FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEPHEN SLOANE
(CRD No. 1257601),

Respondent.

Disciplinary Proceeding
No. 2016049414401

Hearing Officer–MJD

DEFAULT DECISION

December 8, 2020

Respondent is barred from associating with any FINRA member firm in any capacity for recommending an unsuitable investment strategy to 14 customers and charging unfair prices to five customers, in violation of FINRA Rules 2111(a), 2121, and 2010. Respondent is ordered to pay $175,823.03 in restitution, plus interest, to seven customers.

Appearances

For the Complainant: Brody W. Weichbrodt, Esq., Jonathan E. Pahl, Esq., and Ralph DeSena, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Pro se.

DECISION

I. Introduction

On July 20, 2020, FINRA’s Department of Enforcement filed a two-cause Complaint alleging that Respondent Stephen Sloane recommended an unsuitable investment strategy to 14 customers and charged unfair prices to five customers, in violation of FINRA Rules 2111(a), 2121 and 2010. Respondent filed an “Answer” to the Complaint that responded to about two-thirds of the allegations. I ordered Respondent to file a rule-compliant Answer that responded to the remaining allegations. He failed to do so. Respondent also failed to attend two pre-hearing conferences and a show cause hearing.

On September 22, 2020, I ordered Enforcement to file a Motion for Entry of Default Decision (“Default Motion”). Enforcement filed the Default Motion on October 22, supported by the Declaration of Enforcement counsel Brody W. Weichbrodt ("Weichbrodt Decl.") and nine exhibits (CX-1 through CX-9).

For the reasons set forth below, I find that Respondent has defaulted by failing to file a rule-compliant Answer and by failing to appear at two pre-hearing conferences and a show cause hearing.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Respondent entered the securities industry in 1983. From June 2009 to February 2016, he was registered as a General Securities Representative with Morgan Stanley. Morgan Stanley discharged Respondent on February 29, 2016.[1] On March 30, 2016, Morgan Stanley filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating Respondent's registration. On the Form U5, Morgan Stanley stated that the reason for the termination was "[c]oncerns regarding cost-related issues associated with [Respondent's] trading of U.S. [T]reasuries."[2]

After being terminated by Morgan Stanley, Respondent was registered with Westpark Capital, Inc. ("Westpark"), from March 10, 2016, to August 21, 2020, when Westpark filed a Form U5 terminating his registration.[3]

While at Morgan Stanley, Respondent was paid a base salary of $2,000 per month and earned the remainder of his compensation as a percentage of the markups, markdowns, and commissions he charged his retail customers. At Westpark, his compensation came solely from the markups, markdowns, and commissions he charged. Respondent received 65 percent of the gross sales charges as compensation.[4]

B. Jurisdiction

Respondent was last registered with FINRA on August 21, 2020. Although he is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (i) the Complaint was filed while Respondent was associated with a member firm, and (ii) the Complaint charges him with misconduct committed while he was associated with a member firm.

[1] Weichbrodt Decl. ¶¶ 6-8; CX-1.

[2] Weichbrodt Decl. ¶ 8; CX-1.

[3] Weichbrodt Decl. ¶¶ 9-10; CX-1. Respondent voluntarily left Westpark on August 20, 2020. CX-1.

[4] Complaint ("Compl.") ¶¶ 15-17; Answer ("Ans.") ¶¶ 15-17.

C. Origin of the Investigation

In 2016, FINRA began an investigation into Respondent's handling of certain retail customer accounts that traded long-term U.S. Treasuries with maturities of 10-year and 30-year ("Treasuries"). During the investigation, FINRA found evidence that Respondent recommended to 14 of his customers an active, short-term trading strategy in Treasuries without having a reasonable basis to do so. FINRA investigative staff also identified transactions in which Respondent charged certain customers unreasonable prices for Treasuries by charging the customers excessive markups and markdowns.[5] The investigation led to the filing of the Complaint in this disciplinary proceeding.

D. Respondent Defaulted by Failing to (i) File a Rule-Compliant Answer, (ii) Appear at Two Pre-Hearing Conferences, and (iii) Appear at a Show-Cause Hearing

Enforcement served Respondent with the Complaint and Notice of Complaint in accordance with FINRA Rules 9131 and 9134.[6] On August 13, 2020, Respondent filed a handwritten document titled "Answer" and requested a hearing. He failed, however, to respond to paragraphs 18 and 63 through 91 of the Complaint. On August 19, Enforcement filed a motion asserting that Respondent's Answer did not comply with FINRA Rule 9215 because he failed to respond to one-third of the paragraphs of the Complaint.

On August 25, 2020, I held an initial pre-hearing conference with the parties.[7] I informed Respondent that he had failed to answer all the allegations of the Complaint. I also informed the parties that, to give them time to discuss a possible settlement of the matter, I would hold a second pre-hearing conference on September 2.

Later the same day, I issued an Order directing Respondent to file a rule-compliant Answer by September 8. In the Order, I cautioned Respondent that a failure to file a rule-compliant Answer could result in a finding that he is in default and my treating the allegations of the Complaint as admitted. Respondent has never filed a rule-compliant Answer.

Also on August 25, I issued an Order scheduling a second pre-hearing conference for September 2. In the Order, I cautioned Respondent that a failure to appear at a pre-hearing conference could result in a default.

Respondent did not appear at the September 2 pre-hearing conference. I immediately issued an Order scheduling another pre-hearing conference for September 10. On September 10,

[5] Weichbrodt Decl. ¶ 4.

[6] Weichbrodt Decl. ¶ 16.

[7] During the initial pre-hearing conference, Respondent stated that "based on legal advice" he had received and because of his health and advanced age (80) he did not want to participate any longer in the disciplinary proceeding. Initial Pre-Hearing Conference Transcript 4-6.

Respondent informed the case administrator assigned to this proceeding that he could not attend the pre-hearing conference that day. I therefore cancelled the pre-hearing conference. I then issued another Order scheduling a pre-hearing conference for September 15. As with the prior Orders, I reminded Respondent that a failure to appear at the pre-hearing conference could result in a default. Respondent did not attend the September 15 pre-hearing conference.

On September 16, 2020, I issued an Order directing Respondent to show cause why he should not be held in default for his failure to file a rule-compliant Answer and appear at two pre-hearing conferences (held on September 2 and September 15) of which he had due notice. I scheduled the show cause hearing for September 22. In the show cause Order, I again cautioned Respondent that a failure to appear could result in a finding of default and my treating the allegations of the Complaint as admitted. Respondent failed to appear at the show cause hearing.

I find that Respondent has defaulted by failing to file a rule-compliant Answer and failing to appear at two pre-hearing conferences and the show cause hearing, of which he had due notice. Therefore, pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,[8] and deem the allegations in the Complaint admitted.

E. Factual Discussion

The Complaint contains two causes of action. Cause one alleges that from January 2014 to January 2018 Respondent violated FINRA Rules 2111(a) and 2010 by recommending to 14 customers an unsuitable investment strategy involving short-term trading of 10-year and 30-year Treasuries without having a reasonable basis to do so.[9] Cause two charges Respondent with violating FINRA Rules 2121 and 2010 by charging five customers excessive markups and markdowns in five transactions in Treasuries in January 2017.[10]

1. Respondent's Investment Strategy

Respondent recommended an investment strategy that involved the active, short-term trading of 10-year and 30-year Treasuries, which are securities intended as long-term investments. Respondent recommended to his customers that they buy Treasuries with 10-year and 30-year maturities in the secondary market, then wait for some event that would cause Treasury prices to rise. When Respondent determined that such an event had occurred, he recommended selling the securities and using the sales proceeds to repeat the process by buying other 10-year or 30-year Treasuries.[11]

[8] Respondent may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

[9] Compl. ¶¶ 1, 68-75. Five accounts had at least two account holders, including apparently married couples or other family members. Some customers had more than one account. *See* CX-8; CX-9.

[10] Compl. ¶¶ 83-91.

[11] Compl. ¶¶ 18-21.

The Complaint alleges—and in his Answer, Respondent agrees—that Respondent's objective in using this investment strategy was to realize trading gains from the price volatility of Treasuries. According to Respondent, at any given time, the most volatile 10-year and 30-year Treasuries were the ones most recently issued. His strategy therefore focused on buying Treasuries that, at the time the customer purchased them, were most recently issued.[12] Because 10-year and 30-year Treasuries are issued quarterly, customers had four opportunities a year to move from relatively older issuances to more recent issuances of 10-year and 30-year Treasuries.[13]

Respondent executed transactions in Treasuries for the customers on a principal basis. At both Morgan Stanley and Westpark, he had discretion to apply markups and markdowns to the prices he obtained from his firms' trading desks.[14] The markups and markdowns that Respondent charged the customers directly affected their trading gains and losses by increasing the prices customers paid for Treasuries and reducing the prices at which they sold Treasuries.[15] For example, Respondent often charged markups of two percent or more on customer purchases of Treasuries at Morgan Stanley.[16]

As a result of Respondent's active trading strategy, more than 40 percent of the customers' sales of Treasuries occurred within three months of the purchase. Seventy-five percent of the customers' sales occurred within nine months of when they were purchased, and 80 percent took place in fewer than 12 months from the purchase.[17]

In late 2014 and early 2015, Morgan Stanley conducted reviews of Respondent's trading activity in his customer accounts after spotting costly trading activity. Firm supervisors met with him and instructed him to reduce the costs and frequency of his trading. Respondent temporarily complied with the directive. But by late 2015, firm supervisors discovered he had resumed his active trading in Treasuries. In February 2016, Morgan Stanley terminated Respondent.[18]

[12] Compl. ¶¶ 22-23; Ans. ¶¶ 22-23. *See also* CX-5; CX-6.

[13] Compl. ¶ 24; Ans. ¶ 24.

[14] Compl. ¶¶ 27-28.

[15] Compl. ¶ 35.

[16] Compl. ¶¶ 30-31. Respondent charged markups of 2 percent or more on 70 percent of all customer purchases of Treasuries. He charged markdowns of 0.5 percent at Morgan Stanley on 48 percent of the customers' sales transactions. Compl. ¶¶ 32-33.

[17] Compl. ¶ 25. According to the Complaint, in 17 instances, Respondent recommended that customers buy and sell their Treasury securities within three weeks, resulting in 72 separate transactions (including partial purchases and sales). Compl. ¶ 26.

[18] Compl. ¶¶ 47-52. After terminating Respondent, Morgan Stanley retroactively reduced the markups and markdowns Respondent had charged the customers, crediting them $78,727. Compl. ¶ 53. *See also* Weichbrodt Decl. ¶ 35; CX-7.

During the last two years that he was with Morgan Stanley —January 2014 to February 2016—Respondent executed 332 trades for the 14 customers in 10-year and 30-year Treasuries, for which they were charged $316,236 in markups and markdowns. Collectively, the 14 customers suffered trading losses of $88,400 during the two years.[19] Twelve of the customers were over 65 years old when the trading activity ended.[20]

Respondent moved to Westpark in March 2016. Twelve of the 14 customers followed him to Westpark, where Respondent pursued the same trading strategy in Treasuries. From March 2016 to January 2018, based on Respondent's recommendations, Respondent executed 214 transactions in Treasuries in the 12 customers' accounts. Respondent charged the customers $193,789 in markups and markdowns for the 214 transactions. The customers also incurred a $45.50 service fee for each transaction at Westpark, which came to $9,737 for the 214 transactions.[21] After accounting for markups, markdowns, and the service fees, the 12 customers had $241,411 in trading losses from the 214 transactions at Westpark.[22]

During the four-year period from January 2014 to February 2018, Respondent charged the 14 customers $510,025 in markups and markdowns as a result of his trading strategy in Treasuries. The customers realized combined losses of $329,811 (including markups, markdowns, and service fees, and excluding interest they were paid while holding the bonds). Of the 14 customers, only two realized any profits—$482 for one customer and $7,492 for the second customer.[23] One customer suffered $119,756 in trading losses and paid $130,674 in markups and markdowns over the four-year period.[24] After taking into account Morgan Stanley's voluntary full or partial reimbursement payments to customers and interest customers earned on the Treasuries while they held them, seven customers still have $175,823 in outstanding losses.[25] Respondent received approximately $220,000 in compensation from implementing the investment strategy for the 14 customers.[26]

2. Mark-Ups Exceeding Five Percent

On January 30 and 31, 2017, while registered with Westpark, Respondent recommended that five customers use the proceeds of the sales of Treasuries to promptly buy other Treasuries.

[19] Compl. ¶¶ 44-46.

[20] Weichbrodt Decl. ¶ 35; CX-9. Four customers were more than 89 years old when the trading ceased. CX-9.

[21] Compl. ¶¶ 54-59.

[22] Compl. ¶ 60.

[23] Compl. ¶¶ 37, 61-62.

[24] Compl. ¶ 62.

[25] Weichbrodt Decl. ¶¶ 35, 37; CX-8.

[26] Compl. ¶ 4; Weichbrodt Decl. ¶ 35.

Specifically, he recommended that the customers sell Treasuries on January 30 and use the money to buy other Treasuries the next day.

He charged the five customers transaction charges on both the sales and the purchases of the Treasuries. The total markups and markdowns ranged from 6.11 percent to 7.92 percent. Collectively, the customers paid $14,691 in markups and markdowns in five pairs of transactions.[27]

F. Applicable Law

1. Respondent Recommended an Unsuitable Investment Strategy (FINRA Rules 2111(a) and 2010)

FINRA Rule 2111(a) provides that an associated person "must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer" based on the customer's investment profile. A customer's investment profile includes the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person.[28] Supplementary Material 2111.03 states that the phrase "investment strategy involving a security or securities" is "to be interpreted broadly and would include, among other things, an explicit recommendation to hold a security or securities."

Understanding the risks of an investment strategy is a prerequisite for determining whether the strategy is suitable for a customer. Supplementary Material 2111.05(a) (Components of Suitability Obligations) explains that reasonable basis suitability, in particular, requires an associated person to have a "reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors." An associated person's reasonable diligence must include "an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule."[29]

Respondent recommended to the 14 customers the strategy to actively trade 10-year and 30-year Treasuries. Before making the recommendations, Respondent did not perform the reasonable diligence required to provide him with a reasonable basis to recommend the strategy. He failed to consider the effect of the strategy on the customers' investment returns. He did not conduct research, and made no calculations, to determine if the strategy would be profitable given the costs the customers incurred as a result of the active trading he recommended. As a

[27] Compl. ¶¶ 8, 83-85; Weichbrodt Decl. ¶ 5.

[28] FINRA Rule 2111(a); Supplementary Material 2111.04 (Customer's Investment Profile).

[29] Supplementary Material 2111.05(a).

result, Respondent lacked an understanding of the potential risks and rewards associated with his recommended investment strategy.[30]

As the Securities and Exchange Commission ("SEC") had held, a broker who does not understand his investment strategy cannot comply with his obligations under the suitability rule.[31] The SEC has declared that a broker's recommendations "must be consistent with his customer's best interests."[32] Respondent violated Rule 2111(a) because he failed to evaluate the costs of the active trading, and he recommended the strategy without considering the likely risks and rewards of the high costs of the frequent trading. Respondent had to have known that the frequent trading was generating significant markups, markdowns, and commissions that would outweigh any potential profits to the customers. He nonetheless recommended the strategy to numerous customers over the course of four years.

I find that Respondent made unsuitable recommendations to 14 customers to engage in an investment strategy that involved short-term, active trading in long-term Treasuries. The misconduct violates FINRA Rules 2111(a) and 2010.[33]

2. Respondent Charged Excessive Markups (FINRA Rules 2121 and 2010)

Cause two of the Complaint alleges that on January 30 and 31, 2017, Respondent violated FINRA Rules 2121 and 2010 by charging five customers unfair and excessive markups that ranged from 6.11 percent to 7.92 percent in five pairs of transactions.[34]

FINRA Rule 2121 provides that if a member buys for the member's own account from a customer, or sells for the member's own account to a customer, the member "shall buy or sell at a price which is fair, taking into consideration all relevant circumstances."[35] It is a violation of

[30] Compl. ¶¶ 67-71.

[31] *See F.J. Kaufman and Co.*, 50 S.E.C. 164, 168-169 n.16-18 (1989) (collecting cases) ("[A] broker may violate the suitability rule if he fails so fundamentally to comprehend the consequences of his recommendation that such recommendation is unsuitable for any investor."). *See also* Regulatory Notice 12-25 ("Suitability: Additional Guidance on FINRA's New Suitability Rule") (May 2012), Answer 1 to Question 1, https://www.finra.org/sites/default/files/NoticeDocument/p126431.pdf.

[32] *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *39 n.24 (Jan. 30, 2009). *See also Dep't of Enforcement v. Bendetsen*, No. C01020025, 2004 NASD Discip. LEXIS 13, at *12 (NAC Aug. 9, 2004) ("[A] broker's recommendations must serve his client's best interests.")

[33] By violating FINRA Rule 2111(a), Respondent also violated Rule 2010. FINRA Rule 2010 requires a member to "observe high standards of commercial honor and just and equitable principles of trade." A violation of FINRA Rule 2111 also violates FINRA Rule 2010. *Dep't of Enforcement v. Mehringer*, No. 2014041868001, 2020 FINRA Discip. LEXIS 27, at *20 n.15 (NAC June 15, 2020) citing *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *1 n.2 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

[34] Compl. ¶¶ 83-85.

[35] FINRA Rule 0140(a) states that persons associated with a FINRA member shall have the same duties and obligations as the member. Accordingly, FINRA Rule 2121 applies equally to associated persons, such as Respondent.

Rules 2121 and 2010 "to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable."[36]

Supplementary Material 2121.01(a)(3) provides that the "mark-up over the prevailing market price is the significant spread from the point of view of fairness of dealings with customers in principal transactions. In the absence of other bona fide evidence of the prevailing market, a member's own contemporaneous cost is the best indication of the prevailing market price of a security."[37] Supplementary Material 2121.01(c)(5) states that Rule 2121 applies to transactions in which "a customer sells securities to, or through, a broker/dealer, the proceeds from which are utilized to pay for other securities purchased from, or through, the broker/dealer at or about the same time." For such "proceeds" transactions, Supplemental Material 2121.01(c)(5) states that the "mark-up shall be computed in the same way as if the customer had purchased for cash and in computing the markup there shall be included any profit or commission realized by the dealer on the securities being liquidated, the proceeds of which are used to pay for securities being purchased."

For each of the five sets of transactions for the five customers, Respondent used the proceeds of the customers sales of Treasuries on January 30 to buy other Treasuries the next day. The customers' purchases, therefore, were executed at or about the same time as the customers' sales.[38] The transactions accordingly were "proceeds" transactions as described in Supplementary Material 2121.01(c)(5). The markups and markdowns Respondent charged for the five transactions—which each exceeded five percent—were unreasonable, unfair, and excessive after considering all the circumstances, including the nature of the widely traded 10-year and 30-year Treasuries.[39]

I find that the markups and markdowns the five customers paid on January 30 and 31, 2017, resulted in trades that did not take place at prices reasonably related to prevailing market

[36] Supplementary Material 2121.01.

[37] Supplementary Material 2121.01 acknowledges that FINRA's predecessor adopted a "5% policy" for markups based on the notion that traditionally customers were charged markups of less than five percent for their securities transactions. It also states that the "5% policy" is a guide and not a rule, and that markups of five percent or less may be considered unfair or unreasonable. Supplemental Material 2121.01(a).

[38] *See Dep't of Enforcement v. J.W. Korth & Co.*, No. 2012030738501, 2019 FINRA Discip. LEXIS 22, at *18 (NAC May 22, 2019), *appeal docketed*, No. 3-19206 (SEC June 18, 2019) (stating that transactions within five business days are considered contemporaneous for the purpose of determining prevailing market prices).

[39] Compl. ¶¶ 84-89. *See Mark David Anderson*, Exchange Act Release No. 48352, 2003 SEC LEXIS 3285, at *25 (Aug. 15, 2003) (stating that a significantly lower markup is customarily charged in the sale of debt securities than in transactions of the same size involving common stock and that the "common industry practice" as of 1988 was to charge between 1/32 and 3.5 percent for "conventional or straight" Treasuries); *J.W. Korth & Co.*, 2019 FINRA Discip. LEXIS 22, at *23 n.15 (finding that an "appropriate benchmark" for municipal bonds is 3.0 percent, above which a markup on government debt securities is excessive). *See also* Supplemental Material 2121.01(b) listing as relevant factors for determining the fairness of markups the type and availability of the security involved and the pattern of the member's markups.

prices. Therefore, by charging the five customers unreasonable markups and markdowns, Respondent violated FINRA Rules 2121 and 2010.[40]

III. Sanctions

In determining the appropriate sanctions for Respondent's misconduct, I applied the FINRA Sanction Guidelines ("Guidelines") in place at the time of this decision and considered the specific guidelines for each violation, including the General Principles Applicable to all Sanction Determinations and Principal Considerations in Determining Sanctions ("Principal Considerations").[41]

For violations of FINRA's suitability rule, the Guidelines recommend that an adjudicator impose a fine between $2,500 and $116,000 and suspend an individual in any or all capacities for a period of 10 business days to two years. Where aggravating factors predominate, an adjudicator should "strongly consider" a bar for an individual respondent.[42]

There are no violation-specific principal considerations in the Guidelines for suitability violations. Instead, the Guidelines direct adjudicators to consider the Principal Considerations applicable to all violations. A number of Principal Considerations apply to Respondent's suitability violations, leading me to find that Respondent's misconduct was egregious and merits a bar. Respondent engaged in 546 unsuitable transactions, which constitute a pattern of misconduct that affected 14 customers for a lengthy period (January 2014 to January 2018).[43] Furthermore, Respondent ignored warnings from Morgan Stanley that his practices were unacceptable.[44] Twelve of the 14 customers to whom Respondent made unsuitable recommendations were over 65 years of age.[45] Respondent earned commissions of approximately $220,000 at his customers' expense.[46] The 14 customers incurred $329,811 in

[40] *See* Supplementary Material 2121.01, stating that charging a customer an unreasonable price or commission for a security also violates FINRA Rule 2010.

[41] FINRA Regulatory Notice 20-37 (Oct. 2020), https://www.finra.org/sites/default/files/2020-10/Regulatory-Notice-20-37.pdf. On October 20, 2020, FINRA revised the principal considerations in the Guidelines to require adjudicators to expressly consider a customer's age or physical or mental impairment. The revisions are effective immediately and apply to pending cases.

[42] FINRA Sanction Guidelines at 95 (2020), www.finra.org/industry/sanction-guidelines.

[43] Guidelines at 7-8 (Principal Considerations Nos. 8, 9, and 17) (whether the respondent engaged in numerous acts and/or a pattern of misconduct; whether respondent engaged in the misconduct over an extended period of time; the number, size, and character of the transactions at issue).

[44] Guidelines at 8 (Principal Consideration No. 14) (whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from a supervisor that the conduct violated FINRA rules or applicable securities laws or regulations).

[45] Guidelines at 8 (Principal Consideration No. 20) (whether the customer is 65 or older).

[46] Guidelines at 8 (Principal Consideration No. 16) (whether respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

trading losses. Notwithstanding payments Morgan Stanley made to customers,[47] seven of the 14 customers still have outstanding losses of $175,823.

For charging excessive prices in violation of FINRA Rule 2121, the Guidelines recommend a fine between $5,000 and $77,000 for a first action plus (if restitution is not ordered) payment of the gross amount of the excessive markups, markdowns, or commissions. In the case of intentional or reckless misconduct, adjudicators should consider suspending an individual respondent in any or all capacities for between 10 business days and two years. Where aggravating factors predominate, an adjudicator should consider barring an individual.[48] The relevant violation-specific principal considerations an adjudicator should consider for excessive markups include whether the respondent had discretion as to the amount of markups to charge, the number of harmed customers, and the quantified customer harm.[49] Here, Respondent had discretion as to the markups and markdowns he could impose. Even though the Rule 2121 violations occurred only on two days and involved just five customers, they constituted a part of a broader pattern of causing customers to incur unreasonable transaction charges. The trading on those two days involved 21 separate sale and purchase transactions and markups and markdowns of nearly $15,000.

Standing alone, Respondent's violation of Rule 2121 in this case would not call for a bar. However, I impose a unitary sanction for Respondent's violations of causes one and two because they are both based on the same course of conduct—making unsuitable recommendations to customers without a concern for the associated costs of the transactions.[50] The evidence reveals no justification or excuse for Respondent's unreasonable recommendations and unfair pricing. I find no mitigating factors. Thus, consistent with the Guidelines, I find that the appropriate and remedial sanction is a bar in all capacities.

I also find that Enforcement has demonstrated that the customers' quantified losses were proximately caused by Respondent and therefore restitution is an appropriate additional remedy in this case.[51] Accordingly, I order that Respondent pay restitution in the total amount of

[47] Guidelines at 7 (Principal Consideration No. 11) (whether the respondent's misconduct resulted directly or indirectly in injury to other parties, including his firm, and the nature and extent of the injury).

[48] Guidelines at 91.

[49] Guidelines at 91.

[50] *See* Guidelines at 4 (General Principles Applicable to All Sanction Determinations, No. 4) (allowing for the aggregation or "batching" of violations to determine sanctions). *See also Mehringer*, 2020 FINRA Discip. LEXIS 27, at *38 (imposing a unitary sanction for respondent's unsuitable recommendations and for exercising discretion in a customer's account without authorization, in violation of FINRA Rules 2510 and 2010).

[51] Guidelines at 4 (General Principle No. 5) ("Adjudicators may order restitution when an identifiable person … has suffered a quantifiable loss proximately caused by a respondent's misconduct."). The Guidelines also state that adjudicators have the discretion to impose post-judgment interest on restitution orders. Guidelines at 10 n.3.

$175,823.03 to seven customers, plus interest calculated from the date of the last violative transaction for each customer.[52]

IV. Order

Respondent Stephen Sloane is barred from associating with any FINRA member firm in any capacity for recommending an unsuitable trading strategy to customers, as alleged in cause one of the Complaint, and for charging customers unfair prices, as alleged in cause two of the Complaint, in violation of FINRA Rules 2111(a), 2121, and 2010.

I also order Respondent to pay restitution of $175,823.03 to seven customers, plus interest on the unpaid balance, calculated from the dates set forth for each customer, until paid in full.[53] Interest shall accrue at the rate set in 26 U.S.C. Section 6621(a)(2).[54]

[52] The seven customers identified in the Complaint, in fact, involve seven accounts held by ten customers, one of whom (MM) is the sole owner of one account and a co-owner of another account. The customers (or accounts), the amounts of restitution owed to them, and the dates from which interest is to run, are as follows:

RT	$55,309.29	January 31, 2018
WH	$47,203.62	January 31, 2018
MM & LAM	$45,572.90	June 30, 2017
LM & WM	$5,313.28	October 31, 2017
MM	$12,347.08	June 30, 2017
EF, JF & SL	$6,284.53	October 31, 2017
CN	$3,792.33	October 31, 2017

Weichbrodt Decl. ¶¶ 35, 37; CX-8. The customers are identified in the Appendix to this Decision, which is served only on the parties.

[53] In the event that the customers cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed property, or abandoned-property fund for the state(s) of each customer's last known address. Satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, shall be provided to staff of FINRA's Department of Enforcement, Rockville, Maryland, no later than 90 days after the date when this decision becomes final. *See* Guidelines at 11.

[54] *See* Guidelines at 11 (concerning payment of interest on orders of restitution). The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

The bar shall become effective immediately if this Default Decision becomes FINRA’s final disciplinary action. The restitution order of $175,823.03 (plus interest) imposed on Respondent shall be due on a date set by FINRA, but not sooner than 30 days after this Decision becomes FINRA’s final action.

Michael J. Dixon

Michael J. Dixon
Hearing Officer

Copies to:

Stephen Sloane (via email, overnight courier, and first-class mail)
Brody W. Weichbrodt, Esq. (via email)
Jonathan E. Pahl, Esq. (via email)
Ralph DeSena, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

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APPENDIX OF INITIALS

RT	Ria Taitt
WH	William Hulme
MM & LAM	Mark Minsky and Laurie A. Minsky
LM & WM	Lois McCain and William McCain
MM	Mark Minsky
EF, JF & SL	Edward Fisher, Joan Fisher & Sandra Lockwood
CN	Carmen Novak