FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. J. MICHAEL CASAS (CRD No. 4422064), Respondent.	Disciplinary Proceeding No. 2013036799501 Hearing Officer–MAD **EXTENDED HEARING PANEL DECISION** October 2, 2015

Respondent J. Michael Casas (1) willfully violated Securities Exchange Act of 1934, Section 10(b), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010, by fraudulently selling securities issued by his company on the basis of false statements of material fact regarding the use of investor funds; (2) violated FINRA Rule 2010 by converting investor funds for his own personal use. For the above misconduct, Casas is barred from association with any FINRA member firm in any capacity and ordered to pay restitution. Casas is also ordered to pay the costs of this proceeding.

Appearances

Michael P. Manly, Esq., Kevin Rosen, Esq., Penelope Brobst Blackwell, Esq., and David B. Klafter, Esq. for the Department of Enforcement, Complainant.

Respondent J. Michael Casas, pro se.

DECISION

I. INTRODUCTION

Respondent J. Michael Casas induced two investors to invest a total of $83,000 in MCB Capital Partners, LLC ("MCBCP"), a company he owned and controlled. The purpose of the investments was to fund the development and execution of a reverse merger transaction, which ultimately was never consummated. When soliciting the investors for MCBCP during January through September 2012 (the "Relevant Period"), Casas made material misrepresentations regarding the use of the invested funds. After the investors purchased membership interests in MCBCP, Casas converted a majority of their investments to pay his personal expenses.

FINRA's Department of Enforcement filed a two-cause Complaint against Casas on October 6, 2014. One cause of the Complaint charged that Casas fraudulently misrepresented material facts regarding the use of investor funds when soliciting investors and selling membership interests in MCBCP, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010. The other cause of the Complaint alleged that Casas converted investor funds, in violation of FINRA Rule 2010.[1]

After considering the parties' evidence and arguments, the Extended Hearing Panel concludes that Enforcement proved by a preponderance of the evidence that Casas made material misrepresentations when soliciting investors and selling MCBCP membership interests, in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010. The Panel also concludes that Casas converted investor funds and thereby violated FINRA Rule 2010.

II. FINDINGS OF FACT

A. Respondent J. Michael Casas

Casas entered the securities industry in 2001.[2] He was registered with FINRA as a General Securities Representative through his association with a FINRA member firm.[3] Between July 2004 and June 2011, Casas was not in the securities industry.[4]

[1] A three-day hearing was held June 15-17, 2015, in Dallas, Texas.

[2] Complainant's Exhibit ("CX")-1, at 7.

[3] CX-1, at 7.

[4] CX-1, at 7.

In June 2011, he reentered the securities industry and became associated with FINRA member firm RiverStone Wealth Management, Inc. ("RiverStone").[5] In July 2011, he registered with FINRA as an Investment Banking Representative through RiverStone, enabling him to provide investment banking services through MCBCP.

Casas resigned from RiverStone on October 31, 2012.[6] On November 1, 2012, RiverStone filed a Uniform Termination Notice for Securities Industry Registration (Form U5).[7] That same day, RiverStone's Chief Compliance Officer ("CCO") provided a copy of the Form U5 to Casas and notified him that he would remain subject to FINRA's jurisdiction for at least two years.[8] Casas is not currently in the securities industry.

B. MCBCP

Casas formed MCBCP in October 2010.[9] Casas was MCBCP's president and manager.[10] Initially, he was the sole member of MCBCP.[11] In June 2011, BN joined MCBCP.[12] When BN joined MCBCP, Casas was still the majority owner of MCBCP.[13]

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[5] CX-1, at 7.

[6] CX-105. Prior to October 31, 2012, Casas acted as a registered representative of RiverStone as evidenced by the following facts: (1) he disclosed his association with RiverStone in emails and other documents; (2) he filled out his annual RiverStone compliance attestation; (3) he submitted to a surprise audit of his home office conducted by his RiverStone supervisor in June 2012; (4) he paid fees that RiverStone required him to pay; and (5) he stayed in regular communication with his RiverStone supervisor. *See, e.g*., CX-24; CX-25; CX-62; CX-72; CX-88. Although Casas signed the compliance attestation, he admitted that he did not read it or perform the enumerated tasks such as reviewing his FINRA registration information. Hearing Transcript ("Tr.") 123-27.

[7] CX-106.

[8] CX-106.

[9] CX-28, at 1. Casas' employer at the time required Casas to create J. Michael Casas, LLC dba MCBCP as a condition of his employment. CX-28, at 1. Casas established a checking account in the name of J. Michael Casas, LLC where his then employer deposited his paychecks. Tr. 212-15. In June 2011, Casas resigned from this employer and joined RiverStone. CX-28, at 1.

[10] Tr. 187; CX-4, at 4; CX-34, at 4.

[11] CX-28, at 1.

[12] CX-28, at 1. BN was also associated with RiverStone as an investment banker. Casas and BN also worked together at their previous employer.

[13] Tr. 147, 326, 891.

Upon joining MCBCP, BN provided a bridge loan to Casas.[14] BN loaned Casas a total of $18,000: $15,000 in June 2011, and $3,000 in December 2011.[15] According to Casas, the purpose of the loan was to enable Casas to work exclusively on behalf of MCBCP seeking investment advisory clients.[16] Casas explained that he needed the loan because he had given up his previous employment to join RiverStone and devote his time to MCBCP.[17] Although the loan was undocumented, Casas and BN agreed that any monies that MCBCP received would be first applied to pay back the temporary bridge loan from BN.[18] Specifically, BN would be repaid when (1) MCBCP generated enough income to repay the bridge loan, or (2) MCBCP received investments of a sufficient amount to repay the bridge loan.[19]

At the end of September 2011, because Casas and BN were unable to obtain any investment banking clients, they changed the business purpose of MCBCP from investment banking advisory services to an operating company seeking to acquire companies and merge them into MCBCP.[20]

Under MCBCP's revised business plan, Casas and BN performed different roles. Casas continued as MCBCP's president, manager, and majority owner. Casas had all decision-making authority for MCBCP.[21] He was responsible for: (1) soliciting and negotiating the terms of proposed transactions with acquisition targets and publicly-traded companies, (2) facilitating the legal and accounting due diligence, and (3) soliciting "seed capital" for MCBCP and the cash portion needed for the transactions.[22] He was also responsible for MCBCP's finances.[23] Casas had the only MCBCP debit card, and he wrote checks on the MCBCP bank account.[24] BN was responsible for

[14] CX-29, at 3. During FINRA's investigation, Casas stated that the loan was to MCBCP. CX-148, at 3. When Casas received the loan from BN, he was the only member of MCBCP other than BN. CX-28, at 1. At the hearing, Casas claimed that BN did not provide a loan to MCBCP. Tr. 153. Rather, Casas stated that BN simply provided cash to MCBCP so it could operate. Tr. 153. The Panel did not find Casas' testimony at the hearing to be credible.

[15] CX-9, at 3, 9; CX-29, at 3.

[16] CX-29, at 2.

[17] CX-29, at 2-3.

[18] CX-148, at 3.

[19] CX-148, at 3.

[20] CX-28, at 1.

[21] Tr. 889-91.

[22] CX-28, at 3.

[23] Tr. 889.

[24] Tr. 191, 220-29.

recordkeeping.[25] Because BN was an attorney, at times Casas utilized him as MCBCP's in-house counsel to provide advice to Casas.[26]

C. The Proposed Reverse Merger

One of the first companies that Casas identified for his proposed reverse merger[27] was SLC, a private construction company.[28] Casas proposed to merge the following companies into one entity: (1) SLC, (2) MCBCP, and (3) a publicly traded shell company. Casas identified Integrative Health Technologies, Inc. ("IHTI"), a small, development-stage medical technology company, for the publicly traded shell company. In October 2011, MCBCP entered into letters of intent with SLC and IHTI.[29]

To begin the necessary due diligence, Casas retained the services of an accounting firm and a law firm.[30] However, he did not have money to pay for the accounting and legal due diligence. He had no independent source of income, and he had no money in MCBCP's bank account.[31] Casas had spent the $15,000 he had borrowed from BN in June 2011.[32]

Casas needed approximately $200,000 in "seed capital" to pay for the accounting, legal, and operational expenses for MCBCP.[33] Casas also wanted to raise $40 million prior to closing the reverse merger transaction to capitalize the resulting entity.[34]

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[25] Tr. 359-60.

[26] Tr. 220, 355; CX-92.

[27] In a reverse merger, a private business merges into the shell company, with the shell company surviving and the former shareholders of the private business controlling the surviving entity. *See* Securities Act Release No. 8587, 70 FR 42234, 42235 (July 21, 2005).

[28] CX-28, at 1. In October 2011, Casas and BN advised their RiverStone supervisor of their plan to pursue the SLC reverse merger as principals rather than as advisors. Because of this change in their anticipated roles, they sought approval from RiverStone to engage in this activity away from the firm. CX-53. RiverStone's CCO advised Casas and BN that their participation in this transaction was approved in early November 2011. CX-55.

[29] CX-37; CX-38.

[30] CX-28, at 4; CX-148, at 2.

[31] The ending balance in the MCBCP checking account on October 31, 2011, was negative $73.33. CX-9, at 24.

[32] CX-9, at 23-24. An additional $7,500 from an unknown source was deposited into the MCBCP checking account on October 11, 2011; however, the account was overdrawn at the end of October 2011. CX-9, at 21, 24. BN loaned Casas an additional $3,000 in December 2011. CX-9, at 31.

[33] CX-28, at 4.

[34] CX-28, at 4.

To acquire the funds, Casas sought investors in MCBCP.[35] He created an MCBCP offering.[36] Pursuant to the offering, investors would receive shares in MCBCP.[37] "The shares offered through the offering [would] become freely tradable securities upon the Securities and Exchange Commission declaring the registration statement (Form S-4) effective."[38] Specifically, Casas offered eight ownership interest units in MCBCP to accredited investors for $25,000 per unit.[39]

D. Casas' Solicitation of Investor MB

Casas reached out to friends and family to find investors as he needed money to pay the accounting and legal fees associated with the due diligence for the proposed reverse merger transaction. And, although he never disclosed it, Casas also needed money to meet his monthly financial obligations, including his home mortgage, cell phone bill, and medical expenses.

Casas' brother-in-law referred Casas to MB.[40] MB was interested in the reverse merger, but he was also cautious. In December 2011, he conducted his own due diligence. First, he verified that SLC was an actual company.[41] Second, he checked FINRA's website to verify that Casas and RiverStone were registered with FINRA.[42]

Prior to investing in MCBCP, MB asked Casas to send him an email describing the terms of the investment.[43] On January 10, 2012, Casas sent MB an email to "clearly spell[] out the investment opportunity."[44] In the email, Casas represented that MCBCP was seeking to raise $150,000 in "seed capital to fund the legal, accounting and operating expenses in connection with the [SLC]/IHTI merger."[45] Casas explained that more than 85% of the invested funds would go toward the payment of accounting and legal fees, and approximately 15% would be applied to operating expenses.[46] Specifically, he stated

[35] CX-35; CX-36.

[36] CX-35, at 2.

[37] CX-35, at 2.

[38] CX-35, at 2.

[39] CX-55, at 2.

[40] CX 28, at 1; CX-42; Tr. 805.

[41] Tr. 449.

[42] Tr. 384.

[43] Tr. 159.

[44] CX-3.

[45] CX-3.

[46] CX-3.

that "[t]he seed capital will be used to fund (i) accounting fees anticipated to be $100,000, (ii) legal fees anticipated to be $30,000, and (iii) operating expenses for the balance of $20,000." Casas further advised that to raise these funds, he intended to sell six $25,000 membership units in MCBCP, each of which would represent a 1.67% ownership in his company. He stated that the anticipated return for each membership unit would be $50,000 in cash and $102,000 in stock, a total return of more than 600% of the original investment, which would be paid upon consummation of the reverse merger.[47] Casas did not disclose that he would use any of the "seed capital" to pay his personal expenses or to repay the $18,000 loan from BN.

On January 27, 2012, MB purchased membership interests in MCBCP.[48] He executed a Subscription Agreement, which Casas had prepared and signed as MCBCP's manager.[49] Pursuant to the Subscription Agreement, MB invested $50,000 in exchange for a 2.5% ownership interest in MCBCP.[50] The Subscription Agreement stated that the investment funds "will be used to fund the transactional and operational expenses of [MCBCP], to include the payment of accounting fees, legal fees, operational expenses and to provide working capital to [MCBCP]."[51] The Subscription Agreement did not disclose that the invested funds would be spent on Casas' personal expenses or the repayment of the loan from BN.

E. Casas' Use of MB's Investment for Personal Expenses

On January 30, 2012, MB wired $50,000 into MCBCP's bank account, which at the time had a balance of $2.06. Casas then immediately began using MB's investment funds for personal expenses. Casas justified these expenditures by claiming that they were either legitimate business expenses (albeit without any supporting documentation)

[47] CX-3.

[48] CX-4.

[49] CX-4, at 4. The Subscription Agreement described the membership interests as securities and noted that investors could only sell them pursuant to an exemption from the registration requirements under the federal securities laws. CX-4, at 1, 4.

[50] CX-4, at 4. In addition to his investment, MB, an experienced investor with foreign investor contacts, agreed to help raise the $40 million necessary to finance the underlying transaction. Over the following months, MB endeavored, without success, to find investors who were willing to invest in SLC.

[51] CX-4.

or were "personal expenses in lieu of salary" that were operational expenses.[52]

Enforcement showed that Casas paid many personal expenses with the funds MB invested in MCBCP.

The day after MB's investment, Casas visited a Lowe's Home Improvement store and used $364.38 of MB's investment to purchase a new water heater for his home.[53] At the hearing, Casas explained that this was a "personal expense in lieu of salary."[54] During his on-the-record ("OTR") interview, which FINRA took during its investigation, Casas testified that he considered the hot water heater purchase to be a legitimate business expense because it was important for him to have clean clothes and maintain good hygiene.[55]

> [I]f I wasn't able to show up to a meeting in proper attire, in proper hygiene, MCB Capital would not have been able to move that transaction forward. So the nexus, as was common knowledge is, any out-of-pocket expense that I needed in order to meet the obligations.[56]

As Casas explained during his OTR, "I was the operations."[57]

That same day, Casas withdrew $200 from the ATM machine.[58] He surmised that he spent the $200 on beer because "everybody bought everybody beer" in Freer, Texas, where SLC was located.[59] But he could not verify how he spent the money because he

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[52] Throughout the hearing, Casas repeatedly admitted that many of the expenses incurred in the MCBCP account were actually personal expenses. Yet, he did not report these expenditures as income on his personal income tax return to the federal government. Tr. 328; CX-20. He also did nothing to correct his tax return. Indeed, when the Internal Revenue Service ("IRS") cited Casas in September 2014 for failing to report (and pay taxes on) approximately $14,000 in income from a Mexican restaurant and unemployment compensation during 2012, Casas failed to amend his 2012 tax return to include the income he had earned from personal expenses that he had paid in lieu of taking a salary from MCBCP. CX-21. Casas was not concerned about the failure to claim the income because he said that once the IRS officials looked at the income with the expenses, they would figure out that it was a "wash." Tr. 332. Plus, Casas pointed out that "if there is ever a problem and you disclose it to the IRS, if they charge you a late fee, you pay the late fee. You can do a settlement agreement, like I have, with the IRS. I'm in perfect – I am in good standing with the IRS. There's no lien. We correspond. We iron out whatever the differences are." Tr. 333.

[53] CX-10.

[54] Tr. 192.

[55] Tr. 193.

[56] Tr. 193.

[57] CX-147, at 17.

[58] CX-10.

[59] Tr. 194.

did not maintain any log of expenses or receipts to document how the cash or other expenses were spent on endeavors related to the reverse merger transaction.[60] He testified that he began making cash withdrawals because he had once visited a restaurant that did not take credit cards and it was embarrassing.[61] "[F]rom that day forward [Casas] tried to keep some cash on hand in order to take care of tips, in order to take care of whatever it was, whether it was beer at the corner store or whatever it may be."[62] According to Casas, if you added up all his cash withdrawals, "it's an immaterial number."[63]

In February 2012, Casas continued to use the MCBCP account to pay his day-to-day expenses, such as restaurants (most of which were fast food establishments in close proximity to his home), gas, dry cleaning, car washes, and groceries.[64] Casas maintained no supporting documentation to establish that any of the expenses were legitimate business expenses. Casas was not concerned with categorizing expenses. As he explained during the hearing, "if [the accountant] says it is not allowable, then it becomes – then it's a personal expense in lieu of salary. So there was a bucket there to catch it."[65]

Casas also paid his $2,712 home mortgage for the month of January using MB's investment funds.[66] He admitted that he paid his entire mortgage payment with MCBCP funds, and not just a portion of the mortgage that could be allocated to the rental of office space out of his home.[67] Accordingly to Casas, it did not matter how you categorized the mortgage payment—it was either rent and would therefore qualify as a business expense or it was a personal expense in lieu of salary.[68]

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[60] Tr. 195-96.

[61] CX-147, at 19-20.

[62] CX-147, at 20.

[63] Tr. 249.

[64] CX-11. During the Relevant Period, the only deposits made into the MCBCP account were the funds from investors MB and JPG. Tr. 273, 291.

[65] Tr. 196.

[66] CX-8. Although the mortgage check was dated January 15, 2012, it was not cashed until February 9, 2012. CX-8, at 9. The ending balance in the MCBCP bank account was $12.39 on December 30, 2011, and the only deposit of funds into the account in January was MB's $50,000 investment. CX-9, at 32; CX-10, at 3; Tr. 273. Accordingly, Casas used MB's investment funds to pay his January home mortgage payment.

[67] Tr. 202. Casas claimed that at least 80% of his home was used for the operation of MCBCP because he had boxes everywhere. Tr. 203. The Panel did not find Casas' testimony to be credible. First, when Casas' RiverStone supervisor conducted a site visit of Casas' home in June 2012, he did not see any boxes. Second, when the supervisor interviewed Casas, Casas stated that he maintains all of his documents in an electronic drop box. Tr. 205-09.

[68] Tr. 164, 210.

On February 7, 2012, Casas wrote a check to BN in the amount of $2,700 in partial repayment of the $18,000 loan.[69] Casas acknowledged that he never disclosed the loan to MB, but he argued that "it's part of operating expenses and it was immaterial."[70] Casas explained that BN needed money to pay his mortgage, and he made the decision as manager of MCBCP to pay him.[71]

Later the same month, Casas spent $1,325 of MB's investment on an "Endodontic Consultation,"[72] which he believed constituted a legitimate business expense. He testified during his OTR that "if I wasn't able to speak – and the medical records will show that my face was swollen and infected, I wouldn't be able to move the transaction forward. So that's the nexus, if you will, of moving MCB Capital forward."[73]

Casas believed that if the investment funds were used for him or BN, there was "no problem," but "[i]f I used the funds on somebody else, that wasn't performing tasks and responsibility for MCB Capital Partner, that would be a problem."[74] However, in February, and throughout the Relevant Period, Casas also used the MCBCP account to pay for his family's cell phone bill, which always exceeded $300 a month.[75]

During March 2012, Casas wrote a $1,500 loan repayment check to BN,[76] spent more than $600 on gas, $285 on automotive repairs, and withdrew $360 from ATM machines (not including bank fees).[77] He also paid $750 for box seats at a June Houston Astros game.[78] Casas stated the seats were purchased in anticipation of the need to hold a celebration event when the transaction closed.[79] When the transaction did not close at the contemplated time, Casas invited others to the game but no one wanted to watch a

[69] CX-8, at 9. Casas claimed that BN was simply providing capital to MCBCP. Tr. 153, 211. He stated that it was characterized as a loan so that BN could avoid paying taxes on it. Tr. 216.

[70] Tr. 216.

[71] Tr. 217, 220.

[72] CX-11, at 3. On March 28, 2012, Casas spent an additional $375 on an endodontic consultation. CX-12. He also spent $350 at the North Central Baptist Hospital on April 23, and $213 at a Texas Med Clinic on May 7. Tr. 267-68; CX-13; CX-14.

[73] CX-147, at 18.

[74] Tr. 187.

[75] CX-11, at 3.

[76] CX-8, at 7.

[77] CX-12.

[78] CX-12.

[79] Tr. 245.

baseball game, so he went with his wife.[80]

By the beginning of April 2012, the account balance in the MCBCP bank account had dwindled to less than $10,000.[81] Casas used more than half of the remaining funds to make another $2,700 loan payment to BN and pay his home mortgage payment of $2,712.[82] He spent approximately $1,900 on a trip to New York, purportedly to meet with investment bankers from Merrill Lynch.[83] Casas spent the remainder of the investment funds on ATM withdrawals, gas, and restaurants.[84] By May 25, 2012, Casas had completely exhausted MB's $50,000 investment in MCBCP, and the account was overdrawn.[85]

Although Casas represented to MB in writing that he intended to spend more than 85% of any "seed capital" investment on accounting and legal fees, he spent less than half—only $23,400—of MB's $50,000 investment on accounting and legal fees.[86] Of the remaining $26,600, Casas spent more than $5,400 on his home mortgage payment and $6,900 on repaying his loan from BN.[87] As set forth above, he also spent money on his day-to-day living expenses, claiming that any personal expense that he unilaterally deemed to be necessary to keeping him devoted to working full-time for MCBCP was a legitimate "operating expense" of MCBCP.

To purchase the MCBCP membership interests, MB withdrew $50,000 from his Individual Retirement Account ("IRA").[88] MB had no knowledge of the loan from BN that Casas intended to repay.[89] He testified that Casas represented that the funds would be used primarily for legal and accounting fees as described in the January 10 email.[90] MB also testified that Casas never disclosed that he intended to use the investment funds

[80] Tr. 246.

[81] CX-8; CX-13.

[82] CX-8, at 6-7.

[83] CX-13.

[84] CX-13; CX-14.

[85] CX-143; Tr. 271-72.

[86] CX-3; CX-8, at 8-9; CX-11, at 4.

[87] CX-8, at 7-9 (reflecting checks written to mortgage lender and BN between the date of MB's investment and May 25, 2012); Tr. 223-24.

[88] Tr. 394.

[89] Tr. 406. Casas acknowledged that he never told MB about the loan payments to BN, but he claimed it would be an operational expense and it was immaterial. Tr. 216, 309.

[90] Tr. 387-88.

for personal expenses.[91] MB testified that had he known the true manner in which Casas intended to use his investment funds, he would not have made the investment.[92]

F. Casas' Modification of the Proposed Reverse Merger Transaction

By May, 2012, the transaction that Casas had hoped for—a merger between MCBCP, SLC, and IHTI, with the simultaneous raising of $40 million in capital—was not feasible. IHTI had encountered regulatory difficulties with the Securities and Exchange Commission ("SEC") because it had failed to submit required filings to the SEC on a timely basis.[93] Thus, Casas needed a new merger partner for SLC.[94]

In late May 2012, Casas identified Claimsnet.com as a potential merger partner.[95] Casas, on behalf of MCBCP, and Claimsnet entered into a letter of intent.[96] Casas again needed funds for accounting and legal due diligence. To finance these costs, Casas solicited an additional $50,000 "seed capital" investment from MB, which MB declined to provide.[97]

MB declined to invest further for two reasons. First, Casas had been unable to find other investors and had returned to MB for additional funds. Second, Casas had changed the nature of the transaction from one in which he would raise seed capital and $40 million for the new entity to a "cashless close" transaction where capital needed to finance the new entity would be raised after the consummation of the merger.[98] Despite the change in structure, Casas still needed more money.[99] Given MB's concerns, he contacted RiverStone to file a complaint against Casas; however, RiverStone rejected MB's complaint and declined to intervene in MB's dispute with MCBCP.[100] When

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[91] Tr. 393. Casas testified that his personal expenses are included within the operations expenses of MCBCP. Tr. 163, 168. According to Casas, he has never had a sophisticated investor question the operational expenses. Tr. 173-74.

[92] Tr. 392-93, 397.

[93] Tr. 262-63.

[94] *See, e.g.*, CX-133.

[95] Tr. 887-88; CX-139.

[96] CX-139.

[97] Tr. 409, 415; CX-43.

[98] Tr. 416-17. MB testified that he had further concerns when he tried to speak to JPG, SLC's president. When MB attempted to reach JPG, Casas and his partner BN were not pleased and immediately held an emergency conference call with JPG. Tr. 419-21; CX-46.

[99] Tr. 417.

[100] Tr. 423-25; CX-50.

RiverStone rejected MB's complaint, MB complained to FINRA.[101]

G. Casas' Solicitation of Investor JPG

As a result of the deterioration of the relationship between Casas and MB, and Casas' need for additional funds, Casas solicited JPG, SLC's president, to invest in MCBCP.

On May 29, 2012, JPG executed a Subscription Agreement that Casas had created and signed.[102] Casas modified the Subscription Agreement he had used with MB to reflect JPG's investment.[103] Although Casas had used MB's investment funds for his personal expenses, he did not change the language in the Proceeds section of Subscription Agreement pertaining to the use of funds.[104] The Proceeds section, which contained the identical language as the Subscription Agreement that MB signed, represented that the invested funds would be utilized for accounting fees, legal fees, and the operational expenses and working capital of MCBCP.[105] Pursuant to the Subscription Agreement, JGP invested a total of $33,000 and agreed to pay certain accounting fees in exchange for a 5% ownership interest in MCBCP.[106]

H. Casas' Use of JPG's Investment for Personal Expenses

As noted above, the MCBCP account was overdrawn as of May 25, 2012. Soon thereafter, JPG made his investment in MCBCP. He made his investment in two payments: $15,000 on May 29, 2012, and $18,000 on July 23, 2012, both of which were deposited into MCBCP's bank account.[107]

As he had with MB's investment, Casas almost immediately began using JPG's investment funds to pay his personal expenses. Casas immediately wrote a check for his home mortgage for May 2012.[108] Casas testified that he negotiated a deal with his

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[101] Tr. 425.

[102] CX-5. Casas modified the Subscription Agreement from the one he used for MB to reflect JPG's investment amount and his agreement to pay the accounting fees associated with the audit of SLC. CX-5, at 1.

[103] *Compare* CX-4, at 1 *with* CX-5, at 1.

[104] *Compare* CX-4, at 1 *with* CX-5, at 1.

[105] CX-5, at 1.

[106] CX-5, at 1.

[107] CX-5; CX-14; CX-16.

[108] CX-8, at 5. Casas received JPG's initial deposit on May 29, 2012. While the May mortgage check was dated May 25, 2012, it was cashed on June 4. CX-8, at 5.

mortgage lender so his home mortgage was now only $1,904.[109] He passed that savings onto MCBCP by charging MCBCP the reduced amount of $1,904 instead of the prior "rent" payment of $2,712.[110] Casas made mortgage payments to his mortgage lender on June 15, July 15, and August 15 from the MCBCP account.[111] The four mortgage payments totaled $7,616.[112]

On June 4, 2012, Casas wrote a check to BN for $2,700.[113] On June 7, he wrote a check to "Cash" for $2,700, which he gave to BN.[114] Then, in August, Casas paid BN another $2700.[115]

On June 12, Casas withdrew $100 in cash for JPG to receive "several lap dances" at a "strip joint."[116] When questioned about the categorization of this expense, Casas stated that "[i]t was for the entertainment of [JPG]" so it was "absolutely" a business expense.[117] That same day, Casas wrote a check to the prospective Chief Financial Officer of SLC, for $1,200, purportedly as reimbursement for mileage.[118]

With JPG's deposits in May and July, Casas also resumed using the MCBCP debit card on other personal expenses, including restaurants in San Antonio, gas for his vehicles, dry cleaning, trips to department and grocery stores, dog grooming services, and the movies.[119]

On September 6, Casas spent $67 at Vichy Spa in Houston for a massage at 2:00 am.[120] He had gone out with JPG and a couple firefighters. At the end of the evening, he paid for JPG to receive the massage.[121] Although JPG had already told Casas earlier that night that SLC was not going to close the reverse merger transaction, Casas

[109] Tr. 287.

[110] Tr. 288.

[111] CX-8.

[112] CX-8.

[113] CX-8, at 5; Tr. 289.

[114] CX-8, at 4; Tr. 289.

[115] CX-8, at 1; Tr. 289.

[116] Tr. 293-94.

[117] Tr. 294.

[118] Tr. 286; CX-8, at 4.

[119] CX-15; CX-16.

[120] CX-18, at 2.

[121] Tr. 324.

deemed this massage a business expense to entertain JPG.[122] As with the other expenditures, Casas did not maintain any documentation establishing the business purpose, such as a receipt with a note of attendees.

JPG did not testify at the hearing; however, Casas presented an affidavit that he drafted and provided to JPG to sign.[123] The affidavit stated that JPG authorized Casas to use his investment funds in Casas' sole discretion, including on "personal expenses in-lieu-of salary."[124] The Panel does not credit the affidavit because Casas' OTR testimony contradicts it. During Casas' OTR, FINRA asked Casas if the investors were aware that he would be using their funds to pay personal or out-of-pocket expenses. Casas testified:

> As far as [JPG], I don't think [JPG] and I ever talked about it. I don't think he had any concerns one way or the other. Because as soon as the transaction was done he hired me. So I don't think – and knowing [JPG], I don't think [JPG] really cared.[125]

I. Casas' and BN's Misrepresentation of Expenses to Riverstone

As noted above, MB complained to RiverStone in early June in connection with his $50,000 investment.[126] Although RiverStone advised MB that it did not believe that it had any supervisory responsibilities with respect to MB's investment in MCBCP, it decided to continue investigating MB's complaint. On August 8, 2012, RiverStone requested that Casas provide MCBCP's bank statements so that it could investigate how Casas spent MB's investment.[127] Casas, however, refused to provide the bank statements to RiverStone, stating that he was relying on BN's advice.[128] Instead, on October 9, 2012, BN and Casas provided RiverStone with a one-page summary of MCBCP's "expenses" through August 31, 2012.[129] This summary was inaccurate in numerous respects. First, it overstated MCBCP's legal expenses by $5,000.[130] Second, it categorized Casas' entire home mortgage payment as "rent expense."[131] Third, it did not reflect that Casas paid

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[122] Tr. 324-25.

[123] Tr. 802. The affidavit is very similar to Casas' Answer.

[124] Respondent's Exhibit ("RX")-1, at 2.

[125] CX-147, at 23. Casas admitted that he never told JPG about the $18,000 loan from BN. Tr. 309.

[126] As a result of this complaint, RiverStone conducted a surprise audit of Casas' office in mid-June 2012. CX-25.

[127] CX-90, at 2.

[128] CX-92.

[129] CX-6.

[130] Tr. 362-63.

[131] CX-6.

$15,000 to BN for the loan.[132] Fourth, it did not disclose the cash withdrawals, totaling thousands of dollars, that Casas regularly withdrew from the MCBCP bank account.[133] Lastly, the summary did not have a category for Casas' personal expenses; it failed to disclose the thousands of additional dollars that Casas had spent on personal expenses, including a new water heater for his home, dry cleaning, car washes, dog grooming, and a trip to the movies.[134]

On August 10, 2012, RiverStone required Casas and BN to provide a detailed accounting reflecting how MB's $50,000 investment had been spent.[135] BN and Casas provided this accounting report on October 15, 2012.[136] The report was inaccurate.[137] First, although Casas had spent MB's investment funds by May 25, 2012, the accounting report covered the time period of January 30 through August 31, 2012, and reflected that MCBCP's expenses were $50,039.62, slightly over MB's $50,000 investment.[138] It included approximately $12,000 in expenses (including more than $7,300 in payments to the accounting and law firms) that were incurred after May 25, 2012. Second, the accounting report did not disclose the loan repayments to BN.[139] Instead, those payments were hidden by categorizing them as legal expenses.[140] Moreover, the law firm associated with the payments was not even working on the reverse merger transaction and did not provide legal services to MCBCP during the time period that MB had invested in MCBCP.[141] Third, the accounting report did not reflect any personal expenses in lieu of salary.[142] Instead, those expenses were either omitted or categorized as business expenses. For example, Casas' dog grooming bill was listed under "meals and entertainment" and his lawn service bill for his home was listed as an "office expense."[143]

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[132] Tr. 363.

[133] CX-6.

[134] CX-6; Tr. 361-62.

[135] CX-93

[136] CX-7.

[137] Casas claimed to be unaware of the inaccuracies and blamed BN for the accounting. Tr. 374. The Panel did not find Casas' testimony credible. Casas, as MCBCP's president and manager, received the request for the accounting from RiverStone. CX-93. He knew how the monies were spent. He had spoken to BN about providing the bank statements, took BN's advice, and refused to provide them. Tr. 355. When BN provided the accounting report to RiverStone, he included Casas on the email. CX-7; Tr. 364.

[138] CX-7, at 15.

[139] Tr. 367.

[140] Tr. 368-71.

[141] Tr. 368-71.

[142] Tr. 367.

[143] CX-7, at 6.

In reality, of the $83,000 that Casas received from the investors, he spent only $30,734.60 in legitimate accounting and legal fees (approximately 37%), far less than the 85% he had estimated to MB in the January 10 email. Casas spent the remaining investment monies on personal expenses or "undocumented business expenses" such as the following:

Casas' Home Mortgage Payments	$15,752
Lawn Service for Casas' Home	$480
Hot Water Heater for Casas' Home	$364
Cell Phone Bills	$1,714 (family cell phone bill)
Gas Stations	more than $2,300
Car Washes	$26
Car Repairs	$401
Dog Grooming Services	$185
Casas' Medical Expenses	$2,263
Haircut	$23
Dry Cleaning	$94.
Massage at a Late Night Spa	$67
Movies	$41
Box Seats to an Astros Game	$750
"Office Supplies"	$197
Restaurants and Fast Food Establishments	more than $2,500
Travel Expenses - Airfare and Hotel Rooms	more than $3,100
Loan from BN	$15,000
ATM Withdrawals (Cash)	more than $2,000[144]

None of these expenditures was logged or recorded by Casas, and he kept no other records that would establish the business purpose for any of them.[145]

J. The Collapse of the Reverse Merger Transaction

By the end of September 2012, Casas had again overdrawn MCBCP's bank account.[146] He was out of money and was unable to find any new investors.[147]

[144] This amount does not include additional cash Casas obtained in connection with purchases. For example, when making a purchase at Target, Casas obtained an additional $40 in cash during the purchase transaction. CX-17, at 2.

[145] CX-8; CX-10 – CX-18; Tr. 288-89.

[146] CX-18.

[147] CX-96; Tr. 578-80.

Ultimately, JPG, on behalf of SLC, elected not to go forward with the reverse merger transaction.[148]

III. CONCLUSIONS OF LAW

A. FINRA Properly Exercised Jurisdiction Over Casas

Casas first associated with RiverStone in June 2011.[149] He was registered with FINRA as an Investment Banking Representative through his association with RiverStone. On October 31, 2012, Casas submitted his resignation to Riverstone. RiverStone filed a Form U5 on Casas' behalf on November 1, 2012. Although Casas is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction because Enforcement filed the Complaint on October 30, 2014, which is within two years of the effective date of the termination of Casas' registration on November 1, 2012.[150]

Casas argued that FINRA did not have jurisdiction over him because RiverStone should have filed his Form U5 in October 2011 when he changed MCBCP's business purpose to begin attempting to acquire companies. The Panel rejects Casas' argument. The record reflects that Casas did not resign from RiverStone until a year later. In fact, rather than resign from RiverStone, Casas and BN sought permission from RiverStone to engage in this new activity, which RiverStone approved. Furthermore, Casas continued to act as a registered representative of RiverStone by: (1) sending emails and other documents that disclosed his association with RiverStone; (2) completing his annual compliance attestation; (3) submitting to a surprise audit of his home office in June 2012; (4) paying fees that RiverStone required him to pay; and (5) communicating regularly with his RiverStone supervisor.

B. Casas Fraudulently Sold Securities By Making Material Misrepresentations to Investors

The Complaint alleges that Casas willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010, by defrauding customers

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[148] CX-28, at 6. When SLC did not go forward with the transaction, Casas decided to terminate his association with RiverStone on October 31, 2012. CX-28, at 6. JPG then hired Casas to work at SLC. Tr. 74-75, 849.

[149] CX-1, at 5.

[150] The Complaint alleges that Casas engaged in misconduct while he was registered with FINRA and associated with FINRA member firm RiverStone. *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 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).

in connection with the sale of MCBCP membership interests. Specifically, the Complaint alleges that Casas misrepresented how he intended to use the investor funds when selling the MCBCP membership interests.

1. Legal Standard

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 or 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.[151]

Rule 10b-5 makes it unlawful "[t]o 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."[152] A Rule 10b-5 violation requires proof of the following: (1) a false statement or a misleading omission; (2) of a material fact; (3) made with the requisite scienter or state of mind; (4) using the jurisdictional means; (5) in connection with the purchase or sale of a security.[153]

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."[154] Committing fraud and other violations of law and FINRA Rules is inconsistent with the high standards of ethical conduct required by Rule 2010.[155]

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[151] 15 U.S.C. § 78j.

[152] 17 C.F.R. § 240.10b-5.

[153] *Gebhart v. SEC*, 595 F.3d 1034, 1040 and n.8 (9th Cir. 2010) (affirming SEC decision in NASD (now FINRA) disciplinary case charging Rule 10b-5 fraud and distinguished enforcement action from private securities fraud action).

[154] Unlike Exchange Act Rule 10b-5(b), FINRA's antifraud rule language under Rule 2020 does not require that a respondent be the "maker" of a false statement or misleading omission. *See Dep't of Enforcement v. Fillet*, No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *37-38 (NAC Oct. 2, 2013) (discussing the distinction between Rule 10b-5 and NASD Rule 2120 (now FINRA Rule 2020)).

[155] *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178, 182 (2d Cir.), *cert. denied*, 385 U.S. 817 (1966).

2. The MCBCP Interests Were Securities

The MCBCP membership interests that MB and JPG purchased are securities under the Securities Act of 1933 ("Securities Act") and the Exchange Act.[156] The membership interests are investment contracts under the seminal Supreme Court case, *SEC v. W. J. Howey Co.*[157] 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, the Panel concludes that the MCBCP membership interests were securities.

MB and JPG invested money; MB invested $50,000 and JPG invested $33,000. They invested in a common enterprise with the expectation of earning profits solely from the efforts of Casas. Casas represented that the investor funds would be pooled with the funds of other MCBCP investors and invested by MCBCP in a business venture, the proposed reverse merger transaction, selected and managed by Casas.

The documents that Casas gave to MB and JPG also support our finding that the MCBCP membership interests were securities. The January 10 email to MB stated that (1) Casas was selling six membership interests in MCBCP, and (2) assuming the reverse merger transaction was successful, MB could expect to receive a 600% return on his investment. The Subscription Agreements, prepared by Casas and executed by MB and JPG, described the membership interests as securities and noted that the investor could only sell them pursuant to an exemption from the registration requirements under the federal securities laws.

We find, based both on Casas' representations to his investors about their investments and the paperwork documenting the investments, that the products Casas

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[156] None of the parties dispute that the membership interests were securities.

[157] 328 U.S. 293 (1946).

[158] *Id.* at 298-99.

[159] *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *15 (NAC July 18, 2014), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015); *Dep't of Enforcement v. De Vietien*, No. 2006007544401, 2010 FINRA Discip. LEXIS 45, at *16 (NAC Dec. 28, 2010).

sold were securities.[160] "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."[161]

3. The Misrepresentations Concerned the Use of Funds

Casas told both MB and JPG that their investments would be used to facilitate the reverse merger transaction, particularly with respect to the payment of accounting fees and legal fees, as well as other "operational expenses" of MCBCP. In an email to MB, Casas further represented that the vast majority of the funds—more than 85%—would be directed to accounting and legal fees. Instead, Casas paid less than $31,000 to accounting and legal firms, which amounted to approximately 37% of the total amount invested.

At no time did Casas disclose that he intended to use the funds for his own personal expenses. Although the Subscription Agreement warned investors that the securities were risky and an investment in MCBCP could result in losses, the Subscription Agreement was insufficient to notify potential investors of Casas' intention to use investor funds for his personal expenses.[162]

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[160] *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); *De Vietien*, 2010 FINRA Discip. LEXIS 45, at *14-26 (applying investment contract test and determining that nonvoting membership interests in an LLC were securities).

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

[162] To the extent that Casas argues that certain disclosures in the subscription documents corrected any false or misleading statement, he is wrong. For example, the disclosure that "there is a high likelihood that the Company may not be able to execute its business plan [] and the investment will therefore have been irrevocably lost" was not sufficient to inform investors that Casas was going to use (or in the case of JPG already using) investor proceeds to pay his personal expenses that were charged to MCBCP's debit card. *See* CX-4, at 1; *cf., Deng v. 278 Gramercy Park Grp., LLC*, 2014 U.S. Dist. LEXIS 74156, at *15-16 (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).

4. The Misrepresentations Were Material

The question of materiality is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor.[163] A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available.[164]

In *SEC v. Merrill Scott & Associates*, the court held:

> Information is material if a substantial likelihood exists that the facts would have assumed actual significance in the investment deliberations of a reasonable investor. Misrepresentations regarding the use of investors' funds are material. Similarly, investors would consider it important to know their funds were being misappropriated and used for purposes other than those stated when solicited.[165]

As in *Merrill Scott*, a reasonable investor would have assigned actual significance in his investment deliberations to the fact that Casas intended to divert the majority of the investments to his own personal use as opposed to using the investment funds as stated in the subscription agreement and January 10 email. Accordingly, the Panel finds that Casas' misrepresentations about his intended use of the funds were material.

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[163] *TSC Indus., Inc. v. Northway, Inc*., 426 U.S. 438, 445 (1976); *Amgen, Inc. v. Conn. Ret. Plans & Tr. Funds*, 133 S. Ct. 1184, 2013 U.S. LEXIS 1862, at *22 (Feb. 27, 2013); *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 2011 U.S. LEXIS 2416, *19-21 (Mar. 22, 2011).

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. Jordan*, No. 2005001919501, 2009 FINRA Discip. LEXIS 15, at *18 n.7 (NAC Aug. 21, 2009) (rejecting argument "that a finding of materiality must be grounded in evidence that customers 'actually believed' that the omissions altered the total mix of information. This argument lacks merit. '[T]he reaction of individual investors is not determinative of materiality, since the standard is objective, not subjective.'").

[164] *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

[165] *SEC v. Merrill Scott & Associates*, 2011 U.S. Dist. LEXIS 134010, at *41-42 (D. Utah, Nov. 21, 2011) (citations omitted); *see SEC v. Smart*, 678 F.3d 850, 857 (10th Cir. 2012) (stating "it would be material to a reasonable investor that his or her money was not being used as represented in safe investment strategies, but rather, in high risk ventures and for the payment of personal expenses"); *SEC v. U.S. Funding Corp.*, 2006 U.S. Dist. LEXIS 24789, at *13 (D.N.J. 2006) (failure to disclose, among other things, that investor funds were being used for personal expenses).

5. Casas Acted With Intent When He Misrepresented the Intended Purpose of the Funds

There is substantial evidence supporting the Panel's conclusion that Casas intentionally made material misrepresentations when he created the Subscription Agreement and solicited the investors. He acknowledged that he was responsible for the content of the January 10 email and the Subscription Agreement, both of which indicated that the investment funds would be used for legal, accounting, and operational expense of the company. Contrary to these representations, after receiving the investment funds, he used the money for personal expenditures. For example, within one day of receiving MB's investment, Casas purchased a new hot water heater for his home and withdrew $200. Further, there is no evidence that Casas took any steps to ensure that the investors were aware that he was using the MCBCP funds to pay his personal expenses or that the operational expenses constituted a much greater percentage than he disclosed.[166] In fact, when RiverStone questioned Casas about how he used MB's $50,000 investment, he, through BN, responded by providing RiverStone with an accounting report that hid the true manner in which he used MB's investment.

6. Casas Used a Means of Interstate Commerce to Effect the Transactions

Casas utilized interstate commerce to effectuate these transactions. Casas marketed and sold the MCBCP securities through the Subscription Agreement using telephone calls and emails.[167]

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[166] *Kenneth R. Ward*, 56 S.E.C. 236, 259-60 (2003) (finding scienter established when representative was aware of material information and failed to make appropriate disclosures to customers), *aff'd*, 75 F. App'x 320 (5th Cir. 2003).

[167] *See* CX-3 (email from Casas to MB with terms of the investment); CX-10, at 3 (reflecting MB's investment funds sent to Casas via wire transfer); Tr. 280-83 (noting that there are emails between Casas and JPG corroborating the terms of JPG's investment); *see also SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 865 (S.D.N.Y. 1997) (determining that the jurisdictional requirements of the federal antifraud provisions are interpreted broadly and are satisfied by intrastate telephone calls or the use of the U.S. mail), *aff'd*, 159 F.3d 1348 (2d Cir. 1998); *See SEC v. Levin*, No. 12-21917-CIV, 2013 U.S. Dist. LEXIS 20027, *31-32 (S.D. Fla. Feb. 14, 2013) ("[T]he Internet, which necessarily includes email, is an 'instrumentality of interstate commerce.' Because the interstate communications prong of Section 5 is broadly construed, allegations of Preve's email use are sufficient to withstand a motion to dismiss.") (citations omitted). In addition, MB sent his funds to Casas via a wire transfer. *See Shepherd v. S3 Partners, LLC*, No. C-09-01405 RMW, 2011 U.S. Dist. LEXIS 117957, (N.D. Cal. Oct. 12, 2011) (inducing other party to deposit funds via wire transfer constitutes use of a means of interstate commerce in furtherance of the alleged fraud).

7. Conclusion

The Panel finds that Casas willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010, by defrauding investors in connection with the sale of MCBCP securities.[168] A finding of willfulness does not require intent to violate the law, but merely intent to do the act that constitutes a violation of the law.[169]

C. Casas Converted Investor Funds

The Complaint also alleges that Casas converted MB's and JPG's investment funds for personal use in violation of FINRA Rule 2010.

FINRA Rule 2010 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[170] The Rule reaches beyond ordinary legal requirements; it encompasses "a wide variety of conduct that may operate as an injustice to investors or other participants" in the securities markets.[171] "The analysis that is employed [under the rule] is a flexible evaluation of the surrounding circumstances with attention to the ethical nature of the conduct."[172] Rule 2010 "applies when the misconduct reflects on the associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money."[173]

Conversion is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess

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[168] The Panel finds that Casas was the "maker" of the misstatements as required under Exchange Act Rule 10b-5(b). Under FINRA Rule 2020, Casas is liable if he induced the purchase or sale of a security through the "use" of a false statement, even if it was made by another. The Panel finds that Casas also violated Rule 2020 by inducing investors to purchase MCBCP securities through the "use" of false statements.

[169] *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976).

[170] FINRA Rule 2010 applies also to persons associated with a member under FINRA Rule 0140(a), which provides that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

[171] *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013) (quoting *Daniel Joseph Alderman*, 52 SEC 366, 369 (1995), *petition denied*, 104 F.3d 285 (9th Cir. 1997)).

[172] *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *15 (NAC June 2, 2000) (discussing the scope of NASD Rule 2110, the exact predecessor to FINRA Rule 2010).

[173] *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002).

it."[174] Conversion violates FINRA Rule 2010, even if the person from whom the funds are converted is not a customer of the firm with which the respondent was associated.[175]

Here, Casas was entrusted with money invested by MB and JPG for the explicit purpose of providing "seed capital" to MCBCP in order to finance the reverse merger. In both instances, Casas took the majority of their investments and used them for his personal expenses.

Casas claims that he was authorized to use the investor funds as he deemed appropriate; however, the Panel does not accept Casas' assertion. Casas' own testimony (his sworn testimony during his OTR and his testimony during the hearing) demonstrates his conflicting justification for the expenses. During his OTR, he attempted to claim that these personal expenses all had some conceivable nexus with legitimate operations of the business entity (such as reducing his need to seek other employment opportunities) whereas during the hearing he stated that the expenses were "personal expenses in lieu of salary." Had Casas been authorized to use the investor funds as he claimed, there would have been no reason to hide the personal expenses when submitting the accounting report of MB's investment to RiverStone.

Circumstantial evidence further supports the Panel's conclusion that Casas acted with the requisite intent to constitute conversion. For example, Casas' failure to maintain any records of how he used the investor funds is compelling evidence that he did not regard himself as accountable for his actions and that he believed that he could misuse the investor funds with impunity. Moreover, Casas began withdrawing money for his own benefit immediately after MB wired the funds to the MCBCP bank account. Within one day after receiving MB's investment, Casas purchased a new hot water heater for his home and withdrew $200 in cash.

The Panel determines that Casas, with intent, converted to his own use MB's and JPG's funds that he was not entitled or authorized to possess, in violation of FINRA Rule 2010.

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[174] FINRA Sanction Guidelines at 36, n.2 (2015), https://www.finra.org/sanctionguidelines.

[175] *See Saad v. SEC*, 718 F.3d 904, 912 (D.C. Cir. 2013) (fraudulent expense reimbursement); *Henry E. Vail*, 52 S.E.C. 339, 1995 SEC LEXIS 1514 (1995) (sustaining bar for registered representative's misappropriation of funds from the Houston Young Professional Republican's organization, for which he served as treasurer), *aff'd*, *Vail v. SEC*, 101 F.3d 37 (5th Cir. 1996); *Dep't of Enforcement v. Olson*, No. 2010023349601, 2014 FINRA Discip. LEXIS 7 (Bd. of Govs. May 9, 2014) (false expense reimbursement claim); *Daniel D. Manoff*, Exchange Act Release No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (unauthorized use of co-worker's credit card numbers); *Ernest A. Cipriani*, 51 S.E.C. 1004 (1994) (finding that a respondent violated the just and equitable rule by keeping funds remitted to him by non-securities customers for the purchase of insurance).

IV. SANCTIONS

A. Securities Fraud

The FINRA Sanction Guidelines ("Guidelines") set forth a range of sanctions for misconduct involving misrepresentations or omissions of material fact. If the misconduct is intentional or reckless, the Guidelines require the adjudicator to strongly consider barring the individual. If mitigating factors predominate, adjudicators should consider suspending the individual in any or all capacities for anywhere between six months and two years and imposing a fine of $10,000 to $146,000.[176]

The Guidelines set forth Principal Considerations in Determining Sanctions ("Principal Considerations"). When analyzing the Principal Considerations, the Panel found many aggravating factors relevant to this case. They include: whether Casas' misconduct was the result of an intentional act or recklessness;[177] whether Casas accepted responsibility for or acknowledged the misconduct;[178] whether the misconduct resulted in the potential for monetary gain;[179] and whether the misconduct resulted in injury to the investing public.[180] These factors lead the Panel to conclude that Casas' misconduct was egregious.

The Panel determined that Casas' misconduct was knowing and intentional, not merely negligent. Casas was responsible for the creation of the Subscription Agreement that both investors received. He also drafted the January 10 email to MB. Immediately after receiving the investors' funds, he began using the money for his personal expenses. His concealment of his misconduct from RiverStone with false and misleading business justifications also supports an inference of conscious wrongdoing. Specifically, when RiverStone requested that Casas provide an accounting report of how MB's investment monies were used, Casas, through MCBCP's bookkeeper BN, submitted a false accounting report to RiverStone to cover up the true manner in which he used MB's investment funds.

The Panel found that Casas did not accept responsibility for his misconduct. Throughout the hearing, he argued that he did not misrepresent anything to the investors. Rather than accept responsibility, he blamed others. He blamed RiverStone for not filing a Form U5 on his behalf prior to the time that he actually resigned. He blamed MB for not having a sufficient level of "discomfort" with the investment.[181] Casas testified that

[176] Guidelines at 88.

[177] Guidelines at 7 (Principal Consideration No. 13).

[178] Guidelines at 6 (Principal Consideration No. 2).

[179] Guidelines at 7 (Principal Consideration No. 17).

[180] Guidelines at 6 (Principal Consideration No. 11).

[181] Tr. 803.

he has never had this type of problem with any other sophisticated investor. He seemed to believe that if MB had more money at his disposal, MB's loss of $50,000 would not have troubled him and thus MB would not have complained to RiverStone and FINRA. He also blamed MB for failing to obtain other investors for the reverse merger transaction.

Casas' misconduct resulted in monetary gain. He used the monies from each investor to pay his personal expenses, which injured the investors financially.

After carefully reviewing the facts and circumstances surrounding Casas' misconduct, and finding no mitigating factors, the Panel concludes that a bar in all capacities from associating with any FINRA member is the appropriate remedial sanction for this violation.

The Guidelines also 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.[182]

To justify an order of restitution, the evidence must "demonstrate a causal connection" between the misconduct and "any loss at issue," and demonstrate "that the customers' losses came 'as a result of'" the deficiencies in the solicitation communications or offering documents.[183]

Here, Casas personally solicited investors MB and JPG. Casas drafted the January 10 email to MB, outlining exactly how the investment proceeds would be utilized. He also prepared the Subscription Agreements that both MB and JPG received and executed.

MB invested $50,000 in MCBCP. He testified that the funds for this investment came from his IRA. MB exercised care before investing by (1) checking to see if Casas and RiverStone were registered with FINRA, and (2) visiting the entity that was the subject of the reverse merger. He testified that he relied on Casas' representations when making his investment. MB further testified that had he known how Casas intended to use his investment funds, he would not have invested. The Panel finds that MB's $50,000 investment represents a quantifiable loss proximately caused by Casas' misconduct and awards MB $50,000 in restitution.

The Panel declines to award restitution to JPG. After the reverse merger collapsed, JPG hired Casas to work for him. Based on the record, the Panel is unable to

[182] Guidelines at 4 (General Principle No. 5).

[183] *Siegel v. SEC*, 592 F.3d 147, 159, 161 (D.C. Cir. 2010).

determine if JPG recouped his loss when negotiating Casas' salary prior to employing him.

B. Conversion

The Guideline for conversion is expressed in specific terms. Adjudicators are instructed to "[b]ar the respondent regardless of [the] amount converted."[184] For the reasons discussed below, the Panel concludes that a bar is necessary and appropriate to protect investors.

There are several aggravating factors that bear on the Panel's sanctions determination. First, Casas intentionally used investor funds for his personal expenses.[185] "By intentionally taking funds to which [he] was not entitled, [Casas] exhibited flagrant dishonesty."[186] Second, Casas exhibited further dishonesty when he concealed his conversion.[187] When RiverStone requested an accounting report of how Casas spent MB's investment, Casas, through BN, provided RiverStone with an accounting report riddled with false entries to cover up the true manner in which he used the investment funds. His willingness to submit false documentation for his benefit is extremely troubling and raises fundamental questions about his ability to fulfill his fiduciary responsibilities in handling other people's money. Third, Casas failed to accept responsibility for his misconduct.[188] Rather, he continued to assert that, as the manager of MCBCP, he was entitled to use the investor funds in any manner he chose. Fourth, Casas engaged in numerous acts of conversion as he used MB's and JPG's investment monies to cover his day to day personal expenses throughout the Relevant Period.[189] Fifth, Casas' misconduct resulted in his financial gain and injured the investors.[190]

The Panel bars Casas for his misconduct.[191] By taking money that did not belong to him and using it for his own personal expenses, Casas demonstrated that he lacks the integrity and trustworthiness that is required of all FINRA registered representatives. The Panel concludes that barring Casas serves a remedial interest and protects the

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[184] Guidelines at 36.

[185] Guidelines at 7 (Principal Consideration No. 13).

[186] *Olson*, 2014 FINRA Discip. LEXIS 7, at *12 (citing Guidelines at 7 (Principal Consideration No. 13)).

[187] Guidelines at 6 (Principal Consideration No. 10).

[188] Guidelines at 6 (Principal Consideration No. 2).

[189] Guidelines at 6 (Principal Consideration No. 8).

[190] Guidelines at 7 (Principal Considerations No. 17).

[191] The Panel did not order restitution in connection with this charge because it addressed restitution in connection with Casas' fraudulent misrepresentation charge (awarding restitution to MB and declining to award it to JPG).

investing public.[192] In addition, the Panel concludes that imposition of a bar will serve to deter others who may be inclined to take advantage of their investors.

V. ORDER

Respondent J. Michael Casas (1) willfully violated the Exchange Act, Section 10(b), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010, by fraudulently selling securities issued by his company on the basis of false statements of material fact; and (2) violated FINRA Rule 2010 by converting investor funds for his personal use.

For violating the Exchange Act, Section 10(b), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010, the Panel bars Casas from associating with any member in any capacity and orders that he pay restitution to MB[193] in the sum of $50,000, plus interest on the unpaid balance from January 27, 2012, the date of MB's investment, until paid in full. Interest shall accrue at the rate set in 26 U.S.C. Section 6621(a)(2).[194] In the event that MB cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the state of Texas. Casas shall submit satisfactory proof of payment of restitution. Such proof shall be submitted to FINRA Department of Enforcement, 12801 N. Central Expressway, Suite 1050, Dallas, Texas 75243, either by letter that identifies the case name and number and includes a copy of the check, money order, or other method of payment or by email, with pdf copies of the payment documentation, to EnforcementNotice@FINRA.org no later than 90 days after the date this decision becomes FINRA's final disciplinary action in this proceeding.

For violating FINRA Rule 2010, the Panel bars Casas from associating with any member in any capacity.

In addition, Casas is ordered to pay costs in the amount of $8,668.17, which includes a $750 administrative fee and the cost of the hearing transcript.

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[192] *See McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005) ("[T]he purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers.").

[193] MB is identified in the Addendum to this Decision, which is served only on the parties.

[194] The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

If this decision becomes FINRA's final disciplinary action, the bars shall be effective upon service of this decision. The assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.[195]

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Maureen A. Delaney
Hearing Officer
For the Extended Hearing Panel

[195] The Panel has considered and rejects without discussion all other arguments of the parties.