FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. ROBBI J. JONES (CRD No. 1797418), and KIPLING JONES & COMPANY, LTD. (CRD No. 144730), Respondents.	Disciplinary Proceeding No. 2015044782401 Hearing Officer–KBW **EXTENDED HEARING PANEL DECISION** October 17, 2018

Respondent Robbi J. Jones caused Respondent Kipling Jones & Co., LTD. ("KJC") to willfully create and maintain inaccurate books and records and to file materially inaccurate FOCUS Reports. For these violations, KJC is fined $38,000. Because the violation was willful, KJC is subject to statutory disqualification. Jones is suspended from associating with any FINRA member firm in any capacity for two years, barred from associating with any FINRA member firm in any supervisory or principal capacity, and fined $35,000.

Jones also provided inaccurate and misleading information to FINRA staff in response to requests issued pursuant to Rule 8210 and otherwise. She also refused to respond to questions that FINRA staff asked at her on-the-record testimony. For these violations, Jones is suspended from associating with any FINRA member firm in any capacity for two years and fined $35,000.

The suspensions are to be served consecutively. Respondents also are ordered to pay costs, for which they are jointly and severally liable.

Appearances

For the Complainant: Mark J. Fernandez, Esq., John R. Baraniak Jr., Esq., and David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondents: Robbi J. Jones, *pro se*.[1]

DECISION

I. Introduction

The Department of Enforcement brought this disciplinary proceeding against Respondents Kipling Jones & Co., LTD. ("KJC" or the "Firm"), a small broker-dealer based in Houston, Texas, and Robbi J. Jones ("Jones"), the Firm's founder, president, chief executive officer, chief financial officer ("CFO"), chief compliance officer, and financial and operations principal ("FINOP"). In about November 2014, FINRA staff began a Sales Practice Cycle Examination (the "2014 Cycle Exam") that looked at KJC's activities and allowable assets.

This proceeding arose as a result of requests for information and documents that FINRA staff made during the 2014 Cycle Exam regarding two topics. FINRA staff asked about a certificate of deposit ("CD") that KJC and Jones acquired in December 2011 (the "2011 CD") and pledged as security for a personal loan (the "2011 Loan"). FINRA staff also asked about an investigation by the City of Houston (the "Houston Investigation") into whether Jones had, without authorization, charged two plane tickets to a City of Houston credit card (the "Houston Credit Card") for travel unrelated to business with the City.[2] The four causes of action are described below.

A. Causes of Action

The first cause charged that KJC and Jones violated FINRA Rules 4511 and 2010, and Jones caused KJC to willfully violate Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 17a-3 and 17a-5 thereunder. Enforcement alleged that Jones did not record the cancellation of the 2011 CD in KJC's financial books and records, but instead reflected it as an asset through December 30, 2014, thus making KJC's books and records inaccurate. Enforcement also alleged that Jones filed or caused to be filed materially inaccurate FOCUS Reports that inflated KJC's reported net capital by treating the 2011 CD as an allowable asset even though the CD had been pledged as collateral for the 2011 Loan and had been cancelled.

The second cause relates to false and misleading information that Jones allegedly provided to FINRA staff during the 2014 Cycle Exam in violation of FINRA Rule 2010.[3]

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[1] Respondents are no longer represented by counsel, but they were represented through most of the proceeding, including the hearing.

[2] In the record, the City of Houston's charge card is usually referred to as a purchase card or P Card. Hearing Transcript ("Tr.") 187, 885, 887, 938; CX-113, at 18. It is also sometimes referred to as a credit card, *see e.g.*, CX-112, at 9, and sometimes as a debit card, *see, e.g.*, CX-34, at 2. This decision refers to it as a credit card.

[3] The second cause involves alleged misrepresentations that Jones made other than in response to Rule 8210 requests.

Enforcement alleged that Jones provided false and misleading information to FINRA staff about the 2011 CD and the Houston Investigation.[4] In addition, Enforcement alleged that during the 2014 Cycle Exam Jones falsely represented to FINRA staff that her mother, GJ, had recently died.

The third cause charged that Jones violated FINRA Rules 8210 and 2010 by providing inaccurate and misleading information, documents, and testimony in response to Rule 8210 requests. Enforcement alleged that Jones gave false testimony or otherwise made false representations about what happened to the 2011 CD and whether she knew that the CD was pledged as collateral for a loan. Enforcement also alleged that Jones gave false testimony or otherwise made false representations regarding the Houston Investigation, including misrepresenting the plane tickets that were the focus of the investigation and failing to disclose that the investigation had concluded that Jones was responsible for the unauthorized use of the Houston Credit Card on two occasions.[5]

The fourth cause charged that Jones violated FINRA Rules 8210 and 2010 by refusing to answer questions at her on-the-record testimony ("OTR") regarding whether GJ was still alive and whether she had represented to FINRA staff that GJ had died.

B. Respondents' Answer

Jones and KJC filed an answer denying that they engaged in any of the alleged violations. With respect to the CD, Respondents maintain that Jones was not aware that the 2011 CD was pledged as collateral for her 2011 Loan and that she did not know until March 2015 (a year after the fact) that the 2011 CD had been cancelled in 2014. With respect to the Houston Investigation, Jones argues that (1) she did not receive a letter in which the Office of Inspector General determined that she was responsible for the unauthorized use of the Houston Credit Card and (2) it was reasonable for her to believe statements in a letter from her former attorney that the Houston Investigation had cleared her of wrongdoing.[6] As to refusing to answer certain questions at her OTR, Jones testified that she refused to answer in part because she viewed the questions as personal and FINRA staff had represented that it would only ask her about business-related items and because she did not want to discuss her health.[7] Jones acknowledges that her

[4] Enforcement abandoned the allegations in the second cause that Jones violated FINRA Rule 2010 by (a) characterizing the Houston Investigation as an "inquiry" by the City of Houston or the Office of the Controller, rather than as an investigation by the City of Houston's Office of Inspector General; (b) representing to FINRA staff that she did not travel on the dates of the flights that were the subject of the inquiry; and (c) representing that nothing came of the Houston Investigation. Complaint ("Compl.") ¶¶ 115(b)-(c); Tr. 1419, 1474.

[5] Enforcement abandoned the allegation in the third cause that Jones violated FINRA Rules 8210 and 2010 by failing to disclose to FINRA that the Houston Investigation was actually an investigation by the Office of Inspector General, as opposed to an "inquiry" by the City of Houston. Tr. 1608.

[6] Tr. 1547-49.

[7] Tr. 1290-92.

refusal to answer the questions was "stupid" but argues that she was under a lot of stress at the time of her OTR.[8]

* * *

The Extended Hearing Panel (the "Panel") finds KJC liable under the first cause and Jones liable for each of the four causes of the Complaint. For the first cause of action, the Panel determines that the appropriate remedial sanction is to fine KJC $38,000, and to suspend Jones from associating with any FINRA member firm in any capacity for two years, bar her from associating with any FINRA member firm in any supervisory or principal capacity, and fine her $35,000. Because KJC's violation was willful, the Firm is subject to statutory disqualification. For the second, third, and fourth causes of action, the Panel determines that the appropriate remedial sanction is to suspend Jones from associating with any FINRA member in any capacity firm for two years and fine her $35,000. The suspensions will run consecutively.

II. Findings of Fact

A. Respondents

1. Kipling Jones & Co., LTD.

KJC, a small broker-dealer based in Houston, Texas, has been a member of FINRA since 2007 and is registered with the Securities and Exchange Commission ("SEC") as a municipal advisor.[9] Throughout 2014, KJC was required to file monthly FOCUS Reports due to the Firm's statutory net capital requirement and the fact that the Firm had been approved to engage in securities underwritings.[10] In addition, KJC was under heightened supervision and consequently was required to supply to FINRA supplemental information including monthly balance sheets, monthly trial balances, and monthly general ledgers.[11]

At all times, KJC's net capital requirement was $100,000.[12] As of September 30, 2014, KJC reported excess net capital (KJC's reported net capital minus KJC's reported net capital requirement) of $58,527.[13]

[8] Tr. 1290, 1537.

[9] Compl. ¶ 10; Answer ("Ans.") ¶ 10; CX-123, at 1.

[10] Tr. 586.

[11] Tr. 587-88, 692-93, 755. FINRA has jurisdiction over KJC because it is currently a FINRA member and because the Complaint charges the Firm with misconduct while it was a FINRA member.

[12] Tr. 586; CX-123, at 5.

[13] CX-123, at 5.

2. Robbi J. Jones

After graduating with a BBA in finance and accounting and an MBA, Jones joined a large bank in 1987 as a public finance associate.[14] Jones became registered with FINRA in December 1991 as a Municipal Securities Representative. From then through August 2007, Jones associated with several FINRA member firms. Since September 2007, Jones has associated with KJC and served as its president, chief executive officer, and chief compliance officer. Since May 2013, Jones has also served as KJC's FINOP.[15] Under KJC's written supervisory procedures, as FINOP, Jones was responsible for preparing and maintaining the Firm's books and records and its financial reports.[16] Jones is also KJC's CFO.[17]

In addition to her Series 52 (Municipal Securities Representative) license, Jones has obtained the following FINRA licenses: Series 7 (General Securities Representative); Series 24 (General Securities Principal); Series 28 (Introducing Broker-Dealer Financial and Operations Principal); Series 53 (Municipal Securities Principal); Series 63 (Agent); and Series 99 (Operations Professional).[18]

B. The 2011 Loan and CD

1. Jones Takes Out the 2011 Loan and Buys the 2011 CD

In December 2011, KJC urgently needed to increase its net capital by $70,000. Jones contacted the president of a bank ("CNB") and asked if CNB would acquire KJC.[19] CNB declined to make the acquisition.[20] Instead, the bank president suggested that CNB could give Jones a line of credit through which CNB could extend a personal loan to Jones to fund the purchase of a CD that would be pledged as security for the personal loan. The bank president explained to Jones that because the CD would be pledged in support of her personal loan, Jones, as well as KJC, would need to have an ownership interest in the CD.[21]

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[14] Tr. 1187; CX-142, at 10.

[15] Compl. ¶¶ 4-8; Ans. ¶¶ 4-8; CX-142.

[16] Compl. ¶¶ 13-14; Ans. ¶¶ 13-14. FINRA has jurisdiction over Jones because she is currently registered with FINRA through a member firm and the Complaint charges Jones with misconduct while she was registered with FINRA.

[17] Tr. 1333.

[18] Compl. ¶ 5; Ans. ¶ 5; Tr. 340; CX-95, at 4; CX-142, at 2, 11.

[19] Tr. 346-47.

[20] Tr. 346-47, 512-13.

[21] Tr. 347-49, 370-74. Jones was inconsistent on what, if anything, the bank president told her about whether the 2011 CD would be pledged as security for the 2011 Loan. At one point, Jones maintained that the bank president did not explain to her in 2011 that the 2011 CD would be pledged to secure the 2011 Loan. Tr. 991, 1279. Jones testified that if the bank president had explained this, she would have viewed the 2011 CD as unacceptable because an asset that cannot be easily cashed is an encumbered asset that does not qualify as an allowable asset. Tr. 1279-80. Jones

On December 30, 2011, CNB gave Jones a personal one-year renewable loan, the 2011 Loan, of $70,150 on a line of credit to fund the 2011 CD. Consistent with the bank president's explanation, the certificate for the 2011 CD stated near the top of the first page that the CD was issued to "Kipling Jones & Co., LTD. or Robbi J. Jones."[22] In connection with the 2011 Loan, Jones signed the first page of a promissory note (the "2011 Note") under a warning in all capital letters: "CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT." In a box next to the warning, the 2011 Note provided, "SECURITY: This note is separately secured by . . . [the 2011 CD]."[23] The 2011 Note required Jones to pay interest monthly and the principal at maturity.[24]

The certificate also stated that the 2011 CD opened on December 30, 2011, matured on December 30, 2012, and renewed automatically at the maturity date.[25] And it stated that CNB could set off funds in the CD account against any overdue debt owed to the bank by any person having the right to withdraw funds from the CD account.[26]

Jones testified that in 2011 she understood that a CD could not properly be classified as an allowable asset if it were pledged as collateral for a personal loan. She claims that she did not know that the 2011 CD had been pledged as collateral for her loan when KJC reported the 2011 CD on its FOCUS Reports.[27]

The Panel finds that Jones understood from December 2011 forward that she had pledged the 2011 CD as collateral for the 2011 Loan and the CD therefore could not be an allowable

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also testified that the bank president told her that the 2011 CD was not pledged as security for the 2011 Loan. When the Panel asked her about this testimony, she contradicted herself by responding that the bank president did not say whether the 2011 CD was pledged or not. Tr. 1323.

The Panel credits the testimony of the bank president. His testimony was forthright, and he displayed no antipathy towards Jones or any motive to falsely contradict Jones's claims. Indeed, when asked, Jones identified no reason why the bank president would want to harm her. Tr. 1376. Further, the bank president's testimony was not undercut by cross examination and was corroborated by evidence; specifically, the 2011 Note specifies that the 2011 Loan was secured by the 2011 CD and the 2011 CD was issued to "Kipling Jones & Co., LTD. or Robbi J. Jones," not just KJC. Tr. 348, 370-71; CX-95, at 4; CX-140, at 2.

[22] Compl. ¶ 15; Ans. ¶ 15; CX-86, at 11; CX-95, at 4; CX-140, at 2.

[23] CX-140, at 2.

[24] CX-140, at 2.

[25] CX-17, at 4.

[26] CX-17, at 5.

[27] Tr. 1279-80, 1282, 1322-25; CX-86, at 2-3.

asset. She nevertheless reflected the 2011 CD as an allowable asset on KJC's FOCUS Reports and included it in the Firm's net capital computations.[28]

2. Jones Renews the 2011 Loan and CD in 2012

In December 2012, the 2011 CD rolled over for another twelve months, financed by the renewal of the 2011 Loan. Jones executed a new promissory note (the "2012 Note"), signing under the same warning as in the 2011 Note about the importance of thoroughly reading the note. Like the 2011 Note, in a box next to the warning, the 2012 Note set forth provisions specifying that the note was separately secured by the 2011 CD.[29] Like the 2011 Note, the 2012 Note called for monthly payments of interest and full payment of the principal at maturity.[30] Further, the 2012 Note contained the same set-off provision as the 2011 Note.[31]

3. KJC's 2013 Audit Report and Jones's Response

A few months after Jones first renewed the 2011 Loan and CD, on April 9, 2013, KJC's auditor issued a letter (the "2013 Audit Report") reviewing KJC's internal controls.[32] The Report stated that KJC was out of net capital compliance at the end of 2012.[33] The 2013 Audit Report also discussed a material weakness in controls that related to two CDs:

> [Jones] failed to communicate to the Chief Financial Officer the pledging of certain certificates of deposit of [KJC] for the purpose of obtaining a personal loan, the proceeds of which were used to contribute additional capital to the Partnership. The pledging of the certificates of deposit resulted in them becoming non-allowable assets in the computation of net capital.[34]

The two CDs were a CD that KJC had purchased in December 2007 (the "2007 CD") and one that KJC had purchased in December 2010 (the "2010 CD"). The 2007 CD was pledged in support of a personal loan in December 2011, and the 2010 CD was pledged to support a personal loan in April 2012.[35]

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[28] Compl. ¶¶ 32(a)-(m); Ans. ¶¶ 32(a)-(m); CX-104, at 45; CX-115; CX-116, at 1-2, 4; CX-117, at 1-2, 4; CX-118, at 1-2, 4; CX-119, at 1-2, 4; CX-120, at 1-2, 4; CX-121, at 1-2, 4; CX-122, at 1-2, 4; CX-123, at 1-2, 4; CX-124, at 1-2, 4; CX-125, at 1-2, 4; CX-126, at 1-2, 4; CX-127, at 1-2, 4; CX-128, at 1-2, 4.

[29] CX-95, at 12.

[30] CX-95, at 12.

[31] CX-95, at 13.

[32] CX-133, at 3-5.

[33] CX-133, at 5; CX-134, at 1.

[34] CX-133, at 5.

[35] CX-133, at 5; CX-134, at 2; CX-135, at 1.

KJC and Jones did not dispute the discussion of the CDs in the 2013 Audit Report. Rather, by letter to FINRA dated April 30, 2013, Jones represented that she had taken and passed the Series 28 (Introducing Broker-Dealer Financial and Operations Principal) exam in order to better understand financial reporting requirements. In addition, she committed to FINRA that in "order to increase transparency of" the KJC assets, "CDs will no longer be used as capital" and that all "Partnership capital will be held" in four designated accounts, none of which were at CNB.[36] Nevertheless, Jones did not disclose in the letter that she was including the 2011 CD in calculating KJC's net capital, much less that she had pledged the 2011 CD as collateral for the 2011 Loan.[37]

As a result of KJC's having treated the 2007 and 2010 CDs as allowable assets even though Jones had pledged them as security for personal loans, KJC was placed on heightened supervision and required each month to submit to FINRA staff its general ledger, trial balance, and balance sheet.[38]

4. Jones Does Not Pay Off or Renew the 2011 Loan

On October 28, 2013, CNB sent Jones a loan application and a letter advising her that the 2011 Loan would mature on December 30, 2013. The letter said that the full balance of the 2011 Loan would become due and payable on December 30.[39] The letter enclosed a loan application and advised Jones of the other materials that she would need to submit to have the 2011 Loan renewed. To renew the 2011 Loan, Jones needed to complete and return the application and supply her 2012 business and personal tax returns, her two most recent pay stubs, and primary and secondary forms of identification.[40]

Jones did not pay the balance of the 2011 Loan when it became due on December 30, 2013.[41] In early February 2014, Jones submitted the loan application to renew the 2011 Loan, but did not provide proof of her income.[42] CNB therefore did not renew the loan. Instead, during the week of February 3, 2014, CNB's loan collection officer spoke with Jones about her plan for

[36] CX-134, at 2-3. Although none of the violations charged in the Complaint are based on the 2007 and 2010 CDs, the Panel considered the pledging of the two CDs and related correspondence in assessing Jones's credibility and in assessing an argument that Respondents raised in defense of the first cause.

[37] CX-134.

[38] Tr. 587-89.

[39] CX-95, at 18.

[40] CX-95, at 18.

[41] Tr. 349-50, 358-60; CX-95, at 3, 9, 18.

[42] CX-95, at 11.

repayment of the 2011 Loan.[43] Jones told the loan collection officer that she would email the proof of income to CNB to renew the 2011 Loan, but she did not do so.[44]

5. CNB Uses the 2011 CD to Pay Off the Loan

On February 19, 2014, CNB's loan collection officer sent Jones a letter noting that the 2011 Loan expired on December 30, 2013, and that the 2011 CD had been pledged as collateral for the 2011 Loan. This letter warned that if Jones's line of credit was not renewed by February 21, 2014, CNB would consider the 2011 Loan in default and apply the funds from the 2011 CD to satisfy the debt.[45] CNB sent the letter by certified mail to the KJC address listed on the 2011 CD,[46] and the letter was signed for on February 21, 2014.[47] Jones did not pay the outstanding balance.[48]

On March 5, 2014, CNB cancelled the pledged 2011 CD and applied the proceeds ($70,313) to pay off Jones's debt on the 2011 Loan.[49] Jones claims she did not know the 2011 CD was cancelled.[50] While the Panel finds no evidence that Jones or KJC received contemporary notice of the cancellation of the CD, Jones knew the 2011 Loan was past due, she knew she had not satisfied or renewed the loan, and she had received a letter stating that CNB would use the 2011 CD to satisfy the unpaid 2011 Loan if she did not renew the loan. She therefore knew or was reckless in not knowing by April 2014 (when Jones filed KJC's March 2014 FOCUS Report, which included the 2011 CD as an allowable asset) that CNB had cancelled the 2011 CD.

KJC did not record, and Jones did not take steps to cause KJC to record, the March 2014 cancellation of the 2011 CD in KJC's books and records. KJC continued to carry the 2011 CD as an asset on its general ledger through December 2014.[51] KJC also continued to carry the 2011 CD as an asset on its trial balance and balance sheet after CNB had cancelled the CD.[52] The

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[43] Tr. 384-85; CX-95, at 11.

[44] Tr. 981; CX-95, at 11.

[45] Tr. 350, 384-85; CX-95, at 9.

[46] CX-95, at 9-10.

[47] Tr. 984; CX-95, at 4, 9-10. Jones claims she did not get the loan collection officer's February 19 letter. Tr. 984. However, the Panel determines that she received it on or about February 21, 2014. Beginning in 2008, KJC's Houston office was located in leased space at the address listed on the 2011 CD. At some point in the first half of 2014, KJC moved from that address into other office space. CX-115; CX-116, at 1; CX-117, at 1; CX-118, at 1. When KJC moved from the listed address, KJC arranged to continue to receive mail there. Tr. 982-83, 1362-64.

[48] Tr. 349-50; CX-86, at 3; CX-95, at 3.

[49] Tr. 349-50; CX-86, at 3; CX-95, at 3, 9.

[50] Ans. ¶ 2.

[51] Tr. 644-45, 1015-16; CX-104, at 45.

[52] Tr. 643-45, 1018; CX-97, at 1; CX-101, at 1.

failure to record the March 2014 cancellation of the 2011 CD rendered KJC's subsequent general ledgers, trial balances, and balance sheets inaccurate.

In each of the FOCUS Reports that Jones submitted between April 2014 and July 2015, for the periods ending March 31, 2014, through December 31, 2014, KJC reported the 2011 CD as an allowable asset with a value of $70,313 and included the CD in its calculation of net capital.[53] The highest excess net capital that KJC reported during this period was $158,166 for the quarter ended March 31, 2014.[54] KJC reported excess net capital of less than $70,000 in the FOCUS Reports for July 2014, August 2014, the quarter ended September 30, 2014, October 2014, and November 2014.[55] Thus, for most of the second half of 2014, KJC reported excess net capital only because it improperly included the 2011 CD in its net capital calculations.

KJC filed amended FOCUS Reports for the quarter ended December 31, 2014, on July 15 and July 16, 2015.[56] Those amended FOCUS Reports also reflected the 2011 CD as an allowable asset of $70,313.[57] In the amended FOCUS Reports filed on July 15 and 16, KJC's net capital was less than its required minimum of $100,000 even with the use of the non-allowable 2011 CD.[58]

The FOCUS Reports that Jones submitted between April 2014 and July 2015 for the periods ending March 31, 2014, through December 31, 2014, were inaccurate. The FOCUS Reports reflected the 2011 CD as an allowable asset even though Jones had pledged it as collateral for the 2011 Loan, and CNB had cancelled the 2011 CD on about March 5, 2014.

C. The Houston Investigation

1. Houston Notices the Charges

In about November 2012, a clerk in the Office of the Houston City Controller ("Office of the Controller") had questions about a $636.70 charge from September on the Houston Credit Card. The charge was for round-trip travel on Southwest Airlines ("Southwest") between Houston and Birmingham, Alabama (the "Birmingham Trip"). The clerk subsequently identified

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[53] Compl. ¶¶ 30-32(a)-(m); Ans. ¶¶ 30-32(a)-(m); CX-115; CX-116, at 1-2, 5; CX-117, at 1-2, 5; CX-118, at 1-2, 5, CX-119, at 1-2, 5; CX-120, at 1-2, 5; CX-121, at 1-2, 5; CX-122, at 1-2, 5; CX-123, at 1-2, 5; CX-124, at 1-2, 5; CX-125, at 1-2, 5; CX-126, at 1-2, 5; CX-127, at 1-2, 5; CX-128, at 1-2, 5.

[54] CX-116, at 5.

[55] CX-120, at 5; CX-121, at 5; CX-122, at 5; CX-123, at 5; CX-124, at 5; CX-125, at 5. For December 2014, CNB initially reported net capital of $176,346. CX-126, at 4.

[56] Tr. 640-41; CX-115; CX-127; CX-128. On February 3, 2016, KJC also filed an amended FOCUS Report for the quarter ended December 31, 2014. CX-129. The KJC FOCUS Report filed on February 3, 2016, was the first time that KJC reflected the 2011 CD as a non-allowable asset of $70,313. Compl. ¶ 32(n); Ans. ¶ 32(n); CX-115; CX-129, at 2.

[57] Compl. ¶¶ 32(l)-(n); Ans. ¶¶ 32(l)-(n).

[58] CX-127, at 4; CX-128, at 4.

a second questionable charge to the Houston Credit Card, $455.90, for one-way travel on Southwest from Chicago to Houston (the "Chicago Trip"). For both trips, Jones was identified as the passenger.[59]

2. Houston Investigates the Credit Card Charges

In about May 2013, the Office of the Controller began investigating what appeared to be unauthorized use of a city credit card account to purchase two airline tickets for travel by Jones—the Birmingham and Chicago Trips.[60] On May 8, 2013, the Office of the Controller notified FS (the broker-dealer that had acted as a financial advisor along with KJC on various City of Houston transactions) that the office had questions regarding two airline tickets purchased in Jones's name. The broker-dealer relayed this information to Jones, who then talked by telephone with CM, an employee in the Office of the Controller.[61]

After the telephone call, Jones gave CM documentation regarding each of the trips that Jones had "made with respect to the City of Houston since [CM] joined the Office of the Controller."[62] Jones included a printout from her Southwest account reflecting a round-trip flight between Houston and Newark on April 23-26, 2013 ("Newark Trip"), at a cost of $476.30, and an excerpt from KJC's bank account showing an April 18 payment to Southwest for that amount. She also included a document from United Airlines confirming a round-trip flight between Houston and Memphis on November 28, 2012 (the "Memphis Trip"), that was paid for using frequent flyer miles.[63] Each of these trips related to City of Houston business.[64]

The Office of the Controller then referred the matter to the Office of Inspector General.[65] On January 4, 2014, the Office of Inspector General asked Southwest for information regarding the credit card to which the Chicago Trip had been charged.[66] On April 1, 2014, the Office of Inspector General again asked Southwest for payment information about the Chicago Trip, and

[59] Tr. 155-57; CX-112, at 1-4.

[60] Tr. 155-57; CX-112, at 1-4.

[61] Tr. 1117-19; CX-109; CX-113, at 19.

[62] Tr. 1117-19; CX-106, at 2; CX-113, at 36.

[63] CX-107; CX-108.

[64] CX-34. Jones testified that CM asked for information regarding flights Jones had taken since CM became deputy controller. Tr. 1130-31. The record does not establish if that is the information that CM requested, or whether CM requested information relating to the two trips that the Office of the Controller had questioned, the Birmingham and Chicago Trips.

[65] Tr. 156-57.

[66] CX-112, at 13.

also requested information regarding the credit card to which the Birmingham Trip had been charged.[67]

On June 4, 2014, Jones met with the Office of Inspector General. At the meeting, Jones acknowledged that she had taken the Birmingham and Chicago Trips and explained—but was unable to prove—that she had used the credit card of her mother, GJ, to purchase tickets for the trips.[68] By the end of that meeting, and possibly from the outset of the inquiry by the Office of the Controller, the Houston Investigation was focused on the Birmingham and Chicago Trips, and not on the Memphis and Newark Trips.[69]

3. Houston Concludes Its Investigation

Sometime around June through August 2014, Jones and KJC retained a criminal defense attorney, CW, to represent Jones in connection with the Houston Investigation.[70]

On June 16, 2014, the Office of Inspector General sent a letter (the "June 16 Letter") to Jones, care of KJ (Jones's brother, who was an attorney) and with a copy to CW. The letter stated that the Office of Inspector General had completed its investigation and had sustained the allegation that Jones was responsible for unauthorized use of the Houston Credit Card on two occasions to book flights for herself on non-City business.[71]

Jones testified that she did not see the June 16 Letter from the Office of Inspector General until January 2018 when preparing for the hearing in this proceeding.[72] According to Jones, CW told her about the June 16 Letter in about June 2014, but he only told her that it said the City of Houston was not filing criminal charges.[73] Jones explained that CW, as a criminal attorney, thought it was good outcome as long as an investigation did not result in criminal charges, and he therefore did not mention to her that the Houston Investigation had sustained the allegations against her.[74]

Enforcement has not offered persuasive evidence that Jones saw the June 16 Letter at any time before January 2018, or that anyone told Jones before then that the Inspector General had

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[67] CX-112, at 9.

[68] Tr. 1144-46; CX-112, at 7; CX-113, at 18-20.

[69] Tr. 1126; CX-113, at 17-18, 20, 32.

[70] CX-19, at 2; CX-90, at 2; CX-104, at 40.

[71] CX-90, at 2. Jones was inconsistent as to whether her brother, KJ, ever mentioned the June 16 Letter to her. First, she testified that he had yet to mention the letter to her. Tr. 1326. Later, she testified that she has talked to her brother who stated that he saw the June 16 Letter but took no action in response to the letter because he saw that the letter had also been sent to CW. Tr. 1326-27. The record does not reflect that KJ ever showed Jones the letter.

[72] Tr. 1230, 1232.

[73] Tr. 1328.

[74] Tr. 1328.

sustained allegations against Jones. Accordingly, the Panel does not find that Jones saw the letter, or learned of its contents, before January 2018.

Based on the low dollar amount at issue, the Office of Inspector General decided not to make a criminal referral of the matter.[75]

D. FINRA's 2014 Cycle Examination of KJC

1. The CDs and Loans

a. FINRA Requests KJC's Financial Information and Jones Provides Insufficient Responses

In November 2014, FINRA began the 2014 Cycle Exam. In this exam, FINRA staff looked at, among other things, the Firm's net capital, reporting, and legal expenses.[76]

FINRA staff selected September 30, 2014, as the operative date for the review of the Firm's net capital status and reporting, which corresponded to the effective date of KJC's then most-current FOCUS Report.[77] On November 11, 2014, FINRA staff requested various financial books and records including a detailed general ledger for the month of September 2014; a trial balance and a balance sheet as of September 30, 2014; and proof of all allowable assets claimed in the net capital computation.[78] On November 25, 2014, Jones provided the general ledger, balance sheet, and trial balance to FINRA.[79]

Each of these three documents reflected the 2011 CD as having an accrued balance of $70,313.09.[80] This accrued balance corresponded with the amount of the $70,313 allowable asset reported in KJC's FOCUS Reports, strongly implying that the 2011 CD was the allowable asset reflected in the FOCUS Reports.[81] Jones did not provide documents supporting the reported balance of the CD.[82]

On December 4, 2014, FINRA staff requested that Jones provide a copy of the Firm's general ledger covering the period January 2012 through October 2014,[83] which the Firm

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[75] Tr. 923.

[76] Tr. 36, 51-53.

[77] Tr. 36, 38; CX-1; CX-115.

[78] Tr. 36; CX-1.

[79] Tr. 38-39; CX-96; CX-97; CX-99.

[80] CX-97, at 1; CX-99, at 2; CX-101, at 1.

[81] CX-97; CX-99, at 2; CX-101, at 1; CX-123. at 2.

[82] CX-8, at 1.

[83] CX-3; CX-103.

provided a week later.[84] On December 11, 2014, FINRA staff sent Jones an email detailing many documents they had requested but not yet received.[85] The December 11 email included another request for proof of the reported $70,313 balance for the 2011 CD, which the staff had first requested a month earlier.[86] FINRA staff sent Jones another email noting its outstanding requests on December 15, 2014.[87]

On December 18, 2014, Jones sent an email to FINRA staff, representing that CNB was unable to provide a statement reflecting the 2011 CD's balance as of September 30, 2014, and that CNB would instead provide a "screenshot" showing that balance.[88] Jones said she would forward it to FINRA as soon as she received it.[89] Later that day, Jones forwarded, among other documents, a screenshot that showed the balances of the 2011 CD from December 30, 2011, through December 30, 2013, but no information on the balance as of September 30, 2014.[90] Not only was this screenshot not responsive to FINRA's request, the screenshot was in fact 11 months old—and Jones had previously provided this screenshot to FINRA staff in the context of a FINRA request that predated the 2014 Cycle Exam. Jones's email did not note the date of the screenshot, and it did not explain why Jones did not provide the requested information.[91]

On December 26, 2014, the staff asked Jones to contact CNB to find out the early withdrawal penalty on the 2011 CD. Jones responded later that day, saying she was "trying"; she had contacted CNB but had only reached a teller supervisor, who was not able to answer the question.[92] FINRA sent additional requests for information by email on December 30, 2014, January 5, January 9, and January 13, 2015. Jones continued to delay and provide insufficient responses.[93]

Throughout the 2014 Cycle Exam, Jones knew that she had pledged the 2011 CD as collateral for her personal 2011 Loan and, as such, that the CD was not an allowable asset. She also knew that CNB had warned her that it would use the 2011 CD to pay off the 2011 Loan so, in any event, the 2011 CD probably no longer existed. Because Jones omitted this important

[84] CX-11, at 1; CX-103; CX-104.

[85] CX-8.

[86] CX-8.

[87] CX-15, at 1.

[88] CX-17, at 1.

[89] CX-17, at 1-2.

[90] CX-17, at 3.

[91] Tr. 388, 1028, 1365-66; CX-17, at 3; CX-113, at 45.

[92] CX-25, at 4-5.

[93] CX-25, at 1-4.

information about the 2011 CD, her various emails describing steps she was taking to get information about the CD and blaming CNB for not producing it were misleading.

b. Jones Takes Out the 2014 Loan and Buys the 2014 CD

On December 30, 2014, Jones personally borrowed $70,000 (the "2014 Loan") from CNB and bought a two-year CD (the "2014 CD").[94] Like the 2011 Note, the promissory note for the 2014 Loan (the "2014 Note") stated that the loan was secured. On the first page, the 2014 Note stated that Jones was giving the bank a security interest in the 2014 CD. Jones initialed the first page. At the top of the second page under the title "Security Agreement," the 2014 Note read:

> Security: To secure the obligations of this Loan Agreement, I give you [CNB] a security interest in . . . [the 2014 CD] in the name of Kimpling [sic] Jones & Co., LTD. or Robbie [sic] J. Jones . . . The Property will also serve as collateral for all present and future debts.

Jones initialed the second page.[95] On the fourth page, Jones signed her full name under a caution in all capital letters: "CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT."[96]

Even though the 2014 Note clearly stated that the 2014 CD was pledged as security for the 2014 Loan, KJC carried the 2014 CD as an allowable asset for a period on KJC's FOCUS Reports.[97] Jones did this even though she knew that a CD pledged as security for a personal loan did not qualify as an allowable asset and even though she had promised in response to the 2013 Audit Report that she would no longer use CDs as capital.

c. Jones Delays Responding to FINRA and Uses the 2014 CD to Cover for the Cancelled 2011 CD

On January 16, 2015, Jones told FINRA staff that the 2011 CD had rolled over at the end of December 2013 and that at year-end 2014 Jones requested a two-year maturity. Jones explained that because the maturity of the 2014 CD was different from the 2011 CD's maturity, CNB was not able to automatically roll the 2011 CD over. She further explained that since the

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[94] Tr. 986-88; CX-95, at 14-17. The record does not reflect how Jones came to purchase the 2014 CD except that Jones testified that CNB asked her whether she wanted a two-year CD. CX-113, at 48.

[95] CX-95, at 15.

[96] CX-95, at 17. Jones testified at the hearing that she does not recall assigning the 2014 CD as collateral for her personal loan. Tr. 988.

[97] Tr. 1362. The record does not reflect how long KJC carried the 2014 CD as an allowable asset.

2011 CD was therefore technically cancelled, CNB was sending a check for the accumulated interest (which she had not yet received).[98]

In February 2015, because Jones had failed to respond to multiple prior requests, FINRA began requesting information and documents pursuant to Rule 8210.[99] As set forth below, Jones continued to make excuses for why she could not provide the requested information and documents.

On February 24, 2015, in response to a request seeking documentation relating to the early withdrawal penalty on the 2011 CD, Jones submitted documentation for the 2014 CD. She explained that she had requested from CNB the same documentation "for the CD which was in place *during* 2014 [the 2011 CD] but, quite frankly, do not expect to receive it in a timely manner" from CNB.[100]

In late February or early March 2015, FINRA contacted CNB directly to inquire how to obtain a statement or screenshot reflecting the balance of a CD for a given date. On March 2, 2015, FINRA staff emailed Jones, requesting a screenshot showing the 2011 CD's balance as of September 30, 2014, and provided Jones with contact information for a CNB employee who might be able to help her get the information they had requested.[101] The staff added, "If there is some other circumstance or issue regarding the [CD], we would appreciate being made aware of any further details."[102]

The next day, March 3, 2015, FINRA staff sent a follow-up email, and Jones replied a few minutes later stating that she had been unable to reach the CNB employee but would continue to try.[103] On March 4, Jones emailed FINRA staff that she had just heard from the CNB employee and would need to send the request to CNB by overnight mail.[104] On March 5, Jones sent FINRA an email attaching documents relating to the 2014 CD, including a copy of the certificate.[105]

On March 6, 2015, Jones sent FINRA staff an email saying she had received a message from a CNB employee who explained that a screenshot was a printout of the information on a

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[98] CX-27, at 1.

[99] Tr. 97.

[100] CX-33; CX-35, at 1. Jones intended to refer to the 2011 CD and FINRA staff understood that was her intent, when she referred in this email to "the CD which was in place during 2014." Tr. 114-15, 1051.

[101] Tr. 128-29; CX-42, at 3.

[102] CX-42, at 3.

[103] CX-42, at 1.

[104] CX-46.

[105] CX-47.

screen and CNB did not have the ability to produce a screenshot retroactively.[106] Jones added that she has to re-draft her letter to specifically refer to the 2011 CD as a closed account, get the letter notarized, and send it to someone else at CNB.[107]

Later that afternoon, FINRA staff asked Jones by email for a definite date when the requested information and documentation would be in FINRA's office.[108] Later that day, Jones emailed a screenshot for the 2014 CD. She said she expected to receive a letter for the 2014 CD on March 9 and a letter for the 2011 CD on March 10.[109]

Several days later, on March 10, Jones said that she should "have the letter for 2014 tomorrow morning."[110] Later that day, she told FINRA staff that she expected to receive both letters on March 11.[111]

Three days later, on March 13, Jones said she had asked CNB for an update and had not received a response, but she would keep trying. Jones never provided the promised CNB letters to the staff.[112]

On March 18, 2015, FINRA staff issued a "Notice of Current Net Capital Deficiency Identified by FINRA." The notice was based in part on KJC's failure to provide sufficient documentation to verify the 2011 CD, "bringing into question the balance of this allowable asset."[113] The notice reminded Jones that, unless otherwise permitted by FINRA, a member shall suspend all business operations during any period in which the member is out of compliance with the Net Capital Rule.[114]

In March 2015, while trying to obtain information and documentary evidence from CNB to respond to requests from FINRA staff, Jones talked by telephone with the bank president. The bank president told Jones that the 2011 CD was not in place on September 30, 2014, because CNB had used the funds in the CD account to pay off Jones's 2011 Loan.[115]

Throughout the 2014 Cycle Exam, Jones knew that she had pledged the 2011 CD as security for the 2011 Loan, and that it was therefore improper for KJC to treat the 2011 CD as an

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[106] CX-50, at 1.

[107] CX-50, at 1.

[108] CX-53, at 1.

[109] CX-54.

[110] CX-56, at 1.

[111] CX-62, at 1.

[112] Tr. 161-62; CX-63.

[113] CX-69, at 2.

[114] CX-69, at 2.

[115] CX-86, at 3.

allowable asset in calculating KJC's net capital. She also knew that CNB had warned her that it would set off the 2011 CD funds against the 2011 Loan if she did not renew the 2011 Loan. And she also knew that she had not renewed the 2011 Loan. Nevertheless, Jones did not disclose either fact to FINRA staff when communicating to the staff regarding the 2011 CD.

2. The Houston Investigation

During the 2014 Cycle Exam, FINRA reviewed KJC's general ledger and discovered an August 14, 2014, payment of $2,500 to CW's law firm.[116] On November 19, 2014, FINRA staff issued a request to Jones to provide, among other things, an explanation for this payment.[117]

On December 12, 2014, FINRA staff met with Jones to discuss, among other things, the circumstances involving KJC's $2,500 payment to CW's law firm.[118] During this meeting, Jones told FINRA staff the she had retained CW to represent her in connection with an inquiry by the Office of the Controller. She explained that the inquiry concerned what appeared to be unauthorized use of the Houston Credit Card to purchase airline tickets issued in Jones's name.[119] In response to the staff asking about the status of the Houston Investigation, Jones said that she had not received any recent inquiries regarding the airline tickets.[120]

That same day, December 12, FINRA staff requested that KJC provide, among other things, (1) a letter from CW regarding the Houston Investigation that included details regarding the investigation and its outcome; (2) a signed statement from Jones explaining the particulars of the matter, including the current status of the Houston Investigation; and (3) all documentation from the City of Houston on the issue.[121]

On December 23, 2014, Jones forwarded to FINRA a copy of a December 19, 2014, letter from CW to KJC.[122] This letter stated that (1) the City of Houston conducted an investigation regarding two airline tickets purchased in the name of Robbi Jones with the Houston Credit Card; (2) after a thorough investigation, it was determined that the City of Houston did not suffer any financial loss and Jones was cleared of any wrongdoing; and (3) none of the current contracts between KJC and the City of Houston were affected, and KJC continues

[116] Tr. 51-52; CX-104, at 40.

[117] Tr. 45; CX-102.

[118] Tr. 61-62.

[119] Tr. 61-63.

[120] Tr. 62.

[121] CX-11, at 1-2; CX-12.

[122] CX-19.

to do business with the City of Houston.[123] Jones did not provide a statement signed by Jones or documentation from the City of Houston as FINRA had requested.

On February 5, 2015, because Jones had failed multiple times to provide documents in response to FINRA requests, FINRA issued a request pursuant to FINRA Rule 8210 that sought documents on a number of topics, including the Houston Investigation.[124] The staff requested that Jones submit to FINRA, on or before February 12, 2015, a written statement signed by Jones "explaining the circumstances relating to the airfare expense matter (two airfare tickets purchased with a City of Houston credit card in your name) which resulted in the August 2014 legal services provided by [CW]."[125]

On about February 16, 2015, four days after the deadline, Jones submitted to FINRA staff two signed statements regarding the Houston Investigation, accompanied by various supporting documents. In these materials, she indicated that the two airfare tickets in question were the Memphis and Newark Trips. Jones stated that she purchased the tickets for one of the trips and used frequent flier miles to pay for the other trip.[126] The supporting documents included documents Jones had previously submitted to CM in June 2014. These documents demonstrated that Jones purchased the Memphis Trip using frequent flyer miles and the Newark Trip using funds drawn from KJC's operating account.[127]

Jones omitted the Birmingham and Chicago Trips from both of her signed statements, even though (1) she knew that the Houston Investigation focused on these two trips, and (2) the Rule 8210 request explicitly referred to two tickets purchased in Jones's name with the Houston Credit Card.[128]

In March 2015, Jones informed FINRA staff for the first time that the Houston Investigation looked at the Birmingham and Chicago Trips.[129] On March 17, Jones emailed to FINRA staff two documents relating to these trips. The first was an email from Southwest transmitting to Jones information from Southwest's computer reservation system relating to the Chicago Trip.[130] The information included the last four digits of the credit card used in the

[123] CX-19, at 2.

[124] Tr. 97; CX-31.

[125] CX-31, at 2-3.

[126] CX-34; CX-106; CX-107; CX-108; CX-109.

[127] Tr. 70; CX-107; CX-108.

[128] Tr. 110, 112, 283; CX-34, at 2; CX-67, at 2; CX-107; CX-108; CX-109.

[129] Tr. 163-64; CX-67.

[130] CX-66.

transaction and indicated that Jones was the passenger and that Southwest received the payment from GJ.[131]

The second was a memo from Jones on KJC letterhead dated June 6, 2014, and addressed to Southwest's Office of General Counsel.[132] The memo stated that on two occasions Jones purchased through Southwest's online ticket purchasing portal airline tickets for travel on Southwest and asked Southwest for the full 16-digit number for the credit card used to purchase the tickets.[133] In her forwarding email to FINRA staff, Jones stated that her brother drafted the memo and she believed he faxed it to Southwest from his office in Atlanta, Georgia.[134] The record contains no evidence that the memo was faxed or otherwise sent to Southwest.

The record does not reveal what prompted Jones to mention in March 2015 the June 6 letter that KJ purportedly prepared. The record also does not reveal why Jones took almost two months to provide it after FINRA staff asked on January 21, 2015, for "any documentation related to the [Houston] matter that may be available to verify the nature and resolution of the expense issue."[135]

In March 2015, FINRA staff contacted the Office of Inspector General about the Houston Investigation.[136] Later in 2015, the Office of Inspector General told FINRA staff that the office had concluded that on two occasions a City of Houston credit card was used for Jones's benefit, but that the office did not make a criminal referral because of the low dollar amount at issue.[137]

3. Jones's Misrepresentation Regarding Her Mother

During March 2015, Jones mentioned in an email to FINRA staff that there had been a death in her family and she was sorry that she was not able to provide the staff with outstanding documents that the staff had requested.[138] Because Jones had previously mentioned that her

[131] CX-66. According to Jones, she purchased the tickets on Southwest's online ticket purchasing portal. CX-67, at 2. The record does not establish whether the information in the record regarding the source of the payment is based on information that Jones entered into the portal or on information that Southwest received from the bank that issued the credit card.

[132] CX-67, at 2.

[133] CX-67, at 2.

[134] CX-67, at 1.

[135] CX-29, at 2.

[136] Tr. 883-84; CX-70.

[137] Tr. 892, 895-96, 923-24, 933-34; CX-112.

[138] Tr. 646-47.

mother, GJ, was very sick, the FINRA staff member who received the email asked Jones if it was GJ who had died.[139] Jones falsely responded affirmatively.[140]

E. Jones's OTR

1. FINRA Requests Jones's OTR

On March 30, 2015, FINRA staff sent a letter to Jones requesting, pursuant to FINRA Rule 8210, that she appear for an OTR at the New Orleans district office on April 10, 2015.[141] On the morning of April 10, FINRA staff received an email from an individual named "Audrey" using Jones's email address.[142] The email stated that Jones had just been released from the hospital and probably had not seen FINRA staff's letter requesting her appearance for an OTR.[143] That afternoon, FINRA staff spoke with Jones and agreed to postpone the OTR one week to April 17.[144] On April 15, Jones sent an email saying that she was trying to retain counsel to represent her at the OTR, and the next day she requested another postponement of the OTR to allow her additional time to retain counsel.[145] FINRA staff agreed to postpone the OTR to April 23, 2015.[146]

On April 22, 2015, FINRA staff received a letter from Jones's attorney requesting that the OTR be postponed to May 8, 2015, due to a scheduling conflict.[147] FINRA staff agreed to the postponement.[148]

About two weeks later, on May 5, FINRA staff received an email from Jones in which she described in detail various health problems that she had and the medical treatments she was receiving.[149] She also attached several pages of medical records detailing her condition and

[139] Tr. 646-47.

[140] Tr. 646-47, 1246-47.

[141] CX-71, at 6-7.

[142] CX-73.

[143] CX-73.

[144] CX-74.

[145] CX-77; CX-78.

[146] CX-79, at 2-3.

[147] CX-80.

[148] CX-81.

[149] CX-82.

treatments.[150] FINRA staff responded by email indicating that the May 8 OTR would proceed as scheduled.[151]

On May 7, 2015, Jones emailed FINRA staff requesting that they not ask any questions about her health at the OTR. She explained that her attorney is a close friend of her family, and that she did not want to share any information with him about her medical condition for fear that he would relay that information to Jones's family.[152] FINRA staff responded to Jones's email, acknowledging her request and stating that only "business-related items" would be discussed.[153]

About an hour or two later, Jones's attorney telephoned FINRA staff to inquire if the OTR would be postponed due to Jones's medical condition.[154] FINRA staff responded that the OTR would proceed and nothing in Jones's medical records indicated that she could not participate in the OTR.[155] The attorney also inquired what the staff intended to discuss with Jones at the OTR.[156] FINRA staff responded that the OTR would cover matters relating to the 2014 Cycle Exam and matters relating to a separate, on-going cause examination.[157]

2. Jones's Testimony at Her OTR

a. The 2011 Loan and CD

During the May 8, 2015 OTR, Jones, who was represented by counsel, testified:

- that the 2011 CD was never pledged or encumbered;[158]
- that the 2011 CD was "rolled over" in December 2012 and, as far as she knows, in December 2013;[159]

[150] CX-82 (Jones's email reflects that medical records were attached).

[151] CX-83, at 1-2.

[152] CX-84, at 3. According to Jones's unsupported hearing testimony, Jones still had psychic and physical wounds from recently being in a hospital for hypertension and also had another medical condition that she wanted to keep private from her attorney. Jones testified that she gave her attorney documentation relating to one particular medical condition for him to forward to FINRA staff. Tr. 1287-90.

[153] CX-84, at 2-3.

[154] Tr. 792.

[155] Tr. 792.

[156] Tr. 791-92.

[157] *See* Tr. 791-92 (discussing the scope of the OTR).

[158] CX-113, at 43-44.

[159] CX-113, at 44.

- that in 2014 it was "changed to a two-year instrument";[160]

- in response to FINRA staff asking about her most recent communication with CNB regarding the 2011 CD, that it occurred in about February 2014. At that point, CNB told Jones that it would give her a screenshot showing the then-current balance of the CD;[161] and

- in response to FINRA staff asking Jones whether she ever asked the bank president for assistance in obtaining information from the bank and what happened when she did, that the bank president responded that it would be difficult to provide a screenshot for September 30, 2014.[162]

Jones did not testify about her March 2015 conversation with the bank president in which he told her that the bank had used the funds in the CD account to satisfy the 2011 Loan and that on September 30, 2014, the 2011 CD was not in place.[163]

Immediately after Jones's OTR, FINRA staff met with Jones and her attorney and asked Jones to sign a letter authorizing CNB to release to FINRA historic balance information for the two CDs and a statement regarding whether the CDs had been pledged or encumbered.[164] When presented with the letter, Jones asked whether the staff needed information regarding the 2014 CD in light of the information she had already provided, and the staff agreed that it did not.[165] Jones then expressed concern over FINRA's seeking information as to whether the 2011 CD had been pledged, and the staff acknowledged that this issue was not as much a concern as whether the asset existed at specified dates.[166] Jones then conferred with her attorney outside the presence of the staff. After this conference, her attorney informed FINRA staff that Jones could not sign the letter because the 2011 CD did not exist as of September 30, 2014.[167]

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[160] CX-113, at 46.

[161] CX-113, at 47.

[162] CX-113, at 48.

[163] CX-113.

[164] Tr. 197-99; CX-110.

[165] Tr. 197-98; CX-110, at 1-2.

[166] CX-110, at 1-2.

[167] Tr. 197-98; CX-110, at 1-2. Jones testified that while she recalls that FINRA staff presented her with a document to sign, she does not recall providing a reason for her refusal to sign and does not recall anyone informing the staff then that the 2011 CD did not exist on certain dates in 2014. Tr. 1103. Her attorney testified that he thinks that neither he nor Jones told FINRA staff on the day of the OTR that the 2011 CD no longer existed as of September 30, 2014. Tr. 556-57, 568-69. For several reasons, the Panel finds that Jones or her attorney did tell this to FINRA staff then. First, unlike Jones, her attorney did not recall being presented with a document to be signed by Jones which would authorize CNB to release certain information to FINRA, suggesting that his recollection of the post-OTR meeting was limited. Tr. 573-74, 578, 1102. Second, a FINRA staff member testified that she met with Jones and her attorney after the OTR and recalls the attorney making that statement. Tr. 197-98, 293. Third, that staff member

b. The Houston Investigation

During her May 8, 2015 OTR, Jones also testified about the Houston Investigation. Jones made the following statements:

- The Houston Investigation involved five different trips but narrowed to the Birmingham and Chicago Trips;[168]
- Jones purchased the Birmingham and Chicago Trip tickets using GJ's credit card and these trips were not related to business for the City of Houston;[169]
- Jones believed that the Houston Investigation focused on the Birmingham and Chicago Trips because she could not prove (1) the digits on GJ's credit card matched the digits on the Houston Credit Card the tickets were charged to, and (2) the other flights were ruled out "almost immediately";[170] and
- Jones never received a letter or documents from the City of Houston either accusing her of using the Houston Credit Card or reflecting the outcome of the Houston Investigation.[171]

Jones testified that because she booked her Southwest trips through Southwest's online portal, she had put into the portal each of the credit cards that she used.[172] While Jones met with the Office of Inspector General, she used a computer to access her Southwest account, which showed the credit cards that she had put into the portal. For one of the cards, the portal listed GJ's name and showed the last four digits of the card. The Office of Inspector General told Jones that those last four digits were the same as the Houston Credit Card's last four digits.[173]

Jones also testified that she and GJ tried unsuccessfully to obtain either the full 16 digits of GJ's credit card or the credit card account statements that would reflect the relevant

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testified that she prepared a memorandum the following day which accurately summarized the meeting at which the statement was made. Tr. 198-99. The memorandum is detailed and states, among other things, that Jones's counsel informed the two FINRA staff members that "the CD did not exist for the dates being requested in 2014 (September, October, and November)." CX-110, at 1-2. Fourth, in a Rule 8210 request that the staff sent to Jones about six weeks after the OTR, the staff stated that after the OTR, Jones's attorney "verbally represented to FINRA staff that [the 2011 CD] . . . did not actually exist at the time of the firm's FOCUS filings for September 30, 2014, October 31, 2014, and November 30, 2014," and Jones did not object to this statement when she responded to the request. CX-85; CX-86.

[168] CX-113, at 17-18, 20.

[169] CX-113, at 17-18, 29.

[170] CX-113, at 32.

[171] CX-113, at 22.

[172] CX-113, at 33.

[173] CX-113, at 18.

charges.[174] Jones testified that she and other family members had searched her mother's residence on numerous occasions looking unsuccessfully for relevant account statements.[175] Jones further testified that she had been unable to obtain the full 16 digits on GJ's credit card for several reasons, including that (1) the card had expired and been thrown away, (2) the administration of the card had shifted from one bank to another, and (3) the account number reflected on account statements was different than the number that had been on the card.[176]

3. Jones Refuses to Answer Whether Her Mother Had Died

During the OTR, after Jones indicated that privacy considerations posed an obstacle to her obtaining the account statements for GJ's credit card, FINRA staff asked Jones whether GJ was still alive.[177] Jones refused to answer the question, claiming that it was personal and that she would not answer any personal questions.[178] She also refused to answer FINRA staff's questions about whether she had previously told FINRA that her mother had died.[179] Jones also said at her OTR that she probably would not answer the questions if the staff reconvened a later OTR.[180]

At the hearing Jones's attorney asked her why she refused to answer the question of whether her mother was still alive. Jones acknowledged that her refusal was "stupid" and explained that she refused to answer the question for two reasons. First, FINRA staff had told Jones in its May 7 email that they would only discuss "business-related items" and she thought any question about her mother was very personal. Second, Jones did not want to testify about her own health and did not know when testimony of a personal nature could turn to her health.[181]

The May 7 email from FINRA staff responded to Jones's expressed concern about questions regarding her health. However, Jones did not express concern about questions addressing her mother's status. Moreover, Jones did not hesitate to volunteer other comparably personal information, such as when her father had died and that she heard her mother cry during the Houston Investigation.[182] Further, as FINRA staff explained during the OTR, the questions were business related. Representations that an associated person makes to FINRA staff during an exam are clearly business related.

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[174] CX-113, at 48-49.

[175] CX-113, at 48-49.

[176] CX-113, at 18, 33, 49.

[177] CX-113, at 49.

[178] CX-113, at 49, 52.

[179] CX-113, at 52.

[180] CX-113, at 53.

[181] Tr. 1290-92.

[182] CX-113, at 27, 49-53.

F. After the OTR

1. The CDs and Loans

On June 15, 2015, FINRA staff issued a 8210 letter requesting that Jones provide, no later than June 22, 2015, a detailed explanation of the circumstances involving the liquidation of the 2011 CD.[183]

On June 19, 2015, about a month after the OTR, Jones met with the bank president. The bank president told Jones that the 2011 Loan had been secured by the 2011 CD and the CD was properly used to satisfy her loan.[184]

On June 30, 2015 (a week after the deadline), Jones responded to the staff's June 15 letter, stating that:

- on December 30, 2011, she applied for and received an *unsecured* loan from CNB (the 2011 Loan) and used the proceeds to purchase the 2011 CD;

- Jones does not recall giving the bank authority to use the 2011 CD as collateral for the 2011 Loan. In fact, she would not have obtained the loan under those terms because she knew that she could not use a pledged CD to meet KJC's capital requirements;

- during 2014, she fell behind on payments on the 2011 Loan but caught up at some point before December 31, 2014;

- between September 30 and December 31, 2014, Jones was not aware that the 2011 CD had been used to satisfy the 2011 Loan and did not exist for some period of time;

- in March 2015, while trying to obtain information about the 2011 CD from CNB to provide to FINRA, she was informed for the first time by the bank president that the CD was not in place on September 30, 2014, because the bank had used the proceeds of the CD to pay off the 2011 Loan after she missed payments on the loan; and

- until Jones's March 2015 conversation with the bank president, the CNBhad not notified Jones that the 2011 CD would be or had been used to satisfy her line of credit. In fact, she was unaware that the proceeds of the 2011 CD could be used to pay off her loan because she understood that the line of credit was unsecured.[185]

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[183] CX-85, at 2-3.

[184] CX-86, at 2.

[185] CX-86, at 2-3. Jones was inconsistent on why she did not provide FINRA staff with more documents relating to the personal loans that funded the 2011 CD and the 2014 CD. The June 30 letter stated that Jones's law firm had been unable to locate the loan documents. CX-86, at 3. At the hearing, however, Jones testified that she did not

Beginning in late July 2015, FINRA staff sent three Rule 8210 requests asking Jones to sign a letter addressed to CNB that would authorize CNB to release to FINRA staff information and documents relating to the 2011 CD, the 2014 CD, and "any other accounts pledged or encumbered by" either of the two certificate of deposits.[186] The initial deadline for Jones to sign and return the authorization letter was August 4, 2015.[187] However, it was not until September 2, 2015, that Jones signed the proposed letter and returned it to FINRA staff.[188]

2. Jones's Telephone Messages Regarding Her Mother, GJ

In August 2015, Jones left two voice messages with the FINRA staff member to whom she had falsely stated in March 2015 that it was her mother, GJ, who had died.[189] In them, she apologized for falsely answering affirmatively when the staff member asked if it was Jones's mother who had died.[190] Jones stated that, while GJ was sick, it was a different relative who had recently died. Jones explained she gave the false answer because "in a split second I thought well, gosh maybe I can get some more time because I was just overwhelmed with all the FINRA things and personal things."[191]

G. Jones's Credibility

In assessing the evidence, the Panel gave little weight to Jones's testimony. Jones's demeanor at the hearing and the record as a whole caused the Panel to view Jones as not being a credible witness. First, as Jones admits, in March 2015, in order to get more time from FINRA staff to respond to requests for information and documents, she falsely represented to FINRA staff that her mother had died.

Second, the Panel finds, contrary to Jones's testimony at both the OTR and the hearing, that she understood from December 2011 onward that the 2011 CD was pledged as collateral for the 2011 Loan. Thus, the Panel concludes that Jones attempted to mislead FINRA when:

- she filed FOCUS Reports reflecting the 2011 CD as an allowable asset;
- she failed to disclose in connection with the 2013 Audit Report that the 2011 CD had been pledged as collateral for a personal loan;

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provide loan documents because all of the staff's document requests related to the certificate of deposit and in her mind the certificate of deposit and the loan were two separate things. Tr. 1322-33.

[186] CX-87; CX-89; CX-91.

[187] CX-87, at 2.

[188] CX-92.

[189] Tr. 646-48; CX-114.

[190] CX-114.

[191] CX-114, at 2.

- she repeatedly failed to disclose during the 2014 Cycle Exam that the 2011 CD had been pledged as collateral for a personal loan;

- she testified at her OTR that the 2011 CD had not been pledged as collateral for anything;

- she tried to persuade FINRA staff immediately after the OTR that the proposed letter to CNB should not ask CNB to address whether the 2011 CD had been pledged or encumbered;

- she stated in her June 30, 2015, response to the staff's Rule 8210 request that as of March 2015 she understood that the line of credit was unsecured; and

- she testified at the hearing that she sincerely believed that the 2011 CD was not encumbered.[192]

Third, when Jones submitted her April 30, 2013, letter in response to the 2013 Audit Report, she represented that "CDs will no longer be used as capital" and that all "Partnership capital will be held" in four designated accounts, none of which were at CNB.[193] In fact, Jones was using the 2011 CD in calculating KJC's capital. Thus, Jones knew that this representation was false when she made it. In addition, when Jones made this representation, she knew that she had pledged the 2011 CD as security for her personal loan and that it was therefore improper to use the CD in calculating KJC's net capital.

Fourth, despite knowing that FINRA had been seeking information about the 2011 CD since November 2014, Jones failed to promptly inform FINRA staff when the bank president informed her in March 2015 that the 2011 CD had been cancelled. She also failed to identify her March 2015 telephone call with the bank president when she was asked at the OTR about her most recent communication with CNB regarding the September 30, 2014, balance of the 2011 CD. And, when the staff asked at the OTR about what occurred when she reached out to the bank president for assistance, Jones failed to mention that he had told her that the 2011 CD did not exist as of September 30, 2014.[194]

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[192] Tr. 1323.

[193] CX-134, at 3.

[194] According to Jones's hearing testimony, Jones did not testify at the OTR about her March 2015 telephone conversation with the bank president because the president had promised to send her documentation but had not done so. Tr. 1109-10. The Panel rejects this explanation. First, Jones's June 30 letter to FINRA indicates that the bank president made that promise in June 2015 (a month after her OTR), not in the March conversation. CX-86, at 3. Second, even if the bank president had failed to provide promised documentation, such a failure would not justify her failure to disclose the conversation. Third, the Panel finds that the real reason that Jones did not disclose the conversation at her OTR was because she wanted to avoid informing the staff that the 2011 CD did not exist as of September 30, 2014.

Fifth, Jones's credibility was further undermined by inconsistencies in her testimony, which the Panel has identified in this Decision.[195]

III. Analysis

A. First Cause—Jones and KJC Violated FINRA Rules 4511 and 2010 and KJC Willfully Violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 Thereunder

1. Respondents Committed the Alleged Violations

The first cause alleges that Jones and KJC violated FINRA Rules 4511 and 2010, and KJC willfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, by failing to record the cancellation of the 2011 CD on KJC's financial books and records. The first cause also alleges that Jones and KJC violated FINRA Rules 4511 and 2010, and KJC willfully violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder, by filing FOCUS Reports between April 22, 2014, and February 3, 2016, that reflected the 2011 CD as an allowable asset, even though Jones had pledged the CD as collateral for a personal loan and CNB had cancelled the CD on about March 5, 2014.

Section 17(a)(1) requires that broker-dealers make and keep such records and make and disseminate such reports as the SEC, by rule, prescribes. Exchange Act Rule 17a-3(a)(2) requires these records to include ledgers or other records that reflect "all assets and liabilities, income and expense and capital accounts" of the broker-dealer. Compliance with recordkeeping rules is essential to the proper functioning of the regulatory process. "Indeed, the [SEC] has stressed the importance of the records that broker-dealers are required to maintain pursuant to the Exchange Act, describing them as the 'keystone of the surveillance of brokers and dealers by our staff and by the securities industry's self-regulatory bodies.'"[196]

FINRA rules require that members comply with these recordkeeping and reporting requirements. Specifically, FINRA Rule 4511 requires each member firm to "make and preserve books and records as required under the FINRA Rules, the Exchange Act and the applicable Exchange Act rules" and make and disseminate such reports as the SEC, by rule, prescribes as necessary or appropriate in the public interest.[197] The SEC has repeatedly held that the duties to maintain records and file reports require that such records and reports be true and correct.[198]

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[195] *See supra* footnotes 21, 71, and 185.

[196] *Dep't of Enforcement v. Trevisan*, No. E9B2003026301, 2008 FINRA Discip. LEXIS 12, at *35 (NAC Apr. 30, 2008) (quoting *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (1977), *aff'd*, 591 F.2d 588 (10th Cir. 1979)).

[197] *Dep't of Enforcement v. Ortiz*, No. E0220030425-01, 2007 NASD Discip. LEXIS 3, at *15 n.14 (NAC Oct. 10, 2007), *aff'd*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401 (Aug. 22, 2008).

[198] *Dep't of Enforcement v. Inv. Mgmt. Corp.*, No. C3A010045, 2003 NASD Discip. LEXIS 47, at *20 (NAC Dec. 15, 2003). *See also Dep't of Enforcement v. Siesennop*, No. 2010025132201, 2012 FINRA Discip. LEXIS 67, at *29 (OHO Oct. 22, 2012) (quoting *Voss & Co., Inc.*, 47 S.E.C. 626, 632 n.16 (1981)).

Thus, entering inaccurate information in a member firm's general ledgers and FOCUS Reports violates both Rule 4511's requirement to keep accurate books and records and Rule 2010's requirement that members observe high standards of commercial honor and just and equitable principles of trade.[199] "There is no requirement of proof of scienter to establish a violation of Rule [4511], nor is it necessary to prove that inaccuracies in a member's records are material."[200] Conduct that violates Rule 4511 violates Rule 2010's requirement that members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.[201]

Jones caused KJC to not record the cancellation of the 2011 CD in its general ledger and to file FOCUS Reports that inaccurately reflected the 2011 CD as an allowable asset. Accordingly, Jones violated FINRA Rules 4511 and 2010 and KJC violated FINRA Rules 4511 and 2010, Section 17(a) of the Exchange Act, and Rules 17a-3 and 17a-5 thereunder.[202]

2. KJC is Subject to Statutory Disqualification

Enforcement asks that the Panel find that KJC "willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder." A violation is deemed willful if "the person charged with the duty knows what he is doing."[203] The person need not be aware that it is

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[199] *Trevisan*, 2008 FINRA Discip. LEXIS 12, at *27-29 (finding that an associated person who entered inaccurate information into firm's records violated NASD Rule 3110) (the predecessor to FINRA Rule 4511) and NASD Rule 2110 (the predecessor to FINRA Rule 2010).

[200] *Siesennop*, 2012 FINRA Discip. 67, at *29.

[201] *Dep't of Enforcement v. N. Woodward Fin. Corp.*, No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *14 n.16 (NAC July 19, 2016) ("A violation of any FINRA rule is also a violation of FINRA Rule 2010."); *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *35 n.33 (NAC July 18, 2014) (holding that an associated person's failure to comply with NASD Rule 3110 violates FINRA Rule 2010), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

[202] Respondents argue that they should not be found liable under the first cause of action because "Enforcement has not provided Respondents reasonable time to cure the purported violations." [Respondents'] Am. Post-Hearing Br. and Offer of Settlement at 4. This argument fails for at least two reasons. First, Rule 4511, Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder do not contain a requirement that FINRA provide a member firm or associated person an opportunity to correct inaccurate books and records or FOCUS reports. Second, FINRA did provide Jones and KJC a reasonable opportunity to correct KJC's books and records and FOCUS Reports. KJC's 2013 Audit Report put Jones and KJC on notice—if they were not already on notice—that a CD is not an allowable asset if it has been pledged as collateral for a personal loan. By not bringing an enforcement action based on KJC's accounting for the 2007 CD and the 2010 CD, FINRA provided Jones and KJC an opportunity to correct its accounting for CDs that Jones had been pledged as security for a personal loan. In addition, even after FINRA staff asked questions about the 2011 CD, Jones and KJC not only continued KJC's improper accounting for the 2011 CD but improperly accounted for the 2014 CD as an allowable asset even though Jones had pledged the 2014 CD as collateral for a personal loan.

[203] *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000).

violating one of the Rules or Acts.[204] KJC's conduct—*i.e.*, failing to record the cancellation of the 2011 CD and filing FOCUS Reports that reflected the 2011 CD as an allowable asset—was voluntary. The Panel therefore finds that KJC's violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder were willful.

Section 3 of the Exchange Act provides that a person is subject to statutory disqualification if such person has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (G), or (H) of paragraph (4) of Section 15(b) of the Exchange Act.[205] These subparagraphs set forth conditions under which the SEC can sanction a brokerage firm. Subparagraph (D) provides that the SEC may sanction a brokerage firm if the firm has willfully violated any provision of, among other laws, the Exchange Act or the rules and regulations thereunder.[206] Thus, KJC is subject to statutory disqualification as a result of its willful violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder.

B. Second Cause—Jones Violated FINRA Rule 2010 by Providing False Information to FINRA Staff During the 2014 Cycle Exam

1. Information Regarding the 2011 CD

The second cause alleges that Jones provided inaccurate and misleading information and documents to FINRA staff during the 2014 Cycle Exam by describing efforts to obtain information regarding the early withdrawal penalty for, and the September 30, 2014, balance of, the 2011 CD without disclosing that the 2011 CD had been cancelled on or about March 5, 2014. The Panel finds that Jones acted unethically and in bad faith when she repeatedly misled FINRA staff by failing to inform FINRA staff that she had pledged the 2011 CD as collateral for a personal loan and to disclose the facts indicating CNB had probably used the CD to satisfy that loan. Thus, her failures to disclose this information were inconsistent with just and equitable principles of trade and violated FINRA Rule 2010.[207]

2. Information Regarding Houston Investigation

The second cause alleges that, in response to requests from FINRA staff for information regarding the Houston Investigation, Jones provided CW's letter dated December 19, 2014, which stated that, after a thorough investigation carried out by the City of Houston, "Ms. Jones was cleared of any wrongdoing."[208] Because Enforcement has not established that Jones knew or

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[204] *Mathis v. SEC*, 671 F.3d 210, 217 (2d Cir. 2012) (interpreting Sections 3(a)(39)(F) and 15(b)(4)(A) of the Exchange Act).

[205] 15 U.S.C. § 78c(a)(39)(F).

[206] 15 U.S.C. § 78o(b)(4)(D).

[207] *Dep't of Enforcement v. Dieffenbach*, No. C06020003, 2004 NASD Discip. LEXIS 10, at *28-30 (NAC July 30, 2004), *aff'd sub nom. Michael A. Rooms*, 58 S.E.C. 220 (2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006).

[208] CX-19, at 2.

should have known that CW's letter mischaracterized the outcome of the Houston Investigation, Enforcement has not established that Jones violated Rule 2010 by providing the letter to FINRA staff.

3. Information Regarding GJ

The second cause alleges that on March 25, 2015, Jones falsely represented to FINRA staff that her mother had recently died. Because Enforcement has established that Jones made this representation in March 2015, the representation was false, and Jones knew that the representation was false, the Panel finds Jones violated Rule 2010 when she made this misrepresentation to a FINRA staff member.

* * *

Thus, the Panel finds that Jones violated FINRA Rule 2010 by (1) making misleading statements during the 2014 Cycle Exam regarding efforts to obtain information and documents from CNB concerning the 2011 CD and (2) representing to FINRA staff that GJ had died. Jones did not violate Rule 2010 in connection with providing the CW letter to FINRA staff.

C. Third Cause—Jones Violated FINRA Rules 8210 and 2010 by Providing False Information in Her OTR

1. Allegation that Jones Misrepresented the Tickets that Were the Subject of the Houston Investigation

The third cause alleges that Jones provided FINRA staff with a signed written statement on February 13, 2015, in which she misrepresented the particular tickets that were the subject of the inquiry. The Panel finds that Jones misrepresented the tickets that were the focus of the Houston Investigation. Accordingly, Jones violated FINRA Rules 8210 and 2010.

2. Allegation that Jones Failed to Disclose that the Office of Inspector General Had Notified Her of Adverse Conclusions

The third cause alleges that Jones failed to disclose in her February 13, 2015, statement that the Office of Inspector General had notified her on June 16, 2014, that the office had completed its investigation and had concluded that Jones was "responsible for unauthorized use of the City's [credit] card on two occasions to book flights . . . for non-City business." Because Enforcement has not proven that Jones's attorney (or her brother) provided her with a copy of the June 16 Letter, Enforcement has not established that Jones acted unethically or in bad faith by not making this disclosure.

3. Allegation that Jones Testified at Her OTR that the 2011 CD Was "Rolled Over" Each Year Until December 2014

The third cause alleges that Jones testified at her OTR that the 2011 CD was "rolled over" each year until December 2014. Jones testified that she purchased the 2011 CD in

December 2011, recalls it rolling over in December 2012, and assumes that it rolled over in December 2013.[209] Enforcement has not established that this testimony is inaccurate or misleading. CNB records provide persuasive evidence that the 2011 CD existed from December 30, 2011, until March 5, 2014, indicating that the 2011 CD rolled over in December 2012 and December 2013.[210] Accordingly, Enforcement has not established that Jones made this representation unethically or in bad faith.

4. Allegation that Jones Testified Falsely Regarding the Purchase of the 2014 CD

The third cause alleges that Jones testified at her OTR that KJC had elected not to renew the 2011 CD when it matured on December 30, 2014, and, instead, used the proceeds of the 2011 CD to purchase a new CD. Enforcement has not established that Jones made this specific statement and therefore has not proved this allegation. When FINRA staff asked Jones at her OTR why the certificate of deposit went to a two-year term, Jones responded that she was asked if she "wanted to do it two years this year and I said yes."[211] Jones did not testify that the 2011 CD matured on December 30, 2014, and that she used the proceeds of the 2011 CD to purchase the new CD.

5. Allegation that Jones Testified Falsely that the 2011 CD Was Never Pledged as Security for a Loan

The third cause alleges that Jones testified at her OTR that the 2011 CD was never pledged as security for a loan. Because Jones gave this testimony despite knowing that she had, in fact, pledged the 2011 CD as collateral for the 2011 Loan, the Panel finds that Jones violated FINRA Rules 8210 and 2010 by giving this false testimony.

6. Allegation that Jones Testified Falsely that the 2011 CD Was in Place from December 30, 2011, to December 30, 2014

The third cause alleges that Jones testified at her OTR that the 2011 CD was in place from December 30, 2011, to December 30, 2014. Enforcement has not established that Jones gave this specific testimony and therefore has not proved this allegation.

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[209] CX-113, at 43-44.

[210] CX-95, at 3-4. In its closing argument, Enforcement interpreted the Complaint as alleging that Jones falsely testified that the 2011 CD was rolled over in December 2014. Tr. 1485-86. The pages of the OTR that Enforcement's Post-Hearing Brief cites as supporting the allegation do not indicate that Jones gave such testimony. Dep't of Enforcement's Post-Hearing Br. at 23 (citing CX-113, at 44). In addition, in a January 16, 2015 email to FINRA staff, Jones had explained that that "rather than rolling [the 2011 CD] over for another year, I requested a two-year maturity. As a result of my request, the bank was not able to automatically roll the CD . . . ." CX-27, at 1. Thus, the record does not support Enforcement's position.

[211] CX-113, at 48.

7. Allegation that Jones Testified Falsely at Her OTR that She Had Not Received Any Documents from Office of Inspector General Reflecting Outcome of Houston Investigation

The third cause alleges that Jones falsely testified at her OTR that she had not received any letter or documents from the Office of Inspector General reflecting the outcome of the Houston Investigation. Because Enforcement did not prove that Jones's attorney (or her brother) provided her with a copy of the June 16 Letter, Enforcement did not prove that Jones gave this testimony unethically or in bad faith.

8. Allegation that Jones Falsely Represented When She First Learned that the 2011 CD Was Not in Place on September 30, 2014

The third cause alleges that Jones represented in her June 30, 2015, response to a Rule 8210 request that she first learned in March 2015 that the 2011 CD was not in place on September 30, 2014. Enforcement did not establish that this representation was false and therefore did not establish that Jones acted unethically or in bad faith when she made this representation.

9. Allegation that Jones Falsely Represented She First Learned in March 2015 that the 2011 CD Had Been Pledged as Collateral for the 2011 Loan

The third cause alleges that Jones represented in her June 30, 2015, response to a Rule 8210 request that she first learned in March 2015 that her line of credit with CNB was secured by the 2011 CD. Enforcement has not established that Jones made the alleged representation.

10. Allegation that Jones Falsely Represented When She Learned that the 2011 CD Had Been Used to Satisfy the 2011 Loan

The third cause alleges that Jones represented in her June 30, 2015, response to a Rule 8210 request that between September 30, 2014, and December 31, 2014, she had no knowledge that the 2011 CD had been used to satisfy her personal loan. Enforcement did not establish that this representation is false and therefore did not establish that Jones acted unethically or in bad faith when she made this representation.

* * *

Thus, the Panel finds that Jones violated FINRA Rules 8210 and 2010 by omitting the Birmingham and Chicago Trips from her signed statements describing the Houston Investigation and by falsely testifying at her OTR that the 2011 CD was never pledged as security for a loan.

D. Fourth Cause—Jones Violated FINRA Rules 8210 and 2010 by Refusing to Answer Questions Posed in Her OTR

The fourth cause charges that Jones violated FINRA Rules 8210 and 2010 by refusing to answer two questions posed repeatedly at her OTR. Specifically, the Complaint alleges that,

during her OTR, Jones refused to answer questions regarding whether GJ was still alive and whether Jones had previously represented to FINRA staff that GJ had died.

FINRA Rule 8210 requires that associated persons provide information orally or in writing with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.[212] The rule is "unequivocal in its mandate and grants FINRA broad authority to obtain from an associated person information regarding matters that are involved in FINRA's investigation."[213]

Jones repeatedly refused to respond to questions at her OTR concerning whether GJ had died and whether Jones had previously represented to FINRA staff that GJ had died. By refusing to answer these questions at her OTR, Jones violated FINRA Rules 8210 and 2010.[214]

IV. Sanctions

A. First Cause

For Respondents' violations involving the Firm's financial books and records, the Panel considered the Guidelines for recordkeeping violations and falsification of records.[215] For recordkeeping violations by an individual, the Guidelines recommend that Adjudicators consider imposing a suspension of the responsible individual in any or all capacities for a period of 10 business days to three months or where aggravating factors predominate consider a longer suspension (of up to two years) or a bar. For recordkeeping violations by a member firm, the Guidelines recommend where aggravating factors predominate consideration of a suspension of 10 business days to two years or expulsion of the firm. For both individuals and member firms, the Guidelines also recommend a fine between $1,000 to $15,000, but state that where

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[212] *Dep't of Enforcement v. Ballard*, No. 2010025181001, 2015 FINRA Discip. LEXIS 52, at *23 (NAC Dec. 17, 2015).

[213] *Id.*

[214] Jones asserted an affirmative defense of unclean hands based on the May 7 email exchange between Jones and FINRA staff in which the staff stated that they would only ask about "business-related items" at the OTR. This defense fails for several reasons. First and foremost, the asserted defense fails as a matter of law because unclean hands is not a defense in FINRA disciplinary proceedings. *Dep't of Enforcement v. Neaton*, No. 2007009082902, 2011 FINRA Discip. LEXIS 13, at *24-25 (NAC Jan. 7, 2011) (Respondent "may not maintain, as a matter of law, any defense that rests upon an assertion of FINRA misconduct to reduce or eliminate his own misconduct."), *aff'd*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719 (Oct. 20, 2011). Second, Jones's claimed reliance on this email exchange is a pretext for Jones's refusal to answer the questions. Third, this is not a situation where a witness (1) has limited her preparation for an OTR based on representations from the staff regarding the scope of the OTR and (2) needs time to prepare for a question outside that stated scope. Jones did not need extensive preparation to answer these questions. Moreover, FINRA staff provided Jones an opportunity to confer with counsel with respect to these questions.

[215] *Dep't of Enforcement v. Nouchi*, No. E102004083705, 2009 FINRA Discip. LEXIS 8, at *8 (NAC Aug. 7, 2009) (applying Guidelines for falsification of records where respondent deliberately entered false information into books and records); *Trevisan*, 2008 FINRA Discip. LEXIS 12, at *30 & n.14 (applying Guidelines for recordkeeping violations where conduct was negligent).

aggravating factors predominate Adjudicators should consider a fine of $10,000 to $146,000. An even higher fine should be considered where significant aggravating factors predominate.[216]

The Guidelines for recordkeeping violations include five factors to be considered: (1) the nature and materiality of the inaccurate or missing information; (2) the nature, proportion, and size of the firm records at issue; (3) whether inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence; (4) whether the violations occurred during two or more examination or review periods or over an extended period of time, or involved a pattern or patterns of misconduct; and (5) whether the violations allowed other misconduct to occur or to escape detection.[217]

For falsification of records, the Guidelines recommend a suspension of 10 business days to two years, depending on whether the falsification was authorized, there was customer harm, and the misconduct involved other violations.[218] When a respondent falsifies a document in furtherance of another violation, resulting in customer harm or accompanied by significant aggravating factors, a bar is standard.[219] In the absence of customer harm or other violations, a fine of $5,000 to $10,000 is appropriate.[220] The Guideline for falsification of records identifies one principal consideration relevant here—the nature of the falsified document.[221]

For late or false FOCUS Reports, the Guidelines recommend that Adjudicators impose a fine of $10,000 to $73,000 and consider suspending the firm from all solicited retail business for up to 30 business days and thereafter until the firm corrects all deficiencies and suspending the FINOP (or other responsible principal) in any or all capacities for up to two years.[222] The Guidelines for late or false FOCUS Reports do not list any Principal Considerations in Determining Sanctions that would be relevant here.

The Panel considered a number of factors associated with Respondents' conduct in determining the appropriate remedial sanctions for the first cause. A firm's general ledger is a key document for measuring the firm's financial condition and performance.[223] Respondents intentionally and repeatedly reported the 2011 CD as an allowable asset even though Jones knew from the outset that she had pledged the 2011 CD as collateral for the 2011 Loan and understood that the 2011 CD therefore was not an allowable asset.[224] Jones attempted to conceal the

[216] FINRA Sanction Guidelines ("Guidelines") at 29 (2018), http://www.finra.org/industry/sanction-guidelines.

[217] Guidelines at 29.

[218] Guidelines at 37.

[219] Guidelines at 37.

[220] Guidelines at 37.

[221] Guidelines at 37.

[222] Guidelines at 70.

[223] Guidelines at 37 (Principal Considerations in Determining Sanctions, No. 1).

[224] Guidelines at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8 & 13).

recordkeeping and reporting violations during the examination process and her OTR.[225] In addition, the Panel considered that the reporting of the 2011 CD as an allowable asset resulted in a substantial misstatement of KJC's financial condition. Indeed, in several FOCUS Reports, the treatment of the 2011 CD as an allowable asset resulted in KJC's reporting excess, rather than deficient, net capital.[226]

Also, the Panel considered that Jones's misconduct persisted for years.[227] Beginning in early 2012, Jones filed FOCUS reports on behalf of KJC that reported the 2011 CD as an allowable asset even though she knew that she had pledged the 2011 CD as collateral for a personal loan and that the 2011 CD therefore did not qualify as an allowable asset. Then, when Jones and KJC acquired the 2014 CD in December 2014, Jones caused KJC to report the 2014 CD as an allowable asset for a period even though she knew that she had also pledged the 2014 CD as collateral for a personal loan and it was therefore improper to treat the 2014 CD as an allowable asset.

For these violations, KJC is fined $38,000, and Jones is suspended from associating with any FINRA member firm in any capacity for two years, barred from associating with any FINRA member firm in any supervisory or principal capacity, and fined $35,000.

B. Second, Third, and Fourth Causes

The Panel applies one set of sanctions for the second, third, and fourth causes of action because all three causes relate to Jones's failure to cooperate with FINRA examinations or investigations.[228]

With respect to the second cause, the Guidelines do not address violations relating to the provision of false information to FINRA staff other than in response to a Rule 8210 Request. When the Guidelines do not specifically address a violation, a panel should look to Guidelines for analogous violations, where possible.[229] No other Guidelines are directly analogous to the conduct alleged in the second cause, but the Panel did consider instructive a principal consideration contained in the Guidelines for Rule 8210 violations: the "[i]mportance of the

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[225] Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 10).

[226] In assessing the sanction to be imposed on KJC, the Panel also took into consideration that KJC is a small firm. Guidelines at 2. In their post-hearing brief, Respondents suggested that the Panel should treat Jones's personal demographic characteristics as mitigating factors. [Respondents'] Am. Post-Hearing Br. and Offer of Settlement at 2, 6-7. The Guidelines do not indicate that consideration of her demographic characteristics would be appropriate, and the Panel declines to treat them as mitigating factors.

[227] Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 9).

[228] *See Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *56 n.43 (NAC June 3, 2014) (applying unified sanction where respondent both responded late to Rule 8210 requests for information and documents and failed to appear in response to a Rule 8210 request for his testimony), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

[229] Guidelines at 1.

information requested as viewed from FINRA's perspective."[230] With respect to the second cause, the Panel also considered the nature of Jones's misconduct and the Guidelines' Principal Considerations in Determining Sanctions that apply to all misconduct.[231]

In connection with the third cause, the Panel considered the Guidelines for a failure to respond truthfully to a Rule 8210 request. The Guidelines recommend a monetary sanction of $25,000 to $73,000. In addition, it is well established that a "failure to respond truthfully to a FINRA Rule 8210 request is as serious and harmful as a complete failure to respond, and comparable sanctions are appropriate."[232] Thus, the National Adjudicatory Council ("NAC") has stated that, absent mitigating circumstances, a bar should be the standard sanction for failing to respond truthfully to a FINRA Rule 8210 request.[233] If there are mitigating factors present, Adjudicators should consider suspending the individual in any or all capacities for up to two years.[234] The principal consideration in determining sanctions for this type of violation of FINRA Rule 8210 is the importance of the information requested as viewed from FINRA's perspective.[235]

In connection with the fourth cause, the Panel considered the Guidelines for a partial but incomplete response and the Guidelines for a failure to provide a timely response.[236] For an individual who provided a partial but incomplete response, a bar is standard unless the person can demonstrate the information provided substantially complied with all aspects of the request.

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[230] Guidelines at 33 (Principal Considerations in Determining Sanctions, No. 1—Failure to Respond in a Timely Manner).

[231] *See Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *42-44 (NAC Mar. 16, 2017) (considering the nature of the misconduct and the Guidelines' Principal Considerations in Determining Sanctions that apply to all misconduct in a case involving a failure to timely update a Form U4 with material information and providing a false answer on a FINRA questionnaire), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *petition for review denied*, No. 17-15283, 2018 U.S. App. LEXIS 26627 (11th Cir. Sept. 19, 2018).

[232] *Dep't of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *51 (NAC July 24, 2017) (quoting *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *31 (NAC Mar. 9, 2015)).

[233] *Dep't of Enforcement v. Fretz*, No. 2010023724601, 2015 FINRA Discip. LEXIS 54, at *80 (NAC Dec. 17, 2015).

[234] Guidelines at 33.

[235] *Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *58 (NAC May 26, 2017), *appeal docketed*, SEC Admin. Proc. No. 3-18045 (June 26, 2017).

[236] The NAC has applied the Guidelines for a partial but incomplete response where a respondent answered some questions posed at an OTR but refused to answer other questions. *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *49 (NAC Dec. 12, 2012). The NAC has applied the Guidelines for failure to respond in a timely manner where a respondent initially refused to provide certain documents responsive to a FINRA Rule 8210 request and then provided the documents after receiving a Wells call. *Dep't of Enforcement v. Erenstein*, No. C9B040080, 2006 NASD Discip. LEXIS 31, at *16 (NAC Dec. 18, 2006), *aff'd*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596 (Nov. 8, 2007). Because Jones answered many questions posed at her OTR and ultimately provided—in the August voice messages—the information that she refused to provide at her OTR, the Panel considered both Guidelines instructive.

The Guidelines identify several factors for Adjudicators to consider: (1) the importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain the response; and (3) whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response.[237] For an individual who did not respond in a timely manner, the Guidelines recommend considering a suspension in any or all capacities for up to two years.[238]

The Panel considered a number of factors in assessing the appropriate unified sanction in connection with the second cause. From at least November 2014 (when Jones submitted a general ledger and balance sheet reflecting the 2011 CD as a current asset) to June 2015 (when she submitted her response to the FINRA staff's June 15, 2015, Rule 8210 Request), Jones misled FINRA staff by not informing them that she had pledged the 2011 CD as collateral for a personal loan. During this period, she also misled FINRA staff by not disclosing the facts indicating that CNB had probably used the CD to satisfy the loan. From her March 2015 conversation with the bank president (when she was told that the 2011 CD no longer existed as of September 30, 2014) until her post-OTR meeting with FINRA staff on May 8, 2015, she misled FINRA staff by failing to disclose that she had been told that the 2011 CD no longer existed as of September 30, 2014. She lied to FINRA staff when she intentionally represented in March 2015 that her mother had died. This misrepresentation was significant both because Jones was claiming that she had used GJ's credit card to pay for the Birmingham and Chicago Trips and because it was reasonably foreseeable that the misrepresentation would cause FINRA staff to be more lenient in pursuing its outstanding requests for information and documents. In addition, Jones rejected an opportunity to retract her misrepresentation when she refused to answer the staff's repeated questions at her OTR as to whether her mother was still alive. Indeed, she did not retract this misrepresentation until August 2015, when she left a voicemail message with FINRA staff.

The Panel also considered a number of factors in assessing the appropriate unified sanction in connection with the third cause. Jones knew that the fact that the Houston Investigation was looking at the Birmingham and Chicago Trips was important from FINRA's perspective. Jones's omission of these two trips from her written statements impeded the staff's ability to learn key information about the Houston Investigation.

In connection with the third cause, the Panel also considered that Jones knew that her testimony that she did not use the 2011 CD as collateral was false, and she understood that because of the pledge it was improper for KJC to have classified the 2011 CD as an allowable

[237] Guidelines at 33.

[238] The Guidelines for a failure to respond in a timely manner do not identify any considerations in addition to those identified in the Guidelines for a partial but incomplete response. Guidelines at 33.

asset. Thus, Jones knew that whether the 2011 CD had been pledged as collateral was important from FINRA's perspective.

In connection with the fourth cause, the Panel considered whether Jones has demonstrated that the information she provided at her OTR substantially addressed the two questions that she refused to answer. The testimony that Jones gave at her OTR did not explicitly answer the staff's questions about whether GJ was still alive and whether Jones had previously represented to FINRA staff that GJ had passed away. Jones did not explicitly provide this information to FINRA staff until her August 2015 voicemail messages.

With respect to the fourth cause, the Panel also considered whether the requested information was important from FINRA's perspective. Enforcement has established that it was important from FINRA's perspective to determine whether Jones had made unauthorized use of the Houston Credit Card to purchase tickets for the Birmingham and Chicago Trips. Enforcement has also established that whether GJ was still alive was relevant to making that determination. Enforcement has not, however, established that Jones's refusal to testify that her mother was still alive impeded the staff's investigation. Enforcement did not establish that the steps that it would have taken if Enforcement had known that GJ was still alive were reasonably likely to have enabled the staff to determine whether Jones had made unauthorized use of the Houston Credit Card. In addition, Enforcement did not establish that FINRA staff was not independently aware that GJ was still alive.[239] And, it would seem likely that after Jones refused to answer the questions about GJ's status, the staff believed that GJ probably was still alive. While the importance of the question of whether GJ was still alive is aggravating, it is less so than if Jones's refusal to answer the question had impeded the investigation.[240]

In connection with the fourth cause, the Panel also considered that (1) about three months elapsed between May 8, 2015 (when Jones refused to answer the questions at her OTR) and August 2015 (when she left the voicemail messages acknowledging that she had falsely represented to a FINRA staff member that her mother had died); (2) Enforcement repeatedly asked Jones at the OTR whether GJ was still alive and whether Jones had represented to FINRA staff that GJ had died, but—as far as the record shows—did not repeat the request after the OTR or apply additional regulatory pressure after the OTR; (3) Jones did not have a valid reason for refusing to answer the two questions; and (4) Jones was aware that her refusal to answer the questions could result in a bar and her attorney advised her on the record to answer the questions.

In connection with the second, third, and fourth causes, the Panel considered Jones's general lack of cooperation during the 2014 Cycle Exam, especially her repeated failure to timely respond to requests for information and documents.

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[239] A FINRA staff member testified that the staff anticipated before the OTR that the staff would ask Jones whether GJ was still alive, Tr. 803, indicating that the staff at least had doubts about whether GJ had died.

[240] *Dep't of Mkt. Regulation v. Naby*, No. 20120320803-01, 2017 FINRA Discip. LEXIS 27, at *31 (NAC July 24, 2017).

In connection with the third and fourth causes, the Panel also considered whether to treat as mitigating Jones's claimed condition when she testified at her OTR. In general, personal problems such as stress and health issues do not mitigate violations of FINRA Rules.[241] However, personal problems might mitigate a sanction where the respondent has presented evidence that the problems interfered with the respondent's ability to comply with FINRA Rules.[242] But "showing that stress or personal circumstances interfered with an ability to comply with FINRA rules, or that violations resulted from such circumstances, is a difficult burden to meet."[243] Jones has not met this burden here. She has not offered any evidence to corroborate her hearing testimony regarding her condition at her OTR.[244] She has not offered persuasive evidence that her condition interfered with her ability to answer FINRA staff questions truthfully and completely. Moreover, her conduct at her OTR was consistent with her conduct in connection with the 2014 Cycle Exam; her June 30, 2015, response to the June 15, 2015, Rule 8210 request; and her testimony at the hearing (at which Jones falsely testified that she did not understand before her August 2015 meeting with the bank president that she had pledged the 2011 CD as collateral for her personal loan).[245] Accordingly, the Panel does not consider Jones's claimed condition at her OTR to be a mitigating factor.

Jones provided inaccurate and misleading information to FINRA in response to requests that were issued pursuant to Rule 8210 and otherwise and refused to respond to questions that FINRA staff asked at her OTR. The Panel concludes that for these violations, the appropriate remedial sanction is to suspend Jones from associating with any FINRA member in any capacity for two years and to fine her $35,000.

C. Jones Should Serve Her Suspensions Consecutively

In assessing whether to order that Jones serve the suspensions consecutively or concurrently, the Panel looked for guidance to a decision in which the NAC determined that the respondent should serve suspensions consecutively rather than concurrently (as the hearing panel

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[241] *Dep't of Enforcement v. Saad*, No. 2006006705601r, 2015 FINRA Discip. LEXIS 49, at *21 (NAC Mar. 16, 2015), *aff'd*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176 (Oct. 8, 2015), *petition for reviewed denied in part and remanded in part*, 873 F.3d 297 (D.C. Cir. 2017).

[242] *Dep't of Enforcement v. Gadelkareem*, No. 20140409698501, 2017 FINRA Discip. LEXIS 11, at *22 (Mar. 23, 2017), *aff'd*, Exchange Act Release No. 82879, 2018 SEC LEXIS 729 (Mar. 14, 2018); *Saad*, 2015 FINRA Discip. LEXIS 49, at *23.

[243] *Saad*, 2015 FINRA Discip. LEXIS 49, at *24.

[244] Indeed, the day before her OTR, Jones felt that she was healthy enough to fly from Houston to Jackson, Mississippi, for a client meeting and then, on the morning of the OTR, drive from Jackson to New Orleans for the OTR. Moreover, Jones's misconduct persisted for a long time.

[245] *See John M.E. Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *20-21 (Oct. 8, 2015) (rejecting argument that outside stress caused respondent's misconduct and serves to mitigate such misconduct and stating that respondent's "course of conduct was not the type that one might associate with stress, such as an unthinking reaction during a stressful moment that is later redressed; instead, his deceptive conduct demonstrated a high degree of intentionality over a long period of time"), *petition for reviewed denied in part and remanded in part*, 873 F.3d 297 (D.C. Cir. 2017).

had ordered). In that decision, the NAC stated that in determining whether suspensions should be served concurrently or consecutively "[A]djudicators should remain mindful that the purpose of sanctions in . . . disciplinary proceedings is to remedy misconduct" and that "in cases involving rule violations of fundamentally different natures, consecutive suspensions specifically discourage *all t*ypes of additional misconduct at issue."[246] The NAC, however, acknowledged that "consecutive suspensions might exceed what is needed to be remedial, depending on the facts and circumstances."[247]

Here, the violations in the first cause are of a fundamentally different nature than the violations in the other three causes. In addition, the Panel has determined that, in the facts and circumstances of this proceeding, consecutive two-year suspensions do not exceed what is needed to be remedial and that Jones therefore should serve her suspensions consecutively.

V. Order

Respondent Robbi J. Jones violated FINRA Rules 4511 and 2010 by causing Respondent Kipling Jones & Co., LTD., to create and maintain inaccurate books and records and to file inaccurate FOCUS Reports. For these violations, Respondent Robbi J. Jones is suspended from associating with any FINRA member firm in any capacity for two years, barred from associating with any FINRA member firm in any supervisory or principal capacity, and fined $35,000. Robbi J. Jones violated FINRA Rules 8210 and 2010 by providing false and misleading information to FINRA staff in response to Rule 8210 requests and otherwise and refusing to respond to questions that FINRA staff asked at her on-the-record testimony. For these violations, Robbi J. Jones is suspended from associating with any FINRA member in any capacity for two years and fined $35,000. The suspensions are to be served consecutively.

Kipling Jones & Co., LTD. willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 and violated FINRA Rules 4511 and 2010 by creating and maintaining inaccurate books and records and filing inaccurate FOCUS Reports. For these violations, Kipling Jones & Co., LTD is fined $38,000 and is subject to statutory disqualification.

Respondents are ordered jointly and severally to pay costs in the amount of $13,914.58, which includes a $750 administrative fee. If this decision becomes FINRA's final disciplinary action, the first suspension shall become effective with the opening of business on December 17, 2018. The second suspension shall become effective immediately upon the end of the first suspension. The fines and costs shall be payable on a date set by FINRA, but not sooner

[246] *Dep't of Enforcement v. Siegel*, No. C05020055, 2007 NASD Discip. LEXIS 20, at *53 (NAC May 11, 2007), *aff'd*, Exchange Act Release No. 58737, 2008 SEC LEXIS 2459 (Oct. 6, 2008), *petition for review denied in relevant part and granted in part*, 592 F.3d 147 (D.C. Cir. 2010).

[247] *Id.*

than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.[248]

For the Extended Hearing Panel
Kenneth B. Winer
Hearing Officer

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[248] The Panel has considered and rejected any other arguments made by the Parties that are inconsistent with this Decision.