BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Fuad Ahmed, Washington, DC, and Success Trade Securities, Inc., Washington, DC, Respondents.	DECISION Complaint No. 2012034211301 Dated: September 25, 2015

Respondents willfully engaged in securities fraud and sold unregistered securities without the benefit of an exemption. Held, findings affirmed, in relevant part, and sanctions modified.

Appearances

For the Complainant: Jennifer Crawford, Esq., Michael Gross, Esq., Perry Hubbard, Esq., Leo Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: William Saacke, Esq.

TABLE OF CONTENTS

PAGE

PAGE

Decision

Fuad Ahmed and the broker-dealer that he formed, owned, and managed, Success Trade Securities, Inc. ("Success Trade Securities" or the "Firm") (collectively, the "Respondents") appeal a Hearing Panel decision issued on June 25, 2014. The Hearing Panel found that the Respondents willfully engaged in securities fraud and sold unregistered securities without the benefit of an exemption. The Hearing Panel barred Ahmed and expelled Success Trade Securities for the fraud, but declined to impose sanctions for their sales of unregistered securities. After an independent review of the record, we affirm the Hearing Panel's findings concerning the fraud and sales of unregistered securities, in addition to the bar and expulsion that the Hearing Panel imposed for the fraud. We, however, have decided to impose sanctions for the unregistered securities sales, where the Hearing Panel declined to do so. As explained later in this decision, we conclude that the Respondents' sales of the unregistered securities furthered the fraud, supported their efforts to evade regulatory oversight and detection of the fraud, and imposed an additional risk on the investors' already speculative investment. Under these circumstances, we have decided to bar Ahmed and expel Success Trade Securities for selling unregistered securities without the benefit of a registration exemption.

I. <u>Factual Background</u>

A. <u>Ahmed</u>

In May 1994, Ahmed entered the securities industry when he registered with a FINRA firm as a general securities representative. Between May 1994 and August 1998, Ahmed was associated with five FINRA firms. In September 1998, Ahmed founded Success Trade Securities as the broker-dealer subsidiary of Success Trade, Inc. (the "Parent Company"), a holding company that Ahmed had formed in 1997.[1] From September 1998 through March 2015, Ahmed was registered with Success Trade Securities. He has not registered with another FINRA firm since that time.

B. <u>Success Trade Securities</u>

Success Trade Securities is a "deep discount online broker[-dealer]" and operates under the name "Just2Trade.com" and "LowTrades.com," in addition to Success Trade Securities.[2]

---

1 The Parent Company is the holding company of two subsidiaries, Success Trade Securities and BP Trade, Inc. ("BP Trade"). Ahmed is the Parent Company's Chief Executive Officer, President, largest shareholder, and the sole Director on the company's Board of Directors. He is also the only signatory on the Parent Company's bank accounts.

BP Trade is a software company that Ahmed acquired in 2000. BP Trade, which is located in Canada, provides a software and trading platform for only one customer, Success Trade Securities. Ahmed is Chief Executive Officer and President of BP Trade. He testified that he controls the company.

2 Ahmed testified that Success Trade Securities provided a platform where customers can direct their own trading, and in turn, pay lower commissions on the trades. For example,

[Footnote continued on next page]

The Firm is incorporated under the laws of the District of Columbia. Success Trade Securities maintains its principal place of business in the District of Columbia, but also operates from a branch office in McLean, Virginia. The Firm became a member of FINRA in March 1999. Success Trade Securities filed a Uniform Request for Broker-Dealer Withdrawal (Form BDW) with FINRA in February 2015, and it is no longer a FINRA-registered firm.

During the period relevant to the conduct in this case, March 2009 to February 2013, Ahmed was Success Trade Securities' Chief Executive Officer, President, and the sole Director on the Firm's Board of Directors. He also served as Success Trade Securities' Chief Compliance Officer, Anti-Money Laundering ("AML") Compliance Officer, Financial and Operations Principal, and designated supervisor of the Firm's branch office in McLean, Virginia.[3]

C. The Parent Company and Respondents Experience Financial Difficulties in the Years Leading to the Offering

The Parent Company and Respondents were experiencing significant financial distress prior to the securities offering that is the subject of this case.

1. The Parent Company's Financial Problems

In four of the five years prior to the offering, the Parent Company operated with net losses. The Parent Company operated with a net positive income of $201,000 in 2007. The year before the offering, however, the Parent Company returned to operating with net losses. In 2008, the Parent Company's expenses nearly tripled from $552,000 in 2007 to $1.5 million in 2008, and the Parent Company posted a net loss of $661,000 for 2008.[4]

The Parent Company also was burdened with significant debt obligations. Throughout 2007 and 2008, Ahmed executed several promissory notes on behalf of the Parent Company. The individual entering into the loan agreement with Ahmed and the Parent Company was RK, a business person whom Ahmed had met at a wedding in 2003 or 2005. In July 2007, Ahmed and RK executed a 10-year promissory note for $100,000 plus an annual interest rate of 43.2 percent. In September 2007, Ahmed and RK executed a second 10-year promissory note. The second promissory note was for $200,000 plus an annual interest rate of 43.2 percent. In July 2008, Ahmed and RK executed a third promissory note. The third promissory note had a 10-year term and a face value of $550,000, which included the $300,000 owed under the first and second

[cont'd]

Just2Trade.com charged $2.50 in commissions per trade, and LowTrades.com charged $4.50 in commissions per trade.

3 In April 2010, Ahmed hired another individual to serve as Success Trade Securities' Chief Compliance Officer and AML Compliance Officer.

4 The Parent Company's net income or loss for the five years prior to the offering were as follows: (1) $264,000 net loss in 2004, (2) $155,000 net loss in 2005, (3) $22,000 net loss in 2006, (4) $201,000 net income in 2007, and (5) $661,000 net loss in 2008.

promissory notes, and an annual interest rate of 53 percent.[5] Ahmed and RK executed a fourth promissory note in October 2008. The fourth promissory note had a 10-year term, an annual interest rate of 53 percent, and a face value of $250,000. By the end of 2008, the Parent Company owed RK $800,000 plus 53 percent interest.[6] The principal owed to RK exceeded the Parent Company's total revenues in each of the five years leading up to the offering.[7]

Ahmed testified that the Commission and FINRA performed a regulatory audit of Success Trade Securities and took an "exception" to the interest rate on the promissory notes.[8] As a result, Ahmed and RK restructured the third and fourth promissory notes into a new promissory note, the fifth promissory note. Ahmed and RK executed the fifth promissory note in June 2010. The fifth promissory note had a principal value of $800,000, an annual interest rate of 15 percent, and a maturity date of December 2012. As part of the negotiation of the restructured loan, RK insisted that Ahmed and the Parent Company pay him for his losses on the interest rate reduction. Ahmed and the Parent Company agreed to pay RK monthly interest payments until the debt matured in December 2012, and then to provide him with an additional balloon payment of $1.5 million.

As December 2012 approached, and it became apparent that Ahmed and the Parent Company would not be able to satisfy the terms of the promissory note, Ahmed and RK discussed extending the debt for an additional year. In December 2012, Ahmed, on behalf of the Parent Company, and RK executed the sixth promissory note. The sixth promissory note had a face value of $1.5 million, which included Ahmed's and the Parent Company's payment of $45,000 on the note. The promissory note also had an annual interest rate of 15 percent and matured in one year, in December 2013. At maturity, RK also had the option of purchasing 1.5 million shares of the Parent Company's common stock at $1.00 per share. RK testified that, as of the date of his hearing testimony in August 2013, Ahmed and the Parent Company owed him $1.6 million, $800,000 in principal plus an equal amount of accumulated interest.[9]

---

5 The third promissory note voided the first two promissory notes. It is unclear whether the additional $250,000 included in the face value of the third promissory note constituted additional principal provided to Ahmed and the Parent Company or interest due on the prior two promissory notes.

6 RK testified that he felt comfortable demanding high rates of interest on the promissory notes because he could "see that [Ahmed] need[ed] money."

7 The Parent Company's revenues for the five years prior to the offering were as follows: (1) $382,000 in 2004, (2) $353,000 in 2005, (3) $648,000 in 2006, (4) $753,000 in 2007, and (5) $796,000 in 2008. Between March 2009 and February 2013 (the period under review), the Parent Company depended on Success Trade Securities for nearly all of its income. Success Trade Securities paid management fees to the Parent Company.

8 In at least one of the promissory notes between the Parent Company and RK, the assets of Success Trade Securities were listed as collateral for the loan.

9 On May 6, 2013, Ahmed and RK executed a letter of intent, which documented RK's proposed purchase of Success Trade Securities and 15 percent of BP Trade for $10.7 million. As

[Footnote continued on next page]

2. Success Trade Securities' Financial Problems

Success Trade Securities struggled in the years leading up to the Parent Company's securities offering. Although Success Trade Securities had positive net income between 2004 and 2007, the Firm experienced a net loss of $21,000 the year preceding the offering. The net loss was due in large part to the fact that Success Trade Securities' revenues had decreased by $200,000 between 2007 and 2008.[10]

The financial problems that Success Trade Securities experienced in 2008 were exacerbated by events that transpired at its clearing firm, North American Clearing, Inc. ("North American Clearing"). In May 2008, securities regulators froze the customer assets of North American Clearing, and the clearing firm subsequently ceased operations.[11] Success Trade Securities lost its clearing deposit, four months of commissions, and several customer accounts because of the events at North American Clearing.

Ahmed testified that, by October 2008, Success Trade Securities' financial outlook was dim, and the Firm was in desperate need of capital. Ahmed explained, "I mean, the fact that your operating capital just disappears overnight is a shock for any business . . . You have to make sure that you have capital available . . . so we had to make sure that we come up with capital." Ahmed testified that the third and fourth promissory notes that he executed on behalf of the Parent Company with RK in July 2008 and October 2008, respectively, were critical for keeping Success Trade Securities afloat after North American Clearing ceased operating.

3. Ahmed's Personal Guarantee

The Parent Company's and Success Trade Securities' financial problems also imposed a significant financial strain on Ahmed. Ahmed was the personal guarantor for each of the six

---

[cont'd]

discussed *infra* Part IV.B. (The Respondents' Post-Complaint Misconduct), the sale did not occur.

10 Success Trade Securities' revenues, expenses, and net income or loss for the five years prior to the Parent Company's offering were as follows: (1) in 2004, $824,000 in revenues, $819,000 in expenses, and net income of $5,757, (2) in 2005, $726,000 in revenues, $726,000 in expenses, and net income of $114, (3) in 2006, $1.27 million in revenues, $1.25 million in expenses, and net income of $25,000, (4) in 2007, $1.43 million in revenues, $1.4 million in expenses, and net income of $30,000, and (5) in 2008, $1.23 million in revenues, $1.25 million in expenses, and a net loss of $21,000.

11 In May 2008, the Commission filed a federal civil action in the United States District Court for the Middle District of Florida against North American Clearing and several of its executives. *See SEC v. N. Am. Clearing, Inc.*, Litigation Release No. 20602, 2008 SEC LEXIS 1228, at *1 (May 28, 2008). The Commission alleged that the defendants engaged in fraud and misused customer funds to fund the clearing firm's daily business operations and conceal its financial problems. *See id.*

promissory notes between the Parent Company and RK.[12] If the Parent Company defaulted on any of the promissory notes, Ahmed became "unconditionally" and "irrevocably" responsible for all amounts due under the notes.

D. Ahmed Establishes a Relationship with Jinesh Brahmbhatt and the Investment Advisers of Jade Wealth Management

In the wake of worsening financial situations at the Parent Company and Success Trade Securities throughout 2008, Ahmed decided to raise capital in early-2009. Ahmed enlisted Jinesh Brahmbhatt, a registered representative with whom he previously worked, to assist him with the capital-raising effort.

1. Jinesh Brahmbhatt and Jade Wealth Management

Ahmed met Brahmbhatt in 1994, when they worked as registered representatives at a FINRA firm. In May 2008, after working 14 years in the securities industry, Brahmbhatt formed a registered investment adviser, Jade Wealth Management LLC ("Jade Wealth Management"). Brahmbhatt is Jade Wealth Management's President, Chief Executive Officer, and Chief Compliance Officer and owns at least 75 percent of the investment adviser. Jade Wealth Management's customers are comprised primarily of professional athletes. The investment adviser specializes in providing its customers with an array of concierge services, including financial advice, budgeting, bill payments, relocation assistance, the purchase of life and disability insurance, and the procurement of car services. When Jade Wealth Management filed its Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers (Form ADV) with the Commission in March 2013, the investment adviser reported that it had 26 to 100 customers, 76 percent to 99 percent of whom were "high net worth individuals," and $62 million in assets under management.

Jade Wealth Management disclosed that it had five full-time or part-time employees. For purposes discussed *infra* Part I.D.3. (Jade Wealth Management's Investment Advisers Register with Success Trade Securities to Solicit Investors for the Parent Company's Offering), four of these employees became registered with a single broker-dealer, Success Trade Securities. Jade Wealth Management also noted that it maintained its principal office and place of business in Success Trade Securities' office suite in McLean, Virginia, and that it kept its books and records at Success Trade Securities' office in the District of Columbia. Finally, Jade Wealth Management's investment advisers purchased and sold securities for their customers through Success Trade Securities. The marketing brochure that Jade Wealth Management provided to its customers contained a footer on each page that read, "Securities products offered through Success Trade Securities, Inc., member FINRA/SIPC."

---

[12] RK testified that he demanded the personal guarantee because the Parent Company was a "start-up," and he wanted to "secure[] [his] money as much as possible." RK also testified that he required Ahmed to "pledge" all the assets of the Parent Company, including all the assets of the Parent Company's subsidiaries, against the promissory notes. Ahmed agreed to RK's terms.

2. Jade Wealth Management's and Brahmbhatt's Financial Difficulties

Prior to the Parent Company's offering, Jade Wealth Management and Brahmbhatt were experiencing financial difficulties of their own. Although Brahmbhatt had established Jade Wealth Management in 2008, the investment adviser did not secure its first customer until the spring of 2009. By that time, Jade Wealth Management could not afford to pay the salaries and wages of its employees without assistance from Ahmed and the Parent Company. During the relevant period, March 2009 to February 2013, Ahmed and the Parent Company regularly provided Brahmbhatt with personal funds, paid Jade Wealth Management's payroll, and provided the investment adviser with funds to cover other services that were critical to its continued operations.[13]

3. Jade Wealth Management's Investment Advisers Register with Success Trade Securities to Solicit Investors for the Parent Company's Offering

By the time Ahmed initiated the Parent Company's offering, Ahmed had implemented a plan that would permit Ahmed, Brahmbhatt, and their respective companies to remain solvent in the face of mounting financial obligations.[14] Ahmed's company, the Parent Company, issued promissory notes to raise capital for Ahmed and his companies. Ahmed permitted Brahmbhatt and the advisers associated with Jade Wealth Management to register with Success Trade Securities to facilitate the capital-raising effort. The newly-registered representatives of Success Trade Securities then sold the Parent Company's promissory notes to Jade Wealth Management's existing and prospective investment advisory customers. In return for selling the promissory notes, the Parent Company compensated the representative who made the sale, assisted Brahmbhatt in paying the loan that he owed to his former firm, and provided Brahmbhatt with funding to keep Jade Wealth Management afloat. As Brahmbhatt explained to Ahmed when the Parent Company, Success Trade Securities, and Jade Wealth Management initiated their relationship,

---

[13] Brahmbhatt received a $275,000 loan when he began working at his former FINRA firm. Brahmbhatt failed to repay the loan when he left the firm to form Jade Wealth Management. The firm brought an arbitration claim against Brahmbhatt, which settled in the fall of 2009. Brahmbhatt agreed to pay his former firm $180,000 as part of the settlement agreement. Ahmed testified that Brahmbhatt did not have funds to pay the settlement and asked him (Ahmed) for assistance. Ahmed testified that he and the Parent Company provided Brahmbhatt with money to pay the settlement, and in January 2010, made arrangements with Brahmbhatt to start making payments on Brahmbhatt's behalf directly to his (Brahmbhatt's) former firm.

[14] Ahmed admitted that it was his decision to raise capital for the Parent Company by offering the Parent Company's promissory notes to investors.

> I can raise you $7 [million] . . . . I have spent almost [$]1 million to get us to the point that we will have some of the biggest names in sports working with us. But with that said[,] what that means for you is that for every client I bring[,] I want them to invest in [the Parent Company]. But non[e] [of the clients] will have assets [until] Sept[ember]. So[, until] then[,] to weather the storm[,] I have been trying to piece meal clients for you. Fuad[,] I need time to raise [you] all of your capital. If I don't have the time[,] then let me know[,] and I will understand[,] and I will try to find another home for [Jade Wealth Management]. But if you give me time . . . [e]very client I have will be an investor. I will have net new assets under management of [$]20 million by [the] [e]nd of Sept[ember]. Also[,] from now [until] the draft, [J]une 26th[,] I need a little help here and there . . . . I'm at a point now of no return . . . . I need you . . . to consider a short term budget. And as for a raise[,] I will make sure to raise [you] [$]500[,000] within the next month.

E. The Parent Company's Offering

Between March 2009 and February 2013, Ahmed, Brahmbhatt, and the registered representatives associated with Success Trade Securities sold 152 promissory notes, totaling $19.4 million, to 65 investors.[15] Ahmed authorized the offering documents, signed all but eight of the promissory notes issued to the investors, and approved the terms of each promissory note, including the interest rates. Ahmed also personally guaranteed at least one of the Parent Company's promissory notes, although a majority of the notes were unsecured.

1. The Offering Documents

The offering documents in this case consisted of private placement memoranda ("PPMs"), a supplement to the PPMs (the "Supplement"), and a subscription agreement and promissory note signed by each investor and Ahmed on behalf of the Parent Company. The key documents for understanding the contours of the Parent Company's offering are the PPMs and Supplement. There were six PPMs bearing four dates – January 1, 2009, February 1, 2009, September 29, 2009, and November 30, 2009. The Supplement was dated June 30, 2010.

2. The First and Second PPMs

The first and second PPMs (collectively, "Initial PPMs") covered an offering period between January 1, 2009 and March 31, 2009. The first PPM was dated January 1, 2009, and covered an offering period between January 1, 2009 and February 27, 2009. The second PPM was dated February 1, 2009, and covered an offering period between February 1, 2009 and March 31, 2009.

---

15 Many of the individuals that participated in the Parent Company's offering were recently drafted NBA or NFL players who were in their early 20s. Approximately 23 of the 65 investors (35 percent) had income of less than $200,000 in the two years prior to the offering, a net worth of less than $1 million, and minimal investment experience.

The Initial PPMs explained that the offering consisted of 50 of the Parent Company's unsecured promissory notes at an offering price of $100,000 per note. The Initial PPMs had a "minimum purchase" of one promissory note, "payable in cash at the time of the subscription." The Initial PPMs stated that the Parent Company's promissory notes had an annual rate of return of 12.5 percent "until maturity, simple interest, paid monthly, with a maturity date of 36 months from the [c]ommencement [d]ate of each [n]ote." The Initial PPMs also explained that participation in the Parent Company's offering was limited to "accredited investors as defined in Rule 501(a) of Regulation D of the Securities and Exchange (*sic*) Act of 1933,"[16] and that the offering was exempt from registration pursuant to Rule 506 of Regulation D ("Rule 506") of the Securities Act of 1933 ("Securities Act").[17]

The Initial PPMs disclosed that the gross proceeds from the Parent Company's offering would total $5 million.[18] The Initial PPMs explained how the Parent Company intended to use the investors' funds, "[$1.5 million] of the proceeds will be used to buy out existing shareholders and retire debt; [$2 million] will be allocated to an advertising campaign; and [$1.1 million] to be reinvested in technology." The Initial PPMs contained a chart reinforcing the intended use of the proceeds and noted that the remaining $400,000 raised in the offering would be used to provide the Parent Company with "working capital" and to offset offering expenses, commissions, and legal and accounting fees. With regard to the use of proceeds to pay commissions, the Initial PPMs stated,

> The officers and directors of the [Parent] Company, who will not receive any compensation for their efforts, are selling this [o]ffering. No sales or fees or commissions will be paid to such officers or directors. Registered brokers or dealers who are members of FINRA and who enter into a Participating Dealer Agreement with the [Parent] Company may sell notes. Such brokers or dealers may receive commissions of up to 5 percent (5%) of the price of the [n]otes sold.

---

16 Success Trade Securities' investor files contained a form titled, "Success Trade, Inc. Acc[r]edited Investor Questionnaire." A representative formerly registered with Success Trade Securities testified that investors would sign the Accredited Investor Questionnaire, leaving questions unanswered, and he would fill in missing demographic, profile, or income information.

17 In June 2009, the Parent Company filed a Notice of Exempt Offering of Securities with the Commission. The Parent Company claimed the promissory notes were exempt from registration under Rule 505 of Regulation D of the Securities Act ("Rule 505"). Ahmed testified that the filing with the Commission was in error, and the Parent Company's offering of the promissory notes was exempt from registration pursuant to Rule 506.

18 The first PPM stated that the Parent Company offered a minimum of 50, and a maximum of 75, unsecured promissory notes and explained that the offering's gross proceeds would be between $5 million and $7.5 million.

3. The Third, Fourth, Fifth, and Sixth PPMs

The third, fourth, fifth, and sixth PPMs (collectively, "Subsequent PPMs") covered an offering period between September 29, 2009 and June 30, 2011.[19] The third PPM was dated September 29, 2009, and covered an offering period between September 29, 2009 and February 19, 2010. The fourth, fifth, and sixth PPMs were each dated November 30, 2009, and covered an offering period that began on September 29, 2009 and ended on February 19, 2010, December 31, 2010, and June 30, 2011, respectively. The three versions of the November 30, 2009 PPM did not vary in any significant way except for the specified expiration date for the offering.

The Subsequent PPMs offered the same number of the Parent Company's promissory notes (50) at the same per note subscription price ($100,000) as the Initial PPMs. The Subsequent PPMs contained the same minimum purchase (one promissory note), annual rate of return (12.5 percent), and months to maturity (36 months) as the Initial PPMs. The Subsequent PPMs, similar to the Initial PPMs, also explained that the offering was limited to accredited investors, and that the offering was exempt from registration pursuant to Rule 506. The Subsequent PPMs, however, added disclosures about the Parent Company's use of the offering's proceeds, the Parent Company's ownership, and the Parent Company's debt.

a. The Parent Company's Use of the Offering's Proceeds

The Subsequent PPMs advised investors that the Parent Company may not sell the maximum number of offered promissory notes, but stressed that, "there is no minimum proceeds threshold required for the [Parent] Company to utilize offering proceeds." In addition, while the amount of the gross offering proceeds ($5 million) and the explanation of the use of those proceeds were the same in the Initial and Subsequent PPMs, the Subsequent PPMs added a section titled, "Management['s] Discretion as to Use of Proceeds." That section stated,

> The [Parent] Company reserves the right to use the funds obtained from this offering for other similar purposes not presently contemplated which it deems to be in the best interest of the [Parent] Company, its shareholders[,] and its [note] holders and in order to address changed circumstances or opportunities. As a result . . . [i]nvestors will be entrusting their funds to the [Parent] Company's management – upon whose judgment and discretion the investor must depend.

---

[19] The Parent Company issued 25 promissory notes (16 percent of the notes issued) based on the Initial PPMs and 85 notes (56 percent of the notes issued) pursuant to the Subsequent PPMs. There were 42 promissory notes (28 percent of the notes issued) that were not issued pursuant to a PPM. In those 42 instances, the investors purchased the Parent Company's promissory notes based on prior purchases of the Parent Company's notes or informal conversations or emails with Ahmed or the registered representatives of Success Trade Securities. Most of the promissory notes (55 percent or 83 notes) were purchased based on one of the versions of the November 30, 2009 PPM.

The Initial and Subsequent PPMs each disclosed that the Parent Company's officers and directors would not receive any compensation for selling the offering, registered brokers or dealers may sell the promissory notes, and the brokers or dealers may receive commissions of up to five percent for the sales.[20] The Subsequent PPMs, however, added that, "[n]either [the Parent Company] nor any associated person of [the Parent Company] will receive any compensation whatsoever in connection with the sale of any [n]otes in this offering." The fourth, fifth, and sixth PPMs emphasized this point and stated that Ahmed would not receive any compensation for his efforts in selling the offering.

b. The Parent Company's Ownership

Under the title, "Ownership," the Subsequent PPMs disclosed that the Parent Company had approximately 118 investors and three classes of equity securities – common stock, Series A-1 preferred stock, and Series A-2 preferred stock. The Subsequent PPMs stated that the Parent Company had nearly 12 million shares of common stock outstanding and provided a list of the shareholders holding more than five percent of the Parent Company's common stock. There were three individuals and one "portfolio company" on the list.[21] Ahmed was the largest holder of the Parent Company's common stock. Ahmed held 37.6 percent of the Parent Company's outstanding shares.

The Subsequent PPMs stated that the Parent Company had more than 2.5 million shares of Series A-1 preferred stock and 1.3 million shares of Series A-2 preferred stock outstanding. Three related partnerships, described as venture capital firms, owned all of the Parent Company's Series A-1 shares. The largest holder of the Series A-2 shares was a living trust, which owned about 21 percent of the Series A-2 stock. Ahmed was the second largest shareholder of the Series A-2 stock, owning 18 percent of the outstanding shares.[22]

---

[20] The Subsequent PPMs stated that Ahmed was the "Chief Executive Officer and President of the [Parent] Company, there are not any other officers." The Subsequent PPMs also explained that Ahmed was the sole member of the Parent Company's Board of Directors and held all board positions, including Chairman and Secretary of the Board of Directors.

[21] The shares of outstanding common stock were slightly over 11 million by the time the Parent Company issued the fourth, fifth, and sixth PPMs. The portfolio company no longer owned shares of the Parent Company.

[22] RS, an individual described as a "principal" of the portfolio company and the three related partnerships discussed above, owned eight percent of the Parent Company's common stock. Because the portfolio company also owned eight percent of the common stock, RS effectively owned 16 percent of the Parent Company's common stock, all of the Parent Company's Series A-1 preferred stock through the three partnerships' ownership of the Series A-1 shares, and nearly 10 percent of the Parent Company's Series A-2 preferred stock by virtue of the one of the aforementioned partnerships owning Series A-2 shares. Outside of the information contained in the Subsequent PPMs, the record does not contain any information about RS.

The Series A-1 and A-2 classes of preferred stock were convertible into shares of the Parent Company's common stock. The base conversion ratio for the Series A-1 and A-2 preferred stock were 1 to 1 and 1 to 1.265, respectively. The Series A-1 preferred stock also had a $1.00 per share liquidation ratio. The liquidation ratio for the Series A-2 preferred stock was $2.53 per share. The base conversion and liquidation ratios for the Series A-2 preferred stock increased by four percent annually.

c. The Parent Company's Debt

Under the title, "Loans and Other Financial Arrangements," the Subsequent PPMs disclosed that an individual, MS, began lending the Parent Company funds in 2002, and since that time, MS had provided the Parent Company with a "Revolving Master Borrowing Line" and received the Parent Company's "Convertible Subordinated Notes."[23] Each of the Subsequent PPMs stated that the Parent Company owed MS $1.2 million of the Revolving Master Borrowing Line's $1.5 million limit. The line of credit was available to the Parent Company between September 2007 and January 2009 and payable "[o]n demand" at an interest rate of London Interbank Offered Rate (LIBOR) plus three percent. Ahmed personally guaranteed the Parent Company's repayment of the Revolving Master Borrowing Line.

The Subsequent PPMs explained that MS also held two "Convertible Subordinated Notes." The Parent Company issued the first note to MS in May 2002. MS's first note had a principal value of $80,000, matured in 108 months in May 2011, and incurred interest at a rate of 10 percent. When MS's first note matured, it was convertible to 80,000 shares of the Parent Company's common stock. The Parent Company issued the second note to MS in January 2003. MS's second note had a principal value of $40,000, matured in 96 months in January 2011, incurred interest at a rate of eight percent, and was convertible to 40,000 shares of the Parent Company's common stock. Each Convertible Subordinated Notes paid interest to MS semi-annually and required the Parent Company to provide MS with an "additional equity issuance." The additional equity issuance was an allotment of the Parent Company's common stock equal to: (1) two percent of the Parent Company's outstanding common shares as of the note's maturity date or the date that the Parent Company paid the note (whichever was later), or (2) a formula based on the "tangible book value and outstanding common shares of the [Parent] Company."

The Subsequent PPMs disclosed that the Parent Company had three outstanding loans, which had been used to "enhance its technology and to begin and (*sic*) advertising campaign." The Subsequent PPMs stated that the Parent Company borrowed $50,000 from a living trust in January 2008. The loan from the living trust matured in December 2008 and incurred 7.5 percent in interest annually. The Subsequent PPMs listed the consolidated loan between the Parent Company and RK, which was discussed *supra* Part I.C.1. (The Parent Company's Financial Problems). The Subsequent PPMs explained that the Parent Company borrowed

---

[23] The record does not contain any information about MS outside of the information contained in the Subsequent PPMs.

$800,000 from RK in September 2009 for five years at an annual interest rate of 15 percent.[24] The Subsequent PPMs also provided information about a third loan – a loan between the Parent Company and individual named CR.[25] The Subsequent PPMs stated that CR lent the Parent Company $250,000 in September 2009, on the same date that RK loaned the Parent Company $800,000, and that CR's loan matured in five years, earning interest at 15 percent annually. The Subsequent PPMs stated that the interest on the three loans was payable monthly, Ahmed personally guaranteed the loans, and the Parent Company's assets secured the loans.

The Subsequent PPMs also added a section with the title, "Convertible and Related Notes." The Subsequent PPMs disclosed that, "[c]ertain holders have the right to acquire additional shares of Series A-2 preferred stock upon conversion of outstanding [n]otes." This section of the Subsequent PPMs listed individuals and entities that had lent the Parent Company funds in exchange for convertible notes. In 19 instances between June 2002 and November 2004,[26] four individuals and two related entities lent the Parent Company a total of $593,681.[27] The amounts of the loans ranged from $862.50 to $106,000. The convertible notes had an annual interest rate of six percent, were payable on demand, and converted to a number of common shares equal to the principal amount of the note. The Subsequent PPMs also disclosed that 14 of the 19 loans also were convertible to the Parent Company's Series A-2 preferred stock "at a conversion price equal to the lower of (i) $1 per share[,] and (ii) the lowest per share price paid by any person investing in the [Parent] Company prior to the date of conversion or within 60 days after the conversion."

Finally, the Subsequent PPMs disclosed that the Parent Company owed a clearing firm, Computer Clearing Services, Inc. ("Computer Clearing Services"), $45,416.91 on behalf of the Parent Company's software company, BP Trade, and $30,875.45 on behalf of itself. The Parent Company incurred these debts in October and November 2005, respectively.

---

[24] Ahmed and RK did not execute the promissory note, which consolidated the two outstanding loans to $800,000 and lowered the interest rate from 53 percent to 15 percent, until June 2010, nine months after the Parent Company issued the first of the four Subsequent PPMs. Ahmed testified that he and RK had discussed restructuring RK's loans when he prepared the Subsequent PPMs, and that the information in the Subsequent PPMs about RK's loans reflected the agreement that he believed he and RK would reach.

[25] Outside of the information contained in the Subsequent PPMs, the record does not contain any information about CR.

[26] The 19 loans occurred on eight dates between June 2002 and November 2004. Ahmed and the Parent Company executed several of the loans on the same date.

[27] The record does not contain any information about three of the four individuals that held the convertible notes. The fourth individual was RS, the principal of the portfolio company and partnerships discussed *supra* Part I.E.3.b. (The Parent Company's Ownership). The two entities with the convertible notes were RS's partnerships.

4. The Supplement

The Supplement was dated June 30, 2010. The Supplement stated that it was intended to accompany the PPM dated November 30, 2009, but it did not distinguish between the three different versions of that PPM.[28] Ahmed testified that his attorney advised him to prepare the Supplement to disclose loans that the Parent Company had provided to Jade Wealth Management.[29] The Supplement disclosed the Parent Company's loans to Jade Wealth Management, but also added "supplemental information" about the size of the Parent Company's offering, the Parent Company's use of the offering's proceeds, and the Parent Company's financial standing.

a. The Parent Company's Loans to Jade Wealth Management

The Supplement disclosed that Jade Wealth Management provided "securities brokerage services" through Success Trade Securities, and that the Parent Company had made business loans to the investment adviser.[30] The Supplement stated that the current principal amount of the loans was $590,000, comprised of four promissory notes maturing in November 2011, and a $300,000 revolving line of credit due in November 2012. The Supplement also explained that Success Trade Securities was entitled to retain 11 percent of the management fees that Jade Wealth Management generated through its sales of the Parent Company's promissory notes. The Supplement, however, noted that Success Trade Securities would not begin retaining those fees until it made "certain requisite filings with FINRA." Finally, the Supplement stated that the Parent Company was not compensating Jade Wealth Management, or any of its employees, for Jade Wealth Management's recommendation of the offering to customers, but the Supplement added that the Parent Company planned to reimburse Jade Wealth Management for the expenses that it incurred to introduce customers to the Parent Company.

b. The Size of the Parent Company's Offering and the Parent Company's Use of the Offering's Proceeds

Under the title, "Supplemental Information Regarding the Offering," the Supplement stated that the Parent Company had discretion to exceed the $5 million maximum offering size. The Supplement explained that the Parent Company would determine whether to exceed the offering size when it reached the maximum offering amount. The Supplement added, "[a]s of

---

28 The Supplement emphasized that, "[t]he following information is supplemental to the information provided in the [PPM] and should be read in that context with the [PPM]. Headings referenced in this Supplement in italics are the headings to the sections of the [PPM]." The record does not provide an account of the investors that received the Supplement.

29 Ahmed explained that his attorney informed him that the Parent Company's loans to Jade Wealth Management may present a potential conflict of interest, which should be disclosed to investors.

30 The Supplement did not disclose that the source of Jade Wealth Management's loans was the proceeds of the Parent Company's offering.

the date of this Supplement[,] the [Parent] Company has received approximately $3[.4 million] in proceedings from the [o]ffering."[31]

Under the title, "Supplemental Information Regarding the Proposed Use of Proceeds from the Offering," the Supplement stated that the Parent Company had utilized the offering's proceeds "generally in conformity with its initial proposed use of proceeds." The Supplement, however, advised investors that, "in certain instances[, the Parent Company has] modified its use of proceeds as the [Parent] Company's business has demanded."[32]

The Supplement included a table to demonstrate how the Parent Company had used the $3.4 million that it already received in the offering. The table disclosed the following expenditures: (1) $35,000 for offering expenses,[33] (2) $705,000 for advertising for Success Trade Securities,[34] (3) $324,000 for website development for Success Trade Securities,[35] (4) $447,000 for data center infrastructure for BP Trade,[36] (5) $297,000 for a market data feed for BP Trade,[37] (6) $195,000 for software programming for BP Trade,[38] (7) $77,000 for equipment for BP Trade,[39] (8) $950,000 to buy back the Parent Company's shares and retire the Parent Company's debt,[40] (9) $165,00 for legal and accounting fees,[41] and (10) $250,000 in working capital.[42] The

---

31 The registered representatives of Success Trade Securities distributed the Supplement from June 2010 through March 2013. By the time Success Trade Securities began using the Supplement on June 10, 2010, the Parent Company already had raised $4.7 million. The Parent Company exceeded $5 million in proceeds on August 13, 2010.

32 The Supplement reiterated that the Parent Company's officers and directors would not receive any compensation for their efforts in promoting and selling the offering. The Supplement emphasized that, "[n]either Success Trade Securities . . . nor any associated person of Success Trade Securities . . . will receive any compensation whatsoever in connection with any sale of the [n]otes in this offering." Ahmed testified that, during the relevant period, his salary from the Parent Company was $22,200 in 2009, $109,150 in 2011, $81,204 in 2010, and $82,950 in 2012.

33 The record did not disclose the actual amount spent on offering expenses as of June 2010.

34 As of June 2010, the actual amount spent on advertising was $210,331.

35 As of June 2010, the actual amount spent on website development was $236,629.

36 As of June 2010, the actual amount spent on data center infrastructure was $293,284.

37 As of June 2010, the actual amount spent on the market data feed was $174,334.

38 As of June 2010, the actual amount spent on software programming was $7,500.

39 The record did not disclose the actual amount spent on equipment as of June 2010.

40 As of June 2010, the actual amount spent to buy back shares and retire debt was $984,007.

Supplement explained that the Parent Company had used more of the proceeds than originally planned for "data center infrastructure" and "website development" because the Parent "Company in its discretion determined that the build out of its fully integrated and comprehensive online account application platform held such benefit in terms of customer experience and compliance efficiency[] that a modification of the proposed use of proceeds was fully warranted."

c. The Parent Company's Financial Standing

Under the title, "Supplemental Information Regarding Financial Statements as [P]resented in the [Parent] Company's Business Plan," the Supplement indicated that the Parent Company's "unaudited financial statements for the year ended December 31, 2009 appear on the following pages." The Supplement, however, cautioned investors,

> The [Parent] Company produces its own financial statements and does not obtain a professional audit firm for such purpose. The financial statements are presented on that basis and may not conform in every respect to [Generally Accepted Accounting Principles, or "GAAP"]. While the [Parent] Company believes that these financial statements fairly represent the financial condition and results of the [Parent] Company, it cautions investors to receive these financial statements as such . . . .[43]

F. Ahmed's Use of the Offering's Proceeds

By June 2010, when the Parent Company issued the Supplement, the Parent Company had raised $4.7 million in the offering, but it actually spent $4 million. The $4 million was comprised of the figures discussed in footnotes 35 to 44 ($2.2 million), $619,576 in loans to Jade Wealth Management, in addition to the following amounts: (1) $307,411 in payments to BP Trade, (2) $531,545 in interest payments to existing investors, (3) $246,741 in "officer loans,"[44] and (4) $56,900 in payments to Ahmed's brother, FM. There is a $700,000 differential between

---

[cont'd]

41 As of June 2010, the actual amount spent on legal and accounting fees was $279,606.

42 The record did not disclose the actual amount spent on working capital as of June 2010.

43 Although the record contains a four-page financial document, which contains the Parent Company's financial information "as of December 31, 2009," there is no evidence to support that these are the financial statements referenced in the Supplement. There also is no evidence to support that these documents or any other of the Parent Company's financial documents or statements accompanied the Supplement because the investor files in the record contained no such documentation.

44 Ahmed testified that the officer loans were interest free funds that he used to pay personal expenses, such as food, clothing, credit card bills, personal travel, and the lease on his Range Rover.

the $4.7 million raised in the offering by June 2010, and the $4 million in accountable spending during that period. The record does not account for that $700,000.

By the time the offering ended in February 2013, the Parent Company had raised $19.4 million, and the amount of unaccounted funds increased from $700,000 to $4.1 million. The documents in the record support that Ahmed used the proceeds of the offering in the following manner: (1) $4.9 million in interest paid to existing investors, (2) $1.3 million in loans to Jade Wealth Management, (3) $984,007 to buy back shares and retire debt (footnote 42), (4) $830,000 in officer loans,[45] (5) $475,118 in capital investments to BP Trade (footnotes 38, 39, and 40), (6) $446,960 in capital investments to the Parent Company (footnotes 36 and 37), (7) $307,411 in payments to BP Trade, (8) $279,606 in legal and accounting fees (footnote 43), and (9) $91,000 in payments to FM.

G. State Securities Regulators Instruct the Respondents to Stop Selling the Parent Company's Promissory Notes

In June 2012, the District of Columbia's and Commonwealth of Virginia's Divisions of Insurance, Securities, and Banking (collectively, the "State Securities Regulators") conducted an on-site examination of Success Trade Securities. The State Securities Regulators provided the Respondents with the results of the examination in October 2012. The State Securities Regulators' examination report identified 10 areas of concern arising from the Respondents' sales of the Parent Company's promissory notes and order the Parent Company and the Respondents to stop selling the notes.

The State Securities Regulators expressed concerns that Success Trade Securities had made unsuitable recommendations in soliciting investors for the offering. The State Securities Regulators also questioned whether the Firm's sales of the promissory notes had been adequately supervised, whether the transactions had been properly recorded in Success Trade Securities' books and records, whether the registered representatives' executions of the transactions had complied with the Firm's AML compliance program, and whether the transactions had been the subject of certain accounting inaccuracies. Finally, and most notably, the State Securities Regulators expressed concerns that Success Trade Securities' sales of the promissory notes constituted fraudulent transactions because they were not exempt from registration, as the Firm contended. The State Securities Regulators unequivocally ordered Success Trade Securities to stop selling the Parent Company's promissory notes until the "securities are registered[,] . . . the [Firm's] misstatement is corrected[,] and the [State Securities' Regulators] concerns are addressed." The Respondents did not stop selling the Parent Company's promissory notes.[46]

[45] The Respondents proffered a promissory note signed by Ahmed on the first day of the hearing as evidence of the officer loans he received. The promissory note stated that Ahmed received a principal sum of $529,936.37, and that he would repay the Parent Company that amount plus 13 percent interest on a monthly basis until the loans were repaid in full.

[46] Ahmed testified that he disputed the State Securities Regulators' findings, and that he thought that their regulatory concerns could be addressed without shutting down the offering.

The State Securities Regulators' exception report stated that they reviewed documents concerning sales of the Parent Company's promissory notes between June 2009 and March 2012. During that period, the representatives associated with Success Trade Securities sold $7.2 million of the Parent Company's notes to 43 investors. By the time the offering ended in February 2013, an additional 22 investors purchased $12.2 million of the Parent Company's notes.[47]

H. The Respondents' Financial Difficulties Worsen, and They Encourage Investors to Extend or Convert Maturing Notes

By June 2011, the Parent Company's monthly interest payments due to the existing holders of the promissory notes began exceeding its monthly revenues. By June 2012, the interest payments to existing investors had grown to $191,000 per month. By August 2012, the Parent Company funded all interest payments from infusions of capital from new investors. By September 2012, the three-year promissory notes that the Respondents had sold in 2009 were set to mature, requiring the payment of approximately $3.2 million to investors, and the Parent Company's balloon payment of $1.5 million to RK was due.

Ahmed testified that, by fall of 2012, he knew that the Parent Company did not have the ability to pay the principal and interest due on the promissory notes, the Parent Company's interest expenses were getting too high, and he needed to restructure or refinance the Parent Company's debt for his businesses to remain solvent. To rectify these issues, Ahmed convinced many of the holders of the Parent Company's promissory notes to extend their notes at higher interest rates or convert their notes into shares of the Parent Company's stock.[48] He did so by touting the valuation of the Parent Company's software subsidiary, BP Trade, informing

---

[47] The District of Columbia initiated a regulatory action against Ahmed, Success Trade Securities, and the Parent Company as a result of the State Securities Regulators' examination of the sales of the Parent Company's promissory notes to investors. Ahmed, Success Trade Securities, and the Parent Company settled the regulatory action with the District of Columbia in February 2015. The District of Columbia determined that Ahmed's, Success Trade Securities', and the Parent Company's sales of the notes violated the federal securities laws and the District of Columbia's rules and regulations governing the purchase and sales of securities. For the violation, the District of Columbia ordered Ahmed, Success Trade Securities, and the Parent Company to cease and desist from selling unregistered and non-exempt securities in the District of Columbia. The District of Columbia also barred Ahmed, Success Trade Securities, and the Parent Company from engaging in *any securities business* in the District of Columbia. (emphasis added). Finally, the District of Columbia ordered Ahmed, Success Trade Securities, and the Parent Company to pay, jointly and severally, $650,000 as a civil penalty and $12.5 million in restitution. The bars that the District of Columbia imposed on Ahmed and Success Trade Securities subject them to statutory disqualification. *See* Sections 3(a)(39)(B)(i)(II) (15 U.S.C. § 78c(a)(39)(B)(i)(II)), 3(a)(39)(F) (15 U.S.C. § 78c(a)(39)(F)), and 15(b)(4)(H)(i) (15 U.S.C. § 78o(b)(4)(H)(i)) of the Exchange Act; Article III, Section 4 of FINRA's By-Laws.

[48] If investors chose to extend the term of their notes, the repayment of their principal would be delayed. If they chose to convert their promissory notes to equity, the Parent Company would cease making interest payments and would not be obligated to repay the principal.

investors that the Parent Company would gain additional capital through listing on a European Exchange, and suggesting that the Parent Company was in the process of acquiring an Australian company that would enhance its market value.[49]

1. BP Trade's Valuation Report

In September 2012, Ahmed hired a consultant, FD, to prepare a report to estimate the market value of BP Trade (the "Valuation Report"). Ahmed paid FD a consulting fee of $25,000, and FD provided Ahmed with the Valuation Report in six days. The Valuation Report was based solely on assumptions that Ahmed provided to FD.[50] It stated that BP Trade was worth $47.1 million, projected that BP Trade's revenues would double between 2013 and 2014, and it concluded that BP Trade would have profits of 32 percent in 2014. The Valuation Report, however, simultaneously acknowledged that "BP Trade is not currently viewed as a going concern," and that "any estimates related to the value of the business do not necessarily reflect the price at which BP Trade may actually be sold."

The Valuation Report qualified BP Trade's valuation with numerous disclaimers, including the fact that FD did not conduct an independent appraisal of BP Trade's assets, the Valuation Report did not constitute a fairness opinion, and the Valuation Report could not be relied on by anyone other than the Parent Company without FD's prior written consent. As the Valuation Report explained, FD prepared the report for the Parent Company's use to determine whether it should invest additional capital in BP Trade, and it "does not constitute a recommendation to any shareholder of the [Parent] Company as to how a shareholder should proceed with its investment in the [Parent] Company." The day after Ahmed received BP Trade's Valuation Report from FD, he began disseminating it to investors. Ahmed emailed

---

49 Ahmed also began soliciting a new slate of investors who purchased shorter term notes, obtained notes by paying less than the minimum subscription price, and demanded (and obtained) significantly higher annualized interest rates on their note purchases. Prior to April 2012, most of the promissory notes had a 36-month term and an annualized interest rate of 12.5 percent, in accordance with the Initial PPMs and Subsequent PPMs. As the notes from 2009 began to mature in early-2012, however, the Parent Company began selling promissory notes to new investors with maturity dates from one to eight months and annualized interest rates from 20 percent to 240 percent. In several instances, the newly-issued promissory notes guaranteed investors annualized interest rates of 80 percent, 86 percent, 120 percent, 200 percent, or 240 percent.

50 For example, Ahmed told FD that BP Trade would secure 25 licensing customers by the end of 2013, and that the company would have 135 customers by the end of 2017. BP Trade did not have any licensing customers since 2006. At the hearing, Ahmed claimed that he already had two software licensing agreements with independent third parties. On cross-examination, however, Ahmed admitted that he had entered into both agreements during the second day of the hearing, and that the licensee under both agreements was the same person, an individual who assisted Ahmed in drafting the Initial PPMs and Subsequent PPMs for the Parent Company's offering.

several investors, stating, "[a]ttached is the detailed [V]aluation [R]eport of my company done by an independent advisory firm. They have valued my company at $47.1 million."

Ahmed similarly responded to investors' requests for the Parent Company's current financial information by sending them copies of BP Trade's Valuation Report. In these communications, Ahmed failed to distinguish between the software company, BP Trade, the broker-dealer, Success Trade Securities, and the issuer of the promissory notes, the Parent Company. Ahmed also did not disclose that BP Trade's Valuation Report did not account for the Parent Company's financial distress.[51]

In January 2013, FD told Ahmed that the Valuation Report was out of date because BP Trade had been unable to secure licensing customers and failed to prepare promotional materials to market its software. Despite this caveat, the Respondents continued using the Valuation Report to promote the sale of the Parent Company's promissory notes. The Respondents sold 12 additional notes, garnering $1.2 million, after FD informed Ahmed that the Valuation Report was outdated.[52]

2. The Parent Company's Listing on a European Exchange

In late-2012, Ahmed and the registered representatives of Success Trade Securities began contacting investors to inform them that the Parent Company's listing on a European exchange was imminent, and that the investors should take advantage of the "opportunity" to convert their promissory notes into shares of the Parent Company's stock. Ahmed and the representatives informed investors that the listing would occur between April 2013 and June 2013, investors would double or triple their investment, and conversion of the Parent Company's promissory notes to stock would not be an option after the listing occurred. Ahmed claimed that the Parent Company's stock would open between four or five Euros (approximately $4.27 to $5.34 USD) per share.[53]

---

51 FD testified that he did not consider the Parent Company's liabilities, i.e., the debt owed to the holders of the promissory notes, when he prepared the Valuation Report.

52 Ahmed used the Valuation Report to solicit new investors to participate in the offering and convince existing investors to extend their notes or convert their notes to shares of the Parent Company's stock. For example, in October 2012, after discussing BP Trade's valuation, Ahmed obtained an investment of $225,000 from a new investor and persuaded an existing investor to purchase an additional note for $50,000 and convert all of his existing notes to shares of the Parent Company's stock.

53 At the hearing, Ahmed testified about meetings that he had with investors in December 2012 and March 2013, respectively, concerning the listing of the Parent Company on a European exchange. Ahmed testified that he met with the investors who had maturing promissory notes, told them that the Parent Company was going to be publicly listed between April 2013 and June 2013, and estimated that the Parent Company's opening stock price on the European exchange would be four to five Euros. Ahmed did not disclose that the Parent Company needed to raise money to pay interest on the existing promissory notes, and he did not tell the investors that the Parent Company would be unable to make interest payments on the existing notes if they did not

[Footnote continued on next page]

There was no documentation, analysis, or basis to support Ahmed's predicted listing price. To the contrary, FD, the consultant who prepared BP Trade's Valuation Report, testified that it was entirely premature to predict a European exchange listing price for the Parent Company, and that there was no basis to conclude that the Parent Company would be listed on a European exchange by June 2013. As of March 2013, the Parent Company still had failed to complete the preliminary steps necessary for listing on a European exchange – forming a European holding company to acquire the Parent Company's stock, deciding on which exchange to be listed, submitting a listing application to a European exchange, registering the Parent Company's stock with European securities regulators, identifying a market maker for the Parent Company's stock, and raising the funds required to pay for the listing process.

3. The Parent Company's Acquisition of an Australian Company

As the date of the Parent Company's purported listing on the European exchange neared, Ahmed began identifying additional incentives to persuade the holders of the Parent Company's promissory notes to convert their notes into shares of the Parent Company's stock. One such incentive was based on the Parent Company's purchase of an Australian company (the "Australian Company") specializing in online trading for "financial spread betting." In February 2013, Ahmed and the registered representatives of Success Trade Securities began informing investors that the Parent Company was enhancing its market value through the acquisition of the Australian Company. Ahmed explained that the Australian Company was undervalued, and that once acquired, the Australian Company could increase the Parent Company's value by trading at four times its current per share price.

On February 7, 2013, Ahmed made a proposal to purchase the Australian Company for AUD $15 million (approximately $11.5 million USD). In the proposal, Ahmed represented that the Parent Company had sufficient "facilities in place" to finance the acquisition, and that the Parent Company could purchase the Australian Company in three installments – AUD $3 million in cash ($2.3 million USD) on March 28, 2013, AUD $7 million in cash ($5.4 million USD) on April 30, 2013, and AUD $5 million "in cash in respect of . . . restricted net capital" ($3.8 million USD) on April 30, 2013. The Parent Company did not have sufficient funds to pay the first installment for the proposed acquisition, and Ahmed withdrew from the transaction on behalf of the Parent Company.[54]

[cont'd]

convert their notes to shares. One investor, who had $2 million in maturing promissory notes, agreed to convert his notes to shares of the Parent Company's stock after Ahmed told him about the Parent Company's listing on the European exchange.

[54] Ahmed admitted that the financial situation of the Parent Company "didn't look too good" when he tried to acquire the Australian Company. Ahmed, however, explained that he intended to finance the purchase of the Australian Company on the basis of the Australian Company's own cash flow, without reliance on the Parent Company's assets.

I. The Respondents Stop Note Payments

In March 2013, the Parent Company ceased making payments on the principal and interest it owed to the holders of its promissory notes.[55] Ahmed conceded that the Parent Company ceased making the payments because the Parent Company did not have sufficient funds to meet its payment obligations. Six of the 65 investors were repaid fully, a total of $5.7 million. The remaining 59 investors are due $13.7 million.

II. Procedural History

In February 2013, FINRA received two complaints concerning the Respondents and their sales of the Parent Company's promissory notes. FINRA's Department of Enforcement ("Enforcement") initiated an investigation. On April 10, 2013, Enforcement filed a request for a temporary cease and desist order ("TCDO") and the complaint contemporaneously.

The Respondents consented to the TCDO request, and a FINRA Hearing Panel approved and issued the TCDO on April 11, 2013. The TCDO ordered the Respondents to stop selling the Parent Company's promissory notes, extending the terms of the existing notes, and converting the notes into shares of the Parent Company's stock. The TCDO has continued in place from the date of its issuance, and there is no evidence that the Respondents have violated the terms of the TCDO. The complaint asserted two causes of action against Ahmed and Success Trade Securities. The first cause of action alleged that the Respondents willfully misrepresented and omitted material facts in connection with their sales of the Parent Company's promissory notes to the investors. The second cause of action alleged that the Respondents sold unregistered securities without the benefit of a registration exemption.

A five-day hearing took place in Washington, DC, in August 2013. Eight witnesses testified at the hearing, including Ahmed, FD, RK, two FINRA examiners, and three representatives registered with Success Trade Securities. The parties also read the investigative testimony of Brahmbhatt and another registered representative of Success Trade Securities into the record. The Hearing Panel issued its decision in June 2014. This appeal followed.

III. Discussion

The Hearing Panel found that the Respondents willfully engaged in securities fraud and sold unregistered securities that were not exempt from registration. After a thorough review of the record, we affirm the Hearing Panel's findings for each cause of action.

A. The Respondents Engaged in Securities Fraud

The Respondents misrepresented and omitted material facts in connection with their sales of the Parent Company's promissory notes to investors. The Respondents' misrepresentations and omissions in connection with the sales constitute securities fraud and a willful violation of

---

[55] The Parent Company also stopped making payments to RK at this time.

Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010.[56]

1. The Commission's Antifraud Rule

A fundamental purpose of the federal securities laws is to "substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities business." *Richmark Capital Corp*., 57 S.E.C. 1, 9 (2003), *aff'd*, 86 F. App'x 744 (5th Cir. 2004). Liability for failing to disclose material information is "premised upon a duty to disclose arising from a relationship of trust and confidence between parties to a transaction." *Chiarella v. United States*, 445 U.S. 222, 230 (1980). "A registered representative owes such a duty to his clients to disclose material information fully and completely when recommending an investment." *Dep't of Mkt. Regulation v. Burch*, Complaint No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *23 (FINRA NAC July 28, 2011). To be sure, on a "transaction-by-transaction basis, the broker . . . is obliged to give honest and complete information when recommending a purchase or sale." *De Kwiatkowski v. Bear, Stearns & Co*., 306 F.3d 1293, 1302 (2d Cir. 2002); *see Meyer Blinder*, 50 S.E.C. 1215, 1228 (1992) ("A broker-dealer, by holding itself out as a securities professional with special knowledge and ability, impliedly represents that it will deal fairly, honestly, and in accordance with industry standards with the public investor.").

Cases such as this one, which involve the securities offering of an affiliated issuer and broker-dealer, raise serious concerns about potential conflicts of interests. FINRA has advised firms and associated persons that, "[a broker-dealer] that is an affiliate of an issuer in a[n] . . . offering must ensure that its affiliation does not compromise its independence as it performs its investigation . . . . Indeed, its affiliation with the issuer typically would raise expectations by its customers . . . that the [broker-dealer] has special expertise concerning the issuer." *FINRA Regulatory Notice 10-22*, 2010 FINRA LEXIS 43, at *14 (Apr. 2010). FINRA similarly advised firms and registered representatives that broker-dealers that prepare PPMs or other offering documents have an affirmative duty not only to investigate the offered securities, but also to ensure that there are no material misstatements or omissions in the PPMs or offering documents that are disseminated to investors. *See id.* at *15-16.

Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rule 2020 each perpetuate full disclosure in the securities markets and prohibit fraudulent and deceptive acts and practices in connection with the purchase or sale of any security.[57] To establish a

---

[56] We discuss the rules in effect when the conduct occurred.

[57] Section 10(b) of the Exchange Act makes it "unlawful for any person . . . [t]o use or employ, in connection with the purchase or sale of any security . . . , any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe." 15 U.S.C. § 78j(b).

Through three subsections, Exchange Act Rule 10b-5(a), (b), and (c), Exchange Act Rule 10b-5 implements Section 10(b) of the Exchange Act. *See Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *40 (May 27, 2015). Exchange Act Rule 10b-5

[Footnote continued on next page]

violation under the Commission's and FINRA's antifraud rules, a preponderance of the evidence must demonstrate that Ahmed and Success Trade Securities: (1) misrepresented or omitted, (2) a material fact, (3) with scienter, (4) in connection with the purchase or sale of securities, and (5) by means of interstate commerce. *See SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996). The Respondents do not contest elements four and five of the analysis – that their statements or omissions were "in connection with the purchase or sale of a security" and "by means of interstate commerce."[58] We therefore focus our discussion on the first, second, and third parts of the analysis – whether the Respondents misrepresented or omitted facts, whether the Respondents' misrepresentations or omissions were material, and whether the Respondents acted with the requisite scienter to establish the violation.

2. The Respondents Committed Fraud, in Violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5

The first part of our fraud analysis examines whether the Respondents misrepresented or omitted facts in connection with the sales of the promissory notes. The documentary evidence and testimony in the record establish that they did. The Initial PPMs, the Subsequent PPMs, the Supplement, BP Trade's Valuation Report, the individualized solicitation emails sent to investors – all of it – are riddled with misrepresentations and omissions. As we reviewed the record, we determined that the Respondents' numerous misrepresentations and omissions generally fell into one of seven categories. We review each category below.

[cont'd]

makes it unlawful "[t]o employ any device, scheme, or artifice to defraud [Exchange Act Rule 10b-5(a)]; [t]o make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading [Exchange Act Rule 10b-5(b)]; or [t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security [Exchange Act Rule 10b-5(c)]." 17 C.F.R. § 240.10b-5.

[58] The Parent Company's promissory notes constitute securities under the Exchange Act. *See Dep't of Enforcement v. Gebhart*, Complaint No. C02020057, 2005 NASD Discip. LEXIS 40, at *25-32 (NASD NAC May 24, 2005) (citing *Reves v. Ernst & Young*, 494 U.S. 56, 62-63 (1990) (applying the *Reves* factors, i.e., the family resemblance test, to promissory notes to determine whether they are securities under the Exchange Act)), *aff'd*, 58 S.E.C. 1133 (2006), *aff'd in relevant part*, 255 F. App'x 254 (9th Cir. 2007).

The jurisdictional element of the case is also satisfied because the Respondents communicated with the investors via telephone and email and sent them the Initial PPMs and Subsequent PPMs and other offering documents via U.S. mail. *See* 17 C.F.R. § 240.10b-5 (requiring the use of "any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange."); *see also SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 865 (S.D.N.Y. 1997) (determining that the jurisdictional requirements of the federal antifraud provisions are interpreted broadly and are satisfied by intrastate telephone calls or the use of the U.S. mail), *aff'd*, 159 F.3d 1348 (2d Cir. 1998).

a. Misrepresentation and Omission No. 1:
The Use of the Offering's Proceeds

The Respondents misrepresented and omitted facts concerning the Parent Company's use of the offering proceeds. The Initial PPMs, Subsequent PPMs, and Supplement each detailed how the Parent Company intended to utilize the funds that the offering generated – 40 percent for advertising, 30 percent to buy out existing shareholders and retire debt, 22 percent for improvements in technology, and eight percent for offering expenses, commissions, and legal and accounting fees. In actuality, the bulk of the offering's proceeds – $11.5 million (59 percent) – was used for undisclosed purposes: $4.9 million (25 percent) in interest paid to existing investors, $4.1 million (21 percent) in unaccounted funds, $1.3 million (6 percent) in loans to Jade Wealth Management,[59] $830,000 (4 percent) in officer loans, $307,411 (2 percent) in undocumented and unexplained payments to BP Trade, and $91,000 (1 percent) in payments to Ahmed's brother, FM.[60] Instead of using the offering's proceeds for the purposes listed in the Initial PPMs, Subsequent PPMs, and Supplement, the Respondents utilized the investments to bank roll Ahmed and his family and friends and fund and perpetuate the fraud itself by paying existing investors with cash infusions from new investors. These uses of the proceeds were not disclosed to the purchasers of the Parent Company's promissory notes.

On appeal, the Respondents argue that they "in fact, [used] portions of the proceeds . . . for advertising, technology, and other expenditures." Issue No. 4.[61] We acknowledge that the Respondents used *some* of the offering's proceeds for the Parent Company's advertising campaign, infrastructure enhancements, and technological upgrades, as explained in the Initial PPMs, Subsequent PPMs, and Supplement.[62] Our concerns, and the Respondents'

---

59 The Initial and Subsequent PPMs did not mention the Parent Company's loans to Jade Wealth Management. The Respondents did not disclose the loans to Jade Wealth Management until they issued the Supplement in June 2010, which was 16 months after the offering began. Even then, the Respondents misrepresented the amount of the loans. The Supplement stated that the principal due on Jade Wealth Management's loans was $590,000, although the total due on the loans was reaching $620,000.

60 From the $19.4 million in offering proceeds, $5.7 million (30 percent) were returned to investors, and the Respondents used $2.2 million (11 percent) in accordance with the terms of the offering documents: $984,007 (5 percent) to buy back shares and retire debt (footnote 42), $475,118 (2.5 percent) in capital investments to BP Trade (footnotes 38, 39, and 40), $446,960 (2.5 percent) in capital investments to the Parent Company (footnotes 36 and 37), and $279,606 (1 percent) in legal and accounting fees (footnote 43).

61 The Respondents identified 25 issues for our consideration on appeal. During the course of the appellate proceedings, the Respondents withdrew two of the issues, Issue Nos. 15 and 25. We will identify the remaining 23 issues as we address them in this decision.

62 The Respondents point to an exhibit, Respondents' exhibit RX-5029, to support that they used the proceeds in accordance with the Initial PPMs, Subsequent PPMs, and Supplement. The unsubstantiated exhibit, which is titled, "Use of Proceeds," has no identifiable author, does not quantify how much of the proceeds went toward the items listed, and offers no documentation to substantiate that the items on the list were actually purchased. Respondents' exhibit RX-5029 is

[Footnote continued on next page]

misrepresentations and omissions, however, focus on the *undisclosed* uses of the investors' funds. And on this point, Ahmed's testimony and the documentary evidence in the record are conclusive. The Respondents failed to disclose that the offering's proceeds would provide Ahmed, his brother, and the representatives registered with Success Trade Securities and Jade Wealth Management with interest-free and unsecured loans to pay their personal expenses, and they did not inform the purchasers of the promissory notes that they intended to use the investors' funds to pay interest to existing noteholders.[63]

b. Misrepresentation and Omission No. 2: The Parent Company's Financial Condition

The Respondents misrepresented and omitted facts concerning the Parent Company's financial condition. The Initial PPMs, which covered 16 percent of the promissory notes sold during the course of the offering, did not provide the investors with any information concerning the Parent Company's debt or disclose that the Parent Company had posted net losses in four of the five years prior to the initiation of the offering.[64] In addition, while the Subsequent PPMs and Supplement added disclosures about the Parent Company's financial condition, the additional information was woefully inadequate and misrepresented the significance and increasing depth of the Parent Company's financial hardship.

[cont'd]

of no probative value and does not support that the Respondents used the offering's proceeds as described in the offering documents.

63 The Respondents argue that the loans to Jade Wealth Management predated the Parent Company's offering, and consequently, that Jade Wealth Management's loans did not come from the proceeds of the offering. Issue No. 14. That is false. On March 2, 2009 and March 16, 2009, respectively, two individuals invested a total of $350,000 with the Parent Company. During that same period, the Parent Company "loaned" Jade Wealth Management $25,600. The Parent Company made the first of these loans to Jade Wealth Management on March 9, 2009.

Along similar lines, the Respondents assert that the Hearing Panel improperly found that the Parent Company's loans to Jade Wealth Management constituted a *quid pro quo* arrangement, through which the Parent Company compensated Jade Wealth Management for its sales of the promissory notes. Issue No. 14. The existence, or lack, of a *quid pro quo* arrangement between the Respondents and Jade Wealth Management has no bearing on the focus of our inquiry, i.e., whether the Respondents violated the Commission's or FINRA's antifraud rules. We therefore make no findings on this issue.

64 The disclosures made in the Subsequent PPMs suggest that the Initial PPMs drastically misrepresented and omitted information concerning the amount of the Parent Company's debt. The Subsequent PPMs report that the Parent Company owed, at a minimum, $2.8 million in convertible notes, lines of credit, loans, and other payables when it issued the Initial PPMs in January and February 2009. This information was not disclosed in the Initial PPMs.

For example, the Subsequent PPMs and the Supplement, which was to accompany the Subsequent PPMs, did not disclose the effect of the mounting cost of the Parent Company's payment of interest to the existing holders of the promissory notes. During the relevant period, the Parent Company's payment of interest increased from 14 percent to 89 percent of its revenues.[65] The Subsequent PPMs and Supplement did not reflect the Parent Company's mounting annual losses – $899,626 in 2009, $1.6 million in 2010, $1.8 million in 2011, and $2.1 million in 2012. The Subsequent PPMs and Supplement stated that the Parent Company's outstanding notes totaled $1.7 million,[66] but the documents did not disclose that the Parent Company had issued an additional $1.5 million in notes between March 2009 and September 2009 as part of the offering. The Subsequent PPMs also falsely stated that the Parent Company had issued one promissory note for $800,000 to RK, and that the note matured in September 2014 and paid an annual interest rate of 15 percent. When the Respondents issued the Subsequent PPMs, however, the Parent Company had two notes with RK that totaled $800,000, matured in 2018, and paid annual interest in excess of 50 percent.[67]

When the Respondents issued the Supplement in June 2010, Ahmed and RK (at the Commission's and FINRA's prompting) had consolidated and restructured the two notes. The consolidated note with RK was issued on June 7, 2010, had a face value of $800,000, paid annual interest at a rate of 15 percent, and promised a balloon payment of $1.5 million at maturity in December 2012 to account for RK's loss in points. Although the Respondents issued the Supplement approximately three weeks after Ahmed and RK executed the consolidated note, the Respondents did not disclose the $1.5 million balloon payment in the Supplement.[68]

---

[65] In 2009, the Parent Company's revenues were $1.7 million, and the interest expense totaled $241,409, or 14.2 percent. In 2010, the Parent Company's revenues were $1.6 million, and the interest expense totaled $793,820, or 49.6 percent. In 2011, the Parent Company's revenues were $1.9 million, and the interest expense totaled $1.7 million, or 89.4 percent. In 2012, the Parent Company's revenues were $2.1 million, and the interest expense totaled $1.8 million, or 85.7 percent.

[66] The Subsequent PPMs and Supplement disclosed the following notes: (1) $800,000 owed to RK, (2) $250,000 owed to CR, (3) $593,681 in "Convertible and Related Notes," and (4) $76,292.36 owed to Computer Clearing Services.

[67] The Respondents assert that the Hearing Panel incorrectly found that the Subsequent PPMs misrepresented and omitted facts concerning the balloon payment because the terms of the consolidated note were not finalized when the Respondents issued the Subsequent PPMs. Issue No. 22. We agree. The Subsequent PPMs did not omit facts concerning the balloon payment because no balloon payment existed when the Respondents issued the Subsequent PPMs. As a consequence, the Subsequent PPMs' omission of information concerning the balloon payment does not factor into our fraud analysis.

[68] The bulk of the sales, 111 notes or 73 percent of notes sold, occurred after the Parent Company issued the Supplement in June 2010.

c. Misrepresentation and Omission No. 3: The Size of the Parent Company's Offering

The Respondents misrepresented and omitted facts concerning the size of the Parent Company's offering. When the Respondents issued the Supplement to investors in June 2010, the Parent Company's offering already had raised $4.7 million.[69] Two months later, in August 2010, the Parent Company exceeded $5 million in proceeds.[70] Despite this fact, the Respondents did not update the Supplement or amend the Subsequent PPMs to reflect that the Parent Company had exceeded the maximum offering amount. To the contrary, Ahmed testified that he instructed Success Trade Securities' registered representatives to continue disseminating the outdated (and false) Subsequent PPMs and Supplement to investors, even after he knew the offering had raised more than $5 million, $10 million, and $15 million. In the end, the Parent Company raised nearly quadruple what it said it would through the offering.

d. Misrepresentation and Omission No. 4: The Terms of the Offering and the Offering's Investors

The Respondents misrepresented and omitted facts concerning even the most basic aspects of the offering. When the Respondents issued the Initial and Subsequent PPMs, they represented that the Parent Company offered only 50 promissory notes, the minimum subscription price was $100,000 per note, investors were required to purchase a minimum of one note, the annual rate of return on each note was 12.5 percent, and the term of each note was 36 months. The Respondents also represented that participation in the Parent Company's offering was limited to accredited investors, and that the offering was exempt from registration pursuant to Rule 506. Each of these facts turned out to be false.

The Parent Company issued 152 notes (not 50), permitted 14 investors (22 percent of investors) to purchase fractional portions of notes for amounts between $18,500 and $50,000

---

[69] The Subsequent PPMs failed to disclose the Parent Company's receipt of $1.5 million in offering proceeds. The Supplement stated that the Parent Company had already raised $3.4 million in the offering, but the Parent Company had actually raised $4.7 million.

[70] The Respondents assert that the Hearing Panel misrepresented the amount that the Parent Company raised in the offering by noting that the Parent Company made "it appear that [it] was taking on a debt of only $5 million, rather than a debt close to $20 million." Issue No. 9. The Respondents fail to appreciate the accuracy of the Hearing Panel's assessment of the effect of this particular misrepresentation. As the Parent Company continued to raise funds based on the issuance of promissory notes (as opposed to stock), each dollar raised in the offering represented a dollar promised to the investor when the investor's note matured. The Parent Company raised $19.4 million in the offering, which meant that the Parent Company owed the investors, at a minimum, $19.4 million payable as each investor's note matured. This reasoning also explains why Ahmed strongly encouraged noteholders to convert their notes into shares of the Parent Company's stock as the notes came due.

(not $100,000),[71] and in 18 note sales (12 percent of notes sold), promised investors returns in excess of 20 percent.[72] There were also 44 notes (29 percent of notes) sold with terms that were less than the 36 months. Most of the notes with the shorter maturity dates promised the return of the investors' principal within a period of two weeks to eight months.

In concert with the misrepresentations and omissions concerning the terms of the offering, the Respondents also falsely stated that the Parent Company's offering was exempt from registration, and that participation in the offering was limited to individuals who qualified as accredited investors. As discussed *infra* Part III.B. (The Respondents Sold Unregistered Securities Without the Benefit of an Exemption), no exemption applied to the Parent Company's offering, and at least 23 of the 65 individuals (35 percent) who purchased the Parent Company's promissory notes were not accredited investors, as the Respondents had claimed.

The Respondents' misrepresentations and omissions concerning the terms of the offering, and the financial circumstances of the individuals who could participate in the offering, convinced potential investors that the Parent Company's offering was a sophisticated enterprise that was open only to investors who had the financial resources to meet the offering's "strict" requirements. The facts, however, suggest that the Respondents accepted investments from anyone willing to provide them with funding.

e. Misrepresentation and Omission No. 5: <u>BP Trade's Valuation</u>

In the fall of 2012, as the first set of investors' notes matured and the Parent Company's financial outlook began growing increasingly dim, the Respondents forged a new set of misrepresentations and omissions to convince existing noteholders to extend the terms of their notes or convert their notes into the Parent Company's stock. A significant number of the Respondents' misrepresentations and omissions focused on the valuation of BP Trade, the Parent Company's software subsidiary. For example, the Respondents falsely informed investors that they had an objective valuation of BP Trade performed, and that the analysis returned a resulting

---

71 The Respondents assert that the Hearing Panel improperly "faulted [them] for selling less than a minimum sales unit to investors . . . ." Issue No. 21. We acknowledge that the Initial PPMs and Subsequent PPMs allowed the Respondents to "offer fractional [n]otes at its sole discretion." In the context of the entire offering, this limited permission meant only that the Respondents could sell fractional notes and subscriptions to investors who already satisfied the minimum requirements of the offering. In other words, the Respondents could sell a fractional note and subscription to an investor who already purchased one note and subscription for $100,000. The Respondents in this case, however, relaxed the minimum requirements of the offering into nonexistence.

72 The 18 sales are as follows: four notes promised returns of 20 percent; seven notes promised returns of 24 to 30 percent, three notes promised returns of 80 to 86 percent, two notes promised returns of 120 percent, and two notes promised returns of 200 and 240 percent, respectively.

valuation of $47.1 million for the company.[73] The Respondents, however, failed to disclose to investors that BP Trade's valuation was based on a number of suspect assumptions, all of which were provided by Ahmed.

The Respondents falsely told investors that BP Trade's revenues would double between 2013 and 2014, and that the company would post a profit of 32 percent by 2014. The Respondents did not disclose that the projections of revenues and profits were based on the assumption that BP Trade would increase its software licensing customers by 440 percent – from 25 customers in 2013 to 135 customers in 2017.

The Respondents also failed to inform investors that BP Trade's valuation did not include the Parent Company's substantial debt obligations, or that Ahmed funded BP Trade's $11.5 million purchase price primarily through the issuance of the Parent Company's stock. As the consultant who prepared the Valuation Report aptly testified, the noteholders, who received BP Trade's valuation without being apprised of the underlying assumptions, were "walking into a potential minefield."[74]

f. Misrepresentation and Omission No. 6: The Parent Company's Listing on a European Exchange

Shortly after receiving the Valuation Report, the Respondents began falsely telling investors that the Parent Company would be listing its stock on a European exchange between March 2013 and June 2013, and that the opening stock price would be between four or five Euros, or $4.27 to $5.34 USD. The Respondents urged investors to convert their notes into shares of the Parent Company, claiming that the conversion was a "now-or-never" opportunity for investors to double or triple their investment. They also falsely stated that the conversion of the Parent Company's notes into stock would not be an option after the Parent Company went public.

There were no documents, no analysis, no basis – nothing – to support the Respondents' claims that the Parent Company would be listed on a European exchange, let alone to be able to

---

73 The Parent Company's financial statements began listing BP Trade as an asset of the Parent Company in 2009, despite the fact that the "objective" valuation did not occur until 2012. The Parent Company valued BP Trade at $40 million for fiscal year 2009, and $50 million for fiscal year 2010.

74 The Respondents argue that the Hearing Panel misrepresented BP Trade's valuation. Issue No. 6. Specifically, they state, "FINRA provided no evidence to support their valuation of BP Trade and further failed to provide any basis for their valuation of Success Trade [Securities'] stock used to finance the acquisition of BP Trade." The Respondents' statement is without merit. The Hearing Panel made findings concerning the underlying assumptions of the Valuation Report and evaluated whether the assumptions were misrepresentations or omissions for purposes of the Commission's and FINRA's antifraud rules. The Hearing Panel did not value BP Trade.

provide the investors with any minutia of accuracy concerning the timing of the purported listing or the opening stock price. In fact, as of March 2013, the Parent Company still had not completed any of the following: form a European holding company to acquire the Parent Company's stock, decide on which exchange to be listed, submit a listing application to a European exchange, register the Parent Company's stock with European securities regulators, identify a market maker for the Parent Company's stock, or raise the funds required to pay for the listing process. The Parent Company had failed to complete even the most basic of steps necessary for listing on a European exchange. Despite this fact, the Respondents systematically contacted investors to inform them about the public listing and anticipated pricing of the Parent Company's stock without disclosing the Parent Company's dire financial condition or its inability to make interest or principal payments without the infusion of additional capital.

g. Misrepresentation and Omission No. 7: The Parent Company's Acquisition of the Australian Company

Finally, the Respondents misrepresented and omitted facts concerning the Parent Company's acquisition of the Australian Company. In February 2013, the Respondents began informing investors that the Parent Company was in the process of acquiring the Australian Company. The Respondents explained that the acquisition of the Australian Company would enhance the Parent Company's market value and increase the Parent Company's opening price when it listed on the European exchange. The Respondents' assertions concerning the Parent Company's acquisition of the Australian Company were false.[75] The Parent Company was in no

---

75 The Respondents state that they executed a purchase agreement with the Australian Company in February 2013, received an expression of interest from a bank to finance $6 million USD of the AUD $15 million ($11.5 million USD) in March 2013, and did not misrepresent or omit facts concerning the acquisition of the Australian Company. We do not dispute that Ahmed executed a purchase agreement for the Australian Company and received an expression of interest from a bank. His inability to comply with the payment obligations detailed in each document, however, underscores the fact that the Respondents knew they could not afford to purchase the Australian Company when they embarked on the endeavor. The purchase agreement required that Ahmed remit AUD $3 million ($2.3 million USD) within seven weeks, and the bank required him to pay a "mandate fee" of $20,000 USD within four weeks to form an Australian holding company and initiate the financial and legal due diligence for the transaction. The Respondents did not have the funds to complete the purchase agreement or proceed with the bank financing, and they withdrew from the transaction approximately eight weeks after they had started the purchasing process.

The Respondents similarly point to a series of exhibits in the record (RX-5034 to RX-5061) and argue that the Hearing Panel ignored their evidence and misrepresented their efforts to take the Parent Company public and acquire the Australian Company. Issue No. 5. As explained above, the Respondents were, at best, only in the preliminary stages of listing the Parent Company on a European exchange or purchasing the Australian Company. The exhibits that the Respondents suggest the Hearing Panel ignored are a jumble of emails, presentations, brochures, and travel itineraries for Ahmed's trips to Europe, which reinforce the preliminary nature of the Respondents' efforts.

position, financial or otherwise, to execute a deal to acquire the Australian Company. The Parent Company did not have sufficient cash or assets on hand to buy the Australian Company, and it did not have any confirmed source of financing.

3. The Respondents' Misrepresentations and Omissions Were Material

Because we have determined that the Respondents misrepresented and omitted facts in connection with their sales of the Parent Company's promissory notes, we next consider whether the misrepresentations and omissions were material. Misstated or omitted facts are "material" if there is a substantial likelihood that a reasonable investor would have considered the misrepresentation or omission important in making an investment decision, and if disclosure of the misstated or omitted fact "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

As discussed above, the Respondents misrepresented and omitted facts in the following areas: (1) the use of the offering's proceeds, (2) the Parent Company's financial condition, (3) the size of the offering, (4) the basic terms of the offering and accreditation of the investors, (5) BP Trade's valuation, (6) the Parent Company's listing on a European Exchange, and (7) the Parent Company's acquisition of the Australian Company. The Respondents' misrepresentations and omissions in each of these areas were material and affected the total mix of information available to investors.[76] To be sure, a reasonable investor would have found the information that the Respondents misrepresented and omitted important, if not crucial, to his or her investment decision. This is particularly true here, where the Respondents promoted and sold a private placement that presented few opportunities and sources to obtain information concerning the subject issuer and offering.[77]

---

[76] *See, e.g.*, *SEC v. Bravata*, 3 F. Supp. 3d 638, 644-648, 657-658 (E.D. Mich. 2014) (finding that defendant misrepresented material facts when he stated that offering proceeds would be used to acquire real estate, but the funds were used for personal purchases and "loans" that were not repaid); *SEC v. The Better Life Club of Am., Inc.*, 995 F. Supp. 167, 176-77 (D.D.C. 1998) (finding that defendant misrepresented material facts when he failed to disclose he used the proceeds of the offering to pay existing investors and misrepresented the rate of return on the investment).

[77] The Respondents also did not disclose material adverse facts, such as their economic self-interest, when they sold the Parent Company's promissory notes to investors. *See Richmark Capital Corp.*, 57 S.E.C. at 6 (holding that, when a securities dealer recommends stock to a customer, it "must disclose material adverse facts of which it is aware," including "'adverse interests' such as 'economic self-interest' that could have influenced its recommendation").

4. The Respondents Acted with the Requisite Scienter

The Respondents also acted with scienter. Scienter is defined as "a mental state embracing an intent to deceive, manipulate, or defraud."[78] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). The Respondents misrepresented and omitted material facts about the Parent Company and the offering, and they did so with the intent to deceive, manipulate, and defraud the investors who purchased (or intended to purchase) the Parent Company's promissory notes.

During the relevant period, the Parent Company had six employees, not including the individuals that Ahmed recruited from Jade Wealth Management. The Parent Company's limited size allowed Ahmed to control every aspect of the business, including the company's operations, financial matters, capital-raising efforts, and the offering. Ahmed devised the offering. He oversaw its implementation, marketing, and sale. Ahmed managed the finances of the Parent Company, in addition to the proceeds and expenditures associated with the offering.

Ahmed was intimately familiar with the Parent Company and its business affairs. He knew the Parent Company's dire financial state. He knew that the Parent Company would not be able to continue the ever-increasing interest payments to existing investors. And, because he diverted the funds, he knew that the proceeds of the offering were being used for undisclosed purposes, such as "loans" to himself, his brother, Jinesh Brahmbhatt, and Jade Wealth Management. Given this intimate familiarity, Ahmed knew that the Initial PPMs, Subsequent PPMs, and Supplement misrepresented and omitted material information concerning the Parent Company, the Parent Company's financial outlook, and the offering, particularly the use of the offering's proceeds, the size and terms of the offering, and the accreditation of the participants in the offering. Ahmed also knew that the investors had received false information concerning BP Trade's valuation and the Parent Company's listing on a European Exchange and acquisition of the Australian Company. Ahmed therefore intentionally deceived, manipulated, and defrauded the purchasers of the Parent Company's promissory notes, and he acted with the requisite scienter to establish securities fraud.[79] *See Kenneth R. Ward*, 56 S.E.C. 236, 258-59 (2003)

---

[78] Scienter also is established through a heightened showing of recklessness. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 n.3 (2007). Reckless conduct includes "a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977). Our finding that the Respondents acted intentionally, i.e., with an intent to deceive, manipulate, and defraud, subsumes the lesser standard needed to demonstrate recklessness.

[79] If we had any question about the intentional nature of Ahmed's conduct, we need only to examine the "progressive" nature of the disclosures made in the Initial PPMs, Subsequent PPMs, and Supplement. The Initial PPMs did not provide investors with any information about the Parent Company's debt or loans to third parties. The Subsequent PPMs provided investors with some information about the Parent Company's debt and use of the offering's proceeds, but the information was shrouded in outright falsities and half-truths. The disclosures added in the Supplement fared no better. The Supplement disclosed the loans to Jade Wealth Management

[Footnote continued on next page]

(finding scienter established when representative was aware of material information and failed to disclose the material information to customers), *aff'd*, 75 F. App'x 320 (5th Cir. 2003).

Success Trade Securities acted with scienter based on Ahmed's intentional acts. *See SEC v. Sells*, No. C 11-4941 CW, 2012 U.S. Dist. LEXIS 112450, at *24 (N.D. Cal. Aug. 10, 2012) (concluding that an officer's "knowledge may be imputed to [his firm] by application of the doctrine of respondeat superior under which wrongful acts of an employee undertaken within the scope of employment can be imputed to the employer"); *Kirk A. Knapp*, 50 S.E.C. 858, 860 n.7 (1992) (explaining that FINRA properly attributed scienter of firm's owner to firm and thereby found primary antifraud violation by firm based on owner's conduct).

5. Ahmed Had "Ultimate Authority" over the Parent Company's Statements

On appeal, the Respondents argue that they are not responsible for the representations made to the purchasers of the promissory notes because the Parent Company offered the notes, and the individuals associated with Jade Wealth Management "vetted" the offering documents and solicited and sold the notes to investors.[80] Issue Nos. 16, 18. The Respondents' arguments concerning their authority over the statements in this case speak to one of the three provisions of Exchange Act Rule 10b-5, Exchange Act Rule 10b-5(b). As we reviewed the record, we determined that Ahmed (not Success Trade Securities) had ultimate authority over the statements at issue, and that Ahmed is liable under Exchange Act Rule 10b-5(b).[81] *See Janus Capital Grp. v. First Derivative Traders*, 131 S. Ct. 2296, 2301-02 (2011) (holding that the "maker" of a misleading statement is liable under Exchange Act Rule 10b-5(b) when the "maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it").

[cont'd]

and provided investors with some figures related to the Parent Company's use of the proceeds, but the figures were false and inaccurate.

80 Without citing any evidence, the Respondents claim that FINRA also "vetted" the offering documents, and they state that FINRA's review absolves them of liability for the misconduct. Issue No. 18. The Respondents are mistaken. FINRA firms and their associated persons may not shift their burden of compliance to FINRA. *See Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *20-21 n.38 (Feb. 20, 2014); *cf. Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at *54-55 (Dec. 19, 2008) ("A regulatory authority's failure to take early action neither operates as an estoppel against later action nor cures a violation.").

81 The Respondents' arguments concerning Exchange Act Rule 10b-5(b) ignore other applicable parts of the rule, Exchange Act Rule 10b-5(a) and (c). *See John P. Flannery*, Exchange Act Release No. 73840, 2014 SEC LEXIS 4994, at *37, 40 (Dec. 15, 2014) (explaining that Exchange Act Rule 10b-5(a) and (c) proscribe conduct that "employs *any* manipulative or deceptive device or engages in *any* manipulative or deceptive act," and it includes "the drafting or devising of fraudulent misstatements").

Ahmed exercised ultimate authority over the Parent Company, its activities, and the representations made during the course of the offering. Ahmed was the Parent Company's Chief Executive Officer, President, and largest shareholder. Ahmed was the Parent Company's sole decision maker, and no decision took place at the Parent Company without his approval. Ahmed recruited the individuals associated with Jade Wealth Management to sell the notes through Success Trade Securities, controlled the flow of information among the Parent Company, the registered representatives, and the investors, and directly sold the notes to investors in several instances.

With regard to the statements made in connection with the offering, Ahmed reviewed, authorized, and approved the contents of the Initial PPMs, Subsequent PPMs, and Supplement. He approved all sales of the notes to the investors, including the terms of the sales, such as the subscription price, interest rate, and maturity date. Ahmed also directly communicated with investors to convince them to renew, extend, or convert the notes into shares of the Parent Company's stock as the notes matured. The record in this case demonstrates that Ahmed had "ultimate authority" over the representations made about the Parent Company and the offering. *See Janus Capital Grp.*, 131 S. Ct. at 2301-02.

Although we have determined that only Ahmed is liable under Exchange Act Rule 10b-5(b), we nevertheless find that Ahmed *and* Success Trade Securities are liable for fraud under Exchange Act Rule 10b-5(a) and (c). In connection with the sales of the Parent Company's promissory notes to investors, the Respondents employed devices, schemes, and artifices to defraud, in violation of Exchange Act Rule 10b-5(a), because they orchestrated and implemented a scheme to sell the Parent Company's notes to investors based on false information about the Parent Company and the offering. The Respondents also engaged in acts, practices, and courses of business that operated as a fraud upon the investors, in violation of Exchange Act Rule 10b-5(c), because they supplied the investors with the false and misleading information about the Parent Company and the offering.

6. The Allegations in the Complaint Are Primary Violations and Do Not Implicate the Standards for Control Person Liability

The Respondents state that they "had no control person liability because they acted in good faith and did not induce any wrongdoing by Jade [Wealth Management]." Issue No. 16. Section 20(a) of the Exchange Act governs control person liability and states,[82]

[82] The Respondents cite to "Section 12(a) of the Exchange Act" for their discussion of control person liability. Because Section 12(a) of the Exchange Act pertains to the registration of securities that are purchased or sold on a national securities exchange, we assume that the citation is a typographical error, and that the Respondents intended to cite Section 20(a) of the Exchange Act.

> Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable . . . unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

Control person liability applies when an individual or entity is held secondarily liable for another individual's or entity's primary violation of the securities laws. *See vFinance Invs., Inc.*, Exchange Act Release No. 62448, 2010 SEC LEXIS 2216, *40 n.30 (July 2, 2010) (explaining that control person liability does not apply to allegations of primary liability or "causing violations"). As explained above, our review of this case, as defined by the allegations in the complaint, focuses on whether the Respondents, themselves, misrepresented and omitted material facts in connection with the Parent Company's offering. As such, we are concerned with the Respondents' primary violation of the Commission's and FINRA's antifraud rules. Their theory of control person liability does not apply.

We also note that, to the extent the Respondents rely on the affirmative defenses provided in the control person liability provisions of the Exchange Act, their reliance is faulty. As discussed *supra* Part III.A.4. (The Respondents Acted with the Requisite Scienter), the Respondents did not act "in good faith," and they directly and indirectly induced the fraud in this case by recruiting and registering the individuals associated with Jade Wealth Management to solicit and sell the Parent Company's promissory notes to investors based on the misrepresentations and omissions that they supplied.

7. The Respondents' Misrepresentations and Omissions Were Not Forward-Looking Statements Subject to Safe Harbor <u>Protection</u>

The Respondents assert that their statements in the offering documents constitute "[f]orward-looking statements [that] are not actionable." Issue No. 17. Section 21E of the Exchange Act and Exchange Act Rule 3b-6 define "forward-looking statement" to include a statement containing "a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, . . . plans and objectives of management for future operations, . . . [and] future economic performance." 15 U.S.C. § 78u-5(i)(1) (Section 21E definition); 17 C.F.R. § 240.3b-6(c) (Exchange Act Rule 3b-6 definition). Although Section 21E and Exchange Act Rule 3b-6 provide certain safe harbors to limit an issuer's liability for forward-looking statements, the safe harbors do not apply here.

Section 21E of the Exchange Act provides a safe harbor for written and oral forward-looking statements, but only in connection with private legal actions. *See* 15 U.S.C. § 78u-5(c)(1). This case is based on a self-regulatory organization's disciplinary proceeding. It is not a private legal action, and Section 21E of the Exchange Act does not apply. *Cf. Harold F. Harris*, 58 S.E.C. 1118, 1120-1121 n.9, 1130 (2006) (June 1, 2005) (explaining that the safe harbor for forward-looking statements does not apply to the Commission's enforcement actions).

The safe harbor in Exchange Act Rule 3b-6 is similarly limiting, and it applies only in circumstances when the forward-looking statements are contained in documents, such as Forms 10-K, 10-Q, and 20-F, which are filed with the Commission. *See* 17 C.F.R. § 240.3b-6(b). Consequently, the safe harbor provided under Exchange Act Rule 3b-6 is not available here because the Respondents did not make the statements in connection with documents that they filed with the Commission. *See Joseph P. Doxey*, Initial Decision Release No. 598, 2014 SEC LEXIS 1668, at *43-44 (May 15, 2014) (rejecting respondents' argument concerning safe harbor protection under Exchange Act Rule 3b-6).

8. The Respondents Committed Fraud, in Violation of FINRA Rule 2020

FINRA Rule 2020 is FINRA's antifraud rule. FINRA Rule 2020 prohibits members from "effect[ing] any transaction in, or induc[ing] the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."[83] The record in this case demonstrates that the Respondents engaged in fraud and violated FINRA Rule 2020. *See Dep't of Enforcement v. Fillet*, Complaint No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *38 (FINRA NAC Oct. 2, 2013) (explaining that FINRA Rule 2020 "captures a broader range of activity than [Exchange Act] Rule 10b-5(b)"), *aff'd in relevant part*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *1 (May 27, 2015).

The Respondents violated FINRA's antifraud rule because they induced investors to purchase the Parent Company's notes by means of misrepresentations and omissions of material fact concerning the Parent Company's financial outlook, the valuation of BP Trade, the Parent Company's listing on a European Exchange and acquisition of the Australian Company, and the offering, particularly the use of the offering's proceeds, the size and terms of the offering, and the accreditation of the participants in the offering.

* * *

Ahmed and Success Trade Securities: (1) misrepresented and omitted, (2) material facts, (3) with scienter, (4) in connection with the purchase or sale of securities, and (5) by means of interstate commerce. *See First Jersey Sec.*, 101 F.3d at 1467. We therefore affirm the Hearing Panel's findings that the Respondents engaged in securities fraud and willfully violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5,[84] and FINRA Rules 2020 and 2010.[85]

---

[83] Conduct that violates the Commission's or FINRA's rules, including the antifraud rules, is inconsistent with "high standards of commercial honor and just and equitable principles of trade" and violates FINRA Rule 2010. *See Everest Sec., Inc.*, 52 S.E.C. 958, 959 (1996), *aff'd*, 116 F.3d 1235 (8th Cir. 1997). FINRA Rules 2020 and 2010, which generally apply to FINRA "members," are applicable to associated persons pursuant to FINRA Rule 0140(a).

[84] The Respondents' *willful* violation of Section 10(b) of the Exchange Act and Exchange Act 10b-5 results in their statutory disqualification. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) ("'[W]illfully' in [the Exchange Act] means intentionally committing the act which constitutes the violation," not that "the actor [must] also be aware that he is violating one of the Rules or Acts."); *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC

[Footnote continued on next page]

B. The Respondents Sold Unregistered Securities Without the Benefit of an Exemption

The Respondents also sold unregistered securities without the benefit of an exemption, in contravention of Section 5 of the Securities Act. The Respondents' sales of unregistered securities violated FINRA Rule 2010.

1. Section 5 of the Securities Act

Section 5 of the Securities Act prohibits any person from selling a security in interstate commerce unless a registration statement is in effect as to the offer and sale of that security or there is an applicable exemption from the registration requirements. 15 U.S.C. § 77e(a) and (c); *see also Midas Secs., LLC*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199, at *25-26 (Jan. 20, 2012). To establish a prima facie case of a violation of Section 5 of the Securities Act, Enforcement must show that: (1) no registration statement was in effect as to the securities, (2) the Respondents sold or offered to sell the securities, and (3) interstate transportation or communication was used in connection with the sale or offer of sale. *See SEC v. Cont'l Tobacco Co. of S. Carolina, Inc.*, 463 F.2d 137, 155 (5th Cir. 1972). There is no dispute that the Respondents sold unregistered securities using interstate means. There also is no dispute that a registration statement was not on file or in effect for the sale of these securities.[86] Consequently,

[cont'd]

LEXIS 558, at *3 n.2 (Feb. 13, 2015) (stating that applicants were statutorily disqualified because they willfully violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5); *see also* Sections 3(a)(39)(F) (15 U.S.C. § 78c(a)(39)(F)) and 15(b)(4)(D) (15 U.S.C. § 78o(b)(4)(D)) of the Exchange Act; Article III, Section 4 of FINRA's By-Laws.

85 The Respondents argue that the Hearing Panel: (1) made "wildly unsubstantiated statements" about the Parent Company's lack of profitability (Issue No. 7), (2) improperly ignored evidence of RK's offer to purchase Success Trade Securities (Issue No. 8), and (3) incorrectly labeled the Respondents' fraud a "Ponzi Scheme" (Issue No. 12). The Respondents' arguments disregard the focus of our appellate review. The Respondents' critique of the accurate depiction of the Parent Company's financial outlook, their claims about RK's potential purchase of Success Trade Securities, and the label attributed to their fraud have no bearing on our analysis. Our focus is on the Respondents' conduct, and whether they engaged in fraud when they sold the Parent Company's promissory notes to investors. As discussed above, a preponderance of the evidence demonstrates that they misrepresented and omitted material facts in connection with their sales of the notes, acted with the requisite scienter, and violated the Commission's and FINRA's antifraud rules.

86 There was no registration in effect for the Respondents' sale of the Parent Company's promissory notes. The Respondents intended for the Parent Company's offering to be a private placement, and they did not attempt to register the securities. The Initial PPMs and Subsequent PPMs informed investors that the securities were exempt from registration under Rule 506. The Parent Company, however, filed a notice with the Commission claiming an exemption pursuant to Rule 505. Ahmed testified that the Rule 505 filing with the Commission was in error, an

[Footnote continued on next page]

Enforcement has established a prima facie case of a violation of Section 5 of the Securities Act, and the burden shifts to the Respondents to show that the transactions at issue were exempt from the Securities Act's registration requirements. *See Robert G. Leigh*, 50 S.E.C. 189, 192 (1990) ("It is well settled that the burden of establishing the availability of [a Section 5] exemption rests on the person claiming it"). "Exemptions from the registration requirements of the Securities Act are construed narrowly." *SEC v. Blazon Corp.*, 609 F.2d 960, 968 (9th Cir. 1979). Thus, evidence in support of an exemption must be "explicit, exact, and not built on mere conclusory statements." *Robert G. Weeks*, 56 S.E.C. 1297, 1322 n.34 (2003).

2. The Rule 506 Exemption

The Respondents contend that their sales of unregistered securities qualified for an exemption under Rule 506. Issue No. 19. Rule 506 is a "safe harbor" exemption under Regulation D of the Securities Act. *See Donald J. Anthony, Jr.*, Initial Decisions Release No. 745, 2015 SEC LEXIS 707, at *254 (Feb. 25, 2015). Unlike Rule 505, Rule 506 does not limit the duration of an offering, or the amount of capital that an offering may raise. 17 C.F.R. § 230.506 (stating that it is the "[e]xemption for limited offers and sales without regard to dollar amount of offering"); *see also Amendments to Regulation A*, Exchange Act Release No. 74578, 2015 SEC LEXIS 1102, at *403 (Mar. 25, 2015) (explaining that offerings relying on Rule 505 may raise up to $5 million within a 12-month period, and that offerings relying on Rule 506 may raise an unlimited amount of capital).

Under Rule 506, an issuer may claim an exemption and sell its securities to an unlimited number of "accredited investors," and up to 35 non-accredited investors. 17 C.F.R. § 230.506(b)(2)(i). In order for the exemption to apply, however, each of the 35 non-accredited investors also must be "sophisticated." 17 C.F.R. § 230.506(b)(2)(ii); *see Russell C. Schalk, Jr.*, Exchange Act Release No. 74753, 2015 SEC LEXIS 1479, at *17 (Apr. 17, 2015) (in the context of a settlement, explaining that an exemption under Rule 506 was not available because some of the non-accredited investors were not sophisticated). In this case, the Respondents sold the Parent Company's promissory notes to 23 non-accredited investors who also were not sophisticated.

The term "accredited investor" is defined in Rule 501(a) of Regulation D of the Securities Act. 17 C.F.R. § 230.501(a). An accredited investor includes any person "whose individual net worth, or joint net worth with that person's spouse, exceeds $1,000,000. 17 C.F.R. §

[cont'd]

exemption based on Rule 505 was unavailable, and the Parent Company intended to rely on Rule 506 as the basis for its exemption from registration.

We agree with the Respondents' statements concerning the unavailability of an exemption based on Rule 505. Rule 505 could not apply to the Parent Company's offering because the offering raised more than $5 million during a 12-month period. *See* 17 C.F.R. § 230.505(b)(2) (explaining that the Rule 505 exemption applies only if an offering does not exceed $5 million in any 12-month period).

230.501(a)(5). The definition also extends to any person "who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year." 17 C.F.R. § 230.501(a)(6). At a minimum,[87] 23 of the 65 investors who purchased the Parent Company's notes had a net worth of less than $1 million and income of less than $200,000 in each of the two years prior to the offering.[88]

These 23 individuals were non-accredited investors, and consequently, they had to be sophisticated in order for an exemption to apply under Rule 506. *See* 17 C.F.R. § 230.506(b)(2)(ii) (stating that non-accredited investors must have "such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment."). The record, however, demonstrates that the 23 non-accredited investors also were not sophisticated. Most of the non-accredited investors were under 23 years of age. They typically left the "investment history" portion of their account documents blank, or noted that their investment history was limited to the purchase or sale of "marketable securities." All of the non-accredited investors stated that their "investment experience" was "seldom" or "occasional." The non-accredited investors were not sophisticated and did not have the financial or business knowledge and experience to evaluate the merits and risks of investing in the Parent Company.[89]

---

87 We have no confidence that the remaining 42 investors qualified as accredited investors under Rule 501(a). We simply lack sufficient evidence to make the determination one way or the other. The investors' financial information contained in the record was, at best, scant. In addition, to the extent the record contains financial information concerning certain investors, the information is unreliable. A former registered representative of Success Trade Securities who testified at the hearing stated that many of the investors signed blank "Accredited Investor Questionnaires," which he would complete after-the-fact. In several instances, he completed the forms using inaccurate or false demographic, profile, or income information based on an investor's anticipated income. Nothing in the definition of "accredited investor," however, suggests that an investor's income or net worth may be based on a future projection.

88 The 23 individuals constituted 35 percent of the total investors. They purchased $2.3 million of the Parent Company's notes, which is approximately 12 percent of the amount raised.

89 On appeal, the Respondents suggest that the Hearing Panel mischaracterized the investors' financial and business experience. Issue No. 3. To support this point, the Respondents state that the investors had their own financial advisers (typically, the individuals associated with Jade Wealth Management) to review the Parent Company's offering documents and provide them with investment expertise.

Rule 506 states that a purchaser "either alone or with his purchaser representative" must be sophisticated. 17 C.F.R. § 230.506(b)(2)(ii). In order to qualify as a "purchaser representative," however, a person must satisfy four specific conditions, which are outlined in Rule 501(i) of Regulation D of the Securities Act. *See* 17 C.F.R. § 230.501(i) (stating that a person must satisfy *all four conditions* to qualify as a purchaser representative under Rule 501(i)) (emphasis added). The individuals associated with Jade Wealth Management and registered with Success Trade Securities did not satisfy all four conditions in Rule 501(i). Most notably, they did not meet the first condition under the rule, which prohibits purchaser representatives from

[Footnote continued on next page]

Because the Respondents sold the Parent Company's promissory notes to non-accredited, unsophisticated investors, they may not claim an exemption from securities registration based on Rule 506. Consequently, we affirm the Hearing Panel's findings that the Respondents sold unregistered securities without the benefit of an exemption, in contravention of Section 5 of the Securities Act and violation of FINRA Rule 2010.[90] *See Midas Sec.*, 2012 SEC LEXIS 199, at *46 n.63 ("A violation of Securities Act Section 5 also violates NASD Rule 2110." (citing *Sorrell v. SEC*, 679 F.2d 1323, 1326 (9th Cir. 1982))); *Kunz v. SEC*, 64 F. App'x 659, 663-64, 668 (10th Cir. 2003) (holding that respondent violated NASD Rule 2110 by failing to comply with the Securities Act's registration requirements).

C. The Respondents Waived Their Advice of Counsel Defense

The Respondents assert that they are not liable for the securities fraud because they relied on the advice of counsel.[91] To successfully assert reliance on the advice of counsel in the context of a disciplinary proceeding, a respondent must establish "that the respondent made full disclosure to counsel, appropriately sought to obtain relevant legal advice, obtained it, and then reasonably relied on the advice." *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *40 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009). In addition, the advice must be "based on full and complete disclosure," and the respondent asserting reliance must produce "actual advice from an actual lawyer." *Id.* The Respondents' advice of counsel defense fails for two reasons.

As an initial matter, the Respondents waived advice of counsel as a potential defense. The Respondents asserted advice of counsel as an affirmative defense in the proceedings before the Hearing Panel when they filed their answer to the complaint. Based on the Respondents' representations concerning the advice of counsel defense, Enforcement requested that the Respondents proffer information and documents evidencing their communications and

---

[cont'd]

being "an affiliate, director, officer or other employee of the issuer." 17 C.F.R. § 230.501(i)(1). Jade Wealth Management's advisers were employees of Success Trade Securities, which in turn, made them employees of the issuer, i.e., Parent Company. Because the individuals associated with Jade Wealth Management did not satisfy all four conditions in Rule 501(i), they did not qualify as purchaser representatives for purposes of the Rule 506 exemption.

[90] Any offering seeking an exemption based on Rule 506 also must comply with Rule 502, which requires the disclosure of certain financial and non-financial information to all non-accredited investors. 17 C.F.R. §§ 230.502(b), 506(b). The Respondents failed to provide the non-accredited investors with the required financial and non-financial disclosures.

[91] Although the Respondents also assert advice of counsel as a defense to their liability for the sales of unregistered securities, their purported "reliance on counsel 'is of no consequence' to [the] determination of violations of Securities Act Section 5 because the 'advice-of-counsel defense only goes to the question of scienter' and scienter is not an element of Section 5 violations." *David F. Bandimere*, Initial Decision Release No. 507, 2013 SEC LEXIS 3142, at *146-47 (Oct. 8, 2013) (quoting *Zacharias v. SEC*, 569 F.3d 458, 467 (D.C. Cir. 2009)).

interactions with counsel. The Respondents, through counsel, declined to submit to Enforcement's request, stating "[w]e hereby withdraw the advice of counsel defense as stated in the [r]esponse, thus making items [one] through [eight] irrelevant and moot." In response, Enforcement filed an unopposed motion to strike the Respondents' advice of counsel defense. The motion stated, "[c]ounsel for Enforcement spoke with counsel for Respondents about striking the advice of counsel defense, ... [and] [c]ounsel for Respondent[s] stated that Respondents would not oppose a motion to strike the defense." The Hearing Officer granted Enforcement's motion. The Respondents withdrew advice of counsel as a defense before the Hearing Panel, and consequently, may not raise the issue on appeal before us. *See Harris v. US Dep't of Veterans Affairs*, 126 F.3d 339, 342-44 (D.C. Cir. 1997) (finding waiver of limitation defense where not pleaded in answer to the complaint); *Mayer A. Amsel*, 52 S.E.C. 761, 767 (1996) (emphasizing that "a respondent cannot be permitted to gamble on one course of action and, upon an unfavorable decision, to try another course of action").

The advice of counsel defense also fails because Ahmed's testimony concerning his discussions and interactions with counsel was scant, incoherent, and did not meet the standards necessary to establish an advice of counsel defense.[92] *See Dep't of Enforcement v. McCrudden*, Complaint No. 2007008358101, 2010 FINRA Discip. LEXIS 25, at *23-24 (Oct. 15, 2010) (rejecting respondent's advice of counsel defense where he failed to provide adequate evidence of conversations with counsel); *see also Sales of Unregistered Securities by Broker-Dealers*, Exchange Act Release No. 9239, 1971 SEC LEXIS 19, at *8 (July 7, 1971) (describing how a broker's determination that an exemption from securities registration requirements is available should only be made after "competent outside counsel having no proprietary interest in the offering" provides an opinion that explicitly supports and provides a legal basis for such a determination).

D. The Respondents' Procedural Arguments Have No Merit

The Respondents raise several procedural arguments in this appeal. Their procedural arguments have no merit.

1. The Respondents Have Not Established Bias

The Respondents do not generally contest the facts underlying this case. Their primary argument on appeal relates to bias on the part of a Hearing Panelist. The Respondents assert that Ahmed and the Panelist had a prior business relationship that biased the Panelist against them and made the Panelist susceptible toward viewing the underlying conduct in a light unfavorable to them. The Respondents surmise that it was the Panelist's bias that resulted in the Hearing Panel's determination that they violated the Commission's and FINRA's rules. Issue Nos. 1 and 2. The Respondents' argument fails on several levels.

---

92 For example, when asked why he created the Supplement and added information concerning the loans to Jade Wealth Management, Ahmed responded only, "[o]ne of the main reason[s] was I was advised by my counsel."

As an initial matter, the Hearing Officer informed the parties of the prior relationship between Ahmed and the Panelist, and Ahmed did not object to the Panelist's participation in the disciplinary proceeding. On April 10, 2013, Enforcement filed the complaint and a request for an expedited hearing and a TCDO. On April 11, 2013, the Hearing Officer provided the parties with the names and associations of the two individuals who would preside of the TCDO proceeding. The Panelist was one of these individuals. On that same day, the Hearing Officer held a prehearing conference call with the parties to discuss the TCDO. The Hearing Officer stated, "before we appoint them [the two Panelists], I want to make a disclosure as to one of them." The Hearing Officer, once again, provided the parties with the name and affiliation of the Panelist and disclosed, "[the Panelist] is currently registered with FINRA." During the prehearing conference call, the Hearing Officer added,

> [The Panelist] has informed us that more than 10 years ago [the Panelist] did have some contact with the [R]espondents. [The Panelist] at that time was . . . at Computer Clearing Services . . . . [The Panelist] set up a clearing agreement for Success Trade [Securities] and Mr. Ahmed. [The Panelist's] only contact was either by telephone or when Mr. Ahmed came into the offices of Computer Clearing Services. Once the agreement was signed, [the Panelist] had no more contact with Mr. Ahmed. In our office, we have concluded that we do not think that this contact creates a conflict of interest, and that we think it should not prevent [the Panelist] from serving on the panel . . . . However, in an abundance of caution, and a concern that the parties be fully informed, we do make this disclosure and ask whether any party has an objection to [the Panelist] serving as a panel member in connection with this matter.

The Hearing Officer paused to give the parties "a few moments to reflect" on the matter. Ahmed did not object to the Panelist's participation in the TCDO proceeding.[93]

The Panelist who had the prior relationship with Ahmed and participated in the TCDO proceeding also served as a Panelist in the disciplinary proceeding.[94] On July 24, 2013, the Hearing Officer provided the parties with the names and associations of the two Panelists for the disciplinary hearing. The subject Panelist's name and association appeared on the list. When the hearing in the disciplinary matter occurred, the parties were afforded another opportunity to object to the Panelist's participation in the proceeding. On August 26, 2013, the first day of the hearing, the Hearing Officer opened with her remarks, which included the following statement,

---

93 Ahmed specifically stated, "I don't have any objection."

94 The same Hearing Officer also presided over the TCDO and disciplinary proceedings. Different individuals served as the second Hearing Panelist for the TCDO and disciplinary proceedings.

> The first item on my agenda . . . I discussed this with counsel some time ago in connection with the TCDO that [the Panelist] had, at some time in the past, had an encounter with Mr. Ahmed. And for the record, we would like to just make disclosure of that for the purposes of this proceeding.
>
> The Panelist then stated for the record,
>
> For the record, in 1999, that was 14 years ago, I met Mr. Ahmed. I was . . . at Computer Clearing Services. I was part of a team that negotiated a contract, a clearing contract with Mr. Ahmed. When the contract was finalized, I virtually had no contact with him since that time. My – in fact, there has been no contact with Mr. Ahmed since that time. That is my disclosure.
>
> The Hearing Officer concluded,
>
> I believe that the parties had agreed that [the Panelist] could serve on the panel for the TCDO, and I believe at the time also agreed that he could serve on this panel. But in an abundance of caution, we wanted to make that disclosure.

The Hearing Officer then asked the parties whether that had "any issues" that should be addressed before the first witness testified. In response, Ahmed, through counsel, stated, "[n]one from [the] Respondent[s]."

The Respondents were informed of the Panelist's prior business relationship with Ahmed and presented with several opportunities to seek disqualification of the Panelist, but they failed to do so. A party to a disciplinary proceeding may move to disqualify a panelist if the party believes that a panelist is biased. *See* FINRA Rule 9234(b). The motion must be based on a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the panelist's fairness might be questioned. *Id.* The rule provides that the moving party file a motion to disqualify a Panelist within 15 days of learning of the facts that are the grounds for disqualification. *Id.* The Respondents could have moved to disqualify the Panelist at several different junctures, including at the start of the TCDO or disciplinary proceeding, but they did not.

On appeal, the Respondents state that Success Trade Securities cleared through North American Clearing from 2006 to 2008, and the Panelist failed to disclose his employment with the clearing firm during that same period of time. Interestingly, Ahmed recounts a "stormy," "sour," and "acrimonious" relationship that developed between him and the Panelist while Success Trade Securities cleared through North American Clearing, but Ahmed did not recall any of these events until he "reviewed his legal files" in anticipation of this appeal in July 2014. As discussed above, in April 2014, the Hearing Officer provided the parties with the Panelist's name and current employer, and the Hearing Officer informed the parties that the Panelist was currently registered with FINRA. The Hearing Officer also disclosed a significantly earlier business relationship between the Respondents and Panelist dating back to 1999, and the Hearing

Officer presented the Respondents with opportunities to object to the Panelist's consideration of their TCDO and disciplinary case. The Respondents failed to comply with FINRA Rule 9234, and they waived the argument by waiting until this appeal to raise the issue of the Panelist's purported bias against them.[95] *See Robert Fitzpatrick*, 55 S.E.C. 419, 431 (2001) ("We have required that objections to the composition of the Hearing Panel be raised first to the Hearing Panel so that the situation can be considered and, if appropriate, remedied as soon as possible"), *aff'd*, 63 F. App'x 20 (2d Cir. 2003); *Brooklyn Capital & Secs. Trading, Inc.*, 52 S.E.C. 1286, 1294 n.34 (1997) (stating that "we have held, we are not required to consider objections that were not raised at a time when the matter complained of could have been remedied").

Not only have the Respondents waived the issue of bias, the record also demonstrates that the Hearing Panel did not exhibit bias against the Respondents. To the contrary, the evidence demonstrates that the Hearing Panel formulated their opinion based on the extensive record before them and imposed liability against the Respondents based on the overwhelming testimony and documentary evidence.[96] *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *62 (Jan. 30, 2009) ("[B]ias by a hearing officer is disqualifying only when it stems from an extrajudicial source and results in a decision on the merits based on matters other than those gleaned from participation in a case."), *aff'd*, 416 F. App'x 142 (3d Cir. 2010); *cf. Mgmt. Fin., Inc.*, 46 S.E.C. 226, 233 n.17 (1976) (declining to find bias where respondents made naked accusation that adjudicators "look[ed] askance at and [did] not understand the problems of a small, young brokerage firm").

---

[95] In connection with this issue, the Respondents requested that we take judicial notice of a report titled, "The Importance of Arbitrator Disclosure," and the press release publicizing the report. *See The Importance of Arbitrator Disclosure*, Public Investors Arbitration Bar Association (Oct. 7, 2014), https://piaba.org/system/files/pdfs/The%20Importance%20of%20Arbitrator%20Disclosure%20(October%207,%202014).pdf. The 158-page report and press release discuss the interplay between diversity and bias in FINRA's arbitration proceedings.

FINRA Rule 9145(b) authorizes us to "take official notice of such matters as might be judicially noticed by a court." Although we have this grant of authority, we decline to exercise it here. The report and press release relate to FINRA arbitrations and the process of appointing arbitrators to arbitration panels. The publications therefore are immaterial and have no bearing on the disciplinary case that is under review in this appeal. *See Stephen J. Gluckman*, 54 S.E.C. 175, 187 n.42 (1999) ("Gluckman appears mistakenly to believe that this proceeding is an arbitration proceeding. The NASD's Code of Arbitration Procedure, however, is inapplicable to NASD enforcement actions."); *see also* FINRA Rule 9346(b) (explaining that a party who introduces additional or new evidence must demonstrate why the evidence is material to proceeding).

[96] The Respondents' argument concerning bias also demonstrates a misunderstanding of what comprises a Hearing Panel's decision. FINRA Rule 9268(a) states that the Hearing Panel's decision "reflects the views of the Hearing Panel . . . as determined by majority vote." The decision that the Hearing Panel rendered against the Respondents represented the collective determination of the Hearing Officer and two Panelists. *See* FINRA Rule 9231(b) (explaining that a "Hearing Panel" is composed of a Hearing Officer and two Panelists). It was not the product of one individual's perspective of the facts and law.

Finally, to the extent that any bias may have occurred, the NAC's de novo review of this case ensures that the overall disciplinary proceeding conducted against the Respondents was fair and without bias. *See Robert E. Gibbs*, 51 S.E.C. 482, 484-85 (1993) (discussing how de novo review insulates against bias), *aff'd*, 25 F.3d 1056 (10th Cir. 1994); *Dep't of Enforcement v. Dunbar*, Complaint No. C07050050, 2008 FINRA Discip. LEXIS 18, at *33 (FINRA NAC May 20, 2008) (holding that the NAC's de novo review cures alleged Hearing Panel prejudice).[97]

2. The Hearing Panel Properly Excluded the Respondents' Expert Witness

The Respondents state they required the testimony of an expert to refute Enforcement's allegations against them, and that the Hearing Officer erred in denying their motion to offer expert testimony. Issue No. 11. We disagree. In the disciplinary proceeding before the Hearing Panel, the Respondents filed a motion to permit expert testimony. The motion explained the bases for the Respondents' request for expert testimony and explained that the proposed expert was prepared to offer opinions in the following four areas:

1. "It was reasonable to conclude at the time of the [u]nsecured [p]romissory [n]ote sales that [the Parent Company] could honor their (*sic*) debt obligations."

2. "The terms of the [u]nsecured [p]romissory [n]otes are reasonable when compared to the financing practices of other firms."

3. "It is common for firms to use proceeds of debt sales to refund other debts which have come due."

4. "The average U.S. [c]ompany conducting an [initial public offering] has negative net income during the year of the offering."

The Hearing Officer examined the Respondents' motion for expert testimony and denied the motion because the Respondents failed to establish a reasonable basis for the testimony. In the order denying the Respondents' motion, the Hearing Officer stated the proposed expert's opinions were not relevant, reliable, or helpful because the opinions had "nothing to do with

---

[97] Without pointing to any specific attribute, characteristic, or trait, the Respondents argue that they were the subject of selective prosecution. The record, however, is devoid of any evidence to support the Respondents' claims. To establish a claim of selective prosecution, a respondent must demonstrate that he was singled out unfairly for prosecution based on improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right. *See Epstein*, 2009 SEC LEXIS 217, at *53; *Nicholas T. Avello*, 55 S.E.C. 1197, 1209 (2002) (rejecting selective prosecution argument and holding that NASD has wide discretion in deciding against whom to proceed), *aff'd*, 454 F.3d 619 (7th Cir. 2006). The Respondents have made no such showing.

what disclosures [the] Respondents gave investors and whether those disclosures were false and misleading in light of the particular circumstances of this particular issuer."[98]

The Hearing Officer properly denied the Respondents' motion for expert testimony. Under FINRA Rule 9263(a), the Hearing Officer "shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial." The Hearing Officer is granted broad discretion to accept or reject evidence under the rule. *See Dep't of Enforcement v. Mullins*, Complaint Nos. 20070094345 and 20070111775, 2011 FINRA Discip. LEXIS 61, at *50-51 (FINRA NAC Feb. 24, 2011), *aff'd*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *1 (Feb. 10, 2012). "Because this discretion is broad, the party arguing abuse of discretion assumes a *heavy burden* that can be overcome only upon showing that the Hearing Officer's reasons to admit or exclude the evidence were 'so insubstantial as to render . . . [the admission or exclusion] an abuse of discretion.'" *Dep't of Enforcement v. Strong*, Complaint No. E8A2003091501, 2008 FINRA Discip. LEXIS 19, at *17-18 (FINRA NAC Aug. 13, 2008) (emphasis added). On appeal, the Respondents have failed to meet the "heavy burden" necessary to overturn the Hearing Officer's ruling on the expert's testimony.[99]

IV. Sanctions

The Hearing Panel applied FINRA's Sanction Guidelines, barred Ahmed, and expelled Success Trade Securities for engaging in securities fraud.[100] In light of the bar and expulsion for

---

[98] Although the formal rules of evidence do not apply to FINRA disciplinary proceedings, FINRA adjudicators generally consult Federal Rule of Evidence 702 for guidance concerning expert testimony. *See* FINRA Rule 9145(a) (the formal rules of evidence do not apply in FINRA disciplinary proceedings); *see also* Fed. R. Evid. 702 ("A witness who is qualified as an expert . . . may testify in the form of an opinion . . . if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.").

[99] The Respondents state that the proposed expert's opinions were not within the Hearing Panel's expertise. That is not the case. FINRA is a self-regulatory organization, and the individuals who serve on Hearing Panels often have sufficient securities industry knowledge and expertise to render a businessman's judgment without the aid of expert testimony. *See Blinder*, 50 S.E.C. at 1222 ("NASD itself is an expert body whose 'businessman's judgment' may be brought to bear in reaching its decision."); *Dep't of Enforcement v. U.S. Rica Fin., Inc.*, Complaint No. C01000003, 2003 NASD Discip. LEXIS 24, at *27-28 (NASD NAC Sept. 9, 2003) ("[I]n matters that are before a tribunal that includes two or more individuals with experience in the securities industry, expert testimony is often unnecessary and rarely accepted.").

[100] *See FINRA Sanction Guidelines* (2013), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf. In assessing the appropriate sanctions for the Respondents' misconduct, we apply the applicable Guidelines in place at the time of this decision and consider the specific Guidelines related to each violation. *See id.* at 8. We also consult the General

[Footnote continued on next page]

the fraud, the Hearing Panel declined to impose additional sanctions on the Respondents for selling unregistered securities.[101] As discussed in detail below, we affirm Ahmed's bar and Success Trade Securities' expulsion for the fraud, but we have decided to impose sanctions for the unregistered securities sales where the Hearing Panel declined to do so. Our review of the evidence leads us to conclude that the barring of Ahmed and expulsion of Success Trade Securities are the appropriate sanctions for that violation as well.

A. The Respondents' Disciplinary History

Ahmed and Success Trade Securities each have a significant disciplinary history, which is an aggravating factor for purposes of sanctions.[102] The Respondents' disciplinary history demonstrates that they are unwilling or unable to comply with FINRA's rules or the securities laws, and that more severe sanctions are needed to "deter and prevent future misconduct."[103]

1. The Order Audit Trail System (OATS) Violation

In August 2004, Success Trade Securities settled a regulatory action with FINRA. In the disciplinary action, the Firm consented to findings that it had failed to report 6,361 reportable order events to OATS in a timely manner. FINRA censured Success Trade Securities and fined it $6,000 for the violation.

[cont'd]

Principles Applicable to All Sanction Determinations and Principal Considerations in Determining Sanctions, which adjudicators consult in every disciplinary case. *See id.* at 2-7.

[101] The Hearing Panel noted that it would have imposed a one-year suspension in all capacities on each Respondent for the sales of unregistered securities.

[102] *See Castle Secs. Corp.*, 58 S.E.C. 826, 836-37 (2005) (explaining that disciplinary history is a significant aggravating factor and an important consideration in weighing sanctions); *see also Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2) (considering respondent's disciplinary history), 6 (Principal Considerations in Determining Sanctions, No. 1) (same).

[103] *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2). The Respondents state that they were the subject of only "two" disciplinary events, which were "relatively minor in nature," and that the Hearing Panel placed excessive weight on their disciplinary histories. Issue No. 10. As an initial matter, Ahmed was involved in three disciplinary events, and Success Trade Securities had six disciplinary disclosures. Moreover, to the extent the Hearing Panel relied on the Respondents' disciplinary histories to determine the sanctions for their misconduct, we conclude that the Hearing Panel afforded the Respondents' disciplinary histories the proper weight. As the Hearing Panel stated, and the Guidelines underscore, "The Respondents' disciplinary history evidences a disregard for regulatory requirements, investor protection, and commercial integrity."

2. The Net Capital Violation

In June 2009, Success Trade Securities settled a regulatory action with FINRA, in which the Firm consented to findings that it had conducted a securities business while failing to maintain sufficient net capital. FINRA fined Success Trade Securities $5,000 for the misconduct.

3. The AML Violations

In February 2012, Ahmed and Success Trade Securities settled a regulatory action with FINRA, which found that the Respondents violated a host of the Commission's and FINRA's rules. Specifically, Ahmed and Success Trade Securities consented to findings that Ahmed caused the Firm to: (1) fail to implement an AML program that was reasonably tailored to detect and cause the reporting of suspicious transactions, identify suspicious customers and customer activity, and annually test the independence and performance of the AML program and system, (2) conduct a securities business while failing to maintain its required minimum net capital, (3) prepare and maintain inaccurate books and records and submit inaccurate Financial and Operational Combined Uniform Single (FOCUS) Reports, (4) fail to report 39 customer complaints and other required disclosures, (5) fail to obtain FINRA's approval prior to implementing material changes to the Firm's business model, (6) fail to establish, maintain, and enforce adequate supervisory systems and procedures, and (7) fail to establish supervisory systems and procedures governing deferred variable annuities. For these violations, FINRA censured Success Trade Securities and fined it $100,000. FINRA suspended Ahmed in all principal capacities for 60 days, fined him $10,000, and ordered him to complete 16 hours of continuing education related to AML compliance.

4. The Second OATS Violation

In April 2014, Success Trade Securities settled a regulatory matter with FINRA. In the disciplinary action, the Firm consented to findings that it had transmitted 47,248 reportable order events to OATS, which OATS rejected for context or syntax errors. The Firm acknowledged that the repairs were "repairable," but it did not correct any of the rejected reportable order events. As a result, Success Trade Securities failed to transmit 47,248 reportable order events to OATS over a three-month period. FINRA censured Success Trade Securities and fined the Firm $7,500 for the second OATS violation.

5. Utah's Denial of Broker-Dealer and Broker-Dealer Agent Registrations

In January 2015, Ahmed and Success Trade Securities filed applications for broker-dealer and broker-dealer agent registration, respectively, with Utah's Division of Securities. Utah denied the Respondents' applications in February 2015. In its decision, the regulator examined the Respondents' disclosures concerning their customer complaints and regulatory actions, found that the Respondents had failed to respond to the regulator's inquiries concerning their misconduct, and determined that it was "in the public interest that Respondents' applications for broker-dealer and broker-dealer agent licenses be denied."[104]

6. Alaska's Denial of Broker-Dealer and Broker-Dealer Agent Registrations

In January 2015, Ahmed and Success Trade Securities filed applications for broker-dealer and broker-dealer agent registration, respectively, with Alaska's Division of Banking and Securities. Alaska denied the Respondents' applications in April 2015. The denial stated that the Respondents provided the regulator with false and misleading information in connection with certain events in March 2012, and that the Respondents failed to respond to the regulator's requests for information concerning pending regulatory actions against Success Trade Securities and its executive officers. The regulator determined that the Respondents' false and misleading statements, and overall failure to respond, violated Alaska's statutes and regulations prohibiting "dishonest or unethical practices or conduct in the securities or investment advisory business."[105]

B. The Respondents' Post-Complaint Misconduct

The evidence in this case demonstrates that Ahmed and Success Trade Securities continue to engage in misconduct and have established a disturbing pattern of misconduct.[106] This evidence of continued misconduct is admissible to determine sanctions and presents a powerful aggravating factor as we address the Respondents' fraud and sales of unregistered securities.[107]

---

[104] Utah's denial of the Respondents' applications for registration is a disciplinary event that affects our determination of sanctions. *See McCrudden*, 2010 FINRA Discip. LEXIS 25, at *35-36 (finding that the National Futures Association's (NFA) and Commodity Futures Trading Commission's (CFTC) denial of the respondent's applications for licensing as a commodity pool operator, associated person, and principal were "disciplinary event[s]" for purposes of sanctions analysis). Utah's denial of the Respondents' applications for broker-dealer and broker-dealer agent registration subjects them to statutory disqualification. *See* Section 3(a)(39)(B)(i)(I) (15 U.S.C. § 78c(a)(39)(B)(i)(I)) of the Exchange Act; Article III, Section 4 of FINRA's By-Laws.

[105] Similar to the matter involving Utah's securities regulators, Alaska's denial of the Respondents' applications for registration affects our sanctions analysis and subjects the Respondents to statutory disqualification. *See McCrudden*, 2010 FINRA Discip. LEXIS 25, at *35-36; *see also* Section 3(a)(39)(B)(i)(I) (15 U.S.C. § 78c(a)(39)(B)(i)(I)) of the Exchange Act; Article III, Section 4 of FINRA's By-Laws.

[106] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 8) (considering whether the respondent engaged in numerous acts or a pattern of misconduct).

[107] Evidence of misconduct that is not alleged in the complaint, but is similar to the misconduct charged in the complaint, is admissible to determine sanctions. *See Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *22 n.33 (July 1, 2008) (finding, in an unauthorized trading case, that evidence of unauthorized trading, which was not alleged in the complaint, was admissible to gauge aggravating factors to assess sanctions).

Enforcement filed the complaint against the Respondents on April 10, 2013. Approximately three weeks later, on May 6, 2013, Ahmed and RK executed a letter of intent. The letter of intent documented RK's proposed purchase of the assets of Success Trade Securities and a 15 percent ownership in BP Trade for $10.7 million. If the transaction had occurred, RK would have acquired Success Trade Securities' tangible and intangible assets, customer lists and accounts, websites (Just2Trade.com, LowTrades.com, and SuccessTrade.com), and the "goodwill associated therewith, all free and clear of any security interests."

Ahmed forwarded the letter of intent to FINRA's Membership Application Program (MAP) Group. On May 8, 2013, FINRA emailed Ahmed to inform him that the transaction described in the letter of intent required the filing of a continuing membership application (CMA). The staff's email cautioned, "the contemplated transaction as described in the [letter of intent] is not per se approvable as presently constructed because the buyer is not a registered broker-dealer . . . . [h]owever, staff will reserve judgment until an actual application with supporting documentation is filed."

Despite these warnings, on May 16, 2013, Ahmed emailed investors to inform them of Success Trade Securities' imminent sale. Ahmed explained, "[t]he purchase price is $10.7 million, which we expect to be paid over a two or three year period, and intend to use solely to reimburse you and other investors." Ahmed added, "[a]t this time we are suspending interest payments and note repurchases, and expect the next payment to each investor to be following the signing of the purchase agreement arising from the [letter of intent]. We will notify you of that distribution date upon the signing of the purchase agreement."

On May 23, 2013, FINRA sent Ahmed a letter to reiterate the requirement that Success Trade Securities file an application to obtain approval for RK's proposed acquisition of the broker-dealer. The staff stated, "FINRA has previously advised you, by way of an email dated May 8, 2013, as well as pursuant to conversations held by and among FINRA staff and you and [Success Trade Securities'] outside counsel, that the Firm has an obligation to file for and obtain approval for the transfer of assets, business or lines of operation of the Firm." The staff explained that it had "serious regulatory concerns" related to Ahmed's email of May 16, 2013, and that Ahmed's email was false and misleading and violated FINRA Rule 2210(d)(1).[108] The

---

[108] FINRA Rule 2210(d)(1) governs firms' and associated persons' communications with the public and states, in part:

> (A) All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.

[Footnote continued on next page]

staff asserted, "you distributed the [i]nvestor [l]etter on May 16, 2013, which is eight days after FINRA staff informed you that the transaction described in the [i]nvestor [l]etter was '. . . per se not approvable.' Despite this prior notice, you distributed the [i]nvestor [l]etter which indicates that the transaction is viable and expected to go forward."

Ahmed responded to FINRA's letter by email on May 30, 2013. The email responded to four questions that the staff had posed to Ahmed, and provided the staff with a list of investors that had received the communication concerning Success Trade Securities' proposed purchase. Ahmed's email added, "[Success Trade Securities] shall cease using the [i]nvestor [l]etter and any letter with letterhead identifying [Success Trade Securities] as a 'Member of FINRA, SIPC.'" The Respondents never completed an application to obtain approval for the sale of Success Trade Securities, and the evidence suggests that the proposed sale did not occur.

C. Fraud

For intentional misrepresentations or material omissions of fact, the Guidelines recommend a fine of $10,000 to $100,000.[109] The Guidelines also advise adjudicators to suspend an individual or firm in any or all capacities for 10 business days to two years.[110] In egregious cases, the Guidelines suggest barring the individual and expelling the firm.[111]

Over the course of four years,[112] the Respondents orchestrated, implemented, and recruited others to participate in a profound fraud. At every turn, the Respondents misrepresented and omitted material information about the Parent Company, the Parent Company's financial condition, the offering, the intended use of the offering's proceeds, and the Parent Company's future prospects, including BP Trade's valuation and the Parent Company's listing on a European Exchange and acquisition of an Australian Company. The Respondents'

[cont'd]

> (B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

109 *Guidelines*, at 88 (Misrepresentations or Material Omissions of Fact).

110 *Id.*

111 *Id.*

112 *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 9) (considering whether the respondent engaged in the misconduct over an extended period of time).

fraud profited them greatly,[113] as they obtained $19.4 million from 65 investors,[114] a number of whom were young and financially unsophisticated.[115]

The Respondents' misconduct was striking for several reasons. As an initial matter, the Respondents' fraud resulted in substantial investor losses – 59 investors incurred losses totaling $13.7 million.[116] Second, the Respondents' fraud was brazen. When the State Securities Regulators instructed the Respondents to stop selling the Parent Company's notes in October 2012, they ignored the regulators, continued selling the notes for four additional months, and sold 33 more notes for $2.6 million.[117] Third, the Respondents' fraud epitomized the troubling conflicts of interest that may arise in offerings involving affiliated issuers and broker-dealers.[118] Ahmed founded, owned, and managed the issuer, the broker-dealer promoting the issuer's securities, and at least one of the other financial beneficiaries of the offering, BP Trade.[119]

---

113 *See id.* (Principal Considerations in Determining Sanctions, No. 17) (considering whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain). The Respondents assert that Ahmed's repayment of the officer loans with interest supports the imposition of more lenient sanctions for the fraud. Issue No. 13. It does not. As an initial matter, the record contains no evidence to demonstrate that Ahmed actually repaid the loans. The promissory note, on which the Respondents rely, was prepared and signed on the first day of the hearing and evidences only the existence of Ahmed's debt, not the repayment of it. In addition, Ahmed's acceptance of responsibility for the misconduct through his repayment of the loans is mitigating only if it occurs prior to a regulator's detection or intervention. *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 2) (considering whether the respondent accepted responsibility for and acknowledged the misconduct prior to regulatory intervention). The record in this case, however, demonstrates that Ahmed did not rectify the matter, if he did so, until FINRA intervened. *See Dist. Bus. Conduct Comm. v. Gurfel*, Complaint No. C9B950010, 1998 NASD Discip. LEXIS 52, at *21 (NASD NAC June 12, 1998) ("[H]is repayment of the funds is not a mitigating factor, as the offer of repayment occurred only after he was confronted about his wrongdoing . . . ."), *aff'd*, 54 S.E.C. 56 (1999).

114 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 18) (considering the character of the transactions at issue).

115 *See id.* (Principal Considerations in Determining Sanctions, No. 19) (considering the level of sophistication of the affected customers).

116 *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 11) (considering whether the respondent's misconduct resulted in injury to the investing public and the nature and extent of the injury).

117 *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 15) (considering whether the respondent engaged in the misconduct notwithstanding prior warnings from regulators).

118 *See FINRA Regulatory Notice 10-22*, 2010 FINRA LEXIS 43, at *14 (cautioning broker-dealers about their promotion of offerings involving affiliated entities).

Finally, the Respondents' fraud was wrought with other acts of dubious conduct, such as the incomplete and untimely production of some documents,[120] the suspect origin and validity of other documents, the ad hoc preparation of documents in anticipation of this disciplinary case,[121] and the location of $4.1 million in unaccounted proceeds received during the course of the Parent Company's offering.

As we reviewed the Respondents' extensive disciplinary history, their continued misconduct in the face of this pending disciplinary case, and the facts underlying their fraud, we reached one inescapable conclusion. Ahmed and Success Trade Securities pose too substantial a risk to investors to continue with their activities in the securities industry. Accordingly, we have decided to bar Ahmed and expel Success Trade Securities for engaging in securities fraud.[122]

[cont'd]

119 The Respondents stated that they intended to use some of the proceeds of the offering for software enhancements to BP Trade.

120 The Hearing Panel found that the Respondents did not respond completely and timely to FINRA's requests for information and documents, and they concluded that the Respondents' incomplete and untimely document production was an aggravating factor for sanctions. On appeal, the Respondents state that the evidence did not support the Hearing Panel's conclusion. Issue No. 20. We disagree. FINRA staff sent the Respondents three requests for information and documents between March and April 2013. The Respondents' responses to the requests were scant, piecemeal, incomplete, and untimely. In fact, the Respondents did not produce many of the documents until the hearing began.

The Guidelines authorizes adjudicators to consider whether a respondent has attempted to delay FINRA's investigation or conceal information from FINRA, and the Hearing Panel properly considered the Respondents' incomplete and untimely production of documents in the assessment of sanctions. *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 12) (considering whether the respondent has provided substantial assistance to FINRA in its investigation or delayed the investigation); *see also Sears*, 2008 SEC LEXIS 1521, at *22 n.33 (evidence of uncharged misconduct may be considered in the determination of sanctions).

121 For example, Jade Wealth Management filed the Form ADV in March 2013. Ahmed prepared a promissory note documenting the officer loans he received on the first day of the hearing. On the second day of the hearing, Ahmed obtained two signed licensing agreements for BP Trade to assist with his arguments at the hearing concerning the valuation of the company.

122 We acknowledge that we, unlike the Hearing Panel, based our findings of fraud on an examination of the individual provisions of Exchange Act Rule 10b-5. Ahmed violated Exchange Act Rule 10b-5(a), (b), and (c) and FINRA Rule 2020, and we determined that a bar is the appropriate sanction for Ahmed's misconduct. Although Success Trade Securities is not liable for fraud under Exchange Act Rule 10b-5(b), we conclude that Firm's violation of Exchange Act Rule 10b-5(a) and (c) and FINRA Rule 2020 is egregious and merits expulsion.

[Footnote continued on next page]

D. Sales of Unregistered Securities

The Guidelines for the sale of unregistered securities, in violation of Section 5 of the Securities Act, recommend a fine of $2,500 to $50,000.[123] In egregious cases, the Guidelines recommend a higher fine and a suspension of up to two years or a bar.[124] Where the misconduct is egregious and involves a firm, the Guidelines advise adjudicators to suspend the firm with respect to any or all activities or functions for up to 30 business days or until the procedural deficiencies are remedied.[125]

The Guidelines set forth five specific considerations to analyze violations involving the sales of unregistered securities: (1) whether the respondent attempted to comply with an exemption from registration, (2) whether the respondent sold before the effective date of a registration statement, (3) the share volume and dollar amount of transactions involved, (4) whether the respondent had implemented reasonable procedures to ensure that it did not participate in an unregistered distribution, and (5) whether the respondent disregarded "red flags" suggesting the presence of an unregistered distribution.[126]

The Respondents' misconduct illustrates how, when left unfettered, sales of unregistered securities may harm the investing public and disrupt the integrity of the securities markets. The Securities Act requires a registered representative to function in a special role as a gatekeeper who acts to prevent unlawful distributions.[127] As a gatekeeper, the registered representative cannot rely solely on others and must make an individual effort to determine if a sale of

---

[cont'd]

Success Trade Securities, the broker-dealer subsidiary of the Parent Company, facilitated the Parent Company's offering. The individuals who solicited investors to participate in the Parent Company's offering operated from Success Trade Securities' offices, kept their books and records at the Firm, and sold the Parent Company's notes as registered representatives of the Firm. Investors who purchased the notes did so as customers of Success Trade Securities, held the notes in brokerage accounts maintained at the Firm, and received interest payments directly from the Firm.

[123] *Guidelines*, at 24 (Unregistered Securities).

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *See FINRA Notice to Members 11-07*, 2011 FINRA LEXIS 34, at *4 (Feb. 2011) ("The rules prohibiting the sale of unregistered securities are an important component of maintaining the integrity of the securities registration process. Broker-dealers perform an important gatekeeper role. When broker-dealers properly assume their regulatory responsibilities, they guard against the entry of unregistered securities into the markets . . . .").

unregistered securities actually complies with the Securities Act's prohibition on the sale of nonexempt, unregistered securities.[128]

Contrary to the Respondents' assertion, their sales of unregistered securities is not a minor or technical violation of the Securities Act or FINRA's rules. Issue No. 24. In four years, the Respondents sold $19.4 million in unregistered securities to 65 investors. The duration of the Respondents' misconduct,[129] the dollar amount of the sales,[130] and the number of transactions involved present significant aggravating factors in our determination of sanctions.[131]

The Respondents' sales of unregistered securities, standing in isolation, is troubling. That said, when we viewed the unregistered securities sales within the broader context of the Respondents' fraud, the essence of the Respondents' underlying scheme emerged. Faced with financial distress both personally and professionally, Ahmed decided to offer the Parent Company's promissory notes to the investing public. Through an arrangement with Jinesh Brahmbhatt and Jade Wealth Management, Ahmed accessed a team of registered representatives prepared to solicit sales and a pool of potential investors with the exact attributes he required – young individuals with substantial financial means, but minimal financial experience and knowledge. Ahmed then made false promises.

He falsely promised investors that they would obtain their principal plus 12.5 percent in interest at the end of three years. Ahmed "secured" his false promises to investors with false information. He falsely informed investors that he had Success Trade Securities, a lucrative broker-dealer, BP Trade, a software company with pending third-party software licenses, and the Parent Company with a valuation of $47.1 million. For the scheme to succeed, however, Ahmed required minimal regulatory inquiry.

One way to maintain this regulatory anonymity was by ensuring that existing investors were satisfied and received the monthly interest payments on the notes. This explains why Ahmed prioritized the monthly payment of interest to existing investors and used the largest portion of the offering's proceeds, 25 percent ($4.9 million), to pay interest to existing noteholders. The second way was to avoid registration of the securities with any federal or state

---

128 *See Paul L. Rice*, Admin. Proc. File No. 3-2451, 1973 SEC LEXIS 3477, at *26 (Apr. 30, 1973), *aff'd*, 45 S.E.C. 959 (1975) (stating that "[s]alesmen . . . should be aware of the requirements necessary to establish an exemption from [Securities Act Section 5's registration requirements] and should be reasonably certain such an exemption is available before engaging in the offer and sale of unregistered securities").

129 *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 9) (considering whether the respondent engaged in the misconduct over an extended period of time).

130 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 18) (considering the number, size, and character of the transactions at issue), 24 (Unregistered Securities) (considering the share volume and dollar amount of the transactions involved).

131 *See id.*

regulatory agency. Any level of regulatory scrutiny of the Parent Company and the offering would have revealed the facts established in the case – a fledgling enterprise with severe financial distress, no real operations or business plan, unsupportable financial statements, mythical records and bookkeeping, and near-phantom transactions and business arrangements used to divert funds from the Parent Company to Ahmed, his other "businesses," and family and friends whom he wanted to support. If we had any doubt of Ahmed's pointed avoidance of regulatory oversight, it is resolved when we examine the Respondents' haphazard approach to the issue of an applicable exemption from securities registration. Regardless of whether Rule 505 or Rule 506 was applicable, it did not matter to the Respondents as long as an exemption was on file with the Commission.[132]

We similarly note that, as regulators approached, Ahmed ramped up sales of the Parent Company's promissory notes. It is no coincidence that, as the State Securities Regulators initiated an examination of the Respondents' sales of the notes in June 2012, Ahmed began (falsely) informing potential and existing investors about BP Trade's Valuation Report, an imminent listing on a European Exchange, and a pending acquisition of an Australian Company. When the State Securities Regulators issued its order in October 2012, requiring that the Respondents cease all sales of the notes, Ahmed began offering potential investors 20 to 200 percent returns in as little as six months, 86 percent returns in two months, and even 240 percent returns in two weeks. In other words, as the threat of regulatory oversight of his activities neared, Ahmed sought capital, not compliance.

Disciplinary sanctions should be designed "to remediate misconduct by preventing the recurrence of misconduct, improving overall standards in the industry, and protecting the investing public."[133] Toward this end, "[a]djudicators should design sanctions that are significant enough to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices."[134] The sanctions that the Hearing Panel proposed for the Respondents' sales of unregistered securities, a one-year suspension in all capacities for Ahmed and Success Trade Securities, are insufficient to serve these goals. The Respondents' sales of unregistered securities were egregious, particularly because it facilitated and furthered their fraud by allowing them to evade regulatory oversight. Under the circumstances, we have decided to bar Ahmed and expel Success Trade Securities for selling unregistered securities without the benefit of an exemption.[135]

---

[132] For this reason, we reject the Respondents' contention that their attempted compliance with a registration exemption should constitute a mitigating factor. *See id.* at 24 (considering whether the respondent attempted to comply with an exemption from registration).

[133] *Id.* at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

[134] *Id.*

[135] The Respondents claim they relied on the advice of counsel, and they argue that their reliance on counsel should mitigate the sanctions we impose for their fraud and sales of unregistered securities. A respondent's reliance on competent legal advice may be mitigating for purposes of sanctions under the Guidelines. *See Dep't of Enforcement v. Fergus,* Complaint No. C8A990025, 2001 NASD Discip. LEXIS 3, at *46-48 (NASD NAC May 17, 2001) (explaining that advice of counsel may be a mitigating factor if a respondent demonstrates "reasonable

[Footnote continued on next page]

E. Restitution

The Hearing Panel ordered the Respondents make restitution, totaling $13.7 million, to 59 customers. The Guidelines instruct adjudicators to order restitution where it is appropriate to remediate misconduct and necessary to "restore the status quo ante for victims who would otherwise unjustly suffer loss."[136] We may order restitution "when an identifiable person . . . has suffered a quantifiable loss proximately caused by a respondent's misconduct."[137] Although the Commission and courts have not adopted a single approach to proximate causation,[138] we conclude that the losses that the holders of the Parent Company's notes incurred, were the foreseeable, direct, and proximate result of the Respondents' misconduct.[139] On appeal, we affirm the Hearing Panel's restitution order.

The investors, who purchased the Parent Company's promissory notes, did so as a direct result of the Respondents' material misrepresentations and omissions concerning the Parent

---

[cont'd]

reliance on competent legal . . . advice"); *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 7) (considering whether respondent demonstrated reasonable reliance on competent legal advice). As explained *supra* Part III.C. (The Respondents Waived Their Advice of Counsel Defense), however, Ahmed's testimony concerning his discussions and interactions with counsel was scant, incoherent, and insufficient to meet the standards necessary to establish advice of counsel as a defense to liability or a mitigating factor for sanctions.

136 *Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 5) (discussing restitution).

137 *Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 5) (discussing restitution). Two individuals associated with Jade Wealth Management and registered with Success Trade Securities purchased the Parent Company's notes in the offering. The Respondents argue that any award of restitution should exclude them. Issue No. 23. We disagree. These two individuals are identifiable and suffered quantifiable losses that were proximately caused by the Respondents' fraudulent conduct. Based on the record before us, we find no basis to exclude these two individuals from the order of restitution. *Cf. Dep't of Enforcement v. Bullock*, Complaint No. 2005003437102, 2011 FINRA Discip. LEXIS 14, *53 n.23 (FINRA NAC May 6, 2011) (explaining that the doctrine of "unclean hands" permits a FINRA adjudicator to withhold equitable relief, such as restitution, from a party who is guilty of wrongdoing related to the controversy).

138 *See United States v. Monzel*, 746 F. Supp. 2d 76, 85 (D.D.C. Oct. 22, 2010) ("[T]here is no single approach to proximate causation in either the federal or state courts . . . .").

139 *See Dep't of Enforcement v. Brookstone Secs., Inc.*, Complaint No. 2007011413501, 2015 FINRA Discip. LEXIS 3, *147-153 (FINRA NAC Apr. 16, 2015) (ordering respondents to pay restitution where the customers' losses were the "foreseeable, direct, and proximate result" of the respondents' fraudulent and unsuitable sales of collateralized mortgage obligations), *appeal filed,* SEC Admin. Proceeding No. 3-16551 (May 15, 2015).

Company, its financial standing, and the circumstances surrounding its offering of the notes. Based on these facts, we order Ahmed to pay $13.7 million in restitution, jointly and severally with Success Trade Securities, to the 59 investors listed on the Hearing Panel's "Restitution Addendum."[140] The Respondents' payment of restitution shall include prejudgment interest, which shall accrue from February 12, 2013 (the date the Respondents sold the last promissory note), until paid. 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).[141]

V. Conclusion

We affirm the Hearing Panel's findings that the Respondents: (1) willfully violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010 when they misrepresented and omitted material facts in connection with their sales of the Parent Company's promissory notes to investors, and (2) violated FINRA Rule 2010 when they sold the unregistered promissory notes in contravention of Section 5 of the Securities Act. We bar Ahmed, and expel Success Trade Securities, for each cause of action.[142] We order the Respondents to pay, jointly and severally, restitution of $13.7 million, plus interest. We also affirm the Hearing Panel's order that the Respondents pay, jointly and severally, hearing costs of $12,221.52, and we assess appeal costs of $2,450.22, jointly and severally, on the Respondents.

On Behalf of the National Adjudicatory Counsel,

Marcia E. Asquith,
Senior Vice President and Corporate Secretary

---

140 *Cf. First Jersey Sec.*, 101 F.3d at 1476 (permitting joint and several liability for securities violations). The Hearing Panel deducted $5.7 million from the total amount ($19.4 million) that the Respondents received during the course of the Parent Company's offering. The $5.7 million accounts for amounts that six of the 65 investors received through arbitrations or other legal proceedings.

141 *Guidelines*, at 9 (Technical Matters).

142 Ahmed's bars, and Success Trade Securities' expulsions, are effective as of the date of this decision.