FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. RICHARD LIM (CRD No. 4949289), Respondent.	Disciplinary Proceeding No. 2014039091903 Hearing Officer—LOM **HEARING PANEL DECISION** June 2, 2017

Respondent Richard Lim recommended that his customers engage in an active trading investment strategy, which, when coupled with his high commissions, was so costly that it made it unlikely the trading could be profitable. Because he never considered costs, he had no reasonable basis for believing the strategy was suitable. Lim thereby violated FINRA Rules 2111 and 2010. For this violation, Respondent is suspended from associating with any FINRA member in any capacity for nine months and fined $7,500.

Respondent Lim also willfully failed to timely disclose three outstanding judgments on his Form U4 in violation of Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1, and FINRA Rules 1122 and 2010. For this violation, Respondent is suspended six months and fined $10,000.

The suspensions are to run consecutively. In addition, Respondent is ordered to pay costs.

Appearances

For the Complainant: John Luburic, Esq., Brody W. Weichbrodt, Esq., Steve Graham, Esq., and Jeffrey D. Pariser, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Richard Lim, *pro se.*

DECISION

I. INTRODUCTION

Respondent Richard Lim was a registered representative who solicited non-U.S. customers to buy and sell stocks listed in the U.S. markets. Lim stipulated that he recommended an "active trading investment strategy" to his customers. He recommended that his customers buy and sell stocks in an in-and-out trading pattern, seeking quick appreciation from some anticipated "catalyst" event. A Lim customer might hold a particular stock only a few weeks before selling it on Lim's recommendation and using the proceeds to buy another stock in anticipation of another catalyst event. At the same time, Lim charged high commissions that averaged more than 4% per transaction, both to establish a position and to exit from the position. As a result, the first 8% to 9% of any return on the sale of a particular stock would go to commissions.

In charging high commissions and recommending that his customers trade stocks frequently, Lim admitted that he did not consider the costs of the trading at all. As time went on, however, costs had an obvious detrimental effect on his customers' accounts. The customers lost money on most of the trades, and, even when they made a profit, Lim's commissions often consumed that profit—as Lim had to have known. The trading benefited him and not the customers. Lim's misconduct violated FINRA Rules 2111 and 2010.

Separately, for more than four years, Lim failed to amend his Form U4 to disclose three 2009 judgments against him. He failed to do so even after FINRA staff reminded him twice of his obligation to amend his Form U4, once in May 2014, and again in September 2014. He only amended his Form U4 to make the required disclosures in February 2015, after receiving a notice that FINRA staff intended to bring a disciplinary action against him for his failure to make the required disclosures. This misconduct violated Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1, and FINRA Rules 1122 and 2010.

II. PROCEDURAL HISTORY

On December 31, 2015, FINRA's Department of Enforcement filed its Complaint, which initially included as Respondents not only Lim, but his firm, Caldwell International Securities Corp. ("CISC" or the "Firm"), and seven other individuals. The Complaint had nine causes of action that applied to various Respondents.

The Firm and three of its principals, Greg Caldwell, Lennie Freiman, and Paul Jacobs, settled the supervisory charges against them. Three of the other individual Respondents, Alex Etter, Lucas Lichtman, and Richard Lee, registered representatives who worked at the same branch as Lim, also settled the charges against them. Another individual Respondent, Alain Florestan, a registered representative who worked at a different branch of the Firm, has been deemed in default for not participating in the proceeding, and a default decision against him will be separately entered.

Lim was the only Respondent who sought a hearing. This decision addresses only the charges against him, which appeared in the first and eighth causes of action.

A two-day hearing was held in New York, New York, on October 17-18, 2016.[1] Exhibits were entered into evidence[2] and the parties submitted joint stipulations.[3] There was no post-hearing briefing.

III. FACTS

A. Respondent

After graduating from college with a degree in economics, Lim began his career in the securities industry in April 2005. He obtained Series 7 and 63 licenses. He was associated with eight FINRA member firms before associating with CISC on April 15, 2011.[4] He remained associated with CISC until May 16, 2016, when the Firm terminated him because it was filing its broker-dealer full withdrawal registration request ("BDW") and going out of business.[5]

Lim explained why he was at so many different firms in the first six years of his career, attributing it to a combination of naivete about the importance of joining a firm that provided sound guidance and mistakenly following the lead of a more senior broker as that person changed jobs. Lim said he followed the senior broker from firm to firm, grateful to have the job.[6] At his prior firms, Lim's job generally was to cold call potential customers to open accounts.[7]

At one of his prior firms, Lim met Alex Etter, who eventually became his new mentor. After hearing that Lim had left another firm, Etter invited Lim to join him at Etter's branch of CISC.[8] At CISC, Lim continued to generate new customers by cold calling individuals.[9] While at

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[1] In addition to Lim, three other persons testified: Sandra DelBuono, a FINRA case manager in the Enforcement case development team; Joelle Morris, a FINRA examination manager; and YM, one of Lim's customers.

Testimony is referred to here by "Hearing Tr. (name of witness) and page number." Thus, Lim's testimony is cited as "Hearing Tr. (Lim) 99-100."

[2] Enforcement introduced exhibits into evidence, which are referred to here with the prefix "CX" and an identifying number. Thus, Lim's Form U4 is cited as "CX-23." Respondent introduced no exhibits into evidence.

[3] The stipulations are cited here as "Stip." with an identifying paragraph number, such as, for example, "Stip. ¶ 5."

[4] Hearing Tr. (Lim) 233-34, 240-41; Stip. ¶ 1.

[5] Hearing Tr. (Lim) 44-45; Stip. ¶ 1; CX-23.

[6] Hearing Tr. (Lim) 50-51, 233-34.

[7] Hearing Tr. (Lim) 51-53.

[8] Hearing Tr. (Lim) 51-53.

[9] Stip. ¶ 6.

CISC, Lim had a total of about 20 retail customer accounts[10] and generated gross commissions of approximately $100,000 a year.[11]

B. Jurisdiction

FINRA has jurisdiction to bring this proceeding against Lim because the Complaint was brought within two years of the termination of his registration, and the Complaint charges him with misconduct committed while he was registered.[12]

C. Origin Of Case

The proceeding arose out of an investigation of the Firm. With respect to the branch led by Etter, where Lim worked, FINRA staff found that cost-to-equity ratios[13] and turnover rates[14] had either come close to or breached the thresholds that are indicative of excessive trading. FINRA staff noticed that costs were accumulating rapidly in the accounts and were having a

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[10] Hearing Tr. (Lim) 53-55; CX-28.

[11] Hearing Tr. (Lim) 56-61; CX-29; CX-30. At the hearing, Lim denied that his commissions were consistently around $100,000 while he was at CISC. But he represented in a FINRA questionnaire he signed in May 2014 that his estimated gross commissions for the preceding twelve months were $100,000. CX-30, at 1. Similarly, he filled out and signed a CISC annual assessment questionnaire on December 18, 2013, estimating that his gross commissions for 2013 were $100,000. CX-29, at 9. Lim testified that his response to the CISC questionnaire was truthful. Hearing Tr. (Lim) 59. We accept the signed questionnaires as roughly accurate.

Other evidence also supports the $100,000 figure. Trading summaries from the blotters for the four accounts in issue showed that those four accounts alone generated a total of approximately $175,987 over the course of two years (from July 9, 2012 to July 1, 2014): $86,295.75 (GC); $45,180 (BM); $31,312.24 (JPD); $13,200 (YM). CX-117 (revised); CX-123; CX-126; CX-132; Hearing Tr. (Lim) 61-64. Thus, four of Lim's 20 accounts yielded on average $87,993 per year in commissions. He received 60% of those commissions while he was the sole representative on the accounts, and 40% after Etter became a joint representative on the accounts in October 2013. Hearing Tr. (Lim) 61-62. Thus, Lim's estimated share from the four accounts ranged roughly from $52,000 to $32,000 per year, and he had 15 or so additional accounts.

[12] FINRA By-Laws, Art. V, Section 4; Stip ¶ 2.

[13] The cost-to-equity ratio is the "costliness of the trading activity in the account relative to the average account equity. It is also call[ed] the break-even point because it is the point at which the account has to generate profits in order to cover the costs that are associated with the trading activity in the account." Hearing Tr. (DelBuono) 266. The SEC has defined the term cost-to-equity ratio as a measure of the amount an account has to appreciate annually just to cover commissions and other expenses. A cost-to-equity ratio is obtained by dividing total expenses by average monthly equity. A cost-to-equity ratio in excess of 20% generally indicates excessive trading, but ratios from 11.98% to 17.88% have also been held to indicate excessive trading. *Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at *32 & nn.42-43, 45 (May 29, 2015).

[14] "The turnover rate is the number of times the equity in the account is being traded or in essence turned over." Hearing Tr. (DelBuono) 268. The SEC has defined the term turnover rate as the number of times in one year that a portfolio of securities is exchanged for another portfolio of securities. A turnover rate of 6 generally indicates excessive trading, but in a number of cases turnover rates below 4 also have been held to indicate excessive trading. *Calabro*, 2015 SEC LEXIS 2175, at *32-33 & nn.41-45.

negative impact on performance of the accounts.[15] Initially, the investigation of the Etter-led group covered the period from July 2013 through April 2014. However, after reviewing the information collected, the staff expanded the period under review in order to obtain a broader perspective. The review period became July 9, 2012, through July 31, 2014.[16]

D. Lim's Branch Office

During the review period, Lim's CISC branch employed four registered representatives—Etter, Lichtman, Lee, and Lim. Each was an independent contractor. They were paid only by commissions generated when they executed securities transactions in their customers' accounts.[17] Commissions were based on a percentage of the principal amount of each trade. Thus, the more frequent the trades and the larger the transactions, the greater the amount of commissions and the more money Lim made.[18]

Lim and the other representatives at the branch mainly targeted individuals residing overseas or in Canada.[19] They sought customers who had at least $250,000 invested in stocks already, qualifying them as accredited investors. Etter, Lim, and the others also insisted that their customers be willing to list speculation as an objective. They did not want to handle retirement accounts or pensions. They characterized the trading they recommended as speculative, and they wanted customers who understood the risks involved. Their business model excluded people who wanted to buy and hold stocks. They recommended short holding periods and frequent trading.[20] Etter at one point characterized the business model as built on impulsive buying.[21] The Firm later labeled their trading as "active" trading.[22]

Etter was in charge of the branch, and the other registered representatives, including Lim, followed his lead.[23] Lim would sometimes ask Etter what he should charge as a commission on a trade, and Etter would tell him what to charge.[24] When Lim questioned whether the commissions the branch charged were consistent with the Firm's policies on commissions (which policies are discussed below), Etter told him that the Firm's policies did not apply to the branch. Etter told

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[15] Hearing Tr. (DelBuono) 257-60.

[16] Hearing Tr. (DelBuono) 258-59.

[17] Stip. ¶ 3.

[18] Hearing Tr. (Lim) 48, 429.

[19] Stip. ¶ 6.

[20] Hearing Tr. (Lim) 111-12, 424-26, 442-44.

[21] CX-22; Hearing Tr. (Lim) 72-76.

[22] As discussed below, the Firm sought to obtain after-the-fact confirmations from customers that they understood the risks and costs of frequently trading and authorized such trading in their accounts. The forms were labeled "Active Account Suitability Agreement/Affirmation." CX-67.

[23] Hearing Tr. (Lim) 74, 78, 85, 216, 223-24, 229-30, 245-46, 430-31, 435-40.

[24] Hearing Tr. (Lim) 223-24.

Lim simply to sign and return a certification of understanding and compliance with the Firm's policies.[25] Lim signed the certification even though he doubted that the branch was in compliance with the Firm's policies regarding commissions because he felt at Etter's "mercy" and Lim did not want to be fired.[26]

E. The Firm's Policies And Procedures Regarding Commissions

Toward the end of 2013, CISC provided a one-page summary of its guidelines on commissions to its representatives and had them sign it, attesting that they had read, understood, and agreed to abide by the guidelines. In December 2013, at Etter's instruction, Lim signed the certification.[27] The certification contained several provisions relevant here.

First, the certification provided that commissions were limited on accounts that were not designated speculative. It said that annual cumulative commissions on non-speculative accounts were limited to a maximum of 6%, with a target of under 4%. Proper justification and pre-approval were required to exceed the 6% total on an annual basis.[28] Thus, if Lim and the others at the Etter branch had accepted customers who did not designate speculation as an objective, their cumulative commissions would theoretically have been capped.

Second, the certification provided that trades were limited to a maximum commission of 4.5%, with a target average of 2.9% or less. The maximum set forth in the 2013 certification was raised from the previous 3.9% maximum in 2012.[29] As discussed below, from 2012 through 2014, Lim consistently charged three of the customers involved in this case commissions of 4% to 4.5%—even before the Firm raised the maximum to 4.5%.[30]

Third, where a security was sold and the proceeds were used immediately to buy another security (defined as a "proceeds" trade, and treated as a single transaction), the commission was limited to an average of 2.2%, with a target average of 1.5% or less. The limit on a proceeds trade commission could be avoided by waiting until the second day after the proceeds were generated to use the proceeds for another trade.[31] As discussed below, Lim regularly

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[25] Hearing Tr. (Lim) 82-85, 428-32.

[26] Hearing Tr. (Lim) 430.

[27] CX-29, at 14.

[28] CX-29, at 14. The Firm's guidelines as they appeared in its April 2012 and December 2012 FINRA Compliance Manuals also specified a maximum annual cumulative commission rate of 6% for non-speculative accounts. CX-137.2, at 60; CX-137.3, at 59. Lim read the policies each year when they were issued. Hearing Tr. (Lim) 82.

[29] CX-29, at 14. The Firm's guidelines in its April 2012 and December 2012 FINRA Compliance Manuals specified lower commission rates for normal trades. The earlier guidelines imposed a 3.9% maximum commission with a target average of 2.9% or less. CX-137.2, at 58; CX-137.3, at 58. Hearing Tr. (Lim) 89-91.

[30] As discussed below, the fourth customer, BM, refused to pay such a high commission rate and was generally charged 2% to 2.5%. Hearing Tr. (Lim) 165-66, 230-31.

[31] CX-29, at 14. The earlier guidelines for commissions on proceeds trades were the same as those set forth in the December 2013 certification. CX-137.2, at 59; CX-137.3, at 59.

recommended the sale of one stock to fund the purchase of another, and often the sale that generated the proceeds and the purchase using those proceeds were executed on the same day. Lim often still charged commissions on both transactions at a rate of 4% or more.

Fourth, the Firm's guidelines limited the overall costs to customers, not merely the commissions. The guidelines specified that any miscellaneous fee should be added to the commission when calculating the percentage of the commission. The Firm further declared that it reserved the right to automatically revise commission charges greater than those specified, along with the right to charge a representative a fee for correcting the commissions to come within the guidelines.[32] Occasionally, as happened in connection with one of the customer accounts involved in this case, the Firm recalculated commissions charged by Lim to bring them below the maximums specified in the Firm's guidelines. He was aware of those occasions because the Firm charged him when it made such adjustments.[33]

F. Lim Charged High Commissions

Lim typically charged close to the maximum commission rate the Firm allowed. He might charge as much as 4.5% to buy a stock and then charge another 4.5% to sell the stock. Then, he might charge another 4.5% to make a new purchase.[34] As a result, a customer would need to make a significant profit when selling a particular security just to break even. If a customer failed to make a profit when exiting a position in order to invest in another stock, then he had to earn even more on the sale of the second stock to make a profit. As illustrated by review of the four customer accounts discussed below, over time the frequent trading, coupled with the high commissions, led to large accumulating costs relative to the average monthly equity in those accounts. It became more and more difficult for the customers to make enough from the trading to cover its costs.

[32] CX-29, at 14. The Firm provided some flexibility, however, suggesting that exceptions could occur, as, for example, where minimum commissions were charged for small trades. CX-29, at 14.

[33] During part of the review period, contrary to the Firm's guidelines, Lim did not include other costs and fees in his calculation of commissions. As a result, the commission percentage he charged exceeded 4.5%. With respect to one of the customer accounts at issue, for example, the Firm adjusted the commission on a January 15, 2013, trade in GC's account, a sale of a stock with the symbol NTDOY. Lim's charges on the sale had been 4.53%. He had already charged 4.5% on the purchase of the stock. Even after the adjustment, the roundtrip charge to get in and out of the position approached 9%. As Lim admitted, the stock value would have had to appreciate significantly simply to cover the cost of trading. Hearing Tr. (Lim) 225-26, 242-49.

[34] Hearing Tr. (Lim) 78-79, 112-13. Lim had authority to negotiate with customers on commission rates, and in some cases he made the decision about the commission to be charged. Hearing Tr. (Lim) 82. But in other cases he would ask Etter what he should charge. Etter typically said to "charge 4 percent, 4.3 percent, something like that." Hearing Tr. (Lim) 223-24. As Lim admitted, each time he turned over a customer's portfolio, he would charge the customer 8% to 9% of the equity. Hearing Tr. (Lim) 433-34.

G. Customers Could Not Easily Analyze The Costs

It was not easy for customers to recognize the costs they were accumulating as they traded in and out of different stocks. Confirmations provided the dollar amount of a commission on a given trade, and from that a customer might calculate the commission rate on the individual trade. When the customer sold a stock, he would see the amount of commission on the sale, but not the commission charged on the earlier purchase of that stock. Unless the customer was tracking the commissions charged on every confirmation, he might not realize that the commissions to buy and later sell the same stock had consumed any apparent profit. Without tracking the commissions and profits on all the confirmations, the customer would not know that the commissions equaled, or in some cases exceeded, the profit on the account as a whole. Monthly account statements and reports on yearly capital gains and losses that customers received did not disclose the amount of commissions or the rate of commissions. And Lim only provided information about commissions to a customer if the customer asked.[35]

H. The Active Trading Investment Strategy

Lim and the other brokers in his office recommended only equities, typically listed equities that were liquid. They would generate stock ideas by researching companies in public media like Barron's and the internet, looking for securities that they could pitch as likely to appreciate on a short term basis. They would share recommendations with each other and then often recommend the same stock to all their clients.[36]

Lim stipulated that he recommended an active trading investment strategy wherein he looked for securities with a short-term catalyst event to recommend to his customers. Once a stock was purchased, Lim would wait for the catalyst event to occur, or he would sometimes decide that it was unlikely to occur and would recommend the sale of the securities even though the catalyst event had not materialized. He would invest the proceeds from that sale in another security with a purported catalyst and repeat the strategy throughout the life of the customer account.[37]

Typically, Lim would only recommend one stock at a time, and his clients generally held stock in only one or two companies at a time. For the most part, he recommended that his

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[35] Hearing Tr. (Lim) 141-43, 164-65, 205-06; CX-69; CX-92. Some customers complained they did not receive confirmations until long after the trade. Hearing Tr. (Lim) 160-61; CX-47. This made it even more difficult for them to track the accumulating commissions.

One of Lim's customers, YM, became aware of Lim's high commission rates when he began examining the confirmations issued in connection with his trading. While he complained about the high commission rates, he did not complain about the frequency of trades. He was apparently unaware that the frequency of the trades was an additional factor that diminished his returns. He testified that he had no idea what he had paid in total commissions on the trading in his account. Hearing Tr. (YM) 410-12, 414-18.

[36] Hearing Tr. (Lim) 66-69; Stip. ¶ 7.

[37] Hearing Tr. (Lim) 69-72; Stip. ¶ 8.

customer hold a stock for only one to three months. Whenever he had a new idea, he would pitch it to the customer as a new short-term investment that was likely to appreciate rapidly.[38]

In making a recommendation, Lim would talk about how the customer was going to pay for the stock. If the client had the additional money to pay for it, that might be used. But if the client did not, then Lim would recommend selling the existing holding to generate money to make the new purchase.[39]

Lim's recommendations to sell existing holdings were almost always paired with a recommendation to buy a new stock. The strategy was to move from one stock position to another, seeking appreciation, and not to stay in cash for very long. He rarely recommended selling a stock without having another that he recommended buying with the proceeds.[40]

As discussed below, the pattern of Lim's trading is clear. He recommended that customers trade in and out of positions frequently—incurring high commissions each time they did so.[41]

I. Lim Did Not Consider The Costs Of The Trading

Until, as discussed below, the Firm's chief compliance officer visited Lim's branch in the last month of the review period to discuss cost-to-equity ratios and turnover rates, Lim did not consider the costs associated with the active trading investment strategy or the effect of those costs on the customers' potential returns. He did not advise his clients whether the cost of trading could exceed any gains that they might make on the stock. Nor did he advise them of the returns they would need to cover the cost of trading.[42] He recommended that customers buy and sell stock regardless of how much it was going to cost them.[43]

Although Lim did not consider costs, he had access to information regarding the costs of trading. Commissions were the bulk of the costs. Lim was paid a percentage of the commissions

[38] Hearing Tr. (Lim) 68-71.

[39] Hearing Tr. (Lim) 70-72.

[40] Hearing Tr. (Lim) 70-72; Hearing Tr. (YM) 401. Lim recollected one occasion when he recommended that a client sell stock Lim had just purchased in an oil company because the oil market had taken a turn for the worse, and not because Lim had a recommendation for something else to buy. Hearing Tr. (Lim) 447-49. There is no documentary evidence in the record to support his recollection, but we credit that at least once he recommended selling stock without having ready a recommendation to buy stock. His testimony regarding this event was relatively specific. Nevertheless, it is plain that Lim's typical practice was to recommend that a client buy a new stock and fund the purchase by selling a stock that the customer had purchased within the last three months.

[41] Hearing Tr. (Lim) 116, 179; Hearing Tr. (YM) 398-99.

[42] Hearing Tr. (Lim) 94-97.

[43] Hearing Tr. (Lim) 240.

he generated each month and received monthly commission statements. He could check whether the commissions were correct by looking at the customer transactions for the month.[44]

J. Impact Of The Trading On Four Of Lim's Customers

During the relevant period, Lim was the broker of record on the accounts of the four Canadian customers involved in this case, and he received compensation based on trading in the four accounts.[45] According to Lim, each purchase or sale of a security was authorized over the telephone before being executed. He said that he had no discretionary authority and exercised no discretion in his customers' accounts.[46]

It was unclear whether and how often customers rejected Lim's recommendations. He testified that they did sometimes reject his recommendation, but he declined to quantify or estimate how often that occurred.[47]

1. Customer GC

GC opened an account with Lim on May 14, 2011.[48] Lim filled out the account opening form and sent it to GC for his signature. Lim selected speculation as GC's investment objective.[49] Lim was the sole account executive for the account from its 2011 opening through September 30, 2013. Etter became a joint account executive on GC's account with Lim in October 2013.[50]

From September 19, 2012, through June 18, 2014, Lim followed the pattern of recommending one or two stocks to GC, investing all the assets in the account into those one or two stocks, and then selling them after a short period of time to purchase a new stock that Lim recommended.[51] As Lim purchased and sold stock in and out of the account, he typically charged 3.5% to 4.5% on each transaction.[52]

The accumulated costs of trading in and out of the account mounted. By the end of December 2013, GC had paid nearly $40,000 in commissions and fees to engage in the trading;

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[44] Hearing Tr. (Lim) 451.

[45] Hearing Tr. (Lim) 46-47, 65.

[46] Hearing Tr. (Lim) 237, 446.

[47] Hearing Tr. (Lim) 446-48.

[48] Hearing Tr. (Lim) 113-14; CX-66.

[49] Hearing Tr. (Lim) 115-16; CX-66.

[50] Hearing Tr. (Lim) 117-21; CX-70; CX-71, at 35, 41.

[51] Hearing Tr. (Lim) 126-29.

[52] Hearing Tr. (Lim) 129. On some occasions, Lim charged a smaller commission percentage, but there was no evidence to explain why, and the pattern overall tended to the higher commission charges. CX-123.

the account value at that time was $93,000.[53] By the end of the review period, in June 2014, GC had paid more than $86,000 in commissions over the course of two years. During that same two-year period, the average monthly account equity varied from just under $80,000 to $116,500.[54] During the two-year period, Lim made net dollar purchases in GC's account of more than $1.5 million, more than ten times the highest average monthly account equity.[55]

FINRA staff calculated the cost-to-equity ratio—the break-even point—using the total trade costs (which were a little more than the commissions, because they included other fees) divided by the average monthly equity in the account. GC's account had an accumulated cost-to equity ratio of almost 76%. On an annualized basis, the cost-to-equity ratio was 36.37%.[56] Generally, a cost-to-equity ratio of 20% is indicative of excessive trading, but cost-to-equity ratios of less than 20% have also been held excessive.[57]

Lim agreed that the cost-to-equity ratio in GC's account was exorbitant, and that it required a return to cover the costs that was not really feasible. He testified, however, that he did not consider at the time the effect of costs like his commissions on GC's ability to make a profit.[58] Lim had no idea of the level of return that GC would have had to achieve to cover the costs of the recommended trades.[59]

FINRA staff also calculated the turnover rate, using the total amount of purchases divided by the average monthly account equity. GC's account had a turnover rate of 13.28. Annualized, the turnover rate was 6.37.[60] A turnover rate of 6 is generally considered indicative of excessive trading, but turnover rates as low as 3.1 to 3.8 have also been held excessive.[61]

By and large, the active trading strategy generated high commissions for Lim and resulted in losses to GC. The account traded 15 different stocks in 48 different trades during the two years from July 2012 through July 2014. GC lost money on nine of the stocks (ranging from $2,230 to $21,202), made modest profits on four other stocks (ranging from approximately $1,408 to $11,357), and made a large profit on a single stock, American Airlines. The American

[53] Hearing Tr. (Lim) 130-134; CX-124.

[54] CX-123; CX-124.

[55] CX-122, at 2.

[56] Hearing Tr. (DelBuono) 269-83; CX-122, at 1.

[57] Hearing Tr. (DelBuono) 267; *Calabro*, 2015 SEC LEXIS 2175, at *32 & nn.42-43, 45.

[58] Hearing Tr. (Lim) 155.

[59] Hearing Tr. (Lim) 132-33.

[60] CX-122, at 1.

[61] Hearing Tr. (DelBuono) 268; *Calabro*, 2015 SEC LEXIS 2175, at *32-33 & nn.41-45.

Airlines stock tripled in value when the company came out of bankruptcy, yielding a profit of approximately $116,000.[62]

With the profit from the American Airlines trade, GC realized a total profit on the account of $39,360.32.[63] Without the American Airlines trade, the account would have sustained a loss of approximately $76,994.[64]

Even with the profit from the American Airlines trade, the commission charges dwarfed GC's profit. The $39,000 profit that GC made on the account did not equal the accumulated commissions of more than $86,000.[65] GC did not testify, and there was no evidence whether he was aware that he paid more in commissions than the amount of his profit.

2. Customer BM

BM opened an account with Lim on May 10, 2011. Before Lim sent the account opening documents to BM for his signature, Lim checked speculation as the customer's investment objective. Lim employed the same active trading strategy with this account as he did with his other customer accounts.[66] Lim was the sole account executive on the account until October 2013, when Etter became a joint representative on the account with Lim.[67]

Lim sold BM some of the same stocks he sold GC.[68] However, he charged BM less than he charged GC. BM had asked Lim at the outset for the commission rates he usually charged, and, when told that they could be as much as 4.5%, BM refused to pay such high rates. Lim negotiated a 2% to 2.5% commission rate on BM's trades.[69]

BM complained that he did not receive statements or confirmations until well after the relevant dates. BM asked for online access, which Lim testified was not automatically granted.[70] A customer had to request it. BM did not testify and there was no evidence as to whether he ever received online access to his account.

Even with the lower commissions, the active trading strategy generated commissions for Lim and losses for BM. BM paid $45,180 in commissions from September 2012 through April

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[62] Hearing Tr. (Lim) 137-39; Hearing Tr. (DelBuono) 260-68; CX-112; CX-122, at 1, 3.

[63] Hearing Tr. (Lim) 136-41; CX-122, at 3.

[64] CX-122, at 1.

[65] CX-123.

[66] Hearing Tr. (Lim) 156-58; CX-46.

[67] Hearing Tr. (Lim) 158-60; CX-50; CX-51, at 35, 42; CX-52.

[68] Hearing Tr. (Lim) 162-65; CX-117 (revised).

[69] Hearing Tr. (Lim) 165-66, 230-31.

[70] Hearing Tr. (Lim) 160-61; CX-47.

30, 2014.[71] The average monthly account equity was $126,027.47.[72] Lim made net dollar purchases in BM's account of $1.19 million, nearly ten times the average monthly account equity.[73] BM lost money on nine stock investments, with the losses varying from around $9,000 to more than $33,000. He made money on two investments, approximately $10,000 on one and $27,000 on the other. BM, like GC, made money on American Airlines, a little over $134,000.[74]

The end result was that BM made approximately $32,000 on the trading in the account, but, without the profit in American Airlines, he would have suffered a loss of over $101,000.[75] The $32,000 profit BM made overall on trading in the account cost him $45,000 in commissions.

FINRA staff calculated that the cost-to-equity ratio in the account was over 37%, and, on an annualized basis, it was close to 18%. The staff calculated the turnover rate to be 8.88. On an annualized basis, it was 4.26.

3. Customer JPD

JPD opened an account with Lim on July 11, 2011. As with other customers, Lim checked speculation as the customer's investment objective before sending the account opening documents to JPD for his signature.[76] Lim was the account executive for JPD's account throughout the review period, but Etter joined him in October 2013 as a joint representative on the account.[77]

Lim regularly charged JPD commissions approaching 4.5% of the principal amount of a trade. He did so even when he used the proceeds of a sale to buy other stock the same day or the next[78]—a proceeds trade that his Firm's policies and procedures specified should bear no more than an average commission rate of 2.2%.

A set of trades in JPD's account is illustrative of how Lim's active trading strategy and high commissions imposed such a high cost burden that it was difficult for customers to make money. On March 4, 2014, Lim bought a stock with the symbol BPOP for JPD's account. The stock was priced at $29.1598 per share, and the principal amount was valued at $72,607.90. Lim charged a commission of 4.4% on the transaction and made $3,400. Less than a month later, on March 20, 2014, Lim sold BPOP. The price had risen to $31.2871 per share, so the principal

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[71] CX-117 (revised).

[72] CX-116, at 1.

[73] CX-117 (revised).

[74] CX-117 (revised).

[75] Hearing Tr. (Lim) 165, 174; CX-116; CX-117 (revised).

[76] Hearing Tr. (Lim) 177-78; CX-73.

[77] Hearing Tr. (Lim) 181-82; CX-77; CX-78.

[78] Hearing Tr. (Lim) 183-89; CX-77, at 12; CX-78, at 12-13; CX-126.

amount was $77,904.88. Lim charged another 4.4% commission, which amounted to $3,450. Thus, even though JPD appeared to have made a profit of roughly $2.00 per share for an approximate total of $5,000, he actually lost money after factoring in costs. The commission charges for entering and exiting the position totaled almost $7,000.[79]

Then, the very next day, Lim bought another stock with the symbol YOKU for JPD, using the proceeds from the sale of BPOP. The price at the time of the March 21, 2014, purchase of YOKU was $29.026 and the principal amount purchased was $73,006.93. Lim charged a commission of 4.62% on that purchase—more than the maximum his Firm permitted in any circumstances, much less on a proceeds trade. The gross commissions on the transaction amounted to $3,375.[80]

Lim had previously bought YOKU for JPD the preceding month, on February 12, 2014, charging a 4.51% commission on the transaction, and then Lim sold JPD's holding of YOKU a couple of weeks later on March 3, 2014—roughly three weeks before buying it again on March 24, 2014. Lim charged another 4.28% commission on the March 3, 2014 sale. While FINRA staff calculated that JPD made a small profit of $2,112.07 on the February purchase and early March sale of YOKU, he paid more in commissions —a total of $2,520 on the two transactions.[81]

Lim sold the YOKU shares that he had purchased for JPD on March 21, 2014, only a month later—on April 24, 2014. By then, the price had dropped substantially to $24.5438. The principal amount JPD sold was valued at $61,727.66, approximately $11,000 less than the principal amount he purchased. On that transaction, Lim charged a commission of only 1.94%. However, on July 1, 2014, Lim once more bought YOKU. He charged a gross commission of 4.46%, which amounted to $3,000.[82]

JPD did not testify. There was no evidence whether JPD was aware that on four of the five YOKU transactions between February and July Lim charged approximately 4.5% on each transaction. With the nearly 2% charge on the fifth transaction, the commission charges totaled almost 20% of the money that JPD invested in YOKU. The circumstances strongly suggest that JPD relied on Lim's recommendations when trading. Otherwise he likely would have questioned the wisdom of paying 20% to engage in trading that yielded little or no profit.

Although JPD, like GC and BM, invested in American Airlines and made a profit on it, the profit from American Airlines barely covered the accumulated commissions he paid. In

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[79] Hearing Tr. (Lim) 194-97; CX-126.

[80] CX-126.

[81] CX-126.

[82] CX-126. Similarly, Lim charged JPD a 4.5% commission when he purchased a stock with the symbol KERX in January 2014, and, when he sold it a couple of months later, he charged a 4.3% commission. The day after he sold it, Lim purchased BPOP for JDP's account. Even though that was a proceeds trade that should have had a lower commission, Lim charged another 4.13% commission. Hearing Tr. (Lim) 186-89; CX-126.

roughly ten months, Lim charged commissions in JPD's account totaling more than $31,000. FINRA staff calculated JPD's profit on American Airlines to be a little over $32,000.[83] JPD earned a profit on only three other trades: $924 on the sale of HZNP; $1,505 on the sale of KERX; and $2,112 on the sale of YOKU. As discussed above, the commissions on buying and selling YOKU exceeded the profit realized. As for HZNP and KERX, Lim charged commissions on each sales transaction that exceeded the profit ($3,200 in commissions on HZNP; $2,110 in commissions on KERX).[84]

Overall, in roughly ten months, Lim made net dollar purchases in JPD's account of $444,445.02.[85] The average monthly account equity, however, was only $24,255.96.[86] FINRA staff calculated that on an annual basis JPD's account would need to generate a return of over 64% just to cover the cost of the active trading strategy.[87]

4. Customer YM

YM, a resident of Quebec, testified by telephone. He testified in English, but a French translator assisted to ensure that he understood the questions posed, and, if necessary, to translate any thoughts he might be able to express in French but not English.

YM opened an account at the Firm in 2011 after Lim cold-called him about investing in the United States. YM had about 30 years of experience investing in Canadian securities, but did not have investments in the United States. He thought of his account with Lim as providing diversification. YM runs his own construction engineering firm and was very busy at the time he opened the account. He thought it was better to work with an experienced U.S. broker than to try to do the trading himself with an online broker.[88]

Lim did not discuss commission rates with YM when YM opened the account. Nor did he tell YM about the number of trades he would be doing in the account. Lim did not talk about costs or how they could affect performance.[89] Lim also did not discuss the charges for individual trades when he made them.[90] Lim traded in the account following his typical pattern, charging commissions that generally ran between 3.6% and 4.5%.[91]

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[83] Hearing Tr. (Lim) 194-97; CX-126.

[84] CX-126.

[85] CX-126.

[86] CX-125.

[87] Hearing Tr. (Lim) 197-98; CX-125.

[88] Hearing Tr. (YM) 395-98; Hearing Tr. (Lim) 199-201; CX-85.

[89] Hearing Tr. (YM) 398-99.

[90] Hearing Tr. (YM) 393-99, 401.

[91] CX-132. Occasionally, the commissions fell below 3%, but higher commissions were predominant.

In early November 2013, YM began to pay closer attention to the confirmations he received. His attention focused on the commission rates when he saw on the same day both a purchase and a sale. The commission on each transaction was over 4%. YM concluded that around 8.6% of any return was going to pay commissions. This figure was, in his mind, far too high, and he complained to Lim. YM also requested a rate table, once by telephone and once by email. Lim never sent him one.[92]

Instead, Lim brought YM's complaint to Etter, asking Etter what to do. That prompted Etter to intervene and to put himself on the account with Lim. Etter called YM, attempting to placate him by offering to decrease or eliminate commissions on future trades. However, commission charges on the next transaction in April 2014 were just as high, and YM complained again, this time to Etter. YM continued to ask for a rate table.[93]

YM testified that Lim called him once a month or so to discuss the account and make a recommendation of a new stock to buy. Mainly, a new position was financed by the proceeds from selling an existing position. Lim would typically explain his recommendations by saying that "the new one was supposed to be more, to have more valuable expectation."[94] YM said, "I'm in the market to make money. I have to choose the better option."[95] Although YM made the decision to trade, the circumstances strongly suggest that he relied on Lim's representation that the new position was better than the old, and that he followed Lim's recommendations as to the frequency of trading.

YM's complaint never caused Lim to review and analyze the charges in YM's account. Lim also never reported YM's complaint to anyone other than Etter.[96]

After YM's complaint, the trading in his account continued to follow Lim's typical pattern of trading in and out of stocks, with commissions generally between 3.6% and close to 4.5%. Between July 9, 2012, and April 30, 2014, there were 25 trades in YM's account. The accumulated gross commissions over that period amounted to $13,200. During the same period, YM suffered a loss of $13,019.98.[97]

FINRA staff calculated that during the review period YM had an average monthly account equity of $37,149.44. Total costs (commissions plus other fees) were $14,407.24. YM purchased stocks with a total value of $268,458.74, more than six times the amount of the

[92] Hearing Tr. (YM) 402-07, 412-13, 416-18; Hearing Tr. (Lim) 209-10; CX-86.

[93] Hearing Tr. (YM) 404, 409-10; CX-88.

[94] Hearing Tr. (YM) 401.

[95] Hearing Tr. (YM) 401.

[96] Hearing Tr. (Lim) 210-11.

[97] CX-112; CX-132; CX-133 ; Hearing Tr. (DelBuono) 309-13; Hearing Tr. (Lim) 217.

average monthly equity. The staff calculated that the annualized cost to equity ratio on the account was 19.39% and the annualized turnover rate was 3.61.[98]

K. The Firm's Attempts At Oversight

Although the Firm adjusted a few commission charges that exceeded the Firm's 4.5% limit, there is no evidence that it did anything else to address the high costs being incurred in customer accounts until July 2014, the last month of the review period, when the Firm's chief compliance officer visited the branch where Lim worked. On the visit, the chief compliance officer identified certain of Lim's accounts that appeared to have been excessively traded. The chief compliance officer explained cost-to-equity and turn over ratios, and told Lim and the other registered representatives at the branch that they were responsible going forward for keeping track of those ratios for their customer accounts.[99]

Lim testified that up until the chief compliance officer's visit he had never heard of cost-to-equity ratios or turnover rates. Even after hearing them explained, he said he did not completely understand them.[100]

Perhaps Lim did not understand how to calculate the ratios and rates, but he did have a basic understanding of the relationship between frequent trading and higher costs. He testified that after the chief compliance officer's visit he made an effort to better manage costs. As an example, he identified a customer account that was not one of the accounts charged in the Complaint. He said that in trading for that account he stayed within the guidelines provided by the chief compliance officer for cost-to-equity ratios and turnover rates.[101] Although he said that he was using the same active trading investment strategy, he also said, "I didn't really trade his account that much."[102] This testimony indicates that at least by that point he knew that he could control costs by decreasing the frequency of trading in the account.

In July 2014, the Firm prepared a document for customers to sign acknowledging that their accounts were actively traded. It was titled Active Account Suitability Agreement/Affirmation ("Suitability Agreement"). By signing the document, a customer acknowledged that he understood the costs and risks associated with frequent trading in securities. By signing, he further acknowledged that the costs of an actively traded account could result in higher cumulative commissions paid by the customer.[103] The customer's signature also

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[98] CX-131; Hearing Tr. (DelBuono) 308-09.

[99] Hearing Tr. (Lim) 92-93, 219-22.

[100] Hearing Tr. (Lim) 92-93.

[101] Hearing Tr. (Lim) 226-29.

[102] Hearing Tr. (Lim) 228.

[103] CX-67, at 4-5. One of the Firm's principals signed one of these documents in July 2014 before it was sent to the customer for signature. CX-67, at 5.

constituted a declaration that an active trading strategy is "indeed consistent with my personal faculties, financial capabilities and investment objectives."[104]

The Firm sent the Suitability Agreements to customers whose accounts were already being actively traded. The Suitability Agreements were sent to at least two of Lim's customers, GC and JPD.[105]

When the Suitability Agreement was sent to GC, it was treated as mere paperwork. Neither Lim nor the Firm provided a reason for sending it or for requiring the customer's signature.[106] The document did not inform GC how much he had paid in commissions or about the cost-to-equity ratios or turnover rates in his account.[107]

JPD was asked to sign the Suitability Agreement because the Firm had determined that his account had been actively traded. Lim signed the document in his capacity as one of the registered representatives on the account.[108] When JPD signed and returned it in September 2014, more than three years after he had opened his account with Lim in July 2011, JPD wrote in his cover email, "Signed copy of the CYA document."[109]

L. Lim's Attempts To Shift Blame

Lim was not represented in this proceeding. At the hearing, he was meek and apologetic. He acknowledged that his conduct was not what it should have been.[110] He said, "I didn't come here to argue the facts."[111] In closing, he explained that he was taking responsibility for charging commissions that were too high and for improper turnover rates and cost-to-equity ratios, but he argued that a permanent bar was too harsh a penalty.[112]

His contrition was balanced, however, by his repeated attempts to shift blame to those more senior. He charged the commissions that he did because Etter told him the commission rates to charge.[113] He signed the Firm's certification that he was complying with his Firm's guidelines for commission charges, even though he knew he was not, because Etter told him to

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[104] CX-67, at 5.

[105] Hearing Tr. (Lim) 147-53, 189-90; CX-67; CX-75.

[106] CX-67, at 2.

[107] Hearing Tr. (Lim) 152-53; CX-67.

[108] Hearing Tr. (Lim) 189-92; CX-75.

[109] Hearing Tr. (Lim) 191; CX-75, at 2.

[110] Hearing Tr. (Lim) 236-37, 429-32.

[111] Hearing Tr. (Lim) 236.

[112] Hearing Tr. (Lim) 502-03.

[113] Hearing Tr. (Lim) 223 ("I didn't want to charge what I charged, I guess. But that is the way I was told to do that [by Etter]."

sign.[114] He said that he was "willing to take accountability" for his conduct, but he qualified that statement by blaming his Firm for not overseeing him properly. He said,

> But on the same token, I feel with the proper supervision and proper guidance that things could have been different. Maybe a different environment, different office, a compliance officer that was actually there and on top of everything daily, I think these mistakes easily could have been avoided.[115]

M. Unsatisfied Judgments

While in college, Lim accumulated credit card debt, and, in 2008-2009, prior to joining CISC, Lim was having a difficult time paying his bills. At some point, he entered a debt consolidation program. In 2009, three judgments related to credit card debt were entered against him: (i) Asset Acceptance LLC Judgment for $2,927 filed December 18, 2009; (ii) Atlantic Credit Judgment for $5,996 filed October 7, 2009; and (iii) Midland Funding LLC Judgment for $4,695 filed July 7, 2009.[116]

Lim did not disclose the 2009 judgments on his Form U4 until events forced him to do so.[117] In May 2014, in connection with the investigation that led to the complaint in this proceeding, FINRA examiners asked Lim to fill out a personal activity questionnaire. One of the questions was whether Lim had any unsatisfied judgments or liens against him. He answered "no."[118]

Later in May 2014, FINRA examiners met with Lim and discussed the three outstanding judgments against him. Afterward, on June 9, 2014, they sent him a request for information regarding the judgments. The staff received a response from Lim on July 14, 2014. He provided docket numbers for the various judgments, which he testified he had obtained after doing research. He indicated in his written response that he had first become aware of the judgments in May 2014. He did not, however, disclose the judgments in summer of 2014.[119]

In September 2014, Lim gave testimony in an on-the-record interview ("OTR"). He was asked again about the three judgments and advised of his obligation to disclose them. Although

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[114] Hearing Tr. (Lim) 82-85, 429-31; CX-137.3

[115] Hearing Tr. (Lim) 236-37.

[116] Hearing Tr. (Lim) 55-56, 97-98; Stip. ¶ 10; CX-30; CX-31.

[117] Hearing Tr. (Lim) 55-56, 97-98, 452-53.

[118] Hearing Tr. (Lim) 97-98; CX-30.

[119] Hearing Tr. (Lim) 99-102; Stip. ¶ 10; CX-31.

he told the FINRA examiners that he was going to do it "tomorrow," he did not immediately disclose the judgments. Nor did he do so at any time in the fall of 2014.[120]

Although Lim amended his Form U4 on February 19, 2015, to disclose that FINRA was conducting an examination, he still did not disclose the three outstanding judgments. Afterward, he received a "Wells" notice, informing him that FINRA staff intended to pursue disciplinary action against him for his failure to disclose the three judgments. The Wells notice finally prompted action, and, on February 27, 2015, Lim amended his Form U4 to disclose the three outstanding 2009 judgments against him for the first time.[121]

As Lim concedes, he failed to amend his Form U4 within 30 days of learning of the judgments.[122] He says that he takes "full responsibility for not updating [his] U-4 in a timely manner."[123] However, he has no explanation for why he failed to disclose the judgments for approximately ten months after FINRA staff first notified him of them in May 2014.[124] He testified, "I didn't think it was a big deal. Knowing now it is a big deal and I should have done it immediately. It is my fault."[125]

IV. CONCLUSIONS

A. Reasonable Basis Suitability

1. Legal Framework

a. FINRA Rule 2111

FINRA Rule 2111 provides that 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." [126] Supplementary material provides guidance.

The supplementary material describes the suitability rule as rooted in concepts of fairness. "Implicit in all member and associated person relationships with customers … is the fundamental responsibility for fair dealing." Sales efforts must be undertaken "only on a basis

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[120] Hearing Tr. (Lim) 102-05.

[121] Hearing Tr. (Lim) 104-08; Stip. ¶¶ 11-12; CX-26; CX-27.

[122] Stip. ¶ 13.

[123] Hearing Tr. (Lim) 453.

[124] Hearing Tr. (Lim) 454.

[125] Hearing Tr. (Lim) 454.

[126] From July 9, 2012, through July 31, 2014, during the relevant period of time, three versions of Rule 2111 were in effect. *See* FINRA Rules at http://finra.complinet.com/en/display/display.html?rbid=2403&record_id=15663&element_id=9859&highlight=2111#r15663. For our purposes, they may be treated as one. Each version contained the operative language quoted above and the accompanying guidance is consistent.

that can be judged as being within the ethical standards of FINRA rules…."[127] The suitability rule "is intended to promote ethical sales practices and high standards of professional conduct."[128]

Recommendations of individual investments and of investment strategies must be suitable. The supplementary material counsels that the phrase "investment strategy" should be interpreted broadly. It includes, among other things, an explicit recommendation to hold a security.[129]

Suitability is recognized to consist of three "main" obligations: reasonable-basis suitability, customer specific suitability, and quantitative suitability. The supplementary material defines each as follows.

> Reasonable-basis suitability requires that an associated person conduct "reasonable diligence" sufficient to provide him with "an understanding of the potential risks and rewards associated with the recommended security or strategy". The lack of such an understanding when recommending a security or strategy violates the suitability rule.
>
> Customer-specific suitability requires that an associated person have a reasonable basis to believe that the recommendation is suitable for the particular customer based on that customer's investment profile.
>
> 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. Factors such as the turnover rate, the cost-to-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for finding that an associated person has violated the quantitative suitability obligation.

Although much of the evidence in this case resembles evidence that ordinarily appears in a quantitative suitability case, such as cost-to-equity ratios and turnover rates, this is a reasonable basis case. The focus is on Lim's lack of understanding of the risks and rewards of the trading he recommended.

b. FINRA Rule 2010

FINRA Rule 2010 requires FINRA members and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of

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[127] Rule 2111, Supplementary Materials, 01 General Principles.

[128] *Id*.

[129] Rule 2111, Supplementary Materials, 03 Recommended Strategies.

their business. The Rule requires members of the securities industry not merely to conform to legal and regulatory requirements, but to conduct themselves with integrity, fairness, and honesty.[130] It is well established that a violation of another FINRA Rule is also a violation of Rule 2010.[131]

2. Lim Violated FINRA Rules 2111 And 2010

Lim stipulated that he "recommended an active trading investment strategy," explaining that he recommended to his customers that they purchase stock to hold for short periods of time, in hopes that some catalyst event would occur and cause the stock to appreciate. He then typically recommended that they sell, sometimes within a matter of a few weeks, in order to buy other stock that he recommended on a similar basis. When the Firm later sought Suitability Agreements from those customers, it described this pattern of recommendations as an active trading strategy.

As discussed above, Lim charged high commissions. Coupled with the frequent trading, they became a staggering burden on the potential profitability of the customers' accounts.

Lim violated the suitability rule because he recommended a costly trading strategy without considering the costs and evaluating the likely risks and rewards. He had no reasonable basis for believing that the frequent trading he recommended was, in light of his high commissions, suitable. As demonstrated by the proof regarding the cost-to-equity ratios and turnover rates, and the accumulation of costs over time, the costly trading dissipated a substantial portion of his customers' equity.[132] In one case, FINRA staff calculated that the customer's account would have had to generate a return of 64% to break even, a near impossibility.

We do not think that Lim had to make detailed calculations of cost-to-equity ratios and turnover rates in order to know that the costs of trading exceeded any profits earned in the accounts. He was an economics major who should have appreciated the effect that high costs

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[130] *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *22 n.20 (Feb. 13, 2015) (discussing NASD predecessor to FINRA Rule 2010: "[T]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. [FINRA Rule 2010] protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation.") (internal quotations omitted).

[131] *See Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2011027666902, slip op. at 6, n.7 (NAC May 26, 2017). *See also Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999); *CMG Inst. Trading, LLC*, No. 2006006890801, 2010 FINRA Discip. LEXIS 7, at *3 n.2 (NAC May 3, 2010); *Dep't of Enforcement v. Trende*, No. 2007008935010, 2011 FINRA Discip. LEXIS 54, at *11 and nn.12 & 13 (OHO Oct. 4, 2011).

[132] If Lim had been proven to have actual or de facto discretion in his customer accounts, his conduct would have been easily viewed as a violation of the quantitative obligation described in the supplementary material to Rule 2111. See generally *Calabro*, at *32-33 & nn.41-45; *William J. Murphy*, Securities Exchange Act of 1934 Release No. 69923, 2013 SEC LEXIS 1933, at *48-53 & nn.59-67, 59-60 & n.78 (July 2, 2013). In *Murphy*, the SEC said that multiple in-and-out trades in a short period of time are a "hallmark of excessive trading." *Id*. at *60.

would have on his customers' profits from the trading. He knew what his commissions were and he knew the profits and losses the accounts sustained. It should have been obvious to him, particularly as time went on, that the pattern of frequent trading was generating much more in commissions than it was in customer profits. Indeed, he recognized the connection between frequent trading and high cost-to-equity ratios and turnover rates when he responded to the chief compliance officer's visit by doing less trading in an account to better manage the costs. However, with respect to the customer accounts at issue, he did nothing to modify the strategy in the face of mounting costs and losses.

It is plain from the guidance on the suitability rule that a broker who does not understand the investment strategy he recommends cannot fulfill his suitability responsibilities to his customer.[133] Understanding is a prerequisite for analyzing whether the strategy is suitable.[134] As the Securities and Exchange Commission ("SEC") long ago declared, "[A] broker may violate the suitability rule if he fails so fundamentally to comprehend the consequences of his own recommendation that such recommendation is unsuitable for any investor …."[135]

We also take note that Lim recommended securities trades in a pattern that enhanced his commissions to the detriment of his customers. The suitability requirement is designed to ensure that a registered representative's recommendations are consistent with the customer's objectives, financial resources and needs, and other circumstances. It "prohibits a broker from placing his or her interests ahead of the customer's interests."[136] Guidance regarding the Rule expressly provides that recommendations made in order to enhance the broker's commissions violate the suitability Rule.[137]

The fact that YM had no complaint about the frequency with which Lim called and recommended trades is of no significance. It is well-settled that a broker's recommendations should be consistent with his customer's interests, taking into account objective factors relating to the customer's financial situation and needs, and a recommendation is not suitable merely because the customer acquiesces in it.[138]

We conclude that Lim violated FINRA Rule 2111 and thereby also violated Rule 2010.

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[133] Notice To Members 12-25 ("NTM 12-25"), http://www.finra.org/industry/notices/12-25. Additional Guidance on FINRA's New Suitability Rule; Implementation Date: July 9, 2012, Answer 22 to Question 22.

[134] *E.g.*, *F.J. Kaufman and Co.*, 50 S.E.C. 164, 168-69 & nn.16-18 (1989) (collecting cases).

[135] *Id*. at 169.

[136] NTM 12-25, Answer 1 to Question 1, & nn.15-16 (collecting cases).

[137] *Id*.

[138] *See Dane S. Faber*, 57 S.E.C. 297, 310-11 (2004); *see also Dep't of Enforcement v. Bendetsen*, No. C01020025, 2004 NASD Discip. LEXIS 13, at *12 (NAC Aug. 9, 2004); *William C. Piontek*, 57 S.E.C. 79, 95 & n.31 (2003); *Paul F. Wickswat*, 50 S.E.C. 785, 786-87 (1991).

B. Amendments To Form U4

1. Legal Framework

a. Form U4

FINRA's By-Laws and Rules impose a continuing obligation on every registered person to update information on his or her registration application, the Form U4. Article V, Section 2(c) of the By-Laws requires that information in a person's registration application "shall be kept current at all times by supplementary amendments … filed … not later than 30 days after learning of the facts or circumstances giving rise to the amendment." FINRA Rule 1122 further provides that no associated person shall fail to correct inaccurate or misleading information in his or her registration filing upon receiving notice of the correct information.

The SEC has said that the importance of the Form U4 "cannot be overstated."[139] The Form U4 is used by FINRA and other regulators, as well as broker-dealer firms, to determine and monitor the fitness of securities professionals. Forms U4, which are publicly available, also provide investors important information in deciding whom they trust to handle their investments and to advise them.[140]

The failure to timely file an amendment to a Form U4 also violates FINRA Rule 2010. As noted above, a violation of any other FINRA Rule also constitutes a violation of FINRA Rule 2010.[141]

b. Statutory Disqualification

A person is subject to a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934 if, among other things, the person has "willfully" made a false or misleading statement with respect to any material fact in his application to be associated with a FINRA member firm, or the person has omitted from the application a material fact that is required to be stated.[142] Thus, both willfulness and materiality bear on statutory disqualification.

Misconduct is willful in the context of the securities laws if the person "intentionally commit[ed] the act" that constitutes the violation, regardless of whether he understood that he was violating a particular rule.[143] Willful acts are voluntary, in contrast to acts that are

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[139] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012).

[140] *Id. See also North Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *30 (May 8, 2015) .

[141] *E.g.*, *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *16 (NAC Mar. 9, 2015).

[142] *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *14 (Mar. 15, 2016).

[143] *Mathis v. SEC*, 671 F.3d 210, 215 (2d Cir. 2012).

inadvertent or coerced. All that is necessary is that the person intentionally commits the act that constitutes the violation.[144]

In the context of Form U4 disclosures, the SEC has defined materiality in the following way: "[A] fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available."[145] The National Adjudicatory Council ("NAC") has held that "essentially all of the information that is reportable on the Form U4 may be considered material."[146] Unsatisfied liens and judgments in particular are significant because they raise concerns about whether a respondent can responsibly manage his own financial affairs, and ultimately they cast doubt on a person's ability to provide trustworthy financial advice and services to investors who rely on that person to act on their behalf as a securities industry professional.[147]

2. Lim Willfully Failed To Timely Amend His Form U4

Applying the legal framework set forth above, we conclude that Lim willfully failed to timely amend his Form U4, and that he is therefore subject to a statutory disqualification. His misconduct was intentional, not inadvertent. He knew about the unsatisfied judgments by his own admission at least as of May 2014, when FINRA staff asked him about them and reminded him of his obligation to disclose them on his Form U4. Despite the reminder, Lim did not disclose the judgments at any point in the summer of 2014. At his OTR in September of 2014, FINRA staff again reminded him of his obligation to disclose the judgments on his Form 2014. He nevertheless did not disclose them that fall or even in January 2015, when he amended his Form U4 to disclose FINRA's ongoing examination. It was only in February 2015, after he received notice that FINRA staff intended to pursue a disciplinary proceeding against him, that he amended his Form U4 to disclose the judgments.

We further conclude that the judgments that he did not disclose were material. The judgments were important to assessing his fitness to work in the securities industry, because they indicate that he might have had a motive to engage in practices that would enhance his income. The judgments also remained undisclosed for a substantial period of time, roughly six years. As noted above, the NAC has held that the information required to be disclosed on a Form U4 is presumptively material.

Lim's reasons for his failure to disclose the judgments make the violation egregious. He excused his failure to disclose the judgments from 2009 to May 2014, when FINRA staff called

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[144] *McCune*, 2016 SEC LEXIS 1026, at *15, *19-20 & nn.22-23. *See also Dep't of Enforcement v. Ottimo*, 2009017440201, 2015 FINRA Discip. LEXIS 42, at *41 (OHO July 10, 2015), *aff'd*, slip op. at 13 (NAC Mar. 15, 2017); *Dep't of Enforcement v. Riemer*, No. 2013038986001, 2016 FINRA Discip. LEXIS 56, at *15-17 & nn.38-41 (OHO Nov. 4, 2016), *appeal docketed*, (Nov. 21, 2016).

[145] *McCune*, 2016 SEC LEXIS 1026, at *21-22; *Mathis*, 671 F.3d at 219.

[146] *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34 (NAC July, 2007).

[147] *Tucker*, 2012 SEC LEXIS 3496, at *32-33.

the judgments to his attention, by saying that he "didn't think anything of it."[148] He said that he had been in the industry since 2008 and "this is really the first time I'm hearing about these liens, so-called liens."[149] He implied that it was someone else's responsibility to call his attention to the judgments, not his responsibility to timely disclose them. He also said that he thought they were no longer an issue because he had completed a "program" with a debt consolidation agency. However, he did not provide any details. He had no explanation whatsoever for why he did not disclose the judgments for approximately ten months after FINRA staff informed him in May 2014 of his duty to do so. In sum, he had no good explanation.

V. SANCTIONS

In considering the appropriate sanction for a violation, adjudicators in FINRA disciplinary proceedings look to FINRA's Sanction Guidelines ("Guidelines"). The Guidelines contain recommendations for sanctions for many specific violations, depending on the circumstances. They also contain overarching Principal Considerations and General Principles, both of which are applicable in all cases. They are used to analyze aggravating and mitigating factors.[150]

The Guidelines are intended to be applied with attention to the regulatory mission of FINRA—to protect investors and strengthen market integrity.[151] The Guidelines caution that sanctions must be significant enough to prevent and discourage future misconduct by a respondent and to deter others from similar misconduct.[152]

A. First Cause Of Action

For a violation of Rule 2111, the Guidelines recommend a broad range of sanctions. These include suspending an individual respondent for 10 business days to two years and a monetary sanction ranging from $2,500 to $110,000. Where aggravating factors predominate, adjudicators are counseled to strongly consider barring an individual.[153]

For his suitability violation, we conclude that Lim should be suspended for nine months and fined $7,500. We find that there are many aggravating factors. First, Lim engaged in a pattern of misconduct. He traded in and out of his customers' accounts without concern for the costs and without understanding that, over time, the accumulating costs were becoming so great that it was almost impossible for his customers to earn a profit.[154] Second, the misconduct

[148] Hearing Tr. (Lim) 453.

[149] Hearing Tr. (Lim) 453.

[150] FINRA Sanction Guidelines (2017), http://www.finra.org/industry/sanction-guidelines.

[151] Guidelines at 1, Overview.

[152] Guidelines at 2, General Principle No. 1.

[153] Guidelines at 95.

[154] Guidelines at 7, Principal Consideration 8.

occurred over an extended period of time, two years.[155] Third, although it cannot be said that Lim affirmatively concealed his misconduct, he did behave in ways that made it difficult for his customers to fully understand the charges they were incurring and the effect of those costs on their accounts. He did not volunteer any information about his commissions, and when YM asked for a rate table, Lim failed to provide one.[156] Fourth, Lim's misconduct injured his customers, because his commissions consumed profits they might have earned.[157] Fifth, Lim's conduct was intentional.[158] Sixth, his conduct resulted in actual monetary gain for Lim.[159]

Although Lim at times seemed to acknowledge his misconduct, he quickly followed by blaming others. He blamed his Firm's compliance department for not alerting him earlier to the problem of costs and frequent trading. He blamed Etter for directing him to charge high commissions. He portrayed himself as a hapless tool of those around him. On balance, Lim's attitude did not constitute the kind of acknowledgement of wrongdoing that might be mitigating, and, even if it did, his recognition of his misconduct did not occur until after detection and intervention by FINRA.[160]

B. Eighth Cause Of Action

For filing Forms U4 and amendments late, an individual may be fined between $2,500 and $37,000. Where aggravating factors are present, he also may be suspended in any or all capacities for 10 business days to six months. Where aggravating factors predominate, he may be suspended up to two years. If the respondent intended to conceal information or mislead, then he may be barred. The Guidelines identify eight specific Principal Considerations that may bear on the sanctions for this kind of violation. These include the following: (i) nature and significance of information at issue; (ii) number, nature, and dollar value of the disclosable events; (iii) whether omission was an intentional effort to conceal information or mislead; (iv) duration of delinquency; (v) whether failure to timely disclose delayed any regulatory investigation; (vi) whether judgment that was not timely disclosed has been satisfied; (vii) whether failure led to statutorily disqualified individual becoming or remaining associated with a firm; (viii) whether misconduct resulted directly or indirectly in injury to another party, and, if so, the nature and extent of the injury.[161]

We conclude that the most appropriate and remedial sanctions for Lim's failure to make timely disclosures on his Form U4 are a six-month suspension and a $10,000 fine. In reaching

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155 Guidelines at 7, Principal Consideration 9.

156 Guidelines at 7, Principal Consideration 10.

157 Guidelines at 7, Principal Consideration 11.

158 Guidelines at 8, Principal Consideration 13.

159 Guidelines at 8, Principal Consideration 16.

160 Guidelines at 7, Principal Consideration 2.

161 Guidelines at 71.

this conclusion, we considered a number of aggravating factors, beginning with three of the eight specific Principal Considerations. First, the information regarding the outstanding judgments was material, because it related to Lim's ability to manage his own financial affairs and reliably advise others about their financial affairs. The information would inform customers and employers of a potential motive to act in ways that would enhance his financial position. Second, although the size of the undisclosed judgments was not particularly large, there were multiple judgments to be disclosed. Third, the judgments were entered in 2009 and were not disclosed until 2015, roughly six years later. Even accepting Lim's claim that he did not know about the judgments until May 2014, he waited for ten months before disclosing them. As for the other specific Principal Considerations for this type of violation, there was either no evidence or they were inapplicable to the situation here.

We also considered the following aggravating factors from the list of Principal Considerations in Determining Sanctions in all cases. Lim had no explanation for why he delayed disclosure for ten months after FINRA staff first informed him of the judgments and his obligation to disclose them. He did not reasonably rely on any advice that he could delay disclosure.[162] In fact, FINRA staff had to apply strong pressure on Lim to finally disclose the judgments on his Form U4. It was only after two reminders by FINRA staff and notice that the staff intended to pursue disciplinary action that Lim amended his Form U4 to disclose the judgments.[163] This suggests that more stringent sanctions are required to impress upon Lim the need to comply with regulatory requirements. Lim's casual disregard of his obligation to amend his Form U4, as reflected in his comment that he thought it "no big deal," indicates that a substantial sanction is necessary to be a meaningful deterrent.[164] His failure to act after the staff informed him in May 2014 of the judgments and his obligation to disclose them on his Form U4 was intentional.[165]

While Lim adopted a contrite attitude at the hearing and acknowledged responsibility for his misconduct, we do not believe those are mitigating factors. He did not accept responsibility or acknowledge misconduct prior to detection and repeated direction by FINRA staff to amend his Form U4.[166]

VI. ORDER

For violating FINRA Rules 2111 and 2010, Respondent Richard Lim is suspended from associating with any FINRA member firm in any capacity for nine months and fined $7,500. For violating Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1, and FINRA Rules

[162] Guidelines at 7, Principal Consideration 7.

[163] Guidelines at 8, Principal Consideration 14.

[164] Guidelines at 2, General Principle 1.

[165] Guidelines at 8, Principal Consideration 13.

[166] Guidelines at 7, Principal Consideration 2. The Hearing Panel has considered and rejected the arguments by the parties that are inconsistent with this decision.

1122 and 2010, Respondent is suspended from associating with any FINRA member firm in any capacity for six months and fined $10,000. The suspensions are to run consecutively. In addition, Lim is ordered to pay the costs of the hearing in the amount of $5,177.59, which includes $4,427.59, the cost of the hearing transcript, and a $750 administrative fee.

If this decision becomes FINRA's final disciplinary action, Lim's suspension shall become effective with the opening of business on August 7, 2017. The fine and assessed costs shall be due on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

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