FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TITAN SECURITIES
(CRD No. 131392),

BRAD C. BROOKS
(CRD No. 1584633),

and

RICHARD WAYNE DEMETRIOU
(CRD No. 828433),

Respondents.

Disciplinary Proceeding
No. 2013035345701

Hearing Officer–RES

EXTENDED HEARING PANEL DECISION

March 5, 2019

Respondent Richard Wayne Demetriou, a registered representative employed by Respondent Titan Securities, is fined $40,000 and suspended from associating with any FINRA member in any capacity for one year and nine months; Respondent Brad C. Brooks, the sole owner, chief executive officer, and president of Titan, and Titan, are fined $50,000 jointly and severally, and Titan is fined an additional $15,000; and Brooks is suspended from associating with any FINRA member in any principal or supervisory capacity for two months.

With regard to the first cause of action in the Complaint, Demetriou made false or misleading misrepresentations of fact in three widely distributed emails to 36 current and former customers. Demetriou is liable on the first cause of action and ordered to pay restitution in the amount of $84,425, plus prejudgment interest. The Hearing Officer dissents as to the amount of restitution.

With regard to the second cause of action, a majority of the Hearing Panel finds that Enforcement failed to meet its burden of proof that Demetriou was

employed or compensated as a result of an outside business activity. The second cause of action is dismissed. The Hearing Officer dissents.

With regard to the third cause of action, a majority of the Hearing Panel finds that Enforcement failed to meet its burden of proof that Brooks and Titan had an obligation to supervise Demetriou's involvement in a securities offering as an outside business activity because Demetriou was neither employed nor compensated by any person in the offering. The third cause of action is dismissed. The Hearing Officer dissents.

With regard to the fourth cause of action, Demetriou sent investment summaries and three widely distributed emails to his customers and former customers that contained inaccurate information and failed to provide a sound basis for evaluating the facts. Demetriou sent the three emails without obtaining approval by an appropriately qualified registered principal of Titan. Demetriou is liable on the fourth cause of action.

With regard to the fifth cause of action, Brooks and Titan failed to establish, maintain, and enforce adequate supervisory systems for the capture, review, and retention of Titan's securities-related emails, and Titan failed to preserve such emails. Brooks and Titan are liable on the fifth cause of action. A majority of the Hearing Panel concludes that Enforcement did not meet its burden of proof that Titan committed a willful violation. The Hearing Officer dissents and would find that Titan's violation was willful.

With regard to the sixth cause of action, Demetriou used two unauthorized personal email accounts to conduct securities business with customers of Titan. Demetriou is liable on the sixth cause of action.

With regard to the seventh cause of action, a majority of the Hearing Panel finds that, in a "minimum-maximum" offering of limited partnership units, Titan unlawfully released investment funds from escrow before the minimum offering amount was raised from bona fide investors. One of the Hearing Panelists dissents and would find that Enforcement failed to meet its burden of proof in this regard. A majority finds that Enforcement failed to meet its burden of proof that Brooks and Titan made prohibited representations in connection with the minimum-maximum offering. Titan is liable, in part, on the seventh cause of action. The Hearing Officer dissents and would find that Enforcement proved all the violations alleged in the seventh cause of action, including that the violations were committed willfully.

Appearances

For the Complainant: Karen E. Whitaker, Esq., Brody W. Weichbrodt, Esq., Penelope Brobst Blackwell, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For Respondents Titan Securities and Brad C. Brooks: J. Randle Henderson, Esq.

For Respondent Richard Wayne Demetriou: Daniel Kirshbaum, Esq.

DECISION

I. Introduction

FINRA's Department of Enforcement filed a Complaint against member firm Titan Securities ("Titan"), its sole owner, Brad C. Brooks, and a registered representative employed by the firm, Richard Wayne Demetriou. The Complaint, consisting of seven causes of action, alleges a variety of misconduct.

The first three causes of action relate to Demetriou's involvement in RBCP Preferred, LLC ("RBCP"), a limited liability company affiliated with RBC Acquisitions, LLC ("RBC Acquisitions"). RBC Acquisitions sought a multi-million dollar bank loan to finance the construction of "Riverbend," a real estate development in Tunica, Mississippi. The first cause of action alleges that Demetriou sent three widely distributed emails ("Three Emails") to 36 of his current and former customers about an offering of securities by RBCP. Demetriou represented to the customers that an investment in RBCP would make up earlier losses the customers incurred in failed real estate limited partnerships. According to the Complaint, the Three Emails contained false and misleading misrepresentations of fact, and Demetriou had no reasonable basis to believe the misrepresentations were true.[1] By virtue of this conduct, the Complaint alleges that Demetriou violated FINRA Rule 2010.

The second cause of action alleges that Demetriou's participation in RBCP constituted an undisclosed outside business activity in violation of NASD Rule 3030 and FINRA Rule 2010.[2] The third cause of action alleges that, in violation of NASD Rule 3010 and FINRA Rules 3270 and 2010, Brooks and Titan failed to supervise Demetriou's participation in RBCP as an outside business activity.[3]

The fourth cause of action relates to Demetriou's communications with his current and former customers. Some of these communications concerned RBCP. The Complaint alleges that Demetriou drafted and disseminated to his customers consolidated financial statements and sales

[1] Complaint ¶¶ 13-22, 43-45. The Complaint is hereafter cited as "Compl." The Joint Stipulations are cited as "Stip." The hearing transcript is cited as "Tr." The joint exhibits are cited as "JX-__." Enforcement's exhibits are cited as "CX-__." Respondents' exhibits are cited as "RX-__."

[2] Compl. ¶¶ 23-32, 47-49.

[3] Compl. ¶¶ 28-32, 51-54.

literature containing inaccurate information, failed to provide a sound basis for evaluating the facts, and did not obtain a Titan principal's approval of these communications. According to the Complaint, the sales literature consisted of the Three Emails. The consolidated financial statements consisted of "investment summaries" reflecting Demetriou's estimates of the value of the customers' investments (including RBCP). Enforcement claims that the investment summaries were inaccurate because Demetriou represented that the investments were profitable and worth substantial amounts of money when, in fact, they were not generating a return, were highly illiquid, and were virtually worthless.[4] Enforcement alleges that Demetriou's communications violated NASD Rule 2210 and FINRA Rules 2210 and 2010.

The fifth and sixth causes of action relate to Titan's supervisory systems for firm emails and Demetriou's use of personal email accounts. The Complaint alleges in the fifth cause of action that Brooks and Titan failed to establish and maintain adequate supervisory systems with regard to the capture, review, and retention of Titan's securities-related emails, and failed to enforce Titan's written supervisory procedures ("WSPs") prohibiting employees from using personal email accounts to conduct securities business, in violation of NASD Rules 3010 and 3110, and FINRA Rules 4511 and 2010. In addition, the Complaint alleges that Titan willfully violated Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-4 thereunder, by failing to preserve emails relating to its securities business.[5] The sixth cause of action alleges that Demetriou used two personal email accounts, without Titan's knowledge or consent, to conduct securities business with Titan customers, in violation of FINRA Rule 2010.[6]

The seventh cause of action relates to another securities offering, Evolution Partners II, Ltd. ("Evolution II"), which is unrelated to RBCP. The Complaint alleges that Brooks and Titan made false and misleading statements of fact in the private placement memorandum for Evolution II to the effect that any limited partnership units purchased in the offering by the general partner or its affiliates would not be counted in determining whether the required minimum offering amount was raised. The seventh cause of action also alleges that Titan released funds from the offering's escrow account before the minimum offering amount was raised.[7] Accordingly, the Complaint alleges, Brooks and Titan willfully violated Section 10(b) of the Exchange Act, Rule 10b-9 thereunder, and FINRA Rule 2010, and Titan willfully violated Section 15(c) of the Exchange Act, Rule 15c2-4 thereunder, and FINRA Rule 2010.

The Respondents denied the charges, and a hearing was held before a FINRA Extended Hearing Panel. After careful consideration of the hearing testimony, the hearing exhibits, and the parties' briefs, we find, as more fully explained below, the following as to each cause of action:

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[4] Compl. ¶¶ 33-41, 56-59.

[5] Compl. ¶¶ 61-68.

[6] Compl. ¶¶ 70-74. In the hearing, Enforcement modified this cause of action to allege that Demetriou used two unapproved personal email accounts instead of three.

[7] Compl. ¶¶ 76-84.

- First Cause of Action: Enforcement established that Demetriou violated FINRA Rule 2010 by making false and misleading misrepresentations of fact in the Three Emails.

- Second Cause of Action: A majority of the Hearing Panel finds that Enforcement failed to meet its burden of proof that Demetriou violated NASD Rule 3030 and FINRA Rule 2010 because he was not employed or compensated from an outside business activity. The second cause of action is dismissed. The Hearing Officer dissents from this finding.

- Third Cause of Action: A majority of the Hearing Panel finds that Enforcement failed to meet its burden of proof that Brooks and Titan violated NASD Rule 3010 and FINRA Rules 3270 and 2010, by not supervising Demetriou's involvement in RBCP as an outside business activity. The third cause of action is dismissed. The Hearing Officer dissents from this finding.

- Fourth Cause of Action: Enforcement established that Demetriou violated NASD Rule 2210 and FINRA Rules 2210 and 2010, by sending the Three Emails and investment summaries to 34 of his current and former customers that contained inaccurate information and failed to provide a sound basis for evaluating the facts, and by sending the Three Emails without obtaining approval from an appropriately qualified registered principal of Titan. Demetriou is liable on the fourth cause of action.

- Fifth Cause of Action: Enforcement established that Brooks and Titan violated NASD Rules 3010 and 3110, and FINRA Rules 4511 and 2010, by failing to establish, maintain, and enforce adequate supervisory systems for the capture, review, and retention of Titan's securities-related emails. In addition, Titan failed to preserve firm emails in violation of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder. A majority of the Hearing Panel finds that Titan did not willfully violate Section 17(a) and Rule 17a-4. The Hearing Officer dissents from this finding.

- Sixth Cause of Action: Enforcement established that Demetriou violated FINRA Rule 2010 by using two unauthorized personal email accounts to conduct securities business with Titan customers.

- Seventh Cause of Action: A majority of the Hearing Panel finds that Titan violated Section 15(c) of the Exchange Act, Rule 15c2-4 thereunder, and FINRA Rule 2010, by releasing investment funds from escrow before the minimum offering amount was raised in the Evolution II offering. One of the Hearing Panelists dissents from this finding. In addition, a majority of the Hearing Panel finds that Enforcement failed to meet its burden of proof that Brooks and Titan violated Section 10(b) of the Exchange Act, Rule 10b-9 thereunder, and FINRA Rule 2010, because there was insufficient evidence that Brooks and Titan made prohibited representations about the Evolution II offering with scienter. The Hearing Officer dissents from this finding.

Based on these findings, the Hearing Panel (1) fines Demetriou $40,000, suspends him from associating with any FINRA member in any capacity for one year and nine months, and orders restitution of $84,425, plus prejudgment interest; (2) fines Brooks and Titan $50,000 jointly and severally; (3) fines Titan $15,000; and (4) suspends Brooks from associating with any FINRA member in any principal or supervisory capacity for two months.

II. Findings of Fact

A. Respondents

Titan is registered as a broker-dealer with FINRA and the Securities and Exchange Commission ("SEC").[8] Titan was formed in 2004, and the firm's headquarters are in Addison, Texas.[9] Private-placement securities offerings make up 80 percent of the gross revenue of Titan and its affiliates.[10] From 2009 through 2012, the firm grew from eight to 24 registered representatives.[11]

Brooks is Titan's sole owner, chief executive officer, and president. For most of the time covered by the Complaint, Brooks was Titan's chief compliance officer ("CCO"). In all of the time covered by the Complaint, he was Demetriou's direct supervisor.[12]

Demetriou entered the securities industry in 1976.[13] He became employed as a registered representative by Titan in April 2009.[14] He is currently associated with Titan and works for the firm out of his home.[15]

B. Demetriou Learns of the RBCP Offering

From 2001 to 2009, Demetriou was employed by Private Consulting Group, Inc. ("PCG"), a former FINRA member.[16] In the hearing, Demetriou testified that, while at PCG, he

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[8] Stip. ¶ 1. FINRA has jurisdiction over this proceeding against Titan, Demetriou, and Brooks. Titan is a member of FINRA. Demetriou and Brooks are currently registered with FINRA through their association with Titan. Under Article IV, Section 1(a)(1) of FINRA's By-Laws, every brokerage firm that applies for membership in FINRA must agree to comply with the federal securities laws and FINRA's By-Laws, rules, orders, directions, decisions, and sanctions. Article V, Section 2(a)(1) of FINRA's By-Laws imposes this obligation on every application by an individual for registration. Further, FINRA Rule 0140(a) specifies that FINRA Rules "shall apply to all members and persons associated with a member," and that associated persons "shall have the same duties and obligations as a member under the Rules."

[9] CX-1, at 1-2; Tr. 848.

[10] Stip. ¶ 2; Tr. 852.

[11] Tr. 851-52.

[12] Stip. ¶¶ 4-5; CX-113, at 10; Tr. 890.

[13] Stip. ¶ 6; Tr. 44-46.

[14] Tr. 53.

[15] Tr. 97.

[16] Tr. 47.

sold to his customers interests in limited partnerships that invested in real estate.[17] Following the crash of the real estate market in 2008, the PCG-sponsored real estate partnerships Demetriou had sold to his customers did not perform well, if at all.[18]

Demetriou testified that, without advance notice, PCG went out of business,[19] leaving Demetriou's customers without a brokerage firm and with most or all of their investment funds tied up in the illiquid real estate partnerships Demetriou had sold them.[20] Demetriou continued to act as the customers' financial advisor after he joined Titan, providing them with the (albeit limited) information he received about the partnerships.[21]

Demetriou testified that RBCP was a limited liability company that Robert Keys, the former Chief Executive Officer of PCG, organized.[22] Keys and his partner, "BP," formed RBCP to pay the start-up costs of RBC Acquisitions to build the Riverbend real estate development.[23] RBCP would provide short-term capital to pay attorneys' fees, property taxes, and upfront fees until RBC Acquisitions could obtain a multi-million dollar bank loan to pay the costs of constructing Riverbend.[24] After construction, RBC Acquisitions would sell Riverbend and generate a return on investment.[25] To raise the short-term capital RBC Acquisitions needed, Keys and BP proposed that RBCP make a private placement of preferred securities to the former customers of PCG.[26]

Demetriou testified that he learned about RBCP in June or July 2010.[27] Keys telephoned Demetriou and asked him to provide the contact information for Demetriou's former customers from PCG.[28] Keys told Demetriou that RBC Acquisitions needed a small amount of money to pay its upfront costs and fees until the company obtained the multi-million dollar bank loan.[29] Demetriou testified that Keys induced him to be the managing member of the RBCP limited

[17] Tr. 48.

[18] Tr. 49-50, 1467, 1511-12, 1547.

[19] Tr. 50.

[20] Tr. 51-52, 645-46.

[21] Tr. 52.

[22] Tr. 150.

[23] RX-3, at 4. The nature of the development was to be mixed commercial, entertainment, and residential use.

[24] Tr. 243. Keys and BP were the principal owners of RBC Acquisitions.

[25] Tr. 244.

[26] Tr. 243.

[27] Tr. 243.

[28] Tr. 267.

[29] Tr. 293.

liability company by saying, in that position, and on behalf of the customers who invested, Demetriou could monitor Keys' activities.[30]

Demetriou testified that, after Keys' telephone call, he did as much checking around as he could to determine whether Keys was telling the truth and if RBCP was legitimate.[31] According to Demetriou, he concluded that RBCP had a chance of working, whereas the failed PCG-sponsored real estate partnerships were almost certainly worthless.[32] He decided to bring RBCP to the attention of his current and former customers.[33]

C. Demetriou Sends His First Email about RBCP to 36 Current and Former Customers

On July 6, 2010, Demetriou sent an email about RBCP to 36 of his current and former customers, all of whom had invested in PCG-sponsored real estate partnerships.[34] Demetriou testified this email consisted of information Keys had given him.[35] Demetriou sent the email two days before a conference call in which Keys and BP discussed RBCP with the customers.[36] Demetriou testified he expected that Keys would present the same information directly to the customers in the conference call.[37]

Demetriou began the email by stating that Keys had been forced to declare Chapter 7 bankruptcy because of unpaid legal judgments.[38] The email stated that Keys would be judgment-proof in any civil actions Demetriou's customers might file against Keys over the PCG-sponsored real estate partnerships.[39] Yet Keys refused to abandon the customers and felt a personal obligation to them, according to the email.[40]

Demetriou described the Riverbend project and the structure and terms of the RBCP offering.[41] Riverbend had been the principal asset of an earlier PCG-sponsored limited

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[30] Tr. 254.

[31] Tr. 271.

[32] Tr. 733.

[33] Tr. 733.

[34] Stip. ¶ 8; CX-33, at 3. Of these 36 customers, four had opened accounts at Titan. The other 32 consisted of former PCG customers with whom Demetriou kept in contact, principally to inform them of the status of their investments in PCG-sponsored real estate partnerships.

[35] Tr. 283-84, 286-87, 301.

[36] CX-9, at 1; Tr. 282-83.

[37] Tr. 289.

[38] CX-9, at 1.

[39] CX-9, at 1.

[40] CX-9, at 1.

[41] RBC Acquisitions held the ownership interest in Riverbend.

partnership but, Demetriou informed the customers, "the original Riverbend investment could never acquire financing."[42] He stated that Keys had set aside $25 million in the RBC Acquisitions investment to go to the customers.[43] In exchange for a $1,500 minimum investment, a customer would receive preferred stock in RBC Acquisitions with a face amount of $100,000, which would entitle the customer to an annual cumulative preferred dividend of 4 percent.[44] The email stated that the $100,000 face amount of the preferred stock would be paid over a five-year period.[45] Under the same numerical formula, an investment of $4,500 would entitle the customer to preferred stock with a face amount of $300,000 and a payment of $60,000 the first year RBC Acquisitions generated a return.[46]

Demetriou stated in the email that the required minimum investment was 1.5 to 4.5 percent of the amount the customers had lost in the PCG-sponsored real estate partnerships.[47] The funds raised in the RBCP offering would pay RBC Acquisitions' operating expenses until the first construction draw for Riverbend, expected to occur in 90 days.[48] According to the email, funds from the first construction draw would be used to repay the customers their minimum investment.[49] Demetriou stated that making a $1,500 investment in exchange for preferred stock with a face amount of $100,000 was a great return, especially if the $1,500 were repaid in 90 days.[50] To minimize the risk of loss, RBC Acquisitions had arranged for numismatic coins worth $2 million to be posted as collateral.[51] The email also stated there would have to be convincing confirmation of the coins' existence.[52]

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[42] CX-9, at 1.

[43] CX-9, at 1.

[44] CX-9, at 1. Although Demetriou referred to the RBCP securities as "preferred stock," in fact the customers would be offered preferred membership units in a limited liability company. RX-4, at 23. This Decision will use "preferred stock," "preferred interest," and "preferred securities" interchangeably to describe the preferred securities the customers would be offered in RBCP and/or RBC Acquisitions.

[45] CX-9, at 1.

[46] CX-9, at 1.

[47] CX-9, at 1; Tr. 294-95.

[48] CX-9, at 1; Tr. 516.

[49] CX-9, at 1.

[50] CX-9, at 1.

[51] A numismatic coin is a type of coin that, because of historical information about the coin, typically has a higher monetary value than the face value of the coin. Coins that are considered rare or ancient will often have a significantly higher monetary value than the suggested value. http://www.investorwords.com/8131/numismatic_coin.html.

[52] CX-9, at 1. Demetriou testified he probably saw an appraisal of the coins after his July 6, 2010 email to his customers. Tr. 336. He spoke with the family that owned the coins and with registered representatives whom he knew and trusted and had seen the coins at a show in Las Vegas. Tr. 271, 336. He received and read a Safekeeping Receipt showing the coins appraised at $3,076,351. JX-2. He testified that he got a sense the coins were real and were on deposit in the vaults of a corporate custodian in San Diego. Tr. 336; JX-2.

Demetriou's email said that several other items also needed to be confirmed but, in Demetriou's view, RBCP seemed the best route to return the investment funds his customers had lost in the PCG-sponsored real estate partnerships.[53] Demetriou ended the email by stating he would be on the upcoming conference call with Keys and BP and would follow up personally with the customers after that.[54]

Demetriou attached to the email a Riverbend investment summary written by BP, which described the project as a mixed-use development including residential, commercial, entertainment, and recreational elements, all surrounding a project-wide man-made lake system.[55] Upon full buildout, Riverbend would be a planned community with more than 20,000 residents and a variety of business activities.[56]

D. Demetriou Participates in a Conference Call about RBCP

On July 8, 2010, Demetriou participated in a conference call in which Keys and BP solicited Demetriou's customers to invest in RBCP.[57] Demetriou organized the conference call, and Keys and BP made the presentation.[58] There is no audio recording or transcript of the conference call.

Afterward, Demetriou sent emails to some of his customers summarizing what Keys and BP had said in the conference call.[59] Demetriou emailed to some of the customers individualized written illustrations of how the terms of the offering would work for them.[60] He testified that in preparing these illustrations, he discovered Keys' proposal had some mathematical errors.[61] As a result, it was necessary to increase the amount of the minimum investment in RBCP.[62] This increase, in turn, necessitated another email about RBCP to Demetriou's 36 customers.[63]

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[53] CX-9, at 2.

[54] CX-9, at 2; Tr. 309.

[55] RX-3, at 4.

[56] RX-3, at 7.

[57] Stip. ¶ 7.

[58] Tr. 240-41.

[59] CX-122; Tr. 320, 322-23.

[60] CX-122, at 11.

[61] Tr. 310-11.

[62] Tr. 298-99, 310-11.

[63] Stip. ¶ 8; CX-33, at 3.

E. Demetriou Sends His Second Email about RBCP to 36 Current and Former Customers

Demetriou's second email, sent on July 21, 2010, stated the minimum investment amount had increased from 1.5 percent of the customers' loss in PCG-sponsored real estate partnerships to 5 percent.[64] This increase was necessary to return all the customers' investments at the first construction draw.[65] Demetriou stated that, as managing member of RBCP, he would be able to call for the sale of the coins on behalf of the customers if it appeared construction of Riverbend would not go forward.[66]

Demetriou stated the ultimate return on investment would be 20 times the amount of the investment.[67] RBCP, he went on to say, would redeem the customers' preferred stock at 20 percent each year for a period of five years, and the customers would receive a 4 percent cumulative dividend on the unpaid balance.[68] Also, according to the email, the owners of RBC Acquisitions continued to agree to repay the amount of the investment at the first construction draw, but the deadline for that repayment was now 120 days, not 90 days.[69] The email represented that RBC Acquisitions would not make any distribution to the owners of the company until it had redeemed all of the RBCP customers' preferred stock at the aggregate face amount of $25 million.[70]

Demetriou attached to the email a Safekeeping Receipt showing that the coins were appraised at $3,076,351.[71] The Safekeeping Receipt stated the bearer had 100 percent control over the coins "subject to the restrictions set forth below."[72] The restrictions stated the Safekeeping Receipt had been "prepared for the purpose of the agreement between RBC Acquisitions, LLC and RBC Preferred, LLC for monetization and investment purposes and the coins are subject to various restrictions of transfer pursuant to that agreement."[73] Demetriou testified that he did not read the agreement between RBC Acquisitions and RBCP setting forth

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[64] CX-10, at 1.

[65] CX-10, at 1. RBCP later increased the amount of the minimum investment to 10 percent of the customers' loss in PCG-sponsored real estate partnerships, but gave customers the option to make half of this 10 percent investment in the form of a promissory note in favor of RBCP. CX-122, at 17; CX-128, at 5-6; Tr. 523-24. One customer was allowed to tender a promissory note for the entire amount of his 10 percent investment. Tr. 676, 834-35, 1377; JX-1.

[66] CX-10, at 1; Tr. 574.

[67] CX-10, at 1. The preferred stock would have a face amount equal to 20 times the amount of the customer's investment in RBCP.

[68] CX-10, at 1.

[69] CX-10, at 1.

[70] CX-10, at 1.

[71] CX-10, at 2. Although the copy of the Safekeeping Receipt attached to Demetriou's email was not signed, in the hearing the parties entered a signed copy into evidence. JX-2.

[72] CX-10, at 2.

[73] CX-10, at 2; JX-2.

the restrictions of transfer.[74] In the email, he did not describe the restrictions, and he did not recall ever seeing the agreement.[75]

F. Demetriou Resigns as Managing Member of RBCP

Demetriou testified that in August 2010, he read a draft of the PPM for RBCP and saw "my name all over it."[76] Demetriou concluded that Keys had tricked him into becoming managing member.[77] Demetriou testified he was concerned Keys had written the PPM in a way that was not right, and he told Keys to get him out of it.[78] As Demetriou read the PPM, he wrote notes to himself about its contents. Referring to "EL," the person who had posted the coins, Demetriou wrote, "When would [EL] ever give me permission to remove the coins? This does not seem like collateral of any kind."[79] Demetriou also wrote that "[he was] listed as managing member in the Mississippi filing to open RBC Preferred LLC but [he] never signed anything."[80]

Based on the concerns he had after reading the draft PPM, Demetriou resigned as managing member of RBCP.[81] Demetriou had been managing member for four weeks.[82] He testified that, after his resignation, he sought to distance himself from RBCP.[83]

G. RBCP Issues the PPM

RBCP issued the PPM in its final form on August 24, 2010, with Demetriou removed as managing member.[84] According to the PPM, RBC Acquisitions would have the right, but not the obligation, to redeem the customers' preferred interests at an aggregate redemption price of $25 million.[85] RBC Acquisitions would be prohibited from making distributions to its other members until the preferred interests were redeemed in full.[86] An exhibit to the PPM titled "Anticipated Use of Funds" stated that RBCP expected to make a $500,000 payment to a limited liability

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[74] Tr. 338, 355, 838.

[75] Tr. 337-38, 355-56. When asked what the restrictions were, Demetroiu's answer was unresponsive. Tr. 338.

[76] RX-2, at 2; Tr. 255. The parties did not submit the draft PPM into evidence, and Demetriou testified he did not remember what he did with it. Tr. 270.

[77] Tr. 426.

[78] Tr. 265.

[79] RX-2, at 2.

[80] RX-2, at 2.

[81] Tr. 254-55.

[82] Tr. 751-52.

[83] Tr. 267, 330, 365-66.

[84] RX-4, at 23. The parties did not offer into evidence a complete copy of the PPM which, they represented, is not available. The copy the parties offered consists of 19 pages total, with 25 pages missing (pages 6 through 31). RX-4, at 32-33; Tr. 405.

[85] RX-4, at 24.

[86] RX-4, at 24.

company, "ICF," for amounts covering—or advances against—funding commitments to finance Riverbend.[87] ICF's principal was EL, the person who had posted the coins.[88] Demetriou testified he never saw the PPM in its final form.[89]

H. Demetriou Sends His Third Email about RBCP to 36 Current and Former Customers

Despite resigning as managing member of RBCP, Demetriou continued to communicate with his current and former customers about the offering. Demetriou continued emailing his customers individualized written illustrations of how an investment in RBCP would work for them.[90] On September 9, 2010, he sent a third email about RBCP to his 36 customers.[91] He sent this email one day before a conference call he had organized so that Keys and BP could discuss RBCP with the customers.[92]

Demetriou began the email by noting most of the customers had already received the PPM.[93] He reiterated that the first $25 million of profit in RBC Acquisitions, plus a 4 percent preferred and cumulative dividend, would be paid to the customers before the owners of RBC Acquisitions received any proceeds.[94] He stated that, from what he had seen in the securities business, this was "unprecedented in a good way."[95]

Demetriou stated in the email that RBCP had until February 1, 2011, to return the customers' investment.[96] If the investment was not returned by that date, the customers' recourse was to the coins, purportedly valued at $5 million.[97] Demetriou stated that "[m]y efforts over the last two months have been to understand the collateral offered for this relative small upfront cost and the probability of getting the upfront cost returned by February 1, 2011 as described by the documents."[98] He said he had spoken with the appraiser of the coins, and the valuations seemed

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[87] RX-4, at 35.

[88] Tr. 374.

[89] Tr. 259, 261-62, 375, 397-98, 419.

[90] CX-22, at 9-12; Tr. 439-40.

[91] Stip. ¶ 8; CX-12; CX-32, at 7-8; CX-33, at 3.

[92] CX-12, at 1.

[93] CX-12, at 1.

[94] CX-12, at 1.

[95] CX-12, at 1.

[96] CX-12, at 1.

[97] CX-12, at 1. No evidence in the record explains how the value of the coins purportedly appreciated from $3,076,351 to $5 million. Both Demetriou and Keys passed along this increased value to the customers without any explanation.

[98] CX-12, at 1. One of Demetriou's customers testified it was important to her investment decision that the coins could be sold and the investment funds returned to the customers, and that Demetriou had performed a sufficient investigation to have a basis for recommending RBCP. Tr. 519, 521, 523, 529, 556, 583.

to be solid.[99] He stated that all the offering documents were online and gave the internet link for the customers to access them.[100] He never tried to access the link himself.[101]

Demetriou ended the email by stating that, while he could not present RBCP as an investment, he could search, dig, and scratch to find out if RBCP was a good offer for his customers, and that he saw RBCP as the best chance of returning the customers' money plus a profit.[102]

I. Demetriou Participates in a Second Conference Call about RBCP

Demetriou participated in a second conference call, on September 10, 2010, in which Keys and BP solicited Demetriou's customers.[103] Demetriou facilitated the conference call to enable Keys and BP to make their presentation.[104] The parties introduced into evidence a transcript of the call.[105]

BP began by addressing Demetriou and stating, "I think you did a pretty good job of outlining [the offering] in your letter, and the project itself is a pretty exciting piece of property."[106] BP stated that the Riverbend site was located about 20 minutes south of Memphis, Tennessee, and was completely zoned and approved by De Soto County, Mississippi, for 9,500 residential units, mixed use community, commercial, retail, golf courses, hotels, a high-tech park, and medical facilities.[107] BP said he expected to sign a letter of intent for Riverbend to become the licensed entity for an MGM entertainment center, which would be an anchor for the project.[108]

As to the terms of the offering, Keys stated the aggregate face amount of the RBCP preferred stock was $25 million.[109] RBCP was offering this preferred stock first to former customers of PCG who had entrusted their investment funds to several PCG-sponsored real estate partnerships.[110] Keys stated that a person who submitted a $5,000 check and a $5,000

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[99] CX-12, at 1.

[100] CX-12, at 1.

[101] Tr. 375.

[102] CX-12, at 1.

[103] Stip. ¶ 7.

[104] CX-128, at 2.

[105] CX-128.

[106] CX-128, at 2.

[107] CX-128, at 3.

[108] CX-128, at 3.

[109] CX-128, at 5.

[110] CX-128, at 5.

promissory note would receive a "pro rata share of 100 thousand over 25 million," a 4 percent dividend, and a redemption of the preferred stock at the rate of 20 percent per year.[111]

Keys stated that an individual (whom Keys did not name) had put up a collection of coins that had been independently appraised at more than $5 million.[112] "Two people" had said they wanted to lend RBC Acquisitions $70 million, and they were conducting due diligence "right now."[113] In response to a customer's question of what would happen in the worst-case scenario, Keys stated that if RBC Acquisitions did not obtain the $70 million loan by February 1, 2011, RBCP would liquidate the coins and return the investment funds to the customers.[114]

J. Brooks Determines That Demetriou's Involvement in RBCP Is Not an Outside Business Activity

Demetriou testified that RBCP was not on the list of Titan's current securities offerings.[115] In a supervisory review of Demetriou's emails in October 2010, Brooks identified red flags indicating that Demetriou might be engaged in an undisclosed outside business activity in connection with RBCP.[116] Brooks directed Demetriou to submit a written explanation of his involvement.[117] Demetriou emailed an explanation in which he stated the purpose of RBCP was two-fold. First, the offering would raise a relatively small amount of cash to pay attorneys' fees and land option fees to complete the Riverbend project.[118] Second, RBCP would provide a very high return to former PCG customers who had lost investment funds in troubled investments sponsored by PCG.[119]

In the explanation, Demetriou informed Brooks that principals in the RBCP offering were promising the customers a $25 million return on their investment.[120] This translated into a 1,000 percent return: for each $5,000 invested, $50,000 in profit would be returned to the customers.[121] Demetriou stated that each $5,000 investment would be returned by February 1, 2011, or RBC Acquisitions would be in default.[122]

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[111] CX-128, at 6.

[112] CX-128, at 6.

[113] CX-128, at 6.

[114] CX-128, at 10.

[115] Tr. 68-69.

[116] Stip. ¶ 9; Tr. 975-76, 978.

[117] Tr. 415, 976.

[118] CX-6.

[119] CX-6; Tr. 418-19.

[120] CX-6; Tr. 418.

[121] CX-6; Tr. 420.

[122] CX-6.

Demetriou informed Brooks that he was not presenting RBCP as an offering and was not getting paid for it.[123] Instead, according to Demetriou, he was trying to understand RBCP to be able to discuss it with his customers.[124] Separately, he told Brooks he did not have enough information to determine whether RBCP was a good or bad investment.[125] Brooks asked Demetriou to provide a copy of the PPM, but Demetriou said he did not have one.[126]

Demetriou's explanation to Brooks was incomplete. Demetriou did not disclose that he had been the managing member of RBCP.[127] He did not disclose that he had arranged conference calls to enable Keys and BP to discuss RBCP with Demetriou's customers;[128] that he had sent the Three Emails;[129] or that he had communicated to the customers his view that RBCP seemed like the best route to recover the investment funds the customers had lost in the PCG-sponsored real estate partnerships.[130]

Demetriou informed Brooks that Keys was involved in RBCP.[131] Brooks testified that he knew Keys had been in prior bad deals and did not want to have anything to do with Keys.[132] Still, Brooks thought it was okay for Demetriou to facilitate contact between Demetriou's customers and Keys.[133]

Brooks testified that he did not ask how many of Demetriou's customers were involved in the RBCP offering.[134] A year and a half later, Brooks did not know which customers had invested and, when the SEC wanted this information, Brooks had to ask Demetriou.[135] That was

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[123] CX-6; Tr. 981.

[124] CX-6; Tr. 994-95, 999.

[125] Tr. 273.

[126] Tr. 992, 1122.

[127] CX-6; Tr. 425, 1019.

[128] CX-6; Tr. 426.

[129] CX-6.

[130] CX-6; Tr. 428.

[131] CX-6.

[132] Tr. 1011, 1016. In a Decision and Order and Offer of Settlement dated August 31, 2010, FINRA permanently barred Keys from the securities industry for recommending in another securities transaction that a customer invest in a promissory note and for making the false misrepresentation that the note was backed by treasury bonds. CX-4, at 3; CX-114, at 26; Tr. 1306-07. Brooks and Demetriou learned of this bar in February 2012. CX-4, at 1, 3. Demetriou also learned that Keys had been arrested for alleged misappropriation of customer funds. CX-37, at 3. After having his recollection refreshed during a break in the hearing, Demetriou testified he learned of this arrest in January 2013. Tr. 828-29.

[133] Tr. 1018.

[134] Tr. 1002-03.

[135] Tr. 1004-05; CX-31.

when Brooks learned that four of the persons solicited to invest in RBCP were Titan customers.[136]

Brooks testified that after reading the explanation, he determined Demetriou's involvement in RBCP was not an outside business activity.[137] Brooks understood Demetriou was facilitating contact between Demetriou's customers and Keys in an effort to recover the customers' lost investment funds.[138] Brooks testified he thought Demetriou was doing this without being employed, without being compensated, and without holding a position.[139] Brooks replied to Demetriou's explanation by sending a reply email stating, "Thanks, just be sure to let them know that Titan is not involved."[140] Demetriou's explanation and Brooks' reply were both emailed the same day.[141] Brooks did not require Demetriou to submit an outside business activity disclosure form,[142] and he did not supervise Demetriou's RBCP activities.[143]

K. The RBCP Offering Closes

The RBCP offering closed on October 28, 2010.[144] RBCP sold 500 membership units at a price of $5,000 per unit.[145] Twenty-eight of Demetriou's customers bought units.[146] An administrative assistant working for Keys emailed Demetriou notifications of completed investments in RBCP by Demetriou's customers.[147]

Two days before the RBCP offering closed, Demetriou entered into a consulting agreement with ICF in which Demetriou agreed to attempt to broker a loan ICF would make for business or real estate purposes.[148] In consideration for these services, ICF agreed to pay Demetriou $10,000 per month in November and December 2010.[149]

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[136] Tr. 1008-10; CX-33, at 3.

[137] Tr. 976, 1030, 1179.

[138] Tr. 1016.

[139] Tr. 1016.

[140] CX-7, at 1; Tr. 979.

[141] CX-6; CX-7, at 1.

[142] Stip. ¶ 12; Tr. 432-33, 1030.

[143] Tr. 917.

[144] JX-1; Tr. 481, 761-62.

[145] RX-4, at 1.

[146] CX-126A.

[147] CX-7, at 21, 23; Tr. 433-34.

[148] CX-124, at 5.

[149] CX-124, at 5; Tr. 784.

The next day, Demetriou entered into a loan fee agreement with a limited partnership, "MRA."[150] Demetriou testified that he had a 15-year relationship with MRA and knew the firm was seeking loans to refinance some of its buildings.[151] He and representatives of MRA began discussing a loan fee agreement in August 2010.[152] He agreed to introduce MRA to prospective lenders.[153] MRA agreed to pay Demetriou a loan fee if he arranged a financing transaction on terms acceptable to MRA.[154]

Demetriou testified that the effect of the two agreements was that he would attempt to facilitate a loan between ICF and MRA.[155] But the two firms were unable to reach agreement on a loan.

ICF paid Demetriou $20,000 as provided in their agreement.[156] Demetriou testified that he did not receive a fee from MRA because he was not able to materialize an actual loan for MRA.[157] He testified that the $20,000 he received from ICF had nothing to do with RBCP.[158]

L. RBCP Defaults and Fails

In December 2010, BP informed Demetriou that RBC Acquisitions had obtained a commitment letter for the multi-million dollar bank loan for the construction of Riverbend.[159] But, Demetriou testified, RBC Acquisitions did not obtain the loan.[160] With no loan, RBCP did not return the investment funds to Demetriou's customers by the February 1, 2011 deadline and thereby defaulted.[161]

In a conference call a week after the default, Keys and BP stated they were beginning to foreclose on the numismatic coins.[162] It was first necessary to start a 90-day cure process.[163] RBCP's attorney informed Demetriou that RBCP had sent a notice of default to ICF and had

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[150] CX-129, at 2.

[151] Tr. 756, 762.

[152] Tr. 795.

[153] CX-129, at 2.

[154] CX-129, at 2; Tr. 803.

[155] Tr. 787.

[156] CX-121, at 4; CX-125, at 3-6; Tr. 773.

[157] Tr. 758-59. MRA obtained financing from a source other than ICF. Tr. 758.

[158] Tr. 781.

[159] CX-20, at 1; Tr. 443.

[160] Tr. 334, 372-73.

[161] Tr. 334, 372-73; 450; 532.

[162] CX-16, at 1.

[163] CX-16, at 1. Demetriou testified he did not know there was a cure process that had to be completed before RBCP could liquidate the coins. Tr. 452.

demanded to be put in possession of the coins.[164] However, RBCP was not put into possession of the coins.

In the months following RBCP's default, Demetriou continued to arrange conference calls so that Keys and BP could report to Demetriou's customers on how they were trying to salvage the investment.[165] The last conference call took place in September 2012.[166] Demetriou continued to send widely distributed emails to his customers to keep them updated about RBCP.[167] He sent his last email in January 2013.[168]

Demetriou testified that he never received a straight answer why the coins were not sold.[169] One of the explanations was that the fee necessary to secure the coins had not been paid.[170] Because RBCP did not sell the coins, 28 of Demetriou's current and former customers lost the entire $337,700 they had invested in RBCP.[171]

M. Demetriou and Five Other Registered Representatives Use Unapproved Personal Email Accounts to Conduct Securities Business with Titan Customers

From July 2010 through July 2013, Demetriou used two personal email accounts to conduct securities business with Titan customers.[172] Brooks testified that Titan was not aware Demetriou was using personal email accounts for Titan business.[173] Demetriou used these accounts without supervisory approval, and Titan did not capture, review, or maintain emails to or from the accounts.[174]

Titan's WSPs strictly prohibited the use of personal email accounts for securities-related business unless the registered representative obtained written supervisory approval.[175] The supervisor was not allowed to give approval unless Titan could capture emails from the personal account.[176] The WSPs provided that "to the extent a personal email account is permitted, all

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[164] CX-17, at 1.

[165] Tr. 460; CX-20, at 8-9, 18, 20, 26, 29, 39-44.

[166] CX-20, at 41.

[167] CX-16; CX-17; CX-20, at 10-17, 19, 21-25, 27-28, 30-38; Tr. 442-43, 459-60.

[168] CX-20, at 44; Tr. 448.

[169] Tr. 449.

[170] Tr. 449-50.

[171] Tr. 308, 479, 537, 1358; CX-126A.

[172] Stip. ¶ 16.

[173] Tr. 1112; *see* Stip. ¶ 16.

[174] Stip. ¶ 16.

[175] Stip. ¶ 15; CX-113, at 53; Tr. 937.

[176] Tr. 924-25.

emails must be copied to the associated person's Company e-mail address and will be subject to the review standards of all other electronic correspondence."[177] For most of the time period of the Complaint, Brooks was responsible for reviewing registered representatives' email correspondence.[178] He testified that he understood he was required to take action if he saw an unapproved personal account being used.[179]

From April 2011 through April 2013, five Titan registered representatives (in addition to Demetriou) used outside email accounts to conduct securities business without obtaining written principal approval.[180] In the two-year period covered by the Complaint, Brooks received 126 emails from these domains.[181] Brooks testified that in late 2012, he knew some of Titan's registered representatives used personal email accounts, and he took steps to have these accounts captured immediately or prohibited.[182] According to Brooks, he did not allow registered representatives to use unapproved accounts.[183] Brooks testified that if he saw such an account being used for Titan business, he told the registered representative to stop using that account.[184]

Brooks testified that in December 2012, Titan hired a full-time CCO because Brooks recognized Titan needed more expert help in compliance.[185] It was the new CCO's responsibility to stop the registered representatives' use of personal email accounts.[186] According to the Stipulations, the registered representatives' use of personal email accounts continued until April 2013.[187] Demetriou's use of personal email accounts continued until July 2013.[188]

N. Demetriou Sends Investment Summaries to His Customers and Former Customers

From October 2010 through July 2013, Demetriou disseminated 73 "investment summaries" to 34 of his former PCG customers, some of whom were Titan customers.[189] Twenty-seven of these investment summaries included RBCP. Demetriou did not obtain

[177] Stip. ¶ 15.

[178] Tr. 933.

[179] Tr. 1114.

[180] Stip. ¶ 17.

[181] Tr. 1422.

[182] Tr. 1145.

[183] Tr. 1148-49.

[184] Tr. 1150.

[185] Tr. 1268-69.

[186] Tr. 1146.

[187] Stip. ¶ 17.

[188] Stip. ¶ 16.

[189] Stip. ¶ 13; Tr. 498-99.

principal approval before sending the investment summaries.[190] Demetriou testified that the investment summaries listed investments he had recommended to the customers as well as investments he had not recommended.[191] Many of the investments were PCG-sponsored real estate partnerships.[192]

The investment summaries frequently had columns titled "Reported Value."[193] These columns showed a dollar amount for each investment. Two of Demetriou's customers testified they thought "Reported Value" meant the value of the investment.[194] Yet, Demetriou testified, this was not necessarily the case.[195] Instead, "Reported Value" was frequently the amount the customer had originally invested, without taking into account any reductions in value that might have occurred subsequent to the original investment.[196]

Demetriou testified that he kept reporting the original investment amount as the "Reported Value" even though the investment was not worth anything in the open market.[197] He testified "Reported Value" was a misnomer, and he should have called it "Discussion Value."[198] He did not disclose to his customers that some of the "Reported Values" were estimates.[199]

A number of investment summaries had a column titled "Probable Value" as well as "Reported Value," but there was no explanation of the difference between the two.[200] Some investment summaries had a column titled "Possible Value," but did not explain what "Possible Value" meant.[201] Sometimes "Possible Value" was the original investment amount, without regard for what the investment might be worth currently. According to Demetriou, he believed this was justified because efforts were still being made to recover the investment.[202]

Several investment summaries had a column titled "Annual Cash Created."[203] Two of Demetriou's customers testified that they thought "Annual Cash Created" meant the earnings

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[190] Stip. ¶ 14.

[191] Tr. 110.

[192] Tr. 115.

[193] CX-38, at 3.

[194] Tr. 499, 620.

[195] Tr. 122, 124, 130.

[196] Tr. 131; CX-51, at 1; CX-63, at 2; CX-78.

[197] Tr. 175.

[198] Tr. 140.

[199] Tr. 164.

[200] CX-55; Tr. 186.

[201] CX-65; Tr. 202-03.

[202] Tr. 203-04.

[203] CX-38, at 3.

generated annually from the investment.[204] However, "Annual Cash Created" was not the return actually being generated but, in many cases, only the return that had been promised in the investment's offering documents.[205]

Demetriou testified that some of his customers held their interests in PCG-sponsored real estate partnerships in a trust company, "LTT," which acted as third-party custodian for the customers' IRA accounts.[206] In October 2010, LTT reduced the value of these interests to 1/100th of their original investment amount.[207] Despite this devaluation, Demetriou kept listing the same "Reported Value."[208] Other times, Demetriou reduced the "Reported Value" to 1/100th of the original investment amount, but showed a "Probable Value" equal to the original investment amount.[209] Later, LTT returned the PCG-sponsored partnership interests to Demetriou's customers at a value of zero.[210] Yet on many investment summaries, Demetriou continued to show the "Reported Value" at the original investment amount.[211]

The investment summaries did not disclose the sources Demetriou used for his valuations or that some of the customers' investments were not reported on Titan's books and records.

With regard to the customers' investments in RBCP, the investment summaries showed "Reported Values" equal to the amount of money Keys had promised the customers if RBC Acquisitions obtained the multi-million dollar bank loan.[212] Demetriou testified that he did not have support for these "Reported Values" other than what Keys told him.[213] Because Keys promised the customers a return 20 times greater than their original investment, the "Reported Values" were 20 times the amount of their original investment.[214] Demetriou continued to show these "Reported Values" even after RBC Acquisitions failed to obtain the multi-million dollar bank loan.[215] RBCP never paid a return, but Demetriou listed positive amounts of "Annual Cash Created" for the customers' RBCP investments.[216] Although BP died in 2013, and there was no

[204] Tr. 501, 621.

[205] Tr. 114.

[206] Tr. 134-35, 640.

[207] CX-14, at 1; Tr. 136, 138, 142, 636.

[208] Tr. 140, 155-56, 174-75, 212.

[209] Tr. 188, 190.

[210] CX-37, at 18; CX-54, at 3; Tr. 144.

[211] Tr. 190-91, 196.

[212] Tr. 151, 167, 177, 194, 201, 206, 210, 213, 222; CX-14, at 2.

[213] Tr. 152, 155, 168, 207, 219.

[214] Tr. 173, 194-95, 198, 357; CX-79, at 1.

[215] Tr. 177-78, 219; CX-46, at 1; CX-51, at 1; CX-56; CX-58; CX-61; CX-67, at 2; CX-72, at 1; CX-74, at 1; CX-78.

[216] Tr. 152-53, 169; CX-14, at 2.

one left to take the Riverbend project forward,[217] some of Demetriou's investment summaries continued to show RBCP at its original investment amount, multiplied 20 times per Keys' promised investment return.[218]

O. Brooks and Titan Participate in the Evolution II Minimum-Maximum Private Placement of Limited Partnership Units

In October 2012, Titan, acting through Brooks, participated as managing broker-dealer in a minimum-maximum offering of limited partnership units by Evolution II, a limited partnership formed to acquire partnership units in another limited partnership that had been formed to purchase a business center in Stone Mountain, Georgia.[219] The general partner of Evolution II was a limited liability company called Evolution II GP, LLC.[220] Brooks owned 56 percent of this limited liability company.[221]

According to the PPM for Evolution II ("Evolution II PPM"), the offering sought to raise a minimum of $1 million and a maximum of $3 million.[222] Brooks testified that the offering was made on a contingency basis.[223] The general partner established an escrow account to hold the investors' funds until the $1 million minimum offering amount was raised.[224] The escrow agreement provided that, on receipt of $1 million or more in the escrow account, the bank at which the escrow account was established would make distributions to Evolution II.[225]

The Evolution II PPM stated that "[a]ny Units purchased by the General Partner or its affiliates will not be counted in calculating the minimum offering."[226] In a "frequently asked questions" section, the Evolution II PPM stated the general partner reserved the right to acquire unsold partnership units and offer them to investors at a later date:

> Q. What happens if the Partnership does not sell at least $1,000,000 of Units?
>
> A. If the minimum of $1,000,000 of Units are not sold before December 31, 2012, the Partnership will terminate the offering and stop selling Units. The Partnership may, however, extend such minimum offering termination date to March 31, 2013, in the sole discretion of the General Partner. In any event, within ten days after

[217] Tr. 214.

[218] Tr. 214, 216; CX-52, at 2; CX-74, at 3.

[219] Stip. ¶ 18; CX-88, at 2; Tr. 1186.

[220] CX-88, at 11.

[221] CX-107, at 23; Tr. 1196.

[222] Stip. ¶ 18; CX-88, at 2; Tr. 1201.

[223] Tr. 1187.

[224] CX-90, at 1; Tr. 1188.

[225] CX-90, at 1-2.

[226] CX-88, at 55.

> termination of the offering, the escrow agent will return funds including any interest, to investors. The General Partner reserves the right to acquire unsold Units and offer them to investors at a later date.[227]

The Evolution II offering raised $300,000 from five bona fide investors.[228] This was not enough to meet the $1 million minimum offering amount. The general partner borrowed $1.6 million and used these funds to purchase partnership units in the offering.[229] The general partner's purchase brought the amount raised by the offering to $1.9 million.

Titan broke escrow and released the $1.9 million, including the $300,000 in bona fide investor funds, to the general partner.[230] In causing Titan to break escrow, Brooks relied on the general partner's purchase of partnership units to meet the minimum offering amount, before that amount was raised from bona fide investors.[231] As Evolution II sold additional partnership units to bona fide investors, the partnership cancelled the units the general partner had purchased.[232] Evolution II sold enough units to bona fide investors to generate proceeds of $2,973,600 by February 13, 2013.[233]

Brooks testified that he counted the general partner's purchase of partnership units toward the minimum offering amount "[o]nly after consulting counsel and making sure that we had the authority to do it through our documents."[234] According to Brooks, he believed there was a discrepancy within the Evolution II PPM and between that document and the limited partnership agreement, and he went to the counsel who had drafted the documents to find out which controlled.[235] Brooks testified that the packet sent to prospective investors in Evolution II included the limited partnership agreement for the entity.[236] Brooks testified he wanted to know whether the partnership agreement allowed the general partner to borrow funds to purchase partnership units in the offering.[237]

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[227] CX-88, at 17; Tr. 1203-04.

[228] Stip. ¶¶ 19, 20; CX-91, at 2; Tr. 1208, 1215-16. A bona fide investor is an entity or person other than the issuer or its affiliates. *Dep't of Enforcement v. Gerace*, No. C02990022, 2001 NASD Discip. LEXIS 5, at *13 (NAC May 16, 2001) (describing a non-bona fide investor as "an entity with a significant stake in the success of a contingency offering").

[229] Stip. ¶¶ 19, 20; CX-107, at 8, 82.

[230] Stip. ¶ 20; CX-91, at 1; Tr. 1217.

[231] Stip. ¶ 21.

[232] Stip. ¶ 20; Tr. 1220.

[233] Stip. ¶ 20.

[234] Tr. 1210-11.

[235] Tr. 1211-12.

[236] Tr. 1190. Neither party offered the limited partnership agreement into evidence.

[237] Tr. 1234.

According to Brooks, counsel informed him that the partnership agreement "is the overruling document in the packet that the client gets, and so, yes, you can make the loan" to purchase partnership units.[238] Brooks testified that, at his request, counsel drafted the loan documents, reinforcing Brooks' understanding that counsel saw nothing wrong with the general partner borrowing money to purchase partnership units.[239] Brooks testified that counsel "helped prepare the loan documents. We had discussions with him. And a logical person would deem that … he believed it could be done."[240] Counsel drafted and completed the promissory note for the loan before he completed and delivered the Evolution II PPM.[241] In a memorandum written a year after the Evolution II offering, counsel stated "[t]he General Partner believed that it had the authority under the Agreement of Limited Partnership to take the steps to allow the Partnership to disburse the funds" out of escrow.[242]

III. Conclusions of Law

Considering the hearing testimony, the hearing exhibits, and the parties' briefs, the Hearing Panel (and for certain causes of action, a majority of the Hearing Panel)[243] concludes as follows:

A. Demetriou Made False and Misleading Misrepresentations of Fact, in Violation of FINRA Rule 2010 (First Cause of Action)

In the first cause of action, Enforcement charges Demetriou with violating FINRA Rule 2010 from July through September 2010 by making false and misleading misrepresentations of fact about RBCP, with no reasonable basis for believing the alleged misrepresentations to be true. FINRA Rule 2010 provides that "[a] member in the conduct of its business shall observe high standards of commercial honor and just and equitable principles of trade." This Rule encompasses all unethical, business-related conduct.[244] Such unethical conduct reflects negatively on registered representatives' ability to comply with regulatory requirements

[238] Tr. 1230.

[239] Tr. 1275-76.

[240] Tr. 1283.

[241] Counsel completed the promissory note on September 27, 2012. CX-107, at 1-6. Counsel continued to review and revise the Evolution II PPM on October 3, 2012. CX-108, at 7.

[242] CX-93, at 1.

[243] The Hearing Officer dissents from the Hearing Panel majority's conclusions of no liability with regard to the second and third causes of action and parts of the fifth and seventh causes of action. Hearing Panelist 1 dissents from the Hearing Panel majority's conclusion of liability with regard to part of the seventh cause of action.

[244] *Dep't of Enforcement v. Mathieson*, No. 2014040876001, 2018 FINRA Discip. LEXIS 9, at *18 (NAC Mar. 19, 2018).

fundamental to the securities industry.[245] Making a materially false and misleading misrepresentation to customers about an investment violates FINRA Rule 2010.[246]

A registered representative "is under a duty to investigate, and 'he cannot recommend a security unless there is an adequate and reasonable basis for such recommendation.'"[247] He may not ignore facts about which he has a duty to know or recklessly state facts about which he is ignorant.[248] He may not make his recommendation based primarily on the statements of others.[249] When recommending securities in a private placement, he has an obligation to conduct a reasonable investigation of the issuer and the securities.[250] He cannot blindly rely on information from the issuer.[251]

A registered representative makes false and misleading misrepresentations when he states to his customers that an investment is secured by collateral when, in fact, the investment is not secured. In the decision *Ramiro Jose Sugranes*, the SEC found that the respondent violated NASD's Rules of Fair Practice by making false and misleading misrepresentations to a customer to the effect that purported letters of credit backed the customer's investment in "Euro Certificates of Deposit."[252] The SEC held that "Sugranes' misrepresentations regarding the Euro CDs … were intentional acts designed to mislead his customer into believing that the Euro CDs were backed by bank letters of credit, a fact material to the customer's purchasing decision."[253]

Demetriou made false and misleading misrepresentations of fact when he recommended RBCP to his current and former customers. The most pronounced falsehood inhered in Demetriou's statements about the numismatic coins. In the Three Emails, he stated that the coins secured the customers' investment funds in the event RBC Acquisitions did not obtain the multi-million dollar bank loan. In fact, Demetriou admits that RBC Acquisitions did not obtain the bank loan—and RBCP did not liquidate the coins to pay back the customers.[254] Demetriou violated FINRA Rule 2010 by representing that the coins secured the investment funds when the coins did *not* secure the funds.

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[245] *Dep't of Enforcement v. Rubin*, No. 2012033832501, 2018 FINRA Discip. LEXIS 23, at *8 (NAC Oct. 3, 2018).

[246] *Dep't of Enforcement v. Rooney*, No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *80 (NAC July 23, 2015).

[247] *Dep't of Enforcement v. Gomez*, No. 2011030293503, 2018 FINRA Discip. LEXIS 10, at *46 (NAC Mar. 28, 2018) (quoting *Hanly v. SEC*, 415 F.2d 589, 595-96 (2d Cir. 1969)).

[248] *Id*. at *47.

[249] *Id*. at *54.

[250] *Dep't of Enforcement v. Luo*, No. 2011026346206, 2017 FINRA Discip. LEXIS 4, at *19 (NAC Jan. 13, 2017).

[251] *Id*. at *23.

[252] *Ramiro Jose Sugranes*, 52 S.E.C. 156, 156-57 (1995).

[253] *Id*. at 158.

[254] Tr. 410.

Although, in one of the Three Emails, Demetriou sought to raise the disclaimer that "[he could not] present this RBC Preferred, LLC as an investment,"[255] the tenor of the Three Emails in their entirety recommended RBCP to his customers.[256] In the next sentence following the attempted disclaimer, Demetriou stated that RBCP "honestly seems like the best chance of returning your money plus a profit."[257] He failed in his duty to investigate RBCP, and did not have a reasonable basis for recommending the investment. He blindly relied on information Keys gave him.

The Hearing Panel finds that the following statements Demetriou made about the coins to be false and misleading:

- *"[A] 5% refundable cash deposit is required instead of 1.5% in order to return all of your original investment. The 5% deposit is still secured by rare coins on deposit at [a corporate custodian in San Diego]."*[258] In fact, the investment was not "secured" by the coins.

- *"The 5% cash deposit on your part is still guaranteed by a $3,000,000 Safe Keeping Receipt (SKR) from [a corporate custodian in San Diego]. The actual assets are rare coins that have been appraised for $3,000,000. As managing member of the LLC, I will be able to call the collateral on your part if it appears that Riverbend construction will not go forward."*[259] In fact, the Safekeeping Receipt did not "guarantee" the investment. The Safekeeping Receipt stated that it "ha[d] been prepared for the purpose of the agreement between RBC Acquisitions, LLC and RBC Preferred, LLC for monetization and investment purposes and the coins [were] subject to various restrictions of transfer pursuant to that agreement."[260] Demetriou admits that he did not read the agreement between RBC Acquisitions and RBCP setting forth the restrictions of transfer.[261] After RBCP failed to return the investment funds, the company also failed to obtain and liquidate the coins. The Safekeeping Receipt provided no "guarantee" protecting Demetriou's customers.

[255] CX-12. Similarly, in one of the conference calls with the customers, Demetriou stated that "I am not offering this as an investment as a securities representative." CX-128, at 2.

[256] Similarly, it is clear that Demetriou "made" the statements that appeared in the Three Emails, such that the Supreme Court's decision in *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011), does not apply.

[257] CX-12.

[258] CX-10, at 1. In the Three Emails, Demetriou frequently (and erroneously) referred to the minimum investment in RBCP as a "deposit."

[259] CX-10, at 1.

[260] CX-10, at 2.

[261] Tr. 337-38, 355-56, 461-62, 838.

- *"[T]here are over $5,000,000 in rare coins that have been deposited as collateral to back up the February 1, 2011 promise. (The Safe Keeping Receipt is a part of the documents) I have personally talked with the appraiser of these coins, and the valuations seem to be solid. In practice, the coins would have to be sold slowly to achieve the full value of their appraisal."*[262] In fact, the coins did not "back up" RBCP's promise to return the investment funds by February 1, 2011.

Notes that Demetriou wrote to himself on August 16, 2010, show that he knew the coins were not collateral of any kind. Referring to the person who had posted the coins, Demetriou wrote: "When would [EL] ever give me permission to remove the coins? This does not seem like collateral of any kind."[263] The conclusion that the coins did not seem like collateral of any kind would be alarming to a reasonable registered representative. Yet Demetriou admits that he did not disclose his conclusion to the customers.[264] Instead, he resigned as managing member of RBCP and, he says, sought to distance himself from the company (even as he continued recommending that the customers invest).[265]

Other statements Demetriou made about RBCP were false and misleading in the context of the circumstances in which he made them. The Three Emails used bold headings and absolute language, proposing outlandish investment returns to Demetriou's customers. The false and misleading statements included the following:

- *"Bob has set aside $25,000,000 in the investment RBC Acquisitions, LLC to go to the investors."*[266] This statement created the false and misleading impression that there was an actual $25 million that Keys had "set aside" for Demetriou's customers. In fact, RBC Acquisitions did not have any significant amount of funds, which was why it was making the RBCP offering to Demetriou's customers.

- *"In other words, $1500 buys $100,000 in the RBC Acquisitions, LLC. These preferred shares pay a 4%/yr cumulative preferred dividend."*[267] This statement created the false and misleading impression that a customer's investment in RBCP, costing $1,500, was worth $100,000. In fact, there was no factual basis for determining how much an investment in RBCP was worth.

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[262] CX-12, at 1.

[263] RX-2, at 2.

[264] Tr. 463. Demetriou testified that by writing the coins "did not seem like collateral of any kind," what he meant to say was he was not sure how the coins could be accessed. Tr. 304-05. The writing was "[j]ust a note to [him]self to check it out." Tr. 305. But there is no evidence Demetriou "checked it out" to determine how the coins could be accessed in the event of a default. Subsequent events showed that the coins could not be accessed and, thus, were not "collateral of any kind."

[265] Tr. 254-55, 260.

[266] CX-9, at 1.

[267] CX-9, at 1.

- *"If a comfort level on the Riverbend project can be reached, a $4,500 investment will return $300,000 principal. That is a first year principal return of $60,000 that is built into the numbers."*[268] This statement created the false and misleading impression that a $4,500 investment had a realistic likelihood of generating $300,000 in profit—equivalent to an investment return of 6,666 percent. In the first year, the $4,500 investment would purportedly generate a $60,000 return. The phrase "built into the numbers" made it sound as though the $60,000 first-year return was inevitable, a simple matter of mathematical computation. There was no factual basis for postulating such a high investment return.

- *"The first construction draw for the development will be used to repay this 1.5% to you. This is designed to occur within 90 days."*[269] This statement created the false and misleading impression that the first construction draw for Riverbend would definitely occur and was designed to occur within 90 days. Upon the 90-day construction draw, Demetriou's customers would be repaid all of their investment funds. All future payments would be profit. In fact, it was open to significant question whether the first construction draw for Riverbend would occur—and, in fact, it never occurred.

- *"$1500 to buy a $100,000 investment is a great return, especially if the $1500 will be returned in 90 days."*[270] This statement created the false and misleading impression that Demetriou's customers could buy a $100,000 investment by paying $1,500, and the $1,500 would be repaid in 90 days—*and* the customers could keep the $100,000 investment. Demetriou described this as "a great return," without disclosing the significant risk that if all did not go as planned, the customers would lose their entire $1,500 investment. Nor did he discuss the fact that the investment returns proposed for RBCP were too good to be true.

- *"The return of your original investment represents 20 times the 5% deposit you supply to the LLC until the first draw."*[271] This statement created the false and misleading impression that Demetriou's customers would receive an investment return of 20 times the amount of their investment—i.e., an investment return of 2,000 percent. There was no factual basis for postulating such a high investment return.

- *"Your RBC Preferred shares will be redeemed at 20% per year over five years plus a 4% preferred cumulative dividend on the unpaid balance."*[272] This statement created the false and misleading impression that the customers' RBC Preferred shares—with

[268] CX-9, at 1. A "comfort level" appears to mean that a bank is sufficiently comfortable with Riverbend's prospects that the bank is willing to make the multi-million bank loan to RBC Acquisitions.

[269] CX-9, at 1.

[270] CX-9, at 1.

[271] CX-10, at 1.

[272] CX-10, at 1.

a face amount 20 times the amount of their investment—"will be" redeemed for the full face amount over five years, plus a 4 percent preferred cumulative dividend. In fact, it was open to significant question whether the shares would be redeemed so as to return $100,000 for every $5,000 invested.

- *"The first $25,000,000 of profit in RBC Acquisitions plus a 4% per year preferred and cumulative dividend will be paid to you, the RBC Preferred Investors before any owner of RBC Acquisitions receives any proceeds. From what I have seen in the securities business, this is unprecedented in a good way."*[273] This statement encouraged Demetriou's customers to invest in RBCP based on the false and misleading misrepresentation that $25 million of profit "will be" paid to them. In fact, it was open to significant question whether the $25 million of profit would be paid to them.

- *"For each $5,000 initial deposit (deposit returned to you before 2-1-11), you will receive $50,000 of the $25,000,000 above plus the 4%/yr dividend."*[274] This statement created the false and misleading impression that the customers' investment funds would definitely be returned before February 1, 2011; and, in exchange for a $5,000 investment, the customers "will" receive $50,000, plus a 4 percent annual dividend. In fact, it was open to significant question whether a customer investing $5,000 would receive a $50,000 investment return, plus a 4 percent dividend.

Demetriou's misrepresentations were material. A misrepresented fact is material if there is a substantial likelihood that a reasonable investor would consider the misstated fact important in making an investment decision, and disclosure of the misstated fact would be viewed by the reasonable investor as having significantly altered the "total mix" of information made available.[275] Here, a reasonable investor would consider it important to know that the numismatic coins did not secure the investment funds, and that there was no factual basis for the investment returns being promised.[276]

Because Demetriou made false and misleading misrepresentations of fact about RBCP in violation of FINRA Rule 2010, the Hearing Panel finds him liable on the first cause of action.

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[273] CX-12, at 1.

[274] CX-12, at 1.

[275] *Dep't of Enforcement v. Vungarala*, No. 2014042291901, 2018 FINRA Discip. LEXIS 26, at *77 (NAC Oct. 2, 2018), *appeal docketed*, No. 3-18881 (SEC Dec. 6, 2018).

[276] Although materiality is determined by the objective standard of the reasonable investor, one of Demetriou's customers testified that it was important to her investment decision that the coins could be sold and the investment funds returned to the customers, and that Demetriou had performed a sufficient investigation to have a basis for recommending RBCP. Tr. 519, 521, 524, 529-30, 556, 583.

B. Enforcement Failed to Meet Its Burden of Proof That Demetriou Was Employed or Accepted Compensation as a Result of His Involvement in RBCP, in Violation of NASD Rule 3030 and FINRA Rule 2010 (Second Cause of Action)

In the second cause of action, Enforcement charges Demetriou with engaging in an undisclosed outside business activity with RBCP from July through October 2010, in violation of NASD Rule 3030 and FINRA Rule 2010. NASD Rule 3030 prohibited a registered person from being employed by or accepting compensation from any person as a result of any outside business activity without prior written notice to his employer firm:

> No person associated with a member in any registered capacity *shall be employed by, or accept compensation from,* any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.[277]

A majority of the Hearing Panel finds that Demetriou did not engage in an outside business activity within the meaning of NASD Rule 3030. Under that Rule, an outside business activity did not arise unless a registered representative was employed by, or accepted compensation from, any person as a result of a business activity.

The Hearing Panel majority first determines that Enforcement did not prove Demetriou was employed by any person in the RBCP offering. Demetriou testified that in June or July 2010, "Bob Keys kind of tricked me into being more involved [in RBCP] … by saying you could watch me if you were the managing member of the LLC."[278] Demetriou agreed to this while on the telephone with Keys. Four weeks later, Demetriou received a draft of the PPM, and, he testified, "I saw my name all over it. That's about all I saw, and then I got out that day, or maybe a day" or two afterward.[279] At the same time he read the draft PPM, he wrote notes stating that "I am listed as managing member in the Mississippi filing to open RBC Preferred LLC," but "I never signed anything."[280] Demetriou testified, "I resigned from [Keys]. And I said, you know, you got to get [BP] or somebody else to run this because I'm not doing this. And … I backed away as far—fast as I could."[281]

Based on this evidence—which indicates Demetriou did not sign anything and that RBCP was formed in the State of Mississippi without his knowledge—the Hearing Panel majority finds

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[277] NASD Rule 3030 (emphasis added); *accord Dep't of Enforcement v. Scholander*, No. 2009019108901, 2014 FINRA Discip. LEXIS 33, at *74-75 (NAC Dec. 29, 2014), *aff'd*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209 (Mar. 31, 2016). NASD Rule 3030 was in effect until December 15, 2010, when it was superseded by FINRA Rule 3270. Enforcement does not allege that Demetriou violated FINRA Rule 3270.

[278] Tr. 254.

[279] Tr. 255.

[280] RX-2, at 2.

[281] Tr. 260.

that Demetriou's four-week tenure as managing member did not establish an employment relationship between him and RBCP.

Second, Enforcement did not prove that Demetriou was compensated for his involvement in RBCP. There is no evidence Demetriou was paid anything by RBCP, RBC Acquisitions, or Keys. In an effort to demonstrate compensation, Enforcement relied on the consulting agreement Demetriou had with ICF and the $20,000 he received under that agreement. The agreement became operative at the same time as the RBCP offering. But aside from this timing, there is no evidence linking Demetriou's receipt of the $20,000 to his involvement in RBCP. Demetriou testified that the $20,000 had nothing to do with RBCP.[282]

MRA entered into a loan fee agreement with Demetriou at the same time as the consulting agreement with ICF, but Enforcement provided no explanation for why this neutral third party would join in an alleged plan to compensate Demetriou for RBCP. The inferential connection Enforcement seeks to draw is too tenuous, by itself, for the Hearing Panel majority to conclude that the $20,000 payment by ICF was compensation for Demetriou's involvement in RBCP.

The Hearing Panel majority concludes that there was insufficient proof Demetriou was employed or compensated as the result of an outside business activity, and dismisses the second cause of action.[283]

C. Enforcement Failed to Meet Its Burden of Proof That Brooks and Titan Had an Obligation under NASD Rule 3010 and FINRA Rules 3270 and 2010 to Supervise Demetriou's Involvement in RBCP as an Outside Business Activity (Third Cause of Action)

In the third cause of action, Enforcement charges Brooks and Titan with failure to supervise Demetriou's involvement in RBCP from October 2010 through April 2013 as an outside business activity, in violation of NASD Rule 3010 and FINRA Rules 3270 and 2010. NASD Rule 3010 required each member to establish and maintain a system to supervise its registered representatives and associated persons:

> Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.[284]

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[282] Tr. 781.

[283] The Hearing Officer dissents from the conclusions of law in this section.

[284] NASD Rule 3010(a). FINRA Rule 3110 superseded NASD Rule 3010 effective December 1, 2014. FINRA Regulatory Notice 14-10 (Mar. 2014), http://www.finra.org/industry/notices/14-10.

A member violated NASD Rule 3010 if it failed to supervise its registered representatives' outside business activities.[285]

FINRA Rule 3270 relates to outside business activities of registered representatives, and prohibits a registered representative from being "an employee, independent contractor, sole proprietor, officer, director or partner of another person" without notice to his employer firm. FINRA Rule 3270 also provides that a registered representative may not "be compensated, or have the reasonable expectation of compensation, from any other person as a result of any outside business activity." The Supplementary Material to FINRA Rule 3270 specifies the supervision a FINRA member must perform on receiving written notice that one of its registered representatives is engaged in an outside business activity:

> Upon receipt of a written notice under Rule 3270, a member shall consider whether the proposed activity will: (1) Interfere with or otherwise compromise the registered person's responsibility to the member and/or the member's customers or (2) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered …. A member also must evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity … A member must keep a record of its compliance with these obligations with respect to each written notice received and must preserve this record for the period of time and accessibility specified in SEA Rule 17a-4(c)(1).[286]

The supervisory obligations of NASD Rule 3010, FINRA Rule 3270, and the Supplementary Material to FINRA Rule 3270 do not come into play in this proceeding because there was no outside business activity for Brooks and Titan to supervise. In Section III.B. of this Decision, the Hearing Panel majority concludes that Demetriou's involvement in RBCP was not an outside business activity because he was not employed by any person in the offering and did not receive compensation. Accordingly, the Hearing Panel majority finds that Brooks and Titan did not commit the supervisory violation alleged.

In the hearing, Enforcement contended that the third cause of action alleges a general failure on the part of Brooks to supervise Demetriou, and not a supervisory failure limited to an alleged outside business activity. The Hearing Panel majority disagrees. A reading of the Complaint shows that—aside from the usual paragraph incorporating by reference all earlier paragraphs, and a paragraph making a conclusory allegation that Brooks and Titan violated NASD Rule 3010 and FINRA Rule 3270—the third cause of action consists of three paragraphs.

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[285] *Dep't of Enforcement v. Merrimac Corp. Secs., Inc.*, No. 2009017195204, 2015 FINRA Discip. LEXIS 4, at *6 (NAC Apr. 29, 2015) ("[W]e affirm … that Merrimac violated NASD Rules 3010 and 2110 by failing to supervise [two registered representatives'] outside business activities."), *appeal docketed*, No. 3-18045 (SEC Aug. 30, 2017).

[286] FINRA Rule 3270, Supplementary Material .01; *accord Dep't of Enforcement v. Connors*, No. 2012033362101, 2017 FINRA Discip. LEXIS 2, at *32-33 (NAC Jan. 10, 2017).

The first summarizes NASD Rule 3010(a).[287] The second summarizes the Supplementary Material to FINRA Rule 3270.[288] The third alleges, in its entirety, that "[d]uring the period from October 2010 to April 2013, as alleged in paragraphs 24-32, Titan, acting through Brooks, failed to adequately supervise *Demetriou's OBA.*"[289] The supervisory failure that Enforcement alleges is limited to an outside business activity.

In a similar vein, Enforcement argued in the hearing that when the Supplementary Material to FINRA Rule 3270 became effective on December 15, 2010, Brooks was required to "look back" and reconsider whether Demetriou's involvement in RBCP was an outside business activity. In support of this proposition, Enforcement relied on Regulatory Notice 10-49, which required a look back on the outside business activities of registered representatives.[290] Regulatory Notice 10-49 provided that, "for registered persons who are actively engaged in an outside business activity prior to December 15, 2010, firms have until June 15, 2011, to review such pre-existing activities under the standards set forth in FINRA Rule 3270."[291] The Hearing Panel majority already concluded that Demetriou was *not* actively engaged in an outside business activity with regard to RBCP before December 15, 2010, because he was not employed by any person in the offering and did not receive compensation. Thus, Regulatory Notice 10-49 did not impose a look-back supervisory requirement on Brooks.

In sum, the Hearing Panel majority concludes that Enforcement did not prove that Brooks and Titan were obligated to supervise as an outside business activity Demetriou's involvement in RBCP. Therefore, the third cause of action is dismissed.[292]

D. Demetriou's Communications to His Customers Violated the Advertising and Communications Provisions of NASD Rule 2210 and FINRA Rules 2210 and 2010 (Fourth Cause of Action)

In the fourth cause of action, Enforcement charges that, from July 2010 to July 2013, Demetriou's investment summaries and the Three Emails violated NASD Rule 2210 and FINRA Rules 2210 and 2010 governing advertising and communications to investors. FINRA Rule 2210 defines "communications" to consist of correspondence, retail communications, and institutional communications.[293] Enforcement alleges that Demetriou violated NASD Rule 2210 and FINRA Rule 2210 because the investment summaries and the Three Emails contained inaccurate

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[287] Compl. ¶ 51.

[288] Compl. ¶ 52; FINRA Rule 3270.

[289] Compl. ¶ 53 (emphasis added). Paragraphs 24-32 of the Complaint allege an undisclosed outside business activity by Demetriou with regard to RBCP. Compl. ¶¶ 24-32.

[290] CX-135.

[291] CX-135, at 1.

[292] The Hearing Officer dissents from the conclusions of law in this section.

[293] FINRA Rule 2210(a)(1). FINRA Rule 2210 superseded NASD Rule 2210 on February 4, 2013. In NASD Rule 2210, the equivalent of "retail communications" was "sales literature."

information and failed to provide a sound basis for evaluating the facts. Enforcement also alleges Demetriou failed to obtain principal approval of these communications before he sent them to his current and former customers.

The Hearing Panel considers the investment summaries and the Three Emails separately below.

1. The Investment Summaries

Enforcement contends that Demetriou was required to obtain principal approval of the investment summaries. FINRA Rule 2210 provides that "[a]n appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department."[294] Thus, the requirement of obtaining principal approval depends on whether the communication is a retail communication. FINRA Rule 2210 defines a "retail communication" as "any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period."[295]

Demetriou's investment summaries were not retail communications. Although Demetriou sent investment summaries to 34 current and former customers, each summary was unique to each customer because the substantive information was different depending on the customer's investments. Enforcement did not prove that Demetriou sent a single investment summary to more than 25 customers within any 30 calendar-day period.[296] Rather, the record shows that he sent a different individualized summary to each of the 34 customers. To take just one example, an investment summary sent in July 2011 shows "Reported Values" and "Annual Cash Created" for approximately ten IRA investments totaling $45,150 and 15 personal investments totaling $1,037,239.[297] In comparison, a different investment summary, sent to a different customer in February 2013 (almost two years later), shows a "Reported Value," "Annual Cash Created," "Cash Created as a Percentage of Assets," and a column for Demetriou's comments, for six investments totaling $597,309.[298]

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[294] FINRA Rule 2210(b)(1)(A). NASD Rule 2210(b)(1)(A) provided that "[a] registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department." Because Demetriou sent the investment summaries in the period from October 2010 through July 2013, both NASD Rule 2210 and FINRA Rule 2210 apply.

[295] FINRA Rule 2210(a)(5). NASD Rule 2210(a)(2) defined "sales literature" as "[a]ny written or electronic communication … that is generally distributed or made generally available to customers or the public." Titan's WSPs provided that any communication distributed to more than 25 retail customers required Brooks' approval before being distributed. CX-113, at 49-50, 53; Tr. 920, 923.

[296] FINRA Rule 2210(a)(5).

[297] CX-51, at 1.

[298] CX-50.

Because the investment summaries were not retail communications, FINRA Rule 2210 did not require Demetriou to seek principal approval before he sent them. Likewise, the investment summaries did not violate the principal-approval requirement of NASD Rule 2210 because Demetriou did not generally distribute the investment summaries or make them available to the public.[299]

The Hearing Panel still finds liability on the fourth cause of action because the investment summaries constituted correspondence with customers that contained inaccurate information and failed to provide a sound basis for evaluating the facts. FINRA Rule 2210 sets forth content standards governing communications:

> (A) All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.
>
> (B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication.[300]

In April 2010, FINRA issued Regulatory Notice 10-19, in which FINRA stated that consolidated financial account reports "must be clear, accurate and not misleading."[301] If such reports showed assets held in outside accounts away from the firm, the firm had to take "reasonable steps to accurately reproduce information obtained regarding outside accounts and not to include information that is false or misleading."[302] Regulatory Notice 10-19 stated that "[i]f a firm is unable to test or otherwise validate data for non-held assets, including valuation information, the firm should clearly and prominently disclose that the information provided for those assets is unverified."[303] Regulatory Notice 10-19 encouraged firms to disclose "that the consolidated report … may include assets that the firm does not hold on behalf of the customer and which are not included on the firm's books and records."[304]

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[299] NASD Rule 2210(a)(2).

[300] FINRA Rule 2210(d)(1); *accord Dep't of Enforcement v. Meyers Assocs., L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1, at *7 (NAC Jan. 4, 2018), *appeal docketed*, No. 3-18359 (SEC Mar. 14, 2018). NASD Rule 2210(d)(1) provided that "[n]o member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public." *Accord Dep't of Enforcement v. Murphy*, No. 2005003610701, 2011 FINRA Discip. LEXIS 42, at *76 (NAC Oct. 20, 2011).

[301] FINRA Regulatory Notice 10-19 (Apr. 2010), http://www.finra.org/industry/notices/10-19. Although Demetriou called his communications to customers "investment summaries" instead of "consolidated financial account reports," the Hearing Panel finds that Regulatory Notice 10-19 applies.

[302] *Id*. at *6.

[303] *Id*. at *7.

[304] *Id*. at *14.

Demetriou's investment summaries contained inaccurate information and failed to provide a sound basis for evaluating the facts:

1. The dollar amounts shown in the "Reported Value" column of the investment summaries did not necessarily correspond to the actual value of the investments.[305]

2. The "Reported Value" was frequently the amount originally invested in the investment, without taking into account subsequent reductions in value.[306]

3. Demetriou kept reporting the original investment amount even when the investment was not worth anything in the open market.[307]

4. The dollar amounts shown for "Annual Cash Created" were not the returns actually generated but, in many cases, were the returns that had been promised in the investment's offering documents.[308]

5. After LTT reduced the value of some investments to 1/100th of their original investment amount, Demetriou kept using the same "Reported Value."[309]

6. Demetriou continued to show the same "Reported Value" even after LTT returned the investments to Demetriou's customers at a value of zero.[310]

7. The investment summaries did not disclose the sources Demetriou used for his valuations.[311]

8. As to the customers' investments in RBCP, the investment summaries showed a "Reported Value" equal to the amount of money Keys had promised the customers if RBC Acquisitions obtained the multi-million dollar bank loan, which amount was 20 times the amount the customers actually invested.[312]

9. Demetriou listed tens of thousands of dollars in "Annual Cash Created" for the customers' RBCP investments even though RBCP never paid a return.[313]

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[305] Tr. 122, 124, 130.

[306] Tr. 131, 205.

[307] Tr. 175.

[308] Tr. 114.

[309] Tr. 140-41, 156, 174-75, 212; CX-14, at 2; CX-79, at 1.

[310] Tr. 144-45, 190-92, 196.

[311] Tr. 139, 161-62.

[312] Tr. 151, 167, 177, 194, 201, 206, 210, 213, 222; CX-14, at 2.

[313] Tr. 152-53, 169; CX-14, at 2.

Demetriou's investment summaries did not conform to the guidance in Regulatory Notice 10-19. As described above, the investment summaries were misleading. They did not clearly and prominently disclose that the information provided was unverified. They did not disclose that some of the investments were not reported on Titan's books and records.[314]

For these reasons, the Hearing Panel concludes that Demetriou's investment summaries contained inaccurate information and failed to provide a sound basis for evaluating the facts, in violation of NASD Rule 2210 and FINRA Rules 2210 and 2010.[315]

2. The Three Emails

The Three Emails violated NASD Rule 2210 because Demetriou did not obtain principal approval before he sent them.[316] As they were generally distributed and available to customers, they constituted sales literature requiring principal approval.[317]

The Hearing Panel next considers Enforcement's contention that the Three Emails contained inaccurate information and failed to provide a sound basis for evaluating the facts. Below, we find that the following statements violated NASD Rule 2210:[318]

- *"The 5% deposit is still secured by rare coins on deposit at [a corporate custodian in San Diego]."*[319] This statement contained inaccurate information. In fact, the coins did not secure the investment funds.

- *"In the RBC Preferred, LLC documents, it defines February 1, 2011 as the latest date that your cash deposit can be returned to you. If it is not returned, there are over $5,000,000 in rare coins that have been deposited as collateral to back up the February 1, 2011 promise. (The Safe Keeping Receipt is part of the documents) I have personally talked with the appraiser of these coins, and the valuation seems to be solid. In practice, the coins would have to be sold slowly to achieve the full value of their appraisal."*[320] This statement contained inaccurate information. In fact, the

[314] Tr. 165.

[315] A violation of any FINRA Rule constitutes also a violation of FINRA Rule 2010. *Meyers Assocs.*, 2018 FINRA Discip. LEXIS 1, at *7.

[316] NASD Rule 2210(b)(1). FINRA Rule 2210 became effective February 4, 2013, so it does not apply to the Three Emails.

[317] NASD Rule 2210(a)(2) and (b)(1)(A).

[318] Although there is significant overlap between the inaccurate statements alleged in the fourth cause of action and the false and misleading statements alleged in the first cause of action, *see* Section III.A. *supra*, there are also significant differences. In the interest of completeness, this Decision considers each statement found to be inaccurate in the fourth cause of action, even if the statement is a substantial repeat of a statement in the first cause of action.

[319] CX-10, at 1.

[320] CX-12.

coins did not "back up" RBCP's promise to return the investment funds by February 1, 2011.

- *"If a comfort level on the Riverbend project can be reached, a $4500 investment will return $300,000 principal. That is a first year principal return of $60,000 that is built into the numbers."*[321] This statement contained inaccurate information. A $4,500 investment resulting in a $300,000 return is equivalent to an investment return of 6,666 percent. There was no sound basis for projecting such an investment return.

- *"Repayment of the 1.5%: The first construction draw for the development will be used to repay this 1.5% to you. This is designed to occur within 90 days … Security for the 1.5%: I am told that there are $2m in numismatic coins set aside as collateral for the 1.5% investments."*[322] This statement contained inaccurate information. First, it implied that the first construction draw for Riverbend would definitely occur and was designed to occur within 90 days. Second, contrary to the statement, the coins were not collateral securing the customers' investment funds.

- *"All of the preferred shares that my investors do not want are already spoken for. $1500 to buy a $100,000 investment is a great return, especially if the $1500 will be returned in 90 days."*[323] This statement contained inaccurate information. It communicated that Demetriou's customers could buy a $100,000 investment by paying $1,500, and the $1,500 would be repaid in 90 days—*and* the customers could keep the $100,000 investment. In fact, the preferred shares were not a $100,000 investment, and it was open to significant question whether the $1,500 investment would be repaid in 90 days.

- *"RBC Acquisitions seems to be the best route to return your investments."*[324] This statement failed to provide a sound basis for evaluating the facts. It communicated that if Demetriou's customers wanted to recover the investment funds they had lost in the PCG-sponsored real estate partnerships, they had little or no alternative but to invest in RBCP. The statement failed to discuss the significant risk that the customers would lose all of the funds they invested in RBCP.

- *"[BP], the developer, continues to agree to repay the 5% deposit on the first construction draw. That date will be approximately 120 days from now."*[325] This statement contained inaccurate information. It communicated that the repayment of

[321] CX-9, at 1.

[322] CX-9, at 1.

[323] CX-9, at 1.

[324] CX-9, at 2.

[325] CX-10, at 1.

the customers' investment funds was a sure thing and "will be" in approximately 120 days.

- *"The 5% cash deposit on your part is still guaranteed by a $3,000,000 Safe Keeping Receipt (SKR) from [a corporate custodian in San Diego]. The actual assets are rare coins that have been appraised for $3,000,000. As managing member of the LLC, I will be able to call the collateral on your part if it appears that Riverbend construction will not go forward. I have had the SKR issued in the name of RBC Preferred, LLC."*[326] This statement contained inaccurate information. The Safekeeping Receipt did not "guarantee" the investment. On the contrary, the Safekeeping Receipt alerted Demetriou to the existence of an agreement between RBC Acquisitions and RBCP imposing restrictions on the transfer of the coins, but Demetriou never read the agreement and never learned what the restrictions of transfer were.

- *"Priority Return: The first $25,000,000 of profit in RBC Acquisitions plus a 4% per year preferred and cumulative dividend will be paid to you, the RBC Preferred investors before any owner of RBC Acquisitions receives any proceeds. From what I have seen in the securities business, this is unprecedented in a good way."*[327] This statement contained inaccurate information. It communicated that the $25 million priority return was "unprecedented" and that the $25 million "will be" paid to the customers. In reality, the $25 million priority return was "unprecedented" because it was too good to be true.

- *"While I cannot present this RBC Preferred, LLC as an investment, I can search, dig, and scratch to find out if it may be a good offer to you. It honestly seems like the best chance of returning your money plus a profit."*[328] This statement contained inaccurate information. It communicated that Demetriou was purportedly engaged in continual efforts to "search, dig, and scratch" to find out if RBCP was a good offer to his customers. Yet the "checking around" that Demetriou performed did not rise to the level of searching, digging, or scratching.[329] He did not inform the customers that he had not obtained enough information to determine whether RBCP was a good or bad investment.[330] He represented that RBCP seemed like the "best chance" of returning the customers' lost investment funds plus a profit, but he never read the final PPM, which was available before he made this statement. He also did not discuss the

[326] CX-10, at 1.

[327] CX-12.

[328] CX-12, at 1.

[329] Tr. 271-72. Before Demetriou made the statement, RBCP had issued the final PPM for the offering, but he admits that he did not read it. Tr. 419.

[330] Tr. 479.

significant risk his customers would lose even more investment funds by investing in RBCP.

The Three Emails failed to provide a sound basis for evaluating the facts because they did not discuss the risk that RBC Acquisitions might fail to obtain the multi-million dollar bank loan, an event that could result in the complete loss of the customers' RBCP investment funds. This omission was especially significant because Demetriou knew Riverbend had been the subject of an earlier, PCG-sponsored limited partnership but, he stated, "the original Riverbend investment could never acquire financing."[331] He did not discuss the reasons, if any, the outcome would be different the second time around.

The Three Emails did not discuss the risk that RBCP might not be able to liquidate the coins to prevent the loss of the investment funds. This omission was especially significant because Demetriou represented to the customers that "[his] efforts over the last two months have been to *understand the collateral* offered for this relative small upfront cost and the probability of getting the upfront cost returned by February 1, 2011 as described by the documents."[332] Because Demetriou failed in his obligation of reasonable investigation, he did *not* understand the purported collateral.

The Three Emails contained inaccurate information and failed to provide a sound basis for evaluating the facts. They were incomplete because they did not discuss the risk that RBC Acquisitions would fail to obtain the multi-million dollar bank loan, or the risk that the coins would fail to secure the customers' investment funds.

3. Summary

In sum, Demetriou violated NASD Rule 2210 and FINRA Rule 2210 because his investment summaries did not comply with the content standards of these Rules. Demetriou violated NASD Rule 2210 because he failed to obtain principal approval of the Three Emails, and because the Three Emails violated the content standards of that Rule. He violated FINRA Rule 2010 because a violation of any NASD or FINRA Rule constitutes a violation of FINRA Rule 2010.[333] The Hearing Panel finds him liable on the fourth cause of action.

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[331] CX-9, at 1.

[332] CX-12, at 1 (emphasis added).

[333] *Meyers Assocs.*, 2018 FINRA Discip. LEXIS 1, at *7. The NAC's decision in *Dep't of Enforcement v. KCD Financial, Inc.*, No. 2011025851501, 2016 FINRA Discip. LEXIS 38 (NAC Aug. 3, 2016), is not applicable because that case involved a member firm charged with a violation of NASD Rule 2210 based on communications by the firm's registered representatives in furtherance of an approved outside business activity. Here, Demetriou is being held liable for his own communications.

E. Brooks and Titan Failed to Maintain and Enforce Adequate Written Supervisory Procedures for the Preservation of Firm Emails, in Violation of NASD Rules 3010 and 3110 and FINRA Rules 4511 and 2010; and Titan Failed to Preserve Emails In Violation of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder (Fifth Cause of Action)

In the fifth cause of action, Enforcement charges that from April 2011 through April 2013, Brooks and Titan failed to maintain adequate written supervisory procedures for the capture, review, and retention of Titan's securities-related emails, and failed to enforce the firm's WSPs prohibiting personal email accounts for securities-related correspondence, in violation of NASD Rules 3010 and 3110 and FINRA Rules 4511 and 2010. Additionally, the fifth cause of action charges Titan with failing to preserve emails, in willful violation of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.

NASD Rule 3110 provided that a member's WSPs "shall include procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the member's investment banking or securities business."[334] FINRA Rule 4511, which superseded NASD Rule 3110, requires that members "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules."[335] SEC Rule 17a-4 provides that every brokerage firm shall preserve all communications relating to its business for three years:

> Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than three years, the first two in an easily accessible place …. Originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such ….[336]

NASD Rule 3010 provided that "[e]ach member shall retain correspondence of registered representatives relating to its investment banking or securities business in accordance with [NASD] Rule 3110."[337] NASD Rule 3010 required each member to develop written procedures for the review of incoming and outgoing electronic correspondence with the public:

> Each member shall develop written procedures that are appropriate to its business, size, structure and customers for the review of incoming and outgoing (i.e., non-electronic) and electronic correspondence with the public relating to its investment banking or securities business, including procedures to review incoming, written

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[334] NASD Rule 3110(b)(4).

[335] FINRA Rule 4511(a); *accord Dep't of Enforcement v. Escarcega*, No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *64 (NAC July 20, 2017). FINRA Rule 4511 superseded NASD Rule 3110 on December 5, 2011.

[336] 17 C.F.R. § 240.17a-4(b)(4); *accord Dep't of Enforcement v. Merrimac Corp. Secs., Inc.*, No. 2007007151101, 2012 FINRA Discip. LEXIS 43, at *30-32 (Bd. of Governors May 2, 2012).

[337] NASD Rule 3010(d)(3).

> correspondence directed to registered representatives and related to the member's investment banking or securities business.[338]

Finally, NASD Rule 3010 required each member to establish procedures for the review by a registered principal of incoming and outgoing written and electronic correspondence with the public relating to the member's investment banking or securities business:

> Each member shall establish procedures for the review and endorsement by a registered principal in writing, on an internal record, of all transactions and for the review by a registered principal of incoming and outgoing written and electronic correspondence of its registered representatives with the public relating to the investment banking or securities business of such member.[339]

Brooks and Titan violated NASD Rules 3010 and 3110 and FINRA Rules 4511 and 2010. They stipulated that six of Titan's registered representatives (including Demetriou) used unauthorized personal email accounts "for securities related business."[340] Brooks admitted that in late 2012, he knew some of Titan's registered representatives used personal email accounts to send and receive securities-related emails.[341] For the same reasons, Titan violated Section 17(a) of the Exchange Act and Rule 17a-4. The Hearing Panel finds Brooks and Titan liable on the fifth cause of action.

In this cause of action, Enforcement alleges Titan's violation of Section 17(a) of the Exchange Act and Rule 17a-4 was willful. A willful violation under the federal securities laws simply means that the party charged with the duty knows what it is doing.[342] Willfulness is established if the party intentionally commits the act that constitutes the violation.[343] It does not require knowledge that the act violates a rule or statute.[344] A finding that Titan committed a willful violation would subject the firm to statutory disqualification.[345]

A majority of the Hearing Panel finds that Enforcement did not meet its burden of proof that Titan committed a willful violation. The evidence does not show that Titan intentionally failed to preserve the firm's emails. According to Brooks, Titan's policy was never to allow its

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[338] NASD Rule 3010(d)(2); *accord Meyers Assocs.*, 2018 FINRA Discip. LEXIS 1, at *20.

[339] NASD Rule 3010(d)(1); *accord Dep't of Enforcement v. Legacy Trading Co.*, No. 2005000879302, 2010 FINRA Discip. LEXIS 20, at *35-36 (NAC Oct. 8, 2010).

[340] Stip. ¶ 17.

[341] Tr. 1145.

[342] *Vungarala*, 2018 FINRA Discip. LEXIS 26, at *105.

[343] *Elgart v. SEC*, 2018 U.S. App. LEXIS 26627, at *5 (11th Cir. Sept. 19, 2018).

[344] *Merrimac Corp. Secs.*, 2012 FINRA Discip. LEXIS 43, at *36.

[345] Section 3 of the Exchange Act provides that a party is subject to statutory disqualification if it willfully violated any provision of the Exchange Act or its rules and regulations. 15 U.S.C. § 78c(a)(39)(F).

employees to use anything except captured email accounts.[346] Brooks testified that, whenever he saw a registered representative using a personal email account, he told the representative to stop.[347] If the registered representative continued using the personal email account, Brooks testified, he would direct Titan's outside email provider to capture that account.[348] In late 2012, Brooks hired a full-time CCO and, Brooks testified, one of her responsibilities was to get the personal email accounts "captured immediately and taken care of, and the rest of them gotten away with—or taken away."[349] The Hearing Panel majority accepts Brooks' testimony.

Based on Brooks' testimony, the Hearing Panel majority concludes that Titan's violation of Section 17(a) of the Exchange Act and Rule 17a-4 was not willful.[350]

F. Demetriou Used Two Unapproved Personal Email Accounts to Conduct Securities Business with Titan Customers, in Violation of FINRA Rule 2010 (Sixth Cause of Action)

In the sixth cause of action, Enforcement charges Demetriou with using unapproved personal email accounts to conduct securities business with Titan customers from July 2010 through July 2013, in violation of FINRA Rule 2010. Demetriou stipulated that, throughout the three-year period, he "utilized two different unapproved, personal email accounts to conduct securities-related business with Titan customers."[351] He stipulated that "email communications from these email addresses were not captured, reviewed, or maintained by Titan."[352]

Demetriou's use of personal email accounts violated FINRA Rule 2010 because a registered representative's failure to submit securities-related emails to his employer firm for review is inconsistent with high standards of commercial honor and just and equitable principles of trade.[353] Thus, the Hearing Panel finds Demetriou liable on the sixth cause of action.

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[346] Tr. 1148-49.

[347] Tr. 1150.

[348] Tr. 1157-58.

[349] Tr. 1146; *accord* Tr. 1156-57, 1269.

[350] The Hearing Officer dissents from the finding that Titan's violation of Section 17(a) of the Exchange Act and Rule 17a-4 was not willful.

[351] Stip. ¶ 16.

[352] Stip. ¶ 16.

[353] *Dep't of Enforcement v. Zaragoza*, No. E8A2002109804, 2008 FINRA Discip. LEXIS 28, at *26 (NAC Aug. 20, 2008).

G. A Majority of the Hearing Panel Finds that, in Connection with the Evolution II Offering of Limited Partnership Units, Enforcement Failed to Meet its Burden of Proof that Titan and Brooks Violated Section 10(b) of the Exchange Act, Rule 10b-9 thereunder, and FINRA Rule 2010; but a Majority Finds that Titan Violated Section 15(c) of the Exchange Act, SEC Rule 15c2-4 thereunder, and FINRA Rule 2010 (Seventh Cause of Action)

In the seventh cause of action, Enforcement charges Brooks and Titan with violating the the federal securities laws in the Evolution II minimum-maximum offering of limited partnership units. First, Enforcement alleges that, in willful violation of Section 10(b) of the Exchange Act and Rule 10b-9 thereunder, and also in violation of FINRA Rule 2010, Brooks and Titan made false and misleading statements in the Evolution II PPM to the effect that any limited partnership units purchased in the offering by the general partner or its affiliates would not be counted in determining whether the required $1 million minimum offering amount had been raised. Second, Enforcement alleges that, in willful violation of Section 15(c) of the Exchange Act and Rule 15c2-4 thereunder, and also in violation of FINRA Rule 2010, Titan released funds from the offering's escrow account before the minimum offering amount had been raised.[354]

Because of the different culpability standards of Rule 10b-9 and Rule 15c2-4, a majority of the Hearing Panel finds that Titan violated Section 15(c) of the Exchange Act and Rule 15c2-4, but a majority finds that Enforcement failed to meet its burden of proof that Brooks and Titan violated Section 10(b) of the Exchange Act and Rule 10b-9.[355]

1. SEC Rule 10b-9

SEC Rule 10b-9 prohibits any person from making a representation that securities are being offered on an "all or none" basis unless the offering is made on the condition that the investors' funds will be promptly refunded if the total amount due to the seller is not received by the deadline specified in the offering:

> It shall constitute a manipulative or deceptive device or contrivance, as used in Section 10(b) of the Act, for any person, directly or indirectly, in connection with the offer or sale of any security, to make any representation:
>
> To the effect that the security is being offered or sold on an "all-or-none" basis, unless the security is part of an offering or distribution being made on the condition that all or a specified amount of the consideration paid for such security will be

[354] Compl. ¶¶ 76-84.

[355] The Hearing Officer dissents from the conclusion that Enforcement failed to meet its burden of proof that Brooks and Titan violated Section 10(a) of the Exchange Act and Rule 10b-9. Hearing Panelist 1 dissents from the conclusion that Titan violated Section 15(c) of the Exchange Act and Rule 15c2-4.

promptly refunded to the purchaser unless … the total amount due to the seller is received by him by a specified date.[356]

Scienter is a required element of a Rule 10b-9 violation.[357] In an "all-or-none" offering, scienter "is shown by a defendant's knowledge of the minimum requirement, and that funds were retained even though the minimum was not raised."[358]

A majority of the Hearing Panel concludes that Enforcement failed to meet its burden of proof that Brooks and Titan acted with scienter in the Evolution II offering. The Hearing Panel majority determines that Brooks and Titan did not know that the offering failed to raise the $1 million minimum offering amount.

Brooks testified that he acted with the understanding there was a discrepancy within the Evolution II PPM and between that document and the partnership agreement.[359] The Evolution II PPM provided that "[t]he General Partner reserves the right to acquire unsold Units and offer them to investors at a later date."[360] Brooks testified he thought this provision, and a similar provision in the partnership agreement, conflicted with the passage in the Evolution II PPM stating that the offering would not count partnership units purchased by the general partner in calculating the minimum offering amount.[361] He believed the offering documents were not clear as to whether the general partner could borrow funds to purchase partnership units to meet the minimum amount.[362]

Brooks testified that he consulted with the counsel who drafted the offering documents, and counsel told him that the partnership agreement "is the overruling document in that packet that the client gets, and so, yes, you can make the loan" to purchase partnership units.[363] At Brooks' request, counsel drafted the loan documents, reinforcing Brooks' understanding that counsel saw nothing wrong with the general partner taking out a loan to purchase partnership units.[364] Brooks testified that counsel "helped prepare the loan documents. We had discussions

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[356] 17 C.F.R. § 240.10b-9(a); *accord Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *15 (NAC Feb. 12, 2007) ("SEC Rule 10b-9 requires that, in connection with a contingency offering, investor funds be promptly returned if the stated minimum proceeds of the offering are not raised by the deadline specified in the offering."). Brooks and Titan do not dispute that the Evolution II minimum-maximum offering was subject to Rules 10b-9 and 15c2-4. Tr. 1187.

[357] *Kaweske*, 2007 NASD Discip. LEXIS 5, at *21 n.15 ("Scienter is required for a violation of SEC Rule 10b-9.").

[358] *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998).

[359] Tr. 1211-12.

[360] CX-88, at 17.

[361] Tr. 1210-11; CX-88, at 55.

[362] Tr. 1230-31.

[363] Tr. 1230.

[364] Tr. 1275-76.

with him. And a logical person would deem that … he believed it could be done."[365] Counsel drafted and completed the promissory note for the loan before he completed and delivered the Evolution II PPM,[366] showing that counsel knew of the plan to accept funds from a third party in the form of a loan to the general partner, and indicating that counsel discussed and approved of the plan before the Evolution II PPM was issued.

Based on Brooks' testimony, a majority of the Hearing Panel concludes that Brooks and Titan did not violate Rule 10b-9 with scienter. Instead, the Hearing Panel majority accepts Brooks' testimony that he believed the general partner was allowed to purchase partnership units and count them toward the $1 million minimum offering amount and, therefore, he did not know the offering had failed to raise the minimum amount.[367] Accordingly, the Hearing Panel majority dismisses the portion of the seventh cause of action charging Brooks and Titan with violating Section 10(b) of the Exchange Act and Rule 10b-9 thereunder, and FINRA Rule 2010.

2. SEC Rule 15c2-4

SEC Rule 15c2-4 prohibits a brokerage firm that participates in an "all-or-none" offering from transmitting investor funds out of an escrow account unless and until the event or contingency contemplated by the offering occurs:

> It shall constitute a "fraudulent, deceptive or manipulative act or practice," … for any broker … participating in any distribution of securities … to accept any part of the sale price of any security being distributed unless:
>
> If the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on which behalf the distribution is being made until some further event or contingency occurs, (1) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (2) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.[368]

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[365] Tr. 1283.

[366] CX-107, at 1-6; CX-108, at 7.

[367] The Hearing Officer dissents from this conclusion.

[368] 17 C.F.R. § 240.15c2-4(b); *accord Gerace*, 2001 NASD Discip. LEXIS 5, at *8-9.

Scienter is not an element of a Rule 15c2-4 violation.[369]

A majority of the Hearing Panel concludes that in the Evolution II offering, Titan violated Rule 15c2-4's requirement that investment funds be held in escrow until the appropriate event or contingency occurred. The offering raised $300,000 from five bona fide investors.[370] However, this was not enough to meet the $1 million minimum offering amount. The Evolution II general partner borrowed $1.6 million and used these funds to purchase partnership units in the offering.[371]

The general partner's purchase brought the amount raised by the offering to $1.9 million. Titan, through Brooks, broke escrow and released the $1.9 million, including the $300,000 in bona fide investor funds, to the general partner. But the case law is clear that the Evolution II partnership units purchased by the general partner cannot be counted toward the $1 million minimum offering amount.

In *Department of Enforcement v. Gerace*, the NAC held that "[a] minimum contingency offering may not be considered sold … unless the securities are sold in bona fide transactions and the purchase prices are fully paid."[372] Purchases by a party with a significant stake in the success of the offering are not bona fide transactions:

> If an entity with a significant stake in the success of a contingency offering makes undisclosed purchases of securities in order to meet the contingency and close the offering, the façade of a successful offering is created and the representation that the offering will meet a certain minimum contingency is rendered false.[373]

As in *Gerace*, the Evolution II offering presented the façade of a successful offering because the general partner raised the $1 million minimum offering amount by purchasing partnership units worth $1.6 million. The general partner was a party with a significant stake in the success of the offering and was not a bona fide investor.

For these reasons, Titan's release of investment funds from escrow violated Section 15(c) of the Exchange Act, Rule 15c2-4 thereunder, and FINRA Rule 2010.

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[369] *Kaweske*, 2007 NASD Discip. LEXIS 5, at *21 n.15 ("Scienter is not … a requirement for a violation of SEC Rule 15c2-4.").

[370] Stip. ¶¶ 19, 20; CX-91, at 1; Tr. 1208, 1215-16. A bona fide investor is an entity or person other than the issuer or its affiliates. *Gerace*, 2001 NASD Discip. LEXIS 5, at *13 (describing a non-bona fide investor as "an entity with a significant stake in the success of a contingency offering").

[371] Stip. ¶¶ 19, 20; CX-91, at 1; CX-107, at 8, 82; Tr. 1216, 1219.

[372] *Gerace*, 2001 NASD Discip. LEXIS 5, at *13.

[373] *Id*.

3. Willfulness

Enforcement contends Titan's violation of Section 15(c) of the Exchange Act and Rule 15c2-4 was willful. As discussed above, a violation is willful if the party charged with the violation knows what it is doing.[374] The Hearing Panel majority finds that Enforcement failed to meet its burden of proof in this regard.[375] For reasons already discussed,[376] the Hearing Panel majority finds there was insufficient evidence that Titan knew the Evolution II offering had failed to raise the $1 million minimum offering amount when the firm released the investment funds from escrow.

IV. Sanctions

According to the FINRA Sanction Guidelines ("Guidelines"), the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondents.[377] The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

Below, the Hearing Panel addresses the sanctions it is imposing on Respondents.

A. Demetriou

Demetriou is liable for making false and misleading misrepresentations of fact to his current and former customers, sending investment summaries and the Three Emails (which contained inaccurate information and failed to provide a sound basis for evaluating the facts), and using two unapproved personal email accounts to conduct securities-related business with Titan customers.

1. False and Misleading Misrepresentations of Fact, in Violation of FINRA Rule 2010 (First Cause of Action)

The Sanction Guideline for Fraud, Misrepresentations or Material Omissions of Fact recommends a fine of $2,500 to $73,000 for negligent misconduct and a fine of $10,000 to $146,000 for intentional or reckless misconduct.[378] For negligent misconduct, adjudicators should consider suspending the respondent in any and all capacities for a period of 31 calendar

[374] *Vungarala*, 2018 FINRA Discip. LEXIS 26, at *105.

[375] The Hearing Officer dissents from this finding.

[376] *See* Section III.G.1. *supra*.

[377] FINRA Sanction Guidelines at 2 (2018) (General Principle No. 1), http://www.finra.org/industry/sanction-guidelines.

[378] Guidelines at 89.

days to two years.[379] For intentional or reckless misconduct, adjudicators should strongly consider barring the respondent.[380] In cases of intentional or reckless misconduct where mitigating factors predominate, adjudicators should consider suspending the respondent for six months to two years.[381]

The Hearing Panel finds that Demetriou's misrepresentations about RBCP were grossly negligent.[382] Demetriou represented that the numismatic coins secured his customers' investment funds, but he failed to obtain and read the agreement that placed restrictions on the transfer of the coins, and he himself questioned whether the coins were collateral of any kind.[383] Among the aggravating factors for this violation was that Demetriou failed to accept responsibility for and acknowledge his misconduct to Brooks and Titan prior to detection.[384] On the contrary, Demetriou concealed the misconduct by not informing Brooks of the Three Emails at the time Brooks requested Demetriou to provide an explanation of his involvement in RBCP.[385] Brooks did not learn of the Three Emails until long after the fact. Demetriou's misconduct resulted in injury to the investing public, because his customers and former customers lost $337,700 as a result of investing in RBCP, for which he shares responsibility with Keys, as explained below.[386]

A significant aggravating factor arises from a January 2013 email that Demetriou sent to his customers and former customers about FINRA's investigation.[387] After learning that a customer had received a letter requesting that the customer contact FINRA regarding Demetriou and RBCP, Demetriou told his customers in the email that they might also be contacted, and "[t]here is no requirement that you communicate with FINRA, but if you do, simply be honest."[388] Demetriou then listed "a few things [the customers] may like to have confirmed," including:

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[379] Guidelines at 89.

[380] Guidelines at 89.

[381] Guidelines at 89.

[382] Misconduct is negligent if the respondent fails to exercise the standard of care that a reasonably prudent person would exercise in a similar situation. Negligence connotes culpable carelessness. *John P. Flannery*, Initial Decision Release No. 438, 2011 SEC LEXIS 3835, at *104 (Oct. 28, 2011), *rev'd in part*, Exchange Act Release No. 73840, 2014 SEC LEXIS 4981 (Dec. 15, 2014), *rev'd on other grounds*, 810 F.3d 1 (1st Cir. 2015).

[383] RX-2, at 2.

[384] Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct to his employer prior to detection and intervention by the firm).

[385] Guidelines at 7 (Principal Consideration No. 10: Whether the respondent attempted to conceal his misconduct or to lull into inactivity, mislead, deceive or intimidate the member firm with which he is associated).

[386] Guidelines at 7 (Principal Consideration No. 11: With respect to other parties, including the investing public, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury).

[387] CX-110.

[388] CX-110, at 2.

- "The easiest thing for me to do concerning the failed investments with PCG and Bob Keys would have been to walk away and abandon my clients;"

- "I received no compensation from my activities concerning RBC Preferred, LLC;"

- "My efforts were to provide a conference call environment where Bob Keys and [BP] could explain their offer;" and

- "This FINRA letter is, to me, an example of 'No good deed goes unpunished.'"[389]

Demetriou's obvious purpose in writing this email was, first, to try and dissuade his customers from cooperating with FINRA's investigation by making it clear that they did not have to cooperate and, second, to influence what they might say in the event they did speak with FINRA. Demetriou sought to control the content of information FINRA obtained in its investigation. The email shows that Demetriou did not accept responsibility for or acknowledge his misconduct to his customers and that he attempted to conceal his misconduct, lull his customers into inactivity, delay FINRA's investigation, and conceal information from FINRA.[390]

The Hearing Panel does not find any mitigating factors.

Based on these factors, for Demetriou's false and misleading misrepresentations of fact about RBCP in violation of FINRA Rule 2010, the Hearing Panel imposes a fine of $10,000 on Demetriou and suspends him from associating with any FINRA member in any capacity for six months.

Enforcement requests that Demetriou, Brooks, and Titan be held jointly and severally liable for restitution with regard to the customer loss resulting from the RBCP offering. As to Demetriou, the restitution would be a component of relief for Demetriou's false and misleading misrepresentations of fact as alleged in the first cause of action.[391] FINRA is authorized to award restitution under FINRA Rule 8310.[392] The Sanction Guidelines recommend that adjudicators order restitution where appropriate to remediate misconduct:

> Restitution is a traditional remedy used to restore the status quo ante where a victim otherwise would unjustly suffer loss. Adjudicators may determine that restitution is an appropriate sanction where necessary to remediate misconduct. Adjudicators may order restitution when an identifiable person, member firm or other party has

[389] CX-110, at 2.

[390] Guidelines at 7-8 (Principal Considerations Nos. 2, 10, 12).

[391] Restitution against Brooks and Titan would be premised on their alleged failure to supervise Demetriou's involvement in RBCP. Because the Hearing Panel majority dismisses the cause of action against Brooks and Titan for alleged failure to supervise, restitution against them is not warranted.

[392] *Fuad Ahmed*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078, at *89 (Sept. 28, 2017). FINRA Rule 8310 provides that in addition to a number of listed sanctions, FINRA may "impose any other fitting sanction." FINRA Rule 8310(a)(7).

> suffered a quantifiable loss proximately caused by a respondent's misconduct. Adjudicators should calculate orders of restitution based on the actual amount of the loss sustained by a person, member firm or other party, as demonstrated by the evidence.[393]

Restitution should be ordered where the victims' loss is the foreseeable, direct, and proximate result of the respondent's misconduct.[394]

The Hearing Panel unanimously agrees that restitution is an appropriate sanction because identifiable persons—Demetriou's current and former customers—suffered a quantifiable loss proximately caused by Demetriou's misconduct. The parties entered into evidence a joint exhibit showing the amounts that each of Demetriou's customers invested (and lost) in RBCP.[395] Enforcement also entered into evidence a summary exhibit showing the amounts invested.[396] According to this exhibit, the total amount of customer loss was $338,200.[397]

For the purpose of determining the amount of restitution, a majority of the Hearing Panel has decided to apportion the $337,700 loss amount based on the relative culpability of Demetriou and Keys.[398] The majority finds that although Demetriou was a proximate cause of the customers' loss, he was not the only proximate cause, or even the principal cause. Keys was the person who originated the RBCP investment, proffered the numismatic coins as purported collateral for the customers' investment funds, came up with the highly exaggerated promises and rates of return, and took control of the investment funds after the offering closed. In these circumstances, the Hearing Panel majority concludes that Demetriou's restitution obligation should reflect his relative culpability.

Therefore, the Hearing Panel majority apportions restitution between Keys and Demetriou by a ratio of 75 percent to 25 percent. Demetriou will be subject to a restitution order in the amount of $337,700 divided by four (25 percent)—which equals $84,425. The Restitution Schedule attached to this Decision identifies each customer by initials and shows the amount of restitution Demetriou owes to each customer under this Decision on a pro rata basis. Restitution will include prejudgment interest at the rate established in Section 6621(a) of the Internal

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[393] Guidelines at 4 (General Principle No. 5: "Where appropriate to remediate misconduct, Adjudicators should order restitution and/or rescission.").

[394] *Dep't of Enforcement v. Clements*, No. 2015044960501, 2018 FINRA Discip. LEXIS 11, at *69 (NAC May 17, 2018); *Dep't of Enforcement v. Newport Coast Secs., Inc.*, No. 2012030564701, 2018 FINRA Discip. LEXIS 14, at *219 (NAC May 23, 2018), *appeal docketed*, No. 3-18555 (SEC July 27, 2018).

[395] JX-1.

[396] CX-126A.

[397] CX-126A. The exhibit has a $500 typographical error with regard to the loss incurred by customer "DH,", so the actual amount of loss was $337,700.

[398] The Hearing Officer dissents and would order restitution in the full amount of the customers' loss.

Revenue Code, accruing from October 28, 2010 (the closing date of the RBCP offering) to the date that restitution is paid.[399]

2. Advertising and Communications Violations of NASD Rule 2210 and FINRA Rules 2210 and 2010 (Fourth Cause of Action)

The Sanction Guideline for Advertising and Communications Violations recommends a fine of $1,000 to $29,000 for the inadvertent use of misleading communications, and a fine of $10,000 to $146,000 for the intentional or reckless use of misleading communications.[400] Adjudicators should consider suspending the respondent for up to 60 days in an egregious case of the inadvertent use of misleading communications.[401] In the case of an intentional or reckless use of misleading communications, adjudicators should consider suspending the respondent for up to two years.[402] In a case of numerous acts of intentional or reckless misconduct over an extended period of time, adjudicators should consider suspending the respondent for up to two years or barring him.[403] There is one consideration specific to this Sanction Guideline: whether violative communications with the public were circulated widely.[404]

The Hearing Panel applies this Sanction Guideline to Demetiou's use of both the Three Emails and the investment summaries, as alleged in the fourth cause of action. The Hearing Panel has found that Demetriou was grossly negligent in writing and sending the Three Emails. Thus, the level of his culpability was more than inadvertent and less than intentional or reckless. More serious was Demetriou's intentional use of the investment summaries.[405] Demetriou committed numerous acts because he sent 73 investment summaries to 34 customers and former customers.

Among the aggravating factors for this violation was that Demetriou sent the investment summaries over three years—an extended period of time.[406] Demetriou did not accept responsibility for or acknowledge the Three Emails or the investment summaries to Brooks prior

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[399] *Clements*, 2018 FINRA Discip. LEXIS 11, at *69. The closing date is chosen for the beginning of the prejudgment interest period because the record does not reflect the exact date when each customer paid investment funds.

[400] Guidelines at 80-81.

[401] Guidelines at 80.

[402] Guidelines at 81.

[403] Guidelines at 81.

[404] Guidelines at 80.

[405] Demetriou knew that, as a registered representative in the securities industry, he was required to comply with applicable content standards when he put something in writing about investments. Tr. 149.

[406] Guidelines at 7 (Principal Consideration No. 9: Whether the respondent engaged in the misconduct over an extended period of time).

to detection.[407] Demetriou circulated the Three Emails widely.[408] The misconduct resulted in injury to the investing public because Demetriou's customers lost $337,700 as a result of investing in RBCP, for which Demetriou shares responsibility with Keys.[409] There are no mitigating factors.

Based on these factors, for Demetriou's violation of NASD Rule 2210 and FINRA Rules 2210 and 2010, the Hearing Panel imposes a fine of $20,000 on Demetriou and suspends him from associating with any FINRA member in any capacity for one year.

3. Unapproved Personal Email Accounts in Violation of FINRA Rule 2010 (Sixth Cause of Action)

No Sanction Guideline applies to a registered representative's use of unapproved personal email accounts to conduct securities business with the customers of his employer firm. The closest analogy is the Sanction Guideline for Recordkeeping Violations,[410] because Demetriou's use of two personal email accounts made it difficult for Titan to keep records of his securities-related emails as required by SEC, NASD, and FINRA Rules.

The Sanction Guideline for Recordkeeping Violations recommends a fine of $1,000 to $15,000.[411] Where aggravating factors predominate, adjudicators should consider a fine of $10,000 to $146,000.[412] Where significant aggravating factors predominate, adjudicators should consider a higher fine.[413] Adjudicators should consider suspending the respondent for 10 business days to three months.[414] Where aggravating factors predominate, adjudicators should consider suspending the respondent for three months up to two years or barring him.[415]

There are five considerations specific to this Sanction Guideline:

1. the nature and materiality of the inaccurate or missing information;

2. the nature, proportion, and size of the firm records (e.g., emails) at issue;

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[407] Guidelines at 7 (Principal Consideration No. 2).

[408] Guidelines at 80 ("Whether violative communications with the public were circulated widely.").

[409] Guidelines at 7 (Principal Consideration No. 11).

[410] Guidelines at 29.

[411] Guidelines at 29.

[412] Guidelines at 29.

[413] Guidelines at 29.

[414] Guidelines at 29.

[415] Guidelines at 29.

3. whether inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence;

4. whether the violations occurred in two or more examination or review periods or over an extended period of time, or involved a pattern or patterns of misconduct; and

5. whether the violations allowed other misconduct to occur or to escape detection.[416]

Applying this Sanction Guideline, aggravating factors predominated to some degree. Demetriou's misconduct extended for a lengthy period of time; as he stipulated, for three years he utilized two unapproved personal email accounts to conduct securities-related business with Titan customers.[417] Demetriou's lengthy non-compliance reflects recklessness.[418] His violation allowed other misconduct to occur or escape detection, because he sent inaccurate investment summaries through his personal email accounts and—through the same accounts—he sent emails about RBCP after the company defaulted.[419]

On the other hand, the record does not reflect the extent to which Demetriou used his personal email accounts to conduct Titan securities-related business with Titan customers. We are unable to determine whether (1) the substantive content in Demetriou's missing emails was material, (2) the missing emails were voluminous, or (3) Demetriou engaged in numerous acts (i.e., sent numerous securities-related emails to Titan customers).[420]

Based on these factors, for Demetriou's use of personal email accounts to conduct securities-related business with Titan customers in violation of FINRA Rule 2010, the Hearing Panel fines Demetriou $10,000 and suspends him from associating with any FINRA member in any capacity for three months.

B. Brooks and Titan

Brooks and Titan have been found liable for violating NASD and FINRA Rules on recordkeeping because they failed to capture, review, and retain Titan emails and failed to establish, maintain, and enforce adequate supervisory procedures to capture, review, and retain Titan emails. Titan has been found liable for violating the federal securities laws by failing to

[416] Guidelines at 29.

[417] Stip. ¶ 16.

[418] Guidelines at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence).

[419] CX-20; CX-21.

[420] Guidelines at 7 (Principal Consideration No. 8: Whether the respondent engaged in numerous acts and/or a pattern of misconduct), 29 ("Nature and materiality of inaccurate or missing information … The nature, proportion, and size of the firm records (e.g., emails) at issue.").

preserve emails and by releasing investment funds from escrow in the Evolution II offering of limited partnership units.

1. Recordkeeping Violations of Exchange Act Section 17(a), SEC Rule 17a-4 thereunder, NASD Rules 3010 and 3110, and FINRA Rules 4511 and 2010 (Fifth Cause of Action)

The Hearing Panel described the Sanction Guideline for Recordkeeping Violations immediately above in its discussion of the sanctions to be imposed on Demetriou.[421] We incorporate that description here. Applying this Sanction Guideline, the Hearing Panel finds that Brooks' and Titan's misconduct was the result of negligence. However, aggravating factors predominated.[422]

Brooks' and Titan's failure to capture and preserve emails extended to six registered representatives out of a firm of 24.[423] Brooks and Titan failed to prevent the use of personal email accounts for two years.[424] Titan's supervisory procedures and controls in this regard were not properly implemented.[425] Brooks' and Titan's violation allowed other misconduct to occur or escape detection, because Demetriou was able to send inaccurate investment summaries and emails about RBCP through his personal accounts.[426] There are no mitigating factors.

Based on these factors, for Brooks' and Titan's violation of NASD Rules 3010 and 3110, and FINRA Rules 4511 and 2010, and for Titan's violation of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, the Hearing Panel imposes a fine of $50,000 jointly and severally on Brooks and Titan, and suspends Brooks from associating with any FINRA member in any principal or supervisory capacity for two months.[427]

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[421] Guidelines at 29.

[422] Guidelines at 29.

[423] Guidelines at 7 (Principal Consideration No. 8).

[424] Guidelines at 7 (Principal Consideration No. 9).

[425] Guidelines at 7 (Principal Consideration No. 5: Whether, at the time of the violation, the respondent member firm had developed reasonable supervisory, operational and/or technical procedures or controls that were properly implemented).

[426] Guidelines at 29 ("Whether the violations allowed other misconduct to occur or to escape detection.").

[427] The fine is joint and several between Brooks and Titan because Brooks is the sole owner of the firm. Brooks is suspended in a principal and supervisory capacity because he committed the violation in his role as a principal and supervisor.

2. Escrow Violations of Section 15(c) of the Exchange Act, Rule 15c2-4 thereunder, and FINRA Rule 2010 (Seventh Cause of Action)

The Sanction Guideline for Escrow Violations and Prohibited Representations in Contingency Offerings recommends a fine of $1,000 to $15,000 for a violation of SEC Rule 15c2-4.[428] In an egregious violation of Rule 15c2-4, adjudicators should consider suspending the firm in any or all activities or functions for up to 30 business days.[429]

There are four considerations specific to this Sanction Guideline. The first is the amount of commissions or other underwriting compensation retained by the respondent.[430] The second is whether the respondent was affiliated with the issuer or any other entity to which customer funds were released from escrow.[431] The third is whether subscription funds were released before the contingency occurred.[432] The fourth is the extent to which customer funds were exposed to risk or loss.[433]

A majority of the Hearing Panel finds that this case presented a serious but not egregious violation of Section 15(c) of the Exchange Act and Rule 15c2-4. Titan's misconduct resulted from negligence. Titan retained commissions from the Evolution II offering, and was affiliated with the issuer (to which subscription funds were released from escrow) by virtue of Brooks' common ownership interests in Titan and the general partner of Evolution II.[434] Titan released subscription funds before the contingency occurred. However, customers' funds were not exposed to risk or loss.[435]

Based on these factors, for Titan's violation of Section 15(c) of the Exchange Act, Rule 15c2-4 thereunder, and FINRA Rule 2010 in the Evolution II offering, a Hearing Panel majority imposes a $15,000 fine on Titan.

V. Order

The Hearing Panel (or a majority of the Hearing Panel) orders as follows:

With regard to the first cause of action, for violating FINRA Rule 2010 by sending to his current and former customers the Three Emails, in which he made false and misleading

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[428] Guidelines at 22.

[429] Guidelines at 22.

[430] Guidelines at 22.

[431] Guidelines at 22.

[432] Guidelines at 22.

[433] Guidelines at 22.

[434] Guidelines at 8 (Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain), 22.

[435] Guidelines at 22.

misrepresentations of fact about RBCP, Respondent Richard Wayne Demetriou is fined $10,000 and suspended from associating with any FINRA member in any capacity for a period of six months. Demetriou shall pay restitution in the amount of $84,425, plus prejudgment interest at the rate established in Section 6621(a) of the Internal Revenue Code, accruing from October 28, 2010 (the closing date of the RBCP offering) to the date restitution is paid. The Restitution Schedule attached to this Decision identifies each customer by initials and shows the amount of restitution Demetriou owes to each customer. In the event a particular customer or customers cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the state of the customer's last known address. Satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, shall be provided to staff of FINRA's Department of Enforcement, Southern District Office, no later than 90 days after the date when this Decision becomes final.

With regard to the second cause of action, the Department of Enforcement failed to meet its burden of proof that Demetriou violated NASD Rule 3030 and FINRA Rule 2010 by failing to disclose RBCP as an outside business activity. The second cause of action is dismissed.

With regard to the third cause of action, Enforcement failed to meet its burden of proof that Respondents Brad C. Brooks and Titan Securities violated NASD Rule 3010(a) and FINRA Rules 3270 and 2010 by failing to supervise Demetriou's involvement in RBCP as an outside business activity. The third cause of action is dismissed.

With regard to the fourth cause of action, for violating NASD Rules 2210(b) and (d) and FINRA Rules 2210(b) and (d) and 2010 by sending the Three Emails and investment summaries that contained inaccurate information and failed to provide a sound basis for evaluating the facts, and by failing to obtain approval of the Three Emails by an appropriately qualified registered principal of Titan, Demetriou is fined $20,000 and suspended from associating with any FINRA member in any capacity for one year.

With regard to the fifth cause of action, for Brooks' and Titan's violation of NASD Rules 3010(a), (b), and (d), and 3110, and FINRA Rules 4511 and 2010, by failing to establish and maintain adequate supervisory systems with regard to the capture, review, and retention of Titan's securities-related emails, and failing to enforce the firm's WSPs prohibiting the use of personal email accounts for securities-related correspondence, and for Titan's violation of Section 17(a) of the Exchange Act, Rule 17a-4 thereunder, and FINRA Rule 2010, by failing to preserve emails relating to its securities business, Brooks and Titan are fined $50,000 jointly and severally, and Brooks is suspended from associating with any FINRA member in any principal or supervisory capacity for two months.

With regard to the sixth cause of action, for violating FINRA Rule 2010 by using personal email accounts, without Titan's knowledge or consent, to conduct securities business with Titan customers, Demetriou is fined $10,000 and suspended from associating with any FINRA member in any capacity for three months.

With regard to the seventh cause of action, for violating Section 15(c) of the Exchange Act, Rule 15c2-4 thereunder, and FINRA Rule 2010, by improperly releasing investment funds from escrow in the Evolution II minimum-maximum offering of limited partnership units, Titan is fined $15,000. Enforcement failed to meet its burden of proof that Brooks and Titan violated Section 10(b) of the Exchange Act, Rule 10b-9 thereunder, and FINRA Rule 2010, by making prohibited representations with scienter in the Evolution II offering. This part of the seventh cause of action is dismissed.

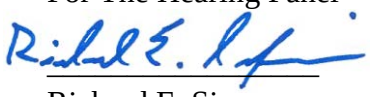
Demetriou, Titan, and Brooks are jointly and severally liable to pay the hearing costs of $14,663.78, consisting of a $750 administrative fee and $13,913.78 for the cost of the transcript.

Demetriou shall serve the suspensions imposed in this Decision consecutively.[436] If this Decision becomes FINRA's final disciplinary action, the first suspension on Demetriou shall become effective with the opening of business on May 6, 2019. The second suspension shall become effective immediately upon the end of the first suspension. The third suspension shall become effective immediately upon the end of the second suspension.

If this Decision becomes FINRA's final disciplinary action, Brooks' suspension in any principal or supervisory capacity shall become effective at the opening of business on May 6, 2019.

The fines, costs, and restitution herein shall be due on a date set by FINRA, but not less than 30 days after this Decision becomes FINRA's final disciplinary action.[437]

For The Hearing Panel



Richard E. Simpson
Hearing Officer[438]

VI. Dissent of the Hearing Officer

The Hearing Officer, dissenting in part from the conclusions of the Hearing Panel majority:

[436] The suspensions are consecutive because Demetriou's violations were "of fundamentally different natures," such that "consecutive suspensions [will] specifically discourage *all* types of additional misconduct at issue." *Dep't of Enforcement v. Siegel*, No. C05020055, 2007 NASD Discip. LEXIS 20, at *53 (NAC May 11, 2007) (emphasis in original), *aff'd*, Exchange Act Release No. 58737, 2008 SEC LEXIS 2459 (Oct. 6, 2008).

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

[438] With regard to those parts of this Decision with which the Hearing Officer or one of the Hearing Panelists dissents, the Hearing Officer signs this Decision on behalf of the Hearing Panel majority.

As discussed in detail below, I dissent from the Hearing Panel majority's conclusions that:

- Restitution against Demetriou for his false and misleading misrepresentations of fact should not exceed the amount of $84,425, or 25 percent of the customers' loss (First Cause of Action). I conclude that the full amount of the customers' loss, $337,700, was the foreseeable, direct, and proximate result of Demetriou's misrepresentations and, therefore, that restitution in the full amount is warranted.

- Enforcement failed to prove that Demetriou violated NASD Rule 3030 and FINRA Rule 2010 (Second Cause of Action). I conclude that Demetriou was employed as a result of his involvement in RBCP and was therefore engaged in an outside business activity.

- Enforcement failed to prove that Brooks and Titan violated NASD Rule 3010 and FINRA Rules 3270 and 2010 (Third Cause of Action). I conclude that Brooks and Titan had an obligation to supervise Demetriou's involvement in RBCP as an outside business activity.

- Enforcement failed to prove that Titan's violation of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder was willful. I conclude that Titan's failure to preserve firm emails was intentional and its violation willful.

- Enforcement failed to prove that Brooks and Titan violated Section 10(b) of the Exchange Act, Rule 10b-9 thereunder, and FINRA Rule 2010, and failed to prove that Titan's violation of Section 15(c) of the Exchange Act and Rule 15c2-4 thereunder, was willful. I conclude that Brooks and Titan made prohibited representations with scienter in the Evolution II offering of limited partnership units, and their securities law violations in the offering were willful.

A. Restitution in the Full Amount of Loss is Warranted for Demetriou's False and Misleading Misrepresentations of Fact about RBCP (First Cause of Action)

With respect to Demetriou's false and misleading misrepresentations of fact about RBCP as charged in the first cause of action, I conclude that the full amount of the customers' loss, $337,700, should be ordered in restitution. Restitution is warranted when the victims' loss is the foreseeable, direct, and proximate result of the respondent's misconduct.[439] In my view, the full amount of customers' loss from investing in RBCP was the foreseeable, direct, and proximate result of Demetriou's misrepresentations.

In *Dep't of Enforcement v. Brookstone Securities, Inc.*, the NAC recognized that neither the SEC nor the courts have adopted a single definitive expression of what constitutes proximate

[439] *Clements*, 2018 FINRA Discip. LEXIS 11, at *69.

causation.[440] According to the NAC, recent tests of proximate causation have included a "substantial factor" test and a "materialization of the risk" approach:

> More recently, courts have incorporated a "substantial factor" test, which asks whether a wrongdoer's conduct was a substantial factor in producing a victim's harm, or a "materialization of the risk" approach, where a harm suffered was the product of the zone of risks that made the actor's conduct unlawful.[441]

Demetriou's misrepresentations about RBCP were a substantial factor in causing his customers to invest and, given his knowledge of the speculative nature of the investment, the complete loss of investment funds was within the zone of foreseeable risk. Restitution may be ordered against Demetriou even if RBCP were nothing more than a fraudulent scheme perpetrated by Keys. In *McGee v. SEC*, the United States Court of Appeals for the Second Circuit held that an award of restitution against a registered representative (McGee) was not excessive or oppressive, even though the principal wrongdoer did not pay any restitution.[442] As the Second Circuit reasoned, "[t]hat Griffin is responsible for additional distinct fraudulent conduct does not absolve McGee of his own responsibility for these transactions."[443]

For these reasons, I would order restitution against Demetriou in the full amount of $337,700, plus prejudgment interest accruing at the rate established in Section 6621(a) of the Internal Revenue Code from October 28, 2010 (the closing date of the RBCP offering) to the date of payment.

B. Demetriou Violated NASD Rule 3030 and FINRA Rule 2010 (Second Cause of Action)

With respect to the second cause of action, I conclude Enforcement established that Demetriou violated NASD Rule 3030 and FINRA Rule 2010. In my view, the evidence showed that Demetriou was employed by RBCP and engaged in an undisclosed outside business activity from July through October 2010. My determination is guided by the NAC's decision in *Department of Enforcement v. Schneider*.[444]

In *Schneider*, the respondent incorporated a company he called "Hedgeco" to operate an educational website focusing on hedge funds and to organize seminars in which hedge fund managers would make presentations to potential investors.[445] The respondent did not notify his

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[440] *Dep't of Enforcement v. Brookstone Secs., Inc.*, No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *148 (NAC Apr. 16, 2015).

[441] *Id*. at *149.

[442] *McGee v. SEC*, 733 Fed. Appx. 571, 576 (2d Cir. 2018).

[443] *Id*.

[444] *Dep't of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6 (NAC Dec. 7, 2005).

[445] *Id*. at *2-3.

employer firm of his efforts on behalf of Hedgeco.[446] In the ensuing disciplinary proceeding, the respondent argued he was not liable for engaging in an undisclosed outside business activity because he was neither compensated nor employed by Hedgeco. In particular, he contended he was not employed because Hedgeco lacked the traditional hallmarks of an employer such as revenue, sales, an office, stationery, and business cards.[447]

Rejecting these arguments, the NAC reasoned that the respondent's reading of the employment element in NASD Rule 3030 "ignores the rule's language and its purpose."[448] Noting that a registered representative was required to disclose an outside business activity at the time he took steps to commence the activity, the NAC found the respondent had taken more than just steps to commence business through Hedgeco.[449] The respondent held himself out as the president and Chief Executive Officer of the company, marketed it to potential customers, and promoted it when he met with hedge fund managers.[450] According to the NAC, "[t]he record makes readily apparent that Schneider was conducting business on behalf of Hedgeco."[451]

As in *Schneider*, the proposition that Demetriou was not employed by anyone in the RBCP offering ignores the language and purpose of NASD Rule 3030. Clearly, Demetriou conducted business on behalf of RBCP and was employed by the company, beginning when it took its first steps to make a securities offering to his customers. He was the managing member of RBCP. After agreeing to serve in this position, he played an important role in the company. Over four weeks, he sent two of the Three Emails and arranged a conference call so Keys and BP could solicit his customers.

In one of the Three Emails, Demetriou represented to the customers that his position as managing member empowered him to liquidate the numismatic coins on their behalf in the event of a default by RBCP.[452] Thus, he used his position in the company to bolster the credibility of the misrepresentations he made about how secure the investment was. He informed the customers he was the one who directed the Safekeeping Receipt be issued in the name of RBCP.[453]

Demetriou then resigned as managing member because, he claims, Keys had tricked him, but he continued to conduct business on behalf of RBCP. Following the issuance of the PPM, Demetriou arranged for another conference call to enable Keys and BP to solicit his customers.

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[446] *Id*. at *13.

[447] *Id*. at *13.

[448] *Id*. at *13.

[449] *Id*. at *14.

[450] *Id*. at *14.

[451] *Id*. at *14-15.

[452] CX-10, at 1.

[453] CX-10, at 1.

An administrative assistant working for Keys emailed Demetriou notifications of the customers' completed investments in RBCP.[454] Demetriou continued emailing the customers individualized written illustrations of how an investment in RBCP would work for them.[455]

Demetriou's October 13, 2010 explanation to Brooks about his involvement in RBCP withheld significant information, indicating that Demetriou knew he was improperly conducting business on behalf of RBCP. Demetriou did not disclose that he had been the managing member of RBCP.[456] He did not disclose that he had arranged two conference calls to enable Keys and BP to solicit his customers,[457] or that he had sent the Three Emails.[458] He represented to Brooks that he was not presenting RBCP as an offering,[459] but he did not forward the Three Emails to enable Brooks to make that determination for himself. Demetriou did not disclose that he had communicated to the customers his view that RBCP seemed like the best route to recover the investment funds the customers lost in the PCG-sponsored real estate partnerships.[460]

Because Demetriou was employed by RBCP and engaged in an outside business activity on behalf of the company, without providing prompt notice to Titan, I find that he violated NASD Rule 3030 and FINRA Rule 2010, and I would hold him liable on the second cause of action. For this violation, I would fine Demetriou $20,000 and suspend him for six months.

Among the aggravating factors supporting these sanctions was that Demetriou's outside business activity with regard to RBCP involved four customers of Titan.[461] The outside business activity resulted in injury to the investing public because Demetriou's customers and former customers lost $337,700 as a result of investing in RBCP.[462] He did not accept responsibility for or acknowledge his activity to Brooks prior to detection.[463] Instead, Brooks learned of the activity by conducting a supervisory review of Demetriou's emails. Demetriou then concealed the extent of the activity by, among other things, failing to inform Brooks that he had sent the Three Emails and had set up conference calls to enable Keys and BP to solicit the customers.[464] I am unable to identify any mitigating factors.

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[454] CX-7, at 21, 23; Tr. 433-34.

[455] CX-22, at 9-12; Tr. 439-40.

[456] CX-6; Tr. 425, 1019.

[457] CX-6; Tr. 426.

[458] CX-6.

[459] CX-6.

[460] CX-6; Tr. 428.

[461] Guidelines at 13 ("Whether the outside activity involved customers of the firm.").

[462] Guidelines at 7 (Principal Consideration No. 11).

[463] Guidelines at 7 (Principal Consideration No. 2).

[464] Guidelines at 7 (Principal Consideration No. 10).

C. Brooks and Titan Violated NASD Rule 3010 and FINRA Rules 3270 and 2010 (Third Cause of Action)

With respect to the third cause of action, I conclude that Brooks and Titan violated NASD Rule 3010 and FINRA Rules 3270 and 2010 by failing to supervise Demetriou's involvement in RBCP as an outside business activity from October 2010 through April 2013. The contrary conclusion of the Hearing Panel majority rests on its view that Demetriou's involvement in RBCP was not an outside business activity. But if RBCP was such an activity—as I find—then Brooks and Titan were required to supervise it.[465]

A supervisor is responsible for reasonable supervision, a standard based on the circumstances of each case.[466] Brooks failed to conduct a reasonable investigation into Demetriou's involvement in RBCP to provide a factual basis for Brooks to determine whether such involvement rose to the level of an outside business activity. Brooks sent an email replying to Demetriou's emailed explanation about RBCP and approving Demetriou's continued involvement.[467] In its entirety, Brooks' reply email stated, "[t]hanks, just be sure to let them know that Titan is not involved."[468] Demetriou's explanation and Brooks' reply were both sent the same day,[469] indicating that Brooks did not spend much time on the matter. But even in that short length of time, Brooks saw and failed reasonably to follow up on a number of "red flags" warning that Demetriou's involvement in RBCP was an outside business activity.

In his explanation, Demetriou informed Brooks that principals of RBCP had agreed that the first $25 million of profit would go to Demetriou's customers.[470] Demetriou informed Brooks this translated into a 1,000 percent return: for each $5,000 invested, $50,000 in profit was scheduled to be returned to the customers.[471] Demetriou acknowledged to Brooks this was a very high return.[472] Demetriou informed Brooks he would be discussing RBCP with the customers.[473] Thus, it would have been clear to a reasonable supervisor that Demetriou intended to talk to the customers about a non-Titan investment proposing highly exaggerated, 1,000 percent returns totaling $25 million.

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[465] *Merrimac Corp. Secs.*, 2015 FINRA Discip. LEXIS 4, at *6 ("[W]e affirm … that Merrimac violated NASD Rules 3010 and 2110 by failing to supervise [two registered representatives'] outside business activities.").

[466] *Clements*, 2018 FINRA Discip. LEXIS 11, at *46-47.

[467] CX-7, at 1; Tr. 1028.

[468] CX-7, at 1.

[469] CX-6; CX-7, at 1.

[470] CX-6; Tr. 418.

[471] CX-6; Tr. 420.

[472] CX-6; Tr. 423.

[473] CX-6; Tr. 425, 1024.

Demetriou informed Brooks that Keys was involved in RBCP.[474] Brooks knew Keys had been involved in earlier bad deals and did not want anything to do with Keys.[475] Still, Brooks thought it was okay for Demetriou to facilitate contact between Demetriou's customers and Keys.[476]

Brooks did not ask how many of Demetriou's customers were involved in the RBCP offering.[477] A year and a half later, Brooks still did not know who had invested and, when the SEC wanted that information, Brooks had to ask Demetriou.[478] It was only then Brooks learned that four of the persons solicited to invest were Titan customers.[479]

There is no evidence Brooks asked whether Demetriou held or had held positions or titles with RBCP; Demetriou had sent any electronic or written communications to his customers about RBCP; Demetriou had participated in any conference calls or other promotional events concerning RBCP; or Demetriou had conducted any activity or business on behalf of RBCP.

Brooks' failure to conduct a reasonable investigation of Demetriou's outside business activity also violated FINRA Rule 3270. When that Rule went into effect on December 15, 2010, the "look-back" provision of Regulatory Notice 10-49 required Brooks to consider whether Demetriou's involvement in RBCP would interfere with or otherwise compromise Demetriou's responsibility to Titan or Titan's customers.[480] The look-back requirement applied to supervisors of "registered persons who are actively engaged in an outside business activity prior to December 15, 2010."[481] Demetriou had been actively engaged in RBCP activities prior to December 15, 2010. FINRA Rule 3270 also required Brooks to consider whether customers or the public viewed Demetriou's involvement in RBCP as part of Titan's business, based on the nature of his involvement and how RBCP was offered.[482] There is no evidence Brooks did any of these things.

Because Brooks and Titan failed in their duty to supervise, Demetriou was able to continue his outside business activity for more than two years. After RBCP defaulted on its obligation to return the investment funds to Demetriou's customers, Demetriou continued to arrange conference calls so Keys and BP could report on how they were ostensibly working to

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[474] CX-6.

[475] Tr. 1011, 1016.

[476] Tr. 1018.

[477] Tr. 1002-03.

[478] Tr. 1004-05; CX-31.

[479] Tr. 1010; CX-33, at 3.

[480] FINRA Rule 3270, Supplementary Material .01; CX-135.

[481] CX-135, at 1.

[482] FINRA Rule 3270, Supplementary Material .01.

salvage the investment.[483] The last conference call was in September 2012—i.e., more than 1.5 years after RBCP defaulted.[484] Demetriou continued to send widely distributed emails to the customers to keep them updated about RBCP.[485] He sent his last email nearly two years after RBCP defaulted.[486]

For the above reasons, I conclude that Brooks and Titan violated NASD Rule 3010 and FINRA Rules 3270 and 2010 by failing reasonably to investigate and supervise Demetriou's outside business activity, and I would hold Brooks and Titan liable on the third cause of action. For this violation, I would fine Brooks and Titan $50,000 jointly and severally and impose a six-month principal and supervisory suspension on Brooks. This was an egregious case of a failure to supervise. Among the aggravating factors was that Brooks and Titan ignored "red flag" warnings that should have resulted in additional supervisory scrutiny.[487] Their failure to supervise enabled Demetriou to engage in an outside business activity that resulted in the loss of $337,700 in customer funds,[488] and the failure continued over an extended period of time—from October 2010 through April 2013.[489] There are no mitigating factors.

D. Titan's Violation of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder Was Willful (Fifth Cause of Action)

As to the fifth cause of action, I conclude that Titan acted intentionally in failing to preserve the firm's securities-related emails, in willful violation of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder. My determination of willfulness is guided by the decision of FINRA's Board of Governors in *Department of Enforcement v. Merrimac Corporate Securities, Inc.*[490] In that case, the Board held that willfulness does not require the respondent firm's knowledge that its failure to preserve emails violates a rule or statute.[491] It also "does not matter that the [firm] was attempting to comply with the rules."[492] The Board held that "Merrimac's

[483] Tr. 460; CX-20, at 8-9, 18, 20, 26, 29, 39-44.

[484] CX-20, at 41.

[485] CX-16; CX-17; CX-20, at 10-17, 19, 21-25, 27-28, 30-38; Tr. 442-43, 459-60.

[486] CX-20, at 44; Tr. 448.

[487] Guidelines at 104 ("Whether respondent ignored 'red flag' warnings that should have resulted in additional supervisory scrutiny.").

[488] Guidelines at 7 (Principal Consideration No. 11).

[489] Guidelines at 7 (Principal Consideration No. 9).

[490] *Merrimac Corp. Secs.*, 2012 FINRA Discip. LEXIS 43.

[491] *Id*. at *36.

[492] *Id*. at *37.

record keeping violations were willful" because the firm's FINOP stopped storing incoming emails, and the firm failed to preserve emails in an easily accessible place.[493]

Titan, acting through Brooks, intentionally acquiesced in a continuing situation in which the firm failed to preserve emails sent or received by the personal email accounts of six registered representatives. The violation continued for *two years*. In that period, Brooks received 126 emails from the personal email accounts of the registered representatives.[494] Titan intentionally committed the act that constitutes the violation: the firm failed to preserve all its emails. It did so even though Brooks admits that, by the end of 2012, he knew the registered representatives used personal email accounts to send or receive securities-related emails.[495] Therefore, I find that Titan's violation of Section 17(a) of the Exchange Act and Rule 17a-4 was willful which, had it been the majority's finding, would have resulted in statutory disqualification.[496]

E. Brooks and Titan Acted with Scienter in the Evolution II Offering of Limited Partnership Units in Violation of Section 10(b) of the Exchange Act, SEC Rule 10b-9 thereunder, and FINRA Rule 2010, and Their Violation Was Willful (Seventh Cause of Action)

With regard to the seventh cause of action, I conclude that Brooks and Titan acted with scienter in the Evolution II minimum-maximum offering of limited partnership units in violation of Section 10(b) of the Exchange Act, Rule 10b-9 thereunder, and FINRA Rule 2010. Brooks and Titan made a representation that the Evolution II offering was on a contingent, minimum-maximum basis.[497] By operation of Rule 10b-9, this meant Evolution II offered the units on the condition that the investors' funds would be promptly refunded if the $1 million minimum offering amount were not received on or before the deadline specified in the offering.[498]

The Evolution II offering did not receive the $1 million minimum offering amount by the deadline. As the Hearing Panel majority notes, the partnership units purchased by the general partner cannot be counted toward the minimum amount.[499] Despite the failure to raise the minimum amount, Titan, acting through Brooks, did not refund the investment funds to the investors. Instead, Brooks released the funds from escrow and used them to purchase the asset contemplated by the offering. He had scienter because he knew of the minimum offering

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[493] *Id*. at *37-38; *accord Elgart*, 2018 U.S. App. LEXIS 26627, at *5 ("A person acts 'willfully' within the meaning of the federal securities laws if he 'intentionally committed the act which constitutes the violation.'") (quoting *ZPR Inv. Mgmt. v. SEC*, 861 F.3d 1239, 1248 (11th Cir. 2017)).

[494] Tr. 1422.

[495] Tr. 1145.

[496] Section 3(a)(39)(F) of the Exchange Act calls for statutory disqualification of a person or firm that willfully violates the federal securities laws. 15 U.S.C. § 78c(a)(39)(F).

[497] CX-88, at 2.

[498] 17 C.F.R. § 240.10b-9(a).

[499] Section III.G.2. *supra*.

requirement and knew the investment funds were retained even though the minimum amount was not raised.[500]

Brooks and Titan made none of the disclosures required by Rule 10b-9. The Evolution II PPM did not inform investors that the general partner's purchase of partnership units could or would be counted toward the minimum offering amount. Instead, the Evolution II PPM stated the opposite: "Any Units purchased by the General Partner or its affiliates *will not be counted* in calculating the minimum offering."[501]

Brooks knew what he was doing when he agreed to participate in a minimum-maximum securities offering, which triggered the application of Rule 10b-9. He knew what he was doing when he counted the general partner's purchase of partnership units to raise the $1 million minimum offering amount. He knew what he was doing when he released the investment funds from escrow even though the minimum amount had not been raised from bona fide investors.

Brooks admits he carried out a plan to deposit $1.6 million of borrowed funds for the purchase of Evolution II partnership units to enable him to release the investment funds from escrow.[502] He testified that it was part of the plan that the $1.6 million would be paid back with investment funds received after the deadline for the offering.[503] This was what Brooks hoped for from the beginning, when the general partner borrowed the $1.6 million.[504]

Brooks testified that he counted the general partner's purchase of Evolution II limited partnership units toward the $1 million minimum offering amount "[o]nly after consulting counsel and making sure that we had the authority to do it through our documents."[505] But Brooks did not consult counsel about whether it would violate Rule 10b-9 to count the general partner's purchase of partnership units. Instead, he admits he sought advice only on whether the general partner had the authority to purchase partnership units and to borrow funds for that purpose.[506] This is corroborated by the memorandum written by the counsel. The memorandum discusses only the authority of the general partner to acquire and dispose of partnership units.[507]

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[500] *First Pac. Bancorp*, 142 F.3d at 1191 (scienter "is shown by a defendant's knowledge of the minimum requirement, and that the funds were retained even though the minimum was not raised").

[501] CX-88, at 55 (emphasis added). Contrary to Brooks' testimony, there was no discrepancy in the Evolution II PPM. The passage on which Brooks relies stated only that "[t]he General Partner reserves the right to acquire unsold Units and offer them to investors at a later date." CX-88, at 17. That sentence did not authorize the general partner to count the acquired units toward the minimum amount.

[502] Tr. 1220.

[503] Tr. 1220, 1235-36.

[504] Tr. 1220.

[505] Tr. 1210-11.

[506] Tr. 1210-11, 1230, 1234.

[507] CX-93, at 1.

It says nothing about the legality of counting units purchased by the general partner to meet the minimum amount, and does not mention Rule 10b-9.[508]

Brooks' and Titan's answer in this proceeding did not raise advice-of-counsel as an affirmative defense and, in their post-hearing brief, they admit they are not raising this defense now.[509] Furthermore, such a defense would fail. Brooks and Titan needed to establish that Brooks made full disclosure to counsel, appropriately sought to obtain relevant legal advice, obtained such advice, and reasonably relied on it.[510] Yet the counsel on whom Brooks purported to rely did not testify in the hearing. In addition, Brooks was unable to present any documentary evidence of what facts, if any, he disclosed to counsel.[511] Nor does the documentary record show what advice counsel gave.[512] No provision in the offering documents authorized Brooks to count the general partner's purchase of partnership units to meet the minimum offering amount.

Brooks' consultation with counsel does not negate the fact that he acted knowingly in counting the general partner's purchase of partnership units toward the $1 million minimum offering amount. Brooks and Titan violated Section 10(b) of the Exchange Act, Rule 10b-9 thereunder, and FINRA Rule 2010 with scienter because they knew of the minimum offering requirement and knew the investment funds were not returned even though the minimum amount was not raised.[513] For this violation, I would fine Brooks and Titan $30,000 jointly and severally and suspend Brooks in any principal or supervisory capacity for two months.

This was an egregious case of a contingent offering violation. Among the aggravating factors was that Brooks and Titan profited by retaining commissions as a result of the offering.[514] Brooks and Titan were affiliated with the issuer by virtue of Brooks' ownership interest in the general partner of Evolution II.[515] Their misconduct was the result of the intentional act of

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[508] CX-93; Tr. 1234-35.

[509] Post-Hearing Brief of Respondents Titan Securities and Brad C. Brooks, at 27. Instead, Brooks testified about his consultation with counsel only for the limited purpose of showing the extent to which he attempted to comply with Rule 10b-9. *Id*. It is plain, however, that Brooks offered this testimony to negate a finding of scienter, an essential element of a Rule 10b-9 violation or, at a minimum, to try and mitigate sanctions. Either way, as discussed in the text above, his advice-of-counsel argument falls short. Another problem with Brooks' claimed consultation with counsel is that there is a disagreement whether or not the counsel represented Brooks and Titan. Brooks testified that "I always believed [the counsel] did represent us." Tr. 1242. But according to an engagement letter, the counsel did not represent Titan. CX-105, at 2.

[510] *Dep't of Enforcement v. Ahmed*, No. 2012034211301, 2015 FINRA Discip. LEXIS 45, at *99 (NAC Sept. 25, 2015), *aff'd*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078 (Sept. 28, 2017).

[511] Tr. 1246.

[512] Tr. 1246-47, 1283-84.

[513] *First Pac. Bancorp*, 142 F.3d at 1191.

[514] Guidelines at 22.

[515] Guidelines at 22.

counting the limited partnership units purchased by the general partner toward the $1 million minimum offering amount.[516]

I also conclude that Brooks' and Titan's violation was willful because they intentionally committed the act that constitutes the violation.[517]

VII. Dissent of Hearing Panelist 1

Hearing Panelist 1, dissenting in part from the conclusions of the Hearing Panel majority:

I dissent from the conclusions of the Hearing Panel majority with regard to the seventh cause of action because, based on the facts discussed in Section III.G.1. *supra*, I conclude Enforcement failed to meet its burden of proof that Titan violated Section 15(c) of the Exchange Act, SEC Rule 15c2-4 thereunder, and FINRA Rule 2010 in the Evolution II minimum-maximum offering of limited partnership units.

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[516] Guidelines at 8 (Principal Consideration No. 13).

[517] *Merrimac Corp. Secs.*, 2012 FINRA Discip LEXIS 43, at *36. As stated in earlier footnotes, Section 3(a)(39)(F) of the Exchange Act calls for statutory disqualification of a person or firm that willfully violates the securities laws. 15 U.S.C. § 78c(a)(39)(F). For the same reasons as discussed in the text above, I conclude that Titan's violation of Section 15(c) of the Exchange Act and Rule 15c2-4 thereunder was willful.

RESTITUTION SCHEDULE
DEP'T OF ENFORCEMENT v. TITAN SECURITIES

Customers[518]	Customers' Investment	25% of Investment[519]
JA and MA	$25,300	$6,325
JF and BF	$19,000	$4,750
DH[520]	$3,350	$838
DM[521]	$4,300	$1,075
SM and LM	$13,750	$3,438
KM	$10,000	$2,500
LM and SM[522]	$5,000	$1,250
DP and KP	$5,000	$1,250
LP and SP	$14,350	$3,588
KP and KP	$10,000	$2,500
RS and VS	$11,000	$2,750
JV	$22,300	$5,575
PW	$17,000	$4,250
RW and DW	$15,000	$3,750
TW and MW[523]	$4,000	$1,000
DW	$45,000	$11,250
JB	$5,000	$1,250
B Revocable Living Trust	$9,000	$2,250
DC	$10,000	$2,500
BC	$10,000	$2,500
RC	$12,000	$3,000
AD	$10,000	$2,500
RD and MD	$20,550	$5,138
JG	$7,500	$1,875
MH	$6,550	$1,638
JP	$4,000	$1,000
BT	$15,000	$3,750
AW	$3,750	$938
Totals:	**$337,700**	**$84,425**

[518] Unless otherwise noted, the evidence supporting the customers' investment amounts consists of JX-1 and CX-126A.

[519] Amounts are rounded to the nearest dollar.

[520] CX-52.

[521] CX-55.

[522] CX-59.

[523] CX-78.