BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC

In the Matter of the Application of

Michael Ciro Colletti

For Review of Disciplinary Action Taken by

FINRA

File No. 3-22491

FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

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In the Matter of the Application of

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For Review of Disciplinary Action Taken by

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File No. 3-22491

I. INTRODUCTION[1]

This appeal concerns the sanctions FINRA imposed on Michael Ciro Colletti for his unauthorized and excessive trading in a customer's account. Colletti does not challenge FINRA's findings about his misconduct but rather complains only that the $10,000 fine and eight-month suspension imposed by FINRA are excessive and that FINRA failed to consider his request to produce evidence of his purported inability to pay monetary sanctions. Colletti's claims are baseless.

Colletti's argument that the sanctions are excessive relies exclusively on the claim that FINRA improperly considered as an aggravating factor a FINRA disciplinary action Colletti settled, and for which he served a principal suspension, at the same time he was engaging in the misconduct here. In this regard, Colletti argues that his prior misconduct should be disregarded because it is not identical to the misconduct in this case.

[1] FINRA files this brief today, December 2, 2025, pursuant to the Commission's October 1, 2025 order staying pending administrative proceedings while the Commission was subject to a lapse in appropriations and its November 13, 2025 order lifting the stay and further extending all deadlines by an additional period of 10 days. *See In re: Pending Admin. Proc.*, Exchange Act Release No. 104162, 2025 SEC LEXIS 2846 (Oct. 1, 2025); *In re: Pending Admin. Proc.*, Exchange Act Release No. 104177, 2025 SEC LEXIS 2867 (Nov. 13, 2025).

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Colletti's argument misses the mark. Colletti's prior misconduct involved his failure to supervise cold callers in his office who, as a result, engaged in impermissible sales activities, including using unauthorized scripts that contained misrepresentations and improper questions in communications with customers. Colletti's prior failures to supervise cold callers' sales practice activities, along with his sales practice violations here, exhibit a disregard for FINRA rules intended to protect customers from unethical sales practices. Colletti, accordingly, was properly considered a recidivist in assessing sanctions for his unauthorized and excessive trading.

Colletti's focus on his disciplinary history also ignores the multiple other aggravating factors that support the sanctions FINRA imposed. Colletti engaged in 73 unauthorized trades, 52 of which were also excessive. His violative trades, which continued over the course of almost two years, were in a non-discretionary IRA account for a customer in his sixties who was nearing retirement and had a moderate risk tolerance and investment objectives of income and growth. Colletti's misconduct caused the customer to lose more than $5,000 in an account whose value never exceeded $10,000 and resulted in financial gains to Colletti of almost exactly the same amount as the customer's losses. Colletti's frequent in-and-out trading and repeated purchase and sale of the same securities resulted in an annualized turnover rate and cost-to-equity ratio exceeding 12 and 86 percent, respectively. Colletti's level of trading, and the commissions he himself set for those trades, virtually ensured that his customer would lose money, while Colletti continued making money. Under these circumstances, the sanctions FINRA imposed, which fall nearer the lower end of the relevant recommended range of fines and suspensions in FINRA's Sanction Guidelines, are more than justified.

Colletti also complains that FINRA failed to properly consider his request to introduce evidence of his alleged inability to pay monetary sanctions. Colletti fails to mention, however,

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that FINRA notified him early in these proceedings that it was his burden to prove inability to pay during the hearing. And when he failed to do so and renewed his request to provide this evidence on appeal before the National Adjudicatory Council ("NAC"), FINRA provided him with written instructions on how to move for admission of evidence, as well as with copies of the applicable FINRA rules. Colletti nonetheless failed to file the required motion and instead simply reiterated his alleged inability to pay and renewed his request to provide evidence long after the time for doing so had passed. Colletti thus waived the right to assert an inability to pay defense and the Commission should reject his arguments to the contrary.

The record amply supports FINRA's findings of violations and the sanctions it imposed for Colletti's misconduct. The Commission, accordingly, should sustain FINRA's action in all respects and dismiss the application for review.

II. FACTUAL BACKGROUND

A. Michael Colletti

Colletti has been in the securities industry for more than two decades. He first registered as a general securities representative with a FINRA member in 2002, and as a general securities principal in 2006. RP 1003, 1010.[2]

From December 2014 through December 2016, Colletti was registered as a general securities representative and general securities principal with FINRA member Cardaret, Grant & Co., Inc. ("Cardaret"). RP 999. During that period, Colletti opened several IRA accounts for the

[2] "RP __" refers to the page number in the July 21, 2025 certified record filed by FINRA. "Colletti Br. at __" refers to Colletti's September 9, 2025 Opening Brief in Support of His Application for Review.

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owner and employees of DS Meyer Enterprises, LLC ("DSM"), a commercial site excavation company. RP 488-89, 493-97.

In January 2017, Colletti left Cardaret and registered with FINRA member The Investment Center, Inc. ("ICI"). RP 998-99, 1005. The DSM account holders transferred their accounts to ICI. RP 662-63, 998, 1006.

B. Colletti Settles a Disciplinary Proceeding Brought by FINRA

In July 2017, FINRA filed a complaint against Colletti alleging that he failed to reasonably supervise cold callers in his branch office. RP 1015. On January 29, 2018, Colletti resolved this disciplinary action through an Order Accepting an Offer of Settlement (the "2018 Settlement"). RP 1016-19.[3]

Without admitting or denying the allegations, Colletti consented to the entry of findings that from May 2014 through October 2014, he failed to reasonably supervise cold callers in the branch office for which he was the designated supervisor and branch manager. RP 1016-17; 2018 Settlement at 2. The 2018 Settlement found that Colletti hired these cold callers without following his member firm's written procedures for doing so and that he and another registered representative, with whom Colletti split expenses for the branch, paid the cold callers from the other registered representative's personal banking account. RP 1017; 2018 Settlement at 5. Most of the cold callers were not registered and were not paid by the firm. *Id.* The 2018 Settlement further found that because Colletti failed to enforce the firm's written procedures

[3] *Dep't of Enf't v. Colletti*, No. 2014042520501 (Jan. 29, 2018) (Order Accepting Offer of Settlement), *available at* https://www.finra.org/sites/default/files /fda_documents/ 2014042520501%20Michael%20Ciro%20Colletti%20CRD%204577898%20Order%20jm%20% 282019-1563346167603%29.pdf (referred to herein as "2018 Settlement"). The 2018 Settlement provided, among other things, that Colletti "fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA." 2018 Settlement at 2.

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regarding cold callers, the firm was unaware of some of the cold callers for months and some were not subject to background checks or approved by the hiring committee. *Id.*

The 2018 Settlement also found that despite working in the same room as the cold callers, Colletti either missed or did not act upon red flags that the cold callers were engaging in impermissible sales activities, including that the cold callers were using unauthorized scripts that contained misrepresentations and improper questions. RP 1017; 2018 Settlement at 6-8.

Based on these findings, Colletti consented to a $7,500 fine and a three-month suspension in any principal capacity. RP 1016; 2018 Settlement at 8. Colletti served his principal suspension from February 20, 2018, through May 19, 2018.[4] RP 1016. As discussed below, while suspended in all principal capacities pursuant to the 2018 Settlement, Colletti engaged in authorized trading and, in the last few days of his suspension, began the course of excessive trading that is the subject of this appeal.

C. Customer RM

RM, DSM's part-time office manager, was one of the employees who opened an IRA account with Colletti at Cardaret to take advantage of the matching contributions offered by DSM. RP 520-21, 529. RM has a degree in accounting and owned his own business before selling it in 2015. RP 519. That same year, RM started working for DSM three days a week.[5] RP 521-22.

RM's only investments in his Cardaret IRA were deductions from his DSM paychecks and DSM's matches. RP 666, 1277-1585. RM opened an IRA account at ICI shortly after

[4] After the suspension period, Colletti's registration as a principal was approved by FINRA as of October 25, 2018. RP 998.

[5] RM worked in the DSM office on Tuesdays, Wednesdays, and Thursdays. RP 521-22.

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Colletti joined the firm. RP 1043-62. The ICI new account form lists RM's risk tolerance as moderate and his investment objectives as income and growth and indicates that the account was non-discretionary. RP 1058. On February 1, 2017, $1,578 in securities positions and $1,151 in cash were transferred into RM's ICI account from Cardaret. RP 1537-46. The securities positions consisted of four mutual funds, five shares of General Electric ("GE"), and two shares of Gilead Sciences ("Gilead"). RP 1542-43. As before, RM's only investments in his ICI IRA were contributions deducted form his DSM paycheck and DSM's matches. RP 1277-1585.

D. Colletti Begins to Actively Trade in RM's Account

From March 2017 through April 2018, Colletti made 21 purchases in RM's ICI account that added to the existing positions in the account. RP 1029. Colletti testified that these purchases were part of a "reinvestment plan" and he did not charge RM commissions for any of these transactions. RP 678-79.

In May 2018, however, Colletti began actively trading RM's account. RP 1029. During the approximately nine-month period from May 2018 through February 7, 2019, Colletti made 50 purchases and sales in the account, all of which Colletti marked solicited. RP 424, 1029-32. Colletti's trading included repeated instances of "in-and-out trading"—i.e., the sale of securities in RM's account and the reinvestment of the proceeds in other securities followed by the sale of the newly acquired shares a short time later. *Id*. *See Harry Gliksman*, 54 S.E.C. 471, 477 n.13 (1999) (defining the term in-and-out trading). Colletti also frequently purchased and sold the same security repeatedly. RP 1029-35. Colletti held the positions in RM's account for an average of 10 days. RP 429-31, 1035.

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Colletti's trading in RM's account during the period from May 2018 through February 2019 resulted in a turnover rate of 10.31 and cost-to-equity ratio of 72.14 percent.[6] RP 1041. Moreover, Colletti's trading resulted in $5,417 in losses in RM's account, while generating $5,081 in commissions for Colletti.[7] RP 432-33, 1041.

E. RM Did Not Authorize Colletti's Trading in His Account

RM testified that he did not authorize any of the trading in his ICI account. RP 530-31, 535-38. The Hearing Panel found RM more credible than Colletti concerning whether the 73 trades in RM's account were authorized.[8] RP 1680-81. The NAC agreed and found that RM's credible testimony was supported by documentary evidence in the record, including Colletti's

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[6] The annualized turnover rate and cost-to-equity ratio for Colletti's trading in RM's account were 12.37 and 86.57 percent, respectively. RP 446-54, 1041. As the Commission has explained, "cost-to-equity ratio is the amount an account would have to appreciate annually to break even given the costs of trading," and "turnover rate is the number of times in one year that a portfolio of securities is exchanged for another portfolio." *Edward Beyn*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980, at *7 (Apr. 19, 2023), *petitions for review denied*, Nos. 23-6526-ag and 23-6653-ag, 2025 U.S. App. LEXIS 81 (2d Cir. Jan. 3, 2025). Annualized turnover rate is calculated by dividing the total account purchases by the average account equity and annualizing that number. *See Newport Coast Sec., Inc.*, 2020 SEC LEXIS 917, at *10. Annualized cost-to-equity ratio is calculated by dividing the total expenses by average monthly equity and annualizing that number. *Id*.

[7] Colletti testified that he set the commissions for his trading and that his commission payout was 90 percent. RP 461-62, 1587. The total costs of the trading in RM's account including charges by the firm totaled $5,427.23. RP 1041.

[8] The Hearing Panel found that while Colletti and RM "likely crossed paths and had some discussions regarding RM's IRA account, . . . the evidence regarding authorization of the 73 trades weighs in favor of RM never authorizing the trades." RP 1680. Accordingly, the Hearing Panel found that "weighing the totality of the evidence, . . . RM was more credible than Colletti on whether any of the 73 trades were authorized and that the preponderance of the evidence is that Colletti never obtained RM's authorization to execute any of the 73 trades. RP 1681. After a de novo review, the NAC agreed with these findings. RP 2033-35.

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notes and telephone records for Colletti's mobile and office lines.[9] RP 1029-32, 1063-1275, 1595-1640.

From May 2018 through February 2019, Colletti's telephone records reflect only seven one-to-two-minute telephone calls to the DSM office.[10] RP 1029-32. Two of these seven calls occurred on a Friday—a day RM did not work in the DSM office. RP 701-02, 723-24, 1029-32. Most importantly, not a single call was on a date and time prior to when Colletti executed trades in RM's account and only one was on a day for which Colletti provided a note referencing a purported conversation with RM. RP 1029-32.

The content of Colletti's notes further supports that Colletti's trading in RM's account was unauthorized. For example, certain notes reference the discussion of a trade that had been executed in the days prior to the note or that was executed in the days after the purported conversation. *Id*. In some instances, Colletti references using cash to purchase a stock when, in fact, Colletti sold another position to make the purchase. *Id*. In one case, Colletti wrote that RM supposedly wanted to sell a stock to take a "small gain" when that sale in fact resulted in a loss. RP 1030.

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[9] The NAC reviewed de novo the Hearing Panel's finding that RM's testimony regarding authorization was credible. RP 2033. *See Wilfredo Felix*, Exchange Act Release No. 101733, 2024 SEC LEXIS 3309, at *14-15 (Nov. 25, 2024) (finding that the NAC cannot defer to a Hearing Panel's credibility determinations when testimony is found not credible given, among other things, objective evidence in the record), *appeal docketed*, No. 25-1038 (D.C. Cir. Jan. 24, 2025). The NAC compared RM's and Colletti's testimony to the telephone records and Colletti's notes and found that "a preponderance of the evidence establishes that RM did not authorize the 73 trades in his account." RP 2033-35.

[10] Because Colletti managed five or six accounts for people associated with DSM, the calls to the DSM office could have been to other accountholders. RP 663. Moreover, there is no record of any telephone calls to RM's mobile phone during the relevant period. RP 1029-32.

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While Colletti testified that he believed he had authority to execute the trades in RM's non-discretionary account, he did not testify that RM authorized each specific trade. To the contrary, he referenced supposed general conversations with RM about taking profits and limiting losses and, with respect to the first 21 trades in RM's ICI account, characterized them as part of a "reinvestment program." RP 678, 722, 808-09, 822-23. Colletti also testified that he may have used time and price discretion for certain trades, while also claiming that he did not understand the definition of time and price discretion and incorrectly claiming that it could last "a few days to a week usually."[11] RP 728, 740, 747, 756, 843-44.

F. Colletti Trades in RM's Account After RM Directs Him to Close and Liquidate the Account

On February 7 and 8, 2019, RM contacted Colletti and directed him to close his ICI account because he was planning to retire. RP 409-10, 1642. On February 8, Colletti followed RM's instructions and sold all the positions in the account. RP 411-12, 1031-32. On February 13, 2019, however, Colletti purchased 550 shares of Dynavax Technologies Corp. ("Dynavax"), a stock he had previously traded in RM's account, using all the proceeds from the prior sales. RP 1031-32. A week later, on February 20, 2019, Colletti sold the Dynavax position. *Id*. While Colletti sold the shares for a slightly higher price (32 cents per share higher), he charged RM total commissions of $460 (with total trade costs of $470.08) for the purchase and sale, and the trades resulted in a "round-trip" loss of $292.27 in RM's account. RP 1034, 1039.

After receiving the confirmations for Colletti's trades of Dynavax, RM emailed Colletti on February 24, 2019 asking, "[w]hy am I still buying stock when on February 8th I spoke to you

[11] In fact, time and price discretion lasts only "until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer." NASD Rule 2510(d)(1), FINRA Rule 3260(d)(1).

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about closing this account out[?]" RP 1641. Colletti replied that "[i]t was actually a trade correction," and that the account was in cash and a check would be sent to RM. *Id*. The commissions from these trades, however, were never refunded to RM.[12] RP 550, 804-06.

III. PROCEDURAL HISTORY

After an investigation of Colletti's trading activities, on February 15, 2023, FINRA's Department of Enforcement filed a two-cause complaint against Colletti, alleging that Colletti had engaged in 73 unauthorized trades in RM's account during the period from March 2017 through February 2019, and that 51 of these trades, executed from May 2018 through February 2019, were also excessive. RP 6-17, 372-74. Colletti denied the allegations in the complaint and the disciplinary proceeding moved towards a hearing.

On April 3, 2023, the Hearing Officer assigned to the matter issued a Case Management and Scheduling Order setting the schedule and other requirements for the disciplinary hearing. RP 23-34, 133-47. Among other requirements, the Case Management and Scheduling Order explained that the "parties must present all evidence bearing on both liability and sanctions at the hearing, including, if applicable, detailed financial information in support of an individual respondent's claim of financial hardship that would prevent the payment of a monetary sanction." RP 147. During the initial prehearing conference, the Hearing Officer further cautioned Colletti specifically to "read the forthcoming case management and scheduling order very carefully and follow all of its requirements." RP 110.

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[12] With respect to these last two trades in Dynavax, the Hearing Panel found not credible Colletti's testimony that the purchase was made in error and the sale was a trade correction, and also rejected as not credible Colletti's claim that he did not know if he received any commissions related to these trades. RP 1680-81. The NAC affirmed the Hearing Panel's credibility findings in this regard. RP 2033.

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Despite these instructions, Colletti did not raise his alleged inability to pay and did not provide any proposed exhibits prior to the hearing related to his inability to pay. RP 266-67. Instead, Colletti raised the financial strain of his wife's medical expenses for the first time during his closing argument at the hearing, stating without supporting evidence, that the 12-month suspension and $15,000 fine requested by Enforcement "would have serious impacts on the ability for me to provide for my family, especially my wife who has been battling stage four metastatic breast cancer for close to three years" and whose "medical expenses are extensive."[13] RP 969-70.

After a three-day hearing, a Hearing Panel issued a February 28, 2024 decision finding that Colletti had engaged in the misconduct alleged by Enforcement. RP 1669-88. Specifically, the Hearing Panel found that Colletti violated FINRA Rule 2010 by executing 73 unauthorized trades in RM's account, and that 52 of these trades were quantitatively unsuitable in violation of FINRA Rules 2111 and 2010. *Id.* For these violations, the Hearing Panel suspended Colletti in all capacities for eight months, fined him $10,000, ordered him to pay $5,417 in restitution to RM, and ordered Colletti to requalify by examination as a general securities representative before again acting in that capacity. RP 1688.

With respect to Colletti's claims about his financial situation, the Hearing Panel found that Colletti "raised this in the first instance during his closing argument and he never presented

[13] Colletti was on notice that Enforcement was seeking monetary sanctions prior to the hearing. In the complaint, Enforcement requested restitution to the customer and the imposition of one or more sanctions provided for under FINRA Rule 8310(a). RP 13. Among other potential sanctions, FINRA Rule 8310(a)(2) provides that FINRA may "impose a fine upon a member or person associated with a member." Moreover, Enforcement specified the sanctions it was seeking in its prehearing brief, requesting that "the Hearing Panel suspend Colletti for a total of 12 months in all capacities, fine him $15,000, and order him to pay [RM] full restitution of $5,417.17, plus pre-judgment interest." RP 204.

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any documentation to support his assertions that his wife's medical issues were causing his family financial distress." RP 1687. Accordingly, the Hearing Panel concluded that Colletti's "assertions of financial distress" did not "warrant further consideration." *Id.*

Colletti timely appealed the Hearing Panel's decision to the NAC, and wrote in his notice of appeal that—notwithstanding the instructions provided at the beginning of the proceedings before the Hearing Panel—he "was unaware he was allowed to produce documents regarding the costs associated with his wife's medical condition and the financial distress it has caused this family." RP 1689-91. Colletti asked to "provide additional documentation" on appeal. *Id.*

On March 25, 2024, FINRA's Office of General Counsel ("OGC") sent a letter acknowledging Colletti's appeal, explaining the procedures on appeal, and specifically addressing Colletti's request to submit additional evidence supporting his purported inability to pay monetary sanctions (the "Acknowledgement Letter"). RP 1693-95. The Acknowledgement Letter advised Colletti that a party who seeks to introduce additional evidence on appeal must file a motion seeking leave to do so. RP 1694. The Acknowledgement Letter stated:

> Please be advised that pursuant to **Rule 9346(b)**, a party who seeks to adduce additional evidence on appeal must file a motion seeking leave to adduce additional evidence **not later than 30 days after OHO transmits to this office and serves upon all parties the index to the record.** The motion must describe each item of proposed new evidence, demonstrate that there is good cause for failing to introduce it below, and demonstrate why the evidence is material to the proceeding. A party who seeks to adduce additional evidence must provide copies of the motion to all other parties to this proceeding.[14] *Id.* (emphasis in original).

[14] OGC included with the Acknowledgement Letter a copy of the rules governing appeals to the NAC, including a copy of Rule 9346(b), which sets forth the requirements for a motion for leave to introduce additional evidence. RP 1696-1733.

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Finally, the Acknowledgement Letter invited Colletti to contact an OGC paralegal with any questions. RP 1695.

Colletti did not move for leave to adduce additional evidence by the deadline for doing so. Accordingly, when OGC later sent a letter scheduling oral argument before a NAC Subcommittee, the letter noted:

> Please note that, unless the NAC Subcommittee previously granted you a right to introduce additional evidence, you do not have a right to introduce new evidence. Pursuant to Rule 9346(b), the deadline for you to apply to introduce additional evidence has passed. Accordingly, the NAC's review will be limited to consideration of the record before the Hearing Panel, written briefs, and oral arguments. RP 1905.

Colletti did not file the required motion as instructed. Rather he reasserted his inability to pay and repeated his offer to provide evidence in his opening brief and during oral argument, both long after the deadline for moving to introduce new evidence had passed.

On June 17, 2025, FINRA issued its final decision, in which it affirmed the Hearing Panel's findings of violation and the sanctions it imposed. RP 2025-42. This appeal followed.

IV. ARGUMENT

On appeal, Colletti states that he "no longer challenges the fact findings" by FINRA. Colletti Br. at 4. Instead, he argues only that the sanctions imposed by FINRA are excessive and that FINRA did not properly consider his purported inability to pay monetary sanctions. Colletti Br. at 4-7. Colletti's decision not to challenge FINRA's findings of violation against him makes sense because, as discussed below (*see infra* Parts IV.A-B), the record demonstrates conclusively that Colletti engaged in the misconduct FINRA found and that his misconduct violated FINRA rules, which were applied in a manner consistent with the Exchange Act. *See* 15 U.S.C. §

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78s(e)(1); *see also Richard Allen Riemer, Jr.*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *8 (Oct. 31, 2018) (setting forth the requirements of Commission review on appeal).

Colletti's challenges to the sanctions FINRA imposed are baseless. The $10,000 fine and eight-month suspension FINRA imposed fall on the lower end of the applicable Guidelines for unauthorized and excessive trading and are amply supported by numerous applicable aggravating factors and absence of mitigating factors. The NAC also properly considered Colletti's 2018 Settlement in assessing sanctions. Colletti consented to the 2018 Settlement and served the suspension pursuant to it while he was engaged in the misconduct that is the subject of this action. Moreover, the 2018 Settlement concerned Colletti's failure to supervise sale practice activities in his office and, accordingly, is similar to his misconduct here which also involved his sales practices in a customer's account.

FINRA also correctly found that Colletti's misconduct caused quantifiable losses to an identifiable person and ordered that he pay RM $5,417 as restitution for those losses. Finally, FINRA's order that Colletti requalify by examination as a general securities representative before again acting in that role is supported by Colletti's testimony, which reflects his profound misunderstanding of basic requirements concerning authorization and appropriate levels of trading. This requirement will ensure that when Colletti reenters the securities industry he will understand his regulatory obligations.

The sanctions FINRA imposed are well supported by the record and, accordingly, the Commission should sustain them.

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A. Colletti Engaged in Unauthorized Trading in RM's Account

FINRA Rule 2010 requires that FINRA members and their associated persons "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. The Commission has long held that engaging in unauthorized trading in a customer's account is a "serious breach of this duty, because unauthorized trades go to the heart of a securities professional's trustworthiness." *Charles Scott Burford*, Exchange Act Release No. 103180, 2025 SEC LEXIS 1577, at *4-5 (June 4, 2025), *appeal docketed*, No. 25-60401 (5th Cir. July 30, 2025). Indeed, the Commission has stated that unauthorized trading "is a fundamental betrayal of the duty owed by a sales[person] to his [or her] customers." *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2008) (*quoting Keith L. DeSanto*, 52 S.E.C. 316, 323 (1995)).

To trade in a non-discretionary account like RM's, Colletti was "responsible for obtaining his . . . customer's consent" prior to every single trade. *Sears*, 2008 SEC LEXIS 1521, at *6. The record establishes that Colletti did not do so. RM credibly testified that he did not authorize any of the trading in the account and the documentary evidence supports his unequivocal testimony. RP 530-31, 535-38, 1029-32, 1063-1275, 1595-1640.

Colletti produced notes that seem to reference conversations with RM. RP 1029-32, 1059-1640. Only a single note, however, corresponds to a record of a telephone call with RM. *Id*. Moreover, for the 10-month period from May 2018 through February 2019, Colletti's telephone records reflect only seven one-to-two-minute calls to the DSM office telephone number and none to RM's telephone number. RP 1029-32. Only one of these seven calls was on

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a date when Colletti executed a trade in RM's account,[15] and two were on a day of the week when RM did not work in the DSM office. *Id*. These records establish that Colletti did not obtain RM's authorization prior to executing trades in his account.

The content of Colletti's notes further supports this conclusion. For example, some notes reference trades that had occurred in the days prior to or after the date of the note. *Id*. In other instances, the content of Colletti's note does not match the activity in RM's account. *Id*. For example, one note states that Colletti was to use cash in the account to purchase a stock when in fact he sold another position and used the proceeds to purchase it. *Id*.

Colletti's own testimony also demonstrates that the trading was unauthorized. Significantly, Colletti never testified that RM authorized every trade. Rather, he testified about a "reinvestment plan" for the first 21 trades and a purported conversation with RM about a general strategy of taking gains and limiting losses. RP 678-79, 722, 808-09, 822-23. Even if true, such conversations about general strategy are not adequate to authorize trades in a non-discretionary account like RM's. *See Michael Pino*, Exchange Act Release No. 74903, 2015 SEC LEXIS 1811, at *18 (May 7, 2015) (rejecting a claim that transactions executed pursuant to a general strategy were authorized where the representative neither discussed the transactions with the customer nor obtained written authorization to exercise discretion in the account).

Nor do Colletti's inconsistent claims about exercising time and price discretion render any of the trading here authorized. Time and price discretion allows a registered representative to exercise discretion as to the price or time of a trade for which the customer has directed the purchase or sale of a definite amount of a specific security. *See* NASD Rule 2510(d)(1) and

[15] Even this call, however, occurred *after* Colletti executed a trade in RM's account. RP 401-402, 1030.

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FINRA Rule 3260(d)(1). As discussed above, however, there is no evidence, and Colletti does not even claim, that RM authorized the purchase of any security whatsoever, much less that he directed the purchase or sale of a definite amount of a specific security. *See Pino*, 2015 SEC LEXIS 1811, at *25 (rejecting a registered representative's claim that he exercised time and price discretion when he was not granted discretion by the customer as to the sale of definite amounts of specified securities in the customer's account).

Finally, there is no doubt that the purchase and sale of Dynavax after RM directed Colletti to close the account were unauthorized. RM's email to Colletti asking about the transactions demonstrates that Colletti did not obtain authorization for the trades. RP 1641. Moreover, the NAC correctly rejected as not credible Colletti's claim that these transactions, which were marked solicited and involved the entire account value at the time, were an error and trade correction because, in part, Colletti did not refund the commissions associated with these transactions to RM. RP 424, 550, 804-06.

As Colletti concedes by not challenging FINRA's findings of violations on appeal, the record abundantly supports that Colletti engaged in authorized trading in violation of FINRA Rule 2010 and the Commission should affirm this finding.

B. Colletti Excessively Traded RM's Account

A registered representative's suitability obligations under FINRA Rule 2111 include the obligation to ensure the trading is quantitatively suitable. *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *23 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012). Excessive trading "occurs when a registered representative controls the trading in an account, and the level of that trading is inconsistent with the customer's objectives and financial

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situation."[16] *Beyn*, 2023 SEC LEXIS 980, at *7. Control over an account may be formal or de facto. *See id*. A registered representative exercises de facto control when he or she "control[s] the volume and frequency of the transactions in the account." *Clyde J. Bruff*, 53 S.E.C. 880, 883 (Oct. 21, 1998). When a registered representative engages in unauthorized trading, as Colletti did here, de facto control is established because the customer "[was] not consulted, nor typically even made aware of, the particular trades executed in [his] account until well after the fact" and, accordingly, is not controlling the trading in his account. *Cody*, 2011 SEC LEXIS 1862, at *29; *see also Sandra K. Simpson*, Exchange Act Release No. 45923, 2002 SEC LEXIS 3419, at *39-40 (May 14, 2002) (explaining that de facto control exists when a customer is incapable of controlling the account because of unauthorized trading).

While there is no single conclusive test for excessive trading, the Commission regularly considers cost-to-equity ratio, turnover rate, and the customer's age, retirement status, and financial condition and objectives. *See Beyn*, 2023 SEC LEXIS 980, at *7. Additionally, the Commission has found that in-and-out trading and multiple "round-trip" purchases and sales of the same securities are also indicative of excessive trading. *See, e.g.*, *Gliksman*, 54 S.E.C. at 477 (in-and-out trading); *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *34 (July 2, 2013) (multiple round-trips).

All these factors support that Colletti's unauthorized trading in RM's account was excessive. The trading was inconsistent with RM's investment profile and investment objectives. RM was 62 years-old when he opened his ICI account, working part-time, and

[16] Effective June 30, 2020, FINRA amended Rule 2111 to remove the requirement that the registered representative control the account for a finding of quantitative unsuitability. *See FINRA Regulatory Notice 20-18*, 2020 FINRA LEXIS 14 (June 2020). Because Colletti's trading occurred before the rule amendment, the control requirement applies to his misconduct.

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nearing retirement. RP 520-22. His ICI account was an IRA for which his risk tolerance was listed as "moderate" and his investment objectives as income and growth. RP 1043-62. Colletti engaged in frequent in-and-out trading—i.e., frequently selling a stock to purchase another that he in turn sold soon afterwards—and purchased and sold the same stocks repeatedly. RP 1029-35. *See Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at *19 (May 29, 2015) (explaining that among the relevant factors in determining the existence of excessive trading is "number and frequency of trades" and the "existence of unauthorized trades"). Moreover, while RM's account value never exceeded $10,000, Colletti's frequent unauthorized trading resulted in losses to RM of more than $5,400, while generating more than $5,000 in commissions for Colletti. RP 1035.

The turnover rate and cost-to-equity ratio for Colletti's unauthorized trading further demonstrate that it was excessive. The Commission has held that a turnover rate of six or higher and a cost-to-equity ratio exceeding 20 percent "generally indicates that excessive trading has occurred." *Beyn*, 2023 SEC LEXIS 980, at *7. The turnover rate and cost-to-equity ratio for RM's account far exceed these thresholds. For the period from May 2018 through February 2019, the turnover rate for RM's account was 10.31, with an annualized rate of 12.37. RP 1041. Accordingly, on an annual basis, the portfolio of securities in RM's account completely changed more than 12 times. For the same period, the cost-to-equity ratio for RM's account was 72.14 percent, with an annualized ratio of 86.57 percent. *Id*. With this level of trading, RM's account would have to appreciate more than 86 percent annually just to break even given the commissions Colletti was charging him. *See Bruff*, 53 S.E.C. at 885 (explaining that the Commission has held "that where a trading strategy results in costs so high as to make the generation of any profit unlikely, the trading is excessive").

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These facts demonstrate that Colletti's unauthorized trading in RM's account during the period from May 2018 through February 2019 was unquestionably excessive. Accordingly, the Commission should affirm the NAC's finding that Colletti's misconduct violated FINRA Rules 2111 and 2010.

C. The Sanctions Imposed by the NAC Are Supported by the Evidence, Consistent with the Sanction Guidelines, and Neither Excessive nor Oppressive

Under Exchange Act Section 19(e)(2), the Commission will sustain the sanctions FINRA imposes unless they are "excessive or oppressive" or impose an unnecessary or inappropriate burden on competition.[17] 15 U.S.C. § 78s(e)(2). In evaluating the sanctions FINRA imposed, the Commission considers any aggravating or mitigating factors, and whether the sanctions are remedial and not punitive. *See Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Secs., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007). When so doing, the Commission considers FINRA's Sanction Guidelines (the "Guidelines"), including the General Principles Applicable to All Sanction Determinations ("General Principles") and Principal Considerations in Determining Sanctions ("Principal Considerations"), as a benchmark.[18] *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *34 n.85 (Nov. 9, 2012).

The NAC imposed a unitary sanction for Colletti's unauthorized and excessive trading of an eight-month suspension in all capacities, a $10,000 fine, an order that he pay RM $5,417 as restitution for his losses, and an order that Colletti requalify by examination as a general

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[17] Colletti does not argue, and the record does not show, that the sanctions imposed are an unnecessary or inappropriate burden on competition.

[18] *FINRA Sanction Guidelines* (2022), https://www.finra.org/sites/default/files/2024-03/2022-sanction-guidelines.pdf. The NAC applied the Guidelines in effect at the time of the Hearing Panel's decision. RP 2038.

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securities representative before again acting in the role.[19] RP 2042. These sanctions, which fall on the lower ends of the Guidelines applicable to Colletti's violations, are supported by numerous aggravating factors, the absence of any mitigating factors, and meet the standards of Exchange Act Section 19(e)(2) and are appropriately remedial.

1. The Suspension and Fine Imposed by FINRA Are Supported by Multiple Aggravating Factors

The Guidelines for excessive trading recommend a fine of $5,000 to $50,000 and a suspension in any or all capacities for a period of one month to two years or, when aggravating factors predominate, a suspension of two years or a bar. *Guidelines*, at 112. The Guidelines for unauthorized transactions recommend a fine of $5,000 to $30,000 and a suspension for a period of one month to two years or, when aggravating factors predominate, a bar. *Guidelines*, at 122. The principal considerations in determining sanctions for unauthorized trading include in relevant part: (1) whether the respondent reasonably misunderstood his authority or the terms of the customer's orders; (2) the number of customers affected and the magnitude of the customers' losses; and (3) the number and dollar value of unauthorized transactions. *Id.*

In assessing appropriately remedial sanctions for Colletti's misconduct, the NAC properly considered several applicable aggravating factors. First, the NAC rejected any notion that Colletti reasonably misunderstood his authority to trade in RM's account. *Id.* Colletti never claimed that he misunderstood conversations with RM, and he conceded that he knew RM's

[19] Colletti does not challenge the requirement that he requalify as a general securities representative. Nor does he challenge the NAC's order that he pay restitution to RM, whom he has acknowledged is entitled to restitution, except insofar as he argues that FINRA did not properly consider his alleged inability to pay monetary sanctions. We address this argument below (*see infra* Part IV.C.2).

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account was non-discretionary.[20] RP 668-70. Moreover, the NAC correctly found that Colletti—who had approximately two decades of experience as a registered representative and registered principal—could not have reasonably believed he could trade in RM's non-discretionary account without obtaining authorization for each transaction. RP 2039.

Second, while acknowledging that Colletti's violations only involved a single customer, the NAC found "the number and dollar value of the unauthorized trades significant given the size of RM's account" and considered aggravating that while RM's account value never exceeded $10,000, Colletti's unauthorized trading caused more than $5,400 in losses to RM, while generating more than $5,000 in commissions for Colletti. RP 2039; *Guidelines*, at 122. Moreover, it is further aggravating that Colletti engaged in a pattern of 73 unauthorized trades, 52 of which were also excessive, over a period of almost two years. *Guidelines*, at 7 (Principal Considerations Nos. 8, 9); *see Burford*, 2025 SEC LEXIS 1577, at *7 (finding it aggravating that respondent engaged in 17 unauthorized transactions over more than two years).

Third, the NAC properly found it aggravating that Colletti's violations occurred in an IRA account for a customer in his sixties and nearing retirement, and caused significant customer losses, while resulting in financial gain to Colletti and that Colletti had not accepted responsibility for his misconduct prior to detection. *Guidelines*, at 7-8 (Principal Considerations Nos. 2, 11, 16); *see, e.g.*, *Raghavan Sathianathan*, Exchange Act Release No. 54722, 2006 SEC LEXIS 2572, at *43 (Nov. 8, 2006) (finding it aggravating that the respondent's misconduct caused customers losses and his own monetary gain); *Joseph R. Butler*, Exchange Act Release

[20] Colletti even testified that he knew his firm did not allow discretionary accounts at all. RP 668-70.

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No. 77984, 2016 SEC LEXIS 1989, at *31 (June 2, 2016) (finding aggravating that respondent failed to take responsibility for his misconduct).

Finally, the NAC considered that while he began in earnest his unauthorized and excessive trading in RM's account, he settled and served a three-month suspension in all principal capacities for his failure to supervise cold callers in the branch office he managed and supervised. RP 2040. The Guidelines provide that "[a]djudicators should always consider a respondent's disciplinary history in determining sanctions and should ordinarily impose progressively escalating sanctions on recidivists." *Guidelines*, at 2 (General Principles No. 2). Sanctions should be more severe for recidivists because they, by definition, have already demonstrated a failure to comply with FINRA rules and doing so advances the important objective of deterring and preventing future misconduct. *Id*. Accordingly, the Guidelines direct FINRA adjudicators to consider imposing more severe sanctions when a respondent's disciplinary history includes either significant past misconduct that is similar to the misconduct at issue or that shows a pattern of causing investor harm, damaging market integrity, or disregarding regulatory requirements. *Id*.

On appeal before the NAC, Colletti argued that he should not be considered a recidivist based on the 2018 Settlement because: (1) the Hearing Panel did not ask him about the merits of the allegations underlying the 2018 Settlement or his reasons for settling; (2) he did not have a "pattern of rule violations involving customer harm;" and (3) the 2018 Settlement and the charges underlying it occurred too long ago to be considered. RP 1808, 1811. Contrary to Colletti's claim here, the NAC properly considered and rejected these arguments. Colletti Br. 4; RP 2040.

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First, Colletti's complaints about the merits of the underlying allegations and his reasons for agreeing to the 2018 Settlement are not relevant. Colletti does not claim that the 2018 Settlement was in some way mischaracterized, and the Guidelines provide that "any final formal disciplinary action by FINRA or other regulator" may be considered as part of disciplinary history. *See Guidelines*, at 2 (General Principles No. 2). Indeed, the 2018 Settlement expressly provides that it may be considered in any future FINRA action. 2018 Settlement at 2. Colletti consented to the findings and sanctions in the 2018 Settlement and cannot now argue that it should be disregarded because he chose to settle rather than litigate those claims.

Second, Colletti's argument that the 2018 Settlement should not be aggravating because it occurred too long ago also has no merit. Colletti's unauthorized and excessive trading of RM's account occurred from March 2017 through February 2019. RP 1029-32. The complaint underlying the 2018 Settlement was filed during this period—in July 2017—and concerned alleged misconduct that had occurred just three years earlier in 2014. RP 1015. Moreover, Colletti agreed to the 2018 Settlement in January 2018 and served the principal suspension imposed pursuant to it from February 20, 2018, through May 19, 2018, during the same time he was engaging in unauthorized trading and beginning his excessive trading in RM's account. RP 1016-19, 1029. *Cf.*, *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 5100, at * 35 (June 26, 2014) (finding relevant, in the context of FINRA's denial of an application for continued associated with a statutorily disqualified person, disciplinary history that occurred approximately five to seven years before the application).

On appeal to the Commission, Colletti argues that the 2018 Settlement should be disregarded because it "bears no relation" to his misconduct here. Colletti Br. at 4. Colletti reads the requirement that the NAC consider relevant prior misconduct too narrowly to apply

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only when disciplinary history is "identical" to the misconduct at issue. The Guidelines, however, provide that prior misconduct may be considered if it is "similar to" the misconduct at issue. *See Guidelines*, at 2 (General Principles No. 2) (stating that more severe sanctions should be considered when a respondent's disciplinary history "includes significant past misconduct that is *similar to* the misconduct at issue," *or* "shows a pattern of causing investor harm, damaging market integrity, or disregarding regulatory requirements"); *see also John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *47-48 (June 14, 2013) (noting that FINRA "routinely considers an applicant's disciplinary history in determining the appropriate sanction" and finding that FINRA "properly considered" respondent's history of suspensions for failure to pay an arbitration award and for acting as a principal without the proper registration when it assessed sanctions for respondent's unethical removal of firm books and records).

Specifically, while Colletti was engaging in the sales practice violations at issue in this matter—unauthorized and excessive trading—he was also settling allegations that he had failed to follow firm procedures and properly supervise cold callers, who themselves engaged in impermissible sales practices in the branch office Colletti supervised. Because of Colletti's failure to supervise, cold callers working in the same room as Colletti used unapproved scripts in communications with customers that included misrepresentations and asked improper questions. This significant prior misconduct, for which Colletti was suspended in all principal capacities for three months—during which he engaged in the sales practice violations at issue in this matter—demonstrates Colletti's disregard for FINRA rules that protect customers, and shows that more severe sanctions are necessary to serve a remedial purpose. Colletti's prior history is aggravating, and the NAC properly considered it.

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2. The Orders that Colletti Pay Restitution and Requalify as a General Securities Principal Are Supported by the Record

Except to the extent he asserts an inability to pay monetary sanctions, Colletti does not challenge the appropriateness of FINRA's order that he pay RM restitution of $5,417 plus prejudgment interest and order that he requalify by examination as a general securities representative before again serving in that capacity. Both orders are supported by the record and should be sustained.

Restitution is appropriate when, as here, an identifiable person has suffered a quantifiable loss proximately caused by a respondent's misconduct. *See Guidelines*, at 5 (General Principles No. 5; *see also Butler*, 2016 SEC LEXIS 1989, at *37 (sustaining an order of restitution to restore the status quo ante when an identifiable person suffered a quantifiable loss due to the respondent's misconduct). There is no question that Colletti's unauthorized and excessive trading caused losses in RM's account. FINRA's order of restitution is necessary to return RM to the position he occupied before Collettt's misconduct and to prevent Colletti from being unjustly enriched. *See Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917, at *37-38 (Apr. 3, 2020) (finding that an order of restitution which restored customers to the position they would have been absent the respondent's misconduct was remedial and neither excessive nor oppressive). Indeed, Colletti himself conceded that restitution to RM is appropriate. RP 363, 971.

FINRA also properly imposed a requirement that Colletti requalify as a general securities representative before again serving in that capacity. The Guidelines provide that such an order it appropriate when "a respondent's actions have demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities industry." *Guidelines*, at 6 (General Principles No. 8); *see also Harry Gliksman*, 54 S.E.C. at 488 (finding that a requalification order was

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"appropriate to remind" the respondent of his regulatory obligations when his misconduct "showed a lack of understanding" of those obligations). Colletti's testimony during the hearing in this matter reflects his profound misunderstanding of basic requirements concerning authorization and appropriate levels of trading. This testimony includes his claim that his trades in a non-discretionary account were authorized based on purported conversations about a general investment strategy or because they were part of an alleged "reinvestment program," his misunderstanding about the limits of time-and-price discretion, and his surprise when confronted with results of his frequent trading and level of commissions he was charging.[21] Under these circumstances, the Commission should sustain the requalification order, which will ensure that Colletti will understand his regulatory obligations in the future. *See Wilson-Davis & Co.*, Exchange Act Release No. 99248, 2023 SEC LEXIS 3658, at *48 (Dec. 28, 2023) (explaining that requalification requirements "help ensure that . . . [registered representatives] have a full understanding of [their] responsibilities").

3. Colletti Has Waived the Inability to Pay Defense in this Proceeding

Finally, Colletti argues that FINRA improperly failed to rule upon his request to introduce evidence of his alleged inability to pay monetary sanctions. Colletti Br. at 1, 6. Colletti's argument, however, ignores that it was his burden to prove this defense, as he was

[21] Colletti testified that he never calculated the turnover rate or cost-to-equity-ratio for RM's account and, in fact, did not know how to do so. RP 812-14, 825-26. He also admitted he did not keep track of the costs of trading in RM's account and did not "realize the commissions were that high." RP 812, 839, 841.

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advised by FINRA, and that he repeatedly ignored FINRA's instructions.[22] As a result, Colletti waived the inability to pay defense before FINRA.

Adjudicators in FINRA proceedings are required to consider a respondent's bona fide inability to pay when imposing a monetary sanction. *See Guidelines*, at 6 (General Principles, No. 9); *see also Bruce M. Zipper*, 51 S.E.C. 928, 931 (1993). However, "[i]t is well settled that a respondent bears the burden of demonstrating an inability to pay." *Castle Sec. Corp.*, 58 S.E.C. 826, 837 (2005); *see also Guidelines*, at 6 (explaining that the "burden is on the respondent to raise the issue of inability to pay and to provide evidence thereof"). The party raising an inability to pay defense has the burden of proving it "[b]ecause the scope of his assets is peculiarly within [his] knowledge." *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *16 (Mar. 17, 2016).

Adjudicators are "entitled to make a searching inquiry" when a claim of inability to pay is made. *Castle Sec. Corp.*, 58 S.E.C. at 837; *see also William J. Gallagher*, 56 S.E.C. 163, 169 (2003) (finding that a FINRA adjudicator was "entitled to make a rigorous inquiry" into a party's claim of inability to pay). To prevail on the defense, a party must document his income, assets, and expenses. *See, e.g.*, *Keith D. Geary*, Exchange Act Release No. 80322, 2017 SEC LEXIS 995, at *44 (Mar. 28, 2017) (finding that Geary did not establish his inability to pay when he failed to document his income, assets, or expenses); *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *37-38 (Feb. 20, 2014) (explaining that "Houston has failed to carry his burden of proving inability to pay because he did not provide any supporting evidence for this contention").

[22] Colletti separately filed a motion requesting remand to FINRA to consider his inability to pay or, alternatively, that the Commission allow him to introduce additional evidence. FINRA filed an opposition to Colletti's motion on September 15, 2025.

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If a party does not raise the issue of inability to pay during the initial consideration of a matter before a Hearing Panel, on appeal the NAC will "presume the issue of inability to pay to have been waived[,] unless the inability to pay is alleged to have resulted from a subsequent change in circumstances." *See Guidelines*, at 6 (General Principles, No. 9).

A party who seeks to raise an inability to pay defense in the first instance on appeal before the NAC may attempt to meet his burden by moving to adduce additional evidence pursuant to FINRA Rule 9346(b). FINRA Rule 9346(b) provides that a party may apply for leave to introduce additional evidence by motion filed not later than 30 days after OHO transmits to the NAC and serves upon all parties the index to the record.[23] Rule 9346(b) further provides that such a motion "shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, [and] demonstrate why the evidence is material to the proceeding."

Colletti waived his inability to pay defense before FINRA because he failed to present evidence to support it. *See, e.g.*, *Dep't of Enf't v. Goritz*, Complaint No. C10000037, 2002 NASD Discip. LEXIS 7, at *16-18 (NASD NAC Apr. 26, 2002) (finding that a respondent waived an inability to pay defense when he did not present the argument during the hearing and did not properly move to adduce evidence related to the defense before the NAC); *cf.*, *The Transp. Grp. (Sec.) Ltd.*, Exchange Act Release No. 100189, 2024 SEC LEXIS 1174, at *3-4 (May 21, 2024) (explaining, in the context of a motion to dismiss for failure to exhaust administrative remedies, that requiring applicants to raise arguments and defenses before FINRA

[23] FINRA Rule 9346(b) also provides that a party may file a motion in accordance with FINRA Rule 9146 requesting an extension of the period during which he may move for leave to introduce additional evidence. Such a motion must demonstrate that there was good cause for failing to file the motion during the prescribed period. Colletti made no such request here.

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in the first instance allows "development of a record" and "promotes the efficient resolution of disputes"). From the beginning of this proceeding, Colletti was notified that it was his burden to produce evidence to establish this defense. The Case Management and Scheduling Order stated that each party must present evidence bearing on both liability and sanctions at the hearing, including specifically, "detailed financial information in support of [a] claim of financial hardship that would prevent the payment of a monetary sanction." RP 147. Despite this instruction, Colletti presented no evidence at all at the hearing relating to his ability to pay.

In his notice of appeal, Colletti indicated that he wished to present additional evidence to the NAC. RP 1691. OGC specifically referenced Colletti's request in the Acknowledgment Letter and provided instructions on how to move to do so. RP 1693-95. The Acknowledgement Letter explained that the motion must describe each item of proposed new evidence, demonstrate that there is good cause for failing to introduce it below and why the evidence is material to the proceeding, and it informed Colletti of the deadline for doing so. RP 1694. Notwithstanding these directions, Colletti never filed a motion to adduce. Instead, he again offered to provide documents in his brief and during oral argument, long after the deadline for filing a motion to adduce had passed.

Colletti had several opportunities to present evidence of his alleged inability to pay throughout the proceedings before FINRA. Colletti, however, failed to do so and therefore waived the defense. Accordingly, the Commission should reject Colletti's arguments and deny Colletti's request to remand this proceeding to FINRA on these grounds.

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V. CONCLUSION

Colletti's unauthorized and excessive trading demonstrates a troubling disregard for the most basic rules governing the conduct of registered representatives. His misconduct is particularly troubling considering he has been registered as a general securities representative and principal for approximately two decades. Colletti's serious misconduct caused significant customer harm and involved numerous other aggravating factors. Accordingly, the sanctions imposed by FINRA are appropriately remedial. Colletti's overly narrow view of his disciplinary history and his complaints about FINRA's failure to consider a defense he waived have no merit. Accordingly, the Commission should sustain FINRA's action in all respects and dismiss the application for review.

Respectfully submitted,

[redacted]

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CERTIFICATE OF COMPLIANCE

I, Celia L. Passaro, certify that this brief complies with the length limitation set forth in Commission Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 9,332 words, exclusive of the pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I further certify that on this 2nd day of December 2025, I caused a copy of the foregoing FINRA's Brief in Opposition to the Application for Review, in the matter of the Application for Review of Michael Ciro Colletti, Administrative Proceeding File No. 3-22491, to be filed through the SEC's eFAP system.

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