

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KIMBERLY SPRINGSTEEN-ABBOTT
(CRD No. 1367633),

Respondent.

Disciplinary Proceeding
No. 2011025675501

Hearing Officer – LOM

**EXTENDED HEARING PANEL
DECISION**

March 30, 2015

As the general partner of investment funds sold by her broker-dealer firm and sponsored by its parent company, Respondent misused investor funds for three years by improperly allocating expenses to the investment funds that were not related to the funds' business. This was unethical conduct that violated FINRA Rule 2010. Respondent is barred from associating with any FINRA member in any capacity, ordered to pay disgorgement in the amount of \$208,953.75 plus interest, fined \$100,000, and ordered to pay costs.

Appearances

Sean W. Firley and Kevin D. Rosen, Boca Raton, Florida, representing the Department of Enforcement.

Robert Horowitz, Greenberg Traurig, New York, New York, and Steven Felsenstein, Greenberg Traurig, Philadelphia, Pennsylvania, representing Respondent.

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) brought this disciplinary action against Respondent Kimberly Springsteen-Abbott (“Springsteen-Abbott” or “Respondent”) alleging that she violated FINRA Rule 2010. FINRA Rule 2010 requires that a FINRA member (and, in conjunction with FINRA Rule 140, a member’s associated persons) “shall observe high standards of commercial honor and just and equitable principles of trade” in the conduct of its business.

Enforcement alleged—and proved—that Springsteen-Abbott purposefully used investor monies as though they were her own, to her personal benefit and to the investors’ detriment, and in violation of limitations imposed by the offering documents for the investments. Springsteen-

Abbott plainly failed to observe high standards of commercial honor. In the hope of concealing her misconduct and avoiding regulatory action, she then lied to FINRA staff investigating the matter and later lied to the Extended Hearing Panel regarding the purposes for which she spent the money. This was an aggravating factor. Because the Extended Hearing Panel believes that Springsteen-Abbott is unlikely to comply with industry regulation and ethical standards in the future, it concludes that she should be barred from the industry, as well as ordered to pay disgorgement (along with prejudgment interest), a fine, and costs.

II. SUMMARY

Springsteen-Abbott is an associated person of a FINRA member broker-dealer, Commonwealth Capital Securities Corp. (“Commonwealth” or “Broker-Dealer”), and serves as its Chief Executive Officer (“CEO”), Chairman, and Chief Compliance Officer (“CCO”). Commonwealth is owned (through a holding company) by Commonwealth Capital Corp. (“Parent Company”), which Springsteen-Abbott controls. The Parent Company is the sponsor of private and public investment funds (“Funds”). Another Commonwealth affiliate controlled by Springsteen-Abbott, Commonwealth Income and Growth Fund, Inc., is the General Partner of the Funds (“Funds’ General Partner”). Springsteen-Abbott’s Broker-Dealer wholesales the Funds to other broker-dealers who sell them to investors.

The Funds invest in equipment leases. Springsteen-Abbott’s husband, Hank Abbott, runs the leasing operation.

Springsteen-Abbott, as a control person of the Funds’ General Partner, had authority to allocate to the Fund’s expenses incurred in operating the Funds’ business. The documents creating the Funds expressly limited the expenses that the Funds would bear to expenses incurred in conducting and administering the Funds’ business.

Springsteen-Abbott abused her authority by improperly allocating to the Funds two types of expenses that were not related to the Funds’ business: personal expenses and Broker-Dealer expenses.

The practice of charging personal expenses to the Funds was a way of life for Springsteen-Abbott and her husband, Hank Abbott. They regularly charged thousands of dollars of personal expenses on the same American Express credit card that they used for business expenses, and then, when she received the monthly American Express bills, Springsteen-Abbott allocated to the Funds many of those personal expenses. The personal expenses improperly charged to the Funds included expenses related to a birthday cruise to Alaska, a Mother’s Day meal at Longwood Gardens, a Disney family vacation, a Thanksgiving dinner, a post-Christmas family dinner on a trip to New York, and, on a regular basis, more modest family meals. Springsteen-Abbott also improperly allocated to the Funds expenses for holiday decorations for her home, car rentals for cars that her husband used for personal purposes, clothes, accessories, and pharmacy and grocery expenses.

Springsteen-Abbott provided business justifications to FINRA staff for some of the expenses allocated to the Funds. Many of these business justifications were not credible; others were demonstrably false.

When confronted with evidence that a particular expense was personal and not a business expense, Springsteen-Abbott might concede that it had been improperly allocated to the Funds, but she might not. For the most part, she maintained that the expenses at issue were properly allocated to the Funds, even in the face of evidence inconsistent with her position. She argued that she and her husband worked nearly all the time, and that what appeared to be personal meals were actually business activities because she and her husband routinely carried work with them and discussed it. She also argued that, in any event, investors were not harmed by the misallocation of expenses because she had benefited the Funds voluntarily in other ways.

As for the improperly allocated Broker-Dealer expenses, Springsteen-Abbott acknowledged at the hearing that they should not have been allocated to the Funds. However, she only realized that in the course of the investigation and disciplinary proceeding. Over the three-year period at issue, Springsteen-Abbott did not recognize that even if the Broker-Dealer expenses were business expenses, they did not relate to the Funds' business and therefore should not have been allocated to the Funds. It is impossible to view this error as inadvertent, particularly when long-standing FINRA guidance requires that there be a written agreement if Broker-Dealer expenses are shifted to another entity, and the Broker-Dealer had no such written agreement with the Funds.

The improper allocation to the Funds of expenses that were unrelated to the Funds' business was unethical and falls well within the proscription of FINRA Rule 2010. It was a misuse of money belonging to investors in the Funds.

For purposes of the sanctions analysis, the Extended Hearing Panel considered a number aggravating factors, including, among others, the following: Springsteen-Abbott's lack of candor at the hearing; her submission of many false and misleading business justifications to FINRA staff; her lack of remorse, even when she was forced to admit that she had improperly allocated particular personal expenses to the Funds; the repeated pattern of misconduct; and the length of time the misconduct continued.

Furthermore, the investigation uncovered other similar misconduct. Springsteen-Abbott allocated to the Funds expenses that, even if they had been related to the Funds' business, should never have been allocated to the Funds—control person expenses. The documents creating the Funds prohibited the allocation of control person expenses to the Funds. Accordingly, because Springsteen-Abbott was a control person, her expenses were never chargeable to the Funds. Nor were her husband's expenses after he became a control person in 2010.

For the misconduct proven at the hearing, and in light of aggravating factors, the Extended Hearing Panel bars Springsteen-Abbott from association with any FINRA member firm in any capacity, orders disgorgement in the amount of \$208,953.75 (along with prejudgment interest), fines her \$100,000, and requires her to pay costs.

III. FACTS

A. Jurisdiction

By virtue of her current registration with Commonwealth, a FINRA member broker-dealer, Springsteen-Abbott is subject to FINRA's jurisdiction.¹

B. Background

(1) Hearing

A three-person Extended Hearing Panel conducted a seven-day hearing. The Parties later filed post-hearing briefs. After careful consideration of the record, the Extended Hearing Panel issues this decision setting forth its findings and conclusions.² The attached "Expense Schedule"

¹ Stip. (dated Jan. 31, 2014) ¶ 2; Art. V of FINRA's By-Laws.

² References to the hearing transcript are cited "Hearing Tr. (name of witness) page number." For example, a citation to Springsteen-Abbott's testimony is "Hearing Tr. (Springsteen-Abbott) 690." Exhibits are referred to with a prefix identifying the proponent, as in CX-number for Complainant's Exhibit and RX-number for Respondents' Exhibit. For example, Enforcement introduced a collection of the American Express statements from which it extracted alleged improper charges to the Funds as a single exhibit, "CX-129." A citation to a spreadsheet that Respondent introduced into evidence is "RX-14."

The following witnesses testified, in addition to Springsteen-Abbott: Hank Abbot ("HAbbot") (her husband); Kelly Edwards ("Edwards") (the FINRA elite examiner on the routine 2011 examination of the Broker-Dealer); Ken Aulbach ("Aulbach") (managing director for sales and marketing for Investors Capital at the time of the relevant events); Lynn Franceschina ("Franceschina") (Principal Financial Officer for the Parent Company, Broker-Dealer, and Managing Partner, as well as Chief Operations Officer); John Clark ("Clark") (FINRA Examination Manager); David E. Borham III ("Borham") (Springsteen-Abbott's adult son).

The Parties filed the following post-hearing briefs: Post-Hearing Brief Of Complainant Department Of Enforcement ("Enf. PH Brief"); Respondent's Corrected Post-Hearing Brief, accompanied by August 6, 2014 letter supplement ("Resp. PH Brief" and "Resp. PH Supplement"); Post-Hearing Reply Brief Of Complainant Department Of Enforcement. ("Enf. PH Reply"). Enforcement filed corrections to its summary hearing exhibits under the title "Department Of Enforcement's Notice Of Filing Corrected Summary Hearing Exhibits" ("Corrected Summary Exhibits").

itemizes the specific credit card charges at issue and is a basis for the amount ordered as disgorgement.³

(2) Investigation And Commencement Of This Proceeding

This proceeding arose out of a routine examination that escalated when FINRA received several regulatory tips. The tips suggested that Springsteen-Abbott was charging personal expenses and billing them as business expenses.⁴ When FINRA staff broadened the examination because of the regulatory tips, the staff issued specific information requests for American Express statements, allocation schedules, and receipts and supporting documentation to reflect the charges on American Express credit card statements.⁵

Upon review of material produced in the investigation, FINRA staff started seeing patterns of charges. It appeared to the staff that there was a general pattern of personal charges being allocated to the Funds.⁶ As a consequence, the staff sought additional information from Springsteen-Abbott and contacted former employees.⁷ The staff eventually focused on a three-year period that extended from the beginning of 2009 to the beginning of 2012.⁸

In August 2012, FINRA staff sent Springsteen-Abbott a “Wells” notice, informing her that they intended to recommend that charges be brought against her. That same month, Springsteen-Abbott reversed some of the expenses identified by the staff as improper. To the extent that charges for her meals had been allocated to the Funds, she claimed that she had “backed out” those charges because she was a control person. Under the Funds’ documents, control person expenses were not allocable to the Funds.⁹

Enforcement filed the original Complaint in May 2013.¹⁰ It charged, among other things, that Springsteen-Abbott had used investor monies to pay for American Express credit

³ The Expense Schedule is a copy of the Conversion Table for Exhibit 2 of the Amended Complaint, as provided by Enforcement in its Corrected Summary Exhibits (with some reformatting and without Enforcement’s yellow highlighting). The Expense Schedule itemizes expenses that were charged to the American Express account and that Enforcement alleges in the Amended Complaint were improperly allocated to the Funds.

The Expense Schedule also contains corrections of various typographical errors that were in the original schedule that Enforcement provided. Often the corrections were no more than misspellings of restaurant names and cities. Sometimes they were corrections of dates or dollar amounts. The dollar amount corrections were often a matter of pennies. None of the corrections are material to the decision in this matter. The document retains Enforcement’s explanation for the corrections in the comment column on the far right.

⁴ Hearing Tr. (Edwards) 51-52.

⁵ Hearing Tr. (Edwards) 53-56.

⁶ Hearing Tr. (Edwards) 58-60.

⁷ Hearing Tr. (Edwards) 61-62.

⁸ Hearing Tr. (Edwards) 61.

⁹ Hearing Tr. (Springsteen-Abbott) 665-66.

¹⁰ Hearing Tr. (Springsteen-Abbott) 622.

card charges that “were not related to legitimate business purposes of the [F]unds.”¹¹ The Complaint alleged that a total of at least \$344,798.79 in investor monies was misused in this way in violation of FINRA Rule 2010.¹²

In July and August 2013, Springsteen-Abbott supervised the preparation of documents produced through counsel to FINRA staff to substantiate some of the expenses.¹³ She produced a spreadsheet of the charges identified in the Complaint. The spreadsheet contained explanations and receipts or other supporting documentation for some charges.¹⁴

Enforcement moved for leave to file an Amended Complaint based on the staff’s review of the various document productions.¹⁵ The motion was granted and the Amended Complaint was treated as filed and served on October 22, 2013. Enforcement removed from the Amended Complaint approximately 400 items totaling about \$136,000 for which Springsteen-Abbott had provided explanations.¹⁶ However, the Amended Complaint retained the allegation that Springsteen-Abbott had misused customer monies by allocating expenses to the Funds that were not related to the Funds’ business.¹⁷

In January 2014, and again in February 2014, Springsteen-Abbott, through her counsel, provided another copy of the spreadsheet accompanied by separate handwritten “tick sheets” explaining the business purpose for some expenses. Each tick sheet related to a particular expense that had been allocated initially to the Funds. Sometimes a tick sheet was accompanied by a receipt or other back up documentation.¹⁸ A tick sheet generally indicated the date an expense was incurred and a business purpose for it. If the expense was for a meal, it also indicated the people who attended the meal.

Springsteen-Abbott both supervised the January and February 2014 productions and filled out many of the tick sheets herself.¹⁹ Many of the receipts and tick sheets for meals included charges for Springsteen-Abbott. There was no indication on many of those tick sheets that Springsteen-Abbott’s portion had been “backed out” of the expenses allocated to the

¹¹ Complaint ¶ 15.

¹² *Id.* ¶ 16.

¹³ Hearing Tr. (Springsteen-Abbott) 622-24.

¹⁴ Hearing Tr. (Edwards) 73; Hearing Tr. (Springsteen-Abbott) 622; CX-6.

¹⁵ Hearing Tr. (Edwards) 76.

¹⁶ Hearing Tr. (Edwards) 372-74.

¹⁷ Amended Complaint ¶ 13.

¹⁸ Hearing Tr. (Edwards) 73-76, 81-84; CX-6; CX-7; CX-132 through CX-221. See also Hearing Tr. (counsel discussion of RX-15) 437-44; RX-15.

¹⁹ Hearing Tr. (Springsteen-Abbott) 624-26. See also Hearing Tr. (Franceshina) 515-27.

Funds.²⁰ Around the time of the February 2014 production, Springsteen-Abbott also provided documents regarding the claimed reallocation of some expenses.²¹

In filings in this proceeding, Springsteen-Abbott admitted that some expenses had been mistakenly charged to the Funds. However, she refused to specify which expenses were covered by this admission. She denied that the reallocation of an expense meant that it had been improperly allocated to the Funds in the first place. Springsteen-Abbott maintained at the hearing that even where she had reallocated an expense there was nothing wrong with the initial allocation to the Funds. Springsteen-Abbott indicated that she was attempting to appease FINRA when she reallocated some expenses, but that, in most cases, she did not agree that the initial allocation to the Funds was improper.²²

The refusal to identify which specific items Springsteen-Abbott admits were improperly allocated to the Funds necessitates a more detailed analysis in this decision than would otherwise be required.

C. The Firms, Respondent, And Respondent's Husband

(1) Corporate Structure

The Parent Company, Commonwealth Capital Corp., owns a holding company, Commonwealth of Delaware (“Holding Company”). The Holding Company in turn owns

²⁰ See, e.g., CX-143; CX-145; CX-146; CX-150; CX-151.

²¹ Hearing Tr. (Edwards) 324-29.

²² See, e.g., Answer To Amended Complaint ¶¶ 13, 14, 15, 20, 27, and 28. These paragraphs of the Answer contain admissions that either explicitly or implicitly acknowledge that Respondent has identified some expenses that were charged to the Funds when they should not have been.

Prior to the hearing, the Hearing Officer asked Respondent's counsel to indicate exactly which particular expenses were covered by these admissions. The Hearing Officer indicated that such specification of the admitted erroneous charges would relieve the Extended Hearing Panel of having to sort through all of the more than 1800 alleged improper expenses. See Pre-Hearing Conference Tr. of Nov. 25, 2013, at 12-14, 16-17, 19-20; and Pre-Hearing Conference Tr. of Feb. 21, 2014, at 25-26.

Counsel's responses at the conferences and Springsteen-Abbott's testimony at the hearing were consistent. They did not identify the line items covered by the admissions. Instead they asserted that, although she claimed to have reallocated many items, reallocation did not signify an admission that any particular item had been improperly allocated to the Funds. Springsteen-Abbott testified that she continued to believe that even reallocated items had been properly allocated in the first instance to the Funds. Hearing Tr. (Springsteen-Abbott) 784, 820-21.

Springsteen-Abbott's husband reiterated that view in his testimony, saying that even as to reallocated expenses, “[W]e believe they were properly allocated.” Hearing Tr. (HAbbott) 1002. He repeated that theme, saying “[T]o the extent that FINRA doesn't like something, our attitude has been, let's reverse it and move on.” But, when asked whether he thought it was proper, in the first instance, to allocate a reallocated expense to the Funds, he said “I do.” Hearing Tr. (HAbbott) 1023.

Springsteen-Abbott took the same position in her stipulations with Enforcement. See Stip. ¶ 18 (Jan. 31, 2015) (what appeared to be vacation expenses in Sonoma were reallocated “notwithstanding [Springsteen-Abbott's] disagreement with [FINRA] Staff's concern.”).

Springsteen-Abbott's Broker-Dealer, Commonwealth Capital Securities Corp., which is a FINRA member. The Holding Company also owns the Funds' General Partner, Commonwealth Income and Growth Fund, Inc.²³

The Commonwealth family of businesses support one another and do no other, independent business. The Parent Company is the sponsor for the Funds. The General Partner is in partnership with the limited partners and public investors who invest in the Funds, and it manages the Funds. The Broker-Dealer is the dealer-manager for offerings of the Funds. It wholesales the Funds to other broker-dealers who then sell them to investors. The Broker-Dealer has no other business.²⁴

(2) Springsteen-Abbott

Springsteen-Abbott took over the Commonwealth family of businesses in approximately 2005 after her husband, George Springsteen, died.²⁵ She is the top executive for all the relevant entities.²⁶ She is the Parent Company's sole shareholder, CEO, and Chairman, and the General Partner's CEO and Chairman.²⁷ Springsteen-Abbott is, and was throughout the three years at issue, a control person of the General Partner. As a control person, her salary, benefits, and expenses are not allocable to the Funds.²⁸

Springsteen-Abbott is the CEO, Chairman, and CCO of Commonwealth, the Broker-Dealer.²⁹ She holds a Series 7, a Series 63, and the DPP, Direct Participation Program, Principal's license, Series 39.³⁰

Springsteen-Abbott is the only person with authority to make allocations of expenses to the Funds.³¹

A number of Springsteen-Abbott's family members are employed in different capacities in the various companies, enabling her to believe she could, with impunity, claim a business purpose for what were really family meals and other personal expenses. Relatives involved in the business during some portion of the relevant three years included Springsteen-Abbott's current husband, Hank Abbott, whom she married in 2008, his sister, RF, one of Springsteen-

²³ Hearing Tr. (Franceschina) 573-75; Hearing Tr. (Springsteen-Abbott) 1210.

²⁴ Hearing Tr. (Franceschina) 601-02, Hearing Tr. (Springsteen-Abbott) 843-44, 1211-12.

²⁵ Hearing Tr. (Springsteen-Abbott) 853, 1227-36.

²⁶ Hearing Tr. (Springsteen-Abbott) 618.

²⁷ Hearing Tr. (Springsteen-Abbott) 616-18; Hearing Tr. (Edwards) 63; CX-1.

²⁸ Hearing Tr. (Springsteen-Abbott) 779-81. See discussion below of the Funds' agreements regarding expenses.

²⁹ Hearing Tr. (Springsteen-Abbott) 616-17.

³⁰ Hearing Tr. (Springsteen-Abbott) 1209.

³¹ Stip. ¶ 12 (Jan. 31, 2014).

Abbott's daughters, HC, her son, David Borham, her then-son-in-law, JC, her brother, MC, her sister, DP, her brother-in-law, AP, and a cousin, MH.³²

(3) Hank Abbott

Hank Abbott runs the leasing operations in which the Funds invest. He is responsible for lease acquisitions, equipment dispositions, portfolio review, and the remarketing of lease equipment.³³

Hank Abbott is president of the Parent Company and serves on its board of directors.³⁴ He also is a director of the Broker-Dealer and a director of the General Partner.³⁵ He was not a control person of the General Partner in 2009, but he became a control person sometime in 2010 and remained so in 2011.³⁶ Once he became a control person, his salary, benefits, and expenses were not allocable to the Funds.³⁷

Hank Abbott incurred a large portion of the improperly allocated expenses. As further described below, Springsteen-Abbott allocated to the Funds numerous charges by her husband for rental cars, meals, and bar bills. He incurred many of these charges near one of his two residences, in Holiday, Florida (near Tampa) and in Boothwyn, Pennsylvania (outside of Philadelphia).³⁸ He incurred others on visits to New Jersey and Connecticut to see family and friends and to obtain hair restoration services.³⁹ He incurred still others on family vacations that he took with Springsteen-Abbott.⁴⁰

D. The Funds

Some of the Funds are public; others are private. The Funds are offered to investors pursuant to registration statements and prospectuses (in the case of the public funds) and private placement memoranda (in the case of the private funds) (collectively "Offering Documents").⁴¹

³² Hearing Tr. (Edwards) 69-71; Hearing Tr. (Springsteen-Abbott) 1268-70.

³³ Hearing Tr. (HAbbott) 861-62.

³⁴ Hearing Tr. (HAbbott) 860-61; Hearing Tr. (Edwards) 66.

³⁵ Hearing Tr. (HAbbott) 860-61.

³⁶ Hearing Tr. (Franceschina) 1176. Springsteen-Abbott disputes that her husband was a control person, but, based on the disinterested testimony that Springsteen-Abbott's employee, Franceschina, volunteered, the Extended Hearing Panel finds that he was a control person beginning in 2010. See the discussion below regarding improperly allocated expenses of control persons.

³⁷ Hearing Tr. (Franceschina) 1176. See discussion below of the Funds' agreements regarding expenses.

³⁸ Hearing Tr. (HAbbott) 865-66, 906; Hearing Tr. (Edwards) 66-67; 209-14; CX-127.

³⁹ Hank Abbott has two adult daughters, CA and KA, who live, respectively, in Jersey City, New Jersey, and Ridgefield, Connecticut. These are places he visited often and where he incurred many of the improperly allocated expenses. Hearing Tr. (HAbbott) 866-67; Hearing Tr. (Edwards) 69-71.

⁴⁰ Hearing Tr. (HAbbott) 1003-05.

⁴¹ Stip. (dated Jan. 14, 2014) ¶ 8.

The Offering Documents, which are issued at the direction of Springsteen-Abbott, include a Limited Partnership Agreement (in the case of the public Funds) or an Operating Agreement (in the case of the private Funds).⁴² Springsteen-Abbott has the sole responsibility for determining whether to allocate expenses to a particular Fund, in accordance with the Limited Partnership Agreement or Operating Agreement for the Fund.⁴³

At the outset, each Fund is a blind pool. It first raises money from investors. Then the General Partner searches for attractive assets and acquires equipment leases. Each Fund acquires information technology equipment, medical technology equipment, telecommunications equipment, and other similar equipment. The equipment leases are short-term, generally for one to three years. The Funds themselves are longer term investments, generally running eight to ten years. Accordingly, there is turnover in a Fund's lease portfolio, and the Fund continues acquiring new leases throughout the term of the Fund.⁴⁴

The General Partner identifies lease transactions for the Funds and analyzes them in detail. Springsteen-Abbott testified that extensive criteria are involved and that concentration in a particular equipment type, lessor, or lessee is a concern. The General Partner seeks to diversify each Fund's holdings.⁴⁵

The Funds have no employees. The employees of the Parent Company do the work that needs to be done for the Funds.⁴⁶

Between December 1993 and the filing of the Amended Complaint in October 2013, thirteen different Funds were created and sold to investors, raising over 240 million dollars.⁴⁷

⁴² Stip. (dated Jan. 14, 2014) ¶ 9.

⁴³ Stip. (dated Jan. 31, 2014) ¶ 12.

⁴⁴ Hearing Tr. (Springsteen-Abbott) 1212-15; Stip. (dated Jan. 31, 2014) ¶ 6.

⁴⁵ Hearing Tr. (Springsteen-Abbott) 837-38.

⁴⁶ Hearing Tr. (Springsteen-Abbott) 1245.

⁴⁷ Stip. (dated Jan. 31, 2014) ¶ 6.

E. The Funds' Agreements Regarding Expenses

Although the Offering Documents for the Funds differ somewhat, the Parties stipulated that they are essentially identical with respect to the allocation of expenses to the Funds.⁴⁸

Article 5 of the Operating Agreement for the private Funds provides in section 5.2 that the Fund shall reimburse the General Partner for expenses relating to the administration and operation of the Fund. Article 5 states in section 5.3, however, that the salaries, fringe benefits, travel expenses and other administrative items incurred by the General Partner's controlling persons are excluded from the allowable reimbursements. Article 6 of the Operating Agreement separately provides for the General Partner to receive various fees as compensation for its work.⁴⁹ The Partnership Agreement for the public Funds contains the same provision for reimbursement to the General Partner for expenses incurred in conducting a Fund's business, and the same exclusion for expenses incurred by controlling persons.⁵⁰

F. Respondent's System Of Allocating Expenses To The Funds

Springsteen-Abbott had no written procedures or written guidelines governing expense allocations to the Funds.⁵¹ She testified, however, that she acted within the agreements that governed the allocation of expenses.⁵² The evidence contradicts her testimony.

Springsteen-Abbott was able to obscure that she was treating personal expenses as though they were business expenses because of the system that she employed for charging business expenses and allocating them to the Funds, as described below. That system made it far more likely that mistakes would be made and improper allocations would be concealed.

The determination to allocate an expense rests solely with Springsteen-Abbott.⁵³ She claimed that her approach is that in order to charge a meal as a business meal, whether to the Funds or to the Parent Company, the whole meal has to be about business. She claimed that

⁴⁸ The Parties stipulated that, with respect to the private Funds, Articles 5 (Company Expenses) and 9 (Rights, Power and Duties of Manager) of the Operating Agreements are identical. There are slight variations among the different provisions of Article 6 (Compensation of the Manager) of the different Operating Agreements that relate to the fees associated with acquiring, managing, and liquidating equipment. Despite those variations in Article 6, the Parties nevertheless agree that RX-9 is an appropriate exemplar for the Extended Hearing Panel to use in connection with the public Funds. Stip. (dated April 25, 2014) ¶ 2.

The Parties stipulated that, with respect to the public Funds, Articles 5 (Partnership Expenses), 6 (Compensation of the General Partner) and 9 (Rights, Powers and Duties of General Partner) of the Limited Partnership Agreements are identical. Accordingly, the Parties agree that RX-10 is an appropriate exemplar for the Hearing Panel to use in connection with the public Funds. Stip. (dated April 25, 2014) ¶ 1.

⁴⁹ RX-9.

⁵⁰ RX-10.

⁵¹ Hearing Tr. (Franceschina) 510; Hearing Tr. (Springsteen-Abbott) 845-46, 848.

⁵² Hearing Tr. (Springsteen-Abbott) 846.

⁵³ Hearing Tr. (Springsteen-Abbott) 723.

everybody who was at the meal had to be discussing business (aside from a few pleasantries).⁵⁴ Given the proof at the hearing that Springsteen-Abbott allocated to the Funds expenses for numerous personal special occasion meals, including a birthday celebration with her best friend while on vacation, and a Thanksgiving dinner, as well as routine dinners with her family and grandchildren, her testimony is inconsistent with the other credible evidence. The record does not reflect that Springsteen-Abbott took any care that a particular meal charge related to the Funds' business.

Springsteen-Abbott, Hank Abbott, and Lynn Franceschina, an employee, used American Express cards that were linked to a single account belonging to the Parent Company. They charged both personal and business expenses to the account. So, for example, veterinary bills and pet supplies were charged on the American Express card. When asked why it would not be simpler to have a separate personal card for such charges, Springsteen-Abbott claimed that she included such personal charges on the Parent Company's card in order to collect points. She testified that she did not have time to even think about opening a second credit card account. On the other hand, she testified that she and her husband had many other credit cards, which they used for personal charges.⁵⁵ She claimed that she did not know during the relevant period that she could have consolidated separate personal and business cards for point accumulation purposes on American Express, although she knows that now.⁵⁶

Each month an American Express statement of charges in the preceding month would arrive.⁵⁷ For each of the three cardholders, the statement showed the date each charge was posted, the vendor, and the general category of item purchased. Springsteen-Abbott and Franceschina each received a copy of the statement. Each went through the statement and made notes. If there were unusual items, they might talk or correspond by email about those items. Franceschina noted some initial allocations on her copy based on what she knew about travel and other business activities during the preceding month. Springsteen-Abbott made similar notes on her copy and sent it to Franceschina. When Franceschina received Springsteen-Abbott's copy, she would treat it as the final approval for the invoice. Unless there were further questions, Franceschina instructed accounts payable to enter the information into the accounting system. Accounts payable then prepared documentation for Springsteen-Abbott's final review and approval.⁵⁸

Springsteen-Abbott would then receive from accounts payable a voucher. The voucher consisted of a cover sheet showing the entity to be paid, the invoice number, and how the charges were allocated. The voucher did not show American Express line items. Rather, it

⁵⁴ Hearing Tr. (Springsteen-Abbott) 846-49.

⁵⁵ Hearing Tr. (Springsteen-Abbott) 851-54.

⁵⁶ Hearing Tr. (Springsteen-Abbott) 854.

⁵⁷ The American Express statements are collected in CX-129. Hearing Tr. (Franceschina) 507.

⁵⁸ Hearing Tr. (Franceschina) 507-08, 591-97; Hearing Tr. (Edwards) 77-78.

showed categories of expenses and how they were allocated among the Funds and other affiliated entities. Springsteen-Abbott signed the voucher.⁵⁹

Because the American Express bill was issued to the Parent Company, if an expense was personal, Springsteen-Abbott testified that she would identify it as such and write a check to the Parent Company to reimburse it for the charge. For example, she testified that this is how she treated the veterinary expenses.⁶⁰ This purported process of reimbursing the Parent Company for personal expenses would appear to involve more effort than simply using a personal credit card for personal expenses and using the American Express card only for business expenses. It undercuts her testimony that she charged both personal and business expenses on the American Express card because she did not have time to open a second credit card account.

Many expenses charged to the American Express account were not easily classified as personal or business. Hank Abbott testified that Franceschina came to him almost every month with questions about the different categories of charges on his card. For example, he claimed that they did not allocate liquor to the Funds although they would allocate food to the Funds. He recalled once that Franceschina had asked him the breakdown for charges he had made in connection with a holiday party and awards dinner for employees in order to segregate the alcohol charge.⁶¹ Hank Abbott's claim that they did not allocate liquor to the Funds is flatly contradicted by the evidence. As discussed below, expenses for bar charges, wine, and other alcohol were routinely allocated to the Funds.

Business expenses could be allocated to the Funds or to one of the three operating companies: the Parent Company; the Funds' General Partner; or the Broker-Dealer.⁶² Most items allocated to the Funds were allocated proportionately, but if an expense was particular to one Fund, such as a lease that belonged only to a particular Fund, then it would be allocated to the particular Fund.⁶³

Springsteen-Abbott testified that she reviewed the American Express account activity "fiercely," and line-by-line.⁶⁴ She said that the process of allocating expenses was a careful process. Part of her review was to make sure that the Funds do not pay for personal things.⁶⁵

⁵⁹ Hearing Tr. (Franceschina) 562-65, 575-77. In her post-hearing brief, Springsteen-Abbott argued that she was unaware of the improper allocations because the document she ultimately approved, the voucher, did not contain line item information. Resp. PH Brief at 1-2, 4 and n.2. As discussed below, the Extended Hearing Panel rejects Springsteen-Abbott's attempt to avoid her responsibility for the improperly allocated expenses. She is responsible for both the system of allocation and the allocations themselves.

⁶⁰ Hearing Tr. (Springsteen-Abbott) 853.

⁶¹ Hearing Tr. (HAbbott) 1033-34.

⁶² Hearing Tr. (Franceschina) 577, 607-09.

⁶³ Hearing Tr. (Franceschina) 581.

⁶⁴ Hearing Tr. (Springsteen-Abbott) 619-20.

⁶⁵ Hearing Tr. (Springsteen-Abbott) 621.

Given that testimony, Springsteen-Abbott is accountable for the multiple improper allocations of expenses to the Funds discussed below.

Franceschina learned how to process the American Express bill (sometime in 2004 or shortly after) from Springsteen-Abbott. Franceschina acted on the basis of what she thought Springsteen-Abbott thought should be allocated. There was no written policy on allocation.⁶⁶

An allocation of an expense to the Parent Company ultimately costs Springsteen-Abbott money, because she is the Parent Company's sole shareholder. An allocation to the Funds benefits her because she does not have to bear the expense.⁶⁷

G. Improperly Allocated Personal Expenses

Throughout 2009, 2010, and 2011, Springsteen-Abbott and her husband celebrated special occasions and engaged in the ordinary activities of life, charging their living expenses on the Parent Company's American Express card. Then Springsteen-Abbott improperly allocated those expenses to the Funds.

To counter the impression that she and her husband were living on the Funds' money, Springsteen-Abbott testified that she and her husband have other credit cards that they use for personal expenses. She presented a couple of compilations of personal charges that she asserts she and her husband incurred on other credit cards during the three years in issue.⁶⁸ The compilations show individual purchases on particular dates under particular categories. The compilations show a total of approximately \$220,000 in charges.⁶⁹

Study of the compilations reveals that Springsteen-Abbott and her husband charged most of their meals to the American Express card, making the meals available for allocation to the Funds. In January 2009, for example, Springsteen-Abbott incurred no personal meal charges on the other cards, either for travel meals or for local meals.⁷⁰ That month her husband incurred meal charges on the other cards, totaling \$45.28 (\$18.85 in vacation meals; \$26.43 in local meals).⁷¹ In contrast, that same month, in January 2009, the two charged close to \$13,000 in meals on the American Express card (charges that Enforcement alleged in its Amended Complaint were improperly allocated to the Funds). The American Express card charges ranged from a dinner that cost more than \$300 to many daily fast food charges in small amounts.⁷²

⁶⁶ Hearing Tr. (Franceschina) 597-99.

⁶⁷ Hearing Tr. (Springsteen-Abbott) 777-78, 849-50.

⁶⁸ RX-13; RX-14.

⁶⁹ Resp. PH Brief at 5-6. Hearing Tr. (Springsteen-Abbott) 1259-68; RX-13; RX-14.

⁷⁰ RX-13.

⁷¹ RX-14.

⁷² See the attached Expense Schedule.

In fact, the meal charges on the American Express card in that one month, January 2009, roughly equaled the meal charges on their personal credit cards for the entire three-year period. According to the compilations, from November 13, 2008, through December 20, 2011, Hank Abbott charged on other cards \$ 6,848.69 for travel meals and \$5,716.28 in local meals, a total of \$12,564.97. From December 1, 2008, through July 21, 2011 (the period of time shown on the compilation for her), Springsteen-Abbott charged on other cards \$470.92 for travel meals and \$1,231.14 for local meals.⁷³

The impression that Respondent would like to create—that she and her husband charged the American Express card modestly, and only when appropriate—is not supported by the record. While it may be that Springsteen-Abbott and her husband did not live exclusively on the American Express charges allocated to the Funds, the record shows a pattern of substantial personal expenses allocated to the Funds throughout 2009, 2010, and 2011.⁷⁴

Some of the personal expenses improperly allocated to the Funds are described below. They are organized in a manner to convey the day-in, day-out nature of Springsteen-Abbott's misconduct. Where similar expenses occurred in different months and years, they are discussed in the same section as the earliest item. A few additional personal expenses, not tied to the month-by-month organization, are discussed after the December and year-end expenses. The expenses discussed here do not include all of the improperly allocated expenses proven at the hearing, but these expenses are sufficient to show Springsteen-Abbott's pattern and practice over the three years from 2009 through 2011.

As to the personal expenses described below, this decision goes into substantial detail to demonstrate how profoundly untrustworthy the testimony of Springsteen-Abbott and Hank Abbott was.

(1) January: Booking For 2009 Birthday Cruise To Alaska

DA is one of Springsteen-Abbott's best friends. DA and her husband, HA, both worked for one of Springsteen-Abbott's companies.⁷⁵

In January 2009, HA suggested that Springsteen-Abbott and her husband join HA and DA on a cruise from Vancouver to Alaska that he was planning to celebrate his wife's birthday.

⁷³ RX-13; RX-14.

⁷⁴ Springsteen-Abbott testified that her husband had other personal credit cards but he could not obtain the records for those. Hearing Tr. (Springsteen-Abbott) 1262-63. Even if true, it does not detract from the large amount of meal charges on the American Express card.

⁷⁵ Hearing Tr. (Springsteen-Abbott) 629, 633; CX-132.

Because the cruise was scheduled around the time of Springsteen-Abbott's birthday, it would be a double celebration.⁷⁶ Accordingly, Springsteen-Abbott booked a reservation for the cruise.⁷⁷

As Springsteen-Abbott admitted, the cruise was a family vacation for the purpose of celebrating both DA's and Springsteen-Abbott's birthdays.⁷⁸ However, although the cruise was a personal vacation, Springsteen-Abbott allocated to the Funds ten charges made on this trip, including airfare, food, and rental car expenses.⁷⁹

Springsteen-Abbott eventually admitted that two of the birthday cruise expenses were improperly allocated to the Funds. She only did so, however, as a result of the investigation and this proceeding:

(a) Springsteen-Abbott allocated \$251.60 to the Funds for a dinner at Fiori D'Italia that the four friends had in Vancouver. She testified that the purpose of the dinner was to celebrate DA's birthday in her capacity as a "manager." In a memorandum that appeared in a post-Complaint document production, however, Springsteen-Abbott indicated that the charge should have been to the Parent Company.⁸⁰ This adjustment was unnecessary if the allocation to the Funds was proper. Thus, the adjustment supports an inference that Springsteen-Abbott knew that the expense was not proper and would not withstand regulatory scrutiny once the investigation began. Because the expense was reallocated to the Parent Company and not to Springsteen-Abbott personally, it appears that she concluded that the dinner concerned Parent Company business and not Fund business. The Extended Hearing Panel finds that the dinner concerned no business at all, but, rather, was a personal expense.

(b) Springsteen-Abbott allocated \$16.63 to the Funds for a fast food charge at the airport in Phoenix, where she and her husband had a layover on the way to Vancouver for the birthday cruise. In the post-Complaint document productions, she provided a tick sheet justifying the charge as relating to her husband's attendance at a supplier diversity conference. At the hearing, however, she was confronted with documentary evidence that the tick sheet was wrong. The calendar entry supporting attendance at the supplier diversity conference belonged to another person, not Hank Abbott. Springsteen-Abbott then admitted that the business justification she provided actually related to an employee's business trip, and not to her and her husband's vacation. She acknowledged that allocating the fast food charge to the Funds was an error.⁸¹

⁷⁶ Hearing Tr. (Springsteen-Abbott) 627-31.

⁷⁷ Hearing Tr. (Springsteen-Abbott) 630-31.

⁷⁸ Hearing Tr. (Springsteen-Abbott) 627-33.

⁷⁹ CX-129 at 7-8, 116, 120-22; CX-130.

⁸⁰ Hearing Tr. (Springsteen-Abbott) 627-29; CX-132.

⁸¹ Hearing Tr. (Springsteen-Abbott) 636-39; CX-133.

Springsteen-Abbott nevertheless resisted admitting that the car rental in Vancouver and other charges allocated to the Funds in connection with the birthday cruise were improper.⁸² She asserted that the trip was partially a business trip, apparently because DA and her husband worked at the Parent Company.⁸³

The Extended Hearing Panel finds that the ten charges allocated to the Funds in connection with the birthday cruise, were improper. Springsteen-Abbott admitted it was a vacation trip, and the circumstances make clear that it was a vacation trip. The genesis of the trip was HA's suggestion in January 2009 to Springsteen-Abbott that she and her husband accompany him and DA on a birthday cruise he was planning. There is no evidence to support Springsteen-Abbott's claim that there was any business purpose or activity. She simply asserted that she was traveling with people who worked for her company and celebrating DA's birthday in her capacity as a "manager" at Springsteen-Abbott's company. The possibility that the group may have discussed unspecified business from time to time does not support the allocation of these vacation expenses to the Funds.

Moreover, Enforcement proved that Springsteen-Abbott provided false documentation to support the business justification for at least one of the expenses, the fast food charge during the layover at the airport. Springsteen-Abbott had no good explanation for why the false documentation was provided. This undercuts her credibility.

The Extended Hearing Panel also finds that Springsteen-Abbott knew that it was improper to allocate her vacation expenses to the Funds. She admitted that vacation expenses should not be allocated to the Funds.⁸⁴

(2) Beginning In January: Cody's Roadhouse Meals With Grandchildren, Family, And Friends Throughout 2009, 2010, and 2011

January 29, 2009. Springsteen-Abbott allocated to the Funds a January 2009 dinner charge of \$86.34. Springsteen-Abbott herself wrote the business justification on the tick sheet for this meal. She wrote, "Review projects, [JC] and [HC]." JC was her son-in-law at the time, and HC is one of Springsteen-Abbott's daughters. At the time, both JC and HC were working at Springsteen-Abbott's company. The receipt for the meal included children's food.⁸⁵ Springsteen-Abbott testified at the hearing that the dinner charge had at some point been reversed because of the children's meals.⁸⁶

⁸² Hearing Tr. (Springsteen-Abbott) 639-45.

⁸³ Hearing Tr. (Springsteen-Abbott) 646.

⁸⁴ Hearing Tr. (Springsteen-Abbott) 646.

⁸⁵ The receipt showed that milk, a corn dog, and a "kid's mac & cheese" were ordered, in addition to adult food (wine, iced tea, prime rib and rib eye entrees). CX-131, at 20-22.

⁸⁶ Hearing Tr. (Springsteen-Abbott) 807-09; CX-131, at 20-22.

Springsteen-Abbott did not explain why the dinner had originally been allocated to the Funds. Nor did she explain why she had provided the business justification for it if it was obvious from the receipt that the charge was for a meal with her daughter, then son-in-law, and one or more grandchildren.

The Extended Hearing Panel finds that the January 2009 dinner charge was improperly allocated to the Funds. The Extended Hearing Panel further finds that there is no evidence to indicate that Springsteen-Abbott had a good faith belief at the time of the meal that it was appropriate to allocate the meal to the Funds. Finally, the Extended Hearing Panel finds that Springsteen-Abbott provided a vague business purpose for the meal—“projects”—in an attempt to cloak a family meal with a business purpose. The tick sheet with the business justification was attached to a receipt showing the purchase of one or two children’s meals. If the receipt with the children’s meals signaled to Springsteen-Abbott that the charge should be reversed, as she claimed that it did, then she should never have submitted the tick sheet to FINRA staff claiming a business purpose that justified the original allocation to the Funds.

April 24, 2010. Springsteen-Abbott allocated to the Funds an April 24, 2010 dinner charge of \$174.97 at Cody’s Roadhouse. She provided a tick sheet showing that the dinner was attended by four adults: Springsteen-Abbott, her friend DA, Springsteen-Abbott’s husband, and Springsteen-Abbott’s brother. The tick sheet labeled the dinner a travel meal, although Springsteen-Abbott’s brother was the only person who was traveling from out of town.⁸⁷

The receipt that accompanied the tick sheet as backup showed that a party of six was at the dinner, which indicated there were two additional persons at the dinner. The receipt also showed that food had been ordered consistent with at least one child at dinner. The order included two milks, a mini soft drink, and chicken fingers. Other food and drink ordered at the dinner included beer and wine, and adult meals for four consisting of lobster and prime rib.⁸⁸

Springsteen-Abbott vehemently denied in her hearing testimony that the dinner had been a family dinner with children.⁸⁹ Then she was shown an email she sent her daughter earlier on April 24, 2010, making plans for a dinner with her daughter⁹⁰

The Extended Hearing Panel finds that the April 24, 2010, dinner at Cody’s Restaurant was improperly allocated to the Funds. The Extended Hearing Panel further finds that the tick sheet Springsteen-Abbott provided to justify the charge was false. The Extended Hearing Panel additionally finds that Springsteen-Abbott’s testimony regarding this dinner was not credible.

⁸⁷ Hearing Tr. (Springsteen-Abbott) 686-87; CX-147. Springsteen-Abbott allocated the amount on the receipt (\$144.96) plus a tip, which was handwritten on the documentation.

⁸⁸ CX-147.

⁸⁹ Hearing Tr. (Springsteen-Abbott) 687-88.

⁹⁰ Hearing Tr. (Springsteen-Abbott) 688-90; CX-230.

August 11, 2010. Springsteen-Abbott allocated to the Funds an August 11, 2010 dinner charge of \$104.23 at Cody's Roadhouse. Later, in connection with a post-Complaint production, Springsteen-Abbott provided a tick sheet and backup documentation as the business justification for the charge. The tick sheet was detailed. It said that Springsteen-Abbott and her husband, along with HA, DA, and one other person, attended the dinner. It listed three business topics that were discussed: the review of a cash report, a new candidate for "BDA," and a rent quote for the tech center.⁹¹

Springsteen-Abbott was asked whether the meal was actually a meal with her family. She flatly denied that, saying, "No."⁹² When she was asked about a \$2.89 charge for a "kid's mac & cheese," she explained that she was on a Jenny Craig diet and she was eating appetizers and drinking 2% milk.⁹³

Then Springsteen-Abbott was confronted with email correspondence that she had written the next day after the dinner. In that correspondence, she wrote to her sister about the dinner the night before, and described it as a dinner with her daughter and her daughter's children to comfort her daughter, who was going through a hard time.⁹⁴

After she was confronted with the email correspondence, Springsteen then agreed that the meal at Cody's Roadhouse was a dinner with her daughter and grandchildren. She also agreed that it was an error to allocate the charge to the Funds.⁹⁵

Springsteen-Abbott's insistence that the August 2010 Cody's Roadhouse dinner was a business meal, until she was shown proof that it was not, damaged her credibility with the Extended Hearing Panel. Springsteen-Abbott's assertion that she ate the "kid's mac & cheese" meal as part of a Jenny Craig diet plan also was not credible. At the hearing, she sometimes admitted that a children's meal signified that her grandchildren were at a meal and other times she denied that they were present, despite a receipt for children's food. The Extended Hearing Panel finds that this type of inconsistency further damaged Springsteen-Abbott's credibility.

The Extended Hearing Panel finds that the dinner on August 11, 2010, was improperly allocated to the Funds. The Extended Hearing Panel further finds that the tick sheet business justification produced to FINRA staff was false. Springsteen-Abbott's testimony with regard to the business nature of the dinner was not credible and was inconsistent with other evidence. Springsteen-Abbott offered no explanation for why the dinner was improperly allocated to the Funds. As for why the detailed tick sheet regarding the business justification for the allocation

⁹¹ Hearing Tr. (Springsteen-Abbott) 672-78; CX-145.

⁹² Hearing Tr. (Springsteen-Abbott) 674.

⁹³ Hearing Tr. (Springsteen-Abbott) 674. The receipt showed that, in addition to the "mac & cheese" meal, the group had ordered chicken fingers and four milks, prime rib, cheese fries, two red wines, and three beers, along with salad for five. CX-145, at 3.

⁹⁴ Hearing Tr. (Springsteen-Abbott) 676-78.

⁹⁵ Hearing Tr. (Springsteen-Abbott) 678.

was false, Springsteen-Abbott testified that the period when the documentation was collected was a difficult period for her because her father passed away. She said simply that she had done the best she could, but that she made some errors.⁹⁶ She failed to explain how the particularized tick sheet setting forth multiple business topics purportedly discussed at the meal came to be attached to a receipt for a family dinner with her grandchildren.

October 10, 2010. Springsteen-Abbott allocated to the Funds an October 10, 2010 dinner charge of \$89.67 for a dinner at Cody's Roadhouse, which was one day after her daughter's birthday. The tick sheet later produced with the business justification for the dinner said that the meal was attended by Springsteen-Abbott and her husband, DA, HA, and one of Springsteen-Abbott's daughters. The tick sheet said that the group talked about whether the company could become a transfer agent and a woman who had interviewed for the transfer agent position.

Email correspondence showed that the interview of the candidate had taken place about a month earlier, on September 16, 2010, so the topic did not appear particularly current at the time of the meal.⁹⁷

The receipt for the meal showed that a complimentary birthday dessert was provided. Several items were ordered that appeared to be for children: a grilled cheese sandwich for \$2.49; a cheese pizza for \$2.98; and two milks. When asked whether these were children's meals, Springsteen-Abbott said she did not know. When asked whether the two milks were for her two grandchildren, she said no. She claimed the two milks were for her.⁹⁸

The meal was for a party of five, according to the receipt. The receipt also showed that, in addition to what appeared to be two meals for children, there seemed to be food appropriate for three adults.⁹⁹

The receipt is consistent with a dinner for Springsteen-Abbott and her daughter and grandchildren, along with one other adult and inconsistent with the tick sheet showing that it was dinner for five adults. Springsteen-Abbott's tick sheet showing that the meal was attended by five adults appears to the Extended Hearing Panel to be a fabrication.¹⁰⁰

The Extended Hearing Panel finds that the Cody's Roadhouse dinner on October 10, 2010, was a birthday dinner for Springsteen-Abbott's daughter, and the cost was improperly charged to the Funds. The Extended Hearing Panel also finds Springsteen's testimony that her grandchildren were not present not credible.

⁹⁶ Hearing Tr. (Springsteen-Abbott) 678.

⁹⁷ Hearing Tr. (Springsteen-Abbott) 681-84; CX-146.

⁹⁸ Hearing Tr. (Springsteen-Abbott) 685-86.

⁹⁹ CX-146, at 4. The group ordered a margarita, two beers, two onion soups, two prime ribs, and a pot pie.

¹⁰⁰ CX-146, at 2.

arch 13, 2011. Springsteen-Abbott allocated to the Funds a March 13, 2011 dinner charge of \$113.96 at Cody's Restaurant. In a post-Complaint production, Springsteen-Abbott provided a tick sheet with a business justification, along with the receipt. The tick sheet described the meal as a dinner meeting with DA. According to the tick sheet, the purpose of the meal was to discuss the status of outstanding investor services issues.¹⁰¹

The receipt was inconsistent with the tick sheet explanation. The receipt showed that a party of six attended the dinner. It also showed that food had been ordered that was more consistent with a party of four adults and two children.¹⁰² Nevertheless, Springsteen-Abbott staunchly denied that the meal was actually a family meal with her two grandchildren.¹⁰³

The Extended Hearing Panel finds that Springsteen-Abbott improperly allocated the March 13, 2011 dinner to the Funds. The Extended Hearing Panel also finds that the tick sheet she provided to justify the charge was false. Finally, the Extended Hearing Panel finds Springsteen-Abbott's testimony at the hearing on this expense was not credible.

(3) February: Expenses Relating To Hair Restoration Trips And Family Visits

February 1-2, 2010. JA Alternatives is a hair restoration company located in Paramus, New Jersey, that Hank Abbott visited on numerous occasions during the relevant period.¹⁰⁴ He testified that he regularly visited the hair restoration company every other month, perhaps fifteen to twenty times in total during the period at issue.¹⁰⁵

On February 1, 2010, prior to a board of directors meeting in Hawaii, Hank Abbott traveled from his home in Florida to New Jersey for a hair restoration treatment at JA Alternatives and then returned to Florida in less than twenty-four hours. A number of expenses related to this trip were charged to the Funds,¹⁰⁶ although the expense for the hair restoration

¹⁰¹ Hearing Tr. (Springsteen-Abbott) 691-93; CX-148.

¹⁰² CX-148, at 4. According to the receipt, a salad for four was ordered, along with two prime rib dinners and one order of half ribs, mozzarella sticks, and wings, along with two beers and two glasses of wine. In addition, two children's meals and two milks were ordered.

¹⁰³ Hearing Tr. (Springsteen-Abbott) 693-94.

¹⁰⁴ Hearing Tr. (HAbbott) 867-68.

¹⁰⁵ Hearing Tr. (HAbbott) 894.

¹⁰⁶ Hearing Tr. (HAbbott) 870-94; CX-129, at 273. The Expense Schedule attached to this decision organizes the expenses charged on the American Express card that were later allegedly improperly allocated to the Funds in chronological order by date of posting. The Expense Schedule also indicates who was the purchaser, Hank Abbott or his wife or Lynn Franceschina. The Expense Schedule is a useful tool for tracing clusters of expenses related to a particular event like the trip to the hair restoration service. See Expense Schedule, items 749-55.

In addition, the American Express bills provide a fuller picture of Hank Abbott's activities, because they include other charges on the card in addition to those allocated to the Funds. CX-129, at 295-96.

treatment was not charged to the Funds. Hank Abbott agreed that the hair restoration service was a personal expense.¹⁰⁷

Hank Abbott began his travel by driving to the Tampa airport in a rented car that he had first rented at the Tampa airport on January 13, 2010, two weeks before. He parked the car at the Tampa airport.¹⁰⁸

When Hank Abbott arrived in New Jersey, he rented another car at Newark airport.¹⁰⁹ He spent the night in a hotel in Saddlebrook, New Jersey.¹¹⁰ The next day, on February 2, 2010, he went to Paramus for his hair restoration appointment.¹¹¹ By 2 p.m., he had returned the New Jersey rental car at Newark airport and was on his way home.¹¹² He picked up the Florida rental car at the Tampa airport the evening of February 2, 2010, incurring a \$33 parking fee.¹¹³ On February 3, 2010, Hank Abbott returned the Florida rental car at the Tampa airport and left for a board meeting in Hawaii.¹¹⁴

The Florida rental car cost a total of \$1,766.58. The entire amount was allocated to the Funds.¹¹⁵

The business justification for allocating the Florida rental car expense to the Funds was that Hank Abbott had prepared for a quarterly business development meeting and transported employees from the airport. But that meeting had occurred from January 27 through January 29, 2010,¹¹⁶ and had concluded by the time that Hank Abbott went to New Jersey for his hair restoration treatment. He said nothing at the hearing about transporting any employees to or from the Tampa airport on February 1-2, 2010.

The parking fee of \$33 also was allocated to the Funds.¹¹⁷

The New Jersey rental car cost \$137.97 for the evening and morning that Hank Abbott had it. That expense was allocated to the Funds.¹¹⁸

¹⁰⁷ Hearing Tr. (HAbbott) 889-90.

¹⁰⁸ Hearing Tr. (HAbbott) 874-75, 881; CX-190.

¹⁰⁹ Hearing Tr. (HAbbott) 881-83.

¹¹⁰ Hearing Tr. (HAbbott) 886-87.

¹¹¹ Hearing Tr. (HAbbott) 888-89.

¹¹² Hearing Tr. (HAbbott) 881.

¹¹³ Hearing Tr. (HAbbott) 883-34.

¹¹⁴ Hearing Tr. (HAbbott) 870-71, 875.

¹¹⁵ Hearing Tr. (HAbbott) 874-78; CX-190; CX-6, at 20.

¹¹⁶ Hearing Tr. (HAbbott) 877-880.

¹¹⁷ Hearing Tr. (HAbbott) 881.

¹¹⁸ Hearing Tr. (HAbbott) 885; CX-191.

Springsteen-Abbott provided FINRA staff a business justification for the allocation of the New Jersey rental car cost to the Funds. The business justification was that Hank Abbott was “flying from BDM meeting back to Pennsylvania” [referring to the business development meeting] via Newark, New Jersey, before another meeting not specifically identified. The documentation provided in support of that business justification was the same documentation that was provided to support the business purpose of the Florida car rental. The receipt for the New Jersey car rental was marked in handwriting “Transp. for BDM” referring to the business development meeting and the transportation of employees for that purpose.¹¹⁹

Although Hank Abbott agreed that the expense for his hair restoration appointment was not a business expense, he insisted that the car rentals and parking still could be properly charged to the Funds, depending on whether he had another appointment while he was in New Jersey.¹²⁰ He denied that the real purpose of the trip was for him to take care of himself just a few days before going to Hawaii. But he acknowledged that he had no documentation to support that belief.¹²¹ He did not mention any transport for a meeting that he might have done while in New Jersey. Hank Abbott’s testimony was, “I rented that vehicle [the New Jersey car rental] so that I could take care of whatever purpose I had there, which included that appointment in Paramus, New Jersey [at the hair restoration company].”¹²² He did not identify any business purpose and there was no evidence that there was one.

The Extended Hearing Panel finds that at least some portion of the Florida car rental was improperly allocated to the Funds, because the car was used, at least in part, for personal purposes. The Extended Hearing Panel further finds that the parking fee was improperly allocated to the Funds, and the entire cost of the New Jersey car rental was improperly allocated to the Funds. Hank Abbott’s testimony regarding this subject was not credible. He could not identify a single business activity he undertook during his trip to New Jersey; he simply maintained that he needed the New Jersey rental car “to take care of whatever purpose” he had there. In addition, the Extended Hearing Panel finds that the documentation provided to justify the business expense was false, and that it was created with the knowledge that Hank Abbott had no documentation or memory as to any business activity conducted during his brief time in New Jersey. The sole purpose of Hank Abbott’s trip was to obtain hair restoration services.

April 2010. In 2010, Hank Abbott and his wife spent the Good Friday-Easter weekend in Jersey City, New Jersey, where one of Hank Abbott’s daughters lives. They drove to New Jersey, stopping to charge \$37.14 for gas. They checked into a hotel there on Friday, April 2,

¹¹⁹ Hearing Tr. (HAbbott) 884-86; CX-191.

¹²⁰ Hearing Tr. (HAbbott) 889-93.

¹²¹ Hearing Tr. (HAbbott) 893-95.

¹²² Hearing Tr. (HAbbott) 891.

2010, and checked out on April 4, 2010. On Friday, Hank Abbott went to JA Alternatives for another hair restoration treatment.¹²³

Friday evening, Hank Abbott had dinner with his best friend, SM, Springsteen-Abbott, and SM's wife at a restaurant in Englewood, New Jersey, called the Assembly Steakhouse. The dinner cost \$472.67 plus a \$100 tip.¹²⁴ Then Hank Abbott and SM went next door to The Bicycle Club for drinks. The bar bill was \$60.50.¹²⁵

The Assembly Steakhouse dinner was included in the original Complaint as an alleged misallocated expense. Springsteen-Abbott responded with a business purpose set forth on a schedule. She indicated the business purpose for the Assembly Steakhouse dinner was that she and her husband were interviewing SM for a potential position in the Florida office setting up a security department. Hank Abbott testified that they were having some problems with homeless people and crime in the building and thought SM could help them with those problems.¹²⁶ This particular expense was dropped from the Amended Complaint, apparently because a memorandum was provided to FINRA staff showing that Hank Abbott had instructed that it be allocated to the Parent Company.¹²⁷ Hank Abbott testified, however, that he still thought it was appropriate to charge the Assembly Steakhouse dinner to the Funds because he was attempting to persuade SM to relocate from Long Island to Florida.¹²⁸

Springsteen-Abbott also allocated the bar charge to the Funds. That expense was not dropped from the Amended Complaint. Springsteen-Abbott's business justification for the bar bill was different than the one that had been provided for the dinner with SM. The tick sheet indicated that the bar discussion had to do with photography services.¹²⁹ Hank Abbott testified that SM had previously done a couple of photography jobs for the Commonwealth companies and that he had done them at a reasonable rate. Hank Abbott suggested that the purpose of the dinner was to reward SM for his previous work. Hank Abbott concluded, "[W]e think it is to our benefit and the funds' benefit to occasionally reward him for that."¹³⁰

¹²³ Hearing Tr. (HAbbott) 917; CX-129, at 332.

¹²⁴ Hearing Tr. (HAbbott) 918-29.

¹²⁵ Hearing Tr. (HAbbott) 928-32; CX-188.

¹²⁶ Hearing Tr. (HAbbott) 920-25.

¹²⁷ Hearing Tr. (HAbbott) 922-26; CX-240. The evidence regarding the memorandum created a suspicion that it had been created well after its purported date, for the purpose of allaying regulatory concerns about the allocation of the Assembly Steakhouse dinner to the Funds. However, the Extended Hearing Panel makes no finding in that regard.

¹²⁸ Hearing Tr. (HAbbott) 924-26.

¹²⁹ Hearing Tr. (HAbbott) 929-33; CX-188.

¹³⁰ Hearing Tr. (HAbbott) 932. A FINRA examiner testified that SM did the photography for an awards dinner for the Parent Company every year. This was not an expense allocable to the Funds. Hearing Tr. (Edwards) 469-71; CX-93.

Saturday of that Easter weekend, Hank Abbott, Springsteen-Abbott, one of his daughters and her husband ate at a restaurant in Jersey City called Porto Leggero. The meal cost \$432.06.¹³¹ Springsteen-Abbott allocated the expense to the Funds. She later provided two different business justifications. On the schedule of charges, the meal was described as relating to business succession.¹³² On the tick sheet provided to FINRA staff, the meal was described as a board of directors' discussion and interview.¹³³

Hank Abbott testified that the purpose of the meal at Porto Leggero was to discuss succession planning. When Springsteen-Abbott took control of the Commonwealth business, she obtained certification as a woman-owned business that made Commonwealth a diversity-qualified supplier to anyone who leases equipment from it. In order to maintain its certification, Commonwealth had to have a succession plan that preserved its status as a majority woman-owned company.¹³⁴

Sunday of that weekend, Hank Abbott had a meal with his other daughter who lives in Ridgefield, Connecticut. They ate at the Fifty Coins Restaurant. The meal cost \$72.28 and was billed to the Funds.¹³⁵ He testified that it was for the same purpose, to discuss succession planning.¹³⁶

The Extended Hearing Panel finds that the purpose of the weekend was for Hank Abbott to go to his hair restoration appointment and for him and his wife to spend the holiday weekend with family and friends. The Extended Hearing Panel finds that all the alleged improper charges related to this trip in the Amended Complaint were improperly allocated to the Funds. Those charges include the charge for gasoline, a bar bill, and the expenses for both the meals with Hank Abbott's daughters. The Extended Hearing Panel further finds that Hank Abbott's testimony regarding the Easter weekend charges was evasive and intended to obscure the true nature of the weekend. His assertion that the Funds were benefited by his treating his best friend to drinks at a bar is ludicrous. The inconsistent and false business justifications provided by Springsteen-Abbott further damaged her credibility.

September 24-26, 2010. Hank Abbott went to another hair restoration appointment at JA Alternatives on Saturday, September 25, 2010, as shown by the charge on the American Express card that he used for both personal and business expenses.¹³⁷

¹³¹ Hearing Tr. (HAbbott) 940-43; CX-189.

¹³² Hearing Tr. (HAbbott) 942; CX-6, at 24.

¹³³ Hearing Tr. (HAbbott) 941-42; CX-189.

¹³⁴ Hearing Tr. (HAbbott) 1027-29.

¹³⁵ Hearing Tr. (HAbbott) 943-44.

¹³⁶ Hearing Tr. (HAbbott) 1027-29.

¹³⁷ Hearing Tr. (HAbbott) 898-902; CX-129, at 465.

The American Express bill paints a picture of Hank Abbott's activity surrounding the hair restoration appointment. He returned a rental car in Orlando, Florida, on Friday, September 24, 2010, that he had rented two weeks before in Tampa. Then, he and Springsteen-Abbott flew from Orlando to Philadelphia. A limousine charge on September 24, 2010, suggests that he and Springsteen-Abbott were picked up at the airport. The next day, Saturday, September 25, 2010, Hank Abbott drove to Paramus, New Jersey. He shopped at Century 21 in Paramus and charged \$24.58. He shopped at a Best Buy, where he charged \$43.86. He went to his hair restoration appointment. He also charged \$41.82 for gas for his drive home. The following day, Sunday, September 26, 2010, he and Springsteen-Abbott had tickets to fly from Philadelphia to Tampa. They appear to have used them since Hank Abbott also incurred a charge that day for in-flight internet.¹³⁸

Thus, the credit card charges show that Hank Abbott flew up to Philadelphia at the beginning of the weekend, drove to Paramus on Saturday for his hair restoration appointment, did a little shopping, and then drove back to Philadelphia. The following day, on Sunday, he and Springsteen-Abbott returned to Florida.

Both the Century 21 charge and the Best Buy charge were initially allocated to the Funds.¹³⁹ The tick sheet for the Century 21 charge showed no business explanation. Instead, it simply referred to the Parent Company.¹⁴⁰ Hank Abbott testified that the reference could mean that the Parent Company had originally borne the expense, ignoring that tick sheets were only created for expenses that had been allocated to the Funds and that were alleged by FINRA staff as improper allocations.¹⁴¹ The gas Hank Abbott bought for the drive home was also allocated to the Funds.¹⁴² He admitted that the investors in the Funds should not pay for the gasoline, but testified that he did not know whether it was allocated to them.¹⁴³

The Extended Hearing Panel finds that the Century 21 and Best Buy charges, as well as the gas charge, were all allocated to the Funds improperly. There was no business justification. The Extended Hearing Panel further finds that Hank Abbott's testimony regarding these charges was evasive and lacked credibility. He suggested that the charges allocated to the Funds in connection with this trip could have been justified because he spends a lot of time on business in Northern New Jersey and Connecticut, and these are routine places for him to go for business. However, he could not recall any business purpose for anything he did that weekend in and

¹³⁸ Hearing Tr. (HAbbott) 898-902; CX-129, at 464-66.

¹³⁹ Expense Schedule at 19, items 1284 and 1285. The Schedule of expenses that Enforcement alleged were improperly allocated to the Funds included other charges made during this weekend trip, but the other expenses were not the subject of testimony.

¹⁴⁰ Hearing Tr. (HAbbott) 899-901; CX-192.

¹⁴¹ Hearing Tr. (HAbbott) 905.

¹⁴² Expense Schedule at 19, item 1288.

¹⁴³ Hearing Tr. (HAbbott) 903-04.

around Paramus. He simply refused to admit that the purpose of the trip was for his hair restoration appointment.¹⁴⁴

January 6-9, 2011. Hank Abbott and Springsteen-Abbott stayed in Ridgefield, Connecticut, the weekend of January 6-9, 2011. Hank Abbott's daughter was expecting a baby in March 2011, and there was a January baby shower that many family and friends attended that weekend.

On his way to Connecticut, on Thursday, January 6, 2011, Hank Abbott went to JA Alternatives, the hair restoration company in Paramus, New Jersey.¹⁴⁵ He and Springsteen-Abbott arrived in Ridgefield that evening and checked into a hotel. The next day, Friday, January 7, 2011, Hank Abbott incurred a meal charge of \$47.59 at the Asian Kitchen in Ridgefield. He also incurred a meal charge of \$404.43 at Bernard's, a Ridgefield restaurant where his daughter's baby shower was held. He incurred a second, smaller charge at Bernard's for \$44.04. On Saturday, January 8, 2011, he shopped at Best Buy in Danbury, Connecticut, and incurred a charge for \$174.86. On Sunday, before driving home, he filled his car with gas, at a cost of \$56.18.¹⁴⁶

Springsteen-Abbott initially allocated to the Funds four of her husband's charges on this trip: \$47.59 (Asian Kitchen), \$44.04 (Bernard's), \$174.86 (Best Buy), and \$56.18 (gas). Later, she reallocated the Best Buy charge. Hank Abbott testified that they sought to find a receipt to determine what he bought but they could not find any documentation, and he had no recollection of what he purchased.¹⁴⁷

Springsteen-Abbott provided a business justification for the \$44.04 Bernard's charge that did not match the event. The justification had to do with a parking garage charge in a slightly different amount. Hank Abbott testified that the \$44.04 Bernard's charge was for a quick dinner with Springsteen-Abbott and his sister, RF, to discuss a wholesale report.¹⁴⁸ However, Hank Abbott incurred a charge for a meal that same day at Bernard's for \$404.43 (which was not allocated to the Funds). It is unclear if or how that larger meal expense related to the claimed dinner for \$44.04.¹⁴⁹ Although it cannot be determined with certainty, the smaller bill is more consistent with a bar charge before or after the expensive meal at the same restaurant.

The Extended Hearing Panel finds that the weekend was for the purpose of Hank Abbott going to a hair restoration appointment and for him and Springsteen-Abbott to attend the baby

¹⁴⁴ Hearing Tr. (HAbbott) 905-06.

¹⁴⁵ Hearing Tr. (HAbbott) 949-52.

¹⁴⁶ Hearing Tr. (HAbbott) 949-66.

¹⁴⁷ Hearing Tr. (HAbbott) 1023-24. Enforcement included the Best Buy charge in its initial Complaint, but not the Amended Complaint. Springsteen-Abbott claimed that the charge was reallocated to the Parent Company. Hearing Tr. (HAbbott) 961-62.

¹⁴⁸ Hearing Tr. (HAbbott) 956-61.

¹⁴⁹ Hearing Tr. (HAbbott) 1025-27.

shower. Accordingly, Hank Abbott's expenses should not have been allocated to the Funds. These include the charges for the two meals (or meal and bar bill), and the gas charge. The Extended Hearing Panel further finds that Hank Abbott's testimony was not credible, and that Springsteen-Abbott provided a false business justification for the \$44.04 Bernard's charge.

(4) February: Best Buy Purchase

On February 22, 2010, Hank Abbott charged \$213.98 on the American Express card. The charge related to a purchase made at a Best Buy in Clearwater, Florida. It was for a Motorola Bluetooth speaker and an XM SkyDock, an in-vehicle satellite radio. Springsteen-Abbott allocated the charge to the Funds.¹⁵⁰

When FINRA staff questioned Springsteen-Abbott in her investigative testimony regarding this charge, she explained the business purpose for the purchase. She claimed that the speaker and satellite radio were an incentive gift for a potential wholesaler candidate her company was trying to lure from a competitor. She identified the candidate as IK. However, when FINRA staff looked up IK's information in the Central Registration Depository ("CRD"), they learned that IK was unemployed from October 2005 through April 2010.¹⁵¹

The FINRA examiner explained that, after she conducted research regarding IK and the Best Buy purchase, the staff became concerned about the pattern of Best Buy charges in large dollar amounts in locations where Springsteen-Abbott and her husband and their family and friends lived. The staff prepared a chart of twenty Best Buy charges that were allocated to the Funds and asked for receipts showing what was purchased.¹⁵²

While Enforcement did not offer proof as to every item on the Best Buy list, the chart served as an explanation of the reason for the staff's general concern about Best Buy charges allocated to the Funds. Although Springsteen-Abbott's counsel indicated that he planned to offer evidence to rebut the inference that Springsteen-Abbott's business justification for the particular Best Buy purchase relating to IK was false, no such evidence was offered.¹⁵³

The Extended Hearing Panel finds that the amount charged in connection with this Best Buy purchase was improperly charged to the Funds. Springsteen-Abbott's claim that the items were purchased to lure IK away from a competitor is inconsistent with the staff's discovery that IK was unemployed at the time of the purchase and had been unemployed more than four years. On that basis, the Extended Hearing Panel rejects Springsteen-Abbott's claim that the charge was for a business purpose. The Extended Hearing Panel further finds that Springsteen-Abbott

¹⁵⁰ Hearing Tr. (Edwards) 250-54; CX-86.

¹⁵¹ Hearing Tr. (Edwards) 251-53.

¹⁵² Hearing Tr. (Edwards) 255-59. The FINRA examiner testified that Springsteen-Abbott allocated to the Funds twenty charges at Best Buy during the review period from 2009 through 2011, for a total of \$4,987.25. Hearing Tr. (Edwards) 254-57.

¹⁵³ Hearing Tr. (objection by Respondent's counsel) 257-58.

intentionally provided a false justification for the Best Buy charge. It is impossible to believe that the description of an attempt to lure IK away from a competitor was an inadvertent mistake.

(5) March: Baptism In Texas

The weekend of March 26, 2011, Springsteen-Abbott and her husband flew to Texas for the baptism of a child of Springsteen-Abbott's niece. The baptism occurred on a Saturday, after a 5 p.m. mass. Close to midnight that same evening, Hank Abbott charged his American Express card at TGI Friday's for \$85.08. He testified that the charge was for a meal he and his wife had with his wife's nephew to interview the nephew for a position in relationship management. Springsteen-Abbott allocated that expense to the Funds initially but later reallocated it to the Parent Company.¹⁵⁴

The Extended Hearing Panel finds that the original charge to the Funds was improper, and that Hank Abbott's testimony regarding the business purpose for the TGI Friday's charge was not credible. It is unlikely that Hank Abbott and his wife were conducting a business interview in a restaurant close to midnight, and it is unlikely that such an interview would take place on a non-work day of a special family event. The charge is more consistent with a bar bill after a family celebration.

(6) April: Wedding Anniversary Dinners

April 2009. Sunday, April 19, 2009, was Springsteen-Abbott and her husband's first wedding anniversary. Springsteen-Abbott allocated to the Funds a dinner that evening at a restaurant in Clearwater, Florida, called Teo Pepe. That dinner cost a total of \$293.06. In a post-Complaint production, Springsteen-Abbott provided a tick sheet with a business justification for the dinner. The tick sheet claimed that the purpose of the expense was a leasing meeting and that the meeting was attended by several people, not including Springsteen-Abbott. As documentary support, an email was attached discussing a different event at a different time. The email attached to support the allocation asked Springsteen-Abbott if one of her team members could be available for a meeting on Monday afternoon, April 20, 2009, about an ELFA Funding Exhibition. In a separate paragraph, the author of the email wished Springsteen-Abbott a "wonderful weekend."¹⁵⁵

The Extended Hearing Panel finds that the dinner was improperly allocated to the Funds, because the documentation provided to support the allocation, which had to do with a Monday afternoon meeting involving Springsteen-Abbott, did not match the event as described in the tick sheet, a Sunday night dinner without Springsteen-Abbott.

Although the email wishing Springsteen-Abbott a wonderful weekend is consistent with the Teo Pepe dinner being part of a wedding anniversary celebration, the Extended Hearing

¹⁵⁴ Hearing Tr. (HAbbott) 971-77, 1022-23; Hearing Tr. (Edwards) 247.

¹⁵⁵ Hearing Tr. (Springsteen-Abbott) 724-26; CX-129, at 89; CX-156; CX-157.

Panel cannot conclude with certainty that the dinner was part of an anniversary celebration. In her testimony, Springsteen-Abbott volunteered, somewhat disdainfully, that she would “never go there” for her anniversary, referring to the Teo Pepe restaurant.¹⁵⁶ In the Extended Hearing Panel’s view, this was one of Springsteen-Abbott’s few candid comments at the hearing. She explained that she and her husband had celebrated their wedding anniversary at the Plaza in New York City the weekend before.

April 2011. Springsteen-Abbott and her husband celebrated their third wedding anniversary during a weekend trip to New York City in mid-April 2011. Springsteen-Abbott testified that, although they celebrated their anniversary in New York and went to an event called the Leatherneck Ball that weekend, their New York trip and attendance at the Ball were business related because they were invited by a client, Northrop Grumman. On that trip, they incurred a charge at the Oak Room on Saturday, April 16, 2011, in the amount of \$71.72. That expense was allocated to the Funds.

A tick sheet in Springsteen-Abbott’s handwriting was provided in a post-Complaint production. It showed a business justification for the allocation to the Funds. The business justification indicated that the expense was for drinks with a leasing contact. The expense was designated for reallocation to the Parent Company in August 2012, around the same time that FINRA staff issued its Wells notice indicating that it was planning to bring a proceeding against Springsteen-Abbott in connection with her allocation of expenses to the Funds. Springsteen-Abbott testified that she reallocated the expense to the Parent Company because it involved alcohol. She testified that she personally thought it was inappropriate to charge the Funds for a meeting that just had alcohol, although, at the same time, she maintained that it would have been permissible to charge the Funds for the drinks.¹⁵⁷

The Extended Hearing Panel finds that the charge was improperly allocated to the Funds. On other occasions, Springsteen-Abbott allocated to the Funds expenses for alcohol alone, making her proffered reason for the reallocation suspect.¹⁵⁸ Furthermore, if she truly had a personal principle of not charging the Funds for alcohol, then she would have never allocated the drinks at the Oak Room to the Funds in the first place. The Extended Hearing Panel finds that Springsteen-Abbott’s testimony regarding the initial allocation and subsequent reallocation is not trustworthy. The Extended Hearing Panel also notes that Springsteen-Abbott’s reallocation of the charge only occurred after the application of regulatory scrutiny.

On Tuesday, April 19, 2011, the actual day of their third wedding anniversary, Springsteen-Abbott and her husband attended a dinner at the Villa Gallace in Indian Rocks, Florida. The dinner cost \$220.83. The expense was allocated to the Funds.

¹⁵⁷ Hearing Tr. (Springsteen-Abbott) 719-23, 832-34.

¹⁵⁸ See, for example, the Good Friday-Easter weekend charge for Hank Abbott to treat SM, his best friend, to drinks, which is discussed above.

Springsteen-Abbott provided a tick sheet with the business justification for the allocation. It claimed that five people, including herself and her husband, attended the dinner, and that the dinner was for the purpose of “Minority Alliance Capital dinner, Diversity Bank.” Springsteen-Abbott testified that the dinner was not an anniversary dinner with her husband.¹⁵⁹

Springsteen-Abbott was shown an email that she sent her brother-in-law earlier in the day on April 19, 2011. In that email, she told her brother-in-law that she and her husband were going out that evening for their anniversary. Even after she was shown the email, she denied that the dinner was an anniversary dinner for her and her husband.¹⁶⁰

The Extended Hearing Panel finds that Springsteen-Abbott improperly allocated the dinner to the Funds. The Extended Hearing Panel finds Springsteen-Abbott’s testimony that the dinner was not an anniversary celebration was not credible, because the email to her brother-in-law is inconsistent with her testimony.

(7) May: Mother’s Day Family Meals

May 9, 2010. Springsteen-Abbott allocated to the Funds a meal charge on Mother’s Day, May 9, 2010, at the Terrace Restaurant at Longwood Gardens. The amount of the charge was \$241.93. Springsteen-Abbott provided a tick sheet stating that due diligence and facilities issues were discussed. At the hearing, Springsteen-Abbott denied that this was a Mother’s Day meal with her family. Then she was shown an email that she sent the next day that described the Longwood Garden visit as a family outing with her son and his wife and the grandchildren. Nevertheless, she continued to insist that it was not a family meal.¹⁶¹

She testified that she believes that the Longwood Gardens dinner was a legitimate business expense. She said that her husband had suggested that they go there to walk around and then eat. She said that they typically will do work when they sit and eat.

Springsteen-Abbott’s husband surprised her by arranging for her daughter to fly in from out of town and join them at Longwood Garden. Her son also joined them. They had a meal together but, according to Springsteen-Abbott, they also worked at that meal. Her grandchildren were there, but she said that they did their thing and she did hers. She also said that she did not believe she should be penalized because her husband surprised her.¹⁶²

The Extended Hearing Panel finds that the Mother’s Day meal was improperly allocated to the Funds. The Extended Hearing Panel further finds that Springsteen-Abbott provided a false and misleading business justification on the tick sheet, and that her testimony that this was not a family meal was impeached.

¹⁵⁹ Hearing Tr. (Springsteen-Abbott) 715-17; CX-155.

¹⁶⁰ Hearing Tr. (Springsteen-Abbott) 718-19; CX-232.

¹⁶¹ Hearing Tr. (Springsteen-Abbott) 711-15; CX-154; CX-231.

¹⁶² Hearing Tr. (Springsteen-Abbott) 827-29.

May 8, 2011. On Mother’s Day, May 8, 2011, Hank Abbott incurred a charge for \$141.28 for a meal at the Outback Steakhouse in Glen Mills, Pennsylvania. Springsteen-Abbott allocated the expense to the Funds and provided a business justification that it was to “discuss FINRA situation and plan document project.” However, this was four months before the beginning of the examination.¹⁶³ Later in his testimony, Hank Abbott explained that the business justification had been inaccurate. He then claimed that they had discussed an SEC audit that took place around the time of Mother’s Day 2011.¹⁶⁴

The Extended Hearing Panel finds that the Mother’s Day meal was improperly allocated to the Funds. The vague business justification first offered to justify the allocation to the Funds was insufficient and not credible. Hank Abbott’s later assertion that they were discussing an SEC audit was similarly insufficient and not credible. Finally, even if Hank Abbott’s testimony were true, a meal to discuss an SEC audit appears to concern the Broker-Dealer and not the Funds’ business. Thus, the allocation was improper under any version of the facts.

(8) May: Memorial Day Weekend Expense At The Bicycle Club

May 2010. According to the American Express bill, on the Friday before Memorial Day, May 28, 2010, Hank Abbott incurred a charge for hair restoration services at JA Alternatives in Paramus, New Jersey. He also incurred a charge for \$750.07 at a restaurant in Englewood, New Jersey, called Grissini.¹⁶⁵ Neither of these expenses was allocated to the Funds. However, another charge for \$111.33 that he incurred at a different restaurant in Englewood, New Jersey, called The Bicycle Club, was allocated to the Funds.¹⁶⁶

Springsteen-Abbott provided a tick sheet claiming that the charge at The Bicycle Club was for dinner for three people (Hank Abbott, RD, and MJ). The purpose on the tick sheet was simply “Allied Health.” Springsteen-Abbott testified that the dinner had to do with an Allied Health site visit.¹⁶⁷ The receipt attached to the tick sheet showed that the party had been served by a bartender and that they finished around 6:30 p.m.¹⁶⁸

During the investigation, FINRA staff called MJ and discussed with him the Memorial Day 2010 charge at The Bicycle Club. The staff did so because they had reviewed an email written by Springsteen-Abbott to her sister a few days before the purported site visit in which Springsteen-Abbott said that she was in the process of planning a birthday party in New York for her husband, and they were going to New York over Memorial Day weekend to look at a facility

¹⁶³ Hearing Tr. (HAbbott) 977-83.

¹⁶⁴ Hearing Tr. (HAbbott) 1020-21.

¹⁶⁵ CX-129, at 372.

¹⁶⁶ CX-129, at 372; Hearing Tr. (Springsteen-Abbott) 797-99.

¹⁶⁷ Hearing Tr. (Springsteen-Abbott) 798.

¹⁶⁸ CX-203.

for the birthday party.¹⁶⁹ Consistent with that email, on the Saturday of that weekend, the American Express bill shows that Hank Abbott incurred a charge in New York City at the Stumble Inn, which is adjacent to the Havana Room where his birthday party was later held.¹⁷⁰

MJ denied he that he was at The Bicycle Club on that Friday of Memorial Day Weekend on a business trip. He told the staff that he never traveled to New York for work while employed by the Parent Company. He said that he only traveled once for work while employed there, and that was to California.¹⁷¹

At some point in the investigation and proceeding, Springsteen-Abbott became aware that MJ had told the staff he never traveled to New York for work and was not at The Bicycle Club.¹⁷² On April 29, 2014, about a week-and-a-half before the hearing, Springsteen-Abbott submitted an unnotarized document purporting to be an attestation by David Borham, her son. The attestation was dated April 12, 2014. In the document, Borham asserted that he, and not MJ, had been on the trip to Allied Health. He called it “the Allied Health lease mission, to force the owner to submit some form of payment on the leases....” He claimed, “Hank was able to secure a payment check from the owner for the Allied leases and we were able to inspect some equipment in their offices. On the way and after we were done, we stopped to have a meal, due to the distance from home, as well as it was a long day.”¹⁷³

Enforcement introduced examples of Borham’s signature on sign-in sheets for training events. The signatures on those documents looked different than the signature on the unnotarized attestation. Springsteen-Abbott agreed that the signatures looked different. However, she testified that without a doubt it was her son’s signature on the attestation, and suggested that the signatures looked different because her son has had two extensive back surgeries.¹⁷⁴

Borham testified that he signed the attestation on April 12, 2014. He also testified that he went on the trip to New Jersey “to see somebody with Allied Healthcare.” He testified that he was the third person at The Bicycle Club, and not MJ. Borham said that he signed the attestation after his mother called him and told him that “she needed me to tell the FINRA people what actually happened on that specific day.” She provided a typed document to him by fax, and he signed it.¹⁷⁵

¹⁶⁹ Hearing Tr. (Edwards) 126-32.

¹⁷⁰ CX-129, at 372; Hearing Tr. (Edwards) 120-21.

¹⁷¹ Hearing Tr. (Edwards) 130-31.

¹⁷² Hearing Tr. (Springsteen-Abbott) 799.

¹⁷³ RX-48.

¹⁷⁴ Hearing Tr. (Springsteen-Abbott) 799-807, 818-19; CX-61, at 4; CX-63, at 7; CX-90, at 8; CX-137, at 4.

¹⁷⁵ Hearing Tr. (Borham) 1199-1206.

Borham testified that it was a one-day trip. They started in Philadelphia, went to New Jersey, and returned to Philadelphia that evening. He thought that he got home at 8 p.m.¹⁷⁶

The Hearing Panel finds that the charge at The Bicycle Club was improperly allocated to the Funds.

The proven facts are inconsistent with the assertions made in the Borham attestation about a long, one-day business trip: Hank Abbott spent at least some of that Friday at the hair restoration company; he finished at The Bicycle Club at 6:30 p.m.; and then he incurred an expensive dinner charge later that evening at Grissini. Borham may have gone on some trip to Allied Health that fits the description in his attestation, but it is not consistent with the facts that his trip was the one associated with the charge on Friday, May 28, 2010.

Moreover, the Borham attestation is suspect for other reasons. It was not drafted by Borham, but, rather, was provided to him by Springsteen-Abbott. It does not appear to have been signed by him, as Springsteen-Abbott admitted, and her explanation for the difference between the signature on it and Borham's signature on other documents is not credible. She claimed the difference was because of two back surgeries he had. He testified, however, that one surgery occurred a year and a half before the hearing, and the other occurred a year before that.¹⁷⁷ The Extended Hearing Panel does not believe that the surgeries explain why the signature on the attestation looks markedly different from Borham's signatures on other documents.

In addition, the FINRA examiner explained that the document appeared to her to be backdated. The examiner did not speak to MJ about the supposed business trip supporting the business nature of the charge at The Bicycle Club until April 16, 2014, and yet the attestation that was created in response was dated April 12, 2014.¹⁷⁸

Regardless of whether Borham signed the attestation or not, the Extended Hearing Panel believes the attestation was fabricated to conceal the personal nature of the expense incurred at The Bicycle Club.¹⁷⁹

¹⁷⁶ Hearing Tr. (Borham) 1202.

¹⁷⁷ Hearing Tr. (Borham) 1205-06. Springsteen-Abbott tried to give a different gloss to the story about how the attestation came about in testimony she gave after she heard her son testify. She made it seem that he had volunteered that he, and not MJ, had been on the trip. Hearing Tr. (Springsteen-Abbott) 1317-19. This testimony seemed designed to diminish the impression that Springsteen-Abbott had sought and drafted the attestation. The Extended Hearing Panel does not find this self-serving testimony credible.

¹⁷⁸ Hearing Tr. (Edwards) 1313-15; RX-48.

¹⁷⁹ That David Borham appeared and gave testimony at the hearing bolstering the statements in the attestation is viewed by the Extended Hearing Panel as an act of loyalty and support for his mother.

(9) June: Vacations, Including Disney Animal Kingdom

June 2009. As discussed above, Springsteen-Abbott allocated to the Funds some of the expenses of the 2009 birthday cruise to Alaska.

June 2010. Springsteen-Abbott also allocated to the Funds some expenses related to a birthday celebration in June 2010. She and her husband vacationed in Orlando, Florida, from June 3 to June 6, 2010, with her daughter, her then-son-in-law, and her two grandchildren. The whole family stayed at Disney's Animal Kingdom Lodge. Springsteen-Abbott allocated to the Funds credit card charges to the Animal Kingdom Lodge in the amount of \$2097.72.¹⁸⁰

The trip was two days after Springsteen-Abbott's birthday and one day after her grandson's birthday.¹⁸¹ There was abundant evidence that the trip was a family vacation.¹⁸²

The Animal Kingdom charges that were allocated to the Funds included charges to various restaurants, room service, stroller rentals, directory assistance, and valet parking.¹⁸³ Those charges appeared on Springsteen-Abbott's credit card and were included in the American Express billing statement that she would have reviewed approximately fifteen days after the family ended their vacation and checked out of the hotel.¹⁸⁴

In addition, Springsteen-Abbott allocated to the Funds a car rental charge for the car that her husband drove from Tampa to Orlando and dropped off in Orlando at the end of the weekend of the family vacation.¹⁸⁵ She also allocated to the Funds the cost of water and medicine purchased at the airport the day they left Orlando.¹⁸⁶ Altogether, seven charges on this trip were allocated to the Funds.¹⁸⁷

With respect to the stroller and similar charges, Springsteen-Abbott provided documentation in her February 2014 production indicating that Franceschina had mistakenly allocated the Disney charges as the Funds' expenses because she thought they related to a conference in Orlando around the same time. Franceschina did not know that the charges were for a stroller and the like because the specific charges were not separately itemized on the Disney bill.¹⁸⁸

¹⁸⁰ Stips. 13 and 14.

¹⁸¹ Hearing Tr. (Springsteen-Abbott) 726-27; Hearing Tr. (Edwards) 88-89.

¹⁸² Hearing Tr. (Edwards) 85-90, 99-100; CX-112 through CX-119.

¹⁸³ Hearing Tr. (Edwards) 90-92; CX-115.

¹⁸⁴ Hearing Tr. (Springsteen-Abbott) 729-31.

¹⁸⁵ Hearing Tr. (Edwards) 100-03; CX-120.

¹⁸⁶ Hearing Tr. (Edwards) 103-04; CX 121.

¹⁸⁷ Hearing Tr. (Edwards) 104-06, 390-93; CX-122.

¹⁸⁸ Hearing Tr. (Edwards) 392-95.

It was not clear that the Orlando conference was really at the same time. The FINRA examiner testified that it was in April, while the Disney trip was in June.¹⁸⁹ There was no evidence that Springsteen-Abbott ever signed up for a conference at the time of the Disney trip or attended one.

With respect to the car rental, Springsteen-Abbott's counsel asserted in questioning that Hank Abbott provided documentation to FINRA staff showing that he conducted some business during the trip to Disney and that he went on a business trip after he dropped the car off at the Orlando airport. Hank Abbott did not provide any testimony regarding what business he may have done on the Disney trip or afterward.¹⁹⁰

The Extended Hearing Panel finds that the charges associated with the Animal Kingdom family vacation were improperly allocated to the Funds. The preponderance of the evidence showed that the purpose of the weekend was a family birthday celebration. The proffered business justification for the car rental was too vague and unsubstantiated to overcome the evidence that the car was used for personal purposes. Even if the allocation of the stroller cost to the Funds was inadvertent, it illustrates how Springsteen-Abbott's system of charging personal and business expenses on the same card could be easily abused. The mistake would never have come to light without FINRA's scrutiny.

(10) November: Home Decorations

Springsteen-Abbott allocated a November 24, 2009, Home Depot expense to the Funds for \$239.86. Among the items included in the receipt were a "nutcracker" and a "grazing doe," along with something that appeared to be a 100-foot electrical cord. Springsteen-Abbott testified at the hearing that the grazing doe for the lawn was purchased for a business function that she and her husband held at their home for "management." She provided no detail about when the function was or who attended.¹⁹¹

In a post-Complaint production, FINRA staff received a tick sheet for the Home Depot charges. Springsteen-Abbott admitted that the tick sheet and documentation for the allocation of the Home Depot charges to the Funds was provided to FINRA staff in the hope that the related claim would be dismissed. The tick sheet contained conflicting information. On the one hand, it said that the charges were for a manager's meeting before a CE meeting, and that the charges should have been allocated to the Parent Company. On the other hand, there is handwriting that says, "Personal Should not have been allocated."¹⁹² At the hearing, Springsteen-Abbott testified

¹⁸⁹ Hearing Tr. (Edwards) 393-94.

¹⁹⁰ Hearing Tr. (Edwards) 396-97.

¹⁹¹ Hearing Tr. (Edwards) 299-301, 304-06; Hearing Tr. (Springsteen-Abbott) 660-62; CX-140.

¹⁹² Hearing Tr. (Springsteen-Abbott) 660-61; CX-140.

that the indication that the Home Depot charges were personal was inaccurate. She specifically denied that the grazing doe was a personal charge.¹⁹³

The Extended Hearing Panel finds that the Home Depot charges were improperly allocated to the Funds. The Extended Hearing Panel further finds that Springsteen-Abbott's assertion at the hearing that the decoration for her lawn was a legitimate business expense because she held a party for "management" at her house to be vague and unsubstantiated.

(11) November: Thanksgiving Dinner 2009

Springsteen-Abbott allocated two charges to the Funds that were incurred on Thanksgiving Day 2009 at the Dilworthtown Inn in West Chester, Pennsylvania. The first was for \$439.11 and the second was for \$20.50. The credit card for the first charge was swiped a little after 5 p.m., and then the card was swiped for the second charge approximately fifteen minutes later.¹⁹⁴

Springsteen-Abbott admitted at the hearing that the \$439.11 charge was for her family's Thanksgiving dinner.¹⁹⁵ She further admitted that the allocation to the Funds of the Thanksgiving dinner charge "should have never happened."¹⁹⁶ She also acknowledged that when she allocated the Thanksgiving dinner charge to the Funds, it was shortly after receiving the monthly bill.¹⁹⁷ The smaller charge appears to have been a bar charge, although Springsteen-Abbott testified that she did not know whether it was.¹⁹⁸

In a post-Complaint production, FINRA staff received a tick sheet with a business justification for the meal. The tick sheet indicated that the charge related to a CE, Firm Element event.¹⁹⁹ Springsteen-Abbott explained that the erroneous attribution of the charge to a CE event occurred because of an error in the date on a checklist. The charge on the checklist was dated 2011 instead of 2009.²⁰⁰

However, upon further questioning, Springsteen-Abbott acknowledged that there had been a CE event at the Dilworthtown Inn the week after Thanksgiving 2009, in December.²⁰¹ The record reflects a charge for meals at the Dilworthtown Inn on December 4, 2009, in the

¹⁹³ Hearing Tr. (Springsteen-Abbott) 661.

¹⁹⁴ Hearing Tr. (Springsteen-Abbott) 647-50; CX-135, CX-136.

¹⁹⁵ Hearing Tr. (Springsteen-Abbott) 650.

¹⁹⁶ Hearing Tr. (Springsteen-Abbott) 651-52.

¹⁹⁷ Hearing Tr. (Springsteen-Abbott) 651.

¹⁹⁸ Hearing Tr. (Springsteen-Abbott) 649.

¹⁹⁹ Hearing Tr. (Springsteen-Abbott) 649-52; CX-136.

²⁰⁰ Hearing Tr. (Springsteen-Abbott) 651.

²⁰¹ Hearing Tr. (Springsteen-Abbott) 652.

amount of \$5,888.22, that was attributed to a Firm Element business purpose.²⁰² The backup documentation for that expense is a mix of 2011 and 2012 Firm Element agendas and sign-in sheets and the like.²⁰³ It is apparent from those materials that Firm Element events generally involve fifteen to twenty people and involve a whole day of training plus meals, which explains why the Firm Element expense had to be more than the \$439 family Thanksgiving dinner that Springsteen-Abbott allocated to the Funds.

The Extended Hearing Panel finds that the two charges at the Dilworthtown Inn on Thanksgiving Day 2009 were improperly allocated to the Funds. They were incurred for a family dinner and a bar charge, not the Funds' business. The Extended Hearing Panel further finds that the improper allocation of these charges was made too close in time to the dinner to have been an inadvertent mistake, and Springsteen-Abbott offered no explanation for the misallocation of these charges to the Funds.

The Extended Hearing Panel also finds that the tick sheet provided to FINRA staff as the business justification for the dinner charge was false and was created under suspicious circumstances. Although Springsteen-Abbott claimed that the tick sheet was erroneous because of confusion about the dates, the tick sheet explanation relates to an actual event at the Dilworthtown Inn not long after the Thanksgiving dinner in 2009. Springsteen-Abbott, who testified that she closely supervised the post-Complaint productions, had to have known that a dinner charge under \$450 could not be for a day-long Firm Element event involving fifteen to twenty people. Overall, it appears to the Extended Hearing Panel that the business justification provided for the initial allocation to the Funds was purposefully false and misleading.

Springsteen-Abbott's failure to allocate expenses appropriately is only confirmed by the business justification she offered for the Thanksgiving Day dinner. She attempted to justify the allocation by asserting that the expense was for training for Broker-Dealer employees. Even her purported justification had to do with Broker-Dealer business, not the Funds' business.

Finally, the Extended Hearing Panel finds that Springsteen-Abbott knew that it was improper to charge her family Thanksgiving meal to the Funds. She admitted that it should never have happened.

(12) December: Year-End Holiday Meals

December 27, 2009. Springsteen-Abbott allocated to the Funds a charge for \$826.08 for dinner on December 27, 2009, at a restaurant in New York City called Broadway Joe's. In connection with a post-Complaint production, she prepared and provided a tick sheet indicating

²⁰² CX-137, at 2-3.

²⁰³ CX-137, at 4-19.

the business justification for allocating the expense to the Funds. The tick sheet said “Met with leasing vendors for year end.”²⁰⁴

At the hearing, Springsteen-Abbott admitted that the dinner was a dinner with her family. She was shown a hotel booking confirmation that showed she had booked three junior suites at a hotel in Times Square for three couples and three children for the same night as the dinner. The rooms were booked for herself, her son, and her daughter. Springsteen-Abbott admitted that the tick sheet she prepared and drafted as a business justification for the allocation to the Funds was inaccurate.²⁰⁵ She testified that she later changed the allocation of the dinner to the Parent Company, noting that her son and daughter were “employees of the firm.”²⁰⁶ She claimed that when she prepared the tick sheet she did not know that the dinner was personal, and that she only realized that when she got further documentation. She did not say what that further documentation was.²⁰⁷

The Extended Hearing Panel finds that the post-Christmas dinner was improperly allocated to the Funds. The Extended Hearing Panel further finds that Springsteen-Abbott provided a false business justification to FINRA staff in a post-Complaint production. Springsteen-Abbott provided no reasonable explanation for why the expense was misallocated in the first place, and no reasonable explanation why she later provided a false business justification. The circumstances of this expense and the false business justification both added to the Extended Hearing Panel’s distrust of Springsteen-Abbott.

December 30, 2009. Springsteen-Abbott allocated to the Funds a charge of \$116.41 for a dinner with her husband at the Blue Pear Bistro on December 30, 2009. In connection with a post-Complaint production, she provided a tick sheet in her handwriting. The tick sheet claimed that the business purpose of the dinner was a “wholesaler performance review meeting.”²⁰⁸

Springsteen-Abbott explained that she and her husband had met with their best wholesale distributor the night before for another dinner at a different restaurant. He was asking for more money. According to Springsteen-Abbott, the dinner at the Blue Pear Bistro with her husband was to discuss the wholesaler’s compensation.²⁰⁹

Springsteen-Abbott admitted that at least her portion of the dinner was improperly allocated to the Funds. She called it an oversight. She testified that in August 2012 her portion of all the meal expenses that had been allocated to the Funds was “backed out” of the charges to

²⁰⁴ Hearing Tr. (Springsteen-Abbott) 653-60; CX-139.

²⁰⁵ Hearing Tr. (Springsteen-Abbott) 653-60. She testified that she reallocated the Broadway Joe’s charge to the Parent Company, in August 2012. *Id.* at 660.

²⁰⁶ Hearing Tr. (Springsteen-Abbott) 657-58.

²⁰⁷ Hearing Tr. (Springsteen-Abbott) 659; CX-227.

²⁰⁸ Hearing Tr. (Springsteen-Abbott) 662-65; CX-141.

²⁰⁹ Hearing Tr. (Springsteen-Abbott) 662-65.

the Funds. She denied that the adjustment had anything to do with FINRA's Wells notice in August 2012.²¹⁰

The Extended Hearing Panel finds that the entire meal charge was improperly allocated to the Funds. The circumstances support the conclusion that it was merely a holiday season dinner for husband and wife. There was no evidence to corroborate Springsteen-Abbott's assertion that it was a business dinner.

December 31, 2010. Email correspondence demonstrated that Springsteen-Abbott and her husband took a vacation the last week of December 2010, although Springsteen-Abbott resisted admitting that fact, and hastened to add that they had scheduled a business meeting while they were in New York.²¹¹ She denied an employee's request to take a day off on December 28, 2010, because both she and her husband planned to be away from work that week and she wanted the employee to cover for them.²¹² She told others at the firm that she and her husband would be seeing family and grandchildren from December 27 through 31, 2010.²¹³

An American Express dinner charge at a restaurant in New York City called Bistecca Fiorentina for \$247.78 was posted on December 31, 2010, on the American Express account. That charge was allocated to the Funds. Springsteen-Abbott provided a tick sheet with a business justification for the charge. The tick sheet claimed that the dinner was a meeting at Bice, a different restaurant, with "Bluerock to expand the GP capacity." The receipt attached to the tick sheet was for Bice, not Bistecca Fiorentina. It also was for a different amount for a meal that occurred a week later, on January 6, 2011. The Bice receipt was supplied to FINRA twice, once to support the December 2010 business expense and once again to support the January 6, 2011 business expense. However, the two receipts had different totals. The one submitted to support the December expense was not signed and had no preprinted total. It showed the total for the Bistecca Fiorentina dinner in handwriting. The one submitted to support the January expense had a preprinted charge for the meal and was signed by Hank Abbott. It included a tip. The total expense for the Bice dinner in January was \$176.92 before tip and \$214.92 with the tip.

Springsteen-Abbott eventually admitted that the receipt provided to support the Bistecca Fiorentina charge was inaccurate.²¹⁴

The Extended Hearing Panel finds that the December 2010 dinner charge was improperly allocated to the Funds. There is no reason to believe that it was anything other than an end-of-year holiday celebration. The Extended Hearing Panel further finds that Springsteen-Abbott provided a false and inaccurate business justification for the charge to FINRA staff.

²¹⁰ Hearing Tr. (Springsteen-Abbott) 665-66.

²¹¹ Hearing Tr. (Springsteen-Abbott) 734-40, 753, 757-61; CX-233 through CX-235.

²¹² Hearing Tr. (Springsteen-Abbott) 738-39; CX-233.

²¹³ Hearing Tr. (Springsteen-Abbott) 736-37; CX-234; CX-235.

²¹⁴ Hearing Tr. (Springsteen-Abbott) 743.

(13) Miscellaneous

Hank Abbott's car rentals. Hank Abbott kept no car at his primary residence in Florida. Instead, he frequently rented cars, picking them up and dropping them off at the Tampa airport. He testified that he had never rented a car in Florida that was not for business purposes. He often rented the cars for a period of two weeks or more. Enforcement collected 29 separate car rentals during the relevant period that cost a total of approximately \$23,900. All these charges were allocated to the Funds. Generally, the business justifications for these charges related to meetings that lasted a few days.²¹⁵

The Extended Hearing Panel finds that it is not credible that Hank Abbott rented cars frequently near his primary residence, where he had no car, solely for business purposes. Some substantial portion of the time that he rented those cars he was using them for personal purposes. It is impossible, however, to determine exactly which of the nearly \$24,000 in expenses, if any, might have been appropriate to allocate to the Funds.

The Extended Hearing Panel provides the following example, however, to illustrate the inadequate support for allocating Hank Abbott's car rental expenses to the Funds. Hank Abbott rented a car at the Tampa airport on October 9, 2009, for one week. Springsteen-Abbott allocated the rental car charge of \$566.97 to the Funds. She later provided a tick sheet with a business justification for the charge. The tick sheet said the car rental was for a person who was conducting on-going due diligence.²¹⁶

Other evidence, including a hotel confirmation, showed that the person conducting the due diligence had been in Tampa only one night. Springsteen-Abbott also admitted that it was not customary for the Parent Company to rent a car for such a person. Rather, the Parent Company usually required people to rent their own cars and seek reimbursement.²¹⁷

Springsteen-Abbott had no explanation for how her husband came to rent a car for the week for someone who was in town only one night. She hypothesized that the wrong receipt had been linked to the charge, and she argued that the rental car charge might still be appropriate if her husband was preparing for the due diligence meeting.²¹⁸

The Extended Hearing Panel finds that the car rental charge was improperly allocated to the Funds. The Extended Hearing Panel further finds that Springsteen-Abbott displayed little concern whether the charge was properly allocable to the Funds or not. She was focused only on showing that it might have been a legitimate business charge.

²¹⁵ Hearing Tr. (HAbbott) 990-98.

²¹⁶ Hearing Tr. (Springsteen-Abbott) 666-67; CX-142.

²¹⁷ Hearing Tr. (Springsteen-Abbott) 667-68.

²¹⁸ Hearing Tr. (Springsteen-Abbott) 669-72.

Franceschina Charges For Dry Cleaning, Clothes, Accessories. Franceschina charged dry cleaning, new clothes, and accessories on the American Express card. Portions of some of these expenses were allocated to the Funds. During the course of the investigation and proceeding, some of these charges were reallocated to the Parent Company. Springsteen-Abbott provided business justifications for the original allocations and explanations for any reallocations.²¹⁹

In her testimony, Franceschina admitted that some personal purchases had been treated as business expenses and allocated to the Funds, although she suggested it happened by mistake. She also directly contradicted some of the business justifications and explanations Springsteen-Abbott provided to FINRA staff. This testimony further undermines Springsteen-Abbott's credibility.

For example, Franceschina bought an accessory at the airport and a portion of the cost was allocated to the Funds. Springsteen-Abbott explained the business purpose, saying it was needed for a meeting because Franceschina had lost her luggage. The evidence showed, however, that the meeting was over, and Franceschina was at the airport to catch a plane elsewhere. Franceschina testified that the accessory was not for a meeting and that she had never indicated that it was.²²⁰

Similarly, four days after a trip that ended June 3, 2010, Franceschina bought something close to her home at Boscov's, and the cost was allocated to the Funds. Springsteen-Abbott provided a business justification, writing that Franceschina had lost her luggage. Franceschina testified that she thought the purchase was for something at the Pennsylvania office and that it had nothing to do with lost luggage. She emphasized that she had never indicated that the purchase was related to lost luggage.²²¹

Franceschina testified that an Ann Taylor charge was related to the only time she ever lost her luggage. That Ann Taylor charge was initially allocated to the Funds.²²²

²¹⁹ For example, Franceschina charged dry cleaning near her home on the company card after a trip to Florida. The Parent Company paid for the charge and then half of the expense was allocated to the Funds. Hearing Tr. (Franceschina) 516-18. Later Springsteen-Abbott reallocated the portion charged to the Funds back to the Parent Company. Hearing Tr. (Franceschina) 518-19.

²²⁰ Hearing Tr. (Franceschina) 519-23. The record contains other examples of accessory charges that were allocated to the Funds. Franceschina bought another accessory on her way out of town at another airport accessory shop. The cost was charged to the Funds. Springsteen-Abbott explained it as a business charge that did not require a receipt because it was below \$20. Hearing Tr. (Franceschina) 523-26.

²²¹ Hearing Tr. (Franceschina) 526-29, 565-67.

²²² Hearing Tr. (Franceschina) 529-31. Springsteen-Abbott provided a "lost luggage" business justification for a Dillard's charge by Franceschina. However, after they discussed the issue of lost luggage Springsteen-Abbott reallocated the expense to the Parent Company. Hearing Tr. (Franceschina) 533-34.

Franceschina testified that a handful of charges had been allocated to the Funds because she had used the company credit card by mistake. Springsteen-Abbott provided business justification documentation that indicated that these were mistakes that she had reallocated.²²³

Franceschina differed with Springsteen-Abbott's treatment of a Kohl's charge, however. Springsteen-Abbott claimed to FINRA staff that she had reallocated the Kohl's charge, providing the "wrong card again" explanation. Franceschina testified, however, that she had a personal Kohl's card that she would have used if the purchase was personal. She maintains that the Kohl's charge was a business purchase appropriate to allocate to the Funds.²²⁴

Purchase Of Novel: *Pursuit of Honor*. Hank Abbott and Springsteen-Abbott flew from Tampa, Florida, to Philadelphia on November 13, 2009. At the Tampa airport, Hank Abbott purchased a political thriller about counter-terrorism called *Pursuit of Honor* for \$27.97. That expense was allocated to the Funds.²²⁵

Initially, Hank Abbott testified that he would not himself have allocated the cost of the novel to the Funds, but he noted that wholesalers for the Commonwealth affiliates are permitted to charge one movie a day to alleviate the tedium of travel. Later, however, Hank Abbott was shown a business justification for the book expense written in Springsteen-Abbott's handwriting. It said "Quotes for presentation at Money Concepts." Then Hank Abbott claimed that he had bought the book to obtain quotes for a business conference.²²⁶ He explained that he frequently gave presentations at broker-dealer conferences to broker-dealers who sold their products, apparently not realizing that (as discussed below) broker-dealer business was not the Funds' business and could not be expensed to the Funds.²²⁷

The Extended Hearing Panel finds that the cost of the book should not have been allocated to the Funds. The Extended Hearing Panel further finds that Hank Abbott's testimony lacked credibility. Finally, the Extended Hearing Panel finds that Springsteen-Abbott personally fabricated an absurd business justification that was untrue.

Conclusions regarding personal expenses. The Extended Hearing Panel could have been persuaded that a few meals and other expenses that appeared to be personal were actually related to the operation of the Funds or were simply inadvertent accounting errors. However, such a conclusion was impossible in the face of the large volume of improper charges and the circumstances in which Springsteen-Abbott and her husband incurred many of the expenses. The Extended Hearing Panel does not believe, for example, that business could have been the

²²³ The charges, which were reallocated because Franceschina had used the company card by mistake instead of her personal card, included \$128.99 at Bebe, in Newark, Delaware, and \$226.79 at Ann Taylor. Hearing Tr. (Franceschina) 542-51; CX-181; CX-182.

²²⁴ Hearing Tr. (Franceschina) 551-52, 567-69; CX-183.

²²⁵ Hearing Tr. (HAbbott) 984-89.

²²⁶ Hearing Tr. (HAbbott) 988-89.

²²⁷ Hearing Tr. (HAbbott) 1019-20.

primary purpose of a meal when grandchildren were integral to the event. The Extended Hearing Panel also rejects the notion that a brief discussion of business at a meal in the context of a family celebration like the birthday cruise or the Mother's Day events makes it appropriate to allocate the expense of the meal to the Funds.

The nature of many of the expenses and the circumstances in which they occurred were evidence that they were improperly allocated to the Funds. For example, Springsteen-Abbott charged hundreds of dollars for merchandise from Bed Bath & Beyond during the relevant period. It is difficult to imagine how this related to the operation of the Funds' business, and there is no credible record evidence explaining any connection to the Funds' business. Similarly, she and her husband charged hundreds of dollars to the American Express card for dry cleaning, groceries, and unspecified pharmacy items. Again, it is difficult to imagine the connection to the Funds' business, and nothing in the record establishes such a connection.

The system by which Springsteen-Abbott, her husband, and Franceschina charged both personal and business expenses to the same American Express credit card was at the root of the problem. It permitted the improper allocations to be concealed, and Springsteen-Abbott gave no credible legitimate reason for operating in that fashion. In sum, the overall lack of transparency and accounting rigor undercut Springsteen-Abbott's claims regarding the business purposes for what appeared to be personal expenses.

H. Improperly Allocated Broker-Dealer Expenses

Springsteen-Abbott allocated to the Funds expenses associated with continuing education to maintain licenses relating to the Broker-Dealer. Many of these expenses were restaurant, fast food, and gas charges.²²⁸ The food charges were often associated with continuing education seminars or studying for examinations. Typically, continuing education might consist of a day of training and then culminate in an awards dinner.²²⁹ There also were charges for on-line course work and for study materials.²³⁰ Springsteen-Abbott incurred some of the on-line Broker-Dealer training expenses on her own American Express card.²³¹

Based on Springsteen-Abbott's own identification of expenses associated with continuing education to maintain the Broker-Dealer, Enforcement alleged a total amount of improper charges for Broker-Dealer expenses of \$24,478.97, plus an additional \$5,624.02 for an event at a restaurant called Alfano's for fifty-seven guests.²³² Respondent's counsel objected that not all of the items on Enforcement's list were proven to be improper. There is no need, however, to

²²⁸ Hearing Tr. (Edwards) 306-11; CX-6; CX-95.

²²⁹ Hearing Tr. (Edwards) 474-78.

²³⁰ Hearing Tr. (Edwards) 306-07; CX-95.

²³¹ See the Expense Schedule attached to this decision. Item 329 indicates a charge on Springsteen-Abbott's American Express card for "FINRA Education & Training." She allocated that expense to the Funds.

²³² Hearing Tr. (Edwards) 311, 315-17; CX-89; CX-95.

separately prove that every one of the fifty-seven items was improper. Broker-Dealer training is not the Funds' business, and under the Offering Documents the Funds agreed to pay only the expenses of conducting the Funds' business. Accordingly, the allocation of Broker-Dealer expenses to the Funds was inconsistent with the provisions of the Offering Documents relating to the allocation of expenses and was improper.

Moreover, as explained by a FINRA examiner, FINRA requires a written cost sharing agreement in order to shift Broker-Dealer expenses to a third party. FINRA Notice to Members 03-63 (issued in 2003) provides that if another entity is going to assume a broker-dealer expense there must be an expense sharing agreement between the entities and that agreement must be in writing. Here there was an expense sharing agreement between the Parent Company and the Broker-Dealer, but there was no expense sharing agreement between the Funds and the Broker-Dealer. Accordingly, the allocation of Broker-Dealer expenses to the Funds was inconsistent with long-standing FINRA guidance, and Springsteen-Abbott had reason to know that it was improper for her to allocate her Broker-Dealer expenses to the Funds.²³³

I. Improperly Allocated Expenses Of Control Persons

In the course of the investigation and proceeding, it became apparent that Springsteen-Abbott had improperly allocated to the Funds other expenses, that, even if related to the Funds' business, should never have been allocated to the Funds—the expenses of control persons. This similar misconduct—improperly allocating expenses to the Funds—is relevant for sanctions purposes. Accordingly, the Extended Hearing Panel's findings in this regard are discussed here.

Springsteen-Abbott was a control person throughout the entire three years at issue. Indeed, during much of that time, she considered herself the only control person. As she admitted, the Offering Documents for the Funds provided that no salary, benefits, or other expenses attributable to a control person were permitted to be charged to the Funds. For that reason, Springsteen-Abbott's salary and benefits were not allocated to the Funds.²³⁴ However, her portion of meals and other expenses were initially allocated to the Funds. After FINRA staff began the investigation and warned that it intended to commence a disciplinary proceeding, Springsteen-Abbott claimed to have reallocated the portion of such expenses attributable to her.²³⁵

The Extended Hearing Panel finds that Springsteen-Abbott's expenses were improperly allocated to the Funds. Any reallocation that may have occurred later does not alter the initial, improper nature of her conduct.

²³³ Hearing Tr. (Edwards) 306-13; CX-9; CX-95. FINRA Regulatory Notice 03-63 (Oct. 2003), <http://www.FINRA.org/industry/notices/03-63>.

²³⁴ Hearing Tr. (Franceschina) 1175-76; Hearing Tr. (Springsteen-Abbott) 1231.

²³⁵ Hearing Tr. (Springsteen-Abbott) 665-66, 779-81.

In her testimony, Franceschina volunteered that Hank Abbott became a control person sometime in 2010. According to her testimony, when that happened, they stopped allocating his salary and benefits to the Funds.²³⁶ However, Springsteen-Abbott continued to allocate to the Funds Hank Abbott's expenses for meals, gas, car rentals, and other purchases, just as she did before. There was no testimony suggesting that Springsteen-Abbott reversed or reallocated his portion of those expenses after he became a control person. The Schedule attached to the Amended Complaint alleges that in 2011 Springsteen-Abbott allocated several hundred charges by Hank Abbott to the Funds and that those charges were not related to the Funds' business. These charges include pharmacy and grocery charges, numerous fast food and restaurant charges, and gasoline charges. Because Hank Abbott was a control person in 2011, even if the charges had been legitimate expenses relating to the Funds' business (which is doubtful in many instances and clearly untrue in others), his charges should not have been allocated to the Funds.²³⁷

Certainly by the time that Springsteen-Abbott finally realized that, as a control person, her expenses were not allocable to the Funds, she should also have realized that her husband's expenses were not allocable to the Funds once he became a control person. But she did not. There is no indication in the record that she made any attempt to reallocate his expenses after he became a control person.

Springsteen-Abbott took the position that she did not have to reallocate her husband's expenses. She testified that, although they were moving him in that direction, Hank Abbott was not yet a full-fledged control person until 2012.²³⁸

The Extended Hearing Panel finds that Franceschina's unprompted description of Hank Abbott as becoming a control person in 2010 is more trustworthy than Springsteen-Abbott's calculated and self-interested characterization of his role. Furthermore, Franceschina testified that they stopped charging the Funds for Hank Abbott's salary and expenses at some point in 2010, which is indicative of when he became a control person

For purposes of sanctions generally, and for purposes of disgorgement in particular, the Extended Hearing Panel finds that all of Hank Abbott's expenses in 2011, as listed on the Schedule attached to the Complaint, were improperly allocated to the Funds. It further finds that Springsteen-Abbott allocated those expenses to the Funds with knowledge that it was improper to do so.

²³⁶ Hearing Tr. (Franceschina) 1175-76.

²³⁷ The attached Expense Schedule lists charges by Hank Abbott in 2011 for fast food, gas, home improvement purchases, groceries, pharmacy items, ice cream, and restaurants.

²³⁸ Hearing Tr. (Springsteen-Abbott) 1231-38.

J. Credibility Determinations

As is abundantly clear from the findings detailed above, the Extended Hearing Panel does not find either Springsteen-Abbott or her husband, Hank Abbott, credible. Their testimony was rife with inconsistencies and often defied commonsense. Furthermore, the Extended Hearing Panel found numerous instances in which Springsteen-Abbott provided false and misleading business explanations for expenses that she initially allocated to the Funds. Finally, the circumstances of the Borham attestation show that Springsteen-Abbott purposely arranged for the presentation of false and misleading evidence at the hearing.

Testimony Lacking Credibility. Some glaring examples of Springsteen-Abbott's and Hank Abbott's more incredible testimony include the following:

Springsteen-Abbott testified that the birthday celebration cruise to Alaska in 2009 was partially a business trip that justified allocating to the Funds expenses for food, an airline ticket, and a rental car. The circumstances, however, show that her best friend's husband organized the trip for his wife and invited Springsteen-Abbott and her husband to come along. It was a vacation, and there is no evidence of any business purpose or activity.

Springsteen-Abbott repeatedly testified about meals at Cody's Roadhouse, asserting that she had properly allocated those expenses to the Funds, when the evidence showed they were meals with her children and grandchildren or one of her best friends. Springsteen-Abbott denied that her grandchildren were at many of these meals, although the meals included items from the children's menu. She claimed, incredibly, that some of the children's meals, including "kid's mac & cheese," were part of her Jenny Craig diet.

Springsteen-Abbott testified that the 2010 Mother's Day meal at Longwood Gardens was appropriate to charge to the Funds, even though the evidence was that her husband had organized a family party for her with her adult children and grandchildren. The next year, in 2011, Springsteen-Abbott allocated to the Funds another Mother's Day meal. She provided a vague business justification—that they discussed the "FINRA situation and plan[ned] document project"—which had to be untrue because the meal was four months before the FINRA examination.

Springsteen-Abbott specifically denied that it was improper for her to allocate to the Funds a Home Depot charge for a grazing doe to decorate her lawn at holiday time. She offered a vague and unsubstantiated justification that she had entertained "management" at her home. Even if true, that business connection did not establish that the doe was purchased for the Funds' business.

Hank Abbott's testimony regarding several visits to New Jersey to obtain hair restoration services and visit family similarly lacked credibility. One trip in particular stands out. On that trip he flew from his home in Florida to Newark in the late afternoon, stayed overnight, went to the hair restoration company in Paramus, New Jersey, and was back at the Newark airport by 2

p.m. to fly back to Florida. Among other items, the cost of the New Jersey rental car was allocated to the Funds. Hank Abbott maintained that the New Jersey rental car was an appropriate business expense and denied that the trip was for his personal purpose of obtaining hair restoration services. However, he never identified any business purpose or activity on this trip.

Hank Abbott's testimony relating to the TGI Fridays expense the weekend he and Springsteen-Abbott flew to Texas for a child's baptism was not believable. The charge was incurred close to midnight after a 5 p.m. mass and family celebration. The Extended Hearing Panel does not believe that they conducted a business interview of a family member in a restaurant close to midnight after the family celebration.

Hank Abbott's testimony regarding the purchase of the political thriller, *Pursuit of Honor*, was transparently false. He modified his testimony after being shown the tick sheet explanation his wife created so as to be consistent with the tick sheet.

False and misleading business justifications. Springsteen-Abbott repeatedly provided FINRA staff with business justifications for her allocation of expenses that were contradicted by other evidence. Sometimes the circumstances compelled the conclusion that Springsteen-Abbott had purposely misrepresented the true nature of expenses.

As discussed above, Springsteen-Abbott provided false documentation for a fast food charge in connection with the birthday cruise trip. She also gave false business purposes for dinners at Cody's Roadhouse that were revealed at the hearing to be family dinners with grandchildren and others. She explained the Best Buy purchase of the Motorola Bluetooth speaker and in-vehicle satellite radio as a recruiting enticement for a person who had been unemployed for over four years. She attributed a December 27, 2009, dinner in New York City for over \$800 to a meeting with leasing vendors, when the dinner was for her family who were spending a holiday weekend at a hotel in Times Square. Her employee, Franceschina, contradicted her explanations with respect to a number of smaller charges by Franceschina that were allocated to the Funds. Finally, Springsteen-Abbott personally provided a totally unbelievable explanation for charging the political thriller, *Pursuit of Honor*, to the Funds—that her husband was looking for quotes for a speech.

Borham attestation. The circumstances of the Borham attestation also were troubling. The attestation was designed to show that a business justification for a meal in New Jersey on a trip to visit family and friends had been mistaken in a detail but was still a valid business justification. Springsteen-Abbott provided a business justification that the meal was a dinner for her husband and two other people after an Allied Health visit. When she learned that one of the three people had told FINRA staff that he was not at the meal, she called her son and provided him an attestation to sign saying he had been on the business trip and at the meal. There were reasons to doubt that he signed the attestation. Moreover, even if he did, the attestation sets forth details regarding the purported business trip and meal that are inconsistent with the proven facts.

These events show that Springsteen-Abbott would do or say anything to avoid admitting that she improperly allocated personal expenses to the Funds.

K. Respondent Agreed She Has Duties To The Funds

As discussed below, Springsteen-Abbott argues that Enforcement has shown, at most, a breach of contract and not an ethical violation. Relevant to that argument is that Springsteen-Abbott violated well-understood duties that she owed to the Funds. Even she agreed that in light of her position as the top executive of all the relevant entities, she owed investors in the Funds a duty to act honestly in allocating expenses, a duty to act ethically, and a duty to act in good faith.²³⁹ The Extended Hearing Panel finds that she breached all of these duties.

L. Findings Related To The Amount Of Improperly Allocated Expenses

As discussed below, the Extended Hearing Panel has determined that Springsteen-Abbott violated FINRA Rule 2010. As further discussed below, among other sanctions, the Extended Hearing Panel orders Springsteen-Abbott to pay disgorgement. The Extended Hearing Panel makes the following findings relating to the amount of disgorgement.

The Amended Complaint alleged that Springsteen-Abbott improperly charged 1840 expenses to the Funds. Although Enforcement did not individually prove at the hearing that every single one of those expenses was improperly allocated to the Funds, it did prove that Springsteen-Abbott engaged in a purposeful pattern and practice of improperly allocating expenses to the Funds. Enforcement also demonstrated that the nature and circumstances of many of the expenses compelled the conclusion that they were personal expenses, Broker-Dealer expenses, and control person expenses that should not have been allocated to the Funds. Assertions by Springsteen-Abbott and her husband regarding the purported business purposes for various charges were proven untrustworthy.

Respondent argues that no sanction should be imposed on the basis of any expense that was not individually addressed in testimony at the hearing. In post-hearing briefing she asserted that there was no evidence that any of more than 1700 items on Schedule 1 were improperly allocated.²⁴⁰

Given the proven pattern and practice and the surrounding circumstances, Springsteen-Abbott misstates the record. The Extended Hearing Panel also notes that Respondent herself is responsible for uncertainty about the validity of the individual charges not discussed at the hearing. Although Respondent admitted that some of the alleged improper charges were in fact erroneously charged to the Funds, Respondent refused to identify the particular expenses that were the subject of her admission.

²³⁹ Hearing Tr. (Springsteen-Abbott) 618-19.

²⁴⁰ Resp. PH Brief at 1.

The Extended Hearing Panel finds that it is fair and reasonable to view all of the alleged improper charges as unjust enrichment. The Extended Hearing Panel further finds that there is reason to distrust the explanations Springsteen-Abbott provided FINRA staff to justify dropping some 400 items from the original Complaint. The Extended Hearing Panel bases its findings on the improper expense allocations individually proven, the categories of improper charges that also were proven, the pattern of misuse, and other circumstances indicating Springsteen-Abbott's lack of candor and fundamental failure to comply with her ethical obligations.

The Expense Schedule attached to this decision contains Enforcement's itemization of the total amount of costs that Springsteen-Abbott initially shifted from herself to the Funds. After adjustments dropping the 400 additional items from the original Complaint, Enforcement calculated the total for the remaining 1840 items to be \$208,953.75. The Extended Hearing Panel finds that this is a fair and reasonable estimate of the amount by which Springsteen-Abbott was unjustly enriched.

IV. CONCLUSIONS OF LAW

A. Respondent Violated FINRA Rule 2010

(1) Rule 2010 Broadly Prohibits Unethical Conduct

FINRA Rule 2010 requires FINRA members and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.²⁴¹ This Rule requires members of the securities industry not merely to conform to legal and regulatory requirements but to conduct themselves with integrity, fairness, and honesty.²⁴²

FINRA Rule 2010 is a broad prohibition against unethical conduct. In *Heath v. SEC*,²⁴³ the Second Circuit Court of Appeals explained that FINRA Rule 2010 "is concerned with enforcing ethical standards of practice in the securities industry."²⁴⁴ The Court extensively discussed the purpose of the Rule and the role it plays in filling in potential gaps in the law and regulations that prohibit specific misconduct. The Court said that prohibitions against specific

²⁴¹ FINRA Rule 2010 is used here to refer not only to the current Rule regarding ethical conduct, but also to its predecessor rules at NASD and NYSE Regulation. The Securities and Exchange Commission ("SEC") applies the same analysis and precedents whichever particular rule is discussed. *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *20 n.13 (Jan. 9, 2015).

²⁴² *Robert Marcus Lane*, Exchange Act Release No. 74269, Slip Op. 10 n.20 (Feb. 13, 2015) ([T]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. [FINRA Rule 2010] protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. [FINRA Rule 2010] has proven effective through nearly 70 years of regulatory experience.").

²⁴³ *Heath*, 586 F.3d 122 (2d Cir. 2009), *aff'g*, *Thomas W. Heath, III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14 (Jan. 9, 2009).

²⁴⁴ *Id.* at 131.

kinds of fraudulent practices “must be supplemented by regulation on an ethical plane in order ‘to protect the investor and the honest dealer alike from dishonest and unfair practices by the submarginal element in the industry’ and ‘to cope with those methods of doing business which, while technically outside the area of definite illegality, are nevertheless unfair both to customer and to decent competitor, and are seriously damaging to the mechanism of the free and open market.’”²⁴⁵ In its 2009 decision in *Heath*, the Second Circuit quoted Judge Friendly in a 1966 Second Circuit decision, who described the predecessor of Rule 2010 as “something of a catch-all” that “preserves power to discipline members for a wide variety of misconduct, including merely unethical behavior.”²⁴⁶

Scienter is not required for a Rule 2010 violation. Rather, the SEC has established a disjunctive test for a Rule 2010 violation that applies *either* to intentional or conscious bad conduct *or* to a failure to meet ethical norms, regardless of intention. The SEC has held that Rule 2010 may be violated if the respondent has acted *either* in bad faith *or* unethically.²⁴⁷ The SEC recently confirmed that it has “long applied a disjunctive ‘bad faith or unethical conduct’ standard to disciplinary action under [Rule 2010].”²⁴⁸ In the context of a Rule 2010 violation, the SEC has defined bad faith as a dishonest belief or purpose, and unethical conduct as conduct inconsistent with the moral norms or standards of professional conduct.²⁴⁹

Misconduct does not have to involve a security to constitute a violation of Rule 2010. The Rule encompasses any unethical business-related misconduct.²⁵⁰ As the NAC recently noted, the argument that business activities are beyond the scope of FINRA’s disciplinary

²⁴⁵ *Id.* at 132.

²⁴⁶ *Id.* at 134 (quoting *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178, 182 (2d Cir.), *cert. denied*, 385 U.S. 817 (1966)).

²⁴⁷ *Id.* at 133.

²⁴⁸ *West*, 2015 SEC LEXIS 102, at *20.

²⁴⁹ *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013). *See also Simpson v. Bear, Stearns & Co.*, No. C07950030, 1997 NASD Discip. LEXIS 13, at *27 n.9 (NAC Jan. 29, 1997) (“Term ‘bad faith’ is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity....”).

²⁵⁰ *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2011 FINRA Discip. LEXIS 40, at *17-18 and n.46 (OHO June 13, 2011) (“Rule 2110 is an ethical rule ... FINRA’s authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.”), *aff’d*, 2012 FINRA Discip. LEXIS 61 (NAC Dec. 12, 2012) (respondent barred for acting as unregistered principal); *Dep’t of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *22 (NAC Feb. 24, 2011) (“FINRA’s disciplinary authority under NASD Rule 2110 is also broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.”) (internal citations and quotations omitted), *aff’d in part, John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012); *Dep’t of Enforcement v. DiFrancesco*, No. 2007009848801, 2010 FINRA Discip. LEXIS 37, at *16 n.11 (NAC Dec. 17, 2010) (citing cases) (“There is a long line of cases stating that a member can be disciplined for “business-related conduct” that violates NASD Rule 2110, even when the activity does not involve a security.”), *aff’d*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012); *Dep’t of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12 (NAC June 2, 2000) (citing *Daniel Joseph Alderman*, 52 S.E.C. 366, 369 (1995), *aff’d*, 104 F.3d 285 (9th Cir. 1997)).

authority if they are not directly related to the securities industry “has been repeatedly rejected in a long line of case decisions.”²⁵¹

Because the securities industry is built on trust, any ethical failure damages the industry generally by casting doubt on the integrity of its participants. An ethical failure also casts doubt on the ability of the particular miscreant to conform to ethical norms in the future. Enforcement of FINRA Rule 2010 is therefore fundamental to FINRA’s regulatory mission, which, as expressed in the Sanction Guidelines, “is the building of public confidence in the financial markets.”²⁵² The overall purposes of FINRA’s disciplinary process are “to remediate misconduct by preventing the recurrence of misconduct, improving overall standards in the industry, and protecting the investing public.”²⁵³ These purposes are served not just when discipline is imposed for conduct undertaken in bad faith, but also when it is imposed for conduct that is unethical.

(2) Respondent’s Assertion That Enforcement Must Prove Bad Faith Is Rejected

Springsteen-Abbott makes a legal argument that betrays a profound failure to understand the nature of her ethical responsibilities. She contends that Enforcement must prove that she allocated the expenses in bad faith—that she intentionally engaged in wrongdoing. The Extended Hearing Panel rejects the argument because it lacks support and is contrary to FINRA Rule 2010. The Rule is intended to encompass a broad range of unethical conduct, not merely intentional wrongdoing.²⁵⁴

Springsteen-Abbott argues that she was not acting on behalf of a regulated entity when she allocated expenses to the Funds (because she was acting on behalf of the General Partner of the Funds), and that the rights of the Funds and the General Partner are defined solely by contract, not FINRA Rules. She asserts, as a consequence, that she cannot be found to have violated any FINRA conduct rule, the alleged Rule 2010 violation involves activity not regulated by FINRA, and FINRA cannot assert a violation of a FINRA Rule as the underlying basis for a Rule 2010 violation. She further asserts that a mere breach of contract does not violate Rule 2010. She asserts that Enforcement must prove that she allocated the charges in bad faith,

²⁵¹ *Dep’t of Enforcement v. Wiley*, No. 2011028061001, Slip Op. at 8 (NAC Feb. 27, 2015) (collecting additional cases).

²⁵² FINRA Sanction Guidelines (Guidelines) at 1 (2013) (Overview), www.FINRA.org/Sanctionguidelines.

²⁵³ Guidelines at 2 (General Principles Applicable To All Sanction Determinations).

²⁵⁴ *West*, 2015 SEC LEXIS 102, at *20-21 (Jan. 9, 2015).

relying primarily on a 1977 Second Circuit decision, *Buchman v. SEC*, which contains language stating that a breach of contract is unethical only if it is in bad faith.²⁵⁵

Springsteen-Abbott's argument fails for three reasons.

First, the argument would write out of Rule 2010 the *ethical* prong of the disjunctive standard, and would make Rule 2010 apply only where there has been a violation of another FINRA Rule or conscious wrongdoing amounting to bad faith. That position is inconsistent with long-standing precedent, including the Second Circuit's decision in *Heath* discussed above, where the Court of Appeals described the Rule as a "broad ethical principle."²⁵⁶ The Court of Appeals discussed the precedents interpreting Rule 2010 at length, concluding that a violation of the Rule does not require bad faith or scienter. Rather, Rule 2010 concerns business ethics.²⁵⁷

Second, the argument rests on the wholly unsupported proposition that bad faith is required where no violation of another FINRA Rule is alleged. Springsteen-Abbott cites no authority for that proposition.

Third, the argument is based on language that Springsteen-Abbott extracted from two decisions (*Buchman* and the SEC decision in *Heath*) without regard for context or nuance. Springsteen-Abbott also ignores completely the Second Circuit's decision in *Heath* that reviewed the SEC decision in *Heath* that she relies upon.²⁵⁸ When the cases Respondent cites are read carefully, and when the Second Circuit's later extensive analysis of those cases and others is considered, it is apparent that Springsteen-Abbott's assertion that Enforcement must show bad faith is wrong.

Springsteen-Abbott quotes language from *Buchman* declaring that a breach of contract is unethical only if it is in bad faith, and comparing the bad faith requirement to scienter in a fraud case.²⁵⁹ She also quotes language from the SEC decision in *Heath* about *Buchman*. The SEC said in *Heath* that the *Buchman* decision "was consistent with long-standing Commission precedent holding that a breach of contract alone is not automatically unethical conduct in

²⁵⁵ *Buchman v. SEC*, 553 F.2d 816, 821 (2d Cir. 1977).

Springsteen-Abbott misstates Enforcement's argument when she asserts that Enforcement attacks any misallocation of expenses, even if it is accidental. Resp. PH Brief. at 8. Enforcement did not allege that Springsteen-Abbott accidentally or inadvertently misallocated some expenses; rather, it alleged and proved that she engaged in a pattern and practice of misallocating expenses to the Funds that was unethical.

²⁵⁶ *Heath*, 586 F.3d at 132.

²⁵⁷ *Id.* at 137.

²⁵⁸ *Id.* at 132-39.

²⁵⁹ Resp. PH Brief. at 9.

violation of the rule, but that such breach may constitute a violation if it was ‘unethical or dishonorable’ or ‘without equitable excuse or justification.’”²⁶⁰

It is apparent from these extracts that a breach of contract is not automatically unethical conduct and that other facts and circumstances must be examined to determine if the breach was unethical. However, even the quoted language fails to support the proposition that bad faith is required. The quoted language does not mention good faith, scienter, state of mind, or intention. Rather, the language indicates that a breach of contract may be a violation because it is unethical, dishonorable, or lacking an equitable excuse or justification. That language indicates a broader range of potentially violative conduct and indicates that such conduct may be judged objectively, regardless of a respondent’s intent.

In fact, as made plain in the Second Circuit’s analysis of *Buchman in Heath*, *Buchman* was a highly unusual case with no application here. *Buchman* was a broker-dealer that refused to honor a contractual duty to accept shares of a company from another broker. The SEC had suspended trading in that company’s stock because of suspicion of fraud and had warned brokers against accepting delivery unless they had no reason to believe that the counterparty was connected to the fraud. *Buchman* thus was subject to conflicting duties—on the one hand, to fulfill the contract, and, on the other hand, to comply with regulatory directives arising out of concern that a manipulative scheme was ongoing. Furthermore, as noted by the Second Circuit, the alleged misconduct involved a single transaction and did not even purport to show a course of unethical business practice.²⁶¹ Accordingly, the Second Circuit reversed the SEC’s determination that *Buchman* had violated Rule 2010 by failing to accept delivery of the shares, and concluded that *Buchman* had not behaved unethically.

In contrast here, *Springsteen-Abbott*’s misconduct did not arise because of conflicting duties and a desire not to facilitate a fraud. Rather, she freely chose to conduct her business affairs in the way she did. She had many other options. Nor are we concerned here with a single transaction. Rather, *Springsteen-Abbott* pursued a business practice that she repeated over and over, month after month, for a period of at least three years. That business practice was to her personal benefit and the Funds’ detriment, and it was concealed from the Funds.

Springsteen-Abbott cites language from another case, *Dep’t of Enforcement v. Shvartz*,²⁶² that is far more consistent with the broad-ranging inquiry appropriate to evaluating the ethical nature of conduct alleged to violate FINRA Rule 2010: “The analysis that is employed is a flexible evaluation of the surrounding facts with attention to the ethical nature of the conduct.”²⁶³

²⁶⁰ Resp. PH Brief at 10.

²⁶¹ *Heath*, 586 F.2d at 136-37.

²⁶² *Dep’t of Enforcement v. Shvartz*, 2000 NASD Discip. LEXIS 6, at *5 OHO June 2, 2000).

²⁶³ *Id.* (quoted in Resp. PH Brief. at 10).

It is the ethical nature of the conduct that must be evaluated, not simply the actor's state of mind. Such an evaluation will, of course, include consideration of the actor's state of mind, but it also will include all the facts and circumstances and whether the actor departed from the moral and professional norms expected in the securities industry. The *Shvartz* decision made that clear in language also quoted by Springsteen-Abbott:

Failure to honor obligations in private contracts are viewed as violations of [FINRA Rule 2010] only if the surrounding facts and circumstances indicate that the conduct was unethical. The concepts of excuse, justification, and 'bad faith' *may be employed* to determine whether conduct is unethical in these cases.²⁶⁴

Recently, the SEC reiterated that a violation of Rule 2010 (in its predecessor form as NASD Conduct Rule 2110) does not require a finding of bad faith. It said, Rule 2010 "focuses on the conduct itself instead of the securities professional's intent or state of mind."²⁶⁵

(3) Respondent's Conduct Violated FINRA Rule 2010 Under Either Prong Of The Test

In any event, Springsteen-Abbott's conduct violated FINRA Rule 2010 under either prong of the test. Her conduct was clearly unethical because it was inconsistent with the moral norms and standards of professional conduct. However, the evidence also supports the conclusion that she acted in bad faith.

a. Springsteen-Abbott's Conduct Was Unethical

Springsteen-Abbott regularly allocated personal expenses to the Funds over an extended period of time. She also allocated Broker-Dealer expenses to the Funds. The Offering Documents for the Funds, however, plainly stated the Funds would only pay the expenses of conducting and administering the Funds' business. Accordingly, Springsteen-Abbott used the Funds' monies in ways that were not authorized.

It is fundamental that the use of investor money for purposes different than the investor intended is unethical. The SEC recently reiterated that principle, saying, "[M]isuse of customer funds is 'patently antithetical to the high standards of commercial honor and just and equitable

²⁶⁴ *Id.* (emphasis supplied) (quoted in Resp. PH Brief at 10).

²⁶⁵ *Steven Robert Tomlinson*, Exchange Act Release No. 73825, 2014 SEC LEXIS 4908, at *17 (Dec. 11, 2014) (quotations and citations omitted). *See also Keith Springer*, Exchange Act Release No. 45439, 2002 SEC LEXIS 3417 (Feb. 13, 2002) (finding that improper post-execution allocation of trades violated Rule 2010 regardless of intent or motive).

principles of trade’ that [FINRA] seeks to promote.”²⁶⁶ No further inquiry into her state of mind is necessary.

b. Springsteen-Abbott Acted In Bad Faith

In any event, the facts and circumstances of this case well support the conclusion that Springsteen-Abbott acted in bad faith.²⁶⁷ She knowingly (or at least recklessly) engaged in improper conduct, allocating personal expenses and Broker-Dealer expenses to the Funds when the Funds had agreed only to pay expenses of the Funds’ business. She engaged in the improper allocations over a period of years, and on a regular basis, repeatedly every month. The conduct was to her personal benefit and to the detriment of the Funds. She was in a position of sole control as to the process for reviewing and allocating expenses, and she chose to mingle personal and business expenses in a manner that made mistakes likely and auditing difficult. When the FINRA investigation started and the initial Complaint was filed, she submitted to FINRA tick sheets with false business justifications to conceal the improper nature of many of the expense allocations.²⁶⁸ She violated duties that she acknowledged she owed the Funds—her duties to act honestly, ethically, and in good faith when allocating expenses to the Funds.²⁶⁹

(4) The Extended Hearing Panel Rejects Respondent’s Argument That No Harm Was Done

Springsteen-Abbott asserted at the hearing that investors in the Funds were not harmed by the allocation of expenses to them, because she voluntarily benefited them in other ways. In her post-hearing brief, she calculated that her voluntary contributions amounted to far more than the alleged improper expense allocations. According to her calculation she provided close to

²⁶⁶ *West*, 2015 SEC LEXIS 102, at *21 (quoting *Henry E. Vail*, Exchange Act Release. No. 35872, at *8 n.12 (June 20, 1995)).

²⁶⁷ It is well-established that “[i]ntent may be proved through circumstantial evidence and inferences drawn from surrounding circumstances.” *West*, 2015 SEC LEXIS 102, at *24 n.20 (quoting *Thomas C. Kocherhans*, Exchange Act Release No. 36556, 1995 SEC LEXIS 3308, at *7 (Dec. 6, 1995)).

²⁶⁸ Acts to conceal misconduct can demonstrate that a respondent knew his conduct was wrongful. *West*, 2015 SEC LEXIS 102, at *23 and n.21 (collecting cases).

²⁶⁹ *Tomlinson*, 2014 SEC LEXIS 4908, at *20 (“In determining whether a securities professional’s conduct is inconsistent with just and equitable principles of trade, we look to whether the conduct implicates a generally recognized duty owed to either customers or the firm.”).

\$2.4 million in voluntary financial support to the Funds.²⁷⁰ She calls herself a proactive general partner.²⁷¹

The so-called “off-set” is irrelevant. Even assuming, arguendo, that Springsteen-Abbott made such voluntary contributions to the Funds, it would not make her improper allocations of personal expenses to the Funds proper. The Funds were entitled not to be charged for personal expenses like her dinners with friends and family, regardless of whether she voluntarily provided the Funds with other monetary benefits. She was not free to ignore the agreements governing the allocation of expenses to the Funds if she compensated the Funds in some other way according to her own views and needs. A so-called “off-set” granted at her whim does not excuse her misuse of the Fund’s money for personal purposes.

V. SANCTIONS

A. Applicable Sanction Guidelines And Considerations

In considering the appropriate sanction for a violation, adjudicators in FINRA disciplinary proceedings look to FINRA’s Sanction Guidelines. The Sanction Guidelines contain recommendations for sanctions for many specific violations, depending on the circumstances. They also contain General Principles and overarching Principal Considerations, which are applicable in all cases. The Sanction Guidelines are intended to be applied with attention to the regulatory mission of FINRA—to protect investors and strengthen market integrity.²⁷²

Springsteen-Abbott is charged here with violating FINRA Rule 2010 by misusing customer funds. The Sanction Guidelines have specific recommendations for that type of violation. The Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and permit an adjudicator to consider a bar from the industry. Where the misuse results from a respondent’s misunderstanding, rather than intentional misuse, or where there is other mitigation, adjudicators may consider a suspension in any or all capacities for six months to two years—and that

²⁷⁰ Resp. PH Brief at 6-8. Springsteen-Abbott claimed three types of “off-set.” First, she claimed that there was a “built-in cushion,” asserting that the Parent Company voluntarily paid for 10% of all American Express charges and operating expenses as though it were another Fund. Second, she claimed that she had voluntarily made capital contributions to two of the Funds, and waived fees and expenses for five of the Funds. Third, she claimed that the Parent Company built its own tech center to support the leasing business but did not pass along certain of the expenses for it, to the benefit of eight of the Funds. *Id.*

The Extended Hearing Panel does not believe that Springsteen-Abbott gave the Funds \$2.4 million voluntarily and without any obligation or personal benefit to her. Given the Extended Hearing Panel’s view of the Respondent’s credibility, the Panel also would not accept such an assertion without considerable corroboration not found in the record here.

²⁷¹ Hearing Tr. (Springsteen-Abbott) 829-30, 842-43, 851-52, 854-59, 1183; Hearing Tr. (Franceschina) 1295-97; Resp. PH Brief at 7.

²⁷² *See* Guidelines at 1 (Overview).

suspension may continue thereafter until the respondent pays restitution.²⁷³ The Principal Considerations should be consulted as relevant.²⁷⁴

The Sanction Guidelines are just that, guidelines. They are not absolute. As set forth in the Overview of the Sanction Guidelines, adjudicators may impose sanctions that fall outside the recommended ranges based on the facts and circumstances of each case.²⁷⁵

The Extended Hearing Panel has consulted the applicable recommendations, relevant Principal Considerations, General Principles, and Overview. It also has closely considered the particulars of this case.

Although the sanctions imposed here vary in some respects from the recommendations, the Extended Hearing Panel believes that more stringent sanctions serve FINRA's regulatory mission and protect the investing public. The Sanction Guidelines caution that sanctions must be significant enough to prevent and discourage future misconduct by a respondent and to deter others from similar misconduct. Sanctions also should encourage improved business practices.²⁷⁶ The Sanction Guidelines expressly permit adjudicators to craft sanctions designed to prevent the recurrence of misconduct, even if those sanctions differ from the Sanction Guidelines.²⁷⁷

B. Aggravating Factors

The number and quality of aggravating factors contribute to the conclusion of the Extended Hearing Panel that Springsteen-Abbott's misconduct warrants stringent sanctions.

(1) Springsteen-Abbott Did Not Acknowledge Her Responsibility For The Misconduct Before Detection, Or, In Many Instances, Even After

Principal Consideration 2 recommends that adjudicators should consider whether a respondent acknowledges and accepts responsibility for misconduct before detection by a regulator.²⁷⁸

In this case, it was only after regulatory scrutiny was brought to bear on her allocation practices that Springsteen-Abbott conceded that she had improperly allocated some expenses to the Funds. As to the majority of the more than 1800 alleged improperly allocated expense items, she continued to maintain that she had properly allocated them to the Funds. Even when she reallocated some expenses, she denied that they had been improperly allocated in the first place.

²⁷³ Guidelines at 36.

²⁷⁴ *Id.* at 2.

²⁷⁵ Guidelines at 1 (Overview).

²⁷⁶ Guidelines at 2 (General Principle No.1).

²⁷⁷ Guidelines at 3 (General Principle No. 3).

²⁷⁸ Guidelines at 6 (Principal Consideration No. 2).

She made it clear that she viewed the reallocations as simply a tactic she hoped would diminish or end further regulatory interest. As to many of the specific expenses that were the subject of hearing testimony, she persisted in describing many charges as business expenses even where the circumstances strongly indicated otherwise. Even when she was forced to admit that a meal or other charge was actually a personal expense, she displayed no remorse for her prior improper allocation of the expense to the Funds.

Furthermore, Springsteen-Abbott argued that Enforcement had failed to prove that she specifically approved or instructed the allocation of any particular expense to the Funds. She noted that although she reviewed the monthly American Express statements, she only signed a voucher that aggregated the American Express charges by category. By this argument, Springsteen-Abbott attempts to shift responsibility elsewhere, which is an aggravating factor.

Springsteen-Abbott cannot deny that she, and only she, had authority to allocate expenses to the Funds. To the extent that her system of authorization did not provide her with specific information about the charges at the time that she signed her approval, she, and only she, was responsible for the system and for any defects in it.²⁷⁹

(2) Springsteen-Abbott Engaged In A Pattern Of Misconduct Over An Extended Period Of Time

Principal Consideration 8 suggests that adjudicators consider whether a respondent has engaged in numerous acts and/or a pattern of misconduct. Principal Consideration 9 focuses on whether a respondent has engaged in the misconduct over an extended period of time.²⁸⁰

It is an aggravating factor that Springsteen-Abbott engaged in a repeated pattern of allocating personal expenses to the Funds and that she did so throughout the three-year period under review, an extended period of time. Additionally, she improperly allocated Broker-Dealer expenses to the Funds, which clearly was not authorized by the Offering Documents for the Funds and which was inconsistent with FINRA guidance.

It is also aggravating that Springsteen-Abbott engaged in other similar misconduct throughout the three-year period, allocating to the Funds her own business and personal expenses when she was a control person whose expenses were never allocable to the Funds. Moreover, in the course of the proceeding, it became apparent that even after she realized that her expenses were improperly allocated to the Funds, she continued to allocate to the Funds her husband's expenses after he became a control person.

²⁷⁹ Consistent with her attempted evasion of responsibility for the improper allocations of expenses, Springsteen-Abbott's post-hearing brief speaks as though it is not clear who was responsible for the improper allocations of personal expenses. It says, "During the Relevant Period, there were some personal expenses charged on the AMEX cards that were allocated to the Funds in error." Resp. PH Brief at 5. To the contrary, it is clear who is responsible for the admitted errors: Springsteen-Abbott.

²⁸⁰ Guidelines at 6 (Principal Consideration Nos.8-9).

(3) Springsteen-Abbott Attempted To Conceal Her Misconduct With False And Misleading Explanations And Documentation

Principal Consideration 10 concerns whether a respondent has attempted to conceal his or her misconduct from regulators.²⁸¹ It is aggravating if so. Principal Consideration 12 also makes it an aggravating factor if a respondent impedes an investigation by attempting to conceal information from FINRA, or by providing inaccurate or misleading testimony or documentary information.²⁸²

In this case, Springsteen-Abbott sought to conceal from FINRA staff that she had allocated many personal expenses to the Funds. The Extended Hearing Panel found that she provided a number of false business justifications to FINRA staff and that the circumstances in some instances compel the conclusion that the business justifications were fabricated. The circumstances of the Borham attestation also create doubt as to Springsteen-Abbott's integrity. She continued throughout the investigation and the proceeding to attempt to conceal her misconduct.

(4) Springsteen-Abbott's Misconduct Injured Investors

Another factor adjudicators should consider is whether other parties, including particularly investors, have been injured by the misconduct. If so, Principal Consideration 11 suggests that the nature and extent of the injury should be considered.²⁸³

Springsteen-Abbott's misconduct injured the Fund's investors, as discussed above. Although, it is difficult to evaluate the nature and extent of the injury the Funds suffered, there is no question that the injury was ongoing throughout the three years at issue, and the improper allocations amounted, at a minimum, to more than a hundred thousand dollars.²⁸⁴

(5) Springsteen-Abbott's Misconduct Was Intentional

Principal Consideration 13 instructs adjudicators to consider whether the misconduct was the result of an intentional act, recklessness, or negligence.²⁸⁵ It is aggravating if the act was intentional or reckless. As discussed above, the Extended Hearing Panel finds that Springsteen-Abbott acted in bad faith. The record compels the conclusion that her misconduct was

²⁸¹ Guidelines at 6 (Principal Consideration No. 10).

²⁸² Guidelines at 6 (Principal Consideration No. 12).

²⁸³ Guidelines at 6 (Principal Consideration No. 11).

²⁸⁴ As discussed above, the Extended Hearing Panel rejects her argument that they were not injured because she claims that she offset the expenses by her voluntary contributions to the Funds. Even if she voluntarily provided the Funds some monetary benefits, she still misused the Funds' money—essentially shifting costs from herself and her companies to the Funds.

²⁸⁵ Guidelines at 7 (Principal Consideration No. 13).

intentional. Her attempts to conceal her misconduct with false and misleading business justifications support an inference of conscious wrongdoing.

(6) The Misconduct Resulted In Springsteen-Abbott's Monetary Gain

Principal Consideration 17 focuses on whether a respondent's misconduct held the potential for monetary gain to the respondent. In this case, there was a simple equation: anything allocated to the Funds was a pecuniary benefit to Springsteen-Abbott because she did not have to bear the expense, either personally or as the sole shareholder of the Parent Company. Her underlying motivation for the improper allocations was the potential for monetary gain, and that is an aggravating factor.

C. No Mitigating Factors

Principal Consideration 3 recommends that adjudicators should consider whether a respondent has voluntarily employed subsequent corrective measures, including revised procedures to prevent the recurrence of the misconduct, prior to detection or intervention by a regulator. Principal 4, similarly, focuses on whether a respondent has attempted to pay restitution prior to detection and intervention.²⁸⁶ Such actions by a respondent might be mitigating.

In this case, Springsteen-Abbott has represented to FINRA staff that she has modified the procedures for allocating expenses. She also has represented that she reallocated a number of the expenses alleged to have been improperly allocated to the Funds. However, Springsteen-Abbott undertook corrective action only after it became clear that the investigation was going to lead to further regulatory action, when FINRA staff notified her in August 2012 her that it intended to recommend the commencement of a disciplinary proceeding against her. Many of her correctives were implemented after the filing of the initial Complaint. Because Springsteen-Abbott changed her procedures and reallocated some expenses only in response to regulatory scrutiny, her actions are not mitigating.²⁸⁷

As noted above, Springsteen-Abbott attributed some of the false business justifications she provided to FINRA staff to the fact that she was busy at the time and caring for her ailing father. To the extent that she is arguing that she was under stress and this is mitigating, that does not relieve her of responsibility for the earlier improper allocation of expenses to the Funds.

Nor is that stress mitigating as to her false statements to FINRA staff and the Extended Hearing Panel regarding the business nature of many of the meals at issue. The NAC recently rejected the argument that stress mitigated a respondent's false statements to his firm and to regulators, saying: "[T]here is no evidence that [the respondent's] stress interfered with his

²⁸⁶ Guidelines at 6, Principal Considerations 3 and 4.

²⁸⁷ The Extended Hearing Panel makes no judgment regarding the efficacy of any changes in the procedures by which Springsteen-Abbott incurs and allocates expenses to the Funds.

ability to comply with FINRA rules or his understanding of what those rules required in terms of ethical conduct. [Respondent’s] conduct did not involve a momentary, stress-caused lapse in, or interference with, his judgment. Instead, it involved several separate decisions that were... ‘premeditated, intentional and ongoing.’”²⁸⁸

Both Springsteen-Abbott’s initial improper allocations of expenses and her false statements regarding the business purposes for those expenses were “premeditated, intentional and ongoing.” The NAC’s decision instructs that her misconduct is not mitigated by the kind of stress she referred to in her testimony.

D. Springsteen-Abbott Is Not Treated Here As A Recidivist

Enforcement argues that Springsteen-Abbott is a recidivist, which would justify increased sanctions.²⁸⁹ Enforcement’s argument is based on a September 27, 2013, SEC cease and desist order against Springsteen-Abbott among others. The SEC proceeding also dealt with the alleged improper allocation of expenses to the Funds, although it did not deal with personal expenses and Broker-Dealer expenses, as here. The theory of the SEC case was that Springsteen-Abbott had failed to disclose to the Funds that, under her interpretation, she was the only control person whose expenses were excluded from the expenses chargeable to the Funds. The Offering Documents had described ten to fifteen individuals and their functions in a way that made it appear that they would be included in the category of control persons. The Offering Documents thus made it appear that the Funds would not be charged for the expenses of those ten to fifteen individuals. The proceeding was settled with an order for Springsteen-Abbott and the Broker-Dealer, jointly and severally, to pay disgorgement of \$1,548,688 (less a credit of \$1,408,598 for reimbursements, contributions, and fee waivers already made to the Funds), prejudgment interest of \$77,566, and a civil monetary penalty of \$150,000.²⁹⁰

The Extended Hearing Panel here does not treat Springsteen-Abbott as a recidivist. The SEC proceeding involved an overlapping period of time and overlapping conduct. Although the proceeding was resolved before the resolution of this proceeding, it was not resolved before the commencement of this proceeding. This means that it cannot be said that she engaged in the misconduct alleged in this proceeding despite have already been subject to prior discipline for similar misconduct. She was not ignoring an SEC order when she engaged in the underlying misconduct in this case. Accordingly, the Extended Hearing Panel declines to impose increased sanctions merely on the basis of the existence of the settled SEC disciplinary proceeding.²⁹¹

²⁸⁸ *Dep’t of Enforcement v. Saad*, No. 2006006705601R (NAC Mar. 16, 2015) (emphasis in original).

²⁸⁹ Enf. PH Brief 24.

²⁹⁰ Pre-Hearing Brief Of Complainant Department Of Enforcement 17.

²⁹¹ See counsel for Respondent’s argument, Hearing Tr. 353.

E. Springsteen-Abbott Engaged In Other Misconduct Similar To That Alleged In The Complaint

It is well-established that evidence of misconduct that is not alleged in the complaint, but which is similar to the misconduct charged in the complaint, is admissible to determine sanctions.²⁹² The record contains evidence of other similar misconduct.

Springsteen-Abbott's allocation of her own expenses to the Funds, when she knew she was a control person whose expenses were never allocable to the Funds, was misconduct similar to that alleged in the Complaint. No subjective decision making was required in connection with the expenses of control persons. Even if Springsteen-Abbott was eating a meal and working on business, and even if she was working on the Funds' business, her expenses were not allocable to the Funds. And yet she did allocate her expenses to the Funds on a regular basis, month after month, for the entire three years under review. It was only after regulatory scrutiny that she recognized the issue and purported to take corrective action.

Springsteen-Abbott also improperly continued allocating her husband's expenses to the Funds even after she stopped allocating his salary and benefits to them. At the point he became a control person, his expenses were no longer allocable to the Funds.

This additional similar misconduct reflects on Springsteen-Abbott's integrity and ability to act ethically and honestly in the future.

F. Sanctions Imposed

Bar. The Extended Hearing Panel bars Springsteen-Abbott from associating with any FINRA member in any capacity because a bar is in the public interest. The Sanction Guidelines authorize a bar, citing the SEC's statement that a bar evidences a conclusion that the public interest is served by permanently excluding the barred person from the securities industry.²⁹³

²⁹² See *Dep't of Enforcement v. McCrudden*, No. 2007008358101, 2010 FINRA Discip. LEXIS 25, at *26, n.19 (NAC Oct. 15, 2010) (citing *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *22 n.33 (July 1, 2008) (finding, in an unauthorized trading case, that evidence of unauthorized trading, which was not alleged in the complaint, was admissible to gauge aggravating factors to assess sanctions); *Gateway Int'l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 SEC LEXIS 1288, at *24 n.30 (May 31, 2006) (stating that, "[a]lthough we are not finding violations based on [other] failures [to file timely reports], we may consider them, and other matters that fall outside the [Order Instituting Proceedings], in assessing appropriate sanctions").

²⁹³ Guidelines at 11 n.9.

The SEC's decision in *Steadman* sets out the factors that should be considered in determining whether to bar a person from the securities industry. In this case, all of the *Steadman* factors weigh in favor of a bar.²⁹⁴

As discussed above, numerous aggravating factors justify the most stringent sanctions here, and there are no mitigating factors. Springsteen-Abbott's misconduct was egregious. Her misconduct also was recurrent, month after month, when she improperly allocated expenses to the Funds. The Extended Hearing Panel has concluded that she knowingly engaged in the misconduct. She did so recklessly, if not knowingly, by using a system that combined personal expenses with business expenses on one American Express charge account. Springsteen-Abbott has made no assurances against future misconduct. To the contrary, she has insisted that her "judgments" regarding the allocation of expenses should not be second-guessed by regulators.²⁹⁵ Given her lack of recognition of the wrongful nature of her conduct, and the opportunities she would have for future violations if she were permitted to continue in the securities industry, the Extended Hearing Panel concludes it is in the public interest to bar Springsteen-Abbott from association with any FINRA member in any capacity.

This sanction is necessary to protect the investing public from an unrepentant wrongdoer. At no time in the course of the hearing did the Extended Hearing Panel see even a glimmer of remorse for the misconduct. The bar is appropriate because "the securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence, it is essential that the highest ethical standards prevail in every facet of the securities industry."²⁹⁶

²⁹⁴ *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). See also *J.S. Oliver Capital Management, L.P.*, Initial Decisions Release No. 649, 2014 SEC LEXIS 2812, at *141 (Aug. 5, 2014). The *Steadman* factors include the egregiousness of the misconduct, the isolated or recurrent nature of misconduct, the degree of scienter, the sincerity of respondent's assurances against future violations, the respondent's recognition of the wrongful nature of the conduct, and the likelihood that respondent's occupation will present opportunities for future violations.

²⁹⁵ Springsteen-Abbott asserted in her post-hearing brief, "[S]o long as [Springsteen-Abbott's] conduct was 'colorably justified' she cannot be found to have acted unethically." Resp. PH Brief 1. She also asserted that Enforcement's views regarding the validity of the expense allocations are entitled to no deference because Enforcement has no "expertise" in her business. She asserted that her "judgment" as to how her "unregulated business should be run [and] what expenses inure to the benefit of the Funds" is entitled to "substantial deference."

The Extended Hearing Panel has rejected the premise underlying these assertions. Springsteen-Abbott was not exercising judgment regarding a range of proper ways of allocating expenses. Rather, she was misusing investor monies when she charged expenses like her family's Thanksgiving dinner to the Funds.

²⁹⁶ *J.S. Oliver Capital*, 2014 SEC LEXIS 2812, at *146 (citing *Donald L. Koch*, 2014 SEC LEXIS 1684, at *86 (May 26, 2014)).

Disgorgement with prejudgment interest. The Extended Hearing Panel orders Springsteen-Abbott to disgorge \$208,953.75.²⁹⁷ The Sanction Guidelines authorize disgorgement as a sanction.²⁹⁸

The primary purpose of disgorgement is to deprive the wrongdoer of her ill-gotten gain.²⁹⁹ Disgorgement is not a punitive measure. It is intended to prevent unjust enrichment.³⁰⁰ It also serves to deter others from similar misconduct.³⁰¹ “Disgorgement need not be exact, instead, courts need only find that the amount sought is a reasonable approximation of gains that are causally connected to a violation.”³⁰²

Because disgorgement is intended to prevent a wrongdoer from profiting from the wrongdoing, it does not require precise exactitude. It is important to make sure that the wrongdoing is not profitable for the wrongdoer. “[T]he risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty.”³⁰³ In this case, the risk of uncertainty should fall on Springsteen-Abbott for an additional reason. She exacerbated the difficulty of calculating a precise amount by her refusal to disclose which particular expenses she has identified as having been erroneously charged to the Funds.

²⁹⁷ Enforcement sought restitution based on the amount of alleged improper allocations minus adjustments for expenses that Respondent claimed to have already reallocated or reimbursed to the Funds. Enforcement calculated the amount of restitution on this basis to be \$174,321.73. Enf. PH Brief at 25. Hearing Tr. (Edwards) 346-48; CX-128 (calculation for restitution).

Restitution focuses not on the amount of gain to the wrongdoer but, rather, on the amount of loss suffered by the victim. The Sanction Guidelines recommend that restitution be awarded where an identifiable person or entity suffers a quantifiable loss that was proximately caused by a respondent’s misconduct. Guidelines at 4 (Principal Consideration No. 5).

The Extended Hearing Panel declines to order restitution because it is impossible on this record to determine which Fund should receive how much of any restitution that could be ordered. The Funds bore different portions of the expenses, and the calculation for apportioning expenses changed, sometimes as frequently as each quarter. Although it is plain that the Funds as a group suffered a loss due to Springsteen-Abbott’s misconduct, the loss suffered by each identified Fund cannot be calculated and quantified.

The Extended Hearing Panel also declines to decrease the amount of disgorgement to the figure calculated by Enforcement for restitution. The Extended Hearing Panel believes that the full amount of improperly allocated expenses on the Expense Schedule should be disgorged. That figure is more appropriately remedial in the circumstances of this case.

²⁹⁸ Guidelines at 5 and nn. 4 and 5, and at 10.

²⁹⁹ *Zacharias v. SEC*, 569 F.3d 458, 471 (D.C. Cir. 2009); *SEC v. Bilzerian*, 29 F.3d 689, 696 (D.C. Cir. 1994).

³⁰⁰ *Zacharias*, 569 F.3d at 472 (collecting cases).

³⁰¹ *J.S. Oliver Capital*, 2014 SEC LEXIS 2812, at *151 (quoting *Montford & Co.*, 2014 SEC LEXIS 1529, at *94 (May 2, 2014)).

³⁰² *SEC v. Capital Solutions Monthly Income Fund, L.P.*, 28 F. Supp. 3d 887, 897 (D. Minn. June 27, 2014). *See also SEC v. Patel*, 61 F.3d 137, 139 (2d Cir. 1995).

³⁰³ *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989). *See also Capital Solutions*, 28 F. Supp. 3d at 898 (“Defendants bear the risk of any uncertainty in the disgorgement analysis, and have failed to overcome any uncertainty on this issue.”).

Once Enforcement presented evidence reasonably approximating the amount of a defendant's ill-gotten gains, the burden shifted to Respondent to prove that amount was not reasonable.³⁰⁴ Springsteen-Abbott failed to carry that burden.

The Extended Hearing Panel also orders that Springsteen-Abbott pay pre-judgment interest beginning on February 12, 2012, until disgorgement is paid.³⁰⁵ Prejudgment interest is a matter of discretion for an adjudicator.³⁰⁶ Where a violator has enjoyed access to funds over a period of time as a result of his wrongdoing, requiring the violator to pay prejudgment interest is consistent with the equitable purpose of disgorgement.³⁰⁷

Fine. The Extended Hearing Panel orders Springsteen-Abbott to pay a fine of \$100,000. It does so for the deterrent effect on her and others, and because the fine better ensures that Springsteen-Abbott does not retain the fruits of her wrongdoing.

The Sanction Guidelines provide that, in a sales practice case, adjudicators should impose a fine as well as disgorgement, even if a respondent is barred, in either of two circumstances: (i) where the case involves widespread, significant, and identifiable customer harm, or (ii) where the respondent has retained substantial ill-gotten gains.³⁰⁸ Although this is not a sales practice case, the Extended Hearing Panel views this commentary as instructive.

Both circumstances identified in the Sanction Guidelines exist here. First, Springsteen-Abbott's misconduct inflicted significant and identifiable harm on the Funds, and the Funds, indirectly (through the wholesaling process to other broker-dealers), were the only customers of her Broker-Dealer. Second, Springsteen-Abbott has obtained and retained substantial ill-gotten gains through her misconduct.

³⁰⁴ *SEC v. Utsick*, 2009 U.S. Dist. LEXIS 42061, at *41 (S.D. Fla. 2009) (citing *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004); *SEC v. First City Fin. Corp.*, 890 F.2d at 1232 *SEC v. Hughes Capital Corp.*, 917 F. Supp. 1080, 1085 (D.N.J. 1996), *aff'd*, 124 F.3d 449 (3rd Cir. 1997).

³⁰⁵ This date is the end of the three-year period defined by the Amended Complaint as the "relevant time period." Amended Complaint ¶ 13.

³⁰⁶ *Hughes Capital*, 917 F. Supp. at 1089.

³⁰⁷ *Id.* at 1090.

³⁰⁸ Guidelines at 10.

VI. CONCLUSION

Kimberly Springsteen-Abbott violated FINRA Rule 2010. Accordingly, she is barred from association with any FINRA member in any capacity, ordered to pay disgorgement in the amount of \$208,953.75 together with interest from February 12, 2012, until paid,³⁰⁹ fined \$100,000, and ordered to pay costs in the amount of \$11,037.14, which includes a \$750 administrative fee and the cost of the transcript.³¹⁰

If this decision becomes FINRA's final disciplinary action, the bar will take immediate effect, and the disgorgement, fine, and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

Lucinda O. McConathy
Hearing Officer
For the Extended Hearing Panel

³⁰⁹ The prejudgment interest rate shall be the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a), the same rate that is used for calculating interest on restitution awards. Guidelines at 11.

³¹⁰ The Hearing Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.