BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC

In the Matter of the Application of

Ricky Alan Mantei

For Review of

FINRA Disciplinary Action

File No. 3-21516

FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

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I. INTRODUCTION

This case is unique in that the violative conduct—a scheme to use prearranged trading to disguise cross trades and thereby circumvent firm policies—is described by Applicant Ricky Alan Mantei in his own words in recorded conversations. In these recordings, Mantei instructs a trader at his member firm, J.P. Turner & Company ("J.P. Turner"), to find counterparties to buy and temporarily hold positions in secured certificates of deposit and bonds with the promise that he would later buy them back at a higher price to compensate the counterparty for this "favor." When J.P. Turner brought the secured certificates of deposits and bonds back to the firm, they were then sold to other firm customers at an even higher price. Absent the interposed sham transactions directed by Mantei, the trades would have been treated as cross trades between firm customers and subject to enhanced procedures to protect the customers and limitations on the amounts of markups and markdowns charged to those customers.

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Mantei's actions violated J.P. Turner's policy prohibiting prearranged trading and circumvented the firm's heightened supervisory procedures with respect to cross trades. His actions were deceitful and intended to conceal his conduct. None of the order tickets or other trade records for these transactions reflected Mantei's instructions to the trader about the prearranged trades or disclosed that they were de facto cross trades. To the contrary, the transactions were designed and effected to appear to be bona fide, arms-length transactions that reached the market. With respect to one of the transactions, Mantei even disregarded explicit instructions by the firm's Chief Compliance Officer not to engage in a cross trade.

Based on the foregoing, FINRA's National Adjudicatory Council ("NAC") found that Mantei violated FINRA Rule 2010 and Municipal Securities Rulemaking Board ("MSRB") Rule G-17. On appeal, Mantei has not presented any legitimate reason to disturb the NAC's liability findings or the sanctions that the NAC imposed. Indeed, the NAC's findings are premised on Mantei's unequivocal instructions on recorded telephone conversations and the firm's trading records, the authenticity of which Mantei does not dispute.

Faced with his own damning words, Mantei cites inapplicable case law, makes disingenuous arguments about the meaning of firm policies, and obfuscates the salient issues with arguments about irrelevant facts. These same arguments were considered and properly rejected by FINRA. Mantei also makes several unavailing procedural arguments that he claims warrant dismissal of the proceeding. He unconvincingly argues that he was prejudiced by FINRA's purported delay in bringing the action. But the time periods at issue here are not excessive, and Mantei has not articulated with any particularity how his ability to defend himself was prejudiced by any purported delay. FINRA's action was fair, and Mantei had the opportunity to defend against it. Mantei's challenge to FINRA's jurisdiction is equally

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unavailing and contrary to established case law that FINRA Rule 2010 applies to all unethical, business-related conduct, regardless of whether it involves a security.

Mantei's misconduct reflects squarely on his ability to comply with the regulatory requirements that are necessary to the proper functioning of the securities industry and vital for the protection of the investing public. The NAC's findings of liability are based in fact, and the NAC's sanctions—two consecutive three-month suspensions, fines totaling $15,000, and a requalification requirement—are appropriately remedial, necessary for the protection of the investing public, and neither excessive nor oppressive. The Commission should dismiss Mantei's application for review.

II. FACTS

A. Background

Mantei entered the securities industry in 1982. RP 6, 45, 1149. Mantei managed a J.P. Turner branch office in Lexington, South Carolina, and was the firm's largest producer. RP 6, 45, 3579-88, 2075-76, 2591. Mantei's business included recommending transactions to clients, taking orders from customers, and sending those orders for execution to J.P. Turner's trading desk for fixed-income products, including bonds and structured certificates of deposit ("SCDs"). RP 1150. The fixed income trading desk, known as the "bond desk," was located in Atlanta, Georgia. RP 1926-27, 2073-74, 2395-96, 3635-37.

Mantei effected transactions in SCDs and bonds for J.P. Turner customers by giving instructions to the bond desk. RP 2670-71, 2026-28. Mantei usually dealt with Sam Palermo, a trader on the J.P. Turner bond desk. RP 2238, 2243, 2369. Palermo followed Mantei's instructions, locating counterparties for transactions and negotiating the terms of the transactions per Mantei's directive. RP 2238-40, 2430-31.

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To place an order, including orders for SCDs, the Lexington branch would submit an order ticket and instructions to the bond desk. RP 2777-78. J.P. Turner's written supervisory procedures ("WSPs) required that any instructions relating to a trade accompany the order ticket. RP 2777-78, 3300-01 (WSPs dated July 31, 2014), 3378 (WSPs dated January 26, 2015). Since at least September 2014, the bond desk used the same order ticket for all fixed income products, including bonds and SCDs. That order ticket was called the "bond ticket." RP 2073-74, 2395-96 3635-37.

B. J.P. Turner Prohibited Prearranged Trading and Permitted Cross Trades Subject to Heightened Supervision

During the relevant period from September 2014 through February 2015, J.P. Turner's WSPs prohibited prearranged trading[1] and permitted cross trades subject to enhanced, *detailed* supervisory procedures. RP 3326, 3402, 3631-33, 2397, 2818. The purpose of these enhanced procedures was to "provide additional structure and transparency to [the firm's] execution of cross-trades," "minimize the potential for conflicts of interest," and ensure that both customers involved in the cross trade received an objectively fair price based on market transactions in the same or similar products. RP 3631-33, 2397-402, 2818. The firm's cross trade procedures applied "when an office sells a bond for one of its clients and purchases the bond for another of its clients" and the trade is "executed internally by the firm and never reach[es] the market." RP 3631.

Among other things, the procedures required the branch to submit an explanation with the order ticket that addressed "why it is best for the one client to sell the bond yet best for the other client to purchase the bond." RP 3631, 3633, 2776-78. The procedures also required the order

[1] J.P. Turner's WSPs defined a prearranged trade as "[a]n offer to sell coupled with an offer to buy back at the same or a higher price, or the reverse." RP 3326, 3402.

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to include an attestation that "the seller was given the right to have the bond sold into the market rather than internally." RP 3631-33, 2776-78. The bond desk was required to "'mark' the value of the bond to the market by reviewing current trading of the same or similar bonds and [to] include evidence of the evaluation with the trade ticket." RP 2397, 2411-13, 2418, 3631-33. Additionally, the "maximum markup/markdown allowed on the entire transaction [could] be no more than the maximum of a single trade," and the markup/markdown would be split between the buyer and seller. RP 3633. To that end, J.P. Turner's cross trade procedures incorporated the firm's commission guidelines applicable to fixed income products, which set the maximum for a single trade at 2.6%. RP 3629, 3633, 2115-16, 2389-90, 2392-93.

Ed Woll, J.P. Turner's Chief Compliance Officer ("CCO"), drafted the firm's cross trade policy. RP 2404, 2340, 1152-53. He testified that while it was titled "bond cross trade" policy, the policy applied to all fixed income products, including the bonds and SCDs at issue. Woll explained that rather than issuing a separate cross trade policy for each different type of fixed income product, the firm "just used the word 'bond' to cover them all." RP 2404. Woll further testified that it made sense to apply the cross trade policy to SCDs because cross trades in SCDs implicate the same fair pricing concerns as cross trades in bonds. RP 2405-06.

Woll's testimony was consistent with the other evidence at hearing, which showed he, Mantei, and others at the firm commonly used and understood the term "bond" to refer to all fixed income products, including SCDs. RP 2405. For example, the trading desk at J.P. Turner that handled orders for all fixed income products, including both bonds and SCDs, was known as the "bond desk." RP 2369, 2404-06, 2073-74. Similarly, the firm required that "all bond orders" for all fixed income products, including both SCDs and bonds, be placed through the bond desk

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using the same order ticket. That order ticket was known as the "bond ticket." RP 3635-37, 2073-74, 2395-96.

C. On Three Occasions, Mantei Directed Prearranged Trading to Circumvent His Firm's Cross Trade Procedures

Mantei's unethical conduct involved three separate sets of transactions. Two sets of transactions involved SCDs: a Wells Fargo SCD with CUSIP 949748R66 ("Wells Fargo R66 SCD") and a Citibank SCD with CUSIP 172986FN6 ("Citibank FN6 SCD"). The third set of transactions involved a Fresno municipal bond with CUSIP 358184HE2 ("Fresno HE2 Bond"). As detailed below, the relevant trading for each set of transactions followed the same general pattern: a customer from Mantei's branch sold the product to J.P. Turner, which in turn sold it to another broker-dealer. Shortly thereafter, that broker-dealer sold it back to J.P. Turner at a price slightly higher than what it had paid for the position. This increased price contained a surreptitious charge to compensate the broker-dealer for temporarily holding the position. In each instance, Mantei sold the repurchased positions at a higher price to other J.P. Turner customers that Mantei helped locate.

1. The Wells Fargo R66 SCD Transactions

The first set of transactions at issue involve a Wells Fargo R66 SCD. In September 2014, a customer of Mantei's branch, CC, and his daughter contacted J.P. Turner about CC's position in the Wells Fargo R66 SCD. RP 2349, 3595. CC had originally invested $96,000 in the SCD. RP 2220. After CC received a statement reflecting that the value of the SCD had dropped, CC's daughter threatened to file a formal complaint. RP 2347-50, 2352, 2355, 3595. She wanted to

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sell the SCD, recover her father's original investment (minus any cash remaining in the account and distributions of interest), and move his account to another firm. RP 2356, 2627-28, 3595.

To resolve the grievance, Mantei believed he needed to sell the Wells Fargo R66 SCD at a price of 89 or 90—an amount sufficient to return CC's original investment. RP 2696-97. Mantei was concerned that, if he sold the SCD at a lower price, he might have to cover the difference to keep the customer from filing a formal complaint, and he understood that the contribution might qualify as a reportable settlement. RP 3153A, 3153-56. Mantei wanted to avoid such a scenario, as he explained in a recorded call with Palermo:

> **Mantei**: [W]e're trying to make this thing go away. But a lot of it has to do with the price that we get for this client. . . . Because the higher I can get, the closer I can get towards 90, the more likely this gal [CC's daughter] is going to just take the money and walk away and be done with this . . . . And I don't have to kick no damn money into the pot. And what we're trying to do is we're trying to keep it from having to be a reportable U4 entry item. In other words, if it was $7,500 dollars, it would be, it's over $5,000 dollars. If we can keep this thing down, then we shouldn't have to.

RP 3151, 3153-54.

At Mantei's instruction, Palermo sought bids for the Wells Fargo R66 SCD in the secondary market, but he was unable to get any interest at a price above the mid-80s. RP 2661. Mantei proposed to J.P. Turner's CCO, Woll, a cross trade by selling the SCD to another J.P. Turner customer who was willing to pay a price of 90. RP 2359-60. Woll, however, would not approve it. RP 2360, 2367. Woll explained he did not feel comfortable with Mantei selling the SCD "to one of his clients for appreciably more than what we had already established that the market was willing to pay for it." RP 2361. Woll also was concerned that a cross trade "would have the appearance, or worse, that we were trying to avoid a complaint by some sort of sleight of hand." RP 2367.

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Mantei agreed to abide by Woll's instructions. As Mantei testified, Woll "said don't do a cross trade. I said, yes, sir." RP 2278-79, 2703. Mantei testified he knew Woll did not want him to sell the Wells Fargo R66 SCD to another J.P. Turner customer. RP 2077, 2276-77. Mantei also testified that he understood Woll was concerned a cross trade might not look "realistic" and could be construed as an effort to make a complaining customer "happy." RP 2277-78. Mantei explained this to Palermo in a recorded telephone call:

> **Palmero**: Ed [Woll] says if it crosses it makes it look bad if FINRA digs into it when next time they do an audit. They come in here, and they see the complaint, they see what we did, they see a cross, they see all that. They go, 'You guys were just priming the market to try to take care of the problem,' and, which is true.

RP 3153A, 3154.

Despite Woll's directive not to sell the Wells Fargo R66 SCD in a cross trade, Mantei directed the sale of the SCD to other J.P. Turner customers using an intervening counterparty to disguise what was, in substance, a cross trade that Woll had forbidden. Thus, Mantei made it appear that the SCD was sold to the market in a bona fide transaction. In fact, the supposed market transaction was a sham prearranged trade. Specifically, in order to get the "magic number" of 89 or above, Mantei instructed Palermo to couple the sale of the SCD with an offer to repurchase it at a higher price. RP 3153A, 3154, 3156. Once repurchased, Mantei planned to sell the SCD to another J.P. Turner customer. RP 2289-90. Mantei's instructions to Palermo were recorded:

> **Mantei**: Can I get you to help me find some-damn-body out there, Morgan Stanley, Citibank, f—king X, any damn body out there, that can help get me a high price, 89-90, something like that on this damn paper? And I will buy the s—t back. You can tell them, "Hey, you

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> put it back up on the {BondDesk}[2] next week, Rick'll buy it from you." Because I will. And I'll buy it back for more than they paid for it.

RP 3153A, 3154. Mantei explained to Palermo that he had J.P. Turner customers as buyers for the SCD, but "I can't cross, because Ed [Woll] says it looks bad." CP 3153A, 3155. He continued, "if we get that and this lady [CC's daughter] accepts, which it looks like she will, then this thing goes away and nobody's U4 gets marked." RP 3153A, 3155. Upon hearing Mantei's plan, Palermo told Mantei, "I'm not going to compliance, because I'm not going to draw attention that you and I are talking a big deal about this." RP 3153A, 3156. Mantei agreed with that approach. RP 3153A, 3156.

Later that day, Palermo tried to find a buyer for the Wells Fargo R66 SCD in accordance with Mantei's instructions. While on hold with a trader at Maxim Group ("Maxim"), Palermo reported to Mantei that he had "already been turned down a couple places" and that other potential counterparties had expressed concerns about "painting the tape."[3] RP 3163A, 3163. Returning to his call with the Maxim Group trader, Palermo presented Mantei's proposal to the trader:

> **Palermo**: What my buyer wanted to do was, he needed a mark away from us. Our {Compliance—he was gone}, he was willing to cross it at 89, which seems to be out of the market, some people think * * *[4] unless you sell it to the market. Now, I didn't want to, I was just going to run something by you. He said, hey, can we get a marker out there, just sell it? I want it back. . .* * * I'm certainly not

[2] This brief employs the same use of brackets as the NAC in its May 30, 2023 decision. RP 4363 n.3.

[3] "Painting the tape" is a manipulative practice of "placing successive buy orders in small amounts at increasing prices." *John R. Glushko*, Exch. Act Release No. 57435, 2008 SEC LEXIS 490, at *3 (Mar. 5, 2008).

[4] The asterisks denote instances where the other person on the call interjects but the speaker continues.

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> interested in getting anybody in trouble, but that's why I was trying to call you earlier.** I wanted to buy it back, but I would have to sell it to you at a price and then buy it back on Wednesday of next week.* * * I wanted to put it out to you and let you know. If I buy it at 89, I'm willing to buy it back even for, worth your while, you know, to cover any cost, and whatever you think is best, you know, and, or at least put it back out. Even if you told me, hey, I'll take it in at 89, you buy it back at 90 and you're okay with that, I'll call the rep and see if he's okay with it.

RP 3159A, 3159-61. The Maxim trader agreed, telling Palermo, "Uh, whatever you need." RP 3159A, 3161.

A few minutes later, Palermo reported to Mantei that he had found a counterparty willing to do the prearranged trade Mantei requested for the Wells Fargo R66 SCD:

> **Palermo**: All right between you and me, that guy I was just talking to on the phone, that I just hung up with you on?
>
> **Mantei**: Yeah.
>
> **Palermo**: I can get favors, and I'm working on two other deals. There's a very good chance I'm going to get a print away from the street from us on this, on that. I think I can do it. He says, whatever you need.

RP 3165A, 3165. Mantei then reminded Palermo of the terms of the arrangement: "Well, if {he'll} just buy that f—ing 96 and then put it back up on {BondDesk} Monday at 90, I'll buy the f—er from him. He'll pick up a point. We're all happy." RP 3165A, 3165. Mantei further explained to Palermo that this would be a "risk-less trade" for the counterparty and that the counterparty would be doing him a "favor." RP 3165A, 3165-66.

In a series of subsequent calls, Palermo expressed concerns to Mantei about getting people "in trouble with the [painting] the tape scenario." RP 3169A, 3170. Mantei dismissed Palermo's concerns and instructed him in no uncertain terms to "Trade on that goddamn piece of paper!" RP 3169A, 3170. Later, when Palermo raised additional concerns about regulatory

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scrutiny, Mantei again instructed Palermo to disregard those concerns, telling him, "F—k them! I'm buying the paper." RP 3169A, 3170. In another call later that day, Palermo told Mantei the potential counterparty to the prearranged trade "seemed a little reluctant." RP 3173A, 3173. Mantei told Palermo that he could "change the price a tad to make it look realistic, you know, 89.01 or 88.91 or something." RP 3173A, 3173. Palermo assured him that was not necessary, telling Mantei "they're standard trades . . . . We'll make it look good." RP 3173A, 3173.

The next day, Palermo asked Mantei if Mantei's plan needed to be approved by J.P. Turner's compliance department "or is that something just you and I are talking about." RP 3177A, 3177. Mantei did not want to tell the compliance department or Woll, explaining to Palermo: "All I need to do is go to [Woll] and say we're good for finding the buyer, no crossing[,] that will pay us eighty-nine cents on the dollar . . . [t]hat's all I need to be able to tell him . . . . As long as he doesn't see a cross going on." RP 3177A, 3177. Palermo responded, "Understood, we're good. I can get a print; I know how to do it; it came to my mind. Bottom line is I got somebody that will help us with this one and when they come back to the market we're going to buy it on another platform, so it's anonymous and everything's clean." RP 3177A, 3177.

On October 1, 2014, Palermo confirmed the arrangement to sell and repurchase the Wells Fargo R66 SCD with the Maxim trader:

> **Palermo**: Hey that favor I asked of you about a week ago? * * * Can you still help me out with that one and I'm going to buy it back.
>
> **Maxim Trader**: Yeah.
>
> **Palermo**: . . . I'm going to buy it back from you, you just name the price, but I'd like to sell a 96-face to you at 90 cents on the dollar. * * * But I'll buy this back if you're okay with that? * * * We'll just put some time between it, make it look good, and then,

um, I won't forget the favor.

RP 3195A, 3196-97. Palermo and the Maxim trader agreed to go ahead with the sale of the Wells Fargo R66 SCD at 90. RP 3195A, 3198.

Later that day, Mantei and Palermo told Woll that they had found a buyer for the sale of the Wells Fargo R66 SCD at the price they needed to make the customer whole. RP 2362-63. They did not tell Woll they had agreed to buy back the SCD at the same or a higher price, or that they planned to resell the SCD to another J.P. Turner customer. RP 2297, 2366, 2371-73, 2704-05. Based on the resulting misimpression that the SCD was being sold into the open market in a bona fide transaction, Woll submitted an order ticket for Mantei to effect the sale of CC's Wells Fargo R66 SCD on October 1, 2014. RP 3589, 2365, 2709-10. Woll testified that had he known that Mantei had either directly or indirectly offered to sell the SCD and then buy it back at the same or a higher price, he would not have signed the ticket. RP 2366-67.

On October 1, 2014, J.P. Turner purchased the customer's position in the Wells Fargo R66 SCD and sold it to Maxim at the price of 90. RP 3147, 3195A, 3198. Following the sale, Palermo treated the position as though it were still a part of Mantei's internal inventory at J.P. Turner because he knew Mantei wanted to buy it back. RP 3201A, 3202.[5]

A week after selling the Wells Fargo R66 SCD, on October 8, 2014, Mantei and Palermo discussed their plan for repurchasing the position. Mantei instructed Palermo that "from a smart standpoint," Palermo should bring back the Wells Fargo R66 SCD in two pieces beginning with 30,000 of the face amount. RP 3201A, 3202. Palermo agreed. RP 3201A, 3202. Palermo and

[5] Woll testified that Mantei was permitted to direct transactions from the street into J.P. Turner's inventory account, and that Mantei could instruct a bond trader to buy shares up to a certain limit if Mantei believed he had customers who would buy them, but the inventory account had to be flat by the end of the month. RP 2691-93.

Mantei then discussed what price they should pay the counterparty for the "favor" of taking in the position. RP 3201A, 3203. Mantei suggested, "How about 90.5?" and Palermo agreed. RP 3201A, 3203.

Later that same day, Palermo called the Maxim trader to discuss repurchasing the position in accordance with the terms proposed by Mantei. Palermo explained he wanted "to do a 30 piece now" but planned "to take them all" eventually. RP 3211A, 3211. They agreed that, when repurchasing the position, Palermo would add a quarter to the 90 price the trader had paid. RP 3211A, 3211. Expressing his appreciation, Palermo told the trader, "I owe you," and the Maxim trader responded, "No problem." RP 3211A, 3212. That day, J.P. Turner repurchased 30,000 of the face amount of the position at 90.25 and immediately sold it to another J.P. Turner customer at 90.50. RP 3147. This left 66,000 of the face amount of the position to be repurchased.

On October 10, 2014, prior to repurchasing the remaining 66,000 of the face amount, Mantei confirmed that he considered himself "still long" on the remaining 66,000. RP 3215A, 3222. Palermo called Mantei's plan to split up the repurchase of the SCD position "brilliant" and assured Mantei he could "still go back and get the other 66 if we need to." RP 3215A, 3222. Palermo then suggested the prearranged trading as "another angle that I can use" and suggested that "maybe [he] ought to start doing that" in connection with another financial instruments. Mantei responded, "Right. Right." RP 3215A, 3222. On October 14, 2014, J.P. Turner repurchased the remaining 66,000 of the face amount from Maxim at 90.25 and immediately sold it to another J.P. Turner customer at 92.34. RP 3147.

None of the order tickets or other trade records for these transactions reflected Mantei's instructions to Palermo about the prearranged trade or disclosed a cross trade. RP 3599, 3601.

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Accordingly, it appeared to J.P. Turner from its order records that the transactions for the selling customer and the buying customer were executed with external parties in arms-length transactions that reached the market.

2. The Fresno HE2 Bond Transactions

Fresh off his success using his prearranged trading scheme with the Wells Fargo R66 SCD, Mantei decided to again use prearranged trading to disguise what were, in substance, cross trades in another fixed income product—the Fresno HE2 Bond.

On December 23, 2014, Mantei called Palermo and instructed him to sell a J.P. Turner customer's 30,000 face amount Fresno HE2 Bond with the caveat that Mantei planned to buy it back later that week to sell to other J.P. Turner customers. RP 3225A, 3225, 2289-90. Mantei explained:

> **Mantei**: Next, I need to cross this Fresno. It's the one that ends in HE2. . . . So I need a cross level where I can fill it today and then buy it back maybe Friday. And yet make some money on the damn thing. . . . I'm going to send you this ticket that's selling at 97.11. And then don't go selling it in the street and I'll buy it back from you on Friday.

RP 3225A, 3225. Approximately 10 minutes later, Mantei and Palermo spoke again. Palermo told Mantei he needed to talk about "that cross" and informed Mantei that, consistent with the J.P. Turner cross trade policy, Mantei could "only take commissions on a cross, you know, one sided."[6] RP 3229A, 3229. Mantei said he was aware of the limitation but explained in further detail how he intended to circumvent the cross trade policy by having Palermo insert counterparties in sham transactions:

> **Mantei**: Wait a minute, wait a minute, wait a minute, wait a minute.

[6] As discussed above (*see supra* II.B), J.P. Turner's cross trade policy only allowed the firm to charge a markup/markdown as if the cross trade were a single transaction and the buyer and seller split this cost.

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> I was gonna get you to just sell them somewhere like you've done in the past. You know, give them a quarter or a half or whatever the hell they want and then we'll just buy it back. How about that?
>
> **Palermo**: Well, see, you told me not to sell it to the street. That's what you just told me.
>
> **Mantei**: But not to the f—ing street, but if you've got someone that'll do us a favor, that's what I'm trying to get you to do.
>
> **Palermo**: Okay. Let me work that trade then.

RP 3229S, 3229.

Three days later, Mantei asked Palermo, "have you got somebody that you could sell it to so that we could buy it back on Monday?" RP 3223A, 3233. Palermo responded, "I'm going to try to find that guy right now, whoever I can find to work with me on that." RP 3233A, 3233. Palermo then assured Mantei that he would get someone to do the transaction. RP 3233A, 3233.

Later that day, J.P. Turner bought the 30,000 face amount Fresno HE2 Bond from a customer at 94.61 and, following Mantei's instructions to Palermo, J.P. Turner sold it to RBC Capital Markets LLC ("RBC") at 97.11 through an order ticket submitted from Mantei's branch office. RP 3148, 3603-07.

On the following Monday, December 29, 2014, Mantei called Palermo to discuss repurchasing the position. RP 3237A, 3237. Referencing the "30 Fresnos" he sold on Friday, Mantei asked if there was "any problem with me buying them back now today at par." RP 3237A, 3237. Palermo explained that would not be a problem: "I just got to go get them." RP 3237A, 3237. Palermo continued that the other trader "was putting a quarter on that," and the repurchase price would be 97.36—.25 more than the sale price of 97.11. RP 3237A, 3237. Mantei told Palermo, "I got two tickets for 10 each and I'll send you the third for 10 today." RP 3237A, 3237. Later that day, J.P. Turner repurchased the Fresno HE2 Bond from RBC at a price

of 97.36 and sold the Fresno HE2 bond in three $10,000 transactions to three customers in three separate transactions at a price of 99.96. RP 3148, 3611, 3613. As a result of concealing what was in reality a cross trade, the total markup/markdown paid by the selling customer and ultimate purchasers was 5.1%, exceeding the 2.6% limit in J.P. Turner's cross trade procedures. RP 3148, 3629, 3633.

None of the order tickets or other trade records for these transactions reflected Mantei's instructions to Palermo about the prearranged trade or disclosed a cross trade. RP 3603, 3611, 3613. To the contrary, the word "CROSS" was scribbled out on the customer sell ticket, indicating falsely that the sales to and from the market were bona fide arms-length transactions. RP 3603.

3. The Citibank FN6 SCD Transactions

Two months after his second success interposing a sham prearranged trade to conceal trades between two J.P. Turner customers, Mantei again asked Palermo to engage in another prearranged scheme with respect to another fixed income product—the Citibank FN6 SCD. Given their previous conversations and experiences, Mantei was able to implement the scheme using more circumspect language in his conversations with Palermo.

On February 25, 2015, Mantei called Palermo and asked whether he had anyone who could hold the Citibank FN6 SCD "in inventory." RP 3239A, 3239. He continued: "[W]e need to sell today but we'll turn around and buy tomorrow." RP 3239A, 3239. Palermo responded, "Yeah I just got to have somebody to take them . . . ." RP 3239A, 3239. Palermo told Mantei he would call "the ones who do it for me"—i.e., the willing counterparties—and instructed Mantei to send him the ticket. RP 3239A, 3239.

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About 15 minutes later, Mantei called and asked Palermo, "You want me to send you that ticket on the 40, Citibank, that [FN6]." RP 3241A, 3241. Palermo responded, "Yeah, let me massage that. I just tried to get someone to take it and I'll take care of you." RP 3241A, 3241.

Although Mantei intended that the ultimate purchaser of the SCD would be a J.P. Turner customer, Mantei confirmed with Palermo that he should not write "cross" on the order ticket. RP 2289-90, 3241A, 3241. Palermo agreed, remarking "We're not crossing it." RP 3241A, 3241. Mantei replied, "So I'm taking that off, alright, and I'm sending you the ticket now." RP 3241A, 3241. Consistent with that conversation, the order ticket for the sale of the SCD contains a blacked-out circle where the word "CROSS" was usually written. RP 3615.

About an hour later, Palermo told Mantei that while setting up "this favor" on the Citibank FN6 SCD for Mantei, he learned that the counterparty had another "50 on the other side." RP 3245A, 3245. Palermo asked if Mantei could use them, "[C]ause then I can bring back 90." RP 3245A, 3245. Mantei declined the additional purchase, remarking "[N]obody wants them." RP 3245A, 3245. Later that day, J.P. Turner bought the 40,000 face amount Citibank FN6 SCD at 90.45 from a J.P. Turner customer and immediately sold the position to firm Janney Montgomery Scott at 93.00. RP 3149, 3615-17.

The next day, Mantei telephoned Palermo and asked if he could "drop" an order ticket "for those Foxtrots." RP 3247A, 3248-49. Palermo agreed and reminded him, "[W]e got to pay a little bit" to complete the repurchase, noting that he would buy back the position at 93.25. RP 3247A, 3249. Mantei confirmed that the position would then be sold to a customer at 95.50 and told Palermo he would send him the ticket. RP 3247A, 3249.

That afternoon, J.P. Turner repurchased the Citibank FN6 SCD in two transactions from Janney Montgomery Scott at a price of 93.15, which included a .15 payment (not .25 as Mantei

and Palermo had previously discussed) to the firm for temporarily holding the position. RP 3149. J.P. Turner then sold the position to a J.P. Turner customer at a price of 95.50. RP 3149, 3619-22. The total markup/markdown paid by the selling customer and ultimate purchaser was 4.9%, which exceeded the 2.6% limit in J.P. Turner's cross trade procedures. RP 3147, 3629, 3633. Neither the order ticket nor any other trade records for these transactions reflected Mantei's instructions to Palermo about the prearranged trade or disclosed a cross trade. RP 3619-22. To the contrary, the word "CROSS" was blacked out from the sell ticket, again falsely indicating that the interposed transactions with Janney Montgomery Scott were bona fide arms-length transactions. RP 3615.

III. PROCEDURAL BACKGROUND

On August 1, 2019, FINRA's Department of Enforcement ("Enforcement") filed a two-cause complaint against Mantei. RP 5-16. Cause one alleged that Mantei acted unethically in violation of FINRA Rule 2010 with respect to the Wells Fargo R66 SCD and Citibank FN6 SCD transactions by circumventing J.P. Turner's WSPs related to cross trades and engaging in prearranged trading in contravention of J.P. Turner's prohibition against such trading. RP 10. Cause two alleged that Mantei engaged in the same pattern of misconduct related to the Fresno HE2 Bond transactions, in willful violation of the fair dealing requirements of MSRB Rule G-17. RP 14-15.

After a five-day hearing, the Hearing Panel found Mantei liable for the violations as alleged in the complaint. RP 1645-3146, 3945-85. For violating FINRA Rule 2010, the Hearing Panel suspended Mantei from associating with any FINRA member in any capacity for a period of 30 business days and fined him $10,000. RP 3984. For violating MSRB Rule G-17, the

Hearing Panel suspended Mantei from associating with any FINRA member in any capacity for a period of 30 business days and fined him $5,000. RP 3984. The Hearing Panel imposed the suspensions concurrently. RP 3984. As a result of Mantei's willful violation of MSRB Rule G-17, he was subject to statutory disqualification. RP 3980; *See* 15 U.S.C. § 78c(a)(39).

Following Mantei's appeal and Enforcement's cross-appeal, RP 3987-3994, the NAC affirmed the Hearing Panel's liability findings. RP 4357-89. The NAC noted that Mantei's liability was premised on his words on the audiotapes directing Palermo to find counterparties to buy instruments coupled with the promise that he would buy them back. RP 4381. The NAC noted that Mantei's misconduct related to the SCD transactions was within the broad range of unethical business-related misconduct proscribed by FINRA Rule 2010. RP4371-72. The NAC also found that Mantei's misconduct related to the Fresno HE2 Bond was a deceptive, dishonest, and unfair practice in the conduct of the firm's municipal securities activities violative of his duty to deal fairly. RP 4376-77. The NAC further found that Mantei's misconduct—i.e., directing Palermo to use prearranged trades involving the Fresno H2 Bond to circumvent J.P. Turner's cross trade policy—was voluntary and thus willful. RP 4377. The NAC also found that Mantei knew, or was reckless in not knowing, that directing prearranged trading of the Fresno H2 Bond in contravention of the firm's prohibition against prearranged trading to circumvent the firm's cross trade policy was improper. RP 4377.

The NAC found that the sanctions imposed by the Hearing Panel were insufficiently remedial given Mantei's serious misconduct and the applicability of several aggravating factors and thus increased the sanctions. RP 4385-89. For Mantei's unethical conduct in violation of FINRA Rule 2010, the NAC suspended Mantei from associating with any FINRA member in any capacity for three months and imposed a $10,000 fine. RP 4388. For Mantei's violation of

MSRB Rule G-17, the NAC suspended Mantei from associating with any FINRA member in any capacity for three months and imposed a $5,000 fine. RP 4388. The NAC imposed the suspensions consecutively, noting that the violations for causes one and two involve separate rules and raise separate, serious regulatory concerns. RP 4388. Finally, finding that Mantei would benefit from relearning the foundational principles for acting as a general securities representative, the NAC ordered Mantei to requalify by examination as a general securities representative. RP 4388.

On June 27, 2023, Mantei filed this appeal with the Commission.[7] RP 4395-97.

IV. ARGUMENT

This is a simple case. Mantei's liability is premised almost entirely on his own words in audiotaped conversations he had with Palermo directing him to find counterparties willing to buy instruments coupled with the promise that Mantei would buy them back at a higher price for the purpose of avoiding the firm's cross trade policy. Faced with this incontrovertible evidence,

[7] Along with his brief, Mantei filed a motion for oral argument (the "Motion"). FINRA opposes the Motion. Commission Rule of Practice 451 provides that "[t]he Commission will consider appeals, motions and other matters properly before it on the basis of the papers filed by the parties without oral argument unless the Commission determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument." 17 C.F.R. § 201.451(a). Mantei asserts that the Commission's consideration of this appeal "would be significantly aided by oral argument," but merely cites the voluminous record and Mantei's counsel's command of the "relevant facts." Motion at 1. As discussed below (see *infra* Part III), this is a simple case based on established precedent and undisputed evidence, and Mantei has not presented any legitimate reason to disturb the NAC's findings of liability or the sanctions that the NAC imposed. Other than Mantei's general assertion in his Motion, Mantei has not established he meets the standard for oral argument Rule 451. *See* 17 C.F.R. § 201.451. To the contrary, "the issues have been thoroughly briefed and can be adequately determined on the basis of the record." *FCS Sec.*, Exch. Act Release No. 64852, 2011 SEC LEXIS 2366, at *38 n.42 (July 11, 2011), *aff'd*, 539 F. App'x 7 (2d Cir. 2013) (denying a motion for oral argument).

Mantei seeks to avoid liability by obfuscating the NAC's findings with repetitive, irrelevant, and, at times, incoherent arguments and claims. Mantei repeatedly points to "undisputed facts" that he claims undermine the NAC findings. But nothing Mantei relies on changes the simple fact that Mantei himself explained, in his own recorded words, his unethical prearranged trading scheme and his purpose of avoiding the cross trading policy.

On appeal, Mantei repeats the arguments that the NAC correctly rejected. Mantei's reliance on inapposite and distinguishable case law is unpersuasive. To the contrary, the record evidence and applicable law support unequivocally the NAC's liability findings and the sanctions it imposed, and Mantei offers nothing to merit overturning FINRA's action. The Commission therefore should affirm the NAC's decision in all respects and dismiss Mantei's appeal.

A. Mantei's Unethical Misconduct Related to Directing the Wells Fargo R66 SCD and Citibank FN6 SCD Transactions Violated FINRA Rule 2010

By directing prearranged trading in the SCDs for the purpose of circumventing his firm's cross trading procedures, Mantei engaged in unethical business-related misconduct. This misconduct violated the ethical standards expected of securities industry members under FINRA Rule 2010. The record, including Mantei's recorded words explaining the cross trading scheme and the purpose avoiding his firm's cross trade policy, support the NAC's findings of violations with respect to the SCDs. Therefore, the Commission should affirm these findings.

FINRA Rule 2010 requires that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[8] When an

[8] FINRA Rule 2010 applies also to persons associated with a member, like Mantei, under FINRA Rule 0140(a).

alleged violation of FINRA Rule 2010 is not premised on the violation of another FINRA rule, "the respondent [must have] acted unethically or in bad faith." *Kimberly Springsteen-Abbott*, Exch. Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020), *petition for review dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. 2021). The Commission has stated that "[u]nethical conduct is that which is not in conformity with moral norms or standards of professional conduct, while bad faith means dishonesty of belief or purpose." *Id.*

1. Mantei's Misconduct Was Business-Related

The record supports the NAC's findings that Mantei's misconduct related to the Wells Fargo R66 SCD and Citibank FN6 SCD was business-related. Mantei's misconduct unquestionably occurred in the context of his business-relationship: Mantei directed prearranged transactions through his firm, which violated J.P. Turner's prohibition against prearranged trading, to disguise what would have been cross trades between J.P. Turner customers but for the interposed counterparties. Mantei thereby evaded the enhanced supervisory procedures that applied to cross trades under the firm's cross trade policy and the limits on markups for cross trades. Moreover, with respect to the Wells Fargo R66 SCD transactions, Mantei circumvented an explicit instruction from J.P. Turner's CCO, Woll, prohibiting the use of a cross trade. Mantei deceived his member firm about the true nature of the transactions to circumvent enhanced supervisory procedures meant to protect firm customers. Mantei's misconduct demonstrates his cavalier attitude towards and inability "to comply with regulatory requirements fundamental to the securities business" and falls squarely within the scope of FINRA Rule 2010. *See James A. Goetz*, 53 S.E.C. 472, 477-78 (1998).

Unable to contest the merits of FINRA's action, Mantei instead argues that FINRA does not possess jurisdiction to discipline him for his unethical misconduct because the SCDs are not

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securities. Br. 13.[9] Mantei's argument misses the point and ignores well-established precedent. The violation here centers on Mantei's unethical business-related conduct, which falls squarely within the scope of Rule 2010.[10] Thus, the Commission should reject Mantei's baseless jurisdiction claims.[11] As the Commission has explained repeatedly, FINRA Rule 2010 "encompass[es] business-related conduct that is inconsistent with just and equitable principles of trade, *even if that activity does not involve a security*." *Grivas*, 2016 SEC LEXIS 1173, at *10. It is not necessary for the conduct to "relate to the associated person's customers or to a securities transaction in order to be covered by Rule 2010." *Id*. at *17. Thus, the fact that Mantei's unethical conduct involved a banking product rather than a securities product is incidental and irrelevant.

Mantei's attempt to distinguish Commission precedent by asserting none of those cases involved "a banking product" is unpersuasive. Br. 14. To wit, the Commission has affirmed violations of FINRA Rule 2010 in cases that did not involve securities. *See, e.g.*, *Keilen Dimone Wiley*, Exch. Act Release No. 76558, 2015 SEC LEXIS 4952, at *11 (Dec. 4, 2015) ("Wiley's unethical, business-related conduct, even while performing insurance-related activities, falls under FINRA's jurisdiction."); *Blair Alexander West*, Exch. Act Release No. 74030, 2015 SEC

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9 "Br. _" refers to pages numbers in Mantei's opening brief filed October 30, 2023.

10 Although Mantei frames his argument as challenging FINRA's jurisdiction, it "is more appropriately understood as addressing whether the facts alleged are actionable under [FINRA] Rule 2010." *Stephen Grivas*, Exch. Act Release No. 77470, 2016 SEC LEXIS 1173, at *14 n.15 (Mar. 29, 2016). Significantly, Mantei does not dispute that FINRA had jurisdiction to bring this disciplinary action against him. *See* 15 U.S.C. § 78o-3(b) and (h); FINRA By-Laws of the Corporation Articles V and XIII.

11 Mantei incorrectly asserts that the NAC failed to address his jurisdiction argument. Br. 13. To the contrary, the NAC analyzed Mantei's argument and held that the FINRA had jurisdiction and that his conduct was actionable under FINRA Rule 2010. RP 4371-72.

LEXIS 102, at *25 (Jan. 9, 2015) ("We reject West's claim that FINRA lacked jurisdiction to bring this action because [t]he underlying transaction was not a securities transaction."); *Ernest A. Cipriani Jr.*, 51 S.E.C. 1004, 1006 (1994) (finding that the respondent converted and misappropriated cash payments for life insurance premiums in violation of FINRA's then existing rules of fair practice).

FINRA Rule 2010 is applied correctly when, as is the case here, wrongdoing reflects on the capacity of a member or an associated person "to comply with the regulatory requirements of the securities business and to fulfill [their] fiduciary duties in handling other people's money." *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002). The rule encompasses all business-related unethical conduct because while a particular instance of unethical conduct may not involve securities, the willingness to engage in such conduct raises the risk of future unethical conduct. *See Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975).

2. Mantei's Conduct Was Unethical

Mantei's prearranged trading in the SCDs was unethical. Unethical conduct is that which is "not in conformity with moral norms or standards of professional conduct." *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *28. Mantei misled J.P. Turner and circumvented the firm's cross trade procedures, which were designed to protect customers and to prevent unfair markups. By directing Palermo to have an external counterparty hold a position temporarily in a prearranged trade interposed between a customer-to-customer trade, Mantei disguised cross trades. By circumventing the cross trade policy, Mantei impeded J.P. Turner's supervision of his trading activities and deprived customers of the protection of the cross trade procedures. Mantei avoided the requirement that he document the benefit of the trade to the buyer and the seller, did

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not have to mark the value of the SCD to the market, and did not limit the firm's markup to that for a single trade in accordance with the firm's maximum markup/markdown guidelines.

Mantei's wrongdoing in connection with the Wells Fargo R66 SCD transactions is especially troubling. After Woll explicitly told him not to do a cross trade, Mantei nevertheless devised a strategy to use prearranged trades with a broker-dealer counterparty for the purpose of concealing what was in effect a sale from one firm customer to another firm customer. According to his own words, Mantei did so to avoid contributing to a financial settlement with a complaining customer that would trigger a reportable event to FINRA. In doing so, Mantei sold the Wells Fargo R66 SCD to a J.P. Turner customer at a price significantly higher than the firm was able to get from the market, but sufficient to compensate the complaining customer without a reportable settlement payment. This conduct, which Mantei described in his own recorded words, was patently unethical.

The NAC appropriately concluded that Mantei's conduct was unethical and reflects negatively on his ability to comply with regulatory requirements fundamental to the securities industry. *See Thomas W. Heath, III*, Exch. Act Release No. 59223, 2009 SEC LEXIS 14, at *18 (Jan. 9, 2009) (holding that the fact that respondent's conduct violated internal firm compliance policies "inform[ed]" determination of whether his conduct was unethical), *petition denied*, 586 F.3d 122 (2d Cir. 2009). The Commission should therefore affirm FINRA's finding that Mantei's conduct violated FINRA Rule 2010.

B. Mantei's Conduct Related to Directing the Fresno HE2 Bond Transactions Violated MSRB Rule G-17

The record similarly demonstrates that Mantei's conduct related to the Fresno HE2 Bond transactions violated MSRB Rule G-17. MSRB Rule G-17 provides that, "[i]n the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities

dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." According to MSRB's interpretive guidance, MSRB Rule G-17 "establishes a general duty of a dealer to deal fairly with all persons . . . even in the absence of fraud." *Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities* (Aug. 2, 2012), http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2.

Following the pattern of the Wells Fargo R66 SCD and the Citibank FN6 SCD transactions, Mantei directed sham, prearranged trades involving the Fresno H2 Bond for the purpose of circumventing J.P. Turner's cross trade policy. The NAC correctly found that a reasonable associated person in Mantei's position would know that disguising a cross trade by directing a trader to find a counterparty to compensate for the "favor" of holding an instrument that he intended to bring back and sell to a firm customer violated the requirements of fair dealing. The NAC appropriately concluded that Mantei's deceptive, dishonest, and unfair practice in the conduct of the firm's municipal securities activities violated his duty to deal fairly and thus violated MSRB Rule G-17.

Faced with the incontrovertible evidence of his violative conduct, Mantei repeats irrelevant claims he argues negate his liability. Mantei argues that he cannot be held liable because FINRA failed to establish that Palermo or any other J.P. Turner spoke to a counterparty, that Palermo executed any of the Fresno HE2 Bond transactions himself, and that Mantei had a particular customer in mind to ultimately buy the Fresno He2 Bond. Br. 29-30. Mantei's arguments mischaracterize the basis for NAC's findings of his MSRB Rule G-17 violations and should be rejected.

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As the NAC explained, Mantei's liability is premised on his actions, as evidenced by his words on the audiotapes, directing Palermo to find a counterparty to buy the Fresno HE2 Bond with the promise to buy it back. Mantei does not deny or even attempt to explain away his words on the audiotapes. Nor can he. The audiotapes reflect the scheme Mantei wanted to implement, and the trade records reflect that the transactions happened the way he directed. Thus, it can be inferred that Palermo or another trader spoke to a counterparty. Moreover, whether Palermo or another trader executed the actual trade or whether Mantei had a particular customer in mind to purchase the Fresno HE2 Bond is irrelevant to Mantei's liability based on his words directing the trading scheme. Additionally, that the counterparty held the instrument for a week simply reflects Mantei's scheme to engage in sham transactions and does nothing to negate Mantei's liability.

Mantei argues that his violations were not willful. Br. at 30. FINRA's willful finding is well supported by the record and established precedent. Mantei's actions that form the basis of his liability—i.e., directing Palermo to use prearranged trades involving the Fresno H2 Bond to circumvent J.P. Turner's cross trade policy—were voluntary and his conduct was at least reckless. *See Ernst & Young, LLP*, Initial Decisions Release No. 249, 2004 SEC LEXIS 831, at *152 (Apr. 16, 2004) (defining recklessness as an "extreme departure from the standards of ordinary care, and which presents a danger . . . that is either known to the [actor] or is so obvious that the actor must have been aware of it"). Mantei consciously directed Palermo to sell the Fresno H2 Bond with the intention to repurchase it. He knew, or was reckless in not knowing, that directing prearranged trading of the Fresno H2 Bond was in contravention of the firm's prohibition against prearranged trading and that circumventing the firm's cross trade policy was improper.

In sum, the evidence definitively establishes Mantei directed Palermo to use prearranged trades involving the Fresno H2 Bond to circumvent J.P. Turner's cross trade policy, in willful violation of MSRB Rule G-17. Accordingly, the Commission should affirm FINRA's findings.

C. Mantei's Other Arguments Mischaracterize J.P. Turner's Policies and Reflect a Fundamental Misunderstanding of His Liability

Faced with incontrovertible evidence establishing his violation of FINRA Rule 2010 and MSRB Rule G-17, Mantei makes a variety of meritless arguments on appeal. These arguments reflect a fundamental misunderstanding the NAC's liability findings and misrepresentation of the facts underlying the NAC's decision. On appeal, Mantei points to myriad undisputed facts, none of which FINRA disregarded, but all of which were immaterial and thus did not affect the NAC's liability determinations. His arguments are utterly devoid of merit, and the Commission should reject them.

1. J.P. Turner's Cross Trade Policy Applied to SCDs

First, Mantei asserts that he did not violate J.P. Turner's WPSPs, so he could not be found liable. Br. 22. Specifically, Mantei argues he could not have circumvented the cross trade policy in connection with the Wells Fargo R66 SCD transactions or Citibank FN6 SCD transactions because (i) J.P. Turner's cross trade policy applied only to bonds, not SCDs; and (ii) the transactions did not involve cross trades. Br. 22-23.

The NAC, like the Hearing Panel, agreed that the totality of the evidence established that the transactions were cross trades "in substance," which would have triggered J.P. Turner's cross trade policy but for the prearranged trades with external counterparties that Mantei directed Palermo to insert. RP 4374. The instruments all "reach[ed] the market" and were not "executed internally" only as a result of the sham transactions directed by Mantei. Mantei's instructions to Palermo to locate a counterparty to temporarily hold the position were to disguise what otherwise

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would have been a cross trade between customers but for the interposed counterparties. The fact that Mantei did not have a particular customer lined up to purchase the SCDs when they were sold to counterparties does not negate the fact that Mantei directed prearranged trading to circumvent the applicability and requirements of the firm's cross trade procedures.[12] Mantei's liability is premised on his circumvention of his firm's WSPs by directing prohibited prearranged trading, not whether or not the transactions themselves, as directed by Mantei, were technically cross trades. The transactions were not cross trade under the policy because of Mantei's explicit instructions meant to circumvent the policy.[13]

Contrary to Mantei's assertions, the NAC's decision contains extensive analysis as to why J.P. Turner's cross trade policy applied to the SCDs at issue. RP 4374-75. Woll, who drafted the cross trade policy, testified that it applied to all fixed income products, including the SCDs. RP 2404-06, 2702-03. Moreover, Woll's testimony was corroborated by other evidence. Mantei conceded that the trading desk that handled orders for all fixed income products, including bonds and SCDs, was known as the "bond desk," and Mantei's branch used the same order ticket—known as the "bond ticket"—to place orders for all fixed income products. RP 2353, 2369, 2405-05, 3595.

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[12] While Mantei did not have a particular customer in mind to purchase the SCD, he testified he knew he had "enough [customers] in the reservoir to fill the trade." RP 2285-87. He also told Palermo, "I got buyers for [the Wells Fargo R66 SCD]." RP 3153A, 3155.

[13] Mantei incorrectly asserts that the NAC held "that whether the trades were cross trades 'does not matter'" and misconstrues FINRA's liability finding. Br. 24. As the NAC makes clear, Mantei is liable, even if the SCDs transactions were not technically cross trades, because he directed sham transactions specifically executed so the policy would not be implicated. RP 4374-75. That the transactions were not cross trades only shows that the trades were executed successfully in accordance with Mantei's directions to Palermo on the audiotapes.

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Even more damning are Mantei's own actions and words which belie his self-servingly narrow reading of J.P. Turner's cross trade policy. During a recorded call, Mantei and Palermo discussed a cross trade involving another SCD and acknowledged the need to comply with the cross trade policy's markup/markdown limitations and the 2.6% markup guideline that applied to certain "bonds." RP 3411A, 3412, 2115-16, 2389-93, 3629. The trade ticket for the sale of that SCD identified the transaction as a "CROSS," as required by J.P. Turner's cross trade procedures. RP 3415, 2401-02, 2776-78. Mantei does not address any of this evidence because it completely undermines his disingenuous claims on appeal about the applicability of the policy and his assertion that the NAC's analysis was somehow unfair or illogical.[14]

2. Mantei Directed Prearranged Trading

Mantei argues he cannot be liable for directing a scheme of prearranged trading with Palermo because Palermo did not execute any of the purchase orders, and there is no evidence as to how the other trades were accomplished. Mantei's argument mischaracterizes the NAC's findings and is meritless.

Mantei's own words on the audiotapes demonstrate that he devised the scheme to use prohibited prearranged trades to conceal customer-to-customer transactions that otherwise would have been subjected to J.P. Turner's cross trade procedures. Mantei explicitly instructed Palermo to locate counterparties to buy the instruments coupled with the promise to buy them back at the same or a higher price. That is the very definition of prearranged trading at J.P.

[14] In support of his incorrect interpretation of J.P. Turner's cross policy, Mantei cites inapposite cases about statutory interpretation and contract law. Br. 23-24. But J.P. Turner's cross trade policy is a firm policy, not a "statute," "rule," or contract, and the cited case law is neither helpful nor relevant. Here, not only did a fact witness, who was the principal drafter of the policy and the firm's CCO, testify about the applicability of the cross policy, but Mantei's own recorded conversations confirm that he understood the policy applies to SCDs.

Turner. RP 3326 (J.P. Turner's WSPs defining prearranged training as "[a]n offer to sell coupled with an offer to buy back at the same or a higher price, or the reverse . . . ."). The record shows that the trades occurred as Mantei directed. The facts that a trader other than Palermo may have executed orders or that other details about the order execution may not have been established makes no difference to the NAC's liability findings based on Mantei's words.

Mantei is incorrect that J.P. Turner's prearranged trading prohibition applied only to trading intended to manipulate the market. Br. 34. While the firm explicitly prohibited prearranged trading because such trading could be deceptive, the prohibition does not require an intent to manipulate. RP 3326. Regardless of whether he intended to manipulate the market, Mantei engaged in unethical and dishonest conduct by directing Palermo to couple his offer to sell the SCDs and bonds with an offer to buy them back at a higher price—conduct which implicated the risk that customers would pay unfair prices and which circumvented limits on the markups and markdowns customers would pay.

3. Mantei Instructed Palermo to Engage in Prearranged Trading to Circumvent J.P. Turner's Cross Trade Policy

Mantei takes issue with the NAC's finding that he "directed" Palermo because Mantei could not execute the trades himself and he did not have authority over the bond desk. Br. 7, 11. Mantei's interpretation of the word "direct" is too narrow and not supported by the context in which the NAC used it. The evidence establishes that Mantei effected transactions in SCDs and bonds for J.P. Turner customers by giving instructions to—i.e., directing—the bond desk. RP 2670-71, 2026-28. The evidence further demonstrates that Mantei primarily dealt with Palermo, and Palermo located counterparties for transactions and negotiated the terms of the transactions based on Mantei's instructions (i.e., directions). RP 2238-40, 2243, 2269, 2430-31. It is not necessary for Mantei to have supervisory authority over Palermo or any trader on the bond desk

to find Mantei liable for, as evidenced by the audiotapes, giving instructions to Palermo to engage in prearranged trades to circumvent the firm's cross trade policy.

Mantei is also incorrect that it was necessary for FINRA to show specifically how the trades were accomplished to find him liable under FINRA Rule 2010 and MSRB Rule G-17. Br. 25. His liability is based on his scheme involving fictitious trades to evade his firm's cross trade policy. That Palermo himself did not execute the trades or that Mantei did not speak to the other traders on the bond desk does not negate Mantei's liability for instructing Palermo to engage in prearranged trading to circumvent the firm's cross trade policy. Facts—not speculation—connect Mantei to the violations: the audiotapes on which Mantei instructed Palermo to execute sham transactions to evade the firm's cross trade policy and the trade records which show that the scheme was implemented in accordance with Mantei's instructions.[15]

D. FINRA Provided Mantei with a Fair Procedure

FINRA is required to provide a fair procedure for disciplining associated persons. 15 U.S.C. § 78o-3(b)(8). This is achieved by filing specific charges, notifying a respondent of those charges, giving him an opportunity to defend himself, and keeping a record of the proceedings. 15 U.S.C. § 78o-3(h)(1).

[15] Mantei's reliance on *David B. Tysk* is misplaced. Br. 27. In *Tysk*, the Commission found that the record did not establish that Tysk acted unethically when he wrote notes of conversations with clients in his firm's computer system months later when there was no evidence that Tysk's notes were false or inaccurate. Exch. Act Release No. 91268, 2021 SEC LEXIS 534, at *16 (Mar. 5, 2021). The Commission held that FINRA cannot base liability on its suggestion that Tysk's purpose for writing notes after the fact was unethical because it is speculative and has no basis in the record. *Id*. at *21. Here, FINRA bases Mantei's liability squarely on the record evidence—i.e., Mantei's words on the audiotapes and trade records. There is no "speculation" that Mantei directed or instructed Palermo to enter into prearranged trades to evade the firm's cross trade policy. His own recorded words conclusively demonstrate that he did.

FINRA satisfied each of these requirements. Nonetheless, Mantei makes a variety of meritless arguments attacking FINRA's process and the Hearing Officer's procedural rulings affirmed by the NAC. These arguments have no support and were rejected by the Hearing Panel and the NAC. The Commission should likewise dismiss these arguments in their entirety.

1. Mantei Had Proper Notice of the Specific Charges Alleged Against Him

Mantei asserts that the NAC inappropriately found him liable on an aiding and abetting theory that was not alleged in the complaint. Br. 30. Mantei is incorrect and again misstates the basis for the NAC's findings.

The underlying complaint alleged that Mantei circumvented J.P. Turner's WSPs related to cross trades and contravened J.P. Turner's prohibition against prearranged trading with respect to the relevant transactions, in violation of FINRA Rule 2010 and MSRB Rule G-17. RP 5-18. Mantei was given the opportunity to defend against the specific charges against him, and both the Hearing Panel and the NAC found him liable as alleged. Thus, FINRA's action complied with Exchange Act. *Cf. David B. Tysk*, Exch. Act Release No. 80135, 2017 SEC LEXIS 645, at *8-9 (Mar. 1, 2017) (remanding action where first cause of action was premised on the violation of firm policy and it was unclear from the decision why FINRA found violations).

Mantei's reliance on fraud case law under Section 10(b) of the Exchange Act concerning secondary liability is misplaced. Br. 31-32. Contrary to Mantei's assertions on appeal, FINRA alleged and the NAC found him liable for his *own* unethical misconduct, not aiding and abetting some other rule violation or specifically fraud. Br. 32-33. Mantei also argues that the lack of evidence of Palermo directing or talking to other J.P. Turner traders or of any other J.P. Turner trader speaking to a counterparty is somehow fatal. Again, Mantei misunderstands the NAC's liability findings: Mantei is liable for *his own* unethical and dishonest conduct as he himself

described in recorded conversations. It was not necessary to show that Palermo or any other trader spoke to the counterparties to find Mantei liable for his unethical conduct as alleged. It also is not necessary for FINRA to bring charges against Palermo for any violations related to the transactions at issue to find Mantei liable.

2. Mantei Was Not Unfairly Prejudiced by Any Delay in This Proceeding

Mantei claims that FINRA's complaint should be dismissed based on FINRA's purported delay in bringing the underlying disciplinary action. Br. 17. There is no basis to dismiss the complaint because Mantei has not established an overall unfairness of the proceedings as a result of any purported delay in filing the complaint or that his ability to mount a defense was harmed by any delay in filing the complaint.[16]

In assessing the overall fairness of a disciplinary proceeding, the Commission considers "the effect that a delay by [the SRO] in the filing of a complaint against a representative may have on the overall fairness of proceedings against the representative." *Mark H. Love*, 57 S.E.C. 315, 323 (2004). While there is no bright line rule about the impact of the length of a delay in filing a complaint on the fairness of the disciplinary proceedings, the Commission considers four different time periods in reviewing whether the SRO proceedings were fair: the time between the filing of the complaint and (1) the initial instance of misconduct, (2) the last instance of misconduct, (3) the SRO's notice of the misconduct, and (4) the initiation of the SRO's investigation. *Id.* at 323-24; *Jeffrey Ainley Hayden*, 54 S.E.C. 651, 653-54 (2000). The

[16] Mantei previously asserted a laches defense before the NAC, but has abandoned that argument before the Commission. *See* Rule of Practice 450(b), 17 C.F.R. § 201.450(b); *cf. mPhase Techs., Inc.*, Exch. Act Release No. 74187, 2015 SEC LEXIS 398, at *26 (Feb. 2, 2015) (finding that applicant abandoned argument that it made in its application for review but not in its subsequent briefs).

Commission also considers whether the respondent's ability to mount an adequate defense was harmed by any delay in the filing of the complaint. *Love*, 57 S.E.C. at 325.

The time periods in this case do not support Mantei's assertion that this proceeding was unfair. In *Hayden*, the Commission found that a disciplinary proceeding was inherently unfair when the charges were not brought until 14 years after the first act of misconduct, six years after the last act of misconduct, five years after the SRO was informed about the misconduct, and three years and six months after the SRO started its investigation. 54 S.E.C. at 653-54. Here, the time between the complaint and the initial misconduct was four years and 10 months (versus almost 14 years in *Hayden*); the time between the complaint and Mantei's last misconduct was four years and five months (versus more than six years in *Hayden*); the time between the complaint and when FINRA first learned of Mantei's misconduct was four years and three months (versus five years in *Hayden*); and the time between the complaint and when FINRA initiated its investigation also was four years and three months (versus three years and six months in *Hayden*). All but one of these four time periods is shorter than the time periods in *Hayden*.[17] Thus, the NAC properly concluded that the timeframes in *Hayden* do not necessarily establish unfairness. *See id.* at 653-54.

Notably, in *Hayden*, the Commission found it significant that the SRO waited two years to open an investigation after being "informed about significant misconduct . . . through a

[17] Mantei complains about inherent unfairness as a result of the period between the start of FINRA's investigation and the filing of the complaint. Br. 20. Of course, Mantei fails to note that the impetus of FINRA's investigation—i.e., J.P. Turner's April 17, 2015 letter reporting the firm's net capital deficiency—did not reference Mantei and, at least initially, did not appear to concern any transactions that involved Mantei. RP 3457-58, 1707-09, 1958-89, 2052-53. Thus, Mantei's assertion that FINRA "became aware of the facts upon which the claims at issue are based no later than April 17, 2015" is disingenuous.

[Footnote continued on next page]

referral . . . to its Division of Enforcement of a 'voluminous' sales practice examination report." *Id*. There was no similar delay by FINRA in this case. Enforcement promptly opened its initial investigation after receiving J.P. Turner's April 17, 2015 letter to FINRA reporting the firm's net capital deficiency. RP 3457-58, 1707-09, 1958. The letter did not reference Mantei and, at least initially, did not appear to concern any transactions that involved Mantei. RP 3457-58, 1707-09, 1958-89, 2052-53. Within three months of J.P. Turner's letter, FINRA requested documents and materials related to the firm's net capital deficiency, including the audiotapes at issue. RP 1958. Considering the voluminous production concerning more than 25,000 transactions during the relevant period, FINRA diligently proceeded with this action, including conducting an on-the-record interview with Mantei on July 7, 2016. RP 1709-11,1956-57, 2006, 3479-3482. Thus, there is no evidence that FINRA delayed this proceeding, or that this proceeding was inherently unfair to Mantei.[18]

Most importantly, Mantei has not shown that his ability to mount an adequate defense was harmed by the purported delay in the filing of the complaint. While Mantei laments the passage of time, the NAC decided this case almost entirely on undisputed facts comprised of recorded telephone conversations and trading records confirming that the trades were executed in

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In yet another instance of insincerity, Mantei argues that FINRA's investigator's testimony that the "time frame of our investigation was 2014 to 2015" (RP 1924) supports Mantei's assertion that the period between the initial investigation and filing of the complaint was "almost five years." Br. 20. But the investigator's testimony was describing the relevant period that FINRA was investigating, not the duration of FINRA's actual investigation. RP 1924.

[18] Mantei complains that, by narrowing the allegations in the complaint from the Wells Notice, he was somehow deprived of notice of what actions he would have to defend. Br. 18. That FINRA ultimately chose to bring *fewer* charges against Mantei in its complaint is hardly reason to complain. There is no question that the Wells Notice included the allegations that were ultimately charged in the complaint. RP 3639-40.

accordance with Mantei's instructions on the audiotapes. As the NAC explained, "[t]his evidence is undisputed and unaffected by any purported delay." RP 4380.

Rather than point to specific, *material* evidence that was not available to him as a result of FINRA's purported delay, Mantei makes broad arguments speculating about hypothetical evidence that might have negated his liability. None of these arguments have merit. First, Mantei argues that by time the complaint was filed, "key evidence and documents" were lost because J.P. Turner was out of business and most of the "key players" were unavailable. Mantei laments his inability to access other J.P. Turner audiotapes, speculating that the tapes "might have confirmed that [Mantei] did not commit prearranged trading or confirm his "regular vague rambling diatribes." Of course, FINRA did not find Mantei liable for "committing" prearranged trading. Regardless, Mantei's argument is speculative at best. Other than these broad statements, Mantei has not explained how additional audiotapes showing Mantei's "vague rambling[s]" would have contributed to his defense or somehow negated the clear and explicit instructions to Palermo upon which his liability is premised.

Mantei also bemoans the unavailability of Palermo as a witness, but fails to address the obvious point made by the NAC that he did not list Palermo as a witness, or request that FINRA issue a Rule 8210 request for his testimony, despite Palmero still being subject to FINRA's jurisdiction when the underlying hearing in this matter was originally scheduled.[19] In addition, even taking as true Mantei's proffer about Palermo's potential testimony—i.e., that he did not work for Mantei, that he was not required to take directions from Mantei, that he was properly

[19] FINRA Rule 9252 permits a respondent to seek an order requiring FINRA issue a request compelling testimony or the production of documents from persons subject to FINRA's jurisdiction.

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supervised, and that he was not disciplined for the conduct at issue[20]—that testimony would have made no difference to the NAC's findings of liability. Further, had Palermo testified that he did not engage in prearranged trading, that testimony would have been belied by the record, which indisputably shows that Palmero agreed to the scheme in the recorded conversation, that Palmero himself executed one of the trades, and that the other transactions were executed in accordance with Mantei's instructions to Palermo.[21]

Next, Mantei contends both his, Woll's, and FINRA's investigator's memories were affected by the passage of time. Although Mantei identifies several instances during the hearing where memories were "spotty," he does not identify any material issue decided against him as a result. That the FINRA investigator could not recall who sat on the J.P. Turner bond desk or incorrectly testified that Palermo entered most of the relevant trades does not in any way affect the NAC's findings that Mantei, through his conversations with Palermo, directed prearranged trading with counterparties in order to circumvent his firm's cross trade procedures. Likewise, Mantei does not articulate with any specificity how Woll's inability to "recall certain non-material information" affected Mantei's defense. Finally, the details of conversations that Mantei had with Woll regarding the Wells Fargo R66 SCD transactions were hardly "critical." As explained by the NAC, the only specific fact that Mantei asserted he could not recall was

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[20] Indeed, the fact that Palermo was not disciplined for his conduct does not absolve Mantei of his violations. *See Charles E. Kautz*, 52 S.E.C. 730, 733 (1996) (holding that it is no defense that others in the industry are also acting improperly).

[21] Mantei also complains that FINRA did not speak to or request documents from the counterparty firms as part of its investigation. Br. 21-22. But Mantei fails to make a coherent argument about what evidence the counterparties could have provided that would have assisted Mantei in his defense or negated liability based on his conversations with Palermo and the firm's trade records. Furthermore, Mantei's failure to request that FINRA issue a Rule 8210 request to any counterparty trader while they were subject to FINRA's jurisdiction makes his argument bemoaning FINRA's choice not to do so ring hollow. Br. 22.

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whether he brought the customer complaint about the Wells Fargo R66 SCD to Woll's attention or vice versa. RP 2698.The NAC did not make any finding against Mantei based on this discrepancy, and Mantei fails to explain why this seemingly inconsequential fact impaired his ability to mount a defense.

Given the dearth of material factual disputes in this case, it is inconceivable how Mantei could have been unfairly prejudiced by purportedly missing documents and faded memories. *See Love*, 57 S.E.C. at 325 ("[FINRA] based its decision on facts that Love did not dispute. Therefore, the testimony of these individuals ultimately was not material."). In sum, Mantei failed to show an overall unfairness of the proceedings as a result of any purported delay in filing the complaint or that his ability to mount a defense was harmed by any delay in filing the complaint. *See Edward John McCarthy*, 56 S.E.C. 1138, 1159-60 (2003) ("McCarthy makes no claim that any witnesses or documents were unavailable as a result of the alleged delay on the part of the Exchange and, therefore, has failed to establish that he was prejudiced as a result.").[22] Mantei has offered no cogent reason why the complaint should be dismissed on fairness grounds, and the Commission should reject his arguments.

3. The Hearing Officer Properly Excluded Mantei's Expert

Mantei argues that the Hearing Officer abused his discretion by excluding his proffered expert's testimony and report on prearranging trading. Br. 34. There is no merit to this argument, and the Commission should reject it.

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[22] In support of his argument about the purported delay and associated unfairness, Mantei cites FINRA, not Commission, precedent and decisions by the FINRA Office of Hearing Officers. Br. 19. The NAC's analysis of its precedent, however, is unassailable and supports its conclusion that the proceeding was not unfair as the result of any purported delay by Enforcement in bringing the action. RP 4382-83.

Under FINRA Rule 9263, a Hearing Officer has discretion to determine whether to reject evidence as "irrelevant, immaterial, unduly repetitious, or unduly prejudicial." *Fuad Ahmed*, Exch. Act Release 81759, 2017 SEC LEXIS 3078, at *55 (Sep. 28, 2017). Adjudicators "have broad discretion in determining whether to admit or exclude evidence, and this is particularly true in the case of expert testimony." *Id*.

The Hearing Officer precluded Mantei's expert, who had no connection to J.P. Turner, from offering general testimony regarding securities industry practices and supervisory standards and from offering "context" and "analysis" of the audiotapes "against both J.P. Turner's internal policies and internal standards." RP 940. In his order denying Mantei's motion for leave to present expert testimony in part, the Hearing Officer explained, "Mantei may not rely upon his expert witness to weigh the evidence and tell the Panel how it should ultimately conclude." RP 940. The Hearing Officer, who has the expertise to evaluate the evidence on prearranged trading without expert testimony, did not abuse his discretion by precluding this testimony. *See U.S. v. Russo*, 74 F.3d 1383, 1395 (2d Cir. 1990) (stating that experts should not "offer[] legal conclusions"); *Ahmed*, 2017 SEC LEXIS 3078, at *56 (holding that a FINRA hearing officer did not abuse her discretion by excluding the proposed expert testimony of a finance professor).

Mantei takes issue with the fact that Woll was permitted to testify about the meaning of J.P. Turner's prearranged trading policy. Br. 34. Unlike Mantei's proffered expert, Woll was a *fact* witness, and Woll had personal knowledge about J.P. Turner's policies and procedures. Indeed, Woll was the firm's CCO and drafted of the firm's cross trade policy. The Hearing Officer properly concluded that Mantei's proposed expert testimony was not relevant and excluded the testimony.

4. The NAC Properly Denied Mantei's Motion to Adduce Additional Evidence

On appeal before the NAC, Mantei tried again to admit his expert's report by filing a motion to adduce, arguing that he sought to "to remedy the Hearing Officer's error in excluding all of [Mantei's] expert's testimony and report on prearranged trading." Contrary to Mantei's arguments, the NAC's denial of Mantei's motion was proper and well supported. RP 4384.

Pursuant to FINRA Rule 9346(b), a motion for leave to introduce additional evidence must demonstrate that there was good cause for the respondent's failure to introduce the evidence in the proceeding before the Hearing Panel, and must explain why the evidence is material. Mantei's proposed evidence fails on both counts. First, Mantei did not fail to introduce the report before the Hearing Panel. In fact, the Hearing Officer rejected it. Thus, Mantei's motion to adduce the expert report on appeal was an attempt to circumvent the Hearing Officer's prior rulings related to expert testimony.

Second, the evidence is not material. Mantei avers that his expert would have testified that "there was no prohibited prearranged trading in this case because, in short, there was no intent to manipulate the market and no harm to the market or any investor" and that Mantei "could not be adjudged to have executed a pre-arranged trade" because he did not personally execute or negotiate the trades. Br. 34. But these issues are not relevant or helpful to the determinations of liability in this case. As previously explained, the findings that Mantei acted unethically are premised on his own words directing Palermo to locate counterparties to buy instruments coupled with an offer to buy them back in an effort to circumvent his firm's cross trade policy. To find Mantei liable for this unethical misconduct under FINRA Rule 2010 and MSRB Rule G-17, it is not necessary to find that he himself executed a prearranged trade or that

Mantei intended to cause market or investor harm. In sum, Mantei failed to sustain his burden to show that his proffered evidence was material.

E. FINRA's Forum is Constitutional

Mantei's claim that FINRA disciplined him through an unconstitutional process is baseless. Br. 35-36. Mantei rests this assertion solely on a concurrence from a motions-panel order granting an injunction in *Alpine Securities Corporation v. FINRA*. *Id.* (citing *Alpine v. FINRA*, No. 23-5129, 2023 U.S. App. LEXIS 16987, at *6-7 (D.C. Cir. July 5, 2023) (Walker, J., concurring). The *Alpine* concurrence that Applicant cites, however, is non-precedential and is inconsistent with decades of Commission and judicial precedents. *See All. for Fair Bd. Recruitment v. SEC*, No. 21-60626, 2023 U.S. App. LEXIS 27705, at *13 n.6 (5th Cir. Oct. 18, 2023) ("To the extent that Petitioner relies on the reasoning identified in one judge's concurrence—that FINRA may be a state actor—that view represents the opinion of one judge at a preliminary stage of a case, prior to merits briefing, . . . and contradicts decades of case law across circuits."); *In re Grant*, 635 F.3d 1227, 1232 (D.C. Cir. 2011) (unpublished orders or opinions do not have precedential effect). Such precedents have consistently rejected attempts like Mantei's to impose on private entities, including FINRA, constitutional requirements reserved for officers and agents of the federal government. *See, e.g.*, *Newport Coast Sec., Inc.*, Exch. Act Release No. 88548, 2020 SEC LEXIS 911, at *43 ("Apr. 3, 2020) ("[T]he Appointments Clause does not apply to FINRA."); *Charles C. Fawcett*, Exch. Act Release No. 56770, 2007 SEC LEXIS 2598, at *14 (Nov. 8, 2007) (finding NASD is "private actor," and not the "government itself"); *All. for Fair Bd. Recruitment,*, 2023 U.S. App. LEXIS 27705, at *10, 18-19 (rejecting claim that "Nasdaq is itself a government entity bound by the Constitution" because, like other securities-industry SROs, it was "not created by the government" nor "under

the direction or control of the SEC in the manner described in *Lebron*"); *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, No. 5:21-CV-071-H, 2023 U.S. Dist. LEXIS 77822, at *39-40 (N.D. Tex. May 4, 2023) (rejecting Appointments Clause and removal claims against the Horseracing Integrity and Safety Authority because, "[l]ike FINRA, the Authority is a private entity"); *Mohlman v. FINRA*, No. 3:19-cv-154, 2020 U.S. Dist. LEXIS 31781, at *14 (S.D. Ohio Feb. 25, 2020) ("Courts have held without exception that FINRA is a private entity and not a state actor.") (collecting cases).

Neither Mantei's reliance on the *Alpine* concurrence, nor that opinion's citation to the Supreme Court's decision in *Lucia v. SEC*, supports overturning these longstanding precedents. FINRA hearing officers are employees of FINRA, a private entity, and they are thus distinguishable from the Commission administrative law judges in *Lucia,* which were unquestionably federal government personnel. *See* 138 S. Ct. 2044, 2051 (2018) ("The sole question here is whether the Commission's ALJs are 'Officers of the United States' or simply employees of the Federal Government."); *Kim v. FINRA*, No. 1:23-cv-02420 (ACR), 2023 U.S. Dist. LEXIS 180456, at *23 (D.C. Cir. Oct. 6, 2023) ("[N]either [*Lucia* nor *Free Enterprise Fund*] addressed the threshold question posed by FINRA's structure—whether FINRA hearing officers are employees of a federal government entity or instrumentality in the first instance."); *Nat'l Horsemen's*, 2023 U.S. Dist. LEXIS 77822, at *42 ("*Lucia* does not resolve an Appointments Clause [or removal requirements] question where the challenged entity is private."); *see also Free Enter. Fund v. Pub. Co. Acct. Bd.*, 561 U.S. 477, 485 (2010) (distinguishing securities industry SROs, of which FINRA is one, from the Public Company Accounting Oversight Board ("PCAOB"), "a Government-created, Government-appointed entity"); *Kim*, 2023 U.S. Dist. LEXIS 180456, at

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*22 ("The Supreme Court's discussion of SROs like FINRA in *Free Enterprise* . . . supports the conclusion that FINRA is likely not a state actor.").

F. The Sanctions that the NAC Imposed Are Remedial and Serve the Public Interest

Based on the seriousness of Mantei's misconduct, including several aggravating factors, the NAC increased the sanctions imposed by the Hearing Panel. The NAC's sanctions are supported by the facts in this case, are consistent with the Sanction Guidelines, are neither excessive nor oppressive, and serve the public interest. The NAC carefully considered all the factors and imposed appropriate sanctions that protect the investing public and correctly reflect the seriousness of Mantei's misconduct.

1. The Sanctions Serve the Public Interest and Are Not Excessive or Oppressive

For Mantei's FINRA Rule 2010 violations, the NAC imposed a three-month suspension in all capacities and a $10,000 fine. RP 4388. The NAC also imposed a three-month suspension in all capacities and a $5,000 fine for Mantei's violations of MSRB Rule G-17. RP 4388. Because the Sanction Guidelines ("Guidelines") do not specifically address the misconduct at issue, the NAC considered the nature of the violations and the Principal Considerations in Determining Sanctions and General Principles Applicable to All Sanction Determinations. RP 4385; *See FINRA Sanction Guidelines* 2-8 (2020), https://www.finra.org/sites/default/files/2021-10/Sanctions_Guidelines_2020.pdf [hereinafter "*Guidelines*"]. Contrary to Mantei's assertions on appeal, the NAC detailed no less than five aggravating factors and thoughtfully analyzed and considered how the imposed sanctions would properly remediate Mantei's unethical conduct. RP 4385-89.

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First, Mantei's conduct was, at a minimum, reckless. RP 4385; *Guidelines*, at 8 (Principal Considerations in Determining Sanctions, No. 13). As a 40-year veteran in the securities industry and self-described "expert in fixed-income products," Mantei knew, or was reckless in not knowing, that the prearranged trading arrangements he devised and directed to circumvent the firm's cross trade procedures were improper. RP 4385. Mantei's claim that he was unaware of the applicability of the cross trade policy to the transactions at issue does not withstand scrutiny, particularly in light of his words on the audiotapes about avoiding the policy and declining to inform Woll of his actions.

Second, Mantei concealed his misconduct from J.P. Turner. RP 4385-86; *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 10). Although Mantei discussed his prearranged trading scheme on recorded telephone calls, he took additional steps to conceal his misconduct, including agreeing with Palermo not to tell Woll about the prearranged trading arrangements (RP 3153A, 3156, 3177A, 3177), splitting up repurchases into multiple transactions and making the trades look "realistic" by adding a percentage of a point (RP 3201A, 3202), and ensuring that the order tickets did not reference a cross trade (RP 3241A, 3241, 3599, 3601, 3603, 3611, 3613, 3615, 3619-22). Noting these actions evince the "inherently deceptive" nature of his conduct, the NAC found Mantei's acts "demonstrate a conscious disregard for the wrongfulness of his actions and aggravate his misconduct." RP 4385-86.

On appeal, Mantei conveniently ignores his additional steps to conceal his misconduct recited in the NAC decision, and instead summarily asserts that the record does not support the NAC's finding that his conduct was "inherently deceptive." Br. 38-39. Mantei also misrepresents the record when he asserts that trade tickets are "clear"—in fact, none of the order tickets or other trade records for the transactions reflected Mantei's instructions to Palermo about

the prearranged trades or disclosed what were in effect disguised cross trades, and, for two of the transactions, the word "CROSS" was scribbled out on the sell ticket. RP 3241A, 3241, 3599, 3601, 3603, 3611, 3613, 3615, 3619-22. Mantei ignores that J.P. Turner's WSPs required that any instructions relating to a trade accompany the order ticket. RP 3300-01, 3378. Mantei also ignores that his scheme to interpose counterparties allowed him to avoid providing additional documentation explaining how the transactions benefited the customers—explanations he otherwise would have been required to submit along with the order ticket. RP 3631-33. Thus, the record belies Mantei's claim that there is no evidence of deceit by him.

Next, the NAC found Mantei's conduct exhibited a pattern of misconduct that included multiple acts over a period of time and involved planning, multiple conversations with Palermo, and three sets of transactions. RP 4386; *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 8). On appeal, Mantei ignores the evidence recited by the NAC of the multiple acts comprising his pattern of wrongdoing and conflates separate principal factors considered by the NAC. Br. 39. The NAC did not consider the number of transactions aggravating, but instead found that size and character of the transactions themselves—which involved thousands of dollars—were not insignificant. RP 4386; *Guidelines*, at 8 (Principal Considerations in Determining Sanctions, No. 17). The NAC also appropriately found that the multiple acts involved in each effecting transaction evinced a pattern of misconduct. RP 4386. The NAC's findings are supported by the record and common sense.

Additionally, the NAC found it aggravating that Mantei's conduct put the buying and selling customers at risk by circumventing J.P. Turner's cross trade policy. RP 4386. As explained by the NAC, because of his scheme, Mantei did not need to document the benefit of the trade to the buyer and the seller, did not have to have the value of fixed income product

marked to the market, and did not need to limit the firm's markup in accordance with the firm's maximum markup/markdown guidelines. RP 3631-33. As a result, the customers were at risk of paying more than the market value of the products and paying excessive markups and markdowns. On appeal, Mantei only notes the lack of actual customer harm but declines to address the risks to customers and the procedures he circumvented that provided customer protection. Contrary to Mantei's assertions, the NAC did not disregard the absence of customer harm, but followed well-established precedence holding that the lack of customer harm is not mitigating.[23] *See KCD Fin. Inc.*, Exch. Act Release No. 80340, 2017 SEC LEXIS 986, at *48 (Mar. 29, 2017) (finding that the absence of customer harm is not mitigating). Moreover, the list of Principal Considerations in Determining Sanctions is "illustrative, not exhaustive." *Guidelines*, at 7. Thus, the NAC was well within is discretion when it found that putting buying and selling customers at risk was aggravating. *See Blair C. Mielke*, Exch. Act Release No. 75981, 2015 SEC LEXIS 3927, at *45 (Sept. 24, 2015) ("[T]he violations at issue harmed the customers by depriving them of [the firm's] supervision of their investments, regardless of whether the investors suffered financial harm.").

Finally, the NAC found Mantei's lack of remorse aggravating. RP 4387; *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2). While Mantei is "entitled to present a vigorous defense," the NAC found that his "continued denial that his conduct was wrongful demonstrates either a misunderstanding or a lack of recognition of his duties as a professional

[23] On appeal, Mantei confuses the concept of aggravation for customer harm in FINRA's disciplinary process with "the regulatory mission of FINRA is to protect investors and strengthen market integrity." Br. 39-40; *Guidelines*, at 1. FINRA imposes sanctions for many violations that do not result in direct customer harm, and Mantei's suggestion that sanctions are less purposeful because they do not award mitigation for the lack of customer harm is nonsensical.

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and of his regulatory obligations." RP 4387. Mantei forgets that in the proceedings below, including on appeal before the NAC, he persisted in attempting to shift blame to others, including by suggesting in the face if his recorded conversations, that the traders on J.P. Turner's bond desk were alone responsible for any misconduct. RP 2550, 2553, 2556-57. Mantei also suggested, and continues to suggest on appeal, that Woll and J.P. Turner's involvement with the Wells Fargo R66 SCD Transactions somehow excuses or otherwise mitigates his misconduct.[24] Br. 3, 4, 17. The NAC disagreed, noting that Mantei's argument overlooks the fact that Woll explicitly told Mantei he could not cross trade the Wells Fargo R66 SCD.[25] Mantei is not being "punished" for his vigorous defense but rather his utter failure to accept responsibility for his serious misconduct or express any remorse or appreciation for his ethical obligations as a broker.

The cases Mantei cites to support his assertion that his lack of remorse should not be aggravating are easily distinguishable. Br. 38. *First City Financial* and *Gunn* concern the lack of remorse as it relates to imposing an injunction to enjoin further violations of the Exchange Act, not as an aggravating factor in FINRA disciplinary proceedings. *See SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1229 (D.C. Cir 1989) (discussing the "lack of remorse" as it related to injunction to enjoin further violations of Section 13(d) of the Exchange Act); *SEC v. Gunn*, No.

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[24] Mantei's assertion on appeal that J.P. Turner's supervisors "approved" the transactions at issue and Woll was "directly involved in all aspects of one [transaction]" (Br. 17) is baseless considering Mantei's numerous steps to conceal his actions, including explicitly discussing with Palermo not telling Woll about the prearranged trade, and the fact that Woll submitted the order ticket to effect the sale of the SCD because he believed it to be a bona fide transaction as a result of the sham transaction Mantei directed.

[25] Mantei complains that the NAC did not cite the record to justify its finding that Mantei continued to l shift and evidenced a lack of remorse. RP 37. But the NAC decision does not contain any record citations and NAC decisions as a matter of course do not include citations to the record. Thus, the lack of record cites in this instance is meaningless. In any event, the record is replete with evidence in support of the NAC's conclusion and this brief cites that evidence.

3:08-CV-1013-G, 2010 U.S. Dist. Lexis 88164, at *23 (N.D. Tex. Aug. 25, 2010) (holding the fact that defendant denied the underlying allegations was insufficient alone to suggest that he was more likely to commit another securities law violation in the context of enjoining him from future violations of Section 10(b) of the Exchange Act).

Adjudicators in FINRA disciplinary proceedings, however, are explicitly instructed to consider the failure to accept responsibility in determining appropriate sanctions for all violations. *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2). Moreover, the Commission has affirmed sanctions determined in part on the basis of a failure to accept responsibility. *See, e.g.*, *Manoff*, 55 S.E.C. at 1165 ("Manoff has not shown any remorse or admitted wrongdoing, and has not provided assurances against a recurrence."); *see also Robert D. Tucker*, Exch. Act Release No. 68210, 2012 SEC LEXIS 3496, at *35-36 (Nov. 9, 2012) (finding that applicant's "persistent attempts to deflect blame onto others . . . suggests that he is likely to engage in similar misconduct in the future").

The NAC justifiably found Mantei's blame shifting troubling because it indicates a propensity for future wrongdoing. The NAC's finding that Mantei's lack of remorse is aggravating is justified, and the sanctions it imposed are necessary to protect the investing public. RP 4387; *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2). Even on appeal, Mantei continues his blame-shifting efforts, asserting he is being held liable for the applicability of the firm's cross trade policy to the transactions at issue despite the fact it was "never communicated" to him. Br. 24. Mantei's continued failure to accept responsibility for his actions only underscores the need for the NAC's increased sanction.

Unlike the Hearing Panel, the NAC declined to find aggravating the potential for monetary gain to Mantei's from his misconduct. RP 4386. Specifically, the NAC found that

there was no evidence that Mantei personally benefitted from any markup or markdown related to the transactions at issue. RP 4386. The NAC's analysis does not mean that its increased sanction is unsupportable. Rather, the NAC's decision to reverse the Hearing Panel's finding that the potential for financial gain was aggravating demonstrates that the NAC conducted an appropriate de novo review and came to a reasoned decision, including with respect to the appropriate sanctions for Mantei's serious violations. The NAC has broad discretion under FINRA rules to modify any Hearing Panel sanction and make its own independent findings. *See* FINRA Rule 9348; *Harry Friedman*, Exch. Act Release No. 64486, 2011 SEC LEXIS 1699, at *25 & n.22 (May 13, 2011). Here, the NAC's sanctions determination is well supported by the record, as evidenced by the thoughtful consideration and analysis in its decision.

Mantei asserts that the NAC found the absence of certain aggravating factors "irrelevant." Br. 38. These factors, which Mantei raised on appeal to the NAC and which the NAC addressed in its decision, are not mitigating and thus do not correspond to a lesser sanction. RP 4387; *see John B. Busacca, III*, Exch. Act Release No. 63312, 2010 SEC LEXIS 3787, at *41 n.77 (Nov. 12, 2010) ("[A] lack of a disciplinary history is not a mitigating factor."), *aff'd*, 449 F. App'x. 886 (11th Cir. 2011); *Keith D. Geary*, Exch. Act Release No. 80322, 2017 SEC LEXIS 995, at *35 (Mar. 28, 2017) (holding that cooperation in a FINRA investigation is not mitigating because associations person has "an 'unequivocal' responsibility to fully cooperate with FINRA"), *aff'd*, 727 F. App'x 504 (10th Cir. 2018); *Manoff*, 55 S.E.C. at 1165-66 (rejecting claim that lack of disciplinary record justifies conduct or a lesser sanction).

In sum, NAC carefully balanced the applicable aggravating factors, lack of mitigating factors, and the nature of Mantei's misconduct and imposed appropriately remedial sanctions that reflect the seriousness of Mantei's violations. Given the seriousness of his misconduct, the

two three-month suspensions and collective $15,000 fine are necessary to protect the investing public and are neither excessive nor oppressive.[26]

2. Consecutive Suspensions Are Remedial and Serve the Public Interest

The NAC ordered that Mantei serve his suspensions consecutively because his misconduct involved different rules and raised separate and serious regulatory concerns. The NAC's assessment is warranted under the circumstances. As explained by the NAC, Mantei made three separate decisions with corresponding multiple acts to circumvent his firm's procedures, thereby circumventing policies that were designed to protect investors. Mantei acted at least recklessly and concealed his actions from his firm. Additionally, Mantei's motivation for the first instance of prearranged trading of an SCD was avoiding disclosure to FINRA of a settlement of a customer complaint, which is independently aggravating. Finally, Mantei continues to blame others for his own misdeeds.

The Guidelines support the imposition of consecutive suspensions in these circumstances. The Guidelines provide that "it *may b*e appropriate to aggregate similar violations if: (a) the violative conduct was unintentional or negligent (i.e., did not involve manipulative, fraudulent or deceptive intent) . . . or (c) the violations resulted from a single systemic problem or cause that has been corrected." *Guidelines*, at 4 (General Principles, No. 4). The Guidelines also provide that, "numerous, similar violations may warrant higher sanctions, since the existence of multiple violations may be treated as an aggravating factor." *Id*. Here, Mantei's misconduct was reckless, inherently deceptive, and resulted from multiple acts of misconduct, including agreeing

[26] Mantei does not challenge the NAC's order that he requalify as a general securities representative. RP 4388. Nor should he. As the NAC held, his misconduct demonstrates a lack of commitment to maintaining fair business practices. Thus requiring him to refamiliarize himself with the rules and foundational principles for acting as a general securities representative is appropriate under the circumstances.

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with Palermo not to tell Woll about the prearranged trading arrangements, splitting up repurchases into multiple transactions to make the trades look "realistic," and ensuring that the order tickets did not reference a cross trade. Moreover, Mantei's misconduct has not been corrected as he continues to fail to accept responsibility for his actions.

In *Michael Frederick Siegel*, the Commission found that FINRA's imposition of consecutive sanctions were neither excessive nor oppressive because, although the applicant's conduct involved the "same underlying conduct," the applicant's violations were different in nature and raised separate public interest concerns. Exch. Act Release No. 58737, 2008 SEC LEXIS 2459, at *46-47 (Oct. 6, 2008). The same is true here. Although Mantei's conduct is the same in that it involved prearranged trading to disguise cross trades, the underlying violations are different, involve different products, and raise separate public interest concerns. The first count of the complaint concerned Mantei's unethical conduct related to the SCD transactions, and the second count of the complaint concerned his deceptive and unfair practice related to the Fresno HE2 Bond transactions.[27] Mantei's misconduct implicated the ethical rules of both FINRA and MSRB, rules designed to prevent harm to fundamentally distinct markets and customers. Imposing concurrent suspensions or a single suspension would undermine the regulatory regime of one set of rules. Mantei violated the ethical standards of two separate regulatory bodies and should be sanctioned for both violations.

In sum, the NAC's imposition of consecutive suspensions is appropriate and necessary to remedy Mantei's serious misconduct.

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[27] Under Section 15A(b)(7) of the Exchange Act, it is FINRA's role to enforce the compliance of FINRA members and their associated persons with MSRB rules. 15 U.S.C. 78o-3(b)(7).

V. CONCLUSION

The record amply supports that Mantei directed Palermo to find counterparties to sell the subject SCDs and bonds coupled with a promise to buy them back in order to evade J.P. Turner's cross trade policy. By doing so, Mantei violated required ethical conduct expected from all FINRA and MSRB members. The sanctions imposed—two consecutive three-month suspensions, fines totaling $15,000, and an order to requalify by examination as a general securities representative—are appropriately remedial and necessary to protect the investing public. Accordingly, the Commission should affirm the NAC's decision in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Megan Rauch, certify that on this 30th day of November 2023, caused a copy of the foregoing Brief in Opposition to Application for Review, In the Matter of the Application of Ricky Alan Mantei, Administrative Proceeding File No. 3-21516 to be served by eFAP on:

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CERTIFICATE OF COMPLIANCE

I, Megan Rauch, certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

I, Megan Rauch, further certify that this brief complies with the Commission's Order Granting Extension of Briefing Word Limit dated November 28, 2023 which permits FINRA to an opposition brief not to exceed 17,000 words. I have relied on the word count feature of Microsoft Word in verifying that this brief contains 16,840 words.

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