

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN THOMAS FINANCIAL, INC.
(CRD No. 40982),

ANASTASIOS P. BELESIS
(CRD No. 2707354),

RONALD VINCENT CANTALUPO
(CRD No. 3137208),

JOSEPH LOUIS CASTELLANO
(CRD No. 1158479),

MICHELE ANN MISITI
(CRD No. 1931272),

and

JOHN STEPHEN WARD
(CRD No. 4118968),

Respondents.

Disciplinary Proceeding
No. 20120334673-01

Hearing Officer—MC

**EXTENDED HEARING PANEL
DECISION**

January 9, 2015

Respondents John Thomas Financial, Inc. (“JTF”) and Anastasios P. “Tommy” Belesis traded ahead of customer orders in violation of FINRA Rules 5320 and 2010, and failed to maintain accurate and complete books and records in violation of FINRA Rules 4511(a) and 2010 and Rules 17a-3 and 17a-4 of the Securities Exchange Act. Belesis provided false and misleading information to FINRA in violation of FINRA Rules 8210 and 2010. JTF and Belesis failed to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010. For these violations, JTF is expelled from membership in FINRA, and Belesis is barred from associating with any FINRA member firm in any capacity. In addition, JTF and Belesis are jointly and severally ordered to disgorge and pay customers \$1,047,288.01 plus interest.

JTF, Belesis, and Respondent Joseph Louis Castellano harassed and intimidated individuals associated with a member firm in violation of FINRA Rules 5240 and

2010. For these violations, JTF is suspended from FINRA membership for two years, Belesis is suspended from associating with any FINRA member firm in any capacity for two years, and they are jointly and severally fined \$100,000. Castellano is suspended from associating with any FINRA member firm in any capacity for one year and is fined \$50,000.

The evidence does not support the charges that JTF, Belesis, Respondent Michele Ann Misiti, and Respondent John Stephen Ward breached their duty of best execution in violation of NASD Rule 2320 and FINRA Rule 2010, or failed to follow customer instructions in violation of FINRA Rule 2010. Therefore, those charges are dismissed.

The evidence does not support the charges that JTF, Belesis, and Misiti made misrepresentations to customers in violation of FINRA Rule 2010, or failed to supervise in violation of NASD Rule 3010 and FINRA Rule 2010. Therefore, those charges are dismissed.

In addition, the evidence does not support the charges that Misiti traded ahead of customer orders in violation of FINRA Rules 5320 and 2010; failed to maintain accurate and complete books and records and falsified customer order tickets in violation of FINRA Rules 4511 and 2010 and Securities Exchange Act Rules 17a-3 and 17a-4; provided false and misleading information to FINRA in violation of FINRA Rules 8210 and 2010; or failed to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010. Therefore, those charges are dismissed.

Finally, the evidence does not support the charge that Respondent Ronald Vincent Cantalupo harassed and intimidated an individual associated with a member firm in violation of FINRA Rules 5240 and 2010. Therefore, that charge is dismissed.

JTF and Belesis are jointly and severally assessed costs of \$29,697.20.

Appearances

Howard Kneller, Esq., and David M. Monachino, Sr., Esq., New York, New York, and Jeffrey D. Pariser, Esq., Rockville, Maryland, for the Department of Enforcement.

Ira Lee Sorkin, Esq., and Amit Sondhi, Esq., Lowenstein Sandler LLP, New York, New York, for Respondents John Thomas Financial, Inc. and Anastasios P. Belesis.

George Brunelle, Esq., Brunelle & Hadjickow, P.C., New York, New York, for Respondent John Ward.

Daniel J. Horwitz, Esq., McLaughlin & Stern LLP, New York, New York, for Respondent Michele Ann Misiti.

Thomas J. McCabe, Esq., McCabe & Flynn, LLP, New York, New York, for Respondents Ronald V. Cantalupo and Joseph L. Castellano.

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I. Introduction

Shortly after 2:30 p.m. (Eastern Time) on February 23, 2012, there was a sudden spike in the price and volume of the thinly traded stock of America West Resources, Inc. (“AWSR”). At the time, Respondent John Thomas Financial, Inc. (“JTF”) held over one million shares of the stock in its proprietary account, and JTF customers held approximately 20 million shares.

As brokers on JTF’s trading floor became aware of the spike, one broker quickly entered two customer sell orders to take advantage of the surge in price. Shortly thereafter, JTF’s owner and CEO, Respondent Anastasios P. “Tommy” Belesis, instructed Respondent Michele Ann Misiti, JTF’s branch office manager, to sell the firm’s proprietary shares.

Meanwhile, JTF’s trading floor, the workplace for approximately 180 registered representatives, became tumultuous when brokers attempting to enter customer sell orders by computer found that the orders were rejected by JTF’s clearing firm. Upset at the rejections, they wrote paper tickets and crowded around the desk of the order entry clerk, Respondent John Stephen Ward, to give him the tickets to enter. Ward was unable to enter the trades successfully. Meanwhile, in the hour before the market’s close, Misiti succeeded in selling much of JTF’s position in AWSR. The proceeds exceeded \$1 million,¹ netting JTF the “biggest profit the firm’s proprietary account had made.”²

FINRA’s Department of Enforcement launched an investigation that led to the filing of a Complaint, which Enforcement subsequently amended. Nine of the ten causes of action in the Amended Complaint concern the events of February 23, 2012. Enforcement’s theory underlying these nine causes of action is that JTF, Belesis, Misiti, and Ward conspired to prevent customers

¹ The proceeds from the sales of JTF’s shares totaled \$1,080,135.46. Tr. (Belesis) 1446-47.

² Stip. 188; CX-215, at 63-64; Tr. (Belesis) 1444, 1529.

from selling their AWSR shares, precluding them from taking advantage of the spike in AWSR's share price on February 23, while at the same time selling the firm's proprietary shares, thereby maximizing the firm's profits at the expense of its customers.

The Amended Complaint charges the alleged conspirators—JTF, Belesis, and Misiti—with trading ahead of customer orders; providing customers with false and misleading information; falsifying order tickets; failing to supervise; engaging in securities fraud; and failing to observe high standards of commercial honor and just and equitable principles of trade. Two causes of action include Ward in the conspiracy, alleging that he, JTF, Belesis, and Misiti breached their joint duty of best execution on behalf of customers and failed to follow customer instructions.

The Amended Complaint contains two other causes of action. One charges that Belesis and Misiti gave false on-the-record testimony to FINRA in its investigation of the trading ahead allegations. The other, unrelated to the events of February 23, 2012, charges that JTF, acting through Belesis, Respondent Joseph Louis Castellano, JTF's chief compliance officer, and Respondent Ronald Vincent Cantalupo, a JTF manager, threatened, intimidated, and coerced several persons who had been associated with JTF.

Citing the scope and seriousness of the alleged wrongdoing, Enforcement seeks to expel JTF; bar Belesis, Misiti, and Castellano; and suspend Ward and Cantalupo. Enforcement also seeks an order requiring Belesis and JTF to pay restitution of more than \$1 million to customers who were deprived of the opportunity to profit from their AWSR holdings.

After carefully reviewing the hearing testimony, documentary evidence, and the briefs filed by the Parties, the Extended Hearing Panel concludes that the evidence is insufficient to prove the allegations against Misiti, Ward, and Cantalupo. Therefore, the charges against them

are dismissed. However, the Panel finds that Enforcement established by a preponderance of the evidence that:

- JTF and Belesis violated FINRA Rules 5320 and 2010 by trading ahead of customer orders, and failing immediately thereafter to fill the orders at the same or a better price than the one obtained for JTF;
- JTF and Belesis violated FINRA Rules 4511(a) and 2010 and SEC Rule 17a-3 and 17a-4 by failing to preserve customer order tickets;
- Belesis violated FINRA Rules 8210 and 2010 by providing false and misleading information to FINRA in sworn investigative testimony; and
- JTF, Belesis, and Castellano violated FINRA Rules 5240 and 2010 by threatening, coercing, intimidating, and attempting to improperly influence persons associated with a FINRA member firm.

II. The Respondents

A. Anastasios P. “Tommy” Belesis, JTF’s Owner and CEO

Belesis first registered with FINRA in 1996. He has held Series 7, 9, 10, 24, and 63 registrations.³ Belesis founded JTF in 2007⁴ and was its owner and CEO.⁵ Belesis is not currently registered with FINRA or associated with a FINRA member,⁶ but remains subject to FINRA’s jurisdiction because the Complaint was filed in April 2013, while he was still registered with FINRA.

B. John Thomas Financial, Inc.

JTF engaged in retail brokerage activities and investment banking.⁷ In February 2012, the firm employed approximately 180 brokers⁸ in offices occupying the 23rd floor of 14 Wall Street

³ Stip. 7.

⁴ Stip. 1.

⁵ Tr. (Belesis) 1314, 1317.

⁶ Stip. 8.

⁷ Stip. 2.

⁸ Stip. 5.

in Manhattan. The central events of February 23, 2012, unfolded on JTF's trading floor, which Belesis described as "a little smaller than a football field."⁹

JTF ceased doing business in June 2013, and the following month it filed an application to withdraw its broker-dealer registration.¹⁰ It remains subject to FINRA's jurisdiction pursuant to Article IV, Section 6 of FINRA's By-Laws because JTF was registered with FINRA when the alleged conduct occurred and when the Complaint was filed.

C. Michele Misiti, JTF's Branch Office Manager

Misiti registered with FINRA in 1993. She has held Series 4, 7, 24, 63, and 65 registrations.¹¹ She joined JTF in March 2009, and in February 2012 she was JTF's branch office manager¹² and supervisor of the firm's brokers.¹³ JTF's chief compliance officer, Respondent Joseph Castellano, was her supervisor.¹⁴

Misiti was employed by JTF through July 5, 2013, and therefore remains subject to FINRA's jurisdiction although she is not currently registered or associated with any FINRA member firm.

D. John Ward, JTF's Order Entry Clerk

Ward entered the securities industry in 2003¹⁵ and joined JTF in February 2012.¹⁶ He has held Series 7, 55, and 63 registrations.¹⁷ Ward held the title of "head trader" at JTF, but he was

⁹ Tr. (Belesis) 1411, 1502.

¹⁰ On July 8, 2013, the firm filed a Form BDW to withdraw its registration with FINRA. That month, FINRA suspended the firm for non-payment of arbitration fees. Stip. 6.

¹¹ Stip. 9.

¹² Stips. 10-11.

¹³ Tr. (Misiti) 1783-84.

¹⁴ Stip. 12.

¹⁵ Tr. (Ward) 2166.

¹⁶ Stip. 15.

the only person designated as a trader,¹⁸ and worked as an order entry clerk.¹⁹ February 23, 2012, was his tenth day on the job.²⁰

Ward was employed at JTF through July 5, 2013, and therefore remains subject to FINRA's jurisdiction although he is not currently registered with FINRA or associated with any member firm.²¹

E. Joseph Castellano, JTF's Chief Compliance Officer

Castellano began his career in the securities industry in 1995. He has held Series 7, 24, 55, and 63 registrations.²² In 2009, he became JTF's chief compliance officer.²³

Castellano was employed at JTF through July 8, 2013, and therefore remains subject to FINRA's jurisdiction although he is not currently registered with FINRA or associated with any member firm.²⁴

F. Ronald Cantalupo, JTF's Regional Managing Director

Cantalupo first became registered and worked with Belesis at a broker-dealer where they were both employed in 1999.²⁵ He joined JTF in 2008.²⁶ He holds Series 7, 24, and 63 registrations. He became a close friend of Belesis.²⁷ At JTF, Cantalupo held the position of regional managing director, a title given in anticipation of JTF establishing other branches, and

¹⁷ Stip. 14.

¹⁸ Tr. (Belesis) 1324-25.

¹⁹ Tr. (Ward) 2228.

²⁰ Tr. (Ward) 2185.

²¹ Stip. 19.

²² Stip. 23.

²³ Stip. 24.

²⁴ Stip. 25.

²⁵ Tr. (Cantalupo) 1935, 1981.

²⁶ Tr. (Cantalupo) 1934-35.

²⁷ Tr. (Cantalupo) 1936.

of Cantalupo supervising the managers of those branches. This did not occur.²⁸ Cantalupo's responsibilities at JTF included maintaining order on the trading floor and managing those who managed the brokers.²⁹

Cantalupo is currently employed by another FINRA member firm and therefore remains subject to FINRA's jurisdiction.

III. America West Resources, Inc.

AWSR was a mining company engaged in the business of selling coal.³⁰ In 2008, JTF began raising money for the company through a series of private securities offerings and bridge financings.³¹ JTF provided AWSR with investment banking services from 2008 to 2011.³² JTF raised approximately \$20 million for AWSR.³³ In return, JTF received compensation in the form of commissions, stock, and warrants for the purchase of stock.³⁴ Some of the shares JTF received were restricted, but by February 2012, the restrictions had been lifted.³⁵

IV. The Clearing Firm and Its Order Entry Systems

Sterne Agee Clearing, Inc. ("Sterne") provided order execution and trade clearing services to JTF.³⁶ JTF's brokers entered customer orders with Sterne through the SunGard AFS

²⁸ Tr. (Cantalupo) 1981-82.

²⁹ Stip. 21; Tr. (Cantalupo) 1981-84.

³⁰ Stip. 37.

³¹ Tr. (Belesis) 1429.

³² Stip. 38.

³³ Tr. (Belesis) 1448.

³⁴ Tr. (Belesis) 1434.

³⁵ Tr. (Belesis) 1434-35.

³⁶ Stips. 27-28.

(“AFS”) order entry system,³⁷ while JTF’s order entry clerks used three other order entry systems—Thomson ONE, eCustody, and BETA.³⁸

Sterne used BETA to execute the orders it received.³⁹ BETA allowed Sterne to impose restrictions that limited trading in certain securities and customer accounts. When Sterne applied a restriction, the BETA system blocked trading in the security or the customer account, and required Sterne, at the request of the introducing broker-dealer, to take action to lift the restriction before the system would accept and route orders to the market for execution.⁴⁰

There were two types of restrictions that Sterne could apply: “REST” and “BORD.”⁴¹ Importantly for this case, however, Sterne only created and retained a record of blocked or rejected orders through the AFS system.

A. The “REST” Restriction

Sterne placed the “REST” restriction on securities possessing restrictive legends on their certificates and securities restricted under SEC Rule 144.⁴² REST restrictions applied to accounts; thus, if an account held a mix of both freely tradable and restricted shares of the same security, the REST restriction blocked trading of all the shares—both restricted and freely

³⁷ Tr. 3294-95 (Counsel citing Cummings’ on-the-record testimony); Tr. (Chambless) 3816; CX-26.

³⁸ Tr. (Ward) 2235; Tr. (Chambless) 3294-95.

³⁹ Tr. (Taylor) 851-52.

⁴⁰ Stip. 29.

⁴¹ Tr. (Taylor) 874-75.

⁴² Restricted securities cannot be freely sold or purchased. They are securities acquired in unregistered, private sales from the issuing company or from an affiliate of the issuer. Investors typically receive restricted securities through private placement offerings, Regulation D offerings, employee stock benefit plans, as compensation for professional services, or in exchange for providing “seed money” or start-up capital to the company. SEC Rule 144 identifies what types of sales result in restrictions being placed on securities and provides exemptions from restrictions that permit public sales of restricted securities under certain circumstances. *See* 17 U.S.C § 77(e)(a); 17 C.F.R. § 230.144.

tradable.⁴³ When asked to enable trading of the freely tradable shares in the account, Sterne personnel, usually in the “legal transfer department,” could manually remove the REST restriction from the account, and then reapply the restriction on the following day.⁴⁴ If an account held only freely tradable shares of a stock, however, Sterne’s systems should not have applied a REST restriction to the account.⁴⁵

B. The “BORD” Restriction

Sterne applied the “BORD” restriction to block transactions exceeding a designated dollar value. The BORD restriction applied to firms, not accounts. For JTF, Sterne applied the BORD restriction to any transaction that exceeded \$100,000. To enter a trade that exceeded the limit, JTF had to request that Sterne personnel manually lift the BORD restriction.⁴⁶

V. The Price and Volume Spike in AWSR on February 23, 2012

On the morning of February 23, 2012, JTF owned 1,170,811 free-trading shares of AWSR in its proprietary account.⁴⁷ There was no market activity in the stock until approximately 2:32 p.m. when a penny stock website published a report identifying AWSR as a “hot stock pick.”⁴⁸ The first AWSR trade was for 500 shares at 28 cents per share.⁴⁹ Fifteen minutes later, the price reached \$1.00 per share.⁵⁰ Then the price surged again. By 2:56 p.m. it was trading at \$1.50 per share, and at 3:04 p.m., the price reached its intra-day high of \$1.80 per share.⁵¹

⁴³ Stip. 35.

⁴⁴ Tr. (Taylor) 852-54, 878; Tr. (Kelly) 681-82.

⁴⁵ Stips. 33, 35-36.

⁴⁶ Tr. (Taylor) 874-75.

⁴⁷ Stip. 64.

⁴⁸ Stip. 66.

⁴⁹ Stip. 65.

⁵⁰ Stip. 68.

⁵¹ Stips. 67-70.

As the price rose, several JTF brokers began to solicit sell orders from their customers who held AWSR shares in their accounts.⁵²

A. Two AWSR Sell Orders Entered Successfully

JTF broker Renos Gordos succeeded in placing two customer sell orders. He entered an order to sell 8,333 shares for one customer, HC, from his desktop terminal at approximately 2:50 p.m. The stock sold for \$1.09 per share.⁵³ Gordos placed the order with Sterne through the AFS system.⁵⁴ The account held both restricted and unrestricted shares of AWSR, and therefore should have been subject to a “REST” restriction. However, Sterne had lifted the restriction in October 2011 and failed to reapply it shortly thereafter, as was its usual practice.⁵⁵

At about 2:51 p.m., Gordos entered another order to sell AWSR from the account of his customer RF for \$1.19 per share. The customer had placed a good-til-cancelled order in November 2011. The account held both restricted and unrestricted shares of AWSR, and therefore should have been subject to a REST restriction. In this case, too, Sterne had previously lifted the restriction, but failed to reapply the restriction shortly afterward.⁵⁶

B. An AWSR Order Rejected

Another JTF broker, Phil Alves, testified that when he became aware of the spike, he attempted to enter an order for a customer sale of AWSR on his computer, but he received an error message and could not enter the order.⁵⁷ Alves testified that he informed Misiti that he could not enter the trade. Misiti asked him if the account had restricted shares, and he told her

⁵² Stip. 71.

⁵³ Stip. 72; CX-337, at 13.

⁵⁴ Tr. (Chambless) 3803-04; CX-337, at 13.

⁵⁵ Stip. 73.

⁵⁶ Stips. 74-77.

⁵⁷ Tr. (Alves) 184-85.

that some were. According to Alves, Misiti then instructed him to write a paper ticket, which he did. Alves then waited for the order entry clerk, Ward, to enter the trade.⁵⁸

C. Ward's Conduct

February 23, 2012, was Ward's tenth day of work at JTF.⁵⁹ Although JTF gave him the title of head trader, he was an order entry clerk. JTF did not have a trading desk, and Ward had neither customer accounts nor trading discretion over JTF's proprietary account.⁶⁰

During his short tenure at JTF, Ward called Sterne frequently. Tim Stack, a JTF assistant branch manager and backup order entry clerk, had given Ward an orientation for his new job and informed him that the numbers to call at Sterne when he needed help were programmed into the speed dial feature of his phone.⁶¹

For Ward, February 23 began as a normal day.⁶² Before the AWSR surge, there were approximately 19 calls between Ward and Sterne, seven of which were with Eric Warner on Sterne's help desk. Warner was one of the "go-to" people Ward had been told to call if there was a problem. Ward and Warner spoke "multiple times" each day.⁶³

1. The AWSR Rejections

Ward testified that at about 2:50 p.m., Alves gave him a ticket for a customer order to sell AWSR that Alves had been unable to enter electronically.⁶⁴ Then other brokers gave Ward

⁵⁸ Tr. (Alves) 185, 187, 189-90.

⁵⁹ Tr. (Ward) 2185.

⁶⁰ Stip. 16; Tr. (Ward) 2168, 2228.

⁶¹ Tr. (Ward) 2263-64.

⁶² Tr. (Ward) 2233.

⁶³ Tr. (Ward) 2171-73.

⁶⁴ Tr. (Ward) 2178.

tickets as well.⁶⁵ Ward remembers that there was “a lot of commotion [about the] incoming tickets.”⁶⁶

When Ward tried to enter the first order for AWSR, the computer displayed an error message indicating both a BORD and a REST restriction. Ward had never seen a REST restriction before. Because he thought the problem was a “trade support problem, or a trading issue,” he contacted Sterne’s trade support desk.⁶⁷

a. Ward’s Calls to Sterne’s Support Desks

Ward called the trade support desk at 2:51 p.m.,⁶⁸ but was unable to get the problem resolved. Next, Ward called Sterne’s market support section and spoke to Sarah Stinson. The call lasted more than nine minutes.⁶⁹

Ward explained to Stinson that the order was being rejected because of a BORD restriction, which was familiar, and a REST restriction, which was unfamiliar. Stinson lifted the BORD restriction. When Ward again tried to enter the order, it still did not go through. Ward testified that this time the BORD restriction did not appear on his computer screen, but the REST restriction was still in place. Stinson looked up the account for Ward, explained that it appeared to her as if the shares should be freely tradable, and placed Ward on hold.⁷⁰ While on hold, Ward informed Misiti that he was having difficulty entering AWSR orders, he was getting error messages, and the orders “weren’t going through.”⁷¹

⁶⁵ Tr. (Ward) 2181.

⁶⁶ Tr. (Ward) 2178.

⁶⁷ Tr. (Ward) 2193.

⁶⁸ Tr. (Ward) 2193. The call was brief. It lasted 30 seconds. CX-1.

⁶⁹ Tr. (Ward) 2193-94.

⁷⁰ Tr. (Ward) 2194-95.

⁷¹ Tr. (Ward) 2196.

b. Ward's Conversation with Warner

At 3:02:36 p.m., presumably at Stinson's request, Warner called Ward.⁷² The call lasted approximately 2 minutes and 24 seconds.⁷³ Ward testified that he told Warner he was unable to enter sell orders for AWSR in two JTF customer accounts.⁷⁴ He recalls giving Warner the account numbers associated with the two orders, the one Alves gave him and a second from another broker.⁷⁵ Ward told Warner that when he tried to enter each order, he saw a BORD restriction, which was familiar to him. Ward said he also saw a REST restriction, which was not familiar to him, and the REST restriction was blocking the orders.⁷⁶

Unlike Ward, Warner has no recollection of their conversation that afternoon.⁷⁷ Understandably, what Warner recalls clearly about February 23 is the lengthy phone call he had with Misiti, when he entered JTF's proprietary trades.⁷⁸

However, Warner made notes on a legal pad that corroborate Ward's testimony. Warner jotted down Ward's name and number, and the account numbers of two JTF customers, RP and DW.⁷⁹ RP was the customer whose order Alves had tried to enter; DW was a customer whose sell order JTF broker John Pecorella was unable to enter.⁸⁰ With no independent recollection,

⁷² Stip. 103.

⁷³ CX-5.

⁷⁴ Tr. (Ward) 2187, 2206-08.

⁷⁵ Tr. (Ward) 2206-07.

⁷⁶ Tr. (Ward) 2209.

⁷⁷ Tr. (Warner) 819, 827, 1029-30, 1053.

⁷⁸ Tr. (Warner) 829, 1053; CX-186.

⁷⁹ Tr. (Warner) 816; CX-186; Stip. 104.

⁸⁰ Stips. 105-106.

Warner testified that he could only “guess” that the two account numbers were for accounts that “Ward had a question about.”⁸¹

Ward remembers the conversation clearly. He testified that Warner told him that the shares of AWSR in the accounts appeared to be freely tradable, and that he did not understand why Ward’s attempts to enter orders were blocked by a REST restriction.⁸² Ward had received a similar answer from Stinson. And when he checked the customer accounts himself, it appeared to him that the shares should be freely tradable.⁸³

At Warner’s suggestion, Ward sent an e-mail to Sterne’s technology department with a screenshot showing the error notice and the restriction displayed on his computer screen. Warner gave Ward the name of the person to send it to.⁸⁴ Ward wrote down the name “T. Helms.”⁸⁵ While talking with Warner, Ward opened his e-mail, copied an image of the screen, moved it to e-mail, and sent it at 3:03:04 p.m.,⁸⁶ approximately 30 seconds into the call.⁸⁷ He sent it to the address he thought Warner gave him: t.helms@sterneagee.com.⁸⁸ Ward did not add any text to the message because he thought “t.helms” would see the screenshot and have an answer for him.⁸⁹

⁸¹ Tr. (Warner) 816.

⁸² Tr. (Ward) 2187.

⁸³ Tr. (Ward) 2187.

⁸⁴ Tr. (Ward) 2203.

⁸⁵ Tr. (Ward) 2295.

⁸⁶ Tr. (Ward) 2197.

⁸⁷ Warner called Ward at 3:02:36. Stip. 103. Ward sent the screen shot at 3:03:04. Tr. (Ward) 2197.

⁸⁸ Stip. 107.

⁸⁹ Tr. (Ward) 2298.

Sterne employed a person named Patti Helms in its business technology group.⁹⁰ Ward had misinterpreted Warner's reference to "P. Helms" as "T. Helms."

As soon as Ward sent the screenshot, he closed his e-mail and put the trading screens back up. Therefore, Ward did not realize that his e-mail was rejected and bounced back to him by Sterne's e-mail system. The screenshot attached to the returned e-mail is blank; Ward does not know why.⁹¹ He testified that he clearly recalls that the screenshot he tried to send showed the error notice he received.⁹²

Enforcement contends that Ward did *not* ask Warner for help in getting the two AWSR orders executed, and that Ward "failed to make a serious effort to resolve the REST issue."⁹³ Enforcement rejects Ward's claim that he called Warner for assistance to enter sell orders for customers DW and RP, arguing that "it is not even plausible that Ward called Warner to discuss removing the REST restriction from those customer accounts, because that restriction did not even apply to [DW's] account—because [DW] held only freely-tradable shares."⁹⁴ Enforcement stresses that Warner would "have entered the trades had Ward asked."⁹⁵

But Ward testified that he "had no idea that Mr. Warner could enter trades ... I saw him as a troubleshooter. He never stated to me he could enter trades for me." Most of Ward's previous conversations with Warner had concerned BORD restrictions.⁹⁶ Ward had never asked

⁹⁰ Stip. 108.

⁹¹ Tr. (Ward) 2198, 2258.

⁹² Tr. (Ward) 2200.

⁹³ Department of Enforcement's Corrected Post-Hearing Br. 11-12 (hereinafter "Enforcement's Post-Hearing Br.").

⁹⁴ Department of Enforcement's Pre-Hearing Br. 14 (hereinafter "Enforcement's Pre-Hearing Br.").

⁹⁵ Enforcement's Post-Hearing Br. 11.

⁹⁶ Tr. (Ward) 2208.

Warner to enter trades, because Ward, in his ten days at JTF, “was never under the assumption that he could.”⁹⁷

Enforcement relies on Warner’s testimony to conclude that Ward lied. But Warner does not recall whether Ward asked him to look into removing REST or other restrictions on AWSR shares.⁹⁸ And Warner’s contemporaneous notes confirm that Ward spoke to him about two customer accounts with shares of AWSR that were not tradable on February 23.

Warner testified at the hearing that in the past he has assisted brokers in selling unrestricted shares from accounts with REST restrictions. He testified that, if requested, he could override a REST restriction and place orders for unrestricted shares in 30 to 60 seconds.⁹⁹ But based upon Warner’s previous sworn testimony, it is unclear whether he could or would have easily resolved the problem confronting Ward on February 23.

In a January 2013 on-the-record interview, Warner testified that he did not think he had overridden a REST restriction prior to February 23, 2012.¹⁰⁰ He recalled overriding some form of trading restriction in October 2012, well after February 23, but he did not remember if it was a REST restriction.¹⁰¹ And he testified that if a firm called because it was having problems lifting a REST restriction, his response would have been to refer the caller to Sterne’s legal transfer department.¹⁰²

⁹⁷ Tr. (Ward) 2208-09.

⁹⁸ Tr. (Warner) 1049.

⁹⁹ Tr. (Warner) 807-09.

¹⁰⁰ Tr. (Warner) 1046-47.

¹⁰¹ Tr. (Warner) 1044-46.

¹⁰² Tr. (Warner) 1047.

2. Ward's Efforts to Enter Order Tickets

Ward estimates that during the spike brokers handed him approximately 15 AWSR customer order tickets.¹⁰³ He had no idea who the customers were, or if the shares they were trying to sell were restricted or unrestricted.¹⁰⁴ With AWSR order tickets on his desk, Ward turned to Misiti, told her he had “sell tickets,” and asked her if she wanted to see and approve the tickets before he entered them. She replied that if they were “all sell tickets,” he “could just enter them.”¹⁰⁵

A crowd of brokers gathered around Ward's desk. Timothy Stack, an assistant branch manager, saw the commotion and stood next to Ward's desk and made the brokers back away to give Ward room to work.¹⁰⁶ When the brokers saw that the orders were not being executed, they became agitated and demanded to know what was going on. Ward testified that he was concerned that if he was unable to resolve the problem, he would lose his job.¹⁰⁷

During the commotion, brokers were standing to Ward's left and right, and in front of him. Stack stood directly to Ward's left and took tickets from the brokers. Stack started sending tickets for securities other than AWSR to Anderson, the other assistant branch manager and backup order entry clerk, so that Ward could concentrate on AWSR. After a brief period, which Ward estimated to be approximately 15 minutes, Stack directed the brokers to return to their

¹⁰³ Tr. (Ward) 2184.

¹⁰⁴ Tr. (Ward) 2184-86.

¹⁰⁵ Tr. (Ward) 2285.

¹⁰⁶ Tr. (Ward) 2225-26. As noted above, another JTF broker, Alves, testified that Stack asked brokers to move away during the commotion, and that Belesis also told brokers to step away from the area around Ward's desk. Tr. (Alves) 229, 190-93.

¹⁰⁷ Tr. (Ward) 2234.

desks. A little later, three or four returned to question Stack, who had remained at Ward's desk.¹⁰⁸

While this was occurring, Misiti was working at her desk behind Ward.¹⁰⁹ The trading room was "a very loud environment," with large screen televisions set at such a high volume that sometimes "it hurts your ears."¹¹⁰ Thus, Ward was unaware that Misiti was selling AWSR shares from JTF's proprietary account while he was trying unsuccessfully to enter the customer sell orders.¹¹¹

Ward kept his attention focused on the screens in front of him.¹¹² Consequently, he has no recollection of seeing Belesis on the trading floor, or hearing Belesis give instructions to brokers. The only supervisor he saw was Stack standing next to him.¹¹³

Ward testified that while he tried repeatedly to enter the AWSR orders, he also entered orders for non-AWSR tickets that brokers had given him because he was supposed to enter them as well. He had lost track of how long the non-AWSR tickets had been sitting on his desk while he tried to deal with AWSR.¹¹⁴

At one point, Ward asked Anderson for help. He gave Anderson two AWSR tickets he had been trying to enter, and stood behind Anderson's desk while Anderson tried to enter them. Ward saw error messages on Anderson's screen showing the same REST restriction that had

¹⁰⁸ Tr. (Ward) 2235, 2268-71.

¹⁰⁹ Tr. (Ward) 2267.

¹¹⁰ Tr. (Ward) 2224.

¹¹¹ Tr. (Ward) 2270-71.

¹¹² Tr. (Ward) 2273.

¹¹³ Tr. (Ward) 2225-26.

¹¹⁴ Tr. (Ward) 2235.

appeared on Ward's screen.¹¹⁵ Ward even tried to enter the orders on Anderson's computer, to no avail.¹¹⁶

Ward testified that he:

attempted multiple times to have these orders put in on both the Thomson system and the BETA system ... attempted to have our assistant branch manager, Eric Anderson, who was the backup order entry person, attempt to enter a couple of these AWSR orders, and he was also unable to do that, and -- it was a crazy, hectic day and it was something I had never seen before in all my time in the business.¹¹⁷

Ward conceded that there may have been other steps he could have taken, but explained that he did the best he could under the circumstances:

[W]hen you're in the moment and you have maybe an hour to get things like this resolved, and being there for nine days it's -- it's not a good situation. I feel like I told my superiors Miss Misiti, who is the branch manager Mr. Anderson, who is also an assistant branch manager, also knew there was a problem I feel like between the phone calls and the letting the supervisors on the floor know what the problem was ... I tried the best I could to get this problem solved.¹¹⁸

3. The Unexecuted February 23 Customer Order Tickets for AWSR

At least two brokers asked Ward to give back their unfilled AWSR order tickets, and Ward complied. With the rest of the tickets, Ward followed JTF's standard recordkeeping procedure. He bundled the tickets with a label showing the trade date, wrapped them in a rubber band, and gave them to Stack to review. Stack, following routine practice, reviewed and initialed the tickets, and then returned them to Ward. Then Ward scanned the tickets and put them, with other paperwork for that month, in a large plastic food storage container he kept beneath his desk. At the end of the month, Ward handed all the accumulated papers and tickets to

¹¹⁵ Tr. (Ward) 2235, 2251.

¹¹⁶ Tr. (Ward) 2252.

¹¹⁷ Tr. (Ward) 2235.

¹¹⁸ Tr. (Ward) 2236.

Castellano.¹¹⁹ He did not destroy them, and nobody subsequently asked Ward to look for them.¹²⁰

D. Misiti's Conduct

1. Selling JTF's Proprietary Position in AWSR

At 3:01:18 p.m. on February 23, Belesis, using his desk phone, instructed Misiti to sell JTF's entire proprietary position in AWSR.¹²¹

At about the time Belesis called, Misiti learned from Ward that he was having trouble entering a customer sell order for AWSR.¹²² Ward told her that when he tried to enter the order, it came up restricted. Because Ward was on the phone when he told her, she assumed he was handling it,¹²³ and did not respond.¹²⁴ Misiti recalled that a few minutes later, Alves yelled that he could not enter an order for AWSR. She instructed him to write a ticket. At JTF, it was standard practice for brokers to write a ticket for the order entry clerk to enter when Sterne's systems blocked an order.¹²⁵

Misiti testified that she could have entered the proprietary orders directly from her computer. However, she called Sterne directly because she had limited experience entering orders; she was uncomfortable trading such a large position; and she knew that the dollar value of the order would exceed JTF's BORD restriction, requiring her to contact Sterne anyway.¹²⁶

¹¹⁹ Tr. (Ward) 2274-80.

¹²⁰ Tr. (Ward) 2226.

¹²¹ Stip. 100; Tr. (Misiti) 1784, 1809; Tr. (Belesis) 1471; CX-1.

¹²² Tr. (Misiti) 1784, 1788.

¹²³ Tr. (Misiti) 1788-90.

¹²⁴ Tr. (Misiti) 1803-04.

¹²⁵ Tr. (Misiti) 1795.

¹²⁶ Tr. (Misiti) 1873-75.

At 3:01:30 p.m., immediately after Belesis' call, Misiti called Don Exner, a senior member of Sterne's correspondent service group, and informed him that she had an order to sell AWSR. Exner was one of her "go-to people" at Sterne. He referred Misiti to Warner.¹²⁷

At 3:05 p.m., Misiti called Warner.¹²⁸ She gave Warner the order to sell JTF's entire position in AWSR, telling him "to put it in not held."¹²⁹ Misiti testified that this meant that Warner would sell the position in increments.¹³⁰ She and Warner were on the phone for an hour and 16 minutes, until after the market closed.¹³¹ Phone records show that Belesis called Misiti repeatedly during the first ten minutes she was working with Warner.¹³²

Warner gave Misiti bid and ask quotes as they worked the order, and Misiti directed Warner to offer varying quantities of shares from JTF's position in response to what Warner told her about the market's movements.¹³³ Warner executed 17 separate transactions selling AWSR, the last occurring at 4:06 p.m., after the market closed.¹³⁴ Their phone call ended at 4:22 p.m.¹³⁵

By the end of the day, JTF had sold 855,000 freely tradable shares of AWSR for \$1,080,135.¹³⁶

¹²⁷ Stip. 102; Tr. (Misiti) 1809, 1836.

¹²⁸ Stip. 114.

¹²⁹ Tr. (Misiti) 1809, 1821.

¹³⁰ Tr. (Misiti) 1810-11.

¹³¹ Stip. 114.

¹³² Tr. (Misiti) 1814; CX-5.

¹³³ Tr. (Misiti) 1810-11, 1821.

¹³⁴ CX-5.

¹³⁵ CX-1; CX-5.

¹³⁶ Stip. 188.

2. The Commotion on JTF's Trading Floor

Misiti described the scene on JTF's trading floor much as Ward did, with brokers milling around noisily.¹³⁷ She testified that the commotion started around 3:00 p.m., was loudest while the market was still open, and continued even after the market closed.¹³⁸

Misiti testified that the commotion on February 23 was not unusual. She said that the trading floor was always loud, with large televisions "blasting," and added that "there's a commotion every day."¹³⁹ On February 23, she first thought that the cause was the spike in AWSR's price, not the brokers' inability to enter the ASWR sell orders.¹⁴⁰

Also like Ward, Misiti does not recall seeing Belesis stand next to her desk during the commotion.¹⁴¹

3. Addressing the REST Restriction Problem and Informing Belesis

After the market's close, Misiti learned that customer sell orders for AWSR had been rejected by Sterne because of a REST restriction.¹⁴² This was a new issue to her. Misiti had no recollection of a REST restriction problem prior to February 23.¹⁴³

Shortly after learning of the problem, at 5:03 p.m., Misiti called Exner again. She told him that orders to sell freely tradable shares of AWSR had been blocked.¹⁴⁴ Exner directed her to

¹³⁷ Tr. (Misiti) 1795-96.

¹³⁸ Tr. (Misiti) 1796, 1806.

¹³⁹ Tr. (Misiti) 1806.

¹⁴⁰ Tr. (Misiti) 1807, 1827-28.

¹⁴¹ Tr. (Misiti) 1899.

¹⁴² Tr. (Misiti) 1843, 1846-48.

¹⁴³ Tr. (Misiti) 1880.

¹⁴⁴ Tr. (Misiti) 1839-40.

send a list of the customers with freely tradable shares of AWSR to Carrie Kelly, the supervisor of Sterne's securities transfer department, who could lift the REST restrictions.¹⁴⁵

Misiti immediately compiled a list of 50 customers.¹⁴⁶ It included the account of every customer holding AWSR shares.¹⁴⁷ Misiti put the information in an Excel spreadsheet, sent it to Kelly at 5:19 p.m., and phoned Kelly at 5:20 p.m.¹⁴⁸

Kelly confirmed receipt of the spreadsheet and immediately started removing the restrictions.¹⁴⁹ She had never before received a request like this.¹⁵⁰ Kelly stayed after her usual work hours to complete the task. As soon as she finished, at 7:06 p.m., Kelly sent an e-mail to Misiti informing her that the REST restrictions had been temporarily removed, and the shares could be traded the next morning, after which the restrictions would be imposed again.¹⁵¹ It had taken Kelly an hour and 47 minutes to lift the restrictions.

In the meantime, Belesis and Misiti spoke by phone several times after 5:00 p.m.¹⁵² Misiti told him about her efforts to sell JTF's position in AWSR. She also informed him that restrictions had prevented the entry of customer orders. Belesis instructed her to contact Maria Cummings, JTF's supervisor of operations, to arrange a meeting for the following morning to discuss the issue. Misiti did so.¹⁵³ JTF's phone records show that after a 5:46 p.m. phone

¹⁴⁵ Tr. (Misiti) 1840-41; Tr. (Kelly) 659, 662-63.

¹⁴⁶ Tr. (Misiti) 1841; Tr. (Kelly) 675; CX-127.

¹⁴⁷ Tr. (Misiti) 1872-73.

¹⁴⁸ Stip. 217; CX-139, at 4-5; Tr. (Misiti) 1840-41.

¹⁴⁹ Tr. (Kelly) 674-76.

¹⁵⁰ Tr. (Kelly) 697.

¹⁵¹ Tr. (Kelly) 678-79; Stip. 236; CX-139, at 1-2.

¹⁵² CX-1.

¹⁵³ Tr. (Belesis) 3857-59.

conversation with Belesis, Misiti called Cummings at 5:52 p.m.¹⁵⁴ Belesis then arranged for a car service to bring Misiti and Cummings to meet with him at 7:00 a.m. on February 24.¹⁵⁵

4. The Missing February 23 AWSR Order Tickets

Enforcement requested that JTF produce all AWSR order tickets for February 23 and 24, 2012.¹⁵⁶ When JTF received the request, Misiti looked for the tickets, but she was unable to find them. She testified that until then she had no idea that the tickets were missing.¹⁵⁷ JTF did not produce any of the tickets for the unexecuted February 23 AWSR customer sell orders.¹⁵⁸ Misiti testified that she does not know what happened to the tickets.¹⁵⁹

5. The February 24 AWSR Order Tickets

On February 24, a JTF broker, Frank Scarso, asked Misiti to write out several customer order tickets to sell AWSR. She did so.¹⁶⁰ She assumed that they were for customers whose orders Scarso was unable to fill the previous day.¹⁶¹ Misiti testified that she knew that a market order given the day before would not carry over to the next day unless it was a good-til-cancelled order.¹⁶² Because a market order is a day order, a new ticket is required if a customer wants the

¹⁵⁴ CX-1.

¹⁵⁵ Tr. (Belesis) 3858.

¹⁵⁶ Tr. (DiTrapani) 479-80.

¹⁵⁷ Tr. (Misiti) 1851-54.

¹⁵⁸ Tr. (DiTrapani) 491.

¹⁵⁹ Tr. (Misiti) 1853-54.

¹⁶⁰ Tr. (Misiti) 1855-56, 1866.

¹⁶¹ Tr. (Misiti) 1869-70.

¹⁶² Tr. (Misiti) 1869-70.

order filled on the following day.¹⁶³ Misiti partially filled out the tickets, including entering the date, February 24, 2012.¹⁶⁴ The tickets clearly indicate that they were day orders.¹⁶⁵

VI. Enforcement Failed to Establish that JTF, Belesis, Misiti, and Ward Conspired to Block Customer Orders

In its pre-hearing brief, the Department of Enforcement summarized the Amended Complaint's core charges, based on the theory that Belesis, Misiti, and Ward conspired to prevent the entry of customer orders of AWSR, stating: "Belesis ... defrauded JTF customers by preventing them from selling their shares ... [and] JTF and Belesis (through Misiti and Firm trader John Ward) ... refused to allow anyone at JTF to execute customer sales." Enforcement further asserted that Belesis and Misiti "shut down electronic trading in AWSR and refused to enter" customer orders submitted by JTF brokers.¹⁶⁶

A critical premise of the Amended Complaint is that Sterne's equity trading systems worked properly on February 23, 2012, and therefore could not have been responsible for blocking JTF customer sell orders.¹⁶⁷ From this premise, Enforcement concluded that: (i) orders to sell AWSR from customer accounts holding only freely tradable shares of the stock would have been executed if JTF, Belesis, Misiti, and Ward had either allowed them to be entered by JTF brokers or had themselves entered them; and (ii) orders to sell freely tradable shares of AWSR from accounts with a combination of unrestricted and restricted shares could easily have

¹⁶³ Tr. (Misiti) 1871-72.

¹⁶⁴ Tr. (Misiti) 1857-65.

¹⁶⁵ CX-53, at 13, 15, 17-19.

¹⁶⁶ Enforcement's Pre-Hearing Br. 1, 3-4.

¹⁶⁷ In support of this premise, the Amended Complaint alleges that Sterne cleared "almost 1,000 orders in securities other than AWSR," and that two other broker-dealers "successfully and timely entered customer orders that afternoon to sell AWSR shares." Amended Compl. ¶ 49.

been executed if the conspirators had merely called Sterne and asked it to lift the restrictions on trading from those accounts.

A. Enforcement’s Predicate for Suspecting a Conspiracy

When Enforcement issued the Rule 8210 request to JTF for all order tickets reflecting orders to sell AWSR entered on February 23 and 24, 2012, Enforcement expected JTF to produce tickets for both executed and unexecuted orders.¹⁶⁸ But the records JTF produced were not responsive to the request. JTF provided only records for AWSR orders that were *executed* on February 23 and February 24. These included: the trade ticket for the sale of JTF’s proprietary shares, a single ticket for a customer sale, and a confirmation of a second customer sale, all on February 23; and tickets for sales from eight customer accounts on February 24, most for customers who had tried unsuccessfully to sell during the spike.¹⁶⁹ This left Enforcement with no records of brokers’ unsuccessful attempts to enter orders during the spike.¹⁷⁰

Enforcement then issued a Rule 8210 request to Sterne seeking a “detailed written statement that sets forth whether, to Sterne’s knowledge, any delays or problems were incurred by Sterne’s correspondents in entering securities orders on February 23, 2012.”¹⁷¹ Enforcement directed Sterne to “include in this response any operational or other problems that may have arisen on that day with respect [to] attempts by John Thomas Financial ... to enter sell orders with respect to the common stock of [AWSR].”¹⁷²

¹⁶⁸ CX-48; Tr. (DiTrapani) 479-80.

¹⁶⁹ Tr. (DiTrapani) 481-87; CX-53, at 5-20.

¹⁷⁰ Tr. (DiTrapani) 489, 492-93.

¹⁷¹ CX-19, at 1 (January 17, 2013 Rule 8210 request).

¹⁷² *Id.*

Thomas Taylor, Sterne's director of operations, testified that he, working with Sterne's general counsel and others, gathered information to prepare the response to the Rule 8210 request.¹⁷³ Sterne reported in its response dated February 6, 2013, that it was unaware of "any delays or problems, operational or otherwise ... in placing orders to sell any security including ... [AWSR] on February 23, 2012."¹⁷⁴ The response also represented that Sterne "reviewed its records relating to reports of order entry system problems *and there are no such reports on February 23, 2012 relating to AWSR or any other equity security.*"¹⁷⁵ In the 8210 response, Taylor wrote that Sterne found that its eCustody system successfully entered JTF's proprietary sales, indicating that the system properly executed AWSR orders on February 23, and that two customer orders were successfully executed as well. Furthermore, Sterne stated that orders to buy and sell AWSR from another firm trading the stock on February 23, 2012, were successfully executed.¹⁷⁶

Sterne's response addressed JTF's claim that customer shares of AWSR had been subject to REST restrictions that prevented the shares from being sold.¹⁷⁷ Taylor explained that a REST restriction should not have been applied to freely tradable shares, and that Sterne's legal transfer department easily could have removed a REST restriction "with a couple of keystrokes."¹⁷⁸ Taylor specifically pointed out that Warner, on the help desk, could have removed REST restrictions.¹⁷⁹ The Rule 8210 response, and Taylor's testimony, indicated that Sterne was

¹⁷³ Tr. (Taylor) 857-59.

¹⁷⁴ CX-26, at 3.

¹⁷⁵ *Id.* (Emphasis supplied.)

¹⁷⁶ Tr. (Taylor) 866-67.

¹⁷⁷ Tr. (Taylor) 868.

¹⁷⁸ Tr. (Taylor) 869.

¹⁷⁹ Tr. (Taylor) 874-75.

unaware of any discussions on February 23 between its employees and JTF representatives about removing REST restrictions until after the market closed.¹⁸⁰ Specifically referring to Ward, the response stated that Ward called Sterne’s trading support department and then the margin department, but the “margin department does not remove REST restrictions,” implying that Ward did not tell Sterne about the REST restriction rejecting orders.¹⁸¹

Based on Sterne’s response, Enforcement concluded, and the Amended Complaint asserts, that:

- “[Sterne’s] trading systems were operating normally on February 23, 2012.”¹⁸²
- “[Sterne’s] equity trading systems had no operational or other complications on February 23, 2012.”¹⁸³
- “Customer orders to sell freely tradable AWSR shares that were not subject to the REST restriction could have been immediately entered by JTF upon receipt [and] customer orders to sell freely tradable shares that were subject to the REST restriction could have been entered by the firm shortly after receipt.”¹⁸⁴
- Ward and Misiti did not ask Sterne to help address the REST restriction blocking customer orders.¹⁸⁵

Assuming these assertions to be true, and with no reason to question Sterne’s response, Enforcement concluded that the “REST restriction did not affect shares contained in accounts that held only freely tradable shares. As such, JTF could immediately sell these shares at any time without Sterne’s intervention. For example, a broker could have entered an electronic trade to sell shares and that sale would be executed electronically, immediately and without

¹⁸⁰ Tr. (Taylor) 869-70.

¹⁸¹ Tr. (Taylor) 870; CX-19, at 1 (January 17, 2013 Rule 8210 request).

¹⁸² Amended Compl. ¶ 79.

¹⁸³ Amended Compl. ¶ 49.

¹⁸⁴ Amended Compl. ¶ 112.

¹⁸⁵ Amended Compl. ¶¶ 43, 44, 47.

intervention.”¹⁸⁶ Therefore, Enforcement concluded that it was not a Sterne malfunction but JTF, Belesis, and Misiti who effectively prevented JTF customers from selling their AWSR shares by making it “impossible for JTF’s brokers to sell customer shares during the spike,” and that “Ward failed to use reasonable diligence to get customer trades entered.”¹⁸⁷

In reaching these conclusions, Enforcement relied on Sterne’s Rule 8210 response confirming that “there were no problems with its systems ... ‘in placing orders to sell ... common stock of [AWSR] on February 23, 2012,’” and sell orders in accounts holding only freely tradable shares “could have been immediately entered and executed.”¹⁸⁸

B. Newly Produced Records from Sterne

During Taylor’s testimony at the hearing, the possibility emerged that Enforcement’s reliance on Sterne’s response to the Rule 8210 request was misplaced, and that the response itself may have been misleading. He testified that Sterne’s order entry system “would prepare a reject report” showing if an order was entered but not executed.¹⁸⁹

Under cross-examination, Taylor testified that when he worked with Sterne’s general counsel preparing the response, he did not review reject reports. He personally reviewed only records of orders that were *entered and executed*—he did not review orders that JTF *attempted to enter that were blocked*.¹⁹⁰ Upon further questioning, Taylor revealed that Sterne’s general counsel had told him that Sterne possessed records of AWSR orders from JTF that Sterne

¹⁸⁶ Enforcement’s Pre-Hearing Br. 11.

¹⁸⁷ *Id.* at 34.

¹⁸⁸ *Id.* at 42 (quoting CX-26, at 3, Sterne’s response to Enforcement’s Rule 8210 request).

¹⁸⁹ Tr. (Taylor) 864.

¹⁹⁰ Tr. (Taylor) 908-09.

rejected on February 23, 2012.¹⁹¹ Taylor did not know if those records had ever been provided to FINRA.¹⁹² Taylor further stated that he was unsure whether Sterne maintained a “comprehensive record” of rejected orders,¹⁹³ but he believed that when Sterne rejected an order, it sent an online notification that the broker would see.¹⁹⁴

Enforcement’s January 2013 Rule 8210 request did not specifically request records of rejected orders. As explained by Enforcement’s investigator, DiTrapani, in the discussions leading to the issuance of the Rule 8210 request, Sterne told Enforcement that no such records existed.¹⁹⁵

Following Taylor’s testimony, Enforcement, at the Panel’s request, issued a new Rule 8210 request to Sterne for records of orders to sell AWSR on February 23 that were rejected because of a REST restriction.¹⁹⁶

Two days prior to the hearing’s conclusion, Sterne responded and disclosed that it had located reports showing several rejected attempts by JTF to enter orders to sell AWSR on February 23, 2012, through Sterne’s AFS system. Sterne attached the records to its letter. They showed six customer orders rejected because of REST restrictions,¹⁹⁷ and two other orders for one customer that were “not entered.”¹⁹⁸ Sterne’s letter states that it did not produce these records in response to the January 2013 Rule 8210 request because its personnel understood that

¹⁹¹ Tr. (Taylor) 906, 909-10.

¹⁹² Tr. (Taylor) 910-11.

¹⁹³ Tr. (Taylor) 920.

¹⁹⁴ Tr. (Taylor) 924-25.

¹⁹⁵ Tr. (DiTrapani) 616.

¹⁹⁶ Tr. 1018-21; CX-337, at 1-3.

¹⁹⁷ CX-337, at 12, 14, 17-18, 21-22.

¹⁹⁸ *Id.* at 15-16.

“eCustody and BETA were the systems at issue in that inquiry,” so it did not search its AFS system.¹⁹⁹

Andrew Chambless, Sterne’s general counsel, appeared and testified on the last day of the hearing about the newly produced records.

1. Sterne Blocked an Order to Sell Freely Tradable Customer Shares of AWSR

Chambless confirmed that an account with only freely tradable shares of AWSR should not have been subject to a REST restriction.²⁰⁰ Thus, the account of customer DW, holding only freely tradable shares of AWSR, should not have been restricted, and his shares of AWSR should have been sold on February 23. Although the AWSR shares in customer DW’s account had originally been restricted, the restricted legends on the shares were removed and the shares became unrestricted in November 2011. Pursuant to Sterne’s protocol, Sterne personnel should have removed the restriction, rendering the shares freely tradable.²⁰¹

Nevertheless, on February 23, 2012, Sterne rejected DW’s order to sell his freely tradable shares of AWSR. The AFS system generated a rejection report stating that the order was “REST RESTRICTED – SECURITY NOT AVAILABLE FOR TRADING.” The report also has a notation “WARNING_ PENDING APPROVAL ... Forcefully removed.”²⁰² The notation “Forcefully removed” shows that the order could not be executed. Chambless made clear that Sterne was responsible for this, and that the order to sell DW’s AWSR stock was not blocked as a result of any action taken by anyone at JTF.²⁰³

¹⁹⁹ *Id.* at 4-5.

²⁰⁰ Tr. (Chambless) 3783.

²⁰¹ Tr. (Chambless) 3784-86.

²⁰² CX-337, at 12.

²⁰³ Tr. (Chambless) 3798.

For another JTF customer, GH, Sterne's records showed a different kind of rejection. JTF tried to enter two orders to sell AWSR for GH at 2:54:04 and 2:54:24 p.m. on February 23. JTF sent the order via the AFS order system, generating a report stating "WARNING Duplicates," and "This order was not entered."²⁰⁴ Chambless testified that Sterne's AFS system routed the order to the BETA system for execution, but the BETA system identified it as an order that might be a duplicate, so it blocked the order and sent a warning to Sterne's equity trading desk. Chambless characterized this as a "soft warning" that a broker could have "pushed through" to execution despite the warning, but Chambless did not know how the broker could accomplish this, or how the broker would know that he could push the order through to execution despite the warning.²⁰⁵

2. Only One Sterne System Recorded Rejected Orders

These rejected orders were entered through Sterne's AFS system. Had they been entered through the Thomson, BETA, or eCustody systems, Chambless testified, there would be no record of the blocked entry of the order.²⁰⁶ This is significant. JTF's brokers entered orders through the AFS system, but Ward entered orders through Thomson, eCustody, or BETA.²⁰⁷ Consequently, Sterne retained no record of rejected orders Ward, or anyone else at JTF, may

²⁰⁴ CX-337, at 15-16.

²⁰⁵ Tr. (Chambless) 3788-93, 3826-27.

²⁰⁶ Tr. (Chambless) 3800, 3816.

²⁰⁷ See CX-337, at 13-14, 22 (orders shown to have originated with JTF broker Gordos); CX-337, at 17 (order shown to have originated with JTF broker Alves, all attempted during the spike); Tr. 3293-95 (Misiti's counsel reading, without objection, passages from on-the-record testimony of Misiti testifying that JTF brokers used the AFS system, and JTF order entry clerks used eCustody and BETA). Ward testified that he tried repeatedly on February 23 to enter AWSR sell orders using the Thomson and BETA systems. Tr. (Ward) 2235.

have attempted to enter on February 23, 2012, for freely tradable shares of AWSR through systems other than AFS.²⁰⁸

Chambless testified that during FINRA's investigation of this case, the issue of orders Sterne received through the AFS system did not come up.²⁰⁹

3. The Rejection of an Order to Sell Freely Tradable Shares of AWSR Was Inexplicable

Chambless had no explanation for why the order to sell freely tradable shares of AWSR from the account of customer DW was rejected during the spike as a result of a REST restriction.²¹⁰

Enforcement argues that it makes no difference. Despite the evidence that Sterne blocked an order to sell freely tradable shares of AWSR during the spike, Enforcement insists "Sterne's trading systems were operating normally on February 23, 2012" and Sterne's systems "were not the reason JTF customers were unable to sell AWSR that day."²¹¹

The Panel disagrees. The evidence shows, for reasons Sterne cannot explain, that it had applied a "REST" restriction to reject at least one order to sell freely tradable shares of AWSR. The evidence also shows that Sterne did not apply a REST restriction to two accounts containing both restricted and freely tradable shares of AWSR, which should have been rejected.²¹²

Taken into consideration with the credible testimony of Misiti and Ward, this evidence undercuts Enforcement's conclusions that the "REST restriction did not affect shares contained in accounts that held only freely tradable shares" and that no Sterne system malfunction affected

²⁰⁸ Tr. (Chambless) 3800, 3816-17.

²⁰⁹ Tr. (Chambless) 3808.

²¹⁰ Tr. (Chambless) 3784.

²¹¹ Enforcement's Post-Hearing Br. 14.

²¹² Stips. 73, 76.

JTF brokers' ability to enter AWSR sell orders on February 23.²¹³ Furthermore, the evidence does not support Enforcement's assertion that the failure to execute JTF customer orders to sell AWSR on February 23 was the result of a conspiracy by Belesis, Misiti, and Ward to prevent the entry of the orders.

VII. JTF and Belesis, Not Misiti, Violated FINRA Rules 5320 and 2010 (First Cause of Action)

FINRA Rule 5320(a) provides that:

Except as provided herein, a member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

The Amended Complaint alleges that during the spike JTF failed to execute at least 15 customer sell orders while processing sales from its proprietary account.²¹⁴ It alleges that Misiti instructed JTF brokers to write tickets, but when a crowd of brokers formed near Ward's and Misiti's desks, Belesis threatened them by yelling at them to move away, to prevent them from interrupting Misiti, and to keep them from entering the customer sell orders.²¹⁵

The next day, Belesis allegedly rejected a senior JTF staff member's suggestion that he cancel JTF's proprietary sales of AWSR and rebill them to customers whose orders had not been filled, to provide the customers with the same price that JTF had obtained.²¹⁶

²¹³ Enforcement's Pre-Hearing Br. 11.

²¹⁴ Amended Compl. ¶ 61.

²¹⁵ Amended Compl. ¶¶ 40-42.

²¹⁶ Amended Compl. ¶ 56.

Based on these allegations, the first cause of action charges that JTF, Belesis, and Misiti traded ahead of approximately 14 JTF customers who tried to sell their positions in AWSR, in violation of FINRA Rules 5320 and 2110.

A. Misiti Did Not Engage in Trading Ahead

The Panel concludes, as Misiti testified, that when the spike started, she believed that Ward was properly addressing the rejection of a customer order to sell AWSR by calling Sterne. Almost immediately thereafter, Belesis instructed Misiti to sell JTF's proprietary position in AWSR. For the next hour and 16 minutes, she was fully occupied carrying out Belesis' instruction. It was only after she finished, and after the market closed, that Misiti learned there were numerous rejected customer orders because of REST restrictions. She then immediately contacted Sterne to lift the REST restrictions; sent Sterne a spreadsheet listing JTF customers holding AWSR; informed Belesis; and contacted Cummings at Belesis' direction to arrange a meeting to discuss the matter on the following morning.

The Panel rejects Enforcement's assertion that Misiti "made no effort to address the issue."²¹⁷ The evidence shows that once Misiti was fully aware of the scope of the problem, she quickly took reasonable steps to have Sterne lift the restrictions.

Misiti did not possess the authority to require JTF and Belesis to rectify the situation by canceling and rebilling the proprietary sales. Misiti was familiar with JTF's policies pertaining to trading ahead,²¹⁸ and familiar with procedures to make price adjustments upon discovering that a broker had traded in a security more advantageously for himself than for a customer.²¹⁹ In the past, when the assistant branch manager who reviewed the daily trade blotter, or the assistant

²¹⁷ Enforcement's Post-Hearing Br. 16.

²¹⁸ Tr. (Misiti) 1907.

²¹⁹ Tr. (Misiti) 1909.

branch manager who reviewed trade tickets, both of whom Misiti supervised, brought suspected trading ahead to her attention, she had taken corrective action.²²⁰ When it came to JTF's proprietary account, however, only Belesis had the authority to make such adjustments.²²¹

1. Misiti's Testimony Was Credible

Enforcement contends that Belesis and Misiti told brokers to write paper tickets for customer orders to sell AWSR to prevent them from entering the orders, and then Belesis and Misiti held the tickets while they sold JTF's proprietary shares. Consequently, Enforcement rejects as false Misiti's testimony that she was unaware of the extent of the problem brokers had entering customer sell orders until after the market closed.²²² Enforcement posits a series of reasons for disbelieving Misiti. The Panel has examined these reasons and finds that they are based on assumptions that the evidence does not support.

Enforcement argues that Ward had to obtain Misiti's approval for every sell ticket before he could enter it, and, therefore, "Ward would have given Misiti every one of the many sell order tickets in his 'stack' for review; and Misiti would have known the problem related to many orders for many customers."²²³ But Ward testified that by February 23, although he and Misiti had not reached the point at which he could "just enter an order without showing her anything," Misiti was becoming "comfortable" in their working relationship.²²⁴ When Ward had the order tickets from Alves and others on his desk, he asked Misiti if she wanted to see and approve them

²²⁰ Tr. (Misiti) 1910-11.

²²¹ Tr. (Misiti) 1912.

²²² Enforcement's Post-Hearing Br. 15. Misiti testified that she was aware Alves had encountered a problem, and instructed him to give the ticket to Ward to handle. Tr. (Misiti) 1811. She testified that she was aware that Ward had encountered a problem, but observed that he was on the phone and assumed he was resolving it. Tr. (Misiti) 1784, 1787, 1789.

²²³ Enforcement's Post-Hearing Br. 15.

²²⁴ Tr. (Ward) 2266-67.

before he entered them. Ward testified that Misiti told him if they were “all sell tickets,” he could “just enter them.”²²⁵ This testimony, which the Panel finds credible, does not support Enforcement’s supposition that Ward gave Misiti all of the AWSR sell tickets he received from brokers.

Enforcement argues that Misiti must have been aware of the extent of the problem because of the commotion, with brokers yelling to get AWSR shares sold, prompting Belesis to intervene and order them to return to their desks. Enforcement infers that “Belesis would have had to speak loudly, and Misiti would have heard him.”²²⁶ However, given the credible testimony about the routine loudness of JTF’s large trading floor, and the level of noise during the commotion on February 23, the Panel disagrees with Enforcement’s conjecture that Misiti must have heard Belesis call out to the traders, and therefore knew the scope of the problem.

Enforcement argues that Misiti’s claim that “she had no idea that there was a disaster in the making ... is not remotely credible.”²²⁷ Here again, the Panel disagrees. We find that Misiti was credible in her testimony that she believed Ward was working on the problem with Sterne and that her attention was focused, beginning at about 3:00 p.m., on carrying out Belesis’ instruction to sell the proprietary position in AWSR.

²²⁵ Tr. (Ward) 2285.

²²⁶ Enforcement’s Post-Hearing Br. 16.

²²⁷ *Id.*

2. The Evidence Does Not Establish that Belesis Hovered Over Misiti During the Spike and Directed Her Actions to Prevent Entry of Customer Orders

The Panel does not conclude, as Enforcement does, that during the spike Belesis was “with Misiti multiple times for several minutes at a time” so that they could prevent the entry of customer orders and profitably sell JTF’s proprietary position in AWSR.²²⁸

Enforcement relies heavily on the testimony of JTF’s anti-money laundering compliance officer, Michael Egan, who testified that Belesis stood over Misiti’s shoulder for as long as 30 minutes during the spike.²²⁹ Egan testified that he saw Belesis by Misiti twice; the first time, according to Egan, was from approximately 2:40 to 2:50 p.m.²³⁰ and the second was from approximately 3:00 to 3:10 p.m.²³¹

The first order entered by a JTF broker for AWSR was not until 2:50 p.m., followed by another at 2:51 p.m.²³² The evidence shows that Sterne rejected the order Alves tried to enter at 2:55:04 p.m.²³³ Belesis did not call Misiti to instruct her to sell JTF’s position until 3:01:18 p.m.²³⁴ Thus, it is unlikely that Egan could have observed brokers yelling, seen Belesis next to Misiti, and watched Stack blocking brokers from approaching Misiti from 2:40 to 2:50 p.m.

Egan testified that he watched for ten minutes, returned to his office at about 2:50 p.m., and came back to the trading floor for another ten minutes beginning at approximately 3:00

²²⁸ Enforcement’s Post-Hearing Br. 17.

²²⁹ Tr. (Egan) 1194, 1198-99, 1222-24, 1258-59.

²³⁰ Tr. (Egan) 1222-23.

²³¹ Tr. (Egan) 1225-26.

²³² Stip. 77.

²³³ CX-337, at 17.

²³⁴ Tr. (Misiti) 1784; Stip. 100.

p.m.²³⁵ Phone records show, however, that calls were made to and from his desk starting at 2:58 and continuing over the following 20 minutes.²³⁶ On cross-examination, Egan conceded that he was in his office from 2:58 to 3:18 p.m., and that the phone records demonstrate that his testimony was inaccurate.²³⁷

Enforcement also relies on the testimony of Alves, who testified that he “saw Belesis next to Misiti multiple times for several minutes at a time ... and 15-20 minutes in total.”²³⁸ But Alves’ testimony was less than certain. For example:

Q: Did you see Tommy Belesis on the floor that afternoon?

A: Yes.

Q: And where was he?

A: Most of the times at his desk, which was far behind me.

Q: Was he ever near Miss Misiti’s desk?

A: Yes.

Q: And where was he standing in relation to Miss Misiti?

A: In the vicinity of her desk, and the trader, *I guess*, in that vicinity – that walkway, it’s about 15 feet worth of space, a walkway.

Q: Was Mr. Belesis literally standing next to Miss Misiti?

A: *I guess* at some times, yes. At some points.

Q: And was he staring at her computer?

A: *Possibly*. He had his back to me.

Q: How long was Mr. Belesis in the area around Miss Misiti and Mr. Ward?

A: Could have been five minutes, three minutes, and later on more.²³⁹ (Emphasis supplied.)

²³⁵ Tr. (Egan) 1224-25.

²³⁶ Tr. (Egan) 1227-30.

²³⁷ Tr. (Egan) 1227-30.

²³⁸ Enforcement’s Post-Hearing Br. 17 (citing to Tr. (Alves) 191-92, 232-33).

²³⁹ Tr. (Alves) 190-91.

Enforcement's witness, Mel Coffey, a broker who was at his desk on the trading floor during the spike, undermined Enforcement's contention that Belesis directed events at Misiti's side for a substantial period. Coffey testified that he saw Belesis on the floor near Ward's desk at just one point that afternoon for only five minutes.²⁴⁰

In sum, the Panel finds that Enforcement failed to prove by a preponderance of the evidence that Belesis stood over Misiti for a substantial period and that, together, they prevented brokers from entering customer orders to sell AWSR. The Panel also finds that Enforcement failed to prove by a preponderance of the evidence that Misiti engaged in a conspiracy with Belesis to block customer orders to sell AWSR. We therefore find the evidence insufficient to prove that Misiti engaged in trading ahead of customer orders, and dismiss the allegations against her contained in the first cause of action.

B. JTF and Belesis Violated FINRA Rules 5320 and 2010

As noted above, FINRA Rule 5320(a) prohibits a firm holding a customer order in an equity security from trading in that security for itself on the same side of the market "at a price that would satisfy the customer order, unless it *immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.*" (Emphasis supplied.) A firm's fundamental obligation, as Enforcement correctly argues, is to satisfy customer orders.²⁴¹ Trading ahead most typically occurs when a firm accepts and holds

²⁴⁰ Tr. (Coffey) 2484-85.

²⁴¹ Enforcement's Post-Hearing Br. 33.

customer orders, but refrains from entering them until it completes trading to its own advantage at the customers' expense.²⁴²

We have found that JTF did not intentionally hold customer orders in abeyance while trading on its own account. To the contrary, the evidence shows that when JTF brokers received customer orders they tried, unsuccessfully, to enter them. Nonetheless, FINRA Rule 5320 required the firm to execute those orders at the same or a better price than the firm obtained for itself.

By 5:00 p.m. on February 23, Belesis knew that there were JTF customers with orders to sell AWSR at the market price whose orders had not been entered.²⁴³ He scheduled a meeting for the following morning to discuss the issue with Misiti and Cummings, JTF's director of operations, and even arranged a car service to pick them up.²⁴⁴

Abraham Mirman, JTF's investment banker, testified that, on February 23, Belesis told him about "great news"—that he had sold most of JTF's position in AWSR.²⁴⁵ The following morning Castellano approached Mirman and told him of a "problem" with the previous day's AWSR trades: JTF had profited while customers who tried to sell AWSR stock had been unable to do so. Mirman testified that he advised Castellano, and then Belesis, that JTF could easily solve the problem. All it needed to do was to cancel the firm's sales and rebill the trades to

²⁴² See, e.g., *Dep't of Enforcement v. Nicolas*, Complaint No. CAF040052, 2008 FINRA Discip. LEXIS 9, at *2-3 (N.A.C. Mar. 12, 2008) (Respondents improperly traded ahead when they received a large customer order, took advantage of the information that the customer wished to buy or sell, traded in the firm's account to establish a position that later the firm used to trade as principal against the customer's order, with the firm obtaining better results than the customer).

²⁴³ Tr. (Belesis) 1427-28, 1515-16.

²⁴⁴ Tr. (Belesis) 1515.

²⁴⁵ Tr. (Mirman) 3555.

customers, filling their orders at the prices that JTF had obtained for itself. According to Mirman, Belesis responded, “No ... I’m not going to do that” and “I’m very comfortable with this.”²⁴⁶

Belesis denies that the conversation took place. Belesis insists that he would never have discussed AWSR with Mirman, because Mirman was the investment banker, and what Belesis did with the proprietary account was none of Mirman’s business.²⁴⁷

The Panel credits Mirman’s testimony on this point. Mirman was clear in his recollection and recounted his conversations with Castellano and Belesis in detail. The context of the conversations also adds plausibility to Mirman’s account. The sale of the firm’s proprietary shares of AWSR was a significant event at JTF on February 23. Mirman was a senior officer at JTF, and would have been aware of and interested in the events of February 23. Also, he reported to both Belesis and Castellano, and spoke to them daily.²⁴⁸

In contrast, the Panel finds Belesis’ testimony self-serving and unconvincing. Furthermore, the Panel notes that Belesis has been untruthful under oath on other occasions when it suited his purpose. For example, Belesis gave on-the-record testimony during Enforcement’s investigation that he had never been a defendant in a FINRA arbitration or a civil suit, but he had been a defendant in three arbitrations and a civil proceeding, actions that resulted in his paying significant monetary judgments.²⁴⁹ In that investigative interview, Belesis also testified that he was unaware on February 23, 2012, that JTF customers tried to sell their shares of AWSR.²⁵⁰

²⁴⁶ Tr. (Mirman) 3557-60.

²⁴⁷ Tr. (Belesis) 3878.

²⁴⁸ Tr. (Mirman) 3535.

²⁴⁹ Tr. (Belesis) 1349-51.

²⁵⁰ At the hearing, Belesis claimed that this prior testimony was “mistaken.” Tr. (Belesis) 1546-47.

But even if Mirman had not recommended to Belesis that he take corrective action on February 24, Belesis could and should have done so. Had he, Belesis would have complied with the last clause of FINRA Rule 5320(a), by rectifying the failure to fill JTF's customer orders to sell AWSR during the spike. His failure to do so violated the Rule.

Belesis claims that he did not rebill the orders on February 24 because he believed that the customer shares of AWSR were still restricted,²⁵¹ based on what Cummings told him at their meeting that morning.²⁵² According to Belesis, at the meeting Cummings informed him that the problem was a result of JTF brokers not having filed the proper paperwork to have restrictions on AWSR stock lifted so that the shares could be traded.²⁵³ This claim is not credible. Before leaving work on February 23, Misiti had succeeded in getting Sterne to remove the restrictions and informed Belesis of her actions. By the time Belesis met with Cummings and Misiti on February 24, he knew that Sterne had lifted the restrictions, making customer shares of AWSR tradable that morning. Thus, as required by FINRA Rules 5320 and 2010, JTF could, and should, have cancelled its proprietary orders and rebilled them to customers who owned freely tradable shares of AWSR, filling the customer orders with the average price per share obtained by the firm on February 23.

VIII. The Evidence Does Not Establish that JTF, Belesis, Misiti, and Ward Violated NASD Rule 2320 and FINRA Rule 2010 (Second Cause of Action)

NASD Rule 2320(a)(1), the "best execution" rule, states: "In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and

²⁵¹ Respondents John Thomas Financial and Anastasios "Tommy" Belesis Post-Hearing Brief 29 (hereinafter "Belesis Post-Hearing Br.").

²⁵² Tr. (Belesis) 3900-01.

²⁵³ Tr. (Belesis) 3859.

buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.”²⁵⁴

The second cause of action charges JTF, Belesis, Misiti, and Ward with failing to use “reasonable diligence to enter AWSR customer orders on February 23, 2012.”²⁵⁵ It alleges specifically that Ward was the person responsible for entering customer orders and that he failed to enter no fewer than 14 customer sell orders during the spike. It charges Misiti with failing to contact Sterne until after she had sold JTF’s proprietary shares. Thus, JTF, Belesis, Misiti, and Ward allegedly failed to fulfill their obligation to fill the orders at the most favorable possible prices under the then-prevailing market conditions, and violated NASD Rule 2320 and FINRA Rule 2010.²⁵⁶

The duty to provide customers with best execution stems from a broker-dealer’s fiduciary obligations and from common law agency principles, which have been incorporated in FINRA rules.²⁵⁷ Broker-dealers are required to make reasonably diligent efforts to provide as favorable a price as possible to the customer buying or selling securities.²⁵⁸

The duty applies to introducing broker/dealers, such as JTF, which do not execute customer orders, but route them to their clearing firm for execution.²⁵⁹ Even though JTF did not execute customer orders, it “nonetheless ha[d] an obligation to ensure that its customer orders [were] executed in a manner consistent with the duty of best execution” and to “conduct an

²⁵⁴ FINRA Rule 5310 superseded NASD Rule 2320 on May 31, 2012, after the events at issue here. See Rule Conversion Chart at <http://www.finra.org/RuleConversionChart>.

²⁵⁵ Amended Compl. ¶ 66.

²⁵⁶ Amended Compl. ¶¶ 66-69.

²⁵⁷ *NASD Notice to Members 01-22* (Apr. 2001).

²⁵⁸ *Id.* at 202.

²⁵⁹ *Id.* at 204.

independent review for execution quality.”²⁶⁰ An introducing broker/dealer must take “reasonable steps” to ensure that its customers are provided with best execution by reviewing trades to monitor the quality of execution.²⁶¹

In this case, the Parties presented little evidence related to JTF’s best execution reviews, although Ward testified that one of his responsibilities was to review five trades daily to ascertain whether customers were given best execution,²⁶² and Misiti testified that JTF reviewed blotters daily and made price adjustments when it discovered that customers received less advantageous prices than JTF did in trading the same security.²⁶³ Nonetheless, Enforcement insists that “the customers who wanted to sell their AWSR shares did not get best execution”²⁶⁴ on February 23, 2012, because JTF, Belesis, Misiti, and Ward failed to apply reasonable diligence to enter the customer orders.²⁶⁵

At the hearing, the Panel requested Enforcement, in its post-hearing brief, to address with specificity the factual and legal support for the allegations that JTF, Belesis, Misiti, and Ward breached their duty of best execution.²⁶⁶ In response, Enforcement cites three cases for the proposition that firms and individuals must provide best execution.²⁶⁷ However, those cases are factually distinguishable from this case.

²⁶⁰ *NASD Notice to Members 01-22*, at 204.

²⁶¹ *Id.*

²⁶² Tr. (Ward) 2256.

²⁶³ Tr. (Misiti) 1909.

²⁶⁴ Enforcement’s Post-Hearing Br. 35.

²⁶⁵ *Id.* at 35-36; Amended Compl. ¶ 66.

²⁶⁶ Order Regarding Post-Hearing Briefs (Jan. 16, 2014).

²⁶⁷ Enforcement’s Post-Hearing Br. 35.

Two of the cases concern charges that firms filled customer orders at the National Best Bid and Offer rather than at better prices obtained by the firms or otherwise available.²⁶⁸ The third, which Enforcement argues is similar to this case, arose from a fraudulent scheme to hold a customer's orders until the firm, trading ahead, established a proprietary position, after which the firm executed the orders to its advantage in a principal capacity, and "essentially stole" the customer's best execution price.²⁶⁹ In that case, Enforcement notes, a respondent was found culpable for violating the duty of best execution "ancillary to the fraudulent scheme."²⁷⁰

This case involves an unusual concurrence of circumstances—a sudden spike in the price and volume of AWSR and inexplicable, erroneous application of the REST restriction to at least one account with freely tradable shares—in a period of little more than an hour on February 23. As Ward points out in his pre-hearing brief, there is nothing in Rule 2320's extensive text that appears to contemplate the circumstances from which this case arises. Rather, Rule 2320 focuses on "reasonable diligence" to obtain the best price for a customer under "prevailing market conditions," applying factors that include "character of the market for the security," "size and type of transaction," "the number of markets checked," "accessibility of the quotation," and the "terms and conditions of the order."²⁷¹

As set forth above, Enforcement failed to prove by a preponderance of the evidence that during the spike in AWSR's price, JTF through Belesis, Misiti, and Ward did not use reasonable due diligence to enter customer orders to sell AWSR. The facts and authorities upon which

²⁶⁸ *Marc N. Geman*, Exchange Act Release No. 43963, 2001 SEC LEXIS 282, at *53 (Feb. 14, 2001), *aff'd*, 334 F.3d 1183 (10th Cir. 2003); *Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266 (3d Cir. 1998).

²⁶⁹ *Nicolas*, 2008 FINRA Discip. LEXIS 9, at *32, *34.

²⁷⁰ *Id.* at *34 n.30.

²⁷¹ Prehearing Memorandum of Respondent John Ward 16-17 (hereinafter "Ward's Pre-Hearing Br."); FINRA Rule 2320(a)(1)(A)-(E).

Enforcement relies do not establish a violation of NASD Rule 2320 and FINRA Rule 2010. For these reasons, the second cause of action is dismissed.

IX. JTF, Belesis, Misiti, and Ward Did Not Violate FINRA Rule 2010 by Failing to Follow Customer Instructions (Third Cause of Action)

FINRA Rule 2010 provides that “[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.” It is a broad ethical principle designed to protect the overall integrity of the securities industry.²⁷² In the absence of a violation of another securities rule or law, conduct violates Rule 2010 only if it is found to be “unethical” or committed in “bad faith.”²⁷³

The third cause of action is limited to the alleged failure by JTF, Belesis, Misiti, and Ward to follow the instructions of JTF customers to sell their shares of AWSR on February 23. By not entering 14 customer orders, Enforcement charges that “Respondents took insufficient steps to follow customer instructions to execute AWSR orders”²⁷⁴ and JTF, Belesis, Misiti, and Ward violated Rule 2010.²⁷⁵

As set forth above, the facts do not support these allegations. The evidence does not establish that on February 23, JTF, acting through Belesis, Misiti, and Ward failed to take sufficient steps to enter customer orders to sell AWSR through Sterne. The evidence shows that

²⁷² *Timothy L. Burkes*, 51 S.E.C. 356, 360 (1993), *aff'd*, No. 93-70527, 1994 U.S. App. LEXIS 19120 (9th Cir. July 25, 1994). At the time of *Burkes*, NASD Rule 2110 was in effect; FINRA Rule 2010 superseded NASD Rule 2110, but is identical in its requirement that members observe high standards of commercial honor, and just and equitable principles of trade. *Benjamin Werner*, 44 S.E.C. 622, 624-25 (1971).

²⁷³ *Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *65 (Dec. 10, 2009) (citing *Thomas W. Heath, III*, Exchange Act Release No. 59223, 94 SEC Docket 13242, 13246 (Jan. 9, 2009), *aff'd*, No. 09-0825-ag, 2009 U.S. App. LEXIS 24128 (2d Cir. Nov. 4, 2009)); *Chris Dinh Hartley*, 57 S.E.C. 767, 773 (2004) (citing *Calvin David Fox*, Exchange Act Release No. 48731 (Oct. 31, 2003)).

²⁷⁴ Amended Compl. ¶¶ 74-75.

²⁷⁵ Enforcement’s Post-Hearing Br. 35-36.

Misiti and Ward were reasonably diligent under the circumstances, and that Sterne's REST restriction was blocking the entry of customer orders of AWSR.²⁷⁶

For these reasons, the third cause of action is dismissed.

X. JTF, Belesis, and Misiti Did Not Violate FINRA Rule 2010 by Making Misrepresentations to Registered Representatives and Customers (Fourth Cause of Action)

FINRA Rule 2010's ethical requirements prohibit members and associated persons from making misrepresentations and omissions of material fact.²⁷⁷

The fourth cause of action alleges that JTF and Belesis, through Misiti and Castellano,²⁷⁸ falsely stated to JTF's registered representatives on February 23 and 24, 2012, that customer sell orders could not be entered because of a problem at the clearing firm, Sterne, and that the registered representatives, in turn, passed this information to JTF customers.²⁷⁹ It alleges that the statement was false because Sterne's systems were operating normally, and that the failure to enter the customer sell orders resulted from the inadequate efforts of JTF, Belesis, and Misiti.²⁸⁰ It further alleges that when Belesis refused to cancel and rebill JTF's proprietary sales, and sell the customer orders instead, he untruthfully said it was because the customers' AWSR shares were restricted and could not be sold.²⁸¹ The fourth cause of action also alleges that Belesis was

²⁷⁶ As previously noted, on February 24, Belesis could have taken steps to fulfill the firm's obligation to follow its customers' instructions by canceling and rebilling the previous day's sales of JTF's proprietary shares. The third cause of action does not, however, charge JTF and Belesis with a Rule 2010 violation for that failure.

²⁷⁷ *Dep't of Enforcement v. Saad*, Complaint No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *11-12 (N.A.C. Oct. 6, 2009), *aff'd*, Exchange Act Release No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010) (finding that a registered person's submission of false expense reimbursement requests and receipts to his broker-dealer violated Rule 2110); *Dep't of Enforcement v. Reynolds*, Complaint No. CAF990018, 2001 NASD Discip. LEXIS 17 (N.A.C. June 25, 2001).

²⁷⁸ Despite alleging that Castellano made misrepresentations to brokers, the fourth cause of action does not charge him with violating Rule 2010.

²⁷⁹ Amended Compl. ¶ 78.

²⁸⁰ Amended Compl. ¶ 79.

²⁸¹ Amended Compl. ¶¶ 56, 80.

responsible for false statements by JTF representatives to customers that their AWSR shares could not be sold because there was insufficient market trading volume in AWSR on February 23.²⁸² Enforcement asserts that these “misstatements” were purposefully made “to camouflage the firm’s fraudulent trading ahead misconduct and to prevent customers from selling their shares in AWSR.”²⁸³ The fourth cause of action charges that these misrepresentations were material and that, by making them, JTF, Belesis, and Misiti violated FINRA Rule 2010.²⁸⁴

For proof of these charges, Enforcement relies primarily on the testimony of JTF broker Alves and three stipulations.²⁸⁵

According to Alves, on both February 23 and February 24, Belesis said he did not know why customer orders to sell AWSR were not executed²⁸⁶ and on the following day, Misiti explained that Sterne did not “recognize” the order he entered.²⁸⁷ Alves also testified that he had never before encountered a problem like Sterne’s rejection of his order to sell AWSR²⁸⁸ and that he and other brokers were confused about why orders were being rejected on February 23.²⁸⁹

Two of the stipulations relate to broker Frank Scarso. Scarso told one customer that he was unable to sell his AWSR on February 23 because of insufficient volume in the stock.²⁹⁰ He informed another customer that Sterne believed the shares were restricted, and that the customer’s order could not be executed because there were too many orders placed ahead of

²⁸² Amended Compl. ¶ 81.

²⁸³ Enforcement’s Pre-Hearing Br. 19.

²⁸⁴ Amended Compl. ¶ 82.

²⁸⁵ Enforcement’s Post-Hearing Br. 37 n.210.

²⁸⁶ Tr. (Alves) 193-96, 200.

²⁸⁷ Tr. (Alves) 198-99.

²⁸⁸ Tr. (Alves) 212.

²⁸⁹ Tr. (Alves) 215.

²⁹⁰ Stip. 267.

his.²⁹¹ The third stipulation establishes that broker Gordos told a customer that his AWSR shares could not be sold because Sterne said the shares were restricted.²⁹²

In related testimony, broker Anthony Maiuolo testified that Belesis and Misiti told brokers at a meeting that a problem with Sterne's trading system prevented the execution of the orders.²⁹³ Finally, RE, one of Scarso's customers, testified that Scarso informed him that the orders could not be executed because "the clearinghouse ... [had] too many orders that they were trying to process."²⁹⁴

The evidence is insufficient to sustain the allegations. First, Alves' testimony and the three stipulations cited by Enforcement do not prove that Belesis misrepresented the reasons for the failure to sell customers' AWSR shares. Second, the statement Alves attributes to Belesis and Misiti was accurate: Sterne's systems rejected orders to sell freely tradable shares of AWSR in accounts with both restricted and unrestricted shares, accepted other orders to sell AWSR in accounts that should have been subject to a REST restriction, and, in at least one instance, failed to accept an order to sell shares in an account with only freely tradable shares. Thus, the evidence does not support the essential predicate for the allegation in the fourth cause of action: that Sterne's trading systems were operating normally on February 23. Third, the evidence does not establish that Misiti failed to make an honest effort to resolve the problem. As set forth above, as soon as Misiti finished entering JTF's order to sell proprietary shares of AWSR, she

²⁹¹ Stip. 269.

²⁹² Stip. 268.

²⁹³ Tr. (Maiuolo) 2727.

²⁹⁴ Tr. (RE) 1153. Customer RE testified that the following day Scarso disclosed that some of RE's AWSR shares were restricted, and that he had neglected to send RE the forms required to lift restrictions. According to RE, Scarso sent him the forms the evening of February 23, and on February 24, RE was able to sell his 193,333 shares of AWSR, including both the shares that were restricted on February 23 and 83,333 shares that were freely tradable for approximately 56 cents per share. Tr. (RE) 1154-57, 1166.

took the necessary steps to have Sterne lift the restrictions on AWSR from all customer accounts. And there is simply no evidence that Misiti gave any broker or customer material misstatements about why customer orders to sell AWSR were not executed.

For these reasons, the fourth cause of action is dismissed.

XI. JTF and Belesis Violated FINRA Rules 4511 and 2010 and Exchange Act Rules 17a-3 and 17a-4 by Maintaining Incomplete Records, but Misiti Did Not Falsify Order Tickets (Fifth Cause of Action)

FINRA Rule 4511(a) requires FINRA members to “make and preserve books and records as required under the FINRA rules, the Exchange Act, and the applicable Exchange Act rules.” SEC Rule 17a-4 directs that the records be preserved for a minimum of three years. The obligation extends to customer order tickets. SEC Rule 17a-3 requires members to maintain a record of each transaction, “whether executed or unexecuted,” and mandates that the record should reflect when the order was received, entered, and either executed or cancelled. As Enforcement notes, the obligation to maintain complete and accurate order tickets is well established, and a failure to do so violates not only these FINRA and SEC Rules, but FINRA Rule 2010 as well.²⁹⁵

The fifth cause of action charges that JTF, Belesis, and Misiti failed to keep and maintain current records of at least 14 customer orders to sell AWSR received on February 23, 2012. It also alleges that on February 24, Misiti created new, falsified order tickets for six of the customer orders received the day before, and as a result the six tickets were inaccurate, in violation of Exchange Rule 17a-3(a)(6).²⁹⁶ Finally, the fifth cause of action charges that JTF, through Belesis and Misiti, failed to preserve the records of 14 unexecuted customer orders received on February

²⁹⁵ *Stephen Michael Sohmer*, Exchange Act Release No. 49052, 2004 SEC LEXIS 41 (Jan. 12, 2004); *Fox & Co. Invs., Inc.*, 58 S.E.C. 873 (2005).

²⁹⁶ Amended Compl. ¶ 87.

23, 2012.²⁹⁷ As a result of these failures, Belesis allegedly did not fulfill his responsibility as the CEO to ensure that JTF complied with applicable laws and regulations, and Misiti did not fulfill her responsibility as branch office manager to ensure that customer equity orders were properly entered and executed.²⁹⁸ The fifth cause of action charges that by this conduct, JTF, Belesis, and Misiti violated the bookkeeping requirements of Exchange Act Rules 17a-3(a)(6) and 17a-4(b)(1), in knowing violation of FINRA Rules 4511 and 2010.²⁹⁹

Ward testified that during the spike, brokers gave him at least 15 paper order tickets to sell AWSR.³⁰⁰ He testified that he returned several tickets to them at their request,³⁰¹ but that he maintained the other tickets in compliance with JTF's procedures. He gave them to an assistant branch manager to review, then scanned them, stored them under his desk, and ultimately turned them over to his supervisor, Castellano, JTF's chief compliance officer, at the end of the month.³⁰²

Castellano testified that he received February's tickets and took them to JTF's file room for storage.³⁰³ Castellano testified further that JTF maintained the tickets until the time FINRA requested that they be produced, but JTF could not produce them because "they were given back to the brokers."³⁰⁴ According to Castellano, when FINRA issued a Rule 8210 request for all order tickets created on February 23 and 24, 2012, JTF searched the file room, checked the

²⁹⁷ Amended Compl. ¶ 88.

²⁹⁸ Amended Compl. ¶ 89.

²⁹⁹ Amended Compl. ¶ 90.

³⁰⁰ Tr. (Ward) 2184-85.

³⁰¹ Tr. (Ward) 2273, 2288.

³⁰² Tr. (Ward) 2274-81.

³⁰³ Tr. (Castellano) 1998.

³⁰⁴ Tr. (Castellano) 2028.

repository of scanned documents, and asked brokers to turn over any of the tickets in their possession.³⁰⁵ However, he stated that “when we went to ask the brokers for the tickets, they didn’t have them.”³⁰⁶ Thus, by Castellano’s account, the brokers disposed of them.

JTF produced only two order tickets for February 23: the ticket for the sale of JTF’s proprietary shares, filled out by Misiti, and the ticket for Gordos’ customer, HC.³⁰⁷ JTF produced none of the rejected customer order tickets created by brokers during the spike.

The Panel does not find Castellano credible. There is no evidence to corroborate Castellano’s claim that tickets were returned to brokers, other than those few that Ward gave back to brokers on February 23. The Panel is satisfied that Misiti and Ward, whose testimony was credible, do not know what became of the tickets. Further, Enforcement did not establish that Misiti was responsible for maintaining the tickets. Her only involvement was creating the ticket for the proprietary sales, which was produced, and participating in a fruitless search to find the customer tickets in response to FINRA’s Rule 8210 request. According to the testimony of Ward, a number of AWSR customer tickets from February 23 should have been found in JTF’s file room.

Belesis also testified about the tickets and JTF’s recordkeeping procedures. When shown JTF’s written supervisory procedures relating to compliance with SEC Rule 17a-3, Belesis testified that he was “not familiar” with the recordkeeping requirements, and claimed that he was unfamiliar even with the fundamental requirement that the firm preserve order tickets for three years.³⁰⁸ The Panel does not find these claims credible, given the length and breadth of Belesis’

³⁰⁵ Tr. (Castellano) 2001-02.

³⁰⁶ Tr. (Castellano) 2028.

³⁰⁷ CX-53.

³⁰⁸ Tr. (Belesis) 1556-57.

experience in the securities industry. Belesis first registered with FINRA in 1996; he has held Series 7, 9, 10, 24, and 63 registrations, and he has owned and operated JTF since 2007.³⁰⁹

Belesis also claims that he played no role in responding to FINRA Rule 8210 requests received by JTF.³¹⁰ He claims that he has “no recollection” of FINRA’s request for the February 23 order tickets, “no recollection” of speaking with JTF’s in-house counsel, and that he did not speak to Misiti or Castellano about the February 23 tickets.³¹¹ He admits that he signed the letter to FINRA certifying that JTF had produced “all responsive documents and information, to the extent located by the firm,” but testified that it was his practice to sign whatever Castellano put in front of him because he trusted Castellano “as a chief compliance officer with the firm, and his integrity.”³¹² Belesis claims he had no idea who wrote the certification letter.³¹³ He also claims that he has no idea what happened to the missing tickets.³¹⁴

Enforcement argues that “Belesis and Misiti arranged for the destruction of AWSR sell order tickets because they wanted to cover up the evidence of the Firm’s trading ahead and other violations.”³¹⁵ There is no direct evidence to support this argument.

JTF’s procedures placed responsibility for maintaining order tickets on the firm’s financial and operations principal, not on Misiti.³¹⁶ And there is no evidence that Misiti

³⁰⁹ Stips. 1, 7.

³¹⁰ Tr. (Belesis) 1557.

³¹¹ Tr. (Belesis) 1557-59.

³¹² Tr. (Belesis) 1559-61.

³¹³ Tr. (Belesis) 1562.

³¹⁴ Tr. (Belesis) 1566-67.

³¹⁵ Enforcement’s Post-Hearing Br. 39.

³¹⁶ CX-171, at 155-56.

“arranged for the destruction” of the tickets, or that she wanted to conceal evidence of trading ahead.

There is also no direct evidence that Belesis arranged to destroy the missing tickets. But as CEO, Belesis shared JTF’s responsibility for maintaining order tickets. Belesis’ testimonial claims of ignorance of that responsibility are not credible, given his position and his many years of experience in the securities industry. Similarly, his claim that he had no involvement in or responsibility for JTF’s response to the Rule 8210 request for production of the order tickets is not credible.

Considering all of the circumstances, the most reasonable inference is that JTF and Belesis either concealed or destroyed those order tickets, which should have contained important evidence of customer orders received by JTF on February 23. Therefore, the Panel concludes that JTF and Belesis failed to maintain the tickets in violation of FINRA Rules 4511 and 2010 and Exchange Act Rules 17a-3 and 17a-4.

The remaining charge in the fifth cause of action alleges that Misiti falsified order tickets when she complied with Scarso’s request to write new tickets for customer orders to sell AWSR on February 24. Enforcement argues that Misiti knew that the customers had placed orders the previous day, but “created new order tickets for six of the orders, causing them to be inaccurately stamped with February 24, 2012 order receipt dates. Misiti knew that the new records were inaccurate.”³¹⁷

However, there is no evidence to contradict Misiti’s testimony that the February 23 customer orders were day orders, not good-til-cancelled orders, and therefore did not carry over

³¹⁷ Enforcement’s Post-Hearing Br. 39.

to the next trading day.³¹⁸ The order tickets Misiti filled out at Scarso's request on February 24 were all marked as day orders.³¹⁹ Misiti's testimony about how and why she prepared the tickets at Scarso's request is credible. Misiti filled out the tickets properly and accurately. Accordingly, the Panel concludes that Misiti did not create falsified order tickets, and the charge against her in the fifth cause of action is dismissed.

XII. The Evidence Does Not Establish that JTF, Belesis, and Misiti Violated NASD Rule 3010 and FINRA Rule 2010 by Failing to Supervise (Sixth Cause of Action)

NASD Rule 3010 states that firms must establish and maintain supervisory systems reasonably designed to ensure compliance with NASD and FINRA rules.

The sixth cause of action alleges that Belesis, as CEO responsible for JTF's compliance with FINRA rules, and Misiti, as branch office manager responsible for supervising the entry and execution of customer orders, failed to take steps to ensure the timely execution of the customer orders to sell AWSR. Although JTF's written supervisory procedures contained provisions designed to prevent trading ahead of customer orders, the procedures delegated responsibility for implementing them to Ward. Yet Ward allegedly did not review order tickets or a trade blotter on February 23, 2012, and was unaware that JTF held a proprietary position in AWSR stock and sold a large portion of it that day.³²⁰ Because JTF failed to maintain the records of at least 14 customer orders to sell AWSR, JTF, Belesis, and Misiti allegedly failed to establish and maintain a supervisory system reasonably designed to ensure compliance with the obligation to maintain accurate order tickets in violation of NASD Rule 3010 and FINRA Rule 2010.³²¹

³¹⁸ Tr. (Misiti) 1871-72.

³¹⁹ CX-53, at 13, 15, 17-19; Tr. (Misiti) 1857-65.

³²⁰ Amended Compl. ¶¶ 93, 98.

³²¹ Amended Compl. ¶¶ 93-94, 98-101.

Enforcement, citing the testimony of Castellano, Belesis, and Ward, now argues that Castellano was responsible for reviewing trades in the proprietary account for potential trading ahead misconduct, but failed to do so. Enforcement further argues that Belesis and Misiti failed to address the rejections of customer orders until after the close of trading.³²² Finally, Enforcement argues that the failure to produce the February 23 AWSR customer order tickets proves that Belesis and Misiti failed to establish an adequate supervisory system.³²³

However, the evidence does not show that the failures to enter the customer orders on February 23, and the failure to preserve the order tickets, resulted from supervisory inadequacies. The evidence demonstrates that by the close of business on February 23, 2012, Misiti and Belesis were aware of the order entry problem, and Misiti called Sterne to address it. Belesis, Misiti, and Cummings met to discuss the matter early on February 24. Castellano testified that he spoke on February 24 with both Misiti and Ward about the customer orders, and that Misiti informed him that Sterne had lifted the restrictions so that the orders could be entered that day.³²⁴ As noted previously, the Panel finds that Misiti acted promptly and reasonably.

As for the February 23 order tickets, as explained above, the Panel finds that JTF and Belesis were responsible for failing to maintain them, and either destroyed or concealed them when obligated to produce them pursuant to Rule 8210. This was not the result of a failure to “establish and maintain a system to supervise ... reasonably designed to achieve compliance with applicable securities laws and regulations” as alleged in the sixth cause of action.³²⁵

For all of these reasons, the sixth cause of action is dismissed.

³²² Enforcement’s Post-Hearing Br. 40.

³²³ *Id.*

³²⁴ Tr. (Castellano) 2015-20.

³²⁵ Amended Compl. ¶¶ 92, 99.

XIII. Belesis, Not Misiti, Violated FINRA Rules 8210 and 2010 by Giving False Testimony (Seventh Cause of Action)

FINRA Rule 8210 imposes the obligation upon persons subject to FINRA's jurisdiction to provide testimony when requested in the course of an investigation. It follows, and is well established, that testimony provided pursuant to Rule 8210 must be truthful; untruthful testimony frustrates FINRA's ability to fulfill its regulatory responsibility to investigate potential misconduct.³²⁶

FINRA made requests to both Belesis and Misiti to provide sworn testimony during Enforcement's investigation of JTF. The seventh cause of action alleges that Belesis and Misiti testified falsely.

When FINRA asked Misiti if Belesis came to her desk on February 23, 2012, while she entered orders to sell JTF's proprietary shares of AWSR, she answered, "No. Not that I recall." When FINRA asked Belesis if any JTF customers sought to sell their shares of AWSR on February 23 or 24, he answered, "I don't know that." When FINRA asked Belesis if he knew of anything that prevented customers from selling their shares of AWSR on February 23 or 24, he answered, "No." And when FINRA asked if Belesis gave brokers any instructions concerning selling AWSR stock, he answered, "No."³²⁷

The seventh cause of action alleges that these answers were false because: (i) Belesis approached Ward and Misiti on February 23 and threatened the gathered crowd of brokers to make them move away; (ii) Belesis knew that customers had instructed brokers to sell their

³²⁶ See, e.g., *Dep't of Enforcement v. Uselton*, Complaint No. 2005000879302, 2010 FINRA Discip. LEXIS 20, at *16 (N.A.C. Oct. 8, 2010).

³²⁷ Amended Compl. ¶ 105.

AWSR stock; (iii) Belesis knew that he had prevented brokers from speaking to Misiti and Ward; and (iv) Belesis gave instructions to brokers that day concerning trading in AWSR.³²⁸

A. Belesis Gave False Testimony

The first question and Belesis' allegedly false answer were:

Q: Mr. Belesis, do you know if any customers of [JTF] requested on February 23rd-24th that their AWSR stock be sold?

A: (Belesis) I don't know that.³²⁹

Enforcement argues that this answer was false because Belesis admitted at the hearing that he knew at the time that there were customers who wanted to sell their shares of AWSR.³³⁰ In addition, his brief presence on the trading floor after the spike began; his conversations with Misiti after the market close; and his decision to meet the following morning with Misiti and Cummings to discuss the failure to enter customer sell orders all confirm that he knew. For these reasons, the Panel finds that Belesis' answer to the first question was false.

The second question and Belesis' allegedly false answer were:

Q: Is there anything that you know of that prevented customers of the firm from selling their shares, AWSR, on [February 23 or 24]?

A: (Belesis) No.³³¹

Belesis admitted at the hearing that he learned on February 23 that there were customers who were unable to sell their shares of AWSR.³³² Belesis also testified more specifically that Misiti told him that there was a "restriction problem" with entering customer orders,³³³ and that

³²⁸ Amended Compl. ¶ 106.

³²⁹ Tr. (Belesis) 1546.

³³⁰ Enforcement's Post-Hearing Br. 41; Tr. (Belesis) 1427-28.

³³¹ Tr. (Belesis) 1548-49.

³³² Tr. (Belesis) 1427-28.

³³³ Tr. (Belesis) 1515.

Cummings confirmed this on the morning of February 24.³³⁴ This evidence establishes that Belesis' answer "No" to the second question was false as alleged.

The third question and Belesis' allegedly false answer were:

Q: Did you give the brokers any instructions that day regarding [AWSR stock]?

A: (Belesis) No.³³⁵

The seventh cause of action alleges that this answer was false because Belesis "gave instructions on that day concerning trading in AWSR stock."³³⁶ Enforcement argues that Belesis admitted telling brokers to move away from Misiti's desk, "purportedly to allow Misiti to resolve the trading issues so that customer orders to sell AWSR could be entered."³³⁷

However, in the testimony that Enforcement refers to, Belesis admitted merely that he told brokers to move away from Ward's desk.³³⁸ Enforcement did not establish that Belesis gave JTF brokers "instructions that day regarding [AWSR stock]" as alleged in the seventh cause of action. Thus, the Panel does not find the answer to the third question to be false.

However, Belesis violated FINRA Rules 8210 and 2010 by providing false answers to the first and second questions posed to him during the December 2012 on-the-record interview.

B. The Evidence Does Not Support the Charge that Misiti Testified Falsely

The seventh cause of action charges Misiti with giving one false answer to a question when she provided on-the-record testimony in Enforcement's investigation. The question and Misiti's allegedly false answer were:

³³⁴ Tr. (Belesis) 1395.

³³⁵ Tr. (Belesis) 1547.

³³⁶ Amended Compl. ¶ 106.

³³⁷ Enforcement's Post-Hearing Br. 42.

³³⁸ Tr. (Belesis) 1505-06, 1511-12.

Q: Did Mr. Belesis come to your desk at all that day while you were executing the order?

A: (Misiti) No, not that I *recall*.³³⁹

Enforcement argues that Misiti's testimony was false because Belesis approached Misiti's desk "multiple times," where he yelled "loudly" at the crowd of brokers, and he remained at Misiti's desk for "a substantial period," at times "standing right over Misiti's shoulder."³⁴⁰

The Panel has found credible Misiti's testimony that she does not recall seeing Belesis near her desk during the commotion on February 23. That testimony mirrors her on-the-record testimony.³⁴¹ As we have noted, other testimony about Belesis' presence on the trading floor during the spike, by the witnesses on whom Enforcement relies, is unclear and inconsistent.

The testimony established that JTF's trading floor was tumultuous on February 23. Misiti had been given a task she knew was important to Belesis, and by her credible account, it absorbed her full attention. She spoke with Belesis several times by phone during her lengthy transaction with Warner, and would understandably not have expected to see Belesis or to take notice of him if he did come near her desk while there was so much activity, and while she concentrated on selling JTF's proprietary position in AWSR.

For these reasons, therefore, the Panel finds that Enforcement failed to establish by a preponderance of the evidence that Misiti's answer to the question posed to her in the investigative interview was false, and we dismiss this allegation against her.

³³⁹ Tr. (Misiti) 1899. (Emphasis supplied.)

³⁴⁰ Enforcement's Post-Hearing Br. 41.

³⁴¹ Tr. (Misiti) 1899-1900.

XIV. The Evidence Does Not Support the Charges that JTF and Belesis Violated Exchange Act Section 10(b) and Rule 10b-5, and FINRA Rules 2020 and 2010 by Engaging in Securities Fraud (Eighth Cause of Action)

Section 10(b) of the Exchange Act makes it “unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national security exchange ... to use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance.”

Exchange Act Rule 10b-5 states further that it is unlawful, using an instrumentality of interstate commerce, “to employ any device, scheme or artifice to defraud,” to make material misrepresentations or omissions of material fact, or engage in acts operating as a fraud or deceit on any person, in connection with the purchase or sale of a security. FINRA’s counterpart to Exchange Act Rule 10b-5, FINRA Rule 2020, prohibits members from using a manipulative, deceptive, or fraudulent device to effect securities transactions. Violations of Rule 10b-5 and FINRA Rule 2020 require proof of scienter or, alternatively, reckless conduct.³⁴²

The eighth cause of action alleges that JTF and Belesis committed securities fraud when they engaged in the conduct described in the first, second, and fourth causes of action, by delaying customer orders for AWSR, trading ahead in JTF’s proprietary position, and materially misrepresenting to firm personnel that the customer orders could not be entered because of problems with Sterne’s trading systems. Enforcement contends that JTF and Belesis knew that customers “were not receiving best execution,” knew that JTF was not “taking the relatively simple steps necessary to resolve the Sterne issue,” and that they therefore “consciously or recklessly prevented Firm customers from selling their AWSR shares.”

³⁴² *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1568-69 (9th Cir. 1990) (Reckless conduct exhibits “extreme departure from the standards of ordinary care.”); *Nicolas*, 2008 FINRA Discip. LEXIS 9, at *43.

Enforcement argues that “Belesis’ misconduct is on all fours with the conduct found by the NAC to be fraud in *In Re Nicholas* [sic].”³⁴³

Enforcement’s reliance on *Nicolas* is misplaced. In *Nicolas*, the evidence showed that “respondents participated in a fraudulent scheme to trade ahead of, and earn risk-free trading profits from” a customer’s orders.³⁴⁴ The facts in *Nicolas* involved a firm accepting customer market orders, with respondents delaying execution in 151 principal trades until the firm established a position matching the size of the customer’s orders, then later executing the customer’s market orders in a principal capacity, exploiting its knowledge of the customer’s orders and executing them at a price to secure a trading profit for itself. In 100 instances, the firm executed the customer’s orders at a price that profited the firm; in 51 instances, the firm passed its cost to the customer, and ensured that it was never at risk in executing the customer’s orders in a principal capacity.³⁴⁵ *Nicolas* applied well established precedent holding respondents liable for fraud when they “committed a manipulative or deceptive act in furtherance of the scheme.”³⁴⁶ Facts like those are not present in this case.

Enforcement did not prove that JTF and Belesis sold the firm’s proprietary shares of AWSR stock, pursuant to a trading ahead scheme, while preventing the entry of customer orders. The evidence does not support Enforcement’s assertion that JTF’s customer orders “to sell freely tradable AWSR shares that were not subject to the REST restriction could have been immediately entered by JTF upon receipt.”³⁴⁷

³⁴³ Enforcement’s Post-Hearing Br. 42.

³⁴⁴ *Nicolas*, 2008 FINRA Discip. LEXIS 9, at *32.

³⁴⁵ *Id.* at *32-34.

³⁴⁶ *Id.* at *31 (quoting *Leslie Arouh*, Exchange Act Release No. 50889, 2004 SEC LEXIS 3015, at *19-20 (Dec. 20, 2004)).

³⁴⁷ Amended Compl. ¶ 112.

Enforcement argues that “Belesis and JTF consciously or recklessly prevented Firm customers from selling their AWSR shares because any sales volume into the market would have reduced the price that Belesis got for the Firm’s shares.”³⁴⁸ But the evidence, as we have found above, does not establish that Belesis and JTF prevented JTF customers from selling their shares of AWSR.

The evidence also does not support Enforcement’s other contentions, which are essential elements of the fraud charge. The evidence did not prove, as the Amended Complaint alleges, that Belesis, Misiti, and Ward intentionally or recklessly failed to contact Sterne to have the REST restriction removed when they should have.³⁴⁹ The evidence did not prove, as the Amended Complaint alleges, that Belesis threatened JTF brokers and prevented them from speaking to Misiti or Ward about the issue.³⁵⁰ The evidence did not prove, as the Amended Complaint alleges, that Belesis and Misiti tried to conceal their misconduct by creating falsified tickets for orders on February 24.³⁵¹

Although the evidence supports the allegation in the Amended Complaint that Belesis failed to cancel and rebill the AWSR sales in the firm’s proprietary account,³⁵² this is insufficient to establish the allegations of fraud in violation of Exchange Act Section 10(b) and Rule 10b-5, and FINRA Rules 2020 and 2010.

³⁴⁸ Enforcement’s Post-Hearing Br. 43.

³⁴⁹ Amended Compl. ¶ 113.

³⁵⁰ Amended Compl. ¶ 114.

³⁵¹ Amended Compl. ¶ 120.

³⁵² Amended Compl. ¶ 117.

Based upon these findings, the Panel concludes that Enforcement failed to prove by a preponderance of the evidence that JTF and Belesis committed securities fraud, as alleged in the eighth cause of action.

XV. JTF and Belesis, Not Misiti, Violated FINRA Rule 2010 (Ninth Cause of Action)

FINRA Rule 2010 states a broad ethical principle governing conduct in the securities industry. Conduct of a firm or associated persons that fails to meet the “obligations owed to a customer or to a fellow member constitutes a breach of ‘just and equitable principles of trade.’”³⁵³

The ninth cause of action alleges that JTF, Belesis, and Misiti acted unethically by selling JTF’s proprietary shares of AWSR “while preventing the sale” of AWSR by customers, and by “making material misrepresentations and omissions to customers and RRs [registered representatives] concerning the reasons” that customer sell orders were not executed.

JTF and Belesis failed to cancel and rebill the AWSR trades on February 24, and thereby prevented JTF’s customers from selling their stock. In doing so, JTF and Belesis failed to meet the obligations they owed to their customers, and violated the just and equitable principles of trade at the heart of FINRA Rule 2010.

As explained in the factual findings discussed above, the evidence does not establish that Misiti did anything to prevent customers from selling their AWSR shares or that she made material misrepresentations and omissions to customers and registered representatives. Accordingly, the charge against Misiti is dismissed.

³⁵³ *Dep’t of Enforcement v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12 (N.A.C. June 2, 2000) (quoting *NASD, Inc.*, 19 S.E.C. 424 (1945)).

XVI. The Ancillary Charges: JTF, Belesis, and Castellano, Not Cantalupo, Violated FINRA Rules 5240 and 2010 (Tenth Cause of Action)

FINRA Rule 5240 became effective on June 15, 2009, superseding and transferring former NASD IM-2110-5 with minor conforming revisions into the Consolidated FINRA Rulebook as a standalone rule instead of an interpretive memorandum.³⁵⁴ The pertinent language of FINRA Rule 5240 cited in the Amended Complaint is identical to the language of IM-2110-5 and prohibits member firms and associated persons from engaging in “any conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member, a person associated with a member, or any other person.” Rule 5240 reflects longstanding FINRA policy. The relevant language of Rule 5240 is set in the context of other provisions that concern improper coordination of prices or trades, and “conduct that retaliates against or discourages the competitive activities of another market maker or market participant.”³⁵⁵

The tenth cause of action alleges that “JTF, Belesis, Castellano, and Cantalupo have conducted business at JTF in a threatening, intimidating, and coercing manner.” The Amended Complaint further charges that they “physically threatened and intimidated RRs who have disagreed with Belesis’ business practices. Castellano and Cantalupo have assaulted RRs.”³⁵⁶

At the hearing, Enforcement either withdrew or declined to present evidence of several of the alleged instances of intimidation and assault. On the sixth day of the hearing, Enforcement announced that it would not pursue the allegations that Cantalupo physically assaulted and

³⁵⁴ *Regulatory Notice 09-20*, at 6 (Apr. 2009).

³⁵⁵ FINRA Rule 5240(a).

³⁵⁶ Amended Compl. ¶ 131.

Belesis orally threatened a broker because he had decided to leave JTF.³⁵⁷ Enforcement presented no evidence in support of the allegations that when a second broker said he would report JTF to FINRA if the firm did not pay him a commission he had earned, Castellano “verbally intimidated” and physically assaulted him,³⁵⁸ and that when Belesis fired a third broker, Belesis threatened to “grenade” and “kill him,” spat on him, and told him that he would never find other employment in the securities industry.³⁵⁹

Three discrete charges related to intimidation remain. They allege that:

- Belesis and Castellano improperly filed Forms U5 to intimidate and harass several members of the Gordos group;
- Belesis attempted to coerce Mirman to remain at JTF when Mirman decided to leave, and Cantalupo threatened Mirman for leaving; and
- Belesis threatened to withhold a commission check from Coffey to coerce him into signing false documents.

A. JTF, Belesis, and Castellano Improperly Filed Forms U5 to Intimidate and Harass Former Representatives

1. Background

Firms are required to provide “timely, complete and accurate information on Form U5.” This is because “the reported information is used by a number of constituencies for a variety of reasons.”³⁶⁰ FINRA uses the information to identify persons who may have engaged in misconduct and to make informed decisions concerning registration. Firms rely on the filings when deciding whether to hire applicants for employment.³⁶¹ When describing possible misconduct on Forms U5, firms are required to include details sufficient to allow readers to

³⁵⁷ Tr. 2119. These allegations are contained in the Amended Complaint at ¶¶ 140-41.

³⁵⁸ Amended Compl. ¶ 142.

³⁵⁹ Amended Compl. ¶¶ 144-45.

³⁶⁰ *Notice to Members 10-39*, at 1 (Sept. 2010).

³⁶¹ *Id.*

understand what was involved, and to file amendments when they become aware of information that would make prior filed information misleading or inaccurate.³⁶² It has been held that submitting false or misleading information on a Form U5 undermines “the integrity of the CRD [Central Registration Depository] disclosure system.”³⁶³

On December 21, 2012, Gordos and fellow JTF brokers Anthony Maiuolo, Rodney Laveau, Keith Williams, and Darren Himmelstein sent resignation notices to JTF from the same fax machine.³⁶⁴ That day, the five together began new employment at member firm National Securities Corporation.³⁶⁵ Shortly thereafter, JTF initiated an internal review of the circumstances of their departure from JTF.³⁶⁶

The Amended Complaint alleges that when Belesis learned of the resignations, he called Gordos and threatened to file his Form U5 with negative information, and a few days later in another phone call threatened to file an inaccurate Form U5, telling Gordos: “You will see what I will do to your U5.”³⁶⁷ Belesis denied making these threats to Gordos.³⁶⁸

In January 2013, JTF, Belesis, and Castellano issued Forms U5 for Gordos, Maiuolo, Laveau, and Williams (the “Gordos group”). Each form states:

Broker is under internal review for the following: 1) Computer fraud, 2) possession of documentation and information in violation of regulation S-P, 3) misrepresentations of fact intended for FINRA staff to rely upon, 4) conspiracy to misappropriate, and misappropriation of, Firm proprietary and confidential

³⁶² *Notice to Members 10-39*, at 2-3.

³⁶³ *Dist. Bus. Conduct Comm. v. Nichols*, Complaint No. C01950004, 1996 NASD Discip. LEXIS 30, at *30 (NASD N.B.C.C. Nov. 13, 1996).

³⁶⁴ CX-170.

³⁶⁵ Tr. (Maiuolo) 2567-68; Tr. (Belesis) 1594.

³⁶⁶ Tr. (Belesis) 1632.

³⁶⁷ Amended Compl. ¶ 134.

³⁶⁸ Tr. (Belesis) 1594-95.

information, 5) wrongful solicitation of firm customers and personnel, 6) breach of contract.³⁶⁹

Castellano testified that JTF's counsel, Robert Bursky, provided the language for the Forms U5 and explained that it was identical for all because they were "acting in concert."³⁷⁰ Because the group had worked together for the past two years, resigned together, moved to the same firm, had joint accounts with each other, and because JTF had a videotape showing Williams handing Laveau documents that "could have been client information," Castellano agreed that identical allegations were appropriate for all four.³⁷¹ In addition, as Gordos admitted, he removed books containing client information, including confidential information, from the premises of JTF when he left the office on December 21, 2012, which he took to the brokers' new firm.³⁷²

In March 2013, JTF filed amendments to the Forms U5 stating that the Gordos group was being reviewed by JTF internally to determine whether the individuals were making false or exaggerated statements to cause harm to JTF and its officers and representatives. The amended forms, unlike the original filings, note that the "review has just commenced and no conclusion has been drawn."³⁷³ The Amended Complaint alleges that Castellano then signed and sent letters to the Gordos group, instructing them to appear at JTF to provide sworn testimony in connection

³⁶⁹ Amended Compl. ¶ 135; CX-264 (Form U5 for Gordos, filed January 2, 2013); CX-272 (Form U5 for Maiuolo, filed January 2, 2013); CX-269 (Form U5 for Laveau, filed January 17, 2013); CX-275 (Form U5 for Williams, filed January 18, 2013).

³⁷⁰ Tr. (Castellano) 2072.

³⁷¹ Tr. (Castellano) 2073-74. Castellano's reference to a videotape is to RX-108, a portion of which was shown at the hearing, depicting Williams giving some documents to Laveau shortly after 4:00 p.m. on December 21, 2012. Tr. (Castellano) 2085-92. Gordos acknowledged that he had "joint reps" with members of the group, specifically with Maiuolo and Laveau. Tr. (Gordos) 3122, 3127.

³⁷² Tr. (Gordos) 3089-90, 3093, 3096-97, 3166-67. Gordos testified that the books, which contained personal confidential information of clients, belonged to him and Maiuolo because the clients were theirs. Tr. (Gordos) 2870-71.

³⁷³ CX-265, at 6 (Gordos); CX-270, at 6 (Laveau); CX-273, at 5 (Maiuolo); CX-276, at 6 (Williams).

with a further internal review. The Amended Complaint alleges that the purpose of the letters was “to harass, intimidate, coerce and otherwise improperly influence” the group because they resigned from JTF.³⁷⁴

Enforcement argues that filing a Form U5 without a reasonable basis to believe the representations in the form are accurate is an abuse. Enforcement contends that by filing the disclosures for all members of the Gordos group, JTF created a “distorted picture,”³⁷⁵ with no reasonable basis to believe that some of the individuals engaged in the described misconduct.³⁷⁶

JTF, Belesis, and Castellano fully appreciated the importance of Form U5 filings to the industry, and to the individuals whose records contain the filings. By filing the identical Forms U5, including in them disclosures that Maiuolo, Laveau, and Williams were under investigation for serious misconduct there was no reasonable basis to believe they had engaged in, JTF, Belesis, and Castellano misled those who rely on the integrity of the CRD disclosure system. As set forth in the discussion below, the context of the filings supports the conclusion that Belesis and Castellano made them for the purpose of harassment.

2. Computer Fraud

The first line of the Form U5 states that each of the brokers was under internal review for “Computer fraud.” The basis for this filing was that JTF found evidence that Gordos accessed JTF client information through Sterne by the Internet from a location off JTF’s premises.³⁷⁷ The facts surrounding the resignation of the Gordos group reveal that there may have been a

³⁷⁴ Amended Compl. ¶ 137.

³⁷⁵ Enforcement’s Post-Hearing Br. 49.

³⁷⁶ *Id.* at 48.

³⁷⁷ Tr. (Belesis) 1600-01.

reasonable basis to conduct, and disclose, an internal review of Gordos in connection with his use of computer access to JTF customer data, but not of Maiuolo, Laveau, and Williams.

According to Castellano, Bursky provided him with records from Sterne showing that on the day of the Gordos group resignations, Gordos logged into Sterne's AFS system from an offsite location. Castellano claimed the location was in Manhattan, "near and around" Maiden Lane, "which is the home address of Rodney Laveau."³⁷⁸ Castellano testified that JTF prohibited brokers from accessing the system remotely, although there were no written procedures saying so.³⁷⁹ Castellano assumed that Gordos must have left his office, gone to Laveau's residence, and logged onto Sterne's system for an hour for the purpose of wrongfully "taking customer accounts" to his new job.³⁸⁰ Castellano consulted with Belesis and Bursky, and together they "came to the conclusion, and felt strong, that [the Gordos group] were ... taking customer information."³⁸¹

At the hearing, Belesis initially stated that the firm found out that Gordos accessed Sterne's system from a computer store. He then altered his testimony, stating that the location was a building on Maiden Lane where Laveau had an apartment.³⁸²

Gordos confirmed that he logged onto Sterne's systems from a remote location, his home, on December 21 at 1:41 p.m. and again at 4:37 p.m. He claimed he logged on to review his

³⁷⁸ Tr. (Castellano) 2046-47.

³⁷⁹ Tr. (Castellano) 2063-64.

³⁸⁰ Tr. (Castellano) 2047-48.

³⁸¹ Tr. (Castellano) 2049.

³⁸² Tr. (Belesis) 1630-31, 1636-37.

customer accounts in preparation for an on-the-record interview with FINRA, although the interview had been rescheduled and was not going to occur that day.³⁸³

Enforcement argues persuasively that while the evidence of Gordos' activity might properly have prompted an internal review of Gordos, there was no reasonable basis to suspect Maiuolo, Laveau, or Williams of wrongdoing.³⁸⁴ Indeed, when asked directly to state what basis he had for conducting an internal investigation of Williams for computer fraud, Belesis testified, "I don't recall."³⁸⁵

3. Misrepresentations to FINRA

The third disclosure in the Forms U5 states that all four members of the Gordos group were under review for making "misrepresentations of fact intended for FINRA staff to rely upon." Belesis and Castellano both testified that the basis for this disclosure was that Gordos misled Bursky about his availability to be interviewed by FINRA. According to Belesis, Gordos gave Bursky "false information why he could not appear" for a scheduled on-the-record interview.³⁸⁶ As Castellano summed up,

Mr. Bursky had informed me that Mr. Gordos was to appear at an OTR on Friday, the 21st, the day that he ultimately resigned, and he had represented to Mr. Bursky that he was going -- that he was leaving town. Mr. Bursky then forwarded an e-mail -- I don't know exactly to who in FINRA -- saying that they weren't able to make the OTR because ... Mr. Gordos ... was out of town. And, meanwhile, he wasn't out of town.³⁸⁷

Gordos was supposed to appear at the on-the-record interview at FINRA's New York offices on December 21, 2012, the day he resigned. Several days before, Gordos instructed

³⁸³ Tr. (Gordos) 3138-39, 3141-42.

³⁸⁴ Enforcement's Post-Hearing Br. 50.

³⁸⁵ Tr. (Belesis) 1647.

³⁸⁶ Tr. (Belesis) 1605-06.

³⁸⁷ Tr. (Castellano) 2094-95.

Bursky to inform FINRA that he could not attend the interview because he was sick.³⁸⁸ Gordos also told Bursky that he was going to be out of town.³⁸⁹ Bursky relayed the information to FINRA.³⁹⁰ Bursky testified that he informed Gordos that the interview was cancelled.³⁹¹

Gordos' testimony concerning the FINRA interview was inconsistent and contradictory. At different points, he testified that: (i) he instructed Bursky to inform FINRA he was ill and could not attend;³⁹² (ii) he could not remember if he so instructed Bursky;³⁹³ and (iii) he told Bursky he wished to reschedule because he was ill, but was willing to attend anyway.³⁹⁴ He also testified that on December 21, 2012, he called FINRA and offered to show up for the interview.³⁹⁵

At 9:29 a.m. on December 21, 2012, the Enforcement attorney who was to conduct Gordos' interview notified Bursky by e-mail that Gordos had appeared, and asked whether Bursky still represented him.³⁹⁶ The interview did not take place because it had been rescheduled.³⁹⁷ The following day, Bursky responded by e-mail, apologizing for having given inaccurate information about Gordos' availability.³⁹⁸

When asked to justify filing Forms U5 stating that Maiuolo, Laveau, and Williams were under investigation for making misrepresentations to FINRA, Castellano testified, "they were

³⁸⁸ Tr. (Gordos) 3243-44.

³⁸⁹ Tr. (Bursky) 3393.

³⁹⁰ Tr. (Bursky) 3394; CX-336, at 11.

³⁹¹ Tr. (Bursky) 3396.

³⁹² Tr. (Gordos) 3244.

³⁹³ Tr. (Gordos) 3106.

³⁹⁴ Tr. (Gordos) 3105-06.

³⁹⁵ Tr. (Gordos) 3244.

³⁹⁶ Tr. (Bursky) 3394.

³⁹⁷ Tr. (Bursky) 3395; Tr. (Gordos) 3232, 3248.

³⁹⁸ Tr. (Bursky) 3397-99.

acting as a group” and “the determination was that because Mr. Gordos did not go to that OTR, and he did access his client accounts, it did benefit the whole group.”³⁹⁹ Belesis responded similarly when asked to justify including the disclosure on Maiuolo’s Form U5, testifying that Maiuolo and Gordos “acted in concert together.”⁴⁰⁰

But when asked what Williams misrepresented to FINRA, Belesis said, “I cannot answer that question”; and when asked to justify filing the notice of internal review of Williams for making misrepresentations, Belesis responded “I don’t know.”⁴⁰¹ When asked the same question in reference to Laveau, Belesis said, “I can’t answer that. I don’t know,”⁴⁰² and “I do not recall, and I am unable to answer.”⁴⁰³

There was a reasonable basis for Belesis and Castellano to conclude that Gordos was untruthful to Bursky about his availability to appear at the on-the-record interview. But Belesis and Castellano lacked a reasonable basis to believe that Maiuolo, Laveau, or Williams made “misrepresentations of fact intended for FINRA staff to rely upon,” and to include that statement in their Forms U5.

4. Improper Possession of Personal Confidential Information, Misappropriation of Proprietary Information, Solicitation of Firm Customers, and Breach of Contract

The Forms U5 also disclosed that the Gordos group members were being investigated for possible improper possession of personal confidential information, misappropriation of

³⁹⁹ Tr. (Castellano) 2095-96.

⁴⁰⁰ Belesis added that Maiuolo also falsely denied to FINRA that he had taken client information with him when he resigned on December 21. Tr. (Belesis) 1612-13. But nobody from JTF had contact with Maiuolo after he resigned, and Belesis could not explain how JTF knew what Maiuolo had told FINRA when it filed Maiuolo’s Form U5 on January 2, 2013. Tr. (Belesis) 1616.

⁴⁰¹ Tr. (Belesis) 1629.

⁴⁰² Tr. (Belesis) 1629-30, 1648.

⁴⁰³ Tr. (Belesis) 1633.

proprietary information, solicitation of firm customers, and breach of contract. There was a reasonable basis for these disclosures.

Gordos removed three books containing confidential client information when he left JTF's offices on December 21, 2012. The information included Social Security numbers, dates of birth, addresses, and telephone numbers.⁴⁰⁴ Maiuolo testified that he became aware that Gordos had taken the books the night after the group resigned or the next day.⁴⁰⁵ On December 26, 2012, counsel for National Securities Corporation, the Gordos group's new member firm, informed JTF that he would return the books.⁴⁰⁶

By taking confidential personal information without authorization to his new firm, Gordos gave JTF reason to believe he might have violated Rule 10 of Regulation S-P, which prohibits unauthorized disclosure of nonpublic personal information to a nonaffiliated third party. It has been held that taking confidential client information for the purpose of maintaining a client base is an ethical violation even when there is no demonstrable customer harm.⁴⁰⁷ Gordos' removal of the client books gave JTF a reasonable basis to conduct an internal investigation into his improper possession of personal confidential information. In connection with this, the fact that the Gordos group worked as a team, left JTF to join National Securities Corporation together, and that Gordos, Maiuolo, and Laveau shared joint representative numbers,⁴⁰⁸ gave JTF reason to initiate an internal inquiry into whether they shared possession of personal confidential

⁴⁰⁴ Tr. (Gordos) 3166-68.

⁴⁰⁵ Tr. (Maiuolo) 2678.

⁴⁰⁶ RX-32.

⁴⁰⁷ *Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54, at *23-25 (Jan. 6, 2012).

⁴⁰⁸ Tr. (Gordos) 2567-68, 2829.

client information, whether they were jointly misappropriating firm property, and whether they were soliciting JTF customers, in breach of their employment contracts with JTF.

5. Conclusion

Both Belesis and Castellano acknowledge that a Form U5 filing should accurately reflect conduct reasonably believed to have been engaged in by the individual for whom the filing is made.⁴⁰⁹ Castellano testified that he is “very sensitive” to the ramifications of filing Form U5 disclosures of suspected wrongdoing, and the possibility that such filings could make it difficult for a broker with negative disclosures to obtain employment and state licensure.⁴¹⁰ Belesis conceded that he understands that Form U5 filings need to be tailored to each individual for whom they are filed, that they must be as accurate as possible, and that it was his responsibility at JTF to review and approve each filing before it was made.⁴¹¹

Nonetheless, Belesis and Castellano filed Forms U5 against Maiuolo, Laveau, and Williams stating that JTF was investigating them for computer fraud and misrepresentations of fact for FINRA staff to rely upon, without any reasonable basis to suspect that they had engaged in such activity.

The context of the filings reflects intent to harass.

When JTF initiated its investigation into the conduct of the Gordos group on December 24, 2012, the CRD system was closed for the Christmas holiday, which meant that the Forms U5 would not appear on CRD until January 2, 2013.⁴¹² On December 28, 2012, Castellano, at Belesis’ direction, sent a total of 99 letters, with the Forms U5 attached, by fax and FedEx to

⁴⁰⁹ Tr. (Belesis) 1620; Tr. (Castellano) 2030, 2033.

⁴¹⁰ Tr. (Castellano) 2035.

⁴¹¹ Tr. (Belesis) 1596, 1600, 1620.

⁴¹² Tr. (Castellano) 2134.

state regulators in the states where Gordos and Maiuolo were registered.⁴¹³ The letters asked that special attention be paid “to the internal review reporting page for both individuals.”⁴¹⁴ Belesis and Castellano knew that the disclosures on the Forms U5 would be available in the system when CRD reopened on January 2, but Belesis wanted to inform the states of the disclosures in advance.⁴¹⁵ The letters were unprecedented; JTF had filed hundreds of Forms U5 for brokers who left the firm, but had never before sent letters such as these.⁴¹⁶

In addition, Belesis instructed Castellano to send letters to the Gordos group requiring them to appear at JTF’s offices to provide testimony under oath. The letters threatened that if the brokers failed to appear or declined to answer questions, “the Firm may draw a negative inference” and “may conclude that you are declining to provide reasonable cooperation in the internal review, which in and of itself, may be a conclusion the Firm reports” to CRD.⁴¹⁷ The letters appear to be modeled on FINRA Rule 8210 request letters. These letters, too, were unprecedented; the firm had not sent letters like these to any of the hundreds of brokers who had left JTF in the past.⁴¹⁸

Finally, JTF filed a criminal complaint with the police against the Gordos group.⁴¹⁹ As a result, Laveau was arrested and briefly incarcerated on JTF’s charges that he had stolen JTF

⁴¹³ Tr. (Castellano) 2132-35, 2137, 2143; Tr. (Belesis) 1711-12, 3878-79.

⁴¹⁴ CX-323, at 1.

⁴¹⁵ Tr. (Castellano) 2141-42. The reason, Belesis claimed, was that he wanted the states to know that “clients ... may be getting calls from someone who stole client information from that particular client in that particular state.” Tr. (Belesis) 1710.

⁴¹⁶ Tr. (Castellano) 2135.

⁴¹⁷ Tr. (Castellano) 2146-49, 2151-52; CX-167; RX-68-69, 70, 72.

⁴¹⁸ Enforcement’s Post-Hearing Br. 32; Tr. (Castellano) 2154.

⁴¹⁹ Tr. (Belesis) 1713-14.

property.⁴²⁰ The police were going to arrest Maiuolo as well, but decided instead to issue a “desk appearance ticket” after Maiuolo’s attorney spoke to them. The charges were later dropped.⁴²¹

Taken together, these actions reflect that JTF, Belesis, and Cantalupo intentionally set out to harass and to retaliate against the Gordos group for leaving JTF and filed Forms U5 indiscriminately, disclosing internal investigations for unfounded charges against Maiuolo, Laveau, and Williams. Therefore JTF, Belesis, and Castellano violated the prohibition imposed by FINRA Rule 5240 against engaging in conduct that harasses a person associated with a member firm, and the high standards of commercial honor FINRA Rule 2010 requires of them.

B. Belesis Did Not Attempt to Coerce Mirman to Remain at JTF, and the Evidence Does Not Establish that Cantalupo Threatened Mirman for Leaving JTF

As noted above, the Amended Complaint originally charged Cantalupo with physically shoving a registered representative and making threats and intimidating JTF representatives who disagreed with Belesis. These allegations led Enforcement to recommend in its Pre-Hearing Brief sanctions of a two-year suspension and a fine of \$100,000.⁴²² At the hearing, Enforcement abandoned the allegation that Cantalupo assaulted a registered representative. Enforcement has modified its position on sanctions, now requesting a one-month suspension and a fine of \$25,000 for threatening Abraham Mirman, former head of JTF’s investment banking department.⁴²³ Cantalupo allegedly made the threat in a four-minute phone conversation.⁴²⁴

The Amended Complaint charges that Cantalupo acted on Belesis’ behalf:

⁴²⁰ Tr. (Maiuolo) 2556-57.

⁴²¹ Tr. (Maiuolo) 2558-59.

⁴²² Enforcement’s Pre-Hearing Br. 61.

⁴²³ Enforcement’s Post-Hearing Br. 54.

⁴²⁴ Tr. (Mirman) 3614.

When Belesis learned of [Mirman's] intention to leave JTF and take his staff with him, Belesis attempted to coerce him to stay at the firm. When [Mirman] refused to do so, Cantalupo telephoned [Mirman] and stated that he wanted to meet [Mirman] in person. When [Mirman] refused this request indicating that he did not want to do so because Cantalupo had previously been incarcerated for drug-related crimes, Cantalupo told [Mirman] that even if it meant he went back to prison, he would 'get' [Mirman]. In response, [Mirman] called the police.⁴²⁵

The evidence is insufficient to prove these charges. Mirman denied that Belesis attempted to coerce him to stay at JTF. Mirman did not testify that he declined to meet with Cantalupo because of Cantalupo's criminal conviction. There is insufficient evidence that Cantalupo threatened to "get" Mirman, or that Cantalupo's statement that he wished to see Mirman in person constituted a threat, harassment, coercion, intimidation, or other attempt to improperly influence Mirman in violation of FINRA Rule 5240.

1. Background

Mirman joined JTF in early 2012 as head of the firm's investment banking department and chairman of its capital markets committee.⁴²⁶ The investment banking department and capital markets committee reviewed potential transactions leading to private placements.⁴²⁷ During the year Mirman was at JTF, he reported to Belesis and Cantalupo.⁴²⁸ The first transaction Mirman brought to JTF closed, coincidentally, on February 23, 2012, and involved a company called grandparents.com.⁴²⁹ Mirman recommended the stock to JTF brokers.⁴³⁰

⁴²⁵ Amended Compl. ¶ 139.

⁴²⁶ Tr. (Mirman) 3534-35, 3551.

⁴²⁷ Tr. (Mirman) 3542-43.

⁴²⁸ Tr. (Mirman) 3434-35.

⁴²⁹ Tr. (Mirman) 3548-49, 3633, 3717.

⁴³⁰ Tr. (Mirman) 3718-19.

Cantalupo was one of a number of JTF brokers who, in turn, recommended the stock to JTF customers, who purchased over 12 million shares.⁴³¹

Mirman left JTF on February 1, 2013.⁴³² He testified that he left for a variety of reasons.⁴³³ He joined a firm owned in part by Belesis' brother, George Belesis, in which Belesis had an indirect interest.⁴³⁴ Mirman had a financial interest in that firm as well, having invested \$200,000 in it.⁴³⁵ However, he left the new firm at the end of February 2013, without notifying either Belesis or his brother George.⁴³⁶

Significantly, Mirman testified that Belesis did not attempt to coerce him to stay at JTF and Cantalupo did not call him in connection with his leaving JTF.⁴³⁷ Although the Amended Complaint alleges that Cantalupo called Mirman when Mirman refused to remain at JTF, and does not mention Mirman's subsequent departure from George Belesis' firm, Enforcement argues now that "[i]n actuality, Cantalupo threatened Mirman because he had previously left JTF and had just left" George Belesis' firm.⁴³⁸

2. The Call

There is no dispute that Cantalupo and Mirman had a heated argument over the phone. On March 1, 2013, Cantalupo left a voicemail message on Mirman's cell phone. On March 2, he left another, in which he said "Don't avoid me, return my call."⁴³⁹

⁴³¹ Tr. (Mirman) 3721.

⁴³² Tr. (Mirman) 3534.

⁴³³ Tr. (Mirman) 3562-63.

⁴³⁴ Tr. (Mirman) 3564-67.

⁴³⁵ Tr. (Mirman) 3569.

⁴³⁶ Tr. (Mirman) 3571, 3739-40.

⁴³⁷ Tr. (Mirman) 3736-37.

⁴³⁸ Enforcement's Post-Hearing Br. 48.

⁴³⁹ Tr. (Mirman) 3611.

Although the Amended Complaint asserts that Cantalupo called Mirman, it was Mirman, responding to Cantalupo's voice message, who called Cantalupo. Mirman testified that Cantalupo said he wanted to see Mirman. Mirman testified that he told Cantalupo that he did not want to meet, but if Cantalupo wished to talk, they could do so on the phone.⁴⁴⁰ At the time, Mirman was sitting in his truck at a shopping center near his home in New York and Cantalupo was in Florida for the weekend.⁴⁴¹

Mirman testified that Cantalupo started "ranting and raving" about Mirman "betraying the firm, betraying the Belesis brothers," and accusing Mirman of having "stuck the firm with grandparents.com."⁴⁴² Mirman testified that he "threw some fuel on the fire" by telling Cantalupo, "I know that you're a convicted drug dealer" and that he did not "take threats from a guy like you lightly." According to Mirman, Cantalupo "exploded" and said that he was going to "find" Mirman, "get" him, and "see" him.⁴⁴³

Cantalupo testified that he had been trying for two or three weeks to reach Mirman to discuss Mirman's recommendation of grandparents.com. Cantalupo testified that he was upset because the stock's price had been falling, although he cannot recall whether, on the day of the call, the price was going down, or, as Enforcement suggested, it was going up.⁴⁴⁴ Cantalupo testified that he had three clients who had invested in grandparents.com, and that he had relied on Mirman's recommendation when he recommended the stock to his customers.⁴⁴⁵

⁴⁴⁰ Tr. (Mirman) 3577-78.

⁴⁴¹ Tr. (Mirman) 3580; Tr. (Cantalupo) 1965.

⁴⁴² Tr. (Mirman) 3578.

⁴⁴³ Tr. (Mirman) 3578-79.

⁴⁴⁴ Tr. (Cantalupo) 1951-53.

⁴⁴⁵ Tr. (Cantalupo) 1958.

After the call ended, Mirman phoned the police.⁴⁴⁶ A police officer responded to Mirman's home. Mirman told the officer that he had just been threatened and wanted to file a police report.⁴⁴⁷

The officer called Cantalupo using Mirman's cell phone. According to Mirman, the officer instructed Cantalupo not to call Mirman or he could be subject to charges of "aggravated harassment." Mirman testified that Cantalupo said, "He will never hear my voice again." Mirman testified that the officer advised him that there was nothing further to do, that Cantalupo was "on notice," and that Mirman should be safe.⁴⁴⁸

The officer wrote and filed a report indicating that the matter was "Closed (Non-Criminal Only)."⁴⁴⁹ The report describes Mirman's complaint, stating that Mirman said his ex-coworker called him and said "I'm going to see you," and that Mirman felt intimidated. The report does not describe any specific threats Mirman attributed to Cantalupo and does not state that Cantalupo said he would "get" Mirman. Neither does it mention anything about "aggravated harassment." It states that the officer advised Cantalupo not to call Mirman but to contact lawyers if there was a business matter they needed to resolve.⁴⁵⁰

Before the police officer arrived, Mirman sent an e-mail to attorneys for JTF and to his own attorneys.⁴⁵¹ In it, Mirman wrote that he took Cantalupo's statements as a threat to him and his family, and described Cantalupo as "George Belesis' partner, someone who is hostile to

⁴⁴⁶ Tr. (Mirman) 3580-81.

⁴⁴⁷ Tr. (Mirman) 3582.

⁴⁴⁸ Tr. (Mirman) 3582-83.

⁴⁴⁹ Tr. (Mirman) 3754; CX-196, at 2.

⁴⁵⁰ CX-196, at 2.

⁴⁵¹ Tr. (Mirman) 3581.

me.”⁴⁵² After the police officer left, Mirman sent another e-mail to the same parties stating that he had been “petrified” for himself and his family.⁴⁵³

At the hearing, when asked specifically what Cantalupo threatened to do, Mirman testified that Cantalupo said he “wanted to come see” Mirman.⁴⁵⁴ Mirman characterized Cantalupo’s statements as “gangster talk.”⁴⁵⁵ Mirman concedes that both he and Cantalupo spoke heatedly, and that he “called [Cantalupo] a drug dealer to kids . . . 20 times, 30 times.”⁴⁵⁶

Cantalupo denied threatening Mirman. He testified that Mirman was screaming and that the phone conversation “got heated.”⁴⁵⁷ Cantalupo testified that when the police officer said he should not contact Mirman, he agreed, and he has had no further contact with Mirman.⁴⁵⁸

The evidence does not substantiate Enforcement’s arguments that “Cantalupo threatened Mirman because he had previously left JTF and had just left [the new firm],” that “Mirman recognized that Cantalupo was acting on behalf of (at least) George Belesis”⁴⁵⁹ and that “[w]hatever Cantalupo’s motivation, he surely understood that Mirman was *persona non grata* once he left two different firms run by the Belesis brothers and that they would welcome his threats and intimidation of Mirman.”⁴⁶⁰

There is no evidence that Belesis or his brother attempted to coerce Mirman to stay at JTF or the new firm, or threatened him in connection with his departure. Enforcement cites

⁴⁵² CX-164.

⁴⁵³ CX-165.

⁴⁵⁴ Tr. (Mirman) 3615.

⁴⁵⁵ Tr. (Mirman) 3761.

⁴⁵⁶ Tr. (Mirman) 3762.

⁴⁵⁷ Tr. (Cantalupo) 1967-68.

⁴⁵⁸ Tr. (Cantalupo) 1972.

⁴⁵⁹ Enforcement’s Post-Hearing Br. 48.

⁴⁶⁰ *Id.*

Mirman's e-mail description of Cantalupo as "George Belesis' partner, someone who is hostile to me" as the basis for its assertion that Mirman "recognized" Cantalupo was "acting on behalf of (at least) George Belesis."⁴⁶¹ But Mirman did not testify that he believed Cantalupo was acting on George Belesis' behalf.

Indeed, Mirman denies that Cantalupo attempted to coerce him at all during their call. Mirman and Cantalupo had a single angry and heated phone conversation. Cantalupo said he wanted to meet, and Mirman refused. Each disagrees about details as to what the other said during the argument, but they agree on its tenor. They agree that grandparents.com figured in the conversation and that there was screaming and yelling.⁴⁶² Mirman concedes he "threw fuel on the fire" that escalated the argument.

Based on these facts, the Panel declines to find that Belesis attempted to coerce Mirman to stay at JTF, or that in the brief, albeit heated, argument over the phone with Mirman, Cantalupo engaged in conduct that "threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member, [or] a person associated with a member" in violation of FINRA Rules 5240 and 2010 as alleged in the Amended Complaint.

C. JTF and Belesis Coerced Coffey to Sign False Statements

The final charge of the Amended Complaint's tenth cause of action alleges that Belesis coerced broker Mel Coffey into signing a new employment contract and an affidavit on May 15, 2013.

⁴⁶¹ Enforcement's Post-Hearing Br. 48.

⁴⁶² Tr. (Cantalupo) 1968; Tr. (Mirman) 3742-43; CX-164.

Coffey joined JTF in 2008. He worked from Long Island, where he lives, until December 2011,⁴⁶³ when Belesis asked him to be JTF's national sales manager and work at the Manhattan office. Belesis provided a car service for Coffey's commute from Long Island and paid for a staff. In late 2012, Belesis eliminated the car service and began charging Coffey to pay the staff.⁴⁶⁴ Coffey and Belesis discussed having Coffey open a small branch office for JTF on Long Island, but nothing came of the discussion.⁴⁶⁵

In early 2013, amid negative press reports about JTF and AWSR, and tired of his lengthy commute, Coffey considered leaving JTF.⁴⁶⁶ On April 15, 2013, Enforcement filed the original Complaint in this disciplinary proceeding. One of the charges alleged that Belesis improperly threatened, harassed and coerced JTF representatives who indicated they were leaving the firm.⁴⁶⁷

On Friday, May 10, 2013, Coffey learned that Belesis had, without prior notice, fired his assistant. Coffey was concerned that he, too, was going to be fired, and worried whether he would receive the \$75,000 check for commissions that he had earned in April. Coffey tried to reach Belesis over the weekend. Belesis responded by text message agreeing to meet the following Monday at the firm.⁴⁶⁸

⁴⁶³ Tr. (Coffey) 2479.

⁴⁶⁴ Tr. (Coffey) 2480-82.

⁴⁶⁵ Tr. (Coffey) 2487-89.

⁴⁶⁶ Tr. (Coffey) 2489-90.

⁴⁶⁷ Compl. ¶ 8 ("JTF, through Belesis, Castellano and Cantalupo, improperly threatened, harassed, coerced and intimidated JTF RRs who have questioned Belesis' instructions, disagreed with his business practices or attempted to leave the firm.").

⁴⁶⁸ Tr. (Coffey) 2491-92.

On May 13, 2013, Belesis and Coffey met in a conference room at JTF. Belesis believed Coffey was leaving JTF,⁴⁶⁹ and informed Coffey that he was going to withhold his commission check because of unresolved customer arbitration claims against Coffey. According to Belesis, JTF was entitled to withhold commissions of brokers who resigned, to defray costs that might be assessed against the firm as a result of pending customer claims.⁴⁷⁰

Belesis and Coffey argued. At the hearing, they gave differing accounts of what occurred. Coffey testified that he told Belesis that if he did not receive his commission check, he would not keep quiet about it.⁴⁷¹ Belesis testified that Coffey went into a rage and threatened to make false, public accusations against JTF.⁴⁷²

Belesis testified that he told Coffey to leave, but that Coffey “started begging” to be allowed to stay. Belesis testified that he told Coffey he “would only feel comfortable” if Coffey retracted the statements he made as they argued. According to Belesis, Coffey offered to sign an affidavit. Belesis asked Bursky to join the meeting. Belesis testified that Coffey told Bursky to draft an employment agreement and an affidavit for him to sign.⁴⁷³ Coffey testified that Belesis instructed Bursky to prepare documents Coffey had to sign to get paid.⁴⁷⁴

Two days later, the papers were ready for Coffey to sign. One document was an amendment to Coffey’s employment contract, extending his employment with JTF from November 2013 to November 2015. It expressly stated that JTF wanted to withhold Coffey’s April 2013 commissions to settle or defend customer complaints, but would “accommodate”

⁴⁶⁹ Tr. (Belesis) 3874.

⁴⁷⁰ Tr. (Belesis) 1573-74.

⁴⁷¹ Tr. (Coffey) 3049-50.

⁴⁷² Tr. (Belesis) 1573-76.

⁴⁷³ Tr. (Belesis) 3876-77.

⁴⁷⁴ Tr. (Coffey) 2493-94.

Coffey, and release the check, on the condition that he sign.⁴⁷⁵ The other document was an affidavit stating that Coffey had never witnessed Belesis “threatening, coercing or trying to intimidate anyone at JTF into taking or refraining from undertaking any action, whether or not related to the sale of securities.” It stated, further, that Belesis did not ever “force, coerce, require, instruct, or request” Coffey to recommend or sell any security, or prevent Coffey from recommending or selling any security, including AWSR. The affidavit also declared that Coffey was signing of his “own free will, free from any duress or coercion” and without promise of “any consideration of any kind.”⁴⁷⁶

Coffey testified that these statements were false and he was coerced to sign them. In fact, Coffey testified, Belesis had asked him to participate “numerous times” in various private placements, including AWSR. Coffey testified that he signed the documents under duress in order to obtain the commissions he had earned the previous month.⁴⁷⁷

After receiving his commission check, Coffey resigned from JTF and sent a letter on May 21, 2013, stating that he had signed the employment contract because he needed the money to support his family.⁴⁷⁸

Belesis claims that he was entitled by the terms of Coffey’s original employment agreement to withhold Coffey’s commission payment.⁴⁷⁹ He points out that there were three customer arbitrations pending against Coffey on May 15, 2013, with claims totaling more than

⁴⁷⁵ CX-235, at 1-2.

⁴⁷⁶ CX-235, at 4 ¶¶ 4-6.

⁴⁷⁷ Tr. (Coffey) 2497-99.

⁴⁷⁸ CX-168; Tr. (Coffey) 2497, 2500-02.

⁴⁷⁹ Belesis’ Post-Hearing Br. 49 (citing Tr. (Bursky) 3374-76, 3378-79); RX-165, at 11.

\$200,000, and in some instances containing claims against JTF and Belesis personally.⁴⁸⁰ Belesis also attacks the credibility of Coffey’s testimony, citing his resignation letter as “self-serving,” and noting that in it, Coffey threatened to report the matter to regulators if his “resignation is challenged in any manner.”⁴⁸¹

Enforcement argues that Belesis and JTF were not entitled to withhold Coffey’s commission. Enforcement cites New York Labor Law Section 191-c, requiring employers to pay commissions no later than the last day of the month following the month in which the commissions were earned.⁴⁸²

The timing of the confrontation between Belesis and Coffey, shortly after the original Complaint was filed, with its allegations of coercive conduct against JTF employees, makes clear that the language of the affidavit, with its references to coercion and to AWSR, was crafted with the backdrop of the Complaint in mind.

Furthermore, the Hearing Panel finds that Coffey testified credibly about signing the contract and affidavit. Coffey’s testimony is corroborated by his resignation letter to Belesis. The very terms of the amendment to the employment agreement, explicitly stating that the release of Coffey’s commission was contingent on his signing, contradict Belesis and corroborate Coffey’s testimony that he had to sign in order to obtain his commission. The Panel is satisfied that a preponderance of the evidence establishes that Belesis coerced Coffey to sign the contract and the affidavit, and that the documents contain falsehoods. In so doing, Belesis violated FINRA Rules 5240 and 2010.

⁴⁸⁰ Belesis’ Post-Hearing Br. 49.

⁴⁸¹ *Id.* at 50 n.26.

⁴⁸² Enforcement’s Post-Hearing Br. 46; N.Y. Lab. Law § 191-c.

XVII. Sanctions

A. Trading Ahead in Violation of FINRA Rules 5320 and 2010 (First Cause of Action) (JTF and Belesis)

Enforcement describes the misconduct in this case as “egregious,” calling for “significant sanctions,” and recommends barring Belesis, expelling JTF, and requiring Belesis and JTF to pay restitution to the identified customers who sought unsuccessfully to sell their shares of AWSR on February 23, 2012.⁴⁸³

On February 24, 2012, Belesis was fully aware of the brokers’ inability to enter customer orders to sell AWSR on the previous trading day. He knew that Sterne had lifted the restrictions on JTF’s customer shares of AWSR. This provided JTF and Belesis with the opportunity to cancel and rebill the firm’s trades, to allow customers to sell their unrestricted shares at the average price per share that JTF had obtained for itself. Through Belesis, JTF declined to do so. This was an intentional decision, presumably to preserve JTF’s profit from selling AWSR.

Although FINRA’s Sanction Guidelines do not specifically address trading ahead, the Principal Considerations in Determining Sanctions include intentionality as a factor to be considered,⁴⁸⁴ as well as whether the misconduct resulted in monetary gain⁴⁸⁵ or injury to any party.⁴⁸⁶ Here, there was substantial gain to JTF and Belesis, and loss of opportunity to customers who wanted to sell during the spike but were unable to do so.

The Guidelines also include the conduct of respondents during an investigation as a factor to weigh, including whether respondents offered substantial assistance to investigators or,

⁴⁸³ Enforcement’s Post-Hearing Br. 53-55.

⁴⁸⁴ *FINRA Sanction Guidelines* 7 (2013) (Principal Considerations in Determining Sanctions, No. 13).

⁴⁸⁵ *Id.* (Principal Consideration No. 13).

⁴⁸⁶ *Id.* at 6 (Principal Consideration No. 11).

instead, concealed information or provided misleading information.⁴⁸⁷ In this case, JTF and Belesis concealed or destroyed a number of unexecuted customer order tickets to sell AWSR created by brokers on February 23, 2012.

For these reasons, the Panel agrees with Enforcement's recommendations to expel JTF, bar Belesis, and order them jointly to compensate their customers.

To establish a basis for ordering JTF and Belesis to pay restitution to customers, Enforcement interviewed JTF's registered representatives and customers whose accounts contained freely tradable shares of AWSR on February 23, 2012. Enforcement found 17 customer accounts in which the customers or the representatives could specify the number of shares the customers sought unsuccessfully to sell during the spike. Enforcement then calculated the average price per share for which the firm sold AWSR on February 23, 2012. The average price per share came to \$1.2634.⁴⁸⁸

Enforcement then calculated the amount each customer account would have earned if its order had been executed at the per-share average price of \$1.2634. From this amount, Enforcement subtracted any proceeds the customers earned from sales of AWSR shares between February 24, 2012, and April 2012.⁴⁸⁹

JTF and Belesis maintain that Enforcement's restitution calculations are flawed. They argue, correctly, that there is no evidence of the precise time customers informed their brokers to enter the sell orders, or when the brokers attempted to enter the orders, and that there is no way

⁴⁸⁷ *Id.* at 7 (Principal Consideration No. 12).

⁴⁸⁸ Tr. (DiTrapani) 456-59; CX-309; CX-318.

⁴⁸⁹ Tr. (DiTrapani) 426-27. The restitution calculation received in evidence at the hearing is CX-317. At the hearing, Sterne produced new information, admitted as CX-337, with records showing additional customer orders to sell AWSR that were not executed on February 23, 2012. Enforcement attached to its corrected Post-Hearing Brief a revised version of CX-317 (marked, however, CX-6 (2nd Revision)) that incorporated the new information from Sterne and reduced the amount of restitution to two customers.

to accurately reconstruct what price customers would have obtained if the orders had been executed promptly.⁴⁹⁰

The Sanction Guidelines provide that adjudicators may order restitution “when an identifiable person ... has suffered a quantifiable loss proximately caused by a respondent’s misconduct.” Further, the Guidelines provide that a restitution order “should be based on the actual amount of the loss sustained.”⁴⁹¹

Here, as JTF and Belesis point out, it is not possible to determine the actual amount of the loss to customers resulting from their inability to obtain execution of their sell orders. However, the Panel is satisfied that, with the limited information available, despite the absence of the order tickets that JTF failed to produce, Enforcement has made a fair and “reasonable approximation” of the gains achieved by JTF and Belesis that they should disgorge. The Panel therefore orders JTF and Belesis to disgorge the proceeds of the proprietary sales and to transfer the gains they obtained to the customers whose orders should have been filled.⁴⁹²

Based upon Enforcement’s revised CX-317, the testimony of DiTrapani, and the supporting interviews and documentation on which he based his calculations, the Panel finds that JTF and Belesis should disgorge and pay \$1,047,288.01, plus interest, to the customers identified in the attached Disgorgement Schedule.⁴⁹³

⁴⁹⁰ Tr. (DiTrapani) 529-35.

⁴⁹¹ *Guidelines* at 4.

⁴⁹² Disgorgement may be ordered “after a reasonable approximation of a respondent’s unlawful profits.” *Dep’t of Enforcement v. Evans*, Complaint No. 2006005977901, 2011 FINRA Discip. LEXIS 36, at *40 n.42 (N.A.C. Oct. 3, 2011).

⁴⁹³ The payments specified in the attached Disgorgement Schedule are based on Enforcement’s revised CX-317.

B. Recordkeeping Violations of FINRA Rules 4511(a) and 2010 and Exchange Act Rules 17a-3 and 17a-4 (Fifth Cause of Action) (JTF and Belesis)

In egregious cases, the Guidelines recommend a fine of \$10,000 to \$100,000 and consideration of expulsion for a firm and a bar for an individual for failure to maintain accurate and complete books and records. The Principal Considerations in Determining Sanctions focus on the nature and materiality⁴⁹⁴ of the missing information.

Here, the facts are egregious. JTF and Belesis concealed at least 14 tickets for customer orders to sell AWSR on February 23, 2012, as well as the electronic file containing scanned copies of the tickets. In the investigation focused on JTF's failure to enter customer orders for AWSR, the order tickets had the potential to answer fundamental questions that persisted through the hearing. The missing tickets could have shown how many JTF brokers tried to enter orders; when they received the orders and tried to enter them; the number of shares of AWSR in each order; and the instructions the customers gave. The lack of the tickets impeded the investigation.⁴⁹⁵

Castellano testified that he had placed the February tickets he received from Ward into JTF's file room, but inexplicably the tickets were "given back to the brokers," and when JTF asked for them, "the brokers didn't have them."⁴⁹⁶ This testimony is suspect on its face, and no broker corroborated it. Belesis' testimony that he played no role in responding to the Rule 8210 request for the tickets is also suspect, particularly in light of the evidence that he was a hands-on CEO, that the investigation into AWSR was important to JTF, and that he signed a certification

⁴⁹⁴ *Guidelines* at 29.

⁴⁹⁵ Tr. (DiTrapani) 391-92.

⁴⁹⁶ Tr. (Castellano) 2028.

that the firm had produced all the requested documents it was able to locate.⁴⁹⁷ As CEO of JTF, the maintenance and production of the tickets was ultimately Belesis' responsibility. So, too, was the failure to produce them. The disappearance of such critical documents is not mere coincidence. As noted before, Belesis has a history of testifying falsely when it appears to be to his advantage. His testimony about the missing tickets is an example.

For these reasons, the Panel finds that a bar is the appropriate sanction for Belesis and an expulsion the appropriate sanction for JTF, which is consistent with the goal of deterring them and others from similar violations.

C. Providing False Testimony in Violation of FINRA Rules 8210 and 2010 (Seventh Cause of Action) (Belesis)

For providing false testimony to FINRA in violation of FINRA Rule 8210, the Guidelines recommend a fine of \$25,000 to \$50,000. If mitigating factors are present, the Guidelines recommend consideration of a suspension for up to two years. A relevant Principal Consideration is the importance of the information from the perspective of FINRA.⁴⁹⁸ It has been held that in the absence of mitigation, "a bar should be the standard sanction for failing to respond truthfully to FINRA."⁴⁹⁹

We have found that Belesis answered two questions untruthfully in an on-the-record investigative interview in this case. The false answers he gave were denials in response to questions central to the investigation into the events of February 23, 2012: whether he knew of customer requests to sell AWSR, and whether he knew of anything that prevented the customers from selling their shares. Truthful answers would have aided the investigation. As in other

⁴⁹⁷ Tr. (Belesis) 1557-67.

⁴⁹⁸ *Guidelines* at 33.

⁴⁹⁹ *Dep't of Enforcement v. Hedge Fund Capital Partners*, Complaint No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *86-88 (N.A.C. May 1, 2012).

instances noted above, Belesis apparently perceived it was advantageous to dissemble and to distance himself from the failure to execute customer orders. There are no mitigating factors. The Panel finds that a bar is the appropriate sanction.

D. Failure to Observe High Standards of Commercial Honor by Failing to Cancel and Rebill Proprietary Sales in Violation of FINRA Rule 2010 (Ninth Cause of Action) (JTF and Belesis)

When they failed to cancel and rebill the proprietary sales of AWSR on February 23, 2012, JTF and Belesis violated the obligations they owed to their customers, and prevented the customers from obtaining execution of their orders. JTF and Belesis failed to comport their conduct with just and equitable principles of trade, under the broad ethical requirements of FINRA Rule 2010.

The violation is serious. However, it arises from the same conduct as described in the first cause of action, for which we have barred Belesis, expelled JTF, and ordered disgorgement. In light of the imposition of those sanctions, no additional sanctions need to be imposed for this violation.

E. Harassing and Coercive Conduct in Violation of FINRA Rules 5240 and 2010 (Tenth Cause of Action) (JTF, Belesis, and Castellano)

For harassment and intimidation, the Guidelines recommend fines of \$5,000 to \$50,000. In egregious cases, the Guidelines recommend fines in excess of \$50,000 and consideration of a suspension of an individual for 10 business days to two years, or a bar, and expulsion of a firm. The Principal Considerations focus on the nature and content of the violative behavior, and whether the misconduct is limited to isolated incidents, or is part of a pattern of repeated wrongdoing.⁵⁰⁰

⁵⁰⁰ *Guidelines* at 48.

In its pre-hearing brief, Enforcement argued that JTF and Belesis acted egregiously and should be barred for coercing Coffey into signing the false affidavit and amended employment contract, and for filing Forms U5 with false information. As for Castellano, Enforcement argued that because he was JTF's chief compliance officer, responsible for overseeing compliance with FINRA rules, his conduct in submitting the Forms U5, sending letters to state securities authorities, and issuing demands that the representatives appear and testify in JTF's internal review, together constitute egregious misconduct meriting a bar. However, Enforcement counts as aggravating factors some unproven allegations.⁵⁰¹

The Panel agrees with Enforcement's assessment that the harassing and coercive misconduct in this case is serious. While Belesis and Castellano may have had a reasonable basis for conducting an internal investigation of some potential wrongdoing by Gordos and the brokers associated with him, they took no care to ascertain that there was a reasonable basis for each disclosure made on each broker's formal record. They acted fully cognizant of the potential injury to the brokers for whom they had no reason, other than association with Gordos, to suspect of much of the serious misconduct disclosed in the Forms U5. And Belesis' threat to withhold Coffey's earned commission check unless he signed an amended employment contract and affidavit was coercive.

Under these circumstances, the Panel concludes that it is appropriate to impose a two-year suspension of membership in FINRA upon JTF, and a two-year suspension from associating

⁵⁰¹ Enforcement argued that Belesis threatened to "run [Gordos] down in the street," but the Panel does not find that Enforcement established that this occurred. Enforcement also asserted that Belesis threatened to "grenade" another broker, and made threats to another, but provided no evidence supporting these assertions. Enforcement asserted that Castellano threatened and assaulted a former broker but did not present evidence supporting this allegation. Enforcement's Pre-Hearing Br. 60.

with any FINRA member firm in any capacity upon Belesis, and a fine of \$100,000 jointly and severally upon JTF and Belesis for harassing and coercive conduct.

As for Castellano, while the evidence shows he acted at Belesis' direction, he did so willingly. In his defense, Castellano argues that he acted reasonably and ethically because he believed the Gordos group engaged in serious wrongdoing, obligating Castellano to file Forms U5 disclosing the firm's investigation.⁵⁰² He stresses that the Forms U5 merely recorded the existence of an internal investigation, and did not assert that the individuals had been found culpable of the various types of misconduct described.⁵⁰³

The Panel does not agree with Castellano's minimization of his role. Castellano should not have signed the partially false and misleading Forms U5, sent the letters to the state authorities, or sent the threatening demand to the Gordos group to provide testimony. He was JTF's chief compliance officer, responsible for ensuring that FINRA rules and the securities laws were followed at JTF. For his misconduct, the Panel concludes that a one-year suspension in all capacities and a fine of \$50,000 are appropriate sanctions, sufficient to remediate Castellano's misconduct and deter him and others from engaging in similar misconduct in the future.

XVIII. Conclusion

For trading ahead of customer orders in violation of FINRA Rules 5230 and 2010, as charged in the Amended Complaint's first cause of action, John Thomas Financial, Inc. is expelled from FINRA, and Anastasios P. "Tommy" Belesis is barred from associating with any FINRA member firm in any capacity. JTF and Belesis are also jointly and severally ordered to

⁵⁰² Post-Hearing Brief of Respondent Joseph Castellano 14-15.

⁵⁰³ *Id.* at 15-16.

disgorge \$1,047,288.01, plus interest, to the customers identified in the attached Disgorgement Schedule.⁵⁰⁴

For failing to maintain accurate and complete books and records, in violation of FINRA Rule 4511(a) and Rules 17a-3 and 17a-4 of the Securities Exchange Act, as charged in the Amended Complaint's fifth cause of action, JTF is expelled and Belesis is barred.

For providing false testimony to FINRA in violation of FINRA Rules 8210 and 2010, as charged in the Amended Complaint's seventh cause of action, Belesis is barred.

For harassing and intimidating individuals associated with a member firm, in violation of FINRA Rules 5240 and 2010, as charged in the Amended Complaint's tenth cause of action, JTF is suspended from FINRA membership for two years; Belesis is suspended from associating with any FINRA member firm in any capacity for two years; JTF and Belesis are jointly and severally fined \$100,000; and Castellano is suspended from associating with any FINRA member firm for one year and is fined \$50,000.

JTF and Belesis are jointly and severally assessed costs in the amount of \$29,697.20, which includes a \$750.00 administrative fee and the cost of the hearing transcript.⁵⁰⁵

⁵⁰⁴ The customers are identified by name in the Addendum to this Decision, which is served only on the Parties. Prejudgment interest is calculated from February 23, 2012, until payment is made. The prejudgment interest rate shall be the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a), the same rate that is used for calculating interest on restitution awards. *Guidelines* at 11.

⁵⁰⁵ The Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this Decision.

If this Decision becomes FINRA's final disciplinary action, JTF's expulsions and Belesis' bars shall be effective immediately. JTF's, Belesis', and Castellano's suspensions shall begin on March 2, 2015. The fines shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

EXTENDED HEARING PANEL.

Matthew Campbell
Hearing Officer

Copies to:

John Thomas Financial, Inc. (*via overnight courier and first-class mail*)
Anastasios P. Belesis (*via overnight courier and first-class mail*)
Ronald Vincent Cantalupo (*via overnight courier and first-class mail*)
Joseph Louis Castellano (*via overnight courier and first-class mail*)
Michele Ann Misiti (*via overnight courier and first-class mail*)
John Stephen Ward (*via overnight courier and first-class mail*)
Ira Lee Sorkin, Esq. (*via electronic and first-class mail*)
Amit Sondhi, Esq. (*via electronic mail*)
George Brunelle, Esq. (*via electronic and first-class mail*)
Thomas J. McCabe, Esq. (*via electronic and first-class mail*)
Daniel J. Horwitz, Esq. (*via electronic and first-class mail*)
Howard Kneller, Esq. (*via electronic and first-class mail*)
David M. Monachino, Esq. (*via electronic mail*)
Jeffrey D. Pariser, Esq. (*via electronic and first-class mail*)

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

Department of Enforcement v. John Thomas Financial, Inc., et al.
Disciplinary Proceeding No. 20120334673-01

Extended Hearing Panel Decision

DISGORGEMENT SCHEDULE

CT	25,268.58
GD	23,162.44
PP	63,171.44
JG	35,533.94
CC & JC	26,321.01
ICS	41,667.00
AM	271,407.26
BG	44,611.67
RE & DE	58,269.69
RP	37,902.87
CO	180,177.64
PF & NF	21,057.57
RG	52,643.29
DW	25,000.00
GH	62,500.00
PR	23,318.60
DH	55,275.01
Total	\$1,047,288.01⁵⁰⁶

⁵⁰⁶ Enforcement's calculations, as submitted with its Post-Hearing Brief, show a total of \$1,047,288.00. Enforcement's calculations do not include prejudgment interest.