

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Jorge A. Reyes,  
Miami Beach, FL,

Respondent.

DECISION

Complaint No. 2016051493704

Dated: October 7, 2021

**Registered representative fraudulently misrepresented and omitted material facts, recommended unsuitable securities to a particular customer, converted funds, and created and used marketing materials that violated the standards for public communications by FINRA members and their associated persons. Held, findings affirmed, in part, and sanctions modified.**

**Appearances**

For the Complainant: Savvas A. Foukas, Esq., Alex P. Ginsberg, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Mark J. Astarita, Esq.

**Decision**

Jorge A. Reyes appeals an Extended Hearing Panel decision. The Hearing Panel found that Reyes, a former registered representative of former FINRA member CP Capital Securities, Inc. (“CP Securities”), engaged in conduct that, in several ways, violated the federal securities laws and FINRA Rules. The Hearing Panel’s findings include that Reyes fraudulently and negligently misrepresented and omitted material facts when he recommended and sold to customers of CP Securities promissory notes issued through private placements by three limited-liability companies affiliated with the broker-dealer—CP US Income, LLC (“CP Income”), CP Venture Capital, LLC (“CP Venture I”), and CP Venture Capital II, LLC (“CP Venture II”). The Hearing Panel’s findings include further that Reyes improperly used and converted funds, made recommendations in violation of reasonable-basis and customer-specific suitability requirements, and used marketing materials that violated the standards that apply to the public communications

of FINRA members and their associated persons. For his misconduct, the Hearing Panel imposed a succession of bars—three in total—prohibiting Reyes from associating with any FINRA member in any capacity, and it ordered that Reyes pay more than \$4 million in restitution.

After a thorough review of the record, we affirm the Hearing Panel’s findings, in part, and modify the sanctions it imposed.

I. Background

Reyes first associated with a FINRA member in August 2000. He was registered as a general securities representative of CP Securities from August 2001 to May 2006. After a period away from the firm, he again registered as a general securities representative of CP Securities from March 2010 to January 2017. He has not since associated with another FINRA member.

CP Securities was a small broker-dealer located in Miami, Florida.<sup>1</sup> The firm was owned by its president, Harold Connell, and his son, Gregory Connell.<sup>2</sup> Harold Connell and Gregory Connell also owned CP Capital Group, LLC (“CP Group”), a holding company that became a part owner of CP Securities in early 2014.

In late 2012, after Harold Connell began planning for retirement, Reyes, Harold Connell, and Gregory Connell became, in effect, equal members of the management of both CP Securities and CP Group, and Reyes involved himself with all aspects of the business of these two entities.<sup>3</sup> The meeting minutes of the boards of both CP Securities and CP Group identified Reyes as a director, and he reviewed and helped formulate their business and financial plans.<sup>4</sup>

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<sup>1</sup> Pursuant to FINRA Rule 8320, FINRA expelled CP Securities from membership in July 2017 after the firm failed to pay a fine and costs imposed as a result of a Letter of Acceptance, Waiver and Consent (“AWC”) that it accepted to settle allegations that it failed to supervise private placement and minimum contingency offerings.

<sup>2</sup> In April 2018, FINRA barred Harold Connell from associating with any FINRA member in any capacity after he accepted an AWC to settle allegations that he violated the federal securities laws and FINRA rules in connection with the promissory notes that are a subject of this case. Pursuant to FINRA Rule 9552(h), FINRA barred Gregory Connell from associating with any FINRA member in any capacity in June 2018 after he failed to respond to a request for information issued under FINRA Rule 8210.

<sup>3</sup> Reyes never registered as a general securities principal of CP Securities.

<sup>4</sup> CP Group had no material operations or assets apart from its ownership of CP Securities and the three limited-liability companies that issued the promissory notes of concern in this case.

## II. Procedural History

FINRA began investigating Reyes after it received two customer complaints. On December 11, 2018, the Department of Enforcement (“Enforcement”) filed an eight-cause disciplinary complaint that alleged Reyes engaged in violations of the federal securities laws and FINRA rules for which sanctions should be imposed.

The first cause of action alleged that Reyes fraudulently misrepresented and omitted material facts when he recommended and sold to customers promissory notes issued by CP Income, CP Venture I, and CP Venture II, in violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010. The second cause alleged, in the alternative, that Reyes negligently made the misrepresentations and omissions alleged in the first cause, in violation of Sections 17(a)(2) and (a)(3) of the Securities Act of 1933 (“Securities Act”) and FINRA Rule 2010.

The third, fourth, and fifth causes alleged that Reyes violated FINRA rules when he improperly used or converted the funds of a customer. Cause three alleged that Reyes improperly used the customer’s funds, in violation of FINRA Rules 2150 and 2010. Cause four alleged, in the alternative, that Reyes converted the funds, in violation of FINRA Rule 2010. And cause five alleged that Reyes misrepresented facts in connection with his alleged improper use or conversion of funds, in violation of FINRA Rule 2010.

The sixth and seventh causes alleged violations of FINRA’s suitability rule. Cause six alleged that Reyes lacked a reasonable basis for believing that the promissory notes issued by CP Income, CP Venture I, and CP Venture II were suitable for at least some investors, in violation of FINRA Rules 2111 and 2010. Cause seven alleged further that the promissory notes issued by all three limited-liability companies were unsuitable for a particular customer to whom Reyes recommended them, in violation of FINRA Rules 2111 and 2010.

Finally, the eighth cause alleged that Reyes marketed the promissory notes to potential investors and customers using written materials that were inconsistent with the standards that apply to the public communications of FINRA members and their associated persons, in violation of FINRA Rules 2210 and 2010.

On March 22, 2019, Reyes filed an amended answer in which he denied all the allegations of wrongdoing Enforcement leveled against him.<sup>5</sup> After an eight-day hearing, the Hearing Panel issued its decision on December 17, 2019. The Hearing Panel found that Reyes engaged in the misconduct alleged in each of the complaint’s eight causes of action. For Reyes’s

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<sup>5</sup> Reyes filed an initial answer on February 8, 2019, after requesting and receiving an enlargement of the period in which to answer the complaint so that he could hire an attorney. Thereafter, after receiving a motion from Enforcement, the Hearing Officer ordered that Reyes file an amended answer because his initial answer did not specifically admit or deny each of the complaint’s allegations as required by FINRA Rule 9215(b).

fraudulent and negligent misrepresentations and omissions of material facts, and his violations of FINRA's suitability rule, the Hearing Panel imposed a single bar from associating with any FINRA member in any capacity. The Hearing Panel imposed a second bar for Reyes's improper use and conversion of funds, and the misrepresentations he made in connection with that misconduct. Finally, the Hearing Panel imposed a third bar for Reyes's use of marketing materials that violated the standards for the use of such communications under FINRA rules.

Reyes timely appealed the Hearing Panel's decision.

### III. Facts

#### A. The Relevant Private Placement Offerings

This case largely involves promissory notes issued through private placements by CP Income, CP Venture I, and CP Venture II for which CP Securities served as the exclusive placement agent. Reyes was involved with all aspects of these offerings. He helped set the terms of the offerings, reviewed drafts of their private placement memoranda, created written marketing materials that he used to promote the offerings, involved himself directly with decisions concerning how the proceeds from the offerings would be used, and acted as the near-exclusive broker of the securities issued.

##### 1. CP Income

CP Income was conceived by Reyes and Gregory Connell.<sup>6</sup> Beginning May 15, 2013, CP Income offered promissory notes with four-year terms that promised monthly interest payments at the rate of 12 percent annually, with repayment of principal to begin after two years.<sup>7</sup>

Reyes participated with Harold Connell and Gregory Connell in the management of CP Income, and he reviewed and helped draft the private placement memorandum for its offering of promissory notes. The private placement memorandum stated that CP Income would invest the proceeds from the sale of the promissory notes in a diverse basket of corporate notes and debentures that would provide investors returns after the conversion of this debt into equity. It also disclosed that the promissory notes were high-risk, illiquid investments that were suitable only for investors who could easily sustain the loss of their entire investment.

Reyes gave the private placement memorandum and other offering documents to the customers to whom he recommended and sold CP Income promissory notes. These customers,

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<sup>6</sup> Gregory Connell owned CP Income equally with its investment manager. He transferred his 50 percent ownership interest in the limited-liability company to CP Group in early 2014.

<sup>7</sup> Reyes determined that the promissory notes should offer 12 percent interest to attract investments from those of his customers who owned fixed-income investments.

however, did not comprehend the documents that they received. Reyes is a native of Venezuela, and his customers were mostly Venezuelan. They spoke and read Spanish. The private placement memorandum and other offering documents were written in English, and Reyes did not provide the customers with Spanish translations of the documents that they received.<sup>8</sup>

The customers who purchased CP Income promissory notes trusted Reyes, and they therefore believed his oral representations and email communications about the offerings, which Reyes communicated exclusively in Spanish. Reyes told the customers that the promissory notes were safe, income-generating investments similar to bonds or other fixed income investments.<sup>9</sup> He did not inform the customers that the promissory notes carried a high degree of risk and were illiquid. He also did not disclose to them that the notes were suitable only for investors who could afford to lose their entire investment.

Reyes provided to prospective investors and customers other written materials that he created to market and promote the promissory notes issued by CP Income. These marketing materials consisted of a PowerPoint® slide presentation. The materials described the promissory notes issued by CP Income as “corporate notes” that were “secured” and “protected” by a “[d]iverse basket of convertible debentures” “used to provide debt funding to U.S. Publicly traded companies in good standing.”<sup>10</sup> The marketing materials further claimed that CP Income “utilizes a comprehensive due diligence process developed with time, which is similar to that provided to private equity companies,” to identify the debentures in which it would invest.

The marketing materials that Reyes created and used to promote the CP Income offering contained no discussion of the risks of investing in the promissory notes it issued. The materials instead prominently featured, in a purported nod to safety, the logos and seals of FINRA, the Securities and Exchange Commission (“SEC”), and the Securities Investor Protection Corporation (“SIPC”), and they further described the structure of CP Income as including “Auditor[s],” “Consultants,” and “SEC Attorneys.”

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<sup>8</sup> Customers testified consistently that they did not read the documents that Reyes gave them. To the extent that a document, such as a subscription agreement, required a signature, the customers testified that they simply signed or initialed the documents in the locations that Reyes highlighted for them.

<sup>9</sup> For example, when one customer told Reyes that her investment in CP US Income would consume most of her assets, he responded that it “was a good company, a good investment, and a good profit . . . that is what we sell, quality fixed-income products, not volatile stocks.”

<sup>10</sup> The materials stated that the convertible debentures purportedly securing CP Income’s promissory notes were themselves secured by “their underlying assets, establishing multiple-cash streams to mitigate risk and ensure that there are high levels of cash to serve the secured corporate note.” “The security,” the materials stated, “always has greater current market value than the face value of the secured corporate notes.”

From June 2013 to June 2014, Reyes raised \$2,125,000 from the sale of CP Income promissory notes to eight customers, which represented all but \$100,000 of the entire sum invested in the CP Income offering.<sup>11</sup> Although the notes paid some interest initially, CP Income failed. The customers who purchased its promissory notes lost all the money that they invested in the offering.

## 2. CP Venture I

Reyes, Harold Connell, and Gregory Connell were disappointed in the performance of CP Income. They therefore decided to create a second limited-liability company, CP Venture I, for which they alone would make the investment decisions.<sup>12</sup> Beginning October 1, 2013, CP Venture I offered two-year promissory notes that promised monthly interest payments at the rate of 10 percent annually, with principal repayment due upon maturity.<sup>13</sup>

When Reyes, Harold Connell, and Gregory Connell formed CP Venture I, they decided to expand CP Securities by creating a Latin American division.<sup>14</sup> CP Securities, however, did not have the financial wherewithal to support this new division. Reyes, Harold Connell, and Gregory Connell therefore decided jointly to use the proceeds from the sale of CP Venture I promissory notes to, among other things, support CP Securities.

From October 2013 to January 2015, Reyes raised \$1,457,000—all the funds the offering generated—from the sale of CP Venture I promissory notes to 10 customers. From October 2013 to September 2015, in a series of transactions that generally followed soon after a customer's investment, Reyes, Harold Connell, and Gregory Connell caused CP Venture I to loan \$1,060,000 to CP Group, which in turn infused \$454,000 in capital into CP Securities.<sup>15</sup> The money CP Group borrowed from CP Venture I was used to fund operations, pay expenses

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<sup>11</sup> Reyes received \$40,000 in commissions for his sales efforts.

<sup>12</sup> CP Venture I was owned by CP Group and Gregory Connell.

<sup>13</sup> As he had with CP Income, Reyes was involved with setting the terms for the CP Venture I offering.

<sup>14</sup> Reyes was in charge of the new division and responsible for recruiting and hiring its brokers. He began using the title Senior Vice President of "LATAM Markets."

<sup>15</sup> The remaining funds that CP Venture I raised from the sale of its promissory notes was loaned to two companies that Reyes recommended, including a Belize company formed and controlled by Reyes's sister that acted as a conduit of the funds to others and generated legal fees for her.

and salaries, and make payments to Reyes and Gregory Connell.<sup>16</sup> None of these expenditures were possible without the money raised from the sale of CP Venture I promissory notes.

Like the private placement memorandum for CP Income, the private placement memorandum for CP Venture I, which Reyes also reviewed and helped draft, stated that it would invest the proceeds from the sale of its promissory notes in a diverse basket of corporate notes and debentures that would provide investors returns upon the conversion of this debt into equity. It also disclosed that the purchase of CP Venture I promissory notes involved a high degree of risk and was suitable only for investors who had no need for liquidity and could easily sustain the loss of their entire investment. The private placement memorandum, however, did not disclose that proceeds from the sale of the promissory notes could be used to fund CP Group or CP Securities, nor did it disclose that the proceeds could be used for lending to members of Reyes's family.

As he had with the CP Income offering, Reyes provided the private placement memorandum and other offering documents for CP Venture I to customers.<sup>17</sup> These customers, however, also did not understand the documents and instead trusted Reyes's oral representations about the CP Venture I promissory notes. Reyes also told these customers that the promissory notes were safe, income-generating investments like bonds or other fixed income investments. He again failed to inform the customers that, in reality, the promissory notes carried a high degree of risk and were illiquid.

The marketing materials that Reyes created and used to promote the CP Venture I offering were nearly identical to those he created and used to promote the CP Income offering. The materials described the promissory notes issued by CP Venture I in virtually identical terms, claiming that they too were secured corporate notes and protected by a diverse basket of convertible debentures that ensured that the promissory notes were over-collateralized. They also claimed that CP Venture I utilized the same type of private-equity due diligence as CP Income when deciding in which companies to invest. And, like the marketing materials for CP Income, the CP Venture I materials did not include any risk disclosures, instead using references to FINRA, the SEC, and SiPC, as well as "Auditor[s]," "Consultants," and "SEC attorneys," to imply safety.

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<sup>16</sup> In return for the money it borrowed, CP Group issued to CP Venture I promissory notes that were convertible into ownership of CP Group in the event it defaulted. CP Group used some of the money CP Venture I loaned it to make payments of interest due on these promissory notes.

<sup>17</sup> Three CP Securities customers purchased CP Venture I promissory notes after Reyes convinced them to exchange funds due them from liquid investments that they had purchased years earlier for CP Venture I promissory notes worth \$67,000. Reyes did not provide the three customers with a CP Venture I private placement memorandum, and he did not ask them to execute subscription agreements for their promissory notes. Reyes sold the CP Venture I promissory notes to the three customers even though each customer's investment did not meet the \$100,000 minimum stated in CP Venture I's private placement memorandum.

CP Venture I also failed, and the customers who purchased its promissory notes lost all the money that they invested.

### 3. CP Venture II

CP Group could not repay the money that it borrowed from CP Venture I. By early 2015, it had largely exhausted that money and was dependent on the revenues generated by CP Securities, which struggled to develop its Latin American division and was likewise short of money. Reyes, Harold Connell, and Gregory Connell therefore decided to form CP Venture II to raise funds to keep CP Group and CP Securities running.<sup>18</sup> Beginning March 13, 2015, CP Venture II offered five-year promissory notes bearing eight percent interest to be paid monthly for the first 36 months, followed by amortized principal payments until maturity.

From May 2015 to February 2016, CP Securities brokers sold \$823,000 in CP Venture II promissory notes to six customers. Of this sum, Reyes raised \$537,000 from sales to three customers, including two who had invested in both CP Income and CP Venture I.<sup>19</sup>

As they had with CP Venture I, Reyes, Harold Connell, and Gregory Connell jointly decided how to invest the funds from the CP Venture II offering. From May 2015 to February 2016, again in a series of transactions that followed closely after each sale of promissory notes to customers, they caused CP Venture II to loan \$774,000 to CP Group.<sup>20</sup> CP Group in turn used this money to infuse \$360,000 of capital into CP Securities, pay Reyes and Gregory Connell, and pay interest to holders of both CP Venture I and CP Venture II promissory notes. Like the borrowing from CP Venture I, these payments were not possible without the additional funding provided by the sale of CP Venture II promissory notes.

The private placement memorandum for CP Venture II, which Reyes similarly reviewed and helped draft, was nearly identical to the private placement memoranda for the CP Income and CP Venture I offerings. Its disclosed use of proceeds was essentially the same, as were the risks it disclosed for investments in its promissory notes. Unlike the private placement memorandum for CP Venture I, however, the private placement memorandum for CP Venture II stated that it “may make loans to affiliated entities.”

Although Reyes provided the private placement memorandum and other offering documents for CP Venture II to customers, the customers did not read the documents because they did not understand them. Reyes instead orally represented to these customers that CP Venture II promissory notes were safe and akin to other fixed income investments, but he did not

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<sup>18</sup> Like CP Venture I, CP Venture II was owned by CP Group and Gregory Connell.

<sup>19</sup> The remaining notes were sold by a foreign representative that Reyes hired as a broker for CP Securities’ Latin American division.

<sup>20</sup> As with its borrowing from CP Venture I, CP Group issued to CP Venture II promissory notes that were convertible into ownership of CP Group in the event it defaulted.



disclose to them that the promissory notes contained a high degree of risk, including the risk of illiquidity and total loss. He also did not disclose that the funds customers invested in CP Venture II would be used primarily to keep CP Group and its broker-dealer afloat or to pay investors interest due on their CP Venture I and CP Venture II promissory notes.

Reyes created and used for the CP Venture II offering marketing materials that were largely the same as the earlier offerings, and which claimed that the promissory notes CP Venture II issued were secured by convertible debentures that were identified after a comprehensive commercial due diligence process. This security, the marketing materials again asserted, “always has greater current market value than the face value of the secured note.” The marketing materials for CP Venture II, like those for CP Income and CP Venture I, were devoid of any disclosures of risk and continued to convey safety by employing references to FINRA, the SEC, SiPC, “Auditor[s],” “Consultants,” and “SEC Attorneys.”

As with the other two offerings at issue here, CP Venture II failed, and the customers who purchased the promissory notes it issued lost all the money that they invested.

#### B. Reyes Recommends the Promissory Notes to a Particular Customer

NR is a native of Venezuela who speaks Spanish and understands and reads no English. After moving with her husband to Florida, they divorced. As part of her divorce settlement, NR received \$2.5 million in property and cash. These funds were meant to last NR, who did not work, her lifetime.

NR had no investment experience prior to her divorce. Initially, she invested her assets in a conservative portfolio of investments through a bank and a large financial services company. This portfolio consisted of bonds, mutual funds, and equities that were meant to generate income sufficient to cover her living expenses and those of her two dependent children.

NR met Reyes through her ex-husband. NR discussed her finances with Reyes. Based on these discussions, Reyes knew that NR did not work. He also knew that NR’s investment objective was to preserve the assets that she received from her divorce by making conservative investments that would generate income.

At first, Reyes recommended that NR invest in bonds through a CP Securities account for which Reyes was the broker. Later, and although he knew NR had a very low tolerance for risk, Reyes recommended that she purchase CP Income, CP Venture I, and CP Venture II promissory notes. NR trusted Reyes and followed his recommendations. In a series of transactions, beginning in June 2013, and ending in June 2015, NR invested \$1,452,000—more than half her net worth—in promissory notes issued by each of these limited-liability companies.<sup>21</sup>

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<sup>21</sup> NR invested through a company that was established after her divorce to hold her personal assets.

Reyes told NR that the promissory notes were safe and would, like a bond, provide her with a fixed income. Reyes did not tell NR that the promissory notes carried risk or that she could lose her entire investment. He also failed to tell her that the promissory notes issued by CP Venture I and CP Venture II would be used to fund financially strapped entities affiliated with those limited-liability companies and an entity with which Reyes had a family connection. NR testified that, had Reyes provided this missing information to her, she would have never agreed to purchase any of the promissory notes he recommended to her.

Reyes provided NR private placement memoranda and subscription agreements each time she invested in the offerings of CP Income, CP Venture I, and CP Venture II. These documents, however, were in English, and NR could not read them. Reyes never translated the documents for her, and he explained that they were merely needed for her to invest. She signed them where Reyes instructed.<sup>22</sup>

NR lost her entire \$1,452,000 investment in the three offerings, although she did receive some interest payments. Because of these investments, and others that Reyes recommended, NR lost most of the assets that were meant to support her a lifetime.

C. Reyes Takes and Spends Money Given to Him for Other Purposes

1. Reyes Spends Money Intended for an Incubator Fund

RS, through his company, RMInc., maintained a CP Securities account for which Reyes was the broker. In May 2015, Reyes recommended and sold to RS \$200,000 in CP Venture II notes. Reyes thereafter began talking to RS about other possible investments.

In January 2016, Reyes proposed to RS the idea of establishing an “incubator fund” in the British Virgin Islands. Reyes then found an attorney who, on February 24, 2016, provided Reyes with a draft engagement agreement to create the incubator fund for a \$10,000 fee, with 50 percent of the fee paid upfront and the remainder paid at the time the attorney established the fund in the British Virgin Islands.

Later that day, Reyes emailed RS that he had “spoken” with the attorney. In his email, Reyes claimed that the attorney’s fee would be \$42,000. Reyes told RS, however, that if he

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<sup>22</sup> The subscription documents that NR signed contained inaccurate information that she did not supply. For example, a “Private Placement Suitability Questionnaire” included in the subscription documents for each of her promissory note purchases overstated her net worth, reporting it as \$5 million when it was in fact \$2.5 million. These documents also falsely stated that NR had “extensive” investment knowledge and that her investment objective was “speculation.”

agreed to engage the attorney by the end of February, and paid the attorney a \$20,000 retainer, the attorney would agree to reduce his fee to \$38,000.<sup>23</sup>

RS agreed to give Reyes the \$20,000 that Reyes claimed was needed to retain the attorney who would establish the incubator fund. To raise the \$20,000, RS sold bonds that he held in RMInc.'s CP Securities account. On March 10, 2016, and again on March 15, 2016, RS gave Reyes checks for \$10,000 drawn on RMInc.'s checking account.<sup>24</sup> Both checks, which RS signed, were made payable to HKSHB International Business LLC ("HKSHB"), a Florida company that Reyes owned and controlled.<sup>25</sup>

Prior to depositing the two checks RS gave him, Reyes's HKSHB bank account was overdrawn. After depositing the two checks, Reyes spent no part of the \$20,000 to establish the incubator fund. Reyes instead used the funds as if they were his own, transferring the money to his personal checking account, providing money to a relative of his girlfriend, and paying personal expenses, including car payments, rent, and groceries.

In less than a month, Reyes spent the entire \$20,000 that RS gave him. Although RS demanded repayment, Reyes returned none of the money RS intended that Reyes use for the incubator fund.

## 2. Reyes Spends Money Paid for a Promissory Note

In early 2016, as the financial condition of CP Group and CP Securities continued to deteriorate, the broker-dealer, at the urging of Reyes, pursued an investment banking deal with Petroleos de Venezuela ("PDVSA"), the Venezuelan state-owned oil company. PDVSA owed its suppliers about \$2.5 billion in unpaid invoices, and it entered into discussions with CP Securities to oversee the exchange of PDVSA notes for its accounts payable. CP Securities anticipated earning a \$37,500,000 advisory fee for its role in structuring these exchanges.

CP Group, however, needed money to keep CP Securities afloat until the PDVSA deal was finalized. CP Group therefore began issuing promissory notes that promised to pay double the amount invested upon the closing of CP Securities' agreement with PDVSA. Reyes knew that CP Group was issuing these notes and for what purpose, and he in fact assisted with drafting an investment summary to market the notes to potential investors.

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<sup>23</sup> Shortly after emailing RS, Reyes emailed the attorney with redlined edits to the draft engagement agreement that Reyes had received earlier in the day. Reyes's edits proposed to conform the attorney's draft engagement letter with the terms that Reyes presented to RS.

<sup>24</sup> RS wrote "Incubator Fund 1st" on the memo line of the first check, and he wrote "Incubator Fund 2nd" on the memo line of the second check.

<sup>25</sup> Reyes disclosed HKSHB as an outside business activity. His disclosure described the company as "not investment related" and claimed that it was used to assist his "family's pet shop business and construction business."

Reyes told RS that he could double his money by investing in the promissory notes that CP Group was issuing to fund CP Securities while it pursued the PDVSA deal. Based on these representations, RS agreed to invest \$150,000. In return, Reyes provided RS a promissory note that provided he would receive \$300,000 upon the closing of CP Securities' agreement with PDVSA, but not later than June 30, 2016.

The promissory note that Reyes provided RS, dated March 28, 2016, was ostensibly based on other notes CP Group issued to fund the PDVSA deal, but Reyes had modified it to state that he guaranteed the note personally. Although Reyes never signed the note, RS provided Reyes with the funds they discussed, which RS raised primarily by liquidating bonds held in RMInc.'s CP Securities account.

As Reyes instructed, RS wired \$150,000 to Reyes's HKSHB bank account, which at the time had a balance of \$1,680.22. Contrary to the representations he made to RS, however, Reyes did not give the funds that RS sent him to CP Group, and he did not otherwise use the money to help CP Securities close the PDVSA deal. Instead, as he had done with the money that RS provided him for the incubator fund, Reyes used the funds as if they were his own, transferring money to his personal checking account, paying his personal credit card debt, and spending large sums of money on personal trips, at restaurants and department stores, for a luxury car, and to pay alimony. In approximately four months, Reyes spent on himself all \$150,000 that RS had given him for the CP Group promissory note. RS never recouped any of this money from Reyes.<sup>26</sup>

#### IV. Discussion

##### A. Reyes Committed Fraud by Misrepresenting and Omitting Material Facts in Connection with Sales of Securities

Exchange Act Section 10(b) makes it "unlawful for any person, directly or indirectly . . . [t]o use or employ, in connection with the purchase or sale of any security . . . , any manipulative or deceptive device or contrivance in contravention" of Exchange Act rules. 15 U.S.C. § 78j(b). Exchange Act Rule 10b-5 in turn makes it unlawful, among other things, for any person, "in connection with the purchase or sale of any security," to "directly or indirectly" "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not

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<sup>26</sup> RS repeatedly asked for the return of the money he gave to Reyes for the incubator fund and promissory note, at one point telling Reyes that he "urgently" needed the money to cover expenses related to the birth of his daughter. RS later told Reyes that he had been forced to leave his house and sleep in his car with his newborn daughter because he did not have any money for a hotel. Despite RS's pleas that he was "desperate" for the return of the funds he had given Reyes, Reyes repeatedly told RS that the money could not be returned because it had been invested in the incubator fund or was being used by CP Group to finance the PDVSA deal.

misleading.”<sup>27</sup> 17 C.F.R. § 240.10b-5(b). Conduct that violates Exchange Act Section 10(b) and Exchange Act Rule 10b-5 also violates FINRA Rules 2020 and 2010.<sup>28</sup>

Enforcement alleged, and the Hearing Panel found, that Reyes engaged in fraud by misrepresenting and omitting material facts when he recommended and sold CP Income, CP Venture I, and CP Venture II promissory notes to customers, as well as when he used the marketing materials that he created to promote these offerings.<sup>29</sup> We affirm the Hearing Panel’s findings.

#### 1. Reyes Misrepresented and Omitted Material Facts

“When making affirmative representations with respect to the purchase or sale of a security there is an ‘ever-present duty not to mislead.’” *Luo*, 2017 FINRA Discip. LEXIS 4, at \*17 (quoting *Basic, Inc. v. Levinson*, 485 U.S. 224, 241 n. 18 (1988)). Accordingly, “one who elects to disclose material facts ‘must speak fully and truthfully, and provide complete and non-misleading information with respect to the subjects on which he undertakes to speak.’” *Louis Ottimo*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588, at \*31 (June 28, 2018) (quoting *SEC v. Curshen*, 372 F. App’x 872, 880 (10th Cir. 2010)). A failure to disclose all material facts, after making selected favorable disclosures, is a material omission under the anti-

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<sup>27</sup> Reyes admitted that the promissory notes he sold to customers were securities. Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 also include jurisdictional elements that prohibit fraud by “any means or instrumentality of interstate commerce.” See 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5. The evidence attests that Reyes’s alleged fraudulent misrepresentations and omissions occurred by means or instrumentality of interstate commerce, including by email. See *Grubbs v. Sheakley Group, Inc.*, 807 F.3d 785, 803 (6th Cir. 2015) (“[T]he very act of sending an e-mail creates the interstate commerce nexus necessary for federal jurisdiction.”).

<sup>28</sup> FINRA Rule 2020 provides that “[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.” A violation of the federal securities laws or another FINRA rule violates FINRA Rule 2010, which provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” *Dep’t of Enf’t v. Luo*, Complaint No. 2011026346206, 2017 FINRA Discip. Lexis 4, at \*21 n.7 (FINRA NAC Jan. 13, 2017). All FINRA rules apply with equal force to persons associated with a member. See FINRA Rule 0140(a) (“Persons associated with a member shall have the same duties and obligations as a member under the Rules.”).

<sup>29</sup> Enforcement alleged also that Reyes should be held liable for fraudulent omissions from the private placement memoranda that he provided to customers for these offerings. The Hearing Panel, however, made no liability findings concerning these allegations. We do not revisit them in this decision. See FINRA Rule 9311(e) (“The National Adjudicatory Council may, in its discretion, deem waived any issue not raised in the notice of appeal or cross-appeal.”).

fraud provisions of the federal securities laws and FINRA rules. *See Dep't of Enf't v. Ottimo*, Complaint No. 2009017440201, 2017 FINRA Discip. Lexis 10, at \*15-16 (FINRA NAC Mar. 15, 2017) (“[H]e chose to disclose only positive information related to his business dealings . . .”), *aff'd in relevant part*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588 (June 28, 2018).

“[M]ateriality depends on the significance the reasonable investor would place on the withheld or misrepresented information.” *Basic*, 485 U.S. at 240. A fact is material if there is a substantial likelihood that a reasonable investor would have viewed it as significantly altering the total mix of information made available. *Id.* at 231-32 (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). “Material facts include those facts that may affect the desires of investors to buy, sell or hold a particular security.” *Dep't of Enf't v. Apgar*, Complaint No. C9B020046, 2004 NASD Discip. LEXIS 9, at \*13 (NASD NAC May 18, 2004).

Reyes misrepresented and omitted material facts when he recommended and sold to customers the promissory notes issued by CP Income, CP Venture I, and CP Venture II. “Facts concerning the safety and quality of an investment would be material to any reasonable investor.” *Luo*, 2017 FINRA Discip. LEXIS 4, at \*24. In this respect, the testimony of customers made clear that Reyes falsely told them that the promissory notes were safe investments like fixed-income securities. He did not inform the customers that the promissory notes were in fact high-risk, illiquid instruments that carried with them the risk of total loss. These misrepresentations and omissions were innately material.<sup>30</sup> *See SEC v. Fife*, 311 F.3d 1, 10 (1st Cir. 2002) (“These misrepresentations and omissions were material because a reasonable investor would want to know about the risks involved in the [investment].”).

Details about the use of an investor’s funds are also material. *See Fuad Ahmed*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078, at \*39-40 (Sept. 28, 2017) (“A reasonable investor would have considered important the misrepresentations regarding the use of

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<sup>30</sup> In this appeal, Reyes argues that any misrepresentations that he made about the risk of investing in the promissory notes were rendered immaterial when he provided customers with the private placement memoranda for the offerings. This argument is unpersuasive. Reyes ignores the fact that the private placement memoranda were written in English and his customers could not read them. *See SEC v. Morgan Keegan & Co., Inc.*, 678 F.3d 1233, 1250 (11th Cir. 2012) (“The way information is disclosed can be as important as its content.”). And in any event, his delivery of the private placement memoranda does not excuse his material misrepresentations and omissions concerning risk. *See Larry Ira Klein*, 52 S.E.C. 1030, 1036 (1996) (“Klein’s delivery of a prospectus to Towster does not excuse his failure to inform her fully of the risks of the investment package he proposed.”). The cases Reyes relies on to argue otherwise are inapposite as they concern generally the issue of whether plaintiffs in private litigation may justifiably rely on a defendant’s misstatements or omissions of material facts. “The reasonableness of an investor’s reliance is not an element of a FINRA enforcement action for fraud.” *See Dep't of Enf't v. Brookstone Sec., Inc.*, Complaint No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at \*83 (FINRA NAC Apr. 16, 2015).

the Note proceeds.”). Reyes, however, failed to tell customers who purchased CP Venture I and CP Venture II promissory notes that the money from the sale of these securities would be used by him, Harold Connell, and Gregory Connell primarily to fund CP Capital Group and CP Securities, including to expand the broker-dealer’s Latin American sales activities. And he made no mention of the fact that these entities were experiencing severe financial difficulties and depended on the money Reyes raised from the sale of the promissory notes to survive. The materiality of these omissions is thus also evident. *See Dep’t of Enf’t v. Clements*, Complaint No. 2015044960501, 2018 FINRA Discip. LEXIS 11, at \*38 (FINRA NAC May 17, 2018) (“Clements’s omissions of fact . . . about Avenir’s financial condition and the firm’s use of proceeds were material.”).

Finally, Reyes misrepresented and failed to disclose material facts in the marketing materials that he created and used to promote the securities offerings of CP Income, CP Venture I, and CP Venture II.<sup>31</sup> Reyes failed to disclose in these materials the high degree of risk that accompanied an investment in the offerings, emphasizing instead the supposed safety of the promissory notes by falsely representing that the notes were secured by a diverse basket of convertible debentures that ensured that the notes were well collateralized. *See Dep’t of Enforcement v. Titan Sec.*, Complaint No. 2013035345701, 2021 FINRA Discip. LEXIS 5, at \*47 (FINRA NAC June 2, 2021) (“A registered representative makes misleading misrepresentations in violation of FINRA Rule 2010 when he states to his customers that an investment is secured by collateral, when, in fact, the investment is not secured.”), *appeal docketed*, SEC Admin. Proceeding No. 3-20387 (June 29, 2021). The marketing materials also falsely represented that any use of investor funds would be preceded by a comprehensive due diligence process, when in fact no such process existed or was performed. As shown by the use of investor funds from the sale of CP Venture I and CP Venture II promissory notes specifically, proceeds from these offerings were not deployed to capitalize a diverse basket of securities but were instead invested mostly to support two financially-stressed entities—CP Capital Group and CP Securities—whose only observed qualities were that they needed money. These misrepresentations and omissions, which bore directly on the level of risk involved with an

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<sup>31</sup> Reyes testified that he did not prepare the marketing materials and believed that CP Securities had approved them for use. The Hearing Panel, however, did not find Reyes credible. We defer to the Hearing Panel’s credibility findings. *See Daniel D. Manoff*, 55 SEC 1155, 1162 (2002) (“We defer to the credibility findings of the NASD. The record supports them and contains no substantial contrary evidence.”). We conclude that the evidence shows Reyes created the marketing materials and possessed ultimate authority over the materials and their contents. We therefore find that Reyes was the maker of the misstatements and omissions made in them for purposes of liability under Exchange Act Rule 10b-5(b). *See Janus Capital Grp., Inc. v. First Derivative Traders*, 564 U.S. 135, 142 (2011) (“For purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.”).

investment in the promissory notes, were material.<sup>32</sup> *See Alvin W. Gebhart*, 58 S.E.C. 1133, 1169-70 (2006), *aff'd in relevant part*, 252 F. App'x. 254 (9th Cir. 2007).

## 2. Reyes Acted with Scienter

Proof of scienter is required to find a violation of Exchange Act Section 10(b), Exchange Act Rule 10b-5, and FINRA Rule 2020. *See Luo*, 2017 FINRA Discip. LEXIS 4, at \*20. Scienter is “a mental state embracing intent to deceive, manipulate, or defraud.” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Scienter is established by showing that the respondent acted intentionally or recklessly. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 n.3 (2007). Recklessness includes “a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known . . . or is so obvious that the actor must have been aware of it.”<sup>33</sup> *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977).

Reyes possessed the requisite mental state to be held liable for fraud. Reyes testified that he knew that the promissory notes issued by CP Income, CP Venture I, and CP Venture II were high-risk investments. Reyes also reviewed and helped draft the private placement memoranda for these offerings, and he therefore knew or must have known that they disclosed, in unequivocal terms, that the promissory notes were illiquid, high-risk securities and suitable only for investors who could afford to lose their entire investment. Reyes, however, did not inform his customers, either orally or in the marketing materials for the promissory notes that he sold to them, that the notes were speculative securities. He instead falsely told his customers that the promissory notes were safe, and the marketing materials he used for each of the offerings deceptively portrayed the notes as secured and over-collateralized. Based on this evidence, there can be no doubt that Reyes acted knowingly and recklessly, and thus with scienter. *See Mohammed Riad*, Exchange Act Release No. 78049, 2016 SEC LEXIS 2091, at \*94 (June 13,

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<sup>32</sup> Reyes’s failure to disclose to customers that the funds they invested in CP Venture I promissory notes would be used also for lending to a company controlled by his sister was likewise material. *See Dep’t of Mkt. Regul. v. Burch*, Complaint No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at \*31 (FINRA NAC July 28, 2011) (finding customers were deprived of material facts when respondent failed to disclose his motivation and potential economic interest in recommending securities transactions in which his wife had an interest). So too was his omission of the fact that proceeds from the sale of CP Venture I and CP Venture II promissory notes would be used to pay prior investors. *See Ahmed*, 2017 SEC LEXIS 3078, at \*40 (“That so much money from new investors was being used to repay existing investors . . . would have been material to a reasonable investor’s assessment of the riskiness of the investment.”).

<sup>33</sup> “Scienter can be established by direct or circumstantial evidence,” and the “objective unreasonableness of a defendant’s conduct may give rise to an inference of scienter.” *Gebhart v. SEC*, 595 F.3d 1034, 1041 (9th Cir. 2010).



2016) (“Scienter can be satisfied by a strong showing of reckless disregard for the truth, as well as actual knowledge of falsity.”); *Luo*, 2017 FINRA Discip. LEXIS 4, at \*16 (“[W]e agree with the Hearing Panel that Luo knowingly and recklessly misrepresented that the [notes] were safe.”).

The evidence likewise shows that Reyes knew well that CP Group and CP Securities needed funding to expand into Latin America and for other purposes, and that he, Harold Connell, and Gregory Connell saw and used CP Venture I and CP Venture II almost exclusively as vehicles to provide that funding.<sup>34</sup> He nevertheless did not disclose to his customers who bought CP Venture I and CP Venture II promissory notes, either orally or in the marketing materials he used, the plan to use the proceeds from his customers’ investments to fund CP Group and CP Securities. Reyes instead falsely claimed that his customers’ funds would be invested in a diverse basket of corporate debentures identified through comprehensive due diligence, knowing this was not the case. In this respect too, Reyes undoubtedly acted with scienter. *See Ahmed*, 2017 SEC LEXIS 3078, at \*45 (“Ahmed acted with scienter with respect to these misrepresentations because he knew the statements to be false when made.”); *Clements*, 2018 FINRA Discip. LEXIS 11, at \*43 (“Clements was acutely aware of Avenir’s finances, yet he failed to disclose material information . . . about Avenir’s financial conditions and the intended use of the proceeds.”).

In sum, we conclude that Reyes made material misrepresentations and failed to disclose material facts in connection with the promissory notes that he recommended and sold to

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<sup>34</sup> As he did before the Hearing Panel, Reyes argues in this appeal that there is no evidence that he knew funds from the sale of CP Venture I and CP Venture II promissory notes would be used to support CP Group and CP Securities. As the Hearing Panel found, and we conclude also, the evidence belies Reyes’s claims that he was unaware of the precarious financial condition of CP Group and CP Securities, and that funds from the offerings would be used to support these entities. In fact, the Hearing Panel concluded that his testimony to the contrary was “false.” “Overall,” the Hearing Panel found Reyes “deceptive and dishonest,” and it concluded that his “efforts were primarily oriented toward separating clients from their money for personal gain as he endeavored to become a highly compensated principal with CP Securities.” We defer to these credibility findings. *See Manoff*, 55 S.E.C. at 1162.

customers, and that he did so with scienter.<sup>35</sup> As a result, we find that Reyes violated Exchange Act Section 10(b), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010.<sup>36</sup>

B. Reyes Made Unsuitable Recommendations to a Particular Customer

FINRA Rule 2111 states that “[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.” FINRA Rule 2111(a). The rule imposes on FINRA members and their associated persons both “reasonable-basis” and “customer-specific” suitability obligations. *See* FINRA Rule 2111 Supplementary Material .05 (“Rule 2111 is composed of three main obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.”).

The customer-specific suitability component of FINRA Rule 2111 “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.” FINRA Rule 2111 Supplementary Material .05(b). FINRA Rule 2111 therefore requires a broker, in addition to having a reasonable basis for making a recommendation, to assess whether a recommendation involving a security or securities is suitable for the specific customer to whom the recommendation is made. *See Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917, at \*18 (Apr. 3, 2020). A recommendation must “be consistent with the customer’s best interests and financial situation.” *Id.* “A broker cannot be satisfied that a recommendation is suitable without disclosing the risks of the security to the customer because the broker must be satisfied that the customer is ‘willing to take those risks.’” *Id.* (quoting *Patrick G. Keel*, 51 S.E.C. 282, 284 (1993)).

Enforcement alleged, and the Hearing Panel found, that Reyes recommended that a particular customer, NR, purchase CP Income, CP Venture I, and CP Venture II promissory notes in violation of customer-specific suitability requirements. We affirm the Hearing Panel’s findings. In reaching this conclusion, we have considered several factors. They include that NR had limited investment experience and was recently divorced. *See William J. Murphy*, Exchange

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<sup>35</sup> Because we conclude that Reyes acted with scienter, we affirm the Hearing Panel’s findings that his conduct, as alleged in the complaint, was willful. *See Bruce Zipper*, Exchange Act Release No. 90737, 2020 SEC LEXIS 5226, at \*33 (Dec. 21, 2020) (“The finding that Dakota acted with scienter is sufficient to find that Dakota acted willfully.”). He is, accordingly, subject to a statutory disqualification. *See* 15 U.S.C. §§ 78c(a)(39)(F) & 78o(b)(4)(D) (including as a statutory disqualification from the securities industry willful violations of the Exchange Act or the rules under this statute).

<sup>36</sup> Having found that Reyes engaged in fraud, we decline to find, as Enforcement alleged in the alternative, and the Hearing Panel found, that Reyes negligently misrepresented and omitted material facts, in violation of Sections 17(a)(2) and (a)(3) of the Securities Act and FINRA Rule 2010.

Act Release No. 69923, 2013 SEC LEXIS 1933, at \*41 (July 2, 2013) (“Lowry was an unsophisticated investor . . . .”); *Patrick G. Keel*, 51 S.E.C. 282, 285 (1993) (“Singleton [was] . . . recently divorced.”), *aff’d*, 733 F. App’x 571 (2d Cir. 2018). Although she received \$2.5 million in assets from her divorce settlement, that money was meant to last her lifetime. *See Bernard G. McGee*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987, at \*32 (Mar. 27, 2017) (“She intended to rely on her investments to sustain her for the rest of her life.”). NR therefore invested these funds initially in a conservative portfolio of assets from which she could generate income to support herself and her two children.

Reyes knew that NR, a homemaker, had a low tolerance for risk and that her investment objectives were to preserve her assets and generate income. *See Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at \*37 (May 27, 2011) (“[H]e knew Mr. Bates was retired, needed to preserve principal, requested low-risk investments, and needed immediate income for monthly withdrawals to cover living expenses.”); *Keel*, 51 S.E.C. at 286 (“Keel knew that Singleton’s primary investment objective was safety of principal.”). He nevertheless recommended, over a two-year period, that NR invest \$1,452,000 in promissory notes from the three relevant offerings. Reyes thus recommended that NR concentrate more than half of her net worth in these speculative investments. *Dane S. Faber*, 57 S.E.C. 297, 298 (2004) (“We have repeatedly found that a high concentration of investments in one or a limited number of speculative securities is not suitable for investors seeking limited risk.”).

Although Reyes told NR that the promissory notes were safe, and would provide her fixed income like a bond, they were in fact illiquid, high-risk investments. *See Cody*, 2011 SEC LEXIS 1862, at \*37 (“Cody recommended that Bates make substantial investments in these bonds, which were rated speculative and highly speculative . . . .”); *Keel*, 51 S.E.C. at 286 (finding that a recommendation that a customer invest in a private placement that was suitable only for persons “who have no need for liquidity” and “could withstand a loss of their entire investment” did not comport with the customer’s investment objective of safety of principal). Reyes did not disclose these considerable risks, which were necessary for NR to understand the investments Reyes recommended to her. *See Newport Coast*, 2020 SEC LEXIS 917, at \*19 (“These customers testified that they never had the risks of [the investment] explained to them.”). He therefore had no basis from which to conclude that his recommendations were suitable for NR because he could not know whether she was willing to accept those risks.<sup>37</sup> *See id* at \*18.

Consequently, we conclude that Reyes did not fulfill his customer-specific suitability obligations when he recommended that NR invest more than half of her net worth in high-risk promissory notes. *See McGee*, 2017 SEC LEXIS 987, at \*32-33 (“This sort of blind experiment with such a large portion of the assets of an unsophisticated investor with moderate means seeking moderate risk was unsuitable for this customer.”). We therefore find that Reyes violated FINRA Rules 2111 and 2110.

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<sup>37</sup> In fact, she was not. NR testified that, had she known she could lose all her money by investing in the promissory notes, or that some of the money she invested would be used to fund CP Group and CP Securities, she would not have followed Reyes’s recommendations.

We, however, decline to find that Reyes also violated reasonable-basis suitability requirements when he recommended that customers purchase CP Income, CP Venture I, and CP Venture II promissory notes. Enforcement alleged, and the Hearing Panel found, that Reyes did not have a reasonable basis to recommend these securities to any investor because he recommended and sold the securities using fraudulent false statements and material omissions. The Hearing Panel concluded that “[s]ecurities sold through fraudulent means are not suitable for any investor.”<sup>38</sup>

We recognize the sometimes-close connection that misrepresentations and omissions of fact play in findings of unsuitability. See *Dep’t of Enf’t v. Frankfort*, Complaint No. C02040032, 2007 NASD Discip. LEXIS 16, at \*31 (NASD NAC May 24, 2007) (“Frankfort’s failure to disclose the Fund’s losses plays an important part in finding both a material omission and unsuitability.”). Such connections have been drawn in cases involving violations of customer-specific suitability requirements. See, e.g., *id.* (“In order for Frankfort, or any other registered representative, to have reasonable grounds for believing that an investment is suitable for a particular customer, he must disclose material information related to risk that he possesses about an investment when failure to make such disclosures would otherwise violate the antifraud provisions.”). We are familiar also with a line of cases holding that recommendations made to purchasers of securities without a reasonable basis may lead to findings of liability under the antifraud provisions of the federal securities laws because a broker cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant.<sup>39</sup> See, e.g., *Hanly v. SEC*, 415 F.2d 589, 597 (2d Cir. 1969) (“He cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those that are reasonably ascertainable.”).

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<sup>38</sup> The Hearing Panel quoted from *Dep’t of Enf’t v. John Carris Inv., LLC*, Complaint No. 2011018647101, 2015 FINRA Discip. LEXIS 32, at \*126 (FINRA Hearing Panel Jan. 20, 2015). *Carris*, however, does not itself cite to any case law or other precedent that supports its statement that securities sold through fraudulent means are inherently not suitable for any investor.

<sup>39</sup> In one such case, we found that a broker violated reasonable-basis suitability requirements and committed fraud when he recommended that his customers purchase securities issued by inherently fraudulent entities without conducting an adequate and reasonable investigation into whether those entities owned the pre-IPO shares of hot internet companies that they claimed to be offering investors. See *Dep’t of Enf’t v. Gomez*, Complaint No. 2011030293503, 2018 FINRA Discip. LEXIS 10, at \*43 (FINRA NAC Mar. 28, 2018) (“Praetorian and the Praetorian G entities were fraudulent and they did not own the pre-IPO shares they purported to own.”). We draw a distinction between *Gomez*, a case in which the respondent had no basis for recommending that his customers invest in fundamentally fraudulent securities that would not be suitable for any investor, and the facts present in this case, which show that Reyes understood that the securities that he recommended his customers purchase were risky but may have been suitable for some investors despite the risk.

We nevertheless have not found, and are not aware of any binding precedent stating, that fraudulent sales of securities inescapably violate reasonable-basis suitability requirements. Reasonable-basis suitability requires a registered representative to have, before making a customer-specific suitability determination, “an adequate and reasonable basis for believing that the recommendation could be suitable for at least some customers.” *Michael Frederick Siegel*, Exchange Act Release No. 58737, 2008 SEC LEXIS 2459, at \*28 (Oct. 6, 2008) (internal quotation marks omitted), *aff’d in relevant part*, 592 F.3d 147 (D.C. Cir. 2010); *accord* FINRA Rule 2111 Supplementary Material .05(a). “The reasonableness of any recommendation is predicated on a registered representative’s understanding of ‘the potential risks and rewards inherent in that recommendation.’” *Siegel*, 2008 SEC LEXIS 2459, at \*28 (quoting *F.J. Kaufman & Co.*, 50 S.E.C. 164, 168 & n.19 (1989)).

We therefore look at the adequacy and reasonableness of the diligence and investigation that a broker undertakes prior to recommending a security to determine whether he possesses a reasonable basis to believe such recommendations are suitable for at least some customers. *See Dep’t of Enf’t v. McGee*, Complaint No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at \*61 (FINRA NAC July 18, 2016) (“McGee failed to conduct sufficient due diligence . . .”), *aff’d*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987 (Mar. 27, 2017). Applying that analysis here, we find the limited evidence about the adequacy of the diligence Reyes performed inconsistent with Enforcement’s claim that Reyes did not have a reasonable basis to recommend to at least some customers the promissory notes at issue. As we find above, Reyes knowingly and recklessly misrepresented or omitted to disclose to customers the risks that came with an investment in the promissory notes. He knew that the promissory notes were high risk and illiquid. He also knew or must have known, having reviewed and helped draft the private placement memoranda for the offerings, that they were suitable only for investors who could afford to lose their entire investment. Finally, Reyes knew that the proceeds from the promissory notes sold by CP Venture I and CP Venture II would be used almost exclusively to support the operations of CP Group and its financially strapped broker-dealer, CP Securities, including to create the broker-dealer’s Latin American division, for which Reyes was responsible. Thus, given his essential involvement in the securities offerings at issue in this case, Reyes knew well the securities that he recommended to his customers. On the basis of this record, and having found that Reyes committed fraud, we decline to find that he did not possess an understanding of the risks inherent in his recommendations such that he also violated reasonable-basis suitability requirements.

C. Reyes Converted Funds Belonging to Someone Else

Conversion is the intentional and unauthorized taking of property that belongs to someone else. *See John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at \*33 (Feb. 10, 2012). It is well established that the act of conversion violates FINRA Rule

2010.<sup>40</sup> *Id.* Enforcement alleged, and the Hearing Panel found, that Reyes converted funds belonging to RS. We affirm the Hearing Panel’s findings.

RS gave Reyes \$170,000 that RS intended Reyes to use to establish an incubator fund and to purchase a promissory note issued by CP Group. Reyes used none of these funds for their intended purpose.<sup>41</sup> Reyes instead deposited the money in the bank account of HKSHB, his disclosed outside business activity, and used all the money as if it was his own, transferring the money to his personal checking account, providing money to a relative of his girlfriend, and paying personal expenses, including those for rent, a car, credit cards, groceries, personal trips, dining, shopping, and alimony.

Because Reyes would not have been able to pay these expenses without the money RS gave him, we find the evidence conclusive that Reyes intentionally appropriated and used the money for a purpose that RS did not authorize. We accordingly find that Reyes converted the funds, in violation of FINRA Rule 2010.<sup>42</sup> *See Akindemowo*, 2016 SEC LEXIS 3769, at \*23 (“We agree with FINRA that Akindemowo’s use of AG’s and RB’s funds meets each element of . . . conversion. . . . Akindemowo did not invest [the] money as they wished. Instead, he used it for his personal expenses.”).

D. Reyes Violated Standards That Apply to the Public Communications of FINRA Members and Their Associated Persons

FINRA Rule 2210 imposes standards on the use and content of the public communications of FINRA members and their associated persons. Enforcement alleged, and the Hearing Panel found, that Reyes created and used marketing materials to promote promissory notes issued by CP Income, CP Venture I, and CP Venture II that breached several aspects of this rule.<sup>43</sup> We affirm the Hearing Panel’s findings.

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<sup>40</sup> Conversion is a violation of FINRA Rule 2010 even if the person whose funds were converted was not a customer of a FINRA member. *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at \*22 (Sept. 30, 2016).

<sup>41</sup> Enforcement alleged, and the Hearing Panel found, that Reyes falsely told RS that his funds would be used to establish an incubator fund and to purchase a CP Group promissory note, in violation of FINRA Rule 2010. We nonetheless decline to find that these misrepresentations constitute a distinct violation of just and equitable principles of trade separate from the conversion of the funds. We instead view these facts as evidence that Reyes used RS’s money for purposes that RS neither intended nor authorized.

<sup>42</sup> Because we find that Reyes converted funds belonging to RS, we decline to find, as Enforcement alleged in the alternative, and the Hearing Panel found, that Reyes improperly used those funds, in violation of FINRA Rules 2150 and 2010.

<sup>43</sup> FINRA Rules 2210 defines “communications” broadly to consist of “correspondence, retail communications and institutional communications.” FINRA Rule 2210(a)(1).

First, FINRA Rule 2210 states that “[a]ll member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.” FINRA Rule 2210(d)(1)(A). The rule requires that the communications of FINRA members and their associated persons “disclose in a balanced way the risks and rewards of the touted investment.” *CapWest Sec., Inc.*, Exchange Act Release No. 71340, 2014 SEC LEXIS 4604, at \*17 (Jan. 17, 2014) (quoting *Jay Michael Fertman*, 501S.E.C. 943, 950 (1994)). This includes disclosure of the investment’s risk of loss and its illiquidity. *See id.* Reyes, however, did not disclose in any of the marketing materials that he created and used for the CP Income, CP Venture I, and CP Venture II offerings the risks inherent in an investment in the promissory notes issued by these limited-liability companies. The materials did not disclose in any manner that the promissory notes were high-risk, illiquid investments. They also did not reveal that the promissory notes were suitable only for investors who could stand to lose their entire investment. We thus conclude that the marketing materials were not “fair and balanced,” and they did not “provide a sound basis for evaluating” the promissory notes that Reyes marketed and sold. *See id.* at \*18 (“The record here supports FINRA’s finding that CapWest failed to provide the requisite balanced disclosure of the risks associated with TIC investments.”); *Phillipe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at \*12-13 (Nov. 8, 2006) (“[T]he brochure did not disclose that the notes were illiquid and carried a high risk of default.”).

Second, FINRA Rule 2210 provides that “[n]o member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication.” FINRA Rule 2210(d)(1)(B). The materials Reyes used to market the promissory notes issued by CP Income, CP Venture I, and CP Venture II nevertheless contained several false, exaggerated, unwarranted, and misleading statements. For instance, the materials falsely claimed that the promissory notes were secured and that the investments underlying the promissory notes would likewise be secured by collateral that would always be worth more than the promissory notes. Such statements were plainly misleading. *See Titan Sec.*, 2021 FINRA Discip. LEXIS 5, at \*62 (“[T]he Three Emails contained various inaccurate statements about the coins securing the customers’ investments in RBCP.”). The marketing materials also made exaggerated and unwarranted statements about the protection that purchasers of the promissory notes could expect because of oversight by FINRA, the SEC, and others. These included statements that CP Securities, the placement agent for the notes, was “regulated and audited in the U.S.” and had a “compliance program that has a successful record in the regulatory environment.” They also included a description of the “fund structure” for CP Income, CP Venture I, and CP Venture II as including “Auditor[s],” “Consultants,” and “SEC Attorneys.” Although regulatory oversight, in

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“Correspondence” is further defined to mean “any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.” FINRA Rule 2210(a)(2). Under FINRA Rule 2210, correspondence thus includes any type of written communication. Accordingly, we find that the marketing materials that Reyes created and distributed are governed by FINRA Rule 2210.

general, provides some level of investor protection, a FINRA member may not make misleading claims regarding the degree of that oversight and the safety it affords investors. *See CapWest*, 2014 SEC LEXIS 4604, at \*22. Reyes’s exaggerated and unwarranted statements about FINRA regulation, CP Securities’ compliance program, and the structure of each of the limited-liability companies that issued promissory notes misled investors. *See id.* at \*25 (“The Firm’s misleading and exaggerated statements regarding the regulatory protections afforded to TIC investments . . . were material . . .”).

Finally, FINRA Rule 2210 prohibits any communication that “implies that FINRA . . . or any other regulatory organization endorses, indemnifies, or guarantees the member’s business practices, selling methods, the class or type of securities offered, or any specific security.”<sup>44</sup> FINRA Rule 2210(e)(1). The marketing materials that Reyes created and used falsely implied that several regulatory organizations, including FINRA, the SEC, and SiPC, endorsed the promissory notes he recommended and sold to customers.

In sum, Reyes created and used marketing materials that did not comport, in several ways, with the standards that apply to the public communications of FINRA members and their associated persons. We therefore find that Reyes violated FINRA Rules 2210 and 2010.

E. Reyes Received a Fair Hearing

Reyes bases his appeal largely on myriad arguments that the disciplinary proceedings that resulted in the Hearing Panel’s decision were unfair. We find these arguments to be without merit and conclude that Reyes was afforded the fair process due him under the Exchange Act and FINRA rules.<sup>45</sup>

1. Reyes Did Not Establish That He Was Entitled to Pre-Hearing Discovery

Reyes asserts that the Hearing Officer unfairly denied a pre-hearing motion he made requesting discovery. We find that the Hearing Officer did not abuse his discretion by denying this request.

The motion at issue asked that Enforcement be ordered to produce “any documents and information pertaining to any conversation or correspondence between Enforcement staff and

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<sup>44</sup> FINRA members may indicate FINRA membership in accordance with Article XV, Section 2 of the FINRA By-Laws.

<sup>45</sup> Reyes argues in his appeal brief that he was denied “due process.” It is well-established, however, that FINRA disciplinary proceedings are not subject to the Constitution’s due process requirements. *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at \*51 (Jan. 30, 2009), *aff’d*, 416 F. App’x 142 (3d Cir. 2010). The Exchange Act requires instead that FINRA provide fair procedures for disciplining its members and their associated persons. 15 U.S.C. § 78o-3(b)(8).



Respondent's customers." Reyes claimed in his motion that "Enforcement staff has apparently contacted Respondent's customers and has made promises of assistance with those customers to obtain restitution of their investments." Reyes asserted that evidence of such promises, which Reyes suggested constituted a "quid pro quo" of restitution for testimony, would constitute material exculpatory evidence under FINRA Rule 9251(b)(3).

Enforcement opposed Reyes's motion. In its response, which was supported by a declaration signed by Enforcement counsel, Enforcement stated that it had complied fully with its obligations under FINRA Rule 9251 to produce to Reyes documents prepared or obtained during FINRA's investigation, and with its obligations under FINRA Rule 9253 to produce substantially verbatim witness statements or written statements made by FINRA staff about the substance of oral statements made by any person who Enforcement planned to call as a witness at the hearing.<sup>46</sup> Enforcement also represented that it had reviewed its files and, to the extent it withheld any documents in accordance with FINRA rules, such documents in no way reflected that any customers were promised repayment of their losses in exchange for their testimony and did not otherwise contain any material exculpatory information.<sup>47</sup>

The Hearing Officer, in an omnibus order dated June 25, 2019, denied Reyes's discovery motion. The Hearing Officer found that Reyes failed to show that Enforcement had within its possession any documents that it should be required to produce under FINRA rules.<sup>48</sup> Reyes did not identify the source of his contention that customers had been promised restitution for their testimony, and his motion was not supported by any evidence, such as a declaration, to support his claim of a quid pro quo. The Hearing Officer also found that Enforcement, in the declaration filed in support of its opposition to Reyes's motion, admitted that it had orally discussed with potential customer witnesses the sanctions and remedies that could be imposed if Reyes were held liable for his alleged misconduct, but it stated that such customers were told that "there was no guarantee that the customers would recover any money through the disciplinary proceeding." The Hearing Officer thus concluded that, while Enforcement's oral statements provided Reyes with grounds to question those customers who testified about their discussions with FINRA staff, Reyes did not establish that any further production from Enforcement's files was required.

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<sup>46</sup> The Hearing Officer deemed Enforcement's production complete in an order he issued on May 7, 2019, to resolve an earlier discovery dispute.

<sup>47</sup> Enforcement identified two categories of withheld documents that it found were arguably encompassed by Reyes's motion. The first category included what Enforcement described as non-substantive emails that FINRA staff had exchanged with potential customer witnesses after the complaint was filed concerning their availability to testify. The second category consisted of investigative interview notes that were not subject to production under FINRA Rule 9253(a)(2) because they concerned customers who Enforcement had no intention of calling as witnesses at the hearing.

<sup>48</sup> The Hearing Officer also found that the motion was untimely by more than two months and failed to abide by the case management and scheduling order because Reyes's attorney failed to meet and confer with Enforcement before filing the motion.

We review for an abuse of discretion the Hearing Officer's order denying Reyes's discovery motion. *See Dep't of Enforcement v. Se. Invs., N.C., Inc.*, Complaint No. 2014039285401, 2019 FINRA Discip. LEXIS 23, at \*45 (FINRA NAC May 23, 2019) ("The Hearing Officer did not abuse its discretion in denying respondents' written motion for production of documents."), *appeal docketed*, SEC Admin. Proceeding No. 3-19185, (May 28, 2019). Reyes bears the burden of showing that the Hearing Officer's ruling constituted clear error. *See Dep't of Enforcement v. North*, Complaint No. 2012030527503, 2017 FINRA Discip. LEXIS 28, at \*28 (FINRA NAC Aug. 3, 2017) ("We determine that North has not met his burden to show that the Hearing Officer abused her discretion in denying North's motions for expert testimony and related evidence . . ."), *aff'd*, Exchange Act Release No. 87638, 2019 SEC LEXIS 4837 (Nov. 27, 2019). We find that Reyes failed to carry his burden.

Reyes did not support his motion with any evidence that Enforcement improperly withheld any specific documents concerning conversations FINRA staff had with potential customer witnesses. *See Guang Lu*, 58 S.E.C. 43, 59 (2005) (finding no error in a Hearing Officer's denial of a motion to compel the production of documents when the Hearing Officer found that the motion did not identify any specific documents that had been improperly withheld); *Se. Invs.*, 2019 FINRA Discip. LEXIS 23, at \*45 ("Although it filed a motion to compel Enforcement's production of documents, . . . nothing in that motion specifically asserted that Enforcement improperly withheld documents . . ."). Moreover, given the declaration that Enforcement submitted in support of its opposition to Reyes's motion, and because the Hearing Officer had earlier ruled that Enforcement had complied with its discovery obligations, we find that there was no reason for the Hearing Officer to question Enforcement's representations that it had already produced to Reyes all the documents that it was required to provide him under FINRA rules. *See FCS Sec.*, Exchange Act Release No. 64852, 2011 SEC LEXIS 2366, at \*33 n.35 (July 11, 2011) ("Applicants point to no evidence contradicting the staff's representations that Enforcement had no documents responsive to the request and knew of no applicable exculpatory documents."); *Se. Invs.*, 2019 FINRA Discip. LEXIS 23, at \*45 ("There was no reason for the Hearing Officer to doubt Enforcement's representation that it produced pursuant to FINRA Rule 9251 all the documents it was required to."). We therefore conclude that the Hearing Officer did not abuse his discretion when he denied Reyes's request for pre-hearing discovery.<sup>49</sup> *See Guang Lu*, 58 S.E.C. at 58 ("The record indicates that . . . Enforcement . . .

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<sup>49</sup> Even were we to find that Reyes established that there were documents or statements that Enforcement was required, but failed, to make available to him, he does not argue and has not shown that this failure "was not harmless error." *See* FINRA Rule 9251(g) ("[N]o rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the documents available was not harmless error."); FINRA Rule 9253(b) (stating the same standard for a failure to produce a witness statement). As the Hearing Officer held in his order denying Reyes's discovery motion, Reyes was free to cross-examine any customers who testified about the conversations they had with FINRA staff concerning restitution and any promises that staff may have made to them. In this respect, every customer who testified at the hearing stated that FINRA staff made no promises in return for their testimony. Reyes thus has not shown why the failure to order the production of

produced to Lu all the materials that NASD rules required it to produce.”); *John Montelbano*, 56 S.E.C. 76, 101 (2003) (“Galasso has not established that there are any ‘missing documents’ . . .”).

## 2. The Hearing Officer Was Not Required to Postpone the Hearing

Reyes claims also that the Hearing Officer unfairly denied his request to postpone the hearing. We find with respect to these arguments too that the Hearing Officer did not abuse the considerable discretion granted him under FINRA Rules.

The Hearing Officer issued the case management and scheduling order in this matter on February 22, 2019. It incorporated the parties’ joint proposed schedule for the disciplinary proceedings. Among other things, the case management and scheduling order established June 14, 2019, as the deadline for the parties’ pre-hearing-submissions, including the parties’ pre-hearing briefs, witness lists, exhibit lists, and copies of their proposed exhibits. The case management and scheduling order also set July 15, 2019, as the date on which the hearing in this matter would commence.

On June 10, 2019, however, the attorney who initially represented Reyes withdrew his appearance, citing his inability to “reconcile the differences” that he had with Reyes. Reyes retained a new attorney, and the attorney entered an appearance in accordance with FINRA rules on June 12, 2019.

On June 13, 2019, Reyes’s new attorney filed on behalf of the parties a stipulated motion to extend to June 18, 2019, the deadline for filing the parties’ pre-hearing submissions, which the Hearing Officer granted.<sup>50</sup> On June 18, 2019, however, without conferring and meeting with Enforcement, Reyes’s new attorney filed a motion on behalf of Reyes to postpone indefinitely the hearing scheduled to begin on July 15, 2019. The motion stated that the “basis for the adjournment are the immediate deadlines in the case,” and not “the short timeframe until the commencement of the hearing.” The motion also stated that “those few extra days” that the parties stipulated were needed for filing their pre-hearing submissions were not sufficient for Reyes’s attorney to adequately prepare a defense against Enforcement’s disciplinary claims.

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any documents concerning Enforcement’s conversations with potential customer witnesses constituted anything other than harmless error. *See, e.g., Merrimac Corp. Sec., Inc.*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771, at \*104 n.169 (July 17, 2019) (“Merrimac . . . had ample opportunity to examine witnesses on the summary and underlying exhibits.”).

<sup>50</sup> The Hearing Officer’s order granting the parties’ stipulated motion stated that the other deadlines governed by the case management and scheduling order remained unchanged, including the date on which the hearing would start.

The Hearing Officer, in the omnibus order he issued on June 25, 2019, denied Reyes's motion to postpone the hearing. In so doing, the Hearing Officer considered Reyes's motion under FINRA Rule 9222, which provides that the hearing shall begin at the time ordered, unless the Hearing Officer, for good cause shown, postpones the commencement of the hearing.<sup>51</sup> FINRA Rule 9222(b). The Hearing Officer noted that the proceedings had commenced nearly six months earlier and, during the interim period, he had granted Reyes extensions of time to file an answer to the complaint and to file his pre-hearing submissions. The Hearing Officer also considered that the time for the hearing to commence was fast approaching and had been established by agreement of the parties several months before, and that logistical and travel arrangements for the hearing had already been made. Finally, the Hearing Officer considered that the charges against Reyes involved fraud and other deceptions which, if proven, represented a substantial threat to the investing public.

The Hearing Officer considered the fact that Reyes had recently changed attorneys, but he noted that the attorney was aware of the existing pre-hearing schedule and hearing date when he entered his appearance. In this respect, the Hearing Officer noted that although the attorney claimed he could not meet the June 18, 2019 deadline for the filing of the parties' pre-hearing submissions, the deadline was the result of an extension of time that he requested and to which the parties stipulated, and the attorney did not explain why he was unable to meet that deadline. In fact, the Hearing Officer noted, Reyes's initial attorney had already exchanged draft pre-hearing witness and exhibit lists with Enforcement, and Enforcement had offered to agree to a longer extension of the pre-hearing deadlines in exchange for Reyes's agreement not to seek an adjournment of the hearing. Under these circumstances, the Hearing Officer concluded, Reyes had not established good cause to postpone the hearing's start. The Hearing Officer nevertheless extended to June 28, 2019, the deadline for Reyes to file his witness list, exhibit list, and copies of his proposed exhibits.<sup>52</sup>

We review the denial of a request for a postponement of a hearing for abuse of discretion. *Dep't of Enf't v. Meyers Assocs., L.P.*, Complaint No. 2013035533701, 2017 FINRA Discip. LEXIS 47, at \*39 (FINRA Bd. Dec. 22, 2017), *aff'd*, Exchange Act Release No. 86193, 2019 SEC LEXIS 1626 (June 24, 2019). The Hearing Officer has "broad discretion" to determine, based on the facts and circumstances presented, whether a request for postponement should be granted. *Id.* We will therefore overturn the denial of such a request only if it is "an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay."

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<sup>51</sup> FINRA Rule 9222 requires that the Hearing Officer, when weighing a motion to postpone the start of a hearing, consider the following factors: the length of the proceeding to date; the number of postponements, adjournments, or extensions already granted; the stage of the proceedings at the time of the request; the potential harm to the investing public if a postponement is granted; and such matters as justice requires. FINRA Rule 9222(b)(1). The Hearing Officer may not, in any event, extend the start of a hearing by more 28 days unless the Hearing Officer establishes the reasons why a longer period is needed. FINRA Rule 9222(b)(2).

<sup>52</sup> Enforcement filed its pre-hearing submissions on June 18, 2019. Reyes did not.

*Falcon Trading Grp., Ltd.*, 52 S.E.C. 554, 560 (1995) (quoting *Richard W. Suter*, 47 S.E.C. 951, 963 (1983)), *aff'd*, 102 F.3d 579 (D.C. Cir. 1996).

We find that the Hearing Officer's decision to deny Reyes's request to postpone the start of the hearing was neither unreasoning nor arbitrary. The Hearing Officer gave due consideration to the factors articulated in FINRA Rule 9222 when weighing Reyes's motion. The complaint initiating disciplinary proceedings against Reyes was filed in December 2018. In February 2019, the Hearing Officer, after granting Reyes additional time to file an answer, and upon receiving the parties' joint proposed schedule, set the dates for the filing of prehearing submissions and the start of the hearing. The relevant deadlines were thus well known to the parties when, in June 2019, Reyes's new attorney entered an appearance in this matter.<sup>53</sup> Reyes's attorney did not give any reason for his inability to meet the June 18, 2019 deadline to which he stipulated for the filing of pre-hearing submissions, and as Reyes's motion made clear, the need for a continuance was not premised on the "short timeframe" to the start of the hearing. Reyes also has not shown in this appeal why the additional 10 days that the Hearing Officer granted him to file a witness list, exhibit list, and copies of any proposed exhibits were not enough.<sup>54</sup> Under these circumstances, we conclude that the Hearing Officer's denial of the motion to postpone the hearing was not an abuse of discretion. *See Dep't of Enf't v. Ricupero*, Complaint No. 20060049953-01, 2009 FINRA Discip. LEXIS 36, at \*24 (FINRA NAC Oct. 1, 2009) (finding no abuse of discretion when the denied request for a postponement came three months after the hearing was scheduled and respondent waited until only weeks before the hearing to hire an attorney); *Dist. Bus. Conduct Comm. v. Chiulli*, Complaint No. C07970006,

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<sup>53</sup> If Reyes's new attorney felt that he could not adequately mount a defense given the existing schedule, he should not have agreed to represent Reyes. *See Falcon Trading Grp. v. SEC*, 102 F.3d 579, 581 (1996).

<sup>54</sup> Reyes filed a witness list and exhibit list on July 2, 2019. He, however, did not, as is required under FINRA Rule 9261, submit copies of any proposed exhibits prior to the hearing. *See* FINRA Rule 9261(a) ("No later than ten days before the hearing . . . each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence . . . each Party intends to present at the hearing."). In such circumstances, FINRA Rule 9280 expressly authorizes the Hearing Officer to preclude the use of such evidence at the hearing. *See* FINRA Rule 9280(b)(2) ("A Party that without substantial justification fails to disclose information required by the Rule 9240 Series . . . shall not, unless such failure is harmless, be permitted to use as evidence at the hearing, information not so disclosed."). Consequently, and in accordance with FINRA Rule 9261, the Hearing Officer ordered that Reyes would be permitted to present at the hearing only documentary evidence that the Hearing Officer determined in his discretion, and for good cause shown, may be relevant and necessary for a complete record. *See* FINRA Rule 9261(c) ("[A] Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record."). Consistent with this order, the Hearing Officer accepted as evidence numerous documentary exhibits that Reyes introduced and offered for admission at the hearing.

1998 NASD Discip. LEXIS 43, at \*31 (NASD NAC Oct. 15, 1998) (“Chiulli was given more than one month’s advance notice of the hearing date. The fact that he did not retain a replacement attorney until shortly before the hearing is not sufficient justification to delay the hearing.”).

3. The Hearing Officer Did Not Deny Reyes the Assistance of Counsel

Reyes objects next that he was unfairly “forced” to defend himself at the hearing without an attorney. We find this assertion without merit.

Reyes’s second attorney withdrew from representing Reyes on the eve of the hearing. In support of his motion to withdraw, the attorney stated that “irreconcilable differences have arisen between the [a]ttorney that make it ethically and morally untenable, repugnant and imprudent for the [a]ttorney to continue to represent the Respondent[’s] interests in this matter.” As a result, the attorney represented, Reyes would appear at the hearing pro se on the date that the hearing was scheduled to begin.

On the first day of the hearing, the Hearing Officer issued an oral decision granting the attorney’s motion to withdraw. In so doing, the Hearing Officer asked Reyes whether he was aware of the attorney’s motion and its implications. Reyes stated that he was, and he acknowledged specifically that he was prepared to proceed with the hearing and to defend himself.<sup>55</sup>

Reyes’s pro se status did not deprive him of a fair hearing. Although FINRA’s rules permit the participation of counsel, it is well established that a respondent is not entitled to have FINRA appoint and pay for an attorney during a FINRA disciplinary proceeding. *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*49 (Nov. 9, 2012) (“Although FINRA’s rules permit the participation of counsel, it is well established that there is no right to counsel in [its] disciplinary proceedings.”). Instead, to satisfy the Exchange Act’s requirements that FINRA provide fair procedures for disciplining its members and their associated persons, FINRA must file specific charges, notify the respondent of those charges, give him a chance to defend himself, and keep a record of the proceedings so that they may, if necessary, be reviewed on appeal. *Id.* at \*48-49. The disciplinary process that Reyes received comported fully with these conditions and, thus, was fair. *See Dep’t of Enf’t v. Ballard*, Complaint No. 2010025181001, 2015 FINRA Discip. LEXIS 52, at \*28-29 (FINRA NAC Dec. 17, 2015) (“Ballard’s proceedings before the Hearing Panel were fair, conducted in accordance with FINRA rules, and provided Ballard with notice of the allegations against him and an opportunity to defend himself.”).

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<sup>55</sup> Reyes, at no time, requested that the Hearing Officer postpone or otherwise adjourn the hearing so that he could hire new legal counsel.

4. Hearsay Evidence Is Permitted Under FINRA Rules

Reyes further contends the Hearing Officer unfairly admitted as evidence hearsay statements made by Gregory Connell and RS. We find no error in the Hearing Officer's admission of this evidence.

“[I]t is well-established that hearsay evidence is admissible in administrative proceedings and can provide the basis for findings of violation, regardless of whether the declarants testify.” *Epstein*, 2009 SEC LEXIS 217, at \*46. In determining whether to rely upon hearsay evidence, it is necessary to evaluate its probative value, reliability, and the fairness of its use. *Id.* at \*47. Factors to consider in this respect include, among other things, the type of hearsay at issue, whether the evidence is signed or oral, sworn or unsworn, whether the evidence is contradicted by other direct testimony, whether the declarant is available to testify, and whether the evidence is corroborated. *Id.*

Consideration of these factors supports the conclusion that the extra-hearing statements about which Reyes complains were probative, reliable, and fairly used in this case. Gregory Connell was not subject to FINRA's jurisdiction at the time of the hearing and was not available to testify. His admitted hearsay statements consisted of excerpts from transcribed testimony that he gave under oath during a FINRA on-the-record interview and in a civil deposition that Reyes attended. This testimony was corroborated by other direct testimony given at the hearing, as well as by numerous pieces of documentary evidence. Gregory Connell's testimony was relevant, material, and probative of Reyes's role at CP Securities, the sale of the promissory notes issued by CP Income, CP Venture I, and CP Venture II, Reyes's involvement in the decisions that were made about how to use the proceeds from these offerings, and the creation of the marketing materials that Reyes used to promote the offerings. We therefore conclude that the Hearing Officer properly admitted excerpts of that testimony as evidence in this case. *See, e.g., Meyers Assocs., L.P.*, Exchange Act Release No. 86193, 2019 SEC LEXIS 1626, at \*51-52 (June 24, 2019) (“These factors support relying on Johnson's OTR testimony . . . .”); *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 SEC LEXIS 819, at \*36 (Apr. 11, 2008) (“The reliability of the contested evidence is high. Guss's investigative testimony, which was given under oath, is consistent with much of the other testimony in the proceeding . . . .”).

We also find no error in the Hearing Panel's decision to allow FINRA staff to testify about statements RS made to them during their investigation of this matter. Third parties, including FINRA staff, may testify about statements made to them by others if their testimony is probative of the issues and reliable. *See, e.g., Edgar B. Alacan*, 57 S.E.C. 715, 729 (2004) (“We reject Alacan's argument that it was improper to admit the testimony of [two witnesses] regarding Alacan's handling of their relatives' accounts.”); *Vladislav Steven Zubkis*, 53 S.E.C. 794, 800 n.6 (1998) (“Although the testimony of NASD staff regarding conversations with Zubkis and Gavzie constitutes hearsay, it is well established that hearsay may be admitted and, in appropriate cases, may form the sole basis for findings of fact.”). Here, RS was not subject to

FINRA's jurisdiction and was not willing to testify at the hearing.<sup>56</sup> FINRA staff credibly testified about the four times they interviewed RS.<sup>57</sup> Their testimony included statements RS made to them concerning Reyes's alleged conversion of his funds.<sup>58</sup> RS's statements to staff were corroborated by other evidence, including copies of emails and other communications that Reyes sent to RS, as well as by checks, wire transfers, and bank statements. We thus reject Reyes's argument that the Hearing Panel unfairly relied upon statements that RS made to FINRA staff in finding him liable for conversion. *See Dep't of Enf't v. McGuire*, Complaint No. 20110273503, 2015 FINRA Discip. LEXIS 53, at \*24 (FINRA NAC Dec. 17, 2015) (finding "undoubtedly probative" the testimony of three witnesses, including a FINRA examiner, who testified about statements the victim of respondent's alleged conversion made to them).

5. The Hearing Officer Did Not Unfairly Restrict Reyes's Presentation of Evidence

Finally, Reyes argues that he was unfairly restricted in his presentation of evidence and examination of witnesses. Among other things, he claims that the Hearing Officer discouraged him from making objections and entered evidentiary rulings that were "shocking." We find these claims unpersuasive.

FINRA Rule 9235 authorizes a Hearing Officer "to do all things necessary and appropriate to discharge his or her duties," including "regulating the course of the hearing" and "resolving any and all procedural and evidentiary matters." *See* FINRA Rule 9235(a). In this respect, a Hearing Officer is required to receive in the record "relevant evidence" and possesses the discretion to exclude all "irrelevant, immaterial, unduly repetitious, or unduly prejudicial" evidence. *See* FINRA Rule 9263(a). Having reviewed the entirety of the record of the hearing in this case, we find no evidence that Hearing Officer abused the broad discretion granted to him to regulate the course of the hearing.<sup>59</sup> *See Brookstone Sec.*, 2015 FINRA Discip. LEXIS 3, at \*110 ("The Hearing Officer is granted broad discretion to accept or reject evidence under this rule.").

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<sup>56</sup> Although initially cooperative, RS emailed FINRA staff shortly before the hearing and informed them that he did not wish to testify because he had received pressure from his family and wanted to put the matter behind him. After receiving this email, FINRA staff re-interviewed RS, and he confirmed his earlier statements to FINRA staff.

<sup>57</sup> FINRA staff provided Reyes with copies of their notes from these interviews.

<sup>58</sup> A member of FINRA staff, who is fluent in Spanish, acted as an interpreter during these interviews.

<sup>59</sup> For example, Reyes objects that the Hearing Officer instructed him not to speak to NR outside of the hearing while she was testifying. The Hearing Officer's instruction followed Reyes's attempt to speak with NR off the record in Spanish during a break in her testimony. We find no error in the Hearing Officer's instruction.



V. Sanctions

For the reasons stated below, we modify the sanctions the Hearing Panel imposed on Reyes. We nevertheless agree with the Hearing Panel that his misconduct is worthy of his exclusion from the securities industry. We therefore impose separate bars for each of the four violations of the federal securities laws and FINRA rules in which we find Reyes engaged.

A. Reyes Is Barred for Engaging in Fraud

The Sanction Guidelines (“Guidelines”) for intentional or reckless misrepresentations of material fact strongly recommended that we consider barring an individual respondent, unless mitigating factors predominate.<sup>60</sup> Based on the presence of numerous aggravating factors, and the absence of any mitigating factors, we conclude that barring Reyes is an appropriate sanction for the fraud he committed.

Reyes engaged in a protracted pattern and repeated acts of misconduct.<sup>61</sup> Reyes made material misrepresentations and failed to disclose material facts to more than a dozen customers who purchased CP Income, CP Venture I, and CP Venture II promissory notes in nearly two dozen transactions over a period of more than two years. Moreover, the evidence shows that Reyes profited from his misconduct.<sup>62</sup> He received substantial commissions from his sales of CP Income promissory notes, and he received from CP Group and CP Securities payments that would not otherwise have been possible absent his fraudulent sales of the promissory notes. Reyes’s customers, on the other hand, suffered great injury.<sup>63</sup> Although some customers received some payments of interest, all of them lost the entirety of their investments in the promissory notes that they purchased, with total customer losses stemming from Reyes’s fraudulent misrepresentations and omissions exceeding \$4 million.

Finally, we find it troubling that Reyes has refused to accept responsibility for his misconduct, despite the fact that he knowingly and recklessly misrepresented and omitted material facts that he knew or must have known created an obvious risk of misleading customers who purchased the promissory notes at issue in this case.<sup>64</sup> In this appeal, Reyes willfully ignores the substantial evidence of his wrongdoing, and throughout these proceedings has sought to minimize his role in the management of CP Group and CP Securities, his involvement in decisions made about how to use the proceeds from the sale of CP Venture I and CP Venture II

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<sup>60</sup> See *FINRA Sanction Guidelines*, at 89 (2020) [hereinafter *Guidelines*]. They also recommend a fine of \$10,000 to \$155,000. *Id.*

<sup>61</sup> See *id.* at 7 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

<sup>62</sup> See *id.* at 8 (Principal Considerations in Determining Sanctions, No. 16).

<sup>63</sup> See *id.* at 7 (Principal Consideration in Determining Sanctions No. 11).

<sup>64</sup> See *id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 2, 13).

promissory notes, and his creation of the marketing materials that he used to promote the promissory notes. Instead, Reyes has repeatedly blamed his customers for not reading the offering materials he provided them, asserted that they “tailored” or “shade[d]” their testimony to obtain restitution, and cast himself as the unknowing victim of what he describes as a theft of funds orchestrated solely by Harold Connell and Gregory Connell. *See John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at \*63 (Nov. 12, 2010) (finding it aggravating for purposes of assessing sanctions that the respondent blamed others for his own misconduct).

As the Hearing Panel found, and the evidence shows, Reyes exhibited an “utter absence of remorse or accountability for his own actions.” His “refusal to acknowledge his misconduct and attempts to deflect blame increase the likelihood that he would engage in similar misconduct in the future.” *Mitchell H. Fillet*, Exchange Act Release No. 79018, 2016 SEC LEXIS 3773, at \*18 (Sept. 30, 2016). “The risk posed to the investing public by associated persons who engage in fraud is profound and obvious.” *Alvin W. Gebhart*, Exchange Act Release No. 58951, 2008 SEC LEXIS 3142, at \*46 (Nov. 14, 2008), *aff’d*, 595 F.3d 1034 (9th Cir. 2010). We conclude that Reyes’s violations of the antifraud provisions of the federal securities laws and FINRA rules therefore warrants the severest of sanctions. *See Marshall E. Melton*, 56 S.E.C. 695, 713 (2003) (“[C]onduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions . . .”). Reyes is fundamentally unfit for association with any FINRA member and poses too great a risk to investors to remain in the securities industry. *See Akindemowo*, 2016 SEC LEXIS 3769, at \*39 (“Akindemowo defrauded investors with false statements about securities and pocketed funds entrusted to him—this conduct demonstrates a fundamental unfitness for association in the securities industry.”); *Gebhart*, 2008 SEC LEXIS 3142, at \*46 (“[W]e concur in NASD’s determination that Gebhart’s misconduct demonstrates that he poses too great a risk to the investing public to be permitted to remain the securities industry.”). Barring him protects the investing public and thus serves a remedial purpose. *See John M.E. Saad*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216, at \*7 (August 3, 2019) (“A FINRA bar may be imposed, not as punishment, but as a means of protecting investors.”), *aff’d*, 980 F.3d 103 (D.C. Cir. 2020). Accordingly, we bar Reyes from associating with any FINRA member in any capacity for violating Exchange Act Section 10(b), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010.

B. Reyes Is Barred for Recommending Unsuitable Transactions to a Particular Customer

The Hearing Panel imposed a single bar on Reyes for his fraudulent and negligent misrepresentations and omissions and his suitability violations. Because we find that Reyes did not violate reasonable-basis suitability requirements, and his violations of his customer-specific suitability obligations raise separate and serious regulatory issues in this case, we impose a separate and distinct sanction for his violations of FINRA Rules 2111 and 2010.<sup>65</sup> *See Siegel*,

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<sup>65</sup> The Guidelines provide FINRA adjudicators the discretion to treat multiple violations individually such that a sanction is imposed for each violation. *See Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 4).

2008 SEC LEXIS 2459, at \*46-47 (“The second suspension will protect the public interest by encouraging Siegel and others to take steps necessary to determine that recommendations that they make to their customers are suitable . . .”).

The Guidelines for making unsuitable recommendations in violation of FINRA Rule 2111 recommend a fine of \$2,500 to \$116,000.<sup>66</sup> They further recommend suspending an individual respondent for a period of 10 days to two years.<sup>67</sup> Where aggravating factors predominate, however, the Guidelines strongly recommend a bar for the individual respondent.<sup>68</sup>

Although we find that Reyes violated customer-specific suitability requirements as to only one customer, NR, we nevertheless find that aggravating factors predominate that warrant barring Reyes from the securities industry. Reyes made multiple unsuitable recommendations to NR over a two-year period, recommending that she purchase promissory notes issued by CP Income, CP Venture I, and CP Venture II in seven different transactions.<sup>69</sup> In this respect, the number, size, and character of the transactions establish that Reyes engaged in a clear pattern of misconduct.<sup>70</sup> Reyes turned to NR as the first, or one of the first, customers to whom he recommended and sold notes issued by all three issuers, and the total investments that she made in these notes represented more than one-third of the proceeds that Reyes raised from his sales of the promissory notes. As Enforcement’s forensic accounting of the proceeds from the sale of CP Venture I and CP Venture II promissory notes showed in particular, each of NR’s purchases was followed promptly by Reyes, Harold Connell, and Gregory Connell causing these limited-liability companies to loan funds to CP Group. We thus find that Reyes intentionally, or at least recklessly, engaged in making unsuitable recommendation to NR.<sup>71</sup> He clearly preyed on her whenever CP Group and CP Securities needed funds.

We also consider it aggravating that Reyes recommended high-risk promissory notes to NR despite her lack of sophistication as an investor and her prior experience of investing in relatively conservative investments that were meant to preserve her assets and generate income.<sup>72</sup> Disregarding NR’s low tolerance for risk, Reyes recommended that NR invest more than half of her net worth in promissory notes that were illiquid and carried the risk of total loss of her investment. In so doing, Reyes caused NR, who was recently divorced and a mother of two, to

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<sup>66</sup> *Guidelines*, at 95.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *See id.* at 7 (Principal Considerations in Determining Sanctions, Nos. 8,9).

<sup>70</sup> *See id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8, 17).

<sup>71</sup> *See id.* at 8 (Principal Considerations in Determining Sanctions, No. 13).

<sup>72</sup> *See id.* (Principal Considerations in Determining Sanctions No. 18).

lose a substantial portion of the assets that were meant to last her lifetime.<sup>73</sup> Reyes's unsuitable recommendations provided CP Group and CP Securities with funding that they desperately needed and allowed these entities to make payments to Reyes that would not have been possible otherwise. Reyes thus profited from his misconduct at NR's expense.<sup>74</sup>

In light of our duty to protect the investing public, we find we must act decisively in this case, as we have done in similar cases, where the evidence proves that the respondent was indifferent to his duties to ensure that he recommends suitable investments to his customer. *See Dep't of Enf't v. Epstein*, Complaint No. C9B040098, 2007 FINRA Discip. LEXIS 18, at \*100-01 (FINRA NAC Dec. 20, 2007) ("Epstein's demonstrated insouciance and indifference towards his responsibilities under NASD rules poses a serious risk to the investing public."), *aff'd*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217 (Jan. 30, 2009). As with his other misconduct, Reyes accepts no responsibility for the unsuitable recommendations he made to NR.<sup>75</sup> He claims in this appeal that NR was more sophisticated than her testimony suggested, but he offers no evidence or arguments as to why the investments he recommended to her were suitable in light of her risk tolerance, investment experience, and customer profile.

We therefore conclude that excluding Reyes from the securities industry is necessary to protect the investing public and prevent him from inflicting on other customers harms similar to those he imposed on NR. *See Saad*, 2019 SEC LEXIS 2216, at \*7; *Gerald J. Kesner*, Complaint No. 2005001729501, 2010 FINRA Discip. LEXIS 2, at \*52 (FINRA NAC Feb. 26, 2010) ("To ensure that Kesner causes no similar harm to the investing public in the future . . . we bar Kesner from associating with any member in any capacity."). Consequently, we bar Reyes from associating with any FINRA member in any capacity for making unsuitable recommendations to NR in violation of FINRA Rules 2111 and 2101.

### C. Reyes Is Barred for His Acts of Conversion

The Guidelines for conversion are expressed in decidedly stark terms: a bar is the standard sanction regardless of the amount converted.<sup>76</sup> This recommendation reflects the practical judgment that those who engage in conversion pose such a serious risk to investors that they should be barred from the securities industry. *See Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at \*25 (Mar. 29, 2016).

By taking funds that RS gave him for other purposes, and using them as if they were his own, Reyes exhibited flagrant dishonesty that renders him unfit for employment in the securities

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<sup>73</sup> *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 11).

<sup>74</sup> *See id.* at 8 (Principal Considerations in Determining Sanctions, No. 16).

<sup>75</sup> *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2).

<sup>76</sup> *Guidelines*, at 36. Because a bar is standard, the Guidelines for conversion do not recommend a fine. *Id.*

industry. *See Dep't of Enf't v. Olson*, Complaint No. 201002334960, 2014 FINRA Discip. LEXIS 7, at \*11 (FINRA Bd. Of Governors May 9, 2014), *aff'd*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015). Numerous troubling, aggravating factors justify this conclusion. Reyes's misconduct was the result of intentional acts that were accompanied by false statements concerning the manner in which he intended to, and did in fact, use the funds.<sup>77</sup> Rather than use RS's funds to establish an incubator fund and purchase a CP Group promissory note, Reyes used the funds for his personal benefit and, in so doing, deprived RS permanently of money that RS urgently needed.<sup>78</sup> And importantly, Reyes has not acknowledged his misconduct.<sup>79</sup> Indeed, as the Hearing Panel found, and the record shows, Reyes falsely testified that the money RS gave him was intended and used for some other "deal" in which Reyes was purportedly acting as a middleman between RS and a Venezuelan company.<sup>80</sup> *See Akindemowo*, 2016 SEC LEXIS 3769, at \*36 ("[W]e note that Akindemowo has consistently given a false account of the facts.").

We do not find any evidence of mitigation that warrants deviating from the standard sanction of a bar in this case. "The public interest demands honesty from associated persons of [FINRA] members; anything less is unacceptable." *Ortiz*, 2008 SEC LEXIS 2401, at \*29; *accord Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at \*23 (Feb. 13, 2009) ("[T]he importance of honesty for a securities professional is so paramount . . . ."), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010). Conversion is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit. *Mullins*, 2012 SEC LEXIS 464, at \*73. Imposing a bar for Reyes's acts of conversion serves a remedial purpose and protects the investing public. *See Saad*, 2019 SEC LEXIS 2216, at \*7; *Grivas*, 2016 SEC LEXIS 1173, at \*27 ("We agree with FINRA that Grivas's [conversion] constitutes the type of dishonesty and disrespect of one's duties as a securities professional that warrants a bar. We thus find that the imposition of a bar here is remedial, not punitive."). Therefore, we bar Reyes from associating with any FINRA member in any capacity for converting funds belonging to RS in violation of FINRA Rule 2010.

D. Reyes Is Barred for Violating Standards that Apply to the Public Communications of FINRA Members and Their Associated Persons

In cases involving numerous acts of intentional or reckless misconduct over an extended period, the Guidelines for using misleading communications with the public, in violation of FINRA Rule 2210, recommend suspending the responsible person in any or all capacities for up

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<sup>77</sup> *See Guidelines*, at 7-8 (Principal Considerations in Determining Sanctions, Nos. 10, 13).

<sup>78</sup> *See id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 11, 16).

<sup>79</sup> *See id.* (Principal Considerations in Determining Sanctions, No. 2).

<sup>80</sup> When RS demanded that Reyes return his money, Reyes provided RS a backdated document ostensibly to reflect this fictional deal. Reyes thus attempted to conceal his misconduct. *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 10).

to two years, or a bar.<sup>81</sup> The Guidelines, in this respect, instruct us to consider whether the violative communications were circulated widely.<sup>82</sup>

Reyes intentionally and recklessly used marketing materials that contained numerous misleading statements and omissions concerning the safety of the promissory notes issued by CP Income, CP Venture I, and CP Venture II. The materials were widely disseminated by Reyes to prospective investors and customers over a period of two years.<sup>83</sup> Reyes's use of the materials also exhibited a pattern of misconduct.<sup>84</sup> He largely copied the marketing materials he created for CP Income promissory notes to create the marketing materials he used for the offerings of CP Venture I and CP Venture II, and in so doing simply used the same false statements of material facts without regard to the specific terms and risks associated with each offering. These actions clearly perpetuated Reyes's fraud, and they obviously benefitted him to the detriment of his customers.<sup>85</sup>

The FINRA Rule 2210 standards that Reyes violated are meant to protect investors. *See Robert L. Wallace*, 53 S.E.C. 989, 997 (1998) ("The rules that Wallace violated provide important safeguards for the protection of public investors."). We therefore agree with the Hearing Panel that barring Reyes for these violations serves an appropriately remedial purpose. *See Saad*, 2019 SEC LEXIS 2216, at \*7. Reyes does not accept any accountability for his use of the marketing materials.<sup>86</sup> In his testimony, he sought to downplay his involvement in the creation of the materials and falsely testified that the materials had been approved by CP Securities.

We find that the marketing materials Reyes created and used were highly likely, and indeed intended, to mislead investors by instilling in them the false belief that they were investing in safe, secured products, when in fact the promissory notes that Reyes was promoting and sold were speculative, high-risk, illiquid, and carried a gamble of total loss. *See Titan Sec.*, 2021 FINRA Discip. LEXIS 5, at \*88 ("We find the investment summaries were misleading and inaccurate, and were highly likely to mislead investors, lulling them into a false sense of security . . ."). We thus bar Reyes from associating with any FINRA member in any capacity for his use of these marketing materials, which violated FINRA Rules 2210 and 2010.

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<sup>81</sup> *Guidelines*, at 81.

<sup>82</sup> *Id.* at 80.

<sup>83</sup> *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 9).

<sup>84</sup> *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 8).

<sup>85</sup> *See id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 11, 16).

<sup>86</sup> *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2).

E. Restitution

The Hearing Panel ordered that Reyes pay restitution totaling \$4,009,000. We affirm the Hearing Panel's order.

Restitution is appropriate “when an identifiable person . . . has suffered a quantifiable loss proximately caused by a respondent’s misconduct.”<sup>87</sup> “An order requiring restitution . . . seeks primarily to return customers to their prior positions by restoring the funds of which they were wrongfully deprived.” *See Newport Coast*, 2020 SEC LEXIS 917, at \*37 (quoting *Kenneth C. Krull*, 53 S.E.C. 1101, 1109-10 (1998)).

We agree with the Hearing Panel’s determination that Reyes proximately caused the losses suffered by the customers to whom it ordered that restitution be paid. Although the Commission and the courts have not adopted a single approach to proximate causation, we conclude that the losses suffered by the identified customers were the foreseeable, direct, and proximate result of Reyes’s misconduct.<sup>88</sup> *See Brookstone*, 2015 FINRA Discip. LEXIS 3, at \*150 (“We conclude that, using any one of the tests articulated above, the losses suffered by the highlighted customers were the foreseeable, direct, and proximate result of the responsible respondent’s misconduct.”). The sum the Hearing Panel awarded includes restitution in the amount of \$3,839,000 to be paid to 14 customers who Reyes defrauded, including NR, to whom Reyes also recommended unsuitable transactions, and \$170,000 to be paid to RS for Reyes’s conversion of his funds.<sup>89</sup> These amounts account for the total loss of the investments made by the 14 promissory note customers and the entire sum of money that Reyes intentionally took

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<sup>87</sup> *Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 5).

<sup>88</sup> In this appeal, Reyes argues that, even assuming his conduct was improper, he may not be held responsible as the proximate cause of customer losses because, he claims, those losses were caused by Harold Connell and Gregory Connell and decisions that they made concerning the use of the proceeds raised from the sale of notes issued by CP Venture I and CP Venture II. This argument ignores Reyes’s fraudulent conduct with respect to the offering of CP Income promissory notes, as well as his conversion of RS’s funds, and it runs counter to the evidence of Reyes’s involvement in deciding how to use the proceeds raised from the CP Venture I and CP Venture II promissory notes that he recommended and sold to customers. In any event, even were Harold Connell and Gregory Connell responsible for additional, fraudulent conduct, it does not absolve Reyes of his responsibility to pay restitution for the misconduct in which he engaged. *See McGee v. SEC*, 773 F. App’x 571, 576 (2018) (“That Griffin is responsible for additional, distinct fraudulent conduct does not absolve McGee of his own responsibility for these transactions.”).

<sup>89</sup> Enforcement did not request, and the Hearing Panel therefore did not impose, restitution for three additional customers to whom Reyes sold promissory notes issued by CP Income and CP Venture I.

from RS and used for personal purposes without authorization.<sup>90</sup> Awarding restitution for these quantifiable losses is appropriate under the facts of this case.<sup>91</sup> *See Brookstone*, 2015 FINRA Discip. LEXIS 3, at \*151 (“The preponderance of the evidence shows that . . . the seven highlighted customers suffered losses totaling \$1,620,100 as a direct result of the unsuitable recommendations and fraudulent misconduct of [respondents] . . . .”); *see also Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at \*37 (June 2, 2016) (“We find that Butler's misconduct in converting LW's funds was a proximate cause of her loss . . . .”).

## VI. Conclusion

We find that Reyes fraudulently misrepresented and omitted material facts, in violation of Exchange Act Section 10(b), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010. We also find that Reyes made unsuitable recommendations to a particular customer, in violation of FINRA Rules 2111 and 2010. We further find that Reyes converted funds, in violation of FINRA Rule 2010. Finally, we find that Reyes created and used marketing materials that violated the standards that apply to the public communications of FINRA members and their associated persons, in violation of FINRA Rules 2210 and 2010. Accordingly, we bar Reyes from associating with any FINRA member in any capacity for each of the four causes of misconduct for which we find Reyes liable under the federal securities and FINRA rules. These four separate bars are effective immediately upon issuance of this decision. We also affirm the Hearing Panel's order that Reyes pay restitution in the sum of \$4,009,000 and hearing costs of \$14,226.97, and we impose appeal costs of \$1,600.31.

On behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell, Vice President and  
Deputy Corporate Secretary

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<sup>90</sup> To the extent these customers receive payments of restitution elsewhere, such payments will offset Reyes's obligation to pay restitution in this case. *See Ahmed*, 2017 SEC LEXIS 3078, at \*91 & n.99. The burden of proving an offset for restitution, however, lies with Reyes. *See United States v. Elson*, 577 F.3d 713, 734 (6th Cir. 2009).

<sup>91</sup> We order that Reyes pay restitution to customers in the amounts set forth in Addendum A. We also order that Reyes pay prejudgment interest on these sums at the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a). *See Guidelines*, at 11. With respect to each customer who purchased the promissory notes at issue in this case, interest shall run from the date of the violative conduct or, if later, the date on which the customer last received interest payments on the promissory notes that he or she purchased.