

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK SAM KOLTA
(CRD No. 5324620),

Respondent.

Disciplinary Proceeding
No. 2018057297102

Hearing Officer—MJD

**EXTENDED HEARING PANEL
DECISION**

Date: August 15, 2024

Respondent Mark Sam Kolta made unsuitable recommendations to 16 customers to invest \$4.8 million in a real estate investment trust, or REIT. To ensure that his firm approved the REIT purchases, Kolta caused the customers' account forms and REIT investment documents to overstate their income, net worth, liquid net worth, investment experience, investment objectives, and risk tolerance. By falsifying his customers' information, Kolta caused his firm to make and preserve inaccurate books and records. He also emailed to customers four retail communications about the REIT investment that were not fair and balanced and contained misleading, unwarranted, and promissory statements and claims.

For these violations, Kolta is barred from associating with any FINRA member in any capacity and ordered to disgorge to FINRA \$297,823 in commissions from his unsuitable REIT recommendations. Kolta is also ordered to pay costs.

Appearances

For the Complainant: Payne L. Templeton, Esq., Richard M. Cella, Esq., and Savvas A. Foukas, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Steven A. Lucia, Esq.

I. Introduction

FINRA's Department of Enforcement filed a Complaint alleging four causes of action against Respondent Mark Sam Kolta. Cause one alleges that between June 2014 and August 2015, while registered with National Securities Corporation ("National" or the "Firm"), Kolta made unsuitable recommendations to 16 customers to invest over \$4.8 million in a high-risk,

non-traded real estate investment trust (or REIT), called the American Realty Capital New York City REIT, Inc. (“ARC New York REIT”), in violation of FINRA Rules 2111 and 2010. The Complaint alleges that Kolta’s recommendations were unsuitable for each of the 16 customers based on their investment profiles and—for six customers—their ages. In addition, the recommendations allegedly resulted in over-concentrating the customers’ investments in a high-risk, non-traded REIT.

Cause two alleges that between September 2013 and August 2015 Kolta caused the falsification of the Firm’s records of his customers’ income, net worth, investable assets, investment objectives, and risk tolerances so that the customers would qualify to purchase the REIT. By causing his firm to maintain inaccurate books and records, the Complaint alleges that Kolta violated FINRA Rules 4511 and 2010. Cause three alleges that Kolta’s falsification of his customers’ account records and REIT investment documents also constituted an independent violation of FINRA Rule 2010.

Finally, cause four alleges that in 2014 and 2015 Kolta circulated to investors four emails about the ARC New York REIT that were not fair and balanced and contained misleading, unwarranted, and promissory statements. Also according to cause four, Kolta failed to obtain approval from a firm principal before sending the email communications to retail investors. The Complaint alleges that this conduct violated FINRA Rules 2210 and 2010.

Kolta filed an Answer denying that his conduct violated FINRA Rules, asserted various affirmative defenses, and requested a hearing.¹

The Extended Hearing Panel finds that Kolta committed each of the violations alleged in the Complaint. For Kolta’s misconduct as alleged in causes one through three (unsuitable recommendations, books and records violations, and falsification of Firm records), the Hearing Panel imposes a unified sanction of a bar in all capacities from associating with any FINRA member firm. For misconduct alleged in cause four (sending four misleading, unwarranted, and promissory communications to customers), the Hearing Panel also determines that assessing a \$40,000 fine and a two-year suspension from associating with any FINRA member firm in any capacity are appropriate remedial sanctions. In light of the bar, however, the Extended Hearing Panel does not impose these sanctions.

II. Procedural Background

A. Kolta Moves to Continue Original Hearing Dates

Enforcement filed its Complaint on December 29, 2022. In its Notice of Complaint, Enforcement proposed New York City as the hearing venue. In his Answer, filed on February 15,

¹ The disciplinary proceeding originated from an investigation initiated in late 2017 after one of Kolta’s customers submitted a complaint to FINRA’s senior helpline. Hearing Transcript (“Tr.”) 199.

2023,² Kolta countered with Miami, Florida, for the hearing location because that is where he has resided since leaving New York some years ago.³

In anticipation of the initial pre-hearing conference, the Hearing Officer instructed the parties to meet and confer and submit a joint proposed pre-hearing schedule, with preferred dates for the hearing in August 2023.⁴ Because the parties did not submit a joint proposed pre-hearing schedule, the Hearing Officer heard argument about proposed hearing dates and a hearing venue during the March 2, 2023 initial pre-hearing conference. Kolta through his counsel argued that a hearing in late 2025 or 2026 was appropriate given the amount of documents FINRA's investigation generated.⁵ Kolta argued that it should be held in Florida because that is where he currently resides.⁶ Enforcement argued that the hearing should be held in New York City because that is where the misconduct occurred and because most customer witnesses are located in the New York City area.⁷ Before adjourning the initial pre-hearing conference, the Hearing Officer informed the parties that, based on their arguments, he determined that the hearing would take place in October 2023, in New York City.⁸ The Hearing Officer ruled that New York City was the proper venue because that was where Kolta resided and was employed when he engaged in the alleged misconduct and where most of the anticipated customer and other witnesses resided.⁹

On March 2, 2023, shortly after the conclusion of the initial pre-hearing conference, Kolta moved to continue the October 2023 hearing dates. On March 7 and March 8, 2023, respectively, Enforcement and Kolta submitted separate proposed pre-hearing schedules. Enforcement adopted the October 2023 hearing dates in its proposed pre-hearing schedule. Kolta's schedule proposed hearing dates beginning in October 2025,¹⁰ two years later than the Hearing Officer had ordered and nearly three years after the filing of the Complaint.

The Hearing Officer held another pre-hearing conference on March 14, 2023, to hear argument on the parties' competing proposed hearing dates. After considering Enforcement's description of the amount of discovery generated during the investigation, the Hearing Officer

² Although Kolta's Answer was dated February 1, 2023, he filed it with the Office of Hearing Officers on February 15, 2023.

³ Answer ("Ans.") at 15 (Affirmative Defenses). Kolta also stated that he would have a "hard time traveling in person" to New York for a multi-day hearing because of his limited financial resources and undisclosed "medical concerns." *Id.*

⁴ Notice of Receipt of Answer and Order Setting Pre-Hearing Conference (Feb. 16, 2023).

⁵ Transcript of Initial Pre-Hearing Conference (Mar. 2, 2023) ("IPHC Tr.") 55-56.

⁶ IPHC Tr. 40-43, 56.

⁷ IPHC Tr. 58-61.

⁸ IPHC Tr. 53-56.

⁹ IPHC Tr. 58-69.

¹⁰ Respondent's Proposed Pre-Hearing Schedule (Mar. 8, 2023) 9.

informed the parties that he would postpone the hearing from October 2023 to February 5, 2024.¹¹

B. Hearing Officer Moves Hearing Venue to South Florida

During a pre-hearing conference on September 26, 2023, to maximize the likelihood of in-person testimony from witnesses, the Hearing Officer suggested that part of the hearing could be held in New York City to accommodate in-person testimony from customer witnesses located in the area and the rest of the hearing could be held in Florida where Kolta and one other witness would testify. The Hearing Officer directed the parties to come up with a proposal to accomplish this objective.¹²

On October 6, 2023, Kolta filed a motion—which the Hearing Officer treated as a motion to have the entire hearing in south Florida—stating that he was unable to reach agreement with Enforcement to split the hearing between New York and Florida.¹³ Enforcement filed an opposition reiterating its view that the entire hearing should be in New York City, but if not held there then the entire hearing should be conducted in Florida.¹⁴

After considering that only a limited number of the 16 customers identified in the Complaint, and potentially two other witnesses, would appear in person if the hearing were held in New York City, the Hearing Officer determined that FINRA’s Regional Office in Boca Raton, Florida, was the more appropriate hearing venue.¹⁵

C. Kolta Claims to Have Been in a Serious Car Accident Three Days Before Hearing

Late on Sunday evening, February 4, 2024, one day before the hearing was scheduled to begin at Kolta’s preferred hearing location in Florida, Kolta twice emailed the Office of Hearing Officers (“OHO”) stating that he had recently been in an automobile accident—specifically, that he was rear-ended by another vehicle while stopped at a traffic light. He wrote that he was “not in the condition to handle this [hearing] at this time.”¹⁶ Kolta attached photos purporting to be of the accident, a Miami-Dade County police department contact note reflecting the accident

¹¹ Transcript of Pre-Hearing Conference (Mar. 14, 2023) 42-45. Accordingly, on March 23, 2023, the Hearing Officer issued an order granting, in part, Kolta’s motion to continue the hearing date. Order Granting in Part Respondent’s Motion to Continue Hearing Dates (Mar. 23, 2023). On the same day, the Hearing Officer also issued the Case Management and Scheduling Order (“CMSO”) that confirmed hearing dates beginning February 5, 2024. CMSO (Mar. 23, 2023) 1, 6.

¹² Transcript of Pre-Hearing Conference (Sept. 26, 2023) 11-15.

¹³ Respondent’s Motion for Bifurcated Hearing Location (Oct. 6, 2023).

¹⁴ Enforcement’s Opposition to Respondent’s Motion for Bifurcated Hearing Location (Oct. 12, 2023) 5 n.7.

¹⁵ See Order Regarding Hearing Venue (Oct. 31, 2023).

¹⁶ Kolta’s first Feb. 4, 2024 email (5:26 p.m.).

occurred late on February 2, 2024, and a hospital bracelet bearing his name. He said that “[r]est is needed” and requested “respect [for his] physical [condition] now.”¹⁷

Kolta also stated that he had terminated his counsel “effective immediately.”¹⁸ The next day, February 5, the Hearing Officer granted counsel’s motion to withdraw his appearance.¹⁹

Immediately after granting the motion to withdraw, on February 5, the Hearing Officer held a status conference at the hearing location where the Extended Hearing Panel had already convened for the hearing. Kolta appeared by videoconference from home and briefly described the automobile accident and his physical condition.²⁰ Based on Kolta’s representations, including photographs he submitted, the Hearing Officer continued the hearing to a date to be determined.²¹

D. Kolta Travels to Texas Within Days of Alleged Serious Car Accident

On February 9, 2024, Kolta emailed OHO that he was still “tending to medical needs,” which were “worse than expected,” and he needed time to retain new counsel.²²

On February 13, 2024, the Hearing Officer issued an order rescheduling the hearing for two weeks beginning on April 22, 2024. The next day, Enforcement moved for reconsideration of the hearing dates and revealed that from about February 7 through 9, just days after Kolta’s purported car accident, Kolta had traveled to Texas to attend a securities industry conference. Enforcement submitted a video and photos that Kolta had uploaded to his Instagram account highlighting his Texas trip.²³ Because Kolta’s trip took place during the first week of the previously scheduled hearing, Enforcement argued that Kolta’s asserted medical condition was not as serious as he claimed.²⁴

On February 14, 2024, the Hearing Officer ordered Kolta to respond to Enforcement’s motion for reconsideration of the April 22 hearing dates and to include evidence of his medical

¹⁷ Kolta’s second Feb. 4, 2024 email (9:57 p.m.).

¹⁸ Kolta’s first Feb. 4, 2024 email (5:26 p.m.).

¹⁹ Order Granting Motion to Withdraw as Counsel for Respondent (Feb 5, 2024). Counsel’s motion cited as a cause “[an] inability to agree on how to present the case, [and] irreconcilable differences” with Kolta. Respondent’s Counsel’s [Amended] Motion to Withdraw (Feb. 5, 2024) 1.

²⁰ Transcript of Conference with Parties (Feb. 5, 2024) 30. Kolta stated that he was experiencing pain in his shoulder, lower back, hip, and neck. *Id.*

²¹ *Id.* at 33.

²² Kolta’s first Feb. 9, 2024 email (12:27 p.m.).

²³ Department of Enforcement’s Motion for Reconsideration of the February 13, 2024 Order Scheduling Hearing Dates and for Other Relief (Feb. 14, 2024) 4-5. Enforcement’s motion was supported by a sworn Declaration from its investigator along with nine photographs and a video retrieved from Kolta’s Instagram account.

²⁴ *Id.* at 6-7.

condition to support his assertion that he was not fit to attend the hearing.²⁵ Kolta promptly responded via email that Enforcement’s position questioning his medical condition was “inappropriate” and he needed “time to allow [himself] the mental clarity to handle [the accident].”²⁶ Kolta later wrote that he was unavailable before April 2024 because he could not retain new counsel before then.²⁷

During a status conference held on February 15, 2024, Kolta acknowledged that he had traveled to Texas just a few days after asking for a continuance of the hearing scheduled to start on February 5.²⁸ On March 1, 2024, after considering Kolta’s admission that he traveled to Texas within days of the purported automobile accident, the Hearing Officer rescheduled the hearing for April 8 through 12 and April 15 through 16, 2024, at FINRA’s Regional Office in Boca Raton, Florida.²⁹

E. Kolta Falsely Claims He Has a Civil Trial Beginning April 8, 2024

On March 6, 2024, Kolta emailed OHO that he had a conflict with the rescheduled hearing commencing on April 8 because he was the plaintiff in a civil action pending in Miami-Dade County Circuit Court scheduled to begin that day.³⁰ On March 12, 2024, Kolta emailed OHO a copy of an undated court scheduling order notifying the parties in Kolta’s civil action that they should be prepared for trial for a three-week period beginning April 8.³¹

On March 13, 2024, Enforcement responded to Kolta’s supposed scheduling conflict by producing a copy of a court order showing that the Miami-Dade County Circuit Court previously continued Kolta’s civil trial to September 2024.³² Kolta therefore knew when he emailed OHO on March 6 that his civil trial was not scheduled to commence on April 8, 2024.

²⁵ Order Shortening Time for Respondent to Respond to Enforcement’s Motion for Reconsideration of February 13, 2024 Order [rescheduling hearing for April 22, 2024] (Feb. 14, 2024) 2-3.

²⁶ Kolta’s Feb. 14, 2024 email.

²⁷ Kolta’s Feb. 15, 2024 email.

²⁸ Transcript of Pre-Hearing Conference (Feb. 16, 2024) 13-16.

²⁹ Order Granting, in Part, Enforcement’s Motion for Reconsideration of Hearing Dates and Rescheduling Hearing Dates (Mar. 1, 2024).

³⁰ Kolta’s Mar. 6, 2024 email.

³¹ Kolta’s Mar. 12, 2024 email.

³² See Declaration of Payne Templeton in Support of Enforcement’s Response to Respondent’s March 12, 2024 Filing Regarding a Purported Schedule Conflict with the April 8-16, 2024 Hearing Dates in this Disciplinary Proceeding (Mar. 13, 2024) ¶ 7, Ex. 4.

F. Kolta Claims He Received a Jury Summons for April 8, 2024 and Refuses to Request a Postponement

On March 14, 2024, Kolta raised another supposed conflict with the April 8 hearing date. He submitted a copy of an undated jury summons from the clerk of the Miami-Dade County Circuit Court stating that he was on standby for jury duty beginning April 8, 2024.³³

During a pre-hearing conference on March 15, 2024, the Hearing Officer informed Kolta that the jury summons did not constitute good cause to postpone the hearing. On its face, the summons explained that the court grants potential jurors one courtesy postponement. It explained how to request a deferral by calling the clerk's office or using the court's website.³⁴ The Hearing Officer instructed Kolta to request the court to reschedule his jury duty on the grounds that, as the named respondent in a FINRA disciplinary proceeding, he was required to attend FINRA's hearing.³⁵ The Hearing Officer followed up by issuing an order instructing Kolta to seek a postponement of his jury duty obligation.³⁶

Kolta did not request a postponement. Instead, he emailed OHO shortly after the conclusion of the pre-hearing conference on March 15 stating that he had already "registered" for jury duty "and that is where [he] will be [on April 8]."³⁷

G. Kolta Submits Two Notes from a Chiropractor

On March 19, 2024, Kolta emailed OHO a note from a chiropractor dated March 18. The chiropractor provided no details about Kolta's possible injuries or medical condition. Nor did he say that Kolta was unable to attend the hearing.³⁸ He wrote that "[d]ue to the severity of the patient's symptoms" and his "current state of recovery" he "recommend[ed] that Mr. Kolta minimize[] activities that involve being seated for extended periods of time such as long days of travel."³⁹ The note did not address Kolta's Texas trip. Kolta stated in his email transmitting the note that any hearing would have to be via videoconference. He also wrote that he needed a continuance of the hearing date because he had not yet been able to retain new counsel.⁴⁰

Because Kolta was able to travel to Texas just days after the automobile accident, and the chiropractor's note did not claim he could not participate in a hearing on April 8, 2024, on March

³³ Kolta's Mar. 14, 2024 email.

³⁴ See Kolta's Mar. 14, 2024 email.

³⁵ Transcript of Pre-Hearing Conference (Mar. 15, 2024) 5-7.

³⁶ Order Following Pre-Hearing Conference Regarding Respondent's March 14, 2024 Email Communication Concerning Jury Summons (Mar. 15, 2024).

³⁷ Kolta's Mar. 15, 2024 email.

³⁸ Kolta's Mar. 19, 2024 email.

³⁹ Kolta's Mar. 19, 2024 email (attachment).

⁴⁰ Kolta's Mar. 19, 2024 email.

28, the Hearing Officer denied Kolta's request for a continuance. The March 28 Order explained that Kolta would be permitted to stand and move around the hearing room to accommodate any need he may have had to avoid prolonged sitting.⁴¹

On March 28, 2024, hours after the order was issued, Kolta emailed OHO a copy of another note from the same chiropractor. In it, the chiropractor essentially repeated what was in the first note: he "recommend[ed] providing accommodation such as virtual access to meetings through platforms like Zoom. This would alleviate the need for extensive travel and prolonged sitting, reducing the risk of aggravating [Kolta's] injuries."⁴²

The Hearing Officer held a final pre-hearing conference with the parties on April 1, 2024. During the final pre-hearing conference, the Hearing Officer informed Kolta that the chiropractor's notes did not support a continuance of the hearing. However, the Hearing Officer assured Kolta that there would be accommodations during the hearing, if needed, and that he could stand and move about the hearing room.⁴³

H. Kolta Claims He has Surgery Scheduled for April 8, 2024

Promptly after the April 1 final pre-hearing conference, Kolta emailed OHO a copy of a note, dated April 1, purportedly from a "surgical coordinator" in a surgeon's office, stating that Kolta was scheduled to have surgery on April 8.⁴⁴ To ascertain that Kolta needed surgery and that it had to take place on April 8, the Hearing Officer ordered him to submit a letter signed by the surgeon who would perform the surgery stating when the surgery had been scheduled and why the surgery must occur on April 8.⁴⁵

Kolta did not produce a letter from a surgeon. Instead, on April 4, 2024, he emailed to OHO copies of three MRI reports.⁴⁶ The Hearing Officer found that the MRI reports, without more, did not support the need for a continuance of the hearing and informed the parties that the hearing would proceed as scheduled on April 8, 2024.⁴⁷

The hearing was held April 8 through 10, 2024, at FINRA's Regional Offices in Boca Raton, Florida, a short drive from Kolta's home. Neither Kolta nor his counsel attended the

⁴¹ Order Regarding Respondent's March 19, 2024 Email Communication and Chiropractor Note (Mar. 28, 2024).

⁴² Kolta's Mar. 28, 2024 email.

⁴³ Transcript of Final Pre-Hearing Conference (Apr. 1, 2024) 5-7.

⁴⁴ Kolta's Apr. 1, 2024 email.

⁴⁵ Order Regarding Respondent's March 28 and April 1, 2024 Email Communications (Apr. 2, 2024).

⁴⁶ Kolta's Apr. 4, 2024 email.

⁴⁷ Order Confirming April 8, 2024 Hearing Date (Apr. 5, 2024). Immediately after the Hearing Officer issued this order, Kolta's current counsel entered his appearance. He emailed OHO that he was unavailable on April 8 because he was "traveling on a longstanding matter." OHO promptly notified the parties by email that the hearing would proceed on April 8, as scheduled.

hearing. The Hearing Panel heard Enforcement’s presentation of evidence supporting the allegations in the Complaint.

III. Findings of Fact

A. Kolta’s Background

Kolta was first associated with a FINRA member firm in 2007.⁴⁸ From 2008 to late 2011, Kolta was registered with Chase Investment Services Corp. (“Chase”). From late 2011 to September 2013, Kolta was registered with Cetera Advisors LLC (“Cetera”) (known as Multi-Financial Securities Corporation until December 2012).⁴⁹ Some of the 16 customers identified in the Complaint first met Kolta when he was registered with Chase and followed him to Cetera and then National.⁵⁰

From September 2013 to May 2017, Kolta was registered as a general securities representative with National, where he made all the recommendations that are the subject of the Complaint to the 16 customers to invest in the ARC New York REIT. On May 11, 2017, National filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Kolta was permitted to resign during an internal review.⁵¹

After leaving National, Kolta was associated with two more FINRA member firms. From June 2017 to February 2018, Kolta was associated with Aegis Capital Corp. (“Aegis”). The Form U5 terminating Kolta’s registration with Aegis stated that they “mutually agreed to part ways” and Kolta was “permitted to resign.”⁵² From March 2018 to October 2021, Kolta was associated with Worden Capital Management (“Worden”). On October 14, 2021, Worden filed a Form U5 ending Kolta’s association and stating the termination was “voluntary.”⁵³

Although Kolta has not been associated with a FINRA member firm since October 14, 2021,⁵⁴ he is subject to FINRA’s jurisdiction pursuant to Article V, Section 4 of FINRA’s By-

⁴⁸ Complainant’s Exhibit (“CX-”) 4a, at 15, 21.

⁴⁹ CX-4a, at 7-8, 11, 19-20.

⁵⁰ *See, e.g.*, Tr. 37-38 (Customer PV describing meeting Kolta at Chase and moving her accounts to Cetera then to National). An index of customer names and initials used in this Decision is attached hereto and is available only to the parties.

⁵¹ CX-4a, at 7; CX-8, at 2.

⁵² CX-4a, at 6.

⁵³ CX-4a, at 6; CX-9, at 2.

⁵⁴ CX-4a, at 6, 10. From January 2022 to December 31, 2023, Kolta was associated with Bridgeway Wealth Partners, LLC, an investment advisor. CX-4a, at 6. On March 20, 2024, Kolta became associated with Empirical Partners LLC, another investment advisor. His registration as an investment advisor was pending with Florida and New York state securities regulators at the time of the hearing. CX-4a, at 5-6. According to his Central Registration Depository (“CRD”), Kolta is currently an insurance agent and real estate agent. CX-4a, at 10, 15.

Laws because the Complaint was filed within two years of his last association with a member firm.⁵⁵

B. The Investment Kolta Chose to Recommend

1. The Nature of REITs

A REIT is a corporation, trust, or association that owns income-producing real estate.⁵⁶ A REIT pools the capital of investors to buy a portfolio of properties, which can include office buildings, hotels, and shopping centers that an average investor might not be able to purchase individually.⁵⁷ There are two types of REITs: those that trade on a national securities exchange and those that do not.⁵⁸ REITs that do not trade, such as the ARC New York REIT, are referred to simply as non-traded REITs. Such REITs do not trade on a securities exchange, at least when they are initially offered for sale.⁵⁹

Non-traded REITs present risks for the average investor. There is a limited secondary market for the sale of their shares, and valuation is therefore problematic.⁶⁰ Many factors affect the valuation of non-traded REITs, including the portfolio of the real estate assets owned and the overhead expenses and costs of capital.⁶¹ While some portion of the total outstanding shares of a non-traded REIT may be redeemable each year, redemption offers to purchase shares may be below the purchase price or the current price per share.⁶² Front-end fees, as a percentage of the purchase price, may be high and may contain offering and other costs.⁶³ Distributions from a REIT are not guaranteed, and they may be funded in part or entirely by cash from investors' capital or from borrowed funds.⁶⁴ Furthermore, distributions may be suspended at any time or halted altogether.⁶⁵

⁵⁵ See Ans. ¶ 14 (admitting that Kolta is subject to FINRA jurisdiction in this disciplinary proceeding).

⁵⁶ CX-395, at 1.

⁵⁷ CX-395, at 1.

⁵⁸ CX-395, at 1.

⁵⁹ CX-395, at 1-2.

⁶⁰ CX-395, at 3.

⁶¹ CX-395, at 3.

⁶² CX-395, at 3.

⁶³ CX-395, at 2, 4.

⁶⁴ CX-394, at 1.

⁶⁵ CX-394, at 1; CX-421, at 2.

2. Kolta Recommended the ARC New York REIT

The ARC New York REIT was formed in late 2013 with the intention, according to its prospectus, of investing most of its assets in office properties in New York City.⁶⁶ It first issued shares in April 2014, at \$25.00 per share, with an anticipated maximum offering totaling \$750 million.⁶⁷ The prospectus established minimum income and net worth standards that investors were required to meet to purchase even the minimum allowable investment of \$2,500. It stated, “An investor must have either (a) a net worth of at least \$250,000 or (b) an annual gross income of at least \$70,000 and a minimum net worth of at least \$70,000.”⁶⁸

The prospectus for the offering warned that an investment in the ARC New York REIT “involves a high degree of risk” and should be purchased only by persons who “can afford a complete loss of investment.”⁶⁹ It further stated that an investment is “suitable only for persons who have adequate financial means, desire a relatively long-term investment and will not need immediate liquidity from their investment.”⁷⁰ It disclosed that the REIT has no operating history and therefore the prior performance of affiliated REITs should not be used to predict future results.⁷¹ Because the offering price of \$25 per share was established “on an arbitrary basis,” the prospectus warned, the value of an investment may be “substantially less than what [investors] pay.”⁷² The REIT also had not acquired any properties or made other investments at the time of the offering, which the prospectus acknowledged made an investment in the ARC New York REIT “more speculative.”⁷³ The prospectus also cautioned that no public market existed for its shares and that none may ever materialize.⁷⁴

Because non-traded REITs are risky, some states place limits on how much a person can invest in them. The prospectus for the ARC New York REIT provided that a New Jersey investor’s “total investment in us, shares of our affiliates and other non-traded real estate investment trusts shall not exceed 10% of his or her liquid net worth,” which it defined as “that portion of net worth (total assets exclusive of home, home furnishings and automobiles minus

⁶⁶ CX-421, at 1, 135-36.

⁶⁷ CX-421, at 2.

⁶⁸ CX-421, at 3, 291.

⁶⁹ CX-421, at 1-2.

⁷⁰ CX-421, at 3.

⁷¹ CX-421, at 36.

⁷² CX-421, at 37.

⁷³ CX-421, at 37.

⁷⁴ CX-421, at 1.

total liabilities) that consists of cash, cash equivalents and readily marketable securities.”⁷⁵ Eight of the 16 customers identified in the Complaint were New Jersey residents.⁷⁶

The prospectus also limited a California resident’s maximum investment in the ARC New York REIT “to 10% of his or her net worth (exclusive of home, furnishings and automobile).”⁷⁷ One customer (TS) was a California resident when he purchased the REIT.⁷⁸

Shares of the ARC New York REIT were not traded on any exchange for five years after Kolta’s last sale to one of the 16 customers. In mid-August 2020, 25 percent of the shares were listed and began trading on the New York Stock Exchange.⁷⁹ Soon after, the price of the shares dropped sharply.⁸⁰ The remaining shares were listed incrementally until August 2021, when all the shares were listed.⁸¹

Based on Kolta’s recommendations, from June 2014 to August 2015, the 16 customers whose investments are at issue in this proceeding bought \$4,834,781 in shares of the ARC New York REIT.⁸² The REIT sales generated gross sales commissions of 7 percent.⁸³ Kolta received commissions of \$297,823 from his sales.⁸⁴ Between 2019 and 2021, all 16 customers filed statements of claim against National with FINRA Dispute Resolution.⁸⁵ The Firm settled all arbitration claims by paying the customers millions of dollars.⁸⁶

⁷⁵ CX-421, at 4-5.

⁷⁶ The eight New Jersey residents are EC, SHS, SWS, JHN, JWN, JN, BN, and RS. CX-31 at 1, 5, 21, 24; CX-116, at 1; CX-117, at 1; CX-130, at 1; CX-131, at 1; CX-139, at 1; CX-172, at 1.

⁷⁷ CX-421, at 3.

⁷⁸ CX-182, at 2, 11; CX-183, at 1, 3, 5.

⁷⁹ Tr. 558, 561.

⁸⁰ Tr. 559; CX-3a.

⁸¹ CX-402, at 64.

⁸² CX-2.

⁸³ CX-2, at 3; CX-421, at 2.

⁸⁴ CX-2. The customers paid gross commissions of \$338,435. CX-2. Kolta received 88% of the commissions the issuer paid to National. Tr. 550, 557; CX-2. Kolta was National’s highest producer of sales commissions for all REITs (not just the ARC New York REIT) at National for the year from March 2014 to early March 2015, with over \$30 million in sales. Tr. 151-52, 182-83; CX-289, at 2-7.

⁸⁵ See CX-405; CX-406; CX-407; CX-408; CX-409; CX-410; CX-411; CX-412.

⁸⁶ The Complaint alleges that Kolta’s 16 customers lost more than \$4.1 million from their investments in the ARC New York REIT and that National paid them restitution of about the same amount (which presumably includes attorneys’ fees). Complaint (“Compl.”) ¶¶ 29-30. The record developed during the hearing shows that, although National paid millions of dollars to settle customer arbitration claims involving Kolta, it does not provide an exact amount for all the customers. Eleven of the 16 customers named in the Complaint received settlements with National totaling approximately \$1,826,638, as follows: SK (\$625,360) (CX-4a, at 102-05; CX-412); FB (\$88,000) (CX-4a, at 24-27; CX-406); SS (\$27,500) (CX-4a, at 41-43; CX-405); PV (\$25,000) (CX-4a, at 34-39; CX-406); RS (\$7,500) (CX-4a, at 139-42; CX-407). SHS and his wife SWS, with their daughter JWN and her husband JHN,

C. Kolta Falsified Customer Account Records and Investment Documents and Caused National's Books and Records To Be Inaccurate and False

1. National's Concentration Policy

During the period that Kolta recommended the ARC New York REIT to his customers, Jonathan Tortorici, an operations specialist, oversaw the processing of customer applications to invest in alternative products, including REITs.⁸⁷ Tortorici testified at the hearing that National had an alternative investments concentration policy—known as the “10/20/30” policy, or rule—that applied to the sales of non-traded REITs.⁸⁸ The policy prohibited the Firm's registered representatives from recommending a non-traded REIT, or other alternative investment, that caused more than 10 percent of a customer's investable or liquid assets to be invested in a single non-traded REIT (or other alternative investment).⁸⁹

The 10/20/30 policy also prohibited recommendations that caused more than 20 percent of a customer's investable or liquid assets to be in any alternative investment product asset class (including non-traded REITs).⁹⁰ Finally, it also prohibited placing 30 percent of a customer's investable or liquid assets in alternative investments generally.⁹¹

This policy was in place throughout the period that Kolta recommended the ARC New York REIT to his customers.⁹² And Kolta knew about the 10/20/30 policy.⁹³ He acknowledged it when Tortorici brought to Kolta's attention that a recommendation to a customer to invest in the ARC New York REIT violated the policy—usually because the investment exceeded 10 percent of the customer's liquid net worth as reported in the Firm's customer records.⁹⁴ Kolta never

together filed an arbitration claim against National that they settled for \$564,039. CX-4a, at 94-97; CX-408. JK testified she settled her claims for \$359,239. Tr. 419. TS testified that he settled with National for approximately \$130,000. Tr. 291.

Five of the 16 customers (JAK, EC, JN, BN, and MF) filed arbitration claims with other claimants whose investments with Kolta are not at issue in this proceeding. The claimants entered into group settlements with National, so their individual settlement amounts are not discernable from the record. *See* CX-4a, at 61-63; CX-409 (showing a \$2,529,165 settlement with EC, JAK, JN, and BN and another five Kolta customers whose investments are not at issue in this proceeding); CX-4a, at 98-101; CX-410 (showing a \$763,505 settlement with MF and another four Kolta customers whose investments are not at issue).

⁸⁷ Tr. 116-17; CX-7, at 4-5.

⁸⁸ Tr. 123.

⁸⁹ Tr. 128-29.

⁹⁰ Tr. 129-30.

⁹¹ Tr. 130-31.

⁹² Tr. 135.

⁹³ Tr. 180-81, 183-84, 344-45.

⁹⁴ *See, e.g.*, Tr. 168; CX-282 (Kolta telling Tortorici in June 2014 that he would be more careful after being informed that FB's proposed investment in the ARC New York REIT would exceed the Firm's 20 percent policy).

questioned the existence of the policy.⁹⁵ In late 2015, the 10/20/30 policy was formally incorporated into National’s written supervisory procedures.⁹⁶

2. National’s Procedures for Reviewing Customer Investments in the ARC New York REIT

When a customer decided to invest in an alternative product, including the ARC New York REIT, National required that a packet of documents (the REIT “investment documents”) be completed before the Firm would approve the purchase. The investment documents included suitability-related information about a customer’s investment profile—the person’s age, income, net worth, investable or liquid assets (referred to variously in the investment documents as “investable assets,”⁹⁷ “liquid assets,”⁹⁸ or “investable/liquid net worth”⁹⁹), investment objectives, and risk tolerances. Two forms that were part of the REIT investment documents were titled the “Direct Business Application” and the “Direct Business Transmittal Form.”¹⁰⁰ These forms required customers to provide information about their finances and investment objectives to help ensure that the product was a suitable investment.¹⁰¹

It was Firm policy to review the REIT investment documents that a registered representative submitted on behalf of a customer to determine whether the investment complied with (1) National’s non-traded REIT concentration policy (the 10/20/30 policy),¹⁰² (2) state laws regulating the purchase of non-traded REITs,¹⁰³ and (3) FINRA’s suitability rule.¹⁰⁴

In addition to the REIT investment documents, National required that a customer complete account records, including the new account application form, that provided the customer’s date of birth, annual income, net worth (excluding the value of the primary residence), investable or liquid assets, assets held at other financial institutions, investment

⁹⁵ Tr. 184.

⁹⁶ Tr. 134-35; CX-418, at 193.

⁹⁷ *See, e.g.*, CX-18, at 1; CX-42, at 1.

⁹⁸ *See, e.g.*, CX-18, at 3; CX-42, at 3.

⁹⁹ *See, e.g.*, CX-102, at 1 (JK’s investment documents); CX-139, at 1 (RS’s investment documents). *See also* CX-232, at 6.

¹⁰⁰ Tr. 120.

¹⁰¹ Tr. 119-20. *See, e.g.*, CX-42, at 1, 3 (Direct Business Application and Direct Business Order Transmittal Form for Customer MF). A non-traded REIT, like the ARC New York REIT, was considered an alternative investment product by National. Tr. 128.

¹⁰² Tr. 132-33; CX-233, at 1.

¹⁰³ Tr. 126-27, 168, 181-82. *See, e.g.*, CX-281; CX-314.

¹⁰⁴ Tr. 132, 136. Between 2013 and 2015, non-traded REITs were the most common alternative investment recommended by National’s brokers. Tr. 117-19.

objectives, and risk tolerance.¹⁰⁵ If information about a customer changed, National required the registered representative to file an update with the Firm.¹⁰⁶

Tortorici testified that a customer's liquid net worth was the most important information in determining whether the product and investment amount was appropriate. But he also reviewed the customer's income, net worth, and age.¹⁰⁷ If a customer was over 60 years old, Tortorici testified, a principal would have to perform an additional review to determine whether more information about the client's situation was needed before approving the purchase.¹⁰⁸

On occasion, Tortorici concluded that a customer's proposed investment in the ARC New York REIT violated the 10/20/30 policy. When this happened, he informed the broker that the customer's investment documents were "not in good order," or "NIGO," and the broker would have to supply new financial information about the customer before Tortorici passed the application on to a principal for final review and approval.¹⁰⁹

The evidence presented at the hearing showed that Tortorici (or a colleague on his behalf) frequently alerted Kolta that his recommendation to certain customers to invest in the ARC New York REIT violated the 10/20/30 policy.¹¹⁰ When this occurred, Kolta would revise, or update, the customer's account forms or the REIT investment documents, or both, increasing the amount of the customer's net worth and investable liquid assets reflected on the documents.¹¹¹

Tortorici also reviewed how much money the customer already had invested in other alternative investments. The broker was supposed to complete and submit a worksheet with this information together with the investment documents.¹¹² If a broker did not submit the worksheet, the investment application would be flagged or rejected as NIGO.¹¹³

¹⁰⁵ See, e.g., CX-91 (brokerage account application for JK's individual account); CX-148 (application for SS's traditional IRA).

¹⁰⁶ See, e.g., CX-14 (update to brokerage account application for customer FB that Kolta caused to be filed with the Firm reflecting falsified information); CX-138 (update to brokerage account application for customer RS's individual account that Kolta caused to be filed with the Firm reflecting falsified information).

¹⁰⁷ Tr. 123-25.

¹⁰⁸ Tr. 180.

¹⁰⁹ Tr. 143-44.

¹¹⁰ See, e.g., Tr. 158-62, 166-67; CX-282, at 2 (concerning FB's investment in the ARC New York REIT); CX-321 (concerning SK's investment in the ARC New York REIT).

¹¹¹ See, e.g., CX-279; CX-286.

¹¹² Tr. 124; CX-232, at 5. See also, e.g., CX-103, at 2 ("Existing Alternative Investment Worksheet" for customer JK).

¹¹³ See Tr. 166-67; CX-321 (email from Tortorici to Kolta stating that he had not filled out the worksheets showing other alternative investments then held by SK and two other customers).

Once a broker submitted a completed package of REIT investment documents to Tortorici, he forwarded the materials to a Firm principal who was responsible for giving the final approval for the REIT sale to the customer.¹¹⁴

3. Kolta Causes Revisions Falsifying Customer Account Records and REIT Investment Documents

Some of the 16 customers followed Kolta from his prior firms to National when he joined the firm in September 2013. In some instances, Kolta did not wait until a customer agreed to purchase shares of the ARC New York REIT before he placed false information in their account documents. In some cases, he inflated the financial figures in the customer's new account forms. For example, Kolta falsified MF's October 2013 new account forms by misstating her net worth as \$2 million and investable assets as \$1.75 million, when her true net worth was in fact about \$500,000.¹¹⁵ MF later invested \$400,000 in the ARC New York REIT.¹¹⁶ Similarly, Kolta changed SK's September 2013 new account forms for an individual account and an individual retirement account ("IRA") to falsely state that his income was \$100,000, his net worth was \$2 million, and he had investable assets of \$1 million, when his actual net worth was about \$1 million.¹¹⁷ SK later invested \$712,500 in the ARC New York REIT.¹¹⁸

Kolta also falsified customer documents to facilitate their purchases of REITs other than the ARC New York REIT—specifically, the American Realty Capital Global Trust, Inc. ("ARC Global REIT") and the American Realty Capital New York Recovery REIT, Inc. ("ARC Recovery REIT"). Five customers purchased these two REITs in late 2013 or early 2014 before investing in the ARC New York REIT.¹¹⁹

When the Firm rejected REIT purchases by Kolta's customers because the supporting paperwork was inconsistent or incomplete or because the recommended purchases violated National's concentration policy, Kolta repeatedly altered the customers' account records and their REIT investment documents. These revisions falsely inflated the customers' financial information, including their investment objectives and risk tolerance.

Jennifer Stoehrer witnessed Kolta's questionable practices. She was Kolta's sales assistant at National from the time he joined the Firm in September 2013 until he left National.¹²⁰ Stoehrer testified that Kolta instructed her on multiple occasions to update a customer's new account form or REIT investment documents to reflect an improved financial

¹¹⁴ Tr. 118.

¹¹⁵ CX-40, at 2-3; CX-431, at 1.

¹¹⁶ CX-2, at 2.

¹¹⁷ CX-49, at 3-4; CX-53, at 2-3; CX-433, at 2-4.

¹¹⁸ CX-2, at 2.

¹¹⁹ See CX-1, at 1, 4, 7, 10, 13; CX-16, at 14; CX-75, at 15.

¹²⁰ Tr. 305; CX-6, at 6.

condition—including income, net worth, and liquid assets.¹²¹ Stoehrer did what Kolta asked without independently confirming the figures Kolta gave her, for example, by contacting the customers.¹²²

D. Kolta Recommended the ARC New York REIT to 16 Customers

1. The Four Testifying Customers (PV, SS, TS, and JK)

Of the 16 customers named in the Complaint, four—PV, SS, TS, and JK—testified at the hearing. The Hearing Panel found the customers’ detailed testimony about their dealings with Kolta and their investments in the ARC New York REIT to be reliable and credible and supported by documentary evidence.

a. PV

PV met Kolta when her former employer invited Chase representatives to explain the services Chase offered.¹²³ On Kolta’s recommendation, PV opened a securities account at Chase.¹²⁴ She followed Kolta when he left Chase in 2011 and moved to Cetera.¹²⁵

In August 2012, PV signed a new account form in connection with opening an IRA at Cetera.¹²⁶ PV testified that Kolta would have her sign blank forms and told her “not to worry,” that she “could trust him.”¹²⁷ PV testified that none of the handwriting on the new client account form was hers.¹²⁸ The form incorrectly stated that she had 25 years of experience investing in stocks, bonds, and mutual funds, which she disputed.¹²⁹ PV disputed that she had ten years of experience investing in REITs, as the form reflected.¹³⁰ PV also testified that she still did not know what a REIT was.¹³¹

PV’s Cetera new account form also recorded that her income in 2012 was between \$100,000 and \$149,999, her net worth (excluding her primary residence) was between \$1 million

¹²¹ Tr. 348-49.

¹²² Tr. 337-38.

¹²³ Tr. 37.

¹²⁴ Tr. 37, 73.

¹²⁵ Tr. 37-38.

¹²⁶ CX-189.

¹²⁷ Tr. 38-39, 43.

¹²⁸ Tr. 38-39.

¹²⁹ Tr. 39-40; CX-189, at 4.

¹³⁰ Tr. 40.

¹³¹ Tr. 39-40; CX-189, at 4.

and \$2,999,999, and her liquid net worth was between \$500,000 and \$999,999.¹³² When shown these entries, PV testified they were false—that instead her income in 2012 was about \$75,000 and her net worth, excluding her primary residence, was “closer to \$500,000. It was never a million.”¹³³

When Kolta moved from Cetera to National, PV transferred her two securities accounts to the new firm.¹³⁴ She was 66 years old when she opened an individual account and an IRA at National in October 2013.¹³⁵ At the time, she worked as an administrative assistant in a large New York City law firm. However, sometime in 2014, before making her first investment in the ARC New York REIT, PV suffered a head injury and never returned to work.¹³⁶ Kolta knew about her injury.¹³⁷

Kolta again had PV sign blank new account forms, telling her that his assistant would fill in the information. Kolta would attach a “sign here” sticker to blank forms indicating where PV should sign.¹³⁸ When PV told Kolta she did not like signing blank forms, he told her not to worry, that she “had to trust him. It was just nothing. [Kolta said] [t]hey’re just forms and to sign it. And I did. I trusted him.”¹³⁹

Kolta caused PV’s October 2013 new account forms for her two accounts to state that her net worth was \$2 million, and her investable assets were \$1 million.¹⁴⁰ PV testified that she did not write these figures on the forms, and they were false.¹⁴¹ PV described her actual investment objectives at the time as “capital preservation” and she wanted to be “conservative” with her investments given her age.¹⁴²

When Kolta submitted PV’s investment documents for a purchase in an affiliated REIT (a \$31,250 investment in the ARC Global REIT), in March 2014, Tortorici emailed him that the amount listed for PV’s investable assets did not match what the Firm had on record.¹⁴³ Kolta

¹³² CX-189, at 4.

¹³³ Tr. 42. In July 2012, PV purchased \$100,000 in shares of a non-traded REIT for her Cetera IRA. *See* CX-189, at 7-13; CX-207, at 5.

¹³⁴ Tr. 42-43.

¹³⁵ Tr. 35; CX-1, at 10; CX-190; CX-195. In November 2014, PV opened a third account but never funded it. CX-1, at 10; CX-199.

¹³⁶ Tr. 36-37, 65-68.

¹³⁷ Tr. 36-37, 65.

¹³⁸ Tr. 45. *See, e.g.*, CX-195, at 6.

¹³⁹ Tr. 43.

¹⁴⁰ CX-1, at 10; CX-190, at 2-3; CX-195, at 2.

¹⁴¹ Tr. 47-48.

¹⁴² Tr. 41.

¹⁴³ Tr. 154; CX-286, at 4.

then instructed his assistant Stoehrer to change PV's account records and REIT investment documents to misrepresent that she had investable assets of \$2 million¹⁴⁴ (as also stated in other documents revised later in June 2014¹⁴⁵). PV testified that she did not write this amount on the forms.¹⁴⁶

In December 2014, PV received a form letter from National asking her to confirm the financial information the Firm then had on file for her, which reflected an income of \$250,000, estimate net worth of \$4.5 million and investable assets of \$4.1 million.¹⁴⁷ PV emailed Kolta about the letter. She asked, "Unless you made me some incredible investment ... what are these \$? Can I buy my penthouse condo in Florida?"¹⁴⁸ Kolta responded, "Lol will go over all your assets with you call me tomorrow or tonight"¹⁴⁹ According to PV, Kolta never discussed National's letter with her. He told her, "Don't worry about it. I'll take care of it. It's something — [but] it must be a mistake."¹⁵⁰

In February 2015, Kolta altered PV's account records to state that her income was \$250,000, her net worth was \$7.5 million, and her investable/liquid assets were \$7 million.¹⁵¹ PV testified that these figures were "[t]otally -- totally false."¹⁵² By 2015, PV was on disability and her income was less than \$90,000, after including social security benefits and distributions from a pension or annuity, as set forth in PV's 2015 federal income tax return.¹⁵³

Between June 2014 and March 2015, based on Kolta's recommendations,¹⁵⁴ PV made three investments totaling \$316,750 in the ARC New York REIT.¹⁵⁵ PV said that Kolta never discussed the risks of investing in a REIT.¹⁵⁶ "His only explanation for the investment was that it

¹⁴⁴ Tr. 333-34; CX-1, at 10; CX-197, at 5-6; CX-200, at 1, 3; CX-286, at 4.

¹⁴⁵ CX-194, at 4-5, 10; CX-198, at 5-6; CX-202, at 1, 3; CX-203, at 1, 3.

¹⁴⁶ Tr. 50-51.

¹⁴⁷ Tr. 48, 54-55; CX-333, at 2.

¹⁴⁸ CX-333, at 2.

¹⁴⁹ CX-333, at 1.

¹⁵⁰ Tr. 55.

¹⁵¹ CX-192, at 4-5.

¹⁵² Tr. 53.

¹⁵³ CX-210, at 1. Under questioning by Enforcement, PV testified that her income was between about \$12,000 and \$15,000 in 2015, which is an accurate estimate if her social security benefits and pension and annuity distributions are excluded. Tr. 52; CX-210, at 1.

¹⁵⁴ Tr. 56.

¹⁵⁵ CX-2, at 2.

¹⁵⁶ Tr. 56-57.

was a good investment, and I would make a lot of money,” PV testified.¹⁵⁷ Kolta told her he invested in the ARC New York REIT himself and so did his mother.¹⁵⁸

In May 2015, three months after PV made her last investment in the ARC New York REIT, she emailed Kolta that she was not happy with it.¹⁵⁹ Although he asked her to call him to discuss her concerns, PV testified that she did not recall speaking to Kolta about her issue. When she tried calling Kolta, he was not available.¹⁶⁰ PV reminded Kolta in an email that she had been out of work for nearly a year, and she was concerned about her investments.¹⁶¹ Kolta told PV that “[s]kittish [persons] never do well,” and “[I] know more of what is going on. And if it does not feel comfortable for you to follow the leader which you have never failed with, you need to work with one you do feel that way with.”¹⁶²

By purchasing \$316,750 in shares of the ARC New York REIT, PV had over 60 percent of her net worth (of approximately \$500,000) concentrated in a non-traded REIT.

b. SS

SS was 62 years old and retired when she opened an IRA at National in November 2013.¹⁶³ SS has a graduate degree in international banking and economics.¹⁶⁴ She worked for the New York City Transit Authority for more than 20 years before retiring in 2010.¹⁶⁵

Like some of the other customers identified in the Complaint, SS met Kolta when he worked at Chase. She followed Kolta when he moved to Cetera, where she made her first investment in a REIT on Kolta’s recommendation.¹⁶⁶ SS then moved her IRA to National when Kolta became associated with the Firm.¹⁶⁷

Kolta’s practice was to have SS sign blank forms, telling her “not to worry” and that his assistant would complete the forms.¹⁶⁸ SS’s November 2013 customer new account form reflected that her income was \$250,000, her net worth was \$2 million, and her assets held at

¹⁵⁷ Tr. 57.

¹⁵⁸ Tr. 57.

¹⁵⁹ CX-356, at 2-3.

¹⁶⁰ Tr. 64.

¹⁶¹ Tr. 65; CX-356, at 2.

¹⁶² CX-356, at 1-2.

¹⁶³ Tr. 78; CX-148, at 1, 6.

¹⁶⁴ Tr. 78.

¹⁶⁵ Tr. 78-79.

¹⁶⁶ Tr. 79-81.

¹⁶⁷ Tr. 80-81.

¹⁶⁸ Tr. 81, 94.

other brokerage firms were \$1 million.¹⁶⁹ SS testified that these figures were incorrect—her income at the time was about \$100,000, and she never earned \$250,000 in income in her life.¹⁷⁰ She also stated that her net worth at the time was about \$500,000, and that the written entry stating that it was \$2 million was not accurate and was not in her handwriting.¹⁷¹

In June 2014, in connection with his recommendation to SS to purchase shares of the ARC New York REIT, Kolta caused SS's account records to be revised and her REIT investment documents to state that she had investable assets and assets held away at other financial institutions other than National of \$2 million.¹⁷² Kolta also falsified SS's REIT investment documents to state that her primary investment objective was "speculation" followed by "capital appreciation," while her risk tolerance was "moderately aggressive."¹⁷³ SS testified that at Kolta's request she had signed blank forms that he said would later be filled in by his assistant.¹⁷⁴ In June 2014, SS made her sole investment in the amount of \$83,120 in the ARC New York REIT.¹⁷⁵

In late June 2014, apparently triggered by Kolta's falsifications of SS's account records, National sent SS a form letter entitled "Notice of Change(s) to Your Account" asking her to confirm the changes in her financial information.¹⁷⁶ The letter read, "We recently received a request to update information on your account. The change(s) you requested is highlighted below."¹⁷⁷ SS marked up the letter with handwritten notations reflecting her true financial information and sent it back to National with instructions to correct her account profile.¹⁷⁸ She corrected the figures to reflect that her actual income was \$100,000, not \$250,000, as Kolta had caused the revision to state; lowered her estimated net worth to \$1 million from \$2 million; and slashed the stated investable/liquid assets from \$2 million to the real amount, \$200,000.¹⁷⁹

SS also replaced the false investment purpose description of "market speculation" with "capital appreciation." She crossed out the word "good" that purportedly described her experience level with various investment products—such as options, variable contracts, futures, alternative investments, and margin trading—and wrote "no exp" (meaning no experience) because she had no experience with these sorts of investment products and had "no idea what

¹⁶⁹ CX-148, at 3-4.

¹⁷⁰ Tr. 83.

¹⁷¹ Tr. 83-84.

¹⁷² CX-1, at 11; CX-149, at 5-6; CX-153, at 3-4.

¹⁷³ CX-153, at 3.

¹⁷⁴ Tr. 94-96, 99.

¹⁷⁵ CX-1, at 11; CX-2, at 2; CX-153.

¹⁷⁶ CX-157, at 1.

¹⁷⁷ Tr. 85; CX-157, at 1.

¹⁷⁸ Tr. 87-88; CX-156, at 4.

¹⁷⁹ CX-156, at 1, 3.

they were.”¹⁸⁰ In July 2014, National sent SS a letter notifying her that her account had been revised as she had requested.¹⁸¹

In September 2014, Kolta again altered SS’s IRA account forms to falsely reflect that she had a net worth of \$2 million. SS testified that she has never had \$2 million in net worth.¹⁸² Remarkably, in early September 2014, National sent SS another letter notifying her of the changes to her financial profile.¹⁸³ Based on Kolta’s falsifications, the Firm had increased SS’s net worth from \$1 million to \$2 million and her liquid assets from \$200,000 to \$1.8 million.¹⁸⁴

SS testified that Kolta did not warn her of the risks of investing in a REIT.¹⁸⁵ He told her instead that the ARC New York REIT was “a very good investment and it pays good interest until you sell it.”¹⁸⁶ He told SS the REIT would provide her returns of 7 percent.¹⁸⁷

SS’s \$83,120 investment in the ARC New York REIT concentrated more than 40 percent of her \$200,000 in investable assets in one non-traded REIT. In addition, SS already held shares in another non-traded REIT in her IRA, which was, according to her account statements, then valued at \$20,000.¹⁸⁸ The two REIT investments resulted in SS having more than 50 percent of her investable assets in shares of non-traded REITs.

c. TS

TS, a sales engineer at a technology company, was a California resident and 43 years old when he opened an individual account at National in September 2013.¹⁸⁹ Chase’s bank affiliate introduced TS to Kolta in 2003 or 2004 when TS was living in New York.¹⁹⁰ TS followed Kolta to Cetera and then to National.¹⁹¹

When TS opened his account at National, in 2013, his new account forms correctly reflected that his income was about \$250,000, his net worth was \$1 million, and his investable

¹⁸⁰ Tr. 90; CX-156, at 3.

¹⁸¹ Tr. 548-49; CX-158.

¹⁸² Tr. 96, 98; CX-150, at 5-6.

¹⁸³ CX-159.

¹⁸⁴ Tr. 549-50; CX-159.

¹⁸⁵ Tr. 99.

¹⁸⁶ Tr. 99-100.

¹⁸⁷ Tr. 99. SS testified that she did not receive a prospectus for the ARC New York REIT. Tr. 100.

¹⁸⁸ CX-162, at 58.

¹⁸⁹ Tr. 252; CX-180, at 1, 7.

¹⁹⁰ Tr. 253.

¹⁹¹ Tr. 253-57. During the period that TS held an account at Cetera, on Kolta’s recommendation, TS invested in an affiliated REIT, the ARC Recovery REIT. Tr. 256; CX-188, at 3.

assets were about \$500,000.¹⁹² Kolta, however, changed the description of TS’s investment purpose to “market speculation,” and his primary investment objective to “speculation.” In fact, TS testified, his primary investment purpose was to “accumulate wealth” and his investment objective was capital appreciation.¹⁹³ Kolta also caused TS’s new account form to falsely state that he had extensive experience in all types of investment products and would make over 15 transactions per year in each investment category.¹⁹⁴

TS made two investments in the ARC New York REIT—in July 2014 for \$102,600 and in July 2015 for \$104,131.¹⁹⁵ TS testified that Kolta recommended the REIT because a prior affiliated REIT had performed well.¹⁹⁶ Kolta did not discuss with TS the risks of investing in the ARC New York REIT.¹⁹⁷ Kolta recommended that TS sell the REIT he held to get the proceeds to invest in the ARC New York REIT.¹⁹⁸ In February 2014, however, TS had purchased a home in California, which Kolta knew about, reducing his total liquid net worth and total liquid assets. TS estimated that immediately after the home purchase, he had approximately \$100,000 in liquid assets.¹⁹⁹

In late June 2014, Kolta sent TS blank ARC New York REIT investment documents for him to sign.²⁰⁰ TS testified that it was common for Kolta to send him blank forms to sign, with instructions where to sign.²⁰¹ In connection with the July 2014 purchase of shares in the ARC New York REIT, Kolta changed TS’s customer account forms and investment documents to falsely state that his income was now \$1 million and both his net worth (excluding his residence) and investable assets were \$5 million.²⁰² TS testified that actually his income at the time was still \$250,000, his net worth was \$500,000 “at the most,” and his investable assets were around \$150,000.²⁰³ Kolta also falsified TS’s investment documents to represent that his investment

¹⁹² Tr. 259; CX-180, at 2.

¹⁹³ Tr. 260-61; CX-180, at 3.

¹⁹⁴ Tr. 261-62.

¹⁹⁵ CX-1, at 12; CX-2, at 2.

¹⁹⁶ Tr. 265-66.

¹⁹⁷ Tr. 267-68, 283-84.

¹⁹⁸ Tr. 265-66.

¹⁹⁹ Tr. 266-68.

²⁰⁰ Tr. 271; CX-317.

²⁰¹ Tr. 271-72, 277, 285-86.

²⁰² CX-182, at 4-5, 10; CX-183, at 1, 5.

²⁰³ Tr. 272-75, 278-79; CX-182, at 4; CX-183, at 1, 5.

objective and investment purpose was “speculation.”²⁰⁴ TS testified that none of the handwriting on the investment documents was his.²⁰⁵

Kolta also recommended TS’s second investment in the ARC New York REIT, in July 2015, for \$104,131.²⁰⁶ In late June 2015, Kolta emailed TS blank REIT investment documents for him to sign, which TS did.²⁰⁷ Kolta again falsified the REIT investment documents to represent that TS’s income was \$1 million, and his net worth and investable liquid assets were both \$5 million.²⁰⁸

TS’s two purchases of shares of the ARC New York REIT totaling \$206,731 caused him to concentrate about 40 percent of his net worth (of \$500,000) in the REIT. According to the prospectus, as a California investor, TS’s maximum investment in the REIT should have been “limited to 10% of his ... net worth (exclusive of home, home furnishings and automobile).”²⁰⁹ Accordingly, Kolta’s recommendations to purchase \$206,731 in the ARC New York REIT violated California’s concentration limits for non-traded REIT shares sold to state residents.

d. JK

Customer JK was 54 years old and married in October 2013 when she opened two accounts for herself at National—an individual account and a SEP-IRA.²¹⁰ She owned a small business designing and importing textiles from Latin America.²¹¹ JK met Kolta around 2008 through her bank, which had recommended him as an investment advisor.²¹² Before meeting Kolta, JK had never worked with an investment professional and had put her savings into certificates of deposit.²¹³ Between June 2014 and August 2015, based on Kolta’s

²⁰⁴ Tr. 276-77.

²⁰⁵ Tr. 273, 275-76.

²⁰⁶ Tr. 281-82, 298.

²⁰⁷ Tr. 284-85, 288; CX-359.

²⁰⁸ Tr. 288-90; CX-185, at 3, 5.

²⁰⁹ CX-421, at 3. TS’s two purchases of the ARC New York REIT made up more than 99% of the value of the holdings in his National securities account in July 2015. The only other holding in the account was approximately \$500 invested in a money market fund. Tr. 282-83; CX-188, at 197-203.

²¹⁰ CX-89, at 1, 3, 6; CX-91, at 1-2. JK and her husband kept their investments separate. Tr. 357. A SEP-IRA, or Simplified Employee Pension (SEP) plan, “provides business owners with a simplified method to contribute toward their employees’ retirement as well as their own retirement savings. Contributions are made to an Individual Retirement Account or Annuity (IRA) set up for each plan participant.” See <https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-seps>.

²¹¹ Tr. 355.

²¹² Tr. 355-56.

²¹³ Tr. 355-56.

recommendations,²¹⁴ JK made six purchases of shares in the ARC New York REIT totaling \$776,600—\$154,436 in her SEP-IRA and \$622,164 in her individual account.²¹⁵

JK told Kolta that she was not a risk taker, that she did not “need huge gains” and “definitely” did not want to lose her savings.²¹⁶ At the time she opened her account at National, JK had already invested in two non-traded REITs that Kolta had recommended while at Cetera. In October 2013, one of the REITs was valued at \$370,000 and the other was valued at less than \$164,000, according to JK’s account statements.²¹⁷

JK testified that Kolta had her sign blank forms, usually when she met with him at his office.²¹⁸ She signed them because she “trusted” Kolta.²¹⁹ Kolta falsified JK’s October 2013 new account forms for her individual account and a SEP-IRA to reflect that JK’s income was \$1 million, her assets held away were \$3 million, her primary investment objective was “speculation” and second was “capital appreciation,” and her risk tolerance was “moderately aggressive.”²²⁰ He also exaggerated her knowledge of a range of investment products, including alternative investments, options, futures, and margin, as “good.”²²¹

JK’s income was never \$1 million, she testified. In truth, during 2013 to 2015, JK made about \$250,000 per year.²²² She also testified that she did not have investable assets of \$3 million.²²³ JK also disputed that “speculation” was her investment objective, testifying that she would have marked “preservation of capital” first, and “income” second, as her objectives.²²⁴ JK also described her risk tolerance as “moderate” or “moderately conservative,” not “moderately aggressive,” as the new account forms inaccurately reflected.²²⁵

Kolta continued to make sure JK’s records contained false information after she opened her accounts. He did so in early 2014, when he recommended that JK invest in a different non-traded REIT offered by American Realty Capital—the ARC Global REIT. In the investment documents for two purchases of this REIT, Kolta inflated JK’s net worth. JK invested \$89,530 in

²¹⁴ See, e.g., Tr. 400-01, 409-10.

²¹⁵ CX-1, at 13; CX-2, at 3.

²¹⁶ Tr. 356-57.

²¹⁷ Tr. 361-62; CX-109, at 4.

²¹⁸ Tr. 385, 399, 408, 413, 416-18; CX-226.

²¹⁹ Tr. 367.

²²⁰ CX-89, at 3; CX-91, at 2-3.

²²¹ CX-89, at 4; CX-91, at 3.

²²² Tr. 365.

²²³ Tr. 366.

²²⁴ Tr. 369, 371.

²²⁵ Tr. 369, 372.

the ARC Global REIT in her SEP-IRA and \$120,000 in her individual account.²²⁶ The investment documents for the two purchases stated that JK's income was \$1 million and her net worth and investable assets were \$18 million.²²⁷ JK testified that her income was \$250,000, and she never had a net worth close to \$18 million.²²⁸ JK further testified that she was never shown the falsified account forms and REIT investment documents with their wildly exaggerated financial figures.²²⁹

To qualify JK to purchase the ARC Global REIT, in her customer account documents, Kolta misrepresented her income as \$1 million and her net worth and investable assets as \$18 million.²³⁰ After investing twice in the ARC Global REIT, JK made six investments between June 2014 and August 2015 in the ARC New York REIT that totaled \$776,600.²³¹ Kolta falsified investment documents for each of these six purchases repeating that JK had a net worth and investable assets of \$18 million.²³² According to JK, Kolta never discussed the risks of holding illiquid, non-traded REITs with her.²³³ Rather, he described the investments to JK as being "safe."²³⁴

Kolta's recommendations to invest \$776,600 in the ARC New York REIT caused JK to concentrate more than 60 percent of her investable assets (of \$1.25 million) in a single non-traded REIT. Additionally, because JK in August 2015 held shares of another non-traded REIT (the ARC Global REIT), valued at the time at over \$190,000,²³⁵ Kolta's recommendations to invest in the ARC New York REIT caused her to have more than 75 percent of her investable assets concentrated in non-traded REITs.²³⁶

²²⁶ CX-1, at 13; CX-108, at 47; CX-109, at 56.

²²⁷ CX-95, at 7-8; CX-96, at 1, 3.

²²⁸ Tr. 379-81, 398, 405.

²²⁹ Tr. 421, 426.

²³⁰ CX-90, at 5-6; CX-92, at 2-3. The updates to JK's account forms also falsely stated that she held \$18 million away from National. Tr. 387.

²³¹ JK made four investments in the ARC New York REIT for her individual account—\$124,500 in June 2014; \$277,500 in September 2014; \$91,550 in February 2015; and \$128,614 in August 2015—and two investments for her SEP-IRA—\$14,000 in February 2015 and \$140,436 in August 2015. CX-1, at 13; CX-2, at 3.

²³² CX-1, at 13; CX-90, at 5-6; CX-92, at 2-3; CX-95, at 7-8; CX-96, at 1, 3; CX-97, at 3-4; CX-99, at 1, 3; CX-100, at 1, 4; CX-101, at 1, 4; CX-102, at 1, 4; CX-103, at 1, 4.

²³³ Tr. 376-77, 397-98, 403.

²³⁴ Tr. 422.

²³⁵ CX-109, at 242-43.

²³⁶ Including three other illiquid alternative investments totaling nearly \$300,000 that JK held in her National account in August 2015, her REIT holdings caused JK to have more than 80% of her investable assets to be concentrated in alternative investments. *See* Tr. 402-03; CX-103, at 2; CX-109, at 218-19, 242-43.

2. The 12 Non-Testifying Customers

Concerning the remaining 12 customers who did not testify at the hearing, Enforcement relied on memoranda of telephone interviews (“MOI”) of the customers that its investigative staff (“Staff”) prepared. The MOIs were admitted into evidence at the hearing.²³⁷ Enforcement’s investigator testified about what Enforcement believed was the most relevant customer statements in the various MOIs and the customers’ falsified new account forms and investment documents. The Hearing Panel found that the customers’ statements about their investments in the ARC New York REIT, as recorded by the Staff in the MOIs, were credible and consistent.

a. FB

FB was 65 years old and employed in the tourism industry when she opened an account at National in September 2013.²³⁸ She invested \$140,000 in the ARC New York REIT in 2014.²³⁹ Enforcement Staff interviewed FB in June 2022 and prepared an MOI of the conversation.²⁴⁰

FB met Kolta when he worked at Chase. FB had received about \$320,000 from the German government as a settlement for the seizure of assets from her parents during World War II.²⁴¹ When she went to her bank to invest the money, the bank introduced her to Kolta, whom she initially trusted, she told the Staff.²⁴² He repeatedly assured FB that he would treat her the same way he treated his parents.²⁴³

In 2013 and 2014, according to FB’s federal tax returns, her income (excluding adjustments) was approximately \$30,000 and \$39,000, respectively.²⁴⁴ She had a net worth and investable assets of less than \$400,000, consisting of the payment from Germany and a savings account with a balance of \$30,000 to \$50,000.²⁴⁵

²³⁷ See CX-428; CX-430; CX-431; CX-432; CX-433; CX-434; CX-436; CX-437; CX-439; CX-441; CX-443; CX-445; CX-450. The Staff interviewed some of the non-testifying customers more than once. Three of the 12 non-testifying customers (SWS, JHN, JN) were not interviewed, but the Staff interviewed their spouses (SHS, JWN, BN), who addressed the couple’s investments in the ARC New York REIT. See CX-439; CX-441; CX-445. Customer MF died in 2021 after she was interviewed by the Staff in 2018. See Tr. 446-47; CX-430; CX-431; CX-432.

²³⁸ CX-13, at 1, 7.

²³⁹ CX-1, at 4; CX-2, at 2.

²⁴⁰ CX-450.

²⁴¹ CX-450, at 2.

²⁴² CX-450, at 2.

²⁴³ CX-450, at 2.

²⁴⁴ CX-23, at 24, 37. FB’s income in 2015 was less than \$15,000, according to her federal tax return. CX-23, at 84.

²⁴⁵ CX-450, at 2, 5.

When FB opened her account at National in September 2013, in her new account form, Kolta misrepresented her income as \$100,000, her net worth as \$1 million, her investable assets and assets held away from the Firm as totaling \$500,000, her investment objectives as “speculation” and “capital appreciation,” and her risk tolerance as “moderately aggressive.”²⁴⁶ FB declared that the information on the account application form was “all wrong.”²⁴⁷ She told the Staff that she wanted no investment risk.²⁴⁸ FB told the Staff that Kolta showed her only the document pages he wanted her to sign, telling her not to worry, that he would complete the forms later.²⁴⁹ According to FB, Kolta never explained the risks of investing in a REIT and did not inform her that it was not possible to immediately sell it if she had to.²⁵⁰

In June 2014, based on Kolta’s recommendation, FB purchased \$100,000 in shares of the ARC New York REIT and another \$40,000 in September 2014.²⁵¹ In June 2014, Tortorici emailed Kolta that he had rejected FB’s proposed investment because it would exceed National’s policy prohibiting customers from owning more than 20 percent in alternative investments because she already owned more than \$110,000 in another REIT.²⁵² A day later, Kolta had Stoehrer submit overstated financials for FB,²⁵³ and Kolta responded to Tortorici via email that he was “sorry for the error” and would be “more careful” in the future.²⁵⁴

Based on the figures Kolta provided, Stoehrer sent Tortorici backdated investment documents for FB’s \$100,000 ARC New York REIT purchase that falsely stated she had a net worth of \$2 million and investable assets of \$1.5 million.²⁵⁵ In connection with FB’s purchases, Kolta falsified her account records and REIT investment documents to represent that she had a net worth of \$2 million and investable/liquid assets of \$1.5 million.²⁵⁶ Kolta made changes to FB’s account documents which triggered a form letter from National in June 2014 to notify FB of the changes. FB said she never received the letter but if she had she would have closed her account with Kolta.²⁵⁷ FB told the Staff that she was never informed that Kolta or the Firm was misrepresenting her financial information for the purposes of qualifying her for the REIT

²⁴⁶ CX-13, at 2-3.

²⁴⁷ CX-450, at 5.

²⁴⁸ CX-450, at 5.

²⁴⁹ CX-450, at 5.

²⁵⁰ CX-450, at 6.

²⁵¹ CX-1, at 4; CX-2, at 2.

²⁵² Tr. 157-59; CX-282, at 2.

²⁵³ Tr. 159-60; CX-282, at 2.

²⁵⁴ CX-282, at 1.

²⁵⁵ Tr. 164-65, 332-34; CX-283. According to Stoehrer, Kolta had her update FB’s financial information on her account forms and the REIT investment documents after FB had signed blank forms. Tr. 333-34.

²⁵⁶ CX-14, at 4-5; CX-17, at 1, 3.

²⁵⁷ CX-450, at 6; CX-451, at 103.

investment.²⁵⁸ Kolta's revisions to FB's account documents also described FB's risk tolerance as "aggressive," her investment objectives as "speculation" and "capital appreciation," and her knowledge of all investment products as "good." FB said all this information was incorrect.²⁵⁹

Kolta's recommendations concentrated about 30 percent of FB's net worth and investable assets (of approximately \$500,000) in the ARC New York REIT.²⁶⁰

b. JAK

Customer JAK was a sales manager at Kmart from 1993 until he retired in 2019.²⁶¹ He was 72 years old in October 2013 when he opened an individual account at National.²⁶² Between June 2014 and August 2015, JAK made four investments in the ARC New York REIT totaling \$623,625.²⁶³

The Staff interviewed JAK twice, in July 2018 and September 2021, and prepared MOIs of each conversation.²⁶⁴ JAK met Kolta in 2011 when he worked at Chase. JAK told the Staff that he relied on Kolta for all recommendations because he had no investing experience.²⁶⁵ He never questioned or opposed Kolta's recommendations, and Kolta never detailed any risks associated with the investments JAK made, including the ARC New York REIT.²⁶⁶ Kolta told JAK that the REIT was a good investment for him and would provide a steady income.²⁶⁷

JAK always signed documents at Kolta's office. It was typical practice for Kolta to have a stack of prepared documents and show JAK where he had to sign.²⁶⁸ JAK never scrutinized the documents he signed.²⁶⁹ JAK told the Staff that one time he was in Kolta's office he saw a

²⁵⁸ CX-450, at 5.

²⁵⁹ CX-14, at 5; CX-450, at 5-6; CX-451, at 93.

²⁶⁰ Because FB already held illiquid shares in another non-traded REIT, valued at \$116,460 in September 2014, Kolta's recommendation to invest \$140,000 in the ARC New York REIT caused FB to have more than 60 percent of her net worth and investable assets concentrated in non-traded REITs at National. CX-21, at 103.

²⁶¹ CX-437, at 1.

²⁶² CX-437, at 1.

²⁶³ CX-1, at 1; CX-2, at 2.

²⁶⁴ CX-436; CX-437.

²⁶⁵ CX-436, at 1; CX-437, at 1.

²⁶⁶ CX-437, at 1-2.

²⁶⁷ CX-437, at 2.

²⁶⁸ CX-437, at 1.

²⁶⁹ CX-437, at 1-2.

document with his name on it that included inflated financials. When he told Kolta the numbers were too high, Kolta responded that he would take care of it.²⁷⁰

From 2013 to 2015, JAK had an annual income of about \$65,000 and a net worth and investable assets of about \$1.25 million.²⁷¹ During this period, his investment objective was to preserve capital while seeking moderate growth and income. JAK had a moderate to conservative risk tolerance.²⁷² Based on Kolta's recommendations, JAK invested \$623,625 in the ARC New York REIT between June 2014 and August 2015.²⁷³

When JAK opened his account at National in October 2013, Kolta misrepresented JAK's income as \$100,000, his net worth and investable assets as \$1.5 million, his investment objectives as "speculation" and "capital appreciation," and his risk tolerance as "moderately aggressive."²⁷⁴ JAK told the Staff the financial figures were inflated and that, even though Kolta never asked what his investment objective was, in fact it was "preservation of capital."²⁷⁵ The forms also incorrectly described JAK's investment knowledge across a full range of investment products (including options, futures, alternative investments) as "extensive." JAK never had any conversations with Kolta about his investment knowledge.²⁷⁶

Kolta continued to misrepresent JAK's financial information after he opened his account at National in 2013. In June 2014 and October 2014, when JAK invested \$104,550 and \$229,875, respectively, in the ARC New York REIT based on Kolta's recommendations, Kolta revised his account records and the REIT investment documents to falsely state that JAK had income of \$100,000, a net worth of \$7.5 million, and investable/liquid assets of \$4.5 million.²⁷⁷

In early February 2015, Tortorici informed Kolta that a pending \$160,200 investment by JAK in the ARC New York REIT would exceed National's 20 percent policy.²⁷⁸ A few weeks later, Tortorici emailed Kolta again about JAK. He said that the net worth and investable assets

²⁷⁰ CX-437, at 2. JAK could not recall when this encounter occurred or what the document at issue was. CX-437, at 2.

²⁷¹ When JAK opened an account with Kolta at Chase in 2011, he reported that his estimated net worth was then between \$500,00 and \$999,999. CX-68, at 1; CX-436, at 1; CX-437, at 1. JAK's federal tax returns show that between 2013 and 2015 his income (including Social Security benefits and adjustments) was between \$63,907 and \$65,979. CX-85, at 28, 39, 53.

²⁷² CX-437, at 3.

²⁷³ CX-1, at 1; CX-2, at 2.

²⁷⁴ CX-70, at 2-3.

²⁷⁵ CX-437, at 3-4; CX-438, at 37-38.

²⁷⁶ CX-437, at 2; CX-438, at 37-38.

²⁷⁷ CX-73, at 2-3; CX-76, at 1, 3; CX-77, at 1, 3; CX-78, at 1, 3.

²⁷⁸ Tr. 168-69; CX-281.

figures on the investment documents associated with JAK's anticipated purchases of the REIT did not match what the Firm had on file for him.²⁷⁹

Consequently, Kolta again recorded false information for JAK. Based on Kolta's recommendations, JAK invested another \$160,200 in March 2015 and \$129,000 in August 2015 in the ARC New York REIT.²⁸⁰ In connection with the two purchases, and in response to Tortorici's emails, Kolta falsified JAK's account forms and REIT investment documents to reflect that JAK had a net worth of \$15 million and investable assets of \$10 million.²⁸¹

Because of Kolta's recommendations, JAK invested \$623,625 in the ARC New York REIT.²⁸² With his last investment of \$129,000, in August 2015, JAK had nearly half of his investable assets in shares of the ARC New York REIT.

c. EC

EC was 70 years old when he opened an IRA at National in October 2013.²⁸³ He later opened an individual account in June 2014.²⁸⁴ EC made two investments in the ARC New York REIT totaling \$440,000—\$400,000 in his individual account in July 2014 and \$40,000 in his IRA in August 2015.²⁸⁵

The Staff interviewed EC in September 2021 and prepared an MOI of the conversation.²⁸⁶ EC met Kolta in 2011 when he was registered with Chase.²⁸⁷ Before he retired in 2016, EC was an assistant comptroller for a music school.²⁸⁸ His income was about \$80,000

²⁷⁹ CX-279. Tortorici also instructed Kolta to have JAK sign new documents because portions of the customer forms contained white-out. National prohibited the use of white-out on customer forms. Tr. 171-73; CX-279. *See also* CX-351.

²⁸⁰ CX-2, at 2.

²⁸¹ CX-72, at 4-5; CX-79, at 1; CX-81, at 1.

²⁸² CX-1, at 1; CX-2, at 2.

²⁸³ CX-26, at 1. EC resided in New York when he opened his two accounts (*see* CX-26, at 1; CX-28, at 2), and when he made his first investment of \$400,000 in the ARC New York REIT in July 2014. CX-30, at 1, 3. By the time EC made his second investment of \$40,000 in August 2015, however, he was living in New Jersey, according to the REIT investment documents and his April 2015 National account statements. *See* CX-31 at 1, 5, 21, 24; CX-33, at 193; CX-34, at 79.

²⁸⁴ CX-28.

²⁸⁵ CX-1, at 2; CX-2, at 2; CX-33, at 159; CX-34, at 4.

²⁸⁶ CX-428.

²⁸⁷ CX-428, at 1. EC followed Kolta from Chase to Cetera and had invested approximately \$75,000 in another REIT at Cetera on Kolta's recommendation. CX-33, at 4; CX-428, at 3.

²⁸⁸ CX-428, at 1. EC told the Staff that he was not the "finance director" at the City University of New York, as Kolta wrote on his new account form. CX-428, at 2.

when he opened his IRA at National in 2013,²⁸⁹ and about \$109,000 in 2014.²⁹⁰ From 2013 to 2015, EC had a net worth and investable assets of \$500,000, which included an annuity valued at about \$40,000.²⁹¹ His investment objectives were income and capital preservation and he stated that he had a moderate risk tolerance.²⁹²

Kolta falsely represented in EC's October 2013 IRA new account forms that EC's net worth was \$1 million, his investment objectives were "speculation" and "capital preservation," and his risk tolerance was "moderately aggressive."²⁹³ EC told the Staff that his actual investment objectives were "preservation of capital" and "income," and that his investment purpose was to "save for retirement," not "market speculation," as Kolta had misrepresented on the form.²⁹⁴ When EC opened his individual account eight months later, in June 2014, Kolta misstated EC's annual income as \$250,000 and misstated that he had a net worth and investable assets of \$10 million.²⁹⁵

From June 2014 to August 2015, Kolta continued to falsify information about EC on National's books and records. In connection with EC's purchases in July 2014 of \$400,000 in shares of ARC New York REIT and another \$40,000 in August 2015, Kolta falsely reported on REIT investment documents that EC's income was \$250,000 and his net worth and investable assets were \$10 million.²⁹⁶ After making the second purchase, Kolta's recommendations caused EC to concentrate more than 80 percent of his net worth and investable assets in the REIT.

EC told the Staff that Kolta never explained what a REIT was or the distinction between a traded and a non-traded REIT.²⁹⁷ Kolta told EC that a REIT was a good investment for him.²⁹⁸ EC told the Staff that, when Kolta recommended the \$400,000 purchase in the ARC New York REIT, Kolta said it would be investing in buildings, was a good investment without risks, and would trade within a few years.²⁹⁹

²⁸⁹ CX-428, at 2. EC began receiving Social Security benefits of about \$20,000 per year when he turned 70 in 2013.

²⁹⁰ CX-428, at 2-3. EC took a large distribution from a retirement account in 2014 causing his income to spike that year. CX-428, at 2-3.

²⁹¹ CX-428, at 3-4.

²⁹² CX-428, at 4.

²⁹³ CX-26, at 2.

²⁹⁴ CX-26, at 2; CX-428, at 4; CX-429, at 49.

²⁹⁵ CX-28, at 4-5, 10. At about the same time as EC opened his individual account in June 2014, Kolta caused an update to EC's existing IRA records to also falsely reflect that he had an annual income of \$250,000 and a net worth and investable assets of \$10 million. CX-27, at 5.

²⁹⁶ CX-30, at 1, 3; CX-31, at 1, 5.

²⁹⁷ CX-428, at 3.

²⁹⁸ CX-428, at 3.

²⁹⁹ CX-428, at 5.

In October 2013, shortly after opening EC's account, the Firm sent EC a form letter asking him to confirm financial information, including a purported net worth of \$1 million and investment objectives.³⁰⁰ EC told the Staff that he told Kolta the figures were wrong. Kolta responded that EC should not worry about it.³⁰¹ In April 2015, National sent EC another letter asking him to confirm updated information, including that EC's net worth and investable/liquid assets were \$10 million.³⁰² When the Staff showed EC a copy of the letter, he said that it was the first time that he had seen that Kolta had listed his net worth and liquid assets as \$10 million.³⁰³

EC's two purchases of the ARC New York REIT totaling \$440,000 constituted more than 80 percent of his net worth.

d. MF

MF was retired and 70 years old when she opened an individual account at National in October 2013.³⁰⁴ A year later, in September 2014, MF invested \$400,000 in the ARC New York REIT based on Kolta's recommendation.³⁰⁵

The Staff interviewed MF on three occasions in 2018 and each time prepared an MOI summarizing the conversation.³⁰⁶ In May 2018, MF sent the Staff an email describing the circumstances of her \$400,000 investment in the ARC New York REIT.³⁰⁷

MF met Kolta in about 2011 when he worked at Chase and followed him to Cetera.³⁰⁸ MF told the Staff that she earned \$10 an hour cleaning homes for a living. She estimated her annual income at the time to be \$30,000.³⁰⁹ MF was on disability for years, but she inherited money which she invested in an annuity in 2011 on Kolta's recommendation. The annuity was valued at nearly \$490,000 in 2014.³¹⁰ The inheritance caused her to no longer qualify for disability benefits.³¹¹ She told the Staff that the gifted money constituted her total net worth of

³⁰⁰ CX-429, at 53-55.

³⁰¹ CX-26, at 16-18; CX-428, at 4; CX-429, at 53-55.

³⁰² CX-429, at 72-75.

³⁰³ CX-26, at 20-22; CX-428, at 5; CX-429, at 72-74.

³⁰⁴ CX-40, at 1-2.

³⁰⁵ CX-1, at 3; CX-2, at 2.

³⁰⁶ CX-430; CX-431; CX-432. MF died in 2021. Tr. 447.

³⁰⁷ CX-392, at 1.

³⁰⁸ CX-392, at 1.

³⁰⁹ Tr. 447; CX-41, at 2; CX-431, at 1; CX-432, at 1. Kolta talked to MF about her possibly cleaning his home. CX-431, at 1.

³¹⁰ CX-392, at 1, 3.

³¹¹ CX-432, at 1.

approximately \$500,000.³¹² To purchase the REIT, at Kolta's direction, MF surrendered the annuity, incurring surrender charges of \$27,000.³¹³ MF told the Staff that she and Kolta did not discuss why she should move her investment from an annuity to a REIT.³¹⁴ Kolta told MF to trust him, that real estate was booming, and he was going to make her money—that in one year she would have \$1 million to buy her own home.³¹⁵

MF told the Staff she had no experience investing and did not understand what “risk tolerance” meant.³¹⁶ She told Kolta that she did not want her money “locked into” an investment and that Kolta did not tell her she would be unable to access her money after investing it in the REIT.³¹⁷

Kolta caused MF's October 2013 new account form to falsely reflect that her net worth was \$2 million, and her investable assets and her assets held away from National were \$1.75 million.³¹⁸ A year later, in connection with MF's \$400,000 investment in the ARC New York REIT, Kolta revised MF's account records and the REIT investment documents to further inflate her financial condition. The forms falsely stated that MF had a net worth of \$10 million and investable/liquid assets of \$8 million.³¹⁹ MF told the Staff that “no way in hell” did she have that kind of money.³²⁰ The documents also exaggerated MF's investment objectives as “capital appreciation” and “speculation” and her risk tolerance as “moderately aggressive.”³²¹ The false updates to MF's account form stated that her investment knowledge for a range of products—including alternative investments, trading on margin, and options—was “good.”³²² MF said that she did not fill out the forms, and that the signatures and initials on some of the investment-related documents were not hers.³²³ She also pointed out that her first name was misspelled in the handwriting on her REIT investment documents.³²⁴

³¹² CX-431, at 1.

³¹³ CX-392, at 1, 4; CX-431, at 1.

³¹⁴ CX-431, at 1.

³¹⁵ CX-431, at 1.

³¹⁶ CX-431, at 1; CX-432, at 1.

³¹⁷ CX-392, at 1; CX-431, at 1.

³¹⁸ CX-40, at 2-3.

³¹⁹ CX-41, at 4-5; CX-42, at 1, 3.

³²⁰ CX-431, at 1.

³²¹ CX-41, at 5.

³²² CX-41, at 5.

³²³ CX-430; CX-431, at 1 (referring to signatures on CX-392, at 7, 9, 14).

³²⁴ CX-432, at 1.

MF's \$400,000 investment in the ARC New York REIT represented about 80 percent of her actual net worth and investable or liquid assets.

e. SK

SK was a salesman for an architectural design company.³²⁵ He was 64 years old when he opened an individual account and an IRA at National in September 2013.³²⁶ SK invested a total of \$712,500 in the ARC New York REIT in 2014.³²⁷ The Staff interviewed SK twice in November 2021 and prepared two MOIs of the interviews.³²⁸

SK met Kolta in 2008 when he was associated with Chase. SK followed Kolta to Cetera and then National.³²⁹ In 2013 and 2014, SK's income was less than \$100,000 and his net worth and investable assets were less than \$1 million.³³⁰ SK said that his investment objectives were "income" and "growth," and he had a "moderate" risk tolerance.³³¹

SK told the Staff he made three investments in the ARC New York REIT because prior affiliated REITs had paid attractive dividends.³³² He assumed that the ARC New York REIT would perform similarly.³³³ At National, Kolta did not discuss any other investment products with SK.³³⁴ He told SK that REITs were best for SK and that there were no better investments than New York real estate.³³⁵ When SK asked Kolta about any risks in investing in the REIT, Kolta told SK, according to his Staff interview, that the ARC New York REIT investment was secure.³³⁶

Kolta caused SK's September 2013 individual and IRA new account forms to falsely state that his income was \$100,000, his net worth was \$2 million, his investable assets and assets held away from National were \$1 million, his investment objectives were "speculation" and

³²⁵ CX-433, at 2.

³²⁶ CX-49, at 1; CX-53, at 1.

³²⁷ CX-2, at 2.

³²⁸ CX-433; CX-434.

³²⁹ CX-433, at 1.

³³⁰ CX-433, at 3. SK's tax returns reflect that in 2014 his adjusted gross income was less than \$79,000. CX-67, at 1-2.

³³¹ CX-433, at 2, 4.

³³² CX-434, at 2.

³³³ CX-434, at 2. SK had invested in the ARC New York Recovery REIT in 2013. CX-1, at 7; CX-62, at 23.

³³⁴ CX-434, at 2.

³³⁵ CX-434, at 2.

³³⁶ CX-434, at 2.

“capital appreciation,” his risk tolerance was “moderately aggressive,” and his investment purpose was “market speculation.”³³⁷

In July 2014, based on Kolta’s recommendation, SK made two investments in the ARC New York REIT—one for \$140,000 in his individual account and another for \$362,000 in his IRA.³³⁸ In connection with the two purchases, Kolta revised SK’s IRA customer account records and REIT investment documents to falsely state that he had a net worth and investable assets of \$7 million.³³⁹ When SK saw that the investment documents that he had previously signed in blank form later contained false financial figures, he told Kolta that he was not worth the amounts listed but Kolta told him not to worry about it.³⁴⁰

In September 2014, at Kolta’s recommendation, SK made his third and final investment in the ARC New York REIT in the amount of \$210,500.³⁴¹ In connection with the purchase, Kolta again caused revisions to SK’s individual account and IRA records and the REIT investment documents that falsely stated that SK had a net worth of \$8 million and investable assets of \$7.5 million.³⁴²

Kolta’s falsifications allowed him to get around National’s 10/20/30 policy. Falsely stating that SK had investable assets of \$7.5 million meant that SK’s \$712,500 total investment in the ARC New York REIT fell below the Firm’s 10 percent concentration limit for any one alternative investment. Kolta’s recommendations to SK to invest \$712,500 in ARC New York REIT shares concentrated more than 70 percent of his net worth and investable assets (of approximately \$1 million) in a non-traded REIT.

f. SHS and SWS

Customers SHS and SWS were a married couple and living in New Jersey when their daughter, JWN (another Kolta customer who invested in the ARC New York REIT, discussed below), introduced them to Kolta in 2015.³⁴³ SWS died in 2021.³⁴⁴ The Staff interviewed SHS in November 2021 and prepared an MOI.³⁴⁵

³³⁷ CX-49, at 3-4; CX-53, at 2-3.

³³⁸ CX-1, at 7; CX-2, at 2.

³³⁹ CX-51, at 9-10; CX-58, at 1, 3.

³⁴⁰ CX-434, at 1-2.

³⁴¹ CX-2, at 2.

³⁴² CX-52, at 5-6; CX-54, at 4-5.

³⁴³ CX-165, at 1-3; CX-445, at 1.

³⁴⁴ CX-445, at 1.

³⁴⁵ CX-445.

SHS and SWS were both 60 years old when they opened three accounts at National in May 2015—two IRAs and a joint account.³⁴⁶ SHS was a U.S. Postal Service letter carrier but had not worked since 2001 because of a work injury.³⁴⁷ In 2015, SHS received \$2,400 per month in workers compensation. His wife, SWS, was disabled and received between \$300 and \$400 per month in disability payments in 2015.³⁴⁸ These were their two sole sources of income,³⁴⁹ which came to about \$35,000 annually. At the time, the couple owned their home, which had an estimated fair market value of \$325,000, but with a mortgage balance in 2015 of about \$198,000.³⁵⁰ SHS told the Staff that their net worth (excluding their residence) was about \$500,000.³⁵¹

Kolta came to the couple's home for their initial meeting. Kolta did not ask SHS or SWS about their investment objectives or risk tolerance.³⁵² SHS told Kolta that his wife was ill and required occasional lengthy hospital stays. She was later diagnosed with Alzheimer's disease.³⁵³ SHS told Kolta that liquidity was important to the couple because of SWS's medical expenses.³⁵⁴ The couple's investment experience was limited to owning mutual funds.³⁵⁵ SHS told the Staff that Kolta recommended a REIT because it had lower fees than mutual funds.³⁵⁶

Kolta brought documents to the meeting at the couple's home and indicated where they had to sign, but he did not go over the paperwork with them.³⁵⁷ When SHS was shown the couple's account forms and investment documents during the Staff's interview, SHS said he did not provide Kolta the financial information reflected in the documents.³⁵⁸ At some point, SHS asked Kolta about the \$4 million in estimated net worth that was on one of the documents. Kolta told him not to worry about it, and that he would correct the figure.³⁵⁹

In the couple's May 2015 three new account forms, Kolta misrepresented that their income was \$100,000, their net worth was \$4 million, their investable assets were \$3.8 million,

³⁴⁶ CX-1, at 5-6; CX-165, at 2-3.

³⁴⁷ CX-165, at 2; CX-445, at 2.

³⁴⁸ CX-445, at 2.

³⁴⁹ CX-445, at 2.

³⁵⁰ CX-445, at 4; CX-446, at 152-53.

³⁵¹ CX-445, at 2.

³⁵² CX-445, at 1.

³⁵³ CX-445, at 1.

³⁵⁴ CX-445, at 5.

³⁵⁵ CX-445, at 2-3.

³⁵⁶ CX-445, at 2.

³⁵⁷ CX-445, at 2.

³⁵⁸ CX-445, at 1-3.

³⁵⁹ CX-445, at 2-3.

their investment objectives were “trading profits” and “capital appreciation,” and they had a “moderately aggressive” risk tolerance and a “good” general investment knowledge.³⁶⁰ SHS told the Staff that his actual investment objective was to safely earn more money from their investments because of his wife’s illness.³⁶¹ Later in May 2015, Kolta caused a revision to the couple’s customer account form for their joint account and for SHS’s IRA to falsely state that they had a net worth of \$5 million and investable assets of \$4.7 million.³⁶²

Based on Kolta’s recommendations, in May 2015, immediately after opening their accounts at National, the couple purchased \$380,000 in shares of the ARC New York REIT in their joint account and SHS purchased \$45,000 in shares of the REIT in his IRA.³⁶³ The REIT investment documents associated with the purchase in the joint account falsely reported that the couple’s income was \$100,000, their net worth was \$4 million, and they had investable assets of \$3.8 million.³⁶⁴ The REIT investment documents for SHS’s \$45,000 purchase (dated ten days after the joint purchase) for his IRA falsely reported income of \$100,000, net worth of \$5 million, and investable assets of \$4.7 million.³⁶⁵

SHS told the Staff that the couple’s investments in the REIT constituted nearly all of their liquid assets.³⁶⁶ Kolta’s recommendations that SHS and SWS invest \$425,000 in the ARC New York REIT caused them to have more than 80 percent of their investable liquid assets in the non-traded REIT, which far exceeded New Jersey’s concentration limits for non-traded REIT shares sold to its residents.

g. JHN and JWN

JHN and JWN are a married couple and live in New Jersey.³⁶⁷ (JWN is the daughter of SHS and SWS.) In January 2022, the Staff interviewed JWN and prepared an MOI of their conversation with her.³⁶⁸ JWN told the Staff that she went to high school with Kolta, and when JWN saw Kolta’s Facebook profile showing that he was in the securities industry, she contacted him about investing her and her husband’s money.³⁶⁹

³⁶⁰ CX-1, at 5-6; CX-163, at 5; CX-165, at 4-5; CX-168, at 5-6.

³⁶¹ CX-445, at 3.

³⁶² CX-1, at 5-6; CX-164, at 5-6; CX-166, at 4-5.

³⁶³ CX-1, at 5-6; CX-2, at 2; CX-170; CX-172.

³⁶⁴ CX-172, at 1, 4.

³⁶⁵ CX-170, at 1, 4.

³⁶⁶ CX-445, at 5.

³⁶⁷ CX-112, at 1; CX-113, at 2; CX-439, at 1.

³⁶⁸ CX-439.

³⁶⁹ CX-439, at 1.

JHN is an engineer for a public utility company and JWN works for a non-profit organization.³⁷⁰ In early 2015, when they were both about 29 years old, they opened four accounts at National. JHN opened an individual account, a traditional IRA, and a Roth IRA; JWN opened a Roth IRA.³⁷¹

Kolta knew the details about the couple's finances. In late 2014, before opening their accounts at National, JWN emailed Kolta copies of monthly account statements for the couple's various bank and brokerage accounts.³⁷² She also sent him a one-page spreadsheet displaying the couple's monthly income and expenses, liabilities, and assets, and reviewed them with Kolta.³⁷³ Liquid assets held in their checking, savings, and brokerage accounts totaled less than \$219,000 as of December 2014.³⁷⁴ In 2015, the couple's combined income (before adjustments), according to their joint federal tax return, was \$164,000.³⁷⁵ Their approximate net worth was around \$500,000, based on real property records, and taking into account the couple's liquid assets of about \$219,000.³⁷⁶

Relying on Kolta's recommendations, the couple invested a total of \$167,408 in shares of the ARC New York REIT between February 2015 and August 2015. JHN purchased \$42,452 in shares of the REIT in his IRA, \$30,160 in his Roth IRA, and \$55,842 in his individual account.³⁷⁷ JWN made two purchases of shares of the ARC New York REIT for her Roth IRA—\$33,000 in February 2015 and \$5,954 in May 2015.³⁷⁸

Kolta told JWN that the ARC New York REIT would boost the couple's income, but they could not take money out of it for one or two years.³⁷⁹ He never suggested any other investments besides the REIT. Kolta also did not discuss the risks of investing in the REIT or concentrating their investments in a REIT.³⁸⁰

³⁷⁰ CX-112, at 2; CX-114, at 2; CX-295, at 2; CX-439, at 5.

³⁷¹ CX-1, at 8-9; CX-116, at 1; CX-117, at 1.

³⁷² CX-293; CX-439, at 2.

³⁷³ CX-293, at 24; CX-439, at 2. One of the couple's liabilities was a \$260,000 mortgage. CX-293, at 24.

³⁷⁴ CX-293, at 24. *See also* CX-439, at 5. JWN estimated for Kolta that the couple's net monthly income after taxes was about \$9,200, or \$110,000 annually. CX-293, at 24. The income includes an estimated \$1,500 in monthly rental from an apartment that JWN and JHN owned and a small amount JWN earned from her Amway business, which she said was not profitable. CX-293, at 4, 24.

³⁷⁵ CX-126, at 5.

³⁷⁶ Residential property records show that JWN and JHN purchased a duplex two years earlier, in 2013, for \$285,000. CX-393, at 15-16. Emails in April 2015 between the couple, Kolta, and a third person show that Kolta assumed a \$300,000 valuation for the duplex. CX-393, at 12.

³⁷⁷ CX-1, at 9; CX-2, at 2.

³⁷⁸ CX-1, at 8; CX-2, at 2.

³⁷⁹ CX-439, at 6.

³⁸⁰ CX-439, at 6-7.

Kolta caused false and inaccurate information about JHN and JWN to be recorded on National's books and records. In JHN's new account forms for his three accounts and the REIT investment documents for his three purchases of shares of ARC New York REIT, Kolta falsely reported that JHN had a net worth of \$10 million and investable assets of \$7 million.³⁸¹ In JWN's new account form for her Roth IRA and the REIT investment documents, Kolta falsely reflected that JWN had a net worth of \$7.5 million and investable assets of \$7 million.³⁸² JWN told the Staff during the investigation that when she saw these numbers in her documents, she told Kolta they were not true. Kolta told her not to worry about the numbers.³⁸³ She also said the couple never had \$7 million in assets held away from National.³⁸⁴

Kolta's recommendation that JWN and JHN invest over \$167,000 in the ARC New York REIT caused them to have about 75 percent of their joint liquid assets (of \$219,000) invested in a non-traded REIT. This far exceeded New Jersey's concentration limits for non-traded REIT shares recommended to state residents.

h. BN and JN

BN and JN, a married couple, are New Jersey residents.³⁸⁵ In September 2021, the Staff interviewed BN about her and her husband's investments in the ARC New York REIT.³⁸⁶ BN and JN met Kolta when he came to look at a vacation home they had placed on the market. The couple owned three vacation properties, but they were all "under water" and losing money, which is why they wanted to sell one of them.³⁸⁷ They believed Kolta was interested in buying the property after asking to spend a weekend there. Instead, Kolta told them he had an investment recommendation for them.³⁸⁸

BN and JN then opened accounts with Kolta at National in July 2015.³⁸⁹ Kolta was the first broker the couple had ever had.³⁹⁰ BN opened an individual account and JN opened a Roth IRA and a SEP-IRA. At the time, BN was 63 years old and JN was 59 years old.³⁹¹

³⁸¹ CX-113, at 4-5; CX-114, at 5-6; CX-115, at 5-6; CX-117, at 1, 4; CX-118, at 1, 4.

³⁸² CX-112, at 5-6; CX-116, at 1, 4; CX-119, at 1, 3.

³⁸³ CX-439, at 5.

³⁸⁴ CX-439, at 5-6.

³⁸⁵ CX-128, at 1; CX-129, at 2; CX-441, at 1.

³⁸⁶ Tr. 530-32; CX-441. BN told the Staff that her husband, JN, did not deal with Kolta. CX-441, at 5.

³⁸⁷ CX-441, at 2. The properties had a combined estimated value of \$700,000. CX-441, at 3.

³⁸⁸ CX-441, at 1, 6.

³⁸⁹ CX-128; CX-129.

³⁹⁰ CX-441, at 2.

³⁹¹ CX-371, at 2; CX-441, at 2.

When the couple opened their accounts in July 2015, Kolta caused their new account records to falsely state that BN and JN had an annual income of \$300,000, a net worth of \$8 million, investable/liquid assets of \$6 million, and a “moderately aggressive” risk tolerance.³⁹² Kolta repeated these exaggerated figures in REIT investment documents dated a month later.³⁹³ BN told the Staff that these figures were incorrect. Their combined annual income in fact was between \$100,000 and \$120,000, their net worth was about \$1.5 million, and their risk tolerance was “conservative.”³⁹⁴ The only money held away from National, BN told the Staff, were funds in their checking and savings accounts.³⁹⁵ JN’s income was derived from owning a truck and operating a container business.³⁹⁶ The income they earned from the vacation rentals was just sufficient to pay off the mortgages on the properties.³⁹⁷

BN told the Staff that when she and JN visited Kolta in his office, he had them sign blank documents.³⁹⁸ Kolta told her that someone else would fill out the documents.³⁹⁹ BN said that Kolta told them the ARC New York REIT would pay dividends and “was expected to go public” within two to three years and be worth \$3 or \$4 more per share.⁴⁰⁰ Kolta told them that “there were no guarantees but that the investment in the REIT looked promising.”⁴⁰¹ Based on Kolta’s recommendations, in August 2015, BN purchased \$452,332 in shares of the ARC New York REIT for her individual account and JN made an investment of \$79,750 for his SEP-IRA.⁴⁰²

Kolta’s recommendations concentrated more than 30 percent of the couple’s net worth (of approximately \$1.5 million) in a non-traded REIT, far in excess of New Jersey’s limitations for its residents.⁴⁰³

³⁹² CX-127, at 5-6; CX-128, at 5-6; CX-129, at 4-5.

³⁹³ CX-130, at 1, 3; CX-131, at 1, 3.

³⁹⁴ CX-441, at 2-3.

³⁹⁵ CX-441, at 3.

³⁹⁶ CX-441, at 3.

³⁹⁷ CX-441, at 3. BN’s new account form and investment documents state that she is self-employed managing the vacation rentals. *See* CX-129, at 2; and CX-131, at 4.

³⁹⁸ CX-441, at 3.

³⁹⁹ CX-441, at 3.

⁴⁰⁰ CX-441, at 2.

⁴⁰¹ CX-441, at 2. BN told the Staff she did not understand what the term “going public” meant in the context of the REIT. CX-441, at 2.

⁴⁰² CX-2, at 3.

⁴⁰³ The value of BN and JN’s liquid assets is unclear in the record. The evidence set forth in the MOI of the Staff’s investigative interview of BN convincingly show the couple’s net worth was about \$1.5 million, which means the couple’s liquid net worth must be less than that amount.

i. RS

RS was a New Jersey high school guidance counselor when Kolta was his broker.⁴⁰⁴ The Staff interviewed him in October 2021 and prepared an MOI.⁴⁰⁵ RS met Kolta when they both worked for a marketing company in about 2006, which was about one year before Kolta became associated with a member firm.⁴⁰⁶

RS opened an account with Kolta in 2012 when he was associated with Cetera.⁴⁰⁷ RS then opened an account at National in April 2014.⁴⁰⁸ RS told the Staff that Kolta gave him blank forms with Post-it notes indicating where to sign.⁴⁰⁹ In 2014 and 2015, RS had an income of about \$75,000.⁴¹⁰

In early 2015, Kolta recommended that RS invest \$10,965 in the ARC New York REIT, which RS did.⁴¹¹ In February 2015, Tortorici emailed Kolta that the \$10,965 investment exceeded New Jersey's 10 percent limit for REITs.⁴¹² At the time, RS's investable/liquid assets as set forth on his account form were between \$50,000 and \$100,000.⁴¹³

To facilitate the sale, in February 2015, Kolta revised RS's account forms.⁴¹⁴ At the same time, Kolta included false and inaccurate information in RS's REIT investment documents. Consequently, the investment documents falsely stated that RS's income was \$100,000.⁴¹⁵ RS told the Staff he had never made that amount in his life.⁴¹⁶ The falsified account and investment documents also reported RS's net worth to be \$500,000 and that his investable/liquid assets were \$250,000.⁴¹⁷ RS told the Staff he had not seen these figures before on any forms.⁴¹⁸ In fact, RS told the Staff that the only asset he had that was not with National at the time was about \$10,000

⁴⁰⁴ CX-443, at 2.

⁴⁰⁵ CX-443, at 1.

⁴⁰⁶ CX-443, at 1.

⁴⁰⁷ CX-136, at 5; CX-443, at 2.

⁴⁰⁸ CX-142, at 1; CX-443, at 3; CX-444, at 24.

⁴⁰⁹ CX-443, at 2.

⁴¹⁰ CX-443, at 3; CX-444, at 19.

⁴¹¹ CX-1, at 15; CX-2, at 3; CX-139, at 1.

⁴¹² Tr. 168-69; CX-281.

⁴¹³ CX-444, at 19.

⁴¹⁴ CX-138.

⁴¹⁵ CX-139, at 1, 4.

⁴¹⁶ CX-138, at 4; CX-443, at 5.

⁴¹⁷ CX-138, at 4; CX-139, at 1.

⁴¹⁸ CX-443, at 5.

in his bank account, which he used to purchase the ARC New York REIT.⁴¹⁹ The only investment RS made in his National account was the REIT.⁴²⁰

Based on Kolta's recommendation, RS invested \$10,965 in the ARC New York REIT in February 2015, which resulted in RS concentrating a minimum of nearly 11 percent of his investable assets in a non-traded REIT, based on his April 2014 account documents that reflected he had between \$50,000 and \$100,000 in investable assets.⁴²¹ This amount exceeded New Jersey's concentration limits for non-traded REIT shares sold to New Jersey residents.

E. Kolta Sent Four Email Communications to Hundreds of Customers Between June 2014 and May 2015 Touting the ARC New York REIT

Between June 2014 and May 2015, Kolta sent four emails to hundreds of retail customers (including the 16 customers identified in the Complaint and other National customers) addressing the purchase and sale of the ARC New York REIT and another affiliated REIT—the ARC Recovery REIT. Kolta failed to get approval for the communications from a qualified Firm principal before sending them.⁴²²

1. Kolta's June 4, 2014 Email

On June 4, 2014, Kolta sent a retail communication via email to more than 25 investors with the subject line "Approaching Sell Out and Exchange."⁴²³ The email discussed the possibility of his customers selling their shares of ARC Recovery REIT (referred to by ticker symbol NYRT) and using the proceeds to invest in shares of the ARC New York REIT (referred to in the email as "the second new york holding," the "second" investment, or the "second half"). The email stated in relevant part:

Yesterday we closed on NYRT at 11.30 per share. This means we have all collectively done 13% in capital gain and an additional 6% in dividend interest for an investment we held about a year at 10\$ start point. In the pre-market we are at 11.50. I would like to begin removing some of our exposure at 20% gains and above, slowly and systematically. If you have not already done so on an individual basis, please contact me to review short/long term capital gain situations for our pending exchanges into the second new york holding. I am expecting another significant boost to portfolios in a similar magnitude to this holding on the second. This will be my final weighting to real estate in portfolios, so if you did not take advantage in round one, let's please further our surge upward in the second half of this Congrats to everyone ccd in here who is now this much wealthier. We will repeat this performance again, and then pause to re-evaluate

⁴¹⁹ CX-443, at 4.

⁴²⁰ See CX-142, at 77; CX-366, at 1.

⁴²¹ CX-444, at 19.

⁴²² CX-211; CX-213; CX-215; CX-218.

⁴²³ CX-211.

economic conditions after having cushioned these balances significantly yet again. My excitement and love for boosting you all has prompted my waking to give you this good news. Log in today if you feel like grinning from that point on.⁴²⁴

2. Kolta's November 7, 2014 Email

On November 7, 2014, Kolta sent another communication via email to hundreds of investors, this time with the subject line "Fwd: New York REIT, Inc. Added to the MSCI US REIT Index (RMZ)."⁴²⁵ Kolta's email discussed the fact that the ARC Recovery REIT (referred to as the "first" investment in the email), after becoming liquid and tradeable in mid-2014, had been added to an index of REITs that tracks the performance of certain REITs. Kolta also referred to the ARC New York REIT (as the "second" investment in the email).

To educate on our process. This is how/why we use the public markets. The private to public listing process of bringing an ipo to market generates in the following fashion. The advantages are seen when buying low initially, and then waiting for listing and inclusion into the indexes as you see below. All we are doing is utilizing the markets in this process to generate the dividends and premiums in share price. The advantages should be clear now via your current portfolios. For those who missed the first, the second should be similar in nature. Congrats to those involved in the first and second. We have boosted portfolio values by using these methods.

Track symbol: NYRT

Existing clientele has entered at 10 and exited above while capturing a 6% dividend. This nets an aggregate above 10%.⁴²⁶

3. Kolta's January 15, 2015 Email

On January 15, 2015, Kolta sent an email, again to hundreds of investors, bearing the subject line "The rule of 72 (Conservative Investing)." Kolta wrote in pertinent part:

The rule attached below portrays how you double your money. I am glad that the principles I have been teaching and guiding you through markets with, again prevail. Large conservative asset purchases remain shining in returns as the market is in disarray. Anyone who has been over leveraged or too aggressive during this stimulus period has been lucky as of thus far. Derek Jeter made it to the hall of fame just getting on base consistently without home runs, so that's what we do here. We want to use this opportunity to accumulate blue chip equities (specifically oil related as oil is down 53% approximately). The swiss central bank has stopped backing the euro causing a fall in the euro and global currencies. Our dollar is now much stronger as a result. Stay the course in

⁴²⁴ CX-211, at 3-4; CX-212, at 2.

⁴²⁵ CX-213.

⁴²⁶ CX-213, at 2.

assets that pay large dividends (6% like our new york property holdings), and you will double your money according to the rule stated below. The reit index is now at a 52 week high and positive eight of nine trading days this year, while the market is down. My current clientele should congratulate themselves upon staying the course while others were greedy. This is how you truly growth net worth. Anyone else should phone me after incurring losses. It is very easy to double, and it only takes one thing to do this when you are invested in large stable assets.

TIME.

We all win eight years and counting.⁴²⁷

Kolta provided a definition of the “Rule of 72” from an entry available on Investopedia.com’s website. It describes the rule as a “simplified way to determine how long an investment will take to double, given a fixed annual rate of interest. By dividing 72 by the annual rate of return, investors can get a rough estimate of how many years it will take for the initial investment to duplicate itself.”⁴²⁸

4. Kolta’s May 30, 2015 Email

On May 30, 2015, Kolta sent another email communication to hundreds of retail investors with the subject line “Closed.” In it, Kolta discussed the closing of the ARC New York REIT (referred to in the email by trading symbol “NYCR”) that was to be effective May 31, 2015.⁴²⁹ Kolta told investors:

As previously communicated, the American Realty Capital New York City REIT (“NYCR”) offering closes on May 31, 2015.

So as to allow for the associated processing times, NYCR subscription documents signed on or before May 31, 2015 will be accepted by the NYCR transfer agent until August 31, 2015. Sales after May 31, 2015 are not authorized and subscription documents dated after May 31, 2015 will not be accepted.

To those participating, congratulations. You own corporate New York City properties, rented, paying you a six percent dividend; and awaiting a tender offer/public offering proceeds. Moving forward, real estate as an asset class struggles in rising rate environments. For current holdings we are fine as rates, if rising, will be done slowly.⁴³⁰

⁴²⁷ CX-215, at 2-3.

⁴²⁸ CX-215, at 4.

⁴²⁹ CX-218; CX-219.

⁴³⁰ CX-218, at 4.

5. Kolta's Failure to Obtain Prior Approval Before Sending the Four Emails

The evidence demonstrates that Kolta failed to obtain approval from an appropriately qualified registered principal of National before sending the four email communications.⁴³¹ In November 2016, National issued Kolta a letter of caution disciplining him specifically for failing to obtain a principal's approval of the emails.⁴³²

IV. Conclusions of Law

A. Kolta Violated FINRA Rules 2111 and 2101 by Making Unsuitable Recommendations to 16 Customers (First Cause of Action)

Cause one alleges that Kolta violated FINRA Rules 2111 and 2101 by making unsuitable recommendations to 16 customers to invest in the ARC New York REIT. When Kolta recommended the REIT to customers between June 2014 and August 2015, FINRA Rule 2111(a) provided:

A member or 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 information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, 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 in connection with such recommendation.⁴³³

Rule 2111 establishes three main suitability obligations: (1) the reasonable-basis obligation; (2) the customer-specific suitability obligation; and (3) the quantitative suitability obligation not to engage in excessive trading.⁴³⁴ The customer-specific suitability obligation, which is the suitability obligation alleged in the Complaint,⁴³⁵ "requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule

⁴³¹ Tr. 577-78; CX-272; CX-425, at 32-35.

⁴³² CX-272; CX-273; CX-425, at 32-34.

⁴³³ FINRA Rule 2111(a).

⁴³⁴ FINRA Rule 2111, Supp. Material .05(a)-(c). See also *Dep't of Enforcement v. Patatian*, No. 2018057235801, 2023 FINRA Discip. LEXIS 13, at *35-36 (NAC Sept. 27, 2023) (discussing the three suitability obligations set forth in Rule 2111 and Supp. Material .05) (citing *Dep't of Enforcement v. Reyes*, No. 2016051493704, 2021 FINRA Discip. LEXIS 29, at *29-30 (NAC Oct. 7, 2021)).

⁴³⁵ Compl. ¶¶ 196, 198-201.

2111(a).”⁴³⁶ “The recommendation must be consistent with the customer’s best interests and financial situation, and the representative must disclose the risks associated with the investment in order to be satisfied that the customer is willing to take those risks.”⁴³⁷

A registered representative who recommends to his customers illiquid securities, such as shares of the ARC New York REIT, violates the customer-specific suitability obligation when (1) the recommended investment is unsuitable and inconsistent with the customer’s investment profile,⁴³⁸ or (2) the amount of the recommended purchases of illiquid securities results in the customer having over-concentrated positions in the illiquid securities that are unsuitable based on the customer’s investment profile.⁴³⁹

Kolta’s recommendations to the 16 customers were unsuitable based on the customers’ financial situations, investment objectives, and risk tolerances, including the excessive concentrations of ARC New York REIT in relation to their net worth. The prospectus described the REIT as a speculative, high-risk investment appropriate only for persons who could afford a complete loss of their investment.⁴⁴⁰ Six of the customers—FB, EC, MF, SK, JAK, and PV—were 65 or older and could not afford to lose their investments. FINRA has recognized that a customer’s “age or life stage are ‘important factors to consider in performing a suitability analysis.’”⁴⁴¹ Liquidity is likely to be more important to seniors and retirees. Accordingly, they “may have less tolerance for certain types of risk than other investors.”⁴⁴²

The concentration of the risky ARC New York REIT for the 16 customers ranged from over 10% to far above 50% of their net worth. For nine customers, their concentration levels far exceeded their states’ permissible concentration levels. Customers SHS, SWS, JHN, JWN, BN, JN, and RS were New Jersey residents at the time of their purchases. New Jersey capped its residents’ permissible concentration in the REIT at 10% of the investor’s liquid net worth. TS resided in California, which also had a 10% concentration limit. Although the Hearing Panel does not find that a violation of a state’s concentration or suitability requirements is per se a

⁴³⁶ FINRA Rule 2111, Supp. Material .05(b). *See also Patatian*, 2023 FINRA Discip. LEXIS 13, at *41-42 (discussing the customer-specific suitability obligation) (citing *Reyes*, 2021 FINRA Discip. LEXIS 29, at *30-31).

⁴³⁷ *Patatian*, 2023 FINRA Discip. LEXIS 13, at *41-42 (citing *Reyes*, 2021 FINRA Discip. LEXIS 29, at *30-31).

⁴³⁸ *Patatian*, 2023 FINRA Discip. LEXIS 13, at *41-45 (respondent violated the customer-specific suitability obligation and therefore violated FINRA Rules 2111 and 2010 when he recommended investments in a non-traded REIT to six customers where the purchase recommendations were unsuitable for the customers based on their investment profiles).

⁴³⁹ *See Dep’t of Enforcement v. Escarcega*, No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *57 (NAC July 20, 2017) (finding that respondent’s recommendations caused customers to be over-concentrated in illiquid debentures).

⁴⁴⁰ CX-421, at 2.

⁴⁴¹ *Escarcega*, 2017 FINRA Discip. LEXIS 32, at *54 n.30 (quoting FINRA Regulatory Notice 07-43 (Sept. 2007), <http://www.finra.org/rules-guidance/notices/07-43> (Sept. 2007)).

⁴⁴² FINRA Regulatory Notice 07-43, at *2, <http://www.finra.org/rules-guidance/notices/07-43> (Sept. 2007).

violation of FINRA Rule 2111, the Hearing Panel is guided by state standards.⁴⁴³ Furthermore, the Hearing Panel has considered National's policy regarding alternative investment concentration, which limits a customer's investment in a single alternative investment, such as a REIT, to 10 percent of the customer's liquid assets. The Firm's policy also limited a customer's investment in any alternative investment product asset class to 20 percent of the customer's liquid assets. The Hearing Panel finds that Kolta's customers' concentration levels, between 10 percent and more than 50 percent of their net worth, far exceeded what is reasonable under FINRA's rules.

Most of the customers had modest incomes and relatively low net worth and therefore needed liquidity when they invested in the ARC New York REIT. Despite their liquidity needs, Kolta recommended that customers invest a large percentage of their liquid net worth in the ARC New York REIT, which was not traded and was illiquid. For example, PV would likely not work again because of a workplace injury that Kolta knew about. On his recommendation, she invested over \$300,000 (60 percent of her net worth) in the REIT. Husband and wife SHS and SWS had little income because they were both on disability and she was ill when Kolta recommended they invest \$425,000 (80 percent of their investable liquid assets) in the REIT. MF had a modest income cleaning homes, but after inheriting nearly \$500,000 from a friend, MF followed Kolta's recommendation to invest \$400,000 (80 percent of her actual net worth and investable or liquid assets) of it in the REIT even though, as she told the Staff, she made clear to Kolta that she did not want her money tied up in an investment. Kolta persuaded another customer, JK, to invest \$776,600 in the ARC New York REIT even though JK already held other REIT investments she had purchased previously on Kolta's recommendation when he was associated with another firm.

JAK earned about \$65,000 a year working at Kmart. JAK followed Kolta's recommendations and made four purchases of the REIT totaling over \$600,000 (nearly half of his investable assets). SK earned about \$100,000 per year and had a net worth of about \$1 million when he invested over \$700,000 (more than 70 percent of his net worth and investable assets) in the ARC New York REIT based on Kolta's recommendations. Even RS, a high school guidance counselor with liquid assets of only about \$50,000 to \$100,000, invested nearly \$11,000 in the REIT. Such heavy concentrations in an illiquid alternative investment were not suitable for the needs of any of Kolta's customers.

Each of the customers had relatively conservative and modest investment objectives. They also uniformly had low risk tolerances. Rather than accept this, Kolta falsified their account records and investment documents so that the ARC New York REIT appeared to be a suitable investment. For example, JK testified that her risk tolerance was "moderate," not "aggressive," as Kolta falsely indicated in her new account form. EC's investment objectives were

⁴⁴³ See *Escarcega*, 2017 FINRA Discip. LEXIS 32, at *57 n.33 (finding that respondent's recommendations that his 12 customers invest in a debenture resulting in concentrations exceeding Arizona's 10% limitation on alternative investment were unsuitable); *Patatian*, 2023 FINRA Discip. LEXIS 13, at *55 (in assessing suitability, adjudicators considered that respondent's recommendations to customers to purchase REIT shares exceeded California's concentration limits).

“preservation of capital” and “income” not “market speculation,” as Kolta misrepresented on the form. JK testified that she told Kolta she was not a risk taker and wanted to preserve her savings. Instead, Kolta falsified her account records to state that her primary investment objective was “speculation,” and her risk tolerance was “moderately aggressive.”

Kolta also exaggerated his customers’ investment knowledge or experience. In fact, none of the customers understood what a REIT was. For example, Kolta had JAK’s account records state he had “extensive” knowledge of nearly all investment products, when Kolta had never talked to JAK about his investment experience. MF had no experience with investing before buying shares of the ARC New York REIT, but Kolta stated on her account documents that her knowledge with investing in alternative investments was “good.” JK had placed her available investable assets only in mutual funds before investing in REITs on Kolta’s recommendation, yet he exaggerated her experience and knowledge on her account documents by indicating that she had a “good” knowledge of a range of investment products.

Even though Kolta elected not to appear at the hearing to provide testimony, months earlier he submitted a two-page pre-hearing brief summarizing his defenses.⁴⁴⁴ Kolta pointed to “multiple layers of approval [by National] every step of the way” that ensured the recommendations were suitable investments.⁴⁴⁵ Kolta argued he “had no way of forcing any of the transactions without approval from the client and the supervisory review process.”⁴⁴⁶ His clients and National, he asserted, “were informed and gave authorization for each transaction.”⁴⁴⁷ These defenses conveniently overlook that the Complaint does not charge Kolta with unauthorized trading and the fact that Kolta’s falsifications of his customers records lulled National into approving the transactions. Although the record suggests that National may not have been sufficiently vigilant in its supervision of Kolta’s REIT sales, this does not relieve Kolta of his own obligation to make only suitable recommendations.⁴⁴⁸ A registered representative has an independent obligation to ensure that a recommendation is suitable, and he cannot shift this responsibility to others or his firm.⁴⁴⁹

The Hearing Panel also rejects Kolta’s suggestion in his pre-hearing brief that because his customers approved the purchases of the ARC New York REIT he is not responsible for

⁴⁴⁴ Respondent’s Prehearing Brief (“Resp’t Prehr’g Br.”) (Dec. 15, 2023) 1.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.*

⁴⁴⁸ Kolta complains in his pre-hearing brief that Enforcement improperly focused “on a single financial advisor instead of the process under which he operated” at National. *Id.* In fact, Enforcement investigated National, and in 2022 the Firm submitted a Letter of Acceptance, Waiver and Consent in which it agreed to a \$3.6 million fine for failing to supervise Kolta in his REIT sales, among many other findings of misconduct. CX-474.

⁴⁴⁹ See *William J. Murphy*, Exchange Act Release No 69923, 2013 SEC LEXIS 1933, at *32 (July 2, 2013) (rejecting respondent’s effort to shift responsibility for his unsuitable recommendations to other persons at his firm), *petition for review denied sub nom. Carl M. Birkelbach v. SEC*, No. 13-2896, 2014 U.S. App. LEXIS 8338 (7th Cir. May 2, 2014).

unsuitable recommendations.⁴⁵⁰ The law is not in Kolta’s favor. It is well-settled that a registered representative’s “recommendation is not suitable merely because the customer acquiesces in the recommendation. Rather, the recommendation must be consistent with the customer’s financial situation and needs.”⁴⁵¹ Furthermore, the customers uniformly testified that Kolta failed to disclose any risks associated with investing in a REIT. Even if he had, this would not relieve him from his responsibility to make suitable recommendations because a registered representative “is under a duty to refrain from making recommendations that are incompatible with the customer’s financial profile,” even if he discloses the risk of an investment.⁴⁵²

The Hearing Panel finds that Kolta repeatedly ignored his customers’ investment needs and investment profiles, including their age, income, net worth, liquid net worth, investment objectives, and risk tolerances, and recommended unsuitable investments. Kolta failed to meet his customer-specific suitability obligations to all the 16 customers by recommending they invest in the risky and illiquid ARC New York REIT. The Hearing Panel therefore finds that Kolta violated FINRA Rules 2111 and 2010, as alleged in cause one of the Complaint.⁴⁵³

B. Kolta Violated FINRA Rules 4511 and 2010 by Causing National to Make and Preserve False Books and Records (Second Cause of Action)

Cause two alleges that Kolta violated FINRA Rules 4511 and 2010 by causing National to create and maintain inaccurate books and records required to be maintained under Securities Exchange Act Rules 17a-3(a)(6) and 17a-3(a)(17).⁴⁵⁴ Specifically, the Complaint alleges that Kolta caused the Firm’s books and records to contain false and inaccurate information about the 16 customers’ net worth, investable or liquid assets (or investable/liquid net worth), annual income, assets held away from National, investment objectives, and risk tolerance.⁴⁵⁵

FINRA Rule 4511(a) requires member firms to “make and preserve books and records as required under the FINRA rules, the [Securities Exchange Act of 1934 (the “Exchange Act”)] and the applicable Exchange Act rules.”⁴⁵⁶ The Exchange Act requires that member firms maintain records related to customer financial information and customer investment transactions. FINRA Rule 4511 incorporates Exchange Act Rule 17a-3(a)(17), which requires member firms to keep and maintain a record identifying information about a customer that includes, among

⁴⁵⁰ Kolta relies on “client approvals” and that his “clients ... were informed” and thus authorized purchases of the ARC New York REIT. *See* Resp’t Prehr’g Br. 1.

⁴⁵¹ *Dane S. Faber*, Exchange Act Release No. 49216, 2004 SEC LEXIS 277, at *24 (Feb. 10, 2004).

⁴⁵² *Jack H. Stein*, Exchange Act Release No. 47335, 2003 SEC LEXIS 338, at *8 (Feb. 10, 2003).

⁴⁵³ A violation of FINRA Rule 2111 is also a violation of FINRA Rule 2010. *Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 911, at *7 n.8 (Apr. 3, 2020) (finding that violations of other FINRA Rules, including Rule 2111, also violate FINRA Rule 2010).

⁴⁵⁴ Compl. ¶¶ 203-13.

⁴⁵⁵ *See* Compl. ¶ 212.

⁴⁵⁶ FINRA Rule 4511(a).

other things, the customer’s “annual income, net worth (excluding the value of the primary residence), and ... investment objectives.”

FINRA Rule 4511 also incorporates Exchange Act Rule 17a-3(a)(6), which requires member firms to “make and keep ... [a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security ... whether executed or unexecuted.”⁴⁵⁷ The Securities and Exchange Commission has repeatedly held that the duty to maintain records requires that such records be true and correct.⁴⁵⁸ A registered representative who causes his firm to keep books and records that have materially false and inaccurate financial or other information about his customers violates FINRA Rules 4511 and 2010.⁴⁵⁹

As set forth above, Kolta caused materially false and inaccurate information to be recorded on new account forms, updates to customer account forms, and REIT investment documents for each of his 16 customers, which were then retained by National. He repeatedly recorded inaccurate income, net worth, and liquid net worth figures for the customers. He also inaccurately recorded decades of investment experience across all types of investment products for the customers and overstated their investment objectives and risk tolerances. These manipulations were clearly intended to qualify the customers to invest in the ARC New York REIT.

By causing National to make and preserve inaccurate books and records concerning the 16 customers, as required by Exchange Act Rules 17a-3(a)(6) and 17a-3(a)(17), Kolta violated FINRA Rules 4511 and 2010, as alleged in cause two of the Complaint.⁴⁶⁰

C. Kolta Violated FINRA Rule 2010 by Falsifying Customer Records (Third Cause of Action)

Cause three alleges that Kolta independently violated FINRA Rule 2010 by falsifying account records and investment documents for all 16 customers on multiple occasions so they would be permitted to buy the REIT. He falsified information about the customers’ net worth,

⁴⁵⁷ See *Patatian*, 2023 FINRA Discip. LEXIS 13, at *53-54 (finding respondent violated FINRA Rules 4511 and 2010 when he recorded false financial information on firm client forms and documents related to customers’ REIT purchases).

⁴⁵⁸ See, e.g., *Dep’t of Enforcement v. Inv. Mgmt. Corp.*, No. C3A010045, 2003 NASD Discip. LEXIS 47, at *20 (NAC Dec. 15, 2003).

⁴⁵⁹ *Patatian*, 2023 FINRA Discip. LEXIS 13, at *56-58 (citing *Escarcega*, 2017 FINRA Discip. LEXIS 32, at *63-64 (finding that respondent violated FINRA Rule 4511 by omitting information that caused a customer’s net worth to be overstated)).

⁴⁶⁰ A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010. *Trevor Michael Saliba*, Exchange Act Release No. 91527, 2021 SEC LEXIS 865, at *43 (Apr. 9, 2021), *modified*, 2022 FINRA Discip. LEXIS 12 (NAC Oct. 6, 2022), *aff’d*, Exchange Act Release No. 99940, 2024 SEC LEXIS 852 (Apr. 11, 2024).

investable or liquid assets, income, assets held away from National, investment objectives, and risk tolerance.⁴⁶¹

FINRA Rule 2010 states that members and associated persons, “in the conduct of [their] business, shall observe high standards of commercial honor and just and equitable principles of trade.” To determine whether a respondent’s conduct constitutes an independent violation of FINRA Rule 2010, adjudicators “must determine whether the respondent has acted unethically or in bad faith.”⁴⁶² “Unethical conduct is that which is ‘not in conformity with moral norms or standards of professional conduct,’ while bad faith means ‘dishonesty of belief or purpose.’”⁴⁶³ Falsifying records “is a form of misconduct that has been held to be ‘unethical’ for purposes of Rule 2010.”⁴⁶⁴

The Hearing Panel finds that in falsifying his customer records Kolta acted unethically and in bad faith. He altered records for 16 customers so that the Firm would approve their purchases of more than \$4.8 million in shares of the ARC New York REIT. He falsified dozens of customer new account forms, including updates to the forms, and REIT investment documents. Without Kolta’s falsifications, National would likely not have allowed the customers to make many of the REIT investments.

Accordingly, the Hearing Panel finds that Kolta independently violated FINRA Rule 2010, as alleged in cause three of the Complaint.⁴⁶⁵

⁴⁶¹ Compl. ¶¶ 214-19.

⁴⁶² *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020), *petition for review dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. Feb. 26, 2021).

⁴⁶³ *Id.*

⁴⁶⁴ *Dep’t of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *23 (NAC May 26, 2021) (respondent independently violated FINRA Rule 2010 by making false expense entries in his firm’s general ledger) (citing *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *50 (May 27, 2015)), *appeal docketed*, No. 3-20380 (SEC July 1, 2021). *See also Dep’t of Enforcement v. Mellon*, No. 2017052760001, 2022 FINRA Discip. LEXIS 11, at *19-22 (NAC Oct. 18, 2022), *appeal dismissed*, Exchange Act Release No. 97623, 2023 SEC LEXIS 1440 (May 31, 2023) (respondent who caused assistant to submit false expense reports to her firm violated FINRA Rule 2010 independently and separately violated FINRA Rules 4511 and 2010).

⁴⁶⁵ *See Dep’t of Enforcement v. Hunt*, No. 2009018068701, 2012 FINRA Discip. LEXIS 62, at *11 (NAC Dec. 18, 2012) (falsifying signatures on annuity documents violated NASD Rule 2110, the predecessor to FINRA Rule 2010), *application for review dismissed*, Exchange Act Release No. 69312, 2013 SEC LEXIS 1001 (Apr. 4, 2013); *Dep’t of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22-23 (NAC Feb. 27, 2007) (“Falsifying documents [in violation of NASD Rule 2110, the predecessor to FINRA Rule 2010] is a prime example of misconduct that adversely reflects on a person’s ability to comply with regulatory requirements and has been held to be a practice inconsistent with just and equitable principles of trade.”); *Ramiro Jose Sugranes*, Exchange Act Release No. 35311, 1995 SEC LEXIS 234, at *3-4 (Feb. 1, 1995) (falsifying letter representing that a certificate of deposit was backed by letter of credit and falsifying bank wires in order to induce a customer to make an investment is inconsistent with just and equitable principles of trade).

D. Kolta Violated FINRA Rules 2210 and 2010 by Sending Customers Four Emails that Were Misleading, Unwarranted, and Made Promissory Statements (Fourth Cause of Action)

FINRA Rule 2210 imposes standards on the use and content of public communications made by member firms and associated persons. Cause four alleges that Kolta violated FINRA Rules 2210 and 2010 when he sent four emails to customers and investors promoting ARC New York REIT.⁴⁶⁶ Kolta sent the emails on June 4 and November 7, 2014, and January 15 and May 30, 2015.⁴⁶⁷

Rule 2210(d)(1)(A) states that all communications with the public must “be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.” Such communications may not “omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.”⁴⁶⁸ The SEC has held that the Rule requires that the retail communications of FINRA members and their associated persons “disclose in a balanced way the risks and rewards of the touted investment[s].”⁴⁶⁹ FINRA Rule 2210(d)(1)(B) provides that no member “may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication.”⁴⁷⁰ In addition, FINRA Rule 2210(b)(1)(A) requires that “[a]n appropriately qualified registered principal of the member must approve each retail communication before ... its use.”

The Complaint alleges that Kolta’s four emails were not fair and balanced and he therefore violated FINRA Rules 2210(d)(1)(A) and 2010 when he sent them.⁴⁷¹ It further alleges that Kolta’s emails “contained misleading, unwarranted, and promissory statements and claims” in violation of FINRA Rules 2210(d)(1)(B) and 2010.⁴⁷² The Complaint also alleges that Kolta

⁴⁶⁶ Rule 2210 defines “communications” broadly to include “correspondence, retail communications and institutional communications.” FINRA Rule 2210(a)(1). “Retail communication” is further defined to mean “any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.” FINRA Rule 2210(a)(5). Under FINRA Rule 2210, retail communication thus includes any type of written or electronic communication. Kolta sent each of the emails identified in the Complaint to significantly more than 25 customers. Accordingly, the Hearing Panel finds that the four emails Kolta distributed are governed by Rule 2210.

⁴⁶⁷ CX-211; CX-213; CX-215; CX-218.

⁴⁶⁸ FINRA Rule 2210(d)(1)(A).

⁴⁶⁹ *CapWest Sec., Inc.*, Exchange Act Release No. 71340, 2014 SEC LEXIS 4604, at *17 (Jan. 17, 2014) (quoting *Jay Michael Fertman*, Exchange Act Release No. 33479, 1994 SEC LEXIS 149, at *17 (Jan. 14, 1994)).

⁴⁷⁰ FINRA Rule 2210(d)(1)(B) further states that “[n]o member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.”

⁴⁷¹ Compl. ¶¶ 229, 232.

⁴⁷² Compl. ¶¶ 230, 232.

failed to obtain approval from a qualified principal of National before sending the four emails, in violation of FINRA Rules 2210(b)(1) and 2010.⁴⁷³

Kolta's first email, on June 4, 2014, failed to provide a fair and balanced representation of the risks of investing in the ARC New York REIT. It did not discuss the risks attendant to an investment in an illiquid non-traded REIT. It also contained promissory and unwarranted projections of future performance. Kolta wrote that he was "expecting another significant boost to portfolios in a similar magnitude to this holding [the ARC Recovery REIT] on the second [the ARC New York REIT]." ⁴⁷⁴ He also wrote to investors "if you did not take advantage in round one, let's please further our surge upward in the second half of this." ⁴⁷⁵ Kolta continued, telling investors, "[w]e will repeat this performance again," which was promissory in nature. ⁴⁷⁶

Kolta's next email, on November 7, 2014, also failed to provide a fair and balanced presentation of the risks of investing in a REIT. ⁴⁷⁷ For example, it referred to the profitability of the prior ARC Recovery REIT but it did not caution readers that there was no certainty the ARC New York REIT would ever become liquid, or that, in the event it became marketable, there was no guarantee it would earn a profit for investors. The email also made promissory, unwarranted, and misleading statements. Kolta referred to a "private to public listing process" for the ARC New York REIT that would "generate the dividends and premiums in share price" and suggesting that it would be "similar in nature" to the ARC Recovery REIT. ⁴⁷⁸ This was misleading and promissory because there are no guarantees that a non-traded REIT will ever become publicly listed or that the ARC New York REIT would generate profits for its investors. Kolta implied that customers would profit by investing in the ARC New York REIT when he wrote they "have boosted portfolio values by using these methods." ⁴⁷⁹

On January 15, 2015, Kolta emailed customers they should "[s]tay the course in assets that pay large dividends (6% like our new york property holdings), and you will double your money." ⁴⁸⁰ He said that the REIT index was at a one-year high and was positive in eight of the first nine trading days of 2015, while the markets generally were down. ⁴⁸¹ He continued that "[i]t is very easy to double, and it only takes one thing to do this when you are invested in large stable assets. TIME." ⁴⁸² This email was not fair and balanced as it failed to mention any risks

⁴⁷³ Compl. ¶¶ 231-32.

⁴⁷⁴ CX-211, at 4.

⁴⁷⁵ CX-211, at 4.

⁴⁷⁶ CX-211, at 4.

⁴⁷⁷ CX-213, at 2.

⁴⁷⁸ CX-213, at 2.

⁴⁷⁹ CX-213, at 2.

⁴⁸⁰ CX-215, at 2.

⁴⁸¹ CX-215, at 2.

⁴⁸² CX-215, at 2.

associated with investing in a REIT. It was also misleading and unwarranted because it did not acknowledge that there were no assurances the ARC New York REIT, or any REIT, would be profitable. Kolta's references to "conservative asset purchases" and "stable assets"⁴⁸³ were misleading because REITs are in fact high-risk investments.

Kolta sent the last email on May 30, 2015. This communication was also not fair and balanced as it failed to mention any risks associated with an investment in a REIT. He told investors in the ARC New York REIT that "[y]ou own corporate New York City properties, rented, paying you a six percent dividend; and awaiting a tender offer/public offering proceeds."⁴⁸⁴ This statement was misleading and unwarranted because as of May 2015 there was no certainty that a public offering liquidity event for the ARC New York REIT would materialize. Also, investors in the ARC New York REIT were not direct owners of real estate properties, and they were not assured of dividends of six percent.

Finally, when Kolta sent the four retail communications to investors, he failed to obtain prior approval from a qualified registered principal at National, as required by FINRA Rule 2210(b)(1). National disciplined Kolta in November 2016 with a letter of caution for his failure to get a principal's approval before sending the emails.⁴⁸⁵

The Hearing Panel finds that Kolta's four email communications to investors failed to make balanced disclosures by failing to address the risks associated with an investment in a REIT. They also contained unwarranted, promissory, and misleading statements and claims about the ARC New York REIT. He also failed to obtain approval from a qualified Firm principal before sending each of the four emails. The Hearing Panel therefore finds that Kolta violated FINRA Rules 2210 and 2010, as alleged in cause four of the Complaint.⁴⁸⁶

V. Sanctions

In determining the appropriate sanctions, the Extended Hearing Panel considered FINRA's Sanction Guidelines ("Guidelines"), which include the General Principles Applicable to All Sanction Determinations ("General Principles"), Principal Considerations in Determining Sanctions ("Principal Considerations"),⁴⁸⁷ and violation-specific principal considerations. The Hearing Panel also considered all relevant facts and circumstances, including the nature of the

⁴⁸³ CX-215, at 2.

⁴⁸⁴ CX-218, at 4.

⁴⁸⁵ Tr. 588-89; CX-272; CX-273, at 1. Kolta acknowledged to National after receiving the letter of caution that he had not been aware of the requirement to obtain prior approval for the emails. CX-272, at 1.

⁴⁸⁶ *Meyers Assoc., L.P.*, Exchange Act Release No. 86193, 2019 SEC LEXIS 1869, at *12 (June 24, 2019) (finding that communications must be fair and balanced and must "disclose in a balanced way the risks and rewards of the touted investments").

⁴⁸⁷ FINRA Sanction Guidelines at 2-8 (March 2024), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

underlying misconduct, any aggravating and mitigating factors, and the risk of future harm that Kolta poses to the investing public.

The General Principles state that “[d]isciplinary sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct.”⁴⁸⁸ The Guidelines further provide that sanctions should be “a meaningful deterrent and reflect the seriousness of the misconduct at issue” and “significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct.”⁴⁸⁹ To that end, adjudicators should “tailor sanctions to respond to the misconduct at issue.”⁴⁹⁰

A. Kolta’s Unsuitable Recommendations and Falsifications of Customer Information on Firm Books and Records (Causes One, Two and Three)

Cause one concerns Kolta’s customer-specific unsuitable recommendations that violated FINRA Rules 2111 and 2010. Cause two involves his books and records violations of FINRA Rules 4511 and 2010, while cause three alleges Kolta’s many falsifications of customer documents constitute an independent violation of FINRA Rule 2010. The Guidelines state that, in certain instances, it may be appropriate to aggregate violations for purposes of imposing sanctions.⁴⁹¹ Because the first three causes arise from Kolta’s scheme to recommend an unsuitable investment, the ARC New York REIT, the Hearing Panel finds that it is appropriate here to impose a unitary sanction for his misconduct.⁴⁹²

In addition to the General Principles and Principal Considerations, the Hearing Panel has considered the specific Guidelines for suitability violations, recordkeeping violations, and falsification of records, each of which recommends a bar for an individual when aggravating factors predominate.⁴⁹³ The Guidelines for unsuitable recommendations instruct adjudicators to “strongly consider a bar” when aggravating factors predominate. Rather than provide violation-specific considerations, the Guidelines direct adjudicators to consult the Principal Considerations to determine appropriate sanctions.⁴⁹⁴

⁴⁸⁸ Guidelines at 2 (General Principle No. 1).

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.* at 3 (General Principle No. 2).

⁴⁹¹ *Id.* at 4 (General Principle No. 4).

⁴⁹² See *Patatian*, 2023 FINRA Discip. LEXIS 13, at *69-70 (imposing a unitary sanction for respondent’s unsuitable REIT recommendations, in violation of FINRA Rules 2111 and 2010, and causing his firm to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010); *Mellon*, 2022 FINRA Discip. LEXIS 11, at *28-29 (imposing a unitary sanction for three related causes of action—conversion, submitting falsified personal expense records to firm, and causing firm to maintain inaccurate books and records).

⁴⁹³ Guidelines at 91 (Recordkeeping Violations), 97 (Forgery, Unauthorized Use of Signatures, or Falsification of Records), and 121 (Unsuitable Recommendations).

⁴⁹⁴ Guidelines at 121.

The Guidelines for recordkeeping violations of FINRA Rule 4511 state that where aggravating factors predominate, adjudicators should consider a suspension of up to two years or a bar.⁴⁹⁵ The Guidelines direct adjudicators to consider the nature and materiality of the inaccurate or missing information: the type and number of records at issue; whether the inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence; whether the violations occurred over an extended period or involved a pattern or patterns of misconduct; and whether the violations allowed other misconduct to occur or to escape detection.⁴⁹⁶ Kolta’s widespread pattern of falsifying his customers’ records, which began in September 2013, when customers first opened accounts with Kolta at National, and continued until August 2015, when he made his last sale of the ARC New York REIT, directly abetted his scheme to sell shares of the ARC New York REIT to customers who were not suitable for such purchases.

The Guidelines for falsification of records, in violation of FINRA Rule 2010, instruct adjudicators to consider suspending the respondent for a period of six months to two years or barring the respondent when aggravating factors predominate, particularly in cases resulting in customer harm.⁴⁹⁷ The most relevant consideration is the nature of the documents falsified.⁴⁹⁸ The falsified documents here enabled Kolta to deceive National into concluding that the customers met the financial requirements to allow them to invest in the ARC New York REIT.

The Guidelines also direct adjudicators to consider a respondent’s arbitration history when assessing sanctions. The Guidelines define “arbitration history” as arbitration awards and arbitration settlements resulting from disputes between a customer and the respondent, “including those when the individual is the subject of an arbitration claim that only names a FINRA member firm.”⁴⁹⁹ The Guidelines further provide that “[a]djudicators should draw on their experience and judgment when evaluating if . . . an individual’s disciplinary and arbitration history establishes a pattern.”⁵⁰⁰ Kolta’s CRD records show that he was the subject of 24 customer-initiated arbitration claims that named National or one of Kolta’s former firms but not him as a respondent.⁵⁰¹ Kolta’s pattern of sales practice misconduct provides additional support for barring him.

⁴⁹⁵ *Id.* at 91.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.* at 97.

⁴⁹⁸ *Id.*

⁴⁹⁹ Guidelines at 2 (General Principle No. 2).

⁵⁰⁰ Guidelines at 3 (General Principle No. 2). *See also* Guidelines at 7 (Principal Consideration No. 1) (calling upon adjudicators to consider an individual respondent’s relevant disciplinary and arbitration history).

⁵⁰¹ CX-4a, at 22. *See also* CX-4a, at 22-144.

The Guidelines also direct adjudicators to consider sanctions previously imposed by other regulators or previous corrective action taken by a firm based on the same conduct. Guidelines at 5 (General Principle No. 7). National sanctioned Kolta in November 2016 with a letter of caution, but the letter addressed only his failure to obtain a

The Guidelines provide that a sanction must be remedial and designed to prevent recurrence of misconduct.⁵⁰² The Hearing Panel applied the relevant Principal Considerations as set forth in the Guidelines and found multiple aggravating factors are present here. Kolta’s misconduct spanned nearly two years and involved 16 customers—six of whom (FB, EC, MF, SK, JAK, and PV) were over 65 years old—to whom he recommended more than \$4.8 million in 34 separate purchases of the ARC New York REIT.⁵⁰³ The investments resulted in large losses before National made reimbursement to the customers by settling their arbitration claims. The Hearing Panel finds that Kolta was particularly motivated by the especially attractive compensation brokers received for selling the ARC New York REIT, which resulted in his earning \$297,823 in commissions from the unsuitable recommendations.⁵⁰⁴ All the evidence before the Hearing Panel makes it clear that Kolta acted intentionally, spurred by lucrative commissions.⁵⁰⁵

The evidence further demonstrates that most of the customers were not sophisticated or experienced investors. Many relied completely on Kolta to make investment recommendations suitable for their investment profiles.⁵⁰⁶ The Hearing Panel notes that Kolta belittled customers when they questioned their investment in the ARC New York REIT, like PV did. When PV sent Kolta an article about issues involving REIT investments, Kolta called her “skittish” and told her he “know[s] more of what is going on [in the market].”⁵⁰⁷

The Hearing Panel further finds that Kolta has never acknowledged responsibility for his actions.⁵⁰⁸ In his pre-hearing brief, Kolta essentially blames National for failing to adequately supervise him and implies that because customers authorized each transaction, he is not responsible for his investment recommendations.⁵⁰⁹

principal’s approval for his email communications to investors about the ARC New York REIT and other REITs. CX-272; CX-273, at 1. The Hearing Panel finds this sanction far too light to treat it as mitigating in the face of the egregious misconduct surrounding the unsuitable recommendations.

⁵⁰² Guidelines at 2 (General Principle No. 3).

⁵⁰³ Guidelines at 7-8 (Principal Consideration Nos. 8, 9, 17, 20) (whether the respondent engaged in numerous acts and/or a pattern of misconduct; whether the respondent engaged in the misconduct over an extended period of time; the number, size and character of the transactions at issue; and whether the customer is age 65 or older).

⁵⁰⁴ Guidelines at 8 (Principal Consideration No. 16) (whether the respondent’s misconduct resulted in the potential for the respondent’s monetary or other gain).

⁵⁰⁵ Guidelines at 8 (Principal Consideration No. 13) (whether the respondent’s misconduct was the result of an intentional act, recklessness or negligence).

⁵⁰⁶ Guidelines at 8 (Principal Considerations No. 18, 19) (the level of sophistication of the injured or affected customer; and whether the individual respondent exercised undue influence over the customer).

⁵⁰⁷ CX-356, at 1-2.

⁵⁰⁸ Guidelines at 7 (Principal Consideration No. 2) (whether an individual respondent accepted responsibility for his conduct).

⁵⁰⁹ Resp’t Prehr’g Br.1.

Consistent with the Guidelines, and after carefully considering the facts and circumstances of this case, the Hearing Panel concludes that the only appropriate sanction for Kolta's egregious misconduct is a bar from associating in any capacity with any FINRA member firm. Kolta has demonstrated extreme disregard for the standards that govern the securities industry and a willingness to place his own pecuniary interests above the best interests of his clients, all of whom relied heavily on him to explain their investments to him. Given Kolta's history and the egregiousness of his misconduct, the Hearing Panel finds that a bar in all capacities is the only sanction that will protect the investing public from Kolta repeating his misconduct. The Hearing Panel believes that the sanction is appropriately remedial and will serve to dissuade others from engaging in similar misconduct.⁵¹⁰

The Guidelines also instruct us to consider a respondent's ill-gotten gains when determining an appropriate remedy. When appropriate, adjudicators may order "disgorgement of some or all of the financial benefit [the respondent] derived, directly or indirectly" from misconduct.⁵¹¹ Disgorgement is appropriate even when a respondent is barred in cases that "involve[] widespread, significant, and identifiable customer harm" or when a respondent "has retained substantial ill-gotten gains."⁵¹² Both conditions are present here. Kolta retained ill-gotten gains of \$297,823 from his sales of the ARC New York REIT, and his misconduct was wide-ranging—involving 16 customers during a period spanning nearly two years and sales of \$4.8 million of the ARC New York REIT. Disgorgement deters violations by making them unprofitable.⁵¹³ The Hearing Panel finds that the equitable remedy of disgorgement is appropriate to deny Kolta his ill-gotten gains and restore the status quo.

Accordingly, the Extended Hearing Panel orders Kolta to disgorge \$297,823 in commissions he earned from his sales of shares of the ARC New York REIT to the 16 customers.⁵¹⁴ The Hearing Panel also orders that he pay pre-judgment interest on the disgorgement amount, calculated from the dates that he received the commissions until the date

⁵¹⁰ Even if the Hearing Panel were to exclude the overwhelming evidence of Kolta's unsuitable recommendations involving the 12 non-testifying customers, the Hearing Panel would still find the evidence of misconduct involving the four testifying customers more than sufficient to justify a bar. The four customers (PV, SS, TS, and JK) purchased nearly \$1.4 million in shares of the ARC New York REIT over a 14-month period. CX-2, at 2-3. Kolta also brazenly falsified multiple account records and REIT investment documents so the four customers would qualify to purchase the ARC New York REIT. CX-1, at 10-13.

⁵¹¹ Guidelines at 5 (General Principle No. 6).

⁵¹² Guidelines at 9.

⁵¹³ *Dep't of Enforcement v. Vungarala*, No. 2014042291901, 2018 FINRA Discip. LEXIS 26, at *116 (NAC Oct. 2, 2018) (disgorgement "remediate[s] ... misconduct by eliminating the financial benefit directly resulting from it" and therefore deters others from engaging in similar misconduct), *aff'd*, Exchange Act Release No. 90476, 2020 SEC LEXIS 4938 (Nov. 20, 2020).

⁵¹⁴ CX-2, at 1.

disgorgement is paid.⁵¹⁵ Because National has paid restitution to the 16 customers, and is no longer in business, the Hearing Panel orders that the disgorgement be paid to FINRA.⁵¹⁶

B. Kolta's Violations of FINRA's Advertising Rule (Cause Four)

The Guidelines for making misleading statements in communications with the public, in violation of FINRA Rule 2210, recommend a fine of between \$5,000 and \$40,000. When a respondent acts negligently, adjudicators should consider a suspension in any or all capacities for a period of 10 business days to two months. When a respondent acts intentionally or recklessly, adjudicators should consider suspending respondent in any and all capacities for up to 18 months. But when aggravating factors predominate, a suspension in any and all capacities for up to two years or even a bar may be appropriate.⁵¹⁷

Specific principal considerations for circulating misleading communications are: (1) the nature and significance of the false, misleading, or omitted information, (2) whether the violative communications with the public were circulated widely, and (3) whether the misconduct was intentional, reckless, or negligent.⁵¹⁸

The communication standards set forth in FINRA Rule 2210 are intended to protect investors.⁵¹⁹ The Hearing Panel finds that Kolta acted intentionally when he sent the misleading emails. The Hearing Panel also finds that his emails were designed to mislead customers by convincing them that the ARC New York REIT was a safe product when in fact it was a high-

⁵¹⁵ CX-2, at 2-3. *See Dep't of Enforcement v. Davidovsky*, No. 2008015934801, 2013 FINRA Discip. LEXIS 7, at *42 (NAC Apr. 26, 2013) (explaining that pre-judgment interest achieves “the proper deterrence for the misconduct because disgorgement alone does not reflect the time value of ill-gotten gains, and in effect, provides the respondent with an interest free loan until the disgorgement order is final.”).

⁵¹⁶ Compl. ¶ 30; CX-474, at 14 n.12. National ceased conducting business in July 2022 and filed a Form BDW (Uniform Request Withdrawal from Broker-Dealer Registration). CX-475.

FINRA's routine practice is to contribute disgorgement amounts collected to the FINRA Investor Education Foundation. Guidelines at 5. *See also* FINRA Report on Use of 2023 Fine Monies at n.1 (June 14, 2024), <https://www.finra.org/about/annual-reports/report-use-2023-fine-monies>.

⁵¹⁷ Guidelines at 114 (Communications with the Public – Failure to Comply with Content Standards).

There are separate Guidelines for a respondent's failure to obtain approval for public communications. Guidelines at 113 (Failure to Comply with Approval, Review, Recordkeeping, and Filing Requirements). The recommended sanctions for this misconduct are significantly less than for violations of advertising content standards: a fine of between \$5,000 and \$20,000 and a suspension in any or all capacities for up to two months where aggravating factors predominate. The most relevant principal consideration is whether the failure to have the communications reviewed or approved resulted in the distribution of false or misleading communications. Guidelines at 113. Because the gravamen of the allegations involving Kolta's emails in cause four is their false and misleading character, the Hearing Panel applied the Guidelines for violations of content standards. Guidelines at 114.

⁵¹⁸ Guidelines at 114.

⁵¹⁹ *Reyes*, 2021 FINRA Discip. LEXIS 29, at *69 (citing *Robert L. Wallace*, Exchange Act Release No. 40654, 1998 SEC LEXIS 2437, at *16 (Nov. 10, 1998) (“The [advertising] rules that Wallace violated provide important safeguards for the protection of public investors.”)).

risk, speculative, and illiquid investment that could result in considerable losses. Each of the emails was sent to well over 100 investors.⁵²⁰ Kolta's misleading email communications were part of an overall campaign of persuasion and a pattern of misconduct to promote his unsuitable recommendations to customers to invest in the ARC New York REIT, which generated a significant payout for Kolta.⁵²¹ The emails perpetuated and advanced Kolta's misconduct.⁵²² The Hearing Panel notes that even after sending his last email, on May 30, 2015, seven of Kolta's customers made another nine investments in the ARC New York REIT totaling more than \$1,175,000, for which Kolta earned additional commissions.⁵²³ The Hearing Panel also considered that Kolta failed to obtain prior approval of the emails. This failure likely facilitated Kolta's ability to distribute the misleading communications.

The Extended Hearing Panel finds that, after considering all the evidence, the appropriate sanctions for distributing four misleading communications to hundreds of investors and failing to obtain prior approval to distribute the emails from a Firm principal are a \$40,000 fine and a two-year suspension from associating with any FINRA member firm in any capacity. In light of the bar imposed under causes one through three, however, the Hearing Panel will not impose these sanctions.

VI. Order

Respondent Mark Sam Kolta violated FINRA Rules 2111 and 2010 by making unsuitable recommendations to 16 customers to invest more than \$4.8 million in the ARC New York REIT, as alleged in cause one. He caused his employer firm to maintain incorrect books and records, in violation of FINRA Rules 4511 and 2010, as alleged in cause two. He falsified his customers financial information and investment profiles, in violation of FINRA Rule 2010, as alleged in cause three. For this misconduct, Kolta is barred from associating with any member firm in any capacity and ordered to pay disgorgement to FINRA in the amount of \$297,823, plus pre-judgment interest running from August 28, 2015, the date of his last sales of interests in the ARC New York REIT (to customers JAK, JHN, and JK),⁵²⁴ until the disgorgement is paid in full.⁵²⁵

⁵²⁰ See CX-211, at 1-3; CX-212, at 1-2; CX-213, at 1-2; CX-214, at 1-2; CX-215, at 1-2; CX-216, at 1-2; CX-217, at 1-4; CX-218, at 1-4; CX-219, at 1-2. Kolta sent each of his mass emails in at least two batches. On January 15, 2015, he sent three mass emails to investors. See CX-215; CX-216; CX-217.

⁵²¹ Guidelines at 7-8 (Principal Consideration Nos. 8, 16) (whether the individual respondent engaged in numerous acts or a pattern of misconduct) and (whether the individual respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

⁵²² *Id.* at 7 (Principal Consideration No. 11) (whether the individual respondent's misconduct resulted directly or indirectly in injury to the investing public, and the nature and extent of the injury).

⁵²³ CX-2, at 2-3; CX-218; CX-219.

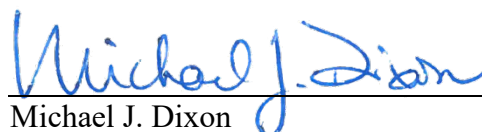
⁵²⁴ CX-2, at 2-3.

⁵²⁵ Pre-judgment interest shall be paid at the rate established for the underpayment of income taxes in Section 6621 of the Internal Revenue Code, 26 U.S.C. §6621(a)(2). See Guidelines 10.

Kolta also violated FINRA Rules 2210 and 2010 by circulating misleading communications to retail customers in the form of four emails and failing to obtain a qualified Firm principal's prior approval of the emails, as alleged in cause four. For this misconduct, the Extended Hearing Panel assesses a \$40,000 fine and a two-year suspension from associating with any FINRA member firm in any capacity. In light of the Extended Hearing Panel's imposition of a bar in all capacities for violations under causes one through three, the Hearing Panel does not impose these sanctions.

If this decision becomes FINRA's final disciplinary action, the bar will take effect immediately.

Kolta is also ordered to pay the hearing costs of \$6,041.61, consisting of a \$750 administrative fee and \$5,291.61 for the cost of the transcript.⁵²⁶ The costs 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
Hearing Officer
For the Extended Hearing Panel

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⁵²⁶ The Extended Hearing Panel considered and rejected without discussion all other arguments by the parties.