

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Ricky Alan Mantei
Anaheim, California,

Respondent.

DECISION

Complaint No. 2015045257501

Dated: May 30, 2023

Respondent violated his firm's prearranged trading prohibition and circumvented its cross trade procedures by directing prearranged trading with counterparties. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Megan Davis, Esq., Jennifer Crawford, Esq., Andrew Boldt, Esq., Douglas Ramsey, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Anthony Paduano, Esq., Katherine Harrison, Esq., Paduano & Weintraub LLP

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Decision

Ricky Alan Mantei appeals, and the Department of Enforcement (“Enforcement”) cross-appeals, an Extended Hearing Panel (“Hearing Panel”) decision pursuant to FINRA Rule 9311. The Hearing Panel found that Mantei violated FINRA Rule 2010 and Municipal Securities Rulemaking Board (“MSRB”) Rule G-17 by directing prearranged trades with counterparties in contravention of his firm’s prearranged trading prohibition to circumvent the firm’s cross trade policy. For his misconduct, the Hearing Panel suspended Mantei from associating with any FINRA member in any capacity for 30 business days and fined him \$15,000. After an independent review of the record, we affirm the Hearing Panel’s findings of liability and modify the sanctions.

I. Facts

A. Background

Mantei entered the securities industry in 1982. From March 2010 to May 2015, Mantei was registered as a general securities representative, general securities principal, and investment company and variable contracts products representative of J.P. Turner & Company (“J.P. Turner”). In May 2015, Mantei associated with another FINRA member firm, where he remains registered today.

B. Mantei’s Business at J.P. Turner

Mantei managed a J.P. Turner branch office in Lexington, South Carolina. During the relevant period, from September 2014 through February 2015, the branch office employed approximately 50 people, including 10 to 19 registered persons. Mantei was the firm’s largest producer. The majority of the Lexington branch customer accounts were assigned to a particular registered representative of record, who was supervised by Mantei.

Mantei’s business at the Lexington branch included recommending transactions to clients, taking orders from customers, and sending those orders for execution to J.P. Turner’s trading desk for fixed income products, including bonds and structured certificates of deposit (“SCDs”).¹ The fixed income trading desk was known as the “bond desk” and was located in Atlanta, Georgia.

Mantei effected transactions in SCDs and bonds for J.P. Turner customers by giving instructions to the bond desk. Mantei usually dealt with Sam Palermo, a trader on the J.P. Turner

¹ SCDs are instruments that represent deposit obligations of a bank. The parties stipulated that, with respect to the SCDs relevant to this case, after a specified period during which they pay a fixed interest rate, SCDs pay periodic interest on a deposit amount determined by a formula set by the issuer that may be correlated to an equity index or an interest rate benchmark. The parties also stipulated that the secondary market for SCDs can be less liquid than for other products, bid and offer spreads can be larger for SCDs than for other products, and it can be more difficult to obtain pricing information for SCDs than for other products.

bond desk who assisted the Lexington branch with most of its fixed income transactions. Palermo located counterparties for transactions and negotiated the terms of the transactions following Mantei's instructions.

To place an order, including orders for SCDs, the Lexington branch would submit an order ticket and instructions to the bond desk. J.P. Turner's written supervisory procedures required that any instructions relating to a trade accompany the order ticket. Since at least September 2014, the bond desk used one order ticket for all fixed income products, including bonds and SCDs. That order ticket was called the "bond ticket."

C. J.P. Turner's Policies and Procedures

During the relevant period, J.P. Turner had written supervisory procedures that prohibited prearranged trading and provided additional safeguards for cross trades (i.e., trades between customers).

Absent two limited exceptions not applicable here, J.P. Turner's written supervisory procedures prohibited prearranged trading. The procedures defined prearranged trading as "[a]n offer to sell coupled with an offer to buy back at the same or a higher price, or the reverse."

On or about April 10, 2014, in a compliance alert titled "Bond Cross Trades," J.P. Turner announced procedures governing bond cross trades. J.P. Turner's Chief Compliance Officer ("CCO"), Ed Woll, drafted the procedures. The procedures permitted cross trades but subjected them to heightened scrutiny to ensure that both the selling customer and purchasing customer received a fair price despite conflicting interests. The firm's cross trade policy applied "when an office sells a bond for one of its clients and purchases the bond for another of its clients" and the trade is "executed internally by the firm and never reach[es] the market." The procedures provided:

- If a client elected to have his trade "crossed" with another J.P. Turner client, the branch was "required to document the benefit of the cross-trade to the buyer and to the seller, submit the explanation with the order ticket and retain a copy in the Branch records." The explanation was required to address "why it is best for the one client to sell the bond yet best for the other client to purchase the bond." And the representative would have to attest "that the seller was given the right to have the bond sold into the market rather than internally."
- The trading desk was required to "'mark' the value of the bond to the market by reviewing current trading of the same or similar bonds and include evidence of the evaluation with the trade ticket."
- The "maximum markup/markdown allowed on the entire transaction [could] be no more than the maximum of a single trade," and the markup/markdown would be split between the buyer and seller.

J.P. Turner calculated the maximum markup/markdown on a cross trade according to the firm's fixed income guidelines. Pursuant to the guidelines, for the types of SCDs and bonds at issue, cross trades were subject to a 2.6% maximum markup or markdown for the entire trade.

The stated objectives of the bond cross trade procedures were to "provide additional structure and transparency to [the firm's] execution of cross-trades," "minimize the potential for conflicts of interest," and ensure that both customers involved in the cross trade received an objectively fair price based on market transactions in the same or similar products.

D. Mantei Directed Prearranged Trading to Circumvent His Firm's Cross Trade Procedures

Enforcement alleged that Mantei engaged in violative conduct by directing three sets of transactions. Two sets of transactions involved SCDs: a Wells Fargo SCD with CUSIP 949748R66 ("Wells Fargo R66 SCD") and a Citibank SCD with CUSIP 172986FN6 ("Citibank FN6 SCD"). The third set of transactions involved a Fresno municipal bond with CUSIP 358184HE2 ("Fresno HE2 Bond"). As detailed below, the relevant trading for each set of transactions followed the same general pattern: a customer from the Lexington branch sold a financial instrument to J.P. Turner, which in turn sold it to another broker-dealer. Later, that broker-dealer sold it back to J.P. Turner at a price slightly above what it had paid for the position. This increased price contained a surreptitious charge to compensate the broker-dealer for temporarily holding the position, as discussed further below. In each instance, Mantei sold the repurchased positions to other J.P. Turner customers. Mantei helped locate each of the customers who later bought the financial products in the three sets of trades.

We now turn to the three sets of transactions at issue.

1. The Wells Fargo R66 SCD Transactions

The first set of transactions at issue involve a Wells Fargo R66 SCD. In September 2014, a customer of Mantei's branch, CC, and his daughter contacted J.P. Turner about CC's position in the Wells Fargo R66 SCD. CC had originally invested \$96,000 in the SCD.² Several years later, he received a statement reflecting the value had dropped to the mid-70s. CC's daughter was angry and threatened to file a formal complaint. She wanted to sell the SCD, recover her father's original investment (minus any cash remaining in the account and distributions of interest), and move his account to another firm.

Mantei believed he needed to sell the Wells Fargo R66 SCD at a price of 89 or 90 in order to resolve the grievance. Mantei was concerned that, if he sold the SCD at a lower price, he might have to cover the difference to keep the customer from filing a formal complaint, and his understanding was his contribution might qualify as a reportable settlement. Mantei wanted to avoid such a scenario, as he explained in a recorded call with Palermo:

² Another broker opened CC's account at J.P. Turner. Mantei did not know the customer.

Mantei: [W]e're trying to make this thing go away. But a lot of it has to do with the price that we get for this client Because the higher I can get, the closer I can get towards 90, the more likely this gal is going to just take the money and walk away and be done with this, and we won't have to d—k with this anymore. And I don't have to kick no damn money into the pot. And what we're trying to do is we're trying to keep it from having to be a reportable U4 entry item. In other words, if it was \$7,500 dollars, it would be, it's over \$5,000 dollars. If we can keep this thing down, then we shouldn't have to.³

At Mantei's instruction, Palermo sought bids for the Wells Fargo R66 SCD in the secondary market, but he was unable to get any interest at a price above the mid-80s. Mantei proposed to J.P. Turner's CCO, Woll, doing a cross trade and selling the SCD to another J.P. Turner customer who was willing to pay a price of 90. Woll, however, would not approve it. Woll explained he did not feel comfortable with Mantei selling the SCD "to one of his clients for appreciably more than what we had already established that the market was willing to pay for it." Woll also was concerned that a cross trade "would have the appearance, or worse, that we were trying to avoid a complaint by some sort of sleight of hand."⁴

Mantei understood and agreed to abide by Woll's instructions. But despite Woll's directive not to sell the Wells Fargo R66 SCD in a cross trade, Mantei directed the sale of the SCD to other J.P. Turner customers using an intervening counterparty. On September 25, 2014, Mantei called Palermo to discuss finding a buyer for the SCD. Mantei told Palermo he needed to get a price for the SCD at the "magic number" of 89 or above. Mantei instructed Palermo to couple the sale with an offer to repurchase it at a higher price. Mantei's instructions to Palermo were recorded:

³ J.P. Turner recorded the bond desk's telephone conversations. At the hearing, Enforcement introduced as evidence and played selected audiotapes of conversations Palermo had on the recorded line with Mantei and with a trader at another FINRA member firm. Enforcement also introduced transcriptions of the audiotapes. We, like the Hearing Panel, view the audiotapes as the best evidence of the conversations. In those instances where we and the Hearing Panel found that certain quoted portions of the transcriptions do not accurately reflect the words spoken on the audiotapes, the corrected language appears in curly brackets (i.e., {}). When our decision is quoting language that includes expletives, those words contain em dashes in place of some letters.

⁴ Woll and Mantei testified inconsistently as to whether Mantei told Woll he had a customer lined up to buy the instrument. According to Woll, Mantei told him that he had a client who would like to buy the SCD for a price somewhere around 90. Mantei, however, denied telling Woll that he wanted to do a cross trade, but conceded he might have considered doing such a trade had Woll not prohibited it. The Hearing Panel did not make a credibility finding on this point and instead wrote that the conflicting testimony was inconclusive. This discrepancy does not affect our findings.

Mantei: Can I get you to help me find some-damn-body out there, Morgan Stanley, Citibank, f—king X, any damn body out there, that can help get me a high price, 89-90, something like that on this damn paper? And I will buy the s—t back. You can tell them, “Hey, you put it back up on the {BondDesk}⁵ next week, Rick’ll buy it from you.” Because I will. And I’ll buy it back for more than they paid for it.

Mantei explained to Palermo that he had J.P. Turner customers as buyers for the SCD, but “I can’t cross, because Ed [Woll] says it looks bad.”

Palermo thereafter tried to find a buyer for the Wells Fargo R66 SCD. Later that day, while on hold with a trader at Firm A, Palermo reported to Mantei that he had “already been turned down a couple places” and that other potential counterparties had expressed concerns about “painting the tape.”⁶ Returning to his call with the Firm A trader, Palermo presented Mantei’s proposal to him:

Palermo: What my buyer wanted to do was, he needed a mark away from us. Our {Compliance—he was gone}, he was willing to cross it at 89, which seems to be out of the market, some people think * * *⁷ unless you sell it to the market. Now, I didn’t want to, I was just going to run something by you. He said, hey, can we get a marker out there, just sell it? I want it back. . . * * * I’m certainly not interested in getting anybody in trouble, but that’s why I was trying to call you earlier.* * * I wanted to buy it back, but I would have to sell it to you at a price and then buy it back on Wednesday of next week.* * * I wanted to put it out to you and let you know. If I buy it at 89, I’m willing to buy it back even for, worth your while, you know, to cover any cost, and whatever you think is best, you know, and, or at least put it back out. Even if you told me, hey, I’ll take it in at 89, you buy it back at 90 and you’re okay with that, I’ll call the rep and see if he’s okay with it.

Firm A Trader: Uh, whatever you need.

⁵ “BondDesk” was a retail bond trading platform used by the firm.

⁶ “Painting the tape” is a manipulative practice described by the Commission as, among other things, “placing successive buy orders in small amounts at increasing prices.” *John R. Glushko*, Exchange Act Release No. 57435, 2008 SEC LEXIS 490, at *3 (Mar. 5, 2008); *accord SEC v. Fiore*, 416 F. Supp. 3d 306, 316 n.4 (S.D.N.Y. 2019) (describing “painting the tape” as “creating an appearance of trading activity without an actual change in beneficial ownership”).

⁷ The asterisks denote instances where the other person on the call interjects but the speaker continues.

Following that call, Palermo reported to Mantei that he had found a buyer for the Wells Fargo R66 SCD.

Palermo: All right between you and me, that guy I was just talking to on the phone, that I just hung up with you on?

Mantei: Yeah.

Palermo: I can get favors, and I'm working on two other deals. There's a very good chance I'm going to get a print away from the street from us on this, on that. I think I can do it. He says, whatever you need.

Mantei: Well, if {he'll} just buy that f—ing 96 and then put it back up on {BondDesk} Monday at 90, I'll buy the f—er from him. He'll pick up a point. We're all happy.

Mantei further explained to Palermo that this would be a "risk-less trade" for the counterparty and that the counterparty would be doing him a "favor."

A few hours later, Palermo expressed concern to Mantei about getting people in trouble with painting the tape and asked Mantei what regulators would do when they evaluated Mantei's plan. Mantei instructed Palermo to disregard those concerns, telling him "F—k them! I'm buying the paper." Mantei later told Palermo that he could "change the price a tad to make it look realistic, you know, 89.01 or 88.91 or something." The next day, Palermo asked Mantei if Mantei's plan needed to be approved by J.P. Turner's compliance department "or is that something just you and I are talking about." Mantei did not want to tell the compliance department or Woll, explaining: "All I need to do is go to [Woll] and say we're good for finding the buyer, no crossing[,] that will pay us eighty-nine cents on the dollar . . . [t]hat's all I need to be able to tell him."

On October 1, 2014, Palermo confirmed the arrangement to sell and repurchase the Wells Fargo R66 SCD with the Firm A trader:

Palermo: Hey that favor I asked of you about a week ago? * * * Can you still help me out with that one and I'm going to buy it back.

Firm A Trader: Yeah. Yeah.

Palermo: . . . I'm going to buy it back from you, you just name the price, but I'd like to sell a 96-face to you at 90 cents on the dollar. * * * But I'll buy this back if you're okay with that? * * * We'll just put some time between it, make it look good, and then, um, I won't forget the favor.

Mantei and Palermo told Woll that they had found a buyer for the sale of the Wells Fargo R66 SCD at the price they needed, but they did not tell him about the arrangement Palermo had

worked out with Firm A. Accordingly, relying on Mantei and Palermo, Woll submitted an order ticket for Mantei to effect the sale of CC's Wells Fargo R66 SCD on October 1, 2014.⁸

Following the sale of the Wells Fargo R66 SCD, Palermo treated the position as though it were still a part of Mantei's internal inventory at J.P. Turner. Mantei's internal inventory at J.P. Turner consisted of positions in J.P. Turner accounts that Mantei had the authority to control through the bond desk, subject to certain limits, so that Mantei could sell that "inventory" to customers.

On October 8, 2014, Mantei instructed Palermo that "from a smart standpoint," Palermo should bring back the Wells Fargo R66 SCD in two pieces beginning with 30,000 of the face amount. Palermo agreed. Palermo and Mantei then discussed what price they should pay the counterparty for the "favor." Palermo called the Firm A trader to discuss repurchasing the position and taking back the SCD in pieces. They agreed that, when repurchasing the position, Palermo would add a quarter to the 90 price the trader had paid. Expressing his appreciation, Palermo told the trader, "I owe you," and the Firm A trader responded, "No problem." That day, J.P. Turner repurchased 30,000 of the face amount of the position at 90.25 and immediately sold it to another J.P. Turner customer at 90.50.⁹ This left 66,000 of the face amount of the position to be repurchased.

On October 10, 2014, prior to the repurchase of the remaining 66,000 of the face amount, Mantei confirmed that he considered himself "still long" on the remaining 66,000 of the face amount. Palermo also confirmed to Mantei, "What I did was exactly what you suggested and I thought that was brilliant." Palermo then suggested the prearranged trading as "another angle that I can use" and suggested that "maybe [he] ought to start doing that" in connection with another financial instrument. Mantei responded, "Right. Right." On October 14, J.P. Turner repurchased the remaining 66,000 of the face amount from Firm A at 90.25 and immediately sold it to another J.P. Turner customer at 92.34.

⁸ Woll testified that he believed this was the best available price and that the instrument was being sold into the open market through an arm's length transaction. According to Woll, he reached these conclusions because the ticket reflected "best available," and he had been clear that it must not be crossed with another customer. Woll said that, had he known before signing the ticket that Mantei either directly or indirectly had offered to sell the Wells Fargo R66 SCD and buy it back at the same or higher price, he would not have signed the ticket.

⁹ Mantei said that he did not have an ultimate customer in mind to buy the Wells Fargo R66 SCD until well after the customer sold it. Mantei explained, however, he usually had an idea which customers might want to buy an instrument, noting "[y]ou know you have enough in the reservoir to fill that trade." And it often came down to this: "The first guy who answers the phone that gives me an affirmative, he gets it."

None of the order tickets or other trade records for these transactions reflected Mantei's instructions to Palermo about the prearranged trade or disclosed a cross trade.¹⁰ Accordingly, it appeared to J.P. Turner from its order records that the transactions for the selling customer and the buying customer were executed with external parties in arms-length transactions that reached the market.

2. The Fresno HE2 Bond Transactions

The second set of the transactions at issue involve a Fresno HE2 Bond. On December 23, 2014, Mantei called Palermo and instructed him to sell a J.P. Turner customer's 30,000 face amount Fresno HE2 Bond with the caveat that Mantei planned to buy it back later that week to sell to other J.P. Turner customers. Mantei explained:

Next, I need to cross this Fresno. It's the one that ends in HE2 So I need a cross level where I can fill it today and then buy it back maybe Friday. And yet make some money on the damn thing I'm going to send you this ticket that's selling at 97.11. And then don't go selling it in the street and I'll buy it back from you on Friday.

Approximately 10 minutes later, Mantei and Palermo spoke again. Palermo told Mantei he needed to talk "about that cross" and informed Mantei that, consistent with the J.P. Turner cross trade policy, Mantei could "only take commissions on a cross, you know, one sided." Mantei said he knew but then explained in further detail what he wanted Palermo to do:

Mantei: Wait a minute, wait a minute, wait a minute, wait a minute. I was gonna get you to just sell them somewhere like you've done in the past. You know, give them a quarter or a half or whatever the hell they want and then we'll just buy it back. How about that?

Palermo: Well, see, you told me not to sell it to the street. That's what you just told me.

Mantei: But not to the f—ing street, but if you've got someone that'll do us a favor, that's what I'm trying to get you to do.

¹⁰ J.P. Turner's trade records provided as follows: On October 1, J.P. Turner (i) purchased the \$96,000 Wells Fargo R66 SCD from customer CC at a price of 90.00 and (ii) sold the \$96,000 Wells Fargo R66 SCD to Firm A at a price of 90.00. On October 8, J.P. Turner (i) repurchased \$30,000 of the \$96,000 Wells Fargo R66 SCD from Firm A for a price of 90.25 and (ii) sold \$30,000 of the \$96,000 Wells Fargo R66 SCD to a J.P. Turner customer for a price of 90.50. On October 14, J.P. Turner (i) repurchased the remaining \$66,000 of the \$96,000 Wells Fargo R66 SCD from Firm A for a price of 90.25 and (ii) sold the remaining \$66,000 of the \$96,000 Wells Fargo R66 SCD to another J.P. Turner customer for a price of 92.34.

Palermo: Okay. Let me work that trade then.

Three days later, Mantei asked Palermo, “have you got somebody that you could sell it to so that we could buy it back on Monday?” Palermo responded, “I’m going to try to find that guy right now, whoever I can find to work with me on that.” Palermo then assured Mantei that he would get someone to do the transaction.

Later that day, J.P. Turner bought the 30,000 face amount Fresno HE2 Bond from a customer at 94.61 and, following Mantei’s instructions, J.P. Turner sold it to Firm B at 97.11 through an order ticket submitted from Mantei’s branch office. Mantei testified that when the customer sold the Fresno HE2 Bond to J.P. Turner, Mantei did not have a specific customer in mind to buy it.

The next Monday, December 29, 2014, Mantei called Palermo to discuss repurchasing the position. Referencing the “30 Fresnos” he sold on Friday, Mantei asked if there was “any problem with me buying them back now today at par.” Palermo said that would not be a problem: “I just got to go get them.” Palermo continued that the other trader “was putting a quarter on that,” and the repurchase price would be 97.36 or .25 more than the sale price of 97.11. Mantei told Palermo, “I got two tickets for 10 each and I’ll send you the third for 10 today.” Later that day, J.P. Turner repurchased the Fresno HE2 Bond from Firm B at a price of 97.36 and sold the Fresno HE2 bond in three \$10,000 transactions to three customers in three separate transactions at a price of 99.96. According to Enforcement, the total markup/markdown paid by the selling customer and ultimate purchasers was 5.1%, which exceeded the 2.6% limit in J.P. Turner’s cross trade procedures.¹¹

None of the order tickets or other trade records for these transactions reflected Mantei’s instructions to Palermo about the prearranged trade or disclosed a cross trade. To the contrary, the word “CROSS” was scribbled out on the sell ticket.

3. The Citibank FN6 SCD Transactions

The third and final set of the transactions at issue involve a Citibank FN6 SCD.

Two weeks prior to the transactions, Mantei and Palermo discussed what appeared to be another planned set of prearranged transactions. During their conversation, Mantei wondered whether “some clown out there’ll” buy the instrument at a specified price “and just hold them in his inventory.” Palermo responded that was what he was “going to try to do.” Mantei then instructed Palermo to just “[g]ive them a f—king quarter and then we’ll turn around and buy them back tomorrow.” The next day, Mantei pressed Palermo to execute the trades and jokingly asked whether he needed to change his name to John Doe and just “go to the other side and . . .

¹¹ MSRB Rule G-15 did not, at this time, require a dealer to disclose its markup when it sold a municipal security on a principal basis to a retail customer account. *See* MSRB Regulation Notice 2016-28 (announcing new disclosure requirements effective May 14, 2018).

hold the f—kers for a day and sell them back” to Palermo. This caused Palermo to laugh. But he immediately cautioned Mantei, “You need to be quiet on the damn phone.”

On February 25, 2015, Mantei and Palermo discussed the transactions at issue but with more circumspect language. Mantei instructed Palermo to sell a J.P. Turner customer’s 40,000 face amount Citibank FN6 SCD coupled with an offer to repurchase it at a higher price. Specifically, Mantei telephoned Palermo and asked:

Mantei: [C]an we sell these, {take them back, sell them} on the credit side? Can you get somebody to hold these 50 [sic] in inventory, just buy them for me tomorrow? . . . [W]e need to sell today but we’ll turn around and buy tomorrow.

Palermo responded, “Yeah I just got to have somebody to take them” He told Mantei he would call “the ones who do it for me” and instructed Mantei to send him the ticket.

About 15 minutes later, Mantei called and asked Palermo, “You want me to send you that ticket on the 40, Citibank, that {FN6}.” Palermo responded, “Yeah, let me massage that. I just tried to get someone to take it and I’ll take care of you.” During the telephone call, Mantei confirmed with Palermo that he should not write “cross” on the order ticket. Palermo agreed, remarking “We’re not crossing it.” Mantei replied, “So I’m taking that off, alright, and I’m sending you the ticket now.”¹²

About an hour later, Palermo told Mantei that while setting up “this favor” on the Citibank FN6 SCD for Mantei, he learned that the counterparty had another “50 on the other side.” Palermo asked if Mantei could use them, “[C]ause then I can bring back 90.” Mantei declined the additional purchase, remarking “[N]obody wants them.”

Later that day, J.P. Turner bought the 40,000 face amount Citibank FN6 SCD at 90.45 from a J.P. Turner customer and immediately sold the position to Firm C at 93.00. Mantei testified that when the customer sold the Citibank FN6 SCD, Mantei did not have a particular customer in mind to buy it.

The next day, Mantei telephoned Palermo and asked if he could “drop” an order ticket “for those Foxtrots.” Palermo agreed and reminded him, “[W]e got to pay a little bit” to complete the repurchase, noting that he would buy back the position at 93.25. Mantei confirmed that the position would then be sold to a customer at 95.50 and told Palermo he would send him the ticket.

That afternoon, J.P. Turner repurchased the Citibank FN6 SCD (in two transactions) from Firm C at a price of 93.15 (not 93.25). J.P. Turner then sold the position to a J.P. Turner

¹² Consistent with that conversation, the order ticket for the sale of the Citibank FN6 SCD contains a blacked out circle where the word “CROSS” was usually written.

customer at a price of 95.50. According to Enforcement, the total markup/markdown paid by the selling customer and ultimate purchaser was 4.9%, which exceeded the 2.6% limit in J.P. Turner's cross trade procedures. None of the order tickets or other trade records for these transactions reflected Mantei's instructions to Palermo about the prearranged trade or disclosed a cross trade. To the contrary, the word "CROSS" was blacked out from the sell ticket.

E. FINRA's Investigation

On April 17, 2015, J.P. Turner sent a letter to FINRA reporting a net capital deficiency at the firm, which ultimately led to FINRA's investigation of Mantei's misconduct at issue. The letter did not reference Mantei. FINRA, however, discovered Mantei's alleged misconduct while investigating the firm's net capital deficiency.¹³ We discuss in detail FINRA's investigation in Part III.C.1 *infra*.

II. Procedural History

Enforcement filed a two-cause complaint against Mantei on August 1, 2019. The first cause of action alleged that Mantei circumvented J.P. Turner's written supervisory procedures related to cross trades and contravened J.P. Turner's prohibition against prearranged trading with respect to the Wells Fargo R66 SCD and Citibank FN6 SCD transactions, in violation of FINRA Rule 2010. The second cause of action alleged that Mantei circumvented J.P. Turner's written supervisory procedures related to cross trades and contravened J.P. Turner's prohibition against prearranged trading with respect to the Fresno HE2 Bond transactions, in willful violation of MSRB Rule G-17.

After a five-day hearing, the Hearing Panel issued its decision on February 18, 2021. The Hearing Panel found that Mantei engaged in the misconduct as alleged. The Hearing Panel made limited credibility findings. The Hearing Panel noted that while Mantei's testimony was "at times meandering and evasive," they "generally found his recollection of events credible" but disagreed with Mantei's "interpretation of his conduct." The Hearing Panel found that Woll's inability "to recall certain non-material information" and "other failures of recollection diminished Woll's overall credibility." The Hearing Panel, however, did not explicitly find Woll not credible on any material point. In addition, the Hearing Panel found "[t]he recollections of the key percipient witnesses (Mantei and Woll) on important matters were not unduly diminished by time."

For violating FINRA Rule 2010, the Hearing Panel suspended Mantei from associating with any FINRA member in any capacity for a period of 30 business days and fined him \$10,000. For violating MSRB Rule G-17, the Hearing Panel suspended Mantei from associating with any FINRA member in any capacity for a period of 30 business days and fined him \$5,000.

¹³ There is no evidence to suggest that Mantei had any knowledge about J. P. Turner's financial reporting or anything to do with the firm's books and records related to the net capital deficiency.

The Hearing Panel imposed the suspensions concurrently.¹⁴ As a result of Mantei's willful violation of MSRB Rule G-17, he is subject to statutory disqualification.

Mantei timely appealed the decision in its entirety, and Enforcement cross-appealed the decision with respect to sanctions.

III. Discussion

The Hearing Panel found that Mantei violated his firm's prearranged trading prohibition and circumvented the firm's cross trade policy by directing prearranged trading with counterparties to facilitate and disguise cross trades, in violation of FINRA Rule 2010 and MSRB Rule G-17. We affirm these findings.

A. Mantei's Conduct Related to the Wells Fargo R66 SCD and Citibank FN6 SCD Transactions Violated FINRA Rule 2010

The Hearing Panel correctly found that Mantei violated FINRA Rule 2010 as alleged in the first cause of action for his conduct related to the Wells Fargo R66 SCD and Citibank FN6 SCD transactions. FINRA Rule 2010 states that a broker-dealer, "in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."¹⁵ The rule is "'designed to enable [FINRA] to regulate the ethical standards of its members' and 'encompass[es] business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.'" *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016) (quoting *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996)). It is not necessary for the conduct to "relate to the associated person's customers or to a securities transaction in order to be covered by Rule 2010." *Id.* at *17 (citations omitted). To determine whether conduct violates FINRA Rule 2010, the Commission examines whether the misconduct "reflects on the associated person's capacity 'to comply with the regulatory requirements of the securities business and to fulfill [his or her] fiduciary duties in handling other people's money.'" *Id.* at *10 (quoting *Daniel D. Manoff*, 55 S.E.C. 1155, 1163 (2002)). To be liable under FINRA Rule 2010, Mantei's conduct must be business-related and in bad faith or unethical. *See Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *20 (Jan. 9, 2015), *aff'd*, 641 F. App'x 27 (2d Cir. 2016).

Mantei's conduct related to the Wells Fargo R66 SCD and Citibank FN6 SCD transactions fits within the broad range of misconduct proscribed by FINRA Rule 2010. First,

¹⁴ The Hearing Officer dissented in the decision regarding the sanctions imposed by the Hearing Panel, noting that he would have imposed a three-month suspension in all capacities for each violation, with the suspensions running concurrently.

¹⁵ FINRA rules apply with equal force to all members and associated persons. *See* FINRA Rule 0140(a) ("Persons associated with a member shall have the same duties and obligations as a member under the Rules.").

regardless of whether the SCDs at issue in this matter are securities, Mantei's conduct was business related. Mantei misled his member firm regarding the true nature of the SCD transactions to circumvent his firm's supervisory procedures. He directed prearranged transactions, which violated J.P. Turner's prohibition against prearranged trading, to disguise what would have been cross trades between J.P. Turner customers but for the interposed counterparties. He thereby evaded the enhanced supervisory procedures that applied to cross trades under the firm's cross trade policy and the limits on markups for cross trades. And with respect to the Wells Fargo R66 SCD transactions, Mantei additionally circumvented an explicit instruction from J.P. Turner's CCO, Woll, prohibiting the use of a cross trade. His collective conduct reflects on his capacity "to comply with the regulatory requirements of the securities business" and falls squarely within the scope of FINRA Rule 2010.¹⁶ See *James A. Goetz*, 53 S.E.C. 472, 477-78 (1998) (by making misrepresentations to his member firm to induce the firm to make a donation to his daughter's high school, broker engaged in business-related misconduct that reflected directly on his "ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money"); *Dep't of Enf't v. White*, Complaint No. 2015045254501, 2019 FINRA Discip. LEXIS 30, at *42-43 (FINRA NAC July 26, 2019) (by structuring nine deposits made in his personal bank accounts in contravention of his member firm's policies and procedures, broker engaged in business-related misconduct in violation of FINRA Rule 2010); *Dep't of Enf't v. Davenport*, Complaint No. C05010017, 2003 NASD Discip. LEXIS 4, at *10 (NASD NAC May 7, 2003) (by making false representations to his member firm to conceal his violation of the firm's policy prohibiting borrowing from customers, broker engaged in business-related misconduct because it "occurred in the context of his business-relationship with his employer" and "reflects directly on his ability to abide by his firm's policies, many of which are designed to protect the public and the firm"); *Dep't of Enf't v. Skiba*, Complaint No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13-14 (FINRA NAC Apr. 23, 2010) (broker violated predecessor to FINRA Rule 2010 by structuring variable annuity transactions to circumvent his firm's procedures).

Second, Mantei's conduct was unethical. Unethical conduct is that which is "not in conformity with moral norms or standards of professional conduct." *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020)

¹⁶ Mantei argues that FINRA does not have jurisdiction over his conduct involving the Wells Fargo R66 SCD and the Citibank FN6 SCD because SCDs are not securities. Mantei is incorrect. His argument is more appropriately understood as a challenge to whether the facts alleged are actionable under FINRA Rule 2010. There is no dispute that FINRA has jurisdiction over a registered representative associated with a member or that FINRA has jurisdiction to discipline associated persons of its members. See 15 U.S.C. §§ 78o-3(b) and (h); FINRA By-Laws of the Corporation Articles V and XIII. Whether FINRA may appropriately sanction an associated person for conduct that it finds violates FINRA Rule 2010, however, is a merits question. See *Grivas*, 2016 SEC LEXIS 1173, at *14 n.15 (holding that representative's taking of money from an investment fund and transferring that money to the broker-dealer with which he was associated to cure the broker-dealer's net capital deficiency was a violation of FINRA Rule 2010).

(quoting *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013)), *petition for review dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. 2021). Mantei misled J.P. Turner and circumvented the firm's cross trade procedures, which were designed to protect customers and prevent unfair markups. By directing Palermo to have an external counterparty hold a position temporarily in a prearranged trade between a customer-to-customer trade, Mantei disguised cross trades. Accordingly, Mantei's conduct impeded J.P. Turner's supervision of his trading activities and deprived customers of the benefits of the cross trade procedures put in place for their and the firm's benefit. Specifically, by circumventing the cross trade policy, Mantei did not need to document the benefit of the trade to the buyer and the seller, did not have to have the value of the SCD marked to the market, and did not limit the firm's markup to that for a single trade in accordance with the firm's maximum markup/markdown guidelines.

Mantei's conduct was unethical and reflects negatively on his ability to comply with regulatory requirements fundamental to the securities industry. See *White*, 2019 FINRA Discip. LEXIS 30, at *43-44 (associated person engaged in unethical conduct by structuring deposits in personal bank accounts in contravention of member firm's policies and procedures); *Skiba*, 2010 FINRA Discip. LEXIS 6, at *13-14 (by structuring variable annuity transactions to avoid firm's procedures that applied to such transactions, broker engaged in unethical conduct); *Davenport*, 2003 NASD Discip. LEXIS 4, at *10-11 (by making misrepresentations to firm in order to conceal that he had violated firm's policy prohibiting borrowing from customers, broker engaged in dishonest conduct that violated predecessor to FINRA Rule 2010); see also *Thomas W. Heath*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *18 (Jan. 9, 2009) (fact that respondent's conduct violated internal firm compliance policies "inform[ed]" determination of whether his conduct was unethical), *petition denied*, 586 F.3d 122 (2009).

We agree with the Hearing Panel that Mantei's wrongdoing in connection with the Wells Fargo R66 SCD transactions was especially troublesome. After Woll explicitly told him not to do a cross trade, Mantei nevertheless devised a strategy to use prearranged trades with a broker-dealer counterparty for the purpose of concealing what was in effect a sale from one firm customer to another firm customer. Mantei also did so to avoid contributing to financial settlement with a complaining customer that would trigger a reportable event to FINRA. Like the Hearing Panel, we find that Mantei's conduct reflected a dishonesty of belief or purpose. Cf. *White*, 2019 FINRA Discip. LEXIS 30, at *43-44 (finding that respondent acted intentionally and with bad judgment but without the "conscious doing of a wrong because of dishonest purpose or moral obliquity" when respondent structured nine deposits without evidence of an underlying dishonest purpose) (quoting *Brokaw*, 2013 SEC LEXIS 3583, at *33 n.72).

On appeal, Mantei argues that he did not violate J.P. Turner's written supervisory procedures, so he could not have acted unethically or in bad faith and in violation of FINRA Rule 2010. Specifically, Mantei argues he could not have circumvented the cross trade policy in connection with the Wells Fargo R66 SCD transactions or Citibank FN6 SCD transactions because (i) the transactions did not involve cross trades; and (ii) J.P. Turner's cross trade policy applied only to bonds, not SCDs. Mantei's arguments fail.

Under J.P. Turner's procedures, a cross trade is a sale and purchase between customers that is "executed internally" by the firm and never reaches the market. Mantei argues that because the transactions at issue "all reached the market," he could not have violated the policy because the transactions were not "executed internally" by the firm. Mantei is mistaken that finding him liable for violating J.P. Turner's cross trade policy is required to find him liable under FINRA Rule 2010. Enforcement alleged, and the evidence shows, that the transactions were cross trades "in substance," which would have triggered J.P. Turner's cross trade policy but for the prearranged trades that Mantei directed Palermo to execute with the counterparties. The fact that Mantei did not have a particular customer lined up to purchase the SCDs when they were sold to the counterparties does not negate the fact that Mantei directed prearranged trading to circumvent the applicability and requirements of the firm's cross trade procedures. Mantei's instructions to Palermo to locate a counterparty to temporarily hold the position were for the purpose of disguising what otherwise would have been a cross trade between customers but for the counterparties. Mantei's liability is premised on his circumvention of his firm's written supervisory procedures by directing prohibited prearranged trading, not the applicability of the cross trade policy to the transactions.

Mantei also argues that J.P. Turner's cross trade policy only applied to bonds, not SCDs. In support, Mantei asserts that the policy explicitly referred to bonds only, that the firm's written supervisory procedures "generally distinguished" between different fixed income products, and that the firm never advised its registered representatives that the cross trade policy applied to all fixed income products. We agree with the Hearing Panel that the totality of the evidence refutes Mantei's narrow reading of J.P. Turner's cross trade policy. Woll (the drafter of the policy) testified that it applied to all fixed income products, including SCDs. While the policy only referred to "bond cross-trades," Woll explained that, rather than issuing a separate cross trade policy for each different type of fixed income product, "[w]e just used the word 'bond' to cover them all."

Woll's testimony was corroborated by other evidence presented at the hearing, which showed that Mantei and others at J.P. Turner commonly used and understood the term "bond" to refer to all fixed income products, including SCDs. As Mantei acknowledged, the trading desk at J.P. Turner that handled orders for all fixed income products, including both bonds and SCDs, was known as the "bond desk," and Mantei's branch used the same order ticket—known as the "bond ticket"—to place orders for all fixed income products.

Mantei's own actions and words also belie his narrow reading of J.P. Turner's cross trade policy. During a recorded call on December 12, 2014, Mantei and Palermo discussed a cross trade involving an SCD. They acknowledged the need to comply with the cross trade policy's markup/markdown limitations and the 2.6% markup guideline that applied to certain "bonds." The trade ticket for the sale of the SCD identified the transaction as a "CROSS," as required by J.P. Turner's cross trade procedures. Based on this evidence, we conclude that J.P. Turner's cross trade policy applied to SCDs, and Mantei acted unethically by using prohibited prearranged trades to evade that policy in connection with the Wells Fargo R66 SCD transactions and the Citibank FN6 SCD transactions.

Relying on cases involving statutory interpretation, Mantei argues that Woll's testimony was "extrinsic evidence" that the Hearing Panel should not have considered when interpreting J.P. Turner's cross trade policy. Mantei is incorrect. The firm's cross trade policy is not a statute but instead firm guidelines drafted by Woll. Woll properly testified as a fact witness based on his personal knowledge regarding the policy. *Accord Dep't of Enf't v. Weinstock*, Complaint No. 2010022601501, 2016 FINRA Discip. LEXIS 34, at *21 (FINRA NAC July 21, 2016) (describing testimony from firm's managing partner and respondent's supervisor regarding the meaning of the firm's outside business activity policy).

Mantei also argues he did not violate J.P. Turner's prearranged trading policy. Mantei's argument fails. The firm's prearranged trading policy prohibited "[a]n offer to sell coupled with an offer to buy back at the same or a higher price, or the reverse." Mantei directed the traders on J.P. Turner's bond desk to do precisely that. That Mantei did not know or deal with the counterparties, did not have access to the firm's trading system, and did not have formal authority over the firm's bond desk does not negate the fact that Mantei devised the plan to use prohibited prearranged trades to conceal customer-to-customer transactions that otherwise would have been subjected to J.P. Turner's cross trade procedures. Mantei directed Palermo to find counterparties to buy and temporarily hold his customers' positions with the promise that he would later buy them back at a higher price.¹⁷

Mantei is incorrect that J.P. Turner's prearranged trading prohibition applied only to trading that was intended to manipulate the market. The firm explicitly prohibited prearranged trading because such trading could be deceptive, but the prohibition did not require an intent to manipulate. Regardless of whether he intended to manipulate the market, Mantei engaged in unethical and dishonest conduct by directing Palermo to couple his offer to sell the SCDs with an offer to buy them back at a higher price.

Mantei claims there is no evidence that he "directed" or "instructed" the J.P. Turner bond desk to make the relevant trades. Mantei is incorrect. The audiotapes show that Mantei directed Palermo to find counterparties to buy and temporarily hold the SCDs coupled with the promise that he would buy them back. That Palermo himself did not execute the trades or that Mantei did

¹⁷ Contrary to Mantei's arguments on appeal, the counterparties did not assume market risk. Mantei told Palermo to instruct the counterparties that he would buy the instruments back at a higher price. Thus, the beneficial ownership of the instruments did not transfer. In fact, Mantei's expert agreed that if the parties adhered to an agreement to sell and repurchase at a higher price, the economic costs and benefits of holding the instrument would remain with the seller. Mantei's argument also is undercut by the fact Mantei told Palermo he was "still long" on the Wells Fargo R66 SCD when it was being held at Firm A, and that Mantei conceded, at least in his on-the-record testimony, that he was still assuming market risk during the period when the counterparties held the instruments. In addition, when Mantei and Palermo discussed the proposed sale of the Wells Fargo R66 SCD to Firm A, Mantei described it as "a risk-less trade" for the counterparty.

not speak to the other traders on the J.P. Turner bond desk does not negate Mantei's liability.¹⁸ Contrary to Mantei's claim, this evidence establishes that Mantei violated J.P. Turner's prearranged trading prohibition and circumvented the firm's cross trade procedures by directing prearranged trading, in violation of FINRA Rule 2010.

B. Mantei's Conduct Related to the Fresno HE2 Bond Transactions Violated MSRB Rule G-17

The Hearing Panel correctly found that Mantei willfully violated MSRB Rule G-17 as alleged in the second cause of action for his conduct related to the HE2 Bond transactions. As an initial matter, we note that, pursuant to Section 15B(b)(2) of the Securities Exchange Act of 1934 (the "Exchange Act"), the MSRB is charged with exclusive authority to promulgate rules related to the municipal securities industry. FINRA's By-Laws provide that its members and persons associated with members agree to comply with MSRB Rules, and FINRA is authorized to impose sanctions for violations of MSRB Rules. *See* FINRA By-Laws Article IV, § 1(a)(1) (agreement by firms); FINRA By-Laws Article V, § 2(a)(1) (agreement by registered persons); FINRA By-Laws Article XIII, § 1(b) (authorization to impose sanctions for violations of MSRB Rules). Under Section 15A(b)(7) of the Exchange Act, it is FINRA's role to enforce the compliance of FINRA members and their associated persons with MSRB rules.

MSRB Rule G-17 provides that, "[i]n the conduct of its municipal securities or municipal advisory activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." MSRB Rule G-17 encompasses both an antifraud prohibition and a duty to deal fairly. *See Notice of Filing of Proposed Rule Change Relating to Rule G-17*, Exchange Act Release No. 45361, 2002 SEC LEXIS 304, at *1-2 (Jan. 30, 2002). MSRB Rule G-17 requires a showing of at least negligence to establish a violation. *See Dolphin and Bradbury, Inc.*, Exchange Act Release No. 54143, 2006 SEC LEXIS 1592, at *33 n.70 (July 13, 2006). According to MSRB's interpretive guidance, the rule "establishes a general duty of a dealer to deal fairly with all persons (including, but not limited to, issuers of municipal securities), even in the absence of fraud." *Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities* (Aug. 2, 2012), <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2>. The rule "is most often cited in connection with duties owed by dealers to investors; however, it also applies to their interactions with other market participants, including municipal entities such as states and their political subdivisions that are issuers of municipal securities." *Id.*

¹⁸ Mantei notes that Palermo executed only one of the 10 transactions at issue. Even still, Mantei nonetheless directed Palermo to find counterparties for the prearranged trades to circumvent J.P. Turner's cross trade policy. Who ultimately executed the transactions is irrelevant to our finding of liability.

Mantei, as an associated person of J.P. Turner, was bound by MSRB Rule G-17.¹⁹ Just as with the transactions involving the Wells Fargo R66 SCD and the Citibank FN6 SCD, Mantei directed prearranged trades involving the Fresno H2 Bond to circumvent J.P. Turner's cross trade policy. By directing Palermo to have an external counterparty hold a position temporarily in a prearranged trade between a customer-to-customer trade, Mantei disguised a cross trade. Accordingly, Mantei's conduct impeded J.P. Turner's supervision of his trading activities and deprived customers of the benefits of the cross trade procedures put in place for their and the firm's benefit. Specifically, by circumventing the cross trade policy, Mantei did not need to document the benefit of the trade to the buyer and the seller, did not have to have the value of bond marked to the market, and did not limit the firm's markup to that for a single trade in accordance with the firm's maximum markup/markdown guidelines. By doing so, Mantei engaged in a deceptive, dishonest, and unfair practice in the conduct of the firm's municipal securities activities violative of his requisite duty to deal fairly.

Mantei's misconduct was well beyond negligent.²⁰ A reasonable associated person would know that it is not fair dealing to direct a trader to find a counterparty to compensate for the "favor" of holding an instrument that would be bought back the next day to circumvent his firm's cross trade procedures. We therefore find that Mantei violated MSRB Rule G-17. *See DBCC v. Lankenau*, Complaint No. C9B940009, 1995 NASD Discip. LEXIS 40, at *32-34 (NBCC Nov. 8, 1995) (finding that respondent who engaged in fictitious trading to circumvent firm inventory limits violated MSRB Rule G-17).

We also find that Mantei's violation of MSRB Rule G-17 was willful. A violation is deemed willful if "the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). To find that Mantei's actions were willful, therefore, we examine if he voluntarily engaged in the misconduct. We need not find that he knew that his conduct violated MSRB rules. *See Mathis v. SEC*, 671 F.3d 210, 216-18 (2d Cir. 2012) (explaining that "willfulness" does not require awareness that one "is violating one of the Rules or Acts"); *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *13 (Dec. 22, 2008) (finding that the law merely requires that the willful actor "voluntarily committed the acts that constituted the violation").

Here, Mantei's actions—i.e., directing Palermo to use prearranged trades involving the Fresno H2 Bond to circumvent J.P. Turner's cross trade policy—were voluntary and his conduct was at least reckless. *See Ernst & Young, LLP*, Initial Decisions Release No. 249, 2004 SEC LEXIS 831, at *152 (Apr. 16, 2004) (defining recklessness as an "extreme departure from the standards of ordinary care, and which presents a danger . . . that is either known to the [actor] or is so obvious that the actor must have been aware of it"). Mantei consciously directed Palermo

¹⁹ "Unless the context otherwise requires or a rule of the [MSRB] otherwise specifically provides, the terms 'broker,' 'dealer,' 'municipal securities broker,' [or] 'municipal securities dealer,' . . . shall refer to and include their respective associated persons." MSRB Rule D-11.

²⁰ We further address Mantei's state of mind in our sanctions analysis. *See Part IV infra*.

to sell the Fresno H2 Bond with the intention to repurchase. He knew, or was reckless in not knowing, that directing prearranged trading of the Fresno H2 Bond in contravention of the firm's prohibition against prearranged trading to circumvent the firm's cross trade policy was improper. We conclude that his violation of MSRB Rule G-17 was willful.²¹ See *Dep't of Enf't v. Henderson*, Complaint No. 2017053462401, 2022 FINRA Discip. LEXIS 15 (NAC Dec. 29, 2022) (finding that respondent's reckless failure to disclose four liens on his Form U4 was a willful violation of Exchange Act Section 3(a)(39)).

C. Mantei's Other Procedural Arguments Fail

Mantei makes various other procedural arguments, which we have considered and reject for the following reasons.

1. Delay in Initiating Disciplinary Proceeding

Mantei argues that Enforcement's delay in filing the complaint was "fundamentally unfair and highly prejudicial in [his] ability to mount his defenses, and constituted laches." Regardless of whether this argument is treated as a laches defense or as a challenge to the fundamental fairness of this proceeding, the result is the same. There is no basis to dismiss the complaint because Mantei has not established unfair delay or lack of diligence by Enforcement, or harm or prejudice to Mantei.

For a defense of laches, a respondent "must demonstrate a lack of diligence by [FINRA,] and that he has been prejudiced." *Dep't of Enf't v. Mehringer*, Complaint No. 2014041868001, 2020 FINRA Discip. LEXIS 27, at *33 (FINRA NAC June 15, 2020) (quoting *Robert Tretiak*, 56 S.E.C. 209, 230 (2003)). When assessing a claim of unfair delay, the Commission and the NAC look to "the entirety of the record," and to whether the respondent has shown his "ability to mount an adequate defense was harmed by any delay in the filing of a complaint against him." *Mark H. Love*, 57 S.E.C. 315, 324-25 (2004); see also *Dep't of Enf't v. Tweed*, Complaint No. 2015046631101, 2019 FINRA Discip. LEXIS 53, at *22-23 (FINRA NAC Dec. 11, 2019), *appeal docketed*, No. 3-19652 (Jan. 10, 2020); *Dep't of Enf't v. Rooney*, Complaint No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *88-89 (FINRA NAC July 23, 2015). "While the Commission has rejected the application of a mechanical test in assessing overall fairness, it has considered, as part of its review of the entirety of the record, a variety of time lags, including the times between the filing of the complaint and: (i) the initial misconduct; (ii) the last misconduct; (iii) notice to the SRO of the misconduct; and (iv) the initiation of the investigation." *Rooney*, 2015 FINRA Discip. LEXIS 19, at *88-89 (quoting *Love*, 57 S.E.C. at 322-23).

²¹ Under Sections 3(a)(39) and 15(b)(4)(D) of the Exchange Act, broker-dealers and associated persons are subject to statutory disqualification for willful violations of the federal securities laws or MSRB rules. See 15 U.S.C. § 78c(a)(39), 15 U.S.C. § 78o(b)(4)(D). Because Mantei willfully violated a MSRB rule, he is subject to statutory disqualification. See 15 U.S.C. § 78c(a)(39), 15 U.S.C. § 78o(b)(4)(D).

The evidence does not demonstrate a lack of diligence by FINRA or that Mantei was prejudiced as a result of any lack of diligence. Similarly, the evidence does not establish that Mantei's ability to mount a defense was harmed by any delay in the filing of the complaint against him or that the proceeding was inherently unfair.

We first review the relevant timeframes. FINRA filed the complaint against Mantei on August 1, 2019, which was approximately:

- Four years and 10 months after the first alleged instance of misconduct in September 2014;
- Four years and five months after the last alleged instance of misconduct in February 2015 (i.e., the February 26, 2015, trade of the Citibank FN6 SCD);
- Four years and three months after FINRA first had notice of potential misconduct on J.P. Turner's bond desk (i.e., April 17, 2015, when J.P. Turner reported a net capital deficiency); and
- Four years and three months after FINRA began its investigation.

These time periods, while long, do not necessarily compel a finding that Enforcement was not diligent in filing the complaint. On April 17, 2015, J.P. Turner sent a letter to FINRA reporting the firm's net capital deficiency. J.P. Turner thereafter began its own internal investigation and gathered documents. J.P. Turner's letter to FINRA did not reference Mantei and, at least initially, did not appear to concern any transactions that involved Mantei. Rather, the letter described transactions being moved out of J.P. Turner's inventory that were not bona fide transactions.²²

FINRA initiated its underlying investigation promptly after receiving J.P. Turner's April 17, 2015, letter. Within three months, J.P. Turner began giving to FINRA documents and other materials related to the firm's net capital deficiency, including the audiotapes at issue. FINRA requested additional documents from J.P. Turner in September 2015, including the trade blotter for all transactions in the firm's inventory accounts from August 1, 2014 through April 20, 2015. In response, J.P. Turner produced its trade blotter records. The records contained more than 25,000 transactions during the relevant period, including the transactions at issue.

FINRA investigative staff conducted on-the-record interviews of multiple people during the course of its investigation, including an interview with Mantei on July 7, 2016. During Mantei's interview, FINRA investigative staff played him the audiotapes. FINRA investigative

²² As noted previously, FINRA staff testified there was no evidence to suggest that Mantei had any knowledge about J. P. Turner's financial reporting or anything to do with the firm's books and records related to the net capital deficiency.

staff conducted at least one additional on-the-record interview after Mantei's interview in September 2016. The lead FINRA investigator testified that FINRA staff thereafter reviewed the data and eventually put together a referral memo to Enforcement. Enforcement issued a Wells notice to Mantei on December 3, 2018. The lead FINRA investigator testified that he did not have additional contact with Mantei after his on-the-record interview.

Based on the record, we find that these timeframes do not necessarily establish a lack of diligence on FINRA's part. All but one of these four time periods are shorter than the time periods that the Commission and FINRA found to be inherently unfair in *Hayden* and *Morgan Stanley*, which Mantei cites in support of his unfairness argument. See *Jeffrey Ainley Hayden*, 54 S.E.C. 651, 653-54 (2000) (almost 14 years between first instance of misconduct and filing of complaint; more than six years between last instance of misconduct and filing of complaint; five years between filing of complaint and when NYSE first had notice of misconduct; and three and a half years between filing of complaint and when NYSE began its investigation); *Dep't of Enf't v. Morgan Stanley DW Inc.*, Complaint No. CAF000045, 2002 NASD Discip. LEXIS 11, at *18-19, 38 (NASD NAC July 29, 2002) (eight years between first instance of misconduct and filing of complaint; seven years between last instance of misconduct and filing of complaint; five years and nine months between filing of complaint and notice of potential misconduct; and four years and nine months between the filing of the complaint and when FINRA began its investigation).

Mantei also fails to show that he was prejudiced, or that his ability to mount a defense was harmed, by any delay. Mantei argues he and other witnesses were unable to recall "critical" facts and events. He also claims that he lost access to documents and audiotapes when J.P. Turner went out of business in April 2016, and that he was unable to offer the testimony of "important" witnesses who left the securities industry. Mantei's arguments are unpersuasive and unsupported by the record.

Our findings, like the Hearing Panel's findings, are primarily based on recorded telephone conversations and trading records. This evidence is undisputed and unaffected by any purported delay. Moreover, Mantei and every other necessary witness were able to testify in detail about the relevant events at issue despite the passage of time. As the only example of his supposed inability to remember "critical details," Mantei cites to the fact that he could not recall whether he brought the customer complaint about the Wells Fargo R66 SCD to Woll's attention or vice versa. But our decision, like the Hearing Panel's decision, does not make any finding against Mantei based on this discrepancy. Mantei also fails to explain why this seemingly inconsequential fact impaired his ability to mount a defense.

Similarly, the FINRA investigator's inability to recall certain facts at the hearing is not fatal. The FINRA investigator could not recall who sat on the J.P. Turner bond desk and incorrectly testified that Palermo entered most of the relevant trades at issue when in fact he executed only one trade. These facts are not relevant to our finding that Mantei, through his conversations with Palermo, directed prearranged trading with counterparties in order to circumvent his firm's cross trade procedures.

While the Hearing Panel found that Woll's inability "to recall certain non-material information" and "other failures of recollection diminished Woll's overall credibility," the

Hearing Panel also found that his testimony “on important matters” was “not unduly diminished by time.”²³ We agree. Other than generalized assertions of prejudice, Mantei does not articulate how Woll’s failures of recollection affected his defense.

In a further attempt to show prejudice, Mantei argues he was unable to obtain unspecified “documents, emails, and audiotapes” from J.P. Turner, which by the time of the hearing was no longer a FINRA member firm. Mantei, however, does not identify any particular document, email, or audiotape that would have materially helped his defense. Mantei asserts that J.P. Turner’s counsel and Enforcement “cherry-picked” the audiotapes. He further asserts that Enforcement’s delay in bringing the action left him unable to procure audiotapes of Palermo’s conversations with counterparties and audiotapes of the J.P. Turner bond desk traders who placed the trades at issue. These audiotapes, even if they existed, are not material. Mantei’s liability is premised on his words on the audiotapes directing Palermo to find counterparties to buy instruments coupled with the promise that he would buy them back. Other than broad statements, Mantei has not explained how additional audiotapes of Palermo’s conversations with counterparties or the audiotapes of the traders who placed the trades at issue would have contributed to his defense or somehow negated Mantei’s explicit instructions to Palermo. In sum, we are unable to ascertain how any additional documents, emails, and audiotapes would have materially contributed to Mantei’s defense and reject the argument as speculative.²⁴

Mantei also argues he was prejudiced because he was unable to obtain testimony from two witnesses—Palermo and the Firm A trader who was the counterparty to the Wells Fargo R66 SCD transactions—who were unavailable because they were no longer associated with a broker-dealer. But Mantei did not list either Palermo or the Firm A trader as a witness despite these

²³ Mantei points to only a single fact that Woll could not recall—he was unable to remember whether he discussed the difficulty in pricing thinly-traded SCDs with customer CC’s daughter when she complained about the loss in value of the Wells Fargo R66 SCD. But that detail has no bearing on the violations found in this case, and Mantei does not contend otherwise.

²⁴ Prior to the hearing, Mantei requested an order directing Enforcement to issue a FINRA Rule 8210 request requiring the broker-dealer that had “custody and control over” J.P. Turner’s documents to produce all emails sent or received by five representatives of J.P. Turner during the almost two-year period from September 2013 through May 2015. The Hearing Officer denied Mantei’s motion on the grounds that he failed to show the information sought was relevant, material, and noncumulative; that he failed to show he engaged in a good-faith attempt to obtain the emails through other means; and that his request was unreasonable and excessive. Mantei argues that the Hearing Officer’s decision was in error and that the unspecified J.P. Turner emails would provide “critical evidence as to [J.P. Turner’s] knowledge and acceptance of [Mantei’s] actions, interpretations of the [written supervisory procedures] at issue, and information concerning bond trading at [the firm].” Mantei failed to show how the Hearing Officer’s denial was an abuse of discretion. *See Dep’t of Enf’t v. Brookstone Sec., Inc.*, Complaint No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *110-11 (FINRA NAC Apr. 16, 2015) (citation omitted).

witnesses still being subject to FINRA Rule 8210 when the hearing in this matter was originally scheduled to begin in March 2020.²⁵ Mantei also never requested that Enforcement invoke FINRA Rule 8210 to request information or testimony from Palermo or the Firm A trader, and Mantei did not ask them to appear voluntarily. Mantei's failure to even attempt to procure these witnesses' testimony when they were available belies his argument that he was prejudiced by their unavailability. Regardless, in light of the undisputed recorded telephone conversations—which show Palermo following Mantei's instructions and offering to sell the Wells Fargo R66 SCD to the Firm A trader and then buy it back at a higher price—Mantei cannot show that their failure to testify was prejudicial.²⁶ *See Love*, 57 S.E.C. at 325 (rejecting respondent's claim that he was prejudiced by the death of one of his customers on the ground that the Hearings Panel's findings were based on undisputed facts and the customer's testimony, therefore, was not material).

In sum, any delay by Enforcement in bringing the action was not so extreme that dismissal is warranted in the absence of any showing of prejudice. Because Mantei has failed to show how the delays resulted in any prejudice or inability to mount a defense, we find no unfairness resulting from the delays and reject his defenses.²⁷ *See Love*, 57 S.E.C. at 323 n.20 (rejecting claim of unfair delay where FINRA filed complaint approximately seven years after first alleged misconduct, six and a half years after last alleged misconduct, approximately four years after date when FINRA first learned of the respondent's misconduct, and approximately three and a half years after the start of FINRA's investigation); *Mehring*, 2020 FINRA Discip. LEXIS 27, at *33 & n.32 (rejecting laches defenses where Enforcement began investigation on the same day it learned of the respondent's misconduct from the filing of an arbitration claim); *Tweed*, 2019 FINRA Discip. LEXIS 53, at *23-24 (rejecting fundamental fairness defense where FINRA filed complaint seven years and five months after first alleged misconduct, seven years and one month after last alleged misconduct, three years and one month after FINRA first learned of misconduct, and three years and one month after FINRA began its investigation);

²⁵ According to CRD, the Firm A trader was registered with FINRA until May 15, 2018, and Palermo was registered with FINRA until August 28, 2018. Both remained subject to FINRA's jurisdiction for two years thereafter. *See* FINRA's By-Laws, Article V, Sec. 4(a)(iii).

²⁶ Mantei claims that Palermo could have confirmed that he “was not required to take direction from [Mantei]” and that Palermo only executed one of the relevant trades at issue. These facts do not change that Mantei directed Palermo to find counterparties to do prearranged trades to circumvent J.P. Turner's cross trade policy and thus are inconsequential to our liability finding.

²⁷ The Hearing Panel also correctly dismissed Mantei's statute of limitations defense. The Commission has “consistently held that no statute of limitations applies to the disciplinary actions of the Exchange or other self-regulatory organizations.” *William D. Hirsh*, 54 S.E.C. 1068, 1077 & n.11 (2000). As the Commission has explained, applying a limitations period to FINRA actions would “impair [FINRA's] statutory obligation and duty to protect the public and discipline its members.” *Frederick C. Heller*, 51 S.E.C. 275, 280 (1993).

Rooney, 2015 FINRA Discip. LEXIS 19, at *89-90 (rejecting fundamental fairness and laches defenses where FINRA filed complaint five years and 10 months after first alleged misconduct, five years and eight months after last alleged misconduct, five years and one month after FINRA was on notice of the misconduct, and four years and nine months after FINRA began its investigation).

2. Aiding and Abetting Was Not the Theory of Liability

The Hearing Panel found that Mantei violated his firm's prearranged trading prohibition and circumvented the firm's cross trade procedures by directing prearranged trading with counterparties to facilitate and disguise cross trades. Mantei claims that the Hearing Panel, by holding him liable for "instructing" or "directing" prearranged trading, inappropriately relied on an aiding and abetting theory that is not alleged in the complaint. Mantei's argument misstates the basis for the Hearing Panel's findings.

The Hearing Panel's findings are not analogous to a finding of liability based on aiding and abetting a primary violator. Rather, Mantei is directly liable for engaging in unethical and dishonest conduct for directing the J.P. Turner bond desk to use prearranged trades to circumvent J.P. Turner's cross trade policy, as charged in the complaint. And the Hearing Panel found Mantei liable for violating FINRA Rule 2010 on that basis.²⁸

Mantei also argues that Enforcement was required to prove intent to manipulate the market or to cause market or customer harm to sustain an aiding and abetting claim. Again, Mantei misstates the basis for the Hearing Panel's liability findings, which were not based on an aiding and abetting theory. Moreover, Enforcement did not need to prove an intent to manipulate the market or to cause market or customer harm to show that Mantei acted unethically. Rather, Enforcement alleged, and met its burden to prove, that Mantei acted unethically by circumventing his firm's supervisory procedures for cross trades and violating its prohibition on prearranged trading. Mantei was given the opportunity to defend against the specific charges against him because the Hearing Panel found him liable for the charges brought against him in the complaint. *See* Section 15A(h)(1) of the Exchange Act (requiring FINRA, in a disciplinary proceeding, "bring specific charges, notify such member or person of and give him an opportunity to defend against, such charges, and keep a record.").

²⁸ Mantei argues that he cannot be liable because he did not place the trades at issue. Again, Mantei's argument misstates the basis for the Hearing Panel's findings. Mantei is liable under FINRA Rule 2010 and MSRB Rule G-17 for directing Palermo to use prearranged trades to circumvent his firm's cross trade policy. The fact that Mantei did not place any of the trades, or that Palermo only placed one of the trades, does not preclude liability. Similarly, the fact that other firms were involved, and the trading occurred over multiple days, during which time the firms held the instruments, does not preclude Mantei's liability for directing Palermo to use prearranged trading.

3. Mantei's Expert Was Properly Precluded from Testifying

Mantei argues that the Hearing Officer erred by precluding his expert from testifying about the meaning of J.P. Turner's prearranged trading policy. We disagree.

Under FINRA Rule 9263, a Hearing Officer has discretion to determine whether to reject evidence as "irrelevant, immaterial, unduly repetitious, or unduly prejudicial." *Fuad Ahmed*, Exchange Act Release 81759, 2017 SEC LEXIS 3078 (Sep. 28, 2017). The Commission has observed that the Hearing Officer has "broad discretion in determining whether to admit or exclude evidence, and this is particularly true in the case of [an expert]." *Id.* (internal quotations omitted). Expert testimony that solely provides legal standards and conclusions is disfavored. *See Dep't of Enf't v. Dratel*, Complaint No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *94 (FINRA NAC May 2, 2014), *aff'd*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035 (Mar. 17, 2016).

Here, the Hearing Officer precluded Mantei's expert from opining on J.P. Turner's prearranged trading policy, reasoning that "Mantei may not rely upon his expert witness to weigh the evidence and tell the Panel how it should ultimately conclude." Mantei's expert, who had no connection to J.P. Turner, had no basis to opine on the meaning of J.P. Turner's policies. Such testimony would encompass the ultimate legal conclusion, which is the province of the Hearing Panel. We conclude that the Hearing Officer did not abuse his discretion in precluding the testimony. *See Ahmed*, 2017 SEC LEXIS 3078 (holding that a FINRA hearing officer did not abuse her discretion by excluding the proposed expert testimony of a finance professor); *Dep't of Enf't v. Murphy*, Complaint No. 2012030731802, 2018 FINRA Discip. LEXIS 24, *63 (FINRA NAC Oct. 11, 2018) (finding that a FINRA Hearing Panel did not abuse its discretion by excluding expert testimony about legal standards and conclusion related to the sale of unregistered securities).

On appeal to the NAC, Mantei submitted a Motion to Introduce Additional Evidence "to remedy the Hearing Officer's error in excluding all of [his] expert's testimony and report on prearranged trading." Pursuant to FINRA Rule 9346(b), a motion for leave to introduce additional evidence shall demonstrate that there was good cause for failing to introduce the evidence below and why the evidence is material. The NAC denies Mantei's request. The request is an attempt to circumvent the Hearing Officer's prior ruling related to expert testimony and is improper. Moreover, the Hearing Panel has the expertise to evaluate the evidence on prearranged trading without expert testimony, so the proposed testimony and expert report are not material.²⁹

²⁹ The Hearing Panel also did not err in dismissing Mantei's other affirmative defenses that: (1) there was no damage to the market; (2) he acted in the best interests of his clients and there was no damage to any client; and (3) the transactions were reviewed and approved by J.P. Turner supervisors and compliance personnel. As the Hearing Panel correctly held, these factual assertions are legally insufficient affirmative defenses, and Mantei was allowed to "offer proof of these factual assertions to the extent they are relevant to potential sanctions, or any other disputed issue at the hearing."

IV. Sanctions

The Hearing Panel imposed on Mantei concurrent 30 business-day suspensions in all capacities and a collective \$15,000 fine. Based on the seriousness of Mantei's misconduct, including several aggravating factors that we discuss below, we increase these sanctions by imposing a longer suspension.

The FINRA Sanction Guidelines ("Guidelines") do not specifically address Mantei's conduct at issue—i.e., directing prearranged trades with counterparties in contravention of the firm's prearranged trading prohibition to circumvent his firm's cross trade procedures.³⁰ We therefore consider the nature of the violation and the Principal Considerations in Determining Sanctions and General Principles Applicable to All Sanction Determinations.

On appeal, Enforcement argued that the sanctions imposed by the Hearing Panel were not sufficiently remedial in light of the numerous aggravating circumstances and absence of mitigation. Specifically, Enforcement claimed that the sanctions did not reflect the serious nature of Mantei's misconduct—i.e., evading his firm's written supervisory procedures that applied to cross trades and the relevant markup and markdown limitations, circumventing explicit instructions from his firm's CCO prohibiting a cross trade, and avoiding making a financial contribution toward a settlement with a complaining customer. Enforcement also claimed that the Hearing Panel's sanctions were insufficient to prevent and discourage future misconduct by Mantei, as exhibited by Mantei's refusal to acknowledge his wrongdoing and efforts to shift blame.

We agree with the Hearing Panel that Mantei's misconduct was serious and numerous aggravating factors are present. The Hearing Panel found that Mantei's conduct was, at a minimum, reckless.³¹ We agree. Mantei is a 40-year veteran in the securities industry and self-described "expert in fixed-income products." He knew, or was reckless in not knowing, that the prearranged trading arrangements he devised and directed in to circumvent the firm's cross trade procedures were improper. Mantei's state of mind is aggravating.

It also is aggravating that Mantei concealed his misconduct from J.P. Turner. According to Mantei, he "hardly disguised his actions; he spoke openly to Palermo on lines that obviously were known to be taped." But the fact that Mantei discussed his prearranged trading scheme on recorded telephone calls does not negate the inherently deceptive nature of his conduct, which was designed to mislead J.P. Turner and evade the firm's cross trade procedures. In addition, Mantei took additional steps to conceal his misconduct, including agreeing with Palermo not to tell Woll about the prearranged trading arrangements, splitting up repurchases into multiple

³⁰ *FINRA Sanction Guidelines* (October 2020), https://www.finra.org/sites/default/files/2021-10/Sanctions_Guidelines_2020.pdf [hereinafter "*Guidelines*"]. We apply the Guidelines in effect at the time of the Hearing Panel's decision.

³¹ *See id.* at 8 (Principal Considerations in Determining Sanctions, No. 13).

transactions and making the trades look “realistic,” and ensuring that the order tickets did not reference a cross trade. We agree with the Hearing Panel that Mantei’s efforts to conceal the true nature of the trading demonstrate a conscious disregard for the wrongfulness of his actions and aggravate his misconduct.

We further agree with the Hearing Panel that Mantei’s conduct evidences a pattern of wrongdoing.³² While the misconduct spanned only five months, the trading directed by Mantei involved planning, multiple conversations, and three sets of transactions involving the instruments at issue. These repeated actions reflect a pattern of behavior and not an isolated instance. In addition, while Mantei’s misconduct involved only a small number of transactions, the transactions themselves were not insignificant.³³

The Hearing Panel found that Mantei’s misconduct created the potential for Mantei to receive monetary gain.³⁴ Mantei explicitly told Palermo, with respect to the Wells Fargo R66 SCD, he was trying to avoid contributing to a financial settlement with a customer that would trigger a reportable event to FINRA, which aggravates his misconduct. *Cf. Dep’t of Enf’t v. Mizenko*, Complaint No. C8B030012, 2004 NASD Discip. LEXIS 20, at *20 (NASD NAC Dec. 21, 2004) (Guidelines direct adjudicators to consider the “potential” for respondent’s monetary or other gain; “[i]t therefore is immaterial that [respondent] did not actually realize the gain that he expected to receive”), *aff’d*, 58 S.E.C. 846 (2005). The Hearing Panel also noted that Mantei created the potential for monetary gain and increasing his payout by circumventing J.P. Turner’s cross trade policy and its markup/markdown limitations. We disagree. Enforcement offered no evidence about Mantei’s payout for the trades at issue, and there is no evidence that Mantei personally benefitted from any markup or markdown related to the transactions at issue. Therefore, we do not assess any aggravation on that basis.

But by circumventing J.P. Turner’s cross trade policy, Mantei deprived customers of the protections that policy was meant to provide. *See Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *45 (Sept. 24, 2015) (“[T]he violations at issue harmed the customers by depriving them of [the firm’s] supervision of their investments, regardless of whether the investors suffered financial harm.”). For each of the transactions at issue, as a result of the intervening trades directed by Mantei, Mantei did not need to document the benefit of the trade to the buyer and the seller, did not have to have the value of fixed income product marked to the market, and did not need to limit the firm’s markup in accordance with the firm’s maximum markup/markdown guidelines. Mantei’s conduct therefore put the buying and selling customers at risk, which we find aggravating. The fact that evidence does not establish actual harm suffered by customers is not dispositive. *See KCD Fin. Inc.*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at *48 (Mar. 29, 2017) (finding that the absence of customer harm

³² *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 8).

³³ *See id.* at 8 (Principal Considerations in Determining Sanctions, No. 17).

³⁴ *See id.* at 8 (Principal Considerations in Determining Sanctions, No. 16).

is not mitigating); *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *34-35 (Mar. 15, 2016) (same). Mantei argues that he was trying to take care of his customers; such intent, however, even if true, also is not mitigating. *See Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 SEC LEXIS 994, at *90-91 (Feb. 1, 2010) (finding that respondent's assertion that she was a nice person who took care of her clients was not mitigating), *aff'd*, 647 F.3d 1156 (D.C. Cir. 2011).

We agree with the Hearing Panel that Mantei's lack of remorse aggravates his misconduct.³⁵ While Mantei is "entitled to present a vigorous defense," his continued denial that his conduct was wrongful demonstrates either a misunderstanding or a lack of recognition of his duties as a professional and of his regulatory obligations. *See N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *44 (May 8, 2015), *aff'd sub nom.*, *Troszak v. SEC*, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016). Mantei's effort to shift the blame to others—including by suggesting, contrary to his own recorded telephone calls, that the traders on J.P. Turner's bond desk were alone responsible for any misconduct—are troubling and indicate a propensity for future wrongdoing. *See Dep't of Enf't v. Ottimo*, Complaint No. 2009017440201r, 2020 FINRA Discip. LEXIS 34, at *14 (FINRA NAC Mar. 27, 2020) (quoting *N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *44), *appeal docketed*, SEC Admin. Proc. No. 3-17930r (Apr. 27, 2020).

Mantei argues he has a long and successful record in the industry.³⁶ Even if that were true, a "lack of a disciplinary history is not a mitigating factor." *John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *65 n.77 (Nov. 12, 2010), *aff'd*, 449 F. Appx. 886 (11th Cir. 2011). Moreover, contrary to his assertions, it is not mitigating that Mantei did not receive explicit guidance from J.P. Turner or his superiors about the firm's cross trade policy and prearranged trading prohibition. Mantei, a 40-year veteran in the securities industry, did not need special training or instruction (from Woll or anyone else) to know it was improper to use prearranged trading with counterparties to disguise customer-to-customer trades to circumvent his firm's cross trade policy. In fact, we find it aggravating that Mantei continues to try to shift the blame for his own misconduct to others.³⁷

³⁵ *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2).

³⁶ *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 1).

³⁷ *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2). Mantei seems to suggest that Woll's and the general counsel's involvement with the Wells Fargo R66 SCD Transactions somehow excuses or otherwise mitigates his misconduct. We disagree. First, Mantei's argument overlooks the fact that Woll explicitly told Mantei he could not cross trade the Wells Fargo R66 SCD, so Mantei directed Palermo to sell the instrument coupled with instructions to buy it back to circumvent Woll's prohibition. Woll testified that he signed off on the ticket because he believed the sale had been an arms-length transaction. More importantly, though, Mantei "cannot shift responsibility to comply with [FINRA's] rules to another senior person at the firm." *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *28 (Dec. 7, 2009). The record also does not support that Mantei reasonably relied on legal

Finally, that Mantei cooperated with FINRA's investigation is not mitigating.³⁸ Indeed, "[he] had an 'unequivocal' responsibility to fully cooperate with FINRA." *Keith D. Geary*, Exchange Act Release No. 80322, 2017 SEC LEXIS 995, at *35 (Mar. 28, 2017), *aff'd*, 727 F. App'x 504 (10th Cir. 2018).

The purpose of FINRA's disciplinary process is to protect the investing public, support and improve the overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.³⁹ Violating a firm's written supervisory procedures and directing trading to circumvent its cross trade policy meant to protect customers and ensure they receive a fair price is serious misconduct. Based on the particular facts and circumstances of this case, we increase the Hearing Panel's sanctions. For the Wells Fargo R66 SCD and Citibank FN6 SCD transactions, we suspend Mantei from associating with any FINRA member in any capacity for three months and impose a \$10,000 fine. For the Fresno HE2 Bond transactions, we suspend Mantei from associating with any FINRA member in any capacity for three months and impose a \$5,000 fine.

We impose these suspensions consecutively. The violations for causes one and two involve different rules and raise separate and serious regulatory concerns. The numerous aggravating factors that accompany Mantei's violations strongly indicate that two, consecutive three-month suspensions are warranted. Mantei made three separate decisions to circumvent his firm's procedures (thereby circumventing policies that were designed to protect investors), acted at least recklessly, concealed his actions from his firm, was motivated by the goal of avoiding disclosure of his contribution to the settlement of a customer complaint, and continues to attempt to shift blame for his own misdeeds. Therefore, we find consecutive suspensions are needed to remedy Mantei's misconduct. *See Michael Frederick Siegel*, Exchange Act Release No. 583737, 2008 SEC LEXIS 2459, at *46-47 (Oct. 6, 2008), *aff'd in relevant part*, 592 F.3d 147 (D.C. Cir. 2010).

We also order Mantei to requalify as a general securities representative. His misconduct demonstrates a lack of commitment to maintaining fair business practices, and we find that he would benefit from relearning the foundational principles for acting as a general securities representative. *See Ashton Noshir Gowadia*, 53 S.E.C. 786, 793 (1998) ("The NASD also reasonably concluded that [applicant's] knowledge of NASD Regulation rules and procedures seems to be inadequate so that requalification by examination at the completion of his suspension

[cont'd]

advice from the general counsel when engaging in the misconduct. *Cf. Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 4131, at *40-41 (Nov. 14, 2008) ("We believe that the respondent asserting such reliance must provide sufficient evidence . . . that the respondent made full disclosure to counsel, appropriately sought to obtain relevant legal advice, obtained it, and then reasonably relied on the advice."), *aff'd*, 347 F. App'x 692 (2d Cir. 2009).

³⁸ *See Guidelines*, at 8 (Principal Considerations in Determining Sanctions, No. 12).

³⁹ *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

would be appropriate.”). These collective sanctions are appropriately remedial and sufficient to achieve the deterrent objectives of the Guidelines.

V. Conclusion

We affirm the Hearing Panel findings that Mantei directed prearranged trades with counterparties in contravention of his firm’s prearranged trading prohibition to circumvent the firm’s cross trade procedures, in violation of FINRA Rule 2010 and MSRB Rule G-17. As a result of Mantei’s willful violation of MSRB G-17, he is subject to statutory disqualification. For his misconduct, we impose two consecutive three-month suspensions in all capacities and a collective \$15,000 fine. We also order Mantei to requalify as a general securities representative. Finally, we affirm the Hearing Panel’s order that Mantei pay hearing costs of \$11,895, and we impose appeal costs of \$1,658.⁴⁰

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

⁴⁰ Pursuant to FINRA Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days’ notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days’ notice in writing, will summarily be revoked for non-payment.