

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CRAIG STANTON NORTON
(CRD No. 349405),

Respondent.

Disciplinary Proceeding
No. 2016048837401

Hearing Officer—DRS

**EXTENDED HEARING
PANEL DECISION**

January 31, 2022

For willfully manipulating the market for a security, Respondent Craig Stanton Norton is barred from associating with any FINRA member firm in any capacity and fined \$240,360 plus interest.

Appearances

For the Complainant: Brody W. Weichbrodt, Esq., John R. Baraniak, Jr., Esq., Mark Fernandez, Esq., and Carolyn Craig, Esq., Financial Industry Regulatory Authority

For the Respondent: D. Craig Parry, Esq., Parr Brown Gee & Loveless, and Mark O. Van Wagoner, Esq., Savage, Yeates & Waldron, P.C.

DECISION

I. Introduction

Manipulation consists of creating deceptive value or market activity for a security through an intentional interference with the free forces of supply and demand. The Department of Enforcement filed a Complaint against Craig Stanton Norton, a registered representative and equity trader, alleging that he manipulated the price of an over-the-counter (“OTC”) microcap security issued by NuGene International Inc. (“NUGN”). Norton bought NUGN shares for the proprietary account of his member firm employer, Wilson-Davis & Co., Inc. (“Wilson-Davis” or “Firm”). Norton’s purchase allegedly set an artificially high closing price for NUGN stock on the day of that trade. This price, the Complaint alleges, helped release millions of NUGN shares held by Norton’s customers from resale restrictions imposed by an agreement they had with the issuer.

According to the Complaint, over the next few months, during a stock promotion paid for by one of his customers, Norton allegedly used his role as a NUGN market maker to coordinate trading in the stock between and amongst his customers. Norton's trading allegedly helped create the false appearance of active trading at steadily increasing prices. By engaging in this conduct, Norton purportedly enabled his customers to liquidate their NUGN stock at artificially inflated prices. Enforcement alleges that Norton's manipulative activities generated around \$10 million in net sales proceeds and over \$400,000 in commissions for himself and Wilson-Davis.

Based on this alleged misconduct, Enforcement charged Norton with willfully violating the federal antifraud provisions and also violating FINRA's antifraud and ethical conduct rules.¹ Norton denied the charges and requested a hearing. A FINRA Extended Hearing Panel held a nine-day hearing from July 19 through July 29, 2021. After reviewing the evidence, the Panel concludes that Enforcement proved that Norton willfully manipulated the price of NUGN stock, as charged. As a result, we bar him from associating with any FINRA member firm and order him to disgorge the commissions he earned from his violative conduct as a fine payable to FINRA, plus interest.

II. Findings of Fact and Legal Standards²

A. Respondent Craig Stanton Norton

Norton has been in the securities industry for nearly 50 years and has been employed by 10 member firms. He first became associated with a member firm in 1973 as a General Securities Representative.³ At times afterward, he was registered as a General Securities Principal.⁴ Norton became a securities trader and market maker in the 1980s.⁵ He has spent most of this career since then trading microcap securities (sometimes called "penny stocks").⁶

From March 2003 through the present, Norton has been registered as a General Securities Representative and Equity Trader with FINRA through Wilson-Davis, a self-clearing broker-

¹ The Complaint also charged Wilson-Davis, James Snow ("Snow") (the Firm's President, Chief Compliance Officer and Anti-Money Laundering Compliance Officer), Byron Barkley (the Firm's head of trading), and Lyle Davis (the Firm's Chief Executive Officer and Financial Operations Principal) with violations arising from the investigation that led to this disciplinary action. The parties resolved the charges through an Offer of Settlement. The investigation arose from a routine examination of Wilson-Davis. Hearing Transcript ("Tr.") 76-77, 375.

² While most of our findings of fact are in this section, we have made additional findings in other sections where necessary to address certain issues.

³ Complaint ("Compl.") ¶ 10; Answer ("Ans.") ¶ 10; Stipulations ("Stip.") ¶ 4; Tr. 1036-40; CX-61.

⁴ Compl. ¶ 10; Ans. ¶ 10; Stip. ¶ 4.

⁵ Tr. 1039, 1750-51.

⁶ Tr. 1723.

dealer.⁷ The primary source of the Firm’s revenue comes from customers who regularly engage in liquidating and trading microcap securities.⁸ Since joining Wilson-Davis, the majority of Norton’s business has also come from those activities.⁹

Norton was a market maker for NUGN at Wilson-Davis from January 2015 through at least September 2015.¹⁰ In this role, Norton was the only individual at the Firm who decided when and how to place and execute both customer and proprietary trades. Specifically, Norton placed all bids and asks for any customer orders that came in for any of his customers,¹¹ filled all NUGN orders, and executed all NUGN trades at the Firm, including Wilson-Davis customer trades and the Firm’s proprietary account trades.¹² Further, Norton was responsible for executing all trades in NUGN between customer accounts.¹³ Norton did not execute trades only when he had customer orders; sometimes he would use his judgment and make trades for the Firm’s proprietary account even without a customer order.¹⁴

B. Events Before the Alleged Manipulation

1. NUGN Becomes Publicly Traded Through a Reverse Merger

The security that is the subject of the alleged manipulation in this case—NUGN stock—originated from a registered S-1 offering in March 2014 by a shell company, Bling Marketing Inc. (“Bling” or ticker “BLMK”).¹⁵ Bling was a start-up jewelry wholesaler with minimal operations.¹⁶ Through the offering, Bling issued 741,000 shares of BLMK common stock at a price of \$0.05 per share to about 30 investors.¹⁷ Two months later, a member firm filed with

⁷ CX-61, at 3; Compl. ¶ 11; Ans. ¶ 11; Stip. ¶ 4. Under Article V of FINRA’s By-Laws, FINRA has jurisdiction over Norton because: (i) Norton is currently registered with FINRA and associated with a FINRA member firm; and (ii) the Complaint charges him with misconduct that allegedly occurred while he was registered with FINRA and associated with a FINRA member firm. Ans. ¶ 11; Stip. ¶ 4.

⁸ Tr. 1054; Ans. ¶ 5; Stip. ¶ 1.

⁹ Tr. 1118–19.

¹⁰ Tr. 1025. “An ‘OTC market maker’ is a FINRA member that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular OTC equity security in an interdealer communication system reflecting a willingness to buy and sell the security on its own or its customers’ behalf on a regular or continuous basis.” Compl. ¶ 29; Ans. ¶ 29.

¹¹ Tr. 1026.

¹² Tr. 1027–28.

¹³ Tr. 1028.

¹⁴ Tr. 1756–57.

¹⁵ Tr. 106; CX-1, at 1.

¹⁶ Tr. 108; Stip. ¶ 12.

¹⁷ Tr. 106; CX-1, at 1.

FINRA a Form 211¹⁸ on behalf of BS—a Wilson-Davis and Broker-Dealer A¹⁹ customer—to make a market in BLMK stock. This filing allowed the stock to trade publicly on the OTC Bulletin Board (“OTCBB”) and Pink Sheets Best Bid and Offer (“PSBBO”)²⁰

In September 2014, Bling announced that it was no longer a shell company.²¹ This announcement set the stage for a reverse merger between Bling and NuGene, then a private company.²² Later that fall, several Wilson-Davis customers entered into funding agreements with NuGene under which they loaned it funds to pay the costs associated with a reverse merger with “a publicly reporting company whose shares are eligible to trade on the over-the-counter markets”²³ These customers included BC (controlled by JF), JHC (controlled by KS), and AA (controlled by SH).²⁴ In addition, these Wilson-Davis customers provided NuGene with funds to “acquire, assign, and enter” into a license with model Kathy Ireland.²⁵ Also around that time, another Wilson-Davis customer, BB, deposited funds into an escrow account in connection with its purchase of NUGN shares.²⁶ In exchange for their funding, these customers received promissory notes that would automatically convert into shares of NUGN after a planned Bling-NuGene reverse merger.²⁷

In December 2014, before the reverse merger, several Wilson-Davis customers including SH, RM,²⁸ and KS bought over 500,000 shares of BLMK stock in private transactions with

¹⁸ “Form 211 is the form that market makers must file with FINRA to initiate or resume quotations in a non-exchange listed security on a quotation medium.” *Dep’t of Enforcement v. Glendale Sec. Inc.*, No. 2016049565901, 2021 FINRA Discip. LEXIS 25, at *4 n.5 (NAC Oct. 6, 2021), *appeal docketed sub nom. Paul Eric Flesche*, No. 3-20647 (SEC Nov. 2, 2021); see <https://www.finra.org/filing-reporting/otcbb/otcbb-forms-documentation>.

¹⁹ To the extent the Complaint identified entities and persons by initials, we use the same initials to identify them in this decision.

²⁰ Tr. 114–20; CX-84. BS was involved in the initial public trade of BLMK, selling shares to Broker-Dealer A’s proprietary account. He later transferred NUGN shares from Broker-Dealer A to an account at Wilson-Davis. Those shares were then transferred to a Wilson-Davis account controlled by Norton’s customer, JF. Tr. 120–21.

²¹ Tr. 121–22; CX-1, at 1. At that time, Bling’s assets and revenues remained minimal and it continued to operate at a loss. Tr. 122–23.

²² CX-1, at 2.

²³ Tr. 125–26, 139; CX-1, at 2; CX-88, at 5–7, 17.

²⁴ CX-1, at 2.

²⁵ Tr. 139, 141–42; CX-88, at 5, 17.

²⁶ Joint Exhibit (“JX-__”) 32, at 9.

²⁷ Tr. 138–39; CX-88, at 5–7, 19–26.

²⁸ An Enforcement summary exhibit identifies RM as both a control person of BB and the person who referred the account to Wilson-Davis. CX-6, at 3. Norton testified during the investigation that RM controlled BB’s account and entered trades for it. Tr. 152, 1195. But at the hearing, Norton recanted, claiming that RM did not control BB, have any involvement with it, or have trading authority over the account. Tr. 1898–99. Norton explained that during his pre-hearing preparation, he noticed that RM’s name was in neither BB’s account opening nor corporate formation documents. Tr. 1899–1900. Further, there was evidence that someone other than RM placed trades on behalf of the account. Tr. 305–06, 466. In any event, according to Norton, RM referred that person to him, and that person, in turn, helped open BB’s account at the Firm. Tr. 1195.

Bling's S-1 shareholders.²⁹ These transactions occurred on nearly identical terms, including the same purchase price (\$0.0311/share).³⁰ The selling shareholders typically retained a few shares, thereby increasing the overall number of shareholders.³¹

A few days after these private transactions, on December 26, 2014, Bling and NuGene entered into their planned reverse merger agreement.³² In connection with the merger, Bling's stock underwent a 15.04-for-1 stock split payable as a dividend to the holders of Bling's common stock, effective February 3, 2015, when the combined company began trading under the ticker symbol, NUGN.³³ When the merger closed, each recipient of the stock dividend received additional shares of BLMK common stock for each share of BLMK common stock held.³⁴ After the stock split, the Bling shareholders who had purchased about 500,000 shares in mid-December 2014, now held roughly 7.6 million shares. Wilson-Davis customers would later deposit around 3.9 million of those shares at the Firm and the remainder at Broker-Dealer A.³⁵

2. Wilson-Davis Becomes a NUGN Market Maker and Receives Its First Deposit of NUGN Shares

Around January 26, 2015—after the Bling-NuGene merger but before the company began trading as NUGN—Norton completed and submitted to Wilson-Davis an application to become a market maker in BLMK stock.³⁶ According to the application,³⁷ Norton wanted to become a market maker in the stock to “assist customer acquisition.”³⁸ As Norton explained at the hearing, one of his long-time clients, JF, said that he wanted to acquire stock in the company and asked Norton to become a market maker in it.³⁹ On the application, Norton falsely answered

²⁹ See, e.g., JX-30, at 35–63. From December 15 to December 24, 2014, around 21 Wilson-Davis customers bought over 500,000 shares of BLMK in roughly 40 transactions with 23 Bling shareholders Tr. 142–44, 165; CX-1, at 2; CX-8. These 500,000 shares represented the majority of the public float at the time. Tr. 165.

³⁰ Tr. 144, 148; CX-8. Compare JX-31 through JX-51.

³¹ Tr. 149–50.

³² Tr. 164; Stip. ¶ 8.

³³ Tr. 201; JX-3; Compl. ¶ 20; Ans. ¶ 20; Stip. ¶¶ 9, 13. Before the merger and stock split, BLMK common stock was listed on the OTCBB and PSBBO. Stip. ¶ 10.

³⁴ Stip. ¶ 9.

³⁵ Tr. 202.

³⁶ Compl. ¶ 37; Ans. ¶ 37; Stip. ¶ 14.

³⁷ Tr. 219; CX-220.

³⁸ Tr. 222; CX-220. Before the merger, BLMK had no reported trading volume Stip. ¶ 11.

³⁹ Tr. 1891. On February 3, 2015, JF placed an order with Norton for his entity, RH, to buy NUGN stock. But, as it turned out, he never bought the stock through Norton at Wilson-Davis. And his order to buy the stock expired unfilled seven days after he placed it. Compl. ¶ 41; Ans. ¶ 41.

no to the question asking whether the issuer had been involved in a reverse merger.⁴⁰ When Norton submitted his application, BLMK had traded publicly only once in its history.⁴¹

On or about February 19, 2015, Norton received a package containing the first deposit of NUGN shares. SH, who controlled AA, sent the package,⁴² which contained five NUGN share certificates (representing 1,399,939 shares) and other items. Among those items was a February 19, 2015 memorandum from SH to Norton and his assistant.⁴³ The memorandum informed Norton that SH's attorney, SM, would be sending an attorney opinion letter by email about the NUGN shares.⁴⁴

SM sent that letter by email to Norton's assistant the next day, February 20.⁴⁵ The letter concluded that the shares were freely tradeable "without violation of the federal securities." Continuing, it stated that "as of December 26, 2014, there were 39,197,400 common stock shares issued and outstanding."⁴⁶ The letter emphasized that "[a]ll five Certificates bare [sic] **restrictive language relative to a Lock Up/Leak Out Agreement**" ("LULO") that limited the percentage of shares the shareholder could sell during certain periods. While the letter described the LULO's terms, it did not mention that the LULO contained an escape clause triggered if the company reached certain market capitalization levels (discussed below).⁴⁷ After addressing the LULO, the letter concluded that the nearly 1.4 million shares "may be deposited into the Shareholder's account and sold immediately, in accordance with the [LULO], in a public market, or through private negotiations, by the Shareholder."

SM's opinion letter also attached the LULO.⁴⁸ The LULO restricted shareholders from selling all their stock at once. It prohibited shareholders from selling any NUGN shares during the first 75 days after the LULO ratification ("lock-up" period).⁴⁹ Later, these shareholders could

⁴⁰ Tr. 1284–85. Norton testified that he did not intentionally mismark the box on the market maker application stating that there had not been a reverse merger; he claimed he had failed to review the Form 8-K closely enough. Tr. 1763–64.

⁴¹ CX-1, at 2. Although the stock appeared on the OTCBB, there was no trading or market for the stock until January 2015. Tr. 116.

⁴² Compl. ¶ 27; Ans. ¶ 27.

⁴³ Tr. 1332–33; JX-30; CX-100, at 1.

⁴⁴ Tr. 1333.

⁴⁵ Tr. 1335; JX-30, at 23.

⁴⁶ JX-30, at 9–10.

⁴⁷ JX-30, at 11. "Market capitalization refers to the total value of a company's outstanding shares of stock, including publicly traded shares and restricted shares held by company officers and insiders. To calculate market capitalization, the total number of a company's shares outstanding are multiplied by the company's current stock price." *Glendale*, 2021 FINRA Discip. LEXIS 25, at *14 n.9.

⁴⁸ Tr. 1335–37; JX-30, at 26–30; Compl. ¶ 54; Ans. ¶ 54. *See also* Ans. ¶ 27 (admitting that AA provided Wilson-Davis with a copy of the LULO in connection with its NUGN deposit).

⁴⁹ *See, e.g.*, JX-30, at 26.

incrementally sell (“leak-out”) shares over the ensuing 150 days as long as each shareholder sold no more than 20 percent of their NUGN shares subject to the LULO in any 30-day period.⁵⁰ But, as noted above, the LULO included an escape clause. The clause provided, in its entirety, that

[n]otwithstanding anything in the foregoing to the contrary, in the event NuGene common stock trade for three consecutive trading days on its principal market and close at such price that (i) the aggregate market capitalization of NuGene is at least \$160 million, then 50% of the unsold Shares will be released from lock up and eligible for sale without any restrictions provided in this Agreement; and if the common stock of NuGene for another three consecutive trading days close at a price such that (ii) the aggregate market capitalization of NuGene is at least \$200 million, then the balance of the Shares shall be released automatically from lockup and be eligible for sale without any restrictions provided in this Agreement.⁵¹

* * *

Four days after receiving SM’s letter and its attachments, including the LULO, Norton bought 250 shares of NUGN for Wilson-Davis’s proprietary account. This small purchase set in motion the alleged manipulation described below.

C. The Alleged Manipulation

1. February 24, 2015 Trade

On February 24, 2015, Norton used his Wilson-Davis proprietary account to buy 250 shares of NUGN at \$5 per share. At the time, he had no customer order in effect to buy shares at \$5 per share;⁵² his own market maker bid to buy the stock was \$1.33 per share; the inside bid was \$2.25 and the inside ask was \$5;⁵³ Broker-Dealer A had been posting that \$5 offer for 18 days with no interest from the market;⁵⁴ NUGN stock had never traded at a price higher than \$2.25 per share;⁵⁵ and the closing price of NUGN stock had been 26 cents since at least February 4. This trade, which caused a spike in NUGN’s stock price,⁵⁶ was 100 percent of the market volume for the day and set the closing price at \$5 per share.⁵⁷

⁵⁰ JX-30, at 26–27.

⁵¹ Tr. 1337–38; JX-30, at 27.

⁵² CX-1, at 4.

⁵³ Tr. 633; CX-15, at 1.

⁵⁴ Tr. 1351–55.

⁵⁵ CX-1, at 3.

⁵⁶ Tr. 1354, 1373.

⁵⁷ Tr. 1356; Compl. ¶ 48; Ans. ¶ 48.

Norton's \$5 trade was the first of several such trades in NUGN over the next two trading days, February 25 and 26.⁵⁸ These \$5 trades represented 100 percent of the total market volume for the three days,⁵⁹ thereby acting to lift the LULO's trading restrictions. By February 27, NUGN's stock price fell to close at \$2.50⁶⁰ and dropped even further, closing at \$1.27 on March 9, 2015.⁶¹

* * *

Three days after Norton's \$5 trade, on February 27, 2015, Wilson-Davis received an email from its outside counsel. The attorney urged Wilson-Davis to impose volume limitations on the sale of AA's NUGN shares. The email noted **"that there is very little trading volume in this stock, that the issuer has recently announced an acquisition and the termination of its shell status, and that the company has issued a number of press releases in the last 30 days."** Given these **"circumstances,"** the email continued, **"we believe that [Wilson-Davis] should impose substantial and conservative volume limitations on this customer's sales (without regard to the limits imposed by the [LULO] or the expiration of that agreement)."**⁶²

Wilson-Davis, however, did not follow that advice, nor, as we discuss later, similar advice it received from its attorney over the next two months about sales of other customers' NUGN shares.⁶³ Norton's trades on behalf of his NUGN customers consistently exceeded 50 percent of the total daily trading volume, and on some days, his trading was 90 percent or more of the total market volume.⁶⁴

The limitations recommended by counsel supplemented those in an internal Firm "guideline" limiting the Firm's trading volume to no more than 30 percent of a stock's total market volume. Norton acknowledged he was aware of the limitation and described it as an anti-money laundering ("AML") "responsibility" designed to "prevent market manipulation."⁶⁵ Norton, however, ignored this guideline in connection with his NUGN trading.⁶⁶

⁵⁸ Tr. 1374–75; CX-1, at 4.

⁵⁹ Tr. 677–78.

⁶⁰ Tr. 287–88; CX-1, at 4.

⁶¹ Tr. 1312.

⁶² Tr. 2084–86; CX-221, at 1 (emphasis in original).

⁶³ Tr. 2084–90; CX-221.

⁶⁴ Tr. 2091–92; CX-11, at 1–2.

⁶⁵ Tr. 1398–99.

⁶⁶ Tr. 2155–56.

2. Additional Customers Deposit NUGN Shares with Wilson-Davis

Beginning in early March, additional Wilson-Davis customers deposited NUGN shares at Wilson-Davis. All told, 22 Wilson-Davis customers deposited around \$3.9 million shares of NUGN stock by early June, comprising about 10 percent of the outstanding shares and a quarter of the public float.⁶⁷ Besides AA, 13 other Wilson-Davis customers submitted NUGN deposit paperwork to the Firm including or referencing the LULO.⁶⁸ The customers' deposit packages included nearly identical stock purchase agreements.⁶⁹

The customers who deposited shares of NUGN stock at Wilson-Davis included an investor group Norton had met in 2005 at the "Big Dog" investor conference in Las Vegas, which focused on microcap stock issuers. The group included RW (who controlled KSI, KHI, and others), SH, AL (who controlled MS and SI), and LB (who controlled SHI).⁷⁰ Each of these customers—and customers they referred to Wilson-Davis—later transacted in NUGN stock and/or other microcap stocks through Norton at Wilson-Davis.⁷¹

By the time Norton's customers began depositing NUGN shares at Wilson-Davis, a number of them had come under regulatory scrutiny. During 2012 and 2013, FINRA's Office of Fraud Detection and Market Intelligence ("OFDMI") sent regulatory requests to Wilson-Davis requesting information about several of Norton's customers' trading activities in various stocks, including BRFH, MAXE, STTX, BMIX, and VEND.⁷² In 2012, as part of a review by OFDMI, the staff interviewed Norton about BRFH's activities and asked him about, among other things, his relationship with various entities and customers that later deposited NUGN shares (e.g., KSI, JF, and MT).⁷³ Two years later, in 2014, FINRA staff also asked Norton about several of his

⁶⁷ CX-4.

⁶⁸ CX-10.

⁶⁹ Tr. 189–90.

⁷⁰ CX-6.

⁷¹ Tr. 1119–21, 1123–25, 2029; CX-2; CX-6. RW referred RM (who controlled RC), JS (who controlled CC), BS (who controlled FEI), and JF (who controlled BC and RH, among other accounts). Tr. 1173–74, 1177, 1179; CX-6. JF, in turn, referred MT (who controlled CD), JG (PE), and NM (LAM). And AL (MS) referred DD (CE). CX-6.

⁷² CX-35; CX-122; CX-133; CX-135; CX-140; CX-156; CX-168. It is unclear how much, if anything, Norton knew about these requests. There is no indication that OFDMI ever sent any of them to Norton (rather than Snow). Norton testified that other than BRFH, Wilson-Davis did not bring these matters to his attention, as it was Snow's practice to answer the inquiries himself and to forward them to Norton only if he needed Norton's help in responding. Tr. 2035–54. And, Norton testified, the specific information requested was information that Snow could have gathered without his help. Tr. 2119–25; CX-133; CX-135; CX-140; CX-156; CX-168. *See also* CX-238. Also, one of Enforcement's examiner witnesses testified that he was aware of no communication between FINRA and Norton about the BRFH matter other than one call in 2012. Tr. 540–41.

⁷³ Tr. 340–44; CX-121.

NUGN customers, including SI, RW, CE, FEI, BSPI/BS, LB, and SHI, their liquidation activity, and referrals among them.⁷⁴

Additionally, in 2014, a microcap issuer sued Wilson-Davis alleging that the Firm (through Norton's market making activities) aided and abetted several of Norton's customers (including KHI, LB, JF, and MT) in a "pump-and-dump" scheme involving LuxeYard, Inc. (ticker "LUXR") stock.⁷⁵ Norton was aware of this lawsuit before Wilson-Davis became a market maker in NUGN.⁷⁶

3. Allegedly Manipulative Trading in March through June 2015

a. Overview of Wilson-Davis's NUGN Trading in Spring 2015

Beginning in early March 2015, Wilson-Davis's trading in NUGN accounted for a substantial percentage of the stock's total trading volume. By the next month, Wilson-Davis accounted for 50 percent of all reported trading volume in NUGN since the stock began trading publicly in January 2015. Norton's trading accounted for 50 percent or more of NUGN's daily volume on many days between March and mid-May 2015.⁷⁷

According to the Complaint, starting in early March 2015, in connection with his customers' stock liquidations, Norton "coordinated trading among his customers to help further the appearance of active trading in the stock at stable or increasing prices" while a NUGN stock promotion was underway. The Complaint alleged that sometimes Norton "entered orders for and executed both sides of the NUGN trades. On other occasions, Norton used Wilson-Davis's proprietary trading account to execute manipulative trades."⁷⁸ To accomplish these trades, Norton allegedly used not-held buy or sell orders.⁷⁹

A not-held order "is an order voluntarily categorized to permit a broker-dealer to trade with others as principal at any price without being required or 'held' to execute the order with the immediacy and price requirements of a market or limit order." Not-held orders give "the broker-dealer discretion as to the price and time at which the trade is executed." Further, "[a] broker-dealer receiving a not-held order agrees to use its judgment to obtain an execution for the volume of stock sought to be purchased (sold) by the customer that is satisfactory to the

⁷⁴ Tr. 2054–60.

⁷⁵ Tr. 1237–38; CX-171.

⁷⁶ Tr. 223–26, 2032; CX-171. It is unclear how much Norton knew about the suit in 2015. He testified at the hearing that he had not seen the complaint by the first quarter of 2015 and did not "know a lot of detail" about it during that quarter. Tr. 1880–82.

⁷⁷ CX-11, at 1.

⁷⁸ Compl. ¶ 66.

⁷⁹ Compl. ¶ 70.

customer, given the customer's instructions, any agreed upon terms, and market conditions.”⁸⁰ According to Norton, market not-held orders gave him price, time, and size discretion over trades.⁸¹ Norton estimated that 90 percent of his customers’ orders were of the not-held variety.⁸²

We now turn to the alleged coordinated trading.

b. March 2–3, 2015 Trades

On March 2, 2015, Norton sold 700 NUGN shares from the Firm’s proprietary account to customer FS at \$1.57 per share,⁸³ a price he chose and which was higher than the last reported trade in the market (\$1.36).⁸⁴ In the sale to FS were the 250 shares Norton had bought on February 24 for \$5 per share.⁸⁵ Although it was not Norton’s practice to go short to fill customer orders,⁸⁶ he went short 450 shares from the Firm’s proprietary account to fill FS’s purchase order.⁸⁷ The trade was the last reported for the day and set the closing price.⁸⁸

When the market opened the next day, March 3, Norton bought the shares back to his proprietary account at prices ranging from \$2.10 to \$2.15.⁸⁹ And again, Norton chose prices not only significantly higher than the prior day’s closing price, but also significantly higher than his own bid at the time (\$1.33).⁹⁰ The prices were also higher than the inside bid, which ranged from

⁸⁰ *Dep’t of Market Regulation v. Leighton*, No. CLG050021, 2010 FINRA Discip. LEXIS 3, at *46 (NAC Mar. 3, 2010).

⁸¹ Tr. 1446. “A ‘market’ order is an order to buy (sell) a stated amount of a security at the best possible price at the time the order is received in the marketplace.” *Leighton*, 2010 FINRA Discip. LEXIS 3, at *46 n.29. Norton testified that his discretion was limited by any conversations he had with the customer regarding the customer’s “price parameters.” Tr. 1452–53. Norton conceded that when he executed a not-held order, his supervisors could not verify if the execution price of the order followed the verbal instructions he received from a customer. Tr. 1448–49. Further, according to Norton, there was no record of those verbal instructions in the Firm’s system. He claimed that he wrote down on a yellow legal pad any instructions he received from a customer. And if he thought it was relevant, he would also note discussions about the liquidity of the stock, the customer’s price targets, and length of time it may take to liquidate the stock. But, he added, his practice was to throw away the pads once they were “filled up.” Tr. 1449, 1647–48, 1768–70.

⁸² Tr. 1447–48; CX-29.

⁸³ Tr. 680; CX-12, at 1.

⁸⁴ Tr. 1428–29, 1433; CX-15, at 1.

⁸⁵ Tr. 1426.

⁸⁶ Tr. 1429.

⁸⁷ Tr. 680, 1427; CX-13, at 1.

⁸⁸ Tr. 1429.

⁸⁹ Tr. 680–81, 783, 1430, 1436–37; CX-12, at 1; CX-15, at 2; CX-29, at 1.

⁹⁰ Tr. 1430–31, 1437–38, 1440–41; CX-15, at 2; CX-29, at 1.

\$1.40 to \$1.60.⁹¹ These trades caused Wilson-Davis to suffer a 70 percent loss, while FS made just \$500 on her investment.⁹²

c. March 9–10, 2015 Trades

On March 9–10, 2015, Norton used Wilson-Davis’s proprietary account to buy more than 40,000 shares of NUGN from Broker-Dealer A.⁹³ Norton’s proprietary account purchases ratcheted up the reported trade volume for NUGN stock for March 10. In fact, Wilson-Davis was responsible for 41 percent of all NUGN shares traded that day.⁹⁴ Also on that day, there was a large uptick in NUGN stock’s closing price.⁹⁵ Norton testified that as of the afternoon on March 10, he was not buying NUGN shares for any customer.⁹⁶

After this buying activity, Norton entered a buy order on March 10 for 50,000 shares for MS.⁹⁷ But he never “billed” to MS all of the stock he bought for his proprietary account. Instead, he used his Wilson-Davis proprietary account to hold most of the shares (33,900) overnight.⁹⁸

d. March 12, 2015 Trades

On March 12, 2015, Norton facilitated a cross trade between two of his customers, AA and JM. AA sold 7,900 shares of NUGN at \$1.64 per share and Norton bought the same amount at the same price for JM.⁹⁹

e. March 26, 2015 Trade

On March 13, 2015, Norton entered a good-til-canceled not-held order for AA to sell 129,710 shares of NUGN at the market.¹⁰⁰ Three days later, on March 16, 2015, Wilson-Davis’s counsel sent Norton’s assistant and Snow the first of ten emails in March and April advising that **“given the increasing numbers of customers [Wilson-Davis] has selling this stock, we**

⁹¹ Tr. 1440–41.

⁹² Tr. 1441, 1981–82, 2369; CX-50A, at 44–45.

⁹³ Tr. 1301–03; CX-15, at 4, 6.

⁹⁴ Tr. 1309; CX-11.

⁹⁵ Tr. 1310.

⁹⁶ Tr. 1303.

⁹⁷ Tr. 1303; CX-29, at 1; CX-15, at 6.

⁹⁸ Tr. 1303–04; CX-13, at 1.

⁹⁹ Tr. 692–93; CX-16A, at 2.

¹⁰⁰ Tr. 1452; CX-29, at 1. Generally, “[g]ood-til-canceled orders are orders to purchase or sell a security that remain in effect until executed or canceled.” *Glendale*, 2021 FINRA Discip. LEXIS 25, at *20 n.15. At Wilson-Davis, however, a good-til-canceled market order could remain open for six months. Tr. 1452.

believe that [Wilson-Davis] should consider appropriate volume limitations on the aggregate sales of all customers, not just each customer individually.”¹⁰¹

On March 18, 2015, Norton entered an order for customer CD to buy 100,000 NUGN shares at \$1.40, good-til-cancelled not-held.¹⁰² While AA’s large March 13 sell order was still pending, on March 25, 2015, Norton entered a large buy order for customer CC, which minutes later he replaced with a good-til-cancelled not-held buy order.¹⁰³

The next day, March 26, Norton executed a 100,000 share cross trade between AA and CC, buying AA’s stock into his proprietary account, and then selling it from that account to CC.¹⁰⁴ Norton saw that the day before, March 25, there had been a sharp drop in the volume of trading in NUGN.¹⁰⁵ The March 26 trade caused a significant spike in trading volume and was reported to the tape (minus the identities of the customers).¹⁰⁶ It also accounted for over 72 percent of the total market volume in NUGN trading that day.¹⁰⁷

During investigative testimony, Norton described the cross trade as a “private transaction” (a description he did not disavow at hearing).¹⁰⁸ And he admitted that at the time of this publicly reported cross trade, he believed the principals of AA and CC knew one another, that CC may have revealed it knew AA was selling, and that AA may have indicated it knew CC wanted to buy.¹⁰⁹

f. March 27, 2015 Trade

On March 27, 2015, Norton executed a cross trade between AA and FEI: AA sold 3,400 shares of NUGN stock at \$1.96 per share and Norton bought the same amount of shares at the same price for FEI.¹¹⁰

¹⁰¹ CX-221, at 6–17. This advice followed five emails counsel sent on February 27 and March 13 and 15 urging Wilson-Davis to “**impose substantial and conservative volume limitations on**” particular customers’ sales. CX-221, at 1–5 (emphasis in original).

¹⁰² Tr. 1468; CX-15, at 13; CX-29, at 1.

¹⁰³ Tr. 1454–55; CX-29, at 1.

¹⁰⁴ Tr. 732, 1456; CX-16A, at 2; CX-17.

¹⁰⁵ Tr. 1456.

¹⁰⁶ Tr. 1456–58; CX-11, at 1.

¹⁰⁷ Tr. 1460; CX-11, at 1.

¹⁰⁸ Tr. 1461, 1466.

¹⁰⁹ Tr. 1466–67.

¹¹⁰ CX-16A, at 4.

g. March 30 through April 2, 2015 Trades

Between March 30 and April 2, Norton executed several cross trades between AA and CD. On March 30, Norton cancelled and replaced a CD buy order and changed it to a new not-held buy order for 100,000 shares.¹¹¹ Within the hour, Norton executed a cross trade between AA and CD for 10,000 shares.¹¹²

The next day, March 31, AA sold 50,000 shares of NUGN at \$1.98 per share to CD in 10 trades coordinated by Norton.¹¹³ Most of the trades were at quantities below 10,000 shares.¹¹⁴ Norton was aware when he executed these trades that the principals at AA and CD knew one another and that CD knew that AA was selling NUGN shares at the time.¹¹⁵ Rather than execute a single trade between AA and CD, he broke up the trade into several small trades.¹¹⁶ The next day, April 1, AA sold another 40,000 shares of NUGN at \$1.98 per share to CD in several trades throughout the day. And on April 2, 2015, AA sold additional shares of NUGN to CD in several cross trades.¹¹⁷ Finally, on April 13, 2015, in yet another transaction between AA and CD involving NUGN stock, Norton signed a letter of authorization to journal a private sale by AA to CD of 100,000 NUGN shares.¹¹⁸

In total, CD bought 150,000 NUGN shares from AA in 19 riskless principal trades (i.e., trades that went through Norton's proprietary account) on top of the 100,000 shares it received in the private transaction.¹¹⁹

h. April 24, 2015 Trades

On April 24, 2015, Norton used Wilson-Davis's proprietary trading account to buy 17,500 shares of NUGN from customer CE at \$2.45 per share and simultaneously sold 15,000 of these shares to MS at the same price. Later that day, Norton sold another 5,000 shares of NUGN to MS and simultaneously bought 2,500 shares each from Wilson-Davis customers BB and CE.¹²⁰

¹¹¹ Tr. 1469–70; CX-15, at 22; CX-29, at 1.

¹¹² Tr. 1470–71; CX-15, at 23.

¹¹³ CX-16A, at 4.

¹¹⁴ CX-15, at 23–25; CX-16A, at 4.

¹¹⁵ Tr. 1472, 1478.

¹¹⁶ When asked why he did not just execute a single trade between these customers for the full number of shares, Norton responded that he “may have different instructions from [CD] at different times of the day.” Tr. 1477. Norton's telephone log, however, reflects no phone calls on that day. CX-7, at 4.

¹¹⁷ CX-16A, at 4.

¹¹⁸ Tr. 1481; JX-30, at 1.

¹¹⁹ Tr. 724–25; CX-16A, at 1, 4.

¹²⁰ CX-16A, at 5.

i. May and June 2015 Trading

Between March and April 2015, AA sold over 2 million shares of NUGN at an average price of \$2.04, at prices ranging from \$1.63 to \$2.49.¹²¹ During this period, Norton liquidated AA's shares while buying the stock for MS, CD, FEI, and CC.¹²² Norton acknowledged that stock liquidators do not typically purchase the stock they deposit for liquidation.¹²³ But in May and June 2015, AA started buying NUGN stock, and MS, CD, and CC started selling.¹²⁴

From May 8 through June 18, 2015, AA bought back over 678,000 shares of NUGN stock at prices between \$2.61 and \$4.40 per share.¹²⁵ On May 6, AA still had a position of 320,000 shares in its account.¹²⁶ Even so, AA bought NUGN shares at average prices higher than any NUGN sale it had made before.¹²⁷ While making NUGN stock purchases from May 20 to May 28, AA was still long nearly 200,000 NUGN shares it had originally deposited at the Firm.¹²⁸

On or about May 7, Norton and SH began communicating about AA's strategy shift. This was the only written evidence in the case purportedly explaining the NUGN trading strategy of one of Norton's customer. SH emailed Norton on May 7 that he had been reading some recent NUGN press releases about new patents and stem cell infused liquid bandages and wanted to talk with Norton "about how we might move forward."¹²⁹ And on May 11, SH wrote Norton that he was tracking NUGN and saw "no clearcut strategy," and sought Norton's advice. But, he added, "at this point maybe we should think about sell[ing] some of my position."¹³⁰ A week later, according to another email he sent to Norton, SH decided "to shift positions" and "start buy[ing] some shares." He attributed this change to NUGN's "new patents and tech."¹³¹ Near the end of the month, on May 29, SH again wrote to Norton about the strategy shift. "It seems like we bought NUGN really well the last week or so. I think we have an opportunity to Profit Take with the stock," he said. So he requested that Norton "start liquidating the shares that you purchased in the last 7 or 10 days at anything better than \$3.51 per share," and asked Norton to let him "know if he had any objections to this strategy."¹³² At the hearing, Norton explained that he may

¹²¹ CX-21, at 1.

¹²² See CX-16A, at 2-7.

¹²³ Tr. 1494-96.

¹²⁴ Tr. 743-45, 748-49, 1490-92, 1531-32, 2112-13; CX-3, at 3.

¹²⁵ CX-21.

¹²⁶ Tr. 755-56; CX-21, at 1.

¹²⁷ Tr. 755-60; CX-21.

¹²⁸ Tr. 860-61.

¹²⁹ CX-105, at 1.

¹³⁰ CX-105, at 2.

¹³¹ CX-105, at 3.

¹³² CX-105, at 4.

have had discussions with SH about the strategy shift, which, in turn, may have prompted him to ask SH to send him the May 7 email.¹³³

Norton's order placement, bidding patterns, and execution of—or failure to execute—AA's buy orders, as well as trade execution prices, are noteworthy. Mainly through AA's buy orders, Norton began to show significant size on his market maker bid. For example, on May 7, 2015, Norton entered a good-til-cancelled not-held buy order for AA for 50,000 NUGN shares.¹³⁴ Norton then bought 1,000 NUGN shares from the street at \$2.50 per share. He added those shares to the existing sizable balance of NUGN shares in the Firm's proprietary account and then sold shares out of that account at \$2.53 per share. He did not, however, sell those shares to AA.¹³⁵

The same pattern repeated itself the next day, May 8, when Norton entered several good-til-cancelled not-held buy orders for AA showing significant size at just below the inside bid. Norton never filled those orders, however, even from his proprietary account.¹³⁶ Ten days later, on May 18, Norton entered another significant buy order for AA—for 100,000 shares—showing size and signaling to the market that there was significant demand for NUGN stock at \$2.60 per share.¹³⁷ Norton's bid was, again, just below the inside bid. And, again, Norton did not fill AA's order either from the significant holdings in the Firm's proprietary account or from the shares he was liquidating on behalf of other customers.¹³⁸ Throughout this period, Norton knew that placing large buy orders just below the bid, while buying whatever stock comes to market (i.e., at the inside ask), was a device to drive up a stock's price called "bid support." Norton testified that if he saw this happening, he would stop it. But he did not do so in connection with his NUGN trading.¹³⁹ Notably, from May 7 through June 18, 2015, Norton also entered 54 buy orders for AA at or above the inside ask, 20 of which were above the inside ask.¹⁴⁰

4. The Stock Promotion Mailer

By late May 2015, in the midst of the above trading, news spread in message board postings about a NUGN brochure being mailed to individuals.¹⁴¹ The 28-page hard-mailer brochure, which featured celebrity model Kathy Ireland on the cover, asked: "Did Kathy Ireland

¹³³ Tr. 1503–04, 1532, 2114.

¹³⁴ Tr. 1534–37; CX-18, at 1.

¹³⁵ Tr. 1535–37; CX-18, at 1. From May 7 to May 28, the balance of NUGN shares in Norton's proprietary account was always over 25,000 shares and at one point exceeded 36,000 shares. CX-13, at 2.

¹³⁶ Tr. 1543–51; CX-18, at 1–2; CX-21, at 1.

¹³⁷ Tr. 1569; CX-18, at 6.

¹³⁸ Tr. 1570–73, 1576–78; CX-18, at 6. This same pattern continued from May 20 to May 28 as well. *See* Tr. 1585–88, 1614–24, 1641–45; CX-18, at 12, 23–28; CX-23, at 15, 17, 28, 36, 57, and 97.

¹³⁹ Tr. 1648–49, 1652.

¹⁴⁰ Tr. 850–51; CX-20.

¹⁴¹ Tr. 364–67; JX-17, at 2.

Just Discover Botox Without the Needle?” The cover also included the stock’s March 9, 2015 closing price of \$1.27. The brochure boasted that “Stem Cell Discovery Reverses Appearance of Aging Could Send NUGN Shares Soaring 1,875%,” exclaiming that “Shares Could Fly from \$1.27 to \$25.08.”¹⁴² Inside, on the next to last page, the brochure disclosed that Norton’s customer, RC,¹⁴³ paid \$4.4 million to print and disseminate the “Advertisement.”¹⁴⁴ Norton received a copy of the brochure at his home in mid-May.¹⁴⁵ He testified that he threw the brochure away without looking at it.¹⁴⁶

The brochure attracted attention. And on June 10, 2015, NuGene issued a press release stating that the OTC Markets Group requested that it comment on “recent trading and promotional activity” in the company’s stock.¹⁴⁷ The press release acknowledged that the brochure encouraged “investors to purchase NUGN shares” and that it “coincided with higher than average trading volume and fluctuations in NUGN stock price.”¹⁴⁸ NuGene, however, denied any involvement with or connection to the stock promotion.¹⁴⁹

5. Trading Proceeds and Compensation from the Alleged Manipulation

Between January and September 2015, Wilson-Davis customers sold around \$13.2 million shares of NUGN generating about \$8.5 million in net trading proceeds.¹⁵⁰ In the midst of liquidating their NUGN shares in Spring 2015, AA and other customers wired the liquidation proceeds out of their Wilson-Davis accounts.¹⁵¹ From the NUGN trading, Norton and Wilson-Davis generated \$400,600 in trading compensation (based on a percentage markup/down) between March 2, 2015 and June 9, 2015, nearly half of which derived from AA’s trades.¹⁵² As compensation, Norton received around 60 percent of the revenue he generated from the NUGN trading.¹⁵³

¹⁴² CX-89, at 1.

¹⁴³ Tr. 1897; CX-6, at 2.

¹⁴⁴ CX-89, at 27.

¹⁴⁵ Tr. 2013–14, 2016–17.

¹⁴⁶ Tr. 2017.

¹⁴⁷ JX-19, at 1.

¹⁴⁸ Tr. 363–64; JX-19, at 1.

¹⁴⁹ JX-19, at 2.

¹⁵⁰ Tr. 374; CX-2.

¹⁵¹ Tr. 1327–29; CX-21.

¹⁵² Tr. 1034–35, 1653–54; CX-32; CX-33.

¹⁵³ Tr. 1653–54.

D. Applicable Legal Standards Governing Manipulation

Based on the above trading activity, Norton is charged with willfully violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10-5 thereunder, and with violating FINRA Rules 2020 and 2010. Section 10(b) 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.”¹⁵⁴ Rule 10b-5 prohibits any person from “directly or indirectly” “employ[ing] any device, scheme, or artifice to defraud” or “engag[ing] in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”¹⁵⁵

FINRA Rule 2020 is FINRA’s antifraud rule and prohibits FINRA member firms and persons associated with them 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.” A violation of Section 10(b) and Rule 10b-5 is also a violation of FINRA Rule 2020.¹⁵⁶ A violation of the Exchange Act, the rules promulgated thereunder, or FINRA’s rules constitutes a violation of FINRA Rule 2010.¹⁵⁷ FINRA Rule 2010 requires FINRA members to “observe high standards of commercial honor and just and equitable principles of trade in conducting their businesses.” This rule also applies to associated persons.¹⁵⁸

“Manipulation is ‘virtually a term of art when used in connection with securities markets.’” It has been described in various ways. For example, manipulation “connotes intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities.”¹⁵⁹ It has also been characterized as “the creation of

¹⁵⁴ 15 U.S.C. § 78j(b).

¹⁵⁵ 17 C.F.R. § 240.10b-5(a) and (c). The rule also requires that the proscribed conduct be accomplished (i) “by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,” and (ii) “in connection with the purchase or sale of any security.” The parties do not dispute that that Norton’s conduct occurred by a means or instrumentality of interstate commerce, such as communicating through telephone calls, email, or the U.S. mail service. These communications satisfy the interstate commerce requirement. *See, e.g., Grubbs v. Sheakley Grp., Inc.*, 807 F.3d 785, 803 (6th Cir. 2015) (concluding that “sending an e-mail creates the interstate commerce nexus necessary for federal jurisdiction”); *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 mail), *aff’d*, 159 F.3d 1348 (2d Cir. 1998). Norton’s conduct also involved the purchase and sale of securities.

¹⁵⁶ *Dep’t of Enforcement v. Smith*, No. 2015043646501, 2020 FINRA Discip. LEXIS 43, at *33, 47–48 (NAC Sept. 18, 2020), *appeal docketed*, No. 3-20127 (SEC Oct. 19, 2020) (citing *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *15 (Mar. 31, 2016), *petition for review denied sub nom. Harris v. SEC*, 712 F. App’x 46 (2d Cir. 2017)).

¹⁵⁷ *See Scholander*, 2016 SEC LEXIS 1209, at *14–15; *Dep’t of Enforcement v. Sandlapper Sec., LLC*, No. 2014041860801, 2020 FINRA Discip. LEXIS 30, at *33 (NAC June 23, 2020).

¹⁵⁸ FINRA Rule 0140(a) provides that all of FINRA’s rules apply equally to members and associated persons, and that associated persons have the same duties and obligations as member firms.

¹⁵⁹ *Glendale*, 2021 FINRA Discip. LEXIS 25, at *62 (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976)).

deceptive value or market activity for a security, accomplished by an intentional interference with the free forces of supply and demand.”¹⁶⁰

Establishing manipulation requires a showing that the conduct was done to “deceiv[e] investors as to how other market participants have valued a security. The deception arises from the fact that investors are misled to believe ‘that prices at which they purchase and sell securities are determined by the natural interplay of supply and demand, not rigged by manipulators.’”¹⁶¹

“Scienter is required in order to establish a claim of market manipulation.”¹⁶² It “‘refers to a mental state embracing intent to deceive, manipulate, or defraud.’ Scienter may be established by proving by a preponderance of the evidence that the respondent knew or was reckless in not knowing that a customer’s trades were for a manipulative purpose.”¹⁶³ Recklessness is “an extreme departure from the standards of ordinary care . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.”¹⁶⁴

“Proof of scienter need not be direct, but rather may be inferred from circumstantial evidence.”¹⁶⁵ Such proof “generally depends upon inferences drawn from a mass of factual detail, including patterns of behavior, apparent irregularities, and trading data.”¹⁶⁶ “[I]solated instances of seemingly innocent conduct can, when viewed as a whole, constitute circumstantial evidence of manipulative activity.”¹⁶⁷

Manipulative schemes often display several common characteristics. These include “a rapid surge in the price of a security, little investor interest in the security, the absence of any known prospects for the issuer or favorable developments affecting the issuer or its business, and

¹⁶⁰ *Id.* (quoting *Swartwood, Hesse, Inc.*, Exchange Act Release No. 31212, 1992 SEC LEXIS 2412, at *17 (Sept. 22, 1992)).

¹⁶¹ *ATSI Commc’ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 100 (2d Cir. 2007) (quoting *Gurary v. Winehouse*, 190 F.3d 37, 45 (2d Cir. 1999)).

¹⁶² *Glendale*, 2021 FINRA Discip. LEXIS 25, at *62 (quoting *Ernst & Ernst*, 425 U.S. at 193 n.12). Proof of scienter is not required, however, to establish a violation of FINRA Rule 2010. *Dep’t of Enforcement v. Fiero*, No. CAF980002, 2002 NASD Discip. LEXIS 16, at *62 (NAC Oct. 28, 2002) (addressing scienter in the context of the predecessor to FINRA Rule 2010) (citing *Wall Street West Inc.*, Exchange Act Release No. 18320, 1981 SEC LEXIS 163 (Dec. 9, 1981)).

¹⁶³ *Glendale*, 2021 FINRA Discip. LEXIS 25, at *62 (quoting *Ernst & Ernst*, 425 U.S. at 193 n.12).

¹⁶⁴ *Salvadore D. Palermo*, Exchange Act Release No. 91301, 2021 SEC LEXIS 592, at *9 n.15 (Mar. 11, 2021) (quoting *Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008) (citation omitted)).

¹⁶⁵ *Dep’t of Enforcement v. J. Alexander Sec.*, No. CAF010011, 2005 NASD Discip. LEXIS 42, at *22 (NAC June 14, 2005) (citing *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390–91 n.30 (1983)).

¹⁶⁶ *Dep’t of Mkt. Regulation v. Proudian*, No. CMS040165, 2008 FINRA Discip. LEXIS 21, at *24 (NAC Aug. 7, 2008) (citing *Pagel, Inc.*, Exchange Act Release No. 22280, 1985 SEC LEXIS 988, at *7 (Aug. 1, 1985), *aff’d*, 803 F.2d 942 (8th Cir. 1986)).

¹⁶⁷ *Terrance Yoshikawa*, Exchange Act Release No. 53731, 2006 SEC LEXIS 948, at *22 (Apr. 26, 2006).

market domination.”¹⁶⁸ Cases analyzing price manipulation usually discuss certain “classic factors” or “hallmarks” of manipulation.¹⁶⁹ For example, “various factors that characterize attempts by manipulators to raise the price of a security” include “domination and control of the market, price leadership by the manipulator, restricting the floating supply of the security, and the decline of the market for the security after the manipulator ceases his manipulative activities.”¹⁷⁰

Manipulative schemes sometimes involve pre-arranged trading and matched trades,¹⁷¹ which are “pernicious precisely because by creating the appearance of additional market activity, they create a substantial loss to investors.”¹⁷² Such schemes have certain trademarks—dozens or hundreds of trades swapping hundreds of thousands or millions of shares in a short time, thereby giving the “false impression that there is interest in the stock.”¹⁷³

While manipulations often come with classic factors or hallmarks, “Section 10(b) and Rule 10b-5 are not intended as a specification of particular acts or practices that constitute ‘manipulative or deceptive devices or contrivances.’”¹⁷⁴ Rather, they are “catchall provision[s]” meant to “allow[] regulators to deal with new manipulative schemes, and thus . . . must be applied flexibly.”¹⁷⁵ These provisions are “designed to encompass the infinite variety of devices that are alien to the climate of fair dealing.”¹⁷⁶ As a result, “[a] finding of manipulation does not rise or fall on the presence or absence of any particular device usually associated with a manipulative scheme.”¹⁷⁷

¹⁶⁸ *Dep’t of Enforcement v. Brokaw*, No. 2007007792902, 2012 FINRA Discip. LEXIS 53, at *30–31 (NAC Sept. 14, 2012) (citing *Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *45 (Dec. 10, 2009)), *aff’d*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *46 (Nov. 15, 2013).

¹⁶⁹ *H. J. Meyers*, Initial Decision Release No. 211, 2002 SEC LEXIS 2075, at *99 (Aug. 9, 2002) (citing *Castle Sec. Corp.*, Exchange Act Release No. 39523, 1998 SEC LEXIS 24, at *8 (Jan. 7, 1998)); *Jay Michael Fertman*, Exchange Act Release No. 33479, 1994 SEC LEXIS 149, at *12 (Jan. 14, 1994)).

¹⁷⁰ *Meyers*, 2002 SEC LEXIS 2075, at *87 (citing *SEC v. Resch-Cassin & Co.*, 362 F. Supp. 964, 976–77 (S.D.N.Y. 1973)).

¹⁷¹ “‘Matched’ orders are orders for the purchase/sale of a security that are entered with the knowledge that orders of substantially the same size, at substantially the same time and price, have been or will be entered by the same or different persons for the sale purchase of such security.” *Howard R. Perles*, Exchange Act Release No. 45691, 2002 SEC LEXIS 3395, at *15 n.15 (Apr. 4, 2002) (quoting *Ernst & Ernst*, 425 U.S. at 205 n.25).

¹⁷² *SEC v. Metcalf*, No. 11 Civ. 493 (CM), 2012 U.S. Dist. LEXIS 163491, at *10 (S.D.N.Y. Nov. 13, 2012).

¹⁷³ *Id.* at *11.

¹⁷⁴ *Meyers*, 2002 SEC LEXIS 2075, at *85 (quoting *Herpich v. Wallace*, 430 F.2d 792, 801–02 (5th Cir. 1970)).

¹⁷⁵ *Dep’t of Mkt. Regulation v. Elgindy*, No. CMS000015, 2003 NASD Discip. LEXIS 14, at *19 (NAC May 7, 2003), *rev’d, in part, on other grounds*, Exchange Act Release No. 49389, 2004 SEC LEXIS 555, at *18 (Mar. 10, 2004).

¹⁷⁶ *Meyers*, 2002 SEC LEXIS 2075, at *85 (quoting *Herpich*, 430 F.2d at 802).

¹⁷⁷ *Proudian*, 2008 FINRA Discip. LEXIS 21, at *23 n.25; *see also United States v. Regan*, 937 F.2d 823, 829 (2d Cir. 1991) (holding that no single set of factors identifies manipulation, which encompasses “diverse devices that ingenious minds” have conceived to manipulate securities prices).

Rather, the existence of manipulation hinges on the actor’s purpose when engaging in the conduct.¹⁷⁸ “[I]ntent—not success—is all that must accompany manipulative conduct to prove a violation of the Exchange Act and its implementing regulations.”¹⁷⁹ “In other words, if someone intends to manipulate the market for a security and engages in action that furthers that intent (even if the manipulation ultimately is unsuccessful), that person has engaged in illegal market manipulation.”¹⁸⁰

Securities professionals, such as Norton, “are not free to trade for whatever purpose they wish. [They] are presumed to be trading on the basis of their best estimates of a security’s underlying economic value.”¹⁸¹ So if they “trade for other purposes [it] can be deceptive.”¹⁸² For example, an associated person “can be primarily liable under Section 10(b) for following a [principal’s] directions to execute stock trades that [he] knew, or was reckless in not knowing, were manipulative, even if [he] did not share the [principal’s] specific overall purpose to manipulate the market for that stock.”¹⁸³

This liability stems from the important role securities professionals play in the capital markets. Simply put, “[f]ew, if any, manipulations can succeed without the assistance of these professionals.” So “it is implicit that they are required to exercise reasonable care when confronted with indicia of manipulative activity.”¹⁸⁴ A broker cannot ignore “warning signs that should have aroused suspicions and caused [him] to question [the customer’s] trading and his own involvement in it.”¹⁸⁵ In other words, a broker cannot “close[] his eyes to the manipulative trading, content to execute [the customer’s] transactions in order to pursue guaranteed profits.”¹⁸⁶ Doing so constitutes scienter.¹⁸⁷

¹⁷⁸ See *Kirlin*, 2009 SEC LEXIS 4168, at *58 n.79 (“[M]anipulation’ can be illegal solely because of the actor’s purpose.”) (quoting *Markowski v. SEC*, 274 F.3d 525, 528–29 (D.C. Cir. 2001)).

¹⁷⁹ *Koch v. SEC*, 793 F.3d 147, 153–54 (D.C. Cir. 2015).

¹⁸⁰ *Brokaw*, 2013 SEC LEXIS 3583, at *46.

¹⁸¹ *FERC v. City Power Mktg., LLC*, 199 F. Supp. 3d 218, 235 (D.D.C. 2016) (citing *ATSI*, 493 F.3d at 100).

¹⁸² *Id.*; see also *Markowski*, 274 F.3d at 529 (concluding that Congress determined “that ‘manipulation’ can be illegal solely because of the actor’s purpose.”).

¹⁸³ *Brokaw*, 2012 FINRA Discip. LEXIS 53, at *28–29 (quoting *SEC v. U.S. Env’tl., Inc.*, 155 F.3d 107, 112 (2d Cir. 1998)).

¹⁸⁴ *Proudian*, 2008 FINRA Discip. LEXIS 21, at *39–40 (citing *Edward J. Mawod & Co.*, Exchange Act Release No. 13512, 1977 SEC LEXIS 1811, at *22 (May 6, 1977), *aff’d*, 591 F.2d 588 (10th Cir. 1979)); see also *Robert J. Prager*, Exchange Act Release No. 51974, 2005 SEC LEXIS 1558, at *31 n.30 (July 6, 2005) (finding that in the context of manipulation, broker-dealers must “use diligence where there are any unusual factors [because] violations of the antifraud and other provisions of the securities laws frequently depend for their consummation . . . on the activities of broker-dealers who fail to make diligent inquiry to obtain sufficient information to justify their activity in [a] security.”).

¹⁸⁵ *Prager*, 2005 SEC LEXIS 1558, at *33.

¹⁸⁶ *Id.* at *33–34.

¹⁸⁷ *Id.* at *34.

Adhering to these obligations is paramount in connection with penny stock trading. These securities “present risks of trading abuses due to the lack of publicly available information about the penny stock market in general and the price and trading volume of particular penny stocks.” As a result, “broker-dealers need to be alert for suggestions of problems and irregularities regarding their customers’ transactions in penny stocks.”¹⁸⁸

* * *

Applying the above legal standards, the key issue is whether Norton engaged in transactions in NUGN stock with scienter to artificially affect the price of its stock or send a false signal as to its value, and not for any legitimate purpose. The parties presented little direct evidence on this issue. Norton was the only percipient witness. And while he denied intentionally or recklessly engaging in a price manipulation, he often claimed to not recall much about the relevant trading.¹⁸⁹ So the evidence here, as in most manipulation cases, was mainly circumstantial and consisted of the trading and surrounding events. It included purported red flags of suspicious or potentially manipulative conduct, as well as indicia of manipulation, relating to NUGN, Norton’s customers who traded in NUGN stock, and their NUGN trading. To help the Panel interpret the evidence, the parties presented expert witness reports and testimony, which we found central to our determination of the charges.

E. Expert Evidence¹⁹⁰

1. Norton’s Expert

Norton’s expert, Robert W. Lowry, was well-qualified to testify about whether indicia of manipulation existed here. He was employed by the Securities and Exchange Commission (“Commission”) for nearly 30 years. He spent over 20 years in the Commission’s Division of Market Regulation. While there, he conducted many broker-dealer examinations and self-regulatory oversight inspections. He also assisted the Commission’s Division of Enforcement on complex investigations and litigation matters regarding broker-dealer activities, including those involving alleged market manipulation.¹⁹¹

For the past 25 years, Lowry has been self-employed as a consultant in the field of securities regulation, and specializes in matters involving broker-dealer trading and sales practices. Lowry’s curriculum vitae represents that he is “thoroughly familiar with how the over-the-counter . . . market operates (e.g., the various types of OTC markets, the role of market makers, how securities prices are determined, and how to detect manipulative or noncompetitive

¹⁸⁸ *Ronald S. Bloomfield*, Exchange Act Release No. 71632, 2014 SEC LEXIS 4543, at *4–5 (Feb. 27, 2014).

¹⁸⁹ Norton’s professed inability to recall events damaged his credibility, as we discuss below.

¹⁹⁰ Norton’s expert testified first because Enforcement did not call an expert in its case in chief—only in rebuttal. So we first address Norton’s expert.

¹⁹¹ Respondent’s Exhibit (“RX-__”) 69A, at 3.

markets).” He has been retained as an expert in about 60 cases involving alleged manipulation¹⁹² and has been qualified as an expert in court and arbitration proceedings in alleged manipulation cases.¹⁹³ His clients in alleged manipulation matters have included the Commission, the Department of Justice, and private litigants (both plaintiffs and defendants) in federal and state courts, administrative proceedings, and arbitrations.¹⁹⁴ In particular, Lowry has testified in federal court for the Commission as a market manipulation expert and for the Department of Justice as an expert in broker-dealer trading and sales practices.¹⁹⁵

Lowry stated in his expert report that his objective in this proceeding was to determine if the trading records and evidence reflect any indicia of market manipulation. He also stated that he “spent many hours analyzing the trading data and looking for [patterns] of activity that might or might not support Enforcement’s manipulation allegations.”¹⁹⁶ Based on his review, Lowry reported that he found no indications of manipulation.¹⁹⁷

a. Overall Conclusions

Lowry determined that the trading data did not reflect “a pattern of conduct or irregularities by Norton” from which he “would infer or conclude that Norton was artificially increasing the NUGN price . . . or otherwise interfering with a fair and orderly market.”¹⁹⁸ He pointed out that Norton mostly sold shares that his customers had delivered to him, and his trades were executed “at, or within, the inside bid and ask spread.” Lowry was not persuaded that manipulative cross trades occurred on the days in March and April identified in the Complaint. He reached this conclusion because, among other things, the “trading data and the infrequent nature of these cross trades . . . renders these trades inconsistent with what would be considered to be a pattern of manipulative cross trades.”¹⁹⁹

Lowry testified that he did not see a pattern of anyone creating an artificial bid.²⁰⁰ Nor did Lowry see a pattern of one market maker constantly raising the high bid when there were no trades that would account for the continuous increase of the high bid.²⁰¹ Likewise, Lowry said he did not see a pattern of Norton or the Firm setting a high price for the day. Indeed, according to Lowry, “with the numerous market makers competitively establishing the [National Best Bid and

¹⁹² RX-69A, at 45–58.

¹⁹³ RX-69A, at 41.

¹⁹⁴ RX-69A, at 45–58.

¹⁹⁵ RX-69A, at 3.

¹⁹⁶ RX-69A, at 10–11.

¹⁹⁷ RX-69A, at 36–38.

¹⁹⁸ RX-69A, at 36–37.

¹⁹⁹ RX-69A, at 37.

²⁰⁰ Tr. 2236.

²⁰¹ Tr. 2237.

Offer (“NBBO”)] (and [Broker-Dealer B]’s dominance of the NBBO), such activity undercuts the proposition that Norton did (or even had the ability to) trade NUGN stock in a manner that artificially impacted the market.”²⁰²

Lowry also criticized Enforcement for not appreciating how the promotional brochure affected the rise in NUGN stock’s market price from \$2.63 on May 13, 2015, to \$4.30 on June 9, 2015, choosing, instead to attribute the increase to the trading by Norton and his customers.²⁰³

Expanding on these opinions, Lowry made several observations. First, he found no manipulative behavior in Norton’s bids.²⁰⁴ To the contrary, in Lowry’s view, Norton’s bids and quotes were unremarkable. Norton was rarely at or shared the inside bid from February 24 to June 12, 2015;²⁰⁵ Lowry saw no “patterns of unusual behavior and/or apparent irregularities that would indicate Norton used his quotes—and in particular his bid—to interfere with the free economic forces of supply and demand.”²⁰⁶ And there was “a competitive and active market for NUGN shares” as evidenced by “the large number of market makers and narrow spreads between the inside bid and ask prices.”²⁰⁷

Second, Norton did not mark the close.²⁰⁸ Lowry reviewed each day’s last trade during the relevant period, examining the date, time, buyer, seller, execution price, previous price, and the NBBO. He saw no pattern of anyone entering orders at the end of the day at a much higher price.²⁰⁹

Third, Norton did not engage in price leadership. Lowry saw no indications that Norton increased his bid for NUGN shares. Instead, as noted above, “Wilson-Davis was infrequently at (or shared) the inside bid.” Nor did Norton provide “the false appearance that more bid side activity existed than actually existed in reality,” according to Lowry. Central to this conclusion, Lowry explained, was that the inside bid and ask quotations for NUGN shares narrowed during March. And starting on April 2, 2015, the inside spread between the bid and ask was scant: \$0.01 to \$0.02. In reaching his conclusion that Norton did not engage in price leadership, Lowry also

²⁰² RX-69A, at 37.

²⁰³ RX-69A, at 37–38.

²⁰⁴ RX-69A, at 12.

²⁰⁵ RX-69A, at 12.

²⁰⁶ RX-69A, at 12–13.

²⁰⁷ RX-69A, at 13. Norton observed that from early March 2015, NUGN had up to 27 market makers. RX-69A, at 12.

²⁰⁸ “‘Marking the close’ is the manipulative practice of selling or purchasing securities near the end of the day to artificially decrease or increase the closing price of a security.” *Brokaw*, 2013 SEC LEXIS 3583, at *16 n.27.

²⁰⁹ RX-69A, at 13.

considered that Norton’s customers typically sold NUGN shares. But when they bought, there was no pattern of them “buying at increasingly and artificially higher prices on the same day.”²¹⁰

Finally, Wilson-Davis did not dominate and control the NUGN market.²¹¹ To begin with, according to Lowry, Enforcement’s claim that from late February through early May 2015 Wilson-Davis and its customers trading dominated the market is irrelevant. For Lowry, domination and control—not just domination—is key. It is the element of control that “might allow a market maker the ability to establish artificial prices rather than prices based on the economic forces of supply and demand.”²¹² But based on the trading data, Lowry saw no evidence that Wilson-Davis controlled the market for NUGN or set artificial prices, asserting that “[s]imply being a high percentage of a trading volume is not indicative of an ability or intent to artificially set the price for a security.”²¹³ In Lowry’s opinion, Norton did not both dominate and control the trading mainly because there were many active market participants; Norton was rarely at, or shared, the inside bid; his customers mainly were sellers; the trading data did not reflect any irregular patterns; and NUGN’s market makers entered competitive quotations.²¹⁴

b. Opinions About Trading on Specific Days

Lowry addressed the allegations of manipulation on the specific days in February through May 2015 identified in the Complaint, reiterating points outlined above. He stated that he did not see any pattern of manipulation on those days.²¹⁵ This opinion rested on two determinations. First, Lowry found no pattern of manipulation through controlling the market or price leadership.²¹⁶ Generally, the purchases took place when the NUGN market was active and competitive with narrow spreads between the bid and ask quotes.²¹⁷

Second, he found that the specific trades identified do not have typical characteristics of match trades. Lowry stated that he saw no evidence that Norton, rather than his customers, were entering the buy and sell orders for NUGN shares. And, Lowry continues, the cross trades here are “not uncommon and . . . are not manipulative unless done for improper purposes.”²¹⁸ He pointed out that “Norton, as the trader for NUGN, and in the normal course of business, would have access to unexecuted orders, and it was his obligation as trader to execute these unfilled

²¹⁰ RX-69A, at 14.

²¹¹ RX-69A, at 14.

²¹² RX-69A, at 15.

²¹³ RX-69A, at 15.

²¹⁴ RX-69A, at 16–17.

²¹⁵ RX-69A, at 18–19. *See* Compl. ¶¶ 42–50, 67–68, 71–73, 77 (alleging that manipulative trading occurred on February 24, 2015; March 2–3, 10–12, 26–27, 2015; March 31–April 2, 2015; April 24, 2015; and May 20–28, 2015).

²¹⁶ RX-69A, at 18–19.

²¹⁷ RX-69A, at 19.

²¹⁸ RX-69A, at 19–20.

orders as soon as possible at prices consistent with the NBBO,” emphasizing that “[AA]’s May 2015 purchases did not affect the market.” Finally, he concluded that the trades are not typical of matched trades because Norton’s customers did not place the buy and sell orders “at or about the same time and or in the same quantity of shares”; the trades were infrequent; they “do not constitute a pattern of such conduct”; and the trades were executed within the NBBO.²¹⁹

As for the \$5 trade on February 24, Lowry’s report contained little analysis. He noted that at the time of the trade, the NBBO was \$2.50 bid and \$5 ask; that Norton testified he did not recall why he made the purchase; that “NUGN had received substantial press attention at or around that date”; that over the next few days, Broker-Dealer A sold additional shares at \$5 per share to two other market makers; and that Broker-Dealer A reduced its ask to \$2.50 on February 27 and then sold additional shares at that price.²²⁰ Lowry’s report did not discuss the significance of these points.

But at the hearing, Lowry expanded on his analysis about Norton’s trade. He stressed that Norton bought the NUGN shares on February 24 at the asking price and, as he noted in his report, the trading at \$5 continued for several days afterward, including mostly by Broker-Dealer B, a dominant player in the market that executes trades for many of the online broker-dealers.²²¹ He also reflected that there was “no science to picking a price on a stock. The market tells you if you’re right or wrong.” So, Lowry continued, traders may well “put in the first bid, the first offer, and they let the market tell them if they’re right or wrong.”²²² Lowry also found no manipulative intent because he saw no evidence that Norton knew that a \$5 price would unlock the NUGN shares.²²³

Still, Lowry described the trade as “extraordinary,” “special,” and “unique” because it was Norton’s first trade in the security. He recognized that it came after 20 days of no trades in the stock, and no one, until then, had taken Broker-Dealer A’s \$5 offer. Lowry noted that the offer was originally \$10 and then it dropped to \$5.²²⁴ And he admitted that when he first reviewed the trade, it appeared troublesome and it concerned him.²²⁵ But when pressed to explain his current view of the trade, Lowry gave a long, rambling, and unresponsive answer.²²⁶

²¹⁹ RX-69A, at 20–22.

²²⁰ RX-69A, at 21.

²²¹ Tr. 2400–02.

²²² Tr. 2402.

²²³ Tr. 2314–16.

²²⁴ Tr. 2319.

²²⁵ Tr. 2320–21.

²²⁶ Tr. 2320–23.

At the end of it, he expressed ambivalence. “I wish Norton had an answer to why he did it but he didn’t,” Lowry said. “I mean, there is no question about it.”²²⁷

Moving on to AA’s purchases in May 2015, Lowry rejected the argument that they provided price support for NUGN stock.²²⁸ He concluded that the stock promotional brochure caused “higher share volume and increasing prices with narrow spreads,” which are “indicia of an active competitive market.”²²⁹ According to Lowry, “[AA] paid higher prices that were attributable to these market conditions and which were consistent with the NBBO.”²³⁰ Also supporting this conclusion, he noted that “[AA’s] purchases were a small percentage of the total trades each day (and no trades on two days). Wilson-Davis constituted a small percentage of the total trades each day and Norton was rarely at the inside bid.”²³¹ He concluded that AA’s purchases lack “the characteristics of a pattern of trading intended to affect the market given the intense market activity, the numerous active market makers, and the narrow spread.”²³²

2. Enforcement’s Expert

To counter Lowry’s testimony, Enforcement called Steve Ganis as a rebuttal expert. Like Lowry, Ganis is also well qualified. According to his curriculum vitae,²³³ Ganis has experience in financial services and regulatory law, including dealing with manipulation-related issues. After graduating from Harvard Law School in 1992, Ganis began his legal career in the federal government, working first in the Commission’s Office of General Counsel and then serving as Counsel to the full Committee on Banking and Financial Services of the U.S. House of Representatives.²³⁴

Next, Ganis “[p]racticed broker-dealer, asset management, banking, derivative, futures and securities regulatory law” in the Financial Services Group at the law firm Goodwin Procter LLP. After two years at that firm, he worked for Fidelity Investments where, over the next six years (2002 through 2008), he served in several AML officer positions, including Chief Anti-Money Laundering & U.S. Sanctions Officer. While at Fidelity, Ganis (i) “[d]esigned and led implementation of USA PATRIOT Act and [Office of Foreign Assets Control] compliance programs and governance throughout [the] Fidelity organization, including systems and processes to detect and prevent . . . potential penny stock and microcap manipulation”; (ii)

²²⁷ Tr. 2323.

²²⁸ RX-69A, at 21.

²²⁹ RX-69A, at 21. He contrasted the “dramatic increase of price and volume” with the modest price increases before the brochure was distributed—the “difference between the \$2.50 ask quote set by [Broker-Dealer A] on February 27, 2015, and the \$2.63 price for NUGN on May 13th.” RX-69A, at 37–38.

²³⁰ RX-69A, at 34.

²³¹ RX-69A, at 34–35.

²³² RX-69A, at 21.

²³³ CX-50A, at 59–62.

²³⁴ CX-50A, at 59–60.

“[i]nteracted extensively with regulators and law enforcement, including to help address potential securities fraud and market manipulation”; and (iii) “[o]versaw due diligence in clearing broker-dealer acquisitions to identify securities fraud and manipulation through specific introducing broker-dealer relationships.”²³⁵

Since 2008, Ganis has practiced law at Mintz Levin Cohn Ferris Glovsky and Popeo, P.C., first as of counsel and, later, as a partner. The varied services he has provided include “[conducting] investigations of and help[ing] prevent securities fraud, market manipulation, money laundering . . . and other illicit finance through client financial institutions.”²³⁶

Finally, Ganis has testified about manipulation in a FINRA disciplinary proceeding.²³⁷ During his testimony as an AML expert in that case, Ganis addressed, among other things, whether the evidence he analyzed—including microcap stock trades—reflected red flags of fraud and manipulative trading.²³⁸

a. Overall Conclusions

Ganis concluded that the totality of the circumstances surrounding the trading and market-making activity in NUGN at Wilson-Davis reflect manipulative intent by Norton.²³⁹ He found that “multiple red flags potentially indicating a manipulative pump-and-dump scheme accompanied the establishment of market making in and the deposit of NuGene stock at Wilson-Davis.”²⁴⁰ According to Ganis, Norton and his customers then “conduct[ed] a pattern . . . of quotations, share certificate deposits, proprietary trades, riskless principal cross trades, and other trading that closely track various known market manipulation activities”²⁴¹ Specifically, the abundance of pump-and-dump red flags and suspicious bids and trades, in Ganis’s opinion, reflect Norton’s manipulative intent. “[P]articularly suggestive of manipulative intent,” he highlighted, was “[t]he \$5.00 purchase that hit a contractual trigger, the [AA] cross trades, and Norton’s critical involvement in [AA]’s sustained pattern of uneconomic purchases”²⁴²

Ganis explained that Lowry reached different conclusions because he relied on an underinclusive list of manipulative devices and behaviors: marking the close; matched orders; domination and control; and price leadership.²⁴³ The list is underinclusive, according to Ganis,

²³⁵ CX-50A, at 59.

²³⁶ CX-50A, at 59.

²³⁷ CX-50A, at 62. *Dep’t of Enforcement v. Wood (Arthur W.) Co., Inc.*, No. 2011025444501, 2015 FINRA Discip. LEXIS 61 (OHO Oct. 29, 2015), *aff’d in relevant part*, 2017 FINRA Discip. LEXIS 30 (NAC Mar. 15, 2017).

²³⁸ *Wood*, 2015 FINRA Discip. LEXIS 61, at *18.

²³⁹ CX-50A, at 4.

²⁴⁰ CX-50A, at 26.

²⁴¹ CX-50A, at 56. *See also* CX-50A, at 4, 26.

²⁴² CX-50A, at 56.

²⁴³ CX-50A, at 4, 16.

because over recent decades, manipulative schemes have become more sophisticated and complex.”²⁴⁴ This evolution is reflected in a “range of manipulative or deceptive devices employed in market manipulation schemes . . . far broader and includes many more practices than the four discussed in” Lowry’s report.²⁴⁵ Examples of these omitted factors include “the Bling S-1 offering registration, the private securities sales, reverse merger, market making initiation irregularities, physical certificate deposits, small purchases without apparent legitimate purpose, large-scale liquidations and outbound wire activity,” according to Ganis.²⁴⁶ “Yet all these factors, especially when combined, are classic red flags signaling risk of a pump-and-dump scheme.”²⁴⁷

b. Manipulative Devices and Red Flags

Ganis addressed various manipulative devices and red flags beyond those discussed by Lowry.²⁴⁸ The manipulative devices fell into two broad categories: (i) manipulative quotations published by market makers,²⁴⁹ such as arbitrary quotations and bid support; and (ii) various types of manipulative trading, including transactions between counterparties acting in concert, relatively small purchases, and hitting contractual triggers.²⁵⁰ He also discussed the following red flags linked to pump-and-dump schemes: shell company reverse mergers, certificate deposits; touting; mass liquidations; and outbound disbursements.²⁵¹

i. Manipulative Quotations—Arbitrary Quotations and Bid Support

According to Ganis, arbitrary quotations are bids or offers bearing “no logical relation to the business history, earnings, assets or products of the security’s issuers. Arbitrary bid and ask quotations,” he explained, “are for prices or quantities not justified by legitimate supply and demand. Manipulators use these quotations to alter or stabilize the prices of thinly traded stocks.”²⁵²

Another manipulative device, bid support, occurs “[w]hen a manipulator places a limit order to buy a significant quantity of shares at a price that is below the inside bid.” This causes “market makers to post a bid (a “Supporting Bid”) that can serve as an artificial floor,” “caus[ing] other market makers to bid higher than they otherwise would . . . and . . . halt[] or

²⁴⁴ CX-50A, at 14.

²⁴⁵ CX-50A, at 16.

²⁴⁶ CX-50A, at 26.

²⁴⁷ CX-50A, at 26, 56.

²⁴⁸ CX-50A, at 16.

²⁴⁹ CX-50A, at 17.

²⁵⁰ CX-50A, at 17–23.

²⁵¹ CX-50, at 23–25.

²⁵² CX-50A, at 17.

slow[] the downward movement that would otherwise occur.”²⁵³ As a result, prices remain “artificially inflated during negative developments or perpetrator liquidations.” Ganis added that a “pattern of large limit orders to purchase not far below the inside bid that get only partially filled or never get filled at all is a classic indicator the orders were placed for the manipulative[] purpose of creating Supporting Bids and an artificial floor.”²⁵⁴

Ganis concluded that bids based on MS orders on February 10 showed signs of red flags associated with an artificial floor strategy.²⁵⁵ On that day, Ganis observed, Norton posted his market maker bid to buy NUGN at \$1.33, apparently representing MS’s order to buy 100,000 shares at \$1.33.²⁵⁶ Norton’s own bid before then had been only \$0.33.²⁵⁷ Before Norton’s \$1.33 bid, the most recent NUGN trades had taken place six days earlier, on February 4, and totaled about 6,000 shares. About half traded “between \$2 and \$2.25 and about half that closed the day at \$0.26, around an 88 percent drop.” Before February 4, “the only other trade in the stock occurred on January 6, 2015, for 500 shares at \$0.13. Thus, as of February 10, less than 6,000 shares of the stock had publicly traded in its entire history.”²⁵⁸

Other than some touting by NuGene in press releases, Ganis saw “nothing of economic substance” to have justified huge price increases. In Ganis’s opinion, an experienced OTC trader like Norton would have viewed the following as suspicious on February 10: (i) the \$2, \$2.25, and \$0.26 purchases on February 4; (ii) the initial and only offer of NUGN stock in the market published by Broker-Dealer A for \$10 and then reduced a few days later to \$5; and (iii) MS’s \$1.33 limit order price to purchase NUGN. In short, Ganis concluded that MS’s price was arbitrary and Norton should have recognized this.²⁵⁹

Ganis saw other indications of bid support later in February when MS increased its order to purchase NUGN shares at \$1.33 from 100,000 to 200,000 shares. Norton ultimately filled only 2,000 shares of that order on March 9, 2015. At that time, Norton was buying other shares for \$1.33. Filling a fraction of MS’s order made no sense, according to Ganis, because Norton bought tens of thousands of shares at \$1.33 while MS’s order was pending.²⁶⁰

The next day, March 10, the day after Wilson-Davis filled one percent of MS’s 200,000 share purchase order, MS placed a new order to buy 50,000 shares of NUGN stock at \$1.33. And

²⁵³ CX-50A, at 18.

²⁵⁴ CX-50A, at 19.

²⁵⁵ CX-50A, at 47–48.

²⁵⁶ CX-50A, at 28.

²⁵⁷ CX-50A, at 29.

²⁵⁸ CX-50A, at 28.

²⁵⁹ CX-50A, at 29.

²⁶⁰ CX-50A, at 29–30.

Norton never filled this buy order either.²⁶¹ This struck Ganis as especially odd. On that day, Wilson-Davis bought 37,000 shares for its proprietary account at an average price of \$1.33. The Firm ended the day holding most of those shares (33,900) in its inventory, which caused the Firm to carry that position overnight.²⁶²

As for the February and March 2015 orders, quotations, and partial fill by Norton for MS, Ganis criticized Lowry for not addressing, among other things, whether the Firm's quotations were arbitrary and constituted bid support and "whether the quotations based on the order or the one percent fill were a contrivance to simulate non-extant demand."²⁶³

Ganis saw additional signs of bid support by Norton in May and June.²⁶⁴ For example, Ganis noted that Norton published bids based on not-held orders that "effectively gave" Norton "discretion to support the price by lifting offers that approach or go below the inside bid."²⁶⁵ Also, during this period, Norton placed several bids showing size of 50,000 or 100,000 shares. These bids, which were based on AA's buy orders, were usually below the inside bid and most were never or only partially executed.²⁶⁶ After examining Wilson-Davis's bid activity in NuGene stock, he concluded that most were Supporting Bids that "established a floor for NuGene's trading price during certain days in this period."²⁶⁷

Ganis faulted Lowry's report for not addressing "whether Wilson-Davis's May 2015 bids comported with a pattern of manipulative Supporting Bids that were not intended to be fully-executed but rather to establish an artificial floor"; "whether the bid size that Wilson-Davis published to the market based on [AA] orders . . . reflected genuine demand"; and "the relationship between customers placing the apparent Supporting Bids and those liquidating their holdings."²⁶⁸

ii. Transactions Between Counterparties Acting in Concert

Coordinated trading between customers is a red flag of potential manipulation, according to Ganis.²⁶⁹ It consists of "[t]wo traders acting in concert on opposite sides of the same trade for the purpose of injecting into the market deceptive information about the value of or activity in a

²⁶¹ CX-50A, at 29–30.

²⁶² CX-50A, at 30.

²⁶³ CX-50A, at 31.

²⁶⁴ CX-50A, at 47–48.

²⁶⁵ CX-50A, at 48.

²⁶⁶ CX-50A, at 48.

²⁶⁷ CX-50A, at 48 (citing CX-28).

²⁶⁸ CX-50A, at 49.

²⁶⁹ CX-50A, at 45.

security” (“Coordinated Trading”).²⁷⁰ One type of Coordinated Trading is matched trades,²⁷¹ which Lowry discussed in his report.

But not all manipulative Coordinated Trading results from an advance, explicit agreement by the counterparties, Ganis noted. Sometimes counterparties “give discretion in advance to trader(s) at one or more market makers participating in the scheme to execute orders over time.”²⁷² That way, “[t]he market makers can then deploy such discretion to match the applicable orders with those of other participants in the scheme in a way that achieves the manipulative purpose of creating deceptive value, deceptive activity, or both.”²⁷³ Such “cross trades in thinly traded microcap stocks among parties known to have business relationships with one another are . . . potential indicators of pump-and-dump manipulation.”²⁷⁴ As Ganis also explained, manipulators may execute cross trades at one firm through a riskless principal trade in which the trader uses the firm’s proprietary account to buy from the seller and sell to the buyer. They do this to reduce exposure to market movements caused by the trading and to make sure that the counterparty will be another participant in the manipulation.²⁷⁵ Ganis declared that these types of trades “are manipulative if they tell the market a misleading story.”²⁷⁶

Other indicators of a pump-and-dump manipulation are “transfers of thinly traded microcap stock between accounts where there is no familial or significant other relationship among the account holders.” These private transactions “are typically settled through internal book-entry journal transfers within a single broker-dealer that carries both counterparties’ accounts and through other kinds of transfers among carrying broker-dealers.”²⁷⁷

Ganis saw examples of potential Coordinated Trading in this case. He pointed to Norton’s execution of trades by crossing orders between customers, such as AA and CD. In Ganis’s opinion, Norton should have realized that these two customers were coordinating their NUGN trading when Wilson-Davis settled private sales between them by internal journal transfer book entries just a few days after their cross trades.²⁷⁸

Ganis concluded that “[t]he overall pattern of crossing so many NuGene orders amongst a group of customers that appeared connected closely” was suspicious. He also thought the trading was suspicious “because the quantities of the individual cross trades are small relative to

²⁷⁰ CX-50A, at 20.

²⁷¹ CX-50A, at 21.

²⁷² CX-50A, at 20.

²⁷³ CX-50A, at 20–21.

²⁷⁴ CX-50A, at 21.

²⁷⁵ CX-50A, at 20.

²⁷⁶ CX-50A, at 47.

²⁷⁷ CX-50A, at 22.

²⁷⁸ CX-50A, at 45.

the total quantities bought and sold by the associated customers.”²⁷⁹ As discussed below in the next section, “[w]hile Norton’s customers were liquidating their NUGN holdings, the cross trades between associated customers signaled additional market activity and demand to buy the stock at the firm, particularly given the manner in which some of the NUGN cross trading was broken down into smaller transactions.”²⁸⁰ Finally, “[t]he likelihood these cross trades were manipulative is exacerbated by the significant percentage of daily volume these trades represented.”²⁸¹

Ganis is critical of Lowry for not addressing “the relationships between Norton’s cross trade customers or the significant risk that these trades injected deceptive information about volume, demand, and liquidity into the market.”²⁸²

iii. Relatively Small Purchases

Ganis stated that making purchases in a thinly traded stock that are small relative to a group’s overall liquidations can be another manipulative device, depending on the reason. Examples of manipulative reasons include “creat[ing] the appearance of more widespread legitimate investor interest than actually exists”; making “trading in the stock appear more orderly and liquid, and thus more attractive to potential victims, than it would otherwise be in the absence of the manipulative purchases”; and trying “to support the price by lifting low offers.”²⁸³

Ganis considered Norton’s execution of several purchases in spring and summer 2015 an example of this type of potentially manipulative buying. As noted above, some of Wilson-Davis’s “customers, mostly [AA], at times placed not-held orders that effectively gave Norton discretion to maintain an artificial price floor by lifting offers from ‘the street.’”²⁸⁴ Norton then exercised his discretion from the not-held orders for AA and others by deciding to buy. This resulted in “manipulative purchases that were small relative to the overall level of liquidation by the customer group,”²⁸⁵ according to Ganis. “Like breaking up the cross trades between associated customers into multiple smaller trades, the relatively small purchases from ‘the street’ conveyed deceptive information about how widespread and frequent NuGene trading was

²⁷⁹ CX-50A, at 46.

²⁸⁰ CX-50A, at 47.

²⁸¹ CX-50A, at 45–46.

²⁸² CX-50A, at 47.

²⁸³ CX-50A, at 22.

²⁸⁴ CX-50A, at 50.

²⁸⁵ CX-50A, at 50–51.

becoming.”²⁸⁶ These purchases, he pointed out, were typically made when other Wilson-Davis customers were selling.²⁸⁷

iv. Hitting Contractual Triggers

Manipulators sometimes try “to influence the market in a security to achieve a favorable legal consequence of hitting a security price benchmark specified in a legal agreement,” Ganis stated.²⁸⁸ Norton’s \$5 trade on February 24 “helped lift the pre-existing legal restrictions applicable to the [AA] shares that were in the process of being deposited with the firm and other shares that were to be deposited subsequently.”²⁸⁹

Looking at the totality of the circumstances, Ganis concluded that the trade was suspicious and manipulative for many reasons. First, Wilson-Davis’s “customers trading in NuGene appear to have participated in a pump-and-[dump] scheme based on the red flags presented,” so “they had an illicit motive to escape the [LULO’s] liquidation restrictions as soon as possible after depositing their shares.”²⁹⁰

Second, Norton had a financial interest to free up the shares because large scale liquidations would result in large commissions for him.²⁹¹

Third, Broker-Dealer A’s \$5 ask “was not only arbitrary but actually absurd in the context of: the stock’s brief and scarce history of trading; the price of the most recent previous trade at the time of \$0.26; and Wilson-Davis’[s] then current bid of \$1.33, which,” he added, “was based on MS’s questionably large buy order to buy the stock.”²⁹²

Fourth, “market makers do not typically purchase stock by simply lifting the offer . . . especially when there is volatility and a significant bid-ask spread, as there was at the time of Norton’s \$5.00 NUGN trade.” Ganis asserted that had Norton wanted a long position on February 24 in NUGN shares, he would have started bidding at or just below the inside bid, then would have incrementally moved his bid up until he found a willing seller. “The fact that Wilson-Davis jumped [in] straight to lift the inexplicable offer of \$5.00—nearly \$4.00 above and four times his bid—just does not make sense,” he stated.²⁹³

²⁸⁶ CX-50A, at 50.

²⁸⁷ CX-50A, at 50.

²⁸⁸ CX-50A, at 23.

²⁸⁹ CX-50A, at 38.

²⁹⁰ CX-50A, at 39.

²⁹¹ CX-50A, at 39.

²⁹² CX-50A, at 39–40.

²⁹³ CX-50A, at 40.

Fifth, the trade caused Wilson-Davis to incur risk by holding the position in its proprietary account overnight.²⁹⁴ This risk became a realized loss on March 2, when the Firm sold the shares to customer FS for \$1.50 per share. “The 70 percent loss Wilson-Davis incurred as a result of the \$5.00 purchase,” he explained, “is further evidence that it lacked economic purpose apart from leading the process that contractually released millions of shares for liquidation in an apparent pump-and-dump scheme.”²⁹⁵

And, finally, other purchases from Broker-Dealer A over the next two days at \$5 released the applicable NUGN share from the LULO restrictions. Thus, the entire February 24–26 trading pattern—of which Norton’s trade was the first step—“closely tracks the manipulative device of buying (or selling) to hit contractual benchmarks.”²⁹⁶

Ganis dismissed Lowry’s written analysis of the \$5 trade, claiming it was neither thorough nor satisfactory and failed to address directly whether the purpose of the trade was to release the NUGN shares from the LULO. Ganis observed that although Lowry discussed price leadership, he failed to explore whether that trade constituted price leadership, domination, and control, and did not consider that Norton was the first market maker to hit the contractual trigger. Further, he failed to address that the purchase accounted for all the volume in NUGN stock on February 24, that the purchase price was nearly four times the size of the Firm’s bid at that time, and was over 19 times higher than the previous trade in the market.²⁹⁷

Ganis therefore concluded that the \$5 trade was suspicious and bore all of hallmarks of manipulation. Of the different aspects of Norton’s NUGN trading, Ganis found the \$5 purchase and AA-CD’s cross trades on March 31 to be the most pronounced of all manipulative indicia.²⁹⁸

v. Shell Company Reverse Mergers

“[M]any previously private microcap issuers whose shares get manipulated in pump-and-dump schemes become publicly tradable in OTC markets through reverse mergers with shell companies that,” according to Ganis, lack “credible business prospects.” Ganis concluded that the issuer’s recent acquisition (i.e., the reverse merger), along with the termination of its shell company status, and its recent volume of press releases—the points raised by Wilson-Davis’s

²⁹⁴ CX-50A, at 40.

²⁹⁵ CX-50A, at 41–42.

²⁹⁶ CX-50A, at 42–43.

²⁹⁷ CX-50A, at 43.

²⁹⁸ Tr. 2604–06; CX-50A, at 56. As for the AA-CD transactions, Ganis explained a troublesome aspect of Norton’s approach of breaking the cross trade into “a bunch of different parts.” According to Ganis, Norton had a duty to both the selling and buying customer to get best execution. But by breaking the trade into small trades, he exposed both customers to risk. “[I]f the price goes up while you’re sitting on it, you hurt the party that’s buying at the expense of the party who’s selling.” But, he continued, “[i]f the prices goes down, you’re . . . doing the opposite.” In sum, “[i]f you don’t do that all at once . . . you’re actually hurting one customer or the other.” Tr. 2611.

attorney—were all “widely recognized red flags potentially signaling a pump-and-dump scheme.”²⁹⁹

vi. Deposits of Physical Certificates

“[M]ost manipulators in pump-and-dump schemes get their initial low-cost shares in certificated form,” according to Ganis. “This is because the microcap issuer’s shares cannot easily [be] transferred by other means (e.g., through the Depository Trust Company) until deposited with a clearing firm.” Continuing, Ganis stated that large deposits of microcap stock in a security that has not yet traded or is thinly traded are, in Ganis’s opinion, a classic manipulation red flag.³⁰⁰ Ganis considered AA’s deposit an “example of a larger pattern of deposits of certificates representing millions of NuGene shares by customers who, as should have been clear from the documentation submitted, acquired Bling stock at around the same time.” And, Ganis added, “[a] total of 20 Wilson-Davis customers made similar deposits of NuGene aggregating to over 3.9 million shares from February through June 2015.”³⁰¹

vii. Touting

Ganis asserted that the “pump” stage of a pump-and-dump scheme often involves false or misleading touting claiming to solve “longstanding, easy to understand problems.” This type of touting often includes a prediction that a stock’s price is expected to reach new heights that greatly exceed its current value.³⁰² One vehicle for touting—mailer campaigns—appeals “to fraudsters because they cannot be detected remotely and thus reduce somewhat the fraudster’s exposure to investigation and enforcement by authorities or victims’ counsel.”³⁰³ As discussed above, a glossy 28-page brochure was mailed out that aggressively promoted the purchase of NUGN stock to prospective investors. This brochure was, in Ganis’s experience, a red flag of pump-and-dump touting.³⁰⁴

While Lowry acknowledged that the brochure created artificial demand (increasing price and volume), Ganis claimed he failed to recognize that touting and manipulation “go hand-in-hand. Both can raise the price as perpetrators are liquidating their low cost shares. Neither deceptive practice would be as effective at misleading unwary victims and generating ill-gotten gains without the other.”³⁰⁵ Put another way, according to Ganis, Lowry applied the “logic of

²⁹⁹ CX-50A, at 23.

³⁰⁰ CX-50A, at 24.

³⁰¹ CX-50A, at 33.

³⁰² CX-50A, at 24.

³⁰³ CX-50A, at 24–25.

³⁰⁴ CX-50A, at 51.

³⁰⁵ CX-50A, at 50.

mutual exclusion,” and failed to recognize that both manipulation through quotations and trades could be occurring along with touting.³⁰⁶

viii. Mass Liquidations Followed by Outbound Disbursements

Manipulators often worry that law enforcement, regulators, victims, or their broker-dealer will prevent them from accessing their liquidation proceeds, Ganis stated. So they often quickly transfer much of the proceeds out of their accounts right after the liquidations. Thus, “large-scale liquidations ultimately causing a precipitous decline after a price has been previously inflated” is an indicia of a pump-and-dump scheme, according to Ganis. “This is especially true for accounts that have held only shares of microcap issuers with this pattern or only shares of a single microcap issuer.”³⁰⁷

Consistent with this hallmark, Ganis observed that AA liquidated shares it had obtained at extremely low cost and then used “the proceeds to fund the pattern of likely manipulative relatively small purchases, as described above. In other cases,” according to Ganis, “[AA] and other Wilson-Davis customers . . . transferred the liquidation proceeds out of Wilson-Davis immediately or shortly after settlement.”³⁰⁸ Ganis concluded that “[t]he pattern of depositing millions of microcap shares in newly-issued certificate form followed by liquidation and immediate or near immediate outbound wire transfers comports with classic pump-and-dump red flags.”³⁰⁹

ix. Irregularities in Wilson-Davis’s Establishment of NUGN Market Making

As discussed above, Norton falsely represented on the application to become a market maker that Bling had not had a reverse merger. This misrepresentation was problematic, according to Ganis, because Norton could have easily determined through publicly available information, including filings with the Commission, that a reverse merger occurred. Moreover, his false statement “masked” a pump-and-dump red flag at the start of Wilson-Davis’s market making in the stock. Further, Wilson-Davis’s purported basis for becoming a Bling market maker was to acquire NUGN shares for JF. But JF never bought the stock through Norton.³¹⁰

³⁰⁶ CX-50A, at 54. Lowry’s logic was especially flawed, Ganis claims, given that the “[t]outing and suspicious orders and trades were all conducted by the same group of entities and individuals that transact with one another privately and otherwise appear to be coordinating.” CX-50A, at 54. But as it turned out, although RC paid for the mailer, neither it nor RM (who controlled RC) ever transacted in, or deposited, NUGN stock with Norton. Tr. 1865.

³⁰⁷ CX-50A, at 25.

³⁰⁸ CX-50A, at 54–55.

³⁰⁹ CX-50A, at 55.

³¹⁰ CX-50A, at 27.

Ganis observed that this failure means that JF’s apparent interest “could have been a false pretext.”³¹¹ Ganis faulted Lowry for not addressing any of these “irregularities.”³¹²

x. Uneconomic Wilson-Davis Trades With Customer FS

Ganis observed that Norton’s March 2–3 trading with FS “generated the appearance to the market of three small trades.” According to Ganis, this suggested “small investor interest[] at prices that increased dramatically (around 40%) from Wilson-Davis’[s] March 2 trades with [FS] to its March 3 trades with her.” The trading, however, caused Wilson-Davis to lose, “a significant percentage on NuGene stock by bouncing NuGene shares back and forth with [FS].” Ganis found “no apparent business purpose” for these trades. To him, the trading “potentially indicates fictitious trading to generate artificial volume.” And he criticized Lowry for not addressing whether the trading had any legitimate purpose or was, instead, made for a manipulative purpose.³¹³

xi. Circumstances Surrounding the Deposits at Wilson-Davis

Ganis identified what he viewed as many red flags coinciding with the deposits of NUGN shares. These purported red flags included the following:

- AA was owned by SH, a promotor of other microcap stocks that were the subject of multiple regulatory inquiries;³¹⁴
- Wilson-Davis knew that SH had business associations in business/trading matters with JF, “who had traded through closely held vehicles in microcap shares that were the subject of a previous regulatory inquiry”,³¹⁵
- the warning from Wilson-Davis’s attorney “about the thin trading in NUGN, the issuer’s recent acquisition (i.e., the Bling-NuGene reverse merger), the termination of its shell company status, and the company’s recent volume of press releases” leading to his urging that the Firm impose substantial and conservative

³¹¹ CX-50A, at 26–27.

³¹² CX-50A, at 28.

³¹³ CX-50A, at 44.

³¹⁴ CX-50A, at 32. Enforcement failed to establish that during the alleged manipulative period, Norton knew if SH was a promotor of other microcap stocks that were the subject of multiple regulatory inquiries. Norton testified he was not aware in early 2015 that any of his clients, including SH, was a stock promoter or otherwise involved in stock promotion efforts. Tr. 1178–79, 1876–78, 2017, 2022–26, 2033. Enforcement did not prove otherwise.

³¹⁵ CX-50A, at 32.

volume limitations on AA’s sales irrespective of LULO-imposed restrictions;³¹⁶ and

- many of the depositing customers knew each other, “obtained their shares in related private transactions around the same time and/or conducted trading in the same microcap stocks . . . that were subjects of regulatory inquiries” (which led Ganis to conclude they were acting in concert).³¹⁷

Ganis claimed that Lowry’s report failed to address, or address sufficiently, what he viewed as “the clear pump-and-dump red flags exhibited by the circumstances surrounding the deposits of the millions of shares of Bling/NuGene share certificates Wilson-Davis accepted.” Further, according to Ganis, Lowry failed to “address whether orders placed by a group of customers whom Norton should have known collectively controlled over 20 percent of the available supply of NuGene stock gave Norton power to dominate and control the market.”³¹⁸

3. Conclusions—Expert Evidence

After carefully considering the expert evidence, we were not persuaded by Lowry’s conclusion that Norton’s trading lacked indicia of manipulation. We found his approach flawed in several important respects. Lowry gave undue weight to the following: the trades were executed between the inside bid and ask; the lack of certain classic manipulative factors or devices; the apparent lack of impact Norton’s trading activities had on the market;³¹⁹ and a purported lack of patterns of manipulative conduct.

Lowry also made concessions in his testimony and report that undermined his opinions. For example, he admitted that:

- manipulative conduct can take many different forms,³²⁰
- a single action, like publishing a quote or entering an order, taken with manipulative intent, can be manipulation;³²¹

³¹⁶ CX-50A, at 32–33. Lowry was also concerned about these communications and Norton’s failure to abide by them. He testified that the attorney’s letter was a “warning” that “perhaps wasn’t adhered to like it was meant” or “recognized for what it was.” Tr. 2404–05.

³¹⁷ CX-50A, at 33–34.

³¹⁸ CX-50A, at 38.

³¹⁹ For example, as Ganis observed, Norton executed the March 2–3 trades involving FS within the NBBO and there were trades at materially higher prices on both days, so the Norton-FS trades did not increase NUGN’s share price. Even so, the trades lacked economic purpose from Norton’s perspective (Norton suffered a large percentage loss; FS made little profit) and were indicia of manipulation, according to Ganis. Tr. 2484–85; CX-50A, at 44–45.

³²⁰ Tr. 2333–35; RX-69A, at 8.

³²¹ Tr. 2308, 2311–14, 2356; RX-69A, at 36.

- an act can be manipulative even if it does not result in a successful manipulation;³²²
- manipulation can take place even in an active and competitive market with multiple market makers;³²³
- trades that make no economic sense often signify manipulation;³²⁴ and
- bid support could be market manipulation.³²⁵

Lowry’s report also contains a significant omission, as noted above: it virtually ignored the \$5 trade on February 24—a major act of alleged manipulation. The report made no attempt to explain whether the trade appeared manipulative, even though, according to his testimony, he originally found the trade troublesome and concerning and later remained somewhat uneasy about it.

On top of these flaws, the overarching deficiency in Lowry’s approach is that it failed to recognize adequately that manipulative intent must be gleaned not from the trading alone—but from the totality of the facts and circumstances. In looking for indications of manipulation, Lowry interpreted the trading without fully considering its context. He ignored the many red flags facing Norton and that Norton’s failure to respond to them reveals indicia of manipulative intent not apparent when the trading is viewed in a vacuum.³²⁶

By contrast, we found Ganis’s opinions well-reasoned, well-supported, and persuasive. He convincingly demonstrated that Norton’s trading and the surrounding circumstances reflected many manipulative indicia and red flags. We also found Ganis a credible witness based on his demeanor at the hearing. His answers were direct and withstood extensive cross-examination, and other credible evidence did not materially undercut his opinions.

We also reject Lowry’s criticisms of Ganis’s opinions. Lowry claimed that Ganis—not he—focused too narrowly.³²⁷ He argued that Ganis relied on documents Enforcement provided to him and ignored “the depth of the market, the activity in the market, the trades in the market, the volume of trading, particularly during the time that” Norton was purportedly “placing stabilizing bids, bids below the high bid but in quantity.” In short, according to Lowry, Ganis

³²² Tr. 2323, 2328–31.

³²³ RX-69A, at 19; *see also* Tr. 2632–33.

³²⁴ Tr. 2369, 2372–73.

³²⁵ Tr. 2379–80.

³²⁶ Even so, Lowry himself conceded that “some of the red flags Enforcement has posed are very serious.” Tr. 2406–07.

³²⁷ Tr. 2630.

“didn’t consider what was going on in the market. He didn’t look at the trades.”³²⁸ This argument misses the mark. Neither Lowry (nor Norton) demonstrated why it was necessary to analyze the entire market to determine whether Norton’s conduct bore indicia of manipulation. And neither he (nor Norton) showed how Ganis’s opinions would have been materially impacted had Enforcement provided him with other documents to review. Intent is the key issue here, and Ganis properly focused on what Norton saw and what he did.

F. Norton’s Defenses and Arguments Fail

Relying largely on Lowry’s report and testimony, Norton argues that Enforcement failed to prove he manipulated the market for NUGN stock. For the reasons discussed above, we did not accept Lowry’s conclusions that the trading bore no indicia of manipulation. Instead, we generally accepted Ganis’s opinions that the trading and circumstances surrounding it evidenced red flags and other indicia of manipulation. Norton also argues that each of the potential red flags in this case, viewed by itself, is not “necessarily indicative of manipulation.”³²⁹ This argument is misplaced. Red flags should not be viewed in isolation. Rather, it is the “composite effect which is determinative, not a dissection of each fact as if it were the whole.”³³⁰

Norton made three other major arguments, which we address and reject.

1. Norton’s Argument that Enforcement is Pursuing an Uncharged Theory of Liability Fails

Norton reminds the Panel that this is not an AML case, and that he is charged with manipulation, not with negligently failing to notice and investigate red flags.³³¹ He points out that the Complaint contains no red flag allegations against him.³³² Yet, he claims, Enforcement seeks to prove that he engaged in manipulation based on red flags.³³³ Continuing, Norton argues that “[a] finding of liability based on this ‘uncharged theory of liability’ is subject to being set aside.”³³⁴

This argument fails. First, Norton mischaracterizes the role of red flags in this proceeding. Norton correctly observes that the Complaint did not charge him with ignoring red

³²⁸ Tr. 2631.

³²⁹ Resp’t Reply Br. 24.

³³⁰ *Colo. Interstate Gas Co. v. Nat. Gas Pipeline Co.*, 661 F. Supp. 1448, 1476 (D. Wyo. 1987) (quoting L. Nizer, *The Implosion Conspiracy* 6–7 (1973)), *aff’d in relevant part*, 885 F.2d 683 (10th Cir. 1989).

³³¹ Resp’t Br. 1–2.

³³² Resp’t Br. 1, 62–63. The red flag allegations in the Complaint only relate to the Firm and certain other individual respondents who Enforcement had charged with having a deficient supervisory system, for failing to supervise, and for having an unreasonable AML system, among other violations.

³³³ Resp’t Reply Br. 16.

³³⁴ Resp’t Reply Br. 2.

flags.³³⁵ But it does not follow that ignoring red flags is irrelevant to the manipulation charge. Enforcement’s theory of liability against Norton stems from allegedly manipulative acts he conducted with scienter. The scienter evidence consists, in part, of red flags that Norton allegedly ignored knowingly or recklessly.³³⁶

Second, AML red flags may also be red flags of manipulation. Ganis explained that AML obligations require a broker-dealer to report suspicious activity, and “[p]otential manipulation is suspicious activity . . . AML red flags for the AML regulations include finding and detecting market manipulation.”³³⁷ In fact, Ganis testified that various AML red flags can also constitute red flags of manipulation—excessive wire activity, excessive journal entries between unrelated accounts, multiple accounts in the names of family members or corporate entities for no apparent reason,³³⁸ and trading comprising a high percentage of a stock’s total volume.³³⁹

Third, Enforcement is not proceeding against Norton on an “uncharged theory of liability” based on red flags. FINRA Rule 9212(a) requires that a complaint “specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated.” A complaint contains “reasonable detail” when it provides sufficient notice to a respondent to “understand the charges and adequate opportunity to plan a defense.”³⁴⁰ To meet this standard, Enforcement is not required to include evidentiary details in a complaint.³⁴¹ Nor must a complaint “specify all details regarding a case against a respondent.”³⁴²

³³⁵ Unlike here, in *Brokaw*, 2012 FINRA Discip. LEXIS 53, at *3, besides charging the respondent with manipulation, Enforcement charged Brokaw, alternatively, with violating just and equitable principles of trade by not conducting an adequate inquiry into whether a customer’s instructions to sell stock were for a manipulative purpose.

³³⁶ See, e.g., *Prager*, 2005 SEC LEXIS 1558, at *33–34; *Brokaw*, 2012 FINRA Discip. LEXIS 53, at *28–29; *Proudian*, 2008 FINRA Discip. LEXIS 21, at *40–41.

³³⁷ Tr. 2469–70. Cf. Special NASD Notice to Members 02-21 (CX-70) at 10, 20 n.35 (reminding firms to “to look for signs of suspicious activity that suggest money laundering,” and while doing so, “to notify self-regulatory organizations and the SEC if they detect indicators of securities laws violations.”).

³³⁸ Tr. 2421–23; CX-70.

³³⁹ Tr. 2346.

³⁴⁰ *Proudian*, at *21 n.22 (finding that a complaint complies with the “reasonable detail” requirement of Rule 9212(a) “when it provides sufficient notice to a respondent to ‘understand the charges and adequate opportunity to plan a defense.’”) (quoting *Dist. Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *10 (NBCC July 28, 1997)); accord *Dep’t of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16 at *2 n.3 (NAC July 16, 2015), *aff’d*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173 (Mar. 29, 2016).

³⁴¹ *Dep’t of Enforcement v. Mehringer*, No. 2014041868001, 2018 FINRA Discip. LEXIS 19, at *46 n.119 (OHO Apr. 30, 2018), *aff’d*, 2020 FINRA Discip. LEXIS 27 (NAC June 15, 2020).

³⁴² *Dep’t of Enforcement v. Zenke*, No. 2006004377701, 2009 FINRA Discip. LEXIS 37, at *11 n.7 (NAC Dec. 14, 2009) (citing *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *11 (July 1, 2008)).

Enforcement met these standards. The Complaint put Norton on notice of the alleged acts giving rise to the violations (e.g., the \$5 trade on February 24 and his coordinated trading) and specified the statute and rules Enforcement claims he violated. The Complaint also alleged that he acted with “intent to deceive, manipulate, or defraud, or, at a minimum” that he was

reckless in not knowing that [his] conduct was intended to manipulate NUGN’s stock price to achieve a level of market capitalization necessary to lift the Lock-Up/Leak-Out Agreement’s restrictions and, later, to manipulate the volume and stabilize or increase the price of the stock while [his] customers liquidated their NUGN holdings.³⁴³

We find that Norton received the notice required to sustain a claim that he engaged in the manipulation of NUGN stock. In any event, viewing the record as a whole, Norton understood the charges against him and had a sufficient chance to defend himself.³⁴⁴

2. Norton’s Arguments About the February 24 Trade Fail

Norton argues that Enforcement failed to prove that when he made the February 24 trade, he knew about the LULO or that he acted with intent to unlock the shares in NUGN.³⁴⁵ Norton makes six primary points.

First, and according to Norton, most importantly, he denied considering the LULO when he made the trade.³⁴⁶

Second, the only publicly available document that included the LULO was BLMK’s Form 8-K dated December 26, 2014, and Exhibit 10.1 to it,³⁴⁷ and it did not provide motive for

³⁴³ Comp. ¶ 133. This case is distinguishable from those Norton cites in which respondents were not placed on adequate notice of the charges against them. *See, e.g., Sears*, 2008 SEC LEXIS 1521 (setting aside a FINRA disciplinary finding that applicant made unauthorized trades in certain customers’ accounts because the complaint did not include allegations of unauthorized trades in those accounts and thus respondent “lacked adequate notice” that such trades would be a basis for liability); *Paulson Inv. Co., Inc.*, Exchange Act Release No. 19603, 1983 SEC LEXIS 2190 (Mar. 16, 1983) (setting aside NASD’s findings of failure to supervise on the part of the respondents because “NASD’s complaint did not charge applicants with any of these deficiencies.”); or *James W. Browne*, Exchange Act Release No. 58916, 2008 SEC LEXIS 3113 (Nov. 7, 2008) (setting aside NASD’s finding of violation where the complaint’s theory of liability conflicted with the evidence and thus the Commission could “not know how [the applicant’s] defense of the [charge in the complaint] might have changed or been augmented if Enforcement had given [him] notice with more specific charges” of its theory of liability).

³⁴⁴ *Proudian*, 2008 FINRA Discip. LEXIS 21, at *21 n.23 (holding that even if the complaint were defective, “the record amply demonstrates that Proudian understood the issues that were the subject of the complaint and had sufficient opportunity to defend himself”) (citing *James L. Owsley*, Exchange Act Release No. 32491, 1993 SEC LEXIS 1535, at *9 (June 18, 1993)).

³⁴⁵ Resp’t Br. 58.

³⁴⁶ Resp’t Br. 14; Tr. 1925.

³⁴⁷ JX-3; JX-4.

Norton to engage in a manipulation by placing a \$5 trade.³⁴⁸ The LULO attached to the Form 8-K did not include the paragraph releasing shares if the company met certain market capitalization thresholds.³⁴⁹ Moreover, the reference to the LULO in the Form 8-K stated that as of December 29, 2014, there were 39,197,400 shares of common stock outstanding.³⁵⁰ As a result, a closing price above \$5 per share would be necessary to unlock the shares, thus eliminating the motive to try to set a \$5 closing price.³⁵¹

Third, there is no evidence that he saw the LULO containing the escape clause on or before February 24. While Norton testified he did not remember when he first saw the LULO, he recalled that it was his practice to sign the stock deposit papers on the same day that he reviewed them after receiving the documents from his assistant. And the evidence showed he signed the papers on February 25—the day after he made the trade.³⁵²

Fourth, even had he reviewed the AA stock deposit documentation before the February 24 trade, nothing in it would have led him to conclude that a closing price of \$5 on one trading day would help lift the stock's restrictions.³⁵³ Had he reviewed the documentation beforehand, he would have (i) seen on the deposit-related worksheet a statement that there were 589,520,000 shares outstanding³⁵⁴ and would have therefore assumed that a share price of \$0.34 would have achieved a market capitalization of \$200 million; (ii) interpreted the LULO's escape clause as requiring two periods—not one period—of three straight days of trading with closing prices at \$160 million and \$200 million respectively; and (iii) read the February 20, 2015 opinion letter from AA's counsel opining "that these 1,399,939 shares may be deposited into this Shareholder's account *and sold immediately* in accordance with the Lock Up/Leak Out Agreement, in a public market or through private negotiations, by this Shareholder."³⁵⁵

Fifth, he had no motive to participate in a supposed \$5 trigger because the LULO permitted a shareholder to immediately sell 20 percent of that shareholder's shares.³⁵⁶ Norton states that AA's package contained 1,564,539 shares.³⁵⁷ Those shares were broken out into five

³⁴⁸ Resp't Br. 11.

³⁴⁹ Tr. 479–80; JX-4, at 3 ¶ 1.

³⁵⁰ JX-3, at 50.

³⁵¹ Resp't Br. 11–12.

³⁵² Tr. 1918–20; Resp't Br. 12–13; JX-30.

³⁵³ Resp't Br. 13. The legal opinion letter stating that the trades on February 24, 25, and 26 unlocked the stock was dated March 19, 2015, meaning Norton would not have seen it until nearly a month after his February 24 trade. JX-20.

³⁵⁴ JX-30, at 3.

³⁵⁵ Resp't Br. 12–13; JX-30, at 11.

³⁵⁶ Resp't Br. 13.

³⁵⁷ Resp't Br. 13. In fact, while Norton's "Stock Received Worksheet" identified this figure as the "The Total Number Shares Owned by Customer," the worksheet reflects that fewer shares—five certificates totaling 1,399,939 shares—were actually deposited. JX-30, at 3; Tr. 1326.

certificates of 279,998 each, an amount he claims is equal to 20 percent of the total.³⁵⁸ Those shares were immediately free trading and needed no \$5 trigger. That AA sent them in that form strongly suggests, according to Norton, that it planned to follow the 20 percent guideline and was not expecting him to manipulate prices.³⁵⁹

Finally, he made only one NUGN trade on one day in February and was not involved in any trading over the next two days.³⁶⁰

We are not persuaded by Norton's arguments. To begin with, for the reasons set forth in a separate section below, we did not generally find Norton a credible witness. So we gave little weight, by itself, to his denial that he considered the LULO before making the February 24 trade.

We reject his arguments for additional reasons. First, as Norton argued, he testified that he did not recall when he first saw the package or its contents but reviewed packages when he signed off on them.³⁶¹ But we consider this testimony in light of his other hearing testimony. Earlier during his testimony, Norton confirmed that he previously and truthfully told the staff that he was aware of the LULO when AA deposited its shares. He then explained that he was aware of it because he wanted to know about applicable limitations impacting the sale of the deposited stock and what would be necessary to lift restrictions on the shares.³⁶² We find his earlier testimony credible, as it was plausible and consistent with what he had told the staff. Also, his earlier testimony is not inconsistent with his later hearing testimony, which was ambiguous—it did not preclude his having seen the LULO when the shares were deposited, but before he conducted and completed his review of the package.

Second, he testified that it was his practice to review restrictive legends on stock certificates “once they are in [his] physical possession,”³⁶³ and Wilson-Davis received the deposit package before he placed the trade.³⁶⁴ The following language appeared across the top of each NUGN stock certificate sent to the Firm by AA with the February 19, 2015 deposit package: “**SEE LOCK-UP/LEAK-OUT AGREEMENT ON BACK.**”³⁶⁵ While copies of the backs of these certificates were not part of the record, similar NUGN certificates described the Lock-Up/Leak-Out Agreement's escape clause on the back:

**“IN THE EVENT THE AGGREGATE MARKET CAPITALIZATION OF
THE COMPANY IS AT LEAST \$200 MILLION FOR THREE**

³⁵⁸ Resp't Br. 13; JX-30, at 3. Actually, 20 percent of 1,564,539 shares is 312,908 shares.

³⁵⁹ Resp't Br. 13.

³⁶⁰ Resp't Br. 13; RX-69B, at 1.

³⁶¹ Tr. 1918–20.

³⁶² Tr. 1349–51.

³⁶³ Tr. 2072.

³⁶⁴ Tr. 2072–73.

³⁶⁵ CX-100, at 2, 4, 6, 8, 10.

CONSECUTIVE TRADING DAYS, ALL OF THE SHARES EVIDENCED BY THIS SHARE CERTIFICATE MAY BE SOLD WITHOUT ANY RESTRICTION BEFORE [A DATE TIED TO CERTIFICATE].”³⁶⁶

Third, Norton testified that it was his practice to review attorney opinion letters accompanying deposits, and his assistant knew that he wanted to review whatever attorney letter AA provided as soon as possible.³⁶⁷ The plain language of SM’s February 20, 2015 opinion letter states that AA’s shares were subject to the LULO. SM emailed her letter about AA’s deposit to Norton via Norton’s assistant on February 20—four days before Norton’s trade.³⁶⁸ SM’s letter referenced and enclosed a copy of the LULO, which included the \$200 million market capitalization escape clause.³⁶⁹

Fourth, there is no evidence that Norton relied on a clearly erroneous total shares outstanding figure on the deposit worksheets to determine that AA’s shares were not subject to the LULO.

Fifth, there is no evidence about why AA deposited five separate stock certificates or that Norton linked the division of shares to the 20 percent restriction. Norton’s argument on this point is merely an after-the-fact rationalization that we do not credit. Moreover, Norton’s argument fails because he did have a motive to release AA from the LULO—so it could liquidate more than 20 percent of its holdings during the lock up period, if it chose to do so.

Sixth, the \$5 trade provided an essential link in the chain of events that led to lifting resale restrictions on his customers’ NUGN shares. It is unlikely that Norton’s trade played such a key role by coincidence.³⁷⁰

Seventh, as Ganis explained in his report and during his testimony—and which we credit on this point—there is no plausible explanation for the trade other than to try to set a high price. Norton provided no credible alternative explanation for the trade. He admitted that he made no attempt to negotiate the price with Broker-Dealer A and claimed that he bought the 250 shares to “obtain inventory,” even though he admitted knowing that AA had told him that it planned to deposit \$1.4 million shares.³⁷¹ He also said that possibly he wanted to take a small position in

³⁶⁶ Tr. 266–71; CX-196, at 12–16; CX-211, at 2.

³⁶⁷ Tr. 1334, 2072.

³⁶⁸ JX-30, at 23.

³⁶⁹ JX-30, at 23–30.

³⁷⁰ We make no finding about whether the LULO required one three-day period of \$200 million market capitalization to trigger the release of all shares, or whether two three-day periods were necessary. To this point, we note that in *Glendale*, 2021 FINRA Discip. LEXIS 25, at *14, the NAC wrote that “[i]f NuGene reached a market capitalization of \$200 million for three consecutive days, all the shares would be released immediately from the Lock-Up agreement.” But whether one or two periods were necessary to trigger the release was not at issue in the case, and as a result, the NAC did not address the question.

³⁷¹ Tr. 1372–73; CX-100; CX-21.

NUGN stock to see where it would trade,³⁷² but he added, “it was a bad trade”³⁷³ that did not “make sense” from a trading perspective.³⁷⁴

Finally, contrary to Norton’s arguments, even if he had not seen the LULO or believed that a \$5 trade would help release the shares, he had a strong motive to buy the stock at a high price: he knew that he would soon be receiving shares that his clients wanted to liquidate profitably. His high-priced trade furthered their goal. And, as things turned out, it set the closing price for February 24.

* * *

Based on the totality of the credible evidence, and the reasonable inferences from them, we find that Norton likely knew about the LULO before his February 24 trade and likely placed that trade for a manipulative purpose—to help release NUGN shares from the LULO’s restrictions.

3. Norton’s *Glendale*-Based Arguments Fail

Norton argued that we should dismiss the charges because in *Dep’t of Enforcement v. Glendale*,³⁷⁵ a FINRA hearing panel, among other things, dismissed similar manipulation charges against Glendale and its head trader.³⁷⁶ After that hearing panel issued its decision (and after post-hearing briefing here concluded), the NAC, among other things, affirmed the hearing panel’s finding that Enforcement failed to prove Glendale and its trader acted with the requisite scienter to manipulate NUGN.³⁷⁷ The NAC described the charges as follows:

Enforcement alleged that [the trader], acting in concert with Glendale customers, placed orders to buy and sell NuGene to inflate the stock price with the goal of causing the price per share to close at \$5.00 for three consecutive days. Enforcement alleged that the inflation of the share price was for the purpose of releasing two Glendale customers RC and RH from the [LULO] that prevented them from selling their shares. Enforcement further alleged that once the customers were freed from the [LULO], Glendale facilitated the sales of more than \$8 million of NuGene shares during a stock promotion campaign. Enforcement argues that we

³⁷² Tr. 1357–58.

³⁷³ Tr. 1357, 1370.

³⁷⁴ Tr. 1371.

³⁷⁵ *Dep’t of Enforcement v. Glendale Sec.*, No. 2016049565901, 2019 FINRA Discip. LEXIS 25 (OHO Apr. 5, 2019), *aff’d*, 2021 FINRA Discip. LEXIS 25 (NAC Oct. 6, 2021).

³⁷⁶ Resp’t Br. 59–62.

³⁷⁷ *Glendale*, 2021 FINRA Discip. LEXIS 25, at *61–66.

should infer intent from [the trader's] trading activity, which Enforcement claims made no economic sense.³⁷⁸

We decline to find that based on *Glendale*, Enforcement failed to prove Norton acted with scienter. To begin with, we decide this case based on the facts in this case, not another one. In any event, the facts in *Glendale* are distinguishable from those here in many respects. For example, in *Glendale*:

- the record did not establish that RC's NUGN shares were subject to the LULO. As a result, the allegation that the trader engaged in manipulation to release RC from the LULO so it could sell its NUGN shares was unsupported;³⁷⁹
- there was insufficient evidence that the trader knew that the two *Glendale* customers—RC and JH—owned NUGN shares that he believed were subject to the LULO or that the trader knew the terms of the LULO when he executed the allegedly manipulated sales;³⁸⁰
- there was insufficient evidence that the trader knew an increase in the price of NUGN would lead to nullifying the LULO and benefit these customers;³⁸¹
- RC was not the trader's customer, and the trader testified he did not know RC owned NUGN shares until that customer started trading those shares;³⁸²
- the documentary evidence did not contradict the trader's testimony that RC's stock certificate lacked a restrictive legend;³⁸³
- while RC's stock purchase agreements referenced a LULO, RC's documents did not include a copy of it;³⁸⁴
- RC provided an attorney opinion letter which represented that RC's NUGN shares were free trading and not subject to restrictions, and the transfer agent represented the same;³⁸⁵

³⁷⁸ *Glendale*, 2021 FINRA Discip. LEXIS 25, at *62–63.

³⁷⁹ *Id.* at *64.

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.* at *64–65.

³⁸⁴ *Id.* at *65.

³⁸⁵ *Id.*

- while JH was subject to the LULO, his sales of NUGN stock did not depend on release from that agreement;³⁸⁶
- while JH sent copies of its stock purchase agreements to Glendale several days before the allegedly manipulative trades were executed, these did not include copies of the LULO itself. There was no evidence that the trader or anyone else at Glendale saw the terms of the LULO until after the manipulative trades, when JH deposited a stock certificate setting forth the terms of the LULO;³⁸⁷ and
- the manipulation charge rested only on conduct purportedly aimed at releasing customer shares from the restrictions of the LULO and not on post-release manipulative trading.

Here, the customers' shares were subject to the LULO; Wilson-Davis received notification of the LULO's existence before the allegedly manipulative trades; and Norton did not receive an attorney letter saying that the shares could be traded freely irrespective of the LULO. Given these differences, among others, between this case and *Glendale*, we do not find that *Glendale* compels a dismissal of the charges against Norton.

G. Norton Was Not a Credible Witness

Having observed Norton's demeanor at the hearing, we did not find him a credible witness. He was often evasive during his testimony and frequently either needed to have his memory refreshed by reference to his on-the-record ("OTR") testimony or was impeached by it.³⁸⁸ And while we recognize that Norton testified about events occurring over six years ago, his repeated professed failures to recall numerous matters appeared contrived and disingenuous. For example, he claimed not to recall any of the following, which we would have expected him to remember:

- that FINRA staff took his testimony in an OTR in November 2014 in Salt Lake City;³⁸⁹
- what he told the FINRA staff in a 2016 OTR about why he made a market in NUGN;³⁹⁰

³⁸⁶ *Glendale*, 2021 FINRA Discip. LEXIS 25, at *65.

³⁸⁷ *Id.*

³⁸⁸ Tr. 1067–70, 1082–87, 1121–23, 1313–15, 1396–98, 1259–62, 1275–76, 1400–03, 1405–08, 1447–48, 1479–80.

³⁸⁹ Tr. 1068.

³⁹⁰ Tr. 1275.

- that the warnings from the Firm’s outside counsel about imposing volume limitations on NUGN stock trading became increasingly strenuous;³⁹¹
- the specifics of any telephone calls he may have made about suspicious NUGN trading, or whether he even made any such calls;³⁹²
- if he ever tried to find out whether AA and CD were acting in concert;³⁹³
- if he ever raised a red flag to anyone in 2014 or 2015 about NUGN;³⁹⁴
- if he ever talked to anyone at the Firm concerning red flags about his customers’ deposit, liquidation, and wire activity;³⁹⁵ or
- if he took any steps to assure himself manipulation was not happening with NUGN stock, even though he admitted that it was unusual and potentially manipulative for a customer who had deposited stock and was still long to buy more shares.³⁹⁶

We also found his testimony implausible on various points. For example, he admitted receiving the NUGN brochure but claims he disposed of it without even looking at it. Yet the brochure concerned an obscure penny stock that Wilson-Davis was making a market in at his request, and he had been involved in facilitating transactions in NUGN stock for his customers. Moreover, when he received the brochure, 22 percent of the float had been deposited with the Firm.³⁹⁷ Further, he testified that he never asked his customers directly whether they were coordinating their NUGN trading activity because “honest or not, none of them would say that they’re coordinating activity with anyone else.”³⁹⁸ We do not find it credible that Norton believed there was no point in asking customers certain questions because he might not receive honest answers.

Finally, we reject Norton’s assertion that only after “looking at some of the documents” did it now appear to him that “perhaps,” or “it was a possibility” that, his clients had tried to

³⁹¹ Tr. 2086–87.

³⁹² Tr. 1056–57.

³⁹³ Tr. 1348–49.

³⁹⁴ Tr. 1997.

³⁹⁵ Tr. 1329–30.

³⁹⁶ Tr. 1494–96. In fact, AA, which had deposited 1.4 million NUGN shares it bought for \$0.03 per share, bought 2,500 shares at \$2.50 per share while still long 322,500 shares, paying for those shares almost double what it paid for the entire 1.4 million shares. Tr. 1497–98, 1500–01; CX-21.

³⁹⁷ Tr. 2016–17; CX-4, at 1. Nevertheless, there is no evidence, or reasonable inference from the evidence, that he likely saw the statement that RC paid for the mailer. The reference to RC appeared in the middle of a long, small font, footnote on page 27. CX-89, at 27.

³⁹⁸ Tr. 2125.

manipulate the market for NUGN stock.³⁹⁹ He explained that what led him to this view was “[s]ellers becoming buyers. Customers entering buy orders at prices that were quite obviously substantially higher than their cost basis of their initial deposit,” adding, “in most cases, it really doesn’t make any economic sense.”⁴⁰⁰ For example, “the buy orders mostly from [AA] at increasing prices . . . just based on their cost basis, made no economic sense,” he said.”⁴⁰¹ While admitting that he “saw it in real time,”⁴⁰² he claimed that only when he saw it “laid out in front of” him and was focusing solely on those trades that he drew these conclusions. He also claimed that at the time, he did not give them “all the attention because” he was “involved in other situations.”⁴⁰³ We do not find this explanation credible. The suspicious trading did not consist of a few trades during a short period, but many trades over several months—trades that included cross trades he facilitated, and trades that generated substantial commissions for him.

Moreover, given Norton’s experience and training, it is not credible that he failed to recognize, in real time, any of the many red flags and indicia of manipulation regarding his NUGN customers, including their deposit and trading activities. Norton had traded penny stocks for decades and understood the risks of manipulation in that market. As a long time market maker for microcap securities, Norton knew that because OTC stocks are usually very thinly traded, the OTC microcap market was susceptible to pump-and-dump schemes.⁴⁰⁴

He was also familiar with the term “red flags”; understood it to mean “things we should look for that could be potentially suspicious activity,” including potentially illegal activity;⁴⁰⁵ and knew that he should heed red flags and ask questions about them.⁴⁰⁶ Norton acknowledged that he had some “front-line responsibility for watching for” red flags associated with stocks his customers were depositing and he was trading.⁴⁰⁷ And he admitted that he had an obligation to review stock deposits for any potentially inappropriate or unlawful activity, including red flags that might be linked to any potential pump-and-dump scheme.⁴⁰⁸

³⁹⁹ Tr. 1658–59, 2142.

⁴⁰⁰ Tr. 2143.

⁴⁰¹ Tr. 2143–44.

⁴⁰² Tr. 2144.

⁴⁰³ Tr. 2145.

⁴⁰⁴ Tr. 1044–45.

⁴⁰⁵ Tr. 1048.

⁴⁰⁶ Tr. 1993.

⁴⁰⁷ Tr. 1048, 1993.

⁴⁰⁸ Tr. 1115–16.

Norton also knew that Wilson-Davis's written supervisory procedures ("WSPs") addressed this subject,⁴⁰⁹ and admitted that he had received training about the red flags in the WSPs and that it was his responsibility to familiarize himself with them.⁴¹⁰ The Firm's WSPs included a section called "Risk Indicators"⁴¹¹ along with an instruction that the Firm's employees needed to "be aware of and keep an eye out for activity that may indicate potential money laundering or other financial crimes."⁴¹² The section included a long list of examples of "risk indicators that might suggest the possibility of money laundering or other financial crimes depending on the factual circumstances."⁴¹³ The circumstances here evidenced over a dozen red flags identified on the list, or presented conduct like those red flags,⁴¹⁴ including red flags on top of those identified by Ganis.⁴¹⁵

⁴⁰⁹ At all relevant times, Wilson-Davis maintained WSPs containing the Firm's written AML program. Compl. ¶ 108; Ans. ¶ 108; Stip. ¶¶ 15, 24. During the relevant period, the Firm's AML policies specifically provided that detecting and preventing potential AML activities was "an obligation of each employee of the firm," and that "[i]t is important that the Firm, as well as all employees, remain diligent and active participants in the Firm's [AML] program." Stip. ¶ 25.

⁴¹⁰ Tr. 1048, 1054–55, 1408.

⁴¹¹ JX-21, at 25–28.

⁴¹² JX-21, at 25–26.

⁴¹³ JX-21, at 26–28.

⁴¹⁴ The list of risk indicators in the Firm's WSPs included, among other examples, the following:

- "The customer wishes to engage in transactions that lack business sense or apparent investment strategy";
- "The customer engages in suspicious activity involving the practice of depositing penny stocks, liquidates them, and wires proceeds";
- "For no apparent business purpose or other reason, the customer has multiple accounts under a single name or multiple names (including family members or corporate entities); there may be a large number of interaccount or third-party transfers";
- "Transactions patterns show a sudden change inconsistent with normal activities";
- "The customer engages in prearranged or other non-competitive trading, including wash or cross trades of illiquid securities";
- "The customer has opened multiple accounts with the same beneficial owners or controlling parties for no apparent business reason";
- "Customer transactions include a pattern of receiving stock in physical form or the incoming transfer of shares, selling the position and wiring out proceeds";
- "The customer, for no apparent reason or in conjunction with other 'red flags,' engages in transactions involving certain types of securities, such as penny stocks . . . which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity)";
- "Buying and selling securities with no purpose or in unusual circumstances (e.g., churning at customer's request)";
- "The customer's account has unexplained or sudden extensive wire activity";
- "The customer engages in excessive journal entries between unrelated accounts without any apparent business purpose"; and
- "Law enforcement subpoenas." JX-21, at 26–28.

⁴¹⁵ For example, although Norton knew that some of his NUGN customers had multiple accounts in different names at Wilson-Davis, including accounts in spouse's names, he never asked those customers what the business purposes were for those multiple accounts. Tr. 1997–2007; CX-94; CX-184, at 2–7.

* * *

Viewed in their totality, Norton's numerous purported failures of recollection, coupled with his denials that he saw red flags and indicia of manipulation, caused us to conclude that he was not a credible witness.

III. Conclusions of Law—Norton Violated Securities Exchange Act of 1934 Section 10(b), Rule 10b-5, thereunder, and FINRA Rules 2020 and 2010 by Engaging in Willful Market Manipulation

As we stated at the beginning of this decision, manipulation consists of creating deceptive value or market activity for a security through an intentional interference with the free forces of supply and demand. To determine whether Norton engaged in manipulation with scienter, we considered all the relevant facts and circumstances. We especially focused on the issue of whether his trading had a legitimate purpose.

After reviewing the evidence, we find that Norton's purportedly violative trading was manipulative and that he acted with scienter. His \$5 trade on February 24 had no legitimate purpose; he made it to affect NUGN stock's price and help release shares from the LULO restrictions. He knew that the purpose was manipulative, or recklessly disregarded its manipulative purpose.

The evidence also showed that Norton saw, or recklessly disregarded, many indications that his customers were likely engaging in a manipulative trading scheme through him. For example, right from the start, Norton should have been on alert, given that the customer who requested he make a market in NUGN placed no trades in that stock through the Firm. Instead, Norton facilitated cross trades and effectively matched orders that he was reckless in not realizing, if he did not otherwise know, were "highly peculiar and made little, if any, economic sense."⁴¹⁶ The coordinated transactions Norton executed for his customers created the false appearance of an active market in NUGN; in fact, Norton's customers were at times simply shuffling NUGN shares back and forth amongst themselves.⁴¹⁷

Further, while liquidating NUGN stock for his customers, Norton knew they had all acquired their shares in December 2014 on basically the same terms, at the same price, and under nearly identical stock purchase agreements.⁴¹⁸ He also knew those shares were deposited at Wilson-Davis at or about the same time. Yet he failed to raise concerns about this with anyone at Wilson-Davis.⁴¹⁹ Nor did he ask any of his NUGN depositing customers about these similarities,

⁴¹⁶ *Proudian*, 2008 FINRA Discip. LEXIS 21, at *35–36 (citing *Perles*, 2002 SEC LEXIS 3395, at *24).

⁴¹⁷ *See id.* at *27 (finding that sales of securities were deceptively absorbed through "the continual shuffling of securities back and forth in its customers' accounts.") (citing *Norris & Hirshberg, Inc.*, Exchange Act Release No. 3776, 1946 SEC LEXIS 223, at *46 (Jan. 24, 1946), *aff'd*, 177 F.2d 228 (D.C. Cir. 1949)).

⁴¹⁸ Tr. 2009–10.

⁴¹⁹ Tr. 2010.

instead choosing to rely merely on their representations on NUGN stock deposit forms that they were not acting in concert,⁴²⁰ even though he knew, based on his attendance at the “Big Dog” investor conference, that several of them knew each other. And although AA placed multiple buy orders at prices a thousand times higher than it paid for the unliquidated NUGN shares in its Wilson-Davis account, he never raised this as a red flag to anyone.⁴²¹ Nor is there any indication that Norton ever questioned SH to determine if his purported basis for shifting AA’s strategy was true; even though SH’s sudden change in direction from being a seller of the stock to being a buyer concerned Norton and, in Norton’s words, “could potentially be an issue,” all he did was ask SH to document the strategy change.⁴²² Finally, Norton testified that warnings from a lawyer recommending imposing volume limitations were “unusual” in his experience, and he conceded that “perhaps” he was “careless” in not focusing on them with his NUGN customers.⁴²³

We find it implausible that Norton inadvertently, or even with gross negligence, ignored the many red flags and indicia of manipulation present here. Rather, he either chose to do so or at least recklessly abdicated his duty to investigate his customers’ trading.⁴²⁴ Norton was “confronted with an abundance of signs that should have aroused his suspicions and caused him to question [his customers’] trading and his own involvement in it.”⁴²⁵ Instead, he “closed his eyes to circumstances indicative of a scheme to create the false appearance of an independent market.”⁴²⁶ It is unclear whether Norton directed the scheme, acted at the direction of his customers, or a combination of both at various times. But regardless, he engaged in manipulative conduct intentionally or at least recklessly.

⁴²⁰ Tr. 2012–13.

⁴²¹ Tr. 2114–15.

⁴²² Tr. 2140–41.

⁴²³ Tr. 2157–58.

⁴²⁴ *Proudian*, 2008 FINRA Discip. LEXIS 21, at *40–41 (“[H]e ignored clear warning signs and recklessly failed to fulfill his investigatory obligations.”) (citing *Richard D. Chema*, Exchange Act Release No. 40719, 1998 SEC LEXIS 2592, at *20–21 (Nov. 30, 1998)).

⁴²⁵ *Id.* at *35 (citing *Prager*, 2005 SEC LEXIS 1558, at *33).

⁴²⁶ *Id.* at *41 (citing *Alessandrini & Co.*, Exchange Act Release No. 10466, 1973 SEC LEXIS 386, at *14 (Oct. 31, 1973)); accord *Prager*, 2005 SEC LEXIS 1558, at *33–34 (“[Respondent] closed his eyes to the manipulative trading.”).

* * *

Given the foregoing, we find that Norton engaged in market manipulation. We also find that because his conduct was intentional or at least reckless, he acted with scienter.⁴²⁷ As a result, we conclude that he violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Rule 2020. And, because of these violations, he also violated FINRA Rule 2010.

Norton's violation of the federal antifraud provisions was willful. "A willful violation under the federal securities laws means 'that the person charged with the duty knows what he is doing.'"⁴²⁸ "Such a finding does not require that the respondent 'also be aware that he is violating one of the Rules or Acts'; it simply requires the voluntary commission of the acts themselves."⁴²⁹ Norton engaged in his violative conduct voluntarily and knew what he was doing. He also acted with scienter, which is sufficient to find that he acted willfully.⁴³⁰ As a result of his willful violation of the Exchange Act and one of its rules, Norton is subject to statutory disqualification.⁴³¹

IV. Sanctions

A. Overview

In considering the appropriate sanctions to impose on Norton, we begin our sanctions analysis with FINRA's Sanction Guidelines⁴³² ("Guidelines") as a benchmark.⁴³³ The Guidelines contain (i) General Principles Applicable to All Sanction Determinations ("General Principles")

⁴²⁷ Norton's selective memory supported our scienter finding. *See Fiero*, 2002 NASD Discip. LEXIS 16, at *66 ("Fiero's selective memory supports our scienter finding.") (citing *Fertman*, 1994 SEC LEXIS 149, at *15 n.28 (finding that respondent's lack of candor and asserted inability to recall even the most basic information about events at issue supports finding of scienter)). Norton's extensive industry experience also bolstered that finding. *Dep't of Enforcement v. Scholander*, No. 2009019108901, 2014 FINRA Discip. LEXIS 33, at *65-66 (NAC Dec. 28, 2014) (holding that an individual's significant industry experience bolsters a finding of recklessness), *aff'd*, 2016 SEC LEXIS 1209.

⁴²⁸ *Smith*, 2020 FINRA Discip. LEXIS 43, at *55 (quoting *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *41 & n.51 (Nov. 9, 2012) (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000))).

⁴²⁹ *Thaddeus J. North*, Exchange Act Release No. 84500, 2018 SEC LEXIS 3001, at *22 (Oct. 29, 2018), *petition for review denied*, 828 F. App'x. 729 (D.C. Cir. 2020).

⁴³⁰ *See Bruce Zipper*, Exchange Act Release No. 90737, 2020 SEC LEXIS 5226, at *33 (Dec. 21, 2020) ("The finding that Dakota acted with scienter is sufficient to find that Dakota acted willfully.").

⁴³¹ *See* Exchange Act Section 3(a)(39)(F) (incorporating by reference Exchange Act Section 15(b)(4)(D), which together provide that a person is subject to statutory disqualification if that person has willfully violated any provision of, among other things, the Exchange Act and its rules and regulations); FINRA By-Laws, Art. III Sec. 4 (providing that a person is subject to statutory disqualification if that person is disqualified pursuant to Exchange Act Section 3(a)(39)).

⁴³² FINRA Sanction Guidelines (2021), <https://www.finra.org/sanctionguidelines>.

⁴³³ *See, e.g., Fuad Ahmed*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078, at *80 (Sept. 28, 2017) (finding that a sanctions analysis should begin with the Sanction Guidelines as a benchmark).

“that should be considered in connection with the imposition of sanctions in all cases”; (ii) a list of Principal Considerations in Determining Sanctions (“Principal Considerations”) “which enumerates generic factors for consideration in all cases”; and (iii) guidelines applicable to specific violations (“Specific Considerations”), which “identify potential principal considerations that are specific to the described violation.”⁴³⁴

The General Principles explain that “sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct.” Adjudicators are therefore instructed to “design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct.” Further, sanctions should “reflect the seriousness of the misconduct at issue,”⁴³⁵ and should be “tailored to address the misconduct involved in each particular case.”⁴³⁶

The sanctions we impose here are appropriate, proportionally measured to address Norton’s misconduct, and designed to protect and further the interests of the investing public, the industry, and the regulatory system.

B. Discussion

The deliberate manipulation of the market is “serious” misconduct that “strikes at the heart of the pricing process on which all investors rely. It attacks the very foundation and integrity of the free market system. Thus it runs counter to the basic objectives of the securities laws.”⁴³⁷ In fact, “there are few, if any, more serious offenses than manipulation. Such misconduct is a fraud perpetrated not merely on particular customers but on the entire market.”⁴³⁸

The Guidelines “do not specifically address market manipulation. Thus, in determining the appropriate sanctions, we look to Commission precedent regarding the gravity of the violation and to the general considerations in determining sanctions, as set forth in the Guidelines.”⁴³⁹ “In addition, the guideline for misrepresentations or omissions of material fact provide guidance in this case.”⁴⁴⁰ That guideline recommends a fine of \$10,000 to \$155,000

⁴³⁴ Guidelines at 1.

⁴³⁵ *Id.* at 2 (General Principle No. 1).

⁴³⁶ *Id.* at 3 (General Principle No. 3).

⁴³⁷ *Michael J. Markowski*, Exchange Act Release No. 43259, 2000 SEC LEXIS 1860, at *17 (Sept. 7, 2000) (quoting *Pagel*, 1985 SEC LEXIS 988, at *21), *aff’d*, 274 F.3d 525 (D.C. Cir. 2001).

⁴³⁸ *Kirlin*, 2009 SEC LEXIS 4168, at *85 & n.113 (quoting *Montelbano*, Exchange Act Release No. 47227, 2003 SEC LEXIS 153, at *49 (Jan. 22, 2003)).

⁴³⁹ *Dep’t of Enforcement v. Kirlin*, No. EAF0400300001, 2009 FINRA Discip. LEXIS 2, at *79 (NAC Feb. 25, 2009), *aff’d*, 2009 SEC LEXIS 4168 (Dec. 10, 2009).

⁴⁴⁰ *Id.* at *79 n.45 (finding that in imposing sanctions for manipulation, FINRA properly considered the guideline addressing general misrepresentations or omissions of fact); *see also* Guidelines at 90 n.1 (stating that the guideline is “appropriate for violations of Section[] 10(b) . . . [and] the applicable rules and regulations thereunder . . .”).

for intentional or reckless misconduct. It also provides that the adjudicator should “[s]trongly consider barring an individual.” But “[w]here mitigating factors predominate,” the guideline directs us to “consider suspending an individual in any or all capacities for a period of six months to two years,” and to “[c]onsider applicable Principal Considerations in determining the duration of a suspension or whether to impose a bar.”⁴⁴¹

Many aggravating factors are present in this case.⁴⁴² Norton’s misconduct, which was intentional or, at a minimum, reckless,⁴⁴³ consisted of many acts, transactions, and a pattern of misconduct (liquidating millions of shares of stock)⁴⁴⁴ spanning five months (February through June 2015).⁴⁴⁵ Norton and Wilson-Davis reaped substantial monetary gain through his violative conduct (\$400,600 in revenue for the Firm of which he received around 60 percent as part of his compensation).⁴⁴⁶ Norton never accepted responsibility for or acknowledged his wrongdoing.⁴⁴⁷ Finally, he violated Firm procedures by effecting cross trades to support or maintain the market price of NUGN shares.⁴⁴⁸

We find no mitigation here to balance against the aggravating factors that accompanied Norton’s violations. In light of the numerous aggravating factors, the seriousness of the violations, and because we find that his continued presence in the securities industry poses a substantial risk to the investing public,⁴⁴⁹ we bar Norton from associating with any FINRA member firm in any capacity.

⁴⁴¹ Guidelines at 90.

⁴⁴² Disciplinary history is considered an aggravating factor under the Guidelines. *See* Guidelines at 7 (Principal Consideration No. 1). Norton has a disciplinary history consisting of eight regulatory actions brought by NASD, the SEC, and two state regulators between 1978 and 1992. CX-61, at 13–38. One of the disciplinary matters was a 1980 offer of settlement with NASD under which Norton was censured, fined \$2,500, and suspended for 15 days in any principal capacity for, among other things, manipulating the market for a common stock and failing to disclose that manipulative activity to the purchasers of the stock. CX-61, at 22–24. And in 1983, in another settled action, the SEC sanctioned him for violating, among other things, the federal antifraud provisions. CX-61, at 26–27. While Norton’s disciplinary history is aggravating, we also considered its age, which somewhat mitigated its aggravating effect.

⁴⁴³ Guidelines at 8 (Principal Consideration No. 13).

⁴⁴⁴ *Id.* at 7–8 (Principal Consideration Nos. 8 and 17).

⁴⁴⁵ *Id.* at 7 (Principal Consideration No. 9).

⁴⁴⁶ *Id.* at 8 (Principal Consideration No. 16).

⁴⁴⁷ *Id.* at 7 (Principal Consideration No. 2).

⁴⁴⁸ During the relevant period, Wilson-Davis’s WSPs prohibited the Firm and its employees from “engag[ing] in a practice of effecting cross transactions for the purpose of supporting or maintaining the market price of a security.” Compl. ¶ 105; Ans. ¶ 105. *See Dep’t of Enforcement v. White*, No. 2015045254501, 2019 FINRA Discip. LEXIS 30, at *51 n.25 (NAC July 26, 2019) (finding that violating firm policies may be aggravating even though it is not a factor listed in the Guidelines.).

⁴⁴⁹ *See Dep’t of Enforcement v. Orlando*, No. 2014043863001, 2020 FINRA Discip. LEXIS 26, at *49 (NAC Mar. 16, 2020) (finding that respondent’s continued presence in the securities industry posed a substantial risk to the investing public and was “best remediated by his exclusion from the securities industry.”).

As for monetary sanctions, besides considering the fraud guideline, we also found instructive the General Principles, which provide that “[t]o remediate misconduct, Adjudicators should consider a respondent’s ill-gotten gain when determining an appropriate remedy . . . [and] may require the disgorgement of such ill-gotten gain by ordering disgorgement of some or all of the financial benefit derived, directly or indirectly.”⁴⁵⁰

We find that disgorgement of Norton’s commissions “will serve to remediate his misconduct by eliminating the financial benefit directly resulting from it. It will also deter others from engaging in similar misconduct.”⁴⁵¹ We will therefore order Norton to disgorge the commissions he earned though his transactions in NUGN stock, namely, \$240,360, payable as a fine to FINRA.⁴⁵² This amount is causally connected to his misconduct.⁴⁵³ Finally, we will order that he pay interest on this disgorgement amount, accruing from June 9, 2015—the date of his last receipt of compensation derived from NUGN transactions⁴⁵⁴—until paid in full.

V. Order

For willfully engaging in manipulative activity in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010, Respondent Craig Stanton Norton is (i) barred from associating with any FINRA member firm in any capacity; and (ii) ordered to disgorge \$240,360 plus prejudgment interest on the unpaid balance from June 9,

⁴⁵⁰ Guidelines at 5 (General Consideration No. 6); *see also Mehringer*, 2020 FINRA Discip. LEXIS 27, at *42 (quoting *Michael David Sweeney*, Exchange Act Release No. 29884, 1991 SEC LEXIS 2455, at *17 (Oct. 30, 1991) (“[D]isgorgement is intended to force wrongdoers to give up the amount by which they were unjustly enriched.”)).

⁴⁵¹ *Dep’t of Enforcement v. Maheshwari*, No. 2017055608101, 2020 FINRA Discip. LEXIS 46, at *38 (NAC Dec. 17, 2020).

⁴⁵² *See Mehringer*, 2020 FINRA Discip. LEXIS 27, at *42 (ordering disgorgement payable as a fine to FINRA). We order the disgorgement paid to FINRA because the evidence did not prove that any identifiable customers were injured. “In cases in which the respondent’s ill-gotten gain is ordered to be disgorged to FINRA, and FINRA collects the full amount of the disgorgement order, FINRA’s routine practice is to contribute the amount collected to the FINRA Investor Education Foundation.” Guidelines at 5 (Principle Consideration No. 6). We decline to impose an additional fine, however, because the Guidelines provide that “Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss” or “if an individual is barred and the Adjudicator has ordered . . . disgorgement of ill-gotten gains as appropriate to remediate the misconduct.” Guidelines at 10.

⁴⁵³ *Dep’t of Enforcement v. Springsteen-Abbott*, No. 2011025675501r, 2017 FINRA Discip. LEXIS 23, at *76 (NAC July 20, 2017), *aff’d*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684 (SEC Feb. 7, 2020) (“An order of disgorgement must be limited to a reasonable approximation of ill-gotten gains or unjust enrichment. And such gain or financial benefit must be causally connected to the violation.”), *petition dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. 2021).

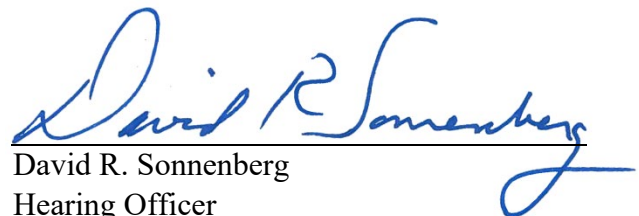
⁴⁵⁴ CX-32. *Cf. Mehringer*, 2020 FINRA DISCIP. LEXIS 27, at *54 n.82 (ordering prejudgment interest to accrue from the last day of the review period for the respondent’s trades).

2015 until paid in full.⁴⁵⁵ The disgorgement and prejudgment interest shall be payable to FINRA as a fine.

Norton is subject to statutory disqualification by operation of law.⁴⁵⁶

If this decision becomes FINRA's final disciplinary action, the bar shall become effective immediately. The fine and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final action.

Norton also is ordered to pay the costs of the hearing in the amount of \$13,537.20, which includes a \$750 administrative fee and \$12,787.20 for the cost of the transcript.⁴⁵⁷


David R. Sonnenberg
Hearing Officer
For the Extended Hearing Panel

Copies to:

Craig Stanton Norton (via email, overnight courier, and first-class mail)
D. Craig Parry, Esq. (via email)
Mark O. Van Wagoner, Esq. (via email)
Brody W. Weichbrodt, Esq. (via email)
John R. Baraniak, Jr., Esq. (via email)
Mark Fernandez, Esq. (via email)
Carolyn Craig, Esq. (via email)

⁴⁵⁵ Prejudgment interest shall accrue at the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a). *See Mehlinger*, 2020 FINRA Discip. LEXIS 27, at *54 n.82 (applying the IRS underpayment rate to prejudgment interest on disgorgement) (citing Guidelines, at 11 addressing interest on restitution)).

⁴⁵⁶ *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *37 (Mar. 15, 2016) (finding that statutory disqualification is not a FINRA-imposed sanction and that a person is subject to statutory disqualification by operation of the Exchange Act.), *aff'd*, 672 F. App'x 865 (10th Cir. 2016).

⁴⁵⁷ The Extended Hearing Panel has considered and rejects without discussion all other arguments of the parties.