FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. ACCELERATED CAPITAL GROUP, INC. (CRD No. 41270), Respondent.	Disciplinary Proceeding No. 2012033566205 Hearing Officer–MC **DEFAULT DECISION** February 15, 2019

Accelerated Capital Group, Inc. failed to establish and maintain a supervisory system reasonably designed to achieve compliance with federal securities law and FINRA rules. It also failed to: reasonably supervise trading activity of registered representatives who engaged in excessive, unsuitable, and unauthorized trading; monitor the use of pre-signed and altered customer forms and documents; and report required information to FINRA. The Firm is censured, fined $400,000, and ordered to pay restitution to six customers.

Appearances

For the Complainant: Jason W. Gaarder, Esq. and Carolyn Craig, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

This case demonstrates the serious consequences and significant harm to investors that can flow from a firm's failure to provide appropriate supervision.

On December 13, 2017, the Department of Enforcement filed the Complaint in this disciplinary proceeding against Accelerated Capital Group, Inc. ("Respondent" or "Firm"). The Complaint alleges misconduct by the Firm through underlying violative sales practices by two registered representatives resulting in sizable customer losses. The four causes of action charge that the Firm: (i) maintained an inadequate supervision system and failed to supervise adequately; (ii) engaged in excessive, unsuitable, and unauthorized trading; (iii) used pre-signed and altered forms; and (iv) failed to report required information to FINRA.

Enforcement properly served the Complaint and Respondent filed an Answer. I issued a case management order and scheduled a hearing. The parties disclosed that the Firm intended to file a Uniform Request for Broker-Dealer Withdrawal ("Form BDW") to terminate its FINRA membership and to withdraw its registration with the SEC.[1] They jointly requested postponement of hearing schedule deadlines several times. The last hearing schedule set the hearing for the first week of December 2018.

On October 26, 2018, Respondent failed to appear for a pre-hearing conference after receiving notice. On November 26, 2018, Enforcement filed a motion seeking entry of a default decision ("Default Motion") supported by the declaration of Jason W. Gaarder ("Gaarder Decl.") and four exhibits labeled CX-1–CX-4.

For the reasons set forth below, pursuant to FINRA Rules 9241(f) and 9269(a), I find Accelerated Capital Group, Inc. in default, deem the allegations in the Complaint admitted, and grant the Default Motion.[2]

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Accelerated Capital Group, Inc. was a Costa Mesa, California-based full service broker-dealer, and a FINRA member since March 1997.[3] On October 3, 2018, the Firm filed a Form BDW. The SEC terminated the Firm's registration effective December 2, 2018, and FINRA terminated its registration effective December 26, 2018.

B. FINRA's Jurisdiction

FINRA retains jurisdiction over Respondent pursuant to Article IV of FINRA's By-Laws because Enforcement filed the Complaint when the Firm was a registered FINRA member and the alleged misconduct occurred while it was registered.

C. Origin of the Disciplinary Proceeding

In 2012, FINRA began an investigation of Respondent's former registered representative BM after receiving a filing from a firm at which he was previously registered. The filing reported potential violations of the firm's policies and other misconduct by BM. The matter was referred to Enforcement in 2013. While Enforcement investigated, FINRA's Los Angeles District Office referred other matters to Enforcement involving additional misconduct identified during the District's examinations of the Firm, including unauthorized mutual fund exchanges executed by another registered representative and the improper use of pre-signed and altered forms.[4]

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[1] CX-3.

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

[3] Complaint ("Compl.") ¶ 7.

[4] Gaarder Decl. ¶ 3.

At the conclusion of the investigation, BM accepted a settlement resulting in a bar from the securities industry for churning, excessive and unauthorized trading, and making unsuitable recommendations.[5] Three other registered representatives accepted settlements for misconduct, as did both the Firm's former president, and the former chief compliance officer, who was responsible for supervising the brokers who accepted the settlements. Subsequently, Enforcement filed the Complaint against Respondent.[6]

D. Respondent's Default

Enforcement served the Complaint on Respondent by certified mail, return receipt requested, with copies by first-class mail and email. Respondent filed an Answer in February 2018.[7]

Respondent participated in the pre-hearing proceedings until its counsel filed a motion to withdraw, which I granted on October 24, 2018.[8] At a pre-hearing conference held that day, the owner of Accelerated Capital Group, Inc. announced that the Firm would not participate further in this proceeding.[9] He was given notice by email and first class mail of another pre-hearing conference scheduled for October 26, 2018. He also received oral notice by Enforcement in a phone call at which time he reiterated that nobody would appear on behalf of the Firm.[10] Respondent failed to appear at the pre-hearing conference[11] and is therefore in default.

E. The Complaint

The Complaint alleges misconduct from August 31, 2012, through February 25, 2016 ("Relevant Period").[12]

1. First Cause of Action: Inadequate Supervision System and Failure to Supervise in Violation of NASD Rules 3010(a) and (b), and FINRA Rules 3110(a) and (b) and 2010

The first cause of action alleges that Respondent violated NASD Rules 3010(a) and (b), and FINRA Rules 3110(a) and (b).[13] Subsection (a) of both rules requires member firms to

[5] *Id.* at ¶ 4. Pursuant to the February 25, 2016 settlement, BM was barred from the security industry for, among other violations, willfully violating Section 10(b) of the Securities Exchange Act of 1934. Compl. n.1.

[6] Gaarder Decl. ¶ 5.

[7] *Id.* ¶ 9.

[8] *Id.* ¶ 11.

[9] *Id.* ¶ 12; CX-4 at 3.

[10] *Id.* ¶ 12.

[11] *Id.* ¶ 13.

[12] Compl. ¶ 1.

[13] NASD Rule 3010 became FINRA Rule 3110 on December 1, 2014, during the Relevant Period; hence, both rules apply to the violative activity.

establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations, and with NASD/FINRA rules. Subsection (b) of both rules requires member firms to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD/FINRA rules. By virtue of violating these rules, the Complaint also charges the Firm with violating FINRA Rule 2010.[14]

The first cause of action describes numerous supervisory system inadequacies and their impact. Respondent's supervisory system was not reasonably designed to identify unauthorized, excessive, or unsuitable trades effected by representatives in their customers' accounts. The system failed to ensure that registered representatives made customers aware of all commissions and fees, that investment recommendations were suitable for them, and that the customers understood those recommendations and were aware of the costs and breakpoints associated with mutual fund transactions.[15] It also failed to ensure that customers understood that Class A mutual funds contained front-loaded fees making them generally unsuitable as short-term investments.[16]

The Firm's supervisory failures allowed BM to engage in extensive misconduct leading to customer harm. When it hired BM in August 2012, Respondent knew that BM's previous firm had terminated his employment for sales practice violations, BM had large unpaid tax liabilities, and he was living far above his means.[17] As a result, the Firm placed him on heightened supervision for the first three months he was associated with the Firm.[18]

Two years later, the Firm again placed BM on heightened supervision, this time for excessive mutual fund trading.[19] The terms of BM's heightened supervision authorized the Firm to contact his clients at random, monitor his trading daily, conduct suitability reviews of his clients' accounts, and review all trades prior to execution.[20] Despite these measures, BM continued short-term selling of Class A mutual funds from customer accounts that had held the positions for brief periods of less than two months to approximately a year.[21]

BM's short-term Class A mutual fund trades were red flags that should have alerted the Firm to take action. Yet the Firm did not contact any of BM's clients. Thus, it was unaware that BM did not sufficiently understand the strategy he was employing to have a reasonable basis for recommending the short-term mutual fund trades, and that his customers neither understood nor

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[14] A violation of a FINRA rule is inconsistent with just and equitable principles of trade; thus, it also violates Rule 2010. *See, e.g.*, *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *44 n.45 (Feb. 10, 2012).

[15] Compl. ¶ 132–33.

[16] *Id.* ¶ 134.

[17] *Id.* ¶¶ 34–35.

[18] *Id.* ¶ 37.

[19] *Id.* ¶ 62.

[20] *Id.* ¶ 38.

[21] *Id.* ¶ 49.

approved the trades.[22] Furthermore, the Firm did not use routine exception reports that could have identified problematic trade activity and recognized that BM was churning his clients' accounts without authorization.[23]

In addition to his inappropriate mutual fund trading, in October 2013 BM started to trade other securities excessively in his customer accounts. He claimed he was following a strategy of "swing trading," which he described as a short-term investment strategy based on computer algorithms.[24] In July 2014, Respondent issued BM a disciplinary letter for what it cited as trading that "appeared aggressive," and rebooked 110 trades to make partial returns of commissions BM had charged the customers. Despite the Firm's awareness of BM's trading pattern, he continued to trade excessively.[25] Through December 2014, he placed more than 2,000 trades in 11 customer accounts, many unauthorized, and did so without the Firm detecting the extent of his excessive trading or the losses suffered by customers.[26] The Firm did not supervise BM reasonably. It failed to ensure that customers understood the fees associated with Class A mutual funds and authorized the trades in their accounts. It also failed to ensure that the trades were suitable.[27]

Based on these facts, I find that Respondent violated NASD Rules 3010(a) and (b), and FINRA Rules 3110(a) and (b) and 2010, by (i) failing to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD/FINRA rules; (ii) failing to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD/FINRA rules; and (iii) failing to supervise BM.

2. Second Cause of Action: Excessive, Unsuitable, and Unauthorized Trading in Violation of FINRA Rules 2111 and 2010

The second cause of action charges that Respondent, through BM, engaged in patterns of excessive short-term trading in Class A mutual funds and "swing trading" that were unsuitable for customers and unauthorized by them, in violation of FINRA Rules 2111 and 2010.[28] This resulted in trading losses sustained and improper sales loads paid by his customers in excess of $900,000.[29]

FINRA Rule 2111, addressing suitability of recommendations, requires a member to have a reasonable basis to believe a recommendation of a securities transaction or investment strategy

[22] Compl. ¶¶ 63–64, 141–44.

[23] *Id.* ¶¶ 136–38.

[24] *Id.* ¶¶ 68–69.

[25] *Id.* ¶¶ 82–83.

[26] *Id.* ¶¶ 68–69, 75.

[27] *Id.* ¶¶ 144–45.

[28] Compl. ¶¶ 150–53.

[29] *Id.* ¶ 3.

"is suitable for the customer, based on the information obtained through the reasonable diligence of the member." It has long been recognized that short-term trading in mutual funds is generally unsuitable, especially when the trades generate costs to the customer.[30] It is also recognized that a member firm is responsible and accountable for misconduct, including unsuitable trading, by its registered representatives under agency principles and the doctrine of *respondeat superior*.[31]

Starting in September 2012, BM began to buy, sell, and re-purchase Class A mutual funds on behalf of numerous customers, holding the funds for inappropriately short periods of less than two months to slightly more than a year, generating large fees and commissions, and causing significant losses. From September 2012 through September 2014, BM made 150 purchases of Class A mutual funds in 21 client accounts—selling 138 of the positions after holding them for less than six months—generating $150,000 in commissions and fees. In 18 of the accounts, held by nine customers, the clients did not authorize the trades.[32]

As noted above, from October 2013 through December 2014, BM, employing his "swing trading" strategy, placed more than 2,000 trades in 11 customer accounts, many unauthorized. When asked about the strategy, BM conceded that he did not understand how it worked. Consequently, he had no reasonable basis to believe it was suitable for his clients. The total losses to the customers' portfolios was more than $750,000, and BM's commissions exceeded $500,000. The average annualized cost-to-equity ratio was more than 30 percent, and the average annualized turnover rate was eight.[33]

Based on these facts, I find that Respondent, through its registered representative BM, violated FINRA Rules 2111 and 2010 by engaging in excessive, unsuitable, and unauthorized trading.

3. Third Cause of Action: Use of Pre-Signed and Altered Customer Forms and Documents in Violation of FINRA Rules 4511 and 2010

The third cause of action charges Respondent with falsifying documents and failing to preserve accurate books and records, in violation of FINRA Rules 4511 and 2010.

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[30] *Krull v. SEC*, 248 F.3d 907 (9th Cir. 2001).

[31] *VFinance Investments, Inc.*, Exchange Act Release No. 62448, 2010 SEC LEXIS 2216, at *36–37 (July 2, 2010); *Dep't of Enforcement v. Yankee Financial Group, Inc.*, No. CMS030182, 2006 NASD Discip. LEXIS 21, at *58–62 (NAC Aug. 4, 2006), *aff'd in relevant part*, *Kresge*, Exchange Act Release No. 55988, 2007 SEC Lexis 1407 (June 29, 2007).

[32] Compl. ¶¶ 46–54.

[33] *Id.* ¶¶ 72–75, 77. The turnover rate is the number of times in a year that a portfolio is exchanged for another, determined by dividing the purchases by the average account equity on an annual basis. The cost-to-equity ratio represents the amount by which an account must appreciate yearly to cover commissions and expenses. An average annualized turnover rate of six or higher, and a cost-to-equity ratio of more than 20 percent, are recognized indicators of excessive trading. *Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at *32 (May 29, 2015).

FINRA Rule 4511 requires each member to make and preserve books and records in conformity with Rules 17a-3 and 17a-4 of the Securities Exchange Act of 1934 ("Exchange Act"). It is implicit in the requirement that records must be accurate.[34] Thus, falsification of a firm's required books and records violates FINRA Rule 4511 as well as FINRA Rule 2010.[35] Falsification occurs whenever a person uses a copy of a signature or fills in information on a document previously signed in blank.[36] Obtaining pre-signed documents also violates high standards of commercial honor and just and equitable principles of trade because it creates the opportunity for registered representatives to fill in the forms with information unknown to the customer.[37] Even if done without ill intent or for any fraudulent or deceptive purpose, falsifying a document constitutes a violation of FINRA Rule 2010.[38]

In mid-2012, the Firm discovered that some registered representatives were altering and reusing customer forms and using blank, pre-signed customer forms to accommodate customer requests.[39] Although the Firm orally instructed its representatives that altering, re-using, and using pre-signed forms were prohibited acts, it had no written supervisory procedures in place instructing personnel that such activity was not allowed.[40] The Firm did not take any other measures to prevent or detect improper use, alteration, or re-use of customer forms or to enhance its supervision in this area.[41] As a result, several registered representatives continued to use pre-signed customer forms to accommodate certain customer requests through August 2015.[42]

These documents were materially inaccurate, supposedly signed and authorized by a Firm customer on a specific date for an account opening or request for distribution, but actually pre-signed and not connected with the activity the documents described.

Based on these facts, I find that Respondent violated FINRA Rules 4511 and 2010.

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[34] *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 51 S.E.C. 892, 900 (1993).

[35] *See, e.g., Dep't of Enforcement v. Hardy*, No. 2005001502703, 2009 FINRA Discip. LEXIS 35 at *15–16 (OHO Jul. 21, 2009); *DBCC v. Mangan*, No. C10960162, 1998 NASD Discip. LEXIS 33, at *10–11 (NAC Jul. 29, 1998).

[36] *See Dep't of Enforcement v. Vines*, No. 2006005565401, 2008 FINRA Discip. LEXIS 24, at *11 (OHO May 30, 2008) ("There is no dispute that Respondent participated in the falsification of records by approving the copying of customer signatures onto IRA Adoption Agreements . . . ."); *Dep't of Enforcement v. Hill*, No. C8A050060, 2006 NASD Discip. LEXIS 47, at *27 (OHO Nov. 14, 2006) ("Respondent created false documents and submitted the documents to her employer . . . by having customers sign blank switch forms and then completing the forms . . . .").

[37] *See Hill*, 2006 NASD Discip. LEXIS 47, at *29–30 (finding that respondent violated FINRA Rule 2010 by entering information on firm records after the customer signed the records in blank because of the risk that such documents would contain inaccurate, misleading, or deceptive information).

[38] *Dep't of Enforcement v. Bukovcik*, No. C8A050055, 2007 NASD Discip. LEXIS 21, at *10–11 (NAC Jul. 25, 2007) (finding that the respondent violated NASD Conduct Rule 2110 by signing documents for customers as an accommodation in violation of his firm's policies and without proper written authorization even if he had received oral authorization).

[39] Compl. ¶¶ 103–106.

[40] *Id.* ¶¶ 107–109.

[41] *Id.* ¶ 110.

[42] *Id.* ¶¶ 111–12.

4. Fourth Cause of Action: Failure to Report Required Information to FINRA in Violation of Article V, Section 2 of FINRA's By-Laws, and FINRA Rules 4530 and 2010

The fourth cause of action charges Respondent with failing to report customer complaints and an internal disciplinary action to FINRA, in violation of Article V, Section 2 of FINRA's By-Laws, and FINRA Rules 4530 and 2010.

FINRA Rule 4530 requires member firms to provide accurate complaint and disclosure filings to FINRA. FINRA Rule 4530(a)(2) specifically requires members to report when an associated person is disciplined in any manner that places a significant limitation on the individual's activities on a temporary or permanent basis. In January 2015, Respondent suspended BM from engaging in commission-based securities transactions, and did not report the suspension to FINRA, in violation of FINRA Rules 4530(a)(2) and 2010.[43]

FINRA Rule 4530(d) requires members to report customer complaints to FINRA by the 15th day of the month following the calendar quarter in which the member receives them.[44] The Firm failed to report to FINRA at least nine complaints made by individual customers against one of its representatives, JLS, for unauthorized mutual fund liquidations.[45]

Article V, Section 2(c) of FINRA's By-Laws provides, "[e]very application for registration filed with [FINRA] shall be kept current at all times by supplementary amendments . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment . . . ." Because FINRA and its regulated firms may use the Uniform Application for Securities Industry Registration or Transfer ("Form U4") to determine and monitor the fitness of those working in the securities industry,[46] "the candor and forthrightness of applicants is critical to the effectiveness of the screening process."[47]

Question 14I(2) of Form U4 requires members to report any customer complaint alleging sales practice violations that is settled for $15,000 or more. The Firm failed to report a customer complaint against JLS, which it settled for $19,749.[48]

By failing to report this information as required, I find that Respondent violated FINRA By-Laws Article V, Section 2, and FINRA Rules 4530 and 2010.

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[43] *Id.* ¶¶ 113–14.

[44] *See Dep't of Enforcement v. Meyers Assoc., L.P.*, No. 2010020954501, 2016 FINRA Discip. LEXIS 29 at *38-39 (OHO Apr. 27, 2016), *aff'd*., 2018 FINRA Discip. LEXIS 1, (NAC Jan. 4, 2018), *appeal docketed*, No. 3-18359 (SEC Feb. 20, 2018).

[45] Compl. ¶¶ 124–25, 168.

[46] *See Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996).

[47] *Guang Lu*, 58 S.E.C. 43, 55 (2005), *aff'd*, 179 Fed. Appx. 702 (D.C. Cir. 2006).

[48] Compl. ¶¶ 122, 126.

III. Sanctions

Enforcement recommends imposition of a censure, fines of at least $400,000, and an order requiring the Firm to pay restitution to six customers totaling $422,029.53.[49]

A. Supervision

For failure to supervise, FINRA's Sanction Guidelines ("Guidelines") recommend a fine between $5,000 and $73,000.[50] The Guidelines also direct adjudicators to consider whether Respondent ignored "red flag" warnings that warranted additional supervisory scrutiny, the nature, extent, size, and character of the underlying misconduct, and the quality and degree of the firm's supervision.[51] In cases involving systemic failures of supervision, the Guidelines recommend fines of $10,000 to $292,000, and consideration of a suspension of up to two years or expulsion.[52]

Enforcement characterizes Respondent's supervisory misconduct—failing to establish and maintain written procedures, failing to implement a supervisory system reasonably designed to achieve compliance with FINRA's rules, and failing to supervise BM—as egregious. Enforcement cites multiple aggravating factors under the Guidelines that include the following:

1. The Firm's supervisory deficiencies allowed BM to defraud vulnerable customers by churning their accounts and making unsuitable and unauthorized trades.[53]

2. The Firm failed to respond reasonably to numerous red flags relating to BM and his trading activity.[54]

3. The Firm did not allocate appropriate resources to supervision by, for example, using exception reports to identify potentially problematic and unreasonable trading activity.[55]

4. The Firm's supervisory failures resulted in customer harm to vulnerable customers, five of them over the age of eighty and at least seven living on fixed incomes. All of these customers specified investment objectives with moderate risk and investment holding periods of at least one to three years.

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[49] Default Motion, at 25.

[50] FINRA Sanction Guidelines at 104 (2018), http://www.finra.org/Industry/Sanction-Guidelines.

[51] Guidelines at 104.

[52] Guidelines at 105.

[53] Compl. ¶ 3; Guidelines at 105.

[54] Guidelines at 104.

[55] Guidelines at 105.

All of them also stated in their new account documents that they always followed their financial advisor's recommendations.[56]

5. The unauthorized and unsuitable transactions were aggravating in number, size, and character: 138 improper mutual fund transactions generated over $150,000 in unnecessary commissions and fees.[57] Over 2,000 improper "swing trades" during a 15-month period caused portfolio losses of over $750,000 and generated more than $500,000 in commissions for the Firm.[58]

6. Of the $900,000 in customer losses caused by the improper transactions, the Firm has not paid restitution to six customers who lost more than $400,000.[59]

7. The Firm engaged in a lengthy pattern of misconduct by failing to supervise BM reasonably and failing to maintain reasonable supervisory policies and procedures. In addition to the large number of excessive and unsuitable transactions that the firm failed to detect and prevent, even after suspending BM's ability to conduct commissions-based securities transactions, the Firm allowed him to continue to work with customers in other aspects of the business.[60]

8. BM's excessive, unsuitable, and unauthorized trading continued for more than two years.[61]

9. The Firm's supervisory failures were, at a minimum, reckless.[62]

10. BM's trading resulted in significant monetary gain of over $650,000 in commissions for him and the Firm.[63]

There are no mitigating factors. I therefore accept Enforcement's recommendation and fine Respondent $150,000[64] for the supervision violations alleged in the first cause of action. I

[56] Guidelines at 7 (Principal Consideration No. 11); Compl. ¶ 3; Guidelines at 8 (Principal Considerations Nos. 18 and 19); Compl. ¶ 43; Default Motion, at 28.

[57] Guidelines at 8 (Principal Considerations 17); Guidelines at 105; Compl. ¶¶ 51–55.

[58] Guidelines at 104; Compl. ¶¶ 75, 78, 80.

[59] Guidelines at 7 (Principal Consideration No. 4); Compl. ¶ 3; Gaarder Decl. ¶ 17.

[60] Guidelines at 7 (Principal Consideration No. 8); Compl. ¶¶ 51–52, 75, 115.

[61] Guidelines at 7 (Principal Consideration No. 9); Compl. ¶¶ 51, 75.

[62] Guidelines at 8 (Principal Consideration No. 13).

[63] Guidelines at 8 (Principal Consideration No. 16); Compl. ¶¶ 52, 80.

[64] Default Motion, at 25.

also find, as alleged in the first cause of action, that the Firm failed to supervise BM, who willfully violated provisions of the Exchange Act.[65]

B. Excessive, Unsuitable, and Unauthorized Trading

The Guidelines for excessive trading recommend a fine of $5,000 to $110,000.[66] The Guidelines for unsuitable recommendations recommend a fine of $2,500 to $110,000.[67] As the violations for excessive and unsuitable trading all involved the same course of conduct, it is appropriate to consider them collectively in imposing sanctions.

Because of the multiple aggravating factors discussed above, I agree with Enforcement that a fine of $200,000[68] is appropriate for the violations alleged in the second cause of action. In addition, I find it appropriate for Respondent to pay restitution, totaling $422,029.52, plus interest, to the following six customers: DB, $156,314.04; SD, $67,115.29; JQ, $17,474.99; LH, $81,208.32; SF, $77,288.10; LA, $22,628.79.[69]

C. Use of Pre-Signed and Altered Customer Forms and Documents

For forgery and/or falsification of records, the Guidelines recommend a fine of between $5,000 to $146,000 if the falsification was not authorized, and $5,000 to $10,000 if it was authorized.[70]

For recordkeeping violations, the Guidelines recommend a fine of $1,000 to $15,000, and if aggravating factors predominate, a fine of $10,000 to $146,000. The relevant Principal Considerations include the nature and materiality of the inaccurate or missing information; whether inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence; and whether the violations occurred over an extended period.[71]

The use of pre-signed and altered forms by several Firm brokers stemmed from a single course of conduct.[72] Enforcement notes that Respondent's conduct here was not egregious given

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[65] By so doing, the Firm is subject to statutory disqualification with respect to membership under Article III, Section 4 of FINRA's By-Laws.

[66] Guidelines at 78.

[67] Guidelines at 95.

[68] Default Motion, at 30.

[69] These amounts include the total loss to each customer, from both BM's mutual fund switching, which ended on September 30, 2014, and his swing trading, which ended on December 31, 2014. See Supplemental Declaration of Jason W. Gaarder in Support of the Department of Enforcement's Motion for Entry of Default Decision ("Supplemental Gaarder Declaration"). Thus, interest shall be calculated for each customer's mutual fund switching losses from September 30, 2014, and for each customer's swing trading losses from December 31, 2014.

[70] Guidelines at 37.

[71] Guidelines at 29.

[72] *See DOE v. Leopold*, No. 2007011489301, 2012 FINRA Discip. LEXIS 2 at *25 (NAC Feb. 24, 2012) (falsification and causing false books and records are often treated as one violation for sanctions purposes given that these violations result from "identical conduct.").

the lack of customer harm, and customers authorized the use of the forms to fulfill their requests.[73] However, the Firm allowed the use of the violative forms for over three years after discovering their use during a branch audit.[74]

Enforcement recommends, and I agree, that a fine of $10,000[75] for the violations charged in the third cause of action of the Complaint is appropriate.

D. Failure to Report Required Information to FINRA

For FINRA Rule 4530 violations involving the failure to report, or filing false, misleading, or inaccurate reports, the Guidelines suggest a fine of $5,000 to $146,000. The Principal Considerations in Determining Sanctions for failing to report are whether events not reported, or reported inaccurately, would have revealed a pattern of potential misconduct, and in cases involving the failure to file or inaccurate filing of a quarterly report, the number and type of incidents not reported or reported inaccurately.[76]

The Guideline for late filing of or failing to file amendments to Forms U4 recommend a fine of $2,500 to $73,000. The applicable Principal Considerations include the nature and significance of the information at issue; the number, nature, and dollar value of the disclosable events at issue; whether the omission was an intentional effort to conceal information; whether the failure to disclose delayed any regulatory investigation; whether it resulted in injury to other parties; and the duration of the delinquency.[77]

In Enforcement's view, Respondent's failures to disclose were not egregious as they did not result in additional customer harm, and did not cause a delay in regulatory investigations. However, the length of time during which the Firm failed to make the proper filings is an aggravating factor.[78]

I therefore agree with Enforcement's recommendation of a fine amount and order Accelerated Capital Group, Inc. to pay $40,000[79] for the violations charged in the fourth cause of action of the Complaint.

IV. Order

For failing to establish and maintain a supervisory system and written procedures reasonably designed to achieve compliance with federal securities law and FINRA rules, and for

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[73] Default Motion, at 34.

[74] Compl. ¶ 112.

[75] Default Motion, at 33.

[76] Guidelines at 74.

[77] Guidelines at 71.

[78] Default Motion, at 35.

[79] Default Motion, at 34.

failing to supervise BM, in violation of NASD Rules 3010(a) and (b), and FINRA Rules 3110(a) and (b) and 2010, Accelerated Capital Group, Inc. is fined $150,000.

For failing to reasonably supervise trading activity of registered representatives who engaged in excessive, unsuitable, and unauthorized trading, in violation of FINRA Rules 2111 and 2010, Accelerated Capital Group, Inc. is fined $200,000. The Firm is also censured and ordered to pay restitution totaling $422,029.53, plus interest, to the six customers in the amounts calculated by Enforcement[80] and listed in Addendum A of this Decision. Interest shall be paid at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), until the date restitution is paid. Satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, shall be provided to the staff of FINRA's Department of Enforcement, District 2, no later than 90 days after this decision becomes final.[81]

For failing to prevent the use of pre-signed and altered customer forms and documents, in violation of FINRA Rules 4511 and 2010, Accelerated Capital Group, Inc. is fined $10,000.

For failing to report required information to FINRA, in violation of Article V, Section 2 of FINRA's By-Laws, and FINRA Rules 4530 and 2010, Accelerated Capital Group, Inc. is fined $40,000.The sanctions shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

Matthew Campbell
Hearing Officer

Dated: February 15, 2019

Copies to:
Accelerated Capital Group, Inc., c/o Mark Stewart (via email and first-class mail)
Jason W. Gaarder, Esq. (via email and first-class mail)
Carolyn Craig, Esq. (via email)
Lara Thyagarajan, Esq. (via email)

[80] Supplemental Gaarder Declaration, ¶ 4.

[81] If Respondent is unable to locate a customer, the Firm must provide Enforcement with proof that it has made a bona fide attempt to locate the customer. Any restitution Respondent is unable to pay to a customer must be paid to FINRA (without interest) as a fine.

ADDENDUM A

Customer	Restitution Ordered	Effective Date for Interest Calculation for Customer Losses Resulting from Mutual Fund Switching: September 30, 2014	Effective Date for Interest Calculation for Customer Losses Resulting from Swing Trading: December 31, 2014
DB	$156,314.04	$29,320.00	$126,994.04
SD	$67,115.29	$11,553.75	$55,561.54
JQ	$17,474.99	$4,167.76	$13,307.23
LH	$81,208.32	$11,422.09	$69,786.23
SF	$77,288.10	$18,532.43	$58,755.67
LA	$22,628.79	$1,092.50	$21,536.29