

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRYAN G. MAZLIACH  
(CRD No. 5518438),

Respondent.

Disciplinary Proceeding  
No. 2016051583101

Hearing Officer–BEK

**AMENDED DEFAULT DECISION<sup>1</sup>**

January 20, 2021

**Respondent is barred from associating with any FINRA member firm in any capacity for recommending and effecting an unsuitable investment strategy to five customers involving in-and-out, short-term, and excessive trading; executing unauthorized trades in the accounts of eight customers; and failing to provide documents and information requested by FINRA, in violation of FINRA Rules 2111, 8210, and 2010. Respondent is also ordered to pay \$158,289 in restitution, plus interest, to five customers.**

*Appearances*

For the Complainant: Ralph Delouis, Esq., Samir Ranade, Esq., and Kay Lackey, Esq.,  
Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

**DECISION**

**I. Introduction**

The Department of Enforcement properly served Mazliach with two Notices of Complaint and the Complaint. Mazliach did not file an Answer to the Complaint. Enforcement was ordered to file a motion for entry of default decision (“Default Motion”) and did so. The Default Motion is supported by the Declaration of Enforcement counsel Ralph Delouis (“Delouis Decl.”) and 14 exhibits (CX-1 through CX-14). Mazliach did not respond to the Default Motion.

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<sup>1</sup> The Default Decision is amended to correct the names of the Enforcement attorneys listed under Appearances.

Accordingly, the allegations in the Complaint may be deemed admitted and Enforcement's Default Motion granted.<sup>2</sup>

As addressed more fully in the Delouis Declaration, however, the number of unsuitable and unauthorized trades asserted in the Complaint is overstated.<sup>3</sup> Accordingly, the trade numbers stated in the Complaint are not deemed admitted. Similarly, the dates of trading for one customer are misstated as several months longer than actual,<sup>4</sup> and are not deemed admitted.

The actual number of trades, however, remains significant, and all trade-related calculations (e.g., commissions, losses, etc.) stated in the Complaint were predicated on the correct number of trades and correctly stated in the Complaint.<sup>5</sup> Mazliach, therefore, was on notice that he was being charged with excessive, unauthorized, and unsuitable trading during a specified period, thereby permitting him to plan his defense if he so chose. Accordingly, the noted errors in the Complaint were not prejudicial.<sup>6</sup> The allegations in the Complaint are deemed admitted, except as noted above,<sup>7</sup> and Enforcement's Default Motion is granted.<sup>8</sup>

## **II. Findings of Fact and Conclusions of Law**

### **A. Respondent's Background**

Mazliach first registered as a General Securities Representative ("GSR") through an association with a FINRA member firm in May 2008.<sup>9</sup> He subsequently was associated with two other firms before joining Laidlaw & Company (UK) LTD (the "Firm") on January 30, 2015, where he worked until his termination in August 2017.<sup>10</sup> Thereafter, Mazliach joined yet another

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<sup>2</sup> FINRA Rule 9269.

<sup>3</sup> Delouis Decl. 9 n.28, 11 n.42 (e.g., stating the correct number of trades in the accounts of five customers is 419, not 450 as alleged in the Complaint, and the correct number of unauthorized trades in the accounts of seven customers is 398, not 420 as alleged in the Complaint); *see also* CX-13 (listing unauthorized trades).

<sup>4</sup> Delouis Decl. 9 n.30 (stating that customer A's trades were executed from May 2015 through January 2016, not May 2015 through May 2016 as alleged in the Complaint).

<sup>5</sup> Delouis Decl. 9 n.28.

<sup>6</sup> FINRA Rule 9212 (requiring the Complaint to specify conduct in "reasonable detail"); *see also Dist. Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at \*10 (NBCC July 28, 1997) ("A complaint is alleged in reasonable detail when it provides a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense.").

<sup>7</sup> This decision hereafter references the correct trade numbers and dates from the Delouis Declaration. *See* Delouis Decl. 9 n.28, 11 n.42.

<sup>8</sup> Mazliach is hereby notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

<sup>9</sup> Complaint ("Compl.") ¶ 7; CX-1 (CRD).

<sup>10</sup> Compl. ¶¶ 7-8; CX-1. All allegations in the Complaint are predicated on actions taken by Mazliach during his association with the Firm; *see* Compl. ¶ 1.

firm, from which he was terminated on December 12, 2018, ending his association with a FINRA member firm.<sup>11</sup>

## **B. FINRA’s Jurisdiction**

Although Mazliach is no longer registered or associated with a FINRA member firm, he remains subject to FINRA’s jurisdiction for purposes of this proceeding pursuant to Article V, Section 4(a) of FINRA’s By-Laws. This is because the Complaint was filed within two years after December 12, 2018, which was the date of Mazliach’s last association with a FINRA member firm, and the Complaint charges Mazliach with misconduct committed while he was associated with a FINRA member firm, and with failing to respond to FINRA requests for information during the two-year period after the date on which he ceased to be registered or associated with a FINRA member.

## **C. Origin of the Investigation**

FINRA staff opened an investigation in this matter in the fall of 2016, based on complaints about Mazliach’s trading in customer accounts.<sup>12</sup> The investigation revealed evidence of excessive trading, unsuitable recommendations and unauthorized trading in the accounts of five customers, customers A through E,<sup>13</sup> and unauthorized trading in the accounts of three additional customers, customers F through H.<sup>14</sup>

As part of the investigation, FINRA staff spoke with customers A through H and obtained customer account forms, brokerage account statements, written correspondence between the Firm and the customers, and Firm telephone records.<sup>15</sup> FINRA staff also took the on-the-record testimony (“OTR”) of Mazliach.<sup>16</sup>

## **D. Respondent’s Default**

Enforcement served Mazliach with a Notice of Complaint and Complaint in accordance with FINRA Rules 9131 and 9134. Specifically, Enforcement sent the Complaint and a Notice of Complaint by first-class and certified mail on September 8, 2020, to his current residence as reflected in the Central Registration Depository (“CRD”).<sup>17</sup> A Customer Index<sup>18</sup> to the

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<sup>11</sup> Compl. ¶¶ 9-10; CX-1.

<sup>12</sup> Delouis Decl. ¶ 5.

<sup>13</sup> In addition to effecting excessive and unauthorized trading in the regular accounts of customers A through E, Mazliach also effected such trades in the IRA accounts of customers A and B. Delouis Decl. ¶ 41.

<sup>14</sup> Delouis Decl. ¶ 6. The attached Appendix identifies the customers who are referred to here as A through H. It will be sent only to the parties. CX-7.

<sup>15</sup> Delouis Decl. ¶ 7.

<sup>16</sup> Delouis Decl. ¶ 8; CX-4.

<sup>17</sup> Delouis Decl. ¶ 21; CX-5.

<sup>18</sup> CX-7.

Complaint also was sent to Mazliach via first-class and certified mail on September 8, 2020.<sup>19</sup> Enforcement sent a Second Notice of Complaint and Complaint by first-class and certified mail on October 9, 2020, to Mazliach at his CRD address.<sup>20</sup> Electronic certified receipts for each of the above reflect what appears to be Mazliach's signature.<sup>21</sup> Additionally, as a courtesy, these documents were also sent to Mazliach at his personal email address as confirmed by him at his OTR.<sup>22</sup>

Mazliach has not filed an Answer or otherwise responded to the Complaint. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and except as noted above, the allegations in the Complaint are deemed admitted and the Default Motion is granted.

### **E. Mazliach Effected Unsuitable Trading (Causes One and Two)**

FINRA Rule 2111(a) requires 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."

The suitability obligation consists of three main components: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.<sup>23</sup> Here, Mazliach effected trades that were excessive and unsuitable, and he did so without a reasonable basis.

#### **1. Lack of Quantitative Suitability: Excessive Trading (Cause One)**

"Quantitative suitability requires a member or associated person to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile . . . ."<sup>24</sup> Moreover, while "[n]o single test defines excessive activity, [] factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation."<sup>25</sup>

Here, Mazliach exercised de facto control over trading in the accounts of customers A through E by deciding what securities to buy and sell, the quantities, the price, and when trades

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<sup>19</sup> Delouis Decl. ¶ 29.

<sup>20</sup> Delouis Decl. ¶ 33; CX-9.

<sup>21</sup> Delouis Decl. ¶¶ 25, 30, 36; CX-6; CX-8; CX-10.

<sup>22</sup> Delouis Decl. ¶¶ 22, 29, 34.

<sup>23</sup> FINRA Rule 2111(a); Supplementary Material 2111.05 (Components of Suitability Obligations).

<sup>24</sup> Supplementary Material 2111.05(c).

<sup>25</sup> *Id.*

would occur.<sup>26</sup> Although some of these trades were coordinated with the customers, most of them were not, and were unauthorized.<sup>27</sup> Between February 2015 and June 2017, Mazliach effected 419 trades in the seven accounts held by these five customers, generating \$187,526 in gross commissions while the customers realized losses totaling \$171,595, as reflected in the below chart.<sup>28</sup>

Customer	Trade Period	No. of Trades	Realized Losses	Gross Commissions Paid to Laidlaw	Annualized Cost-to-Equity Ratio	Annualized Turnover Rate
A (IRA)	2/2015-5/2016	88	(\$55,262)	\$55,560	63.54%	18.85
A	5/2015-1/2016	73	(\$21,486)	\$9,072	218.78%	49.7
B	4/2015-4/2016	47	(\$46,114)	\$29,764	63.53%	20.73
B (IRA)	8/2015-3/2016	37	(\$7,854)	\$27,513	37.02%	12.55
C	4/2015-6/2017	70	(\$15,174)	\$13,957	133.07%	31.51
D	5/2015-1/2016	48	(\$21,805)	\$33,815	78.91%	26.2
E	1/2016-8/2016	56	(\$3,900)	\$17,845	173.53%	50.48
<b>Totals</b>		<b>419</b>	<b>(\$171,595)</b>	<b>\$187,526</b>		

Customers A through E each opened their accounts in 2015 or 2016,<sup>29</sup> and their account forms reflect investment objectives that were speculative with a high risk tolerance. All except customer C, however, actually advised Mazliach that their risk tolerance was moderate or they wanted to invest in blue chip stocks or attain long-term growth or a balance between short-term

<sup>26</sup> Compl. ¶¶ 27, 41, 54, 67, 80, 112.

<sup>27</sup> Compl. ¶¶ 27-29, 41-43, 54-56, 67-70, 80-82; Delouis Decl. ¶ 42. Although the unauthorized trades are part of the excessive and unsuitable trading addressed in causes one and two, they are also separately addressed in the discussion of cause three.

<sup>28</sup> Delouis Decl. ¶ 41.

<sup>29</sup> Compl. ¶¶ 19, 34, 48, 61, 74.

and long-term growth.<sup>30</sup> None of the customers was financially sophisticated,<sup>31</sup> and all but customer E were 62 years or older when they opened their accounts; customer C was 70.<sup>32</sup>

A turnover rate of six or a cost-to-equity ratio in excess of 20% generally indicates that excessive trading has occurred.<sup>33</sup> As reflected in the above chart, Mazliach's trading in the customers' accounts from February 2015 through June 2017 resulted in annualized turnover rates between 12.55 and 50.48 and annualized cost-to-equity ratios between 37.02% and 218.78%, in addition to significant losses and commissions.

Based on their profiles and the moderate risk tolerance and growth objectives that customers A, B, D, and E asserted to Mazliach, the in-and-out trades he effected in their accounts during the short periods reflected in the above chart were excessive and quantitatively unsuitable. That Mazliach's trading in these accounts was excessive and unsuitable is also reflected in the high turnover rates and annualized cost-to-equity ratios.

Regarding customer C, although his account forms reflect that his investment objectives were speculative and that he had a high risk tolerance, he was 70 years old when he opened his account and he worked as a drilling supervisor. There is no evidence that his objectives supported trading at a turnover rate more than five times the rate generally deemed excessive, and a cost-to-equity ratio well over six times what is deemed excessive. Mazliach's excessive trading, much of it unauthorized, benefited only himself, and it violated his quantitative suitability obligations.

As a result of the foregoing misconduct, Mazliach violated FINRA Rule 2111. Because such action is a breach of the duty to observe high standards of commercial honor and just and equitable principles of trade, it also constitutes a violation of FINRA Rule 2010.<sup>34</sup>

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<sup>30</sup> Compl. ¶¶ 23, 38, 52, 66, 78.

<sup>31</sup> Delouis Decl. ¶ 41.

<sup>32</sup> Compl. ¶¶ 22, 37, 51, 65, 77; *see also* FINRA Rule 2114(a) (listing customer's age, investment objective, and risk tolerance as some of several factors making up a customer's investment profile).

<sup>33</sup> *Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at \*32 (May 29, 2015) (The SEC stated that "[t]he turnover rate represents the number of times in one year that a portfolio of securities is exchanged for another portfolio of securities and is calculated by dividing the total account purchases by the average account equity and annualizing the number. The cost-to-equity ratio measures the amount an account has to appreciate annually just to cover commissions and other expenses and is obtained by dividing total expenses by average monthly equity. While there is no definitive turnover rate or cost-to-equity ratio that establishes excessive trading, we have held that a turnover rate of 6 or a cost-to-equity ratio in excess of 20% generally indicates that excessive trading has occurred. But we also have found excessive trading where the annual turnover ratio was 4 or less, and in accounts with cost-to-equity ratios less than 20%." (internal quotation marks, footnotes, and citations omitted); *see also Dep't of Enforcement v. Taddonio*, Nos. 201504423501, 2015044823502, 2019 FINRA Discip. LEXIS 3, at \*58 (NAC Jan. 29, 2019) (applying *Calabro*).

<sup>34</sup> *See Dep't of Enforcement v. King*, No. 2015044444801, 2017 FINRA Discip. LEXIS 31, at \*17 n.7 (NAC July 20, 2017).

## 2. Lack of Reasonable Basis Suitability (Cause Two)

The Supplementary Material accompanying FINRA Rule 2111 states that the “reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors.”<sup>35</sup> What constitutes reasonable diligence varies with “the complexity of and risks associated with the security or investment strategy and the member’s or associated person’s familiarity with the security or investment strategy.”<sup>36</sup> The “reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy,” and recommending a security or strategy without such understanding violates the suitability rule.<sup>37</sup>

Mazliach recommended that customers A through E engage in an active in-and-out trading strategy over periods of time ranging from 8 to 29 months.<sup>38</sup> He generally did not discuss the commissions and fees that he charged.<sup>39</sup> Indeed, he failed to keep track of the costs of these trades or consider how the costs affected the customers’ accounts.<sup>40</sup> He also failed to understand or calculate the cost-to-equity ratios and turnover rates.<sup>41</sup> This trading strategy would have had to generate returns of 37.02% to 218.78% to break even and only benefited Mazliach, who received approximately \$130,023 of the \$187,526 that customers A through E paid in commissions, while the customers suffered losses totaling \$171,595.<sup>42</sup> Succinctly stated, Mazliach lacked a reasonable basis to believe that this trading strategy was suitable for these investors or any investors.

As a result of the foregoing misconduct, Mazliach violated FINRA Rules 2111 and 2010.<sup>43</sup>

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<sup>35</sup> Supplementary Material 2111.05(a).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Delouis Decl. ¶ 41.

<sup>39</sup> Compl. ¶ 13.

<sup>40</sup> Compl. ¶ 14.

<sup>41</sup> Compl. ¶ 15.

<sup>42</sup> Delouis Decl. ¶ 41.

<sup>43</sup> *Dep’t of Enforcement v. Siegel*, No. C05020055, 2007 NASD Discip. LEXIS 20, at \*36-40 (NAC May 11, 2007) (finding that respondent lacked a reasonable basis to recommend investments to his customers where he lacked an understanding of the investments and the investments were not suitable for any investor); *Dep’t of Enforcement v. Lim*, No. 2014039091903, 2017 FINRA Discip. LEXIS 25, at \*47-50 (OHO June 2, 2017) (finding respondent lacked a reasonable basis to recommend an active trading strategy to four customers where respondent did not understand the strategy, causing customers to incur significant losses while being charged significant commissions); *see also Dep’t of Enforcement v. McGee*, No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at \*55 (NAC July 18, 2016) (finding lack of reasonable-basis suitability violated Rule 2010).

## F. Mazliach Executed Unauthorized Trades (Cause Three)

Unauthorized trading occurs when a registered representative effects trades in a customer's account without first obtaining the customer's authorization or consent.<sup>44</sup> As shown in the chart below, Mazliach effected 398 trades in the accounts of customers A through H between February 2015 and June 2017 without the customers' prior knowledge, and without first obtaining their authorization.<sup>45</sup>

Customer	Time Period	Unauthorized Trades <sup>42</sup>
A (IRA)	Feb. 2015 – May 2016	72
A	May 2015 – Jan. 2016	70
B	Apr. 2015 – Apr. 2016	38
B (IRA)	Aug. 2015 – Mar. 2016	30
C	Apr. 2015 – June 2017	56
D	June 2015 – Mar. 2016	38
E	Jan. 2016 – Aug. 2016	37
F	Aug. 2015 – May 2016	9
G	Jan. 2016 – May 2017	28
H	Feb. 2015 – June 2015	20
<b>Total</b>		<b>398</b>

The unauthorized trading constituted over 50% of the excessive trading in the accounts of customers A through E, with overall losses from the excessive trading ranging from \$3,900 to \$55,262.<sup>46</sup> With regard to customers F through H, customer G had a realized loss of \$4,578, while customers F and H had realized gains.<sup>47</sup> Regardless of the actual results of this trading, it was unauthorized and a breach of the duty to observe high standards of commercial honor and just and equitable principles of trade. Thus, it was a violation of FINRA Rule 2010.<sup>48</sup>

<sup>44</sup> *Dep't of Enforcement v. Sahai*, No. C9B020032, 2004 NASD Discip. LEXIS 14, at \*17 (NAC Aug. 12, 2004) (noting that unauthorized trading occurs where a registered person causes the execution of transactions that are unauthorized by customers or sends confirmations in order to cause customers to accept transactions not actually agreed upon).

<sup>45</sup> Delouis Decl. ¶ 42; *see also* CX-13 (Unauthorized Trades for Customers A through H); Compl. ¶¶ 29, 43, 56, 70, 82, 90, 93, 96.

<sup>46</sup> Delouis Decl. ¶¶ 41-42.

<sup>47</sup> Delouis Decl. ¶¶ 47, 49; *see also* CX-14 (Customer G Restitution Analysis).

<sup>48</sup> *Dep't of Enforcement v. Griffith*, No. 2010025350001, 2015 FINRA Discip. LEXIS 55, at \*15 (NAC Dec. 22, 2015) (finding that unauthorized trading violated FINRA Rule 2010 and noting that the "Commission has held that unauthorized trades are a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade. Such misconduct goes to the heart of the trustworthiness of a securities professional and is a fundamental betrayal of the duty owed by a salesperson to his or her customers." (quoting *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at \*6 (July 1, 2008)) (internal quotations omitted).



### **G. Respondent Failed to Respond to Requests for Information (Cause Four)**

FINRA Rule 8210 requires anyone subject to FINRA jurisdiction to provide the information requested by FINRA staff and “is at the heart of the self-regulatory system for the securities industry.”<sup>49</sup> Because FINRA lacks subpoena power, it relies on Rule 8210 to obtain information necessary to conduct “its investigations and fulfill its regulatory mandate.”<sup>50</sup> Rule 2010 charges FINRA members with “observ[ing] high standards of commercial honor and just and equitable principles of trade,” and a “violation of FINRA Rule 8210 constitutes a violation of FINRA Rule 2010.”<sup>51</sup>

Pursuant to FINRA Rule 8210, Enforcement staff sent requests for documents and information on June 22 and July 16, 2020, to Mazliach by certified and first-class mail to his CRD address.<sup>52</sup> Courtesy copies were also sent to Mazliach’s personal email account.<sup>53</sup> Mazliach failed to reply or otherwise produce the requested documents and information, specifically cellular telephone records related to any telephone calls made to customers A through H relevant to FINRA’s investigation of excessive and unauthorized trading in these customers’ accounts.<sup>54</sup>

Thus, Respondent violated FINRA Rules 8210 and 2010.

### **III. Sanctions**

Citing FINRA’s Sanctions Guidelines (“Guidelines”), Enforcement seeks to bar Mazliach from associating with any FINRA member firm and an order to pay restitution to Customers A, B, C, E, and G in the amount of \$158,289 plus pre-judgment interest.<sup>55</sup> As discussed below, and to protect the investing public,<sup>56</sup> deter future misconduct,<sup>57</sup> and remediate misconduct,<sup>58</sup> the imposition of the suggested sanctions is appropriate in this case, with the addition of post-judgment interest.<sup>59</sup>

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<sup>49</sup> *Dep’t of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at \*10-11 (NAC May 26, 2017) (internal quotations omitted).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Compl. ¶¶ 97-98, 102-103; CX-1.

<sup>53</sup> Compl. ¶¶ 98, 103.

<sup>54</sup> Compl. ¶¶ 97, 101, 106.

<sup>55</sup> Default Motion 20-26. *See also* FINRA Sanction Guidelines (2020), <http://www.finra.org/sanctionguidelines>.

<sup>56</sup> Guidelines at 1 (“The regulatory mission of FINRA is to protect investors and strengthen market integrity . . .”).

<sup>57</sup> Guidelines at 2 (General Principles No. 1).

<sup>58</sup> Guidelines at 5 (General Principles No. 6).

<sup>59</sup> Guidelines at 10 n.3 (authorizing post-judgment interest).

### A. Unsuitable Trading (Causes One and Two)

One of the general principles for consideration in all sanction determinations is the aggregation of similar violations, such that when a violation is attributable to a common underlying cause, a unitary sanction may be proper.<sup>60</sup> Here, the excessive trading is closely intertwined with Mazliach's failure to perform reasonable diligence to understand the costs of his overall strategy. The Guidelines for excessive trading recommend a fine of \$5,000 to \$116,000 and disgorgement, along with a suspension in any or all capacities of one month to two years.<sup>61</sup> Where aggravating factors predominate, a longer suspension of up to two years or a bar should be considered.<sup>62</sup> The Guidelines for unsuitable recommendations recommend a fine of \$2,500 to \$116,000 and disgorgement, as well as a suspension in any or all capacities for a period of 10 business days to two years.<sup>63</sup> Where aggravating factors predominate, a bar should be strongly considered.<sup>64</sup>

Here, there are numerous aggravating factors and no mitigating ones.<sup>65</sup> Mazliach's excessive trading involved five customers and occurred over numerous months with individual customer losses ranging from \$3,900 to \$55,262, and turnover rates and cost-to-equity ratios that were excessive in all cases.<sup>66</sup> Mazliach's trades also resulted in hefty commissions, most of which went to him personally.<sup>67</sup> Additionally, most of the trades were unauthorized, none of the customers had backgrounds exhibiting financial sophistication, and four of the five customers were senior in age.<sup>68</sup> Finally, although each customer's account form reflects investment objectives that were speculative with a high risk tolerance, four of the customers advised Mazliach that their risk tolerance was moderate and that they were looking to invest in blue chip stocks or attain long-term growth or a balance between short-term and long-term growth.<sup>69</sup>

In sum, because the totality of Mazliach's actions are predominated by aggravating factors, a bar in all capacities is warranted. Enforcement does not seek a fine or disgorgement

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<sup>60</sup> Guidelines at 4 (General Principles No. 4); *see also Dep't of Enforcement v. Respondent Firm 1*, No. C8A990071, 2001 NASD Discip. LEXIS 6, at \*30-31 (NAC Apr. 19, 2001) (approving a unitary sanction for violations with a common underlying cause).

<sup>61</sup> Guidelines at 78.

<sup>62</sup> *Id.*

<sup>63</sup> Guidelines at 95.

<sup>64</sup> *Id.*

<sup>65</sup> The order directing Enforcement to file a Default Motion also directed it to state any mitigating factors; Enforcement provided none, and the actions deemed admitted are not conducive to inferring any.

<sup>66</sup> Guidelines at 7 (Principal Considerations Nos. 8, 9, 11).

<sup>67</sup> Guidelines at 7-8 (Principal Considerations Nos. 11, 16).

<sup>68</sup> Guidelines at 8 (Principal Considerations Nos. 18, 20).

<sup>69</sup> Guidelines at 8 (Principal Considerations No. 13).

and, because restitution is warranted and being ordered as discussed below, neither a monetary sanction nor disgorgement will be imposed.<sup>70</sup>

### **B. Unauthorized Trading (Cause Three)**

For unauthorized transactions, the Guidelines recommend a fine of \$5,000 to \$116,000 and a suspension in any or all capacities for one month to two years.<sup>71</sup> Where aggravating factors predominate, the Guidelines recommend strongly considering a bar.<sup>72</sup> Here, as above, aggravating factors predominate.

Mazliach effected 398 unauthorized trades in the accounts of eight customers. Moreover, the number of unauthorized trades is so large it could not be the result of a good-faith mistake or misunderstanding.<sup>73</sup> For Customers A through E, most of the unauthorized trades executed by Mazliach resulted in significant customer losses, and significant commissions, most of which accrued to Mazliach.<sup>74</sup> To compound matters, Mazliach attempted to evade Enforcement's investigative efforts regarding unauthorized trades by failing to produce his cellular telephone records in response to two Rule 8210 requests.<sup>75</sup>

As above, because the totality of Mazliach's actions are predominated by aggravating factors, a bar in all capacities is warranted. Enforcement does not seek a fine or disgorgement and, because restitution is warranted and being ordered as discussed below, neither a monetary sanction nor disgorgement will be imposed.<sup>76</sup>

### **C. Failure to Provide Information (Cause Four)**

FINRA's Sanction Guidelines recommend that, if an individual did not respond in any manner to Rule 8210 requests, a bar in all capacities should be standard.<sup>77</sup> The conduct under investigation in this case was serious, involving unauthorized, excessive, and unsuitable trading, and the requested information was highly relevant thereto.<sup>78</sup> Moreover, as previously noted,

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<sup>70</sup> Guidelines at 10 (noting that a fine generally should not be imposed if there is no customer loss or restitution has been ordered).

<sup>71</sup> Guidelines at 99.

<sup>72</sup> *Id.*

<sup>73</sup> Guidelines at 7-8 (Principal Considerations Nos. 8, 13).

<sup>74</sup> Guidelines at 7-8 (Principal Considerations Nos. 11, 16).

<sup>75</sup> Guidelines at 8 (Principal Considerations No. 12).

<sup>76</sup> Guidelines at 10.

<sup>77</sup> Guidelines at 33.

<sup>78</sup> Guidelines at 33 (noting the importance of the requested information from FINRA's perspective as a specific consideration related to a failure to provide information); *see also* Guidelines at 1 (noting the mission of FINRA as protecting investors and strengthening market integrity).

there are no mitigating factors present in this case. Thus, the appropriate sanction is a bar in all capacities.

#### **D. Restitution**

Enforcement seeks restitution for customers A, B, C, and E, based on the commissions charged, and for customer G based on the realized losses.<sup>79</sup> The total restitution sought is \$158,289 plus pre-judgment interest.<sup>80</sup>

Restitution is warranted when “appropriate to remediate misconduct, [and it may be ordered] when an identifiable person, member firm or other party has suffered a quantifiable loss proximately caused by a respondent’s misconduct.”<sup>81</sup> Here, the commissions were paid by customers A, B, C, and E as a direct result of Mazliach’s excessive, unauthorized, and unsuitable trading and his desire to benefit himself. Similarly, the losses suffered by customer G were a result of Mazliach’s unauthorized trading and his desire to benefit himself. Accordingly, restitution is warranted. The individual and total amount of restitution to be awarded, not including interest, is reflected in the below chart.<sup>82</sup>

<b>Customer</b>	<b>Restitution</b>
Customer A (IRA)	\$55,560
Customer A	\$9,072
Customer B	\$29,764
Customer B (IRA)	\$27,513
Customer C	\$13,957
Customer E	\$17,845
Customer G	\$4,578
<b>Total</b>	<b>\$158,289</b>

In addition to ordering pre-judgment interest as requested by Enforcement, post-judgment interest is also warranted to provide full restitution.<sup>83</sup>

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<sup>79</sup> Default Motion 24-26. Enforcement does not seek restitution for Customer D because he recovered his expenses through arbitration, or for customers F and H, because they had net gains from the unauthorized trades. *Id.* at 26.

<sup>80</sup> *Id.* at 24. *See also* CX-12 (setting forth customer charges).

<sup>81</sup> Guidelines at 4 (General Principles No. 4); *see also Dep’t of Enforcement v. Newport Coast Sec., Inc.*, No. 2012030564701, 2018 FINRA Discip. LEXIS 14, at \*219-20 (NAC May 23, 2018) (in excessive trading case, finding the full amount of costs imposed on the customers to be the foreseeable, direct, and proximate result of respondents’ excessive trading and affirming the order of the hearing panel to use commissions as an appropriate measure of restitution); *Dep’t of Enforcement v. Carney*, No. C8A000024, 2001 NASD Discip. LEXIS 21, at \*36 (OHO Feb. 2, 2001) (in unauthorized trading case, ordering restitution based upon amount of customer loss).

<sup>82</sup> Delouis Decl. Schedule A.

<sup>83</sup> Guidelines at 10 n.3.

#### IV. Order


Respondent Bryan G. Mazliach is barred from associating with any FINRA member firm in any capacity for each of the following: (1) recommending and effecting an unsuitable trading strategy to customers, as alleged in causes one and two of the Complaint and in violation of FINRA Rules 2111 and 2010; (2) engaging in unauthorized trades as alleged in the third cause of action and in violation of FINRA Rule 2010; and (3) failing to provide information as alleged in the fourth cause of action and in violation of FINRA Rules 8210 and 2010.

Mazliach also is ordered to pay restitution in the amount of \$158,289 to customers A, B, C, E, and G, plus interest on the unpaid balance, calculated from the last date of trading in each customer's account, as set forth below, until paid in full.<sup>84</sup>

Customer	Date of Last Trade
A (IRA)	May 2, 2016
A	Jan. 13, 2016
B	Apr. 11, 2016
B (IRA)	Mar. 18, 2016
C	June 16, 2017
E	Aug. 4, 2016
G	May 10, 2017

Interest shall accrue at the rate set in 26 U.S.C. Section 6621(a)(2).<sup>85</sup>

The bars shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action. The restitution order of \$158,289 (plus interest) imposed on Respondent shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final action.

  
Bruce E. Kasold  
Hearing Officer

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<sup>84</sup> The dates for initiating the accrual of interest are predicated on the last date of unsuitable trading for customers A, B, C, and E, as reflected in CX-12, and on the last date of unauthorized and related trades for customer G, as reflected in CX-14. In the event that the customers cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed property, or abandoned-property fund for the state(s) of each customer's last known address. Satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, shall be provided to staff of FINRA's Department of Enforcement, Rockville, Maryland, no later than 90 days after the date this decision becomes final. *See* Guidelines at 11.

<sup>85</sup> Guidelines at 11 (concerning payment of interest on orders of restitution). The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

Copies to:

Bryan G. Mazliach (via email, overnight mail, and first-class mail)

Ralph Delouis, Esq. (via email)

Samir Ranade, Esq. (via email)

Kay Lackey, Esq. (via email)

Jennifer L. Crawford, Esq. (via email)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRYAN G. MAZLIACH  
(CRD No. 5518438),

Respondent.

Disciplinary Proceeding  
No. 2016051583101

Hearing Officer–BEK

**APPENDIX**

Customer A	Irving Hoffman
Customer B	Paul Kasofsky
Customer C	Merl Wiggins
Customer D	Thomas Diener
Customer E	Jusy Fernandez
Customer F	Keith Gibson
Customer G	James Flynn
Customer H	Joseph Hoare