRA's ability to carry out its regulatory mandate); *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *79-80 (NAC July 18, 2014) (barring respondent whose "failure to provide the requested information and documents frustrated FINRA's investigation and curtailed FINRA's ability to verify his claims").

²⁴⁸ Brownlee failed to appear for scheduled on-the-record testimony on February 19, 2014, and March 4, 2014. As discussed in detail in the Hearing Panel's April 2, 2015 Summary Disposition Order, Brownlee contends that his reasons for failing to appear involve events that occurred in January 2014. On November 18, 2013, Enforcement sent a Rule 8210 request for Brownlee to appear at FINRA's Atlanta, Georgia district office and provide on-the-record testimony on January 15, 2014. On January 14, 2014, Enforcement advised Brownlee that Enforcement must reschedule Brownlee's testimony. Enforcement spoke with Respondent's counsel in the evening on January 14, 2014, but Respondent's counsel refused to provide alternate dates for Brownlee's testimony and insisted that Enforcement proceed on January 15, 2014. Brownlee and his attorney appeared at FINRA's Atlanta, Georgia district office on January 15, 2014, and Enforcement did not take Brownlee's testimony.

²⁴⁹ See *Elliott M. Hershberg*, 58 S.E.C. 1184, 1192 (upholding NASD's determination that applicant's belated offer to testify nearly six months after the initial request did not mitigate his Rule 8210 violation).

²⁵⁰ The Hearing Panel considered and rejected without discussion all other arguments by the parties.

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.

Carla Carloni
Hearing Officer
For the Hearing Panel