

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

DEPARTMENT OF ENFORCEMENT,
Complainant,

v.

CRAIG GARY LANGWEILER
(CRD No. 841897),

Respondent.

Disciplinary Proceeding
No. 2014040347701

Hearing Officer – CC

DEFAULT DECISION

December 8, 2017

Respondent recommended and executed excessive and unsuitable trades in a customer’s account, in violation of FINRA Rules 2111 and 2010. For this misconduct, he is suspended for one year and fined \$15,000. Respondent exercised discretion in the same customer’s account without prior written authority from the customer or prior approval from his firm, in violation of NASD Rule 2510 and FINRA Rule 2010. For this misconduct, he is suspended for two months and fined \$2,500. For these violations, Respondent is ordered to disgorge excessive commissions of \$18,192 to his customer.

Appearances

For Complainant: Matthew A. Katz, Esq., Tiffany A. Buxton, Esq., and Richard Chin, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority.

For Respondent: No appearance.

DECISION

I. Introduction

On July 14, 2017, FINRA’s Department of Enforcement filed a two-cause Complaint with FINRA’s Office of Hearing Officers (“OHO”). The Complaint alleged in cause one that, while associated with member firm Meyers Associates, L.P., now known as Windsor Street Capital, L.P. (hereinafter “Meyers Assoc.”), Respondent Craig Gary Langweiler violated FINRA Rules 2111 and 2010¹ by excessively trading in the account of customer KK.² Cause two alleged that Langweiler exercised discretion in customer KK’s account without prior written authority

¹ FINRA’s Rules are available at www.finra.org/rules.

² Customer KK is identified in an addendum to the Complaint.

from KK or prior approval from Meyers Assoc., in violation of NASD Rule 2510(b) and FINRA Rule 2010.

Enforcement properly served Langweiler with two Notices of the Complaint and the Complaint. Langweiler never filed an Answer to the Complaint. On September 14, 2017, I issued an Order Governing Motion for Entry of Default Decision. On October 13, 2017, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), together with the October 13, 2017 Declaration of Matthew A. Katz, Esq. (“Katz Decl.”) in support of the Default Motion and seven exhibits.³

As stated in detail below, I find Langweiler in default, grant Enforcement’s Default Motion, and deem the allegations of the Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Langweiler’s Background

Langweiler entered the securities industry in 1977.⁴ Since entering the industry, he has been associated with nine member firms.⁵ From October 2011 through March 2017, Langweiler was associated with FINRA member firm Meyers Assoc. as a general securities representative.⁶ On March 24, 2017, Meyers Assoc. filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) reporting Langweiler’s voluntary termination of employment with the firm.⁷

B. FINRA’s Jurisdiction

FINRA has jurisdiction to proceed with this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA’s By-Laws because (1) Enforcement filed the Complaint with OHO on July 24, 2017, which is within two years of Meyers Assoc.’s filing of a Form U5 on March 24, 2017;⁸ and (2) the Complaint alleged that Langweiler engaged in misconduct during the period when he was associated with FINRA member firm Meyers Assoc.⁹

³ In this decision, Enforcement’s exhibits are referenced as CX-1 through CX-7.

⁴ Katz Decl. ¶ 4; CX-1, at 14.

⁵ Katz Decl. ¶ 4; CX-1, at 11-13.

⁶ Katz Decl. ¶ 4; CX-1, at 5.

⁷ Katz Decl. ¶ 4; CX-1, at 5.

⁸ Article V, Section 4(a)(i) of FINRA’s Corporate By-Laws states that a person whose association with a member firm has been terminated and is no longer associated with any member firm shall continue to be subject to the filing of a complaint based upon conduct that commenced prior to the termination, but any such complaint shall be filed within two years after the effective date of termination of registration.

⁹ Katz Decl. ¶ 5.

C. Origin of the Investigation

This disciplinary action arose from Enforcement’s investigation of Langweiler’s trading activity in the accounts of three customers who filed complaints about Langweiler’s trading and commissions.¹⁰

D. Langweiler’s Default

The Central Registration Depository (“CRD”) indicates that Langweiler’s address of record from April 2015 to the present is an address in Philadelphia, Pennsylvania (“the CRD Address”).¹¹ During the course of the investigation, and as recent as April 2017, Enforcement also communicated with Langweiler at an email address (“Langweiler Email Address”).¹² When Enforcement filed the Complaint on July 24, 2017, Enforcement did not know of a more current address for Langweiler, despite having conducted an Internet search for a more recent address.¹³

Enforcement served Langweiler with a Notice of Complaint and Complaint by certified mail at his CRD Address.¹⁴ Enforcement also sent copies of these documents to Langweiler’s CRD Address by first-class mail and Federal Express delivery and to the Langweiler Email Address.¹⁵ The United States Postal Service (“USPS”) returned the certified mailing to Enforcement marked “Return to Sender – Attempted – Not Known – Unable to Forward,” and the first-class mailing marked “Return to Sender – Unable to Forward.”¹⁶ Federal Express delivered the Notice of Complaint and Complaint to Langweiler at the CRD Address on July 25, 2017.¹⁷ The Notice of Complaint and Complaint that Enforcement sent to the Langweiler Email Address were not returned as undeliverable.¹⁸ According to the Notice of Complaint, Langweiler’s Answer was due on or before August 21, 2017.¹⁹ Langweiler did not file an Answer.²⁰

Enforcement served Langweiler with the Second Notice of Complaint and Complaint by certified mail at his CRD Address.²¹ Enforcement also sent copies of these documents to

¹⁰ *Id.* ¶ 7.

¹¹ *Id.* ¶ 9; CX-1, at 1-2.

¹² Katz Decl. ¶ 10.

¹³ *Id.* ¶ 11.

¹⁴ *Id.* ¶ 12; CX-1, at 1-2; CX-2, at 1.

¹⁵ Katz Decl. ¶ 12; CX-2, at 1.

¹⁶ Katz Decl. ¶ 13.

¹⁷ *Id.* ¶ 14; CX-3. Federal Express delivered the Notice of Complaint and Complaint without requiring a signature upon delivery. Katz Decl. ¶ 14; CX-3.

¹⁸ Katz Decl. ¶ 14.

¹⁹ *Id.* ¶ 15; CX-2, at 1.

²⁰ Katz Decl. ¶ 15.

²¹ *Id.* ¶ 16; CX-1, at 1-2; CX-4, at 1.

Langweiler's CRD Address by first-class mail and Federal Express delivery and to the Langweiler Email Address.²² The USPS returned the certified and first-class mailings to Enforcement marked "Return to Sender – Insufficient Address– Unable to Forward."²³ Federal Express delivered the Second Notice of Complaint and Complaint to Langweiler at the CRD Address on August 24, 2017.²⁴ The Second Notice of Complaint and Complaint that Enforcement sent to the Langweiler Email Address were not returned as undeliverable.²⁵ According to the Second Notice of Complaint, Langweiler's Answer was due on or before September 11, 2017.²⁶ Langweiler did not file an Answer by that date or otherwise respond to the Complaint.²⁷

FINRA Rule 9134 provides for service of a complaint on a natural person by certified mail at the person's residential address as reflected in the CRD.²⁸ I find that Enforcement properly served Langweiler with the Notice of Complaint, Second Notice of Complaint, and Complaint at his CRD Address. I further find that Langweiler failed to file an Answer to the Complaint. Pursuant to FINRA Rules 9215(f) and 9269(a), I find Langweiler to be in default and deem admitted all allegations of the Complaint.

E. Cause Two – Exercising Discretion Without Authority and Approval

I discuss my findings under cause two first because, as discussed in more detail below, one of the elements of proving unsuitably excessive trading in a customer's account is demonstrating a respondent's control over the customer's account. Accordingly, I discuss my finding that Langweiler exercised discretion in KK's account before discussing excessive trading as alleged in cause one.

The Complaint alleged misconduct during a 193-day period, from November 19, 2013 through May 30, 2014 ("the Relevant Period").²⁹ Cause two alleged that, during the Relevant

²² Katz Decl. ¶ 16; CX-4, at 1.

²³ Katz Decl. ¶ 17.

²⁴ *Id.* ¶ 18; CX-5. Federal Express delivered the Second Notice of Complaint and Complaint without requiring a signature upon delivery. Katz Decl. ¶ 18; CX-5.

²⁵ Katz Decl. ¶ 18.

²⁶ *Id.* ¶ 19; CX-4, at 1.

²⁷ Katz Decl. ¶ 20. The Second Notice of Complaint advised Langweiler that his failure to submit an Answer to the Complaint by September 11, 2017 could result in a Hearing Officer's treating the allegations of the Complaint as admitted by Langweiler and entering a default decision against him. *Id.*; CX-4, at 1.

²⁸ FINRA Rule 9131 states that a complaint or other document initiating a proceeding shall be served pursuant to Rule 9134. Disciplinary complaints mailed to a registered representative's last known address as reflected in CRD are deemed to have been received and read by the registered person. *See Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *19-20 (NAC July 26, 2012); *Dep't of Enforcement v. Bond*, No. C10000210, 2002 NASD Discip. LEXIS 6, at n.3 (NAC Apr. 4, 2002) ("Service by mailing to a party's most recent CRD address constitutes constructive notice. Proof of actual notice is not required.").

²⁹ Complaint ("Compl.") ¶ 1; Katz Decl. ¶ 21.

Period, Langweiler violated NASD Rule 2510(b) and FINRA Rule 2010 by exercising discretion in customer KK's account without receiving prior written authority from KK or approval from Meyers Assoc.

NASD Rule 2510(b) states that a registered person shall not exercise discretionary power in a customer's account unless the customer has given prior written authorization to the registered person and the member firm has indicated in writing its acceptance of the account as discretionary.³⁰ "The Rule is significant because '[d]iscretionary trading in a customer's account is a practice that is inherently susceptible to abuse.'" ³¹ FINRA's rules require written advance authorization and firm approval of discretionary authority to ensure "that the trading is being done with the consent of the customer and to alert the firm that extra oversight of the sales representative's handling of the account may be necessary to protect against improper or unsuitable trading."³²

FINRA Rule 2010 requires associated persons to comply with high standards of commercial honor and just and equitable principles of trade. A violation of any other rule, such as NASD Rule 2510, also constitutes a violation of FINRA Rule 2010.³³

During the Relevant Period, Meyers Assoc.'s written supervisory procedures stated that the firm did not accept discretionary accounts and prohibited registered representatives from exercising discretion, including time and price discretion, in customer accounts.³⁴ Langweiler neither sought nor obtained written authorization from KK to exercise discretion in his account at Meyers Assoc., and the firm never approved KK's account as discretionary.³⁵ Notwithstanding Meyers Assoc.'s prohibition and Langweiler's lack of authority, Langweiler effected approximately 257 trades in KK's account during the Relevant Period without first discussing the trades with KK and obtaining his authorization to execute the trades.³⁶ By virtue of this conduct, I find Langweiler violated NASD Rule 2510(b) and FINRA Rule 2010, as alleged in cause two of the Complaint.

³⁰ NASD Rule 2510 has not yet been replaced by a new FINRA rule in the FINRA Consolidated Rulebook, and it remains in effect.

³¹ *Michael Pino*, Exchange Act Release No. 74903, 2015 SEC LEXIS 1811, at *17 (May 7, 2015) (citing *William J. Murphy*, Exchange Act Release No. 41804, 1999 SEC LEXIS 1731, at *8 (Aug. 27, 1999)).

³² *Murphy*, 1999 SEC LEXIS 1731, at *8.

³³ *Pino*, 2015 SEC LEXIS 1811, at *35 n. 31; *Dep't of Enforcement v. Hardin*, No. E072004072501, 2007 NASD Discip. LEXIS 24, at *10 n.5 (NAC July 27, 2007).

³⁴ Compl. ¶ 20.

³⁵ *Id.* ¶ 21.

³⁶ *Id.* ¶ 22. Langweiler testified under oath that he discussed general trading strategies with, and obtained general approval from KK during conversations they had on Fridays, and then he implemented the trading during the following week. Katz Decl. ¶ 24(a); CX-6, at 11-12 (Langweiler on-the-record testimony ("OTR") at 202:15-205:7; 206:19-24 (Oct. 13, 2016)). Langweiler also testified that he "traded freely" in KK's account because KK "never said no to anything." CX-6, at 3 (Langweiler OTR at 165:6-9 (Oct. 13, 2016)).

F. Cause One – Excessive Trading

Cause one alleged that Langweiler violated FINRA Rules 2111 and 2010 by excessively trading in the account of Meyers Assoc. customer KK during the Relevant Period.

KK opened his account at Meyers Assoc. on November 18, 2013, with a deposit of \$50,000.³⁷ During the Relevant Period, Langweiler was the representative of record for KK's account.³⁸ In December 2013, KK deposited an additional \$21,000 in his Meyers Assoc. account.³⁹ KK thereafter deposited \$10,000 in January 2014 and \$10,000 in February 2014.⁴⁰

FINRA Rule 2111 states that an associated person such as Langweiler must have a reasonable basis to believe that a recommended transaction or an investment strategy is suitable for the customer based on the customer's investment profile.⁴¹ FINRA Supplementary Material 2111.05 advises that Rule 2111 is composed of three main obligations, one of which is quantitative suitability. Quantitative suitability requires an associated person who has actual or de facto control over a customer account 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.⁴² Although no single test defines excessive trading activity, factors such as the turnover rate, the cost-equity ratio, the use of in-and-out trading, and the frequency of trading in a customer's account may provide a basis for a finding that an associated person has violated the quantitative suitability obligation.⁴³ Consequently, unsuitably excessive trading has two key elements. It occurs when: (1) "a registered representative has control over the trading in [a customer's] account"; and (2) "the level of trading in that account is inconsistent with the customer's objectives and financial situation."⁴⁴ This case satisfies both elements.

First, Langweiler had control over trading in KK's account. "[A] registered representative's exercise of *de facto* discretionary control over a client's account (even if the exercise of discretion is not properly authorized) satisfies the element of control for the purpose of demonstrating excessive trading."⁴⁵ Langweiler exercised control over KK's account at

³⁷ Compl. ¶ 10.

³⁸ *Id.*

³⁹ *Id.* ¶ 11.

⁴⁰ *Id.*

⁴¹ Conduct that violates FINRA's suitability rule is also "inconsistent with just and equitable principles of trade" and therefore a violation of FINRA Rule 2010. *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *55 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

⁴² See Supplementary Material 2111.05(c).

⁴³ *Id.*

⁴⁴ *Cody*, 2011 SEC LEXIS 1862, at *40-41.

⁴⁵ *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *49 (July 2, 2013), *petition for review denied*, *Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014).

Meyers Assoc. through his unauthorized exercise of discretion.⁴⁶ During the Relevant Period, Langweiler made investment decisions in KK's account, including what to buy and sell, the quantities, the price, and when each transaction would occur.⁴⁷

Second, the level of trading in KK's account was excessive. Determining whether trading levels are excessive does not rest on any "magical per annum percentage."⁴⁸ Rather, several factors may be considered, such as turnover rate, cost-to-equity ratio, and the number and frequency of trading.⁴⁹

The frequency of trading can be indicative of excessive trading,⁵⁰ and the level of Langweiler's trading in KK's account was significant. During the Relevant Period, which measured approximately 193 days, Langweiler executed approximately 257 trades in KK's account.⁵¹ During that time, KK made no withdrawals, maintained an average monthly account balance of \$76,773.02, and incurred losses in excess of \$33,000.⁵² In comparison, Langweiler's gross purchases in KK's account totaled approximately \$1,292,158.⁵³

The turnover rate is the number of times the value of the account is turned over within a given period of time.⁵⁴ The turnover rate is calculated by dividing the aggregate amount of purchases in an account by the average monthly investment.⁵⁵ "Turnover rates between three and five have triggered liability for excessive trading, and it has been generally recognized that an

⁴⁶ Compl. ¶ 12; see *Peter C. Bucchieri*, Exchange Act Release No. 37218, 1996 SEC LEXIS 1331, at *12 n.11 (May 14, 1996) (stating that a broker who exercises discretion in a customer account clearly controls the account).

⁴⁷ Compl. ¶ 12. A representative also exercises *de facto* control if the customer relies heavily on the registered person's advice and follows that advice. *Cody*, 2011 SEC LEXIS 1862, at *42 (citing *Stephen Thorlief Rangen*, 52 S.E.C. 1304, 1309-10 (1997)). Here, Langweiler admitted under oath that KK would do everything Langweiler told him to do (in his account at Meyers Assoc.) and never said "no" to Langweiler. Katz Decl. ¶ 22(a); CX-6, at 3 (Langweiler OTR at 165:20-24 (May 29, 2015)).

⁴⁸ *Bucchieri*, 1996 SEC LEXIS 1331, at *11 (citing *Gerald Donnelly*, Exchange Act Release No. 36690, 1996 SEC LEXIS 89, at *6 (Jan. 5, 1996)).

⁴⁹ *Dep't of Enforcement v. Ul Haq*, No. ELI2004026701, 2009 FINRA Discip. LEXIS 3, at *24 (NAC Apr. 6, 2009).

⁵⁰ *Jack H. Stein*, Exchange Act Release No. 47335, 2003 SEC LEXIS 338, at *16 (Feb. 10, 2003); *Ul Haq*, 2009 FINRA Discip. LEXIS 3, at *26 (finding that trading in a customer account "every day or two" for a period of approximately eight months is indicative of excessive trading); *Dep't of Enforcement v. Merhi*, No. E072004044201, 2007 NASD Discip. LEXIS 9, at *16 (NAC Feb. 16, 2007) ("A violation of [the] suitability rule may be established if a representative's recommendations are quantitatively unsuitable, 'i.e., the representative excessively traded the account.'") (citing *Dep't of Enforcement v. O'Hare*, No. C9B030045, 2005 NASD Discip. LEXIS 39, at *11-12 (NAC Apr. 21, 2005)).

⁵¹ Compl. ¶ 13.

⁵² *Id.*

⁵³ *Id.* Langweiler's trading in KK's account during the Relevant Period generated commissions of approximately \$27,000 and additional trading fees and administrative costs of approximately \$5,400. *Id.*

⁵⁴ *Ul Haq*, 2009 FINRA Discip. LEXIS 3, at *24.

⁵⁵ *Michael T. Studer*, Exchange Act Release No. 50543, 2004 SEC LEXIS 2347, at *13 n.21 (Oct. 14, 2004).

annual turnover rate of greater than six evidences excessive trading.”⁵⁶ Here, the annualized turnover rate for KK’s account was 28.85, more than four times the number generally recognized as excessive.⁵⁷

“Another indicator of excessive trading is the cost-to-equity ratio, which is the percentage of return on the customer’s average net equity needed to pay broker-dealer commissions and other expenses.”⁵⁸ The Securities and Exchange Commission (“Commission”) has held that a cost-to-equity ratio in excess of 20 percent “generally indicates that excessive trading has occurred.”⁵⁹ Here, Langweiler’s trading in KK’s account generated an annualized cost-to-equity ratio of 60.50 percent, which is more than three times the well-established benchmark for excessive trading.⁶⁰ Langweiler tracked the cost-to-equity ratio associated with KK’s account and described it during his on-the-record testimony as both “ridiculous” and “outrageous,”⁶¹ yet he continued to trade excessively.

Because Langweiler knew that his trading outpaced the returns associated with KK’s account, Langweiler lacked a reasonable basis to believe that the number of recommended transactions was suitable for KK.⁶² I find that the trading Langweiler effected in KK’s account was excessive and unsuitable, in light of the size and frequency of the transactions effected and the transaction costs incurred.⁶³ Accordingly, I find Langweiler violated FINRA Rules 2111 and 2010 during the Relevant Period, as alleged in cause one.

III. Sanctions

A. FINRA’s Sanction Guidelines

FINRA’s Sanction Guidelines (“Guidelines”) include Principal Considerations that are applicable to all sanction determinations.⁶⁴ In this case, several of the Principal Considerations apply to violations under both causes of action.

⁵⁶ *Stein*, 2003 SEC LEXIS 338, at *16.

⁵⁷ Compl. ¶ 14.

⁵⁸ *Rafael Pinchas*, Exchange Act Release No. 41816, 1999 SEC LEXIS 1754, at *18 (Sept. 1, 1999).

⁵⁹ *Murphy*, 2013 SEC LEXIS 1933, at *51.

⁶⁰ Compl. ¶ 14.

⁶¹ *Id.* ¶ 16; CX-6, at 10 (Langweiler OTR at 167:16-21 (Oct. 13, 2016)).

⁶² Compl. ¶ 16.

⁶³ *Id.* ¶ 15.

⁶⁴ See FINRA Sanction Guidelines (2017) at 7-8 (Principal Considerations in Determining Sanctions), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

First, Langweiler has a significant disciplinary history.⁶⁵ In March 2017, OHO issued a decision finding that Langweiler willfully failed to timely disclose unsatisfied tax liens and judgments on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”), in violation of Article V, Section 2(c) of FINRA’s By-Laws, NASD IM-1000-1, FINRA Rules 1122 and 2010, and NASD Rule 2110. The decision also held that Langweiler violated FINRA Rule 2010 by providing false information regarding unsatisfied tax liens and judgments to his firm and FINRA. For these violations, Langweiler was suspended for two years from associating with any FINRA member firm in any capacity and fined a total of \$20,000.⁶⁶ In September 2010, FINRA fined Langweiler \$7,500 and suspended him for ten days for violating NASD Rules 2510 and 2110 by exercising discretion in a customer’s account without prior written approval and firm acceptance.⁶⁷ In August 2008, FINRA fined Langweiler \$5,000 and suspended him for ten days for violating NASD Rules 2370 and 2110 by improperly accepting loans from customers.⁶⁸

Second, it is aggravating that Langweiler’s misconduct resulted in significant gains for him and sizeable losses for customer KK.⁶⁹ Langweiler’s actions in KK’s account during the Relevant Period generated approximately \$27,000 in commissions.⁷⁰ The record suggests that Langweiler’s misconduct was motivated by his significant personal debt (which he concealed by failing to disclose liens and judgments on his Form U4).⁷¹ Langweiler’s misconduct resulted in KK’s account being charged approximately \$32,500 in commissions and administrative fees and costs.⁷² Furthermore, KK’s account incurred losses in excess of \$33,000 during the Relevant Period.⁷³

B. Cause One – Excessive and Unsuitable Trading

The Guidelines for unsuitable and excessive trading recommend a fine of \$2,500 to \$110,000 plus disgorgement.⁷⁴ The Guidelines also recommend suspending an individual

⁶⁵ *Id.* at 7 (Principal Consideration No. 1) (the respondent’s relevant disciplinary history). *See also Id.* at 2-3 (General Principles Applicable to All Sanction Determinations No. 2) (“Disciplinary sanctions should be more severe for recidivists. An important objective of the disciplinary process is to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists beyond those outlined in these guidelines, up to and including barring associated persons . . .”).

⁶⁶ Katz Decl. ¶ 24(a); CX-1, at 65-69.

⁶⁷ Katz Decl. ¶ 24(a); CX-1, at 35-38.

⁶⁸ Katz Decl. ¶ 24(a); CX-1, at 30-32.

⁶⁹ Guidelines at 7-8 (Principal Consideration No. 11) (whether respondent’s misconduct resulted directly or indirectly in injury to the public); (Principal Consideration No. 16) (whether respondent’s misconduct resulted in the potential for respondent’s monetary gain).

⁷⁰ Compl. ¶ 13.

⁷¹ *See* CX-1, at 48-52, 59-64, 70-71 (detailing Langweiler’s many federal and state tax liens and civil judgments).

⁷² Compl. ¶ 13.

⁷³ *Id.*

⁷⁴ Guidelines at 95.

respondent in any or all capacities for ten business days to two years and, if aggravating factors predominate, a bar in all capacities.⁷⁵

In addition to the aggravating factors of a significant disciplinary history, injury to the investing public, and respondent's monetary gain (discussed in subsection III.A), I find that other aggravating factors specific to Langweiler's excessive trading violation exist. I find it aggravating that Langweiler's misconduct was intentional.⁷⁶ Langweiler testified under oath that, based on prior customer complaints, he tracked the cost-to-equity ratios in his customers' accounts and that the ratio for customer KK's account was "ridiculous" and "outrageous."⁷⁷ I find that Langweiler's intentional disregard for the interests of KK is particularly aggravating and indicates to me that substantial sanctions are necessary to protect the investing public.

I also find it aggravating that Langweiler effectively concealed his misconduct by falsely reassuring KK that the commissions disclosed on KK's account statement were errors and would be corrected.⁷⁸ Langweiler further complicated KK's understanding of Langweiler's actions by conducting a large number of trades on a riskless principal basis so KK's trade confirmations lacked a clear explanation of the commissions charged to KK's account.⁷⁹

In light of the many aggravating factors attendant to Langweiler's violations under cause one, I suspend Langweiler for one year from associating with any member firm in any capacity and fine him \$15,000. I also order disgorgement as explained in more detail in subsection III.D. I conclude that these sanctions are necessary and appropriate to protect the investing public from Langweiler, deter future misconduct by him and others similarly situated, and uphold high standards of business conduct.

C. Cause Two – Exercising Discretion Without Written Authority or Firm Approval

The Guidelines for exercising discretion without the customer's written authority recommend a fine of \$2,500 to \$15,000, an order of disgorgement, and where aggravating factors predominate, a suspension in any or all capacities for 10 to 30 business days.⁸⁰

⁷⁵ *Id.*

⁷⁶ *Id.* at 8 (Principal Consideration No. 13) (whether respondent's misconduct was intentional).

⁷⁷ Katz Decl. ¶ 24(b); CX-6, at 10 (Langweiler OTR at 167:16-21 (admitting that the cost-to-equity ratio in KK's account was ridiculous and outrageous)(Oct. 13, 2016)). *See also* CX-6, at 6, 8-9 (Langweiler OTR at 86:25-87:7 (admitting he was cognizant of customers' cost-to-equity ratios); 126:24-127:10 (affirming that, after 2004, he acted in a manner to avoid repeated allegations of excessive trading); 151:2-24 (admitting that he had discussions with a supervisor to install safeguards against excessive trading) (Oct. 13, 2016)).

⁷⁸ Katz Decl. ¶ 24(g); Guidelines at 7 (Principal Consideration No. 10) (whether respondent attempted to conceal his misconduct or lull into inactivity, mislead, deceive or intimidate a customer).

⁷⁹ Katz Decl. ¶ 24(g).

⁸⁰ Guidelines at 86.

In addition to the aggravating factors of a significant disciplinary history, injury to the investing public, and respondent's monetary gain (discussed in subsection III.A), I find that other aggravating factors, specific to Langweiler's exercising discretion without authority or approval, also exist. First, not only does Langweiler have a disciplinary history, he is a recidivist with respect to improperly exercising discretion in his customers' accounts.⁸¹ Langweiler was fined and suspended by FINRA in 2010 for similarly engaging in discretionary trading without the necessary approvals.⁸² Given Langweiler's awareness of the violative nature of such conduct from a previous regulatory action, I find that Langweiler acted intentionally and in contravention of prior warnings from FINRA.⁸³ These factors are aggravating.

The Guidelines specific to this violation recommend that adjudicators also consider whether the firm's procedures prohibited discretionary trading in customer accounts and whether a respondent's discretionary trading exceeded time and price discretion.⁸⁴ Here, Langweiler exercised discretion in KK's account, beyond time and price discretion, in direct contravention of Meyers Assoc.'s written policies and procedures.⁸⁵ As further evidence of the intentional nature of Langweiler's violations, Langweiler admitted under oath that he was aware of the firm's prohibition.⁸⁶ Langweiler nonetheless persisted in exercising discretion to KK's detriment.

As the Commission stated in its decision in *Murphy*,⁸⁷ advance authorization from the customer and the firm is necessary to protect against unsuitable trading. It is precisely this—Langweiler's failure to get customer authorization and firm approval of discretionary trading—that enabled Langweiler's suitability violations. I find this aggravating.

In light of the many aggravating factors, particularly Langweiler's recidivism, for exercising discretion in a customer account without written authority and firm approval, I suspend Langweiler from associating with any member firm in any capacity for two months and fine him \$2,500. As discussed in more detail in subsection III.D, I also order disgorgement.

⁸¹ *Id.* at 7 (Principal Consideration No. 1) (the respondent's relevant disciplinary history); (Principal Consideration No. 8) (whether respondent engaged in a pattern of misconduct).

⁸² CX-1, at 35-38. Langweiler testified under oath that he understood FINRA had sanctioned him previously for the same misconduct at issue in this case. Katz Decl. ¶ 24(b); CX-6, at 8 (Langweiler OTR at 128:17 – 129:9 (Oct. 13, 2016)).

⁸³ Guidelines at 8 (Principal Consideration No. 13) (whether respondent's misconduct was intentional); (Principal Consideration No. 14) (whether the respondent engaged in the misconduct notwithstanding prior warnings from FINRA).

⁸⁴ *Id.* at 86 (Principal Consideration No. 2) (whether the firm's policies prohibited discretionary trading in customer's accounts); (Principal Consideration No. 4) (whether the respondent's exercise of discretion exceeded time and price discretion).

⁸⁵ Katz Decl. ¶ 24(f).

⁸⁶ CX-6, at 12 (Langweiler OTR at 207:24-25 (Oct. 13, 2016)).

⁸⁷ 1999 SEC LEXIS 1731, at *8.

D. Disgorgement

The Guidelines instruct adjudicators to consider a respondent's receipt of ill-gotten gains and, where appropriate, order disgorgement of profits.⁸⁸ The amount of disgorgement ordered need only be "a reasonable approximation of profits causally connected to the violation."⁸⁹ Here, KK was not aware of the level and extent of the commissions that Langweiler earned on his account.⁹⁰ During the Relevant Period, Langweiler earned approximately \$27,092 in commissions from handling KK's account.⁹¹ Enforcement represents that, if Langweiler had conformed to the generally accepted threshold for a cost-to-equity ratio of less than 20 percent,⁹² Langweiler would have earned commissions of approximately \$8,900 (generating a cost-to-equity ratio of 19.9 percent).⁹³ Accordingly, the difference between Langweiler's total earned commissions (\$27,092) and the amount of commissions Langweiler would have generated had he maintained a lesser cost-to-equity ratio (\$8,900) is \$18,192. I find this to be a reasonable approximation of Langweiler's ill-gotten gain, which I order Langweiler to disgorge to customer KK.⁹⁴

IV. Order

Respondent Craig Gary Langweiler exercised discretion in the account of customer KK without prior written authority from the customer or prior approval from his firm, in violation of NASD Rule 2510 and FINRA Rule 2010. For this misconduct, Langweiler is suspended for two months and fined \$2,500. Langweiler also traded excessively and unsuitably in the same customer's account, in violation of FINRA Rules 2111 and 2010. For this misconduct, Langweiler is suspended for one year and fined \$15,000. For both violations, Langweiler is ordered to disgorge to customer KK excessive commissions of \$18,192. The suspensions will

⁸⁸ Guidelines at 5 (General Principle No. 6) ("To remediate misconduct, [a]djudicators should consider a respondent's ill-gotten gain when determining an appropriate remedy."), 86 n.2 (Exercise of Discretion Without Customer's Written Authority) ("Adjudicators may also order disgorgement."), 95 n.1 (Suitability) ("Adjudicators should also order disgorgement."). The Guidelines also state that restitution may be considered when a customer has suffered a quantifiable loss as a result of a respondent's misconduct. *Id.* at 4 (General Principle No. 5) ("Where appropriate to remediate misconduct, [a]djudicators should order restitution . . ."). The Guidelines direct that adjudicators "calculate orders of restitution based on the actual amount of the loss sustained by [a customer] . . . as demonstrated by the evidence." Guidelines at 4 (General Principle No. 5). Enforcement represents that, because of KK's approval of and participation in an aggressive trading strategy, it is not able to quantify the amount of KK's losses that is attributable to Langweiler's misconduct. Katz Decl. ¶ 26. Consequently, I have not ordered restitution.

⁸⁹ *Laurie Jones Canady*, Exchange Act Release No. 41250, 1999 SEC LEXIS 669, at n.35 (Apr. 5, 1999), *petition for review denied*, 230 F.3d 362 (D.C. Cir. 2000).

⁹⁰ Katz Decl. ¶ 27.

⁹¹ *Id.* ¶ 28.

⁹² See *Pinchas*, 1999 SEC LEXIS 1754, at *18 ("We have previously found that a cost-to-equity ratio in excess of 20% indicates excessive trading.").

⁹³ Katz Decl. ¶ 28.

⁹⁴ Guidelines at 5 (General Principle No. 6) ("Adjudicators may order that the respondent's ill-gotten gain be disgorged and that the financial benefit, directly and indirectly, derived by the respondent be used to redress harms suffered by customers.").

run consecutively. Thus, Langweiler is suspended for a total period of 14 months, fined a total of \$17,500, and ordered to disgorge \$18,192 to customer KK.

If this decision becomes FINRA's final disciplinary action, the suspension shall become effective with the opening of business on Tuesday, January 16, 2018. The disgorgement and fine shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.



Carla Carloni
Hearing Officer

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