FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. MEYERS ASSOCIATES, L.P. (CRD No. 34171), Respondent.	Disciplinary Proceeding No. 2013035533701 Hearing Officer—KBW **EXTENDED HEARING PANEL DECISION** **November 11, 2016**

Respondent violated NASD Rule 3010(a) and FINRA Rule 2010 by failing to adequately supervise its Chicago office and FINRA Rules 3310(a) and 2010 by failing to establish and implement adequate AML policies and procedures. Respondent is fined $350,000, ordered to retain an independent consultant, and ordered to pay costs.

For the Complainant: Samuel Barkin, Esq., Miki Vucic Tesija, Esq., David Pollack, Esq., and Lara Thyagarajan, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Robert Rabinowitz, Esq., and Sarah Klein, Esq., Becker & Poliakoff, LLP.

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DECISION

I. Introduction

This case involves deficiencies in the monitoring by Respondent Meyers Associates, L.P. (the "Firm" or "Meyers Associates") of activities at its newly opened Chicago branch office ("Chicago office"). The Firm (a FINRA member based in New York City) opened the Chicago office in December 2011, when the Firm's president recruited six registered representatives from another member firm. The Firm appointed one of the six recruits, Christopher P. Wynne, to be the branch office manager. Wynne worked as part of a team with George E. Johnson, the largest producer in the office, until they left the Firm in April 2013. The Department of Enforcement alleged that in 2012 the Firm failed, through Wynne and others, to reasonably supervise the Chicago office (especially Johnson) and failed to establish and implement adequate anti-money laundering ("AML") policies and procedures.

II. Procedural History

A. The Complaint

A referral from FINRA's Office of Fraud Detection and Market Intelligence ("OFDMI") to Enforcement triggered the investigation that led to this proceeding. In April 2015, Enforcement filed a Complaint against four respondents: the Firm, Johnson, Wynne, and Joseph Mahalick (another of the six recruits). Johnson, Wynne, and Mahalick settled with Enforcement before the hearing. Thus, the Firm is the only remaining respondent.

Enforcement charged that the Firm, in violation of NASD Rule 3010(a) and FINRA Rule 2010, failed to adequately supervise the Chicago office.[1] Enforcement also charged that the Firm, in violation of FINRA Rules 3310(a) and 2010, failed to establish and implement AML policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions.[2]

The Firm generally denies that it violated NASD Rule 3010(a) and FINRA Rules 3310(a) and 2010. The Firm argues that its supervisory system and AML program met the applicable standards of reasonableness.[3]

B. The Hearing

The Panel conducted a five-day hearing beginning on February 24, 2016.[4] Following the hearing and the submission of post-hearing briefs, the Panel found that the Firm violated NASD

[1] Complaint ("Compl.") ¶¶ 177-89.

[2] Compl. ¶¶ 198-204.

[3] Post-Hearing Br. of Resp't Meyers Assocs., L.P., at 7-8, 23-24.

[4] In this decision, "Tr." refers to the transcript of the hearing, "CX" to exhibits proposed by Enforcement, "RM" to exhibits proposed by the Firm, and "RXW" to exhibits proposed by Wynne.

Rule 3010(a) and FINRA Rule 2010 by failing to adequately supervise the Chicago office and FINRA Rules 3310(a) and 2010 by failing to establish and implement adequate AML policies and procedures. The Panel also found that the sanctions Enforcement recommended are reasonable and appropriate.

III. Respondent Meyers Associates

A. Background Information

The Firm engages in a general securities business. Its principal place of business is in New York City.[5] The Firm reported revenues of over $6 million and a loss of over $1.2 million for the first nine months of 2015, and total ownership equity of over $2.7 million as of September 30, 2015.[6] As of February 2016, the Firm operated from nine offices and employed about 75 registered representatives.[7]

The Firm has been the subject of a number of final disciplinary actions since 2000.[8] These actions include:

- a 2000 proceeding in which the Firm settled charges by NASD that the Firm had failed to enforce its written supervisory procedures ("WSPs");
- a 2002 proceeding in which the Firm settled charges by NASD that the Firm had failed to enforce its WSPs in connection with the Firm's failure to disclose a conflict of interest;
- a 2005 proceeding in which the Firm settled charges by NASD that the Firm had conducted a municipal securities business for more than a year despite not having a properly registered municipal securities principal to supervise the Firm's municipal securities activities;
- a 2010 proceeding in which the Firm settled charges by the State of Connecticut Department of Banking that, among other things, the Firm had failed to exercise adequate supervisory controls over its operations. As part of the settlement, the Firm agreed to retain an independent consultant to conduct a compliance review of the Firm's supervisory and compliance policies and procedures as well as the adequacy of current compliance employee staffing and experience levels;
- a 2011 proceeding in which the Firm settled charges by FINRA that the Firm had failed to establish, maintain, and enforce adequate WSPs regarding OATS reporting and trade reporting; and

[5] Compl. ¶ 12; Answer and Affirmative Defenses of Respondents [sic] Meyers Assocs, L.P. ("Ans.") ¶ 12. Because the Firm is a FINRA member, FINRA has jurisdiction. Compl. ¶ 14; Ans. ¶ 14. Members agree to comply with FINRA's rules, orders, and decisions as well as the securities laws and other applicable regulations. By-Laws, Art. IV, Sec. 1(a)(1); Art. V, Sec. 2(a)(1); FINRA Rule 0140.

[6] RM-12; RM-13; RM-14. The most recent FOCUS Report in the record is dated September 30, 2015. RM-14.

[7] Tr. 1329-30.

[8] The Panel considered the Firm's disciplinary history in addressing sanctions but not in addressing liability.

- a 2014 proceeding in which the Firm settled charges by the State of Connecticut Department of Banking that the Firm had failed to establish, enforce, and maintain an adequate system to supervise agents and employees. As part of the settlement, the Firm again agreed to retain an independent consultant to audit the Firm's operations, supervisory and compliance policies and procedures, and (specifically) the adequacy of current compliance employee staffing and experience levels.[9]

B. Relevant Senior Officers of the Firm

1. Bruce Meyers

Bruce Meyers ("Meyers") entered the securities industry in 1982. He acquired a securities license as a general securities principal (Series 24) in 1987. He co-founded the Firm in 1994 and owns about 90% of the Firm. He was the chief executive officer ("CEO") and president of the Firm from 1994 until June 2011, when he recruited Donald Wojnowski to be the Firm's president. In December 2011, in response to a settlement with FINRA in which Meyers agreed to be suspended for four months from acting as a principal, Meyers stepped down as CEO and Wojnowski became CEO, as well as the president, of the Firm. In or about June 2012, Meyers resumed holding the position of CEO and acting as the Firm's president.[10]

2. Donald Wojnowski

Wojnowski also entered the securities industry in 1982.[11] In the mid-1990s, he received his securities license as a general securities principal (Series 24).[12] In January 2009, Wojnowski became the CEO of FINRA member firm Jesup & Lamont ("Jesup"), when it merged with a firm that he had formed in 1992. Wojnowski left Jesup in June 2010 because it ceased operations. Wojnowski then went to FINRA member firm Anderson & Strudwick, Inc. ("Anderson") for six months until May 2011, when it merged with another firm. Wojnowski then joined Meyers Associates as president. After assuming the additional title of CEO in December 2011, when Meyers agreed to the four-month suspension, Wojnowski stepped down from both positions in or about June 2012. He left the firm sometime thereafter.[13]

3. Wayne Ellison

Ellison entered the securities industry around 1986. He has held a securities license as a general securities principal (Series 24) since 2004 and also holds a number of other securities licenses including: equity trader limited representative (Series 55), limited representative-

[9] CX-132; CX-143, at 17-20, 31-33, 39-41, 44-45; CX-144, at 10, 14-16, 30-32, 44-47, 51-54, 60-63, 72-73.

[10] Tr. 770-71, 1323-28; CX-143, at 8-9.

[11] Tr. 764.

[12] Tr. 765.

[13] Tr. 624, 764-73; CX-143, at 8-9; CX-145, at 7-8.

investment banking (Series 79), and operations professional (Series 99).[14] Before joining Meyers Associates, Ellison had served as chief compliance officer ("CCO") and AML compliance officer at two other broker-dealers.[15] Ellison served as the CCO and AML compliance person ("AMLCP") of the Firm from early 2012 through December 2014.

C. The Firm's Key Chicago Office Personnel

After joining the Firm from Anderson, Wojnowski recruited six registered representatives from Anderson's office in Chicago in November 2011. The six registered representatives (Wynne, Johnson, Mahalick, Theodore Augustyniak, Joseph Ransdell, and Bradford Szczecinski) started the Chicago office, which was an Office of Supervisory Jurisdiction ("OSJ").[16]

Johnson had worked for seven other broker-dealers between 1992, when he entered the securities industry, and 2011, when he joined Meyers Associates.[17] Johnson actively traded lower-priced securities both before and after he joined Meyers Associates.[18] Johnson was the highest producing retail broker in the Chicago office.[19]

When Johnson and Wynne joined the Firm, they had worked together for more than 12 years. Wynne received his securities license as a general securities principal (Series 24) in about 2006 while he and Johnson worked at Garden State Securities, Inc. Wynne supervised Johnson for most of the four-and-a-half years that they worked together at Garden State. In November 2009, Wojnowski recruited Wynne and Johnson to Jesup, and Wynne and Johnson worked there together until Jesup closed in June 2010. Wynne supervised Johnson for around two of the months they were at Jesup.[20] When Jesup closed, Wynne and Johnson (along with about 60 other registered representatives) followed Wojnowski to Anderson.[21] Wynne supervised Johnson during their entire time at Anderson (July 2010 to November 2011).[22] During most of their working relationship, Wynne worked as Johnson's sales assistant in exchange for a 15% split of Johnson's net commissions and as a producing broker.[23]

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[14] Tr. 624.

[15] Tr. 624-26.

[16] Tr. 102, 690-91, 776, 1014, 1023-24; January 11, 2016 Stipulations ¶¶ 1-2; CX-94, at 8; CX-95, at 9.

[17] Tr. 778; CX-140, at 6.

[18] Tr. 778-79, 1024; CX-140, at 6.

[19] Tr. 111-12, 1210; CX-140, at 6.

[20] Tr. 1007-12, 1206, 1208.

[21] Tr. 777; CX-94, at 9; CX-95, at 9; CX-140, at 2.

[22] Tr. 1208.

[23] Tr. 779-80, 1007-11, 1214-16; CX-140, at 7.

When Wynne joined Meyers Associates, he was the subject of a pending regulatory action by FINRA involving a failure to supervise.[24] Nonetheless, the Firm appointed Wynne as the branch manager for the Chicago office and the supervisor of the registered representatives in the branch.[25] Wynne also continued as Johnson's sales assistant as well as a producing broker.[26]

Wynne and Johnson left Meyers Associates in April 2013 for another FINRA member firm.[27] Meyers Associates then closed its Chicago office.[28]

IV. Failure to Establish and Maintain an Adequate System to Supervise the Activities of Each Registered Representative

"Assuring proper supervision is a critical component of broker-dealer operations."[29] At all relevant times, NASD Rule 3010(a) (now superseded by FINRA Rule 3110(a)) required that each member firm establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with the federal securities laws and FINRA rules, including the establishment and maintenance of written procedures to supervise the types of business in which it engaged.[30] It is not sufficient for a member firm's WSPs to list prohibited activities; the WSPs must also set forth specific supervisory procedures to detect and prevent such activities.[31]

The presence of procedures alone, however, was not enough to satisfy this requirement. NASD Rule 3010(a) also required that supervisors exercise reasonable supervision.[32] "The duty of supervision includes the responsibility to investigate 'red flags' that suggest that misconduct may be occurring and to act upon the results of such investigation."[33] "[R]ed flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review. When

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[24] CX-95, at 16-17.

[25] Compl. ¶ 175; Ans. ¶ 175; Tr. 781, 1024; CX-95, at 2-6.

[26] Tr. 1209-11.

[27] Compl. ¶¶ 9-10; Ans. ¶¶ 9-10; Tr. 1015.

[28] Tr. 100.

[29] *World Trade Fin. Corp.*, Exchange Act Release No. 66114, 2012 SEC LEXIS 56, at *42 (Jan. 6, 2012), *petition for review denied*, 739 F.3d 1243 (9th Cir. 2014).

[30] *See* NASD Rule 3010(a)(1), (b)(1).

[31] See, *e.g.*, *La Jolla Capital Corp.*, 54 S.E.C. 275, 282 (1999) (finding firm's procedures deficient, where the manual identified a prohibited practice but did not set forth any specific procedures that the branch manager should use to detect or prevent those practices).

[32] *See, e.g.*, *Dep't of Enforcement v. Pellegrino*, No. C3B050012, 2008 FINRA Discip. LEXIS 10, at *46 (NAC Jan. 4, 2008) ("A supervisor is responsible for 'reasonable supervision.'"), *aff'd*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843 (Dec. 19, 2008).

[33] *Pellegrino*, 2008 SEC LEXIS 2843, at *33 (quoting *Michael T. Studer*, 57 S.E.C. 1011, 1023-24 (2004), *aff'd*, 260 F. App'x 342 (2d Cir. 2008)).

indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the securities laws."[34]

NASD Rule 3010(a)(5) requires firms to assign "each registered person to an appropriately registered representative(s) and/or principal(s) who shall be responsible for supervising the person's activities." FINRA member firms have a responsibility to "determine that supervisors understand and can effectively conduct their requisite responsibilities."[35] Thus, "[a] violation by a firm's supervisors of their duty to supervise may be imputed to the firm."[36]

A. Supervisory Deficiencies in Connection with Johnson's Efforts in 2012 to Increase Price of IceWEB Stock

As set forth below, in 2012, the Firm failed to adequately supervise Johnson's efforts to increase the reported price and trading volume of the common stock of IceWEB, Inc., a financially distressed company that traded on the OTC bulletin board.[37]

1. Factual Background Regarding IceWEB and Johnson's Involvement in IceWEB

IceWEB manufactured and marketed network and cloud-attached storage solutions and delivered on-line cloud computing application services.[38] In its Annual Report on Form 10-K for the fiscal year ended September 30, 2011, IceWEB reported sales of about $2.7 million and net losses of about $4.7 million for the fiscal year, compared to sales of about $3.4 million and net losses of about $6.9 million for the prior fiscal year.[39] IceWEB also reported that its cash flow was not sufficient to fund its operations, and disclosed, "We will need additional financing which we may not be able to obtain on acceptable terms. If we cannot raise additional capital as needed, our ability to execute our growth strategy and fund our ongoing operations will be in jeopardy."[40]

For the quarter ended March 31, 2012, IceWEB reported sales of about $1.1 million (up about $16,000 from the corresponding quarter in the prior fiscal year) and net losses of about $1.5 million (almost three times worse than IceWEB had reported for the corresponding quarter

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[34] *World Trade Fin. Corp.*, 2012 SEC LEXIS 56, at *42-43 (quoting *John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *35 (Nov. 12, 2010) (citation omitted), *petition for review denied*, 2011 U.S. App. LEXIS 25933 (11th Cir. Dec. 28, 2011)). *See also Dep't of Enforcement v. Rooney*, No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *60 (NAC July 23, 2015) ("NASD Rule 3010 has been applied to require that supervisors exercise 'reasonable' supervision.").

[35] *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *35 (June 29, 2007).

[36] *World Trade Fin. Corp*., 2012 SEC LEXIS 56, at *46 n.61.

[37] CX-19, at 1.

[38] CX-63, at 5.

[39] CX-63, at 32.

[40] CX-63, at 12.

in the prior fiscal year).[41] In this quarterly report, the company again expressed concern about its financial condition and disclosed that, in addition to having plans to increase sales, management intended to seek new capital from new equity and/or debt financing.[42]

Johnson began soliciting purchases of IceWEB stock in 2011, when the share price was between 25 and 30 cents.[43] In early 2012, when Johnson and his customers owned millions of shares of IceWEB stock and the share price of IceWEB stock had fallen to about 12 cents,[44] Johnson began taking steps to increase its share price.

2. Johnson's Initial Effort to Increase the Price of IceWEB Stock

In January 2012, at Johnson's request, Wynne introduced IceWEB's CEO to JF, a stock promoter.[45] Early in February 2012, IceWEB forwarded to Johnson a proposal from JF. JF proposed that IceWEB pay him stock and $6,000 per month for six months to, among other things, "[w]ork to gain favorable analy[sis] and media support" for IceWEB and "assist in gaining financial backing in the form of equity or debt if needed."[46] After continued prompting from Johnson, IceWEB retained JF in February 2012.[47]

Over the next six months, JF published five reports regarding IceWEB stock (the "JF Reports"). On about February 29, 2012, JF published the first of these reports, "IWEB — Turnaround Stock of the Year — On Balance Volume* is saying, 'Buy me!' Part A."[48] JF quickly followed the first report with, "IWEB — Part B — Turnaround of the Year — A New Ballgame Begins."[49] Before May 16, 2012, JF wrote three more reports regarding IceWEB:

- "More on the Turnaround Stock of the Year — A Best Idea for 2012";
- "(IWEB) In the sweet spot of history's fastest ever growth trend"; and
- "I call (IWEB) my 'Turnaround Stock of the year' and I see multi-bag potential for this little company."[50]

JF's primary goal in preparing and circulating the JF Reports was to portray IceWEB as a company experiencing an extraordinary turnaround. To buttress this portrait, the JF Reports

[41] CX-66, at 6.

[42] CX-66, at 34.

[43] CX-140, at 11.

[44] CX-1B; CX-1C; CX-5.

[45] Tr. 1091; CX-8, at 1.

[46] CX-10, at 3-4.

[47] Compl. ¶¶ 83-85; CX-11; CX-12. The parties stipulated at the hearing to paragraphs 81-137 of the Complaint. Tr. 966. (Hereinafter, this decision refers to this stipulation as the "Hr'g Stip.").

[48] Compl. ¶ 86; Hr'g Stip.; CX-14.

[49] CX-14.

[50] Compl. ¶ 86; Hr'g Stip.; CX-15; CX-16; CX-17; CX-19.

made various exaggerated and unbalanced statements concerning IceWEB's quarterly growth. The JF Reports claimed that new orders are "pouring in" and stated, with no support, that "[s]urging orders and extremely high inquiry demand have produced significant increases in top line quarter-over-quarter growth" and "[t]hat trend will continue through the end of the year." Also, two of the JF Reports falsely touted that IceWEB won an award in February 2012 "competing against all the big guys, EMC, NetApp et al."[51] Moreover, the JF Reports did not disclose that IceWEB paid JF to write his reports.[52]

3. Johnson's Intensified Efforts to Increase the Price of IceWEB Stock

In May 2012, Johnson intensified his efforts to increase the price of IceWEB stock. Johnson and his customers continued to own millions of shares of IceWEB stock, and he thus had a stake in the continued survival of IceWEB.[53] IceWEB needed a cash infusion and IceWEB's chances of surviving, at least in the short term, would be enhanced if the price of IceWEB stock increased to at least 17 cents per share for two reasons: (1) IceWEB hoped to receive cash payments in connection with the exercise of certain warrants that had an exercise price of 17 cents per share;[54] and (2) for several months, Johnson had been talking to IceWEB about the company retaining the Firm as a placement agent in a private offering of equity securities (a "PIPE offering") if the reported price and trading volume of IceWEB stock increased. By May 16, Johnson was aware that IceWEB intended to do a private offering using the Firm as the placement agent. Johnson hoped to receive commissions in connection with that transaction.[55]

To raise the price of IceWEB stock, Johnson pushed IceWEB to retain a second stock promoter, TS. On about May 7, 2012, Johnson called TS, urging him to look at IceWEB stock, and called the CEO of IceWEB, urging that IceWEB retain TS to promote IceWEB stock.[56] Wynne understood in May 2012 that Johnson wanted to put IceWEB and TS together.[57]

Johnson engaged in trading activity designed to increase the reported price and volume of IceWEB stock. He successfully solicited seven customers to buy IceWEB stock between May 16, 2012 and May 23, 2012 (the "Trading Period").[58] Many of the purchases of IceWEB stock that Johnson solicited during the Trading Period were matched against sale limit orders that

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[51] Compl. ¶¶ 108-10, 124; Hr'g Stip.

[52] Compl. ¶ 99; Hr'g Stip.

[53] CX-5; CX-19, at 7.

[54] Tr. 187-90; CX-18; CX-20; CX-31, at 1; CX-38, at 1; CX-64, at 10.

[55] Compl. ¶ 103; Hr'g Stip.; CX-56, at 3.

[56] Tr. 196; CX-24; CX-140, at 12.

[57] Tr. 196-99, 392, 1106-09; CX-24; CX-26; CX-29; CX-39, at 2; CX-58.

[58] Tr. 215-16, 225-27, 246, 1559; CX-3A. When asked at his on-the-record testimony ("OTR") why he recommended purchases of IceWEB stock during the Trading Period, Johnson responded that he did not recall. CX-140, at 17, 22.

Johnson solicited.[59] The orders solicited by Johnson significantly increased the reported trading volume of IceWEB stock. In each instance, Johnson gave the order to Wynne (by email or in person), and Wynne then entered the trade into one of the Firm's order management systems.[60] The resulting trades are set forth in Appendix A to this decision, and the trades most relevant to this proceeding, along with certain relevant emails, are discussed in the chronology set forth below.[61] As demonstrated by the emails summarized in the chronology, Johnson's goal was to push the price of IceWEB stock to at least 17 cents per share by Thursday, May 24, 2012.[62]

4. Chronology

a. Tuesday, May 15, 2012

Johnson sent an email to TS asking what time TS planned to meet with IceWEB. TS responded by referring to LUXR, a stock that TS was promoting at the time that had increased greatly in price and volume.[63] TS wrote:

> We ae [sic] going toi [sic] KILL this ... so u better get ready ... we start Tuesday and we just pulled one millioin [sic] names from other promotion to put this story out ... 'The NEXT $Billion Cliud [sic] Storage Company Is ... IceWeb' ... We are going to LUXR treatment on Ice Web.[64]

Johnson replied, "You are the f---ing man!!"[65]

IceWEB's public relations consultant retained TS for $50,000 to promote the company by writing reports between May 22, 2012, and June 22, 2012.[66]

b. Wednesday, May 16, 2012

In the morning, Johnson emailed TS, asking how confident TS was about his planned web campaign. TS responded that the campaign:

> will be VERY intense 2 million high quality opted in subscribers and compounded with blog support[.] What is the day you need it to peak to convert

[59] Tr. 256-57, 270-75, 285-86, 491; CX-42, at 3.

[60] Tr. 138-40, 455, 690, 694, 857, 1240-41, 1559; CX-140, at 8-9.

[61] The trade information in the chronology and in Appendix A are based on Tr. 212-13, 491, 1544; CX-1B, at 2; CX-1C, at 2-4; and CX-3A.

[62] CX-31; CX-38, at 1-6; CX-43; CX-49.

[63] Tr. 199.

[64] CX-29, at 3 (ellipses in original).

[65] CX-29, at 3.

[66] CX-29; CX-58.

> the warrants at .17? I also have some other support coming in ... Thursday is best for you to convert warrants ... $2 million right?

An hour later, Johnson replied affirmatively.[67]

Early that afternoon, Johnson (and Wynne, at Johnson's request) circulated a new JF Report, "Turnaround Stock of the Year Reports 49% Revenue Increase-Inflection point is now defined."[68] Although they distributed the new JF Report to more than 35 Firm customers and Johnson knew by then that IceWEB planned to retain the Firm as the placement agent for a private offering, Johnson and Wynne did not disclose that Johnson expected the Firm to receive compensation for investment banking services from IceWEB in the next three months.[69]

The price of IceWEB stock rose from a closing price of 12 cents per share on May 15 to a closing price of 12.75 cents per share.[70]

c. Thursday, May 17, 2012

Shortly before 10:45 a.m., Johnson gave Wynne two limit orders: an order (marked unsolicited) to sell 500,000 shares of IceWEB stock and an offsetting solicited order to buy the same quantity of IceWEB stock.

The price of IceWEB stock jumped from the prior closing price of 12.75 cents per share to a closing price of 14 cents per share.[71]

d. Friday, May 18, 2012

Shortly before 9:40 a.m., Johnson gave Wynne two limit orders: an order (marked unsolicited) to sell 250,000 shares of IceWEB and an offsetting solicited order to buy the same quantity of IceWEB stock.

At 3:00 p.m., Johnson emailed TS, again asking how confident TS was about IceWEB stock. TS responded reassuringly, "110% confident ... we added a $100 million trading group to the mix … you WILL be where u want to be[.]"[72]

The price of IceWEB stock rose from the prior closing price of 14 cents per share to a closing price of 14.5 cents per share.

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[67] CX-31 (ellipses in original).

[68] Compl. ¶ 86; Hr'g Stip.; CX-32.

[69] Compl. ¶¶ 87-88, 103; Hr'g Stip.; CX-32.

[70] CX-1C; CX-3A, at 1.

[71] CX-1C, at 2; CX-3A, at 1.

[72] CX-36 (ellipses in original).

e. Monday, May 21, 2012

At around 10:06 a.m., Johnson gave Wynne a set of two offsetting limit orders: an order to buy 250,000 shares of IceWEB and an order (marked unsolicited) to sell the same number of shares. At around 3:01 p.m., Johnson gave Wynne two more offsetting limit orders: an order (marked unsolicited) to sell 250,000 shares and an order to buy 250,000 shares. About four minutes later, Johnson gave Wynne a third set of offsetting limit orders: an order (marked unsolicited) to sell 250,000 shares and an order to buy 250,000 shares. About four minutes after that, Johnson gave Wynne a fourth set of offsetting limit orders: an order (marked unsolicited) to sell 221,000 shares and an order to buy 250,000.

An email exchange between Johnson and TS reflects their goal of significantly increasing the reported price of IceWEB stock by Thursday, May 24. After seeing a tweet about IceWEB from TS, Johnson emailed TS, asking whether the results were "better/worse or as expected." TS responded, "We have not begun [as] yet … we only put out simple message to our subs and social media guys as a warm up … the fireworks start tomorrow and climax on Thursday." In reply Johnson asked why only one day (Thursday) when LUXR "was good for weeks." TS answered that the LUXR campaign cost more than $1 million over many weeks. He then indicated that he shared with Johnson the goal of pushing IceWEB's share price up to about 20 cents:

> We are getting the biggest bang for our buck with dedicated emails that crescendo with 1.5 million emails of Thursday morning …WITH some of the PIPE money you raise … we can expand our program … this campaign is short lived and its goal is to get stock in the 20 cent range so John [IceWEB's CEO] can convert enough warrants to fill his war chest.[73]

Later that day, TS again sent Johnson an email reflecting the goal of increasing the price at which IceWEB stock would trade on Thursday: "We got 3.5 million shares today with a water pistol ... The bazookas come out starting tomorrow … You close your PIPE deal for them at .17 on Thursday? Stock will be at .20 or more on Thursday … Bet you steak at Gibson's." Johnson responded that if IceWEB's stock "closes in the 20s, I will buy you two steaks at Gibson's!!"[74]

The price of IceWEB stock jumped from the prior closing price of 14.5 cents per share to a closing price of 15.4 cents per share.[75]

[73] CX-38, at 1-3 (ellipses in original).

[74] CX-38, at 4-6 (ellipses in original).

[75] Tr. 1172-74; CX-1C; CX-3A, at 1.

f. Tuesday, May 22, 2012

At least four times on May 22, Johnson gave a sell limit order to Wynne that was partially or entirely offset by a solicited buy limit order that Johnson simultaneously gave to Wynne. In three of those four instances, the sell order was marked "unsolicited."

Wynne received an email from a customer, JKT, complaining about the commissions that Johnson had charged on the sale of JKT's IceWEB stock on the previous day. JKT wrote: "I don't think I should be charge[d] 2350 for commissions. I was doing a favor for [G]eorge."[76] When Wynne saw this complaint, it did not trigger a question in his mind, and Wynne did not ask Johnson what JKT meant when he stated that he was doing a "favor" for Johnson.[77]

TS announced that he was initiating coverage of IceWEB and issued a report entitled, "By Dumb LUCK I Just Discovered the PERFECT Tech Stock … In My Backyard!" (the "TS Report"). TS sent an email to Johnson with a link to the TS Report, copying IceWEB's CEO. In his email, TS suggested to Johnson that he circulate the TS Report widely and suggested to IceWEB's CEO that the company send the report to each shareholder for whom it had an email address. The TS Report described IceWEB as "perfectly positioned with a low cost/high efficiency unified data storage solution in the commoditized unstructured data storage market" and set forth an initial target of $2.25 for the stock, which was about 15 times the current price. In the early afternoon, Johnson circulated a link to the TS Report to more than 35 customers.[78] In his emails, Johnson did not inform the customers how TS came to write his report.[79]

When Johnson circulated the link to the TS Report, he expected IceWEB to retain the Firm as the placement agent for its private placement.[80] Nevertheless, Johnson and Wynne did not disclose to customers that Johnson expected the Firm to receive compensation from IceWEB for investment banking services in the next three months.

TS sent Johnson an email, which again indicated that the goal was to increase the price at which IceWEB stock would trade: "building bigger Wed[nesday] and then crescendo Thursday … that is what [IceWEB] wanted and that is what [it] is getting[.]" Three hours later, Johnson responded, complaining, "Buy volume has dried up … I've been supporting the .16 bid for the last two hours."[81]

At the end of the trading day, TS sent Johnson an email reflecting their goal of increasing the reported trading volume of IceWEB stock, "Should be [a] 6-8 million share day … but 10

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[76] CX-42, at 3.

[77] Tr. 1145-46.

[78] Compl. ¶¶ 85, 87; Hr'g Stip.; CX-40, at 12-61.

[79] CX-47.

[80] Compl. ¶ 103; Hr'g Stip.

[81] CX-41 (ellipses in original).

million would not be [a] surprise." The email also indicated that the plan was to increase the share price of IceWEB stock so that Johnson and the Firm could raise funds for IceWEB through a PIPE offering and IceWEB could raise funds through the exercise of warrants, "This week is a preview to the whole enchilada … with George raising PIPE money and John [IceWEB's CEO] exercising warrants we should have enough gas in the tank to KEEP this up for the rest of the year …."[82]

The price of IceWEB stock increased 10%, from the prior closing price of 15.4 cents per share to a closing price of 17 cents per share.[83]

g. Wednesday, May 23, 2012

There were three instances when Johnson gave Wynne a sell limit order that was largely or entirely offset by a buy limit order. In two of the instances, the sell order was marked "unsolicited."

Johnson contacted Wojnowski to discuss the contemplated PIPE offering.[84] After the end of the trading day, Wojnowski contacted Ellison, citing the potential PIPE offering, and suggested that IceWEB be placed on the restricted list. The Firm then placed IceWEB on the restricted list, prohibiting the Firm's registered representatives from soliciting customer transactions in IceWEB stock.[85]

The price of IceWEB stock increased from the prior closing price of 17 cents per share to a closing price of 17.49 cents per share.

h. Thursday, May 24, 2012

The price ebbed from the prior closing price of 17.49 cents to a closing price of 17.3 cents per share. In the afternoon, TS sent an email to Johnson that again reflected that TS had been instructed to increase the trading volume and price of IceWEB stock: "[M]y orders were to get huge volume and .17-.18 cents ... for a pre holiday [sic] week this is about as good as we can do[.]" Johnson responded, ".165 bid now ... I need it at .17 to .18 for a couple days at least." TS replied by noting various difficulties he had encountered and that "[w]e brought 9 million shares of volume." Johnson replied, "You did a great job buddy ..... [sic] let's keep it going."[86]

[82] CX-43 (ellipses in original).

[83] CX-1C; CX-3A.

[84] Tr. 864-65.

[85] Tr. 135-36, 832, 863; CX-50.

[86] CX-49 (ellipses in original).

i. Friday, May 25, 2012

On the morning of May 25, IceWEB's CEO passed away suddenly,[87] and Johnson emailed IceWEB's public relations consultant asking for "a little help."[88] The consultant responded, "Dude, we bought 3.6m this week,"[89] suggesting that he was part of another group that was buying IceWEB stock that week. Johnson replied, "TODAY is VERY IMPORTANT!"[90]

The price of IceWEB stock collapsed from the prior closing price of 17.3 cents per share to a close of 13.4 cents per share.

j. June 2012 PIPE Offering

In June 2012, the Firm conducted a PIPE offering for IceWEB. The offering raised more than $1.6 million. The Firm received a 10% placement fee, most of which was paid to Johnson and Wynne.[91]

k. Price of IceWEB Stock in 2016

In 2016, IceWEB's stock is virtually worthless.[92]

5. Johnson Intended to Artificially Inflate the Reported Price and Trading Volume of IceWEB Stock

Johnson's trading and the surrounding circumstances establish that he solicited the purchases and sales of IceWEB stock during the Trading Period with the intent to artificially inflate the reported price and trading volume of IceWEB stock. This finding is based on several facts. Each of the IceWEB orders that Johnson placed during the Trading Period was solicited.[93] All the sell orders were limit orders.[94] Many of the buy orders solicited by Johnson matched sell orders solicited by Johnson.[95] The email from JKT to Wynne in which JKT referred to his having sold IceWEB stock as a "favor" to Johnson suggests that, during the Trading Period, Johnson's customers placed orders to purchase or sell IceWEB stock as a "favor" to Johnson, rather than

[87] CX-53, at 1.

[88] CX-51.

[89] Purchases of 3.6 million shares would account for more than 25% of the IceWEB stock trading during the first four days of that week. CX-1B.

[90] CX-51.

[91] Tr. 1182-85; CX-56, at 9; RXW-106.

[92] Tr. 984.

[93] Tr. 211-14, 491-92.

[94] Tr. 212-13.

[95] CX-3A.

based on expected movements in the price of the stock. The email correspondence between TS and Johnson indicates a goal of pushing the price of IceWEB stock to between 17 and 20 cents per share by Thursday, May 24, 2012. During the Trading Period, the price of IceWEB stock soared from a closing price of 12 cents per share on May 15, 2012 to a closing price of 17.49 cents on May 23, 2012.[96]

6. Legal Standards Applicable to Johnson's Involvement in IceWEB

Johnson's conduct in promoting IceWEB stock potentially implicated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as well as a number of FINRA rules.

a. Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder Prohibit Trading For the Purpose of Artificially Inflating the Reported Volume and Price of a Stock

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make it unlawful for any person to use "any manipulative or fraudulent device in connection with the purchase or sale of any security, which includes manipulative trading."[97] For the purpose of Rule 10b-5, the Supreme Court has defined manipulation as "practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity."[98] The U.S. Securities and Exchange Commission ("SEC") has characterized manipulation as "the creation of deceptive value or market activity for a security, accomplished by an intentional interference with the free forces of supply and demand."[99] In determining whether a manipulation has occurred, the SEC generally looks to see whether the trading and surrounding circumstances suggest an effort to "interfere[] with the free forces of 'supply and demand.'"[100] To violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the person engaged in the manipulation must act with scienter, that is "a mental state embracing intent to deceive, manipulate, or defraud."[101]

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[96] CX-3A.

[97] *Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *42 (Dec. 10, 2009).

[98] *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 476 (1977).

[99] *Kirlin Sec.*, 2009 SEC LEXIS 4168, at *42 (quoting *Swartwood, Hesse, Inc.*, 50 S.E.C. 1301, 1307 (1992)).

[100] *Kirlin Sec.*, 2009 SEC LEXIS 4168, at *44 (quoting *Pagel, Inc.*, 48 S.E.C. 223, 226 (1985), *aff'd*, 803 F.2d 942 (5th Cir. 1986)).

[101] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). A showing of specific intent is not required to establish scienter. *Irfan Mohammed Amanat*, Exchange Act Release No. 54708, 2007 SEC LEXIS 2558, at *35 (Nov. 3, 2007), *aff'd*, 269 F. App'x 217 (3d Cir. 2008). The "scienter" requirement can be satisfied by recklessness, which has been defined in this context as "an extreme departure from the standards of ordinary care … to the extent that the danger of [deceiving investors] was either known to the [respondent] or so obvious that the [respondent] must have been aware of it." *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *22 (Mar. 31, 2016).

b. NASD Rules 2210(d)(1), 2711(h)(1)(C), 2711(h)(2)(A)(ii) and FINRA Rule 2010 Govern the Dissemination of Third-Party Research Reports and Other Public Communications

In 2012, NASD Rule 2210 governed communications issued by FINRA members to the public. The parties stipulated that the JF Reports and the TS Report were communications with the public within the meaning of Rule 2210.[102] Rule 2210's content standards:

- required that "[a]ll member communications with the public shall be based on principles of fair dealing and good faith, and must be fair and balanced," provide the public "a sound basis for evaluating the facts in regard to any particular security," and not omit any material fact or qualification if the omission would cause the communications to be misleading;[103]
- prohibited members from making "false, exaggerated, unwarranted or misleading" statements or claims, and from distributing any false or misleading communication;[104] and
- prohibited members from issuing communications with the public that predicted or projected performance of an investment, and from making "any exaggerated or unwarranted claim, opinion or forecast."[105]

The parties also stipulated that the JF Reports and TS Report were third-party research reports.[106] With certain exceptions not relevant here, NASD Rule 2711 defines "research report" to mean any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.[107] Rule 2711 provides that if a member firm distributes or makes available any third-party research report on a company, the member must accompany the research report with (or provide a web address that directs the recipient to) certain disclosures, including (1) any actual, material conflict of interest of the research analysis which the research analyst knows or has reason to know when the research report is published[108] and (2) whether the member expects to receive or intends to seek any compensation for investment banking service from the company in the next three months.[109]

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[102] Compl. ¶ 89; Hr'g Stip.

[103] NASD Rule 2210(d)(1)(A).

[104] NASD Rule 2210(d)(1)(B).

[105] NASD Rule 2210(d)(1)(D).

[106] Compl. ¶¶ 93, 137; Hr'g Stip.

[107] NASD Rule 2711(a)(9).

[108] NASD Rule 2711(h)(1)(C).

[109] NASD Rules 2711(h)(1)(C), 2711(h)(2)(A)(ii)(c), 2711(h)(13)(A).

7. The Firm Failed to Adequately Supervise Johnson's Activities in Connection with IceWEB Stock

The Firm's supervision of Johnson's activities in connection with IceWEB stock was deficient in three respects: (1) the Firm did not adequately review emails sent to and received by the Chicago office; (2) the Firm did not adequately review Johnson's trading in IceWEB stock; and (3) the Firm did not adequately review third-party research reports and other public communications disseminated by Johnson (and Wynne, at Johnson's request). As a result of these deficiencies, the Firm did not adequately supervise Johnson with a view to preventing violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and violations of restrictions on the dissemination of research reports and other public communications.

a. Review of Emails

Member firms should review emails to or from registered representatives that may evidence conduct inconsistent with FINRA rules and federal securities laws.[110] The Firm failed to adequately review Johnson's emails for such conduct.

The Firm's WSPs required Wynne to review all of the email correspondence of the Chicago office:

> Branch Office Managers must review email correspondence no later than 30 days from receipt/delivery. The BOM may delegate the review of electronic correspondence to a [designated person]. Any inappropriate communication will be referred to the BOM and Compliance for review and further action.[111]

The Firm used its email archival system, Global Relay, to retain and review emails.[112] Global Relay generated a random sample of emails for review, and it also flagged emails containing certain keywords that the Firm specified.[113]

Although Global Relay could be configured to provide a supervisor with access to his or her employees' emails, and despite Wynne's requests for such access, the Firm did not provide this access to Wynne.[114] Wynne therefore could not review the emails sent and received by the registered representatives whom he supervised (the "Chicago emails").

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[110] Regulatory Notice 07-59, "Supervision of Electronic Communications," 2007 FINRA LEXIS 58, at *12 (Dec. 2007).

[111] Compl. ¶ 177; Ans. ¶ 177; Tr. 664-65; CX-110, at 97. The Firm does not claim that Wynne delegated the review of electronic correspondence to a designated person.

[112] Tr. 516-17, 1062-64, 1237.

[113] Tr. 516, 522, 530-31, 697.

[114] Tr. 522.

In February 2012 and again in March 2012, Wynne emailed Wojnowski requesting access, through Global Relay, to the Chicago emails.[115] Wynne also sent emails to Brian Reschke (a general securities principal at the Firm who supervised the independent contractors associated with the Firm and had certain operational responsibilities) about Wynne's lack of access to the Chicago emails.[116] The Firm, however, never submitted a request to Global Relay to provide Wynne with access to emails.[117] Wynne never gained access to the Chicago emails, and he therefore never reviewed the emails.[118]

The Firm argues that Wynne's failure to review the Chicago emails was not a deficiency because Ellison conducted an adequate review of emails sent to and received by the Chicago office. The Panel rejects this argument for two reasons. First, reports that the Firm obtained from Global Relay indicate that Ellison's review of the Chicago emails was minimal. The reports indicate that of the about 140,000 Chicago emails, Ellison reviewed the header of less than 1% of the emails and the body of less than 1/100th of 1% of the emails.[119] Assuming that the Firm used keywords that were reasonably designed to identify potentially problematic emails, it was important that the Firm review the body of emails that Global Relay identified as containing a keyword. Nonetheless, Ellison did not review the body of any emails to or from Johnson or Wynne that Global Relay flagged for review based on a keyword or otherwise.[120] Of the other emails to or from Johnson or Wynne, Ellison reviewed the body of only one email that was to or from Johnson and the body of only four emails that were to or from Wynne.[121]

Second, Ellison did not intend his review to be a substitute for Wynne's review.[122] Rather, Ellison conducted his review to obtain a "global picture" of activity at the Firm.[123]

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[115] Tr. 1066; RXW-084; RXW-090.

[116] Tr. 905-13; CX-113.

[117] CX-138, at 5.

[118] Tr. 1062-64, 1237; CX-138, at 5.

[119] RM-3; RM-4. By letter dated May 29, 2012, OFDMI requested that the Firm provide a copy of all emails pertaining to IceWEB for the period between January 1, 2012, through the present. CX-56. The record does not indicate how many, if any, emails were marked on the reports as "reviewed" as a result of this request.

[120] RM-3; RM-4. Global Relay reports an email as reviewed if the reviewer both looks at the header or body of an email and presses the "review" button. If the reviewer looks at the header or body of an email and does not press the "review" button, then Global Relay reports the email as "viewed." Tr. 563. Ellison pressed the "review" button more than 98% of the times when he looked at an email. RM-5.

The Panel did not credit Ellison's testimony that it was his understanding that he reviewed all of the Chicago emails that Global Relay flagged containing a keyword. Tr. 733-36. The Global Relay reports show that 905 Chicago emails were flagged for review based on keywords and that Ellison reviewed the header of 190 of these emails and the body of none of the emails before May 31, 2013. RM-3; RM-4. No party introduced evidence that the Global Relay reports were unreliable. The Panel therefore concludes that, at most, Ellison timely reviewed the header of about 20%, and the body of none, of the Chicago emails that had been flagged for review based on a keyword.

[121] Tr. 535-37; RXW-061, at 1-2, 5-6.

[122] Tr. 724.

Given that Wynne could not review emails through Global Relay and Ellison's review of the Chicago emails was minimal, the Firm's supervision of the Chicago emails was inadequate. If either Wynne or Ellison had adequately reviewed the Chicago emails, he would have had an opportunity to review emails between TS and Johnson indicating that Johnson might be manipulating IceWEB stock.

b. Review of Trades

The section of the Firm's WSPs entitled, "Market Manipulation," provided: "No purchase or sale order may be entered or executed that is designed to rise [sic] or lower the price of a security or give the appearance of trading for purposes of inducing others to buy or sell."[124] But the WSPs were not reasonably designed to detect or prevent the entry of orders that violated this prohibition. In particular, the WSPs did not set forth any specific procedures for a supervisor to follow to detect such orders or prevent them from being entered or executed.

The Firm provided Wynne with limited tools to detect, and Wynne took minimal steps to detect, whether registered representatives in the Chicago office were manipulating any stocks. The Firm did not provide Wynne with any exception reports for trading at the Firm and (as found above) did not provide him with access through Global Relay to the Chicago emails.[125] Wynne reviewed the daily blotter each day but did not specifically review trading for wash or match trades.[126] Rather, Wynne focused on "[t]hings that stuck out," new accounts, big orders, and securities with which he was not familiar.[127]

Even though the Firm provided Wynne with limited tools to detect a manipulation, Wynne was aware of four red flags that should have caused him to investigate whether Johnson was participating in a manipulation of IceWEB stock. First, during the Trading Period, there were more than a dozen instances when Johnson gave Wynne a solicited limit order to buy IceWEB stock at the same time as a limit sell order (often marked unsolicited) that could be executed against the buy order. Given that the Firm's WSPs required registered representatives to transmit orders to the order execution desk or facility "promptly after receipt," this pattern should have prompted Wynne to ask Johnson how he happened to receive limit orders to sell IceWEB stock at the same time as solicited limit orders to buy IceWEB stock.[128]

Second, on May 22, 2012, Wynne received the email in which JKT complained about the commissions that Johnson had charged on the May 21 sales of JKT's IceWEB stock and

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[123] Tr. 693, 724.

[124] CX-110, at 60.

[125] Tr. 1070-71.

[126] Tr. 1069-77.

[127] Tr. 1077.

[128] CX-110, at 198.

explained, "I was doing a favor for [G]eorge."[129] The reference to "a favor for [G]eorge" should have caused Wynne to question Johnson about the sales, especially given that Johnson had not marked these sales as solicited.[130]

Third, Wynne knew Johnson had recruited JF and TS to promote IceWEB and saw the reports that JF and TS published and that Johnson and Wynne (at Johnson's direction) distributed them to investors. Wynne should have realized that the reports were not balanced and omitted material information, and that Johnson's involvement with these reports suggested that he was determined to push up the price of IceWEB stock.

Fourth, Wynne knew that IceWEB was a thinly traded, low-priced stock, that Johnson traded extensively in the stock during the Trading Period, and that the price of the stock had soared during that period.[131] Johnson placed a dramatically higher volume of orders during the Trading Period than in other comparable periods.[132] During the Trading Period, the price of IceWEB stock shot up more than 45% from a closing price of 12 cents per share on May 15, 2012, to a closing price of 17.49 cents on May 23, 2012.[133]

Thus, the Firm's supervision of trading in IceWEB stock by Johnson and his customers was inadequate.

c. Review of Third Party Research Reports and Other Public Communications

The section of the Firm's WSPs entitled, "Correspondence Requiring Approval Prior To Sending," provided: "Correspondence (including e-mails) to be sent to 25 or more **existing retail customers** within any 30 calendar-day period **and** that makes any financial or investment

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[129] CX-42, at 3.

[130] At the hearing, Wynne testified that he did not know why a customer would do a transaction as a favor for a broker, he first saw the email at his OTR, and the email piqued his interest when he saw it. Tr. 1298. But JKT sent the email to Wynne on May 22, Wynne promptly forwarded the email to Johnson, and (less than an hour later) Johnson replied to Wynne by referring to JKT as a "crybaby." CX-42, at 3. Wynne nevertheless offered no explanation for why the JKT email did not pique his interest when he saw the email on May 22.

[131] In a Notice to Members issued in 2002, NASD noted that "penny stocks ... although legitimate, have been used in connection with fraudulent schemes and money laundering activity." NASD Notice to Members 02-21, 2002 NASD LEXIS 24, at *40 (Apr. 2002).

[132] In the first four months of 2012, the volume of trading in IceWEB stock by the Firm and its customers averaged less than one million shares each month (364,500 shares in January; 2,629,637 shares in February; 232,000 in March 2012; and 465,066 shares in April) and accounted for 16.5% of the total market during those months (12% in January; 39% in February; 3% in March; and 10% in April). In May 2012, Johnson and his customers increased the volume of their trading in IceWEB dramatically to 7,474,969 shares, of which 6,780,089 shares traded during the six trading days of the Trading Period. CX-1A. On five of the six trading days, the Firm accounted for a majority of the total market volume, and on three of those days the Firm accounted for more than 60% of the total market volume (70% on May 17, 69% on May 18, and 65% on May 21). CX-1B, at 2; CX-2A. Almost all of the Firm's trading in IceWEB stock during this period involved the Chicago office. CX-1C.

[133] CX-3A.

recommendation or otherwise promotes a product or service **must be approved prior to sending**."[134] Also, the WSPs contained a blanket prohibition on registered representatives sending out anything that may be deemed research.[135] The WSPs identified more than a dozen criteria to consider when preparing or reviewing outgoing correspondence, including that (1) truthfulness and good taste were required, (2) exaggerated, unwarranted, or misleading statements or claims were prohibited, and (3) projections and predictions were prohibited.[136]

The WSPs also provided that "[a]ll advertising and sales literature must be submitted to the Communications Principal for review and approval prior to use."[137] The WSPs defined "advertising" and "sales literature" to include (in the aggregate) any written or electronic communication distributed or made generally available to customers or the public.[138] These sections of the WSPs provided that registered representatives could distribute advertising and sales literature only if the materials were reviewed and approved by the Communications Principal. But the Firm did not have a Communications Principal during this period.[139] Thus, the WSPs effectively prohibited the use of advertising and sales literature.[140]

The WSPs did not set forth specific procedures for a supervisor to follow to detect and prevent the use of prohibited research, advertising and sales literature.

Although the WSPs did not set forth such specific procedures, Wynne knew from his interactions with Johnson that the JF Reports and the TS Report were being sent to numerous Firm customers. He even personally emailed some reports to customers at Johnson's request.[141] But Wynne took no action to ensure that the Firm's customers who received the JF Reports understood that JF was being paid by IceWEB.[142] Wynne did not (1) consult the Firm's WSPs to determine the steps that the Chicago office should take before circulating the JF Reports and the TS Report to Firm customers or (2) understand what section of the Firm's WSPs governed the office's circulation of the JF Reports and the TS Report.[143] Although Wynne read the JF Reports and the TS Report before they were circulated, he did not review them to determine if they:

- might be deemed research reports that the WSPs prohibited registered representatives from sending out or advertising or sales literature that the WPSs prohibited registered

[134] CX-110, at 98 (emphasis in original).

[135] Tr. 662-63; CX-110, at 97.

[136] CX-110, at 99.

[137] CX-110, at 91.

[138] CX-110, at 89.

[139] Tr. 661.

[140] Tr. 663.

[141] CX-15, at 7; CX-16, at 4; CX-17, at 4-14; CX-19; CX-32, at 1, 7-9; CX-42, at 1, 2, 5; CX-47.

[142] Tr. 1112.

[143] Tr. 1109-14.

representatives from using because the Firm lacked a Communications Principal who could review and approve them;
- were not fair and balanced;
- omitted material information;
- did not provide a sound basis for evaluating IceWEB stock;
- made exaggerated, false, or misleading claims or forecasts; and
- did not comply with applicable FINRA rules in all other respects.[144]

Wynne should have reviewed the JF Reports and the TS Report to make these determinations and should not have permitted—much less participated in—the dissemination of these reports. Wynne's supervision was therefore deficient with respect to the JF Reports and the TS Report.

The Firm's failure to ensure that either Wojnowski (as Wynne's designated supervisor) or Ellison adequately reviewed Wynne's emails also contributed to the Firm's failure to detect the circulation of the JF Reports and the TS Report. That review would have provided another opportunity to detect that the Chicago office was inappropriately circulating public communications that were third-party research reports. But Wojnowski did not review any of Wynne's emails, and Ellison's review was minimal.

Thus, the Firm's supervision of public communications and third-party research reports sent by the Chicago office was inadequate.

B. Supervisory Deficiencies in Connection with Johnson's Trading of Snap Stock

As set forth below, in the summer of 2012, the Firm failed to adequately supervise Johnson's activities in connection with the stock of Snap Interactive, which traded on the OTC bulletin board.[145]

1. Factual Background Regarding Snap Stock and Johnson's Involvement in Snap Stock

In 2012, Snap was an illiquid penny stock.[146] Johnson and his wife, KJ, began acquiring Snap stock in May 2012.[147] By June 30, 2012, Johnson owned almost 160,000 shares at an average acquisition cost of $1.37 per share and KJ owned more than 90,000 shares at an average cost of about $1.03 per share.[148]

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[144] Tr. 1109-12.

[145] Tr. 337.

[146] Tr. 337-38.

[147] Tr. 338.

[148] CX-131, at 94, 124.

2. Johnson's Failure to Disclose to Customers to Whom He Recommended the Purchase of Snap Stock that He Was Selling the Stock

In July 2012, Johnson began selling Snap stock from both his account and KJ's account. In 11 instances between July 18, 2012, and August 31, 2012, Johnson gave Wynne a solicited market order for a client to buy the Snap stock.[149] In each instance, Johnson at the same time (or within minutes) gave Wynne (by email or in person) a limit order to sell Snap stock from either his account or KJ's account.[150] In at least three of these instances, Johnson did not disclose to his customer that he was selling Snap at the same time.[151]

3. Legal Standards Applicable to Johnson's Conduct

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make it unlawful for any person acting with scienter, in connection with the purchase or sale of a security, directly or indirectly to make an untrue statement of material fact or omit a material fact necessary to make a statement not misleading.[152] An omitted fact is material if "there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision."[153] The SEC recently stated, "When a broker-dealer has a self-interest (other than the regular expectation of a commission) in serving the issuer that could influence its recommendation, it is material and should be disclosed."[154] By recommending the purchase of Snap stock without disclosing his own concurrent sales, Johnson "omitted material information, an omission that prevented customers from making an informed investment decision."[155]

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[149] Tr. 340-41, 1190-92; CX-67A; CX-72; CX-74.

[150] Tr. 343-47; CX-67A; CX-69; CX-70; CX-71; CX-72; CX-73; CX-74.

[151] CX-67A; CX-140, at 33-35. The Firm argues that the Panel should not rely on CX-140, Johnson's investigative testimony. The Panel rejects this argument. As an initial matter, "it is well-established that hearsay evidence is admissible in administrative proceedings and can provide the basis for findings of violation, regardless of whether the declarants testify." *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *46 (Jan. 30, 2009), *petition for review denied*, 416 F. App'x 142 (3d Cir. 2010). In determining whether to rely upon hearsay evidence, it is necessary to evaluate its probative value, reliability, and fairness of use. *Charles D. Tom*, 50 S.E.C. 1142, 1145 (1992). Factors to consider in this respect include, among other things, the type of hearsay at issue, whether the evidence is signed or sworn, whether the evidence is contradicted by direct testimony, and whether the evidence is corroborated. *Id.* Here, Johnson testified under oath and against his own interest when he admitted that he recommended the purchase of Snap stock to customers without disclosing that he and KJ were selling Snap stock; and his testimony is uncontradicted.

[152] *Dep't of Enforcement v. Fillet*, No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *18-19 (NAC Oct. 2, 2013), *aff'd in relevant part*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142 (May 27, 2015).

[153] *Scholander*, 2016 SEC LEXIS 1209, at *20.

[154] *Id.* at *17 (quoting *Kevin D. Kunz*, 55 S.E.C. 551, 565 (2002)).

[155] *Richmark Capital Corp.*, 57 S.E.C. 1, 9 (2003), *aff'd*, 86 F. App'x 744 (5th Cir. 2004). Liability also requires the use of "any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange." 17 C.F.R. § 240.10b-5. *See also Dep't of Enforcement v. Gonchar*, No. CAF040058, 2008

4. The Firm Failed to Adequately Supervise Johnson's Trading of Snap Stock

The section of the Firm's WSPs entitled, "Adverse Interest," provided:

> When an RR is on the opposite side of a transaction from a customer (customer sells a security and the RR is the purchaser, or customer buys a security and the RR is the seller), the RR may be considered to have an 'adverse interest' in the transaction. The branch manager or other designated supervisor should require a disclosure on the customer's confirmation or a letter to the customer disclosing that an employee was on the opposite side of the transaction.[156]

The WSPs did not set forth procedures that a supervisor should follow to determine if a registered representative was recommending a transaction while on the opposite side of the transaction. And the Firm did not have an exception report for detecting when this occurred.[157]

Despite the absence of such procedures and exception reports, Wynne knew that Johnson solicited customers to buy Snap stock while selling his or KJ's shares because Wynne entered the orders to buy and sell Snap stock.[158] But Wynne did not know of the "Adverse Interest" provision in the WSPs and was not concerned by Johnson's practice of selling Snap stock from his account or KJ's account at the same time as he was soliciting purchases of Snap stock from his customers.[159] Wynne did not ask anyone at the Firm about the trades.[160] And he did not take any steps to ensure that there was a disclosure to the customers.[161]

Sometime before July 2012, Wojnowski warned Wynne that Johnson should stop trading through KJ's account in stocks that Johnson's customers were also trading.[162] Wynne agreed and said that he would talk to Johnson.[163] But the Firm did not institute any heightened or additional

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FINRA Discip. LEXIS 31, at *27-28 & n.18 (Aug. 26, 2008). This jurisdictional requirement can be satisfied by the use of emails. *Anthony Fields*, Exchange Act Release No. 74344, 2015 SEC LEXIS 662, at *19 (Feb. 20, 2015).

[156] CX-110, at 216.

[157] Tr. 666.

[158] Tr. 1191-94, 1197; CX-70; CX-71; CX-72; CX-73; CX-74; CX-140, at 8-9.

[159] Tr. 1197, 1202.

[160] Tr. 1199-1201.

[161] Tr. 1202-03.

[162] Tr. 823-25. The Panel's finding that Wojnowski's contact with Wynne occurred before July 2012 is based on Wojnowski's testimony that he stepped down as the Firm's CEO and president in about June 2012. CX-143, at 8.

[163] Tr. 824.

supervision of Johnson.[164] And no one at the Firm ever asked Johnson about the placement of sell orders for his account or KJ's account.[165]

Thus, the Firm did not adequately supervise Johnson's trading with a view to preventing him from recommending that a customer buy a stock that he was selling without disclosing his adverse interest.

C. The Firm Violated NASD Rule 3010(a) and FINRA Rule 2010 by Failing to Reasonably Supervise Activities in the Chicago Office

As the Complaint charged, and the Panel has found, the Firm failed to adequately supervise Johnson's activities in connection with IceWEB stock and Snap stock. The Panel rejects the following arguments that the Firm nevertheless did not violate NASD Rule 3010(a) and FINRA Rule 2010.

Citing a 1987 SEC opinion, the Firm argues that it should not be held liable for the deficiencies in Wynne's supervision because reasonable delegations of compliance responsibilities to a particular person in a firm is permissible and absolves the delegator of responsibility for violations, as long as the delegator does not know or have reason to know that such person is not properly performing his duties.[166] This argument fails for two reasons. As illustrated by the SEC opinion cited by the Firm, although the principle applies to delegations by individuals with overarching supervisory responsibilities (such as the president of a firm), the principle does not apply to firms. Also, under this principle "it is not sufficient for [a] person with overarching supervisory responsibilities [to delegate] supervisory responsibility to a subordinate, even a capable one, and then simply wash his hands of the matter until a problem is brought to his attention .... Implicit is the additional duty to follow-up and review that delegated authority to ensure that it is being properly exercised."[167]

The Firm did not adequately train Wynne for his supervisory responsibilities. When Wynne joined the Firm, it did not provide him with any training on his duties as a supervisor beyond giving him written materials.[168] Despite having been appointed by Meyers Associates as a supervisor, Wynne never read the Firm's WSPs; rather, he merely "glanced through" the WSPs.[169]

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[164] Tr. 826.

[165] CX-140, at 36.

[166] Post-Hearing Br. of Resp't Meyers Assocs., L.P., at 11 (citing *Mark James Hankoff*, 48 S.E.C. 705, 707 (1987)).

[167] *Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *50 (NAC May 1, 2012) (citing *Pellegrino*, 2008 SEC LEXIS 2843, at *47).

[168] Tr. 1287.

[169] Tr. 1064, 1115-16.

No one supervised Wynne to ensure that he adequately performed his supervisory responsibilities. The Firm argues that the supervisory organization chart designating Wojnowski as Wynne's supervisor demonstrates that the Firm adequately supervised Wynne.[170] But Wojnowski denied being Wynne's direct supervisor and testified that his other job responsibilities did not allow him time to directly supervise Firm personnel.[171] Further, the Firm did not offer evidence that Wojnowski regularly supervised Wynne. Rather, Wojnowski testified that Ellison "was supposed to monitor the supervisors to make sure they were actually doing the supervisory activities that [the Firm] had assigned to [them]" and that either Ellison or Reschke was responsible for supervising Wynne.[172] Similarly, Ellison denied having ever been designated Wynne's supervisor. Ellison testified that Wojnowski and Wojnowski's successor were responsible for ensuring that Wynne fulfilled his supervisory responsibilities.[173] Reschke also denied that he supervised Wynne, was ever asked to supervise Wynne, ever met Wynne, or ever reviewed Wynne's trading activity.[174]

The Firm failed to take basic steps to ensure that Wynne was adequately supervising the Chicago office. No one at the Firm ever communicated with Wynne to ensure that he was enforcing the WSPs.[175] No senior officers of the Firm visited the Chicago office between November 2011, when the Chicago office opened, and April 2013, when Wynne and Johnson left the Firm, and the Firm never conducted an audit of the Chicago office.[176]

The Firm also argues that for Wynne's last four months at the Firm, he completed and sent to TK, Ellison's principal assistant, a branch manager monthly checklist[177] and that these monthly checklists demonstrate that the Firm "did not blindly put its trust in Wynne as the Chicago OSJ supervisor."[178] This argument fails for two reasons. First, the checklist procedure was deficient in a number of respects. The checklists did not ask for confirmation that the branch manager had reviewed materials to assess whether a registered representative engaged in a market manipulation or recommended a trade on which the registered representative and a customer were on the opposite sides of a transaction.[179] Wynne did not submit the checklists

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[170] Post-Hearing Br. of Resp't Meyers Assocs., L.P., at 12.

[171] Tr. 798-800.

[172] Tr. 788, 798.

[173] Tr. 649, 655-56, 660.

[174] Tr. 905-07, 934. Although Wojnowski testified that he was not Wynne's supervisor, he reviewed and commented on a draft of the Firm's supervisory schedule that identified him as Wynne's supervisor and did not comment that the schedule was inaccurate. Tr. 871-76; CX-114, at 8.

[175] Tr. 1284.

[176] Tr. 664-65, 906-08, 1303. Meyers and Wojnowski visited Chicago when the Firm was in the process of recruiting Wynne, Johnson, and the other registered representatives to form the Chicago office. Tr. 780.

[177] Tr. 703-04, 1057, 1273-75; RM-2.

[178] Post-Hearing Br. of Resp't Meyers Assocs., L.P., at 11.

[179] RM-2.

until January 2013, more than a year after he arrived at the Firm.[180] Meyers does not argue that anyone reviewed the checklists that Wynne submitted.[181] On each of the four checklists Wynne completed, he responded "n/a" to questions seeking confirmation that he had reviewed incoming and outgoing emails and monthly account statements. Also, Wynne did not respond to the question seeking confirmation that he had reviewed "Employee and Family Accounts."[182] Second, a requirement that Wynne submit a conclusory monthly checklist would not constitute adequate supervision in the circumstances of this case.

The Panel rejects the Firm's argument that Maureen Brogan, the FINRA investigator who testified on behalf of Enforcement, "testified numerous times that [the Firm's WSPs] were reasonable and acceptable" and the Panel should therefore find that the Firm's supervision was adequate.[183] The Firm mischaracterizes Brogan's testimony; she did not testify that the WSPs set forth reasonable and acceptable policies and procedures for monitoring accounts for suspicious trading.[184] And the Panel bases its legal conclusion—that the Firm violated NASD Rule 3010(a) and FINRA Rule 2010 by failing to reasonably supervise activities in the Chicago office—on the totality of the evidence.

The Panel also rejects the Firm's argument that because Enforcement did not allege that the Firm violated NASD Rule 3010(b) by failing to establish, maintain, and enforce adequate WSPs, Enforcement cannot establish that the Firm violated NASD Rule 3010(a).[185] Enforcement is not required to allege a violation of NASD Rule 3010(b) in order to establish that Meyers violated NASD Rule 3010(a).[186]

Thus, the Panel finds that Firm violated NASD Rule 3010(a) and FINRA Rule 2010 by failing to reasonably supervise activities in the Chicago office.

D. Other Supervisory Deficiencies

1. Deficient Training and Supervision of Wynne

As the Firm concedes, Wynne "miserably failed" to supervise Johnson because he did not know how to supervise properly, did not care whether he supervised properly, or "was in cahoots

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[180] Tr. 1059; RM-2.

[181] The Wynne checklists do not bear any notation evidencing a review. RM-2. Ellison testified that he was not aware of these checklists. Tr. 708-09. Wojnowski's testimony also suggests that he did not review the checklists. Tr. 881-82.

[182] RM-2.

[183] Post-Hearing Br. of Resp't Meyers Assocs., L.P., at 3.

[184] Tr. 206, 443-46; CX-110, at 252.

[185] Post-Hearing Br. of Resp't Meyers Assocs., L.P., at 9.

[186] *Pellegrino*, 2008 SEC LEXIS 2843, at *32-36.

with Mr. Johnson."[187] The Panel agrees with the Firm's assessment. The Firm did not take reasonable steps to ensure that Wynne was adequately trained and that he adequately supervised the Chicago office. Several factors reinforced the need for the Firm to take reasonable steps to ensure that Wynne adequately supervised Johnson. First, Johnson focused on lower-priced securities. Second, Johnson had been named in two disciplinary proceedings and several arbitrations.[188] Third, Wynne was the subject of a pending FINRA disciplinary proceeding that charged him with failure to supervise. Fourth, in addition to being Johnson's supervisor, Wynne acted as Johnson's sales assistant. In 2012, the Firm paid Wynne $119,809 in compensation, of which $77,196 resulted from an arrangement in which Wynne received a 15% split of Johnson's commission in return for acting as his sales assistant and $39,788 related to compensation for being a branch office manager.[189]

2. Failure to Review Emails Extended Beyond Wynne

Wynne's failure to review the Chicago emails was part of a wider pattern. Wojnowski lacked access to Global Relay and did not review Wynne's emails even though the Firm listed Wojnowski as Wynne's supervisor.[190] Similarly, Bruce Meyers never had access to Global Relay even though the Firm listed him as the supervisor of six individuals, including one producing manager.[191] Likewise, Reschke did not review the emails of the independent contractors whom he supervised and, as far as he recalls, did not have access to those emails through Global Relay.[192]

3. Deficient WSPs

As the Panel found, the Firm's WSPs repeatedly failed to set forth specific supervisory procedures to detect and prevent prohibited activities. Thus, the Firm's WSPs were deficient.

V. Failure to Establish and Implement Adequate AML Policies and Procedures for Monitoring Accounts for Suspicious Activity

FINRA Rule 3310(a) requires each member firm to establish and implement policies and procedures that can be "reasonably expected to detect and cause the reporting of transactions"

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[187] Tr. 1657.

[188] In 1996, NASD fined Johnson $2,500 for an unauthorized trade in an initial public offering. CX-94, at 33-34. In 2006, the Indiana Secretary of State, Securities Division, fined Johnson $1,000 for transacting business in Indiana as a broker-dealer even though he was not registered under the Indiana Securities Act. CX-94, at 31-32. Johnson also had been named in five arbitrations, which settled for a total of about $185,000. The arbitration claims alleged fraud, breach of fiduciary duty, negligent misrepresentation, inappropriate and excessive trading, and unauthorized trading. CX-94, at 17-34.

[189] Tr. 1549-58. The remaining $2,825 related to Wynne's personal production. CX-148.

[190] Tr. 802-03; CX-114, at 13.

[191] Tr. 1348-49; CX-114, at 13.

[192] Tr. 918.

conducted or attempted by, at, or through the member involving (separately or in the aggregate) funds or assets of $5,000 if the member knows, suspects or has reason to suspect, among other things, that the transaction (or a pattern of transactions of which the transaction is a part):

- has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
- involves use of the broker-dealer to facilitate criminal activity.[193]

In NASD's 2002 Special Notice to Members providing guidance to member firms concerning AML programs required by federal law, NASD emphasized that "[a]s with any supervisory procedure, the firm must establish and implement controls and written procedures that explain the procedures that must be followed, the person responsible for carrying out such procedures, how frequently such procedures must be performed, and how compliance with the procedures should be documented and tested."[194]

As set forth below, the Firm's AML policies and procedures for monitoring accounts for suspicious activity were deficient in several respects.

A. Factual Background

Two sections of the Firm's AML Program: Compliance and Supervisory Procedures (the "AML Manual") address the monitoring of accounts for suspicious activity. One section, "Monitoring Accounts for Suspicious Activity," provides:

> [The Firm] will monitor account activity for unusual size, volume, pattern or type of transactions, taking into account risk factors and red flags that are appropriate to [its] business … Monitoring will be conducted through the review of daily trade reports, monthly active account reports, and the various AML [exception] reports provided by [the Firm's] clearing firms. The AML Compliance Person or his or her designee will be responsible for this monitoring, will review any activity that our monitoring system detects, will determine whether any additional steps are required, will document when and how this monitoring is carried out, and will report suspicious activities to the appropriate authorities.[195]

The other section, "Clearing/Introducing Firm Relationships," provides that the Firm "will obtain and use the following exception reports offered by [its] clearing firms in order to

[193] FINRA Rule 3310(a); 31 C.F.R. § 1023.320.

[194] NASD Notice to Members 02-21, 2002 NASD LEXIS 24, at *21 (Apr. 2002).

[195] CX-121, at 17; RM-6, at 17.

monitor customer activity: daily trade reports, monthly active account reports[,] and various AML reports."[196]

The daily trade report (1) was organized by branch, registered representative, and account and (2) showed the following information for each transaction that went through a clearing firm:

- the security;
- whether the transaction was a purchase or sale;
- the number of units purchased or sold;
- the price per unit, the aggregate price;
- whether the transaction was unsolicited; and
- information regarding the commission.[197]

The monthly active account report was designed to identify instances of potential churning of accounts by looking for excessive trading or excessive commissions.[198] It was not designed to detect market manipulation.

Neither section of the AML Manual identifies which AML exception reports should be used to detect potentially suspicious trading activity. And no one at the Firm used AML exception reports during the first eight months of 2012.[199] The Firm did not provide any AML exception reports to Wynne.[200]

B. Deficiencies in AML Manual

The Firm's AML Manual was deficient in several respects. First, the AML Manual did not adequately identify the AML exception reports that should be used to monitor accounts for suspicious activity. As set forth above, although the section of the AML Manual on "Clearing/Introducing Firm Relationships," includes a sentence that begins as if it will identify the AML reports that should be used to monitor accounts for suspicious activities, the sentence concludes without identifying the specific AML reports to be used. The significance of this omission is compounded by the fact that Firm personnel did not use any AML exception reports in the first eight months of 2012.

Second, the AML Manual did not provide adequate guidance on how to use the reports to monitor accounts for suspicious activity. As Ellison testified when asked whether there was any guidance in the AML Manual regarding what steps to take to monitor for customers who

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[196] CX-121, at 27-28; RM-6, at 27. The Branch Manager Monthly Checklist did not ask whether the branch manager had reviewed any exception reports or monthly activity reports. RM-2.

[197] Tr. 817-31, 836-37; CX-116; CX-117; CX-118; CX-119; CX-120.

[198] Tr. 685.

[199] Tr. 677-78; RM-9, at 7, 9-10. The record does not indicate whether anyone began using AML exception reports later in 2012 or in 2013.

[200] Tr. 1070-71.

engaged in pre-arranged or other non-competitive trading, "[t]here is nothing specific that is going to tell you how to do it …. It tells you what [t]o look for but does not tell you how to do it."[201] Beyond stating that the Firm will monitor for unusual size, volume, pattern, or type of transactions taking into account red flags, the AML Manual does not set forth the procedures to be followed to detect suspicious activity in customer accounts.[202] For example, the AML Manual does not explain how to use the reports to identify pre-arranged or other non-competitive trading or trades in which the registered representative and the customer are on opposite sides. Rather, the AML Manual merely states that when an employee of the Firm detects any red flags or other activity that may be suspicious, he or she will notify the AMLCP and, under the direction of the AMLCP, the Firm will determine whether and how to further investigate the matter.[203]

Third, the AML Manual did not state how frequently the AMLCP or his designee should perform the procedures to monitor accounts for suspicious activity.

The AML Manual provided that the AMLCP or his designee is responsible for monitoring accounts for suspicious activity and identified Ellison as the AMLCP, but did not specify the steps Ellison should take to ensure that delegation of AML responsibilities would be effective.[204] Ellison testified that Wynne was designated to monitor the trading in the Chicago office for potentially suspicious activity.[205] But there is no documentation in the record reflecting that Wynne had been designated for AML purposes to conduct this review. Neither Wojnowski nor Wynne knew of the designation.[206]

C. Inadequate Training of Wynne

The Firm did not adequately train Wynne regarding the Firm's AML program. Apart from information provided at the Firm's annual compliance meeting, Wynne did not receive any training on AML policies and procedures.[207] Wynne was not familiar with the AML Manual.[208] Wynne testified that he did not recall having been asked to serve as the AML designee for the Chicago office.[209] Although Wynne nevertheless understood that he was required to report

[201] Tr. 682-83.

[202] The AML Manual lists certain red flags that signal possible money laundering or terrorist financing, including (1) customer engages in pre-arranged or other non-competitive trading, including wash or cross trades of illiquid securities and (2) two or more accounts trade an illiquid stock suddenly and simultaneously. CX-121, at 18-22.

[203] CX-121, at 22.

[204] CX-121, at 2, 17; RM-6, at 2, 17-18.

[205] Tr. 681-82.

[206] Tr. 683-84, 1082-83.

[207] Tr. 1287-88.

[208] Tr. 1081-82; CX-121.

[209] Tr. 1082-83.

potentially suspicious activity to the AMLCP, he did not know that Ellison was the Firm's AMLCP.[210]

D. The Firm Violated FINRA Rules 3310(a) and FINRA Rule 2010 by Failing to Establish and Implement Adequate AML Policies and Procedures

The Complaint charged, and Enforcement proved, that the Firm violated FINRA Rules 3310(a) and 2010 because the AML Manual did not describe in sufficient detail the policies and procedures that the Firm should follow to monitor accounts for suspicious activity.[211] These deficiencies are compounded by the fact that the Firm did not provide any AML exception reports to Wynne and no one at the Firm used AML exception reports for at least the first eight months of 2012. In addition, the Firm did not adequately prepare Wynne for his AML responsibilities.

Thus, the Firm failed to establish and implement adequate controls and written procedures in violation of FINRA Rules 3310(a) and 2010.

VI. Sanctions

In considering the appropriate sanctions to impose on the Firm, the Panel looked to the FINRA Sanction Guidelines.[212] The Guidelines contain General Principles Applicable to All Sanction Determinations ("General Principles") and overarching Principal Considerations in Determining Sanctions ("Principal Considerations"). The Guidelines also contain Principal Considerations in Determining Sanctions for specific violations ("Specific Considerations").

The General Principles explain that "sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct."[213] Adjudicators are therefore instructed to "design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct."[214]

The Guidelines contain a recommendation specific to failures to supervise. Although the Guidelines do not contain a recommendation specific to AML violations, the rules requiring firms to implement AML programs are, in substance, supervisory requirements. Accordingly, the Panel considered the Guidelines for failure to supervise in connection with determining the appropriate sanctions here.

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[210] Tr. 1081-82.

[211] Compl. ¶ 198. Except to the extent set forth above, Enforcement did not prove the other respects by which the Firm allegedly failed to establish and implement AML policies and procedures that were reasonably designed.

[212] FINRA Sanction Guidelines (2016) ("Guidelines"), http://www.finra.org/industry/sanction-guidelines.

[213] Guidelines at 2 (General Principle Applicable to All Sanction Determinations, No. 1).

[214] Guidelines at 2 (General Principle Applicable to All Sanction Determinations, No. 1).

The Guidelines for failure to supervise recommend that the Panel impose a fine of $5,000 to $73,000 and consider limiting activities of the appropriate branch office or department for up to 30 business days. In egregious cases, the Guidelines suggest limiting activities of the branch office or department for a longer period or suspending the firm with respect to any or all activities or functions for up to 30 business days.[215] In a case against a firm involving systemic supervision failures, the adjudicator should consider a longer suspension of the firm with respect to any or all activities or functions (of up to two years) or expulsion of the firm. The Guidelines for failure to supervise set forth three Specific Considerations, discussed below.[216]

The sanctions recommended in the Guidelines are not "prescribe[d] fixed sanctions."[217] "Based on the facts and circumstances presented in each case, Adjudicators may impose sanctions that fall outside the ranges recommended."[218] As the National Adjudicatory Council ("NAC") recently emphasized, "in egregious cases [a hearing panel should] 'consider a higher fine' than the relevant range."[219]

The Panel considered several factors in determining the fine that would be reasonable and appropriate. The primary factors considered are addressed separately below.

A. Aggregation or "Batching" of Claims

The General Principles state that "[a]ggregation or 'batching' of violations may be appropriate for purposes of determining sanctions in disciplinary proceedings" for "similar types of violations."[220] The Firm argues that the supervisory violations and the AML violations are similar.[221] The Panel agrees. Both reflect the Firm's failure to appreciate and adhere to its fundamental obligation to clients and the investing public by establishing and following procedures reasonably designed to detect misconduct by retail brokers. Thus, the Panel imposes a unitary sanction for these violations.[222]

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[215] Guidelines at 102.

[216] Guidelines at 102.

[217] Guidelines at 1 (Overview).

[218] Guidelines at 1 (Overview).

[219] *Dep't of Enforcement v. KCD Fin., Inc.*, No. 20110258551501, 2016 FINRA Discip. LEXIS 38, at *84 n.49 (NAC Aug. 3, 2016), *appeal docketed*, SEC Admin. Proc. No. 3-17512 (Aug. 26, 2016).

[220] Guidelines at 4 (General Principle Applicable to All Sanction Determinations, No. 4).

[221] Reply Br. of Resp't Meyers Assocs., L.P., at 19.

[222] *Dep't of Enforcement v. North Woodward Fin.*, No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *48 n.43 (NAC July 19, 2016) (imposing unitary sanctions for violations of supervisory requirements and AML requirements).

B. Disciplinary History of the Firm

The General Principles instruct that disciplinary sanctions should be more severe for recidivists because an "important objective of the disciplinary process is to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists beyond those outlined in th[e] guidelines."[223] Disciplinary history may assist "in determining the likelihood of the respondent's repeating the misconduct and assessing sanctions that are in the public interest."[224] The SEC has said, "We have long recognized that prior disciplinary history ... provides evidence of whether an applicant's misconduct is isolated, the sincerity of the applicant's assurance that he will not commit future violations and/or the egregiousness of the applicant's misconduct."[225]

Several prior disciplinary proceedings against the Firm were based on inadequate supervision. The Firm's disciplinary history evidences "a disregard for fundamental regulatory requirements"[226] and is a particularly aggravating factor here.

C. Size of the Firm

The General Principles also direct the Adjudicators to "consider a firm's size with a view toward ensuring that the sanctions imposed are remedial and designed to deter future misconduct, but are not punitive."[227] The Guidelines provide that "[w]ith respect to violations involving fraudulent, willful, or reckless misconduct, Adjudicators should consider whether, given the totality of the circumstances involved, it is appropriate to consider a firm's small size and may determine that given the egregious nature of the fraudulent activity, firm size will not be considered in connection with the sanctions."[228] Despite the nature of Johnson's activity, the Panel considered the size of the firm in determining the fine.

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[223] Guidelines at 2 (General Principle Applicable to All Sanction Determinations, No. 2).

[224] *Dist. Bus. Conduct Comm. v. Blitstein*, No. C3A910113, 1992 NASD Discip. LEXIS 29, at *13 n.4 (NBCC Oct. 19, 1992).

[225] *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *47 (June 14, 2013). *See also Midas Sec. LLC*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199, at *66-67 (Jan. 20, 2012) (importance of prior disciplinary history has been long recognized).

[226] *North Woodward Fin.*, 2016 FINRA Discip. LEXIS 35, at *42.

[227] Guidelines at 2 (General Principle Applicable to All Sanction Determinations, No. 1). When assessing a firm's size, Adjudicators should consider, for example, "the financial resources of the firm; the nature of the firm's business; the number of individuals associated with the firm; and the level of trading activity at the firm." Guidelines at 2 (General Principle Applicable to All Sanction Determinations, No. 1). If the violative conduct is fraudulent, willful or reckless, "Adjudicators should consider whether, given the totality of the circumstances involved, it is appropriate to consider a firm's small size and may determine that, given the egregious nature of the fraudulent activity, firm size will not be considered in connection with sanctions." Guidelines at 2 n.2. Here, the Panel determined that given the totality of the circumstances, it is appropriate to consider the firm's small size in connection with sanctions.

[228] Guidelines at 2 n.2 (General Principle Applicable to All Sanction Determinations, No. 1).

D. Inability to Pay

The General Principles state that "[w]hen raised by a respondent, Adjudicators are required to consider ability to pay in connection with the imposition, reduction or waiver of a fine or restitution."[229] Respondent bears the burden of raising the issue and providing evidence of the alleged inability to pay.[230] In seeking to demonstrate an inability to pay, a respondent is held to "a very high standard of proof."[231] The respondent "must prove bona fide insolvency."[232] The respondent "must show that—in seeking to pay a fine—it is unable to obtain the needed funds by, among other things, reducing expenses and salaries, raising capital, or borrowing money."[233]

The Firm timely requested that the Panel consider the Firm's limited ability to pay a substantial fine. The Firm pointed to the deteriorating financial condition evidenced by its FOCUS Reports, including that, as of September 30, 2015, its net capital was under $400,000.[234] But the Firm has not established that it is unable to pay a fine of $350,000. In fact, the Firm's FOCUS Report for the quarter ended September 30, 2015, the last period for which the Firm offered evidence regarding its financial condition, indicates that the Firm had total ownership equity of over $2.7 million.

The Firm's reliance on its deteriorating financial condition is misplaced. The NAC has stated that an otherwise appropriate fine should not be reduced because it will cause the firm to violate its net capital requirement:

> [A] fine that otherwise appropriately sanctions a firm's violative conduct ... may not be limited by claims that the payment will cause the firm to be in noncompliance with its net capital requirement, or to close its doors. Because of the overriding public interest, member firms should be appropriately sanctioned based on their violative conduct, and not merely on the projected effect of the monetary sanction on the firm's balance sheet.[235]

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[229] Guidelines at 5 (General Principle Applicable to All Sanction Determinations, No. 8).

[230] Guidelines at 5 (General Principle Applicable to All Sanction Determinations, No. 8); *Dep't of Enforcement v. Geary*, No. 2009020465801, 2016 FINRA Discip. LEXIS 31, at *46 (NAC July 20, 2016), *appeal docketed*, SEC Admin. Proc. No. 3-17406 (Aug. 18, 2016) (Respondent "has the burden of demonstrating a bona fide inability to pay.").

[231] *Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2009017195204, 2015 FINRA Discip. LEXIS 4, at *16 (NAC Apr. 29, 2015) (quoting *Dist. Bus. Conduct Comm. v. Escalator Sec., Inc.*, No. C07930034, 1998 NASD Discip. LEXIS 21, at *12 (NBCC Feb. 19, 1998)).

[232] *Geary*, 2016 FINRA Discip. LEXIS 31, at *46.

[233] *Merrimac Corp.*, 2015 FINRA Discip. LEXIS 4, at *16 (quoting *Merrimac Corp.*, 2012 FINRA Discip. LEXIS 43, at *44).

[234] Tr. 1459-70; RM-10; RM-11; RM-12; RM-13; RM-14.

[235] *Merrimac Corp.*, 2015 FINRA Discip. LEXIS 4, at *16-17 (quoting *Merrimac Corp.*, 2012 FINRA Discip. LEXIS 43, at *44-45 (internal quotation marks omitted)).

The Panel therefore rejects the Firm's request that the Panel consider the Firm's limited ability to pay a fine.

E. Subsequent Corrective Measures

The Principal Considerations require that Adjudicators consider whether the respondent voluntarily employed subsequent corrective measures prior to intervention by a regulator.[236] Meyers testified that the Firm took remedial steps after May 2012.[237] The Firm did not offer any documentation or other testimony (*e.g.*, testimony from the Firm's current chief compliance officer) that corroborates Meyer's testimony or provide additional detail regarding these steps. The Firm did not establish that the steps remedied the specific deficiencies identified at the hearing. And the Firm did not establish that it took these steps before FINRA began its investigation. For these reasons, the remedial steps identified by Meyers are not a mitigating consideration.

F. Training and Educational Initiatives

The Principal Considerations require Adjudicators to consider "[w]hether, at the time of the violation, the respondent member firm had developed adequate training and educational initiatives."[238] The inadequate training provided to Wynne is an aggravating consideration.

G. Nature of the Firm's Misconduct

The Principal Considerations require Adjudicators to consider "[w]hether the respondent's misconduct was the result of an intentional act, recklessness[,] or negligence."[239] The Firm's failure to adequately review the activities of the Chicago office was, at a minimum, reckless. Wynne ignored repeated red flags. The Firm disregarded emails from Wynne about his lack of access to emails.

The Firm did not adequately prepare Wynne for his supervisory responsibilities or reasonably supervise Wynne to ensure that he was appropriately supervising the Chicago office. The Firm provided Wynne only minimal training. No senior officer of the Firm visited the Chicago office while Wynne was the branch office manager. And the Firm did not conduct an audit of the Chicago office.

The nature of the Firm's misconduct is therefore a particularly aggravating consideration.

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[236] Guidelines at 6 (Principal Consideration in Determining Sanctions, No. 3).

[237] Tr. 1428-29.

[238] Guidelines at 6 (Principal Consideration in Determining Sanctions, No. 6).

[239] Guidelines at 7 (Principal Consideration in Determining Sanctions, No. 13).

H. Red Flag Warnings Ignored by the Firm

The Specific Considerations require Adjudicators to consider "[w]hether respondent ignored 'red flag' warnings that should have resulted in additional supervisory scrutiny."[240] The Panel considered the number of red flags that the Firm ignored to be aggravating. Wynne sent emails to Wojnowski regarding his lack of access to emails, but the Firm did not ask Global Relay to provide access to Wynne. Wynne knew of numerous indications that Johnson was manipulating the IceWEB stock during the Trading Period, but took no steps to investigate. And he read the JF Reports and the TS Report but did not pause to consider whether the reports complied with applicable regulatory requirements. Also, Wynne knew that Johnson was soliciting purchases of Snap at the same time that he was selling Snap (both in his account and KJ's account) but took no steps to investigate whether Johnson was disclosing his conflict of interest.

The Firm argues that Wynne, Ellison, and Wojnowski did not detect any red flags and, thus, the Firm did not ignore any red flags. The Panel rejects this argument. Wynne saw numerous red flags. His failure to recognize them is not a defense. Wojnowski and Ellison took few, if any, steps to ensure that Wynne was adequately supervising Johnson. Thus, their failure to detect red flags does not demonstrate an absence of red flags.

In connection with this Specific Consideration, the Guidelines require Adjudicators to "[c]onsider whether individuals responsible for underlying misconduct attempted to conceal misconduct from respondent."[241] The Firm argues that "any misconduct that [the Firm] should have been alerted to … was intentionally concealed from [the Firm] by the Individual Respondents."[242] The record does not support the Firm's argument. Rather, Wynne failed to detect and prevent Johnson's misconduct despite seeing numerous red flags and the Firm failed to take reasonable steps to ensure that Wynne was adequately supervising Johnson.

The red flags ignored by the Firm are an aggravating consideration.

I. Nature, Extent, Size, and Character of the Underlying Misconduct

The Specific Considerations require Adjudicators to consider the "[n]ature, extent, size and character of the underlying misconduct."[243] Enforcement proved the following misconduct that might have been prevented or detected if the Firm had not failed to supervise and failed to implement an adequate AML program: (1) Johnson's manipulative trading of IceWEB stock; (2) the dissemination of third party research reports about IceWEB that were unbalanced and misleading public communications that were distributed; and (3) Johnson's recommendations to

[240] Guidelines at 102 (Principal Consideration in Determining Sanctions, No. 1).

[241] Guidelines at 102 (Principal Consideration in Determining Sanctions, No. 1).

[242] Post-Hearing Br. of Resp't Meyers Assocs., L.P., at 36-37.

[243] Guidelines at 102 (Principal Consideration in Determining Sanctions, No. 2).

customers that they purchase Snap stock without disclosing that he was selling Snap stock. This misconduct is serious. The nature, extent and character of this underlying misconduct are aggravating considerations.

J. Quality of the Firm's Supervisory Procedures and Controls

The Specific Considerations require Adjudicators to consider the "[q]uality and degree of supervisor's implementation of the firm's supervisory procedures and controls."[244] The egregious deficiencies in the Firm's supervisory procedures and controls and AML program are a particularly aggravating consideration.

K. Conclusion

Enforcement recommended that the Panel impose fines totaling $350,000 and order the Firm to retain an independent consultant.[245] The Panel finds that the Firm's misconduct was egregious and the sanctions recommended by Enforcement are reasonable and appropriate.[246]

VII. Order

For violating NASD Rule 3010(a) and FINRA Rule 2010 by failing to adequately supervise its Chicago office and violating FINRA Rules 3310(a) and 2010 by failing to establish and implement adequate AML policies and procedures, Respondent Meyers Associates, L.P. is fined $350,000, and ordered to comply with the following procedures relating to an independent consultant to be retained by the Firm. The Firm shall:

1. retain, within 60 days of this decision becoming FINRA's final disciplinary action, an independent consultant, acceptable to FINRA staff, to conduct a comprehensive review of each of the Firm's policies, systems, and procedures

[244] Guidelines at 102 (Principal Consideration in Determining Sanctions, No. 3).

[245] Enforcement asked that the Panel also find that the Firm "is subject to statutory disqualification by operation of law, in accordance with FINRA's By-Laws Article III, §4 and Section 3(a)(39) of the Exchange Act." Dep't of Enforcement's Post-Hearing Br., at 31. Under these provisions, the Firm is subject to statutory disqualification, if three conditions are satisfied: the Firm failed to reasonably supervise an individual with a view to prevent violations of provisions of the Exchange Act; the individual violated these provisions; and the individual is subject to the Firm's supervision. When combined with the findings set forth in the Order Accepting Offer of Settlement, *Dep't of Enforcement v. Johnson*, No. 2013035533701 (Feb. 18, 2016), this decision contains findings satisfying these conditions.

[246] In adopting the recommendation that the Panel order the Firm to retain an independent consultant, the Panel considered the fact that in 2010 (and in 2014) the Firm settled charges by the State of Connecticut by agreeing to, among other things, retain an independent consultant. In light of the egregious deficiencies in the Firm's supervisory policies, systems, and procedures in 2012, the Panel concludes that the order requiring the Firm to retain an independent consultant should include procedures designed to increase the likelihood that (1) the independent consultant will conduct an effective review the Firm's policies, systems, and procedures, (2) the independent consultant will develop the recommendations necessary to enhance the Firm's policies and procedures, and (3) the Firm will effectively implement those recommendations.

(written and otherwise), and training that relate to each of the following topics: (1) branch supervision and inspections; (2) review of emails; (3) communications with the public, including research reports and sales literature; (4) low-priced securities transactions; (5) monitoring of customer accounts for suspicious activities; (6) transactions in the accounts of registered representatives or their family members; and (7) its AML policies and procedures as a whole (the "seven topics").

2. exclusively bear all costs, including compensation and expenses, associated with the retention of the independent consultant.

3. cooperate with the independent consultant in all respects, including providing staff support. The Firm shall place no restrictions on the independent consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the independent consultant and the Firm and documents reviewed by the independent consultant in connection with his or her engagement. Once retained, the Firm shall not terminate its relationship with the independent consultant without FINRA staff's written approval.

4. not be in and shall not have an attorney-client relationship with the independent consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the independent consultant from transmitting any information, reports, or documents to FINRA.

5. require, at the conclusion of the review (which shall be no more than 120 days after the date when this decision becomes FINRA's final disciplinary action), the independent consultant to submit to the Firm and FINRA staff an Initial Report. The Initial Report shall address, at a minimum, (1) the adequacy of the Firm's policies, systems, procedures, and training relating to the seven topics; (2) a description of the review performed and the conclusions reached; and (3) the independent consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures, and training.

6. require the independent consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the independent consultant shall not enter into any other employment, consultant, attorney-client, auditing, or other professional relationship with the Firm, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the independent consultant is affiliated in performing his or her duties pursuant to this decision shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other

professional relationship with the Firm or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

7. within 60 days after delivery of the Initial Report, adopt and implement the recommendations of the independent consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the independent consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the independent consultant shall:
   a. reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and
   b. provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the independent consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

8. provide FINRA staff, within 30 days after the issuance of the later of the independent consultant's Initial Report or written determination regarding alternative procedures (if any), with a written implementation report, certified by an officer of the Firm, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the independent consultant's recommendations.

9. further retain the independent consultant to conduct a follow-up review and submit a Final Report to the Firm and to FINRA staff no later than one year from the date when this decision becomes FINRA's final disciplinary action. In the Final Report, the independent consultant shall address the Firm's implementation of the systems, policies, procedures, and training and make any further recommendations he or she deems necessary. Within 30 days of receipt of the independent consultant's Final Report, the Firm shall adopt and implement the recommendations contained in the Final Report.

Respondent is also ordered to pay the costs of the hearing in the amount of $12,802.72, consisting of an administrative fee of $750 and the cost of the transcript.

The fine and the costs shall become due when this decision becomes FINRA's final disciplinary action.

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Kenneth Winer
Hearing Officer
For the Extended Hearing Panel

Copies to:

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Appendix A to
Meyers Associates, L.P. Extended Hearing Panel Decision

Customer	Entry Time	Buy/Sell	Quantity	Price
May 16, 2012				
LKT	09.32.23	Buy	50,000	0.12000
LKT	09.39.02	Buy	50,000	0.12000
LKT	09.44.10	Buy	15,000	0.12500
LKT	10.50.06	Buy	85,000	0.13000
LKT	11.30.21	Buy	6,600	0.12500
LKT	13.06.29	Buy	50,000	0.12900
May 17, 2012				
LK	09.32.20	Buy	5,000	0.13000
LK	10.22.00	Buy	10,000	1.13490
LB	10.44.44	Buy	500,000	0.14250
DL	10.45.16	Sell	500,000	0.14250
LK	10.49.56	Buy	35,000	0.14500
LK	13.27.29	Buy	25,000	0.13900
LK	14.06.27	Buy	10,000	0.13500
LK	15.53.18	Buy	50,000	0.13900
LK	15.56.02	Buy	50,000	0.13990
May 18, 2012				
LB	09.37.05	Buy	250,000	0.1425000
DL	09.37.49	Sell	250,000	0.1425000
LB	10.11.57	Buy	25,000	0.1400000
LB	10.14.24	Buy	25,000	0.1400000
LB	10.17.51	Buy	25,000	0.1400000
HB	11.06.27	Buy	150,000	0.1400000
HB	11.17.32	Buy	21,100	0.1400000
HB	13.05.43	Buy	25,000	0.1400000
HB	15.40.05	Buy	45,000	0.1400000
May 21, 2012				
HB	09.49.01	Buy	40,300	0.1400000
DL	10.03.31	Sell	150,000	0.1450000
DL	10.05.19	Sell	50,000	0.1450000
DL	10.06.27	Sell	250,000	0.1425000
RD	10.06.52	Buy	250,000	0.1425000
HB	10.11.42	Buy	9,700	0.1489000
RD	10.13.55	Buy	25,000	0.1450000
RD	10.47.21	Buy	25,000	0.1450000
RD	10.59.34	Buy	37,500	0.1470000
HB	11.44.47	Buy	100,000	0.1458000
DL	11.59.35	Sell	105,455	0.1451000

Appendix A to
Meyers Associates, L.P. Extended Hearing Panel Decision

Customer	Entry Time	Buy/Sell	Quantity	Price
HB	12.13.37	Buy	20,000	0.1475000
RD	12.18.12	Buy	100,000	0.1475000
TH	12.23.30	Buy	150,000	0.1494000
DT	12.30.41	Buy	250,000	0.1497000
DT	13.23.39	Buy	50,000	0.1500000
JK	15.01.27	Sell	250,000	0.1480000
DT	15.01.54	Buy	250,000	0.1480000
DT	15.05.21	Buy	250,000	0.1480000
JK	15.05.59	Sell	250,000	0.1480000
JK	15.10.27	Sell	221,000	0.1481000
DT	15.10.58	Buy	250,000	0.1475000
DT	15.24.45	Buy	50,000	0.1500000
DT	15.38.50	Buy	50,000	0.1499000
May 22, 2012				
JK	09.36.35	Sell	100,000	0.155000
JK	09.40.02	Sell	298,500	0.151000
RD	09.40.25	Buy	272,000	0.151000
DH	09.57.58	Sell	300,000	0.162000
DH	10.00.59	Sell	184,700	0.163000
DT	10.01.13	Buy	350,000	0.163000
DH	10.33.30	Sell	137,800	0.160000
NC	10.33.55	Buy	150,000	0.160000
MS	11.41.33	Sell	200,000	0.161000
MS	11.44.10	Sell	200,000	0.160000
NC	11.47.23	Buy	150,000	0.160000
MS	11.49.47	Sell	200,000	0.160000
NC	11.51.41	Buy	150,000	0.160000
NC	12.22.30	Buy	50,000	0.160000
NC	12.59.06	Buy	40,000	0.160000
May 23, 2012				
KJ	09.31.03	Sell	100,000	0.170000
CW	09.31.51	Sell	20,000	0.170000
NC	09.33.34	Buy	160,000	0.170000
HB	09.48.34	Sell	100,000	0.175000
HB	09.51.39	Sell	78,500	0.178000
HB	09.54.11	Sell	21,500	0.175000
HB	09.56.49	Sell	100,000	0.171000
HB	09.58.45	Sell	265,000	0.170000
NC	10.00.38	Buy	200,000	0.170000

Appendix A to
Meyers Associates, L.P. Extended Hearing Panel Decision

Customer	Entry Time	Buy/Sell	Quantity	Price
HB	10.06.20	Sell	100,000	0.175000
NC	10.06.39	Buy	100,000	0.175000
HB	12.22.45	Sell	21,500	0.170000
HB	14.02.11	Sell	15,000	0.171000
HB	14.03.04	Sell	20,000	0.170000
HB	14.04.41	Sell	5,000	0.170000
HB	14.21.25	Sell	50,000	0.175000
HB	15.04.03	Sell	20,000	0.171000
HB	15.07.17	Sell	50,000	0.171000
HB	15.07.59	Sell	50,000	0.170000